

# Update

## Communications

July 20, 2009

### **CRTC Adopts a New Framework for Telecommunications Ownership and Control Reviews**

The Canadian Radio-television and Telecommunications Commission (the “CRTC” or “Commission”) announced today that it has adopted a new framework with respect to Canadian ownership and control reviews under the *Telecommunications Act* and the *Canadian Telecommunications Common Carrier Ownership and Control Regulations*. Effective immediately, a four-type framework will apply to all future telecommunications ownership and control reviews for common carriers.

No prior approval of an ownership transaction is required for telecommunications undertakings. Prior to today’s announcement, where the Commission undertook a telecommunications ownership and control review, it did so on a confidential, bilateral basis (i.e., between the carrier under review and the Commission, with no third-party input or release of information on the public record).

Today’s announcement, however, brings telecommunications ownership and control reviews more in line with mandatory broadcasting ownership and control reviews, where the majority of substantive reviews are conducted via written or oral public hearings (i.e., Type 3 or Type 4 proceedings described below), and administrative reviews (i.e., Type 2 proceedings described below) are

reserved for only the most non-controversial ownership transactions. Broadcasting ownership and control reviews do not, however, have access to confidential, bilateral reviews (i.e., Type 1 proceedings).

The Commission’s review of its telecommunications ownership and control framework was prompted by requests by Shaw and TELUS that the Commission publicly consider Globalive Wireless Management Corporation’s (“Globalive”) compliance with the ownership and control requirements. Globalive, a successful bidder in Industry Canada’s Advanced Wireless Services (“AWS”) spectrum auction, is a potential new entrant in the wireless telecommunications industry. Concurrent with today’s announcement, the Commission released a notice of consultation initiating a full public hearing (i.e., Type 4 proceeding) to consider Globalive’s compliance with the ownership and control regime. Comments are due August 21, 2009 and a public hearing will be held in Gatineau beginning September 23, 2009.

#### **Four-Type Ownership and Control Review Framework**

The Commission has determined that where a telecommunications ownership and control review involves complex or novel ownership or governance structures, particularly those involving complex or novel financing arrangements, the public interest may be served in some instances by conducting that review via a public, multi-party process or a process that results in a public record and public decision. While it is under no legal obligation to conduct such public reviews, the Commission stated that such reviews may provide substantive precedents and a level of certainty to all industry players.

The Commission therefore establishes the follow-

ing telecommunications ownership and control review framework, consisting of four types of reviews:

## **Type 1: Confidential, bilateral review**

- Reflects the *status quo* and will continue to be the process most often employed.
- For reviews of routine ownership or governance structures that offer little in precedential value, as the issues raised are neither complex nor novel.
- The CRTC will review a carrier's documentary evidence and make a confidential determination.

## **Type 2: Written, bilateral review, resulting in the release of a public record and decision**

- Will be undertaken where an ownership or governance structure is of a complex or novel nature, such that in the Commission's view its determination will hold precedential value to industry players and the general public.
- Will be carried out in the same manner as a Type 1 review, with a public decision and examination file released upon the conclusion of the Commission's review.

## **Type 3: Written, public, multi-party proceeding**

- Will be undertaken where an ownership or governance structure meets the criteria for a Type 2 review and the Commission is of the view that the evidentiary record would be improved by third-party submissions.
- Documentation filed by the carrier under review will be available for public comment.
- At the conclusion of the review process, a public decision will be issued.

## **Type 4: Oral, public, multi-party proceeding**

- Will be undertaken in exceptional circumstances, where an ownership or governance structure meets the criteria for a Type 3 review and, in the Commission's view, the appearance of parties would more easily allow the Commission to complete and test the evidentiary record.
- Documentary evidence filed by the carrier under review will be available for public inspection.
- Third parties will have an opportunity to file written submissions and request to provide oral submissions on that evidence.
- At the conclusion of the review process, a public decision will be issued.

If you would like to know more about this matter or have any questions with respect to the foregoing, please do not hesitate to contact any member of our Communications Law Group.

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