



PUBLIC INTEREST ADVOCACY CENTRE

LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

ONE Nicholas Street, Suite 1204, Ottawa, Ontario, Canada K1N 7B7

November 22, 2013

Canadian Radio-Television and
Telecommunications Commission
Ottawa, ON
K1A 0N2

VIA GCKEY

Attention: Mr. John Traversy, Secretary General

Dear Mr. Traversy

Re: Part 1 Application by Benjamin Klass requesting fair treatment of Internet services by Bell Mobility, Inc., pursuant to CRTC 2010-445 and CRTC 2009-657, and *The Telecommunications Act*, s.24 & subsection 27(2)

1. The Public Interest Advocacy Centre (PIAC) is in receipt of the above-noted application by Mr. Klass (the Applicant).
2. The Application raises significant concerns regarding the manner in which mobile TV offerings are marketed by Bell Mobility (Bell).
3. The Application also raises a wide range of expansive issues under the *Telecommunications Act* and the *Broadcasting Act* and implicitly highlights a number of tensions in the communications system being exacerbated by increasing convergence and concentration. These issues include Internet traffic management practices (ITMPs), wholesale billing for Internet access, marketing practices by wireless service providers (WSPs), vertical integration of content creators and distributors.
4. The specific issue - and the one on which the Applicant grounds the request for relief¹ - however, is whether a service marketed by Bell, the company's Mobile TV service offering, which is provided subject to a partial exemption from data caps, constitutes a form of undue preference or unjust discrimination under the *Telecommunications Act*.
5. In our view, the concerns raised by the Applicant regarding Bell's use of data caps may extend beyond Bell given our understanding that other WSPs – Rogers and Videotron - may also be engaging in similar conduct.
6. We are concerned though that if the Commission administers this Application as a matter specific to Bell, the effect could be to provide a narrow ruling in respect of one practice by

¹ Application at para. 8.

one WSP, even though (i) there may be other WSPs who have similar offerings that raise similar concerns; and (ii) a decision granting or rejecting the request for relief put forward by the Applicant could have an impact upon not only Bell but also on its competitors, and other actual or future providers of mobile TV services.

7. We therefore do not think the current Part 1 process will provide the Commission an adequate opportunity to deal with the matter in a comprehensive manner, nor an adequate record of other WSPs' practices on which to perform a contextual assessment of Bell's service.
8. This, in our view, would not be in the public interest.
9. At the same time, we are concerned that because the Applicant has raised such a wide range of matters in the Application, there is a practical risk that unless the Commission more clearly defines the issue before it then the result could be a lengthy, inefficient proceeding without sufficient focus that will unnecessarily consume time and resources without resolving the core issue.
10. In order to effectively deal with the Application, we therefore propose that the Commission *broaden* the scope of the proceeding to include all other WSPs, but *narrow* the scope of the proceeding to assess only the core issue of whether differential data caps that depend on who the customer is and who the service providers are constitute undue preference and unjust discrimination.
11. Specifically, we request that the Commission: (i) suspend the Application; (ii) make all WSPs parties to the proceeding and request them to provide on the public record full details of their terms and conditions regarding access by their retail customers to mobile TV offerings they market as well as in relation to mobile TV offerings marketed by others. In such a proceeding, the Commission should provide interested parties sufficient opportunity to submit comments and to provide a reply comments.
12. Given timing constraints due to the upcoming holiday period and review of wholesale services, in order to accommodate the parties, we suggest the following timeline.

Notice of Consultation, with Requests for Information to Parties
Responses to Requests for Information
Public Comments
Public Reply Comments

December 2013
January 15, 2013
February 7, 2014
March 7, 2014

Yours truly,

[original signed]

Geoffrey White
Counsel for PIAC

[original signed]

Jean-Francois Leger
Counsel for PIAC

c: Benjamin Klass (benjiklass@hotmail.com)
Bell (bell.regulatory@bell.ca)
Bell Aliant (regulatory@bell.aliant.ca)
Rogers (rci.regulatory@rci.rogers.com)
TELUS (regulatory.affairs@telus.com)
SaskTel (document.control@sasktel.com)
MTS Allstream (iworkstation@mtsallstream.com)
Eastlink (regulatory.matters@corp.eastlink.ca)
Tbaytel (rob.olenick@tbaytel.com)
Independent Telephone Providers Association (jonathan.holmes@itpa.ca)
Videotron (dennis.beland@quebecor.com)
Globalive Wireless Management Corp. (eantecol@windmobile.ca)
Public Mobile Inc. (Jamie.greenberg@publicmobile.ca)
Data & Audio Visual Enterprises Wireless Inc. (gary.wong@mobilicity.ca)
Canadian Network Operators Consortium (regulatory@cnoc.ca)
Canadian Cable Systems Alliance (cedwards@ccsa.cable.ca)
Cogeco Cable (telecom.regulatory@cogeco.com)
Shaw Cable (Regulatory@sjrb.ca)

***** End of Document*****