



Telecom Regulatory Policy CRTC 2021-239

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Access to in-building wire in multi-dwelling units

The Commission issues a number of determinations regarding access to in-building wire (IBW) in multi-dwelling units (MDUs), following a public proceeding initiated in Telecom Notice of Consultation 2019-420.

The Commission finds that access to fibre IBW is not an essential service and will not be mandated. This finding is predicated on, among other things, the evidence that fibre IBW is duplicable. Further, having considered the relevant policy considerations and pursuant to its analysis under subsections 34(1) and 34(3) of the *Telecommunications Act*, the Commission forbears from regulating access to fibre IBW in all MDUs across Canada.

Second, and consistent with earlier findings, the Commission modifies the MDU access condition regarding access to fibre IBW, so that a competitor's choice to access end-users by means of reselling or leasing fibre IBW would not be mandated but rather subject to a commercial agreement being reached with the owner of the fibre IBW, and without a tariff being required. Under this modification, competitors still have the ability to access the MDU to install their own fibre IBW in an MDU under the MDU access condition.

Third, the Commission extends the modified MDU access condition and associated obligations to all carrier Internet service providers (ISPs). All carrier ISPs are to have access to copper IBW on the same basis as local exchange carriers (LECs).

Fourth, and finally, the Commission repeals its decision to apply Bell Canada's existing tariff for access to copper IBW to the provision of access to fibre IBW on an interim basis, effective 180 days from the date of this decision. Parties may reach a commercially negotiated agreement with Bell Canada for continued use of Bell Canada's fibre IBW.

The Commission **directs** companies that were permitted to use Bell Canada's fibre IBW pursuant to the interim tariff to (i) cease and desist such use within **180 days** of the date of this decision, unless they reach a commercially negotiated agreement with Bell Canada that allows for continued use; and (ii) provide a minimum of **90 days'** notice to affected customers of any changes to their service.

The Commission's determinations in this proceeding will help to facilitate the orderly development of the Canadian telecommunications system, which includes supporting ongoing investments in growth technologies, such as fibre IBW, and fostering

competition through the use of various IBW technologies in MDUs. Consumers in MDUs will continue to have choice among service providers for their Internet, television, and voice communications services, via fibre, as it continues to be installed, and/or other technologies and wholesale services.

Introduction

1. In Telecom Decision 97-8, the Commission set out its framework for competition in the local exchange (i.e. voice) service market and established a number of measures to facilitate the entry of competitive local exchange carriers (CLECs) into that market, as well as entry obligations for CLECs. Further, the Commission mandated interconnection arrangements between local exchange carriers (LECs).
2. In that decision, the Commission also established a definition of an essential facility, service, or function, and determined that inside wire – that is, the wire that end-users are responsible for within their dwellings – did not meet the definition of an essential facility since it may be obtained from multiple providers. However, in order to promote competitive entry and foster consumer choice, the Commission considered it reasonable to mandate that customers be permitted to connect their inside wire to the network of any LEC in whose serving area they are situated.
3. While Telecom Decision 97-8 did not explicitly mention in-building wire (IBW) – that is, the wire between competing providers’ point of connection and the end-user’s dwelling in a multi-dwelling unit (MDU) – the Commission considered whether the existing obligation for landlords to ensure a tenant’s right of access should extend to all LECs such that end-users in all situations have the right to have access to the services of any available LEC directly.
4. In that context, the Commission expressed the view that an important objective of local competition was to increase consumer choice, and that it was in the public interest that end-users have the right and the means to have access to the LEC of their choice in all situations. To ensure that these principles were served, the Commission required, as a condition of providing service, that a LEC “ensure that end-users that it serves are able to have direct access, under reasonable terms and conditions, to services provided by any other LEC serving in that area.”
5. In Telecom Decision 99-10, the Commission stated that the ability of CLECs to have access to the IBW in an MDU was central to the implementation of its policy of end-user choice. In a [letter](#) dated 5 June 2000, the Commission determined that, where a CLEC is given access to the main terminal room in an MDU by the building owner and Bell Canada continues to own the IBW, Bell Canada must allow the CLEC to connect to that IBW. In Decision 2001-362, the Commission applied the determination set out in that letter to all LECs.
6. In Telecom Decision 2003-45, the Commission established conditions and principles for the provision of telecommunications services to customers located in MDUs. That decision included guidelines to assist building owners and LECs in negotiating

conditions of access to MDUs, as well as related matters such as terms and conditions of access to MDUs via LECs' facilities.

7. In particular, the Commission required that “the provision of telecommunications service by a LEC in an MDU be subject to the condition that all LECs wishing to serve end-users in that MDU are able to access end-users in that MDU on a timely basis, by means of resale, leased facilities or their own facilities, at their choice, under reasonable terms and conditions.” This is referred to as the MDU access condition.¹ The Commission stated that it would monitor the status of access to MDUs with a view to determining whether the principles set out in the decision remained appropriate, and the degree to which it could rely on negotiations between building owners and LECs to achieve the Canadian telecommunications policy objectives (the policy objectives) set out in section 7 of the *Telecommunications Act* (the Act). In Telecom Decision 2005-33, the Commission extended the MDU access condition and access guidelines established in Telecom Decision 2003-45 to include members of the Coalition of Hydro Telecom Service Providers (the Coalition). The Commission also extended obligations imposed on LECs regarding the MDU access condition.
8. As noted above, Telecom Decision 97-8 did not explicitly mention IBW, and the service was not addressed in either Telecom Decision 2008-17 or Telecom Regulatory Policy 2015-326 (the two subsequent policy decisions that assessed the essentiality of various wholesale services). As a result, an essentiality determination has not been made to date for the provision of access to IBW of any type (copper, coaxial cable, or fibre), and none of these services has been forborne from regulation. However, the provision of inside wire has been forborne from regulation, with some conditions.²
9. In August 2018, following a dispute with Bell Canada concerning access to Bell Canada's fibre IBW in two MDUs, Cloudwifi Inc. (Cloudwifi) filed an application with the Commission in which it requested relief regarding that dispute, as well as Commission orders allowing facilities-based Internet service providers (ISPs) to access the IBW owned by carriers and broadcasting distribution undertakings. In Telecom and Broadcasting Decision 2019-218, the Commission denied Cloudwifi's request related to the dispute. It stated that once Cloudwifi became a registered CLEC it could connect with Bell Canada's IBW to provide services at both MDUs, and it could do so regardless of the type of technology it wished to use.

¹ The Commission established the MDU access condition, pursuant to its powers under section 24 of the *Telecommunications Act*, to ensure that LECs have the ability to access and enter MDUs to connect or install their facilities, as well as repair and maintain them, and to do whatever else may be required to provide reliable, high-quality service to end-users in MDUs. The condition does not specifically mandate access to any particular type of IBW. However, in the same decision, the access rate for copper IBW was set at \$0.

² See, for example, Telecom Order 99-1016 and Telecom Decisions 2003-38 and 2003-69.

10. In Telecom and Broadcasting Decision 2019-218, the Commission noted that telecommunications services had evolved significantly since the early 2000s, including a migration towards fixed and mobile wireless broadband Internet access services and away from legacy services, such as landline voice service. Thus, the Commission considered that requiring carrier ISPs³ that do not intend to provide local exchange service to become registered CLECs to connect with LEC facilities in MDUs created an unnecessary regulatory burden on those ISPs and on other LECs.
11. In this decision, the Commission also
 - determined that connection to a LEC's fibre IBW by another LEC in an MDU is provided for under existing Commission policies and regulations;
 - directed Bell Canada, as a condition of providing telecommunications services in all MDUs in which it offers service, to provide access to its IBW (including fibre) to all carrier ISPs, including Cloudwifi;
 - directed Bell Canada to apply its existing tariff provisions for copper IBW to carrier ISPs, including Cloudwifi, on an interim basis, as of the date of the decision; and
 - directed Bell Canada to file proposed amended tariff pages reflecting the determinations set out in the decision within 30 days of its publication.
12. The Commission further expressed preliminary views that (i) the MDU access condition and associated obligations should be extended to all carrier ISPs, and potentially to all telecommunications service providers (TSPs); and (ii) all carrier ISPs, and potentially all TSPs, should have access to LECs' and other TSPs' IBW in MDUs on the same basis as registered CLECs, and regardless of technology. The Commission initiated a proceeding in Telecom Notice of Consultation 2019-219 to consider these matters further.
13. In response to an application from Bell Canada to review and vary Telecom and Broadcasting Decision 2019-218, the Commission issued Telecom Decision 2019-419, in which it maintained its view that the existing framework for MDU IBW access was intended to be technology neutral and supportive of end-user choice but rescinded, except where otherwise stated, its directions to Bell Canada in Telecom and Broadcasting Decision 2019-218. On the same date, the Commission issued Telecom Notice of Consultation 2019-420, which replaced Telecom Notice of Consultation 2019-219 with a revised proceeding to consider changes to the framework for access to IBW as well as appropriate rates, terms, and conditions for fibre IBW connections.

³ In Telecom Decision 2019-218, the Commission decided to refer to "carrier ISPs" instead of "facilities-based ISPs," to reflect the use of the defined term "telecommunications common carriers" in the Act.

14. The Commission received interventions regarding Telecom Notice of Consultation 2019-420 from Beanfield Technologies Inc. (Beanfield); Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); the Canadian Communication Systems Alliance; Cloudwifi; Cogeco Communications inc. (Cogeco); the Independent Telecommunications Providers Association (ITPA); Novus Entertainment Inc. (Novus); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); TBayTel; TekSavvy Solutions Inc. (TekSavvy); TELUS Communications Inc. (TCI); UPTélé Inc.; Xplornet Communications Inc. (Xplornet); and one individual.

Issues

15. The Commission has identified the following issues to be addressed in this decision:

- Are the issues of (i) whether access to fibre IBW is an essential service, and (ii) whether it should be forborne from regulation within the scope of this proceeding?
- Should the Commission continue to mandate the provision of access to fibre IBW?
- Should the Commission forbear from regulating access to fibre IBW?
- Should the Commission modify the MDU access condition regarding a competitor's choice to access end-users via resold or leased fibre IBW?
- Should the modified MDU access condition and associated obligations be extended to all carrier ISPs, and potentially to all TSPs?
- Should all carrier ISPs, and potentially all TSPs, have access to LECs' and other TSPs' IBW in MDUs on the same basis as LECs, and regardless of technology?
- How should the Commission dispose of Bell Canada's interim tariff?

Are the issues of (i) whether access to fibre IBW is an essential service, and (ii) whether it should be forborne from regulation within the scope of this proceeding?

Background

16. In Telecom Regulatory Policy 2015-326, the Commission adjusted the criteria that must be met in order for the provision of access to a wholesale service to be mandated. The Commission indicated that it would base its decision on two elements: (i) the Essentiality Test, which includes input, competition, and duplicability components; and (ii) a set of policy considerations – public good, interconnection, and innovation and investment. The Commission may use the

policy considerations to inform a decision whether or not to mandate the provision of a wholesale service.

Positions of parties

17. Bell Canada submitted that the question of whether the Commission should mandate access to fibre IBW is within scope of the current proceeding.
18. Cloudwifi, TekSavvy, and Videotron argued that the Commission should not conduct an Essentiality Test analysis since the matter is beyond the scope of this proceeding. Cloudwifi submitted that the scope was described in Telecom Decision 2019-419, where the Commission said that it would establish rules, standards, and obligations for access to fibre IBW. TekSavvy submitted that since the proceeding is about setting the terms and conditions for access to fibre IBW, to consider these out-of-scope submissions would constitute an error in law because the procedural fairness rights of parties would be negatively affected.

Commission's analysis and determinations

19. The Commission considers that it would be appropriate for it to assess whether access to fibre IBW is an essential service and whether it should be forborne from regulation, before determining to what extent a tariff should apply.
20. Given that, legally, parties (and potential parties) need sufficient notice regarding the case to be met, the following statement was included in the cover letter to a Commission request for information (RFI):

Anyone, including persons not currently parties to the proceeding, may provide a response to these questions. Those not already a party to the proceeding should request to become one as part of their submissions.

21. One of the RFI questions included the following:

Several parties have submitted that fibre in-building wire (IBW) is not an essential service and should not be mandated. Should the Commission determine that this question is within the scope of this proceeding, provide the following information with respect to the Essentiality Test and the relevant policy considerations in the context of fibre IBW in multi-dwelling units (MDUs) (if your company has not already done so).

22. Another question asked, "If the Commission were to determine that fibre IBW should no longer be mandated, should it then forbear from regulating it? If so, to what extent and why?"
23. The cover letter and RFI were sent to all parties on 21 October 2020 and were posted on the Commission's website as part of the public record of this proceeding.

24. As a result, the Commission finds that sufficient notice was provided on the matter – to both existing and potential new parties – and, therefore, the Commission may consider the matter as part of the current proceeding.
25. The Commission is also of the view that it would be reasonable to apply the Essentiality Test as part of this proceeding, rather than as a separate proceeding, since access to fibre IBW has not been subject to the test to date and it would be more efficient to deal with the matter during the current proceeding. The result of the Essentiality Test analysis, and consideration of forbearance, if appropriate, will allow the Commission to determine to what extent a tariff is required for the provision of the service.
26. In light of the above, the Commission determines that the matters of essentiality and forbearance from the regulation of access to fibre IBW are within scope of the proceeding.

Should the Commission continue to mandate the provision of access to fibre IBW?

Background

27. The first step in applying the Essentiality Test is to define the relevant markets for the wholesale service, which include product and geographic components. These markets are typically characterized as the smallest group of services and geographic area for which a firm could profitably impose a significant and sustainable price increase.
28. Once the product and geographic markets are defined, the Commission assesses the wholesale service in question against the three components of its Essentiality Test:
 - **Input component:** The Commission assesses whether the facility⁴ associated with the wholesale service is required as an input by another firm to provide downstream retail service(s).
 - **Competition component:** The Commission examines (i) the upstream market conditions, specifically whether a firm or group of firms have market power; and (ii) the impact that any upstream market power might have on competition levels in the associated downstream market(s).
 - **Duplicability component:** The Commission assesses whether it is practical or feasible for competitors to duplicate the functionality of a facility, through either self-supply or third-party supply.

⁴ In this decision, a reference to a facility or service may be taken as a reference to a facility, function, or service (or all three), as appropriate in the context.

29. For a wholesale service to meet the Essentiality Test, all three components must be satisfied.

Essentiality Test

Service definition / description for access to fibre IBW

Positions of parties

30. All parties that commented on the matter, excluding TekSavvy, generally agreed with the definition of IBW established in Telecom Decision 99-10:

... wire and other facilities which are in the MDU (e.g. wires in the MDU's risers, running from the main terminal room to the telephone closet on each floor and from there to the customer's suite); in-building wire may be owned by a telecommunications service provider or by the property owner.

31. While parties held views similar to this definition, there were some variations. Beanfield's submission referred to the closest feasible point of interconnection versus the main terminal room. Cogeco submitted that the definition in Telecom Decision 99-10 refers to any type of wire, and to any type of telecommunications service. Shaw submitted that the service consists of the provision of a dedicated, individual fibre strand.
32. TekSavvy submitted that the appropriate service description for access to fibre IBW is access by a TSP, for the purpose of providing telecommunications services, to fibre IBW owned by another entity.

Commission's analysis and determinations

33. While TekSavvy's definition of access to fibre IBW does not define what IBW is, it does refer to the wholesale service in question, while the definition from Telecom Decision 99-10 only describes IBW as a facility.
34. The Commission considers that both these elements should be accounted for in the service description. In the context of this proceeding, the wholesale service in question is access to fibre IBW. The Commission is of the view that the definition established in Telecom Decision 99-10 continues to be appropriate for IBW. As a result, the Commission determines that the service description for access to IBW for the purpose of the Essentiality Test to be as follows:

Wholesale access to wire and other facilities which are in the multi-dwelling unit (e.g. wires in the multi-dwelling unit's risers, running from the main terminal room to the telephone closet on each floor and from there to the customer's suite); in-building wire may be owned by a telecommunications service provider or by the property owner.

Relevant markets

Relevant product market

Positions of parties

35. A number of interveners submitted that the relevant upstream product market is services, facilities, or technologies that provide connectivity to customers' suites in an MDU. For example, Bell Canada submitted that the relevant upstream market is services or facilities that provide in-building access or connectivity into customers' suites in an MDU. RCCI submitted that the relevant upstream product market is in-building access technologies and facilities that compete with fibre IBW.
36. TBayTel submitted that the appropriate product market is any connection in the MDU capable of delivering telecommunications services between a main terminal room and the individual suites. SaskTel submitted that the relevant product market is any connection into the MDU that is capable of delivering telecommunication services between a main building connection point and the individual suites, such as fibre, copper, or coaxial wire, and potentially wireless solutions.
37. Beanfield, Bell Canada, Novus, RCCI, SaskTel, TBayTel, and TCI submitted that there are several substitutes for fibre IBW, such as self-provisioning a company's own fibre IBW; unbundled local loops; line-sharing services; access to copper IBW pursuant to a tariff; access to coaxial cable IBW (pursuant to Broadcasting Public Notice 2002-51);⁵ aggregated wholesale high-speed access (HSA) services; and disaggregated wholesale HSA services. TCI also submitted that certain technologies that do not rely on in-building infrastructure are substitutes, including mobile wireless, fixed wireless, and satellite services.
38. Cloudwifi and TekSavvy submitted that fibre IBW has unique characteristics that differentiate it from copper and coaxial cable. For example, they submitted that fibre IBW offers higher speeds and symmetrical download and upload speeds, while copper and coaxial cable IBW are not as fast and have asymmetrical download and upload speeds. TCI submitted that copper and coaxial cable technologies enable gigabit-speed HSA Internet service; however, Videotron submitted that although it is technically possible to provide such service over copper IBW, this is not a viable alternative to fibre IBW since the signal quality weakens as the distance travelled increases.
39. Cloudwifi, Shaw, TekSavvy, and Videotron were generally of the view that there are no substitutes for fibre IBW, or that substitutes are limited. They submitted that disaggregated wholesale HSA service is not a substitute for fibre IBW given the costs and operational challenges associated with the service, among other things. In

⁵ Several companies noted that in Broadcasting Public Notice 2002-51, the Commission determined that access to coaxial cable IBW is subject to a fee of \$0.52 per month. Cloudwifi and Novus submitted that no coaxial cable IBW owners charge that \$0.52 per month fee because it is understood that billing and collecting this amount would cost more than any amounts derived.

addition, Shaw submitted that disaggregated wholesale HSA is a completely distinct service offering and should not be considered as a substitute for fibre IBW.

40. With respect to the relevant downstream markets, Bell Canada submitted that the relevant downstream markets are local wireline voice telephony and wireline Internet access service. Similarly, RCCI submitted that the relevant downstream markets consist of all the downstream services that are provided using access technologies, such as voice, Internet, and television.
41. Other interveners proposed more general product market definitions. For example, Beanfield submitted that the appropriate product market is HSA. Cloudwifi and TekSavvy submitted that fibre IBW is in a product market of its own due to its unique characteristics and because other forms of IBW are not good substitutes for fibre IBW. Videotron submitted that the appropriate product market is the fibre IBW market. Cogeco submitted that the product market should be all telecommunications services provided to an end-user occupying a separate suite in a MDU containing suites with common IBW. Shaw was of the view that IBW constitutes a single product market, regardless of technology.

Commission's analysis and determinations

42. Identifying the relevant product market involves an assessment of the group of services for which a firm could profitably impose a significant and sustainable price increase.
43. The Commission considers that there are several characteristics of fibre IBW that differentiate it from potential substitutes. From an end-user perspective, the primary characteristics of fibre IBW that distinguish it from other technologies are high download and upload speeds, and symmetrical (bi-directional) download and upload speeds. Other technologies that offer high bandwidth and symmetrical download and upload speeds could also be included in the product market, including, for example, coaxial cable operating with DOCSIS⁶ 3.1 full duplex mode.
44. The Commission considers that the relevant downstream market consists of services provided over fibre IBW. Fibre IBW is used primarily to provide high-speed broadband Internet service, and, to a lesser extent, television and voice services (via voice over Internet Protocol [VoIP]). While television and voice services are also provided over fibre IBW, the Commission considers that they are not the primary downstream market.
45. Accordingly, the Commission determines the relevant product market to be technologies and facilities that provide high-speed symmetrical connectivity between a service provider's demarcation point and customers' suites in a MDU in order to support the provision of services such as high-speed broadband Internet.

⁶ Data Over Cable Service Interface Specification (DOCSIS) is a telecommunications standard used to provide Internet access via a cable modem.

Relevant geographic market

Positions of parties

46. In general, parties were of the view that the relevant geographic market is each individual MDU building. However, a number of parties, including Bell Canada, Cloudwifi, RCCI, Shaw, TBayTel, and Videotron, submitted that it would be appropriate to aggregate the geographic market to the level of the company's serving territory for practicality and efficiency purposes. Other parties, including Cogeco, SaskTel, and TekSavvy, submitted that the geographic market should be aggregated at the national level.
47. Conversely, Beanfield submitted that the geographic market should not be aggregated above the individual MDU level. It argued that competitive conditions, such as barriers to entry and number of competitors, may be different between one building and the next.

Commission's analysis and determinations

48. Identifying the relevant geographic market for a product or service generally involves the assessment of whether a customer would be willing to switch from a supplier in one area to a supplier in another area.
49. Based on the limited record of this proceeding, it would appear that companies have, to date, been concentrating the rollout of fibre IBW within particular cities or regions. Although it might be appropriate to consider a geographic market at that level of aggregation, there was insufficient evidence to apply the Essentiality Test at that level.
50. Accordingly, the Commission finds that the relevant geographic market is the individual MDU.
51. Given the above, an essentiality assessment would be required for each individual MDU for which a competitor requested access to fibre IBW. Because such an approach is not practical, the Commission will not apply the Essentiality Test on a per-MDU basis. Rather, it will apply the Essentiality Test to a typical MDU and will consider where there may be exceptions, such as a lack of riser space in a particular MDU or fibre-only MDUs.

Input component

Positions of parties

52. Beanfield, Bell Canada, Novus, RCCI, SaskTel, TBayTel, and TCI submitted that access to fibre IBW fails the input component of the Essentiality Test. They generally submitted that access to fibre IBW is not required to compete in relevant retail markets – that is, to deliver retail voice, Internet, and television services to end-users in MDUs, since there are several substitutes for fibre IBW. TCI submitted that mandating access to fibre IBW would turn MDUs into a monopoly-controlled,

bottleneck service, which would deprive consumers of choice of providers for different services.

53. Cogeco also submitted that access to fibre IBW fails the input component, but only if the construction phase of the MDU has not been completed.
54. Conversely, Cloudwifi, Shaw, TekSavvy, and Videotron submitted that access to fibre IBW meets the input component since there are no substitutes for fibre IBW, or substitutes are limited. Cloudwifi and Videotron noted that many MDUs constructed in the last few years contain only fibre IBW and expressed concern about end-user choice in such cases.
55. Bell Canada and RCCI submitted that there has been almost no demand from competitors for access to their fibre IBW. Conversely, Cloudwifi and Videotron submitted that demand for access to fibre IBW is high and will grow. Cloudwifi submitted that once a tariff is in place, the number of organizations using wholesale access to fibre IBW will increase substantially.

Commission's analysis and determinations

56. In Telecom Regulatory Policy 2015-326, the Commission indicated that it would determine whether the facility associated with the wholesale service in question is required as an input by another firm to provide downstream retail service(s) by considering (i) the downstream market(s) for which the wholesale service is an input; (ii) the technical aspects of the wholesale service; (iii) the past, current, and anticipated demand for the wholesale service; and (iv) trends in demand to assess whether there is sustained growth or decline. If the Commission finds that the wholesale service in question is a required input for competitors to provide downstream retail services, and that there is and will continue to be sufficient demand for the wholesale service, the input component would be satisfied.
57. In Telecom Decision 2019-419, the Commission indicated that access to fibre IBW had not been operationalized through tariffs or guidelines, likely because there was no significant need or demand, nor any direction, to do so in the past. The Commission notes that five companies indicated (in confidence) that they were connected to Bell Canada's fibre IBW, in 28 MDUs, on 16 December 2019, serving 312 customer suites in total.⁷
58. With respect to demand for access to fibre IBW, parties' responses to RFIs indicate that the number of customer suites served using another company's fibre IBW is low, albeit growing. Of the parties that responded, only two indicated that they were serving customer suites using another company's fibre IBW between 2017 and 2019.

⁷ In Telecom Decision 2020-122, the Commission directed all LECs and carrier ISPs that had connected to Bell Canada's fibre IBW to provide to Bell Canada a list of all MDUs in which customers were receiving service on 16 December 2019.

59. One of those companies indicated that the number of customer suites it served using another company's fibre IBW remained the same over the 2017 to 2019 period. The other company increased the number of customer suites served using another company's fibre IBW significantly between 2017 and 2019. However, the total number of customer suites served by using another company's fibre IBW remained very small overall, which is in line with Bell Canada's submission that only 312 customer suites were being served by competitors using Bell Canada's fibre IBW on 16 December 2019.
60. The Commission is of the view, however, that these numbers may not be a true indicator of the potential demand for fibre IBW since connections between 2017 and 2018 were not made pursuant to a tariff, and connections made between 21 June 2019 and 16 December 2019 were based on an interim tariff that was in dispute.⁸ No new connections have been permitted through regulation since 16 December 2019.
61. With respect to future demand for access to fibre IBW, the Commission considers that demand might increase if a tariff were in place. However, the extent to which that demand would increase is unclear and would be a function of the rates, terms, and conditions imposed on the service.
62. With respect to the growth of fibre IBW installations in MDUs, the number of customer suites served by a company using its own fibre has grown significantly over time. For example, of those companies who responded, the total number of customer suites served using a company's own fibre IBW increased by 33% from 2017 to 2018 and by 22% from 2018 to 2019. These companies represent a mix of incumbent local exchange carriers (ILECs), large cable companies, and CLECs, such as Beanfield, Novus, and TekSavvy.
63. With respect to whether companies are choosing to install copper, coaxial cable, or fibre IBW, responses to Commission requests indicate that although the majority of MDUs continue to be served by existing copper and coaxial cable, an increasing percentage of MDUs are served via only fibre IBW.
64. Based on the record of this proceeding, it appears that the majority of parties would prefer to use their own fibre IBW in MDUs, while some parties would opt to use wholesale access to fibre IBW if the Commission mandated access to fibre IBW. The decision to connect to a competitor's fibre IBW may be, in part, based on the convenience associated with using previously installed fibre IBW. The Commission has based this consideration on Bell Canada's statement that sufficient riser space was available, or could reasonably be added, in the MDUs in which five companies

⁸ In Telecom Decision 2019-218, issued on 21 June 2019, the Commission directed, among other things, that Bell Canada file proposed amended tariff pages for its IBW within 30 days of the date of the decision. In Telecom Decision 2019-419, issued on 16 December 2019, the Commission rescinded, among other things, its direction to file proposed amended tariff pages to include such access, as well as access by carrier ISPs and CLECs to Bell Canada-owned fibre IBW.

were connected to Bell Canada's fibre IBW on 16 December 2019, during which time there was an interim tariff rate of \$0 per subscriber per month. It is unclear whether those companies would have connected to Bell Canada's fibre IBW if final tariff rates, terms, and conditions were in place, or whether they would have opted to install their own IBW.

65. In light of the above, the Commission considers that the overall market for access to fibre IBW is likely small but growing. However, the level of demand for this service is unclear, and it is unclear whether there is sufficient current or projected demand that would justify mandating it. As a result, the Commission's view on whether access to fibre IBW meets the input component of the Essentiality Test is inconclusive.

Competition component

Positions of parties

66. Beanfield, Bell Canada, Novus, RCCI, SaskTel, Shaw, TBayTel, and TCI submitted that access to fibre IBW fails the competition component of the Essentiality Test. They generally submitted that companies do not have market power in MDUs that they serve since there are substitutes available that provide relevant downstream services.
67. Cogeco submitted that access to fibre IBW fails the competition component. However, it also submitted that this finding applies only if the construction phase of the MDU has not been completed.
68. Conversely, Cloudwifi, TekSavvy, and Videotron submitted that access to fibre IBW meets the competition component. They were generally of the view that fibre IBW owners have downstream market power since end-users have no alternative to obtain telecommunications services except from the fibre IBW owner, and that providing competitors with access to fibre IBW increases competition while removing such access would result in a lessening of competition. They were particularly concerned about barriers to competition in older brownfield (i.e. existing) MDUs. They also submitted that MDU owners would prefer to use existing fibre IBW, rather than installing additional IBW, since it is an inconvenience to building owners and end-users in brownfield MDUs.
69. Bell Canada, RCCI, and TCI submitted that they do not exercise market power in the relevant downstream markets. Bell Canada and RCCI submitted that there is significant competition in the relevant downstream markets.⁹ With respect to Internet

⁹ Bell Canada and RCCI provided examples from the Commission's 2019 *Communication Monitoring Report*, such as: wholesale high-speed access enabled Internet lines grew from approximately 800,000 in 2014 to 1.3 million in 2018; wholesale-based service providers saw market share increases by revenue with 6.3% in 2016 and 6.8% in 2019; and independent ISPs increased their revenue share in the residential market, with wholesale-based service providers' share growing from 5.6% in 2014 to 6.8% in 2018 and other facilities-based carriers' share growing from 4.1% in 2014 to 6.9% in 2018.

services, Bell Canada submitted that ILECs are not the dominant retail ISPs and that their share of the market, together with that of the incumbent cable carriers, has been in decline over the past five years. With respect to the local voice service market, Bell Canada submitted that competition stems from former cable carriers and VoIP services and that the market is declining.¹⁰ RCCI submitted that both local telephony and local television service markets have been found to be highly competitive by the Commission.

Commission's analysis and determinations

70. In Telecom Regulatory Policy 2015-326, the Commission indicated that determining whether the competition component is met involves examining two elements: (i) the upstream market conditions, specifically whether a firm or group of firms have market power; and (ii) the impact that any upstream market power might have on competition levels in the associated downstream market(s). The Commission considered that the presence of upstream market power alone is not sufficient to meet the competition component. There must also be the potential for a substantial lessening or prevention of competition in the corresponding downstream retail market(s) should access to the upstream input be denied. If, on balance, the Commission finds that there is upstream market power and that the associated downstream retail market(s) could be negatively affected to a substantial degree if it does not mandate the provision of the wholesale service, the competition component would be satisfied.
71. In the relevant product market section above, the Commission determined that the relevant upstream product market consists of technologies and facilities that provide high-speed symmetrical connectivity. However, the Commission considers that, while those other technologies may be available in the near future, they are not yet available in the majority of MDUs. Consequently, the Commission considers that these substitutes are not sufficiently widespread to lessen the upstream market power of fibre IBW owners.
72. Some MDUs may have multiple fibre IBW installations. Consequently, competitors in those MDUs may have several potential alternatives regarding fibre IBW providers. The presence of multiple fibre IBW installations may lessen, to a certain degree, the upstream market power of those fibre IBW owners. However, the record of this proceeding has not demonstrated that there is substantive presence of multiple fibre IBW installations or that this would substantially lessen their upstream market power.
73. Accordingly, the Commission considers that fibre IBW owners have upstream market power over access to fibre IBW.

¹⁰ For example, Bell Canada noted that 39% of homes with fixed telephony subscribed through cable in 2016. See page 242 of the Commission's 2017 *Communications Monitoring Report*.

74. Typically, end-users in MDUs are able to access telecommunications services via a multitude of services and may not even be aware what underlying facilities or wholesale services are being used to provide their retail services. For example, end-users in MDUs may be able to access telecommunication services by mobile wireless, copper IBW, coaxial cable IBW, fibre IBW, and aggregated HSA service (over copper or coaxial cable). The availability of those services should preclude a substantial lessening or prevention of competition in the corresponding downstream retail markets, if access to the upstream input is denied. Consequently, the Commission considers that the withdrawal of access to fibre IBW would not generally result in a substantial lessening or prevention of competition.
75. Some of the aforementioned services may not be available in fibre-only MDUs. In Telecom Decision 2003-45, the Commission noted that copper IBW is generally available in MDUs and that copper pairs can be transferred between LECs when a customer changes service providers. This is not the case in fibre-only buildings.
76. The record of this proceeding indicates that the environment has changed since Telecom Decision 2003-45 was issued. Newer MDUs increasingly have only fibre IBW installed, rather than a mix of copper, coaxial cable, and fibre IBW. In MDUs that contain only fibre IBW, end-users cannot receive downstream services via copper or coaxial cable IBW. However, in fibre-only MDUs, there may be multiple fibre IBW installations that would provide end-users with multiple service provider options.
77. Alternatively, in many cases end-users would have access to telecommunications services via other technologies, such as mobile wireless. Emerging technologies and services – such as disaggregated wholesale HSA – will increasingly become available and will expand the number of options available to end-users in fibre-only MDUs. Additionally, the record of this proceeding indicates that the number of end-users served by competitors that use wholesale access to fibre IBW are limited and represent a very small percentage of the total number of subscribers in MDUs.
78. Consequently, the Commission considers that the withdrawal of access to fibre IBW would not result in a substantial lessening or prevention of competition in fibre-only MDUs.
79. In light of the above, the Commission considers that access to fibre IBW does not meet the competition component.

Duplicability component

Positions of parties

80. Beanfield, Bell Canada, Novus, RCCI, SaskTel, Shaw, TBayTel, and TCI submitted that access to fibre IBW fails the duplicability component of the Essentiality Test.
81. Cogeco submitted that access to fibre IBW fails the duplicability component since it is generally practical and feasible for a facilities-based competitor to duplicate IBW

in MDUs from a financial, technical, and implementation perspective, but only if the construction phase of the MDU has not been completed.

82. Bell Canada, Novus, and SaskTel were of the view that there is typically room in the risers for additional wiring or that additional conduit could be added. Novus submitted that in rare cases it has created additional riser space. Novus also submitted that its experience in Metro Vancouver is that all telecommunications service providers install their own IBW. RCCI noted that in its experience, carriers such as Beanfield and Frontline Broadband Inc. (Frontline) have been able to install fibre IBW to each customer suite post-construction.
83. The ITPA, Novus, RCCI, SaskTel, Shaw, and TBayTel indicated that they have not experienced any issues installing their own fibre IBW in MDUs. Bell Canada noted that one building owner had not permitted it to install fibre IBW on the outside of an MDU for aesthetic reasons; however, new fibre wiring products had alleviated those concerns.
84. Bell Canada provided the results of a survey it conducted of competitors that have self-installed fibre IBW in the Greater Toronto Area (GTA). Bell Canada found that more than six competitors had 490 IBW installations in 471 MDUs in the GTA. It also noted that Valley Fiber Limited (Valley Fiber) planned to install its own fibre IBW in the MDUs Valley Fiber serves.
85. Conversely, Cloudwifi, TekSavvy, and Videotron submitted that access to fibre IBW meets the duplicability component. Those companies submitted that they have experienced issues related to the installation of fibre IBW, for example, due to difficulty negotiating an access agreement; MDU owners refusing to make internal or external modifications to install IBW; refusal of MDUs owners because the work might disturb residents; owners favouring certain service providers; lack of available riser space; significant costs associated with upgrading or installing additional riser space; congestion in the main terminal room, riser, or duct space; substantial make-ready work required to install fibre IBW in MDUs with deteriorating facilities; or issues with those facilities not meeting technical and safety standards.
86. Beanfield, Cloudwifi, Shaw, and Videotron submitted that there may be situations where riser space cannot be added or where power may be an issue in the main terminal room. Shaw also submitted that there is a practical limit on the number of TSPs that can build their own IBW, due to space constraints in risers and telecommunications closets to accommodate additional IBW.
87. With respect to new-construction MDUs, RCCI submitted that there is more conduit available and more consistent design to support the installation of facilities from multiple TSPs in those MDUs. Conversely, Videotron submitted that there is a trend for new MDUs to reduce space for telecommunications services as much as possible. Bell Canada replied that, in its experience, there are just as many risers being constructed in new buildings as in the past, but that some owners may be reducing the size of telecommunications rooms and closets since service providers are

installing smaller equipment, including fibre, which is much smaller in diameter than copper.

88. In addition, certain parties proposed that the Commission modify its existing MDU framework in order to prevent third parties from blocking or “gatekeeping” TSPs from accessing MDUs.¹¹ For example, Beanfield submitted that it has been prevented by building owners, condominium corporations, or their delegates from installing its own fibre IBW in MDUs in the pre-construction or post-construction phases, as a result of exclusivity arrangements or bulk deals. Cogeco submitted that, in some instances during the construction or post-construction phase, property owners or managers have refused it access to install its own IBW. Similarly, Cloudwifi indicated that it had been refused access to MDUs to install its own fibre IBW in the post-construction phase. TCI submitted that carriers face a significant challenge from uncooperative third parties, such as landlords, strata councils, building managers, and riser managers, when deploying fibre IBW.
89. TekSavvy submitted that it had recently experienced two situations in which MDU owners refused to permit it access to two MDUs, and it had been prevented from installing fibre IBW in the post-construction phase of those buildings. TekSavvy indicated that, while it is aware that it may submit a Part 1 application to the Commission pursuant to the MDU access condition to resolve such disputes, it would be burdensome to do so every time it is refused access to an MDU.
90. Bell Canada, Novus, RCCI, SaskTel, Shaw, and TBayTel generally indicated that they were able to access MDUs or had not been obstructed from doing so in order to install IBW.

Commission’s analysis and determinations

91. In Telecom Regulatory Policy 2015-326, the Commission indicated that determining whether the duplicability component is met involves assessing whether it is practical or feasible for competitors to duplicate the functionality of a facility, through either self-supply or third-party supply. If the Commission finds that the functionality of a particular wholesale service cannot reasonably be duplicated by a reasonably efficient competitor on a sufficient scale, the duplicability component would be met.
92. With respect to the matter of third parties gatekeeping access to MDUs and obstructing competitive installation of IBW, there is limited evidence to demonstrate that this represents a significant barrier to installing competitive fibre IBW at this time. The Commission has, on occasion, issued a decision following a Part 1 application to resolve such matters when they arise, such as in Telecom Decision 2016-324. However, from the time that decision was issued to the date of this decision, certain MDU access-related disputes have been resolved through a dispute

¹¹ In the context of gatekeeping access to MDUs, “third parties” generally refers to MDU or condominium developers, condominium boards, and property managers, as well as affiliated parties, such as riser management companies.

resolution process without requiring a Commission decision.¹² The Commission is of the view that no further regulatory measures are necessary to address MDU access-related issues at this time, given the limited number of occurrences of such issues, Commission staff's ability to address certain issues through its dispute resolution mechanism, and the ability of competitors to install their own fibre IBW in MDUs.

93. The record of this proceeding shows that the duplicability of access to fibre IBW may be a function of whether there is sufficient riser space available in a particular MDU. Consequently, the Commission has broken down its analysis for the duplicability component into two sections, based on the availability of riser space to accommodate additional fibre IBW.

MDUs where there is sufficient riser space to accommodate additional fibre IBW

94. If sufficient riser capacity exists to install additional fibre IBW in an MDU, or can otherwise reasonably be provisioned, a reasonably efficient competitor seeking to provide downstream services over fibre IBW should be able to self-provision its own fibre IBW, provided it is able to negotiate access to the MDU on reasonable and equitable terms and conditions, including fees, pursuant to Telecom Decision 2003-45. The record of this proceeding shows that there are numerous examples of companies successfully installing their own fibre in existing MDUs.
95. While several companies indicated that they have experienced difficulty installing fibre IBW due to uncooperative building owners or riser management companies, the Commission considers that its current rules are sufficient to deal with any such instances. In particular, even if access to fibre IBW is not mandated, carriers would still be subject to a condition under section 24 of the Act that essentially states that they cannot provide service in a building if other companies are being prevented from doing so. This condition prevents carriers from entering into exclusivity agreements and incents MDU owners to provide competitive access to their properties to better serve residents.
96. Moreover, the Commission stated in Telecom Decision 2003-45 that it may issue an order against MDU owners, under section 42 of the Act, in cases where negotiations on access cannot be concluded on a timely basis. As a result, companies that face barriers with respect to access to MDUs have remedies available before the Commission to protect against such barriers.
97. As evidenced by many competitors, the Commission considers that where sufficient riser capacity exists to install additional fibre IBW in an MDU, it is practical and

¹² Note, however, that as of the date of this decision, there was an ongoing Part 1 proceeding related to an application by RCCI for access to an MDU in New Brunswick and a closed Part 1 proceeding related to an application by Novus for access to certain MDUs in British Columbia that is currently being held in abeyance while the parties negotiate access on reasonable terms and conditions.

efficient for a company to duplicate it using its own fibre IBW, particularly to support the delivery of high-value services such as broadband Internet.

98. The Commission has also considered whether it is efficient and practical for companies to install fibre IBW post-construction since they may face higher costs than companies that installed it during the construction phase. In Telecom Decision 2003-45, the Commission stated the following:

The Commission also considers that LECs must have access to MDUs during the construction phase, in order to have service available upon occupancy, to minimize disruption, and to avoid the additional costs associated with the installation of facilities after completion of the MDU. LECs that are prevented from accessing an MDU during this period will face higher costs and have greater difficulty in attracting customers than those who had access to the MDU during the construction phase.

99. The record of this proceeding indicates that companies have an opportunity to install fibre IBW during the construction phase of MDUs. For example, Bell Canada noted that during the pre-construction planning stages, service providers discuss their riser needs with the building owner or developer and risers are built accordingly, usually with additional space in case other service providers request access in the future, and RCCI submitted that every carrier has the ability to enter an MDU and install facilities during the construction phase of a new building. Additionally, pursuant to Telecom Decision 2003-45, LECs that wish to install telecommunications facilities during the construction of an MDU should, subject to the building owner's reasonable acceptance of plans for the installation of any wiring or entrance facilities, be given access to the property, as required, to install these facilities.
100. Although the costs to install fibre IBW may be higher post-construction, multiple companies have done so and, therefore, have demonstrated that it is not overly cost-prohibitive for a reasonably efficient competitor to do so in buildings with sufficient riser space. Pursuant to Telecom Decision 2003-45, new entrants are responsible for the costs associated with the installation or upgrade, including costs reasonably incurred by the building owner, and must compensate building owners that install or upgrade the IBW and related facilities for the costs associated with the installation or upgrade made at their request.
101. In Telecom Decision 2015-326, the Commission indicated that scale is also an important consideration, since competitors' capacity for isolated or limited duplicability does not necessarily indicate that they are able to deploy facilities on a widespread basis sufficiently to discipline the exercise of incumbent carriers' upstream market power in relation to relevant downstream markets. As a result, the geographic area used to define the relevant market for the wholesale service in question is typically the appropriate scale for assessing duplicability.
102. Since the Commission has found that the appropriate geographic market is the individual MDU, the appropriate scale for assessing duplicability is at the individual

MDU level. At this level, scale would not apply since each individual MDU constitutes its own relevant market and would need to be assessed on a case-by-case basis.

103. Accordingly, the Commission considers that in cases where sufficient riser capacity exists for competitors to install their own fibre IBW, a reasonably efficient competitor can install its own fibre IBW. Consequently, the duplicability component is not met where sufficient riser space exists.

MDUs where there is insufficient riser space to accommodate additional fibre IBW

104. Several interveners submitted that they have experienced issues with a lack of riser space in MDUs. Based on the record of this proceeding, however, it is unclear the extent to which the issue is lack of riser space or, rather, MDU access issues caused by uncooperative building owners. Pursuant to Telecom Decision 2003-45, where insufficient space is available in risers to install additional IBW, the building owner may either permit the new entrant to construct additional riser space in the MDU, or to upgrade or replace the existing IBW and related facilities to make more efficient use of the riser space available.
105. Given that new entrants have options to construct additional riser space in the MDU, or to upgrade or replace the existing IBW and related facilities to make more efficient use of the riser space available, and that emerging technologies will increasingly become available in the same product market, the Commission considers that the duplicability component is not met in MDUs with insufficient riser capacity.
106. Notwithstanding the finding that access to fibre IBW does not meet the duplicability component where sufficient or insufficient riser space exists, in certain circumstances it could be met if there is insufficient riser capacity in the MDU and the new entrant is unable to install additional fibre IBW in the riser, construct additional riser space in the MDU, or upgrade or replace the existing IBW and related facilities to make more efficient use of the available riser space. These circumstances would need to be assessed on a per-MDU basis. However, based on the record of this proceeding, it appears that these circumstances are highly limited.

Conclusion

107. In light of the above, the Commission finds that access to fibre IBW does not meet the duplicability component of the Essentiality Test.

Conclusion regarding the Essentiality Test

108. Given the Commission's findings that access to fibre IBW does not meet the second and third components of the Essentiality Test, the Commission determines that access to fibre IBW is not an essential service.

Policy considerations related to the Essentiality Test

109. In conjunction with the determination above, the Commission must examine three policy considerations to conclude whether or not it should continue to mandate access to fibre IBW in MDUs.

110. In Telecom Regulatory Policy 2015-326, the Commission stated that it may use a policy consideration to

- justify a decision to mandate the provision of a wholesale service that does not meet the Essentiality Test;
- justify a decision not to mandate the provision of a wholesale service that meets the Essentiality Test; or
- support a decision to mandate the provision of a wholesale service following the application of the Essentiality Test.

111. The policy considerations, as set out in Telecom Regulatory Policy 2015-326, are as follows:

- **Public good:** There is a need to mandate the service for reasons of social or consumer welfare, public safety, or public convenience.
- **Interconnection:** The service would promote the efficient deployment of networks and facilitate network interconnection arrangements.
- **Innovation and investment:** Mandating or not mandating the facility or wholesale service could (i) affect the level of innovation/investment in advanced or emerging networks or services for incumbents, competitors, or both; or (ii) affect the associated level of adoption of advanced or emerging services by users of telecommunications services.

Public good

Positions of parties

112. Beanfield, Bell Canada, Cogeco, RCCI, SaskTel, and TBayTel generally submitted that mandating access to fibre IBW would not enhance social or consumer welfare or public safety, and that public convenience would not be advanced. Conversely, Cloudwifi, Shaw, and TekSavvy submitted that the Commission should consider mandating access to fibre IBW based on the public good consideration because, for example, (i) requiring duplication of access to fibre IBW would be an inefficient use of resources and might inconvenience MDU residents where construction is required to accommodate additional IBW; (ii) it would enhance competition in MDUs, thereby increasing innovative and affordable telecommunications services for end-users; and (iii) it is a public good in the same way that telephone poles are considered by the Commission to be a public good.

Commission's analysis and determinations

113. The Commission considers that the public good policy consideration does not apply to access to fibre IBW because such access does not have a strong connection to social or consumer welfare, public safety, or public convenience. In addition, the Commission does not consider that competition and consumer choice qualify as public good considerations.

114. Accordingly, the Commission finds that the public good consideration does not apply.

Interconnection

Positions of parties

115. Beanfield, Bell Canada, Cogeco, Novus, RCCI, SaskTel, and TBayTel generally agreed that access to fibre IBW is not an interconnection service and, therefore, mandating access to fibre IBW would not promote more efficient networks and network interconnection. Bell Canada and RCCI argued that access to fibre IBW is not an interconnection service since it does not involve the mutual exchange of traffic. Novus submitted that access to fibre IBW is not about interconnection of networks. Similarly, Shaw submitted that mandating access to fibre IBW would not facilitate network interconnection arrangements.

116. Conversely, TekSavvy submitted that mandated access to fibre would enhance the efficient deployment of networks.

Commission's analysis and determinations

117. The Commission does not consider that mandated access to fibre IBW would promote the efficient deployment of networks and facilitate network interconnection arrangements. Interconnection generally refers to the linking of at least two telecommunications network segments at a common physical point, where each interconnected network segment is managed by a separate party, in such a manner as to allow traffic from one party's network segment to be transferred onto another party's network segment. The Commission considers that access to fibre IBW does not involve the transfer of traffic from one party's network to another party's network.

118. Accordingly, the Commission finds that the interconnection policy consideration does not apply.

Innovation and investment

Positions of parties

119. Beanfield, Bell Canada, RCCI, SaskTel, Shaw, TBayTel, and TCI were of the view that mandating access to fibre IBW would not foster innovation and investment in advanced or emerging networks or services. Bell Canada, RCCI, and TCI generally

submitted that mandating access to fibre IBW would have a negative impact on investment – for example, by promoting inefficiency, undermining innovation and investment, and creating a disincentive to invest in fibre networks.

120. TekSavvy submitted that mandating access to fibre IBW would increase innovation and investment. Among other things, it submitted that mandated access would enhance investment in advanced fibre-to-the-premises (FTTP) networks by competitors by lowering their costs to deploy their networks to MDUs, provide innovative services to end-users over fibre, and offer innovative service options to underserved market segments.
121. Cloudwifi submitted that granting easy, low-cost access to fibre IBW would promote facilities-based competition from new, regional, and smaller players, and that mandating access to fibre IBW would encourage competition from innovative facilities-based ISPs. It was concerned that by forcing competitors to install fibre IBW at a cost that far exceeds the cost incurred by the first LECs to enter the building, the Commission would be significantly impairing competitive entry rather than promoting it.
122. Videotron submitted that mandated access to fibre IBW would not have a negative impact on investment. It submitted that although the cost of installing fibre IBW is high, it is not so prohibitive that it would impact business plans to deploy a regional access network. Videotron further argued that sharing fibre IBW could have a moderate positive effect on business plans of companies establishing regional access networks, who would gain additional revenue from competitors using their fibre. With respect to innovation, Videotron submitted that mandating access to fibre IBW would not have a negative impact on innovation since innovative work is not being carried out in the IBW field, but instead on access networks.

Commission's analysis and determinations

123. With respect to the level of innovation and investment in advanced or emerging networks or services for incumbents or competitors, the Commission notes that due to the characteristics of fibre, companies have been installing fibre IBW in many brownfield MDUs and are installing only fibre IBW in newer MDUs. The Commission considers that this investment is likely to continue regardless of whether access to fibre IBW is mandated, given the increasing demand for high-speed Internet services.
124. With respect to the impact of the associated level of adoption of advanced or emerging services by end-users, it is unclear the extent to which end-users would increasingly adopt such services if access to fibre IBW were mandated. For example, if fibre IBW were mandated and more competitive options were available in a building, end-users may be increasingly encouraged to adopt higher-speed services than they otherwise would. However, the record of this proceeding does not provide enough evidence for the Commission to determine whether mandated access to fibre IBW would affect the associated level of adoption of advanced or emerging services

by users of telecommunications services to a substantial degree. Therefore, the Commission considers that there is insufficient evidence to conclude that mandating the service would affect the adoption of advanced or emerging services by end-users to a substantial degree.

125. In light of the above, the Commission considers that the innovation and investment policy consideration would not materially impact the decision to mandate (or not) access to fibre IBW.

Conclusion regarding the policy considerations

126. Given the above, the Commission determines that the public good and interconnection policy considerations do not apply and that the innovation and investment policy consideration would not materially impact the decision to mandate (or not) access to fibre IBW.

Conclusion

127. In light of the above, the Commission finds that access to fibre IBW does not meet the second and third components of the Essentiality Test and that there is no valid policy reason to continue mandating this service. Therefore, the Commission determines that access to fibre IBW is not essential and should not be mandated.

Should the Commission forbear from regulating access to fibre IBW?

Positions of parties

128. Bell Canada, Novus, RCCI, SaskTel, TBayTel, and TCI submitted that the Commission should forbear from regulation if it determines that access to fibre IBW in MDUs does not meet the Essentiality Test. They proposed that the Commission forbear from regulating the service, to varying degrees, under sections 24, 25, 27, 29, and 31 of the Act.

129. Beanfield suggested that the Commission retain the powers required to develop a forward-looking regulatory framework that enables facilities-based competition built around a modified MDU access condition.

130. While Cloudwifi and TekSavvy submitted that access to fibre IBW meets the Essentiality Test, they also proposed that, should the Commission decide to forbear from regulating the service, it should retain certain powers under the Act – specifically, under section 27 of the Act in the case of Cloudwifi, and under section 24 and subsections 27(2), (3), and (4) in the case of TekSavvy.

131. The ITPA was of the view that the Commission should not forbear from regulating access to fibre IBW since it would put existing connections at risk and frustrate end-user choice.

132. Videotron submitted that the Commission should not forbear from regulating access to fibre IBW since there should be regulatory symmetry between MDU IBW access regulations for copper and coaxial IBW and fibre IBW.

133. The following parties cited specific policy objectives of the Act to support their views on forbearance:¹³

- Bell Canada submitted that forbearance would be consistent with the policy objectives in paragraphs 7(a), (b), (c), (f), and (h) of the Act;
- TCI submitted that forbearance would promote the policy objectives, and specifically those in paragraphs 7(b) and 7(c) of the Act; and
- Shaw submitted that although forbearance would be consistent with the policy objectives in paragraphs 7(f) and (g) of the Act, which may be promoted by forbearance, it is likely that the objectives in paragraphs 7(a) and (b) would be undermined; therefore, complete forbearance may not be consistent with the policy objectives, on balance, and would be impermissible pursuant to subsection 34(1) of the Act.

Commission's analysis and determinations

134. Based on (i) the finding that the withdrawal of access to fibre IBW would not result in a substantial lessening or prevention of competition in fibre-only MDUs, and (ii) certain parties raised the forbearance issue as part of the Telecom Notice of Consultation 2019-420, it is appropriate to consider whether to forbear from regulating the service.

Forbearance evaluation options

135. The Act provides two ways for the Commission to forbear from regulating all or part of a telecommunications service. One approach is to conduct a policy analysis under subsection 34(1) of the Act, and the other is to determine, pursuant to subsection 34(2), whether there is sufficient competition to protect the interests of users. The Commission is also required to evaluate the request for forbearance pursuant to subsection 34(3) of the Act, which contemplates whether forbearance would have a

¹³ The policy objectives are as follows: 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (d) to promote the ownership and control of Canadian carriers by Canadians; (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada; (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services; (h) to respond to the economic and social requirements of users of telecommunications services; and (i) to contribute to the protection of the privacy of persons.

negative effect on the competitive market for the service. The Commission typically uses a market power test to determine whether the requirements under subsection 34(2) are met.¹⁴

Subsection 34(1) of the Act

136. Subsection 34(1) of the Act states that the Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain from regulation would be consistent with the policy objectives.

137. The Commission considers that the following policy objectives are most relevant to the question of whether to forbear from regulating access to fibre IBW:

- 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and
- 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

138. The record of this proceeding has demonstrated that companies other than ILECs and incumbent cable carriers have successfully installed their own fibre IBW in many buildings in major cities in Canada, in particular Toronto and Vancouver. Forbearance will allow facilities-based providers to continue with the expansion of their fibre IBW in a competitive environment, with greater certainty as they plan their rollout. Consequently, forbearance would be consistent with paragraph 7(a) of the Act.

139. Forbearing from the regulation of access to fibre IBW in MDUs would enhance the efficiency and competitiveness of Canadian telecommunications, consistent with paragraph 7(c) of the Act, since forbearance would encourage multiple service

¹⁴ The market power test (set out in Telecom Decision 94-19) consists of several evaluation criteria, including market share, supply and demand, barriers to entry, availability of substitutes, and technological factors. In Telecom Regulatory Policy 2015-326, the Commission noted that since both the Essentiality Test and the market power analysis used to inform the Commission's forbearance-related determinations contain many of the same analytical elements, these analyses could be performed in conjunction with each other. Based on the results of the retail market assessment, the upstream market power analysis, as well as the application of the Essentiality Test and policy considerations, the Commission would then determine the specific regulatory measures that should be applied, including whether to mandate the provision of the wholesale service in question.

providers to install their own fibre IBW in MDUs, rather than relying on incumbent IBW owners to provide access to their IBW, thereby increasing the competitiveness of fibre IBW in MDUs.

140. Given that access to fibre IBW does not meet the Essentiality Test, and in particular the competition component of the test, forbearance would also be consistent with paragraph 7(f) of the Act because it would foster increased reliance on market forces for the provision of telecommunications services and would not result in regulation being imposed where it is not required.

141. In addition, forbearance would be consistent with subparagraphs 1(a)(i), (vi), and (vii) of the 2019 Policy Direction,¹⁵ which state that the Commission should consider the extent to which its decisions

- i. encourage all forms of competition and investment,
- vi. enable innovation in telecommunications services, including new technologies and differentiated service offerings, and
- vii. stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services.

142. In particular, forbearance would provide the requested regulatory relief for companies across the country that are making significant investments as they continue to roll out their fibre networks, including deploying fibre IBW in MDUs. The record of this proceeding has shown that this is an ongoing process, which includes the deployment of fibre IBW in both new and older MDUs. As such, the Commission considers that fibre is an important growth technology and that forbearance would further support and encourage ongoing investments and the deployment of fibre IBW in MDUs across the country.

143. Further, forbearance would be consistent with subparagraph 1(a)(i) of the 2006 Policy Direction,¹⁶ which states that the Commission should rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives. The Commission's analysis has demonstrated that the service is duplicable and competitors have been successful in installing their own fibre IBW in MDUs. As a result, not mandating the provision of access to fibre IBW in MDUs would demonstrate a reliance on market forces to the maximum extent feasible.

144. Accordingly, forbearing from the regulation of access to fibre IBW would be consistent with the policy objectives. As a result, it would be reasonable to not apply

¹⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

¹⁶ *Order issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

sections 25, 29, and 31, and subsections 27(1), (5), and (6) of the Act to the provision of access to fibre IBW.

145. However, the Commission is of the view that it should retain its powers to impose conditions on the service, pursuant to section 24 of the Act; protect against undue preference and unjust discrimination, pursuant to subsections 27(2) and (4) of the Act; and determine compliance with all retained requirements, pursuant to subsection 27(3) of the Act.

Subsection 34(2) of the Act

146. Subsection 34(2) of the Act states that where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a decision to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 in relation to the service or class of services.

147. The Commission has already applied a similar test of market power as part of the Essentiality Test, above, and determined that the withdrawal of mandated access to fibre IBW would not result in a substantial lessening or prevention of competition. In addition, there is evidence that, on a broader geographic basis, various service providers have been successfully installing fibre IBW in MDUs over at least three years prior to the start of this proceeding (from 2017 to 2019), and that a substantial number of competitors have successfully installed fibre IBW in MDUs, including Beanfield, Bells and Whistles Communications, Inc., CIK Telecom, Cloudwifi, Coextro, Cogeco, Fibrestream, Frontline, Novus, TBayTel, TekSavvy, and Valley Fiber – particularly within the GTA and Vancouver.¹⁷

148. Consequently, the Commission is of the view that there are no significant barriers to installing fibre IBW in MDUs, that fibre IBW competition has occurred over at least three years prior to the start of this proceeding, and that fibre IBW competition will continue to occur in the future if access to fibre IBW is forborne from regulation.

149. While the Commission has found, for the purpose of the Essentiality Test, that the relevant geographic market for fibre IBW is the individual MDU, it would be appropriate to consider whether to forbear on a broader scale given the administrative challenges and supporting evidence required to perform a forbearance analysis on a per-MDU basis.

150. Evidence in this proceeding indicates that ILECs, incumbent cable carriers, and other competitors have been able to install their own fibre in MDUs in various cities and

¹⁷ Bell Canada's survey of competitors that have self-installed fibre IBW in the GTA found that several competitors had installed fibre IBW in 490 MDUs.

regions across Canada, and building owners also have the option to do the same, anywhere in the country.

151. The Commission considers that the geographic area in which the MDU is located should not generally have a bearing on the ability of a competitor to install its own fibre IBW in an MDU, and therefore forbearance determinations in this proceeding should apply to the service broadly at the national level.

152. As a result, it is not necessary for the Commission to reapply a full market power test under subsection 34(2) of the Act.

Subsection 34(3) of the Act

153. The Commission is also required to evaluate the request for forbearance pursuant to subsection 34(3) of the Act, which states that the Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

154. The Commission considers that access to fibre IBW meets the criteria for forbearance under section 34(3) of the Act. Specifically, to refrain from regulating access to fibre IBW in MDUs would be unlikely to impair unduly the continuance of a competitive market for the services that may be provisioned via fibre IBW.

155. Competitors may self-provision fibre IBW, and other competitive alternatives – such as coaxial cable operating with DOCSIS 3.1 full duplex mode and disaggregated wholesale HSA – will increasingly become available and should form part of the same product market, leading to an expansion to the number of options available to end-users in MDUs. Consumers in MDUs will continue to have choice among service providers for their Internet, television, and voice communications services, via fibre, as it continues to be installed, and/or other IBW technologies.

Conclusion

156. In light of the above, the Commission

- finds, as a question of fact, that to refrain from regulating access to fibre IBW in all MDUs across Canada would be consistent with the policy objectives;
- finds that it is not necessary to reapply a full market power test under subsection 34(2) of the Act;
- finds, as a question of fact, that refraining from regulating access to fibre IBW in MDUs would be unlikely to impair unduly the continuance of a competitive market for the services that may be provisioned via fibre IBW;

- determines that, as of the date of this decision, sections 25, 29, and 31, and subsections 27(1), (5), and (6) of the Act, do not apply to the provision of access to fibre IBW in MDUs; and
- retains its powers to
 - impose conditions on the service, pursuant to section 24 of the Act;
 - protect against undue preference and unjust discrimination, pursuant to subsections 27(2) and (4) of the Act; and
 - determine compliance with all retained requirements pursuant to subsection 27(3) of the Act.

Should the Commission modify the MDU access condition regarding a competitor's choice to access end-users via resold or leased fibre IBW?

Background

157. The MDU access condition is a condition of service that is imposed on LECs providing service in an MDU, pursuant to the Commission's powers under section 24 of the Act. It states that the provision of telecommunications service by a LEC in an MDU is subject to the condition that all LECs wishing to serve end-users in that MDU are able to access those end-users on a timely basis, by means of resale, leased facilities, or their own facilities, at their choice, under reasonable terms and conditions.

Commission's analysis and determinations

158. The objective of the MDU access condition is to ensure that existing and potential end-users in new and existing buildings can have direct access to the LEC of their choice. In addition, the Commission considered that LECs must have the ability to access and enter into MDUs in order to connect or install their facilities, as well as repair and maintain them. These remain important objectives.

159. However, as determined above, access to fibre IBW should not be mandated because it does not meet the Essentiality Test. Having come to this conclusion, it no longer makes sense for the Commission to maintain the portion of the section 24 condition that would require LECs to ensure their competitors have access to fibre IBW by means of resale or leased facilities. This change would not, however, modify the remainder of that condition, which essentially prohibits exclusivity agreements and requires LECs to ensure that competitors have access to the building to install and maintain their own IBW, including fibre.

160. Parties would be able to provide access to fibre IBW under a commercial agreement, while access via copper or coaxial cable would continue to be required under the MDU access condition and obtained via terms established in tariffs and in Broadcasting Public Notice 2002-51, respectively.

161. Accordingly, the Commission modifies the MDU access condition by withdrawing a competitor's choice to access end-users by means of reselling or leasing fibre IBW. As a result of this modification, parties are free to negotiate rates, terms, and conditions for access to fibre IBW on a commercial basis – should they wish to do so – without a tariff, and will continue having the option of installing their own fibre IBW to access end-users.

Should the modified MDU access condition and associated obligations be extended to all carrier ISPs, and potentially to all TSPs?

Background

162. As noted above, the Commission established the MDU access condition in Telecom Decision 2003-45, and extended the MDU access condition and access guidelines established in that decision to include members of the Coalition in Telecom Decision 2005-33. Further, the Commission extended the obligations imposed on LECs regarding the MDU access condition and the disclosure of MDU access agreements to include Coalition members that provide services to end-users in MDUs, whether they provide services directly, or indirectly as a wholesaler.

163. In Telecom and Broadcasting Decision 2019-218, the Commission expressed the view that it would be reasonable for carrier ISPs to have access to MDUs, as well as to LECs' IBW in MDUs, without having to become registered CLECs, in the same way that Telecom Decision 2005-33 extended the MDU access condition and associated obligations to members of the Coalition. Further, the Commission considered that requiring carrier ISPs that do not otherwise intend to provide local exchange service to become registered CLECs to connect with LEC facilities in MDUs created an unnecessary regulatory burden on those ISPs and on other LECs.

164. The Commission subsequently expressed the preliminary view that the MDU access condition and associated obligations should be extended to all carrier ISPs, and potentially to all TSPs, in the same way that it extended the MDU access condition and obligations to members of the Coalition in Telecom Decision 2005-33.

165. In Telecom Decision 2019-419, the Commission reiterated the preliminary view that it had expressed in Telecom and Broadcasting Decision 2019-218. Concurrently, the Commission issued Telecom Notice of Consultation 2019-420, in which it invited comments on the Commission's preliminary view, and to consider changes to the framework for access to IBW, as well as appropriate rates, terms, and conditions for fibre IBW connections.

Positions of parties

166. The Canadian Communication Systems Alliance, Cogeco, the ITPA, Novus, SaskTel, and TekSavvy supported the Commission's preliminary view that the MDU access condition and associated obligations should be extended to all carrier ISPs, and potentially to all TSPs. However, Beanfield, Bell Canada, Cloudwifi, Eastlink,

RCCI, Shaw, TBayTel, TCI, and Videotron indicated that the MDU access condition should only be extended to facilities-based TSPs. While the ITPA took no issue with the Commission's preliminary view, it submitted that small ILECs and MDUs in small ILEC operating territories should be excluded from the scope of the current proceeding, and subject to a follow-up proceeding, if deemed necessary.

167. Cogeco submitted that the guiding principles underpinning the MDU regulatory framework of maximizing end-user choice and facilitating competition remain relevant today. Beanfield, Eastlink, and TekSavvy also raised arguments related to maximizing end-user choice and facilitating competition. Further, Cogeco submitted that the framework should be updated to reflect the evolution of distribution technologies and the market for telecommunications services, which has migrated away from local voice services towards Internet access services.
168. TekSavvy submitted similar comments, indicating that, in its view, there is no reason to limit the MDU access condition and associated obligations, or the ability to access IBW, to LECs or any particular type of technology. Further, TekSavvy indicated that a regulatory regime that treats LECs more favourably than other TSPs is likely out of date, given the decline in importance of the wireline voice service market.
169. Bell Canada submitted that there is no policy rationale that justifies mandated access to fibre IBW and, as a result, the MDU regulatory framework should exclude it and continue to be restricted solely to copper IBW, including coaxial cable IBW. In its view, therefore, LECs, carrier ISPs, and TSPs should not be obliged to share their fibre IBW, nor should they have the right to access Bell Canada's or any other LEC-owned fibre IBW pursuant to the MDU access condition.
170. Bell Canada, RCCI, and TCI expressed support for the principle of "regulatory symmetry." Bell Canada further submitted that, if the Commission continues to mandate the provision of the service, owners of IBW in MDUs should be obliged to share their IBW, and have access to IBW that they do not own, while TSPs that do not own IBW should not have access to IBW. RCCI submitted that, in its view, in order to benefit from the MDU access condition, a TSP should own and operate facilities and bring those facilities into the MDU. RCCI indicated that this is necessary to ensure that the MDU access condition is reciprocal in the sense that all of the rights and responsibilities associated with the MDU access condition would apply equally to all TSPs serving customers in MDUs. TCI submitted similar comments in relation to applying conditions and obligations to all providers in a consistent manner.
171. Eastlink indicated that, in its experience, resellers lack technical expertise and often bypass rules and processes for gaining access to wholesale Internet access services, which has led to damage of Eastlink's network. It indicated that facilities-based TSPs have little recourse to enforce construction standards to prevent any damage to their facilities.

172. Videotron submitted that it failed to understand how non-facilities-based TSPs would benefit from the MDU access condition, given that they do not have a presence in the main terminal rooms of MDUs, and as a result, non-facilities-based TSPs do not have a reason to connect to IBW. Lack of demand from non-carriers was also noted by RCCL.
173. Shaw submitted that granting MDU access to non-facilities-based TSPs would undermine investment incentives by competing facilities-based TSPs, thus limiting Canadians' access to next-generation telecommunications networks. Shaw further indicated that such an approach would be inconsistent with the policy objectives set out in paragraphs 7(b), (c), and (h) of the Act. Bell Canada also submitted that allowing non-facilities-based TSPs to benefit from access to carriers' facilities would undermine incentives for continued facilities-based investment in fibre IBW in MDUs, which would contravene the 2006 Policy Direction, to not artificially favour either Canadian carriers or resellers, and the 2019 Policy Direction, to encourage all forms of competition and investment.

Commission's analysis and determinations

174. The Commission's policies with respect to access to MDUs have sought to maximize facilities-based competition and end-user choice. To that end, in Telecom Regulatory Policy 2003-45, the Commission expressed the view that these concepts go hand in hand. In this proceeding, no parties indicated that the MDU access condition should not be extended to additional parties. However, parties differed on the extent to which the condition should be extended.
175. In general, parties in support of extending the MDU access condition to include all TSPs argued that this would be consistent with the Commission's policy of maximizing end-user choice, reducing barriers to entry, and promoting competition. These parties emphasized that such an approach would be consistent with the various corresponding elements of the 2006 Policy Direction and the 2019 Policy Direction (collectively, the Policy Directions).
176. Conversely, parties supporting the extension of the MDU access condition only to carriers argued that the inclusion of non-carriers would have the potential to undermine facilities-based competition and create disincentives for carriers to invest in building facilities. These parties also raised the argument of regulatory symmetry, in that TSPs with varying responsibilities should be treated equitably only insofar as they share the same responsibilities; that is, carriers and non-carriers should be treated differently, given the additional responsibilities associated with the ownership and operation of telecommunications facilities. Further, these parties expressed concern that (i) there is a lack of evidence of demand for IBW from non-carriers to warrant according them access, and (ii) non-carriers lack the technical expertise to handle IBW, which could lead to damage to telecommunications facilities.

177. Some parties, notably Bell Canada, submitted that the MDU access condition should not apply to fibre IBW. However, the Commission stated in Telecom and Broadcasting Decision 2019-218 that the MDU access condition, as articulated in Telecom Decision 2003-45, is broadly worded and not confined to any particular access technology.
178. The Commission considers the current application of the MDU access condition only to LECs and members of the Coalition to be outdated. While local voice services were the primary focus of the Commission's regulatory framework when it established the MDU access condition, the Commission has since recognized Internet access services as dominant basic telecommunications services and has modified its regulatory framework accordingly, most notably by establishing the universal service objective and the Broadband Fund. The requirement that competitors that may not wish to provide local voice services must register as a CLEC and meet all associated obligations is inconsistent with the Commission's recent policy decisions, which have sought to increase access to broadband Internet access services.¹⁸
179. The Commission considers that three options are available with regard to the MDU access condition and associated obligations: (i) extend the MDU access condition and obligations to all TSPs, (ii) extend them to all carriers, or (iii) extend them only to carrier ISPs.
180. The Commission is of the view that extending the MDU access condition and associated obligations only to carrier ISPs would represent the most appropriate expansion of the MDU access condition at this time.
181. In particular, as some parties noted, non-carriers do not own or operate transmission facilities and would not have a presence in the main terminal room of MDUs. Given that non-carriers would not connect with facilities or install their own facilities in MDUs, there may be no material benefit or reason to extend the MDU access condition to all TSPs, which includes non-carriers. Further, given the lack of demand from non-carriers for access to fibre IBW, and without a verifiable reason for non-carriers to make use of IBW in MDUs, the extension of the MDU access condition to these TSPs would not further the intent of the MDU framework.
182. The MDU framework, as established in Telecom Decision 2003-45, was designed to facilitate the orderly progression of facilities-based competition. For example, the Commission indicated in that decision that LECs must have the ability to access and enter MDUs in order to connect or install their facilities, as well as repair and maintain them and do whatever else may be required to provide reliable, high-quality

¹⁸ However, all TSPs must meet certain regulatory obligations depending on what type of provider they are. [Responsibilities and regulatory obligations](#) apply to facilities-based providers whereas [Responsibilities](#) apply for CLECs.

service to end-users in MDUs. The Commission considers that extending the MDU access condition beyond carriers or carrier ISPs would not be feasible, nor would it be proportionate to the intent of the MDU access condition, which is to help establish facilities-based competition. Limiting the extension of the MDU access condition to carriers or carrier ISPs would preserve that intent.

183. While many parties indicated that the MDU access condition should only be extended to facilities-based TSPs, which implies all carriers, rather than to all TSPs, the Commission considers that it would be reasonable to limit the extension specifically to carrier ISPs, which was one of the two options the Commission proposed in the preliminary view expressed in Telecom Decision 2019-218. In that decision, the Commission noted that there had been an evolution in telecommunications services since the early 2000s, including a migration towards broadband Internet services and away from legacy services, such as landline voice service. Among other things, the Commission considered that requiring carrier ISPs that do not otherwise intend to provide local exchange service to become registered CLECs to connect with LEC facilities in MDUs creates an unnecessary regulatory burden on those ISPs and on other LECs.
184. The Commission does not consider that there is any justification to extend the MDU access condition to any other providers, beyond carrier ISPs, at this point, because services beyond broadband Internet access services – such as commercial private line or data services, for example – were not explicitly contemplated in Telecom Notice of Consultation 2019-420, nor were they reflected in the record of the current proceeding.
185. With respect to the ITPA's request that small ILECs be excluded from consideration in this proceeding, and subject to a follow-up proceeding, if necessary, the Commission notes that the existing MDU access condition applies to all LECs, small ILECs included. The Commission considers that the MDU access condition should continue to be applied to all LECs and, therefore, small ILECs should not be excluded from consideration in the current proceeding.
186. Accordingly, consistent with its determinations in relation to members of the Coalition in Telecom Decision 2005-33, the Commission determines that
- the MDU access guidelines regarding conditions that might be considered just and expedient, as described in paragraphs 147 to 172 of Telecom Decision 2003-45, are extended to include arrangements between carrier ISPs and building owners;
 - the MDU access condition, as described in paragraph 141 of Telecom Decision 2003-45, is extended to include carrier ISPs that provide services to end-users in MDUs, whether they provide the services directly, or indirectly as a wholesaler; and

- carrier ISPs are to meet the obligations regarding disclosure of MDU access agreements, as outlined in paragraphs 173 to 178 of Telecom Decision 2003-45.

Should all carrier ISPs, and potentially all TSPs, have access to LECs' and other TSPs' IBW in MDUs on the same basis as LECs, and regardless of technology?

Positions of parties

187. Bell Canada submitted that carrier ISPs and TSPs, to the extent they use their own facilities to reach an MDU, should have access to copper IBW on the same mandated and equivalent basis as LECs and the Coalition do today, based on the symmetry principle, just as carrier ISPs and TSPs should each have a corresponding duty to make their own copper IBW available to other parties seeking access. However, no mandated access is required to any IBW or non-wired IBW technologies beyond copper IBW at this time. TCI submitted that if access is mandated, there is no reason to exclude registered TSPs that bring their own facilities into an MDU.
188. RCCI agreed that all carrier ISPs should have access to IBW in MDUs on the same terms as registered CLECs, and regardless of technology. However, it submitted that these IBW access rights should not be extended to all other TSPs, in the absence of any such demand and in the absence of any factual basis upon which to determine how a non-carrier TSP would access those facilities in MDUs. TBayTel supported RCCI's position that certain TSPs need to be excluded. Cloudwifi similarly stated that carrier ISPs should have the same access to IBW as CLECs, and that it does not object to preventing pure resellers from having such access.
189. Cogeco and TekSavvy submitted that access to IBW should be extended to all TSPs. In Cogeco's view, all companies, including carriers, facilities-based providers, and resellers capable of offering telecommunication or broadcasting services to end-users, should be allowed access to IBW, regardless of the type of wire installed, provided they pay the service provider that owns the IBW and the facilities. TekSavvy also submitted that limiting access to IBW to facilities-based TSPs would not be technologically and competitively neutral, nor would it encourage all forms of competition, which would be inconsistent with the Policy Directions.
190. The ITPA generally agreed with the Commission's preliminary views that all carrier ISPs, and potentially all TSPs, should have access to IBW on the same basis as registered CLECs. Further, ITPA members would continue to permit access to their copper IBW for those competitors that have taken the required steps to interconnect as CLECs in small ILEC exchanges and have executed building access agreements with MDU owners. However, it argued that small ILECs should be excluded from this proceeding, given (i) the small number of MDUs with fibre IBW in their territories, (ii) the fact that these MDUs tend to be small and have easy exterior access, and (iii) the lack of demand. Beanfield supported the ITPA's position to

exclude small ILECs from any mandatory conditions or obligations with respect to access to fibre IBW.

191. Bell Canada, RCCI, and TekSavvy opposed the ITPA's proposal to exclude small ILECs from the proceeding. Bell Canada and RCCI disagreed with the suggestions that mandated access to fibre IBW should only apply to the largest carriers and that small ILECs should not have to share their fibre IBW while having mandated access to other parties' fibre IBW. TekSavvy opposed the proposal on the basis that there is no valid policy reason for such an exclusion. In its view, such an approach would deny Canadians in small ILEC exchanges access to competitive choices for telecommunications services delivered over fibre, and would be inconsistent with paragraph 7(b) of the Act.

Commission's analysis and determinations

192. Given the determination above to forbear from regulating access to fibre IBW, and the resulting modifications made to the MDU access condition, it is not necessary for the Commission to address the matter of whether all carrier ISPs, and potentially all TSPs, should have access to LECs' and other TSPs' fibre IBW in MDUs. Such access may be negotiated on a commercial basis, based on rates, terms, and conditions agreed to by the parties in question.
193. The provision of coaxial cable has been and continues to be subject to a framework based on the *Broadcasting Act* and the Commission's determinations in Broadcasting Public Notice 2002-51. Therefore, the Commission does not consider that its provision should be subject to additional rules under the *Telecommunications Act*. However, where coaxial cable is being used to provision telecommunications services, all carrier ISPs should have access to it on the same basis as LECs, to ensure consistency with the determination above to extend the MDU access condition to all carrier ISPs.
194. The only outstanding matter is for the Commission to determine whether all carrier ISPs, and potentially all TSPs, should have access to LECs' copper IBW in MDUs on the same basis as LECs.
195. No party objected to permitting carrier ISPs to have access to copper IBW in MDUs on the same basis as LECs, although the ITPA submitted that carrier ISPs should still have to interconnect as CLECs in small ILEC exchanges and execute building access agreements with MDU owners. The Commission considers that limiting the extension of access to copper IBW in MDUs to carrier ISPs, on the same basis as LECs, would be consistent with the determination above regarding the MDU access condition and would support the Commission's focus on facilities-based competition. There is no need for carrier ISPs to interconnect as CLECs, since this would defeat the purpose of the extension.
196. The Commission also considers that small ILECs should not be excluded from the same obligations to share their copper IBW as large ILECs. It would be unreasonable

to apply the modified access framework in such an asymmetrical manner that could potentially deny competitive choices to end-users living in MDUs in small ILEC exchanges.

197. In light of the above, the Commission determines that all carrier ISPs are to have access to copper IBW on the same basis as LECs.

198. The Commission **directs** all LECs that have responsibility for, and control of, copper IBW in an MDU to file proposed amended or new tariff pages, within **30 days** of the date of this decision, in order to provide all carrier ISPs that provide their facilities to the MDU with access to copper IBW in MDUs, on the same basis as registered LECs.

How should the Commission dispose of Bell Canada's interim tariff?

Positions of parties

199. Bell Canada requested the following declaration from the Commission, if it determines that access to fibre IBW is not essential, should not be mandated, and should be forborne from regulation:

The Bell Canada fibre IBW tariff, granted interim approval by the Commission in Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-420, is hereby repealed, effective 90 days from the date of this decision. Parties who were permitted to utilize Bell's fibre IBW pursuant to such interim tariff are hereby directed to cease and desist such use at that time, unless Bell and that entity reach a commercially negotiated agreement allowing for continued use, including, to the extent the parties agree, agreement as to the costs of any damages caused by that party from use of Bell's property and as to the rates applicable to any use of these facilities, including, prior to the date of the interim tariff.

Commission's analysis and determinations

200. To date, access to fibre IBW has only been permitted under Bell Canada's interim tariff, based on the Commission's determinations in Telecom and Broadcasting Decision 2019-218.¹⁹ However, no further access was permitted under the interim tariff as of 16 December 2019, based on the Commission's subsequent determinations in Telecom Decision 2019-419. In that decision, the Commission noted that the interim nature of the tariff would have allowed any required redress following the publication of the final decision on the issue.

¹⁹ In that decision, the Commission directed Bell Canada to apply its existing IBW tariff provisions to carrier ISPs, including Cloudwifi, on an interim basis, as of the date of the decision. The Commission noted that there was no charge for the use of copper IBW in Bell Canada's existing tariff, which meant that the existing rate was \$0. As a result, the Commission set an interim rate of \$0 per subscriber per month to be charged by Bell Canada for use of its fibre IBW.

201. Given the above determinations regarding the Essentiality Test and forbearance, all existing fibre IBW connections provided under the interim tariff will not be mandated and will be forborne from regulation.
202. The Commission's intention in setting the interim rate was that Bell Canada would be compensated, once a final IBW rate was set, for the difference between the interim and final rates for access during the time that the interim rate was in effect. Given that the forbearance determination means that no final rate will be set, Bell Canada's proposal to repeal the interim tariff is reasonable.
203. The Commission does not consider that a significant number of connections were made to Bell Canada's fibre IBW during the period the interim tariff was in effect, since only five companies used Bell Canada's fibre IBW in 28 MDUs on 16 December 2019. As a result, only 312 customer suites would be affected by a repeal of the interim tariff.
204. However, it would be appropriate for companies connected to Bell Canada's fibre IBW to have sufficient notice to, for example, (i) enter into commercial negotiations, (ii) make alternative arrangements to continue serving their customers, or (iii) provide sufficient notice to their end-users so that they can make alternative arrangements.
205. It would be appropriate to provide a 180-day phase-out period for the companies connected to Bell Canada's fibre IBW under the interim tariff to decide how to proceed regarding their existing connections. This would provide sufficient time for parties to conduct commercial negotiations with Bell Canada or make alternative arrangements for their customers.
206. In the event that neither of these options is successful, companies connected to Bell Canada's fibre IBW should provide sufficient notice to their customers so that they can make alternative arrangements. These companies should provide a minimum of 90 days' notice to affected customers of any changes to their service. This would mean that companies connected to Bell Canada's fibre IBW should conclude negotiations within the first 90 days of the 180-day phase-out period.
207. At the end of the 180-day phase-out period, and absent a successful commercial negotiation, companies connected to Bell Canada's fibre IBW should be required to cease and desist such use and Bell Canada could disconnect those existing connections, at its convenience.
208. In light of the above, the Commission repeals its determination to apply Bell Canada's existing copper IBW tariff to the provision of access to fibre IBW on an interim basis, effective 180 days from the date of this decision.
209. The Commission also **directs** persons who were permitted to use Bell Canada's fibre IBW pursuant to the interim tariff to cease and desist such use at that time, unless they reach a commercially negotiated agreement with Bell Canada that allows for continued use, including, to the extent the parties agree, agreement as to (i) the costs

of any damages caused by that party from use of Bell Canada's property, and (ii) the rates applicable to any use of these facilities, including prior to the date the interim tariff took effect.

210. The Commission **directs** companies connected to Bell Canada's fibre IBW to provide a minimum of 90 days' notice to affected customers of any changes to their service.

Conclusion

211. In light of all of the above, the Commission determines that the issues of essentiality and forbearance of fibre IBW are within the scope of this proceeding.
212. The Commission finds that access to fibre IBW is not an essential service and access to it will not be mandated. Further, the Commission forbears from regulating access to fibre IBW in all MDUs across Canada, which is consistent with subsections 34(1) and (3) of the Act.
213. The Commission modifies the MDU access condition regarding access to fibre IBW, so that a competitor's choice to access end-users by means of reselling or leasing fibre IBW will not be mandated, but rather subject to a commercial agreement being reached with the owner of the fibre IBW, and without a tariff being required. Under this modification, competitors still have the ability to access the MDU to install their own fibre IBW in an MDU under the MDU access condition.
214. The Commission extends the modified MDU access condition and associated obligations to all carrier ISPs. All carrier ISPs are to have access to copper IBW on the same basis as LECs.
215. The Commission **directs** all LECs that have responsibility for, and control of, copper IBW to file proposed amended or new tariff pages, within **30 days** of the date of this decision, in order to provide all carrier ISPs that provide their facilities to the MDU with access to copper IBW in MDUs, on the same basis as registered LECs.
216. The Commission repeals its decision to apply Bell Canada's existing tariff for copper IBW to the provision of access to fibre IBW on an interim basis, effective **180 days** from the date of this decision. Parties are free to reach a commercially negotiated agreement with Bell Canada for continued use of Bell Canada's fibre IBW.
217. The Commission **directs** persons who were permitted to use Bell Canada's fibre IBW pursuant to the interim tariff to (i) cease and desist such use within **180 days** of the date of this decision, unless they reach a commercially negotiated agreement with Bell Canada that allows for continued use; and (ii) provide a minimum of **90 days'** notice to affected end-users of any changes to their service.

Policy Directions

218. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the Policy Directions. The Commission considers that its determinations in this decision are consistent with the Policy Directions for the reasons set out below.
219. The 2019 Policy Direction provides that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation. Moreover, the Commission should, in its decisions, demonstrate its compliance with the 2019 Policy Direction and specify how those decisions can, as applicable, promote these four outcomes.
220. The Commission considers that forbearing from the regulation of access to fibre IBW in MDUs is consistent with subparagraphs 1(a)(i), (vi), and (vii) of the 2019 Policy Direction. In particular, forbearance will provide the requested regulatory relief for TSPs, which will support and encourage ongoing investments and the deployment of fibre IBW in MDUs across the country.
221. Forbearance is also consistent with subparagraph 1(a)(i) of the 2006 Policy Direction, which states that the Commission should rely on market forces to the maximum extent feasible as the means of achieving the policy objectives.
222. The Commission considers that expanding the MDU access condition to all carrier ISPs and permitting them to have access to copper IBW in MDUs on the same basis as LECs is consistent with subparagraph 1(a)(v) of the 2019 Policy Direction because it would help to reduce barriers to entry into the market and to competition for TSPs that are new, regional, or smaller than the incumbent national service providers. Further, it is consistent with subparagraphs 1(a)(ii), as well as 1(b)(ii) and (iv), of the 2006 Policy Direction.²⁰
223. In compliance with subparagraph 1(b)(i) of the 2006 Policy Direction,²¹ the Commission considers that its determination to expand the MDU access condition to

²⁰ Subparagraph 1(a)(ii) states that the Commission should, when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. Paragraph 1(b) states that the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry; and (iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers.

²¹ Subparagraph 1(b)(i) states that the Commission should specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with the 2006 Policy Direction.

include all carrier ISPs, on the same basis as LECs, and to permit them to have access to copper IBW, effectively contributes to the implementation of the policy objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act and to the promotion of competition, affordability, and consumer interests in all regions of the country.

224. The Commission has stated in previous decisions that the existing framework for access to IBW in MDUs was intended to be technology neutral and supportive of end-user choice. Although the determinations in this decision result in different regulations for different technologies – that is, for fibre IBW versus other forms of IBW, multiple technologies will still be available in many buildings, and other options, including copper and coaxial cable, may be more affordable solutions for competitors that wish to offer service in those buildings. Further, fibre IBW may be owned by ILECs, cable carriers, ISPs, or building owners, and competitors may enter into commercial agreements with any of these entities. As a result, the determinations in this decision support the competitive neutrality of the service.
225. The Commission considers that the changes to the MDU framework will continue to promote technological and competitive neutrality to the greatest extent possible. They will also broaden IBW access in MDUs to more types of service providers, in support of competition and choice. However, given the significant differences between copper and fibre IBW, the two must be treated differently for the purposes of enabling competition from a new technology in MDUs.
226. The ultimate goal of the Commission, through this proceeding, is to facilitate the orderly development of the Canadian telecommunications system, which includes supporting ongoing investments in growth technologies, such as fibre IBW, and fostering competition through the use of various IBW technologies in MDUs.
227. Furthermore, implementing the Commission’s policy determinations in such a comprehensive and measured manner is an effective way to improve consumer choice in MDUs while encouraging facilities-based competition.

Secretary General

Related documents

- *Bell Canada – Request for clarification of Telecom Decision 2019-419*, Telecom Decision CRTC 2020-122, 9 April 2020
- *Call for comments – Access to in-building wire in multi-dwelling units*, Telecom Notice of Consultation CRTC 2019-420, 16 December 2019; as amended by Telecom Notices of Consultation CRTC 2019-420-1, 8 April 2020; 2019-420-2, 30 April 2020; and 2019-420-3, 13 January 2021
- *Bell Canada – Request for the Commission to review, vary, and rescind certain elements of Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219*, Telecom Decision CRTC 2019-419, 16 December 2019

- *Show cause proceeding and call for comments – Applicability of the Commission’s preliminary view set out in Telecom and Broadcasting Decision 2019-218 to all telecommunications service providers*, Telecom Notice of Consultation CRTC 2019-219, 21 June 2019
- *Cloudwifi Inc. – Application to prevent Bell Canada from interfering with customer use of Bell Canada’s inside wire*, Telecom and Broadcasting Decision CRTC 2019-218, 21 June 2019
- *Beanfield Technologies Inc. – Application for timely access on reasonable terms and conditions to multi-dwelling units located in Toronto, Ontario*, Telecom Decision CRTC 2016-324, 15 August 2016
- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015; as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Application of Decision 2003-45 to the Coalition of Hydro Telecom Service Providers*, Telecom Decision CRTC 2005-33, 10 June 2005
- *TELUS’ application for forbearance from regulation of single-line inside wiring services*, Telecom Decision CRTC 2003-69, 17 October 2003
- *Saskatchewan Telecommunications’ application for forbearance from regulation of single-line inside wiring services*, Telecom Decision CRTC 2003-38, 17 June 2003
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003
- *Cable inside wire fee*, Broadcasting Public Notice 2002-51, 3 September 2002
- *The Commission extends all determinations on the EastLink/Norigen application (access to in-building wire) to all local exchange carriers*, Decision CRTC 2001-362, 19 June 2001
- *Bell Canada – Forbearance from Regulation of Single Line Inside Wiring Services*, Telecom Order CRTC 99-1016, 22 October 1999
- *Location of Demarcation Point for Inside Wire in Multi-Dwelling Units and Associated Issues*, Telecom Decision CRTC 99-10, 6 August 1999
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997

- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994