

**Innovation, Science and
Economic Development Canada**

***Review of the Canadian Communications
Legislative Framework***

**Comments
of
Xplornet Communications Inc.**

January 11, 2019

INTRODUCTION AND EXECUTIVE SUMMARY

1. Xplornet Communications Inc. (“Xplornet”) welcomes the opportunity to provide its comments to the Broadcasting and Telecommunications Legislative Review Panel (“Panel”) concerning the Government’s *Review of the Canadian Communications Legislative Framework*¹ (“Review”).
2. New technologies, and in particular the Internet and the rise of the digital economy, have fundamentally changed the ways that Canadians communicate, access information, and conduct their daily lives. It is against this backdrop that the Minister of Innovation, Science and Economic Development and the Minister of Canadian Heritage enlisted the Panel to perform a joint review of the *Telecommunications Act* (“*Telecom Act*”), the *Broadcasting Act*, the *Radiocommunication Act* and related frameworks. The Review is meant to determine how the Government can adjust its legislative and policy framework to maximize the benefits that the digital revolution can bring for Canadians.
3. In conducting its Review, the Panel has sought comments addressing four principal themes:
 - 1) Reducing barriers to access by all Canadians to advanced telecommunications networks;
 - 2) Supporting creation, production and discoverability of Canadian content;
 - 3) Improving rights of the digital consumer; and
 - 4) Renewing the institutional framework for the communications sector.
4. Xplornet was founded almost 15 years ago with a simple mission: to make fast, affordable, high-speed broadband services available to rural Canadians, wherever they choose to live. Since then, we have established ourselves as a facilities-based, competitive provider of broadband services in rural and remote areas across the country. Xplornet’s LTE fixed wireless network extends across every province and is complemented by broad coverage from state-of-the-art high-throughput satellites. Today, we are offering rural and remote Canadians home Internet packages with speeds of up to 25 Megabits per second (“Mbps”) with a range of data plans, including unlimited usage. To keep up with evolving customer expectations, Xplornet has announced it plans to roll out service with speeds of 100 Mbps in 2020. We are proud to connect more than 350,000 rural and remote households and businesses across Canada every day.
5. Last fall, Xplornet also launched Canada’s newest mobile wireless service, Xplore Mobile, providing service throughout Manitoba.
6. As a rural broadband provider, Xplornet’s submission is focussed on how the Government can modify its legislative and policy frameworks to encourage and enable the delivery of advanced telecommunications services in rural areas by fostering private investment and market forces to the maximum extent possible.

¹ *Responding to the New Environment: A Call for Comments*, launched June 5, 2018.

7. Xplornet believes rural broadband can be provided, maintained and upgraded for sustainable service today and in the future primarily through private investment within a well-designed legislative and public policy framework. Existing laws and policies need to be refreshed to remove barriers that hinder access to advanced technologies and services. The Government is in a position to reduce these barriers and enable all telecommunications providers, including Xplornet, to better serve Canadians.
8. To that end, Xplornet provides the following recommendations for Canada's legislative and policy framework:
 - 1) **Recommendation 1:** Rural broadband programs should follow a national broadband strategy that encourages reliance on market forces to the maximum extent feasible;
 - 2) **Recommendation 2:** Government-led rural broadband initiatives should be managed as part of a national broadband strategy run exclusively by ISED. To the extent some provinces may wish to establish their own subsidy programs, ISED should consult regularly via federal-provincial-territorial discussions to ensure they complement a national strategy and approach;
 - 3) **Recommendation 3:** Canada's spectrum policy should address the needs of ***all*** Canadians, and should not favour urban mobile consumers to the exclusion or detriment of broadband services for rural Canadians;
 - 4) **Recommendation 4:** The *Telecom Act* should be amended to give the CRTC clear ability to grant access to support structures of all kinds under reasonable terms and conditions to facilitate the timely deployment of infrastructure, including innovative new 5G wireless infrastructure; and
 - 5) **Recommendation 5:** Government should not compromise affordability of broadband services by levying an ISP tax to support Canadian content.
9. Where possible, Xplornet has provided information or examples to support its recommendations on the public record. If requested, Xplornet would be pleased to provide additional details on a confidential basis.

RECOMMENDATIONS FOR CHANGES TO THE TELECOMMUNICATIONS LEGISLATIVE AND POLICY FRAMEWORK

Recommendation 1: Rural broadband programs should follow a national broadband strategy that encourages reliance on market forces to the maximum extent feasible.

10. Xplornet's origin and short history significantly influence its views on legislative and policy matters, including funding programs. Founded in 2004 in the small, rural town of Woodstock, New Brunswick, Xplornet was born out of the need for broadband services to facilitate entrepreneurial businesses that wanted to remain in Woodstock yet run their operations and supply customers across Canada. At the time, the common view of telephone and cable Internet service providers ("ISPs") was that broadband could not be affordably or profitably provided in low density rural and remote areas. Xplornet did not believe that was true and set out to find solutions to deliver broadband in rural areas.
11. Over 14 years later, Xplornet has proven rural broadband can be provided affordably and profitably. We have advanced download speeds from less than 512 kilobits per second to 25 Mbps through the adoption of four generations of technology, while significantly driving down costs for rural services. We have invested well over \$1 billion dollars of private capital to build our own national network – reaching rural Canadians from coast to coast to coast – that utilizes the latest LTE fixed wireless technology and is complemented by a constellation of state-of-the-art high throughput 4G satellites. Through that network, over one million Canadians access the Internet every day. Xplornet has become one of the 10 largest ISPs in Canada, and has done so by earning each customer's business, without the benefit of any historical service area monopoly.
12. Xplornet continues to expand and upgrade its network to bring advanced broadband services to more and more Canadians. Currently, Xplornet is preparing to bring 5G services to rural Canada on the same timeline as urban Canada. In 2020, we will be offering broadband services at 100 Mbps download speeds across Canada, and we will continue to strive to deliver more to our customers.
13. Ensuring that all Canadians can meaningfully participate in the digital economy has been a stated priority of the Government of Canada. In 2016, the CRTC formally recognized the vital role the Internet plays in the lives of Canadians. In TRP 2016-496², the Commission explicitly declared broadband services to be a basic telecommunication service and established a universal service objective designed to ensure that "Canadians, in urban areas as well as in rural and remote areas, have access to voice services and broadband Internet access services, on both fixed and mobile wireless networks."³ The Commission described that it would consider the universal service objective to be achieved when Canadians can

² Telecom Regulatory Policy CRTC 2016-496, *Modern telecommunications services – The path forward for Canada's digital economy*.

³ TRP 2016-496, paragraph 37.

access speeds of at least 50 Mbps download and 10 Mbps upload (“50/10 service”).⁴ ISED has supported the Commission’s universal service objective.

14. While Canadians in large urban centres generally have access to Internet services that meet or exceed the Commission’s universal service objective, many Canadians in smaller urban, rural and remote areas of the country do not yet have such services.
15. The Government has committed significant public funds to help promote the deployment of new infrastructure in rural and remote areas. Since 2009, ISED has undertaken three major initiatives to support broadband deployment to rural and remote areas of the country: (a) in 2009, ISED committed \$225 million through its Broadband Canada program; (b) in 2014, ISED committed \$305 million⁵ through its Connecting Canadians program; and (c) in 2016, ISED committed an additional \$500 million through its Connect to Innovate program. In 2016, the Commission additionally announced it would create a \$750 million fund (“Broadband Fund”) to support the deployment of broadband facilities to areas of the country without access to Internet services meeting its universal service objective. These initiatives are in addition to provincial and municipal programs to support broadband.
16. Given Xplornet’s history and experience, we believe that the Government of Canada can largely achieve its priority for all Canadians to have access to high-quality broadband services by establishing a legislative and policy framework that encourages private investors to continue to build out and improve broadband services in Canada, including in rural and remote areas. Indeed, we believe that private investments are essential to achieve ubiquitous access to broadband services to Canadians. Recent estimates from ISED are that it may cost at least \$6.5 billion to bring 50/10 service to all areas of the country.⁶ This is a sum that far exceeds the amounts that have been dedicated by ISED and the Commission. In order to foster the necessary private sector investment, the Government of Canada should only seek to insert public funding where there is not current or planned private investment to achieve its policy objective.
17. While subsidy programs that have been undertaken by Government to-date have stated an intention that subsidies awarded would complement, and not displace, private investments, this has not always been the result.
18. For example, in respect of the CRTC’s Broadband Fund, the Commission has made clear statements that subsidies to be provided will be allocated in a way that is complementary to and that does not displace private investments. When the Commission announced it would create the Broadband Fund in TRP 2016-496, the Commission explicitly stated at paragraph 135:

⁴ TRP 2016-496, paragraph 80.

⁵ \$65 million was later transferred to the Connect to Innovate program.

⁶ *2018 Fall Reports of the Auditor General of Canada to the Parliament of Canada, Report 1 – Connectivity in Rural and Remote Areas* (“Auditor General Report”), page 10.

“The Commission expects that governments will continue to fund, and will create new funding programs to support, broadband infrastructure projects in underserved areas. In addition, the private sector will continue to invest in expanding and upgrading its broadband networks, including in underserved areas, to meet the needs of Canadians. As such, **the Commission’s broadband funding mechanism will be aligned with existing and future broadband investments and funding initiatives; it will complement and not replace them.** [Emphasis added]

19. Despite an intention to ensure future investments are not displaced by Broadband Fund subsidies, the Commission has not taken steps to ensure that its program does not displace future investments.
20. To determine areas of the country that will be eligible for subsidy, the Commission has made a detailed map of Canada using 25 km² hexagons. Any populated hexagon where no household has access to 50/10 service is deemed eligible for funding. The Commission has recently asked service providers to review its maps to ensure it is accurate as of December 31, 2017. Accordingly, even the most up-to-date maps the Commission is currently relying on are over a full year out of date as to the current status of broadband services offered in each hexagon. As a result, this approach ignores investments that have been made in 2018.
21. Additionally, the Commission has not asked service providers for any information concerning their future investment plans, which puts investments to expand coverage at risk. Without any such information, it is impossible for the Commission to ensure that it does not award subsidy to deploy broadband infrastructure in an area where another company already has plans to do so.
22. Service providers will hesitate to commit money to build new network infrastructure in an area that the Commission considers underserved based on 2017 data and therefore eligible for funding. If a private actor invests resources in building or upgrading service in an area that is deemed eligible for funding, there is significant risk that the Commission will subsidize another party to over-build the private investment. Essentially, the prospect of the Commission funding an area based on 2017 data creates an immediate chill on private investment.
23. This chill on investment is not just a theoretical concept. Xplornet has had its own planned investments displaced as a result of subsidy processes failing to consider future plans of service providers. For example, the Commission previously interfered with Xplornet’s investment plans when it considered awarding funding to various Incumbent Local Exchange Carriers for broadband deployment as part of its Deferral Account process.⁷ As Xplornet has put on the record of other public hearings, despite our desire to invest in the areas in question, Xplornet did not proceed with any investments in those areas for over four years because of the risk that Deferral Account funding recipients would over-build Xplornet’s investments. As a direct result, communities that could have received service from

⁷ See Telecom Decision CRTC 2006-9, *Disposition of funds in the deferral accounts*, and related processes.

Xplornet had to wait several years before Xplornet and other smaller ISPs could finally determine where infrastructure subsidized by the Deferral Account process would be located and finalize our own investment plans.

24. The Commission's Broadband Fund program also does not consider the ability for service providers to upgrade existing networks. For example, 4G/LTE networks are typically software upgradeable to faster speeds with minimal equipment investment. As a result, the Commission could wrongly conclude that areas currently served by LTE infrastructure in which 25 Mbps packages are being offered require funding to upgrade to 50 Mbps packages. This is simply not the case – Xplornet is currently making these investments to offer faster speeds without public assistance. Funding other parties to deploy infrastructure in areas that we are upgrading is an inefficient use of subsidy dollars.
25. For these reasons, subsidy programs, like the Commission's Broadband Fund, need to account for all current and planned future investments of service providers to ensure that any subsidy awarded is truly complementary to private investment. By failing to canvas planned future initiatives and upgrades, the Commission will with certainty displace private investments that would otherwise happen without the need for subsidy.

Recommendation 2: Government-led rural broadband initiatives should be managed as part of a national broadband strategy run exclusively by ISED. To the extent some provinces may wish to establish their own subsidy programs, ISED should consult regularly via federal-provincial-territorial discussions to ensure they complement a national strategy and approach.

26. We agree with the recently published findings of the Auditor General of Canada that Canada needs a comprehensive national broadband strategy.⁸ Xplornet recommends that ISED should have the responsibility for designing this strategy and managing any funding initiatives that may be undertaken.
27. Today's reality of having both the CRTC and ISED running separate funding initiatives is unnecessarily complex, creates an undue degree of burden for industry, and is not the most efficient manner for the Government to achieve its goals. While the programs that have been run by the CRTC and ISED have sought to advance the very same objectives, these have each had unique sets of rules and requirements for industry to navigate.
28. Having a single program run by ISED would generate significant efficiencies for all involved. To the extent some provinces may wish to establish their own subsidy programs, ISED should show leadership by consulting regularly via federal-provincial-territorial discussions to ensure they complement a national strategy and approach.

⁸ Auditor General Report, page 7.

29. To this end, we recommend that the purpose of section 46.5 of the *Telecom Act* be clarified. Today, this provision provides the Commission with the ability to create a fund to support continuing access by Canadians to basic telecommunications services. The Commission relied on this clause to create the Broadband Fund. Section 46.5 reads 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 support continuing access by Canadians to basic telecommunications services.** [Emphasis added]

30. Prior to the creation of the Broadband Fund, this provision has never been used in such a manner to support the deployment of new facilities; it has been used to help subsidize the on-going delivery of local voice services to high-cost serving areas and to support the availability of Video Relay Service (VRS) for Canadians who communicate using sign language.

31. Permitting the Commission to raise funds through levies on telecommunications services increases the cost of such services to consumers, thereby compromising one of the Government's stated goals of ensuring broadband is affordable to Canadians.

32. Xplornet submits that section 46.5 should be revised to provide the Commission with the ability to create a fund to support services like VRS that are relied upon by persons with disabilities to access basic telecommunications services. The Commission no longer requires the ability to create a fund for other purposes. The Commission is phasing out subsidy programs related to local voice service and deployment of facilities should be managed by ISED. Accordingly, we recommend that the language of section 46.5 be revised 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 support **continuing** access by Canadians **with disabilities** to basic telecommunications services.

Recommendation 3: Canada's spectrum policy should address the needs of *all* Canadians, and should not favour urban mobile consumers to the exclusion or detriment of broadband services for rural Canadians.

33. As highlighted above, Xplornet is a rural broadband provider seeking to bring advanced telecommunications services to rural Canadians. Our business objectives are well aligned with the Government's priority to extend ubiquitous 50/10 service to all Canadians.

34. An essential part of our rural broadband business is our work to assess and evaluate the best technology to be used to provide service in a given rural or remote area. Overarching considerations for selecting a technology relate to cost and service quality. While wired fibre or cable infrastructure is able to provide high

speeds to customers, these are also high-cost technologies that are best suited for use in high population density areas where consumers are in close proximity to each other. The cost per customer of installing these facilities rapidly increases as the population becomes more dispersed in rural areas, making it impossible to build a workable business case based on affordable rates for service.

35. In rural areas where the population density is lower, fixed wireless infrastructure becomes the technology of choice to provide fast, reliable and affordable broadband service. In addition to its cost advantage in lower density areas, wireless technology is less susceptible to potential disruption than ground or aerial technology that can be damaged by machinery or severe weather (such as wind and ice storms) in rural and remote regions.
36. As a complement to fixed wireless services, high-throughput satellites remain the best-fit technology for the most remote areas of the country or areas with challenging physical terrain. Using 4G high-throughput satellite technology, we are able to provide customers with a high-quality Internet experience. Just like wireless technologies, satellite technologies are currently evolving through a period of rapid advancement, and over the medium term, we anticipate that new technologies (for example, the introduction of low latency services offered by low-earth-orbit satellite constellations) will continue to revolutionize the service offerings that are available for Canadians.
37. It is well recognized internationally that a diversity of technologies is the best way to serve a large geographic mass with a spread-out population, like we have in Canada. The Australian Government has provided clear support for the use of a diversity of technologies to bring broadband services to Australians. For example, in the 2018 *Australian Government Response to the Joint Standing Committee on the National Broadband Network* [NBN] report, the Australian Government clearly stated: "...the Government considers that nbn has the expertise to make decisions about how best to roll out the NBN, and there is value in allowing the experts to use their discretion to choose the most appropriate technology to ensure the network is rolled out as quickly and cost-effectively as possible."⁹
38. The Federal Communications Commission ("FCC") in the United States equally supports the use of a diversity of technologies in deploying broadband to Americans. The FCC's Connect America Fund provides subsidies on a technology-neutral basis in order to allow service providers to select the best-fit technology to serve a given region.¹⁰
39. It is estimated that fixed wireless services are the best-fit technology to serve over two million Canadian households and small businesses in rural and remote regions. The technology that supports fixed wireless LTE services is essentially

⁹ *Australian Government Response to the Joint Standing Committee on the National Broadband Network* report, issued January 2018, at page 5. Available online: <https://www.communications.gov.au/publications/australian-government-response-joint-standing-committee-national-broadband-network-report-rollout>

¹⁰ <https://www.fcc.gov/auction/903#technology>

the same as that supporting mobile LTE services, and both services offer fast, reliable services to consumers. However, the spectrum requirements of each service are fundamentally different. While the average mobile wireless data subscriber uses approximately 2 GB of data per month,¹¹ in contrast, the average household uses 166 GB of data over their home Internet connection.¹² Indeed, because of the significant data used per customer, Xplornet's LTE fixed wireless network carries as much data traffic each month as Bell Mobility's entire mobile network, which supports almost 9 million subscribers.

40. Rural spectrum policy needs to recognize and promote the needs of both fixed and mobile services. Rural spectrum requirements are very different than those of urban areas. In urban areas, spectrum only needs to support an average of 2 GB per month per customer, as traffic from fixed Internet services is carried through wired connections. In rural, however, spectrum needs to accommodate both the 2 GB of mobile traffic generated by each mobile wireless subscriber and the 166 GB per month of data generated by each household subscribing to fixed wireless services.
41. To-date, Government spectrum policies have not recognized the important role of fixed wireless services and have failed to provide the spectrum required to foster increased rural and remote connectivity.
42. In its spectrum policy, ISED has been focused on providing spectrum for mobile wireless services at the expense of fixed wireless technologies. Indeed, over recent years, all spectrum allocations have focused exclusively on mobile needs. There has been no allocation of spectrum for fixed wireless access in more than five years, despite the fact that residential Internet use has increased by nearly 500%¹³ over the period.
43. The lack of new spectrum for fixed wireless broadband service has constrained the ability of ISPs to offer faster speeds and more data to consumers in rural areas.
44. Exacerbating this lack of spectrum, in its on-going consultation related to 3500 MHz spectrum,¹⁴ ISED has further proposed to take back large portions of spectrum that is currently being used by fixed wireless providers to serve rural Canadians. The spectrum clawed back from rural Canadians would be re-auctioned for flexible use to predominantly urban mobile providers.
45. In its consultation paper, ISED has wrongly assumed that this claw-back will not result in any loss of service to rural fixed access users.

¹¹ CRTC, 2018 Communications Monitoring Report, Infographic 6.1.

¹² CRTC, 2018 Communications Monitoring Report, Infographic 5.2.

¹³ Residential monthly internet usage was 33.8 GB in 2012. See, CRTC 2013 Communications Monitoring Report, page 143.

¹⁴ *Consultation on Revisions to the 3500 MHz Band to Accommodate Flexible Use and Preliminary Consultation on Changes to the 3800 MHz Band.*

“43. ISED notes that incumbent licensees will be required to reduce their spectrum holdings and transition to different frequencies in the new band plan. ISED is of the view that, with improved deployment efficiencies and new technologies, licensees should be able to continue to maintain current service offerings with a reduced amount of spectrum. Many incumbent licensees have been building their fixed wireless networks for over 10 years, since the initial auction process took place in 2004. **Under either of the options proposed below, current licensees would be able to continue to provide fixed wireless services with their remaining holdings and, in some cases, to expand their existing networks or take advantage of fixed 5G technologies to improve their services at any time.**” [Emphasis added]

46. This is simply not the case. If ISED implements its proposal to take back 3500 MHz spectrum, this will require Xplornet to forfeit between 25%-66% of its 3500 MHz spectrum. **The loss of this spectrum will directly impact 200,000 of the rural households that we serve, either through the outright disconnection of their services, or a reduction in the service levels that we provide today.**

47. Indeed, the Auditor General also concluded that ISED is not adequately recognizing the needs of fixed wireless providers in its recently published report. As the report states:

What we examined. We examined whether [ISED] managed spectrum to support the availability of rural and remote areas, where appropriate.

Unmet demand for spectrum for fixed wireless broadband. Wireless Internet service providers expressed concern that the government did not make adequate and sufficient spectrum available to provide reliable broadband services in rural and remote areas. **We found that [ISED] did not analyze the spectrum needed by service providers to improve broadband deployment in these areas.**¹⁵ [Emphasis added]

48. The overarching impact of a decision to take back 3500 MHz spectrum will cause significant harm to rural Canadians who do not yet have access to Internet services meeting the universal service standard. Such a decision would:

- significant deepen the urban-rural digital divide in Canada;
- result in an indefinite delay of 5G services in rural areas, which is currently scheduled to arrive in rural Canada as early as late 2019; and
- erode competition in rural Canada, removing service providers from competing in the marketplace.

¹⁵ Auditor General Report, page 18.

49. In order to promote the delivery of advanced Internet access services to rural Canadians, ISED needs to modify its spectrum allocation policies to better recognize the requirements of rural Canadians.
50. Specifically, ISED must recognize the important role that fixed wireless services perform and will perform in connecting more than two million rural Canadian households and small businesses. As noted by the Auditor General, ISED needs to understand the spectrum requirements that are needed to bring advanced broadband requirements to rural Canadians using fixed wireless technology. Finally, ISED needs to ensure its policies support the requirements of rural broadband. This involves a better balancing between allocating spectrum for fixed and mobile services to ensure both services can meet the needs of rural and remote Canadians.

Recommendation 4: The *Telecom Act* should be amended to give the CRTC clear ability to grant access to support structures of all kinds under reasonable terms and conditions to facilitate the timely deployment of infrastructure, including innovative new 5G wireless infrastructure.

51. Xplornet echoes concerns raised by other parties concerning the current lack of clear CRTC jurisdiction to intervene in cases where a service provider is unable to obtain access to public facilities to place wireless equipment. This means that if a service provider is unable to gain access to public places or structures (e.g., telephone poles, hydro poles, as well as unconventional structures, such as lamp posts and highway signs) to place wireless equipment, then a wireless deployment could be significantly delayed or prevented altogether as service providers have no clear dispute resolution mechanism to engage. This is of significant importance given the extensive work being undertaken by wireless providers to implement 5G technologies. These concerns are also highlighted in the submission filed by the Canadian Wireless Telecommunications Association (CWTA).
52. In order to ensure that 5G infrastructure can be rolled out in a timely manner, service providers need a regulatory back-stop that can be engaged in situations where reasonable access to support structures cannot be negotiated with third parties, where such third parties control access to the support structures in question.
53. Today, wireless service providers, like Xplornet, have no clear recourse under the *Telecom Act* to refer a dispute to the CRTC if it concerns access to public facilities (land, lamp posts, highway signs, etc.) to place wireless equipment. This means that if a service provider is unable to gain access to public facilities under reasonable terms and conditions, then it may be that a wireless deployment could be significantly delayed or prevented altogether.
54. Similarly, if a dispute is encountered related to access to the supporting structure of hydro-electric facilities, Xplornet is unable to request CRTC intervention. As the *Telecom Act* is currently drafted, the Commission only has the ability to resolve disputes concerning access to supporting structures of transmission lines (i.e.,

supporting structures owned by telecommunications companies). As a result, an unsuccessful negotiation for access to the supporting structures of a hydro-electric company could equally harm a wireless deployment.

55. This lack of regulatory support for our wireless deployments means that third parties could unreasonably delay or interfere with 5G deployments, depriving Canadians of the associated benefits.

56. Xplornet supports the recommendations put forward by the CWTA in its submission to the Panel.

57. Specifically, Xplornet agrees that the definition of “transmission line” contained in the *Telecom Act* should be modified to clarify that through section 43 of the *Telecom Act*, the CRTC has the authority to resolve disputes and grant access under reasonable terms and conditions to all types of public infrastructure (such as lamp posts, highway signs, and other potential supporting structures) for wireless equipment.

58. Xplornet further agrees that the CRTC should have the jurisdiction to resolve disputes and to set rates for access by telecommunications service providers to the supporting structures of hydro-electric equipment, as described by the CWTA.

59. These changes are necessary to ensure that 5G deployments can be undertaken in a timely manner to deliver advanced services demanded by Canadians.

Recommendation 5: Government should not compromise affordability of broadband services by levying an ISP tax to support Canadian content.

60. In addition to making Internet available for all Canadians, no matter where they live, the Government should assist providers in keeping Internet services as affordable as possible.

61. As highlighted above, it is Xplornet’s mission to make fast, reliable broadband service available for rural Canadians at affordable rates. Affordability has also been identified as a key priority for the Government: the CRTC has noted that affordability concerns can prevent Canadians from accessing the digital economy¹⁶ and ISED has maintained affordability of services as a clear policy goal.¹⁷

62. As described above, there are significant challenges to offering affordable, high-quality services in areas with low population densities. Beyond the network deployment costs associated with bringing service to a rural area, there are significant costs associated with connecting each new subscriber to the network. Travel costs alone to send a technician to a rural area can amount to hundreds of

¹⁶ TRP 2016-496, paragraph 49.

¹⁷ See, for example, the address delivered by The Honourable Navdeep Bains, to the 2018 Canadian Telecom Summit, in which he promoted affordable Internet services. Available online: <https://www.canada.ca/en/innovation-science-economic-development/news/2018/06/2018-canadian-telecom-summit.html>

dollars. Travel costs can reach into the thousands of dollars for remote areas that do not have road access. The hardware costs of installing service for fixed wireless and satellite installations are also significant, as numerous pieces of equipment are required beyond standard customer premise equipment. For our customers, we must also install antenna equipment outside the house, including a reflector dish for our satellite customers.

63. Clearly, the costs involved in delivering service in rural and remote areas create challenges for affordability. Despite this, Xplornet has been able to provide service offerings at affordable prices that are similar to service prices in urban Canada.
64. In this regard, Xplornet opposes the implementation of an ISP tax, as has been discussed by certain parties. The implementation of such a tax would represent a significant barrier for Canadians in accessing broadband service.
65. Support for Canadian content has historically been obtained through a levy on broadcasting distribution undertakings (“BDUs”), as Canadians subscribed to the services of BDUs in order to access broadcasting content. The *BDU Regulations*¹⁸ require licensees (i.e., licensed BDUs) to contribute approximately 5% of their gross revenues derived from broadcasting activities in the previous broadcast year to Canadian programming. These contributions are meant to ensure that BDUs contribute to the creation and presentation of Canadian programming.¹⁹
66. Today, Canadian content is no longer being accessed solely through a single platform controlled by traditional BDUs. Canadians are now accessing content through multiple platforms that are offered over the Internet. This has led to questions about if and how funding mechanisms that support the creation of Canadian content should be changed to adapt to this new multi-platform environment.
67. Xplornet submits it would be inappropriate to implement an ISP tax on Internet access services to support Canadian content. ISPs serve a fundamentally different role than BDUs and should not be treated in a similar manner. While the business of BDUs is to provide access to broadcasting content; ISPs provide access to the Internet, which is far more broad a service than a broadcasting service. Further, ISPs are not in a position to influence or control the content that is accessed by consumers who subscribe to Internet access services. Indeed, sections 27 and 36 of the *Telecom Act* explicitly prevent ISPs from influencing what content is being accessed over the Internet. It is incorrect to suggest that ISPs operate businesses that parallel those of BDUs.
68. Similarly, given the broad functions offered by the Internet, there is no fair way to tax Internet users in relation to accessing broadcasting content. As noted by the CRTC, Canadians use the Internet for a multitude of daily tasks and activities:

¹⁸ *Broadcasting Distribution Regulations*, SOR/97-555.

¹⁹ Broadcasting Regulatory Policy CRTC 2015-24, *Over-the-air transmission of television signals and local programming*, paragraph 27.

In the last few years, more and more Canadians have shifted towards digital platforms for many daily activities, such as those related to commerce, politics, health care, education, entertainment, security, sports, and global affairs.²⁰

...

Canadians also need broadband Internet services with appropriate upload speeds for various activities, such as telework, videoconferencing, and real-time collaborative work. Rather than simply receiving content from various providers, Canadians need the ability to upload content quickly to become exporters and creators of content.²¹

69. Accordingly, the Internet serves many purposes beyond providing access to online broadcasting platforms. Imposing an ISP tax on all Internet users would unfairly tax Canadians who are not using their Internet services to access broadcasting content. It would be unfair to tax an individual who uses their Internet service to perform email and online banking to support broadcasting.
70. Perhaps most importantly, however, an ISP tax would run against Government priorities to advance access to affordable broadband services. As noted above, an ISP tax would reduce the affordability of Internet services, imposing a barrier to access to the Internet on consumers, and in particular, low-income consumers.
71. Xplornet submits that, if additional support is needed for Canadian content, then the Government should obtain this support directly from over-the-top BDUs. These are the parties that are most directly providing access to and profiting from the consumption of broadcasting content in Canada.
72. To date, the CRTC has found that alternative BDUs that compete directly with traditional BDU platforms should not be required to contribute to Canadian programming. Indeed, over-the-top video streaming services have not been required to contribute a percentage of their revenues earned from Canadian subscribers to support the development of Canadian content.
73. Xplornet submits that, if action is to be undertaken to modernize support for Canadian content, over-the-top BDUs should be asked to contribute to content creation.

CONCLUSION

74. In this submission, Xplornet has provided recommendations for changes that could be implemented to the federal legislative and policy frameworks for communications in our capacity as a rural broadband provider.

²⁰ TRP 2016-496, paragraph 74.

²¹ TRP 2016-496, paragraph 77.

75. We have highlighted a number of key barriers that we face in our mission to make fast, affordable, high-speed broadband services available to rural Canadians across the country. In particular, we are recommending that changes be made to how the Government provides subsidies to support the deployment of broadband infrastructure in rural and remote regions of Canada. Subsidy programs as undertaken to-date can interfere with the investment of private capital to build broadband infrastructure for rural Canadians. Subsidy programs should be designed to better ensure that public resources are not used to displace private investment.
76. Any subsidy programs should be managed as part of a national broadband strategy run by ISED. Having multiple Government entities conducting similar programs to achieve the same objective is unnecessarily complex and burdensome for industry. A far more efficient approach would have a single entity – ISED – empowered to oversee a single national strategy.
77. We further recommend that spectrum policies managed by ISED better recognize the crucial role that fixed wireless broadband services play in serving rural communities. Instead of promoting these services, there has been a failure to allocate sufficient spectrum to fixed wireless applications to meet the needs of rural Canadians. Furthermore, the current proposal to claw back spectrum that is being used to provide rural broadband to re-auction it for mobile use is counter to all publicly stated policy goals regarding the extension of the universal service objective to Canadians. In order to meet the needs of rural Canadians, rural broadband requires more support from the Government's spectrum policies.
78. We additionally recommend that the *Telecom Act* be modified to provide the CRTC with greater oversight over wireless deployments. Given the importance of 5G technology, appropriate regulatory back-stops are necessary to ensure that these technologies can be deployed in a timely manner for Canadians.
79. Finally, we recommend that calls for an ISP tax to support Canadian content be rejected. The implementation of such a tax would be unfair and would reduce the affordability of Internet access services, harming the ability of Canadians to participate in the digital economy. If additional support is required for Canadian content, Xplornet recommends that funds be obtained from new over-the-top BDUs who have not historically been required to contribute to Canada's broadcasting system. These are entities that are directly providing access to and benefitting from the consumption of broadcasting content by Canadians.
80. We thank the Panel for the opportunity to provide these comments.

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