



Notice: TIPB-001-2019

2019 02 18

To: Mr. Michael Wernick
Clerk of the Privy Council and Secretary to the Cabinet
Office of the Prime Minister and the Privy Council
80 Wellington Street
Ottawa, Ontario
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Via email: info@pco-bcp.gc.ca

Subject: **Canada Gazette Part 1 Application – Petition to the Governor in Council
Petition to the Governor in Council concerning Telecom Regulatory Policy
CRTC 2018-377 - Comments**

Dear Mr. Wernick,

1. Canada's largest communications company, BCE leads the industry in providing world-class broadband communications services to consumers and business customers across the country.
2. We are rapidly expanding Canada's broadband fibre and wireless network infrastructure with annual capital investments surpassing \$4 billion. At the end of 2018, Bell's fibre footprint reached over 9 million locations – including direct fibre to the premises capability for more than 4.6 million homes and businesses. Bell LTE Advanced (LTE-A) service, the fastest wireless technology available in North America, now covers 91% of the national population. We are also deploying full broadband Internet service into smaller towns and rural locations with leading-edge Wireless to the Home technology. In fact, in our most recent quarterly release, we announced that "...we are expanding our Wireless Home Internet rollout plan in rural Canada by a full 50%, from 800,000 to 1.2 million households, a major infrastructure expansion due directly to the federal government's Accelerated Investment Incentive program."
3. We are pleased to present herein our Comments regarding SouthWestern Integrated Fibre Technology Inc.'s (SWIFT) Petition to the Governor in Council to vary TRP 2018-377¹, which established the framework for the development of the Commission's Broadband Fund.

¹ Telecom Regulatory Policy CRTC 2018-377, *Development of the Commission's Broadband Fund*.

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4. We actively participated in the development of the Commission's Broadband Fund and while we did not originally propose all of the determinations the Commission adopted in TRP 2018-377, we support the Commission's ultimate decision.

5. We believe that there is no merit to SWIFT's assertions in their Petition and that it should be dismissed in its entirety. The Petition requests amendments to a complex funding allocation mechanism that was comprehensively canvassed with private and public stakeholders. With respect to the role of local government in the diffusion of high-quality broadband across Canada, we submit that SWIFT fails to identify any substantial error in the Commission's design of the Broadband Fund. The other, more technical variances sought by SWIFT, do not raise broad public interest concerns. We submit that the framework established by the Commission, a specialized agency, is reasonable and adequately supported by the comprehensive record. It represents an appropriate exercise of the Commission's discretion and does not warrant variation.

6. In addition, SWIFT asserts that its proposal aligns with recommendations from the Auditor General's report on connectivity in rural and remote areas², which notably commented on lessons learned from the Government's Connecting Canadians and Connect to Innovate programs. We disagree.

7. In particular, by requiring private applicants to secure local or provincial funding (before applying to the Broadband Fund for additional public funding), the Petition would displace private-sector investment and fail to encourage projects likely to proceed with less public funding. This would run directly counter to enabling "the most broadband improvement out of the public funds and to maximize the value for tax dollars spent"³, important elements of a sound program as identified by the Auditor General.

Introduction

8. In TRP 2016-496⁴, the Commission established a universal broadband service objective, which aimed to ensure that all Canadian residential and business fixed broadband subscribers would be able to access speeds of at least 50 megabits per second (Mbps) download and 10 Mbps upload, and to subscribe to a service offering with an unlimited data allowance⁵.

9. To help attain this objective, the Commission decided to establish a Broadband Fund, which would distribute up to \$750M during the first five years of its existence. Pursuant to section 46.5 of the *Telecommunications Act*, the Commission determined that the Broadband Fund would be funded through contributions levied on telecommunications providers⁶.

10. The Commission was aware that the widespread availability of broadband Internet access services could not be solved by the Commission alone. The universal service objective could only be attained with the help of other stakeholders in the Canadian telecommunications landscape, such as the Government of Canada, local governments and the private sector⁷.

² 2018 Fall Reports of the Auditor General of Canada - Report 1—Connectivity in Rural and Remote Areas.

³ 2018 Fall Reports of the Auditor General of Canada - Report 1—Connectivity in Rural and Remote Areas, paragraph 1.52.

⁴ Telecom Regulatory Policy CRTC 2016-496, *Modern telecommunications services – The path forward for Canada's digital economy*.

⁵ The Commission's Broadband Fund framework also has a mobile wireless component, but as SWIFT's Petition is focused on the fixed broadband component, it is unnecessary to describe the mobile wireless component.

⁶ TRP 2016-496, paragraph 130.

⁷ TRP 2016-496, introductory paragraphs.

11. Finally, in TRP 2016-496, the Commission provided preliminary views on how this new Broadband Fund would function and announced that it would seek stakeholder feedback on a number of issues, including about the Broadband's Fund guiding principles, design, assessment criteria, governance structure and accountability framework. However, the basic tenets of TRP 2016-496, such as the definition of the universal service objective and the fact that the Broadband Fund was capped at \$750M for the first five years, were set – and not open for further debate. The subsequent consultation on the Commission's preliminary views culminated in TRP 2018-377, which is the policy SWIFT is challenging.

12. SWIFT's petition seeks to vary a number of the Commissions' determinations in relation to A) the role of local government and B) the prioritization of broadband initiatives in light of a limited budget. We will address each of these below.

A) *Role of local government*

13. SWIFT seeks three variances in this area.

i) *Entities eligible for funding*

14. First, in what it describes as variance A)⁸, SWIFT wishes to restore the following definition of what entities are entitled to apply for funding under the Broadband Fund from TRP 2016-496:

"legal entities, incorporated in Canada, that already operate or intend to operate broadband infrastructure. These include private sector companies; provincial, territorial, regional, municipal, and First Nations entities..."⁹

which SWIFT believes was inappropriately modified by the Commission in TRP 2018-377 when the Commission clarified that:

The Commission therefore considers that providing funding to local governments or intermediary organizations and allowing them to decide how and where funds are to be distributed would not be an appropriate model for managing the Broadband Fund."¹⁰

15. SWIFT argues that this variance would allow lower levels of government and intermediary organizations in rural areas and remote communities to access the Broadband Fund and utilize it as a complement to other initiatives.

16. We believe that SWIFT's argument is flawed both in spirit and in practice. The Broadband Fund is drawn from what is essentially a tax on the telecommunications industry to fund defined broadband deployment projects. It is not, and was never meant to be, a way for the federal government (or one of its agencies, the CRTC), to broadly raise money for re-distribution to provincial, local or municipal governments, so that they in turn could pursue whatever local public policy objectives they see fit. Not only would such delegation raise troubling questions about consistency, governance and accountability, but we expect that the Commission lacks the jurisdiction to delegate to local government, as SWIFT desires, the discretion to spend Broadband Fund moneys.

⁸ SWIFT Petition, paragraphs 13 to 16.

⁹ Appendix 1 of TRP 2016-496.

¹⁰ TRP 2018-377, paragraph 117.

17. From a practical standpoint, we note that, even under the Commission's preliminary views expressed in TRP 2016-496, local governments were not eligible to receive funds unless "they already operate or intend to operate broadband infrastructure". Even the preliminary framework did not contemplate that the Commission could cut blank cheques to local communities. TRP 2018-377 simply confirms this view.

18. The Commission's framework does allow local government to partner with telecom operators and seek funds for specific eligible broadband deployment projects that would benefit their local communities. Local communities can thus still access Broadband Fund to complement their local initiatives – they must simply do so in partnership with their preferred operator. This variance is neither appropriate nor necessary.

ii) Requirement to secure government funding

19. Second, SWIFT seeks to reinstate a surprising preliminary view from TRP 2016-496, which is that, in order to be eligible to the Broadband Fund, applicants would be required to secure a minimum level of financial support from a government entity¹¹.

20. This requirement was widely opposed during the Commission's consultation by stakeholders of all types: large and small providers, consumer groups¹² and even governmental participants such as the Governments of British Columbia¹³ and Nova Scotia¹⁴ as well as the Powell River Regional District¹⁵.

21. The problems such a requirement would impose are numerous. The introduction of a mandatory government funding criterion may lead to the rejection of efficient, lower cost proposals that are completely privately funded (other than for the Commission fund's contribution). Even if private/public and private-only bids were equally efficient, the Commission a regime should not favour public/private bids as it would then displace economically efficient private funding, as well as divert public funds from other public policy pursuits.

22. Further, and as we mentioned earlier, this proposal from SWIFT also runs directly counter to the Auditor General's recommendation¹⁶ that programs should maximize the outcomes of public spending, so as to enable the most broadband improvement out of the public funds and to maximize the value for tax dollars spent.

23. Requiring government funding also introduces a degree of unfairness in the process, in that Canadians' access to the Commission's Broadband Fund, which is financed by the industry from revenues generated from these very Canadians, may be conditioned on the compatibility of their local government's broadband policy with that of the Commission's. If, for the sake of argument, one province chose not to set aside broadband deployment funds because of other budgetary priorities, should that disqualify bids for deployment in that province as a matter of course (as prospective bidders would likely fail the public financing criterion for bidding), even though consumers in that province, via their local providers, have contributed to the Commission's broadband fund?

¹¹ TRP 2016-496, paragraph 141.

¹² Reply of the National Pensioners Federation and the Public Interest Advocacy Centre in proceeding leading to TRP 2018-377, paragraph 79.

¹³ Intervention of the Ministry of Technology, Innovation and Citizens' Services of British Columbia in proceeding leading to TRP 2018-377, page 9.

¹⁴ Intervention of the Province of Nova Scotia in proceeding leading to TRP 2018-377, paragraph 25.

¹⁵ Intervention of the Powell River Regional District in proceeding leading to TRP 2018-377, page 2.

¹⁶ 2018 Fall Reports of the Auditor General of Canada - Report 1—Connectivity in Rural and Remote Areas, paragraph 1.54.

24. The risk of an unfair outcome was further illustrated by the submission of Powell River Regional District, which notes that local government funding for private enterprise is prohibited in British Columbia pursuant to the *Local Government Act*¹⁷. Maintaining government funding as a pre-requisite for applicant qualification would thus have severely prejudiced applicants proposing deployment in British Columbia.

25. From a purely practical standpoint, making public funding an eligibility criterion would likely also significantly curtail the number of eligible bids as well as delay the Commission's funding regime and its associated benefits for Canadians. The process to secure government funding, be it municipal, territorial, provincial or federal, is long and complex: the government must first agree to the funding conceptually, budget it, formalize it through a decision of the relevant decision-making body (e.g., city council, provincial legislature) and then award it to a prospective bidder, perhaps conditionally on getting complementary Commission funds.

26. And each government body can have different requirements, objectives and timelines for funding. With a requirement for government funding, fewer bidders than otherwise will have secured funding from another government body. Even where, say, a provincial government was supportive of a particular applicant's project, funding from that provincial government may not be finalized by the time the Commission's deadline for bidding passes. Moreover, there is no guarantee that other government bodies will use the same deployment requirements that the Commission will set. A regional government may only be willing to fund 10/1 broadband service and thus reject requests to support 50/10¹⁸ bids to the Commission's fund.

27. For all these reasons, the Commission modified its preliminary view and eliminated the requirement to secure government funding. We agree with this change.

28. SWIFT, one of the very few parties who had supported this initial requirement, seeks to reinstate it as an element of its proposed variance C)¹⁹. SWIFT argues that, with the removal of this requirement, providers who have not partnered with local governments may now compete with private sector partners that have. According to SWIFT, this may weaken the business case of the private partners SWIFT has chosen to work with.

29. SWIFT's concerns are at best mistaken, at worse self-serving. One would expect that a project that has the financial subsidized backing of SWIFT or another local government would stand a better chance of winning Broadband Fund support than a completely privately-funded one, if only because the public/private partnership should require less additional funding, all things being equal, than a purely private one. If nevertheless the wholly-private project wins Broadband Fund support, (perhaps because it is cheaper or provides superior service) than the SWIFT-endorsed initiative. In this latter case, the local residents benefit as they a) receive efficient service in the area to be served by the private bidder's project and b) SWIFT can re-allocate funds meant for that same area to a different one that remains unserved. We are concerned that granting SWIFT's variance would in effect make SWIFT (or other similar local governments) the gatekeeper over which projects could be deployed in their rural or remote communities.

30. SWIFT also attempts to support its proposal by relaxing the initial requirement for "a minimum level of support", understood to be some undefined level higher than nominal, to only be "a nominal level of support". However, the problems with requiring governmental funding do not stem from the quantum of the support; they flow from the inefficiency, impracticality and

¹⁷ Intervention of the Powell River Regional District in proceeding leading to TRP 2018-377, page 1.

¹⁸ We use shorthand speed pairs for ease of presentation. The first number refers to the download speed and the second to the upload speed, both in megabytes per second.

¹⁹ SWIFT Petition, paragraph 21.

inequity of the concept. As a result, SWIFT's change in semantics does not make the requirement any less problematic.

iii) Mandatory consultation

31. Still in relation to the role of local government, SWIFT asks for a variance that would give applicants a *duty to consult* with local government whereas the Commission's framework only requires applicants to *attempt to consult* with local government, though the Commission explicitly states that it will consider the quality of the consultations and the involvement of the community as an assessment criterion of projects.

32. SWIFT argues that unless local consultation is *required*, unnecessary conflict may arise "if different service providers start approaching different elected officials, community associations, or other representative bodies" for letters of support for their proposals. With respect, we fail to see how adopting a duty to consult would prevent different applicants from approaching different elected officials (whether at the same level of government, such as different reeves for the same county, or at different levels of government) that represent the same community. Moreover, unless the duty to consult is twinned with a requirement to secure *unique* support for an unserved area deployment, multiple applicants can discharge the duty to consult and still compete with each other for the same area.

33. Accordingly, we submit that SWIFT's proposed duty to consult is unwarranted. Meaningful community involvement is already encouraged under the Commission's framework. But fundamentally, a duty to consult will not address SWIFT's concerns about confusion or conflict – *unless* it provides SWIFT or local government with the ability to select a unique preferred private partner. And if the latter case, then we are back to what we perceive to be SWIFT's ultimate purpose behind these variances, to gain control over local broadband deployment funding decisions.

34. SWIFT's proposed variances, which seek to shift decision-making about the Commission's own Broadband Fund from the Commission to local governments, are not in the public interest. They would unfairly favor some areas (such as SouthWestern Ontario) over others (like British Columbia) and would fail to enable the most broadband improvement out of the public funds and to maximize the value for tax dollars spent.

B) Prioritization of broadband initiatives

35. SWIFT also seeks certain variances relating to the eligibility for funding of certain underserved areas and to the specific technical service thresholds that applicants must commit to in order to qualify for funding. We submit that both these issues are program details well within the Commission's specialized expertise and such minutiae do not warrant intervention from the Governor-in-Council.

i) Eligibility criteria

36. In TRP 2018-377, the Commission determined that 25 km² hexagons will be used to define eligible geographic areas, and that in order to be eligible for funding for fixed broadband projects, an inhabited hexagon must not contain any households that already receive broadband at 50/10²⁰.

²⁰ TRP 2018-377, paragraphs 83 to 87.

37. The Commission also specifically considered that there would be little benefit to including an unlimited data option and quality of service metrics, even though these form part of the universal service objective, as minimum requirements to identify eligible geographic areas. The Commission was of the view that areas that do not have access to 50/10 broadband would likely also not have access to unlimited data and broadband services that meet the quality of service metrics²¹.

38. SWIFT wishes to vary these determinations by allowing areas deemed ineligible by the Commission to regain eligibility if they provide evidence that actual speeds and quality of service metrics fall short of the Commission's universal service²².

39. We recognize that any area that does not enjoy the full universal service objective may conceptually receive funding. However, in light of the Commission's ambitious objective of 50/10 across the country and given that the funds required to deploy the required infrastructure far exceed the initial \$750 million earmarked by the Commission²³, it is eminently reasonable for the Commission to disqualify from funding communities within at least partially served hexagons. SWIFT itself acknowledges that replacing legacy copper plants with next-generation fiber networks, only in its target region, will require at least \$2.7 billion in fixed network capital expenditures, and this is without "addressing mobile coverage and capacity gaps".²⁴ The Commission reasonably determined that where certain households within a hexagon already receive adequate service, it is likely that market forces will bring improved levels of broadband Internet access service to the remaining households in the hexagon. The Commission's eligibility rules allow the Broadband Fund to focus on those areas most in need of support, where broadband service is either inexistent or woefully below the objective service standard.

40. The introduction of a "challenge round" whereby communities initially deemed ineligible can reverse this finding is impractical. Allowing ineligibility to be reversed will make the determination of geographic blocks available for funding both more complex (for instance by leading to disputes and confusion about which areas to include) and slower (as preliminary maps will need to be issued, communities will need to gather then submit rebuttal evidence, the Commission will need to review this evidence, and only then issue final - assuming no further disputes – maps).

41. Accordingly, we do not support this proposed variance.

ii) *Minimum Service Thresholds*

42. For fixed broadband, the Commission's universal service objective aims for all Canadians to have access to service that meets the following characteristics²⁵:

- 50/10 speeds;
- An unlimited data allowance option; and
- Quality of service standards for latency, packet loss and jitter.

²¹ TRP 2018-377, paragraph 86.

²² SWIFT Petition, Variance B1, paragraph 18.

²³ We note that in 2016, Innovation, Science and Economic Development Canada (ISED) estimated that connecting all Canadians through fibre could cost between \$40 billion and \$50 billion. Relying on other technologies such as fixed wireless or satellite where appropriate, ISED estimated it might cost at least \$6.5 billion to achieve a speed target of 50/10 Mbps in all areas of the country. See paragraph 1.36 of *2018 Fall Reports of the Auditor General of Canada to the Parliament of Canada – Report 1—Connectivity in Rural and Remote Areas*.

²⁴ SWIFT Petition to the Governor-in-Council to vary the Policy, available at <http://swiftnetwork.ca/wp-content/uploads/2018/12/SWIFTGiCPetitionCRTCbbFund.pdf>, paragraph 1.

²⁵ TRP 2016-496, supplemented by Decision 2018-241.

43. The universal service objective "will take time and significant investments to achieve", requiring funding "over many years"²⁶. While the Commission expects fixed broadband Internet, at the universal service standards, to be available in 90% of Canadian premises by the end of 2021, it realistically remarked that it may be 10 to 15 years away for the remaining 10% of Canadians. It also expected that success may require "intermediate steps"²⁷.

44. As a result, the Commission's framework will accept proposals for projects that only promise to deliver 25/5 service, though it expects these will be scalable, meaning that 50/10 will be provided to the target community at a future date through capacity upgrades. The Commission noted that the scalability of each proposed fixed broadband project will be taken into consideration when it evaluates proposals²⁸. Specifically, for projects proposing to offer services below the levels set out in the universal service objective, the Commission noted that it would consider the project's ability to offer universal service objective-level services in the near future²⁹. In addition, the Commission identified that it would consider a project to be of higher quality based on how close the speed, capacity, and quality of the proposed broadband service would be to meeting or exceeding the levels set out in the universal service objective³⁰.

45. For Canadians with virtually no service, reaching 25/5 would be meaningful and a significant first step towards meeting the universal service objective. At this stage, the Commission chose to focus on speeds rather than capacity or quality of service to determine whether projects are eligible for funding³¹.

46. SWIFT seeks to add the requirement that proposed projects must also deliver 50 milliseconds latency, subject to a demonstration by the applicant that this is not technically feasible in specific circumstances³². SWIFT argues that this will "filter out old technologies, reduce the scope for the Commission's fund to promote inefficient investment, and incentivise innovation and investment in new technologies"³³.

47. There is no need to add a maximum latency filter to proposed projects. First, the Commission's framework already favours projects that have lower relative latency. Accordingly, innovation and investment in newer technologies are already incented. Second, prohibiting projects that may not, early on, satisfy SWIFT's proposed latency threshold raises the risk that affordable, incremental improvements to broadband service would be rejected from the outset.

48. Third, as SWIFT itself acknowledges, "in some areas, particularly in the North... the 50 millisecond latency standards may be hard to achieve in the short to medium term."³⁴ It thus seems eminently reasonable for the Commission to make 50 milliseconds an aspirational target rather than a hardline one.

49. Fourth, and puzzlingly, SWIFT's Petition wishes to institute a hard requirement for latency based on the universal service objective – but it does not seek variance of the fact that the Commission will entertain projects at 25/5 that do not, from the start, deliver the objective of 50/10. There is no logic to insisting on a latency requirement but not on requirements for speeds (or packet loss or jitter for that matter).

²⁶ TRP 2016-494, paragraph 112.

²⁷ TRP 2016-494, paragraph 114.

²⁸ TRP 2018-377, paragraphs 105 and 106.

²⁹ TRP 2018-377, paragraph 231.

³⁰ TRP 2018-377, paragraph 236.

³¹ TRP 2018-377, paragraph 101.

³² SWIFT Petition, Variance B2, paragraph 19.

³³ SWIFT Petition, paragraph 19.

³⁴ SWIFT Petition, paragraph 19.

50. Ultimately, for Canadians with virtually no service, reaching 25/5 (rather than 50/10) or 100 millisecond latency (rather than 50 milliseconds) would be meaningful and a significant first step towards meeting the universal service objective. The Commission's framework, which allows for progressive improvements to broadband service, all within a resolutely finite budget envelope, is correctly designed and does not need to be modified as SWIFT requests.

iii) Publicity of project proposals

51. One last SWIFT proposal which warrants discussion is to make public general information about applications under consideration (such as the identity of the applicant, the proposed area, and proposed speeds to be delivered) so as to allow other applicants to challenge the application and/or submit competing proposals³⁵. This would modify the Commission's determination that applicants will be permitted to file their applications confidentially, and that no public process will be initiated in respect of funding applications.

52. SWIFT argues that public disclosure would accord with "basic principles of transparency in government" and permit local governments that have not been adequately consulted by the applicant to respond and competing private sector providers to make competing proposals³⁶.

53. We submit that public disclosure is neither necessary nor appropriate. First, an expression of interest to offer service in an area is competitively sensitive information, as the Commission noted, saying "public disclosure of unsuccessful applications – for example, the identity of applicants and the area(s) for which funding was sought – could result in harm to applicants, given that it would divulge their expansion strategy."³⁷ There is no need to disclose commercial proposals unless one wins, where disclosure then becomes justified in order to ensure the funded projects are indeed deployed and more generally to monitor the governance and accountability of the Broadband Fund.

54. Second, the Commission's framework for assessing proposals does not feature multiple rounds. There is no process step for local governments to respond or competing providers to make counter-bids, irrespective of whether the initial proposals are public or confidential.

55. Third, we note that the Government of Canada's practice has been, under the Connecting Canadians and Connect to Innovate programs, to only make public details about winning proposals – not about all proposals. This is the same approach that the Commission means to adopt. We also see that, while the Auditor General recommended that the assessment criteria and priorities used by the adjudicator of funds be made public³⁸, his report does not suggest that failed bids themselves be made public. For all of the above we disagree with SWIFT's request to make public proposals under consideration.

56. In summary, we reiterate our position that the framework established by the Commission, a specialized agency, is reasonable and adequately supported by the comprehensive record. There is no merit to SWIFT's assertions in their Petition and it should be dismissed in its entirety.

³⁵ SWIFT Petition, Variance E, paragraphs 25 and 26.

³⁶ SWIFT Petition, paragraph 26.

³⁷ TRP 2018-377, paragraph 406.

³⁸ 2018 Fall Reports of the Auditor General of Canada - Report 1—Connectivity in Rural and Remote Areas, paragraph 1.57.

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Yours truly,

[Original signed by R. Malcolmson]

Robert Malcolmson

Senior Vice-President, Regulatory Affairs and Government Relations

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