



Telecom Notice of Consultation CRTC 2023-56

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Ottawa, 8 March 2023

Public record: 1011-NOC2023-0056

Notice of hearing – Review of the wholesale high-speed access service framework

Deadline for submission of interventions on the expedited process: 24 April 2023

Deadline for submission of interventions on all other issues within the scope of the proceeding: 22 June 2023

[\[Submit an intervention or view related documents\]](#)

The Commission will hold a public hearing, on a date to be announced, at **the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec.**

[Attend the hearing or listen to it online.](#)

Summary

The Commission will review its existing framework for wholesale high-speed access (HSA) services in light of changing market conditions, the significant challenges in implementing the framework, and the importance to Canadians of having access to greater choice and more affordable services.

The Commission invites comments on several issues, including its preliminary views that (i) the provision of aggregated wholesale HSA services should be mandated; (ii) access to fibre-to-the-premises (FTTP) facilities should be provided over these services; and (iii) the provision of FTTP facilities over aggregated wholesale HSA services should be mandated on a temporary and expedited basis, until the Commission reaches a decision as to whether such access is to be provided indefinitely.

The Commission is also imposing an immediate interim reduction to some existing aggregated wholesale HSA service rates.

Introduction

1. Canadians rely on the Internet for various reasons, including to support their work and education, to access services and content, and to remain connected with one another. While reliance on the Internet is not a new phenomenon, and the Commission included Internet service within the universal service objective in Telecom Regulatory Policy 2016-496, its importance has grown since the start of the COVID-19 pandemic.

2. For example, almost 75% of households now subscribe to an Internet access speed at or above the universal service objective speeds of 50 megabits per second (Mbps) download and 10 Mbps upload established by the Commission. In 2019, fewer than 50% of households adopted such access speeds.¹ In 2019, there were also very few households subscribing to Internet speeds near or above 1 gigabit per second (Gbps), whereas 13% of households now subscribe to such speeds. The consumption of data has also grown, as Canadian households now download an average of 395 gigabytes (GB) of data per month, an amount that has more than doubled since 2019.
3. While Canadians access the Internet through various mediums, the vast majority (94%) access the Internet through a fixed broadband connection. While other Internet access technologies are broadly available (including mobile wireless, fixed wireless, and satellite-based services), their service characteristics (including prices) limit their substitutability for most Canadians.
4. Despite the high barriers to entry to supply fixed broadband facilities (including municipal access agreements, rights-of-way, economies of scale, and access to capital markets), most Canadians are fortunate in that they have two viable fixed broadband connections available to their household, one owned by an incumbent local exchange carrier (ILEC), and the other owned by a cable carrier.
5. The large ILECs² and cable carriers³ (collectively, the incumbent carriers), however, hold dominant positions in the provision of retail Internet services across Canada. In fact, large incumbent carriers collectively hold an 84% national market share. This situation has raised concerns with respect to the potential for these dominant firms to exercise market power in a manner that is detrimental to the realization of the Canadian telecommunications policy objectives (the policy objectives) set out in section 7 of the *Telecommunications Act* (the Act).
6. As a result, the Commission has required that wholesale services be made available to Internet service providers (ISPs) [hereafter referred to as competitors]. For years, the Commission has mandated the provision of wholesale high-speed access (HSA) services by the ILECs and, more recently, the large cable carriers, with the objective of facilitating a more vibrant and sustainable competitive retail Internet service market, which provides Canadians with reasonable prices and innovative Internet

¹ The data presented in this notice has been sourced from various surveys, including the joint [Commission-Statistics Canada Quarterly Survey](#) and the Commission's [Annual Telecommunications Survey](#). The Commission collects data directly from the industry and via both government and private sector data partners, and data is filed via the Commission Data Collection System.

² "Large ILECs" refers to Bell Canada (including Bell Aliant Regional Communications, Limited Partnership, and Bell MTS Inc.); Saskatchewan Telecommunications, and TELUS Communications Inc. (TCI).

³ "Cable carriers" refers to Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Communications Inc.; Videotron Ltd. (Videotron); Rogers Communications Canada Inc.; and Shaw Cablesystems G.P.

services of high quality that are responsive to their evolving social and economic needs.

Background

7. As wholesale-based competition grew, the Commission undertook a review of its wholesale HSA service framework as part of the proceeding that resulted in Telecom Regulatory Policy 2015-326. A number of important changes in the Commission's policies regarding wholesale services were adopted as a result of this review.
8. For many years, the Commission's wholesale service framework mandated the provision of aggregated wholesale HSA services. These services enabled competitors to connect their networks to that of an incumbent carrier at a single or otherwise limited number of places – referred to as “points of interconnection” (POIs) – and obtain high-speed paths to end-customers' premises throughout an incumbent carrier's entire operating territory. These paths include both an access component and a transport component, which enable competitors to provide retail Internet services with limited investment in transmission facilities.
9. Guided by the 2006 Policy Direction⁴ and a determination in Telecom Decision 2008-17 that found transport services to be duplicable, the Commission, in Telecom Regulatory Policy 2015-326, adopted an approach meant to migrate aggregated wholesale HSA service customers to a disaggregated wholesale HSA service as the primary wholesale service going forward. Disaggregated wholesale HSA services provide competitors with high-speed paths to end-customers' premises from an ILEC central office or a cable carrier head-end; however, the Commission did not include transport facilities as part of the service. As a result, competitors would be required to either invest in their own transport facilities to support each central office or head-end where they have end-customers, or to lease such facilities from another entity.
10. In that review, the Commission also determined that fibre-to-the-premises (FTTP) facilities were essential and that their availability at a wholesale level would be mandated from the large ILECs and cable carriers. The Commission imposed limitations on aggregated wholesale HSA services to encourage an industry transition towards disaggregated HSA services, notably by restricting access to FTTP facilities by making them available only in the disaggregated wholesale HSA service. The Commission then began implementing the disaggregated wholesale HSA service framework, starting in Ontario and Quebec, where demand for wholesale HSA services was the greatest. Other provinces were expected to follow.

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

11. In Telecom Decision 2016-379, the Commission approved configurations for disaggregated wholesale HSA services in Ontario and Quebec, resulting in fully disaggregated wholesale HSA services being adopted.
12. In Telecom Orders 2017-312 and 2017-312-1, the Commission set out interim rates, terms, and conditions for disaggregated wholesale HSA services in Ontario and Quebec. The Commission later requested that the large incumbent carriers operating outside Ontario and Quebec submit their proposed disaggregated wholesale HSA configurations to support a national rollout of the services.
13. In Telecom Order 2019-288, the Commission approved revised rates for aggregated wholesale HSA services. Later, in Telecom Decision 2021-181, the Commission determined that there was substantial doubt as to the correctness of that decision. Considering factors such as the time and resources required to develop new rates, and its goal of having a smooth transition to the adoption of disaggregated wholesale HSA services, the Commission approved, on a final basis and with certain modifications, the rates for aggregated wholesale HSA services that were in effect prior to the issuance of Telecom Order 2019-288.
14. Implementation of the disaggregated wholesale HSA service framework has posed challenges, and concerns with the implementation and adoption of disaggregated wholesale HSA services and the transition away from aggregated wholesale HSA services have been raised in numerous proceedings initiated since 2015.
15. Some of these implementation concerns, including concerns relating to competitors' ability to feasibly access FTTP facilities, prompted the Commission to initiate Telecom Notice of Consultation 2020-187. That proceeding was initiated for the Commission to consider whether a reconfiguration of disaggregated wholesale HSA services would be appropriate to encourage their broader adoption. Specifically, the Commission sought to determine whether it would be appropriate to reconfigure disaggregated wholesale HSA services to allow for greater levels of aggregation by allowing some transport facilities to be included in the service.

Developments

16. While the Commission has worked toward the implementation of its wholesale HSA service framework, the retail Internet service market has continued to evolve in response to various trends and changes.
17. For example, incumbent carriers have been steadily deploying FTTP facilities across their serving territories, with ILECs taking the lead and often decommissioning their copper access facilities at the same time.⁵ Over 9 million households are now served by ILEC fibre access facilities, notably throughout many major urban centres. For their part, consumers have eagerly embraced fibre to meet their growing Internet

⁵ See, for example, the transcript of the [BCE Q1 2022 Results Conference Call](#) and the transcript of the [TCI Q3 2021 Financial Results Investor Conference Call](#).

needs, with 25% of all retail fixed Internet service subscribers now being served by FTTP facilities. For competitors, however, the potential for fibre-based services remains limited. In fact, the majority of competitors' subscribers adopt speeds below the 50 Mbps universal service objective.

18. Meanwhile, incumbent carriers have enhanced their Internet service market dominance over the past years, growing in terms of both overall revenues and subscribers. Many incumbent carriers have launched flanker brands to support their growth, offering services comparable to those offered by competitors at a lower price point, while some have acquired competitors to further their expansion.⁶ At the same time, many competitors have begun losing subscribers. In 2019, competitors accounted for almost 10% of all fixed Internet service subscribers, while in 2021 this number had dropped to just over 8%.
19. In addition, while the Commission's wholesale HSA service framework was intended to apply equitably among incumbent carriers, it has developed differently in practice. For example, where competitive demand for wholesale services was relatively balanced between ILECs and cable carriers before Telecom Regulatory Policy 2015-326 was published, competitors have increasingly shifted their demand toward cable carrier networks such that they now account for 75% of the total wholesale service market. This shift has been informed by the speed limitations associated with existing ILEC aggregated wholesale HSA services, the inability to access FTTP facilities over existing aggregated HSA services, and the state of implementation of disaggregated wholesale HSA services.
20. While the impacts on the retail Internet service market associated with such developments continue to unfold, there are also troubling signs regarding retail Internet service prices. For example, in June 2022, Innovation, Science and Economic Development Canada (ISED) published a [report](#) entitled *2021 Price Comparison Study of Telecommunications Services in Canada and with Foreign Jurisdictions*. This report indicated that while there are generally a variety of Internet service plans and prices available within Canada, prices for mid-range and top-range plans remain high relative to international peers.
21. In addition to these developments, there have been a number of recent proceedings associated with the wholesale HSA service framework that raise similar concerns with its ongoing effectiveness and ability to meet the objective of providing competitive choices for Canadians and better support to the retail Internet service market.

⁶ For example, Bell Canada's acquisition of EBox inc. and Distributel Communications Limited, TCI's acquisition of Altima Solutions Limited and Start.ca, and Videotron's acquisition of VMedia Inc.

22. In Telecom Decision 2023-53, the Commission concluded the following:
- there is no effective way to reconfigure disaggregated wholesale HSA services to make the services more viable;
 - ultimately, the demand for disaggregated wholesale HSA services may be limited to a handful of dense urban areas where competitors had a large and established customer base;
 - the disaggregated wholesale HSA service framework has not fulfilled its mandate, particularly with respect to achieving its objectives; and
 - the various concerns that gave rise to Telecom Notice of Consultation 2020-187 would not be resolved through that proceeding.
23. In Telecom Decision 2023-54, the Commission acknowledged that there are significant issues associated with the existing wholesale HSA service framework and that viable access to FTTP facilities by competitors is of particular concern. The Commission indicated that developments following the close of record of Telecom Notice of Consultation 2020-187 have been such that changes to the framework may be needed to ensure that proper competitive dynamics are in place to discipline the retail Internet service market.
24. In Telecom Decision 2023-55, the Commission considered that although wholesale regulation is the preferred means to address competitive concerns in a given retail market, it recognized that its current wholesale HSA service framework may not be effectively accomplishing this goal.
25. It is clear that there are many outstanding issues and concerns associated with the Commission's wholesale HSA service framework. It is also clear that the framework has not met its objective of facilitating vibrant and sustainable competition in the retail Internet service market. Moreover, it appears that incremental changes to the Commission's wholesale HSA service framework are not going to address the underlying concerns that have arisen with respect to the state of wholesale-based competition, or more broadly in the retail Internet service market.
26. While the Commission's previous wholesale HSA service framework was developed under the auspices of the 2006 Policy Direction and was implemented in light of the 2019 Policy Direction, both of these Policy Directions have since been repealed and replaced with 2023 Policy Direction.⁷ The 2023 Policy Direction speaks directly to the matter of supporting fixed Internet service competition. In particular, it provides the following:

⁷ *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023

- In order to foster fixed Internet competition, the Commission must
 - a. maintain a regulatory framework mandating the provision – at just and reasonable rates – of wholesale services for fixed Internet;
 - b. monitor the effectiveness of the framework; and
 - c. adjust the framework as necessary and in a timely manner, including by making proactive adjustments (section 9).
- The Commission must mandate the provision of an aggregated wholesale HSA service – that is additional to any other types of wholesale HSA access services that are mandated – until it determines that broad, sustainable, and meaningful competition will persist even if the provision of an aggregated service is no longer mandated (section 10).
- The Commission must mandate the provision of wholesale HSA services with a variety of speeds, including low-cost options, for the purpose of ensuring affordable options for consumers while allowing for the modernization of networks (section 11).
- The Commission should set interim and final tariffs expediently, including by reforming the tariff-setting process and considering external expertise or international best practices (section 12).
- The Commission should ensure that its regulatory framework mandating the provision of wholesale services for fixed Internet applies equitably to carriers that are subject to the framework (section 13).

Proceeding to review the wholesale HSA service framework

27. The Commission is hereby initiating a proceeding to review its wholesale HSA service framework. This proceeding will focus on the following key areas:
- Updates to the market power, essentiality, and policy considerations for wholesale HSA services
 - Updates to aggregated wholesale HSA services
 - Updates to disaggregated wholesale HSA services
 - Measures to further develop competition for retail Internet services
 - Potential need and areas for retail regulation to protect consumer interests
28. In addition, the Commission will consider whether access to FTTP facilities over aggregated wholesale HSA services should be mandated on a temporary basis, while the question of whether they should be mandated indefinitely is considered in the

broader review. The Commission will consider this matter on an expedited basis. The process associated with consideration of this issue is set out further below.

29. The Commission considers that any decision to mandate temporary access to FTTP facilities over aggregated wholesale HSA services is not in the nature of injunctive relief, but is instead a broad policy question. As such, it will not be assessed on the basis of the criteria set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada* (Attorney-General) [1994] 1 S.C.R. 311, but rather with regard to the statutory powers and duties provided in the Act and the Commission's mandate to exercise its powers and perform its duties so as to further the implementation of the Canadian telecommunications policy objectives and applicable policy directions.
30. The scope of each of the areas to be examined is described in detail below. In addition, parties may raise other matters, issues, or proposals that are relevant to and appropriate for a focused policy review of the wholesale HSA service framework. The Commission's intent in initiating this proceeding is to ensure that there is a wholesale HSA service framework that facilitates sustainable competition in downstream retail Internet service markets and provides reasonable prices and innovative retail services to consumers.
31. The Commission will review the matters raised in this proceeding in light of the policy objectives set out in section 7 of the Act. The Commission's wholesale HSA service framework is expected to support the achievement of the policy objectives, and in particular the following:
 - (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
 - (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
 - (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
 - (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services; and
 - (h) to respond to the economic and social requirements of users of telecommunications services.
32. The Commission will also review the matters raised in this proceeding in light of the 2023 Policy Direction, which speaks directly to the matter of supporting fixed Internet service competition. The Commission expects interveners to develop their arguments and positions accordingly.

Updates to the market power, essentiality, and policy considerations for wholesale HSA services

33. In Telecom Regulatory Policy 2015-326, the Commission performed a comprehensive analysis under the Essentiality Test of aggregated wholesale HSA services, disaggregated wholesale HSA services, and FTTP facilities. The Commission considers that much of this analysis remains valid, or could be reapplied with some adjustments, and that this analysis has informed the consideration of various issues outlined in this notice as well as the preliminary views expressed herein.
34. Aggregated wholesale HSA services were deemed non-essential based on (i) a determination regarding the availability of transport facilities, and (ii) an assumption that viable disaggregated wholesale HSA services would be made available in a timely manner. In the proceeding that led to Telecom Decision 2023-53, however, several parties expressed concerns that transport services were not available or duplicable, even in denser urban markets. The Commission considers that if transport services are either not practically available on a wholesale basis, or cannot be reasonably duplicated by entities seeking to provide retail Internet services in competition with the incumbent carriers, then its original finding that aggregated wholesale HSA services are non-essential may no longer be justified.
35. The Commission is examining the availability of transport services, and any barriers to the extension of transport networks, in rural and remote areas in the proceeding initiated by Telecom Notice of Consultation 2019-406, which has not yet concluded. In these circumstances, it would not be appropriate to consider similar transport issues in the context of this proceeding. Given that there are ongoing unexplored issues surrounding the availability of competitive transport services, the Commission's assessment of the duplicability component of the Essentiality Test for aggregated wholesale HSA services would likely be inconclusive absent a detailed review that would impede the Commission's ability to address its concerns with the effectiveness of its current framework in a timely manner.
36. As a result, the Commission considers that it would be more appropriate to focus on and re-examine the application of other elements of the wholesale service framework to aggregated wholesale HSA services.
37. Further, under the existing wholesale service framework, the Commission may also apply certain policy considerations to justify a decision to mandate the provision of a service that has been found to be not essential, or to not mandate the provision of a wholesale service that has been found to be essential. The Commission therefore considers that a new examination of policy considerations could support mandating aggregated wholesale HSA services regardless of whether they are found to meet the input, competition, and duplicability components of the Essentiality Test, to ensure the policy objectives are met. Ultimately, the Commission needs to ensure that its wholesale service framework provides for wholesale access to services and facilities that would enable competitors to meaningfully contribute to disciplining retail

Internet service market dynamics and ensuring that the relevant policy objectives are furthered.

38. The Commission considers that market conditions associated with retail Internet services have not changed materially for the betterment of competition over the past few years. This has led to concerns that the current trends in the market will only increase the potential for incumbent carriers to exercise market power. For example, the Commission considers that there remains a high degree of concentration in the market, very high barriers to entry in the provision of fixed Internet services, and limited evidence of the substitutability of fixed Internet services for mobile wireless, fixed wireless, or satellite services. Given the above, interveners are invited to comment on the applicability of the Commission's previous essentiality analysis and whether there are any significant developments that would warrant a reconsideration or change to the previous findings and conclusions. Intervenors are also invited to comment on whether the existing policy considerations remain appropriate when the Commission is considering wholesale HSA services, or whether additional policy overlays should be contemplated and, if yes, what additional policy considerations should inform the Commission's determinations.
39. Finally, interveners are invited to comment on the state of competition in the retail Internet service market. The Commission expects, however, that an outcome of this proceeding will be to affirm the need for the availability of a practical mandated wholesale service to support competition and address its market power concerns. As such, interveners are asked to focus their submissions on the nature and form of the wholesale HSA services, the provision of which should be mandated from the incumbent carriers.

Updates to aggregated wholesale HSA services

40. In Telecom Regulatory Policy 2015-326, the Commission found aggregated wholesale HSA services to be non-essential, made them subject to various limitations to encourage the transition to disaggregated wholesale HSA services, and indicated that aggregated wholesale HSA services were to be phased out once disaggregated wholesale HSA services were implemented.
41. In Telecom Decision 2023-53, the Commission examined the network configuration for disaggregated wholesale HSA services and found that the wide-scale implementation of disaggregated wholesale HSA services is not practical. In addition, aggregated services remain the primary wholesale HSA services used by competitors today.
42. Given the ongoing issues with disaggregated wholesale HSA services, this is expected to continue for some time. The Commission also considers that aggregated wholesale HSA services support different forms of wholesale-based competition, including more service-based competitors, since they provide competitors the opportunity to provision retail services to end-customers with limited investment in transport facilities. Finally, the Commission considers that its plan to transition

competitors from aggregated to disaggregated wholesale HSA services did not proceed as expected, and ultimately the further development of a competitive retail Internet service market was hindered.

43. Given the above, the Commission considers that aggregated wholesale HSA services would meaningfully contribute to disciplining retail Internet service market dynamics and ensuring that the relevant policy objectives are furthered. The Commission therefore considers that the provision of these services by the incumbent carriers should be mandated.
44. As indicated earlier, the Commission has previously deemed access to FTTP facilities to be essential to support competition; however, it previously determined that it was appropriate to limit fibre access to disaggregated wholesale HSA services in order to encourage an industry transition toward those services. Over seven years have passed since that determination was made, and competitors still do not have viable access to FTTP facilities given the issues and delays that have affected the current wholesale HSA service framework.
45. The Commission notes that consumers are increasingly adopting retail Internet service speeds that can be provisioned only over FTTP or hybrid fibre-coaxial cable facilities. The retail market for slower-speed Internet access services (notably provisioned over copper access facilities) is rapidly shrinking, and an increasing number of customers are subscribing to FTTP services. The Commission also notes that ILECs' aggregated wholesale HSA services are technically limited relative to those of the cable carriers. In these circumstances the Commission does not consider it reasonable to rely solely on the cable carriers' aggregated wholesale HSA services as the only practical wholesale option over the foreseeable future for competitors that wish to compete for subscribers to higher-speed services.
46. The Commission considers that it is not reasonable to expect competitors to rely on a framework that does not provide for viable access to FTTP facilities and that there is significant cause to believe that such access cannot be provided for under the existing framework. The Commission also considers that efforts to reconfigure disaggregated wholesale HSA services would be ineffective and only serve to further delay the realization of the objectives being pursued, namely competitive dynamics in the retail Internet service market that serve to ensure the achievement of the policy objectives. As indicated in Telecom Decision 2023-53, there are underlying issues with disaggregated wholesale HSA services such that there is expected to be a very limited adoption of the services going forward.
47. The Commission is therefore of the preliminary view that the provision of aggregated wholesale HSA services should be mandated and
 - should no longer be subject to the limitations imposed in Telecom Regulatory Policy 2015-326 – including the unavailability of FTTP facilities over the incumbent carriers' aggregated wholesale HSA services – to encourage the transition to disaggregated wholesale HSA services; and

- can effectively co-exist with disaggregated wholesale HSA services and should not be subject to any phase-out, even where disaggregated wholesale HSA services have been implemented.
48. Interveners are invited to comment on the Commission's preliminary view, as well as whether other enhancements or changes are required to aggregated wholesale HSA services in order to facilitate a more vibrant and sustainable competitive retail Internet service market.
 49. The rates for aggregated wholesale HSA services were made final in Telecom Decision 2021-181 and the expected phase-out of those services informed the Commission's decision to not pursue a more detailed review of the associated costs at that time. The Commission considers that the underlying costs upon which those rates were established may no longer be appropriate, given the developments in technology and service delivery that have occurred since those costs were last reviewed.
 50. Given the above, the rates for aggregated wholesale HSA services are included in the scope of this review.
 51. The Commission **directs** the incumbent carriers to file tariff applications with proposed rates for aggregated wholesale HSA services. Directions with regard to these tariff filings are set out below.
 52. Notwithstanding the Commission's goal to establish revised aggregated wholesale HSA service rates more expeditiously, the Commission recognizes that because of the complexity and volume of cost studies, it will take some time to complete this exercise. The Commission is concerned, however, that the current aggregated wholesale HSA service rates may no longer be just and reasonable, given that, for example, usage-driven equipment costs have likely decreased since the last time the costs were reviewed. As such, the existing wholesale rates may be limiting the competitiveness of competitors as observed by their collective decrease in subscribership.
 53. The Commission therefore considers it appropriate to reduce, on an interim basis until revised final rates are established, the existing rates for some aggregated wholesale HSA services to account for anticipated reductions in the costs of traffic-sensitive components for these services. Accordingly, the Commission **determines** that the rates for aggregated wholesale HSA services are to be made interim, and applies an immediate interim reduction to existing rates that reflects a 10% decrease in the costs of traffic-sensitive components used to inform the current rates. The Commission considers that this immediate interim reduction is reasonable and will minimize the risks of harm associated with potential retroactive payments.
 54. The Commission **directs** the incumbent carriers to file updated tariffs reflecting this reduction. Directions with regard to these tariff filings are set out below.

55. Interveners are invited to comment on the application of this interim rate reduction. The Commission may establish an updated interim rate after assessing the interventions. If the record of this proceeding shows that further rate reductions are appropriate, the Commission is prepared to make such a determination.

Updates to disaggregated wholesale HSA services

56. In Telecom Decision 2023-53, the Commission indicated that disaggregated wholesale HSA services would remain available in Ontario and Quebec pursuant to their existing configurations, should competitors wish to avail themselves of the service. Moreover, the rates, terms, and conditions associated with those services remained interim, given the limited scope of Telecom Notice of Consultation 2020-187 (the notice that led to Telecom Decision 2023-53).
57. The Commission notes that the cost studies used to establish the current interim rates for disaggregated wholesale HSA services are dated and that new cost studies would likely be required in order to establish new just and reasonable rates for those services.
58. The Commission recognizes, however, that the demand for disaggregated wholesale HSA services is expected to remain limited, at least in the near term, and that requiring the industry to invest more time into the establishment of revised rates for disaggregated wholesale HSA services may not be proportionate to the associated benefit.
59. Interveners are therefore invited to comment on what the future of disaggregated wholesale HSA services is expected to be, including the potential demand for the services. Interveners are also invited to comment on whether the Commission should consider changes to the existing disaggregated wholesale HSA service rates – for example, whether the interim rates should be made final, whether it would be appropriate to consider rate reductions, how the associated costs should be recovered, or whether another rate-setting methodology (e.g., final offer arbitration) should be applied to establish revised rates.

Measures to further develop competition for Internet access

60. While over 60% of Canadian households are situated in Ontario and Quebec, almost 90% of the demand for wholesale HSA services is in those provinces. Despite some growing demand in various urban centres across Alberta and British Columbia, wholesale-based competition has still not developed in provinces outside Nova Scotia, Ontario, and Quebec in a significant manner. Furthermore, outside larger urban centres, wholesale-based competition has a limited presence, resulting in less choice for consumers in those markets.
61. The Commission is concerned that the current wholesale HSA service framework is not effectively encouraging the expansion of wholesale-based competition outside the larger urban centres of Ontario and Quebec, and in some parts of Nova Scotia, and thereby not furthering competitive choices for many Canadians. Interveners are

therefore invited to comment on how – in addition to the framework changes already identified – the Commission could better support wholesale-based competition across the country, particularly areas that do not currently have significant wholesale-based competition.

62. In addition to the issues already identified with respect to competitive access to FTTP facilities, interveners are invited to identify other matters that may be preventing or discouraging the adoption of higher-speed services by competitors.
63. Furthermore, as noted earlier, the Commission recognizes the existing asymmetry between the ILECs and the cable carriers in the aggregated wholesale HSA service speed offerings given, among other things, the current state of disaggregated wholesale HSA services and the limited access to FTTP facilities. The Commission is concerned that the resulting asymmetry has distorted the market, limited choice for competitors, and ultimately limited the overall competitiveness of the retail Internet service market, thereby negatively impacting Canadian consumers. Intervenors are therefore invited to comment on any other issues associated with the asymmetry or whether additional measures should be taken by the Commission, if any, to support the equitable application of its wholesale HSA service framework.
64. Finally, the Commission notes that it collects a significant amount of information from the industry through its Data Collection System, and that some of the information gathered is presented in the Communications Market Reports, which give Canadians and the industry access to the latest data and trends affecting the market. The Commission recognizes the need to better monitor the effectiveness of its wholesale HSA service framework so that it can be adjusted in a timely manner in response to emerging competitive issues and trends. Intervenors are therefore invited to comment on potential market indicators or metrics that the Commission could adopt to measure the competitive health of the retail Internet service market, as well as how the Commission should measure the effectiveness and adequacy of its wholesale HSA service framework going forward.

Potential need and areas for retail regulation to better protect consumer interests

65. Since the 1990s, the Commission has generally forborne from the regulation of retail Internet access services across Canada,⁸ except under section 24 (related to conditions of service) and subsections 27(2), (3), and (4) [related to undue preference/disadvantage and unjust discrimination] of the Act.
66. To address concerns in a given retail market, the Commission may consider the appropriateness of mandating a wholesale service, introducing regulations at the retail level, or both. The Commission's approach has generally been to mandate a

⁸ A notable exception relates to the incumbent serving territory of Northwestel Inc. (Northwestel). In Telecom Regulatory Policy 2013-711, the Commission determined that Northwestel's terrestrial retail Internet access services would be subject to the Commission's powers and duties under sections 24, 25, 27, 29, and 31 of the Act.

wholesale remedy to address its competitive concerns in the retail Internet service market wherever feasible. Given the currently observed trends, however, including increased market concentration by incumbent carriers, a loss of subscribers by competitors, as well as the current and unresolved issues with its wholesale HSA service framework, the Commission is concerned about relying solely on wholesale regulation.

67. The Commission is of the view that it is appropriate to consider what conditions would justify the imposition of retail Internet service regulation, what regulatory measure or measures would be appropriate to impose, and whether or not such conditions have already been met.
68. Accordingly, interveners are invited to comment on whether wholesale regulation and the competition that it supports can and should continue to be relied upon to address concerns regarding market concentration and potential exercise of market power. If so, interveners are invited to comment on what market conditions should trigger the adoption of additional regulatory measures at the retail level. Intervenors are also invited to comment on what types of retail regulation – in particular through the use of conditions under section 24 of the Act (section 24 conditions) – may be appropriate for the Commission to consider before contemplating further forbearance, including retail rate regulation with respect to sections 25 and 27 of the Act.

Whether access to FTTP facilities over aggregated wholesale HSA services should be mandated on a temporary basis

69. The Commission considers that, while mandating a more effective and permanent wholesale service that supports competitive access to FTTP facilities to be a key consideration in this proceeding, the regulatory process and developing an evidentiary record required to reach a determination on this matter will take time. The Commission is concerned that competitors, many of whom are currently losing subscribers, and the wholesale market as a whole, may suffer significant harm if it does not take action sooner.
70. Moreover, the Commission considers that a number of incumbent carriers have made fibre the focus of the retail Internet service market, resulting in a seven-year head start in establishing and securing a broad customer base by building out and deploying their fibre access networks, which now cover most of their serving territories. Therefore, the Commission expects that there would be minimal risk regarding the future investment of fibre deployment by accelerating the competitive introduction of FTTP facilities.
71. As a result, the Commission will include the acceleration of competitor access to FTTP facilities within the scope of this proceeding. Given the Commission's concerns regarding the state of wholesale-based competition, this issue will be prioritized above all others.

72. In light of (i) the developments in the regulatory environment and retail Internet service market discussed above; (ii) the Commission's determinations in Telecom Decisions 2023-53, 2023-54, and 2023-55; (iii) the time needed to conduct the current review and implement any resulting determinations; and (iv) the Commission's preliminary view regarding the provision of FTTP facilities over aggregated wholesale HSA services, the Commission is of the preliminary view that the provision of FTTP facilities over aggregated HSA services should be mandated on a temporary and expedited basis, at least until the conclusion of this proceeding.

Tariff filing requirements

73. In this notice and related decisions issued today, the Commission has communicated significant concerns with the ability of its current wholesale HSA service framework to provide for meaningful market discipline and achievement of the policy objectives. The Commission has determined that traffic-sensitive components of aggregated wholesale HSA service are immediately reduced by 10%, and has set out a number of preliminary views. While the Commission will only make determinations on its preliminary views after consideration of the record that will be developed in response to this notice, the Commission considers that in order to act expeditiously should some of these views be confirmed, it would be appropriate to require the incumbent carriers to make certain advance tariff filings.

74. With regard to the preliminary view set out above, the Commission **directs** the incumbent carriers to

- file, by **24 April 2023**, proposed tariffs and associated cost studies using the Phase II costing methodology,⁹ with supporting rationale, for FTTP facilities over aggregated wholesale HSA services; and
- file new Phase II cost studies to establish rates for aggregated wholesale HSA services, by **22 June 2023**.

75. With regard to the rate reduction determination set out above, the Commission **directs** the incumbent carriers to file, by **17 March 2023**, revised tariffs reflecting the required 10% decrease in the costs of traffic-sensitive components used to inform the current rates, keeping all else equal, for aggregated wholesale HSA services.

76. Additional details will be provided by way of separate Commission staff letters.

77. The Commission will only approve proposed tariffs related to FTTP if it decides, on the basis of the record to consider this matter, that such access is appropriate.

⁹ The Commission notes that the costing principles adopted in this review will be informed by the outcomes of the proceeding initiated by Telecom Notice of Consultation 2020-131.

Issues not within the scope of the proceeding

78. The Commission initiated Telecom Notice of Consultation 2022-147 to consider what regulatory measures are required to support consumers in the Far North, notably with respect to the regulation of retail and wholesale Internet access services. As a result, matters relating to the provision of wholesale HSA services by Northwestel Inc. will not be considered in this proceeding. At the same time, the Commission does not consider it necessary or appropriate to extend the application of the wholesale HSA framework to the rest of Canada beyond the network footprints of the large ILECs and cable carriers at this time. For this reason, extending wholesale HSA service obligations onto any carrier not currently subject to those obligations will not be considered in this proceeding.
79. While the Commission has concerns with respect to the availability of competitive transport services in different areas of the country and considers that the regulatory status of these services requires further examination, the Commission is concerned that including such issues within the scope of this proceeding would significantly expand the scope of the review, potentially delaying the resolution of other significant competitive issues. While parties may file evidence related to the availability of competitive transport services in support of their positions regarding either aggregated or disaggregated HSA services, the Commission is excluding the regulatory status of transport services from the scope of this review. The Commission notes, however, that it will consider more broadly issues related to the availability of competitive transport services and the potential to reimpose associated regulatory obligations through existing or separate proceedings to be identified at a later a date.

Call for comments

80. The Commission invites comments on the issues identified above:
- i. The Commission's preliminary view that the provision of FTTP facilities over aggregated HSA services should be mandated on a temporary and expedited basis.
 - ii. The applicability of the Commission's previous essentiality analysis and whether there are any significant developments that would warrant a reconsideration or change to the previous findings.
 - iii. The state of competition in the retail Internet service market.
 - iv. The Commission's preliminary view that the provision of aggregated wholesale HSA services should be mandated and
 - should no longer be subject to the limitations imposed in Telecom Regulatory Policy 2015-326 – including the unavailability of FTTP facilities over the incumbent carriers' aggregated wholesale HSA

services – to encourage the transition to disaggregated wholesale HSA services; and

- can effectively co-exist with disaggregated wholesale HSA services and should not be subject to any phase-out, even where disaggregated wholesale HSA services have been implemented.
- v. Whether other enhancements or changes are required to aggregated wholesale HSA services to facilitate a more vibrant and sustainable competitive retail Internet service market.
- vi. The application of an interim rate reduction that reflects a 10% reduction in the cost of traffic-sensitive components used to inform the current rates for aggregated wholesale HSA services.
- vii. What the future of disaggregated wholesale HSA services is expected to be, including the potential demand for the services.
- viii. Whether the Commission should consider changes to the existing disaggregated wholesale HSA service rates – for example, whether the interim rates should be made final, whether it would be appropriate to consider rate reductions, or whether another rate-setting methodology should be applied to establish revised rates.
- ix. How the Commission could better support wholesale-based competition across all regions of the country, particularly areas that do not currently have significant wholesale-based competition, including many Indigenous communities.
- x. Other matters that may be preventing or discouraging the adoption of higher-speed services by competitors.
- xi. Any other issues associated with the asymmetry or the equitable application of the Commission’s wholesale HSA service framework.
- xii. Potential market indicators or metrics that the Commission could adopt to measure the competitive health of the retail Internet service market, as well as how the Commission should measure the effectiveness of its wholesale HSA service framework going forward.
- xiii. Whether wholesale regulation and the competition that it supports can and should continue to be relied upon to address concerns regarding market concentration and the potential exercise of market power. If so, indicate what market conditions should trigger the adoption of additional regulatory measures at the retail level.

- The areas and types of retail regulation that the Commission should consider, in particular through the use of section 24 conditions of service.

81. Submissions should include all necessary rationale and supporting evidence.
82. The Commission will also issue requests for information shortly by way of separate letter.
83. Given the importance of the above-identified issues and the resources required to address these matters in a timely fashion, the Commission considers that new applications or tariffs that are filed over the course of this proceeding on other wholesale HSA-related matters that fall outside the scope of this review will be subject to delays or will be deferred until this review is completed. Any parties making such filings will be duly advised.
84. Moreover, given the intent to address the issue of mandating temporary FTTP access over aggregated wholesale HSA services on an expedited basis, the Commission considers that procedural requests by interveners that the Commission finds will unduly delay or impede this process will not be granted.

Procedure

85. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at www.crtc.gc.ca, under "[Statutes and regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
86. As discussed above, the Commission envisions a multistage process, which will allow expedited decisions on the most pressing matters, and an agile process that can evolve in light of the submissions of parties and changes in the market. Therefore, the Commission strongly encourages all interested persons to follow the public record of this proceeding, since changes to the procedure may be announced by way of a modification to the notice of consultation, a Secretary General letter, or a Commission staff letter, depending on the circumstances.
87. Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Communications Inc.; Rogers Communications Canada Inc.; Saskatchewan Telecommunications; Shaw Cablesystems G.P.; TELUS Communications Inc.; and

Videotron Ltd. are made parties to this proceeding and may file interventions with the Commission on all issues within the scope of this proceeding.

88. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding any issues within the scope of the proceeding.
89. Interventions must be filed in accordance with section 26 of the Rules of Procedure.
90. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.

Expedited process on the matter of temporary FTTP access over aggregated wholesale HSA services

91. The first step of the process will be the filing of initial interventions that speak to the matter of temporary FTTP access over aggregated wholesale HSA services.
92. Parties and interested persons may file interventions on the above-noted issue by **24 April 2023**.
93. Parties may request the public disclosure of information that has been designated confidential in parties' interventions, setting out in each case the reasons for disclosure. These requests must be filed with the Commission, and served on the parties to whom they are addressed, by **4 May 2023**.
94. Responses to requests for public disclosure must be filed with the Commission, and served on the parties making the requests, by **15 May 2023**.
95. Determinations regarding requests for public disclosure will be issued as soon as possible.
96. All parties may file with the Commission, by **6 June 2023**, replies to interventions regarding whether the Commission should mandate temporary FTTP access over aggregated wholesale HSA services.

Interventions on all other issues within the scope of the proceeding

97. Parties and interested persons may file interventions on all other issues within the scope of the proceeding by **22 June 2023**.

Filing of tariffs, additional process, and public hearing

98. Incumbent carriers will be required to file the information set out in paragraphs 74 and 75 of this notice. The process associated with these filings is set out in the Rules of Procedure unless otherwise amended by way of letter.

99. Commission staff will issue requests for information shortly. The process for providing responses as well as for the public disclosure of information that has been designated confidential will be set out in the letter accompanying these requests for information.
100. Other procedural steps associated with this proceeding, including the filing of replies on issues other than mandating temporary FTTP access over aggregated HSA services, will be provided at a later date.
101. The Commission will hold a public hearing, on a date to be determined later, at **the Conference Centre, 140 Promenade du Portage, Gatineau, Quebec**. Because the date for the hearing has not been announced, parties and interested persons are not required to request in their initial intervention whether they request to appear at the public hearing or not. They will be provided with additional details and instructions with respect to the public hearing at a later stage in the process.
102. Only persons that have filed an intervention, as provided for in paragraphs 92 and 97 of this notice, will be permitted to participate during subsequent portions of the proceeding. This restriction does not apply to any processes associated with tariff filings.
103. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
104. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
105. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

106. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
107. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline.
108. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

109. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.
110. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
111. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
112. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

113. Links to interventions, replies, and answers filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.

114. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *John P. Roman – Request for review of the Commission’s determinations regarding forbearance from regulation*, Telecom Decision CRTC 2023-55, 8 March 2023
- *Competitive Network Operators of Canada – Request for temporary access to fibre-to-the-premises facilities*, Telecom Decision CRTC 2023-54, 8 March 2023
- *Network configuration for disaggregated wholesale high-speed access services*, Telecom Decision CRTC 2023-53, 8 March 2023
- *Call for comments – Telecommunications in the Far North, Phase II*, Telecom Notice of Consultation CRTC 2022-147, 8 June 2022; as amended by Telecom Notices of Consultation CRTC 2022-147-1, 14 July 2022; and 2022-147-2, 24 July 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
- *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020; as amended by Telecom Notice of Consultation CRTC 2020-187-1, 22 July 2020
- *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
- *Call for comments regarding barriers to the deployment of broadband-capable networks in underserved areas in Canada*, Telecom Notice of Consultation CRTC

2019-406, 10 December 2019; as amended by Telecom Notices of Consultation CRTC 2019-406-1, 20 December 2019; and 2019-406-2, 21 April 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
- *Interim rates for disaggregated wholesale high-speed access services in Ontario and Quebec*, Telecom Order CRTC 2017-312, 29 August 2017; as amended by Telecom Order 2017-312-1, 12 September 2017
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Follow-up to Telecom Regulatory Policy 2015-326 – Implementation of a disaggregated wholesale high-speed access service, including over fibre-to-the-premises access facilities*, Telecom Decision CRTC 2016-379, 20 September 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
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and other matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision 2008-17, 3 March 2008