



Telecom Decision CRTC 2021-47

PDF version

References: 2019-372, 2019-372-1, and 2019-372-2

Ottawa, 4 February 2021

Public record: 1011-NOC2019-0372

Broadband Fund – Project funding approval for Tough Country Communications Ltd.’s British Columbia transport fibre project

*The Commission **approves** Tough Country Communications Ltd.’s funding application for up to \$55,040 to construct and upgrade transport infrastructure in two communities in British Columbia.*

Application

1. In response to the Commission’s second call for applications for funding from the Broadband Fund set out in Telecom Notice of Consultation 2019-372 (hereafter, Call 2), Tough Country Communications Ltd. (Tough Country) filed an application, dated 28 May 2020, in which it requested approximately \$55,000 from the Broadband Fund to implement a project that will provide a significant improvement in broadband service to two communities in British Columbia.¹ Tough Country indicated that it will build just over 0.5 kilometres of fibre optic transport network, providing new and upgraded points of presence (PoPs)² to the communities of Baynes Lake and Kragmont.
2. The project is expected to provide a capacity of 10 gigabits per second (Gbps) to each of the transport PoPs. This project will improve resiliency and network diversity for communities in the surrounding area.

Commission’s analysis and determinations

3. In Telecom Regulatory Policy 2018-377, the Commission established the eligibility and assessment criteria for the Broadband Fund. In Telecom Decision 2021-43, the introductory decision for the group of funding decisions issued today, the Commission provided background information and described the eligibility and assessment process and selection considerations used to assess and select projects to be funded. The introductory decision should be read in conjunction with this decision.

¹ The content of the application was designated confidential pursuant to section 39 of the *Telecommunications Act*, but certain details are being disclosed in this decision, consistent with section 11 – *Confidentiality* of the Application Guide, set out in the Appendix to Telecom Notice of Consultation 2019-372, and as agreed to by the applicant. Other elements of the application remain confidential but were considered when the Commission evaluated the application.

² A PoP is a point in the network that connects the transport infrastructure to the local access infrastructure.

Eligibility criteria

4. Tough Country's application met each of the eligibility criteria applicable to transport projects.³ First, as a financially solvent and reliable Canadian carrier with more than three years' experience deploying and operating broadband infrastructure in Canada, Tough Country met each of the criteria for eligible applicants. In addition, Tough Country demonstrated that it will invest more than a nominal amount in the project, and that the project would not be financially viable without funding from the Broadband Fund. Further, Tough Country provided evidence that it consulted with communities affected by the project, either directly or through community representatives. Finally, the project will serve eligible geographic areas and will meet the requirements regarding minimum capacity and wholesale and retail open access services.

Assessment criteria

5. On the basis of its evaluation of the project against the assessment criteria for transport projects,⁴ as set out below, the Commission finds that Tough Country's project is of high quality and will assist in achieving the goals of the Broadband Fund.
6. The project is technically sound, and the capacity proposed for the transport PoPs will facilitate providing broadband Internet access service to the above-mentioned region at the level of the universal service objective, which the Commission defined in Telecom Regulatory Policy 2016-496.⁵ The proposed equipment is sufficient to deliver the proposed services, and additional capacity could be enabled in the future, making the project scalable. The project will implement widely adopted and supported technologies with good long-term sustainability. The network design includes various backups and redundancies to ensure that the network is resilient.
7. Tough Country committed to providing wholesale and retail open access to the transport infrastructure. Tough Country submitted wholesale open access plans proposing dedicated service at various speeds and prices.
8. The construction of transport infrastructure represents a long-term investment; a fibre transport network usually has an estimated useful life of 20 years or more. With this in mind, the Commission considered various financial indicators to assess the financial viability of the project and found it to be financially viable and sustainable and the proposed costs to be reasonable. Tough Country committed to investing more than a nominal amount of its own funds in the project and secured third-party funding.

³ Specifically, the Commission used the eligibility criteria set out in sections 6.1.1(a) to (d) of the Application Guide, applicable to all applicants; in sections 6.1.2(a) to (c), applicable to all project types; and in sections 6.1.3(a) to (c), applicable to transport projects. Because the applicant did not comprise a partnership, joint venture, or consortium, criterion 6.1.1(e) did not apply.

⁴ Specifically, the assessment criteria set out in the Application Guide in sections 6.2.1(a) to (d) and in sections 6.2.2(a) to (e).

⁵ Specifically, this objective is 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.

9. Tough Country provided evidence of support for the project from the Member of Parliament for the Kootenay region, the Member of the Legislative Assembly of British Columbia for Kootenay East, and Columbia Basin Broadband Corporation.

Conclusion and directions

10. In selecting the project for funding, the Commission considers that by building and upgrading the proposed transport PoPs, the project is consistent with the universal service objective, and concludes that the project will have a significant positive impact on the two communities to be served. In addition, the Commission concludes that supporting this project represents an efficient use of the funding available from the main component of the Broadband Fund.
11. In light of all the above, the Commission **approves**, to the extent and subject to the terms and conditions set out below, up to a maximum of \$55,040 from the Broadband Fund to be distributed to Tough Country for the purpose of the transport project described above and as set out in the approved statement of work. This approval is subject to the conditions that Tough Country
 - a. confirm in writing, within **10 days** of the date of this decision, its intent to submit a statement of work package to the Commission and to proceed with the project; and
 - b. file for Commission approval, within **120 days** of the date of this decision, a completed statement of work package in the format provided by the Commission, which includes an accompanying workbook that sets out the project budget, key project dates and schedules, and detailed project information, such as logical network diagrams, network descriptions, service designs, project sites, equipment details, maps, specific costs, and milestones.
12. As established in Telecom Regulatory Policy 2018-377, project construction must not have begun prior to the date of this decision and should be completed within three years. As set out in the Application Guide, Tough Country may not apply for reimbursement of its costs until its statement of work has been approved by the Commission. Any eligible costs incurred prior to Commission approval of Tough Country's statement of work but following the issuance of this decision are at Tough Country's risk and will not be reimbursed if the statement of work is not approved.
13. If it receives any additional funding for the project from any source, Tough Country must notify the Commission in writing as soon as possible and no later than **10 days** after receiving the funding. The Commission may proportionately reduce the amount of funding it has approved.
14. In order to receive funding, Tough Country must obtain Commission approval for (i) any material changes to the project, as set out in the approved statement of work; and (ii) any changes to Tough Country that would materially affect the legal or financial documents it provided during the application process. In order for the Central Fund Administrator to be able to distribute funding, Tough Country must sign the National Contribution Fund Administration Agreement if it has not already done so.

15. The Commission will hold back 10% of the claimed amounts of funding until after construction of the network is complete. Holdback funds will be released only once the Commission is satisfied that Tough Country has been operating the network for one year according to the conditions of service set out below (see paragraphs 18 to 20).

Funding conditions

16. In Telecom Regulatory Policy 2018-377, the Commission determined that it would impose a series of conditions (i) that must be met before it will release funding, and (ii) that ensure that the service to be provided using the funded infrastructure meets the promised service levels. The Commission indicated that funding conditions would be set based on project timelines, reporting, auditing, and material changes. Conditions imposed under section 24 of the *Telecommunications Act* (the Act) would be used to set the requirements for the ongoing operation of the network, including the speeds and capacity of services to be provided, pricing, and any reporting or measurement requirements. In addition, all existing regulatory obligations will continue to apply to the provision of services using funded infrastructure.⁶
17. Following Commission approval of the statement of work, the Commission will direct the Central Fund Administrator to release funds to Tough Country, provided that the company is in compliance with the following conditions:
 - a. Tough Country must file a progress report, in the format provided by the Commission, outlining the progress made in the implementation of the project and any variances in the project schedule included in the statement of work. This report is to be filed every **three months** beginning on the date established in the statement of work and continuing until the project completion report is submitted.
 - b. Tough Country must file with the Commission every **three months** a Broadband Fund claim form certified by its chief financial officer, or by an equivalent authorized official of Tough Country, along with supporting documentation demonstrating to the Commission's satisfaction that all costs claimed were actually incurred and paid and are eligible costs related to the activities described in the statement of work. Each claim form must be accompanied by a progress report.
 - c. With respect to eligible and ineligible costs, as described in Telecom Regulatory Policy 2018-377, Tough Country must
 - i. include eligible costs in a claim form submitted within **120 days** of the costs being incurred, unless the costs were incurred after the date of this decision but prior to the approval of the statement of work, in which case the costs must be claimed on the first claim form submitted after the approval of the statement of work;

⁶ Examples of existing regulatory obligations are set out in section 10.1 of the Application Guide.

- ii. ensure that all goods and services are claimed for reimbursement at amounts not greater than fair market value after deducting all trade discounts and similar items. Only the fair market value of the goods and services acquired is eligible for reimbursement; and
 - iii. measure and claim all goods and services received from related parties, as defined under [International Financial Reporting Standards](#), at cost, with no profits or markups from the supplier.
- d. Tough Country must not claim in excess of 25% of the approved amount for costs incurred after the date of this decision but prior to the approval of the statement of work.
- e. Tough Country must ensure that its travel costs, such as meal per diems, comply with the [National Joint Council Travel Directive](#).
- f. Tough Country must publicize, including by publishing on its website, the wholesale open access service packages to be offered as a result of the project at least **90 days** prior to the planned date on which wholesale open access service will be available as detailed in the statement of work. This shall include the proposed location of any PoPs, capacity available for open access, service plans, prices, and terms and conditions.
- g. Where a risk of adverse impact on an Aboriginal or treaty right becomes known following the approval of the statement of work and a duty to consult exists, Tough Country must advise the Commission within **20 days** and submit a plan detailing the form and process for fulfilment of the duty. Release of any additional funding will be contingent on demonstration that any necessary consultations were held to the Crown's satisfaction.
- h. Tough Country must notify the Commission in writing as soon as possible and within no more than **five days** of becoming insolvent.
- i. Tough Country must file its annual financial statements with the Commission upon request. The financial statements would accompany the next progress report filed after the annual financial statements are completed and approved.
- j. Tough Country must ensure compliance with the Government of Canada's national security requirements to address any potential risks related to the overall integrity of network security.
- k. Tough Country must file for Commission approval a project completion report within **90 days** of completion of the final milestone in the statement of work. In the report, Tough Country must confirm that project construction is complete and that broadband services are being offered. The date on which construction is complete and broadband services are being offered will be considered the project completion date. Tough Country must also demonstrate in the report that the project has met the requirements set out in all related decisions. The report is to be in a format to be specified by the Commission.

1. Tough Country must file a project holdback report **one year** after the project completion date demonstrating to the Commission's satisfaction that Tough Country has been operating the network for one year in accordance with the conditions of service established in this decision and described in the approved statement of work.

Section 24 conditions

18. In Telecom Regulatory Policy 2018-377, the Commission determined that it would impose, pursuant to section 24 of the Act, certain conditions regarding the offering and provision of broadband services using facilities funded through the Broadband Fund that would apply once the infrastructure is built. These conditions relate to the speeds and capacity of broadband services provided and the level of retail pricing, reporting, and associated open access service offerings. The conditions imposed on the offering and provision of broadband services will apply to Tough Country and to any other Canadian carrier operating the funded infrastructure.
19. The Commission may conduct periodic audits and require measurements of the project's performance to verify compliance with the conditions of funding and the conditions imposed pursuant to section 24 of the Act on the provision of services using the funded infrastructure. To that end, as a condition of offering and providing telecommunications services using the funded infrastructure, the Commission requires, pursuant to section 24 of the Act, that Tough Country, or any Canadian carrier operating the funded infrastructure, (i) retain all books, accounts, and records of the project, including administrative, financial, and claim processes and procedures, and any other information necessary to ensure compliance with the terms and conditions of this decision, for a period of **eight years** from the project start date; and (ii) provide the Commission with measurements of the performance of Tough Country's implemented project within **five years** of the project's completion date using methodology that the Commission may determine. The Commission may request that external auditors or a Commission-approved auditor certify any related report, form, or documentation, or that a third-party professional engineer certify any required measurements.
20. In addition, pursuant to section 24 of the Act, as a condition of offering and providing telecommunications services using the funded infrastructure, Tough Country, or any Canadian carrier operating the funded infrastructure, must
 - a. provide transport capacity at each eligible PoP funded by the Broadband Fund with total capacity no lower than that proposed in the application and described in the approved statement of work; and
 - b. offer and provide, in a fair, transparent, timely, and non-discriminatory manner, wholesale and retail open access to the transport infrastructure at each eligible PoP funded by the Broadband Fund. Terms and conditions that are the same as or better than those applied to the services of subsidiaries, affiliates, or partners must be applied to other service providers requesting access to project sites. Such wholesale and retail open access services must be offered at rates no higher, and a capacity no lower, than those proposed in the application and detailed in the approved statement of work.

Policy Directions

21. The 2006 Policy Direction⁷ and the 2019 Policy Direction⁸ (collectively, the Policy Directions) state that the Commission, in exercising its powers and performing its duties under the Act, shall implement the telecommunications policy objectives set out in section 7 of the Act, in accordance with the considerations set out therein,⁹ and should specify how its decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.
22. The Commission considers that its decision to approve funding from the Broadband Fund for the project described in detail in this decision is consistent with the Policy Directions.
23. Specifically, this decision to approve funding to build and upgrade transport infrastructure in two communities in British Columbia will help to close the gap in connectivity in underserved areas. There would be no business case for the project without funding from the Broadband Fund. Funding the project will provide improved Internet services to the communities, and thus respond to the social and economic needs of consumers. In doing so, this decision will implement the telecommunications policy objectives, including those set out in paragraphs 7(a), (b), and (h) of the Act.¹⁰

Secretary General

Related documents

- *Broadband Fund – Second call for applications – Introductory decision regarding project funding approvals*, Telecom Decision CRTC 2021-43, 4 February 2021
- *Broadband Fund – Second call for applications*, Telecom Notice of Consultation CRTC 2019-372, 13 November 2019; as amended by Telecom Notices of Consultation CRTC 2019-372-1, 20 March 2020; and 2019-372-2, 27 April 2020
- *Development of the Commission’s Broadband Fund*, Telecom Regulatory Policy CRTC 2018-377, 27 September 2018
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁸ *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

⁹ The relevant considerations are subparagraph 1(a)(i) of the 2006 Policy Direction, which states that the Commission should rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and paragraph 1(a) of the 2019 Policy Direction, which states that the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation.

¹⁰ 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.