December 21, 2015

Ms. Janice Charette  
Clerk of the Privy Council  
and Secretary to the Cabinet  
Langevin Block, 80 Wellington Street,  
Ottawa, Ontario K1A 0A3  
email: info@pco-bcp.gc.ca


Dear Ms. Charette:

1. In accordance with the procedures laid out in Notice No. DGTP-002-2015 — Petition to the Governor in Council (GIC) concerning Telecom Regulatory Policy CRTC 2015-326 (TRP 2015-326), “Review of wholesale wireline services and associated policies”, Cogeco Cable Inc. (Cogeco) hereby submits its comments on the petition filed by Bell Canada, dated October 20, 2015. Failure to address any specific assertion made in the petition should not be construed as acceptance where such acceptance would be inconsistent with the interests of Cogeco.

2. In its petition, Bell requests that the GIC vary TRP 2015-326 in such a manner that the provision of broadband services over FTTP access facilities and, for competitive neutrality purposes, over DOCSIS 3.1 cable access facilities, shall not be mandated. Furthermore, Bell submits that the obligation to provide Independent Internet Service Providers access to broadband services over DSL, FTTN or DOCSIS 3.0 broadband technologies¹ should be limited to broadband speeds up to 100 Mbps.

3. The principal argument raised in Bell’s petition is the potential disincentive that mandating broadband services over FTTP access facilities could have on investment. Indeed, as a result of the CRTC determination, Bell claims that “each fibre-to-the-home investment opportunity will be reviewed and the pace and scale of our

¹ Bell Canada, Petition to the Governor in Council to Vary Telecom Regulatory Policy CRTC 2015-326, Review of wholesale wireline services and associated policies, 20 October 2015, paragraphs E20 and 64.
investment will unequivocally be affected. Where a project's projected return on investment is uncertain, capital will not be allocated to it. The CRTC's decision means that investment will be stopped or delayed for years in areas where the return on investment can no longer be justified.²

4. For the reasons provided below, Cogeco does not believe that Bell, or any other telephone company or cable carrier, will stop or even significantly slow down their FTTP facilities deployment as a result of this new CRTC requirement and accordingly submits that the GIC should not vary the CRTC’s decision as requested by Bell.

5. In the proceeding leading to TRP 2015-326, Cogeco asked the Commission to continue mandating the provision of wholesale broadband services, but to adopt a streamlined regulatory framework encouraging negotiations in determining the provisioning conditions. In Cogeco’s view, such a framework would have fostered the development of business relationships between wholesale providers and customers and would have helped transition the industry toward a market-based solution. Further, this would have ensured that no market foreclosure happens until the forbearance conditions were met and that consumers continued to benefit from a diversified choice of high-speed Internet service providers in the retail market.

6. With respect to the specific issue of mandating FTTP access facilities, Cogeco favored imposing a five-year moratorium on mandatory access to FTTP access facilities based on next generation network deployments³.

7. The Commission did not retain the regulatory approach suggested by Cogeco and maintained access regulations to the wholesale broadband service on a tariff basis and extended the mandatory access to FTTP facilities. In fact, the Commission opted for a prudent approach, ensuring that the retail Internet market remains characterized by the presence of multiple service providers bringing pricing discipline, innovation and consumer choice to the market.

² *Idem*, paragraph E22.
³ Cogeco has not yet started deploying FTTP access facilities that are an integral part of next generation network (NGN) deployments based on optical equipment and accordingly expressed the view during the proceeding that it would be inappropriate to mandate such access facilities for a carrier, like Cogeco, that has not yet undertaken such a network deployment. Consequently, taking into account some market realities and investment concerns, Cogeco supported the imposition of a moratorium on mandatory access to FTTP access facilities based on NGN deployments for the next five years.
8. Nevertheless, Cogeco recognizes that the resulting policy framework ensures the continuance of a third-party Internet access regime for the next five years that is technologically and competitively neutral to the greatest extent possible, in accordance with the Policy Direction. In short, while Cogeco did not advocate for the Commission to mandate broadband services over FTTP access facilities, we take note of the Commission’s decision and are moving forward with the implementation of its determinations.

9. The specific issue of mandating FTTP access facilities has been extensively discussed during the lengthy and multi-phase proceeding that led to TRP 2015-326. At stake was the establishment of a policy that would strike the right balance between incentives for investment in the deployment of FTTP access facilities and the benefits that greater competition could create for consumers by mandating access to these FTTP facilities.

10. Several opposing views were expressed on this issue throughout the proceeding. In its decision, the Commission came to the conclusion that “it is not practical or feasible for competitors to duplicate the access component of wholesale HSA services, including those over FTTP access facilities” and accordingly concluded that mandating wholesale broadband services over FTTP access facilities would be consistent with this finding.

11. Regarding the policy considerations for investment raised by mandatory wholesale broadband services over FTTP access facilities, Cogeco notes that the Commission dismissed, without ambiguity, any concerns in this regard stating the following:

- “negative impact on investment is not likely to happen to any significant degree, particularly in more urban areas”
- “incumbent carriers will generally continue to invest in FTTP access facilities ... in response to consumer demand, as well as to compete effectively and efficiently with the Cablecos”
- “any investment risks associated with mandating [...] FTTP access facilities can be attenuated by providing the incumbent carriers with a reasonable rate of return” based on wholesale rates that are compensatory.

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4 TRP CRTC 2015-326, paragraph 136.
5 TRP 2015-326, paras. 141-143.
12. Cogeco agrees with the Commission’s findings described above.

13. The Canadian telecommunications service market is characterised by the intensity of the consumer demand for competitive Internet and video services. In this context, wireline and wireless carriers have no other choice than to constantly invest to upgrade their networks and meet the evolving service demands of their residential and business customers. The announcement by Bell, in June, 2015, to invest $20 billion in its broadband fibre and wireless networks across Canada by the end of 2020, attests to these competitive pressures.\(^6\)

14. These pressures will not disappear with the fact that the provision of wholesale broadband services over FTTP access facilities is now mandated. Furthermore, the growth in the demand for wholesale broadband services will contribute to the increase in the number of connections on broadband networks of the wholesale providers and, to the extent that the rates for wholesale disaggregated broadband services are set at an appropriate level, will therefore contribute to encourage, rather than discourage, the investment necessary to meet such a demand.

15. However, Cogeco remains concerned with the fact that the Commission did not come to a similar conclusion in its decision regarding the regulatory framework for wholesale mobile wireless services (TRP 2015-177). Indeed, despite the fact that the Commission determined that the GSM-based mobile wireless networks of Bell Mobility, Rogers Communications, and TELUS cannot be practically and feasibly duplicated by competitors\(^7\), and that the three national mobile wireless carriers possess market power in the provision of these services\(^8\), it nevertheless decided not to mandate Full MVNO’s ("mobile virtual network operators") access to the radio access networks (RAN) of these national carriers for reasons which appear to be predicated entirely on a concern that mandating these wholesale services would somehow "discourage" continued investment by mobile wireless carriers.\(^9\)

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\(^7\) TRP 2015-177, paras. 99-108

\(^8\) TRP 2015-177, para. 88.

\(^9\) TRP 2015-177, para. 122.
16. While TRP 2015-177 is the subject of a pending application to review and vary filed by Canadian Network Operators Consortium Inc. and supported by Cogeco, Cogeco finds that it is quite difficult to reconcile the conclusions to which the Commission arrives in relation to the MVNO issue after the factual determination made with regard to the essentiality of the RAN facilities and the market power held by Bell Mobility, Rogers Communications and Telus in the mobile wireless market.

17. As is the case for the wholesale broadband services, Cogeco still believes that mandating wholesale RAN services for Full MVNOs would not have a negative impact on investment, but would strongly contribute to strengthening competition in the retail mobile wireless service market by bringing a greater choice of service providers to the benefit of Canadian consumers.

18. For all of the above reasons, Cogeco respectfully submits that the Commission decision in TRP 2015-326 to mandate the provision of wholesale disaggregated broadband services over FTTP access facilities will not significantly slow down investments as argued by Bell and that the Telecom Regulatory Policy CRTC 2015-326 should be maintained.

Yours very truly,

Nathalie Dorval
Vice-President, Regulatory Affairs and Copyright

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