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Canadian Network Operators Consortium Inc.
Consortium des Operateurs de Réseaux Canadiens Inc.

TELECOM NOTICE OF CONSULTATION 2019-57

REVIEW OF MOBILE WIRELESS SERVICES

PRESENTATION OF MATT STEIN, CHAIR OF CANADIAN NETWORK OPERATORS CONSORTIUM

TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

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Good afternoon. My name is Matt Stein, Chair of the Board and President of CNOC. With me are:

- Pete Rocca, Vice-Chair of CNOC, and CEO of Start.ca, a London, Ontario-based provider of Internet, TV and home phone services over both wholesale and facilities-based platforms.

- Ian Stevens, Director of CNOC, and CEO of Execulink Telecom, a Woodstock, Ontario-based provider of SILEC and CLEC voice, BDU Services, facilities based and wholesale data services, as well as mobility services as an MNO in South Western Ontario.

- Chris Tacit of Tacit Law, counsel to CNOC

- Dr. Zhiqi Chen of Carleton University

- And also assisting us and sitting immediately behind me is Stewart Cattroll, of Tacit Law

For completeness sake, I should also mention that while I am also the CEO of Distributel, I am appearing just for CNOC today.

1. The Canadian Network Operators Consortium, known as CNOC, is an association of 31 competitive telecommunications service providers, offering a variety of communications services, such as home phone, television, and perhaps most famously residential Internet,

not to mention all of the B2B and wholesale offerings our members have. Our members are innovative competitors who operate in difficult circumstance that include obtaining key wholesale inputs from reluctant dominant incumbents while competing with them and with each other to provide services that consumers want. In other words, our members *live* competition every day, on the ground, making a difference to the wallet of Canadians.

Services provided over the mobile wireless platform are increasing in significance by leaps and bounds and that competition is critical if Canadians are to reap the full promise of this platform.

2019 CMR figures show revenues in this sector were $27.1 billion, just over half of all telecom revenues in 2018. EBITDA margins in this sector reached a stratospheric 41.0% in 2018 while Bell, Rogers and TELUS, or the Big Three, accounted for 91% of the revenues in this market.

In our submissions to date, we have discussed the problem with the current retail markets for mobile wireless services, which include not only high prices, but also low product differentiation, and high market concentrations.

It is clear that the mobile wireless needs of Canadians are not being met. Sufficient alternatives simply do not exist. The Big Three and regional carriers won't provide these options and they have no desire to enable other service providers to do so either.

It is time for the Commission to mandate the Big Three to provide mandated wholesale access for full MVNO.

It's important to recognize that an MVNO needs to do most of the same things that the big carriers do, other than build a radio network or have its own spectrum licence. A full MVNO invests in, builds and operates its own backbone network and secures its own interconnection agreements with other carriers to terminate traffic. A carrier of this type must also deploy a variety of facilities including its own switches and servers in order to interconnect with traditional MNOs. However, the MVNO does not have to incur the prohibitive cost of acquiring scarce spectrum before it can operate, removing one of the most significant barriers to entry.

In fact, it bears reminding that the last time there was new entry, three well-funded firms bought spectrum, built a network, set out to establish a brand, and create a retail presence. We all know where that story ended. All three failed and were bought up by three of the four largest telecoms in Canada. Imagine the competitive benefits Canadians would have enjoyed, had the billions of dollars they spent on spectrum and network construction been diverted to other aspects of their business. Canadians would have three more national wireless providers to chose from and would be paying far less than they are today. Maybe it was too early to have a mandated MVNO regime at the time, but we've learned from that mistake, and the time is now.

The full MVNO option requires millions of dollars of investment by each MVNO. The option also provides an MVNO the flexibility to invest in available spectrum where there is sufficient density to warrant such an investment.

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Importantly, for Canadian consumers who are clamoring for lower prices and greater choice, mandated full MVNO access can be made available immediately using interim terms and conditions, with some minor changes to the national carrier domestic roaming wholesale tariffs. These interim conditions would involve the adoption of existing domestic wholesale roaming regulated rates as interim full MVNO access rates and the lifting of the prohibition on permanent roaming for full MVNOs.

Full MVNOs can also add significant value and innovation in retail services in the market that other lesser forms of MVNO cannot do and we would be pleased to provide some examples if the Commission is interested.

We caution the Commission not to accept other lesser forms of competition. For example, if only regional carriers are allowed to become full MVNOs, all Canadians will get is more of the same type of undifferentiated services that we see in the market today. Recent developments such as so-called ‘unlimited data plans’ offered by certain carriers are not indicative of the development of a sufficient level of overall competition. This is just a point in time response to government, regulator, and competition bureau focus in 2019.

It is not practical for the Commission to run a proceeding like this yearly, just to perpetually remind the Big Three to keep up their pretense of competition.

Retail regulation is also not the solution. Retail regulation is inappropriate as it will not maximize competitive benefits or promote competition in an economically efficient manner. More importantly, it will not unleash the competitive creativity enabled by a full MVNO regime, which gives competitors access to the building blocks they need to think outside the box when designing new services. If all that is perpetuated is what exists, all society will get is more of the same. There will be no true disruption and Canadians will not even know what has been lost.

The technical implementation of a full MVNO model is easy. Full MVNO models have been developed in many countries around the world, and all the equipment vendors being used in our networks have deployed MVNO elsewhere.

One of the most important terms and conditions of a successful mandated wholesale regime for full MVNOs will be a requirement for the national carriers to ensure that full MVNOs hosted on their networks are able to obtain access to mobile wireless devices. After all, Connectivity is just one half of mobile wireless service - the other half is the device itself, the part you hold in your hand.

Large device manufacturers, such as Apple and Samsung, are reluctant to sell their mobile wireless devices directly to smaller carriers, such as MVNOs. You can see this playing out by looking at the phone selection available on most networks below a certain size. Wind, for example, had trouble getting traction in the mind of consumers until it was able to offer the iPhone. Unless appropriate measures are taken, at best, MVNOs will only be able to obtain devices that are several years old from third party suppliers.

The inability to obtain access to the latest mobile wireless devices represents a very serious barrier to entry and expansion for MVNOs. Consumers have an insatiable appetite for the latest and greatest mobile devices, and unless MVNOs can provide these devices to their customers, their ability to compete will be severely curtailed.

To remedy this deficiency, CNOC is proposing that the Commission impose a condition on the national MNOs that would prevent them from selling a mobile wireless device to their own customers unless they also make that device available to MVNOs on a white label basis integrated for the host MNO network.

We realize that the national carriers sometimes negotiate exclusivity periods for certain new devices with device manufacturers relative to other MNOs. Under our proposal, such reasonable exclusivity periods would be respected and full MVNOs would only be able to sell these white label devices obtained from the national carriers once the exclusivity period had expired.

Final MVNO access wholesale rates should be set using the Commission's tried and tested Phase II costing method plus an appropriate mark-up. This is the approach that encourages maximum retail pricing flexibility including innovative service pricing and bundling by competitors. While we do not oppose negotiated alternatives, having a tariffed backstop is absolutely essential.

Other issues that should be addressed in a final full MVNO access regime include device availability, final rates for the service, seamless roaming and call hand back. We can provide further details in response to your questions. However, none of these issues can or should hold up the establishment of an interim regime.

We are aware of concerns about the amount of time Phase II costing can take and share these concerns. CNOC has been developing proposals to address this issue, which is caused by incumbent gaming and delay. CNOC will present its proposed solution in the upcoming proceeding which is expected to launch shortly on the setting of rates for wholesale services. Without foreshadowing this too much, I will simply point out that the current process can be gamed to make it take a very long time, which ultimately only serves to benefit those who didn't want it in the first place. Creating a mechanism that favours speed on all sides will address this.

The Commission should resist pleas for other pricing models such as retail minus, which may seem to be straightforward, but would actually be as or even more difficult to implement given pricing differences that vary by incumbent carrier, time and geography, and a lack of proper reference points due to deep discounts, many of which are not posted and constantly changing. by linking a competitor's retail pricing to that of an incumbent, the creation of new and innovative services that are priced differently would also be stifled. A retail minus pricing model would do very little for unleashing the creative competitive potential of the marketplace.

The Commission should also reject a final offer arbitration method of setting rates. The information asymmetry between full MVNOs and the national wireless carriers will mean that full MVNOs will be at a profound disadvantage when it comes to final offer arbitration.

Moreover, the horizontally and vertically integrated Big Three are not really motivated to come to a reasonable negotiated or arbitrated resolution of any rate dispute. Final offer arbitration will not satisfy the requirement in the *Telecommunications Act* that rates be just and reasonable, especially considering that the stakes of such an arbitration may be whether an MVNO can obtain reasonable rates through this process that will enable it to compete at all. In any event, no change in the method used by the Commission to set wholesale rates should be adopted before the Commission conducts the proceeding that will review how rates for wholesale services are set.

I also want to address the much-discussed investment bogeyman. According to this theory, frequently trotted out by incumbents, unless they are allowed to continue to charge supra-competitive prices, prices that are much higher than is appropriate based on international comparisons, the incumbents will stop or significantly slow down investing.

This line of reasoning is just not credible, and you should reject it for a number of reasons.

First, just because the incumbents may receive less revenues in a more competitive environment, which is not necessarily true in any event, it does not follow that they will need to make up the difference by slashing their investment budgets. In fact, the incumbents have many cash flow management options that would allow them to maintain their current levels of investment, including by deciding how much to pay in dividends to their shareholders and how much to retain in cash and short-term investments.

Even if you did believe that they wanted to pull the investment back, the simple answer is that they will continue to invest because it still generates these kinds of returns. At what point do we simply say, 'enough'? Canadians are tired of paying sky high prices only enabled because we have allowed the Big three to have their run of prices for too long, in too coordinated a fashion.

Second, investment decisions are not made on a moment-by-moment basis; they are made based on a risk adjusted evaluation of possible future outcomes over an extended time horizon. The reality is that the incumbents have priced in the possibility of being required to provide mandated wholesale access in approving their current investment plans. The only way one could say the 'risk' of mandated MVNO is not priced in would be to assume the Big Three don't believe there is any likelihood of it happening. Did they not read the Commission's preliminary view in this proceeding? Did they miss the 2019 Policy Direction? Did they not hear the public outcry during the 2019 Federal election? In addition, over the last several months we've seen their op-eds, expert reports, and marketing campaigns, that all tell us the Big Three realize their time of unchecked pricing is at risk. If they were going to pull investment because of mandated MVNO, they already would have. They wouldn't have announced 5G deployments. They wouldn't be trumpeting their investments at investor conferences and on quarterly conference calls. – they would have waited.

Third, regional carriers would still thrive under the regime we propose. While they would not be required to provide mandated full MVNO wholesale services, they would have the option of attracting their own wholesale businesses on a voluntary basis at rates and on terms and conditions they set.

They could also choose to operate as full MVNOs outside of their regional territories, all of which could increase their revenues and give them new opportunities.

When it comes to selecting a remedy for the lack of competition in mobile markets there is a lot more at risk than just those markets. The Commission should be mindful that, with some narrow exceptions, the regional carriers are all vertically (and in many cases horizontally) integrated service providers. Full MVNO is not only needed to ensure competition in mobile markets, it is essential for ensuring continuing and increased competition in the markets for bundled wireless and wireline telecommunications services. In the absence of such access, consumers will abandon competitors who cannot offer full bundles and will migrate back to the incumbents. This will result in a resurgence of a duopoly in the provision of wireline services, while wireless service choices will be about as limited as they are today, with the same unfortunate outcomes for Canadian Consumers.

We urge the Commission to advance consumer interests by adopting the recommendations that CNOC is making in this proceeding.

This concludes our presentation and we would be pleased to respond to the Commission's questions.

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