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# Standing Committee on Industry, Science and Technology

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EVIDENCE

**Thursday, February 3, 2011**

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**Chair**

**Mr. David Sweet**



## Standing Committee on Industry, Science and Technology

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• (1600)

[Translation]

**The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)):** Good afternoon everyone.

[English]

Good afternoon, ladies and gentlemen. Welcome to meeting 54 of the parliamentary Standing Committee on Industry, Science and Technology.

We have with us today, from the CRTC, Mr. Konrad von Finckenstein, as well as Len Katz and Lynne Fancy.

We're ready to roll. I will leave it to you, Mr. von Finckenstein, for your opening remarks of approximately 10 minutes.

**Mr. Konrad W. von Finckenstein (Chairman, Canadian Radio-television and Telecommunications Commission):** Thank you very much, Mr. Chairman.

First of all, I have copies of my opening statement, but my communications person is downstairs in the security line-up. You will have them very shortly. I apologize for that.

As you know, we are in the middle of a hearing of Bell's takeover of CTV. We had to scramble to put this hearing in and get the documents done, so it's a last-minute job. I apologize that it's not here.

[Translation]

I recognize that the members of this committee, as well as Canadians, are concerned about our decisions regarding usage-based billing for Internet services. I am pleased to have this opportunity to clarify the CRTC's position in a very public debate over Internet services and to clear up a few misconceptions.

The Internet is a driver of innovation and the backbone of a modern economy. It is vital that Canadians have access to it, and most of them can choose between different Internet service providers. The market is dominated by what many have called a duopoly: large telephone companies such as Bell Canada and Telus on the one hand, and cable companies such as Rogers, Shaw and Videotron on the other. These large distributors have built extensive networks and continue to invest in them.

For example, during the recession of 2008 and 2009, Bell and Telus invested \$8.7 billion to extend and upgrade their wireline network.

[English]

There are also a number of small Internet service providers, ISPs, that serve approximately 6% of the market. That represents 550,000 subscribers, of which 76% are residential customers. That's 550,000 subscribers out of a total of 9,000,000 subscribers in Canada. Despite offering innovative service and real competition, these small ISPs mostly rely on large distributors' networks to reach their residential customers.

The Internet market has evolved primarily through the efforts of a competitive and dynamic industry. This has been achieved by relying, as much as possible, on market forces. The commission only intervenes if there is clear evidence of market failure.

Let me emphasize that we do not regulate the price of Internet service, whether it's offered to residential or business customers. We also do not set download limits, which are commonly referred to as caps. However, we have established rules to ensure that small ISPs are not squeezed out of the market.

Therefore, large distributors must, one, provide wholesale Internet access to small ISPs at a cost plus a prescribed mark-up, effectively allowing those small ISPs to price their offerings competitively; and two, provide this access at the same speed as that offered through large distributors to residential customers.

Without these two rules, the large distributors could limit the wholesale service to the slowest speeds or make them unattractive to small ISPs in other ways. The commission stepped in to make certain they could present comparable and even different features to consumers.

Earlier this week, Mr. George Burger, a representative of a small ISP, TekSavvy Solutions Inc., appeared on CBC News and stated:

If you did away with all the CRTC regulations, then frankly, you would be left with the duopoly [ ... ] of the cable companies and the telecom [companies].

• (1605)

[Translation]

In recent years, convergence has become a reality and the way Canadians use the Internet has changed tremendously. More bandwidth is being eaten up by consumers who are accessing information, downloading or streaming music and video content, or playing online games. This demand causes congestion on networks, which can push the available bandwidth to its limit.

The commission looked at the situation, and in 2009, developed a comprehensive regulatory approach for Internet traffic management. Let me remind you briefly of its key elements.

[English]

First, when congestion occurs, an ISP response should always be to invest in more network capacity. In a competitive marketplace where consumers have choice, it is in the ISP's best interests to have a robust network.

Two, realizing that network upgrades are not always the most practical solution, we indicated that if it is necessary to manage Internet traffic, it should be done through transparent economic means.

Three, traffic shaping and other technical means should only be employed as a measure of last resort, in which case customers should be made aware of them ahead of time.

Now you should know that nearly all large distributors have introduced usage-based billing for their residential customers—Bell, for example, adopted this billing practice in 2006. And I would like to point out that usage-based billing applies only to residential customers; it does not apply to business customers. As a result, large users, such as those who watch a lot of high-definition movies and television shows online, pay higher rates than those who simply send e-mails or visit social networking websites. Customers who exceed monthly limits are usually subject to an extra charge, though many providers allow users to buy additional capacity for a small fee.

All ISPs advertise their rates, bandwidth caps, and the additional usage charges that apply. Consumers can shop around for a plan that best meets their needs. Internet services are now sold like other public utilities, such as water, gas, and electricity.

As we reported in our most recent *Communications Monitoring Report*, Canadians used on average 15.5 gigabits per month in 2009. Most users fall within the caps currently set by large distributors, and they would not be charged unless their monthly usage increased dramatically. I'm sure most of you are customers of large distributors and therefore subject to such caps.

It's also worth noting that a very small percentage of consumers are heavy Internet users. According to information provided by Bell Canada, less than 14% of users are responsible for more than 83% of Internet traffic. Let me repeat those numbers because they are key. According to information provided by Bell Canada, less than 14% of users are responsible for more than 83% of Internet traffic.

Let me now address our usage-based billing decisions. I would ask that you keep in mind that this billing practice applies only to residential customers and not to businesses. In March 2009, Bell Aliant and Bell Canada asked permission to impose usage-based billing on their wholesale customers—the small ISPs. Bell wanted to create economic incentives for users to stay within their bandwidth caps and ensure that those who use more bandwidth pay their appropriate share.

I see that the statement has finally arrived, so for your information I'm on page 6.

Following a lengthy process that resulted in a series of decisions, the commission decided as follows. We granted large distributors permission to adopt usage-based billing for their wholesale customers. We imposed as a condition that before they could move their wholesale customers to usage-based billing, large distributors

would have to adopt the same billing practice for most of their own residential customers, with the exception of certain grandfathered subscribers. And lastly, the commission examined the rates that large distributors charge their own residential customers when they exceed bandwidth caps and determined that they can only impose 85% of that rate onto their wholesale customers.

In short, our decisions were based on two fundamental principles: ordinary Internet users should not be made to pay for the bandwidth consumed by heavy users, and smaller ISPs offer competitive alternatives to the large distributors and it's in the best interests of consumers that they continue to do so.

• (1610)

[Translation]

I would like to repeat these principles in French.

In short, our decisions were based on two fundamental principles. First of all, ordinary Internet users should not be made to pay for the bandwidth consumed by heavy users. Secondly, small ISPs offer competitive alternatives to the large distributors, and it is in the best interest of consumers that they continue to do so.

[English]

As you know, our decisions were set to take effect on March 1, 2011. We have since received from Bell Canada a request that we delay the implementation date by 60 days. A party from our last proceeding, Vaxination Informatique, has also filed a request for a delay.

In light of these requests and the evident concerns expressed by Canadians, the commission decided yesterday to, one, delay the implementation of usage-based billing for wholesale customers by at least 60 days, and two, to launch, on our own motion, a review of our decision to verify that: (a) it protects consumers; (b) those who use the Internet heavily pay for their excess use; and (c) small ISPs retain maximum flexibility and continue to be a key source of innovation in the industry.

I would like to reiterate the commission's view that usage-based billing is a legitimate principle for pricing Internet services. We are convinced that Internet services are no different from other public utilities, and the vast majority of Internet users should not be asked to subsidize a small minority of heavy users. For us, it's a question of fundamental fairness. Let me restate: ordinary users should not be forced to subsidize heavy users.

[Translation]

We are convinced that Internet services are no different than any other public utilities, and the vast majority of Internet users should not be asked to subsidize a small minority of heavy users.

For us, it is a question of fundamental fairness. Let me restate: ordinary users should not be forced to subsidize heavy users. In addition, we want to be absolutely certain that the modalities we have established are the most flexible under the circumstances and do not hinder innovation or harm small ISPs.

A document outlining the terms of the review will be posted on our website this coming Monday.

We would now be pleased to answer your questions.

[English]

**The Chair:** Thank you, Mr. von Finckenstein.

Now we'll go to our regular rotation of questions. The first round is seven minutes.

We'll go to the Liberal Party, to Mr. Garneau, for seven minutes.

**Mr. Marc Garneau (Westmount—Ville-Marie, Lib.):** Thank you, Mr. Chair.

As we know, Mr. Clement and the Prime Minister, or should I say Mr. Soudas, like to notify the world of their decisions via their Twitter accounts. I would like to think that you were notified officially of some of the things that Mr. Clement and the Prime Minister have been talking about via their tweets. I hope that's the case.

I want to say that I have great respect for the CRTC. I believe it's an important institution. Of course, to fulfill its mandate it does occasionally require direction from government, and that takes into account the rapidly evolving technical world in which we live. I believe, for example, the CRTC made the right decision with respect to Globalive in the case of the wireless spectrum auction.

Unfortunately, I think, in the absence of any leadership from this government on such very fundamental issues as their commitment to net neutrality, their view of open e-government, their direction with respect to foreign investment in the telecom sector, and the importance of providing high-speed Internet to all Canadians, it is very difficult for you to carry out your task and to interpret your mandate. So I view the situation today as primarily one of a lack of leadership on the part of the government.

Having said that, we all saw the tweet that came from Mr. Clement that basically said if you don't reverse your decision, then he's going to reverse it.

Mr. von Finckenstein, what do you intend to do as a result of that tweet?

• (1615)

**Mr. Konrad W. von Finckenstein:** You made a whole bunch of statements, Mr. Garneau. Let me just set the record straight.

We made this decision yesterday at around five o'clock. I was on the phone with all my fellow commissioners, and we decided, in light of the considerable concern that had arisen in light of the two requests for delay, and in light of... You know, we don't have a monopoly on this, and we can always approach things differently. As several editorials suggested, the message we adopted was only one of several possible and that it would probably be wise to initiate a review of various decisions. That's what we did. We brought it up.

I then informed the deputy minister of industry, as a courtesy, about an hour and a half later, saying, "Look, it has always been my policy, as a civil servant of 35 years, not to catch your minister by surprise, so you should know that this is what I am going to announce at the committee tomorrow." That was it. That's the only communication I've had with the minister or anybody in government.

So the decision here to review, as I stated, is self-initiated, and we did it in light of the request by Bell, which, after all, wants to implement usage-based billing. They said to please delay it for 60 days. Since they wanted the delay, and the ISPs definitely wanted the delay, we said, "Let's take the opportunity and make sure we got it right." We believe the principle is right. Are the modalities right? That's what we're going to re-examine.

**Mr. Marc Garneau:** You said, and it's very good, that you don't like to catch your minister by surprise. Did he catch you by surprise?

**Mr. Konrad W. von Finckenstein:** Do you mean with the tweet? I didn't follow his tweet. I read it this morning in the paper.

**Mr. Marc Garneau:** Did he notify you officially before he put out that tweet that...?

**Mr. Konrad W. von Finckenstein:** I told you that I have not had any communication with the minister of any kind.

**Mr. Marc Garneau:** Thank you.

You talked about competition. You talked about innovation in your opening statement. Does your mandate specifically say anything about the importance of competition to allow...?

Obviously, in this case, we're talking about small ISPs that lease services from large ISPs and the fact that this mandated situation allows small ISPs to compete to bring about innovative services that ultimately are good for the consumer. Is that something that is in your mandate specifically?

**Mr. Konrad W. von Finckenstein:** Yes, the Telecommunications Act charges us to ensure that we have a healthy, vibrant communications system that serves all Canadians. We also have direction from the government, as you know, to rely on market processes as much as possible and to only intervene when there is market failure.

With the structure of the Canadian market being, as I mentioned in my opening statement, essentially a duopoly between the telcos on one side and the cable companies on the other side, we came to the conclusion that to have some competition we needed mandated access. That's why we mandated access to the wholesalers. We mandated that it had to be at the same speed as what the big companies provide their own retail companies and it had to be at a discount so that they have a margin to compete.

We are fully aware that innovation happens at the margins, and the small players are probably the most innovative ones and the ones who come up, by necessity, with new ways. Therefore, we very much see it as part of our mandate to make sure that they are part of the market and have space to live in and function.

•(1620)

**Mr. Marc Garneau:** Bell proposed using their cap, and you agreed with that for the small ISPs. Why did you think the caps the large ISPs proposed were at the right level?

**Mr. Konrad W. von Finckenstein:** We don't set caps. We don't set any caps whatsoever.

The wholesalers picked this cap for themselves. Those are the caps they apply to their own users.

**Mr. Marc Garneau:** With respect, you accepted the caps they proposed in this particular instance. I know that you don't set specific caps, but you accepted the ones they actually proposed, in this case.

**Mr. Konrad W. von Finckenstein:** We say you have to treat your wholesale customers like you treat yourselves. That's the basic principle. They impose a cap on their users. If you are a Bell customer user, you are subject to a cap right now. We said that if you resell, don't make it any harsher; it has to be equivalent.

**Mr. Marc Garneau:** You did not feel that this would stifle competition.

**Mr. Konrad W. von Finckenstein:** No, on the contrary, we specifically provided not only that they have to impose the same cap but that the retail price has to be at a 15% discount so that there is room for the small ISPs. Obviously they asked for more. That's a question you may want to look at. Our whole intent all along was to make sure that the small ISPs remain there as a competitive edge, to discipline the large companies.

**Mr. Marc Garneau:** Thank you.

**The Chair:** Thank you, Mr. von Finckenstein.

Thank you, Mr. Garneau.

Now we'll move on to the Bloc Québécois. *Monsieur Cardin, vous avez sept minutes.*

[*Translation*]

**Mr. Serge Cardin (Sherbrooke, BQ):** Thank you, Mr. Chair. Good afternoon and welcome to the committee.

I will get straight to the point of the issue that concerns me. In 2009, the CRTC released telecom regulatory policy CRTC 2009-657. This policy pertained to Internet traffic management and its main purpose was to prevent congestion. However, we are being told that user-based billing also strives to prevent congestion.

Does that mean that your 2009 regulatory policy was ineffective? Is the network currently experiencing this absolutely terrifying congestion?

**Mr. Konrad W. von Finckenstein:** Not at all. It makes perfect sense. If you read page 4 of the statement I gave this afternoon, you will see that the first measure taken to deal with congestion was to broaden the network. If this measure alone is inadequate and we don't have the necessary means, we then have to use economic measures. User-based billing is exactly that. It is a way to discipline usage. Finally, if these two approaches do not work, we can turn to technical means.

That was our general policy. We are going to try a test, namely, we are going to use economic measures in order to discipline Internet usage.

**Mr. Serge Cardin:** We know that there has been increasingly phenomenal advances made in the Internet and that we can now do streaming. Sites such as YouTube or TOU.TV use temporary downloads in order to stream.

Do you think that your recent telecom decision CRTC 2010-802 encourages technological development or do you think that it may limit consumer interest for this type of site?

Moreover, given that one of the principles put forward by the CRTC in its Internet traffic management policy was innovation, do you think that your recent decision, which deters streaming, may in fact be incompatible with your 2009 policy?

**Mr. Konrad W. von Finckenstein:** Not at all. I believe that it is primarily the market that encourages companies to develop. They will do the developing. They will contribute technological development and promote development in society. As you said, we now have streaming. People watch *Netflix* via the Internet. Obviously, this results in heavy use of the Internet, which prompts companies to invest and expand.

The decision on traffic that you are referring to clarifies what is legitimate and stipulates, for Internet providers, what they can do to manage their network in order to maintain integrity. As I said, only a small minority of people are heavy users of the Internet, which creates problems.

**Mr. Serge Cardin:** In the order in council providing instructions to the CRTC on the implementation of the Canadian telecommunications policy, namely P.C. Order 2006-1534 of December 14, 2006—which we commonly refer to as the Bernier order—the Conservative government asked the commission to rely, as much as possible, on free market forces as a way of achieving the objectives set out in section 8 of the Telecommunications Act.

Does telecom decision CRTC 2010-802 comply with this government request? If so, could you explain how?

•(1625)

**Mr. Konrad W. von Finckenstein:** This order in council asks the CRTC not to intervene unless there is a market failure. Our entire policy is aimed at keeping the small ISPs in the market and in facilitating wholesale Internet access for ISPs so that there will be some competition. I believe that these measures fully comply with the instructions given by the government. At the same time, we realize that there are problems, namely, some people use the service more than others and it is not fair for heavy users to be subsidized by the smaller ones. Let's look at all of the markets. Take, for example, wireless. Usage is not unlimited. There is a basic package and, if someone exceeds the time allowed by the package, an additional amount has to be paid. We do the same thing with electricity, oil, etc. We are trying to apply this principle to small providers. The big providers already do this with their own clients. Now we want to try to broaden this approach.

**Mr. Serge Cardin:** Are all of your recent decisions in compliance with government instructions and, if so, how do you explain the Minister of Industry's dissatisfaction with respect to your decision 802?

**Mr. Konrad W. von Finckenstein:** You should ask him the question. I am not speaking on behalf of the minister.

**Mr. Serge Cardin:** Based on what you were saying earlier, are we to understand that, further to your decision, it is not the CRTC but rather the large corporations that are making the rules?

**Mr. Konrad W. von Finckenstein:** No. The large corporations do send submissions to us but we are the ones who decide. We have taken many decisions that the large corporations do not like at all. For example, we insisted that the big suppliers provide their services to small providers at the same speed they provide to their own clients. They do not like that. They appealed to the cabinet and appealed to the court. The cabinet ordered us to review the decision. We did so and decided a second time that this would not work and that the big providers should in fact sell their services at the same speed, otherwise there would be no market for ISPs. We determine de policy, not the large corporations.

[English]

**The Chair:** Thank you, Mr. von Finckenstein.

Thank you, Monsieur Cardin.

Now we will go to the Conservative Party for seven minutes.

Mr. Van Kesteren.

**Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC):** Thank you, Mr. Chair.

And thank you all for appearing before us.

Mr. von Finckenstein, the Prime Minister and the Minister of Industry both have expressed serious concerns about the impact of this decision, what impact it will have on innovation and competition in the Internet sector. Specifically with smaller ISPs, their only incentive really is the unlimited Internet plans to make them competitive in the marketplace, and the CRTC decision was going to take that away.

Now, I'm a member of Parliament from southern Ontario. It's a rural riding. I'm very concerned about the decision and what that would lead to: higher Internet prices and less choice for my constituents. I have to say I'm very relieved to hear that you've agreed with the government to review this decision, but what assurances can I give my constituents and Canadians that the review will lead to a different result?

• (1630)

**Mr. Konrad W. von Finckenstein:** First of all, I did not agree with the government. We did it on our own. It was absolutely clear; it was our decision to do this.

Second, I cannot tell you what the outcome of the review is, but as I've said many times, I believe the ISPs are vital to having a competitive market. I quoted you one of the leading ISPs actually saying the same thing, that if it wasn't for our rules, they wouldn't exist anymore. We forced the large companies to sell to them at the same speed as they sell themselves. We insisted it be sold at cost-

plus so that there was enough of a margin to obtain business. They are the drivers of innovation. That is absolutely clear.

It has happened that a lot of the very heavy users have become clients of those small ISPs who don't have a limit. What we are saying is most of the caps that will be imposed for people are for those who are really excessive users. If you are someone who uses far more than the ordinary Canadian, then you have to pay for it. This is the same thing as if you heat your house warmer than I do. There is an average rate that people pay, and if you really are an excessive user, or a heavy user—I won't say excessive, as it's up to you to determine how much you want—you have to pay for it. This is very simple.

I don't see why the general, ordinary user should subsidize the heavy users. This decision affects 500,000 people. We have 9 million subscribers. All of them are subject to caps right now. We are talking about those 500,000 customers, and not all of them, obviously, only those who are heavy users. We should put this in proportion.

We will make the decision on the basis of submissions that have come before us, and I'm sure people will say the way we did it was too rigid, and second, the discount of 15% is not enough. It has to be a higher one, and maybe that's it. We will look at it with fresh eyes and open minds. I don't have a fixed idea. The principle to me is clear. The ordinary guy should not subsidize the heavy user.

Are the modalities being used correctly or can we do it better? I don't claim to have a monopoly on wisdom. We made our decision on the basis of evidence before us, and thanks to this publicity, I'm sure there will be all sorts of new evidence come before us. As a result of it, the decision may be different or we may reaffirm. I can't tell you this right away.

**Mr. Dave Van Kesteren:** You have a very difficult job. I don't think anybody in this room would argue that point.

Possibly one of the organizations you're talking about is TekSavvy. That is in my riding as well.

Did you convey that message to them? What was their response?

**Mr. Konrad W. von Finckenstein:** TekSavvy and some of its colleagues appeared before the commission about two weeks ago and made representations on our latest ruling. They said basically they liked the ruling, but they thought we went too far, and rather than averaging, we would make them impose it on individual users. That's something they had not told us before. It was never explained that way, and I expect when we now have the hearing, TekSavvy and other companies will come before us and explain how we could do this.

I certainly did not get the impression from them that the whole idea of usage-based billing is anathema to them. But they feel we did not implement it in the best way for them to give the maximum flexibility, etc. They are constrained to say that we forced them to become like a big telco, that they are small companies and they wanted to be flexible. If this can be done, I'm all for it.

**Mr. Dave Van Kesteren:** What I'm hearing is that you're looking for a compromise. Maybe we're putting the cart before the horse, but do you feel positive about that compromise? Do you feel that, working collectively with the main providers and the smaller providers, you can come toward some sort of compromise?

• (1635)

**Mr. Konrad W. von Finckenstein:** My job is all about that. It's all about balance between competing interests, between large providers and small providers, between providers and consumers, etc. That's what we do, and the way we do it is we have a hearing and we ask everybody to come forward with their best ideas. We try to sort out from the evidence what makes sense and what is just self-serving testimony and then come up with a solution that hopefully strikes an acceptable balance. That is exactly what we're going to do here.

**Mr. Dave Van Kesteren:** Can you maybe expand a bit on those consultations, on how they were done? Do you feel at this point that you possibly need to expand a little bit further? You came to a decision. I'm just wondering why we may see it differently. That was my first question: why would we see a different decision if you—

**Mr. Konrad W. von Finckenstein:** As I said, we will issue a notice saying we are redoing this, please comment, etc. This is the principle I just enunciated here: the ordinary user should not subsidize the heavy users. You know what we did. Does this make sense? Do you have a better mousetrap? Where do you think we erred, and what do you suggest? I'm sure TekSavvy, from your riding, will come forward and say for you that's fine, but the discount on 15% does not take into account the cost that is imposed. If you do oppose a regime like that, the discount has to be at least 40%, or something like that. Somebody will put that.

I will ask him, okay, you're telling me 40%. Explain to me the cost of this position, etc. I don't want to hurt you. On the other hand, I don't want you to have a free ride on Bell, so let's figure out what is the appropriate one. They will present evidence, studies, etc., and Bell will come and presumably say exactly the opposite. At the end of the day, we will try to determine, based on the evidence, based on our verification of the evidence, where the truth is and where we should come down.

**The Chair:** Thank you, Mr. von Finckenstein.

Mr. Van Kesteren, that's all the time you have.

Now we have Mr. Masse for seven minutes.

**Mr. Brian Masse (Windsor West, NDP):** I'd like to thank the witnesses for coming so quickly, as we just had a motion on this on Tuesday. We appreciate that effort.

In the previous overturns that have taken place during your tenure, was there at least contact between your office and the ministers' offices, either to provide information or more detail about a decision you made? Was that the process in the past, or is it simply your

learning through media clippings and you don't get a chance to provide additional information to enlighten the decision you've made?

**Mr. Konrad W. von Finckenstein:** First of all, there has been no overturn here.

Let me explain to you how it works. If we make a decision and you as a party are dissatisfied with the decision, you appeal to the minister, who then asks for submissions from other parties and then takes this decision to the cabinet to ratify it, and then they send it back to us to review, to reaffirm, to reverse whatever they want to.

We are not involved at all. We have rendered our decision; it's like an appeal to an appeals court. It's for them. They have their procedure. They do so and they tell us. If, for instance in this case, TekSavvy, one of the companies, had made an appeal to cabinet, then cabinet would deal with it. The minister, on his own motion, can also do it. In Globalive, he did it on his own motion.

That's the process that's laid down in the end.

**Mr. Brian Masse:** Yes. It just seems to be an unusual process. I guess this is the new, modern, "Did you get the memo" version of things these days.

It would be argued by some that in 2006 the CRTC was issued a directive by the Conservative government that changed elements that would put a priority on the business end of it versus that of the consumer. Can you enlighten us about the 2006 change? That's one of the reasons, I believe, that led to your current decision. It's because of that 2006 directive.

**Mr. Konrad W. von Finckenstein:** The telecom act speaks in terms of broad principles and objectives. It leaves it up to the CRTC to put those into reality and make them work.

It also gives the government—to give us direction or guidance. This is what they used. They said they wanted us to interpret these broad principles. That is their right under the legislation, and they do that. We then apply those. That's what we've done in this case.

**Mr. Brian Masse:** Yes. I think that's the real crux of the issue here. The Conservatives made us a digital backwater, when you look at the fact that we have had erosion of our position in the world's standings. With your directive change in 2006 to focus in this direction, it's not surprising that we've ended up in this situation.

I think that's what needs to be fixed if we're going to go forward on this. Simply just overturning this isn't going to work; there needs to be more work on what happened in terms of that directive. I am curious, though—I know you're using the terminology of electricity and oil as a measurement in those crude.... It seems a little simplistic when you look at, for example, residential use. Residential businesses use it. People use the Internet for research. It's not just Netflix. People use it for all kinds of different elements, and depending on the data you're downloading, it would affect your usage as well.



Are you not concerned that once again there are two standards, one for commercial and one for business? It's interesting. Some people have told me that's why it worked. They download there versus at home, because they got capped. That's not good for the workplace. First, if you get caught doing that, that's not good. Second, productivity is there.

You're not concerned we're going to create a culture where people are going to look for shortcuts that way? Shouldn't we be trying to solve that by increasing capacity?

• (1640)

**Mr. Konrad W. von Finckenstein:** You've made all sorts of statements here. I'll have to take them one by one.

First of all, we have a booming telecom sector. I don't think we're a digital backwater at all. We are leading. We're also leading in terms of the regulatory. For instance, last year we were the first country in the world to make a ruling on net neutrality or Internet traffic measures, which was widely copied around the world. So we are not a backwater.

Secondly, in terms of Internet traffic, there are no caps for business. If you want a business, you go and you make your deal with your provider, depending on your use. We're talking only about residential here, and I made that clear.

On the rules for residential, I think the best analogy is the cellphone. For your cellphone you do not have unlimited use unless you pay an extraordinary amount for it. Usually it's a plan that tells you how many minutes you have per month, or how much texting, etc., and if you go over it...

So that's a function of pricing in the market, and the same thing here; if you really want to have huge usage of your cellphone, and use it for all purposes, your cellphone bill will be much higher than mine, because I only use mine when I don't use my land line. That's the choice that you all make.

**Mr. Brian Masse:** But the problem with that as an analysis is that you have businesses, and also sites or whatever, that if you want to connect into, or you rely upon, that actually can be more sophisticated than others, can have more advancements for innovation in terms of the types of data streamed over it and the product you're receiving, customers, people, don't necessarily always have a choice. When they click on a site, they won't know exactly, especially when they're using it for the first time, how much of that is going to actually be running their meter up.

You say that we're not a digital backwater, but we've ended in a situation here that's unusual to different countries. We're talking about throttling. We're talking about limited. We have these Internet billing caps that have been agreed upon. You don't set them, but we're allowing the large telcos to do so.

You know, I think there's a larger problem here that won't be solved just simply by undoing this. I'd like to see some analysis of the usage, because I don't believe it's just as easy, as black and white, as electricity and gas. The Internet is much more complicated than that.

**Mr. Konrad W. von Finckenstein:** First of all, we're only talking about residential. We're not talking about commercial, okay? This is the decision before us.

Secondly, on the caps, which is really the core of your question, if I understand it correctly, as I mentioned in my speech, our communications report says that on average, Canadians use 15.4 gigabytes per month. That was for 2009.

So for the various caps that the various companies have instituted—

**Mr. Brian Masse:** Yes, but under this policy—

**Mr. Konrad W. von Finckenstein:** —they are way beyond that.

**Mr. Brian Masse:** —the residents subsidize the business.

**The Chair:** Mr. Masse, we've actually run out of time. I'm just giving Mr. von Finckenstein a little bit of time to answer your question.

**Mr. Brian Masse:** Thank you, Mr. Chair.

**Mr. Konrad W. von Finckenstein:** Bell's cap in Ontario is 25 gigabytes, and in Quebec it's 60. The average use is 15, so there's a big difference there. There's a huge amount of homes between those two.

**The Chair:** Thank you very much.

We'll now go to the Liberal Party. This is a five-minute round.

Mr. Rota, for five minutes.

• (1645)

**Mr. Anthony Rota (Nipissing—Timiskaming, Lib.):** Mr. Chair, before the clock starts, if you don't mind, I'd like to make a point of order.

There have been a lot of figures brought forward. A lot of them could be very useful to us in our deliberations. I was wondering if Mr. von Finckenstein could table those figures so that we could use them. The usage rates would be the ones that we would ask for.

**Mr. Konrad W. von Finckenstein:** I will gladly do that.

I mean, the key figure is in my statement, which is right in front of you, the one about the average use by Canadians in 2009 being 15 gigabytes per month. But I will gladly give you further details on usage.

**Mr. Anthony Rota:** That would be ideal.

**The Chair:** Yes. If there's anything that would correlate with that as well, perhaps you could table that with the clerk. That would be great.

Go ahead, Mr. Rota.

**Mr. Anthony Rota:** Very good. Thank you, Mr. Chair.

Again, thank you for being here today.

Now, traditionally the role of the CRTC has been one of balancing the interests of consumers, business, and innovation, making sure that it all works well. It's not an easy role. There's a lot of respect for the CRTC.

The CRTC really relies on the direction the government sets. I understand that in 2006 the government issued a "first of its kind" policy direction on telecommunications for the CRTC for greater reliance on market forces. The main guiding point up until that time was market share test, I understand.

Can you give us a quick synopsis of the difference between the two? Perhaps you could give us just the major differences between the two.

**Mr. Konrad W. von Finckenstein:** You're talking about something that was before my time, first of all. I wasn't at the CRTC in those days. Also, don't forget that it's a different industry. We have competition in the telecom industry. The telecom industry originally involved monopolies, and there were rate regulations, etc. There has been a transition from one to the other. It has been a very difficult transition because the industry has grown from a monopoly provided with rate regulation to an industry where there are multiple competitors. It's not an easy task, and it's gone all over the world. People have experienced trouble making that transition. Nonetheless, the transition has been incredibly beneficial. We have seen an explosion in telephone usage and innovation as a whole, the development of not only the Internet but wireless phones and now other wireless mobile apparatuses.

I don't know to what extent it would serve any purpose to go back to a time when regulation was based on a different industry, but if you want, I can ask my colleague who was at the CRTC to explain it. I wasn't there.

**Mr. Anthony Rota:** One of the main points I was looking at in the market share test was the reference to geography. Geography is a very important issue to me. I come from northern Ontario. It's a vast, expansive land and is very sparsely populated. I have to chuckle when I hear some of my colleagues from larger centres talk about our right to electricity and gas. I assume they're talking about natural gas. There are large parts of my riding and large parts of northern Ontario that do not have access to natural gas. That's something that concerns me.

What I was getting at is, how would the decision arrived at today or in the last year have differed had it been the old test versus the new test? Maybe that's something Ms. Fancy could answer.

**Ms. Lynne Fancy (Acting Executive Director, Telecommunications, Canadian Radio-television and Telecommunications Commission):** The specific test you're referring to was limited to the forbearance criteria as to when we would no longer regulate the retail rates for local phone service. The commission had originally made a determination that we would no longer regulate retail rates when the market share of the competitor was at a certain level. At that point, we used the criteria that is in the Telecommunications Act in order to decide whether or not we should no longer regulate. The policy direction applies to all services and all decisions the commission makes. Today we still would determine whether or not to regulate the retail rates of something based on exactly the same test, which would be the test in the Telecommunications Act.

**Mr. Anthony Rota:** Very good.

On a different note, I understand that IPTV was exempt from the caps. What was the rationale behind that?

**Mr. Konrad W. von Finckenstein:** It was because IPTV really is not part of your Internet service. It is a separate service. You're not getting IPTV over the Internet. If you talk about Netflix or Google TV, yes, they come over the top. It is called over-the-top TV. With IPTV, basically there is a pipe and it is divided into various sections. There is one section that is public Internet and everything, and there is another section that provides a specific service. The cable company provides IPTV over that the same way the cable company provides a cable customer telephone service and also Internet access over the same cable.

• (1650)

**Mr. Anthony Rota:** Very good.

When you came to a decision among the commission, was there any dissension among the board members?

**Mr. Konrad W. von Finckenstein:** Which decision are we talking about now?

**Mr. Anthony Rota:** The decision on the usage-based billing.

**Mr. Konrad W. von Finckenstein:** Yes, I believe one of my—

**Mr. Anthony Rota:** What was that dissension? What were the arguments opposing that?

**Mr. Konrad W. von Finckenstein:** It's very technical language, and I'll try to simplify it. Essentially, they said that right now we insist that each customer of an ISP who goes over the limit pay the extra charge, or that the ISP charge them on a per customer basis. She said why not allow some averages there. The easiest way to explain it is to give an example.

You have three customers. The cap is 20 gigabytes, let us say. One uses 25, one uses 15, one uses five. If the cap is 20, obviously with three customers it would be 60. Add the usage of the three of them up and they don't go over 60, but the one that used 25 went over the cap and therefore should pay. In the scenario if you average it out, you would only have to pay if they went over 60.

There's another way of doing it. As I mentioned in response to a question from Mr. Van Kesteren, that's undoubtedly something that will be put to us, and we will have to think through how it works and how technically difficult or easy it is to do that. It will require probably a whole different system of measuring and accounting.

**Mr. Anthony Rota:** Okay.

**The Chair:** Thank you very much.

Now we'll go to Monsieur Généreux *pour cinq minutes*.

[Translation]

**Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC):** Thank you, Mr. Chair, and thank you to our witnesses.

In the regions, we have been working for a long time to ensure that these services are offered to all citizens. Regionally, provincially and federally, we want such services to be accessible to all Canadians. Let's say that I am a farmer, that I live on some concession road in Quebec and that I have had Internet, for example, for a few months, or for a year or two. Given the decision that you made last week, what is the difference between the price that I would have had to pay for this service and the one that I will now have to pay? Is there really a difference? Do you view farmers as business people?

**Mr. Konrad W. von Finckenstein:** I cannot answer because I do not know who your provider is and I do not know whether or not you have subscribed to this service as a consumer or business person. I would imagine that, if you were a farmer, you would have subscribed as a business person. So it would be up to you to decide whether or not the service should only cover your residence or your farm activities as well.

**Mr. Bernard Généreux:** So I should therefore not be affected by that.

**Mr. Konrad W. von Finckenstein:** Everything would depend on who your provider is. For example, if you were a Bell client, nothing would change. You are already subject to...

**Mr. Bernard Généreux:** I would simply like to make a distinction, to ensure that people understand. According to the figures that we presented earlier, approximately 9 million clients are covered by Internet providers in Canada. You stated that a total of 570,000 clients are served by small providers. I would like to know what percentage of this group is really covered by the recent decision. This 6% is affected because these are small provider clients, right?

**Mr. Konrad W. von Finckenstein:** Only the heavy users and not all small ISP clients.

**Mr. Bernard Généreux:** How many people would that represent?

**Mr. Konrad W. von Finckenstein:** I do not know. I do not have these figures. You should ask Teksavvy this question, for instance, in order to find out which percentage of its clientele will have problems.

**Mr. Bernard Généreux:** In the document that you just read, you say the following: In light of these requests and the evident concerns expressed by Canadians, the Commission has decided to:

1. delay the implementation of usage-based billing for wholesale consumers by at least 60 days.

Were these concerns and requests not evident before you made the decision? I am trying to understand what has changed since yesterday. Is it due to public pressure? We do not really know how many people will be affected by this decision, but if public pressure represents 570,000 individuals...

**Mr. Konrad W. von Finckenstein:** First, we received two requests for extensions.

**Mr. Bernard Généreux:** From Bell Canada?

•(1655)

**Mr. Konrad W. von Finckenstein:** From Bell Canada and one other company. It is Bell Canada that initiated this entire process, made representations to us to create the entire usage and billing

system. Bell created this entire problem, asking for a 60-day extension because, clearly, people were not ready for this.

**Mr. Bernard Généreux:** I can understand that these people are asking you to reconsider your decision. Given all of the advertising they have received over the last week, small providers will probably have many more customers by next week. In fact, they are getting incredible publicity throughout the country.

**Mr. Konrad W. von Finckenstein:** That is possible.

**Mr. Bernard Généreux:** I should be in business as a small service provider.

You yourselves decided to revisit the decision, which I commend. You are here before politicians representing those who pay the bills. Obviously, these people do not want to see higher bills. Would I be wrong in saying that over the last few days this issue has exploded exponentially, far beyond the number of people actually affected by the decision? Am I mistaken?

**Mr. Konrad W. von Finckenstein:** No, not at all. You are absolutely right. It is a minority. Approximately 500,000 people.

**Mr. Bernard Généreux:** But that is a lot, I would say. One is already too many.

**Mr. Konrad W. von Finckenstein:** I do not know what percentage of these people will really be affected. Regardless, these people clearly like the Internet, know how to use it and have used it to elicit many reactions.

**Mr. Bernard Généreux:** Is...

**Mr. Konrad W. von Finckenstein:** But we have already seen this in...

**The Chair:** Thank you, Mr. Généreux.

Ms. Guay you may have the floor for five minutes.

**Ms. Monique Guay (Rivière-du-Nord, BQ):** Thank you very much, Mr. Chairman. I am pleased to be here today in the place of my colleague.

I have many questions to ask. I am pleased about your decision to take the time to reconsider your previous decision. You have decided upon 60 days. I suppose you will also take this time to have discussions with the government, which does not agree at all with your decision, if I am not mistaken. You must be aware of this.

**Mr. Konrad W. von Finckenstein:** You are wrong. We are an arm's length organization and have no discussions with government.

**Ms. Monique Guay:** But the government does have oversight...

**Mr. Konrad W. von Finckenstein:** The government provides us formal directions, as it did in the case that we have already discussed.

**Ms. Monique Guay:** But the government does have oversight of the CRTC, Mr. Finckenstein.

You said there are not many heavy users. If there are so few of them, why is it that late Wednesday evening, yesterday evening, over 358,000 people had signed a petition launched online by Open-Media.ca? This petition called on the government to overturn your decision. There were 358,000 signatures in one evening. That is a large number of people.

**Mr. Konrad W. von Finckenstein:** Yes, I know. That is the beauty of the Internet. You can reach out to people quite easily. You can instantly create a community of interest among people who share the same opinion.

**Ms. Monique Guay:** To recruit 358,000 people in one evening is rather difficult, Mr. von Finckenstein. We know how petitions work, because we table them in the House on a regular basis.

**Mr. Konrad W. von Finckenstein:** If you recall, last year, we had a debate on cable distributor fees and fee-for-carriage, as they say in English. I received 700,000 signatures overnight.

**Ms. Monique Guay:** That means people are interested, that they are listening and following what is happening in government and at the CRTC.

**Mr. Konrad W. von Finckenstein:** Absolutely.

**Ms. Monique Guay:** That also means that they do not necessarily agree with your decision. What are you going to do over these 60 days? Will you consult with the government?

• (1700)

**Mr. Konrad W. von Finckenstein:** No, we do not consult the government. We follow a public process. We will take steps to obtain briefs. Once we have studied them, we may or may not hold a public hearing. We will also review all aspects of the issue. We will study the briefs that claim we made a mistake and those that say we did the right thing. Further to that, we will make a decision. As I said earlier, it is up to us to find...

**Ms. Monique Guay:** ... balance.

**Mr. Konrad W. von Finckenstein:** ... balance, if possible. If not, we will have to make a decision one way or the other.

**Ms. Monique Guay:** You absolutely need to strike a balance.

Personally, I am fortunate in that I have high speed Internet at home. When I go beyond the number of minutes allowed, I get billed for each additional minute, billed to my account. You would like more billing. I would say that for the average consumer, that is too much.

We should not forget about the self-employed. There are many people who are self-employed currently and the number is increasing. These people are not millionaires. They work from home and will be penalized by your decision. You have to take that into consideration.

You should also take into consideration the fact that in many homes, high speed Internet is not yet available. It is not available in a number of regions and municipalities. It is not available in three municipalities in my riding. Those people will also be penalized. It takes longer, they use more minutes and they will be paying more. These are things you need to evaluate, that the CRTC has to take seriously and really consider. Will you do that?

**Mr. Konrad W. von Finckenstein:** Obviously we will do that.

In response to your comment, first of all, if a person does not have high speed Internet, this would in no way affect them.

**Ms. Monique Guay:** Great.

**Mr. Konrad W. von Finckenstein:** Second, you said you were subject to a limit and that if you went beyond the number of allotted minutes, you had to pay. That would mean that you are already under a usage-based plan. None of these decisions affect you.

**Ms. Monique Guay:** Vidéotron charges us, sir.

**Mr. Konrad W. von Finckenstein:** Yes, but this decision has no effect on Vidéotron. It only affects small ISPs that do not have limits.

Vidéotron has a 40-gigabyte limit.

**Ms. Monique Guay:** Why did Bell ask you to wait?

[English]

**The Chair:** *Merci.*

Madame Guay, we're over your time now.

We'll go on to Mr. Braid for five minutes.

**Mr. Peter Braid (Kitchener—Waterloo, CPC):** Thank you, Mr. Chair.

Thank you to the representatives from the CRTC for being here this afternoon.

Mr. von Finckenstein, just to start, I have a question with respect to usage-based billing, or UBB. Is one of the purposes of UBB, part of the rationale of UBB, to help manage Internet traffic?

**Mr. Konrad W. von Finckenstein:** As we said in our Internet management decision, if you have problems in contention, firstly, expand. If that doesn't work, then use economic incentives. One of the economic incentives is that the more you use, the more you're going to have to pay.

**Mr. Peter Braid:** Okay. What evidence is there that Internet traffic congestion is really an issue, really a challenge?

**Mr. Konrad W. von Finckenstein:** We hold hearings and people produce and give us the evidence. We have the evidence in terms of the increase per year, per usage, per user. We have the total Internet traffic, and the various companies come before us and point out what they have to do and how close they are to the contention.... Now, of course, people rely on the evidence they give us. Other people appear before us and will contest that evidence if it's not proper....

But the explosion of the use of the Internet, and the increasing use of it for video, makes it obvious I think to anybody that the usage is increasing phenomenally. Is the capacity increasing at the same rate? That's really what it boils down to.

• (1705)

**Mr. Peter Braid:** Is there evidence that congestion is an issue only at a particular time of the day?

**Mr. Konrad W. von Finckenstein:** That's one of the big issues. When this whole issue first came up, it was nothing to do with usage-based business, but Bell in effect wanted to restrict people who were point-to-point users, etc. They said that otherwise those people would slow down the whole Internet and people who use it for time-sensitive purposes, like making telephone calls or watching movies, would have the jitters, etc. For those heavy usages, we said, well, just a second, surely you don't have to block the whole day—that's presumably at peak hours, etc.

If you use our rule, if you have to block traffic or slow it down, etc.—for the point-to-point users, let's say—so that it doesn't interrupt others, then you can only do it in the most minimal way, the most pointed way, i.e., at the time of highest contention. You can't say that because there's a problem at five o'clock, I'll put a 24-hour reduction in....

**Mr. Peter Braid:** Very good. And surely there are other ways to manage Internet traffic. For example, software and technology itself can help to manage Internet traffic. Is that not correct?

**Mr. Konrad W. von Finckenstein:** Yes, but there's one key thing: as long as it's non-discriminatory. If you use technology, you cannot choose who comes first and who comes second, etc. You have to do it across the board.

**Mr. Peter Braid:** Absolutely.

You've mentioned the explosion of the Internet. You also mentioned in your presentation that 14% of users represent 80% of the Internet traffic. But surely no one would consider that to be a static number with the explosion of the Internet, the emergence of the digital age, the streaming of video onto our BlackBerrys, and the watching of TV on the Internet.

That number will dramatically change and shift, and very soon, in the very near future. Should decisions of the CRTC not be forward looking? Should they not consider and anticipate the direction that technology is going in?

**Mr. Konrad W. von Finckenstein:** If you can tell me how to do it, I'd gladly do it.

We always do it on the best available data. By definition, the data is old by the time I give it to you. We try to be prospective. We try to look forward. We try to spot trends, to anticipate, and to take that in, etc., but it is not a science. There are an awful lot of assumptions that you have to make, and you can be dreadfully wrong, as you know—in the Internet business especially.

**Mr. Peter Braid:** You mentioned that one of things you're going to ensure occurs as part of your review is that consumers will be protected. How are you going to do that?

**Mr. Konrad W. von Finckenstein:** As always, we want to know what the effect is on consumers. Is it going to be reasonable? As I mentioned, we want to make sure that heavy users pay for the heavy use and that it's not the innocent average user who has to suddenly pay more, etc. That's one way to protect consumers.

The other thing is I want to make sure the small ISPs stay alive. They are the effective competition, they are the alternative, and they are also the drivers of innovation because they can't survive unless they innovate.

**The Chair:** Thank you very much.

Sorry, Mr. Braid, your time is up.

Now we're on to Mr. Masse for five minutes.

**Mr. Brian Masse:** Thank you, Mr. Chair.

At the time of the 2006 decision, Minister Bernier issued a statement saying, "Our plan will increase competition in the marketplace, which ultimately will have a positive effect on the consumer who will benefit from greater choices and improved products and services." Obviously this didn't turn out to be the case.

Is the result of your decision here today, or what's led to it, that we move towards market forces?

The issue you're pushing here is to restrict consumers to the residential as a way of discouraging people from using the Internet because it's a penalty-based system by the types of volume you then bring down. Isn't that the wrong way to go about it, as opposed to trying to push for greater competition? It seems to reward the companies to bring in this type of a system to get more money without actually having to provide more innovation and capacity.

**Mr. Konrad W. von Finckenstein:** There are two things.

First of all, my colleague, Mr. Katz, was here when the 2006 decision was made. Do we have a more competitive market now than then?

Len, why don't you answer that question.

**Mr. Len Katz (Vice-Chairman, Telecommunications, Canadian Radio-television and Telecommunications Commission):** We have a much more competitive marketplace. The fact that these smaller ISPs are in Canada is a tribute to that as well.

We said last year in one of the decisions we rendered that without smaller ISPs in Canada it's unlikely that we would have a competitive marketplace for Internet services because we would be down to two large players in each of the markets. Then the question is, would two players be sufficient to protect the interest of users? So the CRTC did create, through regulation, market forces to do just that and allow these new players to come in.

• (1710)

**Mr. Brian Masse:** I would argue that consumers haven't necessarily benefited that much from that. Yes, we have more players in the system, but still we have high prices and we now have a limiting system.

I don't understand where the logic is, where it seems that on the residential side, the consumer side, high users pay there. Why is that not applied to businesses?

Here's a scenario. We have digital streaming now for lessons. A university student can be doing digital lessons and end up subsidizing a business for their usage. How is that fair?

**Mr. Konrad W. von Finckenstein:** I will answer your first question.

You say that this is a disciplining and a choking off. It isn't. It is making people pay for what they use, thereby allowing the ISPs to have a greater income and invest it and produce more capacity. It's a simple principle of economics—

**Mr. Brian Masse:** With that logic you're saying that's not going to be the case and you're just going to pay a premium. If you're saying that the logic is not to remove people from getting off the Internet, and lessening it, then they're just paying more, period. It's an extra tax on those users. You're not increasing the capacity. That problem is not going away, under your own logic.

**Mr. Konrad W. von Finckenstein:** You're making all sorts of assumptions to say the logic is that there's not increased capacity. If the ISP makes more income because of usage-based billing, how will it use that income? It's going to use that income to create more capacity. That's the whole idea.

**Mr. Brian Masse:** It hasn't lowered prices for consumers, and now they're actually having to throttle some more. I'm not sure it's working. I don't know why a residential person, or a student, would have to subsidize a business.

**Mr. Konrad W. von Finckenstein:** The business market does not have caps. It is on a one-to-one basis with each business. They negotiate how much a business would need and negotiate the price for it. For consumers you don't do it on a one-to-one basis. Basically there are different menus and you ask them to choose from it because of the sheer numbers.

**Mr. Brian Masse:** Wouldn't a large company like IBM, for example, have a lot more usage than, for example, a small restaurant that is operating?

**Mr. Len Katz:** The likelihood is that IBM would have a managed network and would buy a dedicated system from the carriers rather than a small one. That's just how the smaller ISPs actually sell to the small and medium-sized businesses. It's through managed networks to dedicated networks, which is a totally different ballgame.

**Mr. Brian Masse:** So because they have massive volume they'll get a benefit, a reduction in fee. Meanwhile, if the consumer out there uses massive volume, they'll get an extra tax.

**Mr. Len Katz:** I'm quite sure that every single ISP in Canada has multiple packages for light, medium, and heavy users over and above the charges, over and above the per gigahertz cap, as we call it, as well. So as consumers notice their level increasing, they're free to buy up to the next level, which has a higher cap to it.

**Mr. Brian Masse:** It also could be perceived as a tax, in my opinion, because if you're saying that the space is there, it's not to dissuade them from getting off the Internet and that space is available, then it's an extra tax for usage. And once again you have streaming done by all kinds. It's not just for entertainment and gaming. It's done for educational purposes and so forth. I just don't understand how the usage logic applies somehow to consumers and not businesses. Why doesn't it apply to businesses on the surface anyway?

**The Chair:** Time has expired, Mr. Masse.

But if you have a response to that, I'll let you go ahead.

**Mr. Konrad W. von Finckenstein:** Let's start off with the basic principles. We are under direction from the government not to regulate unless there is a market failure. Mr. Masse wants me to regulate the business market. There is no market failure. No businesses have said, "Come in and regulate", etc., so therefore we're not doing it. It's as simple as that.

**The Chair:** Thank you.

We'll now move on to Mr. Lake for five minutes.

**Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC):** Thank you, Mr. Chair.

Thank you, Mr. von Finckenstein, and the other witnesses today.

I want to get at the methodology here a little bit, if I can, because I'm really trying to understand this. In May 2010, the first decision was made, of the three decisions. What was the discount rate originally in the May 2010 decision?

**Ms. Lynne Fancy:** Bell had first come in and proposed a 25% discount on usage-based billing.

**Mr. Mike Lake:** So Bell proposed the 25% discount.

What was the methodology behind that discount rate? Why was it specifically 25% and not 22% or 28%?

**Ms. Lynne Fancy:** It was their proposal. When they come in to us with a proposed set of rates, they come in with a set and that was their proposal that they put on the table.

• (1715)

**Mr. Mike Lake:** So Bell proposed it.

On the second decision, what discussion happened around the discount rate at that time?

**Ms. Lynne Fancy:** The commission made its decision and put those rates in place. Subsequent to that, Bell Canada reviewed and varied that decision.

**Mr. Mike Lake:** They actually came back and said they didn't like the 25%?

**Ms. Lynne Fancy:** Correct.

**Mr. Mike Lake:** Okay.

**Ms. Lynne Fancy:** They reviewed and varied the decision on the basis that the cable companies, who also must provide wholesale service to the smaller ISPs, did not provide usage-based billing at a discount.

**Mr. Mike Lake:** At any discount, so zero was the number then.

**Ms. Lynne Fancy:** At zero. They requested a review and vary so that their discount would be zero.

**Mr. Mike Lake:** So from your third decision in January 2011, what is the discount right now?

**Ms. Lynne Fancy:** It is 15%.

**Mr. Mike Lake:** And this is CRTC's decision, right? So what's the methodology? What research was done to come up with 15% as opposed to 25% or 0%, or 80%?

**Mr. Konrad W. von Finckenstein:** If you want to look at research, as I mentioned before, this is not an art. We get various submissions showing various numbers, etc., and you have to strike a balance on it. Did we strike the right balance or not? It is one of the reasons we're going to have a review and vary.

As I mentioned at the outset, I don't profess to have all the answers, and neither do the people who have been before me. There is a whole variety of submissions and numbers thrown around and studies and justifications based on different assumptions and on different facts. That's part of the job we have. We have a whole army of people looking through this and looking out, and then they make their...and we, finally, as commissioners, have to make a decision and bear the responsibility.

**Mr. Mike Lake:** So a whole army of people, but shouldn't that whole army of people be actually doing the research ahead of time to make sure we get it right when the decision comes about?

**Mr. Konrad W. von Finckenstein:** Of course we do. They have done research, etc., but that doesn't necessarily mean that people agree with us. As I say, there is always an error factor, because all of this, when you start something new, is based on a lot of assumptions. You have to make assumptions in order to make this decision, and their assumptions may turn out to be wrong.

**Mr. Mike Lake:** But it's a pretty big deal. I mean, this is a pretty big decision and it has a wide-ranging impact on a lot of people.

**Mr. Konrad W. von Finckenstein:** We have had three hearings on this. We have looked at it three times. We have looked at hundreds of documents. This is not something we do lightly and then let the chips fall where they may. We do it very carefully after lots of internal discussion. As I pointed out, one of my colleagues dissented in minority because there is no right or wrong here. You are trying to do the best under the circumstances on the basis of partially old information and partially unknowns, and that's the problem.

**Mr. Mike Lake:** You talk about the armies of people doing lots of research, the three hearings and everything else. If what you're saying is accurate, then I would hope that you could actually explain the methodology behind 15%.

**Mr. Konrad W. von Finckenstein:** You know, Mr. Lake, I make the decisions on the basis of a huge number of presentations. That's one thing. You are now zooming in on one little thing, and you're asking me here to resuscitate something right off the top of my head and give it to you six months after the fact, or whenever the decision was made.

You may think that I have it at the back of my mind. You're putting me in the middle of it. It's the biggest transition in Canada on telecommunications. Now that I'm here appearing before you, you're asking me for tiny little facts about a decision I made some six months ago. I'm sorry, but I cannot give you the answer.

**Mr. Mike Lake:** In fairness, the decision wasn't six months ago; the 15% decision came down not even two weeks ago.

**Mr. Konrad W. von Finckenstein:** That's when it came out. After we make the decision, it has to be written up. It has to be translated in both languages and then published.

I wish I could put them out as quickly as we make them. Unfortunately, that is not the case. The actual date was maybe six months or four months ago; I don't know. It was quite some time ago that we did this.

**The Chair:** Thank you, Mr. von Finckenstein.

Thank you, Mr. Lake. Did you want to ask for tabling of documents on the rationale at a later date?

**Mr. Mike Lake:** That would be a good idea, Mr. Chair.

**The Chair:** Okay. If you would provide that, that would be great, Mr. von Finckenstein.

We're now on to our last questioner from the Liberal Party. Madam Coady, you have five minutes.

**Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.):** We certainly appreciate your being here today on such short notice.

I am a businessperson. Prior to getting into politics, I owned a biotechnology company. While listening today, I was reflecting on bandwidth. I will tell you a little about my company. It really does sound to me as though this is policy pulling on progress. As a biotechnology company in genomics, we did work all over the world. I did work in Seoul, South Korea. Seoul, South Korea, would ship its DNA to my company. I would do the genetic analysis and ship back the results. I had to ship back the results by Internet. I had to be globally competitive. Otherwise, Seoul, South Korea, would go somewhere a little closer than Newfoundland and Labrador to get the genetic analysis done.

This is really about competition, competition from one perspective in terms of making sure that we have the best access and the best rates, and competition to ensure that Canada is globally competitive.

My first question is, why would you accept such a low cap? I know it was Bell's suggested cap, and I'm sure there was a rationale for it. Why would you accept such a low cap when there are much higher caps in other countries?

● (1720)

**Mr. Konrad W. von Finckenstein:** You keep saying "accept the caps". This is a cap that Bell imposes on its own residential users. Bell's residential users—I don't know what the numbers are but it's in the millions. They've just said that when they resell, they want to impose that same cap on the people who take Bell's product and resell it. That's what it boils down to.

This was Bell's business decision. I'm sure Bell will be appearing before the committee. You can ask Bell why the cap is so low. I agree with you that it should be higher. I fully agree with you that the Internet is absolutely vital to our competitiveness. The last thing I would want to do is to cramp the competitiveness. On the contrary, we are trying to make sure that we have a vibrant market, because this is one of the big drivers of the market.

You and I are totally in agreement on that point.

**Ms. Siobhan Coady:** It's policy pulling on progress, as I said earlier.

As you may know, in the last number of days we have been soliciting questions from the public about what kinds of things they're concerned about with this decision.

Dr. Angelo Fuoco from Kirkland, Quebec, said:

One concern that has not been reported to date is the negative impact this CRTC decision may have on health care, especially as it relates to electronic health records. Modern EHR software will require doctors to receive and send out large amounts of medical information over the Internet.

Such information includes blood tests, X-rays, MRIs, information that doctors may need, as well as prescriptions, and so on. He said that as a doctor he is deeply concerned about this policy. Has the CRTC studied the impact of this decision on health care, or have you even considered it?

**Mr. Konrad W. von Finckenstein:** Health care is not residential; it's done by professionals. This decision will not have any effect on it.

We have had hearings on what you call obligation to serve and, in effect, on Internet access and what should be the minimum that people are furnished with. We went to Timmins, to northern Ontario, rather than here to find out, because, like you, we are very much concerned that the Internet is there and can serve for social purposes, for businesses, etc.

This decision deals with private residential access, not with business and not with hospitals, doctors, or anything like that.

**Ms. Siobhan Coady:** Individual doctors may be concerned. That's his point.

I have another question. This one is from Sam Schmidt of Montreal. He says:

Canadian troops overseas frequently use Skype to keep in touch with their loved ones. Caps like this would make families choose between earning a living in a home business or keeping in touch with their family deployed overseas. This decision has an impact that could hurt this type of activity. Is this policy directive shortsighted?

**Mr. Konrad W. von Finckenstein:** Lynne, maybe you can give some details, but the usage of Skype is not going to cause you any problem with 20 gigabytes to access it. The cap comes in when you have heavy video or play three-dimensional games, or something like that. If you use it for Skyping, you will not use anywhere near the 20-gigabyte cap.

**Ms. Siobhan Coady:** The CRTC seems to have been put in a situation where several of its decisions have been overruled by government of late. Are you not being given the proper policy guidance by government? How can we ameliorate the situation?

**Mr. Konrad W. von Finckenstein:** The system is very simple. You have two acts on broadcasting. The CRTC Act establishes broad objectives and then basically says "Leave it to the CRTC to fill out within this frame the detailed rules on everything." Then it provides for two government checks, if you so want to call them. One is they can give us direction on how to do it, and two, if they feel we have gone wrong or people are very dissatisfied, they can appeal to the minister to have us overruled and ask us to review it.

That system has been in place since the 1960s, and by and large it works well. But right now we are in an era of incredible technological change. We also see a convergence between two systems that have been regarded conceptually as totally separate: the telecom system here and broadcasting. We have a convergence of technologies. Digitization means a bit is a bit is a bit. The companies have converged, and we're seeing integrations like never before.

As you pointed out, it's becoming terribly important for the economy. It is really vital that we have a system that works. It's not surprising that there is more government intervention, because it has become so important and so unpredictable.

• (1725)

**The Chair:** Thank you very much, Mr. von Finckenstein, Mr. Katz, and Madam Fancy.

We have about two more minutes, if you'd like to have some closing remarks, Mr. von Finckenstein.

**Mr. Konrad W. von Finckenstein:** No, really I have not. I just want to thank you for interest in this matter.

I can only say that we didn't take this decision lightly in the first place, as I pointed out to Mr. Lake. It took us three rounds to get what we thought was the right decision. We may not have got the right one. We realize, in light of the public concern about this and the fact that even Bell itself asked us to delay the implementation, it is appropriate to review it. We will review it with all diligence and try to come up with the right solution.

Thank you for your time.

**The Chair:** Thank you very much.

To members, you need to know that we have two more meetings scheduled on this, so we will need to have witnesses as well. After that we will be dealing with Bill C-501, clause by clause. We were able to get a date on the 15th, so our two meetings on this subject will be done and then we'll deal with that.

The meeting is adjourned.









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