Comments of Shaw Cablesystems G.P.

Review of wholesale services and associated policies

Telecom Notice of Consultation CRTC 2013-551

January 31, 2014

EXECUTIVE SUMMARY

1. Canadians need and deserve a vibrant communications system that is relevant in the global digital market and provides world-leading networks, content, products and services. Any regulatory framework must put Canadian consumers at the core by ensuring an environment that fosters facilities-based investment and innovation and allows market forces to meet consumer demand. With increasing demand for Internet services, and the corresponding demands on carriers' networks, the stakes in this proceeding are high. The Commission must take a market-driven approach to ensure the needs and demands of Canadians in this rapidly evolving market are met.

2. Facilities-based carriers like Shaw operate in an intensely competitive communications marketplace. Over ten years ago this competitive dynamic reshaped the market in Western Canada. Commencing with broadband competition, a fierce platform-based rivalry between Shaw and its ILEC competitors spread to the full bundle of broadcasting distribution and then telecommunications services. In this dynamic environment, Shaw must invest and innovate to meet our customers' expectations of a high quality, always-available and seamless experience.

3. Shaw is an Internet company with a brand promise that our customers won't miss a thing. To meet this promise, Shaw has committed the highest levels of capital intensity in the country, and with it, has delivered to its customers the best and most reliable connectivity in Western Canada. Innovative services such as Shaw Go WiFi meet our customers' need for on-the-go broadband connections, while extending our network and the value of the broadband experience. Shaw Go WiFi offers Shaw Internet customers a cost-effective, user-friendly alternative to wireless broadband services.

4. The current wholesale framework was established by the Commission in 2008 in response to a Policy Direction issued by the Governor in Council. The centrepiece of the Policy Direction, still applicable to the Commission's mandate today, is greater reliance on market forces. Accordingly, the Commission introduced and applied a new essential facilities test focused on protecting consumers and businesses in the retail market, by asking whether the withdrawal or denial of mandated access to a wholesale service would result in the undue lessening or prevention of competition in the downstream market for services.

5. The Commission should continue to employ its framework in a manner that relies on market forces to the maximum extent possible, regulating only where necessary to ensure customers benefit from investment, innovation and choice. This market-driven, customer-focused and balanced approach is critical in today's rapidly evolving market.

6. In the business market, where the only ubiquitous network is owned by the ILEC, Shaw continues to make inroads, relying on a combination of facilities owned by it and those leased from the ILEC. Without the mandated availability of this limited number of ILEC-controlled facilities, there would be a substantial lessening or prevention of competition in the business market.

7. As part of this market-driven approach, and as specifically directed by the Government, the Commission should remain vigilant to ensure technological and competitive neutrality in arrangements for "public good" services such as support structures, which are typically single source and without which full facilities-based competition could be thwarted.

8. A stable and predictable regulatory framework is required over time in order to support, rather than disrupt, market forces, the competitive process and investment decisions. This is paramount to ensure investment, innovation and competition for the benefit of Canadian consumers.

I Introduction

1. This intervention of Shaw Cablesystems G.P. ("Shaw") is filed pursuant to paragraph 41 of Telecom Notice of Consultation CRTC 2013-551, *Review of wholesale* services *and associated policies*, 15 October 2013 (the "Notice").[1] In accordance with section 26 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, Shaw wishes to receive intervener status in this proceeding. As a major Canadian carrier, Shaw is directly and substantially affected by this proceeding, and therefore Shaw's written intervention is not sufficient. Shaw requests to appear at the public hearing.

2. Shaw is a leader in broadband investment in Canada, and we continue to introduce innovative broadband services to meet the rapidly growing demands of our 1.8 million Internet customers. In today's intensely competitive retail services market, Shaw's success depends more than ever on strong customer relationships and our ability to provide value, innovation, choice and flexibility in our service offerings. We know that our customers have numerous options provided by the other facilities-based carriers, like the ILECs and wireless carriers, as well as independent competitors offering services over mandated wholesale access. Customers are in the driver's seat and expect nothing less than a fast and reliable Internet experience.

3. Shaw's network reaches over 6 million people and as an Internet company we remain focused on meeting the needs of our customers. In today's market, customers have multiple devices connected to our network, and demand for a high quality experience is growing at an unabated pace. The digital revolution has transformed the market in which we operate, creating a borderless and mobile market with new opportunities and challenges.

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[1] As revised by Telecom Notice of Consultation CRTC 2013-551-1.

4. In the Notice, the Canadian Radio-television and Telecommunications Commission (the "CRTC" or the "Commission") seeks comments from parties to assist in its review of the regulatory status of wholesale services and associated policies. The Commission indicates the review will include an investigation of the existing wholesale services framework, wholesale service pricing and the appropriateness of mandating new wholesale services in light of the policy objectives (the "Policy Objectives") set out in section 7 of the *Telecommunications Act* (the "Act").

5. The regulatory framework under review in this proceeding was established in Telecom Decision CRTC 2*008-17, Revised regulatory framework for wholesale services and definition of essential service* (Decision 2008-17), in which the Commission focused on the competitive effects of mandating access to wholesale facilities on the downstream retail market.

6. Decision 2008-17 responded to the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* (the "Policy Direction"). As noted by the Commission in the Notice for this Consultation, the Policy Direction continues to apply. It provides important direction regarding the manner in which the Commission must exercise its mandate and the interpretation it must give to the Policy Objectives.

7. The centerpiece of the Policy Direction is greater reliance on market forces. The Government stipulated the Commission should:

> (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
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> (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

8. Among other things, the Policy Direction requires that economic regulatory measures relied upon by the Commission "neither deter economically efficient competitive entry into the market nor promote economically inefficient entry." Further, where regulatory measures relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, the Policy Direction requires the Commission to "ensure the technological and competitive neutrality of those arrangements or regimes."

9. The Policy Direction provides explicit guidance on the factors to be considered by the Commission in determining the extent to which access to wholesale services should be mandated:

> … with a view to increasing incentives for innovation and investment in and construction of competing telecommunications network facilities, to complete a review of its regulatory framework regarding mandated access to wholesale services, to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and to determine the appropriate pricing of mandated services, which review should take into account the principles of technological and competitive neutrality, the potential for incumbents to exercise market power in the wholesale and retail markets for the service in the absence of mandated access to wholesale services, and the impediments faced by new and existing carriers to develop competing network facilities ...

10. Responding to the Policy Direction, in Decision 2008-17 the Commission replaced the previous definition of an essential facility, function or service established in Telecom Decision CRTC 97-8 with a three-part test drawn from competition law principles (the "Essential Facilities Test").[2] This test places

[2] The Commission determined "that to be essential, a facility, function or service must satisfy all of the following conditions:

i. The facility is required as an input by competitors to provide telecommunications services in a relevant downstream market;

ii. The facility is controlled by a firm that possesses upstream market power such that withdrawing mandated [or denying] access to the facility would likely result in greater reliance on market forces, in particular, by focusing on the impact of withdrawal or denial of a wholesale service in the downstream market – that is, whether such withdrawal or denial would result in a substantial lessening or prevention of competition in that retail market.

11. The Policy Direction and Essential Facilities Test continue to provide the Commission with the tools appropriate and necessary to exercise its mandate in a manner consistent with the Policy Objectives and Government policy; these tools should be applied by the Commission in answering the questions raised in the Notice.

II Review of the Regulatory Framework

12. When undertaking the current review of the wholesale market and determining if new services meet the Essential Facilities Test, the Commission must be wary of introducing regulation that supplants or interferes with the ability of carriers to invest in their networks to meet the needs of their customers. The Commission must ensure a balance is achieved between fostering competition and consumer choice in the retail market while maintaining the appropriate incentives for facilities-based carriers to continue to innovate and invest in their networks to meet the needs of Canadian consumers.

13. It is essential that the wholesale framework appropriately reflects the dynamic market. This will facilitate further investment and competition, leading carriers to create and provide innovative services for the benefit of Canadian

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a substantial lessening or prevention of competition in the relevant downstream market; and

iii. It is not practical or feasible for competitors to duplicate the functionality of the facility."

Decision 2008-17, paragraph 36.

consumers and businesses. The regime should also allow facilities-based competitors to expand their networks efficiently and effectively in response to consumer demands, by not supplanting normal business planning and competition as drivers of investment and innovation. A market-driven, customer-focused and collaborative regulatory framework is essential for the rapidly evolving environment in which we operate today.

14. The regulatory framework must also remain stable over time in order to support, rather than disrupt, the competitive process and investment decisions. In particular, the Commission should avoid any continued uncertainty that could have a negative impact on long-range planning of capital expenditures necessary to ensure that the Canadian communications industry is competitive and responsive to the rapidly changing needs of Canadians. The importance of stability and predictability in the wholesale framework is paramount to ensuring investment, innovation and competition in Canada.

15. In this proceeding, the Commission must therefore seek to limit the scope of the framework to where it is strictly necessary to protect the interests of consumers in the retail market, by applying the Essential Facilities Test in combination with the Policy Direction.

III Answers to the Commission's Questions

16. In this intervention, Shaw will answer certain of the "questions for discussion in this proceeding" set out in Appendix 1 to the Notice. Due to the importance of retail market conditions to any assessment of the need for wholesale regulatory intervention, Shaw will begin by addressing the Commission's questions regarding current market conditions.

Market Conditions

17. Shaw has asked Lemay-Yates Associates Inc. ("LYA") to provide the Commission with an up-to-date picture of the conditions in those markets in which Shaw operates. Its report, entitled *Discussion of Broadband Investment and Outcomes Across Canada* (the "LYA Report"), is attached to this intervention. The LYA Report paints a clear picture of high capital intensity and broadband adoption in Canada, particularly in Western Canada where fierce competition between facilities-based carriers drives the highest levels of broadband investment in Canada and provides exceptional value for Shaw's customers.

18. Competition in Shaw's retail market is fierce, and Shaw has been competing with ILECs for broadcasting, Internet and phone customers for over a decade. This intense competition between facilities-based carriers has allowed consumers to realize the potential of innovative technologies, competition and choice. For example, in Western Canada we saw Internet Protocol Television ("IPTV") competition in the broadcasting market much earlier than in Eastern Canada. Within Shaw's serving area, SaskTel launched its IPTV service in 2002 and MTS followed shortly thereafter in 2003.

19. In this competitive climate, Shaw must continue to make the network investments necessary to remain a leader in broadband services and to meet customer demands for always available Internet, reliable networks and next generation services. In turn, our network investment triggers significant investment by ILECs in technologies such as Fibre-to-the-Node ("FTTN") and Fibre-to-the-Premise ("FTTP") facilities in order to remain competitive in the marketplace. This competition between facilities-based carriers is the basis for consumer choice, rate discipline and innovative service offerings in Canada. It is also the primary incentive to invest and innovate.

20. As illustrated in the LYA Report, Canadian facilities-based carriers competing against other facilities-based carriers in their territories invest a high

percentage of capital in their broadband networks. This shows the importance of ensuring, in a manner consistent with the Policy Direction, that any wholesale service regime does not favour retail competition using resold services or facilities, over facilities-based competition.

21. LYA found that broadband carriers in Western Canada have been re-investing a much higher share of EBITDA into their operations as compared to Eastern Canadian providers – a difference ranging from 20% to up to 50% over the period from 2008-2013 studied.[3] LYA reports that in the case of Shaw specifically, capital investment per connection "is above its Canadian counterparts in most years for the period", increasing significantly in 2012 and 2013 to more than $400 per connection.[4] This necessary level of investment reflects the intensely competitive markets in which Shaw operates.

22. In Shaw's serving area, Shaw and the ILECs – TELUS, SaskTel, Bell, TBayTel and MTS – own and operate wireline networks that serve the residential market. The residential market is characterized by vigorous retail competition between these two competing "platforms" in each market. This competition commenced with broadband competition, and extended to competition for both telephone and television services. There is evidence of significant rivalrous behaviour in this market, with MTS, SaskTel, TBayTel and TELUS each competing vigorously to attract Shaw's traditional base of broadcasting customers, while Shaw has been successful in attracting a significant portion of the ILECs' wireline telephony customers.

23. As discussed further below in relation to market definition, wireless services represent a viable substitute for wireline broadband service. With the national presence of Bell, Telus and Rogers, these wireless carriers provide a third, fourth or even fifth facilities-based competitor in most markets. Added to this competitive

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[3] LYA Report, page 3.
[4] LYA Report, page 4.

landscape of service providers deploying their own "end-to-end" networks are providers of satellite Internet services, primarily focused on rural markets.

24. In addition to facilities-based competitors, the residential market includes numerous resellers, who do not make extensive investment in network facilities but are nonetheless viewed by consumers as offering competitive choice and service options in the marketplace. Low wholesale rates set by the Commission have resulted in recent significant growth in independent ISPs employing TPIA services of cable carriers, such as Shaw.

25. In the business market, there remains only one ubiquitous wireline network – that of the ILECs. Shaw sees significant potential for growth in business markets and continues to invest in its network to reach business locations. However, to achieve entry in the business market Shaw currently relies on a combination of Shaw-owned facilities as well as those leased from ILECs. These latter facilities are necessary in order for Shaw to serve businesses not located in buildings connected to Shaw's network, including businesses requiring service to multiple locations.

26. In the market for business services, not all locations currently benefit from the presence of more than one supplier of broadband access. Nevertheless, competition is slowly increasing, and cable carriers have increased their market share in the business broadband Internet market by 25% from 2008 to 2012.[5] Shaw is growing its presence in the business market by progressively investing in its own facilities to replace those it leases from the ILEC where it can achieve sufficient economies of scale to make such investments. The availability of leased access facilities to business locations, however, remains critical to competition in the business market.

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[5] See Figure 12 of the LYA Report.

27. In this environment of total competition, Shaw has made significant investments in its broadband network to ensure we meet or exceed increasing customer expectations and future demand on our network. Innovative service offerings such as Shaw Go WiFi, which provides our customers with nomadic Internet access over any WiFi-enabled device, extend our network and add value to our customers' broadband experience. Shaw Go WiFi was designed around our customers' evolving needs, particularly for wireless access to a premium Internet experience while on the go. With over 300,000 customers accessing the service at more than 30,000 locations, Shaw Go WiFi offers a compelling, cost-effective and customer-friendly alternative to wireless data packages. Shaw Go WiFi is an excellent example of how market forces drive Internet providers to respond to consumer demands through innovation and investment, which leads to further competition in the marketplace and, ultimately, enhanced consumer benefit.

28. As detailed above, the retail market in Canada is highly competitive and dynamic with carriers engaged in rivalrous competition for consumers across multiple platforms. Any regulatory intervention must be measured against the possible disruptive effect on market forces. A fundamental principle of Canadian telecommunications policy is that market forces offer the optimal means to ensure Canadians are getting the services they need and want.

29. The LYA Report concludes that carriers in Western Canada invest at a higher level than their Eastern counterparts, and that the broadband market is more competitive in the West than in the East: "The broadband market in Western Canada appears more competitive than the market in Eastern Canada, based on higher levels of capital investment committed by Shaw and TELUS over the last five years."[6] Even within this more competitive market in Western Canada, Shaw consistently tops the list of industry participants in terms of capital intensity, with levels hovering at or about 25% of revenues.[7]

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[6] LYA Report, page 3.
[7] LYA Report, page 3.

30. To ensure this trend of network investment, innovation and service competition in response to consumer demand continues within Canada, the Commission must focus its efforts on addressing market failure and impediments to facilities-based competition in wholesale and retail communications markets. Where market forces can be relied on to achieve the Policy Objectives, the Commission should not interfere with market forces, create asymmetries among service providers or impede service innovation to the disadvantage of Canadian consumers.

31. In this dynamic market, network carriers require the flexibility to innovate to meet consumer demand without onerous or restrictive regulation that interferes with normal business operations and expansion in the marketplace. Achieving this balance requires a flexible, market-driven, consumer-focused and balanced regulatory regime.

Market Power Test

32. The Essential Facilities Test correctly focuses on competitive effects and market power in the downstream, retail market. This appropriately places the emphasis of the wholesale regime on protecting the interests of consumers, rather than protecting incumbents or entrant competitors. As set out in Telecom Decision CRTC 94-19, *Review of Regulatory Framework*, the concept of "market power", commonly used in competition law, is intended to explain the ability of a dominant firm to raise prices above those that would prevail in a competitive market. Shaw believes the Commission's test for assessing whether the market for a service is sufficiently competitive, by looking at the supply and demand conditions in the relevant product and geographic markets, remains appropriate.

33. For reasons of administrative simplicity, in Decision 2008-17 the Commission made its essentiality findings on a service-by-service basis and

applied those findings on a national basis.[8] Shaw recommends that the Commission maintain the ability to apply the Essential Facilities Test in a flexible manner that will permit it to take into account market conditions that might justify forbearance. This approach accords with both the fact-based forbearance test provided for under section 34 of the Act as well as the Commission's test for market power. It recognizes that there may be different market conditions, including different suppliers, in different regional areas or between rural and urban communities.

34. In terms of the relevant product markets, the Commission should in particular take into account the increasing substitutability of wireless services for wireline services, especially in the residential market.[9] In Telecom Regulatory Policy CRTC 2010-632, *Wholesale high-speed access services proceeding* (the "HSA Decision"), the Commission considered that, at that time, retail Internet services provisioned using wireless and satellite facilities generally remained complements to, and not substitutes for, retail Internet services provisioned using wireline facilities.[10] Today, the reality is that consumers have access to, and are using interchangeably, two competing wireline networks, as well as an increasing number of wireless networks, both terrestrial and satellite-based.

35. The Commission has recognized this shift in the telecommunications environment in Telecom Regulatory Policy 2011-291, *Obligation to serve and other matters* (the "Obligation to Serve Decision"), where it stated, "Today ... competitive wireless service providers offer a wide variety of service packages that include bundles of voice, data, and text services. As a result, some consumers, particularly in urban areas, are choosing to replace their local wireline service with a mobile wireless offering."[11]

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[8] Decision 2008-17, paragraph 47.
[9] LYA Report, page 14.
[10] HSA Decision, paragraph 53.
[11] Obligation to Serve Decision, paragraph 17.

36. Shaw is also of the view that the framework should continue to distinguish between the residential and business markets, where both the demand and supply conditions differ. In many cases residential services are not substitutes for business services, which have unique characteristics including the need for higher capacity, speeds and the ability to communicate among different locations of the same enterprise.

37. Moreover, as outlined above, while competing end-to-end platforms exist in the residential market, in the business market there is still only one ubiquitous network, controlled by the ILEC. Accordingly, a more persuasive case can generally be made for the need to mandate ILEC services in the business market than in the residential market.

38. The framework should also distinguish between urban and rural markets. In rural markets, the economics of serving customer premises, and therefore the network footprints of both incumbents and entrant competitors, can vary greatly.[12] In the Obligation to Serve Decision, the Commission set target speeds for broadband Internet access service, noting "while many Canadians in urban areas already have access to broadband Internet services at or above these speed targets, such speeds are not currently available to most Canadians in rural and remote areas."[13]

The Existing Wholesale Services Framework

39. It is clear that facilities-based competition continues to grow in the residential market. As carriers make the investments necessary to anticipate and meet the demands of customers, wireline and wireless facilities-based carriers, in particular, continue to vigorously enter and contest each other's core markets and customer bases.

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[12] See Figure 10 of the LYA Report.
[13] Obligation to Serve Decision, paragraph 76.

40. This fierce competition drives Shaw's aggressive and constant investment in broadband infrastructure. In turn, this investment allows us to introduce new and innovative services, such as Shaw Go WiFi, to meet the needs and demands of our customers in the competitive retail market. The flexibility to invest and innovate is critical for carriers to differentiate themselves from the competition and, most importantly, meet the needs of Canadian consumers.

41. The wholesale framework should facilitate, rather than supplant, this competitive process. The Essential Facilities Test remains the appropriate test to be applied to ensure the proper role of the wholesale regime in meeting the Policy Objectives. The Commission must also ensure that its framework remains stable and predictable. This will support, rather than work at cross purposes with, the efficient planning and allocation of scarce capital in the marketplace.

Changes Required to Framework

Service categories and classification of mandated wholesale services

42. As discussed above, the market conditions in Canada reflect a high degree of rivalrous competition among facilities-based carriers. These entities compete with each other over platforms that feature different service and technological characteristics. They each meet consumers' increasing demand for bundled services that serve all, or virtually all, of their home communications needs. In the absence of mandated access to incumbent facilities, the interests of residential consumers would appear to be protected. Therefore, if the Commission were to apply its Essential Services Test to today's market for residential services, it is likely that conditions would not justify mandating access to wholesale Internet services in this market.

43. However, while competing end-to-end platforms exist in the residential market, in the business market there is still only one ubiquitous network, controlled

by the ILEC. Market forces cannot be relied upon to ensure competitive access in the business market and mandated access to CDN DS-0 and DS-1 facilities is required.

44. ILECs continue to have market power in CDN DS-0 and DS-1 access markets. There is very limited competitive supply of these facilities in different geographic markets and equally limited self-supply of these facilities by competitors in the business markets. Although Shaw is increasingly deploying its own facilities into business locations when feasible, access to ILEC CDN DS-0 and DS-1 access facilities remains necessary for competition in the business market.

45. There are significant operational and economic barriers to duplication by one or more competitors of the ILEC network coverage in the business market. Access to buildings, municipal rights of way and support structure capacity limitations all pose significant barriers to ubiquitous deployment of competing CDN DS-0 and DS-1 access facilities throughout a given geographic business market.

46. While new entrants continue to build out their own access networks, ubiquitous or near ubiquitous deployment is not within the foreseeable future and ILECs remain dominant in CDN DS-0 and DS-1 access markets. There also remains a low level of competition in business telephony and data markets from competitors that do not rely on ILEC-mandated access facilities.

New wholesale HSA services

47. The Policy Direction and the Essential Facilities Test continue to provide the Commission with the appropriate tools to address additional wholesale HSA services, including the FTTP facilities identified in the Notice. In the HSA Decision, the Commission considered the principles that should govern wholesale access services on new types of Internet access infrastructure. It determined that it did not require a definition of “next generation services” or a unique regime to address access to these facilities. It stated:

> … the real issue is to establish those wholesale obligations, if any, that should apply to identified facilities. In this decision, the Commission has determined that competitors continue to require access to the wholesale services currently offered by the incumbents over their digital subscriber line and DOCSIS platforms in order to ensure that sufficient competition exists in the provision of retail Internet services. In the case of the ILECs, the facilities that are subject to wholesale obligations include FTTN and, in the case of the cable carriers, DOCSIS 3.0 facilities.[14]

The Commission further considered that as new technologies are deployed there will likely be a demand for wholesale access to these services. The Commission held that its existing essential services framework "will allow it to assess any future services on a case-by-case basis, consistent with the requirements of the Act, the Policy Direction, and the principles set out in the Order in Council."[15] This conclusion continues to apply to additional wholesale HSA services, including FTTP facilities. Shaw is of the view that this incremental, case-by-case approach continues to be appropriate.

Additional new wholesale services (other than wholesale HSA services)

48. Shaw believes the Commission should be cautious about mandating the provisioning of additional new wholesale services, particularly innovative, new services that allow a network provider to differentiate its service from those of its competitors. To the extent such new wholesale services do not represent core access services, and also are economically duplicable, mandating them is not supported by the Commission's wholesale framework, the Policy Direction or Policy Objectives. Under those circumstances, mandating wholesale access would interfere with market forces and impact the introduction of new, innovative services to Canadians. The Commission must ensure the regulatory framework is market-driven and in the best interest of all Canadians.

[14] HSA Decision, paragraph 121.
[15] HSA Decision, paragraph 122.

Forbearance for wholesale services

49. Prevailing market conditions generally support the continued non-mandating and forbearance for services previously classified as non-essential. Moreover, Shaw believes the Commission should be very cautious about, and generally eschew, re-mandating a service where market circumstances were previously found to justify forbearance. Such a measure has the potential to introduce a level of uncertainty that could disrupt market forces. Re-mandating should be used only in exceptional circumstances, in order to address serious market failures.

Negotiated agreements

50. Off-tariff negotiated agreements and discussions for wholesale services continue to be appropriate and should be preferred over expansion of the existing regime or the imposition of new regulatory obligations on existing mandated services. The application filed by the Canadian Network Operators Consortium Inc., which seeks nearly 20 specific changes to the TPIA service as well as a new Quality of Service and Rate Rebate Plan, provides a good example of the types of issues that parties should be encouraged to address through negotiations and bi-lateral discussion, rather than through the imposition of new regulatory obligations.[16]

Pricing

51. In the interests of the stability and predictability of the wholesale services framework, the current pricing approaches to wholesale services should be maintained. Shaw opposes the freezing of rates for legacy services, as the costs of these services are subject to change as, for example, conditions in the labour market and for other inputs fluctuate.

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[16] *Part I Application to the CRTC to Improve the Quality of Wholesale High-Speed Access Services the Respondents Provide to Independent Internet Service Providers*, CRTC File: 8665-C12-201313030.

52. In pricing, as well as other facets of the framework, the Commission must be vigilant to ensure symmetry in the wholesale obligations imposed on carriers, so that neither cable carriers nor ILECs are disadvantaged or otherwise impaired from investing and competing with each other.

Application of Wholesale Services Framework

53. Shaw supports continued mandating of services falling within the "public good" category. In Decision 2008-17, the Commission described services in this category as "those that the Commission has determined provide an important social benefit and are, therefore, mandated." In respect of support structures, specifically, the Commission considered that:

> ... engaging in the construction of duplicate support structure facilities would result in an inefficient use of public and private resources and would be an inconvenience to the public. Accordingly, the Commission determines that support structure services are to be classified as public good services.[17]

54. The Policy Direction singles out these types of arrangements, e.g., for support structures, as requiring the Commission to "ensure the technological and competitive neutrality of those arrangements". Shaw notes that we have been required to seek regulatory intervention in order to address additional barriers to Shaw's access to support structures erected by Telus Communications Company following Shaw's 1 September 2011 announcement to pursue a Wi-Fi strategy.[18] These barriers are precisely of the type that undermine technological and competitive neutrality, and must be addressed by the Commission.

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[17] Decision 2008-17, paragraph 93.
[18] *Part 1 Application by Shaw for an expedited hearing concerning the administration of the TELUS Communications Company support structure tariffs and a request for related orders,* CRTC File: 8622-S9-201311100.

55. These public good services are generally “single source”, and deregulation would create a significant barrier to facilities-based competition. Carriers owning or operating such facilities that create a substantial barrier to entry where removal of regulatory requirements would result in substantial lessening of facilities-based competition should continue to be subject to ongoing regulatory requirements.

III Conclusion

Canadians need and deserve a vibrant communications system that is relevant in the global digital market and comprises world-leading networks, content, products and services. Any regulatory framework must put Canadian consumers at the core by ensuring that market forces can thrive to allow carriers to meet current and future consumer demands through investment, innovation and facilities-based competition. Any regulatory framework must be market-driven and in the best interest of all Canadians.

56. Shaw supports a wholesale services regime that places emphasis on achieving competition in the downstream market for the benefit of Canadian consumers and businesses. When the residential markets in which Shaw competes are analyzed, it can be seen that the interests of consumers are well served by a fiercely competitive marketplace featuring multiple facilities-based platforms, high levels of capital investment and constant innovation that enhances value for consumers. In the business market, where there is only one ubiquitous network, the availability of certain wholesale services continues to be more important.

57. In all cases, Shaw submits that a stable and predictable wholesale framework is paramount to ensure that market forces thrive and facilitate network investment, service innovation and competition to meet the Policy Objectives and the demands of Canadian residential and business customers alike.

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