24 July 2020

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Via GC Key

Dear Secretary General,

Re: *Call for comments – Provision of paper bills by communications service providers,* Broadcasting and Telecom Notice of Consultation CRTC 2020-81 (14 April 2020), https://crtc.gc.ca/eng/archive/2020/2020-81.htm?_ga=2.37842019.1309790556.1586871959-1211976415.1582553073 – Reply by the Forum for Research and Policy in Communications (FRPC)

The Forum for Research and Policy in Communications submitted its comments in the above-noted proceeding on 3 July 2020; it applied to and received the CRTC's consent to revise certain paragraphs of its comments on 21 July 2020. The attached constitutes our reply to other interventions. Unless otherwise indicated the Forum has not changed its answers with respect to the questions posed by the CRTC.

If you have any questions or encounter any difficulty in opening the document, please contact the undersigned

Sincerely yours,

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‘Transitioning’ subscribers from paper to electronic billing in broadcasting:

A benign description of how companies can cut costs by reducing BDU subscribers’ choice over their billing format

Call for comments – Provision of paper bills by communications service providers, Broadcasting and Telecom Notice of Consultation CRTC 2020-81 (14 April 2020)

Reply by the Forum for Research and Policy in Communications (FRPC)

24 July 2020

M.L. Auer
Executive Director

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Executive summary

This proceeding addressed the paper-billing practices of broadcasting and telecommunications companies. The *Broadcasting Act* and *Telecommunications Act* currently require that paper bills be provided without charge – but do not explicitly state that subscribers must be able to receive paper bills if they wish. The CRTC asked whether subscribers should have this choice.

The Forum for Research and Policy in Communications (FRPC) filed comments with the CRTC in this proceeding on 3 July 2020 and subsequently received the CRTC's permission to amend several paragraphs of its comments on 21 July 2020.

This reply addresses the evidence and arguments submitted by the 78 other interveners in the proceeding.

The Forum argued that while some may neither need nor want paper bills today, many individuals and certain groups of Canadians still either need or want this billing format. All but one of five dozen interventions from individuals opposed electronic-only billing.

The broadcasting companies that intervened generally oppose regulatory intervention, on the basis that 'vulnerable' subscribers can currently receive paper bills and that the paper-billing option constitutes a competitive advantage. None committed to provide paper bills in the future, leaving it open to question whether their subscribers will continue to be able to receive their bills in the format of their choice.

Requiring nearly all subscribers – but for a very small number able to justify to BDUs' satisfaction their need for paper billing – in the short- to medium-term to switch to electronic billing effectively constitutes a subsidy from subscribers to a very small number of BDUs. Subscribers will have to absorb the costs of Internet service along with computer and printing equipment and supplies, so that BDUs can reduce their costs.

The Forum maintains that the public interest requires that subscribers should always be able to choose to receive broadcast companies' invoices in print (and without charge), and without having to disclose their private reasons for doing so.

I. Introduction

1 This proceeding asked whether subscribers of broadcasting distribution undertakings (BDU) and telecommunications companies in Canada should be able to receive invoices from these undertakings in the format that best suits the individual subscriber.

2 Seventy-nine individuals, companies and organizations made submissions in the proceeding, including the Forum for Research and Policy in Communications (FRPC).[1]

II. Reply to other interveners

3 The Forum's reply addresses the submissions of other interveners in the context of the CRTC's four questions, and solely with respect to the broadcasting distribution sector.

A. Who needs to continue to receive paper bills?

4 The Forum provided evidence of and argued that some Canadians – particularly older or less well-educated people – are unfamiliar with today's technology, and fear (among other things) that they will be unable to defend themselves against phishing attacks, malware, botnets, identity theft, and online scams. The Forum also provided evidence of, and argued that concerns about, potential breaches of privacy and theft of personal information are well-founded.

5 BDUs raised a number of arguments that are summarized below.

1. The 'Most people have Internet and a printer' argument

6 Quebecor (intervention 99) argues that the majority of Canadians – 89% of all Canadian households, 74% of those over 65 years of age – are competent enough to navigate the Internet and to receive and review their bills online (paragraph 21). Similarly Telus (intervention 94, paragraphs 21 to 28) provides a wealth of data suggesting that many Canadians, including seniors, have access to and use the Internet.

7 Bell argues that "being able to access a bill at any time, via an online platform is generally more convenient for customer" (paragraph 5), while Shaw (intervention 97, paragraph 26) argues that electronic bills are "impossible to lose".

8 The general argument that anyone can access their bills online any time not only ignores the fact that Internet systems, computers and their hard drives and printers all fail from time to time. It also ignores the fact that significant percentages (using the obverse of Quebecor's data) of households in general and Canadians over 65 years of age do not have Internet.[2] This argument also ignores statistics published by the CRTC showing that Internet access is low in certain parts of Canada: in 2018 even 5 Mbps service was

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1 Please note that the Forum's

2 Using Quebecor's figures about the majority of Canadians to estimate the minority of Canadians.

unavailable to 50.3% of households in Nunavut and to more than 9% of households in Newfoundland and Labrador.[3]

9 The 'most people have it' argument also ignores the fact that, as FADOQ (Intervention 78, page 3) pointed out, the average monthly cost of Internet is $80.31 – $963/year. Based on FADOQ's evidence, for the 35% of people aged 65 years or more in Quebec who have an annual income of less than $20,000 the cost of acquiring monthly Internet service – not a computer and printer – would amount to 4.8% of their annual income, a significant amount just to receive a bill formerly delivered free of charge by mail. The Forum noted Telus' initiative to provide more than 10,000 "free mobile devices to help isolated seniors, hospitalized patients and vulnerable Canadians stay connected" (paragraph 28) – and while such charitable activity is admirable, it remains unclear whether the internet connection required for these devices was also provided free of charge. Hoping that Canadians might benefit from charitable works to obtain the internet service and computer equipment needed to replace free paper bills will not ensure that all Canadians are able to choose the format that best suits their needs.

10 Arguing that most people can access and print e-bills does not explain how those who cannot afford monthly Internet charges along with the costs of acquiring a computer (and possibly a printer) are to cope. Expecting such subscribers to visit local libraries every month in the hope of being able to access computers there is the opposite of convenience. It is also difficult to understand how a requirement to provide paper billing to a segment of all BDU subscribers will in any way stifle innovation to serve the remaining BDU subscribers online: simply asserting that regulation stifles innovation does not constitute evidence of stifling – particularly when at the same time BDUs describe the innovative steps they have already taken.[4]

11 In reality the current absence of any requirement to give subscribers choice over billing format clearly enables BDUs to reduce costs by eliminating paper billing, and to raise profits. Eastlink confirms this, by acknowledging that "customers who prefer to pay their bill in person … can print the PDF bill …." (paragraph 12) and that "encouraging customers to use paper billing" enables Eastlink to reduce its "use of paper by tens of millions of sheets annually" (paragraph 12).

12 The Forum's position is that people who cannot afford Internet and computer equipment and people who do not want to use the Internet should not have to buy goods and services they cannot afford or use goods and services they do not want so that BDUs can save money by eliminating the option of paper bills. Eliminating the

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[3] CRTC *2019 Communications Monitoring Report*, Table 9 .2 ("Broadband service availability, by speed and province/territory (% of households), 2018").

[4] Rogers, intervention 93, at 5:

> Rogers has invested significantly in improving our digital experience in order to improve our customers' ability to self-serve their accounts without the need to contact our customer care agents for support or explanation. …

choice of paper bills eliminates convenience, and constitutes a subsidy from BDU subscribers to BDUs.

2. The 'Some people don't like change' argument

13 Rogers (intervention 93, paragraph 14) says that "there remain some consumers who are resistant to a change to online billing", and says this is because "of their level of comfort with digital tools or a desire to take their mailed paper bill … to a physical location to pay it." The evidentiary basis for this claim is unclear, because as the Canadian National Institute of the Blind Foundation (CNIB) (Intervention 56) pointed out (page 1), "no conversations have occurred between communication service providers" – which includes BDUs – "and persons with disabilities to understand their specific needs with respect to billing".

14 The Forum notes that some households do not have, do not want and/or cannot afford monthly Internet subscriptions and computer equipment. Disparaging those who do not want to switch from paper to electronic billing by suggesting these households simply do not care to change does little to advance the discussion of this policy issue, particularly when BDUs like Rogers gain a financial benefit by eliminating subscribers' choice over billing format: it reduces its expenses by eliminating paper and printing costs, and it may also gain new Internet subscribers. Suggesting that people 'simply do not want change' also ignores the fact that for some – including those in accessibility communities – this change removes their choice and in turn, some of their independence (CNIB, intervention 56, page 2).

15 The Forum's position is that BDUs should not be permitted to reduce subscribers' billing-format choice by requiring those subscribers to accept change imposed on them by their BDU.

3. The '"Vulnerable' subscribers are protected' argument

16 Bell (intervention 85, paragraph 1) notes that the CRTC's current "… policy ensures that the rights of vulnerable Canadians are protected ….", and adds that any regulatory intervention "should be focused on vulnerable Canadians" (paragraph 2). Rogers makes the same point (intervention 93, paragraph 18), while limiting its commitment to "customers with disabilities"; similarly, Shaw (intervention 97, paragraph 2) says that responding to "the unique needs and demands of people with disabilities" is "very important to Shaw". The Forum does not agree that people who are deaf, hard of hearing, blind or have difficulties seeing are "vulnerable", or that they have 'unique demands': they are Canadians who have the right to be treated equally. In our view it is both incorrect and insulting to say that people with disabilities who seek to rely on their legal rights are making 'demands'.

17 Eastlink (intervention 83, paragraph 16) confirms that it makes decisions to provide paper billing case by case; apparently it requires customers to justify their request for

paper bills.[5] It is unclear whether a philosophical justification – 'I do not want to use the Internet or computers' – would suffice.

18 This 'just explain and ask' argument ignores the fact that it requires Canadians to disclose aspects of their life that they prefer or may prefer not to disclose to strangers working for BDUs: their physical, financial and/or philosophical position(s).

19 The Forum's position is that Canadians should not have to give up their right to privacy so that BDUs can save money.

4. The 'Slow and lost mail' argument

20 Telus (intervention 94, paragraph 33) argues that electronic billing is "less susceptible to unforeseen external events". It suggests that mailed paper bills can be delayed or lost due to weather, strikes, "paper production slowdown" or lost mail.

21 Telus did not offer any evidence describing the scale of this problem, and it is unclear if it is more widespread than, for instance, Internet disruptions or the theft of personal information through the Internet. Nor did Telus speculate about the degree to which BDU subscribers might – in the absence of their monthly bills – call their service provider to inquire about their missing or delayed bills, which one assume would remain an option.

22 The Forum's position is that people who cannot afford Internet and computer equipment and people who do not want to use the Internet should not have to buy goods and services they cannot afford or use goods and services they do not want so that BDUs can save money by eliminating the option of paper bills. Eliminating the choice of paper bills also eliminates convenience.

23 The Forum's position is that Canadians should not have to give up the convenience of paper bills so that BDUs can save money.

5. The 'Self-management' argument

24 Eastlink (Intervention 83) says that "consumers have increasingly sought tools that allow them to access and manage their accounts online" and that "consumers have embraced online customer portals" (paragraph 5), but the evidence it offers to substantiate these

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[5] Paragraph 16:
Eastlink continues to provide paper billing at no charge to those *customers who request to receive their bill in paper format due to accessibility or other needs*. We have not defined any specific criteria or limits to be applied to such requests in order to provide our customer service representatives with maximum flexibility to find the best solution for each customer based on their individual needs. For example, *if a customer indicates that they are not able to navigate, download or print electronic bills*, we will provide paper billing to that customer. Similarly, *any customer who self-identifies as needing paper billing for accessibility reasons* will be provided with paper billing.
[italics added]

statements actually refers to Canadians' subscriptions to online services, or to its own experience. Subscription levels do not prove that Canadians prefer electronic billing over paper billing; well-designed and current survey research of a large random sample of the Canadian population would help to establish what Canadians prefer in terms of BDU billing format but no BDU submitted that research in this proceeding even though, given its evident financial importance, one might have expected them to do so.

25 The Forum notes that more than 10% of Eastlink's customers "chose to receive their bill" non-electronically (paragraph 6), suggesting if nothing else that desire for electronic billing is not unanimous. The fact that younger generations have grown up using online platforms as Eastlink notes (paragraph 22), does not mean that the desire for paper bills among older generations, or even by some of those younger generations, should be dismissed. A benefit (or disadvantage) of aging is that time provides opportunities for experience, including the experience of learning the need to monitor and track household expenses over time to ensure that invoices are correct and that payments are made in a timely manner: Jim Hamilton (intervention 75) wrote, for example, that he keeps records of all the bills he receives.

26 Quebecor (intervention 99) argues that its online-billing only service, Fizz, was created for subscribers aged 18 to 35 years of age who want an entirely digital experience, and that fully-digital service constitutes a competitive (differentiating) factor except for clients with accessibility needs (paragraph 10). Quebecor does not, however, provide any evidence showing that subscribers to its digital services oppose having the option of paper bills.

27 The Forum submits that eliminating paper billing will demand that all BDU subscribers to learn how to manage their accounts online and that this will eliminate choice in this sector. It is also likely, we believe, that the mistakes that subscribers make in self-managing their BDU accounts online will be to the benefit of the BDUs that may decide due to deregulation to levy fees for late payment, disconnection and reconnection.

28 The Forum's position is that Canadians should not have to learn to manage their monthly BDU subscriptions online so that BDUs can save money.

6. The 'Environmental protection' argument

29 Bell argues that "producing bills electronically lessens the environmental impact of both wasted paper and unnecessary mail deliveries (paragraph 5). Quebecor (intervention 99) also argues that BDUs want to protect the environment by reducing paper billing (paragraphs 17-20), and it offered evidence showing (among other things) that its book division prints on 100% recycled paper (paragraph 19). It argues that there is real demand for e-billing by Canadian consumers who are sensitive to environmental problems (paragraph 23). Telus describes how it reduced its paper and packaging consumption by 36% in 2019 (intervention 94, paragraph 14) and has planted nearly one hundred thousand trees (paragraph 15).

30 Bell did not provide evidence to support its argument, and Quebecor did not provide evidence about its BDUs' use of paper. While Quebecor noted (paragraph 32) that reducing paper consumption would reduce energy use, it did not address the new energy consumption resulting from subscribers acquiring and using computer equipment to manage and pay their bills online.

31 The Forum submits that in this proceeding, environmental-protection arguments that eliminating paper 'saves' the environment ignore more complicated consequences: specifically, in the case of paper manufacturing and mail delivery, the impact of lost jobs and income. We are not arguing that the environment should not be protected so that jobs and income may be preserved – we are simply pointing out that simplistic arguments tend to obscure complex and often unanticipated outcomes.

32 The Forum's position is that Canadians and the economy should not lose jobs and income so that BDUs can save money by eliminating all paper bills.

7. The 'Everyone else' is doing it argument

33 Quebecor (intervention 99) notes that the banking sector is moving to e-billing (paragraph 23), and that the Covid-19 pandemic has required many economic, social and governmental actors to operate at a distance, including the courts (paragraph 24). Quebecor fails to mention that world-wide or Canadian-wide crises such as the Covid-19 global pandemic are rare, the last apparently occurring in the early 20th century (the Spanish Influenza) before BDUs had been invented. It also does not explain why paper bills are not just as appropriate for those seeking to physically distance themselves from its offices: subscribers who receive a printed bill may then mail their payment back to BDUs.

34 Quebecor also fails to mention that negative-option marketing – requiring customers to accept services without obtaining their prior consent – is effectively prohibited in the financial sector by the *Negative Option Billing Regulations*, SOR/2012-23, section 3:

> 3 (1) Before providing a person with a new primary financial or optional product or service, an institution must first obtain the person's express consent to do so, either orally or in writing.
>
> (2) If the consent is provided orally, the institution must provide the person with confirmation in writing of their express consent for the new product or service.
>
> (3) The use by the person of the new product or service, or any product or service related to the new product or service, does not constitute express consent for the purpose of subsection (1).
>
> (4) Any communication from an institution seeking a person's express consent must be made in language, and presented in a manner, that is clear, simple and not misleading.

35 The Forum's position is that those who do not have Internet and computer equipment should not be forced to visit banks in person to pay their bills so that BDUs can save money by eliminating all paper bills.

B. Is CRTC intervention appropriate and warranted?

36 The Forum argued that intervention is warranted with respect to BDU billing practices because voluntary commitments cannot be enforced.

1. The 'No clear evidence that consumers needs not being met' argument

37 Rogers (intervention 93, paragraph 18) argues that regulatory intervention is unjustified because there is no evidence that consumer needs are not being met:

> …absent clear evidence that consumer needs are not being met through the provision of online bills or that reasonable policies are not in place by providers to safeguard vulnerable consumers, there is no justification for the Commission to intervene in this matter. …

38 The Forum notes first that dozens of individuals took the time to file comments in this, a not-especially-widely-publicized, proceeding to state clearly their desire to continue to receive paper bills, and to not be forced to receive bills electronically. If the needs of these interveners were being met, they would not have taken the time to set out their views. Second, neither Rogers nor other BDUs opposing regulatory requirements for paper bills have explained how being forced to accept electronic bills meets the needs of those who do not have, do not want and/or cannot afford the Internet and computer equipment so as to receive such bills.

2. The 'Paper bills are currently available' argument

39 Bell (Intervention 85, paragraphs 1 and 3), Eastlink (intervention 83, paragraph 83) and Sasktel (Intervention 86, paragraphs 5 and 12) say their customers now have access to paper bills. Sasktel adds (paragraph 7) that its customers now have the option of moving to and from electronic and paper billing at any time. Bell says that its policy is to provide a paper bill to customers without charge (paragraphs 3 and 12), without mentioning that such charges are prohibited by law. Neither Bell nor Eastlink commits to maintaining this access, and Bell points out that "… service providers … are not obligated to provide a paper bill" (paragraph 1). Similarly the Canadian Communications Systems Alliance (CCSA, intervention 77) that represents more than 110 companies does not believe that regulatory intervention is required because smaller TSPs and BDUs currently "provide paper bills upon request to their customers."[6]

40 While welcoming the CCSA's members' current practice of providing paper bills upon request, the Forum notes that CCSA has provided very little evidence. It is therefore unclear whether all subscribers of these members are aware that they are able to

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6 CCSA, int. 77, para. 5.

request paper bills. The Forum also notes that as ownership of broadcasting undertakings continues to consolidate, nothing would prevent a new owner of a CCSA member from changing what is now merely practice, rather than a requirement. Third, the problem of exempting smaller BDUs from regulatory requirements for billing-format choice is that no clear mechanism exists to address problems when they arise. Even if the first problem demonstrating the need for re-licensing previously exempted service leads to re-regulation, how will the original complainant's problem that triggered the re-licensing be remedied? Is it reasonable to require the necessity for regulation to be demonstrated by individual Canadians – when Parliament has already enacted a complete regulatory framework for broadcasting in Canada, and delegated responsibility for implementing this framework solely to the CRTC?

41 Shaw (intervention 97, paragraph 16) argues that a customer who wants a paper bill "certainly has a choice of receiving a paper bill from a competing local service provider", although it may have said this in the context of telecommunications rather than the BDU sector. It is not clear, however, that every person in Canada who wants to receive a paper bill can choose between two or more BDUs and that at least one of these BDUs will offer paper billing.

42 The Forum also agrees with Sasktel's statement (paragraph 13) that in the case where some service providers provide paper bills and others do not , "it's one thing for a customer to switch based on customer choice, it's another thing for them to be forced to switch because of lack of choice in the services they need."

43 In general, the Forum's concern is that voluntary decisions to provide paper bills now do not establish any commitment to provide paper bills in the future.[7]

44 The Forum's position is that Parliament's decision to prohibit pay-to-pay fees by statute recognized that voluntary commitments are insufficient because they cannot be enforced. As Parliament's delegate the CRTC should protect BDU subscribers' choice over billing format going forward.

3. The 'If it's good for BDUs, it's good for subscribers' argument

45 Shaw (intervention 97, paragraph 27) says that it has 'transitioned' television subscribers who did not ask to remain paper bills to electronic bills. Shaw notes that this approach has "been effective at [*sic*] reducing our costs and inefficiencies while encouraging customers to try new billing formats."

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[7] Nor, we hasten to add, are we advocating that paper bills be provided for all time. A time may arrive when all Canadian households have Internet service (and computer equipment), and all Canadian households pay their bills online – and it would be absurd at that time to continue to mandate paper billing. Until that time arrives, however, and until Parliament changes the *Broadcasting Act* to establish that it exists to meet BDUs' needs and demands rather than those of subscribers and Canadians, a requirement will exist to meet Canadians' needs and wants for billing format choice.

46 In the past changing the service provided to subscribers and charging them for it without their express consent to those changes was described as a 'negative option'. [8]

47 While the CRTC by the early 1990s permitted BDUs to provide subscribers with new discretionary service as a negative option, it also required clear notice about subscribers' options when it came to billing.

> VIII Cable Carriage Issues
>
> …
>
> 3h) Billing Clarity
>
> The matter of billing clarity respecting the marketing of discretionary services, particularly services marketed through negative option techniques, was the subject of some discussion at the hearing. Discussion centred on the difficulty experienced by many subscribers in comprehending their options with respect to receiving certain discretionary programming services as part of their cable service.
>
> As discussed at the hearing, the Commission insists that cable operators ensure through appropriate notification procedures that their subscribers are made aware of all service options available to them, the costs of each service or segment of service, and the actions that they must take to make their choices known to the cable operator.
>
> The Commission, therefore, requires that cable licensees clearly identify, in plain and easily-understood language, those services that are part of the basic service and those that are discretionary services, the fee for each service or package of services, and the actions a subscriber need take to subscribe to or discontinue the services. This information should be provided to all subscribers, once yearly, at a minimum, using billing inserts or appropriate notification practices. For those subscribers who pay for their subscriptions through automatic bank withdrawals, or in advance, the Commission expects operators to establish appropriate notification practices to inform subscribers of their options. In providing this information, cable operators should avoid the use of marketing terms such as "Full Cable Service", "Extended Basic Service" and "Extended Basic Tier", as such terms are easily confused with the basic service, and may leave subscribers unaware that these are discretionary services that they need not take.
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> In this regard, the Commission has reviewed the CCTA's "Guidelines Respecting the Marketing of the Extended Tier". It notes that this document, in describing

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[8] "Rogers Cable Apologizes", *The Canadian Encyclopedia*, https://www.thecanadianencyclopedia.ca/en/article/rogers-cable-apologizes:

> …
>
> … The complaints focused on the industry's so-called negative option marketing: viewers, after receiving the new channels free for several weeks, would be billed automatically for the additional services, unless they opted to cancel. ….

> subscriber notice requirements, uses such wording as "suggested" or "should". The Commission expects the CCTA to revise this and similar guidelines by removing such voluntary wording and by replacing such terms with imperative terminology, such as "must" or "required", to ensure that cable subscribers are clearly informed of all options available to them. Moreover, the Commission considers it appropriate that the CCTA, on behalf of the cable industry, incorporate the revised guidelines into its existing Customer Service Standards, and submit the proposed revisions to the same public process and procedures as for the CCTA access guidelines, as discussed earlier.[9]

48 The Forum's position is that Canadians should have choice over billing format, and that this choice should not be removed at the discretion of BDUs for whom these changes are not just a way to 'try new billing formats', but a way to spend less money and thereby increase their profits. BDU subscribers should have the right to choose the billing format that suits their needs.

4. The 'Competitive advantage' argument

49 Quebecor (intervention 99, paragraph 26) and Sasktel (intervention 86, paragraph 12) argue that it is inappropriate for the CRTC to intervene in paper-billing practices because billing format constitutes a competitive advantage for consumers to choose so as to best respond to their communications needs. Quebecor also says (paragraph 4) that it operates a legacy platform for traditional services and a digital-only platform for its newer services, Fizz and Helix ,and confirms that subscribers to its newer services can only receive their bills electronically.[10] While Quebecor suggests that the majority of its subscribers welcome this type of billing (paragraph 7), it has not surveyed its customers and bases its arguments on a low level of complaints about online-only billing.

50 Bell says (paragraph 1) that the CRTC's current approach of not requiring bill format choice affords "communications service provider the competitive flexibility to offer billing in their preferred format." (It is unclear from Bell's text whether it is referring to the preferred format of communications service providers or subscribers.)

51 Two things are missing from these competitive advantage arguments: Parliament's concerns and evidence about weight.

52 Those arguing that billing-format choice is a matter of competitive advantage ignore the fact that in the *Broadcasting Act* Parliament does not direct the CRTC to address BDUs' competitive advantages, but does say that BDUs should deliver programming to subscribers "at affordable rates".[11] The Forum's position is that requiring BDU

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9 Structural Public Hearing, Public Notice CRTC 1993-74 (Ottawa, 3 June 1993), https://crtc.gc.ca/eng/archive/1993/PB93-74.htm?_ga=2.174223969.273528805.1595374772-1211976415.1582553073.

10 Quebecor, intervention 99, paragraph 5: "… Pour ce qui est de la nouvelle plateforme numérique, la facture est produite uniquement en format électronique."

11 S. 3(1)(t)(ii).

subscribers to subscribe to and access the Internet to pay for the delivery of programming makes BDU service less affordable. And although Parliament's regulatory policy for broadcasting says that regulation "should"[12] be "sensitive" to the administrative burden that regulation may impose on broadcasting undertakings, the policy merely requires awareness ('be sensitive') and does not in any event override the importance of affordability set out in Canada's broadcasting policy.[13]

53 The second element that is missing from submissions arguing that billing format represents a competitive advantage is any evidence of weight. The submissions provide no evidence to show that BDUs' decisions to provide or not provide paper billing are more or less important to current or potential BDU subscribers than the price of that service. If price is actually a BDU's key competitive advantage, billing format is not and is therefore unlikely to make a difference to subscribers except when they are denied choice - a fact they may only realize after several months of bills.

54 The Forum's position is that construing the offer of paper billing as a competitive advantage effectively makes BDUs' financial performance more important than subscriber choice.

5. The 'Competition will take care of billing format choice' argument

55 The Canadian Network Operators of Canada (CNOC, Intervention 81) argues that the CRTC should "rely upon competition and market forces to address any issues with certain Canadians not receiving their bill in their preferred format" (paragraph 3).

56 The Forum notes first, that CNOC has not provided any evidence proving that Canada's BDU sector is sufficiently competitive to ensure that market forces either respond to or will respond to BDU subscribers' requests. In fact, as the Forum's original submission pointed out, it was the fact that market forces had failed to answer Canadians' desire to receive paper bills free of charge that led Parliament to prohibit pay-to-pay practices in the first place. Market forces do not work as theorized in the broadcast distribution sector because, as the CRTC is aware from its 2019 *Monitoring Report*, the seven largest BDUs serve 97% of all BDU subscribers, and also took in 97% of revenues: BCE and Shaw served 48% of all subscribers and took in 51% of all revenues.[14] Arguments that the main companies operating in this oligopolistic sector will respond to their subscribers' requests ignore reality.

57 Second, while CNOC argues that "a natural competitive incentive to offer paper billing" (paragraph 3) will be created by consumer demand, that 'natural competitive incentive' was absent when Parliament prohibited pay-to-pay billing practices and CNOC has not

12 Use of the conditional tense implies a level of discretion on the part of the CRTC.

13 S. 5(3): "The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2)."

14 CRTC, *2019 Communications Monitoring Report*, Infographic 7.4 ("Overview of industry characteristics").

provided any evidence showing that this "natural competitive incentive" now exists or that it will exist at some point n the future. CNOC's opinion about natural competitive incentives should not be accepted as evidence, as CNOC has not provided any evidentiary support for that opinion. Moreover, its solution of "greater levels of competition" (paragraph 4) was made solely in the context of the telecommunications sector.

58 The Forum's position is that while the absence of CRTC intervention will allow any BDU to eliminate paper billing, a standardized approach on billing format for all BDUs would ensure that all BDU subscribers may choose the method of being invoiced that best serves their needs.

6. The 'Regulation limits BDUs' argument

59 Sasktel (intervention 86, paragraph 12) says that it offers its subscribers billing-choice format and that 'legislating' its decision to offer this choice would be detrimental to its business.

60 The Forum's position is that the CRTC should address billing-format choice to serve the public interest, not to benefit BDUs' businesses.

7. The 'Regulation stifles innovation' argument

61 Rogers (intervention 93, paragraph 17) argues (though possibly in the context of telecommunications) that "efforts to transition consumers to online billing through improved online service should be viewed as an innovation", and therefore presumably desirable. Shaw (intervention 97, paragraph 20) then argues that mandating paper bills stifles innovation in billing practices, although its comments may be focused on telecommunications rather than broadcasting. Sasktel (intervention 86, paragraph 9) begins by arguing that further regulating billing format "may stifle innovation" by "engraining" paper billing for "certain segments of customers", but goes on to say (paragraph 15) that this stifling is 'inevitable'. It says (paragraph 10) that the CRTC need "look no further than the wild success of over-the-top service providers whose online portals provide instant customer choice and, by-in-large [*sic*], bill for service online by billing directly to a credit card." It says this "is innovation that has attracted millions upon millions of consumers".

62 Sasktel offers no evidence to support its inevitable-stifling-of-innovation argument. This argument also contradicts the previous argument that billing format is a competitive advantage: clearly if some subscribers receive paper bills and are 'engrained' into wanting to continue to receive paper bills because they have been receiving paper bills, billing format is not a competitive advantage but a preference.

63 The Forum does not dispute the fact that many Canadian households subscribe to Internet-delivered streaming services – but notes that some households also do not subscribe to such services, and do not subscribe to the Internet. The Forum also notes

that those who subscribe to over-the-top Internet-based programming services may be subscribing because of programming content, not because of billing by credit card.

64 Neither Shaw nor Sasktel has provided any evidence that requiring BDUs to provide subscribers with billing-format choice stifles innovation: BDUs are always free to innovate billing systems for those subscribers who do not want paper bills. They are free to – and should – regularly describe the billing format options available to subscribers.

65 In any event, while Parliament's policy for Canada clearly encourages the broadcasting system's adaptability to technological change,[15] its concern in the specific case of BDUs is for the efficient delivery of programming[16] – not the efficiency of BDUs' billing systems or BDUs' desire to pursue innovative new billing systems.

66 The Forum's position is that requiring BDUs to provide their subscribers with choice over billing format does not in any way prevent BDUs from innovating with respect to programming delivery, or any other aspect of their business.

C. What measures, if any, should CRTC impose on BDUs with respect to their billing practices?

67 We begin by again noting that while the Forum's preference would be for the CRTC to set regulations prohibiting the termination of all paper billing by broadcasters (including BDUs), it is unfortunately not entirely clear whether the CRTC has this authority. Eastlink (Intervention 83, paragraph 4) argued that the CRTC is able to limit a requirement for "paper billing to those consumers who are unable to use electronic billing for accessibility or other reasons (e.g., lack of Internet access)" on the basis of paragraph 5(2)(g) of the regulatory policy in the *Broadcasting Act*. While this section requires the CRTC to be "sensitive" to the administrative burden imposed by regulation on broadcasting undertakings, Eastlink has not explained whether billing format constitutes a matter of administration, and has not provided any evidence establishing that paper billing represents an administrative burden.

68 It is tempting to try to estimate paper billing costs so as to quantify the option of paper billing as an administrative expense. But such estimates would have to take into account not just the total expense for BDUs to issue paper bills but their actual expense, net of any benefits obtained under Canada's *Income Tax Act* – the latter permits many businesses to deduct a range of expenditures from their income and to thereby reduce the taxes they ultimately pay. Basing a decision about paper billing on total (estimated) paper costs instead of net costs (after tax benefits) would overestimate the cost of paper billing.

[15] S. 3(1)(d)(iv).
[16] S. 3(1)(t)(ii).

69 Generally, however, BDUs simply argued against the imposition of any new measures on their businesses.

70 The alternative proposed in our 3 July 2020 comment was for the *Television Service Provider Code* to be amended to clarify that BDU subscribers may choose how they are billed:

> I.1 (a) A television service provider (TVSP) must communicate with a consumer using plain language.
> *(b) A TVSP must provide the first bill it sends to the customer by mail.*
> *(c) A TVSP must continue to provide the customer with printed and mailed bills until the customer asks the TVSP to be billed electronically.*
> *(d) A customer who or that has asked to be billed electronically may at any time ask for bills to be sent by mail, and the TVSP must resume sending bills by mail without imposing any additional charges or fees.*
> *(e) A TVSP who is asked by a customer for printed copies of previous bills shall provide such copies and may charge a reasonable fee for this service.*
> (Italics: proposed change)

D. To whom and how should new measures apply?

71 CNOC (intervention 81) argues that "a certain level of competition" is required, but does not specify how that level should be measured, or whether it has been met in broadcasting. Hence, CNOC's statement that "it may be appropriate for a paper billing obligation to be imposed on the three national wireless carriers, namely Bell Mobility, Rogers Wireless and Telus" (paragraph 4) should not be accepted as applying to the broadcasting sector (with the relevant incumbent BDUs' names changed), as there is no evidence to support it.

72 CNOC also argues that while the Governor in Council has not issued a policy direction to the CRTC about the approach it should take to regulating broadcasting – as it has done with respect to telecommunications – "there is no reason for regulatory asymmetry" (paragraph 5). As neither the *Broadcasting Act*, the *Telecommunications Act* nor the *Canadian Radio-television and Telecommunications Act* set out any requirements for regulatory symmetry or asymmetry, it is difficult to understand the legal foundation for the CRTC to simply apply requirements it sets for telecommunications carriers, to broadcasting undertakings. It is obviously open to the Governor in Council to issue a direction to the CRTC under the *Broadcasting Act*, rather than requiring the CRTC to assume it was the GIC's intention that the CRTC apply a telecommunications *Direction* to the broadcasting sector.

73 Eastlink (Intervention 83) argues that because subscribers of Eastlink and unidentified "other providers" are able to obtain paper billing, "there is no evidence of a market failure that would warrant Commission intervention" (paragraph 3). Eastlink's

submission does not provide sufficient information for it to constitute substantive evidence: for example, Eastlink does not disclose how many providers provide paper billing and how many do not, nor does it state how many subscribers are affected by these providers' decisions. More fundamentally, of course, Eastlink provides no evidence one way or another about the degree to which there is or is not 'market failure' sufficient to warrant CRTC involvement in BDU billing practices.

74 Bell (Intervention 85, paragraphs 2 and 8) and Eastlink (paragraphs 4 and 21) argue that if the CRTC believes regulatory intervention is required, that intervention should be limited to "vulnerable" Canadians, essentially those without personal or home Internet, persons with disabilities and those over 65 years of age. Neither provided any evidence for its argument that any requirement for paper billing "should be limited to providing paper billing to those consumers who are unable to use electronic billing for accessibility or other reasons" (Eastlink paragraphs 4 and 21; Bell, paragraph 8). Eastlink has not provided any argument or evidence to explain why subscribers must justify their reasons for wanting paper bills over any other format.

75 CCSA (intervention 77) argues that if regulatory intervention is required, smaller BDUs should be exempted from regulation. Sasktel (intervention 86, paragraph 13), on the other hand, says that any regulatory intervention should apply "equally and fairly to all service providers" to maintain competitive balance.

76 The Forum maintains that to maintain meaningful choice and individuals' right to privacy, all BDU subscribers should receive paper bills until they decide they would prefer to receive their bills electronically. We also submit that for privacy reasons, no subscriber should have to justify their reasons for wanting paper billing to their service providers: that they lack money to buy a computer, a printer, ink or paper; or to subscribe to the Internet; or that they cannot understand how to use the Internet or online banking systems, or that that they are in some way physically prevented from using online services, or that they simply do not trust the BDU. BDU subscribers should not have to breach their own privacy rights.

77 Eastlink submits that "any new paper billing requirement must be applied to all service providers in a technology neutral manner, including non-facilities-based providers and all over the top providers of video services like Netflix, Apple, and Crave" (paragraph 23). The company has not explained how the CRTC should require paper bills from programming services that are now exempted from regulation, however. Even if the CRTC were to rescind the Digital Media exemption order, it would still be prohibited by the *Direction to the CRTC (Ineligibility of Non-Canadians)*, SOR/97-192 from licensing non-Canadian services such as Netflix and Apple. The counter-intuitive result of lifting the DMEO would be to place regulated online Canadian programming services at a disadvantage vis-à-vis online foreign programming services that would be free to use any billing system they wish.

78 Insofar as BDUs are concerned, the Forum submits that any new requirements – whether made through amendments to the TVSP Code or otherwise – should apply to all BDUs, including exempted BDUs. This was the CRTC's approach in 2009 when it considered accessibility issues:

> The Commission considers that alternative format obligations apply to each customer, rather than to each household. Each qualifying customer who requests to receive information to which the obligations apply in an alternative format should be provided with such information in that format, even if another person in the same household has received the same information in a different format. [17]

79 Imposing requirements for paper billing on some, but not all, BDUs means that some BDU subscribers may lose their choice of billing format. This would effectively implement the 'competitive advantage' argument set out above (part II (B) (4)) which the Forum criticized as lacking evidentiary support.

III. Conclusions

80 Overall BDUs argued that electronic bills offer advantages in comparison to paper bills. They say that compared to paper bills, electronic bills

- Are more convenient
- Can be accessed from anywhere on the planet
- Stimulate innovation in the design of BDUs' billing systems
- Encourage BDU subscribers to adapt to new technology, and
- Save BDUs money.[18]

81 The Forum does not dispute that electronic bills offer advantages. We note, however, that paper bills also offer advantages:

- Free
- Do not require Internet subscription
- Available when the Internet is not working
- Do not require computer or mobile telephone
- Available when computers have crashed
- Available when printer is out of paper or ink or has crashed
- Do not require printer, paper or ink
- Easier to review, and
- Familiarity to those accustomed to paper bills.

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[17] *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy 2009-430 (Ottawa, 21 July 2009), https://crtc.gc.ca/eng/archive/2009/2009-430.htm#b11, at para. 59.
[18] Shaw, intervention 97, paragraph 35.

82 At its core, however, the issue of billing format in the broadcasting sector comes down to questions of fairness, choice, privacy rights and cost.

83 The Forum's position is that in broadcasting fairness requires that BDU subscribers have choice when it comes to billing format, that BDU subscribers should not have to justify their choice of billing format, and that the financial and other costs of billing formats should remain with those whose business it is to provide BDU service.

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