

July 19, 2022

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Attention: Andre Arbour, Director General

Via Email: telecomsubmission-soumissiontelecom@ised-isde.gc.ca

Subject: *Canada Gazette, Part I, June 4, 2022: In the Matter of Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*

1. The Canadian Wireless Telecommunications Association (CWTA) is pleased to submit the following comments concerning the Governor in Council's proposed *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy* (Policy Direction), published in the Canada Gazette, Part I on June 4, 2022.
2. 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, who together deliver Canada's world-class wireless services, one of the key pillars on which Canada's digital and data-driven economy is built.
3. Canadian telecom policy is largely focused on achieving the objectives of high-quality services, broad coverage, and affordable prices for consumers. As the Government's background document, *Renewing Canada's approach to Telecommunications Policy: Context for Action* (Backgrounder), illustrates, the Government's long-standing policy of encouraging facilities-based competition is generating positive results for Canadians across each of these objectives and the Policy Direction should build upon, and not undermine, these outcomes.
4. Alternative forms of competition, such as service-based competition, in which competitors rely primarily on leasing facilities from facilities-based providers, does not foster the level of ongoing investment necessary to expand coverage to underserved communities and to keep pace with other nations in the adoption of new generations of technology. Facilities-based competition is also generally regarded as the most sustainable form of competition.¹ That is why the Canadian Radio-television and

¹ "Facilities-based competition, in which competitors primarily use their own telecommunications facilities and networks to compete instead of leasing them from other carriers, is typically regarded as the most sustainable form of competition." Telecom Decision CRTC 2021-181

Telecommunications Commission (Commission) has tried to ensure that regulatory measures do not “come at the expense of more sustainable competition brought by facilities-based competition.”²

5. Part One of our comments addresses the Government’s background document, *Renewing Canada’s approach to Telecommunications Policy: Context for Action* (Backgrounder) and provides further evidence that facilities-based investment and competition are benefiting Canadian consumers and providing the vast majority of Canadians with access to world-class advanced telecommunication services at affordable prices. It is important that the Policy Direction not undermine the successes of facilities-based competition.
6. In Part Two we discuss our two recommendations for amending the Policy Direction. First, to eliminate the potential for confusion from having objectives listed in different sections of the Policy Direction, we recommend that the objectives set out in paragraph 8 of the Policy Direction be moved to the “Key Objectives” section of the Policy Direction as a new paragraph 3.
7. Our second recommendation addresses the inconsistencies in the current draft of the Policy Direction between the stated “Principles of Effective Regulation” and the overly prescriptive policy actions set out in the direction. Prescribing policies like maintaining mandated wholesale access for fixed internet services or encouraging service-based competition for mobile wireless services runs counter to the principles of effective regulation set forth in paragraphs 3 to 8 of the Policy Direction.
8. As currently written, the Policy Direction requires the Commission to maintain or enact such policies irrespective of potential changes in the market or new evidence establishing that such actions are not effective or proportionate for the stated purpose or are otherwise not the best way to achieve the objectives set out in the *Telecommunications Act* and the Policy Direction.
9. A policy direction should provide guidance to the Commission regarding the outcomes that Government wants to achieve, it should not prescribe the regulatory measures to be maintained or enacted to achieve these objectives. As the “Principles of Effective Regulation” section of the Policy Direction states, sound policy making depends on a consideration of sound and current evidence, decisions must be coherent, and measures implemented by the Commission must be efficient and proportionate for the purpose. This cannot be achieved if the Policy Direction fetters the Commission’s ability to follow these principles when exercising its regulatory authority.
10. Moreover, because of the prescriptive nature of many of its directions, it is questionable whether the Policy Direction respects the limitations of Section 8 of the *Telecommunications Act* which restricts the scope of a policy direction to “directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives”. Instead of providing clarity by replacing the existing two policy directions, questions regarding the legality of some of the Policy Direction mandates will create uncertainty for all stakeholders
11. It is for these reasons that we recommend that the sections entitled “Considerations for Fixed Internet Competition”, “Considerations for Mobile Wireless Competition”, “Approach to Consumer Matters”, and “Measures Supporting Deployment and Universal Access” be removed from the Policy Direction. Failing that, the language in these sections should be amended so that any referenced policy measures

² Telecom Regulatory Policy CRTC 2021-130, Review of mobile wireless services, para. 263

are not mandated but instead considerations for the Commission that remain expressly subject to the objectives of the *Telecommunications Act* and the Policy Direction as well as the Principles of Effective Regulation.

- 12. Failure to address an item in the Policy Direction should not be construed as agreement with that item. In addition, to the extent that there is any inconsistency between CWTA’s submission and that of a CWTA member regarding the Policy Direction, the member’s submission shall prevail.

PART ONE: Further Evidence of the Success of Facilities-based Competition

Investment in Networks and High-Quality Services

- 13. The Backgrounder makes clear that the high level of investment being made by Canadian facilities-based service providers has resulted in high quality services which rank among the best in the world. The following information further supports this point.
- 14. Although the cost of building mobile wireless infrastructure is higher in Canada than any of the other G20 countries, Canadian networks regularly outperform their global peers, ranking first among G20 countries for network quality based on mobile download speed, LTE availability, and mobile user video experience.³
- 15. Not only are Canadian mobile networks faster than those of other G7 countries, as shown in Figure 1 below they are significantly faster. For example, the average download speed of Canadian networks is over 82% faster than those in the United States.

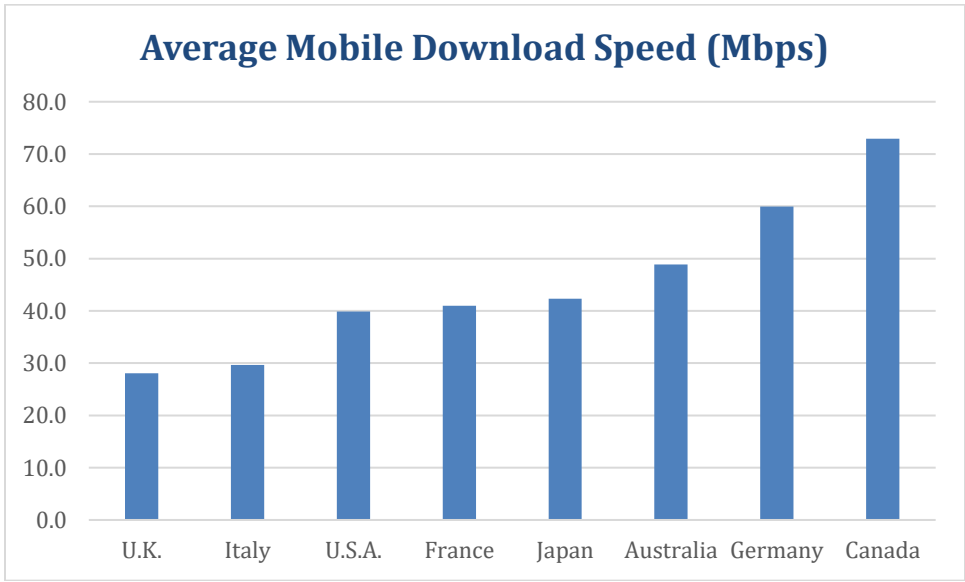


Figure 1: Average Mobile Download Speed⁴

³ PwC, Understanding the cost and quality of networks across the G20, 2021

⁴ Opensignal – Australia Mobile Network Experience Report – April 2022; Canada Mobile Network Experience – February 2022; France Mobile Network Experience Report – May 2022; Germany Mobile Network Experience Report – May 2022; Italy Mobile Network Experience – May

- 16. The above performance indicator is not based solely on networks servicing urban areas. A recent report by independent mobile analytics company, Opensignal, shows that mobile video, gaming, and voice app experience in Canada’s cottage country regions is on par with the national experience.⁵ Moreover, the speeds in Canada’s cottage country are faster than the national average speeds found in many countries.⁶
- 17. The Backgrounder also points out that Canada leads peer countries in household availability of full fibre networks, and when cable networks are considered, coverage of 100 Mbps and 1 Gbps in Canada is ahead of European Union countries. What it does not mention is that, as of 2020, Canada’s mobile wireless networks reach 99.7% of Canadians where they live and conduct business (Figure 2). This includes 98.9% of the North, 98.5% of rural areas, and 90.5% of First Nations reserve areas. Mobile wireless networks also cover 88.5% of major highways and roads. Based on these results, the CRTC has concluded that the mobile wireless industry is on track to meet the CRTC’s target of 100% mobile coverage in homes, businesses, and as many major transportation roads as possible by 2026.⁷

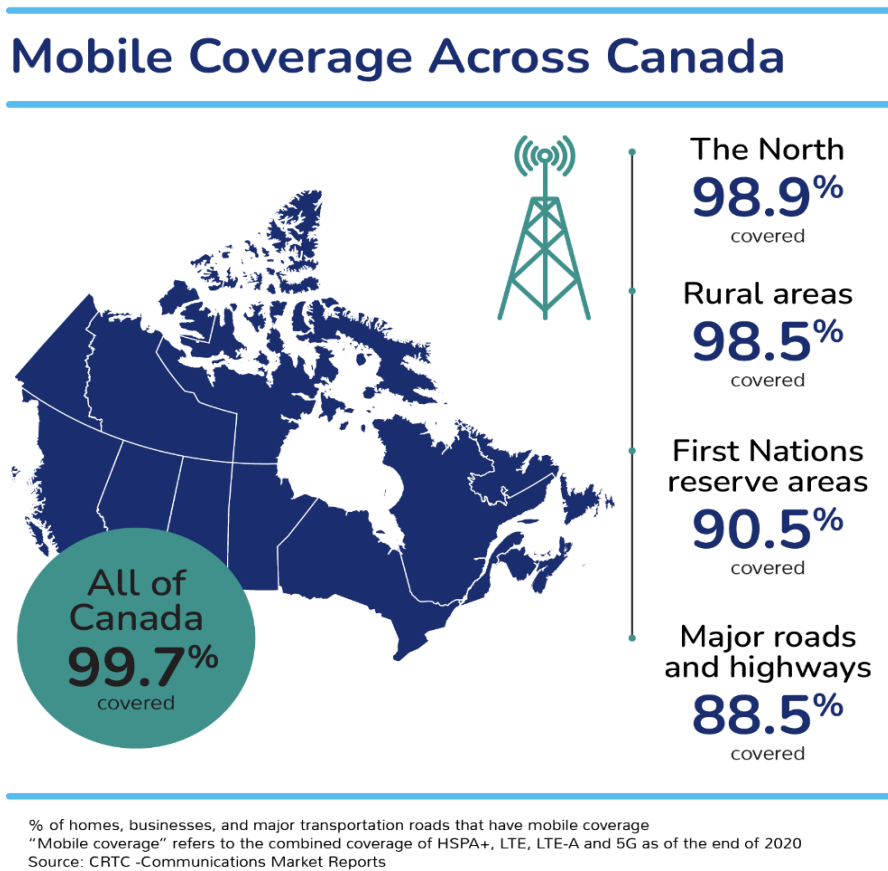


Figure 2: Mobile Coverage Across Canada

2022; [Japan Mobile Network Experience Report](#) – April 2022; [United Kingdom Mobile Network Experience Report](#)– April 2022; [USA Mobile Network Experience Report](#) – January 2022

⁵ Opensignal, *Cottage country mobile experience*, June 9, 2022 - <https://www.opensignal.com/2022/06/09/cottage-country-mobile-network-experience>

⁶ CWTA analysis of Opensignal data – see <https://www.cwta.ca/blog/2022/06/21/new-report-shows-mobile-wireless-user-experience-in-cottage-country-on-par-with-national-experience/>

⁷ CRTC Communications Market Reports - <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/mob.htm>

18. The Backgrounder references the \$11.4 billion invested in capital expenditures by facilities-based service providers in 2020. Even with the continuing uncertainty caused by the COVID-19 pandemic, these service providers increased investments in 2021, investing close to \$12.7 billion in capital expenditures and an additional \$8.9 billion in acquiring spectrum licenses in the 3500 MHz spectrum auction.
19. These investments contributed to Canada ranking an impressive 11th in “5G Reach” in Opensignal’s recent review of the global 5G experience.⁸ While the Backgrounder notes that Canada did not rank among the global leaders in more specialized application metrics, this is largely because Canada has been slower than many other countries in the allocation of new spectrum for use with 5G services. With the deployment of 3500 MHz having recently begun, it is expected that the significant investments made in this spectrum band will result in improved performance in these application metrics.
20. The levels of private sector investment and the resulting progress towards achieving the Government’s and industry’s shared goals of connecting all Canadians with world-class telecom services would not have been possible without policies that recognize facilities-based competition as the best form of competition. Facilities-based competition encourages the expansion and enhancement of digital infrastructure and is the cornerstone of an efficient framework that seeks to maximize innovation and affordability.

Service Adoption and Prices

21. In the Backgrounder the Government states that mobile wireless adoption in Canada “is still lower than many peers and below the OECD average”. The Government bases this conclusion on data from the OECD Broadband Portal.⁹ The penetration numbers featured in the OECD portal are supplied by member governments using their own methodologies and dates for collection of data. In most cases, the subscription numbers are comprised of subscriptions for mobile phones and other connected devices such as tablets, as well as data-only subscriptions, such as those used as a substitute to fixed broadband services.
22. The Backgrounder implies that a lower penetration number for mobile wireless subscriptions in Canada is cause for concern but offers no analysis supporting this view. Moreover, the OECD data shows that some countries report a penetration rate greater than one subscription per inhabitant but provides no insight as to whether that is a positive or negative outcome.
23. For example, does an individual have more than one mobile SIM card because their primary carrier has limited coverage and does not offer network roaming? In addition to a mobile phone, does the individual also have a data-only subscription for use with their laptop because they do not have access to reliable fixed broadband? As the OECD states on its Broadband Portal, “statistical country comparisons should be undertaken with caution”¹⁰, and this is particularly the case when there is insufficient information to assess the meaning of a particular metric like mobile wireless penetration.

⁸ Opensignal, *Benchmarking the Global 5G Experience – June 2022*, <https://www.opensignal.com/2022/06/22/benchmarking-the-global-5g-experience-june-2022>

⁹ <https://www.oecd.org/sti/broadband/broadband-statistics/>

¹⁰ Ibid, see “Broadband Methodology”

24. If one looks at mobile phone subscriptions only, the CRTC reports that as of Q1 2022, there are 33.5 million mobile phone subscribers in Canada.¹¹ This is an increase of 1.3 million since Q1 2021. According to Statistics Canada, there are 32.2 million Canadians aged 15 or older. With more mobile phone subscriptions than there are Canadians aged 15 and above, and over 1 million new mobile phone subscriptions over the last year, any concerns regarding mobile wireless adoption in Canada are not supported by the evidence.
25. The Backgrounder also states that mobile wireless data usage in Canada is lower than the OECD average. As is the case with country comparisons of penetration rates, no conclusions can be drawn from international comparisons of mobile wireless data usage without additional information.
26. The OECD mobile data usage information relied upon in the Backgrounder encompasses all forms of mobile wireless subscriptions, including mobile phone and mobile broadband subscriptions. Also like the mobile penetration data, the mobile data usage per subscriber numbers do not, in and of themselves, provide any insight into the performance of a country's telecommunications market.
27. For example, the OECD Broadband Portal reports that in 2020 Finland had an average month data usage per subscriber of just over 30GB. While this is four times the OECD average, it does not mean that the Finnish telecommunications market is performing significantly better than other OECD countries. Instead, the Finnish market's higher mobile data usage is largely attributable to a bigger reliance on mobile connectivity than in other countries, including Canada.
28. According to the Finnish Transport and Communications Agency (Traficom), high speed fixed-network access and subscriptions in Finland are among the lowest of the Nordic and Baltic countries.¹² Instead, many Finnish homes only have a mobile connection. The result is that internet and other data usage is more mobile-focused in Finland than in other countries. For example, a recent Traficom report shows that while 47% of data transfers in Finland occurred via mobile connections, only 12% of data transfers occurred via mobile connections in Denmark, and 5% in Germany and the UK.¹³
29. As the above example shows, lower mobile data usage in one country versus another is not indicative of a poor performing mobile wireless market in the lower consumption country. Most Canadians have access to high-quality fixed and wireless network services, as well as many public and privately located free WiFi services. According to the OECD Broadband Portal, Canada ranks 8th in the OECD with respect to the number of fixed broadband subscriptions per 100 inhabitants. Finland ranks 24th and is below the OECD average. With more options available to them, Canadians can choose which form of connectivity they wish to use depending on their needs and circumstances.
30. It stands to reason that with more connectivity options, Canada would have a different data usage pattern than other countries, such as Finland. As the Backgrounder indicates, Canada ranks highly in fixed broadband data usage when compared to peer countries such as the U.K. and Australia. With respect to mobile wireless data usage, as shown in Figure 3 below, Canadians' consumption of mobile data

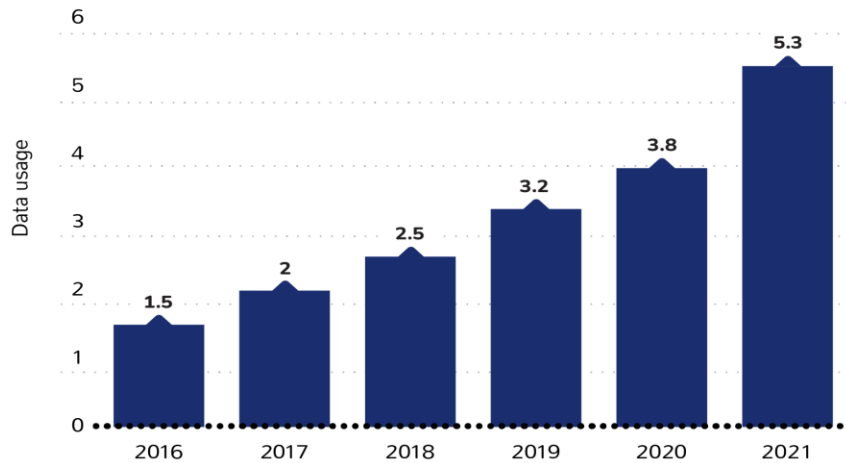
¹¹ CRTC Communications Market Reports, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/mob.htm>

¹² <https://www.traficom.fi/en/news/finland-consumes-significant-share-all-mobile-data-used-nordics-and-baltics>

¹³ <https://www.traficom.fi/en/news/half-internet-usage-finns-travels-through-mobile-network-5g-networks-are-being-built-rapid>

continues to increase year over year. When put together, data traffic in Canada through all means of connectivity is increasing and is not an outlier compared to other peer countries.

Average data usage per subscription with a data plan (GB/month)



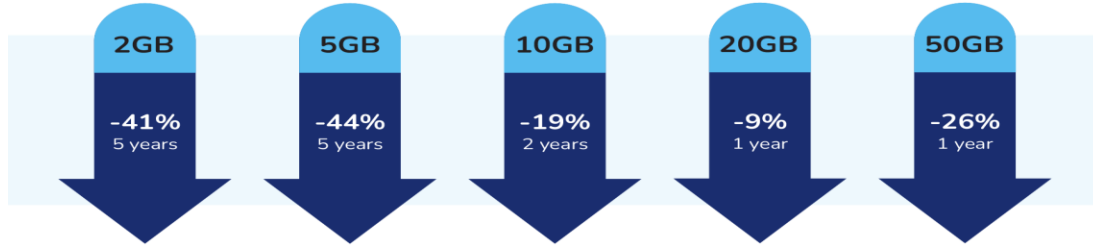
Source: CRTC – Communication Market Report, Current Trends – Mobile wireless – April 2022

Figure 3: Average data usage per subscription with a data plan

31. Regarding prices for mobile wireless services, the Backgrounder notes that prices have declined in Canada. However, it is important to note just how significant these reductions have been. According to recent CRTC data (Figure 4), prices for mid-to-large data plans have decreased significantly in recent years.¹⁴

¹⁴ <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/mob.htm>

Declining Wireless Prices



Percentage (%) decline in lowest reported average price/month for plans with referenced data allotment over the referenced period. 2GB plan with at least 1,200 talk minutes and 300 SMS. All other plans with unlimited talk and SMS. Source: CRTC—Communication Market Report, Current Trends—Mobile wireless—April 2022

Figure 4: Declining Wireless Prices

32. In addition, from January 2019 to May 2022, Statistics Canada’s Cellular Services Index has decreased by 31.43%. In comparison, Statistics Canada’s All Items Consumer Price rose by 13.70%, and the price of U.S. cellular services rose by 2.8% during the same period.¹⁵
33. While the Backgrounder acknowledges the steady reduction in mobile wireless prices, it states that prices are still high compared to international peers. However, most international price comparison studies are based on flawed apples-to-oranges comparisons of dissimilar service plans and make no attempt to explain why such price differences between countries exist.
34. Differences in prices are attributable to many factors, including a difference in the quality of the services provided as well as country attributes, such as the differences in the costs of providing services in each country. As referenced above, the quality of mobile wireless services in Canada is superior to that of most peer countries. With respect to costs of providing the service, largely due to Canada’s size, low population density, climate, and spectrum costs, Canadian network operators incur higher building costs compared to other countries.
35. According to a study conducted by Christensen Associates, Canadian network operators incur 83% higher costs for network building than the benchmark countries of Japan, Germany, France, U.K., Italy and Australia.¹⁶ In another study, PwC concluded that compared to their G20 country peers, Canadian wireless operators have two times higher capital expenditures per subscriber, three times higher

¹⁵ [StatCan](#) consumer price indices, and U.S. [Bureau of Labor Statistics](#) data

¹⁶ <https://www.lrca.com/wp-content/uploads/2020/10/Key-Cost-Drivers-of-Mobile-Wireless-Services-in-Canada-Implications-for-Pricing-US-Included.pdf>

spectrum costs, and 80% less scale, meaning that the expense of operating wireless networks in Canada is significantly greater than in other countries.¹⁷

36. International price comparisons provide little insight into telecom prices between countries if they do not take into consideration all the factors that contribute to differences in prices, including the quality of services and the differences in deployment and operating costs.
37. The Backgrounder partially acknowledges this in stating that we should not expect the same prices in Canada as in smaller countries, but it also suggests that there should not be a significant difference in prices between Canada and Australia because Australia is also a large country and has high quality networks. This comparison ignores the fact that Canada has 50% more cell towers¹⁸ per capita than Australia due to it having more small towns and a more challenging geography, which in part contributes to Canadian operators incurring 33% higher capital expenditures than their Australian counterparts.
38. As the additional data in Part One of our comments illustrates, the Canadian telecommunications industry is delivering positive outcomes for consumers. Significant ongoing investments in digital infrastructure has resulted in world-class networks that provide broad coverage and exceptional performance. Prices for mobile wireless services continue to decline.
39. These are all indications that long-standing policies in Canada that support facilities-based competition are working. This includes targeted policies that have encouraged new entrant regional facilities-based providers to invest in building their own network facilities so that they can offer Canadians alternate services and more choice.
40. Despite these positive outcomes, more time is necessary for these policies to achieve their full impact. Continued promotion of private sector investment in expanding and enhancing networks is critically important, especially for the rollout of 5G and other future generation technologies. It is important that the Policy Direction not undermine the role of facilities-based competition in achieving these outcomes.
41. As Part Two of our comments explain, the prescriptive nature of many of the directions contained in the Policy Direction has the potential to do just that. By fettering the Commission's decision-making power, the Policy Direction contradicts its own "Principles for Effective Regulation" by requiring the Commission to take certain actions regardless of whether such actions are supported by sound and recent evidence or are efficient and proportionate to their purpose.

¹⁷ PwC, *The importance of a healthy telecommunications industry to Canada's high tech success*, July 2020, <https://www.pwc.com/ca/en/communications/publications/761378-the-importance-of-a-healthy-telecommunications-industry-to-canadas-high-tech-success.pdf>

¹⁸ PwC, *Understanding the cost and quality of networks across the G20*, September 2021, <https://www.pwc.com/ca/en/communications/assets/understanding-the-cost-and-quality-of-networks-across-the-g20-en.pdf>

PART TWO: Comments Regarding the Policy Direction

42. We are concerned that the inclusion of objectives in two separate sections of the policy direction creates confusion. In addition, the sections of the Policy Direction entitled “Considerations for Fixed Internet Competition”, “Considerations for Mobile Wireless Competition” and “Approach to Consumer Matters” are overly prescriptive and are contrary to the Policy Direction’s “Principles for Effective Regulation”. These sections may also fall outside the limited scope of Section 8 of the *Telecommunications Act*, thereby creating uncertainty regarding the legality of the Policy Direction.

Policy Objectives

43. As is the case with the 2006 and the 2019 policy directions, the Policy Direction sets out key principles and objectives that the Commission is to consider when exercising its powers to implement the policy objectives set out in Section 7 of the *Telecommunications Act*. The 2006 direction focuses primarily on the reliance on market forces and ensuring that measures implemented by the Commission were efficient and minimally intrusive. The 2019 direction requires the Commission to consider “how its decisions can promote competition, affordability, consumer interests and innovation” and includes a list of sub-factors to be considered in this respect. These additional considerations in the 2019 direction are repeated in the Policy Direction under the heading “Key objectives” (paragraph 2).
44. The Policy Direction also includes six “Principles of Effective Regulation”. CWTA generally agrees with these principles. In particular, we agree that it is important that any measures imposed by the Commission be “efficient and proportionate to the purpose” (paragraph 4) and that decisions should be based on “sound and recent evidence” (paragraph 6).
45. We also agree that when making decisions of an economic nature, the Commission must strike a balance between the objectives of fostering innovation; promoting investment in high-quality networks; improving consumer choice; supporting the provision of innovative services; and encouraging the provision of services at reasonable prices for consumers (paragraph 8).
46. However, the inclusion of objectives in both the “Key objectives” section and the “Principles of Effective Regulation” section gives rise to potential confusion. Placing objectives in different sections of the policy direction could create doubt as to whether these separately listed objectives have equal weight or are to be given different emphasis. As the objectives in paragraph 8 are not less important than the objectives in paragraph 2, they should be listed under the same “Key objectives” section. This can easily be accomplished by moving paragraph 8 to the “Key objectives” section as a new paragraph 3.

Prescriptive Directions

47. Unlike the 2006 and 2019 policy directions, the Policy Direction includes a lengthy list of prescriptive directions. These directions do not advise the Commission on how it should make decisions, they direct the Commission on what decisions it must make.
48. For example, paragraph 9 of the Policy Direction requires the Commission to continue to mandate wholesale services for fixed internet and maintain aggregated wholesale high-speed access services. With respect to mobile wireless services, paragraph 15 instructs the Commission to encourage broader

service-based competition if the effectiveness of Commission's current approach to a mandated wholesale facilities-based mobile virtual network operator access service is lessened due to changes in the market.

49. Prescribing such actions runs counter to the very principles of effective regulation that are contained in the Policy Direction. As evidenced by the 2006 policy direction, policy directions can remain in effect for many years and require an act of Parliament to rescind or replace. During those years, changes can occur in the telecommunications industry, including technological changes, consumer habits, and market participants.
50. As a result, policy directions should provide the Commission with the necessary flexibility to adjust regulations to reflect changes in the marketplace. Prescribing measures such as those in paragraphs 9 and 15 inappropriately fetters the decision-making power of the Commission and runs counter to the very principles of effective regulation that are contained in the Policy Direction.
51. Paragraph 4 of the Policy Direction directs the Commission to ensure that measures it imposes "are efficient and proportionate to their purpose." Paragraph 6 of the Policy Direction states that decisions of the Commission should be based on "sound and recent evidence". Yet prescriptions such as those described above do not consider whether they are efficient and proportionate nor do they allow for the consideration of the most recent evidence.
52. For example, while the Commission may think that the existing mandated wholesale services framework for fixed internet is currently an efficient and proportionate means for achieving the objectives of the *Telecommunications Act*, this may not always be the case. If the Commission determines in the future, based on sound and recent evidence, that mandating wholesale services is not required, or is no longer an efficient and proportionate way to foster fixed Internet competition, the Policy Direction states that it must nevertheless be maintained.
53. Similarly, the Policy Direction requires that if the effectiveness of the Commission's current approach to a mandated wholesale facilities-based mobile virtual network operator access service is lessened due to changes in market structure or circumstances of competition, it must revise its approach to encourage broader service-based competition. This direction requires such a revision even if such a measure is not efficient and proportionate to the purpose or not supported by sound and recent evidence.
54. The same criticism applies to the prescriptions set forth in the "Approach to Consumer Matters" section of the Policy Direction. Paragraph 2 of the Policy Direction includes as a key objective for the Commission to enhance and protect the rights of consumers. However, rather than leaving it up to the Commission's application of the "Principles of Effective Regulation", paragraph 17 of the Policy Direction sets out a list of actions that the Commission must take to fulfill such objective.
55. By prescribing specific policy measures that the Commission must take, the Policy Direction violates its own principles of effective regulation. Such internal inconsistencies should not be present in a policy direction. As with previous policy directions, the Commission should be provided the ability to implement the objectives of the *Telecommunications Act* and the additional objectives set forth in the Policy Direction in a way that respects the principles set forth in the "Principles of Effective Regulation" section of the Policy Direction.

56. We are also concerned that the Policy Direction does not respect the limitations of Section 8 of the *Telecommunications Act* which restricts the scope of a policy direction to “directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives”. Instead of directions of general application on broad policy matters, the prescriptive provisions of the Policy Direction replace the Commission’s decision-making authority with Government-mandated measures to deal with specific and narrow policy matters. Rather than providing clarity by replacing the existing two policy directions, questions regarding the legality of some of the Policy Direction mandates will create uncertainty for all stakeholders.
57. This internal inconsistency and overreaching scope of the Policy Direction can be remedied by removing the sections entitled “Considerations for Fixed Internet Competition”, “Considerations for Mobile Wireless Competition”, “Approach to Consumer Matters”, and “Measures Supporting Deployment and Universal Access”. Failing that, these sections should be amended so that any referenced policy measures are not mandated but instead mentioned only as matters for the Commission to consider and that any such consideration remains expressly subject to the objectives set out in the *Telecommunications Act* and the Policy Direction, as well as the Principles of Effective Regulation.

Conclusion

58. Facilities-based competition is generally regarded as the best and most sustainable form of competition. It is delivering positive outcomes for consumers, including significant ongoing investments in digital infrastructure resulting in world-class networks that provide broad coverage and exceptional performance. It has also resulted in a steady decline in prices for mobile wireless services.
59. In the Backgrounder the Government acknowledges that the Policy Direction should build on these strengths. However, in its current form the Policy Direction inappropriately fetters the decision-making authority of the Commission and risks undermining the positive outcomes being delivered by facilities-based competition.
60. As discussed in Part Two of this document, the Policy Direction does not follow its own “Principles of Effective Regulation” and requires the Commission to take specified actions even if they are not supported by sound and recent evidence or are not efficient and proportionate to the stated purpose. Rather than building on the strengths of the telecommunications sector, including facilities-based competition, the Policy Direction creates scenarios where such strengths would be ignored or undermined to the detriment of all Canadians. These prescriptions may also run afoul of Section 8 of the *Telecommunications Act* which limits policy directions to those of general application on broad policy matters.

61. To rectify these deficiencies, the Policy Direction should be amended by removing the prescriptive sections entitled “Considerations for Fixed Internet Competition”, “Considerations for Mobile Wireless Competition”, “Approach to Consumer Matters”, and “Measures Supporting Deployment and Universal Access”. Alternatively, those sections should be amended so that any referenced policy measures are not mandated but instead mentioned only as matters for the Commission to consider and that any such consideration remains expressly subject to the objectives set out in the *Telecommunications Act* and the Policy Direction, as well as the Principles of Effective Regulation.

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