



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

November 20, 2015

FILED VIA GCKEY

Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau, Quebec
K1A 0N2

Dear Ms. May-Cuconato,

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. – Final Submission of Canadian Network Operators Consortium Inc.

Introduction

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 final submission in this proceeding.
2. CNOCC is limiting its comments in this submission to certain issues raised by the Commission in Notice 2015-239 regarding the operations of the Commissioner for Complaints for Telecommunications Inc. (“CCTS”). CNOCC maintains the positions set out in its previous 25 August 2015 intervention and 9 September 2015 reply comments, as modified and supplemented in its submissions at the oral hearing for this proceeding, unless otherwise specified. 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.

Executive Summary

3. In its presentation at the public hearing, CNOCC put forward comments on the current mandatory requirement for service providers to participate in CCTS, the complaint-based participation trigger mechanism, CCTS’ funding model, CCTS governance and remedies, and concerns regarding the processes and procedures used by the CCTS.
4. CNOCC maintains its position with respect to each of these items.

5. As discussed further herein, CNOC is of the view that the Commission's previous determinations in Telecom Regulatory Policy CRTC 2011-46, *Review of the Commissioner for Complaints for Telecommunications Services* ("Policy 2011-46") regarding the appropriateness of mandatory participation in CCTS by all service providers that provide services within the scope of CCTS' mandate continues to be valid at this time.

6. However, the issue of whether participation should be mandatory is separate from the issue of when a service provider should be required to become a participating service provider. With respect to when participation should be required, CNOC supports the continued use of the complaint-based trigger mechanism that requires a service provider to become a participating service provider upon receipt of a complaint about the service provider by CCTS. CNOC recognizes that this mechanism is not perfect. However, the alternative of requiring all service providers to immediately become participating service providers will not solve the administrative burdens experienced under the existing complaint-based trigger mechanism and will serve only to amplify them in other ways.

7. CNOC also maintains that that current complaint-based funding mechanism should be modified. Under CNOC's proposal, the complaint-based component of the current funding mechanism would be modified to eliminate the application of variable complaint-based fees based on the stage of the complaint handling process where the complaint is resolved. This would be replaced with a mechanism that distributes a portion of the CCTS annual budget for the next fiscal year budget based on the relative proportion of accepted complaints received by CCTS about each participating service provider in the previous fiscal year. This approach will maintain the distribution of CCTS funding based on the relative amount of complaints driven by participating service providers, while also increasing CCTS' funding stability and removing the perverse economic incentives inherent in the existing complaint-based fee mechanism.

8. CNOC remains concerned with the use of processes and procedures by CCTS that are not compliant with the CCTS Procedural Code ("Procedural Code"). In addition, the complaint handling process would benefit from clear and consistent processes and procedures as well as CCTS being able to gather information relevant to a complaint from underlying carriers as necessary.

9. Finally, the current remedies available to CCTS, including the \$5,000 compensation threshold per complaint, continue to be sufficient. Increasing the compensation threshold would require increased complexity in the complaint handling process that would be ultimately detrimental to the intent of CCTS to assist in achieving expedient resolutions in a non-legalistic manner.

Awareness of CCTS

10. CNOC maintains its position that CCTS' current approach to increasing awareness of the CCTS through its own activities and through the public awareness obligations it places on participating service providers remains sufficient and appropriate.

11. As described by CCTS at the public hearing, CCTS undertakes or is planning to undertake a number of activities to generate consumer awareness of CCTS. These include the development of relationships with provincial consumer affairs offices and consumer groups to establish points of referral¹, the hiring a Communications Officer², utilizing social media and direct engagement³, working with the media⁴ and updating its website to better integrate social media⁵. In addition, CCTS also indicated during the hearing that it would consider and review other measures including the use of search engine optimization techniques and making its website mobile-friendly⁶.

12. While the activities undertaken or planned by CCTS increase general public awareness, the central focus of CCTS is on ensuring that it is accessible to customers at the time when they require its assistance and services⁷. In comparison, measures specifically intended to increase broader general public awareness are viewed as less effective and cost inefficient⁸.

13. Other hearing participants and intervenors are of the view that CCTS should increase its focus on promoting broader public awareness of CCTS. Some of these intervenors point to the practices of other industry ombudsman, such as the Australia Telecommunications Industry Ombudsman (“TIO”), that place a greater focus and emphasis on promoting and measuring broad public awareness⁹.

14. However, a review of the TIO website¹⁰, constituting documents¹¹ and membership form that sets out certain obligations of TIO members¹² does not indicate that TIO members are subject to any of the public awareness obligations that are placed on CCTS participating service providers (i.e., providing information about CCTS on websites, billing messages, white page directories and during internal complaint handling procedures). To the extent that the TIO, or any other comparable industry ombudsman, does not impose public awareness obligations on its participating service providers and is therefore solely responsible for creating public awareness of the organization, it should be of little surprise that the TIO places a significant emphasis on creating broader public awareness.

15. CNOC is not opposed to any CCTS plans to further measure the public awareness of CCTS through a polling initiative¹³. However, CNOC maintains its position and agreement with other parties to this proceeding that the focus of public awareness activities should continue to be on ensuring that customers are

¹ Transcript Ref: Vol 1, Paragraphs 539-543.

² Transcript Ref: Vol 1, Paragraphs 550-553.

³ Transcript Ref: Vol 1, Paragraph 558.

⁴ Transcript Ref: Vol 1, Paragraph 45.

⁵ Transcript Ref: Vol 1, Paragraph 565.

⁶ Transcript Ref: Vol 1, Paragraphs 566-567.

⁷ Transcript Ref: Vol 1, Paragraph 44.

⁸ Transcript Ref: Vol 1, Paragraph 45.

⁹ See for example: Transcript Ref: Vol 1, Paragraphs 781-782 & Transcript Ref: Vol at Paragraphs 4223-4425.

¹⁰ Available at: <https://www.tio.com.au/>

¹¹ Available at: https://www.tio.com.au/__data/assets/pdf_file/0017/167111/TIO-Company-Constitution-2014-WM.pdf

¹² Available at: http://www.tio.com.au/__data/assets/pdf_file/0017/170306/TIO-membership-form-2015.pdf

¹³ Transcript Ref: Vol 1, Paragraphs 522.

aware of and able to access CCTS at the time when they have a complaint that they are unable to resolve with their service provider and require CCTS' assistance.

16. CNOC also maintains its position that the current public awareness obligations placed on participating service providers are sufficient. These obligations achieve their primary purpose (i.e. ensuring customers are aware of their recourse to CCTS when they have a complaint that they are unable to solve) to the greatest extent feasible. This is of significant importance to small participating service providers as a result of their limited resources.

17. Other hearing participants are of the view that the participating service providers should be subject to further public awareness obligations such as broadcasting public service announcements and informing new customers about CCTS through e-mail and text messages¹⁴. With respect to the latter, this position appears based in part on the beliefs that e-mails and text messages represent an inexpensive medium to inform new customers about CCTS¹⁵. It is not, however, trivial for small participating service providers with limited resources to set-up and maintain the systems required to send such e-mails and text messages.

18. Accordingly, CNOC remains of the view that additional public awareness requirements advocated for by parties to this proceeding would place a disproportionate burden on participating service providers, with little, if any, corresponding benefit. Such an outcome would also contravene the Policy Direction¹⁶ 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.

Participation in CCTS by Service Providers

19. CNOC notes that there continues to be a general consensus among hearing participants and intervenors regarding the appropriateness of maintaining mandatory participation in CCTS at this time by all service providers that provide services within the scope of the mandate of CCTS.

20. However, it is important to make clear that the issue of whether participation in CCTS should be mandatory for all service providers that provide services within the scope of CCTS' mandate is distinct from the issue of when a non-participating service provider should be required to become a participating service provider.

21. With respect to the issue of when a non-participating service provider should be required to become a participating service provider, CNOC maintains its position that the complaint-based participation trigger mechanism established in Policy CRTC 2011-46 continues to be appropriate. Under this complaint-based

¹⁴ Transcript Ref: Vol 1, Paragraph 704.

¹⁵ Transcript Ref: Vol 1, Paragraph 937.

¹⁶ 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").

trigger mechanism, a non-participating service provider is required to become a participating service provider at the time when a complaint about the service provider is received by CCTS.

22. CNOC notes the concerns expressed by CCTS regarding the administrative burdens associated with the onboarding process under the complaint-based trigger mechanism when a complaint about a non-participating service provider is received by CCTS¹⁷.

23. However, an order directing all non-participating service providers to immediately become participating service providers does not represent a solution to these concerns. Indeed, and as noted by CCTS, the current administrative burdens associated with onboarding providers will continue to arise as new service providers enter the market¹⁸. In other words, this solution will not prevent the administrative burdens currently experienced on an infrequent basis from continuing to occur.

24. Further, an order requiring immediate participation by all service providers can also be expected to increase CCTS' ongoing operational administrative burdens. As noted by the Chair, there are over 1,000 telecommunications service providers registered on CRTC registration lists¹⁹. This number does not include service providers that are not registered or television service providers. In comparison, there are currently 257 CCTS participating service providers.

25. Accordingly, requiring immediate participation in CCTS by all non-participating service providers will result in a substantial increase in the number of CCTS participating service providers. In addition to necessitating a large onboarding project, this significant influx of participating service providers can be expected to increase administrative efforts, for example, with respect to obtaining annual revenue attestations, educating new participating service providers of their obligations, communicating with participating service providers, maintaining accurate point of contact information and other ongoing operational and complaint handling activities.

26. This 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. Forced participation in the absence of a complaint would have no discernible public benefit. Accordingly, CNOC maintains that such an outcome would not be administratively efficient, nor consistent with the Policy Direction²⁰.

27. Instead, CNOC submits that a more appropriate approach would be to address the points of concern related to the complaint-based trigger mechanism that were as discussed during the public hearing. These include an extension of the requirement to become a participating service provider within 5 days following receipt of a complaint to a more reasonable 30-day period²¹, a clear requirement imposed by the Commission

¹⁷ Transcript Ref: Vol 1, Paragraphs 143-153.

¹⁸ Transcript Ref: Vol 1, Paragraph 151.

¹⁹ Transcript Ref: Vol 1, Paragraphs 159.

²⁰ And in particular subpara. 1(a)(ii) thereof.

²¹ Transcript Ref: Vol 4, Paragraphs 4557.

on service providers to comply with all aspects of the CCTS Participation Agreement and related Commission decisions²², and the provision of a list identifying the contact information of non-participating service providers²³.

28. Finally, CNOC maintains its position that the requirement for service providers to participate in CCTS should be imposed directly on all service providers, including telecommunications service providers (“TSPs”) that are not Canadian carriers (which the Commission has called “resellers” in this proceeding). As noted by parties at the public hearing, this will appropriately extract third party service providers in the supply chain from any consideration or review of a TSP’s compliance with its obligations regarding CCTS participation.

29. The placement of obligations directly on all service providers, including TSPs, will also allow for other compliance related items to be addressed, as such needs may arise, through the Commission’s wider range of compliance and enforcement tools.

Funding Mechanism

30. CNOC maintains its position in support of its revised proposed changes to CCTS’ funding model that it described during its presentation at the public hearing and in its subsequent 12 November 2015 undertaking.

31. Under this funding mechanism, CCTS would maintain the current funding mechanism component that applies revenue-based fees to participating service providers that are calculated based on the proportionate share of the participating service provider’s total Canadian telecommunications revenues relative to the total revenues of all other participating service providers. Participating service providers with less than \$10 million in Canadian telecommunications revenues would also continue to pay an annual fee instead of a revenue-based fee.

32. However, the complaint-based component of the funding mechanism would be revised as to eliminate the application of variable complaint-based fees billed on an after-the-fact quarterly basis that are based on the stage of the complaint handling process where a complaint is resolved.

33. Instead, a portion of the CCTS annual budget for the next fiscal year would be distributed over all participating service providers based on the proportion of the total accepted complaints received by CCTS about each participating service provider during the previous fiscal year relative to all of the accepted complaints received by CCTS during the previous fiscal year.

34. This proposed funding mechanism will remove the perverse economic incentives inherent in the current complaint-based fee mechanism that encourages participating service providers simply to settle complaints that are not well founded solely to avoid incurring increased complaint-based fees imposed as the complaint is escalated through CCTS’ complaint handling process.

²² Transcript Ref: Vol 1, Paragraph 93.

²³ Transcript Ref: Vol 4, Paragraphs 4557.

35. This proposal represents a balanced approach. For example, it reflects the views of public hearing participants and intervenors regarding the importance of ensuring that participating service providers responsible for the highest volume of accepted complaints are also responsible for the associated costs incurred by CCTS for those complaints²⁴. It further would address the concerns expressed by CNOC and other parties regarding the application of complaint-based fees on complaints that are subsequently found to be invalid. In addition, it reflects the view expressed by CCTS regarding the importance of stable funding and the pressures placed on CCTS operations by the current complaint-based funding mechanism²⁵.

Process and Procedures

36. CNOC continues to be concerned with the use of processes and procedures by CCTS that conflict with the Procedural Code. As described during CNOC's presentation at the public hearing, CNOC members have advised that CCTS has modified its processes such that it no longer considers an objection, as permitted under the Procedural Code, during the pre-investigation stage of the complaint handling process and will now, in many cases, only consider objections after the complaint is escalated to the investigation stage. This failure to follow the Procedural Code can result in participating service providers paying higher fees, unnecessarily prolong the process and result in complaints that are not valid pursuant to the Procedural Code being counted as accepted complaints against the participating service provider.

37. CNOC notes that this specific concern would be minimized under CNOC's proposed modification to the complaint-based component of CCTS' funding mechanism. Specifically, as per-complaint fees that are based on the stage of the complaint handling process where the complaint was closed would no longer apply under CNOC's proposal, service providers would not incur higher fees as they do today if a contested complaint requires further investigation before the service provider's objection is accepted. This would further allow invalid complaints to no longer be counted as accepted complaints as to ensure that the portion of CCTS funding recovered via the complaint-based component is based on valid accepted complaints.

38. The specific concerns identified by CNOC also relate to the broader issue of the need for clear and consistent processes, rules and requirements that are of significant importance to participating service providers when they are addressing a complaint received by CCTS. Accordingly, CNOC also supports the comments regarding the benefits of standardized information requirements and timelines put forward by another intervenor²⁶.

39. Finally, CNOC shares the concerns expressed by TekSavvy Solutions Inc. ("TekSavvy") regarding the difficulty of resolving a complaint where the issue results from the action of the underlying carrier of a participating service provider. Accordingly, CNOC supports TekSavvy's proposal to allow CCTS to require underlying carriers to provide information and documentation relevant to a complaint²⁷. This would provide

²⁴ See for example: Transcript Ref: Vol 1, Paragraphs 1136-1137.

²⁵ Transcript Ref: Vol 4, Paragraphs 4525-4529.

²⁶ TELUS Intervention at para 30.

²⁷ Transcript Ref: Vol 3, Paragraphs 3655-3667.

the benefit of ensuring that CCTS has all relevant information regarding a complaint. That said, CNOC also agrees that this would not represent a replacement or alternative to competitor quality of service metrics applicable to wholesale services that are subject to an upcoming review²⁸.

Remedies

40. CNOC notes that certain hearing participants and intervenors are of the view that the current \$5,000 per complaint compensation threshold should be increased²⁹.

41. However, as explained by CNOC during its presentation at the public hearing, an increase of the compensation threshold will necessitate more complex complaint handling procedures. This would be detrimental to the intent of CCTS to assist in achieving expedient resolutions in a non-legalistic manner. In addition, the Procedural Code currently allows consumers to reject any remedy proposed by CCTS in a recommendation or a decision and seek recourse elsewhere. Finally, it is notable that CCTS itself believes that the current threshold is appropriate based on its experience to date³⁰.

42. Accordingly, CNOC maintains its position that the current \$5,000 per complaint compensation threshold remains appropriate and should not be increased.

Yours very truly,

William Sandiford

Chair of the Board and President

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²⁸ Transcript Ref: Vol 3, Paragraph 3759.

²⁹ Transcript Ref: Vol 1, Paragraphs 880-883

³⁰ CCTS Intervention at para 44.