

August 16, 2006

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

Dear Mr. St. Aubin:

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

These comments are being submitted by the Coalition for Competitive Telecommunications in response to the above-mentioned notice in the *Canada Gazette*.

Through its member associations¹, the Coalition represents more than 12,000 businesses and all school boards in the Province of Québec. Telecommunications services are a key input to the day-to-day activities of these organizations and a major driver in their productivity and competitive edge. Expenditures on telecommunications services comprise a significant portion of their operational budgets.

The Coalition was established in 2003. Its mandate is to advocate fundamental reform of the Canadian telecommunications regulatory regime as a means of strengthening the vitality and productivity of the Canadian economy. One of the primary reasons for its formation was a major concern that the Canadian Radio -television and Telecommunications Commission (CRTC) was imposing extensive and unnecessary regulation while seriously underestimating the level of competition in the provision of telecommunications services to business and institutional customers. That concern continues to this day.

¹ Association of Canadian Acquirers; Association of Canadian Travel Agencies; Canadian Bankers Association; Canadian Manufacturers & Exporters; Canadian Newspaper Association; Insurance Bureau of Canada; Investment Industry Association of Canada; Investment Funds Institute of Canada; Megatrade Communications Services Corporation; Société GRICS (Société de gestion du réseau informatique des commissions scolaires); The Canadian Depository for Securities Limited.

World Exchange Plaza
45 O'Connor Street, Suite 880, Ottawa, Ontario K1P 1A4
Tel: 613-566-7053 · Fax: 613-566-2026
stikeman@tactix.ca www.telecomcoalition.com

As the Government has recognized, major improvements in Canada's productivity performance are required to ensure our continued prosperity and competitiveness in the world economy. The telecommunications sector is a significant part of our economy and plays a critical role as an enabler for the Canadian economy as a whole and society in general. More than ever before, Canadian businesses and educational institutions are vitally dependent on telecommunications services. A modern economy cannot function, compete or grow without an advanced telecommunications sector. The right policy and regulatory framework for telecommunications can therefore play an important role in improving Canada's productivity performance.

A New Policy Environment is Dawning

Since its formation in 2003, the Coalition has been an active participant in the major CRTC proceedings that have dealt with issues related to economic regulation. It has also been active in other forums, including the telecommunications policy review that was initiated in April 2005. Throughout, the Coalition has advocated a substantial lessening of economic regulation in the telecommunications services sector, thereby allowing competitive market forces to more efficiently and effectively serve the interests of customers.

Many businesses and business organizations, including the Coalition, filed submissions with the Telecommunications Policy Review Panel (TPRP). These groups, representing all sectors of the economy, stated clearly that the current regulatory regime is antiquated, excessively interventionist and a source of unnecessary delay and uncertainty. Rather than benefiting business customers, the current regulatory regime is actually detrimental to their interests.

The Coalition is therefore very supportive of the final report of the TPRP that calls for major changes to Canada's telecommunications policy and regulatory framework through an increased reliance on competitive market forces.

The Government is to be congratulated for acknowledging the important work of the TPRP and demonstrating that it intends to move forward expeditiously with reform. The Governor in Council's decision in early May of this year to refer back to the CRTC for reconsideration the Commission's decision of April 2005 on the regulatory framework for local Voice over Internet Protocol (VoIP) services² was the first indication that the government recognized the strategic importance of the telecommunications sector and the need to substantially alter the traditional approach to regulating it.

Subsequently on June 13th in a speech to the Telecom Summit in Toronto, Industry Minister Bernier expanded on the government's plans for reform when he announced that the government was tabling in Parliament a proposed policy direction to the CRTC on that day. Referring to the objectives in the *Telecommunications Act*, Minister Bernier stated that increased reliance on competitive market forces is to be given precedence by the CRTC, and that reform is to begin immediately:

² Telecom Decision CRTC 2005-28.

“Specifically, the Panel recommended that the government issue a policy direction to the CRTC in order to help clarify this confusion. In doing so, we can immediately begin the modernization of our telecom regulation.

That is why the government tabled in Parliament today a proposed policy direction to direct the CRTC to rely on market forces to the maximum extent feasible within the scope of the current *Telecommunications Act*.”

The Coalition is particularly pleased that in the background to the proposed policy direction the Government has stated that the direction is intended to lay out formally its vision for a new telecommunications regulatory regime where reliance on market forces is paramount and regulation is minimal:

“The proposed policy direction would formally and transparently lay out the Government’s vision for the telecommunications regulatory regime, a regime where market forces are relied on to the maximum extent feasible; regulation is minimally intrusive and clearly identifies the policy objectives which regulatory measures are intended to advance; and reduction or streamlining of regulation is continuously pursued.”

The Need for the Policy Direction

One of the major recommendations of the Telecommunications Policy Review Panel (TPRP) is that telecommunications policy should be set by the Government and not by the CRTC. Historically, this has not always been the case. In many instances it is the CRTC that has decided major issues of telecommunications policy.

The Coalition fully supports the Government setting telecommunication policy. It is properly the responsibility of elected representatives to decide matters of telecommunications policy, and not the function of officials appointed to a government agency. Their role is to implement the policy determined by government. Chairman Dalfen of the CRTC agrees, as he made clear in a recent speech:

“At this stage I can see a number of broad areas of convergence between the TPR Panel’s thinking and our own. One is in the Report’s recommendation that Cabinet should take responsibility for making telecommunications policy. Too often, in my view, the CRTC has had to deal with issues on which successive governments had not defined clear policies, even though the *Telecommunications Act* gives the government the authority to issue broad policy directions to the Commission. In the absence of such direction, and faced with requests from service providers and users for decisions, we’ve had to fill the policy vacuum. If we have been a policy-maker, it has been by necessity, not by choice.”³

³ Charles Dalfen, *Notes for an address to the 2006 Telecommunications International Forum*, April 30, 2006.

The principal finding of the TPRP – that the current telecommunications regulatory regime requires a drastic overhaul in light of technological and marketplace developments – has been evident to the Coalition’s members for some time. Canadian businesses have seen repeatedly that the current regime does not allow prices to fall to levels that a free market would set. Moreover, it prevents the incumbent telecommunications carriers from responding creatively and quickly to meet the needs of business.

The current regulatory framework was established when the large majority of telecommunications services were provided by the telephone companies on a monopoly basis. In the absence of competition, regulation was put in place to protect customers by preventing telephone companies from charging monopoly prices for services deemed essential. The reality today, however, is much different. As customers of telecommunications service providers, Coalition members have for some time witnessed first hand the intense competition that exists in the supply of all business telecommunications services, including local telephone access lines, which was the last telecommunications sector opened to competition.

Business and institutional customers do not need the CRTC to be involved in defining or overseeing the terms of the contracts that they enter into for the provision of telecommunications services. Such involvement in fact hurts customers by introducing delay and uncertainty, limiting price competition and marketing, and stifling innovation.

The CRTC has steadfastly refused to recognize and act on the views of the Coalition and its thousands of business and institutional members. Instead, it continues to substitute its views on what is desirable for business customers rather than listen to business customers themselves.

The CRTC’s April 2006 decision on the approach for deregulating the traditional telephone companies’ local wireline voice services⁴ is the most recent example of the CRTC’s unwillingness to change its critically flawed approach to regulation. That decision ignores the evidence of intense competition in many local markets and is based on erroneous economic analysis that will result in little, if any, deregulation occurring in the foreseeable future, with customers therefore missing out on the benefits of true competition. It also is completely at odds with the findings of the TPRP.

It is evident from the findings of the TPRP, and from the Coalition’s direct experience, that the CRTC will not make the major changes to its approach to regulation that are required. It is the Government that must take the initiative to bring about fundamental regulatory reform. The policy direction proposed by the Government is an important step in the process of reform.

⁴ Telecom Decision CRTC 2006-15.

Timeliness in Finalizing the Direction is Essential

The Coalition supports enacting the policy direction as it was tabled in Parliament on June 13th. The Coalition does not propose any changes.

There are differences between the version of the policy direction proposed by the TPRP in its final report and the policy direction tabled by the Government in Parliament on June 13th. In the Coalition's view, these differences are not substantial. The Government's version retains the same focus as the TPRP: market forces are to be relied upon to the maximum extent feasible by the Commission when making its determinations. Where regulation is required, it is to be as minimally intrusive as possible.

The draft policy direction is the result of substantial analysis and significant consultation. The Gazette Notice states that the Government consulted with the provinces, territories and the CRTC before its draft policy direction was tabled in Parliament. Prior to this, the TPRP held extensive public consultations over a period of several months before preparing its report, including its draft policy direction.

Given the urgency to begin the reform process, which has been acknowledged by both the TPRP and Minister Bernier, the Coalition is opposed to any changes to the draft policy that would significantly alter its focus and to any changes that would cause a delay in its enactment. Because of the requirement of the *Telecommunications Act* to place the draft direction before Parliament for 40 sitting days after it is first tabled and because of the House's summer recess, it will be well into the fall at the earliest before the policy direction could come into effect. The need to start the reform process expeditiously is critical. The policy direction should be enacted as tabled in Parliament.

Continued Regulation Benefits Competitors, not Customers

Since there is only one round of submissions in this process and thus no opportunity for reply, the Coalition is including this section in its comments in anticipation of what certain parties may say in their comments. These parties have made this claim many times before, but that does not make their claim accurate. They will purport to be speaking on behalf of customers, but they are definitely not speaking for any of the thousands of business customers represented by the Coalition, nor any other business customers or groups of business customers of which the Coalition is aware.

Competitors of the incumbent telecommunications carriers may submit comments that, while paying lip service to the benefits of competition, will nevertheless call for continued economic regulation of the incumbent telecommunications carriers' (ITCs') local voice services. This is not surprising because it is completely rational behaviour on their part; they benefit from the status quo. Competition is less intense when the ITCs' local services are subject to economic regulation and the ITCs' competitors are thereby better off.

The ITCs' competitors attempt to conceal their support for continued regulation of the ITCs' local services in the guise of it being necessary to protect customers. The thousands of business and institutional customers represented by the Coalition can and do speak for themselves. They say in no uncertain terms that economic regulation of the ITCs' local services

is not required to protect them. Such regulation is in fact not only unnecessary, but also harmful to their interests since it creates uncertainty and delay, limits price competition, restricts marketing and promotions, and constrains innovation.

The argument that the ITCs' competitors provide as to why regulation of the ITCs' local services is required to protect customers can be summarized as follows: If economic regulation were removed, the ITCs would lower prices and in so doing they would eventually drive all competitors from the market, thereby creating a monopoly that will allow the ITCs to push prices upward in the longer term and thus hurt customers. In other words, customers must endure short-term pain in the form of higher prices, slower supplier responsiveness, and restricted innovation in return for ensuring there is competition in the longer term.

The business and institutional customers represented by the Coalition find this hypothesis – that the ITCs could substantially reduce or eliminate all competitors if their local services were forborne – to be completely lacking in credibility. It has never happened in any of the other telecommunications markets that have been deregulated over the last two decades. Customers therefore are suffering needlessly, as is the economy as a whole.

Conclusion

The members of the Telecommunications Policy Review Panel have produced a comprehensive and forward-looking report. It provides a clear blueprint of the fundamental changes that are urgently required to return Canada to a position of world leadership in telecommunications. The Coalition urges the Government to move ahead quickly with the Report's recommendations to modernize Canada's telecommunications regulatory regime.

As the Report underscores, Canada was a world leader in telecommunications, but we have been losing ground in recent years. Other countries have updated their regulatory regimes and have profited from doing so. Canada has not. The current *Telecommunications Act* came into effect in 1993 before we knew what the Internet was and well before cable and telecommunications providers were capable of offering multiple services in each other's markets as they do today. A revamped telecommunications policy regime that is centered on unleashing market forces will intensify competition, lower prices, boost productivity, stimulate investment and strengthen the Canadian economy.

Enacting the draft policy direction as tabled in Parliament on June 13th as soon as possible will be an important early step in bringing about the required changes in telecommunications policy and regulation.

Yours sincerely,



Ian C.W. Russell
Chair