

Full Speed Ahead: CRTC Orders Large Telcos to Provide “Fibre-to-the-Premises” Internet Network Access to Competitors

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On November 6, 2023, the Canadian Radio-television and Telecommunications Commission (CRTC) made a long-awaited interim order directing certain large telecommunications companies (telcos) to provide access to their “fibre-to-the-premises” (FTTP) internet networks by their competitors in Ontario and Quebec. The interim order, which is intended to improve the competitive choices and affordability of high-speed internet services for Canadians, will apply on an interim basis as the CRTC continues to move forward with its larger review of its internet services regulatory framework in Canada.

Background

In March 2023, the CRTC released Telecom Notice of Consultation CRTC 2023-56, announcing a public consultation process intended to update the regulatory framework for Canada's internet services market. As the CRTC noted, the existing regulatory framework has been unsuccessful in encouraging choices and pricing affordability for Canadian internet customers and has failed to address competitive concerns in the current retail market for internet services in Canada.

One of the key issues to be examined by CRTC Notice 2023-56 is whether large incumbent telcos should be required to provide their smaller competitors with access to the incumbent telco's FTTP networks. As the name suggests, FTTP refers to the supply of fibre optic connectivity from an internet provider's transmission point directly to the end user's premises (i.e., the consumer's home). It is often also referred to as “last mile access,” as it provides internet access through the “last mile” between some midpoint (like a telephone pole) and the end user's premises/consumer's home.

For the last 20 years, large incumbent telcos have been required to provide competitive resellers and smaller, non-facilities-based telcos with wholesale access to the larger, incumbent telco's internet networks across Canada. However, the larger incumbent telcos have only been required to provide what's known as “disaggregated” high speed access services, which require a smaller reseller or telco competitor to connect to the larger incumbent telco's network at several different points. Up until now, the CRTC had not required the large incumbent telcos to provide a smaller reseller or telco FTTP access through “aggregated” high speed access services, which allow a competitor to more easily, efficiently, and competitively connect to the

incumbent telco's network at one central connection point and then directly to a consumer's premises or home.

Acknowledging that the full consultation process contemplated in CRTC Notice 2023-56 would be lengthy, the CRTC also launched a concurrent, included, and expedited proceeding to determine if the large incumbent telcos should be required to provide FTTP access on an interim basis while the larger consultation process is ongoing.

The CRTC's Interim Order

Following the expedited proceeding, the CRTC released Telecom Decision CRTC 2023-358 on November 6, 2023, setting out the CRTC's interim order. In this interim order, the CRTC directs certain large incumbent telcos to provide workable access to their FTTP networks by competitors in Ontario and Quebec, within six months.

One of the key findings serving as an impetus for an immediate interim decision is the CRTC's assessment of the rapid decline in the number of Canadian internet services providers and the attendant decline in competition in the provision of those services. The CRTC finds that the percentage of Canadian consumers who receive internet services from smaller resellers or telco competitors is approximately half of what it was just two years ago. This decline has been exacerbated by the reduction in the number of Canadian telco competitors, as larger incumbent telcos acquire them in the hope of achieving economies of scale. The CRTC also notes that these competition issues are particularly prevalent in Ontario and Quebec.

However, in making this interim order, the CRTC is mindful of the need to continue to incentivize the larger incumbent telcos to invest in high-quality and high-speed internet networks and fibre deployment. For that reason, the interim order includes several notable limitations and exceptions:

- The interim order is limited to Ontario and Quebec, in recognition of the CRTC's finding that these two provinces have suffered a significant competitive decline in the retail internet services market. The CRTC notes that this geographical limitation is intended to address concerns from the larger incumbent telcos that it would be unfair to require them to expend significant costs to provide FTTP access in areas that do not have a significant presence from smaller competitors.
- The interim order establishes interim rates that the smaller reseller and telco competitors will be required to pay to the large incumbent telcos in exchange for FTTP access. This payment requirement is intended to recognize the financial investment the large incumbent telcos have already made when developing their networks and the need to incentivize them to keep doing so.
- The interim order applies only to incumbent telcos that the CRTC defines as "large incumbent local exchange carriers." Only two telcos operating in Ontario or Quebec appear to fall within this definition; namely, Bell and TELUS. Other major telcos, such as Rogers, Cogeco, Videotron and

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Eastlink, are excluded from the interim order because they currently only deploy FTTP fibre to a small portion of their overall networks, whereas Bell and TELUS almost exclusively deploy FTTP fibre in their operations.

Finally, the CRTC underscores that the current interim order remains in effect until the CRTC completes its broader review of the Canadian internet services competition framework, including reaching a final decision on whether wholesale access to all incumbent telco FTTP networks should be mandated long-term.

Key Takeaways

Despite the limitations and exceptions contained in the CRTC's interim order, the interim order represents a notable step in enhancing competition in the Canadian market for retail internet services. Smaller internet access companies who cannot feasibly establish their own "last mile access" to their customers' premises should now, in theory, find it easier to provide internet services comparable to the larger incumbent telcos and therefore increase their competitive presence.

Furthermore, the interim order suggests that the CRTC is not finished with steps to make Canada's retail internet services market more competitive for the benefit of consumers. For example, in the interim order, the CRTC concludes that aggregated high speed access services (which are easier for telecom resellers and smaller telco competitors to access), as opposed to disaggregated access, are the only viable means to quickly provide competitors with access to FTTP networks. While the full review of the CRTC's larger internet services market framework is ongoing, comments like these indicate that the CRTC is likely to continue to support smaller competitors in an updated framework in the belief that offering consumers more choices in the selection of internet service providers will prove beneficial on both a consumer pricing and robust service suite basis.

The Cassels Entertainment & Sports Group will continue to monitor developments in this area as they occur. If you have any questions about the CRTC's public consultation process or how this order may affect your business, please reach out to any member of our team.

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