

# **Telecom Notice of Consultation CRTC 2019-45**

## **Call for comments – Application Guide for the Broadband Fund**

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### **Submission of the First Mile Connectivity Consortium**

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## Executive Summary

E1. This document constitutes the intervention of the First Mile Connectivity Consortium (FMCC) to *Telecom Notice of Consultation CRTC 2019-45: Call for comments – Application Guide for the Broadband Fund*.

E2. The First Mile Connectivity Consortium (FMCC) is an incorporated independent not-for-profit national association. Our members are First Nations Internet service providers – what we call “community/regional intermediary organizations.” Our associate members are university and private sector researchers and others interested in Indigenous and community communications and telecommunication services for the public good.

E3. Indigenous service providers across Canada have innovated to develop and implement modern systems supporting digital infrastructure and services. Residents of these communities should not be restricted to act only as consumers of infrastructure and services – they can also act as producers, owners, and operators. These 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. Also, non-profit and Indigenous organizations exist to serve the needs of their communities. Indigenous organizations need access to the resources to build and deliver the infrastructure that can provide the required bandwidth and quality of service to their communities.

E4. We welcome the Commission’s increasing recognition of and regulatory support for telecommunications infrastructure and services in rural, remote, Northern and Indigenous regions, including the outcomes of public proceedings in which we participated. However, FMCC member organizations and other small service providers continue to face significant barriers. The Commission needs to recognize the important distinctions between private sector commercial telecom providers, not-for-profit regional organization providers, and individual community providers.

E5. We are concerned that certain aspects of the current draft of the *Application Guide for the Broadband Fund* reflect the interests of well-resourced, urban-based, corporate telecommunications providers and omit some of the unique considerations that apply to non-profit and Indigenous providers. The FMCC files these comments on the Commission’s *Application Guide for the Broadband Fund* to highlight issues that need to be addressed in the final version of the *Guide*.

E6. We agree with the Commission’s statement that certain information may be disclosed in its funding decisions. However, we disagree with the Commission’s proposal to shorten the time in which applications may be filed to review and rescind, or vary, a funding decision. We submit that the deadline should remain at 90 days.

E7. With respect to the required investments made by applicants to the Fund, we stress that this requirement should vary depending on the status of an organization; for example if it is an Indigenous and/or non-profit organization, as opposed to a commercial entity. For Indigenous and/or non-profit organizations, this requirement should include reduced or waived financial contributions and in-kind contributions in lieu of cash contributions. While “in-kind contributions” are included in *Appendix 1: Definitions*, it is unclear whether they

apply here. As well, for Indigenous and/or non-profit organizations, this requirement should include existing investments made by applicants.

E8. With respect to geographic eligibility, we reserve the right to correct and/or augment information in maps and data sets.

E9. With respect to coordination of funding with governments and sharing of information, for Indigenous providers, such funding should include funding from existing broadband infrastructure and connectivity programs. As well, funds contributed by the various agencies, including the CRTC, should be managed with common criteria and guidelines. To support this task, we propose the establishment of an Indigenous Communications Funding Oversight Council that includes representatives of involved funding agencies and Indigenous stakeholders.

E10. With respect to access projects, we stress that they must include access to the support structures required to deploy local access infrastructure, for example towers, poles, shelters and enclosures. We highlight a number of significant challenges that FMCC member organizations face in access to these support structures, which are considered an “eligible cost” for the Broadband Fund. These challenges include: high costs to access support structures in First Nations communities; lack of certainty with respect to regulations and rules governing access; lack of certainty with respect to the timeline for authorization of access permits; limited maintenance of existing support structures; limited choice of contractors who can install and/or maintain support structures; and lack of ability to report complaints or provide input into rules and regulations.

E11. With respect to community consultation eligibility criteria, we have concerns with respect to the specific language about Community Consultation in the *Guide*. The Commission should delete the phrase: “attempted to consult”. Applicants must show that they have consulted and provided clear information about proposed projects. The Commission should include examples of specific criteria and evidence to define “the quality and outcome of the consultations and the involvement of the community.” Consultation should also include “meaningful consultation and informed consent” in the case of Indigenous communities. Further, a “market study” is not adequate evidence of consultation. It could be done using available information (e.g. population, average income, public service institutions, local businesses, etc.) without any interaction with the community.

E12. We are also concerned that the *Guide* is focused on providing information to applicants rather than to the communities that will be impacted by funding projects. Therefore, we propose that the Commission prepare (or review and approve) a *Broadband Fund Overview Document* (FAQ for Community Engagement). This information should include clear and plain language definitions and explanation of the division of roles and responsibilities of project applications, including details on ownership, operations, and the requirement for meaningful consent with Indigenous communities. This should also include information about open access, including pricing.

E13. With respect to pricing, we note that provinces include remote regions similar to those in the Territories. We therefore believe that additional cities in the provinces should be included for comparability. Conversely, we note that in the Territories, the “major urban centres” particularly Iqaluit, have prices significantly higher than those in major urban

centres in the provinces. Using these benchmarks will result in a permanent broadband affordability divide.

E14. With respect to mobile wireless projects, we note that spectrum access and licensing rules must support small and non-profit community and Indigenous providers.

E15. In terms of financial information about the project, we note the *Guide*'s requirement that applicants must provide "an irrevocable letter of credit from the lending institution, if relying on credit." This requirement raises a barrier for Indigenous and non-profit organizations that face challenges in securing credit for multi-million dollar projects; many Indigenous communities are limited in their ability to apply for credit because of existing conditions regulating the operations of Indigenous communities. Given these challenges, we recommend that applicants instead provide historical examples of the successful development and operation of similar infrastructure initiatives. Examples could include projects such as: electrification, water and waste-water, roads, airports, and so on.

E16. Regarding the awarding of funding only as periodic reimbursements for costs, we disagree with this procedure because it will not meet the needs of under-resourced not-for-profit applicants, who require upfront payment in order to commence a project. The Broadband Fund should instead provide an initial start-up portion of the approved project funding.

E17. With respect to conditions of funding, the Broadband Fund should specify that compliance and enforcement of obligations are required for all licensees and for funded projects. The language should include how oversight will be provided, and how compliance will be enforced.

E18. Regarding the application process, the deadline for applicants should be not less than six months after the call for proposals is announced. FMCC members indicate that between 8 and 18 months may be required to develop a proposal of the complexity required for the Broadband Fund.

E19. We believe that, in addition to those cited, eligible costs should include costs for leasing land, buildings, and other facilities, including permanent shelters for housing network-related equipment (except for temporary facilities directly related to project construction. We note that these may need to be leased rather than constructed in some communities. Second, financing or carrying costs, loan costs, and interest payments should be included, as they may be required for non-profits and Indigenous projects without sufficient available capital. Third, costs related to developing the application for funding should be eligible for support for nonprofits and Indigenous organizations that do not have sufficient in-house expertise for all of the planning tasks, nor available funds to pay for these services.

E.20. The Fund should also include recognition of in-kind contributions of community lands and equipment to complete construction requirements, for example, for fibre builds. Many of these costs can be absorbed in-kind by an engaged community.

## Introduction and General Comments

1. The First Mile Connectivity Consortium (FMCC) is an incorporated independent not-for-profit national association. Our members are First Nations Internet service providers – what we call “community/regional intermediary organizations.” Our associate members are university and private sector researchers and others interested in Indigenous and community communications and telecommunication services for the public good. Our work focuses on innovative solutions to digital infrastructure and services with and in rural and remote regions and communities across Canada. More details about our members and activities is available: <http://firstmile.ca>
2. Digital services are essential for the social, cultural, and economic development of rural and remote Indigenous communities and their residents.<sup>1</sup> Under the *Telecommunications Act*, Canada’s telecommunication policy includes the objective “to render reliable and affordable telecommunications services of high quality accessible to Canadians.”<sup>2</sup> However, there is a paradox in the development and delivery of communications services in these regions: rural/remote communities with the worst transportation links and highest needs (due to a lack of ‘brick and mortar’ services) often have the worst access, lowest quality of service, and most expensive communications services.<sup>3</sup> This condition is partly due to market failure, since populations in remote regions may be too small and distances too great to generate the revenue and profits required by commercial communications companies.
3. Faced with this challenge, Indigenous service providers across Canada have innovated to develop and implement modern systems supporting digital infrastructure and services.<sup>4</sup> First Nation organizations and regional networks, including FMCC member organizations, provide services to both institutions (e.g. health and education) and households. These organizations utilize a “whole community approach” that frames broadband as an ecosystem of: 1) residents and households; 2) community institutions (“anchor tenants” including health centres, schools, businesses, etc.); and 3) regional transport infrastructure connecting multiple communities. This approach recognizes the goal of sustainability of infrastructure and services in these regions and communities.
4. Opportunities for residents of rural, remote, Northern and Indigenous communities to substantively contribute to and benefit from this work requires recognition of a range of development approaches. Residents of these communities should not be restricted to act only as consumers of infrastructure and services – they can also act as producers, owners, and operators. These 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.

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<sup>1</sup> Research contracted by Industry Canada/ISED, see: <http://firstmile.ca/wp-content/uploads/2016-ISED-FMCC.pdf>

<sup>2</sup> *Telecommunications Act*, Section 7(b).

<sup>3</sup> See: <http://www.northernpublicaffairs.ca/index/volume-6-special-issue-2-connectivity-in-northern-indigenous-communities/a-whole-community-approach-for-sustainable-digital-infrastructure-in-remote-and-northern-first-nations/>

<sup>4</sup> For an overview of projects, see: <http://firstmile.ca/wp-content/uploads/Stories-from-the-First-Mile-2018.pdf>

5. Also, non-profit and Indigenous organizations exist to serve the needs of their communities. As noted below (para 100) commercial providers may leave government-funded projects incomplete, as was the case with Bell Canada in northern Ontario. Indigenous organizations need access to the resources to build and deliver the infrastructure that can provide the required bandwidth and quality of service to their communities.
6. We welcome the Commission's increasing recognition of and regulatory support for telecommunications infrastructure and services in rural, remote, Northern and Indigenous regions, including the outcomes of public proceedings in which we participated, particularly CRTC 2015-135 (Review of Basic Telecommunications Services) and CRTC 2017-112 (Development of the Commission's Broadband Funding Regime).
7. However, FMCC member organizations and other small service providers continue to face significant barriers to the deployment, operations and sustainability of telecommunications facilities and services in their regions and communities. The Commission needs to recognize the important distinctions between private sector commercial telecom providers, not-for-profit regional organizations, and individual community providers.
8. We are concerned that certain aspects of the current draft of the *Application Guide for the Broadband Fund* reflect the interests of well-resourced, urban-based, corporate telecommunications providers and omit some of the unique considerations that apply to non-profit and Indigenous providers.
9. For example, we note the significant barriers that FMCC organizations face in attempting to access local Support Structures (e.g. towers, poles, shelters and enclosures) owned and/or managed by incumbent telecommunications companies. We note the challenges of such non-profit organizations in securing credit for their initiatives. We also point out the challenging funding ecosystem for Indigenous broadband that such organizations must navigate – and the need for funds contributed by various government departments and agencies, including the CRTC, to be managed with common criteria and guidelines. To support this task, we propose the establishment of an Indigenous Communications Funding Oversight Council that includes representatives of involved funding agencies and Indigenous stakeholders (see para 30 below).
10. The FMCC files these comments on the Commission's *Application Guide for the Broadband Fund* to highlight issues that need to be addressed in the final version of the *Guide*. In particular, we draw attention to aspects of the *Guide* that should better recognize and mitigate the barriers and constraints faced by small, nonprofit and Indigenous providers.

### **Comments on Telecom Notice of Consultation CRTC 2019-45**

11. We agree with the Commission's statement that "the following information may be disclosed in its funding decisions: the funding recipient, the number of households that will be served, the amount of funds awarded, the geographic location of the project, the technology to be implemented, and the selection considerations that supported the selection of the project" (para 13).

12. We also concur that the Commission may “disclose information in the application in respect of which confidentiality may have been claimed, to third parties and government bodies, as it deems necessary, in order to verify the information” (para 14).
13. We note that the Commission proposes to shorten the time in which applications may be filed to review and rescind, or vary, a funding decision: “the Commission proposes to vary this rule such that applications to review and rescind or vary a funding decision must be filed within 30 days of the date of the funding decision” (para 15).
14. **We disagree with the proposed revised deadline of 30 days, and submit that the deadline should remain at 90 days.** Indigenous organizations may require more time to get information on the decision to partners, consult with communities, and formulate a response to any issues of concern raised in the funding decision. Consultation with communities, which we regard as fundamental to the development and sustainability of broadband infrastructure and services, is required in the *Application Guide*. Our position is that community consultation must be required to discuss the outcome and next steps concerning a negative funding decision.

## Comments on Appendix to Telecom Notice of Consultation CRTC 2019-45: Preliminary Application Guide for the Broadband Fund

### Section 4: General Guidelines

#### Section 4.1 – Who can apply?

15. This section states: “The applicant, or at least one member of a partnership, joint venture, or consortium must have at least three years of experience in deploying and operating broadband infrastructure, and must be eligible to operate as a Canadian carrier.” We note that some applicants may have less than 3 years’ experience in deploying and operating broadband infrastructure at the time of filing their application. **The requirement should simply be to show that they do have relevant experience, not to specify number of years.**

#### Section 4.2 – Scope of applications

16. This Section notes that applicants to the Fund “must invest an amount in their project that is more than a nominal amount given the nature of the project”. We raise several points with respect to this requirement, and the definition of investments of “more than a nominal amount”:
- **This requirement should vary depending on the status of an organization**, for example if it is an Indigenous and/or non-profit organization, as opposed to a commercial entity. In the past, ISED and other funders provided exemptions for First Nations projects. For example, ISED’s *Connecting Canadians* program’s contribution limit is higher for projects that would serve Indigenous communities. According to the program’s FAQ website: “The program provided up to 75 percent of eligible project costs, compared to 50 percent for the rural component of the program. In addition, projects that serve Indigenous communities may receive up to 100 percent of eligible costs from federal sources if they are able to obtain complementary funding from other federal departments or agencies”.<sup>5</sup>
  - **For Indigenous and/or non-profit organizations, this requirement should include reduced or waived financial contributions and should allow in-kind contributions in lieu of cash contributions.** While “in-kind contributions” are included in *Appendix 1: Definitions*, it is unclear whether they apply here.
  - **For Indigenous and/or non-profit organizations, this requirement should include existing investments made by applicants.** For example, if an applicant has already invested in a feasibility study for a broadband infrastructure project, that expenditure should be included as an eligible contribution.
17. We also find the following statement confusing: “... an application cannot be contingent on ... (iii) funding from another program to be received in the future.” As noted above, an applicant may have applied for funding from another source, and that application may have been approved, but the funding has not yet been received by the applicant. It appears

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<sup>5</sup> See section titled, “How much funding does the program provide?” here: <https://www.ic.gc.ca/eic/site/028.nsf/eng/50010.html>



under Section 4.6 that funding from other programs is acceptable. This statement needs to be clarified.

### Section 4.3 – Geographic eligibility

18. We note that this Section states that: “the CRTC recently published maps and associated data sets based on 2017 information here: <https://crtc.gc.ca/eng/internet/band.htm>”. **We reserve the right to correct and/or augment information in these maps and data sets.**
19. There is limited reliable, robust connectivity data currently available in many rural and remote regions of Canada. This lack of data hinders attempts to monitor whether progress is being made to deliver improved broadband to these areas. Some Indigenous organizations are collecting their own connectivity data. For example, several FMCC member organizations are currently involved in a project that uses inexpensive (similar to Raspberry Pi) devices to assess internet speeds of participating homes and businesses of First Nations. This project utilizes CIRA’s Internet Performance Test to test the speed and quality of internet connections.<sup>6</sup>
20. There are problems with existing mapping methodologies for communications facilities. For example, both ISED and the CRTC indicate they will use 25 Km<sup>2</sup> hexagons to determine areas eligible for infrastructure funding. The CRTC notes: “[A] hexagon will be identified on the Commission’s eligibility maps when at least one household is present within its bounds” (para 83). This hexagon monitoring approach is problematic for many First Nations (and other communities), since a single point of connection is interpreted as indicating the availability of services for a whole community. There are many examples of First Nations in Alberta with significant access inequalities inside a community, such as Maskwacis First Nation (e.g. *Broadband Bruce* documentary).<sup>7</sup>
21. The *Guide* should include a request that potential applicants bring to the Commission’s attention any inaccuracies found by applicants in the CRTC’s maps and associated data sets, and the CRTC should make any corrections publicly available for project planning.

### Section 4.4 – Project costs

22. This Section states that: “... only costs that are directly related to the project and its required capacity to provide broadband services in the eligible geographic area(s) will be covered. For example, costs for excess capacity (e.g. excess speeds above the speeds committed to for an access project) that is not required for the project will not be eligible.”
23. The clause above would inhibit communities from cost-effective strategic planning and may force applicants to make unnecessarily expensive investments in the future. We point out that in order to accommodate future needs such as new and higher speed applications and requirements of high bandwidth users such as anchor institutions, **excess capacity should be included in the project**. Otherwise, providers may need to finance overbuilds or other expensive upgrades to accommodate these requirements in the future.

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<sup>6</sup> For more information, see: <https://www.cybera.ca/news-and-events/news/testing-the-gaps-in-first-nations-internet-access/>

<sup>7</sup> *Broadband Bruce: Fighting Canada’s Digital Divide*, is available for viewing here: <https://www.youtube.com/watch?v=IJUZcMjTOVI&vl=en>

24. **Fibre networks should also be designed to include “dark fibre”** that may be activated in the future.

#### Section 4.6 – Coordination of funding with governments and sharing of information

25. This Section notes that “the CRTC will consider a project to be of higher quality based on a greater level of funding received from sources other than the Broadband Fund [e.g. government funding].”
26. **For Indigenous providers, such funding should include funding from existing broadband infrastructure and connectivity programs.** Several federal departments and agencies already provide funding for Indigenous telecommunications services, including INAC (Indigenous and Northern Affairs Canada) and FNIHB (First Nations and Inuit Health Branch), to be merged into ISC (Indigenous Services Canada). These government agencies play important roles in funding Indigenous broadband infrastructure and services. We note that while helpful, these programs utilize varying criteria, deadlines, and types and levels of support. We propose a unified approach to federal funding of facilities and services for Indigenous communities.
27. **Funds contributed by the various agencies, including the CRTC, should be managed with common criteria and guidelines. To support this task, we propose the establishment of an Indigenous communications funding oversight council that includes representatives of involved funding agencies and Indigenous stakeholders.** Such a council could communicate the range of existing funding programs and projects already in place, so that projects supported by the Broadband Fund could harmonize with them.
28. We note that in this Section, the *Guide* states that: “Applicants must provide information on all other confirmed sources of funding for the project and must indicate whether they have applied for other sources of funding for which decisions might not yet have been issued.”
29. Timing of funding decisions also varies across agencies. With respect to funding for broadband infrastructure, we request clarification of whether existing proposals that are currently under consideration with government programs can be noted as forthcoming contributions in applications to the Broadband Fund. For example, FMCC member organizations have a number of projects that are waiting for funding approval.
30. Also, see above for our comments on Section 4.2, which states that: “an application cannot be contingent on ... (iii) funding from another program to be received in the future”. **These items need to be clarified to provide guidance to applicants.**

## **Section 5: Project Types**

### Section 5.2 – Access projects

31. This section refers to: “all the equipment and material required to connect communities to the nearest PoP”. **This necessarily includes access to the support structures required to deploy local access infrastructure, for example utility poles, towers, and other co-location support structures.** See our comments on these support structures under “Eligible Costs” below (paras 107-124).

## **Section 6: Eligibility**

### Section 6.1.1(d) – Eligibility criteria for applicants – Broadband infrastructure experience

32. This Section notes that applicants must have a minimum of three years’ experience in deploying and operating broadband infrastructure in Canada. As we note above (para 16), some applicants may have less than 3 years’ experience in deploying and operating broadband infrastructure at the time of filing their application. The requirement should simply be to show that they do have relevant experience.

### Section 6.1.1(e) – Eligibility criteria for applicants – Defined roles and responsibilities

33. This Section indicates that applicants must identify which entity will:

- retain ownership of the network assets;
- be responsible for building the network; and
- be responsible for the network’s operation.

34. We welcome this clear division of roles and responsibilities of project applications. We note that this is important information not only for the Commission, but also for affected communities, because it will help communities make informed decisions with respect to the immediate and long-term impacts of projects.

35. Therefore, this information should be made available in a clear and informative manner as a requirement of community engagement. **This information, including a clear and plain language definition and explanation, should be included in the proposed ‘Broadband Fund Overview Document (FAQ for Community Engagement)’** so that community representatives are informed of consultation requirements and the information they are entitled to from any entities applying to the Fund. (See discussion of this Document in para 40).

### Section 6.1.2(b) – Eligibility criteria – Applicant investment

36. This Section refers to applicants investing “more than a nominal amount”. Please refer to our discussion of this issue in para 15 above.

### Section 6.1.2(c) – Eligibility criteria – Community consultation

37. We agree with the Community consultation requirements noted in the *Broadband Fund Guide*. This reflects the recognition of the House of Commons Standing Committee’s *Report on Broadband Connectivity in Rural Canada* that community engagement is a key

component of broadband development policy.<sup>8</sup> **However, we have concerns with respect to the specific language about Community Consultation in this section.** We also note a seemingly broad definition of parties to consultation, which includes: “individuals, elected officials, community associations, or other representative bodies.”

38. First, this section states “... an applicant must provide evidence that it has consulted, or **attempted to consult**, with communities affected by the proposed project, either directly or through community representatives at the provincial, territorial, and/or municipal level, or in the case of Indigenous communities, at the band council or Indigenous government level”. **The Commission should delete the phrase: “attempted to consult”.** Applicants must show that they have consulted. It is not sufficient to state that applicants attempted to consult. They must provide evidence that they have consulted with communities and provided clear information about proposed projects. This should also include their responses to any issues raised by the communities.
39. The Section further states: “...this eligibility criterion focuses on demonstrating that consultations have been undertaken **or attempted**”. For similar reasons, the Commission should **delete** the phrase: “**or attempted**”.
40. The Section also notes: “...the quality and outcome of the consultations and the involvement of the community will also be considered as part of the CRTC’s assessment.” **We support this requirement, but believe that the Commission should include examples of specific criteria and evidence to define “the quality and outcome of the consultations and the involvement of the community.”** Such approaches to consultation benefit both communities and service providers, through the exchange of information regarding development and ongoing sustainability of telecommunications infrastructure and services, particularly in rural, remote, Northern and Indigenous regions.
41. Despite requirements for community consultation, we are concerned that the *Guide* is focused on providing information to applicants rather than to the communities that will be impacted by funding projects. We also raise concerns about a lack of clarity about the information that applications are providing to the parties in the consultation, such as specific information to be provided, potential benefits, costs and impacts, to communities, and any requested contributions by communities (access to existing infrastructure and facilities, etc.) Also, communities must receive information on how they can hold applicants to account, concerning agreements and/or promises made during the consultation process.
42. **Therefore, we propose that the Commission prepare (or review and approve) a Broadband Fund Overview Document (FAQ for Community Engagement).** This document should be distributed by applicants to communities at least three (3) weeks prior to any planned community engagement activities. The information contained in this Document should clearly outline the following points:
  - Summary of the proposed project and its impact on the community.
  - Adequate notice of the consultation, including a clear timeline for the consultation process, the date the consultation will begin (at least three weeks after the

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<sup>8</sup> See: <https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9604427>

applicants' Overview Document is submitted to the community), and when the consultation period is expected to end.

- Information that a community representative should be aware of during consultation with fund applicants.
- A set of questions that applicants must address in their consultations with communities.
- Reference to consultation requirements of the Fund, including Aboriginal and treaty rights.
- Terms and conditions of any proposed partnership, joint venture or consortium involving the community. This includes identifying which entity will: retain ownership of the network assets; be responsible for building the network; and be responsible for the network's operation. We note that the defined list of roles and responsibilities noted above in our discussion in paras 31-33 will be useful to parties to community engagement.
- Contact information that the community can use to request more details.

43. We also note that community consultation may take place: before, during and after an application is made to the Broadband Fund. Community engagement must not be treated as an early-stage opportunity for communities to comment on decisions, but rather an ongoing relationship between equal stakeholders. (Also see our comment in para 13 that the Commission should not shorten the time in which applications may be filed to review and rescind, or vary, a funding decision to allow time for community consultation, as well as other reviews.)

44. We note that consultations regarding Aboriginal and treaty rights should include discussions about the right of applicants to access and build on traditional lands and/or Indigenous territories. The Government of Canada uses the following definition of consultation, as outlined in "Guiding Principle No. 4" in *Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* (March 2011):

"Consultation and accommodation will be carried out in a manner that seeks to balance Aboriginal interests with other societal interests, relationships and positive outcomes for all partners. A meaningful consultation process is one which is:

- carried out in a timely, efficient and responsive manner;
- transparent and predictable;
- accessible, reasonable, flexible and fair;
- founded in the principles of good faith, respect and reciprocal responsibility;
- respectful of the uniqueness of First Nation, Métis and Inuit communities; and,
- includes accommodation (e.g. changing of timelines, project parameters), where appropriate."<sup>9</sup>

45. We believe that this language should also be included in the *Broadband Fund Guide*.

46. Applicants to the Broadband Fund must also recognize the articles in the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP) and the calls to action issued by the Truth and Reconciliation Commission of Canada (TRC). Concerning

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<sup>9</sup> See: <https://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675>

telecommunications, we highlight in particular TRC Call to Action #92, on “Business and Reconciliation”:

“92. We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

i. Commit to **meaningful consultation**, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.

ii. Ensure that Aboriginal peoples have **equitable access to jobs, training, and education opportunities** in the corporate sector, and that Aboriginal communities **gain long-term sustainable benefits** from economic development projects (**emphasis added**).<sup>10</sup>

47. We note that the *Minister of Innovation, Science and Economic Development Mandate Letter* (November 12, 2015) also states the importance of generating economic development and jobs for Indigenous peoples. One of the top priorities in the *Mandate Letter* is to: “Work with the Minister of Indigenous and Northern Affairs and the Minister of Employment, Workforce Development and Labour to promote economic development and create jobs for Indigenous Peoples.”<sup>11</sup>

48. We are pleased to see recognition of Indigenous communities in the *Broadband Fund Guide*. We stress the importance of recognizing Indigenous lands and jurisdiction, and Aboriginal and Treaty Rights, in the application and consultation process associated with the Broadband Fund. We support the CRTC’s statements in 2018-377 that “The Commission may give special consideration to proposed projects that would serve Indigenous communities”. We also support the CRTC’s statements in 2018-377 that it “expects applicants to identify any established or asserted Aboriginal or treaty rights that might be affected by the proposed project and to commit to undertaking any further consultations that may be necessary” (paras 219-224). **This language should apply to all applicants for projects that involve providing services on Indigenous lands.**

49. First Nations hold jurisdiction over rights-of-way in their territories; they are not municipal governments. Assets such as rights-of-way are the responsibility of and governed by the Nation and therefore must be recognized as such. Specific language concerning Indigenous land and treaty rights and procedures to be used in obtaining access to land and rights-of-way should be included in the *Broadband Fund Guide*.

50. Section 43/(3) of the *Telecommunications Act* states: “No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.” We note that public authorities

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<sup>10</sup> See: [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf), p.9.

<sup>11</sup> See: <https://pm.gc.ca/eng/minister-innovation-science-and-economic-development-mandate-letter>

include Tribal Council, Band Councils, and other Indigenous governments, and that specific language referring to them should be included in the *Broadband Fund Guide*.

51. In general, principles of **meaningful consultation** and **informed consent** of Indigenous communities must guide applications to the Broadband Fund, and we believe that this language should be incorporated in the *Guide*.

Section 6.1.3(c) – Transport project eligibility criteria – Open access

52. We support the inclusion in the *Guide* of open access requirements in both wholesale and retail contexts. **We stress that a clear understanding of Open Access is an important part of ensuring competition, innovation and affordability, and should be clearly defined in the *Broadband Fund Guide* for both applicants and the community representatives that they are consulting with.** In existing documents by ISED and the CRTC, the definition of this concept is somewhat unclear. For example:

- Open access (wholesale): “applicants will not be required to commit to any additional wholesale open access obligations other than existing regulatory obligations, such as wholesale high-speed access services, with respect to the [local] access portion of a proposed project” (Telecom Regulatory Policy CRTC 2018-377, para 193).
- Open access (retail): “applicants should be required to commit to offering retail open access to transport infrastructure... [T]o be eligible for funding... an applicant that proposes a project to build or upgrade transport infrastructure must commit to providing retail open access to that infrastructure” (Telecom Regulatory Policy CRTC 2018-377, para 203).

53. **Pricing guidelines should be included in the *Guide*.** There are examples of transport infrastructure in remote regions that is ostensibly open access but where the pricing by the carrier effectively excludes use by any other provider. For example, in response to Northwestel’s request to the CRTC for forbearance from the regulation of the Wholesale Connect Service in communities served by the Mackenzie Valley Fibre Link. FMCC noted its concerns that lack of pricing regulation could limit the accessibility and affordability of such wholesale bandwidth services for communities and community-based ISPs operating in the Mackenzie Valley over the long term.<sup>12</sup> In *Telecom Decision 2017-300*, the CRTC denied Northwestel’s request.<sup>13</sup>

Section 6.1.3(e) – Access project eligibility criteria – Minimum service speeds

54. This Section notes that: “The minimum speed requirements for projects to be considered for funding under the CRTC’s Broadband Fund are 25 Mbps download and 5 Mbps upload. For projects that do not commit to meeting the 50/10 Mbps aspirational targets upon completion, the CRTC will evaluate, in the assessment stage, the scalability of the project proposal to upgrade access capacity to meet the aspirational speed targets within five years of the project completion date.”

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<sup>12</sup> See: <http://firstmile.ca/wp-content/uploads/FMCC-CRTC-NWTel-Forbearance-Letter-Mar9.pdf>

<sup>13</sup> See: <https://crtc.gc.ca/eng/archive/2017/2017-300.pdf>

55. **We believe that the 50/10 criteria should be required for access projects**, in line with the CRTC's targets as specified in CRTC Telecom Regulatory Policy CRTC 2016-496. Otherwise, applicants should be **required to guarantee** that they will upgrade to 50/10 within 5 years of project completion, and to state how they will achieve this goal (in terms of technical and business plans).
56. We also note that the CRTC's criteria could result in project communities not receiving 50/10 service until at least **8 years** from now (allowing for project planning and construction time plus 5 years) – so at least until the year 2027.

Section 6.1.3(f) – Access project eligibility criteria – Pricing and affordability

57. This Section notes that: “These packages must include rates that are identical to or lower than those offered by a facilities-based service provider in one of the major urban centres or communities listed in Appendix 3, in the project's province or territory for reasonably comparable speed and capacity packages.”
58. **We note that provinces include remote regions similar to those in the Territories. We therefore believe that additional cities in the provinces should be included for comparability for projects proposed for remote regions of the provinces.** For example, for remote projects in BC, include Prince George and Fort St. John. For remote regions in Ontario, include Thunder Bay and Sudbury.
59. **Conversely, we note that in the Territories, the “major urban centres” particularly Iqaluit, have prices significantly higher than those in major urban centres in the provinces. Using these benchmarks will result in a permanent broadband affordability divide.** Applicants for Nunavut, for example, should use benchmarks required for Labrador or Nunavik in northern Quebec.

Section 6.1.3(h) – Mobile wireless project eligibility criteria – Pricing and affordability

60. Please see our comments for 6.1.3(f) above that should also apply to wireless projects.
61. **With respect to mobile wireless projects, we note that spectrum access and licensing rules must support small and non-profit community and Indigenous providers.** We agree with recent ISED and CRTC decisions and policies that support small ISPs and community initiatives. Effective spectrum management and regulation should support small and non-profit community operators and not only incumbents and other large providers.<sup>14</sup> We recognize that spectrum management and allocations are the responsibility of ISED, but note the constraints faced by small and Indigenous providers who want to access spectrum.
62. We note that some Indigenous organizations have utilized spectrum, where available, to provide mobile services to their populations. For example, see K-Net Mobile in

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<sup>14</sup> Organizations including the International Telecommunications Union (ITU) Development Bureau have recommended that administrations consider mechanisms to facilitate the development of broadband services in rural and remote areas by small and non-profit community operations. Recommendation ITU-D 19. WTDC 2017 report.  
[https://www.itu.int/en/ITU/Conferences/WTDC/WTDC17/Documents/WTDC17\\_final\\_report\\_en.pdf](https://www.itu.int/en/ITU/Conferences/WTDC/WTDC17/Documents/WTDC17_final_report_en.pdf)



Northwest Ontario.<sup>15</sup> However, existing spectrum licensing policies limit Indigenous activity in providing wireless services.

63. The Fall 2018 report of the Auditor General of Canada highlighted significant shortcomings in the existing spectrum management regime. As noted in that report:

“[S]mall Internet providers did not have sufficient access to high-quality spectrum to support broadband deployment in rural and remote areas. The Department [ISED] auctioned spectrum licenses for geographic areas that were too large for smaller service providers to submit bids for. Also, the secondary market for unused spectrum did not function well, partly because licensees had little business incentive to make unused spectrum available for subordinate licensing” (p.4).<sup>16</sup>

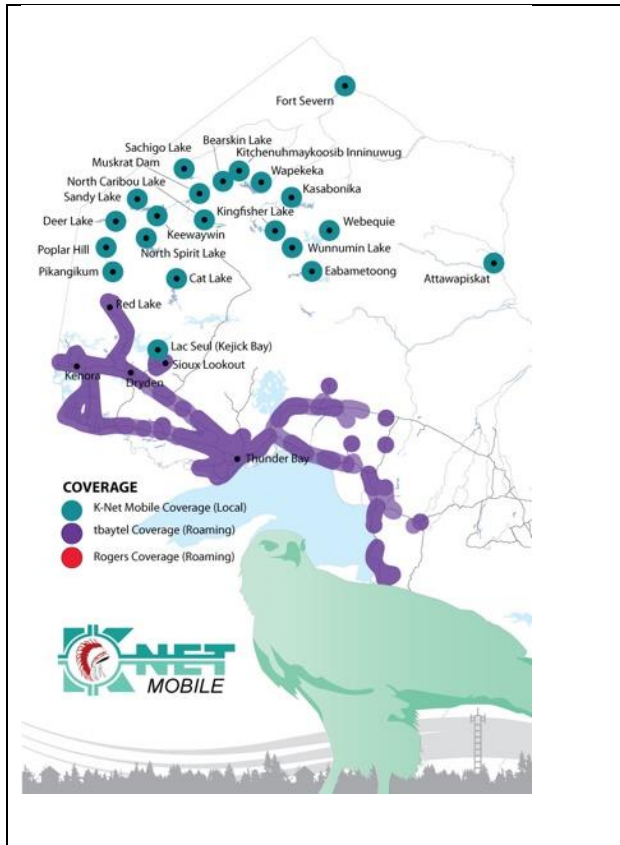
64. Given these concerns, there must be an examination of the classification of service tiers. In a previous response to Industry Canada spectrum consultation (SLPB-004-14), the FMCC commented on service tiers and minimum bids. We expressed our concerns with the geographic and population metrics used to determine existing tiers and corresponding licenses, and also noted that the expense of some proposed minimum bids are a challenge for independent, non-profit cellular providers serving rural, remote and Northern communities. We raised concerns that these high costs restrict the ability of these organizations to expand or establish their operations.
65. Specifically, we provided an example from the areas covered in Tier 2-09. In its sparsely-populated northern section, most communities are fly-in First Nations that are serviced by one of our members, an Indigenous provider called K-Mobile. As is clear from Map 1, KMobile’s service area focuses only on the northern regions of Tier 2-09. It does not include the more densely-populated and accessible southern regions of the Tier.

### **Map 1: K-Mobile Service Area: Remote Northern Ontario**

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<sup>15</sup> See: <http://mobile.knet.ca/>

<sup>16</sup> See: [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201811\\_01\\_e\\_43199.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_01_e_43199.html)



Source: <http://mobile.knet.ca/coveragearea>

66. We present this example to highlight how the existing composition of service tiers and corresponding spectrum licenses can restrict the ongoing development of infrastructure and services in expensive-to-service regions. Alternatively constructed service tiers might reflect different regional characteristics/population sizes/opening bids in ways that can support community-based service providers like K-Mobile as “operating new entrants” serving very remote communities. Therefore, the Broadband Fund should recognize the need to ensure a more inclusive approach to the distribution of spectrum licenses that reflects the diversity of providers.

Section 6.1.3(1) – Satellite-dependent community project eligibility criteria – Affordability

67. This Section notes: “Eligible projects must offer competitive retail pricing. Applicants must commit to offering packages at prices that are the same as or lower than those offered in Iqaluit, Nunavut, for reasonably comparable speeds and capacity.”

68. Please see our comments for Section 6.1.3(f) above. **Iqaluit has prices significantly higher than those in major urban centres in the provinces. Using these benchmarks will result in a permanent broadband affordability divide. Applicants for Nunavut should use benchmarks required for Labrador or Nunavik in northern Quebec.**

Section 6.2.1(b) – Assessment criteria – Financial viability

69. This Section notes that a risk assessment and mitigation plan should include “pricing risks in the supply of services”. **We note that this assessment should include access to support structures (e.g. electricity poles), which are a significant barrier faced by many projects in Indigenous communities.** Please see our discussion below under Eligible Costs.

Section 6.2.1(d) – Assessment criteria – Community consultation and level of involvement

70. We raised concerns with respect to community consultation requirements earlier, in paras 35-49.

71. This Section states: “This criterion will be used to ensure that (i) the applicant has consulted or attempted to consult with affected communities.”

72. **Delete “or attempted.” Applicants must show that they have consulted.** It is not sufficient to state that applicants attempted to consult. They must provide evidence that they have consulted with communities, including their responses to any issues raised by the communities.

73. This Section states: “Consultations and community support could take many forms, for example, **a market study.**”

74. **Delete “a market study.” A market study is not adequate evidence of consultation.** It could be done using available information (e.g. population, average income, public service institutions, local businesses, etc.) without any interaction with the community.

Section 6.2.2(b) Transport project assessment criteria – Number of PoPs for wholesale and retail transport services along the proposed route

75. This Section states: “A project will be considered to be of higher quality based on the number of PoPs provided along the proposed transport route.”

76. This criterion could potentially eliminate support for extending service to isolated regions where populations are small and distances between communities are much greater than in rural areas.

Section 6.2.2(c) Transport project assessment criteria – Number of communities and households that could be served

77. This Section states: “A project will be considered to be of higher quality based on a greater number of communities and households that would likely benefit from the project.”

78. These criteria could potentially eliminate support for extending service to isolated regions where populations are small and distances between communities are much greater than in rural areas.

Section 6.2.2(e) Transport project assessment criteria – Open access service offerings

79. This Section states: “This criterion will be used to assess whether varied and competitive services would be available as a result of the project. A project will be considered to be higher quality based on (i) how low prices would be for subscribers to wholesale and retail open access services, (ii) how high the service speeds would be, and (iii) how broad the range of services would be.”

80. **How are these criteria to be weighted?** For example, a project could propose high service speeds and a broad range of services, but propose excessive prices for open access. See comments under 6.1.3(c). There are examples of transport infrastructure in remote regions that is ostensibly open access but where the pricing by the carrier effectively excludes use by any other provider. The *Guide* should specify that failure to meet *any* of these open access criteria is unacceptable.

Section 6.2.2(f) Access project assessment criteria – Current gap with respect to the availability of universal service objective-level services

81. This Section states: “This criterion will be used to identify proposed projects to build or upgrade infrastructure where the current service availability in a given eligible geographic area is furthest from the universal service objective and where investment in broadband infrastructure is most needed.”

82. **We agree, but note our response to 6.2.2(c) above** that these may also be regions with small populations and significant distances between communities which appear to be given lower priority because of a relatively low number of households to be served.

Section 6.2.2(h) Access project assessment criteria – Coverage (2-A3)

83. This Section states: “This criterion will be used to determine the number of households to be served. A project will be considered to be of higher quality based on how many households would be served by the project, and the coverage density, which is the percentage of underserved households that would be served in the eligible geographic area(s).”

84. **These are two different criteria.** A project may propose to serve a relatively low number of households, but a high percentage of underserved households, for example in remote northern communities. Also, as noted above, a criterion of number of households served will penalize applicants proposing to serve small remote communities.

Section 6.2.2(m) Mobile wireless project assessment criteria – Household coverage

85. This Section states: “A project will be considered to be of higher quality based on how many households would be covered by the project.”

86. **We disagree. Quality should not refer to number of households served.** As noted above, a criterion of number of households served will penalize applicants proposing to serve small remote communities. Therefore the “whole community” approach referenced earlier in our presentation should be used to determine both the need for and the quality

of the project (including anchor institutions, local businesses and organizations, community entities, etc. as well as households).

#### Section 6.2.2(r) Satellite-dependent community project assessment criteria – Retail service pricing and offers

87. This Section states: “The objective of this criterion is to ensure that subscribers will be provided with broadband Internet access service at affordable prices and in various service packages. Eligible applicants must propose to offer various service packages and propose rates that are equal to or lower than those offered by facilities-based service providers in Iqaluit, Nunavut, for reasonably comparable speeds and capacity.”

88. **We disagree. Iqaluit already has prices that are higher than in other Territorial capitals and in provincial towns. Using Iqaluit as a benchmark will result in a permanent broadband affordability divide in Nunavut.** Applicants for Nunavut should be required to use the same benchmarks as those required for Labrador or Nunavik in northern Quebec.

#### **Section 7: Information to be provided by applicants**

##### Section 7.2 – Financial information about the project

89. This Section notes that applicants must provide: “An irrevocable letter of credit from the lending institution, if relying on credit.”

90. **This requirement raises a barrier for Indigenous and non-profit organizations that face challenges in securing credit for a multi-million dollar project.** An irrevocable letter of credit is an appropriate requirement for private sector enterprises with access to capital. However, it is a significant barrier for not-for-profit organizations and communities that are capable of building and maintaining the infrastructure, but often under-resourced. Traditional funding mechanisms have traditionally not been viable for First Nations organizations because it is impossible to put a lien on on-reserve assets by banks and other lenders. They also generally face other barriers:

- Non-profit organizations often face difficulty to qualify for credit or loans;
- Non-profit organizations are not eligible to access the Business Development Bank of Canada; and
- Banks will not accept on-Reserve assets as collateral, making it is very hard for First Nations entities to get financing for infrastructure projects.

Given these challenges we recommend that applicants instead provide historical examples of the successful development and operation of similar infrastructure initiatives. Examples could include projects such as: electrification, water and waste-water, roads, airports, and so on. Another approach might be for INAC to identify a suitable mechanism for securing the credit for First Nations applicants.

##### Section 7.3 –Information about consultation with affected communities

91. This Section states: “Evidence of community consultation, which may be in many forms, for example, **a market study.**”

92. **See our comments above regarding Section 6.2.1(d). Delete “a market study.”** A market study is not adequate evidence of consultation. It could be done using available information (e.g. population, average income, public service institutions, local businesses, etc.) without any interaction with the community.

#### Section 7.7. Satellite projects for operational costs for satellite transport capacity

93. This Section states: “providing retail broadband service packages for low-income customers is not required. For service packages for satellite-dependent communities, a comparative list of packages offered in Iqaluit, Nunavut.
94. **Delete “... providing retail broadband service packages for low-income customers is not required.”** Low income packages should be provided for communities served by satellite projects. Also Iqaluit should not be used for a comparative list of packages, see comments in sections 6.1 and 6.2 above.

### **Section 9: Awarding of Funding**

#### Section 9.3 Claims and payments for eligible costs incurred

95. This Section states “... Claims to recover eligible costs can be made only in respect of costs that are actually incurred; payments will not be made in advance.”
96. **We disagree with this approach. It will not work in the case of under-resourced not-for-profit applicants, who require upfront payment in order to commence a project. The Broadband Fund should instead provide an initial start-up portion of the approved project funding.** While the specific amount would depend on the scope of the project, we suggest an initial allocation of 5 percent to 10 percent of total approved funding.

### **Section 10: Funding Conditions**

#### Section 10.2 – Conditions of funding to be set out in funding decisions

97. Project monitoring and compliance are important to ensure that publicly funded projects meet stated requirements. Historically, some publicly funded broadband projects have failed in this respect. For example, problems with Alberta’s SuperNet have been well documented by the Auditor General of Alberta in November 2018.<sup>17</sup> A *CBC News* story about this audit notes that Service Alberta, the department responsible for managing the SuperNet contract, “lacked the systems to properly measure performance and enforce compliance of the contracts to build and run the system”.<sup>18</sup>
98. The CRTC notes that it will “adopt a multipronged approach to compliance and enforcement, which includes the imposition of obligations, reporting requirements, the distribution or withholding of funding, and the imposition of conditions on the offering

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<sup>17</sup> The Auditor General of Alberta’s report is available here: <https://www.oag.ab.ca/reports/service-alberta-pa-nov-2018>

<sup>18</sup> See: <https://www.cbc.ca/news/canada/edmonton/alberta-auditor-general-supernet-1.4896294>

and provision of broadband services” for its Broadband Fund (CRTC 2018-377, para 303). **However, no details are provided.**

**99. The Broadband Fund should specify that compliance and enforcement of obligations are required for all licensees and for funded projects. The language should include how oversight will be provided, and how compliance will be enforced.**

100. We believe that this oversight is critical. Otherwise projects may remain incomplete or may not meet the connectivity and reliability requirements specified. For example, in 2010, Bell Canada received funding from ISED and other federal and provincial funding programs to roll out fibre transport to remote First Nations in Northern Ontario. This 2010-2015 infrastructure build was to replace Bell’s outdated and inadequate microwave and satellite telecom facilities connecting these communities. However, their project left several intended communities in the Mattawa region unserved. Now, these communities require adequate bandwidth to deliver on the required 50/10Mb connectivity, only to be informed that Bell Canada is unable to deliver this service without obtaining millions of dollars more to upgrade their network. Recent requests by First Nations accessing the Bell fibre transport to deliver a 10 Gbps circuit to the community networks were met with similar responses from Bell that funding is required for a multi-million dollar upgrade to the Bell transport network to deliver this required service.

### **Section 13: Process**

101. Part 13, bullet 2 states: “The deadline for filing applications is on X date at midnight, Pacific Standard Time.”

102. The deadline should be not less than **six months** after the call for proposals is announced. **FMCC members indicate that between 8 and 18 months may be required to develop a proposal of the complexity required for the Broadband Fund.** If environmental and engineering studies have been completed, the bill of materials has been prepared and bids evaluated, the proposal could possibly be completed in six months or less. A business plan can take two to three months to complete properly.

103. We note several barriers faced by most rural and remote not-for-profit regional organizations and communities, which are dealing with the realities of delivering services, being under-resourced, and dealing with the day-to-day operations. It takes time and resources to identify and apply to different funding streams. As well, funding programs often shift over time, as do criteria or requirements for applicants.

### **Appendix 1: Definitions**

104. We note the definition of “in-kind contributions” and point to our earlier discussion in para 15.

### **Appendix 2: Eligible and ineligible costs**

#### Eligible Costs

105. We believe that the following costs should be included as eligible costs:

- **Costs for leasing land, buildings, and other facilities, including permanent shelters for housing network-related equipment (except for temporary facilities directly related to project construction).** We note that these may need to be leased rather than constructed in some communities.
- The Fund should include recognition of in-kind contributions of community lands and equipment to complete construction requirements for fibre builds – many of these costs can be absorbed in-kind by an engaged community.
- **Financing or carrying costs, loan costs, and interest payments.** These costs may be required for non-profits and Indigenous projects, as discussed in detail above in paras 88-90.
- **Costs related to developing the application for funding.** To prepare the proposal, funds are required for engineering studies, meetings, travel, consultation with communities, and for preparing business plans, etc. We note that large providers typically have access to this expertise through in-house staff or consultants. Given limited resources and in-house expertise, funding to complete these planning tasks is necessary for not-for-profit and community applicants. We note that other telecommunication infrastructure development programs funded by ISED and provincial bodies recognize these realities and have put in place such supports.

106. This Section notes that “eligible costs will include, but are not limited to, the following: • direct equipment costs, meaning the costs of the equipment required for project completion, including the costs of servers, switching and transmission equipment, fibre-optic cable, repeaters, radio and microwave equipment, **towers, poles, shelters and enclosures**, backup power supplies, and network broadband connectivity devices including upgrades and adaptations.”

107. Since support structures such as “**towers, poles, shelters and enclosures**” are referred to here, and considered an “eligible cost” for the Broadband Fund, we provide the following comments on problems faced by FMCC member organizations in accessing them.

108. FMCC member organizations are facing significant barriers to the deployment of FTTH and other wired infrastructures due to issues related to local Support Structures owned and/or managed by incumbent telecommunications companies, that issue access permits to third-party providers such as FMCC member organizations for joint usage of these resources. The existing situation impedes the efficient deployment of infrastructure – and if FMCC member organizations apply to the Fund, are successful and want to deploy infrastructure in communities, these obstacles may stop and/or significantly delay their projects. Below, we raise several barriers:

**109. High costs to access Support Structures in First Nations communities.** FMCC recognizes that charges for the joint usage of Support Structures pay for the upgrades or modifications required by the installation of new cables, and also compensate the owner for any eligible additional costs. However, FMCC opposes cases when this process may



be used to block or delay projects, or to indirectly finance the incumbents for the maintenance of their network.

110. Support Structures are located inside the boundaries of First Nations communities – they run along roads and are buried underground. Incumbent providers have received free access to install these Structures, while other organizations, including First Nations organizations, must pay unreasonably high charges to access them. At the construction phase of a project, these charges may consist of authorization fees, engineering charges, payment for repair, and maintenance. They may also include the cost to make any modifications to Support Structures so that they comply with regulations that the incumbent owner often may have either neglected or ignored. These costs often exceed what would normally be expected for similar work. Furthermore, once the new user has paid for these Support Structures, additional monthly fees are charged for usage and maintenance.
111. As a result of these costs FMCC members budget between \$300 to \$1000 per pole, if not more, for the Support Structures joint usage process. A small community with 500 poles that wishes to deploy FTTH would have to plan to spend up to \$500,000 just to get authorization to access Support Structures. This is clearly an unreasonable additional cost to projects.
112. Once authorization is granted, users of Support Structures must pay additional construction, repair and upgrading fees. For example, we have heard of organizations paying over \$25,000 to an incumbent provider to upgrade aerial Support Structures and repair any problems along the way.
113. Finally, third-party users of Support Structures must pay additional (and ongoing) monthly usage and maintenance charges.
- 114. Lack of certainty with respect to regulations and rules governing access.**

Discussions with FMCC member organizations indicates that they are not aware of any standard rules or regulations in place to govern access to Support Structures. Instead, FMCC organizations are forced to negotiate these issues on a project-by-project basis. This variability exists even inside a service region; for example, we know of cases where rules applied to certain organizations are not applied to others.
115. For example, we have heard of a case where an organization was required to move a cable belonging to an incumbent provider because it was installed incorrectly. Despite the fact that the provider had improperly installed this cable, this organization not only had its project delayed, but also had to pay to fix the cable installation. In another case, a Support Structure owner had built a new pole line that blocked third-party access. Despite the fact that this problem was created by the owner and failed to meet existing regulations, an organization that wanted access had to pay for the necessary modifications.
116. These examples raise questions about the enforceability of rules and regulations governing the proper installation of Support Structures. This uncertainty is a significant barrier for small organizations that lack legal and technical resources to continually monitor facilities and negotiate with their owners.

**117. Lack of certainty with respect to the timeline for authorization of access permits.**

Organizations have faced significant delays before they are granted access permits for Support Structures. Even if regulations are in place to provide authorization, they can be used to systematically create delays. In several cases organizations have been forced to wait between 12 to 24 months to get a permit before construction work could begin – a situation that is compounded in regions with short construction seasons. The reasons given for such delays are sometimes unreasonable. For example, in one case a permit was not granted sooner by the Support Structure owner because it was deemed the only authorized entity to conduct repairs. Despite repeated requests to conduct this work, the owner took a year to complete it – and the organization paid for this work to be done.

118. Impacts on projects due to such delays can be enormous – particularly in regions of Canada with short construction seasons due to cold weather and ice road access. Access permitting processes must be followed in a timely manner. As noted earlier, in some cases organizations have faced up to two-year delays for permits, due to owners of Support Structures continuously finding new problems or adding new requirements for access permits.

**119. Limited maintenance of existing Support Structures.** Support Structures in some rural, remote, Northern and Indigenous communities are often not adequately maintained by their owners. This impacts the ability of organizations to utilize them to deploy broadband projects. In some cases, owners of Support Structures will only conduct repairs when a joint usage request has been made by a new user to repair every pole in an entire network.

**120. Limited choice of contractors who can install and/or maintain Support Structures.** Above, we pointed out the high costs to install and/or maintain Support Structures. In part, this is due to the inability of non-owners to conduct their own repair work. Some rules and regulations require users to utilize contractors chosen by owners – often at much higher rates than contractors sourced by non-owners, or an owner may simply use the same contractor, but at much higher rates. This situation has arisen in cases where a repair contractor has been certified by the same company that owns the Support Structures.

121. **Lack of ability to report complaints or provide input into rules and regulations.** At present we know of no formal and efficient complaint mechanism that organizations could use to remedy these issues. It is unclear how support structures are regulated and how affected groups can file complaints with respect to the challenges we note here, such as rule modifications and/or rate changes.

122. In this context we request the Commission’s support in helping address this issue. Even though such Support Structures are an eligible expense in the Broadband Fund, we are concerned with the possibility of the systematic obstruction of new telecom project deployments. **We request that the Commission review this issue, and consider whether an independent organization should be in charge of managing the joint usage of Support Structures.**

**Appendix 3: List of communities for retail price/package comparisons**

123. See our comments under **6.1.3(f)** above.
124. We note that the provinces include remote regions similar to those in the Territories. We therefore believe that additional cities in the provinces should be included for comparability. For example, for remote projects in BC, include Prince George and Fort St. John. For remote regions in Ontario, include Thunder Bay and Sudbury.
125. Conversely, we note that in the Territories, the “major urban centres” particularly Iqaluit, have prices significantly higher than those in major urban centres in the provinces. Using these benchmarks will result in a permanent broadband affordability divide. Applicants for Nunavut, for example, should use benchmarks required for Labrador or Nunavik in northern Quebec.

### **Conclusion: Request to Participate in Follow-on Proceedings**

126. We thank the Commission for the opportunity to contribute to this consultation and request the opportunity to participate in any associated follow-on proceedings. Our members have firsthand knowledge of the unique contexts where Indigenous and nonprofit service providers operate, including the regions that are the focus of the Broadband Fund. Their perspectives and experience are reflected in many of the issues raised in this consultation and in the proposed *Application Guide for the Broadband Fund*.

**\*\*\* END OF DOCUMENT \*\*\***