

November 09, 2020

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission (CRTC)
Ottawa, ON K1A 0N2

[CRTC Telecom Notice of Consultation 2020 - 326](#)

Call for comments – Establishment of new deadlines for Canada’s
transition to next-generation 9-1-1 – Response to Interventions

Public record: [1011-NOC2020-0326](#)

1. Deafness Advocacy Association Nova Scotia (**DAANS**), Newfoundland and Labrador Association of the Deaf (**NLAD**) and Ontario Association of the Deaf (**OAD**), [collectively, **DHH Coalition**] focuses on how emergency telecommunications services may best serve Deaf and Hard of Hearing (**DHH**) consumers in Canada.
2. DHH Coalition acknowledges Interventions in the aforementioned proceeding from Bell Canada, CISC ESWG, CNOC, Bragg (operating as Eastlink), Independent Telecommunications Providers Association, Northwestel, Rogers, SaskTel, Shaw, Tbaytel, TELUS and Xplornet [collectively “**carriers**”].
3. Any failure on DHH Coalition’s part to comment on any content(s) of any specific Intervention or part thereof should not be viewed as agreement to said content(s).

LEGAL FRAMEWORK

Canadian Charter of Rights and Freedoms

4. Section 15 of the [Canadian Charter of Rights and Freedoms](#) of 1982 (**Charter**) reads as:

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

15 (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

5. The Charter’s section 15(1) mandates that DHH consumers must be able to use emergency telecommunications services at par with their hearing counterparts. Any and all modifications required to make to services DHH friendly and accessible are mandated by section 15(2).

Canadian Human Rights Act

6. Pertinent articles of the [Canadian Human Rights Act](#) of 1985 (**CHRA**) read as:

Proscribed Discrimination

2 The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered

Discriminatory Practices

Denial of good, service, facility or accommodation

5 It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

7. Like the Charter, the CHRA proscribes discrimination on the basis of disability in the provision of emergency telecommunications services.

Convention on the Rights of Persons with Disabilities

8. Canada ratified the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) on March 11, 2010.

9. Pertinent articles of the CRPD read as follows:

Preamble

The States Parties to the present Convention,

- b. Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,*
- c. Reaffirming the universality, indivisibility, interdependence and interrelatedness of all of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,*
- e. Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,*
- h. Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,*
- n. Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,*
- o. Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,*
- v. Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,*

Article 1 - Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Article 2 - Definitions

For the purposes of the present Convention:

- *"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;*
- *"Language" includes spoken and signed languages and other forms of non spoken languages;*
- *"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;*

- *"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;*
- *"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.*

Article 9 - Accessibility

1. *To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:*
 - a) *Information, communications and other services, including electronic services and emergency services.*

Article 14 - Liberty and security of the person

1. *States Parties shall ensure that persons with disabilities, on an equal basis with others:*
 - a. *Enjoy the right to liberty and security of person;*
10. The CRPD is an international treaty that moves away from considering people with disabilities as recipients of charity towards being holders of rights. It emphasizes non-discrimination, legal equality and inclusion. Discrimination on the basis of disability is a violation of the inherent dignity and worth of the human person. CRPD defines discrimination as *"... any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others..."*
11. International treaties and conventions including the CRPD are not part and parcel of the Canadian legal landscape unless they have been implemented through legislation. However in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court of Canada ruled that international law helps give meaning and context to Canadian law. The Court ruled in the same case that domestic law (which includes the *Code* and the *Charter*) should be interpreted to be consistent with Canada's international commitments. Paragraph 70 of this decision reads as *"...This means that the judiciary will apply domestic law and interpret legislation in a way that is as consistent as possible with the Convention."*
12. The CRPD is an important human rights tool that puts positive obligations on Canada to make sure that people with disabilities have equal opportunity in all areas of life. Ensuring integration and full participation means designing society and structures for inclusiveness. Such inclusive design and structures must follow "universal design" principles as defined in Article 2. This definition focuses on barrier-free environments and equal participation of persons with disabilities with diverse levels of ability. It is a preferred approach to removing barriers or making "one-off" accommodations, which assume that existing structures may only need slight modifications to make them acceptable. In other words, universal design mandates the design of products, environments, programmes and services to be usable by everyone with or without disabilities, to the greatest extent possible, without the need for adaptation or specialized design.
13. CRPD's Article 14 requires Canada to *"ensure that persons with disabilities, on an equal basis with others... enjoy the right to liberty and security of person ..."* This translates to DHH consumers having the right to access and use emergency telecommunications services at par with their hearing counterparts.

14. Preamble n which reads as: “recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,” means people with disabilities - not anyone else – define what accessibility means and how it must be achieved. In other words, DHH consumers have the right to define what DHH friendly and accessible emergency telecommunications services looks like. They have the right to work with appropriate public and private sectors to establish – at a minimum – the protocols, procedures, and timelines to achieve DHH friendly and accessible emergency telecommunications.

Accessible Canada Act

15. The main premise behind [Accessible Canada Act \(ACA\)](#) of 2019 centers around communities, workplaces and services that enable everyone to participate fully in society without any current or future barriers. According to Employment and Social Development Canada’s website (as of September 10, 2020) “[Making an accessible Canada for persons with disabilities](#)”:

“This legislation will benefit everyone in Canada, especially persons with disabilities, by helping to create a barrier-free Canada through the proactive identification, removal and prevention of barriers to accessibility wherever Canadians interact with areas under federal jurisdiction.”

16. Pertinent articles of the ACA read as follows:

An Act to ensure a barrier-free Canada

Preamble

- *Whereas the Canadian Charter of Rights and Freedoms guarantees the right to the equal protection and equal benefit of the law without discrimination and, in particular, discrimination on the basis of disability;*
- *Whereas the Canadian Human Rights Act recognizes that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated without discrimination and, in particular, discrimination on the basis of disability;*
- *Whereas a proactive and systemic approach for identifying, removing and preventing barriers to accessibility without delay complements the rights of persons with disabilities under the Canadian Human Rights Act;*
- *Whereas Canada is a State Party to the United Nations Convention on the Rights of Persons with Disabilities and Canada has agreed to take appropriate measures respecting accessibility and to develop and monitor minimum accessibility standards;*
- *Whereas barriers to accessibility can impact all persons in Canada, in particular those with disabilities and their families, and can prevent persons with disabilities from achieving their full and equal participation in society;*
- *And whereas Parliament considers that it is essential to ensure the economic, social and civic participation of all persons in Canada, regardless of their disabilities, and to allow them to fully exercise their rights and responsibilities in a barrier-free Canada;*

Principles

6 *This Act is to be carried out in recognition of, and in accordance with, the following principles:*

- (a)** *all persons must be treated with dignity regardless of their disabilities;*
- (b)** *all persons must have the same opportunity to make for themselves the lives that they are able and wish to have regardless of their disabilities;*
- (c)** *all persons must have barrier-free access to full and equal participation in society, regardless of their disabilities;*
- (d)** *all persons must have meaningful options and be free to make their own choices, with support if they desire, regardless of their disabilities;*
- (e)** *laws, policies, programs, services and structures must take into account the disabilities of persons, the different ways that persons interact with their environments and the multiple and intersecting forms of marginalization and discrimination faced by persons;*
- (f)** *persons with disabilities must be involved in the development and design of laws, policies, programs, services and structures; and*

(g) the development and revision of accessibility standards and the making of regulations must be done with the objective of achieving the highest level of accessibility for persons with disabilities.

CRTC Accessibility Policy

17. [CRTC BTRP 2009-430 Accessibility of telecommunications and broadcasting services](#) AKA “Accessibility Policy” was released on July 21, 2009. Paragraphs 28 through 38 of this policy deals with emergency telecommunications services based on the following legal framework and policy direction analysis.

Legal framework

3. As a regulatory tribunal, the Commission must exercise its powers to implement the policy objectives set out in the Broadcasting Act and the Telecommunications Act. The Commission must also act in a manner that is consistent with the Canadian Charter of Rights and Freedoms.

6. The Commission has done so within the broader policy framework imposed by the governing legislation and, in the case of telecommunications, with reference to the [Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives](#) [Policy Direction of 2006]. In considering whether or not the proposed accommodations are reasonable, the Commission has also utilized leading Canadian human rights principles that recognize that equality is a fundamental value and central component of the public interest.

Policy Direction analysis of telecommunications determinations

7. As required under section 47 of the Telecommunications Act, the Commission must exercise its powers in accordance with any policy direction from the Governor in Council. The Policy Direction [of 2006] requires the Commission to implement the policy objectives in the Telecommunications Act in accordance with specific terms and criteria, including the reliance on market forces to the maximum extent feasible.

18. The legal framework described in BTRP 2009-430 has dramatically changed with the passage of the ACA and Policy Directive of 2019. The legal concepts and principles inherent in the ACA match or is based on those inherent in the CRPD. For example, universal design is mandated where and when possible. Applying universal design to emergency telecommunications services means applying as minimal changes as possible to 911 services that everyone use to make them DHH friendly and accessible. Ensuring accessibility and prioritizing consumer interests as elucidated in the Policy Directive of 2019 trumps the reliance on market forces as elucidated in the Policy Directive of 2006.

CRTC Policy Directive of 2019

19. The [Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation](#) of 2019 AKA “CRTC Policy Directive of 2019” partly reads as (with underlining added for emphasis):

Direction

Principles

1. In exercising its powers and performing its duties under the Telecommunications Act, the Commission must implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:

- a) the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation, in particular the extent to which they
 - iv. enhance and protect the rights of consumers in their relationships with telecommunications service providers, including rights related to accessibility,**
 - b) the Commission, in its decisions, should demonstrate its compliance with this Order and should specify how those decisions can, as applicable, promote competition, affordability, consumer interests and innovation.*
20. The subsection iv phrase “including rights related to accessibility” is not limited only to communication DHH consumers have with their communications services providers as in when buying, changing or terminating contracts and when calling for technical assistance. This phrase also means that all telecommunications goods and services themselves must be accessible to all consumers including the DHH.
21. The word “consumer” in “consumer interests” in section b includes DHH consumers.

22. As required under section 47 of the [Telecommunications Act](#) of 1993, the Commission must exercise its powers in accordance with any policy direction from the Governor in Council. Therefore the Commission must ensure that emergency telecommunications services are truly DHH accessible and friendly especially when DHH consumers face health and safety issues especially life and death situations just like their hearing counterparts.

Summary of Legal framework

23. Decisions made by the Commission must comply with the Charter, CHRA, CRPD all of which predated the CRTC Accessibility Policy released in 2009. However the legal framework the Accessibility Policy was based on has changed dramatically since then with the passage of ACA and the CRTC Policy Directive of 2019. The outcome of this old and new legal framework is very simple – that being – emergency telecommunications services must serve everyone including DHH consumers and that the DHH consumers themselves define exactly what accessibility in emergency telecommunications services looks like. The Commission must never forbear such accessibility and must always enact and enforce accessibility related regulations to achieve true DHH friendly and accessible emergency telecommunications services.

BASIC PREMISES OF PROCEEDING

24. This proceeding follows up on [CRTC TRP 2017-182: Next-generation 9-1-1 – Modernizing 9-1-1 networks to meet the public safety needs of Canadians](#). DHH Coalition is most interested in paragraph 174 which reads as follows:

“While SMS-based text messaging is widely used, and its use with 9-1-1 was introduced as an interim solution for Canadians who are Deaf, hard of hearing, or speech impaired, it has limitations that make it unsuitable as an NG9-1-1 Text Messaging solution for all Canadians. For example, it (i) is not a stand-alone service in that it cannot be used without first placing a voice call, (ii) is not IP-based, (iii) is not supported as an NG9-1-1 technology under the NENA i3 standard, (iv) cannot be directly routed to the appropriate PSAP, (v) does not provide location information, and (vi) is not reliable as a long-term solution since text messages are delivered on a best-effort basis. SMS is therefore not an appropriate solution for the provision of NG9-1-1 Text Messaging in Canada.”

25. As will be pointed out later in this Response to Interventions, the emergency telecommunications services as defined and described in CRTC Accessibility Policy, TRP 2017-182 and related CRTC reports and decisions such as text with 9-1-1 is not DHH accessible or friendly. This situation if not immediately rectified would result in DHH consumers being discriminated against in the provision of emergency telecommunications services – something already proscribed by the Charter, CRHA, CRPD, ACA and the CRTC Policy Directive of 2019.

COMPARISONS OF EMERGENCY TELECOMMUNICATIONS SERVICES IN CANADA AND USA

26. Hearing consumers in the States are encouraged to make voice calls to 911 especially when voice calls to 911 provide more information to PSAPs than text messages. However, this is not always possible especially in dangerous situations as in cases of domestic violence or burglary. Everyone in the States, both DHH and hearing may “text to 911” to directly reach a PSAP. PSAP responses to texts to 911 are fast – the average response time is 11 to 18 seconds. Texting to 911 is not available everywhere in the States. As a consequence, anyone texting to a PSAP where text to 911 is not available will automatically get a bounce back message to that effect and will be encouraged to find alternate ways to reach a PSAP. There is no pre-registration for this service.
27. On the other hand, DHH consumers in Canada use a “text with 911” service with very important differences from the American text to 911 service. Canadian text with 911 was devised as a “temporary measure” specific for the DHH and speech impaired communities and for no one else until the NG911 system rolls out. Unlike in the States, a DHH consumer cannot text directly to a PSAP. Instead, the DHH consumer must first initiate a voice call to 911 then send a text to 911. This voice call must be kept open for the duration of the text conversation with the PSAP. Prematurely closing the voice call to the PSAP will automatically terminate the text conversation. This was not a major concern for DHH consumers in the past when voice minutes predated current voice plans. The switchover from the relatively cheaper voice minutes to the much more expensive voice plans caused many DHH consumers to remove voice plans from their mobile phones without realizing that doing so prevented them from ever reaching a PSAP on their mobile devices. There may be a delay of up

to two minutes before a PSAP responds to a “text with 911” message. This “text with 911” service is not available everywhere in Canada. Texting a PSAP where no “text with 911” service is available will not result in a bounceback message to that effect. DHH consumers must preregister for this service and it may take up to two business days before they may actually have access to the “text with 911” service.

28. Current NG911 transition plans include the removal of the “text with 911” service especially when all consumers (both DHH and hearing) are expected to use RTT to relay emergency messages to a PSAP. However this plan is fatally flawed since RTT will work only in areas of high WIFI reception. In areas of low WIFI reception, hearing consumers may still make voice 911 calls to their nearby PSAPs while DHH consumers will not have a comparable alternative to reach nearby PSAPs.
29. DHH consumers in Canada may reach emergency telecommunications services by using TTY to TTY direct calls to PSAPs, TTY calls to PSAPs through TTY Relay Service (AKA “711”), and making IP Relay Service calls to PSAPs. This functionality must not be lost as a result of transitioning to the NG911 system and / or the decommissioning of legacy 911 systems.
30. As previously described in the “Legal Framework” section earlier in this Response to Interventions, universal design and the prohibition of discrimination on the basis of disability in emergency telecommunications services explicitly and implicitly mean a radical rethink and “do over” is required to define what DHH accessible and friendly emergency telecommunications services mean and how / when to implement components of such services.

COMMENTS ON INTERVENTIONS

31. DHH Coalition had a chance to review Interventions from carriers (identified in Paragraph 2 above). None of their Interventions contained the words “accessibility” as in accessibility groups like DHH consumers, “Deaf,” “Hard of Hearing,” and “alpha” or “beta” as in alpha and beta testing.
32. DHH Coalition finds these omissions disappointing and calls for the Commission to do a rethink and “do over” to define what truly DHH accessible and friendly emergency telecommunications services mean and how / when to implement components of such services.

WHAT DOES DHH FRIENDLY AND ACCESSIBLE EMERGENCY TELECOMMUNICATIONS SERVICES LOOK LIKE DURING AND AFTER TRANSITION TO NG911?

33. DHH friendly and accessible emergency telecommunications services during and after transition to NG911 will have all of the following features:
 - a) Texting PSAPs will be made possible by replacing the “text with 911” system currently available in Canada with a “text to 911” system as used in the States and as described earlier. This replacement will be rolled out throughout Canada wherever technically possible no later than March 31, 2021.
 - b) Reaching emergency telecommunications services by using TTY to TTY direct calls to PSAPs, TTY calls to PSAPs through TTY Relay Service (AKA “711”), and making IP Relay Service calls to PSAPs will not be affected at all by the transition to NG911 and will never be decommissioned at any point in time.
34. Organizations representing DHH consumers such as DAANS, NLAD and OAD and DHH consumers themselves must be consulted (where all are fairly compensated for their time and efforts) to determine how, where and when emergency telecommunications services must become DHH friendly and accessible prior and during this transition to the NG911 system. These consultations will involve appropriate alpha and beta testing to ensure all components of legacy 911 and NG911 systems are truly DHH friendly and accessible. These consultations will also include the creation of DHH friendly and accessible public awareness campaigns

CONCLUSION

35. DHH Coalition is looking forward to working with CRTC and interested parties to make all emergency telecommunications services including the all NG911 system components DHH friendly and accessible. Please feel free to contact the undersigned should you have any questions.

Elliott Richman
Executive Director
DAANS

Myles Murphy
Executive Director
NLAD

Donald Prong
Executive Director
OAD

daans@ns.sympatico.ca

myles.murphy@nf.sympatico.ca

dprong@deafontario.ca

cc: Parties to CRTC 2020-326 proceeding
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