Canadian Association of Internet Providers

December 4, 1997

Submission of the Canadian Association of Internet Providers

to the House of Commons Standing Committee on Industry

on Bill C-17, An Act to amend the Telecommunications Act and the Teleglobe Canada Reorganization and Divestiture Act

Good morning ladies and gentlemen. My name is Timothy Denton and I am the regulatory counsel to the Canadian Association of Internet Providers, known commonly as CAIP.

Founded at the beginning of 1996, CAIP is the principal national association representing the interests of the commercial Internet service provider industry. We include all of the larger national and regional Internet service providers, and many of the smaller ones as well. Our membership numbers over 80 firms, including such names as Sympatico, UUNet, IBM, PSINet, and AOL Canada. The membership includes telephone companies, their affiliates, independent Internet service providers, and cable companies that wish to offer Internet access. Complete information on our membership is given at our website. That site is found at <www.caip.ca>. There you will find information on our membership, eligibility for membership, policy positions, meetings, history, and members of the Board of Directors. You will also be able to find there a copy of this presentation shortly.

As time is short I will speak to the issues which concern the members of CAIP in Bill C-17.

We will not be addressing the portions of the Act that deal with the reorganization and divestiture of Teleglobe Canada, nor with the parts of the bill that deal with equipment certification. Likewise the grant of authority to the CRTC to deal with the North American numbering plan is outside the scope of our comments.

What we are concerned about: the licensing regime

What we are concerned about is the licensing regime that is at the core of the proposed new Telecommunications Act. This is what is proposed in section 16.1 and following of Bill C-17.

We have three points to make in relation to this part of the bill.

1. Licensing Reverses the Policy of Free Entry

First, the new bill overturns the basic thrust of the previous 1993 *Telecommunications Act*, which liberalized entry in telecommunications. In the current regime, the one that Bill C-17 seeks to replace, if a person wishing to enter the telecommunications service business wants to, he need only conform to Canadian ownership regulations. He does not need to obtain a licence from the state to do so.

In that sense, the bill is contrary to the generally liberalizing thrust of recent trade policy. Nor are we aware of significant public discussion why the core of the previous Act has to be replaced, why these tools are appropriate, and what the problem is that has to be solved.

2. The Bill Greatly Expands the Potential for Regulation of Computer-Based Services

Second, while the new bill says that a licence would only be required if a person wishes to offer "basic" services, the meaning of that expression is not defined in the bill. "Basic" services have been defined in treaties which Canada has signed, and the CRTC has also assigned the term a meaning, and generally the term is understood in the telecommunications business as real time communication where the content of the transmission is not manipulated in any way beyond what is necessary to send and receive the signal.

"Basic" services are contrasted to "enhanced" services, which are generally defined as "more than basic services". The kinds of services offered by Internet service providers have, in their short existence, always been considered "enhanced" services.

Why then are we concerned? The first reason is that the idea of basic service is a flexible regulatory and political construct, which is capable of being expanded. We have noted, for instance, in the *Final Report* of the Information Highway Advisory Council in 1995, that the definition of "basic" services was considered to be expandable. Moreover, as the Canada-U.S free trade agreement shows, "basic" services mean what the regulator says it means. The regulator having jurisidction defines the term. We therefore have no assurance that the CRTC will continue to restrict the meaning of "basic" to the current limits.

Officials and policies come and go, but legislation remains. This lack of definition in the bill gives the CRTC *carte blanche* to expand its regulatory activities as it sees fit.

Our concerns about the expansion of regulation made possible by the new bill are further confirmed by the new definition of "telecommunications service provider". The new bill states:

> ``telecommunications service provider'' means a person who provides basic telecommunications services, including by exempt transmission

apparatus;

I shall not recite the definition of "exempt transmission apparatus" given in the *Telecommunications Act*. In essence, the term refers to computers. If we simplify to get to the essence of the matter, then we can say that the current *Telecommunications Act* excludes computers from the definition of what is covered by the Act. They do not constitute "transmission facilities", the term of art that lies at the core of what can be regulated by the Commission.

Taking the two factors together, which are a flexible standard of what basic services are, as devised by the regulator, and an expansion of the *Telecommunications Act* to cover computers (called "exempt transmission apparatus"), the potential for regulatory expansion is enormous.

3. What is the Problem?

The key issue here is "why"? What is the problem that needs to be solved? We have heard from government sources that there must be controls on international resellers so that Canadians do not send their money overseas in some large hidden subsidy to inefficient foreign telephone companies. Fair enough. But why the choice of these tools? Renegotiation of international settlement rates might be a more appropriate course of action.

What concerns CAIP is the lack of apparent relation between the unstated goals of the legislation and the potentially vast expansion of regulatory activity made possible by its overly vague language.

We have seen no compelling rationale that the liberalized telecommunications regime established in the *Telecommunications Act* of 1993 needs suddenly to be replaced by a licensing regime that, potentially at least, could include computer-based services.

Ladies and gentlemen, thank you for your attention to this brief. I am available for your questions.