

**COGECO CABLE INC.**  
**Oral Presentation**  
**Let's Talk TV Public Hearing**  
**11 September 2014**

Good afternoon, Mr. Chair, Mr. Vice-Chair and Commissioners. Thank you for giving us the opportunity to appear today at this important hearing on the future of Canadian television. I am Louis Audet, President and Chief Executive Officer of Cogeco Cable Inc. and I will introduce the members of our team. To my immediate left Louise St-Pierre, President and CEO, Cogeco Cable Canada GP Inc.; to her left, Jean-Pierre Caveen, Vice President, Affiliate, Partner and Carrier Relations at Cogeco Cable Canada GP Inc. To my immediate right, Nathalie Dorval, Vice President, Regulatory Affairs and Copyright at Cogeco Inc.; to her right, Yves Mayrand, Consultant; and to Yves' right, Suzanne Blackwell, Consultant and President of Giganomics Consulting inc. who prepared the economic study attached as an Appendix to our written intervention.

I would like to focus our remarks today on a few key elements of our written intervention, more particularly in light of the working document you issued on August 21. You will also find in the Appendix to our presentation a detailed statement on the position of Cogeco Cable on the proposals and options contained in the working document.

The Commission should be commended for taking the lead and initiating this proceeding. As we all know, the Canadian broadcasting system and the broadcasting industry participants are facing unprecedented new challenges in the world of digital video programming on demand, everywhere, any time, and on any delivery platform. We must all adapt sooner rather than later to this new paradigm.

We must however do so within the statutory parameters set out in the *Broadcasting Act* in its present form, even though the broadcasting industry has changed dramatically since the Act was last revised in 1991. We must therefore find ways to achieve the intended outcomes that you have outlined in your notice of consultation without

compromising the present requirements of the existing broadcasting policy for Canada in subsection 3(1) of the Act.

I should add that the new regulatory framework resulting from this proceeding must also contribute in the end to keeping Canadian consumers connected to - and happy with - their Canadian broadcasting system. Conversely, the new regulatory framework should not contain any measures that provide an incentive for Canadian consumers to disconnect from - or cut back their use of - the Canadian broadcasting system. Our submissions reflect this fundamental consideration as well.

We have made it very clear that we support the Commission's objective of making a small basic service available to Canadian consumers. We have mentioned however that the exclusion of the major American conventional television networks from this small basic service would likely be perceived as contrary to the interests of consumers by a good number of BDU customers and would seriously harm the Canadian broadcasting system down the line.

We urge you not to forget that these services are - and will continue to be - available free over-the-air to a large number of Canadian households, that they do not add to the programming cost inputs of the basic service, and that they have been part of the basic service for over 60 years.

When Canadian consumers will actually realize that they will have to subscribe to a basic tier that does not include major American conventional television networks and to separately subscribe to have access to them through their BDU, there could be an adverse reaction, with some Canadian consumers blaming the government and the regulator for giving from one hand more choice and flexibility for discretionary tiers while taking away from the other hand the major American conventional television networks from the basic tier.

We also made it very clear that we support greater choice and flexibility for Canadian consumers when they subscribe to discretionary television services on top of the basic tier. We do this

already to the extent permitted by our contracts with our television programming service suppliers. The major impediment to providing even more choice is the prohibitions and unduly penalizing terms that some television programming service suppliers, both Canadian and non-Canadian, are imposing on independent BDUs such as Cogeco Cable with the clear purpose of maximizing penetration of their programming services by limiting the packaging flexibility at the level of the retail sales in the broadcasting distribution market. Unless you see to it that these terms are no longer allowed or by television programming service suppliers, whether Canadian or non-Canadian, the much heralded new era of greater choice and flexibility will simply not happen for the most popular television programming services available on cable or satellite. There again, many Canadian consumers could be very unhappy with this outcome, and they could blame the government and the regulator for failing to actually deliver the promised goods.

In this regard, although we are not of the view that wholesale rates of programming services that are set on penetration-based rate cards should be completely prohibited in all possible forms, we believe

however that they must be clearly circumscribed and closely supervised by the Commission when they involve vertically integrated entities that have clearly made abusive use of them in the past. We are still stung by such abuse, and we certainly do not want to see them invoked as precedents for future affiliation agreement renewals. In an environment of freedom of choice for Canadian consumers, it is not for the independent BDUs such as us to take all the risks resulting from the loss of subscribers or of subscription or advertising revenues incurred by television programming services.

That being said, does the implementation of a small basic service need to be tied in any way to a retail price cap regime, or does the marketing of flexible packaging options or the composition of build-your-own-package options need to be managed and regulated by the Commission? The answer is absolutely no.

What are the real concerns here, from a regulatory policy perspective? Is it that, if flexibility to add some programming services to the new small basic service is given to BDUs, the VI entities will

game the system by including their own television programming services in a once again large basic service, thus driving upwards the retail price of basic at the expense of Canadian consumers? If so, there is a much simpler and cost effective way to prevent that from happening instead of re-regulating retail rates for cable and satellite services across the whole industry. For instance, the Commission can specify that the flexibility to add to the new small basic service will be limited to certain unrelated services such as the major American conventional television networks, and that VI entities may not include their own related discretionary programming services in that small basic service unless they are mandated for basic distribution pursuant to section 9(1)(h) of the Act.

Is there a concern that VI entities will unduly and unfairly bundle and promote their own related programming services under the build-your-own package option? If so, there is again a much simpler and cost effective way to prevent that from happening rather than micro-managing the content of packages and their promotion in the marketplace across the entire industry. The Commission needs only to ensure that the VI Code is incorporated into the regulations and

precludes VI entities from stacking their packages only with their own related programming services.

This brings us to deal with a central point of our submission. In the current unprecedented level of vertical integration reached in the Canadian broadcasting and telecommunications industries, the Commission must refocus its regulatory framework on dealing with and disciplining the VI entities in order to achieve the intended outcomes for the benefit of Canadian consumers, as opposed to making general regulations that apply across the board to all regulated Canadian programming service or BDU licensees, including the non-integrated independent licensees with no market power. As an independent BDU with less than 7% of the downstream broadcasting distribution market and no financial interest in any television programming service supplier, Cogeco Cable has no opportunity or incentive to game the system at the expense of Canadian consumers. What we care about is what our BDU customers care about, and that includes a small affordable basic cable service and flexible packaging options for all our customers, whether they live in Ontario or in Quebec.



The two options for the small basic service that you have outlined three weeks ago in your working document do not include the one that we proposed, mainly a predominantly Canadian small basic service that could continue to include as well the major American conventional television networks. This would involve no additional programming cost for BDUs or their customers subscribing to the small basic service.

If you are only prepared to consider an all-Canadian small basic (Option A), or a basic service with unlimited flexibility for BDUs to add other services subject to a retail price cap regime (Option B), we would feel compelled to opt for Option A. Re-regulating the retail rates for the basic service under Option B would require the Commission to establish a whole new price cap regime with related methodologies, processes, cost studies, cost allocations between basic cable and other bundled broadcasting and telecommunications services, programming input cost monitoring, and price adjustment mechanisms. In addition to the mere logistics involved, the regime

would involve the usual inefficiencies and shortcomings usually associated with price cap rate regulation, such as regulatory lag and gaming. I would add that, in the highly vertically integrated state of the system, it would not be possible to regulate retail pricing without regulating as well wholesale prices for programming services included in the basic service.

We otherwise agree with the proposals and options outlined by the Commission dealing with the themes of pick and pay, build-your-own-package, affiliation agreements, dispute resolution and the distribution of non-Canadian programming services. We are encouraged by the fact that the Commission appears determined to discipline Canadian VI entities and large non-Canadian television programming service suppliers with market power so as to ensure the successful implementation of the new proposed regulatory framework. You have our support for this, but in the end, we absolutely need your support as well to make it really happen.

On the shutting down of local television station transmitters, we note the overwhelming opposition of Canadian consumers to this proposal in the top 100-liked comments published on the CRTC website, and we worry that Canadian consumers seem to believe that this measure has been requested by Canadian BDUs while, in fact, the measure has been proposed only by one private OTA broadcasting group and by the CBC. As indicated in our comments, Cogeco does not support the shutting down of local station transmitters. We do however appreciate that the Commission, in its latest proposal, understands the need to ensure that this would not lead to carriage fees, which would of course make the basic service a lot more expensive for Canadian consumers and hurt subscription levels and revenues for discretionary programming services offered on top of the basic service.

Finally, we reiterate that we will need 18 months from the date of the Commission's policy decision to implement the proposed new regulatory framework throughout our distribution systems. We submit

to you that an implementation deadline of December 15, 2015 is simply not realistic given the magnitude of the changes and the logistics involved to make them fully operational throughout our cable systems.

Thank you again for hearing us today. My colleagues and I will now be pleased to answer any questions you may have.