

News from the BC Public Interest Advocacy Centre

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Telco Views

High Cost Service Areas

Canada's telecommunications system, one of the world's best, was built on the foundation of a series of monopoly phone companies with regulated rates and service standards. One advantage of this approach was that it facilitated very high levels of access to the system. Rates for small, remote and costly-to-serve communities could be held within reach by spreading costs through a massive customer base.

Throughout the 90's, the federal government and the CRTC have engineered a fundamental shift in that system. The new approach seeks to rely on "market forces" instead of tight regulatory strings, to set service standards and rates. Last May, the CRTC ruled that local telephone service would be open to competition as of January 1 of this year.

But simply decreeing "there shall be competition" does not, in itself, make it so. Canada's diversity is strongly reflected in its telephone markets. Some are highly profitable, and very attractive to competitors. In particular, rivals to BC Tel and Bell are setting their sights on the downtown business customers in places like Vancouver, Toronto and Montreal. Nobody is seriously thinking about competing with BC Tel when it comes to residential customers, especially away from the larger cities.

What this means is that although consumers in smaller communities are paying dearly for the new competitive era in telecommunications, they are shut out of the benefits of the new regime. Their rates have nearly tripled, in some cases, over the past four years. BC Tel is increasingly forced to focus its resources on the task of fighting off the competitors lurking in downtown Vancouver. And the CRTC is dismantling the regulatory safeguards that are needed to protect consumers facing monopoly telephone service -- which is still the reality for these communities, and will remain so for the foreseeable future.

The CRTC has established a nationwide hearing to look into the question of all those communities that are left behind in the brave new world of telephone competition -- the so-called "high-cost serving areas", that are not attractive to the "market forces" that now rule our phone system. Communities in the north and interior, especially the Cariboo area, are

organizing hard to deliver their message to the CRTC: they have the same rights as any Canadians to access our communications technologies, the same right to participate in the emerging world of digitized information and services.

If you have internet access and want to learn more about the activity in the Cariboo area on this issue, check out <http://www.chilcotin.bc.ca/users/ttt>.

Our clients in this hearing are a coalition of community groups representing low-income consumers, both rural and urban. They are taking the position that the time is overdue for the CRTC to take vigorous steps to maintain regional and rural/urban equity in communications. They want the CRTC to acknowledge that monopoly remains the reality for most telephone consumers, and that consumer protections must not be dismantled on the pretense that competition has arrived and will solve all of our problems.

Our clients propose that the Commission adopt the following plan of action:

1. Reaffirm that rural rates will not exceed urban rates.
2. To the extent that the established mechanisms are inadequate to maintain rural/urban parity, and to foster competition where feasible, establish a High Cost Serving Area subsidy program. Its purpose would be to absorb part of the high cost of serving these communities.
3. Since the scheme of this subsidy is to redistribute market revenues in order to "level the field" among competitors seeking entry into High Cost Areas, it should be funded by a tax on the revenues of all companies participating in the telecommunications market.
4. In the meanwhile, incumbent monopoly providers, as the de facto providers of last resort, should continue to be accountable for quality of service and access safeguards appropriate to their persisting monopoly status, including a continuing obligation to serve. Failure to meet these standards should result in the loss of access to subsidies.

These proceedings will extend well into next year. It is vital, above all, that the CRTC and the federal Cabinet realize that they have a serious problem on their hands, that cannot be swept under the rug or addressed with half-hearted measures.

Energy Views

Southern Crossing

This April, the BC Utilities Commission turned down BC Gas' proposal for a new pipeline across the Southern Interior, and issued a decision that met all of the major objectives we had advanced on behalf of consumer groups.

The hearing, which ran for 25 days last fall, was about a proposed natural gas pipeline from the East Kootenays to the South Okanagan. It would deliver gas from Alberta to the

Okanagan and through to the Lower Mainland. The cost (estimates ranged from \$360 million to \$500 million) would have been borne by BC Gas' residential customers. Industrial customers were to be given cut-rate use of the line, which would not begin to cover their share of the capital cost.

Other companies came forward with rival mega-projects to replace the Southern Crossing. Some of these were pipelines, and others were Liquefied Natural Gas storage facilities. The most controversial rival project was an LNG facility proposed by Westcoast Energy, to go into the Howe Sound area.

Our position was that it is wrong to saddle consumers with long-term costs at a time when the energy industry is undergoing rapid change, and that all customers should be required to contribute fairly toward the full cost of facilities they will use. We argued that before going out and building new pipelines, BC Gas should be required to talk to BC Hydro (the biggest natural gas user in the Lower Mainland area), about co-ordinating the use of gas during peak periods.

We applied to the Commission for an order forcing BC Hydro (who were dragging their heels, for political reasons, we think) to come to the hearing and answer questions about these issues. In the end, BC Hydro had a sudden "change of heart", sent representatives to the hearing, and welcomed such arrangements with BC Gas. (We think the threat of political embarrassment over Hydro's unwillingness to make moves to save consumers millions of dollars, did the trick).

We opposed any suggestion that the Commission should try to force BC Gas to contract with any other company for a specific pipe or LNG facility: a "forced marriage" type of negotiation could only work to the disadvantage of BC Gas' captive customers.

On all of these points, the Commission saw things our way. The Southern Crossing Pipeline has been turned down, BC Gas has been told to talk to Hydro about coordinating their gas use. They have been told to look for back-up alternatives as well, that would put consumers at less risk for huge future costs, but they were not ordered to negotiate with any specific company. This will give them far more leverage, if the need arises.

One possibility we can foresee is a revived version of the Southern Crossing, but this time with BC Hydro signed on as an "anchor tenant", using a significant part of the Pipe's capacity to feed the Burrard Thermal generator in the Lower Mainland and the two proposed thermal generators on Vancouver Island. This would help spread around the cost, and facilitate the optimization of use of facilities by coordinating the activities of these two utilities.

The main point is that BC Gas and BC Hydro have been told to find ways to make better use of existing energy systems, instead of looking to new mega-projects to solve all of their needs. The big winners are the consuming public. The energy market, particularly electricity, has been very active over the last few months and will continue to be so in 1998.

Human & Equality Rights

Decision Update

As discussed in our January issue, a number of decisions were released this Fall which were victories for the client groups that we represent. In January we discussed the secondary suites and the Eldridge decisions. In this issue we look at the Doug Collins decision.

Canadian Jewish Congress v. North Shore Free Press Ltd. Operating as North Shore News and Doug Collins

BC PIAC intervened in this case on behalf of the B.C. Human Rights Coalition to defend the constitutionality of s. 7(1)(b) of the Human Rights Code. In 1994 Doug Collins published an article in the North Shore News entitled "Hollywood Propaganda". The Canadian Jewish Congress filed a complaint stating that the article was likely to expose Jewish persons to hatred or contempt contrary to s. 7(1)(b) of the Code. The Respondents, as well as their supporting intervenors, alleged that s. 7(1)(b) was unconstitutional as it violated s. 2 of the Charter in that it limited the Respondents right to freedom of expression. It was conceded that s. 7(1)(b) did infringe the Respondents' freedom of expression under s. 2 of the Charter. However, the Tribunal upheld the constitutionality of this section of the Code under s. 1 of the Charter. Section 1 of the Charter provides that a right which is protected by the Charter may be subject to reasonable limits which are prescribed by law and that can be justified in a free and democratic society.

Following the language of s. 1 of the Charter and the case law that has developed under this section, the tribunal looked at the context in which the article was published, namely anti-Semitism, the role of the media and the importance of freedom of expression and finally, the community in which the article was published. Within this context, the Tribunal then examined the objective of s. 7(1)(b) which was to restrict hateful, contemptuous and harmful speech. This objective was found to be a pressing and substantial objective. Having set out this objective, and referring to the context in which the article was published, the Tribunal found that s. 7(1)(b) was rationally connected to its stated objective, that s. 7(1)(b) was only minimally impairing of the right of freedom of expression and finally, that positive effects of s. 7(1)(b) would outweigh the negative impact on freedom of expression.

Unfortunately, and although the Tribunal found that the article published by Doug Collins to be "nasty", "deliberately provocative", "insulting" and "anti-Semitic", the Tribunal held that the article, "taken on its own" was not "hateful or contemptuous in the sense contemplated by s. 7(1)(b)" of the Code. The complaint against Doug Collins and the North Shore News was dismissed. It remains to be seen what impact this decision will have on other cases dealing with groups which are the target of hate propaganda.

Tenants Rights Action Coalition

In January we reported on the successful decision from Justice Koenigsberg finding a Delta secondary suites by-law ultra vires as discriminating based on family status. Since then, we

have found that Delta is still enforcing the by-law with respect to suites that are occupied by persons who are unrelated and not enforcing the by-law with respect to suites that are occupied by persons who are related. We are reviewing the judgment, and have had a number of discussions with a variety of groups as to the application of the decision. At least one jurisdiction has changed its bylaw as a result of the decision, and other jurisdictions are reviewing the decision to determine how it affects their by-laws.