



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

September 11, 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. – Reply Comments 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 reply comments on certain issues identified by the Commission in regards to the operations of the Commissioner for Complaints for Telecommunications Inc. (“CCTS”).
2. CNOCC is limiting its reply comments to positions put forward by interveners in relation to certain questions posed by the Commission in Notice 2015-239. Silence on any argument or proposal put forward by any party in this proceeding is not intended to represent agreement or acceptance of that position by CNOCC. CNOCC also maintains the positions set out in its 25 August 2015 intervention unless otherwise specified.
3. For the reasons set out herein, CNOCC maintains its view that the current activities undertaken by the CCTS and service providers that participate in the CCTS (“participating service providers”) to promote public awareness of the CCTS are sufficient. The current measures and initiatives increase general customer awareness of the CCTS and, more importantly, ensure awareness at the critical times when consumers require recourse to the CCTS. With respect to concerns regarding non-compliance of participating service providers with their public awareness obligations, CNOCC is of the view that such issues will be appropriately dealt with through the solution presently proposed by the CCTS.

4. CNOC agrees with the views of many interveners regarding the the general appropriateness of maintaining mandatory participation in the CCTS by all service providers that provide services within the scope of the CCTS' mandate. CNOC also agrees with the views of interveners in support of maintaining the mechanism established in Telecom Regulatory Policy CRTC 2011-46, *Review of the Commissioner for Complaints for Telecommunications Services* ("Policy 2011-46") that requires a telecommunication service provider to become a participating service provider upon receipt of a complaint by the CCTS about the telecommunications service provider.

5. CNOC agrees with certain interveners that the requirement for service providers to participate in the CCTS should be directly imposed on service providers, including resellers.

6. CNOC remains of the view that the current structure of the CCTS Board of Directors and the voting structure are effective and should be maintained. CNOC also maintains its view that the remedies available to the CCTS pursuant to the Procedural Code remain appropriate. The changes proposed by certain interveners will require increased procedural safeguards and unnecessarily complex complaint handling procedures.

7. In addition to the proposal put forward by CNOC to address instances where the CCTS has implemented processes that are not consistent with the Procedural Code, CNOC agrees with comments of interveners regarding other issues that should be addressed in order to increase the effectiveness and efficiency of the CCTS' operations. These issues include barriers to the efficient and effective management of complaints by participating service providers due to, for example, the lack of standardized timelines and information requirements. CNOC also supports proposals that would better enable the CCTS to address complaints that result from the actions of a participating service provider's underlying carrier.

8. Finally, CNOC maintains its view that the funding of the CCTS should be based solely on revenue-based fees calculated on the applicable percentages of revenues of participating service providers. The adoption of CNOC's proposal will address the distortionary effect on the achievement of appropriate complaint resolutions created by complaint-based fees and other concerns expressed by interveners regarding the complaint-based fee mechanism.

### **Public Awareness of the CCTS**

9. A review of the record of Notice 2015-239 evidences that a number of activities are currently undertaken by the CCTS and participating service providers in order to increase CCTS awareness generally and specifically for consumers that have a complaint that they are unable to resolve with their service provider.

10. As described by the CCTS in its intervention, the CCTS undertakes specific activities designed to increase general awareness of the CCTS that include, for example, leveraging media coverage and conducting outreach to consumer groups and government representatives<sup>1</sup>. Notably, the CCTS has also recently hired a Communications Officer in order to further its efforts to increase and promote awareness of the CCTS<sup>2</sup>.

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<sup>1</sup> CCTS Intervention at para 20.

<sup>2</sup> CCTS Intervention at para 20.

11. Initiatives such as the development and promotion of online tools and resources by the CCTS similarly assist in creating specific awareness by consumers that are seeking information about the CCTS or recourse regarding an unresolved complaint. CNOC expects that the planned update to the CCTS' website that will better integrate social media and provide additional content and resources will further advance both general and specific customer awareness of the CCTS<sup>3</sup>.

12. With respect to the manner of selecting appropriate public awareness activities, CNOC agrees with the approach described by the CCTS whereby potential initiatives are subject to consideration and review to ensure that they achieve their purpose in an effective and cost-efficient manner<sup>4</sup>. This is a principled and necessary approach given the reality, as noted by the CCTS, that funding is not unlimited and the associated costs must not be detrimental to CCTS' central responsibilities and activities.

13. CNOC agrees that the CCTS could undertake certain additional measures that are aligned with the CCTS' current and principled approach to developing public awareness. In this regard, Bell Canada has proposed that the CCTS increase its focus on the use of website analytics and search engine optimization measures to further increase general public awareness of the CCTS<sup>5</sup>. The relevancy of these additional measures are notable as the CCTS has indicated that the Internet represents the resource that is most frequently used by consumers to locate information about the CCTS<sup>6</sup>. Accordingly, these measures represent effective and cost-efficient methods of increasing the public awareness activities undertaken by the CCTS.

14. In addition to initiatives taken by the CCTS, the activities undertaken by participating service providers, pursuant to their obligations, also promote increased awareness of the CCTS. These specified activities increase both the general awareness of the CCTS and the specific awareness of the available recourse to the CCTS for consumers that have a complaint that they are unable to resolve. Here CNOC agrees with the position of TELUS Communication Company ("TELUS") that that the latter outcome is of primary importance from a public awareness perspective<sup>7</sup>. More generally, CNOC also agrees with parties that the existing public awareness obligations of participating service providers are sufficient to promote awareness of the CCTS<sup>8</sup>.

15. In addition, the existing public awareness obligations result in the promotion of the CCTS by participating service providers to the greatest extent feasible given the resources and expenditures that must be incurred to satisfy the obligations. Such resource and expenditure requirements are of significant concern to small participating service providers. Notably, similar concerns regarding the resource and workload

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<sup>3</sup> CCTS Intervention at para 20.

<sup>4</sup> CCTS Intervention at para 27.

<sup>5</sup> Bell Canada Intervention at paras 21-22.

<sup>6</sup> CCTS Intervention at para 20.

<sup>7</sup> TELUS Intervention at para 32.

<sup>8</sup> See for example: Bell Canada Intervention at para 26; TELUS Intervention at para 41; Cogeco Intervention at para 15; MTS Allstream Intervention at para 4; Rogers Intervention at para 17; and SaskTel Intervention at para 9.

requirements associated with participation in the CCTS have been expressed by the Independent Telecommunications Providers Association<sup>9</sup>.

16. Accordingly, CNOC remains of the view that additional public awareness requirements would place a disproportionate burden on participating service providers. Such an outcome would contravene the Policy Direction<sup>10</sup> 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 objectives.

17. CNOC recognizes the concerns expressed by the CCTS and other parties regarding compliance by participating service providers with their public awareness obligations. However, the appropriate solution to this issue, as proposed by the CCTS, is for the CCTS to work with the Commission to implement measures to address instances of non-compliance<sup>11</sup>.

### **Participation in the CCTS by Service Providers**

18. CNOC notes that there appears to be a consensus among many interveners regarding the general appropriateness of maintaining mandatory participation in the CCTS at this time by all service providers that provide services within the scope of the CCTS' mandate.

19. However, a similar consensus is not apparent with respect to the issue of whether participation in the CCTS should become immediately mandatory on a going forward basis for all small telecommunications service providers that are not currently participating service providers or whether the framework established in Policy 2011-46 should continue to be utilized whereby a telecommunications service provider is required to become a participating service provider upon receipt of a complaint about the provider by the CCTS.

20. CNOC maintains its position that the framework established in Policy 2011-46 remains appropriate. As described in CNOC's intervention, this framework is administratively efficient and ensures that participation is required at the time when CCTS involvement is necessary upon receipt of complaint that requires resolution.

21. CNOC notes the concerns expressed by the CCTS in its intervention regarding the administrative difficulties it has experienced when attempting to enforce the Policy 2011-46 requirements for a non-participating service provider to become a participating service provider following the receipt of a complaint about the provider by the CCTS<sup>12</sup>.

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<sup>9</sup> Independent Telecommunications Providers Association Intervention at para 4.

<sup>10</sup> 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").

<sup>11</sup> CCTS Intervention at para 28.

<sup>12</sup> CCTS Intervention at paras 31-33.

22. CNOC does not discount the difficulties experienced under the framework established in Policy 2011-46 as described by the CCTS. However, CNOC also agrees with the CCTS that there is not a simple solution to this issue<sup>13</sup>. In this context, CNOC submits that simply replacing one administrative burden with another potentially greater administrative burden is not an appropriate solution. As described in CNOC's intervention, an order directing immediate participation in the CCTS by all telecommunication service providers that are not currently participating service providers will necessitate the onboarding of a significant number of providers<sup>14</sup>. This is not a trivial concern given that there were only 257 participating service providers reported in the CCTS 2013-2014 Annual report<sup>15</sup> in comparison to the more than 1700 telecommunication service providers registered on the registration lists maintained by the CRTC that may be providing services within the scope of the CCTS' mandate<sup>16</sup>. Such an outcome would not be administratively efficient, nor consistent with the Policy Direction<sup>17</sup> and would serve only to magnify and increase the current administrative difficulties faced by the CCTS.

23. A more appropriate solution would be to address the source of the administrative burdens faced by the CCTS at the time when a telecommunications service provider is required to become a participating provider. This could involve providing the CCTS with a list of telecommunication service providers that are eligible to be participating service providers and the applicable contact and address information based on the applicable annual Response Manager and registration list contact data collected by the Commission.

24. CNOC also agrees with the CCTS that imposing the requirement for service providers to participate in the CCTS directly on all service providers, including resellers, will assist to mitigate the concerns regarding a telecommunication service provider's compliance with its obligations to participate in the CCTS<sup>18</sup>.

25. Finally, CNOC agrees with the views of certain interveners that any requirement for service providers to participate in the CCTS should be imposed directly on those service providers, including resellers, by the Commission<sup>19</sup>.

### **CCTS's Structure**

26. CNOC maintains its position that the structure of the CCTS Board of Directors and the voting structure are effective and should be maintained. CNOC notes that certain interveners have expressed concerns about each of these items. However, CNOC is not aware of any instances where the structure of the CCTS Board of Directors or the voting structure has impeded the functioning or governance of the CCTS.

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<sup>13</sup> CCTS Intervention at para 34.

<sup>14</sup> CNOC Intervention at para 25.

<sup>15</sup> CCTS 2013-2014 Annual Report at pg 331.

<sup>16</sup> 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.

<sup>17</sup> And in particular subpara 1(a)(ii) thereof.

<sup>18</sup> CCT Intervention at para 34.

<sup>19</sup> See for example: Bell Canada Intervention at paras 32-34; TELUS Intervention at para 56; Cogeco Intervention at para 25; and MTS Allstream Intervention at para 5.

27. CNOC also agrees with the positions of interveners regarding the appropriateness of including TVSPs under the existing industry classifications of the three industry directions<sup>20</sup>.

28. With regards to the sufficiency of the remedies available to the CCTS, CNOC maintains its position that the existing remedies established in the Procedural Code remain appropriate and sufficient to meet the needs of consumers.

29. Certain interveners to this proceeding have proposed that the remedies available to the CCTS be revised in a manner that, for example, increases the per complaint compensation threshold<sup>21</sup> and allows the CCTS to take additional considerations (e.g., compliance incentives and reputational harm) into account when determining appropriate compensation amounts<sup>22</sup>.

30. With specific reference to the compensation threshold, it is again necessary to emphasize that the \$5,000 compensation threshold per complaint does not apply to refund requirements in the cases of billing errors.

31. Further, CNOC notes that the CCTS itself is of the view that the remedies currently available to it, including the \$5,000 compensation threshold per complaint, continue to be sufficient<sup>23</sup>:

Finally, CCTS does not believe, and there is no evidence to suggest that the remedies or amount of compensation available to CCTS to address customer complaints are insufficient. Under section 12 of the Procedural Code, CCTS has authority to require a PSP to remedy its failure to meet its obligations to the customer, notwithstanding the financial amount at issue. In addition to this authority, CCTS may also award compensation of up to \$5,000 for “loss, damage, or inconvenience incurred by the Customer arising directly from the circumstances of the complaint”. This sum has proven ample to address the complaints that CCTS has dealt with to date.

32. In addition, additional procedural safeguards and complex handling procedures would be necessary to accompany any increase to the monetary compensation thresholds and the introduction of considerations regarding factors such as reputational harm and compliance incentives that are significantly difficult to quantify. Accordingly, such changes would serve only to increase the complexity of the CCTS complaint handling process in a manner that is contrary to principles set out in section 2.2 (d), (f) and (g) of the Procedural Code:

2.2 In carrying out his or her functions, powers and duties, the Commissioner shall act in a manner that is independent and impartial, accessible and efficient. Without limiting the generality of the foregoing, the Commissioner shall:

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<sup>20</sup> See for example: Bell Canada Intervention at para 49; TELUS Intervention at paras 67-68; Cogeco Intervention at paras 31-32; MTS Allstream Intervention at para 9; Rogers Intervention at para. 37; and SaskTel at para. 26.

<sup>21</sup> NPF-COSCO-PIAC Intervention at para 149; CIPPIC Intervention at para. 26.

<sup>22</sup> CIPPIC Intervention at paras 26-27.

<sup>23</sup> CCTS Intervention at para 44.

...

(d) endeavour to secure the appropriate, most expeditious and least expensive resolution of every complaint on its merits;

...

(f) provide the services of his or her office in a non-legalistic manner; and

...

(g) follow cost-effective business practices in order to provide the services of his or her office in an economically efficient manner

33. In regards to other modifications that would make the CCTS' operations more effective and efficient, CNOC maintains its position that the CCTS should be directed to abide by its Procedural Code and not implement processes and procedures that are contrary to the Procedural code or that have the effect of otherwise modifying the Procedural Code<sup>24</sup>. This will serve to provide certainty to all participating service providers regarding the processes and procedures to be followed and, in turn, increase the efficiency of the operations and complaint handling activities of both the CCTS and participating service providers.

34. CNOC also agrees with other operational concerns expressed by interveners. TELUS, for example, succinctly describes barriers to the efficient and effective management of complaints by participating service providers due to: (i) the lack consistent timelines established by CCTS investigators for responding to requests for information; (ii) the absence of standard information requested or required in relation to a complaint; and (iii) instances where investigations go beyond the actual complaint filed by the consumer<sup>25</sup>. CNOC also notes the concerns expressed by parties regarding instances where the CCTS has undertaken an interpretative role where there is uncertainty or differing views on the intent or application of complex regulatory policies and decisions<sup>26</sup>. CNOC submits that addressing these concerns will further improve the effectiveness and efficiency of the CCTS' operations.

35. CNOC also agrees with the concerns expressed regarding the difficulty of resolving a complaint where the issue results from the action of the underlying carrier of a participating service provider<sup>27</sup>. Accordingly, CNOC agrees with the proposal put forward by TekSavvy Solutions Inc. that would permit these issues to be better addressed by the CCTS and the Commission<sup>28</sup>.

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<sup>24</sup> See: CNOC Intervention at paras 39-51.

<sup>25</sup> TELUS Intervention at para 30.

<sup>26</sup> See for example: Rogers Intervention at para 10.

<sup>27</sup> CIPPIC Intervention at para. 15.

<sup>28</sup> TekSavvy Intervention at paras 33-43.

## CCTS's Funding Model

36. CNOC does not agree with the views expressed by parties regarding the current sufficiency of the CCTS' funding model that consists of distinct revenue and complaint-based fee components.

37. As explained in CNOC's intervention<sup>29</sup>, the complaint-based fee component has an unintended consequence of incenting participating service providers to simply achieve a resolution despite having met their obligations in good faith. This is because an early resolution, regardless of whether the provider is culpable of wrongdoing, avoids the additional fees that are incurred as the complaint is escalated through the CCTS complaint handling process.

38. CNOC also notes that parties that are otherwise supportive of maintaining the current funding model have nonetheless raised certain legitimate concerns with the complaint-based fee component. For example, Bell Canada expresses concern regarding the inability of CCTS to recover costs where an accepted complaint is subsequently determined to be invalid. Accordingly, Bell Canada has proposed a mechanism whereby a complaint-based fee would be levied for complaints found to be invalid based on the complaint handling stage where the determination regarding the validity of the complaint was made<sup>30</sup>. On the other hand, Rogers Communications Partnership expresses concerns regarding the appropriateness of complaint-based fees being levied for complaints that are accepted but ultimately found to be invalid<sup>31</sup>.

39. CNOC submits that the adoption of its proposal to recover funding of the CCTS solely via revenue-based fees calculated on the applicable percentages of revenues of participating service providers will effectively address all of the concerns regarding complaint-based fees expressed in this proceeding. Specifically, CNOC's proposal will remove the incentive for participating service providers to resolve a complaint despite any wrongdoing simply to avoid incurring additional complaint-based fees. This model will also ensure that the CCTS is able to fully recover its complaint-handling related costs.

Yours very truly,

William Sandiford  
Chair of the Board and President

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<sup>29</sup> See: CNOC Intervention at paras 52-57.

<sup>30</sup> Bell Canada Intervention at para 58.

<sup>31</sup> Rogers Intervention at para 42.