



March 15, 2010

VIA WEB-FILE

Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON., K1A 0N2

Dear Mr. Morin,

**Re: Proposals to vary the scope of TNC CRTC 2010-43
Proposals to extend timelines and evidence in TNC CRTC 2010-43**

CIPPIC is in receipt of a number of letters proposing changes to the scope of the above mentioned Notice of Consultation, particularly with respect to the re-application of ss. 24 and 27(2) of the Act to mobile wireless data services. CIPPIC is additionally in receipt of letters from a number of parties with respect to timelines for submission of evidence in this proceeding. We write, on behalf of our client, OpenMedia.ca (OM), with respect to these two issues.

Proposals to reduce the scope of the NC so as to remove discussion of unjust discrimination in wireless services are a concern to CIPPIC, in particular with respect to ITMPs. To begin with, CIPPIC is of the opinion that wireless internet services carry immense potential for addressing broadband access challenges raised by shortcomings in regional infrastructure – particularly as such wireless broadband improves in speed and efficiency and is increasingly used for non-mobile access.¹ However, a proper assessment of the viability of wireless as an alternative to wireline or satellite in meeting any basic service objectives will depend in part on the extent to which traffic on such a service can be managed without hindrance. In this sense, questions of the reapplication of ss.24 and 27(2) to wireless data services as well as the extent of that reapplication are directly relevant to this proceeding.

CIPPIC is greatly encouraged and supportive of the Canadian Wireless Telecommunications Association (CWTA)'s proposal in its letter of March 10, 2010 to remove ss. 24 and 27(2) from the list of statutory powers forborne in relation to wireless data services. It is further supportive of the Public Interest Advocacy Centre (PIAC)'s letter of March 12, 2010 calling for expedited resolution of this issue of forbearance in a separate parallel proceeding. If, indeed, the issue of forbearance is non-controversial, it should be dealt with in an expedited and parallel manner so

¹ International Telecommunications Union, "ITU Telecom Africa Focuses on a continent at a crossroads", ITU Press Release, May 5, 2008, available online at: <http://www.itu.int/newsroom/press_releases/2008/10.html>, (last accessed March 15, 2010) particularly notes the benefits of relying on wireless broadband to facilitate laptop or desktop broadband access.

as not to needlessly divert resources from the main issue of the NC. CIPPIC believes, however, that some clarification may be in order on a number of issues arising from attempts to narrow the scope of TNC CRTC 2010-43 in this manner.

First, as noted above, discriminatory management of wireless data traffic is a salient concern to a proper assessment of the viability of wireless as a means of achieving access objectives. Any adjustment of the scope of 2010-43 should not preclude discussions of the policy implications of relying on throttled or otherwise discriminatory (whether justly or not) wireless services in meeting access objectives.

That being said, it may be appropriate to address the actual question of forbearance in an expedited and parallel proceeding. CIPPIC wishes to note, however, its view that the framework for assessing ITMPs under s. 27(2) is that set out in Telecom Regulatory Policy CRTC 2009-657. It is our assumption that, once s. 27(2) is reapplied, its application to traffic management of wireless data services will be informed by this same analytical framework. While the application of this framework to specific factual circumstances may be controversial, recognizing its role in resolving wireless ITMP issues under s. 27(2) should not be so. Given that the 2009-657 framework is an *ex post*, complaints driven process, merely affirming that it will guide the application of s. 27(2) to wireless data services will not raise any of these more controversial, fact-specific issues and in addition will put in place the consistent and technologically neutral regulatory approach to traffic management envisioned by TRP CRTC 2009-657.² Indeed, as noted by CIPPIC in TPN CRTC 2008-19, rural access for services such as satellite may very well raise specific challenges that justify different sorts of traffic management than would be reasonably acceptable elsewhere.

Third, CIPPIC reiterates that any consideration of forbearance should ideally be expedited and parallel to the existing TNC CRTC 2010-43, so that parties can proceed with the certainty that any wireless services relied upon in that proceeding will not unjustly discriminate against users. An expedited procedure dealing with any non-controversial aspects of forbearance should not be problematic. If any controversial issues relating to the application of ss. 24 and 27(2) remain and cannot be addressed through an expedited process of this nature, these, too, should be addressed within a reasonable period of time.

With respect to timelines, CIPPIC is in receipt of PIAC's letter dated March 12, 2010 and is fully supportive of the request in that letter. The absence of interrogatory responses and confusion over the scope of the proceeding has created uncertainty, in particular with respect to what evidence need be prepared. CIPPIC proposes that PIAC's adjustments to the timeline be adopted.

It further asks that parties be given a second opportunity to provide evidence prior to the second round of interrogatories currently detailed at para. 41 of the Notice. A second evidentiary deadline set for June 15, 2010, will ensure a full and well-tested record – it will provide additional time to prepare evidence and it will permit parties to respond to evidence from interrogatories with counter evidence. It will additionally have no impact on existing timelines, as it will leave plenty of time for parties to assess new evidence and address any concerns it may raise in the second round of interrogatories currently set for July 6, 2010 (see para. 41). CIPPIC

² See Telecom Regulatory Policy CRTC 2009-657 at para. 115.

will find a second evidentiary submission date of this nature extremely helpful in marshalling its evidence for this proceeding.

We ask respectfully that you take our concerns into consideration in your deliberations on these issues. Please feel free to contact us if you have any questions or concerns.

Best regards,

[original signed]

Tamir Israel
Staff Lawyer
CIPPIC

CC: Interested Parties to TNC CRTC 2010-43
Steve Anderson, OpenMedia.ca
BY EMAIL ONLY

*** END OF DOCUMENT ***