



**Canadian Network Operators Consortium Inc.  
Consortium des Opérateurs de Réseaux Canadiens Inc.**

January 12, 2012

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John Traversy  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Gatineau, Quebec  
K1A 0N2

Dear Mr. Traversy,

**Subject: Bell Aliant Tariff Notice 392 and Bell Canada Tariff Notice 7339 – Interim Comments of Canadian Network Operators Consortium Inc.**

1. In accordance with the Commission's letter dated 4 January 2012 ("Commission Letter"), Canadian Network Operators Consortium Inc. ("CNOC") is hereby filing the following comments regarding whether Bell Aliant Regional Communications, Limited Partnership ("Bell Aliant") Tariff Notice 392 ("TN 392") and Bell Canada Tariff Notice 7339 ("TN 7339") should be granted interim approval.

2. In TN 329 and TN 7339 ("TN 329/7339") Bell Aliant and Bell Canada ("Bell Companies") are proposing to insert the following provision in its tariffs for legacy and FTTN GAS:

**"(b) When a customer directs Residence and Business GAS or GAS-FTTN traffic to the same AHSSPI, the Total Business Capacity will be the total capacity of that AHSSPI, less the Residence capacity ordered by the customer for that AHSSPI. In cases where Residence GAS or GAS-FTTN traffic exists on any Business domain associated with that AHSSPI, Capacity Charges will apply to the Total Business Capacity in addition to the total Residence Capacity."**

3. At the outset, CNOC notes that it vigorously opposes the implementation of TRP 2011-703 through the creations of separate residential and business realms. CNOC has filed a Part I application with the Commission on 4 January 2012 to seek a different method of distinguishing residential traffic from business traffic. Should some other traffic segregation method be adopted, it may well be that the kind of penalty clause sought by the Bell

Companies in this proceeding would be entirely unnecessary. Nevertheless, in this submission CNOC is providing its comments in response to the Commission Letter.

4. CNOC is in receipt of comments filed by Vaxination Informatique (“VI”) with the Commission on 6 January 2012 with respect to TN 392/7339. CNOC is in full agreement with VI that the penalty sought by the Bell Companies would not be just and reasonable. An Independent Internet Service Provider (ISP) does not have the ability to prevent end customers from using a phone line subscribed to residential GAS from logging into a business realm. Such an action by an end user should not lead to the kind of enormous and disproportionate penalty that the Bell Companies’ proposed clause would levy, even on an interim basis, as these exorbitant amounts would still be billed and collected by the Bell Companies while the interim rates are in effect.

5. Such a disproportionate penalty (which can amount to up to \$22,130 per 1 Gbps AHSSPI for a single unavoidable infraction), even if only applied for a limited time, could severely hamper the financial well-being of independent ISPs and perhaps even put some out of business, all of which would lead to an undue lessening of competition. The situation is even worse in the case of independent ISPs that serve predominantly business end users and have very few retail customers. In this type of situation, the ISPs would have an incentive not to compete in retail markets at all.

6. As was the case with the Bell Companies’ proposal for uncorrelated usage charges with GAS, which the Commission ultimately rejected, there is no evidence that login activities that could lead to the carriage of residential traffic on business realms are likely to be of any material significance. In the absence of such evidence no penalty clause should be applied, even on an interim basis.

7. CNOC also agrees with VI that a clause that forbids independent ISPs from allowing residential end users from authenticating with a business realm is the only demonstrable measure that is needed to stem potential abuse by independent ISPs. That is the only measure that should be adopted on an interim basis.

8. If the Commission is still of the view that a penalty is required on an interim basis, the penalty should be significant enough to deter gaming (e.g., \$200), but not so large as to cause significant financial harm to an independent ISP. Moreover, since independent ISPs cannot prevent residential end users from authenticating with a business realm in all cases, the Bell Companies should provide monthly reports to independent ISPs that

identify offending users and independent ISPs should be given the opportunity to take action against such end users for at least one additional billing period to curb the offending behavior. Only if a third consecutive monthly report demonstrates that the end user is still not logging in correctly should the Bell Companies be allowed to levy a penalty from the independent ISP with respect to the conduct of that end user.

9. CNOC also agrees with VI that a period of adjustment should be provided before any penalty is levied, in any event, so that independent ISPs can correct any profile or network errors that have not yet been corrected and that could lead to penalties if not addressed. During this period, independent ISPs will be provided reports of login anomalies by the Bell Companies so that the independent ISPs can rectify those that may be under their control. CNOC recommends a period of adjustment of ninety days. Such a period would encompass two billing cycles and provide independent ISPs with thirty days following each billing cycle to address any anomalies identified during the preceding month.

10. CNOC also agrees with VI that the Commission should also require the Bell Companies to provide it with frequent reports on what the Bell Companies consider to be abuse. This would allow the Commission to better gauge the requirement for penalties and the extent of abuse or other problems on a final basis. CNOC believes that three monthly reports would be appropriate and that the reports should also be provided to interested parties who would then have an opportunity comment on them before the Commission makes a final ruling with respect to TN 392/7339.

11. For all of these reasons, CNOC urges the Commission not to grant TN 392/7339 interim approval as filed.

12. This submission is without prejudice to CNOC's right to make further submission with regards to whether TN 392/7339 should be granted final approval in accordance with the Commission's normal processes.

Yours very truly,

William Sandiford  
Chair of the Board and President

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