

April 23, 2019

VIA Intervention Comment Form

Mr. Claude Doucet  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Doucet,

**Subject: Telecom Notice of Consultation CRTC 2018-422: Call for comments –  
Proceeding to establish a mandatory code for Internet services, CCSA final  
Written Comment**

1. The Canadian Communication Systems Alliance (“CCSA”) speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 110 companies operating from sea to sea to sea, including across the North.

2. CCSA notes the Commission’s statement at paragraph 3(c) of TNC CRTC 2018-422 (the “Notice”) that:

Since 87% of Canadians with Internet services purchase their retail Internet subscriptions from a ‘traditional telephone’ or ‘cable’ company, limiting the initial application of the Internet Code to large facilities-based Internet service providers (ISPs) would strike an appropriate balance between addressing consumer concerns and not placing a heavy regulatory burden on smaller carriers or resellers.”

3. CCSA appreciates the Commission’s attention to the administrative burden that mandatory compliance with such a Code and mandatory participation in the CCTS would impose on the many small ISPs that CCSA represents.

4. As it stated in its initial comment, CCSA continues to agree with and strongly support the Commission’s preliminary position, at paragraph 3(d) of the Notice, that the Code, if ultimately established, “should apply to all retail fixed Internet services provided to individuals and small businesses by large facilities based ISPs”.

5. CCSA has reviewed the Reply Comments of the Canadian Network Operators Consortium (“CNOOC”)¹ and agrees completely with both the arguments and conclusions set out by CNOOC in those comments.
6. In particular, CCSA supports CNOOC’s statements that:

CNOOC acknowledges the Policy Direction requirement for regulation that is symmetrical and competitively neutral. However, this requirement is not absolute. The requirement is to be implemented “to the maximum extent possible”.² More importantly in assessing the application of these principles, the focus must be on the effect of regulatory requirements and not merely on their existence. If the same regulatory requirement imposed on two classes of services providers results in an outcome that is much more onerous for one class than another when the requirement is not justified by other relevant regulatory considerations, it cannot be said that the requirement results in regulation that is either symmetrical or competitively neutral.³

and, further, that:

In the present circumstances, symmetrical and neutral application of the Internet Code is inappropriate given that there exists two classes of providers (i.e., large facilities-based ISPs and competitive service providers) who: (1) do not contribute equally to the need for the protections that the Internet Code would provide; and (2) have radically different capacities to implement and comply with the requirements of the Internet Code. These considerations warrant different regulatory treatment for each of the two classes of providers in question.⁴

7. CNOOC continues to say that:

Conversely, competitive service providers do not meaningfully contribute to Internet service complaints and would be subject to an unduly heavy regulatory burden if required to implement an additional consumer code.⁵

8. These conclusions are especially true with respect to the many, often very small service providers which CCSA represents.

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¹ Telecom Notice Of Consultation CRTC 2018-422, “Call for Comments – Proceeding to Establish a Mandatory Code for Internet Services, Reply Of Canadian Network Operators Consortium Inc.”, 28 January 2019.

² The actual language at s. 1(b)(iii) of the 2006 Policy Direction requires the Commission to use measures that satisfy the following criteria, namely, those that, “if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner”.

³ *Ibid.* at para 47.

⁴ *Ibid.* at para. 48.

⁵ *Ibid.* at para. 50.

9. Many of those companies have a history of operations as BDUs who added retail Internet service to their offerings when they upgraded their broadcasting distribution networks to two-way digital technology.
10. A number of those members are small municipalities, community cooperatives, First Nations or volunteer organizations.
11. Speaking generally, the RFI responses filed by CCSA on behalf of its members indicated that many of these smaller providers:
  - do not have written contracts with their retail customers but, rather, rely on standard terms of service published on their websites;
  - permit their customers to cancel service at any time without penalty;
  - do not experience significant amounts of customer complaints; and
  - will do whatever they can to resolve customer complaints as quickly and simply as possible.
12. As examples, quotes from RFI responses filed on behalf of CCSA members include the following:
  - “We are a small internet provider so much of this does not apply to us. Our clients are not under any contracts. We want customers to like and want our services, instead of having them in a contract. All business we do is on a monthly basis. We have no real opinion on a mandatory code for Internet services. Most of questions do not apply to us.”
  - “[Our company] does not use contracts for residential customers. We do however have an accepted usage policy which in no way affects the consumers right to terminate at will. All of our promotional literature and materials clearly spell out the price the customer will pay throughout the term of the promotion and that they may cancel the service at any time.”
  - “Most of the questions regarding ISP Code of Conduct doesn’t apply to [our company] as we do not have contracts, do not solicit sale, nor have promotions.”
  - “Le client peut mettre fin aux services en tout temps sans délais et sans pénalités ou frais. Nous avons toutefois une politique d'utilisation de nos services qui est en place.”
  - “Nous n’avons aucun contrat avec nos membres. Nous ne faisons aucune promotion.” “Une fois son forfait choisi, il paie pour celui-ci mensuellement. Il peut changer son forfait n’importe quand sans préavis.”
  - “Nous n’avons pas de frais d’utilisation excédentaire, nous n’avons pas de frais de résiliation. Pour un débranchement, le client n’a qu’à nous appeler et nous le débranchons la journée voulue.”

- “We are members of the general public who volunteer our time to operate a non-profit ISP. Our society provides Internet services to residents of our remote community (less than 200 subscribers) solely on the basis of individual contracts. We don’t offer small business contracts and have no professional background or experience in providing small business Internet services.”

“[W]e offer the same on-going services for the same prices to all members, we don’t make special offers, offer limited time promotions or solicit new business. Interested parties who contact us (by phone, email or in person) about becoming members to receive Internet service are given information about our services (BB pkgs, pkg speeds and monthly pkg limits) and our costs (refundable set-up deposits, new connection fee, monthly pkg charge and overusage charge).”

- “As there are no minimum time-frames to keep the service, no early cancellation fees, no rate increases during promotional periods, and because all pricing is given before and after taxes, our offers are clear and transparent. Disputes are rare to non-existent.”
- *Question 3: Explain what steps you currently take to remedy a situation if a customer considers that, upon reading the written contract, it does not fully match with the offer made.*

*Answer:* “This is not an occurrence we are familiar with. In the event such a thing might happen in future, and we couldn’t find a mutually agreeable resolution to the situation, we would simply release the customer from further obligations.”

13. Collectively, those RFI responses illustrate the truths that those smaller distribution companies generally:
  - found that most of the questions in the Commission’s RFI simply did not apply to the way they conduct business with their retail customers; and
  - would have great difficulty understanding and complying with the provisions of a new ISP Code.
14. That is, for the majority of ISPs comprised within CCSA’s membership, imposition of the proposed ISP Code would be a very awkward fit with their actual business practices and, truly, would create a new regulatory burden with which such companies would be extremely ill-equipped to cope.
15. As can be seen from those comments, customer care is paramount to smaller ISPs who operate and serve customers – customers with whom they tend to have close relationships – in their local communities. The retail relationship is as informal and practical as it can be and, because that model reduces the provider’s costs, customers benefit from that approach.
16. Such customers are highly unlikely to benefit from new requirements placed on their local service providers to offer services and promotions using written contractual vehicles designed to comply with the proposed Code’s provisions. Rather, such a requirement is likely to introduce new cost and complexity to both the smaller ISPs and their customers.

17. In summary, imposition of the proposed ISP code on ISPs such as CCSA represents would simply be a poor solution to a problem which does not exist.
18. Once again, CCSA thanks the Commission for recognizing the potential undue burden which imposition of the proposed Code on smaller ISPs would represent.
19. Once again, CCSA strongly recommends that the Commission maintain its preliminary position that the proposed ISP Code “should apply to all retail fixed Internet services provided to individuals and small businesses by large facilities based ISPs” and not to the smaller ISPs.
20. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,



Christopher J. Edwards  
Vice-President, Regulatory Affairs

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