



21 December 2015

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

BY EMAIL info@pco-bcp.gc.ca

Dear Ms. Charette,

Re: **Canada Gazette, Part I, Vol. 149, No. 47, November 21, 2015 - Notice No. DGTP-002-2015 — Petition to the Governor in Council concerning Telecom Regulatory Policy CRTC 2015-326**

Submission of the Consumer Choice Coalition

The following organizations hereby submit the enclosed comments in **opposition** to the petition by Bell Canada (“**Bell**”) to overturn an important decision by the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”):

- the British Columbia Old Age Pensioners' Organization;
- the British Columbia Public Interest Advocacy Centre;
- the Consumers' Association of Canada;

- the Council of Senior Citizens Organizations of British Columbia;
- the Manitoba Public Interest Law Centre;
- the National Pensioners Federation; and
- the Public Interest Advocacy Centre (“**PIAC**”)

—together, the “**Consumer Choice Coalition**”.

In short, the Consumer Choice Coalition submits that the CRTC got it right, Bell’s request would destroy competition, and any decision to overturn or delay the CRTC’s decision would be highly unpopular with Canadians. Cabinet should therefore **deny Bell’s petition**, and **neither vary nor rescind the decision nor refer it back to the CRTC for reconsideration.**

Yours truly,

[original signed]

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Consumer Choice Coalition constituent organizations (by email)

Encl.

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Council concerning Telecom Regulatory Policy CRTC 2015-
326**

Submission of the British Columbia Old Age Pensioners' Organization; the British Columbia Public Interest Advocacy Centre; the Consumers' Association of Canada; the Council of Senior Citizens Organizations of British Columbia; the Manitoba Public Interest Law Centre; the National Pensioners Federation; and the Public Interest Advocacy Centre

The “Consumer Choice Coalition”



December 21, 2015

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Introduction and Executive Summary

1. The Consumer Choice Coalition **opposes** the Petition to the Governor in Council¹ filed by Bell Canada (“**Bell**”) on October 20, 2015 to vary the decision of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”) in Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies* (22 July 2015).
2. The Consumer Choice Coalition comprises the following organizations:
 - The British Columbia Old Age Pensioners' Organization (“**BCOAPO**”);²
 - The British Columbia Public Interest Advocacy Centre (“**BC-PIAC**”);³
 - The Consumers' Association of Canada (“**CAC**”);⁴
 - The Council of Senior Citizens Organizations of British Columbia (“**COSCO**”);⁵
 - The Manitoba Public Interest Law Centre (“**MB-PILC**”);⁶
 - The National Pensioners Federation (“**NPF**”);⁷ and

¹ Canada Gazette, Part I, Vol. 149, No. 47, November 21, 2015 - Notice No. DGTP-002-2015 — Petition to the Governor in Council concerning Telecom Regulatory Policy CRTC 2015-326 (the “**Bell Petition**”).

² BCOAPO is a non-partisan organization instituted in 1932 for the purpose of identifying and supporting issues of importance to seniors. Online: <http://www.bcoapo.ca/>.

³ BC-PIAC is a non-profit, public interest law office. Its creation in 1981 reflected the fundamental belief that it should not only be the rich and powerful that are represented before our courts and regulators. For those bodies to function as they should, they must hear from all of those affected by their decisions. Our task is to provide representation to groups that would not otherwise have the resources to effectively assert their interests. Online: <http://bcpiac.com/>

⁴ CAC is an independent, non-profit, volunteer-based charitable organization with a mandate to inform and educate consumers on marketplace issues, to advocate for consumers with government and industry, and work with government and industry to solve marketplace problems. See CAC, online: <http://www.consumer.ca/>.

⁵ COSCO is the largest federation of senior citizens' organizations in the province of British Columbia and is the umbrella organization of 79 seniors' organizations and a significant number of individual associate members. See COSCO, online: <http://coscobc.ca/>.

⁶ MB-PILC is a unique service in Canada, taking on test cases for public interest groups and low-income individuals. It focuses on consumer, poverty, environmental, Aboriginal and *Charter of Rights* challenges. It was established in 1982 and has had significant victories enhancing the lives and law for all Manitobans. The MB-PILC is funded by Legal Aid Manitoba with support from the Manitoba Law Foundation, firms and lawyers who donate their time to cases, in-kind services, costs awards, client contributions and occasional project grants. It operates strictly at arms length from government. The MB-PILC has established a reputation as an effective and responsible service by filtering cases based on social significance, legal merit, resources required to conduct the case. Online: <http://www.legalaid.mb.ca/services/public-interest-law-centre>.

⁷ NPF is a democratic, non partisan, non sectarian organization which was established in 1945 and incorporated May 1st 1954. We are composed of 350 seniors chapters, clubs, groups, organizations and individual supporters across Canada with a collective membership of 1,000,000

- The Public Interest Advocacy Centre (“**PIAC**”)⁸

—together the “**Consumer Choice Coalition**”.

3. PIAC, in conjunction with CAC, participated extensively in the underlying proceeding leading to the decision at issue. They are joined in the Consumer Choice Coalition by BCOAPO, BC-PIAC, COSCO, MB-PILC, and NCF for the purposes of this submission. (Four of the seven organizations in the Consumer Choice Coalition—CAC, COSCO, NPF and PIAC—are also members of the five-organization Affordable Access Coalition, making submissions to the CRTC as part of its ongoing review of the basic telecommunications services which all Canadians should expect to be able to access.⁹)
4. While greatly technical,¹⁰ the decision at issue can be simply and accurately summarized as follows: large incumbent telecommunications (telephone network or cable network based) companies such as Bell must let smaller competitors buy access to the large incumbent's fibre-optic connection into customers' homes or businesses (known as “fibre-to-the-home” or business “premise”, or “**FTTH**” or “**FTTP**”) thereby being realistically able to compete against the network owner. This requirement is often referred to as “**mandated wholesale access**” or more simply as “**network sharing**”.¹¹
5. Bell is asking Cabinet to vary the CRTC's decision so that traditional network sharing rules are not extended to FTTH access (or to next-generation DOCSIS 3.1 cable networks). Bell submits that the CRTC's decision was “widely opposed”¹² and that it was “surprising”.¹³ In fact, there was nothing surprising about it, and the decision was widely supported. The CRTC has consistently imposed wholesale (or “**network sharing**”) obligations on large

Canadian seniors and retired workers. Our mission is to stimulate public interest in the welfare of aging Canadians. Our goal is to help seniors and retirees have a life of dignity, independence and financial security. Online: <http://www.nationalpensionersfederation.ca/>.

⁸ PIAC is a non-profit organization and charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services. PIAC has pursued this work for over 30 years. Online: www.piac.ca

⁹ See Telecom Notice of Consultation CRTC 2015-134, Review of basic telecommunications services (9 April 2015), online: <http://www.crtc.gc.ca/eng/archive/2015/2015-134.htm>; see also PIAC, “All Canadians should have fast, affordable internet access”(15 July 2015), online: <http://www.piac.ca/our-specialities/all-canadians-should-have-fast-affordable-internet-access/>.

¹⁰ Bell's framing: “In this Petition we ask the Governor in Council to vary the CRTC's decision so that it does not extend legacy wholesale regulation to fibre-to-the-home nor, recognizing the stated desire for regulation to maintain competitive neutrality, to next-generation DOCSIS 3.1 cable networks. We would still have the obligation to provide Reseller ISPs access to our legacy broadband technology, where it exists (i.e., DSL and FTTN). Likewise, cable companies would still have an obligation to provide access to their legacy broadband (using DOCSIS 3.0 and providing broadband speeds up to 100 Mbps anywhere they have such plant today).”

¹¹ The phrase “network sharing” in this matter is different from the sharing of wireless networks, as in the case of Bell and TELUS Communications Company jointly building and sharing wireless networks. See e.g., *Financial Post*, “Telus and Bell's wireless partnership still a sore spot for competitors” (12 June 2012), online: http://business.financialpost.com/fp-tech-desk/telus-and-bells-wireless-partnership-still-a-sore-spot-for-competitors?_lsa=f3e3-9840.

¹² Bell Petition at 16.

¹³ *Ibid.*, at paras. E3, E7 and 5.

telecommunications service providers, recognizing that these companies control essential telecommunications network facilities, and therefore, they have the ability to stifle competition., as users will still opt for bad or expensive internet access over no internet access, if they have given no other choice.

6. Therefore, the Consumer Choice Coalition **opposes** Bell's narrow and self-serving petition. Cabinet should **deny Bell's petition**, and **neither vary nor rescind the decision nor refer it back to the CRTC for reconsideration.**
7. The Consumer Choice Coalition believes that if the Cabinet petition mechanism is to serve its purpose, then it should enhance, not undermine democracy, and do so in a way that is respectful to the scheme of the *Telecommunications Act*, and to the CRTC's role as an expert, independent administrative tribunal. It would do so by acting as a final (as opposed to alternative) mechanism for aggrieved interested persons to bring a matter of important public policy to Cabinet's attention.
8. The Consumer Choice Coalition's three main submissions, detailed later in this document, are as follows:

i. The CRTC got it right.

Canada needs network sharing. Canadian consumers and small and medium sized businesses, the driver of economic growth in Canada, face a lack of choice and high prices for broadband connectivity services. This impairs innovation and hinders Canada's digital economy. If Bell is granted the exclusivity it seeks, consumers and small and medium sized enterprises will suffer. The CRTC very clearly and responsibly consulted on the issues, and considered all of the evidence and views before it, and determined such network sharing was necessary. It is unsurprising therefore that the decision was widely supported.

Cabinet should not undermine the work and analysis that went into this decision, and the broader context in which the decision is situated.

ii. Bell's request would destroy competition.

Bell's request for exclusivity is not necessary, and will not benefit anyone but Bell.

Without network sharing, Bell will have exclusive access to customers it connects with fibre-optic connections, which means there will be no competitive alternatives for those customers unless competitors also build duplicate fibre-optic facilities into those homes and businesses. That would be a profound restriction of choice. Bell does not need this exclusivity. Bell has no choice, in the face of competition from large cable competitors, but to build fibre, or to risk jeopardising what Bell has referred to as its "broadband content strategy". Investment will not be depressed with network sharing. Deployment will not be delayed. Rural areas will not suffer any more than they already do due to a lack of a coherent national strategy for universal broadband service.

Cabinet should give little to no weight to the reports Bell has commissioned or cited because they contain a number of questionable assumptions, they are largely repetitive of what the CRTC had already considered.

iii. Canadians will be upset if the CRTC is overturned.

Overturning the CRTC, or sending the matter back for further consideration, would be a highly unpopular policy choice. The CRTC is an expert, independent administrative tribunal and based its decision on a broad range of legislated policy objectives, after having received volumes of evidence and perspective from across Canadian society. Its decision was widely supported by Canadians. If Cabinet overturns the CRTC, on the basis of repetitive arguments from Bell already heard by the CRTC, Canadians are not only going to be upset, but they may question the new Government's commitment to open, transparent, evidence-based decision-making. Cabinet should not undermine the work and analysis that went into this decision, and the broader context in which the decision is situated. Instead, Cabinet has the opportunity to express its confidence in the CRTC.

9. The Consumer Choice Coalition agrees with Bell that the decision at issue "is one of the most critical regulatory decisions the CRTC has made since the introduction of local telephone competition in the 1990s."¹⁴ However the Coalition's agreement with Bell stops there.
10. The Consumer Choice Coalition's main message is this: ***The CRTC got it right for Canadians***. The CRTC did so after an extensive hearing involving volumes of evidence from industry stakeholders, individual Canadians, academics, and advocacy groups. The CRTC's approach to determining whether to require network sharing was endorsed by the Competition Bureau. The CRTC is an expert, independent administrative tribunal, tasked with pursuing the fulfilment of Canada's telecommunications policy objectives in the public interest. Bell's petition seeks to undercut the CRTC's work by asking Cabinet to substitute Bell's judgment for the CRTC's. Overriding the CRTC will be a blow to evidence-based policy making. That is not in the public interest, nor are the outcomes sought by Bell. The Consumer Choice Coalition therefore urges Cabinet to deny Bell's petition, and in so doing avoiding politicization of broadband internet competition, and avoiding a public outcry.
11. Therefore, the Consumer Choice Coalition urges Cabinet to deny Bell's petition, and to let the CRTC carry on with its important work on behalf of Canadians. Cabinet should not overturn the CRTC, nor refer the decision at issue back to the CRTC for reconsideration, which would equally play into a strategy to stall, if not block competition. Certainty is what is needed now to let competition work for Canadians.
12. Far from being "widely opposed", as Bell has claimed, the CRTC's decision was widely supported by Canadians, academics, and public and consumer groups. Why? Canadians simply do not like the idea of having limited or no choice. They did not like it for cell phones and cell phone contracts, they did not like it for TV channel bundling, and they do not like it for

¹⁴ *Ibid.*, at para. E6.

internet access services. Canadians, like many people, do not like being told which company they must give business to and where and why. They also, rightfully, do not like being told what is good for them. Yet, Bell is essentially asking Cabinet to ignore this and to say Canadians should accept less or even no choice for high-speed home Internet service, because the only alternative is no home Internet service at all. This is a false choice, and it should not fool Cabinet.

13. The Consumer Choice Coalition believes therefore that while the new Government of Canada may wish to strike a new tone in terms of telecommunications policy, it would be a mistake to do so by undermining the CRTC. Of all the ways this new Government can strike a new tone and distinguish itself from the previous one, the Consumer Choice Coalition knows, from years of experience and familiarity with current public sentiment, that Canadians will react badly to with any decision that results in less competition and less choice at home. The Consumer Choice Coalition expects that Canadians will perceive a Government of Canada decision to overturn the CRTC to grant Bell the exclusivity it seeks, as out-of-touch and anachronistic in an era where the promise of internet connectivity itself connotes more choice, more possibilities, more control by consumers, not less. Furthermore, the Consumer Choice Coalition expects that Canadians will view a decision to side with Bell as undemocratic, lacking in transparency, and unaccountable.
14. Furthermore, siding with Bell basically requires Cabinet acceptance of a thinly-veiled threat from Bell. That threat—that if Cabinet does not grant Bell the exclusivity it seeks with its Petition on high-speed internet customers, then Bell will stall, if not suspend, its deployment of FTTH—is untrue and relies on tenuous economic arguments that ignore one simple reality of the CRTC's decision: that even with network sharing, Bell stands to profit. That threat also warrants particular scrutiny, as Bell has made such a threat on a number of previous occasions. The Consumer Choice Coalition's research shows that Bell has continued to perform well in the face of mandated wholesale access, and has continued to invest.
15. The Consumer Choice Coalition urges Cabinet to reject Bell's claim that network sharing will result in less investment and a slower roll out of better networks, and no such roll out in less densely populated parts of the country. The network sharing rules put in place by the CRTC are intended to ensure competition for the benefit of Canadians, but also that Bell is reasonably compensated for the use of its networks by competitors. The CRTC is also in the midst of a considerable public process looking at ways to support the deployment of broadband services for all Canadians, which may include both funding support models for areas that are likely to remain uneconomic to serve, as well as possible wholesale obligations imposed on funding recipients. Were Cabinet to grant Bell's petition, this likely would interfere with progress towards improved telecommunications accessibility and affordability in Canada.
16. The CRTC conducted an extensive proceeding and considered volumes of evidence from industry players (large and small), consumer and public interest groups (including PIAC and CAC, members of this Consumer Choice Coalition), and from individual Canadians. The CRTC did so in accordance with its mandate. Bell is asking Cabinet to substitute Bell's view of

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these issues for that of an expert, independent tribunal, on a matter that is primarily fact-driven and policy-oriented.

17. This government has a chance to help Canadians – all Canadians – by supporting the CRTC's decision to open up fibre networks to competition, and by showing confidence in the CRTC which has demonstrated a commitment to serving the best interests of all Canadians. The Consumer Choice Coalition therefore urges Cabinet to **deny Bell's petition**, and **neither vary nor rescind the decision nor refer it back to the CRTC for reconsideration**. Denying Bell's petition will help Canada move forward towards a digital future.

The CRTC and its decision in context, and the role of Cabinet Petitions

18. Before explaining the Consumer Choice Coalition's three principle submissions about why the CRTC got it right, why Bell's request would destroy competition in Canada, and why Canadians will be upset if Cabinet overturns the CRTC, the Coalition puts the CRTC's role, and the decision at issue, in context, and examines the purpose of the Cabinet petition mechanism under the *Telecommunications Act*.

Key Points

- The CRTC has a polycentric mandate to balance multiple objectives and competing interests.
- The decision under review extends typical network sharing rules to the next generation of internet connectivity.
- The process that resulted in the decision under review was extensive, as was the evidentiary record.
- The Cabinet petition process should enhance democracy, not undermine it.

The CRTC's polycentric mandate

19. The CRTC is an expert, independent administrative tribunal tasked by Parliament with pursuing a broad range of telecommunications and broadcasting policy objectives, and regulating in the public interest.

20. The CRTC is tasked by Parliament with overseeing the communications industry in Canada. The CRTC's objects, powers and duties¹⁵ are set out in the *Telecommunications Act*¹⁶ and the *Broadcasting Act*.¹⁷ It does so through such activities as regulating telecommunications carriers, such as Bell, licensing, promoting compliance with regulations, and encouraging competition.¹⁸ To do so the Commission regularly holds public consultations and hearings, and engages in wide range of outreach activities.¹⁹

21. Historically, the CRTC and its predecessors' form of regulation had been monopoly regulation of common carrier utilities, that is, ensuring prices are just and reasonable, and that Canadian carriers do not unjustly discriminate against any particular person or class of persons, or unduly prefer themselves or any particular person or class of persons.

¹⁵ *Canadian Radio-television and Telecommunications Commission Act*, R.S.C., 1985, c. C-22, s. 12.

¹⁶ *Telecommunications Act*, (S.C. 1993, c. 38.)

¹⁷ *Broadcasting Act*, (S.C. 1991, c. 11).

¹⁸ CRTC, "About us", online: <http://www.crtc.gc.ca/eng/acrtc/acrtc.htm>.

¹⁹ *Ibid.*

22. The *Telecommunications Act* codified those obligations, but also introduced the *discretion* to “forbear” (*i.e.*, refrain) from regulation where the Commission was satisfied that to do so would be consistent with the Canadian telecommunications policy objectives, and the *requirement* to forbear, conditionally or unconditionally, from regulation where the Commission found that there was “competition sufficient to protect the interests of users.”²⁰
23. The CRTC is required by the *Telecommunications Act* to exercise its powers and perform its duties with a view to implementing the Canadian telecommunications policy objectives expressed in section 7 of the Act, and “ensuring that Canadian carriers provide telecommunications services and charge “just and reasonable” and non-discriminatory rates in accordance with section 27 and in accordance with any directions made by the Governor in Council on broad policy matters with respect to the Canadian telecommunications policy objectives.”²¹
24. The “Canadian telecommunications policy objectives” are polycentric, that is, they give expression to a number of core objectives.²² These objectives include:
- facilitating a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions

²⁰ *Telecommunications Act*, s. 34.

²¹ *Telecommunications Act*, s. 47, and s. 8.

²² The Canadian telecommunications policy objectives are expressed as follows.

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

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

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

(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

(d) to promote the ownership and control of Canadian carriers by Canadians;

(e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;

(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

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

(h) to respond to the economic and social requirements of users of telecommunications services; and

(i) to contribute to the protection of the privacy of persons.

- rendering reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
 - enhancing the efficiency and competitiveness of Canadian telecommunications, nationally and internationally
 - stimulating research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;
 - responding to the economic and social requirements of users of telecommunications services.
25. The *Telecommunications Act* also identifies the following as key policy objectives: promoting Canadian ownership and control, protecting privacy rights, relying on market forces, and ensuring that where regulation is required, it is efficient and effective.
26. The “Canadian telecommunications policy objectives” do not tell the Commission how to resolve or balance the possibly conflicting objectives. Cabinet may do so by issuing policy directions, and indeed did so in a 2006 policy direction instructing the Commission to “rely on market forces to the maximum extent feasible as *the means of achieving the telecommunications policy objectives*”.²³ [emphasis added]
27. Ultimately, however, the overriding purpose of Canadian communications law and policy is, broadly speaking, to serve the interests of Canadians, and it is through that lens that any given CRTC decision must be assessed. The *Telecommunication Act*'s policy objectives are much broader and inclusive than the narrow interests of any particular service provider or class of service providers.

The decision under review by Cabinet

28. The decision under review by Cabinet was arrived at via a lengthy extensive consultation process that produced an extensive evidentiary record.
29. The CRTC decision under review by Cabinet is Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies* (“**TRP 2015-326**”),
30. The main focus of TRP 2015-326 is on wholesale services, and specifically which wholesale high-speed access (“**HSA**”) services of incumbents should be made available for leased use by competitors. The three main components of the HSA path to end-users are: the interface component, the transport component, and access (or last mile) component. It is the access component that is the subject of Bell's petition.
31. The Commission's stated objectives of the wholesale services regime are as follows:

²³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355 (14 December 2006) (the “**Policy Direction**”).

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- enhancing the effectiveness of the wholesale service regime to facilitate vibrant and sustainable retail competition that provides Canadians with reasonable prices and innovative services of high quality that are responsive to their evolving social and economic requirements;
- incenting efficient network investment to further the development of facilities-based competition;
- considering network efficiency, competitive neutrality, and technological neutrality when establishing wholesale regulations; and
- recognizing differences in regional markets.²⁴

32. The provision of wholesale services, as the Commission noted in TRP 2015-326,

supports competition in various retail service markets, such as local phone, television, and Internet access service markets, by enabling competitors to access certain telecommunications facilities and network components from incumbent carriers, such as incumbent local exchange carriers (ILECs) and cable companies, so that competitors can extend their networks where necessary to provide their own services to consumers.²⁵

33. The Commission's decisions in TRP 2015-326 were based on its application of the following two-stage approach: (i) the "Essentiality Test" from Telecom Decision CRTC 2008-17, as modified in TRP 2015-326, and (ii) "a set of policy decisions that could modify or support its decision".²⁶

34. The Essentiality Test was what the Commission referred to as the "keystone" of the revised regulatory framework adopted in Telecom Decision CRTC 2008-17.²⁷ The focus of the test, as the Commission clearly stated in 2008, is on fostering investment and innovation in and by competitive telecommunications network facilities.²⁸

35. The Essentiality Test includes three components: the input component, the competition component, and the duplicability component.²⁹ As the Commission noted in TRP 2015-326, "[t]he current definition of an essential facility was developed based on a significant amount of expert testimony and evidence filed in previous Commission proceedings, and no party submitted evidence demonstrating that changes are necessary or appropriate."³⁰ The

²⁴ TRP 2015-326 at para. 14.

²⁵ *Ibid.*, at para. 2.

²⁶ *Ibid.*, at para. 29.

²⁷ Telecom Decision CRTC 2008-17, *Revised regulatory framework for wholesale services and definition of essential service* (3 March 2008).

²⁸ *Ibid.*, at para. 204:

In this regard, the Commission notes that the definition of an essential service adopted in this Decision, which is the keystone of its revised regulatory framework, is based on economic principles associated with competition policy, adapted to the telecommunications regulatory environment. As a result, the Commission considers that the revised framework for wholesale services sends the correct regulatory signals to all TSPs, thereby increasing incentives for investment in, and construction of, competitive telecommunications network facilities. The Commission expects that incentives for innovation with respect to services and facilities will also increase.

²⁹ TRP 2015-326 at para. 31.

³⁰ *Ibid.*, at para. 32.

Commission grounded its decision in a well developed and widely accepted legal test, and as the following will demonstrate, made no errors in either law or fact by applying this test in accordance with key objectives and policy considerations.

36. Regarding policy considerations, the Commission stated that these could be used on a discretionary basis to support a given Commission decision in respect of wholesale services.

The Commission may use a policy consideration to justify a decision to mandate the provision of a wholesale service that does not meet the Essentiality Test. Conversely, the Commission may use a policy consideration to justify a decision not to mandate the provision of a wholesale service that meets the Essentiality Test. Finally, the policy considerations could be used to support the Commission's decision to mandate the provision of a wholesale service following its application of the Essentiality Test.³¹

37. The Commission clearly had in mind that policy considerations were part of the regulatory assessment, but not automatically determinative of any given regulatory assessment, indicating that the Commission was, as it is bound to do, preserving its discretion.

38. The decision under review extends typical network sharing rules to the next generation of internet connectivity—fibre-optic connections to homes (“fibre-to-the-home” or “**FTTH**”) and businesses (collectively, “fibre-to-the-premises” (“**FTTP**”).

39. The CRTC's key findings were as follows:

- The ability of Incumbent telephone companies and cable companies (also referred to as “**incumbent carriers**”) to offer FTTP is largely based on their historical, decades-old incumbency.³²

[...] the incumbent carriers' ability to deploy such facilities is largely based on their decades of incumbency in the provision of wireline services, with all the associated advantages, including established brands and customer bases, existing network infrastructure including support structures, national fibre backbone networks, pre-existing municipal access agreements, various economies of scale, and greater access to capital markets.

- Incumbent carriers have monopoly power in the provision of wholesale services,³³ there is limited competition between them, and whatever competition exists only as a result of regulatory requirements.³⁴

³¹ *Ibid.*, at para. 52 (emphasis added).

³² *Ibid.*, at para. 134:

³³ *Ibid.*, at para. 121-24.

³⁴ *Ibid.*, at para. 123:

Moreover, neither the ILECs nor the Cablecos would be able to easily absorb the wholesale operations of the other absent significant network modifications/equipment investment, thereby limiting the effectiveness of potential supply responses in curbing the exercise of market power. In addition, there is limited competition for wholesale HSA services between the ILECs and the Cablecos, and what competition that does exist today is largely, if not entirely, a result of regulatory intervention. Consequently, there is limited rivalrous behaviour to constrain upstream market power.

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- There are limited substitutes for wholesale services.³⁵
- The barriers to entry for competitors are extremely high, and it is not practical or feasible for competitors to duplicate FTTP facilities. Specifically:

The Commission remains of the view that competitors cannot feasibly or practically duplicate last-mile HSA facilities on a scale sufficient to compete effectively with incumbent carriers within their serving regions. There continue to be significant barriers to duplicating access facilities, including securing sufficient capital, securing rights-of-way, and construction challenges that require significant lead time to complete.

With respect to FTTP access facilities, the barriers to duplicating such facilities are also present in all incumbent carrier serving regions.³⁶

- Most consumers do not have competitive choice for FTTP, and as FTTP deployment increases more and more consumers will have fewer competitors from which to choose.³⁷
- Incumbent carriers own and control the networks competitors rely on to provide retail internet access services, including FTTP. Incumbents have not voluntarily offered wholesale services, and are not likely to.³⁸
- Even with network sharing, incumbent carriers would need to continue to invest.³⁹

³⁵ *Ibid.*, at paras. 122, 126 and 134.

³⁶ *Ibid.*, at para. 133-34:

The Commission remains of the view that competitors cannot feasibly or practically duplicate last-mile HSA facilities on a scale sufficient to compete effectively with incumbent carriers within their serving regions. There continue to be significant barriers to duplicating access facilities, including securing sufficient capital, securing rights-of-way, and construction challenges that require significant lead time to complete.

³⁷ *Ibid.*, at para. 128:

In the case of FTTP access facilities, consumers do not currently have competitive choice regarding such facilities, although some consumers have access to comparable high-speed Internet services provided by certain Cablecos. As a result, the competitive impact of not mandating the provision of wholesale HSA services over FTTP access facilities would be relatively small in the short term. As FTTP deployment increases, however, the potential impact on competition will increase as more and more consumers desiring higher-speed Internet services would have fewer competitor alternatives to choose from.

³⁸ *Ibid.*, at para. 121:

The ILECs and the Cablecos own and control the underlying wireline access facilities associated with wholesale HSA services that competitors rely upon to provision retail Internet access services, including those associated with FTTP access facilities. Together, the incumbent carriers are the sole suppliers of the underlying wholesale services available to competitors, and together have the entire upstream market. In general, wholesale HSA services have not been provided voluntarily by the industry, requiring regulatory intervention to do so, and there is no convincing basis upon which the Commission could conclude that this will change in the foreseeable future.

40. Thus the CRTC concluded that wholesale access to FTTP would be necessary, and then proceeded to consider the relevant policy considerations.

With respect to disaggregated wholesale HSA services over FTTP access facilities, the potential disincentive that a decision to mandate the provision of such services could have on investment was the predominant reason given by the incumbent carriers that the Commission should reject such a proposal. There are several reasons, however, why the negative impact on investment is not likely to happen to any significant degree, particularly in more urban areas. First, the Commission expects that the incumbent carriers will generally continue to invest in FTTP access facilities in order to provide enhanced retail Internet access services in response to consumer demand, as well as to compete effectively and efficiently with the Cablecos. In addition, mandating the provision of disaggregated wholesale HSA services over FTTP access facilities would be predicated on wholesale rates that are compensatory and that provide a reasonable rate of return, resulting in profit on the associated investment.⁴⁰ [emphasis added]

41. Therefore the CRTC considered, but dismissed the concerns of incumbents that a decision to mandate wholesale access to fibre networks could lead to depressed investment. As the CRTC's reasons demonstrate, the Commission was made well aware of and fully considered the concerns and submissions of incumbents such as Bell. Only after taking into account all of the many views expressed and full range of the evidentiary record did the Commission determine that Bell's concerns regarding the impact of mandated access to fibre on investment were unwarranted, and therefore reject Bell's particular view on the matter. The Consumer Choice Coalition stands by the Commission on that, and a Government that values open processes and evidence-based policy should, as well.

The proceeding and evidentiary record which led to the decision under review by Cabinet

42. The CRTC reached the decision at issue after an extensive public consultation and process, and based its decisions on an extensive evidentiary record.

43. Bell states in its petition that the decision was was "surprising".⁴¹ In fact, there was nothing surprising about either the proceeding or the decision that resulted from it.

44. The proceeding that led to TRP 2015-326 was foretold in the Commission's publicly available planning documents, such as in the CRTC's Three-Year Plan for 2013-2016⁴² and 2012-2015:

³⁹ *Ibid.*, at para. 141:

There are several reasons, however, why the negative impact on investment is not likely to happen to any significant degree, particularly in more urban areas. First, the Commission expects that the incumbent carriers will generally continue to invest in FTTP access facilities in order to provide enhanced retail Internet access services in response to consumer demand, as well as to compete effectively and efficiently with the Cablecos. In addition, mandating the provision of disaggregated wholesale HSA services over FTTP access facilities would be predicated on wholesale rates that are compensatory and that provide a reasonable rate of return, resulting in profit on the associated investment.

⁴⁰ *Ibid.*, at para. 141.

⁴¹ Bell Petition at paras. E3, E7 and 5.

“Among the activities planned for the next three years, the CRTC will review issues related to the accessibility of telecommunication services and the wholesale services large companies must provide to their competitors.”⁴³

45. In addition, the Commission ruled in the prior wholesale services review—to which the Bell companies were party—that this proceeding would occur:

The Commission considers that conducting omnibus reviews every two to three years or holding a proceeding to determine whether a review is needed would be unduly burdensome and create undue regulatory uncertainty, contrary to paragraph 1(a) of the Policy Direction. The Commission also considers that conducting an omnibus review after the conclusion of the five-year phase-out period would, consistent with the overall thrust of the Policy Direction, appropriately balance considerations of regulatory certainty and efficiency with the need to ensure that these services remain appropriately classified over time.

Accordingly, the Commission will review the assignment of all remaining mandated wholesale services six years from the date of this Decision.⁴⁴

46. Therefore, in 2008, all parties to the proceeding were put on notice that another review of the same framework regulations would occur in 2014, which then became the case.

47. As for the result, the CRTC's decision to extend mandated network sharing to FTTP services was exactly that: an extension of a long line of decisions that mandated network sharing of progressively advanced Internet access services, keeping in pace with the accelerating nature of technology and users' Internet access needs. But for the uncertainty inherent in all proceedings and concerns regarding industry influence and lobbying, some might consider the CRTC's decision in the current proceeding even predictable.

48. For example, after the CRTC found in 1994 that increasing local competition in telecommunications served the public interest,⁴⁵ the Commission released Telecom Decision CRTC 97-8, *Local Competition*, which introduced network sharing of basic connectivity services used at that time and required incumbent providers to open their networks to competitors, at a fair rate of compensation.⁴⁶

49. In Telecom Decision CRTC 2008-17, *Revised regulatory framework for wholesale services and definition of essential service*, the Commission further developed and established the network sharing requirement for incumbent service providers, specifically to promote competition in ADSL internet access services. In that decision, the Commission stated.

⁴² Canadian Radio-television and Telecommunications Commission, “Three-Year Plan 2013-2016” (2 May 2013), online: <http://www.crtc.gc.ca/eng/backgrnd/plan2013.pdf> at page 13.

⁴³ Canadian Radio-television and Telecommunications Commission, News Release, “CRTC announces priorities for 2012-2015” (6 September 2012), online: <http://www.crtc.gc.ca/eng/com100/2012/r120906.htm>.

⁴⁴ Telecom Decision CRTC 2008-17, *Revised regulatory framework for wholesale services and definition of essential service* (3 March 2008), at paras 196-97.

⁴⁵ Telecom Decision CRTC 97, *Local Competition* (1 May 1997), at para 4.

⁴⁶ *Ibid.*

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The Commission considers that, similar to the situation with respect to ULLs [unbundled local loops, for landline telephone], there are not sufficient wholesale alternatives to the ILECs' ADSL access services. The Commission also considers that in the absence of wholesale alternatives, withdrawing mandated access to the ILECs' ADSL access services would likely result in a substantial lessening or prevention of competition in the retail high-speed Internet access services market, and that this would be inconsistent with the policy objectives and the Policy Direction. The Commission further considers that, at a point in the future, technological advances and industry evolution may provide a wholesale alternative to the ILECs' ADSL access services.⁴⁷

50. As the Commission contemplated, that point in the future has arrived: fibre is now the wholesale alternative to ADSL, to put it mildly.
51. Telecom Regulatory Policy CRTC 2010-632 arrived next in line: in the face of rapidly increasing Internet speeds, this decision affirmed that under the network sharing regime, incumbent providers must offer wholesale Internet access services to competitors at the same speeds that they offer to their retail customers. This was necessary to prevent competitors from falling behind and being unable to compete, as the Commission noted:

The Commission notes the significant extent to which competitors use existing wireline wholesale services to provision their retail Internet services. The Commission also notes that the incumbents are offering increasingly higher retail Internet service speeds to consumers. In the Commission's view, if speed matching were not required for both the ILECs' aggregated ADSL access services and the cable carriers' TPIA services, competitors would be effectively prevented from offering higher service speed options to their own customers.⁴⁸

52. The Commission has demonstrated a consistent commitment to network sharing from its inception, extending the requirement at each key juncture in order to ensure that Canada's telecommunications system continue serving the advancing technological needs of its users. When more and more Canadians moved onto ADSL, the Commission extended network sharing to include ADSL. When Internet users migrated to high-speed broadband on copper wires and coaxial cables, the Commission extended network sharing to include high-speed broadband at the maximum speed actually used by ISPs' customers. Now that Canadians are advancing to fibre, as much of the rest of the world has already done, the Commission is following suit in extending network sharing to meet the new normal, again.
53. However, the Commission did not make this decision lightly or unilaterally. On the contrary, it was the result of an extensive proceeding involving a wide range of participants and a comprehensive evidentiary record.
54. The proceeding commenced with a public notice of consultation in October 2013, which launched a series of procedural stages, submission deadlines, exchanges between parties, rounds of evidentiary discovery and disclosure, an oral hearing, and final written comments, consecutively over the course of 14 months. All told, intervenors and parties who participated

⁴⁷ Telecom Decision CRTC 2008-17, *Revised regulatory framework for wholesale services and definition of essential service* (3 March 2008), at para 76.

⁴⁸ Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding* (30 August 2010), at para 54.

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fully in this proceeding were responsible for completing or responding to each of the following stages, in order of occurrence:

Stage of Proceeding	Date / Deadline
1) Intervention (Round 1) submitted to the Commission	January 2014
2) Rounds of Commission letters, Commission requests for information, procedural letters from other parties, deadline extension or disputes, procedural requests, or responses to such also occurred intermittently throughout this and following stages.	throughout
3) Requests for information (Round 1) issued to other parties	March 2014
4) Respond to requests for information (Round 1)	May 2014
5) Requests for further information and disclosure (Round 1)	May 2014
6) Respond to requests for further information and disclosure (Round 1)	May 2014
7) Respond to fight disclosure requests, if applicable (Round 1)	throughout
8) Submit any disclosures ordered by CRTC (Round 1)	throughout
9) Intervention (Round 2) submitted to the Commission	June 2014
10) Requests for information (Round 2) issued to other parties	July 2014
11) Respond to requests for information (Round 2)	September 2014
12) Requests for further information and disclosure (Round 2)	September 2014
13) Respond to requests for further information (Round 2)	September 2014
14) Submit Reply Comments to any of the above documents, information, or arguments revealed in prior stages	October 2014
15) Respond to fight disclosure requests, if applicable (Round 2)	throughout
16) Submit any disclosures ordered by CRTC (Round 2)	throughout
17) Oral Presentation at Public Hearing (Phase 1)	November-December 2014
18) Oral Replies at Public Hearing (Phase 2)	December 2014
19) Submit undertakings ordered by the Commission, if applicable	December 2014
20) Final Written Submissions	December 2014

55. To give a clearer idea of the scope of the volume of information and evidence produced and exchanged throughout the course of this proceeding, each round of interventions comprised hundreds of pages of submissions distributed to every party; and responses to one round of requests for information alone, across all parties, resulted in approximately 1,014 documents being filed. That accounts for only two of the twenty procedural stages recorded above.

56. The consultation attracted an extensive amount of participation, from across various sectors of society. This included, among others: incumbent telephone companies such as Bell Canada; incumbent cable carriers such as Rogers; independent ISPs such as Teksavvy and Primus; industry association such as the Canadian Networks Operators Consortium; territorial governments such as the Government of Yukon; municipalities such as the City of Coquitlam (BC); educational institutions such as Cybera, a non-profit group, and the School District of Okanagan Skaha (BC); the Competition Bureau; academics such as Catherine Middleton, Canada Research Chair in Communication Technologies in the Information Society; digital activists such as OpenMedia.ca, who submitted the comments of 25,000 individuals; the

Canadian Federation of Independent Businesses; about a half dozen committed independent civilians; and of course public interest advocacy groups, such as the members of the Consumer Choice Coalition.

57. The decision garnered much media attention for its significance.⁴⁹

58. The Coalition believes the decision at issue speaks for itself, and does a good job of summarizing the major positions expressed by most of the major interveners, including Bell and other major incumbents, the smaller competitors, the public interest groups, and the Competition Bureau.

59. In discussing the decision with in an interview with BNN (Business News Network), CRTC Chairman Jean-Pierre Blais described the balancing of interests, and how the CRTC considered Bell's threat about delayed or abandoned investment.

We're an evidence-based body, so we heard all of the positions of the various parties and we balanced those off through what we heard in our deliberations afterwards.⁵⁰

Well we considered their perspective, we don't dismiss it, we balanced it along with other issues, but our view is that it is a business imperative that they continue to invest in this area.⁵¹

60. The CRTC very clearly and responsibly consulted on the issues, and considered all of the evidence and views before it, in light of the CRTC's polycentric mandate. Cabinet should take care not to undermine the work and analysis that went into this decision, and the broader context in which the decision is situated.

The Cabinet petition process should be to enhance democracy, not undermine it

61. Built in to the *Telecommunications Act* are three ways to hold the CRTC to account. These are (i) a process to take errors of fact and law back to the Commission (a so-called "review and vary" application),⁵² (ii) judicial review of questions of law or jurisdiction to the Federal Court of Appeal⁵³; and (iii) the petition to the Governor in Council route.⁵⁴

⁴⁹ CBC, "CRTC says big telecoms must share high-speed networks with competitors", (July 22, 2015), online: <http://www.cbc.ca/news/business/crtc-says-big-telecoms-must-share-high-speed-networks-with-competitors-1.3163132>; *The Globe and Mail*, "Big Internet providers must open fibre networks to competitors: CRTC", (July 22, 2015), online: <http://www.theglobeandmail.com/report-on-business/big-internet-providers-must-open-fibre-networks-to-competitors-crtc/article25633317/>; *Financial Post*, "CRTC says big telecom companies must open fibre networks to smaller providers", (July 22, 2015), online: <http://business.financialpost.com/fp-tech-desk/crtc-says-big-telecom-companies-must-open-fibre-networks-to-smaller-providers>.

⁵⁰ "More competition, better for internet consumers: Blais" (22 July 2015) (video), online: Business News Network, online: <http://www.bnn.ca/Video/player.aspx?vid=662868>.

⁵¹ *Ibid.*

⁵² *Telecommunications Act*, s. 62.

⁵³ *Ibid.*, s. 64.

⁵⁴ *Ibid.*, s. 12.

62. The purpose of the Cabinet petition mechanism must, by virtue of the basic principles of statutory interpretation,⁵⁵ be separate and distinct from the review and vary mechanism, as well as from the judicial review mechanism. With the review and vary process and judicial review each fulfilling their respective roles in the relevant legal system, what then remains to give purpose to the Cabinet petition?

63. The purpose of Cabinet petitions under the *Telecommunications Act*, with Cabinet being a political body as opposed to being a judicial body, should be to enhance democracy, not to undermine it. Yet, granting Bell its petition in this case, or even referring the matter back to the CRTC for reconsideration, would serve to undermine democracy in a significant way.

64. Negatively impacting democratic processes has previously risen as a concern with the Cabinet petition mechanism. In its 2006 report, the Telecommunications Policy Review Panel observed:

The legislative framework within which the CRTC operates therefore makes it appear to be one of the least independent telecommunications regulatory agencies in any OECD country. The government power to intervene in the regulatory process both before and after decisions have been taken has the potential to be detrimental to the integrity of the regulatory process. The Panel notes that this double-barrelled [barreled] process has also led to negative comments in OECD reports and other international fora.⁵⁶

65. The fact that it is a political process means less well-resourced parties and interests may be disadvantaged. In fact, the Panel recommended that the petition process be struck from the *Telecommunications Act*.

Each time a petition to review a CRTC decision is filed, it imposes significant costs on other stakeholders and the Government of Canada in terms of the resources required to respond to the petition. It also creates an extended period of uncertainty on the industry and other stakeholders, since the government may take up to one year to make its decision on the petition. Finally, consumer groups and other less well-funded parties are at a distinct disadvantage, in comparison to large commercial interests, in their ability to participate in the process. This creates an appearance of unfairness. For all these reasons, the Panel considers that it is not necessary to retain the Cabinet review power.⁵⁷

66. The Consumer Choice Coalition therefore believes that if the Cabinet petition mechanism is to serve its legitimate purpose, then it should be to enhance, not undermine democracy, and do

⁵⁵ *McDiarmid Lumber Ltd. v. God's Lake First Nation*, 2006 SCC 58 (CanLII) at para 36:

It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain: Sullivan, at p. 158. Thus, '[e]very word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose' (p. 158).

⁵⁶ *Telecommunications Policy Review Panel Final Report* (2006), online: [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\\$FILE/tprp-final-report-2006.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/$FILE/tprp-final-report-2006.pdf) at at pages 9-15 to 9-16. Although the Panel goes on to note that the Commission has nonetheless operated with relative independence in practice, the fact of the matter remains, with an independent tribunal being potentially subject to politicised executive power.

⁵⁷ *Ibid.*, at 9-18.

so in a way that is respectful to the scheme of the *Telecommunications Act*, and to the CRTC's role as an expert, independent administrative tribunal. It would do so by acting as a final (as opposed to alternative) mechanism for aggrieved interested persons to bring a matter of important public policy to Cabinet's attention.

67. The Coalition notes as a matter of fact that Bell did not attack the CRTC's decision about mandated FTTH network sharing using the review and vary mechanism or the statutory appeal mechanism. In so doing Bell has improperly politicized an important policy issue. As one observer commented, "It seems the incumbents have seen an opportunity with a new government in Ottawa to find ways to delay and further frustrate the fragile competitive environment with appeals."⁵⁸

⁵⁸ "News and Views", Community of Telecommunications Consultants, *InfoTelecom*, 16th ed., (December 2015) online: http://www.neotelis.com/client_file/upload/pdf/info-telecom/InfoTelecom_16.pdf at 2.

Submission 1: The CRTC got it right

68. The Consumer Choice Coalition's first of three main submissions is that the CRTC got it right. Therefore, Cabinet should **deny Bell's petition**, and **neither vary nor rescind the decision nor refer it back to the CRTC for reconsideration**.
69. Canada needs network sharing. Canadian consumers and small and medium sized businesses, the driver of economic growth in Canada, face a lack of choice and high prices for connectivity services. This impairs innovation and hinders Canada's digital economy. TRP 2015-326 is a carefully balanced decision in the face of competitors who supported maintaining the aggregated wholesale regime, on the one hand, and incumbents who generally opposed continued aggregated wholesale HSA services, on the other. The Consumer Choice Coalition believes that consumers will benefit from mandated open access to the facilities of incumbent telecommunications services providers—including FFTH—because it will encourage more competition, more choice, and more affordable pricing at the retail level for broadband now and into the future. The Consumer Choice Coalition agrees with the Commission that “without the mandated provision of wholesale HSA services, most retail customers in Canada would eventually be left with a very limited choice of Internet service providers.”⁵⁹ The Coalition also believes that requiring access to “essential” wholesale internet connectivity will create more retail competition, and that in turn will spur greater innovation and investment in broadband networks. Bell's petition, if granted, would undermine the pursuit of that goal. In the Coalition's second and third main submissions the Coalition addresses why Bell is wrong about its petition, and why Canadians would be upset if Cabinet agreed with Bell.

Key Points

- Canada needs network sharing.
 - There is very limited ISP competition in Canada
 - Canada is sitting among middle to lowest rankings when it comes to broadband speed and prices internationally.
 - Canadian individuals and small businesses across the country have called for increased competition through network sharing, and supported the CRTC decision.
 - Network sharing promotes competition and innovation
 - Network sharing promotes investment.

⁵⁹ TRP 2015-136 at para. 129.

- If Bell is granted the exclusivity it seeks, consumers and small and medium sized enterprises will suffer.
- The decision under review is a carefully balanced decision.

Canada needs network sharing

70. Network sharing is the most effective and realistic, if not only, way for Canadians to obtain the world-class telecommunications systems that they need to be a part of today's global world. First, Canada suffers from notoriously poor market competition among Internet service providers. This is due directly to the system that incumbent providers have been operating under, and that the CRTC attempted to redress with the decision Bell seeks to override. Second, Canadians have been extremely vocal over the past several years, including in the original CRTC proceeding as well as regarding this Petition, about calling for a decision that promotes ISP competition through mandated network sharing—which the CRTC delivered after extensive consideration of written and oral evidence submitted by parties from across multiple sectors of Canadian civil society over the course of 14 months. Third, network sharing promotes competition and innovation, while both would suffer from its loss. Fourth, network sharing would promote investment and fibre deployment, not hinder it, contrary to arguments that Bell has made, and that the CRTC has rejected, multiple times over a series of regulatory proceedings largely similar to this one, in decisions stretching back to 1997.

i. There is very limited ISP competition in Canada

71. First, market competition among Internet service providers is sorely lacking in Canada, illustrated through inordinately high market concentration, soaring customer service complaints, and Canada sitting among mediocre to the lowest rankings when it comes to broadband speed and prices internationally. Independent ISPs, those who risk extinction if incumbent and cable carriers are allowed to maintain their oligopolistic market conditions, made up only 9% of the residential market share in Canada, according to the 2015 *Communications Monitoring Report* (CMR) published by the CRTC.⁶⁰ Furthermore, the top 10 largest telecommunications service providers in Canada make up a stunning 93% of the total telecommunications market.⁶¹ These figures are within one percentage point of those at the time of the CRTC's decision.⁶² Multiple observers have also noted that where there is "competition", in practice it often comes down to a choice between the one telephone carrier

60 CRTC, "Figure 5.3.5 Internet access service revenue shares, by market and by type of service provider, 2014", *Communications Monitoring Report 2015* (November 2015), online: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2015/cmr5.htm#a53a>.

61 *Ibid.*, "Figure 5.0.2 Percent of total telecommunications revenues by ownership groups".

62 See CRTC, "Telecommunications market sector overview: Table 5.3.5," *Communications Monitoring Report 2014* (Report)(Ottawa: Canadian Radio-television and Telecommunications Commission, 2014), online: www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2014/cmr5.htm#s5-3.

and the one cable carrier in the region.⁶³ The CRTC itself concluded that duopoly competition is not sufficient.

72. This severe lack of competition, rooted in a pre-existing regulatory model that historically favoured incumbents such as Bell, has led to Canadians paying some of the highest prices for some of the slowest broadband speeds, internationally. According to recent OECD data from September 2015, Canada is ranked 30th out of the 34 OECD countries for least expensive broadband subscriptions available at the lowest price end, and has the 6th most expensive broadband Internet access in the OECD, at the highest price end.⁶⁴ Moreover, the 2015 *Communications Monitoring Report* shows that Internet access services across Canada are not only rising but accelerating rapidly compared to other telecommunications services (such as home phone lines or television) and more troublingly, compared to inflation, which rose 2% in 2014 while Internet access prices rose 8%.⁶⁵
73. In addition, the Open Technology Institute released an annual study that compares retail pricing and speed of broadband Internet services in 24 cities around the world, focused predominantly on the United States and Europe, with the one Canadian city of Toronto. In a section seeking the “best deal” under \$40 in each city, the only Canadian service provider found on the list was Teksavvy Solutions Inc.⁶⁶—a popular independent ISP that relies on network sharing.

63 "[W]hile Canadians have a choice between cable or DSL broadband providers, there is limited choice as to which DSL or cable service they can select. Further, if a household is interested in 'bundling'...the only choice in most cities is to buy service from the single cable company or the single incumbent phone company that operates in that market." Catherine Middleton, "Structural and Functional Separation in Broadband Networks" in Marita Moll & Lesleie Regan Shade, eds, *The Internet Tree: The State of Telecom Policy in Canada 3.0* (Ottawa: Canadian Center for Policy Alternatives, 2011) 61-72 at page 63, cited in CRTC 2013-551, Reply of OpenMedia.ca (24 October 2014), at para 92.

64 Canada's broadband subscriptions range from \$37/month to \$173.70/month, compared to France and the United Kingdom, which range from \$33.67-\$53.52 and \$28.35-\$59.09 per month, respectively. OECD, "4.1 Fixed broadband subscription price ranges", OECD Broadband Portal (September 2014), online: <https://www.oecd.org/sti/broadband/oecdbroadbandportal.htm>.

65 "As measured by the CPI, average annual inflation in Canada was 2.0% in 2014. In comparison, from 2013 to 2014, the prices of key communication services increased by 3.4% (telephone), 2.3% (cable, DTH satellite and IPTV) and 8.0% (Internet)." CRTC, "Figure 2.0.2 Price indices for telephone services, broadcasting distribution services (cable, DTH satellite, IPTV and pay television) and Internet services, compared to the CPI", *Communications Monitoring Report 2015* (November 2015), online: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2015/cmr2.htm#a2>.

66 Open Technology Institute, "Figure 2: Best Home Broadband Deals Under \$40", *The Cost of Connectivity* (October 2014), online: https://www.newamerica.org/downloads/OTI_The_Cost_of_Connectivity_2014.pdf at page 13.

This was first noted by Professor David Ellis at York University: David Ellis, "Now playing at the CRTC: your precarious future on the Internet (2)", *Life on the Broadband Internet* (26 November 2014), online: <http://www.davidellis.ca/now-playing-at-the-crtc-your-precarious-future-on-the-internet-2>.

74. As mentioned, high prices are not the only issue: Canadians are paying more for less, when it comes to broadband speeds globally. This picture comes across loudly and clearly through Canada's mainstream media coverage, as the following representative excerpts demonstrate:

A 2009 study of high-speed Internet prepared by Harvard University for the U.S. Federal Communications Commission ranked Canada 25th out of 30 countries in terms of price and 20th in terms of speed. More recent data shows similar results. ... And it's only getting worse: The report compares plans offered by selected Internet service providers (ISPs) in 2005, to those they are offering today. While most countries saw prices drop, the one Canadian company on the list had increased its price and capped the amount of bandwidth its customers could transfer over that eight-year period.

—*National Post*⁶⁷

According to data from broadband research company Ookla, Canadians on average had the 38th fastest internet speeds in the world. Among developed countries, only a handful had slower internet speeds than Canada, among them Australia, New Zealand and Italy. That represents a fall of five spots since this spring, when Canada ranked 33rd in Ookla's survey.

—*Huffington Post*⁶⁸

[W]ith an average upload speed of 5.67 Mbps, Canada ranks 53rd in the world and below the global average of 7.6 Mbps, according to the Net Index from Montana-based speed-testing firm Ookla. That's in stark contrast to world leaders Hong Kong and South Korea, where internet users see average speeds closer to 61 and 45 Mbps, respectively. Canada also rates below the G8 average of 8.8 Mbps and is being outperformed by several developing nations, with upload speeds in Manitoba and British Columbia comparable to those in Honduras and Iraq, respectively.

—*CBC*⁶⁹

75. The Consumer Choice Coalition is surprised by Bell's claim that "Canada is among the broadband world leaders today".⁷⁰ In light of the evidence to the contrary as shown above, Bell appears to be continuing in a behavioural pattern noted by the Coalition in the context of Canada's wireless telecommunications regime, and equally applicable in context of Canada's broadband Internet sector: "In response to the ongoing Government and regulatory pressures to provide better service and lower prices, the incumbent responses [such as that of Bell]

⁶⁷ Jesse Kline, "Why Canada has 'Third World access to the Internet'", *National Post* (24 September 2013), online: <http://news.nationalpost.com/full-comment/jesse-kline-why-canada-has-third-world-access-to-the-internet>.

⁶⁸ Huff Post Business Canada, "Canada Falls On Internet Speed Rankings" *Huffington Post Canada* (29 November 2013), online: http://www.huffingtonpost.ca/2013/11/29/internet-speed-world-canada_n_4360391.html?ref=topbar.

⁶⁹ Peter Nowak, "Why internet upload speed in Canada lags behind world average," *CBC* (20 March 2014), online: <http://www.cbc.ca/news/technology/why-internet-upload-speed-in-canada-lags-behind-world-average-1.2578682?cmp=rss>.

⁷⁰ Bell Petition, at para E2.

tends to be characterized by denial of a problem in the first place, often accompanied by expert reports commissioned by them.”⁷¹

76. Canada Research Chair Catherine Middleton and Research Fellow Reza Rajabiun, both at Ryerson University's Ted Rogers School of Information Technology Management, submitted the following in their final comments leading to the decision Bell is attacking:

The denial strategy: At least since the 2010 Digital Strategy Consultation Paper federal policymakers have recognized the average/mediocre performance of broadband networks available to Canadian households and businesses. More important than international rankings, the gap between the quality of broadband networks experienced by Canadian relative to their counterparts in other advanced economies remains substantial (2-3 times in terms of download and 5-7 times in terms of upload speeds). Evidence supporting these facts has already been submitted to the record and discussed in detail at the oral hearing. Nevertheless, some entities that have appeared before you (e.g. Bell, Bell Aliant, Telus) continue to deny there is any problem to be solved, and argue that the Commission should retain the current regulatory strategy or delay decisions about extending mandated access to fibre access and transport facilities.⁷²

77. The entirety of Bell's petition simply constitutes one further move in a strategy of denial. This strategy has been noted by others. As one telecommunications observer commented:

Since the early 1990s, there has been a continuous barrage of strategic moves by the monopoly incumbents to reverse the global trend toward greater competition in the critical field of telecommunications. They appear determined to single Canada out as a country that must have market power concentration by a few former monopolies at the expense of the innovation and lower-cost services competition enables – benefits enjoyed by our trading partners and competitors worldwide.⁷³

78. Further evidence of the dismal state of competition in Canada's broadband Internet market is the number of consumer complaints in this area, which rose 52% over the past year according to the Commission for Complaints for Telecommunications Services in a recent annual report.⁷⁴ Approximately two-thirds of those complaints had to do with non-disclosure or misleading information.⁷⁵ Internet service complaints were the second leading customer dissatisfaction issue for the 2014-2015 year, surpassed only by wireless service (*i.e.*, cell phone) complaints.⁷⁶ This high and growing number of complaints is the exact opposite of what one would expect to occur in a competitive market. A reasonable conclusion would be

⁷¹ PIAC, “Wireless Services in Canada: Why Canadians Deserve Better,” Backgrounder (3 September 2014), online: http://www.piac.ca/wp-content/uploads/2014/11/aws_3_backgrounder_1_canadians_deserve_better_final.pdf.

⁷² Telecom Notice of Consultation CRTC 2015-551, *Review of wholesale services and associated policies*, Final Submission of Catherine Middleton and Reza Rajabiun (19 December 2014) at para. 8 [CRTC 2015-551].

⁷³ “News and Views”, Community of Telecommunications Consultants, *InfoTelecom*, 16th ed., (December 2015) online: http://www.neotelis.com/client_file/upload/pdf/info-telecom/InfoTelecom_16.pdf at 2.

⁷⁴ Commissioner for Complaints for Telecommunications Services, *Making the Tough Calls: Annual Report 2014-15* (December 2015) at page 17 [CCTS].

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, at page 10.

that when it comes to Internet access services in Canada, the principle of voting with one's feet and dollars is broken. There is nowhere better to go, as lack of competition means that dominant ISPs such as Bell have no incentive to either lower prices or improve customer service, with demonstrable consequences. The Consumer Choice Coalition expects the situation to worsen if Bell's petition is granted. Even if Cabinet decides to refer the matter back to the CRTC for reconsideration, the delay and uncertainty involved will allow incumbents to cement their decades-old incumbency.

ii. Canadian individuals and small businesses across the country have called for increased competition through network sharing, and support the CRTC decision.

79. Many Canadians submitted comments to the initial CRTC proceeding through the non-profit digital rights group, OpenMedia.ca. The Consumer Choice Coalition draws Cabinet's attention particularly to the seventeen pages of unique, independently written comments grouped under "Theme 2: Canadians believe incumbent telecom service providers need to be reigned in and their practices made subject to common sense wholesale access rules [*i.e.*, network sharing]. They believe these firms hold and abuse disproportionate market power" and "Theme 3: Canadians want access to a range of affordable independent options for telecom service in a decentralized marketplace. They are extremely unhappy with the experiences they have had with incumbent providers, such as TELUS, Rogers, Bell, Shaw, and Videotron."⁷⁷

80. More broadly speaking, Canadians of all political stripes have been clear and vocal in their call for and support of increasing ISP competition through network sharing, and in particular, this specific decision by the CRTC. First, at least 25,000 people submitted comments on the public record of the CRTC's 2013-551 proceeding, through the OpenMedia submission described above,⁷⁸ with even more commenting on Facebook and Twitter. Second, at time of writing, over 52,000 people have signed an online petition asking the government to reject Bell's appeal to Cabinet.⁷⁹ To put it bluntly, Canadians will not look kindly upon a government who begins its new era by overriding the results of an open and extensive public proceeding on a key issue of fundamental importance (*i.e.*, Internet access) in order to undo the precise policies for which they fought.

81. It is no wonder that Canadians feel so strongly about the price and quality of the Internet access available to them, considering how crucial it is to participating meaningfully in today's digital economy and global community, or indeed, in one's local economy and community.⁸⁰ Network sharing increases the diversity of Internet service providers available to Canadians, and allows for innovation on the level of customer service, fulfilling the needs of niche target

⁷⁷ CRTC 2013-551, "Appendix A", Reply of OpenMedia.ca (24 October 2014), pages 9-25.

⁷⁸ CRTC 2013-551, First Intervention of OpenMedia.ca (30 January 2014) and First Intervention of OpenMedia.ca (31 January 2014).

⁷⁹ "This is an Internet Emergency," OpenMedia.org, online (last accessed 21 December 2015): <https://act.openmedia.org/emergency?src=158757>.

⁸⁰ In still other cases, Internet access provides opportunity for meaningful engagement where one's community is not available locally, such as in the case of Canadians who are socially isolated or marginalized within their geographical communities, for any number of reasons.

audiences, addressing local concerns, or adapting quickly and flexibly to changing circumstances, among other advantages that may be more challenging for large, national corporations to provide.⁸¹ This in turn facilitates increased innovation, productivity, and engagement on the part of Canadian individuals and small businesses alike.

82. That tens of thousands of individual Canadians are concerned about Bell's petition has been demonstrated above; however, 109,000 small-to-medium-sized business owners throughout Canada also contributed to the CRTC decision, through the Canadian Federation of Independent Business (CFIB). In their submission, the CFIB stated:

According to CFIB's 2012 Telecom Survey, high-speed internet services have taken over from telephones as the most often used form of communication technology in a business. In addition, 92.9 per cent of our members use wired high speed internet regularly in their business dealings.⁸²

With regards to competitive options, 47.1 per cent of our members were either somewhat (24.7 per cent) or very (22.4 per cent) dissatisfied with the availability of competitive options for wired internet providers in their area. These numbers have increased since we last conducted this survey in 2008....

Unfortunately, the current situation has not allowed for the growth of competitive options for SMEs. The lack of competitive options is a significant barrier to the ability for many SMEs to grow and expand their business. More than 50 per cent of the market share is provided by just two companies in every province across Canada, and in all provinces outside of Ontario and Quebec, the top two companies combined tend to have around 80 per cent or more of the market share. The CRTC must help foster competitive options for Canadian SMEs just as demand for these services continues to grow.⁸³

83. The CRTC listened to these small-to-medium business owners and listened to tens of thousands of individual Canadians, all of whom expressed that and why Internet access and Internet service competition through network sharing is so important to them, and the Commission made its decision accordingly. These are the stories, the evidence, and the due process that acquiescing to Bell's inappropriately circumventing request would render void.

iii. Network sharing promotes competition and innovation

84. Without network sharing of fibre broadband facilities, competition would not only suffer but potentially die off in the long run. This is because competitor ISPs rely on network sharing in order to offer Internet access services on a level where they can genuinely compete with providers such as Bell, through offering similar Internet speeds while differentiating themselves through price or customer satisfaction, for instance. As Canadian Internet users move to higher and higher speeds such as those accessed through FTTP, those who are unable to provide such services will be left behind. Since independent ISPs rely on network

⁸¹ See generally CRTC 2013-551, "4.0 The Innovations and Contributions of CNOC Members," Second Intervention of the Canadian Network Operators Consortium (27 June 2014) at pages 19-36.

⁸² CRTC 2013-551, First Intervention of the Canadian Federation of Independent Business (31 January 2014) at para 3.

⁸³ *Ibid.*, at para 8.

sharing to compete, preventing the CRTC from implementing their decision would be tantamount to granting incumbent service providers, such as Bell, a duopoly with incumbent cablecos, or effectively a wireline monopoly elsewhere.

85. As an example, PIAC examined what happened to independent ISPs during the transition from dial-up Internet to high-speed broadband, before the CRTC opened up the latter to network sharing:

[I]n its *Communications Monitoring Report* issued in August 2009, the Commission noted that over the 2004 to 2008 period, the residential market share of the “other TSPs” (which the Commission described as service providers “excluding incumbent TSPs and cable BDUs”) diminished “from 16% in 2004 to 8% in 2008”. As the Commission also noted, in the period from 2000 to 2008, subscribership to high speed Internet access shifted from 31% of Internet connections to 93%. The Commission noted that for residential Internet subscribers, during the period 2004-2008, the cumulative annual growth rate for dial-up service was -22.5% while that for high speed services was 13.8%. We interpret this data as an indication of what happens when independent ISPs are unable to or do not keep up with technology used by their incumbent competitors. As consumers were abandoning dial-up service for higher speed technology and as uncertainty continued regarding independents’ ability to offer competitive retail services, independents lost market share. See Table 5.3.2 CRTC Communications Monitoring Report (August 2009), page 217.⁸⁴

86. This is what the Consumer Choice Coalition anticipates happening with FTTP in the event that Bell is successful in its bid to block network sharing, but with greater urgency and significance now in light of the primacy given to high-speed Internet access and online capabilities in today’s digital world.

87. Loss of competition would also come as a blow to innovation, another casualty of blocking network sharing. As former CRTC National Commissioner Timothy Denton put it:

If innovation comes frequently from smaller players trying to satisfy the novel requirements of specialized customers, then creating circumstances in which engineers can innovate is beneficial to the public; indeed, public policy in telecommunications should aim for it—in a sensible balance with other policy considerations. ... The right of carriers to innovate in network architectures is absolute, subject to the normal policy constraints of non-discrimination and non-self-preference. The question remains whether innovation from the edge will ever be allowed again, after the burst of innovation which accompanied the introduction of the Internet.⁸⁵

88. To let Bell have its way would be to cut off all the potential of innovation from the edge, arguably one of the defining characteristics of the Internet itself—whether from the perspective of start-ups in places such as Waterloo and Silicon Valley North disrupting mainstream industries, alternative media revolutionizing how news is done, marginalized groups mobilizing in new ways over social media, or independent artists and entrepreneurs able to break through the noise and find their audiences through non-traditional channels.

⁸⁴ CRTC 2013-551, First Intervention of Public Interest Advocacy Centre (31 January 2014), at note 18.

⁸⁵ Telecom Regulatory Policy CRTC 2010-632, Dissent of Commissioner Denton, *Wholesale high-speed access services proceeding* (30 August 2010), as cited in CRTC 2013-551, Reply of Openmedia.ca (24 October 2014), at para 43.

Network sharing spurs on innovation both by Internet service providers, and through the Internet access they provide to innovative students, creators, and entrepreneurs across the country.

iv. Network sharing promotes investment

89. Studies, academic literature, industry observations, and past experiences at the CRTC give every indication that implementing network sharing policies spurs on investment in high-speed broadband infrastructure, rather than hinders it. As PIAC noted during the 2013-551 proceeding, a 2013 OECD publication stated:

For fixed networks, open access policies in the form of mandated regulated access, such as local loop unbundling or other wholesale access products, have undeniably played a leading role in the development of competition, in most OECD countries, as these markets were liberalised. A variety of wholesale access products enable different levels of investment and possibilities for technological independence for new entrants.⁸⁶

90. Middleton and Rajabiun also pointed out in their submission to the CRTC 2013-551 proceeding:

Some parties to the proceeding suggested that deploying fibre is very costly and risky. However, we also heard from Bell that for aerial distribution plant, the cost of fibre is nearly equivalent to the cost of copper, with the added advantage that fibre provides an operator with a technologically future proof distribution network providing a platform with higher capacity, greater flexibility to provide advanced services, and lower operating costs. Importantly, there also appears to be a substantial marketing edge to branding a service as a fibre based service (e.g. "Fibre", "Optik", "FiberOp").⁸⁷

91. Despite fibre investment barriers being lower than Bell has indicated, particularly with the company's ability to leverage economies of scale in a way that small independent ISPs cannot, studies have suggested that "absent competitive pressure, operators may choose to delay the installation of fibre even when investment in a fibre network has a positive expected net present value".⁸⁸ This appears to have been the case with Bell and other incumbents, considering that at this time last year, while the CRTC deliberated, "six years [of deregulation] later, fibre diffusion remains negligible".⁸⁹

⁸⁶ OECD, "Broadband Networks and Open Access" (2013), *OECD Digital Economy Papers*, No. 218, online: OECD Publishing <http://dx.doi.org/10.1787/5k49ggz7crmr-en> at page 4, cited in CRTC TNC 2013-551, Reply Comments of Public Interest Advocacy Centre (24 October 2014) at para 23.

⁸⁷ CRTC 2015-551, Final Submission of Catherine Middleton and Reza Rajabiun (19 December 2014) at para 16, emphasis added.

⁸⁸ Martin Cave & Keiko Hatta, "Transforming telecommunications technologies—policy and regulation" (2009) 25 *Oxford Review of Economic Policy* 488-505 at 495 (JSTOR), cited in CRTC TNC 2013-551, Reply Comments of OpenMedia.ca (24 October 2014) at para 39.

⁸⁹ CRTC 2015-551, Final Submission of Catherine Middleton and Reza Rajabiun (19 December 2014) at para 1. Middleton and Rajabiun go on to write: "If the Commission remains committed to ensuring 'Canadians have access to a world-class communication system', then wholesale access obligations can offer a potentially powerful tool for stimulating investment in advanced platforms and increasing the pace of progress in broadband network development" (footnote omitted).

92. In fact:

Despite rapid declines in the costs of deploying fibre networks and clear policy regarding forbearance from regulating fibre access networks under Telecom Decision 2008-17, in 2012 fewer than 2% of the total lines were FTTP. Mid-2013 OECD data show 2% of broadband subscriptions in Canada were fibre connections, 8 times below the average for OECD members (16%) and 4 times lower than the United States (8%), a country that has generally followed a similar strategy of regulatory forbearance as Canada.⁹⁰

93. The 2% figure has risen over the past year to 5% of residential Internet access subscriptions being fibre, according to the 2015 *Communications Monitoring Report*.⁹¹ However, Canada still fares poorly compared to fibre deployment in the European Union, despite Bell using the region as a cautionary tale against network sharing. See, for instance, the percentage of broadband subscriptions that is fibre in Sweden (43.7%), Estonia (32.9%), Slovakia (25.8%), Portugal (22%), Slovenia (22%), Denmark (21.6%), and Hungary (15.2%)⁹²—three to nearly nine times greater than fibre deployment in Canada.

94. The lack of more assertive fibre deployment in Canada during six years of deregulation, combined with the near doubling of fibre broadband subscriptions since the CRTC proceeding, implies that the potential or reality of the CRTC's decision has done and will do little to hinder investments in fibre deployment. Furthermore, Bell clearly had their chance during that period, and they missed it.

95. In fact, the CRTC's decision give incumbents such as Bell the incentive to invest more aggressively where they may not have otherwise, as they will be forced to in order to compete with rival providers and technologies, such as cable and IPTV. Members of the Coalition pointed out to the CRTC:

In order for the ILECs to be able to deploy and successfully offer lucrative new services such as IPTV, the ILECs need to modernize their networks. CAC-PIAC submit that the principal risk faced by the ILECs relates to the potential consequences of failing to modernize their networks, not their decision to modernize. ... It is also important to bear in mind that in addition to the risk that their customers will leave them if they fail to modernize, the ILECs also stand to benefit greatly from new services fibre technology will enable them to offer.⁹³

96. Finally, history tells us if nothing else, that intimations of withdrawing or delaying investments to a harmful extent are little more than empty threats on Bell's part. The CRTC decision at the

⁹⁰ CRTC 2015-551, Intervention of Catherine Middleton and Reza Rajabiun (8 November 2013) at para 9 (footnotes omitted).

⁹¹ CRTC, "Figure 5.3.7 Residential Internet access service subscriptions by access technology, 2010 vs. 2014," *Communications Monitoring Report* (20 November 2015), online: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2015/cmr5.htm>.

⁹² OECD, "1.10 Percentage of fibre connections in total broadband", OECD Broadband Portal (December 2014), online: <https://www.oecd.org/sti/broadband/oecdbroadbandportal.htm>.

⁹³ CRTC 2013-551, Final Comments of Public Interest Advocacy Centre (19 December 2014) at paras 77, 79 (footnotes omitted). See also the First Interventions of Bragg Communications (Eastlink), MTS Allstream, and Primus, as cited in Reply Comments of OpenMedia.ca (24 October 2014), at note 56.

centre of current events is only the latest in a long line of similar decisions—also the result of extensive proceedings and careful consideration of all available evidence—in which the CRTC mandated network sharing to ensure that competition and thus Canadian telecommunications kept pace with progressing Internet speeds and advancing technologies.

97. This regulatory lineage includes:

- Telecom Decision CRTC 97-8, *Local Competition*, which opened the way for alternative services and independent competition in Canadian telecommunications services;
- Telecom Decision CRTC 2008-17, *Revised regulatory framework for wholesale services and definition of essential service*, which implemented network sharing of fibre-to-the-node copper facilities (not FTTP), and increased competition in broadband Internet; and
- Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding*, which recognized that in order to have real competition, incumbents such as Bell had to share network facilities with competitors at equally high broadband speeds as they offered to their own retail customers.

98. As for the case at hand, in Telecom Notice of Consultation CRTC 2013-551, *Review of wholesale services and associated policies*, the consultation which resulted in the regulatory policy now before Cabinet, Consumer Choice Coalition members PIAC and CAC stated:

Evidence put forward in the course of the hearing...raises significant doubts about such threats [as Bell is making]. Under Commission panel questioning, for example, it became increasingly evident that FTTP has now become the default technology as Bell Canada expands or updates its network. It also became evident that implementation of FTTP could in fact be less expensive than FTTN (which is already mandated). Under questioning, Bell Canada and Bell Aliant witnesses were hard pressed to argue how, in light of the manner in which they deploy FTTP, this technology is more costly than FTTN. The Bell companies' witnesses also acknowledged that even if FTTP were more expensive, the difference may be insignificant, and that, in any event, FTTP would be a "better long-term investment."⁹⁴

99. With respect to already being set on FTTP investments for long-term growth, Bell only admitted to the Commission what the company already publicized to its own shareholders, such as in its 2014 Annual Report,⁹⁵ as members of the Coalition related to the CRTC:

BCE [Bell] describes the expansion of its broadband networks and services as one of 6 "strategic imperatives". For 2014, the company states that it plans to "Extend Bell Fibe TV service coverage to approximately 5 million households as we grow our FTTN, FTTH and FTTB footprint to more than 6 million locations passed" (at page 39). Another of the company's "strategic imperatives" is to "leverage wireline momentum". The company states

⁹⁴ CRTC 2013-551, Final Comments of Public Interest Advocacy Centre (19 December 2014) at paras 71-73. Additional examples of Bell making similar threats and the CRTC rejecting them are found in Bell's submission of 8 February 2010 in Telecom Notice of Consultation CRTC 2009-261, at para 82, and Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding* (30 August 2010) at para 82, cited in CRTC 2013-551, First Intervention of Public Interest Advocacy Centre (31 January 2014) at notes 14 and 15.

⁹⁵ BCE Inc., 2014 Annual Report (2015), online: http://www.bce.ca/investors/AR_2014/BCE_2014_Annual_Report.pdf .

that it does this by “leveraging our fibre-based TV and Internet services to develop attractive residential offers that drive higher multi-product bundle sales and improve customer satisfaction and retention. These new services contribute to the ongoing shift of our operating mix away from legacy wireline voice services” (page 38). In its “business outlook and assumptions” discussion, the company states that “Increased TV subscriber acquisition is expected through higher projected customer adoption of Fibe TV as we further extend our IPTV broadband fibre footprint in areas of Ontario and Québec” (page 63).⁹⁶

100. In all of these cases, Bell and other dominant service providers threatened depressed investment, and a corresponding detriment to the future of Canada’s telecommunications system, and in all of these cases, Bell continued to invest, build, and compete nonetheless—and, thanks to the CRTC decisions, with viable independent competitor ISPs to impose competitive pricing and customer service discipline, which only benefited Canadians. The situation now placed before Cabinet is simply another round of the same historical cycle. The Consumer Choice Coalition urges Cabinet to recognize this, in addition to the totality of factors and circumstances expressed in the rest of this document, and reject Bell’s petition accordingly.
101. In the next section the Consumer Choice Coalition carries on to explain that not only did the CRTC get it right, but why Bell’s request would destroy competition.

⁹⁶ CRTC 2013-551, Second Intervention of Public Interest Advocacy Centre (27 June 2014), at note 32.

Submission 2: Bell's request would destroy competition

102. In this second of three main submissions, the Consumer Choice Coalition submits that Bell's request would destroy competition.
103. Bell's request for exclusivity is not necessary, and will not benefit anyone but Bell.
104. Without network sharing, Bell will have exclusive access to customers it connects, which means there will be no competitive alternatives for those customers. That would be a profound restriction of choice. Bell does not need this exclusivity. Bell has no choice, in the face of competition from large cable competitors, but to build fibre, or risk jeopardising what Bell has referred to as its "broadband content strategy".
105. Bell's threat to delay or cancel investments is not credible, and its commissioned reports in support of its request for exclusivity are of little value. Investment will not lag as a result of network sharing. Deployment will continue as planned. Rural areas will not suffer any more than they already do due to a lack of a coherent national strategy for universal broadband service. Cabinet should give little to no weight to the reports Bell has commissioned or cited because they contain a number of questionable assumptions, and they are largely repetitive of what the CRTC had already considered.
106. As a final point, the Consumer Choice Coalition notes that Bell has provided no evidence to demonstrate that what Bell is seeking is what Canadians want.

Key Points

- Investment will *not* lag if Cabinet declines Bell's request for exclusivity over fibre networks
 - Bell must keep investing
 - Even with network sharing, Bell stands to profit.
 - Bell has admitted to shareholders the impact of the CRTC decision may be nil
 - Bell habitually overstates the risk of pro-competitive regulatory measures
 - Bell's commitment to rural areas is questionable
 - High speed is characterized as 5, when Bell is selling 1 GB into urban areas. In Bell's view, entertainment etc...
 - If Bell isn't given its requested exclusivity, rural areas will not suffer

any more than they currently do

- Bell's supporting materials, commissioned by Bell or written by previous Bell consultants, should give little to no weight
- Bell does not speak for Canadians and has provided no evidence in support of its claims about "what Canadians want"

Bell must keep investing

107. Bell has to keep investing if it is to execute on its vertically integrated "broadband content" strategy, and if it is to keep pace with its large cable competitors.⁹⁷

108. Bell protests this. At the hearing, Bell framed the issue as follows: "a mandated access rule will affect the pace of deployment and the breadth of deployment. That is essentially the issue."⁹⁸ Bell representatives also stated that mandated network sharing would result in smaller and rural communities only having access to cable-based broadband internet service:

Of course, we are not suggesting that with mandated access such investment will immediately grind to a halt in every location in Canada, but the inescapable conclusion is that smaller and rural communities with only DSL today will be deprived of, or significantly delayed in, receiving the benefits of fibre-to-the-home technology, leaving them with access to only the cable network for advanced broadband.⁹⁹

109. The CRTC clearly rejected that view.

110. The CRTC determined that even with network sharing, incumbent carriers would need to continue to invest.

There are several reasons, however, why the negative impact on investment is not likely to happen to any significant degree, particularly in more urban areas. First, the Commission expects that the incumbent carriers will generally continue to invest in FTTP access facilities in order to provide enhanced retail Internet access services in response to consumer demand, as well as to compete effectively and efficiently with the Cablecos. In addition, mandating the provision of disaggregated wholesale HSA services over FTTP access facilities would be predicated on wholesale rates that are compensatory and that provide a reasonable rate of return, resulting in profit on the associated investment.¹⁰⁰

111. Other parties such as the British Columbia Broadband Association (the "**BCBA**") also rejected that view. As the CRTC noted in its decision "The BCBA added that investment in FTTP access facilities is currently underway in British Columbia, despite the possibility of associated

⁹⁷ See reference to Bell's Annual Report, [below](#).

⁹⁸ CRTC Transcript, Hearing 26 November 2014, Volume 3, 26 November 2014, subject: Review of wholesale service and associated policies, at 3095

⁹⁹ *Ibid.*, at 2979, and 3093-94.

¹⁰⁰ TRP 2015-326 at para. 141.

regulation, and that it did not consider that the incumbent carriers would stop investing in FTTP access facilities if they were mandated.”¹⁰¹

112. In discussing the decision with in an interview with BNN (Business News Network), CRTC Chairman Jean-Pierre Blais described the balancing of interests, and the CRTC's ultimate finding with respect to Bell's threat about delayed or abandoned investment.

Well we considered their perspective, we don't dismiss it, we balanced it along with other issues, but our view is that it is a business imperative that they continue to invest in this area. The cablecos for instance through their co-ax [coaxial cable] networks are offering higher speeds, in fact we know today that telcos are lagging behind the retail market because they don't have as good a regime, network. So if they want to compete with the cablecos they will have to invest in this area, and to meet the needs of Canadians they will have to continue to offer better and faster broadband services.¹⁰²

113. The CRTC had good reason to come to that conclusion that Bell would need to continue to invest. As the following sections demonstrate, even with network sharing, Bell stands to profit, Bell has admitted to its shareholders that the impact of the decision may be nil, Bell's investors have historically performed very well in the face of major CRTC decisions to foster more competition (see Appendix "A", [here](#), and Appendix "B", [here](#)), and Bell has habitually overstated the risk of such decisions.

Even with network sharing, Bell stands to profit

114. Even with mandated network sharing, Bell stands to profit.

115. The Consumer Choice Coalition believes that Bell's concern appears to be not about losing money, but with making less profit than it could under the exclusivity scenario Bell seeks with its petition.

116. With network sharing Bell actually stands to make money for any mandated wholesale access because leasing rates are set such that that the network owner (Bell in this case) is compensated not just for its costs, but also a reasonable rate of return on its investment. This is accomplished via the Commission's "Phase II" costing methodology which is based upon the use of incremental costing, which is then supplemented by an approved markup to establish the appropriate rate.¹⁰³

117. As noted, the BCBA had observed that investment was taking place despite the prospect of mandated network sharing.

118. It would be very surprising if Bell's financial planners and product managers, with input from Bell's legal, regulatory and risk management teams, had *not* built into their business cases the prospect that the CRTC would mandate fibre network sharing. Thus the Consumer Choice

¹⁰¹ *Ibid.*, at para. 102.

¹⁰² "More competition, better for internet consumers: Blais" (22 July 2015) (video), online: Business News Network, online: <http://www.bnn.ca/Video/player.aspx?vid=662868>.

¹⁰³ TRP 2015-326 at paras. 218 and 233-241.

Coalition believes that Bell has planned to conduct its business under a mandated network sharing scenario. Indeed, Bell has even admitted to shareholders that the impact of the CRTC decision may be nil.

Wholesale rates for mandated network sharing should produce a sufficient return for Bell

119. Wholesale rates for mandated network sharing should produce a sufficient return for Bell.
120. Bell states "Rather, they simply pay a regulated wholesale price set by the CRTC (which will never compensate for the up-front capital and risk of our investment)."
121. What Bell fails to mention is that the regulated wholesale price set by the CRTC is rooted, by definition, in ensuring that incumbent companies such as Bell are fairly compensated for their capital and risk of investment.¹⁰⁴ The CRTC states this objective as part of its rate-setting process and rate-setting principles in multiple proceedings and decisions. (See excerpts from Decisions CRTC 2015-326, 2013-70, and 2013-480 excerpted in [Appendix "B"](#), for example.)
122. Furthermore, the rates that the CRTC implements are based on cost studies and various other inputs provided by incumbent companies themselves, for the purposes of receiving a reasonable compensatory rate.¹⁰⁵ Bell itself has approved the costing methodology that the CRTC uses to set rates.¹⁰⁶ Moreover, there is evidence that such reliance on companies to provide their own inputs has in fact resulted in inflated rates, as when the Commission had to

¹⁰⁴ TRP 2015-326 at 141-42:

In addition, mandating the provision of disaggregated wholesale HSA services over FTTP access facilities would be predicated on wholesale rates that are compensatory and that provide a reasonable rate of return, resulting in profit on the associated investment. ... [A]s stated above, any investment risks associated with mandating the provision of wholesale HSA services over FTTP access facilities can be attenuated by providing the incumbent carriers with a reasonable rate of return.

¹⁰⁵ Telecom Regulatory Policy CRTC 2013-70, *Disposition of review and vary applications with respect to wholesale high-speed access services: Introductory statement*, online: <http://www.crtc.gc.ca/eng/archive/2013/2013-70.htm> at 6:

The Commission approved rates for each incumbent, using the model that most closely corresponded to the model each incumbent had proposed for itself in the proceeding. The rates were based on the incumbents' costs to provide the service plus a 30 percent or 40 percent markup.

¹⁰⁶ Telecom Decision CRTC 2008-17, *Revised regulatory framework for wholesale services and definition of essential service* (3 March 2008) at 128:

Bell Canada et al. submitted that they would support setting tariffed prices at Phase II costs plus an appropriate mark-up and that they were not proposing any change in the existing mark-up in this proceeding.

reduce Bell's wholesale high-speed Internet access rates by over 50 percent in February 2013.¹⁰⁷

123. Where the CRTC does not explicitly state incumbent profit¹⁰⁸ or fair compensation¹⁰⁹ as an objective, the Commission focuses on setting rates to either promote or “not interfere[e] with the network providers’ incentives to invest”,¹¹⁰ likely knowing full well that companies cannot or will not invest in new projects if they are not receiving satisfactory rates of return on existing projects that allow them to build further afield.

124. A brief review of CRTC decisions going back to 1986 suggests that the Commission takes seriously the ability of incumbent providers to recoup costs fairly and reasonably under a wholesale regime, and that the CRTC has thus maintained an ongoing commitment to ensuring that wholesale rates are set accordingly. Finally, a review of Bell's financial reports 2010-15 for its wireline segment demonstrates consistent profits and a healthy rate of return (see chart in Appendix “B” for further notes, [here](#)).

Bell has admitted to shareholders the impact of the CRTC decision may be nil

125. If Bell were concerned about the risk of mandated fibre network sharing, Bell would have made that concern clear to investors, the risk would have been priced in to Bell's share price, and indeed investors who were risk averse would have lessened their positions in Bell. Indeed, securities law would have required disclosure of that possibility. Instead, the possibility that the CRTC could mandate network sharing for fibre warranted only a passing reference in Bell's disclosures.

126. In an August 2015 report to shareholders BCE stated this:

Although it is not possible at this time to assess the financial impact of Telecom Regulatory Policy 2015-326, *it could have a negative effect* on our business and financial performance as it is progressively implemented over the next few years. *However, the nature of such effect, if any, will only be ascertainable once the CRTC has completed its costing models*

¹⁰⁷ Gary Ng, “CRTC Releases Finalized Wholesale Internet Rates for Independent ISPs,” iPhone in Canada (21 February 2013) online: <http://www.iphoneincanada.ca/carriers/crtc-releases-finalized-wholesale-internet-rates-for-independent-isps>.

¹⁰⁸ Telecom Decision CRTC 99-16, *Telephone service to high-cost serving areas*, online: <http://www.crtc.gc.ca/eng/archive/1999/dt99-16.htm> at 3.

¹⁰⁹ Telecom Decision CRTC 2013-603, *TELUS Communications Company – Application to review and vary Telecom Decision 2013-73* (12 November 2013) at 33:

One of the policy considerations expressly set out in that decision was the appropriate level of compensation to be provided to incumbent carriers for the provision of wholesale HSA services. The Commission considers that the impact of that decision on incentives to invest in new infrastructure was taken into account in determining the appropriate level of compensation for wholesale HSA services.

¹¹⁰ Telecom Regulatory Policy CRTC 2011-703, *Billing practices for wholesale residential high-speed access services*, online: <http://www.crtc.gc.ca/eng/archive/2011/2011-703.htm> at 44.

*and set the wholesale access rates to be charged by the incumbent telephone companies and cable carriers.*¹¹¹ [Emphasis added.]

127. Thus, Bell clearly contemplated the prospect that the decision could have no effect, in which case, its concerns are unfounded and its Petition is premature. Simultaneously, Bell also contemplated that the CRTC's decision could have a negative effect, and has committed to expanding its business through increasing fibre deployment nonetheless. In both of these cases, the CRTC decision results in no undue or unforeseen harm to Bell's investments.

Bell habitually overstates the risk of pro-competitive regulatory measures

128. Finally, Bell habitually overstates the threat of pro-competitive regulatory measures, when the reality is Bell shareholders have fared consistently well, even in the face of major CRTC decisions mandating network sharing.

129. Appendix "A" to this submission, entitled "[Market Reaction to Major Regulatory Decisions](#)", shows in a series of charts to illustrate how Bell's stock has fared in anticipation of, and reaction to, key CRTC framework decisions affecting telecom and broadcasting competition. The thrust of those charts is captured in the following chart, showing that Bell, and its shareholders, are beyond resilient to CRTC measures to promote competition, but perhaps even benefit from those measures.

Bell's threat to delay or halt rural broadband deployment lacks credibility

130. Bell claims in its petition that without Cabinet overriding the CRTC decision, potential Internet users in rural communities would suffer, due to Bell's lack of sufficient return on investment in FTTP services.¹¹² This claim should be rejected, for three reasons.

131. First, as established elsewhere in this submission, Bell will be forced to continue investing and building nevertheless, due to its oligopolistic competition with rival cable carriers. For further details regarding the lack of impact on Bell's future investments in fibre networks, see "Bell must keep investing", [above](#).

132. Second, Bell will continue investing due to increasing competition from IPTV and the need to sell its own media content over such networks. This is known as Bell's "broadband content strategy".¹¹³ This is a result of Bell's vertically integrated business model which it describes as a "broadband content" strategy, from which it will also continue reaping returns. In 2009, Bell made similar threats at a CRTC proceeding akin to the one before Cabinet.¹¹⁴ Despite its dire

¹¹¹ BCE Second Quarter Shareholder Report (5 August 2015), online: <http://www.bce.ca/investors/financial-reporting/2015-Q2/2015-q2-shareholder-report.pdf> at 32.

¹¹² Bell Petition, para 23.

¹¹³ BCE overview, online: <http://www.bce.ca/aboutbce/bceoverview>.

¹¹⁴ See Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding* (30 August 2010) at paras 32 and 34:

forecasting, however, Bell was still able to assure its shareholders of the following, five years after the CRTC implemented further network sharing, in its 2014 Annual Report:

Our broadband IPTV footprint expanded to 6 million households by the end of 2014, more than 2 million of them served by the direct Fibre to the Home connections that are the focus of our wireline investment and growth going forward.¹¹⁵

133. Bell clearly would not have made or continue to make a genuinely discouraging revenue stream “the focus of our wireline investment and growth going forward”, suggesting that the CRTC decision that resulted from the 2009 proceeding—one from which the current decision descends and extends—was correct.
134. Third, in areas of very low population, where fibre deployment will never provide a return on capital, Bell is much more likely to try to serve these areas with other technologies, in particular wireless, which has lower deployment costs. Therefore Bell’s threats to delay or never deploy fibre to the premises in rural and in particular remote locations are hollow: the Consumer Choice Coalition believes that Bell will never deploy fibre to such areas without a subsidy.
135. On the subject of such subsidies, Bell already receives government funding for deploying broadband networks in rural communities. While none of these as yet has been for fibre to the premises buildouts – reflecting the (at present) higher cost of FTTP – it can be expected that future subsidies will permit or encourage FTTP buildouts.
136. In relation to FTTN and wireless rollout thus far in rural and remote areas, members of the Coalition pointed out Bell’s receipt of rural and remote access subsidies in response to a similar previous petition by Bell challenging the result of the 2009 proceeding:

The Petitioners have over the years been the beneficiaries of a variety of provincial and federal governmental programs and initiatives that have provided them, directly or

Bell Aliant, Bell Canada, and Télébec (Bell Canada et al.) and TCC submitted that a speed-matching requirement for aggregated ADSL access service that requires the provision of this wholesale service using their FTTN facilities would be a disincentive for them to invest further in these facilities. [...]

Bell Canada et al. and TCC also submitted that investment in FTTN facilities is justified only by multi-product revenues – from retail Internet service, IPTV, and telephony. In their view, if a speed-matching requirement were applied to wholesale services provisioned using FTTN facilities, revenues would be reduced. This would occur because end-users would be purchasing high-speed retail Internet service from competitors that use aggregated ADSL access service to provision their retail services, and also because the ILECs would have decreased revenues from IPTV service and service bundles. They further submitted that investment incentives would be reduced in all markets, regardless of size, for any broadband infrastructure subject to wholesale service requirements.

¹¹⁵ BCE Inc., 2014 Annual Report, online http://www.bce.ca/investors/AR_2014/BCE_2014_Annual_Report.pdf at page 8.

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indirectly, considerable assistance in the deployment of network facilities to provide high-speed Internet connectivity to rural locations.¹¹⁶

137. Just like so many other elements of this situation, the fact that government funding assists Bell in building out to rural communities remains the case to this day. To date, Bell Aliant has received at least \$9 million in provincial and federal funding through the Connected Canadians program spearheaded by the Conservative government in 2014.¹¹⁷ This funding comprised \$2 million to deliver access to 2,500 households over DSL-fibre in Kenora, Ontario by 2017;¹¹⁸ approximately \$1 million to build in Newfoundland and Labrador, nearly \$300,000 of which comes from the provincial Rural Broadband Initiative;¹¹⁹ and about \$6 million to deliver Internet access at 5 Mbps in Miramichi, New Brunswick.¹²⁰
138. Finally, as previously noted, the CRTC is presently conducting a large-scale framework hearing on basic telecommunications services (including high speed internet access)¹²¹ in which one of the key issues is the possibility of a nationwide subsidy mechanism for rural and remote areas – which could well include an FTTP aspect. It is very likely that Bell and other telephony incumbents would be very well placed to benefit from any potential build subsidy.
139. In light of these federal and provincial existing and potential future subsidies aimed specifically at rural broadband development, it seems both unrealistic as well as unfair for Bell to threaten to withhold investment from developing networks in rural communities, in essence holding such communities hostage to a regulatory decision Bell considers more favourable to itself.
140. For the reasons described above, Cabinet should ignore Bell's threat and its attempt to leverage the plight of rural communities against the CRTC's decision for its own gain.

¹¹⁶ Industry Canada, "Comments of the Public Interest Advocacy Centre, National Anti-Poverty Organization and Consumers' Association of Canada," Comments Received on Telecom Decisions CRTC 2008-117 and CRTC 2008-118, Telecom Regulatory Policy CRTC 2009-34, and Telecom Order CRTC 2009-111 (8 May 2009), online: <<http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09450.html>> at para 27.

¹¹⁷ Government of Canada, News Release, "Harper Government launches program to bring high-speed Internet to an additional 280,000 Canadian households" (22 July 2014), online: <<http://news.gc.ca/web/article-en.do?nid=869539>>.

¹¹⁸ Government of Canada, News Release, "High-Speed Internet Coming to Kenora District" (25 June 2015), online: <<http://news.gc.ca/web/article-en.do?nid=991789>>.

¹¹⁹ Government of Canada, News Release, "High-speed Internet coming to 14 communities in Newfoundland and Labrador" (25 July 2015), online: <<http://news.gc.ca/web/article-en.do?nid=1007589>>.

¹²⁰ Government of Canada, News Release, "High-speed Internet coming to approximately 2,500 households in Miramichi, over 19,000 households across New Brunswick" (30 July 2015), online: <<http://news.gc.ca/web/article-en.do?nid=1011279>>.

¹²¹ Telecom Notice of Consultation 2015-134, *Review of basic telecommunications services* (9 April 2015), as amended by Telecom Notice of Consultation CRTC 2015-134-1 (3 June 2015), at paras. 16-19, 35 and discussion questions (App. B) numbers 10 and 13(h).

Bell's commissioned reports should be given limited weight

141. The Consumer Choice Coalition notes that Bell has submitted no less than four reports by economists, commissioned specifically for Bell's appeal to Cabinet, and added a fifth report modified from a report commissioned for a separate ongoing CRTC proceeding. Cabinet should give little to no weight to these materials, on three grounds. First, the reports display a number of weaknesses that undermine their use and relevance to this proceeding in any case. Second, the reports add no new information, and represent an attempt by Bell to have Cabinet essentially re-examine and retry a number of complex issues already vigorously argued and settled before the CRTC. Third, submitting these economists' reports in this manner raises issues of procedural fairness, access to justice, and appropriate use of legal channels.

i. Bell's economists' reports add no new information

142. Bell's attempt to circumvent the CRTC's public process and engage in a repeat fact-finding process at a separate and arguably less accessible level of government is highlighted by the realization that the submitted reports add no new information that was not already argued and taken into account in the original proceeding. Bell cites its economists' reports approximately 17 times throughout its petition. Categorizing the main thrust of each reference, the reports all together are used to support the following four points in the actual petition:

- The CRTC decision will discourage investment in new networks.¹²²
- The CRTC decision compares unfavourably to network sharing regulation in other jurisdictions, such as the United States, Japan, or South Korea, or puts Canada in company of the European Union or United Kingdom, put forth as a cautionary tale.¹²³
- Canada has a competitive broadband Internet market and leads globally in broadband.¹²⁴
- The CRTC decision will result in loss of jobs in Canada.¹²⁵

143. The first three points listed above were not only already part of the proceeding leading to the CRTC's decision, but arose as key themes and were argued exhaustively from all sides.¹²⁶ Moreover, these same notions—impact on investment, comparison to other jurisdictions, and Canada's broadband performance—have arisen as points of contention between incumbent TSPs, such as Bell, and much of the rest of civil society, at nearly every CRTC framework proceeding to date.¹²⁷ Each of these proceedings have found these points undermined or outright rebutted by the end, as described elsewhere in this submission and as seen on the

¹²² Bell Petition, at paras. E22, 20, 25; page 28 (box).

¹²³ *Ibid.*, at para. 45; pages 27 (box) and 36 (box).

¹²⁴ *Ibid.*, at para. 52; page 41 (box).

¹²⁵ *Ibid.*, at paras. E8, E29, 16, 28; page 28 (box).

¹²⁶ See generally CRTC 2015-551, First Interventions of all parties, Second Interventions of all parties, Reply Comments of all parties, Oral Remarks of all parties, and Final Comments of all parties.

¹²⁷ See, e.g., Telecom Decision CRTC 97-8, *Local Competition*; Telecom Decision CRTC 2008-17, *Revised regulatory framework for wholesale services and definition of essential service*; and Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding*.

public record of each of these proceedings themselves, including the one leading to the CRTC decision.

144. As for the last point, Cabinet should reject Bell's claim that the CRTC decision will result in loss of jobs the way its economists' reports suggest. First, any loss of jobs is predicated on reduced investment and build-out of fibre networks, which the Coalition submits will not occur to anywhere near the extent that Bell fears—as it has never occurred in the past to the extent that Bell had purported to fear.¹²⁸ Second, the economists that Bell commissioned examined the hypothetical loss to Bell's FTTP investments alone, compared to a vacuum. They did not look at the investments and jobs that would arise as a result of a competitive environment that allows for independent ISPs to exist and grow. These enterprises would also be a source of investment and jobs that may not come to fruition otherwise, from the alternative ISPs themselves employing, innovating, and competing, as well as through Canadians benefiting from higher-quality and more affordable Internet access, allowing for more and greater diversity of innovation and productivity throughout Canadian communities when they are not beholden only to Bell for their Internet access.

ii. Bell's economists' reports rely on questionable assumptions

145. In addition to the assumption of zero benefits from allowing competitor ISPs to thrive, the reports that Bell attached to its petition, as well as the petition itself, make two other assumptions. Both of these assumptions are in dispute, undermined, or refuted in much of the relevant academic literature.

146. The first is that the economic and regulatory models that applied in the 1980s-90s—when the Internet as most know it today had yet to exist and broadband networks had yet to be rolled out across the country, when companies such as Bell held near-monopolies and network sharing was barely a hypothetical—still apply today in 2015, in a completely different structural environment where Internet facilities are concerned, and all but upended market environment where Internet services are concerned (in the sense that Canada now has an oligopoly where before there was a monopoly). For instance, rather than being concerned with insufficient investment in facilities, multiple key voices have begun cautioning the CRTC against *over*-investment through inefficient duplication of facilities, as the City of Calgary did in the proceeding leading to the CRTC's decision.¹²⁹ Fully reliant as they are on what could very

¹²⁸ See “Bell habitually overstates the risk of pro-competitive regulatory measures”, [above](#), and “Bell’s threat to delay or halt rural broadband deployment lacks credibility”, [above](#).

¹²⁹ See CRTC 2013-551, Transcript, Hearing 28 November 2014, Presentation of the City of Calgary, online: <http://www.crtc.gc.ca/eng/transcripts/2014/tt1128.htm> at paras 6897-6907:

The dilemma that the Commission must address is that promoting competition between TSPs is not simply a matter of considering and applying economic principles. The physical reality of the installation of all telecommunication infrastructure has to be taken into account, which becomes particularly important with the construction of new fibre networks. Support structures are categorized as a public good wholesale service based on the fact that duplicate support structure facilities would result in an inefficient use of public land and private resources and would be an inconvenience to the public. ... As can be seen on the screen, multiple installations of fibre network cabinets by carriers are also an inefficient use

well by this point be an outdated model, the economists' reports submitted by Bell paint far from a complete picture.

147. The second assumption is that what occurs in other jurisdictions when it comes to telecommunications regulations can be applied in a straightforward manner to determine policy outcomes to Canada. This assumption is untrue—and that is leaving aside the inaccuracies in Bell's characterization of other jurisdictions' policies to begin with. For example, Bell and the reports it commissions for various proceedings repeatedly point to Europe as an example failure of network sharing. However, what Bell repeatedly fails to mention is that Europe operates in a different structural and market environment, due to the historical lack of cable carriers or even a second incumbent against whom dominant carriers in each region would be forced to compete.¹³⁰ This means that investment could in fact decline in the event of network sharing, as the incumbent could stop investing and self-improving without being concerned about a competitor at its heels. In Canada, however, the fierce competition between telephone carriers and cable carriers ensure that this is very unlikely ever to happen.
148. Similarly, the examples concerning Japan and South Korea omit the fact that before deregulation, both countries applied network sharing as well as invested vast amounts of public spending on their telecommunications networks, nearly nationalizing their telecommunications industry, before competition rose to the level where deregulation was possible.¹³¹ Further and more fulsome studies would be required before Cabinet could make an accurate determination as to the applicability of other jurisdictions' policies, histories, regulatory schemes, and legal and economic contexts to our uniquely Canadian telecommunications landscape—if that were the main question in this proceeding, which the Coalition reiterates it is not in any case.
149. Finally, the key expert, Hal Singer (author or co-author of 3 of Bell's 5 expert reports attached to the Petition) makes a key assumption regarding the regulatory rules he is charged with evaluating which is incorrect. He states in "The Economic Impact of the CRTC's Decision to Unbundle Fibre-to-the-Premises Networks" (being Attachment 2 to the Petition), that: "In a prior decision from 2010, the CRTC limited its intervention to mandate access to "aggregated wholesale high-speed access" services to telco fibre-to-the-node (FTTN) and cableco DOCSIS 3.0 facilities, **thereby exempting FTTP from mandatory unbundling.** [Emphasis added; footnotes omitted.]
150. Mr. Singer's assumption that the CRTC "exempted" FTTP from mandatory unbundling in Telecom Regulatory Policy 2010-632, *Wholesale high-speed access services* proceeding, is

of public land and private resources and a significant inconvenience to the public, similar to duplicate installations of support structures.

See the CRTC's key findings, described [above](#).

¹³⁰ CRTC 2013-551, Reply of OpenMedia.ca (24 October 2014), at para 84.

¹³¹ *Ibid.*, at para 83.

incorrect. No such exemption was ordered.¹³² Instead, the CRTC had an open debate on the issue in the proceeding leading to the Decision that is petitioned from here, once FTTP began to be more widely deployed. Such an assumption on Mr. Singer's part appears to bias later remarks in the same paper that the CRTC intended to not regulate wholesale FTTP access while in fact the CRTC merely deferred the consideration until the actual issue arose.¹³³

151. Many of the parties and intervenors who opposed Bell's positions at the CRTC proceeding provided countervailing evidence regarding much of the above—such as academic researchers, individual Canadians, and public interest groups— although they generally lacked similar means or resources to pay for expert reports to match those that Bell submitted in the proceeding or for answering this Petition. This is simply one more reason that Cabinet should defer to the CRTC, the expert, independent administrative tribunal to whom all parties were able to present and test, in a public forum, all the evidence available at the time. Moreover, that was the time when most if not all parties believed that it would be their only opportunity to provide the Commission with relevant evidence, and conducted their participation on that basis. Voiding their efforts in favour of a single complainant would deliver a severe blow, in Canadians' eyes, to the principles of due process and fairness in governance.

iii. Bell's economists' reports are inappropriate and out of scope

152. Finally, the Coalition believes that submitting so-called expert evidence in a Petition to Cabinet constitutes inappropriate use of this specific legal avenue, raising issues of procedural fairness as well as access to justice. A petition to Cabinet is just that—a petition reverse a previously made decision, one that in this case the CRTC made based on an expansive public record of evidence from a wide range of voices. Expert reports such as those that Bell submitted go to the specific facts and evidence of a decision, and not to the appropriateness of how a decision was made, or the political ramifications of the decision.

153. The petition to Cabinet exists to check or oversee lower-level decisions—generally only in rare situations,¹³⁴ not a foreseeable situation with multiple precedents. This suggests that Cabinet should consider the process by which the tribunal came to its decision, rather than

¹³² See Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding* (30 August 2010) at paras. 121-22.

¹³³ See in particular at pages 7, where he implies the CRTC created a “natural experiment” to test the effect of not mandating wholesale access to FTTP while requiring it for FTTN and at p 8 where he imputes a motive to Bell's move to FTTP from FTTN “presumably in part to avoid the unbundling mandate” as well as numerous subsequent analyses that are based on the theory of “regulatory distortion”. Such assumptions lead his analysis to discard or at least not consider the possibility Bell could be rolling out FTTP in reaction to cable companies' superiority in speeds or the desire to sell data-heavy Bell- controlled content.

¹³⁴ “The Cabinet review power has been used on a number of occasions. It is frequently called for by parties who are dissatisfied with CRTC decisions. However, the government has seldom granted such requests, and the Cabinet review power has never been used by the government on its own initiative.” Telecommunications Policy Review Panel Final Report (2006), online: [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\\$FILE/tprp-final-report-2006.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/$FILE/tprp-final-report-2006.pdf).

repeat the considerable exercise of parsing all the evidence, re-establishing every fact, and retrying all the issues. Petitions from decisions are an opportunity for political and policy review, not an opportunity to engage in a redo of the original proceeding.

154. In the event specific facts do arise as a relevant issue, it is a generally and long recognized principle that higher-level adjudicators may, if not should, defer to lower-level courts or tribunals, as those decision-makers were closest to the ground; immersed for a prolonged period of time in the facts and surrounding contexts; and draw upon their own specialized expertise in determining the facts and coming to their respective decisions.¹³⁵ Reports such as the ones attached to Bell's petition all go to the facts of a matter—facts already put forward, tested, considered, and rejected or accepted before and by the CRTC. They do not go to process or how the CRTC came to its decision, as long as the CRTC duly considered them, which the Commission clearly did.¹³⁶ While the Coalition realizes that Cabinet is not a court or law, nor is meant to be, it seems reasonable that the general principle should still apply, of deferring on factual matters to those who were best positioned to determine what the facts were.
155. By attaching these reports, Bell appears to be asking Cabinet to re-evaluate the entire wholesale services framework where fibre-to-the-premises is concerned, informed by only a select, narrow, self-serving portion of the available evidence. The very fact that Bell petitioned to Cabinet rather than appealed to the Federal Court of Appeal suggests that they know the CRTC's decision would be much harder to impeach on legal grounds, where reviving a battle over established facts, or the exercise of discretion, is frowned upon. As a result, Bell is using its commissioned reports to distort the process and bring attention back to evidence that was already considered, taken account of, or rejected at first instance, in hopes that Cabinet will decide differently, undistracted by the volume of countervailing evidence submitted in the original CRTC proceeding.
156. The main question that should concern Cabinet is this: is this a case where it would be appropriate or desirable for Cabinet to override or even disrupt or delay the CRTC's decision? The relevant response to that question should be the resounding "no" of more than 52,000

¹³⁵ See, for example, *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 12-13:

It is important to emphasize the Court's endorsement of Professor Dyzenhaus's observation that the notion of deference to administrative tribunal decision-making requires "a respectful attention to the reasons offered or which could be offered in support of a decision". [...] This, I think, is the context for understanding what the Court meant in *Dunsmuir* when it called for "justification, transparency and intelligibility". To me, it represents a respectful appreciation that a wide range of specialized decision-makers routinely render decisions in their respective spheres of expertise, using concepts and language often unique to their areas and rendering decisions that are often counter-intuitive to a generalist. That was the basis for this Court's new direction in *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, 1979 CanLII 23 (SCC), [1979] 2 S.C.R. 227, where Dickson J. urged restraint in assessing the decisions of specialized administrative tribunals....

¹³⁶ See generally Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies* (22 July 2015).

Canadian Internet users, over 100,000 small-business owners, numerous public interest groups and municipal or provincial governments, and general civil society as described elsewhere in this submission—not targeted reports by five economists. Giving weight to the latter is not only inappropriate, but irrelevant, when it comes to the ultimate question that lies before Cabinet in this proceeding.

Bell does not speak for Canadians

157. As final point about why Bell is wrong, the Consumer Choice Coalition notes that Bell does not speak for Canadians.

158. That Bell does not speak for Canadians should be a given, yet Bell claims to know what the best long-term interests of consumers are. Bell states that “Interfering with policies that encourage facilities-based competition and investment in NGNs [next generation networks] will inevitably fail to deliver what Canadians want, which is not just more companies selling the same services on the same networks, but more network and service choices that offer the best quality at the highest speeds.”¹³⁷

159. Yet Bell has failed to offer any evidence in support of “what Canadians want”. Bell did not offer any survey evidence, nor any support from other elements of civil society.

160. In the next section the Consumer Choice Coalition carries on from that point to argue that Canadians will be upset if Cabinet overturns the CRTC.

¹³⁷ Bell Petition at para. 61.

Submission 3: Canadians will be upset if the CRTC is overturned

161. In this third of three main submissions, the Consumer Choice Coalition submits that Canadians will be upset if Cabinet overturns the CRTC is overturn. Bell has stated that the CRTC's decision was "widely opposed".¹³⁸

Key Points

- The CRTC's decision was **widely supported**. Bell is wrong when it says the CRTC decision's was "widely opposed".
- Overturning the CRTC will be a blow to evidence-based policy making.

The CRTC's decision was widely supported

162. Bell has stated that the CRTC's decision was "widely opposed".¹³⁹

163. That is not true.

164. Far from being "widely opposed", the CRTC's decision garnered praise from across several sectors of Canadian society, as a favourable ruling for both Canadians and the Canadian public interest.

165. Consumer Choice Coalition members such as the Public Interest Advocacy Centre and the Consumers' Association of Canada lauded the decision as it is expected to "ensure competition at the retail level which will provide consumers with more choice and better prices for broadband".¹⁴⁰

166. Non-profit digital policy groups such as Cybera¹⁴¹ and OpenMedia, who submitted a petition on behalf of 30,000 Canadians to the proceeding, declared the decision "a significant step forward for Canadians' ability to access affordable Internet options".¹⁴² Small-business Internet service providers such as those in the Canadian Network Operators Consortium

¹³⁸ *Ibid.*, at 16.

¹³⁹ *Ibid.*

¹⁴⁰ Public Interest Advocacy Centre, "Consumers to benefit from wholesale fibre access to Internet" (22 July 2015) online: <http://www.piac.ca/our-specialities/consumers-to-benefit-from-wholesale-fibre-access-to-internet>.

¹⁴¹ "This is a major victory for Canadian consumers, who will now get more choice in their internet service providers, and will have improved access to high-speed internet at better costs." Cybera, "CRTC decision on wholesale internet access a positive shift for Canadian consumers" (6 August 2015) online: <http://www.cybera.ca/news-and-events/tech-radar/crtc-decision-on-wholesale-internet-access-a-positive-shift-for-canadian-consumers/>.

¹⁴² OpenMedia.ca, "Our crowdsourced policy became government policy. The CRTC heard your call, Canada." (22 July 2015) online: <https://openmedia.ca/blog/our-crowdsourced-policy-became-government-policy-crtc-heard-your-call-canada>.

commended the Commission, stating that their “pivotal decision underscores the CRTC’s commitment to addressing market failures [and] is a clear win for consumers”.¹⁴³ Reinforcing the public interest element of the CRTC’s decision, multiple municipalities and provincial governments participated in both the written stages and oral hearing of the proceeding to advocate precisely what the Commission ultimately decided.¹⁴⁴

167. Finally, academic researchers and experts in the field, such as Michael Geist, Canada Research Chair in Internet and E-commerce Law at the University of Ottawa, Faculty of Law, praised the decision for its broad and equitable impact: “Canadians in urban areas will benefit from a more competitive environment for high-speed fibre services, while consumers in rural and remote areas will be guaranteed access through a clear legal commitment to universal broadband service.”¹⁴⁵ On the whole, Canadian civil society appears to have welcomed the CRTC’s decision.

Overturning the CRTC will be a blow to evidence-based policy making

168. Overturning the CRTC will be a blow to evidence-based policy making.

169. As described in the section above titled the “CRTC and its decision in context”, the CRTC is an expert, independent administrative tribunal, and it reached its decisions after an extensive public consultation and based its decisions on an extensive evidentiary record. The CRTC explicitly acknowledged the balancing of interests it undertook in the decision. In discussing the decision with in an interview with BNN (Business News Network), as quoted [above](#), CRTC Chairman Jean-Pierre Blais described the balancing of interests, and the CRTC’s ultimate finding with respect to Bell’s threat about delayed or abandoned investment.¹⁴⁶

170. For its part, the Liberal government campaigned on a promise of “Fair and Open Government”, which included the following commitments:

- a. “Open and transparent government”
- b. “Giving Canadians a voice in Ottawa”

¹⁴³ CARTT.ca, “CRTC’s fibre decision good for competition, cures ‘market failures’: CNOC” (22 July 2015) online: <https://cartt.ca/article/crtc%E2%80%99s-fibre-decision-good-competition-cures-%E2%80%99market-failures%E2%80%9D-cnoc>.

¹⁴⁴ See, e.g., “The City of Calgary submitted that the incumbent carriers have a competitive advantage in building out FTTP networks because of their existing access to support structures and municipal rights-of-way. The City of Calgary submitted that FTTP networks should be deployed as efficiently as possible and with a view to minimizing costs and inconvenience born by municipalities when rights-of-way are accessed. Accordingly, the City of Calgary supported the mandated provision of FTTP access facilities to competitors.” Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies* (22 July 2015) at 104.

¹⁴⁵ Cybera, “CRTC decision on wholesale internet access a positive shift for Canadian consumers” (6 August 2015) online: <http://www.cybera.ca/news-and-events/tech-radar/crtc-decision-on-wholesale-internet-access-a-positive-shift-for-canadian-consumers>.

¹⁴⁶ “More competition, better for internet consumers: Blais” (22 July 2015) (video), online: Business News Network, online: <http://www.bnn.ca/Video/player.aspx?vid=662868>.

c. "Evidence-based policy"¹⁴⁷

171. On the promise of open and transparent government the Liberals said that "It is time to shine more light on government and ensure that it remains focused on the people it is meant to serve."
172. On the issue of giving Canadians a voice in Ottawa, the Liberals said that "Government must always stay focused on serving Canadians and solving their problems."
173. On the promise of evidence-based policy the Liberals said that "Government should base its policies on facts, not make up facts to suit a preferred policy. Common sense, good policy, and evidence about what works should guide the decisions that government makes."
174. On the issue of "better service for Canadians", the Liberals also said that "We will involve Canadians in policy-making. Technology makes it easier for citizens and government to share ideas and information. We will explore new ways to use technology to crowdsource policy ideas from citizens."
175. To overturn the CRTC would be a surprising outcome in these circumstances.

Canadians will be upset if Cabinet overturns the CRTC

176. Because the Commission's decision was widely supported, and because the CRTC arrived at its decision via an open, accountable, and transparent process, and did so based on an extensive evidentiary record, the Consumer Choice Coalition expects that Canadians will therefore be upset if Cabinet overturns the CRTC.
177. The Consumer Choice Coalition expects that Cabinet would face legitimate criticism for endorsing Bell's control over customers when the weight of policy is in favour of mandating shared access to improve competition and choice for Canadians.
178. The Consumer Choice Coalition notes already that well over 52,000 Canadians have signed a petition¹⁴⁸ from OpenMedia opposing Bell's petition.
179. The way Bell is using the Cabinet petition mechanism as an *alternative* to the review and vary route, and to the statutory appeal route, rather than as a last resort, suggests that Bell may actually be seeking to circumvent the regulatory and judicial process through a political channel
180. At the same time, the Consumer Choice Coalition notes that siding with Bell and undermining the CRTC's independence and expertise when it was not necessary to support the best

¹⁴⁷ "Real Change: "A New Plan for a Strong Middle Class", online:
<https://www.liberal.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf>.

¹⁴⁸ OpenMedia "This is an Internet Emergency. Speak Out While There's Still time", online:
https://act.openmedia.org/emergency?utm_source=twitter&utm_medium=post&utm_campaign=7012&tid=290.

interests of Canadians would not just be imprudent from a policy perspective, but it would be imprudent from a political perspective.

181. The Consumer Choice Coalition therefore asks Cabinet to defer to the considered judgment of the CRTC, and to consider how Canadians want more telecom choice, and how upset they will be if Cabinet sides with Bell, and the consequences of overriding the open, transparent administrative processes of the CRTC.

Conclusion

182. While Bell is entitled to seek Cabinet reconsideration of the CRTC's decision, it cannot be ignored that Bell has a track record of regularly taking CRTC matters to court or to Cabinet when Bell does not get its way. In this case, Bell is asking Cabinet to overturn a key decision by the CRTC to allow competing internet service providers to compete for Canadians' business using the un-duplicable fibre-optic connections to customers' homes and businesses. (known as "**fibre-to-the-home**" or "**fibre-to-the-premises**").
183. Bell does not speak for Canadians. Bell does not have the polycentric mandate that the CRTC has. Bell does not have the evidence and expertise that the CRTC has.
184. It would be eminently reasonable for Cabinet to defer here to the CRTC.
185. The CRTC, an expert administrative body responsible for polycentric policy objectives applied a Competition Bureau endorsed test to an extensive evidentiary record to arrive at a decision that supports the policy objectives entrusted to it. The CRTC responsibly consulted on these important issues, and considered all of the evidence and views before it.
186. It is unsurprising therefore that the decision was widely supported.
187. Overturning the CRTC, or sending the matter back for further consideration, would be a highly unpopular policy mistake.
188. Cabinet should take care not to undermine the work and analysis that went into this decision, and the broader context in which the decision is situated. Instead, Cabinet has the opportunity to express its confidence in the CRTC, and perhaps more importantly, the opportunity to start off on the right foot with Canadians in its first major test representing how the new Liberal government sees Canada's digital future.
189. Therefore, the Consumer Choice Coalition urges Cabinet to **deny Bell's petition**, and **neither vary nor rescind the decision nor refer it back to the CRTC for reconsideration**. Cabinet should let the CRTC carry on with its important work on behalf of Canadians. Cabinet should not overturn the CRTC, nor refer the decision at issue back to the CRTC for reconsideration, which would equally play into a strategy to stall, if not block competition. Certainty is what is needed now to let competition work for Canadians.

End of Submission

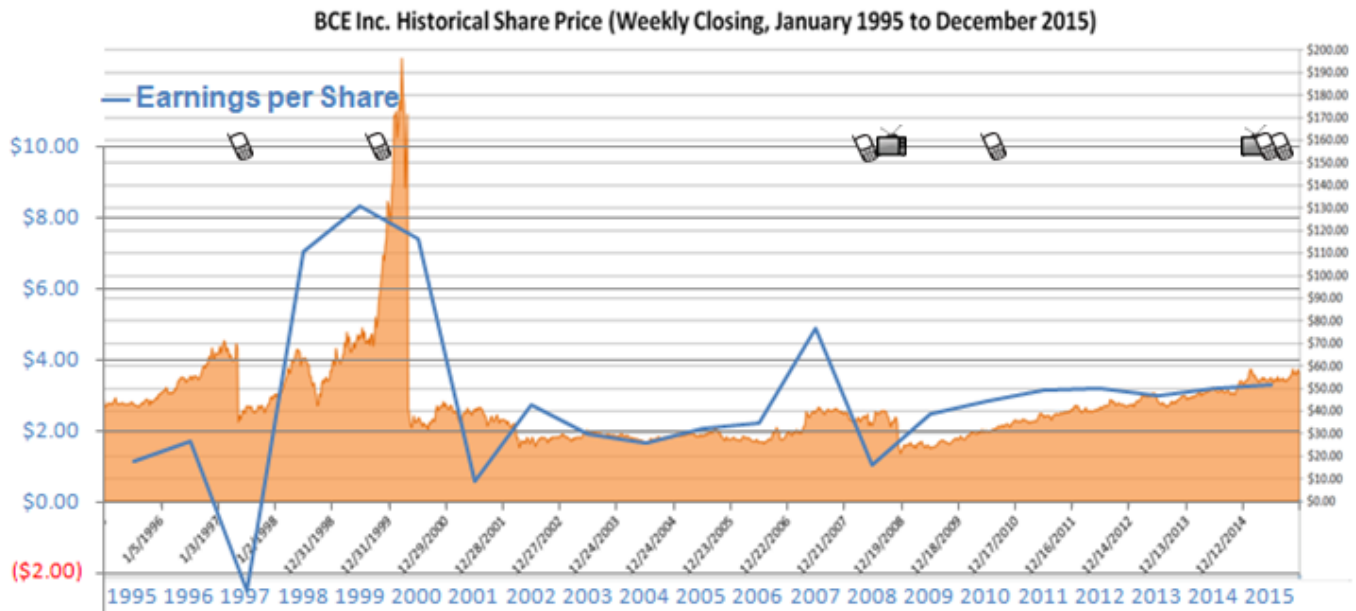
Attachments

"A" – Market Reaction to Major Regulatory Decisions

"B" – Evidence about Network Sharing and Rates of Return

Appendix "A" - Market Reaction to Major Regulatory Decisions

**Bell Share Prices, Earnings per Share, and CRTC Framework Decisions
 1995-2015
 (Data from BCE Inc. Stock Price History)¹⁴⁹**



Decision	Title	Date
CRTC 97-8	Local Competition	May 1, 1997
CRTC 99-16	Telephone Service to High-Cost Serving Areas	October 19, 1999
CRTC 2008-17	Revised regulatory framework for wholesale services and definition of essential service	March 3, 2008
CRTC 2008-100	Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services	October 30, 2008
CRTC 2010-632	Wholesale high-speed access services proceeding	August 30, 2010
CRTC 2015-177	Regulatory framework for wholesale mobile wireless services	May 5, 2015
CRTC 2015-326	Review of wholesale wireline services and associated policies	July 22, 2015
CRTC 2015-	Let's Talk TV: The way forward - Creating compelling and	March 12, 2015

¹⁴⁹ Data generated at <http://www.bce.ca/investors/stock-info/stockpricehistory> (weekly values, January 1, 1995 to December 7, 2015). Raw data for earnings per share found in table below.

Bell Share Prices, Earnings per Share, and CRTC Framework Decisions 1995-2015 (Data from *Globe and Mail*)¹⁵⁰



¹⁵⁰ Historical Share Price chart generated at <http://www.theglobeandmail.com/globe-investor/markets/stocks/summary/?q=BCE-T>, set to "full-width interactive chart" on "max" time frame; screen-captured and cropped to exclude pre-1995 years and resized to fill width of page. Raw data for earnings per share found in table below.

Bell's Earnings per Share (1995-2015)

1995	\$1.12 ¹⁵¹
1996	\$1.70 ¹⁵²
1997	-\$2.53 ¹⁵³
1998	\$ 7.07 ¹⁵⁴
1999	\$8.35 ¹⁵⁵
2000	\$7.43 ¹⁵⁶
2001	\$0.57 ¹⁵⁷
2002	\$2.74 ¹⁵⁸
2003	\$1.90 ¹⁵⁹
2004	\$1.65 ¹⁶⁰
2005	\$2.05 ¹⁶¹
2006	\$2.25 ¹⁶²
2007	\$4.88 ¹⁶³
2008	\$1.02 ¹⁶⁴

151 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2000/ar_2000.pdf at 61.

152 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2000/ar_2000.pdf at 61.

153 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2000/ar_2000.pdf at 61.

154 Online:
<http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/1999/bcear99e.pdf> at 19.

155 Online:
<http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/1999/bcear99e.pdf> at 19.

156 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2000/ar_2000.pdf at 61.

157 Online:
<http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2001/BCEAREng.pdf> at 9.

158 Online:
http://www.bce.ca/assets/Uploads/Documents/archivesAnnualReport/BCE/2002/BCE_EngAIF_Final.pdf at 27.

159 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2004/BCE_annual_2004.pdf
 at 42.

160 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2004/BCE_annual_2004.pdf
 at 42.

161 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2005/BCE_annual_2005_en.pdf
 at 12.

162 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2006/BCE_annual_2006_en.pdf
 at 16.

163 Online:
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2007/BCE_annual_2007_en.pdf
 at 16.

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2009	\$2.50 ¹⁶⁵
2010	\$2.84 ¹⁶⁶
2011	\$3.13 ¹⁶⁷
2012	\$3.18 ¹⁶⁸
2013	\$2.99 ¹⁶⁹
2014	\$3.18 ¹⁷⁰
2015	\$3.28 (forecast) ¹⁷¹

¹⁶⁴ Online: http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2008/BCE_annual_2008_en.pdf at 32.

¹⁶⁵ Online: http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2009/BCE_annual_2009_en.pdf at 31.

¹⁶⁶ Online: http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2010/BCE_annual_2010_en.pdf at 36.

¹⁶⁷ Online: <http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2011/BCEAR2011EN.pdf> at 36.

¹⁶⁸ Online: http://www.bce.ca/investors/AR-2012/BCE_2012_AnnualReport_accessible.pdf at 1.

¹⁶⁹ Online: http://www.bce.ca/investors/AR_2013/BCE_2013_Annual_Report.pdf at 3.

¹⁷⁰ Online: http://www.bce.ca/investors/AR_2014/BCE_2014_Annual_Report.pdf at 3.

¹⁷¹ Online: <http://www.bce.ca/investors/financialperformance/outlook>; see screenshot below

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Bell Forecast 2015: Earnings per Share

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Financial reporting

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The information included on this page represents our guidance as confirmed on November 5, 2015.
 Please read our [caution concerning forward-looking statements](#) when using this information.

BCE's financial guidance for 2015

	February 5	November 5
Revenue growth	1% to 3%	On track
Adjusted EBITDA growth	2% to 4%	On track
Capital intensity	Approx. 17%	On track
Adjusted EPS ⁽¹⁾	\$3.28 to \$3.38	On track
Free cash flow growth ⁽²⁾	Approx. 8% to 15%	On track

⁽¹⁾ Net earnings attributable to common shareholders before severance, acquisition and other costs, net (gains) losses on investments and early debt redemption costs per BCE common share.

⁽²⁾ As of November 1, 2014, BCE's free cash flow includes 100% of Bell Allant's free cash flow rather than cash dividends received from Bell Allant. We define free cash flow as cash flows from operating activities, excluding acquisition costs paid and voluntary pension funding, less capital expenditures, preferred share dividends and dividends paid by subsidiaries to non-controlling interest.

For additional details and explanations, please see BCE's news release dated November 5, 2015.

Yearly Percentage Change in Cumulative Total Shareholder Return Compared to TSE 300 (1995-2000)

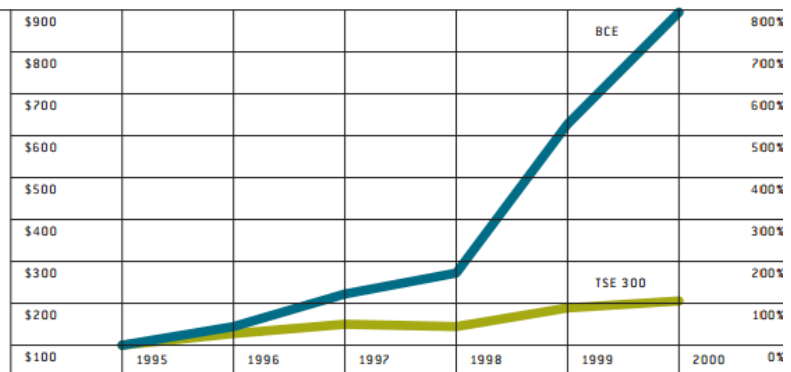
http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2000/ar_2000.pdf at 2.

Shareholder return performance

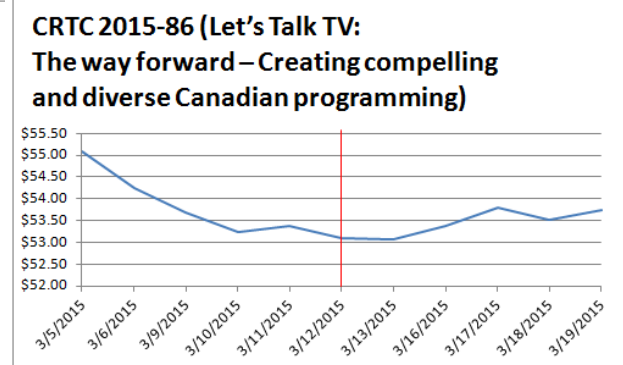
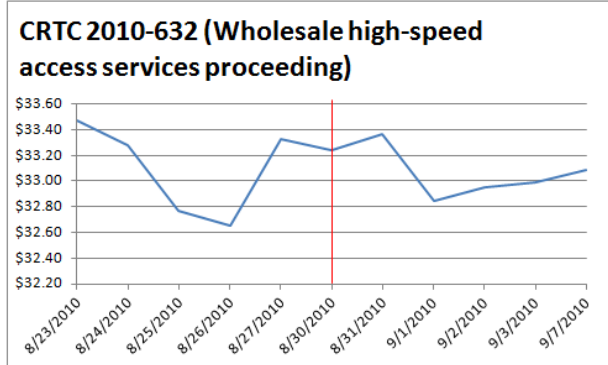
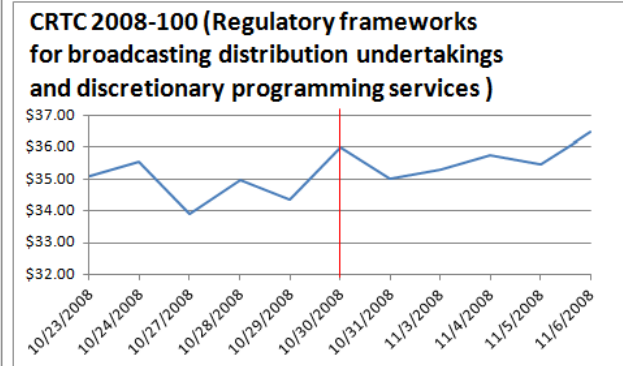
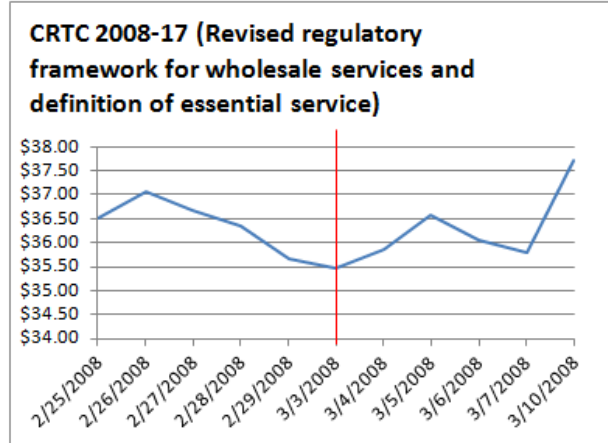
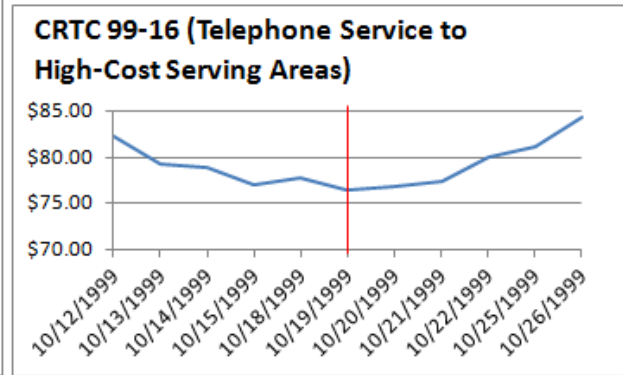
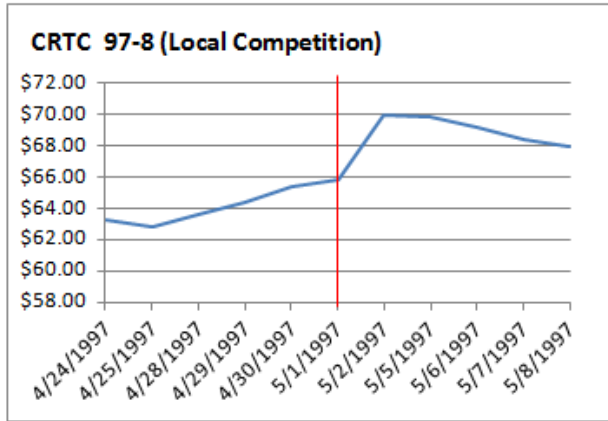
This graph compares the yearly percentage change in the cumulative total shareholder return on the Corporation's common shares against the cumulative total shareholder return of the TSE 300 Composite Index for the five-year period commencing December 31, 1995, and ending December 31, 2000.*

*Assumes that the initial value of the investment in the Corporation's common shares and in the TSE 300 Composite Index was \$100 on December 31, 1995, and that all subsequent dividends were reinvested. All prices for the Corporation's common shares were taken from The Toronto Stock Exchange's records.

The graph has been adjusted to reflect the distribution on May 1, 2000, by the Corporation to its common shareholders of an approximate 35% ownership interest in Nortel Networks by way of a plan of arrangement. For this graph, it has been assumed that the 1.57 common shares of Nortel Networks received on a post-split basis for each BCE Common Share held, as a result of the plan of arrangement, were sold on May 5, 2000 and that the proceeds from such disposition were reinvested into BCE common shares on such date.



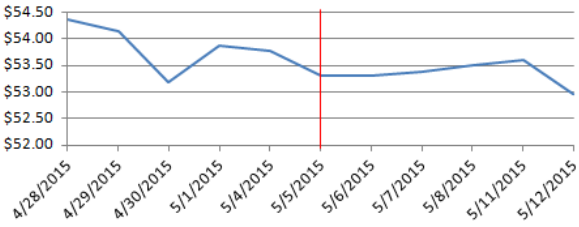
Short-Term Impact of CRTC Decisions on BCE Inc. Share Prices (Daily Closing Prices, One Week Before and After Decision)¹⁷²



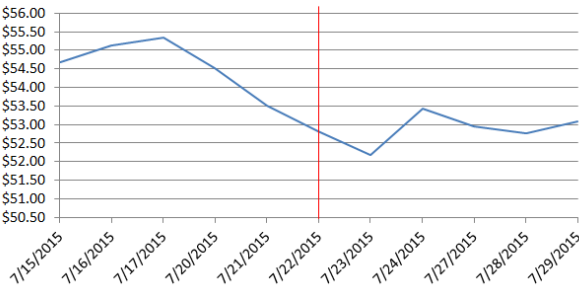
¹⁷² Data generated at <http://www.bce.ca/investors/stock-info/stockpricehistory>. Red line denotes date of the pertinent decision.

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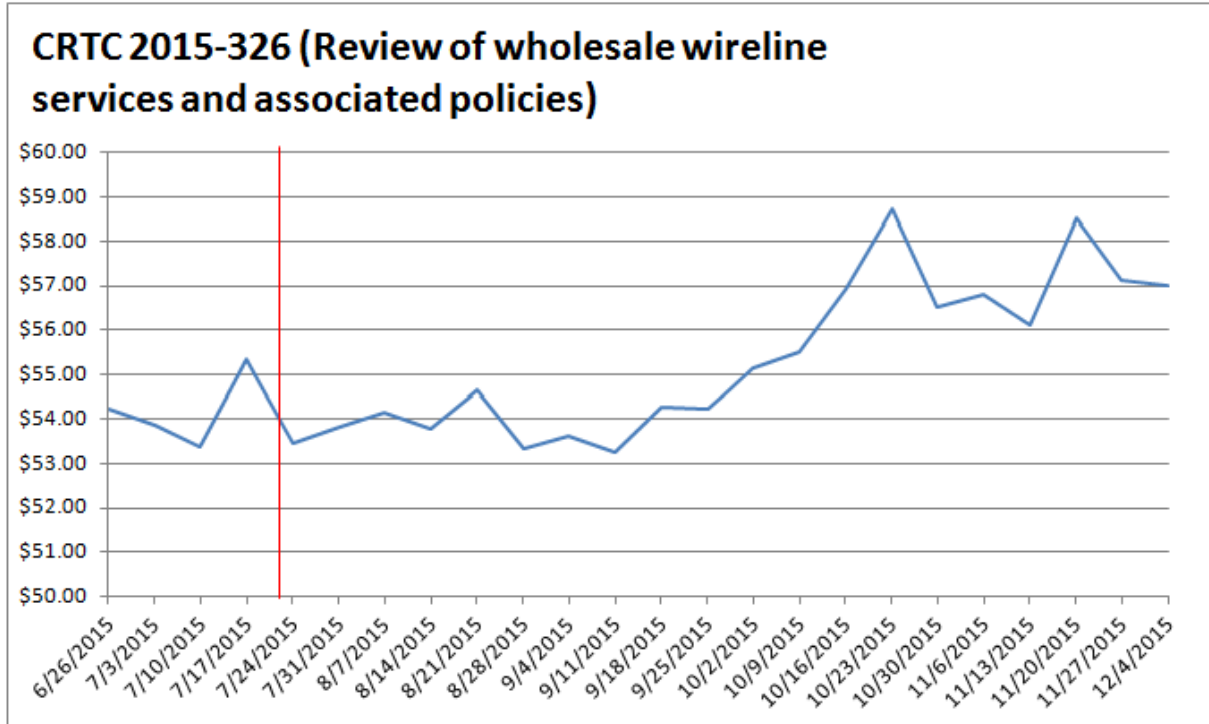
CRTC 2015-177
(Regulatory framework for
wholesale mobile wireless services)



CRTC 2015-326 (Review of wholesale wireline
services and associated policies)



**Impact of *Wholesale Wireline* decision on BCE Inc. Share Prices
(Weekly Closing Price, June 26, 2015 to December 4, 2015)¹⁷³**



¹⁷³ Data generated at <http://www.bce.ca/investors/stock-info/stockpricehistory>. Red line denotes date of decision.

Appendix "B" - Evidence about Network Sharing and Rates of Return

This Appendix provides supporting evidence about how mandated network sharing can yield a positive rate of return for those with the mandate. The supporting evidence comes from:

- [CRTC proceedings](#);
- [Secondary sources](#); and
- [Investor materials](#).

Supporting Evidence: CRTC Proceedings

Emphasis by the Consumer Choice Coalition is denoted with underscore.

Telecom Regulatory Policy CRTC 2015-326 *Review of wholesale wireline services and associated policies (22 July 2015)*

141. There are several reasons, however, why the negative impact on investment is not likely to happen to any significant degree, particularly in more urban areas. First, the Commission expects that the incumbent carriers will generally continue to invest in FTTP access facilities in order to provide enhanced retail Internet access services in response to consumer demand, as well as to compete effectively and efficiently with the Cablecos. In addition, mandating the provision of disaggregated wholesale HSA services over FTTP access facilities would be predicated on wholesale rates that are compensatory and that provide a reasonable rate of return, resulting in profit on the associated investment.

142. Given the above considerations, adoption of an appropriate transition and implementation plan to migrate from the current aggregated wholesale HSA service model towards the disaggregated wholesale HSA service model would substantially alleviate the various investment and innovation concerns identified above. In addition, and as stated above, any investment risks associated with mandating the provision of wholesale HSA services over FTTP access facilities can be attenuated by providing the incumbent carriers with a reasonable rate of return.

Approach to setting rates for wholesale services

218. The Commission's approach to setting rates for wholesale services is based upon the use of incremental costing, which is then supplemented by an approved markup to establish the appropriate rate. Pursuant to the Commission's approach, company-specific costs are generally used in the calculation of costs, which are measured by the incremental, forward-looking costs causal to the provision of that wholesale service.

219. Markups are intended to contribute to the fixed and common costs of the company. However, markups have varied over time depending on a number of factors, including whether the wholesale service is essential, as well as whether there may be additional risk to network investment if the wholesale service is mandated (referred to as a risk premium).

220. Incumbent carriers are required to provide costing information to support their proposed rate for any new wholesale service, or when they want to amend an approved rate for a specific wholesale service, or if the Commission deems that a specific wholesale service's rate should be re-examined.
227. ... Moreover, the ILECs submitted that the Commission's practice of providing a risk premium to account for risks inherent in next-generation networks was appropriate and should continue, and that such risks are better accounted for in the markup rather than as a component of the cost of capital. The Cablecos submitted that if risk premiums are included in the markups for wholesale services provided by the ILECs, then an equivalent premium should be included in the markups for wholesale services provided by the Cablecos.
234. First, no evidence was provided to suggest that the incremental costing approach results in rates that are not just and reasonable. Second, there is no evidence to suggest that developing alternative costing approaches would improve regulatory efficiency, as both proposed approaches include assessing contentious costing elements that would be subject to significant scrutiny and debate. Finally, adopting and implementing any alternative costing approaches, as proposed by both CNOC and RCP, would require extensive follow-up proceedings which would inappropriately create uncertainty in the various markets.

Telecom Decision CRTC 2013-480

Review of rate principles for legacy business wholesale high-speed access services

http://crtc.gc.ca/eng/archive/2013/2013-480.htm?_ga=1.249424002.484016294.1438093447

36. The Commission considers that the rates approved in this decision were established with a view to ensuring that competitors pay rates constituting Phase II costs plus a reasonable markup, while the incumbent providers legitimately recover the costs that are incurred.

[2] Markup is defined as the difference between the cost and rate of a service. For example, if the service cost is \$100 and the markup is 15 percent, then the service rate is \$115. Markup provides a contribution to incumbent carriers' fixed and common costs. Fixed and common costs are costs that do not vary with the offering of a service. These costs are not incremental to providing wholesale services and hence are not recovered in incremental wholesale cost studies. Markup should not be confused with profit margin, given that a number of costs such as corporate overheads and past network investment

Telecom Decision CRTC 2013-603:

TELUS Communications Company – Application to review and vary Telecom Decision 2013-73

<http://www.crtc.gc.ca/eng/archive/2013/2013-603.htm>

32. With regard to TCC's contention that the markups approved in Telecom Decision 2013-73 provide inadequate compensation to network providers, and hence harm its incentives to invest in network infrastructure, the Commission notes that TCC has not provided any current evidence to support its contention, relying instead on submissions made in past proceedings with regard to different services. Similarly, the Commission notes that the markups proposed by TCC were not supported by any current evidence that would indicate why these markups are appropriate.

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33. The Commission also notes that the decision to require incumbent carriers to provide business wholesale HSA services to independent service providers at the same rates as those approved for the equivalent residential wholesale HSA services was made under the policy considerations set out in Telecom Regulatory Policy 2013-70. One of the policy considerations expressly set out in that decision was the appropriate level of compensation to be provided to incumbent carriers for the provision of wholesale HSA services. The Commission considers that the impact of that decision on incentives to invest in new infrastructure was taken into account in determining the appropriate level of compensation for wholesale HSA services.

34. The Commission notes that the purpose of markup in Phase II costing is to provide for the recovery of fixed and common costs that are not causal to any service. In Telecom Regulatory Policy 2010-632, the Commission approved, for ILEC-provided wholesale HSA services, an additional 10 percent markup on the costs of providing these services over new network facilities, (i) in recognition of the fact that the cost of capital associated with these new facilities might be greater than the cost of capital approved for use in regulatory studies, and (ii) in lieu of evaluating what that higher cost of capital might be.

35. Based on the above, the Commission finds that TCC's submissions that markups should be set with a view to compensate for risk, or to provide a return to shareholders, is not consistent with the principles of Phase II costing. Furthermore, the Commission finds that TCC's proposed increase to the markup on wholesale HSA services is not supported by any evidence that the markups approved in Telecom Decision 2013-73 are inadequate.

Telecom Regulatory Policy CRTC 2013-70: Disposition of review and vary applications with respect to wholesale high-speed access services: Introductory statement
<http://www.crtc.gc.ca/eng/archive/2013/2013-70.htm>

6. The Commission approved rates for each incumbent, using the model that most closely corresponded to the model each incumbent had proposed for itself in the proceeding. The rates were based on the incumbents' costs to provide the service plus a 30 percent or 40 percent markup.

8. ... This evolution has led to conflicting viewpoints and debate between the incumbents, who seek a price for their wholesale services that fairly compensates them for the investments they must make to develop and maintain their networks, and the independent service providers, who seek wholesale service prices that allow them to compete in the marketplace.

14. Accordingly, in reviewing this set of interrelated requests, the Commission has sought to ensure that there is a competitive wholesale market that accurately compensates each incumbent for the costs incurred to make those wholesale services available to the independent service providers and, at the same time, to allow for effective and efficient competition to the benefit of Canadians.

23. With these decisions, the Commission has sought to ensure that individual and business consumers in Canada have a choice of service provider while fairly compensating incumbents for their network costs.

24. The revised rates for both residential and business wholesale HSA services better reflect the costs of each incumbent, ...

[2] The Commission approved a supplementary markup of 10 percent for the large telephone companies' higher-speed fibre-based wholesale HSA services given that, unlike the cable carriers, the large telephone companies had provided evidence to demonstrate that the matching speed requirement would increase the risk and create disincentives to invest in their new higher-speed fibre-based networks.

Telecom Decision CRTC 2013-71: Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to review and vary Telecom Regulatory Policy 2011-703

<http://www.crtc.gc.ca/eng/archive/2013/2013-71.htm>

Bell applied for a review and vary of Decision 2011-703, submitting substantial doubt regarding the correctness of the Commission's cost adjustments. The Commission denied for lack of evidence, deeming the costs in question sunk costs.

Telecom Decision CRTC 2013-73: Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policies 2011-703 and 2011-704

<http://crtc.gc.ca/eng/archive/2013/2013-73.htm>

31. The Commission further notes that the markups approved for residential wholesale HSA services were found to appropriately compensate incumbents for their costs of providing these services. Given that business and residential wholesale HSA services, including the dedicated wholesale HSA service, use essentially the same network components and incur the same costs, the Commission is of the view that a lower markup would also appropriately compensate incumbents for their costs of providing business wholesale HSA services. Further, contrary to TCC's position, the Commission considers that that the higher markup for business wholesale HSA services was not intended to compensate for the lower markup for residential wholesale HSA services.

115. The Commission considers that the rates approved in this decision were established with a view to ensuring that competitors pay rates constituting Phase II35 costs plus a reasonable markup, while the incumbent providers legitimately recover the costs that are incurred.

**Telecom Regulatory Policy CRTC 2011-703:
Billing practices for wholesale residential high-speed access services**

<http://www.crtc.gc.ca/eng/archive/2011/2011-703.htm>

The Commission has also decided that rates for either model should be based on each of the individual large cable and telephone companies' costs to provide the service plus a reasonable markup, and further, that these markups be comparable for all cable and telephone companies. As an exception to this and consistent with the Commission's decisions in Telecom Regulatory Policy 2010-632, the telephone companies may charge an additional 10 percent markup for usage and access to the faster fibre-to-the-node services. This will encourage companies to continue to invest in this new technology.

43. The Commission recognizes that no billing model will satisfy all the objectives and concerns of all parties. The Commission must determine which model or models will result in the setting of just and reasonable rates. In undertaking this task, the Commission must consider which model or models will best satisfy the objectives of the Telecommunications Act (the Act) and the Policy Direction, which require that the

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Commission foster increased reliance on market forces while ensuring that regulation is efficient and effective.

44. Consequently, the Commission has assessed the proposed billing models in order to ensure that the independent service providers are able to bring pricing discipline, innovation, and consumer choice to the market while not interfering with the network providers' incentives to invest.

60. The Commission notes that the flat rate model has already been implemented and that the network providers mentioned above have submitted cost studies based on that model, which allow for the full recovery of access and usage costs.

78. The Commission notes that all parties proposed that rates be based on costs and considers that a cost-based approach is appropriate. In setting rates, the Commission balances the need to ensure that network providers are reasonably compensated for their costs with the need to ensure that markups are not so high as to significantly impede independent service providers from providing competitive alternatives in the marketplace.

146. The Commission notes that the ILECs have provided, in confidence, time estimates and occurrence rates for their service charge activities and corresponding labour unit costs. The Commission also notes that the proposed time estimates and occurrence rates for a given activity vary considerably across the ILECs. In the Commission's view, the discrepancies among the ILECs' estimates are greater than would reasonably be expected. The Commission notes that the proposed time estimates and occurrence rates were largely based on estimates from subject matter experts and were not supported by empirical evidence, such as measured data or time and motion studies.

Monthly equivalent payment option for access service charge

156. The ILECs submitted that service charges should be recovered up front and that mandating a monthly payment plan would (a) require them to assume financial risk, particularly in situations where their costs would not be fully recovered – for example, if the service is installed for only a short period of time; (b) lead to an increase in the service charge rate to account for additional administrative and billing costs; and (c) be inconsistent with the Policy Direction requirement for the Commission to rely on market forces to the maximum extent possible.

Commission's analysis and decisions

157. The Commission considers that the one-time costs associated with these service charges represent a significant cost for the network providers and that it is reasonable for them to require that these costs be recovered in a timely manner. The Commission concludes that it is inappropriate to require the network providers to bear the financial risk in situations where the customer cancels service before the total service charge payments have been collected.

158. Therefore, the Commission denies CNOC's request to require the network providers to implement a monthly payment plan for service charges related to monthly access charges.

Wholesale high-speed access services proceeding (30 August 2010)

<http://www.crtc.gc.ca/eng/archive/2010/2010-632.htm>

More specifically, the Commission concludes that ILECs are to provide their existing wholesale high-speed access services to competitors at speeds that match all speed options the ILECs offer to their own retail Internet service customers. However, the Commission recognizes that significant up-front investment is required to construct the facilities ILECs use to provision new higher speed wholesale service options. Therefore, rates for these new higher speed wholesale service options will include, in addition to the markup on costs that would otherwise be used, a supplementary markup of 10 percent.

25. The essential services framework also restructured the previous regulatory framework for wholesale services by establishing six categories of wholesale services. Each existing wholesale service was assigned to one of the six service categories,[18] with the ILECs' aggregated ADSL access services and the cable carriers' TPIA services being assigned to the conditional mandated non-essential[19] wholesale service category. Rates for these services are determined on the basis of service costs to the ILEC or cable carrier plus a markup on these costs.

43. The Commission also notes, however, the position of Bell Canada et al. and TCC that a very large amount of up-front capital is required for ILECs to construct FTTN facilities on a widespread basis. The Commission considers that the investment risk associated with construction of these facilities to serve residential and business Internet markets is greater than, and distinguishable from, risk associated with other ILEC facilities.

44. In the Commission's view, if it were to conclude that speed matching for the ILECs' aggregated ADSL access services should be required, it is reasonable that tariffed rates for new higher speed aggregated ADSL access service options (speed-matching rates) should recognize a higher cost of capital than would otherwise be the case. The Commission notes that the ILECs' costs of capital that would otherwise be used to establish these speed-matching rates are significantly lower than the cable carriers' costs of capital used to establish TPIA service rates.

45. The Commission has paid considerable attention to Bell Canada's investment studies and considers that it would be appropriate for the ILECs to use a higher cost of capital, which would be comparable to the hurdle rate Bell Canada used in its internal FTTN investment studies, in the Phase II cost studies of the ILECs for speed-matching rates.[27] The Commission considers that for tariff purposes, the simplest approach for recognizing this higher cost of capital would be to increase the markup applied to Phase II costs when establishing rates for the new higher speed aggregated ADSL service options. In the Commission's view, an additional markup of 10 percent for each ILEC on the Phase II costs used to establish these speed-matching rates would be appropriate.

46. In light of the above, in its reconsideration of a speed-matching decisions, the Commission concludes that with approved rates that reflect an additional markup of 10 percent on Phase II costs, a speed-matching requirement for the ILECs' new higher speed aggregated ADSL access service options would not result in an undue disincentive for ILECs to continue to invest in FTTN facilities. The Commission notes that this additional 10 percent markup on service costs is over and above the markup that would be applied to the ILECs' new higher speed aggregated ADSL access service options. The Commission further notes that if it concluded that speed matching should be required and rates were established on the basis set out above, the effective cost of capital used

to establish both the ILECs' speed-matching rates and the cable carriers' TPIA service rates would be comparable.

87. The Commission notes that cable carriers would have to make network modifications to allow greater aggregation of end-customer traffic for their TPIA services. However, the Commission considers that, given the evidence provided by the cable carriers, it would be feasible to implement such modifications. The Commission considers that the matter can be appropriately addressed through recovery of the costs of implementing the modifications in question through modified tariffs.

94. The Commission notes that implementation may require cable carriers to upgrade their network equipment to support higher speed interconnection. The Commission also notes that cable carriers may recover the cost for upgrading this equipment through updated TPIA tariffs.

[25] Tariffed wholesale service rates are typically based on the incumbent carrier's service costs plus a markup. The incumbent carrier typically files a cost study in support of wholesale service rates it proposes. In that cost study, which includes a cost of capital, the carrier uses incremental economic costs to estimate service costs. These costs are referred to as "Phase II costs" (for historical reasons) and, for ILECs, are assessed using methodologies set out in Phase II costing manuals that the Commission has approved. After costs are assessed, a markup (expressed in percentage terms) is then added to costs to establish the rate for the service.

Telecom Decision CRTC 2008-17

Revised regulatory framework for wholesale services and definition of essential service (3 March 2008)

<http://www.crtc.gc.ca/eng/archive/2008/dt2008-17.htm>

Discussion on how to price wholesale services

128. Bell Canada et al. submitted that they would support setting tariffed prices at Phase II costs plus an appropriate mark-up and that they were not proposing any change in the existing mark-up in this proceeding.

129. TCC proposed a number of pricing principles, such as "adequate compensation" and "efficient entry," to guide the setting of prices for essential services. TCC also submitted that

- this proceeding was about pricing principles and not the setting of actual prices, and that setting prices based on Phase II costs plus a mark-up of 15 percent, as various parties suggested, was merely a formula and not a pricing principle;
- it would be premature to set prices for essential services, or non-essential services during any transition period, using Phase II costs plus a mark-up; and
- the Commission had never provided any justification for the 15 percent mark-up in terms of a principle for determining the proportion of the embedded cost differential to be included in the mark-up.

132. The Commission notes that it has addressed many of TCC's concerns regarding the Phase II methodology and its application in Telecom Decision 2008-14.

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133. Most parties to this proceeding, including all ILECs except TCC, submitted that the current mark-up of 15 percent applied to Phase II costs for determining prices for essential services continues to be appropriate at this time. The Commission notes that parties did not provide compelling evidence or argument to justify a change to the current mark-up. As a result, the Commission considers it appropriate to retain the current pricing principles for setting prices for essential, including conditional essential services, based on Phase II costs plus a mark-up.

134. Accordingly, the Commission determines that for each of the ILECs, except for Télébec and TCC in its operating territory of Quebec, the essential and conditional essential services as defined in this Decision will, at this time, be priced at company-specific Phase II costs plus a mark-up of 15 percent. In the case of Télébec and TCC in its operating territory of Quebec, essential and conditional essential services will continue to be priced at company-specific Phase II costs plus a mark-up of 25 percent, as determined in Telecom Decision 2005-4.

Telecom Public Notice CRTC 2007-4
Review of certain Phase II costing issues

<http://www.crtc.gc.ca/eng/archive/2007/pt2007-4.htm>

2-3a) In general, the proposed rate or rates for the service would be sufficient to recover the costs of the service, where those costs were defined as the Phase II costs of the service plus an imputed cost.

Resource Cost Study

A Resource Cost study establishes a costing benchmark against which proposed rates can be evaluated. A proposed annual rate equal to the annual equivalent cost (AEC) would be the rate at which the Company exactly meets its revenue requirement. At this rate all causal costs are recovered including repayments and return on capital.

In a Resource Cost study the calculations of the AEC involves identifying the cost cash flows causal to the demand growth of a single unit of equipment (or a typical configuration of equipment, such as a Private Branch Exchange (PBX) over the life of that equipment. These cash flows are converted from their time of occurrence to an equivalent one time amount at the start of the study. This quantity is referred to as the Present Worth of Annual Cost (PWAC). The AEC is then established by expressing this present worth amount (PWAC) as an equivalent continuous annuity over a forward looking time frame (typically the investment's life estimate or the proposal's study period). Included in these cost cash flows is income tax payable which is calculated under the assumption that revenues are equal to costs. Other costs include capital, expense and net salvage of the capital costs.

Capital and expense increase factors are included in Resource Cost studies when the results are to be used to establish rates for a multi-year period. When the Resource Cost study is intended for a cost/revenue comparison or for rate setting in a single year, cost and expense increase factors are not included.

Telecom Decision CRTC 99-16
Telephone service to high-cost serving areas

<http://www.crtc.gc.ca/eng/archive/1999/dt99-16.htm>

3. For many years the telecommunications industry consisted of companies that were regionally-based regulated monopolies. Regulators ensured that rates were just and reasonable while providing the companies with the opportunity to earn a reasonable rate of return (profit).

Telecom Decision CRTC 86-16
Support structures and related items - public proceeding on rates
<http://www.crtc.gc.ca/eng/archive/1986/DT86-16.htm>

In the Phase II Decision, the Commission adopted an incremental cost approach for the economic evaluation of new services. To ensure that all costs related to a new service are considered, the Commission directed that the resources required to provide the new service be identified and costed under the following four categories: direct, indirect, variable common and fixed common. The incremental costs are the costs of the direct, indirect and variable common resources. As noted in Decision 79-16, this approach for new services was adopted without prejudice to the debate on alternative costing methodologies for existing services. The extent to which the Phase II approach applies to existing services was addressed by the Commission as follows: ...

Supporting Evidence: Secondary Sources

<https://cartt.ca/article/crtc-could-make-rate-setting-process-more-transparent>

- "When establishing these rates, the Commission generally uses an incremental costing approach, known as Phase II costing, to evaluate the incumbent telephone and cable carriers' costs of providing wholesale service to competitors. Incumbent carriers submit regulatory economic studies that contain Phase II costing information and reflect the costs of prospective incremental resources used to provide the service, some of which may be submitted with a designation of confidentiality. The CRTC then applies a markup to these costs as a contribution to the incumbents' fixed and common costs."

Evidence that regulated wholesale prices may be / have been based on inflated costs/cost studies

- <https://cartt.ca/article/cost-studies-wholesale-rates-out-whack-cnoc-tells-crtc> In an application filed on April 29, CNOC argues that evidence has now come to light that demonstrates existing usage sensitive rates are too high. It points to a recent proceeding involving Cogeco (Tariff Notice 47) where the company had updated its capacity-based billing (CBB) cost studies which resulted in a price reduction from \$2,556 to \$1,673.63. Upon further review, the cost was reduced yet again to \$1,181.79. ... "This kind of drastic rate reduction begs the question: how could the previous Cogeco CBB rate of \$2,556.00 have been just and reasonable over the preceding year, if ever?... " (-CNOC)
- www.iphoneincanada.ca/carriers/crtc-releases-finalized-wholesale-internet-rates-for-independent-isps/ "It also approved "significantly lower" rates for certain BCE Inc.-owned Bell companies and Telus Communications Corp. in Alberta and British Columbia due to errors discovered in the companies' costs studies. The commission cut the monthly rate Bell companies in Ontario and Quebec can charge for 100Mbps of capacity to \$1,036

from \$2,213. It also cut Telus wholesale flat rates in Albert and British Columbia, dropping the rate for speeds of 25 Mbps to \$29.84 from \$39.51 for example.”

- http://www.huffingtonpost.ca/2013/02/21/crtc-internet-rates-decision_n_2735366.html
http://www.huffingtonpost.ca/j-david-ellis/crtc-internet_b_2076284.html “In a phrase, the Commission has taken away the blank check that allowed the incumbents to hide demand forecasts, service level costs, corporate cost factors and other inputs associated with wholesaling Internet access. Henceforth, the incumbents will have to reveal far more information about the costs of their Internet services than ever before.”
- <http://www.crtc.gc.ca/eng/archive/2013/2013-603.htm> 11. The Commission notes that TCC agreed that the BRAS costs it submitted in support of its original proposal for the 6 Mbps wholesale HSA service were overstated and required modification.

Supporting Evidence: Investor Materials

Year	Wireline Op Revs (\$million)	%Change in Op Rev	Wireline Op Costs (\$million)	Wireline Profit (\$million)	%Change EBITDA	Notes
2010 ¹⁷⁴	\$10,695	0.3%	\$6,559 (p102)	\$6,559 (p102)	5.9%	<p>Bell Wireline increased 0.3% in operating revenues 2009-2010 (by \$29 million).</p> <p>Bell revenues increased 1.0% in 2009 to \$15,020 million from \$14,871 million in 2008, due to higher revenues generated by both our Bell Wireline and Bell Wireless segments.</p> <p>Achieved industry-leading wireline EBITDA growth of 5.9% in 2010.</p> <p>Our financial results for 2010 were highlighted by strong net earnings growth of 32.7% and substantial operating cash flow generation, reflecting increased wireless revenue growth, wireline EBITDA growth of 5.9% and margin improvement.</p> <p>Grew our FTTN Internet</p>

¹⁷⁴ Bell 2010 Annual Report, online: http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2010/BCE_annual_2010_en.pdf

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						<p>subscriber base by 26% in 2010. Bell's operating revenues increased 2.7% in 2010 to \$15,425 million from \$15,020 million in 2009, due to higher revenues at both our Bell Wireless and Bell Wireline segments.</p> <p>EBITDA at our Bell Wireline segment increased 5.9% in 2010, mainly as a result of cost savings achieved from vendor contract renegotiations with key IT and other outsource suppliers, decreased payments to other carriers due to lower rates for traffic terminated on their networks, a decline in net benefit plans cost reflecting the positive impact of a pension valuation allowance reversal and lower capital taxes, as well as other operational efficiency gains resulting from productivity and service improvements in both our field operations and call centres. The continuing decline in our higher-margin legacy voice and data revenues and higher year-over-year Olympics-related expenses moderated the improvement in Bell Wireline's EBITDA in 2010. 43</p>
2011 ¹⁷⁵	\$10,621	3%	\$6,466	\$4,155	1.5%	<p>Bell's EBITDA increased 8.6% in 2011, driven by the acquisition of CTV as well as by the improved operating performance of our Bell Wireline and Bell Wireless segments. 35</p> <p>Bell Wireline's EBITDA improved 1.5%, reflecting a 5.7% reduction in operating costs that was driven by the non-recurrence of expenses incurred in 2010 for the Vancouver Winter Olympics, decreased labour costs, reduced purchases of goods and services</p>

¹⁷⁵ Bell 2011 Annual Report, online
<http://www.bce.ca/Uploads/Documents/archivesAnnualReport/BCE/2011/BCEAR2011EN.pdf>

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						<p>due to lower product sales year over year, decreased capital taxes, commodity tax settlements and efficiency-related productivity improvements in both our field operations and call centres. 35</p> <p>Bell Wireline Q4 performance reflected solid results from Internet and TV, with revenues up 10.0% and 1.6%, respectively. 40</p> <p>Bell Wireline's revenues decreased 3.0% in 2011 due mainly to lower local and access, long distance and data product revenues and the transfer of our portal business. Growth in revenues from our TV and residential Internet services moderated this decline. 41</p> <p>Operating costs at Bell Wireline decreased 5.7% in 2011 to \$6,466 million from \$6,854 million in 2010. 42</p> <p>EBITDA at our Bell Wireline segment increased 1.5% in 2011 mainly as a result of lower operating costs year over year, partly offset by a decline in revenues as described above. 42</p>
2012 ¹⁷⁶	\$10,220	-3.8%	\$6,300	\$3,920	-5.7%	<p>Stronger forecasted TV and Internet subscriber growth, higher penetration of three-product households and stabilizing business markets performance is expected to drive improved year-over-year wireline revenue performance in 2013. We also expect an improving wireline EBITDA trajectory in 2013, driven by increasing scale of Fibe TV, the subsiding year-over-year financial impact of a</p>

¹⁷⁶ Bell 2012 Annual Report, online: http://www.bce.ca/investors/AR-2012/BCE_2012_AnnualReport_accessible.pdf.

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						<p>shortened discount period on residential bundle acquisition offers, fewer residential net customer losses as our IPTV footprint further expands, the positive impact of price increases on our residential services, abating re pricing pressures in our business and wholesale markets, as well as further cost savings. 32</p> <p>Bell revenues increased 3.0% in 2012 as strong year-over-year growth of 6.5% at Bell Wireless and the significant contribution of Bell Media was moderated by a 3.8% decrease at Bell Wireline. 34</p> <p>Supported by a 2.6% reduction in Wireline expenses, Bell Wireline's EBITDA decline was 5.7% in 2012, reflecting the ongoing loss of high margin voice and data revenues and the impact of aggressive price competition.</p>
2013 ¹⁷⁷	\$10,097	-1.2%	\$6,303	\$3,794	-3.2%	<p>2013 PROGRESS</p> <ul style="list-style-type: none"> • Extended our Fibe TV service coverage by 1 million homes to reach more than 4.3 million households across Ontario and Québec • Grew our wireline broadband fibre footprint to approximately 5.8 million locations passed • Became the first network operator in Canada to offer 100G super-core network capability to meet fast-growing demand for Internet performance and cloud computing applications for business customers <p>2014 FOCUS</p> <ul style="list-style-type: none"> • Extend Bell Fibe TV service coverage to approximately 5 million households as we grow our

¹⁷⁷ Bell 2013 Annual Report, online:
http://www.bce.ca/investors/AR_2013/BCE_2013_Annual_Report.pdf

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						FTTN, FTTH and FTTB footprint to more than 6 million locations passed
						Wireline EBITDA: -3.2%
2014	\$10,040	-0.6%	\$6,272	\$3,768	-0.7%	<p>"Our broadband IPTV footprint expanded to 6 million households by the end of 2014, more than 2 million of them served by the direct Fibre to the Home connections that are the focus of our wireline investment and growth going forward." 8</p> <p>"With the mounting success of these fibre-fuelled growth services, Bell's wireline operations grew revenue, Adjusted EBITDA and net residential subscriber additions by the end of 2014 – for the first time since cable phone competition was introduced in 2005." 12</p> <p>Wireline EBITDA: -0.7%</p> <p>2014 Progress - Increased our total number of Bell Fibe TV subscribers by 46.1% to 700,533</p> <p>Bell Wireline: Revenues decreased 0.6% in 2014, which reflected:</p> <ul style="list-style-type: none"> • Continued declines in legacy voice and data revenues, competitive pricing in the business and wholesale markets, and decreased product sales to business customers and at The Source <p>This was partly offset by:</p> <ul style="list-style-type: none"> • Higher Internet and TV service revenues in 2014, as well as growth in IP connectivity and business service solutions revenues //46

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2015 (Q3) ^{178, 179}	\$9,097	-0.2%	\$5,345	\$3,752	1%	<p><u>For 9 months ending September 2015</u></p> <p>Adjusted EBITDA: 1.0% (compared to 2014 Q3)</p> <p>BELL WIRELINE Bell Wireline revenues declined modestly in both the third quarter and the first nine months of the year by 0.6% and 0.2%, respectively, compared to the same periods last year. This was driven by the ongoing erosion in legacy voice and data revenues, competitive pricing pressures in our business markets along with decreased business product sales attributable to overall market softness, as well as the negative impact of legislation enacted in December 2014 which eliminated charges for paper bills in our residential market. Higher subscriber growth in Internet and TV, combined with the favourable impact of changes in residential service pricing, moderated the year-over-year decline. (ShR 7)</p> <p>BCE's Adjusted EBITDA was 3.4% higher in the third quarter of 2015, compared to the same period last year, due to growth across all three of our segments. Adjusted EBITDA in the first nine months of 2015 increased by 3.1% compared to last year, driven by year-over-year growth at Bell Wireless and Bell Wireline, offset in part by a marginal decrease at Bell Media. (ShR 9)</p> <p>BELL WIRELINE Bell Wireline Adjusted EBITDA</p>
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¹⁷⁸ Bell 2015 Q3 Investor Fact Sheet, online: <http://www.bce.ca/investors/financial-reporting/2015-Q3/2015-q3-investor-fact-sheet.pdf>

¹⁷⁹ Bell 2015 Q3 Shareholder Report, online: <http://www.bce.ca/investors/financial-reporting/2015-Q3/2015-q3-shareholder-report.pdf>

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					<p>increased 1.1% this quarter and 1.0% year to date, in comparison to the same periods in 2014, driven by:</p> <ul style="list-style-type: none"> • Continued growth in our Internet and IPTV revenues • Synergy savings generated by the privatization of Bell Aliant • Ongoing effective cost management <p>This was offset in part by:</p> <ul style="list-style-type: none"> • Ongoing loss of higher-margin legacy voice and data service revenues • Continued competitive pricing pressures and market softness in our Bell Business Markets unit <p>//ShR 9</p> <p>Key business developments //ShR 17 GIGABIT FIBE INTERNET SERVICE NOW AVAILABLE TO 2 MILLION HOMES On August 10, 2015, Bell launched its new Gigabit Fibe Internet service to more than 1.3 million homes across Ontario and Québec. Service was also launched to another 650,000 homes in communities across Atlantic Canada on September 23, 2015, bringing the total number of homes with Gigabit Fibe service availability to approximately 2 million at the end of Q3 2015. With our ongoing fibre network build, Gigabit Fibe is expected to be available to more than 2.2 million homes across Québec, Ontario and Atlantic Canada by the end of the year. Bell Gigabit Fibe will offer speeds of up to 940 Mbps at launch, rising to a full 1 Gigabit per second (Gbps) or faster in 2016 as equipment evolves to support these speeds.</p>
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