



Telecom Notice of Consultation CRTC 2011-77

PDF version

Ottawa, 8 February 2011

Call for comments

Review of billing practices for wholesale residential high-speed access services

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In this notice, the Commission launches, of its own initiative, a review of its regulatory approach with regard to the terms upon which large incumbent telephone and cable carriers provide their services to wholesalers, who, in turn, provide high-speed Internet access to retail residential customers. The Commission's approach in reviewing this matter will be based on two fundamental principles: (1) as a general rule, ordinary consumers served by small Internet Service Providers (ISPs) should not have to fund the bandwidth used by the heaviest retail Internet service consumers; and (2) smaller ISPs should continue to be in a position to offer competitive and innovative alternatives.

Introduction

1. The Internet is a driver of innovation and the backbone of a modern economy. In recent years the way Canadians use the Internet has changed tremendously, in part because of the convergence of telecommunications and broadcasting services. It is vital that Canadians be able to access the Internet.
2. The residential retail Internet market in Canada consists of large and small service providers. The large incumbent telephone and cable companies serve approximately 94 percent of the residential retail market and have invested in and built extensive networks. In addition, there are a number of smaller Internet service providers (Small ISPs) serving approximately 6 percent of the residential retail market.
3. These Small ISPs offer innovative services and compete with the large incumbents. However, Small ISPs have generally not built their networks to the same degree as the large incumbents and, as such, typically rely on wholesale services¹ mandated by the Commission and provided by the large incumbents to reach residential

¹ In Telecom Decision 2008-17, the Commission determined that the large telephone companies' aggregated asymmetric digital subscriber line access services and the cable carriers' third-party Internet access services were to be classified as conditional mandated non-essential services.

consumers. The Commission regulates the rates for these wholesale services, but it does not regulate the rates or bandwidth thresholds² charged by the large incumbents to their retail customers. The business wholesale market is regulated distinctly and is not part of these proceedings.

4. Certain large incumbents implemented usage-based billing (UBB) at the retail level some time ago. As stated above, the Commission does not regulate rates or bandwidth thresholds for retail Internet services provided by the large incumbents or Small ISPs.

Network congestion and fairness

5. Consumers continue, and will continue, to increase the amount of bandwidth they use in accessing the Internet to engage in such activities as streaming audio or video, downloading files, or other heavy usage applications. This trend in demand can create network congestion.
6. Accordingly, in 2009,³ the Commission developed a comprehensive regulatory approach to Internet traffic management practices on the basis of the following key principles:
 - i. When congestion occurs, an ISP's first response should always be to invest in more network capacity. In a competitive marketplace where consumers have choice, it is in the ISP's best interests to have a robust network.
 - ii. Given that network upgrades are not always the most practical solution, if it is necessary to manage Internet traffic, this should be done through transparent, economic measures.⁴
 - iii. Traffic shaping and other technical measures should only be employed as a last resort, and in such cases consumers should be advised in advance of the application of these measures.
7. The Commission's regulatory approach with regard to the matter of UBB for mandated wholesale services has been developed over time and through a series of decisions. The Commission's approach is based on two fundamental principles:
 - i. As a general rule, ordinary consumers served by Small ISPs should not have to fund the bandwidth used by the heaviest retail Internet service consumers.
 - ii. It is in the best interest of consumers that Small ISPs, which offer competitive alternatives to the incumbent carriers, should continue to do so.

² A bandwidth threshold is a predefined level of network usage that may be included with a retail Internet service package. Additional rates may apply when the user exceeds that threshold.

³ See Telecom Regulatory Policy 2009-657.

⁴ UBB is an example of an economic measure.

8. Following a series of decisions,⁵ the implementation of UBB rates charged by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (the Bell companies) to their Small ISP wholesale customers, as well as changes to the wholesale UBB rates charged by certain incumbent cable carriers, was to take effect on 1 March 2011.
9. The Commission received an application from Vaxination Informatique requesting that the Commission stay the implementation of Telecom Decision 2011-44. In addition, the Commission received a request from the Bell companies, that implementation of their revised wholesale tariffs be delayed until 1 May 2011. The Commission also received numerous comments from the general public on this matter.
10. On 3 February 2011, the Commission announced its intention to delay the implementation of these decisions and initiate a review of billing practices regarding wholesale residential high-speed access services.

Call for comments

11. The Commission considers that its fundamental principles related to fairness and the ability of Small ISPs to offer competitive alternatives continue to be valid. However, in light of the above, the Commission has determined that it would be appropriate to conduct a review of this matter, of its own initiative. Accordingly, the Commission is initiating this public process. The objective of this review is that Small ISPs continue to be afforded the flexibility to bring pricing discipline, innovation, and consumer choice to the residential retail Internet service market.
12. Comments are invited on:
 - i. How best to implement the following principles with respect to large incumbents' wholesale services used by Small ISPs;
 - a. As a general rule, ordinary consumers served by Small ISPs should not have to fund the bandwidth used by the heaviest retail Internet service consumers.
 - b. It is in the best interest of consumers that Small ISPs, which offer competitive alternatives to the incumbent carriers, should continue to do so.
 - ii. Whether the Commission should set a minimum threshold level for the sale of bandwidth by large incumbent carriers to the Small ISPs and, if so, what should it be;

⁵ See Telecom Decisions 2010-255, 2010-802, and 2011-44.

- iii. Whether it is appropriate to hold an online consultation as part of its review; and
 - iv. Whether it is appropriate to hold an oral public hearing as part of its review.
13. In their comments, parties should provide full supporting rationale and all evidence on which they rely. In addition, parties requesting or proposing changes to the regulatory approach are expected to demonstrate, as applicable, how such changes would:
- i. Benefit consumers to allow them fulsome access to the Internet;
 - ii. Respect the principle that ordinary consumers served by Small ISPs should not fund the bandwidth used by the heaviest retail Internet service consumers; and
 - iii. Ensure that Small ISPs retain flexibility and continue to be a source of innovation in the industry.
14. In light of this public process, the Commission has determined that the implementation of wholesale UBB as approved in Telecom Decisions 2010-255, 2010-802, and 2011-44 is hereby suspended pending disposition of its current review.

Procedure

15. Parties interested in participating in this proceeding and receiving copies of all submissions must notify the Commission of their intention to do so by filling out the online form or by writing to the Secretary General (by mail: CRTC, Ottawa, Ontario, K1A 0N2; by fax: 819-994-0218) by **22 February 2011** (the registration date). Parties are to provide their email addresses, where available. If parties do not have access to the Internet, they are to indicate when they notify the Commission whether they wish to receive disk versions of hard-copy filings.
16. As soon as possible after the registration date, the Commission will post on its website a complete list of interested parties, their mailing addresses, and, if available, their email addresses, identifying those parties who wish to receive disk versions.
17. Any person who wishes merely to file written comments in this proceeding, without receiving copies of the various submissions, may do so by writing to the Commission by **29 April 2011** at the address or fax number noted above, or by using the following comments link.
18. All parties may file comments with the Commission regarding the above-noted issues, serving copies on all other parties, by **28 March 2011**.

19. All parties may file reply comments with the Commission, serving copies on all other parties, by **29 April 2011**.
20. The Commission will not formally acknowledge comments. It will, however, fully consider all comments, which will form part of the public record of the proceeding.
21. If a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
22. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
23. Electronic submissions should be in HTML format. Alternatively, Microsoft Word may be used for text and Microsoft Excel for spreadsheets.
24. Each paragraph of all submissions should be numbered. In addition, the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
25. The Commission encourages parties to monitor the record of this proceeding and/or the Commission's website for additional information that they may find useful when preparing their submissions.

Important notice

26. Note that all information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
27. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
28. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be made available in PDF format.
29. Please note that the information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not link directly to the information that was provided as part of this public process.

Location of CRTC offices

30. Submissions may be examined or will be made available promptly upon request at Commission offices during normal business hours.

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Secretary General

Related documents

- *Usage-based billing for Gateway Access Services and third-party Internet access services*, Telecom Decision CRTC 2011-44, 25 January 2011
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Decision 2010-255 concerning usage-based billing for Gateway Access Services*, Telecom Decision CRTC 2010-802, 28 October 2010
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Applications to introduce usage-based billing and other changes to Gateway Access Services*, Telecom Decision CRTC 2010-255, 6 May 2010
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Cogeco, Rogers, Shaw, and Videotron - Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006