



Telecom Order CRTC 2006-217

Ottawa, 23 August 2006

Bell Aliant Regional Communications, Limited Partnership

Reference: Tariff Notice 200

Asymmetric digital subscriber line wide area network service

The application

1. The Commission received an application by Aliant Telecom Inc. (Aliant Telecom), now Bell Aliant¹, dated 29 May 2006, to introduce General Tariff item 624, ADSL WAN Service.²
2. Bell Aliant's ADSL WAN Service is a broadband access service based on asymmetric digital subscriber line (ADSL) technology that enables a competitive local exchange carrier, Internet service provider, or digital subscriber line service provider (collectively referred to as competitors) to establish a high-speed dedicated channel between an end-user's premises and a Bell Aliant wire centre.

Process

3. The Commission received comments regarding Bell Aliant's application from MTS Allstream Inc. (MTS Allstream) on 29 June 2006 and from the Independent Members of the Canadian Association of Internet Providers (IMCAIP) on 30 June 2006. Reply comments were received from Bell Aliant on 11 July 2006.

Positions of parties

4. MTS Allstream and IMCAIP (the interveners) submitted that the proposed ADSL WAN Service rate structure artificially increased the competitors' costs by basing rates on volume and term commitments. The interveners requested that the Commission eliminate rating based on volume and term commitments in favour of a single monthly rate option.
5. IMCAIP requested that the Commission classify Bell Aliant's ADSL WAN Service as an essential service and set the rates at Category I Competitor Service levels (i.e., Phase II costs plus a 15 percent mark-up). IMCAIP noted that the ADSL WAN Service was used with many applications in addition to carrying Internet traffic (e.g., eCommerce, alarm monitoring, inter-office private networks, video surveillance of real assets, local and long distance voice traffic, etc.). IMCAIP argued that the facilities used to provision the ADSL WAN Service met the definition of an essential facility in that they were exclusively

¹ On 7 July 2006, Aliant Telecom Inc. and BCE Inc. formed Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) combining Aliant Telecom's wireline telecommunications operations in Atlantic Canada, Bell Canada's wireline telecommunications operations in Ontario and Quebec, as well as those of Télébec and NorthernTel.

² ADSL WAN Service means asymmetric digital subscriber line wide area network service.

or predominately provided by a single supplier and they were required as an input for competitors to provision their own broadband services.

6. The interveners objected to the suggestion in Bell Aliant's application that there could be a delay between the service approval date and service availability due to a requirement for network builds and equipment installation. MTS Allstream argued that no such delay should be permitted and provided the following reasons: 1) Bell Aliant already offered the service on a retail basis; 2) competitors have had a need for the service for some time; 3) Bell Aliant was the last major incumbent local exchange carrier (ILEC) to introduce this service; and 4) a continued delay in implementing the service would allow Bell Aliant to continue to confer an undue competitive preference upon itself.
7. The interveners submitted that the proposed rates for the Bell Aliant ADSL WAN Service included excessively high mark-ups, which they submitted should not be more than 15 percent.
8. MTS Allstream requested that the Commission direct Bell Aliant to either justify its use of restated historical costs in its cost study (i.e., Bell Aliant restated 2003 and 2005 costs to determine the current costs of transmission equipment, fibre optic cable and switching equipment) or undertake a revised Phase II cost study based on current capital, installation and provisioning costs, for consideration by the Commission.
9. MTS Allstream also requested that a service option be provided where the modem on the end-customer's premises could be supplied by the competitive service provider, as this option would lower the cost of the service from Bell Aliant.

Bell Aliant's reply

10. In its reply comments, Bell Aliant requested that the submissions of the interveners be removed from the record given that they were filed beyond the prescribed timelines pursuant to the *CRTC Telecommunications Rules of Procedure* (the Rules), and that neither intervener provided a copy of its comments to the Bell Aliant Regulatory Matters Group.
11. Bell Aliant submitted that its rate structure was designed to use volume and term discounts to bring lower rates to customers. Bell Aliant also submitted that its tariff structure was similar to other service providers' tariffs for similar services.
12. In respect of IMCAIP's request that the Commission consider classifying Bell Aliant's ADSL WAN Service as an essential service, Bell Aliant submitted that its wholesale ADSL services, like ADSL WAN Service, were non-essential.
13. With respect to the timing of the ADSL WAN Service's availability, Bell Aliant submitted that it was doing everything reasonable to make the service available as soon as possible.
14. In regard to the proposed rating of the service, Bell Aliant submitted that its proposed rates were developed with appropriate mark-ups for such discretionary Category II Competitor Services. Bell Aliant noted that it had provided the Commission with a Phase II cost study for its ADSL WAN Service, in compliance with Commission requirements.

Commission's analysis and determinations

Bell Aliant's request to remove interveners' comments from the record of this proceeding

15. The Commission notes that pursuant to the Rules, interested parties may intervene with respect to a Part II application from a regulated company, within 30 days of the filing date of the application, by serving copies of the intervention on the Commission and on the regulated company. The Commission notes that in this proceeding, MTS Allstream and IMCAIP submitted their interventions late, by one day and two days respectively. In addition, both interveners failed to serve copies of their comments on the Regulatory Department of Bell Aliant. Bell Aliant requested that the Commission remove these comments from the record of the proceeding, as they were not submitted in accordance with the process set out in the Rules.
16. The Commission notes that the interveners are prospective users of the service in question and that the receipt of their comments was delayed by no more than two days. In the Commission's view, the interveners have provided comments that are relevant to this proceeding. On balance, the Commission is of the view that refusal to accept these comments would not be in the public interest.
17. Accordingly, the Commission **denies** Bell Aliant's request to strike the comments of the interveners from the record. At the same time, the Commission wishes to remind these interveners of their obligations with respect to the Rules.

Proposed rate structure

18. The rate structure (i.e., term and volume discounts) proposed by Bell Aliant for its ADSL WAN Service is consistent with the rate structures the Commission has approved for other ILECs such as Bell Canada and TELUS Communications Company (TCC) for similar services. Accordingly, the Commission considers that it is appropriate to accept the Bell Aliant proposed rate structure for this service at this time.
19. In light of this, the Commission **denies** the interveners' request to modify Bell Aliant's proposed rate structure.

Service classification

20. The Commission notes that ADSL services, such as Bell Aliant's ADSL WAN Service, are classified as Category II Competitor Services pursuant to *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002. In that decision, the Commission described Category I Competitor Services as services in the nature of an essential service. A Category I Competitor Service makes available a facility that is a critical input for competitors in light of its very limited competitive supply.
21. The Commission considers the nature of the facility in question, and circumstances relevant to its supply by competitors and third parties, when it assesses whether to classify a service as a Category I Competitor Service. A competitor service that does not meet the criteria for a Category I Competitor Service is classified as a Category II Competitor Service.

22. The Commission is of the view that competitors have options for the provision of this type of broadband service to their customers. These include building their own networks, co-locating their own ADSL equipment in Bell Aliant's central offices, and subscribing to the ADSL Access Service pursuant to Bell Aliant's General Tariff item 622, or using incumbent cable carriers' Third Party Internet Access service, where available.
23. In light of the foregoing, the Commission **denies** IMCAIP's request to have Bell Aliant's ADSL WAN Service classified as an essential service and set rates at Category I Competitor Service levels.

Service implementation dates

24. The Commission notes that Bell Aliant stated that it is doing everything reasonable to have its ADSL WAN Service ready for use as soon as possible. However, the Commission concludes that it is important to ensure that Bell Aliant makes available its ADSL WAN Service to competitors coincident with the provision of equivalent services to its retail customers, in order to maintain a competitively neutral marketplace where underlying facilities are made available to all service providers.
25. Accordingly, the Commission directs Bell Aliant, within 30 days of the date of this Order, to provide a report specifying the dates by which it will make available its ADSL WAN Service to competitors in each area where it currently offers equivalent services to its retail customers. Copies of this report are to be provided to the interveners. On a going-forward basis, Bell Aliant is directed to provide ADSL WAN Service to competitors in each new serving area coincident with the completion of network builds and equipment installation that will support the introduction of equivalent service to Bell Aliant's retail customers in the same new serving area.

Customer-provided modem

26. The Commission notes that MTS Allstream requested that Bell Aliant provide an option for customers of its ADSL WAN Service to supply their own modems rather than having them provided by Bell Aliant. The Commission notes that the other ILECs (i.e., TCC and Bell Canada) provide this option to competitors with respect to similar services.
27. The Commission therefore concludes that it is appropriate for Bell Aliant to provide an option for its ADSL WAN Service permitting competitors to supply their own modems.
28. In light of the above, the Commission directs Bell Aliant to file proposed tariff revisions, within 30 days of the date of this Order, to modify its ADSL WAN Service tariff to include rates for the option of a customer-provided modem.

Dry loops used in conjunction with ADSL WAN Service

29. The Commission notes that in response to its 4 May 2006 letter as part of the proceeding associated with Aliant Telecom Tariff Notice 180, Aliant Telecom, in a letter dated 12 May 2006, accepted the use of a loop that is not used to provide primary exchange

service (dry loop) for its ADSL Access Service. The Commission also notes that it approved the use of dry loops with Aliant Telecom's ADSL Access Service in *Asymmetric digital subscriber line access service*, Telecom Order CRTC 2006-178, 12 July 2006 (Order 2006-178).

30. The Commission considers that it is also appropriate to employ dry loops with Bell Aliant's ADSL WAN Service, consistent with the Commission's determination in Order 2006-178 and with the tariffs approved for other ILECs that provide equivalent services.
31. Accordingly, the Commission finds that in Nova Scotia Band A1, a rate equal to 60 percent of Bell Aliant's unbundled local loop rate provides sufficient recovery of the dry loop costs where ADSL WAN Service is available or expected to be made available over dry loops. In all other bands, the Commission finds that a rate equal to 50 percent of Bell Aliant's unbundled local loop rate provides sufficient recovery of the dry loop costs where ADSL WAN Service is available or expected to be made available over dry loops.
32. In light of the above, the Commission directs Bell Aliant to issue revised tariff pages for its Aliant Telecom General Tariff item 624, ADSL WAN Service, within 10 days of the date of this Order, reflecting the Commission's determinations with respect to the use of dry loops with its ADSL WAN Service. The Commission notes that this modification to Bell Aliant's proposed tariff is to take effect as of the date of this Order.

Pricing of the Service

33. The Commission notes that Bell Aliant proposed monthly rates for its ADSL WAN Service that varied depending on the contract term and the number of accesses. The Commission considers that Bell Aliant's proposed rates would not permit competitors to price their retail high-speed Internet services in a way that would reasonably allow them to compete with Bell Aliant's retail offerings. The Commission also considers that the ADSL WAN Service rates approved in this Order should allow for mark-ups that ensure that the rate differentials between Bell Aliant's proposed competitor ADSL WAN Service and its retail high-speed Internet services are comparable to those of other ILECs.
34. The Commission therefore considers it appropriate to reduce the proposed monthly recurring rates and service charges associated with the ADSL WAN Service.
35. In light of the foregoing, the Commission **approves on an interim basis** Bell Aliant's application, subject to the rate modifications noted below. The Commission directs Bell Aliant to issue revised tariff pages for its Aliant Telecom General Tariff item 624, ADSL WAN Service, within 10 days of the date of this Order, reflecting the Commission's determinations with respect to the revised rates. The Commission notes that these rates are to take effect as of the date of this Order.

| ADSL WAN Access | 1 Yr Rate (per month) | 3 Yr Rate (per month) |
|---------------------------|--------------------------|--------------------------|
| First 500, each | \$85.00 | \$95.00 |
| Next 500, each | \$75.00 | \$85.00 |
| 1001 or more, each | \$60.00 | \$70.00 |
| | one-time charge | one-time charge |
| Service Charge per access | \$225.00 | \$225.00 |
| Remapping Fee | \$500.00 | \$500.00 |

Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>