



23 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) – Procedural request for clarification of subscriber information in identified in BNoC 2022-267-3 at paragraph 11*

1 The Forum for Research and Policy in Communications (FRPC) intervened in the above-noted broadcasting notice of consultation dealing with a proposal to raise the price of “the basic service”. The Part 1 application filed by Bell Canada, Cogeco, Eastlink and SaskTel relates to “the maximum permissible price for the distribution of the basic service as provided for in [section 17.1 of the *Broadcasting Distribution Regulations* ...](#)”.¹ Section 17.1 of the *BDU Regulations* 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.”

2 The CRTC’s *BDU Regulations* set out a clear definition of the “basic service”:

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

(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;

(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

¹ 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 ¶1.

(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)

- 3 The regulations do not refer to a “basic package”, a “small basic package”, a “small basic TV package” or to a “small basic service”.
- 4 On 20 February 2023 the CRTC published BNoC 2022-267-3. It advised that it had added information to the 2022-267 proceeding record, that it had re-opened that proceeding and that it was inviting “interventions in regard to the new information only” (para. 13).
- 5 According to the CRTC the new information provided by 2022-267-3 consisted of ‘the number of subscribers who could be subjected to an increase in their monthly BDU bill if the CRTC approves the application’, which the CRTC requested from the BDUs on 24 January 2023. Paragraph 10 of BNoC 2022-267-3 explained that the CRTC

... sent an additional request for information to all eight parties involved requiring them to provide the number of their subscribers who could, whether immediately or eventually, be subjected to an increase of any kind on their monthly bill as a direct result of an approval of the regulatory amendment sought in the application. This information can be found on the public record of this proceeding on the Commission’s website at www.crtc.gc.ca or by using the public record number provided above.
[bold font, italics and underlining added]

- 6 Unfortunately, what the CRTC says it asked is not what it actually asked.
- 7 Paragraph 10 says the CRTC asked BDUs about the number of subscribers whose monthly BDU bills could increase “as a direct result of an approval of the regulatory amendment sought in the application”. As FRPC noted above at paragraph 1, the application that triggered BNoC 2022-267 asks the CRTC to approve an increase in the maximum rate charged for the “**basic service**” by amending section 17.1 of the *BDU Regulations* or by imposing conditions of licence.
- 8 As quoted by the BDUs in their replies of 31 January or 1 February 2023, however, what the CRTC actually asked was how many subscribers could be affected by a change in the price charged for the “basic **package**”:

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**.

- 9 Neither the CRTC’s question nor its *BDU Regulations* define the “basic package”, and due to the redaction of the BDUs’ Jan/Feb 2023 responses, it is unclear whether they themselves clearly defined which subscribers would be affected by approving the Part 1 application.
- 10 Based on the unredacted portions of the BDU parties’ answers, however, seven BDUs used four different terms, shown below with yellow highlighting and bold font. (Eastlink’s response is entirely redacted, making it impossible to know what term or concept it used.)

Quebecor: ["forfeit de base" – 'basic package']

Réponses à la demande de renseignements du 24 janvier 2023

Question 1. Veuillez indiquer le nombre d'abonnés des EDR de Vidéotron qui pourraient subir une augmentation quelconque de leur facture mensuelle si le Conseil approuvait l'augmentation proposée du prix maximal du forfait de base.

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Question 2. Veuillez fournir vos hypothèses sous-jacentes et le(s) champ(s) d'application en énumérant les types d'abonnés qui seront immédiatement (ou éventuellement) touchés par l'augmentation proposée.

a) Les abonnés au forfait de base uniquement

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b) Les abonnés au forfait de base uniquement qui ne reçoivent pas un crédit à leur compte

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c) Les abonnés au forfait de base qui sont également abonnés à d'autres options d'assemblage

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d) Les abonnés au forfait de base qui sont également abonnés à d'autres options d'assemblage et qui ne reçoivent pas un crédit à leur compte

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e) Les abonnés au forfait de base qui regroupent leur service de télévision avec un autre service non télévisuel tel que le téléphone filaire ou Internet

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f) Les abonnés au forfait de base qui regroupent leur service de télévision avec un autre service non télévisé et qui ne reçoivent pas un crédit à leur compte

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g) Les abonnés à un forfait différent

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Rogers:

"If the Commission were to approve the Application and raise the maximum rate that could be charged by licensed BDUs for their **small basic TV package**, then these BDUs would be authorized to implement a rate increase to the **basic TV package ...**"

Sasktel:

"5. As of 23 January 2023, SaskTel has # customers that subscribe to the **small basic service**.
#"

Shaw:

A1. Should the Commission approve the proposed increase to the **basic service** price cap, the number of subscribers that would become "rate increase eligible" and could eventually be subject to a corresponding rate increase is as follows (based on January 2023 subscribership numbers):

Shaw Cable	***	***
Shaw Direct	***	***

Telus:
"As reported in TELUS' response to the CRTC's request for information dated October 12, TELUS has approximately # # **small basic service** subscribers, and does not offer discounts to the basic service, or to any discretionary TV services that may be subscribed to in addition to the **small basic service**. Further, while many **small basic subscribers** subscribe to multiple services (e.g. TELUS Internet or telephony services), TELUS does not provide discounts based on subscribership to the small basic service, and credits are not applied to that service.
Therefore, all of TELUS' **small basic service subscribers** could potentially be impacted by the proposed rate increase"

- 11 In other words, the issue that is central to this proceeding – *i.e.*, the number of subscribers to whom BDUs provide the basic service pursuant to section 17.1 of the *BDU Regulations* – is a source of confusion because the BDU parties and the CRTC have used different terms that may refer to different groups of subscribers.
- 12 Adding to the confusion of many different terms that may or may not refer to the “basic service” in section 17.1 of the *BDU Regulations* is the CRTC’s statement in paragraph 11 of BNoC 2022-267-3 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:
 11. 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.
- 13 Unfortunately, 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.
- 14 The extensive redaction permitted by the CRTC of their January/February 2023 answers makes it impossible for the public to understand and therefore to draw conclusions about the collective “1,515,708 subscribers” figure.
- 15 Equally important is the fact that even if all eight BDUs provided numbers about the same group of subscribers – those to whom the BDUs provide the basic service as required by section 17.1 – the 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’ 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)	

16 Altogether 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 8,445,901 direct subscribers to basic services or the “service de base”, whether through their BDU or their direct-to-home (DTH) services:

2022 aggregated annual return	Direct subscribers to basic services Nombre d'abonnés directs au service de base du câble
Telus	1,234,680
Rogers	1,204,556
Shaw (cable)	1,080,855
Shaw (DTH)	503,098
Bell (cable)	1,917,674
Bell (DTH)	778,411
Québecor	1,129,881
Cogeco	596,746
Total, six companies	8,445,901

17 FRPC appreciates the effort the CRTC has made “to accurately understand the potential impact of the industry-wide amendments requested in the application” (2022-267-3, ¶18).

18 Unfortunately, [the lack of reliable and valid data about the number of subscribers](#) to whom the applicants provide the “basic service” so as to comply with section 17.1 makes it impossible for the public to know the case it must meet, and therefore to provide a complete and valid answer based on the evidence available to the public.

19 FRPC respectfully requests that, pursuant to section 5(1) of the CRTC’s Rules, the Commission ask each BDU party to this proceeding two further questions:

- a. Provide the total number of subscribers in the 2021/22 broadcast year to whom you provided the “basic service” as defined in the *BDU Regulations* and
- b. Except for Sasktel (that apparently does not file an aggregated annual return), clarify any difference between the number of subscribers to whom you provide the basic service, and the direct subscribers to basic services / service de base reported in your most recent (2022) aggregated annual return for BDUs’ cable/IPTV and DTH services.

Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (SOR/2010-277)

Power to act

5 (1) The Commission may exercise any of its powers under these Rules at the request of a party or interested person or on its own initiative.

Matters not provided for

(2) The Commission may provide for any matter of practice and procedure not provided for in these Rules by analogy to these Rules or by reference to the Federal Courts Rules and the rules of other tribunals to which the subject matter of the proceeding most closely relates.

- 20 FRPC acknowledges that the deadline for comments in the 2022-267-3 proceeding makes it unlikely that the CRTC will grant this request. Doing so would, however, send a welcome signal that such imprecision in regulatory terminology will no longer be accepted.

Sincerely,



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