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November 28, 1995

Mr. Keith Spicer
Chairman
CRTC
Les Terrasses de la Chaudiere
Central Building
1 Promenade du Portage
Hull, Quebec
K1A 0N2

Dear Mr. Spicer,

**Re: Complaint filed by Cable Watch
pursuant to s. 12 of the *Broadcasting Act***

I represent Cable Watch Citizen's Association ("Cable Watch") in regard to this matter.

Background to these proceedings:

On May 15, 1995, my client Keith Mahar filed in the Ontario Court (General Division) an Application that requested a refund of certain fees collected by his cable service provider, Rogers Cablesystems. This refund was requested since Rogers Cablesystems failed to provide its subscribers with advance notice of its intention to contribute to the Cable Production Fund as of January 1, 1995, and this decision's significant impact on basic cable rates.

On August 25, 1995, Rogers Cablesystems requested the Court to dismiss the Application for reasons of jurisdiction. On October 3, 1995, this request was argued in front of Mr. Justice Sharpe. The following day, Sharpe J. decided that the CRTC has exclusive jurisdiction over this matter, and that consequently these issues should be raised first with the CRTC, and subsequently, if necessary, in the Federal Court of Appeal. Mr. Justice Sharpe concluded that,

"... the task of deciding this case has been specifically assigned by Parliament to the CRTC. ... Assumption of jurisdiction by this court would not only evade the CRTC, it would also remove the case from the authority of the Federal Court of Appeal which is mandated to review the CRTC."

For these reasons, the Court dismissed Mr. Mahar's Application. Mr. Justice Sharpe made no ruling on the merits of the Application.

Subsequently, Rogers Cablesystems requested the Court to order Mr. Mahar to pay approximately \$55,000.00 towards the legal costs incurred by Rogers Cablesystems. On October 30, 1995, Mr. Justice Sharpe decided that Mr. Mahar would not be required to pay any of the legal costs incurred by Rogers Cablesystems, since,

"[t]he issue raised was novel and certainly involved a matter of public interest. While I decided the jurisdictional point against the applicant, I am satisfied that the application was brought in good faith for the genuine purpose of having a point of law of general public interest resolved. It is true that many of the cases in which an unsuccessful public interest litigant has been relieved of the usual cost order have involved suits against the government and the respondent here is a private entity. However, the respondent does enjoy the substantial benefit and protection of a statutory monopoly in the provision of its services to the public, and this application was brought in relation to an important aspect of the terms on which that monopoly is enjoyed. ... The incentives and disincentives created by costs rules assume that the parties are primarily motivated by the pursuit of their own private and financial interests. An unrelenting application of these rules to public interest litigants will have the result of significantly limiting access to the courts by such litigants. Such a consequence would be undesirable with respect to proceedings such as the present one which was, in my view, brought on a *bona fide* basis and which raised a genuine issue of law of significance to the public at large."

Recently, Mr. Mahar and others have established the non-profit organization called Cable Watch, which has the mandate of protecting the interests of cable television subscribers and increasing the accountability of the CRTC to the public.

As a result of the events outlined above, Cable Watch has instructed me to file with the CRTC the complaint that is outlined below.

Cable Watch's section 12 complaint

Cable Watch hereby files a complaint with the CRTC and requests the CRTC to investigate the matters that are outlined below. This complaint is filed pursuant to section 12 of the *Broadcasting Act*, which provides as follows:

12. (1) Where it appears to the Commission that
- (a) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order, or
 - (b) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part,

the Commission may inquire into, hear and determine the matter.

- (2) The Commission may, by order, require any person to do, forthwith or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part or to any such regulation, licence, decision or order.

Relief requested:

Cable Watch hereby requests the following relief:

- (1) a ruling that the CRTC:
- (a) did not have the authority to add subsection 18 (6.3) to the Cable Television Regulations so as to require subscribers to pay fees to maximize contributions to the Cable Production Fund;
 - (b) failed to properly notify cable television subscribers of its intention to add subsection 18 (6.3) to the Cable Television Regulations so as to allow cable television companies to avoid reducing their fees as of January 1, 1995, and subsequently; and
 - (c) failed to fully inform cable television subscribers of the cost consequences that would occur as a result of the addition of

subsection 18 (6.3) to the Regulations which permitted cable television companies to avoid reducing their fees as of January 1, 1995, and subsequently;

- (2) a ruling that the cable television companies that contributed to the Cable Production Fund have significantly altered their fees charged to their subscribers, but these alterations were made without first providing cable television subscribers with proper advance notice of these alterations;
- (3) orders requiring:
 - (a) cable television companies to refund to their subscribers all of the funds collected without proper notice to subscribers of the companies' intentions to alter their fees as of January 1, 1995, and subsequently;
 - (b) cable television companies to reduce their rates to the levels that would have been in effect in the absence of subsection 18 (6.3) of the Regulations;
 - (c) the CRTC to revise its rules and procedures so as to ensure that the CRTC is much more proficient at ensuring that cable television subscribers receive effective and clear advance notice of all decisions made by the CRTC and cable television companies that will affect the cable fees charged to subscribers; and
- (4) an interim order, pending the final resolution of the above issues, that requires cable television companies and the Cable Production Fund to pay into a trust fund all funds that have been and will be collected pursuant to subsection 18 (6.3) of the Regulations.

Grounds for the requested relief:

- (1)
 - (a) Nothing in the *Broadcasting Act* permits the CRTC to require cable television subscribers to pay a surcharge to maximize contributions towards a fund designed to encourage the production of Canadian programming;
 - (b) The CRTC failed to properly notify cable television subscribers that it intended to amend the Cable Television Regulations so as to permit cable television companies to avoid reducing their fees as of January 1, 1995, and subsequently; and

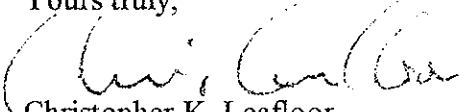
- (c) The CRTC failed to properly notify cable television subscribers of the cost consequences that would occur as a result of the amendments that were made to section 18 of the Regulations which permitted cable television companies to avoid reducing their fees as of January 1, 1995, and subsequently;
- (2) The cable television companies that contributed to the Cable Production Fund made these contributions without first providing their subscribers with proper advance notice of the impact of these contributions on the fees charged to their subscribers;
- (3) The CRTC does not use the most effective methods for ensuring that cable television subscribers are fully informed of all decisions made by the CRTC and cable television companies that affect the rates charged to subscribers; and
- (4) The disputed funds should be paid into a trust fund so as to ensure that these funds will be available if it is determined that these funds should be refunded to subscribers.

Forum for the hearing:

Cable Watch requests that a public hearing be held in regard to these matters. In order to maximize the participation of the public in this hearing, Cable Watch requests that this hearing be conducted in Toronto, Ontario.

I look forward to hearing from you in regard to arrangements for the hearing into the complaint.

Yours truly,



Christopher K. Leafloor

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