



2019 Legal and Regulatory Update for CanWISP

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Outline of Presentation

1. Commission for Complaints for Telecom-television Services (“CCTS”)
2. Obligations on Resellers and CRTC Registration Requirement
3. Mobile Wireless Review
4. New Proposed Policy Direction
5. Developments that should be on your radar
 1. Internet Code
 2. Broadband fund application guide
 3. ISED Consultation to establish a new set of service areas (Tier 5) for Spectrum licensing
 4. ISED Consultation to determine approach to annual adjustments to spectrum licence fees and equipment certification services
 5. ISED Consultation on fixed point-to-point licence fees

CCTS Obligations

- What is the CCTS?
 - An independent organization dedicated to resolving complaints relating to:
 - Telecommunications services including home phone, long distance phone services and prepaid calling cards, mobile wireless services (voice, data and text), wired and wireless Internet access services and other services
 - Television services: all broadcasting distribution models, including cable, Internet Protocol television (“IPTV”) and national satellite direct-to-home (“DTH”) TV service providers
 - Administers consumer codes including the Deposit and Disconnection Code, Wireless Code and the Television Service Provider Code
 - Publishes annual report on complaints identifying trends in complaints that may warrant government attention

CCTS Obligations (cont'd)

- What types of telecommunications service complaints can the CCTS hear?
 - Compliance with contract terms and commitments (**but not the contract terms themselves**), including:
 - disputes about whether there is a contract, what is included in a contract or how the contract should be interpreted
 - disputes about whether the provider's conduct meets its contractual obligations
 - misunderstandings about the particulars of a contract or term
 - Billing disputes and errors (**but not the price of the service itself**), including:
 - having agreed to one price and subsequently being charged more
 - being overcharged due to either a billing system error or a price that is different than advertised
 - being billed for per-use services which an end-user claims it did not use

CCTS Obligations (cont'd)

- What types of telecommunications service complaints can the CCTS hear?
- Complaints from a consumer or small business (i.e., a business with a monthly bill normally under \$2,500) relating to:
 - Service delivery, including:
 - the installation, repair or disconnection of service, including the quality of the service or unreasonable interruptions to service
 - transfers of service from one provider to another
 - Credit management, including:
 - security deposits
 - payment arrangements
 - collections treatment of customer accounts

CCTS Obligations (cont'd)

- What types of television service complaints can the CCTS hear?
 - Complaints from a consumer relating to, among other things, ensuring that Participating Service Providers (“PSPs”):
 - Provide customers with their written agreement and related documents in plain language
 - Ensure that prices, additional charges and the duration of promotional offers set out in the written agreement are clear
 - Provide customers with a time frame and information on any potential charges regarding service calls for installations and repairs
 - Give 30 days’ notice to customers in the event of a change in price of channels, bundles of channels or rental equipment
- Offer Canadians with disabilities a 30-day trial period

CCTS Obligations (cont'd)

- What complaints are excluded from the CCTS' mandate?
 - Telecom exclusions: Internet applications or content; emergency services; payphones; yellow page or business directories; telemarketing or unsolicited messages; 900 and 976 services
 - TV exclusions: digital media broadcast undertaking ("DMBU") services, which are services generally delivered or accessed over the Internet or delivered using point-to-point technology and received by way of mobile devices; interactive services and applications provided by TV service providers; broadcasting content and more.
 - General exclusions: equipment; inside wiring; security services such as alarm monitoring; networking services; pricing of products or services; rights of way; plant, including (without limitation), poles, towers conduits, trenches and other support structures; claims of false and misleading advertising; privacy issues

CCTS Obligations (cont'd)

- What powers does the CCTS currently have?
 - It can require a PSP: to provide a customer with an explanation or apology, an undertaking to do or cease doing certain activities with respect to the customer and/or monetary compensation up to \$5,000 per individual complaint

CCTS Obligations (cont'd)

- How is the CCTS funded?
 - By PSPs
 - PSPs with Revenues > \$10 million =
 - One-time sign-up fee \$1,000 - \$25,000 depending on revenues
 - Revenue-based fee calculated on a proportion of total eligible Canadian telecommunications revenues reported to the CCTS
 - Complaint based fees
 - Quarterly & based on level at which complaint is disposed
 - PSPs with Revenues < \$10 million = nominal Annual Fee.
 - One-time sign-up fee of \$500
 - Nominal annual fee of \$100
 - Complaint based fees
 - Quarterly & based on level at which complaint is disposed

CCTS Obligations (cont'd)

- Under what circumstances does a provider become a PSP?
 - Upon receipt of its first complaint from a customer, the service provider must apply to become a PSP.
 - Regardless of the merits of the complaint
- What if a PSP does not comply with CCTS obligations?
 - The CCTS maintains a list of non-compliant providers on its website
 - Other potential sanctions include:
 - CCTS will cease the sharing of important complaint data and industry comparison statistics with the non-compliant service provider, and requests for information will not be granted.
 - Unpaid CCTS invoices may go to a collections and credit reporting agency.
 - Informing the CRTC that the provider is non-compliant
 - The CRTC could remove an offending service provider from the CRTC registration lists (meaning it is no longer authorized to provide telecom or broadcast services) or levy administrative monetary penalties

CCTS Obligations (cont'd)

- Promoting awareness of the CCTS:
 - PSPs must have a dedicated web page that explains their complaint process, which describes the option for customers to take their complaints to the CCTS. This page must be easy to find (i.e., no more than 2 clicks away from the home page).
 - At a minimum, the information on a PSP's CCTS complaints section of its website will include the CCTS logo and the following message:

“Commission for Complaints for Telecom-television Services (CCTS) CCTS is an independent agency whose mandate is to resolve complaints of consumers about their telecom and TV services, and complaints of small business customers about their telecom services, free of charge. If you have a complaint about your telephone, wireless, internet or TV service, you must first try to resolve it directly with your service provider. If you have done so and have been unable to reach a satisfactory resolution, CCTS may be able to help you.

To learn more about CCTS, you may visit its website at www.ccts-cprst.ca or call toll-free at 1-888-221-1687.”

CCTS Obligations (cont'd)

- If the PSP's website has a search function, a search using any of these keywords will return a link to the dedicated complaints page: "complaint, dispute, CCTS, CRTC, commission, ombudsman".
- At least four times a year, customer bills must include a notice about CCTS. Prepaid mobile customers (and any other customers that don't receive a monthly bill) must have this message brought to their attention in an alternate way, for example, via text messaging.
- If a PSP has modified its billing system since January 2011, the PSP is expected to include a permanent and prominent standard CCTS notification in its bills.

CCTS Obligations (cont'd)

- A billing notice should contain the following text:

"Do you have a complaint regarding a telecom or residential TV service that we haven't been able to resolve? The independent Commission for Complaints for Telecom-television Services (CCTS) may be able to assist you free of charge: www.ccts-cprst.ca or 1-888-221-1687."

- The PSP's customer service staff must inform a customer contacting the PSP with a complaint about the right to complain to the CCTS, if the complaint remains unresolved after the second level of escalating the customer's issue. (A level of escalation would be a customer asking to speak or being transferred to a team leader, supervisor or manager, for example.)

CCTS Obligations (cont'd)

- **CCTS Compliance Monitoring and Enforcement Program**
 - CCTS is now requiring PSPs to complete and return compliance certification forms
 - Throughout the year, CCTS will be engaging in other monitoring activities including audits of PSP compliance with public awareness and other activities

CCTS Obligations (cont'd)

- What is the general process for a CCTS complaint?
 - 1. CCTS conducts an assessment of the complaint
 - 2. Complaint is forwarded to the provider, which has 30 days to respond
 - 3. If the complaint is unresolved after 30 days, CCTS collects information from both parties and attempts informal resolution
 - 4. Investigation, if still unresolved, the CCTS will analyze the evidence provided
 - 5. If still unresolved, CCTS will issue recommendations to the parties
 - 6. If one or both parties rejects the CCTS' recommendation, the CCTS issues a final decision.
- The party against which a complaint is lodged must pay a fee to the CCTS that escalates at each major stage of the process, creating an inducement for PSPs to settle early regardless of the merits.

CCTS Obligations (cont'd)

- Complaint based fees:

Level of Complaint	Fee
Pre-Investigation	\$121.09
Investigation	\$302.73
Recommendation	\$484.37
Decision (demanded by customer)	\$484.37
Decision (demanded by PSP)	\$666.00

Application of Regulatory Obligations on Resellers

- Previously, regulatory obligations applied indirectly to non-carriers or “resellers” through contractual clauses in wholesale or resale agreements with carriers.
- As of January 17, 2017, these obligations now flow directly to resellers.
- Obligations are consumer oriented and relate to:
 - Accessibility
 - Privacy
 - Customer transfers
 - Internet traffic management practices (“ITMPs”)
 - Wireless Code
 - National Do Not Call List

Application of regulatory obligations on resellers (cont'd)

- The CRTC also introduced new measures relating to registrations as telecommunications service providers
- Both carriers and resellers are now required to “monitor and enforce” registration obligations in their service contracts and other arrangements with non-carriers to which they offer and provide services
 - Implication for telecommunications service providers (“TSPs”): Register!
 - Implication for TSPs that provide wholesale services: Amend your contracts!
- Canadian carriers are obliged to report instances of non-compliance (actual or suspected)

CRTC Registrations

- Entities that wish to provide telecommunications services (including fixed wireless services!) need to appear on one or more of the CRTC's registration lists.
- My company is not on the list, what do I do!?
 - Don't panic, you can still apply to be added to any of the CRTC's lists.
- The lists:
 - Basic International Telecommunications Services (BITS) Licensees
 - Facilities-Based Providers
 - Non-Facilities-Based Providers

CRTC Registrations (cont'd)

- Basic International Telecommunications Services (BITS) Licences
 - Providers of voice (both traditional **and VoIP**) and Internet services must obtain a BITS Licence in order to send and receive voice and Internet traffic between Canada and another country
- BITS Licence obligations
 - No anti-competitive conduct in the provision of international voice services
 - Compliance with contribution regime
 - Submit affidavit with accurate information (legal name, contact info, place of incorporation, etc.)
 - Provide CRTC with any information required by regulation

CRTC Registrations (cont'd)

- Facilities-Based Provider Lists:
 - Competitive Local Exchange Carriers (“CLECs”)
 - Incumbent Local Exchange Carriers (“ILECs”)
 - Small Incumbent Local Exchange Carriers (“SILECs”)
 - Non-Dominant Carriers
 - Wireless Carriers
 - Mobile Virtual Network Operator (“MVNO”) or Proposed MVNO
 - Other Carriers
- Obligations:
 - File data with the CRTC on an annual basis
 - File ownership information to attest that they are eligible to operate as a telecommunications common carrier
 - If they provide international voice services or Internet services, a BITS licence is required
 - Adhere to regimes specific to registration types and general regulatory rules

CRTC Registrations (cont'd)

- Non-Facilities-Based Providers
 - Competitive Pay Telephone Service Providers (“CPTSP”)
 - Digital Subscriber Line (“DSL”) Providers
 - Resellers of High Speed Retail Internet Service
 - Resellers of Telecom Services
- Obligations:
 - File data with the CRTC on an annual basis
 - If they provide international voice or Internet services, a BITS licence is required
 - Are not subject to ownership and control regulations
 - Adhere to regimes specific to registration types and general regulatory rules

CRTC Registrations (cont'd)

- Problems with registration lists:
 - Certain sub-lists have lost their meaning (e.g., non-dominant carrier list)
 - Some lists are simply not utilized (e.g., MVNO and proposed MVNO lists)
 - No unique list for fixed wireless broadband service providers (i.e., wireless Internet service providers (“WISPs”)), so some approximation is required
 - A WISP with transmission facilities (e.g., its own fibre transport or point-to-point wireless backhaul) should register as a facilities-based provider
 - A WISP with no transmission facilities should register as a non-facilities-based provider
 - Several types of non-carrier entities that provide services that involve connectivity are unsure if they are subject to a registration requirement

CRTC Registrations (cont'd)

- In the ongoing proceeding TNC 2017-450, the Commission is looking to provide clarity regarding the application of registration requirements to certain classes of non-carrier entities such as providers of Machine-to-Machine, Internet of Things or private Wi-Fi services.
- The Commission is also seeking input regarding a process to manage future exemptions to registration requirements.

Telecom Notice of Consultation 2019-57

- The Commission has initiated its next wholesale mobile wireless services review
- The proceeding will focus on three core areas:
 - Competition in the retail market
 - The current wholesale mobile wireless service regulatory framework, with a focus on wholesale MVNO access
 - The future of mobile wireless services in Canada, with a focus on reducing barriers to infrastructure deployment

Telecom Notice of Consultation 2019-57 (cont'd)

- Competition in the retail market
 - The Commission is concerned that
 - (i) retail market concentration remains high (due in part to a series of acquisitions), and
 - (ii) the Commission has been repeatedly required to intervene in the retail market, suggests that certain aspects of this market are not, in fact, sufficiently competitive in their current state to properly protect the interests of users and further the policy objectives set out in section 7 of the *Telecommunications Act*.

Telecom Notice of Consultation 2019-57 (cont'd)

- Shift in focus from wholesale roaming which is now established to possibility of mandated MVNO access
 - Wholesale roaming
 - Given that final wholesale roaming tariffs were only recently put in place, the Commission considers that it is not necessary to revisit question of whether to mandate wholesale roaming services (or rates);
 - Wholesale MVNO access
 - The Commission acknowledged that there has been virtually no MVNO activity since the last wholesale wireless review;
 - **The Commission has taken the preliminary view that it would be appropriate to mandate wholesale MVNO access.**
 - However, with a view to establishing an appropriate mix of facilities-based and service-based competition, mandated access would be in place for a limited time and subject to a phase-out period.

Telecom Notice of Consultation 2019-57 (cont'd)

- The future of mobile wireless services in Canada, with a focus on reducing barriers to infrastructure deployment
 - Parties are invited to provide their views on whether any further regulatory measures are required to reduce barriers to the deployment of cellular infrastructure
- TNC 2019-57 sets out 17 Questions relating to the three areas of focus listed above
- The procedure for this proceeding includes:
 - Interventions – May 15, 2019
 - Interrogatories proposed by intervenors – May 29, 2019
 - CRTC Interrogatories – July 5, 2019
 - Further comments – October 23, 2019
 - Public hearing commences – January 13, 2020
 - Final submissions – February 12, 2020

New Proposed Policy Direction

- The Governor in Council has proposed a new Policy Direction
 - Notably, the proposed Policy Direction contains the following pro-competition amendments:
 - A requirement for the Commission to encourage all forms of competition;
 - A requirement for the Commission to foster affordability and lower prices, particularly in instances where telecommunications service providers exercise market power;
 - Reduce barriers to entry and competition for smaller telecommunications service providers; and
 - The removal of a requirement for the Commission to focus on investment in facilities

New Proposed Policy Direction

- Importantly, there is a focus on the promotion of innovation
 - From a competitive perspective it will be important for this requirement to be implemented in a manner that does not blunt the other factors
- If the existing Policy Direction is not repealed when the new one is enacted, significant problems may ensue as the current one focuses on minimizing regulation and promoting investment in facilities, and that is not aligned with consumer interests and facilitating increased competition
- Comments are due to be filed with ISED by April 8, 2019

The Internet Code (TNC 2018-422)

- The Commission's preliminary view: Should only apply to large facilities based carriers.
- Would affect various aspects of the relationship between provider and customer (residential and small business)
 - Clarity of terms
 - Critical Information Summary
 - Changes to contracts
 - Bill management tools
 - Equipment issues
 - Contract cancellation and extensions
 - Security deposits
 - Disconnection
 - Other issues
- Remaining process:
 - Responses to CRTC interrogatories – April 4, 2019
 - Final arguments – April 23, 2019

Broadband Fund Application Guide

- Commission released a proposed application guide for its broadband fund
- Parties were invited to submit comments regarding the application process and the information required to be submitted for project evaluation and selection.
- For example, parties were invited to indicate where clarification may be required related to (i) the process for the filing and evaluation of applications, and (ii) other technical details that could adversely affect potential applicants' funding applications.
- This proceeding did not deal with the policy or implementation issues relating to the fund, which have already been addressed
- The record of the proceeding is now closed and a decision is pending in due course
- Still to be resolved is the details of how the contribution regime will be modified to raise the revenues required for this fund

ISED Consultation on a New Set of Service Areas for Spectrum Licensing

- ISED has been conducting a consultation to explore the establishment of a new set of service areas for spectrum licensing to accommodate next gen technologies like 5G.
 - It has proposed two options for setting boundaries for Tier 5 service areas:
 - Option 1: Boundaries are based on Statistics Canada 2016 census subdivisions
 - Option 2: Boundaries based on population centres
- CANWISP participated in a joint submission along with several other parties which advocated for an alternative option with thresholds designed to distinguish remote, rural and urban areas
- The record of this proceeding is closed and a decision is pending in due course

ISED Consultation on Periodic Adjustments for Radio and Spectrum Licence Fees and Fees Related to Equipment Certification Services

- ISED has initiated a consultation proposing the use of the Consumer Price Index as the basis for annual adjustments to spectrum licence fees
- This is the general approach to fee adjustments, which is prescribed by the *Services Fees Act*
- A number of parties are seeking an extension to the current deadline for filing initial comments with ISED which is April 15, 2019 – and ISED has yet to rule on this request
- The deadline for filing reply comments with ISED is presently 15 days after initial comments are posted on the ISED website

ISED Consultation on Fixed Point-to-Point Services

- ISED initiated a consultation to modernize the radio licence fee model for fixed point-to-point systems and their associated fees
- ISED looked at fee-setting methodologies applied in other countries
- ISED established a set of guiding principles
- ISED proposed a consumption-based point-to-point fee model
 - Intended to reward spectral efficiency and encourage innovation
 - Intended to reflect utility of different spectrum bands
 - Perceived as clear and predictable
 - Will be subject to periodic fee adjustment (see previous slide)
- The record of this proceeding is closed and a decision is pending in due course

We are here to help

- Areas in which we can help individual WISPs include:
 - CRTC registrations and related requirements
 - Compliance with CRTC annual data collection system (“DCS”) reporting requirements
 - CCTS registrations and compliance
 - Broadcast licences or exemptions and related compliance
 - Employment agreements (which are subject to federal law and must be drafted as such) and related policies
 - Wholesale agreements and service schedules
 - End-user agreements, including both general and service-specific terms and conditions
 - Privacy, ITMP, authorized use and other policies
 - Negotiating agreements with other business entities (including suppliers and business partners), such as carriers, broadcasting content providers, equipment providers, municipalities, tower and building owners, etc.
 - Corporate governance (including by-laws, corporate policies, director training, running board meetings, etc.)



THANK YOU!!!!