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**TekSavvy Solutions Inc.**

800 Richmond Street  
Chatham ON N7M 5J5

**TELEPHONE** +1 519 360-1575 **FAX** 519.360.1716  
**TOLL FREE** 877-779-1575 **teksavvy.com**

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**Via Email:** 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

Dear Andre Arbour,

**Re: Notice No. TIPB-001-2021 – Petition to the Governor in Council concerning Telecom Regulatory Policy CRTC 2021-130, Canada Gazette, Part 1, 24 July 2021—Submission of TekSavvy Solutions Inc.**

1. TekSavvy Solutions Inc. (“TekSavvy”) **supports** Data on Top, Inc.’s (“DotMobile”) Petition to Governor in Council<sup>1</sup> to vary Telecom Regulatory Policy CRTC 2021-130 (the “CRTC decision”)<sup>2</sup>.
2. TekSavvy shares DotMobile’s concerns regarding yet another decision<sup>3</sup> that the Canadian Radio-television and Telecommunications Commission’s (“CRTC”) has issued, where it failed to act in the public interest and adhere to the Governor in Council’s Policy Direction issued in 2019.<sup>4</sup>

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<sup>1</sup> Data on Top Inc., *Petition to the Governor in Council to vary Telecom Regulatory Policy CRTC 2021-130*, posted on 23 July 2021, <<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11719.html>> [“DotMobile Petition”].

<sup>2</sup> *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021, <<https://crtc.gc.ca/eng/archive/2021/2021-130.htm>> [“the CRTC decision”].

<sup>3</sup> On 28 May 2021, TekSavvy filed a Petition to the Governor in Council regarding Telecom Decision CRTC 2021-181 regarding final rates for aggregated wholesale high-speed access services and demonstrated how that decision not only fails to adhere to the 2019 policy direction but also does not serve the public interest:  
<<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11720.html>>

<sup>4</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, 17 June 2019 [“2019 Policy Direction”].

3. In its decision, the CRTC acknowledges “that insufficient competition in Canada contributes to higher prices in comparison to other countries.”<sup>5</sup> In response to the lack of affordable wireless services, the CRTC could have opened the door for increased competition in Canada’s wireless market by mandating broad-based MVNOs. Instead, the CRTC decision creates insurmountable barriers and allows for only “facilities-based MVNOs” to enter the market. More recently, the Rogers-Shaw merger announcement will further solidify the dismal lack of wireless competition in the retail market. Ultimately, it is the Canadian economy that will suffer as all consumers are forced to pay inflated prices for access to wireless services. Given the growing importance of wireless services, it is imperative that the Government intervene and vary the decision.

### **The CRTC failed to adhere to the 2019 Policy Direction**

4. On February 26, 2019 the Minister of Innovation, Science and Economic Development (“ISED”) issued the 2019 Policy Direction to the CRTC. Policy Directions issued by the Governor in Council are meant to provide the CRTC with “directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives.”<sup>6</sup>
5. Two days following the publication of the 2019 Policy Direction, the CRTC announced the Review of Mobile Wireless Services (the “CRTC Proceeding 2019-57”). The 2019 Policy Direction provided clear direction to the CRTC when considering the current dismal state of competition in the wireless industry and whether Mobile Virtual Network Operators (“MVNO”) could provide a viable solution.
6. TekSavvy agrees with DotMobile that the CRTC’s Decision fails to adhere to the 2019 Policy Direction. Instead of mandating MVNOs, the decision grants wholesale wireless network access only for existing, regional Mobile Network Operators (“MNOs”).
7. The CRTC grounds its conclusion by emphasizing and prioritizing facilities-based competition.<sup>7</sup> By enabling competition from only facilities-based operators, this approach directly contradicts ISED’s Policy Direction to “encourage all forms of competition and investment”<sup>8</sup>. Service-based providers were excluded from the decision.
8. The exclusive reliance on facilities-based competition also fails to support the policy objective to “enable innovation in telecommunications services, including new technologies and differentiated service offerings”<sup>9</sup>. Instead, the decision reinforces current market conditions and the services that are currently offered. In contrast, service-based competitors by their very nature provide differentiated services and innovative offerings in order to compete. By enabling only limited facilities-based competition, the

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<sup>5</sup> The CRTC decision, at para 122.

<sup>6</sup> *Telecommunications Act*, S.C. 1993, c. 38, s. 8.

<sup>7</sup> The CRTC decision, at paras 290-295.

<sup>8</sup> 2019 Policy Direction, at s.1(a)i.

<sup>9</sup> 2019 Policy Direction, at s.1(a)vi.

CRTC has removed an important enabler for innovation and service differentiation from the wireless marketplace.

9. Rather than reducing 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”, as required by the Policy Direction,<sup>10</sup> the CRTC created a regulatory regime that maintains barriers for smaller telecommunications service providers and reinforces barriers for service-based competitors to bring affordability, lower prices and service-based innovation to the marketplace.
10. The enormity of the barrier for entry was confirmed by the sizable investments required by competitors to acquire the limited spectrum available in the recent spectrum auction. Spectrum costs are not the only barrier for entry, as intensive capital investment is also required to access and use the spectrum.<sup>11</sup>
11. The CRTC decision also undermines the direction to “foster affordability and lower prices, particularly when telecommunications service providers exercise market power.”<sup>12</sup> The decision acknowledges that existing service providers exercise market power but offers such a narrow option for competitors to enter the market that there is no reason to believe it will improve affordability or limit the market power of incumbents. This has become even more apparent with the proposed Rogers-Shaw merger, discussed below.
12. In light of the CRTC’s failure to adhere to the Policy Direction, the Governor in Council must vary the CRTC decision and require access for a true MVNO regime. Otherwise, the existing dismal state of competition in the wireless market will continue.

### **Rogers-Shaw merger is evidence of declining wireless competition**

13. A few months after the CRTC’s consultation for the Mobile Wireless Review came to an end, news broke about the Rogers-Shaw merger.<sup>13</sup> This meant that when the CRTC assessed the state of competition in the wireless market, it did not take into account the potential merger of the second- and fourth-largest national carriers. If the Rogers-Shaw merger is approved, Canada is likely to again have three dominant national carriers rather than four.
14. TekSavvy agrees with DotMobile that Rogers’ acquisition of Shaw is proof that facilities-based competition does not help to achieve the objectives in the 2019 Policy Direction. The consolidation of two of the largest national wireless carriers is further proof that

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<sup>10</sup> 2019 Policy Direction, at s.1(a)v.

<sup>11</sup> CRTC, *Communications Monitoring report* (2020), p. 41, <<https://crtc.gc.ca/pubs/cmr2020-en.pdf>>.

<sup>12</sup> 2019 Policy Direction, at s.1(a)ii.

<sup>13</sup> GlobeNewswire, “Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada’s 5G rollout,” 15 March 2021, <<https://www.globenewswire.com/news-release/2021/03/15/2192622/0/en/Rogers-and-Shaw-to-come-together-in-26-billion-transaction-creating-new-jobs-and-investment-in-Western-Canada-and-accelerating-Canada-s-5G-rollout.html>>.

broad-based MVNOs are required to effectively foster competition, affordability, lower prices, and innovation.

15. Even if the transaction is approved with the condition that Shaw's wireless subsidiary Freedom Mobile is sold to another party,<sup>14</sup> the threat that any of the facilities-based providers could one day be consolidated remains. Consequently, facilities-based competition alone does not provide any assurance of improved affordability, service, or innovation. In contrast, Full MVNOs are naturally incentivized to achieve the policy objectives set out in the *Telecommunications Act*, as applied through the lens of the 2019 Policy Direction.

### **Conclusion**

16. TekSavvy calls on the Governor in Council to vary the CRTC decision to institute a full MVNO regime. This would mandate the dominant, national carriers to provide wholesale access to their networks without the numerous unsurmountable obstacles for smaller and independent service-based competitors that are currently set out in the CRTC decision.
17. For the reasons above, TekSavvy supports DotMobile's Petition that, in order to correct the CRTC decision and encourage all forms of competition and investment in the wireless market, the Governor in Council should make wholesale access to dominant networks available to Full MVNOs by:
  - a. removing the requirements targeting regional MNOs, enabling instead a broader category of Full MVNOs;
  - b. removing all spectrum licensing requirements; and
  - c. removing the seven-year limitation on mandated wholesale access.
18. As for pricing, we note that DotMobile proposed rates to be mandated in the revised decision. TekSavvy respectfully submits that the better approach is to adopt the rate-setting methodology we outlined<sup>15</sup> in the process initiated by Telecom Notice of Consultation CRTC 2020-131.<sup>16</sup> In particular, cost-based rates should be set using the established "Phase Two" costing methodology, with interim rates set using the retail-minus approach until cost-based rates are finalized. This approach would ensure that competitive services are offered to consumers in Canada in an expedient fashion, while

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<sup>14</sup> See for example David Paddon, *Rogers shouldn't be allowed to buy Freedom Mobile: Business groups*, The Canadian Press, 6 April 2021, <<https://www.bnnbloomberg.ca/rogers-shouldn-t-be-allowed-to-buy-freedom-mobile-business-groups-1.1586601>>

<sup>15</sup> TekSavvy Solutions, Inc., *Telecom Notice of Consultation CRTC 2020-131, Call for comments – Review of the approach to rate setting for wholesale telecommunications services, as amended – Intervention of TekSavvy Solutions Inc.*, 13 August 2020, <<https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=3904984>>.

<sup>16</sup> *Review of the approach to rate setting for wholesale telecommunications services*, Telecom Notice of Consultation CRTC 2020-131, 24 April 2020, <<https://crtc.gc.ca/eng/archive/2020/2020-131.htm>>.

protecting both incumbents and competitors from paying unjustifiable and unreasonable rates.

19. TekSavvy urges the Governor in Council to take these steps to address the urgent need to increase competition in Canada's wireless market.

Yours sincerely,

*[transmitted electronically]*

Andy Kaplan-Myrth  
VP, Regulatory & Carrier Affairs