

March 18, 2022

FILED VIA GCKEY

Ian Scott
Chair and CEO
Canadian Radio-television and
Telecommunications Commission
Gatineau, QC
K1A 0N2

Dear Mr. Scott,

Subject: A path forward: resolving the Commission’s backlog, and your ongoing participation in decision-making

Commission files 1011-NOC2020-0187, 1011-NOC2020-0131, 8622-C347-202100080, 8661-S83-202003193

Competitive Network Operators of Canada (“CNOC”) is addressing this letter to you to ask you directly:

1. in your capacity as CEO of the Commission, to resolve the Commission’s backlog of competition moving decisions as soon as possible; and
2. in your capacity as a Commissioner and Chair of the Commission, to consider your ongoing and future participation in any proceeding before the Commission involving service-based competition.

1. Resolving the backlog of Commission decisions

The Commission has accumulated a severe backlog of pending decisions and / or inactive proceedings that involve matters that are critical to competition. For example:

- **Telecom Notice of Consultation CRTC 2020-187¹**: A prompt decision in this proceeding is essential for determining whether the high barriers to deploying disaggregated wholesale high-speed access (“HSA”) services and, by extension, reaching end-users via wholesale fibre-to-the-premises (“FTTP”) access facilities, can be reduced. This proceeding was first initiated on June

¹ *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020.*

11, 2020. At this stage, it is unclear if the Commission will require additional procedural steps or if the record of the proceeding is closed.

- **CNOC Part 1 Application for expedited and temporary resale remedy for competitive access to Incumbent FTTP facilities:**² Due to the prolonged delay to accessing essential wholesale HSA services over FTTP access facilities, CNOC requested an expedited and temporary resale remedy that would provide immediate competitive access while the permanent regime was being developed in TNC 2020-187 (and in any necessary follow-up proceeding). CNOC's application was filed on January 8, 2021. Thus, despite CNOC's request for expedited relief – 14 months have elapsed with no decision from the Commission.
- **Telecom Notice of Consultation CRTC 2020-131:**³ This proceeding to review rate setting approaches for wholesale telecommunications services was initiated on April 24, 2020 – almost two years ago. The manner in which wholesale rates are set will determine the viability of competition in the markets for telecommunications services in Canada. The lingering uncertainty in this area is hampering the industry. Without knowing how wholesale input costs will be determined it is becoming increasingly difficult for participants in the industry to make investment decisions.
- **Part 1 Application of Shaw Telecom G.P. for relief from the Commission's speed matching requirement:**⁴ This Part 1 Application, if granted, would result in a very significant departure from the Commission's speed matching requirement, which is presently the very foundation of service-based competition for broadband services. The Application was filed May 27, 2020. The Commission has yet to issue a final decision.

These are but a few examples of pending decisions and / or inactive proceedings that have contributed to a climate of profound regulatory uncertainty. CNOC has made its submissions in all of the above-cited and other competition-related proceedings and will not repeat them here. While the outcome of each proceeding will definitely matter in terms of whether competition will or will not be promoted and thrive, the lack of decisions in the meantime, also has a profoundly corrosive effect on competition.

² CNOC Part 1 Application dated 8 January 2021 for expedited and temporary resale remedy for competitive access to Incumbent FTTP facilities, CRTC File no. 8622-C347-202100080.

³ *Call for comments – Review of the approach to rate setting for wholesale telecommunications services*, Telecom Notice of Consultation CRTC 2020-131, 24 April 2020.

⁴ Shaw Telecom G.P. Part 1 Application dated 27 May 2020 for Immediate Interim Relief from the Speed-Matching Requirement as it applies to Shaw's Gigabit Residential Internet Service Speeds, CRTC File. 8661-S83-202003193.

The level of regulatory uncertainty created by the current backlog is stifling competition, investment and innovation by service-based competitors and facilities-based carriers alike. Accordingly, we urge you to take all possible measures, in your capacity as CEO, to resolve the backlog as soon as possible. CNOC is prepared to work collaboratively with you and all stakeholders in this regard.

2. Decisions regarding your participation in proceedings involving service-based competition

As you know, CNOC recently filed a Part 1 Application (“Application”) with the Commission requesting your recusal from deciding all matters affecting service-based competition pending the adjudication of the application for leave to appeal Telecom Decision CRTC 2021-181 to the Federal Court of Appeal on grounds including reasonable apprehension of bias and breach of procedural fairness. The reasons for CNOC’s concerns are explained in the Application and will not be repeated in this letter.

On February 15, 2022, Senior General Counsel and Executive Director of the Commission, Stephen Millington, issued a letter explaining that the Application would not be considered and that the decision of a Commission member to recuse oneself must be made by that member alone. Mr. Millington’s letter went on to note that you would consider whether to recuse yourself or not whenever a telecommunications matter involving service-based competition is next before the Commission.

Thus, by way of this letter, we request that you, in your role as an individual Commissioner and in light of the considerable influence you wield as Chair, carefully decide whether or not to participate in any ongoing or future telecommunications matter involving service-based competition. We ask that you make your decisions having regard to principles of natural justice and the duty of procedural fairness that the Commission owes to participants in its proceedings. We further ask that you consider public trust and expectations that members of the Commission will decide matters in a fair, impartial and transparent manner.

Yours truly,

Geoff White
Executive Director and General Counsel
613-612-1190

c : Stephen Millington, Senior General Counsel and Executive Director of Legal Services, CRTC (by email)

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