



**Canadian Network Operators Consortium Inc.
Consortium des Opérateurs de Réseaux Canadiens Inc.**

August 25, 2015

FILED VIA GCKEY

John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau, Quebec
K1A 0N2

Dear Mr. Traversy,

Subject: CRTC File 8657-C12-201505505 – Broadcasting and Telecom Notice of Consultation CRTC 2015-239 - Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. – Intervention of Canadian Network Operators Consortium Inc.

Introduction and Executive Summary

1. Pursuant to the procedure set out in Broadcasting and Telecom Notice of Consultation CRTC 2015-239, *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.* (Notice 2015-239), as amended, Canadian Network Operators Consortium Inc. (“CNOCC”) is hereby filing its intervention on certain issues posed by the Commission in regards to the operations of Commissioner for Complaints for Telecommunications Inc. (“CCTS”). In accordance with section 26 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, CNOCC states that it wishes to appear at the public hearing.
2. CNOCC is limiting its comments to certain specific questions posed by the Commission in Notice 2015-239 at this time. CNOCC reserves the right to comment on the positions of other interveners with respect to all questions set out for comment in Notice 2015-239 in its reply comments.
3. For the reasons set out herein, CNOCC submits that the current public awareness activities undertaken by service providers that participate in the CCTS (“participating service providers”) sufficiently promote the awareness of the CCTS. The public awareness activities increase general customer awareness of the CCTS and, importantly, ensure that customers are aware of the CCTS and their recourse to the CCTS at the time when they have a complaint that they are seeking to resolve.
4. With respect to whether participation in the CCTS should continue to be mandatory, CNOCC is of the view that if the Commission maintains the reasons set out in Telecom Regulatory Policy CRTC 2011-46, *Review of the*

Commissioner for Complaints for Telecommunications Services (“Policy 2011-46”) for mandating participation by all service providers based on the evidence put forward in this proceeding, including that market forces cannot be relied upon to ensure sufficient participation in the CCTS, then mandatory participation by all service providers that provide services within the scope of the CCTS’ mandate continues to remain appropriate at this time.

5. If mandatory participation in the CCTS is maintained, the Commission should continue to utilize the framework established in Policy 2011-46 that requires a service provider to become a participating service provider at the time when a complaint about the service provider is received by the CCTS. This framework is appropriate as it minimizes the administrative burden that would arise if all non-participating service providers are immediately required to become participating service providers, prioritizes CCTS onboarding by service providers that generate complaints and ensures that participation is required at the time when CCTS intervention regarding a complaint is necessary.

6. Any requirement for service providers to participate in the CCTS should be imposed directly on service providers by the Commission. This will permit any review of a service provider’s compliance with its obligations to be appropriately completed without the involvement of underlying service providers or any other third party.

7. In regards to the participation requirements of licensed television service providers (“TVSPs”) and related exempt undertakings, CNOC is of the view that there should be parity between the TVSPs that are required to become participating service providers and the TVSPs that will be required to abide by the code of conduct (“TVSP Code”) to be administered by the CCTS under consideration in Broadcasting Notice of Consultation CRTC 2015-105, *Call for comments on a Television Service Provider Code of Conduct working document* (“Notice 2015-105”).

8. CNOC is of the view that the current structure of the Board of Directors and the voting structure is well functioning and achieves the directives set out in *Order requiring the CRTC to report to the Governor in Council on consumer complaints*, P.C. 2007-533, 4 April 2007 (“Order in Council 2007-533”). While CNOC is not proposing any changes at this time, CNOC submits that the outcome of this proceeding should result in the continuance of the well functioning governance of the CCTS that has been achieved to date and the directives set out in Order in Council 2007-533.

9. The remedies available to the CCTS pursuant to the Procedural Code continue to remain sufficient to meet the needs of customers. In addition, the fact that the overwhelming majority of complaints are resolved in a manner that does not require the imposition of remedies available to the CCTS through a recommendation or decision indicates that additional remedies are not required.

10. With respect to additional modifications to the CCTS’ operations, CNOC submits that the CCTS should be directed to utilize processes that abide by the Procedural Code in order to increase the efficiency and effectiveness of its operations.

11. CNOC is concerned that the current inclusion of a complaint-based fee component in the CCTS funding model has a distortionary effect on the achievement of appropriate resolutions during the CCTS

complaint handling process. Accordingly, CNOC submits that the funding of the CCTS should be based solely on revenue-based fees calculated based on the applicable percentages of revenues of participating service providers.

12. Finally, CNOC submits that the CCTS funding process should include a mechanism that accounts for when a participating service provider is not subject to a complaint during a CCTS fiscal year. In such circumstances, the participating service provider has not required the CCTS to expend any resources to resolve any complaints. Accordingly, an appropriate mechanism could refund, or apply as a credit towards the payment of fees for the next fiscal year, annual payments to participating service providers that are not subject to a complaint during the previous fiscal year.

Comments on Questions Posed in Notice 2015-239

Public Awareness of the CCTS

Question 6. Are the current measures used by CCTS participants to promote the CCTS sufficient? If not, what additional measures could participants in the CCTS take to promote the Agency?

13. Participating service providers are currently required to undertake a number of specified activities to promote the awareness of the CCTS. The specified activities are fully described in the document ‘Developing Public Awareness – 2012’ placed on the record of Notice 2015-239 by the CCTS in response to the Commission’s 4 June 2015 requests for information. In summary, the activities required to be undertaken by participating service providers relate to increasing general customer awareness of the CCTS and ensuring that customers are aware of their recourse to the CCTS when they are seeking to resolve a complaint with their service provider.

14. With respect to promoting general customer awareness of the CCTS, participating service providers are required to:

- a. Place the following prescribed text on their websites in specified locations in order to provide information about the CCTS to their customers. This text must also be searchable under prescribed terms if the website provides a search function.

Commissioner for Complaints for Telecommunications Services (CCTS)

CCTS is an independent agency whose mandate is to resolve complaints of individual and small business customers about their telecommunications services. If you have a complaint about your telephone, wireless, or Internet service, you must first try to resolve it directly with your service provider. If you have done so and have been unable to reach a satisfactory resolution, CCTS may be able to help you, free of charge. To learn more about CCTS, you may visit its website at www.ccts-cprst.ca or call toll-free at 1-888-221-1687.

- b. Place the following prescribed text as a message on customer bills or as a billing insert four times annually. This message must also be provided four times annually to any customers that do not receive a bill.

Do you have a complaint regarding your telecommunications service that we haven't been able to resolve? The Commissioner for Complaints for Telecommunications Services (CCTS) may be able to assist you: www.ccts-cprst.ca or 1-888-221-1687.

- c. Insert the prescribed text required to be placed on participating service provider websites in white page directories subject to specified size and placement requirement. This obligation applies only to participating service providers that publish white page directories.

15. In addition, participating service providers are required to notify customers about the CCTS and the recourse offered by the CCTS during the service provider's internal complaint handling process when a complaint remains unresolved. Notably, this requirement ensures that all customers are aware of their recourse to the CCTS when such recourse is actually required (i.e., when they are unable to resolve a complaint with their service provider).

16. CNOC submits that the current measures undertaken by participating providers sufficiently promote the awareness of the CCTS. These measures increase the general awareness of the CCTS by all customers of participating service providers and ensure that customers are informed of their recourse to the CCTS at the time when they have a complaint that they are unable to resolve.

17. CNOC is also of the view that the current measures result in the promotion of the CCTS by participating service providers to the greatest extent feasible. In this regard it is important to recognize that participating service providers must allocate resources and incur expenses in order to satisfy their public awareness obligations. This is of specific concern to smaller participating service providers that must redirect portions of their limited resources in order to satisfy the public awareness obligations. The placement of additional obligations would therefore represent a further strain on the limited resources of small participating service providers.

18. Accordingly, CNOC is of the view that current public awareness obligations are sufficient and effective in promoting awareness of the CCTS to the greatest extent feasible. Any additional requirement would not increase customer awareness of the CCTS materially, but would place a disproportionate burden on participating service providers. Such an outcome would contravene the Policy Direction¹ requirement for the Commission to use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives².

¹ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534, 14 December 2006, SOR/2006-355, Canada Gazette Part II, Vol. 140, No. 26, 27 December 2006 ("Policy Direction").

² *Id.*, at subpara. 1(a)(ii).

Participation in the CCTS by Service Providers

Question 9. Should participation in the CCTS continue to be mandatory for all TSPs that provide services within the CCTS's mandate? Why or why not? Provide supporting rationale.

19. In Policy 2011-46 the Commission determined that all telecommunications service providers that provide services within the scope of the CCTS' mandate are required to participate in the CCTS³. The Commission provided a number of reasons for its decision, including that: (i) the determination was consistent with Order in Council 2007-533; (ii) consumer access to the CCTS was increasingly necessary and beneficial; (iii) all consumers should have access to the CCTS regardless of their choice of service provider; (iv) that the determination advanced the policy objectives 7(b), (f) and (h) of the *Telecom Act*; (v) the decision satisfied the Policy Direction as it was competitively neutral and symmetrical; (vi) the determination would not result in an undue burden for small service providers; and (vii) market forces could not be relied upon to ensure sufficient membership in the CCTS⁴.

20. To the extent that the Commission maintains the views set out in Policy 2011-46 based on the evidence put forward in this proceeding, including that market forces continue to not be sufficient to ensure participation in the CCTS, mandatory participation in the CCTS by all service providers that provide services within the scope of the CCTS' mandate remains appropriate, subject to the caveat set out below in response to question 10.

Question 10. Should participation in the CCTS become immediately mandatory on a going-forward basis for small TSPs that are not currently CCTS participants (i.e. instead of the requirement being triggered by a complaint)?

21. If the Commission deems it appropriate to continue to mandate participation in the CCTS by all service providers that provide services within the scope of the CCTS' mandate, CNOC submits that the Commission should continue to utilize the framework established in Policy 2011-46 that requires a service provider to become a participating service provider at the time when a complaint about the service provider is received by the CCTS⁵.

22. This requirement is administratively efficient as it allows for a staged onboarding of service providers. In addition, it ensures that participation by service providers is required at the time when CCTS involvement is necessary upon receipt of a complaint that requires resolution.

23. Requiring participation to be immediately required by all service providers that are not currently participating service providers would be a significant administrative burden for both the service providers and the CCTS. In this context CNOC notes the following concerns expressed by the CCTS about the

³ Policy 2011-46, at para. 13.

⁴ Policy 2011-46, at para. 15.

⁵ Policy 2011-46, at para. 17.

administrative burden associated with extending membership to small service providers in the proceeding leading to Policy 2011-46⁶:

At present, managing relations with our smallest members consumes significantly more CCTS time and effort due to the more limited staffing and resourcing typically available to smaller TSPs. We are very wary of the administrative burden – and associated costs—that pursuing very small TSPs may create.

24. The Commission explicitly recognized the potential administrative burden posed by an order requiring immediate membership by all service providers that were not participating service providers in Policy 2011-46⁷. As a result, the Commission established the requirement for service providers to become CCTS members upon receipt of a complaint regarding the service provider by the CCTS in order to minimize the administrative burden and prioritize membership by service providers that generate customer complaints⁸.

25. CNOC submits that concerns about an administrative burden arising from an order directing immediate participation in the CCTS by all service providers that are not currently participating service providers continue to apply. For example, based on the most recent information available in the CCTS 2013-2014 Annual Report there are currently 257 CCTS participating service providers⁹. In comparison, there are currently over 1700 telecommunications service providers registered on the registration lists maintained by the CRTC that may be providing services within the scope of the CCTS' mandate¹⁰. This number also does not include television service providers. While CNOC recognizes that service providers may be registered on more than one CRTC registration list, it is clear that requiring immediate participation in the CCTS by service providers that are not currently participating service providers will necessitate the onboarding of a substantial number of service providers.

26. CNOC submits that such an outcome would not be administratively efficient, nor consistent with the Policy Direction¹¹. In contrast, it would result in an unnecessary burden to the CCTS. Such an outcome would also result in a burden to service providers that are not currently participating service providers as they would be required to become participating service providers despite the absence of any complaint filed against them.

27. Accordingly, CNOC submits that the requirement for a non-participating service provider to become a participating service provider should continue to be triggered by a complaint received by the CCTS about the service provider.

⁶ CCTS, Telecom Notice 2010-47, 1 December 2010 Oral Rebuttal, at pg. 3.

⁷ Policy 2011-46, at para. 17.

⁸ Policy 2011-46, at paras. 17-18.

⁹ CCTS 2013-2014 Annual Report, at pg. 331.

¹⁰ The registrations lists referenced are the registration lists for the ILECs, CLECs, SILECs, Non-Dominant, Wireless, Other, DSLSP, Resellers of High-speed Retail Internet Service, and Resellers of Telecom Services.

¹¹ And in particular subpara. 1(a)(ii) thereof.

Question 11. With the recent amendments to the Telecommunications Act that allow the Commission to directly impose conditions of service on resellers, should the requirement that TSPs participate in the CCTS be imposed directly on resellers on a going-forward basis?

28. CNOC is of the view that any requirement for service providers to participate in the CCTS should be imposed directly on those service providers by the Commission.

29. The use of indirect obligations that are imposed via contractual obligations required to be included in the contracts between underlying service providers and service providers necessitates that the underlying service providers be involved in any review of a service provider's compliance with its obligations. For example, previous reviews of a service provider's compliance required the Commission to involve underlying service providers in order to determine whether the required contractual obligations had been included in its contract with the service provider¹².

30. In CNOC's view, matters of compliance should be reviewed and addressed in a manner that does not require the involvement of underlying service providers or any other third party. Involving third parties simply increases regulatory inefficiency contrary to the Policy Direction¹³ with no discernible corresponding benefit.

Question 12. Should participation in the CCTS be mandatory for all licensed TVSPs and related exempt undertakings? Why or why not? Provide supporting rationale.

31. In Notice 2015-105 the Commission requested comment on a draft TVSP Code following its determinations on the appropriateness of creating such a code of conduct in Broadcasting Regulatory Policy CRTC 2015-104, *Let's Talk TV - Navigating the Road Ahead - Making informed choices about television providers and improving accessibility to television programming*. As part of Notice 2015-105, the Commission stated its intention to require all licensed TVSPs and related exempt undertakings to adhere to the TVSP Code¹⁴. The Commission has also stated that the CCTS will be responsible for administering the TVSP Code¹⁵.

32. A Commission determination on Notice 2015-105 is currently outstanding. However, CNOC is of the view there should be parity between the determination on TVSPs that are required to be participating service providers and the determination on the TVSPs that will be subject to the requirement to abide by the TVSP Code.

¹² See Telecom Notice of Consultation 2013-133, *Apparent non-compliance by certain telecommunications service providers with the requirement to be a participant of the Commissioner for Complaints for Telecommunications Services* where telecommunication service providers that provided telecommunications to services to the telecommunication service providers subject to the show cause proceeding were made party to the proceeding and required to respond to Commission requests for information.

¹³ And in particular subpara. 1(a)(ii) thereof.

¹⁴ Notice 2015-105, at para. 5.

¹⁵ Notice 2015-105, at para. 6 and Notice 2015-239, at para. 11.

33. CNOc is also of the view that the requirement for TVSPs to become participating service providers should be equivalent to manner in which telecommunication service providers have been required to become participating service providers. Under such a framework, TVSPs subject to the requirement to abide by the TVSP code and that have revenues over \$10M would be required to immediately become participating service providers¹⁶. TVSPs subject to the TVSP code and that have revenues under \$10M would be required to become participating service providers upon receipt of a complaint about the TVSP by the CCTS¹⁷.

CCTS Structure

34. CNOc is not proposing any changes to the structure of the CCTS Board of Directors or the voting structure at this time. CNOc is of the view that the current structure of the Board of Directors and the voting structure is well functioning and achieves the directives set out in Order in Council 2007-533:

Whereas the Governor in Council considers that the governance structure of an effective Consumer Agency should be designed to ensure its independence from the telecommunications industry by incorporating elements such as: a governing body composed of a majority of members who are not affiliated with any telecommunications service provider; a chief executive officer appointed by the governing body and also not affiliated with any telecommunications service provider; and a budget set by its governing body and provided by the industry at a level sufficient to effectively execute its mandate;

35. Accordingly, CNOc submits that any potential changes to the structure of the Board of Directors or the voting structure as a result of this proceeding should result in the continuance of the well functioning governance of the CCTS that has been achieved to date and satisfy the directives set out in Order in Council 2007-533.

Question 16. Do the remedies provided by the CCTS to consumers as set out in its Procedural Code, including compensation up to \$5,000 per complaint, remain appropriate and sufficient to meet the needs of consumers of both telecommunications and television services?

36. The Procedural Code provides for a number of remedies to be taken by the CCTS in order to address a complaint that remains unresolved. Specifically, the CCTS may direct a participating service provider to provide an explanation or apology, undertake or cease a specified activity, and, or provide compensation to the consumer¹⁸. With respect to compensation, it is important to note that the \$5,000 threshold per complaint does not apply to refund requirements in cases of billing errors¹⁹.

¹⁶ Such an obligation would be equivalent to the requirement for telecommunications service providers with revenues over \$10M to become participating service providers pursuant to Telecom Decision 2007-130 and Telecom Decision 2008-46.

¹⁷ Such an obligation would be equivalent to the requirement for telecommunication service providers that are not participating service providers to become CCTS members upon receipt of a complaint about the provider established in Policy 2011-46.

¹⁸ CCTS Procedural Code, at section 12.

¹⁹ CCTS Procedural Code, at section 12.3.

37. Notably, a review of the statistics regarding complaint resolutions in CCTS Annual Reports indicates that the overwhelming majority of complaints are resolved in a manner that does not require the imposition of such remedies by the CCTS through the issuance of recommendations or decisions. For example, in 2013 to 2014 the CCTS issued only seven recommendations and one decision following the acceptance of 11,340 complaints²⁰. The remainder of the complaints that were not closed by the CCTS were resolved in either the pre-investigation or the investigations stages of the complaint handling process.

38. Accordingly, CNOC submits that this represents strong evidence that needs of consumers are currently being met and that additional or revised remedies are not required.

Question 21. Are there other modifications to the CCTS structure that could make its operations more effective or efficient? If yes, describe the modifications and provide the rationale for their adoption.

39. The CCTS Procedural Code sets out the processes that apply to the handling of complaints by the CCTS and governs the interactions between the CCTS and participating service providers. CNOC is of the view that adherence to the Procedural Code is critical to ensuring that the CCTS operates efficiently and effectively.

40. However, CNOC members are concerned that the CCTS has modified its procedures and implemented new processes that do not abide by the Procedural Code. Accordingly, CNOC submits that the Commission should direct the CCTS to apply its Procedural Code on a consistent basis and that any change in procedures must be consistent with the Procedural Code.

41. For example, the Procedural Code explicitly allows for a participating service provider to submit an objection to the CCTS upon receipt of a complaint during the pre-investigation stage of the complaint handling process on the following grounds:

6.6(a) Objection – if the Participating Service Provider objects to the complaint on the basis that, in the Participating Service Provider’s view, the complaint may not or should not be investigated pursuant to this Code or for any other lawful reason, it shall provide a full written explanation, including the specifics of its objection, within fifteen (15) days of receipt of the complaint;

42. Pursuant to Section 6.7 of the Procedural Code, the CCTS is required to make a determination as to whether or not the complaint is within the scope of the CCTS mandate upon receipt of an objection filed by a participating service provider. If the complaint or any part of the complaint is within scope, the CCTS must determine whether or not to take action with respect to the complaint.

6.7 Where the Participating Service Provider has advised the Commissioner pursuant to Section 6.6(a), the Commissioner shall, following receipt of any additional information or representations from the Customer and/or the Participating Service Provider as the Commissioner may in his or her discretion deem appropriate, decide whether or not the complaint or any part thereof is within scope and whether

²⁰ CCTS 2013-2014 Annual Report, at pg. 9.

or not to take action with respect to the complaint or any part thereof that is determined by the Commissioner to be within scope. The Commissioner's decision shall be provided in writing to the Customer and the Participating Service Provider.

43. Pursuant to Section 6.11 of the Procedural Code, the CCTS will proceed to investigate the complaint only if the CCTS has made a determination to take action with respect to the complaint:

6.11 If,

...

(c) the Commissioner has made a determination under Section 6.7 that the Commissioner will take action with respect to the complaint; or

...

the Commissioner may proceed to investigate the complaint, or determine that it be dealt with by informal resolution.

44. This process provides participating service providers with an important opportunity to address the validity of complaints on the grounds that the complaint may not be investigated pursuant to the Procedural Code or other lawful reasons before the complaint is escalated to the investigation stage and the significantly higher complaint-based investigation fee is incurred under the current funding mechanism.

45. However, CNOC members have advised that the CCTS has modified its process to no longer consider an objection permitted under Section 6.6(a) prior to the escalation of the complaint to the investigation stage where a participating service provider requests that the CCTS decline to take action further to CCTS' discretion under Section 7 of the Procedural Code²¹.

²¹ Section 7 of the Procedural Code states:

7. Discretion to Decline to Take Action

7.1 The Commissioner may decline to take action or continue to take action with respect to a complaint if the Commissioner considers that:

- (a) the complaint is frivolous or vexatious;
- (b) the Customer does not have a sufficient legal interest in the subject matter of the complaint;
- (c) the complaint should more properly be brought before another agency, or a tribunal or court;
- (d) an investigation, or further investigation, is not warranted in the circumstances;
- (e) the Customer has failed to cooperate in a timely manner with the Commissioner's efforts to assess, investigate, attempt to facilitate the resolution of, or make a Recommendation or Decision in relation to the complaint; or
- (f) the Participating Service Provider is offering a resolution that, in the view of the Commissioner, constitutes a reasonable resolution to the matter, even if such resolution is not acceptable to the Customer.

46. CNOC members have also advised that the CCTS will only consider an objection under section 6.6(a) prior to the escalation of the complaint to the investigation stage in very limited cases if the objection is further to Sections 3 and 8 of the Procedural Code²².

47. In addition, CNOC members have advised that the CCTS modified its procedures as to no longer permit participating service providers to provide reasoning and supporting documents that demonstrate that it has reasonably met its obligations to the customer as to permit the closure of the complaint during the pre-investigation stage of the complaint handling process.

48. Such processes also prohibit a participating service provider from addressing complaints that are filed against the incorrect service provider without incurring the complaint-based investigation fee. This occurs in the normal course, for example, where a complaint is filed against a customer's existing service provider regarding the actions of the customer's previous service provider (e.g., the customer's previous service provider continues to bill the customer, the customer's previous service provider did not disconnect service, etc.).

49. These process changes represent significant alternations to the procedures established in the documents distributed by the CCTS to participating service providers titled 'Guide for Participating Service Providers 2012' and 'Guidelines for Detailed TSP Responses'. Notably, the procedures set out in those

²² Section 3 of the Procedural Code states:

3. Scope

The Commissioner is authorized to receive complaints from Customers regarding forborne (unregulated) retail telecommunications services provided by Participating Service Providers, with some exceptions. Those exceptions, and examples of other common services which fall outside the Commissioner's Scope, are set out in the following list:

Section 8 of the Procedural Code states:

8. Duty to Decline to Take Action

8.1 The Commissioner shall take no action with respect to a complaint unless the Commissioner is satisfied that the Customer has previously brought the matter to the attention of the Participating Service Provider and that the Participating Service Provider has been afforded a reasonable opportunity to investigate and resolve the matter.

8.2 The Commissioner shall take no action with respect to any complaint purported to be brought under this Code that:

- (a) has been the subject of a previous determination by CCTS; or
- (b) has been or is currently under consideration by another tribunal, court, or agency that has the authority to compensate the Customer for losses claimed arising from the occurrence at issue.

8.3 The Commissioner shall take no action with respect to a complaint:

- (a) received by the Commissioner more than one year after the date the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based;

or

- (b) based upon or in relation to facts having arisen prior to the Effective Date or, in the case of a Participating Service Provider having become a Participating Service Provider subsequent to the Effective Date, based upon or in relation to facts having arisen more than one year prior to the date on which the Participating Service Provider became a Participating Service Provider.

documents permitted the considerations of objections filed under Section 6.6(a) and evidence supporting that the participating service provider met its obligations to the customer prior to the complaint being escalated to the investigation stage.

50. CNOC is of the view that such process modifications are not consistent with the Procedural Code and remove any opportunity for service providers to raise valid objections to the complaint prior to it being escalated to the investigation stage of the complaint handling process. This process also results in the service provider being required to pay the higher complaint-based investigation fee even if its objection is subsequently accepted by the CCTS.

51. Accordingly, CNOC submits that the Commission should direct the CCTS to abide by its Procedural Code and not implement any processes and procedures that are contrary to the Procedural Code or that have the effect of otherwise modifying the Procedural Code.

CCTS's Funding Model

Question 22. Is the CCTS's current funding model appropriate?

52. CNOC is concerned that the current inclusion of a complaint-based fee component in the CCTS funding mechanism has a distortionary effect on the achievement of appropriate resolutions during the CCTS complaint handling process.

53. CNOC recognizes that complaint-based fees may be intended to distribute funding based on CCTS resource requirements that are driven by individual service providers. However, the complaint-based fee structure also has an unintended consequence of incenting participating service providers to achieve a resolution in the absence of any wrongdoing and where they have met their obligations to the customer simply to avoid incurring additional fees as the complaint is escalated through the CCTS complaint handling process.

54. For example, based upon the complaint-based fee schedule for 2014- to 2015 a participating service provider incurs a fee of \$88.75 when a complaint is accepted by the CCTS and escalated to the pre-investigation stage. If that complaint is not resolved during the pre-investigation stage, the complaint is escalated to the investigation stage and the participating service provider incurs a substantially higher fee of \$221.88²³. Notably, the participating service provider incurs the higher complaint-based fee even if the complaint is closed during the investigation stage upon, for example, a finding that the participating service provider acted reasonably in fulfilling its obligations to the customer.

55. Accordingly, participating service providers that have met their obligations to a customer are incented to offer a resolution, such as a credit, that amounts to less than the difference between the pre-investigation and investigation complaint-based fees simply to close the complaint and avoid incurring the higher complaint-based fee. The high complaint-based fees for decisions similarly act as a disincentive for a

²³ See CCTS(CRTC)14Jun15 NC 2015-239, Attachment 13.

participating service provider to request a decision on a complaint. Indeed, a participating service provider incurs a complaint-based fee of \$488.13 to request a decision where it does not agree with a recommendation issued by the CCTS.

56. In addition, general customer awareness of complaint-based fees is of a concern as this information may be used as leverage to obtain a credit despite no wrongdoing by the service provider. In such cases, the service provider is incited simply to provide a resolution, such as a credit, that is less or equal to the pre-investigation complaint-based fee when a customer threatens to file a complaint with the CCTS.

57. Accordingly, CNOC is of the view that the funding of the CCTS should be recovered solely via revenue-based fees calculated based on the applicable percentages of revenues of participating service providers.

58. In addition, CNOC submits that the funding process should account for participating service providers that are not subject to a complaint during a CCTS fiscal year. For example, in 2013 to 2014 a total of 137 of 257 participating service providers did not have a complaint filed against them to the CCTS²⁴. As of the first half of 2014 to 2015 only 85 participating service providers have been subject to a complaint²⁵. A participating service provider that is not subject to a complaint during a fiscal year does not require the CCTS to expend any resources to resolve a complaint.

59. Accordingly, CNOC submits that a process should be implemented to refund, or apply as a credit towards the payment of fees for the next fiscal year, annual payments to participating service providers that are not subject to a complaint during the previous fiscal year. This process would require a true-up process to recover the shortfall from providers that did incur complaints during the fiscal year. This process is also consistent with the Policy Direction requirement for efficient regulation²⁶ in that it creates a very significant incentive for participating service providers to resolve complaints directly with their customers, rather than allowing complaints to be escalated to the CCTS.

Yours very truly,

William Sandiford
Chair of the Board and President

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²⁴ CCTS 2013-2014 Annual Report, Appendix A.

²⁵ CCTS Mid-Year Report 2014-2015, Appendix A.

²⁶ At subpara. 1(a)(ii).