



June 13, 2018

Claude Doucet  
Secretary General  
Canadian Radio-television and Telecommunications Commission  
Les Terrasses de la Chaudière  
1 Promenade du Portage  
Gatineau, QC J8X 4B1

Dear Mr. Doucet:

**Re: Telecom Notice of Consultation CRTC 2018-98, *Call for comments – Lower-cost data-only plans for mobile wireless services, as amended* – Intervention of Shaw Communications Inc.**

1. Shaw Communications Inc. (**Shaw**), on behalf of itself and its wholly-owned subsidiary, Freedom Mobile Inc. (**Freedom**), is pleased to provide this Intervention in the proceeding initiated by Telecom Notice of Consultation CRTC 2018-98, *Call for comments – Lower-cost data-only plans for mobile wireless services (TNC 2018-98)*, as amended.
2. In TNC 2018-98, the Commission directed Bell Mobility Inc. (**Bell**), Rogers Communications Canada Inc. (**Rogers**), and Telus Communications Inc. (**Telus**) to file with the Commission proposals for national lower-cost data only plans, having regard to views expressed by the Commission in Telecom Decision CRTC 2018-97, *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service (Decision 2018-97)*, including a complete description of the terms and conditions associated with their proposed plans.
3. TNC 2018-98 also allowed the wireless incumbents to comment on the following:

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- (a) how their proposed lower-cost data-only plans, including pricing and capacity, would address the concerns set out in the Order in Council,<sup>1</sup> especially the concerns regarding affordability;
  - (b) justify any limitations or deviations from the Commission's views with respect to the structure of the plan;<sup>2</sup>
  - (c) discuss whether a price ceiling and/or capacity floor are appropriate and, if so, what they could be;
  - (d) identify the target market and timing for the introduction of the proposed plans, including how the incumbents intend to promote the plans' availability to consumers;
  - (e) discuss whether a section 24 condition of service is appropriate to ensure the continued availability of lower-cost data-only plans; and
  - (f) raise any other matters that are pertinent to the issues at hand.
4. Having reviewed the proposals of the wireless incumbents, as well as their submissions in respect of the topics listed above, Shaw has the following comments for the Commission's consideration.
  5. However, first we would like to provide the background against which we make this Intervention.

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<sup>1</sup> P.C. 2017-0557, 1 June 2017.

<sup>2</sup> In TNC 2018-98, paragraph 12, the Commission indicated that the lower-cost data-only plans should

- be available on the latest mobile wireless network technology (i.e. not limited to the third-generation [3G] network);
- be available to all consumers (i.e. not limited to a means-tested subset of low-income households);
- and
- be available on both a prepaid and postpaid basis.

## Introduction & Context

6. Contrary to assertions of Bell, Rogers, and Telus (the **Big 3**), in Canada, a truly competitive mobile wireless environment is only beginning to develop. The Big 3 dominate the market with 89% of subscribers and 91% of revenues. Canadians do not get the value, choices, and affordable prices they increasingly need as their reliance on mobile data escalates. There is clear evidence that the presence of a strong competitor drives pricing discipline, service innovation and choice,<sup>3</sup> yielding more affordable services that are more responsive to the needs of Canadians. However, in many areas of Canada today, a strong competitive alternative to the wireless incumbents does not yet exist.
  
7. Shaw is ready, able and willing to step up and establish itself as a strong alternative to the Big 3 wireless incumbents. Furthermore, we are committed, in the long term, to ensuring there are affordable wireless services for all Canadians in all segments of the market, including in the lower end of the market, which has always been, and continues to be, a focus for Freedom. Although we are a new competitor in the wireless market, we have decades of experience as a network builder and a long track record of customer-focused innovation in the wireline telecommunications and video markets.<sup>4</sup> We look at what our customers want and need, and respond with innovative product offerings and services that are both valuable *and* affordable. We have a bold vision to bring this same spirit of customer-focused responsiveness and innovation to the future of mobile connectivity in Canada.

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<sup>3</sup> See, e.g., Competition Bureau statement regarding Bell's acquisition of MTS, February 15, 2017.

<sup>4</sup> These innovations include BlueSky TV, a completely new platform in the Canadian video market; Internet 150, which delivers leading internet speeds at affordable prices to large and small Canadian communities; Shaw Go WiFi, Canada's leading carrier grade Wi-Fi network; and a suite of innovative, enterprise grade IT products designed for Canada's small business segment.

8. This means that, with our entry into the wireless market, Shaw has looked, and continues to look, for ways to differentiate itself with product offerings that fill gaps left by the Big 3 and respond to unmet customer needs with innovative product offerings. Freedom has historically done this by meeting the needs of customers interested in lower-cost services, subscribers who do not want to enter into long-term contracts, subscribers who require basic services and simple invoices, as well as low-use subscribers. This process of filling gaps is also what led to Freedom's launch of its transformative "Life is a Big Gig" data plans – which include an offer of 10GB for only \$50 per month, with no financial penalties for data overages – an innovative range of plans that respond to Canadians' growing, and previously unmet, needs for fair and valuable data plans. The reaction of the incumbents to the launch of Life is a Big Gig demonstrates the impact that a strong competitor can have on the market.<sup>5</sup>
  
9. Shaw's commitment to become a strong and sustainable facilities-based alternative to the incumbents is clear in our actions. In only a few years, we have invested billions of dollars in our wireless business and are continually expanding and enhancing our network to create the most valuable mobile experiences possible with our limited spectral resources. For example, we have launched LTE-Advanced, enabling millions of Canadians to bring their own device to the Freedom network and presenting meaningful choice in the marketplace. Last year, we acquired 700 MHz and 2500 MHz spectrum, which will further improve our network capacity and quality. More recently, we completed the re-farm of 10 MHz of AWS-1 spectrum across Freedom's entire footprint, significantly expanding Freedom's addressable market.

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<sup>5</sup> Christine Dobby, "Big Three wireless carriers take aim at Freedom with discounted plans", Christine Dobby, The Globe and Mail, December 18, 2017, available online: <https://www.theglobeandmail.com/report-on-business/big-three-wireless-carriers-take-aim-at-freedom-with-discounted-plans/article37372993/> (accessed 7 June 2018).

10. Yet, we continue to face fundamental barriers to sustainable competition in the wireless industry, including dramatic imbalances between our spectrum holdings and those of the incumbents, and challenges accessing towers and sites for our radio antennae on reasonable terms and conditions. The decades of incumbency advantages enjoyed by the Big 3 have created a vastly unequal playing field in the wireless market, making the road to sustainable facilities-based competition a very difficult and uncertain one. The reality is that, no matter how innovative Shaw is operationally or technologically, or how many billions of dollars we spend, our competitive efforts will always be hobbled by these fundamental barriers to competition. On the other hand, if Shaw and other facilities-based new competitors in the market are equipped with the proper tools to challenge incumbent dominance, a new, dynamic wireless environment can finally take hold in Canada.
11. For these reasons, it is imperative that the federal government and regulators focus their efforts on addressing the remaining barriers to meaningful competition in the wireless marketplace. To this end, Canadian regulators and policy makers have made significant strides,<sup>6</sup> but there is still substantial work left to be done.
12. Consistent with the 2006 Policy Direction, the Commission should continue to focus on promoting facilities-based competition through the use of targeted and efficient regulatory measures. Heavy-handed rate regulation or the imposition of a condition of service would be ineffective, highly disruptive to competitive market forces, and contrary to the Policy Direction. Shaw remains of the view that designing retail services should be a function of the market, not the regulator.

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<sup>6</sup> Recent examples include Innovation, Science and Economic Development Canada's recent decision on the licensing framework for the 600 MHz band (*Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band*, March 2018, SLPB-002-18) and the Commission's March 2018 decision finalizing the rates for wholesale mobile wireless roaming (Telecom Order CRTC 2018-99, *Wholesale mobile wireless roaming service tariffs – Final rates*, 22 March 2018).

## Shaw's Comments on TNC 2018-98

13. Shaw takes no positions on the proposals for national lower-cost data only plans filed by the wireless incumbents. However, consistent with our submissions above, the best way to ensure affordability and choice in the market on a long-term basis is through facilities-based competition and the presence of a strong alternative to the wireless incumbents in every market across Canada.<sup>7</sup> The low-cost data segment of the market is already a key focus for Freedom. Balanced, minimally intrusive regulation that reduces ongoing barriers to competition will allow Freedom to bring sustainable choice to the market over the long term.
14. As described above, TNC 2018-98 also invited the incumbents to comment on a variety of issues, including, notably, the appropriateness of a price ceiling and the use of a section 24 condition of service to ensure the continued availability of lower-cost data-only plans.
15. In this respect, Shaw refers the Commission to Shaw(CRTC)16Oct2017-3, filed on November 6, 2017 as part of the proceeding leading to TNC 2018-97, in which Shaw expressed concern that the mandating of a lower-cost data plan could have distortive effects on the retail market that would disproportionately impact Freedom, which already has service offerings targeting the lower-cost market segment. More to the point, Shaw also argued that the Commission did not have the statutory authority to mandate a retail mobile service at a regulated rate and that the Commission's powers under section 24 of the *Telecommunications Act* do not allow it to mandate the provision of a data-only retail mobile wireless plan. In

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<sup>7</sup> See, e.g., Competition Bureau statement regarding Bell's acquisition of MTS, February 15, 2017; Innovation, Science and Economic Development Canada, *Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band*, March 2018, SLPB-002-18, at paragraph 13.

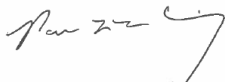
our view, the same arguments apply to the potential imposition of a price ceiling on, or use of section 24 to mandate the availability of, the incumbents' plans.

16. To be clear, the use of section 24 to ensure the continued availability of the lower-cost data-only plans proposed by the incumbents would be tantamount to rate regulation, even if the required service is at the rate proposed by a carrier. Any requirement to offer a service at a certain rate constitutes rate regulation, and the Commission does not have the jurisdiction in this proceeding to engage in rate regulation.

## **Conclusion**

17. The Canadian mobile wireless market is at a pivotal moment. As new competitors deepen their presence in markets across the country, Canadians are being presented with more choice, in terms of products and price, than ever before. However, history tells us that the market dominance of the Big 3, built on decades of incumbency advantages, cannot be underestimated. For nascent competition to evolve into strong, truly sustainable competition, careful, concerted policy-making by all government actors is essential. The CRTC should continue to champion facilities-based competition as the best way to achieve greater choice and affordability in the market for Canadians.
18. Shaw thanks the Commission for the opportunity to participate in this consultation.

Yours truly,



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