

24 March 2009

Mr. Konrad W. von Finckenstein  
Chairman  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

**Subject: Enforcement of Telecom Decision CRTC 2008-117  
and Telecom Order CRTC 2009-111**

Dear Mr. von Finckenstein,

1. We are writing in regard to the flagrant breach by Bell Aliant, Bell Canada and Telus Communications of the Commission's directives in Telecom Decision 2008-117 and Telecom Order 2009-111.<sup>1</sup>

2. In these decisions the Commission ordered the ILECs to provide wholesale aggregated ADSL service at service speeds matching the Internet service speeds provided to their retail customers. This "wholesale speed parity" is necessary to maintain a level competitive playing field and is already required of the cable companies in respect of their wholesale Internet access service (i.e., the cable companies' Third Party Internet Access Services).<sup>2</sup>

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<sup>1</sup> Telus Communications applied for a stay of these decisions on 11 March 2009 and Bell Aliant and Bell Canada applied for a stay on 12 March 2009; however, at law both decisions continue in force and must be complied with unless and until a stay is granted. A party cannot grant itself a stay merely by applying for one.

<sup>2</sup> The ILECs' wholesale speed parity requirement was first ordered by the Commission in 2006 but then rescinded in Telecom Decision 2007-77 in light of the Government's December 2006 Policy Direction which required the Commission to conduct a full review of wholesale services. On 11 December 2008, in Decision 2008-117, the Commission reinstated the wholesale speed parity requirement and directed the ILECs to file tariffs within 45 days. Telus Communications requested and received a delay in that filing date for all ILECs. In response to an application filed by Cybersurf, in Order 2009-111 the Commission reiterated the wholesale parity requirement and directed the ILECs to file the required tariffs on 13 March 2009.

3. Bell Aliant, Bell Canada and Telus Communications have deliberately chosen to flout the Commission's directives by failing to file the required tariffs on 13 March 2009 as ordered. This brazen disregard for their obligations under the *Telecommunications Act* is illegal and undermines the rule of law and the Commission's authority as a regulatory body. Such behaviour cannot be tolerated if the Commission's decisions and orders are to have any meaning or status.

4. The behaviour of these three ILECs is especially troubling given the ongoing decline in Canada's international ranking in the area of telecommunications. As you are undoubtedly aware, the International Telecommunication Union very recently released its 2009 report - *The ICT Development Index* - and Canada has fallen to 19<sup>th</sup> place from 9<sup>th</sup> place in 2002 in respect of the use of information and communication technologies (ICTs).

5. As you also know, according to the OECD Canada has fallen from 2<sup>nd</sup> place in broadband penetration in 2002 to 10<sup>th</sup> place in 2008. Moreover, again according to the OECD, in 2007 Canada ranked 27<sup>th</sup> in terms of broadband rates among the 30 OECD countries.

6. These international comparisons by independent bodies are extremely important since they provide a clear and unambiguous signal that Canada is falling behind. Canada is shifting from being a leader to a loser in the area of ICTs - an area that is critical to Canadians' quality of life and to Canada's economic success in the present and especially the future.

7. Competition in the area of Internet services is a key driver in ensuring that Canada has a world class telecommunications system. And wholesale speed parity is necessary to ensure a level playing field in Internet services. The Commission has come to that conclusion three times - first in 2006, a second time in Decision 2008-117 and a third time in Order 2009-111. Each time, the Commission considered all relevant factors - including the ILECs' incentive to invest in their network - and concluded that wholesale speed parity is in the public interest.

8. Bell Aliant, Bell Canada and Telus Communications clearly do not care about the public interest, the needs of Canadians or Canada's international competitiveness. All they care about is preserving an unlevel competitive playing field and protecting themselves from full and fair competition.

9. The self-interested and illegal behaviour of these three companies must not be tolerated. The Commission must take strong action to preserve the integrity of the rule of law and of the Commission's regulatory decisions. In our view, the Commission should immediately register with the Federal Court both Telecom Decision 2008-117 and Telecom Order 2009-111 so that these directives can be enforced by contempt

proceedings in the Federal Court should Bell Aliant, Bell Canada and Telus Communications continue to flaunt the Commission's orders.

10. Thank you for the opportunity to express our concerns on this matter.

Yours truly,



Mel Cohen  
President  
Distributel  
Communications  
Limited



Edward Antecol  
Vice-President  
Regulatory and  
Carrier Relations  
Yak Communications  
(Canada) Corp.



Edmund Chislett  
President  
Primus  
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Marcel Mercia  
Chief Operations  
Officer  
Cybersurf Corp



Tom Copeland  
Chairman  
Canadian Association  
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cc: The Honourable Tony Clement  
Minister of Industry

Leonard Katz  
Vice-Chairman, Telecommunications

John Traversy  
Executive Director, Telecommunications

John Keogh  
Senior General Counsel, CRTC

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