

March 18, 2019

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 2019-45: Call for comments – Application Guide for Broadband Fund

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 110 companies operating from sea to sea to sea, including across the North.
2. CCSA wishes to comment on the following matters raised by TNC CRTC 2019-45:
 - Community Consultation and Support as Eligibility and Assessment Criterion
 - Confidential Disclosure to Governments and Government-Owned Entities
 - Time Period for Review and Vary Applications and Notification to Unsuccessful Applicants
 - Appendix 3 - Retail Pricing Benchmarks

Community Consultation and Support as Eligibility and Assessment Criterion

3. Paragraph 6.1.2(c) of TNC 2019-45 provides that, “To be eligible for funding, an applicant must provide evidence that it has consulted, or attempted to consult, with communities affected by the proposed project, either directly or through community representatives at the provincial, territorial, and/or municipal level, or in the case of Indigenous communities, at the band council or Indigenous government level.”
4. Paragraph 6.2.1(d), under the “Assessment Criteria” rubric, provides that:

This criterion will be used to ensure that (i) the applicant has consulted or attempted to consult with affected communities, including Indigenous communities if applicable, and (ii) affected communities support the project and intend to take up future services.

A project will be considered to be of higher quality based on a greater level of community support demonstrated in the eligible geographic areas.

As such, applicants will be assessed based on the extent to which they (i) demonstrate details of consultations with affected communities, and (ii) provide evidence of support from affected communities.

5. CCSA is aware of numerous cases in which individual municipalities, regional municipalities and associations of municipalities have expressed interest in developing and implementing broadband projects.
6. In some such cases, regional municipalities have secured CTI and/or provincial funding and are using such funding to overbuild service areas already served by existing CCSA member broadband networks.
7. The quoted criterion raises the potential for conflicts of interest as between governmental and non-governmental applicants.
8. That is, a community which decides to build its own network may well do so as a direct competitor to an existing TSP which also wishes to extend broadband service to the community and, as such, would have a strong incentive to defeat the existing ISP's application.
9. In such a situation, the existing TSP is highly unlikely to be able to secure the support of the community for its proposed project and may well not even be able to consult meaningfully with that community's representatives.
10. Certainly, such an existing ISP could not, for competitive reasons, provide details of its project plans with a community with whom it expects to compete for funding support.
11. Such an existing TSP could conceivably pass the eligibility threshold by documenting its attempts to consult. However, without any possibility of gaining the community's support, the existing ISP's application will almost certainly be inferior to the competing community's application with respect to the "community consultation and support" assessment criterion.
12. The community itself, of course, would strongly support its own funding application.
13. As such, the existing ISP – which may very well have superior resources and expertise needed for execution of an effective network build – is inherently and unfairly disadvantaged by this criterion when it competes with a direct application by the community.
14. The Application Guide should make it clear that the "community consultation and support" eligibility and assessment criteria should not apply to cases in which an ISP's application to service a community competes with an application by the community itself.

Confidential Disclosure to Governments and Government-Owned Entities

15. Paragraph 6.1.1(a)(ii) of TNC 2019-45 includes among the class of eligible applicants, “a Canadian provincial, territorial, or municipal entity, including a public sector body that is established by statute or by regulation or that is wholly owned by a Canadian provincial, territorial, or municipal government.”
16. Section 4.6 of the Notice states that, “To further coordination efforts with governments at all levels and to provide transparency, the CRTC may disclose application information to these governments.”
17. Further, Section 8, “Declaration Form”, at item 8, requires an applicant’s declaration form to provide that, “The Applicant consents to the CRTC disclosing application information on a confidential basis to federal, provincial/territorial, and municipal governments and government agencies for future planning purposes or to assess any potential risks related to the overall integrity of Canadian telecommunications networks.”
18. Again, it is possible that a “provincial, territorial, or municipal entity, including a public sector body that is established by statute or by regulation or that is wholly owned by a Canadian provincial, territorial, or municipal government” which decides to build its own network may well do so as a direct competitor to an existing TSP which also wishes to extend broadband service to the municipality.
19. In such a case, it would be clearly inappropriate for the ISP applicant’s detailed project information to be shared with the competing governmental applicant.
20. While this may not affect the form of the Application Guide itself, the Commission should have procedures in place to ensure that such information will not be shared with any person with whom an applicant is competing for project funding.

Time Period for Review and Vary Applications and Notification to Unsuccessful Applicants

21. Section 13, Item 10 of the TNC 2019-45 states that:

Pursuant to section 62 of the *Telecommunications Act*, an application may be filed with the CRTC to review and rescind or vary a CRTC decision. Pursuant to subsection 71(1) of the *Rules of Procedure*, applicants have 90 days after the date of the funding decision to file such applications. However, the CRTC hereby varies this rule such that applications to review and rescind or vary a funding decision must be filed within 30 days of the date of the funding decision.
22. While TNC 2019-45 does not expressly state any reason for this change, we presume it is intended to support speedy final disposition of funding decisions so as to support timely deployment of funding.

23. While CCSA applauds that intention, it is also important that the procedural framework should not create unfairness for any class of applicants.
24. As a representative of a large number of very small ISPs, many of whom lack either dedicated regulatory resources or familiarity with the Commission's processes, CCSA is concerned with the shortness of the proposed period for the filing of Review and Vary applications.
25. That is especially true when a short appeal period is combined with the Commission's policy stated at s. 4.6 of TNC 2019-45:

Applicants will not be informed of the status of their applications. Funding recipients will be announced in decisions to award funding to the project (hereafter, funding decisions, see definition in Appendix 1) that will be published on the CRTC's website. Applicants will be notified when the call for applications has closed and the CRTC has made all the funding decisions for that call [emphasis added].

26. It is unclear from that paragraph how quickly after having been made, individual funding decisions will be published to the CRTC's website.
27. In addition, where active notification to unsuccessful applicants will occur only once all funding decisions in the tranche have been made, such an applicant may well receive an active notification only after the period allowed to appeal an individual funding decision has passed.
28. Given that combination of factors, CCSA has a real concern that its smaller members may well remain unaware of a funding decision which they might wish to challenge until it is too late to do so.
29. As a reasonable compromise, CCSA recommends that:
 - the period provided for filing of a Review and Vary Application should be no less than 45 days from the date upon which an individual funding decision is made; and
 - the Commission should actively notify unsuccessful applicants of an individual funding decision at the same time the successful applicant is notified.

Appendix 3 - Retail Pricing Benchmarks

30. Paragraph 6.2.2(j) of TNC 2019-45 provides that, "Applicants must propose to offer various service packages and propose rates that are equal to or lower than those offered by facilities-based service providers in one of the major urban centres or communities in the affected community's province or territory for reasonably comparable speeds and capacity (see Appendix 3 for a list of comparable urban centres or communities).
31. The centres listed in Appendix 3 are all major, high-density urban centres which are the beneficiaries of robust competition in the provision of broadband Internet services.

32. Even if the rural and remote markets to which the broadband fund is intended to deliver service were fully fibred today, they would not be characterized by comparable levels of competition to those in the major centres.
33. In CCSA's view, this criterion is likely to depress retail pricing below the level that would be economically sustainable in such low-density markets.
34. As CCSA has said throughout this proceeding, sustainability is perhaps the most important requirement for any network to be built with broadband funding. There is no point to building networks that cannot be sustained.
35. CCSA recognizes that the funding conditions set out in the Application Guide are designed, in part, to ensure sustainability of the networks that the Commission funds.
36. However, it will be extremely difficult to force sustainability through regulatory conditions if the economics of ongoing operation of a funded network simply are not viable.
37. CCSA questions whether this criterion is consistent with the principle of proportionality and suggests that a retail pricing criterion matched more closely to the real economics of serving remote and rural areas which, often, present the most challenging geographic conditions, would be more proportional to the need.
38. For those reasons, CCSA recommends that the communities listed in Appendix 3 should be not be Canada's largest urban centres but, rather, a selection of communities in which the competitive and economic environment more closely match those of the areas for which projects are to be funded.
39. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,



Christopher J. Edwards
Vice-President, Regulatory Affairs

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