

8 April 2011

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

Dear Mr. Morin;

Fibernetics Corporation Application to Review and Vary Telecom Decision CRTC 2010-787, Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Proposed revision to the treatment of imbalance traffic compensation

A. INTRODUCTION

1. Globility Communications Corporation (“Globility”) is in receipt of a Fibernetics Corporation (“Fibernetics”) application requesting a review and variance of Telecom Decision CRTC 2010-787, *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Proposed revision to the treatment of imbalance traffic compensation* (“Decision 2010-787”). Globility hereby files its comments on the above referenced application.

2. Fibernetics bases its application on certain errors and issues related to Decision 2010-787 and the subsequent implementation of the determinations set out in that decision. Fibernetics’ first argument relates to the inclusion of a monthly threshold in the new imbalance compensation framework that allows for a reduction in compensation when traffic in one direction exceeds 80% of the total traffic exchanged for three months or more (“three month threshold”). According to Decision 2010-787, the three month threshold was proposed by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (together, “Bell”). However, as no such proposal was put forward by Bell or any other party in the proceeding, parties were refused the opportunity to comment on the appropriateness of including the three month threshold in the framework and related implementation considerations.

3. Fibernetics’ second argument relates to the implementation process that followed Decision 2010-787. Specifically, the Commission’s direction in Decision 2010-787 to issue revised tariff pages in the absence of proposed tariff pages prohibited parties from commenting

on the substance of the tariff pages and related implementation considerations. This has resulted in differing interpretations and expectations among parties. Specifically, Bell's revised tariff pages apply the three month threshold as an initial eligibility criterion, an application that goes beyond the framework set out in Decision 2010-787. Further, additional issues related to interpretation and expectations arose as a result of the Commission staff letter dated 11 February 2011 ("staff letter") that, among other things, advised that the three month threshold applied prior to the date that Bell's revised tariff came into effect.

4. Accordingly, Fibernetics requests a review and variance of Decision 2010-787, such that¹:

(a) paragraph 22 of the Decision is struck as void ab initio;

(b) the words "for three months or more" are struck as void ab initio from paragraphs 1, 16, 21, and Appendix 1 of the Decision;

(c) the tariff pages issued by the Bell Companies and other CLECs as a result of Decision 2010-787 are quashed as void ab initio;

(d) the Bell Companies be directed to file proposed tariff pages implementing the Decision as amended and a follow-up tariff proceeding to consider same be directed;

and

(e) pending the Commission's determination of such follow-up proceeding, the Bell Companies' traffic imbalance tariffs as they were on 23 November 2010 be reinstated.

5. Globility fully supports Fibernetics' application and requests that the Commission grant the requested relief.

B. COMMENTS

6. In regards to Fibernetics' first argument, Globility agrees that as no party to the proceeding proposed a three month threshold component, parties were refused the opportunity to comment on the appropriateness of including such a component in the framework. In this regard, Globility's 9 June 2010 comments focused on opposing the arguments and methodologies used by Bell to support the following proposal in its 10 May 2010 application:

Furthermore the Companies propose that the Commission give effect to the Companies' proposal by directing the Companies to amend their imbalance tariffs to state that in cases where 80% or more of the total traffic exchanged between a CLEC and the

¹ Fibernetics, 9 March 2011 Application, at para. 11.

Companies on bill-and-keep trunks terminates on the CLEC's network no imbalance payments will be paid to the CLEC by the ILEC.²

7. Globility further notes that Bell did not include any reference to a three month threshold component in its 21 June 2010 reply comments. Therefore, Globility supports Fibernetics arguments in this regard.

8. In regards to Fibernetics' second argument, Globility agrees that the Commission's direction to issue revised tariff pages in the absence of proposed tariff pages prohibited parties from commenting on issues of vital importance related to the substance and implementation of the revised tariff pages. As noted by Fibernetics, this has resulted in significant issues related to the appropriate interpretation and application of the three month threshold and other matters.

9. It is clear that the lack of consideration of such issues has resulted in different expectation and interpretations by parties. For example, Globility agrees that there is nothing in the framework, reproduced below, that indicates that the three month threshold is intended to serve as a one-time initial eligibility criterion³:

Accordingly, the Commission determines that when the volume of traffic in one direction (across all points of interconnection between LECs) is more than 80 percent of the total traffic exchanged for three months or more, the compensation otherwise payable will be cumulatively reduced by

- 5 percent, for every 2 percent increment, when the volume of traffic in one direction is more than 80 percent to less than or equal to 90 percent, and
- 10 percent, for every 2 percent increment, when the volume of traffic in one direction is more than 90 percent to less than or equal to 100 percent.

10. In contrast, a plain and simple reading of this framework supports Fibernetics' interpretation that, "the 80 percent unidirectional termination criterion must be present for three months or more at all times in order for the reductions to imbalance payments otherwise payable to apply"⁴.

11. As also noted by Fibernetics, issues related to implementation were not resolved by the staff letter. In specific regards to the issue related to the start of the three month threshold, it

² Bell, 10 May 2010 Application, at para. 38.

³ Decision 2010-787, at para. 21.

⁴ Fibernetics, 9 March 2011 Application, at para. 24.

was Globility's expectation that the calculation would begin on a prospective basis on the date Bell's revised tariff pages came into effect. However, the staff letter advised that the three month threshold began prior to 24 December 2010, the date that Bell's revised tariffs became effective. According to this interpretation, the three month threshold calculation began on September 24, 2010, a full month before the Commission rendered Decision 2010-787.

12. In Globility's view, it is a fair expectation that when a new decision and framework is set out, parties will be provided time to act in order to address the Commission's determinations. However, the interpretation set out in the staff letter effectively prohibited parties from doing so as they would have had to begun to act prior to Decision 2010-787 being rendered. In addition, by the time the staff letter and resulting clarification was distributed, it was too late for parties to act in any event.

13. Accordingly, Globility supports Fibernetics' arguments in this regard.

C. SUMMARY

14. In summary, Globility agrees with the arguments put forward by Fibernetics and is of the view that the Commission should grant the requested relief.

Yours truly,



Joe Boutros
President

Cc: Distribution List – Commission 11 February 2011 letter

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