CRTC 2010-803

Initial Comments

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Usage-based billing for Gateway Access Services

and third-party Internet access services

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Introduction and general comments

1. Vaxination Informatique submits its initial comments for the 2010-803 public consultation. While the correct dose of regulatory symmetry ensures fair treatment of incumbents and competitors, abuse of regulatory symmetry stifles competition by allowing incumbents to impose retail pricing and restrictions upon all competitors, depriving the market of much needed choices. UBB's retail pricing model is an example of abusive use of regulatory symmetry.

2. The timing of the 2010-803 consultation prevents integration of comments with the new aggregation tariffs expected from the cable companies, as well as knowledge of what Bell Canada's strategy with regards to matching speeds will be.

3. In establishing the 2010-803 consultation on whether to force incumbent's retail prices onto competitors, the Commission is implicitly seeking to rethink its interpretation of regulatory symmetry requirements. Since regulatory symmetry has been a key argument that guided many previous GAS related decisions, such decisions must not be allowed as precedents since they are based on the very arguments being reviewed by this process. Accepting such decisions as precedents would invalidate this process by predetermining its outcome.

4. The respective UBB rates for Bell's and Cable's retail services encompass the full service to the internet. In the case of GAS and TPIA, UBB fees encompass only a short trip within the incumbent's network before leaving it to reach the ISP's facilities. Since the services are asymmetrical, symmetrical pricing is unjust and breaks clause 27 (i) of the Act[1] . Despite being an ITMP, UBB is still a rate which is included in the "every rate".

5. Proper structuring of the GAS and TPIA rates would provide the incumbents with sufficient revenues and incentives to make the network upgrades necessary to supply the purchased capacity without needing to resort to tactics which are designed to slow adoption of new internet technologies in Canada and delay capacity investments by incumbents.

1 27. (1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

6. GAS and HSA services started off as Bell Nexxia commercial data transport services used as an input to build retail or commercial solutions such as a retail ISP business. Neither GAS nor HSA provide connectivity to the internet and there was no Nexxia retail ISP .

7. However, with the corporate joining of Nexxia and Sympatico, this neutral independence ceased and Bell Canada began to call GAS a white-label-resale of its own retail ISP business. It then called for regulatory symmetry to ensure GAS-based services could not offer features Bell Canada decided to not provide in its own offering. Now, it is calling for regulatory symmetry between Cable and Telco so that Bell Canada can adopt the poor aspects of TPIA to further erode competitiveness of the GAS based services.

8. Cable is a very different story. Due to technical issues, it started off as a pure white label resale of the cable companies' retail services, with IP addresses and full internet connectivity provided by the cable company. Later on, TPIA moved towards a last mile access topology with independent ISP traffic shunted off the cable's network early. The Cable companies moved from being a full solution provider to a last mile access provider, one of many inputs needed to build a retail ISP operation. Despite this major evolution, TPIA retains many aspects dating back from its white label resale era (such as retail pricing for UBB).

9. Allowing Bell Canada to charge un-discounted full retail rates just because Cable does it is a mistake. This is like lemmings that jump off a bridge just because the others do it. One must first evaluate whether jumping off a bridge is desirable before forcing all others to do the same.

10. **GAS IS <u>NOT</u> A WHITE LABEL RESALE OF BELL CANADA'S RETAIL ISP SERVICE**

11. The previous paragraph needs to be repeated 100 times.

12. The Commission needs to be reminded once more that neither GAS nor TPIA are ISP services, retail, wholesale or otherwise. It is a bulk last mile data communications service that provides absolutely no connectivity to the Internet and which has no retail equivalent.

13. The GAS service is but one of many inputs needed to build a retail ISP service. It can be used to build many other types of services as well. Its roots as a Nexxia service clearly show that it was not a retail offering. And since TPIA moved away from resale model to a similar bulk last mile access model, the regulatory framework should move ahead towards neutral bulk last mile access services instead of regressing to an anti-competitive retail resale model controlled by the incumbents.

14. GAS is neither resale nor wholesale. Wholesale is when a distributor sells cases of Heinz ketchup to a supermarket. The product in question is complete and can be sold at the retail level without transformation. Retail vs discounted wholesale pricing is important in this context.

15. GAS and TPIA are more akin to an engine. Ford does not resell Cummins engines, it sells trucks that happen to have Cummins engines as one of many inputs. The engine manufacturer cannot dictate the final retail price of the final product (the truck). The concept of retail pricing at full or discounted price is irrelevant because the transaction between the car maker and the engine maker is a commercial one without retail/wholesale components.

16. It is GAS which needs to be regulated, not retail ISP businesses. Since GAS has no ISP features, it has no business containing clauses specific to retail ISP operations. **A clause/item which elicits a discussion on whether it should be priced at retail or discounted wholesale price should automatically be rejected by the Commission since it has no business being included in the GAS tariff.**

17. In an environment where regulatory symmetry is important, the solution is to force Bell Canada's retail ISP business to purchase last mile access services via GAS with the same rates, speeds, features as are purchased by independents. (similar principle for the cable environment). This provides fair symmetry at a low/bulk level, while providing a solid and stable base that ISPs can count on when developing long term strategies without fearing having the rug pulled from under their feet.

18. By ensuring GAS and TPIA regulations remain within the boundaries set by their bulk data transmission nature, the regulatory environment is simplified and the issue of dealing with retail vs discount pricing is avoided since any such issues would, by definition, not be applicable to the bulk data transmission nature of GAS/TPIA.

19. Such an arrangement kills three Policy Directive birds with one stone[2]: regulatory symmetry, lighter regulatory touch, and fostering market driven solutions where customers choose the services they need and have options to avoid services they do not want.

20. Applying the same principles to the cable industry (retail Cable also buying TPIA) would give Canada a world class competitive and open access last mile infrastructure with very limited regulatory overhead, and fair application for everyone.

2 No winged, bipedal, endothermic, egg-laying, vertebrate animals were hurt during the production of this document

Heavy regulatory burden

21. The expensive and drawn out debate for the UBB issue is due to misapplication of regulatory symmetry between asymmetrical services. It must be underlined that GAS is not a retail ISP service. Applying retail ISP features to a service which is not an ISP service is not correct.

22. Because of the ill conceived tariff, there will be a constant battle to adjust the GAS tariff in order to match the freely changing unregulated Bell Canada retail offering. Acceptation of retail rates that match an incumbent's own has the potential to bring chaos should Bell Canada decide it wishes to start charging different rates for Québec and Ontario. While Bell Canada's retail ISP business is free to set its local rates to match that of a local cable company, GAS rates must reflect actual costs instead of market conditions in a almost duopoly environment. Independent ISPs cannot compete in an environment where the incumbents dicate retail pricing.

23. It should be noted that even before UBB gets implemented, there have already been revisions such as addition of pre-paid usage bocks. And since Bell Canada now has many packages with a base usage limit greater than 60gigabytes , it is but a matter of time before there is yet another challenge to TN7181 to have it updated to match Bell Canada's unregulated retail rates and features.

24. Furthermore, the 2010-802's forced application of retail pricing and restrictions on independent ISPs has the perverse result of regulating independent's retail ISP business while at the same time, confirming that Bell Canada's retail ISP business is forborne from regulation.

25. The policy directives to allow market driven solutions cannot work when incumbent's retail business is unregulated while potential competitors have their feet set in regulatory concrete which guarantees competitors will always be behind incumbents.

26. **If Bell Canada's retail ISP business is considered forborne, then regulatory symmetry requirements must ensure that independent ISPs are also forborne and that no aspect of GAS tariffs can end up regulating retail ISP aspects.**

27. In 2010-632, the Commission stated that the competition provided by independents was essential in preventing a duopoly situation. However, these ISPs cannot be competitors if the Commission imposes incumbent dictated retail rates and restrictions.

28. GAS and TPIA must be limited to bulk last mile access services with their respective regulations reflecting the bulk nature of the service. This provides the desired light regulatory touch which does not impede any retail ISP innovation and differentiation,

29. Incumbent's own retail ISP business must be forced to purchase last mile access via GAS/TPIA just as other independent ISPs do. This provides regulatory symmetry but at a low enough level that it does not stifle competitiveness of retail offerings.

30. Any tariff request for retail ISP pricing/features on a bulk GAS/TPIA service must be rejected by the Commission since they are not applicable to the nature of GAS/TPIA services.

31. The punitive retail UBB pricing model for GAS and TPIA must be rejected by the Commission and replaced by a bulk, non-punitive, slightly profitable and cost based usage or capacity pricing model. Such a model will generate the revenues necessary for capacity upgrades in the last mile access network and its operator will have every incentive to foster increased usage to increase profits. Such a model fits well within article 7 of the Act whereas a punitive regime that dissuades increased use does not.

32. Each retail ISP is then free to implement their own technical or economic ITMPs as per the 2009-657 framework and no ISP can impose its ITMP policies on another. ISPs can shape their ITMPs to modulate their customer's usage patterns to match the level of spending the ISP is willing to make to serve its customers. This allows much greater differentiation between ISPs, some willing to offer "Cadillac" services with less restrictive ITMPs while other ISPs may wish to offer "Lada" low end services at much lower cost and more restrictive ITMPs.

33. This offers sufficient product differentiation and choices to give the market options that serve a variety of users. And increased competition will motivate large ISPs and incumbents to improve their services instead of adding more restrictions to them.

34. The regulatory framework(s) must not prevent an ISP from serving of any particular type of user. For instance, an ISP wanting to serve heavy users should be able to purchase sufficient capacity to serve such users without any artificial limits imposed by another party.

35. The solutions proposed in this document will allow the development of competitive, differentiated services and prevent incumbents from imposing retail level restrictions on their competitors.

36. The Commission must not shy away from re-aiming the regulatory efforts for GAS/TPIA towards simpler bulk based services that grant individual ISPs much greater freedom to develop their differentiated services. This may require some review of recent decisions, but it would be Canada on the right path of having a truly competitive environment where incumbents can no longer impose their retail restrictions upon their competitors.

37. The current course adopted by the Commission is regressive and is on track to convert competitors into mere resellers of incumbent dictated services. The course must be changed. Giving a 25% discount on incumbent's inflated retail rates is not sufficient.

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