

CRTC and Federal Government Initiatives Affecting ISP's

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Presented by Bill Campbell, Skyway West

Thank you for inviting me to speak today. I hope to make what is normally a dry topic relevant to your business.

Skyway West joined CAIP years ago because we believed that the success of our business could be threatened or enhanced by decisions made in Ottawa. We didn't have the time or resources to keep up with the political and legal pressures our business is subject to. CAIP kept us educated and through CAIP we tried to influence issues to our favour. Three years ago I became the CAIP Board member representing Western Canada.

It is true that many of the issues are spearheaded by Bell more than Telus but we must remain vigilant to precedents that could overflow into our markets. We will touch on several today. It is also true that some issues affect larger ISP's more than small. Sometimes we escape, but often our size is only an excuse to delay the inevitable.

I have organized my thoughts around five questions.

1. What could increase our costs?
2. What could reduce our costs?
3. What could reduce the quality of the service we provide?
4. What could affect our ability to compete?
5. What could endanger our survival?

1. Three CRTC initiatives could increase our costs.

March 13 2009 CRTC Tariff 2009-484 Usage Based Billing

First, the CRTC approved a tariff filed by Bell allowing Bell to charge wholesale customers for usage on an individual service basis. We of course feel that any cap should be based on our total customer base and not individual customers.

The cap is equal to what ever Bell includes with their competing retail service and can only be applied if Bell is charging their retail customers. Cable companies are already allowed to charge for wholesale traffic, if and when, they charge retail customers. I understand Shaw doesn't charge for wholesale traffic but others do.

The traffic charges are skewed against the wholesale ISP. The Bell retail service includes 60 GB so the ISP's wholesale service includes 60 GB, The first 20 extra GB are one dollar twelve and a half cents (\$1.125) each for a maximum extra charge of \$22.50. The next 220 GB are free. These means the price per GB ranges from \$1.125 to nine cents (\$0.0938) if your customer transfers 300 GB.

CAIP is working with Measurement Canada because we believe there is considerable room for interpretation in what a GB is. Is it traffic before adding Ethernet and ATM overhead, or before? Overhead can average 15% of total traffic. Because of overhead, we only receive 85% of the ADSL speed Telus sells. 6 Mbps is really 5 Mbps, 1 Mbps is really 850 Kbps. Our speed tests show Shaw's speeds are before adding overhead.

Bell's Usage based Billing tariff was in response to the December 2008 CRTC Decision 2008-117 where the CRTC ruled Incumbent Local Exchange Carriers (ILEC's) must provide ISP's with the same Internet speeds they offer retail customers. As Bob said earlier, this is one of the Decisions that the ILAC's eventually appealed to Cabinet.

We are very frustrated that the CRTC 's UBB Decision was made without Bell having to justify GB charges based on traffic studies. What they did file was filed in secret.

In August, MTS Allstream appealed to the Federal Court of Appeal saying UBB isn't fair because Bell doesn't have to pay itself those rates. And, there is no indication that the CRTC considered a usage-based charge to be just and reasonable and if it did, what evidence it considered in coming to such a conclusion".

September 18 2009 MTS Allstream filed a Part VII Application saying the UBB tariff was seriously deficient as it did not meet the most basic informational requirements for tariff applications that propose a rate increase and the introduction of new and additional charges. These fatal errors are exacerbated by the fact that the Commission approved the new UBB charges when there are no fewer than eight separate proceedings outstanding in which every aspect of Bell's wholesale service is under review, as is Telus'.

CRTC Process

This gives me an opportunity to pause to describe how the CRTC process actually works. As Allstream says, there are eight separate proceedings that affect us. The trend is for the CRTC to have Hearing, make a Decision, somebody files a Part VII asking that they Review and Vary, and appeal to the Federal Courts or Federal Cabinet if the decision doesn't go their way. It is obvious that the CRTC is no longer effective, has lost credibility and I believe the cycle will not change until the Federal Government steps in and sets policy. Part VII is the section of the telecommunication Act setting out the grounds under which parties can dispute a CRTC Decision.

New Media Hearings

Second, of three CRTC initiatives that could increase our costs. The CRTC recently ended hearings on the definition of new media and whether new media should be regulated under the Broadcasting Act, Some artists groups and broadcasters promoted a three per cent levy on ISP revenues as a means funding Canadian content in new media. Bell Canada and Rogers Communications argued a levy would be illegal because companies are regulated under either the Broadcasting or Telecommunication Act, not both Acts. And the Telecommunications Act doesn't allow for taxes for Canadian content. Telus agreed and said new media broadcasting should not be considered under broadcasting regulations without the explicit direction from Parliament. The CRTC is asking the Courts if they are in any way able to fund Canadian content from firms covered by the Telecommunications Act.

CRTC Chairman Konrad Von Finckenstein verbally committed to CAIP during the hearing that any tax or levy, if imposed, would not apply to "small" ISPs which are generally thought to be everyone other than “the big five”. Telus, Bell, Bell Aliant, Shaw and Rogers.

Copyright hearings

Third of three CRTC initiatives that could increase our costs. July 20, 2009 Industry Minister Tony Clement and Canadian Heritage Minister James Moore launched the first Canadian public consultation on copyright policy since 2001.

CAIP is a member of the Canadian Advanced Technology Alliance (*CATAAlliance*). CATA is creating a Copyright Campaign led by Jay Thomson, LL.B, Jay is a recognized expert in the fields of Internet/Broadcasting/Copyright Policy & Regulation. Some of you may remember that Jay was the previous president of CAIP and left CAIP to work for Telus. He is now a consultant.

CAIP's position is four fold. First, keep ISPs free from copyright liability. Second, codify notice and notice (not notice and take down), Third, no ISP levy and fourth, no "three strikes" (notice and termination). Here is how these four would add to our costs.

First, in a 2001 Decision, the CRTC acknowledged that we are a carrier and not liable for carrying copyright content. Our main vulnerability is caching copyright content for redistribution.

Second, most ISPs today pass Copyright Infringement notices on to the end user and do not follow up. Copyright holders want us to take down Copyrighted material. This would cost us more in time and probably upset our customers to the point they refuse to pay their bill.

Third, Copyrighted holders argue that we should be paying a levy because we carry copyright material. We used to argue that we should be charging copyrighted holders since we were having to pay for the traffic. However, Usage Based Billing gives them the opportunity to argue we are profiting from carrying Copyrighted content. And should share our profits.

Some groups have accepted that file sharing is unstoppable and unenforceable. Instead they argued that ISPs should by default block all forms of peer to peer and charge \$5/month to remove the block. The \$5 would of course flow to the copyright holders after deducting an administration fee. Of course from our perspective, the Internet is like a leaky sieve and the peer to peer distribution platforms will simply find away around blocks.

Lastly, Copyright representatives demand we cut off customers caught offending three times. Now we have the cost of time spent, disputed accounts receivable and a lost customer. There is some

thought that the ILEC's may agree with cutting off customers in return for distributing copyright material themselves.

2. Only one initiative could reduce our costs and it is a Government initiative, not a CRTC one.

April 24, 2009 Bill C-27, the Electronic Commerce Protection Act

It is possible that the Electronic Commerce Protection Act could reduce the amount of spam and slow down the rate at which we upgrade our mail servers. Speaking for Skyway West, we were unprepared when spam moved quickly to images and our spam controls didn't have the processing power to keep up. Our mail server slowed down and customers complained until we upgraded.

At Skyway West, we considered outsourcing but found it expensive especially when most of our email accounts are free. And, it was not much better than our own methods built on SpamAssassin, 95 vs 98% of spam caught. Since most of our email accounts are free, we direct customers who want more than what we provide to companies that specialize in email.

3. One CRTC initiative could seriously reduce the quality of the service we provide.

November 20 2008, CRTC Decision 2008-108 re Bell throttling wholesale ADSL access Services

October 2007 Bell began throttling its retail traffic and March 2008 unilaterally, and without notice, began throttling wholesale traffic. They used deep packet inspection to identify and throttle peer to peer traffic 10 hours a day. CAIP discovered this after our customers began complaining about long down load times and dropped VoIP and VPN connections. Coincidentally, the CBC

released the final episode of Canada's Next Great Prime Minister using BitTorrent and some users reported it taking 11 hours to download.

At the same time Bell announced its retail accounts would be subject to UBB it began advertising its residential service as a "direct, uncongested service using a new next generation fibre optic network. This is of course the same fibre network they and Telus are trying to prevent ISP's from using by refusing to offer us speed parity and arguing we cannot have access to their Next Generation Network.

April 2008, CAIP filed a Part VII asking the CRTC to direct Bell Canada to cease and desist. We argued Bell had no regulatory authority, was an abuse of Bell's market dominance and puts ISP's at a disadvantage.

November 2008, The CRTC accepted Bell's argument that peer to peer was affecting other users and permitted Bell to throttle as they wished. The decision was based on traffic numbers provided in confidence to the CRTC. It seems a common theme, the CRTC making decisions based on incomplete stats filed in confidence. The CRTC ignored our argument that even if Bell was allowed to throttle, there were better alternatives to throttling at the application level, For example, it would be better to throttle the total pipe and only when congestion occurs.

The CRTC did though decide to hold hearings on the Internet Traffic Management Practices of all Internet Service Providers July 2009 to decide the extent to which retail and wholesale ISP's can manage traffic on their networks.

4. Three CRTC issues could affect our ability to compete.

First, UBB will affect those ISP's who compete by offering more than the 60 GB included with Bell and Telus' retail service. For example, Teksavvy charges \$29.95 for a 5M down/800 K up service including 200 GB. Their unlimited service is \$39.95. The price of their service will increase at least \$22.50 for every customer transferring more than 80 GB.

Second, throttling will affect those of us who compete by adding value to our ADSL services and marketing to users requiring a high quality service for VoIP, VPN's etc. Or, those offering the triple play of VoIP, IP TV and Internet.

Third, the CRTC review of Internet Traffic Management could affect our ability to compete in two ways. If the CRTC allows Bell to throttle as they wish, ISP's will be unable to differentiate their services from Bell. If the CRTC says nobody can manage their traffic, we lose the ability to differentiate by, for example, prioritizing VoIP. This is why we told the CRTC that ISP's should be allowed to traffic manage retail customers but not wholesale.

5. What could endanger our survival?

Bob has already mentioned the Dec 11 2008 CRTC Decision 2008-117 directing Bell Aliant, Bell Canada, MTS Allstream, SaskTel, and Telus to file proposed revised tariff pages to match wholesale speeds to existing retail service speeds where there is demand by any wholesale customer and the March 3 2009 Telecom Order CRTC 2009-111 directing the ILECs to comply with the requirements of Telecom Decision 2008-117. The issue is now before Federal Cabinet who will decide before Dec. 12 2009. They might just push it back to the CRTC restarting the entire process.

MTS Allstream is spearheading a Competitive Broadband Coalition to educate the public and influence Cabinet to our favour. Our Coalition - CAIP, MTS Allstream, the Canadian

Federation of Independent Businesses and nearly two dozen individual companies - represents more than 250,000 businesses with 1,200,000 employees and 900,000 consumer Internet customers in Canada.

We caught the ILEC's by surprise Thursday Sept 10 when we initiated phase 1. It targets Government, media and businesses. We delivered Campaign kits to the offices of all MP's and Senators and will send follow up letters in approximately 3 weeks later. Media coverage of the launch exceeded our expectations, with stories in most major news outlets (CBC, Canadian Press, National Post) and across many Internet properties.

We are driving traffic to www.competitivebroadband.com where people can read about the issue and send an email to Prime Minister Harper, Industry Minister Tony Clement and the Opposition Leader or MP of your choice. We sent 6000 email in six days.

We are now moving the campaign online to take advantage of our customer bases. For example, we are working on billing inserts and web content directed at households. Please give me your business card if you would like to participate.

That concludes my presentation. Thank you for your time. Please feel free to take a business card if you have any questions or want to join CAIP.

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References

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November 2008 CRTC Public Notice 2008-19 Review of the Internet Traffic Management Practices of Internet Service Providers proceeding.

March 2009 review New Media Broadcasting exemption orders

March 13, 2009 CRTC Tariff 2009-484 Usage Based Billing

April 24, 2009 Bill C-27, the Electronic Commerce Protection Act

July 6, 2009, Review of the Internet Traffic Management Practices of Internet Service Providers proceeding.