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PETITIONS TO THE GOVERNOR IN COUNCIL CONCERNING TELECOM DECISION CRTC 2021-181

COMMENTS

OF

BELL CANADA

22 SEPTEMBER 2021

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1.0 INTRODUCTION AND EXECUTIVE SUMMARY

1. Bell Canada (Bell) is pleased to provide the Governor in Council its Comments regarding Decision 2021-181[1], the most recent CRTC decision on broadband wholesale rates.

2. Decision 2021-181 determined that the wholesale broadband rates in market since late 2016 strike an adequate balance between competition and investment, and that these rates should continue to apply, subject to small adjustments. These rates, which already reflect a significant decrease imposed by the CRTC in 2016, are reduced even further in this latest decision – by 7% for Bell. To be clear, our broadband wholesale rates have never been lower. At the same time, Decision 2021-181 overturned disastrous Order 2019-288[2], which would have massively cut wholesale rates to levels that were significantly below our costs, causing us and the other facilities-based carriers to cancel much needed broadband investments. Already Decision 2021-181 has spurred investment, as evidenced by the fact that Bell has increased its capital investment by $1.7 Billion (including an additional $500 million over two years on top of previously announced $1.2 Billion in accelerated Bell investments over the same period) as a direct response to the support for infrastructure investment reflected in recent federal regulatory and policy decisions.

3. Decision 2021-181 acknowledges that the proposed wholesale rates announced in Order 2019-288 suffered from a large number of errors. We say "proposed" rates because in practice the rates from Order 2019-288 have never come into effect because of stays of the Order's implementation. This is fortunate: had Order 2019-288 taken effect, it would have had devastating impacts on investment in Canada's communications infrastructure, with rural Canadians especially hard hit. The fact that Order 2019-288 did not take effect also means that, in practice, Decision 2021-181 lowered our effective rates, not increased them as the Petitioners[3] would have you believe.

4. In their Petitions, Resellers are asking the Governor in Council to implement the much lower wholesale rates from Order 2019-288, back to 2016 and going forward, even though these rates were found to be fundamentally flawed. Resellers submit that, absent this sharp decrease in wholesale rates (along with the associated retroactive windfall), they will be unable

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[1] Telecom Decision CRTC 2021-181, *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services.*

[2] Telecom Order 2019-288, *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services.*

[3] Petitions were filed by Canadian Network Operators of Canada, TekSavvy Solutions Inc. and National Capital FreeNet Inc.

to continue to successfully compete. They also argue that the collapse in wholesale rates resulting from a restoration of Order 2019-288 will not have a meaningful negative impact on network investment.

5. A closer look at the Resellers' arguments shows, however, that there is no need for government action.

6. First, as noted above, Decision 2021-181 actually reduces the regulated wholesale rates that Resellers pay to use Bell's networks and facilities. These lower rates are retroactive to March 2016. Bell has already identified this as a $44 million regulatory charge to pay to the Resellers[4]. Thus with lower rates going forward (the lowest they have ever been) and retroactive payments, the Resellers are financially in a better position than they ever have been. And to be clear, as discussed next, Resellers have been prospering under the existing rates.

7. Second, while they were paying substantially the very same wholesale rates that the CRTC has confirmed in Decision 2021-181, those same rates that have been in place between late 2016 and now, Resellers were able to grow their business and increase their overall market share. For instance, as recently as 2019 (the latest year for which we have CRTC data), resellers were capturing almost 20% of net customer additions[5]. Over that same span, Resellers have also secured an approximately 10% market share nationally[6] (up from 7.6% in 2015) and additional analysis shows resellers are even more successful in urban markets where they focus their operations (for example, Resellers' market share exceeds 18% in Montreal and 16% in the Greater Toronto Area)[7].

8. What Resellers truly decry is not a dark day for competition or Canadians – it is not even a dark day for Resellers. But it is disappointing for Resellers considering they were counting on receiving under Order 2019-288 an undeserved windfall of hundreds of millions of dollars; money that would clearly have come to them at the expense of facilities-based provider broadband builds especially in rural communities. While their cost structure improves slightly and they will receive retroactive adjustments in the millions of dollars (which they are under no obligation to pass through to consumers), Resellers will simply not receive the regulatory manna they have been hoping for since Order 2019-288's fundamentally flawed costing proposed to

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4 BCE press release, https://www.bce.ca/news-and-media/releases/show/BCE-reports-second-quarter-2021-results?page=1&month=&year=&perpage=25.
5 CRTC Communications Monitoring Report 2019 (CMR 2019), Figure 9.1.
6 CRTC Communications Monitoring Report 2020 (CMR 2020), Dataset, Retail fixed Internet, Tab N-F15.
7 Competition Bureau Broadband Study, page 20.

slash wholesale rates significantly below cost.

9. In terms of investment, Decision 2021-181 is completely aligned with the importance that must be given to a regulatory environment that fosters investment in modern networks, across all regions of Canada. Taking to heart the Governor in Council's concerns in 2020 that Order 2019-288 will, in some instances, undermine investment in high-quality networks[8], Decision 2021-181 now sends a strong positive signal which investors are receiving loud and clear. For our part, in response to Decision 2021-181, Bell's biggest-ever network acceleration plan has grown to reach up to $1.7 billion over the next two years. This increased investment is tangible and beneficial for all Canadians and would not be possible if wholesale rates had remained below cost and at non-compensatory levels.

10. Network investment and competition are the two key variables at play in these Petitions, in terms of which of Decision 2021-181 or Order 2019-288 sets the best policy trade-off. As a result, our Comments will primarily deal with these two issues. We will also address briefly affordability for low-income Canadians, a focus of the National Capital Freenet petition, and allegations that the CRTC demonstrated bias in its reasons for replacing Order 2019-288 with Decision 2021-181.

2.0 BACKGROUND

2.1 Rates for Aggregated Wholesale High-Speed Services since 2016

11. Resellers who subscribe to Bell's Aggregated Wholesale High-Speed Access (HSA) services pay two monthly recurring fees.[9] First, Resellers pay a monthly access rate to lease a facility that runs from Bell's Central Office to the retail end-user's home or business.[10] Second, Resellers pay a monthly usage fee called "Capacity Based Billing" (CBB) fee, charged on the network capacity the Reseller determines is needed to offer services to all of its retail customers

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8 Order in Council responding to petitions to the Governor in Council concerning Telecom Order CRTC 2019-288 (2020 OIC).

9 The structure is similar throughout Bell's incumbent area, from Manitoba to Newfoundland. However, for ease of exposition, we will illustrate our position with the rates prevalent in Ontario and Quebec.

10 The rate for this access depends on the technology involved (legacy copper or Fibre-to-the-Node) and the chosen speed profile (e.g., 50 Mbps download/10 Mbps upload). For Bell, only the access rates associated with our Fibre-to-the-Node Wholesale HSA services were in scope of Decision 2021-181 and Order 2019-288. The access rates for our Aggregated Wholesale HSA services offered over a legacy copper connection were frozen at $14.11 for all speeds, the highest of which is 6 Mbps download/0.8 Mbps upload, in 2015 in light of their declining market relevance.

on the mandated wholesaler's network.[11] On March 31, 2016, the CRTC ordered the mandated wholesale providers to file new updated costs studies for both their access and usage rates, and made the existing access and usage rates interim.

12. On October 6, 2016, the CRTC significantly revised down, still on interim basis, the CBB rates of Bell and most of the other mandated wholesale providers[12]. For Bell, this translated to a reduction of over 85% of its 100 Mbps CBB rate, from $1036.49 to $148.08. This sharp decrease in the interim CBB rates was implemented by providers and these much lower CBB rates are what Resellers have been paying for capacity since October 2016. The 2016 October decision did not change any of the access rates.

13. On August 15, 2019, the CRTC released Order 2019-288 which massively lowered both our usage (even lower than 2016) and access rates. These rates were also made retroactive to March 2016, requiring Bell and other mandated providers to pay hundreds of millions of dollars in rebates which Resellers were not obliged to pass on to their retail customers. It also massively lowered the cable access rates. For example, Videotron's rate for 940/50 Mbps went from $81.60 to $14.30, a collapse so significant that it prompted Videotron to cease offering that service profile, its flagship highest speed, in the market. The CRTC set these massively lower rates by clearly abandoning its own costing principles and making a number of flawed costing determinations that ultimately resulted in rates that were significantly below costs. That is not just our position but, as discussed below, the CRTC's as well.

14. Order 2019-288, however, never came into effect, as it was stayed in succession by the Federal Court of Appeal and the CRTC.

2.2 <u>Decision 2021-181</u>

15. In response to several review and vary applications, the CRTC issued Decision 2021-181 in May 2021 which concluded that Order 2019-288 contained numerous costing errors and had to be set aside in its entirety. To replace these faulty rates, the CRTC chose not to engage

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11 This fee is billed in increments of 100 Mbps. This is not a per end-user fee – rather it represents how much capacity the Reseller leases to accommodate its overall user base without, for instance, incurring congestion. As an example, if a Reseller expected its "average" end-user (factoring that some users are not online, some use less, some use more) to generate 5 Mbps of traffic at a peak in a month, then it might purchase 100 Mbps of CBB for every new 20 customers it gains (20 x 5 Mbps = 100 Mbps).

12 Telecom Order 2016-396, *Tariff notice applications concerning aggregated wholesale high-speed access services – Revised interim rates*.

in the lengthy process of correcting each specific costing error partly because it was concerned that doing so would result in rate increases rather than decreases.[13]

16. To be clear, the fact that the CRTC did not perform a fulsome revision of all the costing errors anew in no way reflects that its conclusions are unsupported[14]. Rather, the CRTC reasonably concluded that:

a. making the Interim Rates final, rather than conducting a fulsome revision of the costing errors, would provide the industry with the critical certainty and finality it had lacked for the previous four years and more;[15]

b. a fulsome revision could result in the rates exceeding the end of the periods in the cost studies that underlay Decision 2019-288;[16]

c. an attempt to correct the errors it had identified in the 2019 Final Rates Decision would likely result in final rates that exacerbate asymmetrical rate issues between cable carriers and LECs, stifling competition;[17]

d. during the four years and more in which the Interim Rates were in place, there was a demonstrated growth in competition;[18]

e. any rates imposed after a full revision of the costing errors would likely be the same – or even higher – than the Interim Rates;[19]

f. the CRTC has adopted a similar approach in other decisions by allowing companies to use proxies to establish just and reasonable rates (e.g., cost studies approved for other companies for the same service);[20] and

g. since Order 2016-396, the CRTC has been able to review the extensive information provided in the 2019 Final Rates Decision to confirm that the Interim Rates are just and reasonable.[21]

17. Ultimately, the CRTC largely set final rates that were equal to the interim rates in place as of October 2016, though it did maintain from Order 2019-288 the removal of a 10% markup that ILECs enjoyed for their fibre-to-the-node (FTTN) services. It also, as it had done in Order 2019-288, decided to apply the final rates back to March 31, 2016.

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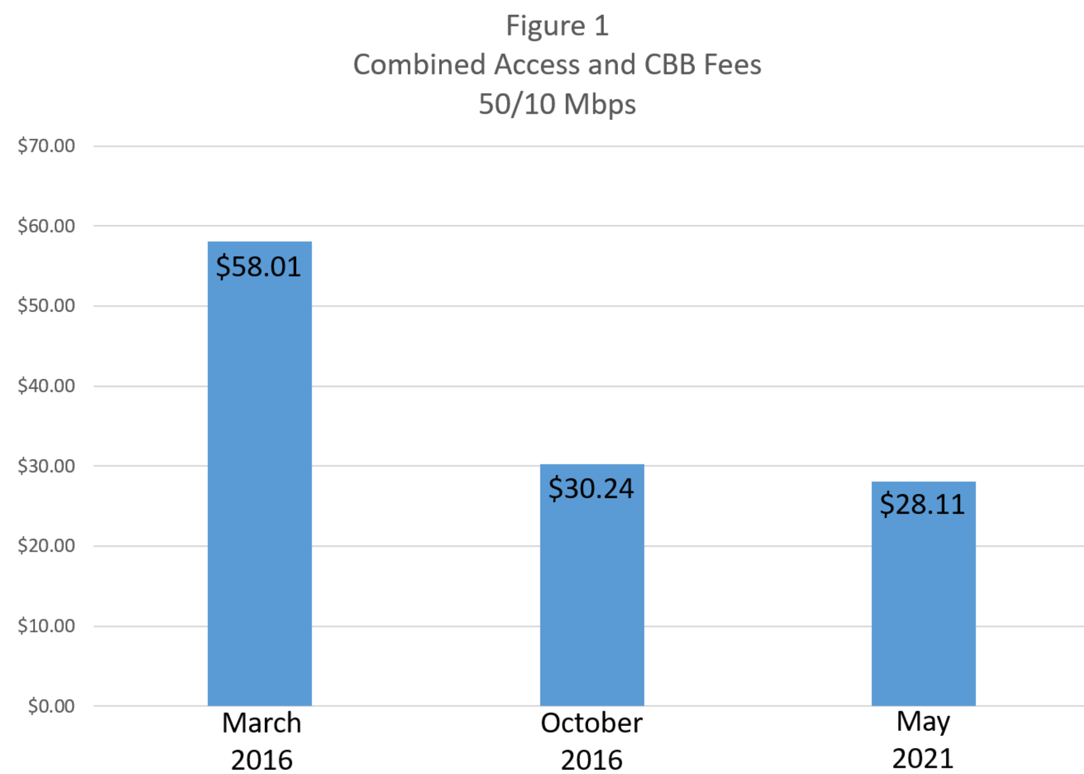
13 Decision 2021-181, paragraph 290.
14 As alleged in the CNOC Petition, paragraphs 48 and following.
15 Decision 2021-181, paragraphs 4 and 299.
16 Decision 2021-181, paragraph 294.
17 Decision 2021-181, paragraph 298.
18 Decision 2021-181, paragraph 303.
19 Decision 2021-181, paragraph 290.
20 Decision 2021-181, paragraph 300.
21 Decision 2021-181, paragraph 304.

18. To be clear, all of the in-market rates for Bell that are the subject of this Petition are therefore lower now, after Decision 2021-181, than they were in the October 2016 to May 2021 span. Our monthly access rate for FTTN has decreased from $25.62[22] to $23.79 (for non-bonded service) and our capacity rate per 100 Mbps also has been lowered from $148.08 to $138.43. Moreover, Decision 2021-181, like Order 2019-288, makes its final rates retroactive to March 31, 2016 resulting in Bell identifying a $44 million regulatory charge to pay to the Resellers[23]. Figure 1 demonstrates the point for Bell's 50 Mbps FTTN service[24] combining wholesale fees for both access and usage:



19. As the above clearly demonstrates, a Reseller who wishes to offer 50 Mbps service on our FTTN network would pay us approximately $28.11 per user per month. This is less than half what it was in March 2016, and 7% lower than the ongoing market rate since October 2016.

22 As indicated above, depending on the speed the prior rate was in the $25.47 to $25.62 range.
23 BCE press release, https://www.bce.ca/news-and-media/releases/show/BCE-reports-second-quarter-2021-results?page=1&month=&year=&perpage=25.
24 The 50/10 Mbps profile is a popular wholesale profile that matches the downstream target of the CRTC's Internet Basic Service Objective. For CBB, we are using the per-user CBB fee as estimated by CNOC in its Petition (Table 2 and Footnote 93). We are using the lower-end of their range as their estimate is for a 100/10 Mbps service, whereas here we show a 50/10 Mbps service.

20. At page 17 of its Petition, CNOC points out that certain wholesale rates in Decision 2021-181 are more than 100% higher than what they would have been pursuant to Order 2019-288. Conversely, however, it means that the rates from Order 2019-288 are up to 86% lower than they had historically been since 2016. Yes, the wholesale rates in each of Order 2019-288 and Decision 2021-181 are far apart. But we submit that it is Decision 2021-181 that maintains the wise course, balancing competition and investment, and lowering wholesale rates only to the extent a correct costing analysis supports the change. Order 2019-288 in contrast is the outlier, an anomaly recognized by the Commission and the Governor in Council as fundamentally flawed[25].

2.3 A re-instatement of Order 2019-288 is not a valid remedy

21. Although we see no reason for any Governor in Council intervention, we highlight that the actual remedy suggested by the Petitioners – which is to simply reinstate Order 2019-288 in its entirety, is a fundamentally flawed solution.

22. The Governor in Council has already concluded that:

> … the final rates set by [Order 2019-288] do not, in all instances, appropriately balance the objectives of the wholesale services framework recognized in Order in Council P.C. 2016-332 of May 10, 2016 and that they will, in some instances, undermine investment in high-quality networks;[26]

23. Granting the Petitions' requested remedy would essentially endorse these flaws, which Decision 2021-181 had corrected.

24. Moreover, the CRTC has been reviewing the various rates for over five years, from the 2016 Interim Rates Decision all the way through Decision 2021-181. As part of its complex rate-setting process, the CRTC has gone through thousands of pages of detailed costing models and submissions, reflecting the perspectives of facilities-based providers, Resellers and interested third parties like consumer groups. The Governor in Council should thus be confident

[25] A conclusion running through Decision 2021-181, from the introductory paragraphs. Errors were also recognized by the Governor in Council: "the Governor in Council considers that the final rates set by the decision do not, in all instances, appropriately balance the objectives of the wholesale services framework recognized in Order in Council P.C. 2016-332 of May 10, 2016 and that they will, in some instances, undermine investment in high-quality networks", 2020 OIC.

[26] 2020 OIC.

that the final, corrected rates have been thoroughly vetted and are proper. It is not necessary for the Governor in Council to substitute its opinion to that of the expert regulator.

25. Further, the replacement of Decision 2021-181 by Order 2019-288 would mean the adoption of rates that are known to be substantially flawed. In other words, swinging the pendulum back to Order 2019-288 would put in place rates that both the Governor in Council and the CRTC know are wrong when, as Minister Bains well understood, "[s]etting the wholesale rates correctly is critical to ensuring…competitive options for Canadians while maintaining continued investment in high-quality networks and expanded access for Canadians in rural and remote areas."[27]

3.0 <u>DECISION 2021-181 CLEARLY FOSTERS INVESTMENT RELATIVE TO ORDER 2019-288</u>

26. It is a well-accepted economic principle that wholesale rates affect network decisions. Balancing competition and investment is a complex, but necessary, endeavor, required of the CRTC by both the 2006 and 2019 Policy Directions. As the Competition Bureau noted, a regulator must be mindful of "the potential negative effects that a wholesale access regime can have on the incentive for facilities-based competition.[28]"

27. The issuance of Order 2019-288, which slashed wholesale rates (by up to 86% for some Bell rate items and, in some cases, all the way to a below cost level) had an immediate impact on investment decisions.

28. We announced that, as a result of Order 2019-288, we had to reduce the scope of our Wireless Home Internet buildout for rural communities by approximately 200,000 households[29]. Other mandated wholesale providers also were forced to cut back[30].

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27 Statement from Minister Bains in *Response by the Government of Canada to petitions concerning CRTC wholesale Internet rates*, 15 August 2020, https://www.canada.ca/en/innovation-science-economic-development/news/2020/08/response-by-the-government-of-canada-to-petitions-concerning-crtc-wholesale-internet-rates.html.

28 Competition Bureau Broadband Study, page 47.

29 BCE press release, https://www.bce.ca/news-and-media/releases/show/CRTC-wholesale-decision-impacting-investment-in-rural-broadband-networks-1?page=1&month=8&year=2019&perpage=25.

30 For instance, Eastlink indicated it would slash about 25% of its planned capital investments for the year and scale back its rural connectivity improvements, Globe and Mail article *Eastlink will cut $50-million to capital investment over CRTC move on Internet rates*, 25 August 2019; also see Shaw's confirmation that Order 2019-288 made it alter its plan with respect to launching new higher-speed Internet tiers and additional wireless expansion beyond our current footprint, from Cartt.ca of 25 October 2019 article *Big Carriers made the wrong moves with wireless re-pricing says Freedom's McAleese – Shaw CEO also warns regulators not to change things now*.

29. The Governor in Council recognized this negative investment fallout when, in August 2020, it declined to vary or rescind Order 2019-288 (since it was already under review by the CRTC) yet expressed its concerns that "the final rates set by the decision do not, in all instances, appropriately balance the objectives of the wholesale services framework recognized in Order in Council P.C. 2016-332 of May 10, 2016 and that they will, in some instances, undermine investment in high-quality networks"[31]. Minister of Innovation, Science and Industry Navdeep Bains' accompanying statement emphasized that "[i]ncentives for ongoing investment, particularly to foster enhanced connectivity for those who are unserved or underserved, are a critical objective of the overall policies governing telecommunications, including these wholesale rates.[32]"

30. Heartened by this message, Bell promptly announced that it would accelerate its roll-out of Wireless Home Internet as well as expand its footprint, explicitly acknowledging that the "[r]amped up program [is] enabled by government policy supporting network investment.[33]"

31. In response to Decision 2021-181, Bell has increased its capital investment by an additional $500 million over two years (on top of previously announced $1.2 Billion in accelerated Bell investments over the same period)[34].

> **With the CRTC's recent decision and ongoing government policy support for facilities-based competition and investment**, Bell has now increased the amount of accelerated funding to [a range of] $1.5 billion to $1.7 billion. This investment will significantly increase the number of wireline and wireless connections in Canada's rural and urban centres alike over the next 2 years, including significantly expanded plans for all-fibre connections, while creating additional employment as network construction activity speeds up[35].[Emphasis added]
> And
>
> …our historic network acceleration in every region [is] supported by public policy encouraging next-generation infrastructure investment…[36]

31 2020 OIC.
32 https://www.canada.ca/en/innovation-science-economic-development/news/2020/08/response-by-the-government-of-canada-to-petitions-concerning-crtc-wholesale-internet-rates.html.
33 BCE press release, https://www.bce.ca/news-and-media/releases/show/Bell-expanding-rural-broadband-to-more-locations-with-faster-speeds-1?page=1&month=9&year=2020&perpage=25.
34 BCE press release, https://www.bce.ca/news-and-media/releases/show/Bell-s-biggest-ever-network-acceleration-plan-gets-bigger-with-additional-investment-now-up-to-1-7-billion-over-the-next-2-years?page=1&month=5&year=2021&perpage=25.
35 Ibid.
36 BCE reports second quarter 2021 results at https://www.bce.ca/news-and-media/releases/show/BCE-reports-second-quarter-2021-results?page=1&month=&year=2021&perpage=25.

32. Had the rates from Order 2019-288 been implemented, none of this additional investment would have happened. Table 1 lists examples of recent Bell investments that are directly attributable to the support for infrastructure investment reflected in recent federal regulatory and policy decisions, and which bring tangible benefits to Canadians[37].

Table 1: Recent Bell investment announcements in network upgrades and deployment

Date	Project	Description
11 Sep 2020	Expansion of Wireless Home Internet to more rural areas and faster speeds	Wireless Home Internet to reach additional 80,000 homes by the end of 2020 Enhanced 50/10 Mbps speeds will now be available to 350,000 homes
19 Oct 2020	Expansion of Wireless Home Internet service to Atlantic Canada	High-speed Internet rolling out to 70,000 locations by the end of 2020 and to a total of 200,000 over the next two years Enhanced 50/10 Mbps access speeds available to 70% of Wireless Home Internet (WHI) homes at launch
4 Feb 2021	Accelerated capital investment of at least $1B over next two years to advance fibre, wireless and rural network rollouts	Enhanced capital plan will add up to 900,000 additional fibre and rural Wireless Home Internet locations while also doubling Bell's 5G population coverage this year
26 May 2021	Expansion of 5G network to 23 more cities and towns	Covers more of the GTA, Barrie, Kingston and Southern Ontario, including Guelph, Hamilton, Kitchener-Waterloo and London; Sherbrooke and Trois-Rivières in Québec; and St. Andrews and Stonewall in Manitoba
31 May 2021	Bell's biggest-ever network acceleration plan gets bigger with additional investment now up to $1.7 billion over the next two years	Accelerated capital investment plan announced in February 201 increase up to $1.7 billion, or as much as $500 million more
22 June 2021	Launch of innovative Wireless Home Internet service in rural and remote communities across Manitoba	WHI now rolling out to 12 communities, available in 40,000 locations by end of year
29 June 2021	Expansion of 5G network in Atlantic Canada	Halifax Regional Municipality in Nova Scotia, St. John's, Flatrock, Paradise, Portugal Cove and Wabana in Newfoundland and Labrador 5G to be available in Fredericton, New Brunswick and Charlottetown, Prince Edward Island later this year
7 July 2021	Broadband Internet throughout Clarington, Ontario	High-speed Internet services now reaching more than 80% of homes and businesses including rural locations: more than 25,000 Clarington homes and businesses with all-fibre high-speed Internet connections and 5,000 rural locations with Wireless Home Internet service
13 July 2021	Expansion of all-fibre Internet access to Hébertville-Station, Métabetchouan-Lac-à-la-Croix and Saint-Bruno in Saguenay-Lac-Saint-Jean, Quebec	Approximately 6,000 rural locations

[37] All are drawn from BCE press releases available at https://www.bce.ca/news-and-media/releases?page=1&month=9&year=2020&perpage=25.

20 July 2021	Expansion of all-fibre Internet access to Holland Landing, Mount Albert, Queensville and Sharon in East Gwillimbury, Ontario	Approximately 5,000 locations
21 July 2021	Expansion of all-fibre Internet access to Inglewood and Palgrave, Ontario	Approximately 1,000 rural locations
21 July 2021	Expansion of 5G network to 28 more communities	Manitoba: Beausejour, Brokenhead, Hanover, Macdonald, Niverville, Ritchot, Rockwood, Rosser, Ste. Anne, St. Clements, Springfield, Taché, West St. Paul and Whitehead Ontario: Ajax, Frontenac Islands, Lincoln, Milton, Pelham, Thorold, Welland and Whitby Québec: Québec City, Bécancour, Grand-Saint-Esprit, Saguenay, Shawinigan and Wôlinak
27 July 2021	Expansion of all-fibre Internet access to Brockville, Casselman and Pembroke, Ontario	Approximately 4,000 locations
3 Aug 2021	Expansion of all-fibre Internet access to Ste-Adèle, Quebec	Approximately 1,200 rural locations
10 Aug 2021	Expansion of all-fibre Internet access to Rawdon, Quebec	Approximately 2,000 rural locations
12 Aug 2021	Expansion of all-fibre Internet access to Roxton Pond, Quebec	Approximately 500 rural locations
17 Aug 2021	Expansion of all-fibre Internet access to Niagara-on-the-Lake and Virgil, Ontario	Approximately 2,000 locations
24 Aug 2021	Expansion of all-fibre Internet access to Saint-Honoré-de-Témiscouata, Quebec	Approximately 200 locations
31 Aug 2021	Expansion of all-fibre Internet access to Uxbridge, Ontario	Approximately ,3000 locations
31 Aug 2021	Expansion of all-fibre Internet access to Côte-de-Beaupré and Île-d'Orléans, Quebec	Approximately 1,100 locations
8 Sept 2021	Expansion of all-fibre Internet access to Botwood, Burin and Marystown in Newfoundland, and North West River and Sheshatshiu in Labrador	Approximately 7,000 rural locations
8 Sept 2021	Expansion of all-fibre Internet access in Hamilton, Ancaster, Dundas and Mount Hope, Ontario	Approximately 90,000 locations
14 Sep 2021	Expansion of all-fibre Internet access to Lamèque, Miscou Centre, Saint-Raphäel-sur-Mer, Haut-Shippagan, Le Goulet and Pigeon Hill, New Brunswick	Approximately 4,600 locations
14 Sep 2021	Expansion of all-fibre Internet access in Oshawa, Ontario	Approximately 54,000 locations

33. According to CNOC's Petition[38], economic principles do not support that Decision 2021-181 is more conducive to investment than Order 2019-288 because

[38] CNOC Petition, section 4.2.1

a) Mandated wholesale providers could be more profitable under Order 2019-288;
b) The impact of Order 2019-288 is not material to the mandated wholesale providers' investment decisions;
c) Decision 2021-181 does not improve rural network deployment; and
d) Decision 2021-181 displaces investment by Resellers

34. We will rebut these arguments in turn.

a) Mandated wholesale providers would not be more profitable under Order 2019-288

35. An expert report filed by CNOC in the course of the review and vary applications of Order 2019-288 proceeding with the CRTC asserts that the mandated wholesale providers' objections are mistaken, since under certain assumptions it could be more profitable for them to work with the wholesale rates from Order 2019-288 then under the then applicable interim rates. The absurdity of that statement is clearly demonstrated by the vigorous opposition of multiple mandated wholesale providers to Order 2019-288, through judicial appeals, political petitions and applications to the CRTC for a review.

b) Order 2019-288 is material to the mandated wholesale providers' investment decisions

36. This argument rests on two, equally wrong, underlying premises. The first premise is that since mandated wholesale providers are large, overall profitable, entities, they are essentially immune to regulatory decisions that change the expected rate of return of investment or that reduce their available cash flow. The second premise is that since certain mandated wholesale providers do not consider wholesale broadband a core strategic business, regulatory developments in that segment cannot be material. We will show that these evince a misunderstanding of the investment equation.

37. CNOC notes that, since Order 2019-288, the mandated wholesale providers have been in a positive financial position, have paid dividends and have continued to make capital expenditures[39]. CNOC concludes from this that fears about the investment impact from Order 2019-288 were unfounded. CNOC's argumentation suggests that the investment litmus test is whether an event makes an entity altogether unprofitable. That is, however, not how investment works in the real world.

[39] CNOC Petition, paragraphs 151 and following.

38. An investor looks at 1) the expected rate of return of a particular investment project and 2) the availability of resources (directly or through credit) to make the investment. With fewer resources available, an investor will invest less. Let us illustrate using the $100 million retroactive payment Bell would have had to make in 2019 had Order 2019-288 not been stayed. With this $100 million envelope, network facilities can be deployed or upgraded to a concrete and finite number of locations or customers. Whether the $100 million shortfall befalls Bell or a differently sized facilities-based provider, a similar number of locations or customers will be left behind when $100 million is no longer invested. The negative impact on Bell's investment is a function of the absolute size of the Order's impact on Bell, not its size relative to our overall business.

39. Moreover, by focusing only on the specific direct impact of Order 2019-288 (then, or now if the Governor in Council grants the Petitions), CNOC ignores the negative impact that the restoration of Order 2019-288 would have on investment more generally through the chill, uncertainty and financial disruption it would create.

40. CNOC also attempts to find a contradiction in our messaging to shareholders when there is none. At paragraph 148 of its Petition, CNOC highlights that our then CEO, George Cope, mentioned to financial analysts that "Wholesale subscribers are not strategic for us"[40] and then CNOC extrapolates this comment to conclude that "[w]holesale subscribers cannot simultaneously be strategically irrelevant and yet also a critical factor that informs Bell's investment decisions[41]". There is no contradiction. True, Bell does not consider the pursuit of wholesale broadband subscribers to be of an important element of its overall business strategy. Yet, the financial impact of a negative Wholesale decision does not rest on the impact of our wholesale revenues. Every dollar we are ordered to fund Resellers retroactively is a dollar that reduces our future investments. Further, forcing us to provide below cost wholesale rates will inevitably lead to a reduction in our retail revenues as we have to lower our retail rates to compete with Resellers who take advantage of our below cost wholesale rates. In neither case is the financial impact experienced by our Wholesale business unit, but instead undermines our retail revenues and our immediate network investments.

40 CNOC Petition, paragraph 148.
41 CNOC Petition, paragraph 149.

41. Indeed, our concern that the new rates from Order 2019-288 would distort the retail market was but one of the multiple elements of irreparable harm we have raised with the Federal Court of Appeal (FCA). The risk that Order 2019-288 would set unreasonably low wholesale rates has been identified to our shareholders as being of material concern all along. For instance our 2018 Annual Report (issued on March 7, 2019, right in the middle of the proceeding leading to Order 2019-288) identifies the aggregated HSA proceeding as part of its list of important regulatory proceedings and warns that rate reductions, as well as retroactivity, could change our investment strategy "especially in relation to investment in next-generation wireline networks, particularly in smaller communities and rural areas[42]". Our concerns about investment were clearly expressed to the public, before and after Order 2019-288 was issued.

42. Our position about the correlation between negative regulatory environment and lower investment has been wholly consistent (and as we mentioned earlier, it also accords with economic theory and independent observers). When Order 2019-288 signaled a worsening of the regulatory investment environment, we curtailed our investment in Wireless Home Internet. When the 2020 OIC was issued, we interpreted it as a positive turn and announced an acceleration and expansion of our Wireless Home Internet service. And after Decision 2021-181 we increased our capital investment by an additional $500 million over two years. Our decision to curtail investment in 2019 was neither an "empty threat[43]" nor was it one-sided, crying foul when things do not go our way. When the regulatory environment improved, we put our money where our argument was.

43. CNOC unfairly advances that either Decision 2021-181 has no bearing on the investment decisions of mandated wholesale providers (no more so than Order 2019-288) or, <u>if</u> it does have an impact, then it is because mandated wholesale providers are gaining new opportunities to gouge consumers. CNOC hence questions the motivation behind, in particular, our recent announcement to adjust our capital investment plan after Decision 2021-181.

44. CNOC's accusation is illogical even within the context of CNOC's own Petition. CNOC argues repeatedly that regulatory decisions do not affect our investment decisions. CNOC also argues that, since we and other mandated wholesale providers are large and profitable in any event, we just invest a lot, all the time, regardless of whatever "blip" occurs on the wholesale regulatory front. Why then would Bell's alleged new "gouging" opportunities translate into new investment?

42 BCE Inc., 2018 Annual Report, page 90.
43 CNOC Petition, paragraph 161.

45. Let's be clear, Decision 2021-181 does not improve our or any other participant's market power so as to afford a "gouging" opportunity. What mandated wholesale providers have gained are a) regulatory certainty, b) a smaller retroactive one-time refund hit and c) increased confidence that the overall investment regime is not trying to subsidize Resellers by making us offer below cost wholesale rates. These factors all encourage us to invest. That is why we announced our biggest-ever network acceleration plan gets bigger with additional investment now up to $1.7 billion over the next two years[44].

46. It also strikes us as disingenuous of CNOC to argue that when facilities-based providers are faced with a negative regulatory decision like Order 2019-288, claims of reduced investment are "empty[45]", "attempts at manipulating policy outcomes[46]" or "hyperbolic[47]" when, oddly enough, a negative regulatory decision for Resellers like Decision 2021-181 is "forcing competitors to indefinitely suspended plans to expand facilities-based and service-based operations.[48]"

c) *Decision 2021-181 improves rural network deployment*

47. CNOC notes that network investment in unserved or underserved rural areas is in most cases dependent on public subsidy. As a result, it argues, mandated wholesale providers will not find a viable business case to invest in these rural areas regardless of whether Order 2019-288 or Decision 2021-181 prevails[49].

48. First, while some rural areas are uneconomic, not all are. Uneconomic areas are uneconomic because of their challenging geographic and demographic circumstances, independently of which CRTC decision prevails. Broadband expansion to these areas will continue to be dependent on government funding – though less government funding may be required, and in fewer areas altogether.

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44 BCE Press Release, https://www.bce.ca/news-and-media/releases/show/Bell-s-biggest-ever-network-acceleration-plan-gets-bigger-with-additional-investment-now-up-to-1-7-billion-over-the-next-2-years?page=2&month=&year=&perpage=25.
45 CNOC Petition, paragraph 132.
46 CNOC Petition, paragraph 161.
47 CNOC Intervention in proceeding leading to Decision 2021-181, paragraph 57.
48 CNOC Petition, paragraph 75.
49 CNOC Petition, paragraph 171.

49. Indeed, private funds remain an important driver of broadband deployment. In certain areas, private funds alone will be enough to expand networks and serve rural and remote communities[50]. But Order 2019-288 stood to undermine those investments, including by reducing Bell's commitment by 200,000 wireless homes.

50. In other areas, even though some public contribution will be required, private funds are still involved – and the business case (and amount of subsidy) is reliant on the impact of wholesale rate setting decisions. Ultimately, as Decision 2021-181 improves incentives to investment and thus the associated private funding of broadband deployment in rural areas, Government does not need to bear as much of the burden of closing the digital divide, thereby saving public funds. Decision 2021-181 improves the business case for rural broadband, with the result that investment is being accelerated, there is a lower overall requirement for broadband subsidies, all with the result that more households will get better service sooner.

d) Resellers invest a fraction of what facilities-based providers do

51. CNOC submits that while the CRTC considered that Decision 2021-181 would allow "continued investment in telecommunications by wholesale HSA service providers, particularly investments that could be made in rural areas[51]", it failed to consider how Decision 2021-181 could conversely hamper investment by Resellers[52].

52. Setting aside that CNOC's argument is internally suspect, since its Petition otherwise claims that regulatory decisions do not impact investment incentives, except for Resellers perhaps, CNOC's own Petition identifies the fundamental flaw in its argument: "competitors account for a small fraction of total industry-wide telecommunications investment. That is true.[53]"

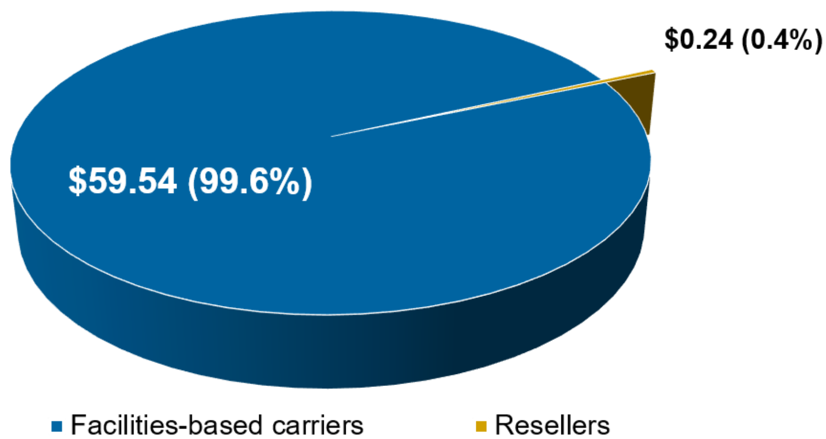
53. A return to Order 2019-288 would be very far from a zero-sum game, where the lost investment from facilities-based providers would be replaced dollar for dollar by investment from Resellers.

54. However, as Figure 2 below makes starkly clear, Resellers have no history of investment in broadband infrastructure. Over the 2013-2019 period, the industry invested over $59 billion in

[50] As the Commission acknowledged, see paragraph 85 of Telecom Regulatory Policy CRTC 2018-377, *Development of the Commission`s Broadband Fund*.
[51] Decision 2021-181, paragraph 389.
[52] CNOC Petition, paragraphs 169 and 178.
[53] CNOC Petition, paragraph 179.

wireline plant and equipment – Resellers represented $240 million of that total, not even one percentage point.

Figure 2
Investment in wireline plant and equipment, $ Billions
(Total 2013-19)



Source: Communications Monitoring Report (2020)

55. A close look at the rural investment made by Resellers, as submitted in Table 2 of Annex 3 of CNOC's Petition, shows just how little actual investment in hard capital network assets CNOC members have made. None of the examples cited by CNOC[54] could come anywhere close to the immediate $500 million increase in investment by Bell alone – all to be spent before the end of 2022.

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54 For instance:

- No figure is provided for CIK Telecom investment in a fixed wireless broadband network;
- Coextro is "working on a project" to bring broadband to 300 households;
- Distributel entered a partnership with Eeyou Communications Network to bring 1-Gbps fibre-optic Internet service, television, long-distance and home phone services to the Cree communities of Eeyou Istchee and to the municipalities of the Eeyou Istchee James Bay region in Northern Quebec. We suspect that the actual network over which these services will run either already exists or is being funded by government, not Distributel;
- Execulink has been granted broadband funding for more than 14 fibre-to-the-premises (FTTP) deployments in Ontario. No information is provided on how much Execulink itself is contributing;
- EBOX claims it made investments to serve the Abitibi territory of Northern Quebec. However, we are unaware that it has deployed access network in the area. If EBOX refers to investment in transport facilities to reach Abitibi, then it is the least a Reseller can do, to deploy the minimal facilities required to subscribe to a mandated wholesale service;
- Paragraph 75 of the CNOC Petition also lists what it describes as "suspended plans to expand facilities-based and service-based operations". Little detail is provided insofar as some of the capital investment projects described may be reflective, at least in part, of government funding – for instance VMedia's reference to a rural FTTP project; and
- The robustness of CIK Telecom's $300M project to deploy FTTH throughout Markham is questionable: announced in 2018, and meant to last 10 years, the first phase aimed to provide service to 2,300 Markham residents by September 2019. No such service appears available on the CIK Telecom website today, two years after the target date of the first phase. We thus question whether the issuance of Decision 2021-181 has truly anything to do with a decision to delay or cancel this project.

4.0 DECISION 2021-181 HAS NO DETRIMENTAL IMPACT ON COMPETITION

56. You would never know it from the Resellers' very vocal complaints, but Bell's wholesale rates are lower today, as set by Decision 2021-181, than they have ever been. Further, Resellers remain entitled to millions of dollars of retroactive adjustments. Given this fact, it is clear that Decision 2021-181 will have no detrimental impact on the competitiveness of Resellers or the overall competitive dynamics between Resellers and facilities-based providers. Even though wholesale rates are not actually rising, the Petitions argue that the rates confirmed on a final basis by Decision 2021-181:

a) have not been conducive to Reseller success between 2016 and now;
b) will force Resellers to raise their retail rates;
c) prevent Resellers from competing against the flanker brands of mandated wholesale providers;
d) prevent Resellers from satisfying the needs of low-income Canadians; and
e) prevent competition in rural areas over networks subsidized by government.

57. We will address each of these predictions in turn.

4.1 Decision 2021-181 maintains rates under which Resellers have been successful

58. The CRTC was well aware of Reseller claims that "competitors are already under enormous pressure given the interim rates[55]" and that anything higher than the Order 2019-288 rates would "directly and immediately result in even lower levels of competition as wholesale-based competitors are forced to raise retail prices to uncompetitive levels or exit the market altogether[56]." But the Commission recognized the hyperbole: under the rates in market since late 2016, and that are largely maintained (if not slightly lowered) by Decision 2021-181, independent data from the CRTC and the Competition Bureau shows growth in Reseller competition and market share. For instance, as recently as 2019 (the latest year for which we have CRTC data), resellers were capturing almost 20% of net customer additions[57]. Over that same span, Resellers have also secured an approximately 10% market share nationally[58] (up from 7.6% in 2015) and additional analysis shows Resellers are even more successful in urban

55 Decision 2021-181, paragraph 287.
56 Ibid.
57 CMR 2019, Figure 9.1.
58 CMR 2020, Dataset, Retail fixed Internet, Tab N-F15.

markets where they focus their operations (for example, Resellers' market share exceeds 18% in Montreal and 16% in the Greater Toronto Area)[59].

59. Reseller claims of doom and gloom cannot be reconciled with the facts. For one, the Competition Bureau's year-long study into the Canadian broadband industry concluded in August 2019 (the very month Order 2019-288 was issued) that "the competitive impact of [Resellers] continues to grow[60]" and "the wholesale access regime appears to be fulfilling its promise to bring about greater consumer choice and increased levels of competition for Canadian consumers.[61]"

60. Independent observer TD Securities Equity Research notably remarked in 2019 that:

> Internet resellers in Canada have already been achieving big market share gains in recent years, and especially since the interim wholesale rates were announced in October, 2016. Our own analysis (unchanged from October, 2016) also concludes that resellers can earn attractive financial returns via the system of interim access rates, while they also provide lower advertised prices than incumbents, which benefits consumers. In other words, the system seems to be working well for consumers, resellers, and facilities-based carriers, so we wonder if there is a problem that the Commission is trying to solve with material incremental reductions to the wholesale rates[62].

61. Their comment remains perfectly apt today as Resellers will continue to face the same (or slightly lower) wholesale rates under Decision 2021-181.

62. CNOC argues that the in-market interim rates since October 2016 have not supported competitor growth. This is a puzzling remark, especially since it acknowledges that it is evident from CRTC data that Resellers market shares have grown since 2016[63].

63. CNOC advances that the near 10% market share achieved by Resellers in the 2016-2019 span, a gain at a compound annual growth rate of over 6%, is not reflective of a healthy Reseller sector for several reasons. First, because market share growth has decelerated[64].

59 Competition Bureau Broadband Study, page 20.
60 Competition Bureau Broadband Study, page 6.
61 Competition Bureau Broadband Study, page 7.
62 TD Securities Inc., *We See Good Odds of the CRTC Decision Being Revised/Overturned,* Industry Insights – Equity Research, 4 September 2019, page 7.
63 CNOC Petition, paragraph 113.
64 CNOC Petition, paragraph 118.

Second, that the national market share masks regional differences[65]. And third that wholesale rates do not go "far enough" to support the growth of competitors[66]. We will rebut these in turn.

i) No Real Deceleration

64. CNOC's growth rate argument is specious because it is looking at small numbers in a vacuum. We reproduce Table 4 from CNOC's Petition to make the point:

Table 4: Share of Residential Internet Access Service Subscriptions (%), 2013-2019

	2013	2014	2015	2016	2017	2018	2019	CAGR 2013-2016	CAGR 2016-2019
Competitors	6.2	6.8	7.6	7.8	8.3	8.9	9.4	8.0%	6.4%

65. CNOC portrays this data as concerning, since the compound annual growth rate is lower for the 2016-2019 period then for the 2013-2016 period. While that is mathematically true, it is meaningless. The net market share gain for 2013-2016, 1.6% of Canadian subscribers, is the same 1.6% that took place for the 2016-2019 period. Their actual subscriber gains have not slowed. The growth rate, because it is relative to whatever figure one uses as the starting point, is simply lower because their market share in 2013 was lower than it was in 2016.

66. You could look at the table above and instead conclude that the reduction of the interim CBB rates in 2016 re-invigorated Reseller growth. Although not shown in the table, for 2015-2016, one can see that the CAGR had fallen to 2.5%, but it rebounded to 6.4% in subsequent years.

67. In the end, no matter how the 2016-2019 data is sliced, it is inescapable that Resellers have added new subscribers at a compound annual growth rate of 11.7% while mandated-facilities-based providers have only done so at a CAGR of 3.2%[67]. The Resellers' faster pace of subscriber additions explains why, in aggregate, Resellers have grown their market share (from 7.8% to 9.4%) while that of mandated facilities-based providers has fallen (from 87.4% to 85.1%)[68].

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65 CNOC Petition, paragraph 115.
66 CNOC Petition, paragraph 119.
67 CMR 2020, Dataset Tab N-F4.
68 CMR 2020, Dataset Tab NF-15. Smaller facilities-based providers account for the balance.

ii) Regional and National Shares

68. CNOC rightly points out that Competition Bureau data indicated that 2018 Reseller market shares varied between different urban centers, from 16%-18% in Southern Ontario and Montreal to only 5% in large Western centers[69]. However, CNOC fails to explain how this shows either some problem with the regime or what the fix would be. Perhaps the higher Resellers share in Central Canada simply owes to the fact that it contains "the most populated areas of Canada" and that as CNOC acknowledges, "entrants will usually look for market segments and locations that are most conducive to successful entry and expansion, and they may be able to grow their market share quickly by picking such "low-hanging fruit""[70]. Indeed, we note that TekSavvy, the largest Reseller, after establishing itself in Central Canada, has since expanded its operations coast to coast[71].

69. Moreover, if Resellers have been able to achieve 16%+ market share under the prevailing wholesale rates charged by Bell and cable carriers in Ontario and Quebec, CNOC fails to justify why these wholesale rates, out of all the rates mandated across Canada, should be further lowered.

iii) Purpose of Wholesale Regime is not to Support Growth of Competitors

70. CNOC also argues that, without the substantial wholesale rate decreases considered by Order 2019-288, "the growth of competitors' market share will likely decelerate further or may even come to a stop…thereby depriving millions of Canadian consumers the benefits of increased competition.[72]" This represents a misunderstanding of wholesale policy.

71. Rather, as the Competition Bureau notes, the CRTC "imposes a mandatory wholesale access obligation to ensure consumer choice and greater levels of competition[73]". However, it does not aim to grant any single or type of competitor a set market share or return.

69 CNOC Petition, paragraph 115.
70 CNOC Petition, paragraph 122.
71 With offices in Chatham, Ontario and Gatineau, Quebec TekSavvy is Canada's largest independent telecom service company with over 300,000 customers from coast to coast. See About TekSavvy description in press releases, such as https://www.teksavvy.com/in-the-news/2020-press-releases/teksavvy-brings-cable-internet-service-to-consumers-in-new-brunswick-and-newfoundland/.
72 CNOC Petition, paragraphs 123-124.
73 Competition Bureau Broadband Study, page 7.

72. What matters for competition, and for Canadian consumers, is the competitive tension between facilities-based providers and Resellers. The exact market share of Resellers is a factor, certainly, but more determinative is the ability of Resellers to influence market dynamics. It is clear from the facts that Resellers are playing their role well under prevailing wholesale rates. As the Competition Bureau noted:

> First, wholesale-based competitors, who use the access regime to serve customers, currently provide services to more than 1,000,000 Canadian households. Second, consumers who are served by wholesale-based competitors report higher satisfaction with their provider than those who use traditional providers. Third, wholesale-based competitors act as a competitive alternative for countless other households, who use their presence to negotiate lower prices and other inducements from other competitors. And finally, several facilities-based competitors, who provide services using their own underlying physical networks, have recently launched flanker brands, at least in part as a competitive response to wholesale-based competitors. In these respects, the wholesale access regime appears to be fulfilling its promise to bring about greater consumer choice and increased levels of competition for Canadian consumers. [Emphasis added].[74]

73. The goal of wholesale policy is to ensure a workable competitive environment – where winners and losers arise based on their own efforts and merits rather than through regulatory shortcuts. Success is not measured by the market share of any particular competitor or type of competitor.

4.2 Decision 2021-181 does not require Resellers to raise retail rates

74. Decision 2021-181 largely maintains the prevailing Resellers' cost structure – for services on the Bell network, it actually lowers wholesale rates by 7%. It should therefore not have, in itself, an impact on the retail rates that Resellers charge. Yet, several Resellers argue that it forces them to increase their retail rates – to wit see Annex 3 of CNOC's Petition which samples actual or proposed price changes from its members, though overwhelmingly in relation to very specific cable speed profiles, or TekSavvy's press release following Decision 2021-181:

> The decision is bad news for consumers, as it effectively guarantees internet prices will continue to rise.[75]

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74 Competition Bureau Broadband Study, page 7.
75 TekSavvy, Press Release, *CRTC Decision Will Kill Telecom Competition, Guarantees Even Higher Prices*, 27 May 2021.

75. What is really happening is that Resellers are adjusting their retail rates to assist with their unfounded narrative of the Petition. As we mentioned earlier, the overly low wholesale rates from Order 2019-288 have never applied in market – but that did not prevent certain Resellers from lowering some retail rates for a time, after the issuance of Order 2019-288, on their optimistic outlook that these overly low rates would come to pass (along with the millions of dollars of retroactive refunds). However, we see that to the extent Resellers lowered their retail rates after Order 2019-288 was issued, they have since raised rates, even past what they were prior to Order 2019-288.

76. For example, TekSavvy's rate for 50/10 Mbps service over the Bell network was $57.00 in August 2019. In September 2019, TekSavvy lowered this rate to $51.95, apparently in response to Order 2019-288. However, in August 2020, TekSavvy raised it up past what it used to be, up to $66.95, even though wholesale rates were utterly unchanged. Today, post Decision 2021-181, it retails this package for $69.95. Its prices are higher now than *before* Order 2019-288 even though its wholesale rates from Bell were never lower!

77. The retail prices of another Reseller, Start.ca, tell a similar story. In September 2019, it announced the reduction of the price of Internet service over the Bell network in Ontario[76] from $60 to $50[77]. Today it stands at $65[78]! Again, even though its wholesale rates from Bell are lower than ever.

4.3 <u>Decision 2021-181 does not make flanker brand offerings predatory</u>

78. CNOC and TekSavvy assert in their Petitions that mandated wholesale providers are using their flanker brands in a predatory fashion[79]. To support its argument, CNOC provides a small sample of three flanker offers, one from each of Bell, Rogers and Videotron. We note that the sample of offers chosen by CNOC is very unrepresentative. For Bell, it quotes a bonded 100 Mbps wholesale service, a very rare wholesale speed profile that represents less than 0.1% of Reseller-served end-users on our network. For the two cable carriers, CNOC specifically refers to new banded speed profiles whose wholesale rates only apply to new customers, as an exception to the bulk of the rates finalized by Decision 2021-181.

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76 https://www.start.ca/blog/crtc-decision-means-lower-prices-and-faster-speeds.
77 Data collected by Bell Business Intelligence in September 2019.
78 https://www.start.ca/services/high-speed-internet#packages.
79 CNOC Petition, section 4.1.2

79. Recall what predatory pricing is, as it is understood in economics and enforced by the Competition Bureau under the *Competition Act*. Essentially, predatory pricing involves setting prices below cost for long enough to eliminate, discipline, or deter entry by a competitor, with the expectation that, after the predation period, the predator will be able to recoup its losses later, by raising its price beyond its pre-predation level. <u>It is accepted that matching the lower price of a competitor is not predatory, regardless of one's cost structure – no competitor is required to cease competing for a customer.</u>

80. The first step in a predatory pricing analysis is to compare the price with the costs - if price is above costs the analysis stops right there as there is nothing inappropriate about lowering retail rates as long as they are above costs. This comparison must take into account the full consumer relationship. The expected overall revenues derived from the customer must be compared to the expected overall costs of providing service – this must thus consider the expected *length* of the customer relationship (whether through a long-term contract or typical monthly churn) as well as the *suite* of services to which the consumer subscribes. In the case of Internet, winning a customer for broadband may be accompanied by supplemental revenue streams from telephony or video services for instance. An advantageous "introductory" broadband offer cannot be judged in isolation – rather it must be assessed as part of a comparison of the expected revenues and costs over the complete consumer relationship[80]. CNOC's claim of predatory pricing only provides a one-month snapshot of the introductory price of a broadband-only offering – it thus provides a woefully inadequate picture to draw firm conclusions, let alone that is uses examples that, at least in our case, are meaningless.

81. Moreover, retail offerings change very rapidly, sometimes daily, in response to market conditions. The Virgin 100/10Mbps plan CNOC quotes as being at a promotional price of $45/month in June 2021[81] is no longer offered at that rate. Rather Virgin 100/1 0Mbps now retails for $80/month in Ontario and $60/month with a $100 one-time credit (which is only redeemable by month three of subscription) in Quebec[82].

82. To highlight the dangers of a narrow picture, Tables 2 and 3 below shows the retail and wholesale rates associated with a Virgin 50/10 Mbps plan in Ontario, a plan which Resellers more commonly subscribe to compete in the market[83], first as it existed in April 2020 and

80 CNOC implicitly accepts this since it amortizes the wholesale service charges over a 36-month period rather than assume they must all be recovered in the first month. See footnote 94 of CNOC Petition.
81 CNOC Petition, Table 5.2.
82 https://www.virginplus.ca/en/internet/index.html, retrieved 6 September 2021.
83 The 50/10 Mbps profile is a popular wholesale speed profile.

second now post Decision 2021-181. We use the same presentation CNOC uses in its own Table 2 at page 31 of its Petition.

Table 2: Flanker brand retail pricing vs wholesale cost at interim rates in April 2020

Flanker Brand	Retail Service	Promotional Price	Wholesale Service	Access Rate	CBB Cost	Service Charges	Total Wholesale Costs	Margin after Wholesale Costs
Virgin (Bell)	50/10 Mbps	$50.00 for first 12 months	50/10 Mbps	$25.62	$4.36	$2.52	$32.50	**+ 35%**

Table 3: Flanker brand retail pricing vs wholesale cost at Decision 2021-181 rates in September 2021

Flanker Brand	Retail Service	Promotional Price	Wholesale Service	Access Rate	CBB Cost	Service Charges	Total Wholesale Costs	Margin after Wholesale Costs
Virgin (Bell)	50/10 Mbps	$70.00 (no advertised promotion)	50/10 Mbps	$23.79	$4.04	$2.52	$30.35	**+ 57%**

83. Looking at mainstream speed profiles, it is evident that CNOC's argument falls apart. Bell's flanker brand Virgin offers retail rates that are well above our wholesale tariff costs.

84. Moreover, CNOC incorrectly depicts competition in the low-price segment as a battle that uniquely pitches Resellers against facilities-based providers. This glosses over the fact that Resellers compete against each other too. Refer to the April 2020 example: using CNOC's methodology the wholesale cost for a 50/10 Mbps service over the Bell network was $32.50. Virgin retailed for $50.00, above the wholesale cost. TekSavvy's 50/10 Mbps over the Bell network was even higher, at $57. But Distributel, one of (if not the) largest CNOC member, was an aggressive discounter. Over the same Bell network, it offered 50/10 Mbps at a $30/month promotional price for the first six-months of a promotion. Distributel was **$27/month** lower than TekSavvy, $20/month lower than Virgin, below cost even in CNOC's view. Was Distributel then predatory? Should Virgin, Fido or other Resellers shrug and leave Distributel the market? That appears to be CNOC's view of competition.

85. As Table 3 shows, today in Ontario, Virgin's 50/10 Mbps offer is $70.00. TekSavvy, over the Bell network, offers 50/10 Mbps service for $69.95, essentially the same price as Virgin. Distributel, again, is lower than both, offering a 50/10 Mbps service on the Bell network for

$39.95 for the first six month, rising to $49.95 for months 7-12 of a one year contract. Another CNOC member, CIK Telecom, is priced even lower, at $34.99 for the first 12 months, after which the price rises to $39.00[84]. Virgin is priced higher than the largest Resellers in Ontario. There is not even a whiff of below cost pricing, let alone predation.

86. We also note that the market presence of flanker brands, competing with each other and with Resellers focusing on the price-sensitive segment of consumers, is not new. Fido Internet launched in November 2015, with Virgin Internet following in the summer of 2016. Fizz, the Videotron flanker, launched in March 2019. CNOC omits to mention that Reseller market share has been growing throughout the period flankers have been present, since it undermines their claim that flankers are eliminating Resellers from the market.

87. As the Competition Bureau rightly noted, the launch of flanker brands is typically a positive development, "as it places pressure on all market participants to lower prices, minimize costs, and compete their hardest in order to win customers.[85]" We acknowledge that economic theory identifies that flanker brands can have negative effects "if they are used selectively in order to push rivals out of the marketplace or otherwise harm competitive outcomes."[86] Tables 2 and 3 above illustrate that, taking a holistic view of the marketplace, no concerns are warranted.

88. In closing this section, we also note that predation in the regulated telecom sector is also largely hypothetical. If mandated wholesale providers did manage to eliminate Resellers, after years of losses suffered by giving consumers the benefit of below-cost services, would these large providers realistically be able to recoup these losses before the regulator or government intervened to regulate wholesale, or even retail, rates?

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84 https://www.ciktel.com/InternetPlans/FiberLiteInternet.
85 Competition Bureau Broadband Study, page 52.
86 Competition Bureau Broadband Study, page 53.

4.4 Decision 2021-181 does not jeopardize affordability for low-income Canadians

89. Capital Freenet's Petition focuses on the intersection of regulated wholesale high-speed services rates and programs assisting low-income Canadians, in particular those in marginalized communities or community housing.

90. Capital Freenet applauds that the recently announced Connecting Families 2.0 program will offer 50/10 Mbps service (with 200 GB of usage) for $20/month to eligible low-income seniors and families who receive the maximum Canada Child Benefit,[87] a program of which Bell is one of the lead participants. Capital Freenet, however, claims that there "are structural issues with the program that reflect problems with [Decision 2021-181].[88]"

91. Capital Freenet complains that it would be "deeply unsustainable" for it to opt into the program[89] with the rates set by Decision 2021-181. It then argues that, if the Order 2019-288 rates were implemented it still would not be able to break even offering a Connecting Families 2.0 plan, having to rely on cross-subsidies from other subscribers as well as donations and grants[90].

92. This is not surprising – but it is not a reflection of anything wrong with Decision 2021-181. The Connecting Families 2.0 program provides select low-income Canadians with an Internet package that participating providers, including Bell, voluntarily offer <u>at a net loss,</u> to help address the needs of a segment of the population that cannot afford even a competitively priced package. There is nothing preventing Capital Freenet or other Resellers from joining the program, if they are willing to shoulder the associated loss for the benefit of the affordability cause. Yet, while the current 13 different providers who have chosen to participate vary in size (e.g., Bell, several SILECs, urban entrant Novus) and business model (e.g., publicly traded and non-profit co-op), all 13 are facilities-based provider: no Reseller has opted into the program

93. Capital Freenet concludes with the statement that "[w]e need wholesale rates that ensure general affordability for all Canadians and that also makes it possible for non-profits like NCF to offer affordable Internet for those living on a range of low-incomes." Yet that is simply not the purpose of a wholesale regime. The CRTC's wholesale access regime aims to supplement the competitive intensity in the retail Internet market that already exists between

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87 Capital Freenet Petition, paragraphs 29 and 30.
88 Capital Freenet Petition, paragraph 31.
89 Capital Freenet Petition, paragraphs 32 and 33.
90 Capital Freenet Petition, paragraph 34.

facilities-based competitors, while maintaining the incentive of these facilities-based competitors to make the investments necessary to ensure Canadians are served by world-class networks. Capital Freenet instead seeks wholesale rates to be set below cost for the underlying network owners, so as to make it possible for Resellers to "compete" (at a profit for Resellers but a loss for facilities-based carriers) for low-income vulnerable Canadians; such a scenario is one that would undermine any incentive to invest.

4.5 Petitioners have offered no valid justification for overturning Decision 2021-181

94. Decision 2021-181 essentially "maintains the course" in the wholesale broadband market, confirming wholesale rates under which Resellers have been able to grow their market share to the point that they serve over a million Canadians today. The rates set by Decision 2021-181 are in fact now slightly lower (by 7% for Bell) that they were in 2019, when a year-long study concluded that "the wholesale access regime appears to be fulfilling its promise to bring about greater consumer choice and increased levels of competition for Canadian consumers.[91]"

95. Further, as wholesale rates either stay flat or are slightly lowered by Decision 2021-181, there is no basis to the Resellers' claim that it forces them to raise their retail rates – their cost structure has improved, not worsened.

96. There is also no evidence of predation from the mandated wholesale providers' flanker brands. Rather, what we witness is vigorous competition between Resellers and facilities-based providers that "places pressure on all market participants to lower prices, minimize costs, and compete their hardest in order to win customers.[92]"

97. Finally, the issue of Internet affordability for vulnerable Canadians is one that is best addressed by targeted government or private initiatives, such as the Connecting Families 2.0 program.

98. What Resellers truly decry is not a dark day for competition or Canadians – it is not even a dark day for Resellers. But it is disappointing for Resellers considering they were counting on receiving under Order 2019-288 an undeserved windfall of hundreds of millions of dollars; money that would clearly have come to them at the expense of facilities-based provider broadband builds especially in rural communities. While their cost structure improves slightly

91 Competition Bureau Broadband Study, page 7.
92 Competition Bureau Broadband Study, page 52.

and they will receive retroactive adjustments in the millions of dollars (which they are under no obligation to pass through to consumers), Resellers will simply not receive the regulatory manna they have been hoping for since Order 2019-288's fundamentally flawed costing proposed to slash wholesale rates significantly below cost.

5.0 PUTTING DECISION 2021-181 INTO ITS BROADER CONTEXT

99. It is important to understand where Decision 2021-181 fits in relation to the overall wholesale regulatory regime. Historically the CRTC has mandated the largest facilities-based carriers to offer a form of wholesale Internet called Aggregated HSA.[93] Recently the CRTC has determined that the transport functionality of Aggregated HSA no longer needs to be mandated and instead it has ordered the largest facilities-based providers to offer a new form of HSA, Disaggregated HSA.[94] [95]

100. The CRTC recognized at the time that there would likely be some Reseller resistance to the transition from aggregated to disaggregated services and that incentives would be required:

> …[G]iven the preference of some competitors to continue to use only aggregated, rather than disaggregated, wholesale HSA services in the near term…incentives will be required to encourage migration to a disaggregated wholesale HSA service, which will result in minimizing regulation to just the essential access facilities, as discussed below.[96]

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93 Aggregated HSA enables Resellers, without having to substantially invest in their own facilities, to lease both: (i) the access facilities needed to connect to customer locations; and (ii) the transport facilities through which large amounts of traffic can be sent and received.

94 Disaggregated HSA enables Resellers to lease the access facilities needed to connect to customer locations, but not the transport facilities. Instead, Resellers obtain transport facilities primarily by investing in their own facilities, which enables them to differentiate their services and compete to a greater extent than under aggregated wholesale HSA services.

95 According to the CRTC:

> The Commission's general approach towards wholesale service regulation has been to promote facilities-based competition wherever possible. Facilities-based competition… is typically regarded as the ideal and most sustainable form of competition. …
>
> With respect to aggregated wholesale HSA services, a decision to [eventually] no longer mandate the provision of such services would not impact investment in high-speed access facilities by incumbent carriers or competitors, nor would it significantly affect consumer adoption of Internet access services, so long as a disaggregated service is made available.
>
> …[I]mplementation of a disaggregated wholesale HSA service would enable competitors to become more innovative by giving them a greater degree of control over their service offerings. Moreover, a disaggregated wholesale HSA service could encourage competitor investment in alternate transport facilities, thereby serving to develop a more robust telecommunications system.

See Telecom Regulatory Policy 2015-326, *Review of wholesale wireline services and associated policies* (TRP 2015-326), paragraphs 5, 138 and 139.

96 TRP 2015-326, paragraph 148.

101. Both Order 2019-288 and Decision 2021-181 only dealt with rates for Aggregated HSA services – by far the most prevalent Reseller broadband input. However, it is clear that the CRTC's reasoning behind Order 2021-181 was motivated partly by its desire to incite Resellers to migrate from Aggregated to Disaggregated HSA service, as Disaggregated HSA reduces the Resellers' reliance on the mandated providers' networks:

> The Commission's primary goal with respect to wholesale HSA service is to complete the transition to disaggregated wholesale HSA service in an appropriate manner such that Canadians can benefit from the increased facilities-based competition it will bring, including access to the incumbents' FTTP facilities.[97]

102. The CRTC clearly realized that massively lowering the rates for Aggregated HSA, as Order 2019-288 would have done, would undermine its goal of encouraging migration to Disaggregated HSA.

> Given all the above, the Commission is concerned that committing a significant amount of resources to a further review would contribute to impeding the objectives set out in Telecom Regulatory Policy 2015-326 regarding the ultimate goal of having a smooth transition to the adoption of disaggregated wholesale HSA service with a corresponding reduction in aggregated HSA service availability.
>
> …<u>The Commission also considers that aggregated wholesale HSA service rates that are set too low would discourage the migration to disaggregated wholesale HSA service</u>.[98] [Emphasis added]

103. By only slightly reducing wholesale rates, Decision 2021-181 fits well within the continuum under which wholesale broadband services have actually been provided over the last five years. Moreover, Decision 2021-181 is also consistent with the CRTC's overarching goal of effecting a transition from aggregated to disaggregated HSA service. Order 2019-288, in contrast, is an outlier both in terms of rates (erroneously applying costing principles to the point some rates would fall below costs) and in terms of overall policy since it would nullify the CRTC's push for disaggregated services

97 Decision 2021-181, paragraph 5.
98 Decision 2021-181, paragraphs 297 and 298.

6.0 NO CRTC BIAS

104. The Petitions allege that CRTC Chairperson Ian Scott is biased in favour of large facilities-based providers on the basis of i) a speech given by Chairperson Scott at a Canadian Club event[99] and ii) the higher number of meetings between CRTC management and mandated wholesale providers than between the CRTC and Resellers[100].

105. Bias is a severe allegation which challenges the integrity of the CRTC and of its members who participated in Decision 2021-181. As a result, it cannot rest on mere suspicion, conjecture or insinuations. It requires clear proof, which is utterly lacking.

106. At the Canadian Club, while Chairperson Scott did express a "personal preference" for facilities-based competition[101] he carefully presented this as his own view, not that of the CRTC as a whole:

> I can give you a personal opinion. Obviously I don't speak for the Commission as a single voice. All of the Commission's decisions… are made by the Commission which means myself and my eight Commission colleagues. We are all peers. I am only one vote … [A] Commission view… can only be found in its decisions and notices. But I can share with you my thoughts...[102]

107. Further, far from indicating bias, the Chairperson's actual remarks show a nuanced assessment of the relative merits of facilities-based and service-based competition. He recognized the benefit of service-based competition is that it "can overcome barriers to entry very quickly [and] can result in very quick changes in pricing", but that "there's less certainty about whether or not that form of competition will always be sustainable", whereas in facilities-based competition, "even if the firm [investing in facilities] were to disappear … the facilities don't go away and so it creates an opportunity for someone else to acquire those facilities".[103]

108. These remarks on the advantages (quickly reducing prices) and disadvantages (long term sustainability) of service-based competition are entirely consistent with the guidance in the 2006 and 2019 Policy Directions "not to artificially favour either Canadian carriers or resellers"

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99 CNOC Petition, paragraph 68.
100 CNOC Petition, paragraph 69.
101 Transcribed from video of presentation, available at http://mediaevents.ca/canadianclub-20210520/.
102 Transcribed from video of presentation, available at http://mediaevents.ca/canadianclub-20210520/.
103 Transcribed from video of presentation, available at http://mediaevents.ca/canadianclub-20210520/.

and to "encourage all forms of competition and investment".[104] They also reflect the longstanding approach of the CRTC, which is "to promote facilities-based competition wherever possible[105]".

109. Meetings between CRTC decision-makers and mandated wholesale providers, from the time the multiple review and vary applications were filed to when Decision 2021-181 was issued, are listed in the Registry of Lobbyists. It is entirely proper for CRTC members to meet with stakeholders. Parliament has declared lobbying to be "a legitimate activity",[106] and it is both frequent and necessary in the highly complex telecommunications and broadcasting industries. Indeed, such meetings were described by a spokesperson for the Minister of Innovation, Science, and Industry as "appropriate and expected".[107] The Registry of Lobbyists discloses that numerous members of the industry lobbied the CRTC between December 2019 and May 2021: BCE did so twice in that span, about broadcasting both times, while ***TekSavvy,*** one of the Petitioners, did so once, and specifically about "telecommunications".[108] Let us be clear, lobbying on non-related broadcasting issues is not evidence of any bias.

110. The CNOC Petition highlights a specific meeting between BCE CEO Mirko Bibic and Chairman Ian Scott in December 2019 as "bias manifest"[109], a meeting that TekSavvy blog calls a "scandal"[110] Yet there is no support to these slanderous claims. The meeting was promptly disclosed by Bell in the Registry of Lobbyists the very next day, and the contemporaneous report states that the subject of the meeting was "*broadcasting*". Decision 2021-181 is about telecommunications: it has nothing whatsoever to do with broadcasting. TekSavvy's own reports show that it met with the CRTC to discuss telecommunications issues. There is no evidence to suggest it was about this file and we make no such allegation. The same cannot be said for TekSavvy who has no evidence, only innuendo, in order to undermine a well-reasoned CRTC decision.

104 2006 and 2019 Policy Directions.
105 TRP 2015-326, paragraph 5.
106 *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.), Preamble.
107 Toronto Star Article, *Is the CRTC getting too cosy with big telecom? Star analysis finds major telecoms met with government and CRTC officials hundreds of times prior to reversal on wholesale internet rates*, 12 June 2021.
108 https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/cmmLgPblcVw?comlogId=472390.
109 CNOC Petition, paragraph 69.
110 https://blogs.teksavvy.com/look-at-this-picture-then-look-at-your-internet-and-mobile-bills.

7.0 CONCLUSION

111. For all of the above, we submit that Decision 2021-181 should be maintained. It strikes an appropriate balance between retail competition and investment, even lowering our wholesale rates by 7%, to their lowest level ever and ordering us to refund monies to Resellers. At the same time, Decision 2021-181 overturned disastrous Order 2019-288, which would have massively cut wholesale rates to levels that were significantly below our costs, causing us and the other facilities-based carriers to cancel much needed broadband investments. Already Decision 2021-181 has spurred investment, as evidenced by the fact that Bell has increased its capital investment by $1.7 Billion (including an additional $500 million over two years on top of previously announced $1.2 Billion in accelerated Bell investments over the same period) as a direct response to the support for infrastructure investment reflected in recent federal regulatory and policy decisions.

112. Decision 2021-181 continues the long-standing CRTC and government policy of encouraging facilities-based competition and aligns with the CRTC's long-term objective of migrating Resellers off aggregated HSA services to disaggregated services.

113. Lastly, allegations of bias or impropriety against the CRTC are unfounded.

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