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Chair

Mr. David Sweet

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• (1530)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good afternoon, ladies and gentlemen.

Bonjour à tous.

Welcome to the 55th meeting of the Parliamentary Standing Committee on Industry, Science and Technology.

We have three organizations with us. I understand that you've been advised that you have five minutes per organization for opening statements. Is that correct, gentlemen?

We are having three meetings on this specific issue. Just before we get to the witnesses and questions, I want to ask committee members, for the benefit of the research staff, because they'll obviously have to do the work, if they're going to desire a report after these three meetings.

Could I get some input from some of the members?

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): We do plan to have one, yes.

The Chair: Okay.

Is that agreed?

Some hon. members: Agreed.

The Chair: All right. Before us, then, ladies and gentlemen, we have, from TekSavvy Solutions, Rocky Gaudrault and George Burger.

Next we have Matt Stein, of Primus Telecommunications; and as an individual, Jean-François Mezei, telecommunications consultant, from Vaxination Informatique.

I'll begin, then, with TekSavvy. Gentlemen, you have five minutes. Go ahead.

Mr. Rocky Gaudrault (Chief Executive Officer, TekSavvy Solutions Inc.): Thank you, Mr. Chairman, for the opportunity to address the committee today.

Accompanying me is George Burger, adviser to TekSavvy.

We're here to speak to an issue that has galvanized the Canadian people to a remarkable degree: usage-based billing. However, we would also like to frame UBB in the context of a far greater issue, which, if unaddressed, will have long-lasting, adverse effects on Canada's ability to (a) provide its people with a first-rate, affordable

Internet experience, and (b) ensure that the Canadian digital sector is able to innovate in the most dynamic industry.

I started TekSavvy in 1998, initially providing web-hosting services in Chatham, Ontario. My brother Marc, an engineer, joined in 1999, and my third and last brother, Eric, joined three years ago after ending a distinguished nine-year career as a naval lieutenant in the Canadian Armed Forces.

Since 1998, TekSavvy has built its customer base and has expanded its services into voice-over-Internet phone services and residential and business Internet services. We are now a major business in Chatham, with over 100 dedicated and skilled employees in offices in Toronto and Sudbury.

TekSavvy has become a Canadian leader as an Internet service provider. We rank as Canada's number one ISP on DSLReports.com, and we have for the last six years running.

Mirko Bibic, spokesman for Bell, has said that we ride on its networks. In fact, we purchase access to telecom and cable backbones, all in accordance with regulation, and we pay substantial amounts—tens of millions of dollars—at CRTC-set wholesale rates, to companies like Bell for that access. Sadly, despite its market dominance, Bell's key objective is to minimize competition to maintain its pricing power.

Mr. Bibic's predecessors made similar arguments 20 years ago when they tried to stop the introduction of competition in long distance services. At the time, Canadians paid \$1.50 per minute for a call between Toronto and Montreal. Today such calls are pennies, if not free, and suppliers still profit.

This fight is no different. If Canadians lose, we'll be paying the equivalent of \$1.50 per minute for good for Internet usage that costs pennies.

Mr. George Burger (Advisor, TekSavvy Solutions Inc.): We have prepared three charts that show, with dismaying clarity, where Canada stands among 30 OECD countries. We submit that this is clear evidence that the existing competitive framework has failed. The only reason, perhaps, that the recent public outcry did not arise earlier and in greater volume is because most Canadians do not know what they are missing, nor do they realize how costly our inferior service actually is.

In the first slide, Canada is shown as 23rd in terms of what Canadians pay for broadband.

In the second slide, Canada ranks 25th in terms of the speed available to consumers, key to optimizing the Internet.

On the subject of UBB, Bell's arguments centre on light users subsidizing heavy ones, preventing congestion and the need to restrain Internet usage generally.

The third chart shows that all OECD countries except Canada and Australia reject usage caps across the board. Seventeen countries have no bandwidth caps at all. Almost no other country shares Bell's views.

On the subject of UBB, the committee and the public have heard much about the imposition of UBB on wholesale customers like TekSavvy. It has, indeed, been charged to Bell's retail customers—people such as you—for years. We have no problem with what Bell wishes to charge its customers; however, Bell continues to seek to impose UBB on ours as well.

There is no economic justification for this legitimized form of price fixing. When Bell says it seeks a level playing field, that means it wants to force all Canadians to pay exorbitant prices for bandwidth, far beyond the cost of supply, and it wants to keep all the benefits.

The CRTC itself acknowledged that there is little cost-related justification for incremental pricing based on usage. In addition, heavy bandwidth users do pay more because they take more expensive packages, so the cross-subsidy argument is without merit.

Absent in underlying cost, UBB is clearly a punitive tax on usage, where the tax enriches Bell shareholders at the expense of Canadian consumers.

The ostensible reason for the tax is to constrain the growth in bandwidth usage. The chairman of the CRTC himself spoke about disciplining Canadians' use of the Internet. Almost unique in the world, UBB is nothing more than an effort to substitute social engineering for social networking.

The impact of UBB across the board is obvious. Canadian consumers pay unjustifiably high amounts for Internet usage; Canadians are forced to resort largely to conventional television content, such as Bell's newly acquired CTV, while the rest of the world flocks to the Internet-based content like Facebook, YouTube, and Netflix; and without increased demand for bandwidth, there will be little motivation to invest in infrastructure, killing innovation. Indeed, Bell's capital expenditures in relation to revenues ratio has fallen for three years straight.

• (1535)

The Chair: Thank you, Mr. Burger. The time is up. Your five minutes are gone.

We'll now go over to Mr. Stein for five minutes.

Mr. Matt Stein (Vice-President, Network Services, Primus Telecommunications Canada Inc.): Thank you, and good afternoon.

My name is Matt Stein, from Primus Canada. I'm the vice-president of Network Services.

I am pleased to have this opportunity to provide Primus Telecommunications Canada's views on the matters under consideration. Before I comment specifically on those matters, I'd like to take a brief moment to provide some details about Primus. I believe

this will assist in providing an understanding of the foundation upon which Primus' views are built.

Primus is a full-service telecommunications provider that operates across Canada. We provide competitively priced and high-quality telecommunications services, including telephone, wireless, and Internet services to over a million Canadians.

In addition to our high-value service offerings that assist in disciplining market rates, we also have a history of innovation. For example, in 2004, Primus became the first to offer a national voice-over-IP telephone service. Today, Primus' telephone customers benefit from our patented Telemarketing Guard service, which, provided free of charge, stops well over a million unwanted telemarketing calls per month from reaching our customers. In fact, this unique Canadian-invented technology is in the process of being licensed for international use by other telecommunications companies worldwide.

In regard to Internet services, Primus provides Internet services across Canada using wholesale access services, as well as Primus' own network, which stretches across five provinces and is capable of reaching over 20% of the Canadian population.

In 2006, Primus became the first in Canada to broadly deploy high-speed DSL technology, known as ADSL2Plus. Primus uses unique Internet traffic management practices on its network that ensure that Primus customers receive high-quality Internet service at all times, yet address capacity and congestion issues as they arise, when they arise, without throttling or unnecessarily impacting users' experience. This is regardless of whether the customer is an early adopter, a heavy user, experimenting with the Internet, or just simply checking their e-mail.

We believe that Primus' innovative and differentiated service offerings represent the very competition that the government wants and are beneficial to both the Canadian market and consumers.

Turning to the issues at hand, we believe that forcing all competitors to offer similar, if not the same, Internet options as the incumbent telephone and cable companies will limit the ability for Primus and other competitors to provide innovative and differentiated services to Canadian consumers.

To date, Internet service providers have been permitted to determine how to price their services, whether to implement usage-based billing, and if so, determine the appropriate thresholds and the rates that will apply over the threshold. If incumbent telephone and cable companies are permitted to impose their retail usage-based billing frameworks on their wholesale access services, all of these aspects are removed from the control of competitive ISPs, or Internet service providers.

It's clear that consumers benefit when market forces are allowed to work in the retail market. All competitors should not only be permitted, but encouraged, to create new and innovative services to meet the changing needs of Canadian consumers.

In contrast, competition and market forces are stifled when competitors are required to mirror the offerings of the large incumbents.

As a market participant, Primus is at all times willing to pay a just and reasonable rate to obtain the wholesale access services that we use as a component to provide our Internet services. To date, the rates for these services have been based on genuine costs plus a reasonable markup to ensure that the incumbent telephone company is fully and fairly compensated. However, the usage-based billing rates applied by incumbents on their retail services are not based on cost. They are expensive by design. They are expensive to disincant heavy Internet use. Accordingly, imposing these rates on wholesale services represents a fundamental and inappropriate change in the pricing of these services.

Primus wants the ability to continue paying reasonable rates for the wholesale access services it utilizes to provide Internet services and continue offering differentiated and innovative services that respond to the needs of Canadians.

Canadians have enjoyed an Internet market with many choices. Some Canadians have taken the choice offered by competitive Internet service providers like Primus. Some have not. But even those who did not make that choice are relying on you to make sure that option remains. Without it, we would all have to live with low caps and excessive usage charges.

Thank you for inviting me today. I look forward to your questions.

• (1540)

The Chair: Thank you, Mr. Stein.

Now over to Monsieur Mezei, *pour cinq minutes*.

Mr. Jean-François Mezei (Telecommunications Consultant, Vaxination Informatique, As an Individual): Thank you, Mr. Chairman.

I am a self-employed Canadian. Unlike the guys with big business, I'm as small as it can get, but I'm affected by all of this, which is why I'm here.

The UBB presented by Bell Canada is not about the user-pay model; it's really about controlling adoption of new applications. Right now you're seeing early adopters, and those are the small statistics we are seeing from Bell, but Bell wants to prevent that from spreading.

The regulatory symmetry that Bell has been talking about and that the CRTC has accepted prevents choice. Without choice, people can't choose another ISP, because they're all going to be the same. That's a very important aspect that needs to be dealt with.

As Mr. Stein said, they're not based on cost. They were asked during the proceedings to justify this. They said they would not go on a cost basis. They're purely arbitrary rates. I don't think anyone in this country can justify arbitrary rates that have to fit with subsection

27(1) of the Telecommunications Act, which says that every rate has to be fair and reasonable. We can't measure that it they're arbitrary.

More importantly, they're designed to be punitive rates. The word "punitive" was used in the proceedings. In one of the early cable filings back in 2000, they admitted that part of the goal was to slow their investment in capacity because it would slow the growth in demand. That's a question the nation needs to ask.

The rates set by Bell are also not relative to congestion. Bell has argued that this is purely a congestion issue, but they actually charge more for people who have lower speeds, and these lower speeds generate less congestion. So it should be the reverse. Questions need to be asked. This was approved by the CRTC, but we don't know why.

The GAS rates, as they now stand, before UBB, are already profitable to Bell. They're not fixed rates. They have variable components, and I will go through them next. So the whole basis of Bell's argument falls.

On the next page of my brief I have a graph that shows the architecture of the GAS versus Bell's retail and IPTV. The GAS shares very little with the Bell retail ISP business. They're really two separate blocks. They only share the last mile aggregation, and that last mile aggregation is a raw data pipe that has no ISP features in it—none whatsoever. It's a raw data pipe. The regulation should be limited to that aspect only.

I also show the scope of the regulation beyond. When you introduce UBB, you put a regulatory scope that goes from the residence all the way to the connection to the Internet, which GAS does not provide at all. That has to be said. It has to be repeated.

First of all, it's not a resale service. We've heard the word "resale" used even by the chairman of the CRTC. It's not a resale. What they're offering has nothing in common with Bell Sympatico, or whatever it's called this week.

• (1545)

[*Translation*]

Applying symmetrical measures for services that are different makes no sense. There should be no aspect of an ISP retail service that should be applied to the GAS rate, because that rate is not an ISP service. So symmetry for those two services makes no sense.

[*English*]

In terms of GAS, we often hear Bell say that GAS is a fixed rate. GAS has two components: the GAS component, which is a fixed rate; and the AHSSPI component, which is a variable rate. It's capacity based. The more users you have, the more AHSSPI capacity you buy. The more AHSSPI capacity you buy, the more you can put through. If your users are more hungry, then you buy more AHSSPI.

The best analogy for this is the restaurant business. There is a lettuce wholesaler, and there is a fancy restaurant that buys a little bit of lettuce and an all-you-can-eat buffet that buys a lot. Nobody subsidizes anyone. They all buy their lettuce at the same price and everybody makes a profit. The buffet has a business model that it can work with and be profitable, and the high-end restaurant will make some money as well.

In closing, on the following pages of my brief, I've provided different regulatory scopes to show where the regulations should apply and where they have attempted to apply them, and the mess it has created.

The Chair: Thank you, Mr. Mezei.

Because we have two groups of witnesses, that means we have limited time, so we'll go with five-minute rounds.

We'll begin with the Liberal Party and Mr. McTeague.

Hon. Dan McTeague: Thank you for your excellent presentations. Mr. Mezei, I read your previous presentation to the CRTC.

I'll allow TekSavvy the opportunity to have Mr. Van Kesteren ask them a question, but to all of you here, the word "television" will not exist in 10 to 20 years. There is an explosion, if you will, in video influence. This will require—I think, Mr. Stein, you used the term heavy Internet use—greater, richer content, which means more bandwidth, more storage. The choke point, not just politically and from a consumer and innovative perspective, but also from what we have seen in the last week, appears to be that whoever controls the bandwidth can now control regulation, price, and how the fate of your companies will be determined. Given that we are going to be seeing a rapid change towards things like television apps, video computer devices, video display surfaces—which we may have touched on a little earlier—video projection systems, video content, holography, and video gambling for some governments, how do you see Canada's future in a circumstance in which a handful of players can determine who gets on at what price?

I'll leave that with you, Mr. Stein, and perhaps we can go right across—Mr. Gaudrault, Mr. Burger, Mr. Mezei.

Mr. Matt Stein: In the past number of years, we have seen the network usage of our customers go up 50% year after year. I can't think of any other kind of consumption rising at that rate. The applications you talked about are the source and cause of this. There are major changes afoot that have been going on for a few years. And that rate is going to accelerate. It is not going to flatten out in the short term. I see that as very concerning.

• (1550)

Hon. Dan McTeague: Mr. Gaudrault and Mr. Burger.

Mr. Rocky Gaudrault: Everything that we've seen today and that we're going to see tomorrow will change in a way that is difficult to predict. Can we say with certainty that it will be a much larger use environment? Almost absolutely, yes. The world is changing in a way that is becoming content rich. With more people online, and more people who are educated on its uses and benefits, we can't help but go there. So things like usage-based billing will absolutely cripple that.

Mr. George Burger: I have to thank you for that question, because it goes to the part of our talk that was unfortunately cut off.

I'm taking the latter part of your question, which was what will happen if all these various elements are in the hands of a few people. I can tell you that the future is somewhat here in Australia. Australia is one of the few countries in the world with a higher concentration of content delivery and content ownership than Canada's, but it's not much greater than Canada's. It's hard to look at these proceedings completely in isolation. For example, we need to look at what's going on with BCE buying CTV. When these duopolies get their hands on all of the content in this country, it makes it difficult to control the gatekeepers of what we watch and how we watch it. I think that's the most important element of these proceedings that I'm asking this panel to consider. It seems as if the minister himself has already taken pains to consider this matter. Attention should be paid to the competitive framework so that this trend does not lead us to where Australia is now.

Hon. Dan McTeague: It appears that we're moving to one digital pipe in every single home across the country. And it would be a concern, obviously, of the Liberal Party that that would be controlled by one individual.

I have one more question—and we have to go very quickly. Mr. Mezei.

Mr. Jean-François Mezei: I will take a little different twist to this. Many countries have already done in Europe.... If your last mile, where control resides with a very few people, is regulated to be open, then everybody has access to it.

If you go back a few years, there was something called Bell Nexxia, which was a wholesale group separate from Bell retail. Bell Nexxia had no problem increasing sales, because it increased its profits. It didn't have a conflict of interest with its retail competitor. Regulation doesn't need to be wide; it needs to be focused. If you have that last mile open, everybody can use it, and it will grow.

Hon. Dan McTeague: Is it fair to correlate the cost of bandwidth with gigabyte cost charges of \$1.50, \$2.50? What does bandwidth cost, and what is the demand now that the CRTC has apparently tried to impose sanctions? I need to know the numbers, because to the Liberal Party it amounts to nothing less than a giga-tax or giga-gouge.

Mr. Matt Stein: I'll try to answer this.

Nowhere else in the networking industry do you pay for access to pipes like this by the gigabyte. So the question, unfortunately, starts with the presumption that you could put a price on a gigabyte.

If you had to, you would make it in the few cents, easily less than 10¢, range. Unfortunately, it's just the wrong way to show the cost of a gigabyte. As for how people price a gigabyte, that's market forces.

The Chair: Thank you, Mr. Stein. Sorry, the clock always marches on here, as it does everywhere.

Monsieur Cardin pour cinq minutes.

[Translation]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair.

Bell Canada and the CRTC have in the past set a sale price between Bell Canada and its sellers, in terms of dollars per gigabyte of data. Bell Canada makes a substantial profit on each gigabyte of data sold. Before the advent of...

[English]

The Chair: Just a moment. We don't have any translation right now. We just want to make sure that we get some translation.

Monsieur Cardin, go ahead. I will credit you a few seconds.

[Translation]

Mr. Serge Cardin: Before the advent of usage-based billing, the reseller was free to resell gigabytes purchased from Bell Canada in the form of Internet services, at its own discretion. Do you think the CRTC decision allows Bell Canada to double bill the gigabyte sold to Internet resellers?

Mr. Jean-François Mezei: In my presentation, I didn't have time to talk about that. Pre-UBB GAS service was based on the phase 2 costs. The phase 2 costs guaranteed not only that Bell Canada is paid for its operating costs, but also that it is paid for infrastructure costs. When demand rises, Bell Canada has the money to invest and increase capacity. The AHSSPI and GAS charges combined gave Bell Canada money so it could make guaranteed profits with no risk and invest for growth. Adding UBB technology provides additional money that Bell Canada does not need to make profits. It is really a double tax.

● (1555)

Mr. Serge Cardin: Gentlemen, do you agree with that?

Mr. Rocky Gaudrault: The reality is exactly what Mr. Mezei has just described. It is a huge problem in general and it is really a case of double dipping.

Mr. Serge Cardin: This is better than in the House of Commons, we have unanimity.

In 2009, the CRTC released its regulatory policy 2009-657 on Internet traffic management, the fundamental objective of which was to prevent Internet traffic congestion. We are told that usage-based billing is also intended to prevent congestion. Do you think Canada is currently facing a serious problem with Internet traffic congestion? Do you think the unlimited plans, like those offered by independent suppliers, are partially responsible for the problem?

Mr. Jean-François Mezei: Given that he represents an Internet supplier, Mr. Gaudrault has a little more knowledge about congestion. So I'm going to let him answer.

Mr. Rocky Gaudrault: Congestion is a subject that it is very important to talk about. Instead of saying there is congestion, Bell Canada showed in its ads in November that for the third quarter it had activated service for more than 40,000 customers with IPTV, IP television. If there was congestion at that point and we add 10 to 25 MB services instead of just the 5 we now have, that means there

was a greater increase in traffic on Bell Canada's side, at a time when it was saying there was congestion. That doesn't make sense. It is impossible for there to have been congestion, given that it added so many things that are really significant in terms of use.

Mr. Serge Cardin: There has been higher demand for some years, but there has also been progress in technology that compensates for the increase in demand. So in terms of congestion, it doesn't seem to be necessarily so.

Mr. Jean-François Mezei: One thing has to be noted. During the proceedings on ITMPs and throttling and the UBB, Bell always reported the figures on congestion confidentially. We ordinary people saw some lovely tic tac toe, while the CRTC saw the real figures. It's very difficult for us to tell exactly what Bell has.

In the forums and elsewhere, we don't hear complaints about congestion or complaints about Internet slowdown. There are isolated problems that we find here and there. For example, take the case if Bell has a link that breaks. If there are three links between two central offices and one of those links breaks, there will be congestion for a day or two. If Bell does its statistics during those days, it can show there was major congestion on the network. We can't judge from that whether there was congestion or not. However, it doesn't seem there has been congestion in most cases in the entire territory covered by Bell.

The Chair: Thank you, Mr. Mezei. Thank you, Mr. Cardin.

Mr. Cardin: Did you credit the seconds from the beginning?

[English]

The Chair: We added it.

Now we'll go to Mr. Van Kesteren for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair, and thank you to the witnesses for appearing.

I want to dumb this thing down a bit. I think I'm beginning to understand this, but correct me if I'm wrong. I'm going to ask some questions and you can just say yes or no.

Let's imagine that the fibre optics are in the middle of this room. They connect each one of us. You're a server, I'm a server, and Mr. McTeague is a server. Have I got that right so far? The pipes are fibre optics. So we provide what you call the last mile. Is that correct?

● (1600)

Mr. Rocky Gaudrault: Keep going.

Mr. Dave Van Kesteren: The pipes, the fibre optics, channel all that information from point A to point B. Then it's picked up at the very end. You buy a segment of that pipe. If you use more than what you've bought—

Mr. Rocky Gaudrault: We can't. We have to buy more.

Mr. Dave Van Kesteren: You can't use more. So you have gone to Bell. I guess that decision happened in 2001 or so to create more competition out there.

So you buy a channel in that pipe. Do I have that right so far?

Mr. Jean-François Mezei: I think I can provide a simple explanation. Basically you buy throughout the Internet by capacity. You buy a pipe of a certain size. You cannot push more data into that pipe than the size of it.

Mr. Dave Van Kesteren: But you've bought that.

Mr. Jean-François Mezei: Yes.

Mr. Dave Van Kesteren: What you do with your customers really has no bearing on Bell. So if Bell wants to charge for caps, it really makes no difference. You're just working in that channel you've bought.

Mr. Jean-François Mezei: Correct.

Mr. Dave Van Kesteren: They want you to charge caps when they're charging caps. They want you to do the same thing.

Have I got that right so far?

Mr. Matt Stein: I think an important distinction here is that in this case, Bell would charge the small ISP or alternate ISP, such as Primus, per user. Rather than using the analogy of pipes, you could say, "All the users of Primus use this many million gallons of water. Primus, you buy all that water and sell it to all those people. No individual person can take more than one gallon per day." That's where the cap comes in. The right thing would be to say, "Primus, you have to pay for all the gallons of water your customers draw", as opposed to saying, "We'll sell it to you, but none of your customers can use more than one gallon of water per day."

The last and most important distinction is that there is a finite amount of water on earth, but there is not a finite amount of Internet. The Internet is truly limitless. It's about the thickness of the pipe. That's why, to my earlier point, it's very difficult to price a gallon of something that is infinite.

Mr. Dave Van Kesteren: Again, we want to keep this as simple as possible.

Here's another question. You're selling mostly to Internet.... Do those pipes also accommodate TV that will go through the fibre optics, and the telephone?

Mr. Matt Stein: Television, telephone, and Internet are all now moving over Internet protocol.

Mr. Dave Van Kesteren: All going through the same pipes.

Mr. Matt Stein: The same pipe at the same time.

Mr. Dave Van Kesteren: And Bell has access or sells those services?

Mr. Matt Stein: Sometimes. Sometimes customers may buy them from other people. You may buy your Internet from somebody and then on top of that Internet connection you may watch TV, you may have phone calls, you may video conference—whatever you're going to do.

Mr. Dave Van Kesteren: Tell me why Canada is at the bottom. I'm looking at these scales. Why are we at the bottom of having the average broadband prices? Is that the reason?

It would seem to me what we've tried to do as a government is to encourage more competition, and if we take away that ability that

you have to charge what you want to charge to your own customer, we are creating a monopoly. Have I got this right so far?

Mr. George Burger: You're absolutely right about it. I think the inference that has to be drawn is that there is a severe lack of true competition in this market. And even this discussion about congestion is a little bit of a red herring because the reality is that every successful business ultimately reaches a point of congestion, and what they typically do is they expand the size of the business—

Mr. Dave Van Kesteren: They make bigger—

Mr. George Burger: —to accommodate that demand, whether it's a restaurant, a store, a pipe, anything.

The Chair: That'll have to be the case.

Thank you very much, Mr. Burger and Mr. Van Kesteren.

Now on to Mr. Masse for five minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and thank you for being here today.

One of the interesting things that we had come out of the hearings from the commissioner was really the realization—I didn't know about it before until we started doing some research—that business is basically treated one way and residential customers are treated another with the UBB.

He saw no inconsistency—even if you agreed with the policy, which I don't—with a large business getting the same treatment of that as a small business. In fact, in his testimony he identified that if you're a company, you could, in terms of the Internet traffic.... There are no caps for business, and if you want to have business, you go and make your deal with your provider depending on your usage. What that meant was that you could get a preferable rate.

Going back to the residential side, or the commercial side, you have the student who is doing streaming for their classes and they are using a lot. What do you think about that position, that consumer and residential get treated different from business? Is that not inconsistent?

● (1605)

Mr. Matt Stein: In the wholesale market today, that is true. Usage-based billing has been brought to the residential market today. It has not been brought to business. But Bell is already capping their business users as well.

So in the current proceeding that we're discussing, you can say, well, it's only affecting residential subscribers; it doesn't affect business. But in fact Bell has already started capping business users, and it's already listed that way.

Mr. Brian Masse: That's interesting testimony, because the CRTC has the power and is actually saying they're preventing them from doing that. It'll be interesting to look into that.

Mr. Matt Stein: It's on Bell's website, and when you look at Bell's business products; they do list caps and so forth. That's there today.

Mr. Brian Masse: That's interesting.

Mr. George Burger: At the risk of bringing in any nefarious objectives, the fact is that a great deal of the growth in bandwidth usage is going to be movies and television shows. That's where the heavy weight is going to be thrown around, not so much in businesses. The reality is that because of the cross-ownership of content assets, it's very, very important to Bell to make sure that people are driven to their content assets and not to third parties. The best way to do that is to make sure residences are taxed very significantly on the bandwidth usage they use.

Mr. Brian Masse: Given that UBB has been in play here—and I'm one of those people who pay extra to have higher content and higher streaming—the model clearly isn't working. The incentive to actually build a stronger pipeline isn't there.

How is it that we end up down on the bottom here across these charts? Is it partly in response to the 2006 mandate change? Is that possible, that it had an impact?

Mr. George Burger: My view is that the dominant position that the incumbents have had when it comes to dealing with the CRTC has really not changed very much over the last 20 years. I think part of the bottleneck has to be with the way the CRTC is dealing with these issues as they arise.

There's been a consistent tendency to be more receptive to the points of view of the incumbents. And even when there are purported compromises in the decision of the CRTC, they're not real compromises; they're really cutting the baby in half and giving both parts to one side.

Mr. Brian Masse: With regard to the review that's taking place right now, it's still going to be done under the old mandate, so I'm not hopeful much is going to change. If you look at what the CRTC put out today, it's still under the same terminology. What do you think about that? I'm concerned we're going to have some other model, or a hybrid model, if anything, come back because the mandate hasn't changed.

Mr. Jean-François Mezei: As an individual, I've spent many countless hours and nights and I don't know how many dozens of cans of Red Bull to stay awake to write submissions over the last year and a half. There have been five decisions already, always in the same direction, from the CRTC. We've had hope that eventually the CRTC would wake up and see the truth and reverse its decision. It never happened, to a point where I submitted a petition to the Governor in Council because I had lost hope that the CRTC would ever realize what it was doing.

Without a strong message from the government, I don't think the CRTC will change direction. It's been a year and a half, with five decisions already on this. I don't think they're going to change direction.

Mr. Rocky Gaudrault: For what it's worth, it's really good that Konrad and the CRTC commissioners have decided to take this on in a different light. The fact that it's gone back is helpful. You're right, it does seem to lead a little bit, but as this is the pre-phase of the hearing and they're asking for submissions on how they would structure it, one would hope the input will change how it currently is set.

• (1610)

The Chair: Thank you, Mr. Gaudrault.

Thank you, Mr. Masse.

Now we'll go on to Mr. Rota for five minutes.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Thank you, Mr. Chair.

Thank you for coming out.

I'd just like a little bit of clarification. I'm going to follow on Mr. Van Kesteren's questioning. For the average person looking at this, it's counter-intuitive. You're saying the ISPs are taking Bell's backbone. They're using it and they're competing against Bell. Maybe just to clarify, why would that be allowed, and what is the intent of that? That's something that is very clear.

I take it back to long distance, which eventually led to lower rates and it led to a more open market.

In your own words, can you explain to us why it's favourable to have individuals use Bell's backbone to compete against it? I'll let you finish that sentence and maybe touch upon the barriers to entry that exist on such a business.

Mr. Matt Stein: Over the past number of years we've invested very heavily in building our own network, as I mentioned earlier. Even with that investment we've made, of millions and millions of dollars, we're still in a position where many customers, even where we've built, are unreachable because the last mile, that connection to the home, is only reachable with proper speeds by Bell.

Therefore, if what you want is a competitive market, you need to give competitors access so they can get in, so they can compete. That does create more choice and lower prices for Canadians.

Mr. Anthony Rota: So it would be fair to say that if we just left it open, there really wouldn't be much of an incentive for a duopoly or a monopoly to really develop at a good speed to provide services to places like where I come from—northern Ontario—because really we don't have a dense population there. Is that fair to say?

Mr. Matt Stein: I think that's fair.

Mr. Anthony Rota: Okay. Very good.

I just wanted to clarify that, because there are questions that come up from people. They ask, why are you allowing them to compete on...?

In any case, I'm going to move on to the next one.

IPTV is something that came up the other day in our questioning. I actually asked the commissioner of the CRTC about IPTV. He said that doesn't count; that's separate. Demand comes through the pipeline. You're all using the same pipeline, yet his comment was that there's a separate pipeline for IPTV. What I'm seeing is Bell, or the provider, the backbone, providing limits to you, the ISPs, but to themselves they're leaving a pipe that's separate.

Is this a separate pipe, or is it all part of the same...? How will that affect people who want to watch independent TV, as opposed to, say, IPTV?

Mr. Matt Stein: There are two questions in there, and I'll very quickly try to answer them both.

The first question is, is this truly a separate pipe or is it all connected? You can't ask us. You would need to look at the submissions. You would need to ask Bell themselves. However, an important piece is the second part, when you ask how it affects. If you choose to use Bell's Internet product, their retail home Internet product, and you have a 25-gig cap, then you choose to use their television product that rides right on top of it. They say as much bandwidth as that is, they're not going to count it. But if you choose to use somebody else's Internet television product, they say they're going to charge that. That racks up the bill.

If you chose to use Primus or any competitive ISP's Internet product, and you choose to use Bell's Internet television product, they say they're not going to charge you for that anyway, because that's okay. But if you use Primus' Internet television product or somebody's independent television product, they're going to charge you for that.

Mr. Anthony Rota: So someone's getting squeezed out of the market here.

Mr. Matt Stein: That's one way to put it.

The Chair: Okay, very good.

We'll let Rocky....

Mr. Rocky Gaudrault: I can add a little bit to this as well. If they're going to make statements that say include/exclude costs, different network or not, then we need to start taking things into the context where they start talking about investments, this \$6 billion or \$8 billion question. They need to section off what is IPTV, what is television, what is Internet, what is mobile. They make blanket statements that say they're spending huge money, and in the middle of saying this, IPTV is separate? I think not, at that point. That needs to be put into perspective.

•(1615)

The Chair: Okay.

Mr. Mezei.

Mr. Jean-François Mezei: During the proceedings, the question was asked about how much is shared, and Bell refused to divulge specifics. It admitted that it was somewhere between the BAS and the DSLAM. If you look at my little graph on pages 7 and 8, it joins up, and a big portion of it is shared.

What's interesting is the amount that's shared between the Bell retail Internet and Bell's IPTV. That segment is about what the GAS uses as well. Where we share the Internet with Bell—Bell's retail Internet—is also where Bell shares it with IPTV. There's one area where all three—

The Chair: I've been waiting for you to come to a conclusion. We're way over time.

I'm sorry, I need to be fair to all the members.

Mr. Wallace for five minutes, please.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair, and I want to thank our guests for coming today.

I'm going to be a bit of a devil's advocate at this end, because we're hearing it in our constituency offices and here on the Hill. I would like your response to some of the things we're hearing—and

some of them have been on your side and some of them haven't been—and then if I have time, I want to ask you about your position going into this next 60 days.

At my house, I'm very good. I changed my lights bulbs to a low-volume use of electricity. I turn off every light when I leave the house. My neighbour beside me leaves his lights on all day long, all night long, all through the house. He pays for use. I pay for use.

Why would that not apply in the Internet services business?

That's a question I'm getting from constituents.

Mr. George Burger: The answer to that, frankly, is pretty straightforward: because that electricity costs money to create. It doesn't just cost money to get to your house, but the source of it costs money. Similarly with gas; you use more gas than your neighbour, you should pay for more gas, because gas is a resource that has value in itself.

Bits, as Matt said earlier, have no value. They're light. They're pieces of air. The value they have is the value that comes with the creation of it by you when you write an e-mail, when someone else writes a story. It has no intrinsic value. The only thing that has value is the pipes, and you pay for that once and for all.

Mr. Mike Wallace: We'll use natural gas as an example. I'm a Union Gas user; I make no bones about it. Other people will knock on my door and will try to sell me gas contracts, but Union Gas cannot say they're only selling that individual customer so much gas; they don't cap how much gas I can use. I can use as much gas as I want, and it depends who I'm with.

Is that basically the same issue you're having with the...? Bell owns the pipe in this case—we'll use Bell as an example, but there are others; I'm actually with Cogeco. Bell owns the pipe, so they should be able to charge for the use of the pipe but not cap how much use I can have in my house. Is that your argument?

Mr. Rocky Gaudrault: We already do that right now with the gateway access service. That's what we pay for right now. Usage-based billing is going beyond that point.

Mr. Mike Wallace: That's what I'm saying. That's the system that's there now. The capping, or the user pay, would be able to cap off how much I'd be able to use. That is the difference.

How come you lost that argument at the CRTC? You've obviously analyzed why. I heard a little bit from Mr. Burger on it. They tend to listen to the big boys—we'll call them that—the main users. If you can tell me without giving away the trade secrets of what your plan is, why did you lose, and what are you doing differently in the next 60 days to convince them otherwise?

Mr. Matt Stein: Unfortunately, why it lost is very long and drawn out, and it is actually a series of things that happened over many, many years. But it sort of goes back to the idea that there is regulatory symmetry: what is on one side and applied to cable gets applied on the other side equally on phone.

Years and years ago, when nobody was using resold or wholesale cable, the cable providers said they would like to charge the wholesalers, of which there were effectively none, the same thing they charged in retail, and nobody really objected particularly strenuously—nobody used it.

Well, now Bell has rightly said, “Look, you allow it over there.” Rather than going back and fixing the wrong from many years ago, they used it, and said, “Yes, okay, that’s a fair point. We have allowed this for years on cable, so we should allow it on telephone-based services as well, on DSL.” That’s why this change.

• (1620)

Mr. Mike Wallace: Do you think there is an opportunity...? Let’s be frank. The political will for something to happen is obviously here, so you could sit back and rely on politics to solve the problem for you and hope for the best, or do you think there actually is a solution between you and the major deliverers, the Bells of the world in the next 60 days?

Mr. Matt Stein: Let me ask you to clarify. When you say “a solution”, as in something potentially that we could negotiate with them...? That door is pretty much closed. In submissions, in filings, and in oral testimony delivered at the CRTC, Bell and Telus have been very clear that this is not the kind of thing they negotiate.

Mr. George Burger: The fact of the matter is that the reason we’re here, and the reason we applaud the minister’s initiative in trying to take some charge over this matter, is that we’re in a situation simply because there’s been an ongoing distortion of, really, the way market forces should operate in a society like our own.

I think right now the fact of the matter is that we are where we are because Bell and other incumbents frankly don’t want competition. They want to split up this market. They want to be able to make as much as they can for their shareholders. That’s perfectly legitimate, but right now the only solution, frankly, is looking for a completely new competitor framework to be introduced. That really rests in the hands of the government and this panel.

That’s why we’re here. We cannot continue to look back and wonder why the CRTC chose this or that. We think we’re beyond that.

The Chair: Mr. Burger, thank you very much. We appreciate it.

For the Bloc Québécois, *quatre minutes, monsieur.*

[Translation]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chair.

I would like to thank the witnesses for being here this afternoon.

We know that the Conservative government has asked the CRTC to rely on the free market as much as possible to achieve the objective in section 7 of the Telecommunications Act. Do you think the government’s deregulation order is in part responsible for the CRTC’s recent decision? Mr. Burger can answer that question perhaps.

[English]

Mr. George Burger: If I understood the question correctly, I think the government did not decree deregulation. I wasn’t there, and,

frankly, I’m not an expert in the area, but I think what the government did try to do was to create a framework that tries to adhere to free markets as much as possible. But of course we’ve seen very clearly from what happened in 2008 that nobody is really an advocate of having a completely unrestrained free market. The world economy nearly crashed because of this unrestrained free market.

I think what we have to do is expect our regulators to have some degree of judgment when it comes to interpreting general objectives like that, so that you can come up with a result where you don’t have hundreds and hundreds of thousands of Canadians up in arms over the fact that they’re being gouged and paying for something that has no value. I’m not sure where the fault lies, but I’m really not sure that the seeds of it are in that particular piece of paper.

[Translation]

Mr. Jean-François Mezei: When I was writing my petition to the Governor in Council, I read and reread the directions. I saw a document that struck a good balance between regulation and deregulation of market forces. I didn’t see a direction that we deregulate blindly. From what I have been able to see, the CRTC is to all intents and purposes letting Bell Canada charge what it wants, on the pretext that the directions entitle it to do that. There is an interpretation problem, either on my part or on the part of the CRTC. Letting Bell impose usage-based billing and charge unjustified unpredictable rates for a regulated service makes no sense. There is a problem.

The direction says that where there needs to be regulation, it should be good. Where there needs to be regulation, it stays. Accordingly to the direction, there doesn’t need to be regulation anywhere. But in fact it is needed here and there. And the direction recognizes that. If it is poorly written or if it allows for a bad interpretation, however, there is a problem. The CRTC has interpreted it badly.

• (1625)

Mr. Robert Bouchard: Does that mean there is bad regulation at present?

Mr. Jean-François Mezei: At page 11 of my presentation, I included a list of all the decisions made in the last few years. We can also see how one decision served as a precedent for another. Telecom Decision 2008-17, which is central, called GAS non-essential. That was based precisely on the direction, and specifically on an approach that advocates deregulation, forbearance.

Mr. Robert Bouchard: Could this deregulation, which you call bad, cause your loss, your death?

Mr. Jean-François Mezei: As an individual, my death...

Mr. Robert Bouchard: I mean as a company.

Mr. Jean-François Mezei: I think so, but you can perhaps put the question to Rocky.

[English]

The Chair: Please speak about death within 15 seconds.

Mr. Rocky Gaudrault: Within 15 seconds...it will become a very difficult challenge.

[Translation]

It is going to be very difficult to respond to situations that change daily.

[English]

The Chair: *Merci beaucoup.*

The last four minutes are for Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chair.

Thank you very much to the representatives for being here this afternoon.

Our time is limited. I have one question for each party, so we'll just sort of go down the line. If you could be as brief as possible with your responses, that would be appreciated.

Mr. Stein, does the issue of Internet traffic exist? And to the extent that it does, how should traffic congestion be managed?

Mr. Matt Stein: You do it by building appropriately sized networks. In the event that you have congestion, you build a little bit more. Then you appropriately charge the wholesaler that is using up individual components of that network. You don't arbitrarily apply caps on their end customers.

Mr. Peter Braid: Thank you.

TekSavvy, if UBB is not the right billing model for small ISPs like yours, and clearly we all agree that it isn't, what is?

Mr. Rocky Gaudrault: Right now there's a bit of confusion as to what UBB truly is. TekSavvy has been applying UBB for years, for probably the better part of 12 years. We apply it on the Internet side. There's an actual cost to that component. From the wholesale side, with Bell in particular, being as this is the topic, that has fixed costs that have, through phase 2, as JF mentioned earlier, been applied to all of the backbone services.

UBB needs to keep existing, but it needs to keep existing in a cost-based mechanism. This is where we differ very much from what Bell has said and what the CRTC has judged recently.

Mr. Peter Braid: More precisely, how should you be charged by Bell?

Mr. Rocky Gaudrault: It should be on cost.

Mr. Peter Braid: Thank you.

Mr. Mezei, what is the solution to the issue of the last mile?

Mr. Jean-François Mezei: There are models in Europe, where the government regulated that the last mile be open access that many companies can have access to. There are different ways of implementing that. Britain split British Telecommunications into two, a network—basically a Bell Nexxia—and a Bell retail, so that they don't have a conflict of interest. Other countries have used regulation without splitting the companies.

In terms of the billing, it has to be bulk, because an ISP buys in bulk.

All of the Internet works on a capacity basis. There's no point in going to UBB at one point. This is something that is done at the

retail level, and it should be under the full control of the retail ISP, not the wholesale provider.

Mr. Peter Braid: Thank you, Mr. Chair.

The Chair: Thank you very much, Mr. Braid. That's quite timely.

Gentlemen, I apologize for limited time. We have two rounds of witnesses today in this meeting. Thank you very much for your testimony.

We're going to suspend for a couple of minutes while the witnesses leave and while we bring in the new witnesses for the next round.

• (1625)

(Pause)

• (1630)

The Chair: We're still in the 55th meeting, with our second panel now. We have egateNETWORKS Incorporated as well as Oricom Internet, and the Public Interest Advocacy Centre.

I understand that everybody has been briefed: five minutes per organization for opening remarks. We need to stay pretty tight. We're already chewing into our one-hour time here.

So we'll begin with Paul Andersen for five minutes, please, sir.

Mr. Paul Andersen (President, egateNETWORKS Inc.): Good afternoon. My name is Paul Andersen. I'm the president of egateNETWORKS. I'd like to thank the chair and committee members for this opportunity to appear before you on this important issue. I'm here to speak on behalf of egate, but I've been intimately involved in the Internet industry for many years as the chair of the Canadian Internet Registration Authority and trustee of ARIN.

EgateNETWORKS is an Internet connectivity and hosting provider that focuses on the small and medium-sized business market. Over the past 15 years, we've evolved our product line in ways that differentiate us from competitors while serving both—

• (1635)

The Chair: Mr. Andersen, I just want you to be mindful—

Mr. Paul Andersen: Of the translators? Yes. I'm also mindful of the five minutes, Chair.

The Chair: Yes. We have translation, so we want to make sure everybody gets it.

Hon. Dan McTeague: Chair, a point of order. It may be that there's some pretty good information coming across here. I have no difficulty with staying an extra four or five minutes after 5:30, if I have the consent of the committee, so that we hear from everyone. What happens is that in the five-minute rounds, they often have to re-explain what they weren't able to say. If we want to give them a little bit more time with us, adding another five minutes at the end, I have no difficulty with that.

The Chair: Then to be fair again, Mr. McTeague, I need to be equal across the board. So that will be six minutes per witness, then, for opening?

Hon. Dan McTeague: Sure. Thanks.

The Chair: Does everybody agree?

Mr. Andersen, you can now slow down a full minute.

Mr. Paul Andersen: Thank you very much, Mr. Chair.

We have given our customers access to services such as IPv6, static addressing, voice over IP, hosted PBX services, and managed private networks, just to name a few. Our smaller size also attracts many customers who prefer dealing with a nimble organization that can offer them a custom solution to meet their unique needs. We provided many of these services long before incumbents did, and in some cases they still do not offer these services.

A common and fundamental misconception is that companies such as mine simply resell a Bell retail service at a lower cost. This could not be further from the truth. The service we lease from Bell is just one of the elements required to give an end-user full service. We provide all the equipment at the customer's premise and deal with internal wiring issues. We have to lease or build facilities to connect to Bell's network. We invest heavily in infrastructure such as data centres, routers, switching equipment, along with a large set of servers to handle a variety of functions, including authentication, DNS, customer management portals and billing systems, not to mention all the associated staff. We also need to build out a network so that we can take the end-user's connection, of which Bell provides the last mile, and transmit their data all across the world. This is expensive and complex to do.

We make decisions on how to build this technology so we can find ways to differentiate our service from the incumbents'. Such differentiation gives the consumer more choice and available offerings and brings price discipline to the market. However, recent decisions by the CRTC, such as the recent UBB decision, the traffic management decision, and several others, have diminished our ability to compete effectively.

The first arm of Bell's strategy is to dictate the business model that competitors will be forced to use so as to ensure that consumers will not have motivation to leave them for a competitor. The restrictions Bell has placed on its own users has degraded their end-user service. It's natural for these users to seek providers like us, who manage our network differently and do not necessarily impose such restrictions.

The second arm of the strategy is to make it difficult or impossible for providers to build their own facilities. Remember, the claim is that we are not building facilities, but the strategy is to make it unprofitable or impossible for us to do. In this regard, the commission disallowed independent providers from being able to offer a service named ADSL-CO. This would have incited competitors to build facilities and connect at the closest feasible point to the end-user. Allowing this service would have encouraged facilities-based competition, eliminated the competitors' traffic from Bell's network, eliminated a lot of the congestion, and allowed the competitor to provide a more robust set of competitive options to the end-user. Most importantly, as a mandated essential service, ADSL-CO would have required Bell to provide this service to us at a price that recovers all their costs plus a healthy profit. Such a service would drastically lower the costs to us and such savings would be passed on to the consumer.

The basic story endlessly repeated by the large carriers is that we are merely resellers, and in some fashion parasites that inhibit needed investments. On this false premise, much damage has ensued. Usage-based billing is a case in point. UBB has been applied to wholesale services. Retail-style UBB fees should not be applied to the wholesale access Bell is required to offer.

My main concerns are as follows.

First, I would like to continue dispelling the myth that competitors are getting some kind of free ride for their heavy users. Competitors already pay fees proportionate for the amount of capacity that our customers use on Bell's facilities. The CRTC UBB proceedings have also made it clear that Bell's proposed UBB rates have no cost-based underpinning. Usage charges, as proposed, are almost, if not exclusively, pure profit.

Secondly, we are completely opposed to the concept of per end-user usage billing. A usage component, if appropriate, should be applied only on an aggregated basis—that is, on the whole competitor leasing and not each end customer of that competitor. Allowing Bell to charge each of my customers in the same manner as Bell's own retail services eliminates my ability to differentiate my product. The proposed rates allow Bell to simultaneously gouge us, their competitor, and completely limit our ability to offer differentiated services that could attract customers away.

It is important to understand the underlying game plan. Everything will soon be distributed over the Internet. Canadians will send and receive ever larger amounts of data. The caps and charges put in place by Bell discourage usage growth. Why, when the world is going toward greater usage, are we moving towards limiting it? How can this be good for innovation, productivity, and our international competitiveness?

We are grateful that the government recognizes the problem by dealing with the recent UBB decisions of the CRTC. We are also hopeful that the CRTC will use this as an opportunity to embrace an approach to wholesale regulation that is more effective at disciplining the market power of the incumbents and promoting competition.

Thank you for your time, Mr. Chair.

• (1640)

The Chair: Thank you very much, Mr. Anderson.

That was very good, reining it right in.

Now we'll go on to Monsieur Bergeron, for six minutes.

[*Translation*]

Mr. Alain Bergeron (President, Board of Directors, Oricom Internet): Good afternoon.

I would like to begin by thanking the Chairman and the committee members for this opportunity to appear before you.

My name is Alain Bergeron. I am the Chairman of the board of Oricom Internet. Oricom Internet is an Internet service provider based in the city of Quebec, and was founded in 1995. Though its client base is in Metropolitan Quebec, it has many clients throughout the provinces of Quebec and Ontario. The company offers a range of services to both residential and business customers.

Oricom's offering to residential clients differs from that of the big players. The company has invested heavily in voice over Internet Protocol technology, referred to as VoIP. It thus provides its residential clients with local call services at very competitive rates, so they do not have to sign up for the three-service bundle packages with the big players in order to get an attractive plan.

Oricom also has a VoIP and Internet bundle plan that is very popular with consumers, who continue to obtain TV from an incumbent. This offer also proves to be an unrivalled offer for younger consumers who no longer use the traditional television and find themselves penalized by the incumbents if they do not take the incumbents' three-service bundle. Oricom's offer also allows consumers to choose between cable and DSL technologies without having to change the service provider. Finally, about 20 rural communities enjoy wireless high speed Internet using Oricom's technical support and network infrastructures.

Furthermore, Oricom's offering to business clients differentiates itself from major service providers like Bell or Telus by offering the setting up of private networks for small businesses, whose requirements are different than those of large-scale organizations. Oricom can offer redundant links over diverse technologies such as fibre optics, DSL, cable or wireless, which major players like Bell or Vidéotron don't bother considering in their offerings. As regards services for the colocation of servers, only a few service providers such as Oricom offer this service in the Quebec area. This service, intended for medium-size firms, is appreciated by businesses that require hands-on contact with their servers. Such proximity facilitates their efforts to comply with the new risk management requirements with a deployment of data links, which is simpler than always having to connect with the colocation sites of Montreal or Toronto.

The latest measure, which is now being debated, is usage-based billing, which, if applied at the wholesale level, will further reduce Oricom's ability to differentiate its services, besides adding a serious financial problem. In fact, Bell will now be authorized to impose virtually the same ceilings for Oricom users as to its own retail users. The dissuasive amounts charged are based on Bell Canada's retail price with a small discount. The decision therefore leads one to believe that only Bell's network is affected by the traffic of Oricom users. That is absolutely untrue. In the costs of a service provider like Oricom based in Quebec, network costs other than those billed by Bell Canada are significant, and proportionally similar. Therefore, Bell's usage-based billing regime is punitive.

Another problem is that the service provider has to assume the risks related to recover the usage fees from its customers. It can no longer cancel usage fees in cases where the customer has been the victim of a virus that has caused higher than expected Internet usage.

Oricom Internet is not opposed to the imposition of traffic control measures of an economic nature at the retail level. The user pay principle is one of the principles espoused by Oricom, whether it is for business or residential customers. Oricom does not offer anybody an unlimited plan. It is one of the company's distinguishing features. Oricom would however like to point out that it should be perfectly feasible, economically speaking, to have a model at the retail level based on unlimited use. In such a model, the peak-period performance and certain other technical characteristics would be different, but would undoubtedly cater to a type of customer. That is the beauty of a playing field with healthy competition.

If the rates charged to Oricom were only cost-based, as is presently the case for the telephone services offered by telephone companies to competitors, we would not be here today. In such a context of healthy competition, the rates paid by users, including by the high data volume users, will very likely be lower, compared with a model that forces competitor retail prices to mirror those of the incumbent carriers.

● (1645)

I would like to remind the members of the Committee that the discussion here is not about the Internet access that is provided by our own infrastructure, but rather our access to the end client. For Bell, this access is of two kinds: the wire between the central office and the end-user's home, and the aggregation network between the Bell and Oricom centres. Oricom would also like to point out that Bell's aggregation network is also used by Bell to transport its IPTV, which is not subject to usage-based billing, without this traffic being taken into account for its own customers. If competitors want to offer such a service, their IPTV traffic would be subject to these charges under the usage-based billing decisions made by the CRTC.

If usage-based billing of Oricom traffic is required to ensure that incumbent carriers recover all of their costs, which we doubt, it should be based on overall usage and not that of a single client. The links between the central offices and homes are not affected by end-users traffic. Moreover, this overall usage should be charged based only on the actual cost of the incumbent companies. It is a matter of equity, incentive to innovate and healthy competition in a constantly evolving market. Who can forecast today the volume of data that will be required by users in a few months' time? Should the decision be left solely in the hands of the duopoly, which is interested in concentrating and limiting access to certain content that they will like to reserve for themselves?

We are grateful that the Government has recognized this problem and we hope that the CRTC will change its approach to regulation in light of the concerns raised.

Thank you for your attention. I'd be delighted to answer your questions.

[English]

The Chair: Thank you, Mr. Bergeron.

We now go to Mr. Lawford for six minutes.

Mr. John Lawford (Counsel, Public Interest Advocacy Centre): Thank you.

Mr. Chair, committee members, Mr. Clerk and staff, my name is John Lawford and I am counsel at the Public Interest Advocacy Centre, PIAC. With me is Janet Lo, also counsel at PIAC. We are here today to represent PIAC and the Consumers' Association of Canada in your study of usage-based billing and its treatment by the CRTC.

I suspect that many of you have already read Bell Canada's defence of usage-based billing in the *Financial Post* of last week, the follow-up piece from yesterday, and also a response from TekSavvy, who are here today.

Mr. Bibic of Bell Canada stated that "the controversy has been wholly built on myths and misinformation". We agree, but they are Bell's myths.

Voices: Oh, oh!

Mr. John Lawford: Bell says that few customers will be affected by across-the-board usage-based billing: only 2% of users. This is misinformation. All customers, whether they take their Internet service from Bell, Telus, a cable company like Shaw or Rogers, or an independent ISP, such as TekSavvy or those others who are here today, are deeply affected. This includes those users who will never notice that they will be facing these charges. It also includes all those who will be facing the new charges, and this group will be growing the fastest, especially as Canadians' Internet usage continues to increase and become mainstream with more video and data-rich content. This group will also be affected because the result of the CRTC's UBB decisions are that there is no more market pressure to keep retail Internet service prices down. This is because the "wholesale" rate is now the telco or cableco retail rate minus the tiny discount of 15%.

When incumbent telco-based ISPs and cableco ISPs raise rates, it will be in the interest of "competitive" ISPs to match their service pricing. Indeed, they will have to. Thus, all high-speed Internet users in Canada will soon pay too much for Internet, and there will likely be large price increases soon. This is what has enraged the average Canadian Internet service users. They are tired of slow, expensive broadband service, and they fear much worse.

Bell Canada also provides a devil for their story: the "heavy user". This, again, is a mythical creation. First, Bell is compensated for the traffic it carries on its network for competitive ISPs. The CRTC has set rates, based on Bell's and other ISPs' costs, that fully compensate Bell. Bell doesn't lose any money on wholesale traffic. What Bell does lose is the chance to sell its retail at its own too-high prices with its own too-low data limits. We call that competition. This competition relies on mandated access—it's true—but the CRTC agreed that this was the only way to avoid a telco and cableco duopoly that would not lower prices, nor improve service.

Second, heavy users can, logically, impact the network only at peak times. If the goal is to reduce congestion at peak times, pricing measures should penalize anyone using the network at peak times. Any other pricing method is profit-making and is not targeted to capacity. Also, imposing usage-based billing on its wholesale customers' own customers is price maintenance. Bell and the other ISPs would say the CRTC has approved the UBB rate structure, so it cannot be "price maintenance". But whether it is, legally, under the

Competition Act, or not, there is no denying that the CRTC has become so muddled in its decision-making that it is enabling retail price maintenance, in fact. Imposing UBB on the retail market at the wholesale supplier's rate means the only rate in the market is the wholesaler's. This is bad enough, but it's magnified out of all proportion when that wholesaler also has a retail service, as do Bell and all of the other major telcos and cablecos across Canada.

Third, Bell's claim that expensive networks are made costlier by small ISPs is simply untrue, at least as far as the public can see. Why? Because Bell refuses to provide any public information or evidence that their network is congested at peak times or that the users it says are congesting the network are indeed the source of that congestion, and, most crucially, it refuses to provide any evidence that UBB is tailored to reducing that congestion. Bell knows what capacity it sells to the ISPs wholesale. If this is the case, then Bell must be avoiding provisioning enough capacity to handle its own retail traffic at peak times.

• (1650)

Why, then, are we here? Time precludes us from going into the finer details of various CRTC decisions and tariff notices and the effect on innovation of all this, and, crucially, the effect of the 2006 policy direction. However, we welcome your questions on these points, and in closing wish to thank the committee on behalf of consumers for taking the initiative to acknowledge Canadians' displeasure with retail Internet service and its regulation in Canada.

Thank you.

The Chair: Thank you very much, Mr. Lawford.

Thank you to all the witnesses.

Now on to Mr. McTeague for five minutes.

Hon. Dan McTeague: Thank you, witnesses.

I'm going to go very directly to your question, Mr. Lawford, regarding the 2006 policy direction. My understanding is that it forced the CRTC to trust market forces. It was done prematurely, against the advice of the technology panel review, and yet we are left with a decision that is—at least for most objective analysts—confounding.

I'm wondering if the effect of the policy review.... I understand some of your predecessors in terms of the panellists—TekSavvy—didn't really get into this at all. But it surprises me, because I think the origins very much relate to a concern we had as Liberals, when the government under Maxime Bernier decided to rush headlong into this.

Now we have a CRTC whose hands may very well be tied, not able to make decisions—proper decisions that are pro-competitive— or yet alone understand the innovative curve that lies ahead. I have described that probably more bluntly.

Cisco Systems in the United States has made it very clear that in the next four years 90% of the content on the web will be video. This is obviously an emerging problem that the Government of Canada seems unwilling to accept, and decisions made at the last moment to overturn—as they did with Global Live, or in this case—seem to me to be based on rule of thumb rather than any particular regulatory rules that might actually help foster competition.

Your thoughts, Mr. Lawford.

Mr. John Lawford: The policy direction has caused much consternation among consumers, and I think you will continue to see problems like this bubble up to the political level if it stays completely as is.

Hon. Dan McTeague: Should the direction be revoked?

Mr. John Lawford: There are two courses. One is revoke the policy direction. There have been a number of decisions on social measures that we find very anti-consumer-protective, and also have not come through on the competition side. The other way of doing it is to clarify—again—what it means, and the interpretation, unfortunately, that seems to have come out of the policy direction is that there has to be this competitive neutrality.

The way I read the policy direction, that's wrong. When we're talking about economic measures, there doesn't have to be any symmetry between cable and telephone. There only has to be efficient entry of competitors and no extra support of competitors where their entry would be inefficient.

So we're going to go back in this next 60 days and make these arguments about the policy direction to CRTC. But if they don't accept it, there are some courses open. The government could go through section 8 and modify this thing again, or it could just take a look at it and say it was a mistake, the CRTC can't handle this responsibility.

•(1655)

Hon. Dan McTeague: Mr. Lawford, as a background to that, the TPR advised the government to take the creation of a tribunal—a competition telecom tribunal—as a further protection in 2005, and that was ignored by the government in 2006.

I'm hearing two concerns. There's a lot of expertise in the telecommunications sector and there are competition issues here, restraint you referred to as price maintenance a little earlier on the retail side.

It seems to me that the government over there has decided to forget and throw out the wisdom in favour of some facile quick-fix

ideas that have ultimately come back to hurt them and hurt consumers. They've opened the Pandora's box.

I'm wondering what your thoughts are on why the government ought not to consider a specialized tribunal to handle these kinds of matters. Because in 60 days we're going to be back to the same drawing board. We're going to be coming back with a decision by the CRTC saying they're not changing.

Mr. John Lawford: Part of the telecom policy review panel's recommendations were taken and part were not. That one about the competition telecom tribunal was not taken up. I think it would have helped, because the kind of expertise you need in this case needs to have more competition law informing it.

So I think if you're going to take one, you should have taken both, or neither. I'm not sure if that answers your question, but it's missing this other piece.

[Translation]

Hon. Dan McTeague: Thank you, Mr. Lawford.

I would now like to ask the other two witnesses some questions.

[English]

Is there enough bandwidth in this country? We've had it very eloquently said that bandwidth is out in the air, it's open, it's who actually grabs it, it's public.

[Translation]

Mr. Bergeron, what do you think?

Mr. Alain Bergeron: I can tell you about the network in the Quebec City region, given that that is where we are interconnected.

Obviously the more traffic that is generated, the better it is for the industry and customers.

Hon. Dan McTeague: But are the prices it is proposed to bill your company justifiable from the standpoint of the costs of supplying that bandwidth?

Mr. Alain Bergeron: Everything is more expensive in Quebec City. However, the amounts charged by Bell, for example, for the connections—we call it the big pipe—aren't a problem. Where there is a problem is that in addition to paying for a full pipe, there is double billing at the end to compensate Bell in the competitive retail market. That means that if Bell's customers have limits, then in addition to paying for Bell's full pipe, we are going to bill our customers for a limit. It amounts to double billing.

[English]

The Chair: Merci, Monsieur Bergeron.

Now on to the Bloc. Monsieur Cardin, for *cinq minutes*.

[Translation]

Mr. Serge Cardin: Thank you, Mr. Chair.

Good afternoon, ladies and gentlemen.

I happened to run into a Bell representative. He told us that for many years, Bell, Rogers and Vidéotron have already been doing usage-based billing. It exists, and you probably do it too.

I was assured that the CRTC decision was simply a matter of relations between Bell and the suppliers. That was the only place where it was going on. It was not supposed to have a direct impact on billing to the suppliers' customers or resellers.

Can you explain Bell's interpretation and your interpretation for me? At an upcoming meeting we may ask the Department how it sees it, because we know how the CRTC sees it. We will ask how the Department or potentially the Minister sees it.

Can you explain this difference in interpretation for me?

Mr. Alain Bergeron: I think Bell has persuaded the CRTC to think that what it sells to the suppliers, like Oricom, represents nearly 100% of the costs, which is completely false.

That is where the problem lies, quite simply. How can we verify what Bell is saying, that the bandwidth costs that Oricom's customers generate for Bell are causing it enormous financial problems? That is absolutely false.

Unfortunately, Bell has done its homework well in persuading the people in charge of regulation that this is right. The CRTC agreed to review that position today. So we have hope that there will be a correction in that regard at least.

• (1700)

Mr. Serge Cardin: Just to give what I was told some significance, how would you explain the increase that might be passed on to the public, to Internet users, Mr. Lawford, given usage-based billing to the companies?

Mr. John Lawford: You're asking me how the CRTC explains it, or...?

Mr. Serge Cardin: No. Are you convinced that this will run directly counter to the public interest?

Mr. John Lawford: There should be a wholesale market so there is competition. Otherwise, first, you have only baby Bells, if I can put it that way, that are reselling exactly the same thing.

Second, if I am a wholesaler, it is up to me to decide how I earn my money. If it is from unlimited access and the market supports that, fine. For consumers, it is better to have those people.

People are mainly going to stay with Bell, but a fair number of them are going to choose somebody else. That will bring discipline to the market. We may get lower prices, or less of an increase.

Mr. Serge Cardin: Let's go back a bit to what happened in 2006. The order in council seemed to advocate more deregulation of the Internet. That was during Mr. Bernier's brief moment. When we see the chain of events, we are entitled to ask ourselves about the government's position today. Was this not to ensure that the CRTC would make decisions so that in practice, as my colleague was saying, Internet service suppliers would disappear and Bell and the others would come back out on top?

Don't you feel that, fundamentally, the CRTC has met the government's expectations with the last decision it made?

Mr. Alain Bergeron: The market is no longer what it was in 2006. This is 2011 now and network needs have grown enormously. In 2011, we have to look to the future and adapt to the public's current needs in terms of networks. The CRTC has to work toward that. We can't be looking to the past too much.

The Chair: Thank you, Mr. Bergeron and Mr. Cardin.

[English]

We'll now move on to Mr. Braid, for five minutes.

Mr. Peter Braid: Thank you, Mr. Chair.

Thank you very much to our panellists this afternoon.

Mr. Lawford, if I could start my questions with you, just at the end of your presentation you made a very brief statement you wanted to elaborate on, and that was the impact, the effect of the UBB decision on innovation in Canada. Could you just elaborate on that?

Mr. John Lawford: Sure. Usage-based billing, as it becomes widespread, asks people to restrict their usage of bandwidth. And it enforces it with a very effective thing, and that's by price. And it is effective because people do reduce their bandwidth when they get the monthly bill.

But if you are trying to sell high-bandwidth services, that will make it very difficult for you to attract capital because anyone you go to—if you're not already making a deal with Bell or with one of the cable providers where it doesn't count towards your capital—the first question from a banker, I'm sure, would be, "So how are you going to get this through the network? It appears you use this many gigabytes per item, per film or whatever." It would be a very difficult thing to capitalize.

And then on the other end, as your customers want to create businesses, they can't bring data down, they can't push it back up. It just creates an environment of almost fear, really. It's not a matter of something you can see specifically, but I think it's one of those situations where you have what-ifs: what if this company—the next Netflix—could have come out of Canada? We'll never know. What if there was an independent film producer who could have had a hit film and could have got it out through the Internet? It's not going to happen.

• (1705)

Mr. Peter Braid: Thank you.

Why are caps so much lower in Canada than they are in other countries?

Mr. John Lawford: The caps have never been in place. In the United States there were practically citizen revolts there when they tried to be implemented by the cable DSL Internet providers.

There is very little competition in Canada. The only competition you have is from small ISPs with a wholesale access, and that is the only way to prise this open. I have to lay it at that. And that's what the Berkman-Harvard study said, and that's what the OECD said, that we have a very small market and you have to be extremely careful in those circumstances.

Mr. Peter Braid: And could you clarify your position with respect to the debate about Internet traffic congestion and peak periods?

Mr. John Lawford: The peak period is what should be driving this whole debate. You only have problems when your capacity is full. It doesn't matter who is causing it, it just has to be managed. The CRTC said, in the traffic management decision, first, we want carriers to build their networks up; second, we want them to use economic measures; and third, we want them to throttle, if they have to.

I don't see any evidence of their doing the first, mostly because the companies refused to provide these figures for competitive reasons, as the excuse. But Canadians don't know how much they're investing in the networks.

Second, if they're going to use economic measures, it would be much more sensible to use ones where you push people off peak time all equally, as with electricity, to off-peak. That may not be very palatable to the average consumer, but it's much more fair.

Mr. Peter Braid: Thank you.

Mr. Andersen, do you make investments, as a company, in your own networks, or do you rely on the large providers to make those investments?

Mr. Paul Andersen: We constantly look to invest. First, as I said in my opening statement, the Bell portion is only a bit. We have to invest in all the other equipment and portions of the network, buying bandwidth to the greater world so that our customers can reach whatever site they want to get.

The problem we have is that if we want to be more facilities based and build out closer to the end-user, we're not able to do that right now under the current framework.

Mr. Peter Braid: And how do we do that?

Mr. Paul Andersen: There was discussion at the last essential services hearing about something I mentioned in my opening, about ADSL-CO, which would allow competitors such as myself to build out closer to the end-user at the local central office and then pick up there. And there are a lot of benefits. First of all, it's obviously encouraging investment. It's also taking our traffic off Bell's aggregate network and moving it onto our own. But unfortunately the CRTC did not allow that.

The Chair: Thank you, Mr. Andersen and Mr. Braid.

Now on to Mr. Masse for five minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

I think we're hearing some expectations and I want to put on the table where we are. I think it's important as the witnesses come forth.

First, the 2006 Bernier decision created the new contextual rules that favoured the companies versus consumers. Second, when this decision came down, I think it's important to note, although there were tweets and some discussion, Charlie Angus immediately put out a press release condemning it, but the minister vacillated, as well as the Prime Minister, tweeting and so forth. Then we came to committee and we're having hearings today, but that was done against the intentions of the Conservatives here, who voted against having these hearings. You can read that, actually. You can read that transcript. It is actually in the blues and you can follow the dialogue at that time.

The expectations of where we're going really lie in the fact of the CRTC being able to rework its decision, but here's what they posted today, which gives me concern. There are two principles on which they're going to review the decision. One, as a general rule, ordinary consumers served by small ISPs should not have to fund the bandwidth used by the heaviest residential Internet consumers.

The Chair: Mr. Lake.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Mr. Chair, I'd like to raise a question of privilege.

A voice: A point of order.

Mr. Mike Lake: No, it's a question of privilege, actually.

The member referred to a vote that actually happened in camera.

Mr. Brian Masse: No, it wasn't in camera.

Mr. Mike Lake: What happened out of camera was a vote on the order in which we were going to study things. The vote on whether or not to study this was held in camera. The member is actually wrong on the information that he's giving.

• (1710)

The Chair: Mr. Lake, I will have the clerk pull the blues and I'll examine it. Of course, if it was a decision that was made in camera, then I'll come back to the committee with a ruling.

Mr. Brian Masse: Thank you, Mr. Chair. I was entirely referring to the discussion out of camera, which is available on the blues on the Industry Canada website.

We're back to the point where unless we get the minister to change the mandate, we're not likely to have a different decision. In your opinion, does a mandate have to change or be altered to some degree? We need to get to that point first if we want to get ourselves out of this box.

Mr. John Lawford: I looked at the telecom notice of consultation that came out today, and as Rocky said earlier, I found it very leading, in the sense that it's talking about a general rule that ordinary consumers, whether they're those of the small ISPs or not, shouldn't have to pay for the heavy users. Again, that's an assumption. I don't know if it's based on the policy direction or not. Our only experience with the policy direction has been that when there is a matter of interpretation of the policy direction, it seems that either the wrong section is used, or the most favourable one to the companies is always used. Whether that means you should repeal it or give direction as to how to implement it more precisely is a fine question, which I would leave to the government or to the other parties to work out, whenever they get that chance.

The policy direction has proved to be a problem at every turn from a consumer protection point of view. The only thing I could add to that is we will see in this proceeding, but there may be some room to refine that policy direction or to take bits out, because it's going to keep coming back to you guys.

Mr. Brian Masse: And that will be the problem. If we're making submissions to the CRTC, they could rule those out of order because they're not consistent with what they want to hear in terms of point one and point two. That's what I'm worried about as we go through these 60 days.

Mr. Andersen, you made a good point about a business model being dictated to you. Could you highlight that? I think that's important, especially when we want to look at independent decisions.

Mr. Paul Andersen: Yes, if you look, at least in the last decision that was approved, which is now under some review and I haven't had a chance to see the notice today, it's very specific on the cap levels that I as an end user have to provide. If I want, for instance, to offer a slightly higher or slightly smaller one, or offer a flat rate one, it's nearly impossible to get into that. For me to be able to offer the service and have any chance of making a small profit, I pretty much have to match their caps and their overage fees. When it did look like this would be the decision that was going to be implemented and a few ISPs started to post their rates, that's effectively what we saw. We saw that across the board, the independent ISPs felt the only option they had was to implement the caps equally, and now, of course, the consumer has lost choice.

Mr. Brian Masse: It sounds like the oil and gas industry, which we've been debating here quite a bit.

Now we have some of the highest prices, some of the lowest speeds, and we have the caps. Is that not an indicator that this model doesn't work?

Mr. John Lawford: If by this model you mean we have what I think Harvard's Berkman Center said was a lukewarm effort at wholesale regulation, then yes, this model doesn't work. If you're strict about your wholesale regulation, you say cost-based and the wholesalers can do whatever they want, then I think it may work fine. But we have to be very careful, because we have such a small market and there's not much competition.

The Chair: Thank you, Mr. Lawford. Thank you, Mr. Masse.

Now we'll go on to Madam Coady for five minutes.

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): Thank you very much.

Thank you, gentlemen, ladies, for appearing before us this afternoon.

I'm just going to pick up on something my honourable colleague from the NDP was talking about. This was about the CRTC reconsidering the decision.

Michael Geist, the Canada research chair of Internet and e-commerce law at the University of Ottawa, has written that—and I'm just going to quote from him—“Sending the decision back to the CRTC for reconsideration virtually guarantees months or years of additional costly hearings and litigation.”

I'd just like to ask the presenters today from the telecoms whether they consider that to be a concern.

Mr. Paul Andersen: Well, there's always concern. There has been, I think, some concern expressed by many of my fellow ISPs that on this and other decisions the regulatory cost has been quite

great, because the proceedings can take a long time and they're very costly in a participation. Of course that is the uncertainty that exists while we're waiting for this decision.

• (1715)

Ms. Siobhan Coady: So there's a cost to participation in the hearings, but is there a cost to the consumers as well because the UBB is continuing while this is ongoing?

Mr. Paul Andersen: My understanding is that the UBB has been suspended until....

Ms. Siobhan Coady: Okay. Right on. Thank you very much.

I'm just wondering as well.... Critics of the UBB have called it an economic disincentive or a tax on Internet use. Those who are proponents of the UBB say it's necessary for network congestion.

Are you finding that there's a network congestion? I know my honourable colleague, Mr. Braid, raised this earlier, but perhaps you could talk, Mr. Bergeron and Mr. Andersen, about this whole decision or the whole viewpoint that's held by the CRTC that ordinary Internet users should pay for the bandwidth consumed by heavy users, and that there is this network congestion.

[Translation]

Mr. Alain Bergeron: If I may, I will answer in French. To some extent, heavy users may cause some congestion in a network, and ultimately it is the direct supplier that has to deal with that.

If there is congestion, if the heavy users all decide to put excessive demand on the Internet at the same second, Oricom's pipeline to the Internet via Bell will be blocked. Oricom's customers are the ones that will suffer the effects of the congestion. Not Bell's customers. That is what has to be understood. Our company rents a pipeline of a certain size. We pay the wholesale price to Bell every month to rent that pipeline. If, for example, we have 2,000 more customers and we forget to call the supplier, which is Bell, to tell them to enlarge the pipeline, there will be congestion. That's our problem, we handle it and we bill our customers accordingly, based on various marketing strategy models available to us. It isn't Bell's problem. If Bell wanted to deliver its IP television on the same pipeline, for example, there might be congestion. It isn't caused by Oricom's customers. It's a different problem. I would say the engineers are very good in general at finding bypasses for problems. But if our customers create congestion, we are the ones they are going to complain to, no one else, and we will have to handle the problem, and solve it and invest in a more robust network. It is no more complicated than that.

To conclude, we can certainly compete with Bell in some areas with packages it doesn't offer. Doctors, for example, need a lot of bandwidth for some applications. We are going to put together a special package for them, one that seems a little disadvantageous for other customer groups, but it is what enables us to exist, to differentiate ourselves.

[English]

Ms. Siobhan Coady: Thank you.

I want to go back to the doctors case, because I did ask the CRTC concerning that specifically.

Mr. Lawford, the previous panel noted that a new competitive framework needs to be put in place as designed specifically for the Internet. What would this leadership look like? And how does this differ from the 2006 policy directive?

Mr. John Lawford: Mr. Masse also touched on a couple of ideas. You can be quite aggressive. I don't think this would happen in Canada, but you could require the large incumbents to cut off their network arm, their retail arm, and have two separate ones. I don't think we need to go that far. What you need to have is strict wholesale rules where the access is as high in the network as possible, so that the service differentiation can start as close to the Internet as possible.

The commission has been reluctant to do that. I am afraid I have to lay a lot of the blame for their timidity at the feet of the policy direction. It could be that it just needs to be rethought or clarified, but it seems to keep coming back.

The Chair: Thank you, Mr. Lawford. Thank you, Madam Coady.

Now we will go on to Mr. Van Kesteren.

Mr. Dave Van Kesteren: Mr. Lawford, I appreciate what you're saying about our having a large country with few people in it. That really has a role to play. But the technology is the last mile, if I am correct in saying that. Mr. Masse talked about the obvious gap that we have in the rates we're charged, compared with those of other countries. Is that gap caused by policy, a lack of competition, or the failure of our service providers to develop more technology? Are we lagging behind other countries in that last mile, the technology?

I would presume that Mr. Bergeron and Mr. Andersen would probably be innovators in technology, so after Mr. Lawford, maybe I'll ask them what kind of innovation they have come up with and how it's been impeded.

• (1720)

Mr. John Lawford: I went through a hearing recently about getting Internet out to the rural areas, determining whether satellite was affordable, and whether other technologies like WiMax could work.

They can. They haven't been really pushed. When Bell got money from the deferral accounts, which was leftover money from, we think, overcharging subscribers some years ago, they first put DSL out as an option. In other words, they were going to improve their DSL footprint, and then they changed it to wireless.

There are problems with that, but at least they were showing they were trying some new ways of getting the information out there. We don't know, because at the moment if you're in the incumbents' territory, it's mostly the incumbents who choose what technology they're going to use. If they don't have competition, they won't have anyone like these guys nipping at their heels. Then they won't try new things. They won't be forced to do that.

Mr. Dave Van Kesteren: Mr. Bergeron, then Mr. Andersen, what examples do you have of new technology and innovation that has enabled you to be more competitive and, as a result, offer more to your customers? Are you able to do that, or are you being impeded?

[Translation]

Mr. Alain Bergeron: The first example I can give you is IP television which is emerging more or less everywhere. As a supplier, we are called on to invest in innovation projects in this area. But the usage-based billing that is in effect at present doesn't allow us to go ahead with these new technologies in an economically viable way. There is no relationship at present between the real cost and the cost billed to us, and it hasn't been billed as an essential service for a long time. That is Oricom Internet's incentive to develop diverse products. At the global level, the existing market is demanding video and things like that.

[English]

Mr. Dave Van Kesteren: Mr. Andersen.

Mr. Paul Andersen: There are definitely impediments without access to a cost-based central product where we can try to get as close to the customer as possible. It makes it difficult. TV is almost impossible in that framework because of the bandwidth caps and the amount of the bandwidth. There are also services, like voice over IP, where we're not able to offer the same quality that a competitor can, because we're reliant on the competitor's network for a certain portion.

Mr. Dave Van Kesteren: I assume that in your brief, in line 52, that is what you're making reference to.

Mr. Paul Andersen: The answer is yes.

Mr. Dave Van Kesteren: How would you describe the relationship between you and Bell, and Bell and its users?

Mr. Paul Andersen: Do you mean between Bell and my end users?

Mr. Dave Van Kesteren: I mean their end users. Do they treat you the same way they treat their customers?

Mr. Paul Andersen: There are definitely a lot of examples where we have concerns as competitors that we're not being treated on the same level.

Mr. Dave Van Kesteren: Do you feel the same?

[Translation]

M. Alain Bergeron: Yes, it's the same thing.

[English]

The Chair: Thank you very much, gentlemen. That concludes our time there.

Now we'll go on to Monsieur Bouchard, *pour cinq minutes*.

[Translation]

Mr. Robert Bouchard: Thank you, Mr. Chair. Good afternoon, ladies and gentlemen, and thank you for being with us this afternoon.

My first question is for Mr. Bergeron. Mr. Andersen might also be able to add to the answer.

Mr. Bergeron, in your presentation, you said the CRTC has to change its approach to regulation. My colleague asked you a question about the order in council governing communications. Do you think that order is in part responsible for the recent CRTC decision?

•(1725)

Mr. Alain Bergeron: Unfortunately, I'm not an expert in orders and legislation. I can only tell you the effect I see. The rates charged at retail by Bell Canada and by Vidéotron in Quebec have to be the same as what I have to charge. In my opinion, I don't think a government policy should impose that on the market and a competitor should have to follow what the dominant company does.

Mr. Robert Bouchard: So that means...

Mr. Alain Bergeron: Has the market changed? I really can't identify a reason, I'm not an expert in regulatory matters. But I can tell you that the effect is that we have to follow what the dominant company charges its individual customers.

Mr. Robert Bouchard: You aren't able to say?

Mr. Alain Bergeron: It's an unfortunate outcome, in my opinion, but I don't know what caused it.

Mr. Robert Bouchard: You aren't able to say that the recent CRTC decision is a result of the government deregulation order?

Mr. Alain Bergeron: I can tell you at least that I do not agree with the government order being interpreted that way. If I had interpreted it, I would not have done it that way.

Mr. Robert Bouchard: Mr. Andersen, what do you think?

[English]

Mr. Paul Andersen: I'm a small-business owner with a regulatory staff of zero, so I have to do this on the side myself. I can't claim to be an expert on the policy direction I think you're referring to.

I'm not sure if it's so much the direction as the interpretation. If I understand it correctly, it's in market forces where it makes sense. We first have to ensure there's a healthy market for competitors that are on solid footing, and that we have access to cost-based facilities. Until you have that, it could be premature to allow market forces in.

I can't speak for why the CRTC went that way, but to me it seems there could be an interpretation problem.

[Translation]

Mr. Robert Bouchard: I'm asking both of you again, Mr. Bergeron and Mr. Andersen. I noted a comment by Mr. Andersen who said the incumbents wanted to dictate a business model.

Do you think the CRTC has given in to the incumbents' demands in making telecommunications rules?

Mr. Bergeron, what do you have to say?

Mr. Alain Bergeron: I tend to agree with you on that.

Mr. Robert Bouchard: Can you explain why?

Mr. Alain Bergeron: Bell asked, for example, to be able to impose usage-based rates on the market. It agreed to that, although I can see no rational reason for doing it. So it would seem that Bell's arguments are better than what I can understand.

Mr. Robert Bouchard: So the big companies are dictating a business model.

Mr. Alain Bergeron: I want to respond to what Mr. Bibic told me, a few months ago, at a CRTC hearing. He told me, directly, that his company had invested \$9 billion, and so it got a say.

That is what Mr. Bibic, from Bell, told me.

Mr. Robert Bouchard: Mr. Andersen, do you want to add to that?

[English]

Mr. Paul Andersen: I believe that when the chairman was here before you last week, he said that their acceptance of the caps was based on the proposal from Bell, because it matched the retail. Obviously I have a problem with that. I think, as I said in my statement, that a wholesaler should not be charged.... What's appropriate for charging a wholesaler is not necessarily the same as what an end user or a retail pricer would be charged.

The Chair: Thank you, Mr. Anderson.

Monsieur Bouchard, be very quick.

[Translation]

Mr. Robert Bouchard: Mr. Bergeron, when you answered the first question, you said you would not have interpreted the government order that way. How would you have interpreted it?

•(1730)

Mr. Alain Bergeron: When I read the order I thought it was fine. After several interpretations, in some cases, the order is fine, but in other cases, it is not how I would have interpreted it. That is what I mean.

[English]

The Chair: Merci.

Now we'll go to Mr. Lake for the final five minutes.

Mr. Mike Lake: Thank you very much to the witnesses for coming today.

I want to use my five minutes, if I could, to kind of help Canadians who may not be as technically minded as many of the people who are following this issue really closely, as you are and as we try to sound to be, as members of Parliament, sometimes.

As a government, we've stated our commitment to making decisions that increase competition and increase the adoption of new technology and that decrease the cost for Canadian consumers, businesses, and innovators, which may not be consumers or businesses. It may be a hobby for them more than anything. But of course in this world some of the greatest advances have been made by people who were seemingly playing around, almost, in a sense. We want to see that innovation occur.

Keeping in mind that we are trying to explain it at a level that most Canadians who may not live in this world every day can understand, why is this decision important?

Mr. Paul Andersen: Which decision? Sorry.

Mr. Mike Lake: Well, I mean the decision to review the decision, I guess, in a sense. It is the decision to give it a second look.

Mr. Paul Andersen: Well, again, I speak as a small-business owner. I can't speak to all the workings of government.

You have an incumbent that has a huge headstart in this market. It has access to a lot of the right-of-ways and facilities, which they control. They also happen to control a lot of other interests. There are obviously media interests they own.

I think, as a business owner, that I need access to effectively compete in this industry, and I can't do that very effectively with the framework there is right now. What we really need, whether it be from government or the CRTC, is access to inputs so that I can provide competitive services to the incumbents so that there isn't a concern that now—

Mr. Mike Lake: Excuse me for one second. You're talking very technically again. You're kind of lapsing into that.

Mr. Paul Andersen: It's my nature. I apologize.

Mr. Mike Lake: Exactly. Can you kind of clearly articulate what you're saying in a way that people who aren't technically minded might understand? We all watch TV and go on the Internet, but not everybody knows exactly how it works or how it gets there.

Mr. Paul Andersen: Well, everything is moving to the Internet, especially on the video side. Right now, as the decisions have come down, especially the usage-based-billing one, it's going to make it impossible for me, from a cost standpoint, to offer services at a competitive price.

Mr. Mike Lake: So you couldn't compete.

Mr. Paul Andersen: Correct.

Mr. Mike Lake: We'd be back to a world of two providers, basically.

Mr. Paul Andersen: Potentially we could be.

Mr. Mike Lake: Mr. Bergeron.

[*Translation*]

Mr. Alain Bergeron: I agree. The incumbents may have interests that are not in line with the success of competing companies in the

networks they have invested in. That is somewhat what I was saying before. So there is a major conflict between the interests of the one investing, the interests of the competition and the interests of the end user. The end user hopes to get very good services at a reasonable price. The existence of competition will be authorized on the absolute condition that the elements that cannot be shared—we're talking about the last mile here—be in the public domain, which is more or less the case at present. So I would say to the general public that they have to ask themselves whether the owners of the major networks in Canada are entitled to dictate how things work in Canada in exchange for their investments. That is the question that has to be asked at this point.

[*English*]

Mr. John Lawford: From a consumer point of view, it's very important that you make it clear to people, through your decision or your report, that you care how much they pay for Internet; you understand how much they rely on it; and when things get seriously out of whack, whether there's a regulator or not, you will respond in whatever way is appropriate so they have that access. They've said loud and clear that they want Internet, they want it at a good price, and they want to use it every day as much as they can. So I'm very pleased that you're having this hearing at all.

• (1735)

The Chair: Thank you very much, Mr. Lawford and Mr. Lake.

I want to thank the witnesses for your time here today and your excellent testimony.

To the members, with the assistance of the clerk I will review the blues on the point of privilege that was given here and report back to you in due process on it.

We'll see you on Thursday.

The meeting is adjourned.

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