



October 10, 2017

VIA GC Key

Mr. Claude Doucet, Secretary-General (Acting)  
CRTC  
1 Promenade du Portage  
Les Terrasses de la Chaudière  
Central Building  
Gatineau, QC  
K1A 0N2

Dear Mr. Doucet:

Subject: **Part 1 Application - Allegation of Undue Preference/Disadvantage, Ebox Inc. vs Bell Media Inc.**

1. CCSA represents independent communications distributors across Canada. CCSA speaks on regulatory matters for more than 125 companies operating throughout Canada. Ebox, Inc. ("Ebox") is a CCSA member company.
2. CCSA has reviewed the Part 1 application made by Ebox in relation to Bell Media Inc.'s ("Bell Media") refusal to provide programming services to Ebox.
3. *The Discretionary Services Regulations* provide, at s. 14(1), that:

If there is a dispute between a licensee and the operator of a licensed distribution undertaking or an exempt distribution undertaking concerning the carriage or terms of carriage of programming that originates from the licensee, including the wholesale rate and the terms of any audit referred to in section 15.1 of the *Broadcasting Distribution Regulations*, one or both of the parties to the dispute may refer the matter to the Commission for dispute resolution.

4. Ebox, is entitled, as of right, to avail itself of the Commission's dispute resolution facilities regardless of whether an affiliation agreement is in place.
5. Ebox has properly applied for the Commission's assistance in relation to a commercial dispute with Bell Media.



6. Bell Media’s programming services, as “licensees” within the meaning of s. 14(1), are bound to participate in the Commission’s dispute resolution proceedings.
7. As Ebox notes, Bell Media is also bound by the undue preference and reverse onus provisions at s. 11 of the *Discretionary Services Regulations*.
8. We note that the introductory decisions to the recent licence renewals for the major English and French programming groups re-asserted the relevance of application of the *Wholesale Code*. That was because:

The Commission considers that the record of this proceeding justifies maintaining the existing conditions of licence that overlap with the Wholesale Code while rendering them suspensive. The conditions of licence at issue stem from past decisions in which the Commission sought to address concerns over the exercise of market power and the impact of consolidation within the system. Noting the concerns of interveners in the current licence renewal proceeding, the Commission considers that the underlying issues that these requirements sought to address remain relevant.<sup>1</sup>

9. In the same decision, the Commission noted that it:

... also considers that the dispute resolution regime, which contains both informal and formal processes and a number of regulatory protections in addition to those found in the Wholesale Code, is well equipped to ensure that a broad range of commercial issues may be brought before the Commission for resolution.<sup>2</sup>

10. The Conditions of Licence for discretionary services provide that a licensee:

... shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent or create incentives that would effectively prevent another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.<sup>3</sup>

11. While that Condition of Licence does not expressly address a situation in which a programming licensee simply refuses to deal with a BDU at all, it is clear that such a refusal to provide any of its many discretionary services to a BDU “effectively prevents” a BDU from “distributing another licensed programming service”.

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<sup>1</sup> Broadcasting Decision CRTC 2017-148 at para. 113.

<sup>2</sup> Broadcasting Decision CRTC 2017-148 at para. 116.

<sup>3</sup> Broadcasting Decision CRTC 2017-144, Appendix 2 at para. 16.



12. Without access to “must have” services like TSN and RDS, a BDU cannot offer a competitive service and is effectively foreclosed from operating as a BDU.
13. CCSA agrees with Ebox that such a refusal is profoundly anti-competitive and does, in fact, create a significant undue preference for Bell and the other incumbent BDUs – and a significant disadvantage for Ebox – in the markets that Ebox serves.
14. As such, Bell Media’s action is absolutely antithetical to the Commission’s conclusion, in introducing the *Wholesale Code*, that “a vigorous wholesale market is essential to fostering an environment and a retail market that enhance greater subscriber choice”.<sup>4</sup>
15. CCSA is deeply concerned that Bell Media could use this current matter to create a precedent for the proposition that it can deny access to its programming services to competing BDUs simply by refusing entirely to deal with those BDUs.
16. Such a result could have profound and wide-reaching negative impacts on the state of competition in the Canadian broadcasting distribution sector. Canadian consumers in many smaller markets could see their choices of providers and their access to competitive pricing severely limited by such a result.
17. Such a result could stifle innovation by newer distribution partners in the delivery models, packaging and pricing they can make available to Canadian consumers.
18. CCSA strongly supports Ebox’s request that the Commission order Bell Media to offer its programming services to Ebox, to negotiate, in good faith, terms for Ebox’s carriage of those services and to participate in the Commission’s dispute resolution proceedings in this matter, including, as appropriate, Ebox’s original request for Final Offer Arbitration.

Sincerely,

Christopher J. Edwards  
Vice-President, Regulatory Affairs

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<sup>4</sup> Broadcasting Regulatory Policy CRTC 2015-438 at para. 2.