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—
Chair

Mr. Bob Zimmer

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• (0850)

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.)): I call the meeting to order.

I apologize for being late. I had come from an all-party anti-poverty caucus meeting.

Thank you to the folks from the CRTC for joining us today to talk about net neutrality. With that, I'll start the meeting and give the floor to you.

Mr. Christopher Seidl (Executive Director, Telecommunications, Canadian Radio-television and Telecommunications Commission): Good morning, Mr. Chairman and honourable committee members. My name is Chris Seidl, and I am the executive director of telecommunications at the Canadian Radio-television and Telecommunications Commission. With me today is my colleague Stephen Millington, senior general counsel and executive director of the CRTC's legal sector. Thank you for giving us the opportunity to appear before you to speak about net neutrality.

As you may be aware, the CRTC is an independent administrative tribunal responsible for regulating the activities of telecommunications service providers further to the Telecommunications Act. As such, the CRTC is required to make every decision with the goal of ensuring the fulfillment of the policy objectives set out in the act.

Net neutrality is the concept that all traffic on the Internet should be given equal treatment by Internet providers, with little to no manipulation, interference, prioritization, discrimination, or preference given. This concept is enshrined in the Telecommunications Act through subsection 27(2), which prohibits unjust discrimination or undue preference, as well as section 36, which prohibits telecommunication companies from influencing the content they transmit unless they have received express authorization to do so from the CRTC. These sections of the act provide the CRTC with the tools and the flexibility to establish and enforce a net neutrality framework that is entirely appropriate and reasonable for Canada.

Interestingly, these are not new provisions. They date back to the Canadian Railway Act of 1906, when the concept of common carriage ensured that railway companies would carry all goods without discrimination. It turns out that the same principles are effective whether we're referring to cargo transported on railway cars or data carried over telecommunication networks. It is important to keep in mind that net neutrality is focused on carriage rather than content.

We mention this because the broadly-worded statutory provisions have stood the test of time and have allowed the CRTC the flexibility required to address more modern concerns. They have been able to adapt to modern technology and needs, including net neutrality.

The CRTC was one of the first regulators in the world to implement an approach to uphold net neutrality. We have taken several decisions that demonstrate our approach. Let me share with you three key ones.

The first, in 2009, created a framework against which Internet traffic management practices may be evaluated for compliance with the Telecommunications Act. Honourable members, the CRTC clearly stated that when congestion occurs, an ISP's first response should always be to invest in more network capacity.

However, we recognize that expanding and upgrading a network is not always the most practical solution. Internet service providers will, when necessary, adopt economic or technical measures to better manage the flow of traffic on their networks. They could, for example, charge extra fees for customers whose Internet usage exceeds a predefined limit or slow traffic on their networks to manage an unusual network congestion situation.

It may be of interest to the committee to note that although the CRTC permits ISPs to use technical measures to manage Internet traffic, we recognize that these measures may allow ISPs to view and collect consumers' personal information and data. Therefore, in the interest of protecting Canadians' privacy, we have put measures in place to limit ISPs' use of that personal information or data to traffic management. They may not use or disclose such information for any other purpose.

• (0855)

[Translation]

We have required ISPs to be transparent about their use of Internet traffic management practices. Customers must be told how the practice will affect their service, including the specific impact on speeds. Should a consumer believe that their ISP is not being transparent, they may ask the CRTC to intervene. Our most recent statistics show that the CRTC received 19 complaints relating to Internet traffic management practices last year.

We have been proactive in ensuring transparency and follow-up on each of the complaints that we receive. We firmly believe that our approach is effective. For instance, when we receive complaints alleging practices or approaches that are of significant concern, we hold public consultations and deal with them in a definitive way.

[English]

Let me explain. A few years ago it came to our attention that certain companies were offering mobile wireless services that exempted their own mobile television services from their customers' standard monthly data allowance. Content from other websites or apps, on the other hand, counted against the customers' monthly data allowance. The CRTC issued a decision in 2015 in which we directed these providers to stop giving their own mobile television services an unfair advantage in the marketplace. We also required the companies in question to amend their practices. The CRTC stated that while it is supportive of the development of new means by which Canadians can access both Canadian-made and foreign audiovisual content, mobile service providers cannot do so in a discriminatory manner.

This decision was the second step we took to uphold the principle of net neutrality by ensuring that audiovisual content is made available to Canadians in a fair and open manner.

The third and most recent step we took was in regard to differential pricing. This is a practice by which providers offer the same or similar products and services to consumers at different rates. Differential pricing can occur when an Internet service provider exempts a particular application from a user's monthly mobile data plan or when an application provider enters into agreement with a service provider to exempt or discount the rate paid for data associated with that application.

In April 2017, we declared that ISPs should treat all data that flows across the networks equally. By enacting differential pricing practices, service providers are in effect influencing consumer choices of which data to consume, the result being that these practices restrict access to content over the Internet, something that the CRTC found was contrary to the Telecommunications Act. Our framework supports a fair marketplace in which ISPs compete on price, quality of service, data allowance, and innovative service offerings.

[Translation]

Net neutrality is an issue in other regions of the world, and has been brought to the forefront of public conversation as a result of the U.S. Federal Communications Commission's decision last December.

The members of this committee may be wondering what impact this decision will have on the CRTC's policies, Canadian ISPs or Canadians. The Federal Communications Commission's vote will not affect the way in which Internet traffic is treated in Canada. The CRTC has set out its approach to net neutrality, consistent with its powers and duties under the Telecommunications Act, and we will continue to enforce it within Canada.

By the same token, the CRTC has no jurisdiction over the way in which Internet traffic is managed outside our country. We therefore cannot comment or speculate on the effects of such a practice, nor the ways in which data will be treated by service providers in other jurisdictions.

• (0900)

[English]

Mr. Chairman, we hope this overview helps you understand the concrete steps taken by the CRTC to address the issue of net neutrality in Canada. The decisions taken by the CRTC, based on the powers currently in the act, combine to create an effective approach to net neutrality and ensure that Canadians always have access to the free movement of ideas.

Before concluding our remarks, we want to advise you that we may not be able to answer all the questions that you would like to ask us today. For instance, you may have read that a coalition called FairPlay recently submitted an application asking the CRTC to establish a regime that would enable ISPs to block access to websites that host pirated content. Mr. Chairman, we trust you will understand that we cannot comment on that application or any other that is currently before the CRTC.

We'd be happy to answer any questions you may have about our approach to net neutrality.

Thank you.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much for that presentation.

We'll begin our seven-minute round with Mr. Saini.

Mr. Raj Saini (Kitchener Centre, Lib.): Good morning to both of you.

I appreciate that this is something that's relatively new. It happened in December, I believe, that the United States came to this decision, and I know there might be some questions you may be unable to answer.

If we look at the net and at the concept of net neutrality, we see that we don't live in a silo here in Canada. There's a lot of interconnectivity between the United States and Canada. There is going to be an impact here in Canada. Have you speculated in any way on what that impact would be? For example, if Netflix tomorrow decides to raise their fees in the United States, obviously we'll have a rise in fees here. Whatever happens there, there will be an impact in Canada.

Have you done any assessment of what that would be or how you would approach that going forward?

Mr. Christopher Seidl: Focusing on net neutrality itself, we can't control what other jurisdictions do on that, but it is a global concern. Different jurisdictions have taken different approaches.

With changes in the U.S., there obviously might be impacts on the application space and which applications will be successful and how much they might have to pay the Internet service providers in the U.S. It may raise their rates if they have to pay the ISPs down there. Whether they pass that on to other jurisdictions is up to them to decide. It won't change our approach to net neutrality in Canada and how we regulate the use of those practices in Canada.

There's no direct impact. I could see it potentially making more sense for some of those content providers to connect directly in Canada, versus transiting from other jurisdictions where the rules on net neutrality aren't as clear. You can see their having more interconnection directly into Canada, but there's been no indication that this may happen.

Mr. Raj Saini: You brought up differential pricing, and you released a framework last April to assess the compliance. You mentioned subsection 27(2). This was based, I believe, on a public consultation.

Mr. Christopher Seidl: That's correct.

Mr. Raj Saini: What conclusion did you reach? I think differential pricing is going to impact us going forward, because we have very few broadband providers in the Internet space. Therefore, they will start to produce a lot of initial content or initial apps on their own, which could foreclose on other content in other parts of the Internet. Going forward, I don't know how you're going to be able to maintain that.

Mr. Christopher Seidl: That's the reason we launched that process; it all started with some of the other applications. I mentioned when Vidéotron offered a set of music services with zero rating. Those services did not count toward the data cap. We looked at that and we said we didn't want this to occur otherwise and have to look at it more broadly, so we launched a public notice. We had an oral hearing in October 2016, with the decision in April 2017. We walked through all the different cases, because in subsection 27(2) the bar is unjust discrimination or undue preference, not just discriminatory preference. There has to be some effect that is not in line with the policy objectives of the act.

We found that in certain cases there may be things that are okay from a differential pricing perspective, but very few. When we looked at just accessing your bill and paying your bill online, we felt that wouldn't affect any other content providers, so that probably wouldn't be a problem. They were things that we thought were agnostic to the application, such as time-of-day data allowances with unlimited data during the midnight hours or whatever, and some counting of the daily use at other times. There still was some discrimination, but it wasn't undue, in our minds. We thought that was probably okay.

We walked through all the different types of cases, and the ones we thought were the most at issue were the application-specific ones, especially the ones through which you would prefer your own application, your own content, your own service over others when

that would cause them to have a disadvantage. We obviously support a fair and open marketplace where innovation happens at all edges of the application space, from the small companies to the large.

• (0905)

Mr. Raj Saini: I want to drill down on differential pricing, because I want to make sure that I understand. Maybe you won't be able to answer this question, because I think it's a bit more philosophical.

In the corporate space, companies will always try to gain market share. That's in any business in any environment. One of the ways you can gain market share is to make a cheaper product or offer more for the same price. Especially because of the fact that there are very limited ISP providers, you don't have a broad...you almost have a monopoly or oligopoly when it comes to broadband providers. How are they going to compete with each other and how are you going to prevent that going forward? Is this a hard-and-fast rule whereby you're going to say you cannot use data caps or free streaming with a universal...? If they produce their own service, are you going to say they can't promote their own service at the expense of foreclosing on content in another service? Going forward, how are you going to restrict that competitive nature in the environment?

Mr. Christopher Seidl: We don't restrict innovation, even in the application space. You can offer your own applications. We just say you can't give preference to your applications for the data by either giving it at a higher speed or not counting it toward the data the same as other applications. We focus on the transmission of the information and not on other applications. If you want to get into other services, be it home monitoring or anything else, we obviously support that and encourage the innovation, but you just can't use your position as the network provider or gatekeeper of that access to that home to give preference to your content.

Mr. Raj Saini: Would that also go for sponsored data?

Mr. Christopher Seidl: That's correct.

Mr. Raj Saini: Okay. Thank you.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much, Mr. Saini.

Our next round of questions goes to Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Chair.

Thank you, gentlemen, for attending here today to discuss a matter of growing importance and relevance to Canadians that many Canadians are probably completely unaware of. I'm wondering, notwithstanding the fact that the CRTC defends net neutrality implicitly, if it is time to put that explicitly into legislation in Canada.

Mr. Christopher Seidl: I think it is already there. I mentioned section 36 and section 27(2) to you earlier in terms of unjust discrimination and undue preference. Really the foundation is common carriage, and those concepts are there. As I mentioned, they have stood the test of time.

It's very much a nuanced approach. Those provisions allow us to look at the issues based on the facts before us to understand where to draw the line, because it's not a black and white line. You don't want to over-regulate and over-provision that into legislation, where you don't have that flexibility to address specific cases.

We heard different solutions that potentially could come out of there, be it a social good and so forth, that might be of benefit. For example, one provider had an issue with some of the software downloads to make sure their phone supported 911, and we wanted to get that out to as many people as possible. You don't want to block that if there is a data charge. People were worried about their data cap.

Therefore, in some cases you say it doesn't really cause a problem and allow it, but we've set up clear guidelines for the industry right now.

Hon. Peter Kent: You say it's a nuanced treatment. In the FCC discussions, those advocating the removal of the 2015 regulations said they wanted to return from a heavy-handed approach to a light-touch framework. How would you characterize the CRTC handling?

Mr. Christopher Seidl: We are strong proponents of net neutrality. That's how we characterize ours. We still are not blocking or *ex ante*. They're called *ex ante* regulations. We have prescriptive rules that block certain treatment. We allow it to a certain level, but we give guidelines for where we think it would be onside or offside, and if any issues come before us, we'll look at them and then, based on that framework, look at the facts on the ground and the impact that the particular practice might have on the market.

• (0910)

Hon. Peter Kent: Given that a great amount of Canadian Internet traffic goes via the United States, what is the CRTC's capacity to monitor? Do you enforce or protect on the basis of industry information or consumer complaint?

Mr. Christopher Seidl: In the case of any privacy issues, as I mentioned, we have set up rules that they can't use any of their traffic management practices from a privacy perspective. In terms of information flowing outside of the country, we don't have any rules that limit that. We don't get involved in Internet peering, for example. We've let the market decide that. We only want to step in and regulate where we absolutely see a need to do that. If there's an issue that is necessary for us to look at, we'll look at it, but we haven't had to step in on that aspect.

Hon. Peter Kent: Does the CRTC meet with other regulators—not only the FCC, not only in the United States—but in Europe and beyond, to discuss these sorts of transborder issues?

Mr. Christopher Seidl: Yes, absolutely. There are some sets of common issues that are across borders and global in nature, and there are annual regulatory forums where regulators get together and discuss those issues. We also meet one on one with our different counterparts in other countries.

Hon. Peter Kent: But joint decisions are never considered or—

Mr. Christopher Seidl: No.

Hon. Peter Kent: —votes taken on protocols and practices?

Mr. Christopher Seidl: Not within our jurisdiction. We obviously implement what's in the Telecommunications Act, and the scope there regulates what's in Canada only.

Hon. Peter Kent: Coming back to the traffic management practices and the example of the broadcaster using their new media sales capacity to diminish user fees, do you have other potential examples or examples that may have occurred in the United States previously that could one day affect Canada?

Mr. Christopher Seidl: Yes. If you go back to the early days, some of the earlier issues were about the phone companies wanting to block voice-over-Internet protocol applications to protect their voice market. There are some cases of that occurring, but it would be clearly offside of our rules right now in terms of traffic management practices.

As I mentioned, in several cases in the U.S. they bundle a set of services together, and you have to get approval to be in that bundle to be exempt from the data allowance. There are those cases out there. India had a big concern with Facebook's Free Basics. They were trying to offer their version of the Internet, and India eventually rejected that solution and went with a stronger net neutrality stance.

Hon. Peter Kent: The FCC chair said, in advocating the removal of the 2015 regulation, that it would in fact encourage greater investment, greater growth, with the Internet achieving its full potential. Do you hear that from Canadian companies?

Mr. Christopher Seidl: When we had the differential pricing proceeding, the focus for many of the service providers was that they needed the ability to differentiate their products and make market share. There wasn't a lot of discussion on investment, but clearly, we've heard before as well that we need to.... It's really about money, obviously, and getting the money from the application space to fund their solutions in the marketplace. I think that's where the U.S. is focusing.

Today we have major incumbents, whether they're cable companies or telephone companies, offering Internet. We also have a wholesale regime. They open up their networks to other providers, such as Electronic Box, TekSavvy, or others that are riding on top of those networks. We do have more competition here. They don't have that in the U.S. The two main providers are the majority of the market share in the U.S., giving them even more control over what to charge application providers. Controlling how they stream or provide that content gives them a lot of leverage in that negotiation.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much, Mr. Kent.

The next seven minutes are to Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you very much.

When my mother was 15, she went to work as a telephone operator. In those days, when someone called in from Boston or Toronto or Vancouver, my mom plugged the little wire in, and that made a connection. I think we see the CRTC and the Internet as an extension of the telephone, when it's not constructed that way at all, correct? The data packets are coming from all over. How information is transmitted from one jurisdiction in Canada to another may not go through a straight line at all, and much of it will be routed through the United States.

What capacity does the CRTC have to maintain the Internet as we know it if the Americans decide to blow the model up?

• (0915)

Mr. Christopher Seidl: The commission has the powers under the Telecommunications Act. We have a power under section 24 to impose conditions on carriers if they help to fulfill the objectives of the act. One of the objectives is to protect the privacy of Canadians as well, so if we see that as a real issue, the commission could look at that.

Mr. Charlie Angus: In terms of the issue of throttling of content that will be going through the American pipes, we're going to be dealing with very large entertainment conglomerates, with their ISP providers in the United States now having a free hand to decide what's moving in those pipes and what's not. Canada's market is smaller than California's, and we're very dependent on what's going through those American pipes.

At the end of the day, is there anything we can do to guarantee that our content is not going to be slowed down or throttled as collateral damage from some kind of U.S. action?

Mr. Christopher Seidl: I think having strong net neutrality rules in Canada will give a clear message to the application space that you will have a safe haven here, if I can use that term, in terms of being treated fairly by your Internet service providers. If the jurisdictions are not that friendly, I could see those content providers coming and connecting directly to our Internet providers here in Canada, and you'll see more traffic within Canada.

Mr. Charlie Angus: I'd like to think that. My concern is that the Internet was constructed through a very unique history in terms of having all manner of players to create a common exchange of information, which has now become increasingly controlled by a few giants. In Canada, we decided against competition. We decided on very protected markets. We have two, three, or four big providers that run the ISPs and are also content providers. You have rules to keep them in check, but in the United States, they have the same situation times a hundred.

Will there not be pressure economically on our ISP providers if they see that their competitors in the United States are able to start throttling content and offering faster service? Competitively, there's going to be pressure from the Canadian content providers, correct?

Mr. Christopher Seidl: Not within Canada. ISPs here compete against each other. They don't compete with the ISPs in the U.S., so I don't see that dynamic playing out in that model. We have rules in place that should enable an innovative marketplace. We have connections with content delivery networks directly in Canada, whereby these providers can peer. Certainly we've seen more and more peering locations show up across the country, and keeping the connectivity within Canada for that content is a very positive sign.

Mr. Charlie Angus: In the FCC dissenting decision, Jessica Rosenworcel says that this power will give ISPs "the power to block websites, throttle services, and censor online content." It is certainly disturbing, when we see China's move to censor content, if the U.S. entertainment industry decides what they're going to throttle or shut down.

We have, obviously, in Canada.... You said you didn't want to speak about FairPlay, which I understand, but under what terms would the CRTC look at shutting down content here? Is that something you would consider as part of your mandate, and under what circumstances would you start to go after content?

Mr. Christopher Seidl: Our mandate, as spelled out in the Telecommunications Act, is really about the transmission and the service providers that provide that transmission. As I mentioned earlier, through the power we have in section 36, nobody can block or influence the content without our approval. We spelled out in our original decision back in 2009 that you can't influence the content from an application such that it's actually blocked, including by slowing it down to the point that it's beyond recognition. That would be offside, and we wouldn't allow that.

I can't speak further in terms of blocking specific sites and content while we have the FairPlay application before us.

• (0920)

Mr. Charlie Angus: Thank you for that.

Finally, my concern is that we know most of the main Internet players are American-based and therefore now under the FCC regulations. Is there a possibility that our use of the Internet is going to be impacted by these corporate changes that are happening in the United States, given the huge power of the United States to control and run the Internet?

Mr. Christopher Seidl: It's obviously a huge market and a very important market for all the application providers out there. If AT&T, Verizon, and the other major providers start preferring specific applications to an extreme, causing others to fail, obviously that application space will be affected. It's a global marketplace, so we may see limitations for some of those new start-ups, if you want to call them that, in Canada as a result of the impact of the U.S. market. You would have to see that play out. It's unclear how that would play out.

Mr. Charlie Angus: Have you expressed concerns or discussed with the FCC the potential impact on Canada of the decision they've made? If not, are you expecting to?

Mr. Christopher Seidl: Not formally, no. That's not part of our mandate.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much, Mr. Angus.

Next up we have Mr. Baylis.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you. We've talked a lot about the United States. Are there other jurisdictions in the western world that do not impose a net neutrality regime and that are operating as the United States is going to operate?

Mr. Christopher Seidl: There are. It varies by country, and it's very nuanced across the countries. I don't have a specific example that I can give you of one that doesn't have any rules. I've been focused more on those that are supporting net neutrality in that sense, so areas that haven't addressed it yet are probably the ones to look at.

Mr. Frank Baylis: In terms of what the impacts of the change in the United States would be, I would think that we could look at other jurisdictions that are dealing with this. I don't know them, but you're saying there are others that do not have as strict or as formalized a net neutrality as ours. Is that correct?

Mr. Christopher Seidl: That's right. I would think, in looking at Canada's net neutrality, that it is probably one of the strongest in the world in terms of addressing all aspects. We started off with the prioritization of traffic, dealing with congestion situations. We moved into self-dealing in terms of your own content, and now we've dealt with paid prioritization and differential pricing with others' content. We've really run the gamut of the different areas that net neutrality touches on.

We've also addressed the privacy item as well. In terms of the spectrum of areas we've addressed, it's there. We haven't got into peering relationships and that marketplace, so anybody can peer anywhere with others. We let that rely on market forces.

Mr. Frank Baylis: You'd say we're one of the stronger ones in the world.

Mr. Christopher Seidl: Absolutely.

Mr. Frank Baylis: I'm curious, because if we take a step back from the Internet, before the delivery of the Internet, it came through a cable. In cable, there was that period of amalgamation. The cable companies were buying up the phone companies and the content. Bell and Rogers were doing this specifically to promote their content through their pipes. We never looked at carrier neutrality, rather than Internet-based neutrality.

You mentioned that these Internet-based laws were based on common carrier laws. Why did we never apply that? Even to this day, if I want to get something through my cable, it's completely tiered: you pay for this, you don't pay for that; this one I'll give you free, this one I own. We didn't apply any of this common carrier concept to cable, which effectively was even more of a monopoly than an Internet Wi-Fi provider, for example.

Mr. Christopher Seidl: I'm not an expert on the cable regulations, but we have quite a few regulations that control carriage in terms of

having availability of channels and programs of national interest and making sure there's no exclusivity on that content so that it's available on multiple platforms. Consumers do have a choice. You don't have to subscribe to multiple cable companies, for example, to get the content you want.

Mr. Frank Baylis: The concept of all content being treated equally is completely non-existent when it comes to cable: you pay for this, you don't pay for that. It's completely blocked in. That is what I understand people fear if we go away from net neutrality—that a similar cable-style regime would be imposed.

• (0925)

Mr. Christopher Seidl: That has come up when we discussed the net neutrality, the idea that you'll get the ISPs choosing the content that is best for you. You can even take it to an extreme. If you charge a lot of money for some content and give other content away for free, people will gravitate to the free side, which could influence the content you consume and then, very importantly, the news and information you consume, which is obviously something you want to keep fairly neutral.

Mr. Frank Baylis: As I'm saying, that does not exist with cable to this day. Cable is monopolistic in the sense that it's very rare that a house has two or three cable lines coming into it.

Mr. Christopher Seidl: No, but you do have choice in which provider you want for your content, even now, over the top providers as well. You have several choices, and we obviously support competition. If you had perfect competition, you might not even have to have that strong a regulation, because competition and market forces will take care of anything that consumers don't like.

Mr. Frank Baylis: Mr. Kent asked a question about subsection 27 (2) and section 36, which are in the act, not in the legislation. Are they specific just to the Internet? They can't be specific to cable, because cable.... Am I right there?

Mr. Christopher Seidl: They're in the Telecommunications Act, which is the legislation that applies to all telecommunications service, be it Internet, voice, or any other data application or data service. Any transmission of content that—

Mr. Frank Baylis: If they—section 36 and subsection 27(2)—apply to all forms of transmission, they clearly have not been acted upon when it comes to cable delivery.

Mr. Christopher Seidl: Broadcasting—

Mr. Frank Baylis: They're doing exactly what we don't want to have happen in Internet. I'm trying to understand that.

Mr. Christopher Seidl: The broadcasting aspects that have been carved out of the Telecommunications Act are in the Broadcasting Act, so all the rules, regulations, and objectives are captured there in terms of the undue preference and unjust discrimination. They have their own rules in that space, and it's not something that would fall under the Telecommunications Act.

Mr. Frank Baylis: You're saying that the cables are not subject to those particular clauses. They're—

Mr. Christopher Seidl: It's only when they're providing telecom services. The broadcasting services and the distribution services are considered broadcasting services, so they fall under the Broadcasting Act.

Mr. Frank Baylis: Okay.

How much time do I have left?

The Vice-Chair (Mr. Nathaniel Erskine-Smith): You have a minute.

Mr. Frank Baylis: You mentioned 19 complaints. How long a period do those 19 complaints span? As well, is this a constant pressure that you're feeling at CRTC or is it just one-offs that come up now and then when these providers try to break through the net neutrality concept in different ways?

Mr. Christopher Seidl: Let me parse that a bit. Over the years, we've seen the complaints go down. These are last year's numbers. We received 19 in 2017. Prior to that, it's been a little more, 30 or 40 per year. Those are the ones we get from individuals. We deal with those. With some of them, there's not enough information to deal with the complaint, and we go back and ask for more information. The way the act is written, you just have to prove there's some discrimination, not that it's undue or unjust.

We then go after the service provider to explain what they're doing and why they're doing it. In some cases, we found they were not complying, and they went into compliance. In other cases, it was just that they were doing some traffic management, but it was within the guidelines that we allow for congestion purposes or other reasons.

Mr. Frank Baylis: Is there no push-back once you talk to them? Have you had to fine companies?

Mr. Christopher Seidl: No, once we point it out, they realize it and say, "Oh, yeah, we didn't realize our software didn't do that correctly. We had better fix it." It's at the margins very much, so if there's a big issue, we will run a major proceeding to really address that, as we have done with the mobile TV and differential pricing.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much, Mr. Baylis. With that we go to Mr. Gourde.

[*Translation*]

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Mr. Chair.

I would like to thank the witnesses for being here.

As consumers, we always wonder if our Internet service provider is giving us enough for our money. In Canada, we often think we pay more than elsewhere.

Is that just an impression or is it actually the case?

Mr. Christopher Seidl: I think you are referring to Internet connection fees in Canada.

We would always like to see real competition among the companies. The various companies offer a lot of packages. Every year we conduct a study to find out what consumers pay for these services. There are a number of differences among regions, in particular as regards the number of competitors, the technology used, and regulations.

We would like to see more competition to give Canadians access to more affordable services.

• (0930)

Mr. Jacques Gourde: Traditional ISPs in Canada often exert strong pressure because they established the Internet here. They invested in the infrastructure, antennas, and fibre optics and want a return on their investment.

Are these providers exerting pressure to retain their market for several more years? Will competitors be able to enter the market after a certain number of years or will these providers try everything in their power to limit competition? They are, after all, the ones who paid for the infrastructure across the country. Providing universal Internet service is a big challenge in Canada.

Mr. Christopher Seidl: Absolutely. We would like to see competition with providers that create their own networks. That would improve services in Canada. If there is not enough competition in Canada, we can implement wholesale services. We have opened the network of other suppliers to give consumers more options. We always give appropriate rates to suppliers who invest in networks so that wholesale services and retail services are profitable for them.

Mr. Jacques Gourde: Would the new providers who would like to enter the Canadian market and create that competition be charged fees for the infrastructure that the other providers have paid for or would it be free for them?

Mr. Christopher Seidl: No, it would not be free.

There are very complex mechanisms for determining the appropriate cost of network access. In our terminology, we call it phase 2 of the costing process. It is a mechanism that enables us to estimate the costs associated with the network, including a profit margin for the companies. We use this mechanism to set the appropriate cost for wholesale services.

In some cases, the major providers do not offer their services entirely willingly. We have to regulate access to certain types of high-speed Internet services to ensure that services such as broadband are offered.

Mr. Jacques Gourde: It is surprising that it is still difficult today for many Canadians in relatively sparsely populated areas to get high-speed Internet. The service they have uses the old frequencies. People who have a business or work from home are at a disadvantage as compared to the rest of the market.

Is there some way to exert pressure to resolve this or will that be done through the market? Perhaps this situation will never be resolved.

Mr. Christopher Seidl: In 2016, we decided that all Canadians should have home access to high-quality Internet service at a speed of at least 50 megabytes per second. We decided that a fund must be established to enable providers to extend their networks and offer services in remote regions. We are in the process of clarifying the details for this type of fund.

Mr. Jacques Gourde: We are talking about the Internet and everything on it. Do you think that the Netflixes of the world and all the services that require a lot of data to be downloaded pollute the Internet in a way for those who use it for work? Is it true that recreational use of the Internet will take up more and more space and that this has an impact on the ability to provide information?

Mr. Christopher Seidl: The quantity of data on our networks and the number of applications increase every year. Providers keep expanding their networks and offering more services. We cannot control access to content. We have to continue investing in networks so that Canadians have more choices.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): We're at around six minutes, so thank you, Mr. Gourde. If you have additional questions, I expect we'll have time at the end.

There are five minutes for Ms. Vandenberg.

• (0935)

Ms. Anita Vandenberg (Ottawa West—Nepean, Lib.): Thank you very much for being such strong proponents of net neutrality. I think this issue is of serious concern. I've heard from my constituents about this, that having all voices heard on the Internet and making sure there is no censorship matters significantly to Canadians. Thank you for that.

When you said that Canada was one of the first countries that was actually regulating in this area, I was interested to note that you have the flexibility, that these principles go all the way back to the Canadian Railway Act, and that sections 36 and 27 of the Telecommunications Act have given you the flexibility to be nimble, to be able to regulate without being overly regulatory and find that balance to make sure the content flows freely.

There have been some who have talked about the need for more legislation or legislation in this area to make this stronger. It sounds as if you feel you have that within the Telecommunications Act. Is there something we can do, as a committee, something to recommend to government, that would give you more tools, that would give you more ability, whether it's legislation or otherwise, to be able to continue to be proponents of net neutrality?

Mr. Christopher Seidl: I know the government is planning to launch a review of both the Broadcasting Act and the Telecommu-

nications Act, and there'll be an opportunity to look at changes to them.

I think the government has been very active in modifying the Telecommunications Act over the years. In particular, the ability to directly regulate resellers is one of the changes that has already been introduced in the act, and the ability to offer up administrative monetary penalties as well, so that when someone is offside, we can actually enforce our regulations. A lot of the changes have come into place.

There are probably a few minor areas where we would comment that changes need to be made. However, from a net neutrality perspective, as I mentioned, what we have today gives us the powers and the flexibility we need to put the rules in place.

Ms. Anita Vandenberg: You mentioned enforcement mechanisms. Do you feel you have enough to be able to enforce?

Mr. Christopher Seidl: Yes.

Ms. Anita Vandenberg: Thank you.

You also mentioned that Canadian content is not something that can be preferred, or there's a balance there. Can you explain that a little bit?

Mr. Christopher Seidl: When we looked at the differential pricing, some proponents were suggesting that we should prefer Canadian content over other content. We gave the view that doing that might advance some of the objectives in the Broadcasting Act, but on balance we felt that it wasn't an appropriate mechanism to do that and that it would be very difficult to try to enforce and put in place. We want to ensure that Canadians get access to all quality content, and that Canadian content has pride of place as well. We didn't feel that using the transmission controls that an ISP might have to influence that is the right vehicle.

Ms. Anita Vandenberg: Okay, but are there other vehicles?

Mr. Christopher Seidl: In supporting Canadian content, there are many vehicles out there.

Ms. Anita Vandenberg: I was interested to hear you say that some of the content providers might connect directly in Canada as a result of the changes in the U.S. regulation. Do you think that might inspire more innovation in Canada, that other app or content providers might try to set up shop here in order to have the net neutrality?

Mr. Christopher Seidl: It's possible. If some of the smaller new start-ups can't penetrate the U.S. markets because the ISPs put rules in place that block or impede their success, you might see them come to Canada or to other countries that have a strong net neutrality regime and try to gain a stronghold here before they go elsewhere.

Ms. Anita Vandenberg: I was interested in your response to Mr. Kent about the meetings between regulators across countries internationally.

I understand that it's probably fairly technical, but is that a forum in which Canada could advocate and could be a proponent in advocating net neutrality in other jurisdictions as well? Obviously we have no mandate, but would it be an area where we could get together with other countries and try to put on some pressure to ensure net neutrality around the world?

Mr. Christopher Seidl: Those forums are really to share information and not really to advocate one way or another. I think having strong net neutrality rules.... I've heard from other jurisdictions that they actually look to Canada's rules and try to model them. I think having strong rules that provide success in the marketplace is probably your best argument.

Ms. Anita Vandenbeld: Okay. Thank you very much.

● (0940)

The Vice-Chair (Mr. Nathaniel Erskine-Smith): With that, we have another five minutes with xx Mr. Kent.

Hon. Peter Kent: Thank you.

I only have one question, but I would like to thank you for giving us a grounding for the further study that the committee will be conducting into this whole challenging issue.

You mentioned earlier, with regard to providers, CRTC considerations of profit margins. What is the range of acceptable profit margins that the CRTC enforces?

Mr. Christopher Seidl: As I mentioned, we're talking about wholesale services. When we set any tariffs, when we look at them for the wholesale side, we look first at all of the costs that go into a provider's network and make sure they can recoup those costs. Then we look at potentially a markup. That's the term we use to identify common costs, such as overhead and so forth. Then, if there's any risk involved, we would look at whether there's a need to ensure that there's enough incentive to the person providing the network to continue to invest and to those using the service to actually invest themselves and go into offering innovative services from that.

We try to get the right balance and the right service level. It's a very complex and detailed analysis that we do.

Hon. Peter Kent: Do you have a percentage range?

Mr. Christopher Seidl: We've had services at 15%. Up to 40% is the typical range.

Hon. Peter Kent: Thank you.

I'll yield my time. Thanks.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

With that, Ms. Fortier, you have five minutes.

[*Translation*]

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you, Mr. Chair.

I will ask my questions in French.

I find all of this very complex and I am surely not the only one. Consumers have to be informed of the changes, adjustments, and regulations in effect.

Are you involved in educating and raising awareness, even among service providers? In the current context, how can we protect the services that the industry offers consumers?

Mr. Christopher Seidl: Under our regulations, the traffic management practices adopted by ISPs have to be transparent. They have to publish information about these practices on their website and in various consumer publications.

On our own website, we provide information about net neutrality, as well as information about the complaints process.

Mrs. Mona Fortier: In your initial presentation, you talked about the complaints system. As I understood it, you have not received that many complaints this year. Looking to the future, we have to make sure the system is working effectively five or ten years from now.

In this context, do you expect to see an increase in the number of complaints? How can consumers ask questions or file complaints?

Mr. Christopher Seidl: The number of complaints is decreasing every year. I think providers will want to offer competitive services that are of the best quality possible. They do not want there to be any control of content or traffic. Increasing competition might in fact lead to a reduction in complaints in the future. Given our regulatory framework, it is clear that providers have not chosen changes such as these.

Moreover, we have the authority to impose fines when problems arise. That is another reason they do not want this kind of management.

Mrs. Mona Fortier: I would like to talk about something completely different.

Right now, I am working a lot on the Official Languages Act. We will probably modernize it, which is necessary after 50 years.

Are there any considerations with respect to the Official Languages Act? I am thinking about access to content among other things. Are there any linkages to the Official Languages Act?

Mr. Christopher Seidl: Absolutely. That is another reason we decided that all communities in Canada must have access to quality service. We decided that universal service for all Canadians, a landline and a wireless network, is a necessity in all homes and in the streets, for safety reasons and all other reasons. We want 100% of Canadians to have access to that service, but it will take time.

● (0945)

Mrs. Mona Fortier: Okay.

I have one last question.

We are looking into this more closely. Do you have any suggestions as to potential topics of interest or witnesses for our study?

Mr. Christopher Seidl: Are you referring to net neutrality?

Mrs. Mona Fortier: Yes.

Mr. Christopher Seidl: You could talk to some providers about their practices, their service concept, and the impact of the changes made in other countries. That would be another topic to delve into.

Mrs. Mona Fortier: Okay. We could invite some service providers.

Are there any consumer groups we could talk to? I am asking because you are no doubt experts on the consumers of these services.

Mr. Christopher Seidl: You could talk to organizations such as the Intellectual Property Advisory Committee, or IPAC. I believe you have already talked to certain experts in the field, including Mr. Geist.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

To finish our round, we have three minutes for Mr. Angus.

Mr. Charlie Angus: Thank you very much.

I just want to talk again about the content providers who have a very protected market, the ISPs in Canada, and they're now handling all manner of television and other media.

When my daughter was working in Africa, she had much better download speeds and Internet service than she does in some major cities. When you get into northern Ontario and other rural regions, you have service providers who have no competition, who have no willingness to extend service, and they charge exorbitant fees to people who are stuck having to use satellite and all other means.

This is not really an issue for the ethics committee—it's more industry—but Canadians are not getting a great deal from our service providers. We pay Cadillac rates and get broken Volkswagen service.

Do you think that there's a way that we can crack this market open and get some better competition?

Mr. Christopher Seidl: We obviously want to have competition sufficient to protect the interests of users and to have affordable and innovative services. Our approach has been to base it on facilities-based competition. That's where you do have the two main providers in most markets, not in the rural areas, and enabling wholesale access, as I mentioned earlier, is another way to get other providers to use those networks.

Then there is the funding of infrastructure and development. With the connect to innovate program, the government is funding a backbone for those remote regions, and having other providers able to access that backbone is a critical component to expanding the network out to other regions and to having more competition. Obviously, offering those services in those remote regions is challenging from a business case perspective. That's why some public support is needed to develop them, to just get them up to a level, and then hopefully some competition will follow through with that as well.

Mr. Charlie Angus: I understand the business case, but we're not dealing with free market players. We're dealing with people who have been given very strong protections by government, by legislation, to protect their markets, and they're not providing the service.

In my region, we had Ontera, Ontario Northland, providing the service where Bell wouldn't. The Liberal government decided to sell off Ontera at a fire sale to Bell. We wrote to the Competition Bureau,

and the Competition Bureau agreed that this was not in the public interest, but hey, it was big giants buying up the little guy. They went along with it. Now when you call Bell and say, "Listen, I have businesses on a main trans-Canada highway that can't get Internet services", they say that there's no business case.

I put it to you that we protect the market, we give them preferential treatment, we keep out American competition, and we're still getting hosed. Businesses and families can't get Internet services when government tells them that this is a priority. Government tells them that this is how they're going to pay their taxes, this is how they're going to get their medical care, yet we do not have a market that does that.

What do you see, from the CRTC, that we can do to force them, if we're going to have a protected market, to actually service Canadians? As I said, you get better cellphone service in Somalia, a broken nation, than you do in a lot of the region that I represent.

● (0950)

Mr. Christopher Seidl: We came up with our basic telecom service decision back in December 2016, when we set the universal service objective. We did indicate that it really is a shared responsibility to bring that level of service to all Canadians. All levels of government, as well as the industry itself, should do whatever they can to offer that. We've identified \$750 million to go towards that broadband fund, which comes from the service providers paying into a contribution fund. We're going to design that and roll it out. The government has put forward the connect to innovate program with \$500 million towards expanding broadband.

I think there's obviously a lot more to be done, and more can be done on the broadband front to really bring that out there. If you have more of that service infrastructure out there with open access, I think you'll see more providers, including local providers in local communities, being able to offer their own service.

It does take time.

Mr. Charlie Angus: Thank you.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

We have time if other people have questions.

I had one question in relation to net neutrality, although I would piggyback on Mr. Angus's concerns.

I lived in the U.K. for a year seven years ago, and broadband networks were pretty competitive. You mentioned TekSavvy and being able to piggyback on existing networks to provide additional competition, but we really don't have the same thing in the mobile world to the same degree as we have with the TekSavvys of the world. In the U.K. seven years ago, I had more content for a lower price than I've had for the years I've lived in Canada since, so keep pushing to bring more competition.

On net neutrality, subsection 27(2) and section 36 provide the foundation for protecting against anti-competitive behaviours, and that's been interpreted as providing a strong foundation for protecting net neutrality. However, net neutrality isn't defined in the act and it isn't enshrined in the act in any principled way, so while we have existing interpretations from the CRTC, which I think are incredibly effective, and it's great to see that you have a document that strengthens that neutrality and you have the differential pricing telecom policy that you just introduced last year, do you think Parliament ought to be seized with the idea of improving the act, enshrining the principle of net neutrality, and effectively taking some of the jurisprudence that has been developed by the CRTC and codifying it in law?

Mr. Christopher Seidl: I think it's definitely worth looking at.

As I mentioned, from our perspective we've had the flexibility and the powers that are needed to introduce that. All of our decisions have been unanimous, and I've been involved in all of them over the years. We've based them on the record we've developed and on very detailed discussion in these cases, so I would be cautious in terms of putting anything hard into the legislation that might not fit with the flexibility you might want going forward.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Okay.

We have Mr. Saini for a question and Ms. Murray for a question.

Mr. Raj Saini: This is more a commentary.

We have a decent net neutrality regime here. In the United States that has changed, and Europe is pretty firm. Many parts of the world do not have this concept of net neutrality as codified as we have or as legislated and regulated as we have. New Zealand or Greenland have tried to zero-rate their local content because the foreign content is more expensive. When we look at it on a trade basis or a competitive basis, we see Canadian companies that have websites and want to sell to those countries or that have content that they want to deliver to those countries.

What is your comment about zero-rating by other countries whose regimes are not as strong as ours to protect their local content? What would you do in that case?

Mr. Christopher Seidl: I probably shouldn't comment. Obviously, it's an issue for Trade, Global Affairs, Industry Canada, and others that may be involved in those discussions. Clearly, there are cross-impacts if there are different rules in different jurisdictions. That should be looked at, but I'm not one to comment on that.

Mr. Raj Saini: Okay.

Ms. Joyce Murray: I want to follow up on Mr. Angus's comments about rural broadband.

In B.C., starting in about 2003, there was a program to bridge the digital divide. By now, I think something like 97% of communities across B.C. have high-speed broadband access at a price comparable to that for a Vancouver customer. I totally understand how critical it is for rural community members and businesses to have access to high-speed broadband.

When you talk about it being a partnership to make that access to the pipe available and the systems for connecting people to the pipe, is there anything that the CRTC can do to facilitate partnerships or the sharing of ideas across the provinces so that the practices in one province can be shared with the other provinces or help the other provinces to get their communities connected as well?

● (0955)

Mr. Christopher Seidl: We're certainly a voice in that discussion. I don't see us being focused as a regulator. Our objectives are in the Telecommunications Act and really trying to facilitate that deployment in different regions.

The people who are in those regions and understand those regions in detail can make much better decisions on what's needed, how to expand that, and where the money can be put forward. That's why we're calling for shared leadership. We'll step in. We have an open proceeding right now, so I can't get into how we'll design that, but we're obviously going to put our \$750 million to work to help expand the networks to all Canadians.

We had a large proceeding to determine the appropriate level of service that Canadians should have, and that was very forward-looking as well. It continues to evolve with the appetite for applications in the world.

We're all going towards more mobile services. You folks may have heard of 5G coming down the pipe as the next generation of mobile wireless, where everything will be connected. There's no end to the amount of infrastructure we'll need to ensure that all Canadians can participate in the digital economy.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thank you very much to you both for joining us this morning.

We'll suspend for five minutes and come back for committee business.

[Proceedings continue in camera]

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