

January 31, 2014

**Mr. John Traversy**  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON, K1A 0N2

**Re: Comments to Telecom Notice of Consultation CRTC 2013-551 Review of wholesale services and associated policies (File No. 8663-C12-201313601)**

Dear Mr. Traversy:

- 1 The BC Broadband Association (“BCBA”) is a group of telecommunications service providers, equipment suppliers and infrastructure constructors in Western Canada. Our group was encouraged by the initiative of the Commission to review the regulatory status of wholesale services and their associated policies and make the following comments.
- 2 **Methodology for Assessment of Market Competitiveness**  
The approach of defining relevant products and geographic markets for a given service has produced a patchwork regulatory and competitive landscape across Canada that varies from Incumbent to Incumbent and region to region. This has produced different landscapes for competitors depending on the region in which they operate. So while the Commission strives to have a national approach, the fact that incumbents have traditional territories has produced a regional mix of tariffs. It has also increased the burden of decision making on CRTC as it tries to deal with the realities of the different incumbent networks and costing.
- 3 The competitive landscape differs greatly from coast to coast and indeed from rural to urban markets. For example the wholesale ADSL landscape in Ontario remains much more competitive with greater market share held by the non-incumbents than in BC and Alberta. In the past proceedings regarding ADSL, the scope has been National, but the rulings specifically targeted incumbents who primarily service different regions.
- 4 Retail product offerings are largely the same across Canada. Likewise the needs of the competitors for a reasonable business model are the same across Canada. In determining regulatory environments for fibre to the home (FTTH) regulation the Commission should consider applying consistent regulations to all regions and players.
- 5 **Current Market Conditions**  
Our members primarily purchase wholesale ADSL services for urban markets and provide wireless connectivity in rural markets. Each market has different challenges. We will focus first on the urban market.
- 6 Much debate has taken place over the past few years on the state of wholesale ADSL services, not only as regards pricing but the matching of the speeds incumbents provide to their retail customers. It will not serve the Commission to reopen this debate again, however looking at the decrease in the number of active independent ISPs in the country speaks loudly to the effectiveness of efforts to increase competition in this space.
- 7 Plainly speaking there are virtually no new entrants in the market, and due to mergers and acquisitions along with financial distress and insolvency, that number will continue to diminish. The stronger, more adaptive ISPs will be the ones that survive and continue to provide choice to consumers and business. They will need the Commission to ensure a level playing field if they will have any chance of competing against the market forces of today.

- 8 Currently the wholesale ADSL and TPIA services marketplace represents a dwindling market share. In BC where we operate, it appears that independent ISPs make up less than 3% of the customer base. TELUS and Shaw dominate the residential and business markets here and continually sell at break even pricing to gain market share. High value electronics like iPads and LCD TV's are given out for new customers by TELUS and ultra low entry point pricing is given by Shaw. This is not new though, the biggest change has been the ability to bundle.
- 9 Shaw and TELUS both offer triple play service (Internet, Phone, and TV) which is difficult for an independent ISP to match. There have been some successes with VoIP phone products, although on the wholesale ADSL side these are difficult to market with dry loop costs required for customers without an active TELUS phone line. It is worth noting that TELUS' own customers need not pay a dry loop cost if they elect to have internet without a phone line.
- 10 The Video portion of the triple play bundle is what ISPs currently lack. There are limited wholesale options in this space. Some entrepreneurial operators have created IPTV boxes for this market space, but they lack on board PVRs or the ability to run multiple streams. Bandwidth and internet data costs become prohibitively expensive for independent ISPs as well. Any pricing model that charges ISPs excessive costs for data transport on Incumbent's internal networks makes delivering HD streaming video a difficult financial proposition.
- 11 One of the largest issues faces this competition today is the access to FTTH products. We face a future where bandwidth and speeds will increase markedly as fibre becomes the new copper. Speeds of 1Gbps to the home will not be far down the road. ISPs orphaned with 25-50Mbps products at the top end will have great difficulty in growing or surviving in that climate. Without access to a viable video offering ISPs can expect to see further erosion of their market share.
- 12 In the rural landscape there are much different challenges. This is an area that currently is unregulated by the CRTC. ISPs are free to offer the best effort over fixed wireless technologies. This technology continues to improve although revenue streams from small customer bases make it difficult to re-invest rapidly in these new technologies. Access to spectrum for many providers is another issue.
- 13 The Commission set out a principle of 5Mbps as the definition of broadband with a goal of all providers reaching that by 2015. The reality in rural Canada is that many customers on older wifi equipment in unlicensed spectrum are getting 1Mbps or less. The Commission has an opportunity to consider broadband internet an essential service. Most Canadians feel at this point that it is an essential service and indeed education, health care and other government services rely increasingly on it. If subsidies along the lines of telephone service to rural areas were to be implemented, wireless providers in the rural space would have the funding to increase speeds, dependability and traffic included with packages. Currently all subsidies for High Cost serving areas is available only to the ILECs. If broadband were designated an essential service but the subsidy funding was only available to ILECs then the regional WISP industry would be decimated.
- 14 Regarding access to wireless spectrum, this is more of an Industry Canada area, but it is worth noting as it does present a barrier for wireless ISPs in providing higher speeds. By creating auctions with large geographic regions like the 700Mhz (Tier 2) and 2500Mhz auctions (Tier 3), smaller wireless ISPs are left out of the bidding process and have to continue to rely on open, interference prone bands.
- 15 **Existing Framework**  
The existing framework of mandating wholesale service delivery to competitors has been a profitable undertaking for the incumbents. They are able to effectively task ISPs with the role of gaining more customers onto the incumbent network than its own sales and marketing can achieve. It has allowed those consumers who are anti-incumbent to ultimately add dollars to the incumbent coffers each month through choosing a wholesale provider.

It has produced an ever declining level of competition as Incumbents are able to ensure their retail divisions have a broader product offering, larger marketing budgets and better pricing than non-incumbent competitors

- 16 Incumbent carriers have invested significantly in their networks as demand for capacity and customer growth through their retail and wholesale channels has continued. Incumbents had massive copper networks at the time of deregulation and have been able to remain extremely profitable through the past 20 years. This has allowed further growth of physical plant and infrastructure.
- 17 Independent ISPs on the other hand have largely been unable to build a significant amount of their own infrastructure. The exception to this case are wireless ISPs who are responsible for the last mile connectivity and have constructed impressive networks of towers, radios and in some cases fibre optics connecting sites. Wholesale ADSL ISPs have had fewer funds to work with and investment has been mostly in their core routing and switching. Some have branched out into the data centre business which does require owned infrastructure. The data centre business is one exception that independent companies have been able to compete effectively.
- 18 Ultimately investment in infrastructure comes from profitability and ability to attract capital. With declining revenues for independent ISPs, outside capital for investment has been scarce in this sector. We have seen examples in the past of investment in larger independent ISPs which has not produced return for investors and created a lack of enthusiasm in the industry. It is our opinion that in order to bring investment dollars to the table there would need to be sufficient profitability for ISPs. If the business model was able to improve through new services and pricing, we might see investment return and ISPs infrastructure investments grow.
- 19 **Service Categories and Classification of Mandated Wholesale Services**  
The existing services categories for mandated wholesale services are largely acceptable with the noted exception of broadband internet being classified as an essential service. It is our understanding this would lead to access to funding that would help with ongoing subsidies needed to provide urban grade internet to rural Canadians. This is sorely needed in many markets to increase speed, coverage and reliability. Rural Canadians are isolated from their urban counterparts and the internet is one of the strongest ways of integrating them. Education for rural youth is an extremely important issue as well. Without access to quality broadband products these children fall significantly behind their urban counterparts. We would also like to stress that if subsidy funding was available for improved internet access to rural Canadians it should be available to incumbents and non-incumbents.
- 20 **New Wholesale HSA Service**  
It is our opinion that new HSA services should be mandated to be provided to independent ISPs in the form of a wholesale service. As previously mentioned, without access to a fibre product with speeds above 100Mbps, Independent ISPs will continue to lose market share. It has also been noted on several occasions that the infrastructure for the last mile is often still copper inside the home and indeed the entire market share position of the incumbent providers can be traced to the efforts of Federal and Provincial governmental assistance through sustained monopoly markets until the 1990s.
- 21 FTTH will replace ADSL ultimately and it is likely to be deployed rapidly once consumer demand is encouraged through marketing campaigns. The currently methodology of placing fibre SAC boxes in a neighbourhood and using existing copper for the final connection to the home has been widely deployed in urban Canada. Some independent ISPs have been able to build their own fibre networks in small communities with major municipal government support but on a large scale the independent ISPs will need to be at the table to produce any competition outside of duopoly in the larger urban centres.

- 22 In many ways this is the last great hope for renewed competition in the sector. Throughout Canada the incumbent providers are preparing to launch large scale GPON networks. These investments are critical if Canadian telecom companies are to keep pace with fibre deployments to the home throughout the world. Any small erosion of the net income available from these initiatives that may be caused by attempting to see 5% of the market being supplied by non incumbent competitors is an insignificant factor in the capital plans and ROI calculations of the incumbents. It must be noted that the wholesale marketplace is a source of revenue for the incumbents and that market share achieved by these players is not at the expense of the incumbent's income model.
- 23 **Additional New Wholesale Services**  
We have identified two product lines that we consider suitable for mandating wholesale access to. Those products are IP based Television/Video offerings and SIP Trunking/VoIP phone line access. As mentioned previously we are in the era where bundling by providers is considered the normal business practice. Consumers prefer to pay one provider for voice, video and internet. Now that the large ILEC and Cable companies all offer these 3 services bundled it is imperative that independent ISPs are able to do the same. There are numerous wholesale VoIP providers that ISPs can choose from, however being able to purchase these services from incumbents would provide access to greater telephone exchanges and enhance existing business relationships.
- 24 On the IPTV front it has been difficult for ISPs to match current offerings of multiple Personal Video Recorders (PVRs) that will do several HD streams into the same household. Any existing wholesale IPTV options are in their infancy and suffer from cost issues related to the high cost of internet transit inside incumbent networks. If incumbent providers could provide a wholesale service (either white label or branded resale) it would allow ISPs to keep customers and hopefully grow revenue.
- 25 **Forbearance for wholesale services**  
Until such time as there is a healthier environment and competition in the industry it would not be appropriate to forbear any services. The marketplace currently struggles with the products available and the pricing that has been laid out for these products.
- 26 Until the market can demonstrate strong success by the competitors the Commission should not remove mandated access to existing products. The test of forbearance is to show sufficient competition in a market to allow CRTC intervention to cease. We don't think the argument can be made that that is the case for any of the current products under review in most markets in the country.
- 27 **Negotiated agreements**  
It is our opinion that the best outcomes for any two business partners comes in the form of negotiated agreements. These off tariff agreements have started to develop recently and do have merit. ISPs and Incumbents should choose this as a first choice in creating long term business arrangements. This is normal in other supply chain relationships and tariff pricing should be something that acts as a fallback position when an off tariff agreement cannot be reached. Ideally, working together as partners should produce profits for both parties. This is a goal both sides should be willing to negotiate for. Unfortunately too often Incumbents see their ISP 'partners as competitors rather than revenue streams and are unwilling to negotiate in good faith. It would be difficult for the Commission to mandate growth in this area but they should do all that they can to foster more of these agreements.
- 28 **Withdrawal of Wholesale Services**  
It is our belief that the current wholesale service marketplace is too frail at this time to consider removing services from regulation. It may be that if a service can be shown to be not used or taken up by any service providers that it is no longer a valid option in the marketplace. In that situation it may be appropriate to remove that service

from regulation. Sometimes due to technology changes product lines lose market relevance and are not sold to the retail marketplace any longer in sufficient volumes. Any services reaching this low level of utilization can be grouped together to become part of a specific proceeding that determines the outcome of regulatory requirements for the product.

29 **Performance Measurements**

One approach our membership has discussed would be mandating that a certain portion of the market be held by independent ISPs buying services from incumbents. By placing financial penalties on incumbents who did not reach their target, the Commission could ensure choice would exist for consumers in all markets. Even if the percentage were to be set to a minimal number like 5% it would force incumbents to find ways to incent growth in this segment of their business. In general, statistics such as percentage market share, dollars of business transacted, capital spending and profitability of the non incumbents are all good indicators of a healthy marketplace. Currently these metrics show that the incumbents have used their market power over the last ten years to reduce completion by non incumbents to insignificant portions of the Canadian marketplace.

30 **Comprehensive Review of Wholesale Services**

As the landscape of our industry changes quickly year to year, we feel it would be appropriate to review every two or three years in a smaller proceeding that provides feedback to the Commission. This will ensure that changes can be made rapidly enough to correct activities that are effecting competition. Delaying these types of changes can have very negative effects. When ISPs go out of business due to non-competitive landscapes, they are typically not replaced by new entrants.

31 **Who Should be Subject to the Commission's Wholesale Services Framework**

The current cast of incumbent providers should remain subject to the Commission's wholesale services framework. These telecom giants are the ones who have the market forces to severally impact or enhance competition in this country and they are the ones that need Commission supervision to ensure a healthy ecosystem. Specifically any company who was able to gain significant market share prior to deregulation due to support of a monopoly position by Provincial and Federal regulation. This list includes all of Canada's major telecom and cable incumbents.

32 Thank you for your consideration on this very important issue for the industry.

Sincerely,



**Rey Sonico**

Secretary/Treasurer - BCBA

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