



Jonathan L. Holmes
Executive Director
regulatory@itpa.ca

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By GCKey

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

Subject: *Call for comments – Proceeding to establish a mandatory code for Internet services* – Telecom Notice of Consultation CRTC 2018-422 – Public Record: 1011-NOC2018-0422 – ITPA Reply Comments

1. Pursuant to the procedures established by the Commission in the Notice of Consultation noted above (“TNC 2018-422”) the ITPA hereby submits its reply to the interventions that were filed by parties on 19 December 2018.
2. In its intervention, the ITPA supported the Commission’s preliminary view that any Internet Code should be applied to only the large facilities-based ISPs identified in footnote 4 of TNC 2018-422. The ITPA also reserved the right to provide further comments in the later stages of this process depending on the positions taken by other parties in their interventions.
3. The ITPA has reviewed the interventions filed by many parties in December in this proceeding and notes that the large facilities-based ISPs are opposed to the

Commission's preliminary view regarding the applicability of the code to smaller service providers.¹ For example, Cogeco states:

90. Finally, and most importantly, the Commission's proposal in subjecting only large facilities-based ISPs appears to be in direct violation of the Policy Direction cited by the Commission itself in the Notice, which requires the Commission to implement non-economic regulatory measures (such as industry codes) "in as symmetrical and competitively neutral a manner as possible."

4. Bell Canada states:

9. Limiting the "initial" application of the Internet Code to Large ISPs does not strike an appropriate balance between addressing consumer concerns and the regulatory burden on smaller carriers or resellers. In addition, it is not in accordance with the Policy Direction which requires the Commission to implement non-economic regulatory measures (like industry codes) in as symmetrical and competitively neutral manner as possible.

5. Shaw argues:

76. In Shaw's view, the Commission's proposed asymmetrical application of the Internet Code is inappropriate and inconsistent with the Policy Direction's clear requirement for regulatory application that is as symmetrical and competitively neutral as possible. Shaw respectfully submits that the Policy Direction does not permit the Commission to engage in a balancing exercise between the competing goals of addressing consumer concerns on the one hand, and not placing a heavy regulatory burden on smaller carriers or resellers, on the other hand.

6. In each of these quotations intervenors exclusively rely on section 1(b)(iii) of the Policy Direction. However, other sections of the Policy Direction are relevant to the question of whether or not an Internet Code should be applied to smaller service

¹ Parties that oppose the Commission's preliminary views include: Bell Canada, CCTS, Cogeco, Eastlink, Mark Goldberg, Quebecor, Rogers, SaskTel, Shaw, TELUS,

providers and, contrary to Shaw's position, these sections do indeed require the Commission to engage in a balancing exercise. Section 1(a) of the Policy Direction is as follows:

1. In exercising its powers and performing its duties under the *Telecommunications Act*, the [CRTC] shall implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:

(a) the Commission should

(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objective, and

(ii) when relying on regulation, 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. (emphasis added)

7. For all of the reasons that follow, the ITPA submits that the Commission should adhere to its preliminary view.

Rely on market forces to maximum extent feasible

8. Applying any new Internet code on the largest service providers that collectively have 87% of Internet customers will have impacts throughout the retail Internet services market without the need for the imposition of this regulatory measure across on all service providers. Smaller independent ISPs that are competing against the largest service providers – and often for their customers – will be required to match these service standards in order to satisfy customer expectations. Just as the largest service providers generally set customer expectations with regard to price and speed offerings, having the largest service providers comply with a mandatory code will also set customer

expectations in the market. Small service providers will ignore these expectations at their peril. The Commission can rely on market forces to discipline smaller ISPs that serve the remaining 13% of the market.

Measures that are efficient and proportionate

9. The imposition of an Internet code (a completely new regulatory measure) on small independent ISPs that would then be enforced by the Commission and administered by the Complaints Commissioner for Telecom-television Services (“the CCTS”) would be neither efficient or proportionate. As noted in the previous section and given the market share statistics provided by the Commission in TNC 2018-422, the Commission can rely on market forces as the most efficient mechanism available to ensure that the effects of the new Internet code are experienced by customers of smaller independent ISPs.

10. In the same way, imposing an Internet code on smaller service providers would not be proportionate vis-à-vis the potential incremental benefit above and beyond imposing it on only the largest service providers. The existing codes of conduct, coupled with the administrative obligations associated with CCTS membership have imposed an administrative burden on small service providers that should not be augmented by an additional Internet code. Appendix A – *Complaints by Service Provider* to the CCTS’ 2017-2018 Annual report² demonstrates that of the ITPA member companies listed, two had no complaints, five have a single complaint, three had two complaints, one had three complaints and one member company had just 13. A cursory review of Appendix A tells the same story for other small independent service providers. Imposing a new regulatory measure such as an Internet code on small services providers is not a proportionate response to the numbers of complaints generated by their customers nor is it a proportionate response given the additional workload associated with these codes.

² <https://www.ccts-cprst.ca/wp-content/uploads/2018/11/CCTS-Annual-Report-2017-2018.pdf>

Interference with competitive market forces

11. Internal resources, be they financial, human or time, are never in abundance for small service providers. ITPA member companies are constantly focussed on providing leading edge services and service levels to their customers in rural areas. Activities and requirements, such as regulatory requirements, that divert resources away from building and expanding their businesses interfere their ability to compete and therefore, interfere with competitive market forces. CNOC states as follows:

3. At the outset, CNOC wishes to emphasize and confirm the Commission's preliminary view that the Internet Code should only be applied to all retail fixed Internet services provided to individuals and small businesses⁴ by the large facilities-based ISPs. Application of the Internet Code to smaller carriers and resellers would impose an unnecessary and heavy regulatory burden on this class of providers. Indeed, implementing the Internet Code would require smaller providers to make very significant changes to systems, processes and personnel. Smaller providers simply do not have the scale and corresponding resources to implement such changes in a cost-effective and timely manner.

12. The ITPA notes that at paragraph 35 of its intervention, Shaw one of the largest service providers, asserts:

The competition and innovation that have accompanied our entry to this market will be put at risk by overburdensome [sic] regulation.

The Policy Direction states that new regulatory measures must interfere with these forces to the minimum extent necessary.

13. The ITPA submits that since in this case the Commission can rely on market forces to protect the 13% of Canadians who acquire their Internet services from companies other than the largest ISPs, any interference with the competitive market

forces small service providers can bring to bear on the market is unnecessary and would violate the Policy Direction.

Conclusion

14. In conclusion, the ITPA submits that those intervenors who have relied exclusively on section 1(b)(iii) of the Policy Direction to oppose the Commission's preliminary view that it should not impose any new Internet code on small service providers have performed only a partial and flawed analysis of the Policy Direction. The ITPA has demonstrated that section 1(a) - with its references to reliance on market forces, efficient and proportionate regulatory measures and minimising the impact on competitive market forces - is also relevant to this question. The CRTC's preliminary view in this instance is the correct approach with regard to small service providers.

Yours truly,

A handwritten signature in black ink that reads "Jonathan Holmes". The signature is written in a cursive, slightly slanted style.

Jonathan L. Holmes

Cc: Parties to TNC 2018-422

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