

**Submission on Petitions to the Governor in Council regarding Telecom
Decision CRTC 2021-181, TIPB-002-2021**

*OpenMedia is a community-based organization that safeguards the possibilities
of the open Internet.*

September 22, 2021





OVERVIEW OF SUBMISSION

A. EXECUTIVE SUMMARY

B. COMMENTS ON CRTC TELECOM DECISION 2021-181

APPENDIX 1: Petition text and signatures. OpenMedia and 31,886 community members call on our Cabinet to immediately overturn the CRTC's May 27 decision on Internet wholesale rates and permanently reinstate the lower 2019 rates.

A. EXECUTIVE SUMMARY

OpenMedia is a community-driven organization that works to keep the Internet open, affordable, and surveillance-free. We operate as a civic engagement platform to educate, engage, and empower Internet users to advance digital rights around the world. Since the beginning of the COVID-19 pandemic, members of the OpenMedia community have spoken out close to 90,000 times through our campaigns in support of more affordable home and wireless Internet services in Canada.

Canadians continue to pay some of the highest prices in the world for home and mobile Internet.¹² Despite assurances that the government and Canadian Radio-television and Telecommunications Commission (CRTC) are working to address the problem, Canada's Internet prices actually increased in 2020.³ The same study by Wall Communications Inc. for Innovation, Science and Economic Development Canada (ISED) reports that in 2020 prices fell from their 2019 levels in all other countries except for Japan in the majority of service baskets.⁴

Our Internet is among the most expensive in the world primarily because our telecommunications market is concentrated to a severe degree. According to the Canadian Media Concentration Research project's *Media and Internet Concentration in Canada, 1984–2019* report, incumbent telecommunications companies made up 86% of the retail home Internet market based on revenue in 2019.⁵

¹ MobileSyrup (2019). *Canada among top five highest costs for 100Mbps internet speed*. Source: <https://mobilesyrup.com/2019/12/18/canada-top-five-highest-costs-100mbps-internet/>

² Rewheel (2021). *Is Canada the most expensive wireless market in the world?*. Source: http://research.rewheel.fi/downloads/Canada_most_expensive_wireless_market_world_PUBLIC_VERSION.pdf

³ Wall Communications Inc. (2020). *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2020 Edition*, p. 52. Source: [https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/\\$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf)

⁴ Wall Communications Inc. (2020). *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2020 Edition*, p. 9. Source: [https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/\\$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf)

⁵ Winseck, Dwayne (2020). *Media and Internet Concentration in Canada, 1984–2019*, p. ix. Source: <http://www.cmcpr.org/wp-content/uploads/2021/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932019-07012021.pdf>



Concerningly, the CRTC has doubled down on Canada's oligopolistic telecom market during the COVID-19 pandemic. In Telecom Decision 2021-181, the CRTC made the decision to reverse its own aggregated wholesale service rates decision from 2019, making it more expensive for independent providers to purchase access to incumbents' wireline Internet networks for resale.

In justifying its re-adoption of higher rates, the CRTC points to its ongoing attempts to transition wholesale competition to a 'disaggregated' model. But this model remains unproven and has been subject to lengthy and persistent delays in its adoption since being introduced in a 2015 CRTC decision. In the meantime, Canadians cannot afford the loss of competition and expensive Internet bill hikes that have resulted from the CRTC's revocation of its fairly-priced 2019 rates, and its destabilization of the aggregated wholesale regime.⁶⁷

In our view, the CRTC's 2021 decision is directly worsening Canada's Internet affordability problem, while forestalling possible future positive change. It is from this perspective that we submit to you OpenMedia's comments on Telecom Decision 2021-181, alongside our community petition calling on you to reverse the CRTC's 2021 wholesale rates decision and re-establish the lower rates set in 2019. Nearly 32,000 Canadians endorsed OpenMedia's petition at <https://openmedia.org/CRTCscandal>.

In the pages that follow, we outline the following arguments:

i) Requiring independent Internet service providers (ISPs) to duplicate existing network facilities through a facilities-based or disaggregated model is a mistake. It is an inefficient use of limited funds for network buildout, imposes huge cost of entry barriers to new competitors entering the market, and ultimately has been proven to be untenable in the market, with any short-term competition gains likely to be undone by mergers and acquisitions.

ii) Services-based competition is more effective than any form of facilities-based model at introducing widespread choice of Internet providers and putting sustained downward pressure on retail Internet prices.

iii) The CRTC's 2021 wholesale rates decision has led directly to more expensive retail Internet prices in Canada, and reversing the decision would substantially remedy the price hikes. The ruling, which increased wireline Internet wholesale rates and denied payments owed to smaller ISPs from incumbents, has forced independent providers to raise retail prices, making it much more difficult for them to play a positive role in exerting competitive pressure across Canada's residential Internet market.

iv) If this anti-consumer decision is not overturned, it will contribute directly to millions of people in Canada remaining on the wrong side of the digital divide. This undermines the government's

⁶ MobileSyrup (2021). *TekSavvy increases internet prices \$3, lays blame on CRTC*. Source: <https://mobilesyrup.com/2021/08/24/teksavvy-internet-price-increase-3-crtc/>

⁷ Global News (2021). *Small internet providers preparing to raise prices, cut services amid CRTC decision*. Source: <https://globalnews.ca/news/7904273/crtc-independent-internet-providers/>



own Internet affordability goals and the best interests of Canadians. In 2019, the Government of Canada ordered the CRTC to promote competition, affordability, and the interests of consumers. Cabinet therefore has an obligation to clearly correct the course of the CRTC's decision to bring it in line with the government's objective of making Canada's Internet affordable and accessible to all, as outlined in the 2019 policy direction and Canada's Connectivity Strategy.⁸⁹ The mixed messaging of Cabinet's August 2020 Order in Council to the CRTC was not helpful and must be clarified and corrected.¹⁰

OpenMedia firmly believes that enabling robust services-based competition through fairly-priced wholesale access in Canada's telecommunications market is the most straightforward and sustainable way to drive down home Internet prices, and that this ultimate retail outcome must take priority. From this perspective, failing to overturn the CRTC's 2021 decision on wholesale rates amounts to an endorsement of the Internet price hikes that have hit Canadians hard during the ongoing COVID-19 pandemic and a rejection of this government's own commitments.

Given all of the reasons we have detailed, OpenMedia, along with nearly 32,000 Canadians who have signed our petition, therefore request Cabinet reverse CRTC Telecom Decision 2021-181, and direct the CRTC to establish reasonable Internet wholesale rates in line with those set by CRTC Telecom Order 2019-288.

⁸ Privy Council Office of Canada (2019). *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*. Source: <http://cdn.michaelgeist.ca/wp-content/uploads/2019/06/CRTC-Policy-Direction-Signed-Order.pdf>

⁹ Innovation, Science and Economic Development Canada (2019). *Canada's Connectivity Strategy*. Source: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00001.html

¹⁰ OpenMedia (2020). *Minister Bains just undermined Canada's best chance for affordable Internet*. Source: <https://openmedia.org/article/item/bains-just-undermined-Canada-best-chance-for-affordable-internet>



B. COMMENTS ON CRTC TELECOM DECISION 2021-181

Since the COVID-19 pandemic was declared in March 2020, OpenMedia has heard from our community time and again that digital connectivity is a lifeline to stay connected, access services, and maintain their livelihoods through this isolating public health crisis — that is, for those who can afford it.¹¹¹² Yet eighteen months into the pandemic, millions of people in Canada still lack affordable access to high-quality Internet that meets or exceeds the CRTC's 50 Mbps download/10 Mbps upload national speed target.

According to a 2020 study by Wall Communications Inc. for Innovation, Science and Economic Development Canada (ISED), residential Internet prices in Canada actually increased from 2019 to 2020, particularly sharply for Canadians purchasing lower cost Internet plans.¹³ All other countries studied except Japan saw prices reduce during that time period across the majority of Internet service baskets.¹⁴ Similarly, more recent 2021 analysis by telecom consumer comparison engine WhistleOut shows home Internet plans meeting the CRTC's speed target increased by more than 4% on average over the past year.¹⁵

Considerable evidence exists that Canada has not made real progress on bringing our home and wireless Internet prices in line with other industrialized countries. In some cases, we are even falling further behind. Numerous reports have documented the sky-high cost of connectivity in Canada relative to our international peers.¹⁶¹⁷ On residential Internet, Wall Communications Inc. (2020) found the average monthly price for a 41-100 Mbps plan — the closest service basket match to the CRTC's speed target — was more expensive in Canada than in all other countries studied other than Australia; notably, Canada's average monthly price for this service basket (\$77.18) exceeded that of the UK, Italy and Germany by >\$20.¹⁸

Our Internet is among the most expensive in the world primarily because our telecommunications market is concentrated to a severe degree. According to the Canadian

¹¹ OpenMedia (2020). *Written Submission to the House of Commons Standing Committee on Industry, Science and Technology Re: Canadian response to the COVID-19 pandemic*, pp. 1,2,4. Source: https://openmedia.org/files/200605_INDUbrief.pdf

¹² OpenMedia (2020). *Written Submission to the House of Commons Standing Committee on Industry, Science and Technology Re: Accessibility and Affordability of Telecommunications Services*. Source: <https://www.ourcommons.ca/Content/Committee/432/INDU/Brief/BR11058287/br-external/OpenMedia-e.pdf>

¹³ Wall Communications Inc. (2020). *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2020 Edition*, p. 52. Source: [https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/\\$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf)

¹⁴ Wall Communications Inc. (2020). *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2020 Edition*, p. 9. Source: [https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/\\$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf)

¹⁵ WhistleOut (2021). *Study Finds Internet Prices Rose 6% in Canada Last Year, Sparking Concerns About Affordability*. Source: <https://www.whistleout.ca/Internet/News/internet-prices-study>

¹⁶ MobileSyrup (2019). *Canada among top five highest costs for 100Mbps internet speed*. Source: <https://mobilesyrup.com/2019/12/18/canada-top-five-highest-costs-100mbps-internet/>

¹⁷ Rewheel (2021). *Is Canada the most expensive wireless market in the world?*. Source: http://research.rewheel.fi/downloads/Canada_most_expensive_wireless_market_world_PUBLIC_VERSION.pdf

¹⁸ Wall Communications Inc. (2020). *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2020 Edition*, p. 62. Source: [https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/\\$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf)



Media Concentration Research project's *Media and Internet Concentration in Canada, 1984–2019* report, incumbent telecommunications companies made up 86% of the retail home Internet market based on revenue in 2019.¹⁹ Small decreases in market concentration in this area from previous years is largely due to smaller ISPs competing for more share of the market — competition that is under threat after the CRTC's recent decision.²⁰

i) FLAWS OF THE FACILITIES-BASED COMPETITION MODEL

The CRTC's position on facilities-based competition is that encouraging providers to rely on their own facilities is the most sustainable model of competition.²¹ But as pointed out in Roger Ware's 2018 report *Competition Issues in Facilities Based Versus Service Based Competition and Disaggregated Wholesale HSA Transport*, insisting on facilities-based competition at all times is not necessarily preferable, and the claim that mandated wholesale access discourages investment is not strongly supported by empirical evidence.²²

Under a facilities-based model, each new ISP that wants to enter Canada's residential Internet market is required to purchase and/or build out their own network facilities in order to provide services to the end user. There are a number of reasons why this is not effective:

a) **It is inefficient.**²³ Just as we do not make different transport companies each build their own highways to the same destinations, we should not make ISPs each build the same networks in the same areas many times over. As pointed out by Ware (2018), Gruber and Koutroumpis's 2013 article "Competition enhancing regulation and diffusion of innovation: the case of broadband networks" argues that higher costs from duplicating facilities is likely to lead to more expensive retail prices.²⁴

b) **It is cost-prohibitive for new entrants, and therefore structurally hostile to competition.** Building out a broadband network from scratch is an extremely expensive endeavour. By forcing new competitors to build their own facilities to provide services to consumers, Canada greatly

¹⁹ Winseck, Dwayne (2020). *Media and Internet Concentration in Canada, 1984–2019*, p. ix. Source: <http://www.cmcrp.org/wp-content/uploads/2021/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932019-07012021.pdf>

²⁰ Winseck, Dwayne (2020). *Media and Internet Concentration in Canada, 1984–2019*, pp. lx, 36. Source: <http://www.cmcrp.org/wp-content/uploads/2021/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932019-07012021.pdf>

²¹ Canadian Radio-television and Telecommunications Commission (2021). *Telecom Decision CRTC 2021-181*, p. 1. Source: <https://crtc.gc.ca/eng/archive/2021/2021-181.htm>

²² Ware, Roger (2018). *Competition Issues in Facilities Based Versus Service Based Competition and Disaggregated Wholesale HSA Transport*, p. 14, para. 24. Source: [https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/\\$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf](https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf)

²³ Ware, Roger (2018). *Competition Issues in Facilities Based Versus Service Based Competition and Disaggregated Wholesale HSA Transport*, p. 13, para. 23. Source: [https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/\\$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf](https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf)

²⁴ Ware, Roger (2018). *Competition Issues in Facilities Based Versus Service Based Competition and Disaggregated Wholesale HSA Transport*, p. 17, para. 30. Source: [https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/\\$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf](https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf)



increases the cost of entry into the market, limiting the number of companies that may reasonably consider doing so. And not only does the cost of the facilities-based model bar entry of new competitors, it dramatically undercuts the ability of current small ISPs to expand, succeed, and potentially even survive long-term in Canada.

c) **It has not succeeded elsewhere.** Encouraging facilities-based competition in an oligopolistic, entrenched telecom market has not led to retail Internet affordability in other markets outside of Canada. As Ware (2018) points out, the United States has also been following the facilities-based model over a services-based one in its regulatory approach, but still has more expensive residential Internet prices than the OECD average in the majority of service baskets.²⁵

d) **It is undermined by our weak Competition Act.** The weakness of Canada's competition laws makes any facilities-based competition gains particularly likely to prove ephemeral compared to other jurisdictions. In Canada, facilities-based competitors that overcome the odds by gathering sufficient startup capital to build a duplicative network make themselves a prime target for buyout by the established telecom companies. Because duplicative facilities-based competition is inherently inefficient in terms of physical resources, these mergers can easily be defended under section 96 of Canada's Competition Act, which justifies anti-competitive mergers that can be argued to increase efficiency.

This dynamic makes a facilities-based competition approach inherently self-defeating. Direct or indirect subsidies to would-be facilities-based competitors, such as set aside spectrum on wireless, or buildout support through the Universal Broadband Fund, may initially help small competitors find a facilities-based foothold. But these attempts at competition stimulus are likely to be eventually reabsorbed by incumbent telecom competitors, either if those startups fail, or when they succeed sufficiently to make themselves an attractive purchase.

Our telecom market has gone through several cycles of this pattern in recent years, including the pending Rogers-Shaw sale, and on the wireless side, in 2017's Bell-MTS buyout. Reforming our competition law to remove or reduce the scope for using Section 96 would help. But ultimately the best way to challenge this dynamic is to introduce many small competitors into the market, in a way that defeats attempts at buyout — a direction incompatible with facilities-based competition.

Problems with the Disaggregated Wholesale HSA Service Framework

In Telecom Decision 2021-181, the CRTC surprised experts and observers when it rejected its own wholesale rates decision from 2019. But the Commission did more than that; in explaining its decision, it stated that it does not want to undertake the regulatory effort it would take to

²⁵ Ware, Roger (2018). *Competition Issues in Facilities Based Versus Service Based Competition and Disaggregated Wholesale HSA Transport*, p. 16, para. 29. Source: [https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/\\$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf](https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf/$file/CB_Broadband_Market_Study_Ware_Report_for_CNOC_20180831_Final.pdf)



ensure its aggregate wholesale rates are just, because its preference is to focus on transitioning wholesale competition to a new disaggregated model in a push towards a more facilities-based competitive landscape.²⁶ We strongly disagree with this conclusion, as:

a) The disaggregated model has never been successfully implemented in Canada to date, despite first being ruled on in 2015.²⁷ In 6 years, the CRTC's decision to mandate wholesale access to incumbents' fibre networks for independent ISPs through the disaggregated model has not translated to any meaningful service provided to Canadians. Today, nowhere in Canada can consumers subscribe to fibre Internet from independent providers through the wholesale access system. We believe this is strong evidence that the disaggregated model has proven itself to be untenable in practice, and see no reason to abandon the current system for it. Canada's aggregated wholesale HSA model is functioning effectively, as we'll discuss further in the section that follows. To abandon a functional system in favour of an untenable one is an irresponsible move that is likely to leave Canada with no working wholesale framework at all.

b) The network duplication inefficiencies of facilities-based competition will do nothing for, or even prolong the digital divide in underserved markets. Due to the high burden of cost placed on independent providers by a disaggregated wholesale HSA model, these ISPs will first look to areas with greater market density in order to recoup these costs; in other words, the disaggregated system is so much more expensive that independent ISPs will be forced to duplicate networks in areas already served by Internet access, and avoid underserved markets in rural and remote communities, just to remain profitable.

c) The decision to abandon working on the aggregated wholesale model should never have taken place without robust public consultation. The CRTC was asked to review and vary the wholesale rates set by Telecom Order 2019-288, not to leverage this proceeding as a point of departure from the aggregated wholesale HSA model.

ii) SUCCESSES OF SERVICES-BASED COMPETITION

An aggregated services-based competition model is the superior alternative to facilities-based competition in terms of guaranteeing affordable Internet access and choice for everyone in Canada.

Canada's aggregated wholesale HSA service framework allows competing ISPs to purchase access to wireline Internet networks owned by incumbent ISPs, in order to resell services to end users without necessarily building out facilities themselves. It prevents smaller ISPs from incurring unnecessarily substantial costs on duplicating existing infrastructure built by

²⁶ Canadian Radio-television and Telecommunications Commission (2021). *Telecom Decision CRTC 2021-181*, p. 1. Source: <https://crtc.gc.ca/eng/archive/2021/2021-181.htm>

²⁷ Canadian Radio-television and Telecommunications Commission (2021). *Telecom Regulatory Policy CRTC 2015-326*. Source: <https://crtc.gc.ca/eng/archive/2015/2015-326.htm>

incumbents, lowers the barrier to entry into the market for new competitors, and guarantees that customers have greater access to multiple service providers.

Wholesale rates refer to the prices that these smaller ISPs have to pay large ISPs to access their networks. Because Canada's incumbent providers have no incentive to offer reasonable rates to small providers with little negotiating power, the CRTC has previously calculated fair wholesale rates that allow smaller ISPs to compete,²⁸ all while providing a healthy rate of profit to the larger companies that own the infrastructure.

The system works. When smaller ISPs can purchase wholesale access to these networks at fair rates, it results in savings for consumers, and a continued incentive for infrastructure owners to build new infrastructure to earn additional profit. If the rates set by the CRTC are reasonably low enough to allow smaller ISPs to thrive, the wholesale access regime functions to enable competition and drive down prices, per basic economic theory on oligopolies. Retail pricing from smaller, wholesale-based providers has reliably been lower for most Internet plans;²⁹ not only does this directly lead to cheaper service options for people in Canada, but it also exerts downward pressure on prices across the market as incumbent ISPs must adjust their rates to compete. We find the CRTC's decision to abandon this functional, proven model baffling, and encourage you to step in and ask them to reconsider it.

iii) IMPACT OF CRTC'S DECISION ON INTERNET AFFORDABILITY & CHOICE

In 2016, the CRTC set interim wholesale rates that were intentionally well above what the regulator anticipated calculating in its upcoming rates study.³⁰ After years of calculation and analysis, in 2019 the CRTC set "final" rates that were lower than the interim levels, as expected. The CRTC also ruled that small ISPs would be owed \$325 million in back payments for what they had been overpaying to larger providers since 2016.³¹ Many small ISPs immediately passed on savings from these lower wholesale rates as lower retail rates to their subscribers, lowering Internet prices and driving up competition across the country.³²³³³⁴

²⁸ Canadian Radio-television and Telecommunications Commission (2021). *Telecom Regulatory Policy CRTC 2015-326*, para. 121. Source: <https://crtc.gc.ca/eng/archive/2015/2015-326.htm>

²⁹ Wall Communications Inc. (2020). *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2020 Edition*, p. 8. Source: [https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/\\$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Final_Telecom_Price_Comparison_2020ReportWall.pdf/$file/Final_Telecom_Price_Comparison_2020ReportWall.pdf)

³⁰ Canadian Radio-television and Telecommunications Commission (2016). *Telecom Decision CRTC 2016-117*, paras. 100, 104. Source: <https://crtc.gc.ca/eng/archive/2016/2016-117.htm>

³¹ Stein, Matt (2020). *Evidence: Thursday, November 26, 2020. Meeting 7, 2nd Session, 43rd Parliament, House of Commons Standing Committee on Industry, Science and Technology*. Source: <https://www.ourcommons.ca/DocumentViewer/en/43-2/INDU/meeting-7/evidence#Int-11039961>

³² House of Commons Standing Committee on Industry, Science and Technology. (2021) *Report of the Standing Committee on Industry, Science and Technology Re: Accessibility and Affordability of Telecommunications Services*, p. 32. Source: <https://www.ourcommons.ca/Content/Committee/432/INDU/Reports/RP11439444/indurp07/indurp07-e.pdf>

³³ MobileSyrup (2019). *Start.ca lowers internet plans after CRTC wholesale rate decision*. Source: <https://mobilesyrup.com/2019/10/25/start-service-provider-lowers-rates-crtc-decision/>

³⁴ TekSavvy (2019). *TekSavvy to Customers: "We lowered your Internet bill. Thank the CRTC."* Source: <https://www.newswire.ca/news-releases/teksavvy-to-customers-we-lowered-your-internet-bill-thank-the-crtc--816437492.html>



Large ISPs like Bell and Rogers immediately appealed the CRTC's 2019 decision with Cabinet directly, the Federal Court of Appeals, and at the CRTC itself. In May 2021, their appeal with the CRTC shockingly led the regulator to reject its own 2019 decision in order to re-establish the higher 2016 rates. Rather than providing a quantitative rationale for amending the 2019 ruling, the CRTC discarded years of its own work to unfairly reinstate the interim rates — rates that were purposefully set too high to begin with, and were never meant to be permanent.

The 2021 decision has led to an immediate contraction in small ISP activity and price competitiveness. These providers, having initially passed on the savings of the 2019 decision to their customers, had no choice but to start increasing their retail prices yet again;³⁵³⁶ this was to account for both the higher operating costs of more expensive rates, as well as the substantial losses from the back pay from larger ISPs they will never receive due to the CRTC's 2021 ruling. Additionally, some smaller ISPs cancelled plans for future investment into service expansions that would have brought desperately-needed telecom competition and choice to many households across Canada.³⁷

Everyday people in Canada are bearing the brunt of this blow to affordability. While the ruling negatively impacted smaller competitors in the market to the benefit of incumbents, it is retail consumers who are left paying for the decision in the form of higher Internet bills, now and moving forward.

This is not an irrevocable move. If the 2021 wholesale rates decision were to be reversed, many Canadians would likely see an immediate reduction in their monthly Internet bills as a result of smaller providers once again passing the savings on to their subscribers.³⁸ And in the long term, reversing the decision would restore the ability for small ISPs to thrive as services-based competitors under Canada's wholesale access regime, therefore enabling greater retail competition. We could once again see the sustained downward competitive pressure we need on prices in the residential Internet market, resulting in more affordable connectivity even for consumers not subscribed to independent providers.

iv) WHY INTERNET AFFORDABILITY IN CANADA MATTERS

Scope and Impact of Canada's Internet Affordability Issue

³⁵ Global News (2021). *Small internet providers preparing to raise prices, cut services amid CRTC decision*. Source: <https://globalnews.ca/news/7904273/crtc-independent-internet-providers/>

³⁶ House of Commons Standing Committee on Industry, Science and Technology. (2021) *Report of the Standing Committee on Industry, Science and Technology Re: Accessibility and Affordability of Telecommunications Services*, p. 32. Source: <https://www.ourcommons.ca/Content/Committee/432/INDU/Reports/RP11439444/indurp07/indurp07-e.pdf>

³⁷ TekSavvy (2021). *CRTC Decision Will Kill Telecom Competition, Guarantees Even Higher Prices: TekSavvy*. Source: <https://www.teksavvy.com/in-the-news/2021-press-releases/crtc-decision-will-kill-telecom-competition-guarantees-even-higher-prices-teksavvy/>

³⁸ TekSavvy (2021). *With the stroke of a pen, the Federal Cabinet can stand up to Big Telecom and lower Canadian internet bills. Visit paylesstoconnect.ca and demand real action to lower your cost of living*. Source: <https://www.teksavvy.com/in-the-news/2021-press-releases/with-the-stroke-of-a-pen-the-federal-cabinet-can-stand-up-to-big-telecom-and-lower-canadian-internet-bills-visit-paylesstoconnect-ca-and-demand-real-action-to-lower-your-cost-of-living/>



Ever since COVID-19 shifted Canadians' lives online in unprecedented ways, it has become more important than ever to ensure every person in this country can access fast, high-quality Internet at a price affordable to them. Those who have limited access to high-speed Internet, or cannot access it at all, are increasingly restricted from full and equal participation in our society and economy.

Lack of affordable service is just as much a barrier to home Internet access as network buildout — a dilemma often overlooked in favour of the “simpler” task of physically connecting more households to the Internet. As stated by the Government of Canada in its 2019 Connectivity Strategy: “It is not enough for a service to be available, for if the cost is out of reach, Canadians cannot take advantage of it.”³⁹

Surveys conducted during the pandemic suggest that lack of affordable options for home Internet has a direct impact on digital adoption for many households. According to a 2020 report by Ryerson Leadership Lab and the Brookfield Institute, nearly 2 out of 5 households in Toronto do not have Internet at home that meets the CRTC's download speed target of 50 Mbps; of this group, the top reported reason was monthly cost of service (49%).⁴⁰ The same study also found that worries about affording home Internet bills affected approximately 1/3 of Toronto households surveyed — especially low-income households, single-parent families, newcomers, and communities of colour.⁴¹ WhistleOut's 2021 survey supports these findings, with 40% of respondents saying that a 5% increase in their monthly Internet bill would be untenable.⁴² The same survey also found that 91% of respondents are concerned about Canada's Internet prices continuing to get more expensive, with 3 out of 4 saying they are “moderately to extremely worried about it”.⁴³

The burden of our unaffordable Internet falls especially heavily on some of Canada's populations most vulnerable to COVID-19, such as seniors, those with health conditions, those living in overcrowded housing, and people with lower incomes. For seniors, changes in income directly impact their Internet utilization rates. Only 54% of seniors with incomes under \$20,000 use the Internet, compared with 73% and 79% for seniors with household incomes of \$60,000-\$79,999 and >\$100,000, respectively.⁴⁴

Members of the OpenMedia community frequently give a human voice to this experience. In 2020, an OpenMedia community member from the Greater Toronto Area shared the following statement with us: “I live on a very low income because of an autoimmune illness. No one asks to be ill. No one asks to be low income. The world is going forward because of the Internet and

³⁹ Innovation, Science and Economic Development Canada (2019). *Canada's Connectivity Strategy*, p. 13. Source: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00001.html

⁴⁰ Ryerson Leadership Lab (2021). *Mapping Toronto's Digital Divide*. Source: <https://www.ryersonleadlab.com/digital-divide>

⁴¹ Ryerson Leadership Lab (2021). *Mapping Toronto's Digital Divide*. Source: <https://www.ryersonleadlab.com/digital-divide>

⁴² WhistleOut (2021). *Study Finds Internet Prices Rose 6% in Canada Last Year, Sparking Concerns About Affordability*. Source: <https://www.whistleout.ca/Internet/News/internet-prices-study>

⁴³ WhistleOut (2021). *Study Finds Internet Prices Rose 6% in Canada Last Year, Sparking Concerns About Affordability*. Source: <https://www.whistleout.ca/Internet/News/internet-prices-study>

⁴⁴ Statistics Canada (2019). *Study: Evolving Internet Use Among Canadian Seniors*. Source: <https://www150.statcan.gc.ca/n1/daily-quotidien/190710/dq190710d-eng.htm>



I can not afford WiFi. I can only afford the minimal gig that comes with the phone. It is not enough to keep up.”⁴⁵ Another community member from New Brunswick said: “I’m in ill health, on social assistance and alone. The internet is essential to my sanity and keeps me in contact with the outside world. I’ve cut my food bill to the bone. A crisis is coming where I will be forced to lose the internet and then I will truly be alone.”⁴⁶

Government of Canada’s Obligations

Solving Canada’s Internet affordability problem is not only in the best interest of the Canadian public, it is also in the best interest of the federal government. In 2019, Canada’s Connectivity Strategy made the meaningful commitment to “connect every Canadian to affordable, high-speed Internet no matter where they live”.⁴⁷ The government has an obligation to follow through on its Internet affordability commitment, but it will never get there via facilities-based competition.

In Canada’s Connectivity Strategy, the government made the explicit promise to explore open access requirements for network infrastructure publicly funded by programs arising from the Strategy.⁴⁸ Promoting robust services-based competition over facilities-based competition is the approach that aligns most with the open access model, in that networks are shared to their fullest capabilities in order to maximize affordable broadband access for the most number of Canadians as quickly as possible.

Perhaps the clearest of the government’s obligations with regards to Internet affordability and wholesale access is the 2019 CRTC policy direction.⁴⁹ Under this direction, the Government of Canada ordered the CRTC to consider how it can help to promote competition, affordability, consumer interests and innovation, as well as support new, smaller, and regional providers. While this policy direction cannot override the CRTC’s obligation to carefully weigh all the objections in front of the Commission, the 2021 wholesale rates decision is in direct conflict with the considerations outlined therein. The government’s objective of making Canada’s Internet affordable and accessible to all cannot be achieved if our telecommunications regulator contravenes policy directives to issue decisions fundamentally undermining the government’s goals. As such, it is vital that Cabinet correct the course of the CRTC on wholesale rates, clarifying or overriding the confusing 2020 direction from Cabinet, and bring the CRTC’s direction in line with the vision for affordable and accessible Internet our government has promised Canadians for years.

⁴⁵ OpenMedia (2020). *Written Submission to the House of Commons Standing Committee on Industry, Science and Technology Re: Accessibility and Affordability of Telecommunications Services*. Source: <https://www.ourcommons.ca/Content/Committee/432/INDU/Brief/BR11058287/br-external/OpenMedia-e.pdf>

⁴⁶ OpenMedia (2020). *Written Submission to the House of Commons Standing Committee on Industry, Science and Technology Re: Canadian response to the COVID-19 pandemic*, pp. 1,2,4. Source: https://openmedia.org/files/200605_INDUBrief.pdf

⁴⁷ Innovation, Science and Economic Development Canada (2019). *Canada’s Connectivity Strategy*, p. 4. Source: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00001.html

⁴⁸ Innovation, Science and Economic Development Canada (2019). *Canada’s Connectivity Strategy*, p. 13. Source: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00001.html

⁴⁹ Privy Council Office of Canada (2019). *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*. Source: <http://cdn.michaelgeist.ca/wp-content/uploads/2019/06/CRTC-Policy-Direction-Signed-Order.pdf>



CONCLUSION

Our Internet affordability problem will not fix itself. Without government action to challenge telecom market oligopolies and reduce the price of connectivity in Canada, millions of people will continue to struggle to access the high-quality Internet they fundamentally deserve. The path to lowering our sky-high Internet prices starts with upholding services-based competition in Canada's telecommunications market — beginning with reversing the CRTC's 2021 wholesale rates decision.

The Commission's ruling not only led to a direct increase in home Internet prices in Canada, it also sharply steered the future of our Internet away from what Canadians need: greater competition, affordability, and choice. The Commission's push to transition Canada's wholesale regime towards a disaggregated, facilities-based model will only reinforce our existing telecom oligopolies, making it more difficult than ever for the federal government to deliver on its promises of affordable connectivity for everyone in Canada.

Cabinet has the power to uphold the affordability benefits brought to Canadians by independent ISPs in the aggregated wholesale HSA regime. **As supported by almost 32,000 members of the OpenMedia community, we are calling on you to reverse the CRTC's Telecom Decision 2021-181.**

Appendix 1 contains the original petition text and signatures.