

September 25, 2005

Delivered via email

Honorable David L. Emerson  
Minister of Industry  
(Minister.Industry@ic.gc.ca)

**Re: Telecommunications Policy Review**

Honorable David L. Emerson, Minister of Industry ("Honorable Minister"), I have written this letter to seek your assistance in relation to the Telecommunications Policy Review Panel's ("the Panel") call for comments on the above captioned matter. As a concerned citizen, ratepayer, taxpayer and voter, I do not envy the task you have placed before the Panel in arriving at its findings and constructing recommendations that will truly serve Canadian consumers and business as outlined the Panel's Terms of Reference:

The panel is asked to make recommendations on how to implement an efficient, fair, functional and forward-looking regulatory framework that serves Canadian consumers and businesses, and that can adapt to a changing technological landscape.<sup>1</sup>

The Panel, in its Consultation Paper further clarifies its perceived role:

Therefore, while we see it as our role to ask: Are there problems with the current framework that need to be fixed? – that is not the only question. To properly discharge our mandate, we must also ask: Should changes be made to the policy and regulatory framework to better equip Canada to reap future benefits from developments in telecommunications and ICT as these become more powerful enablers of our social and economic lives?<sup>2</sup>

Honorable Minister, the Panel has it right. Clearly the Panel needs to gather data and understand what problems exist in the current framework BEFORE the Panel can proceed with formulating and recommending potential changes. The Panel has already received numerous submissions in response to the questions asked in its Consultation Paper. These responses will go a long way to allowing the Panel to gather the necessary data it will need to understand if problems do exist. The responses and the data they contain are however suspect, as they have been structured to represent the views of the responding organizations. The telephone companies have one view, the competitors another, while the general public's interest has been largely ignored.

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<sup>1</sup> Telecommunications Policy Review Panel - Terms of Reference - Regulation - paragraph 3.

Honorable Minister, I therefore request that you, in support of the general public's interest in this matter, seek to provide the Panel with data that will be both unbiased and benchmarked.

Honorable Minister, by this letter I would request that you, on your own volition or with Cabinet approval as necessary, immediately engage the services of the Office of the Auditor General of Canada ("the Auditor General") in order to undertake several audits of the current competitive regime and regulatory processes. Honorable Minister, these audits should be undertaken with a view to ensuring that the audit results can be provided to the Panel in a timely fashion so as to be incorporated into the Panel's analysis and recommendation development.

Honorable Minister, the audit requests that I propose be undertaken can most easily be subdivided under three categories including: Competition, Regulation and Regulatory Process.

#### **COMPETITION:**

Over the last twenty plus years the Canadian Radio-television and Telecommunications Commission ("CRTC" or "Commission") has guided the Canadian telecommunications industry from a monopoly services environment to a competitive services environment. In doing so, the CRTC has created the opportunity for competition to develop in a number of the sectors that make up the telecommunications marketplace including: private line services, long distance services, local services and payphone services.

In analyzing the apparent vision of the CRTC we see a planned and natural progression from the introduction of Toll Competition<sup>3</sup> to Regulatory Framework - Split Rate Base<sup>4</sup> through to the introduction of Local Competition<sup>5</sup> and Price Cap Regulation<sup>6</sup>. The progression of these decisions allowed the CRTC to shield local residential customers from the sudden and significant rate adjustments that would have been necessary to implement local competition. The spreading out of residential local rates into three \$2 per month increases over each of the 1996, 1997 and 1998 calendar years resulted in the local residential customer paying \$6 per month more heading into residential Local Competition.

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<sup>2</sup> Telecommunications Policy Review - Consultation Paper - Forward - second last paragraph.

<sup>3</sup> Telecom Decision CRTC 92-12, 12 June 1992.

<sup>4</sup> Telecom Decision CRTC 95-21, 31 October 1995.

<sup>5</sup> Telecom Decision CRTC 97-8, 1 May 1997.

<sup>6</sup> Telecom Decision CRTC 97-9, 1 May 1997.

The timing of the last \$2 per month local rate increase to coincide with the introduction of residential Local Competition begs the question "Were these CRTC approved local residential rate increases put in place to fund and encourage residential Local Competition?" If this is the case, then this "Consumer Funded" model of competition has been a dismal failure based on the CRTC's own data reporting. In this regard I note that only 419,000 out of 12,891,000 residential local lines are with a competitor<sup>7</sup>. Based on these figures and 6 full years after the introduction of residential local competition, only 3.25% of residential local lines Canada wide are with a competitor. It would therefore appear that the cost to residential customers, in after tax dollars, for the privilege of a residential Local Competitive marketplace over the last six years is in excess of \$5 Billion (\$6 per month X 12 months X 6 years X 12 Million residential local lines<sup>8</sup>). As large as this number is, it should be noted that these rates are also subject to GST and Provincial taxes where applicable. Therefore, the Federal Government has had the privilege of collecting GST in excess of \$350 Million (\$5 Billion X 7%) over the same period.

### **Audit Request #1 - Residential Local Competition**

Honorable Minister, in light of the above, I would request that you request the Auditor General undertake a value for money audit of residential customers contribution to residential Local Competition. Specifically:

1. How has the \$5 Billion collected by the telephones companies and competitors been spent? Has it been used for example to:
  - increase the quality and/or availability of residential telephone service?
  - increase shareholder wealth?
  - Canadianize the telecommunications industry (i.e., buy-out foreign ownership)?
  - subsidize other telecommunications services or customers including for example long distance rates or local business subscriber rates?
2. How has the \$350 Million collected by the Federal Government in additional GST been spent? Has it been used for example to:
  - increase the quality and/or availability of residential telephone service?
  - increase general revenues?
  - fund certain Government sponsored programs?

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<sup>7</sup> Telecom Public Notice CRTC 2005-11, 30 August 2005 - Table B - 2004.

<sup>8</sup> Telecom Public Notice CRTC 2005-11, 30 August 2005 - Table B.

3. How has the collection of all of this money contributed to the development of a robust and sustainable competitive local residential telecommunications marketplace?

Honorable Minister, if residential Local Competition is a prime example of a failed "Consumer Funded" competitive model then Local Pay Telephone Competition is a prime example of a failed "Investor Funded" competitive model.

Local Pay Telephone Competition<sup>9</sup> was introduced by the CRTC effective 1 July 1998. In its' Decision, the CRTC allowed Competitive Pay Telephone Services Providers ("CPTSPs") to enter the payphone business at their own expense subject only to proper registration and compliance to certain consumer safeguards. The CRTC provided the CPTSPs with a 25% reduction in the cost of business lines that they would need to purchase from the telephone companies in recognition that these lines were of reduced functionality. The CRTC did not however rebalance the payphone rates for local calls to make them compensatory. Further, the CRTC recognized that the telephone companies could lock up prime payphone locations through the signing of long term contracts and ordered the telephone companies to file all such contracts with a duration of 5 years or more for the CRTC's review. Finally, the CRTC also recognized the potential for competitive issues to arise and as a result made the following commitment:

The Commission intends to hold a review within a three-year time frame to investigate the impact competition has had on the local pay telephone market. This review will include, among other things, problem areas that have been identified through complaints, including complaints with respect to consumer safeguards and barriers to entry.<sup>10</sup>

Honorable Minister, it has been 7 years since the CRTC introduced Local Pay Telephone Competition and while there was a flurry of activity at the outset, Canadians today would be hard pressed to find a non-telephone company competitive payphone. Furthermore, history shows us that the CRTC did not nullify any of the telephone company payphone contracts of 5 years or longer which would have leveled the playing field and stimulated competition. In addition, the CRTC's promised three-year review has yet to take place.

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<sup>9</sup> Telecom Decision CRTC 98-8, 30 June 1998.

<sup>10</sup> Telecom Decision CRTC 98-8, 30 June 1998 - II GENERAL CONCLUSIONS - B Competition - paragraph 2.

## **Audit Request #2 - Local Pay Telephone Competition**

Honorable Minister, in light of the above, I would request that you request the Auditor General undertake an audit of the failure of Local Pay Telephone Competition. Specifically, the Auditor General should:

1. Gather investment data from all CPTSPs who registered at the outset of the Local Pay Telephone Competition Decision and to determine the negative economic impact to the telecommunications industry in Canada as a result of the failure of the local pay telephone competition.
2. Determine the impact that the CRTC's decision not to nullify or cancel the telephone company's long-term contracts had in creating a barrier to CPTSP entry into the local pay telephone marketplace.
3. Determine the impact that the CRTC's failure to undertake a three-year review as promised had in ensuring the demise of a potentially robust and sustainable competitive local pay telephone marketplace.

### **REGULATION:**

Honorable Minister, under the current regulatory regime, the CRTC has been entrusted with the task of ensuring that the requirements of the *Telecommunications Act* ("the Act") are properly adjudicated in order to strike an appropriate balance in the face of the needs of the diverse interests of the various stakeholders. These various stakeholders include:

- the telephone and cable companies who seek to maintain their dominance and maximize their revenues;
- the competitors who seek to remove or lessen barriers to competitive entry in hopes they too can maximize revenues;
- the public interest groups who seek to ensure that the voices of their constituents are heard; and
- the consumers who seek to get appropriate value for the money they spend on services. In the case of residential consumers, this means ensuring that the CRTC truly establishes rates that are just and reasonable in accordance with the provisions of the *Act*.

Honorable Minister, clearly the role of the CRTC is critical to the successful implementation of the telecommunications regulatory framework in Canada. In this regard, I note that the CRTC

estimates its total telecommunications regulatory costs for the 2005-2006 fiscal year at \$24.0 million and that recovery of costs is through the payment of annual telecommunications fees payable by certain Canadian carriers.<sup>11</sup> Given that the CRTC is an industry funded entity with the largest financial payments being made by the telephone companies, one wonders how this funding arrangement influences the CRTC's decision making process (e.g., the CRTC decision not to nullify or cancel the telephone company's long-term contracts in the case of Local Pay Telephone Competition).

Honorable Minister, earlier this year the CRTC introduced a streamlined process for the disposition of retail tariff filings of the telephone companies<sup>12</sup>. In issuing this Circular, the CRTC admitted that while the *Act* required it to respond to a tariff application within 45 business days, the CRTC noted that its average response time was over 55 business days. In its conclusion, the CRTC states:

With this Circular, the Commission has taken several major steps to increase regulatory efficiency.<sup>13</sup>

The question that begs to be asked is whether this "streamlined process" actually adds to regulatory efficiency or just pacifies the wishes of the telephone companies for faster tariff approvals in light of their significant funding of the CRTC.

Honorable Minister, the admitted failure of the CRTC to comply with the requirements of the *Act* raises a number of red flags ... namely is the CRTC under-staffed, under-funded and/or improperly monitored. In this regard Honorable Minister, a search of the Auditor General's website appears to reveal that the last comprehensive audit of the CRTC undertaken by the Auditor General was in 1981<sup>14</sup>.

### **Audit Request #3 - CRTC**

Honorable Minister, in light of the above, I would request that you request the Auditor General undertake a comprehensive audit of the CRTC. Specifically, the Auditor General should:

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<sup>11</sup> Telecom Public Notice CRTC 2005-6, 16 June 2005 - Telecommunications Fees.

<sup>12</sup> Telecom Circular CRTC 2005-6, 25 April 2005.

<sup>13</sup> Telecom Circular CRTC 2005-6, 25 April 2005 - paragraph 17.

<sup>14</sup> Website search [www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca) "Canadian Radio-television and Telecommunications Commission"... 1981 Report of the Auditor General of Canada - Chapter 6 - Canadian Radio-television and Telecommunications Commission.

1. Perform a compliance audit for the last 7 years since the introduction of residential local competition to determine to what extent the CRTC has failed to comply with the provisions of the *Act*.
2. Perform a resources audit to determine to what extent the CRTC might be under-funded and/or under-staffed and how these resource issues contribute to the CRTC's inability to comply with the provisions of the *Act*.
3. Perform a Conflict of Interest audit to determine to what extent, if any, the fact that the CRTC is industry funded, predominately by the telephone companies, has lead to decisions that, on the surface, appear to favour these companies (e.g., the CRTC decision not to nullify or cancel the telephone company's long-term contracts in the case of Local Pay Telephone Competition).
4. Perform a value for money audit to determine if a Federal Government funded model of the CRTC, and increased perception of independence, would better serve the interests of the Canadian residential consumer and the public in general than does the currently industry funded model of the CRTC.

#### **REGULATORY PROCESS:**

Honorable Minister, as noted above, we see that the CRTC itself has confirmed that it has been unable to comply with the provisions of the *Act* in relation to the processing of tariff applications.

Honorable Minister, it is therefore instructive to look at the tariff application process since it is the vehicle by which the regulated entities, including the telephone companies, get approval to offer new services and/or to obtain rate adjustments.

In this regard, I note a series of tariff applications made by TELUS to introduce a new service for residential customers called "Non-listed address service"<sup>15</sup>. Simply, this service would have allowed TELUS to charge \$2 per month and a one-time data processing charge to allow residential customers the privilege to omit their address from the company's directory and directory assistance records. In denying the TELUS tariff applications, the CRTC stated:

The Commission considers that the proposal removes the flexibility that customers have in how their name and address are listed in the companies'

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<sup>15</sup> TCI TNs 280 and 280A and TCBC TNs 4101 and 4101A.

directory services. This flexibility to include a partial address or no address is currently provided at no additional charge. ... and ...

The Commission is [of] the view that when telecommunications services that compromise personal privacy are introduced, appropriate measures must be taken to maintain the consumer's privacy at no extra cost to the consumer unless there are compelling reasons for not doing so.<sup>16</sup>

Of interest here is that staff within TELUS Regulatory at that time were fully aware that the introduction of this new service had little or no chance of being approved before the tariff applications were even issued. This begs the question "Why were these tariff applications filed in the first place?" Were these tariff applications, which commanded considerable internal resources to develop and, in this case, to also modify, filed to:

1. use the CRTC and the tariff application process to train TELUS regulatory staff;
2. use the CRTC and the tariff application process to train TELUS product management staff;
3. pull a fast one over the CRTC and residential consumers to increase revenues; or
4. over-load the CRTC with a nuisance application to detract the CRTC from performing more meaningful duties to the benefit of Canadian consumers.

Honorable Minister, based on a search of the CRTC website for denied tariff applications for TELUS for the year 2000, we find that:

1. 9 TELUS tariff applications were denied because TELUS failed to file imputation tests<sup>17</sup>;
2. 2 TELUS tariff applications were denied because the applications were deemed by the CRTC as inappropriate in light of privacy concerns<sup>18</sup>;
3. 2 TELUS tariff applications were denied because the CRTC deemed that due to the wide scope of the proposed trial, the offering did not qualify as a market trial<sup>19</sup>; and
4. 3 additional TELUS tariff filings were denied by the CRTC with the following reasons:
  - CRTC was not persuaded that the use of an average benefit period is appropriate<sup>20</sup>;
  - CRTC found that the cost information is incomplete and the proposed rate is excessive<sup>21</sup>; and

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<sup>16</sup> Order CRTC 2000 -1020, 14 November 2000 - paragraphs 2 and 4.

<sup>17</sup> Orders CRTC 2000 - 166, 203, 348, 466, 502, 550, 678, 679, and 996.

<sup>18</sup> Orders CRTC 2000 - 253 and 676.

<sup>19</sup> Orders CRTC 2000 - 157 and 260.

<sup>20</sup> Order CRTC 2000 - 1047.

<sup>21</sup> Order CRTC 2000 - 737.

- CRTC concluded that the company's proposal to charge different rates to existing and new customers in this case is unjustly discriminatory and contrary to Subsection 27(2) of the Telecommunications Act<sup>22</sup>.

It appears clear from the above that TELUS had little regard for the regulatory process in at least the 9 cases where TELUS failed to file an imputation test. Given the considerable resources on the part of:

1. TELUS, to produce these applications; and,
  2. the CRTC to adjudicate these applications,
- one questions how much more efficient the regulatory process could have been in 2000 had TELUS properly filed the applications in the first place or not filed the applications at all. Honorable Minister, even today with the implementation of a streamlined process, the CRTC continues to deny tariffs applications of the regulated entities<sup>23</sup>.

Honorable Minister, as cited earlier you have asked the Panel to make recommendations on how to implement an efficient, fair, functional and forward-looking regulatory framework. To do so Honorable Minister requires the Panel to understanding of application process and approval process being currently employed. In addition, and given that:

1. the CRTC has introduced an streamlined approval process; and
  2. the regulated companies continue to file applications that are denied,
- one wonders what obligations should be placed on the regulated entities to ensure that their applications are meaningful and complete. One also wonders what penalties, other than a denial, are appropriate and necessary in cases of non-compliance.

#### **Audit Request #4 - Applications**

Honorable Minister, in light of the above, I would request that you request the Auditor General undertake an audit of the regulated entities in relation to their applications. Specifically, the Auditor General should:

1. Perform a compliance audit on all applications filed by the regulated entities, for the last 7 years since the introduction of residential local competition, to determine to what extent

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<sup>22</sup> Order CRTC 2000 - 882.

<sup>23</sup> See for example - Order CRTC 2005 - 285 - Bell Customer Specific Arrangement - TN 6736 & amendments; Order CRTC 2005 - 255 - Call-Net LSR Processing - TN 22; and Order CRTC 2005 - 75 - TELUS Construction Charges Tariff - TCI TN 147 & TCBC TN 4215.

these applications have failed to comply with the provisions of the *Act* and the various procedural rules applicable to the applications.

2. Perform an audit on all denied applications, over the same period as noted above, to determine to what extent the denials were as a result of a failure on the part of the regulated entity to provide the CRTC with complete and appropriate information.
3. Perform an assessment in relation to the denied applications, as audited above, to determine to what extent the CRTC would have been more efficient, and as a result more likely to comply with the provision of the *Act*, had the denied applications not been issued in the first place.
4. Perform a value for money audit in relation to denied applications to determine, in dollar terms, the productive time and resources lost by the CRTC in processing these denied applications. Also perform an assessment, in dollar terms, that might be appropriate in allowing the CRTC to issue penalties to the regulated entities for denied applications.

## **CONCLUSION:**

As mentioned from the outset Honorable Minister, I do not envy the task you have placed before the Panel. The Panel has already received numerous responses to their Consultation Paper that will go a long way to allowing the Panel to gather the necessary data it will need to understand if problems do exist in the current regulatory framework. However Honorable Minister, these responses and the data they contain are suspect, as they have been structured to represent the views of the responding organizations and largely ignore the general public's interest in this matter.

Honorable Minister, by way of this letter I have proposed that several audits be undertaken concerning various aspects of the current regulatory framework including competition, regulation and regulatory process. While these are audits I feel need to be done, Honorable Minister the Panel and the CRTC may be able to suggest additional and/or more specific audits to supplement the data collection process and these should be given consideration as well.

Honorable Minister, undertaking these or any additional audits as proposed will supplement the information already collected by the Panel and will provide data that will be both unbiased and benchmarked. In addition, the audit results will help fill voids in the data that has already been

submitted and will ensure that the Panel's ultimate recommendations will take the interests of the general public into consideration.

In conclusion Honorable Minister, I again request that you, on your own volition or with Cabinet approval as necessary, immediately engage the services of the Auditor General in order to undertake the requested audits in order to ensure that the Panel has all the necessary data to fulfil its mandate.

Honorable Minister all of the above is respectfully submitted for your attention and action by a concerned citizen, ratepayer, taxpayer and voter this 25th day of September 2005.

Yours very truly,

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