

# Telecom Policy Review Panel

## Comments of the Consumer Groups (Public Interest Advocacy Centre, the Canadian Internet Policy and Public Interest Clinic, the Consumers Association of Canada, and the National Anti-Poverty Organization)

August 15, 2005

### Executive Summary

1. What is at stake in this review is Canadians' interest in telecommunications, not simply revenue enhancement of telecommunications providers. The Consumer Groups are particularly alarmed that fundamental changes to the objectives of the *Telecommunications Act* may be addressed without sufficient time for public and expert consultation. The Consumer Groups note that the Panel's review may be productive without shaking these fundamental foundations.
2. Changes to framework arrangements for telecommunication regulations should not slavishly reflect current industry preoccupations, such as the current obsession, Voice over Internet Protocol (VoIP). Any regulatory framework incorporates tradeoffs between public scrutiny of the regulated industry and benefits from less regulation. Tangible evidence of advantage (and adequate consumer protection) are requirements for speculative change to the present regulatory environment.
3. Deregulation savings and burdens are infrequently quantified and removal of regulatory formalities most often favours those with more market power – rarely if ever consumers.
4. The present environment in Canada shows no signs of financial malaise for telecommunications providers and no public appetite for a whole-scale change. In such a situation, the Panel should move cautiously with regard to major reform.
5. Given the Panel may be urged to consider proposals to radically re-engineer the Canadian telecommunications environment, the Consumer Groups have put forward the following recommendations to provide balance in any consideration of change:
  - i) With regard to the policy objectives in the *Telecommunications Act*, subsections 7(a), (b), (c), and (i) should remain as is, given their fundamental importance as policy objectives for Canadian telecommunications.

- ii) Subsection 7(h) should also remain as a stated policy objective, but should be expanded so as to expressly focus on the needs of disadvantaged users. Recommended wording: "to respond to the economic and social requirements of users of telecommunications services, in particular disadvantaged users;"
- iii) Subsection 7(f) should be reworded as follows: "to ensure that market forces, where relied upon, and regulation, where required, are efficient and effective in achieving the objectives of Canadian telecommunications policy;"
- iv) An additional clause should be added to section 34 of the *Telecommunications Act*, clarifying that the Commission shall or may re-regulate previously forborne markets, if it finds that competition is not sufficient to protect the interests of users, would be helpful in this respect.
- v) The contribution regime supporting delivery of service to high cost areas should continue to apply. However, it should be revised so as to place more reasonable limits on the amount of subsidy per subscribing household, to focus the subsidy on those most in need (i.e., permanent residents and/or non-wealthy households), to better accommodate local community needs and concerns, and to account for the increasing availability of competitive options in rural and remote areas.
- vi) Movement towards symmetric regulation, where warranted and where such will not stifle competition, may assist consumers in achieving consistent customer service standards.
- vii) ILECs should no longer enjoy one-sided limitation of liability clauses in their tariffs.
- viii) Internet service providers should be subject to "common carrier" regulations under both the *Broadcasting Act* and the *Telecommunications Act* (specifically s.7 of the BDU regulations, and ss. 27(2) and 36 of the *Telecom Act*). In particular, ISPs should not be permitted to block access to third party websites or communications without a court order or regulatory direction, nor should they interfere with user communications, including withholding communications during disputes or otherwise.
- ix) Expanding connectivity to geographic, special needs, and low-income communities requires government or regulatory intervention, despite technological innovations that are lowering the cost of service provision.
- x) Subsidy programs should be continually reassessed so as to ensure that they are providing service where truly needed and that they are cost-effective.
- xi) Government/regulatory intervention should focus on those communities and sectors most in need, and likely to benefit most from such access and empowerment. More resources should be devoted to supporting local community initiatives designed to extend broadband access to low income, unemployed, disabled, elderly, and other disadvantaged communities, and to assist those communities in making effective use of such access.
- xii) Government/regulator should also intervene so as to ensure third-party access to broadband facilities on fair terms.

6. In particular, the Panel should seriously consider methods to increase redress for individual consumers in telecom matters, which redress has become largely shunted aside in the present regulatory environment. To this end, the Consumer Groups suggest:

- i) A “Telecommunications Ombudsman” should be created to address individual consumer complaints.
- ii) The Ombudsman should have the power to make binding orders and award compensation up to \$1000 in individual cases.
- iii) The Telecommunications Ombudsman should conduct inquiries into industry-wide systemic consumer protection issues.
- iv) The Telecommunications Ombudsman should be independent and have jurisdiction over all telecommunications service providers (TSPs), including wireline, wireless, Internet service, VoIP and long distance providers and resellers.

7. Regarding changes to Canada’s connectivity policy, the Consumer Groups support the ubiquity of broadband access as a goal for all Canadians, however, not at any cost and not solely to be funded on the contributions of telecommunications customers. To this end, the Consumer Groups recommend to the Panel that:

- i) Government policy should focus not only on physical access to broadband and ICTs, but also on affordability, special needs access, awareness and training, and effective use by local communities. The status of all of these aspects of access should be measured and tracked on an ongoing basis.
- ii) Expanding connectivity to geographic, special needs, and low-income communities requires government or regulatory intervention, despite technological innovations that are lowering the cost of service provision.
- iii) Subsidy programs should be continually reassessed so as to ensure that they are providing service where truly needed and that they are cost-effective.
- iv) Government/regulatory intervention should focus on those communities and sectors most in need, and likely to benefit most from such access and empowerment. More resources should be devoted to supporting local community initiatives designed to extend broadband access to low income, unemployed, disabled, elderly, and other disadvantaged communities, and to assist those communities in making effective use of such access.
- v) Government/regulator should also intervene so as to ensure third-party access to broadband facilities on fair terms.
- vi) The federal government should commit to stable, long term funding to community networking and public access programs and organizations, including the Community Access Program.

- vii) Broadband deployment to unserved communities should be facilitated, where necessary, through tax-based subsidies rather than service/subscriber-based subsidies.
- viii) Tax-based government funding programs for broadband deployment should be coordinated with the CRTC's contribution-based funding for the extension and upgrading of basic service to high cost areas, so that Canadians are not paying twice for essentially the same end-result.
- ix) Facilities providers under either subsidy scheme (CRTC-administered or federal government-administered) should be selected via a technology-neutral competitive process based on eligibility criteria drawn up by, or in close consultation with, the local community.
- x) The National Broadband Task Force's two recommended deployment models should be used as the basis for a new approach.

8. Advanced Information and Communications Technologies (ICTs) hold much promise as the agent for growth and equality of opportunity in Canada. The Panel should use its report to promote several key principles to ensure that the growth of ICTs proceeds in an orderly fashion and that this development benefits all Canadians:

- i) The federal government should renew and expand its support for local community initiatives to make effective use of ICTs.
- ii) The CRTC should be prepared to regulate Internet service prices and other aspects of service if and when it is clear that competition is insufficient to protect the interests of users.
- iii) The federal government should continue to work with stakeholders to develop industry guidelines, legislation and other measures designed to limit the risks that face consumers when they go online.
- iv) Consumer concerns about online dangers should be addressed by reducing the risks that face consumers when they go online, not by promoting the adoption of ICTs nor by simply assuring consumers that they are safe online.
- v) The federal government should continue its efforts to obtain international agreements and cooperative arrangements aimed at problems of online fraud, spam, spyware, privacy abuses, cross-border redress mechanisms, and other risks that consumers face when going online.

9. Another key area of policy development is protecting the privacy of Canadians. To date Canadians' privacy has been fairly well protected while using traditional telecommunications. This confidence is under stress. To reassure Canadians, who manifestly want more privacy protection in regard to telecom, the Panel should make privacy policy development a priority by considering the following suggestions:

- i) The federal Personal Information Protection and Electronic Documents Act should undergo a thorough and meaningful review, as scheduled, in 2006.
  - ii) The federal Privacy Act should undergo a thorough and meaningful public review in 2006.
  - iii) The federal government should propose and champion a Privacy Rights Charter similar to that proposed by Senator Finestone in 2000.
  - iv) Federal legislative proposals to expand "lawful access" should be subjected to a full and fair public debate before being adopted.
  - v) The federal government should take additional steps to ensure that electronic authentication mechanisms developed and/or used in Canada are designed and implemented so as to minimize if not avoid the collection, use, retention and disclosure of personal information.
10. Finally, as Canadians turn in increasingly large numbers to broadband network services of all kinds, issues of security, fraud, confidence and unfairness become paramount to consumers. The Panel should consider moving the dialogue forward on protecting Canadians from fraud and unfairness while accessing telecommunications. To this end, the Consumer Groups suggest a number of initiatives, including that:
- i) The federal government should continue its efforts to develop effective legislative and regulatory responses to online threats, both federally and across provinces and territories, where self-regulatory approaches have proven insufficient or where market forces are clearly insufficient to address the problem. In particular:
    - a. provinces and territories should be encouraged to adopt consumer protection legislation that proscribes unfair business practices such as mandatory arbitration clauses, and overbroad liability limitation clauses, and that requires effective forms of notice in the online context.
    - b. enforcement of existing laws as they apply to new online threats such as spyware should be improved.
    - c. where existing laws are clearly inadequate to address new online threats such as spam and spyware, legislation targeted at those threats should be developed.
    - d. legislative and regulatory approaches to these problems should not rely upon individual consumers or other private actors to enforce the law; instead, governments should take responsibility for a significant share of the enforcement burden themselves.
  - ii) The federal government should continue to facilitate and encourage multi-stakeholder initiatives to develop codes and guidelines for business best practices in the online context, and should ensure that consumer/public interests are well represented on such bodies. In particular,

- a. That the Canadian Code of Practice for Debit Card Services should be used as the basis for a new or expanded Code of Practice focusing on online banking.
  - b. The federal government should continue to work with other governments to address the international aspects of online fraud, security, network dependability and consumer protection, though the OECD and other international bodies.
11. In closing, the Consumer Groups note that the CRTC has essentially disabled its own ability to evaluate the reasonableness of regulated prices of monopoly telecommunications services to customers by removing reporting of utility service pricing. This is subversive of the Commission's responsibility to set just and reasonable rates.
12. In setting priorities for telecom policy review, the Consumer Groups submit that consumer confidence is the key to successful progress and only through prioritizing consumer protection measures can any other innovations succeed.