Canada Gazette, Part I, Volume 155, Number 30

Notice No. TIPB-001-2021

Petition to the Governor in Council concerning Telecom Regulatory Policy CRTC 2021-130

Comments

of

Bell Mobility Inc.

22 September 2021

Table of Contents

1.0 INTRODUCTION AND EXECUTIVE SUMMARY

1. In its *Review of mobile wireless services* decision (the Decision)[1] released on April 15, 2021, the Canadian Radio-television and Telecommunications Commission (the CRTC) found that "retail prices [are] clearly trending downwards," that "the market is moving in the right direction, and that it is reasonable to expect that this trend will continue in the future as wireless carriers' network capacity increases as a result of ongoing investments and innovation,"[2] and that "les investissements dans les réseaux se poursuivent afin que la qualité et les vitesses des réseaux sans fil du Canada soient parmi les meilleures au monde."[3]

2. Nevertheless, the CRTC decided that, to further accelerate this competitive process, Bell, Rogers, SaskTel, and Telus should be forced by regulation to provide wholesale mobile virtual network operator (MVNO) access to their wireless networks to certain other wireless carriers. In Canada, this was the first time in the nearly 30 year history of the wireless market that policymakers have imposed this heavy-handed form of regulation. Internationally, very few regulators have taken this step and in recent years, the global consensus has been moving in the opposite direction. During the CRTC proceeding, four senior regulators from the United States, European Union, United Kingdom, and Switzerland confirmed that, given the characteristics of the Canadian market, regulators from their respective jurisdictions would not impose mandated MVNO access.[4] The CRTC's Decision makes Canada an international outlier.

3. The Decision has not yet been implemented. On July 14, 2021, Bell, Rogers, SaskTel, and Telus filed proposed tariffs with the CRTC setting out the terms and conditions on which they would make the mandated MVNO access available. On September 7, 2021 at least eight potential MVNOs filed comments on those tariffs, indicating a strong interest in taking advantage of the new rules.

4. Meanwhile, as described below, since the CRTC's decision was issued competition has only continued to intensify, wireless prices have continued to fall, and Canada has continued to benefit from world-leading wireless networks. Statistics Canada reports that wireless prices have fallen 15% so far this year, even as inflation has grown.

---

1 Telecom Regulatory Policy CRTC 2021-130, *Review of mobile wireless services,* 15 April 2021.
2 TRP 2021-130, paragraph 125.
3 TRP 2021-130, Transcript 10.
4 See the following expert reports filed in and testimony given in connection with the CRTC proceeding: Madelin Report at paragraph 7; Adelstein Report, pages 13 and-14; Richard Feasey at Transcript, Vol. 7, line 9337; Georg Serentschy at Transcript, Vol. 3, line 3650.

5. In these circumstances, the Governor in Council should decline to act on DOT Mobile's petition. The CRTC reached its conclusions based on extensive economic, technical, and other evidence gathered over two years from the widest possible range of stakeholders. Its Decision already goes farther than regulators would do elsewhere in the world. And implementation of the decision is ongoing. Despite all this, DOT Mobile is asking the Governor in Council to throw it out and start again with an even more radical and unproven approach. It makes this request based on no evidence and with a narrow focus on promoting its own business model, ignoring both the CRTC's rationale for its decision and the objectives of the *Telecommunications Act* – most notably, the importance of ensuring Canadians in both large centres and rural and remote communities have access to the most advanced digital infrastructure.

6. The CRTC and the Competition Bureau both endorsed the approach adopted in the Decision because they believe it will lead to lower prices (up to 35-40% lower in some cases, according to the Bureau) while still recognizing the importance of wireless investment to expanding this access and supporting Canada's future success in the digital economy.

7. If the Governor in Council were to take the steps requested by DOT Mobile or otherwise intervene in the CRTC's decision, the result would not be more competition but more uncertainty and longer delays for both those who have been ordered to provide mandated MVNO access and their competitors seeking to take advantage of it. This will lead to less investment, less competition from regional and entrant carriers, and ultimately a less connected Canadian economy.

8. For example, on May 31, 2021 we announced an historic accelerated capital investment plan for 2021 and 2022 that would see us spend up to $1.7B more than usual over those two years (for a total investment over that two year period of approximately $9.7B). This was made possible by "greater regulatory stability fostering an improved investment climate."[5] If the rules were to change now, as a result of the petition, then our investment plans would also need to change.

9. As the CRTC cautioned:

> In considering its regulatory approach, the Commission must take care not to disrupt the competition that is already occurring, but instead foster an environment where this competition can grow and be sustainable over the long term.… foster continued innovation and investment in, and affordable access to, high-quality telecommunications facilities in all regions of Canada, including rural and remote areas; promote sustainable

[5] Bell, Press Release, "Bell's biggest-ever network acceleration plan gets bigger with additional investment now up to $1.7 billion over the next 2 years" (31 May 2021).

competition that provides benefits such as affordable prices and innovative services to Canadians; and reduce barriers to entry into the market.[6]

10. Rather than risk moving backwards by abandoning the new approach adopted by the CRTC before it has even been implemented, the Government can and should address the most imminent threat to wireless competition in Canada by blocking Rogers' proposed acquisition of wireless disruptors Shaw Mobile and Freedom. The Competition Bureau has stated that as wireless disruptors like Shaw and Freedom expand, wireless prices fall by up to 35-40%, a far greater impact on the market than anything DOT Mobile has claimed would result from its proposal. If the Government is concerned about wireless pricing, it should block Rogers from unilaterally undoing more than a decade of policy efforts and privatizing billions of dollars in public subsidies that have led to this large reduction in prices and the ongoing success of Canada's regional carriers.

2.0 <u>THE CANADIAN WIRELESS MARKET REMAINS HIGHLY COMPETITIVE</u>

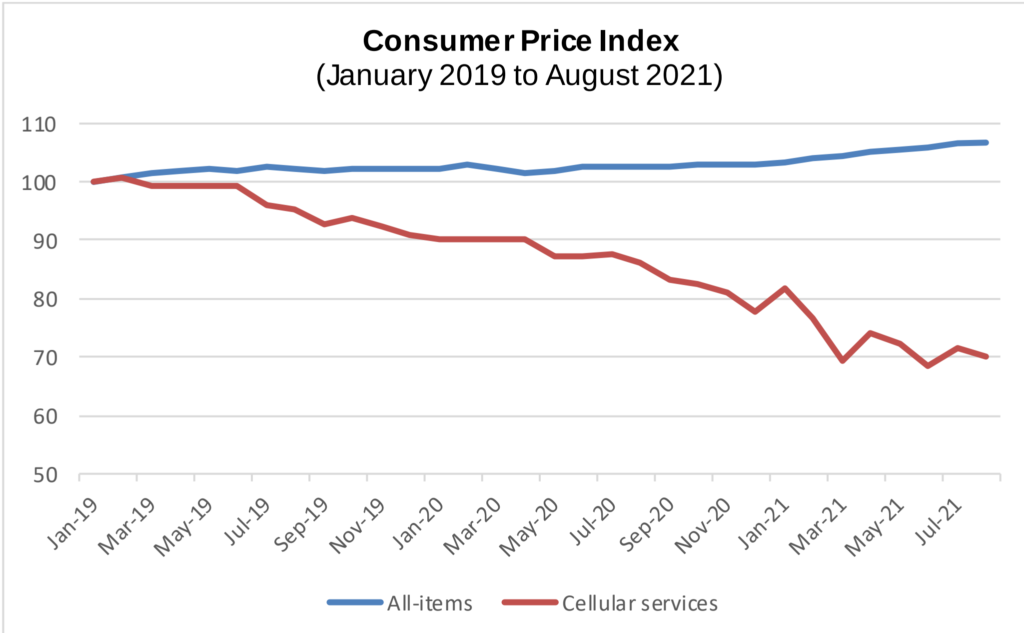
11. Following the release of the CRTC's Decision, evidence of the success of Canada's wireless industry has continued to grow. This includes both a continued decline in wireless prices and continued Canadian leadership in wireless network speeds and coverage.

2.1 <u>Declining wireless prices</u>

12. As the CRTC recognized in its Decision, wireless prices have consistently and significantly fallen in recent years, and this trend has only accelerated. As shown in Figure 1, according to Statistics Canada the price of wireless services has fallen 31% since January 2019 while prices generally have climbed by nearly 7% during the same period. Just since the start of 2021, wireless prices have fallen 15% even as inflation has begun to grow more quickly.

6 TRP 2021-130 at preamble.

Figure 1 - Prices For Wireless Services vs. All Items



13. Innovation, Science and Economic Development Canada (ISED) also collects data on pricing for certain specific wireless plans in order to assess the change in prices relative to benchmarks collected in early 2020. According to ISED's most recent review, prices for plans with between 2 GB and 6 GB of data have fallen by between 9% and 25% relative to these benchmarks and we expect to meet ISED's price reduction targets.

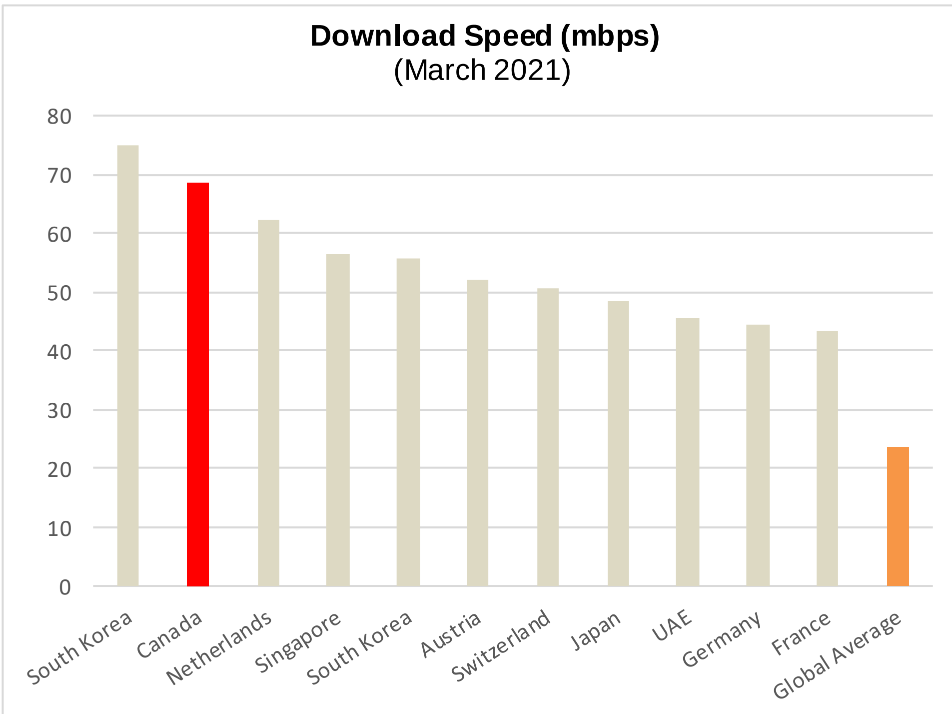
14. These changes reflect the fact that wireless plans have been changing dramatically since the Government issued the 2019 Policy Direction and the CRTC launched its review of wireless services. At that time, a 15 GB plan on our Virgin brand was $120/month. Today, a new subscriber on Virgin can get a 15 GB plan for $70. Similarly, at that time two new subscribers on our Bell brand could share 23 GB of data per month for $118 per person. Today, two new subscribers can share unlimited data with 60 GB at full speeds for $72.50 per person. These dramatic differences are an indication of the fundamental change that has occurred in Canada's wireless market since the 2019.

2.2 <u>World-leading wireless network quality</u>

15. Canadians continue to benefit from some of the best wireless networks in the world as a result of the significant investments that continue to be made by Canada's wireless carriers. Two of the three fastest networks in the world (including Bell's) are in Canada, and these networks are nearly three times

as fast as the global average.[7] Overall, Canada has the second fastest networks in the G7.[8] Reflecting an important use case during the COVID-19 pandemic, a recent Open Signal study ranked Canada third out of 19 countries and the "undisputed leader in North America" in terms of the quality of group video calling over mobile networks.[9]

Figure 2 - Global Comparison of Network Speeds[10]



16. Canada's leadership extends in particular to rural and remote areas. 4G availability for rural areas continues to increase, catching up to 4G availability in urban areas. Opensignal found that "Canadian rural users were able to spend at least 89.9% of their time connected to 4G last year."[11] Rural users on our network continued to experience increases in download speeds over the last year and Opensignal found that "our rural users, on average, had faster download speeds than what our

7 Opensignal, "Global Mobile Network Experience Awards 2021" (March 2021), page 14.

8 Speedtest Global Index (August 2021).

9 Opensignal, "The State of Group Video Calling Experience – North and Latin America" (9 June 2021) available at https://www.opensignal.com/2021/06/09/the-state-of-group-video-calling-experience-north-and-latin-america.

10 Only the top-ranked operator in each country are shown on the graph.

11 Opensignal, "Understanding Canada's rural mobile network experience" (1 July 2021), available at https://www.opensignal.com/2021/07/01/understanding-canadas-rural-mobile-network-experience-july-2021.

users experience in several mature markets… This means that 4G users in rural Canadian are able to connect to a 4G service almost nine out of 10 times, which is extremely impressive."[12]

17. Drive test data from PC Mag shows that time-on-LTE in Canada is 99%, illustrating that our LTE networks are robust and can benefit Canadians not just where they live and work but also as they travel. According to the most recent report from PC Mag, while many Canadians doubled their mobile usage in 2020, network performance did not decline and remained twice as fast as American networks.[13]

18. All of this was accomplished even as carriers awaited the release of key spectrum required to unlock 5G. PC Mag said that "[a]verage speeds of over 200Mbps, which we've seen on Bell and Telus for the past two years, are absolutely spectacular for 4G, and outpace both AT&T and T-Mobile's low-band 5G"[14] and "[i]t's worth mentioning that neither AT&T's nor T-Mobile's 5G networks are faster than the Bell and Telus 4G networks in Canada. Bell and Telus were able to outpace our 5G technologies without a lick of 5G."[15]

2.3 <u>Striking the right balance</u>

19. It is clear that the regulatory policies in place prior to the Decision have appropriately balanced rapid reductions in wireless prices with a continued ability and incentive for wireless carriers to invest in providing Canadians in communities of every size access to world-leading digital infrastructure. According to a survey conducted by the CRTC prior to the Decision, 83% of Canadians are satisfied with their wireless service provider, with more than twice as many Canadians saying they are very satisfied as saying they are somewhat or very dissatisfied combined.[16] This high level of consumer satisfaction is a strong indication that competition is working and consumer interests with respect to price, quality, and coverage are protected.

---

[12] Opensignal, "Understanding Canada's rural mobile network experience" (1 July 2021), available at https://www.opensignal.com/2021/07/01/understanding-canadas-rural-mobile-network-experience-july-2021.

[13] PC Mag, "Fastest Mobile Networks Canada 2020" (9 November 2020) ("The real news this year is that Canadian networks are offering a lot more for subscribers' money, and holding up under the strain of much more capacious service plans… the arrival of unlimited plans in Canada hasn't resulted in the networks slowing down—they're still, on average, twice as fast as the mobile networks in America.").

[14] PC Mag, "Fastest Mobile Networks Canada 2020" (9 November 2020), available at https://www.pcmag.com/news/fastest-mobile-networks-canada-2020.

[15] PC Mag, "Fastest Mobile Networks 2020" (9 September 2020), available at https://www.pcmag.com/news/fastest-mobile-networks-2020.

[16] *Telephone Survey on Mobile Wireless Services in Canada: Final Report*, Prepared for the Canadian Radio-television and Telecommunications Commission (January 2020).

20. The CRTC's new approach, which is very similar to the one proposed by the Competition Bureau,[17] is intended to shift that balance, perhaps dramatically, toward a greater focus on reducing wireless prices while still recognizing the need for continued wireless investment. The impact that this new approach will have on investment and whether it will strike an appropriate balance is not yet clear, and will depend in part on how it is implemented.[18]

21. What is clear, however, is that the approach DOT Mobile is asking the Governor in Council to adopt would strike the wrong balance – indeed, it does not attempt to strike a balance at all. Instead, it is singularly focused on artificially propping up a particular business model in the market through unprecedented heavy-handed regulation and without regard to the inevitable impact on investment. Appendix A sets out public statements from CEOs of both large national and small regional entrant carriers regarding this potential impact. The massive loss of investment that would result from DOT Mobile's proposal – which we have previously estimated would be approximately $900M annually in the short run growing to $1.5B annually in the long run[19] – would reduce the quality of experience for all Canadians, the accessibility of wireless networks in rural and remote areas, and Canada's ability to participate and lead in the digital economy.

3.0 DOT MOBILE'S PETITION IS BASED ON A FUNDAMENTAL MISUNDERSTANDING OF THE CRTC DECISION

22. In their petition DOT Mobile is asking the Governor in Council to (i) rewrite certain elements of the detailed regulatory regime crafted by the CRTC in its Decision and (ii) arbitrarily set wholesale rates that the CRTC, like almost every other regulator who has gone down this path, determined should be set by negotiation and, if necessary, CRTC arbitration. DOT Mobile in essence makes two arguments in support of their request, both of which are based on a fundamentally incorrect understanding of the nature and impact of the CRTC Decision and neither of which responds or even refers to the detailed rationale provided by the CRTC for its Decision.

---

17 The primary difference between the CRTC's approach and the Competition Bureau's approach is that the Competition Bureau would have imposed additional conditions that had to be met before taking advantage of the mandated access.

18 Based on our experience and the empirical evidence presented to the CRTC during its hearings, we estimated that the impact of this form of mandate access would be to reduce investment in Canada's wireless industry by $450M annually in the short run and $900M annually in the long run.

19 See our Final Comments in the proceeding that led to TRP 2021-130, Table 2.

3.1 The CRTC Decision Granted Mandated MVNO Access

23. DOT Mobile's primary concern appears to be that the CRTC "falsely state[s] that MVNOs have been granted mandated access," that "the CRTC Decision incorrectly uses the term MVNO,"[20] and that "the Commissioner [of Competition]'s proposal was incorrectly defined as a facilities-based MVNO."[21] These strange claims do not provide any support for DOT Mobile's request.

24. First, even if the CRTC had used a particular term such as "MVNO" differently from how DOT Mobile understands it, that would not be a reason to dismantle the CRTC's regulatory regime let alone a reason to support DOT Mobile's radical proposal.

25. In any event, the CRTC Decision *does* grant mandated access for MVNOs. Under the CRTC's Decision, a wireless carrier who owns spectrum in a particular region can enter that region as an MVNO – i.e., without building or using its own radio access network in that region but instead relying on regulated access to the radio access network of Bell, Rogers, Telus, or SaskTel. Moreover, that carrier can extend the mandated MVNO access to other companies regardless of whether they are already wireless carriers and even if they do not own and will never own any spectrum in Canada. As a result, the mandated access can benefit a wide variety of competitors with a wide variety of business models.

26. The CRTC did not adopt this approach, which opens up mandated MVNO access broadly but with particular priority for those who may ultimately invest in Canada's wireless infrastructure, arbitrarily or as a result of some error or misunderstanding. Rather, the CRTC determined specifically that the best way to support all forms of competition on a sustainable basis is to protect, to at least some degree, the ability and incentive of carriers, including the regional carriers, to invest in network capacity in Canada:

> In the Commission's view, the best way to achieve a sustainable competitive retail market that responds to consumers' interests over the long term, with a healthy mix of all forms of competition, is to continue to foster the deployment of competing networks. Wireless carriers that add capacity in order to expand their coverage enhance their networks and compete for customers by increasing and innovating in the plans and features they offer. When enough capacity accrues, wireless carriers have an incentive to sell excess or unused capacity to an MVNO and earn revenue for it, rather than have it sit idle. As this occurs, the Commission anticipates that market forces will result in resale competition emerging without further regulatory intervention, as has been the case in countries such as Australia and the United States. In short, in the Commission's view, the optimal way to encourage all forms of competition is by adopting targeted

[20] DOT Mobile Petition, paragraph 5.

[21] Ibid.

> regulatory measures to ensure that there is a sustainable foundation of facilities-based competitors and then relying generally on market forces to deliver the benefits of competition to consumers[22]

27. DOT Mobile does not even attempt to address this conclusion and his provided no reason for the Governor in Council to doubt it.

3.2 The CRTC Decision Will Lead to Additional Entry

28. DOT Mobile's second claim is that "most of Canada will not see any change in the number of wireless service providers" as a result of the Decision because "[o]ther than Shaw, no regional providers have voiced national ambitions."[23] They specifically claim that Videotron will not expand beyond Quebec.

29. Of course, events have already proven DOT Mobile wrong. Videotron spent more than $500M in the recent 3500 MHz spectrum auction to acquire spectrum outside Quebec and has announced its plans to leverage the Decision to expand nationally.[24] Cogeco spent $295M to acquire 3500 MHz spectrum and indicated that "together with the recent CRTC regulatory decision on wireless services" it would position them "to enter the mobile wireless services market… in all of our core markets in Canada."[25] Xplornet and TerreStar own spectrum across Canada and have filed detailed comments on the proposed mandated MVNO access tariffs, clearly because they intend to take advantage of them to offer wireless services in areas where they do not operate today. Ice Wireless has done the same. Other carriers, like Shaw and Eastlink, could use the CRTC's mandated access to expand into new markets where they already own spectrum and could acquire additional spectrum in the open market or in one of the upcoming auctions in order to further expand their footprint leveraging the mandated MVNO access. Clearly significant new entry is imminent and ongoing as a result of the CRTC Decision.

30. The CRTC Decision also explicitly supports the entry of other carriers as MVNOs, including DOT Mobile. For example, if a company like DOT Mobile was not able to reach a deal directly with Bell, Rogers, or Telus, it could instead reach a deal with any of the regional carriers (e.g., Videotron, Cogeco, Shaw, Xplornet, TerreStar, or others) and through them gain mandated MVNO access to the national

22 TRP 2021-130, paragraphs 289 and 290.

23 DOT Mobile Petition, paragraphs 8 and 9.

24 See e.g., Videotron, Press Release, "Quebecor and Videotron take another step towards expansion outside Quebec" (30 July 2021). [We do not believe Videotron met the eligibility requirements to acquire set-aside spectrum in these areas and have sought judicial review in that regard. Even if the Court agrees with us, however, ISED is likely to re-auction the spectrum such that Videotron or an equivalent entrant could acquire it then.]

25 Cogeco, Press Release, "3500 MHz Band Spectrum Auction: Cogeco Acquires 38 Licences in Strategic Areas of Ontario and Québec" (29 July 2021).

carriers' networks. DOT Mobile obviously cannot and does not deny this possibility. Instead, their concern appears to be that they will not be able to enter into a mutually beneficial arrangement with any of these eight or more companies. Ultimately, that concern reveals a problem with DOT Mobile's business model, not a problem with the CRTC's regulatory regime.

3.3 The CRTC Decision Supports the 2019 Policy Direction

31. There is no rationale for the Governor in Council to interfere in the decision of the CRTC as the expert regulator in this case. DOT Mobile has not pointed to any error or unintended consequence associated with the CRTC's decision, nor does there appear to be any divergence between the CRTC's policy objectives and those of the Government.

32. In particular, the CRTC's approach directly adopts and reflects the 2019 Policy Direction, which is referred to at least 25 times in the Decision. The CRTC summarizes the relationship between its decision and the policy set out in the *Telecommunications Act* and the 2019 Policy Direction as follows:

> [T]he Commission's determinations in this proceeding advance the policy objectives set out in paragraphs 7(a), (b), (c), (f), and (h) of the Act. These determinations are aimed at facilitating 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; rendering reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas; enhancing the efficiency and competitiveness of Canadian telecommunications; fostering increased reliance on market forces for the provision of telecommunications services while ensuring that regulation, where required, is efficient and effective; and responding to the economic and social requirements of users…
>
> The 2019 Policy Direction provides that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation. The determinations in this decision comply with the 2019 Policy Direction as follows:
>
> consistent with subparagraph 1(a)(i), the determinations encourage all forms of competition and investment. By providing regulatory support to regional wireless carriers, network capacity should be increased, which would make the organic emergence of a broader MVNO market more likely;
>
> consistent with subparagraphs 1(a)(ii) and (iii), the determinations foster the availability of affordable and lower-priced services of high quality across the country. By creating the conditions for an expansion of sustainable retail competition and creating clear expectations for specific types of service offerings, lower prices should be more broadly available;
>
> consistent with subparagraph 1(a)(v), the determinations 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. By mandating access to the networks of dominant firms, regional wireless carriers will be able to expand their

own coverage, expedite the expansion of their own networks, and serve more customers; and

consistent with subparagraph 1(a)(vi), the determinations enable innovation in telecommunications services, including new technologies and differentiated service offerings. Targeted wholesale measures will permit regional wireless carriers to expand their networks, including next-generation networks, without impeding the ability of the dominant firms to continue to invest. Continued forbearance at the retail level ensures that the ability of WSPs to innovate in their service offerings is not adversely affected.[26]

33. There is therefore no "disconnect between the CRTC Decision and [the] 2019 Policy Direction" as DOT Mobile claims. Rather, DOT Mobile simply disagrees with the CRTC's expert view, reached after a two-year long process in which it gathered extensive economic, technical, and other evidence from the widest possible range of stakeholders, as to the specific regulatory mechanisms that will best achieve the relevant objectives. The CRTC concluded that mandating MVNO access in a manner that, it believes, would continue to support network investment from both large national and small regional competitors would provide the strongest and most sustainable foundation for all forms of competition and innovation to thrive. DOT Mobile appears to believe that the CRTC must abandon any support for wireless investment and take on a truly unprecedented role micromanaging the market, constantly setting and resetting wholesale rates every two years on a permanent basis.[27] No regulator in the world has ever contemplated such an approach and DOT Mobile has not come remotely close to providing the type of evidence that would be required to support adopting it. In any event, the Government's policy certainly does not dictate such an approach.

4.0 THE GOVERNMENT CAN BLOCK THE ROGERS/SHAW TRANSACTION

34. The only other argument DOT Mobile advances in support of its position is that there is a "[c]ontinued consolidation of network operators, such as the Rogers acquisition of Shaw," and therefore competition among four facilities-based carriers "is not a viable option."[28]

35. This is simply wrong. The Government does not have to abandon the decade of policy efforts and billions of dollars in public subsidies that have resulted in the success of the fourth facilities-based competitor in each region of Canada. Nor does it have to throw out the proposed mandated MVNO access regime endorsed by the CRTC and the Competition Bureau and designed to place all forms of competition on a sustainable foundation in favour of one that will have a devastating negative impact on wireless investment. Instead, the Minister of Innovation, Science, and Industry, the Competition Bureau,

---

26 TRP 2021-130, paragraphs 633 and 635.

27 DOT Mobile Petition, paragraph 12.

28 DOT Mobile Petition, paragraphs 9 and 11.

and the CRTC each have the power to simply block the transaction, putting the industry back on course to achieve all of the Government's key public policy objectives.

36. As was demonstrated at the CRTC's hearing and as Shaw itself has said, prior to Rogers' proposed acquisition of Shaw Mobile and Freedom, the regional facilities-based competitors were thriving. In its Final Comments in the CRTC process Shaw explained that their "efforts have created an entirely new competitive dynamic that has cascaded through the markets we serve and beyond, featuring widely available unlimited plans, more choice across all price ranges, lower prices, reduced overage charges and a better customer experience" and that "Freedom's impact thus far is just the tip of the iceberg of what we and other regional disruptors can deliver."[29] Indeed, last year Shaw stated publicly that it had completed 5G testing and was about to launch its 5G network. While it appears to have jumped the gun on the transaction and put those plans on hold, they can readily be reprioritized if the transaction does not proceed.

37. Rogers and Shaw understood this possibility[30] when considering the transaction and have planned for it in their agreements. In particular, they have specifically agreed to a mechanism to compensate Shaw in that scenario by transferring to Shaw 3500 MHz and/or other spectrum from Rogers. Indeed, this is precisely what happened when United States regulators blocked AT&T from acquiring T-Mobile: AT&T transferred spectrum to T-Mobile as part of the reverse break fee in their transaction. In the Arrangement Agreement entered into by Rogers and Shaw, they refer to the 3500 MHz and other spectrum with a value of up to $1.2B that would be transferred to Shaw as part of the reverse break fee if the transaction is blocked as the "RTA Asset Portion" or "Alternative Consideration." This will ensure that the Shaw Mobile and Freedom wireless business are well-positioned to continue their contribution to wireless competition in Canada going forward.

38. Contrary to DOT Mobile's assertion, the Governor in Council's hand has not been forced. It is not necessary to adopt a regulatory regime that will undermine existing wireless competition and permanently reduce wireless investment, with negative consequences for Canada's digital economy and in particular the accessibility of digital connectivity in rural and remote communities. Instead, the Government can simply say no to Rogers and Shaw and proceed with the approach that the CRTC determined would be in the best interests of consumers instead.

---

29 Telecom Notice of Consultation CRTC 2019-57, *Review of mobile wireless services,* Shaw Final Comments, paragraphs 8 and 10.

30 As we explained in a recent submission to the CRTC, the United States regulators blocked a proposed cable mega-merger between Comcast and Time Warner Cable despite the fact that it would have resulted in less concentration and market power than the Rogers/Shaw transaction and did not involve any combination of wireless competitors.

5.0 CONCLUSION

39. With the CRTC Decision, the wireless industry is beginning to emerge from a period of unprecedented uncertainty brought on by one of the most consequential CRTC hearings in its history and followed by the onset of the COVID-19 pandemic. Maintaining a stable regulatory framework now will create an investment climate that allows both industry and policymakers to continue to focus on the overriding public policy priorities for the Canadian telecommunications industry in 2021 and beyond: ensuring that all Canadians everywhere in the country benefit from the investment required to maintain Canada's robust and world-leading broadband networks; unlocking 5G innovation; and supporting the extension of the most advanced infrastructure to even more communities. We look forward to continuing our collective progress toward these goals.

APPENDIX A

The following statements from Chief Executive Offices and other senior executives appearing at the CRTC hearing for TNC 2019-57 demonstrate the likely impact on investment from adopting DOT Mobile's proposal:

– *Eastlink:* In response to a question regarding the sensitivity of Eastlink's investment plans to its current profitability, Lee Brag, their CEO, said "I can do better than speculate, I can tell you the capital we've cut back and what we've done this year. Our initial capital budget for this coming year, year-end August 31st, was about $220 million. We've cut $60 million out of that; we'd laid off people… [given] our concerns associated with an MVNO process and not getting the costing right, we decided to cut back 100 percent of all our cellular expansion. We've put on hold all of our cellular plans, all of our growth because we could not take the risk of spending that money and building out that infrastructure … when the banks say you have a broken business model now because of the regulatory structure and the risk associated with it, you know, they don't lend me money and I can't build networks anyway."[31] [Emphasis added]

– *Freedom:* the CFO of Shaw, Trevor English, revealed to the Commission: "The notice for this hearing came out 2 weeks before the start of ISED's 600-megahertz spectrum auction, a critical process for the future of our wireless business. Our valuations and auction strategy had already been approved, after many months of preparation. The notice's preliminary view regarding MVNO came as a shock. It called into question many of our assumptions, and caused changes to our auction plans, including pulling back on ambitions to expand into new markets… all of this requires long-term investments in spectrum and networks, which depend on a reasonable prospect of a return. If the Commission abandons its current path, and chooses broad resale, our ability to realize a return goes from being challenging to being impossible. This raises the obvious question of whether we can responsibly continue deploying additional capital into wireless."[32] [Emphasis added]

– *Quebecor:* the President and CEO of Quebecor, Pierre-Karl Pelardeau, was candid that "la diminution des parts de marché des concurrents régionaux se traduira inévitablement par une baisse de leurs revenus, ce qui entraînera une réduction de leurs investissements dans la modernisation de leurs réseaux, ainsi que dans l'innovation et la bonification de leurs offres de services... Le danger est donc bien réel. Pour Vidéotron ses clients et ses employés, les

[31] TNC 2019-57, transcript, Vol. 4, lines 5424 to 5428.
[32] TNC 2019-57, transcript, Vol. 1, lines 653 to 655.

conséquences de sa concrétisation de ce scénario seront véritablement dramatiques puisque la fiabilité financière des opérations sans fil mobiles de l'entreprise sera mise en péril."[33] [Emphasis added]

– *Telus:* the CEO of Telus, Darren Entwistle, revealed that the impact of mandated access on investment would be real and significant, explaining that the company's board of directors had instructed "management to pursue an investment reduction plan and a job reduction plan and a philanthropic giving reduction plan should these eventualities present themselves. And we're discussing numbers where the reduction… [is] in the vicinity of a billion dollars of reduced investment over the next 5-year[s]. The reduced employment is in the zip code of 5,000 jobs over the next 5-years."[34] [Emphasis added]

Telus was subsequently instructed to file the resolution of its board on the public record, and it confirms the size of the cuts that Telus would make, noting that mandated MVNO access "would necessarily entail reduced capital and operational expenditures that would impact investments in Canadian communities, including, reducing or eliminating investments in fibre in Tier 2 and 3 Alberta and British Columbia communities, scaling back or slowing 5G network rollout plans, reducing or eliminating retail operations in smaller communities and significantly reducing employment levels."[35] [Emphasis added]

– *Rogers:* the CEO of Rogers, Joe Natale, was clear that they "can only make those bets [e.g., massive investments in 5G] when we have regulatory certainty and support in our future. Without a recognition of that investment potential and an appropriate regulatory framework, our collective costs of capital increase materially, and the investments that are required are jeopardized." [Emphasis added]

He also gave insight into Rogers' internal investment decision-making process, which is a typical one and illustrates why mandated access will necessarily reduce investment: "If there is mandated MVNO access that impacts our investment thresholds, then investment will be reduced, and investment will be reduced in the places where the economics of that investment no longer make sense… if you were to sit in one of our capital investment meetings where Jorge gets his money to build those 300 new towers and to add $1.3 billion of capacity, it is a serious discussion where we take every single request for capital… We rank them one-by-one over, you

33 TNC 2019-57, transcript, Vol. 6, lines 9035 to 9040.
34 TNC 2019-57, transcript, Vol. 3, lines 4511 to 4512.
35 TNC 2019-57, Telus Responses, Telus(CRTC)20Feb20-13.

know, a 20-30-page spreadsheet, and we rank them based on the expected return from that particular investment, and then we draw a line around our affordability based on the 5 percent return invested capital, and the other metrics I talked about earlier, and anything above the line gets done, anything below the line doesn't get done. So what'll happen is that line will be further up the page, and that line will impact rural Canada in the most significant way."[36] [Emphasis added]

– *SaskTel:* the Chief Technology Officer of SaskTel, Daryl Godfrey, explained that "[d]ata usage continues to grow by 30 to 40 percent a year, meaning we constantly need more spectrum, more towers, and more backhaul. And we can only continue to meet these needs if we are able to earn a reasonable return on our investments. But if we are forced to provide service to our competitors at a mandated price which earns us less than we get from retail customers, there is a reduced return on investment and increased business risk. This will lead to less investment in providing networks that customers need to fully participate in the digital economy… Mandated MVNO service will therefore cause a reduction in capital expended on network coverage and network expansion. It will delay investments in 5G, and hold back the introduction of the innovative benefits that technology is capable of delivering."[37] [Emphasis added]

– *Bell:* our CEO, Mirko Bibic, was clear that "if the Commission strays from its long-standing policy of encouraging investments in networks and instead favours wireless resale, we know what will happen. Significant wireless investments will be delayed or will be abandoned. In global capital markets, the cost of capital for Canadian carriers will increase and investment will flow out of Canada, reducing our competitiveness."[38] [Emphasis added]

*** End of Document ***

[36] TNC 2019-57, transcript, Vol. 7, lines 9494 to 9498.
[37] TNC 2019-57, transcript, Vol. 8, lines 11615 to 11618.
[38] TNC 2019-57, transcript, Vol. 2, lines 2712 to 2716.