Bell Aliant
Saskatchewan Telecommunications

2006 07 14

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

David J. Hennessey
Manager,
Regulatory Matters

Dear Ms. Rhéaume:

Subject: Telecom Public Notice CRTC 2006-8, Rate ranges for services other than voice over Internet protocol services

In respect of Telecom Public Notice CRTC 2006-8, attached is the submission of Bell Aliant Regional Communications, Limited Partnership and Saskatchewan Telecommunications ("The Companies").

Yours truly,

David Hennessey

Attachment

cc: Parties to Public Notice 2006-8

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OVERVIEW

1. On 9 June, 2006, the Commission issued Public Notice 2006-8 *Rate ranges for services other than voice over Internet protocol services* (PN 2006-8) in which the Commission initiated a proceeding to consider the establishment of appropriate guidelines for the filing of tariff applications involving rate ranges for services other than Voice over Internet Protocol (VoIP) services. The Commission invited comments on the services or groups of services for which, and the circumstances under which, rate ranges would be appropriate, and on any other regulatory issues related to rate ranges. In this submission, Bell Aliant Regional Communications, Limited Partnership and Saskatchewan Telecommunications ("The Companies") provide comments on the various issues raised by PN 2006-8.

2. Rate ranges are provided for under Section 25(1) of the Telecommunications Act (the "Act") and should not by any means be viewed as a new pricing option under the current regulatory regime for telecommunications in Canada. In addition, wider application of rate ranges is consistent with the Draft Policy statement of the Federal Government tabled in Parliament on 2006 06 13, which directs the reliance on market forces to the maximum extent possible as the means of achieving the telecommunications policy objectives.

3. NBTel, a predecessor company of Bell Aliant, received Commission approval for a long distance tariff using a rate range in1997. That tariff application was approved by the Commission without any conditions that rate ranges would be subject to additional regulation or restriction beyond what would apply for an application requesting approval of a single rate for that service. As a result of approval of rate ranges as far back as 1997, the Companies are concerned by the context of PN 2006-8 if it suggests that the availability of rate ranges beyond VoIP applications may now be in question or that they may only be available in specific circumstances.

4. Rate ranges may increase the efficiency of the tariff approval process by allowing a series of rates to be approved in a single application as opposed to a series of applications proposing changes to the rates for a single service. However, each rate in the range is still subject to the full burden of regulation applied to that service. Rate ranges provide

efficiency but do not provide relief from regulation and therefore should not be viewed as an incremental step towards deregulation or as a substitute for forbearance.

5. In a competitive market, the ability to change rates to meet market requirements is essential. A rate range, as long as the rate charged at any point in time is fair and reasonable, should be an option for practically any service subject to rate regulation. Consideration of tariff applications with proposed rate ranges should not be subject to any additional rules that would not otherwise apply if a single rate was proposed. If a proposed rate, in the range, passes the regulatory tests for the service it should not be denied or removed from the range as a condition of approval in order to control the future pricing. The Companies submit that market conditions and investor expectations are better and more efficient determinants of service re-pricing than would be any regulatory intervention.

6. The Companies further emphasize that approval of tariff applications including rate ranges should not be considered as equivalent to, or a substitute for, or a reason to delay forbearance in markets that are sufficiently competitive to protect customers.

7. The Companies submit that no additional conditions or guidelines should apply when a tariff application proposes a rate range as opposed to a single rate, consistent with Section 25(1) of the Act.

Guidelines For Rate Ranges

8. The Telecommunications Act clearly permits rate ranges. Subsection 25(1) of the Act gives the Commission authority to approve a maximum or minimum rate, or both, to be charged for a service.

> 25. (1) No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

9. The Act also requires the rate for a service be published in a tariff or made available for public inspection. Subsection 25(3) of the Act states that:

> 25. (3) A tariff shall be filed and published or otherwise made available for public inspection by a Canadian carrier in the form and manner specified by the Commission and shall include any information required by the Commission to be included.

10. Under the provisions of the Act, there is no distinction made between a rate and a rate range or any limitations on the use of rate ranges. Therefore, no special interpretation of the Act is required to accommodate rate ranges for any category of service including VoIP or local switched services. To imply that the use of rate ranges should be different for local switched services vis-à-vis VoIP services would read something into the Act that is just not there.

11. The Companies identify that the use of a rate range for a switched service is not at all new. On 14 November 1997, in Telecom Order CRTC 97-1668 (“CRTC 97-1668”), NBTel, a predecessor company of Bell Aliant, received approval for a long distance tariff that included a rate range. While the tariff application was the subject of a competitive intervention, neither the competitor nor the Commission found the proposed rate range required any special guidelines or unique treatment.

12. In the proceeding associated with CRTC 97-1668, AT&T Canada LDS (“AT&T”) submitted that the proposed service provided NBTel with too much discretion in levying charges. AT&T stated that approving the tariff notice would allow NBTel to specifically target individual residential consumers for special pricing because certain customers possess the capability of receiving screen-based text on their telephones. AT&T Canada alleged that it was unclear whether all participants in the proposed market trial would be offered the same pricing at all times.

13. NBTel argued that Section 25 (1) of the Act which specifies that "no Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with, and approved by, the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service" provides the appropriate legislative authority for the Commission to approve the application.

14. The Commission determined that approval of the rate range was not unduly discriminatory as follows:

> The Commission notes that NBTel's proposal would allow for the charging of toll rates between $0.05 and $0.15 per minute, such that one rate is applicable during any offering period. Given that NBTel will offer all participants in the market trial the same prices, terms and conditions for each offering period, the Commission is satisfied that the market trial is not unduly discriminatory.

15. As far back as 1997 a proposed rate range was treated the same as a proposed rate; that is, it was approved as long as all the rates in the range met the regulatory requirements in place for the service at that time. Special guidelines were not required to protect customers or in fact competitors in the long distance market and special guidelines are not required nine years later in a telecommunications market that is subject to significant competition in all market segments. In today's competitive environment, it is logical to take a more progressive, market-oriented approach to pricing. Whereas the Commission in 1997 approved a simple rate range defining specific pricing points, the current environment warrants enhancements, including a range of rates within a larger range, as long as the larger range meets the current regulatory tests of the day and the use of minimum or maximum rates when or if a ceiling or a floor price is the primary regulatory concern.

16. As noted above, the approval of a rate range should in essence be no different than the approval of a series of applications for the same service proposing a "rate". In this regard, the continued use of regulatory measures such as *ex parte* and confidentiality should be available to applications proposing rate ranges in the same way as they apply to applications proposing a single rate. If a claim of *ex parte* or confidentiality is put forward and substantiated, the rate range should be held in confidence or the entire application held *ex parte*, whatever the case may be. This approach seems to have been endorsed by the Commission in its earlier approval of Bell Canada's Digital Voice Lite service where rate ranges have been kept in confidence and in the Commission's recent approval on an *ex parte* basis of Tariff Notice 107 of Saskatchewan Telecommunications.

Is this Increased Regulatory Flexibility?

17. In the call for comments in PN 2006-8, the Commission seemed to be of the view that allowing the use of rate ranges for services other than VoIP services would afford the incumbent carriers greater flexibility to respond to competitive situations. The Companies believe that while there are efficiency and timing benefits that could be realized by the increased use of rate ranges there is no real increase in regulatory flexibility because the rates in the range are nonetheless subject to the full regulatory requirements that apply to the specific service.

18. The Companies expect that a broader use of rate ranges could potentially decrease the number of tariff applications required for a service. However, this would only occur if applications proposing rate ranges were not subject to any additional regulatory hurdles and if a more progressive approach was taken to consider ranges within ranges or other such enhancements.

19. With the broader use of rate ranges, there would be some operational efficiency gains in areas where productivity is currently negatively impacted by the uncertainty and timing of approvals on tariff applications. Rate ranges would provide greater certainty for budget and resource allocations, certainty that collateral materials could be developed and printed in advance and that marketing campaigns could start on a specific date.

20. While some may view the benefits outlined above as greater regulatory flexibility, in the Companies' view, rate ranges have always been available under the Act as long as they meet the other regulatory requirements set out by the Act.

Rate Ranges are not a Substitute for Forbearance

21. The broader availability of rate ranges would not address in any way the negative impact of regulation in markets where there is sufficient competition to protect customers. The efficiency gains that would accrue to the Companies from a wider use of rate ranges would pale in comparison to the ongoing costs for the Companies and telecommunications users in Canada of retaining regulation beyond the point where it is required to protect customers.

22. The Companies do not believe that any additional real or perceived flexibility that may accrue from rate ranges is a substitute for forbearance in markets that are competitive. Greater use of rate ranges is not in reality a lessening of regulation or a substitute for forbearance.

CONCLUSIONS

23. The Companies are concerned that the Commission has set out a public notice process to consider what guidelines or potential restrictions, if any, should be placed on the use of rate ranges in tariff applications for services other than VoIP, given that this is currently available under the Act and has been endorsed by the Commission as far back as 1997. The Companies reiterate that no undue concerns were raised nine years ago about the Commission's ability to approve a rate range or NBTel's use of a rate range at a time when relying on market forces for many services was not an option and the disruption of VoIP was not contemplated by the industry. Today, when all of the Companies' services are subject to significant competition from well established competitors, it is inappropriate to contemplate an increase in the regulatory burden by imposing specific guidelines or restrictions on the use of rate ranges for tariff applications that are not VoIP services.

24. Regulatory measures such as ex parte and confidentiality should be permitted for rate ranges on the same basis as applications that do not propose rate ranges.

25. The Companies believe that increased use of rate ranges could result in additional operational efficiency but does not believe that it would provide any real increased regulatory flexibility because rate ranges would likely be subject to the same level of regulation as would a single rate proposal. Rate ranges are not a substitute for forbearance in markets where there is sufficient competition to protect customers.

26. The Companies reiterate that the Commission established in Telecom Order CRTC 97-1668 that it had the authority to approve rate ranges for services other than VoIP. It would be inappropriate nine years later to consider restricting the use of rate ranges for services other than VoIP. Consistent with the Draft Policy Statement of the Federal Government, the increased availability of rate ranges should certainly be encouraged and embraced to rely on market forces to the maximum extent possible. However, the broader availability of rate ranges should in no way be viewed as any form of regulatory relief or as a substitute for forbearance when forbearance tests would have otherwise been met.

27. The Commission noted in PN 2006-8 that it would make its determination regarding the final disposition of SaskTel TN 107 and Bell Canada TN 6947 in its decision from the current proceeding. It is the Companies' view that there is no reason to delay the final approval of these tariff applications. Both these tariff notices are fully compliant with the Act and current regulatory requirements. The Companies request the immediate approval of these applications.

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