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

11 January 2019

Ms. Janet Yale
Chair
Broadcasting and Telecommunications Legislative Review Panel
c/o Minister of Innovation, Science and Economic Development
235 Queen Street, First Floor
Ottawa, Ontario K1A 0H5

VIA EMAIL to: ic.btlr-elmrt.ic@canada.ca

Re: ***Submission of the Public Interest Advocacy Centre (PIAC)***

Dear Ms. Yale:

Please find attached PIAC's submission to the Broadcasting and Telecommunications Legislative Review Panel.

We wish to thank you and the Panel for the short extension of the deadline for submission of these comments.

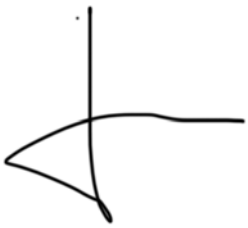
We apologize in advance for the quality of these submissions. It is with a heavy heart and a very real sense of betrayal of our predecessors at PIAC that we are able to submit comments only on the telecommunications questions and have left out very many points. Our only consolation is that the task was in a sense virtually impossible given our present resource constraints.

We hope that nonetheless the Panel will gain at least an impression from the attached comments of what we view to be the central challenges for a review of telecommunications in Canada from a consumer and public interest perspective.

Should the Panel wish to consult with PIAC in person or if the Panel announces a reply or other comment round, we shall do our utmost to respond in a fulsome manner.

PIAC wishes you and all of your fellow panel members the best of luck with the difficult task that lies before you and please know we value your service in this effort.

Sincerely,



John Lawford
Executive Director and General Counsel
Public Interest Advocacy Centre
285 McLeod Street, Suite 200
Ottawa, Ontario K2P 1A1

Attach.

cc The Hon. Pablo Rodriguez, P.C., M.P., Minister of Canadian Heritage and Multiculturalism
The Hon. Navdeep Bains, P.C., M.P., Minister of Innovation, Science and Economic Development

Review of the Canadian Communications Legislative Framework, *Responding to the New Environment: A Call for Comments*

Written Submission of the Public Interest Advocacy Centre

11 January 2019

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Executive Summary

E1. The Public Interest Advocacy Centre (PIAC) is pleased to provide the Panel with our written comments on its Review of the Canadian Communications Legislative Framework, *Responding to the New Environment: A Call for Comments.*

E2. PIAC submits the following recommendations to the Panel:

A. Establish a clear statutory Universal Service Obligation with a clarification of obligation to serve (not the same thing) on each TSP, within their facilities' footprint, and an obligation on the regulator to subsidize below-cost service, whether due to geography or other factors, or the means of customers;
B. The CRTC's statutory obligation to protect the privacy of persons under section 7(i) of the *Telecommunications Act* should be incorporated under a new USO section; there should be an incorporation of this obligation under the *Broadcasting Act*;
C. 5G is not so revolutionary that it should require legislative changes that favour the technology's deployment beyond the powers currently granted to the CRTC;
D. Any Chicago-school economic-regulation approach to modifying the *Telecommunications Act*, such as that promoted in the *2007 Model Act*, should not be followed in the Panel's developments of recommendations to the Government.
    i. PIAC therefore opposes and cautions the Panel against any repeal or substantial amendment of common carriage-based sections of the *Telecommunications Act*. Common carriage sections include s. 25, s. 27, s. 29, and s. 31;
E. With respect to forbearance, the present subs. 34(2) should be amended to remove the word "shall" and replace it with "may", to confer a discretion upon the CRTC to refuse forbearance on this ground where the evidence is ambiguous or likely to change, or otherwise is shown to not necessarily benefit consumers in all ways;
F. Provided that subs. 27(2) is not amended or removed from the *Telecommunications Act*, there is no need for a "net neutrality" section of the *Act* and adding such a "belt and suspenders" section would only leave ambiguity that might be exploited to reduce the protections for consumers that were won in interpreting subs. 27(2) in proceedings related to "net neutrality."
    i. The Act should not be changed to accommodate or manage 5G networks or applications, whether to weaken, clarify or remove "net neutrality";
G. PIAC believes that section 36 is an adequate legislative tool to protect the freedom of content on the Internet from unwarranted interference by spying and scrutiny by carriers or by other parties, and that it should remain in place unchanged. The history and application of section 36 has set a high bar for

any telecommunications carrier that wishes to interfere with the transmission of "content" over its network;

H. The Panel should urge the CRTC and the government to fix the costs awards system with all due haste. If the Panel has any ability to issue interim conclusions before its final report for urgent recommendations, PIAC requests that it do so on this issue, for the sake of our survival.

E3. Finally, PIAC is unable to comment on matters regarding the *Radiocommunication Act* or the *Broadcasting Act* due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

PIAC: Representing the Public Interest in Telecommunications and Broadcasting for over 40 Years

1. The Public Interest Advocacy Centre (PIAC) is pleased to provide the Panel with our written comments on its Review of the Canadian Communications Legislative Framework, *Responding to the New Environment: A Call for Comments.*

2. PIAC is a national, non-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.

3. PIAC has been active in the field of communications law and policy for over 40 years. We have participated as interveners, applicants and respondents in many of the Canadian Radio-television and Telecommunications Commission (CRTC) proceedings over these years on behalf of major consumer and public interest groups as well as on PIAC's own behalf. We strive to consistently, professionally and fearlessly promote the public interest before the CRTC, which is the main regulator in this sector and according to the Acts under review. PIAC also makes submissions to the now Department of Innovation, Science and Economic Development (ISED), largely on matters related to spectrum allocation and finally has also made submissions to the Department of Canadian Heritage in relation to its responsibility for broadcasting policy and in its role as overseer of the CRTC.

4. As noted in our cover letter, this submission will generally follow the questions outlined in Appendix B of the Call for comments but will, where necessary for the sense, depart from that structure at various points.

Telecommunications Act and *Radiocommunication Act*

5. PIAC is largely content with the structures of both the *Telecommunications Act* and the *Radiocommunication Act* and the jurisprudence and practice that has grown up around them. In short, if nothing were to be changed in either Act, that would, in our opinion, be a positive outcome for consumers and average Canadians – at least when compared with possible changes made to weaken each Acts' core legislative powers.

6. This is because Canadian telecommunications law generally relies upon strict control of carriers. The controls are essentially statutory expressions of those tort duties laid down by the common law on common carriers, namely: the requirement to serve all customers, equally,[1] and without prejudice;[2] at just and reasonable rates; taking reasonable care to deliver the items being transmitted. These duties have been translated into explicit statutory requirements throughout the *Telecommunications Act*. This control has largely been eroded in recent years by the process of forbearance, which can be applied to all of these powers but has most strikingly been applied to the requirement to provide service at just and reasonable rates, in the name of trusting "market forces". Whatever the verdict on the state of competition in Canadian retail telecommunications services, removal or crippling of the rate-setting requirement (whether fully or partially forborne or not) risks destroying any actual control of telecommunications by Parliament through the bias of these Acts.

7. All of the Supreme Court of Canada jurisprudence affirming the jurisdiction of the CRTC, as well to a large extent as the jurisdiction of the federal government (from a division of powers standpoint) over telecommunications, relies heavily upon the rate-setting power and, to a lesser extent, powers over interconnection, unjust discrimination, approval of working agreements and limitations of liability.

8. In other words, proposals to eliminate or largely remove powers to control these key telecommunications law duties would cripple both the *Telecommunications Act* and the CRTC, which is generally charged with administering the Act rather than the courts. The reduction or elimination of these key powers would allow provincial governments to redefine telecommunications as aspects of the sale of goods or services,[3] or even as aspects of the delivery of public health.[4] This would invite the re-balkanization of telecommunications to a pre-1989 world and the concomitant

[1] Meaning at the same, or similar for similarly situated customers, rates, usually publicly posted in a tariff notice.
[2] Meaning also with the duty to not "look into the packages" of senders of messages; that is, to not control the content of the communication being delivered. This is codified in s. 36 of the *Telecommunications Act*.
[3] Note the provincial wireless acts, which PIAC believes are unconstitutional. See *Rogers Communications Inc.* v. *Châteauguay (City)*, 2016 SCC 23.
[4] Quebec Bill 74, *An Act respecting mainly the implementation of certain provisions of the Budget Speech of 26 March 2015*, L.Q. 2016, ch.7.

chaos (one, incidentally, that the world of securities regulation cannot seem to escape). For those that battled to unify telecommunications regulation under the federal Parliament and the CRTC (including many telecommunications lawyers at major telecommunications companies) in the 1970s and 1980s, this would be a bitter and ironic result.

9. This doomsday scenario may seem far-fetched, however, we note that in the past there were serious proposals to weaken and remove common carriage-based powers from the *Telecommunications Act*,[5] and PIAC expects proposals to do this again from major telecommunications providers (in particular vertically-integrated ones) as well as content-owners and various parties who view telecommunications as a convenient "choke-point" for regulation of various areas.

10. PIAC does, however, have suggestions to improve the *Telecommunications Act*, mostly by adding provisions to implement policies where the Act is weak. The major additions are to ensure universal, affordable access to telecommunications, a subject we now turn to, to answer the Panel's initial questions.

1. Universal Access and Deployment

11. PIAC believes the answer to the below question is a clear statutory Universal Service Obligation with a clarification of obligation to serve (not the same thing) on each TSP, within their facilities' footprints, and an obligation on the regulator to subsidize below-cost service, whether due to geography or other factors, or the means of customers. These aggressive steps are essential to achieve the most important policy goal of telecommunications regulation: Universal Service.

1.1 Are the right legislative tools in place to further the objective of affordable high quality access for all Canadians, including those in rural, remote and Indigenous communities?

12. PIAC is of the view that there are two major, related but separate, legislative lacunae that should be remedied by additions to the *Telecommunications Act*. First, Canada should adopt a clear universal service obligation such as that in the United States (found in 47 USC §254(b) – (d)). Second, Canada should legislatively clarify and expand the scope of the obligation to serve to all telecommunications service providers (TSPs) in a regulatory environment that relies upon market competition.

Obligation to Serve

[5] H. Intven and M. Dawson, "A Model Act to Implement the Regulatory Recommendations of the Telecommunications Policy Review Report" (Toronto: McCarthy, Tétrault, 2007). Hereafter referred to as the "Model Act, 2007". See also *Telecommunications Policy Review Panel – Final Report 2006*.

13. Dealing first with obligation to serve, the Telecommunications Policy Review Panel Report of 2006 did an admirable job in describing the present state of the law on obligation to serve, as interpreted by the CRTC over that last (now) 30 years. In Chapter 6, pages 6-4 to 6-6, the authors succinctly explain that the obligation to serve was assumed to be in place due to monopoly provision of service in "service territories" of the ILECs. When competition in local service was authorized in Telecom Decision 98-7, the CRTC deftly avoided explaining the legal basis for obligation to serve and concluded that it would not be possible to achieve the subs. 7(b) policy goal (effectively, "accessible" service to all Canadians) where competition had not taken hold. However, the question of the fate of the obligation to serve when competition had in facts taken hold was not answered.

14. In the time since, the CRTC has backed away from imposing the obligation to serve on any carriers in "competitive" markets (such as local telephone forborne areas), even going so far as to declare that such an obligation is "eliminated" for ILECs in those areas.[6] PIAC disagrees with the Commission's conclusion that it can "eliminate" the obligation to serve of any major TSP with facilities near to a customer. We believe that the *Telecommunications Act* does not clearly provide the CRTC with authority to extinguish the common law on this matter and that private law, which would include common carriage law, flows back in[7] to the space and requires all TSPs with facilities near a customer to serve that customer upon request.

15. Whatever the law may be, we agree with the central conclusion of the 2006 TPRP Report on this issue, which stated: "The Panel believes the Telecommunications Act should be amended to impose a clear obligation for all incumbents to serve, subject to the availability of network infrastructure. An incumbent should be relieved of its obligation to serve only with the permission of the regulator."[8]

16. PIAC would, however, based on our view of the law, extend that obligation to <u>all TSPs</u> with facilities near a prospective customer (that is, the law does not require service to be built outside any TSP's "footprint" but if the request is within the service footprint, the TSP has no legal ability to refuse service to a customer wishing service from that TSP). Further, all or any TSP would have to apply to the CRTC to avoid an obligation to serve in this situation for any reason.

17. There are excellent policy reasons why this obligation should be clarified and extended. Most notably, there is a risk of uncontested customers in competitive markets. That is, there are customers that, due to the economics of competition, likely will be shunned by all carriers as not being profitable enough.

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[6] See: Telecom Regulatory Policy CRTC 2011-291, Obligation to serve and other matters (3 May 2011).
[7] See, for example, *Morin* c. *Bell Canada*, 2012 QCCS 4191 and *Bell Canada* c. *Aka-Trudel*, 2018 QCCA 829.
[8] Telecommunications Policy Review Panel – Final Report 2006, at p. 6-6.

18. This was the reason for the Commission's creation of the "stand-alone PES" requirement in Telecom Decision 2006-15 (as am.). The Commission accepted arguments from a consumer Coalition led by PIAC that argued there would be customers (in this case, largely older customers with "basic" local exchange service and no calling features or long-distance plans and no other services such as dial-up Internet (at that time)) who would not be pursued by any carriers and who would be potentially refused service, or, only offered services that greatly exceeded their needs and were priced well beyond their means.

Universal Service Obligation (NOT "Objective")

19. We turn now from the largely legally-required obligation to serve to the largely policy-driven concept of universal service. Universal service is a policy of connecting all citizens of a nation to the telecommunications network to provide them the economic and social benefits of a networked society. Many nations have codified the policy in their legislation.

20. Canada has never had a legislatively-mandated obligation to serve. There have been other informal policies and programs, followed in *ad hoc* manners by various iterations of the telecommunications regulator with occasional exhortations from the federal government to do something about connecting Canadians to the network; however, no explicit legal basis presently exists for this policy. This must change.

21. Subsection 7(b) of the *Telecommunications Act* is often loosely cited as a universal service "obligation" but it is in fact only a policy objective, only one of many, and arguably not the only source of the "obligation" even within the section.

22. As outlined in PIAC's "No Consumer Left Behind II" Report, [9] the CRTC has, in the last 30 years, attempted to address the social and economic goal of universal service, despite a lack of a true legislative "toolkit" by pursuing a "basic service objective".[10]

23. As the term implies, such an objective is not an obligation. The CRTC dutifully reports on the failure, each year, of TSPs to meet the objective, or, rather, reports on progress towards this moving horizon, together with a very generous definition of the objective. The CRTC now has defined the basic service objective not as actually connecting citizens but of making service (affordable or not, at functional quality, or not) "available" to Canadians.

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[9] J. Bishop and A. Lau, "No Consumer Left Behind Part II: Is There A Communications Affordability Problem in Canada?" (PIAC: July 2016) at pp. 11-13. Online: http://www.piac.ca/wp-content/uploads/2016/09/PIAC_No-Consumer-Left-Behind-Part-II-Website-Version.pdf

[10] Recently revised in TRP 2016-496 to include high speed Internet service at 50 Mbps download, 10 Mbps upload.

24. This relative subjection of, and regulatory disregard of (arguably due to the legislative wording), what almost every other nation on earth regards as ***the*** fundamental goal of telecommunications regulation is frankly worse than embarrassing; Canadian universal service policy holds back the nation.

25. Without a clear statutory universal service obligation, the regulator and the government are permitted to allow this key policy goal to drift, and with it, predictable problems arise. We deal with the two major ones, affordability and the digital divide, below.

Affordability

26. PIAC authored two research reports on telecommunications affordability in Canada. In the first, we attempted to define "affordability" and to create an analytical framework for regulators to use if they wished to make affordability an explicit goal of universal service.[11] In the second, PIAC demonstrated that there is an affordability problem for lower-income Canadians with respect to broadband Internet service and to some extent, wireline telephone service (in the wake of price deregulation).[12]

27. PIAC believes that a similar situation now exists in relation to wireless customers from the lower income brackets. The present rate of cellphone penetration in the lowest income quintile of Canadians is only 68%; for those in the upper income quintiles it is almost 100%. This difference is largely due to affordability.[13]

28. The recent "data only plans" CRTC proceeding highlighted the lack of affordable low-use low cost cellphone post-paid plans in Canada. The CRTC acknowledged in this decision that: "there is more to be done to further improve competition, reduce barriers to entry, and address any concerns about affordability and service adoption in the mobile wireless service market. For example, the fact that there was such a gap in the market in the first place and that lower-cost data-only plans would be widely available to Canadians only as a result of this proceeding, may be telling with regard to whether the present state of competition in the mobile wireless service market is meeting the needs of Canadians."[14]

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[11] J. Lawford and A. Lau, "No Consumer Left Behind: A Canadian Affordability Framework for Communications Services in a Digital Age" (PIAC: January 2015). Online: http://www.piac.ca/wp-content/uploads/2015/03/PIAC-No-Consumer-Left-Behind-Final-Report-English.pdf

[12] J. Bishop and A. Lau, "No Consumer Left Behind Part II: Is There A Communications Affordability Problem in Canada?" (PIAC: July 2016). Online: http://www.piac.ca/wp-content/uploads/2016/09/PIAC_No-Consumer-Left-Behind-Part-II-Website-Version.pdf at pp. 11-14.

[13] *Ibid.*

[14] See Telecom Decision CRTC 2018-475, *Lower-cost data-only plans for mobile wireless services* (17 December 2018), at paras. 48-49.

29. Wireless carriers are now making pay as you go ("prepaid") cellphone plans purposely,[15] in our view, economically unattractive in hopes of migrating even lower-income Canadians to postpaid plans; however, for many this simply means no service, as they abandon cellphone service. It is appropriate to consider cellphone service in relation to the traditional wireline obligation to serve as the CRTC has, in their wisdom, decreed that cellphone service is a functional equivalent to wired service for voice and data for the purposes of the basic service objective as revised in 2016,[16] and the forbearance test.[17]

30. The government's recent "Connecting Families" program appears to suggest that an affordable rate for this level of Internet service should be $10 month.[18] This rate obviously does not exist in the market anywhere in Canada; hence the need to strong-arm ISPs into offering this service at a loss.[19] PIAC views this program as doomed to failure due to ISPs being required to service each customer at a loss – thereby incentivizing them not to enroll customers and inviting gaming to avoid being the carrier serving the customer. The program also relies upon political pressure from the government that can be difficult to maintain when the government requires political capital to be expended elsewhere in the industry (such as for a spectrum auction set-aside policy).

31. Yet Canadians appear willing to pay, through their telecommunications bills, a small levy to support affordable, universal access to telecommunications for all Canadians.

32. PIAC contracted Environics to survey Canadians as part of its submissions in the proceeding leading to Telecom Decision 2016-496.

33. Nearly 70% strongly agreed and over 20% somewhat agreed with the statement that: "All Canadians should have access to either cell phone cell phone or landline telephone service no matter where they live in Canada".

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[15] See PIAC, CRTC Part 1 Application, "Application for retention of prepaid balances for Rogers Wireless customers" (8 February 2018). Online: https://services.crtc.gc.ca/pub/TransferToWeb/2018/8620-P8-201800756.zip

[16] See Telecom Regulatory Policy CRTC 2016-496, Modern telecommunications services – The path forward for Canada's digital economy (21 December 2016).

[17] See Telecom Decision CRTC 2006-15, as am.

[18] See Government of Canada, "Connecting Families" From: Innovation, Science and Economic Development Canada. Online: https://www.ic.gc.ca/eic/site/111.nsf/eng/home and see "FAQ: Connecting Families". Online: https://www.ic.gc.ca/eic/site/111.nsf/eng/h_00002.html See also sign-up system at: https://www.connecting-families.ca

[19] Note that participating service providers (note that the program is strictly speaking voluntary) only include larger ILECs and cablecos who can cross-subsidize this service with revenues from other customers ("Participating Internet Service Providers" Online: https://www.ic.gc.ca/eic/site/111.nsf/eng/00003.html); smaller providers such as Eastlink and Teksavvy and they have stated they are not participating for the reason that they cannot afford to lose money on each C.F. customer.

34. Nearly 50% strongly agreed and nearly 40% somewhat agreed with the statement that: "All Canadians should have access to broadband home Internet service no matter where they live in Canada".

35. When asked if they would support paying for such affordable, universal access to telephone and home Internet service through their Internet and home phone bills, about 1 in 2 Canadians believed that telecommunications subscribers should contribute to the fund.

36. The majority of respondents to the Environics survey indicated a willingness to pay some surcharge on their monthly telecommunications bills in order to ensure access and affordability of telephone and broadband home Internet service at home. The mean and median monthly amounts survey respondents were willing to pay are set out below.

All respondents	Mean	Median
Canadians have access to telephone service no matter where they live in Canada	$3.10	$1.00
Low-income Canadians can afford basic home phone service	$2.74	$1.00
Canadians have access to broadband home Internet service no matter where they live in Canada	$2.55	$0.50
Low-income Canadians can afford broadband home Internet service	$2.32	$0.50

Figure 2. How much are Canadians willing to pay to support other Canadians' telecom access?[20]

37. PIAC's expert in the Basic Service hearing estimated an affordability subsidy for broadband Internet for two separate cohorts of low-income Canadians (the "baseline" and "ambitious" versions) would require, above the then $0.37 going to the present National Contribution Fund (NCF), an additional $0.72 (basic) or $1.72 (ambitious) a month per subscriber.

38. The CRTC declined to create an affordability subsidy of any kind in Telecom Decision 2016-496, declaring such an affordability aspect of the basic service obligation to effectively be anyone's problem but the CRTC's – and not even in the Decision itself, but in a frankly cowardly submission to the government. In CRTC Submission to the Government of Canada's Innovation Agenda,[21] due the same day as the Decision was rendered, the CRTC stated:

[20] Environics survey filed with AAC Intervention in Telecom Notice of Consultation 2015-134.
[21] See CRTC, "CRTC Submission to the Government of Canada's Innovation Agenda" (21 December 2016), at https://crtc.gc.ca/eng/publications/reports/rp161221/rp161221.htm

> The CRTC considers that, in light of its necessity to participation in so many aspects of life, broadband access should be considered more holistically as part of the social safety net for vulnerable Canadians. The development of initiatives related to the affordability of broadband Internet access service for Canadians is of considerable concern and will require concerted efforts from a variety of stakeholders.

39. Despite PIAC's application to Review and Vary this decision, the CRTC has refused to re-consider the subsidy and is instead proceeding only with its broadband build subsidy while removing the remaining NCF subsidy in ongoing proceedings.

40. PIAC believes the CRTC has abdicated its responsibility to ensure affordable universal access to broadband in Canada. However, in fairness, the legislation has no clear USO with this requirement. This is why we now demand it.

Digital Divide

41. This situation is exacerbated for Canadians living in rural and remote areas of Canada, where service costs for wireline and wireless telephone and Internet are considerably higher.

42. This lack of concern and more importantly, the lack of subsidy to support affordable telephone and Internet service has the predictable result of a digital divide along rich-poor;[22] urban-rural[23] and other lines.

43. In the past, the Commission has placed a fig-leaf of sorts on this problem in relation to basic telephone service with the National Contribution Regime (subsidy) best expressed in Telecom Decision 2000-745. Unfortunately, the CRTC presently seems minded to remove the telephone subsidy with no replacement subsidy to keep telephone rates low and no Internet affordability subsidy,[24] only a build-out subsidy that may be creating tantalizing, yet unaffordable, access for many Canadians in rural and remote areas. This disaster is headed down the tracks at Canadian society: this Panel much see it and prepare a way to shunt it off.

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[22] See CRTC, 2018 Communications Monitoring Report, Communications Services in Canadian Households: Subscriptions and Expenditures 2012-2016, at p. 10: "The vast majority of high-income households subscribed to Internet services in 2016, compared to less than two thirds of the lowest-income households. Internet use from home in the first income quintile is 22.2 percentage points lower than the overall average of 87.4% and 17.5 percentage points lower than in the second income quintile."

[23] See CRTC, 2018 Communications Monitoring Report, Communications Services in Canadian Households: Subscriptions and Expenditures 2012-2016, at p. 16, Infographic 1.6, "Average monthly expenditures by location - urban centres vs. rural communities".

[24] See Telecom Notice of Consultation CRTC 2018-214.

Writing a USO (universal service obligation) into the Telecommunications Act

44. The legislative method for avoiding embedding this inequality and inefficiency into society is a universal service obligation (USO). PIAC believes that Canada could do worse than to simply copy, almost to a word, several of the key U.S. Universal Service Obligation sections in the U.S. *Communications Act*, 1934, as am., found at 47 USC §254(b) – (d).

45. PIAC notes that the U.S. USO obligation is defined as "an evolving level of telecommunications services … taking into account advances in telecommunications and information technologies and services" (47 USC §254(c)(1)) and in subsections (a-d) provides criteria to help define if services should be considered as part of the USO.

46. The USO's service content is referred to the "Joint Board" of state and federal regulators, as well as the FCC, to update the service level. For a mechanism in Canada, the USO services definition could be made in consultation with provincial and municipal governments in a similar joint Board to be created; or, could be carried out by the CRTC alone.

47. Note that there are three subsections in s. 7 of the *Telecommunications Act* which deal with universal service, namely: subss. 7(a), (b), (h). All three of these describe principles of universal service; this fact is made clear by comparison to 47 USC §254(b).

48. In effect, therefore, three principles of what universal service should accomplish have "done battle" with the other, largely conflicting, policy objectives in the Act since 1993. A frequent complaint of carriers and regulators and even consumer advocates is that it is hard to balance these goals and that therefore CRTC decisions based on them are hard to predict.

49. It therefore makes eminent sense to remove these three policy goals from s. 7 and to place them where they should actually be, that is, as principles of a Canadian USO.

50. The new USO provision also should require, not permit, that the CRTC order all TSPs to subsidize this service level in areas where it is above cost and likely to remain so, in order to achieve universal service. The subsidized areas will usually be rural and remote.

51. The USO provision also should require that the USO be satisfied for low-income persons by requiring, not permitting, the CRTC to create a low-income subsidy for this service level where these persons cannot afford service. "Afford" in this context means that low-income persons (persons with income below the LICO-AT) should

not be required to spend more than 4-6% of household income on the mandated telecommunications service level.[25]

52. The U.S. USO has been hobbled by the requirement of support by only interstate carriers; Canada should not make this mistake of requiring only "ILECs" or "major carriers" to have to contribute to a USO. This is in line with our conception that all TSPs bear an obligation to serve and spread the load as equitably as possible; indeed, the Commission has largely accepted this method for the broadband build-out subsidy stemming from Telecom Decision 2018-496.

53. The Panel will no doubt be concerned that such subsidies may not be supported by the general population of subscribers. However, in the public opinion survey evidence discussed above, 49% of Canadians were willing to pay up to $0.50 per telecommunications subscription to support an affordability subsidy for home broadband for lower-income Canadians.

54. Finally, we would add the "contribut[ion] to the protection of privacy", that is, the policy objective found in subs. 7(i), to the principles of the USO as a new principle (not found in the U.S. USO). Having a networked society that is not a surveillance society should be a major consumer and individual user protective principle. It also complements Canada's private-sector privacy legislation, *PIPEDA*.

1.2 Given the importance of passive infrastructure for network deployment and the expected growth of 5G wireless, are the right provisions in place for governance of these assets?

55. The described benefits of 5G appear to focus on passive communications required to enable driverless cars and smart-city technology. Apart from the ambient increase in citizen-welfare that these innovations may bring, there is little to commend a massive investment in this technology for the average mobile wireless user beyond speed improvements for streaming services and background functions. In this, 5G appears no more important than 4G was to 3G.

56. It is PIAC's view that 5G is certainly not so revolutionary that it should require legislative changes that favour the technology's deployment beyond the powers currently granted to the CRTC. We caution here that the Panel not fall into technological determinism arguments [26] being pushed hard by the major

[25] See PIAC, J. Bishop and A. Lau, "No Consumer Left Behind Part II: Is There A Communications Affordability Problem in Canada?" (PIAC: July 2016). Online: http://www.piac.ca/wp-content/uploads/2016/09/PIAC_No-Consumer-Left-Behind-Part-II-Website-Version.pdf at page IV.

[26] See Robert E. Babe, "Control of Telephones: The Canadian Experience" Canadian Journal of Communication, Vol. 13, No. 2, at p. 16: "In popular literature on new media (Toffler, 1981; Naisbitt, 1984). in academic literature on the Information Revolution (Bell, 1979; Porat, 1978; Irwin, 1984). And most significantly in policy documents

telecommunications companies in Canada at conferences and in lobbying (and, apparently, in convincing the CRTC Chair to lobby for this vision, as well).[27]

57. Instead of loosening unjust discrimination and "net neutrality" principles and present regulatory frameworks, PIAC instead identifies two potential consumer protection gaps with 5G network deployment. Firstly, there need to be provisions in place to ensure that rural areas will receive the same or even similar coverage as urban areas. Secondly, caution should be exercised when considering granting the CRTC jurisdiction over hydro poles and other passive infrastructure. PIAC will elaborate on both of these issues below.

58. There has been a lot of discussion and speculation about the benefits and new capabilities 5G technology will be able to deliver.[28] 5G is estimated to have data transmission speeds that are nearly 20 times faster than current 4G-LTE connections which will allow for exponentially faster download speeds and the ability for networks to carry Internet of Things technologies and various other applications. It has been estimated that 5G will bring a total economic impact ranging between $14 billion to $26 billion depending on external economic influencers.[29] PIAC recognizes that there is some value behind these predictions, however, there are several concerning implications which accompany the encouraging and facilitating of telcos to build out 5G infrastructure.

59. PIAC's main concern is ensuring that all Canadians, including those in rural communities, have access to reliable connectivity with double-digit Mbps speeds before companies begin building 5G infrastructure. There have been some predictions which explain that 5G improvements are possible in rural areas with midband spectrum, which is a lower frequency with a longer range. These improvements are done through massive Multiple Input Multiple Output [mMIMO] antennas, which work with midband spectrum and have results similar to the 3.5GHz band.[30] While the access would still be slower than those using 5G on a higher frequency, it can still improve connectivity and speed in rural areas.

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from the Government of Canada, a recurring theme is evident: technological imperative, the doctrine maintaining that technology's march is largely inevitable, autonomous, foreordained (Winner, 1977)."

[27] Denis Carmel, "Altering the Acts: The CRTC's wants and needs" CARTT, 30 October 2018. Online (subscription required): https://cartt.ca/article/altering-acts-crtcs-wants-and-needs . See also: Christopher Guly, "IIC 2018: 5G not necessarily a win for Canadians, says consumer advocate" CARTT, 4 November 2018. Online (subscription required): https://cartt.ca/article/iic-2018-5g-not-necessarily-win-canadians-says-consumer-advocate

[28] See Timothy Denton, "Ian Scott is right about 5G". Online: http://www.tmdenton.com/index.php/easyblog/entry/ian-scott-is-right-about-5g (31 October 2018).

[29] "5G: Jumpstart our Digital Future," *ICTC-CTIC*, online: <https://www.ictc-ctic.ca/jumpstarting-digital-future-impact-5g-canadian-jobs-economic-growth/>.

[30] "Huawei enables Bell Canada's Wireless to the Home (WTTH) trials that put Canadian rural customers on the path to 5G," online: <https://www.newswire.ca/news-releases/huawei-enables-bell-canadas-wireless-to-the-home-wtth-trials-that-put-canadian-rural-customers-on-the-path-to-5g-675262803.html>.

60. The 600 MHz spectrum auction scheduled for March 2019 is soon approaching. John Knubley, Canada's Deputy Minister, Innovation, Science and Economic Development Canada recently addressed complaints about a digital divide being caused by deployment of 5G technology. He stated that ISED is confident the spectrum will be capable of providing expanded rural coverage as the government has set aside 40% of the spectrum specifically for regional service providers. In conjunction with the auction, the government has also put stringent deployment requirements in place to ensure the spectrum is used across the country.[31]

61. ISED's spectrum requirements and mMIMO technology create the illusion or possibility that facilitating 5G deployment could even be beneficial for rural connectivity. While these factors may help with rural broadband connectivity, PIAC stresses that there need to be actual incentives and requirements in place to ensure rural broadband connectivity is a priority. If the needs of rural communities are not met, it could further a digital divide between Canadians and leave many without access to adequate Internet services or Internet services in general.

62. Secondly, 5G technology requires access to passive infrastructure. Current telecommunications infrastructure involves few large or macro cells transmitting low frequency waves over long distances. 5G technology uses small cells which will be densely distributed within cities to transmit high frequency waves over short distances.[32] The construction of small cell towers will be necessary to deploy 5G technology. CRTC Chairman Ian Scott has expressed the CRTC's desire to have jurisdiction over support structures that would host these small cell towers, stating, "To install these small cells, a number of issues, such as rights of way, poles and ducts, will need to be resolved. These are tricky issues that cut across municipal and provincial jurisdictions as well as private interests."[33]

63. PIAC has concerns with broader telco access to infrastructure. Telcos currently pay hydro utilities to use their poles to attach fibre and copper wires and the revenue generated goes toward paying for the revenue requirement for regulated entities for electricity delivered to hydro customers. If telcos are given cheaper access to hydro poles, Canadians could see a rise in both hydro rates (at the provincial level) and to the cost of (now 5G) wireless services. PIAC believes that a federal-provincial ministerial meeting or joint task force is necessary to first examine the jurisdictional issues and costs of such a move before any decisions are made about broadening the CRTC's powers with respect to jurisdiction over passive infrastructure.

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[31] "ISED, CRTC, answer Auditor General's rural broadband complaints," *Cartt,* December 2018, online: <https://cartt.ca/article/ised-crtc-answer-auditor-generals-rural-broadband-complaints>

[32] "5G: Jumpstart our Digital Future," *ICTC-CTIC*, online: <https://www.ictc-ctic.ca/jumpstarting-digital-future-impact-5g-canadian-jobs-economic-growth/>.

[33] "Altering the Acts: The CRTC's wants and needs," *Cartt*, online: <https://cartt.ca/article/altering-acts-crtcs-wants-and-needs>

64. There is a delicate balance of municipal street and other land use control and telecommunications infrastructure. These have been matters of dispute since at least 1905, requiring major judicial decisions to draw a very fine line for these matters. Shifting the legislative authority greatly towards the CRTC in the name of the federal government to site 5G receivers and antennae as well as other network elements may be a desired outcome of the industry in order to save deployment costs. However, such a shift would inevitably invite many, many years of serious jurisdictional and constitutional litigation with the provinces. In PIAC's view, a serious negotiation amongst the various government levels and regulators should be convened rather than attempting to force such a change down the throats of provincial and municipal authorities via amendments to communications legislation.

65. If the benefits of 5G connectivity are marginal to the average retail wireless user but greatly benefit enterprise or private data network services delivered on the same infrastructure, there is a risk of high pricing to retail customers to build services for private corporate network clients and for cities wishing to become "smart cities."

66. Also, see our comments about 5G and Network Slicing in the Net Neutrality section, below.

2. Competition, Innovation, and Affordability

67. PIAC is unimpressed with the push to "innovation" – we believe it is running cover for technological determinism and a lack of deep policy development. Technological determinism harms consumers because arguments about harnessing technological change in order to better consumers' lives or corralling such change in order to ensure that it does not lead to perpetual, large price increases for consumer communications, is assumed to be somehow impossible or inappropriate. "Innovation" in our view will happen anyways, whether pushed by government as a policy or not (perhaps aided slightly by R&D money) and is often used to cover up increased deregulation. With those cautions in mind, we turn to the other problems mentioned in this question with regulation in the name of competition and its effect, generally, of undermining affordability.

2.1 Are legislative changes warranted to better promote competition, innovation, and affordability?

68. PIAC's first point here is a defensive one: we vehemently oppose any Chicago-school economic-regulation approach to modifying the *Telecommunications Act*, such as that promoted in the *Model Act, 2007*.

69. We therefore oppose and caution the Panel against repeal or substantial amendment of common carriage-based sections of the *Telecommunications Act*. Common carriage sections include s. 25, s. 27, s. 29, and s. 31. Similarly, changes

to common carriage-complementing powers such as conditions of service (s. 24), provision of information (s. 37) or, especially interconnection (s. 40) should not be touched. These sections have underpinned all recent consumer-friendly decisions at the CRTC, such as, most recently, the triumph of net neutrality, the defeat of zero-rating and "FairPlay" and all of the Wireless Code and CCTS.

70. However, there have been a number of regulatory changes that have weakened, severely, consumer protection and universal service goals in the name of traditional economics-based conception of "competition"-promoting regulation.

71. These changes have been favoured by both the government (to varying degrees at varying times), unsurprisingly promulgated and supported by the major regulated carriers, and most clearly and destructively by the CRTC.

72. There are three sources of this destructive over-reliance on the traditional conception of "market forces" and its unproven ability to substitute for traditional common carriage-based telecommunications regulation: the first, virtually unknown but corrupted and corrupting: the Federal Government's 1987 "A Policy Framework for Telecommunications in Canada"; second, the insidious, unchecked and overused "forbearance" power (s. 34 of the *Telecommunications Act*); and, thirdly, the subsequent corrosive and blatantly misguided "Policy Direction" of 2006.

The 1987 Telecommunications Policy Framework – Who Knew?

73. Much like a bad Dan Brown plot: there was a document, somehow, in plain sight, but unknown even to experts. No one but a small coterie of public servants knew of it or what it really meant. Yet it allowed – unbeknownst to consumers – the telecom giants, behind their gilded gates, to enjoy their gains. This is the Federal Government's 1987 "A Policy Framework for Telecommunications in Canada".

74. This document is virtually unknown in telecommunications policy circles. However, it is the federal government's last comprehensive statement of telecommunications policy in Canada. PIAC only discovered its existence and import of this document in the last 2 weeks – gaining access to a copy from only one of 3 libraries in Canada – (it is not online) in the last three days. As a public service, we reproduce the entire policy, in both languages, in our appendix. It is in the public interest that this key, foundational document be made public on the Internet.

75. Yet this document explains one of the key underpinnings of the push to have "facilities-based competition" as the ideal form of telecommunications and the concomitant regulatory rules designed to suppress all but such facilities-based competition.

76. At page 7, all is revealed:

> "The second goal, that of maintaining an effective and efficient network infrastructure, can best be achieved through policies which acknowledge the role and status of Canada's existing telecommunications carriers and which respect the principal economic characteristics of the telecommunications carriage industry. In the latter regard, the heavy investment costs and high transmission capacity of modern telecommunications systems, although essential for economic development, constitute a significant expenditure burden for national economies. In all countries except the United States, this fact has lead [*sic*] to a concern regarding possible over investment in telecommunications network capacity and has prompted many governments to take steps to ensure that their domestic carrier networks can operate at maximum efficiency by achieving the greatest possible economies of scale and scope, consistent with the competitive supply of services and customer equipment. In view of these international initiatives, the government considers it appropriate to establish a framework for policy and legislation which will:
>
> - permit the designation and authorization of national and international facility-based carriers, but limit new entry to the existing facility-based carriers for the time being;
> - facilitate the efficient use of the network infrastructures of existing facility-based carriers by ensuring the carriage of Canadian telecommunications traffic on Canadian network facilities and by requiring the interconnection of networks and services on a nation-wide basis for authorized services; and
> - provide for corporate ownership arrangements which will ensure Canadian control of network planning and development."

77. So the federal government purposely restricted foreign entry, protected incumbents and encouraged monopoly profits to make the industry more industrially-efficient (read, monopolistic) at a national level (avoiding "over investment") – largely to benefit business users of telecommunications – and, in return, asked that affordable, universal telephone service be maintained,[34] in a "monopoly" fashion (which, at the time, meant strict price regulation),[35] for retail users.

78. What has happened, of course, is that the CRTC and government rigorously pursued the policy of Canadian ownership and control and ILEC favouritism – and in particular the facilities-based policy – but failed to require the *quid pro quo* to Canadian consumers of affordable, price-regulated retail service.

[34] 1987 Policy, at p. 4, lists 6 principles to guide telecommunications policy in Canada. Number 2 is: "Canadians must continue to have universal access to basic telephone service at affordable prices."
[35] 1987 Policy, at p. 8: "More efficient utilization of these facilities by all users will contribute to maintaining the affordability of local telephone service, which, as in all other countries, will continue to be provided on a monopoly basis."

79. This occurred by having the 1993 *Telecommunications Act* create the "Canadian carrier" definition and including the s. 34 forbearance power all without embedding a true universal service obligation (rather, these ideas were embodied in the policy objectives in s.7 (really only principles underlying a true USO) that were not even elevated above others about competition (see above)).

80. The "facilities-based" favouritism has been repeated *ad nauseum* by the CRTC to effectively crush any non-facilities-based competition (competitors cannot duplicate ILEC facilities and rights of way granted over nearly 100 years of effective monopoly service provision, so there is no real way to compete on this favoured basis) ever since and to this very day.

81. The fact that this federal government policy is virtually unknown and dates from 1987, well prior to the Internet, is reason enough for an update. More importantly, it is still affecting and infecting the regulatory approach of the Commission and is in direct conflict with the rhetoric of increased competition. By definition, competition cannot come from non-duplicable legacy network facilities and legal structures such as rights of way, municipal agreements and other franchises. Yet that is what the Commission continues to insist upon from competitors. It is utter madness. The facilities-based policy bias must be eliminated.

82. We call on the Panel to recommend that "A Policy Framework for Telecommunications in Canada, Department of Communications, 22 July 1987" be disavowed by the Government of Canada and replaced, as soon as possible thereafter, with a revised, comprehensive policy (updated at least every 10 years) that does not distinguish between facilities and non-facilities based telecommunications service providers. Whether the government wishes to keep Canadian ownership requirements for sovereignty or labour market reasons should be part of the debate on a new Policy. However, we note that retaining these restrictions does not necessarily conflict with a more permissive competitive environment and the potential of such competitors to deliver the true benefits of competition to Canadians without foreign ownership or investment.

The 2006 Policy Direction

83. The 2006 "Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives" P.C. 2006-1534, SOR/2006-355 (the "Policy Direction") should be revoked. Its time has passed.

84. PIAC understands that part of the intent of the Policy Direction may have been to "level the playing field" between the regulation of ILECs and large cablecos. If so, it was probably unnecessary from the beginning but now it has easily achieved its

purpose. We also think it was written far too widely and ideologically to continue in its present form or to exist at all.

85. The Policy Direction represents the height of economic fantasy "regulation" of the industry. Its purpose is facially 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 wording can be read in no other reasonable fashion. The Policy Direction also duplicates the policy objective in s. 7(f) of the Act and is, on that score, redundant.

86. If for no other reason, in relation to consumer retail markets, the Policy Direction shows its ignorance of the insights of behavioural economics. That is, due to human heuristics and biases,[36] consumers employ subconscious shortcuts in the complex telecommunications markets[37] that carriers exploit to avoid consumer choice on "rational" economic grounds.[38] This means that blind reliance on "market forces" actually can lead away from achievement of the policy objectives in s. 7 (in particular, subss. 7(a), (b) and (h).

87. The Policy Direction, by directing the CRTC to use classical economic assumptions (expected utility theory) instead of the latest behavioural economic learning (prospect theory), impedes sensible regulation and much consumer protection regulation.

88. Further, the implementation of the equitable application of "non-economic" (that is, "social" regulation under the Policy Direction, s. 1(a)(iii), while laudable in theory, can burden smaller TSPs with regulatory requirements when in fact they have few consumer complaints on issues that overwhelmingly affect large providers.[39] While fiddling with the Policy Direction to remove such provisions may help it, its overall premise is flawed, its time, if it ever had one, has long since passed, and the Panel should recommend its immediate revocation.

Forbearance

89. We turn now to the CRTC's forbearance power in s. 34 of the *Telecommunications Act*. PIAC is tired of forbearance.

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[36] See Tversky, Amos and Kahneman, Daniel, Judgment under Uncertainty: Heuristics and Biases (1974), *Science*, Vol. 185. See also Kahneman, Daniel and Tversky, Amos, Choices, Values and Frames (1984), *American Psychologist*, Vol. 34. Both reproduced as appendices in Kahneman, Daniel, *Thinking Fast and Slow* (Toronto: Anchor Canada, 2013) ISBN: 978-0-385-67653-3.

[37] See Adi Ayal, Harmful Freedom of Choice: Lessons from the Cellphone Market , 74 Law and Contemporary Problems 91-132 (Spring 2011). Available at: https://scholarship.law.duke.edu/lcp/vol74/iss2/6

[38] See Kahneman, Daniel and Tversky, Amos, Prospect Theory: An Analysis of Decision Under Risk (1979). *Econometrica*, Vol. 47, Issue 2, p. 263 1979. Available at SSRN: https://ssrn.com/abstract=1505880

[39] See the Record in Telecom Notice of Consultation 2018-246, *Report regarding the retail sales practices of Canada's large telecommunications carriers* (16 July 2018). Available online at:

90. Since the addition of the forbearance power in 1993, the CRTC has moved too swiftly and on questionable grounds to as much forbearance as possible and far too quickly.

91. The addition of the forbearance power, and its immediate exercise, beginning with Telecom Decision 94-19, only shortly after the passing of the 1993 Act, was a betrayal of the commitment in the 1987 Policy Framework to protect consumers of retail telephone service by continuing monopoly regulation that would ensure affordable universal service.

92. The next betrayal was made by the Fed government in 2006. In this case, the CRTC, in Telecom Decision 2006-15, [40] decided that ILECs should remain regulated until they had lost a significant market share to competitors for local phone service.

93. The Governor in Council reviewed and varied the decision, actually writing a "competitor presence" test into the decision that required only, for residential forbearance, one facilities-based competitor and another competitor (which could be only wireless) to cover 75% of a local exchange. The result was to grant forbearance to the ILECs before any meaningful competition developed and the local phone service market in all urban markets was deregulated as to price within about a year to 2 years.

94. This head start produced increased revenue for ILECs with no meaningful competitive developments in many exchanges. This head start has allowed ILECs to leverage their lead in home phone to offer wireline internet and IP-based television services in the following years. Many exchanges have effectively only one monopoly provider for much of the exchange despite notional competition from the weak "competitor presence" test.

95. We are still feeling the effects. Meanwhile, the wireless and retail Internet markets were forborne so early as to be effectively always forborne. No re-evaluation of the forbearance in these markets ever has been undertaken despite now sky-high market shares and findings of market power in these markets.

96. PIAC believes, therefore, that the forbearance power should be amended to require a regular periodic inquiry by CRTC to justify its continuance and update the rationale for it. Especially as this is supposed to be based on findings of fact, which go out of date and, also, when the claim is that consumers are "protected" (s. 34(2)) by competition. In our view, competition predictably fails consumers in a regular

[40] See Telecom Decision CRTC 2006-15, *Forbearance from the regulation of retail local exchange services* (6 April 2006), at paras.

fashion due to behavioural economics factors and companies' exploitation of them in industries like telecom with high barriers to entry (including Canadian ownership and control), economies of scope and scale, lax anti-trust (*Competition Act*) enforcement and high market concentrations as a result of the continuing effects of incumbency (former monopoly or quasi-monopoly) and the facilities-based policy bias described above. The CRTC has not recognized this new scholarship and continues to rely on dated economic models from Chicago-school theories that were cool in 1994 for decision 94-19 but are seriously out of touch now.

97. PIAC also is disturbed by the structure of the not one, but two routes to forbearance in s. 34 of the Act.

98. We have never understood the logical basis for subs. 34(1). All CRTC decisions are supposed to be made in accordance with s. 7 policy objectives (see subs. 47(a)), so how can not regulating do the same as regulating? This is perhaps because the text of s. 34(1) requires only congruence with the policy objectives (a very low bar) not "advancing" or "promoting" the policy objectives. We believe the Panel should consider raising the bar to require that the policy objectives be advanced by forbearance, not simply "be consistent with" them.

99. Subsection 34(2), however, is where the action is. Subsection 34(2) bizarrely requires the CRTC to forbear (unlike subs. 34(1), which provides the CRTC with the discretion to forbear) if "the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users".

100. As pointed out in the Telecom Policy Review Panel Report of 2006:

> However, the current Act also provides the Commission with a very broad discretion to decide to forbear if it finds that a type of telecommunications service will be subject to "sufficient" competition to protect the interests of users.
>
> The Act provides no guidance on the tests to be used to determine when such competition is "sufficient" and no direction is given regarding the relative weight to be given to regulation and market forces in markets that remain subject to some regulation.[41]

101. It is PIAC's experience that the Commission is too quick to accept that consumers' interests are protected by a "competitive" market or that the market is truly "competitive". Certainly many consumers do not view, for example, the wireless

[41] Telecommunications Policy Review Panel – Final Report 2006, at p. 2-10.

market, with 90%+ market share in the three major carriers to be competitive and certainly do not consider the market competitive enough to protect their interests.

102. The Commission would seem to agree as it struggled out of forbearance rulings to move towards an eventual Wireless Code.[42]

103. In PIAC's view, the present subs. 34(2) therefore should be amended to remove the word "shall" and replace it with "may", to confer a discretion upon the CRTC to refuse forbearance on this ground where the evidence is ambiguous or likely to change, or otherwise is shown to not necessarily benefit consumers in all ways.

3. Net Neutrality

104. "Net neutrality" in the context of Canadian communications law is in large part derived, as it should be, from common carriage principles codified in the unjust discrimination prohibition in subs. 27(2) of the *Telecommunications Act*.

3.1 Are current legislative provisions well-positioned to protect net neutrality principles in the future?

105. PIAC is of the view that the unjust discrimination provision of the *Telecommunications Act*, subs. 27(2), is the legal source for all of Canada's "net neutrality" law and policy, at least insofar as it has been interpreted and defined by the CRTC in such decisions as: Telecom Regulatory Policy CRTC 2009-657, *Review of the Internet traffic management practices of Internet service providers* (21 October 2009); Broadcasting and Telecom Decision 2015-26, *Complaint against Bell Mobility Inc. and Quebecor Media Inc., Videotron Ltd. and Videotron G.P. alleging undue and unreasonable preference and disadvantage in regard to the billing practices for their mobile TV services Bell Mobile TV and illico.tv* (29 January 2015); Telecom Regulatory Policy CRTC 2017-104, *Framework for assessing the differential pricing practices of Internet service providers* (20 April 2017); Telecom Decision CRTC 2017-105, *Complaints against Quebecor Media Inc., Videotron Ltd., and Videotron G.P. alleging undue and unreasonable preference and disadvantage regarding the Unlimited Music program* (20 April 2017).

106. Therefore, provided that subs. 27(2) is not amended or removed from the *Telecommunications Act*, there is no need for a "net neutrality" section of the *Act* and adding such a "belt and suspenders" section would only leave ambiguity that

[42] See Lawford, J. and White, G., "Front and Centre: The Consumer Interest in Telecommunications and Broadcasting in Canada, 17th Biennial National Conference New Developments in Communications Law and Policy, at pp. 14-17, where the authors go into some length in describing the uncertainties provoked by the present wording of the forbearance provisions.

might be exploited to reduce the protections for consumers that were won in interpreting subs. 27(2) in proceedings related to "net neutrality".

5G and "Network Slicing"

107. However, although current legislative provisions are well-positioned to protect net neutrality principles in the future, some consideration should be given to whether the current provisions are appropriate to accommodate the network slicing capabilities of 5G.

108. PIAC is generally of the view that the unjust discrimination provision under s. 27(2) is adequate for protecting net neutrality principles, including 5G "network slicing". There has been a long history of CRTC and court decisions restricting unjust discrimination to promote competition in telecommunications markets first under s. 321(2) [later renumbered s. 340] of the *Railway Act,* and now under s. 27(2) of the *Telecommunications Act*. This has been applied to many different technological innovations, for example recently to "zero rating".

109. Subsection 27(2) of the *Act* was specifically drafted to prohibit a carrier from unjustly discriminating or giving an undue or unreasonable preference over other persons, such as competitors, or subjecting any person to an undue disadvantage. PIAC believes that allowing certain networks or applications to run at a faster speed would *prima facie* be discrimination under subs. 27(2). However, there may be situations where the Commission would find such uses were not unjust, undue or unreasonable discrimination or preference. Subs. 27(4), lays the burden of proof upon the party discriminating; here, the carrier wishing to use network slicing.

110. One of the new concepts of 5G technology is multi-tenancy. Currently network sharing schemes only enable interactions within the telecommunications sector, either in the form of investments or rents.[43] Future multi-tenant 5G networks are envisioned to provide new real-time business-to-business interactions, beyond accommodating current MNO-MVNO relationships.[44]

111. There likely will be various different applications and technologies running on a 5G network which will require different speeds, bandwidths, latency, security, connectivity, capacity, and coverage.[45] For example, an autonomous vehicle would require a different network than the network used to stream a TV show in the backseat of that same autonomous vehicle. 5G networks are able to accommodate these different needs while still using the same infrastructure through network

[43] Zoraida F., and Martinez JP. 5G networks: Will technology and policy collide? Telecommunications Policy Volume 42, Issue 8, September 2018, Pages 612-621. [*Telecommunications Policy*]
[44] *Ibid.*
[45] Study on Implications of 5G Deployment on Future Business Models, No BEREC/2017/02/NP3 A report by DotEcon Ltd and Axon Partners Group, 14 March 2018, at page 59.

slicing. In effect, operators will be able to offer different 'services' depending on whether customers want low latency and high data throughput, or a service to support connectivity of thousands of devices simultaneously.[46]

112. The Panel should note that the CRTC has never accepted that there is a *legal* category of "private data services" which allow carriers to operate outside the common carriage requirements of the *Telecommunications Act*: see "Private carriage" – Ryan, Canadian Telecommunications Law and Regulation, §110(b) and the authorities cited therein. Private line data services are offered but they are regulated as if a common carriage service. The Panel should resist calls to create a private sphere of carriage.

113. Nonetheless, this "virtual networks" capability could, however, allow 5G service providers to enter directly into service level agreements with over-the-top [OTT] providers which currently operate over network infrastructure.[47]

114. PIAC believes that this could create a challenge to net neutrality principles, as expressed in Commission rulings based on subs. 27(2). However, we believe that the unjust discrimination provisions of the Act, together with the jurisprudence of the Commission on similar cases should be able to guide the Commission in determining if any preference is undue, especially considering the burden of proof borne by the carrier.

115. While a case can be made for certain applications and networks to be prioritized through network slicing (e.g., a hospital network for remote surgery or the braking system on autonomous vehicles), 5G service providers should not be allowed to determine, in advance, which applications can be run on a better network without proper analysis and authorization from the Commission.

116. We note, for example, European net neutrality laws require that network slicing cannot exist to the detriment of availability or general quality of Internet services for end-users.[48] Therefore a certain standard must be upheld for all Internet services before certain networks are given prioritization/faster speeds if using the same network to deliver both services. While 5G network slicing is intended to create a greater optimization of resources by determining which speeds are necessary for certain applications or services, there needs to be careful consideration into how certain services can qualify for a certain type of network.

117. The Panel should note, as well, that should a carrier feel that it cannot develop 5G services in the shadow of possible subs. 27(2) challenges, that it has the option

[46] https://www.cisco.com/c/dam/en/us/solutions/collateral/service-provider/service-provider-security-solutions/5g-security-innovation-with-cisco-wp.pdf
[47] *Telecommunications Policy*
[48] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1455549370431&uri=CELEX%3A32015R2120

under the current subs. 9(1) of the Act to apply for full or partial carrier exemption, with all of the safeguards built into that process.[49]

118. Therefore, in sum, we do not think that the Act must be changed to accommodate or manage 5G networks or applications, whether to weaken, clarify or remove "net neutrality".

Controlling Content

119. PIAC believes that section 36 is an adequate legislative tool to protect the freedom of content on the Internet from unwarranted interference by spying and scrutiny by carriers or by other parties, and that it should remain in place unchanged. The history and application of section 36 has set a high bar for any telecommunications carrier that wishes to interfere with the transmission of "content" over its network.

120. Recently, in Telecom Decision 2016-479 *Public Interest Advocacy Centre – Application for relief regarding section 12 of the Quebec Budget Act*, the CRTC ruled that prior Commission approval is necessary for section 36 to prohibit the blocking by Canadian carriers of access by end-users to specific websites on the Internet, regardless of whether or not such blocking was the result of a claimed Internet traffic management practice.

121. The Commission reaffirmed that blocking will only be approved, upon application, where it would <u>further</u> the telecommunications policy objectives set out in section 7 of the Act and that, accordingly, mere compliance with other legal or juridical requirements – whether municipal, provincial, or foreign – would not, in and of itself, justify the blocking of specific websites by Canadian carriers, in absence of Commission approval under the Act.[50]

122. PIAC agrees with the Commission's findings in TD 2016-479. The practice of basing Commission approval to block websites on whether or not a request furthers the telecommunications policy objectives has proven to work effectively in protecting the freedom of Internet users. Similarly, in Telecom Regulatory Policy CRTC 2009-657 (the ITMP framework), the Commission stated:

> 122. The Commission finds that where an ITMP would lead to blocking the delivery of content to an end-user, it cannot be implemented without prior Commission approval. Approval under section 36 would only be granted if it would further the telecommunications policy objectives set out in section 7 of the Act. Interpreted in light of these policy objectives, ITMPs that result in

[49] See Ryan, "Exemption Power", §504(h).
[50] *Canadian Telecommunications Regulatory Handbook 2017*, Hank Intven and Grant Buchanan.

> blocking Internet traffic would only be approved in exceptional circumstances, as they involve denying access to telecommunications services.[51]

123. Most recently, in Telecom Decision 2018-384, *Asian Television Network International Limited, on behalf of the FairPlay Coalition – Application to disable online access to piracy websites*, the CRTC determined that section 36 is not a tool to be used to address copyright infringement (so called "piracy") concerns. PIAC also agreed with the Commission's findings here that section 36 is not a mandatory power but rather a permissive one and that in weighing the policy objectives of section 7, the Commission did not have the jurisdiction under the *Telecommunications Act* to implement a regime that would address copyright infringement on the Internet. Instead, separate copyright legislation, duly considered by Parliament, would have to be passed to override s. 36 or to direct the Commission and carriers to control content for this purpose.

124. As PIAC stated in our Intervention for that proceeding, there are adequate remedies to address issues relating to piracy in the *Copyright Act*. Parliament made a conscious choice to limit ISPs' role to a "Notice-and-Notice" system. Sections 41.25 and 41.26 of the *Copyright Act* set out a mechanism by which copyright owners can send infringement notices to network service providers and thereby trigger an obligation to forward the notice to the alleged infringer.[52]

125. In short, telecommunications regulation is not the "short-cut" to indirect regulation of all purported evils delivered by telecommunications. Only when a valid scheme is passed by Parliament that deliberately overrides the *Telecommunications Act* should content be controlled or monitored, or if, subject to the Commission's own power in s. 36, the Commission is of the opinion that blocking content or controlling it will further the s. 7 policy objective under the *Act*. Given that blocking and control of content violate the spirit and principles of common carriage – such situations will be very rare.

4. Consumer Protection, Rights and Accessibility

126. PIAC is concerned with communications affordability but also with "just and reasonable" telecommunications rates (or in free-market-speak "value for money"). To the extent that the *Telecommunications Act* is either oriented away from common carriage powers towards the "Model Act" vision of a market-controlled regulatory environment, or that the Act remains the same but the CRTC policy of relying excessively upon forbearance remains in place, we will continue to have a pricing problem (as distinct from an affordability problem, dealt with above). This is

[51] CRTC Telecom Regulatory Policy CRTC 2009-657 at para 122.
[52] PIAC Intervention Fairplay Application, March 29 2018 at para 188.

because Canadian telecommunications markets are highly concentrated and tend towards monopoly pricing, settling at higher rates than most Canadians believe is fair.

127. This is exacerbated for older generations of Canadians who grew up expecting "just and reasonable" rates for telephone service(because that was the regulatory model – and stated government policy – until CRTC rulings that led ultimately to local competition in local telephony)and who will continue to delude themselves into believing that somehow prices for telecommunications should be lower and that the CRTC or "the government" should be able to lower these directly. This generation is still loyal to incumbent carriers, loath to shop around and are unlikely to "churn" to get better deals and experience the benefit of a competitive market. While younger generations of Canadians do not expect this price-controlled market, they are aware that their telecommunications services are priced relatively higher in Canada than elsewhere and are not happy with this situation (and are likely to voice it) due to their increased reliance on telecommunications (in particular, wireless (Internet data) and fixed Internet).

128. Canadians still pay amongst the highest rates in the OECD nations for fixed Internet and for wireless Internet data, an effect observed even when selecting a smaller number of "comparable" foreign markets.[53] This has resulted, at last check, in Canada having 30th place (out of 37) in the OECD in mobile broadband, with 72 subscriptions per 100 inhabitants (65.9 data and voice and 6.1 data only), tied with Turkey.[54] While this is likely enabled by the limits on foreign ownership of Canadian facilities-based telecommunications carriers, PIAC does not believe that that policy of Canadian ownership and control of telecommunications carriers will change in this review.

129. Therefore, the main problem, not asked about directly in this set of Panel questions, is whether the course of forbearance should be reversed and prices regulated once more (or for the first time in wireless). PIAC believes that this change would be beneficial, if only to bring them from the market-set (but elevated) price to something closer to a "reasonable" rate that would simply provide carriers with a reasonable return and not supra-normal profits. We have argued for changes to the use of the forbearance power that would enable "re-regulation" of pricing above.

130. However, the likelihood of a recommendation along these lines being made in the Panel report, namely to re-price-regulate aspects of the telecommunications market, or to price regulate them for the first time, is very small. PIAC therefore

[53] Nordicity, "2017 Price Comparison Study of Telecommunications Services in Canada and Select Foreign Jurisdictions" (5 October 2017) Prepared for ISED. Online: https://www.ic.gc.ca/eic/site/693.nsf/vwapj/Nordicity2017EN.pdf/$file/Nordicity2017EN.pdf
[54] OECD, "OECD broadband statistics update" (28 June 2018). Online: http://www.oecd.org/sti/broadband/broadband-statistics-update.htm

turns its attention, as it has in many "consumer protection" framework hearings (such as the creation of the Wireless Code, the CCTS and the recent Sales Practices Inquiry), to the issue of price protection of consumers in the sense of avoiding unexpectedly large bills ("bill shock"). We leave telecom pricing and in particular wireless pricing issues to government to resolve as either election issues or, more sensibly, as a matter for a renewed policy statement (see below).

131. Bill shock regulation is defensible as required regulatory action, as sudden large charges have the same effect as, and are akin to, deceptive practices such as misstatements as to price in a mass consumer market.

132. The Commission has accepted the premise that: "Preventing bill shock benefits both customers and WSPs."[55] This is a rejection of the concept that consumer protection is a zero-sum game and that TSPs "lose" when consumer protections such as bill shock protections are put in place. Instead, consumer confidence is increased and the market is not retarded by mistrust.

133. The Commission therefore has held that it should limit the effect of carrier pricing that, while strictly speaking forborne, nonetheless creates potential traps for the unwary consumer by exposing them to grossly disproportionate bills (often due to pricing, such as on data overage or wireless roaming, which greatly exceed service costs and an average profit). Of the two parties who must apportion this "loss", the CRTC clearly chose the carrier as the party more likely to be able to shoulder the "loss", discounted the actual amount of the "loss" (it is certainly arguable that an incremental megabyte of data cannot cost carriers as much as overage fees value them at) and left responsibility for avoiding the loss with the least cost avoider, namely the carrier.

134. This sort of "bill shock" protection has been extended to other situations where customers are at high risk, with low downside for carriers and the potential to enhance market trust. This was the basis for the *Wireless Code* restriction of wireless contracts to two years and the requirements to transparently amortize the cost of wireless devices. It was also the rationale for the Commission's consistent stance on mid-term cancellations (where customers of any telecommunications service can no longer be billed for the service after cancellation – previously up to a month or two of service). When viewed as providing critical consumer trust in a market-delivered service, these consumer provisions can be seen as such and not strictly as price regulation.

135. Indeed, the Federal Court of Appeal, in upholding the Wireless Code's adoption date for the implementation of mandatory 2 year contracts noted:

[55] Telecom Regulatory Policy CRTC 2013-271, *The Wireless Code*, at para. 130.

> [54] It is important to recall that while this dispute centers on the effect of the implementation of the Code on early cancellation charges, it is the Code as a whole which is being implemented. The Code contains a large number of other provisions dealing with consumer choice and consumer protection. It covers such topics as the use of plain language in contracts, specific terms to be included in post-paid and pre-paid service contracts, the provision of critical information, changes to contract terms, bill management, mobile device issues, security deposits and disconnection: see A. B. pp 76-83. It is therefore an error to assess the CTRC's decision solely through the lens of early cancellation fees.
>
> [55] When one considers the Code as a whole, one can see that one of its effects will be to put more information in the hands of consumers. To the extent that the functioning of any market is dependent on the quality of the information available to market participants, the coming into force of the Code should make the market for wireless services more dynamic as consumers make better informed choices at more frequent intervals. It is not unreasonable to conclude that achieving this state of affairs is indeed in the best interests of consumers.[56]

136. We agree with this characterization. The Wireless Code provides much needed information and control over consumer contracts into the hands of consumers. It in effect "levels the playing field" between service providers and consumers.

4.1 Are further improvements pertaining to consumer protection, rights, and accessibility required in legislation?

137. While consumer protection and other rights could be protected by the present *Telecommunications Act*, as written (but with the additions to add a USO and clarify the obligation to serve described above), the Act could be amended to make these gains more secure by providing a more sure legal foundation for these rights.

138. We note that the FCA found that the CRTC, in the case of upholding the *Wireless Code* implementation date, had implicitly relied upon its s. 24 conditions of service and offering of service power to justify this consumer protection approach.[57]

139. While s. 24 is a wide-reaching power and one that has now been used (or implicitly relied upon) by the CRTC to craft much of the consumer protection measures discussed above and more (for example, the CCTS, Wireless Code, the TV Service Provider Code), it is a poor foundation on which to build consumer protection.

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[56] *Bell Canada* v. *Amtelecom et al.*, 2015 FCA 126, at paras. 54-55.
[57] *Bell Canada* v. *Amtelecom et al.*, 2015 FCA 126, para. 56-57.

140. Firstly, there is an argument that s. 24 was added to the act to support ratemaking under s. 25 and s. 27 of the *Act*. That is, the CRTC has jurisdiction to make conditions of a very broad nature in support of setting rates. This more limited power, for example, could still ground, for example, the Commission's power to dispose of deferral accounts for any purpose (a holding of the leading recent decision on CRTC telecommunications jurisdiction in *Bell Canada* v. *Bell Aliant Regional Communications*, 2009 SCC 40, [2009] 2 SCR 764) but not the creation of a Wireless or Internet Code.

141. Some of the history of s. 24 lends itself to this limited interpretation.[58] However, neither the CRTC nor the Federal Court of Appeal has questioned that a s. 24 condition is a "standalone" power, limited only by the CRTC having at least to justify its conditions use with a "rational rationale"[59] and reference to the policy objectives in s. 7 of the *Act*. No carrier has challenged the CRTC's use of s. 24 for these results.

142. Whether s. 24 was intended to be used as a general purpose provision to regulate consumer protection, amongst other matters, in an otherwise forborne competitive market, is perhaps irrelevant as it has *de facto* and *de jure* taken on this role.

143. In PIAC's view, in a modern telecommunications environment, when complex issues such as "zero rating" appear (that may not immediately suggest a 'correct' consumer answer), there should instead be a standalone consumer protection provision, with interpretive principles established, to justify and guide these exercises of this new consumer protection power.

144. This is especially so if the policy objectives related to the USO are moved out of a revised s. 7, as proposed above. It may be possible to achieve the same result by making the s. 24 conditions power in some way subject to the new USO section, however, as noted, without an explicit consumer protection section, the USO may be interpreted too narrowly to help consumers in this complex regulatory environment.

145. In addition, the CRTC's recent use of s. 24 to ground its consumer protection, while progressive from a consumer point of view thus far (CCTS, Wireless Code, TVSP Code, immediate payment suspension upon cancellation), is not guaranteed. That is, a new CRTC Chair and commissioners could easily back away from promulgating real consumer protections (such as from bill shock or misleading advertising or

[58] For example, in the CRTC's submission to the TPRP of 2006, section 24's role is discussed in these terms: "It [the new 1993 *Telecommunications Act*] also supplemented the Commission's powers to regulate tariffs of tolls by adding a new provision that empowered the Commission to impose conditions on the offering and provision of any telecommunications service by a Canadian carrier." [Emphasis added.]

[59] *Bell Canada* v. *Amtelecom et al.*, 2015 FCA 126, at para. 53: "Our role, in the circumstances of this case, is to examine the rationale given for the decision to see if there is a rational basis for it."

marketing)[60] without an explicit statutory requirement elsewhere in the *Act* to require the CRTC to protect the interests of consumers. In addition, were the only "consumer policy" section the proposed new USO, then matters such as, for example, broadband speed advertising controls or limits home Internet overage fees may not be addressed if the Commission did not consider them to be part of the requirements of a robust USO.

The Funding of Public Interest Groups in the Communications Sector In Canada

Introduction and Background Regarding Funding of Canadian Communications Public Interest Groups

146. The issue of funding for public interest in telecommunications proceedings has a long history. In May, 1978, following the acquisition of jurisdiction over federally regulated telecommunications carriers in 1976[61] the Commission issued a (still surprisingly relevant) decision which considered various funding proposals relating to participation in Commission hearings.[62] The following statement remains as germane today as then.

> The Commission has concluded that if the objective of informed participation in public hearings is to be met, some form of financial assistance must be made available to responsible interveners, both active and potential, who do not have sufficient funds to properly prosecute their cases, particularly where such interveners represent the interests of a substantial number or class of subscribers[63]

147. The Commission then outlined three types of proposals that it had received. The first involved funding from the Commission itself, either directly or through a "consumer advocacy" office. The second was direct funding by the government and the third was the awarding of costs to qualified interest groups. The Commission stated that the first two alternatives would be better than the third since they would,

[60] Here we must reference PIAC's boycott of Telecom Notice of Consultation 2018-422, *Call for comments – Proceeding to establish a mandatory code for Internet services* (9 November 2018), as a result of the Commission's recent refusal on our motion to consider these very two items as part of this proceeding on what we consider to be a less than consumer-friendly basis, and the ridiculously accelerated procedure schedule, which appears designed to elicit only the result proffered by the Commission in its draft Code attached to the Notice.
[61] PIAC itself was established in 1976 and has been working on behalf of consumers since that time.
[62] *CRTC Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4, 23 May 1978, Canadian Radio-television and Telecommunications Decisions and Policy Statements, 4 CRT, Part 1, Decisions, April 1, 1978 to March 31, 1979, at page 104.
[63] *Ibid.*, at page 122.

> Ensure the availability of resources to interveners in advance of hearings and would thus permit adequate pre-hearing preparation for meaningful intervention.[64]

Note the Commission focus on "meaningful" interventions and the need for adequate "pre-hearing preparation" – an early recognition that receiving funds after a proceeding would lead to inevitable cashflow issues.

148. Notwithstanding its belief that the third alternative was the worst of the three, it was the one the Commission selected and it is the one that we still have today.

149. With respect to the first alternative, the Commission indicated that it did not have funds of its own to support the participation by interveners at hearings and did not have the resources to set up a consumer advocacy office.

150. The best proposal, from the Commission's perspective, was the second proposal, namely that of direct government funding. However, it suffered from other deficiencies such as the lack of assurance that it would be available on a continuing basis. The Commission also mentioned that if funding might only be available to groups with an Ottawa-based office or a national association, it might not ensure an adequate representation for the range of subscriber interests.

151. Accordingly, although strongly favouring "some form of government or other funding" for such groups, the Commission ended up with its last choice, namely the awarding of costs. This was said to "provide a partial resolution of the problem" and that:

> …costs to interveners, which would only represent a small fraction of such regulatory expenses would, in the Commission's view, contribute to a more effective representation of subscriber interests and to an improved record on which to base decisions.[65]

152. Some improvement, however, almost immediately came from an unlikely source: The Supreme Court of Canada.

153. Immediately upon awarding the first cost award under this regime to the Consumers Association of Canada and PIAC in a Bell rate-setting case, the issue of whether the "costs" regime set up by the CRTC was to be modeled strictly on the indemnification principle of costs in civil litigation, or upon some other basis, was raised.

[64] *Ibid.*
[65] *Ibid.*, at Page 123.

154. Bell Canada objected to the taxation order that concluded PIAC and CAC were entitled to the costs award on a basis other than strict indemnification.

155. As quoted by (and upheld by) the Supreme Court of Canada in *Bell Canada* v. *Consumers' Assoc. of Canada* [1986] 1 SCR 190, the CRTC in Telecom Decision 85-1 (the CRTC decision upholding the root taxation order) noted:

> In the Commission's view, the application of the principle of indemnification upon which Bell relies would not be appropriate in regulatory proceedings before it. In the Commission's opinion, the proper purpose of such awards is the encouragement of informed public participation in Commission proceedings. It would inhibit public interest groups from developing and maintaining expertise in regulatory matters if, in order to be entitled to costs, they had to retain and instruct legal counsel in the manner appropriate to proceedings before the courts in civil matters. [Emphasis added.]

156. Also quoted in the Supreme Court decision was the taxation decision at the root of that case (upheld by the CRTC in Telecom Decision 81-5 and the Supreme Court), namely Taxation Order 1980-1, in which the taxation officer said this:

> Therefore, I have interpreted the Commission's decision [Telecom Decision 80-1] in light of the knowledge that public participation is a fragile concept, more talked about than realized, that public interest advocacy groups offer a different, but no less valuable, approach to participation than does the traditional solicitor client form, and that a restrictive interpretation of a costs award by the officer responsible for implementing it would serve no useful public purpose.

157. PIAC therefore arranged its representation to be effective despite the many barriers to effective public participation before regulatory tribunals such as the CRTC in order to protect this fragile concept.

158. Also notably, the Commission has stated that the public interest requires “expert resources” such as the representation PIAC offers to the public and public interest:

> The complexity and importance of the issues which come before the Commission often demand that expert resources be available for their adequate treatment. Such resources are employed by the regulated companies. In the Commission’s view, it is critical to, and part of the necessary cost of, the regulatory process that such resources also be available to responsible representative interveners.[66]

[66] Telecom Decision 78-4, [1978] 4 C.R.T. 104 at p. 122.

159. Finally, in exercising its discretion under subs. 56(1) of the *Telecommunications Act*, the Commission has generally borne in mind the words of Le Dain J., in *Bell* v. *CAC* (above):

> I would agree that the word "costs" in s. 73 [now s. 56 of the *Telecommunications Act*] must carry the same general connotation as legal costs. It cannot be construed to mean something quite different from or foreign to that general sense of the word, such as an obligation to contribute to the administrative costs of a tribunal or the grant of a subsidy to a participant in proceedings without regard to what may reasonably be considered to be the expense incurred for such participation. Thus I am of the opinion that the word "costs" must carry the general connotation of being for the purpose of indemnification or compensation. In view, however, of the nature of the proceedings before the Commission and the financial arrangements of public interest interveners, the discretion conferred on the Commission by s. 73 must, in my opinion, include the right to take a broad view of the application of the principle of indemnification or compensation. *The Commission therefore should not be bound by the strict view of whether expense has been actually incurred that is applicable in the courts. It should, for example, be able to fix the expense which may be reasonably attributed to a particular participation by a public interest intervener as being deemed to have been incurred, whether or not as a result of the particular means by which the intervention has been financed there has been any actual out of pocket expense.* This is what I understand the Commission to have done in this case. It did not reject the general concept of indemnification or compensation, as indicated by the provision in its draft and adopted rules that the costs awarded to an intervener "shall not exceed those necessarily and reasonably incurred by the intervener in connection with its intervention" a requirement included by the taxing officer in his summary of the principles which should govern him as a result of the general approach to the award of costs to interveners adopted by the Commission. What the Commission did reject, as I read its reasons and those of the taxing officer, was the contention that in its application of the general principle of indemnification or compensation it should be governed by the authorities reflecting the application of that principle in the courts. In doing so, it did not in my opinion err in law, so long as it adopted a reasonable approach, as it appears to have done, to what should be deemed to be the expenses incurred for the interventions on behalf of CAC and NAPO et al. I would accordingly dismiss the appeal. [Emphasis added.]

160. This case allows the Commission to take as broad an approach to costs as possible to support public interest intervention, and to "be able to fix the expense which may be reasonably attributed to a particular participation by a public interest intervener as being deemed to have been incurred."

161. In short, public interest costs claims may be whatever is reasonable and is necessary to the vigorous public interest advocacy desired by the Commission and supported by the *Rules*. The Commission is not bound by courts' views of how a "well managed law firm" would conduct public intervention nor what costs a court would award a successful litigant. The Commission should instead consider how an effective public interest advocacy organization would conduct the proceeding to achieve the best outcome in the public interest.

Current Problems with Telecommunications "Costs Awards"

162. This "partial resolution" (as bolstered by the Supreme Court's interpretation) has now been in place for over a quarter century. It has in fact functioned well until quite recently.

163. Unfortunately, the costs award system has become an overgrown garden at the CRTC. The lack of tending to this perhaps pedestrian, yet vital, adjudication has led to now unacceptable delays of almost 10 months, on average, for the CRTC to issue a costs award after the substantive decision in a proceeding.[67] The data make clear that the CRTC resolution of costs claims has been slowing down across the board and that the delays are increasing.

164. PIAC believes that there is no central costs claim tracking system nor responsible entity at the CRTC to ensure costs claims are adjudicated, such as there was with taxation officers. It appear that each analyst or responsible staffer must do the costs award claim and bring it before the Commission for adjudication. We suspect that this means that these "rump requirements" are simply being ignored by overworked staffers who are pushed to move along to the "active" part of new files.

165. It also appears that the Commission does not ask for status on these costs claims nor schedule a regular agenda item to deal with these costs. As a result, we believe, they are ignored.

166. The costs award system therefore has fallen into disrepair through lack of attention and this has resulted in extraordinary delays and a failure to provide stable and long-term funding for effective consumer advocacy in the communications area.

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[67] See Forum for Research and Policy in Communications (FRPC), "Research Note: The CRTC's cost-orders process in telecommunications: a year later" (3 December 2018). Online: http://frpc.net/wp-content/uploads/2018/12/CRTC-cost-orders-Nov-2018.pdf

167. PIAC has had to, on two separate occasions a year apart, write the Ministers responsible for the CRTC to urge them to remedy the situation. PIAC has never received an explanation or apology from the CRTC, nor even a meeting request to discuss costs. We view this as an abject abdication of the CRTC's responsibility bordering on a deliberate policy of starving PIAC out of existence.

168. In PIAC's present case, at the time of writing, we are currently waiting on approximately $150,000 in cost claims decisions from the CRTC, with some claims dating 18 months from submission. In December 2018, this meant that we regrettably had to lay off two staff. PIAC is presently reduced to an Executive Director and General Counsel, our office administrator plus an articling student. PIAC also moved from our longstanding premises (25 years) to a smaller, less desirable location in order to further economize while our cost claims awaited adjudication.

169. There is a very real prospect that PIAC soon will cease operations after 40 years of operation, in large part due to the lateness of CRTC costs awards processes.

170. One solution to the current crisis in consumer representation in the communications area would be to streamline the reimbursement process. One enhancement might be to find a way to enable partial pre-hearing costs to be awarded such that consumer groups could properly prepare for hearings as originally envisaged by the Commission back in 1978 rather than waiting in uncertainty for up to 18 months after the hearing to see if their efforts were deemed worthy of reimbursement. Another might be to require the Commission to render a decision within a certain number of days of the issuance of a decision.

171. We note that the Ontario Energy Board has a costs claims system that is very similar to the CRTC's and manages to issue many more costs awards yearly than the CRTC and typically within 4-6 weeks after the OEB's substantive decision.

172. The OEB also requires potential intervenors to request intervenor status and, for those looking to claim costs,[68] a short explanation of the nature of the anticipated and why the intervention should be reimbursed through the costs system. The process at OEB therefore streamlines the eventual costs awards to those parties that are granted intevenor and costs claim eligibility status.[69] Any member of the public or group is free to participate in OEB hearings but if they do not qualify for eligibility for costs they do not receive any.

[68] See OEB, "Intervenor cost awards" . Online: https://www.oeb.ca/industry/applications-oeb/intervenor-information/intervenor-cost-awards
[69] See OEB, "Practice Direction on Costs Awards" (Revised April 24, 2014). Online: https://www.oeb.ca/oeb/_Documents/Regulatory/Practice_Direction_on_Cost_Awards.pdf

173. Frequent intervenors before the OEB are required to file: "Annual Filings of Frequent Intervenors". PIAC would not be opposed to such a requirement for a CRTC frequent intervenor filing.

174. Public interest groups could also be required to submit an administratively simple, top-line estimated budget to be approved by the Commission prior to participating in a major CRTC hearing. This is required in certain proceedings before the British Columbia Utilities Commission. We do not, however, think it practical or fair to burden public interest intervenors with such a budgeting process for any proceeding. In addition, for Part 1 applications brought by such public interest parties, a separate system would have to be devised to, for example, require a draft budget to be filed at the same time as major Part 1 applications, but not with minor ones.

175. We note also that the CRTC costs scale of counsel, expert and consultant allowable rates have not been reviewed or revised since 2010.[70] CRTC's costs schedule is on the low side compared to, for example, the Ontario Energy Board (see OEB Practice Direction on Costs, Appendix A, Cost Award Tariff).

176. In addition, the OEB does not differentiate between "in-house" and "external" counsel or consultants. In PIAC's view, the CRTC's differentiation between these resources and the resulting vast difference in rates makes no sense in light of the Supreme Court of Canada's admonition to deem appropriate amounts be payable to public interest groups to encourage their participation. It leads to convoluted legal and corporate arrangements at organizations like PIAC that do this work frequently and leads to endless sterile debates about whether a particular lawyer or resource is really in-house.

177. In PIAC's view, there should be one, generous rate, based on "external" rates (as done in the OEB) and the control of excessive costs, if any, should be handled in the CRTC's evaluation of the utility of the intervention.

178. In any case, the Panel should recommend a review of regulatory best practices for costs awards and require the CRTC to undertake regular updates and reviews of its costs awards (we suggest every 5 years). Such reviews should be public proceedings.

179. The Panel should also urge the CRTC and the government to fix the costs awards system with all due haste. If the Panel has any ability to issue interim conclusions before its final report for urgent recommendations, PIAC requests that it do so on this issue, for the sake of our survival.

[70] See Telecom Regulatory Policy CRTC 2010-963, *Revision of CRTC costs award practices and procedures* (23 December 2010), Appendix A: Scale of Costs Legal Fees (Outside Counsel) – Hourly Rates.

Other Possible Solutions

180. PIAC is aware of other possible "solutions" apart from "fixing" the costs awards system, to fund and encourage professional representation of consumer and the public interest before the CRTC.

181. In particular, we are aware of various parties (including, it appears, the CRTC) who suggest a possible public advocate model.

182. PIAC does not favour this model. The Public Advocate model is a directly government-funded advocacy organization, with formal operating independence and a mandate to protect "the consumer" or "the public" in a particular jurisdiction in relation to the matters referred to it.

183. Although such models can be effective in particular circumstances and jurisdictions, in particular, for diffuse consumer claims (such as, for example, in relation to litigating for "all consumers in Ontario" on general consumer protection matters like electronic commerce) these bodies are, in our view, highly counter-productive in specialized regulated industries. The model is therefore inferior to the present costs awards system.

184. This is because the Public Advocate model may operate to some extent independent of its funding, however, it is still beholden to the government that feeds it its budget. In our experience, such PA offices temper their advocacy and do not fearlessly pursue the public interest as they perceive it, in order to maintain funding nor to embarrass the government in general.

185. The present costs award system, by contrast, encourages completely fearless advocacy by allowing any independent intervenor with an interest to make submissions, with the adversarial parties made to pay by the regulator, with the only limit on their advocacy being the reasonable conduct of the formal steps in the proceeding and contribution to a better understanding of the issues by the regulator.

186. The costs awards model also encourages a polycentric representation of the public interest as various intervenors present various aspects of, and concerns of, particular groups of consumers and the public. The resulting variety of views allows the regulator to gain a better picture of the public or consumer interest, itself a varied and difficult to define matter.

187. When there is an official Public Advocate, that advocate tries to be all things to all consumers and the result is often a bland submission style and content. By their nature, specialized regulatory hearings often pit one aspect of the public interest

against another, some consumers against another or various slight contrasts in position. The Public Advocate cannot reflect that diversity in one set of submissions.

188. The Public Advocate's appointment and operation may be subject to very real risks of coercion from the appointing bodies.

189. The Panel also should realize the realpolitik of a Public Advocate. If it is created, it will suck all of the money and oxygen out of consumer representation in this area. No consumer group will operate in the communications area with an "official" consumer opinion to try to counter. In even more practical terms, PIAC believes the creation of such a body would simply steal PIAC's business case and we would close. Whether the "assets", human or otherwise of PIAC and similar groups would be absorbed into the entity is neither known, knowable, nor guaranteed.

The Broadcasting Participation Fund

190. We turn now to another difficulty with public interest intervenor funding, this time in relation to CRTC and related work in broadcasting regulation.

191. From the introduction of the 1968 *Broadcasting Act* until 2012, there was very little public participation in CRTC broadcasting hearings. The applicants and their teams would solicit as many supporting interventions as they could, of course, but participation by independent Canadians or consumer groups was minimal. In 2012, this changed with the introduction of the "Broadcasting Participation Fund" (BPF) as a late addition to the tangible benefits package offered by BCE Inc. in respect of its acquisition of CTVglobemedia Inc. The BPF idea was jointly presented to the CRTC by PIAC and BCE. This independent broadcasting fund was designed to offset the costs incurred by public interest groups in participating in CRTC broadcasting hearings.

192. PIAC and BCE jointly worked out and submitted for approval a proposal for the BPF's establishment and operation. While it was approved by the Commission[71] both PIAC and BCE noted that the record of that proceeding was insufficient to make a determination on long-term, ongoing funding at that time. The Commission agreed, and noted that,

> The Commission is satisfied that the structure of the BPF as proposed by BCE and PIAC would allow for future sources of funding as described in Broadcasting Decision 2011-163, including future transfers of ownership for which the BPF may be specified as an eligible initiative for tangible benefits.[72]

[71] Broadcasting Regulatory Policy CRTC 2012-181, 26 March 2012.
[72] Ibid., at paragraph 25.

193. Unfortunately, and perhaps not surprisingly, broadcasters involved in transfer of control transactions often did not voluntarily propose to contribute tangible benefits monies into the BPF. The only major influx of money to the BPF was the result of the Bell-Astral merger (No. 2).

194. Despite warnings from the BPF Board about dwindling funds at the BPF, it was not until March of 2018 that the CRTC required SiriusXM (in the context of the transaction for which it was seeking CRTC approval) to make significant tangible benefits contributions to the BPF.[73] It is worth noting that SiriusXM initially argued that it should not have to pay tangible benefits at all in respect of their transactions, and when told they did, elected initially not to include funding of the BPF in their proposals. So it is clear that the BPF contribution in this merger was very much a result of the Commission's belated involvement.

195. However, the BPF will run out of funding again, of present claims levels persist, likely within two years if something is not done. The BPF is subject to the hazards of the market in terms of only being required on transfer of control transactions that trigger tangible benefits (which could occur at any time or not at all). It is also subject to choices to be made by the acquiring company. There is no obligation on the acquiring company to include funding for the BPF in its tangible benefits package. It is only if "encouraged" by the CRTC in the course of a public process to do so that an acquiring company will have the sense that it should offer some such funding to avoid having the transaction denied. This is an unsatisfactory situation.

196. PIAC has in major transfer of ownership proceedings suggested a simple formula of 0.5% of tangible benefits to the BPF and 0.5% to the sister Broadcasting Accessibility Fund (BAF).

197. This level of contributions could be mandatory or nearly so, as occurs with the CMF, FACTOR, Musicaction, CRFC, etc., under Commission guidelines.

198. Without a regular industry levy, or a policy that all transactions should contribute our recommended amount (and even then, there will be problems if there are few transactions) the BPF likely will continue to stumble along and become a perpetually-funds challenged bookend to the non-functional telecommunications costs award process.

199. Instead, PIAC recommends that the BPF be dissolved once a parallel costs award process to that on the telecommunications side be established. However, like the revised telecom costs award process, CRTC must be directed to regularly review it and keep it paying at a best practices pace. The broadcasting rules could be promulgated like the telecommunications rules, as a regulation. However, in order to

[73] Tangible benefits proposal by SiriusXM Canada Inc., Broadcasting Decision CRTC 2018-91, 16 March 2018.

do so, the CRTC in the Broadcasting Act, would have to be given authority to award costs, as in s. 56 of the *Telecommunications Act*.

200. Fortunately, a Senate bill was passed to do just that in 2003.[74] It had appropriate language and could be reintroduced along with any other legislative changes the government may wish to make to the *Broadcasting Act*, or, should the larger amendments appear to be slow in being introduced, again introduced as a standalone bill. In the meanwhile, the BPF could be tuned up as indicated above.

The Australian Model

201. Thinking in a larger and more radical way about public interest funding in communications, it is worth exploring another consumer participation funding model in Australia. There, Section 593 of the *Telecommunications Act, 1997* gives the Minister the capacity to make grants of financial assistance to

> a) consumer bodies to support consumer representation in the telecommunications sector, and
> b) to persons or bodies for purposes in connection with research into social, economic, environmental or technological implications of developments relating to telecommunications.

202. Funding under that Act for the 2016-2017 period was provided only to the Australian Communications Consumer Action Network (ACCAN) and for the 2016-2017 year amounted to A$2,230,000 (GST-Exclusive)[75]. Amounts provided to ACCAN are recovered from the annual carrier licence charge imposed under the *Telecommunications (Carrier Licence Charges) Act 1997*. ACCAN and the Department of Communications and the Arts are currently operating under a multi-year funding agreement which continues until 2022 which requires, among a number of other items, a quarterly assessment of 6 key performance indicators as set out in the funding agreement.[76]

203. While PIAC does not prefer this model to the present costs award system, it would be a starting point for discussion. Our suggestion, were this more radical solution considered, would be to ensure the funding generated out of this new fund would not be granted exclusively to one consumer representation body.

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[74] See Senate Bill S-8, An Act to Amend the Broadcasting Act, 2nd Session, 37th Parliament, 51-52 Elizabeth II, 2002-2003. The Bill was not passed by the House before the next election. In a letter to Michael Janigan, then ED of PIAC, a political staffer of Minister Frulla (Canadian Heritage and Status of Women) explained that the Bill had foundered on the question of how to make the CBC subject to costs awards (increasing its appropriation) or exempting CBC (in which the private broadcasters would have to pay more in costs then they deserved to). We are confident this conundrum could be solved by making CBC exempt from costs awards and requiring costs applicants to forgo the CBC's proportionate share of any costs award.

[75] Approximately C$2,107,400.

[76] This information and much more is available on ACCAN's website at http://accan.org.au/

204. It is our understanding that the Expert Panel will issue its "This is what we heard" report in the late Spring and its Final Report in January of 2020. With respect, PIAC may not be able to wait that long for a short-term solution to its chronically funding shortfall. As noted above, any interim recommendations the Panel could make in this regard would be appreciated.

5. Safety, Security and Privacy

205. PIAC believes that the digital rights of consumers described under Part C of the Executive Panel's Review of the Canadian Communications Legislative Framework are adequately protected through the complementary roles of the CRTC and the Office of the Privacy Commissioner [OPC] under the *Telecommunications Act* and *PIPEDA* respectively. However, with the versatility of consent provisions under PIPEDA and the lack of enforcement powers of the OPC, there is a gap which may leave Canadians vulnerable to privacy violations from communications service providers. This gap can be solved by a strengthening of the CRTC's statutory obligation to protect the privacy of persons under section 7(i) of the *Telecommunications Act* and an incorporation of this obligation under the *Broadcasting Act.*

CRTC's Statutory Obligation to Protect Privacy Rights

206. The Commission is vested with unique authority to regulate and supervise the broadcasting and telecommunications systems in Canada, and has a statutory obligation to protect privacy under section 7(i).[77] In exercising its powers under the *Telecommunications Act*, the CRTC may apply higher standards to protect privacy than those contemplated by PIPEDA. For example, the CRTC has found that express consent is required for the disclosure of confidential customer information by Telecommunications Service Providers (TSPs).[78]

207. More recently, in CRTC 2015-462, PIAC and the Consumer Association of Canada (CAC) requested that the Commission prohibit Bell Mobility et al. from collecting and using customer information for the advertising and marketing purposes set out in Bell's Relevant Ad Program (RAP). PIAC/CAC also requested that the Commission initiate a larger follow-up proceeding to examine the data collection, use, and disclosure practices of all other TSPs and broadcasting distribution undertakings (BDUs).

208. In its decision, the Commission ruled that any communications service provider that charges for the provision of services will obtain express, opt-in consent from a

[77] CRTC 2015-462 at para 5.
[78] For example see Telecom Decision 2003-33, Confidentiality provisions of Canadian carriers and Telecom Regulatory Policy 2009-657, Review of the Internet traffic management practices of Internet service providers

customer before using that customer's data for the purposes of targeted advertising.[79] The Commission clarified that for that consent to be "meaningful," it will need to be supported by a detailed explanation that allows the customer to clearly understand the full breadth of the actual information that a company might use to target them for advertising purposes.[80]

Gaps in PIPEDA

209. The finding in 2015-462 is an example of the Commission applying higher standards to protect privacy than those contemplated by PIPEDA. While PIPEDA requires that individuals consent to personal information being collection, used, and disclosed, the manner in which consent must be obtained is vague.[81] Section 4.3.6 of Schedule 1 of PIPEDA states, "The way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected."[82]

210. PIPEDA simply provides a broad range for the type of consent that is required depending on the information being collected, used, and disclosed. Section 4.3.6 states, "An organization should generally seek express consent when the information is likely to be considered sensitive. Implied consent would generally be appropriate when the information is less sensitive..."[83] Section 6.1 of PIPEDA outlines the standard for "valid" consent.[84] This provision is also vague and without further direction from the OPC or CRTC with respect to specific practices, it leaves room for TSPs and BDUs to use implied or opt-out consent for data collection, use, and disclosure practices.

Importance of the Commission's Obligation to Protect Privacy

211. For comparative purposes, Article 21 of the EU's GDPR provides strict provisions giving data subjects the right to object to the collection of personal data processed for direct marketing purposes.[85] No such right exists for Canadians, which makes the Commission's power under 7(i) important as it allows the Commission to provide greater certainty to how consent must be obtained for the collection, use, and disclosure of personal information with respect to telecommunications services. The Commission's decision in 2015-462 is helpful in requiring express opt-in consent for the purposes of targeted advertising. However, as Bell Canada withdrew the RAP which effectively caused the Commission to dismiss PIAC/CAC's application, there

[79] CRTC 2015-462 at para 14.
[80] CRTC 2015-462 at para 14.
[81] Under PIPEDA, an organization cannot collect, use, or disclose personal information of an individual in the course of commercial activities without the consent of the individual, unless the purpose of the collection, use, or disclosure falls under one of the specific exemptions listed in section 7 of PIPEDA.
[82] PIPEDA, Schedule 1, section 4.3.6
[83] *Ibid.*
[84] **6.1** For the purposes of clause 4.3 of Schedule 1, the consent of an individual is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which they are consenting.
[85] EU General Data Protection Regulations, Article 21, sections 2 and 3, online: < https://gdpr-info.eu/art-21-gdpr/>.

has never been a larger follow-up proceeding to examine data collection, use, and disclosure practices of TSPs and BDUs for other purposes. PIAC still believes that further investigation into these practices is necessary.

212. TSPs and BDUs have access to a significant amount of data from consumers. TSPs have access to OTT viewing habits, home internet usage and habits, mobile data usage, etc. BDUs have access to television viewing habits through set-top boxes. There are no explicit provisions in PIPEDA that would require TSPs or BDUs to obtain explicit consent from customers before selling such data to a third party for data profiling purposes.[86] That means that information could be sold to data brokers who could in turn sell profiles to employers, bankers, or insurance companies. PIAC believes that allowing TSPs and BDUs to engage in these types of practices without explicit consent is problematic and violates the privacy of Canadians.

213. In PIAC's view, TSPs and BDUs should be required to have customers click "I agree" to an agreement which states something along the lines of, "We intend to sell your information to data brokers, allowing other companies to track your online movements." If these types of agreements were required, PIAC believes that most customers would not consent to such use and disclosure of their personal information.

214. In fact, there is an overwhelming concern from Canadians that there are inadequate measures in place to protect their privacy online. According to a 2018 Ipsos survey, a significant majority of Canadians (68% strongly/24% somewhat) agree that people should have the right to privacy online.[87] The OPC's 2016 Public Opinion Survey of Canadians on Privacy states, "Roughly nine in 10 Canadians expressed some level of concern about the protection of their personal privacy, including 37% who said they are extremely concerned."[88]

215. The Commission's ability to clarify and require express opt-in consent in certain circumstances is thus extremely important to securing the personal information of Canadians collected through the use of communication services.

216. In order to provide a belt and suspenders approach to privacy protection of communications services customers, PIAC believes that the Commission's powers with respect to privacy protection should be clarified and expanded. While the Commission currently has the power to apply higher standards to protect privacy under 7(i), PIAC believes that this power should be given more urgency and importance. As stated above in relation to the USO, we would add the "contribut[ion] to the protection of privacy", to the principles of the USO (not found in U.S. USO).

[86] There is only the clarification made in CRTC 2015-462 that TSPs must obtain express, opt-in consent from a customer before using that customer's data for the purposes of targeted advertising.
[87] https://www.ipsos.com/en-ca/news-polls/guaranteed-removals-online-privacy-poll-April-2018
[88] https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2016/por_2016_12/#fig2

217. Additionally, there is no statutory obligation to protect privacy interests of Canadians under the *Broadcasting Act.* There should be a parallel provision under the *Broadcasting Act* which states that protecting the privacy of Canadians is an objective of Canadian broadcasting policy.

6. Effective Spectrum Regulation

6.1 Are the right legislative tools in place to balance the need for flexibility to rapidly introduce new wireless technologies with the need to ensure devices can be used safely, securely, and free of interference?

218. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

7. Governance and Effective Administration

7.1 Is the current allocation of responsibilities among the CRTC and other government departments appropriate in the modern context and able to support competition in the telecommunications market?

219. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

7.2 Does the legislation strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

220. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

Broadcasting Act

8. Broadcasting Definitions

8.1 How can the concept of broadcasting remain relevant in an open and shifting communications landscape?

221. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

8.2 How can legislation promote access to Canadian voices on the Internet, in both official languages, and on all platforms?

222. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

9. Broadcasting Policy Objectives

9.1 How can the objectives of the *Broadcasting Act* be adapted to ensure that they are relevant in today's more open, global, and competitive environment?

223. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

9.2 Should certain objectives be prioritized? If so, which ones? What should be added?

224. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

9.3 What might a new approach to achieving the Act's policy objectives in a modern legislative context look like?

225. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

10. Support for Canadian Content and Creative Industries

10.1 How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production, and distribution of Canadian content?

226. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

10.2 How can the CRTC be empowered to implement and regulate according to a modernized *Broadcasting Act* in order to protect, support, and promote our culture in both official languages?

227. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

10.3 How should legislative tools ensure the availability of Canadian content on the different types of platforms and devices that Canadians use to access content?

228. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

11. Democracy, News and Citizenship

11.1 Are current legislative provisions sufficient to ensure the provision of trusted, accurate, and quality news and information?

229. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

11.2 Are there specific changes that should be made to legislation to ensure the continuing viability of local news?

230. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

12. Cultural Diversity

12.1 How can the principle of cultural diversity be addressed in a modern legislative context?

231. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

13. National Public Broadcaster

13.1 How should the mandate of the national public broadcaster be updated in light of the more open, global, and competitive communications environment?

232. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

13.2 Through what mechanisms can government enhance the independence and stability of CBC/Radio-Canada?

233. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

13.3 How can CBC/Radio-Canada play a role as a leader among cultural and news organizations and in showcasing Canadian content, including local news?

234. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

13.4 How can CBC/Radio-Canada promote Canadian culture and voices to the world, including on the Internet?

235. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

13.5 How can CBC/Radio-Canada contribute to reconciliation with Indigenous Peoples and the telling of Indigenous stories by Indigenous Peoples?

236. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

13.6 How can CBC/Radio-Canada support and protect the vitality of Canada's official languages and official language minority communities?

237. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

14. Governance and Effective Administration

14.1 Does the *Broadcasting Act* strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

238. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

14.2 What is the appropriate level of government oversight of CRTC broadcasting licensing and policy decisions?

239. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

14.3 How can a modernized *Broadcasting Act* improve the functioning and efficiency of the CRTC and the regulatory framework?

240. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

14.4 Are there tools that the CRTC does not have in the *Broadcasting Act* that it should?

241. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

14.5 How can accountability and transparency in the availability and discovery of digital cultural content be enabled, notably with access to local content?

242. PIAC is unable to comment on this subject due to extreme resource constraints. We apologize and request that we may be permitted to comment in future rounds of this consultation, whether orally or in writing.

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