

Comments in Regards to the Review of the Canadian Communications Legislation Framework with Respect to Rural, Remote and Indigenous Broadband Connectivity

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Introduction

1. The following document provides comments in relation to the review of the *Telecommunications Act*, *Radiocommunications Act*, and *Broadcasting Act*.
2. The document is organized into thematic sections in relation to the Questions as set out in the Terms of Reference from the Broadcasting and Telecommunications Legislative Review Panel.³ The first section deals with considerations for rural, remote and Indigenous Broadband Connectivity. The second section deals with network neutrality in relation to the *Telecommunications Act*. The third section provides comment on the Canadian Telecommunications Policy objectives in s. 7 of the *Telecommunications Act* not directly related to broadband connectivity. The fourth section deals with digital literacy policy. A fifth address the on the challenge of bifurcated communications legislation, and comments the need of the Review Panel to carefully consider the current state of the Canadian media/communication ecosystem. A summary of recommendations is provided at the end of the document.

Considerations for Rural, Remote and Indigenous Broadband Connectivity

3. The following section addresses some potential concerns and considerations for rural, remote and Indigenous communities, and is organized into four specific sub-sections. In brief these four points can be summarized as follows:
 - Retain Section 7(b) of the *Telecommunications Act*, which is the Canadian Telecommunications Policy objective that ensures rural (and urban) Canadians have access to affordable, reliable and high quality telecommunications services;
 - Enact a limitation or sunset clause on Section 8 of the *Telecommunications Act* to ensure policy directions from Government do not remain in effect beyond their period of usefulness;
 - Do not codify the doctrine of facilities based competition into the *Telecommunications Act*; and,
 - Revise the *Spectrum Framework Policy for Canada* to ensure there is a meaningful consideration of the differing needs and uses of spectrum in rural and remote versus urban areas.

Section 7 of the *Telecommunications Act*

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³ Canada. 2018. "Responding to the new Environment: A Call for Comments." Appendix B. <http://www.ic.gc.ca/eic/site/110.nsf/eng/00003.html#cp>

4. Section 7 (s. 7) of the *Telecommunications Act* lays out the Canadian Telecommunication Policy Objectives. Within s. 7 subsection b is particularly important for rural connectivity. S. 7(b) states one objective of Canadian telecom policy is:

7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;⁴

5. Maintaining this policy objective is crucial to ensuring that rural Canadians receive high quality, affordable and accessible telecommunication services, including broadband. It is the only place within the *Telecommunications Act* that specifically mentions “rural.” As the legislated policy objectives, all broadband policy and regulation must align with the policy objectives. Without such a policy objective, rural, remote and Indigenous communities would have no guarantee that broadband policies would have to benefit or even consider them.
6. Rural Canadians already face a distinct digital divide, as reflected in statistics from the Canadian Radio-television and Telecommunications Commission’s (CRTC) *Communications Monitoring Report 2017*. Notable evidence of this divide includes:
 - Rural communities pay higher prices for internet services than urban centres and have fewer providers to choose from⁵
 - Broadband service offerings in rural communities are more likely to have lower monthly transfer limits (also known as data caps)⁶
 - 31% of rural households lack access to wireline broadband connections (fibre, cable or DSL) and have to rely on fixed wireless access or satellite services⁷
 - Rural households are particularly disadvantaged with respect to availability of higher speed broadband services; only 35% of rural households have access to connections at speeds of 100Mbps or higher⁸
7. Keeping (or even strengthening) the policy objective in s. 7(b) is essential to ensure that rural, remote and Indigenous communities are not left further behind.

Section 8 of the *Telecommunications Act*

8. Section 8 (s. 8) of the *Telecommunications Act* provides the Governor in Council (i.e. Cabinet) with the ability to issue policy directions to the CRTC with respect implementing and interpreting the policy objectives laid out in s. 7. While rarely used, this section is important, as policy directions to the CRTC direct impact the CRTC’s regulatory decision making process. More importantly the current s. 8 does not include any expiry or sunset provision. As such policy directions which are issued to address a specific concern or need may stay in place beyond their usefulness without any means of triggering an automatic review.

⁴ *Telecommunications Act*, S.C. 1993, c. 38, s. 7(b). <https://laws-lois.justice.gc.ca/eng/acts/T-3.4/FullText.html>

⁵ Canadian Radio-television and Telecommunications Commission (CRTC). 2017. *Communications Monitoring Report 2017*, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/cmr2017.pdf> p. 266.

⁶ CRTC. 2017. *Communications Monitoring Report 2017*. p. 269.

⁷ CRTC. 2017. *Communications Monitoring Report 2017*. p. 281.

⁸ CRTC. 2017. *Communications Monitoring Report 2017*. p. 282.

9. S. 8 was notably used in 2006 when the Government directed the CRTC to “rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives,...”⁹ This objective continues to be in force 12 years after it was issued, despite the fact, as noted by a recent House of Commons Industry, Science and Technology Committee report, that rural and remote communities may be disadvantaged as “market forces may be nascent at best or completely non-existent.”¹⁰
10. Revising s. 8 of the *Telecommunications Act* to include a mandatory review or sunset period for policy directions issued under s. 8 would ensure that policy directions are subject to scrutiny over time and are not held over beyond their period of usefulness. A five year review/sunset provision added to s. 8 would address this concern.

Facilities Based Competition

11. The CRTC currently practices the doctrine of supporting facilities based competition rather than services based competition. In other words the CRTC aims to have broadband service providers develop competing infrastructure to offer services over rather than sharing infrastructure and competing at the level of services. The CRTC’s approach has been developed over a series of regulatory decisions from 1997 to 2002, and it continues to use such an approach.¹¹ Scholarly literature reflects the challenges imposed on rural service providers by the doctrine of facilities based competition.¹² It is crucial that this doctrine is not codified into law at the detriment of rural, remote and Indigenous communities, which often lack sufficient competitive telecommunications facilities for such an approach to be effective in encouraging rural broadband deployment.
12. There is evidence of the value of service based competition for rural communities. The World Bank notes infrastructure sharing is particularly effective in rural areas.¹³ Rural areas often have weak market forces (as reflected in the House of Commons study cited above) and insufficient incentives for multiple companies to invest in infrastructure.¹⁴ Lack of market forces undermines facilities based competition as a viable policy approach. Although a degree of infrastructure sharing/services based competition is already present in Canada (in particular through the CRTC’s decision on

⁹ Canada. 2006. *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*. SOR/2006-355. <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-355/page-1.html> s. 1(a)(i).

¹⁰ Canada – House of Commons – Standing Committee on Industry, Science and Technology. 2018. *Broadband Connectivity in Rural Canada: Overcoming the Digital Divide*. <http://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP9711342/indurp11/indurp11-e.pdf> p. 20.

¹¹ CRTC. 2002. “Telecom Decision CRTC 2002-34,” <https://crtc.gc.ca/eng/archive/2002/dt2002-34.htm> para. 99; and,

¹² McNally, Michael B., Dinesh Rathi, Kris Joseph, Jennifer Evaniew, and Amy Adkisson. 2018. “Ongoing Policy, Regulatory, and Competitive Challenges facing Canada’s Small Internet Service Providers.” *Journal of Information Policy*, 8: 167-198; <https://www.jstor.org/stable/pdf/10.5325/jinfopoli.8.2018.0167.pdf>, p. 171 and 194.

¹³ Kelly, Tim and Carlo Maria Rossotto. 2012. *Broadband Strategies Handbook*. Washington, DC: World Bank. <https://openknowledge.worldbank.org/bitstream/handle/10986/6009/676200PUB0EPI0067882B09780821389454.pdf?sequence=1&isAllowed=y> p. 57.

¹⁴ Rajabiun, Reza and Catherine Middleton. 2013. “Rural Broadband Development in Canada’s Provinces: An Overview of Policy Approaches.” *Journal of Rural and Community Development*, 8(2): 77-22, p. 9 and 18-19; and, Rajabiun, Reza and Catherine A. Middleton. 2013. “Multilevel Governance and Broadband Infrastructure Development: Evidence from Canada.” *Telecommunications Policy*, 73: p. 710, 711 and 712.

wholesale wireline services¹⁵ and Innovation Science and Economic Development (ISED) guidelines on infrastructure sharing¹⁶), a more concerted emphasis should be placed on infrastructure sharing and services based competition in rural and remote communities, and codifying facilities based competition into the *Telecommunications Act* would significantly erode the possibility for more effective services based competition in rural areas.

Revise the *Spectrum Policy Framework for Canada* to Ensure Greater Consideration of Rural Needs

13. The *Spectrum Policy Framework for Canada*,¹⁷ is the primary policy document for governing the use of spectrum in Canada. Spectrum is the lifeblood of wireless communication including mobile wireless and fixed wireless, both of which are very important in rural and remote Canada. The current *Framework* has not been revised since 2007, and while the document does have a brief section on the considering the use of spectrum in rural areas,¹⁸ it contains no substantive guidelines to ensure the unique considerations of rural, remote and Indigenous communities are factored into spectrum management. Furthermore the document also heavily favours market forces as the primary means for governing spectrum management.¹⁹
14. There is evidence of cases when spectrum management has distinctly disadvantaged rural Canadians. With regard to mobile wireless, requirements to serve rural Canadians are often weak,²⁰ and access to spectrum for rural providers has been consistently highlighted as a barrier to the deployment of effective services.²¹ As the Auditor General of Canada noted in a recent review of federal broadband programs, “small Internet service providers struggled to acquire high-quality spectrum to improve broadband deployment in rural areas.”²²
15. A revised Spectrum Policy Framework for Canada is needed with a clear strategy for ensuring that rural, remote and Indigenous communities have spectrum management policies that provide for the unique considerations and needs for spectrum in rural areas.

Network Neutrality

¹⁵ CRTC. 2015. *Telecom Regulatory Policy CRTC 2015-326*. <http://www.crtc.gc.ca/eng/archive/2015/2015-326.htm>

¹⁶ Industry Canada. 2013. *Revised Frameworks for Mandatory Roaming and Antenna Tower and Site Sharing*. [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/Revised-Frameworks_EN.pdf/\\$file/Revised-Frameworks_EN.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/Revised-Frameworks_EN.pdf/$file/Revised-Frameworks_EN.pdf); and, Industry Canada. 2014. *Radiocommunication and Broadcasting Antenna Systems*. CPC-2-0-03.

[https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/cpc-2-0-03-i5.pdf/\\$file/cpc-2-0-03-i5.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/cpc-2-0-03-i5.pdf/$file/cpc-2-0-03-i5.pdf)

¹⁷ Industry Canada. 2007. *Spectrum Policy Framework for Canada*. DGTP-001-07.

[https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/spf2007e.pdf/\\$FILE/spf2007e.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/spf2007e.pdf/$FILE/spf2007e.pdf).

¹⁸ Industry Canada. *Spectrum Policy Framework for Canada*. p. 6.

¹⁹ Industry Canada. *Spectrum Policy Framework for Canada*. p. 9.

²⁰ McNally, Michael B., and Samuel E. Trosow. 2013. “The New Telecommunications Sector Foreign Investment Regime and Rural Broadband.” *Journal of Rural and Community Development*, 8(2), <http://journals.brandonu.ca/jrcd/article/view/1003> p. 36; and Joseph, Kris. 2018. “Analysis of Canadian Wireless Spectrum Auctions: Licence Ownership and Deployment in the 700 Mhz, 2500 Mhz and 3500 Mhz Frequency Ranges.” *CRTC Prize for Excellence in Policy Research (2018)*. <https://crtc.gc.ca/eng/acrtc/prx/2018joseph.htm>.

²¹ McNally et al. “Ongoing Policy, Regulatory, and Competitive Challenges facing Canada’s Small Internet Service Providers.” p. 185-187; and, Joseph. “Analysis of Canadian Wireless Spectrum Auctions.”

²² Canada - Office of the Auditor General of Canada. 2018. *Connectivity in Rural and Remote Areas*. http://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_01_e_43199.html para. 1.61.

16. The *Telecommunications Act* includes two important sections with respect to network neutrality – s. 27(2) and s. 36, which state:

27(2). No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

36. Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public.

Despite these two sections, there is a need for more clearly enshrining the principle of network neutrality into Canada's communication legislation.

17. In the 2017 Federal Budget the Government of Canada committed to supporting an open and transparent internet, including addressing issues of net neutrality.²³ The 2018 House of Commons Standing Committee on Access to Information, Privacy and Ethics report *The Protection of Net Neutrality in Canada* similarly stressed the importance of net neutrality noting, "the Committee believes that the increased use of mobiles [sic] services in the future should not compromise net neutrality."²⁴ The CRTC has also stated its support to net neutrality,²⁵ and reflected its support for the concept in various telecom regulatory decisions, including the recent *Framework for Assessing the Differential Price Practices of Internet Service Providers*,²⁶ and its rejection of the FairPlay Coalition proposal.²⁷ Finally, in 2018, the House agreed to Private Member's Motion M-168 which included the statement that network neutrality be one of the guiding principles of the *Telecommunications Act* and *Broadcasting Act* reviews.²⁸
18. Given the multiple indications of support for the principle of network neutrality from the Government, House and CRTC, revision of the Telecommunications Act should involve more clearly establishing network neutrality in the Act, and this is best done through creating an additional policy objective in s.7.
19. A proposed wording for a new policy objective is as follows:

²³ Canada. 2017. *Building a Strong Middle Class: #Budget2017*. <https://www.budget.gc.ca/2017/docs/plan/budget-2017-en.pdf> p. 103.

²⁴ Canada – House of Commons Standing Committee on Access to Information, Privacy and Ethics. 2018. *The Protection of Net Neutrality in Canada*. <http://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP9840575/ethirp14/ethirp14-e.pdf> p. 22.

²⁵ CRTC. 2018. "Strengthening Net Neutrality in Canada." <https://crtc.gc.ca/eng/internet/diff.htm>

²⁶ CRTC. 2017. *Framework for Assessing the Differential Price Practices of Internet Service Providers*. Telecom Regulatory Policy CRTC 2017-104. <https://crtc.gc.ca/eng/archive/2017/2017-104.htm> para. 10-12, and 15.

²⁷ CRTC. 2018. *Asian Television Network International Limited, on Behalf of the FairPlay Coalition*. Telecom Decision CRTC 2018-384. <https://crtc.gc.ca/eng/archive/2018/2018-384.htm>

²⁸ Canada – House of Commons. *Private Member's Motion M-168: Net Neutrality*. 42nd Parl., 1st Sess. [https://www.ourcommons.ca/Parliamentarians/en/members/John-Oliver\(88881\)/Motions?sessionId=152](https://www.ourcommons.ca/Parliamentarians/en/members/John-Oliver(88881)/Motions?sessionId=152)

“to ensure equitable access to telecommunication systems and services that do not favour any carrier or service over any other”

20. In enshrining network neutrality as a policy objective, it is necessary to recognize that there are some forms of internet traffic that are already treated uniquely within a Canadian context including child pornography (e.g. the CleanFeed initiative), spam and denial-of-service attacks.²⁹ Furthermore delay sensitive protocols including the ones used for voice communication may receive priority over other protocols.³⁰ As such any legislative embodiment of network neutrality should recognize that at the margins there are cases where more reductive approaches to network neutrality (e.g. “treat all packets equally”) may not be ideal.

Outstanding Concerns with the Canadian Telecommunication Policy Objectives (s. 7 of the Telecommunications Act)

21. This section provides further comment, not in relation to broadband connectivity, on the Canadian Telecommunication Policy objectives, specifically the Canadian ownership and control objective (7(d)) and the market forces objective (7(f)).

Canadian Ownership and Control (s. 7(d))

22. Section 7(d) of the *Telecommunications Act* along with the *Canadian Telecommunications Common Carrier Ownership and Control Regulations*³¹ place increasingly undue restrictions on foreign entry and investment in the Canadian telecommunication sector and should be eliminated.
23. The Organisation for Economic Cooperation and Development (OECD) has routinely noted Canada’s foreign ownership restrictions are among the highest in the world with respect to the telecommunications sector and chastised the country for continued inaction with respect to liberalization.³²
24. Repeated expert panel reports have also suggested that the foreign investment restrictions in Canadian telecom and broadcasting be removed including the *Telecommunications Policy Review*

²⁹ Michael Zajko. 2018. *Intermediation and Governance of Digital Flows: Canadian Internet Service Providers as Instruments of Public Policy*. PhD Dissertation (University of Alberta). <https://doi.org/10.7939/R3WM1484P> p. 233.

³⁰ Zajko. 2018. *Intermediation and Governance of Digital Flows*. p. 11, n. 4.

³¹ *Canadian Telecommunications Common Carrier Ownership and Control Regulations*. SOR/94-667. <https://laws-lois.justice.gc.ca/PDF/SOR-94-667.pdf>

³² Organisation for Economic Cooperation and Development (OECD). 2002. *Regulatory Reform in Canada: From Transition to New Regulation Challenges*. <https://www.oecd.org/regreform/1960562.pdf> p. 6, and 18-19; OECD. 2018. *Economic Surveys: Canada: Key Policy Insights*. <http://www.oecd.org/eco/surveys/Canada-2018-economic-survey-key-policy-insights.pdf> p. 67.

Panel (TPRP) Final Report in 2006,³³ and *Compete to Win* in 2008 (the Wilson Panel/Report).³⁴ The House of Commons also made more limited recommendations in 2010 on liberalization.³⁵

25. While 2012 reforms partially liberalized the sector,³⁶ in line with the first phase of liberalization recommendations of the TPRP,³⁷ the second fuller liberalization has yet to be achieved.
26. It is important to note though that increased foreign capital is would not address some of our concerns previously noted, specifically enhancing rural broadband. One study looking at mobile wireless broadband found that changes to foreign investment restrictions were unlikely to benefit rural Canadians.³⁸ As such, our endorsement of liberalization of the foreign ownership regime does not mitigate required recommendations with respect to broadband connectivity.

Fostering Market Forces (s. 7(f))

27. Section 7(f) of the Telecommunications Act states that a policy objective is to foster increased reliance on market forces. This policy objective should be viewed as a failure, and removed from the set of policy objectives.
28. The current focus on market forces (further advanced by the 2006 Policy Direction and 2007 Spectrum Policy Framework for Canada) only serves to entrench an existing oligopoly of dominant telecommunication service providers. As indicated by the 2018 Communications Monitoring Report, the five largest telecom service providers (Bell, Quebecor, Rogers, Shaw and TELUS) account for 87% of the revenues in the sector.³⁹
29. Despite attempts to foster competition, particularly through the creation of new entrants into the wireless market, the focus on market forces has led to continued concentration in the telecommunications sector. The wireless new entrants – Public Mobile, Mobilicity and Wind – have been acquired by TELUS, Rogers and Shaw respectively, and Bell has recently acquired MTS.

³³ Canada – Telecommunications Policy Review Panel (TPRP). 2006. *Telecommunications Policy Review Panel: Final Report*. [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapi/tprp-final-report-2006.pdf/\\$FILE/tprp-final-report-2006.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapi/tprp-final-report-2006.pdf/$FILE/tprp-final-report-2006.pdf) p. 11-13 to 11-26.

³⁴ Canada – Competition Policy Review Panel. 2008. *Compete to Win: Final Report*. [https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/vwapi/Compete_to_Win.pdf/\\$file/Compete_to_Win.pdf](https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/vwapi/Compete_to_Win.pdf/$file/Compete_to_Win.pdf) p. 67.

³⁵ Canada – House of Commons – Standing Committee on Industry, Science and Technology. 2010. *Canada's Foreign Ownership Rules and Regulations in the Telecommunications Sector*. 40th Parl. 3rd. Sess. <http://www.ourcommons.ca/Content/Committee/403/INDU/Reports/RP4618793/indurp05/indurp05-e.pdf> p. 45.

³⁶ Statutes of Canada 2012, c. 19 (An Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures (Bill C-38)). Royal Assent 29 Jun 2012. 41st Parl. 1st. Sess. http://www.parl.ca/Content/Bills/411/Government/C-38/C-38_4/C-38_4.PDF s. 595.

³⁷ TPRP. 2006. *TPRP: Final Report*. p. 11-25 to 11-26.

³⁸ McNally and Trosow. 2013. "The New Telecommunications Sector Foreign Investment Regime and Rural Broadband." p. 36. Note Rajabiun and Middleton also suggest that changes to the foreign investment regime will not result in rural broadband investments (Rajabiun and Middleton. 2013. "Rural Broadband Development in Canada's Provinces." p. 11.)

³⁹ CRTC. 2018. *Communications Monitoring Report 2018: Telecommunications Overview*. <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr2018-telecom.pdf> p. 5.

30. Given the pattern of increased concentration in the telecom sector, s. 7(f) of the *Telecommunications Act* should be abandoned.

Digital Literacy

31. In one of the earliest Government of Canada documents on the internet, the Government asked, “In effect, do we need the equivalent of drivers’ education courses to learn how to navigate the information highway?”⁴⁰ The National Broadband Task Force also underscored the importance of digital literacy,⁴¹ and the Telecommunications Policy Review Panel also called for a coordinated national approach to ICT adoption skills.⁴² While the government clearly problematized the issue of digital literacy as early as 1994, including who should pay and how such education could be delivered, 25 years later, digital literacy (as such ‘drivers’ education’ is now known) remains a policy challenge.
32. Digital literacy remains a key barrier for many Canadians preventing them from effectively using the internet.⁴³ The World Bank has highlighted that digital literacy programs are an important demand side broadband policy.⁴⁴ The CRTC has also noted the importance of digital literacy, though has also stated that responsibility for it falls outside its “core mandate.”⁴⁵
33. While the Government of Canada has launched a \$29.5 million Digital Literacy Exchange Program,⁴⁶ a more holistic approach to digital literacy is needed that integrates digital literacy into Canada’s communication framework.
34. In incorporating digital literacy into Canadian policy, it is necessary to conceive of digital literacy broadly. One well suited definition of the term is:

The range of knowledge, skills, and behaviours used with digital devices such as smartphones, tablets, laptops and desktop computers. This term includes the ability to locate, organize, understand, evaluate, and analyze information using digital technology. It involves a working knowledge of current digital technologies and an understanding of how they can be used effectively.⁴⁷

⁴⁰ Industry Canada. 1994. *The Canadian Information Highway: Building Canada’s Information and Communications Infrastructure*. Ottawa, ON: Minister of Supply and Services Canada. p. 31.

⁴¹ Canada – National Broadband Task Force. 2001. *The New National Dream: Networking the Nation for Broadband Access*. <http://publications.gc.ca/collections/Collection/C2-574-2001E.pdf>. p. 12-13, and Recommendation 6.

⁴² TPRP. 2006. *TPRP: Final Report*. p. 7-32, and Recommendation 7-2(d).

⁴³ Ekos Research Associates. 2016. *Let’s Talk Broadband Findings Report*. http://madgic.library.carleton.ca/deposit/govt/ca_fed/crtc_letstalkbroadband_2016.pdf p. 33.

⁴⁴ Kelly, Tim and Carlo Maria Rossotto. 2012. *Broadband Strategies Handbook*. Washington, DC: World Bank. <https://openknowledge.worldbank.org/bitstream/handle/10986/6009/676200PUB0EPI0067882B09780821389454.pdf?sequence=1&isAllowed=y> p. 48.

⁴⁵ CRTC. 2016. *Modern Telecommunication Services*. Telecom Regulatory Policy CRTC 2016-496. <https://crtc.gc.ca/eng/archive/2016/2016-496.htm> para. 245.

⁴⁶ Canada. 2018. “Digital Literacy Exchange Program.” <http://www.ic.gc.ca/eic/site/102.nsf/eng/home>

⁴⁷ First Mile Connectivity Consortium. 2016. *Digital Technology Adoption in Northern and Remote Indigenous Communities in Canada*. <http://firstmile.ca/wp-content/uploads/2016-ISED-FMCC.pdf> p. 9.

35. The panel should consider how to incorporate digital literacy policy within the review of the *Telecommunications Act* and *Broadcasting Act*. We suggest another policy objective in this regard could be established.

Legislative Bifurcation

36. Finally, the legislative bifurcation, which is achieved primarily through s. 4 of the *Telecommunications Act* in conjunction with s. 4(4) of the *Broadcasting Act*⁴⁸ no longer reflects the reality of Canada's current communication ecosystem.

37. Many of Canada's major telecommunication providers are also broadcasters. As noted by research from the Canadian Media Concentration Research Project, Canada's five largest media companies make up nearly three quarters of the media market.⁴⁹ As noted by the report, "high-levels of vertical and diagonal integration are distinguishing features of the network media economy in Canada and they need to be recognized and dealt with accordingly."⁵⁰

38. As noted by the CMCRP's recent report, we live in a "constitutive moment."⁵¹ The decisions of the review panel, must reflect the fact that legislative bifurcation is no longer useful as a policy approach, but more important that any changes to Canada's communication legislation must recognize existing integrated telecom and broadcasting companies have considerable power within the communications environment. Given the key role the sector plays in connecting Canadians and allowing Canadians to share their stories, ideas, knowledge and experiences with each other and the world, the panel must ensure that any proposed changes are to the benefit of the public good.

Summary of Recommendations

- Retain Section 7(b) of the *Telecommunications Act*, which is the Canadian Telecommunications Policy objective that ensures rural (and urban) Canadians have access to affordable, reliable and high quality telecommunications services;
- Enact a limitation or sunset clause on Section 8 of the *Telecommunications Act* to ensure policy directions from Government do not remain in effect beyond their period of usefulness;
- Do not codify the doctrine of facilities based competition into the *Telecommunications Act*; and,
- Revise the *Spectrum Framework Policy for Canada* to ensure there is a meaningful consideration of the differing needs and uses of spectrum in rural and remote versus urban areas.
- Enshrine network neutrality into the Canadian Telecommunication Policy objectives with an objective stating, "to ensure equitable access to telecommunication systems and services that do not favour any carrier or service over any other"
- Liberalize the foreign investment restrictions in the telecommunications and broadcasting sectors and eliminate Canadian Telecommunication Policy objective 7(d)

⁴⁸ Broadcasting Act, S.C. 1991, c. 11. <https://laws-lois.justice.gc.ca/eng/acts/B-9.01/FullText.html> s. 4(4).

⁴⁹ Canadian Media Concentration Research Project (CMCRP). 2019. *Media and Internet Concentration in Canada, 1984-2017*. <http://www.cmcrp.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932017-01062019.pdf> n.p.

⁵⁰ CMCRP. 2019. . *Media and Internet Concentration in Canada*. p. ii.

⁵¹ CMCRP. 2019. . *Media and Internet Concentration in Canada*. p. 89.

- Remove Canadian Telecommunication Policy objective 7(f)
- Integrate digital literacy policy into Canadian communications legislation
- End the bifurcation of the communication legislation

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