



24 February 2023

Filed online

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Call for comments on an application by Bell Canada, Cogeco Communications Inc., Bragg Communications Incorporated, carrying on business as Eastlink, and Saskatchewan Telecommunications regarding the increase of the maximum retail price of the basic service, [Broadcasting Notice of Consultation CRTC 2022-267](#) (Ottawa, 28 September 2022), [2022-267-1](#) (Ottawa, 27 October 2022), [2022-267-2](#) (Ottawa, 17 November 2022) and [2022-267-3](#) (Ottawa, 20 February 2023)*

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including telecommunications. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament in the 1991 *Broadcasting Act*.

The Forum's comments on the new information published by the CRTC in the above-noted proceeding are attached.

We look forward to reviewing other parties' interventions and may reply to these at the appropriate time. Should the CRTC decide to hold a public hearing in this matter the Forum respectfully asks to participate in this process in person.

Regards,

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Nothing ventured, \$330,000,000 (or possibly \$54,565,488?) not gained

**Canada's largest television service distributors want
the CRTC to raise Canadians' costs now and going
forward, but after more than a year, the only
evidence available to the public is unreliable and
therefore immaterial to this proceeding**

*Call for comments on an application by Bell Canada, Cogeco
Communications Inc., Bragg Communications Incorporated, carrying on
business as Eastlink, and Saskatchewan Telecommunications regarding the
increase of the maximum retail price of the basic service,*

[BNoC 2022-267](#) (Ottawa, 28 September 2022)

[BNoC 2022-267-1](#) (Ottawa, 27 October 2022)

[BNoC 2022-267-2](#) (Ottawa, 17 November 2022), and

[BNoC 2022-267-3](#) (Ottawa, 20 February 2023)

Forum for Research and Policy in Communications (FRPC)

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Executive Summary

- ES 1** On 20 February 2023 the CRTC asked for comments about new evidence submitted by the eight BDU parties involved in Broadcasting Notice of Consultation 2022-267.
- ES 2** The 2022-267 proceeding was initiated after Bell, Cogeco, Eastlink and Sasktel applied in January 2022 for permission to raise the rate they may now charge for the basic service. The applicants also asked that the CRTC grant yearly increases based on the rate of inflation and proposed that these increases be granted to all other television distribution services in Canada.
- ES 3** In other words, the BDUs are asking the CRTC to amend section 17.1 of the *BDU Regulations*. It states that “[e]xcept as otherwise provided under a condition of its licence, a licensee shall not charge a customer more than \$25 per month for the distribution of its basic service.”
- ES 4** At the end of September 2022 the CRTC made Québecor, Rogers, Shaw and Telus parties to the January 2022 application and invited public comment on the application. The intervention deadline was initially 28 October 2022; on 27 October 2022 it was extended to 28 November 2022. (This enabled FRPC to commission a survey of Canadians about the applicants’ proposal.)
- ES 5** BNoC 2022-267-3 now asks for comments about new information requested of the eight BDUs by the CRTC and about the statement in the notice that “the parties collectively submitted that a minimum of 1,515,708 subscribers could be subjected to an increase in their monthly bill.”
- ES 6** The BDUs’ replies to the CRTC replicated the latter’s question (the correspondence between the CRTC, its staff and the BDUs was not placed on the public record.) The CRTC did not ask BDUs for the total number of subscribers whom they provide the basic service. It asked instead for “the number of BDU subscribers that [*sic*] could be subjected to an increase of any kind in their monthly bill should the Commission approve the proposed increase to the maximum price of the basic package.”
- ES 7** Of the eight BDUs’ replies to the CRTC, one (Bragg) was wholly redacted. The seven partially redacted replies show that 4 BDUs submitted information about the “small basic service”, one about the “small basic TV package”, one about the “forfait de base” and only one provided information about the “basic service”. It is unclear what the BDUs’ figures describe because the ‘basic package’, ‘small basic service’, ‘small basic TV package’ and ‘forfait de base’ are not terms defined in the *Broadcasting Act*, the *BDU Regulations* or BNoC 2022-267-3, nor has the Commission clarified on the BNoC 2022-267-3 proceeding record that they have identical meanings.

- ES 8** The majority of the evidence in BNoC 2022-267-3 is therefore irrelevant to the 2022-267 proceeding because it provides no information about the impact of the proposed 17.1 rate increase on “**basic service**” subscribers.
- ES 9** FRPC also notes that the ‘collective subscriber figure’ of 1.5 million subscribers was not provided by the BDUs to the CRTC as stated in BNoC 2022-267-3, but appears to have been calculated by the CRTC itself using data provided by the individual BDUs in the proceeding that in turn calculated their separate figures using entirely different concepts.
- ES 10** Even if the CRTC’s collective subscriber figure were valid (and it is not, because like the well-known apples-and-oranges metaphor, the BDUs reported on different types of subscribers), the total yearly revenue generated by a \$3/month increase for that figure would amount to \$54.6 million, which in turn represents 1% of the total operating expenses in 2022 of seven of the BDUs (Sasktel data are not published by the CRTC). If this result were reliable – and for reasons set out in greater detail later in this intervention, it is not – it is unclear why the CRTC would require BDU basic-service subscribers to pay for an amount that even a modest plan to obtain operating efficiencies would easily yield.
- ES 11** FRPC’s review of the very limited evidence available to interveners through BNoC 2022-267-3 has led it conclude that the new information has simply increased the confusion and uncertainty in this proceeding. The information does not provide the CRTC with any basis for concluding that amending section 17.1 to raise the price of BDUs’ basic service by \$3/month achieves the objective of the broadcasting policy for the “delivery of programming at affordable rates”. FRPC notes that under the CRTC’s *Rules of Practice and Procedure*, responsibility for providing this information lay with the applicants.
- ES 12** FRPC therefore recommends that the CRTC
- a. Deny the Part 1 application that initiated the 2022-267 proceeding on the basis of absence of evidence showing that approving the application would implement Parliament’s objective of affordable BDU service;
 - b. In the alternative, suspend the 2022-267 proceeding until BDUs provide the CRTC (and the public) with clear, material and relevant evidence about their proposal’s impact on Parliament’s broadcasting policy;
 - c. Study the concept of a free local basic service;
 - d. Update the *Television Service Provider Code* to define “basic service” and clarify its availability to all BDU subscribers at a regulated rate, and
 - e. Use defined terms consistently in the Commission’s requests for information and determinations (being notices of consultation, regulatory policy, decisions and guidelines).

I. Introduction: 2022-267-3

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including telecommunications. FRPC supports a strong Canadian communications system that serves the public interest as defined by Parliament.
- 2 Broadcasting Notice of Consultation 2022-267-3 (BNoC 2022-267-3) continues the proceeding initiated in early 2022. On 5 January 2022 Bell Canada, Cogeco Communications Inc., Bragg Communications Incorporated (carrying on business as Eastlink) and Saskatchewan Telecommunications asked the CRTC to amend section 17.1 of its *Broadcasting Distribution Regulations (BDU Regulations)* so as to raise the maximum retail monthly price of the basic service from \$25 to \$28. They also asked the CRTC to adjust this price based on the annual Consumer Price Index beginning 1 April 2023 for the period ending on 31 December of the preceding calendar year.¹ FRPC intervened in this proceeding on [28 November 2022](#). The public-participation component of the proceeding ended on 12 December 2022.
- 3 On 20 February 2023 the CRTC published BNoC 2022-267-3. This notice referred to the CRTC’s observation in mid-November 2022 of a “high degree of variability” in the information provided by BDU parties to this proceeding and its conclusion that this variability suggested “differing interpretations of the requested information amongst the parties”.² It mentioned that the CRTC had said in mid-November 2022 that the “percentage of total subscribers listed as ‘basic package subscribers’ varied ... from less than 1% to 100%.”³
- 4 BNoC 2022-267-3 then said that the CRTC had asked BDU parties in the proceeding for more information – specifically, “the number of their subscribers” who would be affected by a CRTC decision approving the BDUs’ application.⁴
- 5 The CRTC went on to say that

[i]n response to this request for information, the parties collectively submitted that a minimum of 1,515,708 subscribers could be subjected to an increase in their monthly bill. The Commission notes, however, that multiple parties indicated that they had not yet ruled out applying

¹ [BNoC 202-267-2](#) (Ottawa, 17 November 2022), at ¶1.

² BNoC 2022-267-3, at ¶4.

³ *Ibid.*

⁴ *Ibid.*, at ¶10.

the increase to other subscriber segments, which could ultimately lead to a greater impact on Canadian BDU subscribers.⁵

FRPC submits that the central issue for the CRTC to determine with respect to BNoC 2022-267-3 is whether the new evidence elicited by the CRTC through its 24 January 2023 request for information establishes that approval of the BDUs' application implements or thwarts Parliament's broadcasting policy.

- 6 Specifically, the CRTC must decide whether the new 2023 evidence shows that granting the January 2022 Part 1 application to increase the "maximum permissible price for the distribution of the basic service as provided for in section 17.1 of the *Broadcasting Distribution Regulations*"⁶ will achieve or fall short of the objective in subsection 3(1)(t)(ii) of the *Act* – that distribution undertakings deliver programming at *Broadcasting Act*, s. 3(1)(t)(ii) affordable rates: 3(1) It is hereby declared as the broadcasting policy for Canada that ...
- 7 Having reviewed the available evidence, FRPC is concerned that the data provided by the BDUs to the CRTC are unreliable, rendering the BDUs' information immaterial to the CRTC's determinations. (t) distribution undertakings ... (ii) should provide efficient delivery of programming at affordable rates

II. Majority of new 2023 evidence is not material to this proceeding

- 8 Quasi-judicial tribunals such as the CRTC must make findings with regard to the evidence, and such evidence must be material to the issue(s) at hand.⁷ As mentioned above, the BNoC 2022-267 proceeding has to do with section 17.1 of the *BDU Regulations*:

⁵ *Ibid.*, at ¶11.

⁶ Bell Canada, Cogeco, Eastlink and Sasktel, *Part 1 Application for a condition of licence with respect to section 17.1 of the Broadcasting Distribution Regulations*, (5 January 2022) at para. 1: "... As detailed in this Application, we request that the maximum permissible price for the distribution of the basic service as provided for in section 17.1 of the Broadcasting Distribution Regulations (the Regulations) be increased to \$28 per month, effective 1 April 2022. ..."

⁷ *Canada (Attorney General) v. Best Buy Canada Ltd.*, [2021 FCA 161 \(CanLII\)](#), at ¶14: "... in order to attract judicial intervention under section 18.1(4)(d), the applicant must satisfy the Court, not only that the Board made a palpably erroneous finding of material fact, but also that the finding was made "without regard to the evidence""

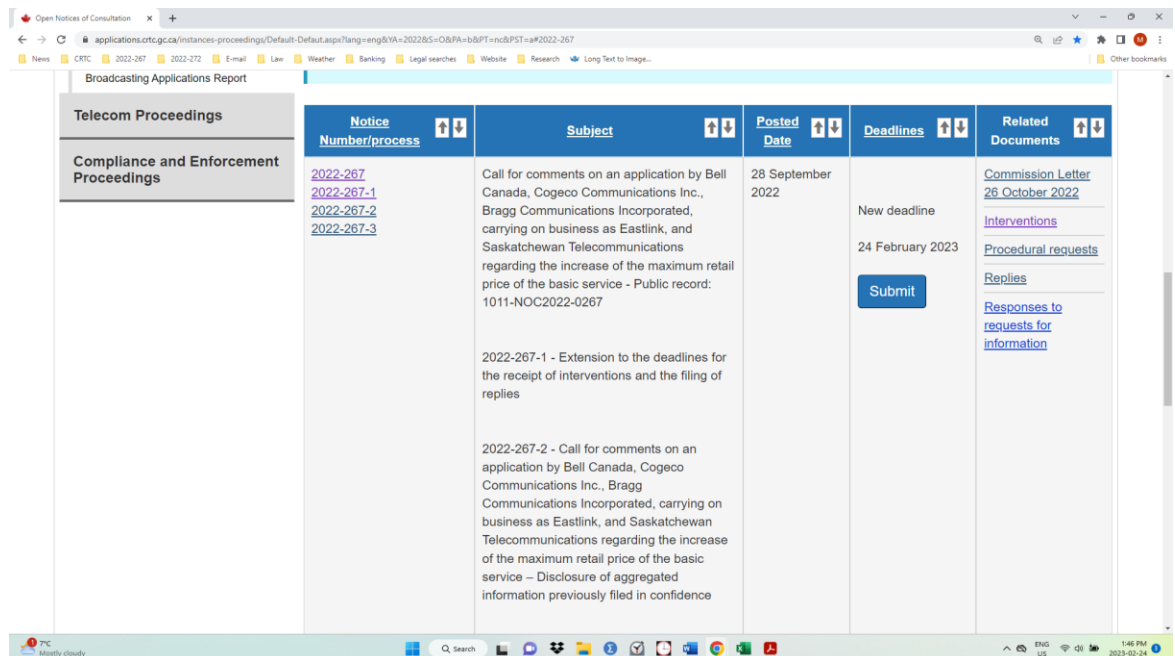
17.1 Except as otherwise provided under a condition of its licence, a licensee shall not charge a customer more than \$25 per month for the distribution of its **basic service**.

9 The CRTC did not, unfortunately, ask the BDU parties in this proceeding for information about the impact of changing section 17.1 on subscribers to the “basic service” – it asked about the impact on subscribers to the “basic package”. Moreover, the CRTC did not ask BDUs for any other information about the subscribers to whom they provide the basic service such as the percentage of those subscribers who subscribe to other services for an additional fee: such evidence could have acted as a informal proxy of their ability to pay higher monthly rates for the basic service.

A. Majority of BDUs provided no evidence about subscribers to the “basic service”

10 As mentioned previously, BNoC 2022-267-3 explained that the Commission (or its staff on behalf of the CRTC) asked the 2022-267 BDU parties for information about subscribers to their “basic package”.

11 FRPC notes that the CRTC’s current practice is to not publish its requests for information from applications on the record of its proceedings. The record of the BNoC 2022-267-3 proceeding, for example, no correspondence from the CRTC on 24 January 2023 appears:



Notice Number/process	Subject	Posted Date	Deadlines	Related Documents
2022-267 2022-267-1 2022-267-2 2022-267-3	Call for comments on an application by Bell Canada, Cogeco Communications Inc., Bragg Communications Incorporated, carrying on business as Eastlink, and Saskatchewan Telecommunications regarding the increase of the maximum retail price of the basic service - Public record: 1011-NOC2022-0267 2022-267-1 - Extension to the deadlines for the receipt of interventions and the filing of replies 2022-267-2 - Call for comments on an application by Bell Canada, Cogeco Communications Inc., Bragg Communications Incorporated, carrying on business as Eastlink, and Saskatchewan Telecommunications regarding the increase of the maximum retail price of the basic service – Disclosure of aggregated information previously filed in confidence	28 September 2022	New deadline 24 February 2023 <input type="button" value="Submit"/>	Commission Letter 26 October 2022 Interventions Procedural requests Replies Responses to requests for information

12 The BDUs that responded to the CRTC’s request repeated the CRTC’s question in their replies, however, and it is set out below:

1. In order to quantify the potential impact on the Canadian broadcasting distribution undertaking (BDU) subscribership, **please indicate the number of BDU subscribers that could be subjected to an increase** of any kind in their monthly bill should the Commission approve the proposed increase **to the maximum price of the basic package**.

13 As noted previously, the BDUs that applied to the CRTC in January 2022 asked the CRTC to amend section 17.1 of the *BDU Regulations* with respect to the rate charged to subscribers for the “basic service”. The *BDU Regulations* define “basic service”.

Broadcasting Distribution Regulations	Règlement sur la distribution de radiodiffusion
<p>basic service means a package of programming services that is distributed by a licensee in a licensed area for a single fee and that consists of</p> <p>(a) in the case of a terrestrial distribution undertaking that distributes programming services on a digital basis, the programming services that are distributed in accordance with section 17 or a condition of its licence;</p> <p>(b) in the case of a terrestrial distribution undertaking that distributes programming services on an analog basis, the programming services that are required to be distributed under section 41 or a condition of its licence, and any other services that are included in the package; and</p> <p>(c) in the case of a DTH distribution undertaking, the programming services that are distributed in accordance with section 46 or a condition of its licence. (service de base)</p>	<p>service de base S’entend d’un bloc de services de programmation distribué par le titulaire, pour un tarif unique, dans la zone de desserte autorisée et composé :</p> <p>a) dans le cas d’une entreprise de distribution terrestre qui distribue des services de programmation par voie numérique, de services de programmation distribués conformément à l’article 17 ou à une condition de sa licence;</p> <p>b) dans le cas d’une entreprise de distribution terrestre qui distribue des services de programmation par voie analogique, de services de programmation distribués conformément à l’article 41 ou à une condition de sa licence, ainsi que de tout autre service inclus dans le bloc;</p> <p>c) dans le cas d’une entreprise de distribution par SRD, de services de programmation distribués conformément à l’article 46 ou à une condition de sa licence. (basic service)</p>

- 14 The CRTC published redacted versions of the BDUs’ answers to its question. The level of redaction granted to Eastlink by the Commission makes it impossible for the public to submit any useful comment about its answer.
- 15 Of the seven BDUs whose answers were partially available, only one – Shaw – provided information about subscribers to the basic service. The other six BDUs provided information about three other types of subscribers: Bell, Cogeco, Sasktel and Telus described subscribers to the “**small basic service**”, Cogeco described subscribers to the “**forfait de base**” [basic package] and Rogers provided data about subscribers to the “**small basic TV package**”.
- 16 Because the CRTC’s request for information asked for information about an undefined term that is not used in section 17.1, the evidence from at least six of the BDUs cannot reliably be used to draw inferences about the impact of granting the Part 1 application on subscribers to the basic service. As a result, the evidence from Bell, Cogeco, Rogers, Sasktel and Telus is not material to the CRTC’s decision to amend section 17.1. If the Eastlink evidence does not describe numbers of subscribers to its basic service, it is also immaterial to the CRTC’s decision.

17 While Shaw’s evidence about subscribers to the basic service appears to be material to the 2022-267 decision in that it may have described subscribers to the basic service, this evidence cannot be used to draw a conclusion about the impact of the decision on all BDUs’ subscribers to basic service. According to the CRTC’s aggregated annual returns summaries for terrestrial BDU services, Shaw’s 1.08 million BDU subscribers represented a little less than 15% of the BDU subscribers served by Bell, Bragg, Cogeco, Québecor, Rogers, Shaw, and Telus:

BDUs	Direct subscribers to basic services ⁸	
Bell	1,917,674	25.9%
Bragg	248,295	3.3%
Cogeco	596,746	8.1%
Québecor	1,129,881	15.2%
Rogers	1,204,556	16.2%
Shaw	1,080,855	14.6%
Telus	1,234,680	16.7%
Total	4,412,687	100.0%

- 18 (FRPC notes that if the data for Sasktel were available, Shaw’s subscribers would decrease as a percentage of the new total, making it even more difficult to argue that its subscriber data might be extrapolated to all BDUs in Canada.)
- 19 FRPC respectfully submits that it would be implausible for the CRTC to conclude that raising the basic-service rate in section 17.1 has no impact on the

⁸ CRTC, 2022 [Aggregated annual returns](#) for BDUs (all BDUs).

affordability of BDU service because the only data concerning BDU subscribers from the five of the seven BDU parties in this proceeding do not actually describe the number of their subscribers to whom the BDUs provide the basic service.

B. The BDU parties did not provide the CRTC with a collective subscriber figure

20 A second issue related to the materiality of evidence involves the provision in BNoC 2022-267-3 of a ‘collective minimum subscriber’ figure. The notice says at paragraph 11 that the eight BDUs in this proceeding had “collectively submitted that a minimum” of 1.5 million subscribers could be subjected to increases in their monthly BDU bills:

In response to this request for information, the **parties collectively submitted that a minimum of 1,515,708 subscribers** could be subjected to an increase in their monthly bill. The Commission notes, however, that multiple parties indicated that they had not yet ruled out applying the increase to other subscriber segments, which could ultimately lead to a greater impact on Canadian BDU subscribers.

21 Yet the unredacted portions of the answers of the eight BDUs do not establish that they ‘collectively’ filed any agreed, specific number of subscribers. Rather, the unredacted portions of the BDUs’ answers instead suggest that the CRTC totalled the information provided by each BDU, possibly based on different measures, and that this total amounted to 1,515,708. If the CRTC in fact totalled the BDUs’ information, the evidence does not indicate the impact of raising the price of basic service: it indicates the numbers of subscribers affected by raising the price of a “small basic service”, a “small basic TV package” and a “forfeit de base”.

22 The ‘collective subscriber figure’ is not material to this proceeding because it has confused apples, oranges and kumquats.

23 Moreover, as the CRTC noted above, “multiple parties indicated that they had not yet ruled out applying the increase to other subscriber segments, which could ultimately lead to a greater impact on Canadian BDU subscribers.”⁹

24 FRPC respectfully submits that the number presented as a ‘collective subscriber figure’ is not material to the 2022-2678 proceeding because it was calculated using data gathered to describe different concepts and because it ignores additional effects for other unidentified subscribers.

⁹ BNoC 2022-267-3, at ¶11.

C. 2022-267-3 evidence contradicted by other public data

25 Even if the information added to the record by BNoC 2022-267-3 described the same group of subscribers (those to whom BDUs provide ‘the basic service’ defined by section 17.1) – and this is not the case – the ‘collective subscriber figure’ published by the CRTC in paragraph 11 contradicts the information provided by BDUs in their BDU Aggregated Returns. In its 2022 BDU Aggregated Return, Québecor alone reported that it had 1,129,881 “abonnés directs au service de base du câble” – or 75% of the collective figure reported by the CRTC at paragraph 11 of 2022-267-3. Bell reported that it had 1,917,674 subscribers to its BDU “basic services” – a quarter more than the ‘collective subscriber figure’ of 1,515,708:

Information about “direct subscribers to basic services” aka “service de base”	
<i>Bell, 2022 (BDU)</i>	
Distribution	
4 Number of direct subscribers to basic services	1,917,674
5 Number of indirect subscribers to basic services	53,565
6 Total number of direct and indirect subscribers to basic services (amount reported on the top of page i)	1,971,239
<i>Cogeco, 2022 (EDR [BDU])</i>	
DISTRIBUTION	
4 Nombre d'abonnés directs au service de base du câble	596746
5 Nombre d'abonnés indirects au service de base du câble	55844
6 Total des abonnés directs et indirects au service de base (nombre reporté en haut de la page i)	652590
Source: CRTC, Aggregate Annual Returns (BDU licensees)	

26 In fact, the seven companies that are parties to the 2022-267 proceeding and whose published aggregated BDU returns are available from the CRTC’s website reported that they had 7,412,687 “direct subscribers to basic services” or to the “service de base” – not the 1,515,708 subscribers set out in the CRTC’s collective figure:

2022 aggregated annual return results	Direct subscribers to basic services
	Nombre d'abonnés directs au service de base du câble
Bell (cable)	1,917,674
Cogeco	596,746
Eastlink	248,295
Québecor	1,129,881
Rogers	1,204,556
Shaw (cable)	1,080,855
Telus	1,234,680
Total, 7 companies	7,412,687

27 The CRTC does not currently make reporting guides for the forms that

its licensees complete available to public. It may well be that the CRTC has provided the BDUs that completed these aggregated annual returns with information enabling them to report on subscribers to a *range* of programming services other than those identified in section 17.1. What that would mean, however, is that the evidence set out in BNoC 2022-267-3 and the evidence in the CRTC’s aggregated annual returns are equally immaterial to this proceeding.

28 FRPC respectfully submits that the evidence available through the BNoC 2022-267-3 proceeding is inconsistent with the evidence submitted by BDUs in their aggregated annual returns and that, as a result, no decision can be based on the 2022-267-3 evidence.

D. 2022-267-3 ‘collective subscriber’ figure creates more doubt

29 Finally, even if one pretended that the collective subscriber figure set out in BNoC 2022-267-3 were reliable – and it is not – the figure raises even more questions about the applicants’ grounds for seeking the increase. Arithmetic suggests that the total amount raised in the first year (ignoring inflation thereafter) would be \$54.6 million:

Collective subscriber figure	1,515,708
Proposed increase per subscriber per month	\$ 3.00
Collective figure x proposed increase	\$ 4,547,124.00
12 months of the year	\$ 54,565,488.00

30 FRPC is not suggesting that \$54.6 million is inconsequential – and in our view it is very much of consequence to current and potential low-income subscribers. That said, this figure amounts to 1% of the total operating costs of seven of the eight BDUs in this proceeding:

2022 total operating expenses	\$ millions
Telus	\$ 800.82
Bragg	\$ 177.53
Rogers	\$ 921.50
Shaw (cable)	\$ 918.39
Bell (cable)	\$ 1,324.67
Québecor	\$ 859.68
Cogeco	\$ 441.59
Total	\$ 5,444.16
Collective figure impact over 12 months	\$ 54.57
As % of total expenses	1.00%

Source: CRTC, *Aggregated Annual Returns, 2022*

- 31 What then, is the BDUs' true rationale for seeking this increase, and why have they chosen not to find savings of an equivalent amount in their own operations?

III. Conclusions and recommendations

- 32 FRPC does not believe that the information added to the record by BNoC 2022-267-3 has answered the question that is before the Commission: will granting the BDUs their application make the basic service less, more or as affordable as the service is now?
- 33 Without the evidence to answer that question – the number of subscribers to whom BDUs now provide the basic service, AND an analysis of the demography of those subscribers preferably based on income or at least BDU-purchasing proclivities – the CRTC lacks the evidentiary foundation required for its decision concerning 2022-267. FRPC also notes that none of the evidence in this proceeding – at least, insofar as the evidence is not redacted – demonstrates any concerns about specific groups of subscribers to the basic service who may require additional consideration. In a recent telecom regulatory policy the Commission itself pointed out that

Statistics Canada data indicates that the employment rate is lower and the poverty rate is higher for persons aged 25-64 with disabilities compared to the general population. This supports arguments made by accessibility groups about the intersectionality of disabilities with lower-income status and the corresponding existence of an affordability barrier specific to this segment of [wireless] subscribers.¹⁰

- 34 The Forum also respectfully notes that in CRTC proceedings initiated by applications the burden of providing the facts on which the CRTC must rely to make its decision rests with the applicants. The CRTC's procedural rules state this requirement clearly at section 22(2)(e):

[Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#)

22(2) An application must ...

...

(e) contain a **clear** and concise **statement of the relevant facts**, of the grounds of the application and of the nature of the decision sought;

¹⁰ *Mobile wireless service plans that meet the needs of Canadians with various disabilities*, Telecom Regulatory Policy CRTC 2023-41 (Ottawa, 23 February 2023), at ¶25.

35 In other words, public-interest participants such as FRPC are not required to ‘prove’ that granting the BDUs’ basic-service rate increase will make the basic service unaffordable. Rather, it was for the applicants to provide the facts showing that if the rate increase is granted, the basic service will nevertheless remain affordable (presupposing it is affordable now). As the applicants have not met this threshold, FRPC continues to believe that the CRTC must deny the application.

A. Recommendations

36 FRPC’s recommendations with respect to BNoC 2022-267-3 are set out below.

1. Deny BDUs’ January 2022 application

37 Due to the applicants’ failure to provide clear evidence to support their proposal – specifically, their failure to provide information about the number of subscribers that will be affected by an increase in the basic service (rather than an increase in the ‘basic package’, ‘small basic service’ or ‘small TV basic service’) – FRPC recommends that the CRTC deny the January 2022 application in its entirety.

38 FRPC notes that BDUs may always apply to the CRTC for relief from their conditions of licence provided they submit evidence that is not just material but also valid and reliable in support of their application. That evidence was largely absent (Eastlink may provided such evidence but its submission was so heavily redacted it is impossible to know what it provided) from the BNoC 2022-267-3 record.

2. In the alternative, suspend BNoC 2022-267 proceeding to gather evidence that is material, relevant, valid and reliable

39 The CRTC “may ... if it is of the opinion that the circumstances or considerations of fairness permit, adjourn a proceeding”.¹¹

40 If the Commission believes it is premature to deny the BDUs’ application, it could adjourn the proceeding until the BDUs provide the Commission and the public with clear, material and relevant evidence about the impact of its proposal on the CRTC’s implementation of subsection 3(1)(t)(ii) of the *Broadcasting Act*, and specifically with respect to subscribers who are provided with the basic service described in section 17.1 of the *BDU Regulations*.

3. Mandate free local basic service

¹¹ CRTC Rules of Practice and Procedure, section 10(a).

- 41 As the Forum recommended in its November 2022 intervention, the ideal response of the CRTC would be to begin to study the idea of a small, no-cost Canadian lifeline service for all Canadians. The Commission now encourages BDUs to provide a free basic service to all subscribers:

Distribution of a local package

5. The licensee is authorized to distribute, at its option, a local package without having to provide users of that local package with the full basic service. The distribution of a local package is subject to the following provisions:

(a) Only local and regional television stations that were available to the subscribers on an over-the-air basis as of 10 November 2010 are to be included in the local package. Stations must provide their signals to broadcasting distribution undertaking (BDU) head-ends or up-link centres, by any means.

(b) Users cannot receive video-on-demand or any other broadcasting services in conjunction with the local package.

(c) BDUs may offer telecommunications services to local package users, but may not offer a local package as part of a bundle or otherwise make receiving this package contingent on purchasing other services.

(d) No fee shall be charged for the local package, but users may be required to purchase or rent equipment, or pay for service/support calls. In addition, users may choose to pay for the use of an electronic programming guide.

(e) Any future compensation related to the proposed local television signal compensation regime will not apply to the local package.¹²

- 42 Whatever the outcome of the 2022-267 application, the CRTC should invite Canadians to comment on this proposal. FRPC submits that the need for a mandated lifeline service is greater today than at any other time since 1968: Inflation is extremely high, food precarity is rising and social disaffection is, in the view of many, growing. After analyzing public safety and crime data Statistics Canada concluded that the pandemic has affected “social cohesion” in Canada.¹³

¹² CRTC, *General Authorizations for Broadcasting Distribution Undertakings, Terrestrial (cable, digital subscriber line, multipoint distribution system) and direct-to-home (DTH) satellite broadcasting distribution undertakings*.

¹³ Statistics Canada, [COVID-19 in Canada: A Two-year Update on Social and Economic Impacts](#), Release Date: 10 March 2022.

43 In 2019, the CRTC briefly addressed proposals for a free lifeline-type BDU service, and declined to deal with it because it was a ‘broader policy issue’ that required a different type of proceeding:

38. ... the Commission notes the position taken by several interveners that viewers in rural and remote communities should continue to be offered basic service at no charge. In the Commission’s view, this is a broader policy issue with potential implications for the entire broadcasting system and is, therefore, beyond the scope of the present licence renewal proceeding.¹⁴

44 In our view, the time has come for the CRTC to develop a framework for such a service and to invite public comment on it.

4. *Update the 2016 TVSP Code*

45 FRPC also recommends, based on the confusion of data in the BNoC 2022-267-3 proceeding, that the CRTC consider revising the 2016 *Television Service Provider Code* to define the ‘basic service’, and to clarify that this service is available to all BDU subscribers for the amount set out in section 17.1 of the *BDU Regulations*.

5. *Use defined terms consistently in CRTC RFIs and determinations*

46 Finally, FRPC respectfully recommends that the CRTC adopt the practice of using consistent terminology in its requests for information (RFIs), notices of consultation, regulatory policies, decisions and guidelines, particularly when the Commission is considering amendments that affect terms defined in its enabling statutes or its own regulations. Our concern is that in the absence of consistent terminology, licensees may decide to collect data solely on the basis of their invoicing systems. A side-by-side comparison of the questions posed by the CRTC in the 2022-267 proceeding shows that variability in concepts used may well have led to confusion insofar as the resulting evidence is concerned: see Appendix 1.

¹⁴ *Shaw Direct – Licence renewal*, [Decision 2019-388](#) (Ottawa, 29 November 2019).

Appendix 1 Questions asked by the CRTC of the applicants and of those made party to the proceeding

BNoC 2022-267: Questions asked by the CRTC of the applicants and of the BDUs made party to the proceeding				
Questions asked of applicants			Questions asked of applicants and parties	
25 Feb/22	21 Mar/22	13 Apr/22	28 Sept/22	24 Jan/23
Q1 Commission staff notes that inflationary pressures as well as the increased carriage costs of 9(1)h services were highlighted in your application. Please disclose any cost saving measures and/or synergies that have been put in place or that you have benefitted from as well as productivity gains since the implementation of the small basic service decision. Please quantify the impact on your costs.				
Q2. Please complete the following table:	Q1. In order to pursue the analysis of the above-noted application, please provide the following information:	Q1. In order to pursue the analysis of the above-noted application, please provide the following information:	1. Please provide the following information:	1. In order to quantify the potential impact on the Canadian broadcasting distribution undertaking (BDU) subscribership, please indicate the number of BDU subscribers that could be subjected to an increase of any kind in their monthly bill should the Commission approve the proposed increase to the maximum price of the basic package . Please provide your underlying assumptions and implementation scope(s) by listing the types of subscribers (e.g. those
	Basic Package	Of the number of basic package subscribers provided in the first round of questioning, please provide:	Please complete the following table:	
Number of subscribers			A. Total number of basic package subscribers	a) the total number of basic package subscribers (includes those that are subscribing to one or more traditional programming services a la carte in addition to the basic package);
Average set top box rental fee (per month)				
		Number of subscribers whose		



BNoC 2022-267: Questions asked by the CRTC of the applicants and of the BDUs made party to the proceeding				
Questions asked of applicants			Questions asked of applicants and parties	
25 Feb/22	21 Mar/22	13 Apr/22	28 Sept/22	24 Jan/23
	subscription fee is \$25			<p>who only subscribe to the small basic service, those who only subscribe to the small basic service without any discount, those who subscribe to other packaging options alongside the small basic service, those who subscribe to a different package altogether, those who bundle their services, etc.) who will be immediately (or eventually) impacted by the proposed increase.</p> <p>Similarly to the aggregated numbers provided in Broadcasting Notice of Consultation 2022-267-2, the Commission is intending to publish the aggregated numbers to the above question. Please confirm your agreement with this approach. If you have concerns with this approach, please explain.</p>
Average installation fee (one time)				
	Number of subscribers who bundle their television service with another service (such as wireline telephone or Internet)			
	Number of subscribers who bundle their television service with another service and whose subscription fee is \$25			
		B. Number of basic subscribers ¹ who DO NOT receive a credit to their account (ex: from a promotion or bundling) ²	b) the number of basic package subscribers who do not receive a credit to their account (this number should not exceed the number of basic package subscribers provided above);	
		C. Number of basic package subscribers ¹ who bundle their television service with another non-television service (such as wireline telephone or internet)	c) the number of basic package subscribers who bundle their television service with another non-television service, such as wireline telephone or internet; and	
		D. Number of basic package subscribers ¹ who bundle their television service with another non-television service AND	d) the number of basic package subscribers who bundle their television services with another non-	



BNoC 2022-267: Questions asked by the CRTC of the applicants and of the BDUs made party to the proceeding				
Questions asked of applicants			Questions asked of applicants and parties	
25 Feb/22	21 Mar/22	13 Apr/22	28 Sept/22	24 Jan/23
		who DO NOT receive a credit to their account ³	television service and who do not receive a credit to their account (this number should not exceed the numbers provided above).	
		<p>1. Basic package subscribers includes those that are subscribing to one or more additional programming services a la carte in addition to the basic package.</p> <p>2. This number (B) should not exceed the number in the row above (A).</p> <p>3. This number (D) should not exceed the numbers in either of the two rows above (B and C).</p>		
			2. Please provide the aggregated total of subscribers across all your broadcasting distribution undertaking systems.	

*** End of document ***