

One of Canada's most important institutions is failing Canadians

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CONTRIBUTED TO THE GLOBE AND MAIL

PUBLISHED JUNE 17, 2021

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There has been much reporting on the extensive political controversy recently about Bill C-10, which seeks to expand the CRTC's scope of authority over online content in the name of protecting Canada's cultural sector. One might conclude from this that the government believes it is more of a priority than promoting telecom affordability and protecting consumers.

Access to high-quality, affordable internet engages virtually every aspect of our lives. That is why the CRTC (Canadian Radio-television and Telecommunications Commission), the administrative body tasked with regulating the telecom sector and implementing Canada's multifaceted telecom policy objectives, is a crucial institution.

Canada's telecom policy is set out in law as a series of objectives in the 1993 Telecommunications Act, overlaid by two directives – one from 2006, which emphasizes reliance on market forces, and the other, in 2019, which emphasizes competition, affordability, consumer interests and innovation.

Making sense of the kaleidoscopic objectives and governmental directives is no easy task, but the major thrust is that Canadian telecom policy should, by leveraging competition and market forces, respond to the needs – both economic and social – of Canadians.

In a series of recent decisions, it has become clear that the CRTC is failing to respond to those needs.

In April, the CRTC decided against cracking open the wireless market to much-needed competition from smaller, more innovative players. Instead of mandating that the national wireless carriers provide wholesale access to their networks to independent providers – as requested by many smaller players and consumer groups – the CRTC basically limited access to regional carriers who already own spectrum and facilities. So rather than opening up the market to more players to compete, the CRTC shielded the biggest players in the industry, which could become even more concentrated if Rogers' acquisition of Shaw (and its Freedom Mobile) proceeds.

Then in May, the CRTC, facing pressure from the large telecom and cable companies' lobbyists and lawyers, and receiving mixed messages from the government, cowered. It reversed its own 2019 decision to lower the rates that smaller, independent internet service providers pay for network access, proclaiming, with scant justification, that it got its 2019 decision wrong.

If the government does not put the CRTC back in line with its policy, which is its prerogative, Canadians can expect to pay even more for less.

There are many perspectives and theories as to why the CRTC is failing. The “regulatory capture” view implies that some commissioners and staff have simply been “captured” by those interests. There is no question that you want a certain amount of industry knowledge and technical skill at the CRTC, but some of the most contentious files, including the competition file, appear to be under the purview of people who have spent years at big telcos.

A related theory is that the CRTC is biased in favour of larger companies, and believes that only the largest of companies can deliver. This view gained more adherents when the CRTC chair openly expressed a personal opinion in favour of facilities-based service providers – which own the networks and transmission facilities – over service-based ones that lease access to those transmission facilities.

Then there is the fact that the larger companies can devote more resources to lobbying, and in return receive more attention from politicians and regulators, right down to one CEO having a meeting at a pub with the CRTC chair in the midst of a review of its rates decision. That sort of behaviour – and the concerning apprehension of bias it creates – was one of the reasons another CRTC commissioner was fired by cabinet in 2016. In the United States, the communications regulator (FCC) has rules around off-the-record contact with FCC officials about matters under review. In Canada, in the absence of such rules, preferential access appears to depend on a company’s size.

If the CRTC is going to ignore government policy and make decisions that protect large companies from competition, then the CRTC, its constitution and its oversight must be retooled. In 2020, a panel of experts appointed by the federal government recommended a number of institutional reforms to make the CRTC more proactive, and more accountable. Those experts also recognized that the government has an important role to play in ensuring the CRTC does not deviate from its policy.

In a 2012 academic paper exploring the relationship between government’s whims and the regulator’s supposed independence – which also used a case study relating to wholesale access – the CRTC had been referred to as a “respected regulatory body.” There is substantial doubt growing among many industry stakeholders, and I suggest consumers, as to the correctness of that view.

Canadians deserve affordable and innovative internet services, and to be treated fairly. They also deserve a transparent, balanced and accountable CRTC.