



GOVERNMENT OF BERMUDA
Ministry of Energy, Telecommunications and E-Commerce

Telecommunications Commission

Our Ref: TC203/01/36/08
Date: July 29, 2009

BY MAIL & EMAIL

Bermuda Telephone Company Ltd.
Jeanne M. Schaaf, Ph.D.,
30 Victoria Street
Hamilton HM 12

Bermuda Telephone Co. Ltd. tariff filing for a new data service “6Mbps download/1 Mbps upload ADSL” dated 7th November, 2008.

BACKGROUND

In a filing dated 7th November, 2008, The Bermuda Telephone Co. Ltd. (“BTC”) submitted a new tariff with the Telecommunications Commission (“Commission”) for a new high speed data service referred to in its application as the “6Mbps download/1 Mbps upload ADSL access arrangement “Simply DSL” service (“Simply DSL 6.0” service).

The tariff filing requested the Commission to approve pricing for the Simply DSL 6.0 service at \$ 49.00 per month.

BTC published the required notice for this tariff filing in the Royal Gazette and the Commission, after waiting the required 21 days, received no public objections to the filing.

The Commission considered the tariff filing during its meeting on 17th December, 2008 and decided to make further enquiry into the requested tariff. The Commission then deferred the item pending the receipt of cost data from BTC to support the filing. In a letter dated 22 December, 2008, the Commission wrote to BTC requesting a cost analysis to support this tariff filing.

There have been a number of communications since between the Commission, its advisors and BTC regarding various cost analysis needed by the Commission to support this and other BTC tariff filings.

The Commission recognizes that BTC has found it difficult to parse the required information from its records. BTC is working directly with the Commission's advisors on this matter in an endeavor to produce adequate data. It has become clear that the delivery of the required information has become a difficult and time consuming process for BTC.

The Commission has determined that an adequate response to cost data is still some months away while BTC and the Commission's advisors continue their discussions and that a *bona fide* effort is being made by BTC to produce the information requested.

BTC has, by correspondence dated as late as 30th June, 2009, made representations to the Commission on the competitive effect that the delay is having on its business. The Commission is minded, at this time, that BTC should not be prejudiced by further delay.

During the meeting of the Commission held on 15th July, 2009, the Commission reviewed the tariff filing and, as required by the Telecommunication Act 1986 also considered:-

- (i) the cost to the Carrier of the service in question;
- (ii) the desirability and need to subsidize other non-profitable services offered by the Carrier in the public interest;
- (iii) the needs of the Carrier for adequate working capital and to establish reasonable reserves;
- (iv) international accounting standards where applicable and modifications thereto;
- (v) technological advances;
- (vi) market conditions in Bermuda and overseas including the likely impact of a new service on other Carriers;
- (vii) regulatory changes where applicable;
- (viii) the need to afford investors a reasonable rate of return on their investment;
- (ix) the question whether in the light of the foregoing, any proposed tariff is just and reasonable and any rates and charges contained therein are applied equally to all persons in substantially similar circumstances and conditions;
- (x) the question whether the Carrier, in respect of the application of rates and charges, the provision of services and the use of its facilities—
 - (a) gives any preference or advantage to any person or to any particular description of telecommunication;
 - (b) subjects any person or any particular description of telecommunication to any disadvantage;
- (xi) the public interest

The Commission reviewed BTC's tariff filing requests relating to its other "Simply DSL" data products, namely its Simply DSL 2.0 at \$ 29.00 per month and its Simply DSL 4.0 at \$ 39.00 per month.

The Commission reviewed the possible effect to the local market of BTC's proposed rate and reviewed the possible effect to the local market of either higher or lower rates than those proposed.

The Commission reviewed any other tariff filing before it for a similar service.

FINDING

The burden of proof to show that, on the balance of probabilities, any new service, the rates or charges in respect thereof or any variation in the rates or charges of an existing service are just and reasonable is upon the Specified Carrier seeking to introduce the new service or the variation, as the case may be. (Telecommunications Act 1986 sec 24 (3))

The Commission finds that BTC has not met this requirement and has placed the Commission in the position where it has not been able to properly examine BTC's costs associated with providing this service.

The Commission pondered the possibility that BTC may have no significant incremental costs to support the pricing of \$ 49.00 for the new service but instead may have already equipment capable of these new higher speeds.

The Commission pondered whether the \$ 49.00 pricing is most likely BTC's determination of what the market can bear for this service.

The Commission accepts that BTC has customers already interested in this new higher data speed and it is in the public interest for higher internet speed options to be available to BTC customers.

The Commission further determines that further delay to wait for additional submissions by BTC regarding the related incremental costs are outweighed by the public interest.

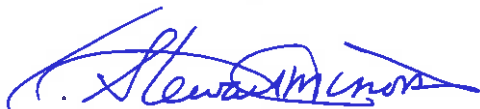
DIRECTION

The Commission hereby directs that:

1. BTC provide its new Simply DSL 6.0 service at \$ 39.00 per month and;
2. Directs that the Simply DSL 6.0 service must be operational by 31 August, 2009 and that a suitable notice of this new data speed shall be posted in a prominent position on BTC's web site for a period of not less than 30 days.

The Commission urges BTC, if and when it decides to file for a new tariff for this service, to provide its supporting incremental cost and cost data to support its tariff filing.

Sincerely,



A. Stewart Minors, CA, MBA
Secretary Telecommunications Commission

Ministry of Energy, Telecommunications and E-Commerce

Telecommunications Commission