



## Telecom Decision CRTC 2024-191

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References: 2022-325, 2022-325-1, and 2022-325-2

Ottawa, 28 August 2024

*Public record: 1011-NOC2022-0325*

### **Broadband Fund – Project funding approval for TBayTel’s mobile wireless project in northwestern Ontario (Highway 527)**

#### **Summary**

Canadians need access to reliable, affordable, and high-quality Internet and cellphone services for every part of their daily lives.

Through its Broadband Fund, the Commission contributes to a broad effort by federal, provincial, and territorial governments to address the gap in connectivity in underserved rural, remote, and Indigenous communities across Canada.

Today, the Commission approves TBayTel’s funding application for up to \$5,156,270 to upgrade five cellular sites to serve approximately 39 kilometres of Highway 527 in northwestern Ontario. This project is a significant step in addressing public safety concerns by providing cellular coverage along an important transportation corridor that serves multiple Indigenous residents and remote residents in northwestern Ontario.

In accordance with the increased emphasis on meaningful community consultation in its third call for applications, the Commission considered the level of demonstrated community support for this application. Dilico, an Anishinabek family care organization, submitted a letter of support for the project. In the letter, the organization stated that the expansion of telecommunications services will assist its work as a service provider and enhance the daily lives of many people living within the proposed area of the project.

Approval of this project furthers the Commission’s commitment to advance reconciliation with Indigenous peoples as it continues its efforts to help connect all Canadians.

#### **Background**

1. In Telecom Regulatory Policy 2016-496, the Commission established the universal service objective. This objective recognizes that all Canadians should have access to cellphone and Internet services on both fixed and mobile wireless networks.
2. To measure progress towards this objective, the Commission established several criteria, including that Canadians using Internet services should be able to (i) access

speeds of at least 50 megabits per second (Mbps) download and 10 Mbps upload, and (ii) subscribe to a service offering with an unlimited data allowance. Furthermore, the Commission found that the latest generally deployed mobile wireless technology (currently long-term evolution [LTE]) should be available not only in Canadian homes and businesses, but also on as many major transportation roads as possible in Canada.

3. To support the development of a telecommunications system that can provide Canadians with access to these basic telecommunications services, the Commission established the Broadband Fund pursuant to subsection 46.5(1) of the *Telecommunications Act* (the Act). The objective of the Broadband Fund is to help achieve the universal service objective and close the gaps in connectivity in rural, remote, and Indigenous communities across Canada. It does this by providing financial support to projects that (i) will build or upgrade access and transport infrastructure for fixed and mobile wireless broadband Internet access services, and (ii) would not be financially viable without funding assistance.
4. The Commission established the Broadband Fund with \$100 million in funding for the first year, rising to \$150 million by the third year through annual \$25-million increases, with future incremental increases to be contingent on a review of the Broadband Fund policy launched in 2023. In Telecom Notice of Consultation 2023-89, the Commission initiated that review and decided to maintain an annual cap of \$150 million for distribution until the conclusion of the review.
5. In Telecom Regulatory Policy 2018-377, the Commission established the criteria for evaluating proposed Broadband Fund projects and addressed matters relating to the Broadband Fund's governance, operating, and accountability frameworks.
6. The Commission has launched three calls for funding applications to the Broadband Fund to date. In the first two calls for applications, the Commission approved funding for projects that will improve access to high-speed Internet and cellphone services in 205 rural and remote communities, including 89 Indigenous communities. Building on this momentum, the Commission issued a third call for applications (Call 3) in November 2022.

### **Call 3**

7. In Telecom Notice of Consultation 2022-325, the Commission issued Call 3 for funding for certain types of projects proposing to serve any eligible area of Canada. The types of eligible projects include (i) transport infrastructure projects, (ii) mobile wireless infrastructure projects, and (iii) projects requiring operational funding to increase satellite transport capacity and to improve broadband Internet access service in satellite-dependent communities. Call 3 closed on 15 June 2023.
8. The Commission noted in Telecom Notice of Consultation 2022-325 that during the assessment phase of applications for Call 3, it would be placing increased emphasis on meaningful consultation with each community affected by a proposed project and

on resiliency (i.e., the proposed network's capacity to maintain acceptable levels of service during network failures).

9. In response to Call 3, the Commission received 105 applications. The Commission is issuing multiple decisions related to this call to expedite the funding approval process to address the immediate need of Canadians for improved access to broadband infrastructure.

### **Application**

10. TBayTel filed an application in response to Call 3 in which it requested \$5,156,270 from the Broadband Fund to upgrade five cellular sites along Highway 527 in northwestern Ontario. This project will enable TBayTel to provide mobile wireless service using the latest generally deployed mobile wireless technology (currently, LTE) to serve approximately 39 kilometres of the highway that currently has no coverage.<sup>1</sup>

### **Commission's analysis**

11. The evaluation of applications for funding from the Broadband Fund takes place in three stages. First, the Commission considers whether an application meets certain eligibility criteria; applications that do not meet the criteria will not be considered. Second, the Commission evaluates proposed projects based on certain assessment criteria to identify a set of selectable projects. Third, from the set of selectable projects identified, the Commission selects projects for funding based on certain project selection considerations. These eligibility, assessment, and selection consideration criteria were established in Telecom Regulatory Policy 2018-377 and are listed in the Application Guide.
12. The Commission has considered TBayTel's application in light of the eligibility, assessment, and selection consideration criteria applicable to all applicants and project types, as well as the eligibility and assessment criteria applicable to mobile wireless projects serving major transportation roads.

### **Eligibility criteria**

13. For a project to be considered for funding, applicants must clearly demonstrate, with supporting evidence, how their applications meet the eligibility criteria regarding

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<sup>1</sup> The content of the application was designated confidential pursuant to section 39 of the 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 2022-325, and as agreed to by the applicant. Other elements of the application remain confidential but were considered when the Commission evaluated the application.

applicant types, the eligibility criteria applicable to all project types, and the eligibility criteria applicable to specific project types.<sup>2</sup>

14. With respect to applicant type, applicants must demonstrate that they meet the requirements set out in the Application Guide regarding their acceptable legal structure, experience, and financial solvency. The Commission considers that TBayTel has demonstrated that it meets these requirements.
15. With respect to eligibility criteria applicable to all project types, applicants must demonstrate that each of the following is met: (i) project viability (i.e., that without funding from the Broadband Fund, the proposed project would not be financially viable), (ii) applicant investment (i.e., the applicant's ability to secure the amount of investment it has committed to), and (iii) community consultation (i.e., that the applicant has consulted or attempted to consult with communities affected by the project, either directly or through community representatives). The Commission considers that TBayTel has demonstrated that it meets all of these requirements.
16. Finally, applicants must demonstrate that they meet certain criteria applicable to specific project types. The eligibility criteria for mobile wireless projects include (i) geographic eligibility (i.e., that the area to be served is part of a major transportation road that does not have access to coverage by the latest generally deployed mobile wireless technology, which is currently LTE); and (ii) latest technology (i.e., that the proposed project must use, at a minimum, the latest generally deployed mobile wireless technology). The Commission considers that TBayTel has demonstrated that it meets all the requirements specific to mobile wireless projects.

### **Assessment criteria**

17. Once a project is identified as having met the eligibility criteria, it is further analyzed under certain assessment criteria applicable to all project types and criteria applicable to specific project types.<sup>3</sup> When applying the assessment criteria, each criterion receives due consideration so that no one criterion in isolation determines whether an application is viewed to be selectable. In Call 3, however, the Commission is placing increased emphasis on certain criteria (as outlined in paragraph 8 of this decision).
18. The assessment criteria applicable to all project types include (i) the technical merit of a project, (ii) the financial viability of a project, (iii) the level of funding from other sources, and (iv) community consultation and level of involvement. These criteria establish a high threshold to help ensure that the funded project is viable (in the

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<sup>2</sup> 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(g) to (i), applicable to mobile wireless projects.

<sup>3</sup> The assessment criteria set out in the Application Guide in sections 6.2.1(a) to (d) apply to all project types, and those set out in sections 6.2.2(k) to (l) apply to mobile wireless projects specifically.

present case, that TBayTel will bring mobile wireless service that meets the universal service objective to approximately 39 kilometres of Highway 527).

#### **Technical merit**

19. In assessing the technical merit of a project, the Commission takes into account the project's feasibility (i.e., the appropriateness of the network technology and infrastructure), scalability (i.e., the technical ability of the project to meet or exceed the universal service objective using the proposed infrastructure), sustainability (i.e., the short- and long-term viability of the chosen technology), and resiliency (i.e., the proposed network's capacity to maintain acceptable levels of service during network failures).
20. Based on these factors, the Commission finds that TBayTel's project is technically sound and capable of delivering speeds consistent with the universal service objective. The proposed project is also capable of delivering the envisioned service and is scalable and resilient. In addition, the project will implement widely adopted and supported technologies with good long-term sustainability.

#### **Financial viability**

21. In assessing the financial viability of a project, the Commission examines the project's net present value, internal rate of return, and business plan, including the risk assessment and risk mitigation plan. The Commission also considers the potential financial success of the proposed project, as well as the project's long-term financial viability and sustainability. The Commission finds TBayTel's project to be financially sound and the proposed project costs to be reasonable.

#### **Funding from other sources**

22. The Commission considers that TBayTel has made a commitment of its own funds to the project and finds that the cost is reasonable for the project.

#### **Consultation with affected communities**

23. In Call 3, the Commission placed an increased emphasis on meaningful consultation with affected communities. As a result, in the assessment of TBayTel's project, significant weight was accorded to the evidence of meaningful engagement. The Commission considered the extent of TBayTel's consultations with the affected communities and the level of demonstrated support at the assessment stage.
24. TBayTel provided evidence of direct notification to Gull Bay First Nation and Whitesand First Nation as well as to health care centres and companies whose residents and employees travel along the planned route.
25. TBayTel also provided a letter of support from Dilico, an Anishinabek family care organization. In the letter, the organization stated that the expansion of telecommunications services will assist its work as a service provider and enhance the daily lives of many people living within the proposed area of the project.

### **Specific criteria for mobile wireless projects**

26. Finally, as with the eligibility criteria, certain assessment criteria apply to specific types of projects. The assessment criteria for mobile wireless projects include (i) the level of improvement in service and capacity (i.e., how much improvement there would be in the mobile wireless technology offered); and (ii) geographic coverage (i.e., the extent of the geographic footprint where universal service objective-level mobile wireless service would become available as a result of the proposed project).
27. On the basis of its evaluation of TBayTel's project against the assessment criteria, including the specific criteria applicable to mobile wireless projects, the Commission finds TBayTel's project to be selectable.

### **Selection considerations**

28. Once a set of selectable projects has been identified based on the eligibility and assessment criteria, the Commission selects a subset of projects for funding. In deciding between selectable projects, the Commission considers whether individual projects will contribute to meeting the universal service objective and whether they will have a significant positive impact on Canadians. This approach is in accordance with Telecom Regulatory Policy 2018-377 and the related Application Guide and takes into account the telecommunications policy objectives set out in section 7 of the Act.
29. The selection considerations set out in the Application Guide include the efficient use of funds and whether the communities affected by proposed projects are Indigenous or official language minority communities.<sup>4</sup>
30. With respect to the efficient use of funds, the Commission considers the amount of funding required for a project, when such funding would be distributed, and the amount of funding currently available for distribution from the Broadband Fund. When selecting projects, the Commission also considers whether the distribution of funds would cause overlap between projects or overlap with alternative funding sources.<sup>5</sup> On the basis of these considerations, the Commission is of the view that funding TBayTel's project is an efficient use of funds.
31. Finally, TBayTel's project will provide coverage along a section of Highway 527. This will benefit multiple Indigenous residents and remote residents in northwestern Ontario who travel on this part of the highway, including those in Gull Bay First Nation and Whitesand First Nation.

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<sup>4</sup> The selection considerations are set out in sections 6.3 to 6.3.4 of the Application Guide.

<sup>5</sup> Section 6.3.1 of the Application Guide states that if different selectable projects cover the same eligible geographic area(s) or if public funding from another source is committed to a similar project, the Commission will distribute funding in a manner that does not cause overlap in projects or funding sources.

## Conclusion

32. The Commission finds that TBayTel's project (i) is consistent with the universal service objective by providing mobile wireless service using the latest generally deployed mobile wireless technology (LTE), and (ii) will have a significant positive impact on the area to be served and address public safety concerns by providing cellular coverage along Highway 527.
33. In light of the above, the Commission approves, to the extent and subject to the directions and conditions set out below, up to a maximum of \$5,156,270 from the Broadband Fund to be distributed to TBayTel for the purpose of the mobile wireless project described above and as set out in the approved statement of work.
34. Consistent with paragraph 305 of Telecom Regulatory Policy 2018-377, the Commission expects project construction to be completed within **three years** of the date of decision.
35. The Commission considers that approval of this project is consistent with its commitment to advance reconciliation with Indigenous peoples, as it continues its efforts to help connect all Canadians.

## Statement of work

36. To be eligible to receive funding, the recipient must obtain approval from the Commission for its statement of work. This will ensure that the planned work will be undertaken to implement the project as described in the application and approved for funding by the Commission.
37. The statement of work must be submitted in the format provided by the Commission and include detailed information on the project plan, such as detailed project information (e.g., logical network diagrams, network descriptions, service designs, project sites, equipment details, specific costs, and an updated project budget). In addition, the project plan must set out a project implementation schedule, including project milestone dates that will include key construction and implementation dates to monitor the project's progress. Up-to-date project mapping must also be provided. Following approval of the statement of work, in order for the recipient to receive funding, any changes that materially affect the project to be delivered must be approved by the Commission.

## Directions

38. The Commission's approval is subject to the conditions that the recipient
  - (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, by **8 January 2025**,<sup>6</sup> a completed statement of work package in the format provided by the Commission, which includes accompanying workbooks that set 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.
39. As set out in the Application Guide, the recipient may not apply for reimbursement of its costs until its statement of work for each project has been approved by the Commission. Any eligible costs incurred prior to Commission approval of the recipient's statement of work but following the issuance of this decision are at the recipient's risk and will not be reimbursed if the statement of work is not approved.
40. In order for the Central Fund Administrator to be able to distribute funding, the recipient must sign the National Contribution Fund Administration Agreement if it has not already done so.
41. The recipient may not apply for reimbursement of, and funding will not be issued for, ineligible expenses, expenses that have yet to be incurred, or expenses that are not related to the activities described in the statement of work as approved by the Commission.
42. Should the recipient fail to demonstrate during the statement of work development phase that the project has adequately considered cyber security, it will be required to mitigate the cyber security risk to the Commission's satisfaction. Failure to propose a mitigation plan that is satisfactory to the Commission could result in the refusal to approve the statement of work.

### **Conditions of funding**

43. Following Commission approval of the statement of work, the Commission will direct the Central Fund Administrator to release funds to the recipient, provided that the recipient is in compliance with the following conditions:
- (a) The recipient 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 final implementation report is submitted.

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<sup>6</sup> For the computation of all time periods set out in this decision, as indicated in section 12 of the [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#), the period beginning on 21 December in one year and ending on 7 January in the following year must not be included.



- (b) The recipient must file with the Commission every **three months** a Broadband Fund claim form signed by its chief financial officer, or by an equivalent authorized official of the recipient, certifying that all costs claimed were actually incurred and paid, and are eligible costs related to the activities described in the statement of work, along with such supporting documentation as is requested by the Commission. Further supporting documentation may be requested by the Commission. Unless the claim form is only for operational costs related to satellite capacity, 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, the recipient 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;
  - (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) In order to receive funding, the recipient 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 the recipient that would materially affect the legal or financial documents it provided during the application process.
- (e) The recipient (including each member of a recipient partnership, joint venture, or consortium) must notify the Commission in writing as soon as possible and within no more than **five days** of becoming insolvent.
- (f) If it receives any additional funding for the project from any source, the recipient must notify the Commission in writing as soon as possible and no later than **10 days** after receiving confirmation of the funding. The Commission may proportionately reduce the amount of funding it has approved.
- (g) The recipient must not claim in excess of 25% of the approved amount for costs incurred after the date of the decision but prior to the approval of the statement of work unless otherwise approved by the Commission.
- (h) The recipient must ensure that its travel costs, such as meal per diems, comply with the [National Joint Council Travel Directive](#).

- (i) Where a risk of adverse impact on an Aboriginal or treaty right becomes known and a duty to consult exists, the recipient 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.
- (j) The recipient (including each member of a recipient partnership, joint venture, or consortium) 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.
- (k) The recipient must file for Commission approval a final implementation report within **90 days** of construction being complete and broadband services being offered. In the report, the recipient must confirm that project construction is complete and that broadband services are being offered. The date on which the final implementation report is submitted will be considered the project completion date. The recipient 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 specified by the Commission.
- (l) The recipient must file a project holdback report **one year** after the project completion date demonstrating to the Commission's satisfaction that the recipient has offered broadband services for one year in accordance with the conditions of service established in the decision and described in the approved statement of work. Holdback funds will be released only once the Commission is satisfied that the recipient has offered the services described in the approved statement of work in accordance with the conditions of service established in the decision.

## **Section 24 conditions**

- 44. 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 the recipient and to any other Canadian carrier operating the funded infrastructure.
- 45. 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 the recipient, 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 the decision, for a period of **eight years** from the project start date; and  
(ii) provide the Commission with measurements of the performance of each of the recipient's implemented projects 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.

Secretary General

### **Related documents**

- *Call for comments – Broadband Fund policy review*, Telecom Notice of Consultation CRTC 2023-89, 23 March 2023; as amended by Telecom Notices of Consultation CRTC 2023-89-1, 17 April 2023; and 2023-89-2, 25 July 2024
- *Broadband Fund – Third call for applications*, Telecom Notice of Consultation CRTC 2022-325, 30 November 2022; as amended by Telecom Notices of Consultation CRTC 2022-325-1, 13 March 2023; and 2022-325-2, 15 May 2023
- *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