

# The True Voice

---

August 16, 2006

Leonard St. Aubin  
Acting Director General  
Telecommunications Policy Branch  
Industry Canada  
16<sup>th</sup> Floor, 300 Slater Street  
Ottawa, Ontario  
K1A 0C8

Dear Mr. St. Aubin:

**Re: Order under Section 8 of the *Telecommunications Act* – Policy Directive to the Canadian Radio-television and Telecommunications Commission, Canada Gazette, Part I, June 17, 2006, page 1606.**

1. In accordance with the procedures set out in the above-referenced Canada Gazette notice, please accept this submission by the True Voice of Competition (TVC) coalition on the federal Government's proposed Policy Directive to the Canadian Radio-television and Telecommunications Commission (CRTC), as set out at page 1606 of the *Canada Gazette*, Part I, dated June 17 2006.
2. The TVC coalition is a growing coalition of resellers, Internet Service Providers (ISPs) and full-service telecommunications carriers. Although some of our members provide their services right across Canada, many of our members are regional based service providers that are focused on Canada's secondary markets, including rural and underserved communities. Included among our members are the following telecommunications service providers: eagle.ca, MTS Allstream, Execulink Telecom, Start Communications, NetAccess Systems, RipNET, Bruce Telecom, SureNet Communications Group, and Colba.Net.
3. The members of the TVC coalition strive to compete with the large incumbent telephone companies by offering innovative services and solutions to our customers, and by catering to markets and customers that are often overlooked by companies such as Bell Canada and TELUS Communications Company. We are a necessary ingredient for a

healthy and competitive broadband services market and we feel that our very survival is threatened by some of the language contained in the proposed Policy Directive. As discussed more fully below, we are gravely concerned with section 1.(c).(ii) of the June 17 proposed Policy Directive as currently drafted, and request that this paragraph be modified prior to the approval of any such directive.

4. The proposed Policy Directive appears to be the first step in the “operationalization” of certain recommendations made by the Telecommunications Policy Review Panel (TPRP) in its recent report released in March 2006.<sup>1</sup> While we as new entrants welcome the laudable goals of increased competition and greater reliance on market forces as espoused by both the TPRP Report and the federal Government’s proposed Policy Directive, our members are concerned that the application of this general rule to the market for wholesale services, when neither the TPRP nor the federal government has actually carried out an analysis of the state of competition in this market, may prove detrimental to the very markets in which the government is seeking to promote competition.
5. We note in this regard that the TPRP Report contains no quantitative or statistical analysis of the wholesale markets for a variety of wholesale services such as unbundled local loops, co-location, ADSL access and transport services, and Ethernet access and transport services. Nevertheless, the favourable conclusions drawn by the Panel with respect to the state of competition in Canada’s telecommunications markets appear to have been extended to cover these markets. Specifically, the Panel states that “the Canadian telecommunications industry has evolved to the point where market forces can largely be relied upon to achieve economic and social benefits for Canadians, and where detailed, prescriptive regulation is no longer needed in many areas”,<sup>2</sup> but it never once examines in its report the actual state of competition in Canada’s wholesale markets. Had it done so, it would have discovered that these markets are not even close to being competitive.

---

<sup>1</sup> *Telecommunications Policy Review Panel Final Report 2006*, March 2006.

<sup>2</sup> *Ibid*, page 1-22.

6. For example, according to the CRTC's recently released Telecommunications Monitoring Report, the incumbent telephone and cable companies control almost the entire market for residential high-speed Internet subscribers, having a combined market share of 97% in 2005.<sup>3</sup> There can be no doubt that this dominance in the retail market is the direct result of these companies owning the necessary cables, wires, and other elements of the underlying infrastructure that are needed to provide high-speed Internet and other broadband services. It is already difficult enough for competitors to gain access to this underlying infrastructure, as illustrated by their inability to gain market share. It stands to follow, therefore, that any orders or directives which propose to limit or scale back the ability of competitors to gain access to these underlying facilities will lessen, not increase competition.
  
7. In its discussion of the market for wholesale services, the TPRP states in its Report that access to wholesale facilities can be achieved through commercial agreements.<sup>4</sup> We strongly beg to differ. Our members have had years upon years of experience negotiating with the incumbents and have learned that these companies have no incentive whatsoever to offer their competitors access to underlying facilities on a timely basis, let alone on commercially reasonable terms and conditions. In fact, the incumbents use these "negotiations" as a delaying tactic to forestall the provision of underlying facilities to competitors. Moreover, because they exercise significant market power in the supply of the facilities in question, they consistently charge exorbitant and usurious mark-ups, in some cases as high as 500% and even 1,000%.<sup>5</sup>
  
8. To put it bluntly, our members need and must rely upon mandated access regimes, such as those established by the CRTC, because negotiations with the incumbents to obtain access to underlying facilities consistently fail. This is the case even in wholesale markets where there are other potential sources of supply in the market.

---

<sup>3</sup> CRTC Telecommunications Monitoring Report, *Status of Competition in Canadian Telecommunications Markets*, July 2006 at 59.

<sup>4</sup> TPRP Report, page 3-31.

<sup>5</sup> These types of mark-ups have been applied to a number of wholesale services, such as ADSL access and transport services, Ethernet access and transport services, and DNA facilities.

9. The members of the TVC coalition also believe that any attempt to limit the definition of services and facilities that are subject to mandated access arrangements so as to only include those which are “essential” in the most narrow, esoteric, and theoretical sense is a recipe for disaster. These types of proposals actually hinder – not promote – facilities-based competition, as is evident from the experience in the United States and the United Kingdom over the past few years. In fact, the regulatory authority in the United Kingdom has concluded that the best way to promote competition is to structurally separate British Telecom’s wholesale and retail operations.
  
10. Our members have also learned from the tech downturn of only a few years ago that investors are not prepared to finance “build it and they will come” networks. Investors expect new entrants to build a base of customers first through resale, and even then, they will only finance facilities-builds if they are not duplicative or if there are actual customers that are signed-up and ready to go at the other end of the facilities. A policy directive that seeks to circumscribe both the number and types of facilities and services that are available on a mandated basis ignores this clear guidance from investors at its peril.
  
11. It is for these reasons, as well as those that are set out in the separate submissions of our members, that the TVC coalition recommends that section 1.(c).(ii) of the federal Government’s proposed Policy Directive be replaced with the following revised wording:

With a view to providing increased incentives for innovation and investment, and to building a stronger competitive environment with greater choice, lower prices and better services for Canadians, conduct a review of its regulatory framework regarding mandated access to wholesale services to ensure that the definition of essential facilities and services is technologically and competitively neutral and adequately addresses the existence where found, of significant market power with respect to network infrastructure,

12. In support of this submission, we have attached a petition that, although only recently posted on our website,<sup>6</sup> has already received the endorsement of over 100 telecom service providers, small business owners and consumers, who all believe that a truly effective regulatory system that is capable of ensuring strong competition requires a thorough understanding and analysis of the competitive conditions in each of Canada's telecommunications markets. In the case of the market for wholesale services, such as unbundled local loops, co-location, ADSL access and transport services, and Ethernet access and transport services, there is no basis to conclude that there is sufficient competition to warrant the narrowing or removal of rules which mandate the rates, terms and conditions of access to these underlying facilities. The evidence simply does not support such a proposal or directive at this time.
  
13. We will continue to gather signatures so as to keep you apprised of the support for our coalition's position. In the meantime, however, we respectfully request that the proposed Policy Directive be revised as proposed herein in order to ensure that Canada's telecommunications sector can become truly competitive.

All of which is respectfully submitted by the True Voice of Competition coalition this 16<sup>th</sup> day of August, 2006.

The True Voice of Competition Coalition

c/o eagle.ca  
Northumbria House  
26 Chapel Street  
Cobourg, ON  
K9A 1H9

---

<sup>6</sup> Please see <http://www.thetruevoice.ca>