

September 14, 2020

VIA Intervention Comment Form

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

Dear Mr. Doucet,

Subject: Part 1 Application: 2251723 Ontario Inc. (“VMedia”) v. Bell Media Inc. - Allegation of undue preference/disadvantage

1. The Canadian Communication Systems Alliance (“CCSA”) speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 110 companies operating from sea to sea to sea, including across the North.
2. CCSA submits this intervention in response to the subject Part 1 Application filed with the Commission by VMedia on August 5, 2020.
3. As VMedia noted in its application, VMedia is a CCSA member company.
4. For the reasons set out below, CCSA supports VMedia’s application.
5. On August 12, 2020, CCSA filed a Part 1 Application with the CRTC regarding Bell Media’s delays and refusals to permit new launches of its discretionary services by numerous CCSA member companies.
6. In that application, CCSA submitted that such delays and refusals amounted to violations of the currently suspensive Condition of Licence for Bell Media discretionary services which

provides that “ the licensee “shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent, or is designed to create incentives that would effectively prevent another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.”

7. CCSA submitted, further, that such delays and refusals contravene ss. 5(e) and (f) of the *Wholesale Code* in that they:
 - impose unreasonable terms and conditions that restrict the ability of a BDU to provide consumer choice; and
 - impose unreasonable terms and conditions that restrict a programming service or a BDU from providing programming on multiple distribution platforms.
8. CCSA submitted, further, that Bell Media’s refusals to permit CCSA Members to distribute its services on their IPTV platforms or as on-demand or TVE offerings contravene s. 12 of the *Wholesale Code* in that such refusals, “where a programming service provides a related BDU with programming on multiple distribution platforms”, fail to meet the requirement that the programming service “shall offer reasonable terms based on fair market value to other BDUs for their non-linear multiplatform rights at the same time as their linear rights and provide such content on a timely basis.”
9. Finally, CCSA submitted that such delays and refusals:
 - confer an undue preference upon Bell Media’s affiliated BDUs and other distribution undertakings; and
 - impose an undue disadvantage upon CCSA members who find themselves unable

to launch new IPTV and on-demand offerings that will enable their customers to enjoy the full benefits of today's available video programming choices and features.

10. While VMedia's complaint involves certain facts that differ from those experienced by other CCSA members – namely with respect to VMedia's distribution of services by means of certain specific “apps” and VMedia's “Wholesale Distribution Model” – the basic underlying anti-competitive behavior experienced by VMedia is the same that experienced by other CCSA members.
11. In particular, Bell Media's blanket refusal to process new launches of its services has been based on the premise that, as VMedia notes, “because CCSA was out of contract with Bell, no approvals of new platforms or services would be forthcoming.”¹
12. That is, despite the existence of existing affiliation agreements between CCSA and Bell Media and despite CCSA's compliance with all available regulatory mechanisms which apply to renewal of such agreements, Bell Media is illegitimately using launch refusals and delays to pressure CCSA and its members, including VMedia, to cave into contract renewals on Bell Media's terms.
13. This is a case of a large, vertically-integrated media company improperly bullying smaller competitors into submission in a manner entirely contrary to the rules and objectives embodied in Bell Media's “anti-competitive” Condition of Licence, the *Wholesale Code* and the undue preference/disadvantage provisions in the *Discretionary Services Regulations*.
14. That is, Bell Media's anti-competitive actions are precisely what those various regulatory and policy protections were designed and enacted to prevent.

¹ VMedia Part 1 Application CRTC File: 2020-0487-8, August 5, 2020 at para. 13.

15. For those reasons, CCSA submits that the Commission should approve VMedia's application and grant the relief requested by that application.
16. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,



Christopher J. Edwards
Vice-President, Regulatory Affairs

cc. George Burger, VMedia - George.Burger@vmedia.ca
Bell Regulatory - bell.regulatory@bell.ca

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