

**VIA Email: [accessible-canada@hrsdc-rhdcc.gc.ca](mailto:accessible-canada@hrsdc-rhdcc.gc.ca)**

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**Re: Canada Gazette, Part I, Volume 155, Number 7: Accessible Canada Regulations  
(February 13, 2021)**

1. The Canadian Wireless Telecommunications Association (“CWTA”) is the authority on wireless issues, developments and trends in Canada. Its membership is comprised of companies that provide services and products across the wireless industry, including wireless carriers and manufacturers of wireless equipment. CWTA-member wireless services providers, who combine to deliver Canada’s world-class, facilities-based wireless services (an important foundation of Canada’s digital and data-driven economy), may also provide internet and broadcast distribution services.
2. CWTA is pleased to submit the following comments to Employment and Social Development Canada (“ESDC”) on behalf of CWTA members and Cogeco Communications Inc. (together as the “CWTA Interveners”).

### **Introduction**

3. Under the Accessible Canada Act (ACA), the Governor in Council may make regulations for specific priority areas for sectors that fall under the jurisdiction of the Canadian Radio-television and Telecommunications Commission (CRTC) and the Canadian Transportation Agency (CTA).
4. The ACA also requires bodies with regulation-making authority, like the CRTC, develop their first regulation with respect to accessibility plans, feedback processes or progress reports by July 2021.
5. As ESDC is aware, telecommunication service providers are regulated by the CRTC. The CRTC promotes accessibility among telecommunications service providers and broadcasting undertakings by introducing regulations to govern these industries. The CRTC regulates through

inclusive and comprehensive consultation processes that seek input from all interested parties. Accessibility advocacy groups regularly and fully participate in the CRTC's processes. Over the course of preceding years, the CRTC has actively shaped telecommunications and broadcasting in Canada to better meet the needs of Canadians with disabilities.

6. To illustrate the impact of the CRTC's regulatory processes for Canadians with disabilities, we note that the CRTC currently requires that service providers maintain or provide, among other things:
- accessible formats for bills and other documents;<sup>1</sup>
  - special web pages with information on accessible products and services;<sup>2</sup>
  - accessible websites and web content;<sup>3</sup>
  - special wireless rate plans to accommodate unique needs;<sup>4</sup>
  - wireless devices that offer accessibility features and functionality;<sup>5</sup>
  - access Text with 9-1-1<sup>6</sup> at no additional cost;
  - access to services like Video Relay<sup>7</sup> and IP Relay;
  - additional access to key information in alternative formats, and to assess wireless devices and services via extended trial periods;<sup>8</sup>
  - development of Enhanced 9-1-1 services, including the use of Real-Time Text<sup>9</sup>;
  - commitment to additional direct consultation to ensure products and services meet respective needs of various disability groups;<sup>10</sup>
  - additional communications activities to ensure that consumers with various disabilities are aware of the existence of various services and protections, including the Wireless Code and Wireless Public Alerting, as well as the common terms in wireless service agreements; and
  - closed captioning and described video requirements for programming pertaining to both broadcasters and distributors of television programming.
7. CWTA commends the work undertaken by ESDC and the CRTC to provide a harmonized approach to the regulations proposed under the Accessible Canada Act. Harmonization provides a clear understanding of expectations for regulated entities, as well as for persons with disabilities.

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<sup>1</sup> *Broadcasting and Telecom Regulatory Policy CRTC 2009-430, Accessibility of telecommunications and broadcasting services, issued 21 July 2009, and Telecom Regulatory Policy CRTC 2013-271 [BTRP 2009-430], The Wireless Code, issued 3 June 2013.*

<sup>2</sup> *BTRP 2009-430.*

<sup>3</sup> *BTRP 2009-430, and Telecom Regulatory Policy CRTC 2016-496, Modern telecommunications services – The path forward for Canada's digital economy, issued 21 December 2016 [TRP 2016-496].*

<sup>4</sup> *TRP 2016-496.*

<sup>5</sup> *BTRP 2009-430.*

<sup>6</sup> *7 <http://textwith911.ca/en/home/>; Telecom Decision CRTC 2013-22, CISC Emergency Services Working Group – Consensus report regarding Text Messaging with 9-1-1 trial and service implementation, issued 24 January 2013, and BTRP 2009-430.*

<sup>7</sup> *Telecom Regulatory Policy CRTC 2014-187, Video relay service, issued 22 April 2014.*

<sup>8</sup> *Telecom Regulatory Policy CRTC 2017-200, Review of the Wireless Code, issued 15 June 2017.*

<sup>9</sup> *Telecom Decision CRTC 2017-182, Next-generation 9-1-1 – Modernizing 9-1-1 networks to meet the public safety needs of Canadians, issued 1 June 2017.*

<sup>10</sup> *TRP 2017-200.*

Harmonization is particularly crucial for entities like the CWTA interveners who will be subject to two sets of regulations and whose accessibility plans will have to address different aspects of their accessibility practices.

8. CWTA continues to advocate for regulations that facilitate a workable and efficient approach that ensures both effective input from those with accessibility needs and the ability of companies to develop and manage plans in a manner that is efficient and does not impose an excessive administrative burden. Accessibility requirements that can be fulfilled in a manner that is efficient and prevents confusion will help to ensure entities can remain focused on effective compliance and are not faced with duplicative regulatory requirements. This is in everyone's interest.
9. Comments provided in this submission are specific to the proposed Accessible Canada Regulations. CWTA has also provided comments to the CRTC consultations concerning **The Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations (TNC 2021-69)**. Where appropriate, we reference those regulations within this submission.

#### **Accessibility Plans and Progress Reports**

10. In their review of proposed regulations under the ACA (both the ESDC and CRTC regulations), CWTA Interveners have paid special attention to those areas that identified and defined the manner and form of publication for both the accessibility plan and progress reports.
11. CWTA Interveners strongly submit that regulated entities should be afforded flexibility on how to develop and publicize their accessibility plans and progress reports, and that this be consistent across regulations. For example, regulated entities that operate more than one brand, affiliate or subsidiary should be able to determine whether the development of an individual plan/report or one combined accessibility plan/report (on behalf of all brands, affiliates, or subsidiaries) is most appropriate.
12. Different service providers operate their services and workplaces in different ways - some on a disaggregated basis and some on a highly integrated basis. Regulated entities should have the flexibility to file in a manner appropriate for each regulated entity in view of its operations in order to: minimize regulatory burden; keep resources efficiently and appropriately focussed on the fulfillment of the objectives of the Accessible Canada Act rather than complying with excessive administrative requirements; and to ensure that accessibility plans and progress reports are as clear as possible.
13. The CRTC has already provided guidance at paragraphs 52 and 53 of TNC 2021-69 - its proposal with respect to its own draft regulations - that supports such an approach:

*52. As a result, the Commission clarifies that where a single regulated broadcasting or telecommunications entity operates multiple brands, it would satisfy its reporting obligations through the publication of a single document (plan or report, as the case may be) outlining the*

*relevant accessibility considerations for each of those brands. That document should be readily accessible through the digital platform of each of those brands.*

*53. Where a single person operates multiple regulated entities of various types, it may still be possible for each regulated entity to comply with obligations under both parts of the Regulations by publishing a single plan or report for the various entities if that document (i) clearly sets out the content required by the ACA in respect of each regulated entity, and (ii) is readily accessible through the digital platform of each regulated entity.*

14. CWTA Interveners have also interpreted the CRTC's guidance to mean that a regulated entity may publish one accessibility plan, one progress report, and one feedback process to satisfy both the Accessible Canada Regulations as well as the regulations published by CRTC. As the CRTC noted, "regulated entities should be encouraged to engage in efficient practices that cut down on unnecessary overlap."<sup>11</sup>
15. CWTA Interveners therefore respectfully ask for ESDC to clarify its alignment on both these points by confirming that:
  - one accessibility plan, progress report, and feedback process per organization are sufficient consistent with the CRTC's guidance; and
  - in instances where a regulated entity operates multiple brands, affiliates, or subsidiaries, the regulated entity may publish one accessibility plan, progress report, and feedback process on behalf of those brands, affiliates, or subsidiaries, at the discretion of the regulated entity.

## **Feedback**

### ***Feedback process***

16. The proposed Accessible Canada Regulations, similar to those of the CRTC, contemplate that a regulated entity must establish a process for receiving feedback through any means by which the regulated entity communicates with the public. Regulated entities are also required to acknowledge the feedback through the same manner in which it was received.
17. From a practical perspective, this approach could be interpreted to mean that a person could provide feedback through any method, including social media interactions (Twitter, Facebook, etc.), interactions (including in-person) with staff at various levels, as well as through websites and other more formal mechanisms.
18. CWTA Interveners believe the proposed approach is overly broad, difficult to administer reliably in a manner to ensure effective compliance, and confusing for consumers. Indeed, while the proposed approach is described as a feedback *process*, it is so broad as to prevent the implementation of any efficient and effective process for addressing such feedback.

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<sup>11</sup> TBNC 2021-69, paragraph 51.

19. Instead, CWTA Interveners respectfully submit that a more streamlined approach to feedback will be easy for the public to understand and engage with, while ensuring more effective responsiveness by organizations. A streamlined and effective feedback process will increase public confidence in organizations' commitments to accessibility and will, as well, avoid administrative inefficiencies and risk of inadvertent non-compliance.
20. Accordingly, CWTA Interveners strongly submit that each regulated entity should be permitted to include in the description of its feedback process the specific means by which feedback can be furnished, provided that such means are widely available and accessible to persons with disabilities. This process would be identified to the public in the manner identified by regulation: in clear, simple, and concise language and published on a regulated entity's main digital platform (e.g. website or mobile application), either directly on the home page or by direct hyperlink from the homepage.
21. CWTA Interveners believe that this approach will ensure that:
- the public will clearly understand the expectations of how their feedback will be managed by the organization;
  - the regulated entity will be better able to acknowledge, track and consider the feedback that is provided; and
  - the regulated entity is better able to meet confidentiality and document retention requirements.
22. Ultimately, feedback provided through a clear, streamlined process will be more valuable to the regulated entity for purposes of identifying barriers and in determining its progress - as well as to the public that benefits from such progress. Allowing entities to build a streamlined and clear feedback process will better ensure that the feedback of consumers is received in a timely manner, acknowledged appropriately as required under the proposed regulations, and reaches the accountable person at the regulated entity, while also minimizing confusion and administrative burden. This, in turn, will improve the efficacy of the entire accessibility regime.
23. In view of CWTA Interveners' concerns that the proposed feedback process is problematic, for the reasons set out above, the CWTA proposes the following specific revision to replace what is currently proposed for sections 9(2) of the draft regulations:

***Feedback process***

**9(2)** A regulated entity must ensure that its feedback process allows a person to provide feedback anonymously and ***through the means specified by the entity and by which it communicates with the public.*** [Emphasis Added]

## Alternative (or Alternate) Formats

24. At paragraphs 8(1), (2) and 17(1), (2)<sup>12</sup>, ESDC identifies the expectations placed on entities in relation to the nature of mandatory alternative formats, and how the request can be made for the alternate formats.
25. CWTA Interveners appreciate the specificity provided with the identification of alternative formats, as well as the means by which the request can be made. In order to ensure harmony exists across regulations, a recommendation has been made to CRTC that its proposed regulations on requests for alternative format follow the ESDC proposal.
26. However, the provision of defined timelines for fulfilling the request for alternative formats, as identified at paragraphs 8(3 a-d) and 17(3 a-d), may be problematic for regulated entities and could unintentionally result in non-compliance. For example, it is likely that many regulated entities will have to rely on outside vendors or resources to facilitate the fulfillment of some requests and the timing may not be fully within the regulated entities' control. In these instances, despite a regulated entity's best intentions and efforts, the regulated entity could potentially exceed the timeline and could then be considered non-compliant.
27. Accordingly, CWTA proposes the following revisions to replace what is currently proposed for sections 8(3)( a-d) and 17(3)( a-d) of the draft Accessible Canada Regulations:

### **Deadlines to obtain accessibility plan**

8(3) The accessibility plan must be provided to the person making a request ***as soon as feasible after the request is received.*** [Emphasis Added]

...

### **Deadlines to obtain progress report**

17(3) The progress report must be provided to the person making a request ***as soon as feasible after the request is received.*** [Emphasis Added]

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<sup>12</sup> ***Manner of request***

**8 (1)** A request for an accessibility plan referred to in subsection 47(8), 56(8), 65(8) or 69(8) of the Act must be made to the regulated entity in a manner specified by the regulated entity and that it uses to communicate with the public.

### **Format**

**(2)** A regulated entity must make its accessibility plan available, to a person who makes a request, in print, large print, braille, audio format or an electronic format that is compatible with adaptive technology and is intended to assist persons with disabilities.

### **Manner of request**

**17 (1)** A request for a progress report referred to in subsection 49(7), 58(7), 67(7) or 71(7) of the Act must be made to the regulated entity in a manner specified by the regulated entity and that it uses to communicate with the public.

### **Format**

**(2)** A regulated entity must make its progress report available, to a person who makes a request, in print, large print, braille, audio format or an electronic format that is compatible with adaptive technology and is intended to assist persons with disabilities.

## Administrative Monetary Penalties

28. CWTA interveners are not supportive of the immediate introduction of administrative monetary penalties (AMPs), since:
- the regulatory regime is being brought into force for the first time; and
  - regulated entities will be subject to two sets of regulations concerning accessibility and, as a result, will have to address different aspects of their accessibility practices in the development of their plans.
29. CWTA Interveners recognize the fundamental importance of their responsibilities regarding existing accessibility requirements and those introduced by the ACA, and are actively working towards a plan of engagement and execution. That being said, because the ACA regime is new and there are two regulators, we respectfully submit that it is in the public interest to allow regulated entities the opportunity to come in to compliance with the ACA or its regulations before any penalties are issued. The immediate objective of all parties should be the development and roll-out of effective accessibility plans, as well as related plans for feedback and progress reports.
30. To that end, in order to provide regulated entities with the time needed to effectively implement feedback processes, develop accessibility plans, and prepare progress reports, we recommend that regulated entities not be subject to AMPs until they have completed one 3-year cycle of publishing an accessibility plan and progress reports. Any AMPs must be issued fairly and must only be issued after regulated entities have sufficient time to understand and implement all requirements. Moreover, we respectfully recommend that the amount of any AMPs imposed factor in the efforts that the regulated entity has made towards compliance in good faith, as well as whether or not the action that has led to the imposition of an AMP was inadvertent despite due diligence in executing its obligations or, by contrast, the result of intentional or egregious non-compliance.

## Document Retention

31. ESDC identifies at paragraph 19 that a regulated entity must retain an electronic or print copy of feedback it receives for a period of 7 years.

### ***Feedback***

***19 A regulated entity must retain an electronic copy or print copy of any feedback it receives under section 9 for a period of seven years after the day on which it is received.***

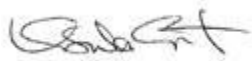
32. This proposed approach is onerous and would be challenging to administer especially if the changes proposed at paragraphs 20-23 of this submission are not implemented and entities are required to accept feedback by any means that they use to communicate with the public.
33. As described above, if the proposed changes are not accepted, then entities will be required to accept feedback by way of any social media contact directed at any of its brands across any of numerous platforms such as Twitter, Facebook, Instagram, etc. If entities are not permitted to

establish a more efficient feedback process, then monitoring all such feedback, much less retaining it for a period of 7 years, would be unduly and unnecessarily onerous.

### **Conclusion**

34. CWTA appreciates the ongoing consultations and the work being done across various regulatory bodies to harmonize efforts. We recognise that this requires significant consultation and time.
35. CWTA respectfully requests ESDC implement an additional consultation period to allow for regulated entities to provide ESDC with feedback and guidance on any aspects of the regulations requiring proposed revisions to the language set out in the current ESDC proposal. This additional review will help ensure regulated entities are able to effectively and efficiently achieve the goals that the legislation seeks to achieve. This reply comment period should be a minimum 14-days and should allow parties to comment on each other's proposals.
36. CWTA Interveners remain supportive of approaches that provide clear and manageable regulatory requirements that minimize regulatory burden and ensure that both regulated entities and the public can constructively engage in accessibility matters. A collaborative, well-functioning and efficient approach to addressing accessibility needs and barriers will be of benefit to all Canadians.

Sincerely,



**Ursula Grant**

VP, Industry and Consumer Affairs

**Canadian Wireless Telecommunications Association**

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