

Montréal, December 4th, 2008

VIA: E-FILE

Mr Konrad von Finckenstein  
Chairman,  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
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Mr von Finckenstein,

I have recently participated in the CAIP vs Bell dossier and have some comments which relate to the way the CRTC operates. While I may use examples specific to my experience in this dossier, this letter comments on the general way the CRTC operates.

### **1- Timeliness of CRTC communications.**

During the life of the throttling dossier, there were numerous changes in deadlines and process, however in NO instance, was the corresponding CRTC letter posted to the CRTC web site in a timely fashion. This has lead to a great deal of confusion.

Initially, contributions from interested parties were accepted. Then the CRTC decided to limit debate to the injunction issue allowing only CAIP and Bell submissions while continuing to accept hundreds of messages from individuals. This change in operation was not announced publically. This generated a lot of confusion and frustration, and it was only weeks later, when the CRTC rendered the injunction decision, that the original process letter outlining this process was posted.

The day before a deadline for interested party submissions, it appears the CRTC emailed CAIP and Bell about the deadline changing to give time to digest the newly released Bell numbers. This email circulated on the internet. On the morning of the deadline, your people at the 1-877.249-CRTC phone line had not heard about this deadline change. It was not until early afternoon that your staff were given information about the deadline being postponed and shown the very letter that I had unofficially seen the day before. Since this was a deadline for interested parties, information should have been made available as soon as it was available the day before instead of just hours before the deadline.

If the CRTC is unable to update it web site in a timely fashion, it should at least inform its front line staff at the telephone lines of such process deadline changes.

Such basic failures in communications do not give the CRTC a professional image.

## **2- Requirement for technical accuracy**

In the past, the CRTC dealt with telecom issues which were often obscure and little understood by the public. Canadians had no choice but to trust that the CRTC had full grasp of the issues and that it made informed decisions.

However, the technology involved in the throttling dossier is documented in open standards and is fully understood by a large number of people around the world. This was perhaps the first dossier where large scale public scrutiny of a technical CRTC decision was possible.

Bell Canada's submissions were filled with significant technical inaccuracies, and fabricated non-existent standards (such as "application headers"). The CRTC failed to note the number of significant technical inaccuracies in Bell's submissions. Furthermore, the CRTC incorporated, in its decision, blatantly inaccurate Bell-supplied statements (such as not looking beyond headers) to help justify its decision. This has a very negative impact on the CRTC's credibility.

Instead of using this very public dossier to show Canadians that the CRTC had full grasp of modern technologies and was relevant to today's networking issues, it did the exact opposite. And it also makes Canadians wonder if all CRTC decisions are made with the same low level of technical understanding.

As a result of this throttling decision, Canadians now see the CRTC as a body which lacks the technical expertise to make informed decisions on modern networking issues and to fully understand and debunk the submissions made by Telcos.

And by accepting blatantly erroneous technical information from Bell Canada, (and ignoring interested party submissions that proved the errors), the CRTC has set the precedent that it is perfectly acceptable for Telcos to lie to the CRTC to help the CRTC side with them, and that they will get away with any such lies. Needless to say that the CRTC will find it harder to convince Canadians that it is an independent body.

I realise that the CRTC will be called upon to make unpopular decisions, or would have decisions influenced by government policies. But in all cases, the CRTC should still uphold a high degree of technical accuracy and admonish Telcos who make submissions containing inaccurate statements. This would at least preserve the integrity of the CRTC and still maintain some respect for its decisions, even the unpopular ones.

To have the CRTC legalize propaganda made by Telcos is unacceptable and sets precedents which will haunt the Canadian telecommunications industry for a very long time.

**Recommendations:**

If the CRTC lacks technical expertise in areas which it is called to rule on, it should hire some, even if on a consulting basis. A nation requires that its regulating body makes informed decisions and hiring a few extra consultants during the study of a dossier costs a lot less than the CRTC losing respect and credibility because it has based a decision on erroneous facts.

Secondly, similar to the post-Enron accounting rules in the USA, you should require that the CEOs of Telcos be held responsible for the accuracy of all facts included in Telco submissions to the CRTC. This would force the Telcos to instruct their lawyers to ensure accuracy of all their submissions and make use of internal technical resources to fact check their arguments.

Thirdly, the CRTC should ensure that all inaccurate statements made by Telcos be outlined in the decisions and that the Telcos be punished in some manner for having submitted technically inaccurate statements.

Regards,

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