

**TELECOM NOTICE OF CONSULTATION CRTC 2023-56**  
***REVIEW OF THE WHOLESAL HIGH-SPEED ACCESS FRAMEWORK***

**COMMENTS**  
**OF**  
**CANADIAN TELECOMMUNICATIONS ASSOCIATION**

**JUNE 22, 2023**

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## Executive summary and introduction

1. Pursuant to the procedure outlined in Telecom Notice of Consultation 2023-56 (TNC), the Canadian Telecommunications Association provides its initial comments on the Commission's review of its framework for wholesale high-speed access services.
2. The Canadian Telecommunications Association is an industry association dedicated to building a better future for Canadians through connectivity. Our members include service providers, equipment manufacturers, and other organizations in the telecommunications ecosystem, that invest in, build, maintain and operated Canada's world-class telecommunications networks. Through our advocacy initiatives, research, and events, we work to promote the importance of telecommunications to Canada's economic growth and social development, and advocate for policies that foster investment, innovation, and positive outcomes for consumers.
3. In this intervention we do not intend to comment on all the issues raised in the TNC. Failure to address any issue should not be construed as our agreement with any assertions made, or preliminary positions taken in the TNC. In addition, to the extent that any comments in this intervention conflict with a comment of an Association member, the comment of the member shall prevail with respect to that member.
4. Given the varied perspectives of the Association's membership regarding aspects of the Commission's wholesale high-speed access framework and proposed reforms, the Association does not take a position on whether a mandated wholesale high-speed access framework should be maintained and, if so, what form it should take. Our intervention focuses on the need to maintain incentives for continued private sector investment in broadband networks and the inappropriateness of considering retail regulation.
5. As discussed further in this intervention, facilities-based competition has long been considered the preferred form of competition, in part, because it is facilities-based competition that determines the quality, coverage and reliability of Canada's networks. Better networks provide better results for consumers and, in continuing to make significant investments in their networks, network operators are incented to vigorously compete against one another to win customers onto their networks.

6. To maintain these positive consumer outcomes, the Commission must ensure that its wholesale high-speed access service framework maintains incentives for facilities-based competitors to continue to invest in their network infrastructure.
7. With respect to retail regulation, there is not sufficient evidence to justify a reversal of the Commission's previous forbearance decisions regarding the regulation of retail internet access services. Moreover, it is not appropriate to consider retail regulation until such time as the wholesale access framework resulting from this consultation is given time to operate so that its impact can be properly evaluated.

### **The benefits of facilities-based competition**

8. The Commission's longstanding approach to wholesale service regulation has been to promote facilities-based competition wherever possible.<sup>1</sup> This is because facilities-based competition is "typically regarded as the ideal and most sustainable form of competition".<sup>2</sup> The preference for facilities-based competition has been driven, in large part, by the fact that it is facilities-based competition that determines the quality, coverage and reliability of Canada's networks.
9. In its 2019 study of competition in Canada's broadband industry, the Competition Bureau observed that while wholesale-based and facilities-based competitors compete against each other every day, "facilities-based competitors engage in a dynamic form of competition to successfully introduce better networks over time through investments in new technologies."<sup>3</sup>
10. The Bureau further described the benefits of facilities-based competition as follows<sup>4</sup>:

This type of dynamic competition benefits competition in at least two ways. First, it is logical that better networks provide better results for consumers: faster, less congested connections that grow and change more or less in tune with consumer demand. Second, once the investment in new networking equipment and physical lines has been made, companies have a strong incentive to compete hard and win customers in order to generate revenues sufficient to recoup those investments.

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<sup>1</sup> See Telecom Regulatory Policy CRTC 2015-326, para.5; Telecom Decision CRTC 2021-161, paras. 3 and 11.

<sup>2</sup> CRTC 2015-326, para. 5.

<sup>3</sup> Competition Bureau, *Delivering Choice: A Study of Competition in Canada's Broadband Industry*, p.45 (Delivering Choice)

<sup>4</sup> *Ibid*, p.47

This race to provide the most robust networks is an important source of dynamic competition. It results in consumers having access to the fastest speeds and best connections while, at the same time, driving substantial investment in the Canadian economy. And, at least over the past 20 years, *it has been a self-sustaining form of competition*, as both telephone and cable companies jockey to establish themselves as market leaders. [emphasis added]

### Positive consumer outcomes

11. The fruits of this dynamic form of competition and the investments it generates are undeniable. As the Commission acknowledges, “Canadians are fortunate in that they have two viable fixed broadband connections available to their household”.<sup>5</sup> In other words, unlike many countries, Canada’s broadband market is comprised of a mix of national and regional ILECs and cable carriers who compete vigorously with one another using different technologies to provide superior performance, coverage, and reliability, and to keep up with the demands of consumers.
12. This is in stark contrast to many other developed countries, such as Italy that has no cable infrastructure and has been struggling to fulfill its high-speed broadband objectives.
13. In recent years, Canada’s national and regional facilities-based service providers have combined to invest an average of over \$9.2 billion in capital expenditures per year to expand and enhance wireline broadband networks in Canada.<sup>6</sup> In addition to wireline capital investments, service providers have also invested close to \$3 billion per year over the same period in wireless infrastructure, and over \$12 billion in acquiring additional spectrum licenses. These wireless investments have contributed to significant improvements in the performance of fixed wireless services, making fixed wireless internet access an increasingly viable substitute for wired services, especially for Canadians in rural communities.
14. These investments, which exceed that of the average of other G7 countries plus Australia as a percentage of revenue (19% vs 14%) and per subscriber basis (\$168 vs \$87)<sup>7</sup> have produced positive outcomes for consumers.

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<sup>5</sup> TNC para. 4.

<sup>6</sup> Based on CRTC reported figures for years 2016-2021.

<sup>7</sup> PwC, Canada’s post COVID-19 recovery: The impact of the telecom sector in 2021 and beyond (2022) (PwC – Canada’s post COVID-19 recovery)

15. The percentage of Canadian households with access to high-speed networks has steadily increased, with 93.5% of households now having access to the CRTC's universal service objective of 50/10 speeds and unlimited data<sup>8</sup>.
16. This increase in coverage is the result of investments made by facilities-based service providers, independently and in partnership with various levels of government, in closing the rural/urban digital divide. For example, the percentage of growth in 50/10 unlimited coverage in rural Canada has increased by 52% between 2018-2021, while coverage in First Nations reserve areas has increased by 38.34% in the same period.<sup>9</sup>
17. But more work is required. Continued investment in connecting and enhancing services in rural and remote communities is necessary to create stronger rural and indigenous communities through enabling remote work, encouraging business investment, providing increased access to healthcare and education, and supporting the delivery of online programs that increase social inclusion and wellbeing.
18. Investments in infrastructure have also resulted in increased network performance. Between 2015 and 2021, the weighted average internet service speed has increased by over 800%, from 28.4 Mbps to 258.8 Mbps.<sup>10</sup> Canadians now enjoy wireline broadband networks that are 56.6% faster than the G20 average and far superior to those in countries such as Germany, U.K., Italy, and Australia.<sup>11</sup>
19. In addition, the Commission notes that more Canadian households are subscribing to higher speed services and that data consumption has more than doubled since 2019.<sup>12</sup>
20. More Canadians choosing faster speeds and significant increases in data consumption could not have happened to this degree without facilities-based competition and a regulatory framework that recognizes the importance of maintaining investment incentives.
21. These positive outcomes are also attributable to the fact consumer prices for high-speed internet plans have remained steady, despite the widespread inflationary pressures being felt throughout the global economy. According to Statistics Canada, while the All-items Consumer Price Index has risen by 15.3% in

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<sup>8</sup> Statement from Minister Hutchings on the Auditor General of Canada's report on rural and remote connectivity, March 27, 2023.

<sup>9</sup> CRTC, Communications Market Reports.

<sup>10</sup> Ibid.

<sup>11</sup> Ookla, Speedtest Global Index, April 2023. Median download speed (Mbps) – Canada 146.07, Germany 82.24, UK 81.18, Italy 63.74, and Australia 52.98

<sup>12</sup> TNC para. 2.

the three years from April 2020 to April 2023, while the Internet Access Services Price Index has risen by only 1.5% over the same period.

22. In addition, service providers across the country offer affordable high-speed internet to low-income families and seniors for as low as \$9.99 per month. Unlike in other countries such as the U.S., these low-cost plans are made available without any government subsidy.
23. Despite prices bucking the inflationary trend seen in most other sectors, the Commission has raised concerns that prices for mid-range and top-range plans remain high relative to international peers.<sup>13</sup> It bases its conclusion on the most recent annual price comparison study commissioned by Innovation, Science and Economic Development Canada (ISED).
24. In doing so it completely ignores the limited nature of ISED's price study methodology. ISED price comparison studies from earlier years used the same methodology, but included important caveats that informed readers about the study's limitations and cautioned that these caveats should be considered when interpreting its findings.
25. For example, the 2016 report stated, in part:

This Study did not take into account the network technologies deployed in the networks nor the speed or quality of service of those networks. Finally, this Study did not account for any cost of service or socioeconomic factors that may be relevant for price differences across different domestic and international jurisdictions. Thus, factors such as population density, terrain and climate have significant impacts on the cost of service.<sup>14</sup>

26. In other words, even if one were to put aside the problems with the collection of price data and assumed it was correct, the study tells us nothing about the reasons why prices differ between countries. Without considering factors such as those referenced in the paragraph immediately above, no meaningful conclusions can be made about the state of internet access prices in Canada relative to other countries.
27. For example, the size of Canada, together with its varied terrain and harsh climate, makes the cost of building fixed broadband networks in Canada higher than in countries that have less area to cover and easier building conditions. Canadian service providers also have a smaller potential subscriber base from which to recoup these costs. For example, when considering only inhabited areas of Canada, Canada only has eight household per km<sup>2</sup> compared to countries like

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<sup>13</sup> TNC para. 20.

<sup>14</sup> Nordicity, *2016 Price Comparison Study of Telecommunications Services in Canada and Select Foreign Jurisdictions*. March 2016.

Japan (248), South Korea (233), UK (113), Germany (103), Italy (62), France (57), and U.S. (43).<sup>15</sup> Yet the Commission did not consider these factors before concluding that there are “troubling signs regarding retail Internet service prices.”<sup>16</sup>

28. The Commission cannot reasonably conclude that differences in prices between countries is a troubling sign without examining whether the prices compared reflect what consumers actually pay for their services and, if there are differences, the reasons for such differences. Failure to examine these questions contradicts the policy direction to the Commission that requires it to base its findings on “sound and recent evidence.”<sup>17</sup>

### **Key contributor to the Canadian economy**

29. In addition to the positive outcomes for consumers, the investments made by facilities-based service providers are a significant contributor to Canada’s economic growth.
30. In 2021, Canada’s telecommunications sector directly contributed an estimated \$74.9 billion dollars in GDP to Canada’s economy and supported over 650,000 jobs across industries.<sup>18</sup> Equally important, during the COVID-19 pandemic, the connectivity provided by the telecom sector was instrumental in maintaining economic and social activity across the country.
31. While there were initial concerns by some observers that telecommunications services would not be able to handle the significant increases in traffic and altered use patterns caused by the shift to remote working, because of careful planning and years of investing in telecommunications networks, Canada’s networks proved to be remarkably resilient during these unprecedented times. Similar foresight and investment are necessary to secure Canada’s future.
32. The need for continuing high levels of capital investment does not suddenly stop with the deployment of the latest generation of network technology. The telecommunications industry is continually evolving and marked by rapid technological change. Only by continuing to invest in the latest innovations are facilities-based service providers able to keep up with the increasing demands of consumers. Enhanced connectivity delivered by the telecommunications sector is also an important enabler of the digital economy and the use cases that will support economic growth as well as environmental and social benefits to all of Canada.

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<sup>15</sup> Calculations using data from Telegeography, GlobalComms Database.

<sup>16</sup> TNC para. 20.

<sup>17</sup> [Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy para 6.](#)

<sup>18</sup> PwC, Canada’s post COVID-19 recovery.



33. Using the infrastructure and connectivity provided by the telecommunications sector, industries will be able to deploy and scale digital solutions, including those using data, AI, and cloud computing, to modernize and improve their operations, processes, and services. As operations become more efficient and productive, they also become more sustainable, with businesses using technologies powered by connectivity to decrease their green house gas emissions and energy consumption and reduce waste. But these innovative solutions will not be available to Canadians without continuing to invest in the network infrastructure that supports their use.

### **Interdependence with other government priorities**

34. Continued investment in broadband infrastructure and services is also critical to support other key government policy objectives. Both the Commission and the Federal Government have made network reliability and resiliency a priority, with the Minister of Industry's introduction of a Telecommunications Reliability Agenda in September 2022<sup>19</sup>, and the Commission launching what it says will be a series of consultations on network reliability.<sup>20</sup> Pending cybersecurity legislation will also introduce regulatory requirements that mandate what steps facilities-based service providers must take in the face of security threats identified by the federal government.
35. While facilities-based service providers already take these matters seriously and continually invest in strengthening and securing their networks, a wholesale high-speed access framework that reduces their investment capacity will make it more difficult to fulfill these government priorities. As SaskTel pointed out in its intervention dated April 24, 2023, these different policy goals cannot be treated as separate issues.<sup>21</sup> Increased coverage, greater reliability, and additional cybersecurity measures all require investment from facilities-based service providers.

### **The impact of mandated wholesale access on investment**

36. To ensure the many positive outcomes highlighted above continue, it is imperative that the Commission maintain the proper conditions for continued private sector investment in broadband networks. This means that in reviewing its wholesale high-speed access service framework, the Commission must consider the impact of wholesale regulation on the incentive to investment.

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<sup>19</sup> <https://ised-isde.canada.ca/site/ised/en/reliable-telecom-services/telecommunications-reliability-agenda>

<sup>20</sup> TNC CRTC 2023-39 – Call for comments – Development of a regulatory framework to improve network reliability and resiliency – Mandatory notification and reporting about major telecommunications service outages.

<sup>21</sup> SaskTel intervention para. 16.

37. The potential negative impact of wholesale regulation on investment is well-established<sup>22</sup>. As the Competition Bureau stated:

...wholesale access regulation diminishes the expected profits of the investment, as some of the profits flowing from the investments are instead earned by wholesale-based competitors using that network to serve consumers.<sup>23</sup>

38. The Bureau also noted that the impact of wholesale regulatory on investment was not only theoretical. Through access to confidential business records of facilities-based service providers it observed “real world examples where profitable investments become unprofitable under differing regulatory treatment.”<sup>24</sup>

39. It is for this reason that, to the extent there is to be mandated wholesale high-speed access services, the wholesale prices must be just and reasonable to ensure that investment incentives are maintained.

### Policy objectives

40. Section 7 of the *Telecommunications Act* sets out the objectives of Canadian telecommunications policy. These include:

(a) to facilitate the orderly development throughout Canada of a telecommunications system that services to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

(b) To render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

.....

(f) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.

41. Each of these objectives requires the maintenance of incentives for investment. A lessening of incentives for private sector investment would threaten the orderly development of telecommunications systems that are vital to Canada’s economic growth and social well-being, risk a reduction in the expansion and enhancement of connectivity in rural and remote communities, and lessen the sector’s capacity

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<sup>22</sup> For example, see independent empirical studies cited in the following: Sanderson and Cormier, [Delivering Better Broadband Performance: Facilities Competition vs Access Regulation](#) (2018); Bazelon, Duplantis, Ros, [An Analysis of Broadband Services in Canada: Competition, Regulation, and Investment](#).

<sup>23</sup> Delivering Choice, p.47

<sup>24</sup> Ibid, p.49.

to invest in research and development and the deployment of next generation technologies.

42. The Commission's implementation of the policy objectives under the Act are also guided by the Minister of Industry's Policy Direction.<sup>25</sup> While the Policy Direction contains specific prescriptions pertaining to fixed internet competition and wholesale high-speed access service, it also requires that in making decisions of an economic nature, it must balance its other objectives with the objective of promoting investment in high-quality networks.<sup>26</sup>
43. Importantly, the objective of promoting investment in high-quality networks is not at odds with other objectives in the policy direction such as "encouraging the provisions of services at reasonable prices for consumers" or maintaining a framework for wholesale internet services "at just and reasonable rates". Rather the Policy Direction requires that in deciding as to what is reasonable in terms of prices and wholesale rates, the Commission must consider the impact that prices and rates have on the incentives for investment in networks.

### Retail regulation

44. In the TNC the Commission states that it is concerned about relying solely on wholesale regulation and invites interveners to suggest what conditions would justify the imposition of retail internet service regulation and what regulatory measures would be appropriate to impose.
45. As noted in the TNC, the Commission has, with a few exceptions such as the establishment of the Internet Code as a condition of service under Section 24 of the Act, forborne from the regulation of retail internet access services across Canada.<sup>27</sup> To reverse a forbearance decision the Commission has previously stated that "evidence must be filed that is sufficiently persuasive to demonstrate that the circumstances that justified the original forbearance determinations are no longer present."<sup>28</sup> The Commission re-affirmed this test in TRP 2013-711 where it stated that "the evidence should demonstrate that the circumstances that gave rise to the forbearance have changed *to such an extent* that the Commission's original findings are no longer consistent with section 34 of the Act"<sup>29</sup> (emphasis added).
46. The TNC does not contain, and we do not think sufficient evidence exists to justify deforbearance from the regulation of retail internet access services. Moreover, it is entirely premature to consider retail regulation when the

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<sup>25</sup> [Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy](#)

<sup>26</sup> Ibid para. 8b.

<sup>27</sup> TNC, para. 65.

<sup>28</sup> Telcom Decision CRTC 2012-25, para. 20. See also

<sup>29</sup> TRP 2013-711, para. 211.

Commission has not yet determined what, if any, changes it will make to the wholesale high-speed access service framework. Only after such framework is given sufficient time to operate is it possible to collect and evaluate the necessary evidence to determine whether the wholesale framework has sufficiently addressed the Commission's concerns.

47. Finally, while we do not think there is a need for additional regulatory regulation, it is difficult to comment on what conditions would justify the imposition of retail internet service regulation without knowing what, if any, measures are being considered by the Commission. To the extent the Commission has specific measures that it is considering, it should clearly describe such measures and provide all stakeholders with the opportunity to comment on them. An open-ended request for suggestions, as set out in the TNC, is not a substitute for meaningful consultation.

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