



November 20, 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); Final Comments of Shaw Communications Inc.
File: 8657-C12-201505505

I. Introduction and Executive Summary

1. Shaw Communications Inc. (“Shaw”) provides these final comments 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.* (the “Notice”).
2. Shaw has reviewed the comments filed in this proceeding and listened intently to the presentations during the oral hearing. 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.

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3. However, proposals by certain parties seeking further expansion of the CCTS' role and mandate would, if adopted, would undermine the very effectiveness that has gained the CCTS widespread praise and support. Such proposals would introduce duplicative, inefficient, administratively cumbersome requirements that would move the CCTS beyond the scope of the intended role and mandate as an independent consumer complaints agency.
4. Further, requests for change to the CCTS Board structure appear to be based on issues that parties theorize may occur or on a misunderstanding of the role or purpose of the CCTS. The CCTS has confirmed that its Board structure has not inhibited its operations. 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.
5. Shaw has structured these final comments to focus on the following matters:
 - Public Awareness;
 - Membership Participation;
 - Mandate & Structure;
 - Funding;
 - Compliance & Enforcement; and
 - Future Review.
6. 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

7. While some parties to this proceeding call for greater general public awareness of the CCTS, parties were unable to point to a standard or acceptable level of awareness for an ombudsman like the CCTS¹. In fact, the CCTS has stated this lack of information was a primary motivator for undertaking a public awareness survey in the 2015-2016 year.
8. Once complete, the CCTS' public awareness survey will provide the Commission with a public awareness baseline to assist in assessing the effectiveness of existing awareness initiatives leading up to the next review of the CCTS. We are confident that the current

¹ CCTS Testimony, Transcript Volume 1, Line 46, PIAC Testimony, Transcript Volume 1, Lines 772-782, CNOC Testimony, Transcript Volume 2, Lines 2773-2788

awareness requirements combined with the CCTS' plans for increased social media and on-line presence will reflect in the survey that consumers are aware of the CCTS when they have an unresolved complaint with their service provider.

III. Membership Participation

9. As we stated in our appearance before the Commission, Shaw supports the ongoing requirements for mandatory membership applied to all service providers regardless of size. Such mandatory and immediate participation among all TSPs would eliminate the difficulties that have arisen under the current participation “trigger” mechanism.
10. 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.²
11. Shaw further submits that mandatory participation should also apply to licensed TVSPs given that, in Broadcasting Notice of Consultation CRTC 2015-105, the Commission stated an “intention to establish a mandatory code of conduct for television service providers (TVSPs) such as cable television services, satellite services, and Internet Protocol television services.” However, Shaw notes the discussion about whether CCTS participation should – or could – be mandatory for small systems that are exempt from application of the TVSP Code.³ Although the Commission has not yet decided which, if any, systems will be exempt from application of the TVSP Code, Shaw submits that the CCTS is only responsible for TVSP complaints under the TVSP Code. Therefore, it follows that any system that is exempt from the TVSP Code should not be required to refer complaints to the CCTS. Shaw further submits that many of the provisions under the TVSP Code relate to the series of Let’s Talk TV decisions and obligations that have been imposed on licensed systems. Accordingly, it may be appropriate to exempt all systems that are subject to the BDU Exemption Order from application of the TVSP Code and CCTS participation.
12. Furthermore, 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

² 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.”

³ Transcript Volume I, Lines 188-205 and Volume 3, Lines 3201-3210.

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 customers.⁴ 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.⁵

IV. CCTS Mandate and Structure

13. NPF/COSCO/PIAC and the FRPC have called for significant changes to the CCTS Board structure, including the addition of new consumer representatives on the Board. However, we note that neither the NPF/COSCO/PIAC nor the FRPC could point to problems with the CCTS Board that negatively impacted or impaired CCTS operations.

14. In fact, Ms. Bernard-Meunier, Chair of the Board of Directors at the CCTS told the Commission:

“What I see on the basis of my experience over the last eight years is that our -- you know, our operating rules within the Board have not had a direct negative impact on the operations of the organization. I would be hard put to find an instance where, quite clearly, we've taken a decision that was detrimental to the organization because we were not able to achieve a different kind of a decision.”⁶

15. Shaw submits the Commission should reject calls for significant changes to the CCTS Board structure. 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. 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*. 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.

⁴ Bell Comments at paras. 39, 40

⁵ Allstream Comments at para. 8

⁶ CCTS Testimony, Transcript Volume I, Line 467

16. With respect to the CCTS' mandate, 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.
17. We note that the CCTS expressed similar concerns in their closing remarks at the oral hearing:

We are pleased that virtually all the presenters have seen the value of our ombudsman role. There was widespread agreement that having an independent and impartial complaints resolution agency has been highly effective and has been of great benefit to customers and service providers. Ironically, some of the very changes to CCTS that these parties seek, either to increase our mandate or to constrain how we currently discharge it, would dramatically reduce our effectiveness and diminish our success.

We strongly urge the Commission to resist these calls for change, which would take us further from the government's vision for CCTS as an independent consumer agency with a mandate to quickly and effectively resolve complaints.

We cannot stress enough the importance to our role as an independent and impartial ombudsman the need to refrain from adding to our mandate any role that involves advocacy or setting standards for the industry and its relationship to any particular group or interest⁷.

18. Shaw submits the Commission should reject calls for an expanded CCTS mandate or scope of complaints. As highlighted by the CCTS, expansion of the scope will only serve to slow consumer complaint resolution processes by placing the CCTS in a quasi-regulatory role. In addition, complaints regarding 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.⁸
19. Shaw also disagrees with the proposal put forward by TekSavvy that the CCTS become an arbitrator for wholesale service delivery disputes.⁹ Under TekSavvy's proposal Section 40

⁷ CCTS Testimony, Transcript Volume 4, Lines 4468-4470

⁸ MTS Allstream Comments at para. 8

⁹ Teksavvy Testimony, Transcript Volume 3, Lines 3877-3885

of the CCTS Procedural Code would be amended to require an underlying third-party service provider (to provide information relevant to a complaint if the TSP identifies the underlying party as contributing to the service issue outlined in the complaint.¹⁰ 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.¹¹

20. Shaw submits that this proposed change to the CCTS Procedural Code and investigation process would have no benefit to the consumer in resolving a complaint. A customer who has filed a complaint with the CCTS is looking for resolution from their service provider. There is no benefit to the customer in determining whether it was the service provider or the underlying wholesale service provider that caused the issue related to the complaint. The customer just wants resolution and it is the customer's service provider that is in the position to provide that resolution.
21. If Teksavvy has concerns regarding the service levels it is receiving from its underlying wholesale providers and the impact those service levels are having on CCTS complaint volumes, then Teksavvy can instigate its recourse options under its wholesale agreements. However, placing consumers and the CCTS in the middle of those commercial arrangements is neither efficient nor appropriate.
22. Simply, 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.

V. Funding

23. We are encouraged by statements from the CCTS that adding "TV complaints or TVSP Code administration will be a relatively straightforward exercise"¹². In light of the CCTS' operating efficiencies and the declining volume of telecom related complaints, we continue to believe the CCTS should be able to subsume these new activities without requiring increases to its operating budget.

¹⁰ TekSavvy Comments at para. 36

¹¹ TekSavvy Comments at para. 38

¹² CCTS Testimony, Transcript Volume 1, Line 59

24. 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.
25. CNOC has proposed the elimination graduated complaint based fees arguing that complaint based fees represent “perverse economic incentives” for “service providers to settle unfounded complaints or agree to unreasonable resolutions to avoid escalating complaint based fees.”¹³ Instead, CNOC proposes that a percentage of the CCTS annual budget be recovered through a calculation of complaint based costs proportioned to service provided on a pro rata basis consistent with the number of complaints generated.
26. Shaw submits the best approach would be the converse of CNOC’s proposal, namely to *increase* the complaint based portion of the annual fee. Contrary to CNOC’s assertions, it is entirely correct and appropriate to maintain graduated complaint based fees that incent service providers to resolve complaints in a timely manner. This structure ensures that those service providers generating the highest volume of complaints and utilizing the CCTS resources to the greatest extent bear the highest costs. Conversely, smaller service providers with reduced revenue based fee and a low number of filed complaints, would benefit by paying smaller annual fees to an organization whose services they do not use.¹⁴

VI. Compliance and Enforcement

27. During its oral presentation, the CCTS raised concerns about participating member compliance with public awareness requirements, delivery of revenue declarations, payment of fees and the Procedural Code¹⁵. The CCTS asked the Commission to send a strong message to the industry and consumers through an unequivocal directive outlining the requirement for participating members to comply with all CCTS requirements.
28. Shaw agrees with the CCTS that member compliance is paramount to the effectiveness of the CCTS and its operations. Participating members should not be able to pick and chose which requirements they will abide by.
29. We also agree that some form of enforcement must be made explicit in the event of non-compliance with CCTS requirements. Shaw strongly believes that the vast majority of non-compliance could be resolved through increased communication and feedback from

¹³ CNOC Testimony, Transcript Volume 3, Line 2730

¹⁴ See SaskTel Comments at paras. 30-31, Telus Comments at paras 79-80, and Rogers Comments at para. 40

¹⁵ CCTS Testimony, Transcript Volume I, Line 89

the CCTS. As a way of example, based on the CCTS' voluntary compliance survey, several participating members are not compliant with aspects of the public awareness requirements. However, it is unclear if the CCTS has taken steps to advise those providers of any non-compliance items or seek a date for rectification of the non-compliance.

30. Therefore, we propose the CCTS undertake greater efforts to advise participating members of instances of non-compliance and request dates for correction of these non-compliance issues. Failure of a participating member to take corrective action for non-compliance would lead to a disclosure of the non-compliance item in the annual or mid-year report. Continued non-compliance could be referred to the CRTC for investigation or alternative enforcement.
31. We also note the CCTS suggested that confidential sharing of revenue data would assist in making compliance and enforcement more straightforward. Shaw supports initiatives that would make it easier for the CCTS to identify service providers that are required to become participants in the CCTS.

VII. Future Review

32. During the course of the public hearing, parties were asked to provide suggestions for metrics on which to gauge the performance of the CCTS in upcoming reviews¹⁶.
33. Shaw believes the most important metric in gauging the success of the CCTS – as with any organization – is customer satisfaction. The CCTS currently tracks its customer satisfaction levels through the use of surveys and collects metrics related to their success in the following areas:
 - Accessibility – was it easy to contact us? (88.8%)
 - Timeliness – did we complete our work in a reasonable time? (89%)
 - Impartiality – did we act without favouritism? (79.8%)
 - Process fairness – were the resolution and investigation processes fair? (75.1%)
34. We suggest the Commission use these customer satisfaction metrics to assess the CCTS' performance in future reviews.

¹⁶ Transcript Volume 2, Line 2888, Transcript Volume 3, Line 3579 and Transcript Volume 4, Lines 4438-4446

VIII. Conclusion

35. 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 final comments.

Sincerely,

Shaw Communications Inc.

A handwritten signature in blue ink that reads "Morgan N. Elliott". The signature is written in a cursive style with a large initial "M".

Morgan Elliott
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cc: Interveners in NoC 2015-239

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