In the matter of

Telecom Notice of Consultation CRTC 2019-57, 2019-57-1

Call for Comments – Review of mobile wireless services

Reply to the Commissioner of Competition's

Economic Studies

Canadian Wireless Telecommunications Association

January 13, 2020

Executive Summary

1. In its Further Comments[1], the Competition Bureau (the "Bureau") acknowledges that "[a]ll else equal, facilities-based competition is the most sustainable and effective form of competition".[2] It also concludes that existing policies promoting facilities-based competition are paying dividends in the form of increased competition and lower prices, but "this competition has not yet reached its full potential…"[3]

2. It is not surprising that facilities-based competition in Canada has yet to reach its full potential. Regional Providers are still in the process of establishing themselves in the market, making large investments to build and expand their networks to serve Canadians in a growing proportion of the country. The fact that Regional Providers have not yet reached their full potential is not justification for mandating MVNO access. The question is whether the momentum in delivering positive consumer outcomes that facilities-based competition exhibited during the Bureau's study period is continuing today. If it is, the case for a mandated wholesale MVNO access regime only gets weaker, as the potential for doing harm increasingly outweighs any potential benefits.

3. The data relied upon by the Bureau and its economic expert is primarily for the years 2016 to 2018. More recent market developments show that the benefits of facilities-based competition observed by the Bureau from 2016-2018 have continued, and even increased, throughout 2019. Prices for wireless services have decreased and data allotments have increased. Canada's wireless adoption rate and data consumption have also increased, as has the share of new subscribers captured by the Regional Providers. The superior quality and coverage of Canada's wireless networks have been further attested to, particularly with respect to the performance and availability of wireless services in rural Canada. Continued investment in wireless networks would not have occurred if there were not intense competition between facilities-based wireless providers.

4. With respect to the potential benefits of a mandated wholesale MVNO access regime, after reviewing international examples, the Bureau was unable to find conclusive proof that a broad-based mandated MVNO regime results in increased competition and lower prices. In addition, the Bureau concludes that in order to have an impact on competition comparable to that of the Regional Providers, an MVNO would ideally have to obtain a 20% market share. The Bureau acknowledges that achieving such a market share is unlikely.

5. The Bureau also notes that any market share that an MVNO is able to capture would come, in large part, at the expense of the Regional Providers; the very companies that the Bureau singles out as having a crucial role in raising the competitive intensity and lowering prices in the Canadian wireless market.

[1] TNC 2019-57, Competition Bureau Further Comments, November 22, 2019 (the "Bureau Report")
[2] Bureau Report, paragraph 257.
[3] Bureau Report, paragraph 331.

6. The Bureau is also unable to provide conclusive evidence that a mandated MVNO access regime would not have a negative impact on investment in wireless infrastructure. The Bureau points out the difficulty in drawing conclusions from international comparisons due to a variety of factors, including that many of the countries that have introduced a mandated MVNO regime did so partly to encourage a fourth MNO entrant; unlike Canada which has a fourth MNO new entrant in most regions. The Bureau notes that investment implications are likely to be different in Canada and that the Regional Providers' investment capacity could be especially harmed by a broad-based mandated MVNO regime.

7. Despite the inconclusive evidence from jurisdictions that have imposed MVNO access regimes, the Bureau's economic expert, Matrix Economics, succinctly explains the asymmetrical risk-sharing between MNOs and MVNOs; with MNOs bearing all of the investment risks but having to share the upside with MVNOs. Matrix concludes that mandating MVNO access may reduce the incentive to invest and that "[t]his kind of erosion of investment incentives would be particularly harmful on the eve of 5G, where incumbents are posed to make significant investments."[4] This negative impact on investment would also reduce the rate of expansion of wireless networks into rural areas, as well as Regional Providers' expansion into, and their ability to provide additional competition in, new markets.

8. Given the ongoing positive consumer outcomes being delivered by existing policies supporting facilities-based competition, the Bureau's uncertainty that a broad-based mandated wholesale MVNO access regime will deliver a meaningful increase in competition, as well as its concern that such a regime could cause significant harm to the Regional Providers and the incentive to invest in wireless network infrastructure, there is simply no basis for deviating from policies that recognize facilities-based competition as the best way to protect the interests of consumers.

9. Even the Bureau's proposal for a limited mandated MVNO access regime, designed to increase competition without harming the growth of the Regional Providers or investment in Canada's wireless infrastructure, is not guaranteed to work. CWTA maintains its position that a mandated wholesale MVNO access policy, of any kind, is unwarranted and could do more harm than good.

10. With respect to the Bureau's suggestion that the Commission consider decoupling of device financing and service contracts, the Bureau does not offer a sound analysis or evidence of the potential impact of such a rule on consumers. Such a rule is likely to have negative consequences for many consumers, including less availability or disappearance of current 0% interest or $0 down payment device contracts. In addition, some consumers would likely become ineligible for device financing and have to resort to other potentially more expensive means to finance the purchase of a mobile device.

[4] See footnote 46 below.

Introduction

11. Pursuant to paragraph 23 of the CRTC's Review of mobile wireless services – Changes to Procedure, dated October 28, 2019, the Canadian Wireless Telecommunications Association ("CWTA") submits its reply to the Bureau's economic studies, appendices and supporting documents, filed with the Commission as "Further Comments of the Competition Bureau" dated November 22, 2019.[5]

12. At the outset, CWTA notes that it does not intend to respond to all of the findings and conclusions of the Bureau's Further Comments, but rather focus on some of its key findings and their importance to the review being undertaken by the Commission. Failure by CWTA to respond to any particular finding, position or argument in the Bureau's Further Comments should not be interpreted as agreement with such finding, position or argument.

13. In setting out the scope of this proceeding, the Commission stated that its focus "is to ensure that its mobile wireless service regulatory framework facilitates <u>sustainable competition</u> that provides <u>reasonable prices</u> and innovative services, as well as <u>continued investment</u> in high-quality mobile wireless networks in all regions in the country"[6] (emphasis added). Under policies that encourage facilities-based competition, the wireless industry has seen positive consumer outcomes across all key metrics and continued momentum toward the objectives set out by the Commission. In light of these positive trends, there is simply no evidence to support a deviation from policies that recognize facilities-based competition as the best way to protect the interests of consumers. In particular, there is no credible evidence that mandated MVNO wholesale access will result in benefits that outweigh its costs. Key findings by the Bureau support CWTA's position.

14. In Part 1 of its Further Comments, the Bureau examines the state of competition in the wireless industry in Canada. Our discussion of Part 1 of the Bureau's Further Comments focuses on the Bureau's findings that policies encouraging facilities-based competition are paying dividends and how events since the 2016-2018 period of the Bureau's market study show ongoing positive effects of facilities-based competition.

15. In Part 2 of its Further Comments, the Bureau considers actions that could be taken by the Commission to promote greater competition in the wireless market. We examine how the considerations made by the Bureau in arriving at its recommendations support CWTA's position that a mandated wholesale MVNO access regime, of any kind, carries risks that far outweigh any alleged benefits.

[5] TNC 2019-57, Competition Bureau Further Comments, November 22, 2019 (the "Bureau Report")
[6] Telecom Notice of Consultation CRTC 2019-57 at paragraph 22.

16. Finally we respond to the Bureau's suggestion that the Commission consider decoupling device financing and service contracts.

Market Developments Beyond Period of Bureau Study

Continued Competitive Intensity and Positive Consumer Outcomes

17. Relying primarily on data from 2016-2018 as analyzed by its economic expert, Dr. Chipty of Matrix Economics ("Matrix"), the Bureau found that while, in its view, the three national mobile wireless providers, Bell, Rogers and TELUS, possess market power in most regions of Canada, the federal government's fourth carrier policy, based on the principle of facilities-based competition, is paying dividends.[7] Regional Providers[8] such as Videotron and Freedom Mobile are bringing meaningful disruption to the wireless market, resulting in increasing competition, more choice for consumers, more investment and declining prices. While the Bureau notes that the impact of Regional Providers is not evenly distributed throughout Canada and that the growth of Regional Providers has been slow, this is not surprising, as building out wireless networks and establishing retail presence takes time and significant investment.

18. Given the dynamic nature of the wireless industry, it is important to consider whether the trends observed by the Bureau from 2016 to 2018 have continued beyond 2018. If there is evidence showing that, under policies supporting facilities-based competition, sustainable competition and positive consumer outcomes continue to gain momentum, the case for mandated wholesale MVNO access only becomes weaker.

19. As noted in CWTA's submission dated November 22, 2019 ("Further Comments"), under policies that encourage facilities-based competition, the wireless industry has, throughout 2019, experienced increased competitive intensity leading to declining prices, increasing wireless coverage and data usage, and world-class network quality and coverage.[9]

20. While the national unlimited plans unveiled in the summer of 2019 are the most prominent instance of a continued decline in prices, they are not the only indication of continuing intense competition within the industry. Throughout 2019, facilities-based wireless providers introduced new and innovative offerings, such as double the data of some of their previous plans with no price increase, large bonus data allotments (e.g. 100GB) that can be used throughout the year in addition to monthly data allotments, other forms of data overage protection, and new forms of device financing. As Scotiabank reported, "…the recent back to school period has been one of

[7] TNC 2019-57, Competition Bureau Further Comments, November 22, 2019 (the "Bureau Report"), paragraphs 145 and 234.
[8] Region Providers means regional facilities-based new entrant providers, including, but not limited to, Freedom Mobile, Videotron, and Eastlink.
[9] CWTA Further Comments paragraphs 9 to 25.

the most competitive periods in the last decade driven by facility based competitors such as Shaw/Freedom, Quebecor/Videotron and Eastlink."[10]

21. More recently, TD Securities reported that the competitive intensity in the wireless industry seen during the summer and fall of 2019 has continued through the holiday season and is expected to continue into 2020:

> Our recent channel checks and discussions with management lead us to conclude that competitive intensity in the Canadian wireless market remains intense, and above historical norms. Promotional battles started in the July/ August back-to-school period in the aftermath of unlimited data plans being launched by incumbent carriers, with responses from both Shaw/Freedom (bigger handset subsidies under Absolute Zero plans) and Quebecor/Videotron (big increases in data buckets plus increased marketing of the Fizz discount/ flanker brand). This intensity has continued and arguably even accelerated during the holiday season, with a multitude of second-line discounts, free gifts with purchase, promotional bill credits, and of course, hefty handset subsidies. In this report, we have lowered our forecasts for each of Rogers, TELUS, BCE, and Quebecor, and we outline our expectations for the upcoming Q4/19 results (note that we already lowered our Freedom forecasts in our Q1/20 preview note for Shaw) (emphasis added).[11]

22. In addition, the pre-2019 price differences between provinces noted by the Bureau are declining significantly and in many cases have effectively disappeared. For example, the unlimited data plans introduced by the national wireless providers in 2019 were generally made available at the same price in every province. As Bell notes in its Further Comments, "[t]o the extent differences in headline prices between provinces have persisted, they tend to relate to Quebec and be limited in the range of $5 to $10."[12] Similarly, in its Further Comments, SaskTel observes that "prices are dropping substantially in areas of Canada beyond previous regions of strong competition. The gap between, for instance, Saskatchewan prices and national prices is narrowing."[13]

Declining Prices are a Result of Increased Competition

23. While the financial analyst community has made clear that increased competition has led to lower prices and other innovative offers benefiting consumers, and despite statements by the Bureau elsewhere in its Further Comments that state price declines are attributable to increased competition, the Bureau devotes a section of its Further Comments questioning the role that competition has played in lowering prices.[14] It does so by relying on outdated or misleading data and by offering an alternative explanation without credible supporting evidence.

24. First it argues that while the price per GB has been steadily decreasing, consumers' monthly bills have "not been decreasing significantly, in fact it has actually slightly increased."[15] While the data on which the Bureau bases its claim is not available to CWTA, we assume it is limited to

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[10] Scotiabank – Daily Edge – Telecommunications Services – September 23, 2019.
[11] TD Securities – Intense Competition Equals Lower Estimates/Targets – January 3, 2020
[12] Bell Mobility Inc. TNC 2019-57, Further Comments, footnote 74.
[13] SaskTel, TNC 2019-57, Further Comments, paragraph 15.
[14] Bureau Report, paragraphs 53 to 58.
[15] Paragraph 54.

data from the 2016-2018 period referenced in the Bureau's Further Comments. Using more recent data, Scotiabank reports that:

> "Wireless key performance indicators show that competition has been rising with a long runway. In particular, all three incumbents' ARPUs are now in decline and postpaid churn is rising. We believe these trends have been indirectly driven by competition from Shaw and Quebecor."[16]

Scotiabank further estimates in the same report that ARPU decline will continue over the next two years. A recent research note from TD Securities offers similar estimates regarding declining ARPU into 2020.[17]

25. Regardless, if the price per GB is decreasing, any increase in a consumer's monthly bill is the result of the consumer's desire to use more wireless services, such as mobile data, and their purchase of a plan that accommodates such increased use. Increased mobile service usage does not negate the fact that the per unit price for mobile services, in this case measured on a per GB of mobile data basis, is declining.

26. Secondly, despite admitting that the price per GB of mobile wireless data is declining in Canada,[18] the Bureau argues that it is declining less rapidly than in other G7 countries plus Australia. To make this argument, the Bureau switches from ARPU and instead relies upon the average of the prices for 1GB, 2GB and 5GB plans from the Wall/Nordicity price comparison studies from 2015 to 2018.[19] Its conclusion is troubling for a number of reasons.

27. The methodology of the Wall/Nordicity price comparison studies is extremely limited, as it only collects pricing data for six Canadian cities, four U.S. cities, and one city in each of Australia, the U.K., France, Italy, Germany, and Japan. As Nordicity stated in its 2016 study, which employed the same methodology, because of the limited sample size, "the prices cited for Canada, US or the international jurisdictions are not meant to be statistically representative of the individual countries as a whole."[20]

28. In addition, the decline in prices in Canada indicated in Figure 6 of the Bureau's Further Comments is, when compared to the pricing data in the Commission's Communications Monitoring Report, grossly undervalued. While Figure 6 does not give precise numbers, the line graph in Figure 6 shows average prices in Canada increasing between 2016 and 2017, with a slight decline from 2017 to 2018. In contrast, the Commission's Communications Monitoring Report shows that from 2016 to 2018 prices for the three service baskets used in the Bureau's Figure 6 declined by an average of 28% (i.e. 1GB declined on average by 22%, 2GB plans by 28%, and 5GB plans by 35%).[21]

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[16] Scotiabank - Wireless Results Rule Out the Need For MVNOs – November 11, 2019.
[17] TD Securities – Intense Competition Equals Lower Estimates/Targets – January 3, 2020
[18] Bureau Report, paragraph 60.
[19] Bureau Report, paragraph 57.
[20] https://crtc.gc.ca/eng/publications/reports/compar/compar2016.htm#Caveats – see Caveats to the Interpretation of the Findings of this Study.
[21] Figure 2.2 - https://crtc.gc.ca/eng/publications/reports/policymonitoring/2019/cmr2.htm#a5

29. Similarly, the latest Communications Monitoring Report shows that the average revenue per-gigabyte of wireless data has declined by 56% from 2015 to 2018, and this was before unlimited data plans were launched across the country in 2019.

30. While these figures do not, in and of themselves, show that prices in Canada are declining any faster or slower than other countries, they do cast doubt on the Bureau's conclusion. In addition, since the Bureau raised the issue of ARPU, we note that in its Further Comments, Rogers shows that, during the period from 2013-2018, of the G7 countries plus Australia only two countries saw a faster decline in ARPU than Canada.[22]

31. However, like the Bureau's faulty logic regarding the relationship between ARPU and the cost of services, the pace of decline in wireless prices should not cause one to doubt that facilities-based competition is the cause for a decline in wireless prices in Canada.

32. Finally, while the Bureau admits that a decline in wireless prices "could suggest that any market power the Big 3 may have held in the past is being reduced through competition"[23], it argues that the reduction in prices could be attributable to a decrease in network operating costs.[24] However, the only support it offers for such assertion is a short article from 2016[25] that provides a high level explanation of LTE networks. The article does not analyze prices and only makes one passing reference to the fact that the cost of deploying LTE networks may be lower than previous generations.

33. Absent evidence to the contrary, and based on analysis from the financial industry, as well as the Bureau's own statements elsewhere in its Further Comments that prices have declined in large part to an increase in competition from Regional Providers, there is little doubt that the increase in competitive intensity in the wireless market is the primary reason for the steady decline in prices of wireless services.

Continuing Impact of Regional Providers

34. The Bureau places significant emphasis on the impact that Regional Providers played in the 2016-2018 period in increasing competitive intensity in the wireless industry. The Bureau also stresses the importance of not imposing an ill-designed mandated MVNO access regime that would stifle the growth of the Regional Providers. It stands to reason then, that if the impact of Regional Providers continued to grow in 2019, the Bureau's caution against imposing a regime that would harm the Regional Providers takes on even more importance.

[22] Rogers, Further Comments, paragraph 33.
[23] Bureau Report, paragraph 53.
[24] Bureau Report, paragraph 57.
[25] Bureau Report, paragraph 57.

35. As indicated in paragraphs 20 and 21 above, the Regional Providers continued to play an important role in increasing competitive intensity and rivalrous behavior in the wireless market in 2019. Of the Regional Providers that report quarterly subscription numbers, Freedom Mobile and Videotron continued to have success in attracting new subscribers, accounting for a combined 24% and 25% of new wireless subscribers in each of the second and third quarters of 2019.[26]

36. The Regional Providers also continued to invest heavily in their wireless networks, both upgrading their networks and expanding them into new markets. For example, Matrix noted that as of December 2018 there were no regional wireless service providers in four CMAs, namely: Lethbridge, Alberta; Kelowna, B.C.; Victoria, B.C. and Belleville, ON. That is no longer true. Freedom Mobile has either launched or announced plans to launch in each of those CMAs.[27]

37. The Regional Providers are not resting on their laurels. For example, Scotiabank foresees that each of Videotron and Freedom Mobile have aspirations to capture 20%-30% of their covered population.[28] But in order to do so they require a stable regulatory environment in which to operate; especially one that recognizes the importance of facilities-based competition.

38. What the Bureau's findings and recent developments show is that Regional Providers are still in the process of establishing themselves in the market, and more time must be given by the Commission before the full benefit of their activities can be measured. In particular, the Commission should not implement any policy that could threaten the momentum of the Regional Providers and the contribution they are making to the wireless market.

Increasing Data Usage

39. The Bureau suggests that a lack of competition in the wireless market is evidenced by low data usage during the study period of 2016-2018, which "suggests that Canadians are likely lowering their consumption in the face of high prices in certain regions in Canada."[29]

40. Whether or not this is true, what is more important is how increasing competitive intensity among facilities-based providers is affecting data usage. As mentioned by the Bureau, shortly after the introduction of its unlimited plans in 2019, Rogers observed that subscribers to those plans increased their data usage by an average of 50%.[30]

[26] TNC 2019-57, CWTA Further Comments ("Further Comments"), November 22, 2019, paragraph 15.
[27] https://mobilesyrup.com/2018/12/16/freedom-mobile-announces-plans-to-extend-lte-coverage-in-2019/
https://www.iphoneincanada.ca/shaw/freedom-mobile-kelowna-lethbridge/
[28] CWTA Further Comments, paragraph 18.
[29] Bureau Report, paragraph, paragraph 41.
[30] Bureau Report, paragraph 47.

41. More recently, Rogers has stated that subscribers to its unlimited plans are using an average of 7GB to 8GB per month, or over two times the average usage prior to the introduction of these plans.[31] Subscriber reaction to the new unlimited plans shows that, as a result of increasing facilities-based competition, and without the need for regulatory intervention, positive consumer outcomes continue.

Recent Market Developments - Conclusions

42. Recent market developments show that the benefits of facilities-based competition observed by the Bureau from 2016-2018 have continued, and even increased, throughout 2019. Prices for wireless services have further decreased and data allotments have increased. Canada's wireless adoption rate and data consumption have also increased, as has the share of new subscribers captured by the Regional Providers. The superior quality and coverage of Canada's wireless networks have, as noted in CWTA's Further Comments,[32] been further attested to, particularly with respect to the performance and availability of wireless services in rural Canada. Continued investment in wireless networks would not have occurred if there were not intense competition between facilities-based wireless providers.

Mandating Wholesale MVNO Access – The risks outweigh alleged benefits

No Proof of Claimed Benefits

43. Throughout this proceeding, CWTA has argued that the alleged benefits of mandated MVNO access are purely speculative, and that the idea that mandated MVNO regimes are widely employed elsewhere or would have minimal negative impact on investment is unfounded. This position is largely supported by the Bureau's conclusions in Part 2 of its Further Comments.

44. After reviewing the international experience with mandated MVNO regimes, either as a merger remedy or as a regulatory intervention, the Bureau recognized that very few countries have implemented such a regime[33] and concludes that outcomes have been mixed with some countries experiencing increased competition while others did not.[34] The lack of direct correlation between a mandated MVNO regime and increased competition is attributed by the Bureau to the fact that "outcomes reflect the impact of numerous concurrent and consecutive policies and market events" and that "significant differences between the countries studied in terms of population density, land mass and other related features…may mean policies that were effective elsewhere may not always be appropriate in Canada".[35]

[31] Scotiabank, Rogers 5G Analyst Meeting Highlights, January 8, 2020.
[32] Ibid, paragraphs 21-24.
[33] Bureau Report, paragraph 153.
[34] Bureau Report, paragraph 238.
[35] Bureau Report, paragraph 153.

45. Unable to find conclusive evidence based on international examples to support claims that a mandated MVNO access regime would be beneficial to Canada, the Bureau concludes that, based on its assessment of Canada's wireless industry and the impact that Regional Providers have had on competition, in Canada "an MVNO would have to obtain above 5.5% market share to have an impact on the market, but ideally an MVNO would achieve a 20% market share to have a comparable impact to that of wireless disrupters".[36]

46. The Bureau further notes that attaining such a market share would be unlikely, especially given that in Spain and Austria, jurisdictions that have employed mandated MVNO access regimes, the collective MVNO market share obtained was 10% and 7%, respectively.[37]

47. This observation is similar to that of Dr. Christian Dippon who CWTA referenced in its Further Comments. Dr. Dippon observed that most MVNOs, whether in a mandated MVNO access regime or otherwise, target niche markets and their total market share is about 5%. More importantly, only about two of the independent MVNOs typically compete directly with the facilities-based operators and gain less than 1% market share when they do so.[38]

48. This leads to the question of how a mandated MVNO regime would be able to achieve the "ideal" market share of 20% in order to deliver the same benefits that the Bureau attributes to the presence of the existing Regional Providers. The Bureau concludes that the likelihood of success is largely dependent on access rate setting, with too high a rate making it unlikely that a MVNO will capture the desired market share, and too low a rate putting Regional Providers at risk, "as the economics of being an MVNO are more appealing than investing".[39] The vulnerability of the Regional Providers under such a regime would be exacerbated by the fact that MVNOs would likely target the customer base of the Regional Providers in order to capture the market share needed to be effective.[40]

49. Having considered the elements necessary for a broad-based mandated MVNO access regime to be effective, the Bureau concludes:

> Were it to be the case that wireless disruptors were still not showing promise, it might be justifiable to pursue a broader MVNO policy; however, in the Bureau's view at this time <u>the risks associated with such a policy are too high for it to be warranted</u>.[41]

50. In summary, the Bureau was unable to find conclusive evidence that a broad-based mandated MVNO access regime will result in increased competition and lower prices in the Canadian

[36] Bureau Report, paragraph 238.
[37] Bureau Report, paragraph 238.
[38] CWTA Further Comments, paragraph 63.
[39] Bureau Report, paragraph 264.
[40] Bureau Report, paragraph 265.
[41] Bureau Report, paragraph 265.

wireless market.[42] In addition, if MVNOs were to have an impact in the market comparable to the Regional Providers, the Bureau concludes that an MVNO would have to obtain a market share of 20%; something the Bureau considers unlikely. Also, any success in capturing meaningful market share would be disproportionately at the expense of the Regional Providers; the very companies that that the Bureau has singled out as having a crucial role in raising the competitive intensity and lowering prices in the Canadian wireless market.

Negative Impact on Investment

51. Following its review of the international experience with mandated MVNO access regimes, the Bureau concludes there is insufficient evidence of decreased investment as a result of MVNO policies in other countries.[43] However, the Bureau acknowledges that drawing conclusions from the international experience is difficult given the small sample size, the lack of information regarding outcomes, the presence of concurrent policies, and the significant differences between countries in terms of population density, size and other features.[44]

52. The Bureau also notes that many of the countries that introduced a mandated MVNO regime did so partly to encourage a fourth MNO entrant, which is not the case in Canada:

> In the Canadian context, most regions in Canada have a fourth MNO in the process of expanding to reach their full competitive potential. The investment implications are likely to be different in Canada for the facilities-based entrants who may be particularly at risk in competing with an MVNO with access to the incumbents' relatively high-quality networks. This could be detrimental to their future investment prospects, particularly given their already narrower margins and high capital intensity. [45]

53. Due to these limitations and differences, the Commission should not rely on the Bureau's observations as conclusive evidence that a mandated MVNO access regime would not have a negative impact on investment.

54. Instead, in addition to evidence provided by CWTA and its members in their respective interventions to this proceeding, one only needs to look to the report by the Bureau's own expert to appreciate the common sense and negative impact of mandated MVNO access on investment. In its report for the Bureau, Matrix states:

> Economic principles suggest that forcing incumbents to allow competitors to use their infrastructure would likely reduce the incumbent's investment incentives. An MNO's decision to invest in infrastructure is

[42] The Bureau notes in paragraph 331 of its report that "…mandated MVNO policy applied broadly risks undermining the steps taken by wireless disruptors, without much certainty that the MVNO policy will significantly decrease prices."
[43] Bureau Report, paragraph 239.
[44] Bureau Report, paragraph 153.
[45] Bureau Report, paragraph 239.

> inherently risky – it does not know in advance whether demand will be sufficient to cover the cost of its investment.[46]

55. Matrix further explains that the risk assessment for MVNOs is different:

> As another academic article explains: "After the incumbent has invested in an asset, entrants can wait to see if an innovation is successful before they enter. Therefore, the incumbent will find its profits reduced in good states by entrants seeking access. Risk-sharing is therefore asymmetric, with the incumbent bearing all of the down side risk but the incumbent and entrant sharing the upside risk. However, the incumbent has made irreversible investments and so must bear the opportunity cost of capital in both good and bad states." As a result, mandating MVNO access may reduce the MNO's incentive to invest in infrastructure by reducing the net expected returns of its prospective infrastructure investments. This kind of erosion of investment incentives would be particularly harmful on the eve of 5G, where incumbents are posed to make significant infrastructure investments.[47]

56. Canada's telecommunications industry is seeing this effect play out today with the estimated negative impact on broadband investment if the third party internet access rates set by the Commission in Telecom Order 2019-88 are permitted to stand.[48]

57. Decreasing the incentive to invest in Canada's wireless network infrastructure would have serious negative implications for Canadians. As the Bureau acknowledges, a mandated MVNO access regime that discourages investment may "exacerbate existing network gaps for rural and remote communities, reducing the business case for investing in already less commercially attractive regions."[49] As referenced above, Matrix reinforces CWTA's argument that a regime that discourages investment would also be harmful to Canada's ambitions to deploy 5G networks on a timely basis.

58. Mandated MVNO access has the potential to not only impact the investment incentive of the national carriers; it will likely also impact the ability and willingness of Regional Providers to invest to expand their networks into new markets. Assuming that the Bureau is correct in its assessment of the Regional Providers' ability to increase competition and lower prices in markets in which they have a presence, it stands to reason that failure to expand into new markets will harm competitiveness and reduce positive consumer outcomes.

59. To illustrate this point, Matrix presents an assessment of the potential consumer harm from a mandated MVNO access regime that discourages investments by Regional Providers. In examining a scenario where Freedom Mobile's investments are undermined by an MVNO policy that results in a reduction of anticipated growth by 25 percent, Matrix estimates that national

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[46] Report Study the State of Competition in the Retail Wireless Marketplace and the Benefits of Additional Competition among Wireless Service Providers, Dr. Tasneem Chipty, Matrix Economics, November 22, 2019 (the "Matrix Report"), paragraph 67
[47] Matrix Report, paragraph 68
[48] CWTA Further Comments, paragraphs 30-32.
[49] Bureau Report, paragraph 253.

provider customers could end up paying more than they would have without an MVNO policy; a savings loss of approximately $19.5 million per month, or $234 million annually.[50]

The Case for Mandated MVNO Access Continues to Weaken

60. The Bureau acknowledges that "[a]ll else equal, facilities-based competition is the most sustainable and effective form of competition".[51] It further concludes that existing policies promoting facilities-based competition are paying dividends in the form of increased competition and lower prices, but "this competition has not yet reached its full potential…"[52]

61. As discussed above, it is not surprising that facilities-based competition in Canada has yet to reach its full potential. Regional Providers are still in the process of establishing themselves in the market, making large investments to build and expand their networks to serve Canadians in a growing proportion of the country. The fact that Regional Providers have not yet reached their full potential is not justification for mandating MVNO access. The question is whether the Regional Providers' momentum is continuing. If it is, then the Commission should question whether any type of mandated MVNO access regime, including the kind suggested by the Bureau, is warranted, and whether the potential risks outweigh the potential benefits.

62. When establishing the current wholesale mobile wireless services regulatory framework in Telecom Regulatory Policy 2015-177, the Commission found evidence of rivalrous behaviour in the mobile wireless market and that the Regional Providers contributed to competitiveness in many regions.[53] Therefore, the Commission decided that the best way to support the mobile wireless retail market was to ensure that the Regional Providers had access to the networks of the three national wireless providers for the purpose of wireless roaming at regulated rates and terms. Importantly, the Commission determined that such access should not be mandated for non-facilities-based operators given the serious negative impacts it would have on continued investment in network infrastructure; a key to delivering advanced mobile wireless services to Canadians.

63. As we have shown herein, under this and other policies supporting facilities-based competition, positive consumer outcomes of increased competition, declining prices, higher network performance and broader network coverage have continued during the 2016-2018 period studied by the Bureau and into today. There is no evidence to suggest that such momentum will stall in the future. In fact, there is every reason to think that maintaining a stable regulatory environment will give Regional Providers the confidence they require to continue to invest in network expansion, and give the national providers the incentive they need to continue making

[50] Matrix Report, paragraph 69.
[51] Bureau Report, paragraph 257.
[52] Bureau Report, paragraph 331.
[53] Telecom Regulatory Policy CRTC 2015-177

the high level of investments required to close the rural/urban divide and deploy 5G in a timely manner.

64. Given the continuing positive consumer outcomes being delivered by existing policies supporting facilities-based competition, the uncertainty that any mandated wholesale MVNO access regime will deliver a meaningful increase in competition, and the potential for significant harm to the Regional Providers and the incentive to invest in wireless network infrastructure, the Commission should refrain from imposing mandated wholesale MNVO access.

The Bureau's Limited Mandated MVNO Access Proposal

65. Having concluded that the potential harms of a broad mandated MVNO access regime outweigh any potential benefits, the Bureau, rather than considering the likelihood that existing facilities-based policies will continue to produce positive consumer outcomes, proposes what it refers to as a "facilities-focused MVNO policy".

66. Even the Bureau's proposal for a limited mandated MVNO access regime, designed to increase competition without harming the growth of the Regional Providers or investment in Canada's wireless infrastructure, is not guaranteed to work as intended. As the Bureau states, its suggested remedy merely has the "potential" to generate the desired outcomes.[54] In an industry as dynamic as the wireless industry, trying to design, implement, and enforce a framework that is based on market conditions as they existed several years prior[55] is fraught with risk and the potential for unintended consequences.

67. CWTA maintains its position that a mandated wholesale MVNO access policy, of any kind, is not warranted, and could do more harm than good.

Decoupling Device Finance and Service Contracts

68. Whether or not the Commission imposes a mandated MVNO regime such as the facilities-focused mandated MVNO regime recommended by the Bureau, the Bureau suggests alternative and additional remedies that it thinks could improve competitiveness in the wireless market. One such proposal is that the Commission mandate the decoupling of device financing and service contracts. Under such a regime, a customer would be allowed to cancel their service contract and switch to another provider without having to cancel their device financing contract with their original provider. The Bureau argues that this would reduce the barriers to switching service providers.

[54] Bureau Report, paragraph 272.
[55] It is likely to take several years beyond the 2016-2018 period of the Bureau's study before any such regime were operational.

69. Other than suggesting it would make switching carriers easier, the Bureau does not offer a sound analysis or evidence of the potential impact of such a rule on consumers. As noted by Bell in its Further Comments in this proceeding, such a rule would likely result in more fraud and bad debt, and require carriers to modify IT systems, operational procedures and contractual arrangements with its suppliers.[56] These include increasing credit checks and tightening eligibility rules. The likely outcome is that carriers would be unable to offer options such as 0% interest or $0 down payment which are currently available. In addition, some subscribers would likely become ineligible for device financing and have to use other means to finance the purchase of a device, such using bank or credit card financing, which in many cases would incur higher financing charges.

70. As noted by Bell, even Regional Providers such as Freedom Mobile oppose such a rule, as "it would do more harm than good for customers and new facilities-based competitors were the Commission to intervene in the retail market to mandate a single handset subsidy model."[57]

71. Furthermore, it is questionable whether the Commission has the authority to regulate financing terms.[58]

*** End of Document ***

[56] Bell Mobility Inc. TNC 2019-57, Further Comments, paragraphs 176-177.
[57] Shaw (CRTC) 5July2016-206, as referenced ibid, paragraph 178.
[58] Bell Mobility Inc. TNC 2019-57, Further Comments, paragraphs 178 and 179.