

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

## APPENDIX C – SUMMARY OF RECOMMENDATIONS

Set out below are CCSA's recommendations as presented in its main submission document. The recommendations are arranged under the relevant topic areas in the Table of Contents of that document.

### Authorize the CRTC to Address Competitive Challenges

#### Ensure the CRTC Can Make Regulations to Constrain Anti-Competitive Behaviours

***Recommendation:*** Amend s. 10 of the *Broadcasting Act* to give the regulator clear authority to make regulations, as required to respond to potential anti-competitive behaviours, which govern commercial relationships and agreements among actors in the marketplace.

#### Support Timely Dispute Resolution and Enforcement

***Recommendation:***

- a. **Repeal s. 18(1)(d) of the *Broadcasting Act*; and**
- b. **re-word s. 12(3) of the *Broadcasting Act* , as set out below, to ensure that it applies to any person affected by a mandatory order issued under s. 12(2):**

**Where the Commission issues an order pursuant to subsection (2) of this section, any person who is affected by the order may, within thirty days after the making thereof, apply to the Commission to reconsider any decision or finding made by the panel, and the Commission may rescind or vary any order or decision made by the panel or may re-hear any matter before deciding it.**

### Authorize the CRTC to Impose Administrative Monetary Penalties

***Recommendation:***

**The legislation should authorize the CRTC to award Administrative Monetary Penalties by including in the *Broadcasting Act* provisions which mirror ss. 72.001 to 72.003 of the *Telecommunications Act*, as follows:**

**s. n.1 Every contravention of a provision of this Act, and every contravention of a regulation or decision made by the Commission under this Act, constitutes a violation and the person who commits the violation is liable**

**(i) in the case of an individual, to an administrative monetary penalty not exceeding \$25,000 and, for a subsequent contravention, a penalty not exceeding \$50,000; or**

**(ii) in any other case, to an administrative monetary penalty not exceeding \$10,000,000 and, for a subsequent contravention, a penalty not exceeding \$15,000,000.**

**s. n.2 The amount of the penalty is to be determined by taking into account the following factors:**

**(i) the nature and scope of the violation;**

**(ii) the history of compliance with this Act, the regulations or the decisions made by the Commission under this Act, by the person who committed the violation;**

**(iii) any benefit that the person obtained from the commission of the violation;**

**(iv) the person's ability to pay the penalty;**

**(v) any factors established by any regulations; and**

**(vi) any other relevant factor.**

**s. n.3 The purpose of the penalty is to promote compliance with this Act, the regulations or the decisions made by the Commission under this Act, and not to punish.**

**s. n.4 The Commission may impose a penalty in a decision in the course of a proceeding before it under this Act in which it finds that there has been a contravention of a provision, a regulation or a decision referred to in section n.1.**

## Empower the CRTC to Make Interim Decisions

### *Recommendation:*

The legislation should empower the CRTC to make interim decisions and award interim relief by including in the *Broadcasting Act* provisions which mirror ss. 60 to 62 of the *Telecommunications Act*, as follows:

- s.n            **The Commission may grant the whole or any portion of the relief applied for in any case, and may grant any other relief in addition to or in substitution for the relief applied for as if the application had been for that other relief.**
- s. n.2        **(1) The Commission may, in any decision, provide that the whole or any portion of the decision shall come into force on, or remain in force until, a specified day, the occurrence of a specified event, the fulfilment of a specified condition, or the performance to the satisfaction of the Commission, or of a person named by it, of a requirement imposed on any interested person.**
- (2) The Commission may make an interim decision and may make its final decision effective from the day on which the interim decision came into effect.**
- (3) The Commission may make an *ex parte* decision where it considers that the circumstances of the case justify it.**
- s. n.3        **The Commission may, on application or on its own motion, review and rescind or vary any decision made by it or re-hear a matter before rendering a decision.**

## Do Not Require ISPs to Contribute to Canadian Content Creation

### *Recommendation:*

**Government should not impose a levy on ISPs whereby Canadian ISPs would be required to contribute to the creation of Canadian content.**

**No legislative changes are required to implement this recommendation. Rather, the CRTC lacks authority, under the existing *Broadcasting Act*, to impose such a levy on ISPs who are regulated as telecommunications common carriers under the *Telecommunications Act* and**

who act solely in that capacity as set out at s. 4 of the *Broadcasting Act*. Government should not introduce changes to that provision so as to impose a new Canadian content levy of ISPs.

In the event Government does decide to impose a levy on Canadian ISPs, the CRTC should use its exemption power under s. 9 of the *Telecommunications Act* to exempt independent ISPs who are not “the top five Internet companies identified in the Commission’s most recent Communications Monitoring Report as generating almost three-quarters of revenue in the residential Internet service market”.

## Support Competitive Entry in the Mobile Wireless Market

### *Recommendation:*

Government should support increased competition in the delivery of mobile wireless services, especially in underserved rural and remote regions and should encourage existing facilities-based telecommunications service providers in such areas to provide competitive wireless services. Government should support competitive entry on the basis of an MVNO reseller model.

CCSA does not recommend specific changes to the *Telecommunications Act* in this regard but does recommend that ss. 7(b) and (c) of the *Act* be preserved as they exist today.

## Implement Consistent Regulation of Access to Telecommunications Support Structures

### *Recommendation:*

The *Telecommunications Act* should be amended to give the CRTC exclusive jurisdiction to regulate the terms and rates for attachment of telecommunications facilities to support structures. CCSA endorses the recommended amendments to ss. 43 and 44 set out below:

### Definition

**43 (1)** In this section and section 44, *Canadian carrier* includes a *distribution undertaking* as that term is defined in subsection 2(1) of the *Broadcasting Act*.

**(1.1)** In this section, *electrical utility undertaking* means an undertaking engaged in the distribution or transport of electricity.

**(1.2)** In this section, a *supporting structure* includes:

- (a) poles, strands or ducts owned by Canadian carriers;
- (b) poles, strands or ducts owned by electrical utility undertakings, regardless of whether they are otherwise regulated at the provincial level of government; and .
- (c) poles, strands or ducts, as well as any public property that is capable of being used as a support for telecommunications facilities, including but not limited to, street light standards, traffic lights, transit shelters or the exterior of buildings, that are owned by a municipality or other public authority.

### **Entry on public property**

(2) Subject to subsections (3) and (4) and section 44, a Canadian carrier may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its telecommunications facilities and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

(2.1) Subject to subsections (3) and (4) and section 44, a Canadian carrier may enter on any highway, transit corridor or other public place for the purpose of attaching its telecommunications facilities to any supporting structure, but shall not unduly interfere with the public use and enjoyment of the highway, transit corridor or other public place.

(2.2) Subject to subsections (3) and (4) and section 44, a Canadian carrier may use any supporting structures owned by a municipality or public authority for the purpose of constructing, maintaining or operating its telecommunications facilities, and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the municipality's or public authority's use of those supporting structures or the safety of the public.

### **Consent of municipality**

(3) No Canadian carrier shall construct a telecommunications facility on, over, under or along a highway or other public place, or attach its telecommunications facilities to any supporting structures owned by a municipality or public authority, without the consent of the municipality or other public authority having jurisdiction over the highway, other public place or supporting structures.

### **Application by carrier**

(4) Where a Canadian carrier cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct, maintain or operate a telecommunications facility or attach its telecommunications facilities to any supporting

structure, the Canadian carrier may apply to the Commission for permission to construct it or attach it, as the case may be, and the Commission may, having due regard to the use and enjoyment of the highway, other public place or supporting structure by others, including the municipality or public authority, grant the permission subject to any conditions that the Commission determines, including, but not limited to, the terms of access and the applicable rate, if any, payable.

#### Access by others

(5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to a supporting structure of a Canadian carrier or an electrical utility undertaking constructed on a highway or other public place, or on an easement or real property whether owned by or licensed to the owner of the supporting structure, that person may apply to the Commission for a right of access to the supporting structure for the purpose of attaching its telecommunications facilities in order to provide its services, and the Commission may grant the permission subject to any conditions that the Commission determines including, but not limited to, the terms of access and the applicable rate, if any, payable to the owner of the supporting structure.

#### Applications by municipalities and other authorities

44 On application by a municipality or other public authority, the Commission may

- (a) order a Canadian carrier, subject to any conditions that the Commission determines, to bury or alter the route of any telecommunications facility situated or proposed to be situated within the jurisdiction of the municipality or public authority; or
- (b) prohibit the construction, maintenance or operation by a Canadian carrier of any such telecommunications facility except as directed by the Commission.

#### Future Vision

Responsibility for Priority, Efficient Delivery and Affordability of Programming

#### *Recommendation:*

**The *Broadcasting Act* should be amended to place obligations on programming undertakings relating to priority carriage of Canadian services, making programming available to all Canadians and efficient delivery of programming to Canadians at affordable rates.**

A new s. 3(1)(t.1) should be added to the *Act*, as follows:

**programming undertakings, to the extent they host programming for direct delivery to Canadians**

**(i), should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,**

**(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,**

**(iii) should make access to their programming available on a non-discriminatory basis to all broadcasting distribution undertakings and carriers; and**

A new s. 3(1)(t.2) should be added to the *Act*, as follows:

**programming undertakings should, where they provide programming services to broadcasting distribution undertakings or carriers pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services.**

***Recommendation:***

**The *Broadcasting Act* should be amended by adding a new s. 4(5) as follows:**

**4(5) For the purpose of s. 4(4), a telecommunications carrier that provides access to broadcasting through its network, including through a navigational tool or recommendation engine acts solely in the capacity of a telecommunications common carrier.**