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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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• (1525)

[English]

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

[Translation]

Good afternoon and welcome to everyone.

[English]

Welcome to the 56th meeting of the Standing Committee on Industry, Science and Technology. Before us we have the following witnesses: from the Canadian Network Operators Consortium, Bill Sandiford and Christian S. Tacit; from the Union des consommateurs, Anthony Hémond; from the Canadian Association of Internet Providers, Monica Song; from MTS Allstream, Teresa Griffin-Muir; and via video conference Steve Anderson, from OpenMedia.ca, who has not joined us yet.

We'll proceed in the order on the orders of the day, ladies and gentlemen.

Mr. Sandiford, go ahead for five minutes, please.

[Translation]

Mr. Serge Cardin (Sherbrooke, BQ): Mr. Chair, I have a small question regarding the motion that I sent to the clerk. I would like to know whether the committee wishes to discuss it before the end of the meeting. That would mean that we would have to set aside 15 to 20 minutes at the end of the meeting to discuss the motion.

[English]

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): We don't have time.

The Chair: I'm always at the behest of the committee. However, I have to say that we have a large group here for only one hour, Monsieur Cardin. Then we have only 45 minutes for the final group. If we take—

Mr. Mike Lake: I think actually it might take ten seconds, so maybe just read the motion. I think we'd be okay with that, because we're not opposing it.

The Chair: Okay.

Read your motion, Monsieur Cardin.

[Translation]

Mr. Serge Cardin: We can deal with this in very little time, Mr. Lake. I would be very grateful if we could do this, particularly as far as the witnesses are concerned, because I do not necessarily want

to disrupt the proceedings of the meeting. I do not know whether my colleagues received this motion.

[English]

The Chair: Just go ahead.

[Translation]

Mr. Serge Cardin: The motion reads as follows:

In order to complete the hearings of the witnesses under its study on the recent CRTC'S decision on Internet services billing, that the committee hold a fourth meeting in order to hear the Minister of Industry and the department officials.

[English]

The Chair: Ladies and gentlemen, you've heard the motion. Do we have agreement? I thought so.

(Motion allowed to stand)

[Translation]

Mr. Serge Cardin: Thank you, colleagues.

[English]

The Chair: We'll put it in the schedule. We've now completed our business very quickly.

Go ahead, Mr. Sandiford, for five minutes.

Mr. Bill Sandiford (President, Canadian Network Operators Consortium Inc.): Mr. Chair and committee members, thank you for giving us the opportunity to appear before you today.

My name is Bill Sandiford. I am the president of CNOC, and also president of Telnet Communications, a mid-size competitive Internet service provider. Accompanying me is Mr. Tacit, counsel to CNOC.

The appendix to this presentation gives some background information on CNOC. We will not discuss the many problems caused by the CRTC's usage-based billing decisions that have already been adequately addressed by others, but there are some additional issues we would like to raise.

Bell has threatened many times in the regulatory and political forums that if it does not get its way, it will reduce its investment in its networks. This has never happened before, and the opposite is true.

Bell must invest to keep up with what the cable carriers are doing. Bell's recent public statements to the effect that investment in broadband networks and services is one of its strategic imperatives is sufficient proof of this.

[Translation]

Competition results in investment. Usage-based billing on wholesale service is the artificial tool that enables Bell to defer investing in its network by repressing competition and, in so doing, demand for bandwidth.

Regulators from other countries have not accepted Bell's approach and the CRTC should not be doing this either.

[English]

No other major incumbent telephone company has applied UBB to wholesale services. While the four major cable companies have had the ability to charge for usage for years, none but Vidéotron has actually done so historically for wholesale services.

The other point we wish to raise is that Bell's Internet traffic measurement techniques are not transparent to competitors or end-users, and are prone to errors that have led to overbilling.

So you may ask how we got to this point. The answer is that framework for regulating wholesale high-speed services is broken. There are two main reasons for this. First, the CRTC treats these services as if they are used by competitors to deliver only Internet access to their end-users. This may have been true in the past, but the situation is vastly different now. Incumbent wholesale high-speed services now constitute the broadband platform that competitors need to offer almost all telecommunications and broadcasting services to consumers today and for the foreseeable future.

The second problem is that the wholesale customers of the incumbents are not viewed by the CRTC as being of equal stature with the incumbents when it comes to competitive issues.

CNOC suggests that wholesale broadband access services should be regulated as a broadband platform that can support many types of retail services instead of being regulated by comparison with or forced to mimic the retail Internet services of the incumbents; configured in a manner that allows competitors to choose the attributes of the services provided to consumers, such as speed, throughput, quality of service, type of service, aggregation, bundling, etc.; and priced so as to allow only incumbents to recover the associated costs of providing the services, plus a reasonable and consistent mark-up that recognizes the essential nature of these services.

The CRTC should also require incumbents to provide competitors access that is fairly priced to new network capabilities and facility types as soon as these become available and are deployed by the incumbents to provide services to their own end-users. Otherwise, competitors will fall behind and competition will be unduly lessened.

If this regulatory framework is adopted by the CRTC on a going-forward basis, determinations such as the recent UBB decisions will never be made again.

The notice of consultation issued by the CRTC on Tuesday does not address the core problems with the current regulatory framework for wholesale services. In fact, the questions posed by the CRTC in the notice are unclear and raise the prospect of retail regulation of Internet services, which would be a step backwards.

We hope that the CRTC will amend the notice of consultation to deal with these broader concerns in a clear manner as quickly as possible. A principled and consistently applied wholesale regulatory regime will lead to vibrant retail competition. Canada cannot afford to continue with the status quo.

There is one final topic that I would like to address. We have heard Mr. Bibic from Bell consistently talking about their billions of dollars of investments in their network. To Mr. Bibic we say, "You're welcome". The competitive ISPs in Canada spend hundreds of millions of dollars with Bell every year. We are sure that our expenditures are well used by Bell and the other incumbents for their capital needs.

We would like to thank the Government of Canada and this committee for addressing these important issues. We welcome any questions you may have.

• (1530)

The Chair: Thank you, Mr. Sandiford.

Monsieur Hémond.

[Translation]

Mr. Anthony Hémond (Lawyer, Analyst, policy and regulations in telecommunications, broadcasting, information highway and privacy, Union des consommateurs): I would like to thank the committee for inviting me to testify. My name is Anthony Hémond, and I am a lawyer and analyst in telecommunications with the Union des consommateurs.

The Canadian Radio-television and Telecommunications Commission said the following about usage caps that Bell Aliant and Bell Canada want to impose on independent providers and their clients: "[...] the Bell companies' proposals would incite heavy end-users to reduce their usage, including during peak periods".

However, the usage caps as proposed by the Bell companies would not in anyway incite users to reduce their Internet use during peak periods, since the application of these caps is not based on the usage period, but on a monthly period.

It has been established that usage caps such as the ones that have been proposed do not in any way serve as an incentive to encourage users to reduce their usage of bandwidth, as indicated in the Bell companies' proposals in their tariff applications approved by the commission. Moreover, this tariff application pertained to the Internet service that is most popular with consumers.

When you look at the graph that I provided in my presentation, you can see that the users whose bandwidth usage is between 80 and 300 gigabytes have no incentive to reduce usage and, incidentally, low users are billed excessively high amounts.

We would also like to draw the committee's attention to the cost billed for bandwidth. It was set at \$1.125 per gigabyte for service which was at that time a 5-megabyte service per second, whereas the market price was 3¢ per gigabyte. The Bell companies were asking up to \$1.875 per gigabyte, which is 60 times greater than the market price. Accordingly, the lowest resale price imposed by Bell represents seven times the cost of purchasing a gigabyte.

According to the chair of the CRTC, who repeated this during his testimony before the committee “[...] less than 14% of users are responsible for more than 83% of Internet traffic”. Understand that this data pertains to traffic and not network capacity. In other words, it is possible, on this basis, to conclude that small users are subsidizing heavy users who are already being charged seven times the actual cost.

Despite what is being said, there was never any explosion of average bandwidth use on the Bell network from 2002 to 2008. Indeed, growth was linear and extremely predictable, as shown by the graphs in my presentation.

The chairman of the CRTC, in testifying before this committee, spoke about the “over-the-top” services on the Internet. He was referring in particular to services such as Netflix, or TOU.TV, namely the provision of broadcast services over the Internet. These services are in direct competition with those provided by Bell, whether it would be satellite Bell TV services or IP television services for which the Bell companies are offering unlimited Internet use monthly packages.

I would respectfully submit that it is because of technological development and innovation that these Internet usages are now commonplace and desirable.

The usage caps imposed by Bell companies, that they want to force their competitors, namely the independent ISPs to adopt, would hinder the development of IPTV services by independent providers, and it would also hamper the development of other innovative services that may be part of tomorrow's Internet landscape. Bell's proposals are, in many respects, anti-competitive and likely to limit innovation.

Today it is obvious that the Bell companies are in a position of conflict of interest because of their vertical integration, making them both a retail Internet service provider and a wholesale provider to broadcast distribution undertakings. This phenomenon will be even more in evidence with Bell's purchase of CTV.

The order in council that provided the CRTC with instructions on the implementation of Canada's telecommunications policy is, amongst other things, the reason behind the CRTC decision regarding usage-based billing.

Under this order in council, the CRTC, when making regulations, must take measures that are symmetrical and neutral as far as competition is concerned. The commission is justifying its decision to authorize Bell to force Internet service resellers that use its network to impose usage limits on their clients because the cable companies use the same practices. However, this justification fails to consider the technological differences that exist between these two networks, which to a certain extent could justify cable companies' imposition of usage caps.

We will reiterate how surprised we were by this CRTC decision to impose Bell commercial practices on resellers without any regard for the competition rules that the CRTC is supposed to be protecting, and which regulate the relationship between competitors and their clientele. The CRTC has decided to abstain from regulating this aspect of telecommunications.

Given the desire of the Bell companies to impose their business model, namely to limit usage, and the support that the CRTC appears to be giving to Bell's proposal, we would urge the committee to study solutions that may resolve part of the problem, namely, the functional separation of the Bell companies.

● (1535)

This is a solution that both Great Britain and New Zealand agreed to adopt, and that the European Union integrated in its directive pertaining to telecommunications services:

The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators, including the operator's own vertically integrated downstream divisions. Functional separation has the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier to verify and enforce compliance with non-discrimination obligations.

The results of functional separation in the United Kingdom and in New Zealand must be underscored:

[English]

Functional separation was followed by a flurry of investment activity by entrants, resulting in the strengthening of competitors Carphone Warehouse, Tiscali UK, and BSkyB, and their shift to competing over more flexible unbundled loops instead of almost solely through wholesale offerings. Prices fell by over 16% each year between 2006-2008. Between the last quarter of 2006 and that of 2008 New Zealand saw its penetration per 100 rates jump, surpassing those of Austria, Italy, Spain, and Portugal; it saw speeds increase more than in any other OECD country, and the primary competitor to Telecom New Zealand, TelstraClear, invested in its own fiber ring connecting all of South Island's towns.

[Translation]

During this time in Canada:

[English]

As of September 2008, the monthly price of an unbundled local loop in Canada, excluding prices for remote areas or the densest downtown areas in terms of PPP, purchasing power parity, was roughly 70% higher than in South Korea and Denmark; almost 50% higher than in Italy; 30% higher than in Japan, France, or Norway; and 25% higher than in Finland or the U.K. Indeed, Canada has the highest monthly charge for access to an unbundled local loop of any OECD country.

The Chair: Monsieur Hémond, on instruction of the committee, I've given some leeway, but we're way over time, so I'll need to move on to the next witness.

Mr. Anthony Hémond: Okay.

The Chair: Now on to Monica Song, for five minutes.

Ms. Monica Song (Counsel, Fraser Milner Casgrain LLP, Canadian Association of Internet Providers): Good afternoon.

My name is Monica Song. I am counsel to the Canadian Association of Internet Providers, or CAIP.

CAIP thanks the committee for this opportunity to appear before you today.

The chairman of CAIP, Mr. Tom Copeland, has been called away on a personal matter and asked me to express his sincere regrets for not being able to appear before you personally today.

The Canadian Association of Internet Providers was formed in 1996 to provide effective advocacy and leadership respecting public policy and regulatory and judicial proceedings affecting the ISP industry. Subject to any questions you may have, CAIP would like to focus on three specific points, with a view to re-establishing the trust of Canadians in the industry and the regulatory process.

First, the true measure of telecommunications services is the network's peak-period bandwidth requirement, expressed in kilobits per second, megabits per second, or gigabits per second. Competitors already pay their proportionate share of the costs of provisioning to the network's peak-period bandwidth requirement.

Second, given that all costs associated with the provision of wholesale gateway access services access costs are already fully recovered, along with very healthy markups, there is no principled basis to authorize wholesale UBB. We want a rational tariff based on wholesale pricing principles that the CRTC has always followed, until now.

Third, we hope that the commission has resolved to go back to the drawing board and rethink the appropriateness of wholesale UBB charges. The commission's so-called "retail equivalence principle" is anti-competitive and arbitrary, and must be shelved in favour of established wholesale costing principles.

Bandwidth constraints are the true measure of network value. It's important to understand what usage means and how it relates, if at all, to the true costs of designing and building a telecommunications network, and therefore whether anyone is heavy or light or getting a free ride.

All IP-based services are defined in terms of bandwidth, or the rate of data transfer, measured in kilobits per second, megabits per second, or gigabits per second. When a retail customer orders an Internet access service or a private network service, or any number of other IP-based services, the customer will be asked to select from the available speed restriction of the service. In the case of Internet services, for example, the retail customer will be asked to select a speed of between say 500 kilobits per second or 25 megabits per second.

Thus, a person who has already migrated to the Internet as his or her preferred video content delivery mechanism, a scientist who wants to exchange huge scientific data sets with a graduate student or fellow scientist across the country or on the other side of the world, or a grandparent in a far-flung area of Canada who wants to video-Skype his or her grandchild in Ottawa will definitely find a 500 kilobit per second connection painfully slow and will order higher-speed services. However, no matter how hard the customer tries, he or she will never be able to exceed the preordained bandwidth of the service ordered. The service is therefore constrained or capped at its preordained speed. And the price of the service increases in proportion to the speed ordered. The higher

the speed; the higher the price. In this sense, every IP-based service is already priced to reflect bandwidth intensity.

Carriers and network operators the world over design and invest in their networks based on projected total bandwidth requirement at peak periods—the peak-period bandwidth requirement. This is the true measure of telecommunications services and of the way in which telecommunications networks are planned and built. In contrast, and not to be confused, is usage in association with usage-based billing. Usage in this context refers to the number of bits of data that are transferred over a given end-user connection, usually over the course of a month. Usage is expressed in bytes, as opposed to bits.

As concerns wholesale access services, such as Bell's GAS, in addition to the foregoing bandwidth cap, competitive ISPs are doubly constrained by a further aggregated bandwidth restriction, which is also preordained and paid for in bits per second. Bell's own responses to commission interrogatories make it abundantly clear that the only way that costs associated with the wholesale GAS access service may be derived is on the basis of peak-period bandwidth, expressed in this case in kilobits per second.

The commission found that Bell already recovers all costs, plus prescribed markups, that are associated with the provision of GAS from the pre-existing rates for the wholesale GAS access service. Wholesale UBB charges are therefore pure gravy.

In the interests of time, I will summarize my second point, which is that we want a rational tariff based on wholesale pricing principles that the CRTC has always followed, until now. They've abandoned that in the case of wholesale UBB. And we'd like a return to established wholesale pricing principles.

• (1540)

CAIP's third point: the commission's equivalence of treatment principle must be shelved. The commission abandoned wholesale pricing principles and instead based its approval of wholesale UBB charges on its so-called "equivalence of treatment" principle for wholesale services and retail services.

The problems with this approach are manifold. They have all been touched on by previous witnesses but were not necessarily related back to this misplaced equivalence principle.

I have five points, which I will quickly summarize.

• (1545)

The Chair: Again, we're way over. Hopefully somebody will ask you a question on the five points and you'll be able to do that.

Mr. Wallace said that he would ask you. So you'll be fine in having that laid out later.

Ms. Monica Song: That's fine. Thank you.

The Chair: We're now going to Ms. Teresa Griffin-Muir, from MTS Allstream.

Ms. Teresa Griffin-Muir (Vice-President, Regulatory Affairs, MTS Allstream Inc.): Good afternoon. I am the vice-president of regulatory affairs at MTS Allstream.

MTS is the incumbent telephone company in Manitoba. We offer an array of telecommunications services, including high-speed Internet and IPTV services. Outside of Manitoba we are the leading competitor to Bell and Telus, offering state-of-the-art business services throughout the country.

I'd like to thank the committee for this opportunity to appear before you today to discuss the CRTC's UBB decision.

The CRTC's approval of Bell's proposed usage-based billing for wholesale DSL services further erodes the mandated availability and pricing of wholesale services. As the availability of economically priced wholesale services erodes, so too does consumer choice and the innovation that robust competition delivers.

The CRTC has allowed what amounts to regulator-sanctioned retail price fixing with the UBB decision. The CRTC has done so on the basis of misinformation and misconceptions.

The first misconception is that wholesale UBB is necessary to protect the integrity of the Bell network. The second is that UBB is competitively neutral and transparent because Bell allegedly applies a usage cap on its retail customers' traffic and charges these customers for usage in excess of a cap.

Bell has offered no evidence demonstrating that its network is congested and would fail if steps were not taken, economic or otherwise, to control traffic on its network. Nor did Bell offer any evidence that demonstrated that the traffic of competing ISPs' customers was the cause of any congestion problems. Indeed, the CRTC has acknowledged that there is no cost-based rationale for the manner in which it is allowing Bell to implement wholesale UBB charges.

Moreover, congestion in a telecommunications network is specific to both time and location. No properly provisioned telecommunications network is congested everywhere at all times. Yet the application of usage caps and usage-based billing by Bell on competing ISPs' customers' traffic is applied everywhere and irrespective of the time.

These caps and usage-based charges are sanctioned by the CRTC even though competitor ISPs, when purchasing wholesale DSL service from Bell, purchase not only access to a customer's premises, or the last mile, but also capacity over Bell's network to transmit the traffic generated by all of their customers, or the middle mile.

Having leased and paid for capacity, the ISP should have the right and responsibility to manage its own customers' traffic. By approving wholesale UBB, the CRTC has allowed Bell not only to decide how much capacity a competitor's customer is entitled to, but to charge that ISP for any usage by individual customers in excess of a cap that Bell arbitrarily imposes. This cap is imposed irrespective of whether the ISP has exceeded the overall network capacity it has purchased from Bell.

In effect, Bell is allowed to charge the ISP multiple times for the same capacity. In fact, we demonstrated to the CRTC that a competitive ISP could purchase far more capacity than its end-user customers use in aggregate and still end up paying substantial UBB charges because some of the competitor's customers exceed a completely arbitrary cap.

Through the imposition of a cap and usage charges, Bell will be allowed to dictate the structure and level of retail Internet pricing. In the best case, competitor ISPs will be forced to mirror Bell's pricing. However, today Bell's retail Internet pricing is no longer regulated and the CRTC has neither the oversight nor the visibility to this pricing.

Do I still have time?

• (1550)

The Chair: One minute.

Ms. Teresa Griffin-Muir: The CRTC has no way of guaranteeing that Bell is even charging its customers UBB in the same manner that Bell is imposing UBB on competitors for their customers' traffic.

Placing so much discretion in the hands of a dominant market player can only diminish competition and, with it, crucial innovation and investment in Canadian broadband infrastructure and productivity-enhancing applications and services. This outcome is contrary to the stated objectives of government and longstanding telecommunications policy. It is not a good outcome for Canadians or Canadian businesses.

Thank you.

The Chair: Thank you very much.

Now we're going to our media link, with Steve Anderson from OpenMedia.

Mr. Anderson, five minutes, please, for your opening remarks.

Mr. Steve Anderson (Founder and National Coordinator, OpenMedia.ca): Thanks for having me. I'm surprised that I've been beamed in for this; it's probably going to cost you in overage fees. But thanks for having me, nonetheless.

I'm here as an Internet user, and one of half a million Canadians who have signed the "stop the meter" petition. I want to start with something a little different—a personal story.

Several years ago I was living at home with my parents, and I really wanted to get involved in media-making and being a video producer. I took it upon myself, because I felt passionate about the issue, to try to learn how to produce videos. With Windows Movie Maker, a free program, and by picking up content on the Web, editing, and teaching myself the process, I produced a video that eventually went on YouTube and was viewed by 500,000 people. I subsequently got a job in the video production market, and I ended up winning a couple of awards. Later, I was able to develop my own non-profit organization.

I tell that story because if we had usage fees in place—what we're talking about, what the big telecom companies want to impose on independent ISPs—there's no way I would have been able to do that. There's no way I would have been able to innovate in that way, and there's no way I would have been able to do that from the ground up. Canadians across the country have stories like that. That's the kind of innovation that is under threat right now.

As far as I'm concerned, these new fees are basically a tax on innovation.

I'd also like to give a bit of context to the public outcry that led to this process. It's not just that there are new fees. It's not just the ridiculous idea of forcing their competitors to adopt these new fees. It's also that Canadians face some of the highest prices in the cellphone market. They pay some of the highest prices for Internet access. We're not keeping up with other industrialized countries. We're becoming a digital laggard. We face bad customer service, because that's what comes with a monopolistic industry.

I think it was just yesterday that Bell had to reveal that their metering service doesn't really work. That's a case in point, that the company would impose that billing structure without even knowing if their service worked properly. They might even be overbilling people.

It's within that context that people are really upset. They have decided to draw a line in the sand with this issue. I think that should tell everyone on this committee, and our representatives, that we need structural change in the market.

As another example of the structural problem we have, if you look at the reactions of Bell in particular to this public outcry, and other big telecom companies, they attack their own customers. In what other industry do you see that? Public relations 101 is that when you have a big problem with your customers, you admit fault.

That's not what they did. In fact they were elitist and condescending and disrespectful. That's not something you can do unless you dominate a market and you have captured the regulator. If you ask people why they're so upset and engaged, it's that context.

We're also talking about musicians, grandmothers wanting to share photos, gamers, and people connecting with their family over Skype. The reasons they're so concerned are as diverse as the country of Canada.

Beyond that, in a world that can seem precarious, both economically and ecologically, the Internet represents opportunity, free expression, and hope. Open communications hold a possibility that our own ingenuity and creativity could lead us to a better world. It allows self-determination—the best idea to win. It is this opportunity that I think people want to protect, and it's this that is under threat.

In terms of specifics of what needs to happen here, what I think and what I'm hearing from Canadians is structural change. We need to give full autonomy to independent ISPs in their billing. They should be empowered to have more control over their services through open-access policies.

•(1555)

UBB is really a symptom of a larger problem of market concentration, and that's really what Canadians are angry about. I didn't mean to talk about vertical integration. I hear people on the Internet saying that Internet congestion is really Netflix prevention. The reason they're saying that is that Bell and the other big telecom companies have their own TV offerings, and when they add new fees to the Internet, it pushes people back under their TV services and pushes them away from competitors online. The fact is, there shouldn't be that kind of dominance in two industries.

The Chair: Mr. Anderson, I'm sorry, your time is well up. I gave you some leeway, as I did with the other witnesses. We'll have to go to questions now, and I hope you'll be able to squeeze your other points in on questions from members.

We have two panels today and lots to do.

Mr. Rota.

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

Thank you all for being here today.

People sometimes ask about competing, buying bandwidth off of a major player and then competing against that player. It seems to be a little counter-intuitive at times, and people look at it and wonder why this is allowed to happen.

The reason is, when you have a duopoly, a monopoly, or even an oligopoly where you have major players controlling a market, the only way to get competition is to have competition created. This helps consumers. I believe that's what we're hearing from many of our ISP producers.

So, really, it is a benefit to producers to have that competition. I think that's probably one of the most important things that we have to bring forward. Without the competition, you have a duopoly and basically there's no competition. That's not healthy for the market.

The 2006 policy directive seems to be squeezing small operators out of business. I understand that Bell requested a discount of 25%. You requested 50%. The CRTC ended up giving you 15%, and that was after giving Bell further concessions. The process was driven by the policy directive. The idea was that with less regulation the market would decide the most efficient outcome. Without competitors having fair access through the market, it doesn't have the chance to choose anyone but the major player. I guess that's where we are today.

I understand a Conservative minister gave that policy directive, which neglected the needs of small operators such as yourselves. Were the series of decisions that have been made and given by the CRTC detrimental, or were they beneficial? How did that lead to the situation we're in right now?

Mr. Tacit.

•(1600)

Mr. Christian Tacit (Barrister and Solicitor, Counsel, Canadian Network Operators Consortium Inc.): Thank you.

I'd like to address this, because there's a lot of discussion about the policy direction and its influence. If you read the document, it's pretty neutral in its language, and it's really up to the CRTC to put flesh on the bones.

On the question of access, according to the wording, if the rules relate to access to networks, they're supposed to enable competition from new technologies and not to artificially favour either incumbents or competitors. In our opening remarks, we pointed to the two main problems leading down this path. Those pre-dated the policy direction by six to seven years.

So the problem is that the commission has been looking at wholesale regulation, at least insofar as broadband is concerned, through the wrong lens. That's really where we're at. I'm not going to repeat why, because we've said that in our remarks, but that's really the issue.

Mr. Anthony Rota: Should the lens be through technology, or it should be through...?

Mr. Christian Tacit: The lens should be through looking at broadband access as a platform and not as analogous to the incumbent's own retail Internet service. The second point is that but for the fact that we have to buy this last-mile piece from the incumbents, we would be putting the other pieces together ourselves—buying, leasing, having networks. We need to be treated as co-competitors and not conceptually as resellers.

If the mindset on those two points were not there, we would never have had these decisions in the first place.

Mr. Anthony Rota: So you're almost separating them into two separate businesses: someone who operates the backbone, and someone who retails. Would you have the two separated completely?

Mr. Christian Tacit: Whether we get there, if there's no other remedy some time in the future, is another question. I think we can start with less-severe measures right now. But the commission needs to do a u-turn, as far as we're concerned, to make this competitive marketplace work and give full effect to the intent of the policy direction.

Mr. Anthony Rota: One of the questions that comes up often and I keep reading about is the aggregate UBB. That would let you carry on with business as it is right now. So to clarify what the aggregate UBB is, you would buy a portion of that pipe and apportion it out yourself, as opposed to bringing it down to a micro-level.

I understand that the argument coming from the providers is that usage keeps increasing—some are saying it's by 40%, 50%, or 100% per year. How does the aggregate UBB solution get you beyond that?

The Chair: Be as quick as possible, please.

Mr. Bill Sandiford: The solution is actually very simple. Today we buy pipes to the incumbents over which this aggregate UBB is delivered, or all of our aggregated traffic is delivered. We're fully compensating them for all of the traffic we're getting today via that.

How does it scale as traffic continues to grow? We buy another pipe, a bigger pipe, or an additional pipe, and they're fully compensated for the uses we push down that pipe.

Mr. Anthony Rota: Does that compensate for capital as well?

The Chair: Sorry, Mr. Rota, you're way over.

Thank you, Mr. Sandiford.

Now from the Bloc Québécois we have Monsieur Cardin.

[*Translation*]

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

My first question is for the representative from the Union des consommateurs. We have limited time and I have several questions I wish to ask.

In my opinion, the Bernier decision is behind this mess that we see today. It is behind several of the CRTC's anticompetitive decisions, including broadcast decision CRTC 2008-117, which deals with the reclassification of bandwidth access services, and recent decisions on usage-based billing.

In your opinion, did the CRTC misinterpret the order in council when it made this decision?

Mr. Anthony Hémond: We can conclude that the CRTC misinterpreted the 2006 directive. Indeed, in order to achieve competition at a lower cost, certain aspects should have been regulated and we should have had effective regulations, something that the CRTC did not do when it took the deregulation approach. The basic premise was that there was a great deal of competition, which was not necessarily the case. So there has been an interpretation problem with this directive.

Mr. Serge Cardin: Further to the CRTC decision on Internet speed equity, namely speed matching, did the CRTC in fact implement the Bernier decision in favour of consumers and competition?

Mr. Anthony Hémond: Once again, we have to wonder about the way that this decision was implemented to get this result. Indeed, speed matching did appear to make sense when the 2006 directive was implemented, whereby competitors were to have access to the same speed as incumbents. In this instance, we had a tangible, easy and obvious application of the directive to state that competitors must benefit from the same things. So sometimes the CRTC's interpretation of the decision is confusing and misleading, but at other times, it is applied properly. So we are somewhere between the two.

• (1605)

Mr. Serge Cardin: When the CRTC issued its broadcast decision CRTC 2008-117, the government asked it to review its decision in an order in council dated December 10, 2009. In this order in council, Minister Clement ordered the CRTC to verify, among other things, and I quote:[...] whether the impact of these wholesale requirements unduly impairs the ability of incumbent telephone companies to offer new converged services [...]

If I understand correctly, when the CRTC interprets the Bernier decision in favour of incumbents, which is anticompetitive, the government says nothing, but as soon as it is interpreted in favour of small providers and competition, the government asks the commission explicitly to overturn its decision in favour of Bell. Do you understand?

Mr. Anthony Hémond: It does give this impression. Indeed, the speed matching order only considered the investment of incumbent companies, so that they would continue investing, whereas in the usage-based billing decision, it was just the opposite. So there appears to be an about-face that is done every time these decisions are made.

Mr. Serge Cardin: Do you feel that the spirit of the requests made by the government in order 2009-2007 is respected in the CRTC decision on usage-based billing?

Mr. Anthony Hémond: No.

We challenged the implementation of this directive and the issues that were interpreted by the CRTC. We informed the commission at that time that, as far as usage-based billing was concerned, in our opinion, the CRTC did not properly interpret the directive.

Mr. Serge Cardin: In your opinion, if we want to have better telecommunications services at better prices for consumers, would it be preferable to regulate the sector more or would it be preferable to follow the Conservatives' strategy to deregulate?

Mr. Anthony Hémond: Deregulation only works in a highly competitive market.

In order to have a competitive market when there is no competition, we have to establish the conditions required to have this competition. So we out of necessity have to regulate in order to enable competition to occur and we have to be able to regulate at the right places. That does not mean regulating the entire sector.

Nevertheless, it would appear that, in the case of certain decisions—particularly the choices made by the CRTC in regulation 2008-2017 regarding the definition of essential service—poor choices were made which do not allow for the participation of competitors and good competition in this sector.

So if we want to establish good conditions and become—or become again—leaders in this sector, that would require targeted regulation in the right places.

Mr. Serge Cardin: There appear to be some inconsistencies between these two aspects. On the one hand, we need to protect investments, and on the other hand, we must encourage competition. What do you think about this inconsistency regarding the decisions or orders that have been made?

[*English*]

The Chair: Be very brief, Monsieur Hémond.

[*Translation*]

Mr. Anthony Hémond: In the decision on, among other things, speed matching, the government order was aimed at protecting the investment made by companies, whereas, in the other decisions, this investment was set aside. So there is a lack of consistency in the policies.

Do we want open competition and a competitive market? Do we want to provide the conditions in order to obtain this competitive market or do we want to protect the investments that are made solely by a few players?

We need to have a competitive market and we must not simply protect these investments.

The Chair: Thank you.

Thank you, Mr. Cardin.

[*English*]

We will now move on to Mr. Wallace for five minutes.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I thank our guests for coming this afternoon.

True to my word, I'll give Ms. Song a few seconds to tell us about the five points.

Ms. Monica Song: Thank you.

The commission based its approval of wholesale UBB on this so-called equivalence of treatment principle that the commission attempted to bring between wholesale access services and retail Internet services. Other witnesses have already described to you that they are not comparable services, but I won't go back over that.

The five problems are as follows. First, the requirement that the competitors mirror the retail pricing plans of Bell or any other wholesale provider is retail price maintenance by any other name. Not only the effect, but the stated intent or purpose of wholesale UBB is to prevent competitors from reducing the price or influencing upwards the prices they are charging their customers. That's effected through the medium of Bell's control over the wholesale access service.

Our second concern is that IPTV is not irrelevant to this issue. Even though competitors and consumers have raised it time and again, the CRTC continues to stick to the myth that IPTV is somehow separate. There is no separate network for IPTV. If retail equivalence and the possibility of congestion are the justifications for requiring competitive ISPs to mirror Bell's retail pricing plans, then the fact that Bell's own bandwidth-intensive IPTV services are exempted by Bell—a vertically integrated network, distribution, and content provider—cannot be considered irrelevant.

Wholesale UBB as proposed is also not a fair and transparent Internet traffic management practice. First, it is applied to the amount of data transferred over the course of a month. Monsieur Hémond and Ms. Griffin-Muir have pointed out that metering 24 hours a day every day will do nothing to reduce congestion—if indeed congestion even exists—or peak-period traffic. Second, if the reduction in peak-period traffic were the real objective, then Bell would have applied UBB to its own IPTV services.

●(1610)

Mr. Mike Wallace: Are you a lawyer? You are. What point are you on? Three, four? Which point are you on now?

Ms. Monica Song: I'm at three.

Mr. Mike Wallace: Can you get to points four and five quickly?

Ms. Monica Song: All right. Retail equivalence—and this is an important point—is, practically speaking, unenforceable, because no one really knows what the retail pricing plans of Bell are. There's no regulation of retail pricing. There's no requirement to publish. At any given point in time, Bell may have hundreds of retail pricing plans out there. So it's fundamentally unfair, because the commission doesn't have the power to police or to monitor Bell's retail pricing.

Third, I would say that retail equivalence allows the commission to do indirectly what it said it wouldn't do, which is to regulate retail pricing. Because it's regulating the retail pricing of competitor fees.

Mr. Mike Wallace: I'm going to stop you right there. I appreciate that. Somebody could ask for the other two.

Here's my fundamental question, based on the presentation we just had and the presentations we've had today. It's a big learning curve for me, I'm not denying that. I knew nothing about it before these hearings started.

I'm of the mindset that the incumbent could sell you a basket of apples, which are bits and bites or whatever you want to call them, and you sell them to whoever you want at whatever price, and they get their price, you get your price, and we'd be done with it.

It's been said today, and I don't understand.... You're saying the CRTC made an error in their judgment. I don't understand why you couldn't get your message to them. Maybe Mr. Tacit could answer that question.

Mr. Christian Tacit: I think it comes back to the two fundamental framework issues that we discussed. They view wholesale, high-speed access as equivalent to the retail Internet service offered by the incumbents. If you apply that equivalency, then it leads you down the UBB path, because then you're trying to make us look like them.

The other point is if you don't recognize that we are co-competitors across the board of equal standing, of equal stature, and we're perceived as a reseller, then it reinforces the first point.

You'd have to ask them, not me, but reading their whole jurisprudence over the years leads me to this conclusion.

Mr. Mike Wallace: Are you going to be able to make your points in the 60 days that the CRTC has added to relook at the issue based on the—

Mr. Christian Tacit: We certainly hope so. We hope that this will be a turnaround in how they view the framework. I think this was the most extreme example that led to this public outcry of something that's been going down this path for many years and has harmed competition. So we hope this is the turning point.

The Chair: Thank you, Mr. Wallace.

Bits, bites, gas, broad and bandwidth. A lot of people across the country are probably having a challenge keeping up with that.

I'd like to remind everybody that Mr. Anderson is via video link. I know that it's easy to see the witnesses here in front of us and forget. I'm certain Mr. Anderson wouldn't want that to happen.

Mr. Masse, five minutes, please.

• (1615)

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you to the witnesses for being here today.

I think it's important to establish that there has been a series of decisions and deregulation that has allowed this current framework to emerge. It's not the fault of the people coming to the table here. It's the plan that's been laid out, and now we're reaping the results. That's really what's happened.

The first question I have, and it's to anyone who wants to answer or to all, is what I'm really concerned about is the CRTC's framework that they issued the other day. I don't think that gives the result we're looking for if they follow those types of hearings. I think we're going to have a similar decision come back or some other type of a hybrid type of a system, unless we get them to re-establish how they're going to have those hearings.

That's why I was disappointed with the minister. If we're just going to wait for the 60 days to answer the two questions in the framing that they've done, we're not going to solve the fundamental problem.

I'll turn that over to anyone who wants to talk about that.

Mr. Christian Tacit: First of all, when the commission issues a public notice like this—now they call them notices of consultation—they're not necessarily carved in stone. People can write in and say, “By the way, we think you need to broaden it, we think you need to clarify the language”, and so on.

This thing has only been out for a couple of days, so stayed tuned.

The Chair: Mr. Masse, Mr. Anderson wanted to comment on that question, if you choose.

Mr. Brian Masse: Yes.

The Chair: Mr. Anderson, did you want to comment on that question?

Mr. Steve Anderson: Yes.

I think the CRTC needs a clearer public interest mandate, for one. For another, I think they should be having public, in-person hearings, not just some sort of online consultation. I think that longer term, as I was trying to say earlier, we need structural change, and when it comes to the CRTC that means, I think, that we need a commission that is based in the citizenry, which means that the chair and the majority of the people on the commission should be from the public interest community, not from industry. I think that's a fundamental structural problem with the CRTC that needs to be changed.

Mr. Brian Masse: Mr. Sandiford, did you want to comment on that?

Mr. Bill Sandiford: I echo the comments of my colleague. The notice of consultation, as it came out, leaves a small window open for us to provide our feedback to the commission on how that process is going to run. We intend to let them know what we think of the notice of consultation and where we think it needs to be broadened or changed in order to make sure we get a full and just answer to the questions that are being asked to them.

Mr. Brian Masse: Right now the CRTC has identified two simple questions. You can argue anything else you want under the sun, but at the same time if there's not a serious recognition by the CRTC that other issues need to be addressed, they could simply say their consultations are about A and B—or 1 and 2—in terms of those questions, and anything else they can strike out. Unless there's a real directive....

Ms. Song, do you want to comment on that?

Ms. Monica Song: I think you're pointing out something that's probably true. The concerns that CAIP has about this notice are that the commission does not appear to have abandoned the notion that it wants to keep wholesale looking like retail. So that same issue seems to be there. But as my colleagues have pointed out, what we can do at this point is simply point that out in written submissions to the commission, and then we may be back before you on this again.

Mr. Brian Masse: I hope the commission is going to get that as a message. Hopefully there will be some political leadership that can be done to direct the commission. Otherwise, once again, they could just come back with that framework.

Really quickly, I want to follow up on wholesale and retail. Can you highlight how that also defeats competition, that philosophy?

Ms. Teresa Griffin-Muir: I think that's been the struggle for the commission all along, recognizing that although there is a mandate to allow market forces, that mandate was really directed at the retail market, and unless there's reasonable wholesale access and a framework that's technologically neutral—so as technology evolves, wholesale access continues to evolve with it—there will not be adequate competition. It's a mindset and a struggle that has been faced internationally, trying to figure out how to achieve that.

Rather than just close the door, which I think is what this decision does, you have to try to figure out a way that will provide fair access from the vantage point of all parties wanting to compete, not just from the vantage point of the incumbent.

• (1620)

The Chair: Thank you very much, Madam Griffin-Muir.

Madam Coady, for five minutes.

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

Thank you for taking the time to be with us today, and thank you, Mr. Anderson, for joining us via the Internet.

I have a broad-ranged.... We're talking about policy directives and.... I'd like to come back out to a vision here, for a moment.

I'm concerned. I'm hearing all about what's happening today, but what are the consequences if Canada does not have a very strong and viable broadband, does not have the capability and aptitude that we

need to have in order to progress? I'm a business person; I think I've said this at this committee before. I own a company in biotechnology. We trade in data all over the world. We have to have access to the Internet. What are the consequences to our country if we don't do something better than what we're doing?

Ms. Song talked about the wholesale pricing principle as being a tactic we could employ. Mr. Anderson, you perhaps might want to lead on this one. I note that Britain has a strategy, a superfast broadband future that wants to be the best broadband in Europe by 2015. I think we could talk about the 2006 policy directive and all those things, but are we going to be where we need to be in order to be competitive and successful and have the jobs of the future that we need?

Mr. Anderson, I'll turn to you first, and then Ms. Song.

Mr. Steve Anderson: I think it is very important for those very reasons. And certainly not just the U.K., but Australia and the U.S all have broadband plans, and we don't have one of those. I think that's a key item. We just need some sort of plan to expand broadband. I think some of that is a structural problem. We do need to separate out wholesale and retail, and I think that will actually bring down prices.

In terms of how important it is, I think it's hugely important. I'm part of a community here in Vancouver of media and business innovators, and certainly they're going to feel this more than anyone else. The next person who creates something in their garage, like Google or something, won't be able to afford these usage fees and you just won't hear about the next Google, or in Canada, NowPublic or HootSuite. So it has huge implications on entrepreneurship and innovation.

Ms. Siobhan Coady: Thank you.

Ms. Song, you talked about going back to a wholesale pricing principle. I'd like you to come out and talk about how important it is to be at the leading edge here for our country. We heard that we need driven leadership in this area. Would you care to comment on this, please?

Ms. Monica Song: I think all the honourable members and everyone else in this room knows that. Successive Canadian governments of all stripes have consistently put on the top of their agenda bringing Canada to the forefront of the digital economy worldwide. But the reality is that since 1994, we've actually gone backwards according to metrics of price, speed, and affordability. I think one of the reasons for that is the lack of competition. Lack of competition is bad for consumers. Lack of competition is bad for innovation, because there aren't adequate incentives. CAIP's call for a return to wholesale pricing principles is designed to ensure that we have, as much as possible, a competitive marketplace.

Ms. Siobhan Coady: Thank you very much.

I want to ask you a final question, Madam Griffin-Muir, and perhaps you can roll two thoughts into this. First of all, you said that Bell recovers all its costs plus markups, and that that is pure gravy. I'm wondering if you'd expand on that.

The second point would be that there's no evidence of congestion. I'm wondering if you could wrap around that this whole issue of how the Government of Canada and the people of Canada can move forward in broadband and what the strategy for that would be.

•(1625)

Ms. Teresa Griffin-Muir: Actually I believe my colleague here said the rest is all gravy. I'm not disputing that. What I think is that certainly with more usage and as usage grows.... And by and large every network provider wants usage to grow, but they want to be able to be compensated for the usage. So the policy will recognize that there is some cost to investment and that those accessing the network, both wholesale and retail, have to pay that cost, but not over and above that cost to a particular provider simply to allow that one provider to offer the service they want or to stifle competition.

So I think as Ms. Song was saying, incenting competition has to be the cornerstone, and finding a way to have a wholesale market that allows competition to flourish in broadband is the best way to get innovation in this country.

The Chair: Thank you very much, Madam Griffin-Muir.

We now go to Mr. Van Kesteren for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair.

Thank you, witnesses, for appearing before us.

Our illustrious chair pointed out just how difficult this is for the general public, and there's no question about it. I think most of us thought we understood, but as we delve into this further, it becomes complicated.

I tried to simplify it at the last meeting. I compared the pipe, and I suggested that what you were doing was buying a segment of that pipe and what you want to do there is really your business. Bell was basically saying they wanted to change that framework. They want everyone to do what they're doing. So that's one simple illustration, and I hope that sticks with people. But I'm going to do something else at this point. I'm going to give you an opportunity, because the next panel is going to be Bell. We're going to have Bell in front of us.

I'm going to start with you, Mr. Sandiford. If at this time you had the opportunity, realizing that most people aren't operating on this plane, what questions would you want us to ask Bell? While you're thinking about that—

Mr. Bill Sandiford: How many hours do we have?

Mr. Dave Van Kesteren: You don't have a lot of time. You have time just to make your point, so make it.

Mr. Bill Sandiford: I think it's quite simple. We've felt all along that we were quite adequately compensating Bell for the services they're providing today. We want to know why they think we're not doing so. Hundreds of millions of dollars are spent every year by the competitive ISPs on services, either from Bell or from the other incumbents across the country, which we require to conduct our business.

We constantly hear them talking about how it's their network and we're parasites on their network. I don't know how many of you would call somebody who gives you hundreds of millions of dollars a parasite. I'm unclear as to why they think of us the way they do. I'm unclear as to how they think they're not compensated adequately for the services we get from them.

Mr. Dave Van Kesteren: Mr. Tacit.

Mr. Christian Tacit: I would ask them two questions.

One, how is it fair that their IPTV traffic that traverses the same network, the same core network, can be exempt from UBB when it's providing a huge load? We all know how intense a video is. Anybody who's ever streamed or downloaded knows that. How is it fair to do that and yet impose it on everybody else if they want to do something similar?

The other thing I would ask, which is an even more basic question, is how is it that they're doing this when nobody else in the world is doing it?

Mr. Dave Van Kesteren: Ms. Griffin-Muir or Monsieur Hémond.... Maybe we will go first with Madame.

Ms. Teresa Griffin-Muir: Actually, I'd just ask them whether they'd feel as comfortable introducing retail usage-based pricing if they were not able to impose it on their wholesale customers.

Mr. Dave Van Kesteren: Monsieur.

[Translation]

Mr. Anthony Hémond: So we need to ask the question and they need to demonstrate that their network is congested. This would be one of the first things that have to be shown because we still do not have any evidence. It is no longer the time to ask questions, it is time to act. When we note that the practices of a business are anticompetitive, we need to take the requisite steps to open the market up to competition. This is essential if we want to once again become leaders in this sector.

[English]

The Chair: Did you want to hear from Mr. Anderson?

•(1630)

Mr. Dave Van Kesteren: Certainly.

Mr. Steve Anderson: I would ask them if, instead of our having to worry about their different incentives from the different markets, it would be better for the public to split up their different businesses so that they're separate entities.

Mr. Dave Van Kesteren: That's great. I want to thank you.

I want to also point out that it's this government's chief concern to introduce competition. I think that anybody who knew our past industry minister, who understands the free market better than any, would certainly know that every one of his directions was inclined to do that. It's working out very well.

As we can see, our Prime Minister and our industry minister acted very quickly and showed that they were—

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): These guys wouldn't be here without deregulation.

Mr. Dave Van Kesteren: Yes. They were showing that we were very concerned about this and we wanted to do something.

So I thank you for that opportunity and I thank you for coming.

Mr. Chair, those are all the questions I have.

The Chair: Thank you very much, Mr. Van Kesteren.

Now we'll go to the Bloc and Mr. Bouchard. *Vous avez cinq minutes.*

[Translation]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chair. Good afternoon, ladies and gentlemen.

Earlier, my colleague asked Mr. Hémond some questions. I would like to hear from the other witnesses. I would like to begin with Ms. Song. Do you feel that the government should regulate further or do you feel that it should deregulate, as it seems to be wanting to do now?

I would like to hear from the other witnesses. We have heard from Mr. Hémond, but I would like to hear from each of you in this matter.

[English]

Ms. Monica Song: Thank you for your question.

I want to make a distinction between the retail market and the wholesale market. I think it would be fine to leave retail markets to the operation of market forces to the maximum extent possible, as long as we have a robust wholesale regime. That used to be the philosophy of the commission a long, long time ago, but we've deregulated retail telecommunication markets almost wholly and the stopgap, the backstop, has been removed.

I think that's the problem. If you're not going to provide a robust wholesale regime that allows competitors to enter into the market, then your only options are to consider more obstructive measures, such as retail re-regulation or structural separation, which others have suggested, and certainly there are governments across the world that are considering that for telecommunications because it's an industry that has huge sunk costs. There's a balance to be struck there, and I think we've lost that balance.

[Translation]

Mr. Robert Bouchard: Ms. Griffin-Muir.

[English]

Ms. Teresa Griffin-Muir: I would agree with Ms. Song.

Since almost all services are deregulated on a retail basis, there has to be a framework that supports competition through wholesale regulation and that ensures access to incumbent networks. Those networks, by and large, were built over a long period of time under a very different framework, one that guaranteed an opportunity for return on investment. There has to be recognition that it is not only more economically viable to not fully duplicate every network, but it's not even economically possible to do so. There has to be a framework that acknowledges that and that gives competitors access to those networks at reasonably economic rates.

[Translation]

Mr. Robert Bouchard: Do you want to respond to those comments?

[English]

Mr. Christian Tacit: I just want to say that I agree fully with that. It really does amount to proper wholesale regulation. It will not only serve to help the retail markets. You may actually see the cable companies and the phone companies competing for the wholesale business as well if they know that they are consistently, in a

principled way, subject to economic regulation that does not allow them to turn themselves into a strictly duopolistic market.

• (1635)

[Translation]

Mr. Robert Bouchard: I would like to ask you a question, Mr. Hémond. My colleague asked you some questions about deregulation, particularly with respect to order 2009-2007. In your opinion, do the CRTC decisions on usage-based billing respect the spirit of the requests made by the government in decree 2009-2007?

Mr. Anthony Hémond: Do you mean in applying the order to bill for usage? I find it difficult to see the...

Mr. Robert Bouchard: Did the CRTC in its decision comply with order 2009-2007 regarding usage-based billing?

Mr. Anthony Hémond: At the time, the 2009-2007 government order was aimed at protecting Bell Canada's investments. Usage-based billing shows the will to protect the investments made by Bell Canada. Usage-based billing, it is argued, is aimed at protecting investment. It has to do with the enforcement of this order, for there should be a very specific field, which would be limited to speed matching, or equivalent speed. However, it has overstepped the boundaries of its application.

The Chair: Thank you, Mr. Hémond, thank you, Mr. Bouchard. Mr. Lake, you have five minutes.

[English]

Mr. Mike Lake: Thank you, Mr. Chair.

Thank you to the witnesses for coming.

Just taking a look at the actual order from 2006, it says pretty clearly that the commission, "when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives".

It goes on to say that the commission, when relying on regulations, should use measures that satisfy the following criteria, namely that if they are of an economic nature, they neither deter economically efficient competitive entry into the market nor promote economically inefficient entry.

There's a lot of talk in there about competition. That's what this is all about today.

As we go through this process, in the end we're going to have to come up with a report and ideas. I want to focus this last round of questions on ideas moving forward.

In your view, as we look to increase competition, increase innovation, and bring prices down for Canadian consumers, what do you suggest? There's a lot of talk about the problems with the decision. What are your suggestions?

I'll start with the bigger organizations. Maybe I'll start with Kate and then go to CNOC.

Ms. Monica Song: If I can say one thing, one guiding principle that would be of assistance would be to return wholesale regulation to a true cost-based regime and don't impose charges where there are no underlying average costs underlying the proposed charges.

I could say a lot more, but I'll leave it to some of my colleagues.

Mr. Mike Lake: I'll come back to you if everybody else finishes.

Go ahead, Mr. Sandiford.

Mr. Bill Sandiford: Ms. Song took some of the words out of my mouth. We want to be able to fairly and adequately compensate incumbents for the services we use on a cost basis, not on a value basis. We want to compensate them based on what their actual costs are to provide the services to us, plus a reasonable markup, as opposed to what their perceived value of the services is, minus a discount. We want a cost-based regime, not a retail minus-based regime. We need that to effectively compete.

Mr. Christian Tacit: If I could just add very quickly, if you look at the three bullet points on page 3 of our opening statement, that's really our prescription right there, so I won't repeat it.

Mr. Mike Lake: Okay.

Ms. Griffin-Muir.

Ms. Teresa Griffin-Muir: I have to agree. Actually, MTS Allstream has long been an advocate for cost-based pricing and competitively and technologically neutral pricing, so we're not frozen in time. We seem to be very good at breaking up dominance, not very, very good, but better than at actually anticipating that as services become available in the market, the underlying infrastructure also has to become available on a wholesale basis.

I would agree that the more robust the wholesale framework, the more likely there will develop competition between incumbent service providers at the wholesale, not just the retail, level.

Mr. Mike Lake: Okay.

Monsieur Hémond.

[*Translation*]

Mr. Anthony Hémond: The most appropriate response would be, as I mentioned, a separation of functions to allow for investment at that level of the network of companies and thus ensure that there will be competition. In the network, there are some places that cannot be duplicated or rebuilt, and thus we should guarantee the openness of the network so that the competitors can get connected. The advantage is that the company who would be in charge of the network would be very interested in seeing a great deal of competition because its sales would go up. It would make a profit, and it could reinvest in the network and improve it. These results were encouraging in Great Britain and in New Zealand. Therefore, let us take that as an example so that we can have a potential for competition and openness and investment in our networks.

• (1640)

[*English*]

Mr. Mike Lake: Mr. Anderson.

Mr. Steve Anderson: I agree with all of that, but I think also we need to remove the incentive to be anti-competitive between different markets, because the wholesale and retail are different markets, so I think we should separate those, as well as the television market. I think also we need accountability and transparency in the market. All of these billing practices, traffic management, should be subject to audits and the results should be made public.

The Chair: Thank you very much to the witnesses.

We're going to suspend right now for about three minutes, and then we will stay on track for the next panel, if the new witnesses would like to come forward as the old witnesses exit.

Thank you very much, ladies and gentlemen.

We'll suspend for three minutes.

• _____ (Pause) _____

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• (1645)

The Chair: Ladies and gentlemen, we're back with the 56th meeting of the Standing Committee on Industry, Science and Technology.

We'll go first to our two witnesses. We have Bell Canada and Shaw Communications.

First we'll go to Mr. Bibic, senior vice-president, regulatory and government affairs, Bell Canada.

Mr. Mirko Bibic (Senior Vice-President, Regulatory and Government Affairs, Bell Canada): Thank you, Mr. Chairman and members of the committee.

I have with me Jonathan Daniels, who is vice-president, regulatory law, at BCE.

Thank you for this opportunity to present our views in person on the issue of wholesale usage-based billing. We will use this time to help set the record straight by starting with a few key points of clarification.

First, Bell has applied usage-based billing for retail Internet services we offer in our competitive footprint since December 2006. But in doing so, we make sure our customers have a wide range of options available to them, each with generous amounts of usage to ensure a high-quality Internet experience.

Now, the suggestion made by some that usage-based billing makes Internet unaffordable is plainly wrong. With Bell, customers can purchase blocks of Internet time that provide three times the average monthly usage for only \$5. A block of Internet time that provides eight times the average usage can be purchased for \$15. With that, a customer can watch nearly 600 hours of additional online video each month. That's over and above the hundreds of hours of online time included as part of our monthly plans.

We also have award-winning tools in place to help all of our customers avoid unwanted usage and ensure their Internet experience is what they want it to be.

The second point of clarification is that the CRTC decision that has prompted current debate over usage-based billing is only about a very small subset of the wholesale marketplace and therefore affects only about 1% of Canadian Internet subscribers.

With respect to another general misunderstanding, I also want to point out that the CRTC decision does not impact Internet services for businesses, large or small.

What is at issue and what we do not believe has been fully addressed as part of your meetings thus far are several fundamental questions related to fairness.

From a billing perspective, we believe there should be no discrimination between retail and wholesale customers. All customers should be treated in the same way, and usage-based billing is the fair way to price Internet use. Simply put, the heaviest users should pay more than those who use less.

[Translation]

Fairness is also a factor when we consider the fact that for over 10 years, the CRTC has authorized cable companies to apply usage-based billing to the wholesale providers who use their facilities.

All that Bell is asking from the CRTC—and we believe that this should be clear to everyone—is an opportunity to set, on the same basis as the cable companies—who are our biggest competitors—the prices billed to the wholesale Internet service providers who share the network with Bell's retail Internet clients.

Unfortunately, these issues are still receiving very little attention. Instead, people are concentrating on a certain number of myths.

Among these myths, there is the idea that usage-based billing will stifle growth, which is absolutely false. You have only to study the retail Internet market in Canada to see that growth is going on unabated. Even in the wholesale market, where certain cable companies apply usage-based billing, nothing has indicated any slowdown in growth.

[English]

Also inaccurate are suggestions that wholesale usage-based billing prevents wholesale ISPs from differentiating their products from our own. Despite our major network investments—\$3 billion between 2006 and 2010 to deliver additional Internet capacity and faster speeds—wholesale ISPs continue to receive significant regulated discounts on the prices they pay to use our network facilities.

These discounts give wholesale ISPs a 50% to 60% reduction relative to our own retail offers, providing them with the flexibility to tailor their own services and pricing packages as they see fit. We must remember that the CRTC decision in question authorizes Bell to charge a third party wholesale ISPs on a usage basis.

But the CRTC decision does not require these ISPs to charge their own customers on a usage basis, even though, as you have learned from others who have appeared before you, some wholesale ISPs already applied usage-based billing well before Bell had the ability to charge them on this basis. This should not come as a surprise. It's consistent with an approach previously supported by OpenMedia.ca, the organization running the current “stop the meter” campaign.

In February 2009 OpenMedia.ca, then known as the Campaign for Democratic Media, voiced its support to the CRTC for usage-based billing as an appropriate means to address traffic congestion.

In fact, Mr. Wallace, you asked the previous panel why their views hadn't been heard by the CRTC. They have been heard by the CRTC.

What is true, however, is that the average wholesale ISP customer uses twice the bandwidth of our own Bell retail Internet customers

while using the same network. These heavy users, on the same network as our users, clearly affect everyone's Internet experience.

I want to be clear here. The third-party ISPs do not buy a pipe from us for their own channel, or their own channel from us. Their customers' traffic travels over the same network as our customers' traffic. This leaves us in a serious bind with the wholesale ISPs' heaviest users, representing only a minuscule fraction of Internet customers in Canada consuming absolutely the most bandwidth and at no additional charge.

Mr. Chairman, members of the committee, the disparity is striking. We must ask this. At what point should the vast majority of Internet customers stop subsidizing the activities of a relative few?

We urge you to take fairness in terms of pricing and regulatory symmetry with the cable companies into account as this process moves forward.

Thank you.

● (1650)

The Chair: Thank you very much.

Now we'll move on to Mr. Ken Stein, for five minutes.

Mr. Ken Stein (Senior Vice-President, Corporate and Regulatory Affairs, Shaw Communications Inc.): Thank you, Mr. Chairman.

Good afternoon. Thank you, Mr. Chairman and members of the committee.

My name is Ken Stein. I am senior vice-president of corporate and regulatory affairs at Shaw. I am joined by Jean Brazeau, senior vice-president of regulatory affairs at Shaw.

As members of the committee know, Shaw is totally committed to innovation, competition, and consumer choice. Shaw serves over 3.4 million customers across Canada. We provide broadband cable television, high-speed Internet, telephony, direct-to-home satellite, and other telecommunications services. Through our acquisition of Shaw Media, we now operate the Global Television Network and 19 specialty services.

All these services are provided, despite what you may have heard, in highly competitive markets where we compete with Zoom, BCE-CTV, Rogers/CITY, Telus, MTS Allstream, and SaskTel. We compete by providing the best possible customer experience. That requires investment. Shaw has spent over \$7.3 billion in capital expenditures since 2000, and we continue to make significant network investments.

Let me move to the issues before this committee. We are all aware that Internet use is changing and increasing dramatically. Canada has the highest consumption rate of online video content in the world. Last year, demand on Shaw's network increased by 100%. That's huge. We have never seen anything like this.

Using the Internet for video content and gaming is becoming the mainstream application. In this rapidly evolving marketplace, it is critical that regulators and the industry look carefully at consumers' evolving use of the Internet. In fact, to ensure that we deliver choice, quality, and value, Shaw announced on Monday of this week that we will establish an Internet usage consultation with all our customers.

Attached to our remarks is a chart showing how independent ISPs use our network. I hope it's not too complicated. I can explain it. It also illustrates the shared nature of that network. As third-party Internet access users and our retail customers consume more and more capacity, network congestion slows speeds for all customers on the network. To address this, we must invest in advanced technology, not just expand bandwidth. We have to invest in advanced technology in our head ends, deploy fibre optic facilities deeper into our network, and expand the number of fibre nodes in our service areas. These are costly solutions, which not only require capital but also involve digging up streets, obtaining municipal approvals to lay fibre, and negotiating with telecommunications and hydro companies that control support structures.

At Shaw, our aim is to maximize the Internet experience for all our customers. To do this, we have to adapt and provide service options that best address their changing and diverse usage.

Shaw currently offers several options with a wide range of prices, speeds, and monthly usage allowances. We will ensure that these options are transparent, and that our customers have timely information about how their usage may be changing. If a customer's use changes, we will make sure they have the chance to make cost-effective adjustments.

Jean.

• (1655)

Mr. Jean Brazeau (Senior Vice-President, Regulatory Affairs, Shaw Communications Inc.): Maximizing our customers' experience also requires us to commit close to \$1 billion every year for network investments. Those who say that bandwidth expansion comes at zero cost do not live in our world.

Shaw's network investments have helped Canada become one of the most dynamic, competitive broadband markets in the world, with a unique mix of cable, telecommunications, wireless, and alternative service providers. Approximately 95% of households have access to broadband using two competing land line facilities, and over 90% of households have access to multiple wireless broadband companies.

Contrary to the suggestions of others, Canada's Internet penetration, prices, and speeds compare very well with other countries' despite the challenges of our geography and population distribution. Canada's broadband leadership has been driven by competition between facilities-based providers, who typically invest \$8 billion to \$10 billion in capital expenditure per year. This fuels a positive cycle of declining prices and faster speeds with no government subsidies.

At Shaw, when we first launched our high-speed Internet service, it included 1.5-megabyte download speed at under \$55 per month. Today, that same Internet product has 7.5-megabyte download speed for under \$40.

In light of the above, we believe that the CRTC's approach to usage-based charges has appropriately balanced the needs of small ISPs and the telecommunications and cable ISPs. We require the market-based tools necessary to manage our network for the benefit of all consumers and to sustain broadband investment, which is really the foundation and the future of the industry.

We agree with the CRTC chairman that usage-based billing is a legitimate principle for pricing Internet services, and that fairness demands that certain Internet users should not be forced to subsidize others.

At Shaw, we have no interest in telling our customers how they can or cannot use the Internet. Our goal is to bring the best and fullest Internet experience to our customers through competing, innovating, investing in our networks, and bringing consumer choice through tailored and flexible service packages.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Brazeau.

Mr. McTeague, for five minutes.

Hon. Dan McTeague: Chair, thank you very much.

I'm sorry you couldn't get an agreement here on accelerated time.

To the witnesses, both of you have come here to suggest that there is a serious problem with growing use on the Internet.

Mr. Bibic, we received an e-mail from your organization the other day suggesting the following:

The CRTC's UBB decisions would affect no more than 2% of Canadian Internet subscribers, only the very heaviest bandwidth users that are also subscribers of third party ISPs.

You now suggest it's 1%. Are you consistent on your numbers, or is this just picking numbers out of the air? I really want to get clarity from you.

The concern I have is that we are looking at more like a 5% to 10% situation. In two years, that number could be more like 50%, and 100% within five years.

What's the correct number, Mr. Bibic? You can't throw these numbers around as if they're irrelevant.

Mr. Mirko Bibic: Well, Mr. McTeague, I'm not throwing numbers around. The range is very, very small, the 1% to 2%, and here's why.

I mean, I don't have the precise figure, but we know the number of wholesale ISPs customers we have and the number of end users they have. We make an extrapolation based on our own Internet users' consumption of bandwidth, how many of their customers would likely trigger the caps, and therefore have usage-based billing apply to them according to the CRTC decision. It is so small.

The point is that 98%—call it 98%, call it 99%—of subscribers in Bell's competitive footprint are already billed on a usage-based billing basis, yet that small group of the heaviest users are not. And that's the fundamental unfairness.

•(1700)

Hon. Dan McTeague: Mr. Bibic, I don't know how long your company has been involved with playing catch-up with the Googles and the Yahoos and others of this world, but I'm wondering if, in some of your calculations here, what you're really doing is complaining over the fact that a new business has been created on your platform—competition—and as a result of their lead in these areas, you are now playing catch-up.

To do that, you have a complaint here with the CRTC and you have a policy direction that basically stopped any competition by leaving the incumbents, both cable and telephone, where they are; I think you can speak just to telephone for now. Now we find ourselves in a situation where you're crying blue that you need more money and that you want to make greater investments by simply throttling off and choking off effective competitors who are providing service at the exact time when the Minister of Industry has said that we have to transform ourselves into the digital world.

If you understand the levels of increase in the number of connectivities and people using the Internet, and the quality and richness of that Internet, how is it possible that you can come here today and defend a charge over 25 gigabytes when it has no bearing on the actual cost that your company has to incur in order to provide that service?

Coming from a company that's had a 120-year advantage, I find it a little rich for you to be here to claim that somehow you need to have these kinds of changes that not only are onerous to consumers; they also will ultimately stifle innovation.

That's the charge, Mr. Bibic. I want you to answer it.

Mr. Mirko Bibic: Mr. McTeague, there are about six components to your charge, so it will take me about half an hour to respond.

Hon. Dan McTeague: You have about a minute and a half.

Mr. Mirko Bibic: First, the idea that Bell is dominating in the Internet market is an absolute fallacy. Any independent market share studies you look at will show you that Bell Canada's market share in its territory for Internet services is about 35% to 38%, well behind the cable companies. So there's no dominance there, and certainly no monopoly.

Second, the networks that we've built, the next generation that we've built, that we've spent \$6 billion to \$7 billion over the last four or five years to build, are brand-new networks. They have nothing to do with the monopoly telephone networks you were referring to.

Third, I think we need to take a big step back, take a deep breath, and put some perspective into this debate, Mr. McTeague. We've talked about choice. We've talked about lower prices. We've talked about competition. The thing that's missing, if Canada truly wants to be a broadband leader, is that it's companies like Bell, Shaw, and Rogers that we need in this country, because it is these companies that will continue to invest billions of dollars so that we don't fall behind, so that we have an innovative digital economy and we fire on all cylinders. That's what we need.

Hon. Dan McTeague: But Mr. Bibic, you're asking Canadians to volunteer that money. You've had money given to you in the past. What have you done with it? You've had a number of capital expenditures permitted to your company, and perhaps a handful of

others, to create a dominant situation in the telephone industry, the cable companies, and cable. You, sir, have received over the past 120 years a tremendous advantage that ISPs cannot possibly catch up with in a short period of time.

I'm asking you, your \$1.20 to \$1.50 to \$2.00 charge per gigabyte, is that in any way relevant to the capital expenditures you now need to undertake in order to catch up with a world that is becoming more and more reliant on heavy content on the Internet? Or are you overcharging?

The Chair: I hate to do this. The time has—

Mr. Mirko Bibic: May I answer, Mr. Chair?

The Chair: We're going to be over time. But as long as there's agreement for overtime, go ahead.

Mr. Mirko Bibic: Mr. McTeague, you focus on 25 gigabytes as if we had only one plan. We have plans that range from 2 gigabytes to 100 gigabytes. And you focus on these numbers on overcharges. As I mentioned in paragraph three, I believe, in my opening statement, you can buy for \$5 about 200 hours of online viewing—\$5. So the numbers you're pointing to are the rack rates. Consumers have a whole bunch of choices from us that allow them to buy more capacity very price affordably. So I disagree with you.

The Chair: Thank you, Mr. Bibic.

Hon. Dan McTeague: How many gigabytes...?

The Chair: Mr. McTeague, really.

Mr. Mirko Bibic: The beauty of our market is that you have choice.

The Chair: Gentlemen, please.

Hon. Dan McTeague: Thanks.

The Chair: Thank you.

[*Translation*]

Mr. Cardin, you have five minutes.

Mr. Serge Cardin: Thank you, Mr. Chair. Gentlemen, good afternoon and welcome.

Following the 2010-802 decision by the CRTC aiming to apply usage-based billing, the government reacted after receiving a petition signed by 358,000 persons. This number is still growing. The surprising thing is that the review was requested not by the government, but by Bell.

This leads me to believe that Bell was not happy with this decision by the CRTC.

•(1705)

Mr. Mirko Bibic: Mr. Cardin, as a point of clarification, Bell did not ask that the CRTC revisit the decision. We suggested that the implementation of usage-based billing be postponed by 60 days so that our clients, wholesale providers, would have time to adapt.

Because Bell asked that usage-based billing not be applied right away, the CRTC decided to take the time to review the decision, given the minister's statement.

Mr. Serge Cardin: So there is a period of time to allow your clients to adjust, and a period of time to review the decision.

Do you like that decision or not?

Mr. Mirko Bibic: We believe that the decision made by the CRTC a couple of weeks ago was entirely appropriate. Usage-based billing is the fairest way to bill users because it means that the heavier Internet users pay more. It is fair and appropriate. We were happy with the decision.

Mr. Serge Cardin: Do you think that the telecommunications sector is too highly regulated and that the CRTC should be careful not to overregulate?

Mr. Mirko Bibic: That's what we have always believed. The telecommunications sector is clearly overregulated. In 2006, an expert panel was asked by the government to examine regulations in Canada. In its report, the Telecommunications policy review panel, the expert panel, indicated that regulations in Canada were extremely cumbersome compared to other industrialized countries and that this was an impediment to the development of the telecommunications industry in Canada.

Mr. Serge Cardin: The notion of usage-based billing is very popular, particularly with regard to the environment. It's the user-payer, or polluter-payer principle. It is very compelling. It is hard not to be drawn in.

Like you, Mr. von Finckenstein said that those users who use less pay for the heaviest users. But that's also a myth. Many Conservatives have been wondering for quite some time now why you stopped offering unlimited plans.

Mr. Mirko Bibic: We stopped offering unlimited plans in 2006. You must understand that the demand for Internet services has increased dramatically. We must constantly invest to offer exceptional services to our clients and we must recover the costs of these investments. The most appropriate way to go about this is usage-based billing. It's the way to make sure that the heaviest users pay the most. Also, as I indicated at the beginning of my presentation, cable companies also have clients, wholesale Internet service providers. The cable companies have the authority, granted to them by the CRTC in 2000, to bill them using usage-based billing. It's a question of fairness.

[English]

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

Thank you very much, Monsieur Cardin.

Now on to Mr. Braid, for five minutes.

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

I have a cap that the chair adjudicates and it's called "five minutes", so I'll move right into it.

Mr. Bibic, could you begin by explaining the purpose of the UBB model as it's applied to your retail customers? What outcomes is it intended to achieve?

• (1710)

Mr. Mirko Bibic: At a high level, what's going on is that obviously Internet users like to use the Internet and there's significant growth, as my Shaw colleagues pointed out in their opening statement, so we have to keep ahead of that growth.

As it happens, this morning we released our fourth quarter 2010 financial results. In there we indicated that we had capital investment of \$860 million, which is up 34% year-over-year, to expand wireless and wireline broadband Internet capacity.

So the point is, Internet usage is growing. We have to keep up with that increased demand. We have to spend close to a billion dollars in three months alone in order to keep up with that demand. So now we take a step back and say that obviously we have to recover those costs, generate a return on that investment, and enough of a return that there's an incentive to keep investing, so that we can keep growing that capacity and go to new areas, build fibre networks, and give customers what they want.

The best way to do that, the most fair way to do that, is a usage-based billing model. We have a number of packages that cater to the light users, the medium users, and the heavy users, and those who are the really heavy users will pay more. That's only fair, and I think that's what the 97% or 98% of Canadians would judge as being fair.

Mr. Peter Braid: The smaller ISPs who have appeared before us, the third-party providers, as it were—and this sort of speaks to one of the fundamental issues and the concerns as part of this debate—are concerned that as the UBB model is applied to their wholesale relationship with you, it squeezes them out as competitors. It takes away one of their key competitive advantages, which is to differentiate their service from yours by offering unlimited Internet access.

How do you respond to that?

Mr. Mirko Bibic: I'm left confused by that allegation, to be perfectly frank with you.

This debate has been raging at the CRTC for about two years. Here is the submission of the Campaign for Democratic Media, which is actually the precursor to OpenMedia. Mr. Anderson was on. It's a thick document. They've put a lot of thought into this, and this doesn't even include the appendices. And this is what they say in it:

A customer that wishes to use more bandwidth in a given month can merely pay for it. In this respect, the impact on users is minimal. There is also a measure of fairness to pricing incentives, in that the user is getting the bandwidth they are paying for.

They go on to say:

Excess monthly usage charges are more reasonable in this respect because they target those users that actually produce the most traffic on a network.

And they say that "Excess monthly usage charges", which are the ones we've imposed, "are also preferable to time of day fees with respect to customer control, because the user is able to ration their usage as needed over a given period of time."

So I have a hard time squaring this, which is very recent with an allegation—

Mr. Peter Braid: But they've come here and they've asked for base pricing plus markup.

In any event, let's move on to a next question and another issue.

Some suggest that Internet traffic congestion is a myth.

Mr. Mirko Bibic: Again, we've been dealing with this at the CRTC for a couple of years. We filed very detailed evidence with the CRTC on this issue.

Let me read from decision 2008-108: "...Bell Canada has established that there is congestion in its network during peak periods."

Let me explain what that means. It's a vast network. We monitor this absolutely every day and every minute of the day. Where we see a hot spot or a hot zone where there is congestion, we deal with it right away. What we do is first and foremost build extra capacity—\$860 million over the last three months. We traffic-shape during peak periods of the day. That means that for peer-to-peer traffic, which is a type of traffic that's absolutely the heaviest bandwidth of all, we shape that to make sure the regular user isn't crowded out of the Internet, and we try to price in a fair manner.

We stay ahead of the issue by making all these investments and managing them.

Mr. Peter Braid: When are the peak periods?

Mr. Mirko Bibic: The peak periods are the evening periods.

The Chair: Thank you very much, Mr. Bibic and Mr. Braid.

Now on to Mr. Masse for five minutes.

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

Since it was the other day, I do want to acknowledge Bell's work on suicide prevention. That's a very important thing.

Now that we have that over with, we'll move on to the questions.

Just kidding.

I do want to know how much of your Internet traffic is business, and how much is customer and personal use.

• (1715)

Mr. Jean Brazeau: At Shaw, the most significant part of our traffic is residential traffic. We are just now getting into the business market. As I said, the vast majority of our traffic would be residential.

Mr. Brian Masse: Do you have a percentage?

Mr. Jean Brazeau: I would venture it would probably be in the 75% to 80% range.

Mr. Brian Masse: How about you, Mr. Bibic?

Mr. Mirko Bibic: During peak periods, certainly the vast majority of the traffic is residential, for obvious reasons. Businesses tend to no longer be in operation during evening periods.

As Shaw indicated, it's largely residential.

Off the top of my head, I don't have the split, but just to be clear, we have small-business Internet packages where there is no usage-based billing, and that's why this doesn't affect small businesses. As far as large enterprises are concerned, they have their own dedicated pipes or tunnels or channels, if you will. They buy massive amounts of bandwidth on separate networks, so to speak, and they buy what they need, and it's vast amounts.

Mr. Brian Masse: When they do that, do they negotiate a preferred rate because they're buying in volume?

Mr. Mirko Bibic: They certainly buy what they need and we price accordingly.

Mr. Brian Masse: This is one of the problems I have with this philosophy about the user pays who uses the most. If that's the case, why is it that a company can get a better rate than that of a residential person or a student who's actually doing streaming? Why wouldn't the same philosophy hold for the business sector as well as the residential sector? Why wouldn't you apply for the smaller business a rate that was preferred versus the volume being occupied by maybe a larger company that has that special agreement?

Mr. Mirko Bibic: For the very large enterprises—the banks, the insurance companies, the manufacturing plants, etc.—it's a completely different debate and discussion. It's a completely different scenario. They consume an incredible amount of bandwidth and they have their own pipes. They pay for what they use. That is the epitome of usage-based billing. They pay for what they use.

As for small businesses, which are generally on the same network as residential users, what you have is really a case where the congestion during peak periods is largely a residential phenomenon. It's in that area that we've addressed the usage-based billing issue, and all we're asking the CRTC for is to follow a fundamental principle of fairness.

If we asked 97% or 98% of Canadians if they would be prepared to pay more so that the 2% of heaviest users pay less, I'm pretty sure of what the answer would be.

Mr. Brian Masse: If that were the case, why wouldn't we meter everybody for all volumes? Secondly, if your customers pay for a package and do not use all of their space, do they get a rebate?

Mr. Mirko Bibic: Mr. Masse, the last question is one of basic economics, really. What we have to do as a facilities-based provider that invests billions and needs to recover the fixed and common costs that go into building the network is to make sure that every subscriber contributes some portion to those fixed and common costs. So we have established kind of an entry tariff, so to speak, and we have packages catered to the light user, medium user, and high user. The user chooses where they want to be on the scale, and they pay that amount per month.

By the way, our 25-gigabyte package, which Mr. McTeague referred to, provides five times the amount of bandwidth that half of our users use. So we provide a lot of usage time on the Internet for our packages.

Mr. Brian Masse: Yes, but if you don't fit within that formula, you're going to pay an extra tax if you don't actually use what you're getting. I think if you can meter where it's going to cost you out, you can also meter it back if it isn't used.

I do want to follow up with regard to your investments. I know that Bell has been doing extremely well. I think the profits for BCE were up 85% for 2008-09. You were talking about the \$3 billion you invested, but how much of that investment is from the deferral accounts?

Mr. Mirko Bibic: BCE invested \$3 billion in capital in 2010 and \$3 billion in capital in 2009. That's not deferral accounting.

Mr. Brian Masse: So you're not investing any of your deferral account money into expansion of services?

Mr. Mirko Bibic: Of course we will be, because the CRTC... And by the way, Bell Canada is the company that came forward first and asked to use the deferral account money to bring broadband—

• (1720)

Mr. Brian Masse: You were also the company that took the deferral accounts to the Supreme Court of Canada against consumers.

Mr. Mirko Bibic: Well, Mr. Masse, we can have a debate on that. That's actually false.

The Chair: You'll have to have it later.

Mr. Brian Masse: That's actually true.

Mr. Mirko Bibic: It's actually false.

The Chair: Thank you, gentlemen.

Now we go to Madam Coady for five minutes.

Oh, Mr. Rota and you will be splitting the time.

Ms. Siobhan Coady: I think I'll leave it to Mr. Rota, and then it will come to me.

Mr. Anthony Rota: Thank you, Mr. Chair.

Thank you for being here.

I have just one quick question. I guess it's more to Mr. Bibic.

I found interesting the comment you made, that those who use the most bandwidth pay the most. That would be the logical step. It's interesting, because a lot of the complaints I got in my community had to do with IPTV. People are saying they like to download Netflix. They've started using it. It's something they're interested in. It's something like iTunes. Now, IPTV doesn't seem to have the same caps on individuals that the open pipe does.

Maybe I'm being paranoid here, but I understand Bell owns the broadcasting, the production, and the pipe. All of a sudden we're saying that consumers who are on regular Internet have caps, but if you buy our product, which is Bell's product, you have unlimited usage or unlimited viewing. Is this anti-competition, or am I missing something here?

Mr. Mirko Bibic: Mr. Rota, I really appreciate you asking me this question, because it keeps coming up, and it's based on a fundamental misunderstanding as to what IPTV is. IPTV refers to the technology. In fact, it's misnamed. It refers to Internet protocol television. Our product is Bell Fibe TV. It's not Internet TV. It's cable television over a telephone network.

Mr. Anthony Rota: Is it capped?

Mr. Mirko Bibic: The point is, it doesn't use the Internet. It's on a separate network. It doesn't use the Internet. Just as a cable network doesn't use the Internet to deliver cable TV—Shaw does not use the Internet to deliver cable TV—Bell does not use the Internet to deliver Fibe TV. Just as you wouldn't ask Shaw why their cable TV service isn't metered, we shouldn't be asked why Fibe TV shouldn't be metered, because it doesn't use the Internet.

Mr. Anthony Rota: What does Fibe TV use? Does it use a separate cable, a coaxial cable?

Mr. Mirko Bibic: It's a separate network.

Mr. Anthony Rota: Is it a coaxial cable?

Mr. Mirko Bibic: It uses the copper wire from the home to our central office, and then it goes off to a separate network.

Mr. Anthony Rota: When it goes off to a separate network, it's using bandwidth?

Mr. Mirko Bibic: But it's not using the Internet, just as cable TV doesn't use the Internet. There's no issue of metering. It's a separate network. Fibe TV has nothing to do with something like Netflix. It's not at all the same. You don't log onto the Internet and then download movies. You're watching cable TV over a Bell network instead of cable TV over a Shaw network.

Mr. Anthony Rota: And that Bell network is a line altogether separate from the broadband Internet?

Mr. Mirko Bibic: That is correct.

Mr. Anthony Rota: Thank you.

I'll let Ms. Coady take over.

Ms. Siobhan Coady: Thank you very much.

Thank you to Bell for the mental health day the other day. It was very well done.

And thank you all, gentlemen, for being here.

Mr. Bibic, in an article you published in the *Financial Post* in early February, you stated that "Canada has increasingly become a world leader when it comes to broadband", both in speed and low cost. Yet time and time again we hear that's not exactly the case.

Let me tell you about TekSavvy, which was before us the other day. They showed us a chart that showed that among the 30 OECD countries, Canada ranks 25th for download speeds and 23rd for the cost of broadband.

So my question to you is which is it. Are we a leader or a laggard?

Mr. Mirko Bibic: That is a great question, and thank you, Ms. Coady.

If you take a look at the chart that TekSavvy presented, this is an old OECD study, and the odd thing about the old OECD study is that it indicates that Canada's fastest speed is 16 megabits per second. Well, Canada has far faster speeds than 16 megabits per second, so they have a sampling error.

I actually would like to turn it over to Shaw and they can explain to you what speeds they have in Canada, and it's far more than 16.

Ms. Siobhan Coady: I would love to have the fullness of the explanation, but that's going to have to suffice, based on time.

Mr. Ken Stein: The study is wrong. The information they gave you is old and it's out of date and it's wrong.

And the Department of Industry is actually working with the OECD to come to a more rational explanation of what our speeds are and what our capacity is.

Ms. Siobhan Coady: Thank you for that.

The Chair: I'll stop Madam Coady's time.

Just for clarity, because I know the calibre of testimony we need here is excellent, can you table, then, documentation about the actual standing—

Ms. Siobhan Coady: Yes, thank you. I was about to ask.

The Chair: —that this country has vis-à-vis other G-8 and G-20 OECD countries?

• (1725)

Mr. Mirko Bibic: Mr. Chairman, I won't belabour this, but attached to my opening statement we have charts that show the rankings.

Ms. Siobhan Coady: I saw them and that's why I asked the question.

The Chair: And here's just one last thing. I haven't seen them. Are the sources on those charts?

Mr. Mirko Bibic: In our case, we've footnoted every source.

The Chair: Madam Coady, I'll start your time again now.

Ms. Siobhan Coady: Thank you very much.

And I apologize. We have only such limited time. But I want to give you the opportunity. In the last group we had before us we heard that "Bell already recovers all costs plus prescribed markups".

The other day we heard from John Lawford of PIAC, and he said that:

Bell is compensated for the traffic it carries on its network for competitive ISPs. The CRTC has set rates, based on Bell and other ISPs' costs, that fully compensate Bell.

So there is a concern here that you're fully compensated for your wholesale costs and that UBB is actually penalizing people. Could you just give us a comment on that, please?

Mr. Mirko Bibic: We're certainly not trying to penalize anybody. We just want to make sure there is fairness in our billing system, so that the vast majority of users don't subsidize the heavy users.

The problem with those allegations is that we fully recover our costs, and this is a tough business, and the payback periods are very long. The difficulty is that those allegations wish away the billions that need to be spent to build the networks—the engineering costs, the construction costs, the equipment costs, the employee costs. You can't just wish away those costs, and we have to recover all those sunk and fixed costs over a long period of time.

The Chair: Thank you, Madam Coady.

Now we'll move on to Mr. Lake for five minutes.

Mr. Mike Lake: Thank you, Mr. Chair.

We know network congestion is only an issue, of course, during peak usage periods. You said those peak usage periods are in the

evenings. If this is true, of course it follows that a movie that's downloaded at 1 p.m. should have no effect on your network.

Have you considered at all a compromise where UBB is only used during peak periods? Or what other compromises have you considered?

Mr. Ken Stein: I can respond to that. The first thing is that that's a draconian kind of step. It would involve more investment in the system, to no real advantage to our customers. Because we don't want to meter every minute of their day and how they're using the system, our system is not designed to do that.

You know, 90% of our customers do not exceed their package bandwidth. When we talk about speeds and the OECD study, our top package, which is called Nitro, has a download speed of 100 megabytes per second. So we have packages available to our customers to ensure they don't exceed their usage allowance and to ensure they get the kind of satisfaction they want. It's the 10% of users—whether it's prime-time or non-prime-time or whatever—who account for 60% of our network traffic.

That's the problem we have to deal with, because to go into a senior residential area in Vancouver and basically say to them that we're going to have to double their rates because we're building out a new system serving the area of the University of British Columbia just doesn't make any sense to us.

So we need to get a balance in terms of what we do and how we offer packages to our customers. That's what we're trying to do in all this. If we tried to get into more sophisticated technologies to say that some people downloaded a movie between one and two o'clock in the afternoon and others downloaded at seven or eight o'clock, we'd get a lot more complaints from people saying they're not home in the afternoon to download a movie; they're home at seven at night.

Mr. Mike Lake: What if one of the independent service providers wants to build a model like that? What if one of the independent service providers wants to say, hey, the system's not being used to its full capacity at one o'clock in the afternoon? And if you're one of those, whatever, 10% of users who uses a lot of bandwidth, if you use it at one o'clock in the afternoon, what difference does it make? What's the cost to you?

Mr. Ken Stein: The cost would be traumatic.

It doesn't provide a better service to the customer.

Mr. Mike Lake: The cost is traumatic for a user downloading lots of information at one in the afternoon? That cost is dramatic?

Mr. Ken Stein: No. I'd have to know when they're doing it. I'm not in a position to know when they're downloading.

Mr. Mike Lake: But what if one—

Mr. Ken Stein: All I measure is what capacity they use over a month.

Mr. Mike Lake: But again, what if one of the independent service providers who is competing with you wants to build a model that is designed around something like that? Why shouldn't they have the ability to do that?

Mr. Ken Stein: If they want to do that with their customers through their investment, and they offer special services, if they want to do that, then that's fine. But that doesn't affect the rate that we charge them, because we're not going to do that.

Mr. Mike Lake: I'd like to hear from Mr. Bibic on this.

Mr. Mirko Bibic: I agree with Mr. Stein. I would just add that again I go back to what OpenMedia themselves said. They view—

Mr. Mike Lake: No, we've heard that already. No offence—

Mr. Mirko Bibic: No. This is another part, Mr. Lake.

Mr. Mike Lake: In fairness, I think you're kind of just ragging the puck here a little bit.

Mr. Mirko Bibic: No, because—

Mr. Mike Lake: I'd like to hear your answer to my question.

• (1730)

Mr. Mirko Bibic: Okay. Peak hour. I actually wanted to answer your question on peak hour pricing.

I agree with OpenMedia, who says peak hour pricing imposes higher fees on low-bandwidth customers. That's what would happen.

Mr. Mike Lake: A separate question, then, again.

Why can't ISPs, the small ISPs, be built on an aggregate basis for their use, for their customers' use?

Mr. Mirko Bibic: That solution has been proposed. Now there is a separate CRTC process. There are lots of ideas that are going to come forward on that separate CRTC process. That will obviously be one of the ideas, and I'm sure that others will have other suggestions.

So we're going to put our thinking caps on as well, and see if there isn't a different way to address this. But we believe fundamentally that what is ultimately ruled on by the CRTC has got to accept the principle that those who use the most pay the most, because if we don't, what's going to happen is everyone's going to have to pay more.

Mr. Mike Lake: What if those who use the most use it when the system is not being used at capacity? That has absolutely no cost to you.

What if one of your competitors wants to design a system around that?

Mr. Mirko Bibic: The issue here is that we build the capacity required in our network to address peak periods. So if the peak period that we anticipate requires a pipe this big, we have to build a pipe that big. That costs a lot of money.

Mr. Mike Lake: So you're—

Mr. Mirko Bibic: It costs a lot of money, Mr. Lake. That capacity is now there. If the heavy users avoid peak periods, what's going to happen is, who do you think is going to be funding that traffic, that capacity that we need at peak periods? It's going to be you and me, not the heavy users.

Mr. Mike Lake: Obviously if your competitors have packages that use the time at non-peak periods, that pipe doesn't have to grow any bigger to accommodate that capacity. Why can't they do that? You'd think that would be beneficial.

Mr. Ken Stein: It doesn't work that way. Right now what we're interested in doing is designing the system for the benefit of the maximum number of customers. The maximum number of customers make use of the Internet in prime-time periods. That's when people come home from work. Most people have day jobs, and they come home and that's when we want to offer the service.

If we then started differentiating and saying it's a different rate at one o'clock, a reaction from our 1.8 million Internet customers would be extreme.

Mr. Mike Lake: Maybe they'd see it as innovation—

Mr. Ken Stein: They'd see it as, oh, okay, so if I'm not working and if I'm unemployed and if I don't have a job, I can come home and download movies at one o'clock in the afternoon. No, I don't think so.

What we're trying to do is provide services to customers and families that make it convenient to use it at their time. That's why we invest \$1 billion a year, to make sure we can serve those customers.

Mr. Mike Lake: But maybe what we need is some innovation that takes us off those old models.

The Chair: Thank you, Mr. Stein, Mr. Lake.

I don't think I've ever asked any questions at this committee, but if the committee will indulge me, there are just a couple of clarifications that I need to make because of what I heard today.

Mr. Stein, you said that your system does not have the capability to meter specific minute to minute, but Mr. Bibic, you had mentioned that your system does. Is that the case, that you can pinpoint minute by minute, hour by hour where your congestion is?

Mr. Ken Stein: Maybe I wasn't clear on this. We measure congestion second by second. You can come to Calgary and you can see our tech centre. We'd love you all to come and do that.

We monitor the congestion of all the networks, all the communities that we serve. Exactly as Mr. Bibic said, if we see a hotspot in a particular area in Fort McMurray, we try to fix that instantly. But that's not metering an individual.

The Chair: Thank you.

As a public company, do you make the number of your customers available to the general public?

Mr. Mirko Bibic: You mean the number of subscribers we have?

The Chair: Yes.

Mr. Mirko Bibic: Yes.

The Chair: You mentioned that you know the number of customers of all the independent ISPs. Is that demanded even from private corporations? Do you demand that before you sell them the service?

Mr. Mirko Bibic: That's confidential information. We are their supplier and they are our valued customer. On aggregate, we know what the number is, but we couldn't say, for example, that Mr. Sandiford has x number of customers. That's his information and it's confidential. We know it because of our relationship.

• (1735)

The Chair: You would be able to tell from the blues that you said you knew exactly how many customers they have.

Mr. Jonathan Daniels (Vice-President, Law and Regulatory Affairs, Bell Canada): We actually have to install. If the customer wants to sign up with us, someone like TekSavvy or one of the ISPs would have to call and tell us who the individual end-user is, and we would have to go and install the line. That's why we know exactly where the locations are. It's our wholesale side that knows it, and they never share it with our retail.

Mr. Jean Brazeau: It's the same for Shaw.

The Chair: You said that Bell Fibe TV was totally separate, but in your explanation you said that you actually use the same off-ramp that you do for Internet service and then it goes to your office. So it's really not a separate cable. It's separate once it gets to your office, but it's the same Internet off-ramp that goes to every residence. Is that correct?

Mr. Mirko Bibic: There is a copper loop that goes from our central office to the home and all data travels on that pipe: Internet

traffic, television traffic, voice traffic, long-distance traffic. But there are no congestion issues there. The real issue is when you get to the central office and go behind it into the Internet. Fibe TV is completely different.

The Chair: I'm just trying to clarify your comments. It is the same cable telephonically. Internet and everything is on the same cable that goes to your main office. Is that correct?

Mr. Mirko Bibic: From the home to the main office, that is correct. You might have heard the term "the last mile".

The Chair: Thank you.

I thank the witnesses very much.

We have one more small piece of business before we adjourn the committee. There was a question raised by Mr. Masse regarding possible privilege. I have taken a look at the blues from the in-camera meeting, which were held securely by the clerk in his office. I've taken a look at the blues of the regular meeting that we had in public.

In my opinion, the question raised by Mr. Lake does not relate to privilege. The conversation that took place, that you were referring to, was regarding whether to call witnesses or not. The conversation happened in camera and out of camera. It happened in two separate cases out of camera. It may be a question of fierce debate, but it is not a question of privilege.

The meeting is adjourned.

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