



Telecom Decision CRTC 2020-92

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Bell Mobility Inc. – Application to review and vary the Broadband Fund’s pricing and affordability eligibility criterion for mobile wireless broadband Internet access projects

*The Commission **denies** an application by Bell Mobility to review and vary the pricing and affordability eligibility criterion applicable to mobile wireless broadband Internet access projects under the Broadband Fund.*

In addition, the Commission clarifies that the pricing commitment does not apply to funds used to create new mobile wireless coverage along major transportation roads.

Background

1. In Telecom Regulatory Policy 2016-496, the Commission created a funding regime (the Broadband Fund) to assist in (i) funding continuing access to the basic telecommunications services that form part of the universal service objective set out in that decision,¹ and (ii) closing the gaps in connectivity.
2. In Telecom Regulatory Policy 2018-377, the Commission determined how the Broadband Fund would be implemented, including the criteria that would be used to select projects for funding. Among those criteria is the pricing and affordability eligibility criterion (the criterion), which states the following:

[T]o be eligible for funding under the Broadband Fund, applicants with proposed projects to provide fixed or mobile wireless broadband Internet access service to customers must

- o identify a list of various broadband Internet access service packages, with rate, speed, and capacity levels that address different customer

¹ The universal service objective is as follows: 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. In addition, the Commission established the following criteria to measure the successful achievement of the universal service objective: (i) Canadian residential and business fixed broadband Internet access service subscribers should 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 allowance; and (ii) the latest generally deployed mobile wireless technology should be available not only in Canadian homes and businesses, but on as many major transportation roads as possible in Canada. The Commission subsequently established quality of service metrics related to latency and packet loss in Telecom Decision 2018-241, and to jitter in Telecom Regulatory Policy 2019-42.

needs, including those of low-income households. These packages must include rates that are identical to or lower than those offered by a facilities-based service provider in one of the major urban centres or communities, to be identified by the Commission, in the proposed project's province or territory for reasonably comparable speed and capacity packages.

o commit to providing broadband Internet access service packages at a rate no higher, and at a speed and with a capacity no lower, than the ones proposed in their application, for a minimum of five years from the project completion date. [the pricing commitment]

3. In Telecom Notice of Consultation 2019-45, the Commission initiated a proceeding in which it sought comments on its Preliminary Application Guide for the Broadband Fund. As part of that notice, the Commission indicated that the policy determinations made in Telecom Regulatory Policy 2018-377 were outside the scope of the proceeding. The Commission also indicated the following in the introduction to the Preliminary Application Guide (and in subsequent versions of the guide): "In the event of any discrepancy between this guide and the determinations in Telecom Regulatory Policy 2018-377, the determinations in Telecom Regulatory Policy 2018-377 prevail."
4. The Preliminary Application Guide included, for mobile wireless broadband Internet access projects (mobile wireless projects), the following pricing and affordability eligibility criterion:

- 6.1.3(h) Mobile wireless project eligibility criteria – Pricing and affordability (1-M1)

Mobile wireless project proposals must include a list of various mobile wireless service packages, where applicable, with rate, speed, and capacity levels that address different customer needs, including those of low-income households. These packages must include rates that are identical to or lower than those offered by a facilities-based service provider in one of the major urban centres or communities listed in Appendix 3, in the project's province or territory for reasonably comparable speed and capacity packages.

5. A similar criterion for fixed broadband Internet access projects (fixed access projects) was included in the Access project eligibility criteria section [6.1.3.(f)] of the Preliminary Application Guide, and was followed by a paragraph indicating that "[a]n applicant must also commit to providing broadband Internet access service packages at a rate no higher, and at a speed and with a capacity no lower, than the ones proposed in their application, for a minimum of five years from the project completion date." No such paragraph was included in the Mobile wireless project eligibility criteria section of the Preliminary Application Guide.

6. Section 10.3 of the Preliminary Application Guide set out the types of conditions that the Commission may impose, pursuant to sections 24 or 24.1 of the *Telecommunications Act* (the Act), on the offering and provision of broadband Internet access services using funded facilities. Among them was the condition that services must comply with the commitments made in the application, including retail pricing, and that Internet access service packages must be provided at a rate no higher and at a speed and capacity no lower than the ones proposed in the application, for a minimum of five years from the date of the Final Implementation Report.
7. The Commission addressed the issues raised in the Telecom Notice of Consultation 2019-45 proceeding in Telecom Regulatory Policy 2019-190.
8. In Telecom Notice of Consultation 2019-191, the Commission launched the first call for applications for funding from the Broadband Fund, which included an Application Guide (the First Call Application Guide). Following the issuance of the first call, the Commission received a question regarding the criterion as it applies to mobile wireless projects. As a result, for clarity, the following paragraph regarding the pricing commitment was added to the criterion in the Application Guide for the second call for comments (the Second Call Application Guide):²

An applicant must also commit to providing mobile wireless service packages at a rate no higher and with a capacity no lower than the ones proposed in its application, for a minimum of five years from the project completion date. This pricing criterion applies to households in mobile wireless eligible hexagons included in the application. Therefore, this criterion does not apply to applicants for projects that will provide mobile wireless service only along eligible major transportation roads.

9. Further, the wording of the conditions related to sections 24 and 24.1 of the Act was modified to indicate the following:

Fixed or mobile wireless broadband Internet access service packages must be provided at a rate no higher and at a speed and capacity no lower than the ones proposed in the application for a minimum of five years from the date of the Final Implementation Report. (emphasis added)

Application

10. The Commission received an application from Bell Mobility Inc. (Bell Mobility), dated 19 December 2019, in which the company requested that the Commission review and vary the criterion.
11. In particular, Bell Mobility submitted that the Commission had committed an error in fact when it failed to consider whether the pricing commitment under the criterion was appropriate for both fixed (wireline and wireless) and mobile wireless project

² See Telecom Notice of Consultation 2019-372.

applications. Bell Mobility requested that, as a result, the pricing commitment be removed for applications for mobile wireless project funding, and replaced by a commitment, for the same five-year period, to offer packages for mobile wireless service at rates, speeds, and capacity comparable to those offered in major urban centres. Bell Mobility added that, without this modification, it would not bid for funding for mobile wireless projects to serve inhabited hexagons.

12. The Commission received interventions regarding Bell Mobility's application from Rogers Communications Canada Inc., SSi Micro Ltd., and TELUS Communications Inc. (TCI).
13. In its intervention, TCI requested that, should the Commission decide not to remove the pricing commitment, it clarify that the commitment does not apply to funds used to create new mobile wireless coverage along major transportation roads, where the roads in question happen to cross through eligible hexagons and, as a result, may provide coverage to people living in those hexagons.

Review and vary criteria

14. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess applications to review, rescind, or vary a decision (review and vary applications) that are filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.
15. Pursuant to subsection 71(1) of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), applicants have 90 days after the date of a decision to file a review and vary application. However, pursuant to subsection 71(2), the Commission may extend that deadline if it is of the opinion that it is just and equitable to do so.

Issue

16. The Commission has identified the following issue to be addressed in this decision:
 - Was Bell Mobility's application submitted within the deadline to file review and vary applications? If not, should the deadline to file such an application be extended?

Was Bell Mobility's application submitted within the deadline to file review and vary applications? If not, should the deadline to file such an application be extended?

Positions of parties

17. Bell Mobility submitted that the pricing commitment was introduced in the Second Call Application Guide. It submitted that, regardless of whether the pricing commitment is a new criterion arising from that guide, or is a pre-existing criterion, the company's review and vary application was filed promptly after it realized the Commission's position, and within the default 90-day period since the issue of the pricing commitment's applicability to mobile wireless projects crystallized. In the event the Commission considers that the application should be characterized as a request to review and vary Telecom Regulatory Policy 2018-377, Bell Mobility requested that the Commission permit its filing beyond the original 90-day deadline, given that the issue only became apparent with the issuance of the Second Call Application Guide.

Commission's analysis and determinations

18. In order to determine whether Bell Mobility's application was submitted within the deadline to file review and vary applications, the Commission must first consider which "decision" it is being asked to review and vary. As noted above, Bell Mobility submitted that the pricing commitment was introduced in the Second Call Application Guide and that it filed its review and vary application promptly after it realized the Commission's position, and within the default 90-day period after the matter of the pricing commitment's applicability to mobile wireless projects had crystallized.

19. However, the policy determination to require a five-year pricing commitment as an eligibility criterion for both fixed access projects and mobile wireless projects was made in Telecom Regulatory Policy 2018-377. It is explicit in that decision that the pricing and affordability eligibility criterion applies to both fixed access projects and mobile wireless projects. While it is true that the Preliminary Application Guide and the First Call Application Guide did not explicitly restate the pricing commitment as an eligibility criterion for mobile wireless projects, the Commission considers that the additional paragraph that was added in the Second Call Application Guide was not new information; rather, it added emphasis to a pre-existing requirement that was established in Telecom Regulatory Policy 2018-377. The requirement was also reiterated as a condition of offering service through funded infrastructure. Each of the guides indicated that Internet access service packages must be provided at a rate no higher and at a speed and capacity no lower than the ones proposed in the application, for a minimum of five years from the date of the Final Implementation Report. Although it was not specified, "Internet access service packages" includes packages for both mobile wireless and fixed access services, since they both give access to broadband Internet.

20. Moreover, even if the notion of the pricing commitment had been omitted from previous guides, they all state that in the event of any discrepancy between the guide and the determinations in Telecom Regulatory Policy 2018-377, the determinations in Telecom Regulatory Policy 2018-377 prevail. As such, the Commission is of the view that Bell Mobility cannot obtain the relief it is seeking through a review of the Second Call Application Guide since the pricing commitment requirement was established in Telecom Regulatory Policy 2018-377.
21. For these reasons, the Commission considers that Bell Mobility's application is an application to review and vary Telecom Regulatory Policy 2018-377. Since that decision was issued on 27 September 2018, the Commission determines that Bell Mobility's application was not filed by the deadline to file review and vary applications.
22. However, the Rules of Procedure provide that the Commission may extend that deadline if it is of the opinion that it is just and equitable to do so.
23. There is one factor in this case that points to an extension of the deadline being just and equitable. As noted above, the Preliminary Application Guide and the First Call Application Guide included explicit language regarding the five-year pricing commitment as an eligibility requirement for fixed access projects, but the same explicit language was not included for mobile wireless projects until the Second Call Application Guide. The fact that the Commission clarified this issue in the Second Call Application Guide could indicate that there was some ambiguity in the previous guides with respect to the criterion.
24. Nonetheless, as discussed above, the Commission considers that Bell Mobility should have reasonably been aware of the pricing commitment before the publication of the Second Call Application Guide. It was stated explicitly in Telecom Regulatory Policy 2018-377 that the commitment applied to both fixed and mobile wireless broadband Internet access service. In addition, all application guides published by the Commission pointed to Telecom Regulatory Policy 2018-377 and included funding conditions that emphasized the five-year commitment. As such, Bell Mobility has had ample opportunity to be aware of and challenge the criterion before the modification in the Second Call Application Guide.
25. Further, the Commission considers that any applicant for a mobile wireless project would be aware of the pricing commitment because the intake tool, which was designed to prompt all applicants to fulfill eligibility requirements for their type of project in order to be able to file their application, requires that they commit to the packages proposed before allowing them to go forward with their applications.
26. The Commission also considers that the need for efficiency, certainty, and finality for applicants to the Broadband Fund, as well as for the Canadian public who may benefit from it, weighs against granting the extension of time in this case.

27. Finally, the relief that Bell Mobility is requesting – the use of a price-matching provision, instead of the pricing commitment – was already considered and denied by the Commission in Telecom Regulatory Policy 2019-190. In that decision, the Commission addressed submissions made by some parties regarding the retail pricing and affordability criteria set out in Telecom Regulatory Policy 2018-377. The Commission rejected Bell Canada’s proposal to use a price-matching provision instead of the set price criterion set out in Telecom Regulatory Policy 2018-377, and addressed TCI’s submission that the Commission should compare prices between similar technologies on the basis that there could be no urban equivalent for a fixed wireless access network project in a rural area. In Telecom Regulatory Policy 2019-190, the Commission also outlined that any lowering of the rates (or any increase in speed or capacity) can be done at any time without additional process. As such, funding recipients could follow national trends of lower prices and increased capacity for mobile wireless service packages without any issue. Funding recipients could also request Commission approval to change their conditions of service, such as the pricing commitment, in accordance with the Rules of Procedure. Further, nothing would prevent them from introducing new plans in funded areas to match the ones they introduced elsewhere.
28. In light of the above, the Commission determines that it would not be just and equitable to extend the deadline in question, and **denies** Bell Mobility’s application to review and vary Telecom Regulatory Policy 2018-377.

TCI’s request for clarification

29. For greater clarity, the Commission will address TCI’s request for clarification regarding the statement in the Second Call Application Guide that the pricing commitment applies to projects with households in eligible mobile wireless hexagons included in the application, but does not apply to projects that will provide mobile wireless service only along eligible major transportation roads.
30. When submitting a mobile wireless project proposal, applicants must select what type of an eligible geographic area the project will cover. The options are
- a 25 km² hexagon in which Statistics Canada’s latest census data show that there is at least one household but in which no household has access to coverage by the latest generally deployed mobile wireless technology (currently, long-term evolution [LTE]), or
 - part of a major transportation road that does not have access to coverage by the latest generally deployed mobile wireless technology (currently LTE).
31. Any project where the applicant has selected the first type of eligible geographic area, i.e. an inhabited hexagon, will require the applicant to commit to providing mobile wireless service packages at a rate no higher and with a capacity no lower than the ones proposed in the application in those hexagons, for a minimum of five years from the project completion date. However, mobile wireless projects where the applicant

has solely selected part of a major transportation road for the eligible geographic areas will not require such a commitment.

32. In other words, the Commission considers that TCI's interpretation is correct. That being said, the Commission notes that, at the assessment stage, there is a household coverage criterion for mobile wireless projects, in which the Commission will consider a project to be of higher quality based on how many households would receive universal service objective-level mobile wireless service as a result of the project. If the applicant is not willing to commit to offering the mobile wireless service packages proposed as part of its application for five years (i.e. if the mobile wireless project covers part of a major transportation road only), it will not be credited with improving the service for the eligible households passed by its project. Applicants wishing to be credited for those eligible households would therefore need to select that their project would cover both an eligible hexagon and part of a major transportation road when submitting a mobile wireless project proposal. As a result, including eligible hexagons in their applications will be a business decision for applicants in which, if they include eligible hexagons, they will have to commit to offering their packages to households in those hexagons for five years. If they do not include eligible hexagons, the project will not be considered of higher quality with regard to the household coverage criterion. Similarly, funding will be provided under the Broadband Fund only for eligible costs, which include costs that are directly associated with project activities. As such, any costs associated with the provision of service in these eligible hexagons will not be eligible if the hexagons are not included in the application.

Policy Directions

33. In arriving at the determination in this decision, the Commission has considered the 2006 Policy Direction³ and the 2019 Policy Direction.⁴
34. The Commission considers that its determination not to extend the deadline for the filing of a review and vary application for Telecom Regulatory Policy 2018-377 contributes to the implementation of the policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.⁵ This determination facilitates the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich, and strengthen the social and economic fabric of Canada and its regions by preventing

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

⁵ The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and (h) to respond to the economic and social requirements of users of telecommunications services.

the uncertainty associated with the possibility of limitless applications to review and vary the framework for the Broadband Fund, which would delay the distribution of funds for broadband infrastructure projects that will support closing the gaps in connectivity. The determination will therefore also contribute to rendering reliable and affordable telecommunications services of high quality accessible to Canadians in underserved areas, as well to responding to the economic and social requirements of users of telecommunications services in those areas by ensuring that they can subscribe to the packages included in the application (or better ones) for a minimum of five years.

Secretary General

Related documents

- *Broadband Fund – Second call for applications*, Telecom Notice of Consultation CRTC 2019-372, 13 November 2019
- *Broadband Fund – Call for applications*, Telecom Notice of Consultation CRTC 2019-191, 3 June 2019
- *Broadband Fund – Modifications to the Application Guide*, Telecom Regulatory Policy CRTC 2019-190, 3 June 2019
- *Call for comments – Application Guide for the Broadband Fund*, Telecom Notice of Consultation CRTC 2019-45, 14 February 2019
- *Establishment of an appropriate quality of service metric for jitter to define high-quality fixed broadband Internet access service*, Telecom Regulatory Policy CRTC 2019-42, 12 February 2019
- *Development of the Commission’s Broadband Fund*, Telecom Regulatory Policy CRTC 2018-377, 27 September 2018
- *CISC Network Working Group – Non-consensus report on quality of service metrics to define high-quality fixed broadband Internet access service*, Telecom Decision CRTC 2018-241, 13 July 2018; as amended by Telecom Decision CRTC 2018-241-1, 3 August 2018
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011