

PETITION BY IRISTEL INC. TO THE GOVERNOR IN COUNCIL

TO VARY TELECOM DECISION CRTC 2021-397, *IRISTEL INC.* – *APPLICATION TO REVIEW, VARY, AND STAY TELECOM DECISION 2020-268 AND TELECOM NOTICE OF CONSULTATION 2020-269 REGARDING THE ROUTING OF TRAFFIC TO NUMBERING PLAN AREA 867, 1 DECEMBER 2021*

AND TO VARY TELECOM NOTICE OF CONSULTATION CRTC 2020-269-2, *CALL FOR COMMENTS – IMPOSITION OF ADMINISTRATIVE MONETARY PENALTIES ON IRISTEL INC. AND TELUS COMMUNICATIONS INC. IN RELATION TO THE ROUTING AND TERMINATION OF PHONE CALLS TO THE 867 AREA CODE IN NORTHERN CANADA – CHANGES TO PROCEDURE, 1 DECEMBER 2021*

**PURSUANT TO SUBSECTION 12(1) OF THE *TELECOMMUNICATIONS ACT*, S.C.
1993, C. 38**

1 MARCH 2022

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EXECUTIVE SUMMARY¹

ES-1. This petition is being submitted by Iristel Inc. (“Iristel”), pursuant to subsection 12(1) of the *Telecommunications Act*.

ES-2. Iristel is seeking relief from the Governor in Council in relation to decisions made by the Canadian Radio-television and Telecommunications Commission (“Commission”) with respect to the use of telephone numbers tied to Canada’s three Territories (collectively, the “North”) and the routing of telecommunications traffic to the North that have unjustly inflicted harm upon Iristel by:

- (a) Punishing Iristel which has made investments in telecommunications facilities in the North for pursuing its innovative business model, while insulating large, dominant telecommunications carriers from the necessity of making similar investments;
- (b) Shifting from the large, dominant telecommunications carriers to Iristel, the burden of disciplining the behaviour of their end customers despite their ability to do so and the lack of a direct business relationship between Iristel and those end customers;
- (c) Putting Iristel in potential jeopardy that could include the payment of a penalty of between \$750,000 and \$1,250,000;
- (d) Creating ongoing business uncertainty for Iristel due to the lack of a well-defined Commission policy with respect to the use of telephone numbers tied to the North and the routing of the other carriers’ telecommunications traffic to the North.

ES-3. These outcomes are completely inconsistent with Canada’s telecommunications policy objectives and other government policy pronouncements, including especially the government’s directive to the Commission to promote competition and investment in telecommunications in all regions of Canada.

¹ Terms not defined and sources not cited in the Executive Summary are defined and cited, respectively in the balance of the petition.

ES-4. In order to rectify the injustice inflicted on Iristel, in this petition, Iristel urges the Governor in Council:

- a) To vary Telecom Decision CRTC 2021-397 (“TD 2021-397”) to find that Iristel did not violate subsection 27(2) of the *Telecommunications Act*;²
- b) To vary TD 2021-397 to order the Commission to articulate a clear and comprehensive policy with respect to the assignment of area code (also known as numbering plan area or “NPA”) 867 numbers and the routing and termination of calls to the North in a subsequent follow-up proceeding; and
- c) Regardless of whether it grants the relief requested in parts (a) and or (b) of this paragraph, to vary Telecom Notice of Consultation CRTC 2020-269-2 (“TNC 2020-269-2”) to remove any consideration of the imposition of an administrative monetary penalty (“AMP”) on Iristel.

ES-5. Iristel is a competitive telecommunications carrier that provides advanced and affordable telecommunications services, including voice, wireless, and Internet services, to Canadians, coast to coast to coast. Iristel, including through its affiliated mobile wireless carriers Ice Wireless and i-MobileCa, is proud to have a long history of investing in building telecommunications facilities in the North, as well as northern Quebec.

ES-6. One of the telecommunications services that Iristel offers is making available phone numbers, including phone numbers from NPA 867, which encompasses the North, to customers who require the use of such phone numbers. Iristel also operates as a provider of local exchange voice services (i.e., a competitive local exchange carrier or “CLEC”) in the North and is also an interexchange carrier (i.e., a provider of long-distance voice services). In other words, Iristel both

² That subsection provides: “No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.”

makes available NPA 867 numbers to customers and carries and terminates traffic from numbers from calling areas (or exchanges) in other NPAs to numbers in NPA 867 exchanges.

ES-7. The Commission's finding that Iristel violated subsection 27(2) of the *Telecommunications Act* stemmed from complaints that had been made by Rogers and TELUS, two of Canada's largest, dominant telecommunications carriers.

ES-8. Iristel makes available phone numbers to customers located all over the world. Some of these customers selected phone numbers from NPA 867 for use by conference calling and call to listen services. Rogers and TELUS objected to having to pay for traffic generated by their own end-users directed to these numbers, arguing that the numbers were being used by end-users that were not located in the North, leading to high costs that generated corresponding revenues for Iristel.

ES-9. Iristel does not police the location of end-users that make use of Iristel phone numbers. Such regulation is archaic in the age of the Internet when end-users may be located all over the world and may have legitimate reasons for wanting to make use of a phone number located in Northern Canada.

ES-10. In response to the complaints from Rogers and TELUS, Iristel argued before the Commission that it should not be responsible for traffic generated by the end-users of other carriers. Iristel emphasized that Rogers and TELUS had self-help remedies available to them to address their concerns with this traffic including:

- a. Building their own facilities in Canada's North;
- b. Using the long-distance transport services of Northwestel Inc. (a BCE Inc. company) instead of Iristel;
- c. Applying restrictions on end-users that make an excessive number of calls to high cost serving areas;
- d. Lowering the amount they charge for mobile wireless data to encourage end-users to use IP-based streaming and conference services; and

- e. Educating their end-users about the costs of calling NPA 867 numbers indiscriminately.

ES-11. Iristel emphasizes that these complaints only arose because neither Rogers, nor TELUS, have built telecommunications facilities in the North like Iristel. Had they done so, they could have interconnected their facilities directly with those of Iristel in the North, and the traffic costs about which they complained would have been substantially reduced. This is because the cost associated with the exchange of telecommunications traffic between carriers when they interconnect directly with each other in the North is much lower.

ES-12. Rogers and TELUS have refused to pursue these self-help remedies. The common theme in their rejection of Iristel's proposals is that Rogers and TELUS are not willing to incur the costs or inconvenience to address what they view as unacceptable behaviour by their own end-users. Instead, they want to shift the responsibility to Iristel.

ES-13. Shockingly, the Commission disagreed that Rogers and TELUS should be responsible for the actions of their own end-users and, in a series of decisions, found that Iristel had violated subsection 27(2) of the *Telecommunications Act*. As a result of this finding of a violation, the Commission is considering imposing a significant AMP on Iristel.

ES-14. The Commission's conduct in finding that Iristel violated subsection 27(2) of the *Telecommunications Act*, and then proceeding to consider the imposition of a significant AMP on Iristel, is particularly unjust because the Commission has refused to create a clear policy for Iristel and the rest of the industry to follow with respect to the Commission's expectations for the assignment of NPA 867 numbers and the routing and termination of calls to the North.

ES-15. This failure to create clear regulatory framework creates ongoing risk for Iristel as it conducts its business in the North. In the absence of regulatory guidance, Iristel is potentially at risk of further findings of violations and the possible levying of further AMPs even though it has

already taken a number steps designed to address the concerns expressed by the Commission this far.³

ES-16. The combination of the Commission's findings in TD 2021-397 and the continuation of the proceeding initiated by TNC 2020-269-2 coupled with the continued absence of a clearly articulated policy will have a serious chilling effect on investment in telecommunications facilities in the North.

ES-17. The Commission's pronouncements to date send a message to large incumbent carriers that they do not need to build their own facilities in the North and that if they dislike the rates charged by competitive carriers such as Iristel, the Commission will protect them. This is wrong. The Commission should be incenting large incumbent carriers like TELUS and Rogers to invest in the North.

³ More specifically, Iristel has:

- 1) Raised the monthly rate it charges for 867 NPA telephone numbers by 50% over what Iristel charges in other NPAs to create a disincentive for Iristel's wholesale customers to select 867 numbers when any other number could serve the same business purpose;
- 2) In April 2021 Iristel terminated its Outbound Termination Services ("OTS") Agreement with Rogers to carry and terminate traffic in the 867 NPA as a result of which Iristel ceased to receive any financial gain from Rogers traffic to the 867 NPA;
- 3) Iristel recently reviewed its records to confirm that none of its customers are currently operating call to listen services in the 867 NPA;
- 4) Following a recent complaint by Rogers about a specific number being used for a call conferencing service, Iristel took measures to ensure that the number was no longer used for call conferencing services and Rogers has confirmed that this has addressed the objectionable traffic it noticed. Iristel took this measure out of an abundance of caution until further clarification is given by the Commission in response to the fling of a request with the Commission ("Clarification Request") seeking elucidation of the Commission's policy with respect to the assignment of NPA 867 number and pending the outcome of any appeals of that decision;
- 5) Iristel has adopted an internal policy that, in instances where high volume traffic patterns to certain numbers are automatically detected through software tools under development, or are brought to Iristel's attention, Iristel will promptly investigate the matter with the customer involved. In the event that it is determined that a number is being used in a manner that is contrary to any Commission determinations, including those in TD 2021-397, Iristel will instruct the customer to cease using this number in the manner that offends the Commission's determinations and proceed to disconnect the number if necessary; and
- 6) Iristel has filed the Iristel Clarification Request seeking elucidation of the Commission's policy with respect to the assignment of 867 numbers. More specifically, Iristel is seeking clarification regarding whether all conference calling service in 867 NPA to all Iristel wholesale customers should be terminated. If not, Iristel is seeking Commission guidance on the appropriate method of determining what is appropriate 867 NPA conference calling traffic, and what is not. Iristel wants to get it right, and the filing of Iristel's Clarification Request constitutes due diligence.

ES-18. Similarly, TD 2021-397 and TNC 2020-269-2 undermine competition and investment in the North and thus are inconsistent with the government’s 2019 Policy Direction to the Commission calling for the promotion of competition and investment in telecommunications in all regions of Canada.⁴

ES-19. The Commission’s approach to date coupled with its inaction in articulating a clear and comprehensive policy regarding the assignment of NPA 867 numbers and the routing of telecommunications traffic to the North represents a significant abdication of the Commission’s responsibilities as a regulator and necessitates intervention by the Governor in Council.

1.0 INTRODUCTION

1. Iristel Inc. (“Iristel”), is hereby submitting this petition to the Governor in Council pursuant to subsection 12(1) of the *Telecommunications Act*.⁵ In the petition, Iristel seeks a variance of two decisions made by the Canadian Radio-television and Telecommunications Commission (“Commission”), namely Telecom Decision CRTC 2021-397⁶ (“TD 2021-397”) and Telecom Notice of Consultation CRTC 2020-269-2⁷ (“TNC 2020-269-2”), both of which were issued on 1 December 2021.

2. Iristel is a competitive telecommunications carrier that provides advanced and affordable telecommunications services, including voice, wireless, and Internet services, to Canadians, coast to coast to coast. Iristel, including through its affiliated mobile wireless carriers Ice Wireless Inc. and i-MobileCa Inc., is proud to have a long history of investing in building telecommunications facilities in Canada’s North and northern Quebec.

⁴ The findings in TD 2021-397 and the continuation of the proceeding initiated by TNC 2020-269-2 are also contrary to the telecommunications policy objectives of the *Telecommunications Act* and contrary to the 2006 Policy Direction and 2019 Policy Direction more broadly.

⁵ SC 1993, c 38 [*“Telecommunications Act”*].

⁶ *Iristel Inc. – Application to review, vary, and stay Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269 regarding the routing of traffic to Numbering Plan Area 867*, Telecom Decision CRTC 2021-397, 1 December 2021 [*“TD 2021-397”*].

⁷ *Call for comments – Imposition of administrative monetary penalties on Iristel Inc. and TELUS Communications Inc. in relation to the routing and termination of phone calls to the 867 area code in Northern Canada – Changes to procedure*, Telecom Notice of Consultation CRTC 2020-269-2, 1 December 2021 [*“TNC 2020-269-2”*].

3. The telecommunications services that Iristel offers in the North are the subject of the present petition. Iristel is seeking relief from the Governor in Council in relation to certain findings made by the Commission that not only represent a significant injustice inflicted upon Iristel, but that will also harm investment in telecommunications facilities in the North.

4. In this petition, Iristel urges the Governor in Council:

- d) To vary TD 2021-397 to find that Iristel did not violate subsection 27(2) of the *Telecommunications Act*;
- e) To vary TD 2021-397 to order the Commission to articulate a clear and comprehensive policy with respect to the assignment of Numbering Plan Area (“NPA”) 867 numbers and the routing and termination of calls to the North in a subsequent follow-up proceeding; and
- f) Regardless of whether it grants the relief requested in parts (a) and or (b) of this paragraph, to vary TNC 2020-269-2 to remove any consideration of the imposition of an AMP on Iristel.

5. In the decisions of the Commission noted above, Iristel has been subject to significant injustice and Iristel urges the Governor in Council, for the reasons set out below, to exercise its power pursuant to subsection 12(1) of the *Telecommunications Act* to intervene and prevent the Commission from taking action that will not only harm Iristel, but also the provision of advanced, affordable, and competitive telecommunications services in the North.

1.1 The structure of the petition

6. Section 2.0 of Iristel’s petition recapitulates the procedural and factual history leading to TD 2021-397 and TNC 2020-269-2.

7. Section 3.0 demonstrates that the Commission unjustly concluded that Iristel violated subsection 27(2) of the *Telecommunications Act* in TD 2021-397 and that TD 2021-397 should be varied by the Governor in Council to remove the conclusion that Iristel violated subsection 27(2) of the *Telecommunications Act*. This section also explains why the Commission must be directed by the Governor in Council to clearly articulate a policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to Canada's North in a follow-up proceeding.

8. Section 4.0 demonstrates that TNC 2020-269-2 should be varied by the Governor in Council to remove the consideration of the imposition of an AMP on Iristel.

9. Section 5.0 briefly discusses Iristel's motion for leave to appeal TD 2021-397 to the Federal Court of Appeal.

10. Section 6.0 is the conclusion.

2.0 THE PROCEDURAL AND FACTUAL HISTORY LEADING TO TD 2021-397 AND TNC 2020-269-2

11. Before proceeding with the request for relief, we recite the procedural and factual history leading to TD 2021-397 and TNC 2020-269-2.

12. Iristel offers several advanced telecommunications services throughout Canada, including in the North. For the purposes of this petition, the telecommunications services at issue are Iristel's provision of phone numbers (sometimes referred to as Direct Inward Dialing or "DIDs") in Canada's North, included in the 867 long distance dialing area also known as numbering plan area ("NPA") 867, as well as Iristel's role as an interexchange carrier and competitive local exchange carrier ("CLEC") operating in the North. In other words, Iristel both makes available NPA 867 numbers to customers and carries and terminates traffic from other NPAs and exchanges to these NPA 867 numbers.

13. It is important to note that Iristel is one of the only CLECs operating in Canada's North that competes against the incumbent operator, Northwestel Inc. ("Northwestel"), which is an

affiliate of BCE Inc (“BCE”). Iristel has made substantial investments in building telecommunications facilities throughout Canada’s North that allow it to operate as a CLEC and interexchange carrier. As explained further below, the fact that other carriers have not invested in building their own facilities in the North ultimately led to the disputes that have resulted in the present petition.

14. Iristel makes available phone numbers from around the world, including phone numbers from NPA 867, to customers located all over the world. Iristel does not police the location of end-users that make use of Iristel phone numbers. Such regulation is archaic in the age of the Internet when end-users may be located all over the world and may have many different legitimate reasons for wanting to make use of a phone number located in NPA 867. Moreover, many of Iristel’s customers are wholesale customers that subsequently resell Iristel’s phone numbers to other users.

15. Iristel’s customers order the phone numbers that they require from Iristel’s online ordering platform. For greater certainty, Iristel does not do anything to encourage its customers to select phone numbers that are located in NPA 867. In fact, following TD 2021-397, and as described further below, Iristel has taken steps to actively discourage the use of NPA 867 numbers unless a customer has a *bona fide* reason for requiring the use of a number located in NPA 867.

16. Iristel’s customers have various reasons for selecting numbers in the NPA 867. Iristel does not scrutinize the reasons of its customers for selecting an NPA 867 number. However, in response to a request for information from the Commission, one of Iristel’s customers, Generic Conferencing, which provides conference call services, offered the following explanation as to why it purchased the use of an NPA 867 number from Iristel:

Generic currently uses one DID from Iristel in the 867 NPA area. Generic has one customer who uses that DID, an organization located in Whitehorse, Yukon, with a billing address on Alsek Road and zip code Y1A 4R3. By using a local Whitehorse number, callers to the

conference service do not have to call long distance to access the conference service.⁸
[Emphasis added]

17. Iristel submits that the desire to provide callers resident in the NPA 867 with a local number to call a conference calling service is an entirely legitimate reason for one of its customers to select an NPA 867 number. Moreover, by making these numbers available, Iristel improves the affordability of conference calling services for Northern Canadians. Unfortunately, Rogers Communications Canada Inc. (“Rogers”) and TELUS Communications Inc. (“TELUS”), two of Canada’s largest incumbent telecommunications carriers, and ultimately the Commission, disagreed that this practice was acceptable.

2.1 Telecom Decision CRTC 2017-456

18. The Commission issued its first ruling on Iristel’s provision of NPA 867 numbers in Telecom Decision CRTC 2017-456⁹ (“TD 2017-456”).

19. Iristel provided NPA 867 numbers to an entity known as Free Conference Call Global (“FCCG”).¹⁰ FCCG subsequently assigned these NPA 867 numbers to one of its customers known as AudioNow.¹¹ AudioNow operated a call-to-listen service whereby callers were able to call a phone number to listen to live or on-demand programming offered by radio broadcasters.¹² Iristel also, at that point in time, had a revenue sharing agreement with FCCG based on the volume of calls to certain NPA 867 numbers.¹³

20. Iristel also had a commercially negotiated Outbound Termination Services (“OTS”) Agreement with Rogers at that time, by which Iristel agreed to carry and terminate calls, that were generated by Rogers’ own customers, to numbers in the NPA 867, regardless of whether they were

⁸ Generic Conferencing response to Commission Request for Information dated 11 June 2019, File #: 8663-J64-201806019 and 8663-T66-201805722 -- Iris Technologies Inc. and TELUS Communications Inc. – Applications for relief regarding the termination of traffic to certain 867 numbering plan area telephone numbers, 12 June 2019.

⁹ *Rogers Communications Canada Inc. – Allegation of traffic stimulation by Iris Technologies Inc. and Iristel Inc.*, Telecom Decision CRTC 2017-456, 20 December 2017 [“TD 2017-456”].

¹⁰ *Id.*, at para 16.

¹¹ *Id.*, at para 24.

¹² *Id.*, at para 30.

¹³ *Id.*, at para 35.

Iristel NPA 867 numbers or NPA 867 numbers belonging to other carriers such as Northwestel.¹⁴ NPA 867 is considered to be a High Cost Serving Area (“HCSA”) and negotiated rates to terminate calls in HCSAs are generally higher than those in non-HCSAs.¹⁵

21. Rogers filed an application with the Commission in which Iristel argued that, as a result of the revenue sharing between Iristel and FCCG, calls to Iristel’s NPA 867 numbers were being artificially stimulated with the result that Rogers was incurring unnecessary costs.¹⁶ For greater certainty, Rogers was complaining about calls made by its own end-users to Iristel’s NPA 867 numbers that had been assigned to call-to-listen services by FCCG, and in particular, those that FCCG ultimately assigned to AudioNow. Rogers argued that Iristel’s conduct violated subsection 27(2) of the *Telecommunications Act* by conferring an undue or unreasonable preference upon Iristel and subjecting Rogers and its customers to an undue or unreasonable disadvantage.¹⁷

22. Iristel vigorously argued against Rogers’ claim that Iristel had violated subsection 27(2) of the *Telecommunications Act*. Amongst other arguments, Iristel noted that Rogers should be responsible for addressing situations where Rogers’ own end-users make excessive use of Rogers’ unlimited calling services to call numbers in HCSAs.¹⁸ Iristel emphasized that Rogers was fully capable of enforcing its acceptable usage policies to restrict the ability of its end-users to call the NPA 867 numbers.¹⁹ Iristel continues to believe that it should not in any way be responsible for traffic generated by the end-users of other carriers and that these carriers should be responsible for enforcing their acceptable usage policies on their own end-users if those end-users are making excessive calls to numbers in HCSAs.

23. The Commission disagreed with Iristel and concluded that Iristel had violated subsection 27(2) of the *Telecommunications Act* by giving itself an undue preference and subjecting Rogers to a corresponding undue disadvantage.²⁰

¹⁴ *Id.*, at para 12.

¹⁵ *Id.*, at paras 12, 38.

¹⁶ *Id.*, at paras 1-2, 41.

¹⁷ *Id.*, at para 1.

¹⁸ *Id.*, at paras 52-53.

¹⁹ *Id.*, at paras 52-61.

²⁰ *Id.*, at para 42.

24. The Commission therefore directed Iristel and its affiliates to “terminate any agreement that assigns FCCG any 867 NPA numbers that are ultimately used by AudioNow, and not re-enter into provisions of such an agreement with FCCG or any of its affiliates” and to “file a report with the Commission confirming compliance with this directive.”²¹

25. To ensure that it was in compliance with subsection 27(2) of the *Telecommunications Act*, Iristel went above and beyond what was required by the Commission in TD 2017-456. Iristel wrote to FCCG and informed FCCG that it must cease supplying AudioNow any NPA 867 numbers that might ultimately confer an undue preference on Iristel or any other party otherwise Iristel would terminate its agreement with FCCG.²² In addition, Iristel terminated its revenue sharing agreements associated with NPA 867 numbers despite the fact that this was not required by the Commission in TD 2017-456.²³

26. It is important to note that despite having the opportunity to do so, in TD 2017-456 the Commission did not articulate any general policy with respect to the assignment of phone numbers in NPA 867, or HCSAs more generally. In addition, the Commission did not articulate any general policy with respect to the routing or termination of calls to NPA 867. The Commission limited its determinations to AudioNow.

2.2 Telecom Decision CRTC 2020-268 & Telecom Notice of Consultation CRTC 2020-269

27. In August 2018, TELUS filed an application with the Commission, that was subsequently supported by Rogers, alleging that Iristel was continuing to stimulate traffic to its NPA 867 numbers.²⁴ Rogers and TELUS claimed that traffic levels were approaching those seen prior to the issuance of TD 2017-456.²⁵ Rogers and TELUS claimed that most of their traffic being sent to

²¹ *Id.*, at para 41.

²² CRTC File 8622-R28-201611781, Confirmation by Iristel Inc. of Compliance with Telecom Decision CRTC 2017-456, 19 January 2018.

²³ *Ibid.*

²⁴ *Iris Technologies Inc. and TELUS Communications Inc. – Applications for final relief regarding the termination of traffic to certain 867 numbering plan area telephone numbers*, Telecom Decision CRTC 2020-268, 14 August 2020 [“TD 2020-268”].

²⁵ *Id.*, at paras 17, 25.

Iristel's NPA 867 numbers was directed to call-to-listen and conference calling services.²⁶ It is critical to understand that the traffic being sent to Iristel's NPA 867 numbers to which Rogers and TELUS objected was traffic generated by their own end-users.

28. TELUS responded to the alleged new traffic stimulation by unilaterally reducing capacity on certain toll circuits, which resulted in some TELUS customers placing calls to NPA 867 numbers not being able to complete those calls and some Iristel customers being unable to receive calls from TELUS customers.²⁷ Iristel filed its own application objecting to TELUS' conduct and arguing that TELUS had violated subsection 27(2) of the *Telecommunications Act* by unilaterally reducing capacity on its toll circuits.²⁸ The Commission ultimately²⁹ agreed with Iristel and found that TELUS' conduct had violated subsection 27(2) of the *Telecommunications Act*.³⁰

29. Iristel raised several legal and policy objections to the claims of Rogers and TELUS that it was once again violating subsection 27(2) of the *Telecommunications Act* based on its provision of NPA 867 numbers.³¹ For the purposes of this petition, Iristel highlights that it reiterated the arguments that it raised in the proceeding leading to TD 2017-456 that it should not be punished because of traffic generated by the end-users of other carriers. Moreover, Iristel should certainly not be punished for carrying this traffic pursuant to a commercially negotiated agreements for the carriage and termination of calls into which each of Rogers and TELUS had entered voluntarily with Iristel.

30. In particular, Iristel argued that Rogers and TELUS were fully capable of adopting a number of self-help remedies to deal with traffic to certain NPA 867 numbers generated by their

²⁶ *Id.*, at paras 19, 22, 27.

²⁷ *Id.*, at para 96.

²⁸ *Id.*, at paras 80-83.

²⁹ Prior to the issuance of TD 2020-268, the Commission issued an interim decision in *Iris Technologies Inc. and TELUS Communications Inc. – Applications for interim relief regarding the termination of traffic to certain 867 numbering plan area telephone numbers*, Telecom Decision CRTC 2018-432, 23 November, at para 12, in which the Commission directed TELUS to restore its toll circuit capacity such that calls to Iristel's NPA 867 numbers could be terminated correctly and also made interim Iristel's tariffed interexchange termination rate. Iristel is not seeking any relief related to those rates in this petition or otherwise.

³⁰ TD 2020-268, *supra* note 20, at para 93.

³¹ *Id.*, at paras 31-34.

own end-users that they viewed as objectionable. Iristel described these self-help remedies in a response to a request for information from the Commission:

One-way inbound calling service providers, or any customer of a telecommunications service provider for that matter, should not be compelled to use toll-free numbers if the customer does not wish to do so simply because Rogers and TELUS refuse to utilize any of the several options available to them to mitigate any costs of call termination to Iristel's NPA 867 numbers that they view as undesirable. As Iristel has indicated throughout this proceeding, some of the self-help measures available to Rogers and TELUS include:

- a) Building facilities in Canada's North as Iristel has done, which would allow for direct interconnection with Iristel;
- b) Using the services of Northwestel instead of Iristel;
- c) Rogers and TELUS enforcing their acceptable usage policies on end-users that they believe are making excessive use of one-way inbound calling services; and
- d) Applying restrictions or sanctions, such as long-distance fees, on end-users that make, in the opinion of Rogers and TELUS, an excessive number of calls to High Cost Serving Areas.

A further self-help measure would be for Rogers and TELUS to lower the exorbitantly high amounts that they charge end-users for access to mobile wireless data, which may incentivize end-users to rely more upon IP-based music streaming and conference services instead of making use of services that utilize voice minutes.

With these self-help remedies available to Rogers and TELUS, it is not appropriate for the Commission to penalize Iristel, or its customers. Iristel has developed a business as a platform company that provides DIDs to its customers, and Iristel's customers are free to select the DIDs that best suit their business needs. If Iristel's customers wanted toll-free numbers, they would have selected toll-free numbers. It is not for the Commission or Rogers or TELUS to second-guess the business choices of Iristel's customers.

Iristel's customers are free to use DIDs in any NPA that Iristel serves where capacity is available [...]

Moreover, with respect to Iristel's role as a terminating carrier, it is only receiving traffic from Rogers and TELUS, it is not originating the traffic. It is unjust and unreasonable for Iristel or its customers to be punished in any way, including by compelling the use of toll-free numbers for one-way inbound calling services, as a result of the actions of Rogers' and TELUS' own end-users. If Rogers and TELUS have an issue with their end-users' use of one-way inbound calling services, it is the responsibility of these carriers to address the issue with their end-users. It is not any concern of Iristel or its customers that Rogers and TELUS refuse to do so.³² [Emphasis in original.]

31. While some of these self-help remedies are self-explanatory, Iristel will further explain two of these self-help remedies for the benefit of the Governor in Council.

32. The self-help remedy of Rogers and TELUS building their own facilities in Canada's North would largely eliminate the costs complained of by these carriers by allowing for direct interconnection with Iristel. Were these carriers to invest in building their own telecommunications facilities to and in the North, like Iristel has done, they could avoid using Iristel as a toll (i.e., interexchange) transport provider to bring traffic to the North, directly interconnect with Iristel in the North, and then send traffic to Iristel's NPA 867 numbers via what is known as the bill-and-keep regime at a fraction of the cost they are currently paying. It is important to emphasize that this entire dispute exists because Rogers and TELUS do not have their own facilities in the North and therefore must rely upon long distant transport providers and Local Exchange Carriers ("LECs") with facilities in the North, such as Northwestel or Iristel, to carry and terminate traffic for their traffic destined to NPA 867, regardless of whether that traffic is ultimately directed to Iristel's NPA 867 numbers or the NPA 867 numbers of another carrier such as Northwestel.

33. The self-help remedy of Rogers and TELUS using the services of Northwestel instead of Iristel is best explained by Northwestel itself, which described this self-help remedy in the

³² CRTC Files 8663-T66-201805722 & 8663-J64-201806019 Iristel(Rogers)4Jun19-1, 26 June 2019, at pp. 2-3.

submission of itself and its affiliate Bell Canada in the proceeding leading to TD 2017-456 as follows:

In the circumstances described by Rogers in its Application, Iristel's financial incentives from artificial traffic pumping would be greatly reduced if Rogers simply used a different long distance transport provider. Today, Iristel earns traffic routing revenues for calls terminating to its Yellowknife local numbers two different ways. First, to the extent Iristel acts as the toll transport provider to bring traffic up North, Iristel earns toll revenues, and these revenues increase with the number of calls/minutes carried. Second, to the extent calls either: 1) originate from local Northwestel end-users up North, or arrive from a different toll transport provider to Northwestel, who then sends the traffic via bill-and-keep to Iristel for final termination, Iristel may earn imbalance payments from Northwestel if the traffic between Northwestel and Iristel is imbalanced enough. We expect that Iristel's toll revenues far exceed what potential imbalance revenues Iristel may expect. Accordingly, were Rogers to migrate its toll traffic away from Iristel to that of another provider, Iristel's financial incentives to artificially pump traffic to the North would likely be significantly decreased. As referenced in Section 3.0, there is a significant imbalance between Northwestel and Iristel, though we would posit the actual dollar payments to Iristel are significantly less than the confidential imbalance figures discussed by Rogers that it is paying for termination to Iristel. While there may be a significant imbalance in terms of minutes, which drives our facilities requirements, the imbalance payments remain small at #³³, clearly eliminating Iristel's incentive should Rogers switch their traffic over to us.³⁴
[Footnotes omitted, emphasis added]

34. While Iristel strenuously objects to the suggestion that it was artificially pumping traffic to the North, Northwestel's comments clearly demonstrate that if Rogers or TELUS were dissatisfied

³³ # denotes information that Bell Canada and Northwestel filed in confidence with the Commission in their original submission.

³⁴ Intervention of Bell Canada and Northwestel Inc., CRTC File 8622-R28-201611781, 30 January 2017, at para 46.

with the commercial arrangement into which they had voluntarily entered with Iristel, they were free to switch to a different long distance transport provider with facilities to the North, such as Northwestel.

35. Shockingly, despite the fact that Rogers and TELUS clearly had several self-help remedies available to them to address their concerns over excessive traffic generated by their own end-users to certain Iristel NPA 867 numbers, the Commission did not even address Iristel's arguments with respect to self-help remedies in TD 2020-268.

36. The Commission found in TD 2020-268 that Iristel was once again violating subsection 27(2) of the *Telecommunications Act* with respect to the provision of NPA 867 numbers.³⁵ As the Commission found that both Iristel and TELUS had violated subsection 27(2) of the *Telecommunications Act* it initiated a follow-up proceeding through Telecom Notice of Consultation CRTC 2020-269³⁶ ("TNC 2020-269") to consider the imposition of an AMP upon both companies.³⁷

37. In TNC 2020-269 the Commission adopted a preliminary view that an AMP on both Iristel and TELUS in the range of \$750,000.00 to \$1,250,000.00 would be appropriate.³⁸

2.3 Telecom Decision CRTC 2021-397 & Telecom Notice of Consultation CRTC 2020-269-2

38. Following the release of TD 2020-268, Iristel swiftly moved to bring an application to the Commission to review and vary TD 2020-268 and to vary TNC 2020-269 to remove any consideration of the imposition of an AMP upon Iristel.³⁹ As a result of this application, and a request from TELUS, the Commission issued Telecom Notice of Consultation CRTC 2020-269-

³⁵ TD 2020-268, *supra* note 20, at para 103.

³⁶ *Call for comments – Imposition of administrative monetary penalties on Iristel Inc. and TELUS Communications Inc. in relation to the routing and termination of phone calls to the 867 area code in Northern Canada*, Telecom Notice of Consultation CRTC 2020-269, 14 August 2020 ["TNC 2020-269"].

³⁷ *Id.*, at para 5.

³⁸ *Id.*, at para 9.

³⁹ TD 2021-397, *supra* note 2, at para 16.

1⁴⁰ (“TNC 2020-269-1”) on 11 September 2020, which adjourned the proceeding initiated by TNC 2020-269 until a later date.⁴¹

39. In its application to review and vary TD 2020-268, Iristel requested, amongst other relief, that the Commission rescind its finding in TD 2020-268 that Iristel violated subsection 27(2) of the *Telecommunications Act*.⁴² Iristel demonstrated numerous errors of fact and law made by the Commission in TD 2020-268 that justified this relief.⁴³

40. Ultimately, however, the Commission rejected Iristel’s arguments and in TD 2021-397 released on 1 December 2021 affirmed its finding in TD 2020-268 that Iristel had violated subsection 27(2) of the *Telecommunications Act*.⁴⁴ As a result, also on 1 December 2021, the Commission released TNC 2020-269-2 in which it resumed the proceeding originally initiated by TNC 2020-269, and adjourned by TNC 2020-269-1, to consider the imposition of an AMP on both Iristel and TELUS.

41. In TD 2021-397 the Commission once again declined to provide Iristel, and the industry at large, with any policy statement with respect to the assignment of NPA 867 numbers and the routing and termination of calls in the North. In fact, while the Commission found that Iristel had violated subsection 27(2) of the *Telecommunications Act* by “allowing the use of 867 NPA telephone numbers by customers based in distant locations” the Commission did not direct Iristel to cease this practice or provide any further guidance on when it might be acceptable to assign NPA 867 numbers to customers based in distant locations.⁴⁵

42. The lack of any statement whatsoever from the Commission in TD 2017-456, TD 2020-268, or TD 2021-397, as to its expectations going forward with respect to the assignment of NPA 867 numbers and the routing and termination of calls in the North has compelled Iristel to file an

⁴⁰ *Call for comments – Imposition of administrative monetary penalties on Iristel Inc. and TELUS Communications Inc. in relation to the routing and termination of phone calls to the 867 area code in Northern Canada – Changes to procedure, Telecom Notice of Consultation CRTC 2020-269-1*, 11 September 2020 [“TNC 2020-269-1”].

⁴¹ *Id.*, at para 10.

⁴² TD 2021-397, *supra* note 2, at para 21.

⁴³ *Id.*, at paras 25-28, 35-39, 47-48, 49-51, 88-91, 95-97, 107-111, 116, 123-125.

⁴⁴ *Id.*, at paras 137-138.

⁴⁵ *Id.*, at para 84.

application with the Commission seeking clarification as to the Commission's expectations ("Iristel Clarification Request").⁴⁶ In particular, Iristel has sought guidance on the Commission's expectations with respect to the assignment of NPA 867 numbers to conference calling services as Iristel believes that it would be shocking and extremely detrimental to the North if the Commission intended to prohibit the availability of local NPA 867 numbers for Northerners to access call conferencing services.⁴⁷ This is a particularly urgent issue given the perhaps permanent increased reliance by all Canadians on call conferencing services during the pandemic.

43. Iristel continues to stand by all its arguments that it made in the proceeding leading to TD 2021-397 with respect to the errors of fact and law made by the Commission in TD 2020-268. However, for the purposes of this petition, Iristel particularly wants to focus on the arguments that it made with respect to self-help remedies, the lack of a clear policy from the Commission with respect to the assignment of NPA 867 numbers and the routing and termination of calls in the North, and the negative impact of the Commission's determination on Canada's telecommunications policy objectives and the telecommunications policy directions issued by the Governor in Council to the Commission.

44. In section 3.0 below, Iristel recapitulates these arguments to demonstrate why the Governor in Council should intervene to vary TD 2021-397 to remove the finding that Iristel violated subsection 27(2) of the *Telecommunications Act* and to vary TNC 2020-269-2 to remove consideration of the imposition of an AMP on Iristel.

3.0 THE COMMISSION UNJUSTLY CONCLUDED THAT IRISTEL VIOLATED SUBSECTION 27(2) OF THE *TELECOMMUNICATIONS ACT* IN TD 2021-397

45. In TD 2021-397 the Commission inflicted a significant injustice upon Iristel when it refused to vary TD 2020-268 to remove its incorrect finding that Iristel had violated subsection 27(2) of the *Telecommunications Act* because of Iristel's assignment of NPA 867 numbers to customers based in distant locations. For the reasons that follow, Iristel requests that the Governor in Council act to correct this injustice, which not only subjects Iristel to extreme peril as a result

⁴⁶ Iristel Inc., "Iristel's request for clarification in relation to Telecom Decision 2021-397", CRTC File 8638-J64-202108430, 24 December 2021 ["Iristel Clarification Request"].

⁴⁷ *Id.*, at paras 8-10.

of the possible imposition of an AMP, but also will have negative impacts on investment in telecommunications facilities in Canada's North.

3.1 The Commission inexplicably refuses to accept the self-help remedies available to carriers to address traffic sent to the North

46. In its application to the Commission seeking to vary TD 2020-268, Iristel demonstrated that the Commission failed to consider a basic principle in the proceeding that led to TD 2020-268, “which is that it is not the responsibility of a carrier to regulate traffic that it terminates on its network and which is originated by the end-users of other carriers and that there are numerous self-help remedies that were available to TELUS and Rogers.”⁴⁸ [Emphasis in original]

47. Iristel enumerated several potential self-help remedies available to Rogers and TELUS in its R&V Application, as it did in the proceeding leading to TD 2020-268.⁴⁹ In its R&V Application, Iristel reiterated that potential self-help remedies that Rogers and TELUS may take include:

- Building facilities in Canada's North;
- Using the services of Northwestel instead of Iristel;
- Enforcing their acceptable usage policies;
- Applying restrictions on end-users that make an excessive number of calls to HCSAs; and,
- Proactively educating their end-users about the costs of calling NPA 867 numbers indiscriminately.⁵⁰

48. Iristel had also previously suggested in the proceeding leading to TD 2020-268 that Rogers and TELUS should “lower the high amounts that RCCI and TCI charge end-users for access to

⁴⁸ Iristel Inc., “Application to Review, Vary and Stay Telecom Decision 2020-268 and Telecom Notice of Consultation 2020-269”, CRTC File 8662-J64-202005595, 8 September 2020 [“Iristel R&V Application”] at para 83.

⁴⁹ *Id.*, at paras 83-94.

⁵⁰ Reply of Iristel Inc., CRTC File 8662-J64-202005595, 30 November 2020 [“Iristel R&V Reply”], at paras 33-38.

mobile wireless data, which may incentivize end-users to rely more on Internet protocol-based music streaming and conference services instead of using services that utilize voice minutes.”⁵¹

49. Iristel has already explained how these self-help remedies would serve to address the problems complained of by Rogers and TELUS above.

50. Rogers and TELUS rejected all of these self-help remedies to address the traffic that their own end-users are generating.⁵² The common theme amongst their rejections of Iristel’s proposed self-help remedies is that Rogers and TELUS are not willing to incur the costs or inconvenience to address what they view as unacceptable behaviour by their own end-users. Instead, they want to shift the responsibility to Iristel.

51. More significantly, Rogers and TELUS refuse to make the investments in telecommunications facilities connecting the North to the rest of Canada and in the North itself that would allow them to carry their own traffic to the North. The result is that they are reliant upon long distance transport providers such as Iristel and Northwestel that have invested in telecommunications facilities in the North. The agreements that Iristel reached with Rogers and TELUS to carry and terminate their traffic were commercially negotiated arrangements that these parties voluntarily entered into because they did not wish to invest in building their own facilities in the North. Iristel submits that it is unreasonable for the Commission to punish it because Rogers and TELUS, two of Canada’s largest incumbent telecommunications carriers, have refused to invest in building facilities in the North.

52. Iristel emphasizes that it has done nothing to incent Rogers and TELUS’ customers to make calls using NPA 867 numbers, and cannot police the behaviour of the end-users of other carriers. To the extent that Rogers and TELUS object to their end-users making these calls, it is incumbent upon them to take any one of, or a combination of, the self-help remedies described by Iristel,

⁵¹ TD 2021-397, *supra* note 2, at para 110.

⁵² Rogers Intervention, CRTC File 8662-J64-202005595, 18 November 2020, at paras 42-44; TELUS Intervention, CRTC File 8662-J64-202005595, 18 November 2020, at paras 38-39.

including the simple matter of enforcing acceptable usage policies on end-users that abuse unlimited calling plans.

53. Iristel continues to maintain that, as set out in its R&V Application:

once the Commission properly considers the basic principles raised by Iristel's proposals with respect to self-help remedies, it can only conclude that Iristel did not in fact give itself a preference, or subject any other carrier to a disadvantage as Iristel was only terminating the traffic of end-users that belong to other carriers. In the alternative, if the Commission did find that Iristel was granting itself a preference and subjecting other carriers to a corresponding disadvantage, it would find that Iristel has discharged its burden of establishing that such advantage is not undue, as required by subsection 27(4) of the *Telecommunications Act* as other carriers have readily available self-help remedies to allow them to fully mitigate any corresponding disadvantage caused by Iristel's advantage and the amount of traffic in question is miniscule compared to overall traffic levels.⁵³

54. Unfortunately, in TD 2021-397, the Commission disagreed that Rogers and TELUS, which Iristel reiterates are two of Canada's largest incumbent telecommunications carriers, should be required to adopt self-help remedies to deal with what they view as excessive traffic to NPA 867 numbers generated by their own customers. In rejecting Iristel's self-help arguments, which Iristel notes was the first time that the Commission addressed these arguments in this long-running dispute, the Commission stated:

The Commission considers that self-help remedies were not appropriate solutions to the issues raised in the proceedings for Telecom Decisions 2017-456 and 2020-268 for the following reasons:

- o Directing carriers to bear the burden of implementing self-help remedies is not a reasonable or effective solution for addressing Iristel's contravention of subsection 27(2) of the Act. For example, Iristel suggested a self-help remedy where the IX ["interexchange"] carrier must bear the cost of building facilities to the North to directly interconnect with Iristel. This would not address Iristel's non-compliance and would place an unnecessary burden on the carrier implementing this remedy.

⁵³ Iristel R&V Application, *supra* note 44, at para 93.

- Iristel proposed that carriers such as RCCI and TCI have a choice to discontinue use of Iristel's services and use the services of IX service providers other than Iristel. The Commission considers that as per paragraph 7(f) of the Act, and under normal market conditions, this could be one self-help remedy available to carriers. However, this is not a reasonable or effective solution to counteract the impact caused by a violation of the Act.
- Relying on RCCI and TCI to implement the proposed self-help remedies to counteract the economic harm resulting from Iristel's non-compliance would not prevent economic harm to carriers other than RCCI and TCI or to RCCI's and TCI's customers who may be required to pay additional fees due to the self-help remedies suggested (e.g. long distance fees).⁵⁴

55. Iristel will deal with each of the Commission's points in turn.

56. Firstly, Iristel submits that requiring Rogers and TELUS, which are massive corporations worth billions of dollars to invest in telecommunications in the North is not an "unnecessary burden" as claimed by the Commission.⁵⁵ Iristel, which is a fraction of the size of these companies, was able to invest in telecommunications facilities in the North and there is no reason that these other two carriers cannot do the same.

57. The same argument with respect to the size of these corporations applies to the other self-help remedies proposed by Iristel, such as Rogers and TELUS enforcing their acceptable usage policies. To the extent that this results in costs to Rogers and TELUS, those two carriers are more than able to bear them and Iristel submits that it is more proportionate regulation to place the burden of policing the activities of their own end-users on Rogers and TELUS than Iristel, which is a fraction of the size of these mega-corporations.

⁵⁴ TD 2021-397, *supra* note 2, at para 120.

⁵⁵ *Ibid.*

58. In assessing the reasonableness of Rogers and TELUS building their own facilities in the North as a self-help remedy, it is useful to consider mobile wireless roaming as an analogy, where a customer of Mobile Carrier A, for example a Rogers customer, roams on the network of Mobile Carrier B, for example Ice Wireless. Mobile Carrier B, assuming it is not one of the three national carriers that have tariffed wholesale roaming rates, is free to set the wholesale roaming rate it wishes to charge to Mobile Carrier A at any level that Mobile Carrier A is willing to pay. The onus is on Mobile Carrier A to notify its end-users if they are roaming on the network of Mobile Carrier B to an excessive degree and thereby incurring excessive costs. In other words, the onus is on Mobile Carrier A to enforce its acceptable usage policy.⁵⁶ The onus is never upon Mobile Carrier B to police the behaviour of Mobile Carrier A's customers and subsection 27(2) of the *Telecommunications Act* is not, and should not be, engaged in these circumstances. This is only logical as Mobile Carrier B is the carrier that incurred the cost of investing in mobile wireless facilities in a particular area and no one forced the customers of Mobile Carrier A to roam on the network of Mobile Carrier B. Similarly, no one compelled a customer of Rogers and TELUS to choose to dial an Iristel NPA 867 number for its conference calling services and those customers were always free to dial a number from a different NPA. Iristel should not be responsible for the choices of the customers of Rogers and TELUS, and failure by Rogers or TELUS to police their own end-users.

59. Moreover, the Commission is wrong to state that requiring Rogers and TELUS to build their own telecommunications facilities in the North would “not address Iristel’s non-compliance” with subsection 27(2) of the *Telecommunications Act*.⁵⁷ As described above by Iristel, and as confirmed by Northwestel, were Rogers and TELUS to invest in their own facilities in the North they could carry their own traffic to the North and exchange traffic with Iristel using the bill and keep method at a fraction of the cost they must pay when Iristel is responsible for carrying and terminating all of their traffic to NPA 867 numbers. To the extent that Rogers and TELUS were to end up paying only a fraction of what they paid when they were fully reliant on Iristel’s facilities, Iristel submits that any preference experienced by Iristel as a result of its assignment of NPA 867

⁵⁶ In fact, the Commission’s Wireless Code imposes a cap on national and international data roaming charges. See, for example, *The Wireless code, simplified*, at Section E.2, <https://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>.

⁵⁷ TD 2021-397, *supra* note 2, at para 120.

numbers would no longer be undue, and thus, Iristel could no longer be in violation of subsection 27(2) of the *Telecommunications Act*.

60. The Commission also rejected the argument that Rogers and TELUS should discontinue the use of Iristel's services and use the services of other long distance transport providers to carry their traffic to the North, such as Northwestel.⁵⁸ At this juncture, Iristel notes that it did in fact terminate its OTS Agreement with Rogers in April 2021, after the record of the proceeding leading to TD 2021-397 had closed, and thus it ceased to receive any financial gain from Rogers traffic to NPA 867.⁵⁹

61. The Commission stated that Rogers and TELUS terminating their services with Iristel was not an effective solution to counteract the impact caused by a violation of the *Telecommunications Act*.⁶⁰ Once again however, the Commission has gotten it backward. If Rogers and TELUS had cancelled their services with Iristel, there would not have been any violation of the *Telecommunications Act*. In this scenario, and assuming Rogers and TELUS transferred their business to Northwestel, Iristel would have received entirely insignificant monetary amounts from Northwestel to terminate the traffic to Iristel's NPA 867 numbers as Northwestel and Iristel are directly interconnected in the North and exchange traffic over bill and keep trunks. Thus, Iristel would certainly not be receiving an undue preference contrary to subsection 27(2) of the *Telecommunications Act*.

62. While Rogers and TELUS would presumably still need to reach commercial agreements with Northwestel in this scenario to carry the traffic being generated by their own end-users to Iristel's NPA 867 numbers, Iristel submits that given the size of these three carriers, Northwestel being an affiliate of BCE, any disadvantage suffered by Rogers and TELUS, and any preference gained by Northwestel, could not be said to be undue contrary to subsection 27(2) of the *Telecommunications Act*. In this respect, Iristel notes that it was not disputed that the overall

⁵⁸ *Ibid.*

⁵⁹ Iristel Clarification Request, *supra* note 42, at para 7.

⁶⁰ TD 2021-397, *supra* note 2, at para 120.

amount of NPA 867 traffic involved in this dispute was relatively small compared to the traffic carried by Rogers, TELUS, and indeed Iristel throughout the rest of Canada.⁶¹

63. The Commission also determined that requiring Rogers and TELUS to adopt self-help measures would not prevent economic harm to other carriers.⁶² This argument can easily be rebutted by noting that no other carrier aside from Rogers or TELUS complained about Iristel's use of NPA 867 numbers in the proceeding leading to TD 2020-268. While some other carriers participated in the proceeding leading to TD 2017-456, they were presumably satisfied by the measures that Iristel took to comply with that decision, including by terminating its revenue sharing agreements. The Commission therefore reached what amounted to a speculative conclusion with respect to possible economic impacts on other carriers in the absence of any supporting evidence.

64. The Commission also stated that it was inappropriate that Rogers and TELUS' end-users may have to pay additional fees, such as long-distance fees, if they make excessive calls to certain Iristel NPA 867 numbers. The Commission's conclusion is not sound as it once again shifts the onus for policing the activity of the end-users of Rogers and TELUS onto Iristel. Iristel emphasizes that presumably only those end-users who are making excessive calls to certain Iristel NPA 867 numbers would be subject to long distance or other fees. As these end-users are responsible for generating the traffic, they should be responsible for paying for it, and there is no reason that Iristel should be punished.

65. Overall, the Commission has inexplicably refused to accept that Rogers and TELUS should have adopted common-sense self-help remedies to deal with what they viewed as excessive traffic to Iristel's NPA 867 numbers. Iristel requests that the Governor in Council vary TD 2021-397 to find that Iristel did not violate subsection 27(2) of the *Telecommunications Act* as Rogers and TELUS had self-help remedies available to them that would render any preference or disadvantage resulting from Iristel's use of NPA 867 numbers not undue or unreasonable.

⁶¹ *Id.*, at paras 38, 124.

⁶² *Id.*, at para 120.

3.2 The Commission has unjustly refused to provide clear direction to Iristel or articulate a policy on the assignment of NPA 867 numbers and the routing and termination of calls to the North

66. In addition to the fact that Iristel did not violate subsection 27(2) of the *Telecommunications Act* because Rogers and TELUS at all times had self-help remedies available to them, Iristel cannot have violated subsection 27(2) of the *Telecommunications Act* as the Commission has refused to provide clear direction to Iristel or articulate a policy on the assignment of NPA 867 numbers and the routing and termination of calls to the North.

67. Iristel has already extensively demonstrated the failure of the Commission to articulate a clear policy above, but to briefly recapitulate:

- The Commission's determinations in TD 2017-456 were strictly limited to AudioNow.⁶³
- The Commission did not provide any guidance whatsoever on what it expected Iristel to do to comply with subsection 27(2) of the *Telecommunications Act* in TD 2020-268.
- The Commission continued not to provide any guidance whatsoever on what it expected Iristel to do to comply with subsection 27(2) of the *Telecommunications Act* in TD 2021-397.
- The continuing lack of clarity from the Commission has required Iristel to file the Iristel Clarification Request with the Commission seeking elucidation of its policies with respect to the assignment of NPA 867 numbers to conference calling services.⁶⁴

⁶³ TD 2017-456, *supra* note 5, at para 41.

⁶⁴ Iristel Clarification Request, *supra* note 42, at para 7.

68. Even if its assignment of NPA 867 numbers to customers based in distant locations did confer a preference on itself, or subject Rogers, TELUS, or anyone else to a disadvantage, the preference and corresponding disadvantage could not be said to be undue or unreasonable in the absence of clear guidance from the Commission on what exactly it wanted Iristel to change about its business model.

69. The Commission should have articulated a clear policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North before finding that Iristel was in violation of subsection 27(2) of the *Telecommunications Act*.

70. For these reasons, Iristel requests that the Governor in Council vary TD 2021-397 to remove the finding that Iristel violated subsection 27(2) of the *Telecommunications Act*. In addition, while Iristel has filed the Iristel Clarification Request asking that the Commission articulate a policy with respect to the assignment of NPA 867 numbers to conference calling services, given that the Commission has refused to articulate any policy whatsoever in three decisions now, Iristel requests that the Governor in Council vary TD 2021-397 to require the Commission to articulate a clear policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North in a follow-up proceeding.

3.3 The Commission’s finding that Iristel violated subsection 27(2) of the *Telecommunications Act* undermines Canada’s telecommunications policy objectives and the Governor in Council’s policy directions

71. The Commission’s finding that Iristel violated subsection 27(2) of the *Telecommunications Act* is also entirely inconsistent with Canada’s telecommunications policy objectives as set out in section 7 of the *Telecommunications Act*, as well as the Governor in Council’s policy directions to the Commission in the 2006 Policy Direction⁶⁵ and the 2019 Policy Direction⁶⁶.

⁶⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355 [“2006 Policy Direction”].

⁶⁶ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227 [“2019 Policy Direction.”]

72. Iristel reiterates that it is effectively being punished by the Commission for choosing to invest in telecommunications facilities in the North and choosing to compete against BCE's affiliate Northwestel, the incumbent telecommunications carrier in the North. The message that the Commission has sent in TD 2017-456, TD 2020-268, and TD 2021-397 is that incumbent telecommunications carriers like Rogers and TELUS that do not invest in facilities in the North can rely on the Commission to rule in their favour when they do not like the terms of the commercial arrangements they have reached with competitive service providers like Iristel who have taken on the risk of investing in telecommunications facilities in the North.

73. The Commission's conduct, unless rectified by the Governor in Council, will have a chilling effect on investment in telecommunications facilities in the North. This will, in turn, reduce competition in the North and thus the affordability of telecommunications services in the North. Moreover, less investment in telecommunications facilities in the North will then hamper the availability and development of innovative new telecommunications services for Northern Canadians.

74. Finally, it is entirely disproportionate and inefficient regulation to punish Iristel for traffic generated by the end-users of Rogers and TELUS, two of Canada's largest incumbent telecommunications carriers. It is these two carriers, not a relatively small carrier such as Iristel, that should bear the burden of policing the activities of their own end-users.

3.3.1 The policy objectives in the *Telecommunications Act*

75. Therefore, the Commission's determination that Iristel violated subsection 27(2) of the *Telecommunications Act* directly undermines the telecommunications policy objectives contained in subsections 7(a), (b), (c), (f), (g), and (h) of the *Telecommunications Act*.

76. Subsection 7(a) of the *Telecommunications Act* states that it is a telecommunications policy objective "to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions." Reducing the levels of investment in telecommunications facilities in the North

will obviously undermine the development of Canada's telecommunications system and its ability to bolster the social and economic fabric of that region of Canada.

77. Subsection 7(b) of the *Telecommunications Act* states that it is a telecommunications policy objective "to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada." As noted above, if the Commission's determination that Iristel violated subsection 27(2) of the *Telecommunications Act* is allowed to stand, it will reduce competition in the provision of telecommunications services in the North, which will in turn reduce the availability of reliable and affordable telecommunications services in the North, which is rural and remote.

78. Subsection 7(c) of the *Telecommunications Act* states that it is a telecommunications policy objective "to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunication." Clearly, competition will be harmed, not enhanced, if competitors are discouraged from investing in telecommunications facilities in the North, which is what will occur for the reasons described above if TD 2021-397 is not varied to remove the finding that Iristel violated subsection 27(2) of the *Telecommunications Act*.

79. Subsection 7(f) of the *Telecommunications Act* states that it is a telecommunications policy objective "to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective." For reliance on market forces to be increased, there must be increased competition, and as noted above, currently the Commission is stifling competition in the North by punishing Iristel for having built telecommunications facilities there. Moreover, as the Commission has refused to develop a policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North, there continues to be a risk that carriers like Iristel will be held in violation of subsection 27(2) of the *Telecommunications Act*, despite best efforts to conduct their businesses in a manner that will avoid such an outcome. Accordingly, the Commission's regulation in this areas has been neither efficient nor effective.

80. Subsection 7(g) of the *Telecommunications Act* states that it is a telecommunications policy objective “to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.” Innovation ultimately flows from competition as competitors will innovate to differentiate themselves in the market. By inhibiting competition in the North by finding that Iristel violated subsection 27(2) of the *Telecommunications Act*, the Commission is also therefore stifling innovation in the provision of telecommunications services by competitors in the North.

81. Subsection 7(h) of the *Telecommunications Act* states that it is a telecommunications policy objective “to respond to the economic and social requirements of users of telecommunications services.” Iristel submits that undermining investment in telecommunications facilities in the North, competition, affordability, and innovation in the provision of telecommunications services by finding that Iristel violated subsection 27(2) of the *Telecommunications Act* does not respond to the economic and social requirements of northern Canadians and actually directly impedes the achievement of these requirements.

3.3.2 The 2006 Policy Direction

82. The Commission’s determination that Iristel violated subsection 27(2) of the *Telecommunications Act* is also inconsistent with the Governor in Council’s directions to the Commission in paragraphs 1(a)(i)-(ii) and 1(b)(iii) of the 2006 Policy Direction.

83. Paragraph 1(a)(i) of the 2006 Policy Direction directs the Commission to “rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives.” Maximum reliance upon market forces requires enhanced competition and as noted above, currently the Commission is stifling competition in the North by punishing Iristel for having built telecommunications facilities in the North.

84. Paragraph 1(a)(ii) of the 2006 Policy Direction directs that the Commission “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.” As noted above, the Commission’s regulation has not been effective as it

refuses to articulate a clear policy for all carriers, including Iristel, and the rest of the industry, with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North. In the absence of such a clear policy, there continues to be a risk that carriers like Iristel will be held in violation of subsection 27(2) of the *Telecommunications Act*, despite best efforts to conduct their businesses in a manner that will avoid such an outcome. Moreover, by punishing Iristel for investing in telecommunications facilities in the North, the Commission has stifled competition in the North, thus clearly interfering with the operation of competitive market forces to a disproportionate extent.

85. Paragraph 1(b)(iii) of the 2006 Policy Direction directs that the Commission should, when relying on regulation, use measures that, “if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner.” There is nothing competitively neutral or symmetrical about punishing Iristel for investing in telecommunications facilities in the North and by doing so the Commission is favouring large incumbents like Rogers and TELUS that have chosen not to invest in the North.

3.3.3 The 2019 Policy Direction

86. The Commission’s determination that Iristel violated subsection 27(2) of the *Telecommunications Act* is also inconsistent with the Governor in Council’s directions to the Commission in paragraphs 1(a)(i)-(iii) and (v)-(vii) of the 2019 Policy Direction.

87. Paragraph 1(a)(i) of the 2019 Policy Direction directs that the Commission should consider how its decisions can “encourage all forms of competition and investment”. As Iristel has extensively demonstrated, by finding that it violated subsection 27(2) of the *Telecommunications Act*, the Commission is stifling investment in telecommunications facilities in the North and thus the development of competition in the North.

88. Paragraph 1(a)(ii) of the 2019 Policy Direction directs that the Commission should consider how its decisions can “foster affordability and lower prices, particularly when telecommunications service providers exercise market power.” Affordability and lower prices will flow from increased competition. However, the Commission is stifling the development of

competition in the North by finding that Iristel violated subsection 27(2) of the *Telecommunications Act*, which will have a chilling effect on investment by competitors in telecommunications facilities in the North.

89. Paragraph 1(a)(iii) of the 2019 Policy Direction directs that the Commission should consider how its decisions “ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas.” Iristel has extensively documented how TD 2021-397 will have a chilling effect on investment in telecommunications facilities in the North and thus undermine the affordability of telecommunications services in that region of the country, which is rural and remote.

90. Paragraph 1(a)(v) of the 2019 Policy Direction directs that the Commission should consider how its decisions “reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional or smaller than the incumbent national service providers.” Far from reducing barriers to entry into the market and competition, TD 2021-397 raises barriers to entry and competition in the North by making it clear that carriers are at risk of being found of violating subsection 27(2) of the *Telecommunications Act* if they choose to invest in telecommunications facilities in the North.

91. Paragraph 1(a)(vi) of the 2019 Policy Direction directs that the Commission should consider how its decisions “enable innovation in telecommunications services, including new technologies and differentiated service offerings.” Innovation ultimately flows from competition as competitors will innovate to differentiate themselves in the market. By inhibiting competition in the North by finding that Iristel violated subsection 27(2) of the *Telecommunications Act*, the Commission is also therefore stifling innovation in the provision of telecommunications services by competitors in the North.

92. Paragraph 1(a)(vii) of the 2019 Policy Direction directs that the Commission should consider how its decisions “stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services.” As noted above, innovation, and thus research and development, ultimately flows from competition as

competitors will innovate to differentiate themselves in the market. By inhibiting competition in the North by finding that Iristel violated subsection 27(2) of the *Telecommunications Act*, the Commission is also therefore stifling investment in research and development and in other intangible assets that support the offer and provision of telecommunications services.

93. Therefore, TD 2021-397 should be varied by the Governor in Council to remove the finding that Iristel violated subsection 27(2) of the *Telecommunications Act* as this finding is inconsistent with Canada's telecommunications policy objectives as expressed in section 7 of the *Telecommunications Act* and the policy directions that the Governor in Council issued to the Commission in the 2006 Policy Direction and the 2019 Policy Direction.

3.4 Telecom Notice of Consultation CRTC 2020-269-2 must be discontinued as it relates to Iristel if the Governor in Council agrees that Iristel did not violate subsection 27(2) of the *Telecommunications Act*

94. To the extent that the Governor in Council agrees that Iristel did not violate subsection 27(2) of the *Telecommunications Act* and varies TD 2021-397 accordingly, it would clearly no longer be appropriate for the Commission to continue to consider the imposition of an AMP on Iristel. In this scenario, Iristel requests that the Governor in Council also vary TNC 2020-269-2 to make it clear that the Commission will no longer consider the imposition of an AMP on Iristel.

95. While the imposition of a penalty under the AMPs regime can be insulated from a petition to the Governor in Council if the penalty is levied in a decision in the course of the proceeding in which the violation leading to the penalty is found to have occurred,⁶⁷ in the present case, the Commission has chosen to proceed to consider the imposition of a penalty in a proceeding (pursuant to TNC 2020-269-2) that is distinct from the decision in which it found the underlying violation to have occurred (i.e., TD 2021-397), and the Governor in Council is entitled to intervene at this stage to prevent the continuation of the process by which a penalty might be imposed.

96. To recapitulate, in the preceding sections of this petition, Iristel has demonstrated that the Commission's finding that Iristel violated subsection 27(2) of the *Telecommunications Act* was incorrect as it punishes Iristel for having built telecommunications facilities in the North and makes

⁶⁷ Pursuant to Section 72.19 and 72.003 of the *Telecommunication Act*.

Iristel responsible for the conduct of the end-users of other carriers. Moreover, the Commission's finding is particularly unjust as the Commission has refused to articulate a clear policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North.

97. Consequently, in this section 3.0 of the petition, Iristel has requested the following relief from the Governor in Council with respect to TD 2021-397 and TNC 2020-269-2:

- 1) TD 2021-397 be varied to state that Iristel did not violate subsection 27(2) of the *Telecommunications Act*.
- 2) TD 2021-397 be varied such that the Commission be directed to clearly articulate a policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North in a subsequent follow-up proceeding.
- 3) To the extent that the Governor in Council agrees that TD 2021-397 should be varied to state that Iristel did not violate subsection 27(2) of the *Telecommunications Act*, TNC 2020-269-2 should be varied so as to cease the consideration of the imposition of an AMP upon Iristel. Moreover, as explained in Part 4.0 of this petition, TNC 2020-269-2 should be varied so as to cease the consideration of the imposition of an AMP upon Iristel regardless of the Governor in Council's determinations with respect to TD 2021-397.

4.0 TNC 2020-269-2 SHOULD BE VARIED TO REMOVE THE CONSIDERATION OF AN AMP ON IRISTEL REGARDLESS OF THE GOVERNOR IN COUNCIL'S DETERMINATION WITH RESPECT TO TD 2021-397

98. In section 3.0 above, Iristel has demonstrated why TD 2021-397 should be varied to conclude that Iristel did not violate subsection 27(2) of the *Telecommunications Act*. It follows that if TD 2021-397 is varied to find that Iristel did not violate subsection 27(2) of the *Telecommunications Act*, there is no justification for the Commission to continue to consider the imposition of an AMP on Iristel in TNC 2020-269-2. However, regardless of whether the Governor in Council agrees that TD 2021-397 should be varied to state that Iristel did not violate subsection

27(2) of the *Telecommunications Act*, TNC 2020-269-2 should be varied so as to remove any consideration of the imposition of an AMP on Iristel. It is entirely inappropriate, as well as ineffective, regulation for the Commission to impose an AMP upon Iristel when it has failed to articulate a clear and comprehensive policy with respect to the assignment of NPA 867 numbers and the routing and termination of traffic to the North.

4.1 The jurisdiction of the Governor in Council to vary TNC 2020-269-2 to remove any consideration of the imposition of an AMP on Iristel

99. The Governor in Council has the jurisdiction under subsection 12(1) of the *Telecommunications Act* to vary TNC 2020-269-2 to remove any consideration of the imposition of AMPs on Iristel as TNC 2020-269-2, the decision of the Commission which resumed the proceeding that had been adjourned since 11 September 2020 by TNC 2020-269-1, was issued on 1 December 2021, which places it within the 90-day time period set out in subsection 12(1) to bring petitions to the Governor in Council.

100. Even though TNC 2020-269-2 is referred to by the Commission as a “Telecom Notice of Consultation”, it is in fact a “decision” within the meaning of subsection 12(1) of the *Telecommunications Act*. This is because in paragraph 9 of TNC 2020-269-2 the Commission made the decision to resume its consideration of the imposition of an AMP on Iristel and TELUS: “Accordingly, the Commission resumes the consultation with respect to the imposition of administrative monetary penalties on Iristel and TCI.”

101. For greater certainty, Iristel is only requesting that TNC 2020-269-2 be varied to stop the Commission from considering the imposition of an AMP upon Iristel and Iristel takes no position, in this proceeding, on whether the Governor in Council should also vary TNC 2020-269-2 to remove the consideration of the imposition of an AMP on TELUS.⁶⁸

⁶⁸ In the proceeding resumed by TNC 2020-269-2, Iristel took the position that the resumption of the that proceeding was unlawful, which would prevent the levying of a penalty more broadly. Iristel stand by those submissions. See also Section 4.2 of this petition.

4.2 Iristel has challenged the legality of Telecom Notice of Consultation 2020-269-2

102. As a result of the deadlines established by the Commission in TNC 2020-269-2, Iristel has already been compelled to make submissions to the Commission in that proceeding. In those submissions, in addition to demonstrating that the imposition of an AMP upon Iristel was entirely inappropriate from a policy perspective, Iristel argued that TNC 2020-269-2 and the Commission's conduct in continuing the consideration of the imposition of an AMP on Iristel was unlawful.⁶⁹

103. Iristel demonstrated that the Commission lacked the statutory jurisdiction to rule on AMPs because, pursuant to section 72.003 of the *Telecommunications Act*, AMPs cannot be levied by way of a follow-up proceeding.⁷⁰ Iristel also demonstrated that by failing to designate a person that is authorized to accept an undertaking, the Commission had fundamentally breached the duty of procedural fairness owed to Iristel.⁷¹

104. While Iristel continues to stand by these legal arguments, in this petition it is focusing on the policy reasons why the imposition of an AMP upon Iristel is not justified.

4.3 The purpose of AMPs and Iristel's commitment to compliance demonstrates that an AMP is not appropriate in Iristel's case

105. Without conceding the lack of a policy basis for the proceeding to continue based on the arguments set out in Parts 2.0 and 3.0 of this petition, even if such a policy basis existed, this is not an appropriate case for the imposition of an AMP. Iristel emphasizes that in the absence of a clear policy from the Commission with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North, the imposition of an AMP upon Iristel will not have any effect on promoting compliance with the *Telecommunications Act* as Iristel, and the industry, will still not know what it is that the Commission expects.

⁶⁹ See intervention of Iristel Inc., CRTC File 1011-NOC2020-0269, 17 January 2022, at sections 2-3 ["Iristel TNC 2020-269-2 Intervention"].

⁷⁰ *Id.*, at paras 26-31.

⁷¹ *Id.*, at paras 39-49.

106. Subsection 72.002(2) confirms that the purpose of AMPs is not to punish, but rather to promote compliance with the *Telecommunications Act*, regulations, or Commission decisions. The AMPs Guidelines also acknowledge this and go on to indicate that “[t]hey will be used where they are the most appropriate tool to obtain compliance and deter future non-compliance.”⁷² This statement is consistent with the graduated enforcement approach described in the AMPs Guidelines, which recites the Commission’s compliance and enforcement toolkit, including promoting compliance, monitoring compliance and conducting enforcement activities.⁷³

107. As the Commission has noted: “Although most violations can be subject to an AMP, not all violations will result in the imposition of an AMP, nor does the Commission generally intend to use AMPs as its first enforcement option. The Commission will continue to use its full range of compliance and enforcement tools.”⁷⁴

108. In this case AMPs are completely unnecessary to bring Iristel into compliance, yet the Commission is using AMPs as its first enforcement option, which is punitive in nature.

109. Iristel is fully prepared to be compliant with Commission determinations and policies and has indicated a willingness to do that since the proceeding leading to TD 2017-456.⁷⁵ However, the Commission continues to refuse to articulate a clear policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North.

110. Despite the absence of a clear Commission policy, Iristel has proactively taken additional actions to try and avoid activities related to the allocation of NPA 867 numbers and the routing of traffic to the North that the Commission might consider to be breaches of subsection 27(2) in connection with Iristel’s assignment of 867 NPA numbers. More specifically, Iristel has:

⁷² *Guidelines regarding the general administrative monetary penalties regime under the Telecommunications Act, Compliance and Enforcement and Telecom Information Bulletin* CRTC 2015-111, 27 March 2015, at para 17 (emphasis added) [“AMPs Guidelines”].

⁷³ *Id.*, at para 6.

⁷⁴ *Id.*, at para 18 (emphasis added).

⁷⁵ TD 2017-456, *supra* note 5, at para 43.

- 1) Raised the monthly rate it charges for 867 NPA telephone numbers by 50% over what Iristel charges in other NPAs to create a disincentive for Iristel's wholesale customers to select 867 numbers when any other number could serve the same business purpose;⁷⁶
- 2) In April 2021 Iristel terminated its OTS Agreement with Rogers to carry and terminate traffic in the 867 NPA as a result of which Iristel ceased to receive any financial gain from Rogers traffic to the 867 NPA;⁷⁷
- 3) Iristel recently reviewed its records to confirm that none of its customers are currently operating call to listen services in the 867 NPA;⁷⁸
- 4) Following a recent complaint by Rogers about a specific number being used for a call conferencing service, Iristel took measures to ensure that the number was no longer used for call conferencing services and Rogers has confirmed that this has addressed the objectionable traffic it noticed.⁷⁹ Iristel took this measure out of an abundance of caution until further clarification is given by the Commission in response to the Iristel Clarification Request seeking elucidation of the Commission's policy with respect to the assignment of NPA 867 number and pending the outcome of any appeals of that decision;
- 5) Iristel has adopted an internal policy that, in instances where high volume traffic patterns to certain numbers are automatically detected through software tools under development, or are brought to Iristel's attention, Iristel will promptly investigate the matter with the customer involved. In the event that it is determined that a number is being used in a manner that is contrary to any Commission determinations, including those in TD 2021-397, Iristel will instruct the customer to cease using this number in

⁷⁶ Iristel Clarification Request, at para 6.

⁷⁷ *Id.*, at para 7.

⁷⁸ Iristel Reply to Letter of Rogers Communications Canada Inc., CRTC File 8638-J64-202108430, 21 December 2021, at para 5.

⁷⁹ Intervention of Rogers Communications Canada Inc., CRTC File 8638-J64-202108430, 7 February 2022, at Footnote 2.

the manner that offends the Commission's determinations and proceed to disconnect the number if necessary; and

- 6) The Iristel Clarification Request seeks elucidation of the Commission's policy with respect to the assignment of 867 numbers. More specifically, Iristel is seeking clarification regarding whether all conference calling service in 867 NPA to all Iristel wholesale customers should be terminated. If not, Iristel is seeking Commission guidance on the appropriate method of determining what is appropriate 867 NPA conference calling traffic, and what is not. Iristel wants to get it right, and the filing of the Iristel Clarification Request constitutes due diligence.

111. However, Iristel reiterates that in the absence of a clear policy from the Commission, Iristel can only guess at what the Commission expects it to do with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North. This means that despite these measures, Iristel's valid business conduct could give rise to Iristel being put at risk of another finding of a violation of the *Telecommunications Act*, which could then potentially expose it to the consideration of further AMPs against it. This situation is fundamentally unjust. Iristel needs legal and regulatory certainty in order to conduct its business.

112. As discussed above in section 3.2 of this petition, despite the fact that Iristel has filed the Iristel Clarification Request, given the Commission's refusal to date to articulate a clear policy over the last five years with respect to the assignment of NPA 867 numbers and the termination and routing of calls to the North, and the unjust impact of the continuing corresponding uncertainty, Iristel is asking that the Governor in Council order the Commission to develop such a policy.

113. Given the absence of a policy relating to NPA 867 numbers and traffic routing to the North, Iristel should not be penalized through the levying of an AMP, particularly when continues to be engaged in obtaining additional clarification from the Commission regarding compliance with the Commission's expectations and has indicated a willingness to comply with applicable lawful Commission rulings.

4.4 The range of AMPs contemplated by the Commission in TNC 2020-269 is unjustified

114. The amount of the AMP proposed by the Commission, which Iristel reiterates is between \$750,000.00 to \$1,250,000.00⁸⁰, is entirely unjustified. The amount of any AMP imposed on Iristel should be extremely minimal if an AMP is to be imposed at all.

115. As Iristel has extensively argued throughout this petition, it is inappropriate for it to be subject to an AMP when the Commission has refused to articulate clearly a policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North. Iristel will fully comply with any such policy once it is established, but it needs to know what the Commission expects it to do and to subject a relatively small telecommunications carrier like Iristel to an AMP in the range of \$750,000.00 to \$1,250,000.00 in the absence of such a policy is punitive and disproportionate regulation.

4.5 The imposition of an AMP on Iristel would be inconsistent with Canada's telecommunications policy objectives, the 2006 Policy Direction and the 2019 Policy Direction

116. The imposition of an AMP upon Iristel for the conduct described in TNC 2020-269 would undermine Canada's telecommunications policy objectives as set out in section 7 of the *Telecommunications Act*, as well as the directions to the Commission issued by the Governor in Council in the 2006 Policy Direction and the 2019 Policy Direction.

4.5.1 The policy objectives in the *Telecommunications Act*

117. Paragraph 7(f) of the *Telecommunications Act* provides that the Commission is required "to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective."

118. It is not efficient regulation to require Iristel to pay an AMP when it has demonstrated that it is complying with the Commission's determinations and has taken steps to avoid instances of future non-compliance with subsection 27(2) of the *Telecommunications Act* in relation to the use

⁸⁰ TNC 2020-269, *supra* note 32, at para 9.

of 867 NPA numbers, including by asking the Commission repeatedly and to articulate its policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North and the Commission has not yet done so. The imposition of an AMP in these circumstances would serve no purpose; it would only result in funds that could be spent on investing in telecommunications facilities and the provision of telecommunications services being spent in paying an AMP.

119. Moreover, by reducing the amount of funds Iristel has available to invest in telecommunications facilities and the provision of telecommunications services, the imposition of an AMP would also undermine the policy objectives set out in paragraphs 7(a), (b), (c), (f), (g), and (h), of the *Telecommunications Act* as further described below.

120. Subsection 7(a) of the *Telecommunications Act* states that it is a telecommunications policy objective “to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions.” Reducing the levels of investment in telecommunications facilities in the North by compelling Iristel to divert funds toward paying an AMP will obviously undermine the development of Canada’s telecommunications system and its ability to bolster the social and economic fabric of that region of Canada.

121. Subsection 7(b) of the *Telecommunications Act* states that it is a telecommunications policy objective “to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.” As noted above, compelling Iristel to divert funds towards paying an AMP will reduce its ability to invest in telecommunications facilities in the North and thus its ability to offer reliable and affordable telecommunications in that rural and remote region of Canada.

122. Subsection 7(c) of the *Telecommunications Act* states that it is a telecommunications policy objective “to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunication.” Clearly, competition will be harmed, not enhanced, if Iristel is

compelled to pay an AMP, which will limit its ability to invest in telecommunications facilities in the North.

123. Subsection 7(f) of the *Telecommunications Act* states that it is a telecommunications policy objective “to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.” Iristel has demonstrated above that the imposition of an AMP upon it will not be efficient or effective regulation, especially when considerable uncertainty regarding what is acceptable conduct with respect to the assignment of NPA 867 numbers and the routing of traffic to the North persists. Moreover, increased reliance on market forces requires increased competition, and competition will be harmed if Iristel is compelled to pay an AMP, thereby reducing its ability to invest in telecommunications facilities in the North.

124. Subsection 7(g) of the *Telecommunications Act* states that it is a telecommunications policy objective “to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.” Compelling Iristel to pay an AMP will reduce its ability to invest in research and development and innovation in the provision of telecommunications services in the North.

125. Subsection 7(h) of the *Telecommunications Act* states that it is a telecommunications policy objective “to respond to the economic and social requirements of users of telecommunications services.” Iristel submits that undermining investment in telecommunications facilities in the North by compelling Iristel to pay an AMP, which will in turn negatively impact competition, affordability, and innovation in the provision of telecommunications services in the North, does not respond to the economic and social requirements of northern Canadians and actually directly impedes the achievement of these requirements.

126. Overall, the imposition of an AMP on Iristel is entirely inconsistent with Canada’s telecommunications policy objectives.

4.5.2 The 2006 Policy Direction

127. The imposition of an AMP upon Iristel for the conduct described in TNC 2020-269 would also undermine the Governor in Council's directions to the Commission in the 2006 Policy Direction.

128. Paragraph 1(a)(ii) of the 2006 Policy Direction requires the Commission "when relying on regulation [to] 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".

129. As noted above, it is not efficient regulation to require Iristel to pay an AMP when it has demonstrated that it is complying with the Commission's determinations and has taken steps to avoid instances of future non-compliance, including by asking the Commission repeatedly to articulate its policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North, and the Commission has not yet done so. The imposition of an AMP in these circumstances would serve no purpose, as Iristel has brought itself into compliance with the *Telecommunications Act*, and would only result in funds that could be spent on investing in telecommunications facilities and the provision of telecommunications services being spent in paying an AMP instead.

130. Moreover, the imposition of an AMP does not constitute proportionate regulation as Iristel has demonstrated that it is complying with the Commission's determinations in TD 2021-397. It is also not proportionate regulation that the Commission is considering the same range of AMP for Iristel and TELUS, despite the fact that TELUS is significantly larger than Iristel. For greater certainty, Iristel is not making any submissions on the appropriateness of an AMP with respect to TELUS, but is merely highlighting the discrepancy between the sizes of the two companies here to indicate that the Commission's preliminary view with respect to the appropriate size of an AMP for Iristel does not constitute proportionate regulation.

131. Imposing an AMP on Iristel in the range being contemplated would also significantly interfere with competitive market forces by substantially undermining Iristel's ability to compete against incumbent service providers, including in the North, as Iristel would be required to divert funds that could be spent on enhancing its network and services towards paying the AMP.

132. Paragraph 1(b)(iii) of the 2006 Policy Direction also requires the Commission when applying regulatory measures to ensure that "if they are not of an economic nature, to the greatest extent possible, [they] are implemented in a symmetrical and competitively neutral manner".

133. The imposition of an AMP would severely distort competition by substantially undermining Iristel's ability to compete against incumbent service providers, including in the North as Iristel would be required to divert funds that could be spent on enhancing its network and services towards paying the AMP. As the imposition of an AMP is entirely unnecessary for all the reasons stated above, it would not be competitively neutral to the greatest extent possible.

4.5.3 The 2019 Policy Direction

134. The imposition of an AMP upon Iristel for the conduct described in TNC 2020-269 would also undermine the Governor in Council's directions to the Commission in the 2019 Policy Direction.

135. Broadly speaking, the directions to the Commission in the 2019 Policy Direction are aimed at promoting the development of competition, affordability, investment, innovation, and access to advanced telecommunications services in all regions of Canada. The imposition of an AMP on Iristel would serve no purpose for promoting compliance as Iristel has brought itself into compliance with the Commission's determinations in TD 2021-397 and adopted robust measures to ensure ongoing compliance, including by asking the Commission repeatedly to articulate its policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North, which the Commission has not yet done. The imposition of an AMP would only serve to divert money that Iristel could invest in telecommunications facilities and the provision of telecommunications services towards paying for an AMP. In turn, the requirement to pay a

substantial AMP would make Iristel a less effective competitor and reduce its ability to offer advanced and affordable telecommunications services to Canadians, including in Canada's North.

136. The imposition of an AMP on Iristel would therefore undermine the Governor in Council's directions to the Commission in subsections 1(a)(i)-(iii) and (v)-(vii) of the 2019 Policy Direction.

137. Overall, the imposition of an AMP on Iristel as contemplated in the proceeding initiated by TNC 2020-269 and continued by TNC 2020-269-2 would be inconsistent with Canada's telecommunications policy objectives as expressed in section 7 of the *Telecommunications Act*, and the policy directions issued to the Commission by the Governor in Council in the 2006 Policy Direction and the 2019 Policy Direction.

4.6 Requested relief with respect to TNC 2020-269-2

138. For all the reasons set out in section 4.0 of this petition, regardless of whether the Governor in Council agrees with Iristel that TD 2021-397 should be varied to state that Iristel did not violate subsection 27(2) of the *Telecommunications Act*, TNC 2020-269-2 should be varied to prevent the Commission from continuing to consider the imposition of an AMP upon Iristel.

5.0 IRISTEL'S APPEAL OF TD 2021-397 TO THE FEDERAL COURT OF APPEAL

139. In addition to this petition, Iristel has, pursuant to subsection 64(1) of the *Telecommunications Act*, filed a motion for leave to appeal TD 2021-397 to the Federal Court of Appeal.⁸¹ Iristel is arguing before the Federal Court of Appeal that the Commission's determination that Iristel violated subsection 27(2) of the *Telecommunications Act* was an error of law and jurisdiction as the Commission had not clearly articulated a policy on the assignment of NPA 867 numbers and the routing and termination of calls to the North prior to making that finding.

⁸¹ *Iristel Inc. c. CRTC et Autres*, Federal Court of Appeal Court File 21-A-31.

140. The existence of Iristel's motion for leave to appeal to the Federal Court of Appeal, and of any appeal, if leave is granted, should not have any bearing on the Governor in Council's consideration of this petition as they are separate proceedings initiated under separate provisions of the *Telecommunications Act*.

6.0 CONCLUSION

141. Throughout this petition Iristel has demonstrated that the Commission, by finding that Iristel violated subsection 27(2) of the *Telecommunications Act* in TD 2021-397, subjected Iristel to a significant injustice. This injustice has been compounded by TNC 2020-269-2, in which the Commission is unjustly and unlawfully considering the imposition of a significant AMP upon Iristel. The Commission's decisions effectively insulate large, dominant telecommunications carriers from the necessity of making investments in telecommunications facilities in the North and punish competitive carriers like Iristel that have chosen to invest in the North. They also allow those carriers the ability to shift responsibility for disciplining the conduct of their end customers to Iristel, even though they have the ability to do so and Iristel has no direction relationship with those end customers.

142. The Commission's conduct in finding that Iristel violated subsection 27(2) of the *Telecommunications Act* is particularly unjust because the Commission has refused to provide clear direction to Iristel with respect to its expectations for the assignment of NPA 867 numbers and the routing and termination of calls to North. This failure to create clear regulation represents a significant abdication of the Commission's responsibilities as a regulator and necessitates intervention by the Governor in Council.

143. Moreover, the Commission's conduct in punishing Iristel for having built telecommunications facilities in the North undermines Canada's telecommunications policy objectives as set out in section 7 of the *Telecommunications Act* as well as the policy directions issued by the Governor in Council to the Commission. TD 2021-397 and TNC 2020-269-2 will have a chilling effect on investment in telecommunications facilities in Canada's North, and will also undermine competition in the provision of telecommunications throughout Canada.

144. Iristel therefore urges the Governor in Council:

- a) To vary TD 2021-397 to find that Iristel did not violate subsection 27(2) of the *Telecommunications Act*;
- b) To vary TD 2021-397 to order the Commission to articulate a clear and comprehensive policy with respect to the assignment of NPA 867 numbers and the routing and termination of calls to the North in a subsequent follow-up proceeding; and
- c) Regardless of whether it grants the relief requested in parts (a) and or (b) of this paragraph, to vary TNC 2020-269-2 to remove any consideration of the imposition of an AMP on Iristel.

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