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5 May 2021

**By GCKey**

Mr. Claude Doucet  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Doucet:

Subject: *Call for comments – Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians’ online safety – Compliance and Enforcement and Telecom Notice of Consultation CRTC 2021-9 – Public Record: 1011-NOC2021-0009*

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1. Pursuant to the procedures established by the Commission in the notice of consultation referenced above (“CETNC 2021-9”) the Canadian Communications Systems Alliance (“CCSA”) and the Independent Telecommunications Providers Association (“the ITPA”) (collectively “the Associations”) submit their reply comments.
2. Failure on the part of the Associations to address any of the arguments made or positions taken by parties to this proceeding should not be construed as agreement with or acceptance of these arguments or positions where such agreement or acceptance is not in the best interest of the Associations or their member companies.
3. In this intervention, based largely on its review of the initial interventions in this proceeding, the Associations make three basic submissions:

- 1) that the Commission’s jurisdiction to mandate network-level blocking of botnets by Telecommunications Service providers (“TSPs”) is, at best, questionable;
- 2) that the Commission’s imposition of a mandatory network-level blocking regime may practically interfere with an “existing, cooperative and collaborative approach adopted by the Government”<sup>1</sup> for management of network security issues and Parliament’s intention in its establishment of such an approach;
- 3) that network-level blocking is not necessarily the better or even an effective response to the threat to Canadians posed by “bad” botnets; and that
- 4) should the Commission proceed to mandate network-level blocking of botnets by TSPs, it should do that, in the first instance, only with respect to the largest TSPs through whom many smaller TSPs obtain their network connections.

### Jurisdiction

4. The Associations are impressed by the notable degree of consensus among parties to this proceeding upon the conclusion that the Commission appears to lack the necessary jurisdiction, under any of a number of statutes considered, to implement a mandatory network-level blocking framework such as that proposed in CENTC 2021-9.

5. That is the consensus view advanced by Bell Canada, the Canadian Internet Registration Authority (“CIRA”), the Public Interest Advocacy Centre (“PIAC”), Rogers Communications and TELUS Communications, among others, each of which has presented a detailed legal analysis of the Commission’s proposal.

6. As is noted by CIRA in paragraph 14 of its intervention:

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<sup>1</sup> Bell Canada Intervention at para. 36.

Although positioned among the questions posed by the Notice, the threshold question of jurisdiction is fundamental to the scope of this proceeding, and so we address it here first.

7. In paragraph 103, CIRA concludes in part as follows:

The approach set out in this intervention underlines the Commission's limited jurisdiction in the area of network security... (emphasis added)

8. In paragraph ES5 of its intervention, PIAC states in part:

... PIAC submits that the Commission has limited legal authority to impose a mandatory anti-botnet framework on ISPs. Specifically, the CRTC's powers under section 41 or 24/24.1 of the *Telecommunications Act* (as expressed in the ITMP rules) as well as section 9 of Canada's anti-spam legislation do not permit the Commission to set out a preventative framework to require ISPs to block or control botnets. The best legal avenue available to the Commission, in our view, in terms of establishing a mandatory regime, is an ad hoc order made under section 36 of the *Telecommunications Act*; however, we note that the Commission has historically assigned a narrow scope to this section.

9. Similar arguments are found in the interventions of Bell Canada, Rogers and TELUS. For example, at paragraph 27 of its intervention, Rogers states in part:

... it remains unclear whether the Commission has the authority to establish any mandatory requirement for network-level blocking of botnets.

#### Potential Interference with Existing Multi-Agency Approach and Parliamentary Intention

10. The interventions of those parties also highlight the other government ministries, agencies and organizations that are already playing a role in the network security arena in Canada (e.g. the Canadian Security Telecommunications Advisory Committee – or

CSTAC) and that have already developed security best practices for TSPs, which standards and practices are widely and publicly available.

11. The Associations are struck, especially, by the highly persuasive submissions of Bell and Rogers to the effect that the Commission's implementation of a mandatory network-level botnet blocking regime may actually interfere with the existing, carefully articulated scheme for the division of responsibilities between – and cooperation among – a variety of expert Government agencies already tasked with responsibility for protection of Canadian citizens and consumers from Internet security threats.<sup>2</sup>

12. In light of the significant doubts expressed on the record of this proceeding that the Commission has the necessary jurisdiction to impose a mandatory network-level blocking framework to limit botnet traffic or that such intervention would be beneficial to Canadians, the Commission should, instead, focus on promoting the resources available to both individual Canadians and TSPs to secure themselves and their networks against malicious botnets.

13. The Associations endorse the comments of many parties to this proceeding in support of a system of voluntary standards and best practices to which TSPs can comply while maintaining the flexibility needed to respond to their customers' security needs within the particular network environment delivered by each TSP.

#### Network-Level Blocking May Not Be the Better Response

14. The Associations note comments provided by many intervenors to the effect that network-level blocking may not be a sufficiently responsive approach to reduction of the threat presented by quickly-evolving botnet technologies and schemes. The Associations

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<sup>2</sup> See, e.g. Bell Canada Intervention at paras. 39 and 41.

note, as well, the many comments raised regarding shortcomings of IP-based, DNS-based and protocol-based responses to those evolving threats.<sup>3</sup>

15. In particular, the Associations support the assertion put forward by TELUS that because “[b]otnets exist because they are able to target and exploit the security vulnerabilities found in end user devices”, the “Government should focus on improving the security of end user devices by establishing and enforcing security standards” for such devices.<sup>4</sup>

16. As TELUS notes, that approach has been applied in other jurisdictions including the US. The Associations submit that great care should be taken to ensure that any response to the botnet threat – especially any mandated response that will impose costs on TSPs and the Canadians they serve – is, at the very minimum, an effective response to the actual threat being experienced.

#### Apply Any Network-Level Blocking Regime Only to the Large Carriers/TSPs

17. In their initial intervention in this proceeding, the Associations argued that the Commission should direct that any new regulatory measures resulting from this proceeding be applied only to the largest carriers first. Many smaller TSPs purchase wholesale Internet services from the largest carriers with the result that an additional subset of Canadians would be automatically covered by that approach.

18. However, should the Commission proceed to mandate a network-level botnet blocking regime, the Associations re-emphasize their submission that the Commission should apply any new regulatory measures resulting from this proceeding only to the largest carriers first. The Associations note that at paragraph of its intervention PIAC states:

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<sup>3</sup> See, e.g. Eastlink Intervention at para. 20, “All three types of blocking proposed by the Commission (DNS-based, IP-based and protocol-based) present a significant risk of false positives and over-blocking”.

<sup>4</sup> TELUS Intervention at para. 4.

25. The Canadian ISP scene is made up of three large companies—Bell Canada, TELUS Communications Inc, and Rogers Communications Inc—several cable-based and telecom-based dominant regional providers, as well as a number of smaller wholesalers. The concern is that only the larger, well-resourced ISPs will be able to comply with a mandatory botnet framework, which would give them a competitive advantage and skew the telecommunications playing field in Canada even further. In PIAC's view, there is a strong consumer interest in having multiple ISPs as they increase competition, access, affordability, and choice. A botnet blocking framework, therefore, should not place unfair regulatory burdens on smaller ISPs and drive them out of the Canadian telecommunications market or create barriers to market entry.

19. The Associations agree with PIAC's concerns regarding unfair regulatory burdens on smaller service providers. If, at some point in the future, the Commission considers that it may be necessary to extend the framework to smaller carriers/TSPs, that should be done only on the basis of objective evidence – including evidence as to the impact on smaller carriers and the reasonable timing of such extension to smaller TSPs – resulting from the conduct of a separate show cause proceeding on the matter.

20. The Associations thank the Commission for the opportunity to provide these comments.

Yours truly,

Jonathan  
Holmes

Jonathan L. Holmes, ITPA  
Executive Director



Christopher J. Edwards, CCSA  
Vice-President

Cc: CENTC 2021-9 Intervenors

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