



August 11, 2020

Via e-mail: info@nirb.ca

Ms. Karen Costello
Executive Director
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay, NU X0B 0C0

Dear Ms. Costello:

Re: NIRB File No. 08MN053 – Assessment of Baffinland Iron Mines Corp.’s Phase 2 Development Proposal for the Mary River Mine

We are in receipt of the recent correspondence between the Parties related to the resumption of the assessment process, including the most recent letter from the Nunavut Impact Review Board (NIRB) on August 7, 2020 in which it states that it will “convene to consider the Motion and provide follow up guidance and response to the feedback provided by parties regarding the resumption of the Board’s assessment.”

As formal intervenor in the Mary River Phase 2 assessment process, we would like to make a submission to the NIRB about the proposed resumption of the assessment at the end of August. Given the unanimous message of opposition expressed in the joint letter from the Mayors and Hunters and Trappers Organizations from the five affected communities on August 6, 2020, we will be brief.

At the outset, we would like to clarify that we have not been informed, consulted or given a heads-up by representatives of Baffinland Iron Mines Corp. or the NIRB about the intentions to resume the assessment process prior to the correspondence of the NIRB on July 29, 2020. While other parties may have known that the resumption of the assessment process was imminent, we were not.

Since August 3, we have been on the land for a filming project planned months in advance, where it was not possible for us to effectively communicate with our advisors and research team and begin preparations for the technical meetings that were proposed to begin August 31. We previously noted the tensions for Inuit between wanting to participate in the assessment process and wanting to be on the land at specific times of the year—especially when the ice has thawed. Therefore, we urge the NIRB to consider in its forthcoming deliberations that procedural fairness

must also consider the fact that many Inuit, especially hunters and harvesters most impacted by the assessment process, are out on the land at this time of year and a rushed process will not accomplish the goal of meaningful consultation with Inuit.

We have worked collaboratively with the NIRB to promote the accessibility of the Mary River assessment process by live broadcasting public hearings in oral Inuktitut to the affected communities. Like many other parties, we outlined some concerns about using remote technology as a substitute (rather than as a complement) for public hearings in our previous correspondence with the NIRB on April 22, 2020. In this regard, we would have hoped that we would have been included in constructive discussions about how multimedia technology could be used to support resumption of the assessment process in an appropriate manner, as well as the limitations of media access in fly-in Nunavut communities.

With 30 years' experience working with media in Nunavut's affected communities, NITV knows systemic barriers to Internet accessibility currently limit the use of multimedia technology to complementing face-to-face public hearings but not to substitute for them. The joint letter of the Mayors and HTOs from the five affected communities makes a strong point about the importance of face-to-face meetings for Inuit.

In 2017, Canada's Supreme Court also underlined the barrier poor internet in Nunavut communities imposes on 'true consultation' in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, [2017] 1 S.C.R. 1069, [Section 49]:

"Internet speed is slow in Nunavut, however, and bandwidth is expensive. The former mayor of Clyde River deposed that he was unable to download this document because it was too large. Furthermore, only a fraction of this enormous document was translated into Inuktitut. To put it mildly, furnishing answers to questions that went to the heart of the treaty rights at stake in the form of a practically inaccessible document dump months after the questions were initially asked in person is not true consultation. "[C]onsultation' in its least technical definition is talking together for mutual understanding" (T. Isaac and A. Knox, "The Crown's Duty to Consult Aboriginal People" (2003), 41 *Alta. L. Rev.* 49, at p. 61). No mutual understanding on the core issues — the potential impact on treaty rights, and possible accommodations — could possibly have emerged from what occurred here."

In addition to cultural and constitutional reasons why Inuit have legitimate expectations and rights to face-to-face meetings, there are significant infrastructure challenges related to bandwidth and cost of access that need to be overcome in order for the proposed remote meeting format to be a viable compromise during the COVID-19 pandemic.

Where PDF document download is problematic and watching Youtube or Netflix unaffordable, interactive two-way live online streaming or teleconferencing with multi-lingual simultaneous translation is virtually impossible. Nunavut's \$399/month BEST 5Mbps download speed for 55GB monthly use is **900 times more expensive** in cost-per-Mbps compared to Bell's best 1.5Gbps for Unlimited use down South. Nunavut's \$40/month WORST 512 Kbps download speed for 2GB

monthly use is **17 times more expensive for 50 times less usage** compared to Bell's worst 10 Mbps for 100GB use down South.

We have included some additional detail about these bandwidth and cost issues in Appendix A, and simply provide one cautionary example related to our live broadcasting of the public hearings in Iqaluit last November: One community member who watched NITV's Inuktitut live streaming of the majority of the public hearings informed us that he had an overage fee of \$800 from his Internet provider.

We believe the assumptions that many people in the south are forming about the capabilities of remote meeting technology must be questioned and tested in the affected communities. Without a massive investment in improved and affordable Internet in the affected communities, NITV believes that it is premature and inappropriate to consider remote meeting technology as a sufficient foundation for informed consultation with Inuit.

While we understand that the NIRB must work with all parties to find new approaches and practical compromises for project assessments during the COVID-19 pandemic, we also urge the NIRB to continue to uphold Inuit rights in the resumption of the Mary River Phase 2 assessment process.

Finally, we have noted with disappointment that the assessment process continues to take on a more legalistic approach and confrontational tone which we believe is incongruous with the free, prior and informed consent of Inuit. Moreover, we share the opinion of the Mayors and HTOs that there are a number of substantive issues that have not yet been resolved and are unlikely to be resolved without a change of approach that is more inclusive of communities.

We thank you in advance for your consideration of our submission.

Dr. Zacharias Kunuk, O.C.
President, Isuma Distribution International
Board Member, NITV.

Lucy Tulugarjuk
Chairperson and Executive Director, NITV;

Lloyd Lipsett
Advisor to Dr. Kunuk and Ms. Tulugarjuk

**Attachment A: Northern Internet Disadvantage
Qiniq (Nunavut) vs. Bell (South) compared in cost-per-Mbps download**

In 2020, still-limited internet capacity in fly-in Nunavut communities is inadequate to support 'true consultation' with interactive, two-way, oral participation with multi-lingual simultaneous translation through online teleconferencing or Zoom-style hang-outs without a significant system infrastructure upgrade. Compared to Bell internet in southern Canada, Qiniq internet cost in remote Nunavut communities is very far behind:

Qiniq's Taki Pro at \$399/month for **5 Mbps** download in Nunavut is **900 times more expensive** in cost-per-Mbps than Bell's Gigabit Fibe at \$125/month for **1.5 Gbps** download down South.

Qiniq's Utility at \$40/month with **512 Kbps** download for **2GB** use is **17 times more expensive for 50 times less usage** than Bell's \$50 Fibe Internet with **10 Mbps for 100GB** use down South.

At its BEST level available, Nunavut's capped download service in Pond Inlet, Iqaluit and Igloolik is *300 times worse for 3 times more cost* than the best available Unlimited service in Toronto where Baffinland headquarters are located, or Ottawa where the Federal Minister is located. At the same time, Qiniq's \$399 Taki Pro adds overage charges at \$15-per-GB over the 55GB cap.

At its LOWEST-COST available, Nunavut's capped and limited Utility service downloads internet *17 times slower for 50 times less usage at about the same price* as the least costly Bell service in Toronto, Ottawa or other southern locations

With its best service 900 times more expensive than southern Canada, and its least expensive service offering 50 times *less* capacity for 17 times *more* cost, Inuit in Nunavut can't afford to stream video services like Netflix or Youtube, Crave, Gem, Amazon or government information websites about COVID-19 or mining in Canada. Lower level speeds and bandwidth caps are too slow to stream media without lagging and unaffordable to download; higher level speeds allow limited streaming but rapidly eat up allowable bandwidth triggering large overage bills.

Carrying out Technical Meetings, Community Round Tables or any kind of Public Hearings by 'teleconference' or 'internet streaming' in and out of Nunavut communities in 2020 is not a factual reasonable objective likely to meet the Supreme Court's technical standard of 'true consultation' or 'mutual understanding.'

Bell Canada southern service at August 2020:

Packages

Choose the speed that suits your needs.

<p>Gigabit Fibe 1.5</p> <p>Fibre to your home</p> <p>View details</p>	<p>Up to 1.5 Gbps¹</p> <p>Total download speed</p>	<p>Up to 940 Mbps²</p> <p>Upload speed</p>	<p>Unlimited</p> <p>Monthly usage</p>	<p>\$124.95/mo.</p> <p>\$59.95 one-time activation fee.</p>	<p>Check availability</p>
<p>Gigabit Fibe</p> <p>Fibre to your home</p> <p>View details</p>	<p>Up to 1 Gbps¹</p> <p>Total download speed</p>	<p>Up to 750 Mbps²</p> <p>Upload speed</p>	<p>Unlimited</p> <p>Monthly usage</p>	<p>\$114.95/mo.</p> <p>\$59.95 one-time activation fee.</p>	<p>Check availability</p>
<p>Fibe 500</p> <p>Fibre to your home</p> <p>View details</p>	<p>Up to 500 Mbps</p> <p>Download speed</p>	<p>Up to 500 Mbps</p> <p>Upload speed</p>	<p>Unlimited</p> <p>Monthly usage</p>	<p>\$104.95/mo.</p> <p>\$59.95 one-time activation fee.</p>	<p>Check availability</p>
<p>Fibe 150</p> <p>Fibre to your home</p> <p>View details</p>	<p>Up to 150 Mbps</p> <p>Download speed</p>	<p>Up to 150 Mbps</p> <p>Upload speed</p>	<p>Unlimited</p> <p>Monthly usage</p>	<p>\$94.95/mo.</p> <p>\$59.95 one-time activation fee.</p>	<p>Check availability</p>
<p>Fibe 50</p> <p>View details</p>	<p>Up to 50 Mbps</p> <p>Download speed</p>	<p>Up to 10 Mbps</p> <p>Upload speed</p>	<p>Unlimited</p> <p>Monthly usage</p>	<p>\$79.95/mo.</p> <p>\$59.95 one-time activation fee.</p>	<p>Check availability</p>
For light Internet users					
<p>Fibe Internet</p> <p>View details</p>	<p>Up to 10 Mbps</p> <p>Download speed</p>	<p>Up to 0.93 Mbps</p> <p>Upload speed</p>	<p>100 GB</p> <p>Monthly usage</p>	<p>\$49.95/mo.</p> <p>\$59.95 one-time activation fee.</p>	<p>Check availability</p>

e:

Qiniq Nunavut service at August 2020:

The screenshot displays the NITV website's LTE service page. At the top, there is a navigation bar with links for MOBILE, INTERNET, COMPANY, MEDIA, CONTACT US, and a language selector (Inuktitut). Below the navigation bar is a purple header with the text "LTE PICK A DEVICE".

Under "PICK A DEVICE", there are four product cards:

- D-Link Modem:** Shows a black D-Link modem with two antennas. Price: \$299.00.
- Wingle:** Shows three white USB dongles. Price: \$160.00.
- BEC Ridgewave:** Shows a black laptop with a white antenna. Price: \$299.00.
- BEC Ridgewave 6900:** Shows a white diamond-shaped antenna. Price: \$799.00.

Each card includes a "Details" button and a "Select" button.

Below the device selection is another purple header: "LTE PICK A PLAN". Underneath, there are two tabs: "Nunavut Residents" (selected) and "Non Residents". A note states: "The below plans are available to Nunavut residents and students in Nunavut."

There are four plan cards:

- Utility:** 2 GB, 512 kbps, \$40.
- Taki Home:** 25 GB, 3 Mbps, \$80.
- Taki Plus:** 35 GB, 3 Mbps, \$180.
- Taki Pro:** 55 GB, 5 Mbps, \$399.

Each plan card includes a "Select" button and a link to "Included Features".

At the bottom, there is a note: "Excess usage pricing: 1 to 2 GB / 3 to 6 GB / 7 to 8 GB / 9 to 10 GB" and a red box stating: "All excess usage GBs do not expire at the end of your subscription month".

The final line of text reads: "Nunavut Resident plans are supported by a co-investment with the Government of Canada's Connecting Canadians program."