



National  
Capital  
**FreeNet**

**Libertel**  
de la Capitale  
Nationale

Petition of National Capital FreeNet Inc.  
to the Governor in Council  
to vary

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

August 25, 2021

1. National Capital FreeNet (“NCF”) is filing this petition because we believe Telecom Decision CRTC 2021-181<sup>1</sup> does not promote competition, affordability, or consumer interests, as ordered in the 2019 Policy Direction<sup>2</sup>, but instead actively inhibits these goals, while disproportionately affecting those living on low incomes.

2. As such, NCF requests a review of Telecom Decision CRTC 2021-181 and an Order in Council to reinstate Telecom Decision CRTC 2019-288<sup>3</sup>.

3. We are concerned about the amount of time required to make a decision, given that it took more than four years between the release of the 2016 Interim Rates Decision<sup>4</sup>, the 2019 Rates Decision, which lowered wholesale access rates retroactive to the 2016 decision and, following the incumbent appeals to the Federal Court of Appeal, the Supreme Court, the Governor in Council and the CRTC, the 2021 Rates Decision that reverted to the 2016 interim rates. This time lag and the ensuing rates reversal made it significantly harder for NCF to expand digital equity programs, plan operations and fundamentally threatens our sustainability. We therefore request that this petition be addressed on an expedited basis.

### **Introduction to NCF and our business model**

4. NCF is a not-for-profit Internet Service Provider committed to digital equity. It is the oldest ISP in the National Capital Region, serving members in both Ontario and Quebec. We believe everyone in our region deserves access to affordable and high-quality Internet that they understand how to use, while feeling safe online. Since 1992 we have connected more than 100,000 members.

5. Our services include selling DSL and cable Internet, an award-winning HelpDesk of staff and volunteers, free locally-hosted email and basic web hosting, and dial-up Internet connectivity, as well as digital literacy workshops that have supported seniors getting online, explored online privacy, helped those on low incomes apply online for government programs like the Ontario Electricity Support Program and the Canada Learning Bond, and more.

6. We founded Digital Access Day in 2018 to draw attention to the ways the digital divide mirrors and exacerbates existing social inequities. We also recently established a Digital Equity Ottawa Coalition with the Social Planning Council of Ottawa, working with other social service organizations and community stakeholders to address the widening digital divide during COVID-19 and working across the community to address digital equity during the pandemic and beyond.

7. We currently serve more than 5000 members of whom about 3000 are subscribers to our broadband Internet services.

8. NCF believes that our work as a not-for-profit with a mandate for affordability makes us uniquely placed to identify how the 2021 Rates Decision is further entrenching the digital divide. However, as a social enterprise, we are structured like many other independent service-based ISPs that also wholesale

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<sup>1</sup> Telecom Decision CRTC 2021-181 (“the 2021 Rates Decision”)

<sup>2</sup> 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 (“the 2019 Policy Direction”)

<sup>3</sup> Telecom Decision CRTC 2019-288 (“the 2019 Rates Decision”)

<sup>4</sup> Telecom Decision CRTC 2016-396 (“the 2016 Interim Rates Decision”)

Internet services. As such, we support the arguments raised in the petitions by TekSavvy Solutions Inc. and the Competitive Network Operators of Canada and recognize that this issue has a wider impact beyond NCF members, ultimately affecting all Canadians.

9. The most obvious difference between NCF and for-profit ISPs, be they independents or incumbents, is that we do not have a profit motive in our pricing for our members. Instead, we work to keep our prices as low as we can while staying sustainable, rather than as high as the market will bear. For example, we do not offer short-term introductory prices which increase later or have an ever-changing menu of offers that mean different people may pay different rates for the same services. We believe these practices work against those from marginalized communities.

10. Our revenue model also includes donations and project grants, which help offset some of our overhead costs, as does engaging volunteer support on our HelpDesk.

11. As an example of this pricing in practice, NCF started offering Internet access in 2005, charging \$29.95/month for 75 GB of usage on a 6/0.8 Mbps speed line. We maintained that price until 2010, while increasing usage to 350 GB. With the introduction of higher speed plans up to 50/10 Mbps, our lowest rate plan only increased to \$30.95 per month through 2016. Then, following the CRTC Interim Rates Decision to drop CBB rates, we lowered all our prices in 2017 and made all our plans unlimited usage for no additional cost.

12. That said, growing usage costs, the continuation of CRTC-regulated higher access rates and other rising costs made our operations unsustainable. As a result, we have had to raise prices twice since March 2020.

13. We know that affordability for our members – and all Canadians – is important. Through our work, including member feedback, as well as a project where we partnered with low-income advocates ACORN, and a recent survey of Ottawa Community Housing tenants, we know that those living on low incomes are disproportionately affected by high costs and need affordability to get and stay connected.

14. To address this need for affordability, NCF launched our Community Access Fund in 2017, which offers a 6/0.8 Mbps speed plan with unlimited usage for \$25/month to all Ottawa Community Housing tenants. It currently has around 300 subscribers.

### **Outcomes of the Telecom Orders CRTC 2019-288 and CRTC 2021-181**

15. After the 2019 Rates Decision was released with its more affordable wholesale access rates, NCF planned to expand our Community Access Fund program, offering higher speeds for less money to a wider range of people living on low incomes. To reflect lower costs, we also planned to lower our regular Internet prices for all members, as we had before.

16. We have also been working on a feasibility study for a community mesh network that would offer home connectivity and free public Wi-Fi based around Ottawa Community Housing tower blocks in neighbourhoods that face the highest level of social inequities. The retroactive refund included in the 2019 Rates Decision would have given NCF the funding to invest in a pilot to test this model and scale it, once proven.

17. Once the 2019 Rates Decision was released, we were waiting for the outcome of the incumbents' appeals to the Federal Court of Appeal, the Supreme Court, the Governor in Council and the CRTC to move forward.

18. We were heartened with the Federal Court of Appeal's decision to uphold the 2019 Rates Decision, determining that the incumbents' arguments were of "dubious merit", and that the Supreme Court of Canada rejected a further appeal.

19. We also appreciated when the Governor in Council chose not to overturn the 2019 Rates Decision<sup>5</sup>, although we thought the fears about protecting the investments of the incumbents were over-stated, given the longstanding history of this argument whenever incumbents' market capture is challenged by being mandated to provide wholesale access. We also note the history of significant quarterly profits for incumbent telecom companies, and the longstanding benefits they have had and continue to receive from large-scale right-of-way access on public lands.

20. The Universal Broadband Fund ("UBF") also helps alleviate some of the concerns about incumbent investments in under-served rural, remote and Indigenous communities as the UBF directly funds ISPs, particularly large incumbent telecoms, to reach these communities.

21. Then in May 2021, more than a year and a half after the incumbents' appeal, we were devastated by the CRTC's reversal of the decision through the release of the 2021 Rates Decision, which basically finalized the 2016 interim rates.

22. As a result of this decision, NCF has to maintain the price increases we implemented during the pandemic and may have to continue to raise our prices to remain sustainable. We have paused the expansion of our Community Access Fund program to other beneficiaries at a lower cost for higher speeds. We are also left trying to find other ways to finance our investment in a community mesh network for free public Wi-Fi and affordable home connectivity in neighbourhoods facing high inequities.

23. This decision feels like the sustainability and community-minded investments of a not-for-profit, as well as the lower prices brought about by increased competition, have been sacrificed to ensure the continued dominance and profits of the incumbents. We believe this trade-off does a disservice to all Canadians, and disproportionately hurts those living on low incomes.

### **Internet affordability**

24. Telecom Regulatory Policy CRTC 2016-496 established a universal service objective of 50/10Mbps. Yet five years later, the CRTC 2020 Communications Monitoring Report showed that although 87.7 percent of urban and rural households have at least a 50/10Mbps service available, only 51.5 percent of households are actually subscribed to home Internet services with speeds that meet that objective. High prices help explain this difference between access and uptake.

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<sup>5</sup> <https://www.canada.ca/en/innovation-science-economic-development/news/2020/08/response-by-the-government-of-canada-to-petitions-concerning-crtc-wholesale-internet-rates.html>

25. The 2020 CRTC Communications Monitoring Report also showed that households in the lowest income quintile spend 13 times the percentage of their income on Internet expenditures as households in the highest income quintiles<sup>6</sup>.

26. A 2019 survey by low-income rights group ACORN<sup>7</sup> found that 65 percent of those surveyed said they had to sacrifice food and medicine to pay for Internet services. ACORN also found that 91 percent of households with no children and 84 percent of households with one or more children said they think Internet services are too expensive.

27. To update this data during the pandemic, NCF surveyed more than 300 low-income Ottawa Community Housing tenants in conjunction with the Social Planning Council of Ottawa. We found that 22 percent of respondents did not have a home Internet connection at all, similar to the recently released Statistics Canada's Canadian Internet User Survey 2020 findings<sup>8</sup>, with more than half citing the reason that Internet access is too expensive.

### **Unintended consequences of low-income Internet programs**

28. Given the creation in 2017 of the Connecting Families Program<sup>9</sup> supported by Innovation, Science and Economic Development Canada, it would be easy to suggest that affordability for those living on low-incomes has been addressed.

29. The original Connecting Families program offered at least 10/1Mbps speed and a minimum of 100 GB of usage for \$10 per month for up to 220,000 families across Canada, chosen by lottery for those that received the maximum Canada Child Benefit. A recent press release about the program reported that more than 75,000 families throughout Canada had benefited from the program by August 2021.

30. After criticism about the speed limitations and the need for wider eligibility, Connecting Families 2.0<sup>10</sup> was recently announced, with speeds up to 50/10Mbps with 200 GB of usage for \$20 per month, adding low-income seniors as potential beneficiaries.

31. Given NCF's mandate, we are thrilled that this program enables more low-income families to get connected. That said, there are structural issues with the program that reflect problems with the 2021 Rate Decision.

32. Of the 13 ISPs participating in Connecting Families 2.0, all of them are facilities-based, owning their own networks. NCF was happy to find that five of the participating ISPs are co-operatives and one is municipally-owned, as we believe this underscores the ways that non-profit, municipal and non-traditional ISPs strengthen the telecommunications market for the better. The other program

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<sup>6</sup> Subscriptions by Income Quintile - Communications Monitoring Report 2020 - CRTC

<sup>7</sup> ACORN Canada Internet for All Campaign <https://www.Internetforall.ca/campaign>

<sup>8</sup> Canadian Internet Use Survey, 2020

<https://www150.statcan.gc.ca/n1/daily-quotidien/210622/dq210622b-eng.htm>

<sup>9</sup> <https://www.ic.gc.ca/eic/site/111.nsf/eng/home>

<sup>10</sup> <https://www.canada.ca/en/innovation-science-economic-development/news/2021/08/affordable-high-speed-internet-for-low-income-seniors-and-families.html>

participants, including Bell, Rogers, Telus, are mandated by the CRTC to provide wholesale Internet access through the tariff rates that are the subject of this appeal.

33. NCF is frequently asked by our members why, given our mandate, we do not participate in this program. We would like to. Unfortunately, the current Bell wholesale tariff line rate for both a 10/1 Mbps and 50/10 Mbps DSL connections is \$23.79 per month per subscriber. This does not include a potential dry line for those without landline service, for which the tariff rates range from \$4.25 to \$22.10 per month per subscriber, depending on where they live. This does not include data usage and overhead costs for operations. This is deeply unsustainable for NCF and means the program reflects and reinforces the anti-competitiveness of the 2021 Rates Decision.

34. Under the 2019 Rates Decision, the wholesale tariff line rate for a 50/10Mbps DSL connection from Bell would have dropped to \$14.78 per month per subscriber. Again, this does not include a dry line, usage or overhead. This means to offer this plan for \$20/month NCF would have to subsidize the difference with revenue from the sale of our other Internet services, as well as with the support of donations and grants. However as this difference is similar to our existing Community Access Fund plan, based on a tariff rate of \$15.61 for a 6/0.8Mbps line, we can reasonably say we could offer this service.

35. Similarly, under the 2019 Rates Decision, the wholesale tariff line rate for all Rogers plans, with speeds from 5/1Mbps to 1024/30 Mbps would be \$13.44 per subscriber per month, with no additional dry line charge, but not including data usage and overhead. This would make it even more possible for us to participate in the Connecting Families program, potentially even offering higher speeds.

36. The FAQ page<sup>11</sup> for the Connecting Families program states that “the government is not subsidizing ISPs to provide the low-cost Internet service.” We believe that maintaining unreasonably high wholesale Internet costs is a form of subsidization on the backs of independent ISPs and wider affordability through increased competition.

37. We have similar concerns about Rogers’ Connected for Success Program, which offers low-income plans to those living in subsidized housing, receiving social assistance and disability support, families eligible for Connecting Families, and the Guaranteed Income Supplement for seniors living on low-incomes. Again, NCF is always happy when there is improved affordability made available to those that need it most. However, this program also offers rates that are built on the structural advantages of a facilities-based ISP.

38. The Connected for Success Program<sup>12</sup>, which has recently expanded, is offering a plan with speeds up to 25/5 Mbps with unlimited usage for \$9.99 per month and a plan with speeds up to 150/15 Mbps with unlimited usage for \$34.99 per month. The current wholesale tariff rate for a 150/15 Mbps plan is \$49.06 per month per subscriber, not including usage and overhead. This is not sustainable.

39. Finally, we will note that these programs, while laudable, inevitably have cut-offs that mean that some of those living on low-incomes will not be eligible and continue to pay higher rates. Our survey of Ottawa Community Housing tenants earlier this year showed that 44 percent of those surveyed paid more than \$50 per month for their Internet service, with more than 30 percent paying more than \$70

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<sup>11</sup> Connecting Families FAQ [https://www.ic.gc.ca/eic/site/111.nsf/eng/h\\_00002.html](https://www.ic.gc.ca/eic/site/111.nsf/eng/h_00002.html)

<sup>12</sup> <https://about.rogers.com/giving-back/connected-for-success/>

per month. We need wholesale rates that ensure general affordability for all Canadians and that also makes it possible for non-profits like NCF to offer affordable Internet for those living on a range of low-incomes.

### **Missing policy directions and process concerns**

40. Many of our concerns about the lack of adherence to the 2019 Policy Direction to promote affordability, competition, low-income programs, and CRTC processes related to the 2021 Rates Decision are echoed in the recommendations from the recent *Affordability and Accessibility of Telecommunications Services in Canada: Encouraging Competition to (Finally) Bridge the Digital Divide* report of the Standing Committee on Industry, Science and Technology. These include:

- “That the Canadian Radio-Television and Telecommunications Commission establish an affordability standard for telecommunications services across Canada after consulting with various stakeholders, taking into account an affordability standard for wholesale Internet rates ensuring equitable treatment of network owners and virtual operators in order to significantly reduce the cost of bandwidth among providers, thereby encouraging more competition and reducing the price of consumer packages, and that it issue its decision within a year.
- That the Government of Canada change some of the parameters for the Connecting Families program to improve accessibility by, for example:
  - ~Changing the eligibility criteria and better targeting families to ensure all low-income households have access to it;
  - ~Requiring service providers to participate in the program and funding them directly; and
  - ~Promoting programs more strategically so that more low-income families are aware of them.
- That the Government of Canada issue a clear directive on competition to the CRTC to connect all Canadians quickly while maintaining a level playing field among telecommunications service providers, particularly between incumbent and independent providers, to ensure both the development of high-quality networks and competition that will have a meaningful impact on the quality of service and price of consumer packages.
- That the Government of Canada issue a directive to encourage the CRTC to revise its process for implementing and appeal new rates so that incumbent telecommunications service providers stop using the appeals process as a delay tactic.”<sup>13</sup>

41. We are further concerned that three years of CRTC study, resulting in the 2019 Rates Decision, was disregarded by a determination in the 2021 Rates Decision that “there is substantial doubt as to the correctness of the aggregated wholesale service rates”, and that “correcting the errors that led to the substantial doubt would, in certain cases, require additional information” while also stating that

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<sup>13</sup> <https://www.ourcommons.ca/DocumentViewer/en/43-2/INDU/report-7/>

“completing a fulsome revision of all the cost studies would prolong the period of regulatory and market uncertainty.” This would suggest that after taking nearly five years to investigate the cost structures underpinning wholesale rates, the Commission did not have enough time or information to make a decision and so instead relied on the information that underpinned the 2016 Interim Rates. This seems like a not insubstantial regulatory failure.

42. This concern is amplified by the 2021 Rates Decision stating that committing significant resources to assessing the cost structures underpinning the wholesale aggregated rates would “contribute to impeding the ultimate goal of transitioning to the adoption of disaggregated wholesale HSA service.” The major incumbents have been rolling out access to FTTP services since 2013<sup>14</sup>, untroubled by having to provide competitive wholesale access despite having been mandated by the CRTC in 2015<sup>15</sup>. The Commission has to date had at least as much time to decide FTTP access rates as it has said was not adequate to access wholesale aggregated access rates. This does not engender trust in the process.

43. We are also troubled by the statement in the 2021 Rates Decision that “the Commission’s general approach towards wholesale service regulation has been to promote facilities-based competition whenever possible” and CRTC Chair Ian Scott stating his preference for facilities-based competition in a public talk at the Canadian Club. This seems to directly contradict the 2019 Policy Directive to “encourage **all** forms of competition and investment”, “foster affordability and lower prices, **particularly when telecommunications service providers exercise market power**” and “reduce barriers to entry into the market”.

44. These concerns were not eased by the reports that Commissioner Scott met one-on-one with representatives of the major telecom incumbents throughout the rate-setting process.

## **Conclusion**

45. For all the reasons noted above, we request that the Governor in Council vary Telecom Decision CRTC 2021-181 and reinstate Telecom Decision CRTC 2019-288.

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<sup>14</sup> Telecom Notice of Consultation CRTC 2013-551

<sup>15</sup> Telecom Regulatory Policy CRTC 2015-326