



PUBLIC INTEREST ADVOCACY CENTRE  
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

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Andre Arbour  
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**BY EMAIL to:** [telecomsubmission-soumissiontelecom@ised-isde.gc.ca](mailto:telecomsubmission-soumissiontelecom@ised-isde.gc.ca)

**Subject:** PIAC Comments on “Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy” (the “2022 Policy Direction”)

Dear Mr. Arbour,

These are the Public Interest Advocacy Centre’s (PIAC) comments on the proposed “Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy” (the “2022 Policy Direction”).<sup>1</sup> We write to indicate our misgivings with and potential changes to telecommunications policy represented by the proposed 2022 Policy Direction.

Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,

John Lawford  
Executive Director and General Counsel

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<sup>1</sup> See ISED: “Proposed policy direction to the CRTC for competition, affordability, consumer rights and universal access”, online: <https://ised-isde.canada.ca/site/mobile-plans/en/proposed-policy-direction-crtc-competition-affordability-consumer-rights-and-universal-access> Also see: Canada Gazette Part I (July 24, 2021), Notice No. TIPB-002-2021 — Petitions to the Governor in Council concerning Telecom Decision CRTC 2021-181, online: <https://canadagazette.gc.ca/rp-pr/p1/2021/2021-07-24/pdf/g1-15530.pdf>

## I. Introduction and Position

1. The Public Interest Advocacy Centre (“PIAC”) is a national non-for-profit organization and registered 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 been extremely active in telecommunications regulation for over 40 years.
2. PIAC is pleased to provide the Government of Canada with comments on the proposed “Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy” (“2022 Policy Direction”). The government has developed this new policy “with a view to building on the strengths and addressing the challenges faced in Canada’s telecommunications sector.” While the new policy does somewhat build upon the previous 2006 and 2019 policy directions, PIAC’s view is that the improvements are too few and the policy direction overall too permissive to adequately address the telecommunications market and regulatory approach that have become increasingly anti-competitive and frankly, hostile to consumer accessibility, reliability and affordability.
3. PIAC’s general position on the proposed policy direction is that it is severely out of touch with the current context of telecom competition and regulation. While PIAC acknowledges that there are some timely and necessary additions in the new policy direction, most of the provisions only help to entrench the *status quo*, in which telecommunications service costs are extremely high and increasing for both consumers and wholesale-based competitors. The current reality is also one in which: an already concentrated industry is under threat of further consolidation;<sup>2</sup> competitors face shutdown due to regulatory uncertainty;<sup>3</sup> consumers face dangerous service blackouts without an adequate backup, notification, or compensation framework;<sup>4</sup> and likely pay the highest rates for wireless (mobile) data in the world<sup>5</sup> and rank in the most expensive quintile for wireline (Internet).<sup>6</sup>

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<sup>2</sup> See the Rogers-Shaw merger, currently at the Competition Tribunal. The CRTC has already approved the transfer of broadcasting assets in Broadcasting Decision CRTC 2022-76, which PIAC petitioned the government to overturn, but which petition was rejected on dubious grounds by a Heritage official and not the Clerk of the Privy Council.

<sup>3</sup> The Canadian Press, “Xplore Mobile, Manitoba wireless carrier created after MTS sale, shutting down in August, *CBC News* (15 July 2022), online: <<https://www.cbc.ca/news/canada/manitoba/xplore-mobile-shutting-down-1.6522052>>.

<sup>4</sup> See CRTC letter, Rogers’ service outage, 8-9 July 2022, online: <https://crtc.gc.ca/eng/archive/2022/lt220712.htm>

<sup>5</sup> Rewheel, “Is Canada the most expensive wireless market in the world?” (April 2021), online: [https://research.rewheel.fi/downloads/Canada\\_most\\_expensive\\_wireless\\_market\\_world\\_PUBLIC\\_VERSION.pdf](https://research.rewheel.fi/downloads/Canada_most_expensive_wireless_market_world_PUBLIC_VERSION.pdf) and tefficient, “Back to normal? Or will 5G push the envelope?” (27 January 2022) at figure 14, p. 17. Online: <<https://tefficient.com/wp-content/uploads/2022/01/tefficient-industry-analysis-3-2021-mobile-data-usage-and-revenue-1H-2021-per-country-16-Dec-update-27-Jan.pdf>>.

<sup>6</sup> See Picodi, “Prices of the internet around the world” (10 December 2019), online: <<https://www.picodi.com/ca/bargain-hunting/prices-of-the-internet-around-the-world-and-Cableco.co.uk>>; “Global broadband pricing league table 2022” (2022), in which Canada was 166th in the ranking of 220 countries from lowest to highest average broadband prices. Online: <<https://www.cable.co.uk/broadband/pricing/worldwide-comparison/>>; Although we find the methodology

## **II. The general wording of the 2022 Policy Direction enables the Commission to easily circumvent application and enforcement**

4. PIAC submits that much of the 2022 Policy Direction simply describes practices and goals that the Commission should already be implementing. Many of the new provisions in the direction state that the Commission “should” implement general regulatory principles such as transparency, predictability, and efficiency. This leaves discretion with the CRTC to determine whether or not to implement any of these “principles”. PIAC’s main issue with this policy approach is that the Commission is already failing to implement these permissive principles in key cases, and the government is repeatedly failing to reverse CRTC decisions that are arguably contrary to them.
5. In PIAC’s view, the 2022 Policy Direction is a largely toothless instrument where, due to its permissive language, the government is effectively being invited to continue its political inability to enforce the similarly permissively worded 2019 policy direction. The 2022 direction must be rewritten to be directive, not suggestive. The Government must then reverse the CRTC’s decisions if it ignores clear directive requirements.
6. For example, the 2022 Policy Direction states that “[t]he Commission should conduct proceedings and issue decisions in a timely manner, in recognition of the need for market clarity,” and furthermore that “[t]he Commission should consider whether adopting new processes or engaging external experts would help reach this objective.”<sup>7</sup> The Commission’s extensive backlog of keystone decisions and considerable slow-down of proceedings have been well-cited as an urgent issue that disproportionately impacts providers other than the three dominant national carriers.<sup>8</sup> Competitors cannot make major service and investment decisions until many of these backlogged decisions are released. The Commission’s response to a recent CNOC letter requesting resolution of these outstanding files was to simply state that the Commission is “working diligently on these complex and important files in order to support the issuance of Commission decisions as soon as possible.”<sup>9</sup> No anticipated timeframe was provided. Despite evidence to the contrary, the Commission clearly believes it is working at an acceptable pace, which calls into question the efficacy of a policy direction that very generally directs the Commission to issue decisions in a “timely manner.” The government has not provided any details on what timeframes are acceptable, nor whether and how it will step in to address excessive delays. We would therefore rewrite these provisions to read: “[t]he Commission shall conduct proceedings and issue decisions within

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questionable, we also draw attention to the latest “Wall Report” for the CRTC, measuring Canada’s place among 7 “advanced” countries: <https://www.ic.gc.ca/eic/site/693.nsf/eng/00578.html#s4.5> Canada underperforms here.

<sup>7</sup> Innovation, Science and Economic Development Canada, *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, s 7.

<sup>8</sup> See CNOC’s letter filed on March 18, 2022 detailing the CRTC’s current backlog of decisions, online: [https://www.cnoc.tech/files/ugd/9e06c4\\_2bf9af35b45e43358a7634b7a6fe8211.pdf](https://www.cnoc.tech/files/ugd/9e06c4_2bf9af35b45e43358a7634b7a6fe8211.pdf).

<sup>9</sup> CRTC, “Telecom - Commission Letter addressed to Geoff White (Competitive Network Operators of Canada)” (23 March 2022), online: <https://crtc.gc.ca/eng/archive/2022/lt220323.htm>.

one year” and “[t]he Commission shall adopt new processes and engage external experts to reach this objective.”

7. PIAC also recommends amending section 2 of the 2022 Policy Direction – a section that was directly copied from the 2019 direction – to instead state that “The Commission **must ensure its decisions** promote competition, affordability, consumer interests and innovation...” (emphasis added). PIAC believes this change in wording helps to bring forward and strengthen the key components of the 2019 direction. Simply directing the Commission to only “consider” these objectives grants too much discretion to the Commission to avoid prioritizing consumer interests in its decisions.
8. Though most of the new provisions in the policy direction are permissive reiterations of ‘balanced’ regulatory principles from the 2019 policy direction, PIAC highlights new sections 9, 10, and 11 as exceptions that introduce new, directive and prescriptive requirements. This is the style that the 2022 Policy Direction requires if it is to have any chance of being effective. Section 9 requires the Commission to “maintain a regulatory framework mandating access to wholesale services, monitor the effectiveness of the framework, and adjust the framework as necessary and in a timely manner, including by making proactive adjustments.” Section 10 further aims to specifically preserve access to aggregated wholesale high-speed services until meaningful competition is sustainable without mandated access – this essentially seems to instruct the Commission not to mandate a full transition to the disaggregated wholesale access model, which many competitors have deemed untenable.<sup>10</sup> Section 11 goes even further to require the Commission to mandate a variety of wholesale access speeds, including low-cost options that enable affordable retail service options for consumers.
9. Sections 9, 10, and 11 work together to preserve a wholesale access framework that promotes wholesale competition and by extension, affordable retail Internet services; therefore PIAC fully supports this portion of the 2022 Policy Direction. Indeed, in the Regulatory Impact Analysis Statement, the government stated that these sections “direct the CRTC to maintain its regulatory framework mandating access to wholesale services for fixed Internet on an indefinite basis,” clarifying that “it [the wholesale framework] is essential for competition and must be maintained.”<sup>11</sup> PIAC agrees with this position.
10. PIAC is also encouraged to see the addition of new consumer-centric provisions under section 17 of the 2022 Policy Direction. In particular, PIAC supports the new provisions directing the Commission to “promote clarity and transparency of pricing information and service plan characteristics in service providers’ marketing materials,” and to “regularly test the performance of their fixed Internet services, including services based on commonly used

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<sup>10</sup> Based on the procedural history and public record of TNC CRTC 2020-187, which remains unresolved after more than two years.

<sup>11</sup> Canada, Department of Industry, “Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy: Regulatory Impact Analysis Statement”, (2022) C Gaz I, 2858, online: <<https://www.gazette.gc.ca/rp-pr/p1/2022/2022-06-04/pdf/g1-15623.pdf>>.

technologies in rural areas.”<sup>12</sup> PIAC will actively be advocating for and monitoring the introduction of new regulatory measures fulfilling these provisions. We note the directory language “must,” which makes these considerations progressive for consumers despite the fact that they are largely restating consumer concerns and structures that already exist or were previously determined by the Commission but left fallow.

11. PIAC also notes that repealing the previous policy directions has the effect of removing Section 1(b) of the 2019 direction, which presently requires the Commission to, in its decisions, demonstrate compliance with that policy direction and “specify how those decisions can, as applicable, promote competition, affordability, consumer interests and innovation.”<sup>13</sup> At the very least, the 2022 Policy Direction should continue to direct the Commission to explicitly justify all decisions based on specific provisions in the policy direction, and to explain how each decision advances consumer affordability and choice. PIAC submits that a provision to this effect must be added back into the new draft policy. In addition, the 2022 Policy Direction should also include a provision requiring the Commission to submit an annual report on how it has complied with and advanced the 2022 Policy Direction, based on which Cabinet may issue additional directions if necessary. The report must be submitted to the Minister and available to the public at the same time.

### **III. Rejection of the petitions to overturn the CRTC’s 2021 wholesale rates decision indicates the government’s apathy towards consumer interests**

12. PIAC notes that the 2022 Policy Direction was announced on the same day the government declined to overturn the CRTC’s 2021 Internet wholesale rates decision.<sup>14</sup> As a result, the high wholesale rates set on an interim basis in 2016 was allowed to stand through 2022, almost six years later. The significant impacts of the government’s refusal to overturn the decision was largely obfuscated by the policy direction announcement, which PIAC views as a smokescreen against consumers who are calling on the government to actively rein in a CRTC that is failing them. PIAC submits that the time for lenience and deference has long since passed. If the government were serious about ensuring that “telecommunications services are innovative, competitive and, most crucially, affordable” as stated in its mission statement for the new direction, the government would have overturned the 2021 wholesale rates decision, and then introduced the 2022 Policy Direction as a continuing commitment to retail Internet service affordability. Instead, consumers face a growing list of rejected petitions requesting the government to overturn CRTC decisions that erode competition.

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<sup>12</sup> *Supra* note 7, at s 17(b)(iii) and 17(d)(i).

<sup>13</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, s 1(b).

<sup>14</sup> *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services* (27 May 2021), TD CRTC 2021-181, online: CRTC <<https://crtc.gc.ca/eng/archive/2021/2021-181.htm>>.

13. In PIAC’s view, there is a stark mismatch between the government’s intended messaging around the announcements of May 26, 2022, and the message consumers received. The Regulatory Impact Analysis Statement specified that “[i]f the response to the petitions were issued on its own, it would misrepresent the Government’s broad policy, and risk sending the wrong message to stakeholders.”<sup>15</sup> PIAC submits that, despite the government’s efforts, the “wrong” message was sent anyway. The message stakeholders received is that the government is out-of-touch with the urgency of consumers’ access and affordability struggles, and is willing to pass on critical opportunities to stand up on behalf of consumers. The other message received is that the government will not stand behind its policy directions. Therefore the proposed 2022 Policy Direction does not provide any comfort to consumers, as it seems very likely the government will not use the 2022 Policy Direction, however it is worded, to remedy an increasingly anticompetitive, unstable and unaffordable telecommunications market.
14. PIAC further submits that there are many other measures the government could take to make telecom services more affordable for consumers, such as low-income subsidies like the FCC’s Lifeline or Affordable Connectivity programs.<sup>16</sup> The government could also direct the Commission to mandate a full, service-based MVNO access framework if the government allows the Rogers-Shaw merger to succeed. PIAC submits that section 14 of the 2022 Policy Direction should be amended to “mandate a wholesale facilities-based mobile virtual network operator access service” that does not require ownership of spectrum or facilities, in line with the true definition of MVNOs accepted worldwide (except in Canada). Government inaction on all these potential fronts suggests that consumers are not, and never will be, a priority or even a real consideration in telecom policy.

#### **IV. Conclusion**

15. In its current form, the 2022 Policy Direction asks consumers to wait and continue to endure high service prices for the foreseeable future. PIAC submits that the Minister, in recognition that the Commission is already failing to fulfill most of the existing policy directions, must redraft the proposed policy direction in a more prescriptive manner, including explicit directions to implement a true MVNO framework, adhere to explicit timeframes for the release of decisions and tariffs, as well as for reviewing aspects of the regulatory framework. In other words, the Minister should completely overhaul the policy direction, except for sections 9, 10, and 11, and then repeal the 2006 and 2019 policy directions. Consumers should be able to depend on the Commission to act in their interests, and where the regulator fails, the government must commit to reversing decisions that fail to implement the government’s policy direction.

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<sup>15</sup> *Supra* note 11 at 2856.

<sup>16</sup> The FCC’s Lifeline program provides a monthly service subsidy to all eligible low-income consumers already on a public assistance program. In 2022, the Affordable Connectivity Program was launched to provide a permanent, continuing subsidy to Lifeline-eligible consumers for their Internet and wireless services.