

September 22, 2021

Via e-mail: [telecomsubmission-soumissiontelecom@ised-isde.gc.ca](mailto:telecomsubmission-soumissiontelecom@ised-isde.gc.ca)

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

Re: ***Canada Gazette, Part I, Vol. 155, No. 30, July 24, 2021, Notice No. TIPB-001-2021 – Petition to the Governor in Council concerning Telecom Regulatory Policy 2021-130***

**Submission of Competitive Network Operators of Canada**

Dear Mr. Arbour:

1. The Competitive Network Operators of Canada (“**CNOC**”) is the voice of competitive Internet and telecommunications service providers that own/operate telecommunications networks in regions across Canada. We fully support the above-referenced petition to Cabinet submitted by our member Data On Tap Inc. (DBA Dotmobile), requesting that the Governor in Council (“**GiC**”) overturn the Canadian Radio-television and Telecommunications Commission (“**CRTC**”).
2. Dotmobile’s petition is one of four petitions currently before the GiC concerning two of three recent CRTC decisions that choke telecommunications competition, affordability, consumer interests and innovation.
  - (1) In **April**, the CRTC issued Telecom Regulatory Policy CRTC 2021-130<sup>1</sup>, which preserves the status quo in mobile wireless services by only allowing the largest of companies, and those with access to scarce, expensive spectrum, to qualify for mandated mobile virtual network operator access. To make matters worse, the CRTC established these criteria, including the spectrum ownership condition, *after the deadline for the 3,500 MHz auction, the last best chance for service providers to try to acquire spectrum.*<sup>2</sup>

<sup>1</sup> Telecom Regulatory Policy CRTC 2021-130, *Review of mobile wireless services*, 15 April 2021.

<sup>2</sup> On April 19, 2021, CNOC wrote the Minister to request a brief, 90-day delay to the auction of spectrum licences in the 3500 MHz Band. The Minister denied a modest extension.

- (2) In **May**, in a decision that former CRTC Chair Konrad von Finckenstein noted lacked any reasoning,<sup>3</sup> the CRTC issued Telecom Decision CRTC 2021-181<sup>4</sup> (“**TD 2021-181**”), which raised the rates smaller competitive home internet providers pay large telephone and cable companies to access essential (non-economically duplicable) network elements, and if left in place will have a calamitous impact on competition and the affordability of home internet in Canada.
- (3) In **July**, the CRTC issued Telecom Regulatory Policy 2021-239<sup>5</sup>, in which it decided not to regulate access to big carriers fibre in-building wire (“**IBW**”) in multiple-dwelling units, concluding that regulating that access was not necessary because “access to fibre IBW because such access does not have a strong connection to social or consumer welfare, public safety, or public convenience” because “the Commission does not consider that competition and consumer choice qualify as public good considerations.”<sup>6</sup>
3. Recently two analysts suggested that the Government of Canada’s approach to telecommunications, as administered by the CRTC, lacks coherence:
- The government must decide, essentially, whether it favours a system designed to serve Canadians or one which is designed to maintain a traditional oligopoly. In other words, does it wish to comply with Section 7(h) of the current Telecommunications Act that states that among its policy objectives is: “to respond to the economic and social requirements of users of telecommunications services.”<sup>7</sup>
4. In the past several months it has become clear that the CRTC favours maintaining the traditional oligopoly, and both that bias, and the resulting policies, contradict the Government’s stated policy objectives, and it is therefore appropriate and necessary for executive intervention.
5. Unless the GiC intervenes quickly on both TD 2021-181 and TRP 2021-130, the Government of Canada’s commitments to “competition, affordability, consumer interests and innovation” in the 2019 Policy Direction will be hollow words.

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<sup>3</sup> The Law Bytes Podcast, Episode 91: “This is No Way to Regulate” – Former CRTC Chair Konrad von Finckenstein Speaks Out on the CRTC and Bill C-10.

<sup>4</sup> *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*, 27 May 2021.

<sup>5</sup> Telecom Regulatory Policy CRTC 2021-239, *Access to in-building wire in multi-dwelling units*, 27 July 2021.

<sup>6</sup> TRP 2021-130, para. 113.

<sup>7</sup> Irene S. Berkowitz and Peter Menzies, *Back to the future: How Canada can become a global leader in digital communications policy*, Macdonald-Laurier Institute, September 16, 2021.

6. To resuscitate those commitments, CNOC recommends the following, in addition to fully rescinding TD 2021-181 (the subject of 3 petitions) and restoring the CRTC lower 2019 wholesale rates. We recommend:

- (1) **Granting Dotmobile’s petition.** The large wireless service providers have benefitted from *decades* of head starts and advantages in terms of spectrum access, as well as a slow-moving, loopholed tower- and site-sharing process that frustrated earlier attempts to foster new market entry. Full MVNO access, as CNOC argued in its intervention to the CRTC and which Dotmobile now seeks via this petition process, will deliver on “competition, affordability, consumer interests and innovation”. Specifically, granting the Dotmobile petition would result in many more of the members of CNOC and other independent communications service providers entering the market to compete on affordability, better service, and innovation, making wireless service more accessible and responsive to consumers.
- (2) **Fully rescinding the 2006 Policy Direction.**<sup>8</sup> The 2006 Policy Direction has been interpreted broadly as elevating market forces above all other considerations in Canadian telecommunications policy, and yet the 2019 Policy Direction privileges “competition, affordability, consumer interests and innovation.” By rescinding the 2006 Policy Direction and leaving in place the 2019 Policy Direction,<sup>9</sup> this will eliminate ambiguity and wiggle-room in Canadian telecommunications policy.
- (3) **Implementing the Industry Committee’s recommendations on wholesale rates and competition.** Specifically, we recommend implementing recommendations 14 and 15 of the INDU Committee’s June 2021 report on affordability and accessibility of telecommunications services;<sup>10</sup>

Recommendation 14: That the Government of Canada issue a directive to encourage the CRTC to revise its process for implementing and appealing new rates so that incumbent telecommunications service providers stop using the appeals process as a delay tactic. For example, in cases where newly announced rates are appealed, the CRTC could:

- Apply an interim rate equal to a 50% difference between the old rates and the newly announced rates; and
- Respect a strict time limit to issue a decision.

<sup>8</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355.

<sup>9</sup> *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.

<sup>10</sup> Standing Committee on Industry, Science and Technology, *Affordability and Accessibility of Telecommunications Services in Canada*, June 15, 2021.

Recommendation 15: That the Government of Canada issue a clear directive on competition to the CRTC to connect all Canadians quickly while maintaining a level playing field among telecommunications service providers, particularly between incumbent and independent providers, to ensure both the development of high quality networks and competition that will have a meaningful impact on the quality of service and price of consumer packages.

7. By adopting these recommendations, the Minister and Governor in Council will put the CRTC back in line with Government policy. We urge you to do this quickly, as ongoing delay and uncertainty only favours the large, converged telephone, cable and wireless providers, at the expense of consumers.

Sincerely,



Geoff White  
Executive Director  
Competitive Network Operators of Canada

cc: The Honourable Minister of Innovation, Science and Industry  
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