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11 January 2019

The Broadcasting and Telecommunications
Legislative Review Panel
c/o Innovation, Science and Economic Development Canada
235 Queen Street, 1st Floor
Ottawa, ON K1A 0H5

Dear Panel members:

Re: Responding to the New Environment: A Call for Comments - Review of the Canadian
Communications Legislative Framework

1. Attached are the Comments of Saskatchewan Telecommunications (SaskTel), in response to the *Call for Comments* regarding the above referenced consultation.
2. SaskTel thanks the Panel for this opportunity to provide comments and input into the consultation process.

Sincerely,

A handwritten signature in blue ink, appearing to be "W.N. Beckman", written in a cursive style.

W.N. (Bill) Beckman
Senior Director - Regulatory Affairs

DS/nb

Attachment

Innovation, Science and Economic Development Canada



Responding to the New Environment: A Call for Comments
Review of the Canadian Communications Legislative Framework

COMMENTS

11 January 2019

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Appendix A

Introduction

1. The telecommunications industry is undergoing a broadband data revolution. The legacy network infrastructure is being replaced and upgraded. Twisted-pair based networks built for analogue voice communications and coaxial networks built for TV broadcast distribution are being replaced by networks designed to move data from place to place. Voice and video are becoming “just another application” on the network as opposed to the purpose of the network. This transition to data is happening to both fixed networks and mobile networks.
2. The killer application on the networks is data, often referred to as content. But these are not single purpose networks. Content includes all services that make use of the internet including basic services such as e-mail, professionally-produced audio and video, consumer-produced audio and video, online games, search engines, news, social media, etc. The content also includes a new generation of applications such as peer to peer ride-sharing, taxi and food delivery via applications such as Uber, and peer to peer hospitality services such as Airbnb. Content in the broadband world is ubiquitously available and not confined to managed networks. While content is available globally, the underlying networks necessary to make content accessible to Canadians are by necessity local, basic, physical Canadian infrastructure that provide a service of national importance.
3. Canada still has a way to go to reach the state where all Canadians have access to broadband service at a reasonable price. A variety of instruments for government action and the coordinated efforts of many departments are needed to ensure that broadband networks are universally accessible at reasonable prices by all Canadians including those living in rural and remote areas. The commonality is the absence of a sustainable business case to build the networks. There will be many ways to motivate the necessary builds, and since incumbency gives certain advantages, there are different kinds of incumbency (including local presence and adjacencies to other self provided services) that may be leveraged. The Panel recommendations should reflect this financial need and different construction opportunities. Legislative changes are necessary but not sufficient to achieve this objective.

Reducing barriers to access by all Canadians to advanced telecommunications networks

4. SaskTel agrees that broadband data networks need to be available to all Canadians and they need to be scalable to meet the increasing data needs of users. Service providers are well down the path to fully deploying such networks. Most of the economically sustainable areas have been built. The Government needs to create a legislative framework flexible and adaptable enough to meet the current and future needs of existing (and possible new) service providers and customers and that encourages existing service providers to complete the build outs in rural and remote areas¹. The Panel should look to existing successful broadband infrastructure deployments in rural and remote areas to determine if they benefitted from any enabling activities or policies that should be preserved or advanced in policy and drafting recommendations. SaskTel will take this opportunity to highlight a few of the initiatives under which it has been able to make networks available in rural and remote areas and use these instances to highlight policy choices that will favour rural and remote deployments.

First Nations Access to Broadband Telecommunications in Saskatchewan

5. Virtually all First Nation's Band Offices, Tribal Council Offices, schools on reserves, and health facilities on reserves in the 70 Saskatchewan First Nations have access to fixed broadband infrastructure services at speeds that exceed 50 Mbps down and 10 Mbps up. Most residences in Saskatchewan First Nations communities north of the tree line have access to DSL delivered high speed internet service at speeds in excess of 5 Mbps down and 1 Mbps up. Working with local First Nations governments and private business partners, SaskTel has provided enhanced cellular coverage to a number of First Nations communities in the north.² SaskTel considers this a success for these (primarily remote) northern communities and believes there are several key factors that contributed to their connectivity.

¹ It is assumed that existing service providers will have a cost advantage derived from economies of scale and existing investments. If existing service providers do not respond to government and regulatory encouragements, then the opportunity to build and provide services should be extended to alternative providers.

² Most residences in Saskatchewan First Nations communities south of the tree line have access to LTE fixed wireless and cellular data.

6. A large contributor to the successes is SaskTel's sales team which includes members from the First Nations communities in Saskatchewan. First Nations communities view the sales teams as representing First Nations' interests as well as SaskTel's. Through them, SaskTel has developed a very good working relationship with the Saskatchewan office of Indigenous and Northern Affairs Canada (INAC). The local INAC branch has assisted and been very supportive in obtaining funding for broadband infrastructure and connectivity to First Nations in Saskatchewan. It is important that multiple stakeholders with different agendas find it rewarding to work together to achieve the common objective of network deployment.
7. Most of these projects would not have proceeded without SaskTel, and a partner (which would include one or more of private businesses, First Nations communities and the federal government), agreeing to work together to build the infrastructure and provide the service. SaskTel works with large groups of stakeholders to find funding from a variety of sources to make otherwise uneconomic projects at least meet SaskTel's investment thresholds. The efforts to find funding are not always successful, but this is an activity that SaskTel pursues in addition to building its higher return capital projects such as fibre to the premises in urban areas.
8. Moreover, ownership support of lower-investment opportunities is a driving factor in the success SaskTel has in rural and remote builds. This is in addition to SaskTel's portfolio management approach to capital investment which encourages pursuit of different projects with different returns and risk profiles. SaskTel's structure as a crown corporation helps increase access for First Nations (and other unserved or underserved communities) in these instances. The return on investment with respect to the contribution required from rural and remote projects like First Nations projects can be lower than other potential investments, but not negative or cause a continuing reduction in the company's total net worth. Contributions from Government and private partners can help make a break-even business case for an infrastructure build. It is possible for the

company's objectives, the owner's objectives, and the community's objectives to be aligned.

9. There are non-monetary incentives for SaskTel to bring advanced communications to rural and remote areas. One incentive is ownership support, with our ownership structure being unique in the industry. People benefiting from expanded networks in rural and remote areas hold the government to account and are quick to express displeasure with SaskTel to their government officials.
10. Additionally, much of the rest of the population understands the need for SaskTel to provide a basic level of broadband service in rural and remote areas and is accepting of lower returns when the investment is to the general benefit of Saskatchewanians. This is not unlike the municipal telephone companies that were created to serve small remote communities or the government investments that were made to electrify rural areas of Canada. Community interests can be instrumental in delivering infrastructure and services. These incentives exist for SaskTel specifically because of our structure as a publicly owned entity.
11. Regulatory intervention or governmental financial incentives or other rewards (spectrum-related, potentially) could be used to recreate similar ownership support within privately-owned companies. Or alternatively public ownership of new service-providing entities might be a solution.
12. Another element that allows SaskTel to be successful in rural and remote projects is that the project business case benefits from SaskTel's existing infrastructure which includes existing systems, processes, resources, and investment that SaskTel has made nearby. Leveraging existing resources and infrastructure make it less costly for an existing service provider such as SaskTel to bring broadband services to these communities than for a new service provider to provide services as a new entrant. Allowing the risk-taking investor to benefit from more customers and the highest-contributing customers in these areas mitigates risks on the project and increases the returns from the project, making the investment more likely. SaskTel has worked with First Nations communities and individuals who have expressed an interest in providing service

- to their communities, but SaskTel and these parties have been unable to develop a business case for the construction and ongoing provision of broadband services by a new entrant. The distances between communities, particularly in the north, and the very low population density and wide separation between residences in the south have proved to be costly economic barriers. Having a remote community served by a single supplier allows the entire revenue stream to be provided to the supplier, justifying investment in more small communities than would otherwise be overbuilt with new broadband infrastructure. Competition in these rural and remote reserve areas reduces the chances of the community being built because it increases the size requirement and thereby reduces the number of communities that can justify the investment.³
13. SaskTel is rewarded in the market by the boost its brand gets when communities and governments recognize their efforts and SaskTel's efforts. The communities and governments benefiting from SaskTel's participation in these network builds do not complain about the price of service being excessive or high by international standards. They know the cost and effort required to deliver the service. Perhaps if all of Canada's existing service providers were similarly rewarded for extending their networks in this manner, Canada would see more of such investments.
14. Without similar types of financial and policy support, the more networks that are built by competing service providers, the less rewarding the unbuilt areas are for network owners which would ultimately lead to fewer networks being built in the long term. Regulatory protections to ensure that rewards remain as high as possible for the otherwise unprofitable work network owners undertake will encourage rural and remote network expansion.
- Wireless Saskatchewan**
15. SaskTel is working with the provincial government to use wireless technologies to improve broadband services in rural and remote areas of Saskatchewan.

³ While SaskTel's experience has not produced a successful business case for community builds, it may be possible that communities that already provide services to their residents

- Wireless Saskatchewan is an initiative that will improve cellular and internet services to over 100 rural communities throughout Saskatchewan by deploying a small cell site solution. If other initiatives under consideration are approved the program will also improve cellular coverage along highways, reduce coverage gaps or grey spots in rural areas.
16. Wireless Saskatchewan relies on multiple tower technologies and backhaul connections, thereby leveraging SaskTel's existing infrastructure. Based on economic factors alone, the project would not be considered by a private enterprise. The large towers cost approximately \$1 million each to construct and connect to SaskTel's network. There are operating costs in addition to the capital expenditure required to build the network.
17. Since rural and remote access to broadband networks are a Canadian priority and wireless technology is often the most economic way of servicing rural and remote areas, it would make sense to have low cost spectrum available for initiatives such as Wireless Saskatchewan. Auctions are designed to maximize federal government revenue with minimal rural deployment requirement. This does not economically encourage rural deployment. The federal government's desire for ubiquitous broadband coverage may override its desire for revenue maximization from spectrum auctions. The government could subsidize this kind of work by providing spectrum at or near cost, instead of aiming for revenue maximization. Revenue maximization from spectrum sales can still be a priority in sufficiently dense areas.

Small Town Fibre Build Example

18. SaskTel decided to test the economics of investing in fibre in smaller communities that have a cable service provider. It chose to build Fibre to the Premises (FTTP) in the entire rural community that had a population of approximately 1700 people. The competitor responded with special offers for their customers, accompanied by 2-year fixed term contracts, in anticipation of our FTTP becoming live. Once in market, the internet and TV solutions offered

are able to leverage their investments, including personnel and operating systems, to help overcome business case issues.

by SaskTel were not attractive enough for many of the competitor's customers to leave their existing provider or break contracts with that provider. It appears that small communities such as the one in this instance are not big enough to support two facilities-based broadband service providers when new capital is invested to provide higher speeds.

Resort Village Build Example

19. SaskTel's Community Participation program allows communities to contribute the deficiency required to make a break-even business case for SaskTel to provide broadband service to the community. In one instance, a community was insistent on having FTTP. Working with the community champions, SaskTel and the community found that it was impossible to develop a business case that would justify the fibre investment. Try as we might, SaskTel and the community could not develop a model that would recover ongoing capital replacement, licencing costs, and operating costs without significant and ongoing commitment from the community. After review and discussions, the community elected to go with a fibre to the Node build with DSL providing the "last mile" of broadband connectivity. The community contribution is recovered by the municipality in the form of a local improvement levy on all landowners.

Recommendations for Reducing Barriers to access by all Canadians to advanced Telecommunications Networks

20. SaskTel suggests to the Panel that there are specific elements that can be drawn from these examples that are instructive in making recommendations for legislation.
 1. **Provide incentives to existing service providers to expand their networks.** Private business will not develop infrastructure in rural and remote areas if there are not sufficient incentives to meet their investment hurdle rates. SaskTel's monetary and non-monetary incentives were a key factor in SaskTel's choosing to develop networks in areas that do not maximize the return on the infrastructure investment. The legislation needs to allow development of an incentive system that rewards existing service providers for expanding facilities where a successful business

case can not otherwise be made. To be effective, incentives need to be more than just up-front capital contributions; incentives addressing ongoing operating costs that aren't economical need to be considered. It is not obvious that the recovery of future operating costs can be economically included in the capital contribution. There may be a need for ongoing subsidy provision like there was for the provision of voice services in high cost serving areas. In addition to monetary incentives, the legislation should encourage non-monetary incentives developed as appropriate and which may include the federal government and the industry working together as opposed to at odds with each other.

2. **Involve government in funding solutions.** For the telecommunications development of the First Nations communities as well as the northern and rural areas receiving network improvements, government contributions (federal and municipal) are needed for projects to proceed.
3. **Vary competitive policies to fit the smaller markets.** As demonstrated by the small-town example and by SaskTel's success in providing broadband to rural and remote First Nations, having a single service provider in certain geographic areas is the most cost-effective solution. This may require a regulatory policy to allocate service monopolies in order to make the most cost-effective business cases.
4. **Align spectrum allocation with rural development goals.** Spectrum assignment is currently allocated based on pursuing the highest financial returns. Where returns are much lower and possibly negative - such as in rural and remote areas – the cost of spectrum should recognize the benefits of ubiquitous coverage. Therefore, low to no-cost spectrum should be provided, which would align with the federal goals of reducing telecommunications barriers in those geographic areas.
5. **Public ownership may have advantages.** Community interests can be instrumental in delivering infrastructure and services. Pursuing a path of public ownership and/or involving community participation should not be

ruled out as a means of providing service in rural and remote areas. Alternatively, regulatory intervention or governmental financial incentives or other rewards (spectrum-related, potentially) could be used to recreate similar ownership support within privately-owned companies.

Supporting creation, production and discoverability of Canadian content

21. SaskTel is licensed to operate as a Broadcasting Distribution Undertaking (BDU). We distribute third party content on a closed/managed network. SaskTel does not operate a major content creation business, and we are watching the BDU industry become less relevant as more content becomes available from online sources and is delivered over un-managed networks. It is our view that BDUs will continue to fill a market need for the short to medium term, but national and international over the top providers are already moving to try and replace the BDU providers. BDUs such as SaskTel have invested significant amounts in the technology to deliver content over their managed networks. The networks provide a service that is valued and will be valued, albeit likely by declining numbers of customers, for the foreseeable future. As the industry migrates from closed to open networks, SaskTel and the customers wanting a managed service require continued access to a wide variety of content and this access needs to be provided in a non-discriminatory manner.
22. The Canadian broadcasting system is expanding to include internet service providers and international platform and content providers. These new players need to be required to play by the same rules as the existing service providers.
23. As a BDU operator, we see the existing business model for news-gathering and distribution being challenged. The old advertising-based funding model is being undermined by online global providers who take advertising dollars formerly used to fund local news while the global providers deliver no local content. The creation of Canadian content that tells Canadian stories to Canadians and the world faces the same challenge. Advertising dollars are moving from broadcast services to online services and are creating a difficult operating environment for local news across platforms. SaskTel funds the creation of a small amount of

local programming, as required through the current regulations. SaskTel uses a portion of these funds to create local programming in Saskatchewan, which allows local stories to be told and is of value to members of the community and SaskTel, as a local BDU.

24. Potential broadcast solutions are very nuanced. Legislative changes that assist content creators, distributors, and consumers to migrate to the new distribution technologies will be helpful, especially while over the top content remains a complicated-to-access, unregulated, and often untaxed solution. Changes that assist the creators and distributors of Canadian news and entertainment to survive and thrive in the new competitive reality are also needed, but the existing framework may be sufficient if applied equitably to all beneficiaries of the current and evolving Canadian broadcasting system.
25. Decisions regarding cultural policy should be driven by a body that reflects Canadian society's cultural milieu. This would reflect the current reality where such direction is already being provided via Cabinet input into CRTC decision-making both before and after CRTC proceedings. Furthermore, while the model for funding the creation of Canadian content can be set up such that it is not dependent on the attitudes of the day, it is appropriate for the funding and production decisions required be reflective of current societal priorities. Division of this function into a legislated framework administered by a government department or government appointees would allow for content decisions of the time to adequately reflect the Canadian demand for Canadian content. SaskTel recognizes representative leadership allows for fluctuations in Canadian content generated, depending on popularity, but because that would be reflective of society overall, such variations would be appropriate.

Recommendations for supporting creation, production, and discoverability of Canadian Content

1. **Ensure content availability for all distributors.** The more avenues that are available for Canadian consumers to access content, the more choice consumers have for accessing Canadian Content. Therefore, distribution and distribution options must remain a top priority. Legislation should also ensure

that BDUs have access to content at non-discriminatory prices for as long as there are regulated BDUs and customers desiring managed services.

Content that should be made available includes content from other Canadian broadcasters, over the top players, and live sports.

2. **Reassess Canadian content contribution requirements.** Existing players are contributing more than their equitable share. SaskTel proposes that any participant in or beneficiary of the distribution system should contribute to the funding model for Canadian content, not necessarily equally but equitably, as determined by the Panel or the regulatory body overseeing broadcasting. This would include content platforms, ISPs, anyone currently exempted by the DMEO (notably digital platforms), as well as the existing contributors.
3. **Allow local content funding to continue.** Require all beneficiaries of the Canadian broadcasting system to contribute to local content creation. SaskTel invests in local community programming and would like to continue to be able to keep a portion of the funds generated by our business within our serving area. This regulatory element is beneficial and perceived as valuable to not only the BDUs, but also the market that benefits from it. Other beneficiaries or users of the Canadian broadcasting system should contribute to local content creation as well.
4. **Establish business model equity for all the participants of the Canadian broadcasting system.** In the same context as the requirements for funding of Canadian content are reassessed, global digital platforms and their contribution to promoting creation, production, discoverability of the content must also be addressed. Platform equality demands all business models (BDUs and digital media platforms) be subject to equitable regulation, including taxation. Online activity should be treated the same as any comparable activity occurring at a bricks and mortar location. Equitable requirements involving content availability and distribution, especially Canadian content, as discussed in the first recommendation, should apply to digital platforms in an equitable way. Regulation applicable to Canadian bricks and mortar operations does not necessarily need to be duplicated for

these global platforms, but reasonable requirements on privacy, competition, and access to content should be put in place. This recommendation also calls for a fair digital taxation policy. Platform equity would include applying the Goods and Services Tax to digital platforms who are providing services to Canadians and equitable treatment of revenues derived from Canadian advertising expenditures.

5. **Determine where government involvement is necessary to reflect cultural and social desires.** Broadcasting regulation currently involves responsibility for making critical subjective decisions, which should be removed from the auspices of the existing institutions that are charged with making impartial decisions today. Decisions regarding production and discoverability, the amount of funding, and what type of projects are deemed appropriate for funding, should be made so as to reflect societal desires. The best way to reflect society's demands in this manner is to have a stronger government influence in the decision-making process.

Improving the rights of the digital consumer

26. Canada has adopted internet traffic management principles that recognize service needs on a non-discriminatory basis. Vertically integrated access providers cannot discriminate nor can access providers favour their own access-based services. The international platform providers are not subject to the same kinds of rules, nor are they subject to the same kinds of tax legislation as local providers.
27. SaskTel is concerned about the international platform providers for several reasons. We recognize that international reach for Canadian content is a growing priority. However, when it comes to large platforms who control their own search and presentment algorithms, it is possible for Canadian content, despite being searched for, to be hidden, or worse, not be presented at all. The potential for inhibiting the discoverability of Canadian content and news sources is concerning for SaskTel, as a contributor to the Canadian content and news

funds. Furthermore, in our view, this compromises the rights of the digital consumer to have access to a neutral internet.

28. In addition, the platforms and their algorithms should be subject to network neutrality requirements. It is possible that they can unjustly discriminate with respect to the content they present and with respect to the access they provide to their platform. This power to discriminate can affect a Canadian businesses success and Canada's democratic institutions. Canadian content creators may find it impossible to access the platform or they may find their content being unjustly discriminated against. Canadian digital consumers should be able to expect that the platforms do not discriminate.

Recommendations for Improving the Rights of the Digital Consumer

1. **Ensure content can be discovered online.** SaskTel recommends that reasonable regulation be weighed with the costs of regulatory burden so as to allow consumers to easily find Canadian Content (including news) online.
2. **Treat all platforms the same.** Content should be shared between all carriers, so as to enable discoverability and allow consumers the flexibility to watch what they want, where they want, at reasonable prices.
3. **Augment network neutrality requirements to include platforms.** Network neutrality requirements currently attach to access networks and vertically integrated suppliers. Similar requirements should attach to platform providers. In the past owners of infrastructure have been required to make their monopoly infrastructure available without undue discrimination. Platforms have achieved the status of being monopoly infrastructure and should be available without undue discrimination.

Renewing the institutional framework for the communications sector

29. It is obvious that the issues facing telecommunications networks revolve around infrastructure. Telecommunications regulation needs focus on infrastructure builds for unserved or underserved Canadians as well as keeping technology

- current and competitive with the rest of the world. The pros and cons of network competition in different areas of the country need to be examined, as previously discussed. Keeping up with the ever-changing technology, as a service provider, as a regulator, or as a funder, is a problem given rapid change in a technically-complex industry. Falling behind is a barrier to the benefits of innovation. The regulatory approach and supporting institutional competencies required need to be centered on telecommunications technology and telecommunications economics including a thorough understanding of competition and financing. Telecommunications is about investments in the physical infrastructure that brings content to the world.
30. Broadcasting needs coalesce around preserving Canadian culture in the face of global competition. The regulatory approach and institutional frameworks necessary for broadcasting need to be built on an understanding of content creation and distribution using global networks while ensuring the interests of Canadians are protected and advanced in a digital global environment. Funding models for content creators need to be examined and modernized to deal with the global nature of content. Canadians and Canadian content creators should not be disadvantaged in the face of global providers. Canadian digital policy cannot favour global providers or disadvantage Canadian providers as it does now.
31. Technical expertise at the governance level is required for technical issues. Network infrastructure, construction, and operational issues require specific expertise. Telecommunications economic issues play out over a long timeframe along with financial and business acumen, not to mention the ability to consider specific geographic impacts and different markets. Those placed in charge of telecommunications governance and regulations should have specific knowledge and expertise regarding the challenges of the industry. They should not have their expertise divided between broadcast and telecommunications. Broadcast has equally complex, but different, needs. Telecommunications has a specific set of needs and is of great enough scope to require specific focus from a governing body and governing individuals.

32. Different policies and regulators are necessary to obtain optimum results from telecommunications and broadcasting industries. Distinct frameworks for each discipline will enable focus for the very different and very challenging challenges, needs, and opportunities of each industry. Separate regulators would help ensure that both administrations could be staffed by need and focused on each individual problem set.
33. Most solutions in both industries should be solved by market forces. Increased competition is the best way to reduce costs and alleviate unnecessary layers in the marketplace. However, where the market fails outlying consumers, such as telecommunications in rural and northern areas or Canadian content discoverability, then regulatory intervention is required.

Recommendations for Renewing the Institutional Framework of the Communications Sector

1. **Separate broadcasting governance from telecommunications governance.** The areas of expertise required to regulate broadcasting versus telecommunications are totally different. Consider the long-term return and massive infrastructure requirements required for the telecommunications industry. As previously discussed, the telecommunication industry has different challenges, including rural and remote deployment, access, keeping the technology current, etc. This industry requires specific needs and a regulator that understands what is required to deploy such infrastructure in different markets. Broadcast, on the other hand, is largely about culture and consumer choice rather than infrastructure. The creation and distribution of the content is a different business altogether than the carriage and distribution of data – the modern telecommunication industry. It is content that rides on the backbone of the telecommunication industry, just like so many other businesses do (which are not regulated by the CRTC). The expertise required for regulating the funding and creation of Canadian content is totally different from the expertise required for regulating the telecommunications industry.

The broadcasting landscape has changed to such an extent that the existing regulatory model no longer fits the industry properly. Distribution over managed networks, a requirement for BDUs, is an example of regulatory infrastructure that is artificially preserving a business model. The nature of broadcasting itself has changed since its inception. Digital platforms allow for flexibility and quick reactionary time to cultural demands and content needs. Technical network expertise is no longer required for the regulatory oversight of the elements that make up broadcasting of the future (and largely of today). Separating the broadcasting oversight from the telecommunications oversight in completely different governing bodies would properly reflect the declining impact of the regulated BDU within the entire broadcasting industry.

2. Reinforce the quasi-judicial nature of the telecommunications regulator.

The CRTC was established as an administrative tribunal, separated from the government and focused on achieving policy objectives in a capital-intensive industry. It is imperative for success in achieving policy objectives and industry success that the telecommunications regulator retains a quasi-judicial focus, its independence, remains a true arm's length from the government, acts as an impartial arbiter of the issues it hears, and independently creates policy as opposed to being influenced by societal or government involvement. Such an institution would create more regulatory stability for the telecommunications industry and better longer-term outcomes for Canadian telecommunications infrastructure. There is an important distinction between government du-jour interference in telecommunications regulation, and policy built on a full understanding of the issue. A strong, quasi-judicial telecommunications regulator would provide the public, industry and government with comfort that long-term policies can be created and maintained to match the long-term investments made in the infrastructure required.

Unfortunately, there have been instances where the CRTC appears to have been exposed to government pressure prior to making a final decision, which raises the appearance of bias. In the recent proceeding for CRTC 2018 –

246, regarding Retail Sales Practices, during the week leading up to the hearing, the CRTC released tweets that strongly implied there were misleading sales practices taking place in the telecommunications industry (see Appendix A). This created a perception of bias and may have satisfied political masters. Another perception of bias through possible undue influence has been created by the CRTC's acceleration of the timeline for its review of wireless services including wireless competition policy and its expressed preference of a policy preferring facilities-based competition in response to the government's pressure to review the MVNO decision. To an extent, the Commission has been politically pressured to take the stance that Telecommunications companies are the enemy of the public, which is certainly not the case.

An unfortunate example that further taints the perception of the CRTC occurred during the hearing regarding CRTC 2018 – 246, regarding Retail Sales Practices, at which Commissioners were asking participants if a sales code was required. As shown in the CBC article in Appendix A, Minister Bains made the following comments to CBC Go Public, "We want to make sure there's a clear code of conduct to protect consumers when it comes to wireless, internet and cable when they deal with their service provider". Given that CRTC decisions can currently be appealed to Cabinet, these types of statements imply that a decision has already been made and make a mockery of the hearing conducted by the CRTC. Such political interference or even perception of interference, should not be tolerated by the telecommunications regulator nor by society at large and, therefore, should not be allowed to occur.

It is imperative that the Government and acting officials respect the independence of the telecommunications regulator. Officials speaking on behalf of the government should respect the independence of the CRTC and remain silent regarding issues before the CRTC until after the decision is made, similar to how the government treats issues that are before a court of law.

SaskTel does not dispute that the government has the powers to enact legislation to overturn a decision of a telecommunications regulator, as it does now with the CRTC, but SaskTel is making the point that matters within the competence of the distinct regulator should be decided by the regulator and subject to judicial review only, in the normal manner or through legislative change. Conversely, broadcasting matters which should be culturally sensitive and reflect current social views may be subject to Cabinet or other political review.

- 3. Consider Ministry oversight of broadcasting.** As indicated previously, regimented impartiality (as is suggested for a Telecommunications industry) is not an appropriate solution for the nature broadcast industry. The evolution of broadcast as distinct from its underlying infrastructure has gone down a path that has seen the importance of infrastructure diminished and the rise of issues that require cultural guidance and involvement as opposed to impartial technical and regulatory expertise. Broadcast (creation and distribution of content) is cultural in nature, and as such, it needs to reflect our broader society. Determining what content deserves funding and how much funding is available is a decision that should be made based on a reflection of society's desires and current cultural milieu and therefore, not by regulators who are supposed to be impartial. The representative governing system is best for creating policy that reflects societal desires, especially desires that change as the will of society changes.

A potential solution to better reflect society's desires as it relates to broadcasting oversight could be to have broadcasting and all that is included in its current regulations (including Canadian content and local news) become a government department. Full separation from the telecommunications regulator would allow flexibility for elected representatives to influence the broadcasting industry as cultural desires change from time to time, as required. This type of institutional framework for broadcasting also aligns with what is currently happening in the broadcasting sector. The regulatory

stability is better matched with the risk and return periods that accompany broadcasting and content investments.

To highlight why such a solution is necessary, consider that recently, the Commission decided on funding requirements for Programs of National Interest to be lowered. The federal government asked for this decision to be reconsidered by way of Order in Council P.C. 2017-1060, issued on 14 August 2017, and after subsequent consultation, the Commission raised the funding allocation requirements. If the government is going to essentially request a decision made by an independent institution to be overturned, then perhaps this is the type of decision that should have been made by a government department in the first instance.

4. **Implement regulatory proportionality.** One size solutions do not fit all of Canada's diversity. Regions pose different challenges and regulatory frameworks should not lose sight of the fact that competition is working in some places while it may not be effective in others. The physical differences between geographical markets and competition can be addressed at a more specific regulatory level. SaskTel urges the Panel to keep regulatory options and variable solutions in mind as requirements for dealing with specific issues do not require the same rules to be applied in all areas. Some service providers may be worthy of closer oversight than others. Regulatory proportionality must allow the regulator to make such determinations rather than requiring all to be subject to the same requirements. The power to forbear or even to direct a remedy at a specific circumstance or service provider is very important.

Ways in which broadcast and telecommunications regulators can ensure that Canadians have a system that serves them without regulating all parties with the same broad brush are needed. Certain regulations applying to smaller telecommunications carriers, when the regulation is designed to address the behaviour of the largest players, can result in regional carriers like SaskTel being "collateral damage". Examples already exist as to how a regulator can demonstrate regulatory proportionality: set-asides in spectrum auctions,

implementing wholesale of broadband networks for the larger players before making all other networks available, and lower mobile data prices for facilities-based competitors on the major networks. Ensuring regulatory proportionality will increase competition and offer consumers more choice while helping control prices.

Conclusion

34. When looking at changes to the legislation, SaskTel encourages the Panel to consider where the principle of regulatory proportionality can be implemented to help ensure that regional telecommunications companies and smaller broadcasters or content creators are not burdened with regulation designed to control the behaviour of the market dominant players. It would be a disservice to Canadians to impose elements at the Act level that are identified solely due to challenges that are not equally wide-reaching. The worst case would be that such Legislation could stifle success (such as what SaskTel is achieving) by shaping the Legislation to fit other parties or regional needs.
35. Suggesting regulatory administrative bodies for Telecommunications and Broadcasting be separated should not be seen as a recommendation for duplication of costs. The point is that there is very little (if any) benefit to them being combined in the current institutional framework. The existing framework is simply an amalgamation that is currently acting to the detriment of regulatory success in both the telecommunications and broadcast industries.
36. SaskTel would like to reiterate our recommendations for the Panel:

Reducing barriers to access by all Canadians to advanced telecommunications networks

- Provide incentives to existing service providers to expand their networks.
- Involve government in funding solutions
- Vary competitive policies to fit the smaller markets
- Align spectrum allocation with rural development goals

Supporting creation, production, and discoverability of Canadian content

- Ensure content availability for all distributors
- Reassess Canadian content contribution requirements
- Allow local content funding to continue
- Establish business model equity for all participants of the Canadian broadcasting system
- Determine where government involvement is necessary to reflect cultural and social desires

Improving the rights of the digital consumer

- Ensure content can be discovered online
- Treat all platforms the same
- Augment network neutrality requirements to include platforms

Renewing the Institutional Framework of the Communications Sector

- Separate broadcasting governance from telecommunications governance
- Reinforce the quasi-judicial nature of the telecommunications regulator
- Consider ministry oversight of broadcasting
- Implement regulatory proportionality.

37. SaskTel thanks the Panel for the opportunity to provide our input into this matter.