

Comments
to
Canadian Radio-television and Telecommunications
Commission

by
Vaxination Informatique
regarding

**Part 1 application
requesting fair treatment
of Internet services by Bell Mobility,
Rogers Wireless and Vidéotron
CRTC 8622-B92-201316646
(2013-1664-6)**

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1. Pursuant to the Commission's letter dated 31 January 2014 which merged the Part 1 applications from Benjamin Klass and the Consumers' Association of Canada, the Council of Senior Citizens' Organization of British Columbia, and the Public Advocacy Centre (PIAC) (collectively, PIAC), Vaxination Informatique provides its additional comments. Vaxination requested intervenor status in its January 9th submission in this file.
2. At this stage of the process, comments from wireless carriers are limited to Bell Mobility (Bell), Telus and Eastlink. The term "mobile TV" is used generically to describe similar services offered by different wireless carriers.

The Big Picture

3. As a New Media Broadcasting Undertaking, the content carried by mobile TV may be governed by the Broadcasting Act, but because, NMBU service delivery is done outside of the traditional regulated OTA or BDU broadcasting systems, the Commission must determine which Act applies to the delivery portion of a particular service.
4. As mobile TV services are delivered to wireless handsets over a data link which:
 - is not dedicated to carriage of broadcasting content
 - shares capacity with services which are clearly Telecom services (internet access).
 - shares protocol, IP address, and congestion realm. (mobile TV traffic can cause congestion on internet traffic and vice versa).

There is no justification to label the link as a "broadcasting" link as the data clearly travels on a telecommunication link not dedicated to broadcasting.

5. Because of the shared nature of the link, the Commission cannot consider the mobile TV service in isolation. Labelling the delivery as "broadcasting" may give incumbents the "get out of ITMP jail" card they are asking for in this game of Monopoly, but still leaves the other traffic regulated by the Telecom Act where 27-2 would balk at the notion of non-broadcasting traffic having to shoulder a greater ITMP burden and pricing in order to literally give mobile TV a free ride.
6. Irrespective of the Commission's classification of the mobile TV delivery, the Telecom Act still applies to the rest of the traffic on the shared link, and the Commission must ensure this traffic is not discriminated against as per 27(2) for both ITMP and pricing.

1 It must be noted that the ITMP jail was built by incumbents who appear to dislike their own medicine when it is applied to their own traffic, but gladly apply it to other people's content.

Comparisons with BDUs

Bell Canada's Jan 9th submission:

E11. Bell Mobility's distinct pricing of broadcasting versus Internet services is no different from the same, long established, pricing practices that exist in the BDU and Internet wireline world. A Bell Fibe TV or a Rogers cable TV subscriber who watches a video-on-demand movie by means of their Fibe TV or cable TV or subscription does not incur Internet data usage charges for such viewing.

7. Questions about why FibeTV was UBB exempt were raised throughout the long debate on GAS since 2010. Bell Canada's consistent answer was that FibeTV used distinct/separate capacity in the portions of the network where congestion happened, and therefore did not contribute to congestion on the Internet links. Due to the nature of DSL, the congestion does not happen on the link between the CO and the homes. (the last mile)
8. It is interesting to note that Bell Canada did NOT argue that FibeTV was exempt of ITMP rules because it was "broadcasting" despite there being no question that as a regulated BDU, it is definitely "broadcasting". However, when the time came to calculate wholesale data rates for GAS, it was important to know whether infrastructure used to carry GAS traffic also carried FibeTV traffic in order to properly impute costs and calculate just and reasonable rate for the portion of capacity used by data. (Irrespective of whether FibeTV was broadcasting or not).
9. In the case of cable systems, the broadcast signals travel on their own dedicated channels in the HFC portion (fibre and coax) which do not cause congestion on the data/DOCSIS channels and vice versa. The HFC portion is where cable companies contend congestion happens.
10. In both cable and incumbent IPTV BDUs, there is a clear separation of capacity between data and broadcasting traffic in the network segments where congestion is likely. Hence, ITMP measures can be sized and applied to the data service only.
11. For mobile TV services, the situation is very different. Because the segment where congestion happens (the last mile, air interface) carries both the internet and mobile TV traffic as a single shared capacity pipe², the comparison with the traditional BDUs is invalid.

2 Vaxination's January 9th submission further elaborates on the shared nature of the data pipe

12. Another important, distinction between traditional BDUs and mobile TV services is one of requirement of a data service. For cable, the subscription to TV services is totally separate from that of data service both at technical and business levels. (one can subscribe to cable TV without internet access, or subscribe to a 3rd party ISP with a TV subscription from incumbent.
13. For Fibe TV, at the technical level, subscription to the internet is not required to get FibeTV. The FibeTV service has its own separate authentication mechanism and traffic travels in a different VLAN, so the internet access is separated/isolated from the TV traffic. However, Bell Canada's business practices insist on tied selling of the two services and does not allow a standalone FibeTV subscription, nor a subscription to a 3rd party ISP and its own Fibe TV, both of which are technically possible.
14. When it comes to mobile TV services, ***before the application on the handset can connect to incumbent's video servers, the connection to the Internet must be established***. This means that the handset must establish the GPRS/HSPA/LTE data link and authenticate with the APN, a process which requires a data subscription since the channel being setup is one to access the Internet.
15. In the case of non-incumbent IPTV BDUs such as Colba, Vmedia, Zazeen, while they are regulated as a traditional BDU and unquestionably "broadcasting", their distribution is decidedly "telecom" as they use GAS and TPIA services to deliver packets to customers. Telecom services do not care and must not care nor differentiate based on the bits in the packet payload.
16. These independent IPTV services must purchase sufficient GAS/TPIA capacity to deliver their telecom content, irrespective of whether the packets contain broadcasting, OTT, text, web, voice, health data or a picture of a cat. Packets are packets and are undifferentiated during transport at IP level.
17. ***There is therefore precedent of broadcasting services being distributed over standard telecom services and their distribution being regulated by the Telecom Act.*** (These ISPs currently offer un-metered internet access so there is no conflict between broadcasting usage and data usage hitting monthly caps)

Mobile TV as broadcasting services

18. The Bell Mobile TV service carries a subset of legacy linear TV programming and limited selection of VOD inventory taken from linear TV channels. This is essentially repackaging of an existing BDU product delivered over a non-BDU platform with no new content unique to that platform. This service is separate from a BDU subscription, although subscription to participating BDU does unlock certain channels if the BDU subscription includes them.
19. The "TV everywhere" types of services are tied to a BDU subscription and offer access to the same channels as are subscribed on the BDU (or a subset thereof). Again, such services offer nothing that cannot be had on the traditional BDU services, they simply extend the reach of the traditional BDU service to mobile handsets.
20. Because the wireless carrier's "TV everywhere" needs to send a transaction to the BDU to authenticate the customer and get the list of subscribed channels, this system only works with BDUs who have agreements with a wireless carrier. At present, it appears incumbent wireless carriers only have relationships with their own BDU services, which reduces competition because it forces a customer to have wireless and BDU subscriptions from the same incumbent.

Competition issues

21. Furthermore, the anti-competitive practice is more obvious when you consider that a Rogers BDU subscriber running the Rogers proprietary TV App on his Bell Mobility handset will incur Bell Mobility UBB punitive charges. If he runs the Bell proprietary app, he may be UBB exempt, but will not gain access to content for which he has paid for through his Rogers BDU subscription. (all this applies vice-versa and to other incumbent carriers as well)
22. The incumbents are using their power to force customers to fully bundle with them (BDU and wireless) or suffer the wrath of excessive UBB charges when accessing content that does not come from the incumbent. This is one reason network neutrality (undue preference and ITMP) rules exist and must be diligently enforced to not set precedents which will degenerate into expensive anti competitive walled gardens with no chance for competition to emerge.
23. While VI rules govern BDU access to linear TV channels and VOD programming to prevent hoarding of content (undue preference) at the broadcasting level, they do not govern requirement for BDUs to accept relationships with different wireless carriers. In the above case, a Bell Mobility customer using the Bell proprietary TV app should be able access content from the Bell servers/service with Bell authenticating with Rogers BDU for the list of subscribed channels.
24. The practice of exempting UBB charges for a carrier's own content is not only a serious network neutrality issue, but also very anti-competitive because of the policy to provide undue preference to wireless customers who are also subscribers to the BDU operated by the same company. While some advantages conferred by "bundling" may be reasonable, there are some, such as this issue, which should be consider undue preference and which go against Policy Direction by reducing market forces in an industry plagued by constant debates about lack of competition.
25. A Bell Mobility customer with a Rogers BDU subscription will be billed for every byte when running the Rogers proprietary TV app on his handset, but if he switches all his business to Rogers or to Bell, he will then get the content UBB free despite the delivery of such content using the same amount of capacity on the network. This is a problem that applies to all incumbents.
26. Vertically integrated carriers are not likely to complain because they are cosy with the arrangement which lets each carrier fully capture their customers and lock them into a full bundle of services and reduce churn while raising ARPU.

27. The only source of competition against the duopoly of incumbents comes from players who cannot offer full bundles, any business practice such as UBB-free television viewing tied to BDU subscription from same company **greatly reduces the ability of competitors to provide sufficient market forces to prevent market failure.**

Broadcasting competition

28. In its submission, Bell Canada brags about how great its Mobile TV service is, his huge success (how many subscribers saw this package added automatically to their account ?) and more importantly, how its success has not impeded the growth of competitors such as Netflix.
29. As this issue is focused solely on wireless services, one would need to see trustable statistics on Netflix usage/growth on wireless services only. Since data pricing for content that does not belong to the incumbent is designed to send customers to bankruptcy court, Vaxination doubts many Canadians risk using Netflix on their mobile device unless they are on a wi-fi system without fear of incurring the wrath of excessive UBB pricing for wireless services.
30. **Furthermore, one need not only consider whether statistics show harm to one competitor in recent months, but also consider whether a precedent setting business practice, if allowed by the Commission, will expand to a point where serious harm will be caused to many players.**
31. The success of the Internet and development of innovative new services and emergence of competitors was made possible because of network neutrality principles which ensure that packets get delivered at the same price/priority no matter who sent the packet or to whom it is destined. Opening the door to differential pricing or treatment of data packets will let incumbents build fortresses which will prevent new players from emerging. They already used UBB practices to curb growth of video competition to protect their legacy TV business. But as that incumbents' business moves to the same pipes that carry the Internet and accessed as Internet applications, the data packets from these services must be treated the same and priced the same.
32. The Commission must stand firm on those principles because opening the door, even if only a little will lets a flood of violations come in and truly kill competition. **The end result will be a need for increased regulation of incumbents** (which is all that will remain of the industry), something which the Policy Direction wants to avoid.

33. Enforcement of telecommunications network neutrality principles embodied through the ITMP and 27-2 rules will not hurt the incumbents' emerging mobile TV services. Incumbents simply need to count mobile TV usage towards monthly cap, increase the monthly data cap by 5 gigs when a subscription to their mobile TV service is made, and allow customers to use those 5 gigs any way they want.
34. The incumbents' service remains at the exact same price for the same content, while upholding network neutrality and removing a undue preference problem. There are many other ways in which incumbents can change their business practices to comply with network neutrality principles in ways which benefit customers. What changes is that they see their market power reduced because they have less ability to capture customers into their walled ~~prisons~~ gardens.
35. If purchasing the mobile TV option gives you 5 gigs are a much lower price than purchasing 5 gigs of data, then so be it. People will buy the mobile TV option and use those 5 gigs for other services. The net effect will be to put downward pressure on data pricing.
36. Should the Commission decide to treat this broadcasting content as being distributed as a broadcasting service and thus exempt from protections of the Telecommunications Act, it will need to consider the following aspects:
 - The Internet traffic that flows on the shared pipe to the handset will still be covered by the Telecom Act and will still require protection against undue disadvantage caused by a "blob" of lawless broadcasting content using up capacity in a congested link for free while the other data bears the consequence and subsidizes this blob when it comes to requiring extra capacity and spectrum to solve congestion issues.
 - In a scenario where wholesale data access is contemplated, the Commission will need to look at costing for those links, and in doing so, will have to ensure that wholesale data pricing does not cross-subsidize the "unregulated broadcasting blob" which the incumbents allow to pass through for free (or almost) and without ITMPs.

Conclusion

37. It is unrealistic for the Commission to hide the problem under the rug by categorizing this internet data as "broadcasting" and implicitly or explicitly allow this incumbents' preference onto themselves.
38. The principles must be upheld and any derogation must be dealt with swiftly. Failure to do so will lead to incumbents blocking the very principles which made the Internet a success, namely by providing competition against the incumbents.
39. As there very simple solutions which do not hurt incumbents and do not hurt customers (in fact, give customers greater flexibility), there is no reason to reject the calls made by Mr. Klass and PIAC to enforce 27-2 and ITMP rules on the mobile TV services.