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September 3, 2015

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Mr. Traversy,

Re: Application by CNOC to Review and Vary Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services.*

CRTC File No. 8662-C182-201508235

Introduction

1. Pursuant to section 26 of the CRTC Rules of Practice and Procedure, OpenMedia submits its comments in regard to the Application by the Canadian Network Operators Consortium, Inc. (**CNOC**) to review and vary *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177. OpenMedia **supports** CNOC's application, and requests to be considered an intervener in this process.
2. OpenMedia is a community-based, citizen-engagement organization that regularly involves everyday Canadians in initiatives on issues that impact their everyday digital lives. Over 60,000 Canadians have spoken out through our campaigns around wireless choice and affordability. In our crowdsourced "Time

for an Upgrade” report on the wireless market, we specifically called for tower sharing rules and fair wholesale roaming obligations.¹

3. In essence, CNOC’s application (**The Application**) is a challenge to two aspects of Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for mobile wireless services (The Wireless Framework)*. First, CNOC challenges the CRTC’s decision not to mandate wholesale Mobile Virtual Network Operator (**MVNO**) access to the networks of the national carriers, namely Bell, Rogers, and Telus. Second, CNOC challenges the CRTC’s decision not to regulate the terms and conditions upon which tower and site sharing services are to be offered.
4. While OpenMedia supports both aspects of CNOC’s application, our comments in this intervention are limited to the topic of MVNO access. In OpenMedia’s view, unless the Commission’s decision to refrain from mandating wholesale MVNO access to the national carriers’ networks is reversed, Canadians across the nation will be deprived of access to a range of affordable, independent options for mobile phone and Internet services. For that reason, OpenMedia submits that the Commission must mandate fair wholesale Full MVNO access to the national carriers’ networks at cost plus a reasonable markup, as per the Phase II costing methodology.
5. The balance of this intervention is structured as follows:
 - First, we briefly review the background of the proceedings leading to the Wireless Framework, and identify the aspects of that framework which are at issue in this proceeding.
 - Second, we briefly identify CNOC’s position with regard to the impugned elements of the Commission’s Wireless Framework. In particular, we focus on the challenges CNOC raises to the Commission’s determinations regarding wholesale MVNO access.
 - Third, and finally, OpenMedia adds our own substantial reasons as to why, in our view, CNOC’s application is justified, and the relief sought is necessary in order to ensure a competitive mobile wireless market across Canada to ensure that Canadians have access to a wide range of affordable, independent mobile service options.

¹ See: OpenMedia. Time for an Upgrade: Demanding Choice in Canada’s Cell Phone Market. pp. 42-43.

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Background — The Wireless Framework

6. The process leading to the Wireless Framework (**the Wireless Proceeding**) was lengthy, its record was voluminous, and its goals were ambitious. The process began with a fact-finding exercise in August 2013, and next involved a distinct proceeding which ultimately resulted in a 2014 finding that Rogers had unjustly discriminated against new entrant carriers by requiring roaming agreements to include exclusivity clauses.² Following these proceedings, the Commission launched TNC CRTC 2014-76, *Review of wholesale mobile wireless services*, which ultimately led to the Wireless Framework — a landmark decision which OpenMedia expects will have major benefits for Canadians seeking access to affordable and reliable mobile services that support their everyday needs.
7. The cumulative public record leading to the wireless framework comprises several rounds of interventions from interested parties, including the national carriers, new entrants, potential MVNOs, the Competition Bureau, Provincial and Territorial governments, a number of firms whose business concerns are affected by the wireless industry, public interest organizations, and individual members of the public; three rounds of interrogatories and corresponding requests for disclosure; oral presentations; undertakings; final submissions; and the records of both the fact-finding exercise and the proceeding that led to the prohibition against exclusivity in roaming agreements. The evidence on record provided the Commission with a vast source of information to draw upon and to inform its decision.
8. Broadly speaking, the objectives of the proceeding were:
 - First, to determine whether the national and/or regional carriers possessed market power in the wholesale markets for wholesale roaming, wholesale MVNO access services, and wholesale tower and site sharing services.
 - Second, to determine what, if any, policy and regulatory measures would be necessary to remedy the situation for Canadians, should market power be found in one or all of the areas being examined.
9. These objectives were approached in consideration of the *Telecommunications Act* (**the Act**)'s policy objectives, as well as the Policy Direction.³ In the Wireless

² See: TNC CRTC 2013-685, which led to TD CRTC 2014-398.

³ §7 of the *Telecommunications Act*, S.C. 1993, c. 38, and Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355, respectively.

Framework, the Commission singled out the need to ensure continued innovation and investment in high-quality telecommunications facilities; to promote sustainable competition that provides benefits to Canadians; and to implement efficient regulatory measures with continued reliance on market forces where appropriate as particularly important.⁴

10. Ultimately, the Commission determined that the national carriers possess market power in the markets for wholesale roaming and MVNO access, and came to no conclusion regarding market power for tower and site sharing.⁵ Although the Commission did not render a determination with regard to market power in the retail wireless market, its decision implicitly recognizes that all is not well in the Canadian wireless market.⁶
11. In order to ensure that the policy objectives driving the wireless proceeding would be met, the Commission first examined the appropriate relevant markets and determined that at the national level, wholesale roaming and wholesale MVNO access meet the definition of essential services. That is, they are wholesale inputs required by competitors seeking to provide service at the retail level.⁷
12. Consequently, the Commission proceeded to implement measures which, in its view, would be sufficient to remedy the competitive problems facing the Canadian wireless market. These measures primarily address the issue of roaming, and involve what will likely be a lengthy series of follow-up proceedings to determine costing, establish tariffs, etc. OpenMedia supports the Commission's roaming measures, which, in our view, will be a boon to the many Canadians who have already benefitted and those who stand to benefit in the future from the new entrants' innovative service offerings.
13. Although the Commission determined that the national carriers have market power in the provision of wholesale MVNO access, and that such access is an essential service for retail competitors, it did not go so far as to mandate MVNO access to the national carriers' networks. Instead, the Commission implemented

⁴ Wireless Framework, para. 16.

⁵ With respect to roaming, see: Wireless Framework, para. 74.
With respect to MVNO access, see: Wireless Framework, para. 88.
With respect to tower and site sharing, see: Wireless Framework, para. 178.

⁶ Wireless Framework, paras. 23-39.

⁷ Wireless Framework, para. 109.

several lesser measures intended to “encourage” a competitive market for MVNO access.⁸

14. Like CNOC, OpenMedia believes that the Commission made a legal and factual error by neglecting to mandate wholesale MVNO access to the national carriers’ mobile networks. MVNOs form an integral part of a competitive wireless market, by ensuring that Canadians have access to genuine choices of affordable, innovative services in a manner that is sustainable, and by ensuring that the benefits of competition will be available to Canadians regardless of the region in which they reside. In the section that follows, OpenMedia identifies elements of CNOC’s Application which require the Commission to reverse its decision not to mandate wholesale MVNO access.

CNOC’s challenge to the Wireless Framework

15. CNOC’s Application is essentially a challenge to two elements of the Wireless Framework: first, the Commission’s determinations regarding mandated MVNO access, and second, its determinations regarding wholesale tower and site sharing. OpenMedia supports both aspects of CNOC’s Application. In this section, we outline our understanding of CNOC’s principal claims as they concern the issue of MVNO access, and highlight importance aspects of CNOC’s position for the Commission’s consideration.
16. In its Application, CNOC raises five principal reasons why the Commission should reverse its decision not to mandate MVNO access, based on the established criteria for assessing an Application to review and vary a Commission policy or decision.⁹ These reasons are:
 - The Commission made an error of law by failing to apply section 34 of the *Act* to its analysis of Full MVNO services;
 - The Commission made factual errors in its characterization of MVNO providers; specifically, it failed to properly distinguish between Full MVNOs and other forms of MVNOs, such as white-label resellers;

⁸ Wireless Framework, para. 124.

⁹ These criteria are laid out in Telecom Information Bulletin CRTC 2011-214, *Revised guidelines for review and vary applications*.

- The Commission failed to consider several basic principles in rendering its determinations in the Wireless Framework, which would have led to a different outcome;
 - New principles have arisen as a result of the Wireless Framework; and
 - A new principle has arisen as a result of a related Telecom Regulatory Policy, TRP CRTC 2015-326, *Review of wholesale wireline services and associated policies (the Wireline Framework)*.
17. The rest of this intervention comprises OpenMedia's analysis of the grounds for reversing the Commission's determination not to mandate wholesale MVNO services to the networks of the national carriers. OpenMedia highlights three issues in particular: the requirements of the *Act* with regard to mandated MVNO; the Commission's determinations regarding the effects of mandated MVNO on new entrant investment; and the principles resulting from the Wireless Framework, the Wireline Framework, and the Policy Direction, consideration of which leads to the conclusion that mandated wholesale MVNO access is in accordance with the *Act's* policy objectives, the interests of current and future Canadian mobile phone users, and the public interest in general.

Mandated MVNO is required under the *Telecommunications Act*

18. CNOC's Application draws attention to the fact that the Commission did not explicitly engage §34 of the *Act*¹⁰ in its determination not to mandate wholesale MVNO access on the national carriers' networks, and that this constitutes an error in law. OpenMedia agrees that the *Act* requires the Commission to consider this important section of the law when considering fundamental issues related to the competitiveness of the telecommunications market, as was the case in the Wireless Proceeding.
19. Although the Commission did not explicitly refer to §34 in its analysis and determinations regarding MVNO access, OpenMedia believes that this section, in concert with §47, requires the Commission to mandate MVNO access, for the following reasons.

¹⁰ §34 of the *Act* contains provisions guiding Commission decisions on forbearance, or, in plain English, decisions whether or not to regulate telecommunications services.

20. First, the Commission determined that the national carriers possess market power in the national market for GSM-based wholesale MVNO access,¹¹ and that such access is an essential service, required by MVNOs to provide a retail class of telecommunications services to the public.¹²
21. Second, the Commission noted that, in its consideration, “MVNOs can play a role in increasing consumer choice and value in the retail market.”¹³ Additionally, the Commission acknowledged that there was “significant demand demonstrated on the record of this proceeding” from potential MVNOs.¹⁴ In OpenMedia’s view, this demand, if satisfied, would translate directly into the types of consumer choice and value that the Commission describes.
22. Third, and as a result of the aforementioned determinations, the Commission determined that the exercise of market power by the national carriers “would likely result in a substantial lessening or prevention of competition in the downstream retail market.”¹⁵ In fact, the Commission acknowledged that retail competition from numerous potential MVNOs has already been prevented by the national carriers’ refusal to provide access to their networks¹⁶ — indeed, to OpenMedia’s knowledge, there are no truly independent Full MVNOs currently operating in Canada.¹⁷ Continued forbearance will only serve to perpetuate this situation, to the detriment of consumer choice, affordability, and service innovation.
23. OpenMedia submits that the combination of these three factors, in accordance with §34(3) of the *Act*, require the Commission to mandate MVNO access to the national carriers’ networks, and therefore that the Commission committed an error in law by neglecting to do so.
24. Section 34(3) of the *Act* states:

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the

¹¹ Wireless Framework, para. 88.

¹² Wireless Framework, para. 102.

¹³ Wireless Framework, para. 120.

¹⁴ Wireless Framework, para. 105.

¹⁵ Wireless Framework, para. 106.

¹⁶ Wireless Framework, para. 105.

¹⁷ CNOC Application, para. 85.

Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

25. OpenMedia acknowledges it may be the case that the Commission did not unconditionally refrain from regulation of MVNO access. Undoubtedly, the measures taken by the Commission — allowing MVNOs to obtain Mobile Network Codes (**MNCs**) and prohibiting wholesale roaming arrangements from containing clauses that restrict MVNOs who operate on the roaming partners' networks — are a step in the right direction.
26. However, OpenMedia further submits that these measures do not go far enough. Whereas prior to the Wireless Framework, the national carriers' exercise of market power with regard to wholesale roaming has taken the form of artificially inflated prices and restrictive agreement terms, in terms of MVNOs, the national carriers have exercised their market power by flat out denying MVNOs access to their networks.¹⁸ The measures the Commission has implemented, while beneficial, effectively restrict potential MVNOs to the new entrants' networks, and at least one new entrant has stated its opposition to hosting MVNOs on the record of the Wireless Proceeding.¹⁹
27. There is no reason to believe that the national carriers, the regional carriers, and at least some new entrants, will stop denying MVNOs access to their networks. In fact, during the Wireless Proceeding one of the interveners, potential MVNO Raven Wireless, was forced to scupper its plans to offer service in British Columbia due to a the refusal of a national carrier to deal on reasonable terms, in what amounted to an effective denial of wholesale service by that carrier.²⁰ Similarly, another party to the Wireless Proceeding, Ting/Tucows, which is a Toronto-based company, has for some time been unable to obtain wholesale MVNO access in its home country of Canada, despite concerted efforts.²¹

¹⁸ In the case of wholesale roaming (and tower and site sharing), Industry Canada's Conditions of Licence (**COLs**) prevent carriers from denying wholesale roaming access to their networks. The COLs do not, however prevent this same practice with regard to wholesale MVNO access.

¹⁹ CNOC Application, para. 87.

²⁰ See: ravenwireless.ca for a detailed statement of Raven Wireless' proposed business model, and the benefits it planned to bring to Canadians.

²¹ CBC News (2013). The Canadian mobile phone service you can't get here. Available at: <http://www.cbc.ca/news/business/the-canadian-mobile-phone-service-you-can-t-get-here-1.1337824>

28. The expectation that Canadian carriers will continue to deny MVNOs access to their networks on an industry-wide or near-industry wide basis means that the Commission's determination not to mandate such access, even in the presence of the two encouragements mentioned above, is effectively a decision to refrain unconditionally from the regulation of wholesale MVNO services.
29. For potential MVNOs, including the numerous parties who appeared at the Wireless Proceeding, the Commission's decision not to mandate Full MVNO access is akin to opening a locked gate, only to be faced with a brick wall barring the way forward. In other words, although the Commission has implemented several measures intended to encourage MVNO entry, these measures will be of no help to MVNOs who are consistently denied access to the national carriers' networks and, by implication, to the thousands of Canadians who are unable to access affordable, independent mobile wireless service options.
30. For the above reasons, OpenMedia submits that the Commission has made an error in law by neglecting to mandate wholesale MVNO access, as its determinations together with §34 of the *Act* require.

Mandated MVNO and new entrant investment: Evidence, or arguments?

31. CNOC's application calls into question the factual basis for the Commission's determination not to mandate wholesale MVNO access. In these comments, OpenMedia focuses on one aspect in particular of the Commission's factual determinations that we believe was taken in error: the potential effect of mandated MVNO on investment decisions by the new entrants.
32. It appears that the Commission has based its decision not to mandate MVNO access to the national carriers' networks, findings of market power and essentiality notwithstanding, solely on the its view that "mandating wholesale MVNO access at this time would significantly undermine [new entrants' current and planned] investments, particularly outside urban core areas."²²
33. OpenMedia has surveyed the public record of the Wireless Proceeding, and we have been unable to identify concrete evidence to support this finding of the Commission.

²² Wireless Framework, para. 121.

34. During the oral proceeding, several parties were asked about the effects of mandated MVNO access on the new entrants' prospects for investment. Cogeco²³ and Mr. Benjamin Klass,²⁴ for instance, were asked such questions, as was the Competition Bureau.²⁵ Some parties, such as Cogeco's expert witness Ms. Lemay, tendered evidence that suggested capital intensity in environments where MVNOs are prevalent is not lower than it is in Canada. Others, such as Mr. Klass and the Commissioner of Competition, were unable to provide answers.
35. By contrast, the new entrants do not appear to have been asked to provide answers to similar questions, whether in the form of interrogatories, undertakings, or oral questioning. In terms of questions regarding MVNOs, the new entrants tendered general arguments to the effect that mandated MVNO was unnecessary, but this is not evidence that their investments would be negatively effected by a decision to mandate MVNO access to the national carriers' networks. The following exchange (which took place during the oral hearing) between Commissioner Menzies and WIND Mobile is illustrative:

1235 COMMISSIONER MENZIES [...]

1236 I just need you to clarify your position on MVNOs for a minute. In your oral submission here too you mentioned your argument against mandated tariffs is that it goes against the policy directives. Is that correct?

1237 MR. LOCKIE: I think it does. But that's not really my argument, if you will. I think the main argument for it is that it's not necessary if the right conditions are in place for facilities-based carriers like ourselves.

1238 COMMISSIONER MENZIES: Do you mean do you believe that an MVNO market will grow if the right conditions that you're the —

1239 MR. LOCKIE: Not necessarily. What I'm saying is I don't think mandated regulated MVNO access. I think it's less than minimally invasive given that

²³ See: Oral testimony of Cogeco, Wireless Proceeding, Transcript Volume 1, beginning at paragraph 823.

²⁴ See: Oral testimony of Benjamin Klass, Wireless Proceeding, Transcript Volume 1, beginning at paragraph 1743.

²⁵ See: Oral testimony of Commissioner of Competition, Wireless Proceeding, Transcript Volume 1, beginning at paragraph 332.

there are actions that can be taken for facilities-based carriers like ourselves to be viable competition in every market. And so it's just not necessary.²⁶

36. In OpenMedia's view, WIND's position on MVNO, together with the similar views of the other new entrants, reflect a rational and understandable self-interested perspective, but not one that necessarily reflects the public interest in a competitive wireless market in all areas of the country, as opposed to just those areas in which the new entrants operate. As well, the new entrants' opposition to entry by MVNOs fails to account for the potential benefits to industry-wide investment that would come with the increase in competition that MVNOs represent.²⁷ In any case, the opposition of new entrants toward mandated MVNO access does not constitute evidence that investment would be affected by such measures.
37. As noted in CNOC's Application,²⁸ there was little evidence on the record of the proceeding leading to the *Wireless Framework* to suggest that new entrant investment would be adversely affected by a decision to mandate MVNO access. Arguments were plentiful that investment would be undermined if the Commission were to mandate roaming access, yet those arguments were rejected. In that case, the Commission determined that mandated roaming at regulated rates was necessary, yet in the case of MVNO access it reached the opposite conclusion, despite the similar facts and analysis surrounding each issue.
38. OpenMedia also notes that new facts have arisen since the *Wireless Framework* was issued that may be of relevance to the Commission's considerations regarding the relationship between wholesale services and investment in wireless networks. During the *Wireless Proceeding*, there was much debate surrounding the potential effect of regulatory intervention on investment. A central theme that emerged was the "European situation." It was argued — primarily by the national carriers and their expert witnesses — that regulatory intervention in European wholesale markets has caused wireless networks there to lag behind those in Canada. One of the primary examples brought out to support this

²⁶ See: Oral testimony of WIND, *Wireless Proceeding*, beginning at para. 1235.

²⁷ Discussed at greater length below.

²⁸ CNOC Application, para. 79.

contention was the growth of LTE coverage in Canada, as compared to slower LTE growth in Europe.²⁹

39. Contrary to such evidence, new facts have emerged that suggest many European countries have caught up with or surpassed Canada in terms of LTE coverage. In its intervention to Telecom Notice of Consultation 2015-134, *Review of basic telecommunications services*, the Canadian Media Concentration Research Project (**CMCRP**) has tendered evidence that demonstrates this trend.
40. The CMCRP refers to data from the European Union and the US Federal Communications Commission (**FCC**) which show that, by the end of 2014, the 4G LTE coverage gap between the Canadian and many European states had “largely vanished.”³⁰ The CMCRP notes that 4G LTE networks were available to 4 out of 5 citizens of the EU member states as of year-end 2014. These data cast significant doubt on the earlier contentions of the national carriers that regulatory intervention along the European services-based trajectory would limit mobile wireless network investment if implemented in Canada.
41. For illustrative purposes, OpenMedia attaches maps showing the countries in which LTE and LTE-Advanced networks have been deployed as of 2015, as Appendix 1.³¹ It is our hope that these data will assist the Commission as it reassesses its decision not to mandate wholesale MVNO access on the basis that it could undermine new entrant investment in wireless networks, particularly outside urban core areas.
42. OpenMedia submits that, for the reasons listed above, the Commission made an error in fact by determining that mandated wholesale MVNO access would undermine new entrant investment, and therefore, given the lack of evidence,

²⁹ See for instance, Bell Mobility, Second Intervention to Wireless Proceeding, August 20, paras. 22 & 134.

³⁰ See: Winseck, D. *Rethinking Universal Service for the 21st Century and an All-IP World*, Intervention of CMCRP to Phase 1 of TNC CRTC 2015-134, para. 45.

³¹ The EU Report cited by CMCRP notes the following: “LTE deployments have focused so far mainly in urban areas, as only 27% of rural homes are covered. However, in ten Member States, LTE is already available also in the majority of rural homes, with very high rates [>90%] in Denmark, Sweden, and the Netherlands.” OpenMedia notes that, although LTE coverage is available to 86% of Canadians according to CMCRP, it has been unable to locate LTE availability statistics specific to rural areas. Given that Statistics Canada reports that 81% of Canadians reside in urban areas, however, OpenMedia expects rural LTE coverage in Canada to be significantly lower than the overall 86% figure.

EU (2015). Connectivity: Broadband Developments in the EU, slide 12, available at: <https://ec.europa.eu/digital-agenda/en/connectivity>

was incorrect in reaching the conclusion that mandated wholesale MVNO access would be inappropriate at this time.

43. Additionally, OpenMedia submits that new factual evidence regarding the growth of LTE networks in European nations challenges the Commission's determination that mandated wholesale MVNO access to the national carriers' networks would adversely affect investment in the Canadian wireless market.

Full MVNOs are innovative and create sustainable competition

44. CNOC's Application demonstrates several important points with regard to the benefits of Full MVNOs and their relationship to the *Act's* policy objectives:
- Full MVNOs have the potential to make a significant and much-needed contribution to innovation, investment, and sustainable competition in the Canadian wireless market, to the benefit of the industry and to Canadian mobile users;³²
 - Mandating wholesale access to the national carriers' networks for Full MVNOs is consistent with a harmonious reading of the *Act's* objectives and the Policy Direction;³³ and
 - Mandating wholesale access to the national carriers' networks for Full MVNOs is consistent with the principles developed as a result of the Wireline Framework, including technological and competitive neutrality.³⁴
45. In OpenMedia's view, a well-rounded, innovative, and sustainably-competitive wireless market must feature the presence not only of national and regional carriers, but crucially it must include MVNOs as well, if the objective of delivering high-quality wireless services to all Canadians is to be met. A market so constituted, and a regulatory framework that enables it, is consistent with a harmonious reading of the *Act's* objectives and the Policy Direction, and would be well suited to serve Canadians by providing greater choice, innovation, and investment in the wireless market. In this final section, OpenMedia submits its views with regard to the potential of Full MVNOs to benefit Canadians along the the above-mentioned points.

³² CNOC Application, paras. 51-72, 95-97.

³³ CNOC Application, paras. 60-61.

³⁴ CNOC Application, paras. 98-105.

46. First, with regard to innovation, the Commission heard evidence during the Wireless Proceeding from numerous existing and potential MVNOs about the potential benefits that could accrue to Canadians should the Commission allow them access to Canada's wireless networks. Some of these examples include the ability to serve currently underserved "niche" markets, such as ethnic groups, low-income Canadians, seniors, and small- and medium-sized business users.³⁵
47. Full MVNOs would be particularly well-suited to serving the needs of mobile users, as they are best positioned to innovate by tailoring their services to meet the specific needs of their target markets, since they would control the majority of the facilities required to provide service. CNOc companies such as Distributel, and other existing wireline carriers such as Cogeco are well positioned to take advantage of the situation, since they have expressed an interest in offering mobile service and could leverage their existing networks and expertise in the short term to bring greater choice to their existing wireline customers and potential new subscribers.
48. One example of the innovative benefits that MVNOs can bring was referred to in a CNOc undertaking submitted to the Wireless Proceeding.³⁶ Republic Wireless, an MVNO operating in the United States, offers its customers a hybrid-network service that allows users to make calls and access unlimited data connectivity on Wi-Fi, or on the Sprint network when Wi-Fi is unavailable, thereby avoiding the potentially expensive charges that are often associated with mobile network usage.
49. Canadian mobile network users, on the other hand, are currently unable to take advantage of innovations like Wi-Fi calling. Although Rogers has advertised that it will deliver the ability to make calls over Wi-Fi on certain devices for over a year, it has yet to make good on that promise, despite the fact that similar devices have had Wi-Fi calling enabled by AT&T and Republic Wireless in the US for some time.³⁷
50. Without mandated wholesale MVNO access, OpenMedia believes that Canadians will continue to be deprived of these and similar innovations in the

³⁵ For an example, see CNOc Undertaking #1 to the Wireless Proceeding.

³⁶ CNOc Undertaking #1 to the Wireless Proceeding.

³⁷ Mobile Syrup (2015). Rogers and Fido to launch WiFi calling on iPhones running iOS 9. Available at: <http://mobilesyrup.com/2015/08/19/rogers-and-fido-to-launch-wifi-calling-on-iphones-running-ios-9/>

future, or will have to wait unduly long periods of time to take advantage while the national carriers continue to delay implementation.

51. Second, the Commission appears to have justified its determination not to mandate Full MVNO access on the basis that such a decision would represent a zero-sum game between investment by the new entrant carriers (e.g. WIND, Videotron, and Eastlink) and investment by potential Full MVNOs.
52. In OpenMedia's view, these two sectors of the market do not represent a direct trade-off, but rather are complementary in nature. For instance, there are many areas of the country that are not served by new entrant carriers. WIND recently divested itself of its spectrum holdings in Manitoba and Saskatchewan, and is therefore unlikely to expand to these areas in the foreseeable future, creating a clear opportunity for independent providers to step in.³⁸
53. Although some urban areas in Manitoba benefit from having competition between four carriers who share two sets of network facilities, there are many cities which have service from only MTS and Rogers. Residents of these areas, which are served by new entrant carriers, stand to benefit from the potential entry of local MVNOs, who could invest in network infrastructure as well as local employment opportunities.
54. Similarly, WIND's operating territory in Alberta and BC is restricted to Calgary, Edmonton, and Vancouver, and the immediately surrounding areas. Residents of the many cities, towns, and rural areas outside of these core urban zones are not expecting service from a "fourth carrier" in the short- to medium-term, and could thereby benefit from the injection of competition and investment that mandating Full MVNO access would bring, without stepping on the toes of new entrants who do not have plans for expansion or have not announced such plans in those areas.
55. There are large areas in the maritimes that are not served by Eastlink,³⁹ whose residents are faced with a similar lack of options to their counterparts noted above.

³⁸ Industry Canada (2015). Spectrum Management and Telecommunications, What's New — 2015. Available at: http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf10780.html#ju1

³⁹ See: Eastlink Network Coverage, available at: <http://www.eastlink.ca/wireless/coveragetraavel/canadacoverage.aspx>

56. OpenMedia agrees with CNOC's observation that mandated Full MVNO access to the networks of the national carriers would bolster industry-wide investment, in accordance with the *Act's* policy objectives. MVNOs and new entrant carriers can co-exist in Canada's wireless market, and, in our view, both are required in order to deliver Canadians in all areas of the country the benefits of high-quality mobile telecommunications services.
57. Mandating access for Full MVNOs would also be consistent with the Policy Direction's mandate that the Commission "neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,"⁴⁰ since potential Full MVNOs (e.g. CNOC members whose wireline operations are economically efficient) have demonstrated an interest and willingness to provide service in many areas of the country, yet have been rebuffed by the national carriers in the current forbore environment.
58. Third, and finally, it is important to underline the fact that Full MVNOs are facilities-based carriers who independently contribute to investment in all aspects of their service, save for the Radio Access Network (**RAN**) component, which would be accessed on a wholesale basis from the national carriers at cost plus a reasonable markup as determined by the Commission. CNOC has estimated that the initial investment required to provide MVNO services could range from \$12-15 million per MVNO.⁴¹
59. The principle that Full MVNOs are facilities-based telecommunications service providers which can contribute to investment was recognized implicitly by the Commission in the Wireline Framework, when it distinguished between aggregated and disaggregated High Speed Access (**HSA**) services:

Aggregated wholesale HSA provides competitors with high-speed paths to end-customers' premises through an incumbent carrier's entire operating territory [...] This path includes an access component, a transport component, and the interface component. **The inclusion of the transport component enables competitors to provide their retail services with minimal investment in transmission facilities.**

⁴⁰ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355, §1(b)(ii).

⁴¹ CNOC Application, para. 54.

Disaggregated wholesale HSA service would provide competitors with high-speed paths to end-customers' premises served by an ILEC central office or a cable company head-end [...] **To provide service to their own end-customers, competitors would have to (i) invest in transmission facilities to each central office or head-end where they have end-customers, or (ii) lease these facilities from another carrier.**⁴²

60. The Commission's characterization of competitors who make use of disaggregated HSA service in *Wholesale Wireline*, together with its decision to mandate wholesale access for such providers,⁴³ shines a light on one of the central issues raised in the CNOC application: Full MVNOs, like their disaggregated wireline counterparts (which, one assumes, would be the same companies in some cases), are facilities-based communications providers, which bring innovation and investment to the markets in which they operate.
61. OpenMedia wishes to briefly draw the Commission's attention to several new developments in the wireline market that we believe have bearing on the issues under consideration here. Following the release of the Wireline Framework, Bell Canada announced that it would be significantly expanding its fibre-to-the-premises (FTTP) network to 1.3 million homes in Quebec and the Ontario, and that FTTP service would be extended to 2.2 million homes by the beginning of 2016.⁴⁴ Bell's announcement that it would be spending \$1.4 billion to achieve this expansion clearly demonstrates that the Commission's determination to mandate wholesale access to next generation fibre networks has not negatively affected carriers' investment decisions.
62. Additionally, OpenMedia notes that the national carriers are not the only ones who continue to invest, regardless of the Commission's decision to mandate wholesale access (or, perhaps, because of that decision). As reported by the CBC, numerous small, independent providers across the country have begun to

⁴² Wireline Framework, paras. 56-7, emphasis added.

⁴³ Wireline Framework, para. 143.

⁴⁴ Telegeography (2015). Bell Gigabit Fibe launched to 1.3m homes. Available at: <https://www.telegeography.com/products/commsupdate/articles/2015/08/11/bell-gigabit-fibe-launched-to-1-3m-homes/>

roll out fibre networks, each contributing to innovation, investment, and increased consumer choice for Canadian businesses and consumers.⁴⁵

63. OpenMedia highlights the above as examples of new and innovative services and providers that have appeared in the wireline sector. There, where the Commission mandates disaggregated HSA access to the national carriers' networks, investment has not been stifled among the large national carriers or among "new entrant" carriers. OpenMedia submits that the facts and circumstances surrounding the wireless industry are substantially similar, such that a similar decision in wireless would likely have similar results.
64. In summary, in this section OpenMedia submits that Full MVNO access to the national carriers' networks should be mandated because:
- MVNOs are capable of providing innovative, high-quality services that would be otherwise unavailable in the wireless market;
 - Investment by MVNOs and investment by new entrant carriers is not a zero-sum tradeoff, but rather the two can coexist and will in fact contribute to greater overall industry-wide investment, consistent with the Act's policy objectives and the Policy Direction; and
 - The Wireline Framework established a new principle, that wholesale service providers are facilities based providers who contribute to investment and innovation, and that the principles of technological and competitive neutrality dictate that this principle encompasses wireless wholesale providers as well.⁴⁶

⁴⁵ For instance, the CBC reports that Urbanfibre is a Vancouver startup which offers gigabit Internet access for \$69 a month; OneGigabit promises gigabit connections for \$45-\$65 per month in Vancouver; Toronto-based Beanfield Metroconnect offers speeds up to 500 Mbps for \$100 per month; Fibrestream markets 500 Mbps fibre service for \$125 per month to Toronto- and Ottawa-area residents and businesses; and a community initiative in Olds, Alberta is offering gigabit internet to homes for \$120 per month.

See: CBC News (2015). Why super-fast internet may come from a company you've never heard of. Available at: <http://www.cbc.ca/news/technology/why-super-fast-internet-may-come-from-a-company-you-ve-never-heard-of-1.3182545> and

CBC News (2015). Fast fibre-optic internet arrives in many small towns before big cities. Available at: <http://www.cbc.ca/news/technology/fast-fibre-optic-internet-arrives-in-many-small-towns-before-big-cities-1.3174901>

⁴⁶ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355, §1(b)(iv).

Conclusion

65. As OpenMedia has argued in other proceedings, the goal of the Commission's determinations should be to provide Canadians with affordable, independent, and innovative options for telecommunications services in a decentralized marketplace. Actions taken to achieve these goals should strive to ensure that markets for those services are truly competitive, accessible, and widespread. This is what Canadians have asked for, and continued forbearance will serve only to frustrate those demands.
66. The record of the Wireless Proceeding demonstrates that the conditions for mandated wholesale Full MVNO access to the national carriers' networks have been met, and, indeed, are required in order to achieve the *Act's* policy objectives, congruent with the dictates of the Policy Direction. More specifically, mandating wholesale MVNO access in such a fashion is necessary to ensure that Canadians have access to the world-class mobile wireless telecommunications services that they deserve.
67. In summary, OpenMedia hopes that the Commission will reconsider its decision to refrain from mandating wholesale Full MVNO access to the national carriers' networks. OpenMedia believes that this is required because:
 - The *Telecommunications Act's* provisions regarding forbearance, in particular §34 of the *Act*, require that the Commission mandate Full MVNO access. Section 34(3) of the *Act* must be engaged in consideration of the facts and circumstances that arose during the Wireless Proceeding, which led to the Commission's determinations regarding market power and essentiality in the market for wholesale MVNO access.
 - There was insufficient evidence on the record of the Wireless Proceeding to reach the conclusion that mandated Full MVNO access to the national carriers' networks would negatively affect new entrant investment. OpenMedia submits that the presence of MVNOs factors crucially into the workings of a healthy, competitive market, and that MVNOs can play a complementary role to the existing market structure.
 - MVNOs provide innovation, investment, and competition to Canadians in a market much in need of these benefits. Mandated wholesale MVNO access is consistent with the *Act's* policy objectives, the Policy Direction, and is

consistent with the principles arising as a result of the Commission's new Wireline Framework.

68. OpenMedia requests its costs in connection with this intervention, pursuant to §56 of the Act.

All of which is respectfully submitted.

Sincerely,

The OpenMedia team

*****END OF DOCUMENT*****

cc:

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Wireless Proceeding Distribution List