BEFORE THE CANADIAN RADIO-TELEVISION
AND TELECOMMUNICATIONS COMMISSION

IN THE MATTER OF

AN APPLICATION BY THE COMPETITIVE NETWORK OPERATORS OF CANADA

PURSUANT TO PART 1 OF
THE *CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS RULES OF PRACTICE AND PROCEDURE*
AND
SECTION 62 OF
THE *TELECOMMUNICATIONS ACT*

TO REVIEW AND VARY TELECOM ORDER CRTC 2026-77, FINAL RATES TERMS AND CONDITIONS FOR AGGREGATED WHOLESALE HIGH-SPEED ACCESS SERVICES OVER FIBRE-TO-THE-PREMISES FACILITIES

23 JULY 2026

Introduction and Executive Summary

1. Competitive Network Operators of Canada ("CNOC") files this Application to request that the Canadian Radio-television and Telecommunications Commission (the "Commission") review and vary *Final rates and final terms and conditions for aggregated wholesale high-speed access services over fibre-to-the-premises facilities,* Telecom Order CRTC 2026-77 ("Telecom Order CRTC 2026-77").

2. Three years ago, in a Direction to the Commission, the Governor in Council ordered the Commission to implement measures to encourage all forms of competition, foster affordability, and remove barriers to entry to allow for greater competition for Internet services in Canada.

3. The Direction required the Commission to develop strong and timely market monitoring and use the results of that monitoring in the performance of its duties. In addition, the Commission was directed to proactively adjust the framework if necessary.

4. What has happened is that the wholesale costing model is completely misaligned with market reality in that the Commission's decision completely ignored the prices the incumbent providers were (are) actually offering (and charging) to consumers.

5. The dominant incumbents' retail prices for fixed internet services on fibre are priced ***at or below*** their regulated wholesale costs. This means one of two things. Either the wholesale rates inaccurately reflect costs or the incumbents are engaged in below-cost pricing, which acts as a barrier to entry and expansion by service-based/wholesale competitors. Either way, the errors Telecom Order CRTC 2026-77 require correction.

6. CNOC therefore requests that the Commission implement retail pricing safeguards to prevent below cost retail pricing strategies while the Commission reexamines the wholesale costing model to ensure that it reflects ***actual*** pricing in the marketplace. Specifically, CNOC requests that the Commission:

   a. direct incumbents to provide retail pricing data, including flanker brand and white-label pricing, in-market offers, special (off-market promotions) and actual prices charged to consumers, as part of its market monitoring;

b. include CNOC members in any data-gathering exercises which ensures all up to date regional and local information is presented, especially given that CNOC members have not been asked to provide information;
c. declare the rates established in Telecom Order CRTC 2026-77 to be interim until such time as the Commission has the opportunity to review the rates, examine the results of its market monitoring activities and establish just and reasonable rates with costs appropriately benchmarked to retail prices; and
d. implement any retail pricing safeguards on incumbent providers it deems appropriate to mitigate the market situation.

7. We elaborate below.

This Application Meets the Criteria for an Application to Review and Vary

8. For the Commission to review and vary a decision, an applicant must demonstrate that "there is substantial doubt as to the correctness" of that decision, for reasons that include "an error in law or fact". There is substantial doubt as to the correctness of Telecom Order CRTC 2026-77 because the regulated wholesale inputs for offering a competitive fibre-to-the-home ("FTTH") service are too high for independent competitors to profitably offer a FTTH service. In addition, the Commission has failed to actively monitor the effectiveness of the framework and make proactive adjustments as necessary. The final rates established by the Commission in Telecom Order CRTC 2026-77 are by the Commission's admission similar to those that have been available for at least two years and yet CNOC is unaware of any ongoing monitoring or proactive measure having been taken.

Background

9. In 2023, the Governor in Council issued a Direction to the CRTC on a Renewed Approach to Telecommunications Policy, SOR/2023-23, 10 February 2023, which repealed a prior 2019 Direction to the Commission. In the 2023 Direction, the Governor in Council noted that the telecommunications market and its regulation had changed since 2019 and that the renewed approach was to reflect those changes.

10. Among other things, the 2023 Direction mandated the Commission to consider as key objectives how its decisions "…would promote competition, affordability, consumer

interests and innovation" insofar as the decisions would a) encourage all forms of competition and investment; b) foster affordability and lower prices, particularly when telecommunications service providers exercise market power; c) ensure that affordable access to high-quality, reliable and resilient telecommunications services is available in all regions of Canada, including rural areas, remote areas and Indigenous communities; and d) reduce barriers to entry into the market and to competition for telecommunications providers that are new, regional or smaller than the incumbent national providers.

11. The Governor in Council also directed that, as principles of effective regulation, the Commission ensure that its proceedings are transparent, predictable and coherent and that the measures it implements are efficient and proportionate to their purpose. In pursuing that mandate, the Commission was directed to develop strong and timely market monitoring, research and strategic foresight skills and use the results that it obtains from these activities in the exercise of its powers and the performance of its duties. In addition, the Commission was directed to base its decisions on sound and recent evidence and that it should exercise its powers to obtain necessary evidence.

12. Recognizing that timeliness in decision making is a key element in ensuring relevance and market certainty, the Governor in Council directed the Commission to consider whether adopting new processes or engaging external experts would assist in achievement of these principles and objectives.

13. With respect to decisions of an economic nature, the Commission was directed to balance the objectives of a) fostering competition; b) promoting investment in high-quality networks; c) improving consumer choice; d) supporting the provision of innovative services; and e) encouraging the provision of services at reasonable prices for consumers.

14. The Governor in Council had specific mandatory guidance for the Commission with respect to fixed internet competition. The Governor in Council ordered the Commission to foster fixed internet competition that is sufficient to protect the interests of users. In furtherance of that mandate, the Commission was directed to a) maintain a regulatory framework mandating the provision – at just and reasonable rates – of wholesale services for fixed internet; b) monitor the effectiveness of the framework; and c) adjust the

framework as necessary and in a timely manner, including by making proactive adjustments.

15. The Governor in Council further ordered that, in implementing measures to foster fixed internet competition, the Commission must mandate the provision of an aggregated wholesale high-speed access service in addition to any other type of service it might deem appropriate and implement access services at a variety of speeds, including low-cost options, for the purpose of ensuring affordable options for consumers while allowing for the modernization of networks. The Governor in Council suggested that the Commission should set interim and final tariffs expediently, including by reforming the tariff-setting process and considering external expertise and international best practices. Lastly, the Commission was directed to ensure that the regulatory framework for fixed internet services applies equally to the carriers subject to the framework.

16. The motivation for these very specific orders within the Direction were the tumultuous and controversial history of the Commission's attempts to establish rates, terms and conditions for wholesale services generally but, also fibre access service specifically. Such was the concern, that the Governor in Council very pointedly directed the Commission to proactively act to foster fixed internet competition that is sufficient to protect the interests of users.

17. Approximately one month after the Direction, the Commission initiated a public hearing with *Notice of Hearing – Review of the wholesale high-speed access service framework*, Telecom Notice of Consultation CRTC 2023-56 ("TNC 2023-56"). In announcing its intention to review the framework, the Commission noted the changing market conditions, the significant challenges in implementing the framework, and the importance to Canadians of having access to greater choice and more affordable services.[1] In addition to announcing the review, the Commission implemented an interim rate reduction to some wholesale high-speed access service rates. At the time, the Commission acknowledged that, notwithstanding its goal to establish rates more expediently, the volume and complexity of costing studies would take some time to complete. In doing so, the

[1] TNC-2023-56 at Summary.

Commission acknowledged that its traditional regulatory and costing processes were not appropriate as market dynamics changed and moved more quickly.

18. In TNC 2023-56, the Commission also acknowledged that in 2019, very few customers were subscribing to internet speeds near or above 1 gigabit per second (Gbps), whereas in 2023, 13% of subscribers then did. Similarly, the Commission noted that along with demand for higher speeds, the consumption of data had more than doubled over the preceding 4 years.[2] It is important to note that this was in a predominantly monopoly supply or, in limited circumstances, a duopoly supply environment as no FTTH access had yet been mandated. The Commission acknowledged that, while there were substitutes for high-speed access, there were no suitable substitutes for the burgeoning demand for fibre and fibre-like services.

19. In terms of market facts, the Commission stated that, "large incumbent carriers collectively hold an 84% national market share. This situation has raised concerns with respect to the potential for these dominant firms to exercise market power in a manner that is detrimental to the realization of the Canadian telecommunications policy objectives (the policy objectives) set out in section 7 of the *Telecommunications Act* (the Act)".[3]

20. The dominant incumbent carriers enhanced their dominance evidenced by growth in subscribers and revenues. The Commission noted that many incumbent carriers had launched flanker or fighting brands to support their growth, offering services comparable to those offered by competitors at a lower price point. These brands inoculated the incumbent premium brands from competitive discipline. As a consequence, competitors lost customers or were acquired by dominant incumbents. This expressed in part, the Commission's motivation for ostensibly providing access to higher speed access services by competitors.

21. Another trend observed by the Commission was contained in the *2021 Price Comparison Study of Telecommunications Services in Canada and with Foreign Jurisdictions*[4] which showed Canada had relatively high prices compared to peer jurisdictions, particularly in

[2] *Ibid*, at para. 2.
[3] *Ibid*, at para. 5.
[4] Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2021 Edition

the higher speed service segments. In the 2025 report, based on data collected in the Fall of 2024,[5] while there were some modest reductions in lower speed tiers, prices remained among the highest vis-a-vis peer jurisdictions in the lower speed service baskets. Prices were the highest, when compared with peer jurisdictions. for the higher speed tiers of 900 Mbps+ which contain the FTTH offerings of the telephone companies and the upper tier offerings of the cable carriers.

22. The Commission noted that the framework to date had not ensured that the competitive dynamics were in place to discipline the retail internet service market and, as such, had failed to meet its objective of facilitating vibrant and sustainable competition in the retail internet service market. The Commission stated that incremental changes to its wholesale high-speed access service framework were not going to resolve the concerns that were evident with respect to the state of wholesale-based competition, or more broadly, in the retail internet service market.[6]

23. The Commission's observations are particularly instructive as they formed the motivation for addressing the steady erosion of competition and competitive alternatives in the retail internet service market that are provided by the independent competitors, including those represented by CNOC. The very same factors that caused both the Governor in Council and the Commission concern in 2023 remain today despite the Commission's efforts to incrementally adjust the rates, and the terms and conditions associated with wholesale access services framework.

24. The biggest policy change – which CNOC and nearly every other market participant in the country opposed – concerned a decision not to prevent incumbents from reselling each other's fibre access service out of their incumbent territories thereby, among other things, extending their joint service dominance nationally through bundling opportunities with their wireless affiliates. The Commission's decisions have been taken and CNOC is not re-litigating them here, but in the period between the issuance of Telcom Order CRTC 2026-77 and the date of filing the Commission's error in fact and law by not imposing some form of retail pricing protections at a minimum has become evident.

[5] Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions: 2024 Edition

[6] TNC 2023-56 at para. 25.

25. The Commission signaled in 2023 that the provision of FTTP using wholesale aggregated high speed access services would be mandated and a review of the state of competition in the retail internet service market would be undertaken. The Commission also expressed its interest in potential actions it could take to measure the competitive health of the retail internet service market and the effectiveness of its wholesale high-speed access service framework going forward. Both in and out of territory pricing examples which are easily monitored show that the Commission's omissions have created a path to the re-monopolization of fixed internet service.

26. In a series of decisions over the subsequent three years, the Commission established interim rates for fibre access service in Ontario and Quebec, as well as extending that access across Canada in 2025, and setting final rates in *Final rates and final terms and conditions for aggregated wholesale high-speed access services over fibre-to-the-premises facilities,* Telecom Order CRTC 2026-77 ("Telecom Order CRTC 2026-77"),[7] the decision which is the subject matter of this request for review and variance.

Telecom Order 2026-77

27. In April of 2026, the Commission established final rates for aggregated wholesale high-speed access services over fibre-to-the-premises facilities. The Commission stated that it was, "…taking action to ensure Canadians benefit from new choices and greater affordability of high-speed internet services".[8] The Commission noted that these rates used its longstanding approach of carefully considering the costs that incumbents incurred to build their networks. The Commission expressed confidence that, in engaging in proceedings over the preceding three years, and in finalizing these rates that it noted were similar to the interim rates, the industry would be provided with certainty and that competitors would be able to offer new choices to Canadians.

28. The Commission also committed to "…continue its active market surveillance to ensure that its approach translates into new choices and more affordable pricing for Canadians". The Commission committed to "…follow the evidence and act quickly to adjust its

[7] Telecom Order CRTC 2026-77
[8] *Ibid*, at Summary

approach if necessary”,[9] and in assessing the effectiveness of its framework, the Commission committed to make any “…necessary adjustments to ensure that Canadians receive the high-quality telecommunications they need at prices they can afford”.[10]

29. Yet the Commission did not appear to do any analysis that benchmarked the wholesale costs against actual prices – at least none was reflected in Telecom Order 2026-77.

30. Importantly, the obligations set out in the Direction are not merely aspirational policy guidance. They are legally binding on the Commission by operation of section 47 of the *Telecommunications Act*. Section 47 requires the Commission to exercise its powers and perform its duties under the Act “(a) with a view to implementing the Canadian telecommunications policy objectives and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27; and (b) in accordance with any orders made by the Governor in Council under section 8.”

31. The Direction, SOR/2023-23, is an order made under section 8 of the Act. Accordingly, the Commission's failure to establish wholesale rates that reflect actual market conditions, its failure to implement meaningful market monitoring that captures the pricing responses of both incumbent and independent providers, and its failure to proactively adjust the framework in response to the self-evident competitive distortions described herein are not merely inconsistent with the spirit of the Direction, they constitute a failure to comply with a statutory duty imposed on the Commission by Parliament through section 47(b) of the Act. This failure gives rise to an error in law that supports a finding of substantial doubt as to the correctness of Telecom Order CRTC 2026-77.

32. It has been reported that the Commission is seeking updates from the major telecommunications carriers and cable companies with respect to residential wireline internet subscribers.[11] CNOC is <u>not</u> aware of its members receiving any such requests relating to the numbers of its members subscribing to their standalone or bundled fibre-to-the premises services such as were sent to the incumbent carriers. The Commission’s letter is neither addressed to nor copied on any party other than dominant incumbent

[9] *Ibid.*
[10] *Ibid*, at para. 33
[11] CRTC wants carrier updates on wholesale internet connections, Cartt, July 14, 2026

telecommunications carriers and cable companies. Moreover, CNOC members have not been asked to provide information about retail pricing or service bundling or any information about the pricing responses they face. This is an important oversight and one that must be corrected in order for the Commission to have a true representation of the pricing responses from incumbent providers and the conclusions that can be drawn about the true costs of providing wholesale fibre access services as it was directed to seek and erred in not doing.

Error in Fact #1

33. While the Commission correctly and, consistent with the 2023 Policy Direction, appears to have implemented a monitoring mechanism to gauge the effectiveness of the rates finalized in Telecom Order 2026-77, those rates have for all intents and purposes been in effect already for almost two years. The ability of independent competitors to competitively and sustainably offer FTTH using the framework is limited and, to the extent independent competitors are offering FTTH, they are unable to profitably match the offerings of out-of-territory incumbents like TELUS,[12] which is either:

   a. selling the service pursuant to a wholesale agreement at below-tariffed rates,
   b. selling the service over facilities that are not tariffed through another party, or
   c. selling the service at or below the wholesale cost with prices guaranteed for abnormally long periods of time – and longer than what would normally be permitted.[13]

In any case, CNOC's members cannot sustain a service to compete with the incumbents unless they are willing and able to subsidize losses over exceedingly long periods of time in order to do so. Independent competitors would have to price services at or below the cumulative wholesale costs in order to do so – meaning this isn't effective or real competition because there is no margin available to operate.

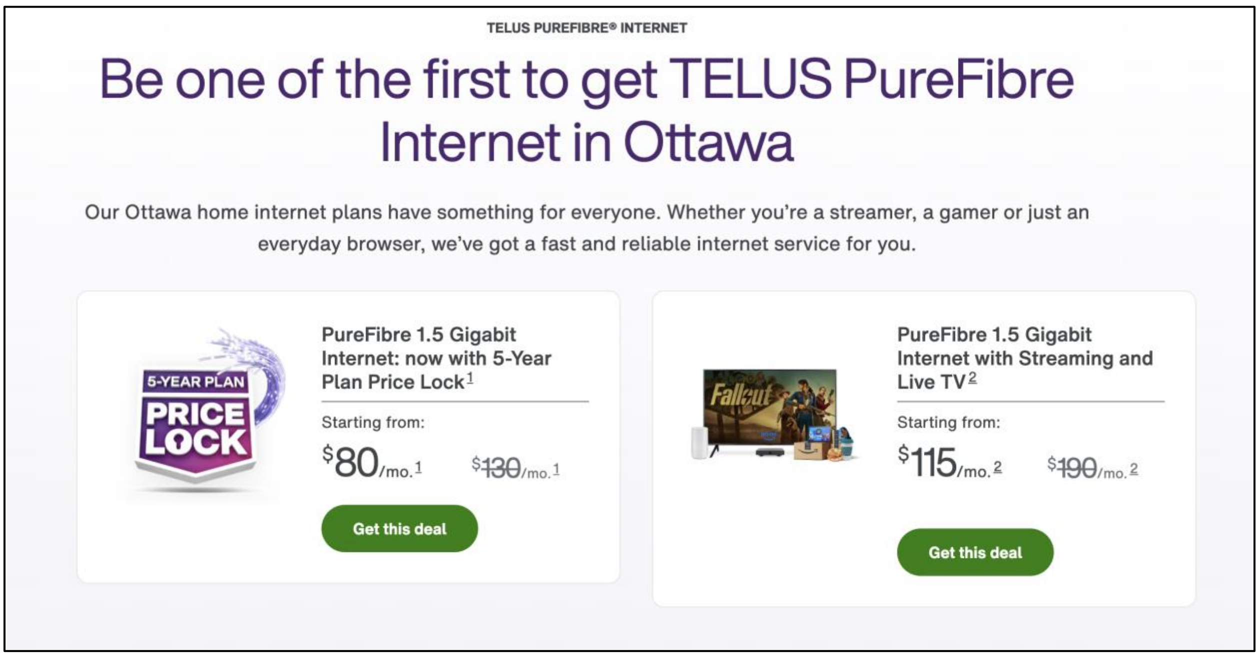
34. That is not a sustainable strategy for any provider other than a dominant multiservice supplier (which can leverage the profits from other business lines where it has pricing

[12] https://www.telus.com/en/internet/ottawa
[13] See for example, Competition Bureau Deceptive Marketing Practices Guidance

power such as wireless) and, as a consequence, smaller independent competitors are effectively excluded from the market or are being forced out contrary to the 2023 Policy Direction that required the government to "reduce barriers to entry into the market and to competition for telecommunications providers that are new, regional or smaller than the incumbent national service providers"[14].

35. The Commission's monitoring mechanisms have seemed to miss the market conditions evolving around it, which is a legal error that requires correction..[15] For example, in Ottawa, TELUS is offering a standalone 1.5 Gbps FTTH service for $80/month, on a two-year term with a 5-year price guarantee.[16]

Figure 1 - TELUS Promotion (Ottawa)



[14] 2023 Policy Direction at 2 (e)
[15] Telecom Order CRTC 2026-77 at para. 33.
[16] https://www.telus.com/en/internet/ottawa

Terms and conditions

1. Offer subject to change without notice and only available to new and existing TELUS customers in Ontario who have not subscribed to internet in the past 90 days and activate an eligible internet plan on a 2 year term. Cannot be combined with other promotional offers not mentioned in this advertisement. Prices of features and select add-ons are not guaranteed during the 2 year term and subject to change anytime. From month 1-60, a $50/mo internet discount applies to the regular price, currently $130/mo. At month 61, the $50/mo internet discount will continue to apply for as long as the eligibility requirements are met or until the discount is no longer maintained. From month 1-60, a $20/mo discount applies to the regular price of unlimited internet data-add on, currently $20/mo. At month 61, the $20/mo unlimited internet data add-on discount will continue to apply for as long as the eligibility requirements are met or until the discount is no longer maintained. All prices do not include applicable taxes. A cancellation fee applies to the early termination of your 24 month internet service agreement, which will be the sum of $480, declining by $20 for every month of Internet service and reducing to $0 at the end of your 2 year term. Rental equipment must be returned in good condition within 14 days of upon cancellation or termination of service, otherwise the replacement cost will be charged to the account. Maximum speeds require optimal network conditions on a wired connection. Internet access speeds may vary depending on location, usage within the home network, Internet traffic, applicable network management or server configurations. Concurrent data streams, including combinations of uploads and downloads, may be required to access maximum speeds. Maximum speeds may not be achievable using a single device. Discounts, promotions, benefits and credits are earned for each full month of service and do not apply to partial billing periods. Final eligibility for the services will be determined by a TELUS representative.

36. In the figure above, TELUS is offering a FTTH service (presumably over Bell Fibe) at a rate guaranteed for ***at least*** five years, that barely recovers the wholesale input costs of replicating it for an independent competitor. TELUS claims the regular price is $130/month, yet the discounted price is guaranteed for five years. This begs the questions, what are the actual costs of providing the service and what is the "regular" price?

37. The Commission has erred, in fact or law, in establishing regulated costs for the fundamental elements used by independent competitors providing a wholesale element enabled high-speed access service. Under any scenario, independent competitors are unable to sustainably compete.

38. The problem is compounded when looking at other prices in the market for similar services. CNOC has done the work to compile a comparative view of not only the regulated wholesale costs that are required to offer an FTTH service but also the prices charged by incumbents, their fighting and flanker brands as well as distributors with whom they have white labeled resale and distribution agreements. In the figure below you can see the minimum costs associated with providing a wholesale FTTH service by region. A dynamic version of this tool is available on CNOC's website.[17]

[17] https://cnoc.ca/index.html - onqc

Figure 2 - Bell Prices (Toronto)

CHOOSE YOUR TERRITORY — SAME INTERNET, DIFFERENT RULES

POSTED RETAIL PRICE · WHAT IT COSTS A COMPETITOR

ON / QC BELL NETWORK | AB / BC TELUS NETWORK | SK SASKTEL NETWORK | MB BELL MTS NETWORK | ATLANTIC BELL ALIANT NETWORK

TODAY'S FIBRE PRICES

TORONTO · BELL NETWORK · VERIFIED JUNE 10 & JULY 20, 2026

	EBOX a Bell brand	BELL FIBE incumbent	COSTCO via Primus, a Bell Brand	WHAT IT COSTS A COMPETITOR to deliver this plan — before profit
REGULAR **150 Mbps**	50^{00}	70^{00} reg. $80.00	44^{95}	103^{56} at CRTC rates
PLUS **500 Mbps**	55^{00} + $100 prepaid card	75^{00} reg. $85.00	49^{95}	104^{22} at CRTC rates
PREMIUM **1–1.5 Gbps**	65^{00} + $100 prepaid card	75^{00} reg. $85.00	59^{95}	105^{33} at CRTC rates

No independent can match these prices and survive. **That's not a market — that's the design.**

PRICES AS POSTED, INCLUDING ADVERTISED CREDITS & DISCOUNTS · EQUIPMENT INCLUDED ON ALL RETAIL PLANS · ROGERS & REGIONAL PROVIDERS COMING SOON

Figure 3 - TELUS Prices (Alberta and BC)

CHOOSE YOUR TERRITORY — SAME INTERNET, DIFFERENT RULES

POSTED RETAIL PRICE · WHAT IT COSTS A COMPETITOR

ON / QC BELL NETWORK | AB / BC TELUS NETWORK | SK SASKTEL NETWORK | MB BELL MTS NETWORK | ATLANTIC BELL ALIANT NETWORK

TODAY'S FIBRE PRICES

B.C. · TELUS NETWORK · VERIFIED JUNE 10, 2026

	TELUS PUREFIBRE incumbent	WHAT IT COSTS A COMPETITOR to deliver this plan — before profit
REGULAR **150 Mbps**	—	112^{85} at CRTC rates
PLUS **500 Mbps**	70^{00} reg. $90.00	113^{48} at CRTC rates
PREMIUM **1–1.5 Gbps**	85^{00} reg. $105.00	114^{53} at CRTC rates

No independent can match these prices and survive. **That's not a market — that's the design.**

PRICES AS POSTED, INCLUDING ADVERTISED CREDITS & DISCOUNTS · EQUIPMENT INCLUDED ON ALL RETAIL PLANS · ROGERS & REGIONAL PROVIDERS COMING SOON

Figure 4 - SaskTel Prices (Saskatchewan)

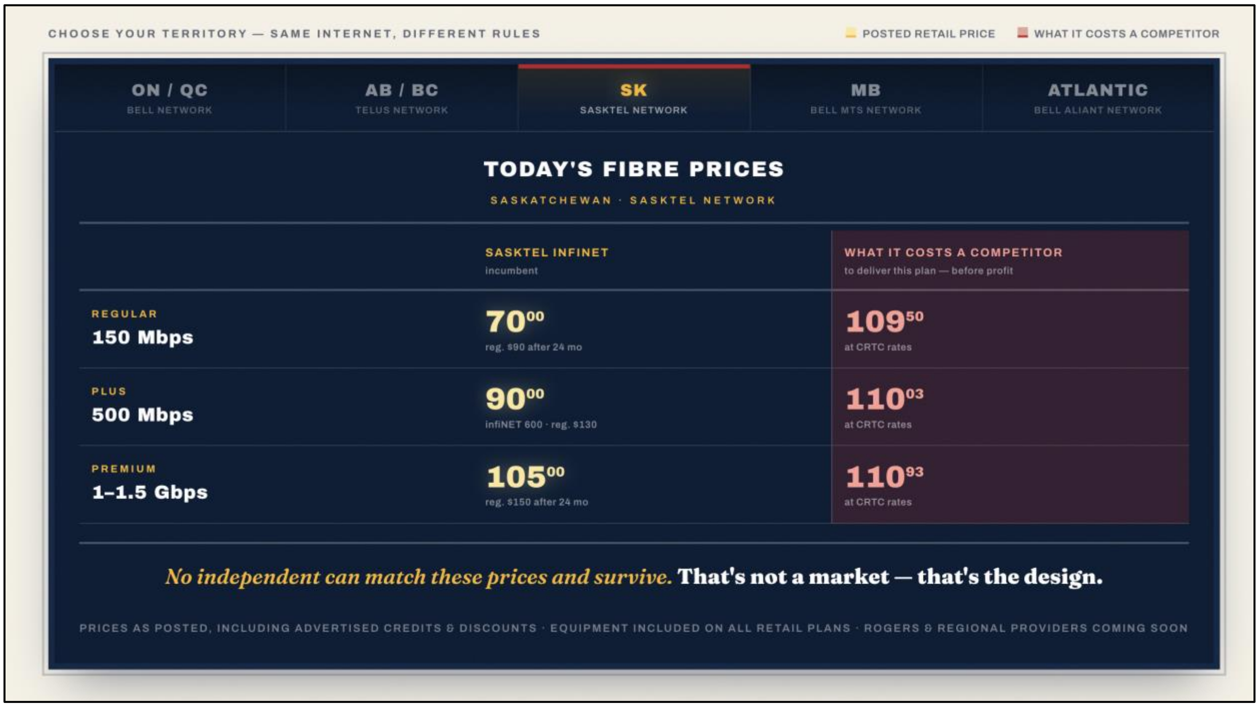


Figure 5 - Bell MTS Prices (Manitoba)

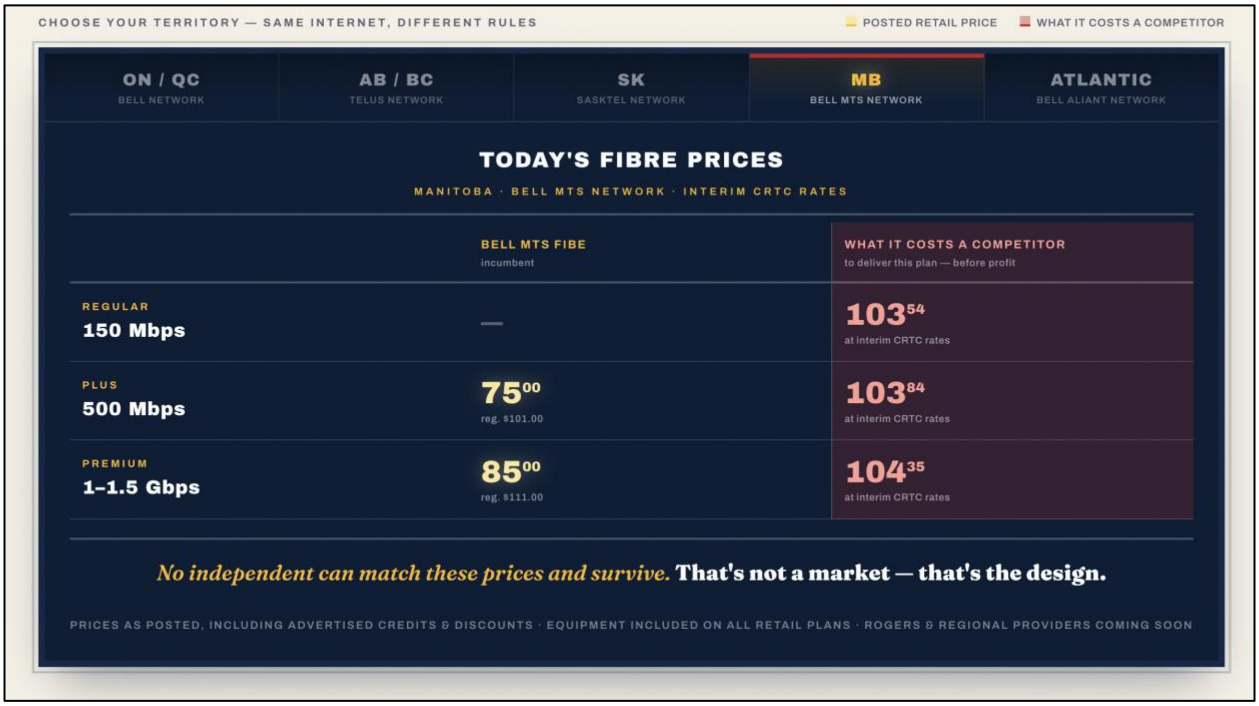
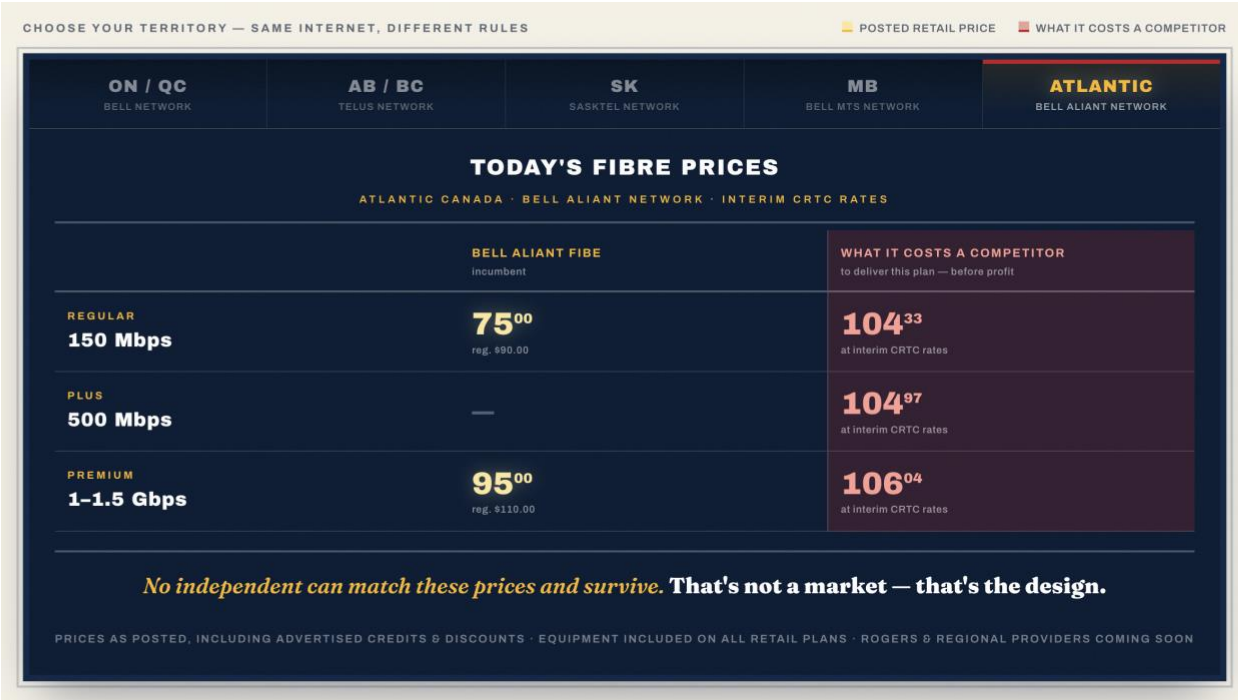


Figure 6 - Bell Aliant Prices (Atlantic)



Error in Fact or Law #2

39. The Commission also erred in failing to establish protections against the dominant providers' ability to price their services below the costs the Commission has determined are, at a minimum, necessary to provide the service. In doing so, the Commission has not reduced barriers to entry, it has raised them for independent competitors. In the 2023 Direction to the CRTC, the Commission was directed to implement and utilize a marketing monitoring capability to detect rapidly evolving market dynamics. However, since that time, as the pricing strategies shown above have emerged, the Commission has failed to do so. As a result, the dominant suppliers of fixed internet in Canada, which the Commission has determined exercise market power, have been able to solidify and build on their position to the detriment of the independent competitors' ability to compete effectively and sustainably in the market.

40. The pricing responses of the dominant fixed internet providers have been evident in the market for a considerable period of time, and the Commission in Telecom Order CRTC 2026-77 established rates that it described as similar to the previously established interim rates. The Commission erred in fact or law in establishing rates that are too high or in failing to establish safeguards to protect against predatory pricing strategies.

41. Ultimately, the Commission has failed to establish just and reasonable wholesale rates for the provision of FTTH service by independent competitors and has failed to establish necessary protections that are self-evident from incumbents' or their proxies pricing responses in the retail market.

Requested Remedy

42. For the reasons set out above, there is substantial doubt as to the correctness of the final rates established in Telecom Order CRTC 2026-77. Given dominant incumbent carriers' retail pricing responses, the costs reflected in the regulated wholesale rates appear overstated and/or that pricing safeguards are required. CNOC therefore requests that the Commission:

a. direct incumbents to provide retail pricing data, including flanker brand and white-label pricing, in-market offers, special (off-market promotions) and actual prices charged to consumers, as part of its market monitoring;
b. include CNOC members in any data-gathering exercises, given the observation that CNOC members have not been asked to provide information;
c. declare the rates established in Telecom Order CRTC 2026-77 to be interim until such time as the Commission has the opportunity to review the rates, examine the results of its market monitoring activities and establish just and reasonable rates with costs appropriately benchmarked to retail prices; and
d. implement any retail pricing safeguards on incumbent providers it deems appropriate to mitigate the market situation.

43. We thank the Commission for its consideration of our review and vary application.

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