

Petition to the Governor in Council by
Data On Tap Inc.
concerning
Telecom Regulatory Policy CRTC 2021-130,
Review of mobile wireless services

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Comments
of
Xplore Mobile Inc.

September 22, 2021

INTRODUCTION AND EXECUTIVE SUMMARY

1. Xplore Mobile Inc. has reviewed the Petition to the Governor in Council concerning Telecom Regulatory Policy CRTC 2021-130¹ (“Petition”) filed by Data On Tap Inc., DBA dotmobile (“dotmobile”) and is pleased to provide its comments on the matters at issue.
2. Throughout the proceeding leading to TRP 2021-130, Xplore Mobile encouraged the Canadian Radio-television and Telecommunications Commission (“CRTC” or “Commission”) to undertake regulatory measures to promote the ability of Canada’s regional wireless carriers to better compete in the mobile marketplace, including the introduction of a mandated mobile virtual network operator (“MVNO”) service. Xplore Mobile is pleased that the Commission has determined that a mandated MVNO service will be introduced and believes that this service will bring positive outcomes for Canadians.
3. Dotmobile has filed the present Petition in order to ask the Governor in Council to expand the eligibility criteria set by the CRTC to access the mandated MVNO service. In TRP 2021-130, the CRTC created a mandated MVNO service that is designed specifically to benefit the facilities-based regional wireless carriers who have already invested significant amounts of capital to acquire spectrum and deploy network infrastructure, and who have proven their ability to deliver more affordable, competitive service offerings to Canadians.
4. As a broadly available MVNO service, as proposed by dotmobile, would undermine the success of Canada’s regional wireless carriers, Xplore Mobile opposes dotmobile’s request to expand eligibility for accessing the mandated MVNO service. Xplore Mobile would be happy to provide the Governor in Council with additional information in confidence concerning how expanding eligibility for the mandated MVNO service would impact our business.
5. Dotmobile has additionally asked the Governor in Council to modify TRP 2021-130 to remove the 7-year sunset that was established for the mandated MVNO service. Xplore Mobile supports a more flexible MVNO service that would enable regional wireless carriers to experiment with the MVNO service to launch services in areas where the business case may be less certain. Enabling experimentation of this manner would permit regional wireless carriers to further leverage the mandated MVNO service to increase their competitive impact.

¹ Telecom Regulatory Policy CRTC 2021-130, *Review of mobile wireless services*.

XPLORE MOBILE: CANADA'S NEWEST MOBILE WIRELESS COMPETITOR

6. Xplore Mobile launched in November 2018 as a new entrant in Canada's mobile wireless services marketplace serving customers within the province of Manitoba.
7. The launch of Xplore Mobile in Manitoba was fostered by the availability of valuable spectrum and other assets in connection with the BCE Inc. ("BCE") acquisition of Manitoba Telecom Service Inc. ("MTS") in 2017.
8. BCE's proposed acquisition of MTS was reviewed in detail by the Competition Bureau ("Bureau") to understand the impact that the merger would have on the competitive environment and to resolve concerns with respect to any aspect of the merger that the Bureau determined likely to substantially lessen or prevent competition.
9. Through its review, the Bureau determined that the amalgamation of the wireless businesses of BCE and MTS was likely to result in the substantial lessening and/or prevention of competition in the supply of postpaid mobile wireless telecommunications service to consumers in Manitoba. To resolve the Bureau's concerns, BCE proposed to enter into additional transactions: one transaction involved the transfer of a base of Manitoba wireless subscribers to Telus; a second involved the transfer of subscribers and the provision of support services to the newly created provider, Xplore Mobile.
10. Since 2018, Xplore Mobile has been actively working to deploy and expand its own radio access network within the province of Manitoba.

THE COMMISSION'S DETERMINATIONS IN TRP 2021-130

11. In TRP 2021-130, the Commission made certain findings following its comprehensive review of the state of competition in the mobile wireless marketplace in Canada. These findings included the following:
 - That the national wireless carriers together exercise market power in the provision of retail mobile wireless services in all provinces except Saskatchewan;²
 - That Saskatchewan Telecommunications ("SaskTel") exercises market power in the provision of retail mobile wireless services in Saskatchewan;³
 - That Bell Mobility Inc. exercises market power with respect to the provision of retail mobile wireless services in the territories;⁴

² TRP 2021-130, paragraph 152.

³ TRP 2021-130, paragraph 154.

⁴ TRP 2021-130, paragraph 156.

- That the national wireless carriers and SaskTel also exercise market power in the wholesale markets in the regions where they have market power in the retail market;⁵
- That regional wireless carriers are uniquely positioned to introduce more effective and sustainable competition in the retail market, to the long-term benefit of consumers;⁶
- That the national wireless carriers and SaskTel fail to offer effective wholesale services to the regional wireless carriers, hindering the expansion of regional providers and entrenching their own dominance in the retail market;⁷ and
- That the failure of the national wireless carriers and SaskTel to provide meaningful access to regional wireless carriers to a wholesale MVNO service confers an unreasonable preference on the national wireless carriers and SaskTel, and an unreasonable disadvantage on regional wireless carriers and retail consumers.⁸

12. In order to address the unreasonable preference/disadvantage that currently exists in the wireless marketplace, the Commission mandated that the national wireless carriers and SaskTel introduce a wholesale MVNO access service. The Commission established clear parameters for this service. Specifically, the Commission made the following determinations concerning the design of the mandated MVNO services:

- 1) Eligible wireless carriers: The mandated MVNO service would be available only to regional wireless carriers.⁹
- 2) Eligible geographic areas: Eligible carriers can access the MVNO service in any tier 4 area where they hold spectrum at the tier 4 level or above, regardless of the extent of their network presence in the area;¹⁰
- 3) Terms and rates: The rates for the MVNO service would be subject to negotiation between parties, with recourse to final offer arbitration before the Commission. The terms for the MVNO service would be set out in tariffs to be approved by the Commission.¹¹

⁵ TRP 2021-130, paragraph 279.

⁶ TRP 2021-130, paragraph 283.

⁷ TRP 2021-130, paragraph 281.

⁸ TRP 2021-130, paragraphs 293 to 294.

⁹ TRP 2021-130, paragraph 316.

¹⁰ TRP 2021-130, paragraph 331.

¹¹ TRP 2021-130, paragraph 362 to 363.

- 4) Duration of service: The mandated MVNO service will be phased out after a period of 7 years from the date that tariffed terms and conditions are finalized, unless delays justify an extension of this period.¹²

13. The Commission directed the national wireless carriers and SaskTel to file proposed tariff pages within 90 days of the issuance of TRP 2021-130.¹³ The processes to finalize these tariffs are currently on-going before the Commission.

EXPANDING THE SCOPE OF THE MVNO SERVICE MANDATED IN TRP 2021-130

14. In its Petition, dotmobile has asked the Governor in Council to modify two elements of the above determinations in order to expand access to the mandated MVNO service. Firstly, dotmobile has asked that the Governor in Council modify the eligibility requirements related to spectrum ownership. Secondly, dotmobile has asked the Governor in Council to remove the 7-year sunset that the CRTC has set for this service.

Expanding Eligibility for the Mandated MVNO Service Would Harm Canada's Regional Wireless Carriers

15. In creating a mandated MVNO service, the Commission undertook a thorough investigation to explore the different types of business models that a mandated MVNO service could support. As part of this investigation, the Commission explicitly considered the MVNO model being proposed by dotmobile, and determined that a mandated MVNO service should be designed to support Canada's regional wireless carriers in growing their operations.

16. The Commission's decision to focus support for regional wireless carriers was based on two factors. Firstly, the record of the proceeding that led to TRP 2021-130 contained clear evidence that Canada's regional wireless carriers were actively and effectively delivering more affordable, competitive service offerings for Canadians in areas where they had a strong competitive presence. Indeed, the Commissioner of Competition provided explicit evidence that demonstrated that wherever regional carriers had at least 5.5 percent market share, they were exerting significant downward pricing pressure on the services of the national wireless providers.¹⁴

17. Secondly, in light of the positive impacts being delivered by regional wireless carriers, the Commission made deliberate decisions to ensure that any new regulatory intervention would not undermine their contributions to the wireless marketplace.

¹² TRP 2021-130, paragraph 376.

¹³ TRP 2021-130, paragraph 362.

¹⁴ Dr. Tasneem Chipty, *Report Studying the State of Competition in the Retail Wireless Marketplace and the Benefits of Additional Competition among Wireless Service Providers*, prepared on behalf of the Competition Bureau of Canada, paragraph 61.

18. To this end, in TRP 2021-130, the Commission extensively discussed the potential negative impacts that mandating a broadly-available MVNO service, as proposed by dotmobile, would have for regional wireless carriers:

252. “Over the years, regional wireless carriers have invested billions of dollars in spectrum and networks in order to compete with the established wireless carriers. At this point in time, although retail prices are generally above competitive levels across Canada, competition is getting stronger and prices tend to be lower in areas where a regional wireless carrier operates in competition with the dominant wireless carriers. However, it is very challenging for a new entrant to grow its network and simultaneously compete with established WSPs. To be successful, regional wireless carriers need to maintain a high capital intensity to grow their networks, keep prices low enough that they can make their retail service offerings competitive, and maintain sufficient margins to recover costs and reinvest.
253. Regional wireless carriers typically target budget-conscious consumers. As a result, these carriers’ EBITDA margins are generally lower than those of the established dominant wireless carriers. The Commission considers that the combination of high levels of investment and typically lower margins leaves these regional wireless carriers in a situation where changes to the market could significantly impact their bottom line.
254. The Commission considers that if wholesale MVNO access were mandated, MVNOs would be able to enter the mobile wireless service market while contributing comparatively little capital and taking on very little risk relative to regional wireless carriers. MVNO competitors would likely target the same budget-conscious consumers targeted by these regional wireless carriers. If these regional wireless carriers, which tend to operate at lower margins than the established wireless carriers, such as the national wireless carriers, suddenly faced competition for their core customers from MVNOs that have fewer financial constraints (e.g. significantly less debt and minimal capital expenditure needs), the impact on the regional wireless carriers would undoubtedly be negative. These negative consequences are highlighted in Dr. Emch’s study for Shaw.
255. To illustrate, regional wireless carriers have invested billions of dollars in the acquisition of spectrum and the funding of capital projects to build their networks, and these costs must be recovered. MVNOs, by comparison, would not have to purchase spectrum or build RANs, and could therefore enter and exit the market with

comparatively little risk. In the Commission's view, this would put regional wireless carriers at a significant disadvantage at a critical time in their growth, and would have a significant negative impact on future investment, particularly in areas outside the major urban centers, as well as on 5G deployment. Improving network investment outside the major urban centres was a major concern raised by several parties in this proceeding, notably by local governments.

256. Accordingly, the Commission concludes that mandating the provision of a broad-based wholesale MVNO access service would likely have a high negative impact on the sustainability of regional wireless carriers and the competition that they bring to the market."

19. The eligibility requirements that were adopted to govern access to the mandated MVNO service were thus explicitly crafted to ensure that Canada's regional wireless carriers were supported and not undermined by the service.

20. Xplore Mobile fully supports the eligibility criteria established in TRP 2021-130 and urges the Governor in Council to reject dotmobile's request that these criteria be expanded. If expanded eligibility criteria were adopted, as proposed by dotmobile, this would undermine our ability to invest to grow our business and to bring strong competitive offerings to our customers. We would be pleased to provide the Governor in Council with more detail in confidence concerning how the adoption of expanded eligibility criteria would impact our business, should this be helpful.

Removing the 7-year Sunset for the Mandated MVNO Service Would Enable Increased Experimentation and Competitive Growth

21. Secondly, we note that dotmobile has asked the Governor in Council to remove the 7-year sunset that has been established for the mandated MVNO service.

22. Xplore Mobile agrees that the 7-year sunset that was established in TRP 2021-130 reduces the ability of regional wireless carriers to leverage this service to bring new competition to Canadians.

23. During the proceeding that led to TRP 2021-130, Xplore Mobile encouraged the Commission to allow for the use of the mandated service beyond the end of a defined window of time. Specifically, we recommended that any sunset provision should only apply to the use of the service to **sell** to new customers. Under our proposal, the regional wireless carrier would be permitted to subscribe to the mandated MVNO service and sell to new customers for a period of 7 years. However, at the end of the 7-year period, the regional wireless carrier would be able to continue to leverage the MVNO service to continue serving the customer base it had developed over the 7-year period, but it would no longer be able to sell to new customers.

24. The purpose of our proposal was to enable regional wireless carriers to experiment with bringing new services to areas of the country where the business case is less certain. With the 7-year sunset that has been established in TRP 2021-130, the regional wireless carrier is committed to deploying network infrastructure before the end of the 7-year time window in order to continue serving its customer base. This commitment to deploy within 7 years requires a regional wireless carrier to have a greater level of certainty in its business case to deploy in a given area, limiting the opportunities that a regional wireless carrier may pursue using the service. Greater flexibility concerning deployment timelines and the use of the MVNO service would only increase the impacts that regional wireless carriers could deliver using the service.
25. Xplore Mobile would support a decision to relax or remove the 7-year sunset established in TRP 2021-130. This would enable regional wireless carriers to more freely experiment with the mandated MVNO service in order to drive additional competitive benefits for Canadian consumers.

CONCLUSION

26. Dotmobile has filed the present Petition in order to ask the Governor in Council to expand the eligibility criteria established to access the mandated MVNO service established by the CRTC in TRP 2021-130. As a broadly available MVNO service, as proposed by dotmobile, would undermine the proven success of regional wireless carriers, Xplore Mobile opposes dotmobile's request to expand the eligibility criteria set to access the mandated MVNO service. Xplore Mobile would be happy to provide the Governor in Council with additional information in confidence concerning how expanding eligibility for the mandated MVNO service would impact our business.
27. Dotmobile has additionally asked the Governor in Council to modify TRP 2021-130 to remove the 7-year sunset that was established for the mandated MVNO service. Xplore Mobile supports a more flexible MVNO service that would enable regional wireless carriers to experiment with the MVNO service to launch services in areas where the business case may be less certain. Enabling experimentation of this manner would permit regional wireless carriers to further leverage the mandated MVNO service to increase their competitive impact.
28. We thank the Governor in Council for its attention to the issues we have raised in these comments. As noted above, we would be pleased to provide any additional information that would assist the Governor in Council with its consideration of the matters at issue.

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