Responding to the New Environment: A Call for Comments - Comments of the Canadian Communication Systems Alliance, Inc.

APPENDIX B – Responses to Questions from CCSA's October 3, 2018 Appearance

1. *For the purpose of determining a possible exemption from a levy on ISPs to fund Canadian programming, please propose the basis for a targeted exemption as opposed to a simple dollar threshold for exemption.*

Answer: In its main submission, CCSA states the position that a levy on ISPs to fund Canadian content creation and exhibition would lack statutory authority under the *Broadcasting Act*, as currently written. Moreover, based on the Supreme Court of Canada decision in *Reference Re: Broadcasting Act*, 2012 SCC 4; [2012] 1 S.C.R. 142, ISPs which provide only the means to access programming through their networks but have no involvement in the selection of packaging of content are not engaged in "broadcasting". Therefore, as a matter of principle, such ISPs should not be called upon to fund the attainment of broadcasting objectives.

CCSA strongly maintains that position.

However, CCSA recognizes that Parliament could change the legislation so as to impose a "Cancon" levy on ISPs. Should that be the case, Government should consider and balance the benefits and harms that could arise from such an approach.

As a general proposition, almost all of the revenues from such a levy would come from the few very large ISPs in the industry. Very little of the revenue would come from small, independent ISPs. However, the negative impact of such a levy on those small ISPs would likely be disproportionate and almost certainly would impair their ability to invest in upgrades and extensions of their existing broadband networks.

For those reasons, an exemption that carved out the smaller ISPs would be appropriate. Rather than using a somewhat arbitrary revenue threshold, such as the existing $10 million telecommunications revenue threshold which applies to exempt small TSPs from certain obligations, a practically effective measure based on objective CRTC data would be useful.

In that respect, the CRTC's just-published 2018 *Communications Monitoring Report* could be applied. That report, at Infographic 5.4, notes that five ISPs – Bell, Rogers, Shaw, TELUS and Videotron – generated 74% of Internet revenues in 2017. The same

Infographic notes that independent ISPs had 12% revenue share, a number that "reflects their limited share of the residential Internet service market".[1]

That indicates a useful, objective threshold for exemption from an ISP "Cancon" levy. In the event a levy is imposed, all ISPs except for the five largest should be exempted.

2. *Please provide the panel with a breakdown of CCSA's membership in terms of geography, company sizes and revenues.*

Answer: At the time of writing, CCSA's membership comprises some 117 communications distribution companies. CCSA members include co-operatives, family businesses and companies run by Indigenous Peoples which compete with large, vertically integrated companies on choice, technology, service and price.

CCSA's members serve more than 1,200 communities throughout the country. Often, they provide services in the lowest-density and most challenging geographic regions of Canada. In many cases, they exist, at least in part, because those challenges discourage investment by the large, vertically-integrated communications companies.

Based on data from CCSA's billing system for the month ended November 30, 2018, the members' systems and video subscribers break down, regionally, as follows:

Province/Territory	BDUs	Video Subscribers
Alberta	6	2,629
British Columbia	52	31,748
Manitoba	65	22,126
New Brunswick	1	179
Newfoundland	13	5,467
Nova Scotia	9	9,599
Northwest Territories	6	7,409
Nunavut	21	4,835
Ontario	104	83,381
Prince Edwards Island	1	78
Québec	149	135,967
Saskatchewan	233	68,527
Yukon	2	7,049
Totals	**662**	**378,994**

As of June, 2018, CCSA comprised:

- 2 members with between 50,000 and 75,000 video subscribers;
- 5 members with between 10,000 and 20,000 video subscribers;
- 9 members with between 5,000 and 10,000 video subscribers;
- 25 members with between 1,000 and 5,000 video subscribers; and
- 70 members with fewer than 1,000 video subscribers.[2]

[1] CRTC, *Communications Monitoring Report 2018*, Infographic 5.4, explanatory note.

CCSA's core business remains the negotiation and administration of affiliation agreements for the distribution of television programming. For that reason, at this time, CCSA does not track its members' telephone and Internet subscriber numbers. Also, CCSA does not have access to its members' individual revenue numbers.

CCSA members, in the aggregate, pay more than $13 million per month – or $156 million per year – in wholesale fees to television programming undertakings.

3. *If an MVNO model were to be made available to facilities-based competitive entrants, what would be the criteria for determining whether a provider is facilities-based??*

Answer: CCSA's suggestion at its appearance was a response to the argument that an MVNO resale model discourages network investment by forcing the large incumbents to share their networks with non-facilities based resellers.

However, CCSA's members are all facilities-based service providers which operate terrestrial networks. At present, most lack the opportunity to add mobile wireless service to their retail offerings. The premise of CCSA's position is that, given such an opportunity, those companies would have a strong incentive to invest in upgrade and extension of their own broadband networks.

CCSA notes, first, that there is no compelling evidence that existence of MVNO competition does, in fact, chill facilities investment by the large incumbents.[3] Indeed, the US incumbents have welcomed the model as representing a new revenue stream and have not scaled back their own network investments.

Second, even if competitive entry by facilities-based companies such as CCSA represents did create some disincentive to investment by the incumbents, there would likely be an offsetting investment by those facilities-based new entrants. That investment would not be primarily in building redundant new Radio Access Networks but, rather, in upgraded and new last mile broadband facilities needed to deliver a compelling quad-play services to existing and new service areas.

Given those arguments, the criterion would be very simple: a facilities-based new entrant into the MVNO market would be any company that already operates an existing physical last-mile network.

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[2] Note that members who have joined CCSA since June, 2018 are not reflected in these numbers. Generally, new members join CCSA with either no or very few video subscribers.

[3] *See* CCSA's May 15, 2014 and October 20, 2014 submissions in response to Telecommunications Notice of Consultation CRTC 2014-76 at https://services.crtc.gc.ca/pub/ListeInterventionList/ Documents.aspx?ID=215468&en= 2014-76&dt=i&lang=e&S=C&PA=T&PT=NC&PST=A, accessed on January 4, 2019.