

News

CRTC seeks speedier broadband access for all

JEFF BUCKSTEIN

The Canadian Radio-television and Telecommunications Commission (CRTC) has ruled that all Canadians — whether they live in crowded urban centres or remote communities across the second largest country in the world — should have access to both voice services and broadband Internet services on fixed and mobile wireless networks.

Mobile broadband services, with access to the latest mobile wireless technology, are also to be made available along major Canadian transportation corridors, in addition to homes and businesses.

“We heard from many Canadians, businesses and governments in rural and remote communities who don’t have access to the telecommunications services they need to do their online banking, use eHealth services, conduct business, access emergency services, further their education, access online government services or buy goods that are not available in their region,” CRTC chairman Jean-Pierre Blais told a press conference.

Canadians also told the CRTC, he noted, that existing broadband Internet access targets — consisting of a download speed of at least five megabits per second and an upload speed of one megabit per second — were too slow for the contemporary digital world.

Blais said the CRTC responded with ambitious new targets for a tenfold increase in speed — a minimum 50 megabits per second for download, and 10 megabits per second for upload — pursuant to subsection 46.5(1) of the *Telecommunications Act*. That section states the CRTC may require any telecommunications service provider to contribute to a fund to support continuing access by Canadians to basic telecommunications services.

This is a significant policy objective because broadband access is important to provide interconnectivity for both personal and business reasons, said Gil Zvulony, an Internet lawyer with Zvulony & Co. in Toronto.

The CRTC will establish a mechanism for the new fund, which will be operated by a third party at arm’s length. For the first year of the fund up to \$100 million will be distributed. This amount will increase by \$25 million over the following four years to reach an annual cap of \$200 million. The commission expects fixed broadband Internet access services to be available in 90 per cent of Canadian premises by the end of 2021, and “in the remain-



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Gil Zvulony
Zvulony & Co

ing 10 per cent of Canadian premises within 10 to 15 years.”

“The CRTC is a powerful regulator, and it does have the authority, under the *Telecommunications Act*, to issue levies like this. This fund [will be] used to provide for infrastructure for organizations to be able to facilitate or upgrade their equipment to provide that service,” said Martin Kratz, a partner with Bennett Jones LLP in Calgary.

Increasing broadband-Internet access to remote communities mirrors the direction of the United States and many European nations, added Kratz, who also leads Bennett Jones’ e-commerce practice.

The targets set by the CRTC pursuant to subsection 46.5(1) of the *Telecommunications Act* do not, however, represent a guarantee or promise that is legally enforceable, said Daniel Anthony, a lawyer with Smart & Biggar in Ottawa, a firm that practises exclusively in intellectual property and technology law.

“What they’ve said is ‘we’re going to use the power in the *Telecommunications Act* to set up a fund, and require telecommunications entities to contribute to that fund, and that’s part of the way that we’re going to

pay for this initiative,’” Anthony elaborated.

“Generally speaking, when the government or a government body sets out a goal or target, it’s an intention or a promise that they’re making but there’s no strict consequence if they don’t meet the goal, and there’s certainly no legal recourse from stakeholders or persons interested,” he said.

If somebody in, say, a remote Inuit community was unable to get the service they needed, their first approach might be to talk to their service provider, or alternatively to see if they can set up their own service and maintain it themselves. Then if their objectives were still lacking, most likely the community would complain to the CRTC, which would look into the situation, assess if there was any fault and determine what, if any, action to take, said Kratz.

Another option for somebody living in a remote community who believed the CRTC’s targets weren’t being met in a reasonable time frame would be taking political action to motivate their member of Parliament to push for legislation, or apportion more money from the budget to help make it happen, said Anthony.

Blais also noted the CRTC had listened to the concerns of Canadians with a hearing or speech disability who said it is difficult to find information related to telecommunications plans and services that address their needs, or uniformity among wireless service plans to address their disabilities.

“As we can’t depend on market forces to address these issues, all wireless service providers will have to offer and publicize, no later than six months from today [Dec. 21, 2016], mobile service packages that meet the needs of Canadians with disabilities. Furthermore, all wireless service providers’ websites are expected to meet the W3C Web Content Accessibility Guidelines by June 1, 2017,” said Blais.

The W3C guidelines cover a wide range of recommendations for making web content more accessible, including accessibility to individuals who live with a disability.

“I would submit that there was a legal obligation to do both of those things, even before this announcement, under the *Canadian Human Rights Act* and the *Telecommunications Act*. You have to make your website accessible if you’re offering certain services,” said Zvulony.

If an individual who is disabled felt that a telecom had not complied with the CRTC’s direction, they could complain to the CRTC,

and the agency would have various remedies to try to correct the situation, including issuing penalties, if it believed that was required, said Anthony.

However, “it is unlikely people would bring a lawsuit against their telecommunication provider for not advertising their disability package or plan,” he added.

The W3C Web Content Accessibility Guidelines acknowledge that “even content that conforms at the highest level...will not be accessible to individuals with all types, degrees, or combinations of disability, particu-

larly in the cognitive language and learning areas.”

There can be legitimate disagreement between a person with a disability who might have a subjective expectation about what they want from the service, compared to what is actually available and meets the service standard as defined, Kratz explained.

“I would say [the guidelines are] trying to reflect the reality that disabilities are very diverse, and some of them are skill based, which is very hard for the CRTC to be able to regulate,” he elaborated.

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