



8 April 2019

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Via e-mail to:
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Dear Ms. Miller,

Re: *Canada Gazette, Part I, Volume 153, Number 10: Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*

1. The Forum for Research and Policy in Communications (FRPC) is a non-profit, non-soliciting corporation established in 2013 to undertake research and policy analysis with respect to communications. We appreciate the opportunity to submit comments regarding the *Direction* proposed by the Governor in Council to guide the CRTC's decision-making with respect to telecommunications.
2. Our comments address the wording of the draft *Direction*, its relationship with the existing *Direction*, the timing of the *Direction's* implementation, evaluation of the impact of the *Direction* by the Department, and the Forum's desire that the Governor in Council also consider the necessity to amend or replace a *Direction* made under the *Broadcasting Act*.

The draft Direction

3. The wording of the draft *Direction* is as follows:

Direction

Principles

1 In exercising its powers and performing its duties under the Telecommunications Act, the Commission must implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:

(a) the Commission, when relying on regulation, should consider how the measures used can promote competition, **affordability**, consumer interests and innovation, namely the extent to which they

(i) encourage all forms of competition,

- (ii) foster **affordability and lower prices**, particularly when there is potential for telecommunications service providers to exercise market power,
 - (iii) ensure that **affordable** access to high quality telecommunications services is available,
 - (iv) **enhance and protect the rights of consumers** in their relationships with telecommunications service providers,
 - (v) reduce barriers to entry and barriers to competition for new and smaller telecommunications service providers,
 - (vi) enable innovation in telecommunications services, including new technologies and differentiated service offerings, and
 - (vii) stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services; and
- (b) the Commission, when relying on regulation, should demonstrate its compliance with this Order and should specify how the measures used can, as applicable, promote competition, **affordability, consumer interests** and innovation.
- [bold font added]
4. The Forum strongly supports the inclusion of four references to affordability, and two references to consumers, in the draft *Direction*. In our view, telecommunications regulation has given affordability and consumer interests insufficient attention in the past decade.

Existing Direction and the 1987 Policy

- 5. The Forum notes that it is somewhat unclear whether the draft *Direction* is intended to replace or co-exist with the 2006 *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355.
- 6. The Forum's preference is that the draft *Direction* replace the 2006 *Order*, given the latter's failure to ensure that regulation of Canada's telecommunications system serves the public interest, not simply with respect to affordability and consumer protection, but also with respect to the availability in Canada of modern, high-quality telecommunications services, from coast to coast to coast.
- 7. We also suggest that it would be appropriate at this time, in light of the Governor in Council's decision to formalize its approach to affordability and consumer-related issues, to clarify the status of the federal "*Policy Framework for Telecommunications in Canada*", published on 22 July 1987 by then-Minister of Communications, Flora MacDonald. The 1987 *Policy* expressly limits facilities-based entry, while mandating network and service interconnection; although it requires that Canadians "have

- universal access to basic telephone service at affordable prices”, the CRTC itself notes that does “not intervene in the retail rates for most communication services”.¹
8. The Forum’s preference is that the federal government revise its telecommunications policy for Canada and the 21st century; in the alternative, the government should clarify that the 1987 policy no longer remains in force.

Implementation

9. The proposed Order would, if approved by Parliament, “... come into force on the day on which it is registered, and would be binding on the CRTC beginning on the day on which it comes into force.”
10. We urge the government to ensure, to the extent that it is possible, that the draft *Direction* come into force and bind the CRTC, as quickly as possible, so as to serve the public interest. We assume that Cabinet would want the draft *Direction* to apply, for instance, to the CRTC’s *Review of mobile wireless services* (Telecom Notice of Consultation CRTC 2019-57), for which a public hearing is currently scheduled for January 2020, and for which comments are due no later than 15 May 2019.

Evaluation of *Directions* to the CRTC

11. The Forum appreciates the fact that statistical data have been published annually since the mid-2000s which compare prices of different categories of telecommunications services in Canada to those in seven other jurisdictions. The most recent report of such data (Wall Communications, *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions - 2018 Edition*) is available online at: <https://www.ic.gc.ca/eic/site/693.nsf/eng/00169.html#a10>. It includes statistics describing average prices and the ‘compound annual growth rate’ (CAGR) of the prices, over time, for each of eight jurisdictions.
12. As they measure annual growth, the CAGR statistics in the 2018 *Comparisons* report cannot show total prices changes over a given period. Table 1, below, includes the beginning and end years shown in Attachment 3, as well as percentage change from the first and last years for each of nine wireless services. (Although wireless services remain important in many locations, we have focussed on wireless services in this comment given the trend in telecommunications use by Canadians towards wireless services, and away from wireline services) Table 1 demonstrates that the change over a period can be significant – prices of the “Mobile Wireless Level 1” category of service decreased by 21.4% in Canada from 2008 to 2018, for example, and by 54.5% in France over the same period.

¹ CRTC, “Phone Services for Canadians”, <https://crtc.gc.ca/eng/phone/> [accessed 8 April 2019].

Table 1 Total changes in prices, over period shown, for each jurisdiction

	Canada	U.S.A.	Australia	U.K.	France	Italy	Germany	Japan
Table A3.1 - International Mobile Wireless Prices								
Mobile Wireless Level 1 (PPP Adjusted)								
2008	\$32.73	\$40.92	\$21.96	\$26.57	\$23.55	n/a	n/a	n/a
2018	\$25.73	\$28.50	n/a	\$14.49	\$10.71	\$6.97	\$14.34	n/a
% change	-21.4%	-30.4%		-45.5%	-54.5%			
CAGR	-2.38%	-3.55%	n/a	-5.88%	-7.58%	-10.48%	-3.71%	n/a
Mobile Wireless Level 2 (PPP Adjusted)								
2008	\$60.81	\$64.54	\$32.90	\$53.98	\$56.30	n/a	n/a	n/a
2018	\$39.43	\$44.29	n/a	\$16.68	n/a	\$11.86	\$15.06	n/a
% change	-35.2%	-31.4%		-69.1%				
CAGR	-4.24%	-3.69%	n/a	-11.08%	n/a	-22.93%	-19.85%	n/a
Mobile Wireless Level 3 (PPP Adjusted)								
2008	\$112.34	\$135.72	\$96.75	\$90.23	\$110.46	n/a	n/a	n/a
2018	\$70.99	\$62.48	\$19.40	\$32.40	n/a	n/a	\$30.10	n/a
% change	-36.8%	-54.0%	-79.9%	-64.1%				
CAGR	-4.49%	-7.46%	-14.85%	-9.73%	n/a	n/a	-19.35%	n/a
Mobile Wireless Level 4 (PPP Adjusted)								
2014	\$92.99	\$109.28	\$84.85	\$58.37	\$50.14	\$61.52	\$80.63	n/a
2018	\$75.44	\$61.26	\$24.70	\$26.56	\$30.91	\$21.11	\$45.80	\$81.52
% change	-18.9%	-43.9%	-70.9%	-54.5%	-38.4%	-65.7%	-43.2%	
CAGR	-5.09%	-13.47%	-26.54%	-17.87%	-11.40%	-23.47%	-13.19%	35.61%
Mobile Wireless Level 5 (PPP Adjusted)								
2015	\$107.50	\$131.12	\$97.43	\$68.93	\$60.96	\$77.44	\$102.74	n/a
2018	\$87.32	\$97.88	\$27.27	\$31.26	\$34.31	\$29.55	\$64.89	\$103.07
% change	-21.7%	-30.4%	-82.7%	-64.5%	-53.2%	-77.8%	-46.9%	
CAGR	-6.70%	-9.29%	-34.59%	-23.17%	-17.43%	-27.47%	-14.20%	39.07%
Mobile Wireless Level 6 (PPP Adjusted)								
2016	\$231.99	\$206.19	\$198.50	\$99.31	n/a	n/a	\$284.12	n/a
2018	\$227.87	\$206.57	\$98.96	\$84.77	\$66.32	\$75.39	\$120.88	\$222.66
% change	-1.8%	0.2%	-50.1%	-14.6%			-57.5%	
Table A3.3 - International Mobile Internet Prices								
Level 1 (2-5 GB) (PPP Adjusted)								
2010	\$54.19	\$73.26	\$33.89	\$24.86	\$46.29	n/a	n/a	\$76.00
2018	\$38.28	\$43.49	\$15.56	\$15.45	\$15.74	\$12.71	\$22.52	\$70.31
% change	-29.4%	-40.6%	-54.1%	-37.9%	-66.0%			-7.5%
CAGR	-4.25%	-6.31%	-9.27%	-5.77%	-12.61%	-7.77%	-10.03%	-0.97%
Level 2 (5-10 GB) (PPP Adjusted)								
2012	\$65.11	\$69.51	\$44.85	\$39.11	\$100.15	n/a	n/a	\$56.77
2018	\$61.90	\$64.59	\$26.24	\$19.78	n/a	\$17.22	\$35.56	\$75.49
% change	-4.9%	-7.1%	-41.5%	-49.4%				33.0%
CAGR	-0.84%	-1.22%	-8.55%	-10.74%	n/a	-9.66%	-8.03%	4.86%
Level 3 (10+ GB) (PPP Adjusted)								
2016	\$80.98	\$110.38	\$48.17	\$24.47	\$63.45	\$31.58	n/a	\$87.09
2018	\$83.35	\$87.30	\$39.35	\$28.19	\$33.53	\$38.73	\$38.38	\$105.94
% change	2.9%	-20.9%	-18.3%	15.2%	-47.2%	22.6%		21.6%
CAGR	1.45%	-11.07%	-9.61%	7.31%	-27.30%	10.75%	6.69%	10.29%

	Canada	U.S.A.	Australia	U.K.	France	Italy	Germany	Japan
Summary of change in prices for nine (9) mobile services								
Smallest change	4	2	0	0	0	0	0	3
Largest change	0	0	3	2	3	0	1	0

13. We determined which of the eight jurisdictions had the smallest change, and which had the largest change, in wireless service prices. The smallest change shows the jurisdiction where prices were decreasing the least (or increasing the most); the highest change shows the jurisdiction where prices have decreased the most (or increased the least).
14. Table 1 shows that among the eight jurisdictions reviewed in the 2018 *Comparisons* report, Canada had the smallest overall change in prices among four of nine wireless service categories. In other words, compared to seven other countries prices went down the least in Canada in four out of the nine wireless services categories reviewed.
15. Similarly, Table 1 shows that compared to the other seven jurisdictions, wireless prices never decreased the most in Canada. They decreased the most in France and Australia (for three wireless service categories), in the UK (for two wireless categories) and in Germany (for one wireless category).
16. If competition reduces prices, competition has not yet achieved that objective in Canadian wireless telecommunications.
17. The Forum respectfully requests that the Department of Innovation, Science and Economic Development (ISED) continue to publish the *Comparisons* report each year. We also suggest that ISED consider inviting public comment on the content of the report, to ensure that the concepts of ‘affordability’ and ‘consumer interests’ are measured in ways that are valid and reliable.

Rescind or amend the Direction to the CRTC (Ineligibility of Non-Canadians), SOR/97-192, P.C. 997-486

18. While aware that this public process concerns the draft *Direction* being proposed under the *Telecommunications Act*, the Forum respectfully notes that the public interest is also being harmed by the continuing inability of the federal regulatory authority, the CRTC, to address the harmful effects of unregulated foreign online programming services on Canada’s broadcasting system due to the unintended consequences of the wording of another *Direction* from the Governor in Council.
19. As you know, the CRTC’s authority covers broadcasters that operate in whole or in part in Canada, and it is required to regulate “all aspects” of Canada’s broadcasting system,

- so as to give effect to Parliament's broadcasting policy.² The *Broadcasting Act* also requires the CRTC to exempt broadcasters from regulation when they are unable to "contribute in a material manner" to the implementation of the broadcasting policy set out" by Parliament in section 3(1) of the *Broadcasting Act*.³
20. In 1999 the CRTC exempted what were then 'new-media' programming services from regulation, in compliance with the *Broadcasting Act*. At that time such services were unlikely to contribute materially to the implementation of Parliament's broadcasting policy.
 21. Since 1999 the facts regarding new-media programming services have changed. In 2018 then-Minister of Canadian Heritage, Melanie Joly, announced that US-owned Netflix had agreed to invest \$100 million per year for five years in programs made in Canada. Netflix' \$500 million programming investment established that some non-Canadian online broadcasters are able to contribute materially to achieving Parliament's broadcasting policy for Canada and, therefore, should not be exempted from regulation.
 22. Yet even if the CRTC were to rescind its exemption of new media (now, digital media) programming services, Cabinet's 1997 prohibition on licensing foreign broadcasters⁴ means that the CRTC would be unable to license foreign online broadcasters. Only Canadian online services would have to comply with CRTC requirements; their non-Canadian peers would be free to ignore them.
 23. As it happens, the Federal Court held in 1998 that licensing (in that case) two foreign-owned companies "out of thousands involved in the industry does not alter the Canadian character and control of the system as a whole."⁵ We suggest that authorizing foreign-owned online programming services to operate in Canada would, if properly undertaken, also not alter the Canadian character and control of Canada's broadcasting system. Indeed, changing the 1997 ineligibility *Direction* would permit the establishment of a regulatory framework that would strengthen Canada's broadcasting system and Canadian broadcasters, by establish a level playing field, so to speak.

² S. 4(2): This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada

S. 3(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the broadcasting system by a single independent public authority.

³ S. 9(4): The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

⁴ *Direction to the CRTC (Ineligibility of Non-Canadians)*, (SOR/97-192)
<https://laws.justice.gc.ca/eng/regulations/SOR-97-192/index.html>.

⁵ *Rogers Communications Inc. v. Canada (Attorney General)*, 1998 CanLII 7494 (FC), at para. 26.

24. The Forum therefore respectfully requests that the Governor in Council turn its attention to the 1997 *Direction*, with the object of either rescinding it altogether or amending it to so that the CRTC would be able to license and/or regulate a new class of programming service – specifically, Canadian- or foreign-owned online programming services able to contribute to the objectives of Parliament’s broadcasting policy for Canada. This change would permit the CRTC to meet its mandate, to consider how online programming services that benefit from access to subscribers and/or advertisers in Canada can best contribute to the implementation of Parliament’s broadcasting policy for Canada, and to begin to mitigate the harms being caused by the operation in part in Canada of unlicensed broadcasting services.

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,



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