CCSA

Regulatory

February 22, 2021

VIA Intervention Comment Form

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet,

Subject: Telecom Notice of Consultation CRTC 2019-406: Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada – CCSA Final Comments

1. The Canadian Communication Systems Alliance ("CCSA") speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 100 companies operating from sea to sea to sea, including across the North.

2. CCSA submits these comments in response to TNC CRTC 2019-406.

3. CCSA has provided detailed recommendations regarding access to and affordability of support structure attachments in its responses to TNC CRTC 2020-366. In this submission, CCSA focuses on other issues that have arisen in response to the Commission's Broadband Barriers proceeding, namely, the need for:

   - operational funding to support continued network operation in High-Cost Serving Areas;
   - regulation of access to wholesale transport services in markets in which transport remains a monopoly service;
   - improved access to high-quality spectrum to support extension and upgrade of fixed

wireless networks; and

- implementation of simplified granting mechanisms to support smaller projects.

Operational Funding

4. In its Reply Comments in this proceeding, CCSA said:

> CCSA considers that the single most important issue to be addressed is the lack of any support for ongoing network operation in what amount to "High Cost Serving Areas". CCSA fears that, without such support, Canada will find itself wasting time and money by building networks that cannot be sustained.[1]

5. It appears from the comments of numerous parties to this proceeding, that the challenge of operating funded networks in thinly-populated rural and remote markets has two dimensions:

- the inappropriateness of applying urban retail rate commitments to the operation of funded networks in such markets; and

- the need for some form of subsidy to support the continued, effective operation of networks in such markets.

6. With respect to the first of those dimensions, Bell states: "There is no economic rationale to expect competitive rates in rural areas to be the same as they are in urban areas since both types of areas exhibit different cost structures. High cost areas very reasonably result in higher rates."[2]

7. Bell's comment is directed toward a conclusion that transport costs and rates may reasonably be higher in rural and remote areas. In fact, higher transport costs are but one element of the incremental costs faced by providers who provide service in such areas as compared to those who serve dense urban markets.

[1] CCSA Reply Comments at Executive Summary, para. 5 [emphasis in original].
[2] Bell Canada Reply Comments at para. 97.

8. In light of the more challenging cost models that apply to providing service in thinly-populated and often geographically challenging rural and remote markets, application of retail price constraints equivalent to those in competitive urban markets makes little sense. Such an approach can only exacerbate the already formidable economic challenge of providing USO-compliant telecommunications services to Canadians in such markets.

9. As to the first dimension, then, CCSA supports Cogeco's proposal to:

> . . . remove the "urban level" retail price criterion for eligible projects. The criterion creates an important financial challenge for network operators in underserved areas. It makes it so that retail prices set in these areas cannot be sufficient to recover costs, thus forcing the deficit to be cross-subsidized by consumers in other communities through prices that have to be set higher than they normally should."[3]

10. CCSA submits, further, that, for many small ISPs, the opportunity for "cross-subsidization by consumers in other communities" does not even exist. Rather, small ISPs facing an "urban level" retail price funding criterion may very well be discouraged by such a criterion from applying for project funding at all.

11. CCSA recommends that this barrier be removed from the Commission's broadband funding framework.

12. The second dimension concerns the continued unavailability of any form of operating subsidy for networks in these often geographically challenging low-density markets. That is especially true in view of the rising costs of passive infrastructure remediation and ongoing rental fees.

13. Prior to the Commission's introduction of a new Universal Service Objective, the Basic Service Objective defined the nature of the telecommunications service that was required to be delivered to Canadians.

14. To support achievement of the BSO in High-Cost Serving Areas, the Commission implemented a National Contribution Fund and a related subsidy regime. The subsidy

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[3] Cogeco Reply Comments at para. ES5.

regime supported delivery of BSO-level local exchange voice service to areas in which the economic realities prevented a fair rate of return for ILECs in relation to their delivery of the BSO-level service.

15. In Telecom Regulatory Policy CRTC 2016-496, the Commission introduced a new Universal Service Objective which replaced the BSO. The point of that new objective was to update the regulatory framework to ensure that all Canadians could benefit from access to high-quality broadband services in a modern communications environment.

16. As the Commission stated in TRP 2016-496: ". . . a new objective now needs to be established to recognize the current state of modern telecommunications services in Canada and to enable Canadians to become even greater participants in the digital economy. Accordingly, the Commission hereby establishes a universal service objective."[4]

17. The Commission affirmed that:

> "Subsection 46.5(1) of the Act states <u>that the Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to basic telecommunications services</u>."[5]

that:

> The universal service objective reflects the modern telecommunications services that enable the participation of Canadians in the digital economy and society. The Commission determines that the following services – which form part of the universal service objective – are basic telecommunications services within the meaning of subsection 46.5(1) of the Act: (i) fixed and mobile wireless broadband Internet access services, and (ii) fixed and mobile wireless voice services.[6]

and that:

> The Commission further determines that it will establish a new mechanism, pursuant to subsection 46.5(1) of the Act, to assist in funding <u>continuing access</u> to the basic

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[4] TRP CRTC 2016-496 at para. 37.
[5] *Ibid*. at para. 130 [emphasis added].
[6] *Ibid*. at para. 131.

> telecommunications services that form part of the universal service objective. This new funding mechanism will assist the Commission in achieving various policy objectives set out in the Act, including the development of a telecommunications system that serves to enrich and strengthen the social and economic fabric of Canada and its regions.[7]

18. In Telecommunications Regulatory Policy CRTC 2018-213, the Commission stated that it had decided:

> . . . to shift its focus from voice services to broadband Internet access services in order to use the funds collected pursuant to subsection 46.5(1) of the Act to support <u>continuing access</u> by Canadians to basic telecommunications services. Modern telecommunications services, such as mobile wireless and fixed broadband Internet access services, are now also considered basic telecommunications services within the meaning of subsection 46.5(1) of the Act.[8]

19. To give effect to that shift of focus, the Commission decided to "phase out the local service subsidy regime and establish a new funding mechanism for projects to build or upgrade broadband Internet access service infrastructure."[9]

20. Re-direction of TSP contribution funds – which are now calculated on the basis of telecommunications revenues that include texting and Internet service revenues[10] – is to a Broadband Fund which is designed to provide <u>only</u> capital funding for network building and upgrading projects.

21. CCSA has never understood why the Commission's Broadband Fund has not incorporated some form of operating subsidy regime, in addition to capital project funding, to support <u>continuing access</u> by Canadians to basic telecommunications services.

22. In CCSA's view, without such an operating subsidy component, that Broadband Fund is unlikely fully to support achievement of the objective of ensuring "continuing access by Canadians to basic telecommunications services".

23. Numerous commenters have raised this issue. FMCC said: "We are pleased that several

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[7] *Ibid*. at para. 132 [emphasis added].
[8] TRP CRTC 2018-213 at para. 40 [emphasis added].
[9] TRP CRTC 2018-213 at para. 6.
[10] TRP CRTC 2016-496 at para. 163.

providers agree with us that funding programs should provide subsidies for operational costs where even with capital funding, revenues will not be sufficient to cover operating costs."[11]

24. Rogers recommended the provision of "funding for operational costs and for training in remote communities"[12] and TELUS noted that "the challenging business cases in many underserved areas of Canada require government assistance in the form of additional funding".[13]

25. In commenting on how the Commission might address this critical barrier, SaskTel urged the Commission to:

> . . . commence a proceeding to review the appropriate business and technology models to allow service providers to meet the USO in High Cost Serving Areas throughout Canada and that this proceeding specifically consider a funding model for the construction and operations of rural broadband networks in areas between communities such as farms and First Nations on Prairie geographies, and remote communities in mountainous areas, and any other areas not adequately served under the existing models that enables construction via capital subsidies and operations via operating subsidies.[14]

26. Beanfield pointed out that:

> . . . a still-more-nuanced, made-in-Canada solution already exists in this regard. That is the uniform approach to identifying high-cost bands in the territories of large ILECs which the Commission adopted in Telecom Decision CRTC 2001-238-2, and has continued to revise from time to time, designating Bands E, F, and G as High Cost Serving Area ("HCSA") bands.[15]

27. CCSA agrees with Beanfield's assessment. CCSA submits that the local voice service subsidy regime's rate band design is well-suited to adaptation to support the ongoing delivery of USO-level telecommunications service in Canada's more economically challenging markets.

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[11] First Mile Connectivity Consortium Reply Comments at para. E27.
[12] Rogers Reply Comments at para. EIV.
[13] TELUS Reply Comments at para. 2.
[14] SaskTel Reply Comments at para. 14.
[15] Beanfield Reply Comments at para. 18.

28. CCSA recommends that the Commission should consider how a contribution and subsidy structure can be tailored to work, in concert with the Broadband Fund, to support extension of ongoing USO-level service to Canadians who live and work in Canada's rural and remote regions.

29. CCSA does not see how, absent such a solution, the Commission's broadband funding program can fully satisfy its stated objective to "support continuing access by Canadians to basic telecommunications services".

30. Rather, CCSA continues to hold its repeatedly stated view that, "there is little value in building new networks if continued operation of those networks is uneconomic and unsustainable."[16]

Access to Wholesale Transport Services

31. Generally, the large wholesale transport providers argue that re-regulation of wholesale transport services is inappropriate while a number of commenters, including smaller competitors and associations such as the Canadian Federation of Municipalities[17] have identified the lack access to transport service as a major barrier to extension of broadband networks in rural and remote markets.

32. In this respect, we note Shaw's comments to the effect that:

> . . . many remote communities in Canada are only served by one incumbent transport carrier with a monopoly. In these cases – where actual monopoly transport routes lead to monopolistic pricing and other terms – it is appropriate for the Commission to intervene[18]

and that:

> Rather than imposing broad rate regulations on the entire wholesale transport market, which would be inefficient and disproportionate to the barrier at issue, the Commission should focus any regulatory efforts on addressing the challenges that

[16] CCSA Reply Comments at para. 13.
[17] *See*, e.g. Federation of Canadian Municipalities Reply Comments at para. 6.
[18] Shaw Reply Comments at para. 9.

arise with monopolistic transport routes.[19]

33. We note, as well, TELUS' comment that: "It is open to any party to bring a Part I application seeking de-forbearance in a specific area at any time."[20]

34. CCSA understands the large wholesale transport providers' concern with re-regulation of the wholesale transport services market on a national basis and, for that reason, supports Shaw's premise that re-regulation should be applied when there is a lack of effectively competitive wholesale transport services in a given market or region.

35. Having said that, CCSA does not consider that the onus to seek Commission action to set terms and rates for access in such non-competitive markets should fall on the ISP who seeks access to transport services.

36. For CCSA members, such regulatory action is both foreign and unaffordable. Many of the small ISPs that CCSA represents lack any dedicated regulatory resources and are unable to bear the costs of a regulatory proceeding contested by one of the large wholesale transport providers.

37. In addition, given the large transport providers' ability to stretch regulatory proceeding timelines with procedural delays, timeliness of access under such an approach would almost certainly become a serious issue.

38. Just as lengthy delays in access to support structure attachments frustrate the ability of smaller ISPs to propose network projects for funding and to implement new network builds, delays in access to wholesale transport services can kill worthy projects before they can get off the ground.

39. For those reasons, CCSA submits that the Commission has a positive duty to identify monopoly and non-competitive transport markets and intervene to ensure that timely, affordable access to transport services is available to competitive ISPs in those markets.

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[19] Shaw Reply Comments at para. 38.
[20] TELUS Reply Comments at para. 25.

40. CCSA reiterates its prior comments that access to wholesale transport services – in terms of both discoverability and affordability – remains a key barrier to the extension of broadband networks in many rural and remote markets.

Improved Access to High-Quality Spectrum

41. Many CCSA members are extending the reach of their existing broadband networks with fixed wireless facilities.

42. Fixed wireless technology is a cost-effective means of extending and improving broadband services to Canadians in rural and remote areas and, in some cases, is an effective alternative for responding to challenges of difficult terrain.

43. The issue for CCSA members is the unavailability of affordable, licensed spectrum in localized blocks appropriate to their service areas. The unlicensed spectrum that some of those ISPs are forced to use, subject as it is to interference issues, is not sufficient to meet the demands of high-quality, USO-level broadband service.

44. CCSA is aware that spectrum issues do not fall squarely within the Commission's mandate but we would be remiss not to raise the matter in a proceeding intended to identify barriers to broadband build-out and to find ways to overcome such barriers.

45. In this respect, we wish to emphasize the following recommendations from CCSA's Reply Comments in this proceeding, as follow:

- all possible models for making more licensed spectrum available to smaller operators on a localized basis should be explored;
- we note the possibilities presented by the US CBRS model and recommend that a similar structure be considered in Canada; and
- we recommend adoption of some form of "Spectrum as a Service" model

whereby smaller operators could rent spectrum on a "pay as you grow" basis.[21]

46. Most importantly, we agree with TELUS' comment that:

> ISED deployment conditions have regularly allowed spectrum, often licenced at a significant discount because of a set-aside, to go unused for years or decades to the detriment of Canadians who live in rural areas. The implementation and enforcement of strong deployment requirements are a crucial element in realizing the objective of Canadians benefiting from the latest wireless telecommunications services in both urban and rural areas. Fallow spectrum achieves no public policy goal."[22]

47. CCSA strongly supports an immediate review of spectrum licensing conditions with a view to encouraging sub-licensing of spectrum in a manner that supports the acquisition and use of unused spectrum by independent ISPs on a timely and affordable basis.

48. Again, given the enormity of the challenge of connecting all Canadians to USO-level broadband service, this precious resource simply cannot be allowed to lay fallow.

<u>Simplified Granting Mechanisms to Support Smaller Projects</u>

49. CCSA has repeatedly commented, in response to the Commission's Broadband Funding Proceeding and this Broadband Barriers proceeding, that the complex nature of the funding application and reporting requirements are, themselves, barriers to the funded creation of new networks in rural and remote areas.

50. For many of the smaller projects such as CCSA member ISPs might propose, those requirements, in CCSA's view, are out of proportion with the funding amounts sought.

51. Those complex requirements discourage smaller ISPs, many of whom operate in the very rural and remote markets which are in greatest need of network extension and improvement, from developing project proposals at all.

[21] CCSA Reply Comments at paras. 30-32.
[22] TELUS Initial Comments at para. 22.

52. For those reasons, CCSA, once again, reiterates its strong recommendation that some form of simplified grant application be available for projects under a certain monetary threshold.

<u>Conclusion</u>

53. CCSA has provided detailed recommendations regarding access to and affordability of support structure attachments in its responses to TNC CRTC 2020-366. In this submission, CCSA focuses on other issues that have arisen in response to the Commission's Broadband Barriers proceeding, namely, the need for:

- funding to support continued network operation in High-Cost Serving areas;
- regulation of access to wholesale transport services in markets in which transport effectively remains a monopoly service;
- improved access to high-quality spectrum to support extension and upgrade of fixed wireless networks; and
- implementation of simplified granting mechanisms to support smaller projects.

54. CCSA recommends that the Commission adapt and apply the existing National Contribution and subsidy regime in a manner that subsidizes the costs of operating new broadband networks needed to extend USO-level service to High-Cost Serving Areas.

55. CCSA recommends that the Commission act positively to identify monopoly and non-competitive markets for the provision of wholesale transport services and re-regulate such markets as needed to remove access barriers.

56. CCSA supports enhancement of spectrum licensing rules to improve the availability of affordable, localized spectrum to smaller, independent ISPs. In particular, CCSA supports rules that encourage sub-licensing of spectrum in a manner that supports the acquisition and use of unused spectrum by independent ISPs on a timely and affordable basis.

57. CCSA recommends that the Commission introduce some form of simplified grant application process for projects which fall below a certain set monetary threshold.

58. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,

Christopher J. Edwards

Vice-President, Regulatory Affairs

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