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July 19, 2022

RE: National Capital FreeNet representations concerning the *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, Canada Gazette, Part 1 published 4 June 2022.

Mr. Arbour,

1. Our understanding is this proposed Order arises in part as a response to the petitions to the Governor in Council concerning Telecom Decision CRTC 2021-181 and serves, instead of overturning that decision with alternate rates, to acknowledge “concerns about competition in the Internet services market and the part that these rates have to play in driving these concerns.”¹
2. The new Order would replace the 2006 Direction² and 2019 Direction³ to ensure interpretative clarity moving forward. This seems both necessary and valuable.

¹ Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy, Regulatory Impact Analysis Statement p. 3

² SOR/2006-355

³ SOR/2019-227

3. This Order also aims to help alleviate the increase in delays and uncertainty with CRTC decisions over the past five years. These delays have indeed made it harder for NCF to make business decisions, including around pricing, network investments, expanding our community services and expanding a lower-cost offering, which has ultimately affected NCF's sustainability at a time when affordable internet access is more important than ever.
4. We support the proposed Order, for the reasons detailed below. That said, we also have some concerns about CRTC compliance with past policy directions and the resulting lack of meaningful enforcement, and therefore how the proposed direction in the new Order can be ensured.

About NCF

5. NCF is a not-for-profit Internet Service Provider based in Ottawa. Founded in 1992 we have connected more than 100,000 members. We believe that everyone in the national capital region deserves access to affordable and high-quality internet that they can understand how to use, while feeling safe online. We are also committed to digital equity, which is an understanding that the digital divide is not random but instead mirrors and exacerbates other existing social inequities.
 6. Our services include selling residential and commercial wholesale DSL and cable internet, an award-winning HelpDesk of staff and volunteers, free locally-hosted email, basic web hosting and dial-up internet connectivity, as well as digital literacy resources, including workshops that have supported members of the community getting online, explored online privacy, helped those on low incomes apply online for government programs like the Ontario Electricity Support Program, the Canada Learning Bond, and more.
 7. In 2017 we established our Community Access Fund, offering a 6Mbps speed plan with unlimited usage for Ottawa Community Housing (OCH) tenants for \$25/month.
 8. We currently serve around 5,000 members of whom around 2900 are subscribers to our broadband internet services, 300 of whom subscribe through our Community Access Fund plan for OCH tenants.
 9. During the pandemic NCF established the Digital Equity Ottawa Coalition with the Social Planning Council of Ottawa, working with other social service organizations and community stakeholders to research and help address the widening digital divide during COVID-19.
 10. As a social enterprise, we are structured like many other independent service-based ISPs that also wholesale internet services and believe we share many concerns. However, NCF is one of very few not-for-profit ISPs in Canada. We wish there were more. Though we are small, we believe our mission combined with our not-for-profit business model makes us
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uniquely placed to assess elements of how wholesale internet regulation decisions can promote competition, affordability, consumer interests and innovation.

Support for the proposed Order's Direction and Key Objectives

11. NCF wholly supports the key objectives in the proposed Order, which are the same as the principles of the 2019 Order. Our rationale and considerations include:
12. As a non-traditional Internet Service Provider with a focus on affordability, the need for CRTC decisions to encourage all forms of competition, which can and should include not-for-profit providers, municipal providers, co-operative providers, and others outside large commercial incumbents and commercial wholesale-based providers, is crucial. We note that this key objective could also include considerations of community and social investment and financial investments in network redundancy and resilience, as well as large-scale financial investments by incumbents to expand access and offerings.
13. As the Regulatory Impact Analysis Statement of this order discusses, the CRTC's 2020 Communications Market Report found that the share of residential Internet access subscriptions provided by wholesale-based ISPs, already only 13% of the market in 2019, declined by one percent in 2020. Given that, we would suggest that incumbent telecommunications service providers exercise significant market power and that particular attention must be taken in future Commission decisions to foster affordability and lower prices in this context.
14. NCF largely serves urban areas with near-universal access to internet, where people don't subscribe to services because of high prices rather than because they're not available. That said, we do have some members in Gatineau and rural parts of Ottawa and the surrounding counties that need higher speed than they are able to access. We also support the idea that all Canadians need and deserve reliable high speed access. We particularly think it's important that universal access to all regions in Canada ensures that the access is also affordable.
15. As a member-driven organization with an elected Board of Directors representing the community we serve, NCF works hard to be transparent about our processes and decisions, respecting the rights of our members. We have never required contracts, offer no limited-time offers that jump substantially in price after a few months, or other forms of differential pricing. We also don't have sales targets for any of our staff so we can be assured we are recommending what are members need, rather than what we want to sell them. We would welcome future decisions to help regulate best practices and consumer protection. This is particularly important for people with disabilities, who are more likely to face barriers to digital inclusion.
16. As a small, regional provider that would also love to see new not-for-profit providers springing up to serve their specific communities, we appreciate the inclusion of considerations of barriers to competition and to entry in future CRTC decision-making.

17. We would suggest, just as we think the CRTC should encourage *all forms* of competition and investment, so should they enable *all forms* of innovation in telecommunications services and differentiated service offerings. National incumbent providers are certainly well-placed to develop certain kinds of large-scale capital-intensive technological innovations. However, there should also be considerations of other kinds of innovation, including social innovation in service delivery or differentiated service offerings that target smaller and under-served markets.
18. Finally, and similar to the point above, we believe investment in research and development is often considered the sole province of national incumbent service providers and can be used as a hedge against calls for greater affordability. Instead, we believe the CRTC should also consider how to stimulate investment in research and development and other intangible assets supporting the provision of telecommunications services from wholesale-based providers as well as incumbents.

Support for Principles of Effective Regulation

19. While all the principles in this section are important and useful, we would like to particularly underscore our support for CRTC decisions that are transparent and based on sound and recent evidence.
20. In relation to decisions of an economic nature, we would again note that when balancing the proposed objectives, that high-quality networks and innovative services are not the sole province of incumbent providers.

Support for Considerations for Fixed Internet Competition

21. NCF would not exist without a regulatory framework mandating access to wholesale services for fixed Internet. We believe our existence, as well as that of other wholesale-based ISPs, has fostered significant competition, ensuring consumer choice and greater affordability, as well as other benefits. As such we support that the proposed Order directs that the Commission must maintain this framework.
22. In our planning, we have been concerned that NCF and other small wholesale-based ISPs might not survive a transition to a wholly disaggregated wholesale access service. As such, we support that the proposed Order directs that the Commission must mandate its ongoing provision. To ensure that it is applied equitably across carriers, we would suggest that this must also include aggregated access to FTTH services rather than maintaining existing aggregated services alongside separate disaggregated FTTH infrastructure that will only be available to the large wholesale-based providers that can afford to access it.
23. We further suggest that in determining the potential end of an aggregated system, considerations of what is meant by broad, sustainable and meaningful competition without aggregated access must err on the side of caution and inclusion, in line with the key objectives related to encouraging all forms of competition.

24. We also support that the proposed Order directs that the Commission must maintain the infrastructure to offer a variety of speeds, including low-cost options in all regions as this would necessarily eliminate affordable options.

Support for other elements of the Order

25. As a member of the Commission for Complaints for Telecom-television Services, we support measures that strengthen its work and other work that strengthens the position of consumers in their relationships with service providers.
26. We would just note that as a small not-for-profit provider, we would expect any requirements consider the capacity of the provider's finances, staff, and technical capabilities.
27. NCF also supports the provision of universal internet and other telecommunications service. However, we again want to underscore that universal access without affordability measures is universal in name only and often leaves behind the most marginalized.

Ensuring compliance

28. The Compliance and enforcement section of the Regulatory Impact Analysis Statement of the proposed Order states that "its measures are direct but give considerable discretion to the CRTC" and that "the proposed 'Key objectives' and 'Principles of effective regulation' sections would help guide the CRTC as it implements the Direction."
29. The same document later states that "in recent years, the Government has received multiple petitions to intervene on technical matters. The Government's view is that it is more appropriate for the CRTC to adjudicate and implement these matters in consultation with industry based on policy guidance provided by the Government."
30. Finally, the Compliance and enforcement section of the Regulatory Impact Analysis Statement states that the CRTC is bound to exercise its powers under the Act and "can also be reviewed by the GIC on the basis of a petition in writing presented to it or on its own motion, which therefore provides another means to ensure compliance."
31. We agree with the analysis that the CRTC staff and Commissioners are experts in their fields and well placed to make these kinds of regulatory decisions, guided by government policy. That is why we support the proposed Order.
32. However, the Commission is not infallible and policy guidance is of limited value if the government is unwilling to intervene during those times that CRTC decisions do not reflect its policy direction.
33. While we will not review the details of the petitions related to CRTC 2021-181, we will note that the new proposed Direction includes as its key objectives the exact same principles as in the 2019 Direction, including promoting competition and affordability.

34. NCF, TekSavvy and CNOC all argued in their petitions that the CRTC 2021-181 decision contravened the previous policy directions, including the 2019 principles promoting competition and affordability. The government acknowledged these concerns in the development of this new proposed Direction, and yet let the previous wholesale rate decision stand, stating that “it is not appropriate to put in place rates the CRTC has determined are based on material errors across different cost factors, as the petitioners have requested. Nor will the Government set alternative rates.”
35. We raise this concern because of the future possibility of providers, be they wholesale-based or incumbent, feeling they need to resort to petitions to the Governor in Council, an acknowledged compliance mechanism of the proposed Order and Directions before it, if the Commission makes a decision that does not follow the Direction. We would argue that it is wholly appropriate for the Government to act in such cases and not doing so erodes the value of the proposed Direction.

Conclusion

36. As a small, regional not-for-profit wholesale-based internet service provider, National Capital FreeNet supports the proposed Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy and we look forward to future Commission decisions that live up to its key objectives and other tenets.

Thank you,



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