

VIA GCKEY

November 20, 2015

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

Subject: **BTNC 2015-239, Final Comments – Broadcasting and Telecom Notice of Consultation 2015-239 Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. File Ref: # 8657-C12-201505505**

Dear Mr. Traversy:

1. Pursuant to paragraph 31 of Broadcasting and Telecom Notice of Consultation CRTC 2015-239, Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. July 24, 2015 ("BTNC 2015-239"), Tbaytel hereby submits its Final Comments regarding the issues raised in this proceeding.
2. Respectfully submitted this 20th day of November 2015.

Yours truly,



Robert Olenick
Regulatory Analyst

c.c. As per CRTC Distribution List

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**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
Comments**

of

Tbaytel

November 20, 2015

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Introduction

1. On June 4, 2015, the Commission by 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”), initiated its review of the Commissioner for Complaints for Telecommunications Services Inc. (the “CCTS”).
2. The Commission in BTNC 2015-239 identified the following specific issues that would be covered by this review:
 - the service an independent communications ombudsman provides to consumers;
 - the consumer experience with the CCTS;
 - public awareness of the CCTS;
 - participation in the CCTS by communications service providers;
 - the CCTS’s mandate;
 - the CCTS’s structure;
 - the CCTS’s funding model; and
 - a future review
3. Tbaytel submitted its responses on July 20, 2015 to the Commission’s requests for information regarding Tbaytel’s promotion of the CCTS. Tbaytel filed its Intervention with respect to this consultation on August 25, 2015, and subsequently filed Reply Comments on September 11, 2015. Further, on October 15, 2015, in response to requests for additional information, Tbaytel provided information on its handling of disputed charges.
4. During the period from November 3, 2015 through November 6, 2015, a Public Hearing was held by the Commission on the issues identified in the Public Notice, as well as other matters.

5. Tbaytel by way of this submission is providing its Final Comments to this proceeding. Tbaytel's failure to comment on any specific issue or matter raised in the written submissions or at the oral hearing should not be interpreted in a manner that would be contrary to Tbaytel's interests.

Executive Summary

6. Tbaytel's comments and responses are premised on it being a small telecommunications services provider, with minimal contact with the Commissioner for Complaints for Telecommunications Services ("CCTS").
7. The CCTS is a Consumer Agency that is functioning independently in a deregulated communications market to resolve customer complaints. The inclusion of the Television Services Providers ("TVSPs") and the administration of its Code of Conduct into the operations of the CCTS will not affect the organizational or operating structure, but rather will provide for a single point of contact to which to bring complaints.
8. To better understand Consumer experience, it will be necessary to expand any customer survey so as to gather more information, inclusive of questions about public awareness of the CCTS, customer experience in terms of timeliness and level of compensation as compared to customer perception of what was expected, and relevant demographics.
9. There are complaints that don't make it to the CCTS but Tbaytel has no way of knowing why customer concerns/complaints are not brought to it in the first place.
10. There is no need for the CCTS to direct further public awareness measures beyond what already exists on the TSPs and the TVSPs. The addition of the TVSPs to the process will automatically increase awareness. All TSPs, including resellers should be involved in promoting the CCTS, but not at the current requirement levels. Since the first- complaint trigger would still be in place, then

the “Non-Participant” requirements should be lessened. Full “participation” will naturally follow when the complaint reaches the CCTS.

11. The CCTS should continue to move funding by moderately increasing the percentage of the Complaint-Based Fees.
12. On matters of compliance, the CCTS should go to the “Participating Service Provider” first to determine the problem(s) and then “work” things out.
13. The next review of the CCTS should be two years after the inclusion of the TVSPs and their related Code of Conduct, and should be more comprehensive than just the structure and mandate as allowed for by this current proceeding, accomplished by including the results of a much expanded customer experience survey.

The Services an Independent Communications Ombudsman Provides to Consumers.

14. Tbaytel recognizes the Commissioner for Complaints for Telecommunications Services (“CCTS”) as a Consumer Agency, independent from the Telecommunications Industry and soon from the Television Service Providers (“TVSPs”), whose structure and functions were determined by the Canadian Radio-television and Telecommunications Commission (“the Commission or “the CRTC”), with a mandate to resolve telephone, wireless, and Internet services, and soon issues related to the provision of television services complaints from individual and small business retail customers. These services are predominantly forborne, that is, a telecommunications service provider (“TSP”) is not required to have tariff-approval from the Commission to offer the service.
15. The basis of the CCTS had the Government noting the telecommunications market moving more towards deregulation and the CRTC’s regulatory presence diminishing, determined that an independent agency would be a necessary and integral component of such a deregulated market to replace the Commission, so to speak, and to give individual and small business retail customers a continued point of contact to bring perceived complaints and issues about their service providers.

16. The CCTS, through administering its related codes, is representing the customers of phone, wireless, Internet and television services, will provide these customers the means to expedite their complaints against TSPs, after first attempting with the TSPs to get beneficial results. The CCTS will continue with each customer's complaint until a resolution is reached that is satisfactory to the customer.
17. The fundamentals of the CCTS, as discussed above, place no obligations on it to collaborate with the Telecommunications Services Providers ("TSPs") or the TVSPs, rather just the opposite, potentially leading to factor to some of the challenges faced by the CCTS, such as: "participation service provider" ("PSP") compliance with the requirements of the "Participation Agreement" and the bringing of TSPs into participation; as well as with compliance, generally, with compliant resolutions and decisions; and why it is necessary for the CCTS to seek to work with the CRTC, rather than with PSPs, to put into place a more robust regime to deal with non-compliance.

The Consumer Experience with the CCTS

18. During the Oral Comments made on November 3, 2015 at the Commission's Public Hearing, the CCTS identified that overall customer satisfaction is close to 90% for some of its key service aspects. However, numerous parties reiterated during the Hearing their contention that the CCTS's survey is lacking and therefore the results are misleading.
19. To rectify the situation, suggestions were put forward. These suggestions included the establishment of databases to track all complaints coming into the CCTS. The first question of any expanded survey would need to: How did the complainant become aware of the CCTS?
20. In response to questions regarding the development of a more comprehensive survey to be used to get and measure customer experience, Commissioner Vennard asked Ms. Monica Auer, Executive Director of the Forum for Research and Policy in Communications, what would be the top three questions that she

would want answered from a database? Ms. Auer responded by indicating that (i) she would want to know about the outcome, to the degree that it was timely and how did the result compare to the complaint; she would want to have the information by TSP or TVSP, as applicable, to determine the degree of performance; and (iii) she would want to involve some demographic variable that could assist in determining whether the process is fair and equitable throughout the country.

21. In developing any database dealing with the issues of customer complaints that go through the CCTS, be they resolved or unresolved¹, will require the assistance of the TSPs and the TVSPs, and this will be difficult as long as there continues to remain adversarial barriers between the TSPs/TVSPs and the CCTS.

Public Awareness of the CCTS

22. Tbaytel still continues to believe that the low number of accepted complaints in relation to the potential number of complaints is not the result of unawareness of the CCTS, but rather the result of the continued efforts of the TSPs in meeting the needs and wishes of their customers, even though some like the Consumers Council of Canada believe that the number of complaints should be much higher than the 11,340 the CCTS reported.
23. It is possible that there have been complaints that have not been brought to the CCTS by customers after reaching a no-resolution stage with the TSP and being informed by the TSP about the CCTS. Tbaytel has no way of knowing the reasons why customers have not gone to the CCTS at this point, nor would it have anyway of knowing why customer concerns/complaints are not brought to it in the first place.

¹ The Consumers Council of Canada estimated that there were more than 43 million contracts eligible for CCTS and noted that there were only 11,340 filed last year. This information was taken from the Consumers Council of Canada's Oral Presentation on November 3, 2015.

24. There is no need for the CCTS to direct further public awareness measures beyond what already exists on the TSPs and the TVSPs. The addition of the TVSPs to the process will automatically increase awareness.
25. Tbaytel agrees with TELUS that all TSPs, including resellers should be involved in promoting the CCTS, but not at the current requirement levels. Since the first-complaint trigger would still be in place, then the “Non-Participant” requirements should be lessened to say, two bill messages per year; an aptly placed reference on the Company’s web-site; and assurance from the “Non-Participant” that upon escalation to a second level complaint-resolution staff person, reference to the CCTS is provided to the Customer. Full “participation” will naturally follow when the complaint reaches the CCTS.

Participation in the CCTS by Communications Service Providers

26. The creation of the Consumer Agency, the CCTS, was an agreed-to condition in the formation of the forbearance framework by the Canadian Radio-television and Telecommunications Commission (“the Commission” or “the CRTC”). The forbearance regime, originally established for the large companies and subsequently extended to the small local exchange carriers (“SILECs”) has proven beneficial for all parties. There will always be customer complaints that have to be dealt with, be it by the Commission or the CCTS, and the TSPs will also have to be involved, whether regulated by the Commission or as a mandatory “participant” with the CCTS, and someone will always have to be paid for the administration of customer complaints, either the Commission through the Telecommunications Fees or the CCTS, as the Consumer Agency. In either instance, participation was mandatory.
27. For “non-participant” TSPs, the current membership requirement is triggered by a complaint. Specifically, a non-participant TSP that offers services within the scope of the CCTS is required to become a participant in the CCTS within five days of the date that the CCTS notifies it that the CCTS has received an in-scope complaint about it.

28. Previously, Tbaytel viewed the requirement to become a participant five days after being served with a customer complaint, the process in place at the current time, to be satisfactory. However, after listening to the presentations at the Hearing, Tbaytel now sees the 5-day signup period as being unrealistic and should possibly be expanded to 50 days, the average time that the CCTS has indicated it has taken TSPs to be signed up.
29. "Participation" requirements are to remain the same for all small service providers, triggered by the first complaint about a service provider.

The CCTS's mandate

30. As reported in the CCTS Annual Reports covering the period July 23, 2007 through January 31, 2015, the CCTS had accepted 58,532 complaints. Included in this total were 52 complaints that the CCTS accepted regarding Tbaytel, less than .1% of the total. It is from this minimal "participant" level that Tbaytel makes its comments.
31. Tbaytel appreciates that the CCTS does not need input from TSPs in matters affecting how it carries out its mandate, but with respect to matters that affect how the TSPs "participate" with the CCTS it would be nice to at least have the opportunity to do so.
32. Tbaytel continues to believe that the CCTS must change the wording of its Procedural Code by clarifying that its mandate is to make interpretations or for the purpose of administering the codes under its jurisdiction, and not to make interpretations that develop policies from the codes.
33. It is also important for the CCTS to recognize the impacts on TSPs when it starts reviewing customer complaints and goes beyond the initial complaint and determines that there are other areas within the complaint that may warrant investigation. TSPs would not be able to respond to any new issues within the Procedural Code timeline as new questions and related information not part of the

original complaint. There also issues of privacy dealing with the need to ensure that the CCTS has the customer's consent to pursue any new issues of complaint, compliance, and/or breach.

34. Tbaytel believes it is important enough to include the following from its August 25, 2015 intervention.

"The CCTS has discussed the reluctance on the part of TSPs to cooperate, but Tbaytel can say the same about the CCTS. For example, receiving emails asking for information that basically say, please respond at your convenience, but no later than two days from now, does little to generate co-operation. The same is true in those cases where there is an expectation on the part of the TSP to know everything that the CCTS staff wants. It is as if the two parties are looking at two different complaints. The CCTS asks each customer what it would take to resolve the complaint and yet it seem that this gets ignored, with the Customer's Incident Report cryptically listing numerous, and sometimes unrelated Complaint Natures for follow-up. Another such point is the discretion that the Commissioner of the CCTS has by section 6.19 of its Procedural Code to extend time for taking action, especially when a customer has missed the 20 day window by section 6.10 of the Code to indicate that matters were resolved to his satisfaction.

As an example, in late 2014 the CCTS launched its TSP Portal. This portal was described as a tool designed to provide a place for service providers to quickly and securely respond to the CCTS complaints and to track how many active complaints and their due dates, and their status according to the CCTS complaint process. This tool benefits the CCTS, and only the TSPs by indicating whether the due date is on a weekend day or a holiday. The portal was created to give TSPs a view of what cases they need to action. The TSP can longer just send an email with a c.c. but now has to upload what was sent to the customer. Documentation and correspondence still needs to be created outside of the portal. The sending of any confidential information to the CCTS from the TSP is not possible, because if it is sent

through the portal it is automatically sent to the customer involved. The sending of confidential information requires a separate email to the CCTS. Further, printing from the portal is not possible.”

35. As previously stated, it would have been beneficial to work co-operatively with the CCTS in the development of the Portal that could have provided both the CCTS and the TSPs with a tool to help expedite resolution to customer complaints.
36. However, the CCTS' mandate remains appropriate with respect to the categories of complaints it should address. Each of the categories mentioned; compliance with contract terms, billing disputes and errors, service delivery, credit management, and complaints related to codes of conduct, are broad enough in nature to ensure that the majority of, if not all customers' complaints would be considered in scope and available for follow-up with the TSPs/TVSPs for resolution, and this would include complaints related to service delivery issues caused by a third-party wholesale network access provider whose participation in the CCTS' process is not contemplated. Installation and repair appoint due dates not kept or delayed; complete loss of service; and intermittent or inadequate quality of service are service delivery issues that are beyond TSP's control but are provided by third-parties who are CCTS "participants".

The CCTS's Structure

37. The Governor in Council also determined 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.
38. The current structure of the CCTS' Board of Directors and the voting structure remain appropriate and there is no reason to neither change the structure of the

Board of Directors nor its voting structure to accommodate the addition of television services. As previously mentioned, all the services provided by all of the communications providers can all be subject to the same categories of complaints and accordingly because of this homogeneity, the TVSPs as a group can be incorporated into the CCTS' "Other TSPs" membership category.

39. If there is any consideration for change because of the TVSPs, there should also be consideration for change with respect to the entirety of the "Other TSPs" membership category, with the possibility for some degree of disaggregation.
40. The fact that the CCTS is to be independent of the Communications Industry is a given, however, "participants" should be kept aware of major decisions and plans that arise out of the CCTS, especially when the "participants" themselves have been asked for input, and this information should be provided on a timely basis. This should apply to findings, decisions, and or recommendations made regarding complaints that could have serious ramifications on the operations of TSPs/TVSPs.
41. If the remedies in themselves are going to remain, then what is identified in the Procedural Code is more than sufficient. If necessary, the Procedural Code should be modified to ensure that the filing of a complaint by a customer should have its sole purpose the resolution of the complaint to the "mutual satisfaction of both the customer and the "TSP", and not as a possible source of revenue for the customer for merely submitting a complaint.

The CCTS's Funding Model

42. The current Funding Model of 60% from Revenue-Based fees and 40% from Complaint-Based fees is appropriate as long as the mechanism provides the CCTS with sufficient funds to allow it to administer and process consumer complaints.
43. This appears to be the case as under the current CCTS Participation Agreement, and following the conclusion of the fiscal year, the CCTS retroactively adjusts and recalculates all Revenue-Based fees and Complaint-Based fees paid during the

year by each “Participating Service Provider based on the actual CCTS revenues and expenses. Revenue-Based fees and Complaint-Based fees are adjusted separately in order to ensure that Revenue-Based fees fund 60% of the CCTS expenses, and Complaint-Based fees fund 40% of those expenses, as required by the Participation Agreement.²

44. It is the totality of the funding that is important and not how it is gathered. However, by increasing the percentage of funding coming from the collection of Complaint-Based fees takes into account that certain service providers receive more complaints than others, and to some degree shifts the funding to a User-Based funding mechanism. Increasing the percentage of Complaint-Based fees should be moderately done.

Compliance and Enforcement

45. The CCTS during the Hearing once more identified that it was having compliance problems with all of the fundamental requirements found in the “Participation Agreement”, including the public awareness plan, the delivery of revenue declarations, the payment of CCTS fees, and the Procedural Code.
46. The CCTS has gone to the Commission for help, for the Commission to issue an unequivocal directive outlining the requirements to comply with all aspects of the Participation Agreement as well as creating a Commission-based punitive enforcement process to which the CCTS can have recourse when a “Participating Service Provider” is in default of its “participation” obligations.
47. Since consumers are directed by the CCTS to go to their service provider first before expecting the CCTS to deal with their complaint(s), the only suggestion to the CCTS, without further information, would be for the CCTS to do possibly the same thing, go to the “Participating Service Provider” first to determine the problem(s) and “work” things out.

² These sentences were taken from the CCTS document – “**2014-2015 Year End Adjustment and 2015-2016 Complaint-Based Fee Rates**” that Tbaytel received from the CCTS on November 17, 2014 along with its 2016, second quarter fees statement.

48. For example, the CCTS does not have the latest version of the “Participation Agreement” signed by Tbaytel, (non-compliance?). Tbaytel has no record of receiving such a document when it was issued in 2014, and it was during the early stages of this Consultation that Tbaytel requested and received the “Participation Agreement”. It has not yet been signed, due firstly to the outcome of this proceeding and secondly due to the possibility that the membership requirement may be expired on December 20, 2015³. Yet, as a legacy “participant” since 2009, Tbaytel has continued to pay its fees, deliver revenue declarations when requested, and follow the public awareness plan and the Procedural Code to the best of its ability.

A Future Review

49. While most parties in this Review continue to propose that the appropriate time frame for the next review be five years, Tbaytel suggested in its August 25, 2015 Intervention, and still believes that a shorter period for the next review would be better. That is, two years after the inclusion of TVSPs and its Code of Conduct.
50. Multiple parties, including the CCTS have recommended that an in-depth survey of the Public Awareness of the CCTS be done, inclusive of the determinations made and levels of compensation, when applicable. The idea put forth by the Forum for Research and Policy in Communications and the Consumers Council of Canada of collecting data and evidence would be a perfect fit with Tbaytel’s suggestion that the Future Review take place after the CCTS has TVSPs and its Code added to its mandate.
51. Further, it should not be necessary to wait for a future defined review date to deal with urgent issues. Both the Commission and the CCTS have the ability to initiate a proceeding at any time and accordingly should take advantage of this ability as needed. “Participating Service Providers” should also have the option to similarly

³ The membership requirement was extended on an interim basis on October 23, 2015 by Telecom Decision CRTC 2015-478, *Review of the Commissioner for Complaints for Telecommunications Services Inc. – Interim Decision regarding the membership requirement for telecommunications service providers.*

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open a proceeding, even one that may be of greater scope than this one that is just winding up.

52. All respectfully submitted this 20th day of November 2015.

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