TekSavvy Solutions Inc. Final Submissions

concerning

Telecom Notice of Consultation CRTC 2019-57,
Review of mobile wireless services,
28 February 2019

15 July 2020

Contents

A. Executive Summary

E1. TekSavvy Solutions Inc. submits to the Commission for consideration these final comments in the CRTC Telecom Notice of Consultation 2019-57 Review of mobile wireless services.

E2. This submission reviews the substance of the arguments that TekSavvy has maintained throughout this proceeding: Consumers in Canada are harmed by the lack of real competition in the mobile wireless marketplace, and that must change. In short, there is limited choice of wireless providers in Canada, too much market concentration with dominant incumbents that are also dominant in other communications markets, a limited variety of plans and services, minimal innovation, and higher prices than comparable international jurisdictions.

E3. TekSavvy submits that,

- the current landscape of the mobile wireless market in Canada does not meet the needs of consumers;
- the Commission must mandate wholesale access to relieve the mobile wireless marketplace from dominant market power of the Big 3;
- it is premature to consider imposing restrictions on any MVNO model; and
- the Commission must ensure the same barriers to competition in the wireline marketplace are not recreated here.

E4. The latest review of wireless services will conclude over a decade worth of efforts which have sought to mitigate the market dominance of the large incumbent Mobile Network Operators (MNOs) in Canada: Rogers Communication Inc. (Rogers), BCE Inc. (Bell), and Telus Corp (TELUS). The negative impacts from the ongoing reliance on facilities-based competition in the mobile services market in Canada has merited multiple instances of regulatory intervention by different parts of the federal government.

E5. Despite regulatory actions including mandated roaming rates, special prices for wireless spectrum, the creation of the Wireless Code, the acknowledgement of predatory sales practices by the Commission, the Governor in Council returning a Commission decision back for reconsideration, and the mandated introduction of low-cost data plans, the competitive profile of the mobile services market remains mostly unchanged due to the adherence to the principles of facilities-based competition by federal regulators.

E6. Today, the incumbents remain in control of 90% of the mobile services market in Canada and it's clear the only way this will be fixed is by adopting a new approach that more effectively fulfills the requirements found in the 2019 Policy Directive: the mandated access to incumbent radio access network with a "Full Mobile Virtual Network Operator (MVNO)" model. This would introduce a higher level of service competition that's enjoyed by mobile consumers outside of Canada.

E7. Certain benefits of an MVNO would include increased choice in wireless provider, better service for those in rural areas, more affordable plans for vulnerable populations and market offerings that would meet the needs of consumers.

E8. The 2019 Policy Direction calls for the Commission to consider how it can use regulation to "encourage all forms of competition" and "foster affordability, particularly when there is potential for telecommunications service providers to exercise market power" as its two highest priorities. TekSavvy submits that this fortuitously aligns with the preliminary view of the CRTC at the outset of these proceedings to mandate access to incumbent mobile networks.

E9. The Commission has heard from other parties concerning different models of mandated access, but the two main modified proposals fall under the same trap as previously attempted remedies: the prioritization of facilities-based competition. The Competition Bureau's model is not realistic due to its requirements for spectrum ownership. As well, Cogeco Communication's Hybrid Mobile Network Operator (HMNO) again rewards companies with expensive infrastructure investments stifling small and agile innovative companies.

E10. Instead, full MVNO, or a configuration where the wholesale purchaser maintains the largest amount of authority over its respective clientele and features, is the model the CRTC should adopt moving forward.

E11. From what was stated during the hearings and in the respective submissions, the incumbent MNOs continue to stand as outliers with their claims that there are no competitiveness issues in the mobile market. Nonetheless, statements from the executives representing the MNOs at the public hearing confirm that the profit margins and ability to maintain free cash flow take precedent over the public interest of network expansion.

E12. Despite the overall economic impacts of the covid19 pandemic, published financial filings reveal the extent to which the publicly traded MNOs enjoy supernormal profits. These signals as well as research submitted by other parties in the course of these proceedings show that investment need not be threatened by the introduction of MVNOs in the Canadian market.

E13. The Commission heard from various parties which proposed limits to various components of any mandated regime like sunset clauses or limits on ownership. It is too early to prescribe these sorts of restrictions. In some cases, there are protections that already exist in statute to accomplish the related policy goals. Indeed, in the face of pressure from the covid19 pandemic, the Competition Bureau recommended that the Commission extend or ignore the sunset terms in its earlier proposal.

E14. TekSavvy submits that comparable international jurisdictions like Australia, European countries and the United States have enjoyed the benefits of MVNO-related service competition. There are more options for customers, more innovative mobile service products and MVNOs have successfully introduced and sustained price discipline on incumbent-controlled markets. MVNOs accomplish the goals Canadian regulators have sought during the course of the last ten years of policymaking.

E15. Commercial negotiations have failed to produce the type of arrangements that would provide successful competition based on the experiences of multiple intervenors throughout this proceeding. Rates should be determined using the established incremental Phase II costing methodology to generate just and reasonable rates for Full MVNO access.

E16. Just and reasonable rates would allow companies to set prices that are more in line with the costs of service delivery versus the requirement to fuel massive profit margins. With just and reasonable rates, smaller virtual providers could offer the type of service innovation like low-cost plans and flexible service for underserved communities. Correct and timely rates would bring price discipline to the mobile market in Canada to the benefit of all consumers.

E17. Any plan to mandate wholesale access to mobile networks needs to be future-facing and principle-based. This means carrying over ideas like technological parity from previous proceedings associated with wholesale broadband services. As well, the commission needs to avoid the same pitfalls in this process as experienced in previous rate setting proceedings and framework proceedings to establish the operational details of the wholesale regime.

E18. It is time to give serious consideration to a long-term view of the industry as wholesale networks increasingly become the norm in other international jurisdictions. Structural separation has been found to be a useful tool for regulators addressing competition issues. There is an opportunity for the same successes to occur in Canada.

E19. Finally, by decoupling the network building and retail sales components of the large MNOs, the Commission could rebalance incumbent incentives to provide an equal playing field to all retail players and disincentives to preference one’s retail business over wholesale business.

E20. Covid19 has brought an additional urgency to the completion of these proceedings. It has revealed how people rely on general network connectivity, as well as exposing gaps in that connectivity caused by the incumbents’ profit-seeking behaviour. Consumers are ready and waiting for systemic change that set new priorities beyond mere shareholder value.

E21. TekSavvy again thanks the Commission for the opportunity to make these final submissions.

B. The current landscape of the mobile wireless market in Canada does not meet the needs of consumers

1. Throughout this proceeding, TekSavvy has highlighted the lack of meaningful competition in the mobile wireless services industry. It is clear that the current mobile wireless marketplace in Canada falls short. Consumers understand that the there are few wireless service providers to choose from, the selection of mobile service offerings is limited and lacks innovation, and the plans that are available are priced higher than in comparable international jurisdictions. These issues become even more stark as the use of mobile telecommunications technology has shifted from a luxury product into a critical tool for millions of people.

2. In order for the regulatory framework to remain relevant, meet the needs of Canada and fulfill the policy objective found in Section 7 of the *Telecommunications Act*[1], the Commission must find a solution to fix the long-standing anticompetitive environment through the imposition of a Full MVNO-based regulatory regime

3. The current lack of real competition in the mobile market can ultimately be traced to the reliance on and promotion of facilities-based competition while ignoring service-based competition.

4. The solution proposed by TekSavvy is the mandating of just and reasonable access rates for mobile services, allowing the development of full Mobile Virtual Network Operators (MVNOs) as service-based competitors. As TekSavvy has submitted in this proceeding, along with many other intervenors, the introduction of service-based competition to the Canadian mobile wireless market in the form of MVNOs would address many of the issues currently plaguing wireless consumers; lack of choice in service providers, lack of choice in service offerings, unaffordability and inability to receive appropriate support.

5. The following is a short review of over ten years of effort to reign in the dominant market power of the three major incumbent Mobile Network Operators—all to no avail.

a. A brief history of the lack of competition in the Canadian mobile telecommunications industry

6. In 2007, Industry Canada (now Innovation, Science and Economic Development Canada or “ISED”) launched a consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services[2] with the intent to develop a framework to make mobile spectrum, which is required to offer mobile wireless services, available in a fair, open and transparent fashion. It was also intended to keep

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[1] *Telecommunications Act* (S.C. 1993, c. 38), s. 7, https://laws.justice.gc.ca/eng/acts/T-3.4.

[2] Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services, 16 February 2007, https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08733.html.

the Canadian wireless infrastructure in step with developments in North America and Europe[3].

7. That consultation resulted in the Policy Framework for the Auction for Spectrum Licenses for Advanced Wireless Services and other Spectrum in the 2 GHz Range[4]. In this framework, Industry Canada identified a need for special spectrum auction rules to reduce the barriers faced by new entrants into the Canadian mobile services market. After acknowledging that incumbent carriers had "both incentives and opportunities to prevent market entry or constrain competition," the design of the auction was intended to "constrain such behaviour, thereby promoting competition."[5]

8. Despite the entry of several competitors as facilities-based providers after the spectrum auction, the incumbents remained capable of wielding their significant market power to successfully eliminate the new entrants.

9. In response to a 2011 Application by the Public Interest Advocacy Centre ("PIAC")[6] which asked that the Commission prohibit wireless service providers ("WSPs") from charging customers for services after they have ported to another WSP, and following an outpouring of support for a national wireless services consumer code[7], the Commission launched a proceeding to consider whether the conditions in the Canadian wireless market warranted Commission intervention[8] and ultimately developed the Wireless Code[9].

10. The Wireless Code aims to address the billing clarity and content concerns initially raised by PIAC and echoed by countless Canadian mobile wireless consumers, and to

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3 Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services, Intent, 16 February 2007, https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08760.html#intent.

4 Policy Framework for the Auction for Spectrum Licences for Advances Wireless Services and other Spectrum in the 2 GHz Range, November 2007, https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/awspolicy-e.pdf/$FILE/awspolicy-e.pdf.

5 Industry Canada, "*Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range*", November 2007, at p. 3.

6 Public Interest Advocacy Centre and Consumers' Association of Canada (PIAC/CAC), Application regarding certain billing practices of the Wireless Service Providers which contravene Section 27(2) of the Telecommunications Act, 22 December 2011.

7 Aside from PIAC/CAC, Rogers, TELUS, CWTA, and Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic all requested the Commission create a national wireless code, some in consideration of newly introduced provincial consumer protection legislation – see NoC 2012-206 at paras. 3 and 4.

8 Telecom Notice of Consultation 2012-206, *Proceeding to consider whether the conditions in the Canadian wireless market have changed sufficiently to warrant Commission intervention with respect to retail wireless services*, 4 April 2012.

9 Telecom Regulatory Policy CRTC 2013-271. *The Wireless Code*, 3 June 2013. ("The Wireless Code").

equip consumers with the tools they needed to better understand their basic rights, as well as their service providers' responsibilities with respect to mobile wireless services. The need for such industry guidelines clearly indicates that the incumbent mobile wireless industry was already, some nine years ago, recognized as being anti-consumer and anti-competitive.

11. The Commission's own concerns about a lack of sufficient competition led to a review of the mobile wireless services market initiated in Telecom Notice of Consultation CRTC 2014-76[10]. This proceeding sparked the creation of mandated wholesale roaming rates for competing MNOs to facilitate sustainable competition in Telecom Regulatory Policy CRTC 2015-177[11].

12. In the same decision, the Commission rejected the notion of mandating wholesale MVNO access because, it reasoned, doing so would discourage investment by Canadian carriers. Although the 2015 decision was an attempt to improve the competitive dynamics in the Canadian mobile industry, the status quo has by and large persisted.

13. Since then, the steady drumbeat of concern about the mobile market continued unabated. Both the CRTC and Governor in Council ("GIC") have attempted limited regulatory interventions to foster competition.

14. In June 2017, the GIC referred back to the Commission the final decision on roaming tariffs, Telecom Decision CRTC 2017-56.[12] In sending it back to the Commission, the Governor in Council expressed concern about the high rates consumers pay for wireless services and the industry's low adoption rates when compared internationally.[13]

15. Despite these years of effort, in 2019 the CRTC found that large telecommunications companies continued to engage in misleading and aggressive sales practices, including for mobile services, to their own benefit and the detriment of consumers[14] The CRTC stated in its Report on Misleading or Aggressive Communications Sales Practices that misleading or aggressive sales practices occur to an unacceptable degree; they are harming consumers, in particular vulnerable Canadians; and they are a serious concern for the CRTC.[15]

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10 Telecom Notice of Consultation CRTC 2014-76, *Review of wholesale mobile wireless services*, 20 February 2014.

11 Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services*, 5 May 2015.

12 Telecom Decision CRTC 2017-56, *Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, 1 March 2017.

13 Order in Council 2017-0557, June 1 2017.

14 *Report on Misleading or Aggressive Communications Retail Sales Practices*, CRTC https://crtc.gc.ca/eng/publications/reports/2018_246/.

15 *Report on Misleading or Aggressive Communications Retail Sales Practices*, CRTC, at page 2, https://crtc.gc.ca/eng/publications/reports/2018_246/.

16. Even more recently, while the review of mobile wireless services was proceeding, regulatory pressure has forced short term changes in service options with the introduction of mobile plans by incumbent players with no overage fees in the summer of 2019. As TekSavvy outlined during February's public hearing in this proceeding, these changes are too little too late and are insufficient to address the short comings of mobile competition in Canada:

> 6081 MR. KAPLAN-MYRTH: Wireless prices are undeniably high in Canada. There have been some small changes in the market, certainly over the last, say, five years, possibly as a result of the mandated roaming regime in the last major review.
>
> 6082 Those are extremely limited competitive effects that just allow one new competitor, essentially, to slightly undercut the dominant three carriers. We don't see that as sustainable dynamic competition that's going to result in a variety of services at a variety of prices that are available to Canadians across the country.
>
> 6083 Certainly, I think the new services in the last year; say the unlimited throttled services in the past year, I think cannot be seen as anything other than the result of regulatory pressure. They did not emerge previously, although they were present in other places. I think -- it seems utterly transparent to me that those are -- I mean, I think they are good services; I think they ought to have come along sooner but I think they are clearly here now, you know, not as a result of competitive pressure but because of the regulatory environment.[16]

17. Later that summer, ISED published its Connectivity Strategy[17] which emphasized the importance of mobile cellular access from coast to coast to coast, acknowledging the unique challenges faced by rural and remote communities.

18. In March 2020, Minister of Innovation, Science and Industry Navdeep Bains announced a plan to track the reduction of mobile plan rates for data buckets of two to six gigabytes (GB) of data, hoping to see prices reduce by 25 percent over the course of two years.

19. Despite the immense efforts of the Commission to stem the harms of the lack of competition, the major MNOs have consistently made the case that there are no competitive issues facing the Canadian mobile telecommunication industry. As the dominant mobile providers have decided to make these points again through the current review of mobile wireless services, their position that "things are fine" should be soundly rejected.

20. More than a decade of incremental adjustments has not addressed issues of lack of choice, lack of innovation, unaffordability of services, and questionable sales practices in the mobile market. If anything, the covid19 pandemic should serve as a wakeup call. Bold steps are required to address the competition issues now.

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16 Telecom Notice of Consultation CRTC 2019-57, Hearing Transcript, Volume 4, February 21, 2020.

17 High-Speed Access for All: Canada's Connectivity Strategy, 17 July 2019, https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00002.html

b. Choice of mobile wireless service providers is limited or illusory

21. The current mobile wireless marketplace in Canada is characterized by three national MNOs ("the Big 3" which includes Bell, TELUS and Rogers), a few regional facilities-based players (Saskatchewan Telecommunications, Videotron, Eastlink, and Shaw-owned Freedom Mobile), and vanishingly few small MVNOs. Even with the current selection of mobile wireless service providers, roughly half of consumers in Canada believe that there are not enough competitors in the Canadian mobile wireless market[18].

22. These independent MVNOs are typically either subsidiary business lines of retail players such as PC Mobile (owned by Loblaws, carried on the Bell network), 7-Eleven Speakout Wireless (owned by 7-Eleven, using Ztar Mobile as the MVNE on Rogers network), or by ISPs such as Execulink Mobile (owned by Execulink Telcom, carried on the Bell network). While the CMR does not report the mobile market share of MVNOs, it is estimated that independent MVNOs collectively capture a negligible portion (less than 1%) of the Canadian mobile market.

23. According to the 2019 Communications Monitoring Report, the Big 3 accounted for 90.7% of retail mobile revenues and 89.2% of mobile subscriptions. Of that, the Big 3's top three flanker brands accounted for 21.4% of revenues and 27.2% of subscriptions, while providers other than the Big 3 and their top three flankers account for only 9.3% revenues and 10.8% of subscriptions.[19] All of the regional facilities-based players and MVNOs are captured within that 9.3% of revenues and 10.8% of subscriptions. Based on these numbers alone, it is clear that the Big 3, whether considered collectively or individually with approximately one third of the market each, possess dominant market power.

24. According to the CRTC, market power enables the incumbents to raise their prices above competitive levels without losing any customers.[20] The significant market power test is used by the Competition Bureau and other international regulatory bodies to assess dominant market power.[21]

25. This dynamic is echoed throughout the entire telecom service industry. The Big 3 are vertically integrated communications industry giants that offer a wide array of services

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18 2019-57 Public Hearing Transcript, Volume 6, at lines 8161-8163.

19 CRTC, *Communications Monitoring Report 2019*, January 2020, at pages 237 and 311, ["2019 CMR"].

20 *Review of Regulatory Framework,* Telecom Decision 94-19, 16 September 1994, "The concept of market power is intended to explain the ability of a dominant firm to raise prices above those that would prevail in a competitive market."

21 European Commission, *Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services*, 7 May 2018, 2018/C 159/01.

including retail phone, Internet, and television as well as broadcasting content, and transport facilities critical to all retail communications services.

26. The Big 3 are often considered collectively within the context of the mobile wireless market because of coordinated behavior which is well documented on the record of this proceeding.[22]

27. Similarly, the Big 3 use their flanker brands to create the impression of competitive options, but they are in fact merely an exercise in brand differentiation. As brands of the MNOs themselves, the MNOs' flanker brands will never be able to discipline MNOs in the market, including independently determining their target market segments, service offerings, or pricing. As such, they do not contribute to meaningful competition in the mobile market. Rather, flanker brands suppress real competition by creating the illusion of competition in a transparent attempt to stave off regulatory intervention.

28. Ice Wireless and members of the Coalition for Cheaper Wireless Services ("CCWS") submitted that consumers are not fooled by flanker brands; their networks are all the same, the customer service they offer is no better than their flagship counterparts, and the services they offer are the same or worse when subscribers exceed their very limited voice minutes or allotments of data or text messages.[23]

29. While the use of flanker brands to create the impression of competition may be frustrating and misleading for consumers, more important to this proceeding is their inherent inability to act as independent competitors and to impose any degree of market discipline on the dominant MNOs, reducing their control of the market and, ultimately, eliminating their demonstrated market power.

c. Current in-market service options do not meet the needs of consumers

30. Compared to mobile offerings found in jurisdictions that have embraced service-based competition, the service and feature offerings in Canada fall short. Described eloquently by Lee Bragg of Eastlink as being "vanilla", there is simply not that much variety to a data plan, a voice plan, and a text plan when the service providers limit themselves to considering only these service features in their attempt to satisfy consumers.[24]

31. With such a vanilla approach to mobile services, the needs of Canadian consumers are largely unmet. At the public hearing in this proceeding, a member of the Coalition for Cheaper Wireless Services and representative of ACORN spoke to the difficulties their clients face as newcomers to Canada whose first language is neither English nor

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22 Consider the Competition Bureau's intervention in Review of mobile wireless services, Telecom Notice of Consultation CRTC 2019-57, 15 May 2019, at para. 12; the Competition Bureau, "*Competition Bureau statement regarding Bell's acquisition of MTS*", 15 February 2017.

23 CRTC Transcript, 18 February 2020, Review of mobile wireless services, Telecom Notice of Consultation CRTC 2019-57, ["2019-57 Public Hearing Transcript"], Volume 6, Ice Wireless at lines 8862-8863, CCWS at lines 8241-8242.

24 2019-57 Public Hearing Transcript, Volume 4, at line 5456.

French, obtaining affordable access to mobile wireless Internet and, specifically, mobile access to software that enables communication and interaction with the world around them.[25]

32. SSi Micro spoke to the challenges faced by consumers in rural Canada where there are few credit card holders and access to financial institutions is extremely limited with unemployment rates as high as 40%. Requiring a bank account, credit history, a credit card and a fixed-term contract as is required by many current WSPs is simply unrealistic in these areas.[26]

33. On the International stage, a competitive MVNO, Consumer Cellular, has teamed up with the American Association of Retired Persons ("AARP") to offer its customers who are AARP members special benefits over the past decade[27] and Lebara Mobile is wholly owned by Vodafone in Australia. Before 2016, Lebara Mobile was part of the Lebara Group, a specialised MVNO with operations worldwide. Lebara has a specific focus on international calling. It focuses on immigrant and expatriate communities in Australia[28].

34. The value MVNOs can provide to Canadians comes not from simply lowering prices, but rather from creating new, innovative services that target underserved or unserved market niches that are not being served by existing players.[29]

35. The ongoing covid19 pandemic makes the need for that innovation all the more urgent, as people are learning and working from home, and therefore relying on their Internet connections more than before. Disproportionately in rural areas, people rely on mobile data instead of fixed wireline networks to stay connected.[30]

36. Simply put, vanilla mobile services are not serving people's needs, leaving service gaps that MVNOs are best-suited to fill.

d. Canadians living in remote and rural areas are underserved

37. Despite the publication of wide-ranging coverage maps[31] suggesting otherwise, incumbent operators have neglected the needs of residential and business customers in rural and remote areas, including those along transportation corridors. The choice of

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25 2019-57 Public Hearing Transcript, Volume 6, at lines 8476-8486.

26 2019-57 Public Hearing Transcript, Volume 9, at line 12413.

27 Consumer Cellular, "*Low rates & great service are just the beginning*", retrieved 15 July 2020

28 Ish Omar for Webb Henderson, TekSavvy Further Comments 2019-57 at Attachment 1, *The role of MVNOs in Australia's mobile market*, 22 November 2019, at p. 20 ["Webb Henderson Study"].

29 2019-57 Public Hearing Transcript, Volume 6, at line 8526, Matthew Gamble, Director of the Internet Society for CCWS.

30 TekSavvy, Response to Request for Information, 29 May 2020 at p.2, "The lack of service-based mobile competition has highlighted problems for both urban and rural mobile consumers"

31 2019 CMR, at pages 330-334.

service for customers in these areas are typically limited to the Big 3's legacy mobile networks (2G or 3G) with some exceptions in areas where regional facilities-based competitors operate.

38. As of 2018, 99.5% of the Canadian population had access to mobile wireless services however, consumers residing in Northern Canada generally had access to only one network, meaning no choice in service provider or services offerings.[32] In fact, much of the CRTC's own data regarding mobile wireless coverage used in its 2019 CMR excludes data from Northern Canada.[33]

39. People in remote and rural areas are in effect being used as bargaining chips by the Big 3. As various regulatory decisions were handed down in 2019 and 2020, the incumbents continued to present the false choice of either affordable Internet rates or rural buildouts of Internet infrastructure. This attitude has caused industry voices to accuse the incumbents of holding rural areas hostage during regulatory negotiations.[34]

40. At the root of the dearth of choice, gaps in rural infrastructure, and the source of unaffordable mobile offerings is the lack of business case to provide these elements for the large, publicly traded MNOs. The commitments to shareholders have taken a clear priority to connecting Canadians outside of urban or suburban locations.

41. Evidence for this is found during the hearing when Bell CEO Mirko Bibic clearly articulated the current dynamic:[35]

> 2708 But my -- I'll give you an -- if it's $10 of profit, and you, of course, in the real world you can add a few zeroes to that, but if it's $10 of profit and we invest $5, there is $5 left over for the shareholder. Just -- I mean, this is simplistic, but just to highlight it.
>
> 2709 If as a result of a regulatory outcome the profit goes to 9, it's easy to say keep your 5 of investment and this 4 to shareholders. No. It can't even be 5 to shareholders tomorrow, it's got to be 6 to shareholders tomorrow because we have to grow the free cashflow to support *the* dividend growth.
>
> 2710 So if the profit goes to 9, **the investment's got to be cut in order to keep, you know, free cashflow stable and grow.**

42. The fiduciary requirements for the publicly traded MNOs to extract very high profit margins stand in direct conflict with the deployment of less than extremely profitable

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32 *2019 CMR*, at page 326-327.

33 *2019 CMR*, at page 326, see the asterisk at the bottom of Infographic 10.10.

34 CBC News, Ian Bickis, "*Bell scales back rural internet plans after CRTC decision on rates*," 19 August 2019.

35 2019-57 Public Hearing Transcript, Volume 2, at lines 2708-2710. [emphasis added]

telecommunication infrastructure. The priority to protect dividend output was a major theme in quarterly conference calls during the covid19 pandemic.[36]

43. The financial success of the organization taking priority over the connectivity of Canadians was on display with the board resolution published by TELUS during the course of this proceeding.[37]

> G. The models prepared by Management and PWC suggest that the free cash flow impacts of certain regulatory scenarios are such that, to continue paying dividends in accordance with its dividend growth policy to millions of Canadians who hold the Company's shares, including the Company's employees who collectively make team members the Company's fourth largest shareholder, the Company would be forced to find reductions in free cash flow of up to $1.1 billion in cash savings.
>
> H. Such reductions would necessarily entail reduced capital and operational expenditures that would impact investments in Canadian communities, including, reducing or eliminating investments in fibre in Tier 2 and 3 Alberta and British Columbia communities, scaling back or slowing 5G network rollout plans, reducing or eliminating retail operations in smaller communities and significantly reducing employment levels for a workforce that enjoys the benefits of high quality, middle class jobs with good employee benefits.

44. This stands in stark contrast with the experience in the US market where Verizon Wireless launched their regional development plan, the LTE in Rural America Program (LRA program) in 2010.[38] Verizon allowed 21 small network operators in 15 states to develop LTE networks in their respective rural regions using Verizon-owned spectrum. Customers of these partners can roam on Verizon's primary network and in return, Verizon's customers can roam on the rural partner networks in the respective rural areas. There are no such initiatives found in the Canadian market.

e. Mobile wireless services are unaffordable

45. The Commission has heard several times on the record of this proceeding that consumers pay too much for wireless services.

46. The MNOs have argued that wireless prices are decreasing sufficiently without mandating MVNO[39], but thanks to regional competition and flanker brands however,

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36 BCE Inc. Q1 2020 Market Analyst Call Transcript, page 7; Rogers Communications Inc. Q1 2020 Market Analyst Call Transcript, page 6; TELUS Corp. Q1 2020 Market Analyst Call Transcript, page 6.

37 TELUS Board Resolution, *"Revising the 2020-2022 Strategic Financial Plan in Response to Regulatory Intervention*", 26 June 2020.

38 RCR Wireless News, Dan Meyer "LTE N.A. 2011: Verizon Wireless set for rural LTE launches in 2012", 9 November 2011.

39 Bell's intervention in 2019-57, 15 May 2019, at para 7; TELUS revised intervention in 2019-57, 9 September 2019, at paras 31; Rogers' intervention in 2019-57, 15 May 2019.

only 8% of consumers have seen the prices they pay for wireless services decrease since 2017. [40]

47. According to the annual Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions,[41] Canada's average mobile Internet service prices are typically higher than leading benchmark countries USA, UK, France, Germany, Italy, Australia, and Japan.

48. These findings are reflected by consumers in "the CRTC's own survey", 95% of consumers in Canada believe wireless prices are higher in Canada than elsewhere in the world.[42]

49. Consumers have demanded lower prices and more choice for wireless services: Over 75,000 people in Canada took action to support lower prices, more choices, and better telecommunications services by supporting the 2019 Policy Direction[43] which encourages all forms of competition and lower prices.

50. Meanwhile, the international experience demonstrates that MVNOs have contributed to lower prices for consumers:

- Mobile prices in Australia in 2017-2018 were 30% lower than they had been in 2014-15, driven by MVNOs both disciplining the retail prices of MNOs and offering low cost entry-level mobile services in the $10-$20/month range with no meaningful impact on the revenues of MNOs[44].
- The Norwegian regulator, Nkom, found that non-facilities based MVNOs focused on value-conscious niches.[45]

f. Meaningful mobile competition will not evolve without regulatory intervention

51. With the three dominant MNOs capturing over 90% of the mobile market and having market power, despite years of public complaints about mobile prices and services,[46] it

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40 Phoenix Strategies Perspectives, CRTC, "*Online Consultation on Mobile Wireless Services in Canada Final Report*", January 2020, see Figure 13

41 Wall Communication Inc., "*Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions – 2018 Edition*", 29 August 2018 at para. 1.

42 Phoenix Strategies Perspectives, CRTC, "*Online Consultation on Mobile Wireless Services in Canada Final Report*", January 2020, see Figure 14.

43 2019 Policy Direction, SOR/2019-227.

44 Webb Henderson Study, at para. 10.

45 NKOM, "*Decision on designating undertakings with significant market power and imposing specific obligations in the market for access*", 14 May 2020.

46 Submission by the Commissioner of Competition before the Canadian Radio-television and Telecommunications Commission in Telecom Notice of Consultation CRTC 2013-685, *Wholesale mobile wireless roaming in Canada — Unjust discrimination/undue preference,*

is clear that the necessary degree of competition has not and will not emerge organically without a regulatory framework in place.

52. Commercial negotiations to achieve third-party MVNO access will not offer the same level of competitive dynamic due to the large asymmetry of information and power between large incumbent telecom providers and smaller parties interested in MVNO.

53. As TekSavvy stated during the public hearing, the incumbents have not demonstrated any interest in pursuing truly competitive commercially negotiated MVNO deals with third parties.[47]

54. The very large US mobile market operates under a light Federal Communications Commission (FCC) regulatory regime, in which the national MNOs exercise dominant and increasing market power in their negotiations with MVNOs. This matches the experiences heard from hopeful Canadian MVNOs, Freedom Mobile[48], Cogeco[49], the members of the ITPA[50]. As a result, independent American MVNOs pay higher than competitive market prices for access to MNO networks, and for the most part cannot operate as Full MVNOs.

55. This environment has limited US MVNOs' ability to offer innovative services or affordable prices. Their overall market penetration has suffered, and MVNO market share has not developed to the same extent as in some other countries. This demonstrates that unless a regulator sets the right conditions and right wholesale rates, MVNOs will be hindered in developing a sustained competitive impact on the market.

56. Finally, Canadian-owned Tucows operates an MVNO, Ting, in the US. Its Canadian CEO, Mr. Elliot Noss, at the public hearing in this proceeding talked about the barriers he has encountered trying to operate in Canada, describing negotiations with the

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January 29, 2014; Reply of the Commissioner of Competition before the Canadian Radio-television and Telecommunications Commission, February 10, 2014.

47 2019-57 Public Hearing Transcript, Volume 4, at lines 6195-6199.

48 2019-57 Public Hearing Transcript, Volume 1, at lines 1230-1233, Mr. McAleese of Shaw (Freedom Mobile) describing attempted negotiations with Rogers and Bell about seamless roaming as "a non-starter", adding that "it's very difficult to get any oxygen into the room on these conversations" referring to commercial negotiations with 2 of the Big 3 MNOs.

49 2019-57 Public Hearing Transcript, Volume 2, at lines 2924-2944, Mr. Jette of Cogeco Communication Inc., "we can't really move any conversation forward with a commercial agreement" adding that "they listen to [their] questions. They take requests, but the answers are not coming back" stating that its not necessarily even fair to describe them negotiations or even conversations. Ms. Dorval added that "there would need a mutual interest to move forward with an agreement with a new entrant, and why would that be since it's just creating new competition? So, why would they move forward".

50 2019-57 Public Hearing Transcript, Volume 8, at lines 10606-10620, ITPA board member and Chief Executive and Technology Officer of Gosfield Communications Mr. Petruk.

dominant MNOs as "short and brutal". [51] Despite being an actual operational MVNO, Ting has not been able to negotiate an arrangement to operate in Canada.

57. In short, commercial negotiations have not led to any significant new entrants that could act as competitors in the market, and there is no prospect that such negotiations will be successful in the future.

C. The Commission must mandate wholesale access to relieve the mobile wireless marketplace from dominant market power of the Big 3

58. The Commission's preliminary view to mandate wholesale MVNO access is supported by a wide range of industry stakeholders and public interest groups.[52]

59. Consistent with the 2019 Policy Direction, a mandated MVNO regime would enable innovation in telecommunications services, including new technologies and differentiated service offerings, and stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services.

a. The Commission's goals are best met by developing a mandated regime for Full MVNO

60. As stated in TekSavvy's intervention to this proceeding, a mandated Full MVNO regime will provide the greatest level of control to the MVNO and the fewest opportunities for the MNOs to introduce competitive barriers. It will be a strong economic incentive for the MVNOs to invest in facilities, systems, and intangible assets in order to control the quality of service and to be able to acquire and manage their own subscribers. While Full MVNO status offers more flexibility to the service provider than other models, such as the ability to innovate and capability of owning subscribers, a Full MVNO must also invest in its own Evolved Packet Core (EPC) and IP Multimedia System (IMS) Core handling SIP-based services to control subscriber activation and service offerings

61. At the same time, a Full MVNO framework must be designed in a way that enables MVNOs to comply with legal and regulatory obligations. Rogers previously proposed that MVNOs must be required to meet the regulatory and legal obligations that MNOs must fulfil.[53] TekSavvy supports this approach in general, with the caveat that some of those obligations may require modification or related mandated services in order to be effective for MVNOs. This would be consistent with the Commission's approach to imposing regulatory obligations on CLECs. For example, it is our understanding that, depending on how MVNOs interconnect with underlying carriers, we may not be able to

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51 2019-57 Public Hearing Transcript, Volume 2, at lines 3308-3318.

52 There is broad support for MVNOs generally from groups including the Competitive Network Operators of Canada (CNOC) and its members, Tucows, TNW Wireless, Independent Telecommunications Providers Association (ITPA), Canadian Internet Policy & Public Interest Clinic (CIPPIC) and OpenMedia, Coalition for Cheaper Wireless Services (CCWS), Manitoba Coalition, and Canwisp.

53 Rogers' Further Comments to 2019-57, 22 November 2019 at para. 191.

provide full 9-1-1 functionality or wireless public alerts without that functionality being provided or supported by the underlying carrier.

62. Similarly, while TekSavvy would uphold the principles of the Wireless Code (the "Code"), the Code as written may not apply effectively to MVNOs without some amendment, again depending on the details of the underlying wholesale-retail relationship. In particular, the ability of MVNOs to meet the requirements of the Wireless Code may depend on the degree to which they are able to exercise control over the underlying wholesale service on which they rely to provide services.

63. Mandated wholesale services are regulated by the CRTC in order to provide more choice for high-speed connectivity, driving competition that results in innovative service offerings and reasonable prices for consumers. For over 20 years, TekSavvy has primarily offered retail services that rely on regulated wholesale inputs to provide wireline Internet and voice services, building up a base of customers in every province, and providing innovative customer service and support. TekSavvy's goal is to bring its customer-focused approach to the mobile industry as well.

64. Internationally, regulated and commercially negotiated MVNOs have been successful at introducing meaningful competition into markets that were otherwise dominated by a small number of incumbents.

- In Australia, there are a diversity of MVNOs, which are a material part of the mobile services market. Notably, MVNOs that have the most success in Australia are the ones that drive innovations.
- In the US, MVNOs deliver benefits to consumers through pricing structures and service features that are attractive to consumers who have been neglected by the major MVNOs. MVNOs also rate higher for customer service and quality of service than MNOs.
- Since MVNOs emerged in the US, the prevalence of two-year contracts has eroded, and service-device plans have been separated, bringing more transparency and new options to the marketplace.
- Finally, Ting mobile, an independent MVNO from Tucows that provides services using Sprint and T-Mobile's network. Ting does not provide specific plans to customers, instead it bills the customers for the cheapest plan each month based on the customer's usage.[54]

65. Not only would a Full MVNO model achieve the Commission's goals of increasing competition in the market for mobile services as described above, it would also have the benefit of advancing broader objectives of encouraging competition in related markets for other communications services.

66. There is a critical connection between a competitor's ability to compete on mobile and its overall ability to succeed as a competitive alternative for telecommunications and broadcasting services. As people rely more on mobile services, as incumbent carriers

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54 Ting, "*Only pay for what you use*", retrieved 15 July 2020.

increasingly bundle mobile services with other services, and as we approach the promise of unified networking enabled by 5G technology, it will be more important than ever for independent providers that compete in other markets to be able to also offer mobile services.

67. Even triple-play ISPs like TekSavvy[55] will have difficulty competing with incumbents in wireline and broadcasting markets in the absence of mobile competition as well. In short, the addition of mobility to TekSavvy's existing service offering is essential for its long-term competitiveness as a service provider. We anticipate that without the ability to offer wireless services to our current wireline customers, the overall margins and customer base of wireline wholesale-based providers are likely to erode to unsustainable levels.

b. Cogeco's HMNO proposal is too limited to generate competition in markets across Canada

68. TekSavvy does not support Cogeco's HMNO solution as presented, since that solution is tailored to Cogeco's profile and falls short of enabling an industry solution.

69. In order for the HMNO model to constitute an industry solution that fosters competition from a wide range of smaller facility-based competitors, the Commission would need to adopt a broad definition of the term "facilities" in respect of the eligibility criteria for HMNOs.

70. Few ISPs have facilities at the regional level and the financial resources for on-going capital investment to qualify for or be likely to make use of the proposed HMNO service.

71. Consequently, TekSavvy submits that a broader definition of HMNO would better align with the objectives of both the 2019 Policy Direction and the 2006 Policy Direction[56], specifically, enabling and encouraging investment in facilities as well as competition from smaller service providers.

c. The Competition Bureau's proposal will only benefit established players

72. The Bureau proposes a very limited MVNO regime, eligibility of which would be extremely restricted to a narrow few industry players, but in practice, potentially only a single player. Because the Bureaus proposed regime recommendation only benefits a very limited number of players, it would only deliver the benefits of competition to a limited number of consumers.

73. Given its requirements for upfront investment in Spectrum and deployment in five years, the proposed MVNO regime would add risk and uncertainty for Shaw and other candidates likely to take advantage of the proposed regime.

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55 TekSavvy TV is provided by Hastings Cable Vision Ltd.

56 2006 Policy Direction, SOR/2006-355

74. Despite the Commissioner of Competition suggesting in a recent filing concerning covid19 that increased mandated MVNO access period could be extended in light of the pandemic[57], TekSavvy believes that the proposal is remains flawed.

75. The Bureau supports its proposal by arguing in the absence of investment requirements, new entrants that receive mandated MVNO-access may fail to invest in infrastructure of their own to become MVNOs[58] and incumbent MNOs might have reduced incentives to invest.[59]

76. TekSavvy notes however, that in the United States and Australia, multiple types of MVNOs have increased competition in those markets, delivering benefits for consumers without undermining MNO investments, as supported by TekSavvy's expert reports filed with its Further Comments.[60]

d. All other proposals are not market solutions

77. Retail price regulation is not an effective long-term solution. A mandated Full MVNO regime will encourage competition which in turn results in price discipline without direct interventions from the federal government.

78. The plan for a single competitor from the oral presentation of Bob Boron, Bruce Kirby and Alek Krstajic is another over-engineered approach to artificially stimulating competition in mobile services industry. The group called for a single virtual competitor to be crowned by the Commission.

79. This model would not introduce and sustain meaningful competition. Competition from multiple players is required to spark truly sustainable competition. Moreover, crowning one virtual competitor would ignore the importance of mobile services to existing competitors and the benefits to the broader communications industry and market as a whole.

80. Even though TekSavvy does not wholly agree with the proposals of the Competition Bureau, Cogeco or any of the one-off solutions outlined in this section, something can

57 The Commissioner of Competition, *Review of mobile wireless services, Telecom Notice of Consultation CRTC 2019-57 – Response to request for information*, 29 May 2020.

58 Matrix Economics, Dr. Tasneem Chipty, "Report Studying the State of Competition in the Retail Wireless Marketplace and the Benefits of Additional Competition among Wireless Service Providers", 22 November 2019 [the "Chipty Report"] at para 70.

59 The Chipty Report, at para 68.

60 Wireless service prices decreased after MVNO entered into the market in 2014 in Austria, Bundes Wettbewerbs Behorde (2016), "An Ex-post Evaluation of the Mergers of H3G/Orange and TA/Yesss!", at page 16. See also Spain's mandated MVNO access to mobile operators infrastructure since 2006, CNMC (Spanish competition regulator) deregulated the MVNO market in 2017 when they considered there were effective competition in their wireless market. Mobile Word Live (2017), "Spanish MVNO market deregulation approved."

and should be said for the overarching theme that the Commission must take action to open the market up in some way to competition.

e. Full MVNO would not lead to reduced investment in facilities

81. The MNOs have claimed that a regulatory obligation to offer wholesale services on an MVNO model would directly reduce the funds available for investment in their facilities. This is not true for several reasons.

82. On the contrary, as stated in the Delta economic group study for CNOC, a mandated wholesale MVNO access would stimulate investments by the national wireless carriers because of the increasing number of mobile wireless subscriptions.[61] Full MVNO status would also incentivize independent service providers to make substantial investments in their staff, innovation, systems, and equipment in order to attract and retain subscribers

83. As stated by NEREO consulting, MVNOs help MNOs to improve their earnings before interest, taxes, depreciation, and amortization (EBITDA) margins by reducing subscriber acquisition costs with only a slight reduction in ARPU.[62] Thus, it is reasonable to expect overall industry investment to continue at or above current levels if MVNOs are allowed to bring additional competition into the market.

84. TekSavvy supports the findings in CNOC's expert report from Dr. Zhiqi Chen that investment by incumbent carriers is not impacted when EBITDA values are above a certain threshold. The Big 3 incumbents have enjoyed EBITDA margins above 42 percent and Dr. Chen collected evidence that investment intensity would increase with EBITDA values above 37-40 percent.[63] In fact, TekSavvy has a proven track record having consistently invested to increase the size of its wireless and wireline facility-based network infrastructure to better serve its clients. TekSavvy initiated its fixed wireless access strategy by rolling out broadband access to more than 2,000 rural households in Southwestern Ontario and plans to continue its investment in facilities. The fact is that access to competitive services creates a virtuous cycle in which competitors invest in facilities.

85. Through its research, the Bureau did not find conclusive evidence from other jurisdictions of reduced investment incentives resulting from mandated MVNO access. In a number of jurisdictions where mandated MVNO access was effective in driving down prices, the Bureau did not find evidence that significant decreases in investment had occurred.[64]

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61 Zhiqi Chen, An Economic Analysis of Mandated Wholesale Access for MVNOs and Competition in the Mobile Wireless Telecommunications Industry in Canada, 2019, at p. 35 ["the Chen Report"].

62 NERO Consulting, "*MVNO Business Essentials*", October 2014.

63 The Chen Report, at p. 38.

64 Rogers, *Review of mobile wireless services, Telecom Notice of Consultation CRTC 2019-57 – Further Comments*, 22 November 2019, at para. 191.

86. As Martyn Roetter of MFR Consulting said on behalf of TekSavvy at the hearing in this proceeding,

> MVNOs deliver benefits to American consumers through pricing structures and service features that are attractive to consumers who have been neglected by the major MVNOs. MVNOs also rate higher for customer service and quality of service than MNOs.
>
> ….
>
> MVNOs have not negatively impacted MNOs' investments or performance – instead, wholesale access contributed to MNO revenues and profits.[65]

87. MVNOs in the United States have not negatively impacted MNOs' investments or performance. On the contrary, wholesale access has contributed to investor revenues and profits. Competitive MVNOs have attracted retail customers to their networks that MNOs themselves do not effectively address, increasing network utilization and hence revenues overall.

88. Since the public hearing in February, two of the Big 3 providers have launched and are now operating 5G networks in various cities across Canada,[66] joining the third which launched late January but only offered service on 5G phones in March.[67]

89. These actions were taken despite a regulatory environment where the Commission has the preliminary view to mandate an MVNO regime and an ongoing global pandemic.

90. TekSavvy submits that under an appropriate MVNO regime, competitive pressures will result in increases in investment by new competitors and maintenance of investment by incumbent MNOs and overall capital intensity in the telecommunications industry will increase. This would be consistent with the direction to foster all forms of competition and investment as well as innovation in telecommunications services and technologies as specified in the new Policy Direction, as well as encouraging conditions consistent with the direction to rely on competition to the maximum extent possible as specified by the 2006 Policy Direction.

91. As referred to in Webb Henderson Study filed with TekSavvy's Further Comments, the growth of MVNOS does not appear to have had a meaningful impact on the revenues of MNOs as evidenced in the following cases:

- Telstra experiences growth in earnings before interest, tax, depreciation and amoritisation (EBITDA) between fiscal year 2014 and 2016, with EBITDA falling

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65 2019-57 Public Hearing Transcript, Volume 4, at lines 6067-6069.

66 Bell, "*Bell launches Canada's largest 5G wireless network*"; TELUS, "*TELUS launched first wave of its 5G network to bolster Canada's exonomic productivity, improve virtual healthcare, and support digital education*" 18 June 2020.

67 Rogers, "*Rogers Only Carrier to Offer 5G Service on Canada's First 5G Smartphone*", 6 March 2020.

in subsequent years. EBITDA margins also increased consistently between fiscal year 2014 and fiscal year 2017, from 40% to 43%, before falling to 34% in fiscal year 2019[68]

- Vodafone, the only MNO without material fixed-line or media operations, has experienced consistent and significant growth in EBITDA, with EBITDA rising 42.9% between 2014 and 2018.EBITDA margins also increased consistently, from 22.1%in 2014 to 27.3% in 2016 to 30.2% in 2018.[69]

- Optus experienced growth in mobile revenue between FY 2014 and FY 2016, and between FY 2017 and FY 2019. Despite a significant drop in revenue between FY2016 and FY 2017, overall revenue is 11.7% higher in FY 2019 compared to FY 2014.EBITDA figures(and margins)for Optus' mobile operations are not publicly available.[70]

92. According to the expert study submitted by Cogeco, MNOs currently enjoy profit levels (43% EBITDA) which constitute a significant margin of 4.6 to 5.2 percentage points over levels typically found in competitive telecoms markets.[71] The study found that even if incumbents decrease investments in the face of competition, it is likely that this decrease will be more than offset by investments from new competitors.[72]

93. This relationship holds as long as the incumbent EBITDA levels are in the range between 43% and 37%. As indicated earlier, most independent industry analysts do not believe that MVNOs will have a significant impact on incumbents' profitability. Moreover, as stated by NEREO consulting, MVNOs help MNOs to improve their EBITDA margins by reducing subscriber acquisition costs with only a slight reduction in ARPU.[73] Thus, it is reasonable to expect overall industry investment to continue at or above current levels if MVNOs are allowed to bring additional competition into the market.

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68 Telstra, *Annual Report 2019*, at page 21; and, Telstra, *Annual Report 2015*, at page 22.

69 EBIDTA margins calculated by reference to EBITDA and revenue figures from Hutchison Telecoms, *Annual Report 2018*, page 3; Hutchison Telecoms, *Annual Report 2016*, page 3; Hutchison Telecoms, *Annual Report 2015*, page 3.

70 Australian Competition and Consumer Commission, *Communications Market Report 2017–18*, at page 27.

71 NGL Nordicity Group Limited, *Economic Impact Assessment (EIA) of Mandated Radio Access Network (RAN) to Hybrid Mobile Network Operators (HMNOs) - Facilities-Based Carriers*, 12 September 2019, at page 15 ["Nordicity study"].

We note that Nordicity's study examined the hybrid mobile network model (HMNO) which is a variation of the facilities-based MNVO regime proposed by TekSavvy and others, but profiled on cableco facilities. TekSavvy submits the results of facilities-based MVNO and HMNO regimes in terms of investment, competition, affordability would be substantially the same.

72 Nordicity study.

73 NEREO Consulting, *MVNO Business Essentials*, October 2014.

94. Other industry analysts such as Drew McReynolds have concluded that MVNOs would not materially affect MNOs' EBITDA.[74] Thus, if profits are not substantially affected by new MVNO competition, then incumbents' investments would not be expected to substantially decrease

95. MNOs argue that mandating an MVNO regime will mean reduced investment in facilities. However, the record of this proceeding demonstrates that the presence of MVNOs will increase MNO revenues. If investment is reduced despite increased revenues, it will be at the discretion of the MNOs themselves, and not a symptom of MVNOs.

96. In the Chipty report, the Competition Bureau did not find conclusive evidence from other jurisdictions of reduced investment incentives resulting from mandated MVNO access. In several jurisdictions where mandated MVNO access was effective in driving down prices, the Bureau did not find evidence that significant decreases in investment had occurred.[75]

97. Similarly, in his expert report for TekSavvy, Australia's Ish Omar of Webb Henderson stated that Australian MVNOs "are regarded as an appropriate way of enhancing retail outcomes through additional services-based competition without unduly detracting from infrastructure investment incentives or significantly remaking the structure of the market."[76] Omar wrote,

> The complementarities between MVNOs and MNOs in Australia have generated value for MNOs. By hosting MVNOs on their network, MNOs are able to obtain wholesale revenue from new market segments without diluting their brand and without materially impacting retail revenues from their core customer base. Such wholesale revenue can be material, particularly in the case of "thin" MVNOs, where MNOs capture the majority of the revenue generated from supplying the services. The value that MVNOs generate for MNOs, if the market settings are appropriate, explain why MNOs in Australia have voluntarily entered into commercial agreements to host MVNOs.
>
> Simultaneously with the growth of MVNOs in Australia, Australia's mobile broadband performance indicators have remained strong by global standards, and MNO revenues and margins have broadly risen. This suggests that entry and growth of MVNOs have not detracted from the investment incentives or financial performance of MNOs.[77]

98. Martyn Roetter of American MFR Consulting provided in his expert report that MVNOs have not negatively impacted MNOs' investments or performance. Instead, wholesale access contributed to MNO revenues and profits. Competitive MVNOs in the US have

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74 Drew McReynolds RBC, *Capital Markets Fall 2019 Canadian Telecommunication Services report*, at page 9.

75 Competition Bureau of Canada, *Further Comments of the Competition Bureau*, 22 November 2019, at para. 219.

76 Webb Henderson Study, at page 11.

77 Webb Henderson Study, at page 32.

attracted retail customers to their networks that MNOs themselves do not effectively address, increasing network utilization and hence revenues overall.[78] Increased revenues should facilitate continued and perhaps even increased investment in facilities.

99. Finally, TekSavvy also notes Spain's mandated MVNO regime, which has been in effect over the last 11 years, has not led to market instability and that incumbent MNOs have continued to invest in technology upgrades despite the presence of MVNOs.[79]

D. It is premature to consider imposing restrictions on any MVNO model

100. Parties in this proceeding have proposed various ways in which a mandated MVNO regime could be circumscribed either to limit who would be eligible to be an MVNO or to limit where MVNOs would be able to provide services. Each of those limitations must be evaluated against whether the resulting mobile market would meet the goals of competition, affordability, and innovation.

101. TekSavvy submits that the key principles of a mandated MVNO regime should first be adopted by the Commission, and discussion of the modalities of application including potential measures to impede foreign ownership be discussed in the February 2020 portion of the consultative process.

a. Eligibility criteria

102. TekSavvy submits that there should be no requirement to have a minimum or maximum number of independent MVNOs operating on national wireless carrier networks.

103. TekSavvy submits that it is unnecessary for the CRTC to mandate specific investment and/or network rollout targets in order to meet the objectives of creating competitive telecom markets and a level playing field across the country.

104. With respect to the ITPA's proposals for eligibility requirements for MVNOs, while TekSavvy agrees with the need for future MVNOs to register with the Commission as a condition of operation, we disagree with the other three proposed threshold requirements. Limiting eligible providers to being telecommunications common carriers under the *Telecommunications Act* would limit eligibility to providers that own or operate "a transmission facility". Without a departure from the traditional understanding of what constitutes a telecommunications common carrier or a transmission facility, this is likely to limit eligible MVNOs to businesses that are already established, traditional telecoms that are not likely to introduce the kind of service innovation the mobile market is searching for.

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78 TekSavvy Further Comments 2019-57, at Attachment 2, Martyn Roetter, *The Wireless Telecommunications Market in the US*, 22 November 2019 ["Roetter Study"].

79 One Development We Connect Thailand, [MVNO Market – Spain](), 1 October 2019.

b. Foreign ownership

105. There is a well-established framework that delineates requirements for Canadian ownership and control in the telecommunications industry in Canada.[80] That framework applies to providers of voice, broadband, data, and mobile services: there are ownership requirements for those that are telecommunications common carriers, and no ownership requirements for those that are not. That balance is driven by the broad policy goals of the *Telecommunications Act* rather than any narrower vision of specific markets or the perceived need to protect particular businesses or exclude others. That broad policy approach, under the purview of Parliament, should also apply to MVNOs, and it is therefore unnecessary for the Commission to introduce ad hoc ownership requirements for the regulatory framework governing MVNOs.

c. Sunset clause

106. In TekSavvy's submission, the time for a phase-out of the MVNO regime should be determined by a future "competitive" market test.

107. A short-term regulatory regime with an arbitrary sunset clause (eg. 5 years) would not reflect the investment cycle for new facilities and unnecessarily add risk and uncertainty to the business planning process for regional competitors. It also does not reflect the regulatory cycle, as borne out by recent regulatory experience: setting rates for existing services in an existing wholesale competitive regime (aggregate wireline HAS services) began in 2015 and while final rates were set in 2019, they are currently under review in three fora and are not likely to be fully resolved until later this year (2020) at the very earliest

108. The five year sunset clause is unrealistic in light of the investment cycle for core and RAN facilities in the wireless industry and would, in effect, prevent Shaw and other potential facility-based MVNOs from attracting significant investment capital for build out in that period. If there must be a phase-out of the MVNO regime, it should be determined by the future "competitive" market, as was successfully applied in the Spanish telecom market.

109. In addition, consider the Competition Bureau's recent RFI response in which it reconsidered its proposed sunset clause as being inappropriate in light of the ongoing covid19 pandemic.[81]

110. TekSavvy submits that in light of the nature of the historic high levels of concentration in the telecommunications industry and the ongoing barriers to entry, there should not be a sunset clause. TekSavvy would propose instead a periodic review on a 5-year basis of the state of competition in the industry and corresponding review of the mandated MVNO access service regulations.

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80 *Telecommunications Act*, S.C. 1993, c. 38, at s. 16.

81 Competition Bureau of Canada, *Review of mobile wireless services, Telecom Notice of Consultation CRTC 2019-57 – Response to request for information*, 29 May 2020.

E. The Commission must not reintroduce barriers to competition that are present in the regulated wholesale wireline market

111. Noting the negative impacts of structural imbalances between incumbents and competitors in the wireline sector, we argue that with dominant market power, the well-known problems persisting on wholesale wireline will only be reproduced in a wholesale wireless environment unless the Commission mandates MVNO access in such a way to deliberately avoid those problems.

112. While the regulatory framework and rates for wireline broadband services have not yet been finalized for mandated wholesale access to fibre-to-the-home (FTTH) services,[82] in theory it ought to have been possible for competitors to negotiate with the incumbents for access to those networks and services. Those negotiated agreements have not in fact emerged; to the contrary, the incumbents have denied competitors negotiated access and have opposed and drawn out the regulatory process for years. Meanwhile, the same incumbents continue to draw out the process to finalize wholesale rates for the older fibre-to-the-node (FTTN) services as well. As CNOC points out, given the incumbents' various current appeals of the CRTC's final rates decision in that proceeding, it will have taken competitors at least sixteen years to obtain meaningful, stable access to the FTTN infrastructure.

113. The MVNO framework must ensure that MNOs cannot place unnecessary burdens on MVNOs to prevent them from offering a full range of services or create two classes of services.

a. Reasonable, timely rates are required

114. The Commission must set reasonable cost-based rates in a timely manner.

115. Over the past eight years, the incumbent carriers have been able to abuse the wholesale costing system, drawing out the costing process, perennially overcharging competitors (thereby keeping prices high for consumers), and ultimately reducing competition.

116. That experience with setting rates in the wholesale wireline context should serve as a cautionary tale for the Commission as it approaches setting rates for any new MVNO regime. Not only must it aim to set rates properly, but it must aim to avoid the errors of the past and prevent incumbents from being able to game the system either by inflating rates or complicating and delaying process.

117. Just and reasonable rates will decide what sort of offerings MVNOs will be able to provide. As per TekSavvy's oral comments, the ability of an MVNO to offer low-cost plans will be based on the rates it will pay to access the mobile networks of the incumbents. If the wholesale rates are too high, it would not make business sense to offer services below the cost of delivery:

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82 *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services,* Telecom Notice of Consultation CRTC 2020-187, 9 September 2020.

> 6159 MS. LO: In our responses to the Commission's RFIs around low-cost plans, our primary position is that MVNOs at large would have the opportunity to deliver low-cost plans to the market. A very important key precondition to the ability to deliver low-cost plans is how the wholesale rates are set. It's just not -- there's no business case for us to be able to offer low-cost plans where rates are too high, and we can't sell the below our fixed cost.
>
> 6160 So, you know, I think generally our TekSavvy brand has always stood for honest and fair pricing. That's what we've done. That's how we price services on our wireline side, and you see that as well in terms of the types of options that we have developed over the years to help customers manage potential overages, and also pushing for unlimited plans and being able to offer that to our customers.

118. TekSavvy maintains its position that current roaming rates are not reasonable and should not be applied to MVNO access.[83]

b. Technology parity is necessary

119. The MVNO framework must ensure that MNOs cannot place unnecessary burdens on MVNOs to prevent them from offering a full range of services or create two classes of services.

120. The network and technical capabilities which comprise wholesale roaming should be included in a full MVNO wholesale access service, in addition to seamless roaming, call hand back, and mandated local backhaul. These features are necessary to create a level playing field between the incumbent MNOs and the smaller players accessing their networks. TekSavvy submits that these specific access features would provide safeguards against incumbents “gaming the system” by limiting competitors’ ability to offer equivalent services.

121. All RAN technologies available from an MNO for its own customers should be available to MVNOs. It is imperative that MVNOs have full and immediate access to the same technologies and features on which MNOs base their retail service offerings. As a result, all network technologies should be subject to mandated Full MVNO access.

122. The Commission must also take particular care to ensure speed matching in terms of access to new networks and technologies.

123. As TekSavvy canvassed at length in recent proceedings,[84] the Commission has long recognized the speed-matching requirement as a fundamental pre-requisite to competition in both residential and business retail Internet service markets, and a necessary safeguard for consumers’ interests. In particular, the Commission

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83 *TekSavvy intervention concerning the Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, at paras. 100-120.

84 *TekSavvy intervention concerning interim relief, suspension of 100 Mbps speed cap condition, and restoration of speed matching requirement*, Canadian Networks Operators Consortium Inc. Part 1 Application to Review and Vary Telecom Regulatory Policy CRTC 2015-326 and Telecom Decision CRTC 2016-379, CRTC Reference 8662-C182-201809534, 7 January 2019.

determined that a symmetrical speed-matching requirement for both ILEC and cable carrier wholesale HSA services was necessary to enable "competitors to compete on a more equitable basis"[85] and to ensure that "competitors in all parts of the country have the same range of options available to them and can compete in multiple markets".[86] Without a speed-matching requirement, "an ILEC and cable-carrier duopoly would likely occur in the retail residential Internet service market, and competition might be reduced substantially in small-to-medium-sized retail business Internet service markets".[87]

124. Speed matching is not only a fundamental cornerstone of the wholesale HSA framework but a prerequisite for telecom competition, applicable to both wireline and mobile competition in Canada today. Furthermore, since higher speeds and better services are generally only available on newer technologies, speed matching requires that new technologies are available to the wholesale market at the same time when they are available in the retail market. As such, unrestricted MVNO access to speeds and technology will be just as crucially relevant to mandated MVNO as access to fibre-to-the node (FTTN) and fibre-to-the-home (FTTH) facilities is in the wireline wholesale market.

125. However, despite the Commission's acceptance of speed matching as a requirement for a competitive market, the wholesale wireline regime has been plagued by regulatory gaming that has prevented wholesale-based competitors from accessing FTTH facilities at the same time that incumbents increasingly use those same facilities to feed consumer demand for higher speeds, while allowing their copper networks to languish.

126. The Commission should also take note of the ability of and tendency for dominant wireline incumbents with market power to manipulate the competitive environment, both by leveraging their control over innumerable inputs

127. Therefore, the Commission ought to consider mandating access to essential services that incumbent operators with market power such as the Big 3 undeniably possess might refuse to provide without the proper mandated regime.

c. Structural or functional separation is necessary

128. TekSavvy again urges the Commission to consider functional or structural separation in addition to mandating wholesale access for full MVNOs.

129. The many barriers that competitors face on the wholesale wireline side are fundamentally a result of the structure of that wholesale market. Incumbent carriers both control the inputs for wholesale competition and benefit in the retail market by limiting those inputs. Until incumbents and competitors each use the same wholesale inputs to provide retail services, carriers will continue to impose barriers on competitors,

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85 *Cogeco, Rogers, Shaw, and Videotron - Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006, at para 209 ["TD 2006-77"].

86 *Bell Aliant Regional Communications, Limited Partnership for services provided in the Atlantic Provinces*, Telecom Order CRTC 2007-21, 25 January 2007, at para 23.

87 *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010, at paras 54-55.

and Canada will not have an efficient and effective competitive market for communications services, either wireline or mobile.

130. Structural or functional separation is a sweeping change that would rebalance incentives to provide an equal playing field to all retail players and disincentives to preference ones retail business over wholesale business. There continues to be a negative impact on wholesale-based providers' end-users and real challenges for wholesale-based providers to be vigorous competitors in telecommunications markets. Without systemic change, the competitive wholesale industry in Canada will never be sustainable.

131. As Ish Omar wrote in the Webb Henderson Study filed with TekSavvy's Further Comments,

> Functional and structural separation creates a decoupling of retail and wholesale markets, with different entities operating at different levels of the market. Under structural separation, infrastructure is owned and operated by a wholesale-only entity that is not controlled by any retail telecoms operator, thereby reducing incentives for the wholesale-only entity to discriminate in favour of its own retail arm (or more broadly to discriminate between retailers). Functional separation allows for common ownership between wholesale and retail entities, although wholesale and retail activities must take place through distinct business units, with regulatory constraints applying to the interaction between the business units to minimize the wholesale business unit of the operator discriminating in favour of its own retail unit.
>
> As noted above, the key difference between functional or structural separation and MVNO access is that MVNOs *coexist* with vertical integration (*i.e.* MNOs continue to operate at both the *wholesale* and retail level). Functional and structural separation models tend to be used in circumstances where infrastructure-based competition is inefficient which is the case in Canada considering all of the evidence on record alluding to that fact.[88]

F. Conclusion

132. Despite years of efforts to try and mitigate the control the large incumbents have over the mobile telecommunication markets in Canada, the playing field remains largely as uncompetitive as ever.

133. The mobile services market remains mostly unchanged due to the adherence to the principles of facilities-based competition by federal regulators. Incumbents control 90% of the mobile services market in Canada[89] and that figure has not changed in light of the stated goals of two federal governments controlled by different political parties and multiple commission chairs.

134. The resulting competitive dynamic is the source of ongoing and persistent issues that harm consumers in Canada.

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88 Webb Henderson Study, at pages 10-11.

89 CRTC, *Communications Monitoring Report* (2019), Figure 8.12, at p. 237.

135. Lack of real choice, limited product differentiation, underserved rural areas, predatory sales practices, and of course some of the planet's highest retail mobile per gigabyte costs are all the symptoms of the larger problem of facilities-based competition.

136. The real benefactors of the commitment to requiring some form of facilities-investment are the profit margins and shareholders of the larger incumbent network operators. The incumbents admit this themselves as they repeatedly stated during the public hearing the intention to prioritize dividend returns and free cash flow over the use of funds to invest in network expansion.[90]

137. Published financial filings reveal the extent to which the publicly traded organization enjoy supernormal profits, so much so that financial industry equity analysts have offered very promising predictions of the incumbent market performance, despite the overall economic impacts of the covid19 pandemic.

138. After over a decade of incremental changes in attempts to make facilities-based competition work, it is time for a different strategy to encourage all forms of competition as per the 2019 Policy Direction. Mandated wholesale access of incumbent mobile networks with just and reasonable rates in the form of MVNOs will allow a market to evolve with real, service-based competition.

139. Comparable international jurisdictions like Australia, European countries and the United States have enjoyed the benefits of MVNO-related service competition. There are more options for customers, more innovative mobile service products and MVNOs have successfully introduced and sustained price discipline on incumbent-controlled markets. MVNOs accomplish the goals Canadian regulators have sought during the course of the last ten years of policymaking.

140. Full MVNO access needs an opportunity to flourish here in Canada. Given that it has not and will not emerge organically, mandated full MVNO is the correct framework to apply. Other suggestions like the Competition Bureau's model or the HMNO proposal by Cogeco each pick winners and losers and would only cement the current anticompetitive dynamic. The single virtual competitor idea proposed by Boron, Kirby and Krstajic[91] is not a feasible solution for similar reasons.

141. Commercial negotiations have failed to produce the type of arrangements that would provide successful competition based on the experiences of multiple intervenors throughout this proceeding. Rates should be determined through the use of incremental phase II costing to generate just and reasonable figures for Full MVNO access.

142. Full MVNO access means the company purchasing wholesale mobile network access has full control over the experience of its customers and the underlying network components like its national IP network and mobile core deployment. This means the

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90 CRTC review of mobile wireless services, Transcript of Bell Mobility Inc. CEO Mirko Bibic lines 1835-1837, 2707-2710 to the Canadian Radio-television and Telecommunications Commission at the Public Hearing related to the Review of Mobile Wireless Services, 19 February 2020.

91 CRTC review of mobile wireless services, *Presentation of Alek Krstajic, Bruce Kirby and Bob Boron to the Canadian Radio-television and Telecommunications Commission at the Public Hearing related to the Review of Mobile Wireless Services*, 24 February 2020.

organizations using the MVNO regime will have total control over the SIM card deployment and device provisioning of their respective customers.

143. There should be minimal eligibility requirements associated with the mandated regime. Although it has conceded more flexibility is needed, with covid19, the Competition Bureau's sunset clause and spectrum requirements are still not realistic strategies to launch new mobile competition in Canada. There are protections against the overreach of foreign ownership in the Canadian telecommunication market baked into the *Telecommunications Act*.

144. Just and reasonable rates would allow companies to set prices that are more in line with the costs of service delivery versus the requirement to fuel massive profit margins. With just and reasonable rates, smaller virtual providers could offer the type of service innovation like low-cost plans and flexible service for underserved communities.

145. Throughout this proceeding, the Commission has heard from a long list of voices that more competition is necessary to improve the mobile services market in Canada. Intervenors like CIPPIC/Open Media, the Manitoba Coalition, and the Coalition for Cheaper Wireless Service have represented a diversity of consumer views and they have called for mandated full MVNO access.

146. Small service providers like Iristel, the members of CNOC, the ITPA and others have also made the call for improved wholesale access to the incumbent networks. These companies seek to offer their communities great service, fair prices and innovative products.

147. The recent developments of covid19 have cast the efforts to implement service-based competition with a new urgency. The importance of fair access to online services everywhere has invigorated multiple levels of new government support. This will mitigate the impact of any theoretical reductions in incumbent investment into network infrastructure.

148. Additionally, with anticipated government support for network builds in rural and remote areas[92] the increased revenue streams with MVNO access will support smaller providers to boost investment in networks in Canada.

149. The Full MVNO model is required in order to deliver on the 2019 Policy Direction's objectives of encouraging all forms of competition, lower prices, prioritizing innovation, access in all regions of Canada, enhanced accessibility, and innovation.

150. TekSavvy thanks the Commission for the opportunity to make these final comments.

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92 CBC News, "Liberals hasten high-speed broadband access plan in response to pandemic," 2 May 2020.