



# Telecom Regulatory Policy CRTC 2023-41

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## Mobile wireless service plans that meet the needs of Canadians with various disabilities

### Summary

The lived experience of persons with disabilities shared on the record of this proceeding demonstrates that barriers to wireless connectivity still exist. These barriers include the affordability of accessible plans, the way they offer data, and the way wireless service providers (WSPs) verify eligibility for these plans.

While the range of accessible plans and the increasing adoption of these plans are positive, the Commission finds that targeted regulatory action is necessary to ensure that WSPs more fully meet the diverse needs of persons with disabilities.

The Commission therefore **directs** WSPs to engage in regular consultations with persons with disabilities to address their concerns and **directs** WSPs to file annual reports outlining, among other things, the outcome of those consultations.

Furthermore, the Commission is imposing additional requirements in order to address the barriers to accessible plans identified in this proceeding. To this end, among other requirements, the Commission **directs** WSPs to ensure that sign-language users have unfettered access to video relay service.

All of a WSP's brands must individually comply with this decision.

### Background

1. In Telecom Regulatory Policy 2016-496, the Commission directed all wireless service providers (WSPs) to offer mobile wireless service packages that meet the needs of Canadians with disabilities and to publicize all of their disability-specific products and services on their websites. The Commission further expected WSPs to use methods to publicize this information other than advertising on their websites.
2. In Telecom and Broadcasting Notice of Consultation 2018-246, which led to the Commission's [Report on Misleading or Aggressive Communications Retail Sales Practices](#), the Commission sought views on the impact of misleading or aggressive sales practices on, among other groups, persons with disabilities. In that report, the

Commission found that offering packages designed to meet the needs of Canadians with disabilities at reduced prices is a best practice that is in the public interest, and the Commission expected these reduced prices to be offered in addition to any other offers or promotions.

3. In submissions filed on the record of Telecom Notice of Consultation 2019-57, parties raised issues related to the provision of accessible mobile plans. Subsequently, as announced in a Commission [letter](#) dated 4 December 2019, the Commission initiated a separate proceeding dedicated to consideration of accessibility-related mobile wireless service issues. Accordingly, the submissions on the record of Telecom Notice of Consultation 2019-57 dealing with accessibility issues were transferred to this proceeding. Generally, these submissions were from accessibility organizations proposing that mobile plans with specific accessible attributes (such as large or unlimited data buckets at lower prices than other plans) be mandated.

### **The Accessible Canada Act**

4. While the Commission is exercising its powers under the *Telecommunications Act* (the Act) in this proceeding, the complementary obligations of the *Accessible Canada Act* (the ACA) are also relevant.
5. The ACA aims to achieve a barrier-free Canada for persons with disabilities by creating a framework for the proactive and systemic elimination of barriers to accessibility. The ACA sets out the key principles of this framework. These include that (i) laws, policies, programs, services and structures must take into account the disabilities of persons, the different ways that persons interact with their environments and the multiple and intersecting forms of marginalization and discrimination faced by persons, and (ii) that persons with disabilities must be involved in the development and design of laws, policies, programs, services and structures.
6. In Telecom and Broadcasting Regulatory Policy 2021-215, the Commission set out the *Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations* created under the ACA. These regulations require Canadian carriers and telecommunications service providers to publish accessibility plans and annual progress reports. Carriers and telecommunications service providers with more than 100 employees are required to publish accessibility plans by 1 June 2023. Among other things, accessibility plans must address any conditions that the Commission has imposed relating to accessibility.

### **The proceeding**

7. On 1 June 2020, the Commission initiated Telecom Notice of Consultation 2020-178 to examine (i) how WSPs are complying with existing regulatory requirements for the provision of mobile wireless plans that meet the needs of Canadians with various disabilities and the promotion of those plans in ways that are accessible, and whether

differences exist between primary and flanker brands;<sup>1</sup> (ii) whether the plans currently offered and promoted are sufficient to meet the needs of Canadians with various disabilities; and (iii) whether additional regulatory measures are required, and if so, the nature of such measures required to ensure that Canadians with various disabilities have access to plans that meet their needs and enable them to participate more fully in Canada's digital economy.

8. The Commission also stated the preliminary view that unless explicitly noted otherwise, where it imposes a requirement on all WSPs (such as the requirement to offer accessible wireless service plans as set out in Telecom Regulatory Policy 2016-496), this requirement is imposed on all the brands operated by a WSP and that each brand must independently comply with any requirements.
9. The Commission received interventions from
  - seven WSPs: Bell Mobility Inc. (Bell Mobility); Ice Wireless Inc., on behalf of itself and its subsidiary Iristel Inc. (Ice Wireless); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Shaw Communications Inc., on behalf of its subsidiary Freedom Mobile Inc. (Shaw); TBayTel; and TELUS Communications Inc. (TCI);
  - four consumer groups: the Canada Deaf Grassroots Movement (CDGM); the Canadian National Institute for the Blind Foundation (CNIB Foundation); the Deaf and Hard of Hearing Coalition (DHH Coalition);<sup>2</sup> and the Deaf Wireless Canada Consultative Committee – Comité consultatif pour les Services Sans fil des Sourds du Canada (DWCC-CSSSC), the Canadian Association of the Deaf – Association des Sourds du Canada (CAD-ASC), and the Canadian National Society of the Deaf-Blind (CNSDB) (collectively, DWCC et al.);<sup>3</sup>
  - the Canadian Wireless Telecommunications Association (CWTA), and

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<sup>1</sup> Wireless brands may be marketed as primary brands, flanker brands, white label brands, or other brands. A primary brand is generally the brand that is most recognizable by consumers and is directly associated with the parent company that owns and operates the facilities to provide services. A flanker brand, also referred to as an extension or a secondary brand, is separately marketed under distinct logos and other branding and is used by the primary brand WSP to offer varying services and plans to consumers. The primary brand's network is used to provide services under the flanker brand. Fido Solutions Inc. (parent company Rogers Communications Canada Inc.), Koodo Mobile (parent company TELUS Communications Inc.), Lucky Mobile (parent company Bell Canada), and Virgin Mobile Canada Ltd. (parent company Bell Canada) are examples of flanker brands.

<sup>2</sup> The DHH Coalition is composed of the Deafness Advocacy Association Nova Scotia, the Newfoundland and Labrador Association of the Deaf, and the Ontario Association of the Deaf.

<sup>3</sup> Although the members of DWCC et al. filed their submission as a group, this decision occasionally refers to the CNSDB individually when referring to information provided solely by the CNSDB as part of the group submission.

- 15 individual Canadians.

10. The Commission also received responses to requests for information (RFIs) from the above-noted WSPs as well as 14 other WSPs: Bragg Communications Incorporated, carrying on Business as Eastlink (Eastlink); Brooke Telecom Co-operative Ltd.; Bruce Telecom; Execulink Telecom Inc. (Execulink), Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; Mornington Communications Co-operative Limited; SaskTel; Sogetel Mobilité inc.; Tuckersmith Communications Co-operative Limited; Wightman Telecom Ltd.; Xplore Mobile Inc. (Xplore); and Ztar Mobile Canada, Inc.

### **Accessible plan offerings in the market and their adoption**

11. In this proceeding, WSPs filed the accessibility-specific plans, rebates, and add-ons (accessible plans) that they currently offer, which take the following forms:

- Fixed monthly rebate, from \$10/month by RCCI's flanker brand Fido, \$15/month by SaskTel, and \$20/month by Bell Mobility (and WSPs that resell Bell Mobility's wireless services), RCCI, TCI, Videotron, and Xplore
- Fixed rebate on devices, such as Bell Mobility offering some handset discounts
- Variable rebate, from 25% off for customers of TCI's flanker brand Koodo Mobile (Koodo) to 50% off for the customer with a disability as well as one caregiver or family member by TBayTel
- Extra data, such as 1 gigabyte (GB) per month by Eastlink or 2 GB per month by Bell Mobility's flanker brand Virgin Plus
- Free or rebated features, such as Bell Mobility and Eastlink offering some free directory assistance (411) calls
- Specific plans, such as RCCI's flanker brand Cityfone Telecommunications Inc.'s 3 GB accessibility plan and unlimited text accessibility plan

12. In an RFI dated 23 November 2021, Commission staff asked WSPs to provide the current number of customers who subscribe to an accessibility plan or who benefit from any type of discount related to accessibility to get a better sense of whether consumers have responded positively to the accessible plans being offered. Following requests for disclosure of the received information, the aggregated total of all subscribers with accessible plans across all WSPs—14,453 subscribers—was published, and interveners were invited to comment on this information.

### **Issues**

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

- Are current accessible plans meeting the needs of Canadians with various disabilities?
- If current accessible plans are not meeting the needs of Canadians with various disabilities, what measures are needed?
- Should accessible plan requirements apply to each brand and subsidiary operated by a WSP?

## **Are current accessible plans meeting the needs of Canadians with various disabilities?**

### **Positions of parties**

14. The CDGM, the CNIB Foundation, the DHH Coalition, and DWCC et al. (hereafter, the accessibility groups) generally argued that individual needs may differ, and that these needs are not being met by accessible plans. The CWTA and Eastlink pointed to surveys filed by DWCC et al. on the record of this proceeding<sup>4</sup> as an indication that people with different disabilities prefer different types of plans. WSPs generally submitted that every person with a disability may have different needs, that there is no “one-size-fits-all” solution, and that flexibility is necessary to ensure that every customer can find a plan that suits their individual needs.
15. Accessibility groups and individual interveners generally had two main concerns with the composition of accessible plans: price/affordability and “full-speed” data allotment (i.e., data not artificially slowed, or throttled, as a result of a traffic management policy).
16. On the issue of affordability, accessibility groups and two individual interveners raised concerns related to the economic situation faced by some persons with disabilities, citing Statistics Canada’s and their own reports.
17. WSPs argued that a range of price and data options in the market was sufficient to respond to the needs of a wide variety of users, including those who have disabilities. The CWTA and TCI argued that further regulatory measures could limit this range of choices.
18. On the issue of data allotments, the CDGM, the DHH Coalition, and DWCC et al. submitted that the data traffic management practice known as throttling has an unduly adverse effect on sign language users given their reliance on data-heavy video communication applications. They argued that video calling is to Deaf and Hard of

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<sup>4</sup> DWCC et al. filed two research reports on the record of this proceeding, based on surveys they conducted: *A Stark Reality: Wireless Accessibility Issues and Challenges for Deaf, Deaf-Blind, and Hard of Hearing Canadians*, which reports on the findings of a survey conducted by DWCC et al.; and *Unlocking the Mystery Shopping Experiences of Deaf, Deaf-Blind and Hard of Hearing Canadians in Wireless Service Retail Stores*, which reports on the findings of secret shopper research conducted by DWCC et al.

Hearing (DHH) users what voice calls are to hearing users. They added that throttling impacts the ability to clearly see facial expressions, handshapes, and body movements that are linguistic features of sign language.

19. Bell Mobility, the CWTA, Eastlink, RCCI, Shaw, TCI, Videotron, and Xplore broadly submitted that throttling unlimited data plans is necessary to maintain network quality for all customers. Bell Mobility, RCCI, Shaw, and TCI further argued that all evidence regarding the impact of throttled speeds on the record of this proceeding is anecdotal.
20. The CDGM, the DHH Coalition, and DWCC et al. submitted that WSPs are failing to sufficiently promote or maximize awareness of their accessible plans and rebates. They argued that the current number of subscribers is disproportionate in comparison to the estimated number of Canadians who are Deaf or who use sign language. They referenced the 2012 Mission Consulting report on video relay service (VRS), *VRS Feasibility Study*, which estimated that 370,000 Canadians are profoundly Deaf, and that 37,000 use sign language as their primary language.<sup>5</sup> The DHH Coalition pointed out that this only represents a single disability group among many.
21. DWCC et al.'s mystery shopping report highlighted the barriers faced by 30 mystery shoppers, including concerns related to the discoverability of accessible plans in stores as well as the actual process of subscribing to them. The CDGM argued that these issues may lead to persons with disabilities simply accepting mass market plans. Accessibility groups also took issue with the way in which certain WSPs verified eligibility for accessible plans.
22. WSPs argued that current promotion and training efforts were generally sufficient, as demonstrated by the increased adoption of accessible plans in the last two years. Bell Mobility and RCCI submitted that adoption of accessible plans by customers is rapidly growing. RCCI noted a 147% increase in the number of subscribers to these plans in 2021 alone. The WSPs that verify eligibility defended the practice as necessary to ensure persons with disabilities can benefit from accessible plans.
23. However, RCCI and TCI recognized that more could be done to educate consumers about their accessible plans to increase consumer awareness of those plans and services.

#### **Commission's analysis**

24. In Telecom Regulatory Policy 2021-130, the Commission found that although retail prices had been trending down across Canada, they were higher than what would prevail in a fully competitive market. As revealed in this proceeding, the vast majority of current accessible plans are, in effect, a rebate on mass market plans. This means that there is a range of accessible plans available, which is generally positive. Rebates

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<sup>5</sup> This report formed part of the record of the proceeding leading to the Commission's VRS policy (Telecom Regulatory Policy 2014-187).

may help to address the issue of affordability, which is also positive. However, the lived experience of persons with disabilities shared on the record of this proceeding demonstrates that affordability still remains a barrier in the case of accessible plans.

25. Statistics Canada data indicates that the employment rate is lower and the poverty rate is higher for persons aged 25-64 with disabilities compared to the general population. This supports arguments made by accessibility groups about the intersectionality of disabilities with lower-income status and the corresponding existence of an affordability barrier specific to this segment of subscribers.
26. With respect to data allotment of accessible plans, many retail customers, including persons with disabilities, subscribe to plans that are marketed as unlimited plans. In general, these plans feature a soft data cap that, once reached, sees data transmission speeds managed, or throttled, by the WSP. The lived experience of persons with disabilities shared on the record of this proceeding demonstrates that this can be a barrier that affects the use of accessibility-specific applications.
27. While certain large WSPs have seen a significant increase in subscribers to accessible plans in recent years, the Commission considers the reported total number of 14,453 subscribers to these plans to be significantly lower than could have been expected. As the CNIB Foundation notes, the Statistics Canada *2017 Survey on Disability Reports* indicates that roughly one in five Canadians (6.2 million) identifies as having a disability.
28. While WSPs demonstrated their efforts to train their staff in accessibility issues, some WSPs, namely RCCI and TCI, recognized that more could be done to better inform consumers of these plans. The lived experience of persons with disabilities shared on the record of this proceeding demonstrates that verification measures used by WSPs can also be a barrier.
29. Taken together, the existence of barriers to the adoption of accessible plans and the relatively low adoption rates are significant indicators of the need for Commission intervention. In particular, the Commission determines that targeted action is necessary to help ensure that accessible plans are easier for persons with disabilities to find and to subscribe to, that a wide range of these plans are available to address diverse needs, and that recent positive trends in adoption continue.
30. These measures will help address the social and economic interests of consumers and strengthen the position of persons with disabilities in their relationships with WSPs without detracting from the competition or market forces that deliver benefits, such as innovative services, to Canadians. Should the measures prove not to be sufficient to achieve the objectives, the Commission may determine that further intervention is necessary.

## **If current accessible plans are not meeting the needs of Canadians with various disabilities, what measures are needed?**

### **Consultations and reporting requirements**

#### **Positions of parties**

31. Following the publication of Telecom Regulatory Policy 2016-496, the CWTA submitted that it undertook consultations on behalf of, and in collaboration with, the following WSPs: Bell Mobility, Eastlink, RCCI, SaskTel, Shaw, TBayTel, TCI, and Videotron. However, plans for further consultations with accessibility groups were affected by the COVID-19 pandemic.
32. TBayTel submitted that it has actively worked with a number of local accessibility groups at the community level, which has allowed it to gain a better understanding of the specific needs of customers and to tailor its accessible plans to the needs of those customers. It has also given TBayTel the opportunity to educate customers on the different options available to meet their needs.
33. TCI submitted that as a result of the ACA, WSPs now have even greater motivation to ensure wireless accessibility and pointed to the consultation, feedback, and reporting obligations under that Act. SaskTel submitted that it is considering feedback it received during ACA consultations, and Shaw noted its plan to start accessibility consultations under the ACA in June 2022.
34. The CNIB Foundation submitted that the Commission should conduct periodic audits or impose additional reporting requirements, rather than rely on complaints from the public to assess WSPs' accessible plans. The DHH Coalition and DWCC et al. submitted that reporting should be ongoing and should break down aggregated data by disability because that would be more useful for both the Commission and the public. The CNIB Foundation suggested that this reporting should also track the availability of devices and plans tailored to customers who are blind and others who are not readily able to use screen-based devices.

#### **Commission's analysis**

35. Persons with disabilities, either individually or as members of groups representing their interests, are best positioned to understand their own needs.
36. As noted in Telecom Regulatory Policy 2016-496, accessible plans must be based on consultations with Canadians with disabilities. Furthermore, under the ACA, WSPs must consult persons with disabilities regularly as part of their reporting obligations. As a result, most WSPs have already undertaken consultations with accessibility groups, directly and through the CWTA, and these WSPs indicated that they intend to continue doing so.
37. The benefit of meaningful consultation is demonstrated by the outcome of TBayTel's consultation with the community of persons with disabilities that it serves. As a result



of its active engagement with its local community, TBayTel established the exemplary offer of an accessible plan at 50% off the regular price for persons with disabilities and for a caregiver or household member.

38. To build on the results that have so far been achieved through consultations between WSPs, accessibility groups, and persons with disabilities, the Commission **directs** WSPs to engage in regular, at least yearly, consultations with persons with disabilities and groups representing their interests. The purpose is to assess whether accessible plans are offered and promoted in a way that fully meets their needs and if not, what changes are required to ensure barrier-free access to these plans. These consultations should seek views from different groups representing various disabilities across the regions served by a WSP. This is the best avenue to ensure that the concerns of persons with disabilities are heard by WSPs and for WSPs to propose workable solutions to be considered by persons with disabilities.
39. While the requirement applies to individual WSPs, the Commission considers that one option would be for an industry group, such as the CWTA, to coordinate consultation sessions on behalf of multiple WSPs, as long as each of those WSPs are represented at the consultations and are able to engage on issues specific to their respective services.
40. The Commission is imposing this consultation obligation under section 24 of the Act for wireless Canadian carriers and paragraph 24.1(d) of the Act for non-carriers (also known as resellers), as a condition of offering and providing retail mobile wireless services relating to access to those services by persons with disabilities.
41. To further support the ongoing active participation of persons with disabilities and groups representing their interests in consultations, the Commission encourages the telecommunications industry to explore methods of providing financial support for community representatives for these consultations.
42. To ensure that the Commission and other stakeholders are able to assess whether there is meaningful progress in serving persons with disabilities, there needs to be public reporting of year-over-year progress and the results of consultations. This will ensure not only that progress continues, but that it is transparent and quantifiable. It will also allow the Commission to assess whether additional intervention becomes necessary.
43. The Commission therefore **directs** WSPs to file annual reports in an accessible format (e.g., screen reader compatible) with the Commission regarding their accessible plans and their ongoing consultations with persons with disabilities. The filing date for these annual reports will be **1 June**, starting **1 June 2023**. Among other things, WSPs must report on:
  - the specific consultations that were held, including who from the disability community took part in the consultations, any insights that were gained, and changes put in place by the WSP as a result of the consultations;
  - the total number of subscribers to accessible plans; and

- the composition of accessible plans available in the market in the course of the year, including any plans that have been withdrawn from the market during that period and the reason for doing so.

The full list of issues to be addressed is included in paragraphs 141 and 142 in the conclusion of this decision, and WSPs will be issued a specific set of questions on these issues to be answered in the report before the report is due.

44. While accessibility groups have asked to have the information above broken down by disability type, the Commission considers that it would be more consistent with the protection of the privacy of persons not to require WSPs to collect, retain, and report this kind of sensitive and personal information.
45. The Commission is imposing this reporting obligation under paragraph 37(1)(b) of the Act for carriers, and under subsection 37(2) of the Act for non-carriers, as the Commission considers this information necessary for the administration of the Act, in particular for monitoring how the offering and provision of retail mobile wireless services are meeting the needs of persons with disabilities.
46. These consultations and reporting requirements overlap, in terms of subject matter and process, with those already required from WSPs in the context of the ACA. To minimize the burden on all stakeholders, it should be possible for these consultations to be done and reports to be prepared in parallel with ACA requirements, which are generally due annually on 1 June under the *Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations*. To that end, the publication date for the annual reports required in this decision will also be 1 June.
47. In recognition of the limited time WSPs have to address the issues raised in this decision, the reports due on 1 June 2023 will be more limited in scope with respect to consultations with persons with disabilities. The first-year reports only need to set out the WSP's plans for the following year's consultations. Information regarding the composition of accessible plans as well as the adoption of these plans by persons with disabilities will still be required.
48. The Commission intends to render these reports public to the greatest extent possible. The Commission also welcomes feedback from persons with disabilities and groups representing their interests. Once the annual reports are rendered public, opportunities will be provided to respond, which may include Commission proceedings regarding those reports.

## **Verifying eligibility for accessible plans**

### **Positions of parties**

49. WSPs broadly opposed proposals to prohibit verifying the eligibility of customers for accessible plans. Bell Mobility, the CNIB Foundation, the CWTA, DWCC et al., Eastlink, RCCI, TBayTel, TCI, and Xplore submitted that requiring proof of eligibility is necessary to ensure that resources and supports intended for persons with disabilities

are not abused by persons without disabilities. Quebecor, TCI, and Videotron submitted that honest customers would pay the price if dishonest customers abused the system.

50. Bell Mobility, the CWTA, and Eastlink submitted that WSPs will work with customers to find alternate ways to confirm eligibility if the customer cannot provide the expected materials. TCI argued that seeking verification is not inconsistent with the ACA as long as the request is respectful and not onerous.
51. The CWTA, RCCI, TBayTel, and TCI submitted that, if rules or restrictions regarding proof of eligibility for accessible plans are introduced, the Commission should retain a flexible approach.
52. Accessibility groups generally opposed the requirement to prove eligibility, but DWCC et al. acknowledged that some type of demonstration of eligibility could help ensure that benefits intended for persons with disabilities actually reach persons with disabilities. The CNIB Foundation submitted that misrepresentation of disability was a concern.
53. However, none of the accessibility groups were in favour of having to provide medical certificates to their WSPs as proof of eligibility for an accessible plan. DWCC et al. submitted that membership in an accessibility group or registration with VRS should be sufficient proof of eligibility. The CNSDB submitted that not all persons with disabilities are members of national disability organizations and cautioned against verification that would require the sharing of sensitive personal information (such as eligibility for the disability tax credit). An individual intervener submitted that not all disabilities, including some cognitive disabilities, are recognized by all WSPs.
54. The CDGM, DWCC et al., and individual interveners argued that verification processes are burdensome and frustrating. DWCC et al. submitted that the consensus among their members was that the customer should control how they choose to identify. The CDGM, the CNSDB, and the DHH Coalition shared this view. The DHH Coalition submitted that self-identification as a person with a disability was generally accepted when requesting an extended trial period under the Wireless Code, the Internet Code, or the Television Service Provider Code; becoming a registered VRS user; or registering for Text with 9-1-1 service.
55. The CDGM, the CNSDB, the DHH Coalition, and DWCC et al. submitted that WSPs did not provide data quantifying any potential harm from abuse if proof of eligibility was prohibited.

#### **Commission's analysis**

56. Accessible plans often take the form of an ongoing monthly rebate, with a specific monetary value. This is different than other types of accessibility measures that can be obtained by means of self-identification, such as paper bills or alternative format contractual documents. The costs associated with such rebates would also be greater for WSPs than the costs associated with other accessibility measures. All of this

supports WSPs' arguments that there is a risk for abuse of accessible plans by ineligible customers.

57. On the other hand, WSPs have not provided evidence that would help the Commission quantify this risk, such as evidence of people who do not qualify for accessible plans attempting to, or succeeding in, subscribing to them. It is clear that persons with disabilities are greatly concerned by some WSPs' current practices.
58. Under the circumstances, additional guidance for WSPs is required to ensure that these risks are not used as justification for practices that amount to accessibility barriers. Accordingly, the Commission adopts the following guideline: If WSPs choose to verify the eligibility of customers for accessible plans, the verification process needs to be as easy as possible for the customer.
59. For example, a medical certificate, which would require a customer to provide a WSP with highly sensitive personal health information, and which may require that a fee be paid to a doctor or clinic, would not meet this threshold. Demonstrating membership in an accessibility group organized at the national, provincial/territorial, or local level, on the other hand, would be acceptable.
60. The Commission intends to evaluate WSPs' practices with respect to accessible plans in a manner that is consistent with the ACA's broad definition of a disability.<sup>6</sup> In the context of eligibility, this means that a WSP cannot draw arbitrary lines between types of disabilities, deeming only those persons with specific types of disability to be eligible for accessible plans. To do so could result in an undue preference or unjust discrimination against specific persons with disabilities.
61. In addition, to prevent persons with disabilities from having to provide verification every time they change service providers, the Commission encourages the telecommunications industry to establish a common transferable record of eligibility for persons with disabilities (an "accessibility passport"). This would improve both accessibility and competition by making switching WSPs easier for persons with disabilities, while also enhancing privacy because prospective service providers would not need to know a customer's specific situation, only that they are eligible.
62. Finally, the Commission **directs** WSPs to include in their annual reports (i) their progress, following consultations with persons with disabilities, on their approach to verifying eligibility, if any, and whether that approach ensures that persons with disabilities can easily access plans that suit their needs, and (ii) the efforts undertaken towards a common transferable record of eligibility.

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<sup>6</sup> Section 2 of the ACA defines a disability as "any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment – or a functional limitation – whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person's full and equal participation in society."

## Unfettered use of VRS

63. Unlimited wireless plans that offer unlimited voice calling, either locally, provincially or within Canada, are available on the market. However, even where these plans offer unlimited data, data traffic is generally slowed, or throttled, after a soft cap is reached.
64. In the 23 November 2021 RFI, Commission staff sought comments on whether persons with disabilities were subject to an unjust or unreasonable disadvantage as a result of these types of Internet traffic management practices (ITMPs). It also sought comments on the zero-rating of data traffic associated with video communications such as VRS and whether it complies with the differential pricing practices (DPP) framework set out in Telecom Regulatory Policy 2017-104.<sup>7</sup> In the DPP framework, the Commission identified evaluation criteria to determine whether a specific DPP is consistent with subsection 27(2) of the Act.

## Positions of parties

65. The CDGM, the DHH Coalition, and DWCC et al. generally argued that DHH users are unreasonably disadvantaged relative to hearing users who can often make as many voice calls for as many minutes as they wish for a flat rate as part of their wireless plans. DHH users cannot, in their view, make similarly unlimited video calls, through VRS or otherwise, because these calls consume significant amounts of data. Users either reach their hard data caps and then incur overage charges or reach their soft data caps and then have their data speeds significantly throttled, which can adversely impact video communications. The CDGM, the DHH Coalition, and DWCC et al. submitted that VRS usage should not be counted toward the data cap of DHH users since VRS usage is equivalent to voice calling.
66. The accessibility groups also stressed that DHH users who need to call 9-1-1 must do so through VRS and argued that this is a key reason such communications should never be throttled.
67. WSPs generally submitted that DHH users are not disadvantaged relative to hearing users. Videotron submitted that there could be a disadvantage to DHH users, but that it is not unjust or unreasonable because it reflects constraints associated with wireless technology itself and the technical differences between voice and video communication. TCI argued that there was no evidence that ITMPs alone were responsible for issues persons with disabilities face with video communications, and offered alternative explanations such as device issues.
68. While RCCI conceded that DHH users may not make full use of voice calling and need an alternative means of using the telecommunications system, RCCI, along with

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<sup>7</sup> Zero-rating is the practice of providing Internet access without financial cost under certain conditions, such as by permitting access only to certain websites or by subsidizing the service with advertising. Pursuant to Telecom Regulatory Policy 2017-104, zero-rating is permitted for account management.

Shaw, argued that their data traffic management practices are an equitable way to manage congestion that complies with the Commission's ITMP framework. Bell Mobility, the CWTA, Eastlink, RCCI, SaskTel, Shaw, TBayTel, TCI, and Xplore further argued that the broad availability and range of discounts, data add-ons, and other benefits grant persons with disabilities access to wireless telecommunications services comparable with that of hearing users.

69. Many WSPs, including the national carriers, submitted that they already voluntarily zero-rate VRS. RCCI and TCI submitted that the Commission could encourage all WSPs to provide free, unlimited, un-throttled access to VRS. The CWTA and Eastlink argued that any discussion of mandated zero-rating for VRS is premature. Execulink submitted that its system cannot currently zero-rate data, and that it would need time to confirm whether it is feasible.
70. Ice Wireless, Shaw, TCI, Videotron, and Xplore submitted that zero-rating VRS would be consistent with the DPP framework because it demonstrates clear benefits to the public interest with minimal harm to WSPs. SaskTel argued that there is no evidence that zero-rating VRS would be in the public interest consistent with the DPP framework, and that it would be counter to the 2006 Policy Direction and 2019 Policy Direction (the Policy Directions).<sup>8</sup>

### **Commission's analysis**

#### ***Data caps and ITMPs***

71. Accessibility groups have identified legitimate concerns related to data throttling practices. Subsection 27(2) of the Act prohibits Canadian carriers (including carrier-WSPs) from unjustly discriminating against or giving undue preference to any person, including themselves, or from subjecting any person to an undue or unreasonable disadvantage. To assess this, a party must first establish, on a balance of probabilities, that some conduct constitutes a preference or subjects a person to a disadvantage. If it does so, the burden shifts to the carrier imposing the preference or disadvantage to demonstrate that this is not undue or unreasonable.
72. In this case, the accessibility groups have established a disadvantage: where unlimited plans that reach their soft data caps are subject to throttled speeds that prevent reliable use of video communication, VRS users are disadvantaged. These users can only use VRS reliably if they pay for additional full-speed data. A hearing user making voice calls would experience no such barrier.

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<sup>8</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006; and *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

73. Many WSPs throttle data to speeds well below the threshold currently recommended by the CAV for VRS calls (1.3 megabits per second [Mbps] download/upload).<sup>9</sup> For example, once a customer's soft cap of unlimited data is reached, Bell Mobility, RCCI, and TCI limit speeds to 512 kilobits per second (Kbps), and Freedom Mobile and Shaw, to 256 Kbps.
74. WSPs have argued that, even if there is a disadvantage, it is not undue. More specifically, they submitted that throttling some data traffic is a necessary method of managing their wireless networks; that video communication is data-intensive; that their policies apply equitably to all users; and that, in cases where video communications fail, it cannot be proved that throttling alone leads to the failure.
75. The Commission's ITMP framework, set out in Telecom Regulatory Policy 2009-657, provides considerations for assessing whether traffic management practices result in an unreasonable disadvantage under subsection 27(2) of the Act.<sup>10</sup> These include whether an ITMP is designed to address a specific technical need, whether it results in as little disadvantage and harm as is reasonably possible, and whether network investment could reasonably address the need in question.
76. WSPs' submissions indicate that there is a legitimate technical need to manage the traffic on wireless networks responsibly. None of the interveners disagreed with this point, nor did they argue that network investment alone could entirely alleviate this technical need.
77. However, while WSPs' throttling policies may apply in the same way to all customers, the effect is different on certain members of accessibility communities. A specific set of wireless customers, namely DHH persons who use VRS, are susceptible to an unreasonable disadvantage—and potentially to significant harm—as a result of these policies.
78. The Commission determined in Telecom Regulatory Policy 2014-187 that VRS is a basic telecommunications service allowing DHH users to make and receive calls over the public switched telephone network using sign language. It is, in effect, an accessible substitute for voice telephony. As a result, and of particular significance, VRS also allows these users to communicate with public safety services such as 9-1-1 (once it becomes operational, the same will apply to 9-8-8, the national dialing code for mental health crisis and suicide prevention services).

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<sup>9</sup> The SRV Canada VRS website also refers, under a different heading, to a recommended connection capable of 5 Mbps download and 3 Mbps upload speed. Given that the figure is intended to represent a minimum threshold, the Commission is using the figure of 1.3 Mbps as the appropriate benchmark in the circumstances.

<sup>10</sup> In Telecom Decision 2010-445, the Commission extended the ITMP framework to apply to mobile wireless data services.

79. Accordingly, none of the WSPs' arguments discharge their legal burden. When access to VRS for DHH users who subscribe to unlimited wireless plans is restricted in a manner that access to voice service for hearing customers on similar plans is not, the disadvantage is unreasonable. This would also constitute a barrier as defined in the ACA.
80. The Commission acknowledges that there may be other causes for the degradation of video communications besides traffic management policies. But the Commission does not find these other causes to be relevant to the analysis of unreasonable disadvantage where a WSP's traffic management policy throttles data transmission speeds to below the minimum standard of the CAV (download and upload of 1.3 Mbps). Where data transmission speeds cannot meet this standard as a result of a WSP's traffic management policy or throttling practice, it is the policy or practice itself that would be responsible for the unreasonable disadvantage.
81. While the record of the proceeding was focused mainly on unlimited plans, accessibility groups also argued that plans with a hard monthly data cap have the potential to lead to an unreasonable disadvantage for VRS users. This represents an especially grave and pressing concern since it amounts to a barrier to VRS users making 9-1-1 calls. For instance, a VRS user who has reached their hard data cap could not call 9-1-1 without incurring overage charges, whereas a hearing user would face no such barrier. In the Commission's view, this is equally as unacceptable as an unlimited subscriber having VRS access impeded by throttling.
82. As a result of the above, it is an unreasonable disadvantage, and therefore contrary to subsection 27(2) of the Act, when DHH sign language users are unable to make and receive calls over the public switched telephone network through VRS in a comparable way to hearing users accessing voice services. This is the case when the inability is caused by a soft data cap paired with an ITMP, such as a throttling practice, or by a hard data cap.

#### ***Zero-rating and the DPP Framework***

83. Zero-rating VRS could help to avoid the unreasonable disadvantage to VRS users in a number of circumstances. Encouragingly, multiple WSPs (and all national carriers) are currently zero-rating VRS, reaching the great majority of wireless subscribers in Canada. However, a question was raised as to whether zero-rating VRS-related data would be consistent with the Commission's DPP framework.
84. The purpose of the DPP framework is to provide clarity on whether an Internet service provider's specific differential pricing practice—such as zero-rating or discounting



retail Internet data traffic—is consistent with subsection 27(2) of the Act.<sup>11</sup> The DPP framework evaluation criteria include

- the agnostic treatment of data (i.e., data is treated equally regardless of its source or nature);
- the exclusiveness of the offering;
- the impact on Internet openness and innovation; and
- whether there is financial compensation involved.

85. Under the DPP framework, the Commission also indicated that it would consider whether there are exceptional circumstances that demonstrate clear benefits to the public interest and/or minimal harm associated with a DPP.

86. In considering these factors, the Commission notes that:

- Zero-rating VRS data does not constitute an agnostic treatment of the data because it specifically targets a single service.
- Zero-rating of VRS data—even if implemented network-wide—is limited to a particular class or group of subscribers (registered VRS users), but they are members of this class owing solely to their need for a substitute to voice telephony.
- The practice does not adversely impact the openness and innovation of the Internet: VRS is a basic telecommunications service that substitutes for voice telephony. Further, the service itself constitutes an innovation and contributes to openness in allowing sign language users to more easily access the telecommunications system.
- There is no financial compensation involved. VRS is funded from the National Contribution Fund, and the Commission approves its annual budget.

87. Zero-rating VRS data is a practice that fosters access to a basic telecommunications service, including access to 9-1-1 (and soon to 9-8-8). It also helps to avoid a potential violation of subsection 27(2) of the Act under the ITMP framework and enables greater accessibility in the telecommunications system generally. It would not disadvantage any competing service, because it is the only service of its type (i.e., a Commission-recognized substitute for basic voice telephony).

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<sup>11</sup> The DPP pertains to Internet service providers, which WSPs are acting as when they give a customer access to the Internet.

88. Taking all of the above factors into consideration, the Commission considers that zero-rating VRS clearly benefits the public interest, with minimal associated harm, and would be consistent with the DPP framework.
89. Furthermore, if the Commission were to interpret the DPP framework in a way that forbade zero-rating of VRS, thereby precluding WSPs from expanding access to the service, this could have a disproportionately negative impact on persons with disabilities and lead to concerns under section 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees equality before and under the law, as well as equal benefit and protection of the law.

#### **Conclusion on unfettered use of VRS**

90. While zero-rating VRS is helpful, alone it may not be a complete solution to unreasonable disadvantage – especially where this relates to throttling practices. For instance, if VRS data can still be throttled when a VRS user otherwise reaches their soft data cap, as appears to be the case for some customers, it would not remedy the unreasonable disadvantage. VRS users who subscribe to unlimited wireless plans must not be precluded from using the service simply by virtue of reaching a soft data cap in a billing cycle. To avoid this unreasonable disadvantage, data transmission speeds for VRS must not be subject to a policy or practice that automatically throttles those speeds below the CAV’s minimum standard of 1.3 Mbps, either before or after a VRS user has reached their soft data cap.
91. The Commission acknowledges that some flexibility may be appropriate. The most appropriate way to ensure unfettered access to VRS may vary depending on the type of plan that DHH users subscribe to. For instance, as far as unlimited plans are concerned, at least one national carrier—TCI and its flanker brand Koodo—zero-rates VRS data and ensures it is not throttled when a VRS user reaches their soft data cap. Regional carrier TBayTel zero-rates VRS data and offers a throttling speed of 2 Mbps, which is above the minimum CAV standard, to customers with disabilities who request it. Regional carrier SaskTel does not zero-rate VRS data but imposes a throttling speed of 2 Mbps. These are examples of methods that avoid unreasonable disadvantage in the case of unlimited plans with a soft cap, though there may be other examples in the case of plans with a hard cap.
92. Accordingly, the Commission does not consider it necessary to mandate zero-rating of VRS by all WSPs at this time. Consumers have access to WSPs that offer zero-rated VRS services, and, as seen above, zero-rating alone may not be a complete solution.
93. Rather, in light of the unreasonable disadvantage identified under subsection 27(2) of the Act, the Commission **directs** carrier-WSPs to take any steps necessary (or maintain steps already taken) to ensure that DHH sign language users are able to make and receive calls through VRS in a comparable way to hearing users accessing voice services. This applies to plans with both soft and hard data caps.
94. Some WSPs will not need to take further action. For those WSPs that do, options are available to them, including zero-rating and having sufficiently high throttled speeds

for unlimited plans. This will remove a barrier to wireless communication. In particular, VRS is of paramount importance as a route for DHH sign language users to reach public safety services. No matter how WSPs choose to comply with the directions in this decision, they must ensure that VRS is available for this purpose.

95. The Commission **directs** WSPs to include in their annual reports the measures undertaken to address the unreasonable disadvantage identified under subsection 27(2) of the Act with respect to unfettered access to VRS. If these reports demonstrate continuing concerns, the Commission would be justified in taking further, more specific, action to remedy the unreasonable disadvantage.

## **Unfettered use of other services or applications**

### **Positions of parties**

96. The DHH Coalition and DWCC et al. submitted that DHH customers use various applications to make calls, not only VRS. Some interveners raised the concern that, while VRS users can make point-to-point calls (i.e., calls between VRS users without the use of an operator) with each other, only Deaf people are eligible to register with VRS. As a result, the CDGM and the DHH Coalition argued that all video applications need to be zero-rated. They gave the example of DHH persons living in remote regions needing to call an interpreter to attend virtual appointments. DWCC et al. referenced its own survey, filed on the record of this proceeding, in which it reported that respondents used VRS at about the same rates as other applications like Facebook Messenger and Facetime when using long-term evolution (LTE) technology. The CNIB Foundation argued that people who are blind use different accessibility services, which serve similar functions to VRS for people who are Deaf and which should also be zero-rated.
97. TCI submitted that DHH users have access to VRS for interpretation and point-to-point calls. Bell Mobility, the CWTA, Eastlink, RCCI, Shaw, TBayTel, TCI, Videotron, and Xplore argued that zero-rating other video applications should not be mandated.
98. Bell Mobility, the CWTA, Eastlink, Ice Wireless, SaskTel, Shaw, TCI, and Videotron submitted that any potential zero-rating for other video applications should be considered in light of the DPP framework. Shaw argued that zero-rating could be considered as compliant with the framework because there is no financial compensation involved, while RCCI, TCI, Videotron, and Xplore argued that such zero-rating would not be in line with the DPP framework. RCCI and TCI argued that one of the purposes of accessibility discounts is to offset any disadvantage experienced by persons with disabilities in their use of wireless services.
99. RCCI, Shaw, and Videotron submitted that there are technological concerns with the feasibility of zero-rating a whole category of services with multiple providers, as opposed to a single-provider service like VRS.

## Commission's analysis

100. The Commission recognizes the concerns of accessibility groups regarding data limits and throttling practices, and their effect on a wide range of applications. As a result, the Commission will provide additional guidance to WSPs to help further increase the accessibility of wireless services.
101. However, there is an important distinction to be drawn between VRS and other applications: VRS is a basic telecommunications service providing a substitute to a comparable basic telecommunications service, namely voice telephony, and access to 9-1-1. These unique characteristics of VRS are critical to the undue preference or disadvantage analysis, which informs the conclusion that access to VRS must not be impeded in those cases.
102. In the case of other applications used for accessibility purposes, it is unclear what the appropriate equivalent services would be. Further, the full range of applications that may assist wireless customers with accessibility remains undefined. Accordingly, the Commission is unable to determine at this time whether customers with disabilities are unreasonably disadvantaged relative to other customers regarding the use of applications other than VRS.
103. With respect to zero-rating data from specific applications, there do not appear to be exceptional circumstances in these cases in the same way as there are in the case of VRS. Those applications are not basic telecommunications services, and access to them will not remedy a clear case of undue disadvantage. However, an application of the factors from the DPP framework suggests that there would still be a public interest in zero-rating a broader range of accessibility applications that outweighs any harm:
- **Agnostic treatment of data:** Zero-rating a range of accessibility applications for accessible plan subscribers would not constitute agnostic treatment of the data, but it would be more agnostic than service-specific zero-rating of VRS.
  - **Exclusiveness of offering:** Accessible plan subscribers are a particular class or group, but membership in this class is dependent on being a person with a disability (a personal characteristic over which a person has no control that constitutes a protected ground under human rights law and the *Canadian Charter of Rights and Freedoms*) who requires accessible wireless services.
  - **Openness and innovation:** The practice should not adversely impact the openness and innovation of the Internet to a significant degree. This factor is meant to encompass concerns related to the entrenching of services and providers. This may occur when traffic is artificially driven to certain applications or services—as a result of zero-rating—at the expense of potential competitors that may not enjoy similar benefits. This should represent less of a concern in an accessibility context, where the number of subscribers is relatively small. While zero-rating accessibility applications may increase use of those services, to an extent, any

other accessibility service could benefit from zero-rating under the present analysis.

- Compensation: There would be no direct financial compensation involved in zero-rating accessibility applications for accessible plan subscribers.

104. Accordingly, as a general matter, the Commission has no concerns with WSPs zero-rating data associated with accessibility applications. A non-exhaustive list would include applications such as video communication, wayfinding, and visual interpretation applications.

105. With respect to throttled speeds of unlimited plans, the record of this proceeding has highlighted potential barriers to persons with disabilities. Specifically, accessible plans not having sufficient data at sufficient speeds at all times to ensure persons with disabilities can participate in society was one of the key barriers raised by accessibility groups. As submitted by the CNIB Foundation, this need extends beyond the applications used by sign language users.

106. As noted in the analysis of unfettered use of VRS, WSPs should consider reassessing their throttling thresholds for unlimited plans that are also accessible plans. If a soft cap effectively shuts off access to wireless services entirely for a person with a disability, this would raise potential undue disadvantage concerns. However, the current record does not establish whether this is in fact happening, or, if so, which accessibility applications are affected.

107. Nonetheless, WSPs revisiting their throttling practices may prove to be a broad and efficient way to ensure that persons with disabilities have greater accessibility without the need to explore whether specific applications deserve different treatment.

108. To that end, the Commission expects WSPs to make available unlimited accessible plans that will not prevent any accessibility application or feature from working as expected due to throttling policies.

109. The Commission **directs** WSPs to include in their annual reports their progress regarding these plans, specifically how WSPs are using zero-rating and traffic management practices with the available accessible plans, and how these practices are being used to promote, rather than restrict, accessibility of wireless services for persons with disabilities. If these reports demonstrate continuing concerns, the Commission would be justified in considering further regulatory measures to respond to the needs of persons with disabilities.

## **Promotion of plans and customer service**

### **Positions of parties**

110. The CDGM, the DHH Coalition, and DWCC et al. submitted that insufficient training of sales staff and failure by WSPs to maximize awareness of accessible plans limit the adoption of such plans by persons with disabilities. WSPs that filed

information concerning their specific promotional and training efforts generally argued that their efforts in this regard were robust.

111. Accessibility groups submitted that in-store promotion and advertising to the broader public is necessary to increase awareness of accessible plans. Accessibility groups also acknowledged that they themselves have a role to play in increasing awareness. They added that in-store interpretation should be available upon request, including that there should be intervenors for persons who are Deaf-Blind, that sign language videos promoting accessible plans should be made available on the WSPs' websites and in-store, and that persons with disabilities should be involved in the development of training materials for customer service and sales staff.

#### **Commission's analysis**

112. The guidance relating to eligibility verification in this decision should help improve the sales experience for persons with disabilities. Regardless, promotional and training efforts may be missing the mark, particularly in light of the current figures for subscribers to accessible plans. The Commission has reviewed the training materials filed by WSPs and considers that they do not present obvious flaws. However, their effectiveness largely depends on how this training is being implemented by customer service and sales staff.
113. The development of promotional and training materials would benefit from more involvement by accessibility groups and persons with disabilities to help ensure that WSPs are addressing their concerns.
114. The CRTC Secret Shopper Program specifically measured the shopping experience of persons with disabilities and has publicly identified areas where the shopping experience may be more negative for certain persons with disabilities. These areas include product and service recommendations, the provision of clear information, and the time afforded to the customer to make an informed decision. However, that exercise does not specifically assess promotion of accessible plans.
115. Increasing awareness of accessible plans is the responsibility of all stakeholders, and WSPs should consult persons with disabilities in their efforts to address concerns relating to promotion, customer service, and training for sales persons and report to the Commission on their efforts.
116. Accordingly, the Commission **directs** WSPs to include awareness of accessible plans as a topic for WSPs' consultations with persons with disabilities and to include in their annual reports details of their efforts in this regard. Specifically, WSPs should address the promotion and training efforts they have undertaken, how they measure the success of those initiatives, and any planned adjustments to their approach going forward.

## **Mandating specific plans**

### **Positions of parties**

117. The CDGM, the DHH Coalition, DWCC et al., and multiple individuals submitted that, to ensure equitable access to wireless data, specific plans should be mandated. While accessibility groups generally agreed that individual needs may differ, they proposed specific accessible plans. DWCC et al. further submitted that some features should be available for free for persons with disabilities, such as call forwarding to a VRS number or obtaining a text transcript of voicemails. The CDGM and DWCC et al. submitted that WSPs should work with accessibility groups and experts to find workable solutions.
118. The CDGM, the CNIB Foundation, and the DHH Coalition argued that the Commission should reassert forborne regulatory powers to ensure more equitable services. However, DWCC et al. argued that measures required to address the needs of persons with disabilities do not require de-forbearance.
119. The CWTA and WSPs were largely opposed to mandating specific accessibility plans and submitted that, through consultations with accessibility groups, they realized that there is no “one-size-fits-all” solution to accessibility. They argued that imposing specific plans may prevent customers with disabilities from customizing a plan at a price that meets their needs. The CWTA submitted that, initially, some WSPs had launched static accessibility plans, but eventually replaced these with rebates and extra data in reaction to low uptake of those plans.
120. Bell Mobility, the CWTA, Eastlink, RCCI, SaskTel, Shaw, TBayTel, TCI, and Xplore argued that the broad range of accessible plans available speaks to the competitiveness of the market. Bell Mobility, the CWTA, Eastlink, Ice Wireless, RCCI, SaskTel, Shaw, TBayTel, TCI, Videotron, and Xplore submitted that the record of this proceeding indicates that continued forbearance is preferable. Shaw argued that reliance on market forces is furthering policy objectives relating to reliable, affordable, and high-quality services and responding to the economic and social needs of persons with disabilities.
121. TCI argued that a mandated discount might not be viable for all plans or brands, and that a regulated discount might have the effect of reducing choice because some plans might have to be removed from the market, or some plan prices might have to be increased.
122. Bell Mobility submitted that the plans proposed by accessibility groups varied widely and argued that this shows that the needs of persons with disabilities with respect to accessible plans vary. Bell Mobility, RCCI, Shaw, and TCI added that WSPs are currently offering accessible plans that, in some cases, are more favourable to users in terms of price or data allotment than the plans requested by accessibility groups and provided examples of this from their own brands.

## Commission's analysis

123. The Commission has forborne from rate regulation of retail mobile wireless services. In order to mandate the provision of specific accessibility plans, with specific attributes, at a specific price, the Commission would need to re-assert currently forborne regulatory powers. To do that, the Commission would need to find, as a question of fact, that the current state of de-forbearance was inconsistent with the policy objectives of the Act. The Commission does not consider that such a finding is warranted at this time.
124. While accessibility barriers exist, the additional measures described in this decision are such that the re-assertion of forborne powers and the mandating of specific plans, features or prices are not required at this time.
125. With respect to the Commission's existing obligations for WSPs to offer accessible plans, WSPs have crafted various competing solutions. The existence of discounts as a key feature of many accessible plans shows some recognition of the economic needs of users with disabilities who, as the record of this proceeding has demonstrated, are more likely to have concerns related to affordability. The recent introduction of innovative, percentage-based rebates for accessible plans into the market should also be beneficial for users who need larger plans.
126. The fact that various accessibility groups proposed different attributes for what they wanted to see in an accessibility plan supports the view that there needs to be flexibility in how WSPs can meet the needs of Canadians with disabilities. Requiring a specific accessible plan—effectively, attempting to craft a “one-size-fits-all” solution to accessibility—may prevent accessible plans from evolving along with the needs of persons with disabilities and may lead to these plans always lagging behind the market.
127. Some of the accessible plans that are currently available include features that go beyond those proposed by some accessibility groups. On the other hand, some accessibility groups proposed accessible plans that go far beyond what is currently offered in the market at similar price points (such as plans proposed by the DHH Coalition that were based on the low-cost plans that the Commission expected WSPs that exercise market power to offer in Telecom Regulatory Policy 2021-130).
128. However, in the *Report on Misleading or Aggressive Communications Retail Sales Practices*, the Commission identified the offering of accessible plans at reduced prices as a best practice that is in the public interest. The Commission noted its expectation that these discounts be offered in addition to any other offer or promotion, not instead of it. Accordingly, any accessibility discount should also apply to the low-cost plans the Commission described in Telecom Regulatory Policy 2021-130. Although they may not be directly responsive to the needs of every person with a disability, these plans were designed to meet specific needs at a lower price point and should still serve that need, with an accessibility discount applied, for some persons with disabilities.



129. Furthermore, the Commission has set out additional targeted measures, including mandatory consultations, regular reporting, a direction to avoid unreasonable disadvantages, and clear guidance on improving promotion and the sales experience. These measures should help accelerate the positive market developments spurred by the requirement to offer accessible plans in Telecom Regulatory Policy 2016-496. The consultative process imposed in that decision has led WSPs to introduce and refine their accessibility offerings. Further targeted consultations and reporting requirements should help focus WSPs' attention to ensure that their offerings become even more responsive to the needs of persons with disabilities.
130. Nonetheless, specific guidance with respect to addressing existing affordability barriers for persons with disabilities would be useful. Generally, accessible plans should include substantial rebates or additional data allotments compared to mass-market plans. The Commission considers that TBayTel's offer of a 50% rebate to persons who self-identify as having a disability, as well as to a caregiver or family member, is a particularly noteworthy example. TBayTel's approach is in line with the Commission's 50% rate discount off tariffed toll services for DHH persons.<sup>12</sup> The Commission considers this a reasonable target for accessible plan discounts and intends to monitor WSP reports against this expectation. If these reports demonstrate continuing concerns, the Commission would be justified in considering future regulatory measures to respond to the needs of persons with disabilities.
131. Accordingly, while there is currently room for improvement in responding to existing barriers, including eligibility, plan composition, and promotion, the most appropriate way to bring about this improvement is through the targeted measures set out in this decision. The current market, where WSPs in all regions of the country have crafted competing offers for persons with disabilities (largely based on discounts and additional data), will be improved by these measures, and de-forbearance is not currently required to further the policy objectives of the Act. Should the measures prove not to be sufficient to achieve the objectives, the Commission may reconsider its position and determine whether further intervention is necessary.

### **Should accessible plan requirements apply to each brand and subsidiary operated by a WSP?**

#### **Positions of parties**

132. The CNIB Foundation, the DHH Coalition, DWCC et al., and an individual intervener agreed with the Commission's preliminary view that accessible plan requirements should apply to all WSP flanker or subsidiary brands. They argued that different brands have different offerings, which Canadians with disabilities should not

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<sup>12</sup> First established in Telecom Decision 80-14, this discount was reviewed and applied to numerous incumbent local exchange carriers in Telecom Decision 2007-56 (Bell Aliant; Bell Canada; MTS Allstream Inc.; Ontera, a division of NorthernTel; SaskTel; Télébec, Société en commandite; and TCI) and to Northwestel Inc. in Telecom Decision 2007-5. It was most recently addressed, and maintained, in Telecom Decision 2015-254 for Northwestel Inc.'s toll services.

be prevented from accessing. They added that Canadians with disabilities exist in all market segments, including those served by flanker brands.

133. WSPs broadly disagreed with this preliminary view. TCI argued that it would jeopardize the continued viability of lower-cost products in the marketplace, reducing choice for all customers, not only customers with disabilities. However, TCI also submitted that Koodo launched an accessibility discount in late 2021 of 25% off per month and unlimited access to VRS. Videotron argued that flanker brand business models make compliance with the requirements impossible. For similar reasons, Bell Mobility and RCCI argued that requirements should not apply to prepaid brands. Shaw argued that the brand under which accessible plans are offered would not impact the quality of the service.

### **Commission's analysis**

134. In general, for regulatory requirements to achieve their intended objectives as effectively as possible, these requirements should be imposed on each of the brands operated by a provider.

135. In Telecom Regulatory Policy 2016-496, the intention of requiring WSPs to offer accessible plans was to increase the accessibility of wireless services. Requiring flanker brands to comply separately with the requirements would serve this goal. If each brand must comply with the requirements, there will be more accessible plans available in the market being offered by more vendors. It is reasonable to assume that there will be more opportunity for persons with disabilities to find plans that meet their needs as a result.

136. The Commission acknowledges that different brands and subsidiaries may operate in different ways, but there is no compelling evidence that these differences would prevent flanker brands from offering accessible plans. In fact, many currently do, including TCI's flanker brand Koodo, which introduced an accessible plan recently. Flanker brands have some flexibility to structure their accessible offerings in a way that is specific to the context in which they operate. The key is for these plans to be responsive to the needs of persons with disabilities.

137. The Commission determines that, consistent with the preliminary view expressed in Telecom Notice of Consultation 2020-178, the regulatory requirement relating to the offering and provision of accessible wireless plans applies to all the brands operated by a WSP, and that each brand must individually comply with any requirements. However, the manner in which each brand complies with requirements can be different and tailored to the brand's business model.

138. Regarding the reporting requirements imposed in this decision, the Commission clarifies that flanker brands and subsidiaries must comply with these requirements, but the relevant information may be included as part of their relevant main brands' reports to limit duplication of information and reduce the number of reports created. This would also be consistent with the ACA model where regulated entities that offer

multiple brands may create a single accessibility plan or report for a corporate group, as long as it separately addresses the distinct accessibility considerations for each of those brands.

## **Conclusion**

139. The Commission considers that targeted action is necessary to help ensure that accessible plans more fully meet the needs of persons with disabilities.
140. The Commission **directs** WSPs to engage in regular, at least yearly, consultations with persons with disabilities and groups representing their interests. The Commission encourages the telecommunications industry to explore methods of providing financial support for community representatives for these consultations.
141. The Commission **directs** WSPs to file annual reports in an accessible format (e.g., screen reader compatible) with the Commission regarding their accessible plans and their ongoing consultations with persons with disabilities. The filing date for these annual reports will be **1 June**, starting **1 June 2023**. These annual reports are to deal with the following issues:
- the total number of subscribers to accessible plans;
  - the composition of accessible plans available in the market in the course of the past year, including any plans that have been withdrawn from the market during that period and the reason for doing so;
  - the specific consultations that were held with persons with disabilities in the past year, including who from the disability community took part in the consultations, and any insights that were gained; and
  - WSP progress, and changes put in place by the WSP as a result of the consultations, as detailed in the following paragraph of this decision.
142. The Commission **directs** WSPs to
- include in their annual reports their progress, following consultations with persons with disabilities, on their approach to verifying eligibility, if any, and whether that approach ensures that persons with disabilities can easily access plans that suit their needs;
  - include in their annual reports the efforts undertaken towards a common transferable record of eligibility;
  - include in their annual reports the measures undertaken to address the unreasonable disadvantage identified under subsection 27(2) of the Act with respect to unfettered access to VRS;

- include in their annual reports their progress regarding unlimited accessible plans, specifically how WSPs are using zero-rating and traffic management practices with the available accessible plans, and how these practices are being used to promote, rather than restrict, accessibility of wireless services for persons with disabilities; and
- include awareness of accessible plans as a topic for WSPs' consultations with persons with disabilities and include in their annual reports details of their efforts in this regard. Specifically, WSPs should address the promotion and training efforts they have undertaken, how they measure the success of those initiatives, and any planned adjustments to their approach going forward.

143. In recognition of the limited time WSPs have to address the issues raised in this decision, the reports due on 1 June 2023 will be more limited in scope. The first annual report is to deal with the following issues:

- the total number of subscribers to accessible plans;
- the composition of accessible plans available in the market in the course of the past year, including any plans that have been withdrawn from the market during that period and the reason for doing so; and
- WSPs' plans for consultations with persons with disabilities for the coming year.

144. Because the Commission is seeking feedback from persons with disabilities, opportunities will be provided to respond to these annual reports.

145. With respect to WSPs that verify eligibility for accessible plans, there is no need to impose an outright ban on this practice. However, if WSPs choose to seek proof of eligibility, the process must be as easy as possible for a person with a disability. Furthermore, the Commission encourages the telecommunications industry to establish a common transferable record of eligibility for persons with disabilities.

146. With regard to unfettered use of VRS for accessible plans, the Commission **directs** carrier-WSPs to take any steps necessary (or maintain steps already taken) to ensure that DHH sign language users are able to make and receive calls through VRS in a comparable way to hearing users accessing voice services. This applies to plans with both soft and hard data caps.

147. The Commission expects WSPs to make available unlimited accessible plans that will not prevent any accessibility application or feature from working as expected due to throttling policies.

148. While the Commission does not consider it necessary to reassert forborne regulatory powers, the Commission expects WSPs to address existing affordability barriers for persons with disabilities by ensuring that accessible plans include substantial rebates or additional data allotments, compared to mass-market plans.

149. Finally, the Commission determines that the regulatory requirement relating to the offering and provision of accessible wireless plans is to be imposed on all the brands operated by a WSP, and each brand must individually comply with any requirements. However, the manner in which each brand complies with the requirements can be tailored to the brand's business model. Flanker brands' and subsidiaries' annual reports may be included as part of the relevant main brands' reports.

## **Policy Directions**

150. The 2006 Policy Direction requires that the Commission, in implementing the telecommunications policy objectives set out in section 7 of the Act, rely on market forces to the maximum extent feasible. Further, when relying on regulation, the Commission should use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

151. The 2019 Policy Direction provides that when the Commission exercises its powers and performs its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation. Moreover, the Commission should, in its decisions, demonstrate its compliance with the 2019 Policy Direction and should specify how those decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.

152. The determinations set out in this decision comply with the 2006 Policy Direction as follows:

- Subparagraph 1(a)(i): Market forces alone cannot be relied upon to fully ensure that persons with disabilities can avail themselves to accessible plans that truly meet their needs without barriers. Targeted obligations, strong guidance, and monitoring from the Commission will ensure that WSPs respond more fully to the needs of persons with disabilities.
- Subparagraph 1(a)(ii): The measures are efficient and proportionate to their purpose, and minimally interfere with market forces because the onus is put on WSPs to (i) meet the needs of persons with disabilities based on their own consultations with accessibility groups and the directions set out in this decision and (ii) report on the progress made.
- Subparagraph 1(b)(iii): The measures are not generally of an economic nature and are generally to be implemented in a symmetrical manner by all WSPs, including main brands, flankers, and subsidiary brands, and are implemented in a competitively neutral manner so that each WSP can determine how best to meet the needs of persons with disabilities, in consultation with them. While measures relating to undue preference only apply to carrier-WSPs, this is because the Act restricts the application of that provision to carriers. Further, the application would be symmetrical amongst carrier-WSPs.

153. The determinations in this decision comply with the 2019 Policy Direction in the following manner:

- Subparagraph 1(a)(iv) requires that regulatory measures enhance and protect the rights of consumers in their relationships with telecommunications service providers, including their rights related to accessibility. The measures included in this decision will require that persons with disabilities have a direct channel to work with WSPs to determine how accessible plans evolve and will require WSPs to report on the progress made.
- Subparagraph 1(a)(vi) requires that regulatory measures enable innovation in telecommunications services, including new technologies and differentiated service offerings. The measures put the onus on service providers to find ways to better meet the needs of persons with disabilities, allowing them the flexibility to innovate in the manner in which they serve these customers without a static, imposed solution, while putting persons with disabilities at the centre of the discussion.

154. In these ways, through the targeted measures in this decision, the Commission is exercising its regulatory powers with a view of implementing the policy objectives of the Act, as informed by the Policy Directions.

Secretary General

### **Related documents**

- *The Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations*, Telecom and Broadcasting Regulatory Policy CRTC 2021-215, 7 July 2021
- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021
- *Call for comments – Accessibility – Mobile wireless service plans that meet the needs of Canadians with various disabilities*, Telecom Notice of Consultation CRTC 2020-178, 1 June 2020; as amended by Telecom Notices of Consultation CRTC 2020-178-1, 26 August 2020; 2020-178-2, 29 September 2020; 2020-178-3, 23 March 2021; 2020-178-4, 21 May 2021; and 2020-178-5, 29 June 2021
- *Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, 28 February 2019; as amended by Telecom Notices of Consultation CRTC 2019-57-1, 28 October 2019; 2019-57-2, 20 March 2020; and 2019-57-3, 23 June 2020
- *Report regarding the retail sales practices of Canada's large telecommunications carriers*, Telecom and Broadcasting Notice of Consultation CRTC 2018-246, 16

July 2018; as amended by Telecom and Broadcasting Notice of Consultation CRTC 2018-246-1, 16 October 2018

- *Framework for assessing the differential pricing practices of Internet service providers*, Telecom Regulatory Policy CRTC 2017-104, 20 April 2017
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Northwestel Inc. - Application to remove regulatory constraints applicable to basic toll schedules*, Telecom Decision CRTC 2015-254, 12 June 2015
- *Video Relay Service*, Telecom Regulatory Policy CRTC 2014-187, 22 April 2014
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009
- *Review of the regulatory constraints that apply to the basic toll schedules*, Telecom Decision CRTC 2007-56, 23 July 2007
- *Price cap regulation for Northwestel Inc.*, Telecom Decision CRTC 2007-5, 2 February 2007
- *Bell Canada, general increase in rates*, Telecom Decision CRTC 80-14, 12 August 1980