

Call for comments – Telecommunications in the Far North, Phase II

Submission of the First Mile Connectivity Consortium: EXECUTIVE SUMMARY

- E1. The First Mile Connectivity Consortium (FMCC) is an incorporated independent not-for-profit national association. Our members are First Nations Internet service providers known as “community/regional intermediary organizations.” Our work focuses on innovative solutions to digital infrastructure and services in rural and remote regions and communities across Canada.
- E2. In this intervention the FMCC is joined by several organizations based in the Far North, and specifically in the Northwest Territories. These include the following organizations:
- **KatloTech Communications**, a Northern Indigenous-owned business located in Yellowknife.
 - **DigitalNWT**, which involves several organizations dedicated to improving digital equity and digital literacy in the Northwest Territories. The following DigitalNWT partners endorse this intervention: Gwich’in Tribal Council; Inuvialuit Regional Corporation; Sahtú Renewable Resources Board; Dene Nation; and Smart Communities Society NWT.
 - Our intervention is also supported by the **Native Women’s Association of the NWT**.
- E3. Our comments present the perspectives of both consumers and service providers. Northern populations must have opportunities to utilize digital communications infrastructure and services not just as an enabler of economic development in other industries and services, but also as a locally-owned and managed resource in and of itself.
- E4. **For consumers**, digital services are essential for the social, cultural, and economic development of rural, remote and Northern Indigenous communities and their residents. There are very limited public data available regarding the specific digital challenges experienced by people living in the far North — and particularly regarding smaller population, rural/remote communities. We present the results of research we have conducted with residents of rural/remote NWT communities through household surveys and interviews.
- E5. **For service providers**, we present data and analysis about the experiences of service providers operating in rural/remote Indigenous communities, including those in the far North. These providers, including KatloTech and FMCC partner organizations, position sustainable local and regional enterprise development at the forefront of broadband infrastructure and services in rural and remote regions.

E6. We welcome the Commission’s increasing recognition of and regulatory support for telecommunications infrastructure and services in rural, remote, Northern and Indigenous regions. At time of writing (late September 2022), the Commission has not yet released the outcomes of the CRTC 2019-406 and CRTC 2020-366 proceedings. It is challenging to provide fulsome contributions on some issues raised in these proceedings without knowledge of the Commission’s decisions on those matters.

E7. We also present our analysis of submissions from individual respondents and Intermediary Organizations to Phase 1 of these proceedings (CRTC 2020-367). We believe this provides policymakers with a better overall understanding of the expectations of Northerners, and areas where the existing policy framework falls short.

E8. We request to appear at the Public Hearing in Whitehorse and note that some participants may wish to participate by telephone or videoconference.

E9. We present the following responses to selected questions in Appendix 1:

Q1: Substantive Equality and Equity

E10. We welcome the Commission’s adoption of principles of equity and substantive equality as guidelines for evaluating possible regulatory outcomes of these proceedings. To achieve equitable or fair outcomes, regulators and policymakers may need to provide pre-exemptive access (for example to spectrum), subsidies to Indigenous residents, and subsidies to providers serving remote and other high cost regions. Equity should be reflected in the basic service objective, and could also refer to fairness in terms of access to consumer support and services in Indigenous languages.

E11. The history and current experiences of residents of the Far North indicates that principles of substantive equality and equity are not in place. Today, broadband has truly become an essential service for residents of the Far North – particularly in rural/remote communities whose residents rely on telecommunications to access services otherwise unavailable in their communities. It is now more important than ever that the CRTC require the provision of 50/10 mbps broadband service as mandated in its Basic Service decision in ALL communities.

E12. We suggest two organizing frameworks to understand equity and substantive equality. First, the **geography** of the Far North: National (North/South); Regional (rural/urban divides inside the Far North); and Local divides (within communities). Second, perspectives of both **consumers** (e.g. end-users of telecommunications services) and **service providers** (e.g. organizations that provide those services).

E13. In Phase 1 of the proceedings, rural/remote Northern residents submitted more comments regarding certain challenges, such as inability to access banking services, challenges in running SMEs and home-based online businesses, issues with poor customer service, and limited availability and speed. Rural/remote residents also reported availability challenges. When data overage fees and mandatory (“dry loop”) telephone services are included, a significant affordability divide exists between prices paid by urban/central consumers and those in rural/remote communities. Affordability is also impacted by income inequalities

present inside local communities. For low-income households in rural/remote NWT communities like Ulukhaktok, these costs reflect an estimated 6.13% of monthly income.

- E14. **Recommendation: The CRTC should consider existing approaches designed to support equity and substantive equality in the provision of services, such as *Jordan's Principle*.**

Q2: UNDRIP Principles

- E15. UNDRIP supports and reflects a government-to-government relationship that stresses that Indigenous peoples are **rights holders** not **stakeholders**. This means that First Nations and other Indigenous governments must guide and participate in policy/regulatory discussions and exercise their rights in a fulsome way. UNRIP requires every level of the federal government to align Canadian laws with the standards set forth in the declaration.
- E16. **“Free, prior, and informed consent”** is an important concept in the context of telecommunications. Indigenous communities have the right to make their own decisions about their land and territories, traditional knowledge and languages, and telecommunications infrastructure and services.
- E17. **Recommendation: The Commission should consider existing work on this issue, such as that undertaken by the First Nations Technology Council in B.C.**
- E18. The CRTC can play an important role in institutionalizing Indigenous participation in telecommunications policy and regulation. There is currently no specific office at the CRTC or ISED dedicated to Indigenous connectivity issues.
- E19. **Recommendation: Drawing from the example of ONAP in the U.S. the Commission should set up a dedicated office and hire more staff with experience and focus on issues related to Indigenous contexts in the Far North and in other rural/remote and Northern regions.**

Q3: OCAP™ Principles

- E20. Regulatory consultations face limitations in sourcing actionable feedback. In particular, consumers living in small-population, rural/remote, Indigenous and Northern communities face significant challenges in contributing to CRTC proceedings. The Commission can support OCAP™ principles through engaging Northern residents in the monitoring and evaluation of telecommunications infrastructure and services. Such work can be informed by activities undertaken in the U.S., such as through the Broadband DATA Act.
- E21. **Recommendation: The Commission should work with Indigenous governments, organizations and communities to engage community members in efforts to monitor and evaluate the outcomes of publicly-funded telecommunications infrastructure and services.**

Q4: Indigenous rights, treaties, agreements and negotiations

E22. Indigenous connectivity advocates point out that rights-of-way and other agreements regarding Indigenous territories were negotiated decades ago, before increased legal recognition of Indigenous rights. There do not appear to be any formal standards or requirements regarding “free, prior and informed consent” in the context of telecommunications policy and regulation.

E23. Recommendations: Require Northwestel and other providers to obtain formal consent from Indigenous governments before installing facilities on their land. Facilities on Indigenous lands, such as conduit and towers, should be accessible to Indigenous providers.

Q5: Economic Reconciliation

E24. From the earliest days of the Indigenous peoples have advocated for their right to share in the ownership and control of these resources and the economic benefits derived from their development and use. These recommendations extend from initial planning and construction, to ongoing management, operations and maintenance.

E25. Economic reconciliation is supported by Call to Action #92 (on Business and Reconciliation) issued by the Truth and Reconciliation Commission of Canada. We urge the telecommunications industry to join the Commission in acting on these recommendations, in the spirit of corporate social responsibility and reconciliation. We fully endorse the [2021 Indigenous Connectivity Summit \(ICS\) Policy Recommendations](#) cited by the Commission. FMCC member organizations are involved in the annual ICS and contributed to the formation of these recommendations.

E26. An important framework for economic reconciliation is the **First Nations “e-Community” model**, which presents a vision of a community network that interconnects local organizations and households to the world through backhaul transport infrastructure via a local point of presence. Over the years we have made many recommendations relevant to economic reconciliation, some of which were submitted to CRTC 2019-406. At time of writing (Fall 2022) we are not yet aware of the Commission’s Decision on those important proceedings.

Q6: COVID-19 impacts

E27. The COVID-19 pandemic further underscored the importance of the Commission’s 2016 Basic Service Objective, as well as of **affordable** services. DigitalNWT research demonstrates the lack of adequate, affordable home Internet services in most rural/remote NWT communities. The vast majority of survey respondents use the Internet more now than before the COVID-19 pandemic. During the pandemic they used the Internet for banking services, connecting with friends, buying/selling items online, participating in politics, and working from home. Many respondents highlighted the need for lower-cost, more reliable, faster services with more data.

E28. Recommendation: Support policies and regulations that increase bandwidth and support competitive providers, including Indigenous providers. Bandwidth, QoS and affordability are critical and will be required post COVID as well.

Q7: LEO satellites

E29. Satellite systems play an essential role in connecting rural and remote communities. The effects of satellite deployment must be considered in light of the community aggregator model (which allows for local networks) and the direct-to-home model (which cuts out local distribution and associated economic development opportunities).

E30. Direct-to-home LEO systems, such as Starlink’s service, face uncertainties over issues including speed/QoS, affordability and reliability. It will be important to monitor and evaluate consumer experiences with deployments of LEO systems. LEOs can be a useful complement to other connectivity technologies in the North, and can provide important benefits to communities with respect to network resilience, redundancy and reliability. However, in many cases core services such as FTTH household connections remain the most important for consumers.

E31. Subsidized short-term (e.g. emergency) provision of LEO equipment and services may be disruptive for existing operators including Indigenous ISPs. This has created new divisions in communities between ‘have’ and ‘have not’ households and is splitting the consumer market and affecting the business model for local ISPs.

E32. Recommendation: The Commission (and other funders) should consider both immediate and long-term impacts of introducing LEO systems in rural/remote communities.

Q8: Defining Affordability

E33. The high costs of telecommunications – particularly when data overage fees and other ancillary costs are involved– reflect additional costs that residents of the Far North must pay compared to residents of urban/Southern communities. Many households in the Far North, including low-income households, consist of large families and/or numbers of people living together who are required to share a single connection, which can significantly increase data overage fees. Statistics Canada’s most recent reports also demonstrate high numbers of low-income households in the NWT – up to one-quarter of the number of households in each community.

E34. Recommendation: The Commission should determine “undue hardship” in relation to appropriate metrics: for example, location, household income and size, and bandwidth / data usage for essential public services and economic activities accessed online.

Q9: “Affordability Standard”

E35. Any affordability standard should include the metrics noted in response to Q8.

Q10: Measures to address affordability (generally and for low-income households)

E36. Our research confirms the statement that “customers in the Far North generally pay more for less in comparison to customers in the south and that this impacts all retail customers in the Far North, including low-income households”. Our research confirmed that there are also divides inside the Far North and inside communities.

E37. The Commission should consider offering subsidies to help offset the costs of services for low-income households in the Far North. Such subsidies can be developed with reference to existing programs such as the FCC’s *Lifeline Support for Affordable Communications* and the U.K.’s *Better Broadband Scheme*.

E38. Recommendation: The Commission should design and provide affordability subsidies for low-income households in the Far North. Any subsidy program should be permanent.

Q11: Ending “dry loop” telephone service requirements

E39. The current “discounted” approach to a ‘dry loop’ phone line is less transparent than using targeted subsidies, since a subsidy model would require the incumbent to show the actual costs of providing these services to consumers. The marketing of this current “discounted” approach for dry loop telephone services is also confusing for consumers.

E40. Recommendation: The Commission should replace the “discounted” dry loop phone line service with targeted subsidies to consumers, and require Northwestel to make actual costs of ‘dry loop’ telephone services clearer and more transparent.

Q12: Ending “data overage fees”

E41. Data overage fees are a symbol of the lack of equity in telecommunications affordability across the Far North, between rural/remote and central/urban communities, and between households in rural/remote communities. These challenges are exacerbated due to the exponential growth of video streaming and two-way videoconferencing services over the past few years – and particularly during the COVID-19 pandemic. To our knowledge, there is no upper limit to the amount of data overage fees that consumers must pay.

E42. Recommendation: The Commission should require Northwestel to conduct a review of the actual costs to provide household data, and enforce an upper limit to data overage fees. Eliminate overage fees but ensure packages are still affordable: consider requiring more bandwidth allocation; measures to increase competition; or targeted consumer subsidies.

Q13: Changing Northwestel’s retail tariffed services

E43. We intend to comment on this issue in the next phase of the proceeding.

E44. Recommendation: The CRTC should require Northwestel to make information regarding installation fees, security deposits, suspension and disconnection of service,

and refunds for outages publicly available on its website, including in Indigenous languages.

Q14: New conditions of service on satellite providers?

E45. The Commission may need to establish targeted subsidies for low income consumers utilizing ALL providers, including satellite providers.

E46. The CRTC should set targets for reliability and other QoS metrics for satellite operators and require them to provide annual reports to the Commission.

Q15: Any other actions to improve affordability?

E47. Targeted subsidies for low-income residents of the Far North should be implemented. Operational subsidies or other supports for non-profit service providers in rural/remote regions can lower rates and increase competition.

E48. The Commission should also consider technical and organizational solutions. Anchor tenants such as schools and local governments often lease capacity that is used primarily during the daytime. Local providers should be encouraged and funded to establish community intranets to share online resources such as school instruction throughout the community.

Q16: Affordability of local (home phone) service rates?

E49. Voice and 'plain old telephone services' (POTS) are still important in the Far North. ILECs including Northwestel should not be able to waive their obligation to serve these communities. It is at best premature to allow mobile service to be substituted for fixed lines, which are still important in northern communities.

E50. The lack of wholesale competition for voice services affects prices for consumers. Specifically, the affordability of local (home phone) service rates in rural/remote NWT communities is impacted by the ability of third-party providers (CLECs) to offer services.

Q17: Should CRTC re-introduce a local service subsidy for home phone service?

E51. While POTS remains important to Northern consumers, a local service subsidy should not remain restricted to telephony. It should also include retail Internet services.

Q18: Northwestel's capital investment plan and growth technology

E52. Many respondents in Phase 1 of these proceedings requested that Northwestel should clearly and publicly report detailed financial statements on project spending and profits in an accessible way. Northwestel was required for some years to submit reports to the CRTC that included some financial information at the end of each yearly report. Unfortunately, it appears that these reports came to an end in 2018.

E53. Recommendation: the CRTC should require Northwestel to make its financial and planning information publicly available.

Q19: New subsidy for retail in Far North?

E54. The CRTC should introduce a new subsidy to reduce the rates charged for retail Internet access services in *all* communities in the Far North. This subsidy should be provided to all low-income subscribers in the Far North, and should be portable (available to use with any provider/technology) and include both voice and Internet access.

E55. The United States provides several operational subsidy programs that target high-cost regions, schools and libraries, and low-income subscribers. These examples, and our response, discusses issues to consider when developing a subsidy in the context of these proceedings.

Q20: Improving quality of service / speed of Northwestel's Network

E56. The CRTC should take action to improve the quality of Northwestel's network, including issues related to speed, bandwidth and latency. The Commission should utilize actual vs advertised speeds in any measures and evaluations.

E57. Recommendation: The CRTC should support more robust data collection, including user experience monitoring.

Q21: Improving reliability of Northwestel's Network

E58. The Commission should take action to improve the reliability of Northwest's network, in both day-to-day operations and during extreme events such as emergencies. This should include the training and hiring of local technicians in small-population, rural/remote communities.

Q22: Northwestel's network improvement plan

E59. Northwestel should be required to submit a network improvement plan that provides details regarding upgrades to transport facilities, network redundancy, and upgrades, expansions and improvements of services. The CRTC should provide details concerning how monitoring and oversight of funded projects will be carried out in the Far North.

Q23: Complaint resolution process

E60. Existing mechanisms such as the *Internet Code* are not helpful to Northern consumers given the lack of competition. Complaints processes of both the CRTC and CCTS should be improved and simplified, and be made more accessible to the needs of Northern consumers.

Q24: CRTC actions to improve how telecommunications services are offered or provided

E61. Plans should more clearly adhere to 'actual' vs 'advertised' speeds. More Indigenous language content should be included in marketing materials and contracts. A telephone

service could provide supports in Indigenous languages as well as employment opportunities for Northerners.

Q25: Meaningful engagement with Indigenous communities

E62. It is important that the CRTC imposes requirements and expectations on service providers with regard to meaningful engagement with Indigenous communities. This should include explicit requirements, including for the duty to consult and free, prior and informed consent. Some examples exist in the U.S. , such as the FCC Tribal Government Engagement Obligation.

E63. There are few details provided in Northwestel's Community Engagement report. The Commission should make public the full unredacted version of this report.

Q26: How might consumers benefit from competition?

E64. Northern residents desire competition and want to see new ISP/s (alternative choices) in the North. These might include non-profit, community or Indigenous providers. However, these alternative providers face significant barriers when working to provide services in these contexts, as we have documented in previous proceedings such as 2019-406 and 2020-366.

Q27: Which benefits of competition are most important to consumers?

E65. In our opinion, **all** of these benefits are important to consumers, and are interrelated and connected. Innovation is important so that Northerners benefit from new technologies and services, and innovative means of delivering them. Increased affordability, reliability and QoS are all important, but they may be related to lack of competition and oversight.

Q28: Northwestel's Wholesale Analysis

E66. Northwestel should be required to provide access to its transport network at reasonable rates.

Q29-39:

E67. We intend to address selected topics in these questions in future phases of this proceeding.

Other Northern Regions:

E68. We note that conditions in many northern parts of the provinces are similar to those in Northwestel's service area: small isolated communities, no year-round roads, harsh climate and geography, and so on. The CRTC should therefore consider implementing a similar regulatory framework for Bell companies serving remote regions of northern Manitoba, northern Ontario, Northern Quebec/Nunavik, and Labrador.

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