

July 15, 2021

**BY COURIER**

Mr. Ian Shugart  
Clerk of the Privy Council and Secretary to the Cabinet  
Langevin Block  
80 Wellington Street  
Ottawa, Ontario K1A 0A3

Dear Mr. Shugart,

**Subject: Petition to the Governor in Council concerning *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*, Telecom Decision CRTC 2021-181**

Pursuant to Subsection 12(1) of the *Telecommunications Act*, Competitive Network Operators of Canada (“CNOC”) hereby submits a petition to rescind Telecom Decision CRTC 2021-181 and restore Telecom Order CRTC 2019-288.

TD 2021-181 is the latest example of a pattern of CRTC mismanagement and decisions that are plainly out of touch with the Government’s mission to make affordable and high-quality telecommunications services available to Canada’s middle class and the people working hard to join it.

Yours truly,

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**PETITION BY COMPETITIVE NETWORK OPERATORS OF CANADA  
TO THE GOVERNOR IN COUNCIL**

**TO RESCIND TELECOM DECISION CRTC 2021-181, *REQUESTS TO REVIEW AND VARY TELECOM ORDER 2019-288 REGARDING FINAL RATES FOR AGGREGATED WHOLESALE HIGH-SPEED ACCESS SERVICES***

**AND TO RESTORE TELECOM ORDER CRTC 2019-288, *FOLLOW-UP TO TELECOM ORDERS 2016-396 AND 2016-448 – FINAL RATES FOR AGGREGATED WHOLESALE HIGH-SPEED ACCESS SERVICES***

**15 JULY 2021**

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## **EXECUTIVE SUMMARY**

ES-1. The CRTC has compromised the foundation for broadband competition and affordability in Canada. It has expressed an overt preference for Big Telecoms at the expense of Canadians' need for competitive and affordable choice of broadband services. The GIC must step in to correct the CRTC's grievous error and restore regulation that can support meaningful broadband competition.

ES-2. The CRTC has unconscionably undermined competition through substantial and arbitrary increases to the cost of aggregated wholesale HSA services, the main wholesale input that supports service-based competition in Canada's retail markets for broadband services. This decision, TD 2021-181, has forced competitors to increase prices, withdraw services and scale back investment plans. These consequences are dire and likely to worsen.

ES-3. Levels of consumer choice, competition, affordability, investment and innovation are eroding at pace that has never been seen in this industry. This rapid decline comes at a time when Canadians depend on essential broadband services more than ever – for work, education and social interaction in the midst of a global pandemic.

ES-4. The CRTC's decision is fundamentally incompatible with this Government's consistent messaging to Canadians about the importance of competition and affordability of telecommunications services.

ES-5. The GIC must intervene before the damages flowing from TD 2021-181 become irreparable. TD 2021-181 must be rescinded. In its place, the GIC must restore the lower final rates that the CRTC approved in TO 2019-288, which are capable of supporting sustainable and vigorous competition.

ES-6. To ensure that the harm caused by TD 2021-181 is mitigated to the greatest extent feasible, CNOC requests that the GIC grant this relief by an order-in-council to be issued within no more than six months from the date that TD 2021-181 was issued.

## **Background to TD 2021-181**

ES-7. TD 2021-181 is preceded by a tortuous seven-year history of CRTC proceedings. Throughout this period, Big Telecoms applied a strategy of delay, suppression and obfuscation. They seized on every opportunity to frustrate the CRTC's rate setting process. The CRTC even scolded the Big Telecoms for their conduct.

ES-8. Despite the CRTC's reprimands, the Big Telecoms' delay tactics were ultimately successful. The CRTC eventually decided in TD 2021-181 that it would set higher final rates largely on the basis that there was no more time to conduct an additional costing review. Disappointingly, the CRTC's mismanagement of this file also contributed to the delay. In fact, it took the CRTC over fourteen months to issue TD 2021-181 after the public record closed in the underlying proceeding.

ES-9. The only fleeting moment of hope for competition came by way of TO 2019-288, the CRTC's prior final rates decision. Unlike TD 2021-181, TO 2019-288 set final rates that were cost-based, thereby leaving room for positive competitive outcomes. In the immediate days following the release of TO 2019-288, several competitors announced substantial retail price reductions and the introduction of new benefits and service features for customers, at no added cost.

ES-10. The hope surrounding TO 2019-288 would be short lived due to the barrage of appeals launched by Big Telecoms. One by one, those appeals failed. The Federal Court of Appeal even commented that the claims of the Big Telecoms were of 'dubious' merit. However, after a lengthy delay, the CRTC issued TD 2021-181 and reversed itself completely. Final rates are now as much as **265% higher** than the rates approved in TO 2019-288.

ES-11. TD 2021-181 is the latest installment in a deeply concerning series of CRTC decisions. In parallel with the prolonged processes leading to TD 2021-181, the Commission committed fatal missteps in other files that were critical to competition, including the latest mobile wireless review and the regulatory efforts to configure, cost and implement disaggregated wholesale HSA services. These files reveal a pattern of mismanagement and decisions that are plainly out of touch with the Government's mission to make affordable and high-quality telecommunications services available to Canada's middle class and the people working hard to join it.

ES-12. The CRTC and especially its Chair and CEO, Ian Scott, are guilty of holding an overt bias in favor of the Big Telecoms. Mr. Scott has improperly expressed his “personal preference” for facilities-based competition while belittling service-based competition as “arbitrage”. He has preferential meetings with senior executives of Big Telecoms over casual beers. His opinions and conduct raise an incontrovertible apprehension of bias that has poisoned TD 2021-181 at its root.

### **TD 2021-181 Fails to Strike a Harmonious Balance of Objectives**

ES-13. CNOOC is aware of the GIC’s determination that TO 2019-288 did not, in all instances, appropriately balance the objectives of the wholesale services framework, and will, in some cases undermine investment in high-quality networks. With respect, that determination is incorrect. The rates set in TO 2019-288 ensure high levels of network investment while harmoniously advancing the other objectives of the wholesale wireline framework.

ES-14. By comparison, TD 2021-181 represents a dysfunctional balancing of those same objectives. There is no time for a third kick at the can. The GIC must select the set of final rates that provides a better balancing, overall, of the policy objectives. It must restore TO 2019-288.

### **Consumer Choice, Competition, Affordability and Innovation**

ES-15. Due to TD 2021-181, competitors have been forced to implement substantial increases to monthly prices for broadband services of new and existing customers alike. In some instances, the rates approved in TD 2021-181 cannot support any viable business model whatsoever, thereby forcing competitors to withdraw service offerings from the marketplace, as has already happened.

ES-16. The effect of these price increases is amplified for Canada’s most vulnerable users of telecommunications services. CNOOC member National Capital Freenet, a non-profit Internet service provider that offers low-cost options to low-income Canadians, has publicly stated that TD 2021-181 is making it more difficult to provide affordable services to those living on low incomes.

ES-17. All of these consequences are compounded by the fact that Canada’s average retail pricing for all service speeds increased from 2019 to 2020, as reported in international price comparison studies. Furthermore, Canada already ranks poorly when it comes to the pricing of higher speed services when compared to the pricing that exists in similarly situated industrialized countries.

ES-18. Competitors can no longer compete when TD 2021-181 has set wholesale rates that greatly exceed the predatory pricing of Big Telecoms' flanker brands like Virgin (Bell), Fido (Rogers) and Fizz (Videotron).

ES-19. **To put this into perspective, any individual can go to a Virgin, Fido or Fizz kiosk or digital store and purchase services at rates that are lower than the rates that the CRTC has approved for equivalent wholesale service speeds.**

ES-20. Competitors would incur substantial and indefinite losses if they were merely to match, let alone beat, the retail pricing of these flanker brands. This shows that the final rates approved in TD 2021-181 are severely inflated. The Competition Bureau has cautioned that this scenario harms competitive outcomes, and by extension, innovation, and has negative effects on economic welfare.

ES-21. Finally, the CRTC hinged its final rates on the incorrect assumption that those rates have supported competitor growth since 2016. In reality, competitor growth has **decelerated** since 2016 and the retail market for Internet access services remains highly concentrated nationally.

ES-22. Post TD 2021-181, competitor growth is on a trajectory to continue its deceleration or even come to a stop. By contrast, TO 2019-288 would have mitigated or reversed the deceleration in competitor growth, thereby facilitating higher levels of choice when it comes to broadband service providers, services and price.

## **Investment**

ES-23. The CRTC does not explain its superficial and incorrect conclusion that TD 2021-181 will lead to greater investment and facilities-based competition.

ES-24. The "Brattle Report", the most determined attempt by Big Telecoms to substantiate investment threats is fraught with fatal flaws. The report relies on outlandish assumptions that have the effect of grossly exaggerating estimated reductions in operating cash flows resulting from the rates approved in TO 2019-288. When those assumptions are corrected, the average estimated reduction to (all five of the) Cable Carriers' operating cash flow is a combined \$109.4 million per year instead of the \$2.6 billion to \$3.7 billion that is claimed.

ES-25. To put this in perspective, the rates approved in TO 2019-288 would result in a reduction in operating cash flows of the five Cable Carriers that is equal to less than 1.29 percent of their total and combined operating cash flows. This small reduction in cash flow will not have any effect on the Cable Carriers' capability to invest in broadband facilities.

ES-26. Big Telecoms also shamelessly contradict their own investment threats to policy makers and investors.

ES-27. When addressing the investor community, a BCE executive stated that wholesale subscribers are "not of value to investors". Similarly, a Rogers executive remarked to investors that the retroactive impact of TO 2019-288 is not significant on a go-forward basis.

ES-28. Big Telecoms have also increased dividends substantially year-over-year since TO 2019-288 was released. Each of the Big Telecoms whose shares are publicly traded issued total dividend payments in excess of \$100 million during 2019 and again in 2020. In 2020, BCE made a staggering total dividend payout of **\$2,975 million** whereas Rogers led the field of Cable Carriers with total dividend payouts of **\$1,011 million**. However, dividends only tell part of the story.

ES-29. Cogeco, Rogers, Shaw and Quebecor each repurchased a substantial volume of shares during 2019 and 2020: to the tune of, respectively, **\$197.9 million**, **\$655 million**, **\$290 million** and **\$201.2 million**. Throughout this period, Big Telecoms also reported massive capital expenditures. For instance, BCE, Rogers and TELUS respectively report 2020 capital expenditures of **\$4,202 million**, **\$2,312 million** and **\$2,775 million**.

ES-30. **These record dividend increases, substantial share buybacks and massive capital expenditures occurred while Big Telecoms appealed and lobbied the GIC on the claim that TO 2019-288 would reduce their incentives and capability to invest. This irreconcilable conduct completely discredits the Big Telecoms. The GIC must recognize Big Telecoms' investment threats for what they are: unscrupulous policy manipulation.**

ES-31. Big Telecoms' empty investment threats are not novel. They apply this strategy in opposition of any regulatory outcome that is inconsistent with their motive to maintain and expand their market power. Big Telecoms made these threats in 2010, when the CRTC determined that ILECs would be required to provide wholesale HSA services over their FTTN facilities. Again,

these threats were uttered in 2015, when the CRTC required ILECs to provide wholesale HSA services over their FTTP facilities. Those investment threats have yet to materialize.

ES-32. In TD 2021-181 the CRTC also incorrectly concluded that its final rates will allow for continued investment in rural areas. Inflated wholesale rates will not ensure investment in rural areas. Extending broadband connectivity to unserved and underserved areas will be achieved primarily via this Government's robust funding programs. Just recently, an additional \$1 billion was added to the Universal Broadband Fund. The CRTC's own broadband fund will provide up to \$750 million in funding over five years. ISED's Connect to Innovate is investing \$585 million by 2023.

ES-33. Altogether, these funding programs will ensure that the digital divide is conquered. By contrast, arbitrary and inflated wholesale rates will harm rather than advance these connectivity objectives.

ES-34. The CRTC did not consider that the higher final rates approved in TD 2021-181 will undermine competitor investments, including investments in rural areas. Due to the difference in operating scale between Big Telecoms and competitors, changes in operating cash flows that are caused by wholesale rates have a disproportionate impact on competitors' capability to invest. Not surprisingly, competitors have been forced to scale back investment plans due to TD 2021-181. For example, CNOC member CIK Telecom announced that it must scale back its \$300 million fibre deployment project due to the CRTC's final rates. Several other examples are described in the body of the Petition.

ES-35. The GIC should not be persuaded by the Big Telecoms' recently announced increases to investment plans following TD 2021-181. Big Telecoms have simply recognized that TD 2021-181 will stagnate competition for years to come, thereby paving the way for the Big Telecoms to exercise greater market power and increase retail pricing. Thus, if TD 2021-181 does in fact lead to more investment by Big Telecoms, it will be because those investments are funded by new opportunities to gouge consumers on price, while simultaneously allowing Big Telecoms to issue record dividends and repurchase shares in bulk.

## **Only TO 2019-288 Strikes a Harmonious Balance of Objectives**

ES-36. TD 2021-181 undermines consumer choice, competition, affordability and innovation. The CRTC also incorrectly correlated inflated final rates with higher levels of investment. The decision provides a profoundly dysfunctional balancing of the objectives underpinning the wholesale wireline framework.

ES-37. Due to TD 2021-181 competitors have been forced to hike prices, withdraw services and scale back investments. At the same time, the flanker brands of Big Telecoms are advertising predatory prices that are substantially lower than the wholesale costs that competitors must incur to operate. Unless the GIC intervenes, competitors and competition will be pushed out of the marketplace.

ES-38. This outcome is contrary to the telecommunications policy objectives of the *Act*<sup>1</sup> and the Policy Directions.<sup>2</sup>

ES-39. This Government has assured Canadians that competition and affordability of telecommunications services are priorities. Accordingly, TD 2021-181 cannot stand.

ES-40. Notwithstanding the GIC's earlier reservations about TO 2019-288, the final rates in that order offer a far more calibrated balancing of objectives compared to TD 2021-181. Most importantly, TO 2019-288 responds directly to the needs of Canadians who demand competitive and affordable broadband services. What's more, those rates will ensure competitive outcomes without undermining investments, as confirmed by the two-faced conduct of Big Telecoms which completely discredits the investment threat that formed the basis of the GIC's concerns with TO 2019-288 in the first place.

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<sup>1</sup> Specifically, Subsections 7(a), (b), (c), (d), (e) and (h).

<sup>2</sup> Specifically, Subparagraphs 1(a)(i) and (ii), 1(b)(i) and (ii) of the 2006 Policy Direction; and Subparagraphs 1.a.i., ii, iii, v., vi., vii. of the 2019 Policy Direction.

## **1.0 INTRODUCTION AND STRUCTURE OF PETITION**

### **1.1 Introduction**

1. Telecom Decision CRTC 2021-181<sup>1</sup> (“TD 2021-181”) sounds the death knell for broadband competition in Canada. This decision of the Canadian Radio-television and Telecommunications Commission (“CRTC” or “Commission”) erases more than three years of intensive costing work and arbitrarily approves severely inflated interim rates for aggregated wholesale high-speed access (“HSA”) services, the main wholesale input that competitive telecommunications service providers require to provide retail service offerings to over one million Canadian households.<sup>2</sup> As a direct result of the decision, competitors have no choice but to hike retail pricing and cut back or eliminate investments to operate and extend their broadband networks.

2. The decision signals to Canadians that affordability of telecommunications services is not a priority for the Government of Canada. It suggests that the Government is siding with Big Telecoms<sup>3</sup> at the expense of Canada’s middle and lower classes, who demand essential high-quality telecommunications services at affordable prices. These signals are incontrovertibly at odds with the Government’s consistent messaging to Canadians that competition and affordability are paramount.

3. TD 2021-181 is thus fundamentally contrary to the telecommunications policy objectives set out in section 7 of the *Telecommunications Act*<sup>4</sup> (“Act”) (“telecommunications policy objectives”) and the Policy Directions<sup>5</sup>. The CRTC disregarded its mandate to encourage all forms of competition and investment, to foster affordability and lower prices, and to reduce barriers to entry and competition for telecommunications service providers that are new, regional or smaller than incumbent national service providers. It is a one-dimensional decision that benefits the Big Telecoms exclusively, to the detriment of all other stakeholders – and especially Canadian consumers.

4. The timing of this decision could not be worse. Canada currently ranks poorly at the international level when it comes to broadband pricing. There is no hope to improve that ranking in the wake of TD 2021-181. What’s more, the Government has acknowledged that the COVID-19 pandemic has had a disproportionate economic impact on women, racialized communities,

small businesses, and young workers.<sup>6</sup> In this time of remote work and learning, the last thing that these groups, and Canadians in general, should face is higher Internet prices.

5. TD 2021-181 is the most anti-competition and anti-consumer decision since the CRTC's usage-based billing ("UBB") decision in 2010.<sup>7</sup> In that instance, the Government made known its dissatisfaction with the decision in response to the thousands of Canadians who loudly voiced their concerns that the CRTC's UBB decision would greatly reduce wireline competition. The CRTC heeded the onslaught of consumer objections, and the direction from Cabinet, and eventually corrected course.

6. More than a decade later, competition and affordability are again threatened by a CRTC decision that completely misses the mark. The present situation is even more dire than the UBB crisis. Accordingly, Competitive Network Operators of Canada ("CNO") requests that the Governor in Council ("GIC") heed the mounting calls for urgent action, just as it did in the aftermath of the CRTC's UBB decision. Doing so requires that the GIC restore Telecom Order CRTC 2019-288<sup>8</sup> ("TO 2019-288"), the Commission's previous order setting lower final rates for aggregated wholesale HSA services by rescinding TD 2021-181.

7. The GIC's comments concerning TO 2019-288 are not lost on CNO. We are aware of the GIC's earlier view that TO 2019-288 did not, in all instances, balance the objectives of the wholesale services framework recognized in Order in Council P.C. 2016-332<sup>9</sup> ("OIC 2016-332"), and will in some instances undermine investment in high-quality networks.<sup>10</sup>

8. Based on the evidence that exists today, it is clear that the GIC's concerns would not have materialized then and will not in the future. While the Big Telecoms threatened to make reductions to investment, they simultaneously issued high dividend increases and spent millions of dollars on share repurchases, as outlined in Annex 1 to this Petition. In fact, Big Telecoms reported massive capital expenditures throughout the years during which TO 2019-288 allegedly undermined their incentives to invest, as described in Annex 2 to this Petition. That is not all. The burden of broadband investment is not on Big Telecoms alone. This Government recently allocated **\$1 billion** from its budget to fund broadband deployment in rural parts of Canada. This broadband funding program and others like it will ensure that sufficient investments are made, along with contributions by Big Telecoms and competitors alike, to extend connectivity to unserved and underserved areas.

9. These facts prove that the investment plans of Big Telecoms were never at risk. Against this backdrop, the GIC's previous concerns associated with TO 2019-288 no longer apply. In fact, it is the investment plans of competitors which have been laid waste.

10. TD 2021-181 does not strike the balance that the GIC initially envisioned. In TD 2021-181, the CRTC incorrectly correlated substantially increased rates with a better balancing of investment policy considerations. Furthermore, it did so at the expense of every other objective cited in OIC 2016-332, including: improved consumer choice and competition, innovative service offerings and reasonable prices for consumers.

11. It is now far too late for another multi-year CRTC process to fix this situation. We have run out of runway due to the successful delay tactics of Big Telecoms and the CRTC's own mismanagement of this file. Accordingly, sending TD 2021-181 back to the CRTC for reconsideration is not a viable option. Canadians can no longer afford to wait any longer. Certainty must be restored immediately and definitively.

12. Therefore and pursuant to Subsection 12(1) of the *Telecommunications Act*, CNOC requests that the GIC rescind TD 2021-181 and restore TO 2019-288 and to do so on the basis that TO 2019-288 ensures a far more calibrated balancing of investment, competition, affordability and innovation, all in accordance with the telecommunications policy objectives and the Policy Directions. In order to mitigate the competitive harms of TD 2021-181 as much as possible, CNOC also requests that the GIC take this action within no more than six months from the date that TD 2021-181 was issued.

13. In order to set the stage for why urgent relief is needed, the next Part of this Petition outlines the history that has led to the new dark age for competition and affordability marked by TD 2021-181, and demonstrates how the CRTC has fallen out of touch with the telecommunications needs of Canadians.

## **2.0 HOW WE CAME TO A NEW DARK AGE FOR COMPETITION AND AFFORDABILITY**

14. The tortuous history surrounding the review and setting of aggregated wholesale HSA service rates caused regulatory uncertainty and stifled competition. Rather than resolve this

untenable situation, TD 2021-181 marks a new dark age for competition and affordability in Canada.

15. Below, CNOC outlines the seven-year history that led to this boiling point. This troubled context surrounding TD 2021-181 underscores the need for the GIC to take action at a critical juncture that will determine the fate of competition and affordability in Canada's markets for telecommunications services.

## **2.1 2013 to 2015: Profoundly Distorted Capacity-based Billing Rates**

16. Rates for aggregated wholesale HSA services have been distorted for more than seven years.

17. In 2014, at the very beginning of the seven-year struggle surrounding aggregated wholesale HSA rates, CNOC implored<sup>11</sup> the CRTC to conduct a thorough review of capacity based-billing ("CBB") rates through which service-based competitors purchased bandwidth from the Big Telecoms.<sup>12</sup> At the time, CBB rates were absurdly inflated. All Big Telecom tariffs provided for CBB rates over \$1,000 per 100 Mbps – with one charging as much as \$2,031 per 100 Mbps. While these high rates were in effect, the popularity of video streaming services like Netflix was soaring to new heights. This meant that competitive service providers were consuming more bandwidth, which, in turn, drove up the corresponding amount and cost of bandwidth paid through CBB rates charged by the Big Telecoms.

18. In 2015, CNOC filed an application requesting that the CRTC make CBB rates interim pending a review of those rates.<sup>13</sup> CNOC's application included evidence demonstrating that the cost of capacity allocated on a per end-user basis would soon fully eclipse and even greatly exceed the prices that Big Telecoms charged to their own retail customers for equivalent services.<sup>14</sup> It was plain to see that these rates constituted an ever worsening barrier to competition that was on a trajectory to becoming insurmountable.

## **2.2 The CRTC Reviews Costing Inputs for Wholesale HSA Services**

19. Soon after CNOC filed its 2015 Application, the CRTC initiated a proceeding to review costing inputs that are used to set rates for wholesale HSA services.<sup>15</sup> The proceeding invited

intervenors to comment on six costing issues.<sup>16</sup> The Big Telecoms, CNOc and other intervenors all participated and filed detailed submissions.

20. That proceeding led to Telecom Decision CRTC 2016-117<sup>17</sup> (“TD 2016-117”), wherein the CRTC applied significant changes to costing parameters that played a central role in setting rates for wholesale HSA services. As a result of that determination, the CRTC made interim all wholesale HSA service rates on the basis that those rates were “likely not just and reasonable”.<sup>18</sup> Finally, the CRTC directed all Big Telecoms to file cost studies reflecting the determinations in the decision to facilitate the CRTC’s ability to set new rates.

### **2.3 The 2016 Interim Rates Orders were Influenced by the Big Telecoms’ Willful Disregard for the CRTC’s Rules**

21. Following TD 2016-117, the Big Telecoms were unhappy that the CRTC took steps to correct costing inputs that previously inflated wholesale rates in their favor. Rather than appealing that decision, the Big Telecoms instead decided to apply a defiant strategy of delay, suppression and obfuscation.

22. The Big Telecoms conducted their cost studies in wanton disregard of the CRTC’s costing rules.<sup>19</sup> In particular, they refused to implement certain costing changes that the CRTC had just ordered in TD 2016-117.<sup>20</sup> The Big Telecoms substituted the CRTC’s approved costing parameters with their own inputs.<sup>21</sup> They also ignored the Regulatory Economic Studies Manual (“Manual”) to which the Big Telecoms must adhere when developing their cost studies.<sup>22</sup>

23. Not only did the Big Telecoms attempt to make their own costing rules, they also took every opportunity to prevent intervenors like CNOc from scrutinizing their cost studies in a fair and transparent manner. For example, the Big Telecoms claimed overly broad and unjustified designations of confidential information that were inconsistent with the CRTC’s disclosure requirements.<sup>23</sup> In addition, the Big Telecoms omitted critical information from their responses to requests for information and even outright refused to provide responses to the CRTC’s requests for information because they disagreed with the appropriateness, relevance or materiality of the CRTC’s request.<sup>24</sup>

24. CNOc submitted two letters to the CRTC seeking appropriate levels of disclosure and production of information that was critical to the public record in these costing proceedings.<sup>25</sup>

25. Six months after TD 2016-117 was issued, the CRTC delivered Telecom Order CRTC 2016-369<sup>26</sup> (“TO 2016-396”) setting interim rates for the Big Telecoms, with the exception of Eastlink, thereafter setting interim rates for Eastlink in Telecom Order CRTC 2016-448 (“TO 2016-448”) (together, TO 2016-396 and TO 2016-448 are called the “2016 Interim Rates Orders”).

26. The CRTC concluded that the rates proposed by the Big Telecoms were “**on a prima facie basis, not based on reasonable costs**”, due to “**deviations from Phase II costing principles, the lack of pertinent costing details, including descriptions of input data variables, and modelling assumptions without supporting rationale**”.<sup>27</sup>

27. The CRTC proceeded to make a number of adjustments to the Big Telecoms’ proposed costs and approved new interim rates that were lower than previous rates. The CRTC acknowledged that a more comprehensive costing exercise would be necessary to set final rates, explaining that: “These interim rates are based on an examination that is necessarily less than fully comprehensive. The establishment of the final rates will be based on a full review and assessment of the relevant cost inputs and costing methodologies.”<sup>28</sup> In other words, the Interim Rates Orders represented a first incremental step towards the establishment of just and reasonable final rates.

28. Notably, the 2016 Interim Rates Orders explicitly addressed the Big Telecoms’ disruptive conduct, stating: “The Commission expresses its significant concern that most wholesale HSA service providers chose to disregard Commission staff’s guidance, the Manual, and relevant past Commission determinations.”<sup>29</sup> In addition, Jean-Pierre Blais, then Chair and CEO of the CRTC, scolded the Big Telecoms in a press release, stating: “**The fact that these large companies did not respect accepted costing principles and methodologies is very disturbing**.”<sup>30</sup> [Emphasis added.]

#### **2.4 TO 2019-288 Sets Final Rates After Years of Delays Caused by the Big Telecoms**

29. Following the 2016 Interim Rates Orders, the CRTC engaged in a review of cost studies for the setting of final rates for aggregated wholesale HSA services.

30. Yet again, the CRTC’s process was frustrated and impeded by the conduct of the Big Telecoms. CNOC was forced to file another two letters requesting appropriate levels of disclosure and production of information that was relevant and material to the public record that would inform the CRTC’s decision on final rates.<sup>31</sup> One of these letters was comprised of thirty pages describing

the Big Telecoms' extensive failures to abide by the CRTC's disclosure rules and worse, the Big Telecoms' outright refusals to respond to the Commission's requests for information.<sup>32</sup> Having reviewed this letter and the Big Telecoms' reply to the same, the Commission identified no less than fifty instances where the Big Telecoms either did not justify a designation of confidential information or where additional information was required.<sup>33</sup> Worse yet, this failure came after the Commission repeatedly reminded the Big Telecoms to file cost studies with the detailed cost information required by the CRTC's costing rules with proper public disclosure of information.<sup>34</sup>

31. The Big Telecoms' strategy of non-compliance caused multiple rounds of procedural skirmishes that prolonged the proceeding. In the end, it would take the CRTC just short of three years to issue final rates for aggregated wholesale HSA services by way of TO 2019-288.

32. TO 2019-288 reduced aggregated wholesale HSA service CBB rates between 15% and 43%, and corresponding access rates between 3% and 82%.<sup>35</sup> The CRTC also determined that retroactive application of the final rates was necessary in order to compensate for the period in which the rates being applied were not just and reasonable. It therefore ordered the retroactive application of the final rates to January 31, 2017 for Shaw and March 31, 2016 for all other Big Telecoms.

33. **For the first time in over five years, rates for aggregated wholesale HSA services were at levels that established a cost structure that allowed service-based providers to compete vigorously on price – and that is exactly what they set out to do.** In the days immediately following the release of TO 2019-288, many competitive service providers reduced prices and upgraded service packages at no charge, as a direct response to the CRTC's final rate determinations. For example:

- Distributel Communications Limited ("Distributel") announced that it would increase home Internet speeds for its customers at no extra cost to them. Distributel also revised its pricing for Internet and bundled service offerings that include Internet services. For example, Distributel's 250Mbps cable Internet service was reduced from a promotional rate of \$85.00 per month for the first 12 months and \$95.00 afterwards to \$39.95 per month for the first 12 months and \$79.95 per month afterwards.<sup>36</sup>

- Start.ca stated that TO 2019-288 allowed savings to be passed on to customers with prices for some high-speed cable Internet end-users falling by \$20.00 to \$70.00 per month, with a speed upgrade.<sup>37</sup>
- EBOX Inc. (“EBOX”) announced that it was lowering prices, improving speeds, and making unlimited plans more affordable for more than 90% of its customers as a result of the Order.<sup>38</sup>
- Oricom Internet Inc., Execulink Telecom Inc. (“Execulink”) and All Communications Network of Canada Co. (“ACN”) also reduced prices for Internet services.<sup>39</sup>
- TekSavvy Solutions Inc. (“TekSavvy”) also announced that it would reduce prices or upgrade data plans for 85% of its customers following the Order.<sup>40</sup>

34. The examples just cited show that TO 2019-288 put the industry on a clear trajectory towards higher levels of competition and improved affordability of telecommunications services.

35. Unfortunately, these initial steps to provide more affordable services were derailed by the onslaught of Big Telecom appeals of TO 2019-288, including: (1) applications requesting that the CRTC stay and review and vary TO 2019-288;<sup>41</sup> (2) motions to the Federal Court of Appeal for a stay of TO 2019-288 and for leave to appeal the CRTC’s decision;<sup>42</sup> and (3) petitions to the GIC seeking variances of TO 2019-288. The outcome of these appeals is discussed in the sections that follow.<sup>43</sup>

36. While the appeals were ongoing, the Big Telecoms were successful in convincing the Federal Court of Appeal and the CRTC to grant stays of TO 2019-288.<sup>44</sup> These stays applied, collectively, until the last appeal of the decision was resolved. The net result of these stays is that the rates approved in TO 2019-288 never came into effect. Consequently, many competitive service providers were forced to abandon planned price reductions and other service benefits that were linked to the final rates approved in TO 2019-288.

## **2.5 The Federal Court of Appeal Dismisses the “Dubious” Appeals of the Big Telecoms**

37. The appeals to the Federal Court of Appeal were brought by Bell and the Cable Carriers, respectively. The appeals alleged that the CRTC committed various errors of law and jurisdiction with respect to TO 2019-288. Bell and the Cable Carriers argued, among other things, that the

CRTC:<sup>45</sup> (1) failed to exercise its powers with a view to implementing the Canadian telecommunications policy objectives set out in section 7 of the *Act* and in accordance with the 2006 Policy Direction<sup>46</sup>; and (2) failed to exercise its powers with a view to ensuring that the wholesale HSA service providers charged “just and reasonable” rates in accordance with Sections 27 and 27 of the *Act*.

38. On September 10, 2020, the Federal Court of Appeal dismissed the appeals in their entirety and with costs calculated at the highest end of the available scale. In doing so, the Court took the unusual step of explicitly stating that the appellants raised claims that were of “dubious merit”.<sup>47</sup>

## **2.6 The GIC Dismisses the Petitions to vary TO 2019-288**

39. Bell, TELUS and the Cable Carriers respectively filed petitions to the GIC requesting variances of TO 2019-288. These petitions consistent predominantly of Big Telecom threats to reduce investment in telecommunications infrastructure.

40. The petitions were heavily opposed.

41. More than 125,000 Canadians sent letters to their Members of Parliament, the Governor in Council, the Chair of the CRTC, and the Minister of Innovation, Science, and Industry, requesting that the Government support TO 2019-288 with a view to ensuring competition, affordability and choice of broadband service providers.

42. The GIC ultimately dismissed the petitions and declared that it would monitor the public proceeding in respect of the Big Telecom applications to review and vary TO 2019-288. As noted, the GIC noted its view that the final rates set by TO 2019-288 do not, in all instances, appropriately balance the objectives of the wholesale services framework, and will, in some cases, undermine investment in high-quality networks. These remarks, in light of the radical and dysfunctional policy priorities of TD 2021-181, are a focus of Part 4.0 of this petition.

## **2.7 The CRTC Reverses Itself Completely, Approves Final Rates that are Incompatible with Competition and Affordability**

43. Bell, TELUS and the Cable Carriers respectively filed applications to the CRTC seeking review and vary of TO 2019-288. The applications included a mix of policy and costing arguments. Once again, the Big Telecom applications were heavily opposed by a large and diverse group of stakeholders.

*The Final Rates Represent Massive Increases Relative to the Rates Approved in TO 2019-288*

44. While the GIC had indicated that it expected a rebalancing of policy objectives in certain instances, TD 2021-181 shockingly applied massive increases to virtually every single rate approved in TO 2019-288. The following is but a small sample of the rate increases that apply to service speeds that are in especially high demand by Canadian consumers:

**Table 1: Sample of higher service speed rate increases from TO 2019-288 to TD 2021-181**

<b>Big Telecom</b>	<b>Service / Service Band</b>	<b>TO 2019-288 Rate</b>	<b>TD 2021-181 Rate</b>	<b>Dollar Difference</b>	<b>Percentage Increase</b>
Bell Canada	Bonded 25 / 1 Mbps	\$23.22	\$52.32	\$25.36	<b>109%</b>
	Bonded 50 / 10 Mbps	\$23.22	\$52.32	\$25.36	<b>109%</b>
	Bonded 100 / 10 Mbps	\$23.22	\$52.32	\$25.36	<b>109%</b>
Bell MTS	VDAS 100 / 10 Mbps	\$16.22	\$24.83	\$8.61	<b>53%</b>
TELUS	101 to 150 Mbps	\$35.35	\$57.66	\$22.31	<b>63%</b>
Cogeco	120 / 10 Mbps	\$13.37	\$42.05	\$28.68	<b>214%</b>
Shaw	100 to 129 Mbps	\$11.47	\$28.17	\$16.70	<b>145%</b>
	130 to 250 Mbps	\$11.47	\$41.36	\$29.89	<b>260%</b>
Rogers	100 / 10 Mbps	\$13.44	\$23.02	\$9.88	<b>73%</b>
	150 / 15 Mbps	\$13.44	\$49.06	\$35.62	<b>265%</b>
Videotron	120 / 20 Mbps	\$14.30	\$37.01	\$22.71	<b>158%</b>
Eastlink	101 to 150 Mbps	\$16.72	\$31.32	\$14.60	<b>87%</b>
		\$16.72	\$34.14	\$17.42	<b>104%</b>

45. TD 2021-181 also increased CBB rates substantially for all Big Telecoms, and by as much as 74% compared to the final rates approved by TO 2019-288.<sup>48</sup>

46. The application of these rates retroactively meant that competitors could no longer expect the substantial retroactive refund payments that were anticipated following TO 2019-288.

47. In the underlying proceeding, competitors raised concerns that significant increases to aggregated wholesale HSA rates would harm competition and force retail prices to uncompetitive levels. TD 2021-181 devotes no more than a single sentence to this issue, in which the CRTC concludes that the Commission’s 2019 Communications Monitoring Report and the Competition Bureau Study demonstrate “growth in competition that has continued with the interim rates in place”. As discussed in Part 4.0 below, this superficial analysis of competitor market growth does not support the incorrect conclusion that the interim rates are appropriate.

*The CRTC’s Approach to Setting Final Rates is Not Supported by Sound Rationale*

48. The analysis that led the CRTC to approve these rates is as disappointing and flawed as the rates themselves.

49. The starting point for the CRTC’s analysis is the applicable test for determining whether the CRTC should review and vary a decision pursuant to Section 62 of the *Act*. That test requires that the CRTC find substantial doubt as to the correctness of the original decision.<sup>49</sup> In this case, the CRTC found substantial doubt as to the correctness of certain costing determinations underpinning the original decision.<sup>50</sup>

50. The CRTC proceeded to exercise its discretion to vary its original decision by speculating that rates would be increased significantly if potential costing errors were resolved.<sup>51</sup> It also remarked that a fulsome revision to the cost studies would provide just and reasonable rates and further information would be required to undertake such a revision.<sup>52</sup> However, the CRTC decided not to undertake a further review, finding:

(1) Spending more time on a cost review cannot be justified in light of:<sup>53</sup>

- i. the industry has already been without final aggregated wholesale HSA rates for more than four years;
- ii. seeking additional information would result in rates approaching or exceeding the end of their study periods;
- iii. there are other ongoing proceedings that may have a future impact on rates.

(2) A fulsome revision of cost studies would require significant resources from the industry while other related proceedings were ongoing.<sup>54</sup>

(3) Concern regarding the ultimate goal of having a smooth transition to the adoption of disaggregated wholesale HSA services.<sup>55</sup>

51. In these “unique circumstances”<sup>56</sup>, the CRTC decided to simply make the interim rates final, with certain minor adjustments. The CRTC concluded that this approach resulted in “just and reasonable rates” while lowering its “regulatory burden” (i.e., avoiding the need to conduct a fulsome review).<sup>57</sup>

52. CNOC agrees Canadians cannot afford to wait a second longer while sustainable competition is delayed by yet another costing review. However, CNOC does not accept that these “unique circumstances” excuse the CRTC from setting rates that can support competition and affordability.

53. The industry is squeezed by the pressure of “unique circumstances” because the Big Telecoms have consistently and successfully delayed this rate-setting effort to its breaking point. The CRTC did not hold the Big Telecoms accountable. Worse yet, the CRTC even contributed to the delays by taking fourteen months<sup>58</sup> to issue a decision that does little more than extend the *status quo*. Therefore, the CRTC’s own mismanagement of this file played a significant role in the development of the “unique circumstances” that serve as rationale for the final rates that are approved in TD 2021-181.

54. While the CRTC has indeed run out of time for further cost reviews, Canadians should not fall victim to the consequences of wholesale rates that are incapable of fostering competition and affordability of retail services. The GIC is uniquely positioned to swiftly and definitively implement final aggregated wholesale HSA rates that protect the interests of Canadians. As will be demonstrated in Part 4.0, only the rates approved in TO 2019-288 can achieve this outcome in a manner that strikes the necessary balance between ensuring consumer choice, competition, affordability, investment and innovation.

## **2.8 A Concerning Pattern: The CRTC is not Living up to its Mandate**

55. TD 2021-181 is the latest product of a Commission that has fallen out of touch with the needs of Canadians. In parallel with the prolonged processes leading to TD 2021-181, the Commission committed fatal missteps in other files that were critical to competition, including the latest mobile wireless review and the regulatory efforts to configure, cost and implement

disaggregated wholesale HSA services. These files reveal a pattern of mismanagement and decisions that are plainly out of touch with the Government's mission to make affordable and high-quality telecommunications services available to Canada's middle class and the people working hard to join it, and which are of benefit only to the Big Telecoms.

*The CRTC Deprived Canadians of Sustainable Mobile Wireless Competition*

56. As the GIC is undoubtedly aware, the CRTC recently held a multi-year process to review the wholesale mobile wireless framework. This proceeding was held during the period in which the federal Government announced a commitment to reduce mobile wireless prices significantly.<sup>59</sup> While the CRTC held its proceeding, the Minister of Innovation, Science and Industry expressed disappointment that prices for mid-range mobile wireless plans had not moved. The Minister announced that Bell, Rogers and TELUS are expected to reduce their prices by 25 percent within the next two years from the date of the Minister's announcement and further, if those targets are not met, the Government would take action with other regulatory tools to further increase competition and help reduce prices.

57. The CRTC was presented with comprehensive Full mobile virtual network operator ("Full MVNO") proposals that, if implemented, could facilitate vigorous and sustainable competition in Canada's highly concentrated mobile wireless markets. Of the proposals that were before the CRTC, only the Full MVNO option could reliably achieve and even exceed the Government's price reduction target. Moreover, these Full MVNO proposals could serve as a catalyst for competition and improved affordability of mobile wireless services – without undermining investments in next generation 5G networks.

58. In the end, the CRTC declined to mandate Full MVNOs and instead approved a severely limited MVNO model that is only available to an exclusive class of spectrum holders that is dominated by the Big Telecoms. Much like TD 2021-181, the CRTC's decision extinguished any hope of meaningful competition, consumer choice and affordable services in Canada's mobile wireless market.

*The CRTC has Deprived Canadians of Competition over FTTP Access Facilities*

59. The CRTC mandated wholesale access to the fibre-to-the-premises ("FTTP") facilities of the Big Telecoms **six years** ago.<sup>60</sup> And yet, by the CRTC's own admission,<sup>61</sup> we have yet to see a

single confirmed instance where this service could be deployed to provide Canadians with additional choice of FTTP service providers. That is because: (1) the CRTC decided in 2015 that wholesale access to FTTP facilities must occur via disaggregated wholesale HSA services; and (2) disaggregated wholesale HSA services are profoundly broken at this time.

60. After three years of prolonged efforts to configure, cost and deploy disaggregated wholesale HSA services, it became obvious that competitors were being asked to do the impossible. CNOc filed an application with the CRTC that was intended to resolve this untenable situation. The application explained that disaggregated wholesale HSA services could not be used due to three insurmountable barriers to deployment: prohibitive costs, glacial deployment horizons and the lack of regulated or competitive transport service. The application requested three headings of relief that, combined, would provide for imminent FTTP access over aggregated wholesale HSA services<sup>62</sup> while also reducing barriers preventing use of disaggregated wholesale HSA services with a view to ensuring economically efficient entry over time.

61. It took the CRTC **nineteen months** to run its proceeding and issue a decision on CNOc's application.<sup>63</sup> In its decision, the CRTC agreed that CNOc's application raised serious questions with respect to the regulatory framework for wholesale wireline services and the deployment of disaggregated wholesale HSA services.<sup>64</sup> However, the CRTC chose not to implement any of the urgent relief sought in the Application. Instead, the CRTC only initiated a new proceeding to review the configuration of disaggregated wholesale HSA services. All other issues and relief requested by CNOc were deferred to "future proceedings".<sup>65</sup>

62. It has now been one year since the Commission issued its decision regarding CNOc's application. Canada is not any closer to service-based competition over FTTP access facilities. The CRTC's proceeding to review disaggregated wholesale HSA configurations is ongoing, but there is no end in sight to this ordeal. In a best-case scenario, it would take the CRTC another two years to approve final tariffs for disaggregated wholesale HSA services, with the result that meaningful competition using FTTP access facilities – the new standard for ISP services - is at least that far away.<sup>66</sup>

63. To make matters worse, the CRTC's review of disaggregated service configurations is incapable of addressing all the fundamental issues with disaggregated wholesale HSA services. The CRTC has yet to initiate the vague "future proceedings" that it promised. This suggests that

the timeline to resolving all the issues affecting disaggregated wholesale HSA services will be stretched even further.

64. In short, the CRTC's management of the disaggregated wholesale HSA file has been an unmitigated disaster. Far from the CRTC's 2015 pledge of a "smooth transition" towards disaggregated wholesale HSA services and service-based competition over FTTP access facilities, the transition has a been at a dead standstill for years.

65. In January 2021, CNOC filed an application to the CRTC requesting an expedited and temporary resale remedy for competitive access to Big Telecom FTTP facilities. That proposal is simple, straightforward, and consistent with previous CRTC approaches to open up new services to competition. If implemented, the remedy would facilitate competition until such a time that more permanent solutions are implemented to repair the state of disaggregated wholesale HSA services. The CRTC has yet to rule on this application. Every day that goes by is another day that Canadians are deprived of a meaningful choice of FTTP services, service providers and price.

66. The foregoing demonstrates that the CRTC is exhibiting a disturbing pattern of behavior. It has consistently mismanaged its most important files including the review of wholesale mobile wireless services, the regulation of disaggregated wholesale HSA services and, most recently, the setting of final rates for aggregated wholesale HSA services. Across the board, its decisions are incompatible with the Government's mandate to encourage vigorous and sustainable competition. TD 2021-181 represents the CRTC's latest and most acute failure.

## **2.9 The CRTC is Biased in Favor of the Big Telecoms**

67. Developments surrounding the release of TD 2021-181 have raised a reasonable apprehension of bias on the part of the CRTC and especially its Chair and CEO, Ian Scott. Mr. Scott's statements and conduct reveal and explain a preferential relationship with the Big Telecoms. This bias poisons TD 2021-181 at its root and consists of the subtext that explains the CRTC's brash decision to reverse itself completely and arbitrarily set inflated final rates.

68. Mr. Scott, himself a former Vice President at TELUS, expressed a highly inappropriate personal opinion mere days before TD 2021-181 was issued. At a Canadian Club event, Mr. Scott was asked what he thought about service-based competition as opposed to facilities-based competition. He responded by voicing his "personal preference for a stronger belief and reliance

on facilities-based competition” and attributed this preference in part to his prior experience in the private sector. Despite the fact that the 2019 Policy Direction requires the CRTC to encourage all forms of competition, Mr. Scott went on to describe service-based competition as “arbitrage”. This underscores a profound misunderstanding of service-based competition and the value that it brings to Canadian consumers.

69. In the aftermath of TD 2021-181, the media seized on the jarring discrepancy between the number of meetings between CRTC / ISED and Big Telecoms compared to the meetings between the CRTC / ISED and competitors.<sup>67</sup> It was revealed that, not only do Big Telecoms have more frequent meetings with government and the regulator than competitors by orders of magnitude – Big Telecoms are also accorded the privilege of having casual beers with the head of the CRTC, Ian Scott. Indeed, a recent photo has surfaced online of Mirko Bibic, President and CEO of Bell Canada, meeting with Ian Scott at a crowded bar in Ottawa.<sup>68</sup> This is bias manifested.

70. The GIC should not tolerate the product of the CRTC’s overt bias towards Big Telecoms. TD 2021-181 must be rescinded and replaced with TO 2019-288.

### **3.0 THE IMMEDIATE AFTERMATH OF TD 2021-181**

71. In the short period since TD 2021-181 was released, the decision has already profoundly disrupted the operations of Canada’s competitive telecommunications service providers. The decision is linked to price increases, the removal of services offerings from the marketplace and reduced investments by competitors. These consequences are described in the sections that follow.

#### **3.1 Competitors Are Forced to Raise Prices, Withdraw Services and Scale Back Other Consumer Benefits**

72. Recall the price reductions and service upgrades that were announced by competitors in direct response to TO 2019-288. Now, in stark contrast, competitors have been forced to greatly reduce the competitiveness of their offerings due to the high rates approved in TD 2021-181. Annex 3 outlines several examples of actions that CNOC members were forced to take in response to the higher cost structure that they face due to the final rates approved in TD 2021-181. For example, several CNOC members were forced to implement monthly price increases of between \$5.00 to \$20.00 depending on service speeds and the extent of the CRTC’s corresponding wholesale rate increase. In several cases, the final rates approved for certain wholesale service

speeds could not support a viable business model. Accordingly, CNOC members were forced to withdraw service offerings.

73. The consequences of TD 2021-181 are also amplified for Canada's most vulnerable populations. For instance, National Capital Freenet ("NCF"), a non-profit Internet service provider with a mission of making Internet accessible to everyone in the National Capital Region, remarked that the CRTC's reversal on wholesale internet rates will disproportionately affect those living on low incomes.<sup>69</sup> As explained by NCF, "Higher prices are hard on everyone. We know from past studies and first-hand experience that some of those living on low incomes will need to make trade-offs with their food budgets and other necessities just to stay connected. This decision will only make that worse."<sup>70</sup>

74. After TO 2019-288, NCF was planning to expand the eligibility for their lower-cost plan and add higher speeds at a lower cost. TD 2021-181 has forced NCF to shelve those plans.<sup>71</sup>

### **3.2 Competitors Are Forced to Abandon or Reduce Investment Plans**

75. The final rates approved in TD 2021-181 are also forcing competitors to indefinitely suspended plans to expand facilities-based and service-based operations, including expansion to serve rural areas. For example:

- CIK Telecom is now forced to scale back a \$300 million fibre network investment.
- Coextro has indefinitely suspended plans to expand operations outside of Ontario;
- Distributel is scaling back plans to introduce innovative smart-home features and products that would increase the value proposition and functionality of higher speed Internet service offerings;
- EBOX is scaling back infrastructure investment plans with respect to datacenter expansion and television technology improvement. EBOX is also scaling back investment in its fibre buildout, MVNO deployment and acquisition activities in Québec. EBOX has also decided to reduce its campus space by as much as 50% to address the more difficult market conditions and has put on ice the expansion of its data centre on the south shore of Montreal. The new EBOX campus that was launched in April 2016 and required \$7.5 million of investment is now being reduced due to slower sales activity;<sup>72</sup>

- Execulink has been forced to reduce capital expansion plans by \$30 million; and
- VMedia is abandoning plans for a \$10 million investment in rural FTTP deployment projects and a separate \$3 million investment to serve multiple dwelling units in its serving area. TD 2021-181 also prohibits VMedia from participating in any future mobile wireless or fixed wireless spectrum auctions.

76. It should be emphasized that CNOC members represent only a small minority of the more than 550 competitors operating in Canada.<sup>73</sup> As such, the total industry-wide reduction to competitor investments is far greater than the sample described in Annex 3. Other competitors have already announced that TD 2021-181 is solely responsible for disappointing changes to investment plans going forward. For example, TekSavvy announced that TD 2021-181 has forced its withdrawal from the 3500 Mhz spectrum auction.<sup>74</sup>

77. TD 2021-181 will also have significant employment related consequences. Some CNOC members have scaled back their hiring plans. Others are forced to make layoffs in response to the higher cost structure imposed by the CRTC's final rates.

78. As explained in the next Part of this Petition, the dire anti-competitive consequences just described flow from a failure by the CRTC to balance its guiding policy objectives appropriately.

#### **4.0 THE DECISION FAILS TO STRIKE THE NECESSARY BALANCE OF POLICY OBJECTIVES**

79. OIC 2020-553 responding to the Big Telecom appeals of TO 2019-288 noted that exercising the authority under subsection 12(1) of the *Act* to vary the decision was premature. In those circumstances, the GIC deemed it appropriate to “await the Commission’s decision”.

80. Now, the GIC is uniquely positioned to assess both sets of final rates – and to choose which final rates can better support the policy objectives of the wholesale wireline framework in a harmonious manner. As recognized in OIC 2016-332, those objectives are: improved consumer choice and competition, further investment in high-quality networks, innovative service offerings and reasonable prices for consumers.

81. Recall that the GIC concluded in OIC 2020-553 that the final rates set in TO 2019-288 (1) do not, in all instances, appropriately balance the objectives of the wholesale framework and (2)

would, in some instances, undermine investment in high-quality networks. With respect, those conclusions are incorrect. For the reasons that are set out in the balance of Part 4.0, the rates established by TO 2019-288 would ensure high levels of network investment while harmoniously advancing the other objectives of the wholesale wireline framework.

82. By contrast, the rates approved in TD 2021-181 fail to strike the necessary balance of objectives in all instances. The CRTC incorrectly correlated substantially increased rates with a better balancing of investment policy considerations. Furthermore, it did so at the expense of every other objective enumerated in OIC 2016-332.

83. Only the final rates approved in TO 2019-288 can serve the telecommunications needs of Canadians. The GIC must ensure that those needs are met.

#### **4.1 TD 2021-181 Fails to Strike a Balance of Objectives that Ensures Consumer Choice, Competition, Affordability and Innovation**

##### **4.1.1 The final rates harm competitive outcomes**

84. As detailed in Part 3.0, TD 2021-181 has already caused significant damage to competition. The resulting final rates have forced competitive service providers to hike prices for retail services, which, in many cases, were already subject to recent price increases associated with higher costs attributable to the pandemic.

85. The new final rates are not only an impediment to service-based competition. As shown in Section 3.2 and Annex 3, the rates have also foreclosed opportunities for significant infrastructure investment that would have otherwise generated facilities-based competition.

86. The timing of the CRTC's decision to set high rates for aggregated wholesale HSA services is bewildering. Those rates will predictably result in less consumer choice and higher prices while Canadians continue to rely on broadband services for work, education and social interaction during a global pandemic. Broadband access is not a luxury, it is an essential service that Canadians require throughout their day-to-day lives. Canadians cannot afford to pay luxury pricing for an essential service, simply because the CRTC has failed to fulfill its mandate. Unfortunately, that is exactly what has come to bear in the wake of TD 2021-181. Indeed, the reality faced by vulnerable populations is captured by NCF's testimonial that TD 2021-181 increases broadband prices for Canadians who require low-cost services.

87. The retail price hikes that have occurred and will continue to occur in the months to come will significantly worsen Canada's poor international ranking when it comes to broadband service pricing. The Wall Communications Inc. price comparison report<sup>75</sup> ("Wall Report") prepared for and published by ISED concludes as follows:

The measured prices for the European countries included in the study (U.K., France, Italy and Germany) have consistently been lower than those in Canada – in some cases, by a wide margin.

Relative to last year, all countries (except for Canada and Japan) have lower prices in a majority of baskets. Canadian prices were higher in every basket.<sup>76</sup>

88. Let that sink in – Canada's average retail prices went up from 2019 to 2020 in **every service basket**. Now, the CRTC has decided to increase final wholesale rates relative to TO 2019-288 for **virtually every service speed**.

89. What's more, the Wall Report reveals that Canada's international ranking is especially lackluster when it comes to the pricing of higher-level service baskets (i.e., higher service speeds). For example:

- Canada's average monthly price for 100-249 Mbps services is \$83.95 whereas average prices for equivalent services in the UK, Germany and Italy are, respectively, \$75.30, \$64.85 and \$50.98.
- Canada's average monthly price for 250-500 Mbps services is \$97.16 whereas average prices for equivalent services in the UK, Italy and France are, respectively, \$84.08, \$50.98 and \$39.51.
- Canada's average monthly price for 500+ Mbps services is \$107.55 whereas average prices for equivalent services in the UK, Germany, Italy and France are, respectively, \$92.86, \$58.42, \$50.98 and \$49.69.

90. Despite the fact that Canada's pricing performance on higher speed is particularly poor, the CRTC decided to approve rates for services in these service baskets that were as much as **265%** higher than the final rates approved in TO 2019-288.<sup>77</sup> These outcomes are indefensible.

91. As an aside, Big Telecoms have recently published opinion pieces in newspapers that attempt to defend TD 2021-181. One such article referenced a study Commissioned by Facebook<sup>78</sup>

that ranked Canada first in an international comparison of Internet affordability.<sup>79</sup> This ranking is severely misleading. The study's stated methodology provides as follows:

“Fixed (wired)-broadband monthly subscription charges refer to the monthly subscription charges for fixed (wired)-broadband Internet service in USD. Fixed (wired)-broadband is considered to be any dedicated connection to the Internet at downstream speeds equal to or greater **than 256 kbit/s. If several offers are available, preference should be given to the 256 kbit/s connection.**”<sup>80</sup> (emphasis added).

92. As cited, this study prioritizes an assessment of pricing for **256 Kbps**. To put that in context, Canada's universal service objective is 50 Mbps download / 10 Mbps upload. By comparison, 256 Kbps is nearly **200 times slower** than 50 Mbps download. Canada's high ranking when it comes to 256 Kbps services is thus completely irrelevant. The referenced study has also been heavily criticized for methodological flaws including incorrect measures of Big Telecoms' market shares.<sup>81</sup> For these reasons, the GIC should reject this study and instead rely on the data in the Wall Report.

93. TO 2019-288 set final rates that ensured that competitive service providers would have a cost structure that allowed them to compete vigorously. Even during the period that TO 2019-288 was under appeal, competitors were confident that those final rates would be upheld as being consistent with the core policy objectives that the Government set for the wholesale wireline framework. That confidence increased when the FCA rejected the “dubious” claims of the Big Telecoms and again when the GIC dismissed the petitions appealing TO 2019-288. In anticipation, despite facing increasing usage costs that rise almost everyday, competitors held off significantly increases in the prices of their own services. Now, TD 2021-181 imposes a massive burden on the cost structure of competitive service providers. Competitors have no choice but to increase retail pricing to regain their necessary margins, in light of the much higher costs imposed through the CRTC's final rates.

94. The Standing Committee on Industry, Science and Technology (“INDU Committee”) recently considered TD 2021-181 and the CRTC's review of mobile wireless services and reached a firm conclusion that these decisions failed to meet the affordability needs of Canadians. Specifically, the INDU Committee concluded as follows:

“While the Committee was preparing this report, the CRTC announced two important decisions. It announced a regime for mobile virtual network operators (MVNOs), and it reversed its decision on wholesale rates announced in August 2019. On the one hand, the

Committee views the MVNO decision as a step forward, although it is a rather modest step considering the structure of the announced regime. On the other hand, the Committee is very frustrated with the CRTC's decision to cancel the new wholesale rates. During the Committee's study, independent TSPs repeatedly stressed the importance of implementing these rates to provide affordable services to their customers and thereby put downward pressure on the price of services offered by incumbent TSPs. The Committee questions this change in direction by the CRTC, which had studied the issue for several years before issuing its decision in 2019.

The Committee does not believe that, collectively, these decisions meet Canadians' expectations of affordability in the telecommunications sector. They certainly do not advance this objective as much as they should, and the Committee believes that the CRTC should do more to address affordability. The Committee believes that the federal government should intervene to encourage the CRTC to put in place decisions that promote specific objectives, including affordability and accessibility."<sup>82</sup> (emphasis added)

95. Retail pricing matters to consumers. In fact, the Competition Bureau's consumer research confirms that price is "the single largest factor driving consumer choice".<sup>83</sup> It therefore follows that the final rates approved in TD 2021-181 undermine service-based providers' ability to compete on the most important competitive differentiator from a consumer's perspective.

96. Price also happens to be a differentiator that competitive service providers have embraced over two decades of service-based competition for broadband services in Canada. Case in point, the Competition Bureau' market study found that survey respondents "feel that wholesale-based competitors price significantly lower than facilities-based competitors."<sup>84</sup> CNOOC expects that this reputation will erode over time unless the GIC takes action to restore TO 2019-288. The rates approved in TD 2021-181 simply do not allow for price differentiation.

97. The retail pricing related consequences of TD 2021-181 will inevitably lead some consumers to switch from their preferred provider. As concluded in the Competition Bureau's market study:

"Of interest, current customers of wholesale-based competitors were materially more likely to respond that they are "very satisfied" with both their current ISP and their choice of ISPs than those who purchase services from facilities-based competitors."<sup>85</sup>

98. This excerpt proves that competitive service providers are highly valued by Canadian consumers of telecommunications services. Now, TD 2021-181 threatens to undermine the affordability of competitors' service offerings thereby reducing overall levels of consumer choice in the marketplace.

99. Furthermore, as noted in Section 3.1 above and Annex 3, TD 2021-181 has forced some competitors to either withdraw certain service speeds or abandon plans to introduce new service speed options for their customers. For example, the access rate for Rogers' 150/15 Mbps service **went up by 42%** over the prior interim rate for that service. As discussed, the rate for this service is also **265%** higher than the rate approved in TO 2019-288. Several CNOC members have come to the conclusion that no viable business model can support a retail offering that is effected through such a severely inflated rates. Consequently, many CNOC members have withdrawn retail options that utilize Rogers' 150/15 Mbps service. Through these outcomes, it is plain to see how the CRTC's final rates are already reducing levels of consumer choice.

#### **4.1.2 Competitor wholesale costs exceed predatory flanker brand retail prices**

100. The competitive harms stemming from TD 2021-181 are further amplified by the Big Telecoms' "flanker brand" strategies, consisting of affiliated Big Telecom brands that target the same customers as service-based competitors (e.g., Bell / Virgin, Rogers/ Fido and Videotron / Fizz). The Competition Bureau has commented that these types of strategies can be positive for competition, as it places pressure on all market participants to lower prices, minimize costs and compete their hardest to win customers.<sup>86</sup> However, the Competition Bureau also cautions that these strategies "can have negative effects on competition and economic welfare if they are used selectively in order to push rivals out of the marketplace, or otherwise harm competitive outcomes."<sup>87</sup>

101. The entry and success of flanker brands in retail broadband markets should not be mistaken as a healthy indicator of competition. Big Telecoms have strategically deployed their flanker brands to target, squeeze and ultimately push wholesale-based providers, like CNOC members, out of the marketplace. It is not a coincidence that flanker brands offer service plans exclusively within the 0-200 Mbps speed range. Service speeds within that range account for **96.8%** of all wholesale-service enabled subscriptions.<sup>88</sup> While targeting the same end-users as competitors is not a problem in itself, the flank brands' use of predatory pricing to win these customers harms competition and economic welfare.

102. In February 2020, TekSavvy filed a complaint to the Commissioner of Competition seeking an inquiry and enforcement action in respect of Bell and Rogers' use of flanker brands.<sup>89</sup>

TekSavvy’s complaint identified instances where flanker brands were selling retail services below the wholesale cost that Big Telecoms charged for equivalent service speeds.<sup>90</sup>

103. Now, TD 2021-181 provides Big Telecoms with the opportunity to use flanker brands to squeeze competitors to new extremes. To illustrate, Table 2 compares a sample of flanker brand offerings to the wholesale costs that a competitor incurs in order to put its own equivalent service to market. In every case, competitors’ wholesale costs under TD 2021-181 are higher than flanker brand retail pricing.

**Table 2: Flanker brand retail pricing vs wholesale cost imposed by TD 2021-181**

<b>Flanker Brand</b>	<b>Retail Service</b>	<b>Promotional Price<sup>91</sup></b>	<b>Wholesale service<sup>92</sup></b>	<b>Access Rate</b>	<b>CBB cost<sup>93</sup></b>	<b>Service Charges<sup>94</sup></b>	<b>Total wholesale costs<sup>95</sup></b>	<b>Margin after wholesale costs</b>
Virgin (Bell)	100 / 10 Mbps	\$45.00 <sup>96</sup>	(Bell) Bonded 100 / 10 Mbps	\$48.58	\$4.30 to \$5.46	\$2.52	\$55.40 to \$56.56	<b>- \$10.40 to - \$11.56</b>
Fido (Rogers)	150 / 15 Mbps	\$50.00 <sup>97</sup>	(Rogers) 150 Mbps / 15 Mbps	\$49.06	\$13.04 to \$14.71	\$1.76	\$63.86 to \$65.09	<b>- \$13.86 to - \$15.09</b>
Fizz (Videotron)	120 / 20 Mbps	\$50.00 <sup>98</sup>	(Videotron) 120 Mbps / 20 Mbps	\$37.01	\$13.64 to \$17.39	\$2.30	\$52.95 to \$56.70	<b>- \$2.95 to - \$6.70</b>

104. Table 2 demonstrates that TD 2021-181 imposes wholesale costs that greatly exceed flanker brand retail pricing. We have yet to even account for all other costs that competitors must incur to provide services and already TD 2021-181 precludes any opportunity for service-based competition versus the Big Telecom’s flanker brands.

105. The complete picture of flanker brand pricing vs competitor cost structures is far more dire, as shown below in Table 3, which includes aggregated cost data reported by CNOC members.

**Table 3: Flanker brand retail pricing vs all competitor costs**

Wholesale service <sup>99</sup>	Total Wholesale Costs <sup>100</sup>	Other Tariffed Charges <sup>101</sup>	Transport costs <sup>102</sup>	Network Operating Costs <sup>103</sup>	Other Costs (SG&A+) <sup>104</sup>	Total costs <sup>105</sup>	Margin after ALL costs
(Bell) Bonded 100 / 10 Mbps	\$55.40 to \$56.56	\$2.66	\$0.09	\$0.47	\$22.77	\$81.39 to \$82.55	- \$36.39 to - 37.55
(Rogers) 150 Mbps / 15 Mbps	\$63.86 to \$65.09	\$1.95	\$2.90	\$2.24	\$19.11	\$82.97 to \$84.20	- \$32.97 to - \$34.20
(Videotron) 120 Mbps / 20 Mbps	\$52.95 to \$56.70	\$2.47	\$0.63	\$1.96	\$19.41	\$77.42 to \$81.77	- \$27.42 to - \$31.77

106. The additional costs identified exacerbate an already untenable situation created by TD 2021-181. In each case, competitors would suffer a monthly loss of no less than \$27.42 per month and up to \$37.55, per subscriber – just to match flanker brand pricing!

107. **To put things into perspective, any individual can go to a Virgin, Fido or Fizz kiosk or digital store and purchase the above-listed services for rates that are lower than the rates that the CRTC requires competitors to pay for corresponding wholesale services.**

108. In these circumstances, competitors have two options: (a) incur substantial and indefinite losses in order to match or beat flanker brand pricing with a view of maintaining or expanding the customer base; or (b) set pricing at a level that can generate a profit and accept unprecedented churn rates due to customers cancelling services, opting instead for cheaper flanker brand services. Both options are unsustainable and lead to the same inevitable outcome: competitors will be pushed out of the marketplace.

109. The market reality just described demonstrates that the Competition Bureau's caution about flanker brands has come to full fruition. While the situation with flanker brands consists of the most acute example of predatory pricing, competitors are also being squeezed to unsustainable extremes in order to compete with certain retail offers of the Big Telecoms.<sup>106</sup> Unless the GIC intervenes, the predatory pricing of flanker brands and Big Telecoms combined with the CRTC's inflated rates will squeeze competitors to the point of failure.

#### **4.1.3 TD 2021-181 will harm innovation**

110. The rates approved in TD 2021-181 will also chill innovation. The Competition Bureau correlates higher levels of competition with increased innovation.<sup>107</sup> Conversely, the final rates approved by the CRTC will decrease innovation by all market participants. TD 2021-181 forces competitors to abandon and / or reduce service-based and facilities-based operations thereby curtailing opportunities for innovation in both these areas. At the same time, the CRTC's final rates ensure that Big Telecoms will face lower market discipline from weakened competitive service providers. Thus, TD 2021-181 also reduces the Big Telecoms' incentives to innovate.

#### **4.1.4 The final rates have not supported competitor growth since 2016**

111. Recall that the CRTC dismissed concerns raised by competitors that significantly higher rates would harm competition and force retail prices to uncompetitive levels.<sup>108</sup> The CRTC attempted to justify this position on the basis that the interim rates (now final, with minor adjustments) have allowed for competitor growth since 2016. The CRTC also referenced this observation when it addressed the telecommunications policy objectives and Policy Directions. Specifically, the CRTC concluded that approving rates that led to growth in competition and investment was consistent with subsections 7(a), (b), (c) and (f) of the *Telecommunications Act*; subparagraphs 1(a)(i) and 1(a)(iii) of the 2006 Policy Direction; and subparagraphs 1(a)(vi) and 1(a)(vii) of the 2019 Policy Direction.<sup>109</sup>

112. Contrary to the CRTC's findings, the interim rates are not responsible for competitor growth since 2016. While competitor market share rose in certain areas of Canada over that period, actual growth has decelerated. Furthermore, those rates, which are now final, will not support continued competitor growth going forward.

Canada's highly concentrated markets for retail Internet services

113. The residential subscription market share of competitors has indeed grown since 2016. That is evident from the figure of the 2019 CMR that is cited in TD 2021-181.<sup>110</sup> As we can see from Table 4 below, competitors' national share of residential Internet access service subscriptions has grown from 7.8 percent in 2016 to 9.4 percent in 2019. This represents a compound annual growth rate ("CAGR") of 6.4 percent.

**Table 4: Share of Residential Internet Access Service Subscriptions (%), 2013-2019<sup>111</sup>**

	2013	2014	2015	2016	2017	2018	2019	CAGR 2013- 2016	CAGR 2016-2019
Competitors	6.2	6.8	7.6	7.8	8.3	8.9	9.4	8.0%	6.4%

114. These market share figures must be assessed in their context. Despite competitor market share growth, the retail market for Internet access services is still highly concentrated nationally. The national subscription share of the Big Telecoms is 85.1 percent in 2019.<sup>112</sup> Moreover, the high cost of duplicating broadband access networks generally only allows a choice of, at most, two facilities-based providers (an ILEC and a Cable Carriers) for most Canadian households.<sup>113</sup> This implies that, in many geographic markets, the combined subscription share of the Big Telecoms represents the two-firm concentration ratio (CR2). The 85.1 percent market share of the Big Telecoms therefore suggests a high degree of concentration in the retail market for Internet access services when viewed at the national level.

115. It should be emphasized that market concentration at the national level masks significant differences in market concentration across different areas of Canada. For example, Table 5 shows the Competition Bureau's market share estimates for competitors in four regions at the end of 2018.<sup>114</sup> This table indicates that competitor market shares range from 16.1 percent to 18.6 percent in these four regions. This is substantially above the national average market share of competitors, which is 8.9 percent in 2018. Since these four regions are among the most populated areas of Canada, this large gap between the four regions and the national average implies that the competitors' share of Internet access service subscriptions in many other parts of the country must be substantially below the national average of 8.9 percent. This is confirmed by the Competition Bureau's estimates that market shares for wholesale-based competitors are in the order of 5 percent

for the cities of Calgary, Edmonton and Vancouver, the three largest urban centers after Toronto and Montreal.

**Table 5: Approximate Market Shares for Wholesale-Based Competitors (%), 2018<sup>115</sup>**

Regions	Greater Toronto and Hamilton Area	National Capital Region	Southern Ontario Region	Montreal Area
Market Share	16.1	16.6	18.4	18.6

116. To determine whether the 2016 interim rates supported continued growth of competitors, it is not sufficient to consider just the growth rates since 2016, as the CRTC did. The GIC should also examine what had happened prior to 2016. To this end, Table 4 indicates the annual growth rate of competitors' market share in the three-year period both before and after 2016.<sup>116</sup> It shows that the annual growth rate of competitors' market share before 2016 is 8.0 percent, 1.6 percentage points higher than the annual growth rate after 2016. In other words, growth of competitors has actually **decelerated** after 2016.<sup>117</sup>

117. Table 6 outlines the number of residential Internet access service subscriptions between 2013 and 2016 for both Big Telecoms and competitors. We see that subscriptions to competitors' services grew at an annual rate of 11.5 percent between 2013 and 2016, and at 10.6 percent between 2016 and 2019. Again, we observe a deceleration in competitors' growth. More strikingly, the data in Table 6 shows that the Big Telecoms' subscription growth accelerated after 2016: its annual growth rate gained 1.2 percentage point, from 1.9 percent to 3.1 percent.

**Table 6: Residential Internet Access Service Subscriptions (thousands), 2013-2019<sup>118</sup>**

	2013	2014	2015	2016	2017	2018	2019	CAGR 2013- 2016	CAGR 2016-2019
Competitors	693	794	912	960	1058	1179	1298	11.5%	10.6%
Big Telecoms	10177	10383	10576	10753	11122	11319	11793	1.9%	3.1%

118. This shows that the CRTC's conclusion about competitor market share growth was made in a vacuum. The CRTC dismissed competitor concerns about the detrimental competitive effect of higher rates due to competitor growth between 2016 and 2019. However, the CRTC did not acknowledge that growth in competition actually decelerated during this period.

119. Altogether, this analysis shows that the 2016 interim rates, which are now final with minor adjustments, did not go far enough to support continued growth of competitors. Instead of maintaining its momentum, competitors' growth has slowed down after 2016. The Big Telecoms, on the other hand, have grown their subscriptions at a faster rate after 2016. These two factors combined contributed to the 1.6 percentage points drop in the annual growth rate of competitors' market share.

120. To make matters worse, the CRTC presents no evidence in TD 2021-181 to support the notion that its final rates will provide an environment in which competitors can realistically grow their market share in the years to come. The CRTC simply assumes that because the 2016 interim rates (in its view) led to the growth of competitors, they will continue to have the same impact in the future.

121. The data presented in Tables 4 and 6 shows the flaw in the Commission's logic. If, back in 2016, the Commission had adopted the logic it has used in TD 2021-181, it would have concluded that the inflated wholesale rates prior to 2016 were "just and reasonable" because the market share of competitors had been growing at 8.0 percent per year under these rates. In retrospect, we know that that would have been the wrong conclusion; competition grew not because of those inflated rates, but despite those inflated rates. With its decision to revert to the 2016 interim rates, the Commission is committing this very mistake in TD 2021-181.

122. How did competitors grow despite high wholesale rates? When a highly concentrated market is opened up for competition, entrants will usually look for market segments and locations that are most conducive to successful entry and expansion, and they may be able to grow their market share quickly by picking such "low-hanging fruit". However, after that low-hanging fruit has been picked, it will become increasingly more difficult for entrants to expand their market share further. This is consistent with the evolution pattern of competitors' market share in Table 4. With competitors' market share at only 6.2 percent in 2013, the retail market for Internet access services was highly concentrated. The lack of competition left room for competitors to expand their market share at an eight percent annual rate despite the extremely inflated wholesale rates that were in place from 2013 to 2016. After the interim rates were implemented in 2016, intuitively we would have expected that the lower rates should accelerate the growth in competitors' market share. The fact that the growth rate slowed down significantly after 2016 indicates that competitors

have faced strong headwinds in maintaining their growth momentum. It suggests that if the CRTC had not implemented the lower rates in 2016, competitors' growth rate would have been even slower than the 6.4 percent they achieved.

123. Now with their market share at more than nine percent, it will be even more challenging for competitors to continue to grow their market share. If the wholesale rates are to be maintained at the 2016 level, the growth of competitors' market share will likely decelerate further or may even come to a stop. CNOC members already report subscribership declines that are attributable to the rates approved in 2016. This trend will continue to cause significant harm to consumers whereas adoption of the lower 2019 rates would have helped mitigate or reverse the deceleration in competitors' growth.

124. It is important to keep in mind that the retail market for Internet access services remains highly concentrated in many areas of the country. By reverting to the 2016 rates, the Commission is allowing the deceleration to continue thereby depriving millions of Canadian consumers the benefits of increased competition that would otherwise be brought by the final rates approved in TO 2019-288.

#### **4.1.5 TD 2021-181 undermines consumer choice, competition, affordability and innovation**

125. Given the foregoing, TD 2021-181 undermines consumer choice, competition, affordability and innovation. Therefore, the CRTC's final rates do not further any of the related policy objectives enumerated in Section 7 of the *Telecommunications Act*, including Subsections 7(a), (b), (c), (d), (e) and (h). To the contrary, these policy objectives are hindered by TD 2021-181.

126. For the same reasons, the CRTC's final rates deter market entry contrary to subparagraphs 1(b)(i) and (ii) of the 2006 Policy Direction. TD 2021-181 is a direct impediment to competitive market forces. In addition, the higher rates approved in TD 2021-181 will not lead to greater investment or facilities-based competition, as will be shown in Section 4.2 of this Petition. Therefore, the final rates approved in TD 2021-181 cannot be considered regulation that is efficient and proportionate to its purpose, contrary to subparagraph 1(a)(ii) of the 2006 Policy Direction and Subsection 7(f) of the *Telecommunications Act*.

127. The CRTC claimed that its final rates advanced subparagraph 1(a)(i) of the 2006 Policy Direction by relying on market forces to the maximum extent feasible “by making final the interim aggregated wholesale HSA service rates established in 2016 or earlier, and under which competitive independent service providers continued to grow their customer bases and shares of the market.”<sup>119</sup> However, as shown in Section 4.1.2, competitor market growth has actually decelerated during the period of 2016 to 2019 and is likely to continue to erode significantly in the wake of TD 2021-181. These outcomes are contrary to subparagraph 1(a)(i) of the 2006 Policy Direction.

128. Finally, TD 2021-181 runs afoul of nearly every principle articulated in the 2019 Policy Direction. For example, the CRTC’s final rates:

- Do not encourage competition and investment from competitive service providers. The CRTC’s decision is explicitly biased in favor of facilities-based competition. This bias contributed to an outcome that will continue to prevent and lessen downstream service-based competition unless the GIC intervenes [contrary to Subparagraph 1.a.i. of the 2019 Policy Direction].
- Do not foster affordability and lower prices. Instead, the final rates undermine affordability and increase prices [contrary to Subparagraph 1.a.ii. of the 2019 Policy Direction]
- Do not ensure that affordable access to high-quality telecommunications is available in all regions of Canada, including rural areas. Rather, TD 2019-288 approves rate increases relative to TO 2019-288 – in all areas of Canada [contrary to Subparagraph 1.a.iii. of the 2019 Policy Direction]
- Do not reduce the barriers into the market and to competition for telecommunications service providers that are new, regional or smaller than the Big Telecom national service providers. To the contrary, the final rates greatly exacerbate barriers to entry and competition for these classes of telecommunications service providers [contrary to Subparagraph 1.a.v. of the 2019 Policy Direction].
- Do not enable innovation in telecommunications services, including new technologies and differentiated service offerings. The competitive harms resulting from the final rates will

chill innovation within the industry [contrary to Subparagraph 1.a.vi. of the 2019 Policy Direction].

129. Unlike TD 2021-181, TO 2019-288 set final rates that advanced consumer choice, competition, affordability and innovation. Those rates further the telecommunications policy objectives while also achieving the requirements of the Policy Directions. CNOG therefore urges the GIC to restore TO 2019-288 with the shortest possible delay.

#### **4.2 TD 2021-181 Will Not Foster Greater Investment and Facilities-based Competition**

130. In TD 2021-181, the CRTC concluded that the interim rates that were in effect since 2016, and which are now approved on a final basis with minor adjustments, have supported investments and will continue to do so, particularly in rural areas.<sup>120</sup> The CRTC did not provide any rationale in support of this conclusion. By extension, the CRTC cites no evidence whatsoever to back the notion that there exists a causal relationship between the rates that were in effect since 2016 and investments (rural or otherwise).

131. The CRTC's unsupported conclusion simply does not withstand scrutiny.

132. The alleged link between the 2016 rates and investments is: (1) inconsistent with economic principles; (2) contradicted by the Big Telecoms' messaging to investors; (3) undermined by a long history of empty investment threats made by Big Telecoms; and (4) blind to investments made by competitors and the reality that rural infrastructure relies heavily on public subsidy.

133. All of the foregoing is addressed in greater detail throughout the balance of this section. The thrust of this section is that TD 2021-181 does not produce rates that are more conducive to investment than the rates approved in TO 2019-288. This, in turn, reinforces the conclusion that only TO 2019-288 strikes a harmonious balance of policy objectives including consumer choice, competition, affordability, investment and innovation.

##### **4.2.1 Economic principles do not support a conclusion that TD 2021-181 rates will foster greater investment and facilities-based competition**

134. As noted above, the CRTC does not explain its conclusion that the rates approved in TD 2021-181 will lead to greater investment and facilities-based competition. In the underlying proceeding, the "Brattle Report"<sup>121</sup> filed by the Cable Carriers was the most determined attempt to support the notion that TO 2019-288 will reduce investments. The Brattle Report therefore

constitutes an appropriate reference point for guiding a principled discussion of the CRTC's investment findings in TD 2021-181. Likewise, this discussion should be informed by the "Chen Report"<sup>122</sup>, CNOC's response to the Cable Carriers' evidence, which identified fatal flaws in the Brattle Report.

135. From an economic perspective, a firm's investment behavior is influenced by two factors: its incentive to invest and its capacity to invest.<sup>123</sup> Its incentive to invest in a project is determined by the expected rate of return on the project, while its capacity to invest depends on its ability to obtain the resources (in particular, capital) needed for the project.<sup>124</sup>

136. At a surface level, it is intuitive to assume that a Big Telecom's profit under the lower rates approved in TO 2019-288 would be smaller than under the higher TD 2021-181 rates. However, as explained in the Chen Report, lower wholesale rates would lead to faster growth in wholesale subscriptions, and if the demand elasticity<sup>125</sup> is greater than 1, it is possible that a Big Telecom's profit is larger under the TO 2019-288 rates than under the TD 2021-181 rates.<sup>126</sup>

137. If a Big Telecom should indeed earn a larger profit under the TO 2019-288 rates than under the TD 2021-181 rates, the firm's incentive and capacity to invest clearly would not be reduced by the restoration of TO 2019-288.

138. Even if growth in wholesale subscribership does not fully compensate a Big Telecom for reduced profits attributable to the difference between the TO 2019-288 and TD 2021-181, potential reductions in operating cash flows would not reach a level that would impair the Big Telecoms' capacity to invest.

139. The Brattle Report purports to show that the TO 2019-288 rates would reduce the operating cash flows of Cable Carriers by between \$2.6 billion and \$3.7 billion over the five-year period from 2020 to 2024. However, as shown in Chen (2020), these estimates grossly exaggerate the impact of the TO 2019-288 rates because they are based on several unrealistic (and in some instances, outlandish) assumptions,<sup>127</sup> and one of these assumptions alone leads to an overstatement of the reduction in the Cable Carriers' operating cash flows by more than \$2 billion.<sup>128</sup>

140. If we adjust the Brattle Report's model<sup>129</sup> to correct its unrealistic assumptions, the Cable Carriers' reported reduction to operating cash flows (\$2,566 million) is overstated by \$2,019

million.<sup>130</sup> This yields a somewhat more accurate estimate for the reduction in the Cable Carriers' operating cash flows: \$547 million over the five years, or, on average, \$109.4 million per year.<sup>131</sup>

141. Note that the \$109.4 million figure is an estimate of the reduction in operating cash flows of **all five Cable Carriers combined**. To put this number in perspective, it is useful to compare it with the sum of operating cash flows of the four publicly traded Cable Carriers.<sup>132</sup> Based on their financial reports, the combined operating cash flow of those four Cable Carriers in 2019 was \$8,487 million. The above-calculated \$109.4 million operating cash flow reduction associated with TO 2019-288 is equal to **1.29 percent** of \$8,487 million.

142. The inclusion of Eastlink's cash flow (which is not available, as Eastlink is a privately owned company) would make this percentage even smaller. Therefore, the estimated reduction in operating cash flows of the five Cable Carriers amounts to less than 1.29 percent of their operating cash flows.

143. What this means is that the loss in the Cable Carriers' operating cash flows caused by the lower TO 2019-288 rates, if there is any, will be extremely small compared to the overall operating cash flows of these companies. At these levels, the potential reduction in operating cash flows is unlikely to affect the Cable Carriers' capability to invest.

144. From this observation, we can infer that the loss in Cable Carriers' operating cash flows caused by the lower TO 2019-288 rates, if there is any, would be very small relative to their overall operating cash flows and, as such, is very unlikely to affect their capability to invest. This conclusion is resoundingly confirmed by the conduct of Big Telecoms following the release of TO 2019-288, which is marked by record dividend increases, extensive share buyback activity and massive capital expenditures. This conduct, which contradicts the Big Telecoms' own investment threats, is addressed in the subsequent section.

#### **4.2.2 The Big Telecoms contradict their own investment threats**

145. Threats of reduced investment were a common thread throughout all the Big Telecom appeals of TO 2019-288. We can also reliably assume that the Big Telecoms spearheaded their brute force lobbying efforts based on these threats.<sup>133</sup> It can be a persuasive tactic because all will agree that infrastructure investments are important and the Government's ear should be sensitive to this topic.

146. However, as CNOC has demonstrated, these threats are inconsistent with economic principles. If one looks to the Big Telecoms' messaging to investors between 2019 and 2021, the veil gets pulled back even further, revealing the Big Telecoms' investment threats for what they really are: unscrupulous attempts to manipulate policy.

147. For example, when facing the GIC, Bell represents that wholesale rates were critical to its investment decisions.<sup>134</sup> Bell even blamed TO 2019-288 for its decision to reduce broadband deployment by 200,000 households in rural areas.<sup>135</sup> These are the signals that Bell sends to policy makers.

148. However, when facing its investors, Bell conveys a very different assessment of its wholesale business. For example, George Cope, then President of BCE, in response to a question asking why Bell had removed wholesale subscribers, constituting 15% of its subscribers, from its subscriber base explained that wholesale subscribers are "not of value to investors". To quote Mr. Cope directly: "Wholesale subscribers are not strategic for us. It is not a market we approach. It is not a market that we have, frankly, any interest in pursuing, other than regulatory requirements."<sup>136</sup>

149. Bell can't have it both ways. Wholesale subscribers cannot simultaneously be strategically irrelevant and yet also a critical factor that informs Bell's investment decisions.

150. Rogers is also guilty of making irreconcilable statements regarding the investment implications of the final rates approved in TO 2019-288. Facing the GIC, Rogers claimed that those rates undermined their investments in infrastructure.<sup>137</sup> Just like Bell, Rogers told a different story to investors. For example, Rogers' Chief Financial Officer, Anthony Staffieri addressed the topic of TO 2019-288 during a Q&A session held on 10 September 2019. During this session, Mr. Staffieri opined that TO 2019-288 was "disappointing" and "just can't be good for the industry" before commenting on the retroactive impact of the order, as follows: "So, the retroactive impact we've disclosed is, as you said, up to the date of the announcement mid-August, the cumulative impact retroactive is CAD 140 million. It's not significant on a go-forward basis. And the wholesale piece of it overall is not a big part of it."<sup>138</sup>

151. The Big Telecoms' securities filings discredit all claims that TO 2019-288 threatened the Big Telecoms' financial positions and investment incentives. Whereas the Big Telecoms' appeals of TO 2019-288 projected bleak financial and investment outcomes following TO 2019-288, the

Big Telecoms' quarterly and annual reports following the release of TO 2019-288 reveal a different reality altogether.

152. Since TO 2019-288 was released, all Big Telecoms report strong financial performance. In 2020, BCE reported \$1 billion of excess cash after dividend payments.<sup>139</sup> All other publicly traded Big Telecoms report substantial free cash flows in 2020 that support financial flexibility.<sup>140</sup> Big Telecoms also outline extensive capital expenditures for 2019 and 2020, as outlined in Annex 2. For instance, BCE, Rogers and TELUS respectively report 2020 capital expenditures of \$4,202 million, \$2,312 million and \$2,775 million.<sup>141</sup>

153. CNOC acknowledges that the Big Telecoms generally identified the review of aggregated wholesale HSA rates (and the outcome of the TO 2019-288 appeals) as ongoing business risks in their financial reports. However, this perceived risk seemingly had little, if any, impact on the Big Telecoms' financial profile.

154. Far from the bleak financial outlook projected in the appeals of TO 2019-288, the Big Telecoms' finances post-TO-2019-288 were marked by substantial year-over-year dividend increases and massive share buyback activity. Annex 1 to this Petition summarizes this activity in detail. As shown, **all of the Big Telecoms respectively issued total dividend payments in excess of \$100 million during 2019 and again in 2020.** In 2020, BCE made a staggering total dividend payout of **\$2,975 million** whereas Rogers led the field of Cable Carriers with total dividend payouts of **\$1,011 million**.

155. That's not all, Cogeco, Rogers, Shaw and Quebecor each repurchased a substantial volume of shares during 2019 and 2020: to the tune of, respectively, **\$197.9 million**, **\$655 million**, **\$290 million** and **\$201.2 million**.

156. These dividend increases and share repurchases send signals to investors that are squarely at odds with the Big Telecoms' messaging to policy makers regarding the purported anti-investment effects of TO 2019-288.

157. To put the extent of the Big Telecoms' hypocrisy in context, consider that Rogers declared \$1,011 million in dividends in 2020. That is 824% more than the estimated \$109.4 million annual reduction in operating cash flows for **all five Cable Carriers combined** as a result of the final rates approved in TO 2019-288.

158. This evidence demonstrates that Big Telecoms are not acting in a manner that is consistent with their desperate pleas to policy makers about the investment implications of TO 2019-288. Following the release of TO 2019-288, the conditions for investment by Big Telecoms have seemingly never been better.

159. Now, with the future of competition at stake due to TD 2021-181, the GIC cannot allow itself to be swayed by big money threats that have nothing to do with investment – and everything to do with the next big dividend increase or share repurchase.

#### **4.2.3 Big Telecoms’ threats to reduce investment are a tired and empty refrain**

160. In the absence of a correlation between the final rates approved in TD 2021-181 and investments made by Big Telecoms, it would seem that the CRTC was influenced by the Big Telecoms’ campaign of threats to reduce investment in infrastructure.

161. CNOC has shown that the Big Telecoms’ investment threats are discredited by their contradictory messaging to the investor community. That is not the only reason why the Big Telecoms’ threats should be disregarded. As CNOC highlighted in its opposition to the Big Telecoms’ appeals of TO 2019-288,<sup>142</sup> there is over a decades’ worth of reasons why the Big Telecoms’ investment claims are nothing more than empty threats aimed at manipulating policy outcomes.

162. Big Telecoms consistently use investment threats as a tactic to thwart or appeal any regulatory outcome that is unfavorable to their commercial interests. To date, these threatened consequences have not materialized.

163. For example, in Telecom Regulatory Policy 2010-632<sup>143</sup>, the Commission determined, among other things, that the ILECs would be required to provide wholesale HSA services over their FTTN facilities.<sup>144</sup> This took place despite warnings from Bell and TELUS that “investment incentives would be reduced in all markets, regardless of size, for any broadband infrastructure subject to wholesale service requirements”.<sup>145</sup>

164. In that same proceeding, the Cable Carriers submitted that “their investments in Internet infrastructure are driven by market opportunity and intense retail service competition from the

ILECs. They also submitted that both they and the ILECs have been building fibre in their networks closer to homes and business premises for at least a decade...”<sup>146</sup>

165. Since then, the ILECs have moved on from FTTN deployments to deploying FTTP facilities “given the important benefits associated with higher speeds and long-term service reliability”<sup>147</sup>. Their warnings in 2010 about reduced investment did not come to fruition.

166. In Telecom Regulatory Policy 2015-326, the Commission required ILECs to provide wholesale HSA services over their FTTP facilities in order to facilitate competition in the provision of retail broadband services at the greater speeds that ILECs can only provide over those facilities.<sup>148</sup> The Commission made this determination despite warnings from Bell and TELUS that their incentive to invest in FTTP facilities would be reduced if wholesale access to FTTP facilities is mandated.<sup>149</sup>

167. In October 2015, Bell even filed a petition<sup>150</sup> requesting that the Governor in Council vary TRP 2015-326 so that wholesale regulation does not extend to FTTP facilities (the “Bell 2015 Petition”).<sup>151</sup> The Bell 2015 Petition exclaimed: “[t]here should be no doubt that going forward, as a result of the CRTC's decision, each fibre-to-the-home investment opportunity will be reviewed and the pace and scale of our investment will unequivocally be affected”<sup>152</sup>. The Bell 2015 Petition was rightfully **denied** by the Governor in Council. And yet, in its petition to the GIC regarding TO 2019-288, Bell boasted of its accomplishments in FTTP investment and deployment since TRP 2015-326.<sup>153</sup> What’s more, the 2020 CMR reports that FTTP Internet services are available to 44.7% of homes.<sup>154</sup> That is up from 6.2% of homes passed by fibre in 2014.<sup>155</sup>

168. This history shows that the Big Telecoms’ investment threat is a tired refrain that has lost all credibility.

#### **4.2.4 The CRTC’s determinations on rural investment are short sighted and incorrect**

169. Recall that the CRTC concluded that its determinations would allow for “continued investment in telecommunications by wholesale HSA service providers, particularly investments that could be made in rural areas.”<sup>156</sup> The CRTC provided no rationale in support of this determination.

170. For the reasons that follow, the notion that the rates approved in TD 2021-181 are linked to Big Telecom investment in rural areas is demonstrably incorrect.

*Public subsidy will continue to fund rural broadband deployment*

171. As demonstrated in Section 4.2.1, economic principles do not support the claim that lower 2019 rates would reduce investments generally. Furthermore, network investment in unserved or underserved rural areas is in most cases dependent on public subsidy. Big Telecoms will not find a viable business case to invest in these rural areas regardless of whether TO 2019-288 or TD 2021-181 prevails. Big Telecoms will continue to look for public subsidy to fund these projects, while simultaneously increasing shareholder dividends and increasing stock value through share repurchases.

172. Leaving that aside, CNOC is encouraged by this Government's strong commitment to tackle connectivity issues in underserved and unserved parts of the country through substantial funding programs. It is these types of initiatives – and not the setting of inflated wholesale rates – that will extend broadband availability to all Canadians.

173. For instance, this Government provided for an additional \$1 billion for the Universal Broadband Fund, to be allocated over six years starting in 2021-2022, with the stated objective "...to fund broadband infrastructure projects that will bring high-speed Internet at 50/10 Megabits per second (Mbps) to rural and remote communities."<sup>157</sup> The total amount of funding for the Universal Broadband Fund now stands at \$2.75 billion.<sup>158</sup>

174. The CRTC's own broadband fund provides up to \$750 million in funding over five years to support projects to build or upgrade access and transport infrastructure to provide fixed and mobile wireless broadband Internet access services in eligible underserved areas of Canada.<sup>159</sup>

175. ISED's Connect to Innovate program will also have a significant impact. As described by ISED, "The Connect to Innovate program is investing \$585 million by 2023 and will bring high-speed Internet to 975 rural and remote communities in Canada, including 190 Indigenous communities."<sup>160</sup> This program has already awarded over \$444 million in funding to municipalities, indigenous governments, Big Telecoms and competitors.<sup>161</sup> Altogether, the federal government has made available \$7.2 billion dollars in funding to advance connectivity since 2015.<sup>162</sup>

176. These are but a few of the current programs that are collectively aimed at connecting rural Canada. Big Telecoms are taking full advantage of these programs and other partnerships with provincial and municipal governments to invest in rural Canada.<sup>163</sup> These initiatives will continue to deliver on their mandate for years to come.

177. In the context of this petition, the GIC should therefore factor the breadth and success of broadband funding programs when assessing which of TO 2019-288 and TD 2021-181 is capable of striking a more harmonious balance of investment, consumer choice, competition, affordability and innovation. The CRTC did not consider the determinative influence of funding programs on rural investments. Its failure to do so materially influenced the rates that were approved in TD 2021-181. On behalf of Canadians, the GIC cannot afford to make the same mistake at this critical juncture for the competitiveness and affordability of telecommunications services.

*The CRTC failed to consider rural investment by competitors*

178. Competitors also invest in rural broadband networks. The CRTC did not acknowledge these investments in TD 2021-181. Nor did the CRTC consider the harmful effects of its final rates on these investments. To illustrate, Annex 3 highlights a small sample of rural broadband network builds by CNOC members (who represent a small minority of the more than 550 competitors operating in Canada<sup>164</sup>). Notably, some of these projects include network builds in First Nations communities.

179. The Big Telecoms will reply that competitors account for a small fraction of total industry-wide telecommunications investment. That is true. After all, competitors only account for 3.7% of the revenue market share.<sup>165</sup> However, wholesale service-based competitors also exhibit the highest CAGR of all types of service providers, including Big Telecoms, when it comes to investments made in plant and equipment between 2015 and 2019.<sup>166</sup> Thus, competitors have a rapidly increasing role when it comes to investment. Unfortunately, this progress is not acknowledged by the CRTC, and is threatened by TD 2021-181.

180. Compared to the rates approved in TD 2021-181, the 2019 rates would increase competitor incentives and capacity to invest in broadband networks, including networks in rural areas. As noted above, competitors are much smaller than Big Telecoms in their scale of operations. Consequently, the same dollar amount of change in operating cash flow has a much larger impact

on the overall cash flow of a competitor than on a Big Telecom. The additional profit that a competitor can earn under the lower 2019 rates will improve its capacity to invest.

181. Conversely, the higher final rates approved in TD 2021-181 will reduce competitors' capacity to invest. This is already readily observable in the marketplace. Section 3.1 and Annex 3 outline several examples, including CIK Telecom's decision to cut back on a \$300 million fibre network deployment and TekSavvy's decision to pull out of the 3500 Mhz spectrum auction.

182. The foregoing examples prove that the rates approved in TD 2021-181 have a significant negative impact on competitors' capacity to invest in telecommunications facilities, including facilities that will support the extension of broadband to rural areas. The list of abandoned and scaled back competitor investment plans will continue to grow unless the GIC takes action to restore TO 2019-288.

*TD 2021-181 will undermine competition in rural communities*

183. Due to TD 2021-181, any new publicly funded broadband networks in previously unserved or underserved areas will be starved of competition indefinitely. This is another important consideration that was not factored in the cursory reasons provided in TD 2021-181.

184. To recap, the final rates approved in TD 2021-181 will not foster additional investment by Big Telecoms in rural areas. Big Telecoms will continue to rely on public subsidy to deploy networks in unserved and underserved areas. However, the combination of the new higher final rates and the low population density of rural areas will make it very difficult if not impossible for service-based competition in these areas.

185. Canadians living in rural areas deserve not only connectivity, but also choice of connectivity services, providers, pricing and service features. TD 2021-181 fails to provide all of these things. Canada owes more to its middleclass and those working hard to join it. By restoring TO 2019-288, the GIC would establish conditions that will allow rural communities to benefit from investment and competition.

**4.2.5 TD 2021-181 is not shielded by recent investment announcements**

186. Soon after the release of TD 2021-181, Bell announced an additional \$500 million in infrastructure investment. This announcement, and any others like it, does not justify the higher

rates set out in TD 2021-181 and should not deter the GIC from restoring TO 2019-288 and the necessary balance of objectives that those rates provide.

187. As noted above, Big Telecom investments are made on the basis of a profitable business case and, in rural areas, the availability of public funding to bolster that business case. Based on Bell's past behavior, this strategic announcement likely has nothing to do with the CRTC's rate decision, and everything to do with giving the CRTC a pat on the back for gift wrapping a final rates decision that benefits the Big Telecoms exclusively.

188. However, if it is true that Bell would not have adjusted its capital investment plan but for TD 2021-181, the decision was not influenced by any greater incentives to invest stemming from the CRTC's final rates. Rather, it is because the rates approved in TD 2021-181 will stagnate service-based competition in Canada for years to come. In this environment, Bell and other Big Telecoms will not face price discipline from effective service-based competitors. Thus, Bell and the other Big Telecoms will have opportunities to exercise greater market power thereby resulting in higher retail prices that could not be sustained in a competitive environment fostered by TO 2019-288.

189. In short, if TD 2021-181 does in fact lead Bell and other Big Telecoms to announce new investments, it will be because those investments will be funded by new opportunities for the Big Telecoms to gouge consumers on price while continuing their consistent practice of issuing record dividends and buying back shares in bulk.

#### **4.2.6 The final rates undermine investment policy objectives**

190. In summary, the final rates approved in TD 2021-181 do not advance the wholesale wireline framework's investment objectives. Those rates will not live up to the CRTC's ill-informed promise of increased investment by Big Telecoms. Nor will the CRTC's final rates bolster facilities-based competition. At the same time, TD 2021-181 greatly undermines competitors' incentives and capacity to invest.

191. Accordingly, the CRTC's final rates are inconsistent with all of the investment related aspects of the telecommunications policy objectives and Policy Directions, including:

- Subsections 7(a), (b), (c), (d), (e), (f) and (h) of the *Telecommunications Act*;

- Subparagraph 1(b)(ii) of the 2006 Policy Direction; and
- Subparagraphs 1.a.i., ii., iii., v., vi., vii. of the 2019 Policy Direction.

#### **4.3 The CRTC's Final Rates Impede the Deployment of Disaggregated Wholesale HSA Services**

192. The CRTC claims that TD 2021-181 sets final rates that will “promote the development and transition to the future mandated disaggregated wholesale HSA network”.<sup>167</sup> Yet again, this conclusion is unsupported by rationale or evidence. The CRTC merely asserts that “aggregated wholesale HSA service rates that are set too low would discourage the migration to disaggregated wholesale HSA service.”<sup>168</sup> The CRTC does not bother explaining what it considers to be rates that are “too low” nor does it conclude that the rates in TO 2019-288 were “too low” so as to discourage migration to disaggregated wholesale HSA services.

193. The CRTC's arbitrary linkage between its final rates and improved conditions for disaggregated wholesale HSA deployment is false.

194. As explained in Part 2 of this petition, disaggregated wholesale HSA services remain inaccessible to competitors due to the presence of high barriers consisting of: (1) prohibitive costs; (2) glacial deployment horizons; and (3) lack of regulated or competitive transport. A proceeding is currently underway to review disaggregated service configurations.<sup>169</sup> The outcome of that proceeding could potentially mitigate some, but not all,<sup>170</sup> of the issues that have rendered the CRTC's disaggregated wholesale HSA service regime unworkable. It is unknown when, whether and to what extent the CRTC will take action to resolve all of the issues preventing disaggregated wholesale HSA deployment, which is currently the only option for wholesale-based competition over FTTP access facilities.

195. Regardless of the inherent problems associated with the development of disaggregated wholesale HSA services just described, TD 2021-181 does not facilitate competitor deployments of disaggregated wholesale HSA services. By extension, the final rates approved by the CRTC are not conducive to a “smooth transition” to the disaggregated regime.

196. In fact, TD 2021-181 has created a new and formidable additional cost barrier to disaggregated wholesale HSA deployment. Prior to TD 2021-181, competitors were expecting substantial retroactive refund payments resulting from the significantly lower rates that were

approved retroactively in TO 2019-288. For many competitors, those refunded payments represented an injection of capital that could fund new infrastructure investments including the deployment of disaggregated wholesale HSA services pending the CRTC's resolution of the problems undermining that regime. That opportunity is now lost.

197. Going forward, the final rates will also not provide sufficient revenues to fund disaggregated wholesale HSA deployment over time. Flanker brands are already offering retail promotions below competitors' wholesale costs for equivalent services. How does the CRTC expect competitors to withstand this anti-competitive conduct of the Big Telecoms while simultaneously allocating massive amounts of capital to deploy disaggregated wholesale HSA services?

198. TD 2021-181 notes that the CRTC's incorrect determinations regarding disaggregated wholesale HSA services are purportedly consistent with, at least:<sup>171</sup>

- Subsections 7(a), (b), (c), and (f) of the *Telecommunications Act*;
- subparagraphs 1(a)(vi) and 1(a)(vii) of the 2019 Policy Direction; and
- subparagraph 1(b)(i) of the 2006 Policy Direction.

199. However, as demonstrated, the pursuit of all of the above-listed policy objectives is hindered by the final rates, which impede rather than facilitate the deployment of and transition to disaggregated wholesale HSA services. By contrast, TO 2019-288 sets rates that provide competitors with access to capital that will greatly improve the conditions for disaggregated wholesale HSA services if and when the CRTC resolves all of the issues undermining that regime.

## **5.0 CONCLUSION**

200. TD 2021-181 is an aberration. It sets final rates that are brazenly incompatible with the CRTC's mandate. These final rates are well on their way to profoundly eroding the modest levels of competition that currently exist in Canadian markets for retail telecommunications services.

201. This Government has told Canadians that competition and affordability of telecommunications services is a priority. Accordingly, TD 2021-181 cannot stand.

202. The CRTC has bought into the Big Telecoms' two-faced strategy of clamoring to policy makers about reduced investment while simultaneously issuing record dividend increases and repurchasing shares in bulk. The GIC should not be similarly fooled by Big Telecoms' transparent attempts to manipulate policy for profit.

203. Despite the GIC's hope that the CRTC would strike a calibrated balancing of policy objectives with greater emphasis on investment, TD 2021-181 does not deliver. The CRTC incorrectly correlated higher rates with investment by Big Telecoms and facilities-based competition. Worst of all, the CRTC did so at the expense of consumer choice, competition, affordability and innovation. TD 2021-181 is a clear path to a substantial lessening and prevention of competition in downstream retail markets for telecommunications services. Early responses to the decision confirm that a dark age for competition has already begun.

204. The GIC must correct the situation urgently, by restoring TO 2019-288. This option responds directly to the needs of Canadians and not just to the profit driven motives of Big Telecoms. Consumer choice and affordability of broadband services have never been more important to Canadians who are still working, learning and interacting online in the midst of a global pandemic. Only TO 2019-288 strikes a holistic balance of all relevant policy objectives, consistent with the requirements of the *Telecommunications Act* and the Policy Direction. Only TO 2019-288 and the rates approved therein can make high-quality telecommunications services accessible to more Canadians at a time when connectivity is essential to economic, social and mental wellbeing.

205. CNOC urges the GIC to signal to Canadians that this Government will not allow dysfunctional regulatory policies to harm consumer choice, competition, affordability and innovation. We therefore implore the GIC to rescind TD 2021-181 in its entirety and restore TO 2019-288.

206. To minimize the harms of TD 2021-181 to the greatest extent feasible, CNOC also requests that the GIC issue its decision within no more than six months of the date that TD 2021-181 was issued. This timeline allows sufficient time for the GIC to conduct its internal process and consultations with the Provinces, without unnecessarily prolonging the *status quo*.

\*\*\* END OF PETITION \*\*\*

- <sup>1</sup> *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*, Telecom Decision CRTC 2021-181, 27 May 2021
- <sup>2</sup> Competition Bureau Market Study, “Delivering Choice: A Study of Competition in Canada’s Broadband Industry”, (“Competition Bureau Market Study”), at p. 51.
- <sup>3</sup> Throughout this Petition, “Big Telecoms” refers to Bell Canada (“Bell”), Bell MTS, a division of Bell Canada (“Bell MTS”), Bragg Communications Incorporated (carrying on business as Eastlink) (“Eastlink”), Cogeco Communications Inc. (“Cogeco”), Rogers Communications Canada Inc. (“Rogers”), Saskatchewan Telecommunications (“SaskTel”), Shaw Communications Inc. (“Shaw”) and Videotron Ltd. (“Videotron”); and TELUS Communications Inc. (“TELUS”). Each of Bell, Bell MTS, SaskTel and Videotron is hereinafter called an “ILEC” (collectively called “ILECs”), and each of Cogeco, Eastlink, Rogers, Shaw and Videotron is hereinafter called a “Cable Carrier” (collectively called “Cable Carriers”).
- <sup>4</sup> S.C. 1993, c. 38.
- <sup>5</sup> *I.e.*, the *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2006-355 (the “2006 Policy Direction”) and the *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227 (the “2019 Policy Direction”) (together the “Policy Directions”).
- <sup>6</sup> See for example, Office of the Prime Minister, “Prime Minister Trudeau’s message for International Women’s Day 2021”, 8 March 2021, <https://pm.gc.ca/en/videos/2021/03/08/prime-minister-trudeaus-message-international-womens-day-2021>; Office of the Prime Minister, “Prime Minister announces support for Black entrepreneurs and business owners”, 9 September 2020, <https://pm.gc.ca/en/news/news-releases/2020/09/09/prime-minister-announces-support-black-entrepreneurs-and-business>; Office of the Prime Minister, “Statement by the Prime Minister on Small Business Week”, 18 October 2020, <https://pm.gc.ca/en/news/statements/2020/10/18/statement-prime-minister-small-business-week>; Office of the Prime Minister, “Support for students and new grads affected by COVID-19”, 22 April 2020, <https://pm.gc.ca/en/news/news-releases/2020/04/22/support-students-and-new-grads-affected-covid-19>.
- <sup>7</sup> *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Decision 2010-255 concerning usage-based billing for Gateway Access Services*, Telecom Decision CRTC 2010-802, 28 October 2010.
- <sup>8</sup> *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services*, Telecom Order CRTC 2019-288, 15 August 2019.
- <sup>9</sup> *Order Declining to vary Telecom Regulatory Policy CRTC 2015-326*, Order in Council P.C. 2016-0332, issued May 10, 2016 (“OIC 2016-332”).
- <sup>10</sup> *Order to decline to vary, rescind or refer back for reconsideration Telecom Order CRTC 2019-288 given the CRTC is already reviewing it*, Order in Council P.C. 2020-0553, issued August 15, 2020 (“OIC 2020-553”).
- <sup>11</sup> CNOC first intervention dated 31 January 2014 in the proceeding initiated by *Review of wholesale services and associated policies*, Telecom Notice of Consultation CRTC 2013-551, 15 October 2013.
- <sup>12</sup> As background, aggregated wholesale HSA service rates are comprised of two main components: the flat “access rate” that applies per end-user connection and the “capacity based-billing” or “CBB” charge that accounts for usage-sensitive capacity (i.e., bandwidth) that wholesale customers require.
- <sup>13</sup> CNOC (then Canadian Network Operators Consortium Inc.) Part 1 Application dated 30 April 2015 to make usage sensitive rates interim (CRTC File 8661-C182-201503946) (“CNOC’s 2015 Application”), available at: <https://services.crtc.gc.ca/pub/TransferToWeb/2015/8661-C182-201503946.zip>
- <sup>14</sup> CNOC estimated that the CBB cost per subscriber would soar to \$176.16 by 2019, See CNOC’s 2015 Application, at para 27.
- <sup>15</sup> *Review of costing inputs and application process for wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2015-225, 28 May 2015, [https://crtc.gc.ca/eng/archive/2015/2015-225.htm?\\_ga=2.162691580.1359691137.1622815946-64230908.1585313916](https://crtc.gc.ca/eng/archive/2015/2015-225.htm?_ga=2.162691580.1359691137.1622815946-64230908.1585313916)
- <sup>16</sup> *Id.*, at paras 13-20.

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- 17 *Review of costing inputs and the application process for wholesale high-speed access services*, Telecom Decision CRTC 2016-117, 31 March 2016.
- 18 TO 2016-117, at para 104.
- 19 TO 2016-396, at para 19; TO 2016-448, at para 13.
- 20 TO 2016-396, at Appendix 2; TO 2016-448, at Appendix 2.
- 21 *Ibid.*
- 22 *Ibid.*
- 23 As set out in Confidentiality of information used to establish wholesale service rates, Telecom Regulatory Policy CRTC 2012-592, 26 October 2012 and Letter dated 13 September 2013, CRTC File No. 8638-C12-200805906, available at: \*<https://crtc.gc.ca/eng/archive/2013/lt130913.htm>.
- 24 See for example: Cogeco (CRTC)02Mar18 Question 6b); Cogeco (CRTC)02Mar18 Question 23d); Cogeco (CRTC)02Mar18 Question 23d); Cogeco (CRTC)02Mar18 Question 26; Bragg(CRTC)2Mar18-12 part d); Bragg(CRTC)2Mar18-14; Shaw(CRTC)2Mar18-15 part d); Shaw(CRTC)2Mar18-17 part h); Québecor Média(CRTC)2mars18-5 groupé part b); Québecor Média(CRTC)2mars18-21 groupé part a).
- 25 CNOC letters dated 18 July 2016 and 7 October 2016 in Follow-up to Telecom Decision CRTC 2016-117, Review of costing inputs and the application process for wholesale high-speed access service.
- 26 *Tariff notice applications concerning aggregated wholesale high-speed access services – Revised interim rates*, Telecom Order CRTC 2016-396, 6 October 2016.
- 27 TO 2016-396, at para 19; TO 2016-448, at para 13.
- 28 TO 2016-396, at para 26;
- 29 TO 2016-396, at para 22; TO 2016-448, at decision preamble.
- 30 CRTC news release dated October 6, 2016.
- 31 See CNOC letters dated 21 June 2017 and 8 June 2018 in Follow-up to Telecom Order CRTC 2016-396 and Telecom Order CRTC 2016-448 – Aggregated wholesale high-speed access.
- 32 CNOC letter dated 8 June 2018 in Follow-up to Telecom Order CRTC 2016-396 and Telecom Order CRTC 2016-448 – Aggregated wholesale high-speed access.
- 33 Telecom Commission Letter Addressed to the Distribution List dated 27 July 2018, CRTC File Nos. 8740-B2-201606873, 8740-B2-201703447, 8740-C6-201606831, 8740-E17-201610262, 8740-M59-201606980, 8740-R28-201606808, 8740-S22-201606823, 8740-S9-201606790, 8740-T66-201606815, 8740-V3-201606849, available at: <https://crtc.gc.ca/eng/archive/2018/lt180727b.htm>.
- 34 Telecom Procedural Letter Addressed to Distribution List dated 31 March 2016, CRTC File Nos. 8661-C12-201504829 and 8661-C182-201503946, available at: <https://crtc.gc.ca/eng/archive/2016/lt160331a.htm>; See also Telecom Procedural Letter Addressed to Distribution List dated 16 December 2016, CRTC File Nos. 8740-B2-201606873, 8740-C6-201606831, 8740-M59-201606980, 8740-R28-201606808, 8740-S22-201606823, 8740-S9-201606790, 8740-T66-201606815, 8740-V3-201606849, 8740-E17-20161026, available at: <https://crtc.gc.ca/eng/archive/2016/lt161216a.htm>.
- 35 TO 2019-288, Appendix 1.
- 36 Affidavit of Christopher Hickey sworn October 15, 2019 (“Hickey Affidavit”), at paras 215-216, Responding Motion Record of Canadian Network Operators Consortium in *Bell Canada et al v. British Columbia Broadband Association et al* (Federal Court of Appeal Docket 19-A-59) and Bragg Communications Inc. et al v. British Columbia Broadband Association (Federal Court of Appeal Docket 19-A-58) (“CNOC Motion Record”); See also Michael Lewis, Toronto Star, “Canadian internet rates are falling, and you can thank the CRTC”, 17 September 2019, <https://www.thestar.com/business/2019/09/17/canadian-internet-rates-are-falling-and-you-can-thank-the-crtc.html>.
- 37 *Ibid.*
- 38 Cision, “EBOX s'engage à baisser les prix des consommateurs suite à la décision du CRTC”, 20 September 2019, <https://www.newswire.ca/fr/news-releases/ebox-s-engage-a-baisser-les-prix-des-consommateurs-suite-a-la-decision-du-crtc-879222738.html>.
- 39 Hickey Affidavit., at paras 218-220; See also CNOC Motion Report, at Exhibits 54-57; See also “Oricom Internet's quick reaction to the CRTC's decision”, 18 September 2019,

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<https://markets.businessinsider.com/news/stocks/oricom-internet-s-quick-reaction-to-the-crtc-s-decision-1028535317>; See also Cartt.ca, “Execulink lowers prices, too”, 15 October 2019, <https://cartt.ca/execulink-lowers-prices-too/>.

- 40 “TekSavvy to Customers: “We lowered your Internet bill. Thank the CRTC”, 13 September 2019, <https://www.teksavvy.com/in-the-news/2019-press-releases/teksavvy-to-customers-we-lowered-your-internet-bill-thank-the-crtc/>.
- 41 Bell Canada Part 1 Application Seeking Order to Review and Vary Telecom Order CRTC 2019-288, Follow-up to Telecom Orders 2016-396 and 2016-448 – Final Rates for Aggregated Wholesale High-Speed Access Services, dated 13 December 2019; Joint Part 1 Application of the Cable Carriers for Review and Variance and a Stay of Telecom Order CRTC 2019-288, Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for Aggregated Wholesale High-Speed Access Services, 13 December 2019; TELUS Part 1 Application to Review and Vary Follow-up to Telecom Orders 2016-396 and 2016-448 – Final Rates for Aggregated Wholesale High-Speed Access Services, Telecom Order CRTC 2018-288 and Telecom Order 2019-288-1, 13 November 2019.
- 42 Bell Canada et al v. British Columbia Broadband Association et al, FCA Dockets A-456-19 and A-457-19.
- 43 Bell Canada Petition to the Governor in Council to Vary Telecom Order CRTC 2019-288, Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services, 13 November 2019; TELUS Communications Inc. Petition to the Governor in Council to Vary Telecom Order CRTC 2019-288, Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services, 13 November 2019; Petition of Bragg Communications Incorporated, Cogeco Communications Inc., Rogers Communications Canada Inc., Shaw Communications Inc., and Videotron Ltd. to Vary Telecom Order CRTC 2019-288, Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services, 13 November 2019.
- 44 Order of Justice Richard Boivin of the Federal Court of Appeal, 22 November 2019, Docket 19-A-59; *Requests to stay the implementation of Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*, Telecom Decision CRTC 2020-342, 28 September 2020.
- 45 *Bell Canada v. British Columbia Broadband Association*, 2020 FCA 140, at paras 7 and 8.
- 46 At the time, the 2019 Policy Direction did not apply to TO 2019-288. However, the 2019 Policy Direction does apply to TD 2021-181.
- 47 *Bell Canada v. British Columbia Broadband Association*, 2020 FCA 140, at para 214.
- 48 For example, Videotron’s CBB rate (per 100 Mbps) increased from \$227.05 in TO 2019-288 to \$395.36 in TD 2021-181, an increase of 74.13%.
- 49 The criteria for assessing review and vary applications are set out in *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011.
- 50 TD 2021-181, at paras 64-273
- 51 *Id.*, at paras 290-291 and 302.
- 52 *Id.*, at paras 292-293.
- 53 *Id.*, at paras 293-295.
- 54 *Id.*, at para 296.
- 55 *Id.*, at para 297.
- 56 *Id.*, at para 304.
- 57 *Id.*, at para 301.
- 58 From the closing of the public record.
- 59 This government’s initial commitment is reflected in the Prime Minister’s mandate letter to Minister Bains dated 13 December 2019, which directed the Minister to use all available instruments, including the advancement of the 2019 Policy Direction, to reduce the average cost of cellular phone bills in Canada by 25 percent, over and above the 25 percent reductions realized by the industry in 2019 over 2018.
- 60 *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015.
- 61 *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020

- 62 CNOC’s proposal provided that such access would be phased out pursuant to an appropriately calibrated forbearance framework.
- 63 Telecom Commission Letter addressed to Distribution list dated 11 June 2020, RE: Canadian Network Operators Consortium Inc. Part 1 Application to Review and Vary Telecom Regulatory Policy CRTC 2015-326 and Telecom Decision CRTC 2016-379 – Commission Decision.
- 64 *Ibid.*
- 65 Specifically, the CRTC deferred consideration of CNOC’s request for port and fibre strand sharing functionality for all disaggregated wholesale HSA services and access to FTTP facilities over aggregated HSA services whereby such access will be phased out subject to a forbearance framework.
- 66 The disaggregated HSA service configuration proceeding is still ongoing. CNOC expects that the record of that proceeding will not close for another few months. After the close of record, stakeholders can reasonably expect the CRTC to take as much as one year or more to issue its decision (based on recent timelines for CRTC decisions). Thereafter, the CRTC will need to commence a tariff proceeding for disaggregated HSA services under new configurations. That proceeding would occur over several months followed by potentially another year of CRTC deliberation until a decision is rendered.
- 67 Christine Dobby, Toronto Star, “Is the CRTC getting too cosy with big telecom? Star analysis finds major telecoms met with government and CRTC officials hundreds of times prior to reversal on wholesale Internet rates”, June 12, 2021.
- 68 <https://blogs.teksavvy.com/look-at-this-picture-then-look-at-your-internet-and-mobile-bills>
- 69 “CRTC internet rates come at high cost for those on low incomes” <https://www.ncf.ca/en/blog/crtc-internet-rates-come-at-high-cost-for-those-on-low-incomes/>
- 70 *Ibid.*
- 71 *Ibid.*
- 72 See <https://www.lecourrierdusud.ca/longueuil-accorde-une-aide-de-100-000-a-la-societe-electronic-box/>; See also <https://www.ebox.ca/blogue/ebox-campus/>.
- 73 Competition Bureau, “Market Study Notice: Competition in Broadband Services”, <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04360.html>.
- 74 “CRTC Decision Will Kill Telecom Competition, Guarantees Even Higher Prices: TekSavvy”, <https://www.teksavvy.com/in-the-news/2021-press-releases/crtc-decision-will-kill-telecom-competition-guarantees-even-higher-prices-teksavvy/?opt-in>
- 75 “Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2020 Edition”, Wall Communications Inc.
- 76 Wall Report, at p.64.
- 77 See Section 2.7 for several detailed examples of these rate increases relative to the final rates approved in TO 2019-288.
- 78 The Economist Intelligence Unit, “The Inclusive Internet Index”, (<https://theinclusiveinternet.eiu.com/explore/countries/CA/performance/indicators/affordability>).
- 79 Rizwan Jamal, Toronto Star, “Forget the rhetoric. CRTC’s internet pricing reversal is actually a boon for some resellers”, June 12, 2021. (<https://www.thestar.com/business/opinion/2021/06/12/forget-the-rhetoric-crtcs-internet-pricing-reversal-is-actually-a-boon-for-some-resellers.html>.)
- 80 The Economist Intelligence Unit Data Set – Series Explorer – 2.1.4 “Fixed-line monthly broadband cost” (<https://theinclusiveinternet.eiu.com/assets/external/downloads/3i-index-data.csv>).
- 81 Emma Prestwich, The Huffington Post Canada, “Canada Has Most Affordable Internet, Economist Intelligence Unit Declares In New Index”, March 3, 2017 (“[https://www.huffingtonpost.ca/2017/03/02/canada-affordable-internet\\_n\\_15113304.html](https://www.huffingtonpost.ca/2017/03/02/canada-affordable-internet_n_15113304.html)).
- 82 INDU Committee Report No. 7 – INDU (43-2), [https://www.google.com/search?q=indu+committee+2021-181&rlz=1C1GCEU\\_enCA821CA821&oq=indu+committee+2021-181&aqs=chrome..69i57.2460j0j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=indu+committee+2021-181&rlz=1C1GCEU_enCA821CA821&oq=indu+committee+2021-181&aqs=chrome..69i57.2460j0j4&sourceid=chrome&ie=UTF-8)
- 83 Competition Bureau Market Study, at p. 26.
- 84 *Id.*, at p. 29.

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- 85 *Id.*, at p. 25.
- 86 *Id.*, at p. 52.
- 87 *Id.*, at p. 53.
- 88 2020 CMR, Open Data Portal, W9, “Wholesale HSA-enabled subscriptions by service speed in Mbps (thousands), 2015-2019”. <https://open.canada.ca/data/dataset/bd41f23a-6dbc-45ee-9419-422153aff567/resource/f2a90048-8130-4599-aa4d-c94f6c81d03b/download/open-data-wholesale.xlsx>
- 89 TekSavvy complaint dated February 20, 2020 Seeking an Inquiry and Enforcement Action by the Commissioner of Competition in Respect of the Anti-competitive practices of Bell and Rogers. <https://www.teksavvy.com/wp-content/uploads/2020/02/PUBLIC-TekSavvy-Complaint-02202020.pdf>
- 90 *Id.*, at paras 13-15.
- 91 Pricing as of June 2021 per flanker brand websites.
- 92 The corresponding wholesale HSA service that competitors must purchase in order to provide the same service speed.
- 93 CBB costs have been calculated per end-user on a monthly basis.
- 94 Tariffed one-time “service charges” and “connection charges”. For the purpose of translating these costs to a monthly amount, CNOC has amortized the charges over a thirty-six-month period.
- 95 The sum of access rates, CBB costs and amortized service connection charges.
- 96 This promotional rate applies for 12 months. The plan is month-to-month, without activation or installation fees or modem fees. Promotion was available during June 2021 at [https://www.virginmobile.ca/en/hot-offers/internet-special-offer.html?invsrvc=vibso&EXT=VIR\\_INT\\_Google\\_kwid=p21923460372&gclid=CjwKCAjwwqaGBhBKEiwaMk-FtFgI50YvbUcw7-CHy4Y1idqB3-fP2kuqYa3Bf3QsmCqSxEpCKdx2DxoC39AQAvD\\_BwE&gclsrc=aw.ds&province=ON&geoResult=ON](https://www.virginmobile.ca/en/hot-offers/internet-special-offer.html?invsrvc=vibso&EXT=VIR_INT_Google_kwid=p21923460372&gclid=CjwKCAjwwqaGBhBKEiwaMk-FtFgI50YvbUcw7-CHy4Y1idqB3-fP2kuqYa3Bf3QsmCqSxEpCKdx2DxoC39AQAvD_BwE&gclsrc=aw.ds&province=ON&geoResult=ON)
- 97 This promotional rate applies for 12 months. The plan is month-to-month, without activation or installation fees or modem fees. Promotion was available during June 2021 at: [https://www.fido.ca/promotions/internet/offers?ecid=PS\\_F0148\\_F\\_INT\\_Feb\\_21\\_FIS\\_O6FJLQ&ecid=PS\\_F003\\_0\\_F\\_INT\\_Apr\\_19\\_ALW\\_ZX66OQ&s\\_kwid=AL!5244!3!500998665497!e!!g!!fido%20internet&gclid=CjwKCAjwwqaGBhBKEiwaMk-FtOIDnAgwqAjNxpRcOQodTx7E4\\_ImZD8zQoNeqstkLl8P799058L8eRoCDQIQAvD\\_BwE&gclsrc=aw.ds](https://www.fido.ca/promotions/internet/offers?ecid=PS_F0148_F_INT_Feb_21_FIS_O6FJLQ&ecid=PS_F003_0_F_INT_Apr_19_ALW_ZX66OQ&s_kwid=AL!5244!3!500998665497!e!!g!!fido%20internet&gclid=CjwKCAjwwqaGBhBKEiwaMk-FtOIDnAgwqAjNxpRcOQodTx7E4_ImZD8zQoNeqstkLl8P799058L8eRoCDQIQAvD_BwE&gclsrc=aw.ds)
- 98 This promotional rate is “all inclusive”. Promotion was available during June 2021 at: [https://fizz.ca/en/internet-plan?DATA\\_CAPACITY=10250&DOWNLOAD\\_SPEED=5010&PLAN=1000](https://fizz.ca/en/internet-plan?DATA_CAPACITY=10250&DOWNLOAD_SPEED=5010&PLAN=1000)
- 99 The corresponding wholesale HSA service that competitors must purchase in order to provide the same service speed as the flanker brand service offerings identified in Table 2.
- 100 The sum of access rates, CBB costs and amortized service connection charges, as calculated in Table 2.
- 101 Includes, as applicable: tariffed service connection charges, dry-loop service charges and fees.
- 102 Cost of any transport services that are required between the competitor’s backend and the point of interconnection for wholesale HSA services, allocated on a per end-user basis, per month.
- 103 Includes all network monitoring, management, maintenance and repairs costs, allocated on a per end-user basis, per month.
- 104 Includes all sales, marketing, customer support, billing and other overhead or administrative costs, allocated on a per end-user basis, per month.
- 105 Includes all Wholesale Costs reported in Table 2 and all other cost categories reported in Table 3 (Other Tariffed Charges, Transport Costs, Network Operating Costs, Other Costs (SG&A+).
- 106 For example, Videotron is offering 400 Mbps services for \$52.00 (or \$64.00 including equipment), to customers located on the Island of Montreal. The corresponding access rate approved in TD 2021-181 is \$53.15 per month. In other words, even before accounting for the cost of CBB and all other costs that competitors must incur in order to put a competing service to market, the access rate approved in TD 2021-181 forecloses any opportunity for meaningful competition.
- 107 Competition Bureau Market Study, at p.9.
- 108 TD 2021-181, at para 303.

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- <sup>109</sup> *Id.*, at paras 389 and 394.
- <sup>110</sup> *Id.*, at para 303.
- <sup>111</sup> Data is sourced from the 2020 CMR open data portal, Dataset, Data - Retail fixed Internet, Tab N-F15. Retrieved from <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2020/cmrd.htm> on June 4, 2021.
- <sup>112</sup> 2020 CMR open data portal, Dataset, Data - Retail fixed Internet, Tab N-F15. Retrieved from <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2020/cmrd.htm> on June 4, 2021.
- <sup>113</sup> This fact is recognized in the Competition Bureau Market Study, at para 13.
- <sup>114</sup> Competition Bureau Study, at Figure 4.
- <sup>115</sup> *Ibid.*
- <sup>116</sup> The CRTC data is only available for the period 2013-2019.
- <sup>117</sup> This corroborates TekSavvy’s submission to the Commission that competitors are under enormous pressure given the 2016 interim rates.
- <sup>118</sup> 2020 CMR Open Data Portal, Dataset, Data - Retail fixed Internet, Tab N-F4. Retrieved from <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2020/cmrd.htm> on June 4, 2021.
- <sup>119</sup> TD 2021-181, at para 395.
- <sup>120</sup> TD 2021-181, at paras 304, 389 and 394.
- <sup>121</sup> Brattle Group, “Analysis of the CRTC’s Final Rates for Aggregated Wholesale High-Speed Access Services: Impact on Broadband Network Investment and Innovation”, November 12, 2019.
- <sup>122</sup> Zhiqi Chen, “Assessment of an Expert Report by the Brattle Group Regarding Telecom Order CRTC 2019-288”, January 31, 2020.
- <sup>123</sup> Dixit, Robert K. and Pindyck, Robert S., *Investment under Uncertainty*, Princeton: Princeton University Press, 2012.
- <sup>124</sup> Hubbard, R. Glenn. "Capital-Market Imperfections and Investment," *Journal of Economic Literature*, 36(1998), 193-225.
- <sup>125</sup> Demand elasticity is a measure of the change in the quantity purchased of a product in relation to a change in price.
- <sup>126</sup> Chen Report, at paras 32-35.
- <sup>127</sup> As described in paragraphs 17-31 of the Chen Report, the unrealistic assumptions that inform the Brattle Report’s analyses are: (1) reliance on a Cable Carrier average revenue per user (ARPU) growth rate that is more than 72 percent lower than actual market trends; (2) failure to consider that decreases in ARPU (relative to the *status quo*) will be offset by increased usage per user; (3) unrealistically high estimated competitor market share growth (as much as twice the growth rate in the *status quo*; and (4) failure to consider increases in the rate of subscription growth.
- <sup>128</sup> *I.e.*, the unrealistically large reduction in the growth rate of the Cable Carriers’ ARPU.
- <sup>129</sup> Specifically, their “Scenario A” model that accounts for a “moderate” service-based competitor growth scenario. As explained in the Chen Report, the Brattle Report’s “Scenario B” and “Scenario C” involve even more outlandish assumptions than Scenario A.
- <sup>130</sup> The estimated reduction in operating cash flows can be found in Figure 10 of the Brattle Report, while Dr. Chen’s estimate of the overstatement can be found in Appendix A1 of Chen Report.
- <sup>131</sup> It should be emphasized that this revised estimate still overstates the reduction in operating cash flows because it embodies the effects of remaining unrealistic assumptions.
- <sup>132</sup> The four are Cogeco, Rogers, Shaw and Rogers.
- <sup>133</sup> Since TO 2019-288, Bell, Rogers, Shaw, Cogeco, Quebecor and TELUS had at least 261 meetings with ISED, compared to 18 meetings between competitors and ISED. Those same Big Telecoms had 17 meetings with the CRTC, compared to one meeting between competitors and the CRTC (as reported by Christine Dobby of the Toronto Star in “Is the CRTC getting too cosy with big telecom? Star analysis finds major telecoms met with government and CRTC officials hundreds of times prior to reversal on wholesale internet rates”, June 12, 2021).
- <sup>134</sup> Bell petition dated 13 November 2019 to the GIC to vary TO 2019-288, at paras 57-58.
- <sup>135</sup> *Id.*, at para 15.

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136 BCE Q1 2019 Results Conference Call, May 2, 2019.

137 Cable Carrier petition dated 13 November 2013 to the GIC to vary TO 2019-288, at p.2.

138 Rogers Communications Inc. BMO Media & Telecom Conference dated 10 September 2019, at p.8.

139 BCE Q4 2019 Results and 2020 Guidance Conference Call Transcript, at p.13.

140 Cogeco 2021 Investor Update, at p.22; Quebecor 2020 Annual Report, at p.3; Rogers 2020 Annual Report, at p.11; Shaw Annual Report, at p.9; TELUS 2020 Annual Report, at p.7.

141 See Annex 2.

142 See for example, CNOC response to Gazette Notice TIPB-002-2019, at paras 148-153.

143 *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010 [“TRP 2010-632”].

144 *Id.*, at para. 78.

145 *Id.*, at para. 34.

146 *Id.*, at para. 38.

147 Order, *supra* note 1, at para. 307.

148 TRP 2015-326, *supra* note 117, Exhibit 14, at paras. 97 and 143.

149 *Id.*, Exhibit 14, at paras. 109-110.

150 Petition of Bell Canada to the Governor in Council to Vary Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*, 20 October 2015 (“Bell 2015 Petition”).

151 *Id.*, at para 8.

152 *Id.*, at ES22.

153 Bell Canada Petition to the Governor in Council to Vary Telecom Order CRTC 2019-288, *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services*, 13 November 2019, at para 56.

154 Canadian Radio-television and Telecommunications Commission, *Communications Monitoring Report 2020*, at p.51 (“2020 CMR”).

155 Canadian Radio-television and Telecommunications Commission, *Communications Monitoring Report 2015*, at Figure 5.1.6.

156 TD 2021-181, at para 389.

157 [https://www.ic.gc.ca/eic/site/139.nsf/eng/h\\_00006.html](https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00006.html)

158 *Ibid.*

159 <https://crtc.gc.ca/eng/internet/internet.htm>

160 <https://www.ic.gc.ca/eic/site/119.nsf/eng/home>

161 Innovation, Science and Economic Development Canada, “Connect to Innovate Program – Project status updates”, <https://www.ic.gc.ca/eic/site/119.nsf/eng/00017.html#fn4>.

162 Innovation, Science and Economic Development Canada, “Progress toward universal access to high-speed Internet”, <https://www.ic.gc.ca/eic/site/139.nsf/eng/00036.html>.

163 For example, under the CRTC’s broadband fund: Cogeco is being funded for three different broadband projects in Ontario, Rogers is being funded for a project in Ontario, Shaw is being funded for a project in British Columbia; Bell is being funded for projects in the Yukon and Northwest territories.

164 Competition Bureau, “Market Study Notice: Competition in Broadband Services”, <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04360.html>.

165 2020 CMR, at Table 2.1.

166 2020 CMR Open Data, Table T-S3.

167 TD 2021-181, at para 390.

168 *Id.*, at para 298.

169 *I.e.*, the proceeding initiated by TNC 2020-187.

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<sup>170</sup> Other critical relief that CNOC requested to resolve barriers to disaggregated wholesale HSA deployment were vaguely deferred to “future proceedings” by the CRTC. These headings of relief include port and fibre strand sharing functionality for all disaggregated wholesale HSA services and access to FTTP facilities over aggregated HSA services whereby such access will be phased out subject to a forbearance framework.

<sup>171</sup> See TD 2021-181, at paras 390, 394 and 395. Note that these references point to the parts of the CRTC’s analysis of the telecommunications policy objective and Policy Directions that refer explicitly to the effects of the CRTC’s determinations on the disaggregated wholesale HSA regime. The CRTC also notes that its determinations are generally consistent with other policy objectives and aspects of the Policy Directions – those findings are the focus of CNOC’s submissions in Sections 4.1.3 and 4.2.6.

## **ANNEX 1**

**Annex 1**  
**Big Telecom Dividend Increases and Share Buybacks 2018 to 2020**

<b>Dividends paid out by Big Telecoms- 2018-2021</b>					
	<b>Total Dividend Payout</b>			<b>2018-2020 Change</b>	
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>\$ Change</b>	<b>% Change</b>
<b>BCE<sup>1</sup></b>	\$2,679M	\$2,819M	\$2,975M	\$296M	5.2%
<b>Cogeco<sup>2</sup></b>	\$93.7M	\$103.7M	\$112.3M	\$18.6M	19.9%
<b>Quebecor<sup>3</sup></b>	\$113M	\$266M	\$611M	\$498M	440.7%
<b>Rogers<sup>4</sup></b>	\$988M	\$1,016M	\$1,011M	\$23M	13.7%
<b>SaskTel*<sup>5</sup></b>	\$89.9M	\$116.3M	\$107.2M	\$17.3M	19.2%
<b>Shaw<sup>6</sup></b>	\$384M	\$389M	\$573M	\$189M	49.2%
<b>Telus<sup>7</sup></b>	\$1,141M	\$1,149M	\$930M	-\$211M	-18.5%

(\*SaskTel pays dividends the Crown Investments Corporation of Saskatchewan (CIC) and dividends to CIC are determined through the Saskatchewan Provincial budget process on an annual basis)

<b>Shares Repurchased by Big Telecoms via Normal Course Issuer Bids (NCIB) 2018-2020</b>							
	<b>2018</b>		<b>2019</b>		<b>2020</b>		<b>2018-2020</b>
	<b># of shares</b>	<b>Value</b>	<b># of shares</b>	<b>Value</b>	<b># of shares</b>	<b>Value</b>	<b>Value of repurchased shares</b>
<b>BCE<sup>8</sup></b>	3,085,697 common shares	\$175M	-	-	41,400 Preferred Shares	\$1M	\$176M
<b>Cogeco<sup>9</sup></b>	205,810 subordinate voting shares	\$14.6 million	327,200 subordinate voting shares	\$32.4 M	1,592,000 subordinate voting shares	\$165.5M	\$212.5M
<b>Quebecor<sup>10</sup></b>	-	-	-	-	6,457,050 Class B Shares	\$201.2M	\$201.2M
<b>Rogers<sup>11</sup></b>	-	-	9.9 million Class B Non-Voting Shares	\$655 M	-	-	\$655 M

<sup>1</sup> BCE 2019 Annual Report, at pg.78; BCE 2020 Annual Report, at p.86.

<sup>2</sup> Cogeco 2020 Annual Report, at p. 27.

<sup>3</sup> Quebecor Annual Report 2020, at p. F-7.

<sup>4</sup> Rogers Communications Inc. 2019 Annual Report, at p. 51; Rogers Communications Inc. 2020 Annual Report, at p. 103

<sup>5</sup> SaskTel Annual Report 2019/2020, p. 59.

<sup>6</sup> Shaw Communications Inc. 2018 Annual Report, at p. 75; Shaw Communications Inc 2020 Annual Report at p. 87.

<sup>7</sup> Telus Corporation 2020 Annual Report, at p. 82.

<sup>8</sup> BCE 2018 Annual Report, at p. 159; BCE 2020 Annual Report, at p. 162.

<sup>9</sup> Cogeco 2018 Annual Report, at p. 20; Cogeco 2020 Annual Report, at p.30.

<sup>10</sup> Quebecor Inc. (2021, February 25). News Release, "Quebecor Inc. Announces 38% Increase in Quarterly Dividend And Reports Consolidated Results For Fourth Quarter and Full Year 2020" at p. 9 <<https://sedar.com/>>

<sup>11</sup> Rogers Communications Inc. 2019 Annual Report, at p. 141.

**Annex 1**  
**Big Telecom Dividend Increases and Share Buybacks 2018 to 2020**

<b>Shares Repurchased by Big Telecoms via Normal Course Issuer Bids (NCIB) 2018-2020</b>							
	<b>2018</b>		<b>2019</b>		<b>2020</b>		<b>2018-2020</b>
	<b># of shares</b>	<b>Value</b>	<b># of shares</b>	<b>Value</b>	<b># of shares</b>	<b>Value</b>	<b>Value of repurchased shares</b>
<b>Shaw<sup>12</sup></b>	-	-	-	-	<b>Q2 2020:</b> 5,614,672 Class B Non-Voting Shares	\$140M	\$290M
					<b>Q4 2020/Q1 2021:</b> ~6.5 million Class B Non-Voting Shares	\$150M	
<b>Telus<sup>13</sup></b>	2.1M common Shares	\$100M	-	-	-	-	\$100M

<b>Dividend Increases and Share Buybacks by Big Telecoms- 2018-2020</b>	
<b>Incumbent</b>	<b>Action</b>
<b>BCE</b>	2018, Dividend increase of 15 cents, or 5.2%, to \$3.02 compared to \$2.87 per share in 2017. <sup>14</sup>
	2020, Dividend increase of 5% (from \$3.17 per share to \$3.33 per share) <sup>15</sup> <b>BCE Commentary to investors:</b> dividend increase on the basis of strong free cash flow growth underpinned by stable absolute dollar capital spending in 2020. BCE added that it would retain over \$1billion of excess cash after the dividend payments. <sup>16</sup>
	2021, Dividend increase of 5.1% (from \$3.33 per share to \$3.50 per share) <sup>17</sup>
	2019, BCE Board of Directors authorizes normal course issuer bid to purchase for cancellation up to 10% of the public float for each series of BCE's outstanding First Preferred Shares that are listed on the Toronto Stock Exchange (TSX). <sup>18</sup>

<sup>12</sup> Shaw Communications Inc. 2020 Annual Report, at p. 74; Shaw Communications Inc. (2021, January 13). News Release, "Shaw Announces First Quarter Fiscal 2021 Results" <<https://sedar.com/>>

<sup>13</sup> Telus Corporation 2018 Annual Report, at p. 189.

<sup>14</sup> BCE 2018 Annual Report, at p. 46.

<sup>15</sup> BCE 2020 Annual Information Form, at p.26.

<sup>16</sup> BCE Transcript: BCE Q4 2019 Results and 2020 Guidance Conference Call, at p.13.

<sup>17</sup> BCE 2020 Annual Information Form, at p.26.

<sup>18</sup> BCE 2019 Annual Report, at p.162.

**Annex 1**  
**Big Telecom Dividend Increases and Share Buybacks 2018 to 2020**

<b>Dividend Increases and Share Buybacks by Big Telecoms- 2018-2020</b>	
<b>Incumbent</b>	<b>Action</b>
	2018, BCE repurchased and cancelled 3,085,697 common shares for a total cost of \$175 million. <sup>19</sup>
	2020, BCE repurchases and cancels 41,400 First Preferred Shares for a total cost of \$1 million. <sup>20</sup>
<b>Cogeco</b>	2018, Dividend increase of 10.5% to \$1.90 per share. <sup>21</sup>
	2019, Dividend increase of 10.5% to \$2.10 per share. <sup>22</sup>
	2020, Dividend increase of 10.5% to \$2.32 per share. <sup>23</sup>
	2018, Cogeco purchased and cancelled 205,810 subordinate voting shares with an average stated value of \$1.7 million for consideration of \$14.6 million. <sup>24</sup>
	2019, Cogeco Communications purchased and cancelled 327,200 subordinate voting shares with a weighted average price of \$98.97 for consideration of \$32.4 million. <sup>25</sup>
	2020, Cogeco Communications purchased and cancelled 1,592,000 subordinate voting shares with a weighted average price per share repurchased of \$103.98 for a total consideration of \$165.5 million. <sup>26</sup>
	2020, Cogeco Communications announced that the TSX accepted the renewal of its notice of intention for a NCIB, enabling it to acquire for cancellation up to 1,809,000 subordinate voting shares from May 4, 2020 to May 3, 2021. <sup>27</sup>
<b>Quebecor</b>	Q1 2019, Dividend increase of 100% from \$0.055 to \$0.1125 on Class A and Class B Shares <sup>28</sup>
	Q4 2019, Dividend increase of 78% from \$0.1125 to \$0.20 on Class A and Class B Shares <sup>29</sup>
	Q4 2021, Dividend increase of 38% from \$0.20 to \$0.275 on Class A and Class B Shares <sup>30</sup>
	2020, Quebecor purchased and cancelled 6,457,050 Class B Shares for a total cash consideration of \$201.2 million <sup>31</sup>

<sup>19</sup> BCE 2018 Annual Report, at p. 78.

<sup>20</sup> BCE 2020 Annual Report, at p. 162.

<sup>21</sup> Cogeco 2018 Annual Report, at p.3.

<sup>22</sup> Cogeco 2019 Annual Report, at p.5.

<sup>23</sup> Cogeco 2020 Annual Report, at p.5.

<sup>24</sup> Cogeco 2018 Annual Report, at p.20.

<sup>25</sup> *Ibid*, at p. 27.

<sup>26</sup> *Ibid*.

<sup>27</sup> *Ibid*.

<sup>28</sup> Quebecor 2019 Q1 Consolidated Financial Statements and Notes, at p. 14.

<sup>29</sup> Quebecor 2019 Q4 Consolidated Financial Statements and Notes, at p. 44.

<sup>30</sup> Quebecor 2019 Q4 Consolidated Financial Statements and Notes, at p. 44.

<sup>31</sup> Quebecor Inc. (2021, February 25). News Release, "Quebecor Inc. Announces 38% Increase In Quarterly Dividend And Reports Consolidated Results For Fourth Quarter and Full Year 2020" <<https://sedar.com/>>

**Annex 1**  
**Big Telecom Dividend Increases and Share Buybacks 2018 to 2020**

<b>Dividend Increases and Share Buybacks by Big Telecoms- 2018-2020</b>	
<b>Incumbent</b>	<b>Action</b>
<b>Rogers</b>	2019, Dividend increase of 4.2% (from \$1.92 in 2018 to \$2.00) per share. <sup>32</sup>
	2019, Rogers purchased 9.9 million shares under NCIB programs for \$655 million (7.7 million Class B Non-Voting Shares for \$500 million, under the 2019 NCIB and 2.2 million Class B Non-Voting Shares for \$155 million under the 2018 NCIB) <sup>33</sup>
	2020, In April 2020, Rogers announced that it had received approval from the TSX to establish a NCIB program for the period commencing April 24, 2020, and ending April 23, 2021, to purchase the lesser of 34,927,589 Class B shares, representing approximately 10% of the public float of the Class B shares, and that number of Class B shares that could be purchased under the NCIB for an aggregate purchase price of \$500 million. <sup>34</sup>
<b>Shaw</b>	2019, On October 29, 2019, Shaw announces that it has received approval the TSX to establish a NCIB program from November 1, 2019 to October 31, 2020. The Company had the ability to purchase for cancellation up to 24,758,127 Class B Non-Voting Shares, representing 5% of all of the issued and outstanding Class B Non-Voting Shares. <sup>35</sup>
	2020, During the year ended August 31, 2020, Shaw purchased 5,614,672 Class B Non-Voting Shares for cancellation for a total cost of approximately \$140 million under the NCIB program. <sup>36</sup>
	November 2020, Shaw announces it has received approval from the TSX to establish a NCIB program from November 5, 2020 to November 4, 2021. Shaw is authorized to purchase for cancellation up to 24,532,404 Class B Shares, representing approximately 5% of all of the issued and outstanding Class B Shares. A total of 490,648,083 Class B Shares of Shaw were issued and outstanding as at October 22, 2020. <sup>37</sup>
	Shaw repurchased approximately 6.5 million Class B Non-Voting Shares since the commencement of NCIB program in November 2020 for approximately \$150 million <sup>38</sup>
<b>Telus</b>	2018, Dividend increase of 6.6% from \$1.97 to \$2.10. <sup>39</sup>
	2019, Dividends declared in 2019 totalled \$2.2525 per share (pre-share split) an increase of \$0.1525 per share or 7.3% (pre-share split) compared to the dividends declared in 2018. <sup>40</sup>
	Q1 2020, the Board declared a first quarter dividend of \$0.5825 per share (pre-share split), payable on April 1, 2020, a cumulative increase of \$0.0375 per share (pre-share split) or 6.9% from the \$0.5450 per share (pre-share split) dividend declared one year earlier. <sup>41</sup>

<sup>32</sup> Rogers Communications Inc. 2020 Annual Report, at p. 94.

<sup>33</sup> Rogers Communications Inc. 2019 Annual Report, at p. 141.

<sup>34</sup> Rogers Communications Inc. (2020, April 22). Form 51-102F3 – Material change report. <<https://www.sedar.com/>>

<sup>35</sup> Shaw Communications Inc. 2019 Annual Report, at p. 64.

<sup>36</sup> Shaw Communications Inc. 2020 Annual Report, at p. 74.

<sup>37</sup> Shaw Communications Inc. (2020, November 2). News Release, “Shaw Announces TSX Approval for a Normal Course Issuer Bid” <<https://www.sedar.com/>>

<sup>38</sup> Shaw Communications Inc. (2021, January 13). News Release, “Shaw Announces First Quarter Fiscal 2021 Results” <<https://sedar.com/>>

<sup>39</sup> Telus Corporation 2018 Annual Report, at p. 4.

<sup>40</sup> Telus Corporation 2019 Annual Report, at p. 28.

<sup>41</sup> *Ibid.*

**Annex 1**  
**Big Telecom Dividend Increases and Share Buybacks 2018 to 2020**

<b>Dividend Increases and Share Buybacks by Big Telecoms- 2018-2020</b>	
<b>Incumbent</b>	<b>Action</b>
	Q1 2021, Dividend increase of 6.8% from \$0.29125 to \$0.3112 from one year earlier. <sup>42</sup>
	Q2 2021, On May 6, 2021, the Board declared a second quarter dividend of \$0.3162 per share on issued and outstanding Common Shares, payable on July 2, 2021. The second quarter dividend increased by \$0.02495 per share or 8.6% from the \$0.29125 per share dividend declared one year earlier. <sup>43</sup>
	2018, Telus purchased approximately 2.1 million common shares for \$100M. <sup>44</sup>
	2019, Telus received approval from the TSX to purchase and cancel up to 8 million Common Shares for consideration of up to \$250 million, from January 2, 2019, to January 1, 2020. Telus did not purchase any shares pursuant to the 2019 NCIB. <sup>45</sup>
	2020, Telus received approval from the TSX to purchase and cancel up to 8 million Common Shares for an aggregate purchase price of up to \$250 million from January 2, 2020 to January 1, 2021. Telus did not purchase any shares pursuant to the 2020 NCIB. <sup>46</sup>

<sup>42</sup> Telus Corporation - Q1 2021 Management's Discussion & Analysis at p.12.

<sup>43</sup> *Ibid.*

<sup>44</sup> Telus Corporation 2018 Annual Report, at p. 57.

<sup>45</sup> Telus Corporation 2019 Annual Report, at p. 28.

<sup>46</sup> Telus Corporation 2020 Management's Discussion & Analysis, at p. 34.

## **ANNEX 2**

**Annex 2**  
**Big Telecom Capital Expenditures 2015 to 2020**

Incumbent	Total Capital Expenditures						2015 compared to 2020 Change	
	2015	2016	2017	2018	2019	2020	\$ Change	% Change
<b>BCE</b> <sup>1</sup>	\$3,626M	\$3,771M	\$4,034M	\$3,971M	\$3,974M	\$4,202M	\$576M	15.89%
<b>Cogeco</b> <sup>2</sup>	\$439.2M	\$467.5M	\$428.1M	\$457.8M	\$434.6M	\$484M	\$44.8M	10.2%
<b>Quebecor (Videotron)</b> <sup>3</sup>	\$723.1M	\$735.9M	\$699.9M	\$703.4M	\$689.1M	\$596.1M	-\$127M	-17.6%
<b>Rogers</b> <sup>4</sup>	\$2,440M	\$2,352M	\$2,436M	\$2,790M	\$2,807M	\$2,312M	-\$128M	-5.2%
<b>SaskTel</b> <sup>5</sup>	\$328.7M	\$316.1M	\$288.2M	\$268.2M	\$268.2M	\$262.9M	-\$65.8M	-20%
<b>Shaw</b> <sup>6</sup>	\$1,106M	\$1,049M	\$1,225M	\$1,361M	\$1,212M	\$1,111M	\$5M	0.5%
<b>Telus</b> <sup>7</sup>	\$2,577M	\$2,968M	\$3,094M	\$2,914M	\$2,906M	\$2,775M	\$198M	7.7%

**Discussion:**

The table above excludes Bragg Communications Inc., operating as Eastlink (“Eastlink”), because Eastlink is a privately held company that does not publicly report its financial results.

As set out in the table, capital expenditures by the Incumbents vary from year to year and over time, with some Incumbents incurring fewer capital expenditures in 2020 than they did in 2015, and others incurring substantially more capital expenditures.

Importantly, in the financial reports used to create this table, the Incumbents do not claim that wholesale rates or wholesale-based competitors influenced their decisions, either for or against, to incur capital expenses in any given year. Instead, the reasons given for

<sup>1</sup> BCE Inc. (“BCE”) 2016 Annual Report, at pp. 3, 54; BCE 2017 Annual Report, at p. 5, 55; BCE 2018 Annual Report, at p. 5, 57; BCE 2019 Annual Report, at pp 5, 57; BCE 2020 Annual Report, at pp 5, 66.

<sup>2</sup> Cogeco Communications Inc. (“Cogeco”) 2017 Annual Report, at p. 4; Cogeco 2018 Annual Report, at p. 20; Cogeco 2019 Annual Report at pp. 20-21; Cogeco 2020 Annual Report, at p. 25.

<sup>3</sup> Videotron Ltd. / Vidéotron Ltée (“Videotron”), 2016 Q4 Financial Report, at p. 2; Videotron 2019 Q4 Financial Report, at p. 5, Videotron 2020 Q4 Financial Report, at p. 49

<sup>4</sup> Rogers Communications Inc. (“Rogers”), 2016 Annual Report, at p. 54; Rogers 2017 Annual Report, at p. 7; Rogers 2018 Annual Report, at p. 27, Rogers 2019 Annual Report, at p. 37; Rogers 2020 Annual Report, at p. 103

<sup>5</sup> Saskatchewan Telecommunications (“SaskTel”), 2016/2017 Annual Report, at p. 37; SaskTel 2017/2018 Annual Report, at p. 38; SaskTel 2018/2019 Annual Report, at p. 49; SaskTel 2019/2020 Annual Report, at p. 56.

<sup>6</sup> Shaw Communications Inc., (“Shaw”) 2016 Annual Report, at p. 49; Shaw 2017 Annual Report, Shaw 2018 Annual Report, at p. 33; Shaw 2019 Annual Report, at p. 72; Shaw 2020 Annual Report at p. 70.

<sup>7</sup> TELUS Corporation (“TELUS”), 2018 Annual Report, at p. 34; TELUS 2020 Annual Report, at p. 81.

**Annex 2**  
**Big Telecom Capital Expenditures 2015 to 2020**

capital expenditures included, as just some examples, improving network reliability<sup>8</sup>, expanding the coverage of fibre networks<sup>9</sup>, and supporting increased demand during the COVID-19 pandemic.<sup>10</sup>

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<sup>8</sup> See, for example, TELUS 2019 Annual Report, at p. 51.

<sup>9</sup> See, for example, SaskTel 2015/2016 Annual Report, at p. 5.

<sup>10</sup> See, for example, BCE 2020 Annual Report, at p. 66.

## **ANNEX 3**

**Annex 3**

**CNOC Member Responses to TD 2021-181 and CNOC Member Rural Investments**

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**Table 1: Sample of CNOC Member Business Changes that are Attributable to the Final Rates Approved in TD 2021-181**

<b>Competitor</b>	<b>Action</b>	<b>Affected Service</b>	<b>Price Increase</b>	<b>Notes</b>
Distributel	Service Withdrawal	(Rogers) 150 Mbps	N/A	Service withdrawal in response to rate increase to corresponding Rogers TPIA service
EBOX	Price increase / Planned price increase	(Videotron) 200 Mbps service	\$5.00 per month (from \$74.95 to \$79.95)	Price increase in response to rate increase to corresponding Videotron TPIA service
	Price increase / Planned price increase	(Videotron) 400 Mbps service	\$5.00 per month (from \$74.95 to \$79.95)	Price increase in response to rate increase to corresponding Videotron TPIA service
	Price increase / Planned price increase	(Rogers) 150 Mbps service	\$10.00 per month (from \$69.95 to \$79.95)	Price increase in response to rate increase to corresponding Rogers TPIA service
	Price increase / Planned price increase	(Rogers) 500 Mbps service	\$5.00 per month (from \$79.95 to \$84.95)	Price increase in response to rate increase to corresponding Rogers TPIA service
	Service Withdrawal	(Videotron) 15 Mbps service	N/A	Service withdrawal in response to rate increase to corresponding Videotron TPIA service
	Service Withdrawal	(Videotron) 100 Mbps service	N/A	Service withdrawal in response to rate increase to corresponding Videotron TPIA service. Service has been replaced with more expensive 120 Mbps service.

**Annex 3**

**CNOC Member Responses to TD 2021-181 and CNOC Member Rural Investments**

	Removal of credit card payment option	N/A	N/A	EBOX has removed customers' option to pay bills via credit card in order to avoid associated fees as a cost saving measure in response to TD 2021-181
CIK Telecom Inc. ("CIK")	Price increase / Planned price increase	(Rogers) 150 Mbps	\$20.00 per month (from \$49.99 to \$69.99)	Price increase in response to rate increase to corresponding Rogers TPIA service
	Price increase / Planned price increase	(Videotron) 15 Mbps	\$10.00 per month (from \$29.99 to \$39.99)	Price increase in response to rate increase to corresponding Videotron TPIA service
	Scaling back of retail promotions	(All)	N/A	CIK has ended its policy of renewing fixed term retail promotions at the end of term.
City Wide Communications Inc. ("City Wide")	Service Withdrawal	(Rogers) 150 Mbps	N/A	City Wide abandoned plans to launch a 150 Mbps service in New Brunswick due to rate increase to corresponding Rogers TPIA service
Coextro	Price increase / Planned price increase	All	10% to 20%	Due to rate increases, Coextro was forced to pass on a 10% to 20% cost increase to customers
	Service Withdrawal	(Rogers) 150 Mbps	N/A	Service withdrawal in response to rate increase to corresponding Rogers TPIA service
VSOFT Inc.	Service Withdrawal	(Rogers) 150 Mbps	N/A	Service withdrawal in response to wholesale supplier's rate increase due to corresponding rate increase to Rogers TPIA service
VMedia Inc. ("VMedia")	Price increase / Planned price increase	(Rogers) 150 Mbps	\$15.00 per month	Price increase in response to rate increase to corresponding Rogers TPIA service

**Annex 3**

**CNOC Member Responses to TD 2021-181 and CNOC Member Rural Investments**

	Price increase / Planned price increase	All (new and existing)	\$5.00 per month	VMedia increased prices for all new and existing customers in response to the rate increases (for Rogers 150 Mbps service, this \$5.00 increase is in addition to the flat \$15.00 increase described above)
Oricom Internet Inc. (“Oricom”)	Price increase / Planned price increase	(Videotron) 15 Mbps	\$9.00 per month (from \$35.95 to \$44.95)	Price increase in response to rate increase to corresponding Videotron TPIA service
	Price increase / Planned price increase	(Videotron) 60 Mbps	\$16.00 per month (from \$44.95 to \$60.95)	Price increase in response to rate increase to corresponding Videotron TPIA service
	Price increase / Planned price increase	(Videotron) 100 Mbps	\$20.00 per month (from \$49.95 to \$69.95)	Price increase in response to rate increase to corresponding Videotron TPIA service

**Table 2: List of Investments by CNOC Members in Rural Parts of Canada**

CIK Telecom	CIK Telecom invested heavily in a fixed wireless broadband network to serve rural parts of the Gravenhurst and Muskoka areas;
Coextro	Coextro is working on a project to bring 1Gbps service to 300 households of the Chippewas of Georgina Island First Nation;
Distributel	Distributel entered a partnership with Eeyou Communications Network to bring state-of-the-art 1-Gbps fibre-optic internet service, television, long-distance and home phone services to the Cree communities of Eeyou Istchee and to the municipalities of the Eeyou Istchee James Bay region in Northern Quebec;
Execulink	Execulink has been granted broadband funding for more than 14 FTTP deployments in Ontario, including Norfolk County, Lambton County, Middlesex County, Oxford County and Elgin County.
EBOX	EBOX made investments to serve the Abitibi territory of Northern Quebec.