



September 11, 2015

Filed electronically

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON
K1A 0N2

Dear Mr. Traversy:

**Re: Broadcasting and Telecom Notice of Consultation CRTC 2015-239 – *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. (BTNC 2015-239)*; Reply Comments of Shaw Communications Inc.
File: 8657-C12-201505505**

I. Introduction and Executive Summary

1. Shaw Communications Inc. (“Shaw”) provides this reply to interventions filed by parties in response to Broadcasting and Telecom Notice of Consultation CRTC 2015-239, *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. (the “Notice”)*.
2. Shaw has reviewed the comments filed in this proceeding and we are pleased to note that many of the interventions are consistent with Shaw’s proposals. There is a significant degree of consensus among the interveners with respect to the current mandate and structure of the *Commissioner for Complaints for Telecommunications Services (“CCTS”)*. The level of support for continuation of the CCTS is overwhelming and all parties agree the CCTS provides a valuable service to Canadian consumers. The evidence on the record to date shows that consumers are highly satisfied with the services provided by the CCTS and value its role in resolving disputes within its mandate and scope.

Shaw Communications Inc.
40 Elgin Street, Suite 1400
Ottawa, Ontario K1P 5K6
Tel: 613-688-6751
Fax: 613-688-6799

3. In view of this strong degree of consensus, Shaw submits that the proposals by certain parties to expand the mandate or structure of the CCTS should be rejected by the Commission. Those parties seeking further expansion of the CCTS' role and mandate would, if adopted, be duplicative, inefficient, administratively cumbersome and moreover beyond the scope of the intended role and mandate of the CCTS. Requests for change to the CCTS structure appear to be based on issues that parties theorize may occur or are based on a misunderstanding of the role or purpose of the CCTS. However, the CCTS is functioning well and is clearly meeting the needs of consumers in assisting with unresolved complaints. In light of this, changes to the role or structure of the CCTS are not warranted or necessary.
4. Shaw has structured these reply comments to focus on the following matters:
 - Public Awareness;
 - Industry Participation;
 - Mandate;
 - Structure;
 - Funding; and
 - Service Provider Survey.
5. Failure by Shaw to address any particular proposal, comment or position by an Intervener should not be interpreted to be Shaw's agreement to the proposal, comment or position of that party.

II. Public Awareness

6. As many interveners noted, complaint volumes are not a valid proxy to measure the level of public awareness of the CCTS. As Telus noted, a reduced number of complaints to the CCTS is evidence of the fact that service providers are providing better customer service in the competitive market:

Reduced use and awareness of the CCTS may in future be the result of increased focus by communications services providers on their own customer services, *i.e.* achieving the overarching public policy goal, and should not be taken as an indicator of failure on the part of the CCTS.¹

7. The ability for a consumer to locate the CCTS, when a complaint remains unresolved, is the best indicator of the CCTS' success in public awareness. Shaw also concurs with

¹Comments of Telus, 25 August 2015 ("Telus Comments") at para. 34.

TELUS's observation that "the CCTS' website seems to be easily 'discoverable' by customers who are looking for information online about making complaints about their telephone or wireless services."² This is supported by Bell's assessment of Google search results for the CCTS.³

8. Shaw agrees with the proposals of several parties who suggested that the CCTS should focus its Public Awareness efforts on on-line strategies, given the increased reliance by consumers on the Internet as a source of information. In this digital age, the Internet is the source most Canadians turn to for information. To this end, Shaw submits that suggestions such as those put forward by Bell and the Consumer Council of Canada regarding increased website analytics and other search engine optimization should be reviewed by the CCTS and incorporated into the Public Awareness Plan, where possible.⁴
9. Shaw notes that the joint comments filed by National Pensioners Federation (NPF)/Council of Senior Citizens' Organizations of British Columbia (COSCO)/Public Interest Advocacy Centre (PIAC) ("NPF/COSCO/PIAC") also put forward several helpful suggestions regarding enhancements to the CCTS website. Referring to resources offered by other ombudsman organizations, NPF/COSCO/PIAC suggest that:

... the CCTS must make its accessibility services more prominent on its website. It is now common to find clear options on ombudsman websites to increase the font size, to change the colour of the webpage, or to access an 'Accessibility' link. ... the CCTS should also be required to make these and other types of accessibility readily available.⁵
10. Shaw agrees with these concerns and accordingly submits that the CCTS should undertake efforts to improve website accessibility.⁶
11. With respect to continuing awareness of the CCTS among TVSP customers (upon the prospective addition of the TVSP Code to CCTS' existing mandate), Shaw agrees with SaskTel that the same communications methods currently leveraged by telecommunications service providers ("TSPs") would be appropriate, including information about the CCTS on TVSP websites, standard notifications on TVSP billing statements and ultimately the provision of CCTS contact information following a second unsuccessful attempt internally to resolve a customer's concern. SaskTel notes that:

² Telus Comments at para. 36.

³ Intervention of Bell Canada, 25 August 2015 ("Bell Comments"), para. 22 and Table 1.

⁴ See Intervention of the Consumers Council of Canada, 25 August 2015 ("CCC Comments") at paras. 36-38 relating to mobile device compatibility and the use of mobile apps.

⁵ Intervention of NPF/COSCO/PIAC, 25 August 2015 ("NPF/COSCO/PIAC Comments") at para. 26.

⁶ Intervention of CNIB and the Alliance for Equality of Blind Canadians, 25 August 2015 ("CNIB Comments") at paras. 6, 11.

Consumers most frequently become aware of a TVSP issue they wish to resolve when viewing their bill and therefore the most appropriate communication tool with the CCTS contact information is the TVSP bill and website.⁷

12. However, Shaw does not agree with NPF/COSCO/PIAC that mandating public service announcements (PSA) on television would be appropriate. Conventional media promotional vehicles, such as PSAs on broadcast television, are inefficient in reaching the CCTS targeted audience.⁸ As Shaw noted in its comments, such a step would be unnecessary and, moreover, inappropriate.
13. Shaw agrees with the comments filed by several parties who note that the broadcast PSAs could create consumer confusion, given that the CCTS is not the ombudsman for *television broadcasters*. As Bell notes, PSAs are already run by broadcasters on behalf of the Canadian Broadcasting Standards Council. Therefore, mandating CCTS-oriented PSAs would inevitably result in consumer confusion as to the relevant organization to approach with a complaint.⁹ The likely outcome would be that many complaints regarding broadcast programming would be erroneously directed to CCTS.¹⁰
14. In summary, it is Shaw's position that the focus of the CCTS over the coming years should be: enhancements to the CCTS website; increased accessibility; increased awareness efforts and ongoing compliance.

III. Membership Participation

15. If the Commission determines that membership should remain mandatory, such approach should be applied to all service providers regardless of size. Such mandatory participation among all TSPs would eliminate the difficulties that have arisen under the current participation mechanism.
16. Currently, a TSP is only required to join the CCTS five days after the date on which the TSP is informed by the CCTS that it has received a complaint about the TSP falling within the scope of the CCTS' mandate. As CCTS explains in its comments, this approach which "triggers" participation "upon first complaint" has led to delays in the resolution of complaints.¹¹ Where a non-member TSP refuses to join CCTS following a complaint, it takes, "on average, 103 days between the date that CCTS first referred the TSP to the CRTC and the date that the TSP actually joined CCTS."¹² Thus, the current trigger

⁷ SaskTel Intervention, 25 August 2015 ("SaskTel Comments") at para. 11.

⁸ Bell Comments at para. 27.

⁹ Bell Comments at para. 27.

¹⁰ Bell Comments at para. 27.

¹¹ CCTS Comments at para. 30.

¹² CCTS Comments at para. 33.

mechanism is difficult to manage and does not result in the expedient resolution to consumer complaints regarding non-member service providers.

17. As Bell notes, the “benefit of immediate [and mandatory] participation ... is that CCTS participants must inform their customers of the CCTS existence and contact information.”¹³ The trigger mechanism therefore creates an automatic prejudice against the first customer to file a complaint.¹⁴
18. Given that the annual fee for small service providers is already reduced where revenue is less than \$10M and, if the service provider is not the source of a consumer complaint, it will not be subject to any complaint-based fees, the financial impact of mandatory participation on small service providers is minimal; however, it provides the benefit of fast complaint resolution to all consumers.¹⁵
19. Shaw acknowledges the comments filed by parties that the current “trigger” approach has functioned “as a *de facto* exemption for new market entrants and for smaller players with good behaviour.”¹⁶ This view argues that such an approach remains consistent with the public interest and should trump the narrow concern with the CCTS’ administrative burden with respect to the triggering of new members.
20. In reply, Shaw submits that the CCTS participation rules should not be used as a means to achieve other public policy goals such as market participation and reduced barriers to entry, nor as a tool to calibrate “the administrative burdens of newer and smaller PSPs themselves”.¹⁷
21. Finally, if the Commission extends mandatory participation to TVSPs then it should be applicable to all TVSPs as well as resellers. This position is best expressed by Bell, who notes that mandatory participation for all TSPs will ensure that all consumers can benefit from the CCTS complaint settlement services and related regulatory obligations on a symmetrical basis.
22. Shaw also concurs with those parties who noted that Digital Media Broadcasting Undertakings (“DMBUs”) affiliated with licensed TVSPs should not be required to participate in the CCTS, nor should complaints about these services be within scope of the CCTS. DMBUs provide services which are unique and distinct from services provided by TSPs and TVSPs. As Bell commented, the DMBU market is “dynamic”, “defined by innovation and experimentation ... [with no need for] long-term commitments” from

¹³ Bell Comments at para. 31

¹⁴ NPF/COSCO/PIAC Comments at para. 91.

¹⁵ NPF/COSCO/PIAC Comments at para. 83; see also SaskTel Comments at para 18. Shaw agrees with NPF/COSCO/PIAC that “simply put, if you are a TSP operating in the retail market in Canada, your services fall within the mandate of the CCTS.”

¹⁶ TekSavvy comments, para. 21.

¹⁷ TekSavvy comments, para. 19.

customers.¹⁸ The DMBU market is not in need of the nature of the safeguards provided by the CCTS. Accordingly, participation should be voluntary for DMBUs, including those affiliated with TVSPs. As well, issues related to exempt services, such as The Shopping Channel, games, alpha-numeric text services, Facebook, apps, etc., should also be excluded from the scope of the CCTS.¹⁹

23. However, if the Commission does not agree with this approach, then Shaw submits that it would be appropriate to implement mandatory membership for *all* Digital Media Undertakings, regardless of their affiliation with a TVSP.

IV. Mandate

24. Most parties to this proceeding, including Shaw, support the continuation of the current CCTS mandate and do not propose any changes or expansion of the CCTS' role. Shaw is concerned that expanding the mandate of the CCTS to include complaints about regulated services, bundled features, content or accessibility would place an unfair burden on the CCTS by requiring it to become experts in multiple areas. It would also place the CCTS in a quasi-regulatory role, which would be inappropriate.
25. We are pleased that CCTS has indicated that it supports this approach, in principle in noting that:

The overall objective should be to duplicate for TV the broad scope of complaints currently allowed for telecom. The principle underlying the s. 3 telecom service exclusions of the Procedural Code is to exclude from the mandate items that are regulated (e.g. emergency services, payphones, 900/976 services), or issues for which another more expert body already exists (e.g. privacy issues, advertising issues). This same principle should apply to any exclusions to TV services and is in keeping with the Commission's statement at paragraph 4 of BNC 2015-105, "The TVSP Code would not address issues that are already addressed in other broadcasting industry codes and regulations, including issues related to content of television programming and advertising, such as violence and equitable portrayal."²⁰

26. As Shaw noted in its initial comments, in view of the fact that CCTS will have oversight over services provided by TVSPs, caution must be taken to clearly define the scope of such oversight, to ensure that the universe of complaints that the CCTS administers is limited to broadcast services that are the subject of the Code. This consideration has been succinctly captured by SaskTel, who notes that the CCTS, as the administrator of the TVSP

¹⁸ Bell Comments at paras. 39, 40.

¹⁹ Allstream Comments at para. 8.

²⁰ CCTS comments at para. 40; see also Cogeco comments in support at paras. 27-28.

Code of Conduct, “must ensure that it applies the Code of Conduct to only the true broadcast aspects of the service offering.”²¹

27. There are many services provided by TVSPs or over TVSP distribution networks which should not fall within the scope of the CCTS mandate. As MTS Allstream argued, simultaneous substitution errors and accessibility issues should continue to be handled through the Commission, rather than the CCTS, and the Commission remains the appropriate arbiter of these issues.²²
28. A further concern is raised with respect to the scope of CCTS’ role which, by its very mandate, is that of an ombudsman. This interpretation of CCTS’ role was noted in the following comment by Eastlink:
- CCTS’ success is achieved by operating within the scope of their jurisdiction and the established processes, being careful to avoid engaging in issues that expand beyond that scope into the realm of interpretations or policy making, which is more appropriately addressed through Commission processes.”²³
29. As outlined by Rogers, the role of the CCTS is not an “investigative body”. Rogers noted that CCTS involvement in some disputes to date relating to the Wireless Code resulted in the CCTS expanding its inquiry to all elements of the Wireless Code, irrespective of the complaint before it. As Rogers points out, such an approach is inappropriate, as the service provider has no opportunity to first address the issue with the customer; neither the customer nor the service provider was aware that there was an issue.²⁴
30. Shaw submits that it is also not the role of the CCTS to act as a “consumer advocate” or provide consumers with legal advice as some parties have suggested. Such suggestions should be disregarded.²⁵ As the Commission determined in *Telecom Regulatory Policy CRTC 2011-46*,²⁶ the appropriate role for the CCTS is one that “should be limited to administering a code and reporting on complaints related to violations,” rather than to develop [and interpret] codes.²⁷
31. Shaw also disagrees with the proposal put forward by TekSavvy that the CCTS become an arbitrator for wholesale service delivery disputes. Under TekSavvy’s proposal the CCTS Procedural Code would be amended to require an underlying third-party service provider (i.e., a provider of wholesale network access) to provide information relevant to a complaint if the TSP identifies the underlying party as contributing to the service issue

²¹ SaskTel comments, para. 22.

²² MTS Allstream Comments at para. 8.

²³ Eastlink Comments at para. 4.

²⁴ Rogers comments at para. 12.

²⁵ See, e.g., FRPC Comments at para.s 36, 47, 63 and 74.

²⁶ TRP 2011-46 at paras. 43-44.

²⁷ Rogers Comments at para. 26.

outlined in the complaint.²⁸ This would involve an investigation into the underlying wholesale service provided and the relevant parties involved, and culminate in forwarding any dispute between service providers to the CRTC for its determination.²⁹ Shaw submits that this proposal, if adopted, would result in the CCTS gathering and forwarding complaints involving commercial or regulated wholesale arrangements. This would be of little or no benefit to the consumer in resolving a complaint.

32. Shaw notes that service providers must be responsible for the service their customers are receiving. Whether the service is provided over its own network or through a regulated or commercial arrangement, the consumer's relationship is with the service provider and the service provider alone is able to compensate the consumer for the service issue. Revising the CCTS mandate as suggested by TekSavvy only serves to encourage service providers to point fingers or generate complaints toward other service providers. This places both the CCTS and consumers in the middle of disputes without any benefit.

V. Structure

33. The CCTS Board has been operating successfully for over 8 years. During that time, the CCTS has effectively incorporated and applied the *Procedural Code*, the *Deposit and Disconnection Code* and the *Wireless Code*.
34. Some parties – in particular NPF/COSCO/PIAC – have raised concerns about possible outcomes due to the current Board structure and voting rights. Shaw submits in reply that those concerns are premised on hypothetical concerns and perceived conflicts of interest. There is no evidence that any of these concerns have – or will – come to fruition. In fact, the CCTS itself has not recommended any changes to its Board Structure noting that this would be a significant undertaking, including the issue of statutory impediments to such changes.³⁰
35. Shaw submits that unless there is an actual proven concern with the Board composition and its operations, there is no reason to undertake the significant changes required to introduce changes at this level.
36. Shaw further submits that the current process to select the Board of Directors remains appropriate.³¹ The balance between independently appointed directors, consumer representatives, and industry representatives appropriately reflects the needs of the CCTS in carrying out its purposes as an independent organization, with equal participation from the industry and from consumer representatives.

²⁸ TekSavvy Comments at para. 36.

²⁹ TekSavvy Comments at para. 38

³⁰ CCTS comments at para. 42.

³¹ This position is supported by other interveners; see Telus Comments at para 67 and Bell Comments at para. 47.

37. Other interveners have suggested that the composition of the Board is currently “inequitable”,³² or should be altered to have a majority of consumer appointed Directors, to “ensure that CCTS is ... a telecommunications consumer agency.”³³ However, Shaw points out that the CCTS is an independent organization. While there are currently, and should be, members of the Board with expertise and experience representing *both* consumers and the industry, the Board composition is, and should remain, balanced and unbiased.
38. FRPC also suggests that “consumer groups that appoint members to the CCTS Board of Directors should ensure that the majority of these members have legal training.”³⁴ Shaw respectfully disagrees: the CCTS does not perform a legal role. The FRPC’s proposal that a legal education should be a prerequisite to a director’s participation is difficult to reconcile with FRPC’s other argument that CCTS does not have a primary purpose of alternative dispute resolution. Rather, its mandate is to report on and resolve consumer complaints, and administer applicable codes.³⁵

VI. Funding

39. Many parties support an increased reliance on complaint based fees. As set out in our initial comments, Shaw supports a move towards a 50/50 funding model. Those service providers generating complaints should shoulder a higher portion of the CCTS costs.
40. CNOC has proposed the opposite suggesting that complaint based fees be eliminated completely and that the CCTS be supported solely on revenue based fees. This would only serve to eliminate any incentive for providers to reduce the number of complaints generated, as service providers with higher annual revenues would shoulder the burden of these costs.³⁶ Shaw submits this approach would be inappropriate and should be rejected.
41. The best approach would be the converse of CNOC’s proposal, namely to *increase* the complaint based portion of the annual fee. This would have two positive effects: (1) service providers would be motivated to reduce the number of complaints made by their customers, encouraging higher quality service and a more direct relationship between service providers and their customers, and (2) there would be a more equitable division of the costs associated with operating the CCTS amongst the service providers that are using its resources. As such, smaller service providers with reduced revenue based fee and a

³² NPF/COSCO/PIAC Comments at paras. 116, 121-122.

³³ FRPC Comments at para. 37.

³⁴ FRPC Comments at para. 28.

³⁵ CCTS Comments at para. 2.

³⁶ Based on the 2013-2014 Annual Report, CCTS received a total of 96 complaints filed for Shaw. During the same period, CNOC members Primus had 95 complaints, Distributel had 76 complaints, ACN had 75 complaints and Teksavvy had 53 complaints. Based on CNOC’s proposal, Shaw’s higher revenue percentage would result in Shaw bearing the cost of the smaller CNOC member complaint costs.

low number of filed complaints, would benefit by paying smaller annual fees to an organization whose services they do not use.³⁷

VII. Service Provider Survey

42. With respect to the issue of compliance with customer awareness initiatives among participating service providers, Shaw has read CCTS' comments on the results of its recent survey that it conducted of 133 "participating service providers" (PSPs) in May 2015.³⁸ Shaw participated in this survey and is disappointed to learn from CCTS' comments that many other PSPs did not take the opportunity to participate.
43. The results of the survey, as summarized by the CCTS³⁹, are troubling and we believe that all CCTS Participants should take steps to ensure compliance with their obligations relating to public awareness. To assist in ensuring such compliance, it would be helpful if the CCTS provided specific feedback to each of its members that provided responses to the CCTS survey. Based on Shaw's internal review with respect to the completed survey provided to CCTS, we believe we are 100% compliant with each of the commitments set out by CCTS in its plan, "Developing Public Awareness of CCTS" ("the Plan"). Shaw noted in detail its adherence to the elements of the Plan in its comments in response to the Notice.⁴⁰
44. However, based on the survey results that the CCTS provided in its comments, not only is it unclear who among all PSPs were non-compliant but also which elements of the Plan were not adhered to.
45. Shaw can confirm that, since completing and submitting the survey in May, 2015 we have not received any communication from the CCTS in this regard. To the extent that the CCTS has encountered any inaccuracies in the member surveys during their investigations, Shaw submits that it would be appropriate for CCTS to provide feedback to the members and engage in a dialogue around the requirements. In the absence of such steps, it is extremely difficult for members to address any gaps in compliance or address any concerns the CCTS may have with their compliance.

³⁷ See SaskTel Comments at paras. 30-31, Telus Comments at paras 79-80, and Rogers Comments at para. 40.

³⁸ Initial Comments of CCTS, 25 August 2015 ("CCTS Comments") at para. 23.

³⁹ CCTS Comments at para. 24 and as set out in Appendix 4.

⁴⁰ Intervention of Shaw, 25 August 2015 ("Shaw Comments") at paras. 20-21.

VIII. Conclusion

46. Shaw remains committed to participating in this public proceeding with the objective of ensuring that the CCTS is well-positioned to help resolve customer complaints. We appreciate the opportunity to file these reply comments.

Sincerely,

Shaw Communications Inc.

A handwritten signature in black ink, appearing to read "Dean Shaikh". The signature is fluid and cursive, with a large initial "D" and "S".

Dean Shaikh
Vice President, Regulatory Affairs
Regulatory@sjrb.ca

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