



March 10, 2010

via e-pass

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

Dear Mr. Morin,

**Re: Telecom Notice of Consultation CRTC 2010-43 - Proceeding to review access to basic telecommunications services and other matters**

The Canadian Wireless Telecommunications Association (CWTA) is writing to indicate that its carrier members are prepared to support the reapplication of ss. 24 and 27(2) of the *Telecommunications Act* to mobile wireless data services just as the Commission retained those sections when it forbore from regulating mobile public switched voice services. With such support, CWTA submits that it would no longer be necessary for the Commission to consider this issue in the above-noted proceeding.

In paragraphs 24 and 25 of the Notice of Consultation, the Commission stated the following with respect to the question of forbearance from regulation of mobile wireless data services:

In a separate matter, the Commission, in Telecom Decision 96-14 and in follow-up decisions, forbore from regulating mobile wireless data services. However, the Commission recently indicated its intention to review the appropriateness of reapplying section 24 and subsection 27(2) of the *Telecommunications Act* (the *Act*) to these services. [Pursuant to Telecom Regulatory Policy 2009-657]

The Commission notes that there is a link between issues regarding high-speed Internet service and mobile wireless data services, as well as the associated service providers. Accordingly, as part of the proceeding initiated by this notice, the Commission will review the appropriateness of the mobile wireless data services forbearance framework.

The issue included in the Notice of Consultation is a narrow one, limited to the question of whether the Commission ought to have the *authority* to address unjust discrimination-type issues in the mobile wireless data services context, should the need arise. The question of how the Commission might *exercise* that authority is a separate one, and will always be fact-driven. While the latter type of question may well be controversial depending on the circumstances, the former should not be. All parties are likely to agree that the Commission ought to have the authority to address unjust discrimination issues in the mobile wireless data services context, should any arise, using its familiar powers under ss. 24 and 27(2) of the *Act*.

In fact, CWTA notes that the CRTC Chairman was quoted in *The Globe and Mail* as stating that there was a “bit of paranoia” respecting the intended scope of the proceeding initiated by TNC 2010-43, and that the hearing will focus on the narrow issue of whether the CRTC should have the power to protect against wireless service discrimination.<sup>1</sup>

CWTA notes that on 10 February 2010, CRTC staff issued a letter indicating that the Commission would not grant requests from CWTA and others to sever its planned review of the mobile wireless data forbearance framework from the Notice of Consultation and conduct that review in a separate proceeding.

In response to the Association’s original request to deal with the scope of wireless forbearance in a separate proceeding, both the Canadian Film and Television Production Association (CFTPA) and the Public Interest Advocacy Centre (PIAC) wrote to the CRTC, making known their concerns respecting non-discriminatory access to mobile data networks and the lack of regulatory remedies to prevent such discrimination.

CWTA and its carrier members understand the concerns of the Commission, and parties such as CFTPA and PIAC, respecting the possibility of unjust discrimination issues arising in the provision of mobile wireless data services (including issues associated with the use of Internet traffic management practices), and respecting the need for the Commission to have the authority to address such issues, should they arise. CWTA’s current proposal to vary the terms of wireless forbearance so as to allow for the reapplication of ss. 24 and 27(2) of the *Act* to wireless data services should fully assuage these concerns, ensuring that the CRTC has the ability to resolve any potential issues of unjust discrimination should they arise.

Following further consideration and consultation, CWTA’s carrier members submit that the Commission and the parties can all be spared a potentially enormous amount of unnecessary work and uncertainty by removing this issue from the Notice of Consultation and dealing with it on its own. The Commission could simply indicate its intention to vary the relevant forbearance order to add ss. 24 and 27(2) to the list of sources of statutory authority that it has retained, notwithstanding forbearance, with respect to mobile wireless data services just as the Commission retained those sections when it forbore from regulating mobile public switched voice services. Parties could be given the opportunity to comment on the terms of the proposed order that would give effect to that intention.

CWTA and its members would respectfully request that the proposal contained in this letter be considered, and a determination rendered, by the members of the Commission.

Sincerely,

*-electronic document*

J. David Farnes  
Vice President,  
Industry & Regulatory Affairs

Cc: John Traversy, CRTC  
Interested Parties, TNC CRTC 2010-43

\*\*\**End of Document*\*\*\*

---

<sup>1</sup> J. McNish and I. Marlow, “CRTC Chief tries to clear the air over broadband,” *The Globe & Mail, Report on Business*, 15 February 2010: <http://www.theglobeandmail.com/report-on-business/crtc-chief-tries-to-clear-the-air-over-broadband/article1468534/>