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August 16, 2006

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

RE: *Canada Gazette*, Part I, notice dated June 8, 2006, introduced in the House on June 13, 2006 and listed in *Canada Gazette* as Vol. 140, No. 24 on June 17, 2006

ORDER UNDER SECTION 8 OF THE TELECOMMUNICATIONS ACT –
POLICY DIRECTION TO THE CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION

Dear Director General,

Attached are eagle.ca's comments regarding the above noted Policy Directive. I would be pleased to provide further comment or clarification if needed.

Regards,

A handwritten signature in black ink that reads 'Copeland' with a horizontal line underneath.

Thomas Copeland



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**Representations submitted by eagle.ca with respect to *Canada Gazette*,
Part I, Notice dated June 8, 2006**

**ORDER UNDER SECTION 8 OF THE TELECOMMUNICATIONS ACT –
POLICY DIRECTION TO THE CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION**

Background

1. eagle.ca is an independent Internet Service Provider in south-central Ontario. We were the first telecommunications company to bring Internet access to the communities of Northumberland County, establishing ourselves in 1995.
2. eagle.ca uses wholesale facilities from a variety telecommunication providers to deliver services such as broadband in areas where it is uneconomical or impossible to use our own facilities.

General Comments

3. eagle.ca supports the broad objectives of the proposed Policy Direction. Specifically for the CRTC to rely on market forces where feasible and when relying on regulation to use measures that are efficient and proportional.
4. eagle.ca does however have significant concern with two aspects of the implementation of the Policy Direction.
5. The first is a concern for the survival of smaller telecom providers if there is no check on the economic power of the dominate providers. This concern is based upon the past actions of some dominant providers and with how the CRTC has determined there was sufficient 'competition' to stop regulating.
6. Historically, the CRTC have used criteria such as 'less than 75% of market share' to decide there is sufficient competition to deregulate a market segment. This may seem reasonable until one realizes that the other 25% may be shared by dozens of competitors. When one competitor has 75% market share and the next largest has 2 or 3% it is hardly a level playing field.





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Left unchecked the dominant provider, through their economic power could force smaller competitors to stop providing the service.

7. The second area of concern is how 'essential services' will be defined in section (c) (ii) where the proposed Policy Directive states; " the extent to which mandated access to wholesale service that are not essential service should be phased out". Historically the CRTC uses a very narrow definition of 'essential service' and there are number services where competitors cannot install their own equipment and must obtain the services from the incumbent on a wholesale basis that the CRTC has not classified as 'essential'.

8. DSL broadband service in areas where the incumbent telephone company serves their customers through a remote switching unit is a good example. On Bell Canada's existing installation base of DSL customers, it is estimated that more than 24% are in locations that are not eligible for collocation. This number will grow with Bell's publicly announced initiatives to take DSL further into its network to reach customers not previously served. In many of these areas there is no other option for high speed but wholesale DSL is not considered an 'essential services' by the CRTC. If access to wholesale service is removed the incumbent telephone companies will have a monopoly on broadband access in many areas of Canada.

Specific Recommendations

9. eagle.ca strongly encourages the Minister to make two changes to the proposed policy directive.

10. The first change is to require the CRTC when determining if they can rely on market forces to take into account the effects on the smaller providers. In particular do not rely on market forces if the incumbent could use their market dominance and economic power to force their competition to stop offering the service.

11. The second recommended change is to require the CRTC to not remove mandated access to any wholesale service that is not universally competitive or where competitors are not able to install their own equipment.