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Ms. Pamela Miller  
Director General  
Telecommunications and Internet Policy Branch  
Innovation, Science and Economic Development Canada  
235 Queen Street, 10<sup>th</sup> Floor  
Ottawa, ON K1A 0H5

**RE: Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation  
*Canada Gazette, Part 1, 9 March 2019***

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Dear Ms. Miller:

1. SSi Micro Ltd. (“SSi”) is pleased to provide our comments on the Proposed Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation (the “Proposed Order”). The Proposed Order was published in the *Canada Gazette, Part 1*, on 9 March 2019, and parties were invited to comment within 30 days of publication.

### **Summary and Recommendations**

2. We commend Innovation, Science and Economic Development Canada (“ISED”) and the Governor in Council for emphasizing the development of competition in the telecommunications sector, and through that improved consumer outcomes, as a matter of urgent concern.
3. SSi is an internet service provider, a wireless service provider and a competitive local exchange carrier (“CLEC”) operating in Canada’s North. We have also designed, built and operated state-of-the-art communications networks around the world and, with over 25



years of operating experience, we are a leader in remote-area connectivity, delivering advanced satellite, broadband and mobile wireless solutions.

4. SSi understands first-hand the challenge of providing effective and affordable communications services to remote and outlying areas. SSi launched broadband into many markets where the internet previously did not exist, delivers mobile voice and data services to communities where those were not available, and provides a competitive alternative to the incumbent operator in many other small and remote markets.
5. We also know from experience that the best way to improve customer outcomes such as affordability, the availability of choices that best meet the consumer's wants and needs, consumer protection, and innovation is to ensure that competition is vigorous, fair and comprehensive. In fact, we believe that fair and healthy competition is the **only** way to improve these consumer outcomes.
6. We support the proposed Direction's instruction to the Commission, when using regulation, to "reduce barriers to entry and barriers to competition for new and smaller telecommunications service providers". This endorsement of the potential impact of new and smaller entrants is very welcome and corresponds with the findings of recent policy studies from House of Commons Standing Committees, the Competition Bureau, other policy-makers and even the CRTC itself as they have considered how best to achieve Canada's telecommunications objectives, especially in remote and rural areas. We explore some of these findings in greater detail below.
7. Two fundamental concerns, however, inhibit us from voicing wholehearted support for the proposed Direction to the CRTC as the most appropriate instrument available to promote competition and thereby improve outcomes for consumers.
8. Our first concern is with **clarity**. That is, it is not clear how the CRTC is supposed to interpret this proposed Direction in light of its overlap with the language of the policy objectives expressed at section 7 of the *Telecommunications Act*, and with the language of the 2006 *Order Issuing a Direction to the CRTC on Implementing the Telecommunications Policy Objectives*, SOR/2006-355 (the "2006 Policy Direction"). If the intent of the Governor in Council is to provide the Commission with a clear set of priorities among these often-conflicting policy statements, we believe it would be more helpful to do so in a clear and unambiguous fashion.
9. Our second concern with the proposed Direction is that its issue **not undermine efforts to update and modernize** the legislation concerning the communications sector, including the *Telecommunications Act* itself. Our analysis of the *Act* suggests that the legislation may still contain fundamental impediments to competition as a consequence of its origins as a statute governing the regulation of private-sector monopolies.



10. Our second concern, that the Direction not derail more fundamental reform of the communications sector legislation, in turn stems from two observations:
  - First, we note that the 2006 Policy Direction was the only substantive output that resulted from the thorough review, in 2005-06, of the *Telecommunications Act*, a review that stimulated the production of draft revised legislation; and
  - Second, we do not believe that even the most clearly worded Direction that the Commission should “consider promotion of competition, affordability, consumer interests and innovation” in its decisions can address impediments to competition that are embedded in the existing legislation.
11. We **recommend**, therefore, that the Governor in Council clarify the wording of the proposed Direction so that the Commission is clearly directed to support competition as the best means of delivering improved consumer outcomes including affordability, choice, consumer protection, and innovation in service offerings. We also **recommend** that ISED establish a clear and certain process by which it expects to see the report and recommendations of the current Broadcasting and Telecommunications Legislative Review Panel become a legislative priority for Government.

### **Competition from SSi Delivers Improved Consumer Outcomes in Canada’s North**

12. SSi’s story of providing broadband internet and mobile wireless services in Canada’s North, a region long dominated by a single incumbent local exchange carrier (“ILEC”), proves that competition – even in challenging circumstances – is the only effective way to deliver the benefits of connectivity to Canadian consumers.
13. SSi is a family company, launched in 1990 by Jeff and Stef Philipp. We are deeply rooted in Canada’s North: Our name reflects the company’s origins in the Snowshoe Inn, founded more than fifty years ago by Jeff’s parents in Fort Providence, Northwest Territories.
14. We specialize in remote-area connectivity, providing broadband, mobile and other communications services across Canada’s North. We have also carried out projects in Africa, the South Pacific and South-East Asia. Our mission is to ensure that all Northern communities have access to affordable, high quality broadband services. To achieve this vision, we have invested heavily in facilities and infrastructure.
15. In 2005, SSi built and launched the QINIQ network to provide affordable broadband service to all 25 communities in Nunavut. Investments by the Federal Government covered part of the initial costs of satellite transport and infrastructure.



16. Since then, we have co-invested with Canada over \$150 million into Nunavut infrastructure, and we have paid over \$10 million to our community service providers, local agents who are key to our success in all of Nunavut's 25 communities.
17. In September 2015, SSi announced a \$75 million investment in Nunavut's broadband future, which included \$35 million from the Government of Canada's Connecting Canadians Program for the purchase of satellite capacity. SSi has directly committed \$40 million for additional satellite capacity and network-wide upgrades to both the backbone and last mile infrastructure throughout the Territory.
18. QINIQ improved the lives of Nunavummiut by providing access to cost-effective broadband connectivity. This was previously impossible; before 2005 most users had no access at all to broadband infrastructure. With QINIQ, for the first time every Nunavut community had affordable Internet access for the same price, immediately allowing consumers access to the digital age. Today we are still the only broadband provider that serves all 25 communities in the Territory.
19. In 2018, SSi delivered another first. We deployed and launched the SSi Mobile broadband network throughout Nunavut. All residents now benefit from the latest generation 4G LTE technologies, with the same service level and the same mobile voice and data pricing available to all.
20. The new 4G-LTE system enables services such as high-performance broadband, mobile voice and data, telemetry applications, video conferencing, and more. It is also offering, for the first time ever, a less expensive and more versatile alternative to the old wireline phone – one that eliminates long distance charges in Nunavut, bringing families closer together.
21. We have seen, know, and live daily the positive impact of our investments in information technology for consumers, organizations and small business in Nunavut.

### **Getting the Regulatory Framework Right to Deliver Customer Benefits through Competition**

22. From our experience, one message becomes clear: without fair and vigorous competition, customers do not see sustained improvements in affordability, choice, or access to innovative, high quality services. Without that competition, consumers have little power in the market to demand equitable treatment from their telecommunications service providers. And it is crucial that policy-makers appreciate that fair and vigorous competition is both possible and necessary in Canada's remote and rural areas.

23. We have delivered this message to both policy-makers charged with setting the broad parameters of telecommunications regulation, and to the CRTC as it has made use of the tools available, including competition, to achieve the goals of the telecommunications policy set forth at section 7 of the *Telecommunications Act*.
24. The House of Commons Standing Committee on Industry, Science and Technology (“INDU”), for example, clearly heard the message. In crafting its recommendations in its April 2018 Report, “Broadband Connectivity in Rural Canada: Overcoming the Digital Divide,” INDU reflected the essential connection between competition and improved telecommunications performance in remote and rural Canada:

*Increasing and improving broadband Internet access in rural and remote areas face many challenges. Indeed, licensed incumbents tend to only invest in high density areas that are more economically profitable. However, small providers, non-profit providers or non-incumbent providers could deploy broadband Internet in rural and remote areas in an economically profitable manner should the Government of Canada adapt the regulatory framework to their means, especially with regards to spectrum and network management, along with funding allocation.*

*To facilitate broadband deployment in rural and remote communities, the Committee recommends, notably that the Government of Canada consider ways to increase the accessibility of funding programs for small providers, non-profit providers and non-incumbent providers, and consider the spectrum allocation process for the purpose of broadband deployment. The Committee also recommends that ISED develop a comprehensive rural broadband strategy in collaboration with key stakeholders.*

25. It is also clear that the CRTC understands how crucial competition is to delivering consumer benefits. Since 2011, in view of the “benefits that would be provided to consumers, such as a greater choice and innovative services,” facilities-based local competition has been permitted throughout the territory of Northwestel Inc. (“Northwestel”), the ILEC that was at that time the only provider of local telephone service in Canada’s North.<sup>1</sup>
26. The Commission has also clearly heard the message that in order to improve broadband connectivity in remote and rural Canada, the priority has got to be ensuring that there is

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<sup>1</sup> Telecom Regulatory Policy CRTC 2011-771, *Northwestel Inc. – Review of regulatory framework*, 14 December 2011.

adequate backbone (or transport) infrastructure, and that it is openly accessible to wholesale and retail customers alike.<sup>2</sup>

27. However, both the Commission and Northwestel's competitors have faced ongoing challenges in attempting to require Northwestel to live up to the requirements of local competition, including the provision of wholesale services and other facilities that competitors require in order to compete.
28. The Commission continues to use its current powers to pressure Northwestel to deal with its interconnecting competitors in good faith. In the past year alone, the Commission has:
  - Established further regulatory oversight to ensure that Northwestel meets competitor quality of service standards with respect to its interconnection and wholesale services, recognizing that the lack of competition Northwestel faces in access to these services means that it faces few incentives to provide them in a timely fashion;<sup>3</sup>
  - Required Northwestel to reduce rates for Wholesale Connect and refund overpayments to its wholesale customers using this service, which is often their only option;<sup>4</sup>
  - Required Northwestel to implement all aspects of its previous determinations that applied to other ILECs in Canada concerning cost studies for services like Wholesale Connect;<sup>5</sup> and
  - Required Northwestel to reduce the rates it charges for Mobile Fibre Backhaul service in Nunavut to bring the mark-up on the service in line with what Northwestel charges in Whitehorse and Yellowknife.<sup>6</sup>

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<sup>2</sup> In Telecom Regulatory Policy CRTC 2018-377, *Development of the Commission's Broadband Fund*, 28 September 2018, and again in Telecom Notice of Consultation 2019-45, *Call for comments – Application Guide for the Broadband Fund*, 14 February 2019 ("TNC 2019-45"), the CRTC established a hierarchy among the types of broadband infrastructure projects it will select for funding. For instance, in TNC 2019-45, the Commission notes that it "may give special consideration to fixed access or transport infrastructure projects over mobile wireless infrastructure projects, and transport infrastructure projects over fixed access infrastructure projects" so as to meet its objective of funding "projects that will provide access to broadband services to as many Canadians as possible in the long term." Appendix 1, section 6.3.3, page 20.

<sup>3</sup> Telecom Regulatory Policy CRTC 2018-123, *Review of the competitor quality of service regime*, 13 April 2018.

<sup>4</sup> Telecom Order CRTC 2018-338, *Northwestel Inc. – Wholesale Connect service – Final rates*, 31 August 2018.

<sup>5</sup> Telecom Regulatory Policy CRTC 2019-49, *Application of the Commission's determinations set out in Telecom Decision 2008-14 to Northwestel Inc.*, 11 March 2019.

<sup>6</sup> Telecom Order CRTC 2019-92, *Northwestel Inc. – Revisions to Mobile Fibre Backhaul service*, 28 March 2019.

29. The fact that Northwestel’s competitors, and the Commission itself, have expended so much effort over the past seven years to ensure that the ILEC is treating its competitors more fairly, in the interests of providing consumer benefits such as enhanced choice, affordability and service innovation, points to the ongoing challenge of implementing competition when faced with incumbent inertia – and it raises a fundamental question that is highly relevant to the proposed Direction.

### **Would a Revised Direction to the CRTC Help the Commission to Establish a More Positive Regulatory Framework for Competition?**

30. That question is, whether a Direction to the CRTC such as the one being proposed can be an effective means of achieving the regulatory objective of using competition to deliver improved consumer outcomes.

31. With respect, we are not convinced that the revised Direction as currently drafted is the most appropriate instrument to achieve this objective.

32. Our first concern is with the **clarity** of the proposed Direction. In particular, the language of the proposed Direction overlaps in several significant respects with the language in which the telecommunications policy for Canada is set out in s. 7 of the *Telecommunications Act*.

33. For example, the proposed Direction’s instruction that the Commission should consider how regulatory measures used can “foster affordability and lower prices, particularly when there is potential for telecommunications service providers to exercise market power” and “ensure that affordable access to high quality telecommunications services is available” (clauses 1(a)(ii) and (iii)) both overlap with the statement, in s. 7(b), that among the objectives of Canadian telecommunications policy is “to render reliable and affordable telecommunications of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.”

34. Similarly, the proposed Direction’s instruction that the Commission should consider how regulatory measures can “stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services” (clause 1(a)(vii)) closely tracks the language of s. 7(g): “to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.”

35. Without clearer direction, it is difficult to see how the Commission can do more to fulfill these objectives through its regulatory activities. The effect of the proposed Direction

seems to be only to require the Commission to specify how each decision it issues addresses these objectives.

36. The proposed Direction would also be more helpful, we believe, if it were clearer about the relationship between its laudable attention to competition, especially from “new and smaller telecommunications service providers” (clause 1(a)(iv)), and the policy objective to “foster increased reliance on market forces for the provision of telecommunications services...” (section 7(f)) and, in particular, the 2006 Policy Direction which required the Commission to specify how each regulatory decision was consistent with a greater emphasis on reliance on market forces.
37. We would be able to offer more wholehearted support to a Direction that:
  - Clearly articulates the logical link between the enhanced choice that can only come from increased, fair and sustainable competition and improved consumer outcomes including affordability, service innovation, and the protection of consumers’ rights in their relationships with telecommunications service providers; and
  - Notes that regulatory action may be required to support increased, sustainable competition for improved consumer outcomes where it has been demonstrated that market forces are, or are unlikely to be, sufficient.
38. Our **second** concern is whether a revised Direction under section 8 is the best way available for the Governor in Council to signal a new orientation to telecommunications policy.
39. We note that the Broadcasting and Telecommunications Legislative Review Panel (the “Review Panel”) is mid-way through its work of considering the many submissions it received. Among these submissions, we note in particular two that are highly relevant to the question of whether a Direction is the most appropriate instrument to achieve Government’s objectives.
40. First, we note the Commission’s own plea for clarity with respect to the objectives of any new legislation that results from the process to which the Review Panel is contributing:

*Generally speaking, any new legislation’s objectives should articulate clearly defined outcomes, should not unduly overlap with each other, and should not be prescriptive. For example, it should not specify or make assumptions with regard to the type of service or technology by which outcomes should be achieved. A useful approach could be the introduction of a clear and simple purpose clause that frames the context of whatever communications legislation is advanced. Any set of objectives or*



*outcomes would then be read and interpreted in light of this clause, without placing undue limitations on how those outcomes are implemented.<sup>7</sup>*

41. We believe the Commission's views concerning how legislation can best communicate the government's purposes for the regulator are worthy of serious consideration.
42. Second, we would draw your attention to our own submission as a way to explain our concern that **a Direction will substitute for more fundamental changes to the legislation** that are required to ensure true competitive and technological neutrality in telecommunications.
43. As SSi explained in greater detail in our submission to the Review Panel, the legislation itself may need to be revised and updated to make it clear that the ILECs do not have priority over their competitors, a priority that can be used to foreclose competitors from offering innovation, choice and affordable services to consumers. We noted that some parties are interpreting section 27 of the *Telecommunications Act* in such a way that it establishes a priority for ILECs. As we noted in our recommendations:

*The meaning of the phrase "just and reasonable rates," currently found in s. 27(1) of the Telecommunications Act, has recently been the subject of proceedings before the CRTC.<sup>8</sup> We believe it is clear that the intention of the legislature in enacting that Act was to build on to the foundation of the CRTC's former jurisdiction under the Railway Act, including by permitting the Commission to determine the meaning of "just and reasonable" in light of the telecommunications policy for Canada enunciated at s. 7 of the Telecommunications Act. However, other parties to that proceeding have argued that the phrase imports expectations that the incumbent LEC, so long as it has not been explicitly relieved of an ill-defined "obligation to serve", must always be able to recover a "reasonable" rate of return, irrespective of the evolution of the regulatory framework and rules in accordance with the telecommunications policy.<sup>9</sup>*

*The phrase is useful, and for the most part we believe that it has served the Commission well as it has sought to balance the various interests referenced in the*

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<sup>7</sup> CRTC Submission to Broadcasting and Telecommunications Legislation Review, 10 January 2019, available at <https://crtc.gc.ca/eng/publications/reports/rp190110.htm> (last accessed 2 April 2019).

<sup>8</sup> Independent Telecommunications Providers Association ("ITPA"), Application to Review and Vary Telecom Regulatory Policy CRTC 2018-213, Phase-out of the local service subsidy regime (CRTC file # 8662-J92-201808015).

<sup>9</sup> See for instance the application of ITPA and the intervention of TELUS Communications Canada ("TELUS") in the above-noted proceeding (CRTC #8662-J92-201808015). We elaborated our views on this matter, in particular concerning the intention of the legislature, in our Comments filed with the Commission on November 23, 2018, available from the Commission's website at

<https://services.crtc.gc.ca/pub/ListeInterventionList/Documents.aspx?ID=276960&en=2018-0801-5&dt=i&lang=e&S=C&PA=T&PT=PT1&PST=A> (last accessed January 10, 2019).

*telecommunications policy. However, if the Commission or the courts ultimately determine that “just and reasonable” does establish any sort of priority for the ILECs, including the idea that the ILECs have prior claim on telecommunications revenues to the point that they can prevent the Commission from adjusting the regulatory framework to better suit changing conditions (in this case, by phasing out the ILEC-only local subsidy system), the language should be adjusted in revised legislation. **The alternative is a position that we believe is untenable, as well as highly distorting in a competitive marketplace. It would serve to entrench an ILEC position of privilege at the expense of enabling the industry as a whole, to say nothing of the regulator, to develop the regulatory framework as conditions evolve.***<sup>10</sup>

## Conclusion and Recommendations

44. We appreciate that the Governor in Council, and the CRTC, must work with the tools currently available to improve consumer outcomes by strengthening competition. We are especially delighted that the proposed Direction highlights to the Commission the importance of “reduc[ing] barriers to entry and barriers to competition for new and smaller telecommunications service providers” (section 1 (a)(v)), consistent with the April 2018 recommendation of the Standing Committee on Industry, Science and Technology (INDU). However, our concern that a Direction to the CRTC might remove the impetus to proceed with more fundamental legislative change reflects an unfortunate precedent.
45. The 2006 Policy Direction, for instance, appears to be the only outcome of the 2005-06 Telecommunications Review Panel’s extensive process of reviewing the *Telecommunications Act*. That review exercise even resulted in the preparation, in draft, of revised legislation.<sup>11</sup>
46. To address our concerns about **clarity** and **potential substitution for necessary legislative reform**, therefore, we respectfully recommend the following:
  - First, that the Governor in Council clarify the wording of the proposed Direction so that the Commission is clearly directed to support competition as the best means of delivering improved consumer outcomes including affordability, choice, consumer protection, and innovation in service offerings; and

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<sup>10</sup> SSi Micro Ltd., Submission to the Broadcasting and Telecommunications Legislative Review Panel, January 11, 2019, paragraphs 46-47; emphasis added. The complete submission is enclosed for ease of reference.

<sup>11</sup> The proposed draft legislation was published in Hank Intven and Mary Dawson, *A Model Act to Implement the Regulatory Recommendations of the Telecommunications Policy Review Report* (Toronto: McCarthy Tétrault, 2007).



- Second, we also recommend that ISED establish a clear and certain process by which it expects to see the report and recommendations of the current Broadcasting and Telecommunications Legislation Review Panel become a legislative priority for Government.

47. All of which is respectfully submitted,

SSi Micro Ltd.

[SGD – DEAN PROCTOR]  
Dean Proctor  
Chief Development Officer

*Encl.: SSi Micro Ltd., "Connecting Canadians to a World of Possibilities," Submission to the Broadcasting and Telecommunications Legislative Review Panel, January 11, 2019.*

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