



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

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March 30, 2007

VIA Fax and Mail

The Honourable Maxime Bernier
Minister of Industry
Office of Consumer Affairs
6th floor
235 Queen Street
Ottawa, ON
K1A 0H5

Dear Mr. Bernier:

**RE: Extension of Broadband Access to Rural and
Remote Areas of Canada**

Since its inception in 1976, the Public Interest Advocacy Centre (PIAC), has attempted, as part of its mandate, to represent the interests of consumers without the resources to advocate effectively for themselves concerning the delivery of important public services such as telecommunications, broadcasting, energy, financial services and transportation. As such, the issue of access to such services has been a predominant theme in our work before courts, tribunals, and legislative and governmental policy makers.

As part of that commitment, a representative from PIAC was an active participant in the Broadband Task Force created by the previous government, which tendered a report to the then Industry Minister Brian Tobin in 2001. The recommendations of the Task Force included the establishment of a government objective that all Canadians should have equitable and affordable access to broadband services and that the policy focus should be on communities where the private sector is unlikely to deliver services.

As you are aware, CRTC Telecom Decision 2006-9 attempted to deal with the difficulties of commercially delivering broadband services to rural and remote areas of Canada's incumbent local telephone companies (ILECs). It did so by clearing the balances in the deferral accounts in which had been deposited over-collected residential rates arising from the implementation of CRTC Decision 2002-34. This latter Decision had set up the second-generation price caps regime for rate-setting purposes. As a result of the 2002 Decision, residential rates had been artificially increased to encourage local competition, and the increased amounts deposited in deferral accounts maintained by each ILEC. This meant that residential ratepayers

paid extra to provide incentives to local competition that never arrived, at least during the price cap period.

After conducting a contest to arrive at the best proposal to spend the remaining amounts in the ILEC deferral accounts, the Commission approved potentially worthwhile projects (uneconomic broadband and disabled access). However, this end result obscures the fact that the process for collection and expenditure of the deferral account funds was not a proper exercise in ratemaking pursuant to the Commission's statutory mandate. Only residential ratepayers were expected to contribute to the accounts by way of increased rates, and only the ILECs were to be able to use the funds to enhance their business. With instructions from our ratepayer representative clients, we have accordingly advanced an appeal in the Federal Court of Appeal, for which leave has recently been granted. The appeal seeks to quash the Commission order directing the expenditure of remaining ILEC deferral account funds.

Such action should not, in any way, be taken as a change of position by PIAC concerning the objectives of the Broadband Task Force, aforesaid. We still support the implementation of an equitable, realistic and effective program for ensuring that all Canadians have access to information and communications technologies (ICTs) wherever they reside. Where delivery of such ICTs is uneconomic, there may well be costs that must be borne by all Canadians that will result in an overall increase in the economic, social and cultural benefits achieved by ICTs.

However, the hijacking of the ratemaking and price caps process set out in the *Telecommunications Act* is not the way to help achieve an otherwise admirable social goal. We hope that this clarifies any questions that may have arisen as a result of the appeal of CRTC Telecom Decision 2006-9, and look forward to working with you and your department in the future in implementing the objectives of the Broadband Task Force and the Telecommunications Review Panel.

Thank you.
Yours truly,

Original signed

Michael Janigan
Executive Director/General Counsel

cc: Mr. Michael Binder – fax only
Assistant Deputy Minister