Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting and Telecom Decision CRTC 2015-26

PDF version

Route reference: Part 1 applications posted on 22 November 2013 and 10 January 2014

Ottawa, 29 January 2015

Mr. Benjamin Klass, and the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia and the Public Interest Advocacy Centre

Applications 2013-1664-6 and 2014-0013-4
File numbers: 8622-B92-201316646 and 8622-P8-201400134

Complaint against Bell Mobility Inc. and Quebecor Media Inc., Videotron Ltd. and Videotron G.P. alleging undue and unreasonable preference and disadvantage in regard to the billing practices for their mobile TV services Bell Mobile TV and illico.tv

The Commission finds that Bell Mobility Inc. (Bell Mobility) and Quebecor Media Inc., Videotron Ltd. and Videotron G.P. (collectively, Videotron), violated subsection 27(2) of the Telecommunications Act *by exempting their mobile TV services Bell Mobile TV and illico.tv from data charges. Subsection 27(2) prohibits Canadian carriers from conferring an undue disadvantage to others, or an undue preference to itself or others. Bell Mobility and Videotron have given an undue preference in favour of subscribers of their respective mobile TV services, as well as in favour of their own services, and have subjected consumers of other audiovisual content services, and other services, to a corresponding undue disadvantage.*

In light of the above, the Commission ***directs*** *Bell Mobility to eliminate its unlawful practice with respect to data charges for its mobile TV service by no later than* ***29 April 2015****.*

Further, the Commission ***directs*** *Videotron to confirm by* ***31 March 2015*** *that it completed its planned withdrawal of its illico.tv app for Blackberry- and Android-based phones by 31 December 2014, thereby removing any undue preference for its mobile TV service, and ensure that any new mobile TV service complies with the determinations set out in this decision.*

This decision will favour an open and non-discriminatory marketplace for mobile TV services, enabling innovation and choice for Canadians. The Commission is very supportive of the development of new means by which Canadians can access both Canadian-made and foreign audiovisual content. However, mobile service providers cannot do so in a manner contrary to the Telecommunications Act*.*

A concurring opinion by Commissioner Raj Shoan is attached to this decision.

Canada

Applications

1. Mr. Benjamin Klass filed an application in regard to billing practices by Bell Mobility Inc. (Bell Mobility) for its Bell Mobile TV service (application 2013-1664-6; file number 8622-B92-201316646). Subsequently, the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia and the Public Interest Advocacy Centre (collectively, PIAC et al.) filed an application in regard to billing practices by Quebecor Media Inc. (Quebecor), Videotron Ltd. and Videotron G.P. (collectively, Videotron) for Videotron's mobile TV service illico.tv (application 2014-0013-4; file number 8622-P8-201400134).[1] For the purposes of the present decision, Mr. Klass and PIAC et al. will be referred to collectively as "the applicants," and Bell Mobile TV and illico.tv will be referred to collectively as "the mobile TV services."

2. The applicants objected to the practice by Bell Mobility and Videotron of exempting the mobile TV services from the standard monthly data caps and data charges (to be referred to collectively in this decision as "data charges") generally applicable to their wireless services. They requested that the Commission prohibit Bell Mobility and Videotron from exempting their mobile TV services from data charges as this practice confers upon themselves an unfair advantage, gives their mobile TV services an undue preference, and unduly discriminates against their wireless customers that consume mobile online video services, and against Bell Mobility's and Videotron's competitors, in violation of subsection 27(2) and, according to Mr. Klass, section 24, of the *Telecommunications Act*, which read as follows:

> 24. The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.
>
> 27.(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

3. Mr. Klass also characterized the data charges as an application-specific economic Internet Traffic Management Practice (ITMP) and requested that the Commission prohibit the use of application-specific ITMPs for the purpose of providing unduly preferential access to mobile TV services.

Background

4. The mobile TV services are accessed on mobile devices via apps (i.e., mobile application software) developed by Bell Mobility and Videotron (for Videotron, on Android- and Blackberry-based phones). These services offer aggregated broadcasting content: they offer

[1] PIAC et al. also filed a Part 1 application (2014-0014-2) in regard to the billing practices by Rogers Communications Partnership (Rogers) for its mobile TV service Rogers Anyplace TV. However, by letter dated 9 September 2014, this Part 1 application was closed after the Commission was informed by Rogers that it no longer offers the $5 mobile service data plan for that service.

mostly live streaming of television stations, and other related television programming services, with access to a limited library of video-on-demand content.

5. The choice of television services offered on these mobile TV services varies. Bell Mobility's customers have a greater choice of television services if they are also Bell Fibe and/or Bell Express Vu customers. In regard to Videotron, only its cable subscribers can become customers of its mobile TV service. Videotron determines the channels that are available to customers, depending on a customer's billing address and on whether the customer subscribes to that channel as part of its cable subscription.

6. To access the mobile TV services on a mobile device, a subscriber must also subscribe to a wireless voice plan, data plan or tablet plan. In regard to Bell Mobile TV, the subscriber must subscribe to a Bell Mobility service or to one of its affiliates, such as Virgin Mobile. The data consumed in accessing the mobile TV services over Bell Mobility's [2] and Videotron's mobile networks is exempt from those service providers' wireless data charges, subject to the following:

    - Bell Mobility charges its subscribers $5 per month to access its service on their mobile devices, which covers up to ten hours of content.[3] It charges $3 for each additional hour.

    - Videotron charges its subscribers $5 per month to access five hours of content, $10 per month for 15 hours of content, and $15 per month for 30 hours of content, with any additional hours in each plan charged at $1.50 per hour. These Videotron rates were in place for only Android- and Blackberry-based phones when PIAC et al. filed its application.

Proceeding

7. The following parties participated in this proceeding: the Canadian Network Operators Consortium Inc., Bragg Communications Incorporated, TELUS Communications Company, Vaxination Informatique, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, York University, Bell Mobility, Quebecor, on behalf of its affiliate Videotron G.P., and various individuals, as well as Mr. Klass and PIAC et al. In addition to their submissions, Bell Mobility and Videotron filed responses to written interrogatories addressed by Commission staff. The public record for this proceeding, upon which the Commission's determinations in the present decision are based, is available on the Commission's website at www.crtc.gc.ca or by using the file numbers provided above.

Issues

8. After examining the complete public record of this proceeding, the Commission considers that the issues it must address are the following:

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[2] Bell Mobility's mobile TV service is also accessible via any Wi-Fi connection.

[3] One hour of viewing equals approximately 0.5 gigabytes of data.

- whether Bell Mobility and Videotron are providing telecommunications services and are operating as Canadian carriers in regard to the transport of their mobile TV services to subscribers' mobile devices;

- if Bell Mobility and Videotron are operating as Canadian carriers providing telecommunications services in regard to the transport of their mobile TV services to subscribers' mobile devices, whether in doing so they are acting in violation of the Commission's ITMP rules, as alleged by the applicants; and

- if Bell Mobility and Videotron are operating as Canadian carriers providing telecommunications services in regard to the transport of their mobile TV services to subscribers' mobile devices, whether in doing so they are acting in violation of subsection 27(2) of the *Telecommunications Act*, as alleged by the applicants.

Are Bell Mobility and Videotron providing telecommunications services and operating as Canadian carriers in regard to the transport of their mobile TV services to subscribers' mobile devices?

9. The *Telecommunications Act* applies to the provision of telecommunications services by Canadian carriers and, in some respects, to other telecommunications service providers.[4] Section 4 of the *Telecommunications Act* provides that the *Telecommunications Act* does not apply to broadcasting by a broadcasting undertaking, which is subject to the *Broadcasting Act*.

10. The threshold issue in dispute in this proceeding is whether Bell Mobility and Videotron, in the transport of the mobile TV services to end users' mobile devices, are operating as Canadian carriers providing telecommunications services and are therefore subject to the *Telecommunications Act* and policies made pursuant to that Act.

Positions of parties

11. Mr. Klass submitted that the means by which Bell Mobile TV is delivered to customers is a telecommunications service subject to the *Telecommunications Act* and related rules. He argued that Bell Mobile TV is accessed and delivered over the same telecommunications facility that is used by Bell Mobility customers when they access any other online video, Internet or telecommunications service on their mobile devices, and that Bell Mobility has not contradicted this in its statements on the record. Mr. Klass also argued that the distinction between "delivery over the Internet" and "point-to-point delivery" does not exist for consumers who access content on their mobile devices. From this perspective, Bell Mobile TV operates no differently than any other Internet-enabled mobile service.

12. Videotron submitted that a mobile TV service is a broadcasting service because it offers television content to its subscribers and is exempt by virtue of the Exemption Order for Digital Media Broadcasting Undertakings (DMBU exemption order).[5] Bell Mobility

[4] *Telecommunications Act* S.C. 1993 c. 28 as amended. In particular, see amendments set out in *Economic Action Plan 2014 Act, No. 2*, S.C. 2014, c. 39.

[5] This exemption order is set out in the appendix to Broadcasting Order 2012-409.

submitted that when providing its mobile TV service, it is operating as a broadcasting undertaking that is in accordance with paragraph 2.b) of the DMBU exemption order. It further submitted that by virtue of section 4 of the *Telecommunications Act*, this Act cannot apply to it, and that when offering and providing Bell Mobile TV, it is therefore not subject to the *Telecommunications Act*. Bell Mobility also argued that the Commission is precluded from applying subsection 27(2) of the *Telecommunications Act* to mobile TV services as this provision applies to the provision of a telecommunications service by a Canadian carrier. In its view, when it offers its mobile TV service, it is not acting as a Canadian carrier but as a broadcasting distribution undertaking (BDU). As such, its mobile TV service is not a telecommunications service.

13. Bell Mobility stated that, in contrast to an Internet service provider (ISP) that has no involvement with the content it distributes, it has acquired the necessary programming distribution rights from the relevant copyright owners in order to wirelessly distribute its mobile TV service. It asserted, among other things, that regardless of whether subscribers have a wireless data plan, it activates and deactivates subscribers simply by selling or cancelling the mobile TV service. Bell Mobility submitted that in contrast to apps that launch connectivity to Internet-based video services, its mobile TV app launches a BDU delivered using point-to-point technology and accessed by way of mobile devices.

14. In Bell Mobility's view, it is a broadcasting undertaking when offering Bell Mobile TV, and it is acting as a Canadian carrier offering a telecommunications service when providing wireless connectivity that enables its subscribers to view programming on their mobile devices.

Commission's analysis and decision

15. The Commission considers that Bell Mobility and Videotron, in acquiring the mobile distribution rights for the content available on their mobile TV services, in aggregating the content to be broadcast, and in packaging and marketing those services, are involved in broadcasting. In this regard, it notes that no party to this proceeding disputed that mobile TV services constitute broadcasting services as contemplated by the DMBU exemption order.

16. Further, the Commission considers, and no one disputed, that Bell Mobility and Videotron operate as Canadian carriers when they provide access to the Internet and other voice and data services to their subscribers. In particular, consistent with Bell Mobility's submission, the Commission considers that Bell Mobility and Videotron are acting as Canadian carriers providing a telecommunications service when they make available the wireless data connectivity used by subscribers to view programming services over the Internet. It also considers that Bell Mobility's and Videotron's roles as Canadian carriers in providing wireless data connectivity and transport services to enable subscribers to access content on their mobile devices are not necessarily transformed into those of broadcasting undertakings merely because they are involved in the content. Rather, it is necessary to examine in each case the facts to determine the true nature of the services being provided.

17. The Commission finds that in order to transport their mobile TV services from their servers to subscribers' mobile devices, Bell Mobility and Videotron use their respective wireless

access networks.[6] These are the very same networks they use to deliver their wireless voice and data telecommunications services, which are clearly telecommunications services subject to the *Telecommunications Act*. Moreover, these services' traffic is currently treated the same as other traffic in Bell Mobility's and Videotron's wireless access networks. Based on both Bell Mobility's and Videotron's submissions, the data path is the same regardless of whether the Bell Mobile TV or illico.tv subscriber has a wireless voice plan, data plan or tablet plan.

18. Further, given the network descriptions provided by Bell Mobility and Videotron, the Commission finds that the functions performed by Bell Mobility and Videotron to establish the data connectivity and provide transport over their wireless access networks would be the same whether the content being transported is their mobile TV services, other broadcasting services, or non-broadcasting services. That is, the purpose of these functions is to establish data connectivity and transport the content – agnostic as to the content itself.

19. As submitted by Mr. Klass, from a subscriber's perspective, the mobile TV services are accessed and delivered under conditions that are substantially similar to those of other Internet-originated telecommunications services. Also, as indicated by Mr. Klass, the consumer accesses the mobile TV service on its mobile device in the same way that it accesses other apps.

20. Subscribers to the mobile TV services require data connectivity whether or not they have a data plan.[7] Data connectivity is required to authenticate the end user as a mobile TV service subscriber and to transmit the content to end users' mobile devices.

21. In the facts of the present case, the data connectivity required to access the mobile TV services cannot be established unless the subscriber obtains a telecommunications service from Bell Mobility or Videotron. In the case of Bell Mobility, only an end user that subscribes to a Bell Mobility (or Bell Mobility affiliate) mobile wireless voice plan, data plan or tablet plan can subscribe to Bell Mobility's mobile TV service. In the case of Videotron, a customer needs to subscribe to a mobile wireless voice service to use the app. As such, it is the subscriber's wireless voice plan, data plan or tablet plan that provides the basis upon which the end user is identified as a subscriber and upon which the subscriber is connected to the network. As noted above, this necessary data connection enables that end user to access the mobile TV services' content.

22. In light of all of the foregoing, the Commission concludes that Bell Mobility and Videotron are providing telecommunications services, as defined in section 2 of the *Telecommunications Act*, and are operating as Canadian carriers, when they provide the data connectivity and transport necessary to deliver Bell Mobile TV and illico.tv, respectively, to their subscribers' mobile devices. In this regard, they are subject to the

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[6] In this regard, see, for example, in addition to the submissions, Bell Mobility's response to the Commission's interrogatory #7 of 4 April 2014, which can be accessed on the Closed Part 1 Applications page by clicking on "Responses to requests for information".

[7] In this regard, see, for example, in addition to the submissions, Bell Mobility's response to the Commission's interrogatory #13 of 5 August 2014, which can be accessed on the Closed Part 1 Applications page by clicking on "Responses to requests for information".

Telecommunications Act. This is the case whether or not concurrent broadcasting services are also being offered.

23. The fact that the transport of the mobile TV service constitutes a telecommunications service is reinforced when the availability of Bell Mobility's mobile TV service over Wi-Fi is considered. When Bell Mobility's mobile TV service is accessed by subscribers over a Wi-Fi network (whether public, such as in restaurants and cafés, or private, such as in their homes), the content is transported over the Internet by another telecommunications service provider (TSP) to the end users' mobile devices. As such, Bell Mobility's wireless access network is not engaged.

24. In the Commission's view, just as the TSP provides a telecommunications service when it transports the mobile TV service accessed by a subscriber using Wi-Fi, so too is Bell Mobility providing a telecommunications service when it provides the transport, and data connectivity, so that the mobile TV service can reach its subscribers' mobile devices.

25. The Commission therefore rejects Bell Mobility's and Videotron's arguments that the relief claimed pursuant to the *Telecommunications Act* should be denied on the basis that they are not subject to that Act. Section 4 of the *Telecommunications Act* does not apply as a shield to the application of the *Telecommunications Act* in this case given that Bell Mobility and Videotron are acting as Canadian carriers in providing transport and data connectivity services required for the delivery of their mobile TV services, as discussed above. Accordingly, the Commission considers below the requests made by Mr. Klass and PIAC et al. in regard to the Commission's ITMP rules and for relief pursuant to its powers under the *Telecommunications Act* to prevent unjust discrimination, or undue or unreasonable preference or advantage.

Are Bell Mobility and Videotron, when operating as Canadian carriers providing telecommunications services in regard to the transport of their mobile TV services to subscribers' mobile devices, acting in violation of the Commission's Internet Traffic Management Practices rules?

26. ISPs employ ITMPs to address possible congestion in their networks, including linking rates to user consumption. In Telecom Regulatory Policy 2009-657, the Commission established an ITMP framework that provides clarity and a structured approach to evaluating whether existing and future ITMPs are in compliance with subsection 27(2) of the *Telecommunications Act*.

Positions of parties

27. Mr. Klass submitted that Bell Mobility employs two different data caps, one of which is specific to the mobile TV service, the other to all other Internet traffic. He characterized Bell Mobility's exemption of its mobile TV service as an application-specific economic ITMP, set at ten hours of viewing per month, and noted that the second data cap varies according to the rate plans offered by the operator. In his view, the $5 that customers are charged for access to Bell Mobility's mobile TV service constitutes an ITMP that is substantially less than the ITMP that applies to other Internet traffic.

28. One individual who intervened in this proceeding took the view that hourly billing or data usage-based billing are economic ITMPs that manage Internet use by charging customers based on some measure of their consumption.

29. Bell Mobility submitted that its mobile TV service is not an ITMP and that it was never designed as a measure to manage traffic generated over the Internet. It challenged the assertion that the $5 monthly charge for ten hours is an ITMP, arguing that it is the charge for a television service delivered over a mobile wireless access network.

30. Videotron also submitted that a billing model does not necessarily constitute an ITMP. Noting that there are many billing models with different characteristics, it stated that its practice is clear and easy to understand. Videotron further submitted that differences between billing models do not necessarily lead to undue preference or unjust discrimination, especially when the service in question is being offered in an experimental environment.

Commission's analysis and decision

31. Wireless carriers can use ITMPs to manage traffic and address possible congestion in their networks. The data charges relating to the data connectivity and/or transport by Bell Mobility and Videotron of their mobile TV services could be a form of an economic ITMP; that is, they could be established in a way to manage traffic.

32. The Commission considers, however, that the current data charges in question are intended to encourage the consumption of the mobile TV services on mobile devices, rather than to address possible congestion.

33. Moreover, there is no evidence that Bell Mobility and Videotron are using any technical ITMPs in relation to the transport of the mobile TV services. In this regard, Videotron stated that although it had been prioritizing illico.tv content on its network, it has ceased this practice.

34. In light of all of the above, the Commission is of the view that Bell Mobility and Videotron, in regard to the transport and data connectivity of their respective mobile TV services, are not using any ITMPs that fall within the scope of the Commission's current ITMP framework. Accordingly, they are not in violation of the Commission's ITMP rules.

Are Bell Mobility and Videotron, when operating as Canadian carriers providing telecommunications services in regard to the transport of their mobile TV services to subscribers' mobile devices, acting in violation of subsection 27(2) of the *Telecommunications Act*?

35. In light of its finding that Bell Mobility and Videotron are operating as Canadian carriers providing telecommunications services in regard to the transport of their mobile TV services to subscribers' mobile devices, and are therefore subject to the *Telecommunications Act* and policies made pursuant to that Act, the Commission must determine whether in doing so, they are acting in violation of subsection 27(2) of that Act.

Positions of parties

36. The applicants and supporting interveners submitted that Bell Mobility and Videotron unduly prefer their own mobile TV services, thereby subjecting competitors to an undue disadvantage. Specifically, they argued that the mobile TV data is subject to relatively lower data usage rates and exempted from the application of data caps. They further argued that the operators are leveraging their distribution channels to provide their own data-intensive applications with significant advantages that no other data-intensive application can offer in competition.

37. Certain parties submitted that Bell Mobility and Videotron unduly prefer subscribers of their own mobile TV services and unduly disadvantage their other subscribers who face considerably higher usage charges to access competitors' DMBU services. In this regard, some noted that customers are charged up to 800% more for all other forms of video and other Internet-based data. In regard to Bell Mobility's mobile TV service, Mr. Klass noted that subscribers currently have two options for watching ten hours of Canadian Broadcasting Corporation (CBC) programming on their tablets using a mobile network during a given month: a) using the mobile TV service at Bell Mobility's price of $5 (or sometimes for free when the service is offered as a promotion or a bonus), or b) using one of several CBC services accessed over the Internet with their data plan at Bell Mobility's price of $40.

38. Mr. Klass submitted that a mobile TV service is a data-intensive application, and that to the extent that mobile networks are susceptible to capacity constraints, it is reasonable to conclude that the use of mobile TV services contributes to network costs and congestion in proportion to the similar use of Internet services.

39. Finally, certain parties submitted that although Bell Mobility and Videotron stressed the purported benefits of their respective services in relation to broadcasting policy objectives set out in the *Broadcasting Act*, there is no quantifiable evidence to demonstrate the magnitude of those benefits.

40. In Bell Mobility's view, its mobile TV service is a broadcasting service and thus cannot be compared, under subsection 27(2) of the *Telecommunications Act*, with telecommunications services that it is providing when acting as an ISP. It submitted that the claim that the pricing of mobile TV services is "too low" is incorrect, and that the rates are in line with those of similar new distribution services recently launched by Rogers Communications Partnership and Quebecor. Both Bell Mobility and Videotron argued that this claim also ignores the fact that mobile TV services are experimental new broadcasting distribution services.

41. Bell Mobility also submitted that the claim that its mobile Internet data rates for the viewing of Internet content are "too high" is incorrect. It noted that the retail wireless data telecommunications market has long been forborne from price regulation. It further noted that the Commission, in the proceeding that led to the issuance of the wireless code decision,[8] concluded that the telecommunications market continues to be sufficiently competitive to protect users such that there is no need for the Commission to resume

[8] Telecom Regulatory Policy 2013-271

regulating wireless data rates. Bell Mobility argued that there is no evidence indicating a change in these circumstances.

42. According to Bell Mobility, the Bell Mobile TV service is precisely the type of innovative, Canadian content-rich, consumer-focused service the Commission's new media policy was intended to foster. It argued that its mobile TV service contributes to the achievement of broadcasting policy objectives of the *Broadcasting Act* by ensuring that more Canadian programming is accessible to Canadian consumers online and on their mobile devices. Bell Mobility added that this type of pro-Canadian, pro-consumer and pro-creator wireless broadcasting service needs to be nurtured, not discouraged. For its part, Videotron stated that this experimentation allows all providers to better know the market, and to find better ways to make their offers more attractive to consumers. It argued that as Canadians get used to consuming television content on their mobile devices, this could only have a positive impact on all providers of such content. For this reason, Videotron concluded that any preferences that may exist because of the billing methods in question cannot be considered undue.

Commission's analysis and decisions

43. In Telecom Decision 96-14, as well as in subsequent decisions, the Commission forbore from regulating mobile wireless data services, which are used, among other things, to provide Internet access to mobile wireless service subscribers. In Telecom Decision 2010-445, the Commission amended the forbearance framework for mobile wireless data services by making the offering and provision of data services by Canadian carriers subject to its powers and duties under section 24 and subsections 27(2), 27(3) and 27(4) of the *Telecommunications Act*. In that decision, it considered that amending the forbearance framework to provide for the application of those sections of the *Telecommunications Act* to mobile wireless data services was appropriate and would enable it to address, among other things, unjust discrimination and undue preference issues with respect to the provision of mobile wireless data services by Canadian carriers.

44. The Commission's analysis of an allegation of undue or unreasonable preference or disadvantage under subsection 27(2) of the *Telecommunications Act* is conducted in two phases:

- it must first determine whether the conduct in question constitutes a preference or subjects a person to a disadvantage; and

- where it so determines, it must then decide whether the preference or disadvantage is undue or unreasonable.

Determination of preference or disadvantage

45. As set out above, the functions performed by Bell Mobility and Videotron to establish the data connectivity and provide transport over their wireless access networks are the same whether the content being transported is their mobile TV services, other broadcasting services, or non-broadcasting services. In the Commission's view, from the perspective of the consumer, the mode of transport of these services – whether over the public Internet or

through a point-to-point connection using Internet protocol – is immaterial and likely even unknown.

46. Nevertheless, there is a significant difference in cost to the consumer of accessing, by means of the wireless network, audiovisual and other content over the Internet when compared to accessing the mobile TV services. As discussed above, the amount of time spent by the subscriber accessing the mobile TV service does not count towards the data cap of a subscriber's wireless plan. Rather, consumers pay a set charge to access a number of hours of mobile TV services on their mobile devices, which charge is not based on the number of gigabytes of data consumed. In contrast, other content services (even those offering programming services that are substantially similar to those offered by the mobile TV services) count towards a subscriber's data cap (for example, on a one gigabyte data plan, a customer could reach this cap after watching two hours of video programming).

47. As noted above, it is the subscriber's voice plan, data plan or tablet plan that provides the basis for the data connectivity required for an end user to access the mobile TV service. Notwithstanding this, given that access to the mobile TV services is exempt from the standard data plans, and given the minimal charge imposed to access the services, the charge to consumers to access content from other audiovisual content services on their mobile devices is significantly higher than the charge to access their respective mobile TV services. As a result, Bell Mobility and Videotron consumers have a significant economic incentive to access content through the mobile TV services rather than through other content services. Conversely, Bell Mobility and Videotron consumers of other data services are subject to a corresponding disadvantage by having to pay more to access content on their mobile devices and by facing a data cap. This incentive also provides the mobile TV services with an advantage and other data services a corresponding disadvantage.

48. The Commission therefore finds that in providing the data connectivity and transport required for consumers to access their respective mobile TV services on their mobile devices, Bell Mobility and Videotron have given a preference in favour of subscribers of their respective mobile TV services, as well as in favour of their own services, and have subjected consumers of other audiovisual content services, and other services, to a corresponding disadvantage.

Undue or unreasonable nature of the preference or disadvantage

49. Preference or disadvantage in and of itself is not contrary to the *Telecommunications Act*; the preference or disadvantage must be undue or unreasonable. The Commission must therefore determine whether the above-noted preference or disadvantage is undue or unreasonable. In this regard, pursuant to subsection 27(4) of the *Telecommunications Act*, the burden of establishing before the Commission that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that confers the preference and subjects the person to a disadvantage.

50. In addition, pursuant to section 28 of the *Telecommunications Act*, the Commission is required to have regard to the broadcasting policy set out in the *Broadcasting Act* in determining whether any preference or disadvantage is undue or unreasonable in relation to the transmission of programs.

51. As discussed previously, Bell Mobility and Videotron have taken the position in this proceeding that their mobile TV services are broadcasting undertakings. Bell Mobility specifically argued that the distribution of these services can only be considered under the *Broadcasting Act* and is not subject to the *Telecommunications Act*. As noted above, Bell Mobility stated that its mobile TV service supports the achievement of numerous objectives of the *Broadcasting Act*, and that its broadcasting service needs to be nurtured, not discouraged. It also submitted that its data caps are competitively neutral and treat all online video service content the same, including its own content, which is available on websites such as www.ctv.ca or www.tsn.ca. Bell Mobility further submitted that there is no unjust discrimination in regard to its customers or in regard to content providers, whether they are online video service content providers or not. Finally, it argued that to the extent that there is any discrimination or preference, online video service content providers continue to show strong growth in Canada, and there is no evidence that such discrimination has resulted in a substantial lessening of competition.

52. According to Videotron, the charges allow providers to better know the market and to find new ways to make attractive offers to consumers. In its view, should Canadians get used to consuming television content on their mobile devices, this could only have a positive impact on all service providers of such content.

53. The Commission considers, however, that encouraging customers to access these data-intensive services is inconsistent with the carriers' approach in regard to other data services, which is to impose data caps in order to optimize the efficiency of these networks. If access to mobile TV services continues to grow, which is a reasonable expectation, the data charges for these mobile TV services, the disproportionately high data limits, and the encouragement for subscribers to use these services, might result in a degradation of other services by contributing to network congestion.

54. The Commission notes that Bell Mobility, in support of its argument that there has been no lessening of competition, solely referenced growth rates for online video services on all platforms (not specifically for mobile devices) as evidence that competition in the mobile content viewing market has not been harmed. This position was echoed by Videotron, who further stated that its own mobile TV service benefits consumers through its innovation, finding new ways to make its offerings attractive to consumers.

55. The Commission acknowledges that no complaints or interventions were filed by competing service providers. It nevertheless considers that Bell Mobility's and Videotron's arguments are not persuasive: not only do they fail to address the impact of the significant difference in data charges on consumers, they also do not address the potential for significant harm in the future to other audiovisual content services accessible on subscribers' mobile devices that are subject to data caps. Given the considerable difference in the data charges in question, the Commission is not convinced by the arguments provided by Bell Mobility and Videotron that there has been no material impact, or that such an impact is unlikely in the future, either on consumers or on the growth of other services.

56. Over the last few years there has been steady growth in the adoption of smartphones in Canada, as well as a steady increase in the amount of television and Internet content accessed by Canadians on their mobile devices. In 2013, there were 17.6 million mobile broadband subscribers in Canada, up from 14.3 million in 2012. In 2013, 62% of Canadians

owned a smartphone, compared to 14% in 2009. Currently, 77% of Francophones and 84% of Anglophones access the Internet on their smartphones. In 2013, 14% of Francophones and 18% of Anglophones watched television on their smartphones, compared to 2% and 5%, respectively, in 2009.[9]

57. In regard to the mobile TV services, the data is mixed. The Commission notes, however, that Bell Mobile TV has more than 1.4 million subscribers, a significant number that the Commission's expects would have an impact on competing services in the future as monthly usage and familiarity with the service grows.

58. In light of the above, the Commission finds that the preference given in relation to the transport of Bell Mobility's and Videotron's mobile TV services to subscribers' mobile devices, and the corresponding disadvantage in relation to the transport of other audiovisual content services available over the Internet, will grow and will have a material impact on consumers, and other audiovisual content services in particular. As an example, it may end up inhibiting the introduction and growth of other mobile TV services accessed over the Internet, which reduces innovation and consumer choice.

59. The Commission also considers it significant that Bell Mobility and Videotron are in a position to treat the transport of their mobile TV services in such a significantly different fashion when compared to other audiovisual content services, given the leverage that comes from owning both the means of transport and the rights to the content.

60. Although section 28 of the *Telecommunications Act* applies in the present case to the extent that the preference and disadvantage relate to the transmission of programs, the Commission notes that the broadcasting policy set out in the *Broadcasting Act* is not in itself determinative of the issue. The favourable terms offered by Bell Mobility and Videotron for the transport and data connectivity required for their own mobile TV services might support certain objectives of the broadcasting policy. However, the disadvantage to consumers in accessing other Canadian programs on their mobile devices, and to these other programs, could not be said to further these objectives. Accordingly, the Commission considers that the preference or disadvantage cannot be justified in regard to the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.

61. In light of all of the foregoing, the Commission is of the view that Bell Mobility and Videotron have not discharged the burden of establishing before the Commission that any preference or disadvantage is not undue or unreasonable. Accordingly, it finds that Bell Mobility and Videotron, in providing the data connectivity and transport required for consumers to access the mobile TV services at substantially lower costs to those consumers relative to other audiovisual content services, have conferred upon consumers of their services, as well as upon their services, an undue and unreasonable preference, in violation of subsection 27(2) of the *Telecommunications Act*. In addition, they have subjected their subscribers who consume other audiovisual content services that are subject to data charges, and these other services, to an undue and unreasonable disadvantage, in violation of subsection 27(2) of the *Telecommunications Act*.

[9] All figures and percentages are from the *Communications Monitoring Report 2014*.

62. Accordingly, the Commission **directs** Bell Mobility to eliminate its unlawful practice with respect to data charges for its mobile TV service by no later than **29 April 2015**. In the Commission's view, the elimination of the exemption from data charges for mobile TV services is a way to address the undue and unreasonable preference and disadvantage.

63. In regard to Videotron, the Commission notes that this operator, in a letter dated 14 October 2014, stated that the illico.tv app for Blackberry and Android devices would be withdrawn at the end of 2014 and that users of the app will have access to the app until the end of March 2015. It further stated that the app will be replaced by a service that does not have a data charge exemption. Accordingly, the Commission **directs** Videotron to comply with its planned withdrawal of the illico.tv app by the dates outlined in its letter, and to confirm by **31 March 2015** that the app has been withdrawn. The Commission further **directs** Videotron to ensure that any new mobile TV service complies with the determinations set out in this decision.

64. The Commission notes that certain parties raised an issue relating to whether Bell Mobility and Videotron, in regard to their billing practices for their mobile TV services, have conferred an undue preference under the DMBU exemption order adopted pursuant to the *Broadcasting Act*. Given the above determinations, and noting that the applications by Mr. Klass and PIAC et al. were filed pursuant to the *Telecommunications Act*, the Commission does not consider it necessary to address this issue.

Policy Direction

65. The Policy Direction[10] states that the Commission, in exercising its powers and performing its duties under the *Telecommunications Act*, shall implement the policy objectives set out in section 7 of that Act, in accordance with paragraphs 1(*a*) and (*b*) of the Policy Direction.

66. The Commission considers that its findings in the present decision are consistent with the Policy Direction and advance the policy objectives set out in subsections 7(*a*), (*b*), (*c*), (*f*) and (*h*) of the *Telecommunications Act*.[11]

67. Consistent with subparagraph 1(*a*)(ii), the Commission considers that eliminating the unlawful practice with respect to data charges in relation to the mobile TV services is efficient and proportionate to its purpose, and interferes with the operation of market forces to the minimum extent necessary to meet the policy identified above. As set out above, the

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[10] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355

[11] The cited policy objectives of the *Telecommunications Act* are:

- 7(*a*) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- 7(*b*) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- 7(*c*) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- 7(*f*) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and
- 7(*h*) to respond to the economic and social requirements of users of telecommunications services.

Commission considers that eliminating the exemption from data charges is one way to address the undue and unreasonable preference or disadvantage. Further, the Commission considers that the elimination of the unlawful practice with respect to data charges neither deters economically efficient competitive entry into the market, nor promotes economically inefficient entry, consistent with subparagraph 1(*b*)(ii) of the Policy Direction. Quite the reverse, in removing a significant impediment to competition, it will allow for efficient competitive entry into the market.

Secretary General

Related documents

- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Amendments to the* Exemption order for new media broadcasting undertakings *(now known as the* Exemption order for digital media broadcasting undertakings*)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Modifications to the forbearance framework for mobile wireless data services*, Telecom Decision CRTC 2010-445, 30 June 2010
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009
- *Regulation of mobile wireless telecommunications services*, Telecom Decision CRTC 96-14, 23 December 1996

Concurring opinion of Commissioner Raj Shoan

I wholly agree with the result of the majority decision; the mobile TV service providers at issue in this process should eliminate their unlawful practice with respect to charging for data.

I do not, however, agree with the narrow rationale of the majority. In my view, the undue preference provisions of the Digital Media Exemption Order (DMEO) apply in tandem with the undue preference provisions of the *Telecommunications Act* in this instance. Alternatively, the majority should have given greater weight to the applicability of section 28 of the *Telecommunications Act* to this matter. In either case, I am of the view that the Commission should not have confined its analysis solely to the application of section 27 of the *Telecommunications Act*.

The applications pertain to the provision and associated billing of broadcasting services. As technologically neutral legislation, the applicability of the *Broadcasting Act* is not limited to a particular platform. It was drafted and designed as an evolving statute. As such, the manner in which programming is delivered to Canadians is immaterial; the *Broadcasting Act* is intended to capture certain activity, namely, the provision of programming to Canadians by way of radio waves or other telecommunications. This is why, despite the fact that virtually 95% of Canadians receive their programming via cable or satellite companies, the *Broadcasting Act* does not refer to these distribution technologies as encapsulating the only method by which programming can be disseminated. It was purposefully designed to be platform neutral.

Telecommunications technology employed by way of radiocommunications or other technology underpins both the *Broadcasting Act* and *Telecommunications Act*. On a basic level, the fundamental difference between two statutes is the nature of the captured activity. Simply put, broadcasting is the provision of programming to the public over such technology and telecommunications captures what remains – mainly, transport of messages, including exchanges of a private nature between individuals and commercially motivated interactions.

Why was this distinction made? Decades ago, as a matter of law and policy, broadcasting and telecommunications were deemed to have differing social, economic and, in the case of broadcasting, cultural impacts worthy of public policy support. Such public policy support has changed over time through statutory amendments and the adoption of new legislation altogether. The nature of such support and the corresponding obligations of licensees or entities of both regimes have also changed and evolved over the years.

It is important to understand and appreciate this background when considering the issues raised by applicants. In an era of rapid transformation in both the broadcasting and telecommunications industries, recalling the fundamental distinction between the two industries informs decisions both present and future. There was a time when telecommunications regulation in this country was federally regulated under the *Railway Act*. The modern era *Broadcasting Act* was not enacted until 1968. Today, both industries are thriving with national, regional and local enterprises. The fundamental

distinction between the two industries, however, has not changed – broadcasting is the act of providing programming to the public over such technology and telecommunications captures transport of private or commercial services.

The foregoing introduction is intended to simplify the very complex regulatory regimes at play in this matter. Often, the complexity associated with these types of files results in a measure of inaccessibility when CRTC decisions are released to the public. Without a comprehensive understanding of the Commission's policies, industry jargon and the technology itself, it can be very difficult for the average consumer to understand the intricacies of Commission decision-making. For this reason, in order to make this concurring opinion more easily understood by all readers, I have chosen to separate this opinion between the issues of interest to the industry and the impacts of the majority decision on the Canadian consumer.

For the industry

As noted in paragraph 4 of the majority decision, the mobile TV services in question are accessed on mobile devices via apps (i.e., mobile application software) developed by Bell Mobility and Videotron (for Videotron, on Android- and Blackberry-based phones). These services offer aggregated broadcasting content – mostly live streaming of television stations and other related television programming services – with access to a limited library of video-on-demand content.

The majority decision considers that Bell Mobility and Videotron are involved in broadcasting and notes, in this regard, that no party to this proceeding disputed that mobile TV services constitute broadcasting services as contemplated by the DMEO. I agree.

The divergence between the position of the majority and this concurring opinion occurs when assessing the role of the carrier in the distribution chain. At paragraph 16, the majority decision states that it "considers that Bell Mobility's and Videotron's roles as Canadian carriers in providing wireless data connectivity and transport services to enable subscribers to access content on their mobile devices are not necessarily transformed into those of broadcasting undertakings merely because they are involved in the content. Rather, it is necessary to examine in each case the facts to determine the true nature of the services being provided."

The majority decision then goes on to discuss the pertinent facts in this case. This first relevant fact, as stated in paragraph 17, is that the mobile TV services in question are offered over wireless access networks and these are the "very same networks they use to deliver their wireless voice and data telecommunications services, which are clearly telecommunications services subject to the *Telecommunications Act*." The second relevant fact, at paragraph 18, is that "the functions performed by Bell Mobility and Videotron to establish the data connectivity and provide transport over their wireless access networks would be the same whether the content being transported is their mobile TV services, other broadcasting services, or non-broadcasting services. That is, the purpose of these functions is to establish data connectivity and transport the

content – agnostic as to the content itself." On the basis of these two facts, at paragraph 22, the Commission finds that Bell Mobility and Videotron are acting as Canadian carriers when delivering programming to end users.

With respect to my colleagues, I have difficulty accepting their argument. It is the nature of the activity that defines a service, not the nature of its platform, and a reasonable argument can be made that evolving activity on a platform may change elements of the nature of the service. It may be true that certain networks were initially used solely for wireless voice and data but if, over time, they become networks for programming distribution, that fact must be reflected in Commission decision and policy-making. Secondly, it is differential pricing by carriers of content on their wireless platform that has spurred the applications – meaning, to some degree, carriers are *not* acting in an agnostic manner. They have identified certain programming applications as being worthy of preferential treatment and instituted processes over their networks to give effect to that preference. As such, in my view, the second premise underpinning the majority decision is suspect.

In contemplating the application of the *Broadcasting Act* and, by extension, the DMEO in this matter, the majority did not, in my view, give sufficient consideration as to whether any of the undertakings that comprise a broadcasting undertaking could reasonably apply to the activity of the mobile carriers in this matter.

On a basic level, the provision of programming services by way of radio waves or other telecommunications to end users has always been an activity captured by the *Broadcasting Act*. That activity has been statutorily split between distribution activity, programming activity and network activity. An exception has been granted to Internet service providers (ISPs) by the Supreme Court in circumstances when they provide passive access to broadcasting over the Internet. I am not necessarily convinced, however, that wireless service providers (WSPs), such as Bell Mobility and Videotron, can avail themselves of this exception; their billing practices seem to demonstrate a degree of programming consumption management that could not be described as passive.

As stated at paragraph 28 of *Distribution of satellite subscription radio services by direct-to-home broadcasting distribution undertakings*, Broadcasting Decision CRTC 2006-615, 3 November 2006, the Commission has determined that the definition of broadcasting undertaking "includes" programming services, distribution services and a network but may also include other services not specifically named.

Given that the applications pertain to billing practices associated with mobile television services, and given further that the preferential billing practices employed in this matter call into question the degree of control carriers exercise over programming consumption by consumers, I am of the view that the Commission should have employed the DMEO to resolve the preferential treatment until satisfied that the billing practices employed were related to a valid network issue. Network management has traditionally been a telecommunications issue; programming consumption control strikes me as a broadcasting control measure. The submissions by carriers in this process indicated that the fees associated with mobile television services were not related to managing network

congestion. Given this fact, I would have erred on the side of applying the DMEO in conjunction with the undue preference provisions of the *Telecommunications Act* until satisfied that preferential billing practices were not being employed to favour certain online programming services over others.

For the consumer

Leaving aside the considerations discussed above, the majority decision has a number of implications for Canadian consumers. By foregoing the undue preference provisions of the DMEO as well as the meaningful application of Section 28 of the *Telecommunications Act*, the majority decision avoids consideration of broadcasting policy objectives in such matters in the present decision and, by implication, sets a significant precedent on a going forward basis.

For the consumer, this means that, in the future, if a broadcast undertaking, whether programming or distribution based, that is operating over a telecom carrier's network wishes to avail itself of a remedy against said carrier in order to further a broadcasting policy objective, it will have a very high threshold to cross. In fact, given the majority decision, it may be next to impossible.

Why is this problematic? In an era of convergence typified by merging distribution and business models, there is an element of short-sightedness for any regulator to foreclose against certain jurisdictional arguments when industries and services are constantly being re-defined by business realities and are in a state of flux.

At paragraph 84 of his application, for example, the applicant, Benjamin Klass, makes the argument that, through its inequitable billing practices, Bell is charging unfairly for the consumption of CBC programming, a free over-the-air service, on mobile networks. One could argue that all Canadians have already paid for CBC programming and that Bell is inappropriately profiting from its distribution on a new platform. Typically, this would be a programmer/distributor matter that would be dealt with under the auspices of the *Broadcasting Act* through a tool such as a 9(1)(*h*) order. As a result of this decision, however, a complainant/applicant would need to find an applicable policy objective under the *Telecommunications Act* to challenge such billing behaviour. Given that the majority decision states that such a scenario would not fall under the current Internet Traffic Management Policy (ITMP),[12] it is not clear whether such an objective is readily apparent.

In addition, at paragraph 35 of its supplementary intervention, CAS-COSCO-PIAC questions how imposing price barriers on on-line video services, which compete with those of the large vertically integrated service providers, promotes the growth and development of new media. The promotion of the growth and development of new media, however, would be a broadcasting policy objective. As such, this argument would be

[12] In this scenario, a fee associated with accessing CBC programming over a cellular network would not be related to managing network congestion. As such, according to the majority decision, the current ITMP does not apply.

difficult to make in the future in these circumstances pursuant to this majority decision given the particular policy objectives of the *Telecommunications Act*.

The majority decision could also have a number of other unforeseen consequences due to its avoidance of a broadcasting lens in its consideration. Subsection 27(2) of the *Telecommunications Act*, for example, prohibits an undue preference and/or unjust discrimination against *any person*. In other words, nationality is irrelevant. According to the logic of the majority decision, any non-Canadian, exempt digital broadcasting undertaking offering an online service in Canada could make an undue preference claim against a Canadian telecommunications carrier if charges associated with its consumption domestically are not comparable to like entities. This could be particularly challenging for carriers serving high cost serving areas. It could also have an impact on the development of zero-rated applications.

Conclusion

In light of the above and given that the purpose of the preferential billing in this matter benefits the related programming services of the carriers in question, I am of the view that the undue preference provisions of the DMEO should properly have been applied in conjunction with undue preference provisions of the *Telecommunications Act* in this matter. The *Telecommunications Act* is engaged by virtue of the fact that we are dealing with common carriers but the nature of the billing preference clearly relates to broadcasting undertakings. As such, in my view, the undue preference provisions of *both* instruments should have been engaged.

As a final commentary, I note the following comments contained in the interventions and replies submitted for this process:

> "The fact that no Canadian or foreign content provider participated in this proceeding, even to provide comments on our mobile television offering, indicates that these online services do not view the RAP-TV mobile service as a competitor."
> – Rogers' Reply (par. 21)

> "Rogers has, wrongly and irrelevantly, invited the Commission to find that the lack of any interventions in this proceeding from any Canadian or foreign content provider should be taken as support for the billing practices at issue."
> – CAS-COSCO-PIAC Reply (ES6(ii))

> "The Commission should not accept lack of intervention in a proceeding such as this one as anything other than that fact – it should not be taken as support for the behaviour at issue." – CAS-COSCO-PIAC Reply (par. 36)

> "Bell has, wrongly (and for a second time in this proceeding), posited a test for undue preference that looks to a "substantial lessening of competition", and fails to consider, as required, the broader public interest." – CAS-COSCO-PIAC Reply (par. 41)

The undue preference/unjust discrimination test is, at its core, a complaints-based remedy. A party must take the initial step to identify a preference or discrimination. This first step, however, is not enough. In order to be effective as a regulatory tool, it requires industry-wide input in order to build a comprehensive public record for the purposes of meaningful debate and decision-making. Given the confidentiality associated with normal business practices in both the broadcasting and telecommunications industries, without the participation of other parties to demonstrate that they are also being treated not only differently but on an undue basis, undue preference complaints cannot work to resolve unfairness.

Once, both the broadcasting and telecommunications industries were sufficiently balanced in terms of the market power such that the Commission could be assured that, through a public process, all of the various points of view and perspectives would be captured for its consideration. Both industries, however, have seen substantial consolidation in recent years. Today, a handful of companies are dominant in terms of overall industry revenues.

In an industry dominated by a few strong players who control access to key platforms, market dynamics could be challenged in capturing all of the necessary arguments to formulate a comprehensive view of the issues before the Commission in the context of a public process. Independent services could fear economic reprisals when they submit commentary opposed to large, vertically integrated players. This has a domino effect on policy and regulatory development when the tool employed – such as the undue preference test – relies heavily on industry and public input.

In the context of these applications, for example:

- there was no intervention from competing broadcasting services that indicated that the programming offered by the mobile television services in question was or was not being done on an exclusive or preferential basis;

- there was no evidence on the record that other mobile service providers are prevented or have experienced difficulty in offering an equivalent mobile television service;

- no programming services submitted evidence that they were being denied access to the mobile broadcasting platforms of the large vertically integrated companies; and

- no programming services at all intervened to comment on the fact that the online programming services of the vertically integrated companies were receiving preferential treatment.

Instead, the Commission relied upon the input of students, citizens, not-for-profit organizations and volunteer-based charitable organizations to reach its determination in this matter – a unanimous decision that the billing processes were not acceptable. These individuals are to be commended for their input, participation and engagement.

On a broader scale, however, it is worrisome that a business practice that the entire Commission found to be unacceptable elicited little commentary from the industry at large. While I do not presume to know what remedy to employ to correct this current state of affairs, the Commission and the industry surely have a joint role to play in ensuring the ongoing engagement of all entities – licensed or exempt – on a going forward basis. It may be timely for the Commission to consider amendments to its undue preference practices that allow for more frank and meaningful input.

Alternatively, the creation of an Office of a Public Intervener who can address media and communication issues directly to the Commission, Canadian public or Parliament may be a worthwhile consideration. When industry dynamics are such that students, not-for-profits and charities are forced to contend against the deep pockets of large, national, vertically integrated entities in order to bring to light relevant issues of public interest without the support of affected parties (i.e. Canadian broadcasters), it does not bode well for future developments, regulatory or otherwise, in an industry. The Commission is limited in terms of shaping debate and dialogue in a public process given the requirement that it remain, at all times, neutral and objective. A Public Intervener for Communications and Media could provide the type of meaningful input required for informed decisions without the risk of reprisal from the industry due to pre-existing business relationships. I, for one, would support the creation of such an office and certainly encourage the pertinent parties to explore it further.