



Distributel Communications Limited
300 - 177 Nepean Street
Ottawa ON
K2P 0B4

Mr. Robert A. Morin
Secretary General
Telecommunications,
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Filed via Access Key

December 9, 2010

Dear Mr. Morin:

Subject: Telecom Notice of Consultation CRTC 2010-803 *Usage-based billing for Gateway Access services and Third Party Internet access services*

Pursuant to the Call for comment on Usage-based billing for Gateway Access services and Third Party Internet access services, Distributel Communications Limited (Distributel) hereby submits its comments concerning TNC 2010 803.

Yours truly,

A handwritten signature in blue ink, appearing to read "Donald Cavanagh", written over a horizontal line.

Donald Cavanagh
VP Telecommunications

Attachments

End of Document

c.c. Interested parties

*Usage-based billing for Gateway Access services
and Third Party Internet Access services*

Telecom Notice of Consultation CRTC 2010-803
28 October 2010

Reply Comments
Distributel Communications Limited
9 December 2010

Introduction

1. These Reply Comments are submitted by Distributel Communications Limited (Distributel) in accordance with the procedures set out in TNC 2010-803.
2. Distributel received 29 November 2010 comments from Bell Aliant and Bell Canada (collectively “Bell”), the Cable Carriers, CAIP, CNOC, Vaxination Informatique and MTS Allstream. Distributel has had an opportunity to review a draft of the Reply Comments submitted by CNOC and supports those submissions. In addition, Distributel has identified three issues for separate comment.
3. First, the per user usage charges of the incumbents have no relation to costs. Consequently, the application of such charges at the wholesale level would be contrary to the Policy Direction since they would “deter economically efficient competitive entry into the market”.
4. Second, the comments of Bell and the Cable Carriers confirm that the sole purpose of the per user usage charges is to modify end user behaviour by discouraging Internet usage through the application of an Economic Internet Traffic Management Practice (EITMP). In these circumstances, there is no reason why the incumbents should receive a financial windfall from charging per user usage charges at the wholesale level. If the Commission wishes to require competitors to charge usage charges to their end users then *that, and only that*, should be required. In other words, the requirement for competitors to charge usage charges to their end users should be made a condition of the incumbents' broadband access services, but the revenues from those charges should not flow through as a windfall to the incumbents. Rather, the revenues from such charges should be retained by the competitors.

5. Third, given that retail Internet rates are unregulated, the linkage of unregulated retail per user usage charges and wholesale broadband access service charges is unmanageable and ultimately unenforceable. Consequently, such an approach is contrary to Policy Direction's requirement that the Commission use measures which are "efficient and proportionate to their purpose".

1. The Charges are Contrary to the Policy Direction

6. The per user usage charges are not based on costs. They are strictly aimed at modifying end user behaviour. This point was emphasized by the Cable Carriers in their 29 November 2010 submission:

11. UBB charges exist first and foremost to assist the underlying network operator in managing the Internet traffic profiles of end-users on its network. They are particularly effective in modulating the behaviour of a small subset of end-users who, in the absence of such charges, would tend to consume a disproportionately large share of network bandwidth. ...

12. ... The purpose of the thresholds and the additional usage charge is not to collect incremental revenues that will recover a set of incremental costs. Rather, the purpose is to curtail very high bandwidth consumption to a threshold maximum by shaping End-User behaviour.

7. The lack of any cost basis for Bell's per user usage charges was confirmed by the Commission in Decision 2010-255:

54. The Commission notes that under the Bell companies' proposed economic ITMP, they would continue to recover their access costs and all usage costs from the flat-rate component.

8. The absence of any cost basis for the per user usage charges means that the application of these charges in the broadband access tariffs of the incumbents imposes an inappropriate cost on competitors. These charges raise competitor costs without any economic justification. The resulting revenues are pure profit – a form of monopoly rent. Consequently, the application of these charges deters economically efficient entry contrary to the requirements of the Policy Direction.
9. The inclusion of per user usage charges in the broadband access tariffs of the incumbents is bad policy and contrary to the Policy Direction. No such charges should be applied.

2. The Incumbents Should not Receive a Windfall

10. The 29 November 2010 comments of Bell and of the Cable Carriers confirm that the sole purpose of the per user usage charges is to modify end user behaviour by discouraging Internet usage. In these circumstances, there is no reason why the incumbents should receive a financial windfall from charging per user usage charges at the wholesale level.

11. If the Commission wishes to require competitors to charge per user usage charges then this requirement should be made a condition of access to the incumbents' broadband access services and the financial benefit from such charges should flow to the competitors, not the incumbents.
12. This approach could be implemented by including an appropriate clause in the agreements between the incumbents and the customers of the incumbents' broadband access tariffs. The incumbents have ample incentive to monitor the retail offerings of competing ISPs to ensure that the same retail per user usage charges were actually being charged by competing ISPs as by the incumbents. There would be no regulatory burden on the Commission.
13. This approach would have the advantage of regulatory simplicity. It would ensure that competitors could immediately match the retail offers of the incumbents by changing their per user usage charges to match those of the incumbents whenever necessary, without the requirement for a change to the incumbents' broadband access tariffs. And, this approach would also ensure that the incumbents would not receive a financial windfall in the form of the flow through of per user usage charges paid by end users of competitors. Such a windfall cannot be justified on any economic or policy basis.

3. Linkage of Wholesale and Retail Rates is Unmanageable

14. The linkage of the incumbents' per user usage charges in their broadband access tariffs with the same type of charges at the retail level is totally unmanageable.

15. The retail Internet rates of the incumbents are unregulated. Those rates can be changed at any time, in any way and for any group or subgroup of subscribers. It is unrealistic to expect the Commission to attempt to monitor such retail changes. It is equally unrealistic to expect competitors to file applications with the Commission every time such changes occur in order to require corresponding changes to the incumbents' broadband access tariffs.
16. It would be grossly inefficient from a regulatory perspective for the Commission to attempt to enforce a retail/wholesale linkage in a coherent and consistent manner. It would also impose a huge regulatory burden on the Commission, the incumbents and competitors. Consequently, in effect, any such linkage is unenforceable.
17. It is bad policy and bad regulatory practice to establish a tariff regime which is fundamentally unenforceable. Such an approach is also contrary to Policy Direction's requirement that the Commission use measures which are "efficient and proportionate to their purpose".

Conclusion

18. Distributel strongly disagrees with any application of per user usage charges at the wholesale level. As indicated in Distributel's 29 November 2010 Comments, the Commission's decision to approve such charges is based on a seriously flawed policy which discourages Internet use, inhibits broadband innovation, impairs competition and limits consumer choice.
19. The Commission's decision is also contrary to the Policy direction because it deters economically efficient entry and would be unmanageable from an enforcement perspective.

20. In Distributel's submission, any usage charges applicable at the wholesale level should be truly reflective of costs and should apply to a wholesale customer's aggregate traffic. This is the only way to ensure an economically rational wholesale regime. It is also the only way to ensure that the wholesale regime complies with the Policy Direction.

21. That being said, if the Commission concludes for some reason that competitors' retail Internet offerings should include a per user usage charge equal to the per user usage charges imposed by the incumbents then this should be accomplished by means of a contractual requirement between an incumbent and a customer using the incumbent's broadband access tariff. Under this arrangement, the competitor would retain the revenues generated by such charges. The incumbent should not be permitted to reap a windfall.

22. All of which is respectfully submitted.

*** end of document ***