March 17, 2016

From: Josh Tabish
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To: Ms. Danielle May-Cuconato, Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa ON K1A 0N2
Filed via GC Key

CRTC reference: #8620-J106-201601633

Re: Attempt by Rogers to disconnect Ice Wireless and the proper interpretation of Telecom Regulatory Policy CRTC 2015-177: Intervention of OpenMedia on request for final relief

Dear Ms. May-Cuconato,

Please find attached OpenMedia's intervention as part of the above-noted Part 1 Application by Ice Wireless. Our submission has been filed via GC Key and will be served on all parties.

OpenMedia thanks the Commission for their time and consideration on behalf of the over 45,000 Canadians that have joined our *Stop Blocking New Providers* campaign calling on the CRTC to support innovative new wireless providers in Canada's cell phone market.

Sincerely,

Josh Tabish, for OpenMedia

Filed via GC Key

cc: Applicants (regulatory@icewireless.ca)
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Intervention of OpenMedia

1. OpenMedia is in receipt of a Part 1 Application submitted by Ice Wireless, Inc. on February 15, 2016, on behalf of itself and its affiliate Sugar Mobile Inc., regarding an attempt by Rogers Communications Partnership (Rogers) to disconnect Ice Wireless and Sugar Mobile from the roaming services provided to those parties by Rogers. OpenMedia has had the opportunity to review the record of this proceeding as it has developed to this point, and hereby submits its comments in respect of the above-noted Part 1 Application.

2. OpenMedia is a community-based, citizen engagement organization that regularly involves everyday Canadians on issues that impact their everyday digital lives. In our crowdsourced "Time for an Upgrade" report on the wireless market, we lay out a positive vision for policies that enable fair and affordable cell phone options through a level playing field. In addition, we actively participated on behalf of Canadians in the proceeding that led to the Commission's *Wireless Code of Conduct* and recent efforts by the Canadian Network Operators Consortium to review and vary the provision of mandated mobile virtual network operator (MVNO) access in CRTC 2015-177.

3. At the time of writing, more than 45,000 members of the OpenMedia community have joined our *Stop Blocking New Providers* campaign at https://act.openmedia.org/blocked/ – and the numbers continue to climb. The online petition was launched in response to efforts by Rogers to block Sugar Mobile from roaming on their cellular networks, and the Part 1 Application cited herein. By signing our petition, these Canadians have asked the Canadian Radio-television and Telecommunications Commission (CRTC): "Do not cave to Big Telecom's demands. Stop these giants from blocking innovative and affordable MVNO providers."

4. These Canadians recognize that the Big Three wireless providers – Bell, Rogers, and Telus – control 90% of the mobile market, and force us to pay some of the highest bills in the industrialized world. As a frustrated community member recently reminded us on Facebook, "We shouldn't have to tell the CRTC anything. They should protect the people's interests by default, not big business."[1] Indeed, what they are calling for is greater choice and affordability in our wireless sector, and they raise significant questions about the role of innovative wireless services in Canada, and the ability of our regulatory regime to encourage such innovation.

[1] Hanson, Edward. (2016, March). Facebook comment. Retrieved from http://on.fb.me/22o0DCH

Regulatory Background

5. In 2013, following a fact-finding exercise in regard to the impact of wholesale roaming arrangements on the competitiveness of the Canadian wireless marketplace, the Commission initiated a proceeding to determine whether there was a situation of unjust discrimination or undue preference with respect to those arrangements.[2] That proceeding resulted in two major outcomes: First, it was determined that there were "clear instances" of unjust discrimination and undue preference on the part of Rogers (the respondent in this present case) with respect to the rates it charged to "certain new entrants" and with respect to the imposition of exclusivity clauses upon said new entrant(s).[3]

6. Immediately following those determinations, the Commission launched a second proceeding of broader scope and magnitude to consider whether the mobile wireless market was sufficiently competitive, and if not, what to do about it.[4] The result of that proceeding was the *Wholesale Wireless Framework*, in which the Commission determined for the first time that regulation of certain components of the Canadian wireless marketplace would be required in order to, "facilitate sustainable competition that provides benefits to Canadians, such as reasonable prices and innovative services, as well as continued innovation and investment in high-quality mobile wireless networks."[5]

7. In the *Wholesale Wireless Framework*, the Commission determined that "the national wireless carriers [i.e. Bell, Rogers, and Telus] collectively have the ability and incentive to, with regard to GSM-based wholesale roaming in the national market, maintain rates and impose terms and conditions that would not prevail in a competitive market," and thereby made a determination that "Bell Mobility, RCP, and TCC collectively possess market power in the national market for GSM-based wholesale roaming."[6] The Commission reached the same conclusion with respect to wholesale MVNO access.[7] Following its assessment of market power, the Commission

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[2] Telecom Notice of Consultation CRTC 2013-685, *Wholesale mobile wireless roaming in Canada — Unjust discrimination/undue preference,* Ottawa, 12 December 2013.
[3] Telecom Decision CRTC 2014-398, *Wholesale mobile wireless roaming in Canada — Unjust discrimination/undue preference,* Ottawa, 31 July 2014.
[4] Telecom Notice of Consultation CRTC 2014-76, *Review of wholesale mobile wireless services*, Ottawa, 20 February, 2014.
[5] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015.
[6] ibid, paragraph 73.
[7] ibid, paragraph 88.

determined that GSM-based wholesale roaming and MVNO access provided by the national carriers are essential inputs required by competitors in order to compete in the marketplace.[8]

8. As a result of these findings, the Commission mandated the regulation of wholesale mobile wireless roaming rates based on the Phase II costing methodology, as well as certain terms and conditions upon which those services were to be offered; it ordered the national carriers to issue interim tariffs; and the national carriers were directed to file proposed tariffs for final approval.[9] While the interim tariffs are presently in effect, to OpenMedia's knowledge approval for the proposed tariffs was postponed until further notice pursuant to a Commission Letter dated 18 December, 2015.[10]

9. Although the Commission acknowledged that "MVNOs can play a role in increasing consumer choice and value in the retail market,"[11] it ultimately determined not to mandate that the national carriers provide wholesale MVNO access under regulated rates and/or conditions.[12] In the *Wholesale Wireless Framework,* the Commission did, however, take action "to reduce certain barriers faced by MVNOs to facilitate, and allow more flexibility in, their commercial negotiations with wireless carriers", actions which were intended to "encourage the emergence of a competitive market for wholesale MVNO access."[13]

10. Those measures included ensuring that MVNOs could acquire their own Mobile Network Codes (MNCs), and, most notable in the instant proceeding, the Commission determined that "…as a condition of offering and providing GSM-based wholesale roaming, Bell Mobility, RCP, and TCC must provide roaming on their GSM-based mobile wireless networks to all subscribers served by their wholesale roaming partners, **including the subscribers of any MVNOs operating on their wholesale roaming partners' networks.**"[14]

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[8] ibid, paragraph 109.
[9] ibid, paragraphs 139, 144, and 140, respectively.
[10] See: http://www.crtc.gc.ca/eng/archive/2015/lt151218a.htm
[11] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015, paragraph 120.
[12] The decision not to mandate wholesale MVNO access was later upheld following an request for review & variance by the Canadian Network Operators' Consortium (CNOC), in which OpenMedia intervened. See: Telecom Decision CRTC 2016-60, *The Canadian Network Operators Consortium Inc. — Application to review and vary Telecom Regulatory Policy 2015-177,* Ottawa, 18 February 2016.
[13] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015, paragraph 124.
[14] ibid, paragraph 165, emphasis added.

It is this latter section of the *Wholesale Wireless Framework* that is the central focus of the dispute in the instant proceeding.[15]

Facts

11. Ice Wireless is a facilities-based mobile carrier which operates in competition with Bell Mobility in the Canadian Territories. Ice Wireless also competes with Telus in Yellowknife and Whitehorse.[16] Ice Wireless has a reciprocal wholesale roaming agreement with Rogers.[17]

12. Sugar Mobile is an affiliate of Ice Wireless which operates an MVNO that is "hosted on Ice Wireless' network."[18] Sugar markets its service both in Ice's licensed territory as well as in other locations across the rest of Canada.[19] Sugar provides its customers with a SIM card that is coded to the Ice Wireless network,[20] as well as an app that replaces the built-in voice and SMS functionality on its customers' Android and iOS devices.[21] Sugar also provides its customers with 200 MB of cellular roaming data per month, which is the impugned element of the service.[22] Ice Wireless estimates that Sugar Mobile customers will make greater than 80% of their use of the service while connected to Wi-Fi, as opposed to cellular, networks.[23]

13. Ice Wireless and Sugar Mobile are affiliates of Iristel, a facilities-based competitive local exchange carrier (CLEC) operating across Canada.[24]

14. Rogers has threatened to terminate its roaming agreement with Ice Wireless, on the alleged basis that, in Rogers' view, Sugar Mobile customers are taking advantage of the reciprocal roaming agreement between Ice and Rogers to roam on Rogers' network, and that this fact constitutes a breach of the terms of that agreement.[25] To be more precise, Rogers has argued that Ice and/or

[15] Part 1 Application by Ice Wireless Inc. *Relating to Rogers Communication Partnership's attempt to disconnect Ice Wireless Inc. and the proper interpretation of Telecom Regulatory Policy CRTC 2015-177, 15 February, 2016,* paragraph 8.
[16] ibid, paragraph 3.
[17] ibid, paragraph. 4.
[18] ibid, paragraphs 5 & 14.
[19] See: Ice Wireless(CRTC)26Feb16-5.
[20] See: Ice Wireless(CRTC)03Mar16-1.
[21] Ice Application, paragraph 13.
[22] ibid.
[23] ibid, paragraphs 30 & 54.
[24] See: http://www.iristel.ca/about-us/ and https://services.crtc.gc.ca/pub/TelecomList/eng/TelecomLists?pt=33&_ga=1.215289879.1670752342.1416024332
[25] ibid, paragraph. 6. See also: Rogers' answer of February 18, 2016, paragraph 6.

Sugar is in breach of the terms of its agreement by virtue of the fact that Ice is "marketing this service nationally, to customers outside of Ice's operating territory, using Rogers to augment its customers' use of Wi-Fi networks".[26] Furthermore, in Rogers' view:

> "The Agreement is very clear that Ice cannot allow access to Rogers' network by third parties. The balance of convenience does not sanction Ice and Sugar to continue marketing Rogers' service to customers that do not reside in Ice's licensed serving territory and that do not take wireless mobile service on Ice's Home Network. These customers are clearly not roaming and have no right to use Rogers."[27]

15. The existing reciprocal roaming agreement between Ice Wireless and Rogers that is the subject of this dispute has been filed in confidence with the Commission, and is not publicly available. It is therefore difficult to comment on the merits of the accusations and responses found in the Ice Application respecting the specific provisions of the agreement.

16. A request seeking disclosure of the roaming agreement was filed by Vaxination Informatique as part of this proceeding. Although that request was denied, the Commission appears to have instructed parties that they may refer to the terms of Rogers' publicly available proposed roaming tariff as a proxy.[28]

17. OpenMedia has reviewed the proposed tariff, and provides its comments on the matter below.

Specific issues

18. In OpenMedia's view, the issue in the present proceeding appears to turn on either: Whether Sugar Mobile qualifies as an MVNO operating on Ice Wireless' network, or, in the alternative, whether Sugar Mobile may be instead reselling Rogers' wireless services and/or whether a Sugar Mobile customer who does not reside within Ice's licensed territory is considered to be "excessively" or "permanently" roaming on Rogers' network.

19. Whether or not the Commission ultimately condones Sugar's right to access wholesale roaming services, in OpenMedia's view, it is imperative that the roaming rights of Ice Wireless's primary customers be maintained.

[26] Rogers' answer of February 18, 2016, paragraph 11.
[27] ibid, paragraph 28.
[28] Commission Letter of March 15, 2016, addressed to Distribution list of this proceeding.

Are Sugar's customers entitled to roam on Rogers' network under the terms of the proposed tariff?

20. Ice Wireless maintains that Sugar Mobile is indeed "an MVNO that uses Ice Wireless as its host network."[29] For a Sugar Mobile customer who resides within Ice Wireless' licensed operating territory, this is undoubtedly the case, since Ice's wireless access network would fulfil the "roaming" function of the Sugar service for customers when not connected to a Wi-Fi network. For a Sugar mobile customer who resides outside of Ice Wireless' licensed territory the situation is more complex.

21. On the one hand, it seems likely that Sugar Mobile and Ice Wireless make use of common core facilities for the handling of voice and SMS traffic generated by their respective customers. Sugar customers also make use of Ice Wireless-issued SIM cards, which are a necessary component of the wireless network. To the extent that this is the case, Sugar Mobile could be considered to be operating on Ice Wireless' network, and customers of Sugar would therefore be entitled to access roaming services through the Ice-Rogers roaming agreement.

22. On the other hand, Sugar Mobile customers who reside outside of Ice's licensed territory would typically not make use of the wireless access portion of Ice's network (i.e. the RAN). This situation seems to be what Rogers has in mind as one factor which would disqualify Sugar Mobile customers from eligibility to roam on its network. But does Sugar have to utilize its host network's RAN for its customers to qualify for the right to roam on Rogers' network, pursuant to the terms of the proposed tariff?

23. Without all the relevant technical details regarding how Ice Wireless operates its network, we cannot be 100% certain, as this depends on whether the Ice and Rogers contract is materially similar to the terms of the proposed tariff. However, as we noted previously, it is difficult to meaningfully engage with this question in the absence of access to the confidential agreement. This absence raises obvious barriers to arriving at an informed assessment of how Rogers' claims will impact the public interest.

24. OpenMedia's understanding here depends on whether Sugar Mobile's operation — including the Wi-Fi networks which customers use to access the service — qualifies as accessing Ice Wireless's "Public Mobile Network (PMN)" as defined in the tariff and the GSM Association's articles of association.

[29] Ice Application, paragraph 14.

25. Regardless, for reasons we will detail later in this submission, we ask the Commission to take a broader view of the issues at hand.

Are Sugar Mobile customers "excessively roaming"?

26. With regard to the second specific issue, whether Sugar Mobile customers could be considered to be “excessively” or “permanently” roaming within the terms of the tariff, OpenMedia’s conclusion is similar. It appears that the question of whether this access may count as “excessive” roaming under the terms of the proposed tariff hinges on whether Sugar Mobile’s customers are considered to be accessing Ice Wireless’s PMN when they use voice, SMS, or data over Wi-Fi. [30] However, in any event, we believe that the Commission must take a broader view in order to avoid inadvertent foreclosure on innovative new wireless providers, particularly in light of CRTC 2015-177.

Policy Issues and Market Considerations

27. For the following reasons, OpenMedia is concerned that an overly narrow interpretation of the terms of the proposed tariff, which was developed by Rogers and has yet to receive final approval from the Commission, may throw the "innovation baby out with the regulatory bathwater." In other words, while a strict interpretation of the terms may lead some to the conclusion that Sugar Mobile customers are not eligible to roam on Rogers’ network, OpenMedia believes that a different conclusion is warranted if Sugar Mobile’s service is taken at face value, in consideration of the broader policy and market considerations at play.

28. At face value, what Sugar Mobile offers its customers is affordable access to mobile service, using a combination of facilities-based and service-based components. The Sugar Mobile service appears to be inextricably integrated with Ice Wireless’s home network (with respect to call handling/switching functions as described above) as well as Iristel’s LEC operation (with respect to access to local mobile telephone numbers). The difference between Sugar Mobile and a typical MVNO is that Sugar Mobile customers do not typically access the RAN portion of Ice Wireless’s network when using the service, but instead leverage Wi-Fi for the primary “last mile” connection.

29. It is clear that Sugar Mobile does not expect its customers to make predominant use of the service while on Rogers’ network; in practice, customers would roam onto Rogers’ network when not in range of a Wi-Fi network, much in the same way as Wind Customers would roam onto

[30] RCP Proposed Tariff Page, One-way Domestic Wireless Roaming Services Tariff, original p. 105, § 3.5.

Rogers' network when not in range of the Wind network. In effect, Sugar Mobile customers would be "incidentally" accessing the Rogers network when a Wi-Fi network was not available.

30. To be sure, an MVNO whose customers typically do not make use of the RAN portion of its host network is unorthodox, but willingness to challenge entrenched business models is also the hallmark of an innovative enterprise. Similar innovative approaches to providing mobile service are beginning to emerge in the United States—for example, Google Fi, Republic Wireless, and FreedomPop are all operating as MVNOs that leverage the Wi-Fi-first model—but until Sugar Mobile's launch, few (if any) similar propositions existed in Canada.

31. A close comparator may be Shaw's "Shaw Go" WiFi network. Shaw Communications is pursuing a strategy that integrates Wi-Fi networks into the various telecommunications and broadcasting services it offers customers, demonstrating that the idea of using Wi-Fi as an extension or replacement of the traditional PMN is not far-fetched or limited to the fringes. Indeed, in its most recent quarterly report, Shaw spent significant effort highlighting the development of its Shaw Go Wi-Fi network, and in particular the potential to integrate Shaw Go Wi-Fi with the operations of newly-acquired WIND Mobile:

32. "With WIND we will acquire immediate scale, spectrum, retail distribution, a wireless network that has a clear path to LTE and the opportunity to integrate that wireless network with our hybrid fibre-coax network and Shaw Go WiFi in a converged best-in-class network of networks. This vision will connect our customers when, how and wherever they want and with the speeds they want."[32]

33. Additionally, Bell Mobility advertises access to "the largest Wi-Fi network across Canada" to its mobile subscribers.[33] Rogers also offers its mobile customers a service called "Rogers Wi-Fi Calling" that allows subscribers to place phone calls and send and receive texts while outside the reach of Rogers' licensed footprint, or in "poor coverage locations."[34]

34. These examples demonstrate that numerous Canadian telecommunications service providers are experimenting with how to integrate Wi-Fi into their operations. Ice Wireless' Sugar Mobile, like Shaw, Bell, or Rogers, is part of an integrated operation that incorporates telecommunications

[32] Shaw, "Shaw Announces First Quarter Results and Positions Itself as a Leading Pure-Play Connectivity Provider," 14 January, 2016, available at: http://www.shaw.ca/uploadedFiles/Corporate/Investors/Financial_Reports/2016-01-14-First-Quarter-Results.pdf
[33] See: http://www.bell.ca/Mobility/Our_network
[34] See: http://www.rogers.com/business/on/en/smallbusiness/shop/wireless/wifi/

facilities, over-the-top services, and Wi-Fi networks to offer service to the public. Sugar Mobile is simply stepping ahead of the pack by combining a Wi-Fi first, cellular back-up model.

35. As discussed above, the Commission determined in the *Wholesale Wireless Framework* that the national carriers must provide wholesale roaming services to “all subscribers served by their wholesale roaming partners, **including the subscribers of any MVNOs operating on their wholesale roaming partners’ networks.**”[35]

36. The decision to regulate roaming rates and conditions, as well as certain elements of the MVNO market, came after nearly two years of significant activity from all parties involved. OpenMedia notes here that a significant contributing factor that brought us to the present juncture was the finding in TD 2014-398 that Rogers, the respondent in the instant proceeding, had used its control over roaming arrangements in an unduly preferential and unjustly discriminatory manner vis-à-vis competitive mobile wireless carriers.[36]

37. In the *Wholesale Wireless Framework,* the Commission recognized that “the national wireless carriers [i.e. Bell, Rogers, and Telus] collectively have the ability and incentive to, with regard to GSM-based wholesale roaming in the national market, maintain rates and impose terms and conditions that would not prevail in a competitive market”[37] (i.e. that they collectively possess market power). This is the situation that the development of tariffs for wholesale mobile wireless roaming services is intended to rectify.

38. OpenMedia understands that the decision over whether Sugar Mobile's operation is offside depends on the terms of the proposed tariffs as they stand *today* — that is, terms that were developed by Rogers and that have yet to receive final approval from the Commission. We must underscore our conviction that it would be a perverse outcome indeed if Rogers or any of the other national carriers were allowed to use the significant influence they have over the development of the terms and conditions of those tariffs to foreclose the possibility of competition from new and innovative services. In OpenMedia's view, such an outcome is precisely what the imposition of the new tariffs seeks to prevent.

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[35] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015, paragraph 165, emphasis added.
[36] Telecom Decision CRTC 2014-398, *Wholesale mobile wireless roaming in Canada — Unjust discrimination/undue preference,* Ottawa, 31 July 2014.
[37] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015, paragraph 165, paragraph 73.

39. In addition, OpenMedia submits that allowing the wholesale mobile wireless tariffs to develop along such an unduly narrow course would run counter to the spirit of the relevant provision of the *Wholesale Wireless Framework:* that the national carriers must provide wholesale roaming services to “all subscribers served by their wholesale roaming partners, including the subscribers of any MVNOs operating on their wholesale roaming partners’ networks.”[38]

40. Furthermore, to date, over 45,000 Canadians have signaled that they want the Commission to support innovative services like Sugar Mobile to be available in the marketplace through OpenMedia’s *Stop Blocking New Providers* campaign.

41. The wholesale mobile wireless tariffs, if properly implemented, may remove the national carriers’ ability to exercise their market power, but in OpenMedia’s view, they cannot remove their incentive to forestall additional competition and innovation, using whatever means available — even though those means may be limited in relation to what they were at this time last year.

42. Since the ink has yet to dry on the proposed tariffs, OpenMedia urges the Commission to be watchful of how these tariffs are formulated, so that they are not used to foreclose the possibility of fair competition in the retail market for mobile wireless services, or to prevent innovation from new entrants.

43. OpenMedia urges the Commission to see Sugar Mobile for what it really is: just the kind of innovative service that should be encouraged. At this point, we would be remiss not to ask the question: in whose interest is it to approve tariff terms that prevent this type of innovation from emerging? OpenMedia and our 45,000 petition signers submit that it most assuredly would not be in the public interest.

44. Finally, OpenMedia submits that the situation with respect to Sugar Mobile must not be viewed in isolation; it must be placed in its broader context. It is crucial to understand Sugar Mobile forms part of an integrated facilities-based telecommunications undertaking that includes Iristel, a CLEC which operates across Canada, and Ice Wireless, a new entrant wireless carrier operating in the territories.

45. Fostering the provision of innovative telecommunications services such as those on offer from Sugar is consistent with a number of the *Telecommunications Act’s* policy objectives. Notably, Sugar is providing Canadians with affordable telecommunications services in urban and rural areas (wherever Wi-Fi is available). Sugar Mobile contributes to enhancing the efficiency and

[38] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015, paragraph 165, emphasis added.

competitiveness of Canadian telecommunications by generating revenue that can be used to enhance Ice's ability to compete as a wireless new entrant in the territories and elsewhere by providing funds for infrastructure investment, perhaps enabling Ice to more effectively participate in future spectrum auctions. And, as over 45,000 of OpenMedia's community members will attest, Sugar Mobile unequivocally responds to the social and economic requirements of users.[39]

46. Based on the foregoing, OpenMedia submits that Sugar Mobile should be permitted to continue operating until such a time as the wholesale mobile wireless tariffs have been finalized, and the uncertainty surrounding the situation is resolved.

Ice Wireless Subscribers require access to roaming, regardless of the outcome

47. As mentioned above, Ice Wireless is a new entrant wireless carrier serving the Territories. Ice has undoubtedly made substantial investment in the furtherance of bringing competition to Northwestel's traditional monopoly territories, an endeavour which deserves special consideration considering the economic, technical, and regulatory challenges facing those regions, and the high prices facing Northern residents.[40]

48. Regardless of whether Sugar Mobile ultimately is found to be entitled to roam on Rogers' network, OpenMedia submits that it is absolutely essential that Ice Wireless subscribers retain the right to roam. Under no circumstance should Rogers be permitted to terminate Ice Wireless' roaming agreement in a manner that results in the loss of roaming capability for Ice's Northern subscribers.

49. As Ice has submitted, "In the event that Ice Wireless is disconnected from roaming on Rogers' network, it would experience a massive loss of subscribers to other operators. In these circumstances, Ice Wireless would have difficulty sustaining itself as a viable business. The loss suffered would be impossible to quantify and there would be no way for Ice Wireless to recover from this loss."[41]

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[39] Canada, *Telecommunications Act*, S.C. 1993, c.38, §7.
[40] A breakdown of wireless pricing can be found in the CRTC Communications Monitoring Report, 2015, figures 5.5.1.5-5.5.22. For voice-only service baskets, pricing in the North compared to the rest of Canada appears to be relatively similar. However, for service plans including 1GB of data or more, the lowest price for mobile service in the North appears to be higher than in most other provinces, as does the highest price. From a brief survey of online marketing material, it appears that the "lowest" and "highest" prices on offer correspond to Ice rate plans and Bell rate plans, respectively, suggesting that Ice is having a beneficial competitive effect for Northern Canadians.
[41] Ice Application, paragraph ES-13.

50. This position is consistent with the *Wholesale Wireless Framework,* wherein the Commission determined that: "GSM-based wholesale roaming from the national wireless carriers under reasonable rates, terms, and conditions is necessary for smaller wireless carriers, including new entrants, to offer broad or national network coverage to their retail customers,"[42] and that "wholesale roaming and MVNO access provided by Bell Mobility, RCP, and TCC are essential",[43] or, in other words, that denial of access would result in a substantial lessening or prevention of competition in the retail market.

51. The Public Interest Advocacy Centre (PIAC) has rightly agreed that Ice must not be disconnected from roaming: "Such a result would possibly be fatal to Ice Wireless's wireless business in the north if many customers defected and would irreparably harm the fragile competition that is only just starting to develop."[44] Equally if not more important, PIAC rightly points out that the concern stretches beyond preserving competition, by pointing out that unexpected disconnection or interruption of telecommunications services is quite simply unsafe to the persons thus affected.[45]

52. OpenMedia strongly supports Ice and PIAC on the above points. Allowing Ice's customers to be disconnected from the ability to roam when outside their home area would run counter to the *Telecommunications Act*'s policy objectives, the *Wholesale Wireless Framework* and plain old common sense. Under no circumstance should Rogers be permitted to terminate Ice's roaming agreement.

Conclusion

53. In summary, OpenMedia notes that the *Wholesale Wireless Framework* was intended to preserve and promote competition and innovation in the Canadian wireless market, in particular competition and innovation from new entrant wireless carriers, by constraining the national carriers' market power. Ice Wireless is one of the few (if not the only) remaining independent new entrant wireless carrier in Canada, and Rogers appears to be using its influence over the tariff process to enact terms that would prevent Ice from offering Canadians an innovative and competitive service offering.

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[42] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015, paragraph 71.
[43] Telecom Regulatory Policy CRTC 2015-177, *Regulatory framework for wholesale mobile wireless services,* Ottawa, 5 May, 2015, paragraph 109.
[44] PIAC Intervention re: Ice request for interim relief, 18 February 2016, paragraph 14.
[45] ibid, paragraph 15.

54. OpenMedia submits that permitting the wholesale mobile wireless tariffs to be constructed in such a manner would unduly limit the affordable, competitive options available to residents of Canada, and would frustrate the Commission's purpose in establishing the mandated roaming framework.

55. In OpenMedia's view, services like Sugar Mobile are just the kind of innovative, competitive options that should be on offer in the Canadian wireless marketplace. In light of the present circumstances, we question whether the current rules should be allowed to be constructed in such a way as to foreclose the possibility of competition in the retail wireless market.

56. At the very least, OpenMedia submits that Sugar Mobile should be allowed to operate until the tariff approval process has been completed, and the tariffs finalized.

57. Second, and finally, OpenMedia submits that the Commission must not permit Rogers to terminate Ice Wireless' ability to offer roaming to its Northern customers. To do so would not only endanger Ice Wireless' business prospects, perhaps fatally, but would strike a significant blow to telecommunications competition in the Canadian Territories. Furthermore, it would unduly harm the residents of the territories, who, through no fault of their own, would find themselves with less options for communications services, and potentially cut off from the ability to communicate -- an outcome that would be in no one's interest.

58. Thank you for your time and consideration.

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