



Telecom Regulatory Policy CRTC 2011-46

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Review of the Commissioner for Complaints for Telecommunications Services

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In this decision, the Commission sets out its determinations in its review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. (CCTS or the Agency) – an independent telecommunications consumer agency.

The Commission provides the underlying considerations and implementation details associated with its determination of 1 December 2010 that all telecommunications service providers that provide services within the scope of the CCTS's mandate are to be members of the Agency for a five-year period. The Commission determines that the Agency's current governance structure and mandate is generally appropriate; however, the Commission establishes a new procedure for the development and approval of mandatory industry codes of conduct and standards, and requires the CCTS to include additional information in future annual reports in order to improve its accountability and transparency. In addition, the Commission finds that the Agency's current remedies are appropriate and supports the Agency's plans to increase public awareness and to address accessibility concerns as they arise.

Introduction

1. The Commissioner for Complaints for Telecommunications Services Inc. (CCTS or the Agency), an independent telecommunications consumer agency, was established in 2007 by several telecommunications service providers (TSPs) in response to *Order requiring the CRTC to report to the Governor in Council on consumer complaints*, P.C. 2007-533, 4 April 2007 (the Order). The Order stated that an independent consumer agency with a mandate to resolve complaints from individual and small business retail customers should be an integral component of a deregulated telecommunications market. The Order also stated that all TSPs should participate in and contribute to the financing of an effective consumer agency and that its structure and mandate would be approved by the Commission.

2. In 2007, the Commission initiated a proceeding¹ to address, among other things, the structure and mandate of the CCTS. That proceeding resulted in Telecom Decision 2007-130, in which the Commission (a) determined that all TSPs with annual Canadian telecommunications service revenues exceeding \$10 million in the previous year were required to be members of the CCTS; (b) granted conditional approval to the CCTS's structure and mandate, subject to fulfilling certain conditions set out in that decision relating to its governance, mandate, and remedies; (c) requested that the CCTS improve the accessibility of its services to consumers and develop a comprehensive communications plan; and (d) determined that it would initiate a review of the CCTS within three years of the CCTS meeting the conditions of approval.²
3. In 2008, Cogeco Cable Inc. (Cogeco); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Inc. (RCI); and Shaw Communications Inc. (Shaw) (collectively, the cable carriers) along with Bragg Communications Inc. argued that the Commission should review and vary its determination mandating membership of certain TSPs in the CCTS. In Telecom Decision 2008-46, the Commission affirmed its decision to mandate membership but determined that the requirement would only remain in effect until 20 December 2010. The Commission also determined that it would review the membership requirement on a *de novo* basis, along with other matters, as part of its three-year review of the CCTS.
4. In April 2010, the Commission initiated the three-year review of the CCTS,³ which included a public consultation from 29 November to 1 December 2010.

Overview of the proceeding

5. The Commission received submissions from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); the Canadian Association of the Deaf (CAD); the Canadian Cable Systems Alliance Inc. (CCSA); the CCTS; the cable carriers;⁴ Distributel Communications Limited (Distributel); MTS Allstream Inc. (MTS Allstream); the Public Interest Advocacy Centre (PIAC), on behalf of the Consumers' Association of Canada and Canada Without Poverty; Saskatchewan Telecommunications (SaskTel); TELUS Communications Company (TCC); l'Union des consommateurs (l'Union); and Verizon Canada Ltd.

¹ See Telecom Public Notice 2007-16.

² In August 2008, the Commission confirmed that the CCTS had met all of the conditions of approval set out in Telecom Decision 2007-130, as amended by Telecom Decision 2008-46.

³ See Telecom Notice of Consultation 2010-247, as amended.

⁴ Shaw appeared with the other cable carriers at the public consultation, but submitted a separate written submission.

6. In light of the pending expiration of the membership requirement, the Commission rendered an oral decision from the bench on this issue at the public consultation, on 1 December 2010.⁵
7. The public record of this proceeding, which closed on 1 December 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Issues

8. In this decision, the Commission will address the following issues: membership, governance, mandate, remedies, public awareness, and accessibility.

I. Membership

9. Parties were divided as to whether the Commission should require TSPs to be members of the CCTS; if so, whether this requirement should apply to some or all TSPs; and further, if membership were mandated, when the Commission should review this requirement.
10. The Bell companies, PIAC, SaskTel, TCC, and l'Union proposed that membership in the CCTS be made mandatory for all TSPs regardless of their telecommunications service revenues. These parties argued that this approach would (a) be consistent with the Order and the Policy Direction,⁶ (b) ensure that all consumers would have equal access to the CCTS's services, and (c) not place an undue financial or administrative burden on small TSPs. Distributel submitted that mandatory membership should be triggered by a complaint threshold, rather than by a revenue threshold.
11. In contrast, the CCSA and the cable carriers argued that membership in the CCTS should be voluntary for TSPs. The CCSA, which represents many smaller TSPs, expressed concern that mandated participation in the CCTS could result in a substantial disproportionate cost impact and competitive penalty for smaller providers. Several of these parties also argued that voluntary membership would be more consistent with the Policy Direction. The CCSA, Cogeco, RCI, and Videotron submitted that if the Commission were to mandate membership in the CCTS, a three-year expiration date would be appropriate.
12. The CCTS submitted that voluntary membership would present significant challenges, particularly in relation to the overall funding of the Agency and the funding obligations of the remaining members in the event that certain members withdrew. The CCTS also submitted that it has concerns about the operational impact of expanding its membership to include smaller TSPs. The CCTS submitted

⁵ See Telecom Decision 2010-921.

⁶ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction)

that if the Commission expanded the membership requirement to all TSPs with services in-scope, it should ensure that the CCTS can implement the new requirement efficiently. The CCTS supported a five-year review period, which it considered would enable it to fully establish its governance and operational structures, implement its new systems, and provide the Commission with data based on a reasonable duration of operations.

Membership decision

13. On 1 December 2010, the Commission made a determination on its *de novo* review of the membership requirement, which is as follows:

Having considered the full record of the proceeding, including the submissions received from parties at the oral consultation held these past three days, we are of the view that all residential and small business consumers that obtain forborne telecom services in Canada, including those that receive services from TSPs that do not have more than \$10 million in revenues, should benefit from the services provided by the CCTS. The Commission therefore requires, pursuant to section 24 of the *Telecommunications Act*, that all TSPs that offer services within the scope of the CCTS's mandate are to be members of the CCTS for a period of 5 years. A period of 5 years, rather than a shorter period as proposed by some parties, is appropriate to ensure sufficient certainty for the effective planning and operation of the CCTS. This ruling is effective as of December 20th for current members of the CCTS and will apply to current non-member TSPs at a future date, to be specified in the Commission's reasons for its decision, which will be issued in January 2011.

14. The Commission notes that as a result of this decision, for a period ending on 20 December 2015, Canadian carriers are required, as a condition of providing telecommunications service to any reseller that was a member of the CCTS on 1 December 2010 and offers services within the scope of the CCTS's mandate, to include in their service contracts and other arrangements with such resellers the stipulation that the reseller is required to be a member of the CCTS.

Considerations underlying the membership decision

15. The Commission has taken into account the following considerations with respect to its imposition of a requirement on all TSPs that provide services within the scope of the CCTS's mandate,⁷ including forborne wireline, wireless, Internet, and voice over Internet Protocol (VoIP) services to residential and small business retail customers, to be CCTS members for the next five years:

⁷ The CCTS is authorized to address complaints from eligible customers (individuals or small businesses) regarding forborne retail telecommunications services, with some exceptions. The CCTS's mandate is described in section III of this decision.

- Consistent with Telecom Decisions 2007-130 and 2008-46, the Commission has the authority to mandate membership in the CCTS as section 24 of the *Telecommunications Act* (the Act) provides the Commission with broad powers to make the provision of telecommunications services by Canadian carriers subject to conditions.
- Requiring that all TSPs that provide in-scope services be CCTS members is consistent with the Order, which states that all TSPs should participate in and contribute to the funding of the Agency and that it should serve residential and small business retail consumers.
- Parties to this proceeding agreed that the CCTS has been effective in resolving complaints from those consumers who have had access to its services. Further, forborne telecommunications services are likely to continue to grow in importance over the next five years. As a result, access by consumers to the CCTS's services is increasingly necessary and beneficial.
- Given the CCTS's significant utility to consumers, membership in the CCTS should be comprehensive to allow for all consumers to access the CCTS's services, regardless of the revenues of the consumer's TSP.
- This decision ensures that all such consumers have equivalent access to the CCTS's services, which will advance the policy objectives set out in paragraphs 7(b), (f), and (h) of the Act.⁸ Consistent with the Policy Direction, this approach is also competitively-neutral and symmetrical as it applies to all TSPs that offer in-scope services.
- Market forces are insufficient at this time to sustain a critical mass of membership in the CCTS needed for it to operate effectively. A voluntary approach to membership could not be relied upon, at this time, to maintain even the existing CCTS membership level.
- The record of this proceeding demonstrates that the financial and other implications of CCTS membership will not put an undue burden on smaller TSPs.⁹
- A five-year membership requirement will provide the CCTS with the certainty required to ensure the effective planning and operation of the CCTS.

⁸ The cited policy objectives of the Act are

7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and

7(h) to respond to the economic and social requirements of users of telecommunications services.

⁹ For instance, the financial burden is minimized due to the fact that membership fees are set at a level proportionate to the TSP's revenues: at present, small TSPs pay a \$1,000 initial membership fee, and approximately \$130 or less on a quarterly basis thereafter, and any additional fees for specific complaints.

Implementation of the membership decision

16. As noted above, the membership requirement took effect in relation to those TSPs that were already CCTS members on 20 December 2010, and will take effect for non-member TSPs as specified in this decision.
17. With respect to non-member TSPs, the Commission notes the concern that the CCTS could be faced with a significant administrative burden in the event it has to absorb a large number of new members at the same time. The Commission considers that this burden could be minimized, while also ensuring that all consumers can benefit from the CCTS's services, by prioritizing membership in the CCTS to those non-member TSPs that generate customer complaints. As such, the Commission is of the view that non-member TSPs that offer services within the scope of the CCTS should become members of the CCTS within five days of the date that the CCTS notifies the TSP that the CCTS has received an in-scope complaint about it.¹⁰
18. Accordingly, with respect to TSPs that were not members of the CCTS on 1 December 2010, the Commission determines, under section 24 of the Act, that for a period ending on 20 December 2015
 - as a condition of providing telecommunications service, all Canadian carriers are required to be members of the CCTS commencing five days after the date on which the CCTS informs the Canadian carrier that the CCTS has received a complaint about the Canadian carrier falling within the scope of the CCTS's mandate; and
 - as a condition of providing telecommunications service to any reseller, all Canadian carriers are required to include in their service contracts and other arrangements with such resellers the stipulation that any such reseller is required to be a member of the CCTS commencing five days after the date on which the CCTS informs the reseller that the CCTS has received a complaint about the reseller falling within the scope of the CCTS's mandate.
19. To provide clarity about which TSPs are CCTS members, the Commission directs the CCTS to update the list of CCTS members on its website within five business days of a TSP becoming a new member of the CCTS.

Other matters

20. The Commission remains of the view set out in Telecom Decision 2007-130 that funding is an issue best determined by the CCTS's membership and governing body, as long as the CCTS is sufficiently funded to effectively execute its mandate. The Commission considers that the CCTS may determine whether changes to its funding model are appropriate with respect to the addition of smaller TSP members.

¹⁰ The Commission notes the CCTS requires that a complainant provide the TSP in question with a reasonable opportunity to resolve his or her complaint before seeking recourse from the CCTS.

21. With respect to the CCTS's definition of "small business"¹¹ customer, the Commission considers that no change is required at this time.

II. Governance

22. As set out in the Order, the CCTS should be industry-established and -funded, yet its governance structure should ensure its independence from the telecommunications industry.
23. In Telecom Decision 2007-130, the Commission found that the CCTS's governance structure was generally appropriate, subject to the removal of certain eligibility restrictions for independent directors and the amendment of certain voting approval thresholds.
24. In the current proceeding, PIAC and l'Union raised concerns that the voting thresholds other than simple majority used by the Board of Directors give TSP directors undue influence over board decisions. PIAC proposed that the CCTS remove all non-simple majority voting thresholds from the board voting rules, at least on non-financial management matters, to increase the independence of the Board of Directors. PIAC submitted that the CCTS's recent failure to pass a code dealing with disconnections and deposits, which requires approval by extraordinary resolution, is an example of the impediments caused by the CCTS's current voting structure.
25. All TSPs that commented on this issue submitted that the voting structure should not be amended since it has worked well in practice and PIAC's request is therefore not justified by the evidence.
26. The Commission considers that the evidence on the record does not justify requiring any changes to the CCTS's voting structure at this time. In this regard, the Commission finds that the current voting structure is appropriate to ensure the CCTS's independence from the telecommunications industry. The Commission notes PIAC's concern regarding the CCTS's failure to develop and approve industry codes of conduct and standards and will address this matter later in this decision.

III. Mandate

Scope of complaints

27. The CCTS addresses complaints from individual and small business retail customers dealing with a range of issues including: billing disputes and errors; service delivery;

¹¹ The CCTS's definition of "small business" generally refers to a business with monthly telecommunications service revenues not exceeding \$2,500.

credit management; white pages, directory assistance and operator services; and unauthorized transfer of service. The CCTS also excludes a number of matters or services as falling outside of its scope.¹²

28. PIAC submitted that the CCTS's scope of eligible complaints should be expanded to include, among other things, regulated services and customer service issues. The Bell companies, the cable carriers, MTS Allstream, and TCC submitted that they see no reason for changes to its complaints-handling mandate at this time and that the CCTS has been effectively resolving consumer complaints related to deregulated telecommunications services from individuals and small businesses.
29. The Commission notes that the CCTS recently modified its Procedural Code (on 1 June 2010) to broaden, and provide greater clarity to consumers regarding, its mandate. The Commission further notes, as set out below, that the CCTS will report on out-of-scope complaints in a more detailed manner in future annual reports, which will demonstrate, on an ongoing basis, whether the CCTS's scope of complaints remains appropriate. The Commission also considers that it would be duplicative to add regulated services to the CCTS's scope of complaints, because the Commission is mandated to receive and address complaints about these services. Accordingly, the Commission considers that the record does not justify requiring the CCTS to expand its current scope of complaints at this time.

Annual reports

30. Consistent with the Order, the CCTS is mandated to publish an annual report on the nature, number, and resolution of complaints received for each TSP.
31. The CCTS has produced three annual reports to date. The Commission has some concerns about the quality and transparency of data in these reports, in particular, with respect to breakdowns of data that do not tally and the high proportion of out-of-scope complaints coded simply as "other." However, the Commission notes that the CCTS has committed to redesign its electronic case management system in order to report on the data it collects more effectively and precisely. The CCTS submitted that its new data management system should be operational by the beginning of its next fiscal year (i.e. by 1 August 2011).
32. The Commission considers that the CCTS's annual report is the key mechanism by which its stakeholders, including consumers, TSPs, and the Commission, can assess the CCTS's performance on matters such as the results of its complaint resolution activities, trends in complaints, operational improvements, and the effectiveness of public awareness initiatives. In this regard, the Commission considers that the annual report should be as comprehensive as possible.

¹² The CCTS does not accept complaints concerning Internet applications or content; broadcasting services; emergency services; payphones; equipment; inside wiring; yellow page or business directories; telemarketing or unsolicited messages; security services, such as alarm monitoring; networking services; pricing of products or services; 900 and 976 services; rights-of-way; privacy issues; claims of false or misleading advertising; and plant.

33. In light of the above, the Commission expects the CCTS to include, at a minimum, each of the following items in its annual report: (a) total contacts divided into total complaints and total non-complaint contacts; (b) total complaints divided into closed and open complaints; (c) total complaints divided into in-scope and out-of-scope complaints; (d) total in-scope complaints divided into a list of in-scope services or matters; (e) total out-of-scope complaints divided into each item in the CCTS's list of 16 out-of-scope services or matters, as set out in its Procedural Code; (f) remedies awarded and accepted (at the recommendation and decision stages) during that year; and (g) measurements of public awareness and customer satisfaction. The CCTS is also expected to ensure that the breakdowns of data provided tally, or to provide a clear explanation as to why a given data set does not tally.
34. As set out in Telecom Decision 2007-130, the CCTS is to publish its annual report within 90 days of the end of its fiscal year. The CCTS requested that the Commission extend this period from 90 to 180 days, due to the labour-intensive nature of developing these reports.
35. The Commission considers that for reasons of accountability and transparency, it is critical that the CCTS's annual reports be made public in a timely manner. The Commission further considers that once the CCTS has implemented its improved electronic case management system, this should significantly improve its data preparation process. The Commission considers that it is appropriate, in this instance, to allow the CCTS to publish its next (2010-2011) annual report within 180 days of its fiscal year-end; however, all subsequent annual reports, which will benefit from the CCTS's improved data management system, are to be issued within 90 days of the CCTS's fiscal year-end.

Trend reporting

36. Consistent with the Order, the CCTS's mandate includes identifying issues or trends that may warrant further attention by the Commission or the government.
37. PIAC submitted that the CCTS has not been reporting or monitoring trends in a meaningful way. The CCTS countered that it first identified issues or trends that it considered noteworthy in its 2008-2009 annual report and that it expects that the implementation of its new electronic case management system will improve its ability to identify and report on trends and issues going forward.
38. The Commission considers that trend analysis is important to help identify where additional attention might be warranted, for example through the use of industry codes or a targeted expansion of the CCTS's scope of complaints. The Commission notes that, in the "Topics and Trends" section of its 2009-2010 annual report, the CCTS identified trends in complaints related to contract issues, number portability, and premium text messages. The Commission considers that this approach is appropriate and expects the CCTS to report on, at a minimum, the top three trends in complaints each year in its future annual reports.

Industry codes and standards

39. Consistent with the Order, the CCTS's mandate includes the development or approval of industry codes of conduct and standards.
40. The CCTS currently administers one voluntary code, the Canadian Wireless Telecommunications Association's Code of Conduct for Wireless Service Providers.
41. In Telecom Regulatory Policy 2009-424, the Commission requested that the CCTS develop an industry code for disconnections and deposits policies that would apply to local exchange carriers (LECs) operating in forborne markets and that fulfilled certain criteria set out by the Commission in that decision. On 30 June 2010, the CCTS informed the Commission that it had attempted to develop and approve the code, but was unable to do so. The CCTS submitted that adoption of the code would have required broad agreement among its directors (i.e. an extraordinary resolution) and that various stakeholders objected to the scope, reach, and style of the draft code.
42. The CCTS's role in code development was a key concern for parties. Parties raised the following concerns: that the CCTS is not the appropriate body to develop codes and standards; that voluntary and mandatory codes should be treated differently; that the extraordinary resolution vote on codes is not appropriate; and that the code development process does not support participation by consumer groups.
43. The Commission considers that it is appropriate to distinguish between voluntary and mandatory codes. With respect to codes voluntarily developed by industry or the CCTS, the Commission considers that the CCTS's current approach, including a vote by extraordinary resolution to approve codes, remains appropriate. However, the Commission considers a new approach is needed for the development and approval of mandatory codes (i.e. codes that the Commission determines are to be developed and implemented by TSPs). The Commission considers that, as proposed by some parties, the appropriate mechanism for the development of mandatory codes is a CRTC Interconnection Steering Committee (CISC) working group that includes the CCTS as a participant.
44. The Commission considers that the development, approval, and enforcement of mandatory codes would work as follows: (1) The Commission establishes the minimum criteria for the particular code to be developed. (2) The Commission requests CISC to develop the code within a fixed time frame. The CCTS participates in this CISC process, along with other interested parties. (3) CISC submits a report (consensus or non-consensus report) on the draft code to the Commission for review. (4) Following review, the code is finalized in a Commission decision, as appropriate. (5) The CCTS administers the code, publishes the code on its website, and reports on complaints related to violations of that code in subsequent annual reports.
45. In light of the above, the Commission requests that CISC develop a code for disconnections and deposits for all LECs operating in forborne markets that fulfills the criteria for that code set out in Telecom Regulatory Policy 2009-424.

The Commission expects the CCTS to participate in the development of this code. The Commission requests that CISC file a report on this code within six months of the date of this decision.

IV. Remedies

46. The CCTS may require a TSP member to provide a customer with an explanation or apology, an undertaking to do or cease doing specified activities with respect to the customer, monetary compensation in an amount not to exceed \$5,000, or any combination of the above.
47. PIAC proposed increasing the remedy limit from \$5,000 to \$10,000 per complaint to address, among other things, roaming fees disputes that can fall within this range. The Bell companies, the cable carriers, MTS Allstream, and TCC submitted that the CCTS's remedial powers are effective and should not be modified at this time.
48. The Commission notes that the monetary limit does not apply to amounts that are to be refunded in order for a TSP to correct a billing error. The Commission considers that the \$5,000 limit on monetary compensation appears, to date, to be sufficient to allow the CCTS to award adequate compensation to consumers. As a result, the Commission considers that no changes to the remedies offered by the CCTS are required at this time.

V. Public awareness

49. The CAD, PIAC, and l'Union submitted that the CCTS needs to improve its public awareness and outreach initiatives. The CCTS submitted that its public awareness has grown since its establishment. According to its most recent annual report, the CCTS considers that sporadic bill inserts have been the most successful aspect of its public awareness efforts to date. While recognizing that the creation of public awareness about the CCTS is a long-term and continuing project, the CCTS submitted that it is committed to working with its members, as well as with other entities, to promote public awareness of its services.
50. The Commission considers that the degree of public awareness of the CCTS is crucial to its effectiveness – consumers will not seek recourse with the CCTS if they are not aware that it exists or of how it might help them.
51. The Commission supports the CCTS's commitment to implement further public awareness initiatives. In this regard, the Commission considers that TSP members should continue to use a variety of communication methods, such as directories, websites, and a standard notation on billing statements, to inform consumers about the CCTS. The Commission considers that the appearance of a standard notation on billing statements should increase from two to four times annually. Also, over time, as TSPs modify their billing systems, they should include a permanent and prominent location for a standard notification about the CCTS such as on the last page of their monthly billing statements. The Commission also supports the CCTS's

commitment to employ surveys to gauge the effectiveness of its public awareness initiatives. The Commission directs the CCTS to report on the findings of these initiatives on its website, in a timely manner, and in its annual reports.

VI. Accessibility

52. The Commission notes that the CCTS has met all of its accessibility objectives to date and has taken significant steps to improve the accessibility of its complaint handling systems and website in both official languages and to persons with disabilities. The Commission considers that the CCTS has been performing well in this area, and that the CCTS should continue to monitor and resolve accessibility issues as they arise.

Secretary General

Related documents

- *Review of the Commissioner for Complaints for Telecommunications Services – Decision on membership*, Telecom Decision CRTC 2010-921, 8 December 2010
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Notice of Consultation CRTC 2010-247, 30 April 2010, as amended by Telecom Notice of Consultation CRTC 2010-247-1, 12 August 2010
- *Revised regulatory requirements for management of customer accounts*, Telecom Regulatory Policy CRTC 2009-424, 17 July 2009
- *Applications to review and vary certain determinations in Telecom Decision 2007-130 regarding the establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2008-46, 30 May 2008
- *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, 20 December 2007
- *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services*, Telecom Public Notice CRTC 2007-16, 22 August 2007