

June 12, 2020

VIA Intervention Comment Form

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

Dear Mr. Doucet,

Subject: Telecom and Broadcasting Notice of Consultation CRTC 2020-124: Call for comments – Regulations to be made under the *Accessible Canada Act*

Introduction

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. The *Accessible Canada Act* creates very significant new process and reporting requirements for federally-regulated entities including BDUs, TSPs and ISPs.
3. Those requirements include creation of accessibility plans based on “design for accessibility” considerations, update of such plans, periodic reporting on status and implementation of such plans, implementation of new feedback mechanisms and obligations regarding provision of notices to regulatory authorities.

4. All of those requirements represent substantial administrative and cost burdens on the regulated entities to whom they apply. The costs of meeting those new burdens are not offset by any new revenue-generating opportunities.
5. In addition, those new requirements, accompanied as they are by exposure to substantial Administrative Monetary Penalties for non-compliance, represent increased legal and economic risk for regulated entities.
6. CCSA submits that imposition of such requirements on smaller BDUs, TSPs and ISPs such as CCSA represents would have a disproportionate negative impact on those smaller communications service distributors, first with respect to the cost and administrative burdens of the new obligations and, second, with respect to the risks imposed on smaller distributors.

The Special Characteristics of Small BDUs and TSPs

7. CCSA is concerned, in particular, that many of its smaller members lack the resources to interpret and implement such process and reporting changes so as to fully comply with the legislation and may, through inadvertence, become subject to substantial economic and other sanctions.
8. CCSA comprises a number of not-for-profit community cooperatives, volunteer community organizations and First Nations which may suffer disproportionate economic harm from the requirement to implement the required planning, reporting and process obligations to which they would be exposed as “regulated entities”.
9. As one CCSA member put it in response to a Request for Information in the TNC CRTC 2018-422 proceeding:

We are members of the general public who volunteer our time to operate a non-profit ISP. Our society provides Internet services to residents of our remote community (less than 200 subscribers) solely on the basis of

individual contracts. We don't offer small business contracts and have no professional background or experience in providing small business Internet services.

[W]e offer the same on-going services for the same prices to all members, we don't make special offers, offer limited time promotions or solicit new business. Interested parties who contact us (by phone, email or in person) about becoming members to receive Internet service are given information about our services (BB pkgs, pkg speeds and monthly pkg limits) and our costs (refundable set-up deposits, new connection fee, monthly pkg charge and overusage charge).¹

10. CCSA is especially concerned with the ability of such communications providers to bear the added costs and risks that compliance with these new rules would place on them.
11. On the other hand, those smaller communications providers typically serve localized communities and maintain close relationships with their customers. As a matter of community engagement and competitive necessity, they are highly responsive to their customers, including those with accessibility needs.
12. As CCSA noted in its response to TNC CRTC 2018-422, many of these smaller providers:
 - do not have written contracts with their retail customers but, rather, rely on standard terms of service published on their websites;
 - permit their customers to cancel service at any time without penalty;
 - do not experience significant amounts of customer complaints; and

¹ CCSA, "Telecom Notice of Consultation CRTC 2018-422: Call for comments – Proceeding to establish a mandatory code for Internet services, CCSA final Written Comment", 23 April, 2019 at para. 12.

- will do whatever they can to resolve customer complaints as quickly and simply as possible.²

13. As CCSA said in that submission:

... customer care is paramount to smaller ISPs who operate and serve customers – customers with whom they tend to have close relationships – in their local communities. The retail relationship is as informal and practical as it can be and, because that model reduces the provider’s costs, customers benefit from that approach.³

14. Of the 110 CCSA member companies which reported through CCSA’s billing system as of March, 2020:

- 66 served fewer than 1,000 customers
- 14 served between 1,000 and 2,000 customers
- 12 served between 2,000 and 5,000 customers
- 6 served between 5,000 and 10,000 customers
- 9 served between 10,000 and 20,000 customers; and
- 3 served more than 20,000 customers.

15. Of the three CCSA member companies that served more than 20,000 customers in aggregate, those companies provided service through a large number of BDUs, often spread across very large geographic regions, as follows:

CCSA Member Company	Number of Discrete BDUs
Access Communications	225
Cable Axion	31
Dery Telecom	57

² *Ibid.* at para. 11.

³ *Ibid.* at para. 15

16. That is to say that the great majority of companies comprised within CCSA are very small and would stand to be severely impacted by a new requirement to comply with these onerous planning, reporting and feedback provisions.
17. While CCSA members understand the importance of responsive and transparent accommodation of accessibility principles in their service offerings, CCSA submits that, by the very reason of their small size, their localized operations and their community engagement, these companies can and do respond effectively to their vulnerable constituents on a daily basis.

Application of the BDU Exemption

18. Subsection 9(4) of the *Broadcasting Act* provides that the Commission “shall . . . exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1)”.
 19. Based on its factual finding, per s. 9(4), subject to the provisions of BO CRTC 2017-320,⁴ the “BDU Exemption Order”, the Commission has exempted BDUs that serve 20,000 or fewer subscribers from the requirements of Part II of the *Act* and regulations made under that Part.
 20. The Commission’s power to make regulations is established by s. 10 which is contained in Part II of the *Act*. The proposed regulation to implement aspects of the *Accessible Canada Act* would therefore be a regulation made under Part II.

⁴ Broadcasting Order CRTC 2017-320, “Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers”, 31 August 2017.

21. As such, the proposed regulation, without more, would not apply to BDUs already exempted by operation of the existing BDU Exemption Order.
22. Rather, application of the proposed regulation to already exempted BDUs would require amendment of the BDU Exemption Order in force at the time the regulation was implemented.
23. Therefore, exemption of currently exempted small BDUs from application of the proposed regulation would require no further action by the Commission.
24. In view of the Commission's prior factual finding which led to issuance of the existing BDU Exemption Order and in view of the facts concerning its membership outlined above, CCSA submits that exemption, in this manner, of already exempt BDUs from application of the proposed regulation would be both consistent and appropriate.
25. Moreover, given the Commission's previous finding of fact that regulation of the class of BDUs that serves 20,000 or fewer subscribers will not contribute materially to achievement of the objectives at s. 3(1) of the *Broadcasting Act*, s. 9(4) of the *Act* requires that such BDUs shall be exempted from application of the proposed regulation.
26. CCSA recommends that BDUs that serve 20,000 or fewer subscribers should be exempted, as set out above, from application of the proposed regulation.
27. CCSA's membership comprises a number of not-for profit community cooperatives, volunteer organizations and First Nations BDU undertakings.
28. Such undertakings are especially sensitive to the costs of implementation of the *Accessible Canada Act* processes and administrative requirements and the financial risk attendant on non-compliance with that legislation.
29. Community cooperatives, in particular, are governed by the communities they serve, both in terms of board composition and their subscriber/member bases. In addition to the imperatives

of community engagement and competitive service that apply to all small BDUs, such undertakings can be expected to be especially sensitive and responsive to their communities' needs, including the needs of vulnerable groups and individuals within those communities.

30. For those reasons, to the extent that such BDUs do not qualify for exemption under the existing BDU Exemption Order, CCSA recommends that they, too, should be exempted from application of the proposed regulation.

Exemption of Small Telecommunications Service Providers

31. Almost all CCSA members who offer BDU service also offer voice and/or Internet services to their customers. In both of those capacities, they act as Telecommunications Service Providers (“TSPs”).
32. For that reason, exemption of their BDU operations from application of the proposed regulation, without more, would be entirely meaningless. Even though exempt as BDUs, such companies would still have to comply with the planning, updating, reporting and feedback requirements of the *Accessible Canada Act*.
33. BNC/TNC 2020-124 poses the question of which TSPs, if any, should be exempted from application of the proposed regulation. Specifically, the Commission asks “. . . should any of the telecommunications service providers currently falling under the scope of the exemption from the reseller registration obligation established in Telecom Regulatory Policy 2019-354 also be exempted under the ACA?”⁵
34. The class of TSPs exempted from regulation pursuant to TRP 2019-354 is different from the class of companies to whom the BDU Exemption Order applies. As a result, use of that definition as a class for exemption would not address the problem that many small facilities-based companies who would be exempt as BDUs would remain subject to the proposed

⁵ BNC/TNC CRTC 2020-124 at para. 40.

regulation as TSPs.

35. CCSA considers that a more useful definition of the class to be exempted, for the purpose of this proceeding, would be similar to the one established in relation to the Commission's recent implementation of the Internet Code in TRP CRTC 2019-269.⁶

36. In TRP 2019-269, the Commission analyzed the question of application of the Code as follows:

Given that the large facilities-based ISPs account for 87% of all Internet services received by Canadians, and that these service offerings are complex and oftentimes offered as part of a bundle, the Commission considers that the Internet Code should apply to large facilities-based ISPs at this time. The Commission considers that imposing the Code on the largest national and regional ISPs strikes an appropriate balance between benefiting the largest possible customer base and minimizing the burden of compliance with the Code. It will also ensure that customers can avail themselves of minimum standards, which will aid them in navigating the more complex agreements between themselves and their ISP.⁷

37. The Commission noted, with respect to smaller ISPs:

Further, smaller ISPs represent a diverse range of ISPs, including not-for-profits and cooperatives run by members of the community. They may not have the resources to fully understand and implement the Code at this time and, in many instances, they offer a limited range of plans with no discounts or promotional prices, lessening the potential risks to customers.⁸

⁶ Telecom Regulatory Policy CRTC 2019-269, "The Internet Code", 31 July 2019.

⁷ *Ibid.* at para. 112.

⁸ *Ibid.* at para. 125.

38. The Commission concluded: “Accordingly, the Commission determines that the Internet Code will not apply to smaller ISPs at this time.”⁹
39. CCSA notes that, in making that determination, the Commission responded to concerns which correspond precisely to those which CCSA has raised in this intervention, namely that smaller TSPs “may not have the resources to fully understand and implement the Code at this time”.
40. Consistent with CCSA’s observations above, the requirements of the *Accessible Canada Act* are at least as complex and burdensome as those contained in the Internet Code: in fact, they are far more so. In addition, they are backed by with sanctions far more onerous than those which attach to the Code.
41. CCSA therefore recommends that, consistent with the Commission’s determinations regarding application of the Internet Code, the proposed regulation to implement the *Accessible Canada Act* should apply to “the large facilities-based [TSPs], including all of their brands and affiliates” that provide telecommunications services: “Bell Canada (including Bell MTS Inc.; NorthernTel Limited Partnership; and Télébec, Société en commandite), Cogeco, Eastlink, Northwestel, RCCI, SaskTel, Shaw, TCI, Videotron, and Xplornet”.
42. CCSA notes the Commission’s statement of its expectation, in relation to the Internet Code, that: “. . . because customer protection is an important issue for the Commission, it expects all ISPs to behave in a manner that is consistent with all the principles set out in the Internet Code.”¹⁰
43. As we have stated above, CCSA and its members appreciate the importance of the principles of “accessibility by design” and delivery of services to vulnerable groups among the members’ customer bases in a responsive and transparent manner.

⁹ *Ibid.* at para. 126.

¹⁰ *Ibid.* at para. 127.

44. As such, CCSA members would have no difficulty with an expectation that they would do whatever they can, within the limits of their resources, to respect those principles.
45. To CCSA members, that is implicit in their need and desire to deliver responsive, high-quality service to all of their customers. It is something they can do because they know their customers.

Conclusion

46. Application of the *Accessible Canada Act* requirements, as described in BNC/TNC 2020-124, to small broadcasting and telecommunications service providers such as CCSA represents would impose a substantial and disproportionate hardship on those companies.
47. The Commission should exempt from application of the proposed regulation:
- all BDUs which currently qualify for exemption under the existing BDU Exemption Order;
 - to the extent they do not qualify for exemption under the existing BDU Exemption Order, BDUs who are not-for-profit cooperatives, volunteer organizations and First Nations;
 - TSPs who are not “the large facilities-based [TSPs], including all of their brands and affiliates” that provide telecommunications services: “Bell Canada (including Bell MTS Inc.; NorthernTel Limited Partnership; and Télébec, Société en commandite), Cogeco, Eastlink, Northwestel, RCCI, SaskTel, Shaw, TCI, Videotron, and Xplornet”.
48. Notwithstanding their exemption from application of the regulation, CCSA members would be comfortable with an expectation that they would do whatever they can, within the limits of their resources, to respect the principles of “accessibility by design” and delivery of services to vulnerable groups among the members’ customer bases in a responsive and transparent manner.



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

Sincerely,

A handwritten signature in black ink that reads "C. J. Edwards". The signature is fluid and cursive, with a long, sweeping underline.

Christopher J. Edwards
Vice-President, Regulatory Affairs