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Submission to CRTC 2009-614: <http://digital-copyright.ca/node/5079>

Commissioners, Ladies and Gentlemen,

My name is Russell McOrmond, and I am speaking as a private citizen. I will start by offering my opinions on the specific questions before you, and then put these questions into context.

I believe when it comes to local programming that the approach you took with the Local Programming Improvement Fund (LPIF) is in the right direction, with minor changes. If preserving and enhancing local programming is the goal, this needs to be focused on individual programs and not stations or broadcasters. LPIF should fund local programming independent of the delivery mechanism, which would include traditional broadcasting, cable access, and Internet distribution.

I believe it is inappropriate for the broadcasters to suggest local programming is a fee for carriage issue. I understand that some channels are not bringing in the same advertising revenues as they have in the past, but this is more an issue of convergence than local programming. As advertising revenue moves online from traditional media, content creators will need to move online as well.

On the issue of fee for carriage I believe this historical arrangement has two sides that created a symbiotic relationship. Cable companies were allowed to redistribute Over The Air signals without payment, but were also mandated to offer these stations as part of basic cable and on more prominent positions on the dial. It seems to be a simple matter of fairness that if one part of this arrangement changes, the entire arrangement should change.

The CRTC should allow over the air private broadcasters to designate themselves as specialty channels. This would mean that they would get fee for carriage, but also that the cable companies would no longer be required to carry them in any specific bundle or on a low channel on analog service.

The CRTC should mandate that the cable operators offer these channels a-la-carte, and not require any specific bundle. This is the most common message from the online consultation website, which is that audiences are fed up with bundles. The CRTC should mandate that all stations be available a-la-carte. It is clearly unfair to offer fee for carriage for any legislatively mandatory stations.

Public broadcasters like the CBC or TVO should be considered separately, as citizens already pay for them. They should not be able to designate local stations as specialty channels, would not receive fee for carriage, and would be mandatory carriage.

Cable or Satellite companies should not be allowed or mandated to manipulate the signals of third party channels without agreement from these third parties. The concept of a Canadian program rights market is a throwback to a past which should no longer be supported. If I am a subscriber to a specific channel that has scheduled to air a specific program, it must never be blacked out or otherwise manipulated simply because some other channel also wishes to air that same program simultaneously or at some other time.

We have the larger picture which is sometimes summarized with the title of convergence.

The CRTC was formed at a time when broadcasting and telecommunications were two silos that each had their own legislation and regulation. In a recent submission from the CRTC you indicated that "the *Copyright Act* should be reformed in a manner that defies a silo based approach". The same needs to happen with broadcasting, telecommunications and the new converged infrastructure. We are moving towards there being one digital pipe into homes and offices where voice, streaming multimedia, and other data are all simply types of information on that pipe.

The Internet should not be seen as a service offered by incumbent telecommunications and broadcast companies, but as a common platform which will include traditional telecommunications and broadcasting services as a subset. For reasons clearly articulated in economic texts such as *The Innovators Dillema* by Clayton M. Christensen, these incumbent industries will have conflicts of interest and be least able to embrace this new medium.

Let us look at the connections into my home. I have water and sewer which are fully municipal services. I have natural gas and electricity where the pipes are fully neutral, and yet I have a choice of providers for these sources of energy. I have coax and twisted pairs that are allegedly fully owned by the phone and cable companies.

Convergence should cause the government and regulators to ask is whether we should abolish this communications exception. We need to ask if the broadcasting and telecommunications sectors are two massive government programs, or if they are services that can exist in a minimally regulated marketplace. The CRTC has indicated that it wants to rely on market forces, but unfortunately these forces can never exist if the CRTC relies on inter-modal competition: Cable and satellite for television, cable and DSL for Internet access.

We have experience with the type of transition we need to make in order to receive the full benefits of convergence. We have something to learn from the previous Progressive Conservative government of Ontario. The Energy Competition Act of 1998 aimed at establishing a deregulated market for the supply of electricity, continuing the deregulation of the natural gas supply market. This was partly accomplished by recognizing that energy distribution was a natural monopoly, and that expecting each potential competitor to put their own pipes into our homes and offices would be impractical. The sector was split into supply that would be a fully competitive private sector marketplace, and distribution which would operate under a highly regulated utility model.

We must do the same thing for our communications infrastructure, separating a highly regulated utility model for municipal distribution from minimally regulated services that are then built on top. This will allow a free market to build services that actually meet the needs of consumers. This will allow local programming to become more local, lowering existing barriers to distribution of neighborhood programming.

I recognize that this is not something that the CRTC can create itself, but this type of forward facing vision should be part of your submissions to government.

Thank you.