



## Telecom Decision CRTC 2021-415

PDF version

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

Ottawa, 16 December 2021

*Public record: 1011-NOC2019-0372*

### **Broadband Fund – Project funding approval for We’koqma’q First Nation and Seaside Communications Inc.’s access project in Nova Scotia**

The Commission established the Broadband Fund to help close the digital divide and ensure that broadband Internet services are available to all Canadians. The second call for applications was open to all types of projects in all eligible geographic areas in Canada. Given the large number of applications it received and Canadians’ immediate need for improved access to broadband infrastructure, the Commission is issuing multiple decisions related to this call.

In this funding decision, the Commission **approves** We’koqma’q First Nation and Seaside Communications Inc.’s funding application for up to \$915,165 to build and/or upgrade local fixed access infrastructure in two communities in Nova Scotia.

#### **Background**

1. In Telecom Regulatory Policy 2016-496, the Commission established the universal service objective, namely 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.
2. To measure the successful achievement of this objective, the Commission established several criteria, including that 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 (50/10 Mbps), and to 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 on as many major transportation roads as possible in Canada.
3. In order to support the development of a telecommunications system that can provide Canadians with access to these basic telecommunications services, pursuant to subsection 46.5(1) of the *Telecommunications Act* (the Act), the Commission established the Broadband Fund. The objective of the Broadband Fund is to help achieve the universal service objective and close the gaps in connectivity in underserved areas by providing necessary 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 determined that for the first five years of the Broadband Fund, a maximum of \$750 million would be distributed as follows: no more than \$100 million in the first year, which would increase by \$25 million annually over the following four years to reach an annual cap of \$200 million. Monies for the Fund are collected from contributions made by telecommunications service providers<sup>1</sup> whose total annual Canadian telecommunications service revenues amount to over \$10 million.
5. In Telecom Regulatory Policy 2018-377, the Commission addressed matters related to the Broadband Fund, including its governance, its operating and accountability frameworks, and the criteria the Commission would use to evaluate proposed projects. It also stated that it intended to conduct a review of the Broadband Fund in the third year, 2022, to ensure that it is managed efficiently and is achieving its intended purpose. The incremental increases in the fourth and fifth years (a total of \$75 million) are contingent on the results of that review.

## **Second call for applications**

6. In Telecom Notice of Consultation 2019-372, the Commission issued its second call for applications for funding from the Broadband Fund (hereafter, Call 2) for all types of projects proposing to serve all eligible geographic areas of the country. Call 2 included an Application Guide.
7. In response to Call 2, the Commission received 586 valid applications. Given the volume of applications and the immediate need of Canadians for improved access to broadband infrastructure, the Commission is issuing multiple decisions related to this call.

## **Application**

8. In response to Call 2, a consortium comprising We'koqma'q First Nation and Seaside Communications Inc. (hereafter, the consortium) filed an application in which it requested \$915,165 from the Broadband Fund to implement a project to improve the broadband Internet access services available to eligible areas in two communities in Nova Scotia.<sup>2</sup> The consortium indicated that it will use fibre-to-the-home (FTTH) technology to offer services with unlimited data, with speeds ranging from 25/5 Mbps to 1,000/50 Mbps, in the We'koqma'q First Nation and the community of Whycocomagh.

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<sup>1</sup> "Telecommunications service provider" is defined in subsection 2(1) of the Act. As set out in Decision 2000-745, telecommunications service providers include incumbent local exchange carriers, alternate providers of long distance services, competitive local exchange carriers, resellers, wireless service providers, international licensees, satellite service providers, Internet service providers, payphone providers, and data and private line service providers.

<sup>2</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 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.

## **Commission's analysis and determinations**

9. The Commission has considered the consortium's application in light of the eligibility and assessment criteria established in Telecom Regulatory Policy 2018-377 and listed in the Application Guide.

### **Eligibility criteria**

10. The consortium's application satisfied each of the eligibility criteria applicable to access projects.<sup>3</sup>
11. The consortium has complied with the rules governing (i) its acceptable legal structure, experience, and financial capacity; (ii) the type and scope of the project; and (iii) the services to be offered. In addition, the consortium (i) 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, (ii) demonstrated its ability to secure the amount of investment it committed to, and (iii) provided evidence that it consulted or attempted to consult with communities affected by the project, either directly or through community representatives.
12. The consortium also demonstrated that it met the eligibility requirements
  - a. to build or upgrade infrastructure in an eligible geographic area, defined as a 25 km<sup>2</sup> hexagon where there is at least one household but where no household has access to broadband Internet access service at download and upload speeds that are at the level of the universal service objective (50/10 Mbps);
  - b. to offer broadband Internet access service at minimum speeds of 25/5 Mbps;<sup>4</sup> and
  - c. to include a list of various broadband Internet access service packages, 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 of reasonably comparable packages offered by a facilities-based service provider in a major urban centre or community located in the project's province or territory.

### **Assessment criteria**

13. In applying the assessment criteria, the Commission considered each criterion such that no one criterion in isolation determined whether the consortium's application was of high

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<sup>3</sup> Specifically, the Commission used the eligibility criteria set out in sections 6.1.1(a) to (e) of the Application Guide, applicable to applicants; in sections 6.1.2(a) to (c), applicable to all project types; and in sections 6.1.3(d) to (f), applicable to access projects.

<sup>4</sup> In Telecom Regulatory Policy 2018-377, the Commission stated that it expects that proposed projects that do not initially meet the universal service objective-level speeds of 50/10 Mbps will be scalable, meaning that speeds of 50/10 Mbps will be provided to the target community at a future date through capacity upgrades in the access or transport infrastructure.

quality. These criteria established a high threshold to help ensure that the funded project is likely to succeed, that is, that the consortium will build the funded infrastructure and provide fixed broadband Internet access services to Canadians and businesses in the targeted underserved areas. As with the eligibility criteria, certain assessment criteria specifically applied to access projects, such as the consortium's project.<sup>5</sup> The assessment criteria for access projects included the number of households that would be served by the project, the proposed level of service, the Broadband Fund cost per household, the retail service pricing and service packages that would be offered, and the current gap between the available service level and the universal service objective level.

14. The Commission assessed the technical merit of the project to ensure that the project is efficient, sustainable, and likely to continue meeting the broadband service requirements of the underserved eligible geographic areas over the long term. The technical assessment took 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).
15. The Commission finds that the consortium's project is technically sound and capable of delivering speeds and data allowances consistent with the universal service objective. The proposed equipment is capable of delivering the proposed services, and the project is scalable and resilient. In addition, the project will implement widely adopted and supported technologies with good long-term sustainability.
16. In its financial assessment, the Commission examined the project's net present value, internal rate of return, and business plan, including the risk assessment and risk mitigation plan. The Commission considered the potential financial success of the proposed project, as well as the project's long-term financial viability and sustainability.
17. The Commission finds the consortium's project to be financially sound and the proposed project costs to be reasonable. In addition, the Commission considers that the consortium has made a significant commitment of its own funds to the project and finds that the cost per household to the Broadband Fund is reasonable for the project.
18. Further, the Commission considered the quality of the consortium's consultations with affected communities and the level of demonstrated community support at the assessment stage. The consortium provided a council resolution from We'koqma'q First Nation supporting the application. In addition, the consortium stated that We'koqma'q First Nation will own the network and that its members will be prioritized for any jobs created as a result of this project.
19. As set out above, on the basis of its evaluation of the consortium's project against the assessment criteria, including the specific criteria applicable to access projects, the

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<sup>5</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(f) to (j) apply to access projects specifically.

Commission finds that the project is of high quality and will assist in achieving the goals of the Broadband Fund.

## Conclusion

20. In accordance with the approach set out in Telecom Regulatory Policy 2018-377 and the related Application Guide, when deciding which high-quality projects to select, the Commission, keeping in mind the telecommunications policy objectives set out in section 7 of the Act, considered not only whether individual projects would contribute to meeting the universal service objective, but also whether they would have a significant positive impact on Canadians.
21. In Telecom Regulatory Policy 2018-377, the Commission determined that when selecting projects for funding, it will give special consideration to the efficient use of funds and may give special consideration to a number of other factors, including the type of project and whether the communities affected by proposed projects are Indigenous or official language minority communities.
22. An assessment of the efficient use of funds includes consideration of 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 considered whether the distribution of funds would cause overlap between projects or overlap with alternative funding sources.<sup>6</sup> On the basis of all these considerations, the Commission concludes that funding the consortium's project is an efficient use of funds.
23. With respect to project type, the Commission determined in Telecom Regulatory Policy 2018-377 that it may prioritize fixed access infrastructure projects as part of its selection process. The consortium's application is for a fixed access project that will provide access services, also known as last-mile services, to connect households to broadband infrastructure.
24. With respect to the affected communities, in selecting this project for funding, the Commission applied the social consideration that the project will benefit an Indigenous community.
25. Finally, the Commission concludes that, in providing broadband Internet access services with speeds of up to 1,000/50 Mbps and an unlimited data allowance, the project is consistent with the universal service objective and will have a significant positive impact on the communities to be served, which encompass approximately 395 households.
26. 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 \$915,165 from the Broadband Fund to be distributed to the consortium for the purpose of the access project described above and as set out in the approved statement of work.

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<sup>6</sup> Section 6.3.1 of the Application Guide states that if different high-quality 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.

## Statement of work

27. 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.
28. 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

29. The Commission's approval is subject to the conditions that the recipient
  - a. confirm in writing, within **10 days**<sup>7</sup> 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 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.
30. As established in Telecom Regulatory Policy 2018-377, project construction should not have begun prior to the date of this decision and should be completed within three years. As set out in the Application Guide, the recipient may not apply for reimbursement of its costs until its statement of work for the 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.
31. 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.

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<sup>7</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.

32. 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. 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.
33. The Commission will hold back 10% of the claimed amounts of funding until after project construction is complete. Holdback funds will be released only once the Commission is satisfied that the recipient has offered broadband services for one year according to the conditions of service set out below (see paragraphs 36 to 38).

### **Funding conditions**

34. In Telecom Regulatory Policy 2018-377, the Commission determined that it would impose a series of conditions on funding recipients (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 include conditions related to project timelines, reporting, auditing, and material changes. Conditions imposed under section 24 of 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.<sup>8</sup>
35. 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.
  - 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. 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

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<sup>8</sup> Examples of existing regulatory obligations are set out in section 10.1 of the Application Guide.

- 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. The recipient 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. The recipient must ensure that its travel costs, such as meal per diems, comply with the [National Joint Council Travel Directive](#).
- f. 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, 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.
- g. The recipient must notify the Commission in writing as soon as possible and within no more than **five days** of any member of the consortium becoming insolvent.
- h. The recipient 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.
- i. The recipient must ensure compliance with the Government of Canada's national security requirements to address any potential risks related to the overall integrity of Canadian telecommunications networks.
- j. 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.



- k. 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 this decision and described in the approved statement of work.

## Section 24 conditions

- 36. 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.
- 37. 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 this decision, for a period of **eight years** from the project start date; and (ii) provide the Commission with measurements of the performance of the recipient'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.
- 38. In addition, pursuant to section 24 of the Act, as a condition of offering and providing telecommunications services using the funded infrastructure, the recipient, or any Canadian carrier operating the funded infrastructure on behalf of the recipient, must offer and provide fixed broadband Internet access service packages to customers served by the funded infrastructure at a rate no higher, and at speeds and with a capacity no lower, than the ones proposed in its application and described in the approved statement of work. The packages must be provided for a minimum of five years following the date of the Final Implementation Report (i.e. the project completion date). The recipient, or any Canadian carrier operating the funded infrastructure on behalf of the recipient, must publicize, including by publishing on its website, the packages offered to subscribers as a result of the project, including the service speeds, capacity, prices, and terms and conditions.

## Policy Directions

39. The 2006 Policy Direction<sup>9</sup> and the 2019 Policy Direction<sup>10</sup> (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,<sup>11</sup> and should specify how its decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.
40. 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.
41. Specifically, this decision to approve funding for a project to build and/or upgrade infrastructure in order to improve fixed broadband Internet access services in certain eligible areas in Nova Scotia 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 enable approximately 395 households to access broadband Internet access services that meet or exceed the universal service objective level 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.<sup>12</sup>

Secretary General

## Related documents

- *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

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<sup>9</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>10</sup> *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

<sup>11</sup> 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.

<sup>12</sup> 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; 7(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 7(h) to respond to the economic and social requirements of users of telecommunications services.

- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000