

April 8, 2019

VIA Email: ic.telecomsubmission-soumissiontelecom.ic@canada.ca

Ms. Pamela Miller
Director General
Telecommunications and Internet Policy Branch
Innovation, Science and Economic Development Canada
235 Queen Street, 10th Floor
Ottawa, Ontario
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Subject: ***Canada Gazette Part 1, Vol. 153, No. 10 – Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation (the “Policy Direction”)***

Dear Ms. Miller,

1. The Canadian Communication Systems Alliance (“CCSA”) speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 110 companies operating from sea to sea to sea, including across the North.
2. CCSA notes that most members of the Independent Telecommunications Providers Association (“the ITPA”) are also CCSA members. CCSA has reviewed the ITPA’s comments in draft and supports the ITPA’s submissions.
3. CCSA supports issuance of the Order to implement the Policy Direction as proposed in the *Canada Gazette* notice.
4. Among the top-level objectives of the *Telecommunications Act* are that telecommunications policy should have, as its objectives:
 - to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;¹ and

¹ *Telecommunications Act* (S.C. 1993, c. 38), s. 7(b).

- to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.²
5. In 2006, the Governor-In-Council implemented the current telecommunications Policy Direction, a central pillar of which is that, in applying the *Telecommunications Act* and associated regulations, the CRTC should “rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives”.³
 6. That Policy Direction required the CRTC to review its regulatory framework, “with a view to increasing incentives for innovation and investment in and construction of competing telecommunications network facilities.”⁴
 7. As CCSA has recently noted in its submissions to the Broadcasting and Telecommunications Legislation Review Panel, effective competition has yet to be established in certain key telecommunications market areas despite the 2006 Policy Directive.
 8. Those areas include, especially, provision of competitive retail Internet services through access to disaggregated High-Speed Access services over fibre and wholesale access for competitors to the mobile wireless services market.
 9. With respect to wholesale access to fibre, it remains a continuing struggle for the smaller, competitive communications providers that CCSA represents to discover where connections to the incumbents’ facilities are, where capacity may be available and to obtain reasonable pricing for wholesale access to such facilities.
 10. On the wireless side, Canada’s mobile wireless telecommunications services market continues to be dominated by the three largest carriers who, in aggregate, served 90% of subscribers and reaped 92% of the total revenues in 2017.⁵
 11. Over the decade from 2007 to 2017, those numbers have not changed greatly. In 2007, the three largest carriers held 92% of the subscribers and 94% of the revenues in the sector.⁶
 12. Those numbers show that competitors have achieved some limited success in penetrating the mobile wireless market over the past decade but those gains have been very small.

² *Telecommunications Act* (S.C. 1993, c. 38), s. 7(c).

³ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives SOR/2006-355, P.C. 2006-1534 2006-12-14 at s.1(a)(i).

⁴ *Ibid.* at s.1(c)(ii)

⁵ CRTC, *Communications Monitoring Report 2018* at Infographics 6.6.2 and 6.6.6, respectively.

⁶ CRTC, *Communications Monitoring Report 2008* at Figures 5.5.7 and 5.5.8.

13. These are areas in which “reliance on market forces”, per the existing Policy Direction, simply is not getting the job done and has not resulted in substantially enhanced competition for the benefit of Canadians.
14. Rather, the mandated reliance on market forces and presumption of “minimally intrusive regulation” established by the existing Policy Direction have combined with a strong bias toward encouragement of facilities-based investment to actually frustrate competitive entry and innovation by new and smaller competitors.
15. That is, the large incumbent communications providers – those companies that exercise real market power in the Canadian telecommunications market – have been empowered by the existing Policy Direction to argue successfully that encouragement of competition by non-facilities-based competitors will necessarily chill their own incentive to invest in their advanced fibre and wireless networks.
16. The most recent example of that result is the CRTC’s affirmation, in Telecom Decision CRTC 2018-97 of its decision that mandated roaming was to provide “incidental, not permanent” access to the national wireless carriers’ networks and of its prior decision not to mandate wholesale MVNO access “due to concerns that doing so would undermine investment in spectrum and networks by facilities-based wireless carriers”.⁷
17. The proposed Policy Direction differs from the 2006 Policy Direction in its clear focus on the promotion of “competition, affordability, consumer interest and innovation”; that is, on desired outcomes rather than the manner of regulation to be applied by the CRTC.
18. The proposed Policy Direction proposes to do that by requiring the CRTC, among other things, to “encourage all forms of competition”, to “ensure that affordable access to high quality telecommunications services is available” and to “reduce barriers to entry and barriers to competition for new and smaller telecommunications service providers”.
19. Nowhere does the proposed Policy Direction mention “minimal intervention” or “regulatory symmetry”, principles from the existing Policy direction upon which the incumbents have relied to protect their existing market dominance.
20. In its express mention of “all forms of competition”, the proposed Policy Direction represents a clear departure from the “facilities-based” investment bias – again, a premise upon which the incumbents have relied to protect their existing market dominance – which has informed recent CRTC decisions.

⁷ Telecommunications Notice of Consultation CRTC 2019-57, “Review of Mobile Wireless Services”, Ottawa, 28 February, 2019 at para. 11.

21. For all of those reasons, CCSA questions the conclusion set out in the Regulatory Analysis which accompanies the proposed Policy Directive that the proposed Policy Direction can “exist in complimentary fashion to the previous Policy Direction”.⁸
22. While the continued use of “streamlined and efficient practices” is laudable, it is doubtful, for instance, whether a continuing mandate of “minimally intrusive” regulation can always co-exist comfortably with the principles set out in the proposed Policy Direction.
23. Rather, it is easy to imagine a circumstance in which more intrusive regulation – for example, re-regulation of the wholesale provision of competitor access to transport fibre – might be needed to achieve the objective of ensuring “affordable access to high-quality telecommunications services”.
24. In such a case, perpetuation of the prior policy mandate for “minimally intrusive regulation” could set up an inherent conflict in the government’s directions to the CRTC.
25. CCSA submits that the proposed Policy Direction should cleanly and completely replace the prior one. CCSA would be concerned that a requirement that the two directives remain operative “in complimentary fashion” would be almost certain to result in ambiguities and in contests regarding which terms of which order should prevail in a given circumstance.
26. Having said, that, CCSA considers that the proposed Policy Direction is a significant and important improvement over the 2006 Policy Direction, particularly in its clear focus on desired outcomes for Canadians, in all parts of the country, who rely more heavily every day, on the capability and affordability of their telecommunications system.
27. CCSA thanks the department for the opportunity to make these comments.

Sincerely,



Christopher J. Edwards
Vice-President, Regulatory Affairs

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⁸ *Canada Gazette* Part 1, Vol. 153, No. 10. at 853.