Comments

by

Vaxination Informatique

regarding

Broadcasting and Telecommunications
Legislative Review

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Introduction

1. Jean-François Mezei, dba Vaxination Informatique has participated in CRTC processes between 2008 and end of 2016, and was the author of the 2011 Petition to Governor in Council seeking the overturn of the CRTC's UBB decisions.

2. Vaxination presents these comments as part of the review of the Broadcasting, Telecommunications and Radio communications acts. Vaxination is willing to appear for an oral hearing to further expand on this submission if necessary.

Executive Summary

3. The world is going through a digital revolution. Protecting legacy industries in such a revolution removes the catalyst for them to change, and their continued presence, especially in a subsidized mode, will hinder the economics for new industries to emerge, allowing foreign entities to dominate the new digital economy.

4. In a digital age, telecommunications have become an essential cog for all aspects of the Canadian economy, not just media. Forcing telecom to subsidize media will render all telecom less competitive and hurt Canada's economy. It would entice Canadians to develop their ideas in other countries with more affordable telecommunications. If the media industry needs financial help, it must come from general tax revenues instead of picking one industry to bear the burden.

5. It is possible to incorporate strong Net Neutrality principles in the Telecommunications Act, but this must be done carefully as not all telecommunications are "retail Internet". There must be room for exceptions which must be granted ex-ante by the CRTC prior to entering into force.

6. While Canadians had confidence telephone companies wouldn't listen to their telephone conversations because it wasn't feasible to do, technological advances now make it possible for them to peek at data they carry and monetize usage patterns by selling this to advertising companies (or insert their own advertising). As such, **Privacy** protections are now required in the Telecommunications Act to ensure Canadians maintain a high level of trust that a carrier will limit itself to delivering data without looking at it.

Digital revolution

"If you don't cannibalize yourself, someone else will". Steve Jobs[1]

7. The world is going through a digital revolution. The industrial revolution which preceded it created new industries, killed older ones, and transformed others. Today, there are still companies that make horse drawn carriages, but those are novelties used by the tourism industry, not an industrial mainstay.

8. The pace of the digital revolution is akin to a gold rush. Only the first few to stake claims succeed, and expand their leadership worldwide. A leadership void in Canada means foreigners fill this void. Bell Canada wishing to protect its legacy TV business by delaying and then limiting its CraveTV offering ensured Netflix became the dominant player in Canada.

9. The problem with legacy industries is that few are willing to cannibalize their existing profitable business model to venture into uncharted territory. Meanwhile, new companies have no need to protect an old business model and are hungry to steal customers from the legacy companies. In a matter of a few years, Apple's iTunes went from nowhere to the world's largest music store, with many brick-mortar chains going away. Government didn't step in to save Sam the Record Man or HMV. Amazon replaced many large book store chains, record stores, and now has widened the scope to just about every possible retail sales from food to underwear. Sears, Eaton's, Zellers are gone. Government did not step in to save them.

10. While the digital revolution is far from over, the report cards so far shows that very few legacy companies have succeeded in a move to digital. Should a country base its long term future on protecting legacy industries whose odds of survival are low?

11. Protecting legacy domestic industries has a cost: it prevents the emergence of domestic digital innovators.

12. When a business is addicted to its old business model, which is least risky? Forcing it to quit legacy cold turkey and move to digital to survive? Or granting it more time on its legacy model to think about the possibility of forming a committee to consider a potential long term move to digital? (during which, foreign competitors come in and steal the market anyway)

1 From the book "Steve Jobs" by Walter Isaascon., Simon & Schuster.

13. The digital revolution is moving telecommunications to an essential part of all of our economy just as electricity or telephones did in the past. Were electric utilities tasked to contribute to broadcasting funds because the broadcasting industry uses electricity for lighting? Would highways be tasked to contribute to subsidizing milk because milk trucks travel on highways?

14. The key to success in a digital economy is to have affordable telecommunication industry which is competitive and thus fosters emergence of new industries here instead of in other countries. Canada has chosen to tackle the cost of telecommunications via competition.

15. As such, it is not fair to force competitors to contribute to funds that help incumbent's legacy media divisions. If an incumbent decides to invest in a legacy business that raises its costs, then it need to bear these costs alone and let competitors steal customers with lower rates. That is how competition works. Forcing competitors to share the burden defeats the goal of allowing market forces to drive prices down towards costs.

Telecom is more than the Internet

16. It is also important to consider unintended consequences of any policy that assumes "Internet" when considering telecommunications policy. There are many services which provide no connection to the Internet. Dark fibre, wavelengths on an already lighted fibre, microwave links and others which provide raw bit transfer. There are Ethernet and MPLS based services which provide point to point or multipoint services in closed private networks and work ISO layer 2. There are IP based services which provide no connection to the Internet, and there are private network services which, while using the Internet as backbone, provide secure point to point connections linking offices/plants/sales outlets without providing a connection to the Internet. The list goes on and on.

17. The Internet itself uses many such underlying services to establish connections between separate networks. Taxing the Telecommunications to subsidize media may result in many services being taxed multiple times because of the layered approach to connectivity.

18. A bank may buy dark fibre from supplier A between its data centre and a "carrier hotel" where it connects to suppliers B and C from whom it buys transit to the Internet. The same bank also has a large private secure network linking all its branches and ATMs. The Telecommunication Act covers all those (and many more) as well as the retail ISP business on top of it. Taxing telecommunications simply means that Canadian businesses will get dedicated connections to the USA and buy transit there, exempt from Canadian taxes.

19. The Telecommunications Act must remain technology and service agnostic and its objectives be equally applied to all types of telecom, including types that have not been developed yet. The existing 1992 Act has remained relevant because of these core principles.

Policy Direction

20. The 2006 Policy Direction's[2] focus was on increasing competition. However, because it prescribed deregulation as the medicine for achieving the goal, the net result has been the deregulation of incumbents and thus increase in their market power.

21. As a result of the directive, the CRTC spent years on a process (2009-261) whose goal was to deregulate various wholesale services that made competition possible. Interestingly, despite these efforts mandated by the Policy Direction, its 2010-632 decision concluded that it couldn't forbear wholesale high speed access due to the risk of formation of duopoly. Nevertheless it wasn't until 2012 that ISPs finally got access to matching speeds. So Bell Canada got a 5-6 years head start with higher speeds that were unavailable to competitors.

22. Similarly, the CRTC's repeated approvals of the UBB regime (Bell Tariff 7181) proposed by Bell was done with a focus of deregulating. This decision was reversed because of popular uprising by OpenMedia and a Petition to Governor in Council by Vaxination which caused the Minister to suggest the CRTC reconsider its decisions. The UBB decisions approved by the CRTC would have allowed Bell to dictate that its competitors match Bell's own retail offerings, thus preventing meaningful competition. All in the name of deregulation. This helped stall availability of matching speeds between 2009 and 2012.

23. More recently, CNOC requested a disaggregated approach to wholesale high speed access (benefiting 3 of its members) and the CRTC justified its 2015-325 decision in part with 1(c)(ii) of the Policy direction, expecting this new policy would spur deployment of trunk lines to every remote region of the country. The end result is that consumers continue to be deprived of competitive access to current technology (FTTH). In essence, because of the Policy Direction, the CRTC has granted Bell Canada (as well as Telus) an indefinite monopoly on modern FTTH access, with limited potential for competition in densely populated areas. (roughly 70 Central Offices in Bell Territory which has over 890). And A process begun in 2013 has already delayed competitive access to FTTH by over 5 years, hurting consumers and allowing Bell to start raising rates because competitors don't have access to the more reliable service (which also has higher speeds).

2 Policy Direction: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-355/page-1.html

24. While sections (a) and (b) of the Policy Direction offer laudable goals, section (c) clouds this by trying to limit competition to only facilities-based incumbents at a time where it was accepted that a competitive ISP market requires wholesale access to the last mile and other services and there calls to do the same for MVNOs in the mobile wireless market.

25. The original Policy Direction was accompanied with specific areas where the CRTC was to consider deregulation. Such micro management should not be allowed.

Access to passive infrastructure

26. In its submission to the BTLR (made public by the CRTC), the CRTC asks to gain jurisdiction over support structures, public and privately owned buildings.

27. After the 1998 Ice Storm, the province of Ontario set new standards for utility poles which grandfathered existing setups, but any changes/additions to what is attached to a pole requires the pole to meet the new standards or be replaced (at about $30,000 per pole). As a result, deployment of fibre to the home was severely hindered in Ontario because in many cases, it requires the replacement of poles on a large scale, with the telecommunication operator paying the utility for the cost of the new pole but not becoming the owner of the new pole (and thus still paying rent despite having paid for it.)

28. This problem is an Ontario problem, and Bell and smaller municipal deployments in Québec for instance had not encountered this problem which greatly facilitated deployment of FTTH in Québec without much fanfare. Ontario has also semi privatized its electric infrastructure so the telecom industry needs to deal with different parties depending on where the work is performed.

29. Before deciding to burden all of the country with the CRTC lengthy processes where decisions can take a year, one should consider if the request for powers would benefit all of the country or only Ontario.

30. The CRTC itself deregulated in-building wiring. And the CRTC retains the power to prevent any telecommunication carrier from signing exclusive deals with a building (thus preventing building owners from granting access to multiple carriers) If the core problem is that of exclusive arrangements for which the CRTC already has powers to stop, then is there really a need to impose CRTC regulations/powers on every building in Canada?

31. Since each province and in cases municipality have standards on minimum height of a cable above a street (to let local traffic pass), and distance between power and telecom cables etc, imposing national standards would become a huge burden on cities, especially when we have a captured regulator acting in the interest of incumbents (in part due to Policy Direction).

32. Prior to being granted such powers, the CRTC should at first convene a national group of stakeholders (provincial and municipal governments as well as provincial utilities) to see if it is even possible to have a national regulator of such infrastructure.

Network Neutrality

33. As an active participant in all the network neutrality proceedings at the CRTC since 2008, Vaxination has seen how the CRTC has always left gaping holes in its regulations. While the CRTC brags about being one of the first, its ITMP decision of 2009 allowed Bell Canada to continue to throttle based on content type. And its 2016 decision on differential pricing has not prevented Telus from zero rating its own OTT offering (Pik TV) which competes against Netflix.

34. Having Network Neutrality enshrined in the Telecommunications Act would allow the principles to stand clearly with clear principles that don't grant the Commission much leeway to give incumbents exemptions that are not warranted.

35. However, there are dangers to such incorporation in the Telecommunications Act which encompasses more than just access to the Internet. So careful wording is required.

36. A "pure" formulation which Vaxination would propose:

> ***Where a telecommunications service allows the customer to connect to or accept connections from destinations not specified in the service, except where the Commission approves otherwise, neither the cost nor the carriage of a telecommunication must be influenced by the origin, destination or nature of the content.***

37. The first portion basically limits the scope to services that provide access to the Internet or any similar network that may be developed in the future. (aka: the service connects you to a network, not to specific sites). It does not apply to managed Internet services where you get a VPN to a specified remote office or between 2 data centres.

38. The "except where the Commission approves otherwise" is needed for ex-ante approvals to zero rate access to account management pages, or perhaps zero rate access to video conference services by deaf/hear of heading users.

39. Furthermore, there needs to be an exception to allow discrimination for purely network management/defence purposes such as handling a DDoS attack, blocking spam or honouring a QoS "priority" tag set be the customer so packets sent with the flag by that user will have priority over packets without the flag sent by same user. This can either be explicit in the Act, or as a Policy/regulation set out by the Commission.

40. Relying on ex-post process is flawed because by the time the CRTC comes to a decision, the incumbent has already benefited from years of its marketing initiative so incumbents know they can cheat for 2-3 years before their campaign needs to end.

Privacy

41. The current act mentions in its objectives 7(i) :

> *to contribute to the protection of the privacy of persons*

42. There is also Section 36 on the control of content, which has such a broad meaning that the CRTC has rarely relied on it.

43. In the past, Canadians had confidence that the telephone companies would not listen in to telephone conversations and use that information to their own advantage (selling information). Safe Harbour provisions existed because the telephone companies did not listen to conversations and unaware of what was being said.

44. More importantly, at the time the Act was written, there was no technology that would allow a telephone company to perform mass listening and interpretation of what was being said so it could interrupt a conversation to insert an audio advertisement that was relevant to what was being said. As such, 7(i) was deemed sufficient.

45. Today, not only do telecommunication carriers have the technological ability to inspect data flows to be aware of their content, but they also have business motives since they can profit from using and/or selling their customer's data or insert advertisements. This breaks the trusts Canadians have had in their telecommunications being private with the carrier acting as pure carriers of raw data without a concern about nature of content.

46. Trust that Canadian telecommunication carrier's will blindly and securely deliver data is paramount to a digital economy that relies so intrinsically on data communications. This is no different from the postal system where Canadians trust that Canada Post does not look inside letters and is limited to the address information required to deliver the letter. In Internet terms, only the destination IP address is needed to deliver a packet.

47. Suggested Telecommunications Act text:

> *Except where explicitly requested by the customer, a carrier has no rights to the nature or content of a communication to or from an end point that it does not own. As such, except for network management purposes, it must not collect, process or transfer to a 3rd party any such information.*

48. The "end point it does not own" reflects that some services such as email and DNS or others may be operated by the carrier and those services inherently need rights to process the data sent from or to the customer.

49. There may also be cases where a carrier is contracted to process transactions and handover to a 3rd party certain transactions. (consider for instance credit card processing where a carrier is hired by banks to sort transactions so they can be delivered to the right bank or to Visa, Mastercard or American Express based on the credit card number inside the transaction. Such remain possible when the customers (the banks) provide explicit request as part of contract.

Data Modification

50. Although Section 36 provides some basis to prevent "control" of content, incumbents have enacted systems that modify the contents of a private conversation. Telus' mobile service[3] for instance not only slows down traffic it deems to be "video", but also intercepts JPEG and GIF images and transmits to the user a version it recreates with lower resolution. Some ISPs have dabbled into inserting their own advertising into a response from a service, adding their own data in a stream deemed private between the remote service and the user. Some will use this technique to inject a "frame" into a server's response to indicate the user is approaching its download limit. (instead of blocking the request altogether and providing its warning).

51. While Vaxination does not have a suggested text at this point, there needs to be, perhaps as a subsection of 36, text to guarantee that a telecommunication will not modify the content of a communications except with explicit consent from customer.

3 Telus Net Neutrality FAQ: https://www.telus.com/en/bc/get-help/service-terms/wireless-network-experience-optimization/support.do

Site blocking

52. Despite the CRTC having rules against site blocking, there are still calls for such an authoritarian policy to be implemented.

53. While site blocking is possible on a small scale, generally for time limited periods (blocking IPs that are attacking a network or server for instance), it does not scale into a nationwide permanent system and becomes unwieldy to administer by hundreds of ISPs large and small. This is especially the case when there is a cat and mouse game with the allegedly offending party constantly changes host names or provides means to connect by IP address instead of host name.

54. More importantly, the "Safe Harbour" protections that were confirmed by a number of Federal Court of Appeal and Supreme Court in recent years fall apart for all ISPs should such a policy be enacted as ISPs then become responsible for content.

55. The bodies that develop Internet standards have created the DNSsec version to prevent exactly what Bell and others are calling for: ISPs falsifying DNS responses. When DNSsec lets users know that their ISP is providing falsified responses, users will stop trusting their ISP and use foreign DNS servers they can trust. In an area where trust in the telecommunications system is primordial to the development of the economy, is this the direction our government wishes to take ?

56. Site blocking would cause costly management headaches in the ISP industry and yet, end users would so simply get around these limitations. In other words, it would not solve the problem.

57. If an entity provides stolen content to the public, the correct course of action is to go after that entity through legal means and block their access to the Internet altogether. One goes after the one hole in a sinking boat to plug it instead of asking thousands of passengers to use buckets to bail water out to keep up with rush of incoming water.

58. The best way to stop piracy in the media business is for the media business to sell its content in a way consumers want and at a price that is not designed to dissuade digital use.

59. If this precedent is set, where will the blocking end? First, offending media sites, then offending lottery sites. What's next ?

60. When Audio cassettes came it, they spelled the doom of the music industry. Imagine this, people recording music from radio and giving it to their friends. Yet, this allowed the development of the Sony Walkman which allow people to listen to music everywhere and this increased consumption of music.

61. When VHS/Betamax tapes became available, the same cries of piracy and annihilation of the TV and movie industries were made. Yet, this spawned a totally new legitimate industry for movie rentals and opened a new window for distribution of movies that would otherwise no longer generate any revenues.

62. Similarly, when NAPSTER was being attacked by the music industry, it was because the later had steadfastly refused to make its music available for download. It was Apple who managed to convince them to give it a try, and within 5 to 6 years, iTunes had become the world's largest music store, proving there was a huge pent up demand that the music industry had refused to serve.

63. And today, music is readily available on many digital platforms, including many record labels posting their music on Youtube and the need to pirate music has greatly diminished.

64. Making Canadian content available easily on as many platforms as possible (Netflix, Youtube, Crave, Illico) might also be a means to reduce the need to pirate copies. When content is developed without ties to an incumbent, this becomes much easier to make content available.

65. In fact, one of the failures so far is the cross selling of Canadian programs between french and english markets. Even the CBC's new subscription service is separate from Radio Canada's «Tout TV» and requires 2 separate subscriptions instead of giving subscribers access to content provided by both CBC and Radio Canada (as well as CBC North in first nations languages).

66. Such goals cannot be accomplished by the Broadcasting Act which is focused on linear television and radio. But another Act could have as objectives to make Canadian programming in any language available on as many platforms as possible (and this includes first nations programming).

67. The fact that CBS has opened its CBS All Access service in Canada shows how Canadian incumbents have failed to move to Digital. For years, Bell's CraveTV refused to carry current content, relegating it to "library" and catch-up windows. With HBO Now expanding worldwide, Bell had no choice but to relent and allow Game of Thrones on Crave or risk seeing HBO Now do like CBS and open up shop in Canada. This is not the sign of leadership. This isn't even an "also ran" in digital, it is a sign of "we don't want to run".

68. Canada must not set its policies based on the desires of old legacy media business models of companies that refuse or work to delay the move to digital.

69. In the end, if Bell/Rogers/Corus/Vidéotron are unwilling to cannibalize their linear TV revenue streams, someone else will, and the incumbents will only have themselves to blame. They should not come begging for protection from governments.

And with this lead in, I now move to the Broadcasting Act...

70. When radio was introduced, people feared newspapers and books would die. When television was introduced, people feared radio, books and newspapers would die. While their roles changed, they survived.

71. Legacy linear broadcast television may become a niche in areas with good Internet access, but will remain an essential service in many areas (especially those without affordable high speed Internet) for many years.

72. As such, the Broadcasting Act aimed at linear programming remains relevant for the foreseeable future as linear television channels will continue to require regulation on minimum number of hours of Canadian programming, and use of scare spectrum, and BDUs will still require a list of "must carry" linear TV channels.

73. The regulations needed to reach the objectives of the Broadcasting Act are meant for linear television and radio and are not compatible with an on-demand environment. As such, the Broadcasting Act should limit itself to linear broadcasting of radio and television and not try to regulate on-demand media services.

74. As such, the Broadcasting Act should NOT be modified to incorporate totally new digital distribution and business models for entertainment/news/culture, many of which cannot be codified because they haven't been invented yet.

75. At the legislative level, how does one differentiate a linear news broadcasting station's web site or "app" from that of a newspaper when both now provide text, videos and images that are on-demand? Should newspapers be regulated under the Broadcasting Act the second they start to publish videos on their web site? What about an individual doing news podcasts?

76. It is likely a better approach to allow the digital revolution to evolve a bit more to give greater visibility of which business models will emerge, succeed or die. It could be that there is no need to deploy heavy artillery to regulate domestic and foreign digital entities because Canadian content can succeed on those platforms.

Section 4: Telecom vs Broadcasting

Existing Section 4(4) For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the Telecommunications Act, when acting solely in that capacity.

77. This section should to be updated to reflect the fact that broadcasting content can be delivered over a telecommunication service, and in such circumstances, its carriage is governed by the Telecommunications Act. While both the CRTC and Federal Court of Appeal confirmed this in the Mobile TV case, these challenges were due to the nebulosity of this clause (and its reciprocal in the Telecommunications Act)

78. Proposed Section 4(4):

> ***For greater certainty, this Act does not apply to the carriage of broadcasting content over a telecommunications service that is not dedicated to the carriage of licensed broadcast undertakings.***

79. The "not dedicated portion" provides differentiation between a the traditional BDU and either new IPTV-BDU over Internet or OTT provider. The "dedicated" could be interpreted in terms of telecom capacity, (separate data channels) or a service which is purchased separately and provisioned with its own IP address through which only the BDUs content can be obtained, with Internet access service purchased separately. A BDU's content delivered via a connection provided by an Internet access subscription (same IP used to obtain banking, weather or Netflix) would then be carried over Telecom (and be bound by Net Neutrality rules during transmission).

80. This provides for a transition from the traditional TV-only cable services that are regulated under Broadcasting Act and OTT services that are delivered over the Internet. Eventually, all BDU services may be delivered over a telecommunications link from a regulatory point of view.

81. When a BDU service is delivered over a telecommunications service, Net Neutrality rules will apply to the carriage of the content, but not to the content itself. As such the BDU is still "broadcasting" in terms of selecting which channels are available and at what quality.

82. Note: Section 4 of the Telecommunications Act needs a reciprocal update:

> ***4 This Act does not apply in respect to carriage of broadcasting content being delivered over a link dedicated to delivery of licensed broadcasting content.***

Funding of content production

83. Reliance on BDU's contribution to media funds needs to end. This was recognized in a recent federal government budget with an increased funding from general tax revenues to compensate for drop in BDU contributions. It is also not fair to force BDUs to contribute while other content distribution platforms do not have to contribute. As well, smaller new BDUs do not have to contribute according to current CRTC rules. The landscape has changed sufficiently to warrant a complete rethink.

84. As a result, the funding to replace what BDUs have traditionally contributed should come from general tax revenues. Attempting to get funding from new media, most of which are based outside of Canada is akin to trying to heard cats.

85. Do you force Youtube to contribute based on revenues generated when a Canadian citizen watches a cat video made by a Tuvalu citizen? What about a small South African video distribution company who offers worldwide access to some African cultural movies/ documentaries ? Should it be forced to block access to Canadians if it is unwilling to go through all the tax paperwork so it can rent/sell its videos to a dozen Canadians per year?

86. As mentioned previously, proposals to levy funds from Telecom Industry should be rejected as, unlike the BDUs who exclusively carry broadcasting content, the telecom industry is a lynchpin of the whole Canadian economy and making telecommunications less competitive will shift businesses to countries where telecommunications are lower priced.

87. It is far more logical to shift responsibility to fund cultural content to a industry-neutral source such as federal government's general tax revenues. Setting a fixed percentage of general tax revenues that goes to the media funds, with a proportion of funds going to english, french and first nations content development would provide some assured funding and more importantly, unlike funding from legacy broadcasting incumbents, would not tie new content to legacy platforms who do not wish to see digital platforms succeed

9(1)h

88. As with contributions by BDUs to the media funds, the existing 9(1)h mechanism needs to be adapted to an environment where BDUs are no longer the sole source of distribution of entertainment/news.

89. As such, the federal government should also provide a fund from general tax revenues which are distributed according to CRTC decisions on whom gets 9(1)h funding. Some additional thinking is required on how the funds would be distributed as it could no longer be based on how many customers a BDU has.

90. The 9(1)h clause is still needed in the Broadcasting Act as the CRTC will still need to mandate "must carry" in conditions of license. However, the funding aspect would need to go to a separate distribution neutral Act (likely the same as the contribution to media funds)

91. When funding of a broadcast undertaking comes from all Canadians, then the content should be made available to all Canadians. As such, programming which benefits from such funding should be made available not only on legacy BDU services but on OTT services available to all Canadians with or without a BDU subscription. This is a very important change from current environment where content needs to be exclusive to cable to get revenues from cable.

92. As well, the CPAC channel's funding needs to be shifted from cable companies to the general tax revenues as well. It isn't fair that cable companies should bear the burden for this essential service. Programming of national interest such as APTN or TV5 would be funded via the proposed shift of funding for 9(1)h mechanism.

93. In its current inception the CRTC is meant to be an arms-length independent administrative tribunal. There are clauses in both Telecommunications and Broadcasting Acts to define the types of interactions allowed by the government. (Order in Council and Policy Direction). Yet experience shows that ex-parte communications that influence the outcome of CRTC decisions happen regularly.

94. The FCC in the United States is formally constituted along partisan lines with the number of commissioners from each party dictated by which party is in power. As such, the FCC makes political decisions.

95. The tone of the allegedly independent CRTC changes at the whim of the Minister or new government and without a new Policy Direction. For instance, after the UBB revolt of early 2011, the CRTC, with the same chair and Commissioners instantly became pro competition instead of being pro incumbent and this continued for a while after the next chair was brought in and then reverted subtly to being pro-incumbent. The current chair has made no attempt to be pro competition/consumer. Tribunals should not change "flavour" when some of their judges change and certainly not because a Minister wants them to change.

96. All lobbying at the CRTC should be banned, or if allowed, all needs to be made public either as transcriptions or videos posted on Youtube. The existing lobby registry does not help participants responds to ex-parte arguments raised by incumbents with the Commission before a process has even begun.

97. You can't participate meaningfully in a process when you do not know all the arguments raised by another party.

98. Similarly, any communications between the government and the CRTC should be explicitly banned outside of formal mechanisms. However, in addition to Policy Direction and Order in Council, the Minister should be allowed to participate in proceedings as an interested party according to the Commission's Rules and Procedure. This makes the government position clear and provides for a fair process, allowing interested parties to know and respond to those arguments. This is far more democratic than ex-parte communications that result in decisions that appear illogical with inconvenient arguments pushed aside without proper explanation.

99. The later becomes important if it is decided to shift the Radio communications Act to the CRTC. The government will need to retain a means to make policy suggestions such as spectrum set-asides for a specific block of frequencies, or decision to limit competition to 4 facilities-based players, which the CRTC, as an administrative tribunal would have difficulty making on its own.

100. In reviewing the Acts, care should be taken to re-enforce the CRTC's independence and ability to make evidence based decisions devoid of covert government or interested party influence. If the government wishes to interfere, it must issue its opinions publicly to keep CRTC processes open and fair.

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