



September 22, 2021

Filed electronically

Director General, Telecommunications and Internet Policy Branch
Innovation, Science and Economic Development Canada
235 Queen Street, 10th Floor
Ottawa, Ontario K1A 0H5

**RE: Notice No. TIPB-001-2021 - Petition to the Governor in Council concerning
Telecom Regulatory Policy CRTC 2021-130 – Eastlink comments**

1. Pursuant to the *Canada Gazette*, Part 1, published July 24, 2021, Bragg Communications Inc., carrying on business as Eastlink ("Eastlink"), provides herein its comments regarding Data On Tap Inc., doing business as dotmobile ("DOT")'s Petition to the Governor in Council to vary the Canadian Radio-television and Telecommunications Commission's (the "CRTC", "Commission") Telecom Regulatory Policy CRTC 2021-130, *Review of mobile wireless services* (the "Policy").
2. Eastlink's failure to address any specific aspect of the Petition should not be interpreted in any way as support where doing so would be contrary to Eastlink's interests.

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "Marielle Wilson". The signature is written in a cursive, flowing style.

Marielle Wilson

Vice President, Regulatory

***Canada Gazette*, Part 1, July 24, 2021, Petition to Governor in Council to vary Telecom
Regulatory Policy CRTC 2021-130 (TIPB-001-2021)**

Eastlink Comments

22 September 2021

1. Bragg Communications Inc., carrying on business as Eastlink (“Eastlink”), provides herein its comments regarding Data On Tap Inc., doing business as dotmobile (“DOT”)’s Petition to the Governor in Council to vary the Canadian Radio-television and Telecommunications Commission’s (the “CRTC”, “Commission”) Telecom Regulatory Policy CRTC 2021-130 *Review of mobile wireless services* (“TRP 2021-130”, the “Policy”). Eastlink’s failure to address any specific aspect of the Petition should not be interpreted in any way as support where doing so would be contrary to Eastlink’s interests.
2. In the Policy, the Commission mandated the provision of a wholesale facilities-based mobile virtual network operator (MVNO) access service, which will enable eligible regional wireless carriers to use the networks of Bell Mobility Inc., Rogers Communications Inc., TELUS Communications Inc., and Saskatchewan Telecommunications, where these four exercise market power, to service new areas while they build out their networks for a period of 7 years. The Commission determined that in order to be eligible to use the service, a wireless carrier must possess a spectrum licence at the tier 4 level or higher in a given tier 4 area. The Commission mandated a wholesale facilities-based MVNO access service after a lengthy proceeding that carefully considered the impact that a broad-based wholesale MVNO access service would have on competition in the wireless market, and ultimately determined that it would have a negative impact on the sustainability of regional wireless carriers and the competition and investment they bring to the market, while having minimal long-term impact on competition and pricing. The Policy also determined that the rates for the service would be commercially negotiated between the parties, with final offer arbitration by the Commission as a recourse if negotiations fail.
3. DOT’s petition is requesting that Cabinet issue an “Order in Council” to amend the Policy, to allow for a broad-based wholesale MVNO access service. This includes:
 - Removing all spectrum licensing requirements;
 - Removing the seven-year limitation on mandated wholesale access; and
 - Removing the requirement to own and operate an existing radio-access network.
4. In addition, they are requesting that the Order set the following wholesale rates:
 - \$0.0070 per voice minute (based on 500 average minutes of usage)

- \$0.0010 per SMS (based on 500 average minutes of usage)
 - \$0.0060 per MB of data (based on 3 GB of average data usage)
 - Wholesale cost for the \$35/month 3GB plan would be \$22.00, leaving a moderate 37% average retail margin to cover operating costs and investments.
5. DOT is also seeking an order that would direct the CRTC to review the maximum mandated wholesale rates every two years to determine if they allow for competitive retail pricing, based on a margin equal to the average reported wireless EBITDA margin of the dominant networks in the CRTC's Communications Monitoring Report.
 6. In their petition DOT appears to have ignored the regulatory approach to wholesale services the Commission outlined in their Policy and how it achieves the objectives outlined in the *Telecommunication Act* (the "Act"), along with the lengthy analysis and review the Commission made in reaching its determination, including the significant negative impact that a broad-based wholesale MVNO access service will have on the ability for the regional wireless carriers to continue to invest in their networks. Instead, DOT's entire petition appears to be based on what they view as a misinterpretation by the CRTC of *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 (the "2019 Policy Direction"). Eastlink opposes this view, and submits that DOT's petition should be dismissed.

Overview of Eastlink's position

7. During the proceeding that led to TRP 2021-130 Eastlink highlighted the negative impact that a broad-based wholesale MVNO access service would have on our ability to continue to invest in and grow our network. In this regard, Eastlink submitted that the presence of a broad-based MVNO access service will result in a substantial lessening of competition due to the harm it will have on the facilities-based regional wireless carriers who are responsible for bringing strong competition to the industry, and who would be replaced with MVNOs who would be incapable of disrupting dominant national carriers.
8. The other key aspect of Eastlink's submissions was the significant investment that regional facilities-based wireless carriers are making into wireless infrastructure in Canada.

Investments that were made based on a reliance on decisions made pursuant to the policy objectives of the Act and *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355 (the “2006 Policy Direction”) which recognize and encourage investment into facilities and facilities-based competition. Based on these policy objectives, the Commission has issued numerous decisions that have supported Eastlink’s ability to continue our investment and recognized that while policies that help minimize barriers to obtain key inputs (such as roaming) are important to expanding our facilities and services, mandated broad-based MVNO access would severely compromise our efforts to expand our facilities and improve competition.

9. Eastlink’s position remains the same. Nothing has changed that would alter the significant negative impact that a broad-based wholesale MVNO access service will have on the regional wireless carriers. In their request DOT does not provide any evidence that would dispute the Commission’s determination, nor do they provide any evidence that mandating a broad-based wholesale MVNO access service will bring positive, sustainable competition to Canadians, especially those living in rural and remote areas that rely on facilities-based investments. However, it is evident that any changes to the wholesale services framework will seriously impede the business of regional facilities-based wireless carriers like Eastlink.

Regulatory approach to wholesale services

10. The Commission is responsible for ensuring its regulations achieve the policy objectives established in the Act and the Government’s 2016 and 2019 Policy Directions. In order to achieve this mandate, the Commission must design policies and issue decisions that aim to improve access to telecommunication services to all Canadians, including those in rural and remote communities, enhance access to high quality affordable services, and encourage innovation, while ensuring its policies rely on market forces to ensure efficient and effective regulation. In order to support the network investment that is necessary to achieve the policy objectives established in the Act and the Government’s Policy Directions, the Commission has consistently recognized the need to support facilities-based investment, as it has proven to be the best option to bring sustainable competition to Canadians.
11. On 28 February 2019, the Commission issued Telecom Notice of Consultation 2019-57 *Review of mobile wireless services* (the “Notice”) as part of their regular review of mobile

wireless services and their associated regulatory framework. The review was not the result of the 2019 Policy Direction issued by Innovation, Science and Economic Development Canada (“ISED”) as suggested by DOT. Rather, it was part of the Commission’s process to regularly review wholesale wireless services, as they have done throughout the years. As noted in the Notice, the Commission put forward a preliminary view that it would be appropriate to mandate that the national wireless carriers provide MVNO access service as an outcome of the proceeding. They also took the preliminary view that the service should be in place for a limited amount of time and be subject to a phase-out period as market forces take hold. Although they had a preliminary view, they did not, as suggested by DOT, presume that a mandated MVNO framework would be required to meet the objectives set out by the 2019 Policy Direction. The purpose of the wholesale wireless framework review was to gather input in order to make an informed decision.

12. The Policy clearly outlines how the Commission applied its approach to wholesale services when reaching its decision. In it they explain that wholesale measures are used to address competition concerns in the retail market, and that, as a general matter, regulatory intervention in the wholesale market should be viewed as a means of addressing situations of undue preference or unjust discrimination, such as the differential treatment that may arise as a result of the dynamic between a carrier’s retail and wholesale operations. Such intervention is typically done by mandating that firms exercising market power provide competitors with access to their networks, or parts thereof, at regulated rates, terms, and conditions¹.
13. The Commission applied its analytical framework for determining whether to mandate the provision of a wholesale service as established in Telecom Regulatory Policy 2015-326 (“TRP 2015-326”). Consistent with past decisions, when considering whether intervention is necessary, the Commission applied a multi-step analysis considering various aspects of the market, and the competitive landscape. The first step in the analysis is to define the relevant product and geographic markets for the wholesale services. The next step is to apply the essential services test (referred to as the “Essentiality Test”), which has three components (the essentiality criteria):
 - Input component: the facility is required as an input by competitors to provide telecommunication services in a relevant downstream market.

¹ TRP 2021-130, Paragraph 159.

- Competition component: the facility is controlled by a firm that possess upstream market power such that withdrawing mandated access, or denying access to the facility, would likely result in a substantial lessening or prevention of competition in the downstream market.
- Duplicability component: it is not practical or feasible for competitors to duplicate the functionality of the facility.²

14. These criteria, which are aimed at determining whether a wholesale service is a bottleneck, and whether access to the service is necessary for successful retail competition, help inform the Commission's assessment as to whether the wholesale service provider's conduct results in it unduly preferring itself or disadvantaging a competitor or group of subscribers, contrary to subsection 27(2) of the Act. In addition to these criteria, in TRP 2015-326 the Commission indicated that it would evaluate whether there are policy considerations that would inform, support, or reverse a decision to mandate the provision of wholesale service. Where appropriate, the Commission may use a policy consideration to justify a decision to mandate the provision of a wholesale service that does not meet the Essentiality Test, conversely the Commission may also use a policy consideration to justify a decision not to mandate the provision of a wholesale service that meets the Essentiality Test.³

15. The Commission applied its analytical framework to a broad-based wholesale MVNO access model, with the relevant product market being permanent access to the RAN of the host carrier for the purpose of operating as an MVNO as initially proposed in the Notice, and with the relevant geographic market being the tier 4 area. Under a broad-based wholesale MVNO access model there are minimal or no eligibility restrictions.

16. The Commission determined that the broad-based wholesale MVNO access service did not meet the competition or duplicability component of the Essentiality Test, and therefore determined that wholesale MVNO access is not an essential service. With regards to the impact on competition, the Commission considered that MVNOs would likely use the service to target similar customers as those served by the regional wireless carriers. The Commission was concerned that this would have a disproportionate impact on the regional wireless carriers, which will likely have a negative impact on the sustainable competition they bring to

² TRP 2021-130, Paragraph 162.

³ TRP 2021-130, Paragraphs 163 and 164.

the market. The Commission concluded that while there may be some initial downward pressure on overall pricing as MVNOs seek to gain customers, over the longer term the net impact of broad-based MVNO presence on competition, particularly as a means of affecting retail market power, is not likely to be substantial⁴. With respect to the duplicability component the Commission determined that although there are some barriers to entry, the functionality of broad-based wholesale MVNO access can be practically and reasonably duplicated by reasonably efficient competitors, as evidenced by the regional wireless carriers.⁵

17. Following its determination that broad-based wholesale MVNO access did not meet the Essentiality Test, the Commission focused its analysis on the relevant policy considerations. With regards to the broad-based wholesale MVNO access service, the Commission determined that innovation and investment were of particular relevance, since one of the strategic policy objectives of the proceeding is continued innovation and investment in, and affordable access to, high-quality telecommunications services and facilities in all regions of Canada, including rural and remote areas.

18. With respect to innovation, the Commission considered the impact that broad-based wholesale MVNO access would have on plans and pricing, and technical and service innovation. The Commission considered that since MVNOs entering the market would likely compete on pricing in order to build a customer base, there may be a downward pressure on market prices, at least in the short term. However, as the rates would either be commercially negotiated or set by the Commission, a mandated regime allowing for broad MVNO entry would be difficult to sustain over the longer term without careful and ongoing regulatory assistance⁶. Given the lack of facilities, and access to capital, the Commission determined that it is unlikely that MVNOs would have the resources to dedicate to funding research and development, making it unlikely that MVNOs would have any significant impact with respect to technical innovation at the network level. When it comes to service innovation, they would likely be targeting the same customers who are already served by the regional carriers, flanker brands and existing white label MVNOs. As a result, the Commission considers that MVNOs

⁴ TRP 2021-130, Paragraph 199.

⁵ TRP 2021-130, Paragraph 207.

⁶ TRP 2021-130, Paragraph 240.

entering the market would face difficulties attempting to offer an innovative service, or finding a market that is not already well served by the existing wireless service carriers.⁷

19. Although the Commission considered that there would be minimal impact on the national carriers' investment, they determined that there would likely be a high negative impact on the sustainability of regional wireless carriers and the competition they bring to the market. This is due to the fact that MVNOs would be able to enter the market with very little capital, and take on very little risk, while targeting the same customer bases as the regional carriers. This would result in regional wireless carriers facing significant competition from MVNOs who do not have the same financial constraints, and would only be able to compete on price, impacting the regional carriers' ability to maintain and grow the customer base necessary to continue to invest and expand their service offerings.

20. After undergoing its analysis, the Commission determined that the detrimental impact that a broad-based wholesale MVNO access service would have on regional wireless carriers, and the risk that this would disrupt the competition and innovation they have brought to the market, would detract from the fulfillment of the telecommunications policy objectives set out in paragraphs 7(c) and (f) of the Act.⁸

21. In their Petition DOT fails to outline any concerns they have with the Commission's analysis as outlined above, nor point to any errors or omissions the Commission made in reaching their conclusion.

Policy Directions

22. DOT mobile does not address the detailed analysis the Commission undertook to determine the appropriate regulatory approach to wholesale services, nor do they dispute or provide any evidence to contradict the Commission's determination that a broad-based wholesale MVNO access service would have a detrimental impact on the regional wireless carriers, and the competition they bring to the market. Instead, they suggest there is a disconnect between the Commission's Policy and the 2019 Policy Direction. Eastlink submits that in making their

⁷ TRP 2021-130, Paragraph 244.

⁸ TRP 2021-130, Paragraph 262.

determination the Commission's Policy clearly outlines their consideration of both the 2006 and 2019 Policy Directions, as directed by Cabinet.

23. Pursuant to the 2006 Policy Direction, the Commission, in exercising its powers and performing its duties under the Act, should rely on market forces to the maximum extent feasible as the means of achieving the telecommunication policy directives, and to use measures that are efficient and proportionate to their purpose. The 2019 Policy Direction complements the 2006 Policy Direction, and includes an emphasis on considering how the Commission's decisions can promote competition, affordability, consumer interest and innovation. As outlined above, the Commission gave significant consideration to how a mandated broad-based MVNO wholesale access service would promote competition, affordability, consumer interest and innovation. In making their determination, they also considered the ongoing regulatory intervention that such a regime would require, which would be contrary to the 2006 Policy Direction to rely on market forces to the greatest extent possible.
24. In particular, the Commission considered that "mandating such a service would not be consistent with the 2019 Policy Direction with respect to the consideration that the Commission has been directed to give to reducing barriers to competition, and to fostering affordability and lower prices in areas where there is market power. Arguably, while a broad-based wholesale MVNO access service would encourage broader service-based competition, for the reasons discussed above, this would likely come at the expense of more sustainable competition brought about by facilities-based competitors. Furthermore, such an approach would not be consistent with the 2006 Policy Direction, which instructs the Commission to rely on market forces to the maximum extent feasible to achieve the policy objectives, and to neither deter economically efficient competitive entry nor promise economically inefficient entry through its regulations"⁹.
25. The Commission carefully considered the impact that a mandated broad-based MVNO access service would have on competition, affordability, consumer interest and innovation. DOT has not provided any evidence that the Commission was incorrect in their determination that a

⁹ TRP 2021-130, Paragraph 263.

broad-based MVNO access service would have a detrimental on the regional facilities-based wireless carriers, while having a minimal impact on affordability and competition.

Conclusion

26. Removing the eligibility requirements for MVNO access as requested by DOT in their Petition will have a significant negative impact on Eastlink's ability to continue expanding and growing our wireless network. There are no benefits to be gained from mandating wholesale broad-based MVNO access to the national wireless carriers' networks, and there is the potential for a significant negative impact on the regional wireless carriers' abilities to continue to bring long-term sustainable competition to Canadians. Even now, as the regional wireless carriers are still in the process of investing and expanding their networks, while also absorbing wholesale roaming and other wholesale cost inputs that remain high, there are already a wide variety of competitive choices available to Canadians.
27. A regulatory framework that supports entry by resellers will only continue to undermine the Federal Government's objectives of improving Canada's telecommunications networks, and ensuring that Canada remains competitive in the future. The harm to network investment would be disproportionately felt in rural areas where the economics of network deployment are already quite challenging. It is more important now than ever that Canadians living in rural and remote communities are able to participate in the digital economy.
28. The Commission provided a very detailed analysis to support its decision, relying on an established regulatory process for reviewing its approach to mandating wholesale access services. DOT does not address or dispute the Commission's analysis and conclusions as they related to the negative impact that a broad-based MVNO wholesale access service will have on regional wireless carriers. Instead, DOT takes a very narrow view of the Commission's determination, considering only a small portions of the Policy, to support its Petition. Eastlink submits that DOT has not provided any credible basis for varying the Policy.
29. For the foregoing reasons, Eastlink submits that the variances requested by DOT and described herein should be denied.

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