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FILED VIA EMAIL (ic.telecomsubmission-soumissiontelecom.ic@canada.ca)

Pamela Miller
Director General
Telecommunications and Internet Policy Branch
Innovation, Science and Economic Development Canada
235 Queen Street, 10th Floor
Ottawa, ON
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Dear Ms. Miller,

Subject: Proposed Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation – Comments of Canadian Association of Wireless Internet Service Providers

1.0 Introduction

1. In accordance with the procedure set out in the *Canada Gazette*, Part I on March 9, 2019¹, Canadian Association of Wireless Internet Service Providers (“CanWISP”) is hereby providing its comments on the *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation* (“Order”) proposed by the Governor in Council.²

2. CanWISP supports the adoption of the Order and believes that it will have a positive impact on competition, affordability, consumer interests, and innovation in Canadian telecommunications and urges the Governor in Council to adopt it as swiftly as possible. However, while CanWISP fully supports the content of the Order it has further suggestions that it believes will enhance the Order’s effect and avoid potential pitfalls.

¹ *Canada Gazette*, Part I, Vol. 153, No. 10, 9 March 2019, pg. 856, at pg. 860 [“Gazette Notice”].

² Gazette Notice, at pgs. 860-861 [“Order”].

3. In particular, CanWISP urges that the Governor in Council take the following measures:

- The Governor in Council should monitor how the Commission interprets the Order to ensure that the Governor in Council's intention is being followed; and
- The 2006 Policy Direction³ should be repealed contemporaneously with the coming into force of the Order.

2.0 CanWISP and its members

4. CanWISP is an organization that was founded in 2013 that represents the interests of Canadian wireless Internet service providers ("WISPs"). CanWISP members operate networks providing Internet access to households in rural and remote areas throughout Canada – areas that large telecom operators are either not servicing or in which they have not upgraded their old copper network and thus provide only basic services.

5. CanWISP members range in size, servicing between several hundred to 25,000 subscribers. They supply high speed Internet service as well as Voice over Internet Protocol ("VoIP") voice services, and video services. Some members even provide mobile roaming services over LTE networks. CanWISP has over 50 members that provide service to around 160,000 subscribers in rural and remote areas.

6. CanWISP members live in, invest in, and employ people in the predominantly rural communities that they serve.

3.0 CanWISP fully endorses the content of the Order

7. CanWISP fully endorses the content of the Order and urges the Governor in Council to implement it as soon as it is able.

8. In particular, CanWISP is heartened by the requirement in the Order that the Commission adopt regulatory measures that "encourage all forms of competition" and "reduce barriers to entry and barriers to competition for new and smaller telecommunications service providers."⁴

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355 ["2006 Policy Direction"].

⁴ Order at subsections 1(a)(i), (v).

9. CanWISP is confident that the Order will encourage the Commission to take measures to foster the continued expansion of WISPs and the development of their infrastructure in rural and remote areas that currently do not have access to broadband.

10. In particular, CanWISP is hopeful that the Order will require the Commission to ensure that the administration of its new Broadband Fund⁵ does not unduly favour the Incumbents and that telecommunications service providers of all sizes, including WISPs that have served their communities for decades, will have an equitable chance to receive funding to expand their networks in rural and remote areas where it would not otherwise be economically feasible to do so. Obviously, a significant barrier to entry for WISPs, many of whom are small businesses, in terms of expanding or upgrading their networks to better serve rural Canadians, is access to capital.

11. As the Commission will likely be making its first call for applications under the Broadband Fund in short order⁶, CanWISP requests that the Governor in Council ensure that the Order is implemented without delay.

4.0 The Commission's implementation of the Order should be closely monitored

12. CanWISP urges the Governor in Council to monitor the Commission's implementation of the Order to ensure that its intent has been properly understood and executed.

13. In this respect, CanWISP notes the unfortunate history of the 2006 Policy Direction, which has caused considerable difficulties for competitive service providers that compete against Canada's large Incumbent Local Exchange Carriers ("ILECs") and Cable Carriers (collectively, "Incumbents").⁷

⁵ The Broadband Fund was established by Telecom Regulatory Policy CRTC 2016-496, *Modern telecommunications services – The path forward for Canada's digital economy*, 21 December 2016.

⁶ Canadian Radio-television and Telecommunications Commission, "Chris Seidl to the Standing Senate Committee on Banking, Trade and Commerce", 4 April 2019, available at: <https://www.canada.ca/en/radio-television-telecommunications/news/2019/04/chris-seidl-to-the-standing-senate-committee-on-banking-trade-and-commerce.html>

⁷ Incumbent refers to any of the large incumbent telephone companies (each an "ILEC" and collectively "ILECs"), namely Bell Canada ("Bell") (including the operations that were previously operated by Bell Aliant Regional Communications, Limited Partnership and MTS Inc., collectively "Bell"), Northwestel Inc. ("Northwestel"), Saskatchewan Telecommunications ("SaskTel") and TELUS Communications Inc. ("TELUS"), or any of the large cable company incumbents, namely Bragg Communications Inc. o/a Eastlink "Eastlink"), Cogeco Communications

14. In particular, the emphasis in the 2006 Policy Direction upon relying on “market forces” to the maximum extent feasible⁸ has been, in CanWISP’s opinion, seriously misinterpreted by the Commission. For example, in Telecom Decision CRTC 2018-97⁹ (“TD 2018-97”), the Commission denied competitors wholesale access to the mobile wireless networks of the Incumbents largely on the basis that it believed that granting wholesale access to these mobile wireless networks would be inconsistent with the requirement in the 2006 Policy Direction to rely upon market forces to the maximum extent feasible.¹⁰

15. The result of this ongoing lack of wholesale access to the mobile wireless networks of the Incumbents is that effective competition has failed to develop and the Incumbents control one of the most highly concentrated mobile wireless markets in the world.

16. In its Regulatory Impact Analysis Statement accompanying the Order, the Governor in Council has acknowledged that the ongoing lack of competition in the provision of mobile wireless services has resulted in less than optimal consumer outcomes, including some of the highest prices for mobile wireless services in the world and abusive sales practices by large Incumbents.¹¹

17. CanWISP does not believe that the intent of the 2006 Policy Direction was to instruct the Commission to shy away from the use of effective wholesale regulation or other remedies once it is clear that a *laissez faire* approach will not accomplish optimal consumer outcomes. Unfortunately, this is how the 2006 Policy Direction has been interpreted by the Commission.

18. In order to avoid a similar fate of misconstruction befalling the Order as the 2006 Policy Direction, CanWISP urges the Governor in Council to closely monitor the Commission’s implementation of the Order. This close monitoring will allow the Governor in Council to take further steps to intervene in the event that the Commission does not implement the proposed Order as intended.

Inc. (“Cogeco”), Rogers Communications Inc. (“Rogers”), Shaw Communications Inc. (“Shaw”), and Videotron Ltd. (“Videotron”) (each a “Cable Carrier” and collectively “Cable Carriers”).

⁸ 2006 Policy Direction at subsection 1(a)(i).

⁹ Telecom Decision CRTC 2018-97, *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*, 22 March 2018 [“TD 2018-97”].

¹⁰ *Id.*, at para 126.

¹¹ Canada Gazette, Part 1, Vol. 153, No. 10, 9 March 2019, at pgs 854-855.

5.0 The 2006 Policy Direction should be repealed

19. CanWISP notes the Governor in Council's intent to keep the 2006 Policy Direction in force following the coming into force of the Order.¹² CanWISP urges the Governor in Council to reconsider this position and instead repeal the 2006 Policy Direction simultaneously with the coming into force of the Order for the reasons that follow.

20. The Commission's interpretation of the 2006 Policy Direction, particularly the provision requiring it to rely upon market forces to the greatest extent feasible¹³, is incompatible with the Governor in Council's intent to foster all forms telecommunications competition¹⁴, including, wholesale-based competition over mobile wireless networks. The Commission's reasoning in TD 2018-97 made this conflict apparent as the Commission does not believe that wholesale-based competition represents maximum reliance upon market forces.¹⁵ Thus, the two policy directions conflict with each other in this respect and CanWISP urges the repeal of the 2006 Policy Direction to avoid disputes and uncertainty over which policy direction is to prevail.

21. CanWISP notes the Governor in Council's concern that the Commission continue to find efficiencies and streamline its processes¹⁶, which it was instructed to do in the 2006 Policy Direction.¹⁷ The objective of efficient and streamlined regulation is unobjectionable and is supported by all members of the industry. Thus, CanWISP proposes that to the extent that the Governor in Council is concerned that the repeal of the 2006 Policy Direction may lead the Commission to stop seeking efficiencies and streamlining its processes, the Governor in Council can easily insert subsections 1(c)(i), (iii), and (iv) of the 2006 Policy Direction into the Order, instead of leaving the 2006 Policy Direction in place.

22. Maintaining both policy directions in force will also lead to an increase in the regulatory burden imposed on smaller providers as they will be required to demonstrate that their positions in

¹² *Id.*, at pg. 858.

¹³ 2006 Policy Direction at subsection 1(a)(i).

¹⁴ Order at subsection 1(a)(i).

¹⁵ TD 2018-197, at para 126.

¹⁶ Canada Gazette, Part 1, Vol. 153, No. 10, 9 March 2019, at pg 858.

¹⁷ 2006 Policy Direction at subsection 1(c)(i), (iii), and (iv).

Commission proceedings comply with two separate policy directions, as well as the policy objectives contained in section 7 of the *Telecommunications Act*.¹⁸ CanWISP submits that a requirement to craft legal submissions in Commission proceedings such that they comply with two policy directions does not constitute either efficient or streamlined regulation.

23. In the event that the Governor in Council rejects CanWISP's preferred solution of repealing the 2006 Policy Direction, as an alternative measure, CanWISP suggests that the Governor in Council modify the Order such that it contains an unambiguous statement that the Order will prevail over the 2006 Policy Direction in the event of any conflict.

24. Consequently, in order to avoid inevitable conflicts between the 2006 Policy Direction and the Order, as well as to reduce the regulatory burden that complying with two policy directions will entail, CanWISP urges the Governor in Council to repeal the 2006 Policy Direction concurrently with the coming into force of the Order.

6.0 Conclusion

25. CanWISP strongly supports the Order and requests that the Governor in Council bring it into force as soon as it is able. CanWISP believes that the Order will, by promoting competition by all types of telecommunications service providers, significantly improve consumer outcomes.

26. However, to enhance the likelihood of the Governor in Council achieving its objectives of promoting competition, affordability, consumer interests, and innovation in Canadian telecommunications through the Order, CanWISP also urges the Governor in Council: (a) to monitor closely how the Order is implemented by the Commission; and (b) to repeal the 2006 Policy Direction contemporaneously with the coming into force of the Order.

Yours truly,

Andreas Wiatowski
Chair

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¹⁸ SC 1993, c 38.