



Rogers Communications Partnership

333 Bloor Street East
Toronto, Ontario M4W 1G9
rogers.com
Tel.: 416.935.2525
Fax: 416.935.2523
ken.engelhart@rci.rogers.com

Ken Engelhart

Senior Vice President – Regulatory

January 26, 2011

Mr. Wayne Wouters
Clerk of the Privy Council
and Secretary to the Cabinet
Langevin Block
80 Wellington Street
Ottawa, ON K1A 0A3

Dear Sir:

Re: Petition to the Governor in Council pursuant to section 12 of the Telecommunications Act concerning Telecom Decision CRTC 2010-805, Bell Canada – Applications to review and vary certain determinations in Telecom decision 2010-637 concerning the use of high-speed packet access wireless technology and the deferral account balance

1. This petition is presented to the Governor in Council by Rogers Communications Partnership (“Rogers”) pursuant to section 12 of the *Telecommunications Act*.
2. In its petition Rogers respectfully requests the Governor in Council to vary Telecom Decision CRTC 2010-805, *Bell Canada – Applications to review and vary certain determinations in Telecom Decision 2010-637 concerning the use of high-speed packet access wireless technology and the deferral account balance* (“Decision 2010-805” or “the Decision”), issued by the Canadian Radio-television and Telecommunications Commission (“CRTC”) on October 29, 2010.

3. In the Decision, the CRTC approved a proposal by Bell Canada and Bell Aliant Regional Communications, Limited Partnership (collectively “Bell”) to use \$306.3 million in deferral account revenues to extend broadband service to 112 approved locations using high-speed packet access (“HSPA”) wireless technology. The variance requested by Rogers would reduce this amount by the deferral account revenues required by Bell to cover the uneconomic portion of its cost to serve the 15 approved locations that Bell committed to serve in the first year (2011) of its four year roll-out plan.
4. With respect to the remaining 97 approved communities, Rogers requests the Governor in Council to further vary the Decision to provide for a competitive bidding process to be conducted by the CRTC in which carriers would bid for the minimum level of subsidy they require to serve these locations with the same (or better) level of broadband service as Bell has committed to provide, including the competitor services proposed by Bell; at the same (or lower) price; within the same (or shorter) timeframe proposed by Bell. The CRTC would then select the carrier requiring the lowest level of subsidy to provide specified level of service to the 97 locations in question.

Executive Summary

5. In the Decision, the CRTC approved a proposal by Bell to use \$306.3 million in deferral account revenues to extend broadband service to 112 approved locations using HSPA wireless technology. The \$306.3 million represented the subsidy that the CRTC considered Bell would require to cover the uneconomic portion of its construction and service provision expenses to provide the broadband service in question. (Bell had originally requested \$463.6 million.)

6. As discussed further herein, the CRTC did not conduct a competitive bidding process to select Bell as the supplier of broadband services to the 112 approved locations in question; it did not test Bell's costs against those of competing bidders to determine whether they were excessive; and it did not permit other bidders the opportunity to provide the services in question for a lower subsidy or in a faster time frame than the four year rollout proposed by Bell.
7. The CRTC's failure to conduct a competitive bidding process for this public subsidy is contrary to the principles of competitive neutrality enshrined in the Governor in Council's *Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* ("The Direction"); it is contrary to the best practices that have been developed over the past few years in other broadband expansion subsidy programs, including the federal government's Broadband Canada program; it will result in the waste of public money that would otherwise be returned to consumers who contributed the subsidy; and it will subsidize Bell to construct broadband networks to some communities that are already served with broadband services by Bell's competitors.
8. There are other carriers that are capable of providing the same broadband service levels to the communities in question at considerably lower subsidy levels than Bell proposed and the CRTC has approved.
9. For its part, Rogers hereby commits to the Governor in Council that it can provide an identical service to Bell to the same communities using the same HSPA wireless technology for at least \$50 million less than Bell. This means that the selection of Rogers in a competitive bidding process would provide the consumers and businesses in the 97 locations with broadband services in the same or shorter timeframe committed to by Bell, leaving at least \$50 million

either to be refunded to consumers as originally prescribed by the CTRC, or used to extend broadband service to additional locations.

10. The fact that Rogers can guarantee this pricing and these timelines to the Governor in Council using the same technology as Bell and offering precisely the same service underscores the fallacy of the CRTC assumption that a regulatory process could replicate the outcome of a competitive bidding process.
11. Rogers acknowledges that it is not the only competitive supplier of broadband services in Canada that might wish to participate in a competitive bidding process. During the course of the CRTC's public process, other suppliers requested a competitive bidding process and indicated their intention to bid if given the opportunity.
12. Public funds for broadband expansion are a limited and very important resource in Canada and should be used prudently in a cost effective manner. Allowing more than \$306 million to be sole-sourced to one carrier without competitive bidding does not reflect an efficient use of resources as evidenced by the fact that Rogers is willing to guarantee the provision of an identical service for \$50 million less than Bell.
13. At the same time, Rogers is cognizant of the CRTC's, the Government of Canada's, and most importantly, the approved communities' desire to see broadband services rolled out as soon as possible without any further delays. The CRTC's public process has already consumed close to 5 years without service being extended to any of the approved communities. With this in mind, Rogers proposes that Bell be permitted to proceed to roll out its HSPA network to the 15 communities it has proposed to serve in year 1 (2011) of its four year rollout. During this same timeframe, the CRTC should carry out a competitive bidding process for all eligible carriers that commit to the service standards,

including the competitor services, proposed by Bell, and the pricing established by the CRTC and that commit to roll out that service to the remaining 97 approved communities in the same or shorter timeframe than has been proposed by Bell Canada and approved by the CRTC. Given Rogers' commitment to bid on provision of service to all of these communities for \$50 million less than Bell within the 2012-2014 timeframe accorded to Bell or sooner, the Governor in Council will be assured that all of the approved communities will receive broadband service in the same or shorter timeframe as proposed by Bell. Moreover the service will be provided for \$50 million less public subsidy than Bell requires. This is a minimum saving as Rogers reserves the right to bid for a lower subsidy in a competitive bidding process.

14. For all of these reasons, Rogers respectfully urges the Governor in Council to vary the Decision in the following respects:
 - i) Limit the CRTC's approval of Bell's HSPA proposal to the 15 approved locations that Bell proposes to serve in year one (2011) of its four year rollout plan.
 - ii) Conduct a competitive auction of deferral account funds to serve the remaining 97 approved locations. This auction should be open to any telecommunications service provider that commits to all the services, service levels, competitor services and pricing established by the CRTC for Bell and that commits to roll out service to the locations in question at least as fast as Bell has proposed to do. The bidder who satisfies these criteria and bids for the lowest deferral account subsidy for the 97 approved communities shall be selected by the CRTC to provide the service.
15. Proposed wording for the changes to Decision 2010-805 that are required to give effect to the variance requested are set forth in the appendix to this petition.

Background to the Decision

16. In the Decision, the CRTC authorized Bell to draw down \$306.3 million from its deferral account to construct broadband networks to 112 approved locations using HSPA wireless technology. The \$306.3 million represented the subsidy that the CRTC considered Bell would require to cover the uneconomic portion of its construction and service provision expenses to provide the broadband service in question. This subsidy was \$157.3 million lower than the level that Bell had previously indicated would be required to serve the communities in question using HSPA technology.
17. The Decision marks the last in a series of decisions dating back to 2006 concerning disposal of the funds in Bell's deferral account.
18. The Deferral account was created in 2002 in Telecom Decision 2002-34, *Regulatory framework for the second price cap period*. In that decision the CRTC permitted the incumbent local telephone companies (ILECs), including Bell, to charge residential and small business customers in urban (non-high cost) areas more for local telephone service than would have been permitted under the price cap plan approved by the CRTC. This decision to allow the ILECs to over-charge for local service was intended to encourage entry into the local telephone market by competing carriers. The ILECs were not permitted to use the money over-charged to consumers for their own purposes. They were directed to segregate these funds in "deferral accounts" and not to draw any funds down without the approval of the CRTC.
19. In Telecom Decision 2006-9, the CRTC considered the purposes for which deferral account funds could be used. The CRTC determined that at least 5% of the revenues should be spent on improving access to telecommunications services by persons with disabilities; the remaining funds could be used to cover

the uneconomic portion of the cost to extend broadband services to rural and remote parts of Canada that do not have such facilities; and any residual amount would be rebated to consumers and small business users in non-high-cost service areas (who were the source of the revenues).

20. In Telecom Decision CRTC 2006-9 the CRTC set forth the principles that were to govern the use of deferral account funds by the ILECs in extending their broadband networks.
21. In paragraph 189 of that decision, the CRTC recognized the importance of competitive neutrality in ensuring that the funds are administered in a fair and equitable manner, taking into account the activities and plans of competing suppliers of broadband services.

“... competitive neutrality is a principal part of the objectives to be considered when implementing the initiatives to be funded from the deferral accounts.”
22. Notwithstanding the fact that a number of carriers that participated in the 2006-9 process had argued that all carriers should be eligible to have access to deferral account funds in order to extend broadband networks to rural and remote areas, the CRTC declined to implement a competitive bidding process to ensure competitive neutrality and an economically efficient use of deferral account revenues. Its rationale for this refusal was that competitive bidding would introduce an additional level of complexity, increased regulatory and administrative burden and delay into the process. As a result of this determination only ILECs were permitted access to deferral account funds.
23. Rather than order a competitive bidding process the CRTC put in place a number of measures that were designed to ensure that deferral account revenues were not used to extend the ILECs' broadband networks to areas already served by

competing carriers. These measures included compliance with the following conditions:¹

- broadband service is not available from any service provider and is not part of their existing commitments or planned roll-out;
- the community has not received funding, or approval for funding, from any government broadband expansion programs;
- deployment must be based on least-cost technology;
- proposals must include backbone and access facilities;
- backbone facilities must be made available to alternative broadband service providers at a minimal rate that will be approved by the Commission when reviewing the broadband expansion proposals for approval;
- any wholesale broadband service offered by the ILEC, such as Bell Canada's Gateway Access Service, must be made available in all funded communities; and
- proposed funding must cover only the uneconomic portion of the project.

24. Following release of Decision 2006-9, the CRTC convened proceedings to assess the ILECs' deferral account plans and to provide competitors with the opportunity to make their own plans and broadband network deployment known to the CRTC in order to prevent over-building their networks. This process culminated in Telecom Decision CRTC 2008-1 in which the CRTC ruled on the eligibility of the locations proposed by the ILECs, (with the exception of a number of communities in respect of which the CRTC required additional information in order to make a final determination). In Decision 2008-1 the CRTC denied the ILECs' requests to be permitted to make additional broadband expansion proposals other than those already before the CRTC. Any remaining funds were

¹ Decision 2006-7, para. 197.

ordered to be rebated to consumers in non-high cost service areas in accordance with Decision 2006-9.

25. Decision 2008-1 was the subject of petitions to the Governor in Council and appeals to the Federal Court of Appeal and the Supreme Court of Canada. The follow-up proceedings initiated by the decision were therefore stayed pending completion of the judicial review. All of the appeals were eventually denied.
26. At that point in time, the CRTC convened a further follow-up process to assess the ILECs' plans to extend broadband services to 14 communities it had identified in Decision 2008-1 as having insufficient information to make a determination. The ILECs filed their plans and competing suppliers of broadband services were given an opportunity to identify which of those areas they either already served, or had plans to serve – but only as of February 19, 2007. That date was chosen by the CRTC as the relevant date on the basis that it was the date established as the cut off date for competitive deployment in the proceeding which led to Decision 2008-1. Evidence of competitive builds subsequent to February 19, 2007 was therefore excluded from consideration.
27. On February 5, 2010, the CRTC released Decision 2010-60 in which it approved Bell's plans to extend broadband service to 10 of the 14 contested communities in its operating territory. This brought to 112 the number of approved locations for Bell Canada. In that Decision, the CRTC refused to consider circumstances in which competing suppliers had already extended broadband access services to the communities in question subsequent to February 19, 2007, or the fact that other government funded subsidy processes were under way under a competitive RFP process to provide funds for the same purposes.

8. ... the Commission will not approve exclusion requests for communities or DSAs in which the ABSP was not providing broadband

service as of 19 February 2007 or had not advised the Commission as part of the record of the Telecom Public Notice 2006-15 proceeding that it had plans to provide broadband service to the supplemental communities.

9. The Commission also notes that Telecom Decision 2008-1 required ABSPs requesting exclusion on the basis of planned service to provide evidence of firm plans to serve the community in question. The Commission does not consider plans which are contingent on the receipt of funding from programs such as the federal government's *Broadband Canada: Connecting Rural Canadians* program to be firm plans as there is no guarantee that the ABSP will receive such funding. Accordingly, the Commission is not approving exclusion requests which are contingent on obtaining such funding.

28. This meant that it was possible for Bell to receive a subsidy to extend service to areas already served by its competitors after February 19, 2007, contrary to the CRTC's original principles in Decision 2006-9.
29. The ILECs were then ordered to provide their service, technology and rollout plans to serve these areas, as well as the areas previously approved in Decision 2008-1, and to file their related cost studies.
30. Up until this point in time, Bell had proposed to provide its broadband services to the approved locations using digital service line (DSL) wireline technology. However, when Bell filed its revised technology and costing data to serve the 112 locations in question, it filed a completely different technology plan and new costing information to support it. Instead of DSL technology, Bell proposed to use wireless HSPA technology and it requested \$463.6 million in deferral account subsidy representing its calculation of the uneconomic portion of its rollout plan. Bell proposed a four year rollout plan serving 15 of the approved

locations in year 1 (2011), 34 in year 2 (2012), 37 in year 3 (2013) and 26 in year 4 (2014).²

31. A number of parties opposed Bell's new HSPA proposal based on the fact that Bell had already announced plans to build out its HSPA network to support its mobile wireless business which competes with Rogers and other mobile wireless carriers in the cellular/PCS market. Subsidizing Bell's proposed broadband expansion plan raised serious concerns as to whether Bell's purpose was to subsidize the build it had already announced as a competitive response to Rogers' HSPA network.
32. In Telecom Decision 2010-637, the Commission approved a drawdown of \$306.3 million from the Bell companies' deferral account to expand broadband services in the 112 approved communities using wireline digital subscriber line (DSL) technology, rather than the high-speed packet access (HSPA) wireless technology proposed by the Bell companies. The Commission also approved a rebate of \$251.6 million to the Bell companies' subscribers in non-HCSAs and set out the implementation details for the drawdown of their deferral account balance.³
33. In Telecom Decision 2010-637, the Commission indicated that the Bell companies' original proposal to use HSPA wireless technology to provide broadband services in the approved communities (the original proposal) did not satisfy the Commission's requirements as set out in the deferral account

² Bell Canada and Bell Aliant, *Additional Follow-up Information Related to the Deferral Account-Funded Broadband Expansion Program*, February 26, 2010, Table 1, page 7. Individual locations by in-service year are identified in Table 2 of the Appendix to the Attachment to Bell's February 26 (Revised March 30), 2010 submission.

³ Decision 2010-805, at para. 4.

decisions. Specifically, the Commission indicated that the original proposal did not offer features comparable to broadband service in urban areas such as (i) a variety of service options, including various speeds and usage caps, (ii) an option for a greater than 2 gigabyte (GB) monthly usage allowance, and (iii) an insurance option that would provide an extra 40 GBs of usage for \$5 per month. The Commission also considered that the original proposal would not represent the use of least-cost technology. The Commission therefore approved the use of wireline DSL technology and fixed the amount of funds available for broadband expansion at \$306.3 million to serve all of the approved communities.⁴

34. Following the CRTC's determinations in Decision 2010-637, Bell Canada filed two applications – one amending its earlier HSPA proposal to address the concerns expressed by the CRTC in that decision and a second application asking the CRTC to review and vary Decision 2010-637 and to approve the revised HSPA⁺ technology plan using the \$306.3 million approved by the CRTC for a DSL rollout – rather than the \$463.6 million originally stated to represent the uneconomic portion of its HSPA plan.
35. Barrett, EastLink, Rogers, and Videotron opposed the revised proposal. These parties submitted that, while they supported the principle of technological neutrality, the Bell companies should deploy a wireline DSL solution as originally directed by the Commission.
36. Rogers and Videotron submitted that HSPA services are now, or are expected to be, available from Bell Canada, RCI, and Videotron in most of the approved communities. As such, they argued that it would be inconsistent with the deferral

⁴ Decision 2010-805, at para. 9.

account decisions to approve the revised proposal in order to fund broadband service where such services are already offered.

37. EastLink and Videotron argued that approving the revised proposal would result in the subsidization of Bell Canada's mobile voice service. They indicated that it would be inconsistent with the Policy Direction to distort the competitive market for mobile voice services in the approved communities by funding a technology that could provide both voice and data services.
38. Barrett, Rogers, and Videotron submitted that the revised proposal does not adhere to other principles in the deferral account decisions, as it does not represent the use of least-cost technology to deploy broadband services. These parties argued that alternative broadband service providers could provide a comparable service at significantly less cost than Bell Canada, and submitted that if the Commission approves the revised proposal, it should allow for competitive bidding to see whether other companies could provide the HSPA+ service at less cost.⁵
39. Notwithstanding these objections, the CRTC approved Bell's applications in Decision 2010-805 – the decision that is the subject of this petition.

The CRTC's Decision Fails to Comply with Direction

40. While Decision 2010-805 is consistent with the principle of technological neutrality, it is completely contrary to the principle of competitive neutrality set out in the Direction. That statutory instrument, which is binding on the CRTC by virtue of section 47(b) of the Act, includes the following directions to the CRTC:

“1 (a) the Commission should

⁵ Decision 2010-805, at paras. 13-17.

(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and

(ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;

(b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that

(i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with this Order,

(ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,

(iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner,”

41. The CRTC’s Decision fails the requirement for competitively-neutral regulation in a number of respects:
- it sole-sourced the subsidized broadband expansion funds to Bell, rather than implementing a competitive bidding process;
 - it ignored the fact that since February 19, 2007 some of the approved locations have already been served by Bell’s competitors thus enabling Bell to compete on a subsidized basis against these carriers that have invested their own funds to extend service;⁶ and

⁶ The CRTC also ignored the fact that Bell Canada had already started rolling out its HSPA network to some of the approved locations without a subsidy.

- it refused to consider the market distortions that would result in the mobile wireless market if Bell receives a \$306.3 million subsidy to extend its HSPA network in competition with its competitors' unsubsidized HSPA networks.
42. The CRTC's reasoning in addressing these concerns demonstrates a lack of understanding of the concept of competitive neutrality and a lack of understanding of the advances in competitive subsidy programs that have been made over the past five years since the CRTC first rejected this approach in 2006.

Availability of Broadband Service in Some of the Approved Locations

With regard to the parties' submission that HSPA services are already available in some of the approved communities, the Commission notes that, in order to ensure a fair, predictable, and transparent process, it established 19 February 2007 as the cut-off date for alternative broadband service providers to verify that they were offering, or were planning to offer, broadband service in these communities. The Commission notes that broadband service was not available to the communities in question as of this cut-off date. Furthermore, the Commission notes that none of the carriers providing HSPA service in the approved communities demonstrated that their current service offerings are comparable to Bell Canada's revised proposal.⁷

43. As Barrett Xplore pointed out to the CRTC in its comments on Bell's initial HSPA proposal, the world did not stand still between February 19, 2007 and April 16, 2010. By ignoring evidence of actual broadband network builds post February 19, 2007, the CRTC allowed its own procedures to get in the way of sound public policy. It also wasted subscribers' money by spending it where it was

⁷ Decision 2010-805, at para. 21.

unnecessary to do so. The deferral account funds were meant to be used to extend broadband services to areas where this service is not available. By looking backwards to see if it was available in 2007, rather than at the present time, the CRTC ignored its own guiding principle.⁸

44. Bell's proposal to enter markets on a subsidized basis that its competitors have already entered using private capital promotes inefficient entry by Bell and discourages efficient entry by others, contrary to every element of subsections 1(a) and (b), including specifically subsection 1(b)(ii) of the Direction.
45. As regards the CRTC's statement that none of the carriers providing HSPA service in the approved communities demonstrated that their current service offerings are comparable to Bell's revised proposal, the fact is that the CRTC had already denied them this opportunity by sticking to the February 19, 2007 cut-off date as recently as Telecom Decision 2010-60, a few months earlier.
46. While the CRTC cut off all evidence from other carriers post February 19, 2007, it permitted Bell to completely revise its plan, its technology and its costing information in 2010. It was comparing the coverage and service characteristics of competitors in February, 2007 with what Bell planned to provide over a four year period starting in 2011 with a different technology if it received a \$306.3 million subsidy. The unfairness of this approach to competitors was obvious to everyone except the CRTC.
47. The truth is that competitors are serving some of the 112 locations that Bell is proposing to serve and, in a competitive bidding process, competitors would be able to provide the services that Bell purposes to provide at a lower cost in part because of their advanced rollout.

⁸ Comments of Barrett Xplore Inc. and Barrett Broadband Networks Inc., May 21, 2010, para. 18.

Distortion of the Wireless Market

Regarding the parties' concerns that the revised proposal would distort the mobile voice market, the Commission notes that mobile voice services are already available in the vast majority of the 112 approved communities. Furthermore, the Commission considers that there are many economic and social benefits associated with access to broadband services in these communities, and that any associated market distortion would be minimal.⁹

48. This reasoning by the CRTC appears to miss the point entirely. It is not just that wireless voice service is already available in these markets, and that Bell's wireless voice service will be subsidized in these areas – it is that competitive HSPA and other broadband wireless services have been rolled out by Bell's competitors in the approved locations and indeed by Bell itself, and only Bell's HSPA service will be subsidized. Moreover, the CRTC's process ignored the fact that Bell would have been spending capital in any event to expand its HSPA network. A competitive bidding process would force carriers to offset their existing level of investment against the amount of subsidy they would need to provide on HSPA service that meets the CRTC's standards for use of deferral account revenues. This is in part why a competitive bidding process would result in a lower subsidy requirement than the \$306.3 million required by Bell Canada.

Failure to Permit Competitive Bids

With respect to the proposals to allow for competitive bidding in order to ensure the use of least-cost technology, the Commission notes that it rejected this idea both in Telecom Decisions 2006-9 and 2007-50, since it would add a significant layer of complexity, delay the implementation of

⁹ Decision 2010-805, para. 22.

broadband expansion, and result in substantial administrative and regulatory burden. The Commission considers that these reasons continue to be valid.¹⁰

49. The CRTC's continuing belief that its sole-source regulatory process for dispersing deferral account revenues is less complex, involves less regulatory and administrative burden and would result in less delay than a competitive bidding process – is totally at odds with the facts. The CRTC has disproved its own proposition.
50. Decision 2006-9 was released on February 16, 2006 – almost five years ago and Bell Canada only recently started on year 1 of its four year build, involving only 15 of 112 locations.
51. It is worth noting that in neither of the decisions did the CRTC elaborate on the nature of the complexity, the length of the delay and the costs of the administrative and regulatory burden that it was concerned about. As far as the regulatory process is concerned, we know that it has taken five years, that it has involved at least six CRTC hearings, petitions to Cabinet, appeals all the way to the Supreme Court of Canada and enormous cost to the industry.
52. With respect to complexity and administrative/regulatory burden, experience with competitive bidding has improved since 2006 as governments at all levels have increasingly used competitive bidding or a similar process to award public funds for rural telecommunications development.¹¹ Recently the Federal Government used competitive bidding under the Broadband Canada initiative to award

¹⁰ Decision 2010-805, para. 23.

¹¹ See for examples of federal and provincial funding initiatives and call for applications, http://www.ic.gc.ca/eic/site/719.nsf/eng/h_00032.html; and <http://www.ic.gc.ca/eic/site/719.nsf/eng/00050.html>.

approximately \$123 million out of the total budget of \$225 million. In light of these experiences, the industry and the public sector have become more familiar with competitive bidding and the CRTC's concern over its complexity is no longer valid and must be re-evaluated. While the CRTC itself has never conducted a competitive bidding process, the CRTC can retain experts from the private and public sectors with the requisite experience to assist it in conducting the process.

53. Developments since 2006 no longer support the CRTC's concern that a competitive bidding process would delay the implementation of broadband expansion. First, the ILECs' use of the deferral account funds has been mired in delay brought about by regulatory and judicial challenges to the extent that five years after Decision 2006-9 Bell has barely started on year one of its four year build.
54. Second, it is particularly noteworthy that, despite the delay in use of deferral account funds, rural broadband expansion in general has not slowed since 2006, and competitive bidding for the deferral account funds would not have delayed that general trend. In the evidence filed by MTS Allstream in Telecom Notice of Consultation CRTC 2009-261, *Proceeding to consider the appropriateness of mandating certain wholesale high-speed access services* (TNC 2009-261), MTS Allstream listed the various public rural broadband expansion initiatives since 2001, totalling some \$1.4 billion as at February 2010. The vast majority of these initiatives occurred after Decision 2006-9. In the Competitors' view, a competitive bidding process will not reverse this trend and therefore the CRTC's concern about delay in rural broadband expansion is no longer valid.
55. Finally, the concerns expressed by the CRTC in Decisions 2006-9 and 2007-15 must now be balanced against the competitive harm that will result if the funds are not open to competitive bidding. As indicated above, the CRTC did not

envisage today's broadband competitive landscape in 2006, it never contemplated that the ILECs would use any approved funds for HSPA network expansion and did not foresee the extent of private investment in competing HSPA networks. Any lingering concerns over the complexity and administrative burden involved in competitive bidding are outweighed by the market distortions that will result from permitting Bell to continue building out its HSPA network on a subsidized basis.

Rogers Guarantees a Successful Auction Process

56. There is no downside to ordering a competitive auction process and there is a very significant upside.
57. Rogers is willing to guarantee to the Governor in Council that it will bid in the auction to build all of the 97 approved locations designated by Bell for years 2 to 4 of its build for \$50 million less in deferral account subsidy than was approved by the CRTC for Bell.
58. In making this guarantee, Rogers commits to abide by all of the service levels imposed on Bell by the CRTC and all of the same timeframes. Rogers will meet or beat all timelines proposed by Bell and all service specifications using the same HSPA technology. However, because the process proposed will be a competitive one, Rogers reserves the right to bid less than its guarantee, thereby producing a saving of more than \$50 million.
59. By guaranteeing a floor for a competitive auction, Rogers is removing all risk to the Governor in Council, the CRTC and, most importantly, the communities to be served. The \$50 million saving is a minimum saving. The money saved can either be used to build out more communities in a second competitive auction –

or returned to consumers along with the \$251.6 million rebate to Bell subscribers already ordered by the CRTC.

Requested Variance to Telecom Decision 2010-805

60. For all of these reasons, Rogers respectfully urges the Governor in Council to vary the Decision in the following respects:

i) Limit the CRTC's approval of Bell's HSPA proposal to the 15 approved locations that Bell proposes to serve in year one (2011) of its four year rollout plan and limit Bell to the subsidy identified for these locations.¹²

ii) Conduct a competitive auction of deferral account funds to serve the remaining 97 approved locations. This auction should be open to any telecommunications service provider that commits to all the service standards, competitor services and pricing established by the CRTC for Bell and that commits to roll out service to the 97 locations in question at least as fast as Bell has proposed to do. The bidder who satisfies these criteria and bids for the lowest deferral account subsidy for the 97 approved communities shall be selected by the CRTC to provide the service.

61. Proposed wording for the changes to Decision 2010-805 that are required to give effect to the variance requested are set forth in the appendix to this petition.

¹² The original level of subsidy required by Bell to serve the 15 locations in question was filed in confidence with the CRTC in Table 3 of the Appendix to the Attachment to Bell's February 26 (Revised March 30), 2010 submission. That amount should be reduced by 33.9% - being the reduction made by the CRTC when it reduced Bell's overall level of deferral account subsidy from \$463.6 million to \$306.3 million in Decision 2010-637.



62. All of which is respectfully submitted by Rogers.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Ken G. Engelhart', written in a cursive style.

Kenneth G. Engelhart
Senior Vice President – Regulatory

Copy: The Hon. Tony Clement, PC, MP
Robert Morin, Secretary General, CRTC
Mirko Bibic, Bell Canada

Attach. – Appendix

APPENDIX

Amendments Requested to Telecom Decision CRTC 2010-805

1. Delete paragraphs 21 – 25 of the Decision.
2. Add the following new paragraphs starting at paragraph 21:
 21. The Commission notes the parties' concerns that the revised proposal would distort the mobile market and possibly result in over-building broadband networks that have been constructed since the original cut-off date of 19 February 2007. Given the fact that legal and regulatory appeals produced a significant delay in between the establishment of the cut-off date and proceedings regarding implementation in 2010, a decision to permit Bell Canada to use the full \$306.3 million to proceed with its HSPA⁺ proposal, would give rise to competitive inequity and distortions in the wireless broadband market that are inconsistent with the Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives.
 22. The Commission also notes that since its original determination in 2006 regarding the possibility of holding a competitive auction of deferral account subsidies, there has been considerable experience in Canada with broadband subsidy plans and competitive bidding for subsidies. Given the work done to date in identifying the 112 approved communities and the service level requirements to be met by the carrier providing the service, including the maximum rates, the Commission considers that a competitive auction would provide a valid means of allocating the deferral account revenues that have been set aside for broadband expansion. The Commission believes that this would also be the most equitable way of addressing the concerns of carriers that have already constructed or have begun to construct broadband facilities to the 112 approved communities.
 23. At the same time, the Commission is concerned that broadband expansion not be delayed any more than it already has been.

24. For these reasons, the Commission approves Bell Canada's revised proposal in respect of the 15 approved locations that Bell Canada proposed to serve in year one (2011) of its four year rollout.

25. In respect of the remaining 97 approved communities that Bell proposed to serve in years 2 – 4 of its rollout plan, the Commission shall convene a competitive auction for the remaining subsidy identified for these locations. All Canadian carriers that are willing to abide by the same service levels, competitor services, timelines and pricing approved for Bell Canada, will be eligible to participate in this auction. The eligible carrier that requires the lowest deferral account subsidy to serve the 97 approved locations will receive the subsidy. Any balance in deferral account revenues remaining will either be returned to the Bell Companies' subscribers in non-high-cost serving areas (non-HCSAs) or distributed in a second auction to serve additional communities. The Commission will issue a public notice shortly establishing timelines and procedures for the auction which is to be concluded with funds allocated by September 30, 2011.