Telecom Decision CRTC 2023-196

PDF version

References: 2020-131; 2020-131-1; 2020-131-2

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Review of the approach to rate setting for wholesale telecommunications services

Summary

Canadians use telecommunications services to communicate, work, learn, and participate in modern society. Telecommunications services need to be available to all Canadians, regardless of geographic area, at prices that are affordable.

One of the ways that the Commission makes telecommunications services more affordable for Canadians is through access to wholesale services. Wholesale services allow third party companies to sell services to consumers using incumbent networks. This increases consumer choice and spurs greater competition to lower prices.

As part of the wholesale frameworks it implements, the Commission typically sets the wholesale rates at which third party competitors obtain access. The Commission's primary approach to wholesale rate setting has historically been the Phase II methodology (Phase II).

Phase II-type approaches continue to be consistent with the wholesale rate-setting methodology used by other international regulators, and generally remain the best method of ensuring just and reasonable wholesale rates. Accordingly, the Commission will continue to base its rate-setting approach on Phase II. However, the Commission will enhance this approach with significant improvements.

The new approach will consider market rates and other relevant information. It will be equally applied to all large providers. It will also be more flexible in respect of small providers and providers of services for which there is little demand.

Although its primary costing approach will rely on Phase II, the Commission will also remain open to using other approaches where appropriate. Such determinations will be made on a case-by-case basis, where the facts of a matter require a different approach to arrive at just and reasonable rates and advance Canada's telecommunications policy objectives.

The Commission will take several steps to develop and maintain industry experience with Phase II. Commission staff will provide training sessions to the industry on a regular basis. The Commission will develop a page on its website with information relevant to implementing Phase

II. The Commission will also continue to engage with industry participants on industry developments that affect how Phase II should be implemented.

The Commission will continue its work to improve the Phase II approach. Two follow-up proceedings are contemplated in this decision. The Commission invites all stakeholders to continue to share their experience with Phase II, and proactively identify issues that could lead to future proceedings and continued improvement of the Phase II approach.

To ensure the effective and efficient operation of the Phase II methodology, the following changes are effective immediately:

- The Commission **directs** wholesale service providers to provide market-level information when submitting rate-setting applications for any new or existing services. This will allow the Commission to consider market prices when setting rates.
- The Commission determines that service providers, particularly smaller providers and those providing services for which demand is very limited, should be given more flexibility to use the approved rates of other service providers.
- To ensure that the enhanced Phase II methodology is streamlined, the Commission determines that regular updates to the Regulatory Economic Studies Manuals (the Manuals) should be undertaken.
- To improve the transparency, fairness and efficiency of the Phase II methodology, the Commission **directs** each of the cable carriers to develop and file for the Commission's approval company-specific Manuals within **nine months** of the date of this decision.
- In the medium term, it is important for the Commission to further enhance, streamline, and strengthen the Phase II methodology. The Commission therefore announces its intent to explore the development of a common costing model.

Introduction

1. To increase competition in the retail telecommunications services market, one of the Commission's objectives has been to facilitate the entry of competitors into the market. One way the Commission does this is by mandating wholesale service providers to make their bottleneck capital-intensive facilities available to the new entrants in the market on a wholesale basis at just and reasonable rates.

2. The Commission has generally used the Phase II methodology to set the rates of the wholesale services that the service providers are mandated to provide to their competitors. Pursuant to the Phase II methodology, the rates of regulated wholesale services are determined based mainly on the long-run incremental cost (LRIC) of provisioning a service, plus an associated markup to contribute to a company's fixed and common expenses.

3. In recent years, several industry participants have expressed concerns with the continued use of the Phase II methodology, in its current form, for establishing the rates for wholesale services. They are concerned about the time and complexity involved in implementing the Phase II methodology. Their concerns include the following: (i) the Phase II methodology, as implemented at this time, can result in estimations of costs well below the actual costs of provisioning the service; (ii) because it does not consider retail rate levels, the Phase II methodology sometimes results in wholesale rates that are higher than retail rates; (iii) the Phase II methodology is not technologically neutral in its treatment of facilities and services offered by the telephone companies and the cable carriers; (iv) the Phase II methodology does not properly capture the costs of provisioning newer technologies in the telephone companies' and the cable carriers' networks; (v) the Phase II methodology takes too long to implement; and (vi) the markup and cost of capital used in Phase II regulatory economic studies need re-evaluation.

4. In Telecom Notice of Consultation 2020-131, the Commission invited interested persons to identify issues associated with the various rate-setting approaches for wholesale telecommunications services (hereafter, wholesale services), with the intent to establish a more transparent and efficient rate-setting process while ensuring that rates for regulated wholesale services remain just and reasonable. Specifically, the Commission invited comments on each of the following five rate-setting approaches and encouraged parties to provide arguments for and/or against each approach: (i) the continued use of the Phase II methodology; (ii) a retail-minus based approach; (iii) a most efficient operator model approach; (iv) an accounting-based costing approach; and (v) commercially negotiated rates.

5. In Telecom Notice of Consultation 2020-131, the Commission also stated that if parties have additional approaches they would like the Commission to consider that are not included in the five approaches outlined in that notice of consultation, they should propose these additional approaches and identify all potential benefits and drawbacks associated with each.

6. This section provides a brief overview of key decisions in which the Commission has employed each of the approaches listed in paragraph 4 to establish the rates of regulated wholesale services during the past years.

Continued use of the Phase II methodology

7. LRIC is a forward-looking cost concept that predicts likely changes in relevant costs over a given time period. LRIC methodology, from which the Phase II methodology is derived, is frequently used to establish efficient costs in telecommunications services price regulation. Recommended by the European Commission as the preferred costing methodology for European Union member states, LRIC has been adopted not just in Europe, but in countries around the world.

Wholesale wireline services

8. In Telecom Decision 79-16 (i.e., the Phase II decision), the Commission set out an approach for the costing of new telecommunications services based on the additional costs associated with establishing each new service. In the decision, the Commission established the basic principles of performing a Phase II regulatory economic study, including principles related to the identification and estimation of incremental costs associated with provisioning the proposed service, and the requirement that the service be shown to be profitable within a reasonable period following the approval of the associated tariffs.

9. Telecom Decision 79-16 also provided directives to the incumbent local exchange carriers (ILECs) on the standard approach and format for use in the development and presentation of cost studies to be filed with the Commission in support of each tariff application.

10. Subsequently, the ILECs filed their respective Regulatory Economic Studies Manuals (the Manuals)[1] with the Commission. The Manuals contained detailed descriptions of the various Phase II methodologies to be employed in estimating the incremental costs of a proposed service.

11. The Commission first introduced competition in the terminal equipment market in Telecom Decision 82-14, and in the long-distance market in Telecom Decision 92-12. It further established the framework for local competition in Telecom Decision 94-19.

12. To facilitate competition in the long-distance market, in Telecom Decisions 94-19 and 97-6 the Commission required the ILECs to unbundle several of their service components such as switching and aggregation as well as billing and collection. These services were to be offered to competitors. The rates of such services were developed based on Phase II methodology.

13. In Telecom Decision 97-6, the Commission set out the following criteria for conducting cost studies of wholesale services using Phase II methodology when setting the rates of certain unbundled service components:

    - The costs of competitor services should be developed on an all-carrier basis, combining the ILEC demand as well as the competitor demand, to negate any cost advantages to the ILECs due to their incumbency.

    - A markup of 25% in setting the rates of these services should be imposed as a contribution to the ILECs' fixed and common costs.

14. In Telecom Decision 97-8, the Commission determined that all of an ILEC's essential services[2] will be subject to mandatory unbundling and mandated pricing, and that setting

[1] The Manuals are developed in accordance with generally accepted economic concepts and methods, and incorporate the prospective incremental costing principles and methodologies set out in Telecom Decision 79-16, as amended in subsequent Commission determinations described in the Manuals.

[2] As defined in Telecom Decision 97-8, to be essential, a facility, function, or service must meet all three of the following criteria: (i) it is monopoly controlled; (ii) a competitive local exchange carrier requires it as an input to

rates for essential facilities based on Phase II incremental costs plus a 25% markup is appropriate.

15. In Telecom Decision 98-9, the Commission determined that wholesale high-speed access telecommunications services, including broadband Internet, provided by ILECs and cable carriers would be subject to tariffs. Furthermore, in Telecom Decision 99-8, the Commission directed the cable carriers to file the associated cost studies based on the Phase II methodology as set out in Telecom Decision 79-16.

16. In Telecom Decision 98-22, the Commission modified how it calculated the value of plant and equipment at the end-of-study period used in Phase II regulatory economic studies, adopting the discounted service potential approach which recognizes the time value of money. The Commission also approved final rates for the unbundled local network components granted interim approval in Telecom Decision 97-8, based on the Phase II methodology.

17. In Telecom Decision 2000-745 the Commission determined that it is appropriate to reduce the level of markup used in Phase II regulatory economic studies from 25% to 15% to reflect the fact that, in a competitive local environment, the ILECs' fixed and common costs will decline as a result of increased operational efficiencies due to outsourcing, increased automation, and various other factors.

18. In Telecom Decision 2002-34, the Commission classified competitor services into category I and category II services. Category I services consist of all essential services, and the Commission determined that these services will be priced based on Phase II incremental costs plus a 15% markup. Category II competitor services include the remainder of competitor services, and the rates for these mandated services will be market-based and depend on considerations in addition to, or other than, Phase II incremental costs.

19. In Telecom Decision 2008-17, the Commission revised the definition of an essential service, replacing the definition set out in Telecom Decision 97-8. The Commission also set out a restructured regulatory framework for wholesale services, providing rationale for the assignment of key services within each of six new service categories and determined, among other things, the pricing principles for each of these categories and the phase-out periods for non-essential services subject to phase-out.

20. In Telecom Regulatory Policy 2009-274, the Commission permitted the ILECs to use the company-specific working fill factor (WFF) of a particular facility (or a proxy WFF for a new facility or technology) for Phase II regulatory economic study purposes, provided the ILEC satisfies certain conditions specified in the decision. The Commission, however, also determined that Commission-mandated WFFs are to be used in regulatory economic studies when company-specific measured or target WFFs do not meet the prescribed conditions, are not available, or have been disallowed.

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provide services; and (iii) a competitive local exchange carrier cannot duplicate it economically or technically. This definition was subsequently revised in Telecom Decision 2008-17.

21. In that decision, the Commission also determined that when a study is updated before the end of the previous original study period, the ILECs are permitted to include in the updated study any unrecovered or over-recovered portion of the introduction costs included in the original study.

22. In order to encourage the ILECs to continue to invest in fibre-to-the-node (FTTN) technology,[3] which is required to provision new higher speed wholesale services and requires significant upfront investment, in Telecom Decision 2010-632 the Commission determined that ILECs could include an additional 10% supplementary markup on Phase II incremental costs when calculating the rates of these new higher-speed services.

23. In Telecom Regulatory Policy 2011-703, the Commission approved two different methods for setting the rates of mandated wholesale high-speed access (HSA) services: (i) the capacity-based billing model; and (ii) the flat-rate model.[4] The Commission also determined that rates for either model should be based on each of the individual large cable and telephone companies' Phase II incremental costs of providing the service, plus a reasonable markup.

24. In Telecom Regulatory Policy 2015-326, the Commission determined that the Phase II methodology based on a company-specific incremental costing approach remained appropriate when setting the rates for wholesale HSA services. In that decision, the Commission also stated that in order to improve regulatory efficiency or to further certain policy objectives, it may adopt other costing approaches, on a case-by-case basis and as necessary.

25. In that decision, the Commission also determined the following:

- All current markups to mandated wholesale services will remain unchanged and the establishment of any additional markups for wholesale services will be determined on a case-by-case basis.

- The rates for the wholesale legacy services, defined as unbundled local loops, digital subscriber line services not provided over next-generation mixed fibre/copper networks (e.g., FTTN), and low-speed competitor digital network access services (i.e., DS-0 and DS-1 competitor digital network accesses),[5] provided by the incumbent carriers will be frozen at existing rate levels (including rates approved on an interim basis).

26. To make the Phase II methodology more efficient and appropriate compared to the approaches employed in Telecom Regulatory Policies 2011-703 and 2011-704 as well as in

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3 Under FTTN technology, fibre optic cable is laid to a central cabinet in a customer neighbourhood (i.e., the node), where it then connects to a customer premise using existing copper wiring.

4 Under the capacity-based billing model, independent service providers determine in advance the amount of capacity they will require to offer retail services. Should demand exceed this capacity, they have to manage their network capacity until they purchase more. Under the flat-rate model, independent service providers pay a flat fee per month regardless of usage.

5 A DS-0 represents a channel capable of digital transmission at a rate of 56 kilobits per second, equivalent to 1 voice circuit. A DS-1 represents a channel capable of digital transmission at a rate of 1.544 megabits per second, equivalent to 24 voice circuits.

Telecom Decision 2016-117, the Commission issued the following directions to be used in the wholesale HSA services cost studies going forward:

- The rates for wholesale HSA services should be set by speed bands, so that wholesale HSA service providers can have the flexibility to introduce new service speeds within a set speed band without filing an associated cost study.
- All equipment in the access portion of the service should include only non-usage-sensitive costs.

27. In Telecom Order 2019-288, the Commission determined that the 10% supplementary markup allowed in Telecom Decision 2010-632 when establishing rates is no longer appropriate for the ILECs' wholesale HSA services over FTTN facilities, given the significant decline in the ILECs' volume of new FTTN builds. The Commission disallowed the application of that supplementary markup going forward.

28. In Telecom Decision 2021-181, the Commission approved on a final basis, with certain modifications, the rates of incumbent carriers' aggregated wholesale HSA services that were in effect on an interim basis prior to the issuance of Telecom Order 2019-288. The modifications included the removal of the 10% supplementary markup for ILECs.

Wholesale mobile wireless services

29. A mobile wireless carrier (hereafter, wireless carrier) requires spectrum and a mobile wireless network to provide mobile wireless services. Competition in the wireless industry benefits society and the economy by providing innovative communications services at affordable prices.

30. Starting in the mid-1990s, the Commission forbore from regulating mobile wireless services.[6] As a result of forbearance from regulation, wireless carriers were not required to obtain prior Commission approval of the rates, terms, and conditions for their mobile wireless services, including wholesale mobile wireless services.

31. However, in Telecom Regulatory Policy 2015-177, the Commission determined that it is necessary to regulate the rates that Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) [collectively, the national wireless carriers] charge other Canadian wireless carriers for domestic Global System for Mobile communications (GSM)-based wholesale roaming services, primarily in light of the Commission's findings that wholesale roaming is not subject to a sufficient level of competition and that these services are essential.

32. In Telecom Decision 2017-56, the Commission determined that it would forbear, on a final basis, from the approval of off-tariff agreements for mandated wholesale roaming,

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6 Except with respect to its powers under section 24 and subsections 27(2), 27(3), and 27(4) of the *Telecommunications Act* (the Act).

effective on the date the rates, terms, and conditions for mandated wholesale roaming are approved on a final basis.

33. In Telecom Order 2018-99, the Commission approved the final rates of wholesale mobile wireless roaming service tariffs. The Commission noted that its determinations in the order would further enable sustainable facilities-based competition in the Canadian mobile wireless services market and encourage increased investment in high-quality networks by wireless carriers, resulting in more affordable and innovative services being available to all Canadians.

34. To address retail market power and improve wireless competition in Canada, the Commission, in Telecom Regulatory Policy 2021-130, mandated the provision of a wholesale facilities-based mobile virtual network operator (MVNO) access service, to enable eligible regional wireless carriers to use the networks of the incumbents to serve new areas while they build out their networks. The national wireless carriers were also required to implement seamless roaming as part of their wholesale roaming service, to prevent dropped calls and data sessions when consumers move from one network to another. The Commission also confirmed that its wholesale roaming policy applies to 5G networks to help ensure that competition can continue to grow as the mobile wireless service market evolves to 5G. Finally, the Commission set an expectation for Bell Mobility, RCCI, Saskatchewan Telecommunications (SaskTel), and TCI to offer and promote low cost and occasional use plans to the benefit of Canadians, particularly elderly and low-income users.

Retail-minus based approach

35. Under the retail-minus based rate-setting approach, regulated wholesale service rates, in general, are determined based on the current retail rates for similar services, less a predetermined percentage.

36. In Telecom Decision 99-11, the Commission noted that there was a continued lack of access to cable carriers' telecommunications facilities through interconnection for competitors to offer retail Internet services. The Commission therefore determined that it is in the public interest to mandate the cable carriers to offer their higher-speed Internet services on a resale basis. Specifically, in Telecom Decision 99-11, the Commission determined that any given cable carrier is required to make its higher-speed retail Internet service available to Internet service providers on a resale basis at a discount of 25% from the lowest retail rate charged by that carrier, in the applicable serving area, during any one-month period. The Commission determined that the resale requirement is to remain in place until the cable carriers provide wholesale third party Internet access to the cable network.

37. In Telecom Order 2011-377, the Commission prescribed the methodology to be used by the ILECs and cable carriers in setting the interim rates for wholesale residential and business high-speed access services.

38. In that order, the Commission determined that the interim rates of these services should be set based on a retail-minus approach for the following reasons:

- It would be both simple and expedient to establish interim rates based on a retail-minus approach.
- Setting interim wholesale access monthly rates based on stand-alone rates would simplify the interim process and reduce the potential difficulty of quantifying the lowest retail access rates.
- A fixed rate would provide pricing certainty and administrative simplicity.
- Given that these rates were interim, the risk of interfering with market forces was minimal.

39. In that order, the Commission set the interim wholesale high-speed access monthly rates for the ILECs' proposed higher matching speeds and for the cable carriers' proposed aggregated points of interconnection based on their respective stand-alone retail rates, excluding monthly modem charges, minus 35% for residential services and minus 15% for business services.

40. In Telecom Regulatory Policy 2015-177, the Commission rejected the use of a retail-minus costing approach instead of the existing Phase II methodology approach in setting rates for wholesale roaming services provided by the national wireless carriers, for the following reasons:

- The prevalence of bundled pricing (e.g., for Internet, home phone, and mobile wireless services) and wireless pricing plans (e.g., one price for voice, text, and data) in the retail market would make it difficult to establish, with accuracy, an appropriate rate for any particular service.
- The retail-minus approach would require frequent adjustments to the rates given the dynamic nature of retail pricing.
- Using a cost-based approach to establish wholesale rates would confer price certainty within the wireless industry and enable the national wireless carriers to recover their costs and obtain a fair return on their investments.

41. Similarly, in Telecom Regulatory Policy 2015-326, the Commission determined that the continued use of Phase II methodology in the evaluation of wholesale services was appropriate and rejected other proposed costing alternatives, such as a retail-minus approach or the efficient competitor model approach, for the following reasons:

- No evidence was provided to suggest that the incremental costing approach results in rates that are not just and reasonable.

- There was no evidence to suggest that developing alternative costing approaches would improve regulatory efficiency, since both the retail-minus approach and the efficient competitor model approach include assessing contentious costing elements that would be subject to significant scrutiny and debate.

- Adopting and implementing any alternative costing approaches, as proposed, would require extensive follow-up proceedings which would inappropriately create uncertainty in the various markets.

42. In Telecom Decision 2016-67, the Commission directed Bragg Communications Incorporated, operating as Eastlink (Eastlink) to continue calculating the rates for its higher-speed retail Internet service available for resale at a 25% discount from its retail Internet service rate, applied consistently to all competitors' end-customers, regardless of the duration of any relevant promotions that Eastlink offers its retail Internet service end-customers. The decision also stated that Eastlink's obligation to provide its higher-speed retail Internet service for resale in a given area within its serving territory in the Atlantic provinces will cease when Eastlink provides third-party Internet access service in that area pursuant to an approved tariff.

Most efficient operator model approach

43. Under the most efficient operator model approach, all companies using similar network technology in similar geographic markets would participate, along with other impacted parties, in the development of a single model predicated on the most efficient network design. This model would then be used to develop regulated wholesale service costs for all companies deploying similar technology, taking into consideration company-specific input assumptions.

44. The Commission has not historically employed the most efficient operator model approach in establishing the rates of regulated telecommunications services in Canada.

Accounting-based costing approach

45. With accounting-based costing, company-specific costs would be used to create service rates, with an appropriate markup. The costs of activities or assets would be included based only on what is applicable given the service studied.

46. While the Commission employed the accounting-based approach earlier when the ILECs were under rate of return regulation, the Commission has seldom used this approach directly in estimating costs and setting the rates of individual wholesale services. However, the Commission has used accounting costs as a specific cost input in certain Phase II regulatory economic studies when setting wholesale service rates, such as the use of net book value as a proxy for the market value of non-fungible assets.[7]

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[7] Non-fungible assets are generally legacy technology-based pieces of equipment that have no further use in any other services provided by the company.

Commercially negotiated rates

47. Under commercial negotiation, the rates of regulated services would be established based on mutually agreed-upon rates between wholesale service providers and their competitors (individually or in a group), with the Commission available to mediate any disputes.

48. In the case of wholesale services for which regulated tariffs already exist, the Commission, in certain situations, has allowed wholesale service providers and their competitors to enter into further private negotiations to set rates and conditions of services that are different from the established tariffs. The Commission concluded, in various decisions, that such off-tariff agreements will provide benefits to both competitors and consumers. The following are some examples of Commission determinations regarding the implementation of off-tariff agreements:

- In Telecom Decision 2008-17, the Commission established a revised regulatory framework for wholesale services and assigned these services to six broad service categories.[8] In that decision, the incumbent ILECs and cable carriers were permitted to enter into off-tariff negotiated agreements[9] with competitors only for wholesale services in the non-essential services subject to phase-out of regulation category.

- In Telecom Regulatory Policy 2009-19, the Commission permitted incumbent carriers to negotiate off-tariff agreements for conditional essential[10] and conditional mandated non-essential wholesale services[11] as well, as long as the incumbent carrier files the negotiated agreement with the Commission for the public record.[12] The Commission stated that it was necessary to allow for the public review of such agreements.[13]

- In Telecom Regulatory Policy 2012-359, the Commission directed the incumbents to file only a summary of negotiated agreements for the public record, instead of filing their negotiated agreements for conditional essential and conditional mandated non-essential wholesale services.

49. Since the Commission's established tariffs would provide a backstop for such arbitrations, Commission mediation and arbitration is seldom used to resolve disputes occurring in off-tariff negotiations.

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8 The six wholesale service categories are: essential, conditional essential, conditional mandated non-essential, public good, interconnection, and non-essential subject to phase-out of regulation.

9 Parties may conclude agreements at rates, terms, and conditions different than Commission-approved tariffs, although the underlying services remain regulated.

10 Conditional essential wholesale services would include services such as unbundled local loop and competitor digital network DS-0 and DS-1 access facilities.

11 Conditional mandated non-essential wholesale services would include services such as co-location and related link services, aggregated asymmetric digital subscriber line and third-party Internet access services, and pay telephone basic access line services.

12 Information that would identify the incumbent carrier's wholesale service customer or any customer of that wholesale service customer is not made public.

13 This determination was made to address concerns with respect to the administration of subsection 27(2) of the Act in relation to off-tariff agreements for conditional essential and conditional mandated non-essential services.

50. The Commission provides services to help parties resolve disputes related to the *Broadcasting Act* or the *Telecommunications Act* (the Act). However, before the Commission agrees to resolve such disputes, the parties are required to make best efforts to first use other means to resolve their issues, for example through private third-party mediation or arbitration and bilateral negotiations.

51. In cases where the parties have been unable to resolve the dispute by other methods, the Commission would employ its dispute resolution process as set out in Broadcasting and Telecom Information Bulletin 2019-184. However, this process only applies when the dispute is relevant to the regulation and supervision of the Canadian broadcasting or telecommunications system, and when resolution of the dispute does not require a new policy or a change to an existing policy.

52. In resolving such disputes, the Commission may adopt one of the following three options, provided some criteria (outlined in Broadcasting and Telecom Information Bulletin 2019-184) are met:

- Staff-assisted mediation: a confidential dispute resolution process whereby Commission staff helps parties come to a mutually acceptable resolution.
- Final offer arbitration (FOA): a public process, reserved exclusively for disputes that are monetary, which results in a binding decision and throughout which a Commission panel will act as arbitrator and choose between the final offers put forward by the two parties.
- Expedited hearing: a public process for disputes that are not exclusively monetary, which may be used when the parties involved have failed to resolve the dispute through staff-assisted mediation and under which the Commission will establish Commission panels to conduct brief oral hearings.

53. If a staff-assisted mediation process terminates without resolution, the dispute will then be forwarded for consideration under FOA, an expedited hearing, or another Commission proceeding.

54. Under FOA, after the Commission arbitration panel selects one of the offers in its entirety, the Commission issues its decision. Furthermore, under section 62 of the Act, parties are expected to agree not to apply for a review and vary of the decision resulting from the FOA in order to improve the efficiency and effectiveness of the dispute settlement mechanisms. If an FOA process fails, the Commission may suggest or initiate a different dispute resolution mechanism.

55. In Telecom Regulatory Policy 2021-130, the Commission determined that the national wireless carriers exercise market power in the wholesale MVNO access service markets in the territories in which they serve. Accordingly, the Commission determined that it would mandate the incumbents to provide a facilities-based wholesale MVNO access service.

56. The Commission also determined that the rates of wholesale MVNO access services were to be commercially negotiated between parties, with FOA by the Commission as a recourse if negotiations fail, for the reasons outlined below:

- While cost-based rates provide a measure of certainty with regard to rates, terms, and conditions of service, the process for establishing wholesale rates can be long and complex. A delay would hinder the main purpose of expediting competitive expansion by regional wireless carriers by granting them wholesale network access while they expand and upgrade their networks.
- The regional wireless carriers, which would be the principal users of the service, are sophisticated companies and they generally favoured commercial negotiations over a tariffed rate.
- The FOA process is generally appropriate when there is a single issue subject to a bilateral dispute. Parties are provided with incentives to propose a just and reasonable rate because should they propose a rate that is either too high or too low, the Commission can adopt the rate proposed by the other party.
- Given that a generally appropriate Commission-specific FOA process already exists (see paragraphs 17 to 33 of Broadcasting and Telecom Information Bulletin 2019-184), there is no need to seek a third party to act as arbitrator.

57. In addition, the Commission's established FOA process allows, in exceptional cases, for the rejection of both offers when neither would be in the public interest. Such a safeguard also helps to ensure that the process ultimately arrives at a just and reasonable rate for the service.

58. In Telecom Regulatory Policy 2021-130, the Commission also determined that parties may enter into off-tariff agreements if they so choose. Any such agreement must be filed with the Commission upon completion for information purposes.

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59. Wholesale services are the services that telecommunications companies provide to each other. These services are integral to the overall development of a competitive Canadian telecommunications system.

60. The provision of wholesale services primarily supports competition in various retail service markets by enabling competitors to access certain telecommunications facilities and network components from ILECs and cable carriers, so that competitors can provide their own services to consumers.

61. The Commission sets the rates for wholesale services to facilitate competition between service providers and to promote innovative services and affordable prices for Canadians, while also ensuring that the rates are just and reasonable.

62. Wholesale rate-setting can have a significant impact on the telecommunications market, and provisioning wholesale services at appropriate rates is an important aspect of establishing and maintaining a competitive Canadian telecommunications environment. Given the importance of ensuring that such rates are just and reasonable and to address the concerns recently raised by various parties on the suitability of the current rate-setting approach, on 24 April 2020 the Commission issued Telecom Notice of Consultation 2020-131 in which it invited interested persons to identify issues associated with the rate-setting approach for wholesale telecommunications services in Canada. The Commission stated that the notice of consultation was meant to establish a more transparent and efficient rate-setting process for regulated wholesale services, while ensuring that the rates so established are just and reasonable.

63. The Commission received interventions from the following parties:

- Bell Canada; Bell Mobility; Northwestel Inc.; and Télébec, Société en commandite (collectively, Bell et al.); SaskTel; and TCI (hereafter collectively referred to as the ILECs);
- Cogeco Communications Inc. (Cogeco); Eastlink; Quebecor Media Inc., on behalf of Videotron Ltd.; RCCI; and Shaw Communications Inc. (hereafter collectively referred to as the cable carriers);
- Allstream Business Inc., the Competitive Network Operators of Canada (CNOC), Distributel Communications Limited, Mobilexchange Ltd., SSi Canada, TekSavvy Solutions Inc., Xplornet Communications Inc., and Xplore Mobile Inc. (hereafter collectively referred to as the competitors);
- the British Columbia Broadband Association;
- the Competition Bureau;
- the Independent Telecommunications Providers Association;
- the Aboriginal Council of Winnipeg; the Consumers' Association of Canada, Manitoba Branch; and Winnipeg Harvest (collectively, the Manitoba Coalition);
- PSBN Innovation Alliance;
- the Public Interest Advocacy Centre (PIAC); and
- individuals.

64. The public process closed on 27 November 2020.

Issues

65. In Telecom Notice of Consultation 2020-131, the Commission solicited comments on the following questions in order to assist it in establishing a transparent and efficient rate-setting process for the regulated wholesale services that results in just and reasonable rates.

- What is the appropriate methodology for the setting of wholesale service rates?
- Should the same rate-setting methodology be used for all wholesale services?
- Should the same wholesale rate-setting methodology be employed by all companies providing wholesale regulated services?
- Based on the option selected, should the Commission assist companies in acquiring and maintaining knowledge of wholesale rate-setting methodology and of the Commission's expectations in the wholesale rate-setting process? If so, how should the Commission assist companies in this regard?
- How would technological changes be addressed in the wholesale rate-setting process?
- If there were to be a change in the wholesale rate-setting approach for regulated wholesale services, how would such a transition occur?
- Are there methods that could be employed to create a more efficient wholesale rate-setting process?
- Other issues

What is the appropriate methodology for the setting of wholesale service rates?

66. In Telecom Notice of Consultation 2020-131, the Commission proposed five different approaches that could potentially be used in determining the rates for wholesale services and invited the parties to the proceeding to provide their views in favour of or against each of these approaches.

67. The rate-setting approaches for wholesale services proposed by the Commission were the following:

  - the continued use of the existing Phase II methodology;
  - the adoption of a commercially negotiated rates approach;
  - the adoption of a retail-minus rate-setting approach;
  - the adoption of a most efficient operator model approach; and
  - the adoption of an accounting-based costing methodology.

68. The Commission further invited the parties to provide comments on how each of the methodologies identified above would (i) impact the efficiency and transparency of the wholesale rate-setting process; and (ii) be consistent with the context established by sections 27 and 47 of the Act, section 7 of the policy objectives, and the 2006[14] and 2019[15] Policy Directions.[16]

69. Some of the cable carriers proposed a hybrid approach for the setting of wholesale HSA service rates. Under this proposal, the rates of HSA services above a certain speed threshold would be subject to commercial negotiation, whereas the rates of HSA services below that speed threshold would be established by the service provider, subject to the constraints set under a rate-test model (a variation of the retail-minus model).

70. The positions of parties for each of the rate-setting approaches proposed by the Commission are set out below, followed by the Commission's analysis.

Continued use of the existing Phase II methodology

71. The Phase II methodology is a forward-looking incremental costing approach originally established by the Commission in Telecom Decision 79-16 to estimate the causal costs associated with the provision of new telecommunications services. The approach has been subsequently amended in various Commission decisions and Commission staff letters, and it is currently used to estimate the causal costs associated with new and existing services. Under this approach, the rates for a wholesale service would be established by adding a markup to the incremental costs of the service, as a contribution to the company's fixed and common costs.

Positions of parties

72. In their submissions, the majority of the competitors, as well as PIAC and others, supported the ongoing use of the Phase II methodology in setting the rates for wholesale services. The ILECs and the cable carriers (collectively, the wholesale service providers) generally argued against this view.

73. The wholesale service providers submitted that the rates for service charges and next-generation 9-1-1 services could continue to be set using the Phase II methodology since they are easier to implement and are not subject to controversial costing principles such as capacity costing. These parties also submitted, however, that for most of the other services

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[14] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006.

[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] The 2006 and 2019 Policy Directions were in effect when Telecom Notice of Consultation 2020-131 was published. They are no longer in effect. On 13 February 2023, the Department of Industry (also known as Innovation, Science and Economic Development Canada) issued the 2023 Policy Direction (*Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 13 February 2023) to the Commission, which replaces the 2006 and 2019 Policy Directions.

they provide, the continued use of the Phase II methodology to set rates is inappropriate for the following reasons:

- In recent years, the Phase II methodology has resulted in costs that are below the causal costs of providing the service.
- The Phase II methodology implementation has become difficult, controversial, resource-intensive, and conducive to long delays.
- Some of the issues with the Phase II methodology cannot be easily adjusted.
- The principle of capacity costing in the Phase II methodology, which assumes network stability, is no longer valid given the recent pace of innovation and change in the networks (for example, the network facility costs are currently mainly driven by the rollout of new functionalities instead of by growth in traffic as has been assumed previously).
- The current timeline for setting final rates for regulated wholesale services is inefficient and time-consuming, making it difficult to plan and operate in circumstances where these final rates are unknown.

74. The parties in favour of the continued use of the Phase II methodology submitted that it remains fundamentally sound and robust, and that it incorporates the necessary methodological tools to derive just and reasonable cost-based rates. In support of the Phase II methodology, these parties also submitted the following:

- The Phase II methodology reflects the principle of cost causality, relies on forward-looking incremental costs, employs growth technology, deals with facilities that are shared with other services, and allows for markup for the recovery of fixed and common costs.
- The valuation of shared plant capacity is achieved through the use of a well-developed capacity costing methodology (where capacity costing is, by definition, not appropriate, the Phase II methodology uses company-specific capital cost factors).
- The Phase II methodology allows for the inclusion of company-specific costs, is technologically neutral, and provides for the costing of discrete and shared facilities.
- The problems associated with the use of the Phase II methodology as raised by the wholesale service providers are due to their disregard for the Commission’s guidance, for following their Manual, and for relevant past determinations.
- Proposals by some wholesale service providers for the continued use of the Phase II methodology for certain services and for using new rating approaches for other services would require all parties to maintain the Phase II methodology while simultaneously taking on the additional resource burden to introduce and maintain new rate-setting approaches.

- Over the last three years, LRIC-based methodologies, such as the Phase II methodology, have been regularly used by European Union national regulatory agencies to regulate wholesale rates for access to next-generation technologies, including fibre.

- When applied in a neutral, objective, and rational manner, the Phase II methodology provides the best way of ensuring that facilities owners are fairly compensated.

- The issues raised by the parties who argued against the continued use of the Phase II methodology, such as complexity, time required to finalize rates, and appropriate cost inclusions, would also arise with any other mandated price setting methodology.

Adoption of a commercially negotiated rates approach

75. Under a commercially negotiated approach, the rates for regulated wholesale services would be established based on mutually agreed-upon rates between wholesale service providers and competitors, either individually or as a group. The Commission is available for mediation and failed negotiations can be resolved using FOA.

Positions of parties

76. The wholesale service providers submitted that they primarily preferred the adoption of commercially negotiated rates as the method for setting the majority of wholesale service rates. They added that the existing off-tariff agreement process has demonstrated the success of commercial negotiations and the competitiveness of the wholesale market. They submitted the following arguments in favour of a negotiated approach for the establishment of wholesale services rates:

- A negotiated approach for setting wholesale rates provides greater opportunity to meet competitor-specific needs, includes only parties in the rate-setting process, and minimizes unnecessary regulation.

- This approach would allow for any methodology to be used in support of wholesale service rates and would not require parties to produce and analyze significant amounts of data.

- A negotiated approach to setting rates would reduce barriers to participation in the wholesale rate-setting process given that commercial negotiation is straightforward, requires minimal specialized knowledge, and leverages the existing negotiating experience of competitors, and given that negotiation experience is commonly found throughout the industry.

- A negotiated approach to setting rates would promote and strengthen competition since competitors would be able to negotiate with multiple wholesale service providers, reflecting the outcome of a competitive market that can produce optimal results from an economic perspective.

- This approach would also result in the recovery of the costs of providing the service and would encourage efficient investments necessary to innovate.

- An FOA dispute resolution approach would address with mediation the negotiations in which parties are unable to agree and would provide a fairer, simpler, less expensive, and more transparent wholesale rate-setting approach than all the other wholesale rate-setting approaches identified in this proceeding.

- Mediation and an FOA dispute resolution approach would minimize unequal negotiation leverage and would promote successful commercial negotiations. Adopting existing FOA dispute resolution guidelines would also minimize the transition period and would result in a transparent methodology.

- The negotiated approach to setting wholesale service rates would foster increased reliance on market forces and promote policy objectives, such as rural and remote connectivity and affordable access to next-generation speeds, by establishing the regulatory stability and predictability that will support multi-year investment programs in Canada’s digital infrastructure.

77. Several parties, including the competitors, the Manitoba Coalition, and PIAC, argued against the use of commercial negotiations for setting the rates for wholesale services for the following reasons:

- Any wholesale service rate established by negotiation is likely to be more favourable to the wholesale service provider and unfavourable to competitors due to unequal negotiation leverage, including:
    - the asymmetry of information such as costs to provide the service, rate agreements with other parties, technological change, and related productivity improvements;
    - a lack of transparency;
    - a lack of wholesale service provider competition; and
    - the fact that competitors are more incentivized to negotiate quickly since the agreement is a precondition of providing services.

- The negotiation of existing off-tariff agreements can be confrontational.

- Under the negotiated approach to setting wholesale rates, the wholesale service providers are incentivized not to enter into agreements that would lower profits below the amount they would otherwise earn from not entering into the agreement.

- Regulatory intervention may be required to ensure negotiations for the introduction of new retail services are completed in a timely manner.

- Negotiating in groups of competitors would make it difficult to come to agreements since assessing the requirements of each competitor separately is difficult.

- Developing an entirely new wholesale rate-setting process based on commercial negotiation, while removing the existing backstop of wholesale rates established using the Phase II methodology, would neither be a productive nor a proportionate and efficient approach, and would result in regulatory uncertainty.

- A negotiated approach to setting prices is inappropriate in a market where many competitors are negotiating with multiple wholesale service providers for multiple services.

- FOA dispute resolution is time consuming given that it occurs separately from bilateral commercial negotiations.

Adoption of a retail-minus rate-setting approach

78. Under the retail-minus approach, regulated wholesale service rates would be determined based on the current retail rates for similar services, less an amount based either on a predetermined percentage or on avoidable costs, defined as the costs a wholesale service provider avoided by not having to provide the service to retail customers, and specific to each service.

Positions of parties

79. Very few parties supported the use of a retail-minus approach in establishing rates for wholesale services. Mobilexchange Ltd. and Xplornet Communications Inc. were in favour of using this approach for specific wireless services. Other parties, while not advocating for the use of the retail-minus approach, did highlight the following advantages to this approach:

- The retail-minus approach would be straightforward, less costly compared to other wholesale service rate-setting methodologies or new cost-based approaches, and would not require participants to have extensive knowledge.

- This approach would be less onerous on parties since it would not require wholesale service providers to design and build complex network models to produce forecasts for demand into the future or require specialized technical, economic, and accounting knowledge of telecommunication services.

- Use of this approach would eliminate the need for lengthy regulatory proceedings to consider modifications to various costing inputs and assumptions.

- Wholesale service rates would be based on market rates, which are fully visible to all parties, making the rate-setting approach transparent.

- This approach would allow for changes to retail and wholesale service rates to reflect retail market conditions without wholesale service providers having to file updated cost studies.

80. The majority of parties argued against the adoption of the retail-minus approach for setting the rates for wholesale services. They submitted the following rationale:

- The retail-minus costing methodology would result in regulatory uncertainty since processes would need to be developed and refined if it were to be used extensively.

- This approach would not increase or improve regulatory efficiency due to fundamental concerns such as identifying equivalent retail and corresponding wholesale services and identifying avoidable costs that are contentious and will be time-consuming to resolve.

- Determining an appropriate retail rate would be very complex. The appropriate retail rate would be difficult to establish with accuracy when there are frequent changes in retail prices resulting from significant bundling and discounting activities.

- Identifying the avoidable costs for every equivalent retail service would be complex, time-consuming, and resource intensive. Retail rates and avoidable costs would need to be re-established regularly, resulting in continuous ongoing updates that would be costly and inefficient.

- The retail-minus approach could allow wholesale service providers to influence other service providers to increase retail rates.

- This approach would require wholesale rates to change at the same frequency as retail rates, which would be cumbersome and could potentially restrict competitive behaviours for all service providers due to the speed at which prices and other service elements change in the retail market.

- The wholesale service rates established under the retail-minus approach would not be useful in six months or less as a result of possible changes in avoidable costs during this period.

- The retail-minus approach results in cost structure unpredictability and cost fluctuation for wholesale service customers.

- This approach would not result in cost recovery and would eliminate incentives for promotions and discounts if the retail rate were based on the lowest retail rate in the market at any given time. Furthermore, in terms of wholesale rate-setting for Internet services, the approach may not allow for cost recovery as Internet usage grows and a separate charge for usage would be required to ensure competitors contribute to investments.

- Wholesale service providers will likely choose not to lower their retail rates since that would lead to automatically lowering the wholesale rate, leading to a vicious circle of choosing between losing market share to other wholesale service providers and competitors or selling the service at a loss.

Adoption of the most efficient operator model approach

81. Under the most efficient operator model approach, all service providers using similar network technology in similar geographic markets would participate, along with other

affected parties, in the development of a single costing model predicated on the most efficient network design. The model would be developed using the Phase II methodology or a similar long-run incremental costing methodology. This model would then be used to develop regulated wholesale service rates for all companies deploying similar technology, taking into consideration company-specific input assumptions.

Positions of parties

82. Only SSi Canada supported using the most efficient operator model approach as the primary method to set the prices of wholesale services, arguing the following:

- The most efficient operator approach to setting rates would promote rate certainty since wholesale service rates would be based on costs that are incremental and forward-looking.

- Developed properly, this approach could recognize similar geographic markets and similar network technologies when setting wholesale service rates.

- This rating approach has the potential to establish the lowest cost wholesale model for incumbents, which translates into lower wholesale prices for wholesale customers. Furthermore, once the model is established, updating it regularly can be relatively simple compared to approaches based on historical costs.

- This approach could expedite the rate-setting process, given that only one costing model would be used in setting the rates for wholesale services. It would also provide meaningful opportunity for parties to participate in the rate-setting process.

83. The majority of parties did not support the most efficient operator model approach for wholesale rate-setting, for the following reasons:

- This approach offers no promise for improving wholesale rate-setting delays and would lead to a complex, contentious, and costly process.

- The most efficient operator model approach is complex to implement given that there are very few commonalities across the wholesale service providers due to the diverse geography of Canada and the use of different network technologies and/or configurations by carriers.

- This approach requires significant data and adjustment mechanisms to account for differences between each company, including company-specific cost structures, technological inputs, customer density, and customer mix and demand conditions. Without these company-specific adjustments, companies will have no control over their rates since these would be based on the theoretical performance of other similar companies and not on the actual or forward-looking costs of a given company.

- It would be difficult to acquire and retain internal talent to construct, support, and maintain such a model.

- This approach would require regulators to understand and determine the most efficient ways to deploy the various technologies.

- A one-size fits all approach cannot capture the costs associated with the diverse set of wholesale services offered by carriers and the types of networks they deploy.

- This approach would have to be supplemented by other wholesale rate-setting approaches for services that do not have network components, such as service charges.

Adoption of an accounting-based approach

84. An accounting-based costing approach would use accounting-based and/or activity-based costing systems[17] to develop service rates. The model would be based on the information available for each company on an annual basis, and results could be subject to scheduled audits as appropriate. Under this approach, companies would be expected to update their rates for wholesale services on an annual basis using the latest accounting information.

Positions of parties

85. None of the parties supported the adoption of an accounting-based costing approach to set wholesale service rates, for the following reasons:

- An accounting-based costing approach does not focus on future courses of action, which include investments and productivity improvements. This approach would also not incentivize investment in innovative technologies.

- Since accounting costs would not reflect the marginal cost of providing the service, such costs would not closely reflect the underlying economic cost of providing wholesale services or could result in inefficient markets.

- Under this approach, allocation factors would be required for the assignment of shared facility accounting costs to individual services, a complex and time-consuming process. Such an approach would not result in estimating costs that are causal to provisioning a service, and wholesale service providers would have an incentive to use allocation factors in a manner that is most advantageous to themselves.

- While an activity-based costing approach could be used to assign expenses to individual services, this approach has the following drawbacks: (i) activity-based costing is highly complex and requires extensive adjustments, explanatory appendices, and detailed processes to estimate causal costs; (ii) activity-based costing cannot be used to identify capital costs associated with an individual service; and (iii) not all wholesale service providers have developed an activity-based costing system.

- Under this approach, changes in accounting information or classifications would add complexity to the updating of annual rates and could result in having to maintain a

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[17] Activity-based costing is a costing method that assigns overhead and indirect costs to related products and services. This method of costing recognizes the relationship between costs, overhead activities, and products.

unique set of accounting records that would only be required for regulatory requirements.

- Mandatory annual updates and scheduled audits of prices established using an accounting-based approach would lead to a burdensome, inefficient, time consuming, and costly process since such updates would require formal regulatory processes, including a lengthy interrogatory process.

- Using an accounting-based rating approach would likely require the development of a manual describing the methodology to allocate costs, including possible external oversight, which would ultimately result in the same level of complexity as using the Phase II methodology.

Adoption of a rate-test model approach

86. The rate-test model approach proposed by the cable carriers is a variation of the retail-minus rating method for setting the rates of regulated wholesale HSA services below a certain speed threshold, such as 50 or 100 megabits per second. This model would use the wholesale rates proposed by a wholesale service provider and add company-specific costs incurred to provide the services to the retail customer, such as billing and marketing. The rate-test model determines, using all the services under the speed threshold, whether the wholesale service provider would have a reasonable rate of return if it were selling the services at retail rates. If the test is passed, then, by proxy, an efficient competitor would be able to operate and earn a reasonable rate of return on those services as well.

87. This model would be subject to periodic Commission audits to ensure that the data used is accurate and auditable.

Positions of parties

88. The cable carriers in favour of using the rate-test model as part of a hybrid approach for setting the rates for wholesale services submitted the following arguments:

- Using this approach would permit wholesale service providers to establish their own wholesale rates for wholesale HSA services as applicable.

- The rate-test model template is simple to use, easy to populate, and easy to validate using auditable costs.

- The rate-setting process would be straightforward since wholesale service providers would be permitted to simply file a tariff for each available wholesale HSA service.

- This approach would provide for a process of ongoing verifications rather than the complicated cost studies required under other approaches.

- The rate-test model approach accounts for costs specific to wholesale service providers since it is based on the wholesale service provider’s actual costs of providing the retail service. Such costs, as well as the publicly available retail rates used in the model, are easy to collect and verify.

- All inputs used can be subject to an external audit on a periodic basis to ensure compliance with the overall parameters of the rate-test model.
- This approach to rate-setting would encourage investments by wholesale service providers, including expansion into rural areas, since the wholesale service providers would not run the risk of ongoing regulatory uncertainty and potential threats of below-cost rates.

89. Some parties, including Bell et al., TekSavvy Solutions Inc., and the Competition Bureau were opposed to adopting the rate-test model approach for setting the rates for wholesale services. They submitted the following arguments:

- This approach has drawbacks similar to those associated with the traditional retail-minus methodology.
- The rate-test model approach is conducted at a portfolio level across a full set of services. This allows wholesale service providers to engage in margin squeezing for their most profitable services while keeping retail margins high on less profitable services, resulting in a negative impact on competition.
- Adopting this approach to set the rates for wholesale services would limit competition since the approach allows relatively profitable products to cross-subsidize those that are not, which would limit competitors to selling unprofitable products.
- The proper implementation of the rate-test model approach would require extensive future proceedings.

Commission’s analysis

90. Subsection 27(1) of the Act requires the Commission to ensure that the rates charged by Canadian telecommunications carriers are just and reasonable. The Act provides the Commission with the explicit flexibility to set rates using any method or technique to determine what rates are just and reasonable [subsection 27(5)]. In the context of wholesale services, just and reasonable rates neither encourage uneconomic entry nor deter economic entry and should appropriately reflect the cost of the service. When setting rates, the Commission must also consider whether the rates would achieve the policy objectives set out in section 7 of the Act, and whether they are consistent with the 2023 Policy Direction.

91. The Commission’s role in ensuring just and reasonable rates is fundamental to making certain that the Canadian telecommunications policy objectives of increased competition, affordability of services, and investment in networks are achieved. For aggregated wholesale HSA services, for example, the wholesale service framework requires competitors to rely almost entirely on an incumbent’s network. The framework therefore

depends on the Commission to set appropriate rules and rates with a view to implementing the policy objectives.

92. As requested in Telecom Notice of Consultation 2020-131, all parties provided their specific views and rationale on the various rate-setting approaches and their own specific recommendations on the methodology or methodologies to be employed for the wholesale rate-setting process. The Commission considers that the selection of a rate-setting methodology going forward should be based on a framework that incorporates the various views expressed by all the parties in a structured way. Thus, the Commission adopted a three-step process to select a suitable rate-setting methodology for wholesale services. The three steps are set out below and this process is to be employed going forward:

- Establishment of criteria to be used for the evaluation of rate-setting approaches
- Evaluation of the proposed rate-setting approaches against the selected criteria
- Selection of an appropriate rate-setting approach

Establishment of criteria to be used for the evaluation of rate-setting approaches

93. In their submissions as part of this proceeding, parties generally proposed that the review of the rate-setting methodology for wholesale services should be guided by certain principles, objectives, and/or criteria. In this regard, parties identified a wide range of proposed criteria including efficiency and length of time to set rates; encouraging investments and innovative services; competition and economic efficiency; complexity and meaningful participation; evidence-based rate-setting and transparency; reliability and regulatory certainty; adaptability to services and technological change; company-specific costs and cost recovery; and consistency with the Act and the 2006 and 2019 Policy Directions.

94. Using the criteria proposed by interveners in this proceeding as well as the criteria used in previous regulatory proceedings such as the proceeding that led to Telecom Regulatory Policy 2015-326, the Commission has determined that the appropriate criteria against which to evaluate the various costing methodologies are: (i) efficiency, (ii) transparency, (iii) providing regulatory certainty, (iv) adaptability, and (v) allowing for the recovery of costs while giving competitors a reasonable opportunity to compete.

95. In assessing each criterion, the Commission analyzed the interventions of parties, taking into consideration how each rate-setting approach would meet the criteria now and in the future. The Commission further considers that each of the above-mentioned criteria should be evaluated based on certain attributes, as specified below.

Efficiency

96. In this context, efficiency generally refers to the desired result of setting the rates for wholesale services in a timely and efficient manner. Under the Commission’s assessment criteria for selecting the appropriate rate-setting methodology, the attributes of this criterion could therefore be defined by features such as the time required to set final rates;

the ease of participation by all parties in the rate-setting process; the quantity of resources required by industry players and the Commission to develop rates; the ease of use for parties submitting rate applications; and the ease of implementing the rate-setting approach, such as whether a follow-up process is needed for its implementation.

Transparency

97. Transparency in the context of a rate-setting approach would include the mathematical calculation of how wholesale rates are calculated and whether such rates are auditable.

98. The Commission also considers evidence-based rate-setting to be an element of transparency in that it relates to the information required to set rates and whether that information is available for parties to comment on. Evidence-based rate-setting refers to clearly identifying which information is allowable in wholesale rate-setting situations as well as identifying the supporting rationale when dismissing any evidence provided by parties.

Providing regulatory certainty

99. Providing regulatory certainty in the marketplace is an important criterion that should be considered when setting the rates for wholesale services. Such rate certainty is an essential requirement for the service providers and competitors to engage, plan, and participate in the market.

100. A major consideration to ensure regulatory certainty in the marketplace would be that the rates of services set under a given approach should be effective, barring any significant changes in the market, for a minimum sufficient length of time instead of changing frequently. In addition, the rate-setting approach and any specific methodology employed should be uniform across all companies. This would allow for the development of rates by geographic region.

101. The rate-setting approach used should also be uniform for all services, avoiding the need for different approaches for different services to the maximum extent possible. Providing such regulatory certainty would allow the service providers as well as the competitors to be well versed in the specific rate-setting approach used. The Commission considers that other criteria such as efficiency and transparency would also contribute to regulatory certainty.

Adaptability

102. A wholesale rate-setting approach’s capacity for adapting to new services, new technologies, and other changes in the market determines how modifiable the approach is over time. This is an important criterion to be considered in selecting an appropriate rate-setting methodology for wholesale services given the ever-changing technical platforms used by service providers to offer such services.

103. The less adaptable an approach is to ongoing changes in network technology and markets, the more regulatory intervention would be required to analyze and evaluate that approach’s impacts on wholesale service rates. In this regard, the Commission also notes that the

parties to this proceeding were generally of the view that the wholesale rate-setting approach must be readily adaptable to technological and market changes.

104. The wholesale services rate-setting approach chosen should take into consideration the ability of that approach to adapt to future changes in the methodology used, as necessary.

105. The adaptability criterion should therefore ensure that the rate-setting approach selected in this context easily be able to accommodate existing and future technologies and changes to the markets, as well as any new rate-setting methodologies that may arise in the future.

Allowing for the recovery of costs while giving competitors a reasonable opportunity to compete

106. The Commission notes the submissions by many parties that any rate-setting approach should take into consideration company-specific circumstances and ensure cost recovery. Allowing the wholesale service providers to recover company-specific costs while providing services to competitors would also contribute to the incentive for wholesale service providers to invest in their respective networks.

107. The Commission notes that the methodology for rate setting should provide an environment for an effective competitor to be able to compete in the retail market.

108. The wholesale rate-setting approach selected should therefore allow wholesale service providers to adequately recover the costs of providing the wholesale service and enable competition by competitors.

Evaluation of the proposed rate-setting approaches against the selected criteria

109. The Commission analyzed the interventions submitted as part of Telecom Notice of Consultation 2020-131, taking into account how each rate-setting approach under consideration would meet the selected criteria listed above, both now and in the future.

Continued use of the Phase II methodology

110. The Phase II methodology could be considered an efficient rate-setting approach in that it can be used to set final rates in a timely manner for the vast majority of tariff applications, since they are straightforward and it is easy to verify that they follow Phase II incremental costing principles. In addition, the process of setting tariffs, whether they be existing or new, is already established using the Phase II methodology. Furthermore, it is well known by all the parties and does not require a follow-up proceeding for its continued use.

111. The Commission does, however, acknowledge that using the Phase II methodology can be lengthy when setting final rates for complex tariff applications and proceedings such as the wholesale HSA services. The Phase II methodology requires significant resources and can be difficult to understand and use for some industry participants, especially smaller companies. Its use also requires knowledge of economics, accounting, and network operations as well as specific company information on a per service base, which may not be straightforward to obtain.

112. With regard to transparency, while the Phase II incremental costing models and sensitive company-specific information are generally confidential, the disclosure guidelines established in Telecom Regulatory Policy 2012-592 adequately balance the need to release information that would allow various parties to participate in rate-setting proceedings with the harm that could be caused to the wholesale service providers by the release of that information.

113. However, the transparency of costing information related to the Phase II methodology could be improved for parties participating in more complex rate-setting proceedings and should be addressed going forward if the Phase II methodology is chosen as the primary rate-setting approach. For example, while the cable carriers use the Phase II methodology to estimate the costs of wholesale services, they currently do not have a Regulatory Economic Studies manual similar to the ILECs'. Furthermore, Phase II incremental costing models are filed in confidence, preventing some parties from understanding how certain calculations are derived.

114. With regard to providing regulatory certainty, the Phase II methodology is forward-looking, which results in rates that reflect expected market conditions, including the technology used, over a period of time. Once final rates are set, generally for a five-year period, they typically remain constant, barring any changes in the market. This provides regulatory certainty for all parties when planning their respective strategies. Continuous gathering of data on markets would allow the Commission to determine if a review of the rates set using the Phase II methodology is necessary before the end of the five-year period, if changes in the market warranted such a review. Furthermore, the Phase II methodology could be used when setting rates, regardless of the nature of the wholesale service or the geographic region, ensuring that the rates established are uniform across companies and regions.

115. The Phase II methodology has been used since the Commission began setting rates for regulated wholesale services. When applied consistently over the years, the Phase II methodology provides certainty to service providers, competitors, and end-users. The rates set should provide a stable environment for various parties to participate in the market. The Commission also notes that many parties supported this view.

116. Some parties have argued that the length of time required to set final rates has affected their investments and network planning. However, such lengthy rate-setting proceedings generally occur only for a limited number of complex tariff applications. The Commission is examining ways to improve the timeliness of rate-setting applications, which would reduce the length of time for which interim rates are in place. This is discussed in paragraphs 273 to 279.

117. One of the main features of the Phase II methodology is that it allows for the estimation of the costs associated with a service on a forward-looking basis over a fixed study period. By definition, this methodology would therefore allow for the estimation of costs of various resources and facilities based on the latest technology used in provisioning the service, as well as based on the expected values of parameters such as inflation, productivity, and any expected improved practices related to provisioning services as they evolve in the future.

118. The Phase II methodology has been modified as needed over the years to properly reflect the input variables over the study period. Examples of such modifications include the introduction of technology cost factors in estimating the forward-looking costs of fibre facilities and the estimation of end-of-study value in a regulatory economic study using the discounted service potential method instead of net book value.

119. The Phase II methodology should therefore easily be able to accommodate and adapt to any technological or regulatory changes that may occur in the future.

120. The Phase II methodology is designed in such a way that the rates developed using the methodology would cover all incremental and causal costs associated with a given unit of service. The rates would also contribute toward the recovery of the company's fixed and common costs. Since the methodology also takes into consideration return on equity, service providers are allowed a reasonable return on their investment, which also encourages further investments in the market.

121. Some service providers argued that in recent proceedings the Phase II methodology resulted in rates below causal costs. This allegation has little merit conceptually, since rates developed based on Phase II costing principles would, by definition, allow a wholesale service provider to recover the causal and incremental costs of providing the service and to receive a contribution toward its fixed and common costs. Any argument stating that the Phase II methodology would result in rates below the incremental costs of providing the service can only be due to the incorrect application of the Phase II costing principles in deriving the associated costs. Should the Phase II methodology be chosen to be the primary regulatory wholesale rate-setting approach, the issues raised by parties with regard to that methodology could be addressed in an ensuing review of the Phase II methodology to ensure the proper application of its principles in deriving service costs going forward.

Commercially negotiated rates approach

122. Commercial negotiation also allows for an efficient means of setting the rates for wholesale services under certain circumstances, such as in cases where there are a limited number of customers and wholesale service providers, as is the case with wholesale MVNO access service, or in cases where there is a competitive market for similar services. Like the Phase II methodology rate-setting process, a framework for commercial negotiation exists with the current use of off-tariff agreements. An FOA process for addressing disputes has also been established under Broadcasting and Telecom Information Bulletin 2019-184 and more recently, for MVNOs specifically, under Telecom Information Bulletin 2022-337. This framework allows for the efficient establishment of an FOA process to address any disputes in commercial negotiations.

123. The commercial negotiation process becomes much less efficient, however, if employed to set rates for a portfolio of wholesale services, such as HSA, which has many customers negotiating with wholesale service providers offering a wide range of services or in cases where there is no comparable wholesale market for similar types of services. While negotiating in groups of competitors could somewhat alleviate this concern, this practice is contingent on the ability of competitors with similar needs to form groups to negotiate as

one interested party. Furthermore, delays in establishing negotiated rates could be magnified should an FOA process occur, since critical resources from the wholesale service provider and competitor will necessarily be involved, possibly delaying other ongoing negotiations. In this regard, the Commission notes the submissions from competitors stating that the establishment of existing off-tariff agreements is difficult, and that the negotiation process can be described as confrontational.

124. With regard to transparency, the public availability of inputs and information used in commercial negotiations will be limited, since the negotiations and the agreed-upon rates of services between the negotiating parties would be confidential. This lack of transparency would contribute to wholesale service providers having more leverage in negotiations, which would result in competitors being restricted in their ability to assess the reasonability of offers, since no comparative information on rates would be available.

125. In general, under commercial negotiation, negotiations are likely to occur at different times, resulting in wholesale service rates being made available at very different times for competitors. While this may be the result of the different timing needs of competitors, it could also be due to an imbalance in negotiating leverage that inhibits competitors' ability to compete. Given the high volume of negotiated agreements expected for certain services, this outcome could negatively impact regulatory certainty for the industry.

126. Commercial negotiations also require the negotiation of contract periods. As a result, variable agreement contract lengths could result in contract periods that are so short that they are burdensome to competitors because they require frequent negotiation, or contract periods that are so lengthy that they become uneconomic for competitors.

127. Commercial negotiation offers a high range of adaptability in setting rates for wholesale services. For example, it could be used to set the rates for any wholesale service regardless of any technological, market, or other changes to any existing services. In addition, commercial negotiation allows for the use of any methodology in support of proposed wholesale service rates and does not require parties to produce and analyze significant amounts of data for Commission approval. As a result, when setting the rates for wholesale services, commercial negotiation is an extremely flexible approach that could be applied in many situations.

128. The concerns raised by some parties about establishing the rates for new services under this approach have merit. These parties stated that regulatory safeguards might be required to ensure negotiations are completed in a timely manner, such as delaying the introduction of new retail services until wholesale service agreements are completed.

129. With regard to the recovery of costs by the wholesale service providers, under the commercial negotiation approach between two parties, it would be reasonable to assume that the rates proposed by the service providers would be above the incremental cost of providing the service, but they may also be too high to enable competitors to compete. However, it is also possible that competitors could propose wholesale rates that are below the cost of providing the service. If negotiations go to an FOA process, it is possible that wholesale service rates could be set that do not cover the cost of providing the service or

that are too high to enable competitors to compete. However, this concern is minimized since the Commission can reject proposals at the FOA stage if the proposals submitted by each party are not just and reasonable.

Retail-minus or rate-test model approaches

130. A main advantage of using a retail-minus approach or the rate-test model approach to set wholesale rates is that they would make transparent to parties, including competitors, how the wholesale service rates were developed, limited only by any confidential information associated with the use of avoidable costs.

131. An extensive follow-up proceeding would be required to develop and refine the retail-minus approach and the rate-test model approach to determine the appropriate avoidable costs for each individual wholesale service and for each wholesale service provider. In addition, identifying similar or equivalent retail services for setting the rates for wholesale services would be complex and would not be possible for all wholesale services. These proceedings would likely be contentious due to the expected scrutiny of all parties. These approaches would also need ongoing monitoring for changes to the equivalent retail services, including monitoring of discounts, promotions, and bundled discounts associated with the retail services in question, and estimating ongoing changes to avoidable costs for each service. These factors would result in continuous updates to wholesale tariffs. The retail-minus and rate-test based rate-setting approaches are, therefore, an inefficient method for setting wholesale service rates.

132. Under the retail-minus approach or the rate-test model approach, proceedings would involve a review of the wholesale services rates set using the equivalent retail rate less avoidable costs, or a proxy of avoidable costs, as well as a review of the supporting rationale submitted by the wholesale service providers. Since these proceedings would also deal with any discounts, promotions, and bundled discounts offered, it is very likely that the wholesale service providers would file significant information on a confidential basis. Therefore, all the information required to set the tariffs would not be fully transparent to all parties.

133. A given company’s financial statements could be used to assess the avoidable costs required to estimate the wholesale rates. However, isolating service-level avoidable costs from aggregate financial statements would be a lengthy and complex process and would involve many assumptions for costs shared among various services, which would also reduce transparency. In addition, certain wholesale service providers are privately held companies and information in their financial statements may not be publicly available.

134. The rate-test model approach as proposed by parties would be run by the wholesale service providers only and would therefore not provide an opportunity for other parties to review and comment on the process. The information would not be transparent. Periodic compliance reviews, even if conducted, would only marginally improve the transparency of the rate-setting process since most information for a given rate-setting period would likely be submitted in confidence.

135. Under the retail-minus approach, wholesale service rates would continually evolve due to changes in equivalent retail rates or in avoidable costs. Given the nature of a constantly evolving retail market and unpredictability in retail rates, as well as variability in avoidable costs in the retail marketplace, there would be a significant concern around rate instability, which would lead to very low regulatory certainty. The rate-test model approach allows for individual wholesale service rates to change as frequently as proposed by the wholesale service provider. Such flexibility could lead to instability in wholesale service rates since the only constraint in setting wholesale service rates is compliance across a set of services. The rate instability due to the retail-minus and rate-test model approaches would create regulatory uncertainty and make it difficult for competitors to engage, plan, and participate in the market.

136. The retail-minus and the rate-test model approaches for rate-setting offer a high rate of adaptability for wholesale services which have an equivalent retail service. Both approaches can readily accommodate new services, future technologies, and regulatory changes. Over time, the threshold in the rate-test model could be revised, resulting in more services making use of this approach. However, the cost benefits of technological changes would only be reflected when or if the wholesale service provider chose to revise the equivalent retail rates.

137. With regard to the retail-minus approach, wholesale service providers are generally unlikely to set retail rates that do not recover the total cost of providing the service, which includes the cost to provision the service as well as the avoidable costs not incurred through competitor resale. However, this approach could result in situations where cost recovery would be a concern, especially if the retail rates used include bundling discounts, promotions, or other discounts. This would likely only be a concern for a limited period, while promotions are offered or when discounts are offered to a limited base of target customers. This approach would also ensure that wholesale rates are less than retail rates with a markup, which could enable competitors to compete in the market.

138. Given that wholesale service providers set the majority of the inputs in the rate-test model approach, this approach guarantees a reasonable rate of return, as long as the set of services proposed by wholesale service providers passes the test assessing the margin between retail and wholesale prices for the services. However, since the margin analysis is conducted across a full set of services, it risks not being sufficient to enable a competitor with a different mix of services than that of the wholesale provider to compete in the market.

Most efficient operator model approach

139. Defining and developing the most efficient operator model would require an extensive and lengthy follow-up proceeding. A most efficient network design is extremely complex and developing such a model would require significant resources. Two separate versions of the model would have to be developed to represent the difference between ILEC networks and cable carrier networks, as well as to reflect significantly different geographic markets. In addition, the development of an efficient network design would not include certain wholesale service rates, such as service charges, which would still need to be calculated using another rate-setting method.

140. The most efficient operator model approach would provide transparency when setting wholesale rates since industry parties would participate in the development of the model and the design. The model structure would therefore be available to all parties. Rates established using this approach would reflect future market conditions as well as the most efficient technology and would therefore provide a stable environment and regulatory certainty for parties to participate in the market.

141. Although this rate-setting approach can be modified and updated to accommodate and adapt to any technological or regulatory changes that may occur in the future, implementing those changes will require significant time and effort. In addition, the most efficient operator model relies on a theoretical and efficient network design that does not reflect the details of any company-specific networks. As a result, rates produced using the most efficient operator model approach with company-specific input assumptions will very likely not result in the recovery of costs required to provision the wholesale service. Such a theoretical model would be based on the most efficient design, which also may not reflect the costs incurred by smaller service providers due to the absence of economies of scale experienced by larger service providers.

Accounting-based costing approach

142. None of the parties to this proceeding supported the use of an accounting-based approach to set the rates for wholesale services. The shortcomings of this approach include the need for a lengthy follow-up proceeding to develop and implement the associated processes required, the development of procedures to assign company accounting costs to individual services through cost allocation, and the need for company-specific adjustments to reflect company-specific accounting systems. Furthermore, the need for annual updates and audits under this approach would be inefficient and time consuming since most of the information submitted by companies would likely be filed in confidence.

143. Under the accounting-based costing approach, transparency of costs information to parties would be restricted. In addition, wholesale service rates would be based on historical costs and the timing of capital expenditures would greatly influence rates. This would contribute to rate instability and reduce regulatory certainty, impacting the stability and predictability of a significant cost input for competitors' retail services. Regularly scheduled audits of accounting data would extend the uncertainty related to finalizing wholesale service rates, which would limit the competitors' ability to make long-term strategic business decisions.

144. The introduction of new services could result in significant start-up costs in the early years when demand for a service is generally low. This would result in very high wholesale service rates in the early years of the service, which could notably restrict competition in such cases. Similarly, when a new technology is introduced, these new costs would be captured early in the accounting records before the benefits of improved productivity would be fully realized. There would therefore be a delay before such productivity changes were reflected in lower wholesale service rates.

Selection of an appropriate rate-setting approach

145. While all rate-setting approaches assessed met some of the criteria selected, none of them fully met all the required criteria and each had different strengths and weaknesses. When setting various wholesale rates, different criteria are more important. It will therefore be crucial for the Commission, going forward, to continue to be flexible and adaptable and to choose the most effective rate-setting methodology for the service in question.

146. For example, the Commission considers that the commercial negotiation approach would be more suitable and efficient in situations where there are a limited number of customers and wholesale service providers, such as in the case of MVNO access where this approach is currently used and/or in cases where there is a competitive market for similar services.

147. However, the commercial negotiation approach may not be an efficient rate-setting alternative for services such as HSA. In such cases, the Commission is concerned that moving to commercial negotiations with an FOA process would likely result in significant delays in finalizing all wholesale rates, given the number of wholesale service providers, their various wholesale product offerings, the large number of competitors, and the fact that there is no similar competitive market.

148. Based on the record of this proceeding and an analysis of the interventions submitted by parties, the Commission considers that, on balance, the Phase II methodology will be the most appropriate rate-setting approach for setting the rates for most wholesale services. When all five assessment criteria discussed above are appraised together, the Phase II methodology is generally stronger compared to the other rate-setting approaches being evaluated in this proceeding. The existence of the off-tariff process, which uses negotiation for agreements, also allows for the benefits offered by commercial negotiation if appropriate.

149. The Commission acknowledges that the rate-setting methodology, particularly in relation to rate setting for wholesale services, should be improved to take into account additional information which will inform the development of wholesale rates devised through the Phase II methodology. This will include consideration of similar competitive wholesale services, where available, as well as consideration and ongoing evaluation of retail rates to ensure that wholesale rates are reasonable and support competition when compared to retail rates. In addition, the Phase II methodology will require ongoing development to ensure the process is streamlined.

150. In addition, in selecting the Phase II methodology to continue serving as the primary rate-setting approach, the Commission has taken into consideration its own role in ensuring that the rates of regulated wholesale services are just and reasonable, which is fundamental to ensuring that the policy objectives of increased competition, affordability of services, and investment in networks are achieved.

151. While the remaining rate-setting approaches may not be suitable for all services, the Commission may adopt any of these approaches, depending on the circumstances, to improve regulatory efficiency or to further certain policy objectives.

152. The technologies and network practices used to provision telecommunications services are changing rapidly, especially in recent years. Under such circumstances, and to address concerns raised by some parties that the current application of the Phase II methodology results in rates that are below the causal incremental costs of providing the service, the Commission considers that it is important to periodically review how the Phase II incremental costs are developed so that they are consistent with the Phase II costing principles. This issue is further discussed in paragraphs 280 to 283.

153. In light of the above, the Commission determines that the Phase II methodology, with the improvements discussed above and later in this decision, will continue to be used as the primary rate-setting method for wholesale services with the continued use of off-tariff agreements as necessary. The Commission also determines that it may adopt other costing approaches, where appropriate and on a case-by-case basis, in order to improve regulatory efficiency or to further certain policy objectives.

Should the same rate-setting methodology be used for all wholesale services?

154. In Telecom Notice of Consultation 2020-131, the Commission noted that while it is generally more efficient to employ the same rate-setting methodology for all regulated wholesale services, not all regulated wholesale services operate in the same competitive environment. As a result, the Commission invited parties to comment, with supporting rationale, on how each proposed methodology would impact the efficiency and transparency of the wholesale rate-setting process, including factors that could be considered in an analysis of an appropriate wholesale rate-setting methodology, such as market conditions or market competition. The Commission also sought comments on the appropriateness of employing different wholesale rate-setting methodologies for interim rates for wholesale services versus final rates for those same services.

Positions of parties

155. Most parties were in favour of allowing different rate-setting methodologies to be used for different wholesale services. Several parties also supported the idea that different rate-setting methodologies should be used for setting interim rates and final rates for wholesale services.

156. Many of the large service providers submitted that more than one approach is required for setting the rates for wholesale services for a variety of reasons including the complexity of wholesale services, apparent focus by the Commission on lowering wholesale rates, length of time required to set wholesale service rates, flexibility to adapt to the marketplace, and the recent inappropriateness of determinations by the Commission.

157. In support of using different rate-setting methodologies for wholesale services, parties also submitted the following:

- Approaches other than the Phase II methodology should be considered to advance regulatory efficiency or certain policy objectives, such as maintaining competitiveness and encouraging investments.

- Certain wholesale service characteristics such as market conditions (e.g., unknown demand, fluctuating retail pricing, significant investment requirements) and level of competition should be taken into consideration when choosing the appropriate rate-setting approach.

158. The competitors, while supporting the continued use of the Phase II methodology to set the final rates for wholesale services, generally submitted that a different approach is needed to set the interim rates for these services. This is to address issues that could arise such as extended periods of time required for rate-setting, large retroactive payments, limiting incumbents' early entry into the retail market, and ensuring competitors are able to compete. It also addresses situations where it is not possible to ensure rates are consistent with the Phase II costing principles, such as when new technology is introduced without any prior Phase II methodology approach having been approved.

159. Some service providers also argued that the rates of wholesale legacy services should be set based either on accounting costs such as net book value or by freezing their rates at existing levels. According to these parties, freezing the rates for wholesale legacy services more broadly will encourage end-users to adopt services carried over next-generation technology. Furthermore, the declining nature of demand would make it inefficient and unnecessarily burdensome to review and revise the rates of such services.

Commission's analysis

160. When reviewing the appropriate methodology for wholesale rate-setting, the Commission took into consideration, among other criteria, the efficiency and transparency of each rate-setting methodology during the wholesale rate-setting process. This approach resulted in the Commission's determination that the enhanced Phase II methodology is the preferred general rate-setting approach for wholesale services. Parties will continue to have the option of using off-tariff agreements when setting rates.

161. In this decision, the Commission has also determined that it may adopt other costing approaches, where appropriate and on a case-by-case basis, in order to improve regulatory efficiency or to further certain policy objectives.

162. These determinations are also consistent with the approach used at present, such as the use of the Phase II methodology for the majority of wholesale services and the use of commercial negotiation for specific situations such as MVNO access.

163. With regard to a given party proposing a different approach to setting wholesale service rates, applications with all supporting rationale must be submitted at the time of the proposed rate for the service. The Commission, however, will make the final determination with respect to the appropriate methodology to be used with such applications.

164. Regarding concerns related to market conditions and the setting of interim rates using the Phase II methodology, parties were primarily concerned with proposed interim rates that could result in negative impacts to competitors while the Commission is analyzing and setting the final service rates. In most cases, however, the negative impacts to competition,

if any, are generally temporary since the retroactive application of final rates established using the Phase II methodology addresses the difference between interim and final rates.

165. In cases where interim rates are in place for an extended period of time, the impact of differences between interim and final rates can be magnified. For example, there may be negative impacts to competition since incumbents may benefit from a prolonged service head start with presumably higher interim rates. When final rates are then set, significant retroactive payments to competitors or providers could also occur.

166. To address this concern and further enhance the approach to the Phase II methodology, wholesale service providers, when filing rate-setting applications for any new services or for new speeds not in an existing HSA band, or when proposing a new rate for any existing service, must also provide significant additional market-level information. This information should include the equivalent stand-alone service retail rates, promotion and winback retail rates, comparison to rates for similar services in other countries, and any other related relevant information. This would allow the Commission to compare retail and wholesale rates and to test the assumptions used in the rate-setting methodology and costing models.

167. This additional information will provide the Commission with a point of reference necessary to compare relative rates available in the marketplace and analyze potential competitive impacts when setting interim and final wholesale rates. This additional information will also form part of ongoing information collection, as per the latest Policy Direction, to support future proceedings relating to rates and to ensure that wholesale rates remain just and reasonable.

168. Regarding legacy services, the Commission normally reviews applications for such wholesale services on a case-by-case basis and has previously frozen the rates of specific wholesale services under certain conditions.

169. While parties proposed to freeze the rates of additional wholesale services or revise the legacy services rate-setting approach, the current practice of reviewing such applications on a case-by-case basis should continue since it allows the Commission to analyze the specific conditions associated with each application.

170. In light of the above, the Commission determines the following with regard to whether the same rate-setting methodology should be used for all wholesale services:

- The same rate-setting methodology does not need to be used for all wholesale services and the Commission may adopt other rate-setting approaches where appropriate and on a case-by-case basis.

- Should parties wish to propose a different approach to setting wholesale service rates, they must submit an application, with all supporting rationale, at the time of their submission of the proposed rate for the service. In such instances, however, the Commission will make the final determination with respect to the appropriate methodology to be used.

- When submitting rate-setting applications for any new or existing services, to enhance the Phase II methodology, wholesale service providers must provide market-level information, including the equivalent stand-alone retail rates, promotional and winback retail rates, comparison to rates for similar services in other countries, and any other relevant information, to allow the Commission to compare retail and wholesale rates and test the assumptions used in the rate-setting methodology and costing models.

- Parties that file applications to review or freeze legacy wholesale service rates should continue to submit applications with all supporting rationale for each service for consideration by the Commission.

Should the same wholesale rate-setting methodology be employed by all companies providing wholesale regulated services?

171. Many companies, particularly smaller ones, that are required to file wholesale rates do so on an infrequent basis, sometimes having to file wholesale service rates for a single service only. In these cases, considering that the filing of a cost study and the acquisition and maintenance of Phase II costing knowledge could be challenging, the Commission has approved alternative methodologies, such as using the retail-minus approach or using the rate for a similar or identical approved wholesale service, calculated using the Phase II methodology, as a proxy rate. The proxy approach has typically been employed for smaller service providers.

172. In Telecom Notice of Consultation 2020-131, the Commission invited parties to comment on whether this process should be continued on a case-by-case basis, whether the adoption of a single, consistently applied wholesale rate-setting methodology should be employed by all companies for all studies, or whether another method is required in setting the rates for wholesale services.

Positions of parties

173. While the majority of parties generally supported the use of the same rate-setting methodology for all larger service providers, for a given service specifically, they also submitted that there should be some flexibility when choosing a methodology in special circumstances such as the specific service characteristics faced by a company, or its size.

174. Even though parties recommended using the same service-specific rate-setting methodology for larger service providers, they varied in their views as to the single methodology to be used by all these companies.

175. Some parties also submitted that small service providers with resource constraints should be allowed to use a less onerous approach, such as the retail-minus approach, when setting the rates of their wholesale services. These parties submitted that this alternative would allow for an efficient approval process for small carriers who are only required to file infrequent cost studies.

176. Certain parties argued that the service providers of services with little or no demand should be allowed to use proxy rates approved for other service providers, instead of undertaking a detailed costing exercise. They added, however, that to ensure that the selected proxy rates continue to be just and reasonable, there should also be provisions for such rates to capture any future rate changes to the original proxied service provider's rates.

177. Parties submitted that small ILECs should be allowed the flexibility to either develop cost-based rates with supporting cost studies or adopt larger service providers' rates for the affected services as a proxy, provided they operate in a similar operating territory.

178. To support the use of proxy rates for small ILECs, parties provided the following arguments:

- The proxy approach is a more streamlined and less costly process than having to develop cost studies to support rate proposals.
- Unlike large incumbents, the small ILECs are unable to exercise market power, which could lessen competition or consumer choice in their given territories.
- There is no regulatory basis for imposing rigorous anti-competitive safeguards, such as prospective costing methodologies for the small ILECs, to ensure that their wholesale service rates are just and reasonable.

179. The ITPA also submitted that the Commission should remove certain restrictions on the selection of proxy rates by small ILECs. It argued, for example, that small ILECs should be permitted to use as a proxy any rate approved by the Commission for the same service without being limited to that of the neighbouring large ILEC.

180. The ITPA also argued that in the case where a tariffed proxy rate cannot be found or is not acceptable, the small ILEC should present objective proof of the reasonableness of its proposed rate in light of the available wholesale rates for the same services in comparable markets, such as high-cost areas, across Canada. It added that such objective proof could include quotes obtained from other service providers, information received from prospective customers, or even letters from prospective customers supporting the proposed rates.

181. Certain competitors proposed that when there is demand, the small subsidiaries of large service providers should be fully regulated, since the less rigorous rate-setting methodology cannot be justified for such companies on the grounds that they have limited resources and expertise.

182. Service providers with such subsidiaries argued that the above proposal should be denied, since the incumbent-owned subsidiaries generally operate independently and the legal structure does not affect costs and efficiencies or the characteristics of the small ILEC operating territories. They also argued that the Commission typically does not consider ownership structure, other than foreign ownership levels as required under the Act, when applying telecommunications regulations.

Commission’s analysis

183. While the Commission has determined that the enhanced Phase II methodology will generally be used as the rate-setting methodology, it further determined that it would consider other methodologies for setting the rates for wholesale services based on specific circumstances. It would be appropriate to apply this approach to all large service providers across Canada. This would allow for the uniform application of the same methodology for all the companies, while allowing for exceptions as warranted by special situations.

184. Some wholesale service providers proposed that they should be allowed to use less onerous approaches, such as the retail-minus approach, to set wholesale service rates since they are only required to file infrequent cost studies and have limited resources. However, although these providers may only file cost studies infrequently, some are the large incumbent service providers in their respective operating territory and should therefore be subject to the same rules as the other large incumbents.

185. With regard to setting the rates of services with little or no demand, the proposal to use proxy rates approved for other wholesale service providers or rates approved for similar services provided by the same service provider instead of undertaking a costing exercise has merit.

186. This simplified rate-setting approach should be made available to any wholesale service provider regardless of its size. However, this option will be available only on an exceptional basis for wholesale services with very little demand, provided the applicant also meets the following conditions: (i) a wholesale service provider proposing to use a proxy rate must proactively demonstrate that the service does not have enough demand, currently or in the future, to justify the expense of developing a detailed cost study; and (ii) companies will have to provide arguments and support as to why the proxy rate being proposed in such situations is appropriate and applicable.

187. There is also merit to the proposal that any proxy rate adopted by a service provider should be revised to match any changes to the original source rate. However, in order to keep rates just and reasonable, such a provision should be limited to situations where the reason for the price change in the source rate is equally applicable to the service provider using the proxy rate.

188. Certain parties submitted that small ILECs should be permitted to use a proxy of any rate approved by the Commission for the same service without being limited only to the rate of the neighbouring large ILEC. They also argued for the flexibility to propose their own rates in light of the available wholesale rates for the same services in comparable markets. The Commission considers that the existing directive for a small ILEC to employ the rates of the same service provided by the neighbouring large service provider is limiting. To provide additional flexibility, this provision should be revised to allow the small ILECs to adopt the approved rates of any company in any region for the same service, provided the small ILECs provide (i) sufficient rationale and supporting evidence to justify the rate selected; and (ii) demonstrate why the neighbouring ILEC rate for the same service is not appropriate.

189. The Commission is also open to a small ILEC filing proposed rates for its wholesale services using the rate-setting methodology of its choice. In such a case, the company should adequately justify the use of the methodology chosen and provide complete and sufficient evidence in support of its proposal. The Commission, however, will make the final determination with respect to the appropriate methodology to be used, subject to applicable circumstances.

190. The Commission does not agree with the proposal by some parties to impose full regulation on companies that are small ILEC subsidiaries of large service providers, due to their affiliation to the large companies. The cost and resource structure of these subsidiaries would likely be comparable to other independent small ILECs as long as they remain separate legal and operational entities.

191. In light of the above, the Commission determines the following with regard to the rate-setting methodology to be used by companies:

- With regard to large service providers providing services for which there is more than little or no demand, the wholesale rate-setting methodology should be service-specific, and the same methodology should be used by all companies.

- However, any service provider, with little or no demand for a service, would be allowed to proxy the rates approved for the same service offered by another wholesale service provider, or rates approved for similar services provided by the same service provider, when supported by sufficient and satisfactory evidence as specified in this decision. A company that uses such proxy rates to set its service rates would only be subject to any further changes to the original source rate if the reason for the price change equally applied to said company.

- Additional flexibility will be given for small ILECs to allow them to adopt any approved rates of any company in any region for the same service, provided the small ILECs provide sufficient rationale and supporting evidence to justify the rate and demonstrate why the neighbouring ILEC rate for the same service is not appropriate.

- The Commission will consider, subject to its approval, a small ILEC filing proposed rates for its wholesale services using the rate-setting methodology of the company's choice if it adequately justifies the use of the methodology chosen and provides complete and sufficient evidence in support of its proposal.

Based on the option selected, should the Commission assist companies in acquiring and maintaining knowledge of wholesale rate-setting methodology and of the Commission's expectations in the wholesale rate-setting process? If so, how should the Commission assist companies in this regard?

192. In Telecom Notice of Consultation 2020-131, the Commission noted that considerable costing knowledge is required to participate in the wholesale rate-setting process and that the burden of having to acquire and maintain such knowledge can often act as a barrier for parties to actively participate in the process.

193. As a result, the Commission invited comments on whether it should assist companies in acquiring and maintaining knowledge on the rate-setting methodology, the Commission’s expectations in the wholesale rate-setting process, and the approaches that could be used to assist companies in acquiring and maintaining such knowledge.

Positions of parties

194. Most parties were in favour of the Commission assisting companies in acquiring and maintaining knowledge, while a select few, including Bell et al., Cogeco, and RCCI argued that assistance wasn’t required.

195. Regardless of the rate-setting method chosen, most parties requested the following assistance from the Commission:

- Ongoing support in the form of online or classroom instruction as well as manuals and workshops that provide an overview of the methodology and explain it, with details on how to complete models, including what evidence is required.
- Information campaigns, in-person interviews with Commission staff, a resource for questions and answers, other educational measures, and a guidebook on policies and rules.
- Information sessions to allow parties to learn, ask questions, and obtain a better understanding of the rate-setting method and how it is applied.
- Well-organized summaries and links to past decisions on all relevant documents such as regulatory policies, decisions, orders, regulatory economic study manuals, applications, and Commission letters available online.

196. Some parties, including Bell et al., submitted that it is not necessary for the Commission to assist companies in acquiring and maintaining costing-related knowledge since companies are aware of the Phase II methodology and a well-defined rate-setting methodology will not require further assistance. These parties added that the use of certain rate-setting approaches, such as the retail-minus approach, should not require further assistance from the Commission.

197. Allstream Business Inc. was concerned that assisting companies in acquiring and maintaining knowledge would be a continuous burden on the Commission. It added that regardless of any support provided by the Commission, there will continue to be a gap in expertise between wholesale service providers and competitors.

198. Eastlink was of the view that acquiring and maintaining knowledge should be equally applied to ensuring Commission staff are familiar with not only the mechanics of any rate-setting methodology, but also differences in technologies used, new services being offered, and the geography served.

Commission's analysis

199. In this decision, the Commission has determined that while it may employ other rate-setting methodologies, the enhanced Phase II methodology will be the predominantly employed methodology when setting the rates for wholesale services. Some parties submitted that since the Phase II methodology is well defined and companies are familiar with this rate-setting process, there is little merit in the Commission providing further assistance to parties. However, based on the submissions of a majority of the parties and the Commission's own experience, providing costing support as required on Phase II methodology-related matters would be beneficial to all parties, and would provide a platform for all parties to communicate on an ongoing basis.

200. Commission staff previously provided a two-day in-person information and training session on Phase II costing principles and concepts to the wholesale service providers, competitors, industry, and consumer groups. The continuation of similar training sessions held on a regular basis could be used to meet parties' general interest in online or classroom instructions and workshops. Such sessions could also be used as a forum for in-person questions and answers about the Phase II methodology, policies, rules, evidence required, and how to complete costing models.

201. The Commission further recognizes the importance of keeping the industry updated and informed on rate-setting methodology, decisions, and Manuals. The Commission will establish a page on its website to allow for parties' enquiries on the Phase II methodology or other rate-setting issues.

202. Some parties submitted that, regardless of any support provided by the Commission, there will always continue to be a gap in expertise between wholesale service providers and competitors. There is, however, an incentive for the competitors to fully understand the costs associated with running their business and they should be responsible for closing any expertise gaps through knowledge acquisition, including the use of consultants as necessary.

203. By assisting companies in acquiring and maintaining knowledge on the Phase II methodology, the gap in expertise between wholesale service providers and competitors would be reduced. This would likely contribute to parties' increased participation in rate-setting proceedings.

204. With regard to the concern raised by parties that assisting companies in acquiring and maintaining knowledge would be a continuous burden on the Commission, the establishment of a page on the Commission's website to allow for parties' enquiries on the Phase II methodology or other rate-setting issues would provide a balance of burden to the Commission, while assisting companies.

205. Regarding the Commission and its staff acquiring and maintaining knowledge on new and emerging technologies, industry trends, new service offerings, and customer needs, this is something that the Commission already does. It is important to continuously monitor the

industry and improve knowledge so that the Commission can continue to improve its effectiveness in delivering better-reasoned decisions of a higher quality.

206. Acquiring knowledge from the industry, including wholesale service providers and competitors, as well as from industry and consumer groups, also improves the Commission's awareness on changes to technologies used to provide wholesale services, changes to geography served, updates to the competitive marketplace, and the impacts of Commission decisions on end-users.

207. In light of the above, and taking into consideration other Commission priorities, the Commission determines the following with regard to assisting companies in acquiring and maintaining knowledge of wholesale rate-setting methodologies and processes:

- Commission staff will provide training sessions on a regular basis, which will be used as a forum for in-person questions and answers about the enhanced Phase II methodology, policies, rules, evidence required, and how to complete costing models.
- The Commission will develop a page on its website, directly accessible by all parties, with information such as relevant past Commission decisions, regulatory policies, orders, Manuals, applications, and Commission letters.
- The Commission will continue to invite industry participants, including wholesale service providers, competitors, and consumer and industry groups, to provide the Commission with reports and presentations, on an as-needed basis, that present updates on changes to technologies used to provide wholesale services, changes to geography served, updates to the competitive marketplace, and the impacts of Commission decisions on end-users.

How would technological changes be addressed in the wholesale rate-setting process?

208. In Telecom Notice of Consultation 2020-131, the Commission invited parties to comment on whether complex wholesale rate-setting issues related to newly deployed technology and specific to a given wholesale rate-setting proceeding should be addressed prior to the wholesale rate-setting proceeding.

Positions of parties

209. Most parties argued that any approach adopted for wholesale rate-setting should take into consideration current and future technologies. Some parties also submitted that wholesale service rates should be set prior to the release of new retail services to ensure new technologies are not withheld from competitors. However, the majority of parties did not comment on the issue of addressing technological changes that may lead to deviations from accepted wholesale rate-setting approaches.

210. Certain parties submitted that technological changes that lead to a deviation from the accepted wholesale rate-setting approach should be addressed before the wholesale rate-

setting proceeding for the following reasons: (i) a focus on deviations, separately from setting wholesale service rates, allows for a review of the deviations without drifting into rate setting or into policy objectives; (ii) reviewing deviations in a rate-setting proceeding is not an efficient process since it prolongs interim rates, contributes to uncertainty, and results in retroactivity that affects investment planning; and (iii) addressing deviations separately would be consistent with past decisions in which the Commission determined that certain methodological changes revising company-specific costing Manuals were better suited to a separate process rather than a rate-setting proceeding.

Commission's analysis

211. Currently, wholesale rate-setting proceedings incorporate growth technology and allow parties, including the Commission, flexibility to propose new or revised approaches in estimating costs, as long as the proposals are consistent with the Phase II costing principles.

212. Reviewing proposed deviations in approaches to estimating costs in a separate preliminary proceeding, before the rate-setting applications, allows for a focused discussion about various proposals and a clear determination on each approach, making the process for estimating costs reasonable. This would reduce the complexity of estimating costs associated with a particular technology in the rate-setting proceeding.

213. A shortcoming of that approach, however, is that a significant amount of time would be required due to procedural process and the issuing of a decision for such a preliminary proceeding. In addition, if parties were to disagree with the decision, they could request a review and vary of the decision, which would prolong the ensuing rate-setting process further.

214. However, continuing to use the current approach of analyzing new or revised approaches to estimating costs during a rate-setting proceeding, along with analyzing other pertinent information included in a tariff application, would offer the following benefits: (i) insight into how these revised approaches impact the final proposed rate which, in many instances, can only be assessed during the rate-setting proceeding; and (ii) setting final rates using such a combined proceeding would very likely take less time than two separate costing methodology and rate-setting proceedings.

215. The Commission, therefore, determines that:

- Proposals for deviations in estimating costs should continue to be reviewed during a rate-setting proceeding, as is the current process.

- On a case-by-case basis, such as for the introduction of a new service, the Commission may conduct a separate prior process to provide a clear direction to parties proposing rates, simplifying the rate-setting proceeding.

If there were to be a change in the wholesale rate-setting approach for regulated wholesale services, how would such a transition occur?

216. In Telecom Notice of Consultation 2020-131, the Commission invited comments by parties on how to implement any suggested changes to the wholesale rate-setting approach in terms of a proposed timeline to roll out the proposed methodology and how to implement the application of the rate-setting methodology for existing wholesale services.

Commission's analysis

217. In this decision, the Commission has determined that the enhanced Phase II methodology will be used as the primary rate-setting method for wholesale services. However, the Commission may also adopt other costing approaches, where appropriate and on a case-by-case basis, in order to improve regulatory efficiency or to further certain policy objectives, such as the use of commercial negotiations for MVNO access rate-setting.

218. While parties commented on or proposed different transition periods for the various rate-setting approaches, the Commission considers that no transition period is required for the recommended rate-setting methodologies. This is because the Phase II methodology is already in use today and its enhancements do not require additional time to be implemented, the rates of most of the existing wholesale services have already been set using the Phase II methodology, and the use of commercial negotiations for MVNO access has already been determined in Telecom Regulatory Policy 2021-130.

219. Some parties argued that if the Phase II methodology were to be retained as the primary rate-setting approach going forward, it would be necessary to address whether certain associated methodologies require further modifications. These concerns are discussed in paragraphs 280 to 283. Any changes resulting from such a review, however, will not alter the Phase II costing principles used in the rate-setting methodology. Therefore, the Phase II methodology can continue to be used while these issues are reviewed.

Are there methods that could be employed to create a more efficient wholesale rate-setting process?

220. In Telecom Notice of Consultation 2020-131, the Commission noted that several parties expressed concerns regarding the extended time requirements and delays involved with the wholesale rate-setting process. To address this issue, the Commission invited parties to provide their views on methods that could be employed by the Commission to create a more efficient wholesale rate-setting process.

221. Many parties made various proposals that would improve the effectiveness of the current process for setting wholesale service rates. However, the majority of such proposals focused only on improving various aspects of the rate-setting process instead of directly addressing the underlying concern of time requirements and delays involved with the ongoing wholesale rate-setting proceedings.

222. Several parties provided proposals that sought to improve the efficiency of the current process to set wholesale service rates. These proposals included the following:

- separating rate-setting proceedings from reviews of the Phase II methodology approach;
- using incentives for wholesale service providers to increase the efficiency and timeliness of the rate-setting process;
- setting standard timelines for competitor tariff applications;
- providing recommendations to all parties for comment before the Commission issues a final decision;
- restricting changes to the Manuals during a rate-setting proceeding; and
- adhering to disclosure requirements.

Separating rate-setting proceedings from reviews of the Phase II methodology approach

Positions of parties

223. Many parties, including some wholesale service providers, submitted that in order to improve the efficiency of the rate-setting process, the Commission should initiate a preliminary proceeding before a tariff proceeding to determine the proper cost inclusions and methodologies that should be included. They argued that as part of this preliminary proceeding, the Commission should release a draft determination for final comment by the parties. They added that the Commission could address those comments in its decision, if necessary, including by changing its draft determination if an error is made in the original draft determination.

224. The same parties generally submitted that the Commission should determine that no proposed changes to the Phase II methodology should be made during tariff proceedings. Any such changes, if required, should be done by way of applications to be addressed separately, and the start of those proceedings should not interrupt or slow down any ongoing rate-setting proceeding.

225. CNOC opposed the incumbents' proposal to include a preliminary costing proceeding as part of a rate-setting proceeding since this would introduce significant and unnecessary delays to the rate-setting process. It added that such issues would already be addressed as part of the current process to update the Manuals.

Commission's analysis

226. The process for rate-setting proceedings, such as tariff notices, filed at this time allows wholesale service providers to propose changes to the costing methodology and cost inputs as part of their submissions during the proceeding. Reviewing costing methodology changes and new cost inputs during such a proceeding would result in a longer period

being required to set the final rates. To avoid this delay, parties have proposed that changes to introduce new methodologies and/or cost input changes should be held in advance in a proceeding separate from the rate-setting proceeding itself. The rate-setting proceeding would incorporate the decisions made in the proceeding related to costing methodology changes and new cost inputs.

227. However, reviewing any proposed changes by parties during a rate-setting proceeding would provide the flexibility to address those changes, ensuring that any revised costing approaches would reflect the most recent information. Proceeding in this way would also allow the Commission to evaluate how these revised approaches might impact the final proposed rate. While the Commission acknowledges that reviewing such changes in methodology during a proceeding can cause proceedings to be somewhat longer, the time required would likely not be as significant as if a separate process was launched beforehand to address methodological issues.

228. Changes to methodology or costing approaches in the Phase II methodology are currently addressed primarily during wholesale rate-setting proceedings. Changes that are company-specific and wholesale service-specific should generally be addressed during rate-setting proceedings. When changes apply to multiple service providers and wholesale services, they could be addressed in a separate proceeding if the Commission deems it is more appropriate to do so.

229. As a result, the Commission determines that changes to the Phase II methodology or costing approaches should continue to be reviewed on a case-by-case basis as is currently done.

Using incentives for wholesale service providers to increase the efficiency and timeliness of the rate-setting process

Positions of parties

230. Some parties suggested the creation of a holding account for wholesale service revenue while rates are interim, to be maintained by the Commission or another independent party, in order to encourage the efficiency and timeliness of rate-setting proceedings. They argued that this would ensure that, during a tariff proceeding, wholesale service providers do not benefit from overcharges, pending the determination of final rates.

231. The same parties submitted that this fund would be paid out to either the wholesale service providers or the competitors based on whether the final rate was higher or lower than the interim rate. They added that creating this holding account would deter wholesale service providers from delaying the tariff approval process by filing incomplete information and proposing non-standard approaches in order to hold competitor funds for as long as possible.

232. The wholesale service providers argued against the creation of such a fund. They submitted that it would take capital away from the service providers, which they need to cover their costs for providing the wholesale service and which they use to invest in providing new

and advanced telecommunications services, with no corresponding benefits to anyone, and with significant additional costs for consumers.

Commission’s analysis

233. Withholding all interim revenue, or even a portion of it, would result in deferring the receipt of revenue by wholesale service providers until the final rates are set. This would result in service providers being required to provide wholesale services while their associated compensation was withheld, which could affect their ongoing investments and operations.

234. Such a scenario could be discriminatory against the wholesale service providers if competitors did not consider themselves to be obligated to do their part to contribute toward encouraging the efficiency and timeliness of the rate-setting process.

235. Furthermore, the complexity, effort, and cost required to develop and administer these holding accounts, which would be required for each service and each wholesale service provider, would also adversely impact the efficiency and timeliness of the rate-setting process.

236. For the above reasons, the Commission considers that it would not be appropriate to adopt the proposal by parties to create a holding account and withhold interim wholesale revenue from wholesale service providers until the rates are set on a final basis.

Setting standard timelines for competitor tariff applications

Positions of parties

237. Some wholesale service providers submitted that in order to create a more efficient wholesale rate-setting process the Commission should provide greater clarity regarding the timeline for any future reviews, including the target implementation dates for new rates.

238. Certain competitors submitted that there are asymmetries and competitive imbalances in the current environment and that these are preventing competitors from competing on a level playing field with the wholesale service providers. These competitors submitted that, to create a more efficient wholesale rate-setting process, there should be a standardized timeline for approving tariff applications for competitor services, in the form of an update to Telecom Information Bulletin 2010-455-1.

Commission’s analysis

239. The procedural timelines for processing competitor services tariff applications with rate-setting components, including the associated schedule for interventions and replies of parties, are provided in Telecom Information Bulletin 2010-455-1. Due to the significant variety and differences in complexity of competitor tariff applications, the remaining procedural timelines are usually set by the Commission or Commission staff and are dependent on the circumstances of each proceeding.

240. As a result, setting standard procedural timelines that encompass all competitor tariff applications would not be appropriate since timelines set for certain competitor tariff applications would be too short, while for others they would be too long.

241. The Commission will, however, continue to respect the provisions set out in section 26 of the Act, which specify that within 45 business days after a tariff is filed, the Commission shall dispose of the file or make public reasons why it has not done so and specify the period of time within which it intends to do so.

242. Given that tariff applications with rate-setting components vary in complexity, that the required process is specific to each application, and that service standards are already available, the Commission determines that further updates to Telecom Information Bulletin 2010-455-1 to set additional timelines are not required.

Providing recommendations to all parties for comment before the Commission issues a final decision

Positions of parties

243. Some parties argued that to make the rate-setting process more efficient, the Commission should issue to the parties an initial draft of its recommendations on methodologies to be used and what costs would be permitted in the proceeding. They argued that such a process would allow for parties to comment on and identify any errors, oversights, or misinterpreted costs before a final decision is made by the Commission.

244. RCCI further submitted that such draft recommendations would allow for parties' comments on any unanticipated impacts on parties, such as the effect of retroactive payments, and could therefore lessen the possibility of parties appealing Commission decisions.

Commission's analysis

245. With regard to the proposal by some parties that the Commission provide its preliminary recommendations on methodologies and costs permitted in a rate-setting proceeding to all parties for comments before issuing its final decision, which would diminish the possibility of any appeals, such a procedural step is not required since the process used in such rate-setting proceedings allows parties to raise any concerns they may have during the proceeding itself. In addition, parties have insights into areas of concern that the Commission may have through the requests for information Commission staff issues to the wholesale service providers for additional information on cost inputs and costing methodology during the proceeding.

246. The wholesale rate-setting proceedings also allow for the service providers, competitors, and other parties to provide their concerns and views on any of the other parties' submissions as applicable. As a result, the existing rate-setting process already allows for the majority of impacts, oversights, and misinterpreted costs to be identified and discussed prior to the issuing of a final decision by the Commission.

247. Issuing a preliminary draft decision for parties to comment on may have the following adverse consequences: (i) issuing draft determinations to parties ahead of the final decision by the Commission, and waiting for and reviewing their comments would prolong any delay without establishing and approving final rates, which in turn would contribute to further regulatory uncertainty; (ii) some parties could file more privacy requests before the final decision, which could further delay the completion of the proceeding; and (iii) providing draft determinations would also provide foresight into potential final determinations, possibly impacting the marketplace.

248. Based on the above considerations, the Commission considers that it would be inappropriate to release draft recommendations on establishing methodologies and cost inputs during Phase II methodology and rate-setting proceedings.

Restricting changes to the Manuals during a rate-setting proceeding

Positions of parties

249. Some parties submitted that maintaining the values of all cost factors, including company-specific appendices in the Manuals, and keeping them updated on a regular basis outside of rate-setting applications will reduce the length of time required to review tariff applications, and contribute to creating a more efficient wholesale rate-setting process. Parties further proposed that limiting changes to approved approaches and values in the Manuals during a rate-setting proceeding will also reduce the length of time required to review tariff applications.

250. Certain parties suggested that whenever the Commission amends the cost study method during a proceeding it should also provide updates to the language to be used in the Manuals to reflect the changes made.

251. Some incumbents and competitors submitted that the cable carriers should be required to file their own Manuals with the Commission, since this would increase the transparency of how they apply the Phase II methodology in estimating their proposed rates in a manner consistent with that of other wholesale service providers.

Commission’s analysis

252. The Manuals contain details of the Phase II methodology and company-specific parameters for use by the wholesale service providers in their respective rate-setting proceedings. However, a shortcoming of the current process whereby the Commission approves any updates to the Manuals, whether related to methodology or to company-specific parameters, is that such updates proposed by the wholesale service providers are addressed by the Commission only during rate-setting related proceedings. This not only diverts the focus of all parties, including the Commission, from the main issues of the proceeding, but also makes the rate-setting proceedings less efficient, extending the length of time required to review tariff applications.

253. Another limitation of the current process for updating the Manuals is that during a proceeding, the Commission will very likely only address the updates to parameters that are specifically relevant to that proceeding, and not all the updates proposed by parties.

254. Developing a scheduled update process for the Manuals will address outstanding updates and ensure that any future proposed updates to the Manuals or its appendices are addressed in a timely manner. Regular updates to the Manuals will therefore contribute to reducing proposed changes during rate-setting proceedings, thereby reducing the delay in those proceedings and increasing the efficiency of final rate-setting proceedings.

255. With regard to the proposal by certain parties to restrict the possibility of making changes to the Manuals during a rate-setting proceeding, such a proposal could potentially result in the use of outdated methodologies and values of company-specific parameters. This would go against the Phase II costing principle of using forward-looking costs and could lead to the under- or over-recovery of incremental costs, therefore resulting in rates that are not just and reasonable.

256. Unlike the ILECs, the cable carriers do not currently have their own company-specific Manuals that they use to develop their respective regulatory economic studies. The Manuals provide the general details of how each company develops costs and performs its economic evaluation studies based on company-specific data and information so that the studies conform to the prospective incremental costing principles and methodologies set out in Telecom Decision 79-16, and as further amended in subsequent Commission staff letters or Commission determinations.

257. It is important for the cable carriers to develop their own company-specific Manuals that would allow each of these carriers to demonstrate, while performing regulatory economic studies, how their own company-specific information would be adapted and translated to meet the Phase II costing principles as prescribed by the Commission. For consistency, the Manuals prepared by the cable carriers should have similar content and structure to those submitted by the ILECs.

258. The development of the Manuals by the cable carriers would allow the Commission to verify the consistent application of Phase II costing principles among the various wholesale service providers during rate-setting proceedings. Not only would this contribute to increased transparency when various parties are reviewing all wholesale service providers' cost studies, it would also reduce the time required for the rate-setting process, increasing its efficiency.

259. Based on the above, the Commission determines the following:

- The Manuals, including company-specific appendices, will be updated on a regular basis as per a schedule to be established by Commission staff.

- The Commission will not restrict the possibility of making changes to the Manuals during a rate-setting proceeding.

- The Commission **directs** each of the cable carriers to develop and file for the Commission's approval company-specific Manuals within **nine months** of the date of this decision. These Manuals should follow the same structure and format as the ILECs' existing Manuals, as applicable, and should include the company-specific appendices identified in Appendix 3 of Telecom Decision 2008-14.

Adhering to disclosure requirements

Positions of parties

260. The competitors generally submitted that a requirement for wholesale service providers to provide sufficient disclosure of confidential information during a tariff proceeding would greatly improve the efficiency, timeliness, and accuracy of the rate-setting process. These parties further submitted that their current experience in this regard is that the wholesale service providers do not adhere to the current disclosure rules, requiring them to prepare voluminous disclosure requests during a proceeding and ultimately making the process less efficient.

261. To address this issue, the competitors proposed the following enhancements to the current disclosure requirements during a tariff filing: (i) the Commission should adopt in camera hearings to provide bona fide counsels and consultants with access to confidential information; (ii) when disclosure requests are denied, the Commission should adapt the mechanism of non-disclosure agreements adopted in Compliance and Enforcement and Telecom Decision 2020-7 to require incumbents to share more information in costing proceedings, subject to the terms of a non-disclosure agreement; (iii) public versions of incumbents' costing models should be made available such that their contents remain consistent with the Commission's current disclosure guidelines for cost information; and (iv) a comparative analysis of the capital unit costs filed by each of the wholesale service providers should be made available on the public record, which would permit competitors to assess a complete range of the costs without actually disclosing those that are specific to a given incumbent.

262. The competitors submitted that during a rate-setting proceeding, release of or access to information as identified above would strike the balance between confidentiality and transparency, permitting all stakeholders to assess the reasonableness of cost study results.

263. The wholesale service providers replied that the competitors' proposal for additional disclosure of the wholesale service providers' confidential information, their costing models, and a comparative analysis of unit costs employed should be rejected since the Commission has already established a comprehensive set of disclosure guidelines for cost information under Telecom Regulatory Policy 2012-592. These include demand forecasts, resource unit costs, corporate cost factors and parameters, financial parameters, and other similar inputs.

264. According to the wholesale service providers, the above-mentioned guidelines already provide an appropriate balance between the need competitors have for information to meaningfully participate in wholesale proceedings and allowing these wholesale service

providers to keep certain information confidential to protect them from specific harm. Such confidential information includes revealing the incumbent carriers' business strategies or hampering their ability to negotiate with suppliers of equipment or labour, or providing competitors with valuable insight into wholesale service providers' network management and configurations.

Commission's analysis

265. Proper disclosure of wholesale service providers' confidential information is an important consideration in creating a more efficient wholesale rate-setting process.

266. In this regard, the disclosure guidelines that apply to proceedings at this time are based on the Commission's determinations in Telecom Regulatory Policy 2012-592. These guidelines provide directions to parties when filing information with the Commission, listing the cost items which must be disclosed on the record. Information designated as confidential is then reviewed for consistency with disclosure guidelines and to evaluate whether the harm of disclosure is outweighed by the public interest in disclosure.

267. Based on the above, disclosure requests made by parties during a proceeding are evaluated on a case-by-case basis to determine whether such requests are consistent with the guidelines and have merit, allowing the Commission to take the appropriate action as necessary.

268. With regard to the enhanced disclosure guidelines requested by parties, such as in camera hearings, non-disclosure agreements, public versions of costing models, and comparative analysis of unit costs, such detailed levels of disclosure could possibly provide competitors with commercially sensitive information about the wholesale service providers that could be used to the competitors' advantage.

269. The competitors' interest in enhanced disclosure was to allow for improved efficiency, timeliness, and accuracy of the rate-setting process. In this context, further enhanced disclosure of service provider data could contribute to the improved accuracy of the rate-setting process by allowing competitors to comment on the additional information provided. There is no evidence, however, that further disclosure will contribute to increased efficiency, due to the additional information needing to be analyzed.

270. Any enhancements to the disclosure guidelines established in Telecom Regulatory Policy 2012-592, if required, should only be dealt with in a separate proceeding that would deal specifically with such issues in a more fulsome manner.

271. Furthermore, should parties mutually agree to enter into non-disclosure agreements for the disclosure of confidential information, they should do so for all similarly situated parties requesting the disclosure of such confidential information.

272. Based on the above analysis, the Commission determines the following regarding developing a more efficient wholesale rate-setting process:

- The Commission will continue to rely on its existing guidelines related to the disclosure of confidentiality of information used to establish wholesale service rates, as established in Telecom Regulatory Policy 2012-592.
- Parties may mutually agree to enter into non-disclosure agreements for the disclosure of confidential information provided they do so for all parties requesting the disclosure of such confidential information.

Developing a common costing and rate-setting model for all wholesale service providers

Commission's analysis

273. A general and ongoing concern among parties engaged in a major wholesale services rate-setting proceeding is that completing such crucial proceedings is time consuming, as is the process for the Commission to set the final rates of the services in question. Since the Commission shares this concern, one of the issues addressed by the Commission in this proceeding was the identification and implementation of changes to the existing processes that would contribute to making the overall rate-setting process more practical and efficient.

274. A major activity that consumes a significant amount of time during a rate-setting proceeding is the development and analysis of the associated costing models that are used in estimating the Phase II incremental costs of the service being considered. In this regard, the wholesale service providers, for their rate-setting submissions, have to date been permitted to develop and use their own individual and self-built costing models, designed to adhere to the costing methodology as set out in the Manuals.

275. This procedure is inefficient, however, since it requires Commission staff to spend a considerable amount of time familiarizing themselves with each of the related costing models for each rate-setting proceeding and for each service provider. This process also requires Commission staff to make adjustments to these differing models as necessary, to ensure their consistency with the Phase II methodology, and to verify and correct errors in formulae within the models, if any.

276. This process, under which each wholesale service provider develops and uses its own individual model for rate-setting purposes, has the following drawbacks: (i) the potential for inconsistencies in estimating and calculating costs and rates compounds with each different model; (ii) the impact on Commission staff's efficiency and ability to arrive at a timely resolution, since adjustments and analyses have to be performed and validated in multiple disparate models for each individual service analysis; (iii) the strain on wholesale service providers tied to the need for knowledge and the financial burden affiliated with each company building, maintaining, and developing its own respective Phase II costing models; and (iv) the need for interveners and smaller companies to be able to acquire and maintain the necessary knowledge to effectively participate in complex and lengthy rate-setting proceedings.

277. These drawbacks significantly contribute to making the current rate-setting process slower and less efficient than it need be. The Commission believes that the development of a single costing and rate-setting model that could be used by all wholesale service providers would alleviate the impact of several of the associated time-consuming activities stemming from the current approach, resulting in a much more efficient process than the current one.

278. The advantages and benefits of a common costing and rate-setting model to be used by all wholesale service providers would include the following:

- increasing transparency and helping promote consistency in methodology and calculations across all companies;
- focusing the analysis on the inputs themselves and not on the validation of the calculations, thus reducing the potential for errors and the time required to establish rates;
- improving the speed of the rate-setting process and therefore providing increased regulatory certainty to the industry thanks to, for example, the resulting shorter retroactivity period;
- improving the ability of the competitors and parties to participate in rate-setting proceedings by allowing for a consistent and uniform analysis for all companies;
- limiting unnecessary delays due to deficiency and confidentiality issues created during a proceeding;
- limiting the several rounds of questioning issued by Commission staff to wholesale service providers in order to obtain the company-specific costing information required to understand the methodology, assumptions, and costing calculations used in the proposed costs and rates;
- improving the quality of the cost studies by minimizing the number of updates;
- improving the consistency of methodology and cost calculations across wholesale service providers; and
- promoting the establishment of rates that reflect consistent and evolving technologies and demand impacts in a more efficient manner.

279. Based on the above advantages, as well as in an effort to assist in meeting the need for consistent knowledge and expertise across all companies and to improve the timeliness and transparency of rate-setting decisions, the Commission intends to initiate a proceeding to explore the development of a singular costing and rate-setting model to be used by all wholesale service providers when filing rate-setting proposals.

Other issues

280. In this decision, the Commission has determined that the use of the enhanced Phase II methodology is generally the most suitable approach for establishing the rates of regulated wholesale telecommunications services. During the proceeding, several parties submitted that, should the Commission decide to continue with the Phase II methodology for rate-setting purposes, a review and update of many of the costing parameters and methodologies used in Phase II regulatory economic studies would be necessary to ensure their compliance with the basic Phase II costing principles. The various items for further consideration as raised by parties in this regard included the estimation of working fill factors, the application of capacity costing, the use of proxy costs in studies used for rate-setting, estimation of support structure costs, and the need for a re-evaluation of discount rates and markups used in establishing rates for wholesale services.

281. Given the rapid evolution of various technologies employed in the telecommunications infrastructure and their associated provisioning practices, the Commission considers that it is important to monitor and review the assumptions and methodologies used to derive the Phase II rates of associated wholesale services on a regular basis. This will ensure that the parameters and methodologies used to estimate costs in regulatory economic studies properly reflect growth technology and forward-looking costs, the basic pillars of Phase II costing principles. The Commission further agrees with the parties that such a review should also be extended to other variables used in the rate-setting process such as the discount rate and cost and productivity increase factors.

282. The Commission considers it important and necessary to hold a follow-up proceeding to examine and determine whether its existing directives regarding the cost estimation of the various components of capital and expense costs to be used in the rate-setting studies are adequate or require further revisions. However, the logical and appropriate time for such a review would be after the receipt and approval by the Commission of the cable carriers' Manuals. This would also allow the Commission to identify issues that are of immediate importance for consideration in that proceeding. Doing so would contribute to the proper application and continued use of the Phase II methodology going forward.

283. The first update to the Manuals will be addressed as part of the above-mentioned follow-up proceeding.

Conclusion

284. The Commission determines that the Phase II methodology, with the improvements discussed in this decision, will continue to be used as the primary rate-setting method for wholesale services with the continued use of off-tariff agreements as necessary. The Commission also determines that it may adopt other costing approaches, where appropriate and on a case-by-case basis, in order to improve regulatory efficiency or to further certain policy objectives.

285. The Commission determines the following with regard to whether the same rate-setting methodology should be used for all wholesale services:

- The same rate-setting methodology does not need to be used for all wholesale services and the Commission may adopt other rate-setting approaches where appropriate and on a case-by-case basis.

- Should parties wish to propose a different approach to setting wholesale service rates, they must submit an application, with all supporting rationale, at the time of their submission of the proposed rate for the service. In such instances, however, the Commission will make the final determination with respect to the appropriate methodology to be used.

- When submitting rate-setting applications for any new or existing services, to enhance the Phase II methodology, wholesale service providers must provide market-level information, including the equivalent stand-alone retail rates, promotional and winback retail rates, comparison to rates for similar services in other countries, and any other relevant information, to allow the Commission to compare retail and wholesale rates and test the assumptions used in the rate-setting methodology and costing models.

- Parties that file applications to review or freeze legacy wholesale service rates should continue to submit applications with all supporting rationale for each service for consideration by the Commission.

286. The Commission determines the following with regard to the rate-setting methodology to be used by companies:

- With regard to large service providers providing services for which there is more than little or no demand, the wholesale rate-setting methodology should be service-specific, and the same methodology should be used by all companies.

- However, any service provider, with little or no demand for a service, would be allowed to proxy the rates approved for the same service offered by another wholesale service provider, or rates approved for similar services provided by the same service provider, when supported by sufficient and satisfactory evidence as specified in this decision. A company that uses such proxy rates to set its service rates would only be subject to any further changes to the original source rate if the reason for the price change equally applied to said company.

- Additional flexibility will be given for small ILECs to allow them to adopt any approved rates of any company in any region for the same service, provided the small ILECs provide sufficient rationale and supporting evidence to justify the rate and demonstrate why the neighbouring ILEC rate for the same service is not appropriate.

- The Commission will consider, subject to its approval, a small ILEC filing proposed rates for its wholesale services using the rate-setting methodology of the company's choice if it adequately justifies the use of the methodology chosen and provides complete and sufficient evidence in support of its proposal.

287. The Commission determines the following with regard to assisting companies in acquiring and maintaining knowledge of wholesale rate-setting methodologies and processes:

- Commission staff will provide training sessions on a regular basis, which will be used as a forum for in-person questions and answers about the enhanced Phase II methodology, policies, rules, evidence required, and how to complete costing models.
- The Commission will develop a page on its website, directly accessible by all parties, with information such as relevant past Commission decisions, regulatory policies, orders, Manuals, applications, and Commission letters.
- The Commission will continue to invite industry participants, including wholesale service providers, competitors, and consumer and industry groups, to provide the Commission with reports and presentations, on an as-needed basis, that present updates on changes to technologies used to provide wholesale services, changes to geography served, updates to the competitive marketplace, and the impacts of Commission decisions on end-users.

288. With regard to how technological changes should be addressed in the wholesale rate-setting process, the Commission determines that:

- Proposals for deviations in estimating costs should continue to be reviewed during a rate-setting proceeding, as is the current process.
- On a case-by-case basis, such as for the introduction of a new service, the Commission may conduct a separate prior process to provide a clear direction to parties proposing rates, simplifying the rate-setting proceeding.

289. The Commission determines that changes to the Phase II methodology or costing approaches should continue to be reviewed on a case-by-case basis as is currently done.

290. The Commission considers that it would not be appropriate to adopt the proposal by parties to create a holding account and withhold interim wholesale revenue from wholesale service providers until the rates are set on a final basis.

291. Given that tariff applications with rate-setting components vary in complexity, that the required process is specific to each application, and that service standards are already available, the Commission determines that further updates to Telecom Information Bulletin 2010-455-1 to set additional timelines are not required.

292. The Commission considers that it would be inappropriate to release draft recommendations on establishing methodologies and cost inputs during Phase II methodology and rate-setting proceedings.

293. The Commission determines the following with regard to changes to the Manuals:

- The Manuals, including company-specific appendices, will be updated on a regular basis as per a schedule to be established by Commission staff.

- The Commission will not restrict the possibility of making changes to the Manuals during a rate-setting proceeding.

- The Commission **directs** each of the cable carriers to develop and file for the Commission's approval company-specific Manuals within **nine months** of the date of this decision. These Manuals should follow the same structure and format as the ILECs' existing Manuals, as applicable, and should include the company-specific appendices identified in Appendix 3 of Telecom Decision 2008-14.

294. The Commission determines the following regarding developing a more efficient wholesale rate-setting process:

- The Commission will continue to rely on its existing guidelines related to the disclosure of confidentiality of information used to set wholesale service rates, as established in Telecom Regulatory Policy 2012-592.

- Parties may mutually agree to enter into non-disclosure agreements for the disclosure of confidential information provided they do so for all parties requesting the disclosure of such confidential information.

295. The Commission intends to initiate a proceeding to explore the development of a singular costing and rate-setting model to be used by all wholesale service providers when filing rate-setting proposals.

Policy Direction

296. In Telecom Notice of Consultation 2020-131 the Commission sought comments from parties to establish a more transparent and efficient rate-setting process for regulated wholesale telecommunications services while ensuring that the rates for these services remain just and reasonable. In this decision, the Commission has determined that it would be appropriate to use the Phase II methodology, with the enhancements detailed in this decision, as the primary rate-setting method for wholesale services. The Commission also determined that it may adopt other rate-setting approaches where appropriate and on a case-by-case basis in order to improve regulatory efficiency or to further certain policy objectives. The Commission considers that its determinations in this decision are consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act and in accordance with section 1 of the 2023 Policy Direction (the Policy Direction).

297. The Commission considers that its decisions in this proceeding would create a framework that would result in just and reasonable rates for regulated wholesale services that would allow competitors to compete in the retail marketplace and would encourage service providers to continue to invest in resources to provide the required services. These decisions are consistent with paragraphs 2(a) and 8(a) of the Policy Direction, which specify that the Commission should foster and encourage all forms of competition and investment.

298. The requirements set out in this decision (i.e., for wholesale service providers to provide significant market-level information when proposing a new wholesale service rate, or rate changes, such as the equivalent stand-alone retail rates) would allow the Commission to analyze potential competitive impacts in the market when setting interim and final rates for wholesale services. The Commission considers that such measures significantly enhance the Phase II methodology and comply with paragraph 2(b) of the Policy Direction, which specifies that the Commission should foster affordability and lower prices, particularly when telecommunications service providers exercise market power. These measures would also comply with paragraph 2(c) of the Policy Direction, which specifies that the Commission should ensure that affordable access to high-quality, reliable, and resilient telecommunications services is available in all regions of Canada, including rural areas, remote areas, and Indigenous communities.

299. The Commission's determination to employ the enhanced Phase II methodology to set the rates for wholesale services going forward would result in just and reasonable rates, since such rates would be based on forward-looking incremental costs. The Commission considers that such a cost-based rating approach would also encourage competition since it would reduce barriers to entry into the market for telecommunications service providers whether they are new, regional, or smaller than the wholesale service providers, consistent with paragraph 2(e) of the Policy Direction, which specifies that the Commission should reduce barriers to competition.

300. The rates set based on the enhanced Phase II methodology would allow service providers to recover the incremental costs of providing services based on growth technology as well as the costs of forward-looking practices for provisioning services. This would encourage the service providers to invest in new technologies and offer innovative as well as differentiated service offerings, thereby improving consumer choice and guaranteeing reasonable prices, consistent with paragraphs 2(f) and 8(c), (d), and (e) of the Policy Direction. Such cost-based rates would allow all parties to be on the same cost-based footing and therefore stimulate all parties to invest in research and development as well as in high-quality networks, in line with paragraphs 2(g) and 8(b) of the Policy Direction.

301. The Commission considers that its recommendations in this decision for the cable carriers to submit new company-specific Manuals and for the Commission itself to create a public web page that would facilitate communications between the Commission and the various parties, to provide information on the public record to the maximum extent, and to develop a common rate-setting model for all service providers would contribute to ensuring that the Commission's proceedings and decisions are transparent, predictable, and coherent as specified under section 3 of the Policy Direction.

302. In this decision, the Commission has determined that wholesale service providers could use proxy rates approved for other wholesale service providers, or rates approved for similar services provided by the same service provider, to set the rates of services with little to no demand, instead of proposing rates based on the standard process of performing a time-consuming regulatory economic study. The Commission considers that such a measure will make the rate-setting process more efficient and proportionate to its purpose, consistent with section 4 of the Policy Direction. This determination would also comply with section

7 of the Policy Direction, which specifies that the Commission should conduct proceedings and issue decisions in a timely manner in recognition of the need for market clarity.

303. The Commission notes that section 5 of the Policy Direction requires the Commission to further develop strong and timely market monitoring, research, and strategic foresight skills and to use the results that it obtains from these activities in the exercise of its powers and the performance of its duties. Furthermore, section 6 of the Policy Direction states that the Commission should base its decisions on sound and recent evidence and should exercise its powers to obtain necessary evidence. The Commission considers that its determinations in this decision for the industry participants to continue to make presentations to the Commission on an ongoing basis to provide updates on relevant changes in the telecommunications-related marketplace, such as changes to technologies, geography served, competitive marketplace, and impacts on consumers, would continue to allow the Commission to develop strong and timely market monitoring, research, and strategic foresight skills that would facilitate making decisions based on sound and recent evidence, in line with the Policy Direction.

304. The Commission has determined that the wholesale service providers should supply competitive market-level information when submitting rate-setting applications, allowing them to use proxy rates based on the similar services of other companies for services with limited demand, and allowing the small ILECs to adopt any approved rates for the same service from any company in any region as an alternative to filing detailed cost studies. These decisions conform with section 12 of the Policy Direction, which specifies that the Commission should set interim and final tariffs more expediently, including by reforming the tariff-setting process.

305. The Commission considers that its direction to the cable carriers to submit their own company-specific Manuals, similar to those already employed by the ILECs, for Commission approval, as well as its plan to develop a common rate-setting model for all wholesale service providers are consistent with section 13 of the Policy Direction, which specifies that the Commission should ensure that its regulatory framework mandating wholesale high-speed access services applies equitably to all carriers subject to the framework.

Secretary General

Related documents

- *Practice and procedure for final offer arbitration to determine mobile virtual network operator access rates*, Telecom Information Bulletin CRTC 2022-337, 9 December 2022

- *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*, Telecom Decision CRTC 2021-181, 27 May 2021

- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021

- *Call for comments – Review of the approach to rate setting for wholesale telecommunications services*, Telecom Notice of Consultation CRTC 2020-131, 24 April 2020; as amended by Telecom Notices of Consultation CRTC 2020-131-1, 7 July 2020; and 2020-131-2, 19 October 2020

- *Application to allow Bell Canada and its affiliates to block certain fraudulent voice calls on a trial basis – Requests for disclosure of information filed in confidence and motion for a non-disclosure agreement*, Compliance and Enforcement and Telecom Decision CRTC 2020-7, 17 January 2020

- *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services*, Telecom Order CRTC 2019-288, 15 August 2019; as amended by Telecom Order CRTC 2019-288-1, 22 August 2019

- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019

- *Wholesale mobile wireless roaming service tariffs – Final rates*, Telecom Order CRTC 2018-99, 22 March 2018

- *Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, Telecom Decision CRTC 2017-56, 1 March 2017

- *Review of costing inputs and the application process for wholesale high-speed access services*, Telecom Decision CRTC 2016-117, 31 March 2016

- *The Canadian Network Operators Consortium Inc. – Application for relief regarding the pricing and availability of Eastlink's higher-speed retail Internet service for resale,* Telecom Decision CRTC 2016-67, 24 February 2016

- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 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

- *Regulatory framework for wholesale mobile wireless services,* Telecom Regulatory Policy CRTC 2015-177, 5 May 2015

- *Confidentiality of information used to establish wholesale service rates,* Telecom Regulatory Policy CRTC 2012-592, 26 October 2012

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application for revised filing requirements associated with wholesale negotiated agreements*, Telecom Regulatory Policy CRTC 2012-359, 3 July 2012

- *Billing practices for wholesale business high-speed access services*, Telecom Regulatory Policy CRTC 2011-704, 15 November 2011
- *Billing practices for wholesale residential high-speed access services*, Telecom Regulatory Policy CRTC 2011-703, 15 November 2011; as amended by Telecom Regulatory Policy CRTC 2011-703-1, 22 December 2011
- *Interim rates for wholesale residential and business high-speed access services*, Telecom Order CRTC 2011-377, 15 June 2011
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010
- *Review of the use of company-specific working fill factors and the recovery of past introduction costs not fully recovered*, Telecom Regulatory Policy CRTC 2009-274, 14 May 2009
- *Bell Canada et al.'s application to review and vary Telecom Decision 2008-17 with respect to negotiated agreements*, Telecom Regulatory Policy CRTC 2009-19, 19 January 2009
- *Regulatory policy: Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Regulatory policy: Review of certain Phase II costing issues*, Telecom Decision CRTC 2008-14, 21 February 2008; as amended by Telecom Decision CRTC 2008-14-1, 11 April 2008
- *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002; as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002
- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000
- *Application concerning access by Internet service providers to incumbent cable carriers' telecommunications facilities*, Telecom Decision CRTC 99-11, 14 September 1999
- *Regulation under the Telecommunications Act of cable carriers' access services*, Telecom Decision CRTC 99-8, 6 July 1999
- *Final rates for unbundled local network components*, Telecom Decision CRTC 98-22, 30 November 1998
- *Regulation under the* Telecommunications Act *of certain telecommunications services offered by "broadcast carriers"*, Telecom Decision CRTC 98-9, 9 July 1998
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997

- *Unbundled rates to provide equal access*, Telecom Decision CRTC 97-6, 10 April 1997
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994
- *Competition in the provision of public long distance voice telephone services and related resale and sharing issues*, Telecom Decision CRTC 92-12, 12 June 1992
- *Attachment of subscriber-provided terminal equipment,* Telecom Decision CRTC 82-14, 23 November 1982
- *Inquiry into telecommunications carriers' costing and accounting procedures – Phase II: Information requirements for new service tariff filings*, Telecom Decision CRTC 79-16, 28 August 1979