

Analysis of Basic Services Objective from the December 21, 2016 the Canadian Radio-television and Telecommunications Commission (CRTC) ruling.

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On December 21, 2016, the Canadian Radio-television and Telecommunications Commission (CRTC) declared broadband internet a basic telecommunication service as part of its review of its basic services objective.¹ The decision is an important shift in internet policy for the Commission and will have an important and significant impact on rural communities.

Background

The CRTC's decision stems from a consultation initiated on April 9, 2015, in which the CRTC set out to review which services it deems basic (or essential) telecommunication services.² Services the Commission assesses as basic are services that all Canadians should have access to and constitute the Commission's Basic Service Objective (BSO). The BSO was first set out in 1999 in Telecom Decision CRTC 99-16, and consisted of the following services: individual line local touch-tone phone service; low-speed (narrowband) internet; access to the long distance network; operator/directory assistance services; enhanced calling features and privacy protection features; emergency services; voice message relay service; and a printed copy of the local telephone directory upon request.³

In 2010-11 the Commission reviewed the BSO.⁴ As part of the 2011 decision, the Commission decided that broadband should not be a basic service.⁵ The CRTC did, however, set an aspirational goal of having all Canadians have access to broadband as defined by speeds of 5 Mbps download and 1 Mbps upload by 2015.⁶

The April 2015 Notice of Consultation initiated a consultation process that lasted over a year aimed at assessing if any changes to the BSO were required, specifically whether broadband

¹ Canadian Radio-television and Telecommunications Commission (CRTC). 2016. *Telecom Regulatory Policy CRTC 2016-496*. <http://www.crtc.gc.ca/eng/archive/2016/2016-496.htm>

² CRTC. 2015. *Telecom Notice of Consultation CRTC 2015-134*. <http://www.crtc.gc.ca/eng/archive/2015/2015-134.htm>

³ CRTC. 1999. *Telecom Decision CRTC 99-16*. <http://www.crtc.gc.ca/eng/archive/1999/dt99-16.htm>

⁴ CRTC. 2010. *Telecom Notice of Consultation CRTC 2010-43*. <http://www.crtc.gc.ca/eng/archive/2010/2010-43.htm> and, CRTC. 2011. *Telecom Regulatory Policy CRTC 2011-291*. <http://www.crtc.gc.ca/eng/archive/2011/2011-291.htm>

⁵ CRTC. 2011. *Telecom Regulatory Policy CRTC 2011-291*. para. 63 and 83.

⁶ CRTC. 2011. *Telecom Regulatory Policy CRTC 2011-291*. para. 76 and 79.

should be a basic service, and identifying barriers to broadband access and uptake.⁷ There was significant participation in the consultation – the first round of written interventions generated over 25,000 pages of comments, a survey by EKOS on broadband had over 30,000 respondents,⁸ and the three week hearing in Gatineau in April 2016 generated a nearly 1,500 page transcript.⁹ During the second week of the hearing CRTC Chair Jean-Pierre Blais noted specifically that “Today, in Canada, broadband is vital”¹⁰ and highlighted the need for a more robust national broadband strategy in which the CRTC could play a leadership role.¹¹ The consultation produced an extensive record that the Commission used to shape its decision.

The CRTC’s Decision

The resulting decision stemming from the 2015/16 review of basic services is extensive with many important changes. The Commission framed its decision within the policy objectives set out in section 7 of the Telecommunications Act¹² and the 2006 Policy Direction from the Federal Cabinet to the CRTC.¹³ Using these as a guide the CRTC noted the declining importance of voice communications (phone) and the corresponding increasing of broadband internet as the key communications technology of the 21st century.¹⁴ The decision addressed several interrelated issues as identified by the Commission including:

- Policy regarding modern telecommunications services
- The Commission’s role regarding broadband internet access services
- Broadband funding mechanism
- Modifications to the current regulatory measures for local voice services
- Affordability of broadband internet access services
- Accessibility
- Consumer empowerment
- Digital literacy
- Data collection and monitoring¹⁵

⁷ CRTC. 2015. *Telecom Notice of Consultation CRTC 2015-134*.

⁸ Results of the survey can be found here: EKOS Research Associates. 2016. *Let’s Talk Broadband: Findings Report*. <http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2016/030-15-e/report.pdf>

⁹ Interventions and the hearing transcripts can be accessed here: <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?lang=eng&YA=2015&S=C&PA=t&PT=nc&PST=a#2015-134>

¹⁰ Jean-Pierre Blais. 2015. *Transcript, Hearing April 18, 2016*. <http://www.crtc.gc.ca/eng/transcripts/2016/tt0418.htm> line 7564.

¹¹ Jean-Pierre Blais. 2015. *Transcript, Hearing April 18, 2016*. <http://www.crtc.gc.ca/eng/transcripts/2016/tt0418.htm> line 7611-7616.

¹² Telecommunications Act (S.C. 1993, c. 38), s. 7. <http://laws.justice.gc.ca/eng/acts/T-3.4/>

¹³ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives. SOR/2006-355. <http://laws.justice.gc.ca/eng/regulations/SOR-2006-355/FullText.html>

¹⁴ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 17.

¹⁵ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 24.

Based on the evidence the CRTC concluded that the old BSO definition was no longer sufficient, and that a new objective was required. The new objective is, “Canadians in urban areas as well as rural and remote areas, have access to voice services and broadband Internet access services, on both fixed and mobile wireless.”¹⁶ As a result of this new objective, fixed broadband access was declared a basic service, and the Commission also highlighted the importance of ensuring mobile wireless access on major transportation roads.¹⁷

With respect to fixed broadband services, the Commission established a new speed target – fixed broadband services for residences and business should have speeds of at least 50 Mbps download and 10 Mbps upload.¹⁸ These new speed targets were selected to ensure effective participation in the global economy by Canadians and be competitive with speed targets in other jurisdictions.¹⁹ Furthermore, service providers must ensure that when offering access at these speeds there is also an option for an unlimited data allowance (i.e. no data caps).²⁰ These speeds are to be available to 90% of Canadian households by 2021 (currently 82% of premises have these speeds available).²¹ The remaining 10% of premises are to have services at these speeds within 10 to 15 years.²²

Another key element of the decision was the creation of a new fund for rural broadband. This new fund will replace the old National Contribution Fund that funded phone service in High Cost Service Areas (HCSAs). The Commission established the guiding principles for the new fund as:

- The funding mechanism will focus on underserved areas in Canada;
- The Commission will attempt to align its funding mechanism with the broader ecosystem of current and future funding and investments; and,
- To the greatest extent possible, the funding mechanism will be managed at arm’s length, based on objective criteria, and will be administered in a manner that is transparent, fair and efficient.²³

The new fund will be competitive, and fund both access and transport facilities for fixed broadband and mobile wireless broadband infrastructure.²⁴ The new fund will begin with \$100 million in funding, and grow for five years by \$25 million annually, reaching a total of \$200 million in its final year.²⁵ Over the entire five years the total fund will be \$750 million. 10% of

¹⁶ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 37.

¹⁷ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 64.

¹⁸ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 80.

¹⁹ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 76-77.

²⁰ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 97.

²¹ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 79 and 114.

²² CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 114.

²³ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 137.

²⁴ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 138-139.

²⁵ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 145.

the funds in any given year will be reserved to focus on satellite-dependent communities.²⁶ These funds will come from Telecommunication Service Provider (TSP) revenues, and eligible revenues will now include retail internet access and texting service revenues.²⁷ Eligible fund recipients will be legal entities (incorporated in Canada) including private sector companies, provincial, territorial, regional, municipal and Indigenous governments and non-profit organizations.²⁸ However, it is important to note that eligible recipients must demonstrate experience deploying or operating broadband infrastructure or the appropriate resources for deploying and operating broadband infrastructure and demonstrated financial solvency.²⁹

In addition to the decision to define broadband as a basic service, new speed targets and the new fund, the Commission also addressed several other issues related to broadband access and use. With respect to affordability, the Commission maintained its position of not engaging in retail rate regulation (wholesale broadband service rates are regulated, and retail rate regulation does occur in the special case of Northwestel's terrestrial facilities).³⁰ The CRTC also noted that it would not develop digital literacy programming as it is outside of the core mandate of the CRTC.³¹ With regards to both digital literacy and affordability, the CRTC noted that these issues cannot be tackled by the Commission on its own,³² and a corresponding submission by the CRTC to the federal government's Innovation Agenda released at the same time as the decision contains further discussion of how these issues may be addressed more holistically.³³ The decision also included new considerations around accessibility and awareness of broadband services,³⁴ and information for subscribers on data overages.³⁵

Impact of the Decision

Determining the exact impact of the Commission's decision at this point is challenging. The CRTC itself noted that fixing the gaps between urban and rural and remote broadband services will require "billions of dollars" of which the CRTC decision and new funding mechanism is only one part.³⁶ The new \$750 million fund, along with Innovation, Science and Economic Development (ISED) Canada's recently launched \$500 million "Connect to Innovate" program³⁷

²⁶ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 150.

²⁷ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 161 and 163.

²⁸ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. Appendix 1.

²⁹ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. Appendix 1.

³⁰ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 196.

³¹ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 245.

³² CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 203 and 245.

³³ CRTC. 2016. CRTC's *Submission to the Government of Canada's Innovation Agenda*.

<http://www.crtc.gc.ca/eng/publications/reports/rp161221/rp161221.htm>

³⁴ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 211-217.

³⁵ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 231-241.

³⁶ CRTC. 2016. *Telecom Regulatory Policy CRTC 2016-496*. para. 128.

³⁷ Canada. 2016. "Connect to Innovate Program." <http://news.gc.ca/web/article-en.do?nid=1170079>

will inject considerable funds into Canada's broadband ecosystem; however, challenges will remain.

For communities, particular underserved rural and remote communities, these new funds will help close the gap between urban and rural broadband, but they are not a panacea. For individuals affordability and skills gaps will persist, and require other policy mechanisms beyond CRTC intervention. It is also important to note that the Commission is mandating only the accessibility of broadband services, and not require actual uptake or use of services. For the most remote communities, speeds at the target levels may not be realized until 2031 according to the decision. While these concerns are significant, the CRTC's decision to declare broadband a basic service and the focus on broadband over voice services represent an important development in Canadian broadband.