



***Review of the structure and mandate of the Commissioner for Complaints
for Telecommunications Services Inc., Broadcasting and Telecom*** Notice of
Consultation
CRTC 2015-239 (Ottawa, 4 June 2015)

Forum for Research and Policy in Communications (FRPC)

Remarks

Gatineau, 5 November 2015

Check against delivery

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I Introduction

- 1 Thank you, Mr. Chairman. My name is Sjef Frenken, and I chair the Board of Directors of the Forum for Research and Policy in Communications – or FRPC ('frap-ci'). With me today is Monica Auer, FRPC's Executive Director.
- 2 Our remarks today focus on the role of the CCTS, its effectiveness and its transparency.
- 3 Before dealing with these three issues, we would like to address the underlying purpose of this proceeding.

II **Purpose of this proceeding: a consumer communications meets communications' subscribers' needs by addressing their concerns fairly, effectively and transparently**

- 4 In its initial submission one participating service provider (PSP) said that this review should show how service providers can be motivated to improve customer service so that CCTS is no longer needed.

"[H]ow can service providers be incented to do better so that consumers don't feel a need to take their concerns to the CCTS"
(Telus, ¶7).
- 5 Of course, what we usually hear is that the competitive marketplace motivates companies to serve their customers better.
- 6 In reality, CCTS exists to provide PSP users with remedies that the market cannot, will not or does not provide.
- 7 That is why FRPC believes that the question that this review should answer is this: **is CCTS an effective, transparent and independent consumer agency that has the governance, procedures and resources it needs to address subscribers' concerns transparently, effectively and fairly?**
- 8 We think the answer to this question is a qualified yes – if certain important changes are made.

A *Role of CCTS – a consumer agency*

- 9 The first changes have to do with the function of CCTS. It must be clarified to establish that its role is to ensure that consumers' rights are respected.
- 10 CCTS has itself said that it is "an independent consumer agency with a mandate to resolve complaints" (CCTS submission, ¶8). But then it also says that its "primary goal ... is timely and satisfactory complaint resolution" (CCTS, ¶11).
- 11 PSPs generally agree that CCTS' role is to process complaints.
- 12 Focussing on the process of handling complaints tends to imply that the processing function is more important than a consumer-protection function.
- 13 We think it is clear that Cabinet wanted CCTS to protect consumers, because this is what Governor in Council Order 2007-533 said it wanted – in English, a "Consumer Agency", and in French, une "agence de protection des usagers".
- 14 CCTS was always expected to receive and resolve complaints – but we think it is wrong as a matter of historical fact to say that CCTS was only ever intended to perform this role by negotiating settlements between PSPs and subscribers without regard to consumers' legal rights. If its main function were simply to process complaints as quickly as possible, why would any of the seats on the CCTS Board of Directors be designated for consumer representatives?
- 15 Clearly defining CCTS' role is important because a consumer protection agency is different from a complaints-resolution body.
- 16 The one processes complaints to reach settlements as quickly as possible; the other processes complaints within a framework of consumer protection law to provide fair outcomes.

- 17 It should be pointed out that consumer agencies are not “partial” to consumers simply because their name includes the word, ‘consumer’. Their analyses must be objective and based on facts – and they do not simply try to negotiate settlements to process thousands of complaints as quickly as possible: they exist to ensure that people are treated fairly, and that their basic rights are respected.
- 18 **CCTS’ by-laws, its *Procedural Code* and its internal procedures should therefore simply state that CCTS considers subscribers’ consumer rights when it investigates, and makes recommendations about, their complaints.** For this reason, CCTS should also consider hiring its own full-time legal counsel, rather than retaining outside counsel at a cost of \$190 thousand in the last two years alone.
- 19 We have also recommended that CCTS be required to conduct its work objectively, rather than ‘impartially’, as is currently required.
- 20 Objectivity and impartiality are two different concepts, and lead to different outcomes. Impartiality refers to the idea of taking sides; objectivity refers to the idea that matters are decided on the basis of facts.
- 21 **CCTS’ by-laws, its *Procedural Code* and its internal procedures should simply require that CCTS undertake its work objectively.**
- B A fair and effective consumer agency**
- 22 The second set of changes we have proposed has to do with fairness and effectiveness. CCTS should ensure that consumers are treated fairly by PSPs, and that its administration of various *Codes* is effective.
- 23 What this means is that **CCTS should report on issues such as timeliness – as well as actual outcomes and satisfaction with outcomes.**
- 24 Unfortunately, the reports now provided by CCTS cannot answer these three key questions:
1. Are complainants are being treated fairly?

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2. Do CCTS' outcomes satisfy complainants? and
 3. Is PSP compliance with the *Codes* increasing, decreasing or staying the same?
- 25** CCTS should therefore **provide public access to anonymized data about complaints and their outcomes**. This would enable the CRTC and other interested parties to evaluate trends and outcomes.
- 26** CCTS should also change its approach to evaluating its performance. In the last two years it spent \$177 thousand on consultants: we suggest that it use some of these resources to hire professional survey experts – and by that, we mean people with university-level training in quantitative research methods – to design a proper survey questionnaire. It may be interesting to measure complainants' satisfaction with the CCTS process – but **what CCTS ought to be measuring is satisfaction with the actual outcomes of its process**.
- 27** Finally, CCTS should change the way it reports complaints about PSPs, from simply reporting the numbers or percentages of complaints received about individual PSPs, to reporting the numbers of complaints per PSP, per 100,000 subscribers.
- 28** Reporting numbers of complaints about individual PSPs without knowing the *rate* of these complaints is meaningless. Suppose two companies each attract one hundred complaints in the same period. Would we not react differently to this statistic, if we knew that the first company received just 1 complaint per hundred subscribers, while the second received 100 complaints per hundred subscribers?
- 29** **Reporting on complaints per 100,000 subscribers will permit CCTS, the CRTC and other interested parties to compare PSPs on an equal footing.**

c *Caesar's spouse: transparency and CCTS*

- 30 The final point we would like to address is transparency. As we have said in our submission, CCTS has been asked to perform an important role.
- 31 As we have also said, the statistics reported by CCTS make it almost impossible to its performance.
- 32 To paraphrase the old expression, CCTS must not only perform its role well, it must be seen to be performing the role well.

1 *CCTS should provide data about complaints*

- 33 A very basic problem is that CCTS' annual reports provide very little meaningful information. An enormous gap remains between the concepts about complaints, and their measurement. That gap makes it impossible to evaluate CCTS' performance in any meaningful detail.
- 34 Take the issue of compensation. The CCTS *Procedural Code* permits it to compensate complainants for “loss, damage or inconvenience” (s. 12.2), and CCTS has said that the remedies and compensation available to address well-founded complaints are sufficient (CCTS, ¶44). Telus has pointed out that 25 out of 7,795 complaints involving compensation received the maximum \$5,000 amount.
- 35 Knowing that 25 complainants received \$5,000 in compensation does not establish whether any of these 25 recipients were entitled to higher levels of compensation, whether they even asked for the maximum amount awarded, whether any of the other 7,770 complaints were not offered compensation when they merited it, or whether they asked for but did not receive a different quantum of compensation.
- 36 Our own review of the minuscule number of complaints published on CCTS' website found that its approach to compensation varied significantly (FRPC, ¶¶126 to 136).
- 37 CCTS should therefore publish anonymized data about different aspects of the complaints it ‘resolves’. Apart from anything else these data

should at least set out the sections of the *Code* or *Codes* engaged by a complaint; the date it was received, accepted, investigated and concluded; the remedies that were offered and accepted, and the quantum of compensation offered and accepted.

- 38 CCTS should also publish its criteria for awarding compensation, to eliminate concerns that these are being administered *ad hoc*.
- 39 Without this it will remain impossible to know whether the CCTS process works effectively, and whether the outcomes being obtained really are fair.

2 CCTS should publish annual financial statements

- 40 A second problem involves CCTS' financial statements. We welcomed CCTS' decision to publish these documents although, once we reviewed them, we wondered why they were kept confidential to begin with.
- 41 **The CRTC should require CCTS to publish its financial statements each year, on its website and in its annual reports, along with the notes to these statements.**
- 42 These statements should also be more detailed, to provide information about the staffing and financial resources allocated to pre-investigation, investigation and administration. The time allocated to different companies should also be tracked, to ensure that the current allocation of fees remains appropriate.
- 43 And – if the CRTC does ask CCTS to publish its annual financial statements – please – and we cannot stress this enough – please have it provide 10-year backcasts in its PDF and its online versions.
- 44 Historical data matter when it comes to evaluating performance. It is an utterly egregious waste of analysts' time to force each of them to create spreadsheets and enter data to analyze the performance of agencies like CCTS. And, if data are not presented consistently over time, CCTS should also explain changes in presentation.

3 CCTS should survey satisfaction with outcomes, not process

- 45 Like everyone else, we have noticed CCTS' publication of information collected from its surveys of complainants. The questions it has measure views about the quality of the service complainants encountered from CCTS, but do not measure their satisfaction with the outcome of the process.
- 46 These are different concepts that must be measured with different questions. CCTS should consult with experts – such as members of the Marketing Research and Intelligence Association, the Canadian industry organization of survey research firms – to develop professional research designs to measure complainants' satisfaction with the process and results of their experience with CCTS.
- 47 CCTS could also ask complainants how they learned about it, because the answers will inform CCTS and PSPs about areas where they might strengthen their outreach initiatives.
- 48 Finally, CCTS should also have a reasonable financial reserve to permit it to undertake and publish independent research on matters that are directly relevant to its mandate and work.

III Conclusion: 21st century governance must use 21st century tools

- 49 To conclude, Mr. Chairman and Commissioners, CCTS has an important role to perform, and has done some very good work.
- 50 There is a fundamental problem with transparency, however, which the CRTC should address. CCTS' current approach to reporting simply does not permit its work and the results of its work to be evaluated empirically – which is generally the best way to evaluate public policy.
- 51 This is why FRPC has argued that CCTS must become more transparent, by releasing more information to the public. Transparency will establish that CCTS is performing its role credibly. Transparency permits it to be accountable to Canadians, to consumers, to the CRTC and to communications companies.

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- 52 Fortunately, technology now makes transparency very inexpensive. To put this into perspective, when I began working at the CRTC in the 1970s the word, ‘desktop’, simply meant the top of a desk – personal computers did not begin to arrive in the offices of the Commission’s staff until the mid-1980s.
- 53 Today’s software and hardware permit organizations like CCTS to collect a huge swath of data far more easily: the real challenge is deciding which data to collect, and which to report.
- 54 That said, FRPC recognizes that implementing most of the recommendations being made will require more resources – in particular the anonymized database and professional surveys we have proposed.
- 55 CCTS’ financial statements show, however, that its income decreased by \$106 thousand in the last two years, and by \$156 thousand in the same period if one excludes the special levies set out in its financial statements.
- 56 The CRTC must ensure that CCTS is properly funded to do its job – while ensuring that the fees charged do not become a competitive disadvantage for very small communications companies.

Mr. Chairman and Commissioners, this concludes our remarks. Thank you for the opportunity to appear before you today; we welcome your questions.

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