

**OpenMedia Submission to the
Broadcasting and Telecommunications Legislative Review Panel**

January 11, 2019

OpenMedia is a community-based organization that works to keep the Internet open, affordable, and surveillance free.



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The Broadcasting and Telecommunications Legislative Review Panel
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Ottawa, Ontario K1A 0H5

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January 11, 2018

Dear Broadcasting and Telecommunications Legislative Review Panel,

We are writing to you on behalf of OpenMedia, a community-based organization that works to keep the Internet open, affordable, and surveillance-free. We work toward informed and participatory digital policy by engaging hundreds of thousands of people in protecting our online rights and finding positive solutions. Our community is comprised of nearly 235,000 engaged people throughout Canada.

Our organization and community members have been active participants at the Canadian Radio-television and Telecommunications Commission (CRTC) and parliamentary processes such as the Copyright Act review. We are also heavily focused on education and mass outreach on digital rights issues.

We hope that through this review process, Canada's Telecommunications and Broadcasting Acts will better support bringing everyone in Canada fast, affordable, high speed Internet services, more choice of providers, and establish a strong Net Neutrality framework that is able to endure the test of time.

In this submission, we will outline our core concerns, and recommendations regarding the Acts under review, as compiled from the voices of our community. Our policies and positions have been created as the result of numerous actions and consultations with OpenMedia community members over the past years, and consultations with experts in the industry, all of which have shaped the organization's positions on these issues.

Additionally, we have included a letter with our core recommendations Broadcasting and Telecommunications Legislative Review (BTLR) panel, signed by 9,636 community members ([Appendix A](#)). We thank you for considering the voices of people in Canada from all backgrounds, political beliefs, and socio-economic statuses, who believe in the open, affordable, surveillance-free Internet.

OpenMedia is a community-based organization that works to keep the Internet open, affordable, and surveillance free.



We are grateful for the attention this review panel is giving to these issues, and look forward to the next phases and their consequent recommendations.

We hope that this submission adequately outlines the priorities of the OpenMedia community. If you have any questions, or we can be of any further assistance, please let us know.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Marie Aspiazu". The signature is written in a cursive style with a large, circular flourish at the end.

Marie Aspiazu
Digital Campaigner, OpenMedia

A handwritten signature in black ink that reads "Laura Tribe". The signature is written in a cursive style with a long, horizontal flourish extending to the right.

Laura Tribe
Executive Director, OpenMedia



OpenMedia's Core Concerns

A Lack of Affordable Telecommunications Services in Canada

It is widely recognized that people in Canada pay some of the highest prices in the industrialized world for wireline and wireless Internet, for subpar service compared to our international counterparts.¹ These high prices are holding back the Canadian economy, stifling job creation and exacerbating Canada's digital divide.

According to the CRTC's 2018 Communications Monitoring Report (CMR), the average household in Canada spent 2.90% of its annual income on communications services.² The average household spent \$92.08 CAD on mobile and \$49.50 CAD on wireline Internet services per month (total of 141.58 CAD per month) from 2012-2016. In comparison, the average household in the United Kingdom spent the equivalent of 117.43 CAD on communications per month.³ Moreover, the Canadian government's 2018 wireless comparison study confirms the gap between Canada and other countries' wireless affordability continues to grow.⁴

The average amount of data used per subscriber in 2017 according to the 2018 CMR 2018 was 1.6 Gigabytes per month – among the lowest in the Organisation for Economic Co-operation and Development (OECD).⁵ Canada's wireless subscribers also paid an exorbitant \$1.2 billion in overage fees alone in 2017.⁶

¹ Media and Internet Concentration in Canada, 1984-2017: Canadian Media Concentration Research Project:

<http://www.cmcrp.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932017-01062019.pdf>

² Communications Monitoring Report 2018: Canadian Radio-television and Telecommunications Commission: <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/index.htm>

³ Family spending in the UK: financial year ending 2017. (Figure 4). Office for National Statistics: <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/expenditure/bulletins/familyspendingintheuk/financialyearending2017>

⁴ More Steps Needed: "Government Commissioned Report Shows Canadian Wireless Pricing Remains Among Highest in the Developed World: Michael Geist: <http://www.michaelgeist.ca/2019/01/more-steps-needed-government-commissioned-report-shows-canadian-wireless-pricing-remains-among-highest-in-the-developed-world/>

⁵ CRTC, Communications Monitoring Report 2018: Retail Mobile Sector, December 20, 2018, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr2018-mobile.pdf>, p 21, Figure 6.15. Canada is 27th or among the lowest quarter of OECD countries: OECD, "Mobile Data Usage Per Mobile Broadband Subscription", *Broadband Portal*, December 2017, <https://www.oecd.org/sti/broadband/broadband-statistics/>.

⁶ Data overages accounted for 5% of total mobile retail revenues in 2017 (CRTC Communications Monitoring Report 2018, Table 6.16), amounting to \$1.225 Billion (5% * \$24.5 Billion in total mobile revenues: CRTC Communications Monitoring Report 2018, Infographic 6.1).



Canada is falling behind our international counterparts when it comes to data usage, yet mobile revenues in 2017 reached an all-time high of \$24.5 billion.⁷ This unaffordable reality is even worse for people living in rural communities, who continue to pay more for (typically lower quality) services than their urban counterparts. The amount of revenues Canadian wireless providers extract from each customer has been historically high and continues to grow each year,⁸ even as capital expenditure per subscriber continues to shrink.⁹ The high subscription costs that characterize Canadian mobile are likely the reason Canada remains near the bottom of the OECD heap in terms of mobile subscriptions per 100 inhabitants.¹⁰

Canada's prices are so extraordinarily high because of the incumbents' excessive market share, and current regulations offer little to no opportunity for new entrants in the market to help provide new offerings or increase competition. Canada's top five telecom companies: Bell, Telus, Rogers, Shaw and Quebecor alone accounted for 72.5% of the \$81.2 billion network media economy in 2017, climbing up from 72.1% the previous year.¹¹ Bell, Rogers, Shaw, Telus, Videotron, Cogeco, Eastlink and SaskTel, the incumbent telephone and cable companies, accounted for 87% of residential retail Internet access market in 2017. Wireless services are even more concentrated, with the Big Three accounting for 92.3% of the sector's revenue in 2017. Moreover, Bell Canada alone single-handedly accounted for 28% of all network media economy revenue in 2017.¹² This is not what a competitive market looks like.

One of the largest distinguishing factors between Canada's marketplace and our competitors is the industry's highly concentrated marketplace, and lack of alternative providers.

⁷ CRTC, Communications Monitoring Report 2018: Retail Mobile Sector, December 20, 2018, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr2018-mobile.pdf>, p 3, Infographic 6.1.

⁸ <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr3b.htm#s40vi1>, Infographic 4.9, Average Revenue Per User rose from \$59.97 in 2013 to \$65.33 in 2017. Since at least 2014, Canada's ARPU has been truly world-leading: https://cippic.ca/uploads/2014-76_FinalReply.pdf, figure 2.

⁹ <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2018/cmr3d.htm#f614>, Figure 6.14.

¹⁰ Canada is ranked 30th out of 37 OECD countries with 72 subscribers per 100 inhabitants (well below the OECD average of 102.4 mobile data subscriptions per 100 inhabitants): OECD, 1.2.2 Mobile Broadband Subscriptions per 100 inhabitants, December 2017, <https://www.oecd.org/sti/broadband/broadband-statistics/>.

¹¹ Media and Internet Concentration in Canada, 1984-2017: Canadian Media Concentration Research Project (p. v) <http://www.cmcrp.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932017-01062019.pdf>

¹² Media and Internet Concentration in Canada, 1984-2017: Canadian Media Concentration Research Project: <http://www.cmcrp.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932017-01062019.pdf>



For years, OpenMedia has been advocating for the introduction of Mobile Virtual Network Operators (MVNOs) to help bring more affordable plans and options to Canada's wireless markets. Unfortunately, this opportunity has been rejected by the CRTC, and the federal government has failed to step in. While we see nothing legislatively preventing MVNOs from being introduced into the marketplace under the current Telecommunications Act, it is worth noting that the policy direction and reliance on facilities-based competition often overshadow the benefits that would come from ensuring fair rates for MVNOs to offer alternative wireless services to customers in Canada.

In the CRTC's most recent decision to reject MVNOs, its solution was instead to launch a proceeding that resulted in low-cost data-only plans that will do nothing to meet the data and affordability needs of Canadians today, let alone of the future. While the entire consultation began around a need to address the issues of affordability, the end result was a series of data-only plans that are in fact more expensive than, or the equivalent of, plans already in the market. Not to mention being significantly inadequate in the amount of data available to customers, the largest plan was capped at 1GB.¹³ This type of limited scope proceeding, which ultimately serves to protect the incumbents and fails customers, is a serious concern for OpenMedia. Without clearly and directly addressing the challenges that people in Canada face with our out of control telecommunications market, we will continue to pay some of the highest prices in the world, and suffer from a lack of innovation in plans, pricing, and service.

The Need for Increased Competition and Choice

Canada simply does not have enough competition between, or customer choice of, telecommunications providers. In wireline markets, incumbents hold the majority of market share, with only 12% percent of revenues going to smaller, independent providers.¹⁴ Worse yet, in the wireless market, 92% of all mobile revenues in 2017 were made by only three companies.¹⁵ Although 7(c) of the Telecommunications Act clearly outlines the objective "to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications," this does not adequately ensure that there is adequate competition between providers.

¹³ https://cippic.ca/uploads/2018-98_INTERVENTION.pdf.

¹⁴ CRTC, Communications Monitoring Report 2018: Retail Fixed Internet Sector & Broadband Availability, December 2018, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr2018-internet.pdf>, p12, figure 5.7.

¹⁵ CRTC, Communications Monitoring Report 2018: Retail Mobile Sector, December 2018, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2018/cmr2018-mobile.pdf>, p 5, Infographic 6.2.



Bell, Telus and Rogers occupy too much of Canada's telecommunications marketplace to be seen as competitive. Three providers making up the majority of the market do not provide the services or choice that people in Canada require, or that would be sufficient to help address the affordability issues we are currently facing.

For example, before Bell acquired MTS, Manitoba was home to some of the lowest wireless prices in the country.¹⁶ The reason was simple — the presence of a fourth provider in the region fostered more competition and lower pricing. After Bell took over MTS, it wasn't long before the merged company axed unlimited flat rate data plans and increased most plan prices by \$5.¹⁷ The deal was a blow to competition in the wireless market and once again, called for government to immediately shift to a different policy direction that brings more providers to the market, not less.

Four times now – in 2015,¹⁸ 2016,¹⁹ 2017,²⁰ and most recently in March of 2018²¹ – the CRTC has said no to mandating Mobile Virtual Network Operators (MVNOs).²² Fundamentally, these decisions consistently rule in support of perpetuating the status quo of limited choice in Canada's mobile telecommunications marketplace. This facilities-based approach to competition directly stands in the way of bringing more choice into the marketplace, as the incumbents not only have the benefit of a decades-long head start in building their infrastructure, but also the countless corresponding government subsidies and benefits they received along the way.

The federal government should open up the networks to stop Big Telecom from blocking Canadians' access to independent, affordable providers. That means ensuring that indie providers can operate on a level playing field with the Big Three. This will require setting fair wholesale rates for MVNOs.

Hundreds of thousands of people in Canada have repeatedly called on the government for more

¹⁶ Why Bell's Plan to Buy MTS Could Kill the Government's Fourth Wireless Carrier Strategy: Michael Geist:

<http://www.michaelgeist.ca/2016/05/why-bells-plan-to-buy-mts-could-kill-the-governments-fourth-wireless-carrier-strategy/>

¹⁷ Bell MTS Axes Unlimited Flat Rate Data Plan, Prices Jump \$5 in Manitoba: iPhone in Canada: <https://www.iphoneincanada.ca/carriers/bell/bell-mts-axes-unlimited-flat-rate-data-plan/>

¹⁸ Telecom Regulatory Policy CRTC 2015-177: CRTC: <https://crtc.gc.ca/eng/archive/2015/2015-177.htm>

¹⁹ Telecom Decision CRTC 2016-60: CRTC: <https://crtc.gc.ca/eng/archive/2016/2016-60.htm>

²⁰ Telecom Decision CRTC 2017-57: CRTC: <https://crtc.gc.ca/eng/archive/2017/2017-57.htm>

²¹ Telecom Decision CRTC 2018-97: CRTC: <https://crtc.gc.ca/eng/archive/2018/2018-97.htm>

²² CRTC rejects opportunity to bring increased competition to Canada's wireless market: OpenMedia: <https://openmedia.org/en/crtc-rejects-opportunity-bring-increased-competition-canadas-wireless-market>



choice of mobile providers and lower prices via multiple OpenMedia campaigns, namely:

- **Open Canada's Networks** at act.openmedia.org/OpenNetworks: 7,996 action takers
- **Lower My Cell Bill** at act.openmedia.org/lowermycellbill: 8,516 action takers
- **Stop Blocking New Providers** at act.openmedia.org/blocked: 46,812 action takers
- **More Choice** at act.openmedia.org/MoreChoice: 9,846 action takers
- **Affordable Data Now** at act.openmedia.org/AffordableDataNow: 8,052 action takers
- **Lower my cell Bill (Calling Minister Bains' office)** at lowermycellbill.ca: 860 action takers

The message is loud and clear: Canada desperately needs more wireless providers to decrease the high market concentration and compete with Canada's Big Three in order to promote competition and offer consumers more choice.

Access to Quality Networks: A Call for a National Broadband Strategy

The Internet is not a luxury in the 21st century, but a necessity. The CRTC's 2016 decision²³ to categorize the Internet as a basic service was a positive step towards ensuring quality access throughout Canada, regardless of who you are or where you live. But just declaring high-speed Internet a necessity does not inherently make it a reality. We strongly believe that the government must step in to realize this basic service objective for so many people in Canada still struggling to access the services that many others take for granted.

While there have been many disparate investments and programs to help address connectivity issues throughout the country, OpenMedia firmly believes that a national broadband strategy is the only way to ensure that *no one* is left behind, and there is a clear vision for connecting everyone throughout the country – not just those in financial or political 'priority areas'. We need to ensure all Canadians can access the Internet in a way that allows them to both create and consume content, as well as actively participate in the local and global economy and society.

We are calling on the government to set clear connectivity goals for the entire country, and ensure that everyone is able to receive high-speed connectivity by a set deadline. While we recognize this project is ambitious, and will require significant investment. We see this just like the attention given to the critical infrastructure governments already support, such as roads, hydro, and water, all which require ongoing maintenance and upgrades to keep up as communities continue to grow and develop.

²³ Telecom Regulatory Policy CRTC 2016-496. <https://crtc.gc.ca/eng/archive/2016/2016-496.htm>



For reference, the CBC is subsidized at \$35 per person and broadband is only about \$2.25.²⁴ Broadband funding per person must be increased in order to realize the CRTC's recognition of the Internet as a basic service for everyone across Canada. Without sustainable government investment and prioritization, people in Canada will continue to struggle to get online with quality and affordable connectivity.

These infrastructure developments can be achieved through public and private partnerships, or government ownership, but the individual ownership and maintenance must be negotiated with the local communities accordingly – particularly in First Nations communities. There may not be, and likely is not, one set solution for each region. However, the government has already taken a step forward by asking for the Canada Infrastructure Bank to help fund rural broadband projects across Canada.²⁵ While this is certainly not the only way to fund such a project, this is a positive step towards putting connectivity atop the government's agenda.

The development of a national broadband strategy, and the corresponding rollout plans, should be created in partnership with local communities, and governments at all levels. But waiting for market forces to bring every person in Canada online is simply not working.

Over 10,000 people in Canada have already called on Innovation Minister Navdeep Bains to introduce a National Broadband Strategy to bring everyone in Canada online with affordable, quality Internet service via OpenMedia's campaign at: act.openmedia.org/broadband-plan.

Protecting Net Neutrality

The OpenMedia community is incredibly concerned about protecting and upholding strong Net Neutrality protections in Canada. While Canada currently has Net Neutrality protections in place, it is important to note that these protections stem from a series of multiple historical CRTC decisions about Net Neutrality and interpretations of certain sections of the Telecommunications Act – but not the specific requirements of the Telecommunications Act itself.

The current framework leaves the door open for Net Neutrality violations that are perfectly legal, should the CRTC decide that such preferential treatment is warranted – which is highly problematic. Under no circumstances should Canada's Internet Service Providers (ISPs) be

²⁴ The Standing Senate Committee on Transport and Communications Evidence: Senate of Canada: <https://sencanada.ca/en/Content/Sen/Committee/421/TRCM/54211-e>

²⁵ Liberals Want Infrastructure Bank To Help Fund Rural Broadband Internet: Huffington Post: https://www.huffingtonpost.ca/2018/12/31/liberals-infrastructure-bank-rural-internet_a_23630694/

allowed to pick and choose what consumers can and cannot see and do online, or what traffic should take priority over others.

CRTC Chair Ian Scott's recent remarks²⁶ that because "technology continues to evolve," we need to use "flexibility" in addressing our Net Neutrality framework that we've relied on for more than a decade, have raised serious concerns with the OpenMedia community. The remarks are at odds with the federal government's commitment to Net Neutrality, and the needs of people in Canada to ensure that all traffic is treated equally. The problem with such "flexibility" is that it may be abused, as political or industry interests shift. As this is a policy and legislative framework that is intended to stand for many years, we firmly believe that we cannot leave room for various interpretations or interests, and instead must ensure the principles of common carriage cannot be compromised.

Prime Minister Justin Trudeau²⁷ and Minister of Innovation, Science and Economic Development, Navdeep Bains²⁸ have both pledged their support for these protections. Additionally, in May of 2018, Canada's House of Commons adopted a motion (M-168)²⁹ in support of recognizing existing and future Net Neutrality protections. All 277 MPs in attendance voted in favour of the motion, clearly demonstrating widespread support for Net Neutrality among our elected representatives.³⁰

OpenMedia's community has been vocal with strong support for robust Net Neutrality protections on multiple occasions over the past three years.

In 2016, over 55,000 people in Canada called on the government for stronger Net Neutrality rules; an end to data caps for wired Internet and to ensure all Canadians have access to affordable, unlimited wireless data plans; and to ban differential pricing schemes known as "zero-rating", as part of the CRTC's zero rating proceeding. Additionally, over 6,000 people

²⁶ Ian Scott to the annual conference of the Canadian Chapter of the International Institute of Communications: Government of Canada: <https://www.canada.ca/en/radio-television-telecommunications/news/2018/11/ian-scott-to-the-annual-conference-of-the-canadian-chapter-of-the-international-institute-of-communications.html>

²⁷ Trudeau 'very concerned' about U.S. plans to roll back net neutrality: CTV News: <https://www.ctvnews.ca/sci-tech/trudeau-very-concerned-about-u-s-plans-to-roll-back-net-neutrality-1.3691028>

²⁸ Statement - Minister Bains comments on the Federal Communications Commission vote on net neutrality: [Canada Newswire](#)

²⁹ Motion: Private Members' Business M-168 (Net neutrality) <https://www.ourcommons.ca/Parliamentarians/en/votes/42/1/674/>

³⁰ Canada's House of Commons adopts motion to formally enshrine net neutrality into law: Mobile Syrup: <https://mobilesyrup.com/2018/05/24/canadas-house-of-commons-adopts-motion-formally-net-neutrality-law/>



submitted their own unique, personalized comments to the CRTC as part of this proceeding via: act.openmedia.org/datacaps/comment and over 1,000 people flooded the CRTC's corresponding forum on Reddit, calling for a ban on zero rating.^{31,32} Most recently, over 14,500 people in Canada voiced their support for Net Neutrality in response to the CRTC Chair's recent remarks mentioned above.

OpenMedia has delivered these citizen voices and concerns directly to the CRTC via two written submissions and an in person presentation before the CRTC as part of its zero rating hearing.^{33, 34,35, 36} The resulting CRTC ruling in April 2017³⁷ issued a framework to prevent telecom providers from engaging in zero rating practices and strengthened Net Neutrality in Canada, in a win for the public interest.³⁸

The United States' recent repeal of Title II Net Neutrality protections should serve as a cautionary tale to Canada. Despite 83% of Americans across the political spectrum supporting Net Neutrality, the Federal Communications Commission (FCC) repealed Net Neutrality in December of 2017.

Since then, Internet users are already experiencing negative impacts of not having these protections in place, as ISPs have begun throttling online content. For instance, last year

³¹ Thanks to you, we have a real chance to #EndDataCaps and stop zero-rating: OpenMedia: <https://openmedia.org/en/thanks-you-we-have-real-chance-enddatacaps-and-stop-zero-rating>

³² Canadians flood CRTC Reddit forum calling for ban on differential data pricing: Financial Post: <https://business.financialpost.com/technology/canadians-flood-crtc-reddit-forum-calling-for-ban-on-differential-data-pricing>

³³ Telecom Notice of Consultation CRTC 2016-192 Examination of differential pricing practices related to Internet data plans First Intervention of OpenMedia Engagement Network: <https://assets.documentcloud.org/documents/2929782/CRTC-2016-192-Openmedia-First-Intervention.pdf>

³⁴ Telecom Notice of Consultation CRTC 2016-192 Examination of differential pricing practices related to Internet data plans CRTC File No.: 1011-NOC2016-0192 Further Intervention of OpenMedia Engagement Network (OpenMedia): https://openmedia.org/files/crtc_2016-192_second_intervention_of_openmedia_final.pdf

³⁵ OpenMedia's presentation at the CRTC hearings on differential pricing (a.k.a. zero-rating): OpenMedia: <https://openmedia.org/en/openmedias-presentation-crtc-hearings-differential-pricing-aka-zero-rating>

³⁶ Final Reply of OpenMedia Submitted to the Canadian Radio-television and Telecommunications Commission In the Matter of TNC CRTC 2016-192 Examination of differential pricing practices related to Internet data plans CRTC File No.: 1011-NOC-2016-0192: https://openmedia.org/files/tnc_crtc_2016-192_final_reply_of_openmedia_final.pdf

³⁷ Telecom Regulatory Policy CRTC 2017-104: CRTC: <https://crtc.gc.ca/eng/archive/2017/2017-104.htm>

³⁸ Net Neutrality Alive and Well in Canada: CRTC Crafts Full Code With Zero Rating Decision: Michael Geist: <http://www.michaelgeist.ca/2017/04/net-neutrality-alive-well-canada-crtc-crafts-full-code-zero-rating-decision/>



Verizon throttled the “unlimited” Internet connection of a California fire department in the middle of a catastrophic wildfire, delaying the firefighters’ response and putting people’s lives at risk.³⁹ Most recently, Comcast has been sued by the Minnesota Attorney General for rate hikes and fraudulent equipment charges.⁴⁰ These are just two examples of numerous Net Neutrality violations that have already taken place in the U.S., and many more expected to come without the previous Title II protections in place.

The negative impacts of the loss of Net Neutrality protections are not isolated to the U.S., given the global nature of the Internet. This is why the issue has been on the international spotlight over the past year, with millions of people coming together across the globe to restore these protections, including over 17,000 people in Canada as part of OpenMedia’s global campaign.⁴¹

Finally, we note that modern high speed broadband wired networks are generally sufficiently robust in terms of speed, latency and jitter to support the functioning of most networked applications and services. With the impending adoption of 5G mobile networks, mobile networks are set to enjoy comparably robust broadband sufficient to support emerging applications primarily on a best efforts basis.

We urge this panel to use the U.S. Net Neutrality repeal as a cautionary tale, but also as an opportunity to strengthen Canada’s current Net Neutrality framework to prevent abuses.

We recommend the government maintains strong protections for Net Neutrality and common carriage, while maintaining Sections 27(2) & 36 of the Telecommunications Act, which establish the framework for non-discriminatory content provision. However, we would recommend that the government uses this review to go one step further and additionally enshrine common carriage principles explicitly into the Telecommunications Act to prevent any future violations, or future CRTC decisions that could stray away from the current path and commitment on behalf of the government to protect Net Neutrality.

³⁹Verizon throttled fire department’s “unlimited” data during Calif. Wildfire: Ars Technica: <https://arstechnica.com/tech-policy/2018/08/verizon-throttled-fire-departments-unlimited-data-du-ring-calif-wildfire/>

⁴⁰ Comcast Swindled Customers With Rate Hikes, Bogus Equipment Charges, Lawsuit Claims: Fortune: <https://fortune.com/2018/12/21/comcast-customers-minnesota-ag-lawsuit/>

⁴¹ World for the Web: OpenMedia: <https://act.openmedia.org/worldfortheweb>



Vertical Integration

Vertical integration continues to be an obstacle to common carriage, as it creates powerful incentives for communications providers to leverage their control over connectivity in order to interfere with content. This has been evident from attempts to advance policy mechanisms such as FairPlay, and in proposals from media interests impeding that of Net Neutrality.

Vertical integration creates competitive distortions, allowing companies to leverage control over key inputs and market power across related services. Vertical integration also creates perverse incentives. A converged content creator and distributor will disfavour creation of content that cannot be marketed across converged platforms controlled by it.⁴² Converged entities will also disfavour distribution options that would compete with their most profitable customer offerings.⁴³ For example, the Bell/Astral merger likely foreclosed an HBO direct to customer service option in order to preserve HBO content as a tiered service offering that is highly popular in jurisdictions where it is available (such as the United States).⁴⁴ These are discrete symptoms of a much broader set of problems that arise where high convergence intersects with substantial market concentration. Some of these market and incentive distortions can be addressed with discrete regulatory action, but ultimately, when this dynamic takes hold, customers lose out.

It is possible to reduce these types of harms. A clearer definition of the service innovation and customer harms that arise in converged contexts, coupled with a more aggressive administrative monetary penalty scheme may counteract some of the adverse incentives that arise when this type of model takes hold. Ultimately however, the CRTC should be explicitly empowered to separate elements of the content creation, content distribution and telecommunications access market segments under certain conditions. But the full detrimental impact of a highly converged and concentrated communications landscape is difficult to measure and fully identify as cross-market powers can be leveraged in subtle ways. Some of these problems simply cannot be fixed by means of discrete regulation, and will require some form of separation.

⁴² https://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf.

⁴³ https://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf, para 43.

⁴⁴ https://cippic.ca/uploads/BNC_2013-106_INTERVENTION.pdf, paras 46-48.



Bad Sales Practices

As has been the subject of much public discussion and consultation over the past year,⁴⁵ people in Canada are often the targets of misleading and aggressive sales practices by Big Telecom.⁴⁶ We have particularly seen this to be the case from the most vertically integrated companies, working to upsell customers into additional services that they may not need, for the benefits of ‘cost savings by bundling.’ These tactics take advantage of some of the country’s most vulnerable populations, putting revenues before people – including many of the employees of these companies,⁴⁷ who are penalized for failing to upsell customers.

Unfortunately, even when they have been wronged by their providers, customers often have no choice but to remain with the same provider or simply switch between incumbents, due to the lack of alternative options. This is yet another reason why Canada needs more choice, to foster innovation, quality services, and true competition among telecom providers.

While we recognize that the CRTC is currently examining this issue of misleading and aggressive sales tactics, we believe that these practices are also worth raising before this panel, as broader legislative adjustments and penalties may also help address this issue in structural ways that are beyond the CRTC's mandate. In particular, we remain concerned that many customers are unaware of the options available to them at the CCTS, or that without the necessary documentation from their providers (for example the recordings of their customer service calls), they are unable to provide the evidence needed for their cases to be heard.

Section 7 Objectives in the Telecommunications Act

Overall, we believe that the Section 7 objectives in the Telecommunications Act are adequate. However, we do have concerns regarding how the government, CRTC, and industry are failing to meet the Section 7 objectives as currently outlined. In particular, Sections 7(a), 7(b), 7(c) and 7(h) are not being met. Some examples of this include but are not limited to the lack of infrastructure development being built in rural, remote, First Nations and Northern communities; the outrageously high connectivity costs in Canada; and a significant lack of competition.

⁴⁵ CBC: <https://www.cbc.ca/news/business/bell-rogers-crtc-1.4879376>

⁴⁶ CBC hidden camera investigation captures misleading sales tactics for Bell: CBC: <https://www.cbc.ca/news/business/hidden-camera-reveals-misleading-sales-tactics-for-bell-1.4556536>

⁴⁷ Rogers, Fido and Bell call centre workers penalized for reducing plans, offering credits: CBC: <https://www.cbc.ca/news/business/telecom-call-centre-incentives-hurt-customers-say-insiders-1.4857890>



One objective that remains problematic is 7(f), the increased reliance on market forces. It is irrefutable that in many areas of Canada, market forces are simply failing to provide adequate service for residents. We need to acknowledge and address the fact that in some areas, market forces simply will not suffice whereas more generally, it is unlikely that telecommunications markets will meet adequate levels of competition in the foreseeable future.

The 2006 Policy Direction

The 2006 Policy Direction⁴⁸ emphasizes reliance on market forces as the primary regulatory mechanism. While the Supreme Court of Canada has rightly recognized that the policy direction cannot supersede the Commission's legislative obligation to carefully weigh *all* the policy objections encoded in section 7,⁴⁹ the policy direction remains problematic for explicitly emphasizing the needs of corporations over those of individuals and end users. In many cases, we have seen decisions that have protected the revenues of Canada's telecommunications companies, at the expense of citizens' needs. But fundamentally, the role of the government, and its legislation, is to protect Canadians and the people in Canada that it is elected to represent.

We would therefore recommend rescinding the policy direction, and replacing it with one that requires the CRTC, in exercising its powers and performing its duties, to:

- minimize negative impacts on individual Canadians;
- maximize affordability and connectivity of telecommunications services for all Canadians;
- prioritize the needs of individual Canadians as pre-eminent;
- maximize the neutral, non-discriminatory treatment of downstream content; and
- maximize competition.

While a renewed policy direction need not compel the CRTC to conduct an active review of all existing policies as was required by the 2006 Policy Direction, it should further direct the Commission to indicate how future regulatory decisions meet these criteria.

⁴⁸ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-355/page-1.html>

⁴⁹ *Bell Canada v Bell Aliant*, 2009 SCC 40.



Concerns With Other Proposals Being Put Forward as Part of this Review

FairPlay Canada and Website Blocking

The Telecommunications Act must not permit any website blocking proposals, including FairPlay Canada.

FairPlay's proposal is a solution in search of a problem. Fundamentally, FairPlay does not address the main issue this coalition of some of the most powerful telecoms and media industry has — which is piracy and a lack of compensation for creators. However, it *will* serve to censor legitimate online content and speech, violating our right to free expression. It would also violate Canada's long-standing Net Neutrality principles and create a dangerous precedent for other censorship plans in future.

FairPlay Canada's proposed scheme is a slippery slope. What is more, Canada is home to some of the toughest anti-piracy rules in the world, and already has a system in place to deal with online copyright infringement with due process through the courts.⁵⁰ Piracy rates in Canada are declining due to the rise of subscription based services like Netflix and Spotify, which offer users a wide variety of content for reasonable prices.⁵¹ But these issues have been blatantly ignored by proponents of this dangerous proposal.

The FairPlay proposal was vehemently opposed by dozens of experts, over 83,000 individual submissions via OpenMedia's website DontCensor.ca, and 57,000 other submissions across Canada, as part of the CRTC's consultation. A very similar proposal was also opposed by over 26,000 people when Bell tabled it in NAFTA months before presenting it before the CRTC.⁵²

The CRTC rejected this proposal in October 2018, stating it didn't have the jurisdiction to govern this area of the Internet, and therefore did not assess its merits but instead deferred the

⁵⁰ Why Canada is Now Home to Some of the Toughest Anti-Piracy Rules in the World...And What Should Come Next: Michael Geist:

<http://www.michaelgeist.ca/2017/03/why-canada-is-now-home-to-some-of-the-toughest-anti-piracy-rules-in-the-world-and-what-should-come-next/>

⁵¹ Anti-piracy group urges CRTC to create website-blocking system: Globe and Mail:

<https://www.theglobeandmail.com/report-on-business/anti-piracy-group-urges-crtc-to-create-website-blocking-system/article37766686/>

⁵² Don't Let Bell Censor Our Internet: OpenMedia: <https://act.openmedia.org/BellNAFTA>

proposal to the current review of the Copyright Act, and this review of the Broadcasting and Telecommunications Acts.⁵³ This specific proposal, as well as concerns of online copyright infringement, have since been recommended at the INDU committee,⁵⁴ as part of its review of the Copyright Act.

We urge this Review Panel to reject FairPlay, and similar website blocking proposals or legislative frames that would permit such proposals in future, and hinder the open Internet.

Taxes That Would Increase the Cost of Connectivity

Over the past few years, a number of problematic levies, or taxes, have been put forward as proposals for finding additional funding mechanisms from the Internet to offset the reduction of cultural funding from broadcast television revenues and the government's own contributions.

But people in Canada already pay some of the highest prices in the world for what is widely recognized as middle of the road service. We simply cannot afford to increase the costs of connectivity to offset the reduction of other sources of funding.

While there have been a number of different proposals made on how to find ways to tax the Internet to subsidize content creation, there are a few that stand out in particular, which we would like to address specifically:

- **An “iPod Tax”:** This recycled idea was already rejected in the last iteration of the Copyright Act but has resurfaced yet again. This proposal would tax all smartphone and similar devices sold in Canada, to compensate for alleged music copying.⁵⁵ This idea ignores the decrease in private music copying with the rise of subscription-based services, and that people use smartphone devices for a wide variety of reasons far beyond music consumption. This unfairly punishes users of technology with additional costs for services they may or may not even be using, and preemptively assumes that all users of smartphone devices are guilty of copyright violations, without any supporting evidence.

⁵³ Telecom Decision CRTC 2018-384: CRTC: <https://crtc.gc.ca/eng/archive/2018/2018-384.htm>

⁵⁴ Standing Committee on Industry, Science and Technology: Evidence: Thursday, June 7, 2018: <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-121/evidence>

⁵⁵ Canadian Music Industry Wants Government to Pay Copying Fee for Every Smartphone Sold in Canada: Michael Geist: <http://www.michaelgeist.ca/2018/06/canadian-music-industry-wants-government-to-pay-copying-fee-for-every-smartphone-sold-in-canada/>



- **A “Netflix Tax”:** This proposal would require Over-the-Top (OTT) providers like Netflix to pay a portion of their revenues into Canadian content funding, in the same way that Canadian broadcasters do. Some have even gone so far as to suggest reversing the CRTC’s Digital Media Exemption Order to see OTT providers required to also comply to the same Canadian content regulations as broadcasters. This fundamentally misunderstands the nature of the Internet, and would target OTT services of all sizes – not just Netflix. While the disruptive nature of the Internet can be clearly seen to have an impact on traditional content distribution methods; this innovation, disruption and flexibility is exactly why people are moving away from cable and towards the Internet. We should be embracing these new digital technologies and creating digital-first content for these environments that customers are embracing – not trying to force people and content back into the old boxes of legacy distribution methods.
- **An Internet Tax:**⁵⁶ This proposal would require Internet Service Providers to pay into Canadian content funding, as Canadian broadcasters already do. Unfortunately, we know these prices will simply be passed directly onto customers, which ultimately results in yet another fee added to the cost of going online; an increase to the already extraordinary costs of connectivity in Canada. Additionally, broadcasters receive many benefits from these Canadian content creation funds that ISPs do not – making this an unfair playing field. We can’t afford to raise the prices of our already overpriced Internet connections in Canada, furthering our digital divide. The idea of an Internet tax has already been rejected by nearly 40,000 Internet users and the federal government.^{57,58}
- **A Copyright Tax on Broadband Data Use:** In 2018, we heard a proposal for all Internet use over 15GB per month per household to be taxed to help supplement creators who are underpaid in their current licensing agreements.⁵⁹ This is based on the misguided claim that any Internet usage over 15GB *must* be due to streaming content, and that streaming content (even if users pay for it legally), means users are inadequately compensating creators.

There is no question that creators should be fairly compensated for their work. However, these solutions that penalize end users by unfairly assuming they’re breaking the law are not the way to make this happen. Instead, we need to focus on ensuring that creators are being fairly paid

⁵⁶ Stop this 'Digital Tax on Everything': OpenMedia: <https://act.openmedia.org/internettax>

⁵⁷ Stop this 'Digital Tax on Everything': OpenMedia: <https://act.openmedia.org/internettax>

⁵⁸ Trudeau Puts An End to the Netflix and ISP Tax Debate: “Consumers...Pay Enough for Their Internet”: Michael Geist: <http://www.michaelgeist.ca/2018/02/trudeau-puts-end-netflix-isp-tax-debate-consumers-pay-enough-internet/>

⁵⁹ Canadians should be taxed for streaming TV shows and movies, music composers say: Global News: <https://globalnews.ca/news/4538209/composers-guild-canada-tax-download/>



by those that are licensing their works, and that there are adequate funding mechanisms available to a wide variety of content producers and artists throughout Canada – including government contributions. Our experience is that these kinds of additional fees and levies rarely end up compensating the artists themselves, but instead simply continue to line the pockets of the largest production and publishing companies.

- **Sales Tax:** Charging federal sales tax to online providers is often conflated with the above proposals, but is critically distinct. Should the federal government choose to apply HST to international online services, those taxes should rightly be charged and remitted to the government, then allocated into the general budget as the government sees fit – including as funding for arts, culture, and creators. Paying corporate taxes, as the rest of companies operating within Canada do, is a reasonable contribution to our economy, and provides the federal government with the necessary resources to support content creators and Canadian cultural products.

We stress that we cannot afford to further increase our digital divide and the price of the Internet in Canada. A fast, affordable Internet connection is essential to an innovative Canada.

An Internet Tax, Copyright Tax, or any other levy or fee that increases the cost of Internet usage or devices used to connect to the Internet in Canada should be rejected.

Promotion and discoverability mechanisms should be supported via government funding, and incentives should be put in place to create digital-first content. The solution is not dictating what content travels through the Internet, or how.

Conclusion

As a part of this consultation, OpenMedia built an online platform to allow our community members to endorse the key recommendations we have made to the Broadcasting and Telecommunications Legislative Review Panel in the sections above, and urge the government to stand up for open, affordable, innovative Internet in Canada as it conducts the review of the Broadcasting and Telecommunications Acts.

Fundamentally, Canada is failing to meet the needs of the Canadian public when it comes to connectivity, affordability, and quality of service. It's time to put the people in Canada, who these communications networks are intended to serve, first. And stop protecting the revenues of some of the most profitable and powerful telecom companies in the world.

OpenMedia is a community-based organization that works to keep the Internet open, affordable, and surveillance free.



9,636 people across Canada endorsed our letter at: act.openmedia.org/CanadasInternet. Their letter, and signatures, are attached in [Appendix A](#). The voices of individuals in Canada are a critical aspect of the work that OpenMedia does. These voices hold to account the obligations of this panel and the government to ensure that policies meet the needs of the people they are intended to serve, and we hope we have done a sufficient job in representing their views and perspectives in this submission.

We look forward to the next steps in this proceeding, and are happy to continue to answer any questions you may have.



Appendix A

Letter from 9,636 OpenMedia community members, as signed at:

<https://act.openmedia.org/canadasinternet>

Dear Broadcasting and Telecommunications Legislative Review panel,

I am a concerned citizen who would like to emphasize the importance of the following issues as part of the review of Canada's Broadcasting and Telecommunications Acts:

Internet Affordability

Canada currently pays some of the highest prices in the industrialized world for what is widely recognized as sub-par service. The Internet is not a luxury in the 21st century, it's a basic service.

The current Telecommunications Act includes the objective: "to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada." But this objective remains far from a reality for many throughout Canada. Until the government steps in with a clear plan and budget to make this happen, it's nothing but wishful thinking.

We cannot afford any additional taxes and levies that would increase the cost of connectivity, including an Internet Tax, Netflix Tax or a Copyright Tax on broadband use.

Internet Access

We need access to quality networks throughout Canada – not just in urban centres. It's time to bridge Canada's digital divide. Waiting for market forces to address underserved people in Canada simply has not worked. The government of Canada must commit serious funding to a thorough national broadband strategy. For reference, CBC is subsidized at \$35 per person and broadband funding is about \$2.25.*

Without government investment and prioritization, people in Canada will continue to struggle to get online with quality and affordable access.

Net Neutrality



Under no circumstances can we afford to let our Internet Service Providers (ISPs) pick and choose what we can and cannot see and do online. Canada has a long history of Net Neutrality. But right now, our only protections for Net Neutrality come from a handful of historical CRTC decisions about Net Neutrality – not the rules themselves. The current framework leaves the door open for Net Neutrality violations that are perfectly legal.

Net Neutrality must be enforced with clear common carriage rules, which dictate all content to be treated equally. The rules must be applied without exception, and before any abuses by Big Telecom take place. This also means the government should reject website blocking proposals like Bell-led “FairPlay Canada,” which would violate Net Neutrality principles and create a dangerous precedent for other censorship plans.

More Choice of Providers

Big Telecom’s current stronghold on our telecom market has resulted in some of the highest prices in the world, and limited choice in providers, plans, and quality of service. We need choice in our telecom markets to allow people to pick the providers that work best for them. More choice equals more flexibility, more affordability, and the freedom to ensure we’re getting the services we need from the provider we choose.

If we don’t increase competition in the marketplace, we’re going to need structural separation to break up the vertically integrated conglomerates, to ensure greater choice and competition, and clear delineation of interests between the different segments of the companies.

Please take the above concerns into account as you review Canada’s Broadcasting and Telecommunications Acts, and ensure any recommendations put forward put the public interest at the heart of Canada’s communications laws.

Sincerely,

[Undersigned.]