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Is the CRTC getting too cosy with big telecom? Star analysis finds major telecoms met with government and CRTC officials hundreds of times prior to reversal on wholesale internet rates

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Brad Meredith has been a TekSavvy home internet customer for a decade. He's the kind of guy who tracks down good deals for his relatives and helps them troubleshoot connection problems.

Meredith, who lives in Toronto with his wife and baby and is looking for work as a project manager, said he likes the company's customer service and feels good about supporting a smaller, independent player.

When he heard the Canadian Radio-television and Telecommunications Commission recently reversed a decision — on the prices independent internet service providers (ISPs) pay big telecoms to access their networks — in favour of the large telephone and cable companies, he was “flabbergasted” and frustrated, he said. “Really frustrated.”

He's worried about the prospects for smaller ISPs like TekSavvy, which tend to offer lower prices, and fears the ruling could hurt or kill such competitors. Tek-

Savvy has already scrapped plans to expand into the cellular business, citing the CRTC decision as the reason.

The earlier decision, made back in August of 2019, found that wholesale rates had been too high for years and lowered them. But in a surprising about-face last month, the regulator reversed course, saying it had made numerous mistakes in the 2019 ruling and, with some minor changes, reverted to a set of older rates. (Those rates had been put in place in 2016 as a temporary measure and were themselves significantly lower than a previous set of rates.)

Meredith said he wonders what happened to prompt the regulator to reverse course. “I thought maybe this time it would actually happen, that the CRTC would stick to its guns. To see that collapse is just another kick in the teeth.”

He's not alone in wondering what happened.

“I was stunned by this decision,” said Konrad von Finckenstein, who was

“I thought maybe this time it would actually happen, that the CRTC would stick to its guns,” says long-time TekSavvy customer Brad Meredith of the CRTC's reversal. “To see that collapse is just another kick in the teeth.”

chair of the CRTC from 2007 to 2012. He said he was shocked that the commission would reverse itself on so many issues and that since regulation is rarely black and white, the “best thing is if you come up with something that both sides grudgingly accept.”

The ruling, he said, “seems to come totally down on one side. ... I've never seen anything quite that one-sided in terms of regulatory decision-making.”

Critics say the decision tilted in favour of big telecom because the CRTC and its chair, Ian Scott, have become too cosy with players like Bell and Rogers — massive companies that have ample resources for lobbying the federal government, which lately seems to have become much more supportive of the industry's largest players.

Scott himself, who previously held executive roles in government and regulatory affairs with satellite communications provider Telesat and Telus, has become a focal point for anger over the ruling.

Consumer advocacy group OpenMedia splashed his picture across an online petition titled, “CRTC’s Big Telecom Scandal,” which had attracted more than 22,000 signatures as of Friday morning. University of Ottawa law professor Michael Geist wrote of the ruling: “Much of the blame rests with the government, as it appointed CRTC Chair Ian Scott, who has presided over a dismantling of a pro-consumer, pro-innovative policy approach.”

TekSavvy has filed a petition with the federal cabinet asking it to overturn the CRTC ruling and remove Scott as chair while VMedia has called for Scott to resign.

The wholesale system is meant to encourage competition in a market dominated by one telephone and one cable company in each region, such as Bell and Rogers in Toronto. Arguing Scott is biased against that system, TekSavvy pointed to public remarks he made in May, in which he said he has a “personal preference or stronger belief” in “facilities-based competition,” meaning companies that build their own networks rather than reselling the service.

The Competitive Network Operators of Canada (CNOC), which lobbies on behalf of small ISPs, called the ruling “an arbitrary decision that appears to be the result of lobby pressure and false big telco threats.”

It’s not easy to peer inside the decision-making of the CRTC to see what factors

prompted the sudden reversal. But government lobbying records are public, so to better understand the role that it may have played, the Star analyzed federal lobbying records between Aug. 15, 2019, and June 1, 2021, and spoke with experts on the CRTC decision-making process.

This analysis revealed that big telecom had substantially better access to both the government and the CRTC in its bid to affect policy.

In fact, Bell, Rogers, Shaw, Cogeco, Quebecor and Telus had more than 250 meetings with government officials in the department of Innovation, Science and Economic Development (ISED), plus a dozen meetings with Scott, one of which took place over a beer in a busy Ottawa bar.

By comparison, CNOC, TekSavvy and fellow independent ISP Iristel met with ISED or the CRTC just 19 times since the 2019 ruling.

CRTC spokesperson Eric Rancourt said the regulator made an independent decision and while he did not comment specifically on Scott’s role, he said the chair is only one of nine commissioners who made the call.

“The CRTC built a public record, carefully considered the issues raised by the parties and determined that there was substantial doubt in the rates that were set in that decision, a decision made by all commissioners.”

Mohammad Hussain, a spokesperson for Innovation Minister François-Philippe Champagne, said it is “appropriate and expected” for the government to meet with telecom players to convey Ottawa’s goals for the sector and hear

the companies’ feedback.

“Any suggestion that stakeholder meetings taken by the minister or his staff would have any influence over the decisions of the CRTC is incorrect, as the CRTC operates at arm’s length from the government,” Hussain said.

In response to the ruling, Bell said it plans to invest up to \$500 million more on networks over the next two years. The company’s chief legal and regulatory officer, Robert Malcolmson, said the CRTC “struck the right balance,” adding, “I think the regulator is trying to balance resellers’ need for access to networks and investment in those networks by the companies that build them.”

Many experts agree lobbying is a legitimate practice and note that parties cannot lobby CRTC officials on open files. Still, smaller companies are vastly outnumbered by the big players.

“The lobbying that goes on, especially from the large companies, is incessant and constant,” von Finckenstein said in a podcast hosted by Geist. In a later interview with the Star, von Finckenstein said the CRTC needs to hear from the parties it regulates but must be careful to listen to both sides equally.

“That’s a problem, because the resources are so different. The resources between Bell and (independent ISP) Distributel — there’s absolutely no comparison. So they can’t see you very often, they can’t speak to you.”

When the original CRTC ruling on wholesale internet rates was published in August 2019, it, too, caused an immediate uproar.

Independent ISPs celebrated and companies such as TekSavvy, Distributel and Start.ca passed on discounts to customers or upgraded their internet speeds for free. But large players called it a huge mistake. Bell notably said it would cut about 200,000 households from a planned expansion of rural internet upgrades.

Within a month of the ruling, Bell and the cable companies Rogers, Shaw, Cogeco, Quebecor and Eastlink had filed appeals with the Federal Court of Appeal. By the end of September, the Federal Court of Appeal granted a temporary stay of the CRTC ruling, freezing its effect. Appeals to the federal cabinet and applications to the CRTC asking it to review its own decision also followed.

While the lawyers prepared attacks from all angles, the lobbyists were also busy.

The ruling was published on Aug. 15, a Thursday. By the following Wednesday, Bell had a meeting with Navdeep Bains, then the minister of innovation, and Rogers met with him the next day.

Records from the federal lobbying registry also show that representatives from Shaw and Cogeco both had meetings with Parvinder Sachdeva, senior policy adviser to Bains, on the Wednesday after the ruling.

It is up to companies to file records and the registry includes meetings with staff members from policy advisers to deputy ministers. Communications can range from a brief phone call to a sit-down meeting, and the length of discussions is not noted.

Since the wholesale rates decision, Rogers has met with representatives

from ISED 77 times; Shaw 58; Telus 40; Cogeco 34; Bell 29 and Quebecor 23. In total, they met with Bains 16 times. (Telus and Quebecor didn't meet with the former minister at all over that time period and Telus said it has not lobbied any level of government on the wholesale internet services debate; Eastlink has not lobbied at all.)

These are large companies — Rogers, Bell, Quebecor and Cogeco all have media operations and Telus has a health division — and they meet with government about many things. Lobbying records do not typically disclose specific matters discussed, and many of the meetings included in this analysis are on the subject of broadcasting or subjects other than telecom.

Large telecoms said interactions with federal and provincial governments are a normal and accepted practice. Shaw, for example, said it is common for governments to meet with a range of stakeholders on complex issues to “develop a more informed policy decision.”

“In this case, we met several times with government officials as the 2019 rates would have had a devastating impact on network investment and rural and remote connectivity,” said Shaw spokesperson Chethan Lakshman.

When Champagne was named innovation minister on Jan. 12 this year, lobbyists from big telecoms were quick to meet with him too. Between Jan. 18 and Feb. 4, Rogers, Bell, Telus, Cogeco and Quebecor all met with the new minister. (Hussain noted those were “brief introductory calls as he assumed this portfolio.”)

Following the 2019 decision, TekSavvy has had 12 meetings with ISED repre-

sentatives, including one with Bains but none with Champagne. Independent ISP lobby group CNOC has met with ISED four times and Iristel has met with ISED twice, including a meeting with Champagne.

Meetings with the CRTC are less common, which could be in part because meetings with most staffers and commissioners do not need to be disclosed in the lobbyist registry. Records are only required for meetings with the chair, two vice-chairs and a few senior bureaucrats.

Still, since the wholesale ruling, Bell has also met twice with Scott, Rogers three times, Shaw five times, and Cogeco and Quebecor once each. TekSavvy has met once with the CRTC since that time but not with Scott.

On Dec. 19, 2019, Scott met with Mirko Bibic, who is now the CEO of Bell but was then chief operating officer. The Star has learned that the two were seen meeting at D'Arcy McGee's, a popular pub on Sparks Street in Ottawa where public servants, government officials and members of the media often congregate. The meeting is disclosed in the lobbyist registry with broadcasting as the subject discussed.

“Meetings between Bell representatives and government officials cover many topics, including broadcasting and telecom policy as well as infrastructure and technology issues,” Bell spokesperson Ellen Murphy said. “These meetings are a matter of public record, including those in public establishments as you note, and are typically scheduled weeks in advance due to the busy agendas of public servants.”

The CRTC did not comment on the

meeting between Scott and Bibic. On lobbying in general, Rancourt said, “To better understand the Canadian communications industry, CRTC staff and commissioners routinely meet with stakeholders, including consumer groups.”

Von Finckenstein would not comment on the specific meeting, but said when he was chair, he would include a third party, typically the CRTC’s general counsel, in lobbying meetings with industry.

Peter Menzies, who was a CRTC commissioner from 2007 to 2017, including four years as vice-chair of telecom, similarly said when he was at the commission, the recommended practice was to meet with lobbyists in the office and have a third person present. He said he thought meeting at a bar “would fall into the category of high-risk behaviour.”

By early 2020, with appeals of the CRTC ruling grinding along, a new and potentially more significant factor was suddenly in play: the COVID-19 pandemic.

The public health crisis sent office workers and students home and made online access to government services essential, highlighting the need for robust communications services. Telecom companies poured money into network upgrades to address surging demand (Bell, for example, spent an extra \$200 million on network capacity last year) and volunteered resources such as laptops and iPads for schools.

Industry players say this went a long way to changing the tone of conversation with government.

The pandemic “had a significant impact,” Bell’s Malcolmson said. “I think government and policy-makers rightly want to fix the so-called digital divide as quickly as possible by supporting companies that will invest in networks.”

A Rogers spokesperson similarly said COVID-19 underscored the importance of “world-class networks.”

Court appeals of the CRTC ruling failed and the federal government also said it would not overturn the decision, but in an August 2020 statement, then-minister Bains questioned whether the regulator got it right.

Champagne’s spokesperson Hussain said “the statement was clear in saying the 2019 rates did not ‘appropriately balance the policy objectives of the wholesale services framework’ and that there was concern ‘that these rates may undermine investment in high-quality networks, particularly in rural and remote areas.’ ”

Yet, while ISED notes that the CRTC is an arm’s-length body, the government can still overturn CRTC rulings. Bains’s statement was seen by many at the time as a strong signal to the CRTC to change direction on the decision, which the regulator was still reviewing.

It is difficult to say precisely what impact government lobbying has on CRTC rulings, and many have argued the commission should be more transparent and that its ties to industry should be examined.

A landmark report on Canadian broadcast and telecom legislation prepared by a group chaired by Janet Yale proposed reforms to mandate lobbying records for a wider range of CRTC staff and a more

transparent appointment process.

“Our sense is the incumbents have much closer ties, and access, to staff, than the smaller players do,” said Geoff White, executive director of CNOC, adding the same is true of politicians. “It sometimes takes the smaller players months to get a meeting with a high-profile politician — such as a minister or opposition critic — if smaller players are even able to get a meeting.”

CRTC commissioners and staff “often come from the same large, powerful companies that are then able to lobby them with a frequency that is way out of proportion to competitors, disruptive businesses and public interest groups,” said Andy Kaplan-Myrth, vice-president of regulatory affairs at TekSavvy.

TekSavvy noted that in Scott’s recent remarks about his preference for policies to support companies that build their own networks, he said that view could come in part from “some of my experience in the private sector.”

Timothy Denton, who was a CRTC commissioner for five years ending in 2013, said he believes the CRTC chair has outsized influence over decisions because he works with staff on advice that is then presented to other commissioners. He added that Scott doesn’t need to be lobbied to do what he already believes is right.

The government has not made reforms to the CRTC, but other aspects of the Yale report informed Bill C-10, the controversial legislation to update Canada’s Broadcasting Act that could see the commission gain new powers over the internet, such as greater powers over social media.

Monica Auer, executive director of the non-partisan Forum for Research and Policy in Communications, said the CRTC is not transparent or accountable enough for those new responsibilities.

Critics of C-10 say the bill is being rammed through Parliament by the Liberals and Bloc Québécois in a bid to secure money for Canada's cultural sector from digital platforms while leaving unanswered questions about its implications for freedom of expression. Also unclear is exactly what role the CRTC will play in this system, what it will regulate and how it will report on what it does.

“Do I think the commission is going to get all in our faces about Canadian content on cat videos? No,” Auer said, adding, “But I don’t know what the commission is going to do. And the simple fact is nobody else does either because we don’t know how the commission operates.”

This story has been updated to say a meeting between CRTC chair Ian Scott and Mirko Bibic, then chief operating officer of Bell, took place on Dec. 19, 2019. An earlier version said the meeting was on Dec. 12.

This story has been updated to indicate that TekSavvy met once with the CRTC since the 2019 ruling, but not with chair Ian Scott.