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C.D. Howe Institute Telecommunications Policy Working Group

Communiqué #2: Governments Must Cut Through Their Red Tape to Build 5G

- Ottawa needs to dramatically reduce regulatory entanglement by exercising its exclusive constitutional authority for telecommunications infrastructure as well as address tensions with municipalities and provincially regulated utilities over access rights to passive infrastructure since these disputes may impede deployment of 5G facilities.
- To accelerate rural and remote connectivity, federal and provincial governments should streamline incentive programs, aiming for a “one-stop window” approach, and ensure clearly articulated goals and funding criteria.
- A “5G roadmap” could provide certainty for facilities-based providers and downstream users/developers to accelerate homegrown innovation in technology and applications that leverage 5G connectivity.

Canadian telecommunications policy is at a critical crossroads. Policy decisions about the structure and stance of regulation for telecommunications providers will in turn shape commercial decisions about investments in next-generation facilities and capabilities. Government support for the build-out of telecommunications infrastructure will impact the pace at which communities are digitally connected and their ability to participate in an increasingly digital economy.

In this context, the C.D. Howe Institute has established the Telecommunications Policy Working Group to identify, and distill policy directions for, the strategic questions facing Canadian telecommunications – particularly concerning:

- Vigorous competition for competitive pricing and high quality telecommunications services;
- Investment in next generation infrastructure; and
- Inclusive access to telecommunications services and participation in the digital economy.



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This second communiqué provides an overview of jurisdictional hurdles for telecommunications infrastructure. Specifically, what constitutional limits do provinces and provincially regulated utilities face regarding fees or levies on telecommunications facilities? Will the federal government intervene to address unconstitutional initiatives by municipalities to impose conditions on access to passive infrastructure for telecommunications facilities? How can jurisdictional boundaries be resolved to avoid unnecessary regulatory costs when deploying next generation wireless technology? How can governments coordinate various incentives for expanded connectivity?

Broadly, this Working Group believes that a key challenge government must resolve is clarity on the boundaries of federal and provincial jurisdiction – particularly in relation to fees imposed by municipalities and electric utilities, permitting, and access to passive infrastructure for installing telecommunications facilities. Governments must also streamline the patchwork of federal and provincial funding programs for expanding the geographic reach of high-speed services and enabling rural/remote connectivity.

Resolving Jurisdictional Hurdles for Telecommunications Infrastructure

While communications delivered by both wireline and wireless facilities have been long upheld to be under exclusive federal jurisdiction, certain municipalities and provinces have sought to impose various permits and restrictions on the siting of telecommunications facilities and access to passive infrastructure. Courts have generally affirmed the exclusivity of the federal jurisdiction and held that provincial laws or municipal bylaws that restrict telecommunication facilities are unconstitutional.

For example, the Supreme Court has rejected any “double aspect” with respect to the siting of radiocommunication infrastructure – specifically, provincial power for local matters does not confer concurrent jurisdiction for a matter within the exclusive jurisdiction of the federal Parliament.¹ More recently, the Alberta Court of Appeal considered the applicability of a bylaw that regulated access to municipal rights-of-way by telecommunications providers. A majority of that court found that the bylaw intruded on federal jurisdiction and is therefore was constitutionally inapplicable to telecommunications providers.²

1 *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23 at para. 50.

2 *Calgary (City) v Bell Canada Inc.*, 2020 ABCA 211 at para. 128.

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Nonetheless, telecommunications providers report continued examples of tensions with municipalities around limits on placement of telecommunications infrastructure. Addressing such obstacles slows the deployment of infrastructure and increases the costs of compliance.

Working Group members expressed frustration that the federal government has not more actively asserted its jurisdiction under the constitution to relieve facilities providers of the burden faced in negotiating – and sometimes litigating – with municipalities for access rights.

5G technology will involve more widespread placement and greater options for locating antennae. The ubiquity of facilities required for 5G rollout poses the risk that 5G deployment could be slowed by local challenges or attempts to regulate siting.

Streamlining Incentives for Expanded Connectivity

Significant questions discussed by members concerned government incentives for expanded connectivity. They are:

- How can governments promote low-cost options for connecting underserved communities?
- How should governments measure success in expanding digital connectivity?
- What funding is required for universal broadband access? How can this be channeled?
- How should governments target investments to accelerate local economic development?
- What role can institutions like the Canada Infrastructure Bank play in mobilizing private capital?

Public Funding for Connectivity

The federal government has prioritized “inclusion” as the focus of its telecommunications agenda, and the government proposes to accelerate the timeline for universal broadband access from its earlier 2030 target.³ Building on its former target of making high speed available to 84 percent of Canadian households in 2017,⁴ the federal government now aims to extend high-speed internet coverage to 98 percent of households by 2026.⁵ Federal measures under its connectivity strategy include:

3 Speech from the Throne.

4 Defined as internet speeds of 50 megabits per second (Mbps) download and 10 Mbps upload. See: Innovation, Science and Economic Development Canada. 2019. *High-Speed Access for All: Canada's Connectivity Strategy*. Available online: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00002.html

5 Innovation, Science and Economic Development Canada. 2020. *High-speed Internet for all of Canada*. Available online: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00000.html

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- Funding for broadband through Infrastructure Canada's \$2 billion Rural and Northern Infrastructure stream of the Investing in Canada Infrastructure Program;
- The CRTC's \$750 million rural/remote broadband fund; and
- \$1.75 billion for a new Universal Broadband Fund, new investments in the Connect to Innovate program, and advanced new Low Earth Orbit satellite capacity.⁶

The potential costs of universal access will likely require an accelerated uptake of this funding in the view of group members. According to a 2018 Auditor General of Canada report, Innovation, Science and Economic Development Canada estimated that connecting all Canadians through fibre (with virtually unlimited download and upload speeds) could cost between \$40 billion and \$50 billion, and achieving a speed target of 50/10 Mbps in all areas of the country would cost at least \$6.5 billion.⁷

The federal government emphasizes the role of the Canada Infrastructure Bank in providing funding for broadband. The Canada Infrastructure Bank's recently announced growth plan features a \$2 billion initiative to accelerate connectivity in underserved communities through low-cost financing in cooperation with internet service providers and other governments.⁸

Targeting Funding and Measuring Success

Governments aim to imbed objectives and incentives for connectivity with broader aims for economic development, particularly in rural regions. For example, British Columbia has emphasized broadband connectivity as a critical enabler of its post-pandemic economic recovery plan, particularly to advance economic diversification and unlock job opportunities in digitizing sectors.⁹

6 Innovation, Science and Economic Development Canada. 2020. *Universal Broadband Fund*. Available online: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00006.html

7 Auditor General of Canada. *2018 Fall Reports of the Auditor General of Canada to the Parliament of Canada: Report 1—Connectivity in Rural and Remote Areas* at para. 1.35. Available online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_01_e_43199.html

8 Canada Infrastructure Bank. 2020. *\$10 Billion Growth Plan: Investing in New Infrastructure*. October. Available online: <https://cib-bic.ca/en/growth-plan/>

9 Government of British Columbia. 2020. *Stronger BC for Everyone: BC's Economic Recovery Plan*. Available online: <https://strongerbc.gov.bc.ca>

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While governments have often focused on the count of connected households, this can understate the value of connection in rural areas where broadband plays an outsized enabling role in social and economic participation and the penetration of new technologies.

The network character of telecommunications infrastructure means that certain “transport” investments to remote communities can help unlock “last mile” connections for easier future build-out. Governments can accelerate long-term connectivity with “future proofed” priorities – for example, prioritizing investments that will be leveraged for future build-out and providing for break-points on transport infrastructure to enable lateral future connections.

Ensuring inclusivity for broadband access also requires consistent data and mapping of communities with different service levels. Governments also see investments in digital skills – for example, for small business operators or older adults – as critical for adoption of new technologies and maximizing the economic impact of improved connectivity.

In British Columbia, funding for investments by internet service providers and regional and local governments in connectivity are presently focused on:

- rapid expansion of connectivity to drive regional economic development in rural areas, Indigenous communities and along B.C.’s highways;
- build-out of last-mile and transport infrastructure for broadband; and
- technical infrastructure assessment of current and proposed networks as part of a regional connectivity plans.¹⁰

Ontario presently approaches broadband funding via a set of bottom-up initiatives coordinated with regional public-private partnerships through which it aims to catalyze private investments. For example, the SWIFT (Southwestern Integrated Fibre Technology) and EORN (Eastern Ontario Regional Network) aim to accelerate broadband infrastructure in underserved communities and rural areas across Southwestern and Eastern Ontario, respectively. Similarly, the Improving Connectivity for Ontario (ICON) program is application based and invites proposals for expanding broadband for underserved and unserved communities from telecommunication service providers, municipal governments, Indigenous communities and non-profits. Finally, for its \$150 million broadband and

10 British Columbia Northern Development. 2020. “Connecting British Columbia.” Available online: <https://www.northerndevelopment.bc.ca/funding-programs/partner-programs/connecting-british-columbia/>

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cellular investment program, Ontario's goal is a flexible design that promotes partnerships with industry and leverages private-sector experience for connectivity solutions.¹¹

Standardizing Federal and Provincial Programs

Despite governments' aspirations and new programs for expanding connectivity, telecommunications providers report difficulty understanding and accessing these channels for support. In particular, different programs lack clear criteria and common standards. Telecommunication providers indicate that streamlining the different federal incentive programs would help better identify priorities, target investments, and achieve scale.

In particular, Working Group members observed that the deployment of 5G requires clarity from governments. Certain members proposed that a "5G roadmap" from the federal government – and ideally coordinated with provincial governments – could provide certainty for facilities-based providers and downstream users/developers of 5G technologies. Specifically, many 5G use-cases remain speculative and the potential near-term uptake of 5G capabilities may not produce expected profits for facilities-based providers over the necessary horizon to justify accelerating investments. Nonetheless, the availability of 5G connectivity for the development and demonstration of new applications will be critical for innovation by Canadian businesses that would leverage 5G. Canadian governments should therefore consider what incentives, policy support and regulatory frameworks are required to keep pace with international peers and provide a platform for homegrown innovation.

For incentives to expand connectivity, Working Group members also stressed the importance of clear and aligned priorities, "one-stop windows" and standardized submission requirements to avoid uncertainty and rework. Nonetheless, various Working Group members suggest that governments can accelerate deployment with more top-down approaches that feature a clear matrix of priorities and coverage objectives across communities.

Members noted that, to this end, provincial governments like Ontario and British Columbia indicate they have taken steps to align their submission requirements with the pending forms for the federal Universal Broadband Fund (UBF). Reciprocally, the federal government plans for "tick a box" options that provides for relay of UBF proposals to provincial governments.

11 Government of Ontario. 2019. *Up to Speed: Ontario's Broadband and Cellular Action Plan*. Available online: <https://www.ontario.ca/page/speed-ontarios-broadband-and-cellular-action-plan>

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Upcoming from the C.D. Howe Institute Telecommunications Policy Working Group

Future communiqués from this Working Group will address specific policy recommendations regarding rate-setting for mandated access and for mobile virtual network operators and the framework and timeliness for allocating spectrum.

Working Group Mandate:

The C.D. Howe Institute has established the Telecommunications Policy Working Group to identify and distill policy directions on the strategic questions facing Canadian telecommunications – particularly concerning:

- Promotion of vigorous competition for pricing and quality for telecommunications services;
- Investment in next generation infrastructure; and
- Inclusive access to telecommunications services and participation in the digital economy.

Objectives and Format:

This Working Group will:

- Meet monthly to distill perspective for government and identify priority policy challenges.
- Issue communiqués synthesizing discussions, identifying policy options and differing perspectives (to be drafted in coordination with co-chairs and published after feedback from members).
- Identify pressing policy questions for research by Institute.
- Contribute to Institute initiatives on issues identified by the group (e.g., podcasts, webinars).

Members of the Telecommunications Policy Working Group:

- **Lee Bragg**, Executive Vice Chair, Eastlink.
- **Lucy Casacia**, Vice-President Smart Solutions, WSP.
- **Robert Ghiz**, President & CEO, Canadian Wireless Telecommunications Association.
- **Lawson Hunter**, Senior Counsel, Stikeman Elliott LLP.
- **Elisa Kearney**, Partner, Davies Ward Phillips & Vineberg LLP.

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- **Marie-Helene Labrie**, Senior Vice-President, Public Affairs, Cogeco.
- **Daniel Levitan**, Vice President of Stakeholder Relations, Hydro One.
- **Robert Malcolmson**, Chief Regulatory Officer, BCE – Bell.
- **Viet Nguyen**, Head of Government & Industry Relations, Ericsson.
- **Chima Nkemdirim**, Vice-President, Government Relations, Shaw Communications.
- **Steve Orsini**, Co-chair and Adjunct Professor, Public Policy & Administration, Carleton University and former Ontario Secretary of Cabinet.
- **Wayne Purboo**, Senior Vice-President, New Relic, Inc.
- **Stephen Schmidt**, Vice-President, Telecom Policy & Chief Regulatory Legal Counsel, Telus.
- **Terence Smith**, Partner, Boston Consulting Group.
- **Susan Stanford**, Assistant Deputy Minister, Connectivity and Distributed Growth, Government of British Columbia.
- **Konrad von Finckenstein**, Senior Fellow at the C.D. Howe Institute.
- **Scott Wallsten**, President, Technology Policy Institute.
- **Len Waverman**, Co-chair and Dean of DeGroote School of Business at McMaster University.
- **Ted Woodhead**, Senior Vice-President, Regulatory Affairs, Rogers Communications.