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Via e-mail: telecomsubmission-soumissiontelecom@ised-isde.gc.ca

Director General
Telecommunications and Internet Policy Branch
Innovation, Science and Economic Development Canada
235 Queen Street, 10th Floor
Ottawa, Ontario K1A 0H5

Re: Competitive Network Operators of Canada and Teksavvy Solutions Inc. petitions (the “Petitions”) to the Governor in Council

Canada Gazette, Part I, Vol. 155, No. 30, July 24, 2021, Notice No. TIPB-002-2021 — Petitions to the Governor in Council concerning Telecom Decision CRTC 2021-181(the “Reversal Decision”)

Dear Mr. Arbour:

1. VMedia Inc. (“VMedia”) submits this letter **in full support** of the Petitions submitted by the Competitive Network Operators of Canada (“CNO”) and Teksavvy Solutions Inc. (“TSI”).

About VMedia.

2. VMedia is a member of CNO, the voice of competitive independent internet and telecommunications service providers that own/operate telecommunications networks in regions across Canada.
3. VMedia is a competitive provider of internet, TV and phone services in Canada. As an independent internet service provider, VMedia competes with the incumbent telephone companies (telcos) and cable television companies (cablecos)(collectively the “Incumbents”) in providing Canadian consumers with the high-speed internet-based services they increasingly demand.
4. VMedia was also one of the first companies to be licensed by the CRTC as a non-incumbent broadcasting distribution undertaking (BDU) to deliver TV signals to Canadian consumers. Since then, VMedia has pioneered a number of important innovations, including:
 - a. the first “skinny basic” TV offering,
 - b. its proprietary VBox which combines the functionality of a set-top box capable of receiving conventional TV services and a media payer which can access apps and over the top video and other content over the internet,
 - c. its VCloud personal video recording function which allows consumers to scroll back up to 7 days to view TV programs they missed or may want to revisit, and
 - d. app-based TV viewing, enabling Canadians to access regulated broadcasting content through all the popular app platforms and devices, such as ROKU, Apple TV, Apple iOS,



Android TV and Mobile, Amazon FireTV and others, freeing Canadian consumers from the need to purchase or rent costly and cumbersome set top boxes.

5. VMedia launched its TV service, together with its high-speed internet service, in March 2013. Since then, VMedia has grown substantially as it offers Canadians attractive packages of internet, TV and phone services in competition with the Incumbents, and currently serves tens of thousands of Canadian households from coast to coast, which enjoy savings of up to 35% on their service packages as compared to the prices charged by the incumbents.
6. The core of VMedia's business remains the provision of residential internet services. Its ability to offer competitive services which provide affordable alternatives for Canadians is entirely dependent upon the efficient functioning of the regulatory framework for telecommunications services administered by an unbiased and impartial CRTC. In this regard the business of VMedia, like those of other independent internet service providers ("ISPs"), depends on its ability to have access to telecommunications infrastructure and facilities owned and operated by the Incumbents, which have been built by the Incumbents, in the case of the telcos, over more than century, and in the case of the cablecos, over the last fifty years.
7. This access, based on long-standing policy and regulation, is to be provided in exchange for compensation to the Incumbents in the form of fair and reasonable tariffs. Those prices were finally determined, after a lengthy years-long process conducted by the CRTC, in its Telecom Decision 2019-288(the "Decision").
8. The Incumbents employed all legal measures available to them to overturn or modify the Decision, and launched challenges and appeals to the courts, to Cabinet, and to the CRTC itself, in a review & vary process, initiated this time, unlike the process leading up to the Decision, under a new Chairperson.
9. All of the challenges and appeals were rejected except the review & vary appeal to the CRTC. In an unprecedented finding set out in the Reversal Decision, and to the astonishment of all industry observers and participants, including the Incumbents themselves, the CRTC fully reversed the results of its own deliberations, and reset tariffs at levels which it itself in the Decision had found to be unjust and unreasonable. Indeed, in certain cases it even increased those rates even beyond the levels which the CRTC had previously found to be unjust and unreasonable.
10. The Reversal Decision also did away with a retroactive calculation of the amounts the Incumbents overcharged ISPs over the years, which would have resulted in a payment of over \$400million to ISPs. That amount was earmarked for investment by ISPs in facilities, including the funding of capital expenses required to participate in the new fibre to the home access framework.
11. All of that is now in jeopardy, as well as the ability of ISPs to continue to meaningfully offer an affordable and competitive alternative to Canadians in crucial high-speed internet services which fuel of their everyday lives.
12. For the reasons set out below, VMedia supports the Petitions, which ask Cabinet to void the Reversal Decision and reinstate the Decision as soon as possible, to enable ISPs to renew their ability to compete, and offer better services and prices to Canadian families, especially to those finding it difficult to keep up with increasing costs of their everyday needs.

Reasons

13. VMedia's reasons for supporting the Petitions are simple.
14. First, as the Petitions clearly show, the reasons for the Reversal Decision were not supported by any substantive new quantitative data or evidence. The CRTC essentially stated that it got it wrong in the Decision, but said it would not go to the trouble of showing how it got it wrong, as it would be too time-consuming and pointless in the face of the looming transition to a disaggregated fibre to the home framework.
15. Such reasoning, in the face of the fact that the Decision was nearly four years in the making, is an insult
 - a. to the efforts of the CRTC team and commissioners who came to the conclusion that the then-(and now) prevailing tariffs were unjust and unreasonable,
 - b. ISPs who have built their businesses with great effort over the years in reliance upon an evidence-based regulatory process, and
 - c. most importantly to Canadians, who are entitled to expect the CRTC to put their interests ahead of Incumbents, who are among the most profitable telcos and cablecos in the world. Those companies represent a level of concentration almost unmatched in the industrialized world, and currently offer internet services - truly an essential service growing in importance every day - under a duopoly framework in each market, with typically one local telco competing with one local cableco. In that context the CRTC should be even more vigilant that their market dominance does not result in abusive practices and prices which unduly re-distribute wealth from those least able to afford it, the many millions of hardworking less fortunate and middle-class families, into the pockets on Incumbent executives and shareholders.
16. Second, the Reversal Decision represents a disturbing recent trend in the findings of the CRTC away from competition, and consumers interests, to a further concentration of power in the hands of the Incumbents, yet another reversal, this time of decades of movement towards a more competitive telecom landscape which encourages new and smaller entrants to offer more affordable and innovative services to Canadians.
17. Without those smaller entrants, like VMedia, and its fellow CNOC members, Canadians might well be paying exorbitant rates on a per gigabyte basis for internet service – like they continue to do for mobile data services – rather than the ubiquitous unlimited internet packages now available throughout the market. For it was those very ISPs that fought the usage based billing battle with the Incumbents in 2011, which wanted to restrain the ISPs from offering unlimited internet as an alternative to the Incumbents' costly capped packages.
18. Yet that trend is indeed also reversed, with the anti-competitive trifecta of recent decisions which include
 - a. the Reversal Decision, as well as
 - b. Telecom Regulatory Policy CRTC 2021-1301, which rejects the possibility of virtual mobile operators and preserves the status quo in mobile wireless services by only allowing the largest of companies, and those with access to scarce, expensive spectrum, to qualify

for mandated mobile virtual network operator access, and

- c. Telecom Regulatory Policy 2021-2395, in which it decided not to regulate access to big carriers fibre in-building wire (“IBW”) in multiple-dwelling units.
19. In that last-mentioned decision, the CRTC seemed to confess to its own deliberate pivot away from competition and consumers by stating that “the Commission does not consider that competition and consumer choice qualify as public good considerations.” Stunning.
20. And even more so in the face of Cabinet’s own 2018 policy direction¹ to the CRTC on implementing Canadian telecommunications policy objectives to promote competition, affordability, consumer interests and innovation. It would appear the Commission did not get that memo.
21. Finally, VMedia is most concerned about the credibility of the CRTC’s decision-making process, and the impairment of its reputation as an unbiased and impartial quasi-judiciary tribunal.
22. Whether or not bias was actually a factor in these recent decisions, there are certainly enough facts on the public record to create the appearance of bias.
23. First, the Chairman is the only person currently on the Commission with extensive industry expertise in telecom. The Chairman however is also a former senior executive of one of the major telcos which will benefit so greatly from this recent line of decisions. Unlike the Decision, all of those decisions related to processes initiated under and overseen by the current Chairman.
24. Second, the Chairman himself has publicly acknowledged his own bias in favour of facilities-based competition, such as that provided by the Incumbents, over the predominantly service-based competition offered by ISPs.² The core of his reasoning is that service-based competition is not sustainable.
25. This conclusion is on its face unsupportable, when one takes into account that it was the introduction of service-based long distance phone in Canada in the 1990s that drove those rates down dramatically, and continues to offer the same competitive alternative today. Without it, Canadians would still be paying \$1-2 per minute for a daytime call between Toronto and Montreal.
26. Third, there is the matter of preferred access to the CRTC, and to the Chairman, enjoyed by Incumbents and their lobbyists. This favouritism, so prejudicial to ISPs, was fully documented by Christine Dobby in The Toronto Star³ in compelling investigative reporting published shortly after the Reversal Decision, and was inspired by the CRTC’s unprecedented and unexpected findings.
27. The article prominently mentioned a now-widely circulated photograph of the then-COO and now CEO of Bell Canada having a beer with the Chairman unaccompanied by staffers in a well-known bar in Ottawa. That meeting took place on December 19, 2019, a week after Bell filed its request for the very review & vary process which led to the Reversal Decision.
28. The Decision had a huge potential impact on Incumbents, not because it could diminish its business,

¹ <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11524.html>

² https://www.youtube.com/watch?v=j4ZqY_yHqbg Minutes 17:10-20:00.

³ <https://www.thestar.com/business/2021/06/12/is-the-crtc-too-cosy-with-big-telecom-star-analysis-shows-major-telecoms-met-with-government-and-crtc-officials-hundreds-of-times-prior-to-reversal-on-wholesale-internet-rates.html>

but because it would allow sufficient competition so that the incumbents could not gouge Canadians, and generate even greater profit margins for themselves. VMedia asks Cabinet to consider such a meeting in another context, where perhaps, in the days when Canadian banks sought to merge, a CEO of a bank were seen having a one-on-one drink with the head of the Competition Bureau, or perhaps with the Minister of Finance.

Conclusion

29. There are three simple and obvious reasons VMedia offers in support of the Petitions.
30. The Reversal Decision was an unprecedented about-face by the CRTC, rejecting the interests of Canadian families and embracing the interests of the nation's most profitable and powerful businesses and their shareholders. That in and of itself is troubling, but the Commission did so without even bothering to proffer material new evidence or quantitative data to support its decision. All the CRTC did was say it got it wrong the first time. This is unacceptable in a transparent, rules-based society such as ours.
31. The Reversal Decision represents a regressive move back to a past when competition was eschewed in favour of the interests of monopolies and duopolies that dominated the early development of Canada's industries. Moving away from competition, and rejecting the interests of consumers in favour of an ephemeral concept such as "the public interest" which the Chairman is known to prefer, takes one back to the days of a non-competitive, protected Canadian economy where Canadians had few choices, little say, and no leverage against rapacious suppliers. This cannot be what this government wants, and it is certainly not the policy this government has promoted in its Policy Direction to the CRTC of 2018.
32. And finally, as in all matters which come before judicial or quasi-judicial bodies in this and other democracies founded on the rule of law, justice not only needs to be done, but must be seen to be done. The appearance of bias in this case is so overwhelming, and the reasons behind the Reversal Decision so obscure, that the only way to reassure Canadians of the integrity of our system, and of their importance to our re-elected leadership, is to reject the Reversal Decision, and reinstate the Decision, as soon as possible.

Yours very truly,

V MEDIA INC.



Alexei Tchernobrivets
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