



## Telecom Decision CRTC 2007-130

Ottawa, 20 December 2007

### Establishment of an independent telecommunications consumer agency

Reference: 8665-C12-200711748

*In this Decision, the Commission approves, subject to certain conditions being met, the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. (the Agency), a telecommunications consumer agency established by telecommunications service providers (TSPs).*

*The Commission determines that all TSPs with annual Canadian telecommunications service revenues exceeding \$10 million are required to be members of the Agency.*

*In addition, the Commission expects modifications to be made to the Agency's governance structure, mandate, and remedies.*

*The Commission expects the applicable Agency documents to be modified as per the changes set out in this Decision and expects the Agency's Founding Members to file these documents with the Commission, no later than 45 days following the date of this Decision, to demonstrate that the Commission's conditions of approval have been met.*

*The Commission requests that the Agency report back to the Commission within three months of the date of this Decision on issues related to the Agency's operating procedures and public awareness campaign. The Commission expects any necessary updates to applicable Agency documents to be filed at that time.*

### Introduction

1. The Governor in Council's *Order requiring the CRTC to report to the Governor in Council on consumer complaints*, P.C. 2007-533, 4 April 2007 (the Order) states that an industry-established consumer agency, independent from the telecommunications industry, with a mandate to resolve complaints from individual and small business retail customers should be an integral component of a deregulated telecommunications market.
2. The Order sets out, among other things, general guidelines with respect to the mandate and governance structure for such a consumer agency. It also states that the consumer agency's structure and mandate would be approved by the Commission.
3. In response to the Order, certain telecommunications service providers (TSPs) – Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Cogeco Cable Canada Inc.; MTS Allstream Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Inc.; Saskatchewan Telecommunications; TELUS Communications Company; Virgin Mobile Canada; and Vonage Canada Corporation – established the Commissioner for Complaints for Telecommunications Services Inc. (the Agency). These TSPs

were later joined by Bragg Communications Incorporated and are collectively referred to in this Decision as the Founding Members. The Agency began operating on 23 July 2007. The Founding Members filed a proposal with the Commission on that same date, which they subsequently amended, in which they submitted that the Agency fulfilled the expectations set out in the Order.

4. In Telecom Public Notice 2007-16, the Commission initiated a proceeding, including a public consultation, and invited comments on, among other things, the structure and mandate of the Agency.
5. The Commission received written comments in connection with the proposal, and numerous parties made oral presentations at the public consultation. Participating parties are listed in Appendix 1 to this Decision. The public record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), under "Public Proceedings."
6. The record of the proceeding closed on 23 November 2007.

### **Overview**

7. The Order states that all TSPs should participate in and contribute to the financing of a consumer agency that would be independent from the telecommunications industry and would be effective in responding to the telecommunication complaints of individual and small business retail customers (consumers).
8. The Founding Members submitted that the Agency was a new industry-established dispute resolution mechanism for telecommunications consumers and that its governing body, once finalized, would be independent from the telecommunications industry. They also submitted that, as such, the Agency met the expectations set out in the Order. The Founding Members further submitted that if the Commission, in approving the Agency's structure and mandate, were to find that certain modifications were required, the Commission should only modify the Agency to the extent required to meet the Order's expectations.
9. TSPs that had not become members of the Agency generally supported the key principles of the Founding Members' proposal, including the principle of voluntary membership. TSPs represented by the Canadian Cable Systems Alliance Inc. (CCSA) and the Canadian Independent Telephone Company Joint Task Force (collectively, small TSPs), as well as Primus Telecommunications Canada Inc. (Primus), expressed concerns about the financing of the Agency and other requirements for TSPs if membership in the Agency were mandatory.
10. The Consumer Groups<sup>1</sup> submitted that the Agency, as proposed, did not meet the expectations of the Order, notably the expectation that it be effective for consumers and independent from the telecommunications industry.

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<sup>1</sup> In this Decision, the term "Consumer Groups" refers collectively to ARCH Disability Law Centre (ARCH); the British Columbia Public Interest Advocacy Centre for BCOAPO; the Canadian Internet Policy and Public Interest Clinic (CIPPIC); the Public Interest Advocacy Centre, as counsel for the Consumers Council of Canada and the National Anti-Poverty Organization; and l'Union des consommateurs.

11. The Commission acknowledges the efforts made by the Founding Members to both establish the Agency shortly after the issuance of the Order and to meet the expectations set out in the Order. The Commission notes that parties to this proceeding submitted many recommendations, with a view toward making the Agency more effective, independent, and consumer-friendly. Based on the record of the proceeding, the Commission considers that some modifications, as set out in this Decision, are required to ensure the Agency's effectiveness and independence.
12. In this Decision, the Commission will consider the key issues of membership, governance structure, mandate, and remedies, as well as other matters.

### **I. Membership**

13. The Order states that all TSPs should participate in and contribute to the financing of an effective consumer agency. The Order also states that the consumer agency should have a budget set by its governing body and provided by the industry at a level sufficient to effectively execute its mandate.
14. The Founding Members proposed that membership in the Agency be voluntary. They considered that based on the current level of TSP participation in the Agency, the interests of most consumers would be protected without requiring mandatory membership.
15. The Founding Members stated that mandatory membership would not be inconsistent with *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction); however, they considered that voluntary membership was more in keeping with the principles of the Policy Direction.
16. The Founding Members proposed a funding formula that, in their view, would provide sufficient funding for the Agency to fulfill its mandate. They indicated that the minimum fee for enrolling in the Agency, which would apply to smaller TSPs, would be \$1,000.
17. Shaw Communications Inc. (Shaw) submitted that mandatory membership in the Agency would be contrary to the Policy Direction since there was no evidence that market forces could not be relied upon to ensure that non-member TSPs participated in consumer complaints resolution processes.
18. Those TSPs that were not members of the Agency generally supported voluntary membership and argued that market forces would be sufficient to encourage TSPs to enrol. They submitted that the Commission might not have the authority to require TSPs to participate in and fund an Agency that could impose binding monetary decisions. They also submitted that mandatory membership raised logistical and enforcement issues.
19. The small TSPs and Primus expressed concerns about how the Agency would be financed if membership were made mandatory. Primus submitted that it should not bear full responsibility for the costs associated with complaints that involved an underlying service provider.

20. The CCSA submitted that if membership were mandatory, exemptions should be made for smaller TSPs to minimize administrative and financial concerns.
21. The Consumer Groups generally favoured mandatory membership for all TSPs because they considered that maximum participation in the Agency would benefit the maximum number of consumers and would secure the longevity of the Agency. The Consumer Groups submitted that mandatory membership for all TSPs would be competitively neutral. They also submitted that the Order, not market forces, was driving the development of the Agency.
22. Both the Founding Members and the Consumer Groups indicated that when a provider refused to join the Agency, it would be preferable for a Commission-led process to be undertaken to discipline non-member TSPs, rather than requiring the Agency to do so.

### **Commission's analysis**

#### ***(i) Mandatory versus voluntary membership***

23. The Commission notes that several major TSPs, including Shaw and Primus, have not yet joined the Agency. The Commission considers that in order for the Agency to be effective, its membership must be as comprehensive as possible to ensure that as many consumers as possible have access to the Agency's complaint resolution services. Therefore, it may be appropriate to make membership in the Agency mandatory.
24. The Commission considers, however, that the duties and fees associated with membership in the Agency could have an adverse impact on smaller TSPs and could raise administrative concerns. As such, the Commission considers that it may be appropriate to not require smaller TSPs to become members.
25. The Commission notes that TSPs with annual Canadian telecommunications service revenues in excess of \$10 million account for approximately 95 percent of total Canadian telecommunications service revenues. The Commission considers that establishing a membership requirement threshold at that level would ensure that membership in the Agency is sufficiently comprehensive.

#### ***(ii) Application of the Policy Direction***

26. The Commission notes that several parties made submissions regarding the applicability of the Policy Direction to the issue of membership in the Agency.
27. In regard to subparagraph 1(b)(i) of the Policy Direction, the Commission considers that a requirement that TSPs with annual Canadian telecommunications service revenues in excess of \$10 million become members of the Agency would advance the policy objectives set out in paragraphs 7(b), (f), and (h) of the *Telecommunications Act* (the Act).
28. With regard to subparagraph 1(a)(i) of the Policy Direction, the Commission notes that TSPs did not establish the Agency until after the Governor in Council had issued the Order. The Commission also notes that while the Order states that all TSPs should participate in the Agency, not all major TSPs have become members. Accordingly, the Commission considers that it cannot rely on market forces to achieve the policy objectives referred to above.

29. With respect to subparagraphs 1(a)(ii) and 1(b)(iii) of the Policy Direction, the Commission considers that requiring TSPs to become members of the Agency would be efficient and proportionate to its purpose, would interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives referred to above, and would be implemented in a symmetrical and competitively neutral manner. The Commission considers that requiring all TSPs with annual Canadian telecommunications service revenues above \$10 million to be members of the Agency would ensure that as many consumers as possible would have recourse to the Agency for complaints related to telecommunications services, without a significant administrative and financial burden being imposed on TSPs.

*(iii) Funding*

30. Regarding Primus's concern about responsibility for costs associated with complaints involving an underlying service provider, the Commission considers that funding is an issue best determined by the Agency's membership and governing body, as long as the Agency is sufficiently funded to effectively execute its mandate. The Commission also considers that, in the context of the Agency's complaints resolution process, the TSP with the direct consumer relationship should be accountable to the complainant.

**Commission's determinations**

31. The Commission determines, under section 24 of the Act, that

- as a condition of providing telecommunications service, commencing 1 February 2008, all Canadian carriers with annual Canadian telecommunications service revenues exceeding \$10 million in the previous fiscal year, as reported to the Commission under the contribution regime, are required to be members of the Agency; and
- as a condition of providing telecommunications service to any reseller, all Canadian carriers are required to include in their service contracts and other arrangements with such resellers the stipulation that, commencing 1 February 2008, any such reseller exceeding the threshold noted above is required to be a member of the Agency.

32. The Commission's approval is conditional on all applicable Agency documents being amended to reflect the mandatory membership requirements set out above.

33. The Commission finds that its determinations on membership are consistent with the Policy Direction.

34. The Commission expects that when the Agency receives a complaint from a customer of a TSP that may be required to be, but is not yet, a member of the Agency, the Agency will notify the Commission, and the Commission will take appropriate action.

35. The Commission also expects the Agency to continue to refine the funding model to encourage the enrolment of those TSPs with annual Canadian telecommunications service revenues of \$10 million or less and to address other budgeting concerns.

## **II. Governance structure**

36. The Order states that the consumer agency should be independent from the telecommunications industry and should be directed by a governing body composed of (a) a majority of members who are not affiliated with any TSP and (b) a chief executive officer who is appointed by the governing body and is not affiliated with any TSP.
37. The Founding Members proposed that the Agency have two primary decision makers – a board of directors (Board) and a Commissioner (the chief executive officer or CEO). They submitted that the Board would administer the affairs of the Agency, while the CEO's primary responsibility would be to investigate, assist in the resolution of, and make recommendations and decisions related to complaints. They also indicated that the CEO would operate independently of the Board.
38. The Founding Members proposed a Board comprised of three directors representing the telecommunications industry (industry directors) and four directors independent of telecommunications industry affiliation (independent directors). The Founding Members proposed that consumer groups be responsible for appointing two of the four independent directors and that the other two be nominated through an independent process. These directors are referred to as consumer-group-appointed independent directors and other independent directors, respectively.
39. The Founding Members submitted that an independent three-person ad hoc nominating committee would nominate the initial candidates for the positions of other independent directors. They also submitted that the provisional Board<sup>2</sup> would not be able to veto those nominations. Thereafter, replacements for the positions of other independent directors would be nominated by the independent directors. They noted that the ad hoc nominating committee had been organized by a national executive search firm and operated at arm's length from the provisional Board.
40. The Founding Members proposed that, among other restrictions, people employed by a TSP or a consumer advocacy group within the previous three years be excluded from nomination as other independent directors. The Founding Members also proposed that the independent directors would nominate candidates for the position of CEO and that the eligibility criteria for the CEO would be the same as for the other independent directors.

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<sup>2</sup> The provisional Board, which includes representatives from two TSPs and an associated law firm, is the governing body of the Agency until the permanent Board is established.

41. Regarding Board decisions, the Founding Members proposed different voting approval thresholds – simple majority votes, special resolutions,<sup>3</sup> extraordinary resolutions,<sup>4</sup> and unanimous approval by industry directors only – depending on the matter to be decided.
42. The Founding Members proposed that, among other things, (a) the approval of the annual report and any reports on issues and trends be subject to simple majority vote; (b) special resolutions apply to such matters as the appointment of other independent directors and the chair of the Board (the Chair); (c) extraordinary resolutions apply to such matters as the development and ratification of industry codes of conduct or standards; amendments to the letters patent, bylaws, membership agreement, and procedural code; the appointment of the CEO; the removal of the CEO or the Chair; and the approval or amendment of the annual budget and business plan; and (d) unanimous industry approval apply to changes to the Agency's funding model.
43. The Consumer Groups considered that the proposed governance structure was not sufficiently independent of the telecommunications industry to meet the expectation set out in the Order. They proposed a modified governance structure with equal representation of consumer-group-appointed and TSP-appointed directors: specifically, three industry directors, three consumer-group-appointed directors, and one director that would be independent from both TSPs and consumer groups. ARCH Disability Law Centre (ARCH) proposed that there be representation from the disability community on the Board.
44. The Consumer Groups argued that it was inappropriate for the Founding Members to suggest that independence from the telecommunications industry should include independence from consumer advocacy groups. In this regard, the Consumer Groups proposed that the clause that prevented persons employed by a consumer advocacy group within the previous three years from being eligible to become other independent directors be removed.
45. The Consumer Groups considered that since the Board had responsibility for both corporate governance and policy-making, the requirement for certain special and extraordinary resolutions compromised the independence of the Agency.
46. In this regard, the Consumer Groups considered that amendments to matters such as the procedural code and bylaws would be required to expand the Agency's procedures and mandate in order to better serve consumers, but that the industry directors would likely block any proposed amendments if such measures conflicted with the interests of TSPs.
47. The Consumer Groups also objected to the voting approval thresholds for the appointment and removal of the CEO and the Chair. They considered that there was no need to give TSPs disproportionate influence on those matters since those positions were already subject to independence criteria.
48. The Consumer Groups further objected to the requirement for Board approval on industry trends and systemic issues. They indicated that the CEO should be free to research and report on those issues without Board approval.

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<sup>3</sup> Special resolutions require the approval of at least 2/3 of the Board.

<sup>4</sup> Extraordinary resolutions require the approval of at least 2/3 of industry directors and at least 2/3 of the independent directors.

### **Commission's analysis**

49. The Commission notes that the proposed Board is comprised of a majority of directors not affiliated with TSPs and considers this to be appropriate. The Commission also considers the proposed division of independent directors into two consumer-group-appointed and two other independent directors to be appropriate.
50. The Commission considers the process for nominating the initial other independent directors to be appropriate given that the members of the ad hoc nominating committee were selected by an independent firm, the members of the ad hoc committee were independent from the industry, and the provisional Board could not veto the nominations of the ad hoc committee. The Commission notes, however, that there is currently no process in place for the nomination and appointment of the two consumer-group-appointed directors. The Commission considers that the Consumer Groups active in this proceeding should establish a transparent process for the nomination and appointment of the consumer-group-appointed directors.
51. The Commission considers that the proposed nomination restrictions described in paragraph 40 and voting thresholds described in paragraph 42 should be modified in order to ensure an effective and independent Agency.
52. The Commission considers that the restriction prohibiting persons employed by a consumer advocacy group within the previous three years from being eligible as other independent directors is unwarranted. In this regard, consistent with the Order, the Commission considers that the Agency is to be independent from only the telecommunications industry, not consumer advocacy groups. The Commission also considers that other independent directors should be selected from among the best candidates available to the Agency, provided that there is no recent industry affiliation.
53. The Commission considers that requiring special and extraordinary resolutions for Board approval on certain matters, as proposed, would enable industry directors to limit the Agency's effectiveness and independence. Accordingly, the Commission considers that the voting resolutions should be modified as follows: a simple majority vote would be required for the appointment of the Chair, appointment of the CEO, and approval, repeal, or amendment to the procedural code; and a special resolution would be required for the approval, repeal, or amendment of any bylaws (except regarding the funding formula) and removal of the CEO or Chair. The Commission considers that the other voting thresholds, as proposed, would be appropriate.

### **Commission's determinations**

54. The Commission concludes that the Agency's proposed governance structure, including the nomination processes, is generally appropriate. However, the Commission's approval is conditional on all applicable Agency documents being amended to
  - remove restrictions that prohibit persons employed by a consumer advocacy group within the previous three years from eligibility as other independent directors, and



- reflect the voting approval thresholds set out in Appendix 2 to this Decision.

### **III. Mandate**

55. The Commission considers that there are four sub-issues to be addressed with respect to the mandate of the Agency: the scope of eligible complaints, industry codes of conduct and standards, identification of trends that may warrant further attention, and the annual report.

#### **(i) Scope of eligible complaints**

56. The Founding Members provided a list of telecommunications services and matters to be included in the scope of eligible complaints for the Agency, to which no party objected.

57. The Founding Members also provided a list of telecommunications services and matters to be excluded from the scope of eligible complaints. This list included, among other things, regulated services, claims of false or misleading advertising, policy matters, prices, privacy/confidentiality, general operating practices, and complaints more appropriately dealt with by another tribunal.

58. The Founding Members argued that it would not be appropriate to include regulated services in the scope of eligible complaints since consumers of regulated services had recourse to the Commission. However, they submitted that the Agency would accept complaints related to bundles that combined forborne and regulated services.

59. The Consumer Groups submitted that the Agency would most benefit consumers if the scope of ineligible complaints were as limited as possible. In this regard, they argued that many of the categories of ineligible complaints were overly broad and/or vague and could exclude many complaints. The Consumer Groups submitted that regulated services should be in the scope of eligible complaints, in order to reduce consumer confusion. Accordingly, the Consumer Groups opposed most of the proposed exclusions.

60. The Competition Bureau submitted that the Agency's mandate should be expanded to include complaints related to false or misleading advertising.

#### ***Commission's analysis***

61. The Commission notes that while the Order sets out that the mandate of the consumer agency should include resolving complaints from consumers, it does not otherwise define the scope of eligible complaints.

62. Given that the Agency has only recently begun operating and that the Commission has jurisdiction over regulated services, the Commission considers that it would not be appropriate at this time to expand the Agency's mandate to include resolving complaints regarding regulated services.

63. The Commission notes the concerns expressed by the Consumer Groups that many of the matters proposed to be out of scope appear overly broad or vague and that the inflexible application of these categories might result in many valid complaints being deemed out of scope by the Agency.

*Commission's determinations*

64. The Commission concludes that the list of telecommunications services and matters deemed to be in and out of scope of the Agency's mandate is generally appropriate at this time. However, the Commission expects
- the Board to review the list of services and matters deemed to be outside the scope of the Agency's mandate and provide clear definitions, with examples, of these services and matters; and
  - the Agency to track complaints deemed to be out of scope and categorize them by type of ineligible complaint.

**(ii) Industry codes of conduct and standards**

65. The Order states that the mandate of the consumer agency should include the development or approval of related industry codes of conduct and standards.
66. The Founding Members submitted that the Agency might assist in the development or approval of industry-related codes or standards, but only at the request of a TSP member, a director of the Board, or the CEO.

*Commission's analysis*

67. The Commission considers that the list of parties that may request that the Agency develop industry codes or standards should be expanded to include the Commission. The Commission considers that any industry codes or standards that it requests from the Agency should be filed with the Commission, once they have been approved by the Board.

*Commission's determinations*

68. The Commission's approval is conditional on all applicable Agency documents being amended to
- expand the list of parties who may request that the Agency develop industry codes or standards to include the Commission; and
  - require the filing with the Commission of any industry codes or standards that it requests from the Agency, once they have been approved by the Board.

**(iii) Identification of trends that may warrant further attention**

69. The Order states that the mandate of the consumer agency would include identifying issues or trends that may warrant further attention by the Commission or the government.

70. The Founding Members indicated that, at the request of TSP members, the Agency could identify and report on issues or trends within its mandate that might warrant further attention by its members, the Commission, or the government. The Founding Members indicated that such reports would maintain the confidentiality of TSP members.
71. The Consumer Groups did not consider it appropriate to limit the identification of issues or trends to TSP requests only. The Consumer Groups submitted that the Agency's CEO would be in a position to provide valuable input to the Commission and the government on systemic issues and should be empowered to inquire into, report on, and make recommendations to the industry and to the Commission on issues of consumer concern involving the telecommunications industry, even where such issues might not qualify as eligible consumer complaints. The Consumer Groups opposed the proposal that TSPs never be named in reports about systemic issues.

*Commission's analysis*

72. The Commission considers that the ability to identify and report on trends and systemic issues is an important function of the Agency. The Commission also considers that the list of parties who may identify trends or systemic issues that may warrant further attention should be expanded to include any director of the Board, the CEO, and the Commission. Further, the scope of such reports should include matters outside the Agency's scope of eligible complaints for these reports to be comprehensive and effective. Finally, such reports should identify individual TSP members, where appropriate.

*Commission's determinations*

73. The Commission's approval is conditional on all applicable Agency documents being amended to
- expand the list of parties that may identify trends or systemic issues for Agency reports to include any director of the Board, the CEO, and the Commission; and
  - include matters outside the Agency's scope of eligible complaints in reports that identify trends or systemic issues, and identify individual TSP members in these reports, where appropriate.

**(iv) The annual report**

74. The Order states that the mandate of the consumer agency should include publishing an annual report on the nature, number, and resolution of complaints received for each TSP.
75. The Founding Members indicated that the Agency would publish an annual report, following its annual general meeting, describing the nature, number, and resolution by stage of eligible complaints for each TSP member. Parties did not object to this proposal.

### *Commission's analysis*

76. The Commission considers the Founding Members' proposal to be generally appropriate in this regard. The Commission also considers that the annual report should be published within a reasonable timeframe after the Agency's fiscal year-end.

### *Commission's determination*

77. The Commission's approval is conditional on all applicable Agency documents being amended to require the publication of its annual report within 90 days following the end of the Agency's fiscal year.

## **IV. Remedies**

78. The Founding Members proposed that the Agency's remedies available to consumers include requiring a TSP to (a) provide an explanation or an apology, (b) undertake to do or cease a specified activity or activities, and (c) provide monetary compensation.
79. The Founding Members proposed that the CEO be able to recommend monetary compensation of up to \$1,000, but that any binding award granted by the CEO at the final decision stage be subject to any applicable limitation of liability clause contained in the TSP's contract. They noted that amounts refunded or credited as a result of billing errors would not constitute monetary compensation and were not subject to the \$1,000 limit. The Founding Members submitted that monetary compensation was limited to \$1,000 since a limit in excess of this threshold would, in their view, require that the Agency develop further procedural safeguards, similar to those found in small claims courts.
80. The Founding Members submitted that the appropriate level of limitation of liability should be determined by the market. In their view, the CEO must apply contractual limitations of liability at the final decision stage of the complaints resolution process because the courts enforce limitation of liability clauses. The Founding Members also argued that very few complaints were expected to reach the final stage in the Agency's complaints resolution process and that the CEO would not be prevented from issuing non-binding recommendations for monetary compensation exceeding contractual limitations of liability prior to that stage. In their view, the Order did not contemplate that TSPs should waive limitation of liability clauses.
81. Primus submitted that if the Commission empowered the Agency to overrule limitation of liability clauses, it would amount to re-regulation or, in the case of resellers, regulating TSPs' terms and conditions of service for the first time.
82. The Consumer Groups submitted that the limit of \$1,000 was inappropriately low. They argued that, for example, the failure of a TSP to provide telecommunications services to consumers could result in a considerable loss to the consumer. The Consumer Groups proposed raising the limit to \$10,000 and submitted that raising the limit would not require any additional procedural safeguards. The Canadian Internet Policy and Public Interest Clinic (CIPPIC) argued that the Agency had similar procedural safeguards to small claims courts, which it noted had the power to award compensation of up to \$10,000 in some cases.

83. The Consumer Groups also opposed the Founding Members' proposal to have contractual limitations of liability supersede the CEO's monetary compensation decisions since this would hinder the Agency's ability to award meaningful monetary compensation. The Consumer Groups noted that TSP service contracts generally included limitations of liability of no greater than \$100.
84. CIPPIC argued that courts would not necessarily enforce limitation of liability clauses. It considered that courts would not enforce any of the TSP limitation of liability clauses that it had reviewed. CIPPIC submitted that if the Agency's procedural safeguards were sufficient for the Founding Members with respect to matters of breach of contract, then they should be sufficient for limitation of liability clauses.

#### **Commission's analysis**

85. The Commission notes that no party objected to the proposal that the CEO have the power to require a TSP to (a) provide an explanation or an apology to the consumer, (b) undertake to do or cease a specified activity or activities, and (c) provide monetary compensation to the consumer for losses associated with certain complaints. The Commission considers it appropriate that the Agency have access to the above-noted remedies.
86. The Commission considers that an independent dispute resolution scheme would not be effective at resolving many consumer disputes if it could not provide meaningful financial compensation to the consumer.
87. The Commission notes that certain consumers, particularly small business customers, could incur losses in excess of the Agency's current \$1,000 threshold during a dispute with their TSP. The Commission considers that the CEO should therefore have greater flexibility to award compensation to adequately compensate the loss incurred and that it would be inappropriate for the Agency to be limited to awarding amounts not exceeding \$1,000.
88. The Commission notes that courts do not always apply limitation of liability clauses. The Commission considers that it would be inappropriate to allow a limitation of liability clause in a customer contract to effectively overrule a binding decision made by the CEO since doing so would effectively render illusory the Agency's ability to award consumers meaningful financial compensation.
89. The Commission considers that a compensation limit of \$5,000 per complaint for the Agency should provide sufficient financial compensation to consumers who have disputes with their TSPs. The Commission does not consider that additional procedural safeguards would be necessary as a result of such an increase in monetary compensation.

#### **Commission's determinations**

90. The Commission's approval is conditional on all applicable Agency documents being amended
- such that the CEO is not, in the case of binding decisions, constrained by contractual limitations of liability; and

- to give the CEO the power to award compensation up to \$5,000 per complaint.

## **V. Other matters**

91. The Commission considers that there are three other matters to be addressed in this Decision: operating procedures, public awareness campaign, and future review of the Agency.

### **(i) Operating procedures**

92. The Founding Members proposed operating procedures for the Agency that addressed, among other things, the methods by which a consumer might make a complaint, the timeliness of the complaint resolution process, and the transfer of complaints that would be more appropriately dealt with by another body.
93. The Founding Members proposed that the methods by which a consumer might make a complaint be limited to mail, fax, or web form. They indicated that it was appropriate for the Agency not to accept complaints made via other mediums, including telephone and email, in order to facilitate the full development of the record of the complaint.
94. The Founding Members also proposed that the Agency not accept complaints made by consumer organizations. They indicated, however, that the CEO would have the discretion to treat certain complaints as group complaints if the same circumstances applied to each complaint.
95. The Founding Members submitted that all aspects of the Agency's complaint process should be accessible to all people, but they indicated that its complaint process was not yet fully accessible to people with disabilities. The Founding Members also submitted that the Agency's CEO would be responsible for developing fully accessible operations and information. In this regard, the Founding Members indicated that the CEO would have the discretion to accept complaints in non-written form under certain circumstances.
96. The Founding Members indicated that the Agency's complaint resolution process comprised four stages, with specific timelines associated with a TSP's response at each stage. They indicated that while there were no specific timelines associated with the Agency's deliberations during the process, the CEO could put in place performance standards for the Agency's work. They also indicated that while the Agency did not have a formal process for urgent matters, the CEO would have the discretion to shorten service intervals in some situations, such as where disconnection was imminent.
97. The Founding Members indicated that the Agency had developed working relationships with the Commission and other relevant agencies in order to share information on operational processes and to encourage properly directed transfers of complaints that were outside of the scope of the Agency.
98. The Consumer Groups raised concerns about several of the Agency's operating procedures. They considered it inappropriate to limit the Agency's methods of accepting complaints because such limitations would make the Agency less accessible to consumers. Accordingly, the Consumer Groups proposed that the Agency also accept complaints via telephone,

via email, or in person. They also indicated that the Agency should allow consumer organizations to present complaints on behalf of parties since this might be easier and/or more effective for certain consumers.

99. ARCH and the Canadian Association of the Deaf argued that, for the Agency to effectively accomplish its mandate, it must be fully accessible to all Canadians, including those with disabilities. ARCH submitted that the Agency should be willing to accept complaints in any form that met the needs of the complainant. ARCH submitted that the Agency should engage in meaningful and ongoing consultations with people with disabilities and disability-related organizations.
100. The Consumer Groups submitted that the timelines for TSPs to respond to complaints were too long and should be reduced. Non-member TSPs suggested that the Agency's timelines be flexible, recognizing the differences in how they resolved complaints.
101. The Consumer Groups also indicated that there should be a time limit on the Agency's deliberations. ARCH submitted that the Agency's timelines must be sufficiently flexible to accommodate people with disabilities. The Consumer Groups further indicated that the Agency should develop a formal process for urgent issues, such as disconnection.
102. The Consumer Groups and the Competition Bureau submitted that procedures among various parties should be formalized in order to coordinate complaint handling among the Agency, the Commission, and the Competition Bureau.

*Commission's analysis*

103. The Commission considers that the Agency and its complaint resolution process should be consumer-friendly and notes that several parties proposed detailed modifications to the Agency to achieve this goal. In this regard, the Commission considers that the Agency should (a) modify its complaint resolution process in order for it to be accessible to all telecommunications consumers, (b) ensure that the complaint resolution process is timely, and (c) ensure that complaints more appropriately addressed by another body are transferred efficiently to that body.
104. The Commission considers that the Agency should accept complaints from any consumer via telephone, email, and teletypewriter (TTY), as well as via mail, fax, and web form. The Commission also considers that the Agency should accept collective complaints as well as complaints made by a consumer organization on behalf of a consumer or group of consumers.
105. The Commission considers that the Agency should be more accessible to consumers, particularly to people with disabilities, and that it should make the Agency's services accessible early in the development process. Accordingly, the Commission considers that the Agency should meet, at a minimum, the standards of accessibility offered by the TSP with the highest accessibility standards. Further, the Commission considers that the CEO should consult with groups representing people with disabilities, with a view toward improving the Agency's operating procedures.

106. The Commission also considers that the activities at each stage of the complaint resolution process, including those performed by the Agency, should be subject to an appropriate and measurable time frame. The Commission considers that the Agency should publish a report on these performance standards on its website and update such information quarterly.
107. The Commission notes that it has procedures in place to deal with urgent matters, such as disconnection of primary exchange service, on an expedited basis and considers that the Agency should develop similar procedures.

*Commission's determinations*

108. The Commission expects
- the Agency to meet, at a minimum, the standards of accessibility offered by the TSP with the highest accessibility standards as soon as possible;
  - the Board to review and consider the other detailed modifications proposed by parties in this proceeding, with a view toward making the Agency's procedures more consumer-friendly; and
  - the Agency to establish a coordinating committee, comprising staff from the Agency, the Commission, and other organizations responsible for handling telecommunications-based complaints, in order to develop, among other things, an efficient referral/transfer process and a method to identify regulated and forborne local services and service areas.
109. The Commission requests that the Agency report to the Commission on the following matters:
- the acceptance of (a) any complaint made via telephone, email, and TTY; (b) collective complaints; and (c) complaints made by a consumer organization on behalf of one or more consumers;
  - the establishment of seamless transfers, where appropriate, to other organizations responsible for handling telecommunications-based complaints, including live transfers to the Commission;
  - the improvements to the Agency's accessibility, pursuant to consultations with groups representing people with disabilities;
  - the development of performance standards for the Agency; and
  - the development of expedited procedures for urgent matters.
110. The Commission requests the Agency to file, within three months of the date of this Decision, an update on its operating procedures, as well as its revised procedural code reflecting the Board's review of the above-noted matters.



**(ii) Public awareness campaign**

111. The Founding Members proposed that the CEO be responsible for developing a public awareness campaign for the Agency. They indicated that TSP members would be involved in the campaign as appropriate – for example, by including information about the Agency on TSP members' websites and in their directories.
112. The Consumer Groups submitted that the Agency should undertake a public awareness campaign that would clearly identify its procedures to the public. They also submitted that TSP members should provide information to consumers regarding the Agency's role, contact procedure, and contact information on their websites, in promotional literature, and on billing statements.

***Commission's analysis***

113. The Commission considers that the Agency would be more effective if there were broad public awareness regarding its role, responsibilities, and procedures. The Commission also considers that an appropriate communications plan would incorporate public awareness requirements for both the Agency and its TSP members.
114. The Commission considers that TSP members should use a variety of communications methods, such as directories, websites, and a standard notation on all billing statements, to inform consumers about the Agency. The Commission also considers that if an initial attempt by a TSP member to resolve a consumer's dispute fails, the TSP should inform the consumer about the Agency.
115. The Commission further considers that the Agency should allocate sufficient resources and develop a plan for its initial and ongoing public awareness campaigns.

***Commission's determinations***

116. The Commission requests that the Agency
  - develop a comprehensive communications plan for both the Agency and its TSP members, which should include a standard notation for all TSP member billing statements;
  - file the communications plan with the Commission, within three months of the date of this Decision; and
  - include, in all applicable Agency documents, the TSP members' responsibilities regarding the communications plan.

**(iii) Future review of the Agency**

117. The Commission considers that it would be appropriate to conduct a review of the Agency's structure and mandate, as well as related matters, in the future to examine how well the Agency is operating.

118. Accordingly, the Commission determines that it will initiate a review of the Agency, no later than three years after the Agency meets the conditions of approval set out in this Decision. The scope of the review will be determined at that time.

### **Conclusion**

119. The Commission **approves** the structure and the mandate of the Agency on the condition that all applicable Agency documents are amended as set out in this Decision.
120. The Commission expects the Founding Members to file, within 45 days of the date of this Decision, a copy of the Agency's membership agreement, bylaws, and procedural code, updated to include the required changes.

Secretary General

### **Related document**

- *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services, Telecom Public Notice CRTC 2007-16, 22 August 2007*

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

**Participating parties**

The following parties filed submissions and/or comments during this proceeding, and many also participated in the oral consultation:

- ARCH Disability Law Centre (ARCH)
- Bell Aliant Regional Communications, Limited Partnership
- Bell Canada
- Bragg Communications Incorporated
- The British Columbia Public Interest Advocacy Centre for BCOAPO
- The Canadian Association of the Deaf
- The Canadian Broadcast Standards Council
- The Canadian Cable Systems Alliance Inc. (CCSA)
- The Canadian Independent Telephone Company Joint Task Force (CITC-JTF)
- The Canadian Internet Policy and Public Interest Clinic (CIPPIC)
- The Commissioner of Competition (the Competition Bureau)
- Cogeco Cable Canada Inc.
- Execulink Telecom Inc.
- MTS Allstream Inc.
- Northwestel Inc.
- Primus Telecommunications Canada Inc.
- The Public Interest Advocacy Centre, as counsel for Consumer Council of Canada and National Anti-Poverty Organization
- Quebecor Media Inc., on behalf of Videotron Ltd.
- Rogers Communications Inc.
- Saskatchewan Telecommunications
- Shaw Communications Inc. (Shaw)
- Télébec, Limited Partnership
- TELUS Communications Company
- L'Union des consommateurs
- Virgin Mobile Canada
- Vonage Canada Corporation
- Mr. Christopher Smithers

**Voting approval thresholds for decisions of the Board**

<b>Board decision</b>	<b>Voting threshold</b>
Appointment of auditor(s) and fixing the remuneration of the auditor(s)	Majority vote
Appointment of a secretary or treasurer	Majority vote
Approval of the annual report	Majority vote
Appointment of the Chair	Majority vote
Appointment of the CEO	Majority vote
Approval, repeal, or amendment of provisions to the procedural code	Majority vote
Other business that may be transacted at a Board meeting	Majority vote
Approval of reports on issues and trends	Majority vote
Election of an independent director (excluding consumer-group-appointed independent directors)	Special resolution
Approval, repeal, or amendment of any bylaws, except for the funding formula	Special resolution
Removal of a TSP as a member of the Agency	Special resolution
Removal of a director (in certain circumstances)	Special resolution
Removal of the CEO or Chair	Special resolution
Approval of, or amendment to, the annual budget and business plan	Extraordinary resolution
Amendment of the letters patent	Extraordinary resolution
Approval of industry codes of conduct and standards	Extraordinary resolution
Approval of, or amendment to, the funding formula	Unanimous TSP vote