



PUBLIC INTEREST ADVOCACY CENTRE  
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC  
285 McLeod Street, Suite 200, Ottawa, ON K2P 1A1

8 April 2019

Ms. Pamela Miller  
Director General  
Telecommunications and Internet Policy Branch  
Innovation, Science and Economic Development Canada  
235 Queen Street, 10th Floor  
Ottawa, Ontario  
K1A 0H5

PRIVILEGED AND CONFIDENTIAL

**VIA E-MAIL to: [ic.telecomsubmission-soumissionstelecom.ic@canada.ca](mailto:ic.telecomsubmission-soumissionstelecom.ic@canada.ca)**

**Re: Comments of the Public Interest Advocacy Centre (PIAC)  
Submitted on Gazette Notice — Order under Section 8 of the  
*Telecommunications Act* — Policy Direction to the Canadian  
Radio-television and Telecommunications Commission**

Dear Ms. Miller:

Please find comments of the Public Interest Advocacy Centre (PIAC) on the above-noted matter.

Sincerely,

A handwritten signature in blue ink, appearing to be 'John Lawford', with a stylized flourish at the end.

John Lawford

Executive Director and General Counsel, PIAC  
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**Comments of the Public Interest Advocacy Centre (PIAC) Submitted on Gazette Notice — Order under Section 8 of the *Telecommunications Act* — Policy Direction to the Canadian Radio-television and Telecommunications Commission**

**8 April 2019**

**Introduction**

1. On March 9, 2019, in Part I, Vol. 153, No. 10, at p. 853, notice was given in the *Canada Gazette*, Part I, pursuant to s. 10(1) of the *Telecommunications Act* (the “Act”), that the Governor in Council proposed to make, under s. 8 of the Act, an Order providing policy direction (the “New Policy Direction”) to the Canadian Radio-television and Telecommunications Commission (the “CRTC” or the “Commission”).<sup>1</sup>
2. PIAC makes these representations with respect to the New Policy Direction in accordance with the Notice in the *Canada Gazette*. PIAC is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests – and vulnerable consumer interests in particular – concerning the provision of important public services. PIAC intervenes in telecommunications proceedings on behalf of Canadian consumers to advocate for services that are accessible and affordable for consumers, as well as telecommunications service provider (TSP) practices that are transparent and

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<sup>1</sup> *Canada Gazette*, Part 1, online: <<http://gazette.gc.ca/rp-pr/p1/2019/2019-03-09/pdf/g1-15310.pdf#page=319>>.

accountable to the public.

### **The Proposed Policy Direction is Necessary and Beneficial to Consumers**

3. Given PIAC's experience advocating in this area, PIAC believes that this New Policy Direction is a necessary step in the right direction for protecting consumers interests in the telecommunications industry. The proposed New Policy Direction indicates a clear message to CRTC from government to reorient telecommunications policy towards consumers. PIAC, along with many other consumer advocates,<sup>2</sup> hopes that the proposed New Policy Direction will lead to prompt changes such as MVNOs, Internet wholesale rates that encourage competition from more carriers, and consumer protection rules that truly protect consumers from dominant telecommunications companies.
  
4. The effect of such changes can ultimately lower prices in wireless and Internet, which we believe in our experience and work are huge consumer problems in Canadian communications markets. For example, the introduction of MVNOs, which could be more easily facilitated under the New Policy Direction, would have a positive impact on lowering prices in wireless by allowing wireless service providers to be able to purchase wholesale capacity for resale at just and reasonable rates.<sup>3</sup>

### **More Clarification for Application of two Directions**

5. The proposed New Policy Direction is a significant change which should greatly benefit consumers. In order to ensure that maximum benefit for consumers is derived from the implementation of the New Policy Direction, more clarification is required as to how the 2006 Policy Direction will mesh with the provisions of the proposed New Policy Direction. Minister Navdeep Bains has said that the proposed

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<sup>2</sup> Proposed new CRTC rule changes could lead to cheaper wireless plans, upstarts say, online: <<https://www.cbc.ca/news/business/crtc-mandate-wireless-1.5037382>>; Enough is Enough: Bains Proposes CRTC Policy Direction Grounded in Competition, Affordability, and Consumer Interests, online: <<http://www.michaelgeist.ca/2019/02/enough-is-enough-bains-proposes-crtc-policy-direction-grounded-in-competition-affordability-and-consumer-interests/>>; 'Competition' definition key to impact of new CRTC directive: experts, *The Wire Report*.

<sup>3</sup> Telecom Notice of Consultation CRTC 2018-98, Intervention of the Public Interest Advocacy Centre at para 51.

New Policy Direction “in many ways” is a complement to the 2006 CRTC directive, and “where there is a conflict this will overtake that.”<sup>4</sup>

6. PIAC has some concerns about how this proposed New Policy Direction will interact with the 2006 Policy Direction and the Act. PIAC believes that the proposed New Policy Direction should have stronger language – ideally confirming Minister Bains’ statements about the interplay and application of both Policy Directions – and which clearly explains how the Commission is to apply the Policy Directions together, should they both remain in place.
7. There also should be a clarification stating that the proposed New Policy Direction will apply broadly to all of the policy objectives under section 7 of the *Telecommunications Act*, and not just narrowly to “social objectives,” which are widely considered to be subss. 7(a), (b), (h) and (i). PIAC believes that the New Policy Direction should be harmonized with all the policy objectives under the *Telecommunications Act*, in order to ensure that the purpose of the New Policy Direction to promote competition, consumer interests, affordability, and innovation is being upheld in all areas of the Commission's regulatory decision making.
8. Longer term, we also urge the Government to consider formally replacing the 1987 “A Policy Framework for Telecommunications in Canada”, which has never been formally withdrawn but which is essentially moribund, as its central tenet, facilities-based competition, was premised on rate-regulated consumer telephone rates.<sup>5</sup> Since the 1993 *Telecommunications Act*, however, the rate regulation of local telephone service was to be soon forborne and other key services such as wireless and Internet access service, were effectively always forborne from rate regulation.

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<sup>4</sup> Innovation Minister Bains says proposed directive will ‘overtake’ conflict in 2006 order, online: <<https://mobilesyrup.com/2019/02/27/bains-directive-crtc/>>

<sup>5</sup> See: “Written Submission of the Public Interest Advocacy Centre” to the Government’s “Review of the Canadian Communications Legislative Framework, Responding to the New Environment: A Call for Comments” (PIAC, 11 January 2019), at heading “The 1987 Telecommunications Policy Framework – Who Knew?” paras. 73-82, pp. 18-20, criticizing the Government’s “A Policy Framework for Telecommunications in Canada” and its zombie-like influence of this Policy on Canadian telecommunications law and in particular, the over-emphasis on facilities-based competition and the denial of software-based and other non-facilities based competition.

9. If the proposed New Policy Direction is implemented quickly, without these clarifications, it runs the risk that it will be ignored and the Commission will continue to regulate without giving sufficient consideration to consumer interests or to promoting competition and innovation. However, these longer term tasks and risks are not reasons for denying the New Policy Direction; on the contrary, they are reasons for it and we desire that in any case, the New Policy Direction is declared.

### **Adjust the language in Clause A**

10. Nonetheless, the New Policy Direction could be slightly more forcefully and clearly worded to achieve its goals. Clause A of the proposed New Policy Direction states, “The Commission, when relying on regulation, should consider how the measures used can promote competition, affordability, consumer interests and innovation [...].”<sup>6</sup>
11. PIAC would like to echo comments from others that the words between “should” and “promote” should be removed,<sup>7</sup> as they have the potential to give the CRTC too much leeway to make judgments which do not truly align with the objectives of the New Policy Direction.
12. Removing these words does not otherwise harm the New Policy Direction and no additional words are needed. This small change would add considerable directive power to the New Policy Direction.

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<sup>6</sup> Proposed Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation, online: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11484.html>.

<sup>7</sup> See A. Salzman, “Proposed new CRTC rule changes could lead to cheaper wireless plans, upstarts say”, CBC News, 28 February 2019, online: <https://www.cbc.ca/news/business/crtc-mandate-wireless-1.5037382>, quoting Prof. Dwayne Winseck, Carleton University:

“If we look at Clause A, get rid of all the words between 'should' and 'promote,’” Winseck says. “Those are weasel words, and they really need to be eliminated. Because otherwise the CRTC can simply say, ‘Yeah, we did consider these measures’ and then they can just continue to engage in these obfuscatory practices that they’ve been engaging in. There’s a ton wiggle room in those six words,” Winseck says. “Those six words can undo a mountain of good.” We agree that the qualification may unduly undermine the “direction” to the CRTC to actually “promote competition, affordability, consumer interests and innovation” and leave open the option of only thinking about these goals, not pursuing them.

## **The 2006 Policy Direction Should Eventually be Revoked**

13. PIAC submits that it would be preferable to revoke the 2006 Policy Direction due to the facial incompatibility of the 2006 Policy Direction and the New Policy Direction. However, PIAC understands that it may not be practicable to immediately revoke the 2006 Policy Direction, as it may take some time for the CRTC and the Canadian telecommunications companies to adjust regulatory proceedings that are underway and investments that have been committed under the 2006 Policy Direction approach. However, PIAC believes that the 2006 Policy Direction's time has passed and that it should, in reasonably short order, be revoked.
14. PIAC's submission to the Broadcasting Telecommunications Legislative Review Panel explains our views with respect to why the 2006 Policy Direction is no longer appropriate.<sup>8</sup> Essentially, the 2006 Policy Direction's purpose and effect are to greatly restrict or effectively remove authority of the CRTC to regulate in areas that are not forborne, despite the lack of a finding of regulatory forbearance, in the name of pure faith in the "market". The 2006 Policy Direction, in economic terms, by directing the CRTC to use neoclassical economic assumptions (expected utility theory) instead of the latest behavioural economic learning (prospect theory), impedes sensible regulation and much consumer protection regulation.<sup>9</sup>
15. PIAC believes that the New Policy Direction would function far more effectively if it did not have to balance its objectives with those under the 2006 Policy Direction.

## **Conclusion**

16. The Government's New Policy Direction is a welcome change which has the potential to effect positive changes for consumers. In order to ensure that the goal of the New Policy Direction is reached, the Government should firstly adjust the language in the New Policy Direction: to remove unnecessary qualifiers; to provide clarification which explains how it will apply in relation to the objectives under

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<sup>8</sup> Public Interest Advocacy Centre, "Submission to the Broadcasting Telecommunications Legislative Review Panel 2019" at paras 83-88. This is more logical if the 1987 "A Policy Framework for Telecommunications in Canada" is removed as well.

<sup>9</sup> *Ibid.*

section 7 of the *Telecommunications Act*; and most importantly, to clarify how the New Policy Direction will apply alongside the 2006 Policy Direction.

17. As an eventual next step, the Government should actively consider revoking the 2006 Policy Direction within a reasonably short time-frame.

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