

It's Time to Fight for Fair Internet:

**End the Delays and Bring Fairness and
Competition Back to Canada's Telecom Industry**



If there's one thing that 2020 has made abundantly clear, it's that internet access is absolutely essential to all facets of our lives.

All day every day, Canadians are using the internet to work, learn and stay connected from home. The way we interact with one another and with the world has changed dramatically, and it looks like many of these changes could be around for a long time.

At the very core of our nation's values is the recognition that every Canadian needs equitable access to this new way of living and working. Affordable internet service is a basic need – one that Canada's telecommunications companies have a moral responsibility to provide.

Yet Canadians pay some of the highest rates for telecommunications services in the developed world. A handful of large players effectively make up an oligopoly in our telecom industry, and they use their deep pockets and never-ending resources to obstruct competition and impede innovation where it's needed most.

It's time for this to stop. It's time we fight for fair internet.

Holding Competition (and the Country) Hostage

In the early 2000s, Canada was a telecom leader, pushing ahead of other OECD countries in broadband availability and usage.¹ But the country's leadership was short-lived. Canada ranked second (behind South Korea) in broadband penetration between 2001 and 2004, and its position slipped from there.² That slip coincided with actions by the incumbents, such as their decision to deploy technologies that could further monetize their legacy copper facilities, while Canada's incumbent peers in other countries focused on deploying next-generation fibre-to-the-home services as early as 2001. The incumbents' focus on over-monetization extended to their retail offerings as they aggressively implemented usage-based billing. As of 2007, all incumbent offers surveyed by the OECD had usage caps in place.³

It was against this backdrop that independent internet service providers (ISPs) chose to compete in a different manner, one that has led to major innovations in the industry, such as unlimited internet access.

Most Canadians take unlimited, unmetered internet access for granted today, but it wouldn't exist without the perseverance of independent ISPs.

If it hadn't been for the independent ISPs fighting for competition, innovating on packages and pricing, and driving the industry to offer unlimited

service, consumers might still be charged *by the megabyte* for internet access. The revolutionary new developments that are now pervasive in our lives – streaming services like Netflix, the video conferencing we all now do right from our homes over Zoom and Microsoft Teams, and all of the other entertainment and productivity innovations we enjoy today – would simply not be possible if that were case.

Unfortunately, we've never managed to regain our short-lived leadership, and today, Canada struggles to keep pace with other developed nations. For the last decade and beyond, we have consistently ranked among the most expensive countries for wireline internet access.⁴ In wireless, the story is equally troubling.

Our telecom system, which is prone to lawyering, lobbying and delays, is set up to favour the largest companies despite clear policy objectives intended to benefit consumers through increased competition.

Those big players, which take in 86% of total Canadian residential internet service revenues⁵, fight any and all competition efforts by smaller, independent ISPs. The industry is supposed to be regulated by a three-legged stool made up of the government, the Competition Bureau and the Canadian Radio-television and Telecommunications Commission (CRTC), yet it

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seems that at least one of those legs is always struggling to stand firm. And that’s what the big telecom companies count on. While the CRTC and its experts do their best to make fair, informed, independently researched decisions that put Canadians first, the collective efforts of these incumbent companies, backed by an unstable system that seems incapable of keeping them in check, keep prices high and hold competition hostage.

And now the industry is embroiled in the latest development in this ongoing saga: In August 2019, the CRTC issued the results of a three-year, well-reasoned decision⁶ in which it determined that the big telecoms and cable companies were overcharging the independent players for wholesale access to their networks – costs that are passed on to Canadian consumers.

The CRTC’s ruling ordered the incumbents to lower their wholesale rates and pay back \$325 million to the competitive ISPs to account for years of deliberate overcharging. This was a very fair outcome, and many independent telecoms took immediate action to pass the benefits on to Canadians by lowering prices and increasing speeds.

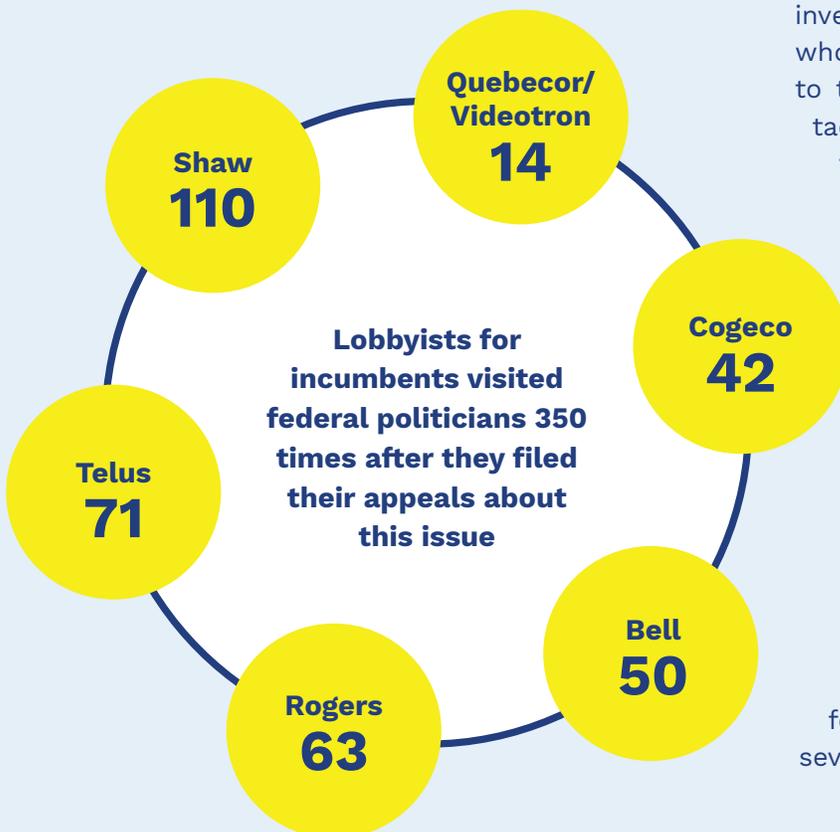
Unfortunately, the big telecoms started working the system to obstruct the order, like they always do. They challenged the decision through every avenue for appeal that’s allowed under the *Telecommunications Act*:

1. Asking the government to weigh in
2. Taking the decision to court
3. Straight-out asking the CRTC to reconsider

They have deep pockets and extensive connections, which allows them to mount intense lobbying campaigns in support of their case. Between November 2019 and September 2020, federal politicians were lobbied by the incumbents a whopping 350 times.⁷ They have money, armies of lawyers, and seemingly endless patience to drag these discussions out.

Their efforts are replete with fear-mongering as they try to paint a bleak picture of what might happen if they were forced to charge fair prices. As industry analyst Denise Hearn said in an August op-ed, “the threat of more competition has forced the incumbents to take a page out of their age-old playbook by recently inking a report that paints a dismal future, projecting a battered GDP, lost jobs, and a stalling of innovation investment in Canada if the MVNO access and wholesale rates are enforced.”⁸ In their appeal to the Federal Court of Appeals (part of delay tactic #2), the telecoms argued that repaying the smaller players for years of overcharging would constitute an “unconstitutional tax.”

But let’s be clear: it’s a game of delays. The incumbents don’t necessarily expect to *win*. They just know that the longer they drag things out, the more time they can spend overcharging, which means more money in their pockets. They also know that more delay means more time for competitors to weaken, unable to invest or innovate because they have no idea what their cost structures will be. We will never know what incredible developments the industry might have seen over the last few years had the competitors not been so severely constrained in their ability to invest and



innovate for Canadians the way they wanted to. There could have been countless flow-through effects, opportunities to enable Canadians to better achieve their own objectives, run small businesses, and invest in themselves and their families.

The incumbents continue to seize market share while ensuring the competitive companies suffer from attrition, trapped in a never-ending wait-and-see mode. They know that there's a good chance some of the smaller players won't survive. In fact, Bell has even gone so far as to *point* out to the CRTC how many competitors it has disconnected from service due to lack of payment or who have been overdue on their payments since the August 2019 order (14 and 10 of them, respectively).⁹ Bell's position is it shouldn't have to repay someone who's struggling to stay afloat, which only serves to prove that this is part of their very strategy. They're hoping to drag decisions out long enough that we'll all just go away.

But we're standing strong. CNOC represents the independent ISPs – the nimbler players who believe in

competition and innovation – and we're going to keep fighting for all Canadians. We see through these underhanded, predictable tactics.

Why our system permits a handful of powerful companies to leverage their wealth and connections to benefit their businesses while sacrificing the rights of Canadians is beyond comprehension. This type of behaviour should simply not be allowed. The CRTC was set up to ensure fairness and competition, and when it issues a well-researched, carefully considered ruling, it should be enforced, full stop.

A Game of Delays

**Tactic
1**

Asking the government to weigh in

**Tactic
2**

Taking the decision to court

**Tactic
3**

Appealing to the CRTC to reconsider

A Reversal on the Liberal Government's Campaign Promises

Unfortunately, it appears that the incumbents' lobbying efforts have been highly successful. In an unexpected turn of events, our Federal Cabinet quietly released a statement at 8:00 a.m. on Saturday, August 15, 2020, that signaled its support for the incumbents.

While Cabinet declined the incumbents' request that it overturn the CRTC's directive (delay tactic #1), its statement clearly undermined the regulator's ruling, saying that "the rates do not, in all instances, appropriately balance the policy objectives of the wholesale services framework."

This position goes completely against the Liberal government's "Choose Forward" campaign promise to make life more affordable for the average Canadian. During that campaign, Navdeep Bains, now Canada's minister of innovation, science and industry, announced the party's introduction of "a CRTC policy directive, which made it very clear that we're going to focus on consumers, around affordability and more competition, that provides clear guidelines to the CRTC to mandate new pricing and more competition."¹⁰

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Court of Appeal Says Telecoms' Claims Have "Dubious Merit"

On September 11, 2020, however, there was some great news amid all this disappointment: the Federal Court of Appeal dismissed the incumbents' case. The telecoms' fear-mongering may have worked on the politicians, but our federal judges saw right through it: the court found that many of the incumbents' claims were "of dubious merit" and unanimously dismissed their appeal.

Despite this, on November 12, 2020, the incumbents delayed things once again by trying to appeal to the Supreme Court of Canada (SCC), asking the SCC to hear arguments about legal issues that are well-settled in Canadian law. In reality, and in their submission to the SCC, their fundamental concern is not with any matter of law; it's about not being able to charge higher wholesale rates to competitors. Shockingly, they even suggest that investment in rural and indigenous communities will not happen if the CRTC's rates are upheld. And so delay tactic #2 continues. While we don't believe the SCC will hear the case, the process will nevertheless cost everybody still more unnecessary time and money.

Delay tactic #3 also still remains in play, where the incumbents have simply asked the CRTC itself to review its ruling, in a "review-and-vary" process. We call on the CRTC to stand strong and not be swayed by unfair, devious tactics that only serve to harm Canadians.

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What Do Canadians Think of All This?

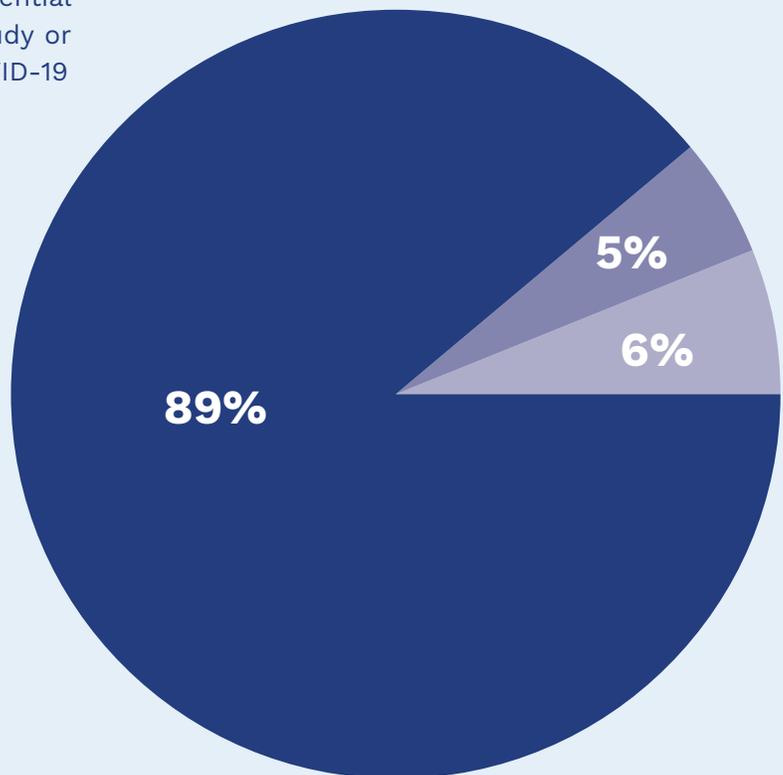
We asked Canadians for their thoughts on all of this, in a survey of 1,517 Canadians aged 18+ between July 24 and 26, 2020, entitled *Fighting for Fair Internet: What Canadians Think of the Large Telecoms*. The results were clear: Canadians think this is unfair.

Nine-in-ten (89%) Canadians agree, including 67% who strongly agree, that the large telecommunications companies should comply with the CRTC's well thought-out decision to decrease internet rates, because it's an essential service that allows Canadians to work, study or stay connected at home due to the COVID-19 pandemic.

We agree with Canadians. The competitive ISPs are poised to bring innovation to the industry, but it's extremely difficult to do that when they're forced to pay unnecessarily high charges to the incumbents. Together, we are fighting for fair internet. Our goal is to ensure Canadians have access to competitive telecommunications rates, not only through this ruling but throughout the industry.

Large telecoms should comply with the CRTC's ruling:

- Strongly or somewhat agree
- Strongly or somewhat disagree
- Don't know/prefer not to answer



What the Industry Needs Now

Bringing innovation to Canada's telecommunications industry starts with change in four key areas: choice, fairness, competition and value.

Choice

The incumbents argue that there's plenty of choice in the industry. But they cite other incumbents as their competition, or flanker brands that are simply subsets of their own companies and that don't compete with them at all. But Canadians don't believe they have much choice at all. Nearly half of Canadians (45%) do not feel they have an adequate choice when selecting an internet provider.

Almost two-thirds (63%) say there's *no point in changing their provider* – that all internet service providers are the same. More Canadians who currently subscribe through one of the larger companies feel this way (66%) than those who use one of the independent companies (40%). Those using an independent ISP are also significantly more likely to believe they did have a good selection when choosing their provider. This suggests that those who use one of the

independent companies have discovered the value of using a more flexible, innovative ISP. Canadians who already use the independent players seem more satisfied with the choices before them, and we want to bring that choice to more of the country.



63%
of Canadians
**“There’s no point in
changing providers; they’re
all the same.”**

Just over half of Canadians (53%) are happy with their provider and don't want to change, with those subscribing to independent companies (versus the incumbents) significantly more likely to agree (67% versus 51%). About a third say they'd like to change but feel trapped by their current internet provider (36%) and feel they don't have any choice of providers (35%). Canadians in rural communities are significantly

more likely to agree they don't have any other choices (51%, compared with 31% of Canadians in urban or suburban areas).

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With the current oligopoly in place, it's very difficult for the independent players to differentiate themselves enough to provide the choice Canadians want. We need to have the flexibility to set prices and develop different options that work for different segments of the population. To do that, we need to be charged rates that make sense, as ruled by the CRTC in 2019. Those rates need to be enforced.

Fairness

Our country is built on principles of equality and equal opportunity. Those principles need to translate to our telecom industry. It's simply not fair for a handful of large players to exert their power over an industry, making it harder for some people to access what is clearly an essential service. Canadians should not be subject to unfairly high prices in order to do their jobs or access their children's schoolwork.

Sadly, when it comes to telecom pricing, Canadians have come to expect the big companies to continue to pursue their own interests over those of the people.

Seven-in-ten (69%) Canadians are *not surprised* that the large telecommunications companies have gone to court to try to overturn the CRTC ruling. Half (49%) say they are "not at all

surprised" at this move, and those who use one of the independent internet providers versus one of the large telecoms are more likely (85% vs. 68%) to say they are not surprised.

Almost all (93%) Canadians say that if they were being overcharged for their internet service, it would be fair for the company to lower their rates or improve their offering at no extra charge to the consumer. And nine in ten (92%) Canadians say they would be upset (67% would be very upset) to discover they were being overcharged for their home internet service.

**Straight out of the
playbook:
69%
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**Canadians just want their service
pricing to be fair. That shouldn't
be too much to ask.**

Competition

Our markets are built on competition. It's what drives companies to be innovative, to go beyond what other players are doing, to offer more to meet consumers' needs. And Canada used to pride itself on innovation! The BlackBerry, for example, was the poster-child for Canadian innovation in telecom.

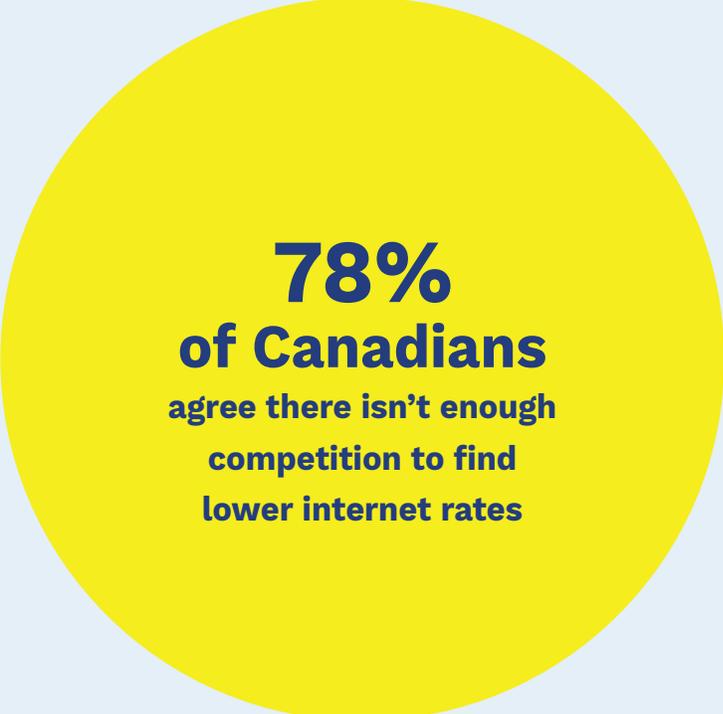
Competition is what brought us unlimited internet plans, serviced-based innovation, mainstream VoIP and anti-robocalling technology. It's what allowed us to make phone calls to the next town over without paying "long distance" charges – a clearly positive change that Bell fought against, challenging it all the way to the Supreme Court. Healthy competition gives consumers options and makes services more affordable.

In Canada, we have a handful of large telecom companies co-operatively competing and working in tandem to protect their interests and keep prices high for Canadians. That's not what competitors are supposed to do. The incumbents have done a great job of suppressing competition and forcing the independent ISPs to pay extremely high rates to access their networks, making it nearly impossible for them to innovate and compete at the levels they would like to.

This environment is ripe for reform. Our *Telecom Act* allows for seemingly endless delays and appeals, holding competition hostage during long, drawn-out frivolous court cases. And our government seems to be clearly on the side of big business, which is not what Canadians want.

Canadians see the large companies as extremely similar to one another. Nearly half of Canadians (47%) don't shop around for internet services – they feel trapped, saying they have no choice.

Eight-in-ten (78%) agree there isn't enough competition or choice between internet service providers in Canada to allow them to find lower monthly rates.



78%
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Two-thirds (66%) of Canadians say the reason we have some of the highest internet rates in the world is that large telecommunications companies form an oligopoly and can charge whatever fees they want, with 44% saying this is the *primary reason* for the high rates. Half (49%) say lack of appropriate government regulation plays a part.

The CRTC's ruling is a step in the right direction, and the Federal Court of Appeal's dismissal of the incumbents' case brought us even closer – but the subsequent attempt to appeal to the Supreme Court of Canada sets things back once again. We need the CRTC to uphold its own decision and implement lower wholesale rates, so Canadians can start to see the benefits. When the independent ISPs are released from unreasonably high rates, they will have much more flexibility to develop innovative, competitive services that meet the needs of more Canadians.

Value

More choice, fairness and competition mean increased value for everyone. Telecom services must provide the value that Canadians expect and deserve. Instead, consumers can often be heard complaining about their provider, throwing up their hands in frustration because there's nothing they can do to find better value elsewhere.

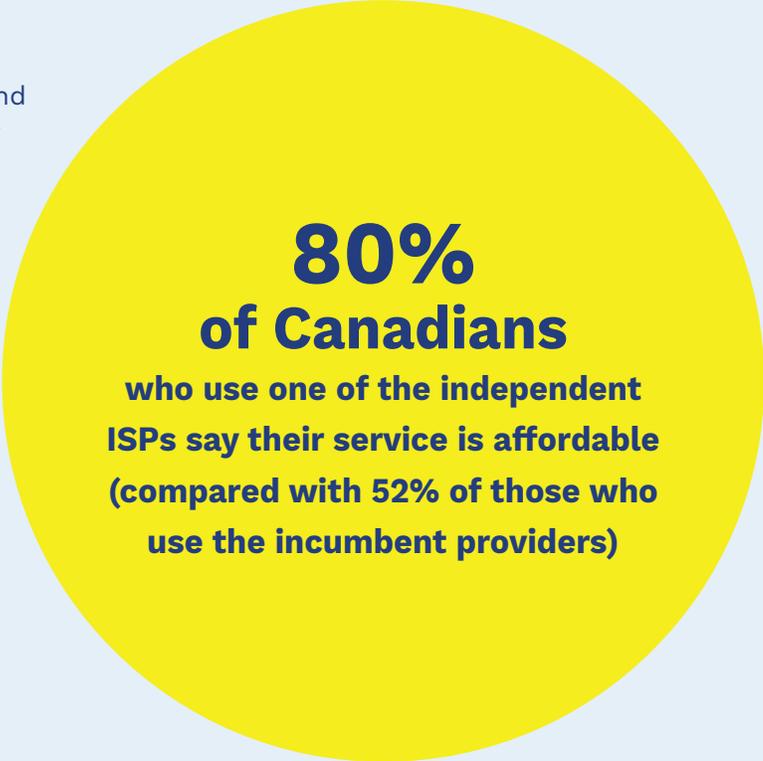
Although they're bombarded with advertising every day trying to get them to switch, customers who already use independent ISPs indicate a greater desire to stay with their provider. Of Canadians who are still with a large provider, 45% have thought about switching in the last 24 months, compared with only 27% of those with independent providers.

Paying high prices is never easy, and the COVID-19 pandemic has put many Canadians in an even more difficult economic position. Twenty-one percent of Canadians say they worry about being able to pay their internet bill some months. No Canadian should struggle to access a basic, essential service. That number should be zero.

Canadians using one of the independent ISPs are significantly more likely (80% of customers who

use independent ISPs, versus only 52% of those using incumbent providers) to say their service is affordable. On the flip side, 38% of customers of the large providers say their service is not affordable, compared with only 15% of customers who use the independent companies.

It's time for change. We need to create the conditions that will ensure reduced rates and increased innovation, which together provide the value that Canadians want and deserve.



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Enough is Enough – It’s Time to Fix the System

The CRTC was designed to regulate this market and ensure no players are unfairly exerting their power over the industry.

By so actively lobbying to overturn a critical CRTC ruling, the incumbents have shown us that they want to unfairly exert their power. They believe that different rules should apply to them. That’s not fair.

Further, the Liberal government campaigned on a promise to make life more affordable for middle-class Canadians. Signaling their support for big business instead of fair pricing is a clear backtracking.

Canadians deserve better. And the Federal Court of Appeal agrees: the incumbents are using claims of “dubious merit” to hold us hostage.

The CRTC needs to stand strong and enforce its decision, demonstrating that it won’t be swayed by lobbying and pressure. After three years of comprehensive research (and yet another year of unnecessary delay tactics), the CRTC needs to stand firm.

There are other obvious changes that need to come to the industry. One is to stop letting the

incumbents set the interim wholesale rates (those paid by the ISPs until a CRTC rate decision is enacted). Instead we should adopt a system of “retail-minus” rate-setting, whereby the interim rates are automatically set at the incumbents’ own retail price minus a set percentage. On top of that, fees paid during the interim period should not go directly to the incumbents, but rather should be held in escrow until the final rates are set. Those two changes would go a long way to deterring the incumbents from their delays.

Another necessary change is to stop allowing the incumbents to penalize Canadians for choosing a competitive provider. The incumbents treat such customers as second-class, giving them substandard service in hopes they’ll give up and switch. There’s nothing fair about that. We need to institute an “equivalence-of-inputs” framework, which mandates that whatever the incumbents do in the retail market must be made available – on an equitable basis – to competitive service providers and their customers.

If these things don’t happen, competition in this country will suffer permanent damage. The incumbents will continue taking money out of Canadians’ pockets to pay dividends to their investors. The competitive ISPs will continue to flounder, and many won’t survive. Unlimited internet service could dry up. Canadians’ way of life is at stake.

The Next Logical Step: Structural Separation

Of course, there's a bigger solution available, one that's beyond the scope of this paper but that we need to start considering seriously, and that's structural separation. Under structural separation, the incumbents would be split into two parts: retail and wholesale. Wholesale access would be offered by an independent entity, from which every company, including the incumbents, would get their service. Everyone would pay the same prices, and there would be no preferential treatment for incumbents nor any possibility of delay tactics. This has worked in other countries, and it's time Canada started exploring it as a real option.

Now especially, as the world struggles to fight its way back from a global pandemic, we need to show Canadians that we have their backs. We need to fight for fair internet so they can work, learn and connect across the wires, staying safe in their homes while still connecting to the world through services we provide. There's no place for inflated pricing and no need for more delay tactics.

**We've been saying it for years,
but we'll say it again: enough is
enough.**

Our members, the competitive internet service providers, are on board, ready to provide choice, fairness, competition and value. We're calling on the CRTC to hold firm and implement its own decision, and to continue standing strong in future decisions, holding the big players to account for their monopolistic behaviours and allowing for a vibrant, innovative industry in which Canadians know they have real choice.

For Further Information



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Jeff Brownlee is the Executive Director of the Competitive Network Operators of Canada (CNOC) and has more than 15 years of experience as a not-for-profit executive, including a long tenure as vice president, public affairs, partnerships and membership for Canadian Manufacturers & Exporters (CME) – Canada’s largest and longest-standing trade and industry association. He created and published CME’s flagship magazine, 20/20, which was recognized as one of the top five industry publications in the country by the Canadian Business Press. A former journalist, Jeff is widely touted as one of the country’s foremost communicators and has appeared in all major Canadian as well as international media. He has served at a senior level in numerous federal government departments – including finance and security – and was the press secretary under Canada’s Deputy Prime Minister and Minister of Finance from 2001 to 2003.

About the Survey

Fighting for Fair Internet: What Canadians Think of the Large Telecoms, an online survey of 1,517 Canadians aged 18+ was completed between July 24 and 26, 2020, using Leger’s online panel. The margin of error for this study was +/-2.5%, 19 times out of 20.

About the Competitive Network Operators of Canada (CNOC)

CNOC is the voice of Canadian independent ISPs, representing more than 30 competitive telecommunications providers that operate wireline and/or wireless networks in many regions of Canada. CNOC’s mission is to increase the level of competitive choice, add more value and boost innovation in the delivery of communications services to Canadians. For further information, visit www.cnoc.tech.

Endnotes

- ¹ “Telecommunications Policy Review Panel Final Report,” page 35, [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\\$file/tprp-final-report-2006.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/$file/tprp-final-report-2006.pdf).
- ² “Telecommunications Policy Review Panel Final Report,” [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\\$file/tprp-final-report-2006.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/$file/tprp-final-report-2006.pdf).
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- ⁵ CRTC, “2019 Communications Monitoring Report,” Figure 9.1, <https://crtc.gc.ca/pubs/cmr2019-en.pdf>.
- ⁶ “Telecom Order CRTC 2019-288,” August 15, 2019, <https://crtc.gc.ca/eng/archive/2019/2019-288.htm>.
- ⁷ Includes registered lobbyist visits on behalf of Bell, Rogers, Shaw, Telus, Cogeco, and Quebecor/Videotron, from November 2019 to September 2020. Registry of Lobbyists, Office of the Commissioner of Lobbying Canada, <https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/guest>.
- ⁸ Denise Hearn, “Canadian Lawmakers Have a Choice: Defend Corporate Interests or Competitive Markets,” Hill Times, August 3, 2020, <https://www.hilltimes.com/2020/08/03/hearn/258692>.
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- ¹⁰ “Federal Election 2019: Liberals Aim to Reduce Cell Phone Prices: Bains,” Global News [video], September 22, 2019, <https://globalnews.ca/video/5936709/federal-election-2019-liberals-aim-to-reduce-cell-phone-prices-bains>.



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