



# 2019 Legal and Regulatory Update for BCBA

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# Outline of Presentation

1. Telecom Notice of Consultation CRTC 2019-57 (Review of Mobile Wireless Services)
2. New Proposed Policy Direction
3. Internet Code
4. Broadband fund application guide
5. Telecom Decision CRTC 2019-112 (Swift Application to Review and Vary the CRTC Broadband Funding Policy) and related SWIFT Petition to Governor in Council
6. ISED Consultation to establish a new set of service areas (Tier 5) for Spectrum licensing
7. ISED Consultation to determine approach to annual adjustments to spectrum licence fees and equipment certification service
8. ISED Consultation on fixed point-to-point licence fees
9. CNOC HSA part 1
10. Court of Quebec decisions on the interaction between the federal Telecommunications Act and the Quebec Consumer Protection Act

# Telecom Notice of Consultation 2019-57

- The Commission has initiated its next wholesale mobile wireless services review
- The proceeding will focus on three core areas:
  - Competition in the retail market
  - The current wholesale mobile wireless service regulatory framework, with a focus on wholesale MVNO access
  - The future of mobile wireless services in Canada, with a focus on reducing barriers to infrastructure deployment

# Telecom Notice of Consultation 2019-57 (cont'd)

- Competition in the retail market
  - The Commission is concerned that
    - (i) retail market concentration remains high (due in part to a series of acquisitions), and
    - (ii) the Commission has been repeatedly required to intervene in the retail market, suggests that certain aspects of this market are not, in fact, sufficiently competitive in their current state to properly protect the interests of users and further the policy objectives set out in section 7 of the *Telecommunications Act*.

# Telecom Notice of Consultation 2019-57 (cont'd)

- Shift in focus from wholesale roaming which is now established to possibility of mandated MVNO access
  - Wholesale roaming
    - Given that final wholesale roaming tariffs were only recently put in place, the Commission considers that it is not necessary to revisit question of whether to mandate wholesale roaming services (or rates);
  - Wholesale MVNO access
    - The Commission acknowledged that there has been virtually no MVNO activity since the last wholesale wireless review;
    - **The Commission has taken the preliminary view that it would be appropriate to mandate wholesale MVNO access.**
      - However, with a view to establishing an appropriate mix of facilities-based and service-based competition, mandated access would be in place for a limited time and subject to a phase-out period.

# Telecom Notice of Consultation 2019-57 (cont'd)

- The future of mobile wireless services in Canada, with a focus on reducing barriers to infrastructure deployment
  - Parties are invited to provide their views on whether any further regulatory measures are required to reduce barriers to the deployment of cellular infrastructure
- TNC 2019-57 sets out 17 Questions relating to the three areas of focus listed above

# Telecom Notice of Consultation 2019-57 (cont'd)

- The procedure for this proceeding includes:
  - CRTC has posed a number of interrogatories to wireless carriers on April 5, 2019 and responses are due on June 5, 2019
  - Interventions – May 15, 2019
  - Interrogatories proposed by intervenors – May 29, 2019
  - Further CRTC Interrogatories – July 5, 2019
  - Further comments – October 23, 2019
  - Public hearing commences – January 13, 2020
  - Final submissions – February 12, 2020

# New Proposed Policy Direction

- The Governor in Council has proposed a new Policy Direction
  - Notably, the proposed Policy Direction contains the following pro-competition provisions:
    - A requirement for the Commission to encourage all forms of competition
    - A requirement for the Commission to foster affordability and lower prices particularly in instances where telecommunications service providers exercise market power
    - Reduce barriers to entry and competition for smaller telecommunications service providers

# New Proposed Policy Direction (cont'd)

- Importantly, there is a focus on the promotion of innovation
  - From a competitive perspective it will be important for this requirement to be implemented in a manner that does not blunt the other factors
- If the existing Policy Direction is not repealed when the new one is enacted, significant problems may ensue as the current one focuses on minimizing regulation and promoting investment in facilities, and that is not aligned with consumer interests and facilitating increased competition
- ISED should closely monitor how the proposed Policy Direction is interpreted by the Commission in order to ensure that the Governor in Council's intent is being followed, particularly with respect to innovation

# New Proposed Policy Direction (cont'd)

- Comments were due by April 8, 2019
- The proposed Policy Direction must be laid before both Houses of Parliament for 40 days, and that period expires on June 5, 2019
- After that the Governor in Council can pass the proposed Policy Direction with or without amendments without a requirement for further consultation

# The Internet Code (TNC 2018-422)

- The Commission's preliminary view: Should only apply to large facilities based carriers
- Would affect various aspects of the relationship between provider and customer (residential and small business)
  - Clarity of terms
  - Critical Information Summary
  - Changes to contracts
  - Bill management tools
  - Equipment issues
  - Contract cancellation and extensions
  - Security deposits
  - Disconnection
  - Other issues
- The record of this proceeding is now closed and a decision is pending

# Broadband Fund Application Guide

- Commission released a proposed application guide for its broadband fund
- Parties were invited to submit comments regarding the application process and the information required to be submitted for project evaluation and selection.
- For example, parties were invited to indicate where clarification may be required related to (i) the process for the filing and evaluation of applications, and (ii) other technical details that could adversely affect potential applicants' funding applications.
- This proceeding did not deal with the policy or implementation issues relating to the fund, which have already been addressed
- The record of the proceeding is now closed and a decision is pending in due course
- Still to be resolved are the details of how the contribution regime will be modified to raise the revenues required for this fund
- A call for proposals is expected in the coming months

# Telecom Decisions CRTC 2019-112

- In TD 2019-122, issued on April 29, 2019, the Commission denied an application by SouthWestern Integrated Fibre Technology Inc. ("SWIFT") to review and vary Telecom Regulatory Policy CRTC 2018-377, which established the framework for the Commission's Broadband Fund
- SWIFT had objected to: "(i) the use of hexagons to define geographic eligibility for fixed broadband Internet access service projects, and (ii) the exclusion of partially served hexagons from eligible geographic areas." (para 6 of TD 2019-122)
- SWIFT claimed that the Commission's determinations were "likely to have a large negative impact on communities with sub-par Internet quality in southwestern Ontario and likely in the rest of Canada." (para 6 of TD 2019-122)
- The Commission disagreed, finding that it made no errors of law or fact with respect to TRP 2018-377 and upheld the original decision

# SWIFT Petition to the Governor in Council

- In a Petition to the Governor in Council SWIFT seeks to vary the CRTC Broadband Funding Policy (Telecom Regulatory Policy 2018-377) by:
  - Removing restrictions on eligibility of municipal governments and community-based intermediary organizations to apply to access the fund
  - Enhancing the Commission's commitment to the application of minimum service quality standards
  - Empowering underserved communities and promoting public-private cooperation needed to counteract Canada's growing rural-urban digital divide in Internet access quality and affordability.
  - Enhancing the accountability of subsidy recipients for actual speeds/quality of broadband services they ultimately deliver.
  - Enhancing the transparency of the Commission's funding decisions by publishing submitted applications

Interventions have been filed and a final determination is pending

# ISED Consultation on a New Set of Service Areas for Spectrum Licensing

- ISED has been conducting a consultation to explore the establishment of a new set of service areas for spectrum licensing to accommodate next gen technologies like 5G.
  - It has proposed two options for setting boundaries for Tier 5 service areas:
    - Option 1: Boundaries are based on Statistics Canada 2016 census subdivisions
    - Option 2: Boundaries based on population centres
- BCBA participated in a joint submission along with several other parties which advocated for an alternative option with thresholds designed to distinguish remote, rural and urban areas
- The record of this proceeding is closed and a decision is pending in due course

# ISED Consultation on Periodic Adjustments for Radio and Spectrum Licence Fees and Fees Related to Equipment Certification Services

- ISED has initiated a consultation proposing the use of the Consumer Price Index as the basis for annual adjustments to spectrum licence fees
- This is the general approach to fee adjustments, which is prescribed by the *Services Fees Act*
- Initial comments were filed on April 15, 2019 and have been published
- A number of parties opposed any license fee increases
- BCBA filed a placeholder submission
- The deadline for filing reply comments with ISED is May 10, 2019

# ISED Consultation on Fixed Point-to-Point Services

- ISED initiated a consultation to modernize the radio licence fee model for fixed point-to-point systems and their associated fees
- ISED looked at fee-setting methodologies applied in other countries
- ISED established a set of guiding principles
- ISED proposed a consumption-based point-to-point fee model
  - Intended to reward spectral efficiency and encourage innovation
  - Intended to reflect utility of different spectrum bands
  - Perceived as clear and predictable
  - Will be subject to periodic fee adjustment (see previous slide)
- The record of this proceeding is closed and a decision is pending in due course

# CNOC HSA Part 1

- CNOC filed its Part 1 Application on 7 November.
- The Application requested the following final relief:
  - Removal of the 100 Mbps speed cap on aggregated HSA services (“Speed Cap”) on an expedited basis (given that the Speed Cap was scheduled to come into effect once final tariffs for disaggregated HSA are approved)
  - Significantly lower levels of disaggregation for Bell and possibly also the Cable Carriers
  - Port and fibre sharing functionality on all incumbent disaggregated HSA services
  - Access to FTTP facilities over aggregated HSA services, whereby such access will be phased-out subject to a forbearance framework

# CNOC HSA Part 1 (cont'd)

- The Commission suspended the Speed Cap on an interim basis as requested by CNOC, pending a final determination of the CNOC Application
- The CRTC granted this interim relief even though it determined that CNOC had not met one of the three elements of the interim relief test that the CRTC normally uses, on the basis that consumers should not be disrupted
- TELUS is now seeking leave to appeal the CRTC's interim decision to the Federal Court of Appeal since the CRTC deviated from its normal interim relief test and did not give parties advance notice that it would be deviating from that test

# CNOC HSA Part 1 (cont'd)

- The TELUS leave application is rather odd since:
  - The only parties directly affected by the CRTC interim decision are Cogeco, Rogers and Videotron
  - TELUS could have also approached this issue by way of a review and vary application to the CRTC in which it could have made its arguments directly to the Commission
  - The CRTC is likely to make a determination on the final relief requested by CNOC before any appeal brought by TELUS is heard and determined, if TELUS does get leave to appeal the CRTC interim decision
- CNOC's reply on the eleven interventions of parties with respect to the final relief request by CNOC will be filed on May 13, 2019

# Court of Quebec Decision

- Earlier this month the Court of Quebec ruled that the federal Telecommunications Act has precedence over Quebec's Consumer Protection Act ("CPA"). More specifically, the Court found that the provisions of the CPA with respect to contractual issues in telecommunications are void as they infringe upon federal jurisdiction.
- The case arose as a result of Bell and TELUS being charged in two separate cases with violations of the CPA.
- **Important to note:** a) this ruling only effects Quebec and b) it is possible that the provincial government will appeal the decision.
- For now, we advise that TSPs continue to comply with both CRTC rules and the various provincial CPAs that may be applicable to their activities. We will continue to monitor this case as it will likely have important implications for the scope of federal jurisdiction over TSPs.

# We are here to help

- Areas in which we can help individual TSPs include:
  - CRTC registrations and related requirements
  - Compliance with CRTC annual data collection system (“DCS”) reporting requirements
  - CCTS registrations and compliance
  - Broadcast licences or exemptions and related compliance
  - Employment agreements (which are subject to federal law and must be drafted as such) and related policies
  - Wholesale agreements and service schedules
  - End-user agreements, including both general and service-specific terms and conditions
  - Privacy, ITMP, authorized use and other policies
  - Negotiating agreements with other business entities (including suppliers and business partners), such as carriers, broadcasting content providers, equipment providers, municipalities, tower and building owners, etc.
  - Corporate governance (including by-laws, corporate policies, director training, running board meetings, etc.)



THANK YOU!!!!