



December 9, 2010

[Via Access Key](#)

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

Dear Mr. Morin,

RE : **Telecom Notice of Consultation CRTC 2010-803, Usage-based billing for Gateway Access Services and third-party Internet access services (TNC 2010-803) – Reply Comments of the Cable Carriers**

1. Cogeco Cable Inc., Quebecor Media Inc., on behalf of its affiliate Videotron Ltd., Rogers Communications Inc. and Shaw Communications Inc. (collectively, the Cable Carriers) are in receipt of comments dated 29 November 2010 from the following parties on the matters raised in TNC 2010-803:

- Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies);
- the Canadian Association of Internet Providers (CAIP);
- the Canadian Network Operators Consortium Inc. (CNOC);
- Distributel Communications Limited (Distributel);
- MTS Allstream Inc. (MTS Allstream); and
- Vaxination Informatique (Vaxination).

2. The following are our reply comments.

The current proceeding is narrow in scope; it is not a review of TRP 2009-657 or Decision 2010-802

3. The scope of the current proceeding was defined by the Commission at paragraph 4 of TNC 2010-803 as follows:

The Commission calls for comments, including supporting rationale, as to whether or not the UBB [usage-based billing] components and excessive usage charge of GAS [gateway access service] or equivalent services and of TPIA [third-party Internet access] services should be set at levels below the ILECs' and the cable carriers' comparable retail UBB rates and, if so, to what extent.

4. Despite this explicitly narrow statement of scope, several parties have attempted to make use of this proceeding to re-argue the Commission's broader policy framework regarding UBB generally and resale UBB specifically.
5. For example, at paragraph 4 of its comments, CAIP suggests that there is not yet any "clear evidence" that either economic or technical Internet traffic management practices (ITMPs) are required on wholesale services. Similarly, at paragraph 29 of its comments, Distributel states bluntly that it "strongly disagrees with any application of the Per Usage Charges at the wholesale level. 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."
6. Such statements are not only out of scope of the current proceeding, they show a blatant disregard for the extensive fact-based analysis undertaken by the Commission in the proceeding that led to Telecom Regulatory Policy CRTC 2009-657, *Review of the Internet traffic management practices of Internet service providers* (TRP 2009-657). They must be discarded.
7. The same is true for the efforts of several parties¹ to have the Commission revisit its determination in TRP 2009-657 authorizing underlying carriers to apply end-user-based UBB charges to their wholesale customers. These parties would prefer that the Commission direct underlying carriers to apply UBB charges to their wholesale customers on a "bulk basis". Yet as CNOC rightfully acknowledges at paragraph 34 of its comments, the end-user basis for the application of wholesale UBB charges has already been decided. The scope of the current proceeding is strictly limited to the question of whether or not to apply a discount to such charges in a wholesale context.
8. We also note that some parties² have seized the opportunity afforded by this proceeding to put forward the allegation that underlying carriers will systematically avoid applying to their retail customers the same UBB charges that they are authorized to apply to their wholesale customers. The implication appears to be that the Commission should respond to this threat by waiving wholesale UBB charges entirely.
9. Yet once again, the Commission has already expressly ruled on this issue. In Telecom Decision CRTC 2010-802, *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*

¹ See CAIP's comments at paragraph 11, Distributel's comments at paragraph 25, MTS Allstream's comments at paragraph 3, and Vaxination's comments at paragraphs 12 and 28.

² See CAIP's comments at paragraphs 6-9, and MTS Allstream's comments at paragraph 6.

(Decision 2010-802), the Commission expressly chose not to apply any *ex ante* prohibitions on the UBB-related promotional activities of the Bell companies. Instead, the Commission stated that it would address future concerns, should any arise, on an *ex post* basis. Any attempt to now revisit this determination amounts to a review and vary of Decision 2010-802 and is outside the scope of the current proceeding.

The purpose of UBB is not limited to strict cost recovery

10. In the Cable Carriers' November 29, 2009 comments, we devoted considerable attention to the lengthy history and consistent rationale for the application of UBB charges on wholesale Internet access services. We emphasized that UBB charges exist first and foremost to assist the underlying network operator in managing the Internet profiles of end-users on its network, and 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. These charges are not, and have never been, strictly cost-based.
11. This lengthy history and consistent rationale seems to have been lost on several other parties. For example, at paragraph 11 of its comments, MTS Allstream calls for UBB rates to "reflect the costs of providing the extra capacity that competitors are using", as if these costs could be established based on a simple direct accounting methodology oblivious to the impact of behavioural changes on network usage. CAIP, at paragraph 10 of its comments, goes so far as to suggest that GAS and TPIA rates are already compensatory without UBB, an assertion that willfully ignores the reality that without the application of UBB charges, wholesale end-users could be expected to impose dramatically different demands on network resources than their retail counterparts.
12. Suggestions that underlying carriers should be forced to apply UBB charges only at peak network usage periods³ are also beside the point. As a matter of practicality, underlying carriers have to date elected to apply UBB charges on an aggregate monthly basis rather than on a time-of-day or alternative metered basis. Evidence was provided by the Cable Carriers in the proceeding leading to TRP 2009-657 that this chosen practice was having the desired behavioral effect. It is conceivable that this situation could change in the future. What is important, however, is that the Cable Carriers apply UBB charges on the same non-discriminatory basis to both their retail and wholesale end-users.

³ See Distributel's comments at paragraphs 11-15.

Calls for regulatory and economic arbitrage must be rejected

13. In its November 29, 2010 comments, CNOC makes an elaborate appeal for a minimum 50% discount on wholesale UBB charges relative to retail UBB charges.
14. The principal arguments put forward by CNOC in support of its proposal are that it would improve the state of competition in the provision of Internet access services, mitigate the alleged disadvantages of being a wholesaler of these services (for example as relates to the ability to bundle services), and enhance the ability of wholesale customers to differentiate their services in the market (presumably by passing their UBB savings on to their end-users).
15. In other words, CNOC is asking the Commission to approve an arrangement founded on regulatory and economic arbitrage.
16. The Cable Carriers are strongly opposed to such a proposal. To artificially promote resale competition through the mandating of arbitrary discounts on network access charges runs dramatically counter to the Commission's consistent policy of promoting facilities-based competition. It would also run counter to the requirement in the Policy Direction that the Commission should "rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives"⁴.
17. Among the other arguments put forward by CNOC in favour of its arbitrage proposal is the assertion that because wholesale customers incur some of their own transport costs between the underlying carriers' access networks and the public Internet, they should not have to bear 100% of UBB charges⁵. This argument ignores the fact that the underlying carriers' access cost studies already take account of the fact that wholesale customers provide some of their own facilities. The demarcation between what is provided by the underlying carrier and what is self-provided by the wholesale customer is already clearly defined in these studies.
18. CNOC also argues that wholesale customers will incur their own costs for implementing and administering UBB to their retail end-users⁶, and that some discount to retail UBB rates is required to offset these costs. The Cable Carriers disagree. It is the underlying carrier that bears the entire cost of measuring excess usage traffic and billing the requisite charges to the wholesale customer on an end-user basis. The wholesale customer's only role is to choose whether

⁴ P.C. 2006-1534, *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*.

⁵ See CNOC's comments at paragraph 49.

⁶ See CNOC's comments at paragraphs 50-51.

or not to pass through these charges to its end-users, in whole or in part. We submit that the cost of performing this role is minimal.

19. At the end of the day, CNOC's proposed 50% discount on UBB charges must be recognized for what it is – a wholly arbitrary attempt to secure an artificial competitive advantage relative to underlying carriers without any factual support.

The implementation time frames put forward by CNOC are unreasonable

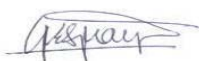
20. In its comments, CNOC requests that any ILEC or cable carrier that has not yet implemented wholesale UBB be required to file proposed tariffs and provide notice to its wholesale customers at least six months prior to the initial implementation date for its first wholesale UBB offering. The Cable Carriers view such a delay as entirely unnecessary. Given the wholesale customer's minimal involvement in the actual implementation of UBB, we view a 60 day time frame as more than adequate to receive notice from the underlying carrier, decide on an end-user billing policy, and send an advisory to end-users. We also note that a 60 day time frame is consistent with the rules established by the Commission in TRP 2009-657 in relation to technical ITMPs.
21. In its comments, CNOC also appears to request that any changes to wholesale UBB regimes already established by underlying carriers should require a minimum 90 day implementation delay. The Cable Carriers cannot see any reason why such a lengthy delay should be required. Changes to individual speed-specific UBB rates and thresholds can be expected to be quite common as underlying carriers respond to competitive pressures in the robustly competitive Internet access marketplace. A standard 30 day timeframe should be more than adequate for advising wholesale customers of such changes.

Conclusion

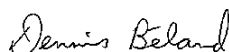
22. The Cable Carriers reiterate that UBB charges are first and foremost a mechanism for managing Internet traffic, that is to say an economic ITMP. UBB rates and caps are set at levels where they are expected to have an influence on the traffic patterns of end-users, particularly high consumption end-users, otherwise they do not achieve their purpose.
23. Any attempt to establish rates for wholesale UBB charges based on a narrow assessment of incremental costs is destined to failure, as it would not take into account the broader behavioral impacts that permit the attainment of the underlying carrier's network management objectives.
24. The potential adverse effect on network management of an obligation to reduce wholesale UBB charges by an arbitrary percentage amount could also be severe.

25. If wholesale end-users are subject to significantly lower UBB charges than retail end-users, they will have significantly higher bandwidth consumption profiles than their retail counterparts. Such a result, if imposed by regulation, would require an increase in monthly wholesale end-user access rates to reflect the increased consumption of network resources by wholesale end-users.
26. It would be simpler and more equitable to maintain the existing equitable policy of applying the same UBB rates and caps to wholesale as to retail end-users.

Yours very truly,



Yves Mayrand
Vice President
Corporate Affairs
Cogeco Cable Inc.
Tel.: 514.874.2600
Fax: 514.874.2625
yves.mayrand@kogeco.com



Dennis Béland
Senior Director, Regulatory Affairs,
Telecommunications
Quebecor Media Inc.
Tel.: 514.380.4792
Fax: 514.380-4664
regaffairs@quebecor.com



Ken Engelhart
Senior Vice President
Regulatory
Rogers Communications Inc.
Tel.: 416.935.2525
Fax: 416.935.2523
ken.engelhart@rci.rogers.com



Jean Brazeau
Senior Vice President
Regulatory Affairs
Shaw Communications Inc.
Tel.: 416.649-5211
Fax: 416.649-5201
jean.brazeau@sjrb.ca

Copy: Interested Parties List, TNC 2010-803

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