

May 4th, 2021

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Janice Charette
Interim Clerk of the Privy Council and Secretary to the Cabinet
80 Wellington Street, Ottawa, Ontario, K1A 0A3

The Honourable François-Philippe Champagne,
P.C., M.P. Minister of Innovation, Science and Industry
C.D. Howe Building, 235 Queen Street, Ottawa, Ontario, K1A 0H5

Re: Petition to Governor in Council to vary Telecom Regulatory Policy CRTC 2021-130

Dear Governor in Council,

1. Data On Tap Inc. (“DOT”), DBA as dotmobile™, the first Canadian Full Mobile Virtual Network Operator (“Full MVNO”)¹ with the support of over thirty-three thousand Canadians², pursuant to section 12(1) of the Telecommunications Act, writes to you to request your review of the recent Telecom Regulatory Policy CRTC 2021-130 and issue ‘Order in Council’ remedying the misinterpretation of the policy directive SOR/2019-227.
2. As you are aware:
 - a. On **February 26, 2019** the Minister of Innovation, Science and Economic Development (“ISED” or “ISI”) issued a policy direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation (the “2019 Policy Direction”). This policy was signed into law on June 18, 2019.
 - b. On **February 28, 2019**, the Canadian Radio-television and Telecommunications (“CRTC”) announced the Review of Mobile Wireless Services (the “CRTC Proceeding 2019-57”) which closed on July 15, 2020.
 - c. On **April 15, 2021**, the Canadian Radio-television and Telecommunications Commission (“CRTC”) issued the decision — Review of Mobile Wireless Services, Telecom Regulatory Policy CRTC 2021-130 (the “CRTC Decision”) and its policy on mobile virtual network operators (“MVNOs”).

¹ [List of the CRTC registered Telecommunications Providers](#)

² <https://dotmobile.app/membership>

3. The CRTC Proceeding 2019-57 was a direct result of the 2019 Policy Direction being issued by ISED, and the CRTC presumed that a mandated MVNO framework would be required to meet the objectives set out by the 2019 Policy Direction.³
4. The CRTC Decision and related Press Releases⁴ falsely state that MVNOs have been granted mandated access to dominant MNO networks, writing that the “Commission approves mobile virtual network operators for Canadian market.” Instead, the CRTC mandated this access for existing, regional MNOs where they already own spectrum but have yet to deploy their RAN. Specifically, the CRTC determined that “in order to be eligible to access the mandated facilities-based wholesale MVNO access service, wireless carriers must possess a mobile spectrum licence at the tier 4 level or higher in a given tier 4 area.”⁵
5. DOT is deeply concerned with the disconnect between the CRTC Decision and your Ministry’s 2019 Policy Direction, that the CRTC’s definition of an MVNO was disregarded in the CRTC Decision, and how the Commissioner’s proposal was incorrectly defined as a “facilities-based MVNO” in order to be included in the evaluation.
 - a. Paragraphs 17 through 21 of the CRTC Decision detail how the CRTC incorporated the 2019 Policy Direction into their own Strategic Objectives. Conveniently, the CRTC determined that the new direction, issued more than a decade after the 2006 Policy Direction, was largely the same as their existing Strategic Objectives. More specifically, the CRTC determined that “In the Commission’s view, the strategic objectives of its previous mobile wireless service framework remain generally relevant when matched against the 2019 Policy Direction. For example, the strategic objective of continued innovation and investment in high-quality telecommunications facilities espouses similar principles to subparagraphs 1(a)(i), (iii), (vi), and (vii) of the 2019 Policy Direction.”⁶
 - b. The subparagraphs from the 2019 Policy Objective that were referenced by the CRTC make no mention of “telecommunications facilities”. Each of the subparagraphs goes out of its way to promote non-facilities competition, as evidenced by the language chosen in each subparagraph.
 - Subparagraph (i) directs the CRTC to encourage “all forms of competition,” rather than purely facilities-based competition.
 - Subparagraph (iii) directs the CRTC to ensure all regions of Canada have “affordable access to high-quality telecommunications services”, rather than “telecommunications facilities”.

³ [Telecom Notice of Consultation CRTC 2019-57](#) para. 39; [Transcript, Hearing February 18, 2020](#) para. 20

⁴ [CRTC puts measures in place to spur more mobile wireless competition for Canadians](#)

⁵ [Telecom Regulatory Policy CRTC 2021-130](#) para. 316

⁶ [Telecom Regulatory Policy CRTC 2021-130](#) para. 19

- Subparagraph (vi) about innovation describes “new technologies and differentiated service offerings”, which is expanded upon in subparagraph (vii) where the CRTC is directed to “stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services”. The CRTC is being directed to enable and stimulate innovation and investment in service, not facilities.
- c. The CRTC Decision is built on the CRTC’s misinterpretation of the 2019 Policy Objective when updating their strategic objectives⁷ (the “Strategic Objectives”), which continue to focus on facilities-based investment and competition. Specifically, the Strategic Objectives, with the additions underlined, are:
- Continued innovation and investment in, and affordable access to, high-quality telecommunications facilities in all regions of Canada, including rural and remote areas
 - sustainable competition that provides benefits, such as affordable prices, and innovative services, to Canadians;
 - implementing efficient regulatory measures with respect to wholesale mobile wireless services, along with continued reliance on market forces where appropriate; and
 - reducing barriers to entry into the market for competitors that are new, regional, or smaller than the incumbent national carriers.
- d. The CRTC also disregarded advancements in technology when constructing their Strategic Objectives, and the evolving definitions of facilities, barriers to entry, service differentiation, business models, technological innovation. In other words, what is described in the 2019 Policy Objectives is very different from what was reasonably contemplated in 2006 Policy Objectives under the same definitions.
- e. The CRTC Decision incorrectly uses the term MVNO, even when compared to the CRTC’s own definition of an MVNO. Specifically, the CRTC determined that “an MVNO is a wireless service provider that does not own spectrum or operate its own radio-access network (RAN); instead, it relies on the spectrum and RAN of a wireless carrier and, in some cases, other facilities and/or services, to provide mobile wireless services to consumers. MVNOs encompass a variety of service-based providers that rely on wholesale services to varying degrees to support their retail businesses.”⁸

⁷ [Telecom Regulatory Policy CRTC 2021-130](#) para. 21

⁸ [Telecom Decision CRTC 2019-56](#) footnote 2

- f. The CRTC's determination focused on the "Full MVNO" model, which was defined in the CRTC Decision as "mandated permanent access to the RAN of a host carrier. The RAN consists of spectrum, towers, and related facilities and equipment located at tower sites. In a Full MVNO model, all other facilities and equipment required by an MVNO beyond the RAN would not be mandated, but would be supplied or otherwise obtained by the MVNO itself, including the core network, billing systems, customer care, and devices."⁹
 - g. In addition, the Commissioner's proposal, which became the basis for the CRTC Decision, was ruled by the commission as being differentiated enough from all other industry definitions and proposals that it was evaluated separately. Specifically, "The Commission considers that the Commissioner's facilities-based MVNO proposal would also constitute a Full MVNO model. However, given the targeted nature of that model, in terms of both geography and eligibility, the Commission has performed a separate evaluation of it."¹⁰
 - h. There is a clearly documented disconnect between the CRTC's definition of an MVNO, their definition of a Full MVNO, and the Commissioner's proposal for a 'facilities-based MVNO'. Granting wholesale access where an MNO owns unused spectrum does not turn them into a Full MVNO, despite them operating post-RAN facilities. They are already an MNO because they operate a RAN and own spectrum. They cannot be redefined as an MVNO because by definition both a Full MVNO and an MVNO do not operate a RAN or own spectrum.
6. The CRTC Decision does allow regional providers to resell their mandated access to MVNOs. However, few carriers meet the spectrum requirements and spectrum is a high barrier of entry¹¹. This provision is unlikely to result in any natural formation of an MVNO market.
7. The Commission determined that MVNOs would have a moderately positive impact on service innovation, based on submissions from potential MVNOs¹². The facilities-based MVNO model promotes existing regional carriers to invest more quickly in RAN deployments where they have spectrum, having no impact on service innovation and failing to meet 2019 Policy Objective subparagraph (vi), as well as incentivizing a singular business model in contradiction to 2019 Policy Objective subparagraph (i).
8. Additionally, the spectrum requirements restrict where such an MVNO service could operate, and most of Canada will not see any change in the number of wireless service providers

⁹ [Telecom Regulatory Policy CRTC 2021-130](#) para. 173

¹⁰ [Telecom Regulatory Policy CRTC 2021-130](#) para. 176

¹¹ [Telecom Regulatory Policy CRTC 2021-130](#) para. 274

¹² [Telecom Regulatory Policy CRTC 2021-130](#) paras. 245, 246

available for them to choose from, in contradiction to 2019 Policy Objective subparagraph (iii).

9. Continued consolidation of network operators, such as the Rogers acquisition of Shaw, is further proof that facilities-based competition is not a viable option to achieve the 2019 Policy Direction. Other than Shaw, no regional providers have voiced national ambitions. Videotron sold Ontario spectrum holdings to Rogers¹³, explicitly stated that they did not intend to expand their network to other provinces when the Commission asked them¹⁴.
10. The CRTC did not incorporate the Rogers-Shaw merger into the CRTC Decision as the CRTC Proceeding 2019-57 public record was closed 8 months before the deal was announced¹⁵. This would constitute as a significant development in the market, necessitating that this policy be reviewed¹⁶.
11. As evidenced by the testimony and ongoing acquisitions, it is clear that the CRTC Decision is misaligned with the current market conditions. There has been a steady decrease in the number of regional, facilities-based competitors and consolidation of facilities will only continue.

¹³ [Quebecor announces the sale of its AWS-1 spectrum licence in Toronto to Rogers](#)

¹⁴ [Transcript, Hearing February 25, 2020](#) paras. 9273 - 9278

¹⁵ [Telecom Regulatory Policy CRTC 2021-130](#) paras. 16

¹⁶ [Telecom Regulatory Policy CRTC 2021-130](#) paras. 377

12. We urge the ISI to review the CRTC Decision given the apparent misinterpretation of the current ISI Policy direction and misalignment with market conditions and issue an “Order in Council” to amend the qualifications for wholesale access to dominant networks.
- a. Make wholesale access to dominant networks available to Full MVNOs by removing the requirements targeting regional MNOs.
 - Remove all spectrum licensing requirements.
 - Remove the seven-year limitation on mandated wholesale access.
 - Remove the requirement to own and operate an existing radio-access network.
 - b. Set a maximum wholesale rate to allow Full MVNOs to offer plans that meet the affordable and occasional-use plan requirements identified by the CRTC:
 - \$0.0070 per voice minute (based on 500 average minutes of usage)
 - \$0.0010 per SMS message (based on 500 average minutes of usage)
 - \$0.0060 per MB of data (based on 3GB 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.
 - c. Direct the CRTC to review 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.



Algis Akstinas (Chief Executive Officer)
Data On Tap Inc.
33,000+ Members

May 4th, 2021

CC: Claude Doucet, Secretary General, CRTC (via GCKey); Chris Seidl, Executive Director, Telecommunications, CRTC (via email: chris.seidl@crtc.gc.ca); Michael MacPherson, Committee Clerk, Standing Committee on Industry, Science and Technology (via email: indu@parl.gc.ca); Geoff White, Director, Legal and Regulatory Affairs, Competitive Network Operators of Canada (via email: geoff.white@cnoc.ca).

REFERENCES

Government of Canada proposes new CRTC direction to put Canadians at the forefront of future decisions

<https://www.canada.ca/en/innovation-science-economic-development/news/2019/02/government-of-canada-proposes-new-crtc-direction-to-put-canadians-at-the-forefront-of-future-decisions.html>

2019 Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation

<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11524.html>

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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)

<https://laws.justice.gc.ca/eng/regulations/SOR-2019-227/>

Telecom Decision CRTC 2019-56

<https://crtc.gc.ca/eng/archive/2019/2019-56.htm>

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Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada's 5G rollout

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Quebecor announces the sale of its AWS-1 spectrum licence in Toronto to Rogers

<https://www.quebecor.com/en/-/quebecor-annonce-la-vente-de-sa-licence-de-spectre-ssfe-1-de-toronto-a-rogers>

List of the CRTC registered Telecommunications Providers

<https://applications.crtc.gc.ca/telecom/eng/registration-list>

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CRTC Communications Monitoring Report

<https://crtc.gc.ca/eng/publications/reports/policyMonitoring/2020/cmr1.htm>