Before the Canadian Radio-television and Telecommunications Commission

In the matter of Part 1 Review and Vary Applications

by

Bell Canada, TELUS Communications Inc., and the Cable Carriers

concerning

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

Intervention of TekSavvy Solutions, Inc.

February 17, 2020

The fact that these large companies did not respect accepted costing principles and methodologies is **very disturbing**. What's even more concerning is the fact that Canadians' access to a choice of broadband Internet services would have been at stake had we not revised these rates.

- Jean-Pierre Blais,
CRTC Chairman
and CEO, 2016

[W]e had negative wholesale... subscriber additions, which of course we would be very comfortable with… **Of course**, part of **that is our strategy** with the roll-out of the Virgin Internet brand.

- George Cope,
Bell CEO, 2018

So, the retroactive impact we've disclosed is … CAD 140 million. It's **not significant** on a go-forward basis. And the wholesale piece of it overall is not a big part of it.

- Anthony Staffieri,
Rogers, Rogers Chief
Financial Officer, 2019

…Canadians deserve a competitive marketplace where consumers have **real choice** and are treated fairly.

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E3. The Incumbents claims in the Applications about the impact of the 2019 Order on their investments are not credible. The Commission's decision on wholesale rates will not undermine investments by Incumbents. The Incumbents' sole purpose is to delay the implementation of the corrected wholesale final rates, which harms competition and keeps prices high. Retroactive payments are "just and reasonable" in light of years of the Incumbents inflating the rates.

E4. The Incumbents should be held accountable for their noncompliance of the Commission's decisions. The Commission should consider additional measures to ensure effective and effective competition, including imposing administrative monetary penalties to promote compliance and structural or functional separation to realign the incentives of wholesale service providers.

A. INTRODUCTION AND SUMMARY

1. TekSavvy Solutions Inc. ("TekSavvy") has reviewed the Part 1 Review and Vary Applications[1] ("the Applications") filed by Bell, the Cable Carriers[2], and TELUS ("the Incumbents") to review and vary Telecom Order CRTC 2019-288 and Telecom Order CRTC 2019-288-1[3] (referred to collectively as "the Order").

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[1] Bragg Communications Incorporated (carrying on business as Eastlink), Cogeco Communications Inc., Rogers Communications Canada Inc., Shaw Cablesystems GP and Videotron Ltd., Application for Review and Variance and a Stay of Telecom Order CRTC 2019-288, *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for Aggregated Wholesale High-Speed Access Services,* 13 December 2019 ["Cable Carriers Application"].

Bell Canada Part 1 Application Seeking Order to Review and Vary Telecom Order CRTC 2019-288, *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final Rates for Aggregated Wholesale High-Speed Access Services*, 13 December 2019 ["Bell Application"].

TELUS Part 1 Application to Review and Vary *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final Rates for Aggregated Wholesale High-Speed Access Services, Telecom Order CRTC 2018-288 and Telecom Order 2019-288-1,* 13 November 2019, ["Telus Application"].

[2] In this submission, Rogers, Videotron, Shaw, Cogeco, and Bragg cba Eastlink are collectively referred to as the "Cable Carriers".

[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; *Telecom Order*

2. TekSavvy has reviewed and fully supports the comments submitted by its industry association, the Canadian Network Operators Consortium Inc. ("CNOC").

a. About TekSavvy

3. TekSavvy is Canada's largest independent Internet service provider ("ISP"), based in Chatham, Ontario and Gatineau, Quebec, which has been providing Canadian consumers with wireline broadband Internet services since 2002. TekSavvy has won numerous awards for the quality of its user experience.[4]

4. As of 2019, TekSavvy provides, in every province in Canada, a competing retail wireline Internet service to those provided by the Incumbents, who collectively have a national retail wireline Internet market share of 86%.

5. As a wholesale-based competitor, TekSavvy pays Incumbents to access their infrastructure to deliver retail Internet services; it is the furthest thing from a free ride.[5] In fact, the wholesale rates TekSavvy pays not only cover the Incumbent's cost, it includes a generous profit markup of 30%. Since 2009, TekSavvy estimates that it has paid Incumbents <u>over $1 billion for wholesale access to their networks</u>.

6. The implications of the Applications go far beyond wireline Internet services, into other communications services such as mobile where the national market is dominated by Bell, TELUS, and Rogers with a combined market share in excess of 90%.[6] The Canadian Radio-television and Telecommunications Commission ("Commission")[7] is currently consulting[8] on opening the wireless sector to competition by enabling competitors like TekSavvy to buy wholesale access to Incumbent wireless facilities to

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CRTC 2019-288-1, Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services, 22 August 2019 [together "the 2019 Order" or "the Order"].

4 For example, Toronto Star, Reader's Choice 2019, Diamond Winner, Internet Service Provider; Now Magazine Best Internet Provider 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019; St. Catherine's Standard – Reader's Choice 2019, Platinum Winner, Internet Service Provider.

5 Contrary the Applications claims, TekSavvy is not merely a "reseller" of Internet services, as it does not resell the wholesale services of the Incumbents or even their Internet services. In this submission, we refer to service providers like TekSavvy as wholesale-based competitors.

6 CRTC, *Communications Monitoring Report* (2018), Figure 4.8, at para 109. "The mobile sector continued to be dominated by the three largest mobile service providers … and increasingly so. In 2017, these entities accounted for 92% of retail mobile revenues, compared to 90% in 2015 and 91% in 2016."

7 *Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, 28 February 2019, at para 39, <https://crtc.gc.ca/eng/archive/2019/2019-57.htm?_ga=2.115614660.314736630.1574344786-1762400617.1572361033> ["TNC 2019-57"].

8 *Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, 28 February 2019, at para 39, <https://crtc.gc.ca/eng/archive/2019/2019-57.htm?_ga=2.115614660.314736630.1574344786-1762400617.1572361033>.

compete nationally with those dominant Incumbents. TekSavvy is eager to participate in a competitive wholesale mobile market, but would not be able to do so if wholesale rates for wireline services remain unjust and unreasonable, especially after such a prolonged costing proceeding.

b. Applications ask the Commission to ignore "very disturbing", uncontested findings of fact

7. Retail prices are inextricably linked to wholesale rates. Canadians pay among the highest retail prices for Internet and mobile services in the world, and in some cases, the very highest.[9] The reason is that the Incumbents' rates for wholesale services have always been, and currently remain, extremely high. Competitors have been ringing alarm bells about the issue for years.

8. The Order confirmed, on the basis of the Incumbents' own evidence and submissions, that the Incumbents' wholesale rates were, in fact, severely inflated. Specifically: during the 4-year rate-setting process that led to the Order, the Commission found the Incumbents deliberately violated its regulations to manipulate and to massively inflate their wholesale rates.

9. Put another way, Incumbents drove up costs for competitors and kept retail prices high for consumers.

10. In this regard, TekSavvy notes that, of their eight different appeals of the Order, not a single Incumbent contests the Commission's unequivocal finding of fact from 2016 that the Incumbents' deliberately deviated from its rules to inflate capacity rates, TekSavvy's single largest cost input, by an order of magnitude. As Jean-Pierre Blais, CRTC Chairman and CEO said at the time,

> Competitors that provide retail Internet services to Canadians using wholesale high-speed services must have access to these services at just and reasonable prices. The fact that these large companies did not respect accepted costing principles and methodologies is **very disturbing**. What's even more concerning is the fact that **Canadians'** access to a **choice** of broadband Internet services would have been **at stake** had we not revised these rates.[10] [emphasis added]

11. Despite these findings, the Incumbents were not penalized whatsoever. The Order merely corrected the Incumbents' rates to comply with longstanding regulations and ordered Incumbents to return overbilled amounts to competitors to the start of the

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9 *Canada's Communications Future: Time To Act*, the report of the Broadcast and Telecommunications Legislative Review Panel, January 29, 2020, pp. 78 – 79, <https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/$file/BTLR_Eng-V3.pdf>, [the "BTLRP Report"].

10 CRTC News Release, "CRTC finds proposed wholesale high-speed access rates unreasonable", 6 October 2016, <https://www.canada.ca/en/radio-television-telecommunications/news/2016/10/crtc-finds-proposed-wholesale-high-speed-access-rates-unreasonable.html>.

proceeding. They are not even required to return amounts they overbilled going back to when the inflated rates were first set.

c. The Applications are an anti-competitive tactic that will soon lead to price hikes

12. Now, with the Applications, the Incumbents ask the Commission to overturn the Order.

13. With some understatement, the BTLRP Report notes that "the CRTC's review and vary power… may be used as a delay tactic".[11]

14. These Applications are a textbook example. First, Incumbents worked together to inflate competitors costs, which in turn inflated retail prices. Then Incumbents worked together to undermine, delay, and prolong the Commission's proceeding to review and correct those costs. Four years later, after 128 violations of costing rules, retail prices for Internet are still high, and $325 million have been siphoned from competitors, unjustly enriching the very same dominant Incumbents that seek to keep retail prices high for Canadians.

15. Now, having been caught red-handed by the regulator following a detailed four year long proceeding, the Incumbents have deployed lawyers and lobbyists to delay the process and to thwart any benefit to consumers or competition that the Order would deliver. With a total of eight different appeals to the Governor in Council, the Commission, and the Federal Court of Canada, they apparently hope to tie the Order up for years.

16. In the meantime, competitors remain stranded on massively inflated wholesale rates, while Incumbents unleash predatory fighting brands with retail prices below competitors' wholesale costs that the Incumbents do not contest inflating.

17. When the Commission began correcting the inflated costs, TekSavvy twice passed on those savings to consumers by lowering retail prices and upgrading service offerings for hundreds of thousands of existing customers.[12] TekSavvy has also invested in new services such as IPTV, and in facilities such as a high-speed fibre broadband network in Chatham-Kent to connect more than 38,000 residences and businesses in the region.

18. If the Applications are not promptly rejected, the direct and immediate result will be even lower levels of competition as wholesale-based competitors are forced to raise retail prices or to exit the market altogether.

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11 BTLRP Report, pp. 48-50.

12 CBC, "CRTC ruling prompts TekSavvy to cut prices, hike some internet speeds", 21 December 2016 <https://www.cbc.ca/news/business/crtc-teksavvy-1.3906730>.

TekSavvy Press Release, "TekSavvy to Customers: 'We lowered your Internet bill. Thank the CRTC." 13 September 2019, <https://www.teksavvy.com/in-the-news/2019-press-releases/teksavvy-to-customers-we-lowered-your-internet-bill-thank-the-crtc/> ["TekSavvy 2019 Press Release"].

d. The Applications do not establish substantial doubt as to the correctness of the original decision

19. Ultimately, as CNOC's intervention argues and as TekSavvy further argues below, none of the Applicants meet the burden of establishing substantial doubt as to the correctness of the original decision. Instead, the Applications substantially draw out aspects of the Order that they perceive as or predict to result in negative outcomes for them or the market as a whole.

e. Incumbents must be held accountable for anti-competitive, anti-consumer activities

20. The Commission is considering the Applications on the cusp of a historic opportunity to open up a critical telecom market to competition: Mobile services. How the Commission resolves the issue of wholesale wireline rates will be widely seen as a litmus test for its broader approach to competition for telecom services.

21. On this issue, the Incumbents are simply not credible. They have a long history of acting to protect their market power at the expense of consumer interests. For instance, in 2011, the current CEO of Bell Canada testified that unlimited wireline Internet plans were not feasible or fair:

> **We** [Bell] **<u>stopped offering unlimited plans in 2006</u>**. You must understand that the demand for **<u>Internet</u>** services has increased dramatically. <u>We must constantly invest</u> to offer exceptional services to our clients and <u>we must recover the costs of these investments</u>. The most appropriate way to go about this is <u>usage-based billing</u>. It's the way to make sure that the heaviest users pay the most. … It's a <u>question of fairness</u>.[13] [emphasis added]

22. Bell was wrong then, acting only to protect their control of the wireline Internet market, and they are still wrong today. To be clear, without companies like TekSavvy, the retail Internet market in Canada would look just like the long-distance market in 1991, or the wireless market in 2020: No unlimited plans[14] and a captive market, served by a small handful of bloated, former-monopolies who coordinate their behaviour, resulting in

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13 *House of Commons Standing Committee on Industry, Science and Technology,* 40th Parliament, 3rd Session, (10 February 2011), Mr. Mirko Bibic, <https://www.ourcommons.ca/DocumentViewer/en/40-3/INDU/meeting-56/evidence#Int-3738710>.

14 The "unlimited" mobile plans that have emerged in recent months are not a response to competitive pressure but, rather, a transparent last-ditch attempt to ward off regulation of the mobile market following the Commission's preliminary finding in TNC 2019-57 that it would be necessary to mandate wholesale access for competitors. Further, "unlimited" plans are not truly unlimited, as data speeds are throttled after reaching a certain limit.

higher prices for Canadians[15] by way of overt "usage-based" price-gouging, on basic services that families and businesses simply require in the 21st century.

23. Left unchecked, the Incumbents' conduct has three logical outcomes:

a. **Retail Prices Stay High.** First, by inflating wholesale prices and increasing TekSavvy's costs (and the costs of other wholesale-based competitors), Incumbents have, in effect "raised the floor" on retail prices for Internet service and, as a result those prices have been, are now, and are likely to continue to be substantially higher than they would be but their anti-competitive conduct, as confirmed by numerous studies that show Canadians pay among the highest prices in the world for Internet services.

b. **Competitors Exit Internet.** Second, by charging TekSavvy inflated wholesale rates, while also targeting TekSavvy with fighting brand offerings at retail prices below TekSavvy's wholesale costs—in effect, squeezing TekSavvy from both sides—Incumbents have deliberately made TekSavvy's continued presence in the retail market increasingly unsustainable. As a direct result, TekSavvy's exit from that market is increasingly likely.

c. **Competitors Do Not Enter Other Markets.** Third, if TekSavvy were to exit retail Internet markets, which is the base upon which other retail services are built, it will also cut investments, exit other markets in which it participates, and scrap plans to enter new markets such as mobile.

24. Incumbents face no risk and suffer no consequence for their noncompliance and anti-competitive conduct. On the contrary, they reap massive rewards in the form of extraordinary profits and unparalleled market dominance. Incumbents' have inherent incentives to continue their pattern of anti-competitive behavior and, as a result, their noncompliance and anti-competitive conduct is likely to continue until they are held accountable through administrative monetary penalties, or until their incentives are adjusted through structural or functional separation.

25. During the consultation period of the Applications, more than 125,000 Canadians voiced their support for the CRTC's Order and for lower Internet and cell phone prices. A copy of that letter is attached to this submission as Appendix A.

26. In TekSavvy's submission, the Commission must reject the Applications immediately in order to meet the Telecommunications Policy Objectives in accordance with the 2006 and 2019 Policy Directions, including in particular encouraging all forms of competition

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15 Competition Bureau, *Review of Mobile Wireless Services: Comments of the Competition Bureau on Telecom Notice of Consultation CRTC 2019-57,* 15 May 2019, at para 55, <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04431.html>, ["Bureau's Comments on TNC 2019-57"].

and investment, fostering affordability and lower prices, reducing barriers to entry, and enabling innovation in telecom services including differentiated service offerings.[16]

B. THIS PROCEEDING IS THE FIRST TIME THAT WHOLESALE RATES HAVE BEEN PROPERLY SET

a. Wholesale prices determine retail prices for wireline Internet services

27. Historically, telecommunications services in Canada were provided almost exclusively by telephone companies that operated on a monopoly basis within their given geographic service territory, with retail prices being regulated by the Commission.

28. Requiring competitors to "duplicate" this infrastructure would just require more government handouts, and is economically inefficient, like building parallel highways, gas lines, or sewer systems. The Competition Bureau acknowledged this in its Market Study in respect of Canada's broadband industry:

> Given the significant costs of deploying wired networks, it is likely not economical for a new enterprise to "overbuild" a new network on top of existing telephone and cable networks.[footnote omitted] This is, in part, because simply placing wires does not come with any guarantee that those wires will be used. Once the wires are placed, that new network still must compete with existing networks in order to attract a sufficient number of customers at sufficient levels of revenue to pay off their investments.[footnote omitted] At the current cost of deployment, it does not appear economically viable for additional wired networks to provide additional choice for Canadian consumers.[17]

29. To ensure that dominant Incumbent carriers allow competitors to buy services on their networks, the Commission mandates wholesale access, and is required to set just and reasonable rates for those services. Competitors like TekSavvy require that wholesale access to Incumbent wireline facilities to provide competing retail services. The wholesale cost that TekSavvy pays for access to the Incumbents' wireline facilities is far and away its largest single cost in providing its retail Internet services.

30. Accordingly, wholesale rates are a primary driving factor in determining the retail price at which TekSavvy and other wholesale-based competitors are able to offer a competitive option for retail telecom services to Canadian consumers.

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[16] Government of Canada, *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11524.html ["2019 Policy Direction"].

[17] *Delivering Choice: A Study of Competition in Canada's Broadband Industry*, 7 August 2019, p. 13, <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04470.html> ["Competition Bureau Market Study"].

31. Two examples in the last four years show how wholesale rates determine competitors' retail prices. First, when the Commission reduced wholesale capacity rates in its 2016 Order, TekSavvy lowered bills for 98% of its customers in January 2017.[18]

32. Second, when the Order corrected wholesale rates on a final basis in August 2019, TekSavvy lowered bills again by up to $20/month or upgraded customers to unlimited data at no additional cost for over 85% of its customers.[19] These lowered bills translated to millions of dollars of savings for hundreds of thousands of TekSavvy customers. Those lower prices can only be sustained if the Order is upheld. Compounding other wholesale-based competitors' price reductions following the Order and the resulting benefits of competition, if the Applications are rejected and the Order is upheld, wholesale rate corrections stand to bring Canadians hundreds of millions of dollars in savings on their Internet bills.

b. Canadian retail prices for Internet and mobile service remain among the highest in the world

33. The Broadcasting Telecom Legislative Review Panel, in a section of its Report entitled "Fostering a Competitive Market", considered the relative competitiveness of Canada's telecommunications sector, as compared to other countries.[20]

34. After noting that "[p]rice is a key competitive variable", the Panel found that a number of studies have concluded that retail prices for both mobile and Internet services are generally higher in Canada than in comparator jurisdictions, and in some cases, are the highest such prices.

35. With respect to retail wireline broadband Internet prices, the Review Panel found that for a significant majority of Canadians, prices for fixed wireline broadband services were on average higher than most other surveyed countries and, for some speed/usage combinations, Canadian prices were the highest among all countries surveyed.[21]

c. Proper wholesale rates are a precondition to competition

36. As the Competition Bureau concluded in its 2019 Market Study on competition in Canada's broadband industry, wholesale-based competitors like TekSavvy deliver important benefits to consumers:

> Wholesale-based competitors fulfill a meaningful competitive presence in the marketplace. They currently serve more than 1,000,000 Canadian households, and act as an alternative for countless others, who use the presence of wholesale-based competitors to negotiate lower prices and better terms from other competitors in the marketplace.[22]

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18 TekSavvy Frequently Asked Questions, <https://blogs.teksavvy.com/price-change>.

19 TekSavvy 2019 Press Release.

20 BTLRP Report, at pp. 78-79.

21 BTLRP Report, at pp. 78-79.

22 Competition Bureau Market Study, at p. 57.

37. In addition to services provided through regulated wholesale services, TekSavvy invests significant sums in building, maintaining, and improving its own coast-to-coast national IP network, including points of presence across the country, and transit networks.

38. TekSavvy has invested in facilities to enhance its service offerings. For example, TekSavvy has built its own facilities-based fixed-wireless network access to serve a number of underserved communities in southwestern Ontario, and TekSavvy continues to build and invest in wireless Long-Term Evolution (LTE) in southwestern Ontario.

39. Since 2018, TekSavvy is investing in a high-speed fibre broadband network in Chatham-Kent to connect more than 38,000 residences and businesses in the region.

40. Meanwhile, TekSavvy continues to make other significant non-facilities investments to develop and improve its service, internal systems, and product innovations.

d. This proceeding constitutes a long-overdue correction to massively inflated wholesale rates

41. For four years prior to the 2015 process, wholesale-based competitors sought to shed some light on the wholesale rates that they were paying that did not allow them to be truly competitive against the Incumbents.

42. To understand how that came to pass, it is instructive to revisit the history leading up to the 2015 process that led to the Order.

43. In 2011, the Commission merged four major wholesale proceedings, established “Capacity Based Billing” (CBB) as the structure for the new billing model, and set astronomically high rates for CBB. [23] Those rates were set based on cost studies from an earlier billing model (Usage Based Billing), which were filed in confidence and were not subject to today’s levels of scrutiny by competitors.

44. In the following years, CNOC identified that the wholesale rates were not set correctly,[24] and asked the rates should be reviewed in light of modernized transparent costing guidelines,[25] but the Commission rejected both requests.

45. By 2015 it was clear to all observers that wholesale rates were impossibly high and wholesale-based competitors were on life support, and the Commission initiated

[23] *Billing practices for wholesale residential high-speed access services*, Telecom Regulatory Policy CRTC 2011-703, 15 November 2011 [“TRP 2011-703”].

[24] *Telecom Regulatory Policy 2011-703,* Telecom Decision CRTC 2013-72, 21 February 2013, at para 36.

[25] *Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policies 2011-703 and 2011-704*, Telecom Decision CRTC 2013-73, 21 February 2013, at para 18.

Telecom Notice of Consultation CRTC 2015-225 to examine issues with those rates.[26] For example, the Commission was well aware that CBB rates were already severely limiting the ability of wholesale-based competitors to compete with Incumbents, and the Commission expected that CBB costs will continue to increase in the future, threatening the survival of competitors:

> These [CBB] costs are expected to exacerbate as consumption increases over time, given that a competitor must pay for all of its data traffic to be routed back to a central point of aggregation, no matter how far away a subscriber is located. The result is an expensive and often inefficient use of the network that will challenge the sustainability of competitors in the years ahead.[27] [emphasis added]

e. The Incumbents' own evidence revealed numerous, repeated violations of CRTC rules to drive up competitors' wholesale costs

46. The Commission initiated TNC 2015-225 to review cost study inputs and to streamline the tariff application process, noting issues with the way tariff notices were being filed, and the timelines and process by which the Commission was approving those tariff notices.

47. Following TNC 2015-225, the Commission arrived at Telecom Decision CRTC 2016-117[28]. In that decision, in response to what it learned in the 2015 consultation, the Commission revised certain assumption on which the rates were set, found that the then-current wholesale HSA service rates were not likely just and reasonable, made all those rates interims, and directed the Incumbents to file new tariff applications, setting out the parameters for costing inputs in a very clear manner. Notably, the Incumbents did not dispute or appeal the Commissions' determinations in TD 2016-117.

48. Following the Commission's direction in TD 2016-117, the Incumbents filed their revised tariff applications in June, 2016. In October 2016, the Commission issued TO 2016-396 and TO 2016-448. In those orders, the Commission found that the wholesale rates

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26 *Review of costing inputs and application process for wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2015-225, 28 May 2015, https://crtc.gc.ca/eng/archive/2015/2015-225.htm ["TNC 2015-225"].

27 *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, at para 145 https://crtc.gc.ca/eng/archive/2015/2015-326.htm ["TRP 2015-326"].

28 *Review of costing inputs and the application process for wholesale high-speed access services*, Telecom Decision CRTC 2016-117, 31 March 2016 https://crtc.gc.ca/eng/archive/2015/2015-326.htm ["TD 2016-117"] .

proposed by the Incumbents' tariffs were, on their face, not based on reasonable costs.[29]

49. Instead, the Commission expressed "its significant concern"[30] that certain Incumbents "chose to disregard"[31] and "deviated from"[32] its well-established costing requirements, as they sought to impose wholesale rates on wholesale-based competitors that were significantly higher than the Incumbents' own retail rates.[33]

50. The Commission further determined that the Incumbents then-*existing* wholesale rates were inflated, and revised their existing CBB rates which were, at that time, the single greatest wholesale cost input for TekSavvy's competing retail Internet services:[34]

> 20. The Commission considers that **the current interim monthly rates** for wholesale HSA service providers **should be revised to more accurately reflect the established costing principles.**
>
> 21. In Telecom Procedural Letter dated 31 March 2016, Commission staff provided guidance with respect to the new tariff applications for banded non-legacy aggregated wholesale HSA service speeds. **It was expected** that wholesale HSA service providers **would follow the guidelines** when preparing their respective cost studies and filing their respective tariff applications. In addition, **it was expected** that wholesale HSA service providers **would comply** with the Manual and relevant past Commission determinations.
>
> 22. The Commission expresses its **significant concern** that most wholesale HSA service providers **chose to disregard** Commission staff's **guidance, the Manual, and relevant past Commission determinations.**
>
> 23. In order to ensure that the **interim rates are based on proper costing principles and reasonable costs, the Commission has made a number of adjustments** to the proposed costs related to the capacity costing approach and additional adjustments related to other issues. These adjustments, with rationale, are provided in Appendix 2 of this order. [emphasis added]

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29 *Tariff notice applications concerning aggregated wholesale high-speed access services – Revised interim rates*, Telecom Order 2016-396, 6 October 2016, at para 19, https://crtc.gc.ca/eng/archive/2016/2016-396.htm [TO 2016-396"]; and,

Bragg Communications Incorporated, operating as Eastlink – Revised interim rates for aggregated wholesale high-speed access service, Telecom Order CRTC 2016-448, 10 November 2016, at para 13, https://crtc.gc.ca/eng/archive/2016/2016-448.htm "TO 2016-448"].

30 TO 2016-396, at para 22.

31 TO 2016-396, at para 22.

32 TO 2016-396, at para 18 and TO 2016-448 at para 12.

33 TO 2016-396, at para 7.

34 TO 2016-396, at paras 20-23.

51. The Commission slashed Rogers' CBB rate from $1,251.00 to $320.00, or by 74% and Bell's CBB rate from $1,030.00 to $149.08, or by 86%.

52. In respect of the CRTC's decision reducing CBB rates, Jean-Pierre Blais, the CRTC's then Chairman and CEO, was unequivocal:

> Competitors that provide retail Internet services to Canadians using wholesale high-speed services must have access to these services at just and reasonable prices. The fact that these large companies did not respect accepted costing principles and methodologies is very disturbing. What's even more concerning is the fact that Canadians' access to a choice of broadband Internet services would have been at stake had we not revised these rates.[31] [emphasis added]

53. Note that the Commission's October 2016 decision revised just *one* Incumbent wholesale rate component (CBB), on an *interim* basis, pending its final rate decision. The Commission further indicated that the access component of the Incumbent wholesale rates remained unchanged at that time, and would be dealt with when the Commission issued its final rate decision, along with the matter of retroactivity:[35]

> 25. These interim approved monthly [CBB] rates reflect the wholesale HSA service providers' cost estimates submitted in response to Telecom Decision 2016-117, adjusted by the Commission to reflect the costing principles the wholesale HSA service providers should have applied, together with an appropriate markup
>
> 26. These interim [CBB] rates are based on an examination that is necessarily less than fully comprehensive. The establishment of the final rates will be based on a full review and assessment of the relevant cost inputs and costing methodologies.
>
> 27. …The access portion of the aggregated wholesale HSA service rates of Bell Canada, Cogeco, MTS, RCCI, and Videotron, made interim on 31 March 2016 in Telecom Decision 2016-117, remain unchanged at this time.
>
> 28. The Commission will assess the extent to which, if at all, retroactivity will apply when wholesale HSA service rates are set on a final basis. [emphasis added]

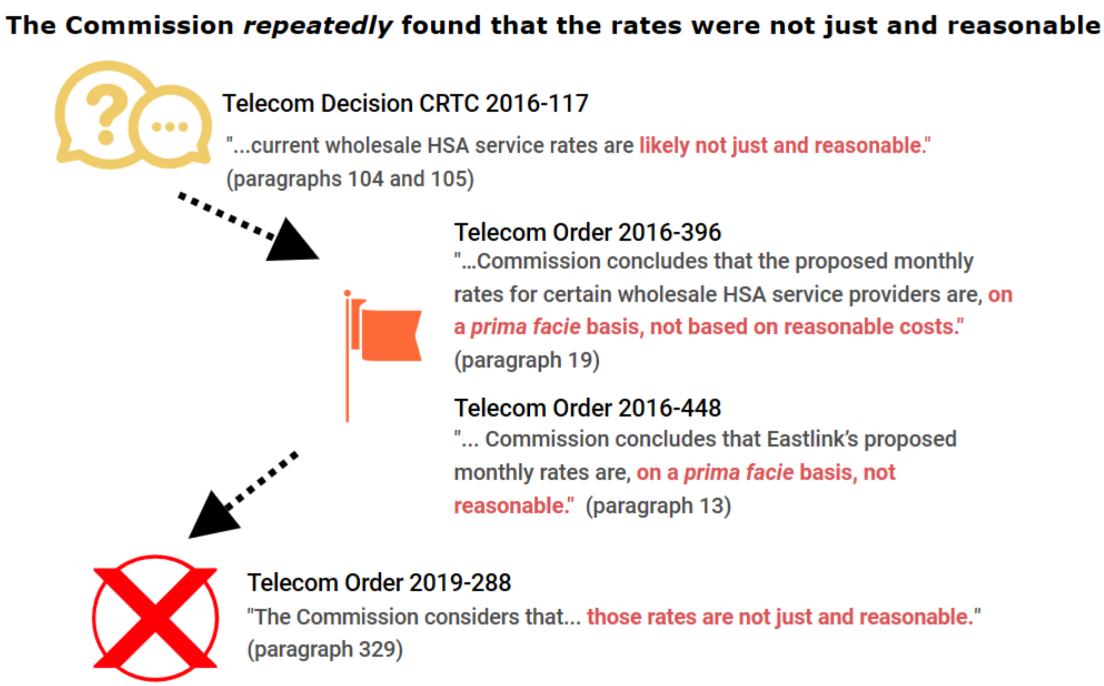
54. Importantly, the Incumbents did not dispute any of those findings with respect to the Commission's initial *prima facie* decision concerning only CBB (capacity charges) in 2016. In other words, Incumbents have accepted, and do not contest, the Commission's unequivocal finding of fact that they deliberately deviated from the CRTC's rate-setting regulations and vastly overstated their cost of supplying wholesale services to TekSavvy.

55. Therefore, it should hardly be surprising that the Commission further revised both wholesale CBB and access rates in 2019 when it set final wholesale rates in the Order.

[35] TO 2016-396, paras 25-28

56. After all, (a) the Commission in its 2016 decision merely found that one single rate component was unjust and unreasonable on a *prima facie* basis; (b) its rate revisions to certain CBB rates were necessary and completed on an interim basis; and (c) its rate revisions were limited to wholesale CBB rates, meaning that further scrutiny of the Incumbents' proposed costing inputs for access rate was yet to come.

Figure 1 - CRTC repeatedly found that rates were not just and reasonable

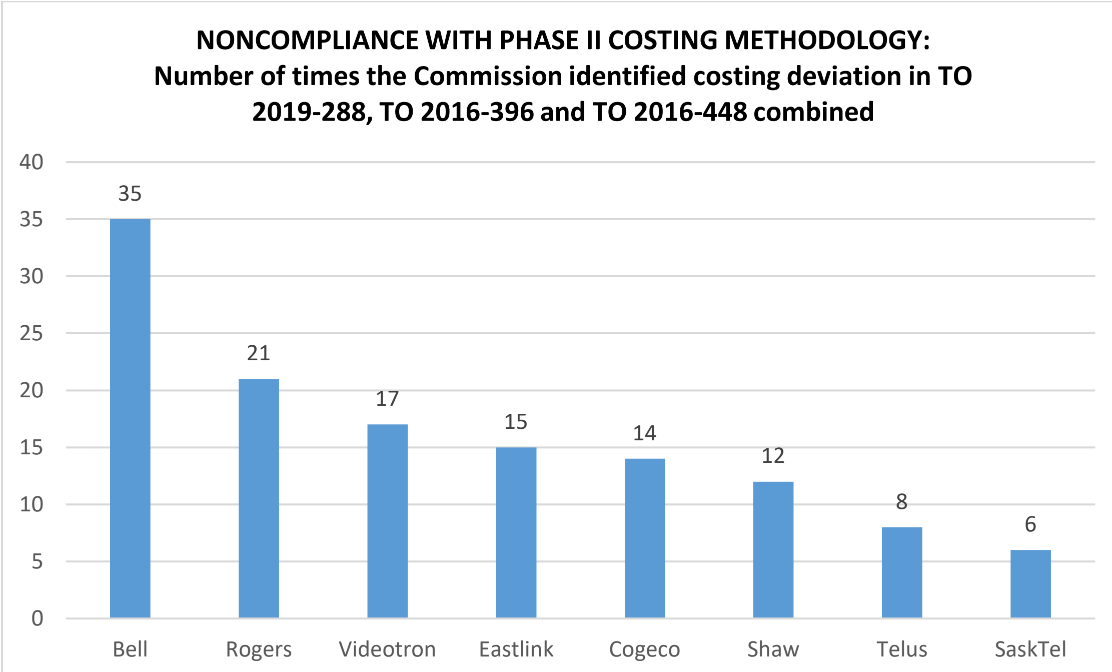


57. Since the Incumbents vastly inflated wholesale CBB rates, as found by the Commission in 2016 and not disputed by the Incumbents, it should be no surprise that the Commission found the Incumbents' proposed access rates to also be similarly inflated.[36]

58. Combining the 2016 interim rate Orders and the 2019 final rates Order, the Commission identified that the ***Incumbents deviated 128 times from the costing rules and methodology***. Despite many Commission statements and instructions to follow costing rules, the Incumbents chose to ignore or refused to follow the costing methodology.

36 TO 2019-288.

Figure 1 – Incumbent Noncompliance with Phase II Costing Methodology



59. Ultimately, after nearly three years of further submissions, cost studies, and replies, based on its established costing methodology and the Incumbents' cost studies, the 2019 Order applied the costing methodology that had been decided without dispute in 2016, correcting inflated rates that the Incumbents implicitly admitted at the time.

60. TekSavvy supports CNOC's costing analysis in its response to the Applications that show that the Commission's costing determinations are correct. As CNOC explains, the Incumbents' costing arguments do not raise substantial doubt as to the correctness of the Order.

C. THE APPLICATIONS ARE NOT CREDIBLE

a. Sole purpose is to harm competition and keep prices high

61. After repeatedly violating numerous costing regulations and delaying the proceeding for years, the Incumbents have launched a full court press to block, derail or delay the Order for one reason: it would result in more competition.

62. In fact, Bell identified this in its "urgent motion" to stay the Commission's decision at the Federal Court of Appeal:

> 46. Because Resellers are reducing prices in response to the Decision, Carriers, including Bell, will be forced to do the same. This will have the immediate effect of reducing the price Bell can charge subscribers for its Internet services.[footnote omitted]
>
> 47. If Bell reduces its retail prices, it will be unable to recover the retail fees it would have charged during the time the Decision was in effect. Further,

regardless of whether Bell reduces its rates, Bell's retail FTTN subscribers will become accustomed to lower prices, rendering it virtually impossible to raise prices back to pre-Decision levels if the Decision is overturned. Unsurprisingly, while subscribers have no resistance to having their retail rates **decreased**, they are highly resistant to having their retail rates **increased**. If the Decision is not stayed, the market will have been permanently changed.[37] [emphasis added]

b. Retroactive application of rates is "just and reasonable" in light of Incumbent rate-fixing

63. In light of the numerous Incumbent violations and delay tactics, as well as the Commission's explicit finding that the Incumbents' rates were "based on inappropriate costs and assumptions, those rates were not just and reasonable" the Order applied the final rates retroactively to ensure that competitors paid "just and reasonable rates."[38]

64. At all stages of the proceeding, all parties were well aware that final rates could apply on a retroactive basis. The Commission clearly stated <u>at least six times</u>—in TNC 2015-225, TO 2016-117, TO 2016-396, and TO 2016-448—that it would assess the extent to which rates would apply on a retroactive basis.

Figure 3 – Quotes from the Commission's decisions

Telecom Notice of Consultation CRTC 2015-225	"…The Commission is assessing … whether retroactive rate adjustments should apply, and, if so, to what extent." (para. 20)
Telecom Order CRTC 2016-117	"The Commission will assess the extent to which, if at all, retroactivity will apply when new cost studies are submitted in support of revised wholesale HSA service rates." (summary)
	"The application of retroactivity will be best addressed once updated cost studies are filed and the rates for each speed-band are approved." (para. 98)
	"The Commission will assess the extent to which, if at all, retroactivity will apply when new cost studies are submitted in support of revised wholesale HSA service rates." (para. 105)
Telecom Order CRTC 2016-396	"The Commission will assess the extent to which, if at all, retroactivity will apply when wholesale HSA service rates are set on a final basis." (para. 28)
Telecom Order CRTC 2016-448	"The Commission will assess the extent to which, if at all, retroactivity will apply …." (para. 18)
Telecom Order CRTC 2019-288	"The Commission has also determined that the final rates will be applied retroactively." (summary)

37 Bell Motion Record of the Moving Parties (Motion for an Interim Stay) in the matter of *Bell Canada v BCBA et al.*, FCA 19-A-59, Tab 3, "Memorandum of Fact and Law of the Moving Parties, Bell Canada, Bell MTS, and MTS Inc., dated September 24, 2019" at paras. 46-47.

38 TO 2019-288, at para 329.

c. Perspective on retroactive amounts

65. Indeed, each Incumbent's estimated retroactive payments are immaterial when compared against other notable expenses or company revenues earned between 2016 and 2019.

66. Accordingly, it is worth juxtaposing the Incumbents' estimated retroactive payment amounts to their reported revenues to contextualize any claims the Incumbents have asserted about the impact of retroactivity.

67. For example, while Bell claims it would owe competitors $100 million, the company reported revenues of $85.62 billion from 2016 to 2019. Bell paid its top five executives $127 million in compensation in 2018. The retroactive payments that Bell would be required to make to competitors pursuant to the Order—that is, the amount that Bell overcharged competitors, not including interest—amounts to just 0.12% of Bell's revenues over the same period.

Figure 4 – Incumbents estimated retroactive amounts compared to revenues

Company	**Estimated Retroactive Amount**	**Notable Expenses*** (Notes in Appendix B)	**Company Revenues During Respective Retroactivity Period**** (Notes in Appendix B)	**Retroactive Amount % of Revenues***** (Notes in Appendix B)
Bell	$100M	**$127M total 2018 compensation to top 5 executives**, including 12M in direct comp and $95M in shares for CEO	$86.620B	0.12%
Rogers	$140M	**$525M write off** after a failed IPTV project in 2016 **$100-140M** write off for failed streaming project **$69.3M CEO compensation** 2013-2016 **$24 million(USD)** corporate jet	$54.995B	0.25%
Quebecor (Videotron)	$50M	**$55 million write off** for failed IPTV project in 2015	$14.559B	0.34%
Shaw	$10M	**$158 million write off** for failed streaming project in 2017	$14.473B	0.07%
Cogeco	$25M	**$600 million write off**, after selling its failed entry into the Portuguese market in 2012for $59 million after it acquired Cabovisao for $658 million in 2006	$8.377B	0.30%

TELUS	"not material"[39]	N/A	$52.152B	"not material"

68. Notably, TELUS did not announce how much they would owe in retroactive payments, but it has said the amount is so low that it is not material to the operation of the business.[40]

69. Clearly, the corrective retroactive payments that would be required pursuant to the Order represent a small fraction of the Incumbents' balance sheets. Conversely, those retroactive payments represent a very significant part of any competitor's balance sheet.

70. In the current case, the Incumbents made a business decision to take a regulatory gamble to propose and defend wholesale rates charged to their own competitors that did not follow the Commission's well-established costing principles and costing manuals. This risk ended up not paying off, but it pales in comparison to other business decisions and write offs they have previously made.

d. Incumbents, investor analysts, and commentators all agree that the impact of the Order is not material

71. In fact, analysts, commentators, and Incumbents themselves for the most part described the Order as not significant.

Incumbent Leaders	Reaction
George Cope, BCE, President and CEO	"I think investors should relax. We'll find the right balance. So [the Order is] not, you know, the type of decision that we wanted to see but it's a long game".[41]
Anthony Staffieri, Rogers, Chief Financial Officer	"So, the retroactive impact we've disclosed is … CAD 140 million. It's not significant on a go-forward basis. And the wholesale piece of it overall is not a big part of it."[42]
Darren Entwhistle, TELUS, President and CEO	"The forward-looking CapEx guidance that we're providing and the nominal CapEx number that we are articulating for 2020 and 2021 does not include or anticipate any diminution related to

39 TELUS, "Q3 2019 Management's discussion and analysis", at p. 41 https://assets.ctfassets.net/rz9m1rynx8pv/3Kuahao55ATIy5OwDergbd/f355f8e1ae0c78215c6662f4f6c82377/TELUS_Q3_2019_quarterly_report.pdf ["Telus Q3 2019 Management analysis"]

40 Telus Q3 2019 Management analysis, at p. 41

41 BMO 20th Annual Media & Telecom Conference, George Cope answers to questions, September 10, 2019, online <http://www.bce.ca/investors/investorevents/all/show/BMO-20th-Annual-Media---Telecom-Conference > .

42 BMO 20th Annual Media & Telecom Conference, Anthony Staffieri answers to questions (excerpt), 10 September 2019, at p. 9.

	regulatory policy, regulatory intervention or government intervention" "…we made a moral contract within the organization back in 2013 which said, so long as we generate great wireline results, we will keep making the fibre investments."[43]
Investor Analysts	**Reaction**
Maher Yaghi, Desjardins Capital Markets	"unlikely to have a large impact on the big publicly traded telecoms, though their profits will be affected marginally"[44]
David McFadgen, Cormack Securities Inc.	"…we expect the ongoing financial impact on the bottom-line [from the CRTC Order] to be minimal given the incumbents generate little revenue from the resellers currently. We believe that the real impact to the incumbents will be to make the resellers more competitive and potentially result in lower internet net adds for the incumbents."[45]
Jeff Fan, Scotiabank	"the cablecos and telcos have many competitive advantages that will help them deal with the impact" of the Order … "[t]he facilities-based providers can also leverage their owners' retail pricing flexibility, flex their marketing muscle, and take advantage of their distribution and scale to maintain share in the ISP market."[46]
Anonymous Analyst	"Another analyst, speaking on the condition of anonymity, said that Bell's announcement of pulling back connecting 200,000 rural households was "more messaging, perhaps, than balancing the scale."[47]
Drew McReynolds and Caleb Ho at RBC Dominion Securities Inc.	" very little" has changed "most (but not all) of the political rhetoric is bark versus bite" [48]
Commentators	**Reaction**
Byron Holland, Canadian Internet Registry Association	"[c]ompanies like Bell have benefited from decades' worth of public subsidies and protections from competition, and now

43 TELUS, "Q3 2019 Conference Call Transcript", November 7, 2019 at p. 14-15.

44 *The Wire Report,* "On wholesale rates, companies cry foul, but analysts aren't convinced", August 21, 2019, https://thewirereport.ca/2019/08/21/on-wholesale-rates-companies-cry-foul-but-analysts-arent-convinced/ [*The Wire Report* re: On wholesale rates].

45 Cormack Securities Inc., David McFadgen & Siddhant Dilawari, "Q2/19 Wrap: Competitive Intensity Grows", September 16, 2019, at p. 10.

46 *The Wire Report*, re: On wholesale rates.

47 *The Wire Report*, re: On wholesale rates.

48 RBC Dominion Securities Inc., Drew McReynolds & Caleb Ho, "Canadian Telecommunications Services", October 11, 2019.

	they're threatening to abandon rural Canadians because the CRTC is forcing them to compete."[49]
Former CRTC Commissioner Timothy Denton	"[t]he [incumbent] carriers have backed themselves into this corner by constantly proclaiming that rural investment depended on high rates of profit, and that the CRTC and wholesale competitors have or will cut into those high levels of profit. But the financial analysts do not seem to be concerned."[50]

72. Similarly, the commentary following the 2016 Order suggested there would be no impact, which played through in subsequent 2017 financial reports by the Incumbents. Incumbent and investor analyst commentary following the 2016 Order can be found in Appendix C.

e. Incumbents anti-competitive retail pricing below the wholesale costs they inflated for competitors

73. The Commission made it clear that the wholesale rates were, and currently remain, extremely inflated.[51] The Commission did not set rates "below cost", as asserted by the Incumbents.[52]

74. In this regard, it is informative to compare the wholesale rates that have been set at various stages of this proceeding to Incumbent retail prices.

75. Rogers' fighting brand, Fido, and Bell's fighting brand, Virgin, have been present in the mobile wireless market for many years. However, it was only in 2015 and 2016, after the Commission initiated its review of the wholesale wireline rates that Rogers and Bell added wireline Internet service to Fido and Virgin's service offerings.

76. Fido and Virgin's retail prices for a given level of Internet service (e.g. 30 Mbps download) are regularly set below the wholesale rates that TekSavvy and other wholesale-based competitors are required to pay Bell and Rogers for the wholesale access they need to deliver that same level of service to their customers.

77. For example, consider Bell's 50 Mbps service, the fastest speed competitors are able to offer using Bell's wholesale services. Bell retail (Virgin) regularly 50 Mbps service for $30/month for the first 12 months, with no modem cost and no activation charge. Based on known network usage, the tariffed wholesale cost for 50 Mbps service would be

49 *The Canadian Press*, "More Telcos raise concern over CRTC's new wholesale broadband rates", August 21, 2019.

50 Timothy Denton, "The crocodiles are thrashing in the river", August 22, 2019, <https://tmdenton.com/index.php/easyblog/entry/the-crocodiles-are-thrashing-in-the-river>.

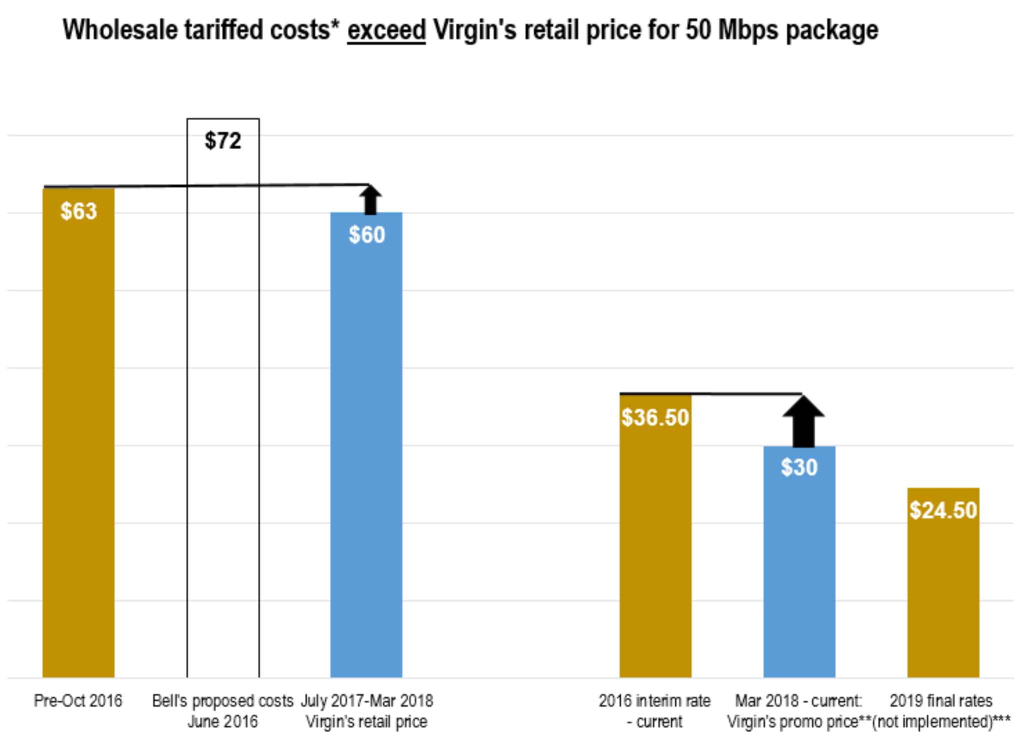
51 TO 2016-396, at paras. 20-23.

52 Cable Carriers Application, at paras 30 and 33; Bell Application, at paras 3, 16, 93–100; Telus Application, at paras 19 and 21 ["Telus Application"].

$63/month at pre-2016 rates; $72 /month at rates Bell proposed in 2016[53]; $36.50/month at currently in-effect interim rates from TO 2016-396; and $24.50/month at final rates from the 2019 Order.[54]

78. Note that *these figures include only the regulated input costs required to provide the service*, and do not include other product and service inputs, business overhead, or any profit margin at all. They also do not include tariffed installation charges, Bell $90.65 under the GAS tariff[55]. In total, after adding TekSavvy's additional network and other costs, <u>even at the final rates from the Order, it will be challenging for TekSavvy to compete with Bell's own retail offering on the 50 Mbps speed tier</u>.

Figure 5 - Bell offers Virgin Internet retail prices (50Mbps) below its wholesale tariffed costs



* Wholesale tariffed costs

- Included: 1) access rates; 2) capacity rates; and 3) dry loop rates.
- Excluded regulated costs: 1) install fee (one-time); and 2) other per-customer tariffed costs (e.g. modem swap, repair ticket).
- Other excluded non-regulated costs: 1) network services (e.g. usage-sensitive transport, transit, co-location, peering, backbone); 2) customer premise equipment (e.g. modem); 3) operational costs (e.g. sales and support staff, internal systems, payment processing costs, etc.); 4) marketing costs; and 5) administrative costs.

** Virgin offers this promotional price on a frequently recurring basis.

53 Bell Tariff Notice 7504, 30 June 2016.

54 Our estimate is based on our 50 Mbps tariffed costs (including access, capacity, and dry loop costs). To calculate the capacity fee (given that it is set per 100 Mbps unit basis rather than on a per user basis), we used internal data about our traffic patterns associated with 50 Mbps service.

55 Bell Canada General Tariff CRTC 67.16 Item 5440.4(d)(2)(a).

*** When Aug 2019 rates come into effect, TekSavvy estimates this is the likely wholesale cost.

79. To understand the methodical and deliberate nature of this damage to competitors and wholesale-based competition, one need only refer to statements made to investors by Bell's CEO George Cope:

> [W]e had negative wholesale... subscriber additions, which of course we would be very comfortable with… **Of course**, part of **that is our strategy** with the roll-out of the Virgin Internet brand.[56] [emphasis added]

80. The same problem exists on cable; consider Rogers' 75 Mbps service. Rogers offers this speed in the market under its Fido flanker brand for $32.50/month for 12 months, with no modem cost or activation charge for self-installs (which are not part of the wholesale service).[57] Based on known network usage, the tariffed wholesale cost for 75 Mbps service would be $67/month at pre-2016 rates; $52/month at rates Rogers proposed in the Cable Carriers' Application to the CRTC to review and vary the 2019 Order[58]; $33.50/month at interim rates from TO 2016-396; and $20.50/month at final rates from the Order.

81. Note that these *figures include only the regulated input costs required to provide the service*. They do not include installation charges, for which Rogers charges $63.53 under their TPIA tariff, other service inputs, business overhead, or any profit margin at all.[59]. In total, after adding TekSavvy's additional network and other costs, <u>even at the final rates from the Order, it will be challenging for TekSavvy to compete with Rogers' own retail offering on the 75 Mbps speed tier</u>.

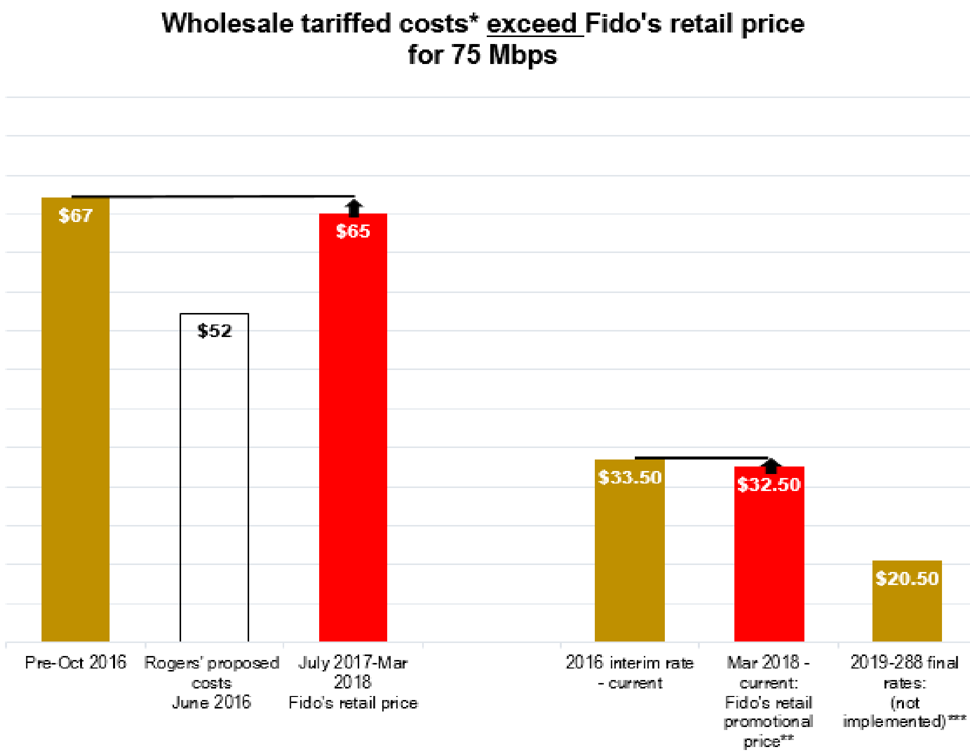
[56] BCE Q3 2018 Results Conference Call Transcript, 1 November 2018, at p. 8, http://www.bce.ca/investors/financial-reporting/2018-Q3/2018-q3-transcript.pdf.

[57] Our estimate is based on our 75 Mbps tariffed costs on Rogers (including access and capacity costs). To calculate the capacity fee (given that it is set per 100 Mbps unit basis rather than on a per user basis), we used internal data about our traffic patterns associated with 75 Mbps service.

[58] Cable Carriers Application, Appendix 2.

[59] Rogers Access Services Tariff CRTC 21530 Part G Item 703, section 1.3(ii)(a).

Figure 6 - Rogers offers Fido Internet retail prices (75Mbps) below its wholesale tariffed costs



* Wholesale tariffed costs

- Included: 1) access rates; and 2) capacity rates.
- Excluded regulated costs: 1) install fee (one-time); and 2) other per-customer tariffed costs (e.g. modem swap, repair ticket).
- Other excluded non-regulated costs: 1) network services (e.g. usage-sensitive transport, transit, co-location, peering, backbone); 2) customer premise equipment (e.g. modem); 3) operational costs (e.g. sales and support staff, internal systems, payment processing costs, etc.); 4) marketing costs; and 5) administrative costs.

** Virgin offers this promotional price on a frequently recurring basis.
*** When Aug 2019 rates come into effect, TekSavvy estimates this is the likely wholesale cost.

f. Wholesale rates will not undermine investments by Incumbents

82. The Order has nothing to do with rural Internet or other Incumbent investments.

83. Comprehensive government funding mechanisms are coming online to fill in gaps in broadband infrastructure in Canada's rural and remote areas.[60] Universal access is the first principle of the Government's Digital Charter: "all Canadians will have equal opportunity to participate in the digital world and the necessary tools to do so, including access, connectivity, literacy, and skills."[61]

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60 Government of Canada, Budget 2019 "Building a Better Canada: Universal High-Speed Internet" <https://www.budget.gc.ca/2019/docs/nrc/infrastructure-infrastructures-internet-en.html> and Universal Broadband Fund <https://ic.gc.ca/eic/site/139.nsf/eng/h_00006.html>.

61 Innovation, Science and Economic Development Canada, *Canada's Digital Chart: Trust in a digital world*, < https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00108.html>.

84. It defies credulity that retroactivity of final rates would contribute to the Incumbents' stated concerns about their continued ability to invest in building networks. Given that any retroactive application of final rates would be a result of unjust and unreasonable interim rates, this line of argument is tantamount to stating that the business model for investment in underserved areas relies on unjustly overcharging smaller competitors. The Commission must reject any such argument.

85. In fact, in a 2015 CRTC proceeding on basic telecommunications services, Bell submitted that there is no business case to build broadband infrastructure in some rural and remote areas:

> Due to our country's size and challenging geography, there are rural and remote areas in which broadband services are not available today because there is no business case to build the necessary infrastructure to serve them.[62]

86. In its submissions, Bell continued to tell the Commission that funding rural broadband is a necessary and appropriate role for the federal government, who in fact "should always have the primary role in funding broadband deployment in remote areas…"[63]

87. Indeed, the Incumbents employ taxpayer subsidies to undertake Internet infrastructure builds in rural and remote regions. TELUS, Shaw, Cogeco, Bell, and Eastlink together received $181,990,000 in subsidies from the Connecting Canadians[64] and Connect to Innovate[65] programmes. Bell alone received $12.3 million from the Connecting Canadians Program[66] as well as $108 million through the Connect to Innovate Program[67].

88. Notably, this is not the first time that Incumbents have threatened to pull back on rural Internet builds. Bell in 2015 filed a Petition to the Governor in Council regarding the Commission's decision to mandate wholesale access to fibre infrastructure and claimed that the Commission's decision to mandate competition on fibre would deepen the "digital divide", leave rural Canada behind, hamper Canada's digital economy, and deprive Canada of "billions of dollars in investment entirely from private resources."[68] Many respondents refuted these claims. The GIC went on to deny Bell's Petition, reiterating its commitment to increasing higher-speed broadband coverage and

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62 Intervention of Bell Canada and its affiliates, TNC 2015-134,14 July 2015 ["2015 Bell Intervention"], at p.6.

63 2015 Bell Intervention, at p. 18.

64 Announced Connecting Canadians projects, https://www.ic.gc.ca/eic/site/028.nsf/eng/50044.html

65 Announced Connect to Innovate projects, https://www.ic.gc.ca/eic/site/119.nsf/eng/00009.html

66 Announced Connecting Canadians projects, https://www.ic.gc.ca/eic/site/028.nsf/eng/50044.html

67 Announced Connect to Innovate projects, https://www.ic.gc.ca/eic/site/119.nsf/eng/00009.html

68 Bell Canada, *Petition to the Governor in Council to Vary* Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*, 20 October 2015 [Bell Fibre Petition]. See for example, para. 7.

supporting competition, choice, and availability of services for Canadian consumers and business users, and noting that it would soon consult Canadians on its $500 million commitment in Budget 2016 should be used to extend broadband service in rural and remote communities.[69]

89. Such arguments must be seen for the empty threat that they are. Where network investments are too expensive to complete, the appropriate subsidy mechanism to bridge the gap is a direct subsidy from one of the various broadband funding programmes now or soon to be available, rather than squeezing it out of Internet subscribers and wholesale-based competitors.

90. There is also a certain irony in the Incumbents' stated narrative that they invest in facilities and "resellers" do not, when in fact the inflated wholesale rates are a major reason why wholesale-based competitors have not been able to invest as much as they otherwise would have. To be clear, wholesale-based competitors are only able to invest in facilities and innovate where they are able to have reliable, bankable cost certainty which can be translated into capital investments. While Incumbents were enriched by massively inflated rates for several years, wholesale-based competitors were being drained and were accordingly unable to commit to investments in facilities to the extent they otherwise might have, in particular where sources of financing and evaluations of risk are concerned. This is particularly ironic given the emphasis of the 2006 Policy Direction on facilities-based investment.

91. This dynamic is true not only for investment in rural areas, but also for other aspects of the regulatory framework that require investment by competitors. For example, while final rates and terms have not yet been set for the new wholesale framework that will usher in competition on fibre-to-the-home networks (disaggregated wireline HSA),[70] it is clear that building out the necessary networks is going to require a substantial investment by the same wholesale-based competitors who are struggling after years of overpaying the country's dominant telecoms.

92. Finally, the Commission must not accept an Incumbent carrier's own choice to remove a service as proof that it had was forced to remove that speed tier, and therefore proof that rates were incorrect and investments will be affected.

93. On October 23, 2019, Videotron announced that they would no longer offer gigabit service in the retail market, and they applied to destandardize the 940 Mbps speed tier from their wholesale offerings.[71] Videotron claimed this decision followed from the

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[69] Innovation, Science and Economic Development, "Statement by the Government of Canada on Bell Canada petition of CRTC wholesale decision", 11 May 2016, https://www.canada.ca/en/innovation-science-economic-development/news/2016/05/statement-by-the-government-of-canada-on-bell-canada-petition-of-crtc-wholesale-decision.html

[70] TRP 2015-325; Telecom Order CRTC 2017-312.

[71] Videotron Tariff Notice 58, *Tarif général CRTC 26950 – Service d'accès internet aux tierces parties (AITP) – Avis de modification tarifaire No. 58 (AMT 58) – Retrait du service dégroupé « Téléchargement/Download 501-1000 Mbps, Téléversement/Upload 0-100 Mbps » et*

Order.[72] In each of their Applications, other carriers have cited[73,] Videotron's mere act of withdrawing the service from the retail market and applying to destandardize the service as evidence that Incumbents will stop investing in faster speeds in light of the Order.

94. The fact is, as TekSavvy argued in an intervention to Tariff Notice 58,[74] the Order has not taken effect[75] and Videotron's own financial statements reflect no concern about the final rates. On the contrary, Videotron reported growing revenues for Internet access services "mainly due to higher revenue per subscriber and subscriber growth".[76] The fact that the Order did not merit a mention in Videotron's statements to investors suggests there may be an ulterior motive behind removing "gigabit" speed services. As TekSavvy argued in our intervention to that tariff notice, Videotron's action appears to be at best a feigned injury intended (like a soccer player diving[77]) to create the impression of some harm, or at worst an anticompetitive maneuver designed to punish competitors and consumers for the Order.

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dénormalisation du service groupé « Téléchargement/Download jusqu'à 940 Mbps, Téléversement/Upload jusqu'à 50 Mbps » 23 October 2019 ["Videotron TN58"].

72 Videotron, "Recent CRTC decision on wholesale Internet access rates - Videotron restates concern over major consequences of technological lag for our communities", November 13, 2019, https://www.newswire.ca/news-releases/recent-crtc-decision-on-wholesale-internet-access-rates-videotron-restates-concern-over-major-consequences-of-technological-lag-for-our-communities-890588419.html.

73 Bell Application, at para 10, 61-62 and 61; Cable Carriers Application, at para 39(e), 99.

74 TekSavvy's intervention regarding *Tarif général CRTC 26950 – Service d'accès internet aux tierces parties (AITP) – Avis de modification tarifaire No. 58 (AMT 58) – Retrait du service dégroupé « Téléchargement/Download 501-1000 Mbps, Téléversement/Upload 0-100 Mbps » et dénormalisation du service groupé « Téléchargement/Download jusqu'à 940 Mbps, Téléversement/Upload jusqu'à 50 Mbps »,* 22 November 2019.

75 Federal Court of Appeal orders issued 22 November 2019 in *Bragg Communications Incorporated (c.o.b. Eastlink) et al. v. British Columbia Broadband Association et al.* (Docket 19-A-58) and *Bell Canada et al. v. British Columbia Broadband Association et al.* (Docket 19-A-59).

76 Form 6-K Securities and Exchange Commission Washington, D.C. 20549 Report Of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 of the Securities Exchange Act Of 1934 for the month of November 2019, at page 7, https://www.quebecor.com/documents/20143/223093/VL_6K_Q3-2019.pdf/8b2e0efa-72ce-13d4-d3d8-7b85661acf77?version=1.0&t=1573668115837.

77 From Wikipedia.org: "In association football, diving is an attempt by a player to gain an unfair advantage by falling to the ground and possibly feigning an injury, to give the impression that a foul has been committed. Dives are often used to exaggerate the amount of contact present in a challenge. Deciding on whether a player has dived is often very subjective, and one of the most controversial aspects of football discussion. Players do this so they can receive free kicks or penalty kicks, which can provide scoring opportunities, or so the opposing player receives a yellow or red card, giving their own team an advantage." (accessed 22 November 2019).

g. Competition is not "market distortion"

95. In their Petition, the Cable Carriers argue that the flat rate wholesale access rates will distort downstream retail markets and investment, stating without evidence that "an increase in speed does not necessarily result in a commensurate increase in peak hour traffic or capacity demand at the point of interconnection…". They incorrectly claim that as competitors sell higher speeds, they will not also purchase more capacity and then, on the basis of that incorrect claim, they will not also purchase more capacity, and on that statement they falsely conclude that there will be an "inability to charge speed-based prices—both at retail and wholesale…".[78]

96. These claims are completely false. Moreover, as more online applications generate increasing amounts of traffic, and as subscribers continually purchase higher and higher speeds, subscribers require more and more capacity across the board.

97. In fact, following the reduction in CBB rates in the 2016 Order, TekSavvy was able to afford to sell more higher speed services, which had a direct and material impact on how much capacity we required: While TekSavvy's total subscriber count on Rogers has dropped by 2.5% from January 2017 to December 2019, we require over 70% more capacity over the same time period.

98. In short, contrary to the Cable Carriers' claims, higher speed services translate directly into higher capacity demands, driving up costs for wholesale-based and facilities-based providers alike.

99. On the contrary, based on the final rates in the Order, it is now clear that the retail market is already distorted, with retail rates far above actual costs. This is precisely the problem that can be solved by competition built on just and reasonable rates.

D. THE APPLICATIONS DO NOT ESTABLISH SUBSTANTIAL DOUBT AS TO THE CORRECTNESS OF THE ORIGINAL DECISION

100. Under the *Telecommunications Act*, the Commission has jurisdiction to review and vary or re-hear its decisions.[79] Under the CRTC's guidelines for review and vary applications[80], in order for the Commission to exercise its discretion to review and vary a decision, "applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to:

(i) an error of law or in fact;

(ii) a fundamental change in circumstances or facts since the decision;

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78 Cable Carriers Application, at paras 80-82.

79 *Telecommunications Act*, s. 62.

80 Telecom Information Bulletin CRTC 2011-214, *Revised guidelines for review and vary applications*, 25 March 2011.

(iii) a failure to consider a basic principle which had been raised in the original proceeding; or

(iv) a new principle which has arisen as a result of the decision."[81]

101. Bell bases their application on errors in fact.[82] TELUS bases their application on errors in fact and law,[83] as well as policy considerations.[84] The Cable Carriers base their application on "new facts and circumstances" and on errors of fact and "principle".[85]

102. Ultimately however, none of the Applicants meet the burden of establishing substantial doubt as to the correctness of the original decision. Instead, the Applications substantially draw out aspects of the Order that they perceive as negative or predict to result in negative outcomes for them or the market as a whole.

103. Taken together, the Applications argue that the outcome would be such a major change from the status quo that it must be wrong. Bell states that "The Commission has failed to strike the right balance between Carriers and Resellers [sic]", pointing to changes to investment incentives. But in fact the Commission's stated goal in setting rates is not to protect the status quo of today's market. Rather, "the Commission balances the need to ensure that network providers are reasonably compensated for their costs with the need to ensure that markups are not so high as to significantly impede independent service providers from providing competitive alternatives in the marketplace."[86]

104. The final rates in the 2019 Order are lower than the unjust and unreasonable pre-2016 rates, the interim rates, or the rates that were proposed by network providers at various stages of the proceeding. The final rates reasonably compensate network providers for their costs. The Incumbent carriers would argue that lower rates indicate substantial doubt as to the correctness of the decision. In actuality, the fact that the final corrected rates are lower speaks to how much the incumbents have maintained artificially high pricing through inflated rates that were unjust and unreasonable.

105. In short, what the Incumbent carriers call "harm" is actually an intended outcome of the Commission's stated goal: to set rates that reasonably compensate the carriers for their costs while promoting competition in order to lower prices for consumers and reduce levels of incumbent dominance.

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81 Telecom Information Bulletin CRTC 2011-214, *Revised guidelines for review and vary applications*, 25 March 2011, at para 5.

82 Bell Application, at para 2.

83 Telus Application, at para 21.

84 Telus Application, at para 14.

85 Cable Carriers Application, at para 26.

86 TRP 2011-703, at para 78, as cited in TO 2019-288 at para 286.

E. REMEDIES

106. Overall, wholesale-based competitors have been hanging on by a thread following years of paying inflated rates to Incumbents. They have weathered inflated rates for a decade and an entire wholesale rate review and costing proceeding, winning some procedural concessions along the way such as improved transparency for cost studies. Having waited three years for final rates, the competitive telecom sector cannot continue to wait while rates are resolved, or to weather yet more rounds of framework reviews and cost studies. Simply put, if Incumbents are allowed to continue to delay and obstruct competition to protect their dominant market positions and supranormal profits, wholesale-based competitors will not be able to survive, let alone to discipline the Incumbents in the market.

107. The Incumbents have asked for a number of remedies, including not making final rates apply retroactively,[87] varying the final rates,[88] applying the 2016 interim rates on a final basis[89], and further delaying final costs until yet another round of procedure on costing methodology is completed.[90]

108. Not only should these requests be dismissed as inappropriate and unjustified, but the Commission should consider further action that would discourage the Incumbents from taking advantage of their dominance in regulatory proceedings in the future, including administrative monetary penalties for not adhering to costing methodology and process as set out by the Commission throughout the rate setting proceeding. TekSavvy also calls on the Commission to issue a public Notice of Consultation on the issue of whether competitive goals would be better served by functionally or structurally separating dominant carriers.

a. The Commission should not vary the corrected rates in the Order

109. For the reasons detailed in CNOC's intervention in this proceeding, the Commission should not vary the Order. As explained above, competitors are already under enormous pressure under the 2016 interim rates, following years of pressure under even more inflated rates and, ultimately, the rates in the Order are correct.

110. To be clear, any variance to the rates in the Order will 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.

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87 Bell Application, at paras 118-125.

88 Bell Application, at para 180, Cable Carriers Application, at para 103, and Telus Application, at para 67.

89 Bell Application, at paras 108-112.

90 Bell Application, at paras 113-117; Cable Carriers Application, at para 95.

b. The Commission should not stay the Order

111. Bell asks the Commission to stay the final rates pending a final determination in their Application.[91] Of course, the Federal Court of Appeal has issued a stay for the time being.[92] However, Bell asks the Commission to itself stay the application of the final rates to protect Bell and the other Incumbents from the application of those rates in the event the proceeding in Federal Court of Appeal Court File No. 19-A-58 or any follow-on appeal is concluded, abandoned, or dismissed, or in the event that there is no longer a stay in that proceeding.

112. The Commission should not stay the rates. While this matter raises a serious issue, the irreparable harm is to competitors more than it is to Incumbents. Moreover, the harm to wholesale-based competitors is a real harm that competitors have already suffered having paid unjust and unreasonable rates since at least 2016.

113. Wholesale-based competitors lived with the inflated rates while they were under review and managed their risk during that time. If anything, Incumbents are better capitalized to manage the risk than competitors are. It would be illogical for the Commission to put less capitalized competitors in the position of managing the risk both over the past decade when considering competitors' complaints that rates were set to high and also now when considering Incumbents' complaints that rates would be set too low.

114. Finally, the Incumbents' arguments that the Order will "distort"[93] or "hinder"[94] the broadband services market ignore their significant structural advantages that will buffer Incumbents from any harm from wholesale-based providers, which advantages have been recognized by the Commission[95] and the Competition Bureau[96], including: i) the ability to control how wholesale competitors like TekSavvy can access their services; ii) the deployment of "flanker brands" to strategically attack wholesale competitors; iii) the ability to bundle services for their customers; and iv) brand awareness.

115. These structural advantages are powerful tools that the Incumbents can use and are already using to prevent any "distortion" of the market by wholesale-based competitors. In short, even when just and reasonable wholesale rates are in place, Incumbents' accrued privilege from their structural advantages will allow them to continue to broadly control how the market operates.[97]

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91 Bell Application, at section 11.

92 Boivin, JA, Order for Stay dated 22 November 2019, FCA.

93 Bell makes at least 9 references in its Application, at paras 4, 9, 64, 128, 135, 148, 150, and 156.

94 Telus Application, paras 2 and 12.

95 TRP 2015-326, para 3.

96 Competition Bureau Report, pp 7, 27-32, 48, 53, 55-56, C-1 ff.

97 For more about the many structural advantages enjoyed by Incumbents, please see *TekSavvy Submissions to Competition Bureau Market Study: Competition in Broadband Services*,

c. Final rates must be set before the next review of the Commission's approach to setting rates for wholesale services

116. Incumbents further suggest starting the rate setting proceeding from scratch, reviewing the costing methodology in an anticipated costing proceeding, and then applying that new methodology to setting aggregated rates.[98]

117. The Commission should reject this argument as not only being self-serving but also undermining the Commission's authority and responsibility to set just and reasonable rates. Beginning with TNC 2015-225[99], following its usual role setting rates for regulated services, the Commission studied options and established its costing methodology and then applied that methodology to the best evidence it had to set final rates in the 2019 Order. Notwithstanding the ability to review and vary a decision of the Commission, setting aside five years of procedure risks rendering the Commission effectively unable to set rates at all.

118. On the contrary, the logical and reasonable approach is for the Commission to finalize the rates that apply to the period since it last established costing methodology in TD 2016-117, and then to initiate a new proceeding to review costing methodologies going forward, as it did in TNC 2015-225 and as it has planned to do in 2020 for some time.[100]

119. The 2016 rates sought by the Incumbents are the same rates the Commission determined to be grossly inflated thanks to bogus costing studies submitted by the Incumbents that totally ignored mandated Phase II costing methodology.

d. The Commission should consider additional measures to ensure effective and efficient competition

120. With their Applications, the Incumbents are asking the Commission to uphold their anti-competitive conduct.

121. The broad picture of this rate setting proceeding from 2015 to today is a portrait of a few dominant Incumbents attempting to evade the application of any effective regulatory regime:

   a. the Incumbents overcharged wholesale providers inflated rates for years, stifling competition in Canada;

Abridged version, published February 25, 2019, https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/TekSavvy-Submission-CompetitionBureau-ABRIDGED.pdf/$file/TekSavvy-Submission-CompetitionBureau-ABRIDGED.pdf.

98 Bell Application, at paras 113-117, and the Cable Carrier Application, at paras 94-95.

99 TNC 2015-225.

100 See for example, Canadian Radio-television and Telecommunications Commission Departmental Plan 2019-2020, Catalogue No. BC9-26E-PDF.

b. the Commission caught the Incumbents charging inflated rates, first in the 2016 Order and again in the 2019 Order;

c. the Incumbents repeatedly failed to file cost studies in the proceeding in accordance with the Commission's directions and accepted costing methodology;

d. the Incumbents failed to apply the final rates, despite the Order,[101] and have launched an unprecedented multi-pronged strategy to delay the implementation even further by appealing to the Commission, the Federal Court of Appeal, and the Governor in Council; and

e. meanwhile, Incumbents have used inflated rates to effectively "raise the floor" on retail prices to keep consumer prices high while squeezing competitors out of the market.

122. In short, the Incumbents are boldly flouting the Commission's own rules, and so far have done so without consequence. In fact, even if just and reasonable final rates are set and apply retroactively to correct earlier unjust and unreasonable interim rates, without penalties or other consequences the Incumbents will have benefited by delaying the application of those rates during which time they continued to enjoy the compounded advantages of market dominance and costing advantages. In effect, they would have lost the battle but won the war.

123. In order to promote compliance with the Commission's regulatory authority and to ensure that Incumbents are properly incentivized to comply with the Commission in the future, the Commission should hold the Incumbents accountable for the major noncompliance identified in this application by applying administrative monetary penalties. If the Commission does not hold the Incumbents accountable, they will have no incentive to comply with the Commission's decisions that serve to promote competition, and they will continue to impose their dominance.

124. TekSavvy notes that the Commission is empowered under section 72.001 of the Telecommunications Act to impose an administrative monetary penalty (AMP) up to $10 million for a first contravention.[102] TekSavvy notes that the Commission has several times in the past few years alone reminded carriers that it has the authority to impose AMPs to promote compliance with the Act.[103] TekSavvy further notes that a penalty in

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[101] Commission letter dated 20 September 2019, regarding failure of most Incumbents to issue revised tariff pages in compliance with the 2019 Order.

[102] Telecommunications Act, at s. 72.001.

[103] See for example *Frontier Networks Inc. – Application regarding the refusal of Eastlink to allow Frontier to resell high-speed access services*, Telecom Decision CRTC 2018-458, 11 December 2018, at para 56; *Commission letter regarding Progress Reports following Non-consensus report 1540RE04*, 10 December 2019; *Commission staff letter regarding Videotron Tariff Notice 57*, 22 October 2019.

these circumstances would appropriately serve the stated statutory goal of AMPs to promote compliance with the Act.[104]

125. In addition, the Commission should consider other remedies to adjust the incentives of the dominant incumbents to better align their commercial interests with the Commission's and the public's interest in meaningful competition, including structural or functional separation of wholesale and retail operations.

126. Since at least the introduction of wireline competition, the Commission has essentially undertaken a piecemeal approach to reducing barriers to competition by mandating wholesale services at tariffed rates and on tariffed terms, with periodic proceedings to address specific competitive barriers, such as cable modem approvals[105] or quality of service issues[106].

127. As an alternative to this whack-a-mole approach, the Commission could consider a broader approach that would separate the wholesale and retail interests of the dominant Incumbents. For example, causing the Incumbents as retail service providers to also operate within the wholesale framework, buying services from the Incumbents as wholesale service providers, could realign their interests not only to make rate setting a less adversarial and fraught process but also to reduce barriers for wholesale services across the board.

128. As such, TekSavvy calls on the Commission to issue a public Notice of Consultation on the issue of whether competitive goals would be better served by functionally or structurally separating dominant carriers.

129. Simply put, the future of telecom competition is at stake with these appeals. If Incumbents are allowed to continue to delay and obstruct competition to protect their dominant market positions and supranormal profits, and if their brazen anticompetitive activities are allowed to continue, wholesale-based competitors will not be able to survive, let alone to discipline the Incumbents in the market.

F. CONCLUSION

130. In response to the Applications, for the reasons submitted above, the Commission should:

a. **Immediately reject the Applications in their entirety:** The Commission completed a detailed review based on the Incumbents' own information and applied the established costing methodology. In their Applications, the Incumbents do not raise substantial doubt as to the correctness of the Order. The just and reasonable wholesale rates in the Order must stand. If the Applications are not rejected, Internet prices will increase for consumers. Previous payments at unjust and reasonable rates represent a transfer of wealth from wholesale-based providers and

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104 Telecommunications Act, at s. 72.002(2).

105 Telecom Decision CRTC 2004-37, Cable modems for third-party Internet access, 4 June 2004.

106 Telecom Regulatory Policy CRTC 2018-123, Review of the competitor quality of service regime, 13 April 2018.

their customers to Incumbents. The established and appropriate way to correct that wealth transfer and prevent unjust enrichment of Incumbents is to require retroactive application of the final rates, as the Commission ordered.

b. **Hold Incumbents accountable for their noncompliance and anti-competitive actions:** As argued above, until they are held accountable for their noncompliance with the Act and Commission decisions and for their anti-competitive conduct, Incumbents will continue to act to protect their dominance by inflating wholesale rates and then delaying processes to correct those rates. Accountability must be imposed on them in order to deter gaming and realign their interests with those that encourage competition, whether through AMPs or through structural or functional separation.

131. Finally, to be clear, the wholesale rates for wireline services in the Order form the foundation for competitors like TekSavvy. Without just and reasonable wholesale rates for wireline services, competitors will not survive to deliver the benefits for consumers that are envisioned for the telecom market, most recently in the 2019 Policy Direction[107], including promoting competition, fostering affordability and lower prices, reducing barriers to entry, and enabling innovation in telecom services including differentiated service offerings.

132. More specifically, without just and reasonable rates for wireline services, competitors will not be in a position to serve the same goals in the mobile market following the Commission's ongoing consultation on mobile competition.[108]

133. The Incumbents failed to demonstrate any grounds that raise substantial doubt as to the correctness of TO 2019-288 and TO 2019-288-1.

134. For all these reasons and those argued by CNOC, TekSavvy submits that the Commission should **immediately reject and deny** the Incumbents' Applications and **hold the Incumbents accountable** for their noncompliance and their anti-competitive actions.

***** END OF DOCUMENT *****

107 2019 Policy Direction.

108 TNC 2019-57.

APPENDIX A: PAYLESSTOCONNECT.CA AND CONNECTERPOURMOINS.CA LETTERS

[recipient name] M.P.
House of Commons
Parliament Buildings
Ottawa, Ontario
K1A 0A6

Dear [recipient name],

RE: [email subject]

As a constituent in your riding, I am writing to express my frustration with the high price of internet and cell phone services, and to voice my support for the CRTC's decision to improve the affordability of internet services for Canadians.

Canadians simply require internet services to stay connected at work and at home. Yet we pay too much and have very little choice. The market is controlled by a few large companies who take advantage of us and keep prices high. The Government of Canada and the CRTC have a responsibility to protect consumers by ensuring we have real choice and affordable options. It's in the best interests of all Canadians.

The Government of Canada needs to put our interests first – ahead of the large telecom companies. I want and expect the CRTC to promote competition and affordability and for the large companies to be held accountable for their actions. Otherwise, we won't have any real choice and my bills will continue to eat up more and more of my household budget.

As your constituent, I am respectfully asking that you act to support the CRTC's decision to promote affordable internet prices and to protect consumer interests.

Thank you for hearing my concerns, I look forward to your response.

Sincerely,
[sender name]

[sender email]
[sender postal code]

CC: Hon. Minister Navdeep Bains
Ian Scott, Chairperson and Chief Executive Officer CRTC
Patricia Brady, Director General, Telecommunications and Internet Policy Branch, Innovation Science and Economic Development Canada

Canada Gazette, Part I, Volume 153, No. 50, December 14, 2019, Reference number TIPB-002-2019

[recipient name] M.P.
Chambre des communes
Édifices du Parlement
Ottawa, Ontario
K1A 0A6

Cher/chère député(e) [recipient name],

RE: [email subject]

En tant qu'électeur de votre circonscription, je vous écris afin d'exprimer ma frustration avec les tarifs élevés des services Internet et de téléphonie cellulaire, et d'exprimer mon soutien pour la décision du CRTC d'améliorer l'accès des Canadien(ne)s aux services Internet.

C'est pourtant simple, les Canadien(ne)s ont besoin de services Internet pour être connectés et leur permettre de travailler à la maison. Et pourtant, nous payons trop cher et nous avons très peu de choix. Le marché est contrôlé par quelques grandes sociétés qui profitent de nous et maintiennent des prix élevés. Le gouvernement du Canada et le CRTC ont la responsabilité de protéger les consommateurs en s'assurant que nous avons un vrai choix ainsi que des options abordables. Ceci sert au mieux les intérêts de tous les Canadien(ne)s.

Le gouvernement du Canada doit mettre nos intérêts au premier plan – devant ceux des grandes sociétés de télécommunications. Je souhaite et j'attends du CRTC qu'il favorise la compétition et l'accessibilité et qu'il tienne les grandes sociétés responsables de leurs actes. Sinon, nous n'aurons pas vraiment le choix et mes factures continueront de ronger un part de plus en plus importante de mon budget familial.

En tant qu'électeur de votre circonscription, je vous demande respectueusement d'appuyer activement la décision du CRTC de favoriser des tarifs Internet abordables et de protéger les intérêts des consommateurs.
Merci d'avoir entendu mes préoccupations, j'attends votre réponse avec impatience.

Sincères salutations,
[sender name]

[sender email]
[sender postal code]

CC: Ministre Navdeep Bains
Ian Scott, Président et dirigeant principal du CRTC
Patricia Brady, directrice générale, Direction générale de la politique des télécommunications et d’Internet, ISDE

Gazette du Canada, Partie I, volume 153, no. 50, 14 décembre 2019, numéro de référence TIPB-002-2019.

APPENDIX B: REFERENCES FOR ESTIMATED RETROACTIVE AMOUNTS TO INCUMBENT NOTABLE EXPENSES AND REPORTED REVENUES

*** References for Notable Expenses:**

Bell: Bell, "Notice of 2019 Annual General Shareholder Meeting and Management Proxy Circular", March 7, 2019 at sections 10 and 11 https://www.bce.ca/investors/AGM-2019/2019-bce-management-proxy-circular.pdf

Rogers: Financial Post, "Rogers Communications Inc to take up to $525 million hit as it kills IPTV plans, adopts Comcast platform", December 16, 2016 https://business.financialpost.com/technolog16y/rogers-communications-inc-to-take-up-to-525-million-hit-as-it-kills-iptv-plans-adopts-comcast-platform

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Globe and Mail, "Rogers paid outgoing CEO $42.6-million over three years", March 20, 2017 https://www.theglobeandmail.com/report-on-business/rogers-paid-outgoing-ceo-426-million-over-three-years/article34357427/

Globe and Mail, "Rogers embroiled in tax battle over private-jet purchase", January 22, 2015 https://www.theglobeandmail.com/report-on-business/rogers-embroiled-in-tax-battle-over-private-jet-purchase/article22592539/

Videotron: Financial Post, "In the fight to win back TV audience, Canada's cable companies Buy American", October 26, 2017 https://business.financialpost.com/telecom/in-the-fight-the-win-back-tv-audience-from-the-telcos-canadas-cable-companies-buy-american

Shaw: Toronto Star, "Canadian streaming service Shomi shutting down", September 26, 2016 https://www.thestar.com/business/2016/09/26/shomi-is-shutting-down.html

Cogeco: Globe and Mail, "Louis Audet to resign as Cogeco CEO, will stay on as chairman", May 15, 2018 https://www.theglobeandmail.com/business/article-louis-audet-to-resign-as-cogeco-ceo-will-stay-on-as-chairman/

**** Notes for Company Revenue Calculations:**

For all companies except for Shaw, company revenues are calculated during the retroactivity period of March 31, 2016 to current. Shaw's retroactivity period is calculated for January 1, 2017 to current. Company revenue are calculated using overall Operating Revenue as reported by each company.

Bell: The total profit for the retroactivity period (Q2 2016 - Q4 2019) for Bell is calculated from reported 23Operating Revenues in the following reports: Bell, "BCE Inc. 2016 annual report", March 8 2017 at p. 87 https://www.bce.ca/investors/AR-2016/2016-bce-annual-report.pdf, Bell, "BCE Inc. 2018 Annual Report", March 13 2019 at p. 83 https://www.bce.ca/investors/AR-2018/2018-bce-annual-report.pdf, Bell, "2019 Supplementary Financial Information", February 6 2020 at p. 2 https://www.bce.ca/investors/financial-reporting/2019-Q4/2019-q4-supplementary-information.pdf

Rogers: The total profit for the retroactivity period (Q2 2016- Q4 2019) for Rogers is calculated from reported Total revenue in the following reports: Rogers, "Rogers Communications Inc. 2016 Annual Report", Feb 9 2017 at p. 58 https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2017/08/Rogers-2016-Annual-Report_bookmark.pdf and Adjusted EBITDA in Rogers, "Rogers Communications Inc. 2018 Annual Report", Mar 6 2019 at p. 32 https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/Rogers-2018-Annual-Report.pdf, Rogers, “Q4 2019 Supplemental Financial Information”, at p. 2 https://1vjoxz2ghhkclty8c1wjich1-wpengine.netdna-ssl.com/wp-content/uploads/2020/01/Rogers_Supplemental_Financial_Information_Q4_2019.pdf.

Quebecor/Videotron: The total revenue for the retroactivity period (Q2 2016 - Q3 2019) for Videotron is calculated from reported Total Telecommunications Revenue and Total Media Revenue in the following reports: Quebecor, “Q2 2016 Supplementary Disclosure”, Aug 4 2016 at ps. 4-5 https://www.quebecor.com/documents/20143/59471/QI_SDisc_Q22016_Eng.pdf/deb3eb82-340c-cbab-5727-db1decf4239b?version=1.0&t=1497902212023, Quebecor, “Q3 2016 Supplementary Disclosure”, Nov 3 2016 at p.4-5 https://www.quebecor.com/documents/20143/59477/QI_SDisc_Q32016_Eng.pdf/ffd4509a-1428-d3de-a841-8349338b123e?version=1.0&t=1497901996777, Quebecor, “Q4 2016 Supplemental Disclosure”, Mar 15 2017 at p. 4-5 https://www.quebecor.com/documents/20143/59483/QI_SDisc_Q42016_Eng.pdf/29e5e407-240f-205b-05e7-3ebdd779c55b?version=1.0&t=1497901773177, Total Revenue in the following report: Quebecor, “2018 Annual Report”, Mar 13 2019 at p. 1 https://www.quebecor.com/documents/20143/222890/812d113c-2e20-48c8-a3e3-36cfa26dd9a5-QI_EF_Q42018_Eng.pdf/b09c9f98-0b72-fcc1-b83e-8854b17a8f9d, Quebecor, “Q3 2019 Condensed consolidated financial statements”, Nov 7 2019 at p. 2 https://www.quebecor.com/documents/20143/222911/ced4f656-7e14-4c5d-b8d5-131ed532517d-QI_EF_Q32019_Eng.pdf/f7a88e76-f7a2-5676-db6d-55f970f47257

Shaw: The total revenue for the retroactivity period (Q3 2017-Q1 2020) for Shaw is calculated from reported Revenue in the following reports: Shaw, “Shaw Announces Third Quarter and Year-to-Date Results”, June 28, 2017 at p. 2 https://www.shaw.ca/uploadedFiles/Corporate/Investors/2017-06-28-Shaw-Announces-Third-Quarter-and-Year-to-Date-Results-89werheui347f.pdf, Shaw, “Shaw Announces Fourth Quarter and Full Year Fiscal 2017 Results”, October 26, 2017 at p. 2 http://assets.aws.newsroom.shaw.ca/uploadedfiles/newsroom/content/news_articles/2017/4th%20qtr%202017%20pr%20final1.pdf, Shaw, “Annual Report 2019”, at p. 9 http://shaw.ca/uploadedFiles/Corporate/Investors/Financial_Reports/2019-annual-report.pdf, and Shaw, “Shaw Announces First Quarter Fiscal 2020 Results”, January 13, 2020 at p. 2 https://shaw.ca/uploadedFiles/Corporate/Investors/Financial_Reports/1st%20Qtr%20PR_version%20approved%20for%20release%201.12.2020%20v2.pdf

Cogeco: The total revenue for the retroactivity period (Q3 2016 – Q1 2020) for Cogeco Communications is calculated from reported revenue in the following reports: Cogeco Communications, “2016 Annual Report”, November 2, 2016 at p. 38 http://corpo.cogeco.com/cca/application/files/8015/0913/5524/2016_Annual_Report.pdf, Cogeco Communications, “2018 Annual Report”, October 31 2018 at p. 3 http://corpo.cogeco.com/cca/application/files/5115/4118/1702/CCA.Q4.2018_-_Annual_Report_web.pdf, Cogeco Communications, “2019 Annual Report” October 30, 2019 at p. 3 http://corpo.cogeco.com/cca/application/files/4515/7248/4675/CCA.Q4.2019_-_Annual_Report_compressed.pdf, Cogeco Communications, “Q1 2020 Investor Fact Sheet” Jan 15, 2020 at p. 2 http://corpo.cogeco.com/cca/application/files/7615/7904/4702/CCA-Investor-Fact-Sheet_Q12020.pdf

TELUS: The total revenue for the retroactivity period (Q2 2016 - Q3 2019) for TELUS is calculated from reported operating revenue in the following reports: TELUS, “2017 Annual Report”, April 6, 2018 at p. 33 https://assets.ctfassets.net/rz9m1rynx8pv/t4ESxjDOBE0qKoOiU8YmQ/416fb9b2cfbf87be4cfee491ff16eae7/TELUS_2017_annual_report-for_online.pdf>, TELUS, “2018 Annual Report”, April 5, 2019 at p. 5 https://assets.ctfassets.net/rz9m1rynx8pv/jRaoZUCqKFlMhEsgaLPDN/2920eb537702fc25ff60042a281d84a0/TELUS_2018_annual_report-acc_FINAL.PDF, and Consolidated EBITDA in TELUS, “Fourth Quarter, 2019 Supplemental Investor Information”, November 7, 2019 at p. 3 https://assets.ctfassets.net/rz9m1rynx8pv/DeR2EnwxiMgwItoPZt6Gd/3594b9709b6bca2994c028c4ff26e39b/TELUS_Q4_2019_investor_supplemental.pdf

***** Note for Retroactive Amount %**

The retroactive amount % is calculated using each company's estimated retroactive amount owing divided by the reported aggregate revenues of each company over the retroactive period.

APPENDIX C: IMPACT STATEMENTS FROM INCUMBENTS, INVESTMENT ANALYSTS, AND COMMENTATORS AFTER TO 2016-396 (CRTC INTERIM RATE CORRECTION)

Impact Statements Showing No Impact Following TO 2016-396 (CRTC interim rate correction):

Incumbent Leaders	Reaction
Glen LeBlanc, BCE Executive Vice President and CFO	"Adjusted EBITDA is also up a healthy 2.4%, yielding a higher year-over-year margin of 41.1%. This was achieved despite the $35 million George mentioned earlier in regulatory-related impacts absorbed in the quarter from wholesale Internet tariff-free rates, mandated customer refunds for cancelled services, and the loss of simultaneous substitution advertising rights for the Super Bowl."[109]
Anthony Staffieri, Rogers Chief Financial Officer	"[w]holesale has never been a significant part of our business, and it continues to not be very significant. And so the […] impact on net adds in the quarter for wholesale Internet was negligible."[110]
Investor Analysts	**Reaction**
Maher Yaghi, Desjardins	"We believe this decision could push incumbents to sell Internet flanker brands in order to compete against small players."[111]
Jeff Fan, Scotiabank	The decision isn't likely to have a material effect on incumbents, Fan said, adding that "significant consolidation of resellers may be necessary to make them truly competitive."[112]
Phillip Huang, Barclays	Huang says incumbents are likely to respond to the CRTC's decision with an increased focus on flanker brands. "The industry will certainly be watching closely the resellers' reactions to the decision — whether and to what extent the resellers will pass on their cost savings to consumers," he said. "In the near term, we would expect the incumbents to broaden their recently established fixed broadband flanker brands to help defend market share against the strengthened resellers." Huang added that it "remains to be seen whether [the decision] could trigger a slowing in broadband investments."[113]

[109] Bell, "Q1 2017 conference call transcript", at p. 9.

[110] Rogers Q4 2016 Report, at p. 10.

[111] *The Wire Report,* "Wholesale rate decision could lead to focus on flanker brands, analysts say", October 7, 2016 [*The Wire Report* re: Telecom Order 2016-396].

[112] *The Wire Report* re: Telecom Order 2016-396.

[113] *The Wire Report* re: Telecom Order 2016-396.