



# 2018 Legal and Regulatory Update

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# Outline of Presentation

1. CRTC Broadband Funding Regime
2. Commissioner for Complaints for Telecom-Television Services (CCTS)
3. CRTC Registration Requirements and Telecom Notice CRCT 2017-450
4. Telecom Decision CRTC 2018-97: Reconsideration of final terms and conditions for wholesale mobile wireless roaming service
5. Copyright Notice-and-Notice Update
6. Fairplay Canada Application
7. Reminder regarding Commercial and Employment Law Arrangements and Documentation

# Broadband Funding Regime

- The CRTC has established a broadband funding framework to ensure that Canadians, in urban areas as well as in rural and remote areas, have access to voice services and broadband Internet access services, on both fixed and mobile wireless networks.
- The following measures will be used to assess the attainment of the objective:
  - Canadian residential and business fixed broadband Internet access service subscribers should be able to access speeds of at least 50 megabits per second (Mbps) download and 10 Mbps upload, and to subscribe to a service offering with an unlimited data allowance; and
  - The latest generally deployed mobile wireless technology should be available not only in Canadian homes and businesses, but on as many major transportation roads as possible in Canada.

## Broadband Funding Regime (cont'd)

- A third party will operate the fund at arm's length from the Commission in a manner that is transparent and efficient. The fund will evolve within the broadband Internet funding ecosystem and complement other sources of funding and investment. For the first year of the fund (2019?), no more than \$100 million will be distributed. This amount will increase by \$25 million annually over the following four years to reach an annual cap of \$200 million.
- The CRTC held a follow-up proceeding to examine how the fund would actually work. The record is now closed and a decision is pending.

# Broadband Funding Regime (cont'd)

- Some of the issues of particular interest to WISPs include:
  - Frequency of applications (one call or calls every few years?)
  - Payout options (progress payments?)
  - Reporting requirements; (progress reports and broadband performance)
  - Speed threshold justifying funding (below 50 Mbps for fixed wireless?)
  - Proximity of transport facilities (does it really guarantee access?)
  - Types of costs that can be recovered (start-up vs. ongoing?)
  - Definition of “government entity” (include NFPs and community entities?)
  - Demonstration of investment capacity
  - Assessment criteria and possible “priority underserved” areas
  - Reserved amount for “satellite-dependent communities”

# 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
  - Administers consumer codes including the 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**), examples include:
    - 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**), examples include:
    - 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 end-users claim they did not use



# CCTS Obligations (cont'd)

- What types of telecommunications service complaints can the CCTS hear?
- Complaints from a consumer or small business owner with monthly bill normally under \$2,500 and relating to:
  - Service delivery, examples include:
    - 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, examples include:
    - security deposits
    - payment arrangements
    - collections treatment of customer accounts



# 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 participating service provider (PSP) to: provide a customer with an explanation or apology, an undertaking to do or cease doing certain activities with respect to the customer OR monetary compensation up to \$5,000

# 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:
    - The 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, which can open up the PSP to possible removal from registration lists and administrative monetary penalties, among other remedies

# CCTS Obligations (cont'd)

- New requirements PSPs, as of February 1, 2018:
- Promoting awareness of the CCTS:
  - PSPs must have a dedicated web page that explains their complaint process, which includes a description of the option for customers to take their complaints to the CCTS. This page must be easy to find; no more than 2 clicks away from the home page.

# CCTS Obligations (cont'd)

- New requirements for Participating Service Providers (“PSPs”), as of February 1, 2018:
- Promoting awareness of the CCTS:
  - At a minimum, the information on a PSP’s CCTS complaints section of its website will include the CCTS language 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](http://www.ccts-cprst.ca) or call toll-free at 1-888-221-1687.”

# CCTS Obligations (cont'd)

- New requirements PSPs, as of February 1, 2018:
- Promoting awareness of the CCTS:
  - 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".



# CCTS Obligations (cont'd)

- New requirements for Participating Service Providers (“PSPs”), as of February 1, 2018:
- Promoting awareness of the CCTS:
  - At least four times a year, customer bills must include a notice about the 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, they are expected to include a permanent and prominent standard CCTS notification in their bills.

# CCTS Obligations (cont'd)

- New requirements for Participating Service Providers ("PSPs"), as of February 1, 2018:
- Promoting awareness of the CCTS:
  - Billing notice should look like:

*"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](http://www.ccts-cprst.ca) or 1-888-221-1687."*

# CCTS Obligations (cont'd)

- New requirements for Participating Service Providers (“PSPs”), as of February 1, 2018:
- Promoting awareness of the CCTS:
  - The PSP’s customer service staff must tell customers contacting them with a complaint about the right to complain to the CCTS, if the complaint remains unresolved after the second level of escalating their 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)

- **New CCTS Compliance Monitoring and Enforcement Program**
  - CCTS is now requiring PSPs to complete and return compliance certification forms
    - First round of these forms sent out in first week of February 2018.
  - 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.

# Commissioner for Complaints for Telecommunications Services (CCTS) (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

# Commissioner for Complaints for Telecommunications Services (CCTS) (cont'd)

- Issues for WISPs:
  - Fixed wireless broadband service can be limited or variable in quality due to local conditions beyond a WISP's control, even through it may be the only service available, yet consumers can complain to CCTS which causes the WISP to incur complaint fees and other costs associated with responding to the complaint
  - The new requirements to promote CCTS awareness increases costs and the regulatory burden faced by WISPs
  - An internal industry review of the latest version of the CCTS PSP Guide is required so that the industry can articulate and prioritize its concerns and convey them in a concise manner to CCTS



# CRTC Registration and the 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

## CRTC Registration, etc. (cont'd)

- The CRTC also introduced new measures relating to registrations of “resellers” 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 resellers that rely on wholesale services: Register!
  - Implication for resellers that provide wholesale services: Amend your contracts!
- Canadian carriers are obliged to report instances of non-compliance (actual or suspected)

# CRTC Registration, etc. (cont'd)

- 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 Registration, etc. (cont'd)

- Basic International Telecommunications Services (BITS) Licences
  - Providers of voice services (both traditional and VoIP) must obtain a BITS Licence in order to send and receive voice 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 Registration, etc. (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
  - 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, a BITS licence is required
  - Adhere to regimes specific to registration types and general regulatory rules

# CRTC Registration, etc. (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 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 Registration, etc. (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
  - Not clear how a WISP with transmission facilities (e.g. Fibre transport or point to point wireless backhaul) is expected to register as a facilities-based provider or what information should be provided in support of such an application
  - Several types of non-carrier entities that provide services that involve connectivity are unsure if they are subject to a registration requirement



## CRTC Registration, etc. (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.
- Recently, the Commission issued requests for information to all providers who are registered with the Commission.
- There may be more future proceedings and Commission follow-up to address other aspects of the registration obligation.

# CRTC Registration, etc. (cont'd)

- Issues for WISPs:
  - Am I registered?
  - If I am registered, how do I navigate the current uncertainty concerning registration requirements?
  - An internal industry review of the current registration requirements, related uncertainty and consequences for WISPs is required so that the industry can articulate and prioritize its concerns and convey them in a concise manner to the CRTC, as a number of the core concerns are not encompassed by the current CRTC proceeding on registrations
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# Telecom Decision CRTC 2018-97

- **Background:**
  - In 2015, the Commission reviewed its wholesale wireless framework
  - The main features of the Commission's regulatory policy were:
    - Mandated domestic wholesale roaming services;
    - A finding that although wholesale mobile-virtual-network-operator ("MVNO") access did meet the Commission's definition of an essential services, it would not be appropriate to mandate such access given the potential to negatively impact facilities-based investment.
  - In Telecom Decision 2017-56, the Commission approved final terms and conditions for wholesale roaming services, specifying that the services are intended to provide incidental, not permanent access to the national wireless carriers' networks.

# Telecom Decision CRTC 2018-97 (cont'd)

- **Background cont'd:**
  - The Commission also subsequently clarified that public Wi-Fi access does not form part of a home network for the purpose of establishing what constitutes incidental use.
  - On 1 June 2017, the Governor in Council referred Telecom Decision 2017-56 back to the Commission for reconsideration.
- **Note: concurrently with the release of Telecom Decision CRTC 2018-97, the Commission approved final rates for the wholesale roaming services provided by Bell, Rogers and TELUS. Notably, these rates were significantly lower than interim rates.**

# Telecom Decision CRTC 2018-97 (cont'd)

- **Reconsideration agenda:** the Governor in Council stated that it is material to the reconsideration that the Commission consider whether:
  - broadening the definition of “home network” to consider other forms of connectivity, such as Wi-Fi, would have a positive impact on the affordability of retail mobile wireless services to consumers in Canada;
  - the evidence demonstrates in a sufficiently clear and significant manner that the potential negative impact on investment in wireless infrastructure from the inclusion of Wi-Fi connectivity in the definition of “home network” outweighs the potential positive impact on the affordability of retail mobile wireless services to consumers from that inclusion; and
  - impact on investment could be mitigated by imposing conditions on mandated wholesale roaming services, such as ensuring that roaming by customers of providers who offer service primarily over Wi-Fi would be incidental rather than permanent by, for example, limiting roaming in amount, subjecting roaming services to a different tariffed wholesale rate, or both.

# Telecom Decision CRTC 2018-97 (cont'd)

- **Broadening the definition of “home network”**
- The Commission found that:
  - altering this definition would bring uncertainty to the market; and
  - from a regulatory perspective, there should be a clear line drawn between incidental (wholesale roaming) and permanent access (resale or MVNO) to the national wireless carriers' networks

# Telecom Decision CRTC 2018-97 (cont'd)

- **Impact of broadening the definition of “home network” on the affordability of mobile wireless services**
- The Commission found that:
  - Some lower price mobile wireless options exist today
  - More competition, including via Wi-Fi first service models could introduce additional lower-cost models, but it would be unclear what kind of demand there might be for such services given that public Wi-Fi networks are unmanaged and susceptible to quality of service issues
  - Also, consumers already use Wi-Fi with their current mobile service providers
  - Overall, the impact of Wi-Fi first models would be uncertain



# Telecom Decision CRTC 2018-97 (cont'd)

- **Impact of broadening the definition of “home network” on investments in mobile wireless services**
- The Commission found that:
  - If mandated resale competition were to occur, the business case for investing in mobile wireless facilities in certain markets would become more difficult
  - In the Commission’s view, the potential negative impact on investment outweighs any potential positive impact on affordability

# Telecom Decision CRTC 2018-97 (cont'd)

- **Could impact on investment be mitigated by imposing conditions on mandated wholesale roaming?**
- The Commission found that:
  - The record of the proceeding is inconclusive on this matter and the Commission therefore cannot render a clear decision on what constraints could potentially mitigate impacts on carrier investment

# Telecom Decision CRTC 2018-97 (cont'd)

- **Alternative means to address the concerns of the Governor in Council:**
  - The Commission is initiating a public process with the goal of ensuring that lower-cost data-only plans are widely available to Canadians
  - The focus of this process will be on national wireless carriers
  - The intent of the process is to determine whether the national wireless carriers should be required to offer lower-cost data-only plans by, for instance, imposing a section 24 condition of service, and how such plans should be structured to address the gap in the market for lower-cost data-only plans and further the policy objectives set out in section 7 of the Act.
- **The Commission announced that it intends to initiate its review of the wholesale wireless framework within the next year (which is earlier than originally scheduled), which will include a review of the MVNO access policy.**

# Telecom Decision CRTC 2018-97 (cont'd)

- Issue for WISPs:
  - If you want to enter mobile wireless markets, you will need your own spectrum to expand into that area in the near term

# Notice and Notice

- Balanced compromise between rights of copyright owners and freedoms of Internet users.
- ISP obligations:
  1. “As soon as feasible”, forward the notice electronically to the person to whom the electronic location (IP Address) identified by the location data specified in the notice belongs
  2. Inform the claimant of its forwarding OR, if applicable, of the reason it was not possible to forward it.
  3. Retain records on the identity of the person to whom the IP address in the notice belongs to, for 6 months or 12 months (if claimant sues the alleged infringer and provides the ISP notice).

# Notice and Notice (cont'd)

- Valid Notice must be in writing and:
  - a) State claimant's name and address (to allow communications)
  - b) Identify the work or other subject-matter to which the alleged infringement relates
  - c) State the claimant's copyright interest or right in the work
  - d) Specify the "location data" for the electronic location to which the claimed infringement relates
  - e) Specify the infringement that is claimed
  - f) Specify the date and time of alleged infringement

# Notice and Notice (cont'd)

- ISPs cannot charge fees
- Statutory Damages: \$5,000 – \$10,000
- Scale dictates implementation: automation vs manual processes
  - Webforms / Automated Copyright Notice System (ACNS)
- Most ISPs attach a “wrapper” message to their end-users to provide context
  - Avoid giving legal advice
  - Link to information resources



# Notice and Notice (cont'd)

- Common complaints that we have heard from our clients in the past:
  - Template notices & spreadsheets
  - “Settlement offers”
  - Graphic notices
  - Advertisements
  - Notices are being sent to the wrong address
  - Form/style of notices that are being received
  - Duplicate notices for the same infringement

# Notice and Notice (cont'd)

- Additional Issue for ISPs, including WISPs:
  - Some content owners are starting to sue end-users cross referenced to IP addresses for which multiple notices of alleged infringement are forwarded
  - As part of this activity, a content owner will seek an order against the ISP to obtain the end-user name(s) and contact information associated with the IP address
  - If it turns out that the ISP cannot provide the relevant data for internal technological reasons (e.g., because of the combined use of NAT and inability to identify end-user by port), the content owner may take the position that not having the technical capability to correlate IP addresses to end-users is a breach of the *Copyright Act*, and unless rectified within a reasonable period of time justifies the seeking of statutory damages against the ISP for not complying with the notice-and-notice regime.

# Notice and Notice (cont'd)

- Additional Issue for ISPs, including WISPs (cont'd):
  - We think that this interpretation of the *Copyright Act* is dubious, BUT, which WISP wants to be the test case to litigate this, potentially all of the way to the Supreme Court of Canada?

# Fairplay Canada Application

- According to Fairplay Canada, which is a coalition of 25 parties:
  - Piracy is a large and growing problem that threatens the massive employment, economic, and cultural contributions of Canada's film, television, and music industries
  - To combat the piracy problem, the CRTC should create an independent agency to identify websites and services that are blatantly, overwhelmingly, or structurally engaged in piracy. Following due process and subject to judicial oversight, ISPs would ultimately be required, by the CRTC, to disable access to the identified piracy sites and services.

# Fairplay Canada Application (cont'd)

- Problems with this scheme:
  - Cost of implementation
  - Ineffectiveness of blocking methods
  - Over-inclusiveness of blocking
  - And end run around the *Copyright Act* notice-and-notice regime

# Compliance and best practices checklist

- Commercial best practices:
  - Terms of Service
  - Privacy Policies
  - Acceptable Use Policies
  - Internet Traffic Management Policies
  - Wholesale Agreements
  - Agency Agreements
  - Resale Agreements
- Employment law and other federal laws applicable to WISPs



THANK YOU!!!!