



October 23, 2018

Mr. Claude Doucet  
Secretary General  
Canadian Radio-Television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

**Re: Telecom Notice of Consultation CRTC 2018-98, Lower-cost Data-only Plans for  
Mobile Wireless Services- Shaw Final Reply Comments**

**File: 1011-NOC2018-0098**

Dear Mr. Doucet:

1. Shaw Communications Inc. ("**Shaw**"), and its wholly-owned subsidiary, Freedom Mobile Inc. ("**Freedom**"), are pleased to provide these final reply comments pursuant to the procedures set out in Telecom Notice of Consultation CRTC 2018-98, *Lower-cost data-only plans for mobile wireless services (TNC 2018-98)*.
2. Shaw has reviewed the reply comments submitted on October 9, 2018 by Bell Mobility Inc. (**Bell**), Cogeco Communications Inc. (**Cogeco**), Québecor Média inc. (**Québecor**), Rogers Communications Canada Inc. (**Rogers**), SSi Micro Ltd. (**SSi Micro**) and Telus Communications Inc. (**Telus**) in this proceeding. Based on Shaw's review of these comments, there appears to be consensus amongst the wireless service providers that Commission intervention in the lower-cost data-only (**LCDO**) segment of the wireless market is not only unnecessary but could have negative repercussions on facilities-based competition.

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## **I. The Negative Impact to New Facilities-based Competitors**

3. As we outlined in our earlier comments, Shaw opposes Commission intervention in the lower-cost data-only segment of the wireless market. Freedom very recently began offering new low-cost and data-only products as a way of responding to consumer demand and distinguishing itself in the market. Regulatory intervention in the low-cost data-only market segment will eliminate this market differentiator.
4. It is critical that all market segments remain available to new facilities-based competitors who are in the process of investing billions of dollars to enhance and expand their networks and have introduced differentiated, innovative and competitive wireless services in the market. It is these investments by facilities-based competitors that are starting to have a real impact on competition in the retail mobile wireless market and are challenging the dominance of the Incumbents in the markets.
5. Freedom and other facilities-based new competitors are legitimately concerned that this competitive activity would be negatively impacted by the Commission's proposed regulatory rate intervention. The harm from the proposed retail price regulation will hit the facilities-based new competitors the hardest and put the business models of facilities-based new competitors at risk. Shaw agrees with SSi Micro's statement:

“[W]e remain concerned that the Commission's proposal amounts to rate regulation of retail mobile wireless services, a proposal that can negatively impact new and emerging wireless carriers, particularly if the CRTC establishes a price ceiling and/or capacity floor for LCDOs.”<sup>1</sup>

6. Parties in this proceeding have echoed Freedom's concerns that price regulation and mandated wireless plans at artificial rates would undermine network investment. As Cogeco stated:

“In addition, regulatory intervention in a retail market always carries with it the risk of unintended consequences which may distort the market and reduce the ability of the Commission to encourage investment in facilities and to promote

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<sup>1</sup> Para 5 of SSi Micro's comments October 9, 2018

competition among facilities-based carriers. In other words, if the Commission were to intervene in the retail market, the risks would be high and the rewards would be uncertain.”<sup>2</sup>

7. SSi Micro raised similar concerns as it relates to new facilities-based competitor investments in remote and rural areas:

“Put more plainly: if the Commission mandates the NWCs to offer LCDO plans throughout their networks, even in remote and rural locations where retail mobile wireless service (let alone competitive service in many markets) is only now beginning, there is a strong chance that that new entrants and competitive service offerings will never develop – and this is certainly not a desirable outcome, nor one that will protect consumers’ interests.”<sup>3</sup>

8. As evidenced by the comments submitted by facilities-based new competitors in this proceeding, the Commission’s regulatory intervention will have a very real impact on the business of facilities-based competitors and on their ability to attract and make investments in their networks. In particular, the uncertainty surrounding the Commission’s intervention in the market will raise red flags just as billions of dollars of investment is needed to build-out next-generation 5G networks.

## **II. Regulatory Intervention is Not Warranted**

9. As we detailed in our responses to Commission requests for information and in our earlier submission, the Commission does not have the authority to use its powers under section 24 of the Act to direct the Incumbents to provide the LCDO plan or to establish a price ceiling and a capacity floor for the LCDO plans. Mandating an LCDO plan with a price ceiling and a capacity floor invokes the Commission’s rate making powers and would be tantamount to rate regulation.
10. Pursuant to section 34 of the Act, the Commission has forborne from regulating retail mobile wireless services, except with respect to its powers under section 24 and subsections 27(2), 27(3) and 27(4) of the Act. The Commission must therefore reverse its forbearance findings in order to require carriers to file tariffs for a mandated LCDO plan pursuant to section 25. However, in order to reverse its forbearance findings, the Commission must find that there has been a change in

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<sup>2</sup> Para 19 of Cogeco’s comments October 9, 2018

<sup>3</sup> Para 50 of SSi Micro’s comments October 9, 2018

circumstances such that there no longer exists competition sufficient to protect the interests of users in the mobile wireless market. There is no evidence on the record of the proceeding that support a reversal of the Commission's earlier forbearance findings.

11. Further, there is no need for the Commission to intervene and impose intrusive regulatory measures in the retail mobile wireless market that interfere with the operation of market forces. As Shaw has proposed, the Commission could treat the Incumbents' proposals, including the length of time that they will make their LCDO plans available in the market, as unilateral, voluntary undertakings.<sup>4</sup> Rogers has acknowledged that this approach is an appropriate course of action and has indicated its willingness to make such an undertaking:

"Rogers agrees with Shaw that undertakings would be a good alternative to further regulatory action by the Commission. For its part, Rogers would be willing to provide such an undertaking which could be reviewed by the Commission after two years to determine whether its continuance is required."<sup>5</sup>

12. While Bell did not explicitly address Shaw's proposal, they have similarly indicated that no further Commission action is required beyond accepting the Incumbent carrier's commitments to provide the proposed LCDO services:

"It is therefore not necessary for the Commission to take additional steps beyond accepting the carriers' commitments, particularly when the Commission has announced a review of the wholesale wireless framework in 2019 which will provide it with an opportunity to evaluate compliance with the carriers' commitments and adjust if necessary at that point in time."<sup>6</sup>

13. Given the serious detrimental effects that intrusive retail rate regulation will have on service providers, long-term facilities-based investment and customers in the wireless market, the Policy Direction requires that the Commission opt for the least intrusive way of addressing concerns in the market.

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<sup>4</sup> Shaw(CRTC)20Jul2018-201.

<sup>5</sup> Para 71 of Roger's comments October 9, 2018

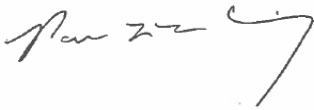
<sup>6</sup> Para 30 of Bell's comments October 9, 2018

### III. CONCLUSION

14. Shaw acknowledges that there are presently competition problems in the Canadian mobile wireless market. However, the solution is not to introduce interventionist price controls into the market that will interfere with and harm the ability of facilities-based new competitors, such as Freedom, to effectively compete in the mobile wireless market. To do so would work at cross-purposes with the policy of facilities-based competition and would be inconsistent with the Canadian telecommunications policy objectives.

Yours truly,

Shaw Communications Inc.

A handwritten signature in black ink, appearing to read "Paul Cowling". The signature is stylized and written in cursive.

Paul Cowling  
SVP, Legal & Regulatory Affairs

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