

**COMMISSIONER FOR COMPLAINTS
FOR TELECOMMUNICATIONS SERVICES INC./COMMISSAIRE AUX PLAINTES
RELATIVES AUX SERVICES DE TÉLÉCOMMUNICATIONS INC.**

PROCEDURAL CODE

Amended and Restated June 1, 2010

Last Amended April 4, 2011

1. Interpretation

1.1 In this Code,

- (a) **“CCTS”** means the Commissioner for Complaints for Telecommunications Services Inc./Commissaire aux plaintes relatives aux services de télécommunications inc.;
- (b) **“Code”** means this Procedural Code, as amended from time to time;
- (c) **“Commissioner”** means the Chief Executive Officer of CCTS;
- (d) **“CRTC”** means the Canadian Radio-television and Telecommunications Commission;
- (e) **“Customer”** means an individual or Small Business that received telecommunications services from a TSP Member at the time the facts on which the complaint is made arose;
- (f) **“Decision”** means a Decision of the Commissioner made under Section 11;
- (g) **“Effective Date”** means July 10, 2007, the date on which CCTS was incorporated and this Code comes into effect;
- (h) **“Recommendation”** means a Recommendation of the Commissioner under Section 10;
- (i) **“Small Business”** means a business whose:
 - (i) net monthly invoice for all telecommunications services in the month preceding the month in which a complaint is made against such TSP Member; or
 - (ii) average net monthly invoices for all telecommunications services in the three (3) month period preceding the month in which a complaint is made against such TSP Member;

did not exceed \$2,500;

- (j) **“TSP Members”** means any persons for the time being admitted to membership of CCTS as a TSP Member (for as long as those persons have not withdrawn their membership in accordance with the CCTS By-Laws and Membership Agreement); and
- (k) **“Telecommunications Services Providers”** means, collectively, telecommunications services providers that provide telecommunications services to Customers in Canada and **“Telecommunications Services Provider”** means any one of such telecommunications services providers.

2. Functions, Powers and Duties of Commissioner

2.1 The Commissioner shall, as and from the Effective Date:

- (a) receive and assess the eligibility of complaints and determine whether a complaint falls within the scope of this Code;
- (b) deal with complaints impartially and efficiently after attempts at resolution between a Customer and a TSP Member have proven ineffective, either:
 - (i) by informal resolution, including mediation, conciliation or other forms of informal dispute resolution; or
 - (ii) by investigation, Recommendation and Decision;
- (c) carry out the functions, powers and duties prescribed in this Code, and such other functions, powers and duties as may be directed by the Board of Directors of CCTS from time to time; and
- (d) be bound by and at all times act within and give effect to this Code.

2.2 In carrying out his or her functions, powers and duties, the Commissioner shall act in a manner that is independent and impartial, accessible and efficient. Without limiting the generality of the foregoing, the Commissioner shall:

- (a) remain impartial to the interests of the TSP Members, as between the TSP Members, and from and as between their respective customers;
- (b) not act as an advocate for telecommunications service providers, customers, or any other person;
- (c) provide the services of his or her office in English and French and in such other languages as the Commissioner deems appropriate;
- (d) endeavour to secure the appropriate, most expeditious and least expensive resolution of every complaint on its merits;
- (e) provide the services of his or her office without charge to Customers;

- (f) provide the services of his or her office in a non-legalistic manner; and
- (g) follow cost-effective business practices in order to provide the services of his or her office in an economically efficient manner.

3. Scope

The Commissioner is authorized to receive complaints from Customers regarding forborne (unregulated) retail telecommunications services provided by TSP Members, with some exceptions. Those exceptions, and examples of other common services which fall outside the Commissioner's Scope, are set out in the following list:

- (a) Internet applications or content;
- (b) Broadcasting services;
- (c) Emergency services;
- (d) Payphones;
- (e) Equipment;
- (f) Inside wiring;
- (g) Yellow page or business directories;
- (h) Telemarketing or unsolicited messages;
- (i) Security services, such as alarm monitoring;
- (j) Networking services;
- (k) 900 and 976 services;
- (l) Pricing of products or services;
- (m) Rights of way;
- (n) Plant (including, without limitation, poles, towers, conduits, trenches and other support structures);
- (o) Claims of false and misleading advertising; and
- (p) Privacy issues.

4. Standard of Review by Commissioner

4.1 The Commissioner shall investigate, assist in the resolution of, and make Recommendations and Decisions in relation to complaints with a view to determining whether the

TSP Member reasonably performed its obligations pursuant to the applicable contract and followed its usual policies and operating procedures in its dealings with the Customer.

4.2 In making this determination, or when the contract is silent on an issue, the Commissioner will consider general principles of law, good industry practice, any relevant codes of conduct or practice, and what is fair and reasonable in the circumstances of the Complaint.

4.3 Although the Commissioner may consider a TSP Member's policies or operating practices, no Recommendation or Decision may direct or require a TSP Member to change any such policy or practice.

5. Delegation

The Commissioner may delegate any of the Commissioner's functions, powers and jurisdiction to another member of CCTS staff, other than the authority to make Decisions under Section 11.

6. Complaints

6.1 Subject to Section 6.2 a complaint shall be in writing and shall:

- (a) set out the Customer's name, address, phone number and, where possible, the account number assigned by the TSP Member to which the complaint relates;
- (b) indicate the TSP Member to which the complaint relates;
- (c) set out the details of the complaint;
- (d) indicate the date or dates on which the matters complained of occurred and came to the attention of the Customer;
- (e) set out what steps the Customer has taken to seek to resolve the complaint directly with the TSP Member, including details of the TSP Member's response;
- (f) indicate what the Customer would regard as a reasonable resolution of the complaint; and
- (g) indicate the Customer's consent to be bound by this Code and such procedures as may be established by the Commissioner.

6.2 In order to ensure reasonable access to CCTS, including, in particular, by persons with disabilities, the Commissioner may accept complaints made:

- (a) by telephone, e-mail, online complaint form, teletypewriter (TTY), in person or by such other means as the Commissioner deems appropriate, provided all other requirements set out in Section 6.1 are satisfied; and
- (b) by a properly authorized representative of the Customer. The Commissioner may make such inquiries as are deemed appropriate to ensure that the Customer has

properly authorized the representative to make the complaint. Any such representative is deemed to have agreed to abide by the provisions of this Code, and in particular Sections 13 to 15 hereof.

6.3 Upon receipt of a complaint, the Commissioner shall assess whether the complaint, or any part thereof, falls within scope.

6.4 If the Commissioner is of the view that no part of the complaint is within scope, the Commissioner shall forthwith advise the Customer of such assessment and the reasons therefore.

6.5 If the Commissioner is of the view that any part of the complaint is within scope, the Commissioner shall forthwith provide a copy of the complaint to the relevant TSP Member. In the case of a complaint received orally, the Commissioner shall ensure that it is reduced to writing and shall provide the written version to the TSP Member and the Customer.

6.6 The TSP Member shall reply to the Commissioner in writing, with a copy to the Customer, regarding any complaint provided to it by the Commissioner under this section, as follows:

- (a) Objection – if the TSP Member objects to the complaint on the basis that, in the TSP Member’s view, the complaint may not or should not be investigated pursuant to this Code or for any other lawful reason, it shall provide a full written explanation, including the specifics of its objection, within fifteen (15) days of receipt of the complaint; or
- (b) Resolved – if the complaint has been resolved to the mutual satisfaction of the Customer and the TSP Member, the latter shall so advise the Commissioner in writing within thirty (30) days of receipt of the complaint; or
- (c) Unresolved - if the complaint remains unresolved, the TSP Member shall so advise the Commissioner within thirty (30) days of receipt of the complaint from the Commissioner. Together with this advice the TSP Member shall provide a full and complete written response to the allegations made in the complaint, and shall also provide copies of all documents in its possession that are relevant to the complaint.

6.7 Where the TSP Member has advised the Commissioner pursuant to Section 6.6(a), the Commissioner shall, following receipt of any additional information or representations from the Customer and/or the TSP Member as the Commissioner may in his or her discretion deem appropriate, decide whether or not the complaint or any part thereof is within scope and whether or not to take action with respect to the complaint or any part thereof that is determined by the Commissioner to be within scope. The Commissioner’s decision shall be provided in writing to the Customer and the TSP Member.

6.8 Where the Commissioner has concluded that a complaint, or any part thereof, is not within scope, the Commissioner shall advise the Customer and the TSP Member in accordance with Section 6.4 and shall advise the Customer of any agency, body or organization which the Commissioner reasonably believes may have jurisdiction in relation to the complaint. The Commissioner shall offer the Customer such assistance as the Customer may request in forwarding

the complaint to the appropriate body. If the complaint relates to a TSP that is not a TSP Member, the Commissioner shall advise the Customer in accordance with Section 6.4 and shall offer the Customer such assistance as the Customer may request in forwarding the complaint to the CRTC.

6.9 The Commissioner shall maintain a record of complaints determined by the Commissioner not to be within scope.

6.10 Where the TSP Member has advised the Commissioner, pursuant to Section 6.6(b), of the mutual resolution of the complaint, the complaint shall be deemed to be resolved unless the Customer, within twenty (20) days of the date of the communication in writing from the TSP Member to the Commissioner and the Customer under Section 6.6(b), advises the Commissioner that the complaint has not been resolved to the satisfaction of the Customer.

6.11 If,

- (a) after thirty (30) days from receipt of the complaint under Section 6.5, the TSP Member has not advised the Commissioner under either Section 6.6(a), Section 6.6(b) or Section 6.6(c); or
- (b) the TSP Member has advised the Commissioner under Section 6.6(c) that the complaint remains unresolved; or
- (c) the Commissioner has made a determination under Section 6.7 that the Commissioner will take action with respect to the complaint; or
- (d) the Customer has advised the Commissioner that the complaint has not been resolved to the satisfaction of the Customer as described in Section 6.10;

the Commissioner may proceed to investigate the complaint, or determine that it be dealt with by informal resolution.

6.12 In assessing whether a complaint is in scope, and in investigating or attempting to informally resolve a complaint, the Commissioner may:

- (a) require such assistance of the Customer and the TSP Member as the Commissioner considers reasonable and appropriate; and
- (b) request, and a TSP Member shall promptly provide (subject to Section 6.13), any information, document, including reliable copies thereof, or other thing that is relevant to the complaint, whether or not such information, document or other thing is admissible as evidence in a court of law. The Commissioner may receive and rely upon any document so provided.

6.13 A TSP Member may decline to provide any information or document requested by the Commissioner, if it can demonstrate, to the satisfaction of the Commissioner, that the material is subject to solicitor-client privilege, or that by providing it the TSP Member would place itself in breach of the law.

6.14 If a TSP Member or Customer discloses documents or supplies information to the Commissioner and requests that the Commissioner treat it as confidential, the Commissioner shall not disclose that information to any other party without the consent of the party who has made the confidentiality request, provided that:

- (a) maintaining the confidentiality of such information does not unduly impede the Commissioner's ability to attempt to investigate, assist in the resolution of and/or make a Recommendation or Decision with respect to the complaint; and
- (b) the Commissioner is satisfied that the confidentiality request has been made in good faith.

6.15 The Commissioner may consolidate, and treat as a single complaint, two or more complaints filed by or on behalf of the same Customer relating to the same TSP Member and arising from the same transaction or occurrence or series of transactions or occurrences.

6.16 The Commissioner may consolidate, and take action with respect to, two or more complaints filed by or on behalf of two or more Customers relating to the same TSP Member and arising from the same transaction or occurrence or series of transactions or occurrences.

6.17 Subject to Section 6.18, the Commissioner shall not consider and shall take no action with respect to a single complaint filed by or on behalf of more than one Customer.

6.18 Notwithstanding Section 6.17, the Commissioner may take action with respect to a complaint filed by or on behalf of one or more Customers, provided that:

- (a) each Customer to which the complaint relates is specifically identified and has authorized that the complaint be filed on behalf of such Customer;
- (b) the complaint relates to the same TSP Member and arises from the same transaction or occurrence or series of transactions or occurrences; and
- (c) the Commissioner considers that it is appropriate and efficient to do so.

6.19 The Commissioner may, in his or her discretion, extend or abridge the time for taking any action under this Code, save and except for the time limitation for filing a complaint pursuant to Sections 8.3 through 8.5.

7. Discretion to Decline to Take Action

7.1 The Commissioner may decline to take action or continue to take action with respect to a complaint if the Commissioner considers that:

- (a) the complaint is frivolous or vexatious;
- (b) the Customer does not have a sufficient legal interest in the subject matter of the complaint;

- (c) the complaint should more properly be brought before another agency, or a tribunal or court;
- (d) an investigation, or further investigation, is not warranted in the circumstances;
- (e) the Customer has failed to cooperate in a timely manner with the Commissioner's efforts to assess, investigate, attempt to facilitate the resolution of, or make a Recommendation or Decision in relation to the complaint; or
- (f) the TSP Member is offering a resolution that, in the view of the Commissioner, constitutes a reasonable resolution to the matter, even if such resolution is not acceptable to the Customer.

8. Duty to Decline to Take Action

8.1 The Commissioner shall take no action with respect to a complaint unless the Commissioner is satisfied that the Customer has previously brought the matter to the attention of the TSP Member and that the TSP Member has been afforded a reasonable opportunity to investigate and resolve the matter.

8.2 The Commissioner shall take no action with respect to any complaint purported to be brought under this Code that:

- (a) has been the subject of a previous determination by CCTS; or
- (b) has been or is currently under consideration by another tribunal, court, or agency that has the authority to compensate the Customer for losses claimed arising from the occurrence at issue.

8.3 The Commissioner shall take no action with respect to a complaint:

- (a) received by the Commissioner more than one year after the date the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based; or
- (b) based upon or in relation to facts having arisen prior to the Effective Date or, in the case of a TSP Member having become a TSP Member subsequent to the Effective Date, based upon or in relation to facts having arisen more than one year prior to the date on which the TSP Member became a TSP Member.

8.4 For the purposes of Section 8.3(a), a complaint shall be deemed to be received by the Commissioner on the earlier of:

- (a) the date it is actually received; or
- (b) five (5) days after it was sent to the Commissioner by regular mail.

8.5 Notwithstanding Section 8.3(a), the Commissioner may take action with respect to a complaint received by the Commissioner more than one year but no more than eighteen (18) months after the date when the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based where:

- (a) the Customer brought the matter to the attention of the TSP Member no more than one year after the date the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based; and
- (b) the Customer and the TSP Member continued to be engaged in an attempt to resolve the matter more than one year after the date when the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based.

9. Investigation and Resolution

9.1 The procedure for the conduct of any investigation under this Code will be such as the Commissioner considers proper to secure the appropriate, most expeditious, efficient and most cost effective resolution of a complaint on its merits.

9.2 In the course of an investigation, the Commissioner may continue to seek to facilitate a mutually acceptable resolution of a complaint wherever practical and appropriate.

9.3 When a complaint cannot be resolved in a manner acceptable to the parties to the complaint, the Commissioner may direct that it be dealt with under any one of section 7, 10 or 11 of this Code.

10. Recommendations

10.1 Upon completing an investigation, the Commissioner may either reject the complaint or make a Recommendation to the Customer and the TSP Member regarding what the Commissioner considers to be a reasonable and appropriate resolution of the complaint, without having regard to any monetary limitations of liability contained in the contract between the Customer and the TSP Member.

10.2 The Commissioner's Recommendation:

- (a) shall be in writing;
- (b) shall include the Commissioner's reasons;
- (c) is not binding on the Customer or the TSP Member; and
- (d) is subject to the monetary limits set out in Section 12.

11. Decisions

11.1 Within twenty (20) days of receipt of the Commissioner's Recommendation, each of the Customer and the TSP Member shall advise the Commissioner in writing either that:

- (a) the party accepts the Commissioner's Recommendation; or
- (b) the party does not accept the Commissioner's Recommendation and the reasons why, in the party's view, the Commissioner's Recommendation is not appropriate or acceptable.

11.2 If the Customer and the TSP Member both accept the Commissioner's Recommendation, the TSP Member and the Customer shall promptly take such steps as are called for in the Recommendation, and the Customer and the TSP Member shall be deemed to fully release one another from any and all losses, damages, and claims, arising from the matters relating to the complaint.

11.3 If either the Customer or the TSP Member fails to respond to the Commissioner's Recommendation within twenty (20) days of receipt, the Recommendation shall be deemed to have been accepted by that party.

11.4 If either the Customer or the TSP Member, or both, do not accept the Commissioner's Recommendation, the Commissioner shall consider the reasons set out by either or both parties for rejecting the Recommendation, and shall thereafter issue a Decision in writing, including the Commissioner's detailed reasons therefor.

11.5 In formulating the Decision, the Commissioner shall consider whether there is substantial doubt as to the correctness of the Recommendation. If in the Commissioner's discretion there is doubt as to the correctness of the original Recommendation, the Commissioner's Decision may amend or modify the remedy recommended to the Customer and the TSP in the Recommendation, or may impose a remedy not previously recommended.

11.6 The Commissioner's Decision shall be binding on the TSP Member, but not on the Customer.

11.7 The Customer may choose whether or not to accept the Commissioner's Decision under Section 11.5 within twenty (20) days of receipt. In order to do so, the Customer shall notify the Commissioner and the TSP Member in writing. If the Customer does not provide this notice, the Customer will be deemed to reject the Decision.

11.8 If the Customer accepts the Decision, the Customer and the TSP Member shall be deemed to fully release one another from any and all losses, damages, and claims, arising from the matters relating to the complaint.

11.9 If the Customer does not accept the Decision, the Customer may pursue such remedies as may be available to the Customer, and the TSP Member shall be deemed to be fully released from the Commissioner's Decision.

12. Remedies

12.1 In making a Recommendation or Decision, the Commissioner may require the TSP Member to:

- (a) provide the Customer with an explanation or apology;
- (b) undertake to do or cease doing specified activities with respect to the Customer;
- (c) pay the Customer monetary compensation in an amount not to exceed:
 - (i) in relation to any single complaint, or any two or more complaints consolidated pursuant to Section 6.15, five thousand dollars (\$5,000) in the aggregate; or
 - (ii) in relation to any two or more complaints consolidated pursuant to Section 6.16, five thousand dollars (\$5,000) in respect of each such complaint so consolidated; or
 - (iii) in relation to any complaint filed on behalf of two or more Customers in respect of which the Commissioner has taken action pursuant to Section 6.18, five thousand dollars (\$5,000) in the aggregate; or
- (d) any combination thereof.

12.2 In making a Recommendation or a Decision that a TSP Member pay monetary compensation to a Customer, the Commissioner:

- (a) shall award an amount that is appropriate to compensate the Customer for any loss, damage or inconvenience incurred by the Customer arising directly from the circumstances of the complaint;
- (b) shall not make an award that is punitive of the TSP Member, or is in the nature of consequential damages; and
- (c) may, where appropriate, exercise his or her discretion whether or not to apply any limitations of liability contained in the applicable contract between the Customer and the TSP Member.

12.3 For greater certainty, amounts that the Commissioner determines are to be refunded or credited as a result of billing errors shall not constitute monetary compensation within the meaning of Section 12.1(c).

13. No Use or Disclosure in Other Proceedings

13.1 The discussions, documents and correspondence of the Customer, the TSP Member, and the Commissioner created for, arising from or in relation to a complaint shall be deemed to be without prejudice and shall not be disclosed or used in any subsequent legal or other proceeding.

13.2 The Commissioner, members of his or her staff, or his agents may not be called to testify in any subsequent legal or other proceeding, nor may production or disclosure be sought of any document, discussion or correspondence arising from a complaint or any document or information contained in the files of the Commissioner.

14. Confidentiality

14.1 In the course of carrying out his or her functions, powers and jurisdiction, the Commissioner shall, subject to Section 14.3 below, maintain the confidentiality of the Customer and the TSP Member, save as between the parties to the complaint and as may be necessary to carry out the Commissioner's functions in relation to the complaint.

14.2 Without limiting the generality of the foregoing, all conciliations, investigations or, Recommendations shall maintain the anonymity of the TSP Member and the Customer.

14.3 Notwithstanding Section 14.1, a Decision of the Commissioner made pursuant to Section 11.4, whether accepted by the Customer or not, shall be available to the public, including the name of the relevant TSP Member. The name and identity of the Customer shall remain confidential and any identifying information shall be removed from any public disclosure of such Decision.

15. Immunity

15.1 The Commissioner and his or her staff and agents are immune from suit in relation to the good faith exercise of their functions, powers and jurisdiction under this Code, and all related activities.

16. Recommendations and Decisions Do Not Establish Precedents

16.1 In considering each complaint, the Commissioner's discretion shall not be fettered by, and the Commissioner shall not be bound by, any previous Recommendation or Decision made by the Commissioner or by any predecessor in that office.

17. Effective Date

17.1 This Code, as amended and restated at June 1, 2010, applies:

- (a) to all complaints received on or after June 1, 2010; and
- (b) to complaints received and accepted for investigation prior to June 1, 2010 in relation to which no Recommendation or Decision has been made and which have not been resolved.

17.2 Notwithstanding paragraph 17.1(b), the Commissioner shall exercise his or her discretion pursuant to Section 6.19 to ensure that any changes to the time for taking action under this Code shall not operate in such a manner as to cause unfairness to either a Customer or a TSP Member involved in a complaint to which paragraph 17.1(b) applies.