



PUBLIC INTEREST ADVOCACY CENTRE  
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

27 April 2015

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 - Shomi compliance with *Telecommunications Act*  
and with Digital Media Exemption Order**

The Public Interest Advocacy Centre (“**PIAC**”) hereby submits the enclosed application to the Commission under the *Telecommunications Act* and the *Broadcasting Act*, pursuant to Part 1 of the *CRTC Rules of Practice and Procedure*<sup>1</sup> (the “**Rules**”) regarding the “shomi” service offered by the respondents Rogers Communications Inc., Rogers Communications Partnership, and Rogers Media Inc. (“**Rogers**”) and Shaw Communications Inc. and Shaw Media (“**Shaw**”) through Shomi Partnership.

This application is filed under the Commission’s “Broadcasting and Telecom Cover Page” under the “Broadcasting” sector menu selection, and under the “Telecommunications” sector menu selection.

Service on Shomi Partnership is effected hereby by service on each of Rogers and Shaw, partners in Shomi Partnership, pursuant to section 18(b)(ii) and section 19 of the *Rules*.

Yours truly,

*(Original signed)*

Geoffrey White  
Counsel for PIAC

Cc: Rogers ([RCI.Regulatory@rci.rogers.com](mailto:RCI.Regulatory@rci.rogers.com))  
Shaw ([regulatory@sirb.com](mailto:regulatory@sirb.com))  
PIAC ([jlawford@piac.ca](mailto:jlawford@piac.ca))

Encl.

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<sup>1</sup> SOR/2010-277.

**BEFORE THE CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION**

**IN THE MATTER OF AN APPLICATION BY  
THE PUBLIC INTEREST ADVOCACY CENTRE**

**PURSUANT TO SECTIONS 7, 24, 27 AND 47 OF  
THE *TELECOMMUNICATIONS ACT***

**AND**

**SECTIONS 3 AND 5 OF  
THE *DIGITAL MEDIA EXEMPTION ORDER***

**REGARDING SHOMI**

**27 April 2015**

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## 1. INTRODUCTION and BACKGROUND

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- 1) The applicant the Public Interest Advocacy Centre (“**PIAC**”<sup>1</sup>) files this Part I application<sup>2</sup> regarding the “shomi” service (“**Shomi**”) offered by the respondents Shomi Partnership, Rogers Communications Inc., Rogers Communications Partnership, and Rogers Media Inc. (“**Rogers**”), and Shaw Communications Inc. and Shaw Media (“**Shaw**”).
- 2) This application is brought under the *Telecommunications Act*,<sup>3</sup> and the *Digital Media Exemption Order*<sup>4</sup> (the “**DMEO**”) made under the *Broadcasting Act*.<sup>5</sup>

### Overview

- 3) In what follows, PIAC alleges that Rogers, Shaw and Shomi Partnership are provisioning the Shomi service in a manner that is inconsistent with their obligations under the *Telecommunications Act*, the *Broadcasting Act*, and orders made thereunder.
- 4) More specifically, PIAC argues that:
  - (i) by tying Shomi access to the subscription of an affiliated (Rogers or Shaw) internet service, Rogers, Shaw and Shomi Partnership are conferring an undue preference on their affiliated internet service, and unjustly discriminating against independents internet service providers and their subscribers, in violation of subsection 27(2) of the *Telecommunications Act*;
  - (ii) by tying Shomi access to the subscription of an affiliated (Rogers or Shaw) internet service or broadcasting distribution undertaking (“**BDU**”) service, Rogers, Shaw and Shomi Partnership are conferring an undue preference on their affiliated internet service businesses or BDU service, as the case may be, and unjustly discriminating against independents internet service providers or BDU services and their subscribers, as the case may be, in violation of section 3 of the DMEO; and
  - (iii) by tying Shomi access to the subscription of an affiliated (Rogers or Shaw) internet service, Rogers, Shaw and Shomi Partnership are violating the prohibition against exclusivity in section 5 of the DMEO.
- 5) The exclusivity, as well as the months-long “head start” harms competition, the business case of independent internet service providers, and consumers who wish to fine-tune their

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<sup>1</sup> PIAC is a non-profit organization that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services. See Public Interest Advocacy Centre, online: <<http://www.piac.ca>>.

<sup>2</sup> *CRTC Rules of Practice and Procedure*, SOR/2010-277, sections 1 and 3.

<sup>3</sup> S.C. 1993, c. 38.

<sup>4</sup> Broadcasting Order CRTC 2012-409 - Amendments to the *Exemption order for new media broadcasting undertakings* (now known as the *Exemption order for digital media broadcasting undertakings*) (26 July 2012).

<sup>5</sup> S.C. 1991, c. 11.

viewing experience, choose the access platform of their choosing, and reduce their monthly communications expenses.

- 6) PIAC therefore requests, among other decisions, that the Commission:
  - (i) direct Rogers, Shaw and Shomi Partnership to eliminate its unlawful practice under the *Telecommunications Act*; and
  - (ii) declare that Shomi's online offering does not currently meet the conditions for exemption in the DMEQ.
- 7) PIAC also argues that the Commission should hear from other interested stakeholders, as well as the general public, to have as complete a record as possible.

## **Background**

- 8) This is a revised PIAC Part I application to the Commission regarding Shomi.
- 9) On 6 February 2015 PIAC, along with the Consumers' Association of Canada ("**CAC**"), filed with the Commission the original Part I application<sup>6</sup> regarding Shomi, and a separate application regarding CraveTV.<sup>7</sup> The essence of these applications was that Shomi and CraveTV are being provisioned in manner designed to circumvent rules in place to promote competition and consumer choice and to mitigate against the harmful effects of vertical integration, and restrict the ability of consumers to fine-tune their viewing experience, choose the access platform of their choosing, and reduce their monthly communications expenses.
- 10) On 10 February 2015 the Commission posted the applications online, thereby opening them for public comment.
- 11) Procedural skirmishes ensued, including an attempt by Vaxination Informatique to expand the process, and attempts by Bell and by TELUS Communications Company to strike the CraveTV application.
- 12) On 20 February 2015 the Commission suspended the two applications, "in light of submissions received since 11 February 2015, the date on which Commission staff refused a request by Vaxination Informatique to modify the process", and stated that "Further direction with regard to the process and timelines will be provided to parties in due course."

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<sup>6</sup> Application 2015-0141-1.

<sup>7</sup> Application 2015-0136-2.

- 13) On 12 March 2015 the Commission “returned” the PIAC-CAC complaints in light of Broadcasting Regulatory Policy CRTC 2015-86 (“**BRP 2015-86**”),<sup>8</sup> released that day, and a new consultation on conditions of exemption for a new hybrid video-on-demand service: Broadcasting Notice of Consultation CRTC 2015-87 (“**BNC 2015-87**”).
- 14) In that letter, the Commission stated the following:

The Commission considers that the applications by Public Interest Advocacy Centre and Consumers’ Association of Canada (PIAC/CAC) would benefit from taking into consideration the Commission clarifications in the above-noted Regulatory Policy.

Accordingly, by majority decision, the Commission returns these applications. If PIAC/CAC still wishes to pursue the issues identified in its applications, it should consider whether it would be more appropriate to do so in the proceeding to amend and expand the exemption order for VOD services, or by way of a new application(s). Any new application must take into consideration the above noted Regulatory Policy and provide more specific evidence and argument in support of its position.

- 15) PIAC has reviewed BRP 2015-86, considered the Commission’s letter returning the PIAC-CAC applications, and reviewed BNC 2015-87. PIAC has determined that for certain issues in those applications (undue preference, exclusivity) it is more appropriate to pursue those by way of a new application under both the *Telecommunications Act* and the *Broadcasting Act*. PIAC will express its view in response to the proposal in BNC 2015-87 regarding hybrid video-on-demand services, that such a proposal will not fully address the concerns raised by PIAC about the anti-competitive effects arising from Rogers, Shaw and Shomi Partnership’s undue preference, (manifested tied selling of Shomi to affiliated Internet services), and violation of the DMEQ’s exclusivity rule.

### **The Need for a Public Record**

- 16) PIAC believes it is more appropriate to pursue the issues identified in their previous Part 1 application regarding Shomi rather than in response to BNC 2015-87 because the issues PIAC raises cannot be resolved within the scope of BNC 2015-87; in part because of the linking of Shomi access to subscription to a Rogers or Shaw internet service. This makes consideration of the *Telecommunications Act*, as well as the *Broadcasting Act*, key. Also, it is important for the Canadian public, and for competitors of Rogers and Shaw to have the opportunity to submit comments on the issues raised. Because PIAC’s original application regarding Shomi was returned, the Commission was unable to hear from Canadians and from competitors to Rogers and Shaw.

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<sup>8</sup> Broadcasting Regulatory Policy 2015-86 - *Let’s Talk TV: The way forward - Creating compelling and diverse Canadian programming* (12 March 2014).

- 17) In this regard, PIAC notes Commissioner Shoan's recognition in the *Mobile TV* decision<sup>9</sup> of the importance of "industry-wide input in order to build a comprehensive public record for the purposes of meaningful debate and decision-making."
- 18) The Commission should allow interested stakeholders, including independent competitors and consumers, to provide their views on this matter. Furthermore, in light of Commissioner Shoan's expressed concerns about independent competitors potentially being afraid to counter the vertically integrated companies, the Commission should consider making independent competitors of Rogers and Shaw parties to this process.<sup>10</sup>

## 2. ALLEGED FACTS

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- 19) In this Section PIAC outlines the alleged facts on which this Application is based. Specifically, PIAC describes the relevant terms and conditions of the Shomi service, and the way Rogers, Shaw and Shomi have described the Shomi service and marketed it to Canadians. In addition PIAC cites some observed consumer frustration with the practice at issue.

### Key facts

- 20) On 26 August 2014 Rogers, through its Rogers Media division, and Shaw, through its Shaw Media division, announced a joint venture to provide an over-the-top ("OTT") broadcasting service called "**shomi**."
- 21) Shomi was announced in both a press release,<sup>11</sup> and at a press conference.<sup>12</sup>

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<sup>9</sup> Concurring opinion of Commissioner Raj Shoan, Broadcasting and Telecom Decision CRTC 2015-26 - *Complaint against Bell Mobility Inc. and Quebecor Media Inc., Videotron Ltd. and Videotron G.P. alleging undue and unreasonable preference and disadvantage in regard to the billing practices for their mobile TV services Bell Mobile TV and illico.tv* (29 January 2015) [*Mobile TV*].

<sup>10</sup> Commissioner Shoan:

In an industry dominated by a few strong players who control access to key platforms, market dynamics could be challenged in capturing all of the necessary arguments to formulate a comprehensive view of the issues before the Commission in the context of a public process. Independent services could fear economic reprisals when they submit commentary opposed to large, vertically integrated players. This has a domino effect on policy and regulatory development when the tool employed - such as the undue preference test - relies heavily on industry and public input.

<sup>11</sup> Shomi initial press release "shomi what I'm missing: New streaming service to deliver superior user experience and most popular content to Canadians, this fall" (26 August 2014), online: <[http://about.rogers.com/About/Media\\_Relations/News/14-08-26/shomi\\_what\\_i\\_39\\_m\\_missing\\_New\\_streaming\\_service\\_to\\_deliver\\_superior\\_user\\_experience\\_and\\_most\\_popular\\_content\\_to\\_Canadians\\_this\\_fall.aspx](http://about.rogers.com/About/Media_Relations/News/14-08-26/shomi_what_i_39_m_missing_New_streaming_service_to_deliver_superior_user_experience_and_most_popular_content_to_Canadians_this_fall.aspx)>.

<sup>12</sup> Shomi Press Conference: Video, "WATCH: Rogers Media President Keith Pelley and Shaw Media Senior VP of Content Barbara Williams answers questions about the new "shomi" streaming service", link to article featuring video, online: <<http://globalnews.ca/news/1527665/what-is-shomi-and-how-does-it-work>>.

- 22) According to the press release announcing Shomi, "**shomi** is a joint venture owned equally by Rogers Communications and Shaw Communications. **shomi** will operate as a standalone entity with its own management structure."<sup>13</sup> Shaw and Rogers each issued identical press releases, in addition to the Shomi press release.
- 23) In the joint venturers' initial marketing, Shomi was described as a "subscription video-on-demand service."<sup>14</sup> In the Shomi Terms of Service, Shomi is described as a "subscription video-on-demand streaming service". Rogers and Shaw have described themselves as "distributors" of Shomi. Shomi Partnership describes Rogers and Shaw each as a "partner".
- 24) Rogers and Shaw refer to Shomi in various ways. For example, Rogers referred to Shomi in its 2014 Annual Report as follows:<sup>15</sup>
- a "streaming subscription video on demand (SVOD) service"
  - a "complimentary shomi subscription video on demand OTT service."
  - "our online video product"
  - "our exciting new online on-demand video streaming service with thousands of hours of the most popular TV and movie content."
  - "our joint venture in shomi, a new subscription video-on-demand streaming service"
  - a "new subscription video-on-demand streaming service available on mobile, tablet, online, and through our cable set-top boxes."
  - "In 2014, we entered into a joint venture equally owned by Rogers and Shaw Communications Inc. to develop, launch and operate a premium subscription video-on-demand service offering movies and television series for viewing on-line and through cable set-top boxes."
- 25) Shaw, in its 2014 Annual Report, described Shomi in the following way:<sup>16</sup>
- "Most recently we launched video streaming from shomi – a made-in-Canada on-line content experience service with cutting-edge customization and an impressive depth of programming choice."
  - "a new SVOD/OTT service"
  - "a new subscription video-on-demand service"

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<sup>13</sup> Shomi initial press release, (emphasis original).

<sup>14</sup> Shomi initial press release.

<sup>15</sup> Rogers, 2014 Annual Report (4 March 2015), online: <<http://www.rogers.com/cms/investors/pdf/annual-reports/Rogers-2014-Annual-Report.pdf>>.

<sup>16</sup> Shaw, 2014 Annual Report (28 November 2014), online: <[http://www.shaw.ca/uploadedFiles/Corporate/Investors/Financial\\_Reports/1SCIAnnReport2014.pdf](http://www.shaw.ca/uploadedFiles/Corporate/Investors/Financial_Reports/1SCIAnnReport2014.pdf)>.



- 26) According to the press release announcing Shomi, "shomi will launch in beta first to Rogers and Shaw Internet or TV customers. shomi will be available starting the first week of November [2014] at a suggested retail price of \$8.99 per month."<sup>17</sup> It is not clear if the \$8.99 price is, as stated, suggested, or required by the terms of the Shomi partnership agreement.
- 27) Rogers and Shaw each appear to have separate and different promotional sites for Shomi (<http://shomi.rogers.com> and <http://www.shaw.ca/shomi>, respectively). The Shomi service itself appears available through a dedicated website, [www.shomi.com](http://www.shomi.com).
- 28) In the joint venturers' initial marketing, Shomi was described as a "subscription video-on-demand service."<sup>18</sup> In the Shomi Terms of Service, Shomi is described as a "subscription video-on-demand streaming service". Rogers and Shaw have described themselves as "distributors" of Shomi. Shomi describes Rogers and Shaw each as a "partner".
- 29) Shomi's marketing emphasis has been on content exclusivity, content differentiation, and content curation. Rogers, Shaw and Shomi claim Shomi's user interface is better than competitors (namely Netflix), and features Shomi staff acting like video-store staff in terms of making picks and recommendations (as opposed to a computer), and with celebrities curating their own lists of recommended content.<sup>19</sup>
- 30) As Shaw Media's Senior Vice-President of Content (now Executive Vice President, Broadcasting and President, Shaw Media) Barbara Williams explained at the Shomi Press Conference: "Most of the content that you will find on the service is exclusive to our service and we'll be working to have more and more exclusive content over time."<sup>20</sup>
- 31) Thus, one of the catchphrases Rogers-Shaw use in the marketing is "Shomi what I'm missing." The elements of competitive differentiation include the following appeals to potential subscribers:
- "the latest, most exclusive shows and selections personalized for you"
  - "the only subscription video-on-demand service created *for* entertainment lovers *by* entertainment lovers"
  - "Tired of the endless scrolling? Team of entertainment experts hand pick recommendations for you"

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<sup>17</sup> Shomi initial press release.

<sup>18</sup> Shomi initial press release.

<sup>19</sup> See *e.g.*, Shomi Press Conference.

<sup>20</sup> Video: Global News, "Shaw and Rogers discuss their new 'shomi' streaming service" (26 August 2014), online: <<http://globalnews.ca/video/1527538/shaw-and-rogers-discuss-their-new-shomi-streaming-service>>, Barbara Williams, at 4:54 et seq.

- “Tired of watching outdated series? More than 11,000 hours of past seasons of the most popular TV shows”<sup>21</sup>
  - “Titles hand-picked by real humans”<sup>22</sup>
- 32) Additionally, Shomi and Rogers have made a series of announcements regarding exclusive content.<sup>23</sup>
- 33) At a press conference on 26 August 2014 (the “**Shomi Press Conference**”), Rogers Media’s President, Keith Pelley, stated that Shomi would be “in beta for the first six to twelve months.”<sup>24</sup> Mr. Pelley also indicated his expectation that by November of 2014.<sup>25</sup>
- 34) In a subsequent press release announcing the launch of Shomi, Rogers and Shaw stated that “**shomi** is available in beta first to Rogers and Shaw Internet or cable customers, while conversations continue with other BDUs.”<sup>26</sup>
- 35) The Shomi Terms of Service refer to the service being “provided by or on behalf of Shomi Partnership and its current and future affiliates.”<sup>27</sup>
- 36) As of the date of this second application, it appears that Shomi has not concluded any such distribution deals, and that access to Shomi continues to be restricted to Rogers and Shaw cable and Internet customers. The Shomi website continues to refer to Shomi as being “Currently available in limited beta release to Rogers and Shaw Internet or TV customers.”<sup>28</sup>

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<sup>21</sup> Appendix “A” – Shomi initial announcement (emphasis original); see also Video: Shaw and Rogers discuss their new ‘shomi’ streaming service’, *supra* note 20.

<sup>22</sup> Shaw, “Shomi” (Accessed 4 February 2015), online: <<http://www.shaw.ca/shomi>>.

<sup>23</sup> See e.g. Vickie Reichardt, “5 Exclusive Binge-Worthy Series on shomi” (7 November 2014), online: <<http://www.connectedrogers.ca/watch/tv/5-exclusive-binge-worthy-series-on-shomi/>>; Shomi, “shomi™ is coming up aces with exclusive content deal with BBC Worldwide North America” (31 October 2014), online: <<http://www.prnewswire.com/news-releases/shomi-is-coming-up-aces-with-exclusive-content-deal-with-bbc-worldwide-north-america-281070032.html>>; shomi, “shomi™ just got better with shomi Exclusives, bringing critically acclaimed Original Series to Canadians for the first time. Ever.” (29 January 2015), online: <<http://shomimedia.com/news-feed/press-releases/2015/01/shomi-just-got-better-with-shomi-exclusives>>; and shomi, “shomi™ becomes the exclusive streaming home in Canada of acclaimed Sony Pictures Television series *Outlander*” (29 January 2015), online: <<http://shomimedia.com/news-feed/press-releases/2015/01/shomi-stikes-a-new-deal-with-sony-pictures-television>>.

<sup>24</sup> Shomi Press Conference at 0:11.

<sup>25</sup> Shomi Press Conference at 3:33.

<sup>26</sup> Shomi press release, “It’s time - #readyseshomi!” (3 November 2014) (emphasis original).

<sup>27</sup> Shomi Terms of Service, s. 1.

<sup>28</sup> See online: <<http://discover.shomi.com>>.

**Current availability of Shomi**

37) Shomi, as of the date of this application, is available exclusively to Rogers and Shaw customers as follows:

	<b>Rogers</b>	<b>Shaw</b>
Prerequisite Service	Internet or cable BDU subscription	Internet or cable BDU subscription (does not include satellite BDU subscription)
Promotional deals/trials	Free for 2 years with Internet plan <i>Ignite 60</i> or above  30 day trial with Internet plan <i>Ignite 30</i> or any BDU subscription	30 day trial with any Internet plan or BDU subscription
Regular monthly pricing	\$8.99	\$8.99

38) PIAC alleges that there is no technological reason for making access to the Shomi service exclusive to customers of a particular internet service provider or BDU, and that the marketing literature of at least Rogers and Shaw illustrate a clear emphasis on access to the Shomi service being an early competitive differentiator. Were there technological reasons (capacity limitations, for example) for offering the Shomi service exclusively to Rogers and Shaw customers, or business reasons (for example, customer billing), PIAC believes that Rogers and Shaw and Shaw would have stated those. Were there capacity limitations then Rogers and Shaw could simply have limited the initial number of subscriptions available. Based on the statements by Rogers' President and CEO, it appears at least Rogers has provisioned sufficient network capacity for Shomi.

39) Based on the foregoing descriptions of Shomi by Rogers and Shaw it appears that Shomi is largely considered by Rogers and Shaw to be an online service that is designed to increase the 'share-of-wallet' and 'stickiness' of customers, *i.e.*, increase the average-revenue-per-user (**ARPU**), and reduce customers' freedom and willingness to switch service providers.

- 40) Recent statements by Rogers' President and CEO about penetration and ARPU,<sup>29</sup> and in response to an investment analyst question about data usage,<sup>30</sup> support the assertion that Shomi is designed to lock in customers.

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<sup>29</sup> RCI Q4 2014 Earnings Call, transcript available online: <<http://seekingalpha.com/article/2864306-rogers-communications-rci-ceo-guy-laurence-on-q4-2014-results-earnings-call-transcript>> (emphasis added):

So let me just take a bit of time to go through this one. So first of all, you create propositions, let's take **shomi** or NHL or Roam Like Home and if you take those three examples, the first one launched on October 8th, the second two were in November as I remember -- so actually they've been in the market very little time. So what happens you have a proposition, you put it into the marketplace and you start advertising it and over time, the awareness of the product builds up.

The next thing you get is adoption of the product which then leads to **penetration** providing it's something that the customer values and then they've got the product, they are using it. **And then it has to feed into their view of whether affects their total value for money of what they are getting from a provider and then it has to influence their behavior.** So back to your question, what I would say is the kind of innovation I'm talking about is certainly in the style of the things that we launched in Q4 and you would expect to see more of that kind of thing coming out across the course of 2015.

**The thing you have to work out in your own mind is the rate at which you'll get penetration. You get penetration on multiple products, so one customer might take two or three of the different propositions and at what point that affects their behavior in relation to their propensity to churn.** At the same time, however, those products and propositions are actually positioned towards the higher end of our pricing matrix and therefore as customers do adopt them, what the earliest indicator you start to see is **ARPU**.

So depending on whether we position the kind of proposition to be attractive, the number of propositions we have and the pickup in penetration rate that will affect the rate of ARPU increase and then. Secondly, **it will ultimately affect the basis on which they stay with us or go to another operator.** So I hope that kind of puts a bit of color around it.

<sup>30</sup> *Ibid* (emphasis added):

[Drew McReynolds – RBC]

Just maybe a follow-up on data growth and Tony, I think you gave some good statistics around LTE and the increase in data consumption on LTE. Just wondering, just tying this into shomi and NHL GameCenter LIVE, I know it's still early days, but to what extent are you seeing an uptick in your data growth on the LTE network related to that increased video streaming? And with respect to what you've seen to-date, are you comfortable with your network performance supporting that type of data growth as we look forward?

[Guy Laurence - President & CEO]

So if I might pick that up, so we're not going to reveal exact figures on that but I would describe myself as **extremely satisfied in terms of the data consumption associated with the propositions we're putting in the marketplace.** The second thing is I have a small paranoia over making sure there is sufficient network capacity there where we introduce these things because there is no point in putting a huge amount of work into creating a proposition only to find out that your customer can't benefit from it. So way before we had solidified the proposition such as NHL which launched October 8th, we actually put in place plans to increase our network capacity and they continue apace so that we stay ahead of the curve.

### **Reduction in Consumer Choice, and Observed Consumer Frustration**

- 41) The consequence of Rogers' and Shaw's marketing and provisioning of Shomi is a reduction in consumer choice.
- 42) There is also a lack of choice between alternative BDUs because Rogers, Shaw and Shomi have not delivered on their promises to conclude other distribution agreements, and in so doing appear to be into a several-month head start against other BDU competitors.
- 43) There is also a lack of choice that results from independent internet service providers being unable to compete against internet service provider affiliates of BDUs who are able to offer Shomi. The harm that flows from this is that independent internet service providers, whose plight PIAC believes was well-established on the record of the *Review of wholesale services and associated policies* (TNC 2013-551) proceeding, is exacerbated.
- 44) PIAC has observed through social media that consumers want access to Shomi without having to purchase BDU or Internet services from Rogers or Shaw. For example, some consumers question why Rogers and Shaw have decided to offer Shomi as a tied product.<sup>31</sup> One consumer stated that despite being eligible for access to Shomi, he decided not to use it due to the "strings attached."<sup>32</sup> Other consumers have complained on social media that despite wanting to subscribe to Shomi, they are unable to since Rogers and Shaw services are not offered where they live,<sup>33</sup> or because they do not want BDU

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<sup>31</sup> See consumer reviews for the shomi Android application, online: <<https://play.google.com/store/apps/details?id=com.shomi.phone&hl=en>>, e.g. review of Adam Bennewies (22 December 2014): "If you're going to launch a streaming service to try and compete. Make it so anyone can use it. Not just people that already have cable. It isn't cord cutting if you still have to pay for a cable package." See also, reviews of Taylor Lafferty (1 February 2015), and Yuvski K (27 December 2014). See also, comments by consumers on social media, Beth Agnew (11 November 2014), online: <<https://twitter.com/Professorsan/status/532334554749497346>>: "shomi is missing a HUGE market by excluding people who have no Rogers/Shaw internet. Just sayin' That's why Netflix is so successful.."; Notorious EGG (18 January 2015), online: <<https://twitter.com/silvermink/status/556897143718293504>>: "Shomi would be a great service if it didn't require you to have cable TV, which seems contrary to the point of online TV services."

<sup>32</sup> See consumer review for shomi Android application by Chris Jackman (26 December 2014), <<https://play.google.com/store/apps/details?id=com.shomi.phone&hl=en>>: "From all the advertising, I thought this was a Netflix alternative. What a fail. You have to log in with your Rogers or Shaw account to even get started. I'm a Shaw customer, but because of the strings attached to this service, I'm just going to go with Netflix."

<sup>33</sup> See Paul G (11 February 2015), online: <[https://twitter.com/pg\\_72/status/565517189890211841](https://twitter.com/pg_72/status/565517189890211841)>: "@shomicanada when will your service be available to Rogers Wireless customers? No Rogers/Shaw cable or internet in my area." See also conversation between user "Loxy" and shomi support account "shomi helps", Loxy (8 February 2015), online: <<https://twitter.com/loxyisme/status/564577014158356481>>: "So if I don't pay for TV, I can't get @shomicanada or @CraveTVCanada as Whitehorse does not have internet via Bell, Rogers, Telus, Shaw." "@loxyisme Hi, currently you need to have Cable TV or Cable Internet with Rogers or Shaw to get shomi, we are working on expanding. ^AB" "@shomihelps I know. But that's not possible where I live."

services.<sup>34</sup> In the days after the Commission's decision establishing the Hybrid VOD license, when some media reports claimed the decision would force Shomi to be offered online without being tied to BDU or Internet service, consumers praised the Commission's decision.<sup>35</sup> PIAC submits that these consumers are representative of a much larger group of consumers, who are clearly dissatisfied with the artificial service prerequisites imposed by Rogers and Shaw, and believe that consumers should have the opportunity to submit their views on this issue to the Commission in response to this application.

- 45) In the following section, PIAC submits that the offering of Shomi by Rogers, Shaw and Shomi Partnership contravenes the *Telecommunications Act* and the DMEQ.

### **3. GROUNDS of APPLICATION**

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- 46) PIAC contends that the tied sale of Shomi to affiliated Rogers or Shaw internet service violates subsection 27(2) of the *Telecommunications Act*, and sections 3 and 5 of the DMEQ.

#### **Application of the *Telecommunications Act***

- 47) The marketing and provisioning of Shomi by Rogers, Shaw and Shomi Partnership involves a question not just of the exclusive distribution of broadcasting,<sup>36</sup> but the favouring of internet (telecommunications) service by means of broadcasting service.
- 48) PIAC contends that the requirement Rogers, Shaw and Shomi Partnership impose on potential Shomi subscribers to subscribe to affiliated (Rogers or Shaw) internet services is inconsistent with their obligations under the *Telecommunications Act*.

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<sup>34</sup> See Tom Megginson (26 February 2015), online: <<https://twitter.com/CreativeTweets/status/571018640197169152>>: "@shomicanada I'm done with cable, and I'll subscribe to Shomi the day it doesn't require a cable package." and mattea (11 February 2015), online: <<https://twitter.com/silvermgc/status/565621460371521536>>: "I don't even use the cable I just wanna watch shomi :)"

<sup>35</sup> See Darren Morin (12 March 2015), online: <<https://twitter.com/darrenmorin/status/576081006853271552>>: "CRTC gets it. Streaming services should be available to all Canadians, not only traditional cable subscribers ..." and Andrew Prescott (12 March 2015), online: <<https://twitter.com/ChristianConsr/status/576082977614012417>>: "A #CRTC win for Canadian consumers: CraveTV & Shomi MUST be offered online WITHOUT a TV/Cable subscription."

<sup>36</sup> The Commission rejected PIAC's *Telecommunications Act* undue preference argument in Bell Part I re Rogers GameCentre Live (Broadcasting Decision CRTC 2015-89) at para. 61:

COSCO-PIAC submitted that Rogers' practices are in violation of the undue preference prohibition in section 27(2) of the *Telecommunications Act*. The Commission notes that the application was filed solely with respect to the *Broadcasting Act*. The Commission is of the view that COSCO-PIAC has failed to demonstrate how the *Telecommunications Act* applies to the facts of this case, which involves a question of exclusive distribution of broadcasting.

- 49) Rogers and Shaw compete with other firms in the marketplace for internet service, wireline services, and BDU services. Additionally, Rogers competes with other firms for mobile wireless.
- 50) Rogers and Shaw, in their capacity as providers of internet service, are governed by the *Telecommunications Act*, and Commission decisions promulgated thereunder, most notably, the prohibition on unjust discrimination and undue preferences in subsection 27(2).
- 51) PIAC contends that the tying of Shomi access to an internet subscription of one of the two Shomi partners (that is, to Rogers' or Shaw's internet service) is a clear preference to these two internet service providers, and a clear violation of the prohibition against unjust discrimination and undue preference in subsection 27(2) of the *Telecommunications Act*. PIAC believes such discrimination and preference in the market is likely to harm internet service competitors, and their subscribers, and is clearly undue. In any case, PIAC submits that since the Shomi service clearly states its discriminatory requirement of specific internet service from one of two specific carriers that the burden of showing the preference or discrimination is not under and falls upon, Rogers, Shaw and Shomi Partnership, under subsection 27(4) of the *Telecommunications Act*.
- 52) When the alleged unjust discrimination and undue preference is in relation to the transmission of programs, section 28 of the *Telecommunications Act* requires the Commission to "have regard to the broadcasting policy for Canada set out in subsection 3(1) of the *Broadcasting Act*."<sup>37</sup>
- 53) Rogers, Shaw and Shomi Partnership and their affiliates are under an obligation not to unduly prefer themselves, nor unjustly discriminate against non-affiliates or other customers.
- 54) PIAC contends that in preferring affiliated internet service to the detriment of customers of other internet service providers wishing to access that online content, Shomi Partnership (and its constituent partners Rogers and Shaw) are impairing the development of a competitive market for telecommunications services, and that this undue preference does

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<sup>37</sup> *Broadcasting Act*, s. 28:

Transmission of broadcasts

**28.** (1) The Commission shall have regard to the broadcasting policy for Canada set out in subsection 3(1) of the *Broadcasting Act* in determining whether any discrimination is unjust or any preference or disadvantage is undue or unreasonable in relation to any transmission of programs, as defined in subsection 2(1) of that Act, that is primarily direct to the public and made

(a) by satellite; or

(b) through the terrestrial distribution facilities of a Canadian carrier, whether alone or in conjunction with facilities owned by a broadcasting undertaking.

not further the broadcasting policy objectives. Rather, it strengthens Rogers' and Shaw's already significant position in the telecommunications marketplace, and limits the ability of independent internet service providers to mount a credible competitive challenge to them.

- 55) In restricting access to Shomi to only those Canadians who subscribe to a Rogers or Shaw Internet (telecommunications) service, Rogers, Shaw and Shomi Partnership are conferring a preference on their affiliated internet service to the detriment of competitors' internet service. Also, it may be that by including Shomi access for free for two years in certain internet service packages, Rogers is conferring a preference on their affiliated internet service to the detriment of competitors' internet service.
- 56) This undue preference serves to favour the subscription to, and consumption of, the Shomi partners' internet service offerings over the internet service offerings of internet service providers that cannot, by virtue of Rogers, Shaw and Shomi's tied (and for now, entirely exclusive to them) distribution model, offer customers and potential customers as compelling of a value proposition because they do not have the scale and scope to compete for the rights for such programming.
- 57) As the *Globe and Mail* recently reported in a feature about online streaming, quoting a Rogers' executive:

The largest broadcast companies have one major advantage: The [*sic.*] have deep-seated relationships with producers and studios, and once they own the traditional TV rights to a program for network television and speciality channels, adding digital rights can be "a logical extension," Mr. Purdy [Senior Vice-President, Content] said. "Increasingly you're having one comprehensive discussion."<sup>38</sup>

- 58) If customers of independent internet service providers are unable to access Shomi over-the-top ("**OTT**") because independent internet service providers do not have an affiliated BDU that is able to offer Shomi, then independent internet service providers run the risk of losing customers to the converged internet service providers/broadcasting entity. The loss of market share will further entrench the dominance of the large vertically integrated entities over the marketplace, resulting in loss in competition and increases in prices for consumers.
- 59) As a result, cord-shavers, cord-cutters, and BDU-subscribers who wish to reduce their cable bills through content stacking and customization of content consumption, face limited choice in the Canadian communications marketplace. Cord-cutter customers of internet service providers that are not affiliated with Rogers or Shaw cannot access Shomi

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<sup>38</sup> James Bradshaw, "Streaming wars: How disruptors are shaking up the TV business" (19 April 2015), online: <<http://www.theglobeandmail.com/report-on-business/streaming-trouble-the-traditional-and-digital-tv-worlds-clash/article24015722/>>.



without first switching to Rogers or Shaw. To respond, independent internet service providers would have to develop their own streaming service (subject to the non-exclusivity provisions of the DMEQ), an unlikely and implausible prospect given the scale, scope and purchasing power of Rogers and Shaw.

- 60) Furthermore, it would be inconsistent with measures to promote more competition in the internet service market if internet service providers would be allowed to tie access to content from their affiliated media business to consumption of their internet service.
- 61) The tied sale of Shomi to internet service harms competition and undermines consumer choice. As the situation continues, harm to competition and to consumer choice increases.
- 62) That Shomi (or its constituent partners) may be engaged in “broadcasting by a broadcasting undertaking” does not render the *Telecommunications Act* inapplicable. As the Commission clearly and unanimously decided in *Mobile TV*, the status of an entity under the *Broadcasting Act* cannot be used to shield an entity from its obligations under the *Telecommunications Act*. Specifically, “Section 4 of the *Telecommunications Act* does not apply as a shield to the application of the *Telecommunications Act*” where the respondents are “acting as Canadian carriers in providing transport and data connectivity services required for the delivery” of the TV service at issue.<sup>39</sup>
- 63) Furthermore, in requiring the Commission to have regard for the *Broadcasting Act*'s broadcasting policy for Canada in assessing undue discrimination in the context of terrestrial carriage by a Canadian carrier, Section 28 of the *Telecommunications Act* explicitly contemplates the possibility of broadcasting carriage being used in a way to violate the *Telecommunications Act*.
- 64) As PIAC argued in its original application regarding Shomi, the choice of being able to subscribe to a BDU service to be eligible to receive Shomi should not save Shomi from being in contravention of the DMEQ exclusivity rule (discussed below), which restricts mobile and internet service exclusivity. That argument was based on PIAC's view that Rogers and Shaw appear to be favouring the “BDU or cable Shomi” over the “internet service / OTT Shomi.”<sup>40</sup> At the same time, for the purposes of this argument under the

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<sup>39</sup> *Mobile TV* at para. 25.

<sup>40</sup> As PIAC stated in their returned application:

Rogers and Shaw have clearly emphasised how “cable Shomi” comes with no data charges, and the references to concluding distribution deals with other distributors seems to emphasize, if not exclusively mention, BDU distributors and *not* internet service providers.

PIAC believe that Rogers, Shaw and Shomi are marketing Shomi like an OTT service, that when consumed via STB access through a BDU service lets customers avoid paying data fees they otherwise would have to pay if Shomi was accessed through the internet. The “catch” is that customers must purchase BDU services they might not otherwise wish to, and also continue to require a subscription to an internet service.

*Telecommunications Act*, PIAC contends that the offering of a choice between being eligible for Shomi with a BDU subscription or with an internet service subscription should not make Shomi immune to being in contravention of the *Telecommunications Act*.

### **Application of the Digital Media Exemption Order**

- 65) PIAC contends that the DMEO applies to Shomi when consumed via internet service (*i.e.* access the OTT version) because Shomi “provides broadcasting services, in accordance with the interpretation of “broadcasting” set out in *New Media*, Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14, 17 May 1999, that are: a) delivered and accessed over the Internet.”<sup>41</sup> Rogers itself claims that the OTT version of Shomi operates under the DMEO.<sup>42</sup> More simply, as the Commission noted in BRP 2015-86, “online video services operate as exempt undertakings under the DMEO.”<sup>43</sup>
- 66) PIAC further contends that Rogers, Shaw and Shomi’s method of offering Shomi contravenes DMEO section 3 (undue preference), and section 5 (exclusivity).
- 67) By violating these conditions of exemption, PIAC alleges, Shomi is not eligible for exemption under the DMEO.

### **Undue preference**

- 68) Section 3 of the DMEO deals with undue preference. Section 3 states:

The undertaking does not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the party that gives the preference or subjects the person to the disadvantage.

- 69) PIAC contends that Rogers, Shaw and Shomi are violating the prohibition against undue preference in the DMEO by conditioning access to the service on the purchase of an affiliated internet service or BDU service. Rogers is similarly granting its internet service an undue preference by including Shomi for free in certain of its internet service packages. The effect of this is to prefer their own services (internet or BDU, as the case

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<sup>41</sup> DMEO, s. 1.

<sup>42</sup> See question “Does shomi comply with Canadian Radio-television Telecommunications Commission (CRTC) requirements?” on the shomi FAQ, online:  
<<http://www.rogers.com/web/support/shomi/information/2?setLanguage=en>> (emphasis added):

For our customers who subscribe to Rogers Hi Speed Internet only, **shomi will operate under the digital media exemption order** and is therefore exempt from regulation. The CRTC has encouraged the industry to offer new and innovative multi-platform digital services like shomi that provide a Canadian alternative to existing Over The Top (OTT) content services available to consumers.

<sup>43</sup> At para. 96.

may be) which restricts choice in the marketplace, impairs competition, and harms consumers.

- 70) The Commission appears in BRP 2015-86 to indicate that the tied sale of an online streaming service to BDU services is acceptable, so long as the choice of BDU service is not restricted.<sup>44</sup> As of the date this application is filed, Rogers, Shaw and Shomi continue to use the “beta” label, without any indication of when Shomi will emerge from “beta” status, and do not appear to have concluded any distribution arrangements with other BDUs. PIAC allege that this months-long head start may be unjustly discriminatory against other BDU competitors who may wish to offer Shomi to their BDU subscribers.
- 71) In restricting access to Shomi to only those Canadians who subscribe to a Rogers or Shaw BDU service, Rogers, Shaw and Shomi Partnership are conferring a preference on their affiliated BDU services to the detriment of competitors’ BDU services.
- 72) This undue preference serves to favour the subscription to, and consumption of, the Shomi partners’ BDU service offerings over the BDU service offerings of BDU service providers that cannot, by virtue of Rogers, Shaw and Shomi’s tied (and for now, entirely exclusive to them) distribution model, offer customers and potential customers access to the exclusive content Shomi has.

### **Exclusivity**

- 73) Section 5 of the DME0 deals with exclusivity. Section 5 states:

... the undertaking does not offer television programming on an exclusive or otherwise preferential basis in a manner that is dependent on the subscription to a specific mobile or retail Internet access service.

- 74) In other words, a Digital Media Broadcasting Undertaking (“**DMBU**”) must not tie access to its “television programming” to the subscription to a specific mobile service or internet service. The DME0 defines “television programming” as “...programming designed primarily for conventional television, specialty, pay or video-on-demand services.”
- 75) PIAC contends that Shomi is designed primarily for television and is thus “television programming” within the meaning of section 5 of the DME0. The marketing of Shomi

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<sup>44</sup> BRP 2015-86 at para. 100:

The BDU-specific services operate under clear rules, which include the regulatory framework for VOD services set out in Broadcasting Regulatory Policy 2010-190 and the standard requirements for VOD services set out in Broadcasting Regulatory Policy 2014-444. They must also abide by the conditions set out in their licences or, in the case of the exempt VOD services, those conditions set out in their exemption order. Similarly, there are different but equally clear rules that apply to online video services under the DME0.

boasts the thousands of hours of TV shows (“Tired of watching outdated series? More than 11,000 hours of past seasons of the most popular TV shows”<sup>45</sup>), and much of Rogers’ and Shaw’s marketing emphasis has been on being able to access Shomi via a set-top box:

- Shaw’s Ms. Williams used set-top box (“**STB**”) access to differentiate Shomi, stating that STB access makes “it a very different opportunity than what Netflix is, and it actually keeps people engaged in that cable subscription.”<sup>46</sup>
- Responding to the question “How does shomi compare to Netflix?” in the Shomi FAQ, Rogers concludes: “Plus, **shomi** is available on your set-top box so you won’t incur any data charges.”<sup>47</sup>
- Responding to the question about compliance with the CRTC requirements, Rogers then states its expectation that “Most of our customers will access **shomi** through the set top box and then online through username/password authentication.”<sup>48</sup>
- At the Shomi Press Conference both Rogers’ Mr. Pelley and Shaw’s Ms. Williams said the following:

Mr. Pelley: And one of the interesting things about the set-top box – that was when – when the research came down, that was something that was really – it really resonated with, with consumers – that they wanted it on the set-top box – and that’s a real advantage that we have. So we’re comfortable that we will have other BDUs signed up by the time of launch. Packaging or pricing – packaging and so forth will be announced at a – at a later date – and in terms of the actual distribution model – all of that will be evaluated during the actual beta testing – so you know we can’t emphatically tell you exactly right now – we know that we’re going to launch to – if we were to launch today we’d launch to 4.5 million Canadians – by the time we get to launch other BDUs we’re convinced would be involved.<sup>49</sup>

Ms. Williams: “it really speaks to the power that I think a partnership like this brings to a service like this, with a background we have in television, with the expertise we have in content, you know, accumulation, and the opportunity we have to promote this service across all of our current properties we’re in a very powerful position to make sure that a) Canadians are well aware of that and b) they understand that there is something distinctive about this offering that, that they can’t currently get. And just to emphasize Keith’s earlier point, *the fact that it’s offered on the set-top box is not only something that consumers were really clear with us that they wanted, but it makes it a very different opportunity than*

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<sup>45</sup> Shomi initial press release.

<sup>46</sup> Shomi Press Conference at 5:30 (emphasis added).

<sup>47</sup> See question “How does shomi compare to Netflix?”: Rogers, “shomi FAQs: General Product Information” (Accessed 4 February 2015), online: <http://www.rogers.com/web/support/shomi/information/2?setLanguage=en>.

<sup>48</sup> See question “Does shomi comply with Canadian Radio-television Telecommunications Commission (CRTC) requirements?”: Rogers, “shomi FAQs: General Product Information” (Accessed 4 February 2015), online: <http://www.rogers.com/web/support/shomi/information/2?setLanguage=en> (emphasis original).

<sup>49</sup> Shomi Press Conference at 4:00.

*what Netflix is, and it actually keeps people engaged in that cable subscription.*<sup>50</sup>

76) Because the content available through Shomi is designed primarily for television and is thus “television programming” within the meaning of section 5 of the DMEO, and because access to the OTT version of Shomi is restricted to those who subscribe to a specific retail internet service, the Commission should conclude that Rogers, Shaw and Shomi Partnership are violating section 5 of the DMEO by offering the OTT version of Shomi on an exclusive basis.

77) The Commission was clear in the DMEO decision:

[...] digital media broadcasting undertakings can exercise exclusive rights to programming designed primarily for conventional television, specialty, pay or VOD services without having to make such programming available to competing digital media broadcasting undertakings, provided that they do not restrict access to that programming on the basis of a consumer’s specific mobile or retail Internet access service, as the case may be.<sup>51</sup>

78) The Commission recently reaffirmed this in BRP 2015-86.<sup>52</sup>

#### 4. NATURE OF DECISION SOUGHT

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79) Based on the foregoing, PIAC requests the following decision from the Commission.

##### **Under the Telecommunications Act**

- (i) Declare that Rogers’, Shaw’s and Shomi Partnership’s marketing and provisioning of the Shomi online video streaming service exclusively to Rogers’ and Shaw’s internet customers only (as opposed to all Canadian users of the internet) constitutes an undue preference under subsection 27(2) of the *Telecommunications Act*, and
- (ii) Pursuant to (i), direct Rogers, Shaw and Shomi Partnership to eliminate its unlawful practice under the *Telecommunications Act*.

##### **Under the Broadcasting Act**

- (i) declare that Rogers’, Shaw’s and Shomi Partnership’s marketing and provisioning of the Shomi online video streaming service constitutes an undue preference under section 3 of the DMEO, because Rogers, Shaw and Shomi are conditioning access

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<sup>50</sup> Shomi Press Conference at 5:30 (emphasis added).

<sup>51</sup> DMEO at para. 24 (emphasis added).

<sup>52</sup> At paras. 85-86.

to the Shomi service on subscription to an affiliated internet (telecommunications) or BDU (broadcasting) service and unduly disadvantaging unaffiliated internet service providers and BDUs, to the detriment of competition and to consumers;

- (ii) declare that linking access to Shomi to the subscription to a particular mobile or internet service provider constitutes a violation of section 5 of the DMEQ; and
- (iii) pursuant to (i) and (ii), declare that Shomi's online offering does not currently meet the conditions for exemption in the DMEQ.

## 5. COMMISSION'S JURISDICTION

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- 80) PIAC contends that the Commission has the necessary jurisdiction to grant the relief sought herein.
- 81) Section 24 of the *Telecommunications Act* grants the Commission authority to impose any conditions on the offering and provision of any telecommunications service by a Canadian carrier.

Conditions of service

24. The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

- 82) Despite the Commission's forbearance from the regulation of retail internet service,<sup>53</sup> and mobile wireless data services,<sup>54</sup> the Commission has retained its powers to sanction unjust discrimination under subsection 27(2) of the *Telecommunications Act*.
- 83) The Commission in its decision in *Mobile TV* recognized that legal status under one statute (the *Broadcasting Act*) cannot be used to shield violations of another statute (the

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<sup>53</sup> Telecom Order CRTC 99-562 – *Forbearance from retail internet services* (25 June 1999) at para. 40:

In light of the foregoing and consistent with its previous internet service forbearance rulings, the Commission will, in the case of carriers that have Utility segment operations and have implemented the Split Rate Base regime, unconditionally:

[...]

- retain its powers under subsections 27(2), 27(3) (except to the extent that that provision refers to powers that are forborne), and 27(4) of the Act to provide an additional safeguard against carriers granting any undue preference

<sup>54</sup> Telecom Decision CRTC 2010-445 - *Modifications to forbearance framework for mobile wireless data services* (30 June 2010) at paras. 7-8: "the offering and provision by Canadian carriers of mobile wireless data services shall be subject to the Commission's powers and duties under section 24 and subsections 27(2), 27(3), and 27(4) of the Act."

*Telecommunications Act*) when the acting capacity in question is under the *Telecommunications Act*.<sup>55</sup>

- 84) Section 9(4) of the *Broadcasting Act*, in requiring the Commission to exempt broadcasting undertakings from any or all the requirements of Part II of the Act where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the Canadian broadcasting policy objectives, gives the Commission discretion to impose “such terms and conditions as it deems appropriate” on any required exemption, and indeed the Commission has conditioned the DME0 on compliance with a prohibition against undue preference.

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*Mobile TV* at para. 25:

The Commission therefore rejects Bell Mobility’s and Videotron’s arguments that the relief claimed pursuant to the *Telecommunications Act* should be denied on the basis that they are not subject to that Act. Section 4 of the *Telecommunications Act* does not apply as a shield to the application of the *Telecommunications Act* in this case given that Bell Mobility and Videotron are acting as Canadian carriers in providing transport and data connectivity services required for the delivery of their mobile TV services, as discussed above.