



24 April 2008

Filed Electronically

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

Dear Mr. Morin:

Re: Part VII Application by the Canadian Association of Internet Providers Requesting Certain Orders Directing Bell Canada to Cease and Desist from “Throttling” its Wholesale ADSL Access Services

On 3 April 2008, the Canadian Association of Internet Providers (“CAIP”) filed an application requesting that the Commission issue a number of interim and final orders directing Bell to cease and desist from throttling its wholesale ADSL access services.

Pursuant to the Commission’s letter on procedure dated 8 April 2008, as amended by a subsequent Commission letter dated 18 April 2008, CAIP hereby submits the attached Reply in relation to its request for interim relief in this matter.

Should the Commission have any questions regarding the attached submission, please do not hesitate to contact the undersigned.

Yours truly,

Tom Copeland
Chair, Canadian Association of Internet Providers

c.c. Bell Canada

**Before the Canadian Radio-television
and Telecommunications Commission**

The Canadian Association of Internet Providers

Applicant

and

Bell Canada

Respondent

REPLY

24 April 2008

I. INTRODUCTION

1. On 3 April 2008, the Canadian Association of Internet Providers (“CAIP” or the “Applicant”) filed an application (the “Application”) with the Commission pursuant to sections 7, 24, 25, 27, 32, 36, and 62 of the *Telecommunications Act* (the “Act”) and Part VII of the *CRTC Telecommunications Rules of Procedure* (the “Rules”) requesting that the Commission issue a variety of interim a final orders relating to Bell Canada’s practice of deliberately “throttling” the telecommunications traffic of competitive Internet service providers (“ISPs” or “competitors”) and other carriers that are interconnected to Bell Canada’s local network.
2. As part of its Application, CAIP requested that the Commission issue an interim order, on an urgent and expedited basis, directing Bell Canada (“Bell” or the “Respondent”) to immediately cease and desist from using any technologies to “shape”, “throttle” and/or “choke” the wholesale ADSL access services that it provides to competitors and, in particular, its tariffed Gateway Access Service (“GAS”).
3. On 8 April 2008, the Commission issued a letter on procedures on CAIP’s Application indicating that it was appropriate to adopt expedited procedures for the disposition of CAIP’s request for interim relief. The Commission also advised the Applicant and the Respondent that the process for disposition of CAIP’s request for final orders would be set out no later than the date of the Commission’s decision on CAIP’s request for interim relief.
4. In accordance with the procedures set out in the Commission’s letter of 8 April 2008 (as amended by a subsequent Commission’s letter dated 18 April 2008), the following constitutes CAIP’s Reply to Bell’s 15 April 2008 Answer (“Bell Answer”) as well as Bell’s comments, dated 22 April 2008, on an intervention which was filed in support of CAIP’s request for interim relief by Primus Telecommunications Inc. (“Primus”), dated 15 April 2008.
5. In its 3 April 2008 Part VII Application, CAIP requested that the Commission re-establish the *status quo ex ante* pending final disposition of its Application by issuing an interim order, on an urgent and expedited basis, directing Bell to immediately cease and desist from throttling its competitors’ GAS traffic.

6. In its Answer to CAIP's Application, Bell essentially admits to having installed equipment and implemented processes throughout its network that intentionally reduce the data transfer speeds of Bell Canada's regulated GAS service. These actions constitute a direct violation of the Commission's tariffs as well as sections 24, 25, 27 and 36 of the Act. These actions are also causing irreparable harm to the many competitors that subscribe to Bell's GAS service, as well as to the public interest in ensuring that telecommunications common carriers, such as Bell, do not engage in unduly discriminatory or preferential behaviour and that they uphold the inviolability and privacy of end-user communications by acting in a transparent and passive manner in relation to the content that is carried over their networks.

Bell's Admissions

7. In the view of CAIP, Bell has failed to establish a rational connection between its throttling practices to any legitimate or pressing objective of any kind and the corresponding effect of these practices on competitors and their end-user customers has been at once targeted and overly broad. By Bell's own admission:
- Bell is deliberately reducing the speed and throughput of a local access service (*i.e.*, GAS) that is used by interconnected competitors to provide a wide variety of retail telecommunications services to their end-user customers, including remote LAN access services, voice over Internet Protocol ("VoIP") services, virtual private network ("VPN") services, streaming audio and video services, data exchange services, and high speed Internet access services.
 - Bell has engaged in these throttling practices without providing a shred of evidence that its network is congested or that its GAS customers are the specific cause of any alleged network congestion.
 - Bell commenced these throttling practices without providing competitors with any notice of its intention to throttle or "shape" their traffic and without providing competitors with any opportunity to test the impact of Bell's traffic shaping technology on the services that competitors deliver to their end-user customers.
 - Bell's campaign of throttling competitors traffic was initiated at precisely the same time that it decided to stop offering an unlimited usage plan to its retail Internet customers – a decision, which Bell knew might cause its retail customers to migrate to the unlimited usage plans of competitors.
 - Bell does not apply its traffic shaping measures uniformly across all types of traffic or across all types of users. Instead, it is specifically targeting the traffic

of users who seek to gain access to on-line content that is delivered using peer-to-peer (“P2P”) applications. Currently, P2P applications include literally hundreds of legitimate, Internet-delivered content (e.g. Linux ISO image software which is used by home and office professionals, scientific data exchange, especially for purposes of dealing with large datasets, such as bioinformatics; LionShare higher education digital resource sharing software,¹ military communication, various on-line games/programs played by children and adults, and other new media content, which makes use of P2P and BitTorrent applications to deliver data, audio and video content to on-line audiences.

GAS, P2P and DPI Technology

8. It is also clear from Bell’s Answer that it fundamentally misunderstands (or has consciously misrepresented) several key facts and issues that are of direct relevance to the issues under consideration in this proceeding, including, most significantly, the nature of the local access and transport service that Bell provides to its wholesale customers, the extent to which its DPI “traffic shaping” technology interferes with both the content and privacy of end-user communications, and the tremendous impact that its traffic shaping practices have had – and are continuing to have – on competitors, their end-users customers and providers of new media content that make use of P2P applications to deliver content to their on-line users, listeners and viewers. In particular,
- Bell appears to be under the mistaken impression that GAS is simply a “white-label” version of its retail Internet access service which ISPs merely “re-bill” to their end-user customers. In actual fact, Bell’s GAS service never touches the “Internet”. GAS service is a local access and transport service that is used by a wide variety of competitors (e.g., CLECs, long distance carriers, ISPs, data providers) to gain access to end-user customers that are connected to Bell’s host and remote switches via copper loop facilities. The purpose of GAS is to create a pipe or pathway that runs from the premises of each end-user customer through Bell’s central offices (“COs”) and then on to a physical interface point in Bell’s local network where competitors must interconnect in order to gain access to their customer’s traffic.
 - Because the purpose of GAS is to simply provide a local access and transport capability to competitors that are interconnected to Bell’s local network, it is a ***content agnostic*** service, which means that it can be used to provision an entire range of broadband telecommunications services to end-user customers, including VoIP, VPN, remote LAN access, high speed Internet access and streaming audio and video services.

¹ The Pennsylvania State University, LionShare, online: <<http://lionshare.its.psu.edu/>>.

- When GAS is used by competitors to provision high speed Internet access services, it is the competitor – and not Bell – that puts the end-user’s traffic on to the Internet. The competitor accomplishes this by: (i) backhauling its customers’ traffic from the point of physical interconnection in Bell’s local network to the competitors’ point of presence (“PoP”) using backhaul facilities that are leased or owned by the competitor, (ii) routing customer traffic on to the competitor’s Internet routers and servers and then (iii) arranging for the delivery of that traffic to its final point of destination with third party Internet backbone/transit providers.
 - Contrary to Bell’s claim that the “GAS tariff requires that a wholesale ISP customer pay on a per user basis – full stop” and that “[T]here are no other ‘GAS service components’”, in actual fact the GAS tariff contains several one time and recurring service elements, including, most notably, an Aggregated High Speed Service Provider Interface (“AHSSPI”) which is the physical interconnection point in Bell’s local network where competitors must interconnect in order to gain access to their customers’ traffic.
 - Bell does not seem to be aware of the fact that the AHSSPI is sized and scaled to meet the specific traffic volume requirements of competitors, nor does it seem to be aware of the fact that, because of its traffic shaping measures, competitors are now paying for AHSSPIs that they either no longer need or which are too large because Bell is reducing the volumes of traffic that it delivers to competitors at the AHSSPI.
 - Despite Bell’s assertions to the contrary, it is not possible to determine whether a given packet of data contains P2P content by simply examining the “header” of a packet. In order to determine whether a packet contains P2P content, the payload of the packet itself must be inspected. This is why Bell’s DPI technology is called “**Deep Packet Inspection.**” With DPI, Bell actually inspects the data packets not only of its own end-user customers, but also those belonging to the end-user customers of its competitors.
 - Bell claims that its traffic shaping measures only affect P2P traffic. However, the record of this proceeding corroborates what has been widely reported elsewhere, which is that Bell’s DPI technology negatively impacts the performance of several other non-P2P services, including VPN and VoIP services.
9. There is also uncontradicted evidence, as particularized at paragraph 56 herein, that strongly suggests that the reasons behind Bell’s decision to throttle its competitors’ GAS traffic have little to do with Bell’s unsubstantiated claims of “network congestion” and more to do with a desire to lessen competition in retail telecommunications markets. There are far too many “coincidences” between the timing of the initiation of Bell’s throttling practices and the timing of a number of other events in order to conclude otherwise.

II STRUCTURE OF THIS SUBMISSION

10. This Reply addresses CAIP's request for an interim order, to be issued on an urgent and expedited basis, directing Bell to immediately cease and desist from using any technologies to "shape", throttle" and/or "choke" its wholesale ADSL services. In keeping with the Commission's precedents, CAIP has organised its submissions on interim relief in accordance with the test for a stay or interlocutory relief set out in *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. This Reply is similarly structured on a discussion, in turn, of each of the three criteria that the Court instructed decision-makers to assess and weigh in determining a request for such relief.
11. In Part III of this Reply, CAIP submits that there are at least four issues that meet and exceed the low threshold of "a serious question to be tried." In particular, there is a strong *prima facie* case that Bell's traffic-shaping measures:
 - are in breach of competitor tariffs that have already been approved by the Commission, contrary to sections 24 and 25 of the *Act*;
 - were undertaken in a pre-meditated fashion that flagrantly violates the Commission's Notification of Network Changes rules;
 - are unduly discriminatory or disadvantageous to competitor ISPs and new media content providers and are unduly preferential to Bell's competitive position in retail telecommunications markets contrary to subsection 27(2) of the *Act*; and
 - violate Bell's privacy and common carrier obligations contrary to sections 7 and 36 of the *Act*.
12. In Part IV of this Reply, CAIP submits that the traffic-shaping measures undertaken by Bell are and are likely to cause to CAIP and its members unquantifiable and irreparable harm in the form of market share losses, damage to goodwill and reputation, lost opportunity, increased training and human resources costs and loss of ability to properly manage and control customer traffic volumes. Given the legal and practical barriers to individualised civil actions for such losses and given that in this regulatory proceeding before the Commission, there is no prospect of any compensation in damages in any event, CAIP submits that irreparable harm will be caused to CAIP's members if interim relief is not granted.

13. In Part V of this Reply, CAIP submits that if there is any doubt as to the practicability of assessing the merits of the case at this stage of the proceeding or of determining the direct harm that will not be recoverable in damages to CAIP's members at this time, CAIP submits that an assessment of the balance of convenience determinatively favours the granting of CAIP's request for interim relief. Bell's purely commercial (and frankly anti-competitive) interests in shaping the traffic of its competitors are far outweighed by the strong public interest in a number of overriding considerations. These include the maintaining of respect for CRTC tariffs that continue to remain in force, maintaining certainty of contractual relations between Bell and CAIP members (as well as CAIP members and their end-user customers), and the public interest in sending a strong message to telecommunications common carriers that "prioritising", "managing the network" or any number of other euphemisms that may be used by carriers to affect the content of telecommunications on a unilateral basis, without going through the proper tariff or other channels, will not be countenanced by the Commission.
14. In conclusion, CAIP submits that in the circumstances of this case, weighing the evidence and the *RJR-Macdonald* criteria as a whole, law and equity demand that the Commission exercise its discretion to grant CAIP's request for interim relief.

III. SERIOUS ISSUES TO BE TRIED

15. The first factor that a court or other decision-maker will normally consider under the *RJR-Macdonald* test is the relative strength of the applicant's case. The threshold is a very low one, in that the applicant for interim or interlocutory relief need only establish that its case is not frivolous or vexatious. In the particular circumstances of this case, CAIP submits that there are at least four strong *prima facie* grounds to consider that CAIP will ultimately be successful in its Application to the Commission.
 - a) ***Bell Canada's Traffic Shaping Measures are Contrary to Sections 24 and 25 of the Telecommunications Act***
16. In its 3 April 2008 Application, CAIP noted that the tariff for GAS ("GT Item 5410") does not include any provisions that would allow Bell to *deliberately reduce* the data transfer speeds referenced therein, let alone to do so unilaterally and without prior notice of any

kind. The tariff simply references the speeds at which the service is to be offered and specifies the different monthly rates that are associated with these speeds.

17. In CAIP's view, by deliberately applying traffic shaping measures to the traffic of its GAS customers, Bell Canada has unilaterally, and without prior Commission approval, altered the tariffed terms upon which GAS is being offered to wholesale customers, which is contrary to section 24 and subsection 25(1) of the Act. Specifically, Bell is attempting to introduce terms and conditions of service which impede the speed and performance of GAS and which were never approved by the Commission.
18. In its Answer to CAIP's Application, Bell relies on several arguments to suggest that the terms of its tariffs as well as its agreements with competitors permit it to engage in its traffic shaping practices. In particular, Bell argues that its GAS tariff only requires it to offer GAS at speeds of "up to" those that are specifically referenced in GT Item 5410 (*i.e.*, 256 Kbps downstream/256 Kbps upstream and 5 Mbps downstream/800 Kbps upstream).² Bell further states that its Terms of Service as well as its contracts with its GAS customers contain provisions that allow it to take steps to ensure that users make fair and proportionate use of its network.³
19. Before addressing these arguments, it is important to understand the context in which they have been made. According to Bell, the growth of P2P traffic on the Internet in general poses a serious threat to its ability to manage its network. More particularly, Bell alleges that five per cent of users on its network are responsible for causing congestion on its network as a result of abusive downloading or uploading of P2P files.⁴ This situation is alleged to have necessitated the highly intrusive traffic shaping measures that it has chosen to adopt.

Network Congestion – Myth or Reality?

20. At the outset, it is interesting to note that at present, no other incumbent local exchange carrier ("ILEC") in Canada has apparently felt it necessary to throttle their competitors' traffic. Yet, it is reasonable to assume that in proportionate terms, the amount of P2P

² Bell Answer, paragraph 32. The referenced speeds are for GAS service to residential end-users. Slightly higher speeds are available for business services. See GT Item 5410.4.(f)

³ *Ibid.*, paragraph 34.

⁴ *Ibid.*, paragraph 20.

traffic on Bell's networks is roughly the same as on the networks of other ILECs. While there is some evidence that Canadian cable companies have started to throttle their retail customers (for reasons that are likely unique to cable network architecture), there is no evidence that the ILECs have throttled their competitors. In fact, SaskTel has gone so far as to issue a statement to its competitors stating that it has not engaged in traffic shaping.⁵ The latter fact in and of itself completely belies the illegitimacy of Bell's unsubstantiated "network congestion" claims.

21. The only specific information that Bell has provided regarding congestion is the problem posed by the so-called 5 per cent of "heavy users" who allegedly abuse their access plans. The following vague and unclear claims appear at paragraph 20 of Bell's Answer:
- During peak usage periods, 5 per cent of users were generating 60 per cent of total traffic on the network and 60 per cent of that traffic was P2P traffic.
 - This claim essentially boils down to an allegation that heavy users were "generating" P2P traffic that represented 36 per cent of "total traffic" on Bell's network;
 - During peak usage periods, the so-called 5 per cent were "utilising" 33 per cent of available bandwidth.
22. On their face, the claims at paragraph 20 do nothing to establish congestion in Bell's network. CAIP notes that Bell appears to be suggesting, via its Appendix 1 that heavy users are bandwidth hogs that are chewing up every-increasing share of the total capacity of the network.
23. In reply, CAIP notes that no matter how heavy a user an individual end-user might be (nor for that matter how many TCP/IP sessions that individual has running on his or her computer) that individual cannot exceed the maximal speeds allotted to his service as *defined by the tariff*.⁶ The point is that the bandwidth available to each end-user is not, despite Bell's attempts to cloud the issue, unlimited, but rather is limited to the speeds

⁵ See SaskTel statement, dated 8 April 2008, attached hereto as Exhibit "A".

⁶ This is the significance of the following statement, at paragraph 40 of Bell's Answer: "However, even though all P2P traffic is subject to the same rates during peak period, those users with low to moderate usage of P2P during peak periods will simply not experience the same delay in their level of use." In other words, the amount of bandwidth available to each end-user is fixed by the service description in the GAS tariff.

defined in the tariff. Therefore, the notion that the five per cent who are allegedly the cause of the problem are chewing up ever-increasing shares of the total capacity of Bell's fibre-based MPLS backbone network, its fibre-based transport networks, its fibre-fed remotes, or individual copper lines is not only improbable, it defies all logic and reason.

24. Second, the claims at paragraph 20 of Bell's Answer are practically meaningless because there is so little information provided by Bell as to how the relevant measurements were taken. For example, are the claims based on a measurement taken at an isolated moment in time, or do they represent measurements taken over a period of some hours, over the entire 10-hour peak period on a given day, or an average of averages calculated over a period of days, weeks or months? At what point(s) in the Bell network was/were the "available bandwidth" measurements taken? On individual customer lines? At Bell's central offices? At Bell's BASs? On Bell's MPLS backbone network?
25. To go further and perhaps more to the point, if there was a network congestion problem, one would expect to have seen latency problems, dropped packets, dropped connections – in short, widespread problems that would have been apparent to Bell's GAS customers and would have been documented both by Bell and its competitors.
26. Not only were such problems apparently not observed, Bell commenced the throttling of competitor traffic at the very same time that it launched a massive mailing campaign to its home phone customers that is intended to promote its retail Internet access service, a service that is described by Bell's billing insert as offering "super fast access speeds" of up to 16 Mbps. This mailing campaign also states that Bell's Internet services are capable of providing a "Direct, **uncongested** gateway to the Internet" over a "brand new, next-generation fibre optic network."⁷ Furthermore, Bell's throttling of competitor traffic also comes at a time when it is poised to introduce IPTV on a commercial basis.
27. The lack of any concrete information whatsoever on Bell's part justifying the throttling measures and on the other hand, promotional material regarding yet faster retail Internet services and the roll-out of ever more bandwidth-intensive services, strongly refute the

⁷ Please see the attached Bell billing insert set out in Exhibit "B" hereto.

alleged congestion problems faced by Bell. Indeed, these facts suggest that the true explanation for Bell's throttling measures lies elsewhere, namely in Bell's desire to disadvantage its competitors in their ability to offer differentiated services and products and to prefer itself in the retail market for Internet access services.

Breach of Sections 24 and 25 of the Act

28. Having now dispelled the notion that Bell is experiencing network congestion problems, it is now possible to return to Bell's specific arguments as to why it believes it is entitled to throttle its competitors' traffic under sections 24 and 25 of the Act.
29. As indicated above, Bell has argued that its GAS tariff only requires it to offer GAS at speeds of "up to" those which are specifically referenced in GT Item 5410 (*i.e.*, for residence users 256 Kbps downstream/256 Kbps upstream and 5 Mbps downstream/800 Kbps upstream).⁸ Bell further argues that its Terms of Service as well as its contracts with its GAS customers contain provisions that allow it to take steps to ensure that users make fair and proportionate use of its network.⁹
30. With respect to Bell's argument that its GAS tariff only specifies the "maximum" speeds at which its GAS service are available, CAIP notes that the words "up to" as set out in Item 5410.4.(f) of Bell's GAS tariff were inserted into the tariff because the performance of this service can be affected by the quality of the copper loop facilities that link each customer premise to a Bell host or remote switch. For example, it may not be possible to achieve GAS speeds of 5 Mbps downstream/800 Kbps upstream in the case of an end-user customer that is served by a copper loop facility that has excessive bridge taps or which is approaching the range of the ADSL equipment located at Bell's host or remote switches.
31. It is not accurate, therefore, to argue, as Bell has done, that the words "up to" in the tariff were intended to serve the purposes that it now wishes to invoke, namely the throttling of its competitors' traffic.
32. Furthermore, and in any event, it is important to note that the Commission made a factual finding in Telecom Order CRTC 2006-258 ("Order 2006-258") that "information

⁸ Bell Answer, paragraph 32.

⁹ *Ibid.*, paragraph 34.

regarding the transmission speeds available for GAS is important to competitors, **who rely upon the availability of the advertised speeds to ensure that the GAS meets their requirements.**¹⁰

33. The Commission also determined in the same Order that “given the sensitivity of competitors' business plans to speed availability, the tariff publication of such data with respect to competitor services is more critical than it is with respect to retail services such as KeyPak.”¹¹ Finally, the Commission determined in Order 2006-258 that approval of the GAS tariff as proposed by Bell Canada will offer no recourse pursuant to the company's tariffs, **should service complaints arise if Bell Canada does not deliver the proposed speeds.**¹²
34. In the view of CAIP, Order 2006-258 makes it clear that there is a very strong expectation on the part of the Commission that Bell must deliver the speeds set out in its GAS tariff to competitors who subscribe to this service. The fact that the Commission's ruling recognized that competitor business plans are highly sensitive to the speeds advertised in the GAS tariff and that competitors rely upon the availability of these speeds to ensure that GAS “meets their requirements” suggests that there is a strong presumption that Bell must honour the speed commitments referenced in both its GAS tariff and in its advertising materials to wholesale customers.
35. While there may be certain instances when Bell is unable to deliver the speeds reflected in the GAS tariff (e.g., in instances involving network maintenance or outages),¹³ there is nothing in the tariff or in any of the Commission rulings cited by Bell which authorizes it to *deliberately reduce* the speeds that are promised in the GAS tariff. Furthermore, while it is true that the Commission permits Bell, through its Terms of Service, to limit or even terminate service to specific end-customers who engage in network abuses, this is generally the full extent of Bell's rights in relation to these abuses. These rights do not permit Bell to throttle all of the P2P content destined for the customers of its competitors

¹⁰ Telecom Order CRTC 2006-253, paragraph 12, emphasis added.

¹¹ *Ibid.*, paragraph 13.

¹² Bell Answer, paragraph 34, emphasis added.

¹³ During the proceeding that led to the approval of GT Item 5410, Bell stated that it would only engage in limiting bandwidth for wholesale services “in cases of troubleshooting or to protect the network infrastructure from congestion resulting from malfunctioning or mis-configured equipment or malicious hacking.” See Letter from Bell Canada to the CRTC, re: Bell Canada Tariff Usage Billing Notice No. 6767 (TN 6767) – Gateway Access Service (GAS), dated December 1, 2003.

for 10 hours each and every day, regardless of whether those end-user customers have actually engaged in instances of network abuse.

36. With respect to Bell's argument that similar provisions relating to network abuse can be found in the "Master Communications Agreement for Tariffed' (MCAT) services that each ISP purchasing GAS must execute", it is CAIP's understanding that all ILEC agreements that are associated with tariffed services must be approved, in advance, by the Commission before they can take effect. To date, CAIP has not been able to locate any Commission decisions which approve the use of the MCAT in association with Bell's GAS service. The regulatory status of this agreement is therefore uncertain.
37. As a final observation, CAIP notes, once again, that the service that competitors obtain from Bell is not a "white label" version of Bell's retail Internet access service. GAS is a local access and transport service which is designed specifically for competitor use. There is no Internet access component to the service. The purpose of GAS is simply to provide a local access and transport capability to competitors that are interconnected to Bell's local network so that these competitors can provision their own retail telecommunications services which may or may not include the provision of retail Internet access services.
38. It is clear from Order 2006-253 that there is a high expectation on the part of the Commission that Bell is obliged to deliver the speeds referenced in the GAS tariff because the customers of this service are carrier class customers. Accordingly, any actions taken by Bell to deliberately reduce the speeds set out in GAS tariff should be seen for what they truly are, namely a blatant attempt to unilaterally alter the terms and conditions of the GAS tariff without seeking prior Commission approval, as required under section 24 and subsection 25(1) of the Act.

b) *Failure to Provide Notice of Network Changes*

39. CAIP notes that Bell has chosen not to directly address in its Answer its failure to "notify" its competitors of its intention to implement network modifications that could affect the operation of other carriers' networks. As set out in the Application, the obligation that is imposed on all local exchange carriers is twofold:

- (i) Provide advance notification of any network modification that may affect the operation of the networks of other carriers to which they are interconnected, pursuant to the rules and procedures contained in Letter Decision 94-11; and
 - (ii) Conduct technical tests of the proposed changes with all of the carriers to which it is interconnected.
40. As set out in CAIP's Application, the Commission's rules relating to "Notification of Network Changes" were put in place as Canadian telecommunications networks were opened up to competition. These rules were developed in recognition of the fact that in order for competition to truly work, the networks of the former incumbents would have to be interconnected with those of competitors. As such, any changes made to the network of one carrier would have repercussions for the operations of a competitor. The Commission imposed rights and obligations with respect to prior notification and joint testing between competing carriers in order to ensure the reliability, predictability and efficiency of interconnected telecommunications networks and services for Canadian end-users.¹⁴
41. Bell states in its Answer that there is "a large amount of confusion and miscomprehension about .. what Bell is doing to [throttle its competitors' GAS service]."¹⁵ And yet the confusion and miscomprehension has been sown by Bell. It has made changes to its network without notification. No information was provided to its wholesale customers as to exactly what changes Bell has made. CAIP's members have been subjected to unexpected network disruptions, their network users were affected without notice, and Bell failed to provide them with the opportunity to examine the proposed change, conduct joint testing and take action as required before the change came into effect.¹⁶
42. And yet, CAIP notes that in its Answer, Bell admits that it has been running technical trials since an unspecified point in time last year and began "the second phase" of throttling its competitors' Internet traffic on March 14, 2008.¹⁷ Thus, Bell has admitted

¹⁴ See CAIP Application at paragraphs 57-59, citing *Local Competition*, Telecom Decision CRTC 97-8 ("Decision 97-8").

¹⁵ Bell Answer, paragraph 11.

¹⁶ *Local Competition*, Telecom Decision CRTC 97-8 (decision 97-8), paragraph 44, cited in CAIP's Application at paragraph 57.

¹⁷ Bell Answer, paragraph 15.

that its decision to throttle its competitors' GAS service has been planned, pre-meditated, and trialed for at least six months and more likely over a year.

43. Bell's response to this appears to be that it "remains willing to work with any customer who is experiencing Internet service problems and in particular those believed to be caused by this Internet traffic management solution; and that it has contacted its competitors and "encouraged them to come forward with any suspected problems and remains committed to working with them."¹⁸
44. Bell's professed willingness to "work with" its competitors is breathtaking in its disingenuousness. Recall that in a public meeting held on 23 November 2007, probably after Bell had already started the planning activities to throttle its competitors' traffic, Bell specifically represented to competitor ISPs that it would not use DPI in conjunction with its wholesale ADSL access services. Bell's professed, after-the-fact "willingness to work" with competitors, is a little like kidnapping the victim and then joining the search party. Having flouted the Commission's tariffs, its policies with respect to notification of network changes, and the *Act* itself, Bell can proclaim all it wants that it is "willing to work" with its competitors after the fact, the harm has already been done.
45. In addition, the reality of Bell's "willingness to work" is far less encouraging. Since March 14, 2008, the only notice that Bell appears to have issued to its wholesale customers in relation to its throttling measures is a two-page document entitled "DSL Traffic Management – Frequently Asked Questions (FAQ)".
46. By way of response, CAIP can advise that this "FAQ" document was not received by all of its members who subscribe to Bell's GAS. Moreover, the document was sent out more than one month *after* Bell commenced the throttling of its competitors' traffic which is hardly responsive given Bell's duties to provide advance notice of network changes to its competitors.
47. Perhaps more troubling, however, is the fact that Bell's FAQ document is almost entirely bereft of any technical details regarding its traffic shaping equipment and network protocols. Moreover, when asked to provide this type of information, Bell has been extremely evasive and short on technical details. This is not acceptable state of affairs.

¹⁸ Bell Answer, paragraph 6.

Competitors require this information in order to properly handle the trouble reports that they receive from their own customers and to figure out, more generally, how best to manage their networks in the face of Bell's traffic shaping measures.

48. CAIP's members also report that Bell's technical support staff appear to have a very superficial knowledge of the DPI equipment in Bell's network, yet they refuse to allow competitors to speak to the equipment vendor directly. In fact, CAIP's members have reported that Bell will not permit its DPI equipment vendor to troubleshoot or even speak to competitors who have been affected by Bell's throttling practices.
 49. The sheer deliberateness and planning that must have gone into the implementation of traffic-shaping measures throughout its network makes Bell's breach of the Commission's "Notification of Network Changes" policies even more egregious. Bell's flagrant breach of the Commission's policies in this regard gives rise to a serious concern regarding the predictability, efficiency and reliability of telecommunications in Canada. If carriers, like Bell, are allowed to make network changes without prior notice and compliance with the Commission's policies, competitors will be left to wonder what other changes Bell may impose on them next without giving any notice or an opportunity to engage in joint testing?
 50. The policy rationale behind the Commission's Notification of Network Changes policies, which is to prevent network disruptions and disruptions to end-users and to provide competitors with the opportunity to examine, test and make contingency plans with respect to any proposed changes is still valid and, indeed, is more relevant than ever. Bell's deliberate flouting of these policies is a serious issue that merits thorough examination by the Commission. In the interim, that thorough consideration, Bell's apparently deliberate, surreptitious conduct should be enjoined by the Commission as requested by CAIP.
- c) *Bell's Actions Constitute an Undue and Unreasonable Preference Granted to Itself and a Disadvantage Applied to Competitors***
51. In its Answer, Bell argues that there is no issue that it is acting contrary to section 27 of the *Act* because it is applying throttling equally to its retail and wholesale customers who

allegedly share a common network in the exact same manner and to the same extent¹⁹ and that its decision to throttle competitor GAS service had nothing to do with preventing the migration of retail Sympatico customers to its competitors.²⁰

52. In addition, Bell suggests that the following alleged facts somehow minimise the illegality or deleterious effect of its traffic-shaping measures:
- throttling is “applied only during peak usage periods” and “only applied to P2P file sharing applications”;
 - its throttling has not been applied to streaming applications;²¹ and
 - “it has not been presented with any evidence that its Internet traffic management solution is having any impact on VPN or VoIP traffic.”²²
53. Bell has conceded that it has singled out P2P traffic for traffic-shaping at this time. P2P is a type of Internet protocol utilizing a network that does not rely on a central server to store information. The information is distributed between a number of computers.²³ P2P can be extended and enhanced to foster productivity in the workplace and support community activities and offers among other advantages, enhanced load balancing, dynamic information repositories, redundancy and fault tolerance.²⁴ As indicated above, P2P applications include literally hundreds of legitimate, Internet-delivered content.
54. New media content available on the Internet is often delivered using P2P protocol. So regardless of whether it is streaming content or not, it is clear that new media undertakings are seriously affected by Bell’s decision to target all content delivered using P2P protocols. For example, it is now a widely known fact that due to Bell’s unrestrained throttling, the CBC’s “Next Great Prime Minister” show, which was available on the cbc.ca website in P2P format, was rendered virtually inaccessible.

¹⁹ Bell Answer, paragraphs 6 and 39.

²⁰ Bell Answer, paragraph 6.

²¹ *Ibid.*

²² *Ibid.*

²³ Consumer Utility Services: Broadband Glossary, online:

<http://www.cus.net/broadband/content/glossary.html>

²⁴ Manoj Parameswaran, et al. “P2P Networking: An Information-Sharing Alternative” online:

<http://cism.mcombs.utexas.edu/works/articles/PARA.Cxs2final.pdf>

55. In addition, since its Application was originally filed, Bell has progressively rolled out more and more DPI equipment into all nodes of its network. Tests that have been run on different IP applications prove that certain other services and applications (other than P2P-based applications) are also being affected. In particular, CAIP notes that:

- VPN and other encrypted data services appear to have been affected, based on evidence filed by interested parties in this very proceeding²⁵ as well as in the on-line user forums referenced in Bell's Answer.²⁶ Bell has also confirmed to one of CAIP's members that its traffic shaping measures were the cause of a VPN service disruption, which is contrary to its claim that these measures do not impact VPN connections; and
- VoIP services also appear to have been affected, based on tests run subsequent to the filing of CAIP's application.²⁷ These test results are consistent with what some users are reporting to the Commission²⁸ as well as in on-line user forums.²⁹

56. With this background in mind, Bell has simply not addressed the discriminatory, disadvantageous or preferential nature of its traffic shaping measures, other than in baldly denying the concern. However, the uncontroverted facts speak for themselves. CAIP therefore reiterates those that give rise to a serious concern that Bell's throttling measures confer an undue preference on itself, and subject its competitors to an unreasonable and discriminatory disadvantage:

²⁵ See in particular the submissions of the following interested parties in this proceeding: R. Mancini, A. Clark, W. Dnes, S.Schreiber, P. Smith, and M. Dynes.

²⁶ See, for example, <http://www.dslreports.com/forums/66>

²⁷ Once a connection has been flagged as a P2P user, it would appear that traffic other than P2P is throttled. The following test was conducted by a CAIP member on 16 April 2008:

"My test tonight at home. No p2p on the line in a week or so. Test run at 7:15pm.

SSH on port 9473 500Kbps download
VOIP test using visualware voip speed test 4.5Mbps x 550kbps.

Start P2P download of ubuntu. Throttled.

Stop P2P.

SSH on port 9473 30Kbps download
VOIP test using visualware voip speed test 30Kbps x 30Kbps.

These results are consistent from what I understand. Once a connect has been flagged as a P2P user all traffic that is not whitelisted is throttled."

²⁸ See, for example, <http://www.dslreports.com/forum/remark,20230832?hilite=> which reproduces a letter that was sent to Commission by a user complaining about Bell's throttling practices and the impact of these practices on the user's VoIP service.

²⁹ See, for example, <http://www.dslreports.com/forum/remark,20251481?hilite=> and <http://www.dslreports.com/forum/remark,20214553?hilite=>

- Bell commenced the throttling of competitor traffic at precisely the same time that it decided to eliminate the last vestiges of its retail unlimited Internet usage plans.³⁰ Bell's 2007 Annual Report indicates that it knew that the discontinuance of such plans might cause its retail customers to migrate to the unlimited usage plans of its competitors.³¹
- Bell commenced the throttling of competitor traffic at the very same time that it launched a massive mailing campaign to its home phone customers that is intended to promote its retail Internet access service, a service that is described by Bell's billing insert as offering "super fast access speeds" of up to **16 Mbps**. This mailing campaign also states that Bell's Internet services provide a "Direct, **uncongested** gateway to the Internet" over a "brand new, next-generation fibre optic network".³²
- Bell does not offer a 16 Mbps speed to competitors under either its GAS or HSA tariffs. The fastest speed available to competitors under these tariffs is 6 Mbps.³³
- The DPI equipment that Bell uses to throttle its competitors' traffic is manufactured by Ellacoya which was recently acquired by Arbor Networks. In 2005, BCE Capital, an affiliate of Bell, participated in a \$13.5 million round of venture capital funding for Ellacoya. CAIP's members have reported that Bell will not permit its DPI equipment vendor to troubleshoot or even speak to competitors who have been affected by Bell's throttling practices.
- Bell's throttling of competitor traffic also comes at a time when it is poised to introduce IPTV on a widespread, commercial basis. Bell is currently providing IPTV on a limited basis in Ontario and Quebec, but its annual reports and quarterly statements to investors make it clear that it is investing heavily in IPTV and that it intends to significantly expand its presence in the terrestrial content distribution business.

57. With respect to the "undueness" of Bell's breaches of subsection 27(2) of the *Act*, CAIP states that undueness in the circumstances of Bell's conduct arises simply from the fact that

³⁰ Please see the attached notice to Bell employees entitled "Important Usage Billing Changes", dated 13 March 2008 set out Exhibit "C" hereto.

³¹ In its 2007 Annual Report, Bell noted that certain restrictions that it had placed on customer data transfers as well as a switch to usage-based billing could provide independent ISPs who offer unlimited usage plans or unrestricted speeds, a competitive advantage, "result[ing] in an increase in [Bell's] Internet subscriber churn rate beyond... current expectations." See: BCE, 2007 Annual Report, page 42.

³² Please see the attached Bell billing insert set out in Exhibit B hereto.

³³ Bell General Tariff, CRTC 6716 – Digital Access Services, High Speed Access Services, Item 5420.2.(q).

- Bell has engaged in throttling in violation of its tariffs;
- Bell has flouted the Commission's "Notification of Network Changes" policies; and
- Bell has in no way demonstrated that given the objective that it says that it was seeking to achieve, that it chose the least intrusive means possible in order to achieve that objective.

58. With respect to the latter point, CAIP notes that Bell has stated that the harm that it was trying to address by throttling its competitors' traffic is the disproportionate use of available bandwidth by the so-called 5 per cent. In reply, CAIP provides the following points to refute Bell's unsubstantiated claims that its throttling measures were legitimate and necessary.
59. First, as stated in paragraph 22 above, from a logical and factual perspective, Bell has not provided a single shred of evidence that the cumulative effect of the so-called 5 per cent is network congestion of a level that merits the drastic actions that Bell has taken. For this reason also Bell's throttling measures are undue.
60. Second, even if there was a congestion problem, which CAIP denies, there is no demonstrable or rational connection between the measures imposed by Bell on its competitors and the reduction of this harm, since there is no evidence whatsoever that the so-called 5 per cent are subscribed to competitors' services. Again, not being rationally connected to Bell's professed objective, the measures are undue.
61. Third, and as a direct corollary to the point immediately above, because there is no rational connection between the objective of controlling abuse and Bell's decision to throttle all P2P users, the measures affect potentially thousands or even hundreds of thousands of "innocent" users and are therefore, undue.
62. Fourth, and as referred to above, at least one former ILEC has issued a statement that it has taken a conscious decision not to shape its competitors' traffic. In a statement to customers of its "High Speed Resale" service dated 8 April 2008, SaskTel has stated:

SaskTel does not use any form of traffic shaping, rate limiting or usage caps on a per user or per application basis at this time. [emphasis in original]³⁴

63. SaskTel then goes on to say that there is a built-in cap on the High Speed Resale service that it provides to its competitors in that the service is defined with specified maximal upload and download rates. Once these maximal limits are reached, an individual subscriber's multiple upload and download requests will experience delay. There is no reason to believe that in proportionate terms, SaskTel is experiencing less P2P traffic than Bell. The fact that SaskTel has not felt it necessary to throttle traffic on a per user or per application basis is powerful evidence of the undueness of Bell's throttling.
64. Fifth, if indeed there is a problem and it resides with the so-called five per cent, as alleged by Bell, then there are far less intrusive and tailored ways in which Bell already has the toolkit to address this issue. As noted by Bell itself, its retail Terms of Service tariff contains provisions that allow it to suspend or terminate service where a customer uses or permits others to use services so as to prevent fair and proportionate use by others.³⁵ The Terms of Service do not go on to state that Bell may degrade the service of all of its customers (regardless of the service that they are subscribed to), by targeting specific applications at Bell's whim and fancy without notice of any kind. The fact that Bell has available to it less intrusive and authorised means of addressing problems of network abuse but has apparently deliberately chosen to ignore such means is again proof positive of the undueness of its actions.
65. In summary, CAIP reiterates that given that Bell has intentionally degraded its competitors' IP traffic in a manner that is not authorised by tariffs and that is at once overbroad (in not actually being focussed on abusers of their network) and targeted (in that it has singled out new media and other legitimate forms of Internet traffic), there is a strong *prima facie* case that Bell has breached its subsection 27(2) obligations. Certainly, the case on *prima facie* grounds is sufficiently strong that it merits the Commission's considered determination.

³⁴ See SaskTel statement set out in Exhibit "A".

³⁵ Bell Answer, paragraph 35.

d) Customer Privacy and the Inviolability of the Content of Customer Communications

66. In its 3 April 2008 Part VII Application, CAIP noted that Bell is using traffic shaping measures to: (i) open each data packet belonging to the end-user customers of its competitors; (ii) examine the packet data and header information; and then (iii) apply certain rules to the content in question.
67. In its Answer to CAIP's Application, Bell argues that "it treats all P2P traffic the same" and that "it only looks at the application header of the content but not the content itself".³⁶ Bell also argues that because it "does not block access to any content or applications...the Company is not affecting end-user's privacy nor is it controlling the content or influencing the meaning or purpose of telecommunications."³⁷
68. By way of response, CAIP notes that Bell has admitted in its Answer that it is using Deep Packet Inspection ("DPI") to shape its competitors' traffic.³⁸ While Bell may assert that this technology is only used to examine packet "headers", the literature on DPI does not support these assertions. For example, the description of DPI contained on the "dPacket.org" web-site defines DPI as follows:

Deep Packet Inspection" (DPI) is a computer networking term that refers to devices and technologies that inspect and **take action based on the contents of the packet (commonly called the "payload") rather than just the packet header**. The following analogy helps clarify the role of DPI:

*A packet is analogous to a physical postal mail message. The address on the outside of the envelope is analogous to the "packet header" and the information inside the envelope is analogous to the "payload." **DPI is analogous to taking action on that mail message not only based on the address on the envelope, but also making considerations based on the contents of the envelope.***³⁹

69. CAIP notes that dPacket.org identifies itself as a "non-profit corporation founded for education and scientific purposes to foster and support community interest and progress

³⁶ Bell Answer, paragraph 41.

³⁷ *Ibid.*

³⁸ *Ibid.*, paragraph 8.

³⁹ See: <https://www.dpaket.org/introduction-deep-packet-inspection-processing>

in deep packet inspection and processing (DPI/DPP).⁴⁰ CAIP further notes that one of the founding “Gold Sponsors” of dPacket.org is Ellacoya, the company that manufactures Bell’s DPI equipment.⁴¹

70. Even Ellacoya’s descriptions of its DPI equipment do not support Bell’s assertion that it is only examining packet headers and not the payloads of the packets themselves. According to Ellacoya, “[U]nlike most policy-based network devices, the Ellacoya switch can identify traffic based on **application signatures in addition to standard TCP/IP header information**.”⁴² Ellacoya’s product literature also states explicitly that its DPI technology allows a service provider “to identify the application being used” by a particular end-user, but “does not identify the specific files being shared.”⁴³
71. In essence, what this means is that Bell is examining packet headers and inspecting packet payloads in order to determine what type of content is being sent by or delivered to the customers of competitors. Although Bell is quick to point out that it does not examine the actual contents of the packet payloads, it is clear from these descriptions of Bell’s traffic shaping practices that Bell can identify, *inter alia*, the type of data being transferred, the ISP upon whose network the data is being transferred, an end-user’s intention to acquire certain types of Internet content and the IP address and, hence, the identity of the end-user customer who is sending/receiving the data.
72. As indicated in CAIP’s 3 April 2008 Application, the collection and use of such information by Bell, which in this case would have clearly been done without the prior consent of the end-user customers so affected, violates the privacy of such individuals.⁴⁴
73. This aspect of Bell’s wholesale throttling activities gives rise a serious issue that Bell’s actions violate the privacy of the communications of its wholesale customers as well as that of their end-user customers.

⁴⁰ See: <https://www.dpacket.org/about-us>

⁴¹ See: <https://www.dpacket.org/sponsors>

⁴² See: <http://www.ellacoya.com/products/IPServiceControlSystem.pdf>

⁴³ See: <http://www.ellacoya.com/solutions/know.shtml>

⁴⁴ Office of the Privacy Commissioner, *A Guide for Businesses and Organizations - Your Privacy Responsibilities and Your Privacy: Canada’s Personal Information Protection and Electronic Documents Act*, p. 3, Online: http://www.privcom.gc.ca/information/guide_e.asp. See also *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, subsection 2(1).

74. With respect to Bell's argument that it is not controlling the content or influencing the meaning or purpose of telecommunications carried by it because it "does not block access to any content or applications", CAIP submits that blocking access to content is not the appropriate threshold test for determining whether a carrier has violated its duties as a common carrier under section 36 the Act.
75. Section 36 of the Act states very clearly that a carrier "shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public." Bell's traffic shaping measures clearly influence the meaning and purpose of the telecommunications that it carries for the public. Indeed, as noted by CAIP in its Application, Bell is reducing the throughput or data transfer speeds available to the end-user customers of competitors by as much as 90 per cent. At speeds such as this, mainstream content available on the Internet, such as audio or video content (e.g., the CBC's "Next Great Prime Minister" program), would be slowed beyond recognition or meaning.
76. These drastically reduced speeds also make it clear that Bell is exercising control over this content by isolating the data packets that make up this content, classifying those packets as low priority *vis à vis* other types of content and quarantining the packets until Bell decides that they can be released to end-user recipients at a time and in a manner determined wholly by Bell.
77. In a similar fashion, Bell is influencing the "meaning" and the intended "purpose" of this content by preventing it from being delivered in the manner and within the time frames intended by the content sender and the content recipient. To use the example referenced in CAIP's Application, if a musical selection that is lawfully downloaded from the Internet is constantly interrupted by Bell's traffic shaping measures such that it can only be heard in fragments or only with the repeated clicking sounds that come from delays and re-buffering, then the meaning of the musical selection has been influenced by measures deliberately adopted by Bell.
78. It is ludicrous for Bell to suggest that the only way that content can be controlled or its meaning or purpose influenced is if it is blocked outright. Section 36 of the Act clearly contemplates instances where the meaning or purpose of a communication is being controlled or influenced while in transit from the content sender to the content receiver.

79. Bell's throttling of GAS customer traffic degrades communications between users to the point where the intended meaning and purpose of these communications is fundamentally altered. This conduct, like the privacy concerns discussed above, also gives rise to a serious issue that Bell has violated its duty under section 36 of the Act.

IV. BELL'S TRAFFIC SHAPING MEASURES ARE CAUSING IRREPARABLE HARM

80. The second of the three *RJR-Macdonald* test criteria requires a decision-maker to consider whether its refusal to grant relief could "so adversely affect the applicant's own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the results of the interlocutory application." As confirmed by the Supreme Court in *RJR-Macdonald*, "irreparable" refers to the nature of the harm suffered rather than its magnitude. In addition, the term "irreparable harm" has been held by the courts to be that which either cannot be quantified in monetary terms, or which cannot be cured.
81. In its 3 April 2008 Part VII Application, CAIP noted that Bell's traffic shaping measures are causing irreparable harm to those of its members who subscribe to the GAS tariff. This harm, which has manifested itself in several forms, cannot be cured and cannot be quantified in monetary terms. Specifically,
- Bell's traffic shaping measures have caused drastic reductions in the transfer speeds of the services that CAIP's members provide to their end-user customers. In fact, testing by CAIP's members confirms that Bell's traffic shaping measures have degraded data transfer rates to as low as 30 kilobytes per second downstream - a speed which does not even come close to speeds referenced in the GAS tariff.
 - Bell's traffic shaping measures have significantly impaired the ability of CAIP's members to properly manage their customer's traffic and to adequately address the increased number of complaints that they have received from their end-user customers whose services have been impacted by Bell's throttling practices.

- Bell's traffic shaping measures have forced ISPs to pay for GAS service components that they now no longer need or do not require in the same quantities as before because of the reduced traffic volumes of GAS traffic being delivered to them by Bell.
 - Bell's traffic shaping measures have dramatically reduced the volume of traffic that GAS customers are able to deliver to both backhaul providers and Internet backbone providers.
 - Bell's traffic shaping measures have caused economic harm to CAIP's members in the form of threatened and actual cancellation of service contracts. CAIP's members are also experiencing a loss of reputation and good will with their customers as a direct result of Bell's traffic shaping measures.
82. In its 15 April 2008 Answer, Bell addresses some but, not all, of these various manifestations of the harm that its traffic shaping practices are causing to competitors. For example, in response to CAIP's observation that Bell's traffic shaping measures have caused drastic reductions in the transfer speeds of the services that CAIP's members provide to their end-user customers, Bell asserts that "since traffic volumes are indeed measurable, then it is incumbent upon CAIP to adduce such evidence when seeking such extraordinary relief. *It has not done so.*"⁴⁵
83. This is simply incorrect. At paragraph 40 of its Application, CAIP noted that its members have tested the transfer speeds of Bell's GAS service and these tests confirm what every user out there already knows, which is that Bell's traffic shaping measures have degraded data transfer rates to as low as 30 kilobytes per second downstream, which represents a reduction of more than 90 per cent from the maximal speeds available under the GAS tariff.⁴⁶ This 30 kilobytes per second figure is not a figure that CAIP has simply pulled out of the air. It is entirely consistent with the data transfer rates that have been reported by end-user DSL customers in the various on-line user forums which Bell

⁴⁵ Bell Answer, paragraph 47, emphasis added.

⁴⁶ Under the GAS tariff, Basic business service is to be provided at speeds of 6 Mbps downstream and 800 Kbps upstream. See GT Item 5410.4.(f).

frequently references in its Answer.⁴⁷ For example, users in the “Bell Sympatico” forum⁴⁸ and the “TekSavvy forum”⁴⁹ (both of which are sponsored by *Broadband Reports*) repeatedly make reference to being throttled to 30 kilobytes per second during the period from 4:30 p.m. to 2 a.m.⁵⁰

84. This 30 kilobytes per second figure is also consistent with the data transfer speeds that are referenced in other complaints that have been filed with the Commission regarding Bell’s throttling practices⁵¹ as well as in numerous comments and submissions that have been filed with the Commission by individual citizens who are concerned with Bell’s throttling practices.⁵²
85. Interestingly, Bell does not deny that reduced data transfer speeds could harm its competitors. Nor could it: as Bell well knows, the business plans of competitors depend very heavily on the data transfer speeds that are referenced in Bell’s GAS tariff. In fact, the Commission itself took notice of this fact when it observed in Telecom Order CRTC 2006-258 that “**given the sensitivity of competitors’ business plans to speed availability**, the tariff publication of such data with respect to competitor services is more critical than it is with respect to retail services such as KeyPak.”⁵³
86. It should be evident, therefore, that if a competitor advertises to both existing and potential customers that it is capable of providing high speed Internet access services at the speeds specified in an official Commission tariff and as promised to it in the advertising literature of its underlying supplier of local access and transport functionality (*i.e.*, Bell), but the competitor is then subsequently prevented from delivering those speeds because its supplier is *intentionally reducing the speed of the underlying service*, the competitor will suffer harm as a direct result of the supplier’s conduct. Specifically, the competitor will not be able to provide the service that it has advertised to its customers, which in turn means that the competitor will be faced with both threatened

⁴⁷ In paragraph 47 of its Answer, Bell states that the “Company has seen in the online forums a similar allegation of dramatically reduced volumes...”

⁴⁸ <http://www.dslreports.com/forum/sympat>

⁴⁹ <http://www.dslreports.com/forum/teksavvy>

⁵⁰ An illustrative graph of the reduced data transfer speed of 30 kilobytes per second can be found here: <http://www.dslreports.com/forum/r20354153-Just-like-clockwork>

⁵¹ See for example the complaint filed by Vaxination Informatique, dated 4 April 2008.

⁵² http://www.crtc.gc.ca/public/partvii/2008/8622/c51_200805153_com.htm

⁵³ Telecom Order CRTC 2006-258, paragraph 12, emphasis added.

and actual cancellations of its customer service contracts, which means a loss of revenues and market share, as well as losses to its reputation and good will.

87. The facts speak clearly that GAS customers are harmed by its traffic shaping practices. CAIP's members have reported that some of their customers are threatening to terminate service, while others have actually done so as a direct result of Bell's throttling practices. If Bell needs evidence of these losses, it need look no further than the on-line user forums, which it references in its Answer, where customers have announced that, notwithstanding the superior services that they receive from their independent ISP, they are terminating their service arrangements because of Bell's traffic shaping practices.⁵⁴ And these are only the customers who are willing to state in a public forum why they have left their independent ISP. There are many other customers who have advised CAIP's members directly that they are terminating their service arrangements because of Bell's throttling practices.
88. The fact of the matter is that for every day that Bell continues to throttle GAS traffic, competitors not only lose customers, revenues and market share, they also experience a corresponding loss in reputation and good will. If Bell's throttling practices are permitted to continue unabated as they are at present, many competitors who have staked their reputations on offering an unimpeded Internet access service which respects the privacy and inviolability of their customers' communications suffer serious, irreparable and irreversible harm.
89. Bell's almost comical response to this argument is that competitors have "alternatives" to GAS. For example, Bell argues that competitors can co-locate in its COs where they can install their own DSLAMs (this problem is discussed more fully below) or they can subscribe to the cable companies' third party Internet access service – a service which Bell knows has been almost uniformly rejected by competitors because of its numerous service coverage and technical problems.⁵⁵ Bell even suggests that competitors can subscribe to its HSA service which is a vastly over-priced wholesale ADSL access service that no reasonably efficient competitor could ever use to provision high speed

⁵⁴ <http://www.dslreports.com/forum/r20354736-Leaving-Teksavvy>

⁵⁵ For a detailed discussion of the problems associated with the cable companies' TPIA service, please see the Written Argument of CAIP in the proceeding initiated by Telecom Public Notice CRTC 2006-14, dated 27 November 2007.

Internet access service to residential customers because the tariffed rates for this service are higher than the prices that are generally charged to residential customers in downstream retail markets.

90. Of course, what Bell fails to mention with respect to all of these so-called “alternatives” is that none of them offer a solution to the problem of how competitors gain access to customers that are served by remote switches.⁵⁶
91. It is CAIP’s understanding that more than 40 per cent of the customer access lines in Ontario and Quebec that are “ADSL capable” are actually served by remote switches. This number climbs to over 80 per cent in some geographic areas. This is an extremely large number and no amount of co-locating in Bell’s COs right now will provide competitors with access to these customers. Only Bell’s GAS is capable of delivering this capability for both residential and business customers.
92. But Bell knows this already, as does the Commission. In fact, this is one of the very reasons why the Commission decided in *Essential Facilities*, Telecom Decision CRTC 2008-17, to classify Bell’s ADSL Access service (GT Item 5400) as a conditional essential service and to classify its GAS and HSA services as conditional mandated non-essential services. In the words of the Commission:

The Commission considers that in many situations, ***co-location is not a cost-effective alternative for reasonably efficient competitors at this time***. In order for competitors to offer retail high-speed Internet access service, ***in most instances they have no option other than to buy the wholesale aggregated ADSL access or TPIA services***. To withdraw mandated access to aggregated ADSL access service – that is, access and transport – at this time would likely result in a substantial lessening or prevention of competition in retail high-speed Internet access services. The Commission therefore finds that ***aggregated ADSL access service must be mandated, given that it is the only cost-effective means to provide transport to, and access from, an ILEC’s central office to the competitor’s customer***. [Emphasis added]⁵⁷

⁵⁶ HSA service offers a partial solution for business customers that are served by remote switches, but it cannot be used to provide service to residential customers because the tariffed rates for this service are higher than the prices that are charged to residential customers in downstream retail markets.

⁵⁷ Decision 2008-17, paragraph 85.

93. In its 3 April 2008 Part VII Application, CAIP also noted that Bell's traffic shaping measures have significantly impaired the ability of its members to properly manage their customer's traffic and to adequately address and dispose of the increased number of complaints that they have received from their end-user customers whose services have been impacted by Bell's throttling practices. In particular, CAIP's members are no longer able to make accurate predictions regarding customer traffic volumes on their networks, which has negatively impacted their ability to carry out routine network planning and design activities, and they are no longer able to reliably manage their customers' traffic because of the unpredictability and volatility in traffic volumes that has been created by Bell's traffic shaping measures.
94. On the customer service side of their operations, CAIP's members have experienced significant increases in customer complaints regarding the speed and quality of the services that they receive from their chosen CAIP member. This, in turn, has placed a strain on the help desk/customer service resources of these companies and increased their costs of doing business because of the additional manpower and training that is now needed to deal with complaints relating to Bell's throttling practices.
95. Some of these costs could have potentially been avoided had Bell honoured its obligation to give proper notice to competitors of the changes that it intended to implement in its network and to allow those competitors to participate in joint testing of its DPI technology. As discussed above, not only did Bell fail to provide this notice, it appears to have made a deliberate and conscious decision not to do so, despite the fact that only a few short months ago, it had reassured competitors that it would not throttle their traffic.⁵⁸
96. A further type of harm that is being experienced by CAIP's members as a result of Bell's traffic shaping measures is that they are incurring significant costs for a number of different volume-based telecommunications services that they now no longer require – or do not require in the quantities that were originally ordered – because they are not able to generate the traffic volumes that were assumed when these services were first ordered.

⁵⁸ As indicated in paragraph 32 of CAIP's Part VII Application, Bell met with several ISPs at the Marriott Hotel in Mississauga Ontario on 23 November 2007 where these assurances were given.

97. In particular, CAIP explained in its Application that Bell's traffic shaping measures have forced ISPs to pay for GAS service components that they now no longer need or do not require in the same quantities as they did before because of the reduced traffic volumes of GAS traffic being delivered to them by Bell. CAIP also noted that Bell's traffic shaping measures have dramatically reduced the volume of traffic that GAS customers are now able to deliver to both backhaul providers and Internet backbone providers.
98. At paragraph 49 of its Answer to CAIP's Application, Bell states that the "GAS tariff requires that a wholesale ISP customer pay on a per user basis – full stop."⁵⁹ Bell also states in its Answer that "[T]here are no other 'GAS service components.'"⁶⁰
99. These are stunning statements which disclose just how little Bell appears to know about its own GAS service and how this service actually works. In actual fact, the GAS tariff contains several one time and recurring service elements, including, most notably, the AHSSPI which is the physical interconnection point in Bell's local network where competitors must interconnect in order to gain access to their customers' traffic. The AHSSPI is offered at a variety of speeds (*i.e.*, DS-3, OC-3, 10 Mbps, 100 Mbps, 400 Mbps and 1000 Mbps ("Gig E") and may only be ordered pursuant to a one, two or three year contract period. This means that the competitor must make an accurate prediction of its traffic volumes for the full term of the AHSSPI contract period in order to ensure that it does pay for more AHSSPI capacity than it actually needs.
100. Based on the statements contained at paragraph 49 of its Answer, Bell does not seem to be aware of the fact that the AHSSPI is sized and scaled to meet the specific traffic volume requirements of competitors, nor does it seem to be aware of the fact that, because of its traffic shaping measures, competitors are now paying for AHSSPIs that they either no longer need or which are sized too large because Bell is deliberately reducing the volumes of traffic that it delivers to competitors at the AHSSPI.
101. The same holds true for the facilities that competitors lease in order to *backhaul* their customers' traffic from the AHSSPI to their PoP and to route their traffic on to the Internet *backbone*. Competitors must order backhaul and backbone capacity based on pre-committed traffic volumes. If a competitor is unable to receive or deliver the traffic

⁵⁹ Bell Answer, paragraph 49.

⁶⁰ *Ibid.*

volumes that it has contracted for with backhaul and backbone providers because its underlying supplier of local access and transport functionality (*i.e.*, Bell) is intentionally reducing the speed and volume of its competitors' traffic (contrary to the terms of a Commission approved tariff and representations from the supplier itself), then the competitor will be paying for capacity/facilities that it does not need.

102. In its Answer to CAIP's application, Bell argues that even if it is true that competitors have paid for facilities that they now do not need "this is money that independent ISPs would have spent in any event (*i.e.*, if the interim order is granted they will still incur these charges) and therefore cannot constitute irreparable harm."⁶¹
103. CAIP does not understand this argument. The irreparable harm being suffered by its members stems from the fact that they are paying for facilities and capacity (*i.e.*, AHSSPI, backhaul and backbone) that they now do not need because Bell is intentionally reducing their traffic volumes. If the Commission grants the interim relief requested by CAIP, then the *status quo ex ante* will be reinstated, which will allow competitors to fully utilize the capacity that they have paid for. If, on the other hand, the Commission does not grant the interim relief requested by CAIP, these facilities will be fully paid for, but they will not be fully utilized.
104. While Bell might argue that losses such as the value of unusable GAS capacity and unusable backhaul/backbone capacity could be quantified, as a legal matter, in regulatory proceedings before the Commission, there is no prospect of any compensation in damages. Also, because GAS service is a regulated service, there is no doubt that if civil actions were to be launched (which as a practical matter, given the inherent delays and costs of litigation would be beyond the reach of CAIP's individual members), these would be met with preliminary objections that the matter is within the jurisdiction of the Commission.
105. With respect to the other forms of harm being experienced by CAIP's members, there is no way of quantifying or recovering the goodwill, the damage to reputations and the market share losses that have begun to materialize for CAIP's members if the interim relief is denied.

⁶¹ *Ibid*, paragraph 50.

106. Finally, CAIP wishes to reiterate that the damage to the public interest in the orderly provision and development of telecommunications in Canada and in the privacy and inviolability of telecommunications content carried over Bell's network, which would result from a denial of the interim relief requested in CAIP's Application, cannot be compensated for in damages following completion of this proceeding.

V. THE BALANCE OF CONVENIENCE FAVOURS THE REQUESTED RELIEF

107. In its Answer, Bell argues that not granting the interim relief requested by CAIP "favours retaining the status quo." This argument appears to boil down to the following three assertions:

- Bell's traffic shaping measures are legitimate because Comcast is doing it in the United States;
- Bell is throttling in order to "ensure a consistently high level of service of all of its customers"⁶² and is doing so in a way that minimally harms its customers as a whole; and
- If CAIP's request for interim relief is granted, it would have the perverse effect of providing an "unreasonable preference to wholesale ISP customers and their end users who will be able to continue to use a disproportionate amount of available bandwidth during peak periods creating an unreasonable disadvantage for Sympatico retail and business customers."⁶³

108. CAIP submits that based on the strength of the *prima facie* case presented by CAIP in its Application, as supplemented by this Reply, the interim relief set out in its Application should be granted. However, if there is any doubt as to the practicability of assessing the case at this stage of the proceeding or the direct harm that will not be recoverable in damages to CAIP's members, CAIP submits that an assessment of the balance of convenience determinatively favours the granting of CAIP's request for interim relief.

109. Under this head of analysis, CAIP submits that the most relevant considerations are:

⁶² Bell Answer, paragraph 57.

⁶³ *Ibid.*, paragraph 61.

- The fact that it is Bell that has disturbed the *status quo ex ante*, all other relevant factors having remained undisturbed and hence, the inconvenience that the members of CAIP and their end-user customers will suffer if interim relief is withheld is much greater than the inconvenience to Bell of returning to the *status quo ex ante*;
- The fact that there is no legitimate and pressing basis for Bell's throttling actions and therefore, no overriding interest, either private or public, that favours withholding the interim relief requested by CAIP;
- Even if there was any evidence of a legitimate and pressing basis for Bell's throttling actions, their effect is at once so overbroad, discriminatorily targeted at specific applications/protocols and disproportionately disruptive, that the prejudice to CAIP's members outweighs any inconvenience to Bell of returning to the *status quo ex ante*; and
- To the contrary, an overriding public interest in:
 - (i) The protection of privacy;
 - (ii) The inviolability and neutrality of telecommunications common carriage;
 - (iii) Maintaining respect for the enactments of Parliament;
 - (iv) Enforcing the Commission's tariffs and policies, such as the Commission's Notification of Network Changes policies

strongly tilts the balance of convenience in favour of granting the interim relief sought by CAIP.

Return to the Status Quo Ex Ante

110. As noted above, Bell argues that the "status quo" will be preserved if the interim relief that CAIP seeks is not granted.
111. In reply, CAIP notes that Bell has twisted the notion of the *status quo* beyond recognition when it seemingly insinuates that the interests of commercial stability and predictability, which presumably the *status quo* argument would be directed at preserving, would be favoured by not granting to CAIP the prohibitory interim relief that it seeks.

112. It is conceded by Bell that it has unilaterally modified the GAS service, without prior notice on or around 14 March 2008. The throttling measures undertaken by Bell could not have occurred without deliberate planning and provisioning over an extended period of time. At the same time, it is conceded by Bell that it provided absolutely no notice to its competitors of changes that it has now put into place. The *status quo* under the balance of convenience test and in the circumstances of this case, which involve pre-meditated and deliberate action on the part of Bell to modify a tariffed service in a way that it knew would be highly disruptive to competitors and their end-user customers, refers to the situation that prevailed prior to the unlawful measures that are being attacked by CAIP and NOT the situation that obtains presently as a result of Bell's unilateral actions.⁶⁴
113. It is submitted, therefore, that in the particular circumstances of this case, the balance of convenience does favour the granting of CAIP's request for interim relief and thereby, a return to the *status quo ex ante*.

No Legitimate Basis for Bell's Throttling Actions

114. In its Answer, Bell weakly suggests that its throttling measures are legitimate because an American cable distribution undertaking is "doing it too." Also implicit in Bell's submissions on balance of convenience is the notion that the throttling actions were necessary to address a serious network congestion problem and to better the customer experience for all of its customers.
115. As already discussed in detailed fashion above, Bell has provided not a single iota of evidence that there is a congestion problem in its network. Bell has not explained the extent of the problem, when the problem first began to manifest itself, how it knew that this problem was attributable to P2P applications.
116. On the specific issue of balance of convenience, Bell appears to rely almost exclusively on the fact that Comcast, an American service provider, has also recently embroiled itself in a traffic-shaping debacle. In reply, CAIP notes the Comcast case is entirely distinguishable from the case at hand:

⁶⁴ See for example, *Ethical Funds Inc. v. Mackenzie Financial Corp.* (2000), 6 C.P.R. (4th) 92 (F.C.T.D.).

- In the case of Comcast, there were three separate complaints regarding Comcast's traffic shaping practices that were filed with the FCC in the United States. Unlike the instant case, none of these complaints involved a competitive dispute between Comcast and independent ISPs.
- Comcast is a cable distribution undertaking (not an ILEC). There are very few, if any, competitors in Canada who subscribe to the cable companies' TPIA services because of the numerous coverage and technical problems associated with this service.
- In Bell's case, there are a pre-existing requirements, imposed by section 36 of the *Act*, section 27 of the *Act*, and Bell's wholesale GAS tariff, that distinguish Comcast's situation from Bell's situation with respect to its wholesale competitor services.

117. Bell's vague references to the threats posed to its network do not have the ring of truth. What rings more true are the irrefutable facts set out at paragraph 56 above which collectively suggest that the reasons behind Bell's decision to throttle its competitors' GAS traffic have little to do with Bell's unsubstantiated claims of "network congestion" and more to do with a desire to lessen competition in retail telecommunications markets.
118. As discussed above, there is no legitimate, competitively neutral basis for the measures undertaken by Bell. Rather, at this point, the evidence points to the conclusion that the most rational explanation for the reasons that Bell undertook the throttling measures are purely commercial and relate directly to a desire to decrease competition in the downstream retail market.

The Public Interest Would be Protected by a Return to the Status Quo Ex Ante

119. In its Answer, Bell strenuously argues that it is throttling its competitors' traffic in order to "ensure a consistently high level of service of all of its customers" and is doing so in a way that minimally harms its customers as a whole. As proof of the minimally intrusive or harmful effects of its throttling, Bell baldly states that its throttling has been effective in reducing (by 50 per cent) P2P traffic during peak periods and has seen an (unquantified) decrease in congested links.
120. Bell concludes its Answer with the rather strained argument that if CAIP's request for interim relief is granted, it would have the perverse effect of providing an "unreasonable preference to wholesale ISP customers and their end users who will be able to continue

to use a disproportionate amount of available bandwidth during peak periods creating an unreasonable disadvantage for Sympatico retail and business customers.”

121. In reply, CAIP notes that both of these arguments assume that Bell has made out a case that a legitimate and pressing congestion problem exists in its network and that such problem is caused by its wholesale GAS competitors, which as submitted by CAIP above, is not even close to the case.
122. In light of the foregoing, CAIP submits that there are no public interests that would support Bell's position on CAIP request for interim relief. In fact, since there is no evidence and every reason to doubt the legitimacy of Bell's claims that it was necessary and minimally intrusive on its part to interfere with the Internet signals being carried over its networks, the only interests that would be supported by not returning the parties to the *status quo ex ante* are purely commercial and personal to Bell.
123. However, it is important to note that requiring Bell to cease and desist from applying the throttling measures that it has imposed on its wholesale GAS customers is not likely to represent a significant burden on Bell. Bell has operated without the throttling measures in place for several years (GAS service was first introduced as a tariffed service effective January 1, 2005; however it was previously offered on a non-tariffed basis by Bell Nexxia). On the other hand, as stated above, the harm to CAIP's members is likely to be very difficult to quantify in damages, and any quantification is likely not to reflect the full extent of CAIP's members' substantive right to predictability and reliability in the wholesale services that it is paying Bell for, nor the market share losses.
124. In this regard, it is also relevant to note that the deliberateness of Bell's conduct, the lack of notice to a measure that it clearly knew or ought to have known would have a significant impact on its wholesale GAS customers, should be given consideration in weighing the burden that has been imposed on CAIP's' members, who have in every sense, been the victim of Bell's deliberate and pre-meditated actions, versus the burden on Bell of complying with interim relief, given that it has planned and controlled every aspect of the measures that it has imposed on its competitors.
125. Furthermore, it is clear from the discussion above in relation to the serious issues to be determined by the Commission in this Application, that several very important public

interests are at play in this proceeding, which deserve to be protected over and above the commercial and private interests of CAIP's members that have been affected by the throttling measures.

126. First, as stated above, the *status quo ex ante* is not the situation that prevails now as a result of an unexplained, unjustified measure unilaterally undertaken by Bell. The *status quo ex ante* is a return to the situation that prevailed prior to Bell's initiation of throttling measures – namely the provision of GAS to Bell's competitors, in the unlimited form that Bell has always represented the service.
127. Second, there is a strong public interest in ensuring that until final determination of the issues in this proceeding, the Commission should order Bell to immediately cease and desist from applying the throttling measures in the manner that it did. Otherwise, the Commission will be inviting other telcos to interfere with the content being carried over their telecommunications networks on vague, unsubstantiated "network management" grounds.
128. Third, the privacy and inviolability of private telecommunications is enshrined in the *Criminal Code*, in the *Copyright Act*, and in sections 7 and 36 of the *Telecommunications Act*. Until such time as CAIP's application is finally resolved, the public interest in the privacy and inviolability of telecommunications demands the granting of CAIP's request for interim relief.
129. Fourth, Bell's throttling measures clearly violate the terms of existing tariffs, which have the status of regulations in Canada. It is an uncontested fact that prior to the date that Bell initiated the throttling measures, it was providing its wholesale customers with GAS service that did not include deliberate traffic shaping. Bell has modified the service, without a tariff application and prior approval of the Commission. Bell in its Answer expressly acknowledges that it could have applied for a tariff amendment. If that is the case, then it was not up to Bell to flout the law by unilaterally amending the service without prior notice and without prior Commission approval. Again, there is an overriding public interest in ensuring that common carriers regulated by the CRTC respect their legal and regulatory obligations.

130. Fifth, there is a serious issue that Bell has engaged in throttling at this time for reasons other than innocuous “network management” reasons, but rather with the intention of eliminating or reducing competition in downstream retail markets for Internet access and other services. If CAIP is correct in this and the Commission fails to grant CAIP’s request for interim relief, the public interest in competition in telecommunications markets in Canada and respect for the non-discrimination provisions of the *Telecommunications Act* will have been irretrievably damaged. If Bell and other common carriers believe that the Commission will not act to restrain anti-competitive behaviour pending the outcome of proceedings before, parties may well flaunt the law in order to reap the benefits of anti-competitive conduct even if they realise that in the end, they will be constrained from engaging in anti-competitive measures.

VI. CONCLUSION

131. Based on all of the foregoing as well as the submissions contained in CAIP’s 3 April 2008 Part VII Application, CAIP respectfully requests that the Commission issue an interim order, on an urgent and expedited basis, directing Bell Canada to immediately cease and desist from using any technologies to “shape”, “throttle” and/or “choke” its wholesale ADSL access services.

All of which is respectfully submitted on behalf of the Canadian Association of Internet Providers this 24th day of April 2008.



Tom Copeland
Chair, Canadian Association of Internet Providers

EXHIBIT A

CAIP REPLY

24 April 2008

SaskTel Carrier Services Group
10th Floor
2121 Saskatchewan Dr
Regina, SK S4P 3Y2

April 8, 2008

Dear Valued Customer,

Thank you for choosing SaskTel's High Speed Resale service. SaskTel makes every effort to ensure our High Speed Resale service offers value and quality to our customers.

During recent media reports, SaskTel became aware of High Speed Internet Service Providers that are involved in the practice of shaping traffic on their network to prioritize Internet traffic during peak usage times.

SaskTel would like to clarify any concerns regarding our stance on this practice and confirm that **SaskTel does not use any form of traffic shaping, rate limiting, or usage caps on a per user or per application basis** at this time.

SaskTel does, however, advertise upload and download rates based on maximum speeds achievable when ideal circumstances exist. Advertised speeds are qualified with the phrase "up to" because of a number of variables that can impact the actual speed each individual user can achieve. This situation is not unique to SaskTel customers but the nature of Internet technology, regardless of the ISP.

If you have any questions, please contact SaskTel's Carrier Services Group.

Sincerely,

Joan Abday
Sales Associate
(306) 777-2913

EXHIBIT B

CAIP REPLY

24 April 2008



Step up to the most powerful Internet.

24/4 26(K)

Dear .

You're currently enjoying Bell home phone service and we're delighted to have you with us. In appreciation, we would like to extend a special Internet offer, exclusive to your area.

Our newly enhanced Internet service is now available in your neighbourhood. It gives you the choice of super fast access speeds on a brand new, next-generation fibre optic network. Imagine watching movies, listening to music or gaming online more than three times faster than regular Internet.¹

Get the most powerful Internet free for your first 3 months.

- New, next-generation fibre optic network
- Direct, uncongested gateway to the Internet
- Choice of consistent, super fast access speeds -- up to 16Mbps²
- Maximum security that blocks more spam and viruses than anyone else
- A complete wireless home network conveniently installed for you³

Your choice of Total Internet service
3 months FREE⁴
 Starting from \$42.95/mo. thereafter
 as a Bell home phone customer⁵

Free professional installation⁶
 Security services included⁷

Plus, with the added convenience of free professional installation and just one bill to manage, it couldn't be easier.

The most powerful Internet. Another advantage of the Bell Better Home.[™]

Call us today at 1 866 868-6028 to take advantage of this great offer and find out how to save more on your home phone service.

Sincerely,

Kevin Crull
 President
 Residential services

P.S. Call today to receive the most powerful Internet free for your first 3 months.



Offer ends April 30, 2008. Available to residential customers in Ontario, where technology permits. One-time activation or migration fee (\$20) applies. \$25 fee applies if you cancel the order prior to activation or if you downgrade to a slower speed service. Subject to change without notice and cannot be combined with any other offer. Early termination fees apply. Taxes extra. Other conditions apply, including minimum system requirements. (1) Speed and signal strength may vary with your technical configuration, Internet traffic, server, environmental conditions or other factors. (2) Applies to the access between the customer's modem and switching equipment from Bell. (3) Additional equipment required, including cables and adapters. One-time Home Networking fee (\$79.95) applies if you downgrade from Total Internet Performance or Max, or if you cancel your subscription within the first 6 months. (4) Available to current customers with an account in good standing who receive this letter and who subscribe to Total Internet Performance or Max with a 3-yr. contract. The user's current monthly rate (now \$47.95 for Performance or \$99.95 for Max; subject to change), less \$5 Bundle discount, applies thereafter. 30GB of usage per month, plus an additional 30GB of usage (total 60GB) during the initial contract term for Performance, or 100 GB of usage per month for Max; charges apply for extra activity. Modem rental (\$2/mo.) extra. (5) The Bundle is available to customers who subscribe to at least 2 services among long distance, Internet, digital TV or wireless (monthly) and one of which is on a select plan. Bundle discount cannot be combined with any other offer and may be terminated by Bell upon 30-day notice. You do not have to subscribe to Bell Canada's local or other tariffed services. Visit bell.ca/bellbundle for details. (6) Applies to on-site home networking installation only. For complete installation details, visit bell.ca/totalinstall. (7) Provided with Radialpoint Inc. to Bell Internet service customers. No service provides absolute protection. Only available with Windows operating systems. Better Home is a trade-mark of Bell Canada.

EXHIBIT C

CAIP REPLY

24 April 2008

Important Usage Billing Changes

March 13, 2008

1. Stop-sell on \$25 [Unlimited Usage Plan](#)
2. No monthly billing limit on usage overage charges
3. Ontario Total Internet Performance now includes 60GB of usage

Details

What, when, where

Why

How

Details	
What, when, where	<p>Please read the details associated with these changes carefully.</p> <p>1. UNLIMITED USAGE PLAN STOP-SELL - ONTARIO & QUEBEC</p> <p>As of March 12th there will be a stop-sell implemented on the \$25 Unlimited Usage Plan. The Unlimited Usage Plan will still be available in your ordering tools until further notice; however, we ask that you <u>not</u> sell this plan to a customer under any circumstance. All incentives/payouts related to selling this plan are being discontinued.</p> <p>If a customer insists on receiving unlimited usage, please soft transfer them immediately to the SCS Usage Queue via the A2A transfer application.</p> <p>Please note that the 30 GB Usage Insurance Plan @ \$10/month remains available to High Speed, Ultra, Performance, Optimax & Max customers.</p> <p>2. NO MONTHLY BILLING LIMITS ON USAGE CHARGES – ONTARIO & QUEBEC</p> <p>We currently have in place a monthly \$30 maximum charge for any usage overage charges our customers may incur. Until June 30th, 2008 we will continue to offer all plans with a \$30 max charge. <u>New</u> customer acquisitions on and after June 30th, 2008 will be subject to usage charges without monthly billing limits (\$30 max charge no longer applicable).</p>

Note that this change applies to all products & tiers of service in Ontario & Quebec. Transfer any in-depth questions or concerns about this change to the SCS Usage Queue.

For example:

Customer joined before June 30th, 2008 = \$30 usage charge limit

Customer joined on or after June 30th, 2008 = no monthly billing limit

Note that select HS & Ultra customers will continue to receive unlimited usage as per their current agreement – transfer questions to the Usage Queue

3. ONTARIO'S TOTAL INTERNET PERFORMANCE INCLUDES 60GB OF USAGE

Included with Total Internet Performance, Ontario customers currently receive 30GB of included usage **plus an additional 30GB** for the duration of a customers' contract term (total of 60GB). Effective immediately, Ontario customers will benefit from **60GB of usage included** in their plan. We will no longer be promoting this as 30GB + 30GB but rather as 60GB.

Why

Industry Changes

Over recent years, Canadian Internet service providers have gradually adapted their pricing models to include a usage-based billing component. As bandwidth-intensive activities on the Internet continue to grow in popularity, it is vital that ISP's are able to charge a customer for usage.

Customers are familiar with usage-based pricing given their experience with cell phones & long-distance. A customer that only uses a cell phone for emergencies will likely subscribe to a plan that includes fewer minutes than a customer who needs to use a cell phone for constant communication.

By removing the Unlimited Usage Plan & max charges, Sympatico is taking a further step in ensuring that we are adapting appropriately in this rapidly changing market.

Competitive Landscape

It is important to note that Sympatico is not breaking new ground by

	<p>marketing plans with no billing limits on usage overage charges. Currently Videotron also markets several of their plans with no monthly billing limits.</p> <p>In contrast, Cogeco subscribers are currently not being given an option to pay for usage incremental to what is included in their plan. Instead the customer could have their account suspended when exceeding their plan's GB cap.</p>
How	<p>Positioning for customers concerned about usage charges:</p> <p>Step #1: Probe to understand the customer's usage needs</p> <p>Step #2: Customize your offer</p> <ul style="list-style-type: none"> ○ Offer a plan that suits the customer's usage pattern and assure concerned users that there is more usage included than they would initially think – only 5% of our base exceeds 60GB / month. In fact 82% of customers stay under 10GB /month. ○ If a customer expects that they will use more than what is included in our plans – move to step 3 <p>Step #3: Offer a solution – the Usage Insurance Plan</p> <p>Example:</p> <p><i>“Mr/Mrs customer, given your downloading and uploading needs, I understand that you are concerned with the amount of Internet usage included in this plan. For only \$10 a month, we can offer you a Usage Insurance Plan. This plan will allow you to upload and download an additional 30GB a month, without having to sign a contract. This would bring your total monthly available usage to [insert current usage included in plan + 30GB]. Does this sound like something you would be interested in?</i></p> <p><i>Don't forget that you can always monitor your usage online at www.bell.ca/internetusage. This tool will allow you to check how close you are to reaching the amount of usage included in your plan.”</i></p>

**Business Office - Procedures – Call Procedures - Usage
SCS Technical – Procedures - Usage**