

ROTHSCHILD & Co.

67 Farnham Avenue, Toronto, Ontario M4V 1H6
(416) 801-9701 (416) 595-9889 (fax)

May 19, 2004

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

Re: Telecom Public Notice CRTC 2004-1
Review and disposition of deferral accounts for the second price cap period

Dear Ms. Rhéaume:

1. Rothschild & Co. files these comments in response to Telecom Public Notice 2004-1 on behalf of its client, RipNET Limited ("RipNET").

Executive Summary

2. RipNET submits that:
 - It is in the public interest to build the facilities needed to provide high-speed broadband and other telephony services to low-density rural and remote communities.
 - It is in the public interest to allow deferral account monies to be used to subsidize the cost of building the facilities needed to serve low-density rural and remote communities.
 - The public interest would be best served if the deferral account monies were made available only to non-ILECs to subsidize the cost of building facilities required to provide high-speed broadband and competitive local telephony services.
3. Based on its experience, RipNET submits that there are sufficient funds in the Bell Canada ("Bell") deferral account to allow non-ILECs like RipNET to build the facilities needed to provide high-speed broadband and competitive telephony services to most, if not all, areas within Bell's territory not covered by Bell's current DSL footprint.
4. Further, there would appear to be a large enough reserve in the Bell deferral account to fully finance the construction of the required facilities without any need to secure additional financing. This would effectively eliminate financing as a barrier to building the facilities required to provide high-speed broadband and competitive telephony services to rural and remote communities.
5. Given Bell's already dominant position within its territory, RipNET respectfully submits that it would not be in the public interest to allow Bell access to the deferral account monies.
6. RipNET submits that to restrict access to deferral account monies to non-ILECs or aspiring CLECs would be in the public interest in that it would benefit the communities that would be provided with high-speed connectivity while at the same time would promote the development of facilities-based competition in local telephony.

RipNET Background & Experience

7. RipNET is an Internet Service Provider (“ISP”) that was established in 1994 in Brockville, Ontario. RipNET serves customers both in Brockville and the surrounding rural area known as the United Counties of Leeds and Grenville (“Leeds Grenville”).
8. RipNET has registered with the Commission its intention to become a CLEC.
9. As a first step towards becoming a CLEC, RipNET recently built the facilities required to provide high-speed connectivity to rural residents of Leeds Grenville. We built a wireless network using licensed spectrum in the 3.5GHz band.
10. Rural Leeds Grenville is an area where high-speed connectivity using DSL and cable service was not available. Leeds Grenville is within Bell’s territory.
11. A key reason that it was economically feasible for RipNET to build the facilities required to provide high-speed service is that RipNET received grants from both the Ontario and Federal governments to subsidize the expense.
12. Without government grants, it would not have been feasible for RipNET to build the wireless network. In the absence of grants, subsidies or incentives the projected revenues would not cover the debt RipNET would have incurred to build the network.

Competitive Local Telephony Services

13. The facilities that RIPNET has built to provide high-speed broadband service to rural Leeds Grenville can also be used to deliver VOIP and other telephony services.
14. RipNET’s wireless system has been designed to support multiple services and multiple users.
15. We believe that to ensure the long-term success and sustainability of this wireless broadband network, it must have the capability to support multiple services.
16. In RipNET’s experience, we cannot justify the investment required to deliver high-speed broadband service to rural and remote communities without: 1) government grants to subsidize the expense and 2) unless we are able to use the same facilities to deliver additional services like VOIP and other telephony services.

Importance of Telco Grade

17. RipNET provides high speed service using licensed spectrum in the 3.5GHz band. We were assigned two pairs of frequencies by Industry Canada on a first come, first served basis. This provided us with 100mHz of spectrum which assures we can expand the system to provide multiple services.
18. We recently participated in the Industry Canada auction of spectrum in the 3.5GHz band and obtained additional spectrum in to reach homes in areas adjacent to Leeds Grenville. This additional spectrum is intended to allow us to extend our service area.
19. We also have been assigned licensed frequencies in the 23gHz and 7gHz bands for our backhaul.
20. The wireless line-of-sight technology which is the basis for our network is proven technology.

21. Using licensed spectrum for transmission and backhaul minimizes the chance of interference from other wireless devices and thereby improves the reliability and sustainability of our service.
22. Our wireless broadband network is telco grade to ensure reliability and to maximize its viability as a distribution system for potential users.
23. We realize that if we want third parties to have confidence in the network or want to convince customers to rely on us for telephony service like VOIP, then it must be designed to be telco grade from the outset.
24. We also realize that the system hardware and network design must be robust, fully redundant and expandable to allow us to offer multiple services to both residential and business customers.

Model For Rural Broadband

25. RipNET submits that its approach to building the facilities required to provide high-speed broadband is a model that could be used to bring sustainable broadband and competitive VOIP telephony service to other rural communities across Canada,
26. The business model we have developed shows that the service can be sustainable even with a relatively small residential customer base.
27. We believe the success of our Leeds Grenville broadband solution serves as a working model to demonstrate the viability of wireless broadband for rural Canada.

Bell Canada's Share of Market & Competitive Balance

28. On December 2, 2003 Bell Canada ("Bell") filed an application pursuant to Part VII of the CRTC Rules of Procedure (the "Application") requesting: "...Commission approval of the use of the funds in the deferral account established by Bell Canada pursuant to the directives in Decision 2002-34, to expand Bell Canada's DSL footprint over a three-year period into communities which presently have no high-speed broadband Internet connectivity...".
29. In its application Bell acknowledges it is already in a position to provide high-speed service to the vast majority of customers in its territory.

"By the end of 2003, Bell Canada expects that its DSL footprint will cover about 80% of some 10 million homes and business lines passed in its serving territory. The Company expects that its DSL in-service base will reach about 1.2 million lines by the end of this year."¹
30. Bell further indicates that it plans to extend its DSL footprint to allow it to provide high-speed service to some 90% of customers in its territory in the normal course of business.
31. "Beyond 2003, the Company will continue to expand the DSL footprint into key target areas for residential and business markets. Under its commercial rollout plan, the Company expects to expand its DSL footprint to cover approximately 90% of homes and business lines within three to four years."²
32. Based on this information included in its application, it is clear that:

¹ Bell application, 2 December, 2003, par. 32

² Ibid., par. 33

- Bell already reaches the vast majority of homes and businesses in its territory; and
- it has plans to reach half of those that it does not already reach within the next three or four years.

33. Clearly Bell dominates the facilities-based provision of high-speed connectivity in its territory.
34. Bell states that “the Company’s proposal will benefit subscribers in appreciable ways while ensuring that the competitive balance between the Company and its competitors is not adversely affected”.³
35. RipNET disagrees with Bell’s contention that its proposal, if approved, would not adversely affect its competitors.
36. Our business model shows that wireless technology offers Canada the opportunity to bring broadband, VOIP telephone and Video-on-Demand services to rural residents and thereby level the technological playing field with urban centers.
37. However, this model would be rendered unworkable if we were forced to compete directly with Bell before we had an opportunity to become established in the marketplace.
38. Bell is already the primary ILEC in its territory. It already provides local and long distance telephony service to most, if not all, of the customers in the areas to which it now proposes to extend high-speed using deferral account monies.
39. Given Bell’s dominant position in its territory, it would have a significant advantage over potential competitors like RipNET if it were also to own the facilities required to provide high-speed.
40. If Bell were to extend its DSL footprint to these communities, it would effectively eliminate any market potential for facilities-based competitive high-speed broadband or telephony services.

Need For Grants or Subsidies

41. In its application Bell states that “The initiative would entail using the deferral account fund to expand Bell Canada Digital Subscriber Line (DSL) footprint over a three-year period into communities which presently have no high-speed broadband Internet connectivity (from the Company or from competing providers) and where there is no expectation that such connectivity would be made available unless some form of incentives were provided to make the provision of service possible.”⁴
42. RipNET agrees that it is unlikely that any company would build the facilities required to provide high-speed service to rural and remote communities unless it received a grant, subsidy or incentive.
43. In the CRTC Report to the Governor in Council on the Status of Competition in the Telecommunications, Infrastructure and Service, the Commission states that, “without public funding and support, broadband services of similar quality and price available in urban areas will generally not be made available in rural and remote areas of the country.”⁵

³ Ibid., par. 15

⁴ Ibid., par. 14

⁵ CRTC Report to the Governor in Council on the Status of Competition in the Telecommunications, Infrastructure and Service, November 2003, pg. 34

44. Our experience in raising the financing that we needed to build RipNET's wireless network confirmed the Commission's report.
45. As we tried to finance to build RipNET's wireless network, it became clear that it would not be possible to build the network without government assistance or access to some other subsidies.
46. We needed government grants to offset a significant portion of the cost of building the network. Otherwise we would not have been successful in financing the balance of the project.
47. The Commission should also recognize that, even after the Ontario government had agreed to subsidize up to 43% of the cost of our project, it was extremely difficult for RipNET to convince lenders to provide the balance of the financing we required.
48. There is clearly a need for grants or subsidies. There is also clearly a need for grants or subsidies that would cover the full cost of building the facilities required to deliver high-speed broadband service and thereby eliminate financing as a barrier to serving rural and remote communities.

Bell Deferral Account

49. Bell has reported to the Commission that it estimates it will have an accumulated balance in its deferral account of some \$160.4 million by May 31, 2004 and \$168.2 million by May 31, 2005.⁶

	<u>Price Cap Year Ending as of:</u>		
	<u>31 May 03</u>	<u>31 May 04</u>	<u>31 May 05</u>
Total Additions (a)	186.2	65.3	7.9
Total Draw downs (b)	(91.1)	0	0
Net Additions [(a) - (b)]	95.1	65.3	7.9
Balance (Note 1)	95.1	160.4	168.2

50. Bell estimates the implementation of its proposal would result in the extension of service to between 45,000 and 50,000 additional subscribers. It estimates the total capital costs of the project, including expenses, at between \$135 million and \$170 million.⁷
51. Based on its experience in Leeds Grenville, RipNET submits that there are sufficient funds in the Bell deferral account to allow companies like RipNET to build the facilities needed to provide high-speed broadband and competitive telephony services to areas outside Bell's current DSL footprint.
52. Further, there would appear to be a large enough reserve in the Bell deferral account to fully finance the construction of the required facilities without any need to secure additional financing.
53. Further, based on RipNET's experience with its wireless network in Leeds Grenville, depending on the technology a company chose to use, there is sufficient funding in the Bell deferral account to extend high-speed broadband service to far more than Bell's estimate of 45,000 to 50,000 additional subscribers

⁶ Bell Canada filing to CRTC, 11 May 2004, Table 1, page 2 of 18

⁷ Op. Cit., par. 51

Public Interest

54. In its application, Bell stated that “The Company proposes to expand the availability of its DSL services in a competitively neutral fashion to areas where it is uneconomic to provide such service provided that the Company is able to recover the costs incurred for this expansion by means of a drawdown from the deferral account.”⁸
55. RipNET does not agree that Bell’s proposal would be competitively neutral.
56. If it is uneconomic for Bell – the dominant carrier in its territory and one of Canada’s largest companies – to build the facilities required to provide high-speed then it is also uneconomic for any other company to make such an investment. Clearly subsidies would be needed to make it economic to serve these areas.
57. The deferral account monies represent the potential subsidy that could make it economically feasible for many companies – not just Bell – to build the required facilities.
58. There are many rural and remote areas across Canada, areas like Leeds Grenville, where it is uneconomic to construct the facilities required to provide high-speed Internet connectivity unless some form of grants, subsidies or incentives were available.
59. RipNET has acknowledged that without subsidies, in the form of government grants, it would not have been economic to build a wireless network to offer high-speed broadband and competitive telephony services to residents living in rural Leeds Grenville.
60. In the case of Bell, it has indicated that uneconomic areas represent some 10% of households and businesses in its territory.
61. Bell indicates that it seeks permission to use deferral account monies to build the facilities required to serve these uneconomic areas.
- “The portion of the Company’s serving territory where the expansion of the Company’s DSL footprint is not warranted on a commercial basis can only be provided broadband service if other inducements are possible.”⁹
62. Given its already dominant position within its territory, RipNET respectfully submits that it would not be in the public interest to allow Bell to access the deferral funds to extend its reach beyond the 90% of households within its territory that it already serves.
63. RipNET submits that the public interest would be better served if access to the deferral account monies were restricted to companies other than Bell – restricted to non-ILECs. We believe that access to the deferral account monies should be restricted to non-ILECs that commit to building the facilities required to bring high-speed broadband and competitive local telephony services to rural and remote communities.
64. RipNET expects that if such subsidies were available new players would come forward with proposals to build the facilities required to serve these remote and rural communities within Bell’s territory as well as the territories served by other ILECs.

⁸ Op. Cit, par. 16

⁹ Op. Cit., par. 34

65. The added benefit of making the deferral account monies available to non-ILECs is that the facilities required to provide high-speed connectivity could also be used to provide competitive local telephony service using VOIP.
66. If additional subsidies like the deferral account monies were accessible to RipNET, we would be eager to extend high-speed broadband and VOIP telephony services to areas adjacent to Leeds Grenville.
67. As stated previously, much of the facilities required to provide high-speed service can also be used to provide VOIP and other telephony services. It is reasonable to expect that other independent operators, like RipNET, will become CLECs and use their networks to provide competitive VOIP and other telephony services.
68. RipNET submits that:
- It is in the public interest to build the facilities needed to provide high-speed broadband and other telephony services to low-density rural and remote communities.
 - It is in the public interest to allow deferral account monies to be used to subsidize the cost of building the facilities needed to serve low-density rural and remote communities.
 - The public interest would be best served if the deferral account monies were made available only to non-ILECs to subsidize the cost of building facilities required to provide high-speed broadband and competitive local telephony services.
69. RipNet's submits that its position is consistent with the policy objectives as set out in the Telecommunications Act (the "Act").

"It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives:

- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;"¹⁰

70. RipNET further submits that its position is consistent with the objectives set-out by the Commission regarding the disposition of deferral account monies.

"In Decisions [2002-34](#) and [2002-43](#), the Commission stated that the deferral accounts were to be cleared in a manner that contributes to achieving the Commission's objectives for the current price cap period.

Parties should use the objectives set out by the Commission as a guide when preparing their submissions. The objectives set out in these decisions are:

- to render reliable and affordable services of high quality, accessible to both urban and rural area customers;
- to balance the interests of the three main stakeholders in telecommunications markets, (i.e., customers, competitors and incumbent telephone companies);

¹⁰ Telecommunications Act, in force 23 October, 1993, Par. 7 (b), (c), (f)

- to foster facilities-based competition in Canadian telecommunications markets;¹¹

71. RipNET submits that these key objectives, which are clearly in the public interest, can only be achieved if new entrants like RipNET receive subsidies to build the facilities required to offer both high-speed broadband and telephony services.
72. RipNET believes that it is in the public interest to restrict access to deferral account monies to non-ILECs in part because such a restriction would serve to promote the development of facilities-based competition in local telephony.

Independent Administration of Deferral Account Monies

73. RipNET suggests that if deferral account monies are to be invested in the building of such facilities, the monies should be given to new players rather than incumbent ILECs like Bell.
74. RipNET recognizes that the Commission does not have the mandate or the facilities to administer and manage the deferral account monies.
75. RipNET respectfully suggests that the deferral account monies should be administered and managed by an independent agency. This agency could:
- establish criteria for eligibility for deferral account monies;
 - invite proposals from companies that would like to build the facilities needed to serve low-density rural and remote communities; and
 - select the companies that would receive subsidies from the deferral account monies.
76. RipNET suggests that, subject to certain adjustments to its current funding eligibility criteria, Industry Canada's Broadband for Rural and Northern Development ("BRAND") program or Ontario's Ontario Small Town and Rural Economic Development program ("Ostar") or Ontario's Connect Ontario Broadband Regional Access program ("Cobra") could be appropriate vehicles for such a program.
77. Further, it is possible that the administrative facilities established by Industry Canada for BRAND or the government of Ontario for Ostar or Cobra could be used to manage the deferral account program.
78. The Commission's objective should be to find an appropriate body to administer the deferral account monies that has the facilities and experience to maximize the amount of funding that actually goes towards the building of facilities and minimal amounts are needed for the administration of the program.

¹¹ Telecom Public Notice CRTC 2004-1, 24 March 2004, Par. 21

Summary

79. We appreciate the opportunity to share our comments with the Commission on these important matters.
80. We look forward to the reaction of the Commission and other participants to our suggestions and to reading their ideas as to what would be in the greatest public interest for the use of deferral account monies.

Yours truly,

Eric W. Rothschild
President

Cc: Kingsley S. Grant
C.E.O.
RipNET Limited