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VIA EMAIL

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

Dear Panel:

Subject: Broadcasting and Telecommunications Legislative Review - Responding to the
 New Environment: A Call for Comments

The Independent Telecommunications Providers Association (“the ITPA”) is pleased to submit the attached written comments on the behalf of its member companies. The list of ITPA member companies can be found in the Appendix to this letter.

Yours truly,

*Jonathan
Holmes*

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**BROADCASTING AND TELECOMMUNICATIONS
LEGISLATIVE REVIEW PANEL**

WRITTEN REMARKS

BY

**THE INDEPENDENT TELECOMMUNICATIONS
PROVIDERS ASSOCIATION (ITPA)**



**Independent
Telecommunications
Providers Association**

11 JANUARY 2019

Introduction

The ITPA represents 22 rural incumbent communications service providers that offer telephone, Internet access and broadcasting services in BC, Ontario and Quebec.¹ ITPA member company roots are in the incumbent local telephone business, and in many cases members have been in business for over 100 years. These companies have their origin in situations where the large incumbent telcos refused to establish local telephone service in rural areas and enterprising individuals or groups took the hard steps necessary to build networks and connect their customers to each other and to the outside world. Just as they did in the past, our member companies are today taking the hard steps required to bring broadband connectivity to underserved areas. In many cases, having even a single source of broadband connectivity in an underserved area is a stretch from a business case perspective and can only happen with external financial support.

ITPA members are family-owned businesses, community cooperatives or municipally-owned enterprises. For the most part they do not focus on large urban markets but instead on rural and remote communities in the three provinces. They provide service in areas that do not and will not attract investment from the large providers.

The ITPA believes that it is very important for members of the panel to appreciate that companies such as ITPA members – especially in rural and remote areas - have the potential to unlock and promote competitive market forces to the benefit of rural Canadians and to assist the three levels of government in Canada with achieving their policy goals.

¹ See www.itpa.ca for maps of members' incumbent and CLEC exchanges.

We encourage the Committee to investigate the accomplishments of these small carriers to date and to ensure that the *Telecommunications Act* (“the Act”) of the future continues the existing Act’s role in addressing the market power and market dominance of the largest facilities-based service providers – market power that often impedes the growth of and opportunities for small service providers.

Summary of the ITPA’s Position

The ITPA would like to raise four points with the Committee:

1. There is no need to merge the various pieces of legislation due to the fact that each act was designed to address different issues in different sectors or the economy;
2. There is a need for a sustainability component in broadband funding programs to ensure that on-going operational costs of subsidized networks are addressed;
3. The Act’s Policy Objectives that deal with ensuring the availability of reliable and affordable telecommunications services in rural areas and enhancing the competitiveness of Canadian telecommunications at the national level should be maintained. One of the decision that should flow from these Policy Objectives should be the introduction of a Mobile Virtual Network Operator model to promote both wireless competition and the availability of wireless services in rural areas; and
4. The existing *patchwork quilt* of regulation that governs support structure attachment rates in Canada should be ended and jurisdiction over these

facilities should be given to the Canadian Radio-television and Telecommunications Commission (“the CRTC”).

1. No Need to Merge the Two Acts

At the outset the ITPA’s view is that, while the communications environment continues to evolve, the existing telecommunications legislation can remain relevant and continue to provide the necessary framework to govern that sector. More important than major changes to the legislation and the question of whether all communications legislation in Canada should be merged into a single act, in our mind, is changing the policies and regulations that flow from it.

In his blog, former CRTC Commissioner Timothy Denton helpfully, and simply, describes the differences between the two acts:

Each Act has been perfected over time for the purposes it serves. To borrow internet terminology, the Telecom Act deals with market power at the transport and infrastructure layers. The Broadcasting Act deals with the perceived problem of Canadian content, namely that without subsidies and – it is believed - a licensing scheme, there would not be a sufficiency of it. In modern terminology, this is a problem at the applications layer.

Each Act has been perfected over time to help the regulator solve the problems which rise from the particular nature of each industry. In telecoms, the problems arise from the limited possibilities for competition, which proceed from the very large capital requirements of laying out connections throughout cities and rural areas. Wireless technologies have alleviated those capital requirements, but they have not eliminated them. Getting into the telecommunications game against incumbents takes billions upon billions, and no one has been successful in this who did not start as a licensed territorial monopoly in cable television, or as an original incumbent telephone company. Every other form of competition leases access to the

facilities of others, and while resellers (as they are called) perform an important function, they are marginal.

In broadcasting, Canada attempted to create a viable alternative to the Americans by carefully erecting a closed system of licensees. In modern terms, programming is an application. It is subsidized in the hundreds of millions of dollars a year by special funding agencies. The Act established enormous penalties for “broadcasting” without a licence. A broadcaster “speaks” by fiat of the government.²

Since each of the acts was designed to address different issues in different sectors of the economy, there is no need to merge the different pieces of legislation at this time, including the Radiocommunication Act.

2. Sustainable Federal Broadband Projects

Section 46.5 of the Act gives the CRTC the authority to operate a fund to support access to basic telecommunications services. It states:

The Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to basic telecommunications.

In a recent decision, the CRTC added broadband Internet access to the very short list of “basic” services. The only other items on that list are local wireline voice telephony service and mobile wireless services in limited circumstances.

² *Legislative Review: Telecom and Broadcasting Acts* – Timothy Denton’s Blog, 7 March 2018. <http://www.tmdenton.com/index.php/easyblog/entry/legislative-review-telecom-and-broadcasting-acts>
The ITPA does not necessarily endorse all of the opinions espoused by Mr. Denton in this edition of his blog.

Until very recently the key feature of the CRTC's funding mechanism was on-going support for the continued operation of local voice networks in high-cost areas – areas where the regulated affordable rates for the service do not cover the entire costs of operating these networks. What was the result of this on-going funding approach? It has been a resounding success. For decades, it brought and sustained reliable and high quality voice telephony service to over 95% or more of Canadian households.

As a nation, Canada's approach to subsidizing the roll-out of broadband networks thus far has been very different. From the Connecting Canadians and the Connect to Innovate programs and now the CRTC's pending broadband fund, as well as the many provincial subsidy initiatives, the emphasis has been on contributing to the up-front capital costs of a project to the almost total exclusion of on-going operational costs. Unlike local voice telephony, there has been no "sustainability component" built into these programs.

This approach does not generate optimal results in rural Canada. ITPA members companies have seen instances of up-front funding being granted only to have the project languish with yesterday's technology, be sold for pennies on the dollar or even be decommissioned when it becomes too expensive or inconvenient for the service provider to maintain. ITPA members have witnessed such failure in action. For example, Hay Communications was recently approached by a local grain elevator at the height of its busy harvest season frantically looking for connectivity. It had previously been serviced by a wireless provider that had received federal funding to roll out its network but could no longer justify operating the network in this sparsely-populated rural area and shut it down.

Without a sustainability component (which could include quality of service considerations), subsidized telecom projects in rural areas will eventually suffer and there may even be further project shut downs.

The CRTC has recently decided to phase-out the local voice subsidy in favour of its new broadband fund which will focus on subsidizing up-front capital costs. The ITPA is very concerned that if the CRTC's decision stands, service levels to the most vulnerable rural Canadians for both telephone and broadband services will suffer.

In our view, section 7 of the Act should be maintained but revised, as follows, to include the objective of sustainability in order to develop and operate networks and transmission facilities that will support continuing access by Canadians to basic telecommunications services:

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

(a) to facilitate the orderly development **and operational sustainability** throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; [and]

[...]

(e) to promote the **development and ongoing** use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada; [*Emphasis added*]

A minor revision to section 46.5 of the Act would help to link the revised policy objectives to the Commission’s authority to create and operate funds to support continuing access by Canadians to basic telecommunications, as follows:

46.5 (1) The Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to

(a) promote the development and ongoing use of Canadian transmission facilities for the provision of basic telecommunications services, or

(b) support continuing access by Canadians to basic telecommunications services. [*Emphasis added*]

3. Addressing Market Power in the Wireless Market

The Panel’s Terms of Reference state that “wireless communications in Canada have grown from a relatively niche service to tens of millions of connections and devices.”

The Terms of Reference also state that “the Internet has similarly grown into an essential service throughout the economy and society.” The same passage notes the essentiality of delivering such services to rural and remote areas. Given the origins and operating territories of ITPA members, we could not agree more.

The Policy Objectives in the Act deal with ensuring the availability of reliable and affordable telecom services in rural areas, as well as urban markets and enhancing the competitiveness of Canadian telecommunications at the national level.

These Objectives should be maintained because of the regulatory and policy decisions that could and should flow from them.

While there are typically 3 to 4 mobile wireless service providers in most large urban markets in Canada, it is a different story in rural areas where there may be two, or only one wireless carrier offering reliable service.

However, one of the greatest challenges faced by ITPA members today is their inability to offer their own (i.e. over licensed spectrum that they operate) mobile wireless voice or data services to their customers³. This means that while Canadians are streaming more and more content to ever-more devices, those living in many of the markets our members serve lack the choices available to Canadians in urban markets and so miss out on the benefits of multi-service provider competition.

Why is this?

Licensed wireless spectrum is the bedrock of a retail wireless service offering. However, the manner in which the federal department of Industry, Science and Economic Development (“ISED”) dispenses spectrum through its tier structure and auctions approach effectively eliminates the possibility of participation by small service providers. Even if these service providers were able to afford the spectrum under the current regime, industry players have all seen the examples of wireless new entrants winning spectrum at great cost and then being hobbled by the expense of actually building out their wireless networks. The current regime simply does

³ One consequence of this predicament is as follows. From an incumbent telephone provider perspective, the CRTC allows these companies to fulfill their obligation to serve requirements using mobile phones, an option that is currently not available to many ITPA members.

not work for small service providers. This is one of the major reasons why between them, three companies in Canada have approximately 90% market share.

One of the decisions that should flow from the Policy Objectives we identified earlier should be the introduction of a Mobile Virtual Network Operator (MVNO) model to promote both wireless competition and the availability of wireless services in Canada. In fact, if the goal is to promote competitive market forces in the wireless market the MVNO option is the only possible response to ISED's current approach to licensed spectrum – an approach that, intended or not, excludes small service providers. If MVNO is not an option, ISED needs to make major changes to its spectrum licencing approach to facilitate participation by small service providers.

The MVNO market entry strategy is potentially a good one for small rural service providers and a strategy for which a good business case can be developed and executed for rural markets.

4. Addressing the “Patchwork Quilt” of Support Structure Regulation

Finally, in order to promote access to “reliable and affordable” broadband Internet services, particularly in rural areas, the ITPA believes that jurisdiction over all support structures should fall under the CRTC's jurisdiction. The ITPA has obtained a copy of the CRTC's own submission to the Panel, dated 10 January 2019 and notes that it has called for a single regulatory agency to have direct authority over all passive infrastructure. ITPA supports the CRTC's position in so

far as it relates to traditional support structures (e.g. telephone/hydro poles, ducting etc.)⁴

To provide their services, telecommunications carriers must attach their plant to support structures such as hydro and telephone poles. The alternative to attaching plant to poles is to bury it underground, a far more expensive approach that may not be possible in many locations. In rural areas, the equation is not how many customers can be served from a single pole, rather, the equation is how many poles does it take to serve a single customer.

In Canada there is currently a “patchwork quilt” of regulation governing such attachments depending on whether the support structures are owned by federally-regulated telecommunications companies or provincially-regulated hydro utilities. Provincial rates are escalating dramatically – particularly in Ontario – and can be as much as four times the rates set by the CRTC. These higher rates have the effect of siphoning-off scarce broadband fund resources that would otherwise be used for broadband roll-outs in rural areas. There is no Public Interest in such a scenario.

The CRTC has considerable expertise with rate-setting mechanisms for such attachments. The provincial electrical utility regulators do not. That is why the CRTC should be the single regulator for all support structure attachments.

This patchwork quilt environment has become a pressing problem and real threat to the success of the federal government’s rural broadband initiatives to say nothing about defeating the current Act’s Policy Objectives of “facilitating the orderly development throughout Canada of the telecom system” and “[rendering]

⁴ The ITPA has not had the opportunity to develop a position on increasing CRTC oversight of other passive infrastructure such as lawn furniture and light poles.

reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas...”

Conclusion

In conclusion, the ITPA reiterates the points made in this submission to the Committee:

1. There is no need to merge the various pieces of legislation due to the fact that each act was designed to address different issues in different sectors or the economy;
2. There is a need for a sustainability component in broadband funding programs to ensure that on-going operational costs of subsidized networks are addressed;
3. The Act’s Policy Objectives that deal with ensuring the availability of reliable and affordable telecommunications services in rural areas and enhancing the competitiveness of Canadian telecommunications at the national level should be maintained. One of the decision that should flow from these Policy Objectives should be the introduction of a Mobile Virtual Network Operator model to promote both wireless competition and the availability of wireless services in rural areas; and
4. The existing *patchwork quilt* of regulation that governs support structure attachment rates in Canada should be ended and jurisdiction over these facilities should be given to the CRTC.