

VIA EPASS

May 20th, 2009

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and Telecommunications Commission (CRTC)
Ottawa, Ontario K1A 0N2

Dear Mr. Morin:

Re: Application to Review and Vary Telecom Decision CRTC 2008-108,

"The Canadian Association of Internet Providers' application regarding Bell Canada's traffic shaping of its wholesale Gateway Access Service"

<http://www.crtc.gc.ca/eng/archive/2008/dt2008-108.pdf>

1. This application is made by Jean-François Mezei of Vaxination Informatique pursuant to section 62 of the Telecommunications Act and Part VII of the CRTC Telecommunications Rules of Procedure, and Telecom Public Notice 98-6 "Guidelines for Review and Vary Applications".

2. As part of the 2008-108 decision, the paragraph immediately preceding paragraph 1 begins with:

The Commission notes that parties to this proceeding have raised concerns related to existing and emerging Internet traffic management practices that are beyond the scope of this proceeding.

The CRTC admits to having **failed to consider basic principles which had been raised in the original proceeding**. With an arbitrarily limited scope, the Commission was able to ignore important issues in order to quickly render a decision, with a promise of an in-depth examination of the issues later on with the 2008-19 Public Notice. The end result is that there is a flawed decision (2008-108) entered into the public record before a proper analysis could be done, hence the need for this Review and Vary part VII application.

3. The precedents set by this decision have already been quoted in other proceedings. To prevent other processes from relying on a flawed decision, the **CRTC must immediately rescind the 2008-108 decision** and place a high priority on a review of the 2008-108 decision.

4. The 2008-19 Public Notice process may result in the CRTC deciding on a set of acceptable network management techniques applicable to *internet service providers*. However, because the GAS service is not an internet service, the 2008-19 conclusions are not implicitly applicable. Because it uses different protocols and has different billing paradigm, GAS needs to be managed differently. Therefore, the **CRTC need not wait for the 2008-19 process to complete before proceeding with the review and vary of 2008-108**.

5. Because there are a number of other GAS related files facing a CRTC decision this year, it is important that 2008-108 be corrected prior to those upcoming decisions to prevent the later from being based on the faulty premises set forth by 2008-108. The **review of 2008-108 must therefore be made on a priority basis** before the other upcoming decisions for GAS service are to be made.

CRTC 98-6: ... that the applicant demonstrate, on a prima facie basis, the existence of one or more of the following:

- (a) an error in law or in fact
- (b) a fundamental change in circumstances or facts since the decision
- (c) a failure to consider a basic principle which had been raised in the original proceeding
- (d) a new principle which has arisen as a result of the decision.

6. The basis for this request to Review and Vary application are based on points (a) and (c). Point (b) affects the priority with which this R&V must be processed because of the new tariff filings as well as CRTC orders, stay of execution and cabinet requests which are pending.
7. Arguments are detailed in the attached analysis. Below is a summary of some but not all of the issues which are analysed in the attached document.
8. Section 27.2 of the Act: The Commission argued that there was no discrimination due to the fact that Bell throttled Sympatico and competitor's customers equally. The Commission failed to note that since the 2 services are significantly different, the application of equal throttling was in fact discriminatory. The Commission also failed to note that the practice of throttling only certain packets was in fact discriminatory by definition.
9. Section 36 of the Act: The Commission blindly concluded that Section 36 was not contravened by Bell's action, without understanding how the throttling was applied, and more importantly not understanding the concept of the ISO 7 layers which define responsibilities of a network provider. Once the Commission agrees to set aside propaganda and look at hard facts, it will conclude that the practice of throttling only certain applications breaks section 36 of the Act.
10. The protocol and service paradigm: The Commission made the wrong assumptions as to acceptable network management techniques for the GAS service. It avoided the discussion on the fact that this is a service based on PPPoE, and avoided the discussion on Bell Canada's commercial obligation to provide the level of service being purchased by service providers. 2008-108 grants Bell Canada not only the right to look at the contents of any packets transiting on any part of its network, but more importantly, it grants Bell Canada the right to charge for a level of service it cannot provide due to lack of capacity increases and has no intention of providing.
11. Factual errors. Throughout the 2008-108 document, there are many factual errors which have already propagated to other files. For instance, in the opening of 2008-19, the CRTC defined throttling as "delaying" packets, even though it ignored documents filed that showed this was not the case, and also states categorically that DPI equipment does not look at contents of packets even though proof was given, complete with the packet layouts of the protocols used.

The enclosed analysis provides discussion in more detail of the above arguments along with many others. I trust the Commission will realise that 2008-108 cannot be allowed to stand and that once all errors are excluded and all facts are included, that will be forced to Vary the decision for the GAS service.

Regards,

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