

1 February 2016

John Traversy
Secretary General

RE: Phase 2 Intervention

Regarding the Consultation on *Review of basic telecommunications services*:
Telecom Notice of Consultation CRTC 2015-134, 9 April 2015; CRTC 2015-134-1, 3 June 2015; CRTC 2015-134-2, 22 December 2015; CRTC-134-3, 14 January 2016.

Intervenor:

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By submitting this intervention I am indicating my intent to become party to this proceeding.

I also request to appear at the public hearing on 11 April 2016 in Gatineau, Quebec via videoconference provided at the Commission's Alberta regional office in Calgary.

Summary

1. In my intervention submitted in Phase 1 of this proceeding, I reviewed recent academic research on how basic telecommunications services should be defined and regulated by the Commission. Given findings across a spectrum of research programs, I sought to highlight the persisting divides in ways that Canadians access and use telecommunications services, specifically digital connections. While not all Canadians enjoy sufficient access to reliable digital infrastructure such as broadband Internet, the larger argument made in the Phase 1 submission was that mere access to digital connectivity is insufficient to meet the broader policy objectives of economic growth and citizen engagement.
2. In this intervention submitted in Phase 2, I return to Section II of the Phase 1 submission, to clarify a number of points made about the Commission's role regarding access to basic telecommunications services. This clarification takes shape around the definition of basic telecommunications services and status of market forces in relation to certain cited interventions made by other parties in Phase 1.

Updated: Response to the specific consultation objectives

II. The Commission's role regarding access to basic telecommunications services

Definition of basic services

1. As is evident across the hundreds of interventions in Phase 1, the definition of "basic" services remains unclear. Articulating a more robust definition of what basic means is the first fundamental problem that this proceeding must address as it moves forward into the hearings.
2. Despite the lack of clarity around what specific parameters constitute basic telecommunications services, there is some agreement among intervenors that broadband and satellite Internet, along with wireless and wireline telephony, should be included. While including these different types of connectivity raises distinct sets of questions about infrastructural development according to the contingencies of each technology, it is important to maintain this plurality of communications channels in order to acknowledge the different meanings of "basic" across sectors of the Canadian population. The question of basic services is often

less about the specific technologies over which telecommunications services are delivered and more about the reliability, affordability, and quality of the connection.

3. When defining basic, there is always some implicit characterization of the Canadians who use telecommunications services. As indicated in my Phase 1 submission, it is not only users who are important to consider here, but also non-users. Non-users, moreover, may fall into separate categories – representing a “dual digital divide”¹ – depending on whether they are non-users by choice or circumstance. The language of users and non-users is thus perhaps more useful than that of telecoms “consumers” for maintaining focus on Canadians as citizens who rely on telecommunications services to support a rich set of everyday activities beyond those most obviously related to promoting a strong digital economy.
4. The Canadian public’s need for sufficient telecommunications services extends far beyond economic parameters to include social needs, such as education, health, group belonging, safety, privacy, expression, civic participation, creativity, and cultural innovation. Since these social needs are somewhat more intangible than the business uses that lead directly into revenue-generating activities, the continued regulation of telecommunications services in relation to affordability is most urgent. Especially for segments of the Canadian population who are non-users by circumstance, the cost of obtaining and maintaining an adequate level of service can be a significant barrier to the efficacy of benchmarks for basic service. Moreover, as the Phase 1 submission by Cybera points out, these barriers tend to exacerbate the existing divides between urban and rural Canadians.²
5. Almost all of the submissions have noted that more ambitious targets must be set for broadband Internet speeds. The Phase 1 submission by Rob McMahon of the First Mile Connectivity Consortium deftly summarizes the deficiencies in current speed targets, particularly in Northern Canada.³ As noted in this and other submissions, target speeds should match those set internationally in similar developed countries such as the US and Australia and those across Western Europe. Since the issue of connection quality is ever-evolving along with technological

¹ Tamara Shepherd (2015), CRTC Telecom Notice of Consultation 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #271, p. 4.

² Cybera (2015), CRTC Telecom Notice of Consultation 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #300, p. 3.

³ Rob McMahon (2015), First Mile Connectivity Consortium, CRTC Telecom Notice of Consultation 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #327, p. 27.

development, such targets must be reviewed often in relation to future needs as demand grows.

Market forces

6. Similar to the definition problem underlying the goal of ensuring basic telecommunication service, the definition of “market forces” requires additional clarification. This point was eloquently made in Monica Auer’s Phase 1 submission for the Forum for Research and Policy in Communications, which states, “As for competition, the fundamental dilemma for the Commission in this proceeding, and every other telecommunications policy proceeding, is that the government has not clearly defined what it means when it talks about ‘market forces’ or ‘competitive market forces’.”⁴
7. Perhaps unsurprisingly, the Phase 1 submissions made by the larger telecommunications providers all describe the robust health of current market forces. Telus’s submission states that “the market is working very well to provide basic telecommunications services to the vast majority of Canadians,”⁵ and Rogers’s submission asserts that “Competition is Constantly Pushing ISPs to Improve.”⁶ Moreover, Bell included in its intervention documents a specially commissioned independent report on competition in the Canadian telecoms sector, which finds that “the market is characterized by vigorous, dynamic competition, with multiple firms deploying different types of infrastructures and technologies to produce rapidly improving levels of service.”⁷
8. The arguments made by large firms about the competitive nature of the market are not, however, matched by equivalent statements by newer entrants. For example, WIND Mobile’s submission states that “the evidence clearly establishes that even with hundreds of millions of dollars of Government funding and the operation of market forces, the current broadband target is clearly a very costly and difficult goal, particularly as one seeks to expand telecommunications networks further and further into the remote

⁴ Monica Auer (2015), Forum for Research and Policy in Communications (FRPC), Comments on Telecom Notices of Consultation CRTC 2015-134 and 2015-134-1, *Review of basic telecommunications services*, 14 July. Intervention #309, p. 5.

⁵ Telus Communications Company (2015), Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #331, p. 36.

⁶ Rogers Communications Partnership (2015), Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #296, p. 3.

⁷ Jeffrey A. Eisenach (2015), *Broadband Market Performance in Canada: Implications for Policy*. NERA Economic Consulting, July.

<http://www.nera.com/publications/archive/2015/broadband-market-performance-in-canada--implications-for-policy.html>

areas of Canada.”⁸ Bram Abramson, in his Phase 1 submission for TekSavvy, similarly notes that “Market forces and government funding have not, thus far, ensured that all Canadians have access to the range of reliable high-speed, low-latency telecommunications services that support participation in the digital economy.”⁹ Statements such as these exhibit a more tempered account of the role of market forces in the provision of basic telecommunications services.

9. Further, submissions from intervenors not representing industry positions tend to be even more reserved about the capacity for market forces to ensure the provision of basic telecommunications services. Consider the Phase 1 submission made by Beverly Milligan of Media Access Canada, which describes a Canadian broadband market characterized by high prices and low service quality that has not fulfilled the promise of providing basic service, particularly for Canadians with disabilities.¹⁰ Vaxination Informatique’s submission portrays a telecom industry in Canada that “has become addicted to subsidies, so they lack initiative, preferring to wait for subsidies or being forced by the Commission to act. The reality is that there are areas that cost more to serve than others, and some form of government intervention at regulatory and financial levels are necessary.”¹¹ Finally, the submission from Union des consommateurs frankly states that, “Le Conseil ne peut se fier simplement au libre-jeu du marché et au bon vouloir des différents paliers gouvernementaux pour assurer un accès efficient aux services de large-bande à l’ensemble des citoyens.”¹²
10. The disconnect between various intervenors’ perspectives on the ability of competitive market forces – however these are defined – to support all Canadians’ ability to acquire basic telecommunications services points toward the inherent deficiencies in primarily market-based solutions. Even if the marketplace was able to achieve perfect competition, regulatory safeguards still need to be in place to ensure that less economically viable geographic areas and populations still have access to digital connectivity as part of basic telecommunications services.

⁸ WIND Mobile Corp. (2015), Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #318, p. 5.

⁹ Bram Abramson (2015), TekSavvy, Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #340, p. 3.

¹⁰ Beverly Milligan (2015), Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #278, p. 16.

¹¹ Jean-François Mezei (2015), Vaxination Informatique, Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #323, p. 6.

¹² Union des consommateurs (2015), Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #297, p. 24.

11. Moreover, there is an urgent need for a new policy framework that does not simply reproduce the common fallacy that the market will single-handedly rectify divides. Instead, what is needed is a set of complementary but diverse policy solutions based on more comprehensive data that accounts for all of the factors that may influence usage. One of these comes back to the issue of affordability, since cost is among the least measured international statistics about network usage, despite surveys like the Canadian Internet Use Survey – cited in my Phase 1 submission – which show the impact of price on the decision to connect.

Conclusion

12. There is evidently a need for better compilation of the patchwork of data around basic services, as presented across the interventions. For example, the potential of the Internet Performance Test as a new tool for measuring speeds, introduced in the Phase 1 submission of Fenwick McKelvey,¹³ could be cross-referenced with data on speeds from the *Communications Monitoring Report*,¹⁴ as well as data about usage from the Canadian Internet Use Survey.¹⁵ The CRTC's support for the gathering and publication of increasingly robust sets of data that are internationally comparable is also something suggested across many of the Phase 1 interventions that is important to emphasize again here.
13. The idea behind increasing the availability and utility of public data that can inform a proceeding such as this one is further meant to drill down into the specifics of what exactly is under regulatory consideration. Policy strategies need to be sensitive to the multiple, situated ways of defining the digital divide and its impacts in order to effectuate beneficial changes in internet adoption and usage, as noted in the Phase 1 submission from MediaSmarts.¹⁶
14. The concept of basic telecommunications services, while crucial for the Commission to consider as part of its regulatory responsibilities, can only ever constitute one part of the

¹³ Fenwick McKelvey (2015), Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #286.

¹⁴ Canadian Radio-television and Telecommunications Commission (2014), *Communications Monitoring Report 2014*, Ottawa: CRTC, October. Tables 5.3.12 & 5.3.13.

¹⁵ Statistics Canada, The Canadian Internet Use Survey:
<http://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=4432>

¹⁶ MediaSmarts (2015), Telecom Notice of Consultation CRTC 2015-134, *Review of basic telecommunications services*, 14 July. Intervention #265, p.3.

interconnected set of affordances necessary for ensuring that all Canadians can meaningfully participate in economic and social life. These required affordances go beyond the distributive model of simply providing access to encompass broad public understandings of how connectivity fits into the country's social and economic fabric, and so the Commission's approach to defining the key terms that shape the meaning of telecommunications is crucial.

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