



Telecom Notice of Consultation CRTC 2011-77

Review of Billing Practices for Wholesale Residential High-Speed Access Services

CRTC Reference No.: 8661-C12-201102350

Phase II – Oral Rebuttal Opening Comments of OpenMedia.ca

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Good morning.

1. Mr. Chairman, Commissioners, I wanted to thank you for giving us a chance to offer our rebuttal comments. We'll try to keep matters brief and to the point.
2. Our panel remains unchanged from our last visit. My name is Tamir Israel, I am staff lawyer with CIPPIC, and with me again is Steve Anderson, executive director of OpenMedia.ca.
3. We wanted to thank you once again for giving us an opportunity to come before you. Steve will start off today by providing responses to some of your questions to us from our previous visit, and then I will offer some points on rebuttal.
4. We will keep it brief and to the point today.

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5. In our presentation last week we advocated for a pricing regime that enables competition and encourages innovative use of the Internet through independent ISP pricing model autonomy. To get there we argue the commission should focus on ensuring a wholesale pricing regime that is cost-based, fact-based and transparency-based.
6. The Commissioner asked us to elaborate on some of the key facts that we put forward during our presentation. We have submitted evidence and I will briefly review some of the key points now.
7. One of the areas the commission asked us to examine further is the international comparison between Canada and countries like the UK, Sweden and Japan where open access policies play a critical role. As promised we have submitted the *International Comparison* section of *OpenMedia.ca's Casting an Open Internet* report for the record.
8. As you'll see from the report, many of our global counterparts are shifting towards open access policies.¹ One of the key findings of the report was quote, "unbundling, when effectively implemented, served as a critical juncture in telecommunications regulation by significantly opening up competition. In Canada, unbundling was formally adopted, but has not facilitated as much competitive entry into the market as it has in countries like the UK, Japan and Sweden."²
9. Looking specifically at Japan and the UK is instructive:
10. Japan: the regulator forced the incumbent NTT to unbundle its last mile infrastructure to new entrants and lease out its dark fiber at low, regulated rates. By the late 2000s, NTT's infrastructure was opened to independent ISPs, allowing for fierce service-

¹ OpenMedia.ca, 'Casting an Open Net', 2011, p. 84.

² OpenMedia.ca, 'Casting an Open Net', 2011, p. 84.

based competition and the development of a thriving broadband market.³ The government reportedly **sees no evidence that these policies have affected growth or diminished NTT's incentives to invest in infrastructure.**⁴

11. UK: Functional separation has spurred widespread broadband use across the country, lowered broadband prices, and offered a much wider range of choices for Internet service.⁵
12. While many of the countries leading in telecom performance have implemented fairly drastic solutions the commission can take a small step in the right direction by adopting a rigorously cost-based approach that enables independent pricing model autonomy
13. Independent ISP pricing autonomy refers to the degree to which independent ISPs can develop their own business and pricing models without being beholden to the wishes or dictates of incumbents. Independent ISPs have more pricing autonomy when rates are cost-based and transparent so they can compete on equal footing with incumbents.
14. Canada has attempted unbundling, but it has failed to take significant hold. The Berkman Center's *Next Generation Connectivity* report associates our high wholesale rates with Canada's falling standing on key broadband metrics like price and speed. According to the report:

*Looking at 2008 data as reported by the OECD, Canada's commitment to a cost-plus-markup approach is uncharacteristic of other countries, where long run costs as well as less crisply defined concepts like "cost orientation plus reasonable profit" (Netherlands) are used. The result, in any event, is that by comparison to high performers for which the OECD reported data in the Communications Outlook 2009, Canada's rates for local loop are high. As of September 2008, the monthly price of an unbundled local loop in Canada...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 UK. Indeed, Canada has the highest monthly charge for access to an unbundled local loop of any OECD country.*⁶

15. In the spectrum of pricing autonomy Canada is on the far end, where independent ISPs find themselves highly constrained. In fact, while UK indie ISPs already pay 25% less

³ OpenMedia.ca, 'Casting an Open Net', 2011, p. 69.

⁴ Kushida, K., & Oh, S. (2007). The Political Economies of Broadband Development in Korea and Japan. *Asian Survey*, 47(3), 481-504.

⁵ OpenMedia.ca, 'Casting an Open Net', 2011, p. 71.

⁶ Benkler, Y., Faris, R., Gasse, U., Miyakawa, L., & Schultze, S. (2010). "Next Generation Connectivity: A review of broadband Internet transitions and policy from around the world." Harvard University: The Berkman Center for Internet & Society. 168

than their Canadian counterparts, Ofcom recently put forth a proposal to lower rates even further.⁷

16. In closing, studies show that we need to move from a paradigm of protecting incumbents to a paradigm of encouraging competition. If we want lower prices, world-class speeds and more choice, we need to provide indie ISPs with the flexibility to compete, and both incumbents and independent ISPs with incentives to invest.

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17. As we noted in our last visit before you, for us a successful tariff is one that enhances autonomy in the wholesale market by being cost-based, facts-based, and transparent. As Steve just noted, studies suggest rigorous adherence to cost-based tariffs as a necessary element in ensuring sufficient wholesale competition develops.
18. To this effect, we are very pleased that there appears to be fairly broad consensus at this point around a cost-based tariff, at least in principle.
19. I would like to start by saying a little about peak period and volume pricing, as these are two of the competing models before the Commission.
20. Briefly, in order to clearly decide which of these two pricing models is preferable from a cost-based perspective, there needs to be evidence on the correlation between, on the one hand, peak period usage at a point of interconnection and congestion on a network, as well as the connection between usage generated at a network end (whether at the user's end or at the wholesale interconnection point) and utilization rates at downstream link.
21. Online traffic congestion and, hence, online provisioning remains peak-period driven. Indeed, it appears that increases in video streaming and away from peer-to-peer usage are driving *greater* peak period to off-peak period usage disparities, meaning that peak period usage will increase as a driver of network investment in the future:

Because congestion is, by definition, at its worst during the peak usage period and investments necessary to relieve congestion must target usage as measured during the peak period, the most important measure from a network provisioning standpoint is that of the peak period. Given the nature of video traffic, it is unsurprising that peak traffic is actually increasing at a much higher rate than global traffic. In fact, the Companies' peak traffic increased by 55% in 2009 and 61% in 2010.⁸

22. A very typical daily traffic curve resembles the following:⁹

⁷ Flveash, Kelly. (2011). "Ofcom calls on BT Openreach price cuts for ISPs" The Register. Retrieved from, http://www.theregister.co.uk/2011/03/31/ofcom_bt_wholesale_price_fall/

⁸ Bell, "Initial Comments to TNC CRTC 2011-77", March 28, 2011, para. 33-34.

⁹ Appendix B to Rogers, "Initial Comments to TNC CRTC 2011-77", March 28, 2011, p. B3.

CHART B3 Internet Use by Time of Day - North America 2010

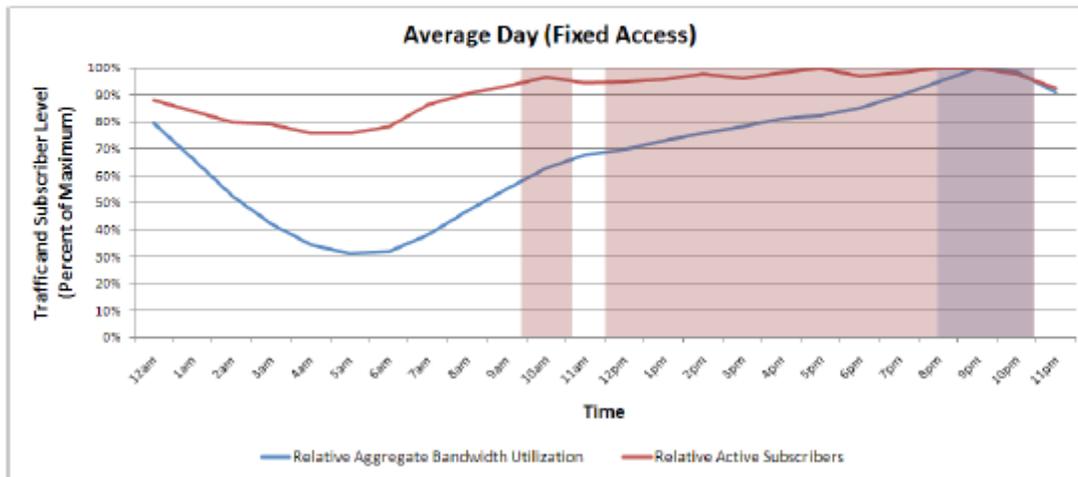


Figure 1 - North America - Average Day (Fixed Access)

These peak-usage patterns are fairly endemic across most ISPs with slight variations and we have seen no indication to suggest that this pattern is likely to change. As such, we submit that peak period usage or throughput remains an effective and appropriate mechanism for determining network investment costs. We note that we do not believe it is so simple to flatten out usage curves of this nature so as to vitiate peak period traffic trends. Indeed, incumbents currently have the incentive to do so, but have not successfully managed to.

23. With respect to the 95 percentile plan put forth by CNOG, it is our view that this proposal appears the most favourable at the moment as it emulate peak period usage. As we have stated before, however, it is difficult to assess the plan in whole without understanding how the per Mbps rate attached to it will be priced. With respect to MTS' proposal and Primus' similar proposal, we note that this plan has the advantage of best emulating incumbent conditions, in some respects, for wholesale ISPs. Finally, it is our view that Bell deserves credit for its latest proposal, which is a vast improvement over its previous offerings. We have some outstanding concerns over the per GB pricing of this plan, and continue to favour the CNOG plan (priced properly) and the MTS plan as these appear to offer wholesale ISPs greater autonomy by allowing them greater flexibility and responsibility in planning their own networks. Indeed, if it were not an overly cumbersome endeavour, we would join Vaxination Informatique and urge the Commission to put in place a range of tariffs so that wholesale ISPs could each choose for themselves which is best suited to their needs.
24. On a final note, as I mentioned, we have grave concern with the \$0.175/GB rate. The \$0.195/GB, by Bell's own admission, was an incentive-based rate intended to encourage traffic discipline. To fulfill our undertakings, we have put in place cost

estimates suggesting the per GB transport cost on Bell's network is significantly lower. If Bell's AVP model is adopted, the assumptions underlying this figure need to be carefully examined.

Thank you for your time. We will be pleased to take your questions.