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December 9, 2010

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Mr. Morin:

RE: *Usage-based billing for Gateway Access Services and third-party Internet access services, Telecom Notice of Consultation CRTC 2010-803* (“Notice 2010-803”) – Reply Comments of TELUS Communications Company (“TELUS” or the “Company”)

1. In accordance with the procedures contained in Notice 2010-803, TELUS files these Reply Comments. In these Reply Comments, TELUS addresses the comments filed by certain parties that argue that the per usage rates and the excessive usage charges for usage-based billing (“UBB”) applied to wholesale Internet services should be set at specified levels below the comparable retail UBB rates. The failure of TELUS to specifically deny any allegation or statement made by any party in this proceeding should not be construed as agreement or acquiescence with such allegation or statement where agreement or acquiescence would be contrary to TELUS’ interest.
2. Bell Canada and Bell Aliant Regional Communications, Limited Partnership (the “Companies”) received final tariff approval for UBB plans for their wholesale ADSL services in *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Applications to introduce usage-based billing and other changes to Gateway Access Services*, Telecom Decision 2010-255 (“Decision 2010-255”). In that Decision, the Commission mandated cost-based rates for the flat-rate component in UBB plans, but mandated a 25% discount relative to comparable retail rates for the per usage rate and the excessive usage rate.

Wholesale Internet service providers (“ISPs”) would then lease the services at the mandated rates but then apply their own rate plans to their end-customers.

3. The Companies filed a review and vary application seeking variances to certain determinations of Decision 2010-255. In that proceeding, which led to the determinations in *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Decision 2010-255 concerning usage-based billing for Gateway Access Services*, Telecom Decision CRTC 2010-802 (“Decision 2010-802”), TELUS filed an answer that supported the Companies review and vary application.¹ As such, TELUS has previously stated its support for UBB rates for wholesale Internet services.

UBB Plans Are for Traffic Management Purposes

4. Prior to determining how UBB rates for wholesale ISP customers should be applied, it is important to examine the purpose of UBB plans as a whole. The Commission has characterized UBB plans for retail and wholesale Internet access services as economic Internet traffic management practices.² If the fundamental purpose of UBB plans is to manage the usage of data traffic on a carrier’s network, it does not matter whether the end-customer is wholesale or retail-based. What matters is that every end-customer’s usage has effects on the overall bandwidth on the carrier’s network. For this reason, it makes sense for retail and wholesale end-customers to be charged the same UBB per usage rates, because all customers cause the same constraints on overall network bandwidth.
5. For this reason, TELUS agrees with the position of the Cable Carriers³ that different UBB rates for wholesale ISP customers could lead to increased bandwidth consumption for their end-customers.⁴ This would have deleterious effects on the overall ability for the network provider to use UBB as a traffic management practice, because there would be different price signals sent to different end-customers regarding their usage. In order for a network provider to

¹ TELUS’ Answer is available at http://www.crtc.gc.ca/public/partvii/2010/8662/b54_201009051/1410856.pdf.

² See, for example, Decision 2010-255, para. 21.

³ Cogeco Cable Inc., Quebecor Media Inc., on behalf of its affiliate Videotron Ltd., Rogers Communications Inc. and Shaw Communications Inc.

⁴ Comments of the Cable Carriers, para. 15.

be able to manage the traffic on their networks effectively, end-customers should face similar incentives to manage their own usage accordingly.

Competitors Will Still Be Able to Differentiate Their Service Offerings

6. Some parties have disregarded the important traffic management policy basis for UBB plans and demanded mandated price discounts so that they can price differentiate their retail services from those of the incumbents. The Canadian Network Operators Consortium Inc. (“CNOC”) states that without mandated wholesale discounts for the UBB usage rate or the excessive usage charge rate, they will not be able “to differentiate their retail services” from those of the incumbents.⁵ MTS Allstream Inc. (“MTS Allstream”) makes similar comments that competitors will be “forced to mirror” the incumbents’ retail offerings.⁶
7. These hyperbolic statements should be rejected by the Commission. First, on the question of price differentiation, the flat-rated component of the UBB rate plan will be cost-based for wholesale customers. Therefore, wholesale customers will be paying cost-based wholesale rates for the flat-rated component, calculated in accordance with accepted regulatory cost principles. As such, wholesale customers will be obtaining wholesale Internet services at rates that will be different than those offered at retail, meaning that there are opportunities for price differentiation.
8. In addition, wholesale ISP customers pay the UBB-based rates that include both the fixed and variable UBB components. However, it is entirely up to the wholesale customer whether it passes on the UBB variable rates to their end-customers. Nothing prevents the wholesale ISPs from making their own retail pricing plans for their customers that differ from those offered by other competitors, including the incumbents.
9. Also, CNOC seems to be implying that the only manner in which wholesale ISPs differentiate themselves from the incumbents is via price differentiation. Of course, this is not the case. In fact, competitive ISPs, including some members of CNOC, have argued before the Commission that they provide an array of service

⁵ Comments of CNOC, para. 32.

⁶ Comments of MTS Allstream, para. 8.

differentiators from the incumbents when they provision their services that use wholesale Internet access services to their end-customers.

10. As an example, competitive ISPs filed comments in another proceeding that state that they develop “service innovations and provide customer choice” by providing services that utilize using underlying wholesale ADSL access services. In the same filing, competitive ISPs claim that their business and residential customers have received service innovations that were not available from “less nimble and less motivated incumbent providers.” Claiming that ISP competitors are “more motivated than incumbents,” they have asserted that their ability to differentiate their offerings based on factors other than price. A list of many of their claimed product and service differentiators from the incumbents was also included in that filing.⁷ Indeed, ISP competitors have previously argued that service and product differentiation, and not price differentiation, is the source of their “competitive advantage” over the incumbents.

Reply to Comments of Distributel

11. Distributel, for its part, provides suggestions on economic Internet traffic management practices to employ other than the UBB plans that are under consideration in this proceeding. For example, Distributel suggests metered rating based on the time of day, to take into account that bandwidth demands are subject to peak period usage.⁸ No matter the merit of these suggestions, they are out of scope in this proceeding and are not under consideration.
12. Distributel also makes some comments about the freedom of incumbents to set retail Internet pricing.⁹ Distributel neglects to mention that this same freedom

⁷ See section entitled “Competitor innovations and promotion of consumer choice” contained within the Final Comments of Acanac Inc., Accelerated Connections Inc., Advanced Knowledge Network, Canadian Association of Internet Providers, EGATE Networks Inc., Managed Networks Systems Inc., Pathway Communications, Sentex Communications Corp., Skyway West Business Internet Services and Telnet Communications, June 21, 2010, (available at http://www.crtc.gc.ca/PartVII/eng/2009/8663/c12_200907321.htm), filed in relation to *Proceeding to consider the appropriateness of mandating certain wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2009-261, para. 16-25. Examples of differentiators listed include remote monitoring and control system, managed private network services, connectivity for retail outlets and point of sale processors, access and redundancy services, quality of service commitments, live agent customer service, Web hosting, web mail, telemarketing guard and customer portals.

⁸ Comments of Distributel, para. 25.

⁹ Comments of Distributel, para. 16.

extends to all ISPs, given that the retail Internet access marketplace has been unencumbered by price regulation for all competitors for many years.

13. Finally, wholesale ISPs must recognize that if they are going to rely on the networks of other carriers, they must accept that the carriers have the right to manage the traffic on those congested networks, subject to the limits allowed by the Commission. As a result, Distributel's comments regarding usage charges being applied to all service providers being bad policy are unfounded.¹⁰ Such usage charges are the result of multiple end-customers causing bandwidth demands on one network. If Distributel or any other competitor wishes to avoid such charges, it is free to build its own network and manage the bandwidth in accordance with the practices allowed by the Commission.
14. In summary, TELUS agrees with the positions set out by the Companies and the Cable Carriers that there should be no mandated set discount from the variable component of retail Internet UBB rates for wholesale Internet UBB rates. To do otherwise would impair the ability of network providers to manage traffic on their networks.

Yours truly,

{original signed by Ted Woodhead}

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cc. Interested parties to Notice 2010-803
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¹⁰ Comments of Distributel, para. 16.