



Intervention in the Matter of

**Telecom Notice of Consultation CRTC 2023-56
CRTC File No: 1011-NOC2023-0056**

**Submitted to the
Canadian Radio-television and Telecommunications Commission**

24 April 2023

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

<https://openmedia.org>

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April 24, 2023

Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau QC, K1A 0N2

Dear Mr. Doucet,

Re: Telecom Notice of Consultation CRTC 2023-56 - Review of the wholesale high-speed access service framework (CRTC File No: 1011-NOC2023-0056) - Temporary FTTP access over aggregated wholesale HSA services - intervention of OpenMedia Engagement Network

1. OpenMedia is a community-driven organization that works to keep the Internet open, affordable, and surveillance-free. We are pleased to submit our intervention in Telecom Notice of Consultation CRTC 2023-56, which considers the granting of temporary fibre-to-the-premises (FTTP) access over aggregated wholesale high-speed access (HSA).
2. OpenMedia strongly agrees with the CRTC's assessment that FTTP facilities over aggregated HSA should be mandated on a temporary and expedited basis.
3. The CRTC's 2015-326 decision to mandate disaggregated wholesale access to incumbents' fibre networks has not translated into meaningful wholesale adoption, or choice of fibre Internet services being made available. OpenMedia welcomes the CRTC's current investigation into how to remedy the fact that people across Canada have been denied affordable retail fibre Internet services from their choice of provider for over eight years.
4. With Canada in the midst of an affordability crisis, and the incredible increase in demand for reliable FTTP services expedited by the rise in remote work and the COVID-19 pandemic, the situation today is far more severe than it was during CRTC proceeding 2013-551. Inflation, price gouging, and growing concentration in key sectors are contributing to the rising costs of basic goods and services.

5. Rogers Communications' recent purchase of Shaw Communications has fundamentally altered the Canadian telecommunications landscape. With Rogers now owning such a significant portion of Canadian wireline Internet, the need for competitive wholesale services is more important than ever.
6. Such context is crucial for understanding the current state of FTTP competition in Canada — or the complete lack thereof. Enabled by sector-wide increases in concentration and the eight-year delay in facilitating FTTP access for wholesale-based Internet service providers (ISP), incumbents have significantly intensified their investment in FTTP facilities. This strong investment has provided incumbents with extremely high levels of market power in retail fibre Internet services that exceed the already-concerning levels of dominance in broader wireline and wireless telecommunications.
7. Moving forward, investment in the telecommunications sector will continue to be dominated by fibre technology. Companies are moving away from building DSL and cable Internet infrastructure, instead turning to fibre as the gold standard of connectivity that will serve the present and future needs of customers and business interests alike. With demand for fast and high-quality Internet only increasing, independent providers will be eliminated from the market if they do not receive fair FTTP wholesale access, resulting in severe lack of choice and affordability for customers.

THE NEED FOR URGENT CRTC ACTION ON AGGREGATED WHOLESALE FIBRE TO THE PREMISES ACCESS

8. OpenMedia strongly believes that FTTP facilities over aggregated wholesale HSA services should be mandated on a temporary basis to provide urgent relief to customers and wholesale-based service providers. Further, OpenMedia believes this should also be extended on a permanent basis as a part of the outcome of this broader proceeding.
9. While FTTP access is only a portion of the overall wholesale framework, it is currently completely inaccessible to the majority of wholesale-based providers. The situation has grown dire. These providers are already struggling due to the current wholesale HSA framework being examined in the broader context of this proceeding. A dramatic reduction in wholesale-based providers alongside growing broader economic challenges have driven this industry to a crisis point that mandating interim FTTP wholesale access will help alleviate greatly.

10. Incumbents are acquiring smaller competitors at an alarming rate. In the past year alone, a minimum of seven ISPs were purchased by incumbents. Other pending or completed acquisitions may also exist that OpenMedia is not yet aware of. Overall, independent provider market share was considerably impacted by these acquisitions; the modest gains in market share achieved over the past decade by smaller providers such as Distributel, EBOX, and VMedia have now been reabsorbed by the incumbents who have purchased these competitors. Other remaining independent ISPs, such as TekSavvy, have reportedly seen their subscriber base shrink in recent years.¹
11. Fibre adoption is increasing in Canada. According to the Organisation for Economic Co-operation and Development (OECD), Canada's percentage of fibre subscriptions in total fixed broadband increased from 18.5% in 2020Q2 to 25.94% in 2022Q2.² Because retail FTTP services are overwhelmingly unavailable through wholesale-based providers as a result of the dysfunctional wholesale access framework, it stands to reason that subscribers switching to fibre Internet would be correlated with a contraction in wholesale-based ISPs' overall subscriber base.
12. The CRTC's failure to implement the tariffed wholesale HSA rates set by decision 2019-288 has directly contributed to the current state of affairs by leaving independent ISPs paying inflated rates simply to operate basic Internet retail services. In addition, the CRTC's 2021 decision to undo the 2019 final rates means independent ISPs have yet to receive the back-pay owed to them by incumbents after years of being overcharged on wholesale HSA rates by as much as 77%.³
13. The impact of increasing levels of market concentration and decreased ability for independent ISPs to remain viable is being exacerbated by incumbent behaviour. Innovation, Science and Economic Development (ISED) has clearly documented that incumbents are pricing wireline retail Internet services lower than the CRTC's tariffed wholesale HSA rates, thereby undercutting competition from wholesale-based providers

¹ Canadian Media Concentration Project (CMCRP), *Revised 11th Edition: Media and Internet Concentration in Canada, 1984–2021*, (2022), <http://www.cmcrp.org/wp-content/uploads/2023/01/GMICP-Concentration-Report-Canada-2021-30012023-21.50.pdf>

² Organisation for Economic Co-operation and Development (OECD), *Broadband Portal*, (Accessed on 12 April 2023), <https://www.oecd.org/digital/broadband/broadband-statistics/>

³ Telecom Order CRTC 2019-288, *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services*, (15 August 2019), <https://crtc.gc.ca/eng/archive/2019/2019-288.htm>

in a manner that prevents wholesale-based ISPs from remaining competitive or profitable under the CRTC's current tariffed rates.⁴

14. The current HSA framework functionally restricts the types of services independent providers are able to offer, without providing access to fibre. This stagnation has resulted in incumbents holding a total monopoly over retail fibre Internet services in the vast majority of markets in Canada. Presently, fibre internet access via wholesale-based providers is effectively nonexistent. This is deeply harmful to both customers and competitors.
15. In light of wholesale-based ISPs' current inability to compete with incumbents on retail Internet services, and the unprecedented rate at which these small providers are disappearing from the market, urgently facilitating access to incumbents' FTTP facilities will provide the fastest and most impactful relief to both customers and wholesale-based providers to prevent a total collapse of the competitive market.

INCUMBENTS' HEAD START

16. OpenMedia agrees with the CRTC's assessment that incumbents have had a substantial head start in deploying FTTP facilities and establishing a highly dominant market share in retail fibre Internet services in Canada. The Commission is correct in its assessment that there is minimal risk of negative impact to future fibre investment by providing wholesale-based ISPs immediate access to FTTP facilities. Withholding of future investment is a common threat presented by incumbents in past proceedings of this nature.⁵ However, such purported consequences of pro-competitive regulation have never materialized to any significant degree.
17. It is also worth noting that because of incumbents' substantial fibre infrastructure deployment to financially-lucrative areas since 2015, the immediate future of fibre infrastructure investment is primarily a matter of urgently building out to some of the least-connected households and communities in Canada. As demonstrated by projects funded through ISEDs Universal Broadband Fund (UBF) and the CRTC's Broadband

⁴ Innovation, Science, Economic Development (ISED), *Delivering Choice: A Study of Competition in Canada's Broadband Industry*, (7 August 2019), <https://ised-isde.canada.ca/site/competition-bureau-canada/sites/default/files/attachments/2022/CSBP-BR-Main-Eng.pdf>

⁵ Canadian Broadcasting Corporation (CBC), *Bell scales back rural internet plans after CRTC decision on rates*, (19 August 2019), <https://www.cbc.ca/news/business/bell-canada-internet-1.5252419>

Fund, incumbents currently do not undertake this type of investment without significant subsidies to cover large portions of the costs. Any impact that wholesale regulation could reasonably have on the future of fibre investment is assuredly constrained by the existence of this reliable source of public funding for incumbents to complete FTTP projects in areas with the most need.

THE 2023 POLICY DIRECTION SUPPORTS MANDATING TEMPORARY FTTP ACCESS

18. By prioritizing access to FTTP facilities within the scope of this proceeding, the CRTC will be adhering to obligations of ISED's 2023 policy direction to the Commission. Overall, the 2023 policy direction clearly instructs the Commission to monitor and maintain a regulatory framework that ensures the provision of wholesale-based services, specifically at just and reasonable rates. The direction binds the CRTC to consider how its decisions will promote competition, affordability, and the best interests of consumers, with a number of specific objectives included within which are explored in greater detail below.⁶
19. The 2023 policy direction to the CRTC also states that decisions must "encourage all forms of competition and investment; foster affordability and lower prices, particularly when telecommunications service providers exercise market power."⁷ Considering that the Canadian retail fibre Internet services market is presently a monopoly, prioritizing access to FTTP facilities for wholesale-based providers over aggregated HSA would be acting in accordance with the new policy direction. In comparison, while severely lacking in competition and due for urgent reform, the wholesale HSA system is less monopolistic than fibre. This is not to say that it does not strongly warrant further assessment as well; it is in dire need of updates. However, when examining the need for urgency, retail fibre Internet services are not available at all through the wholesale access system today,

⁶ Innovation, Science and Economic Development (ISED), *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, (Date modified: 13 February 2023) <https://ised-isde.canada.ca/site/mobile-plans/en/order-issuing-direction-crtc-renewed-approach-telecommunications-policy>

⁷ Innovation, Science and Economic Development (ISED), *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, (Date modified: 13 February 2023) <https://ised-isde.canada.ca/site/mobile-plans/en/order-issuing-direction-crtc-renewed-approach-telecommunications-policy>

while there are at least some wholesale-based Internet services available on the retail market using older, slower technologies, making fibre the most urgent of the issues at hand.

20. Additionally, the 2023 policy direction states that CRTC decisions must “reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional or smaller than the incumbent national service providers.”⁸ Providing accelerated access to FTTP facilities for independent ISPs would immediately enable these providers to compete on service quality and speed in the retail market. Today, these ISPs are restricted from doing so due to lack of access to FTTP facilities, and instead must try to compete exclusively on legacy technologies such as DSL and cable.
21. Accelerating wholesale-based providers’ access to FTTP facilities is in the public interest. OpenMedia puts forward that there are three main issues in the public interest worth addressing regarding FTTP services: 1) Subscribers need multiple providers to choose from to ensure choice of services and prevention of monopolies; 2) Fibre is currently unaffordable, and therefore inaccessible for many; 3) Fibre is not a luxury, but a necessity.

Subscribers need multiple providers to choose from

22. In a survey of the OpenMedia community conducted in April 2023, the majority of respondents indicated that they do not have a choice of more than one fibre Internet service provider where they live. Of the respondents who are currently subscribed to fibre, 60.55% said they want the option to switch providers.⁹ The ability to choose both the services and providers of choice is critical to ensuring that customers have access to appropriate plans that adequately meet their needs.

Fibre is unaffordable, and therefore out of reach for many

23. The 2023 policy direction states that CRTC decisions must “ensure that affordable access to high-quality, reliable and resilient telecommunications services is available in

⁸ Innovation, Science and Economic Development (ISED), *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, (Date modified: 13 February 2023) <https://ised-isde.canada.ca/site/mobile-plans/en/order-issuing-direction-crtc-renewed-approach-telecommunications-policy>

⁹ See Appendix A.

all regions of Canada, including rural areas, remote areas and Indigenous communities; enhance and protect the rights of consumers in their relationships with telecommunications service providers, including rights related to accessibility.”¹⁰ In alignment with these aspects of the policy direction, we maintain that wholesale access to FTTP facilities must be functionally available to competitive ISPs as soon as possible.

24. Ensuring robust freedom of choice for consumers necessitates that the fastest and most reliable Internet services are available from a wide variety of providers at affordable prices. As a result of eight years of stagnation on access to FTTP facilities, customers in Canada are currently paying inflated retail prices for fibre connectivity due to the monopolies held by incumbents. Immediate improvement in affordability on retail fibre Internet services can only take place through an injection of services-based competition via the wholesale access framework.
25. Many members of the OpenMedia community have reported not adopting FTTP services due to the high subscription costs. According to April 2023 survey respondents, over 96% of those who are not currently subscribed to fibre would be more likely to make the switch if it was more affordable, indicating the need and desire for a fibre internet connection if the price did not place it out of reach.¹¹ These subscribers require urgent action from the CRTC to make fibre more affordable in the interests of closing the digital divide in Canada.

Fibre is a necessity, not a luxury

26. For other members of the OpenMedia community, fibre adoption is too essential to be limited by the lack of choice of providers, or high prices – even those issues are of significant concern for the customer. According to April 2023 survey respondents, 63.83% of those who are currently subscribed to fibre indicated that even though fibre is too expensive, it is a necessity.¹² This is because the service quality of a FTTP connection is non-negotiable for many people who require it to fulfill their employment, education, or other basic needs — and instead these individuals will sacrifice other

¹⁰ Innovation, Science and Economic Development (ISED), Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy, (Date modified: 13 February 2023) <https://ised-isde.canada.ca/site/mobile-plans/en/order-issuing-direction-crtc-renewed-approach-telecommunications-policy>

¹¹ See Appendix A.

¹² See Appendix A.

portions of their household budget in order to shoulder the cost of connectivity. These customers in particular require urgent relief from debilitatingly high prices, and the freedom to choose which provider will offer them the best service quality.

27. Mandating independent providers' access to FTTP facilities can help the CRTC better support fibre adoption across all regions of the country, particularly in areas served by FTTP today and in the near future. Broadband infrastructure investment moving forward will be concentrated on fibre technologies and will be taking place to a great extent in rural and remote communities. By ensuring independent providers can immediately access FTTP facilities, the CRTC will enable future robust wholesale-based competition in these new markets — including the public interest benefits of affordability and choice for beneficiary groups who need it the most, such as Indigenous and northern communities.

CONCLUSION

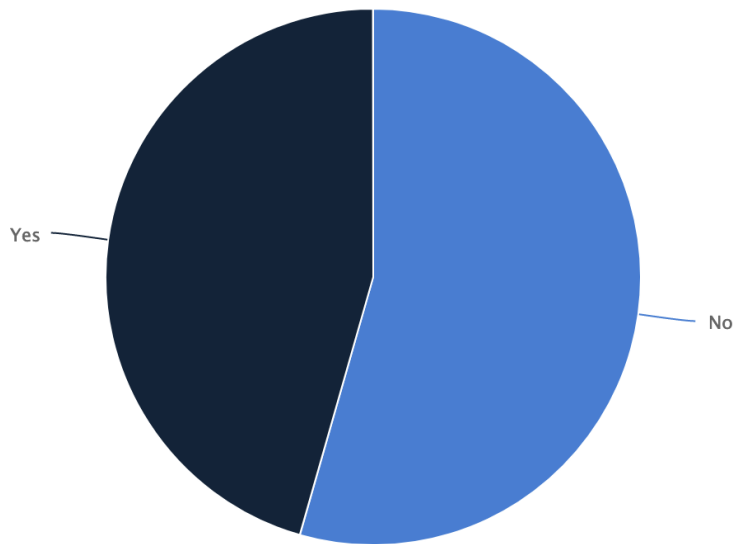
28. OpenMedia agrees with the CRTC's view that the provision of FTTP facilities over aggregated HSA services should be mandated on a temporary and expedited basis, at least until the conclusion of this proceeding. And further, that this broader proceeding should ensure the continued functional, fair, and affordable access for wholesale-based ISPs to incumbent-owned FTTP facilities for the foreseeable future. This is an extremely urgent matter for the preservation of what little competition remains in Canada's telecommunications market, as well as the provision of affordable, competitive retail fibre Internet services for the public.

Appendix A: Breakdown of OpenMedia Community Feedback

Q1: Are you currently subscribed to a fibre Internet connection at home?

Answer	Answered	Percentage
No	2,456	54.43%
Yes	2,056	45.57%

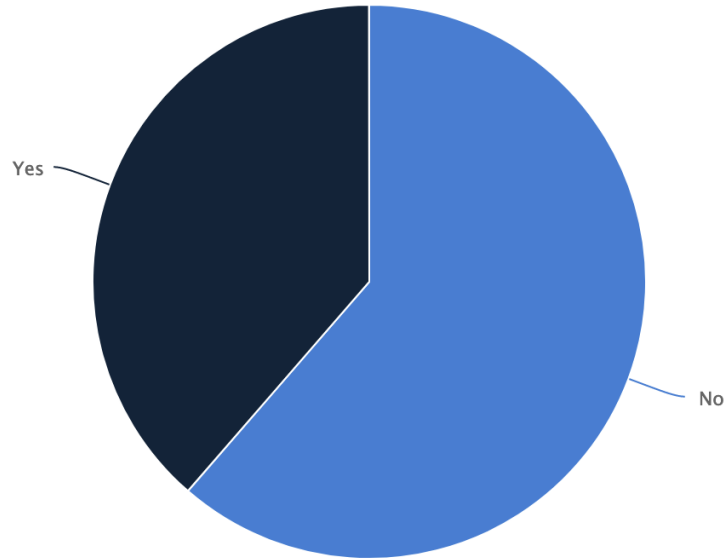
Are you currently subscribed to a fibre Internet connection at home?



Q2: Do you have a choice of more than one fibre Internet service provider (ISP) where you live?

Answer	Answered	Percentage
No	2,737	61.38%
Yes	1,722	38.62%

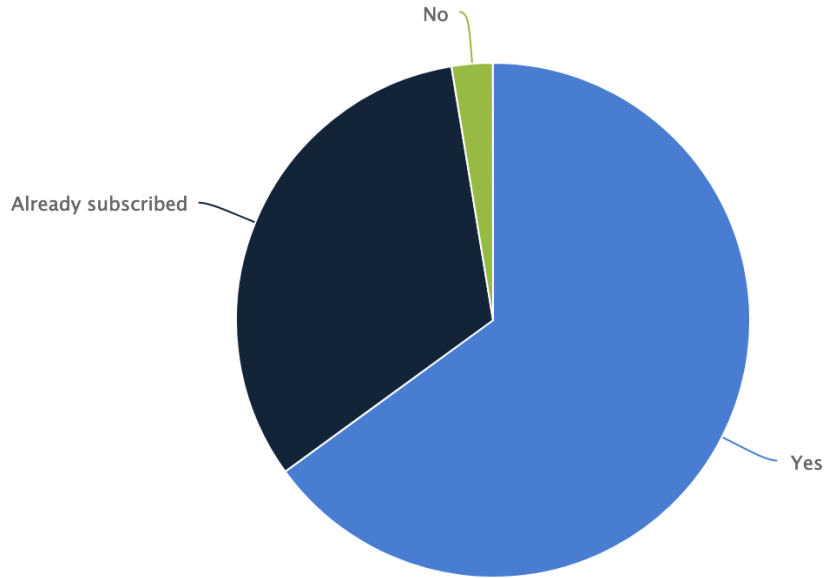
Do you have a choice of more than one fibre Internet service provider (ISP) where you live?



Q3: Would you be more likely to switch to fibre if it was more affordable?

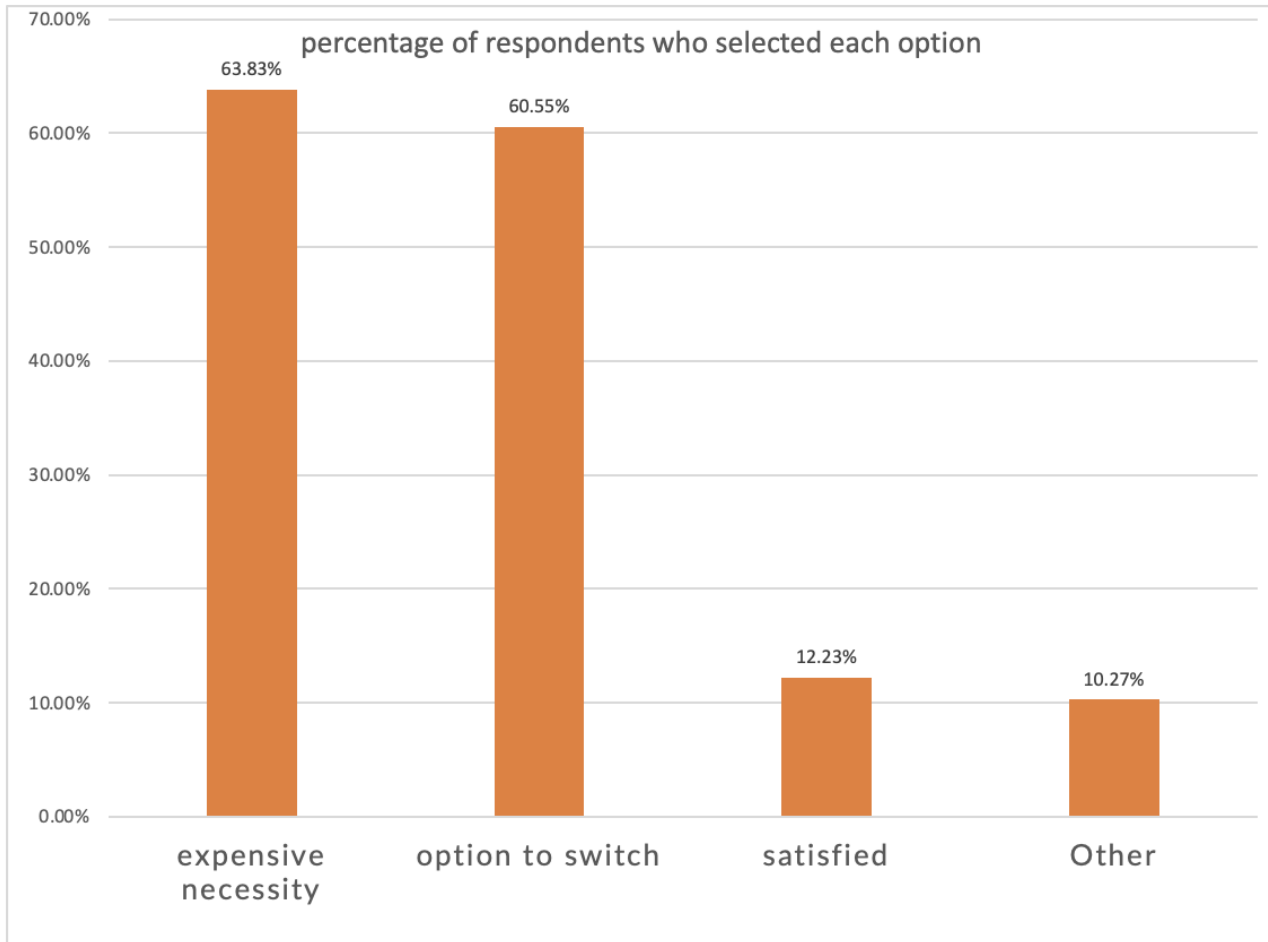
Answer	Answered	Percentage
Yes	2,915	64.99%
Already subscribed	1,454	32.42%
No	116	2.59%

Would you be more likely to switch to fibre if it was more affordable?



Q4: If you are currently subscribed to fibre internet, select all of the following that apply to you:

- I am currently satisfied with my fibre internet
- My fibre internet is too expensive, but it is a necessity
- I want the option to switch service providers
- Other (please describe in Question 6)



% of respondents	frequency	selection
63.83%	1634	expensive necessity
60.55%	1550	option to switch
12.23%	313	satisfied
10.27%	263	Other

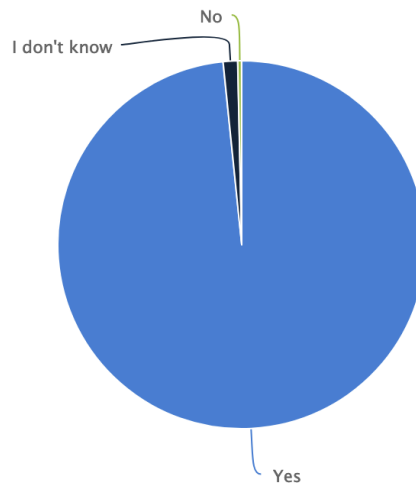
2560 total respondents

Note: respondents could select more than one option.

Q5: Are you concerned that Big Telecom's recent purchases of independent ISPs in Canada are resulting in less choice?

Answer	Answered	Percentage
Yes	4,434	98.38%
I don't know	58	1.29%
No	15	0.33%

Are you concerned that Big Telecom's recent purchases of independent ISPs in Canada are resulting in less choice?



Appendix B: OpenMedia Community Comments

Q6: In your own words, please tell the CRTC why it matters to you that they end the monopoly on fibre Internet to improve choice and affordability immediately

[In the interests of community privacy, all supporter names and individual comments have been redacted from this version, which was created to be shared publicly on <https://openmedia.org>. All comments were filed in CRTC TNC 2023-56 as part of the original intervention and remain part of the Commission's public record.]