**BEFORE THE GOVERNOR IN COUNCIL**

**Governor in Council's Proposed *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation***

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**Representations of TELUS Communications Inc.**

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## 1.0 Introduction and Overview

1. TELUS Communications Inc. ("TELUS") is pleased to submit these comments in response to the Governor in Council's proposed Policy Direction to the CRTC (hereinafter the "proposed Direction").[1]

2. The proposed Direction identifies four priorities, namely promoting competition, affordability, consumer interests and innovation that the Canadian Radio-television and Telecommunications Commission (the "CRTC") will be required to take into account when exercising its powers and performing its duties under the *Telecommunications Act*.

3. While these are important and laudable priorities, the proposed Direction is compromised by numerous material flaws that make it unlikely, if not impossible, that the Government will accomplish these goals. The proposed Direction may also lead to significant unintended consequences that will negatively impact both investment and affordability. The principal flaw of the proposed Direction is that it directs the CRTC, when relying on regulation, to consider how the measures used "encourage all forms of competition" (emphasis added). This direction fails to recognize and prioritize the importance of facilities-based competition, which drives investment in infrastructure. Because it fails to do so, the proposed Direction will not fundamentally address the issue of affordability which derives from facilities-based competition, and the innovation and investment that is the end result.

4. *Investment in competing infrastructure* is a condition precedent to the achievement of all of the Government of Government of Canada's Innovation and Skill Plan which includes the themes of innovation, rural broadband deployment, and better outcomes for citizens and companies more generally. **The proposed Direction distracts, rather than directs, and as such, will make no meaningful contribution to the achievement of broader goals under the Innovation and Skills Plan.** The proposed Direction fails to focus the regulator, the industry or the country on the primary and most impactful means (investment

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1 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 I, Volume 153, Number 10, March 9, 2019.

in competing infrastructure) for achieving the goals underlying the proposed Direction (promoting competition, affordability, consumer interests and innovation).

5. The proposed Direction also makes no contribution to the central, epochal task facing the telecommunications industry and governments across the world: the construction and deployment of advanced 5G networks. In leading 5G nations (notably, the United States and South Korea), governments have focused on *actively supporting* the construction and deployment of these networks by rapidly allocating and auctioning 5G spectrum, supporting efficient access to passive infrastructure and by ensuring a policy environment conducive to investment, innovation and risk. In contrast to the situation in leading 5G countries, the proposed Direction provides no express support for 5G network construction and deployment. **Canadians would be poorly served by a policy instrument that does not speak to, or support, the central task of the moment – the construction and deployment of advanced 5G networks.**

6. Encouraging "*all* forms of competition" would undercut the CRTC's longstanding regulatory commitment to facilities-based competition, which has repeatedly been proven by both economic theory and practical experience to be the only regulatory structure capable of delivering sustainable competition and driving the investment in infrastructure necessary to achieve the Governor in Council's goals, including affordability. The "service-based" competition that the proposed Direction would encourage, including in the form of mobile virtual network operators ("MVNOs"), is not truly competition at all and will undermine the incentives for the continued investment required to advance the digital economy.

7. The rationale for the proposed Direction, as set out in the Regulatory Impact Analysis Statement ("RIAS") accompanying the proposed Direction, is flawed, and may explain the reason that the proposed Direction fails to mention the importance of facilities-based competition and investment in infrastructure. In the RIAS, the Governor in Council identifies some supposed features of the current telecommunications services market that it believes are preventing further progress in the advancement of better consumer

outcomes.[2] These concerns are unsubstantiated and/or based on flawed analyses by third parties and the background comments reflect misconceptions that inhibit sound policy-making. The Governor in Council should discount claims based on flawed studies that have been put forward to provide the basis for the proposed Direction, including that Canadian prices for telecommunications services are comparatively high, and reject unsubstantiated claims that incumbent carriers exercise market power and engage in coordinated behaviour that raises prices.

8. Reliable data show the world-leading investment record of Canadian facilities-based carriers and the high-quality and widespread availability of advanced services available at prices that compare favourably on an international basis, and support continued investment in infrastructure by encouraging facilities-based competition. First, Canada's prices for mobile telephony and Internet services compare favourably on an international basis, with Canada's prices for mobile telephony services being generally cheaper than the prices that providers in ISED's seven benchmark countries would charge for the same plans. Second, the record of Canadian facilities-based carriers on investment is outstanding. In 2017, 45% of the revenues of the incumbent telecommunications service providers and cable-based carriers was spent on capital expenditures, with capital intensity for the telecommunications industry being second only to utilities (40% and 79.2% respectively), and well above the average for all industries of 6.6%.[3] Canadian telecommunications capital expenditures per capita is among the highest in the world. Third, as a result of the investments Canadian facilities-based carriers have already made and continue to make, 98% of Canadian households have access to fixed broadband Internet access[4] and benefit from some of the world's fastest and most reliable wireless services.

9. This market performance brings into question the need for the proposed Direction. The timing of the release of the proposed Direction also overlaps with the work of the Broadcasting and Telecommunications Legislative Review Panel, the mandate of which is

[2] RIAS, Background, para. 3.
[3] *2018 CRTC Communications Monitoring Report*, pp. 102-3.
[4] *2018 CRTC Communications Monitoring Report*, p. 25.

to review the Canadian communications legislative framework, including the *Telecommunications Act*, and to submit recommendations for change to the Government of Canada to "maximize benefits that the digital age brings to citizens, artists and creators, the communications industry, and the economy."[5] In contrast to the timing of the release of the 2006 Policy Direction, which was formulated and released *after* the release of the 2006 Telecommunications Policy Review Panel Final Report, the Governor in Council is proposing a new Policy Direction *before* the Broadcasting and Telecommunications Legislative Review Panel has had an opportunity to review public submissions and release its interim report, which is to be provided no later than June 30, 2019, and its final report, which is to be filed in January 2020.

10. Furthermore, although the proposed Direction purports to "guide the CRTC in making decisions,"[6] the elements that the CRTC would be required to take into account risk working at cross-purposes to each other. As TELUS indicated in its submission to the Broadcasting and Telecommunications Legislative Review Panel, the existing *Telecommunications Act* lacks a clear, consistent, and unambiguous statement of contemporary and future-oriented policy objectives. The current objectives constitute an open-ended, unranked, largely undefined and indeed often contradictory policy statement.[7] Unlike the 2006 Policy Direction which prioritized the role of Canadian telecommunications policy objective 7(f) in the *Telecommunications Act*[8] by providing guidance to the CRTC by directing it "to take a more market-based approach to implementing the [Telecommunications] Act,"[9] the proposed Direction simply provides

5 Responding to the New Environment: A Call for Comments, Review of the Canadian Communications Legislative Framework, Introduction, Broadcasting and Telecommunications Review Panel, September 24, 2018.

6 RIAS, Regulatory Analysis, Benefits and Costs, para. 3.

7 Broadcasting and Telecommunications Legislative Review Panel, Review of the Canadian Legislative Framework, Submission of TELUS Communications Inc., January 11, 2019, Section 5.0 Theme D – Renewing the Institutional Framework for the Communications Sector, subsection 5.1 – The Telecom Policy Objectives Should Be Amended to Emphasize Competition, Innovation, Investment and Timely Deployment of Facilities.

8 Policy objective 7(f) is "to foster increased reliance on market forces for the provision of telecommunications services ant to ensure that regulation, where required, is efficient and effective."

9 Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission, Regulatory Impact Analysis Statement, Canada Gazette Part 1.

yet another list of unranked goals to an already unranked list of objectives that provides no guidance to the regulator on how to make decisions and provides no further insight for the public on understanding how these goals will be achieved.

11. As TELUS recommended in its submission to the Broadcasting and Telecommunications Legislative Review Panel, the existing Canadian telecommunications policy objectives should be replaced with new objectives emphasizing competition, innovation and investment and the timely deployment of infrastructure. In addition, new policy objectives should clearly express support for exclusive federal authority over telecommunications.[10] Implementation of the TELUS proposal would achieve all of the goals expressed by the Governor in Council in its proposed Direction – in addition to others – to the benefit of the regulator and the Canadian public.

12. In light of this situation, the Governor in Council should not proceed with the proposed Direction until the Broadcasting and Telecommunications Legislative Review Panel releases its final report. In the alternative, the duration of the proposed Direction should be limited in time so as to not effectively pre-empt the findings of the Broadcasting and Telecommunications Legislative Review Panel and any future legislative amendments that may result from the Panel's recommendations.

13. To the extent that the Governor in Council nevertheless intends to proceed with the proposed Direction, TELUS makes the following recommendations:

- The text of the proposed Direction should be amended as follows:
    - Consideration 1(a)(i) which currently reads "encourage all forms of competition" should be amended to read:

[10] Broadcasting and Telecommunications Legislative Review Panel, Review of the Canadian Legislative Framework, Submission of TELUS Communications Inc., January 11, 2019, Section 5.0 Theme D – Renewing the Institutional Framework for the Communications Sector, subsection 5.1 – The Telecom Policy Objectives Should Be Amended to Emphasize Competition, Innovation, Investment and Timely Deployment of Facilities.

> "(i) encourage investment in competing telecommunications networks."

- The duration of the proposed Direction should be limited in time so as to not effectively pre-empt the findings of the Broadcasting and Telecommunications Legislative Review Panel and any future legislative amendments that may result from the Panel's recommendation; and

- The proposed Direction should exist in complementary fashion with the previous 2006 Policy Direction.[11]

14. The balance of TELUS' submission is as follows. In Section 2.0, TELUS reviews the issues underlying the rationale for the proposed Direction and demonstrates that in each case the reasons advanced to support the need for the proposed Direction are unsubstantiated. TELUS provides data demonstrating strong market performance, which bring into question the need for the proposed Direction. In Section 3.0, TELUS explains how the proposed Direction threatens continued investment in telecommunications facilities by encouraging "all forms of competition" and will not achieve the Government of Canada's goals. TELUS explains why facilities-based competition remains the best course going forward to ensure the required investments and innovation in the telecommunications industry. In Section 4.0, TELUS outlines why the Governor in Council should not proceed with the proposed Direction or in the alternative, the duration of the proposed Direction should be limited to allow the Broadcasting and Telecommunications Legislative Review Panel to complete its work. In Section 5.0, TELUS explains why the 2006 Policy Direction should remain in force. TELUS' concluding remarks are provided in Section 6.0.

## 2.0 The RIAS Does Not Substantiate the Need for Intervention in the Form of the Proposed Direction

15. In the RIAS, the Governor in Council identifies some supposed features of the current telecommunications services market that it believes are preventing further progress in the

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

advancement of better consumer outcomes, specifically: the relative prices of telecommunications services when compared on an international basis; alleged incumbent market power; lack of affordability; alleged coordinated behavior amongst the national mobile wireless incumbents; alleged misleading and aggressive carrier sales practices and lack of access to high-quality telecommunications services.[12] The RIAS also sets out reservations regarding competitive conditions in the market for telecommunications services. These concerns are unsubstantiated and/or based on flawed analyses by third parties and the background comments reflect some serious misconceptions that need to be corrected if policy, going-forward, is to be soundly-based. In the balance of this section, TELUS identifies the specific concerns expressed by the Governor in Council and responds to each of them.

### *2.1 The claim in the RIAS that "prices are high relative to those in peer countries for comparable plans" has been demonstrated to be false*

16. The claim made in the RIAS that "prices are high relative to those in peer countries for comparable plans"[13] depends largely on the results of studies undertaken at the request of the Department of Innovation, Science and Economic Development ("ISED") by communications consultancies Wall Communications Inc. and Nordicity. Those studies purport to show that Canadian prices are amongst the highest in the industrialized world. These studies have been found to be seriously flawed.

#### *2.1.1 Canada's prices for mobile telephony and Internet services compare favourably on an international basis*

17. TELUS asked NERA Economic Consulting to critically examine the Wall/Nordicity methodology and its conclusions. The result, a study entitled *An Accurate Price Comparison of Communications Services in Canada and Select Foreign Jurisdictions*, was published in October 2018. NERA concluded that the findings of the Wall/Nordicity study

12 RIAS, Background, para. 3.
13 RIAS, Background, para. 3.

were "false" due to "the poorly designed and executed methodology used to conduct the Study".[14] Amongst NERA's key findings was that:

> [C]orrectly interpreted at the country level, Canada's prices for mobile telephony services are generally cheaper than the prices providers in ISED's seven benchmark countries would charge for the same plans. This result dispels the claims [made in Wall/Nordicity] that "Canadians pay some of the highest prices in the industrialized world for mobile wireless services," and "Canadians continue to pay more for wireless service than the majority of their peers living in G7 countries and Australia."[15]

18. Similarly, Canadian prices for fixed broadband Internet service compare favourably on an international basis. Dr. Robert W. Crandall recently undertook a comparison of wireline Internet access prices as part of TELUS' response to the Competition Bureau's current Market Study of Broadband Services. Dr. Crandall concludes that "the best data available allow one to conclude that Canadian consumers face wireline broadband prices that are slightly lower than those in similar countries throughout the world despite Canada's obvious topographical disadvantages."[16] Moreover, Canadian prices are declining when considering the price per Mbps of download speed.[17] The Government has never offered any rebuttal to these and other studies set out below, and to the extent it intends to continue to rely on them, should provide a response to these serious methodological concerns.

#### *2.1.2 Revenues from telecommunications services are invested back into carrier networks to ensure high-quality services are widely available*

19. The Wall/Nordicity studies are also lacking in that they fail to take into account that the prices Canadians pay are invested back into carrier networks to ensure that high-quality services are widely available. The record of Canadian facilities-based carriers on investment is outstanding. In 2017, 45% of the revenues of the incumbent

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14 *An Accurate Price Comparison of Communications Services in Canada and Select Foreign Jurisdictions*, October 2018, NERA, p. 1.

15 *An Accurate Price Comparison of Communications Services in Canada and Select Foreign Jurisdictions*, NERA Economic Consulting, October 2018, p. 34.

16 Competition Bureau Canada Market Study Notice: Competition in Broadband Services, Expert Report of Dr. Robert W. Crandall, pp. 13-14, Appendix A to Initial Submission of TELUS Communications Inc., August 31, 2018.

17 *Ibid.* p. 14.

telecommunications service providers and cable-based carriers was spent on capital expenditures, with capital intensity for the telecommunications industry being second only to utilities (40% and 79.2% respectively), and well above the average for all industries of 6.6%.[18] Canadian telecommunications capital expenditures per capita is consistently among the highest in the world. In 2014, Canadian telecommunications capital expenditures per capita was exceeded only by Australia (which has been rolling out a publicly-funded broadband network, with massive cost overruns). In that year, the United States and Japan ranked 6th and 7th and South Korea ranked 18th. Most European Union ("EU") countries fell in between the United States and South Korea.[19]

20. As a group, the large telecommunications service providers (*i.e.,* those with over $100 million in revenues) spent $12.1 billion on capital expenditures ($9.7 billion of which was spent on wireline networks) in 2017.[20]

21. As a result of the investments Canadian facilities-based carriers have already made and continue to make, 98% of Canadian households have access to fixed broadband Internet access[21] and benefit from some of the world's fastest and most reliable wireless services. According to independent sources,

- Canadian wireless subscribers enjoy the fastest average mobile download connection speeds in the G7, including twice the average speed found in the United States.[22]
- Canadian wireless networks are now third fastest in the world, 159% faster than the global mobile average.[23]
- Long term evolution (LTE) networks, which deliver higher speeds than previous generation networks, are available to 98.5% of Canadians.[24]

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18 *2018 CRTC Communications Monitoring Report*, pp. 102-3.
19 Ovum data cited in PLUM, Fostering investment and competition in the broadband access markets of Europe, February 2016, p. 44.
20 *2018 CRTC Communications Monitoring Report*, 2018, pp. 102-3.
21 *2018 CRTC Communications Monitoring Report*, p. 25.
22 OpenSignal, State of LTE – Global, February 2018.
23 Ookla, Speedtest Global Index, January 2019.
24 *2018 CRTC Communications Monitoring Report*, Table 5.5.15.

22. These accomplishments are considerable when considered in light of Canada's immense size, relative labour costs, relatively low value of the Canadian dollar versus peer jurisdictions, low population density and levels of urbanization versus similar attributes of countries that are frequently used as comparators. For example, World Bank figures indicate that the population per square kilometer of landed areas of Canada is 4.04 versus 35.6 for the United States, 37.7 for the OECD (including Canada), 120.9 for the EU and 528 for South Korea.[25] The failure of Wall/Nordicity to take these factors into account in evaluating Canadian price levels is one of the criticisms levelled at the Wall/Nordicity studies by NERA.

23. It is instructive to compare investment levels per capita in the United States and the EU that are provided in Figure 1 below.[26] The authors of this figure, Johannes Bauer and Erik Bohlin, calculate that, if the 14 major EU economies had invested the same amount per capita as the United States, total accumulated capital expenditures would be $27 billion higher by 2020. Looking forward over the five-year period between 2020 and 2025 when capital expenditures will predominantly support 5G network deployment, the accumulated investment gap could rise to more than $100 billion.[27]

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[25] See https://data.worldbank.org/indicator/EN.POP.DNST.

[26] Based on Johannes M. Bauer and Erik Bohlin, "Roles and Effects of Access Regulation in 5G Markets", September 4, 2018 (hereinafter "Bauer and Bohlin"), p. 49. Available at /www.researchgate.net/publication/327447217_Roles_and_Effects_of_Access_Regulation_in_5G_Markets_Full_Report. "EU14" = Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal, Spain, Sweden, and United Kingdom.

[27] *Ibid*.

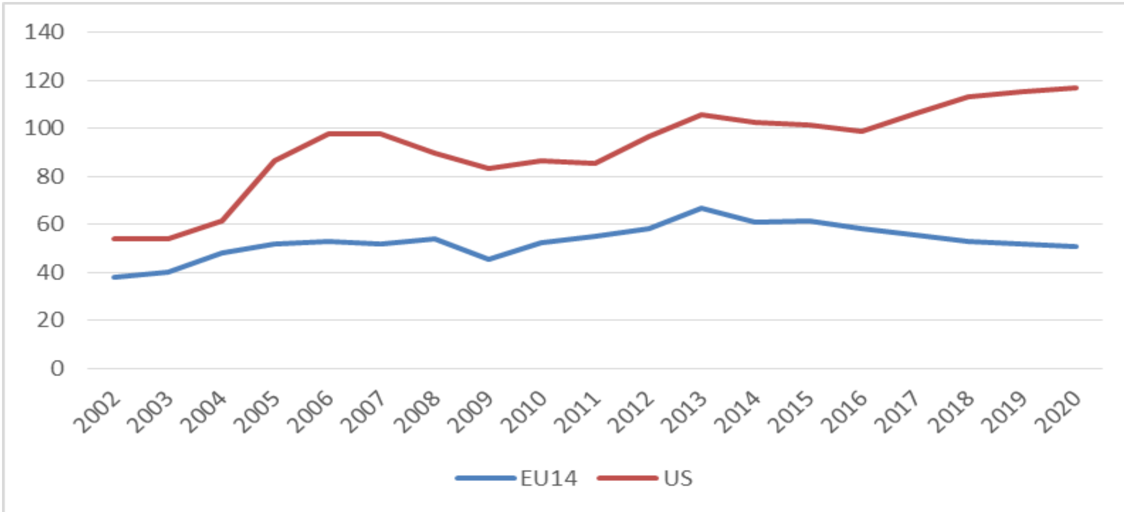


**Figure 1**

Capex per inhabitant, US vs. EU
(US$ billions (2018-2020 estimated)

24. The difference in United States and EU investment is explainable at least in part by differences in policies toward competition. The EU has chosen to adopt policies conducive to services-based competition, while the United States has generally favoured facilities-based competition. Bauer and Bohlin cite earlier research that shows that, "[f]or 3G services, MVNO obligations reduced MNO capex significantly by 17%"[28]. They conclude that, in a 5G environment,

> Experimentation and innovation are often hampered by ex-ante regulation and asymmetric interventions. Research on vertically related markets and the internalization of complementary externalities in such markets has shown that improper regulation can distort and undermine the dynamic coordination between participants in the value system. This could prevent them from fully realizing the innovation potential inherent in technological and business complementarities. *Proposals to introduce national regulatory mandates for MVNOs and national roaming as part of the licensing regime negate these insights.*[29] [Emphasis added]

28 Bauer and Bohlin, p. 30, citing J. Kim et al., "Access regulation and infrastructure investment in the mobile telecommunications industry" (2011) 35 Telecommunications Policy 907-919.

29 Bauer and Bohlin, p. 5.

25. In summary, the Governor in Council should discount flawed studies that suggest that Canadian prices for telecommunications services do not compare favourably on an international basis. The Governor in Council should note the world-leading investment record of Canadian facilities-based carriers that has resulted in high-quality and wide-spread availability of advanced services, and should support continued investment in infrastructure by encouraging facilities-based competition. The Government of Canada should also accelerate arrangements for the release of spectrum that is critical for the success of next generation 5G wireless services.

### *2.2 The RIAS incorrectly infers from the size of the incumbents' shares of the wireless market that they possess market power, and that such power has been used to disadvantage consumers*

26. The RIAS states that "Canada's incumbent carriers possess and have exercised market power."[30] This statement rests largely on a 2014 report by the Brattle Group filed by the Competition Bureau in its Intervention in the CRTC's 2014 wholesale mobile wireless review.[31] The Brattle Report concluded that the incumbent wireless carriers hold market power and that this had led to a market failure in the form of higher prices for wireless services.

27. However, the Brattle Report's analysis was flawed in several important respects. TELUS submitted expert evidence by Dr. Jeffrey Eisenach of NERA in the same CRTC proceeding and refuted the Brattle Report's conclusions.[32] Among Dr. Eisenach's findings were the following:

> … inferring market power on the basis of concentration statistics, especially for dynamic industries, is simply inconsistent with modern economic theory and evidence: In industries characterized by high fixed costs, high levels of concentration are expected; and, in industries – like mobile wireless – which are characterized by dynamic competition, high levels of concentration do not imply excessive returns or the existence of market power. Repeating

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30 RIAS, Background, para. 3.

31 *Review of Wholesale Mobile Wireless Services*, Telecom Notice of Consultation CRTC 2014-76.

32 TELUS Second Intervention, Telecom Notice of Consultation CRTC 2014-76, August 20, 2014, Appendix B (Second Report of Dr. Eisenach).

> market concentration statistics and complaining of the need for "increased competition" (meaning, in fact, "more competitors") cannot take the place of modern economic analysis of market dynamics.[33]

28. The Competition Bureau has never answered Dr. Eisenach's criticisms and has not provided any new research to support the position it took in 2014. Unless and until Dr. Eisenach's criticisms have been addressed, it would be imprudent to base any public policy actions on the Brattle Report. In any event, the years since 2014 have seen the pace of change in the wireless market continue unabated with new competitor results casting further doubt on the reliability of the Brattle Report:

- In its most recent annual report, Shaw, which operates Freedom Mobile, stated that its "[w]ireless footprint now covers approximately 16 million people in some of Canada's largest urban centres, or almost half of the Canadian population". Shaw added that "[i]n fiscal 2018, we added over 255,000 Wireless subscribers and ended the year at over 1.4 million customers, a 22% increase compared to a year earlier", and that "[t]he growth of Freedom Mobile's subscriber base was complemented by strong financial performance and higher average revenue per user ("ARPU"), reflecting the appeal of our differentiated value proposition."[34]

- Quebecor Inc., which operates Videotron, reported that in 2018 its mobile telephony revenues rose 13.7%, and the number of mobile telephony lines served rose by 12.7% versus 2017.[35]

29. Further evidence of the competitive nature of the wireless market can be found in the pricing behaviour of providers. Canadian website MobileSyrup publishes a weekly list of wireless promotions, noting that "if you're in the market to switch carriers, then you'll want to know about the latest promotions and cell phone rate plan changes." MobileSyrup's update for the week of April 1, 2019 alone shows 74 different in-market promotions across 17 different providers and brands. Indeed, the fact that there are third party websites that

[33] Second Report of Dr. Eisenach, para. 48.

[34] Shaw Communications Inc. Annual Report, 2018, p. 1: https://www.shaw.ca/uploadedFiles/Corporate/Investors/Financial_Reports/634996_Shaw_AnnualReport_PRINT.pdf

[35] Videotron Ltd Form 20-F for the year ended December 31, 2018, p. 6.

track this activity and that it is updated on a weekly basis is itself indicative of the high degree of rivalrous behaviour and the robustness of this market.[36]

30. Nor is price competition restricted to one-time promotions. In its June 2018 submission to the proceeding initiated by *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98, TELUS demonstrated that wireless service providers had had promotions in-market for at least 23 out of 26 weeks in the first half of 2018.[37]

### 2.3 The concern expressed in the RIAS about the affordability of telecommunications services is best addressed through competition, not regulation

31. The RIAS states that "[t]he affordability of telecommunications services challenges Canadians, and in particular low-income Canadian families with financial constraints."[38] However, Canadian communications services are already affordable. As noted in Section 2.1 above, Canadian mobile wireless prices and Internet prices compare favourably on an international basis. Affordability of mobile wireless services was recently further facilitated in the CRTC's recent decision in *Lower-cost data-only plans for mobile wireless services*, Telecom Decision CRTC 2018-475.

32. There are already several programs in place that support affordable access to telecommunications services in Canada. For example, TELUS' Internet for Good and Rogers' Connected for Success provide computers, connectivity and digital literacy training to thousands of low income households. TELUS' Mobility for Good initiative provides youth in care with access to a TELUS cell phone plan at $0 per month, and includes unlimited across Canada talk and text and up to 3GB of monthly data usage. TELUS and several other ISPs have been instrumental in facilitating the Government of Canada's Connecting Families initiative which offers discounted Internet service wholly

[36] "Here are the changes to Canadian carrier plans this week [April 1-April 7]," Ian Hardy, www.mobilesyrup.com, 1 April 2019.

[37] TELUS, Reply, June 28, 2018, para. 33, in *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98.

[38] RIAS, Background, para. 3.

funded by the facilities-based carriers to low income Canadian families. Notably, service-based competitors declined to participate.

33. Regulatory intervention to deliver short-term price decreases, such as artificial support for new non-facilities-based entry, will only deprive Canadians of the long term benefits of investment generated by facilities-based competition with the ensuring innovation and higher quality and lower priced services that result, as TELUS explains in further detail below. Such strategies would be counter-productive to goals the Governor in Council is trying to achieve as outlined in the proposed Direction.

34. To the extent that affordability remains a barrier to access to telecommunications services, it is an issue best dealt with by various levels of government by means of taxation policy and social assistance and not through sector-specific legislative measures.

### *2.4 There is no basis for the claim that the national mobile wireless incumbents have engaged in "coordinated behaviour"*

35. The RIAS claims that "[t]he Competition Bureau has concluded that the national mobile wireless incumbents coordinate their behaviour, resulting in higher prices for Canadians,"[39] citing a Position Statement made by the Competition Bureau in connection with Bell Canada's 2017 acquisition of MTS. For the following reasons, the Governor in Council would be ill-advised to allow important public policy decisions now to be influenced by the allegations made by the Competition Bureau in that context.

36. First, the Competition Bureau's study was conducted in a manner that compares unfavourably with the thoroughness of the approaches adopted in other cases, and it failed to make findings on key issues. In an earlier case (involving a different sector),[40] the Competition Bureau commissioned a study by an independent expert, Dr. Marcel Boyer. In his study, Dr. Boyer identified certain features that need to be present in a market to permit firms to coordinate. He said that "they need to [be able to] establish terms of coordination, detect deviation or cheating by a rival, and react to (or punish) deviating

39 RIAS, Background, para. 3.

40 https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04053.html.

behavior." There is no indication in the Competition Bureau's Position Statement in the Bell/MTS case that the Competition Bureau considered whether any of the features identified by Dr. Boyer were present in the market for telecommunications services – that is, whether national mobile wireless incumbents have established terms of coordination (tacitly or expressly), whether they monitor deviation or cheating by their rivals, or whether they have the capacity to punish deviating behaviour and have in fact done so. In short, a proper investigation of these issues would have undoubtedly resulted in the conclusion that there is no evidence of coordinated behavior in the market for Canadian mobile wireless services.

37. Second, the Competition Bureau's conclusions were the product of a process that was conducted in a non-transparent manner and without an opportunity for the public at large to examine or challenge the methodology adopted or the results produced. Any evidence that the Competition Bureau collected under section 11 of the *Competition Act* is unavailable to other branches of the Government of Canada or to the public because of constraints placed by law on the Competition Bureau's power to share such evidence. The result is that the study and its conclusions have not been and cannot be subject to scrutiny by interested parties.[41]

38. In summary, previous highly questionable findings of coordinated behavior on the part of the Competition Bureau should not be determinative of important public policy decisions in the current context.

### ***2.5 The RIAS's claim that "Canadians have expressed substantial concern regarding the sales practices used by large telecommunications carriers" relies principally on a consumer survey conducted on behalf of the CRTC that has been discredited***

39. The RIAS states that "Canadians have expressed substantial concern regarding the sales practices used by large telecommunications carriers, and reports have alleged that those carriers have used misleading and aggressive sales practices and abuse information asymmetries to their benefit and at the cost and harm of Canadian consumers."[42] However,

41 *Competition Act*, RSC 1985, c C-34, s.29(1)(b).
42 RIAS, Background, para. 3.

the CRTC's findings on this issue in a proceeding initiated at the behest of the Governor in Council were based largely on a survey the CRTC commissioned from Ipsos Public Affairs. The reliability of that survey was strongly attacked by TELUS and others in the CRTC proceeding on sales practices.[43] In its final report, the CRTC acknowledged that any such survey "will have its methodological limitations," and said that while the Ipsos survey "overall provides important and valid insights into the experiences" it was "not conclusive."[44]

40. During that proceeding, TELUS submitted that the problem of telecommunications companies engaging in misleading or aggressive sales practices was not widespread, pointing out that the number of interventions on the issue, at less than 1,300, was far fewer than the CRTC has received in other recent proceedings (one of which attracted over 150,600 interventions). The evidence also established that a small number of providers were the subject of a disproportionately large number of complaints regarding sales practices.[45]

41. To address these concerns, TELUS proposed that a new code, supported by an enforcement mechanism, be developed.[46] In its report, the CRTC said it will consider the creation of a new, mandatory Internet Code for Internet service providers[47] - an idea on which it is now consulting.[48] As such, the creation of such a code should resolve this particular concern expressed in the RIAS.

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43 See TELUS Final Submission, November 9, 2018, paras. 6-9, in *Report regarding the retail sales practices of Canada's large telecommunications carriers*, Telecom and Broadcasting Notice of Consultation CRTC 2018-246 ("TELUS Final Submission on *Retail Sales Practices"*).

44 CRTC, Report on Misleading or Aggressive Communications Retail Sales Practices, 2019, p. 14.

45 See TELUS Final Submission on Retail Sales Practices, para. 6. The other proceeding referred to was *Asian Television Network International Limited, on behalf of the FairPlay Coalition – Application to disable online access to piracy websites*, Telecom Decision CRTC 2018-384. See para. 14.

46 TELUS Final Submission on *Retail Sales Practices*, paras. 13-14.

47 CRTC, Report on Misleading or Aggressive Communications Retail Sales Practices, 2019, p. 4.

48 *Call for comments – Proceeding to establish a mandatory code for Internet services*, Telecom Notice of Consultation CRTC 2018-422.

### *2.6 The concern expressed in the RIAS about a decreasing but still significant number of Canadian households that remain without access to high-quality services is misplaced because carriers are making the investments necessary to close the digital gap*

42. The RIAS refers to "[a] decreasing but significant number of Canadian households [who] remain without access to high-quality services, particularly in areas that are underserved by competition."[49] Notably, significant private sector investments continue to fill this gap. In March 2019, TELUS announced that it will continue to make significant investments over the next three years to improve Internet access for rural communities.[50]

43. Since 2013, TELUS has been accelerating its investment in state-of-the-art mobile networks and Fibre to the Home technologies for upcoming 5G networks:

- By the end of 2018, 76 per cent of families and businesses in TELUS' Quebec ILEC territory had access to the TELUS PureFibre network. By 2021, 93 per cent of families and businesses in TELUS' Quebec ILEC territory will have access to the TELUS PureFibre network.
- TELUS has connected more than 40 Indigenous communities throughout B.C. and Alberta, and will connect at least 10 more before the end of 2020.
- TELUS developed an innovative partnership program in 2016 that brings broadband infrastructure to rural and remote communities through co-funded builds from local governments, developers, and Indigenous funding organizations.[51]

44. To the extent that private sector investment will not completely close the digital divide, the Government of Canada has recently announced a number of new initiatives (in addition to previously announced programs) to accelerate this process.[52] However, the process of filling in any remaining gaps in network coverage will primarily depend upon the readiness

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49 RIAS, Background, para. 3.

50 TELUS puts Canadians first with extraordinary $215 billion investment in broadband network and operations: Near ubiquitous network coverage in Canada now will be supported by Government of Canada's Accelerated Investment Incentive: https://www.globenewswire.com/news-release/2019/03/18/1756433/0/en/TELUS-puts-Canadians-first-with-extraordinary-215-billion-investment-in-broadband-network-and-operations.html

51 TELUS Press Release, March 18, 2019.

52 As announced in Federal Budget 2019, including the new Universal Broadband Fund. In addition, the CRTC's new Broadband Fund and various Canadian Provincial Governments are also dedicated to closing the digital divide.

of facilities-based Canadian carriers to continue investing in the necessary infrastructure. Resellers, MVNOs and other forms of "service competition" are not going to contribute to the solution, as explained in the following section in which TELUS provides its comments on the text of the proposed Directive.

## 3.0 The proposed Direction Should Be Delayed As It Threatens Continued Investment in Telecommunications Facilities

45. The stated objective of the proposed Direction is to "formally and transparently lay out the Government's priorities for telecommunications policy, namely that the CRTC should consider promoting competition, affordability, consumer interests and innovation,"[53] which "will guide the CRTC in making decisions." TELUS agrees with these goals. However, the proposed Direction will not accomplish these goals because it fails to emphasize the importance of facilities-based competition and continued investment, and instead opens the door to regulatory protection for companies (including MVNOs) who, by virtue of their business model, have explicitly decided not to invest in Canadian telecommunications infrastructure. The literature on the matter is unequivocal: greater mandated wholesale access leads to poorer quality service and depressed investment with no appreciable decrease in consumer prices.

### *3.1 Encouraging "all forms of competition" will not achieve the Governor in Council's goals*

46. Section 1(a)(i) of the proposed Direction would require that the CRTC, when relying on regulation, consider the extent to which the measures it uses will "encourage *all* forms of competition". The supposition is that by "encouraging all forms of competition" the desired outcomes - competition, affordability, consumer interests and innovation - will be promoted. However, as explained in the following paragraphs, facilities-based competition is, in both theory and practice, demonstrably superior to competition delivered by MVNOs and other forms of resale of carrier services and facilities. Any policy that weakens facilities-based competition weakens the case for continued investment in infrastructure

53 RIAS, Objective.

and compromises the ability of the industry to deliver the outcomes the Governor in Council is seeking.

47. In *Review of wholesale wireline services and associated policies*, Telecommunications Regulatory Policy CRTC 2015-326, the CRTC stated that its "general approach towards wholesale service regulation has been to promote facilities-based competition wherever possible. Facilities-based competition, in which competitors primarily use their own telecommunications facilities and networks to compete instead of leasing from other carriers, is typically regarded as the ideal and most sustainable form of competition." The CRTC added that "facilities-based competition is best achieved by requiring incumbent carriers to make available only facilities that are 'essential' for competition."[54] As such, measures that will encourage all forms of competition in the proposed Direction denote a serious departure from the CRTC's stated approach.

48. The consultancy PLUM confirms that "[t]here is a substantial body of reputable econometric studies which indicate that regulation which supports service-based competition has a negative impact on infrastructure-based competition and associated investment."[55] An approach that avoids providing artificial support for services-based competition will not deter economically-efficient new entry. The recent announcement by Dotmobile that it intends to launch an MVNO service is testimony to the market's ability to attract new entry without additional forms of artificial regulatory support.[56]

49. There is much more evidence that calls into doubt departing from facilities-based competition. In recent years, study after study has proven that mandatory wholesale access reduces investments, leads to lower network quality, and has no appreciable effect on prices. In a 2014 report for TELUS, Dr. Georg Serentschy, previously the Chairman of the Body of European Regulators for Electronic Communications, contrasted the facilities-based approach to competition in the United States with the European regulatory approach,

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54 *Review of wholesale wireline services and associated policies*, Telecommunications Regulatory Policy CRTC 2015-326, paras. 5 and 6.

55 PLUM, "Fostering investment and competition in the broadband access markets of Europe", February 2016, p. 14.

56 https://mobilesyrup.com/2019/03/07/mvno-dotmobile-crtc-funding/

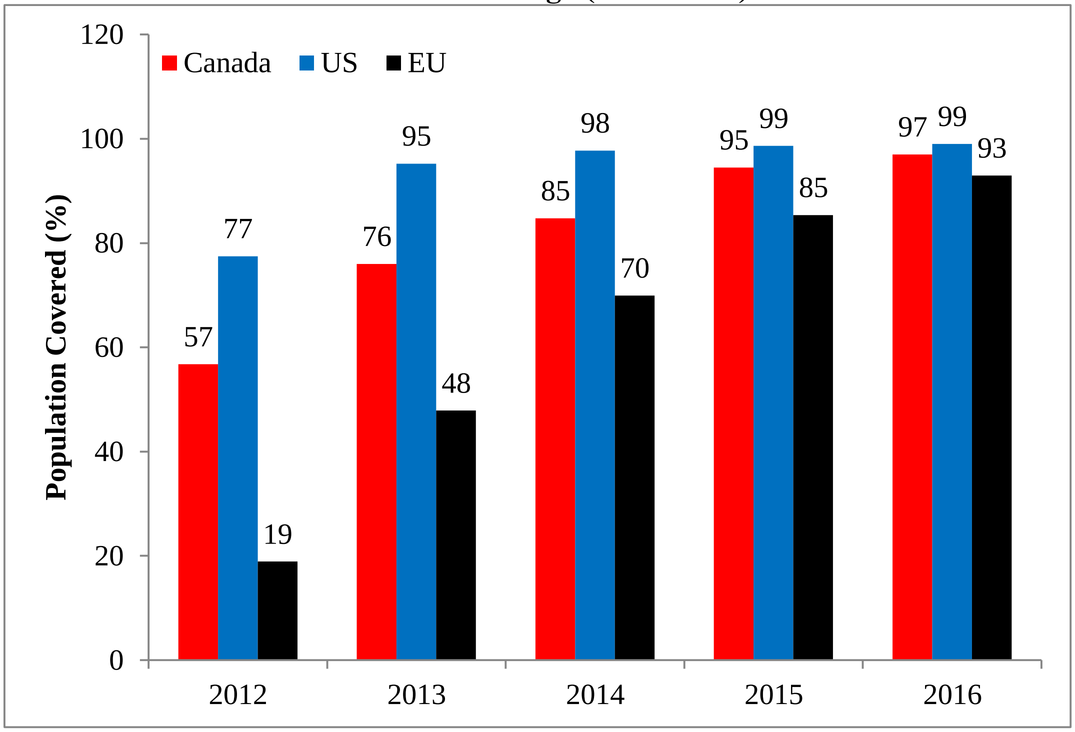
which has historically favoured greater mandated wholesale access. Dr. Serentschy concluded that "European telecom companies tend to … delay innovation whose monetization is still uncertain or embryonic (such as with 4G or fibre investment)" and also noted that "European incumbent telecoms trade at a 45% discount relative to large regulated companies, such as US utilities, to account for the very high level of regulatory uncertainty and other frailties in the European regulatory framework."[57]

50. In a 2017 study for TELUS, Dr. Jeffrey Eisenach compared the results of Canada's facilities-based competition approach to wireless regulation to the EU's more intrusive regulatory approach (see Figure 2 below). Dr. Eisenach concluded as follows:

> In 2012, only about 19 percent of the European homes were covered by LTE, compared with 57 percent for Canada and 77 percent for the US. Although the gap has decreased, the EU has still not caught up to North America. In 2016, 97 percent of Canadians and 99 percent of Americans had LTE coverage, compared with 93 percent of Europeans.

[57] Report of Dr. Georg Serentschy, Appendix "B" to second intervention of TELUS, Telecom Notice of Consultation CRTC 2014-76, *Review of wholesale mobile wireless services*, 20 August 2014 at pp.9 and 14, https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=2187576

**Figure 2:**
**4G LTE Coverage (2012–2016)**




*Source: GSMA Intelligence. Note: Figures show the four quarter average of 4G LTE coverage for each year.*

51. The more advanced deployment of LTE networks in North America has resulted in faster average connection speeds. Cisco reports that the average smartphone connection speed in Canada in 2016 was 24.2 Mbps, the highest of all countries surveyed. A recent report by OpenSignal affirms this result, finding that the average LTE connection speed in the first quarter of 2017 was 30.6 Mbps in Canada compared with 22.7 Mbps in the UK and 15.0 Mbps in the US.[58]

52. Dr. Eisenach also noted the significant disparity in capital expenditure between Canada and the United States on one hand, and the EU on the other hand:

> Historically, Canadian and US mobile operators have invested more heavily in their networks (as measured on a per connection basis) than those in the EU. While there is no question that these high

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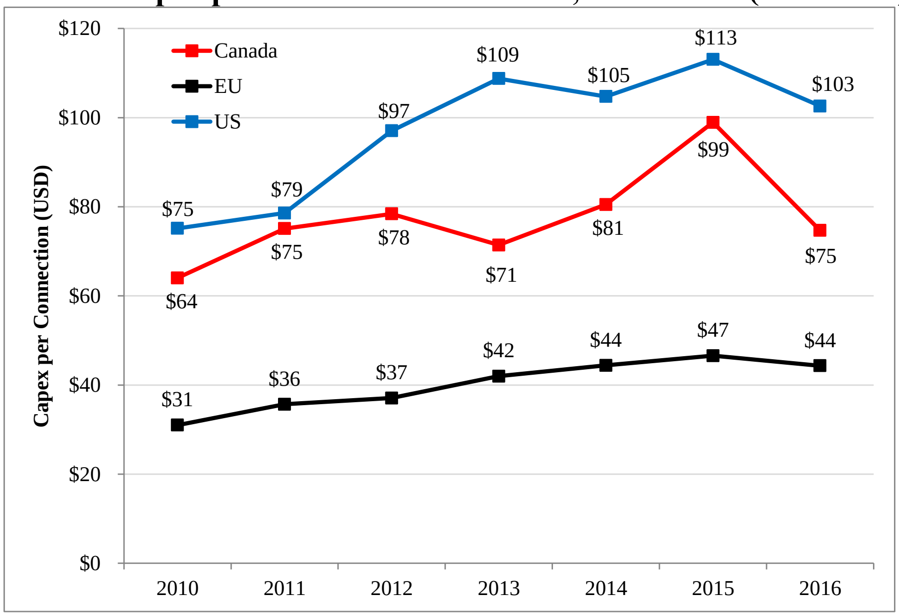
58 Report of Dr. Jeffrey Eisenach, Appendix to TELUS Intervention, Telecom Notice of Consultation CRTC 2017-259, *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*, 8 September 2017 at paras. 37-38, https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=2963477

levels of investment have paid off in the rapid pace and extent of LTE deployment and associated high levels of network performance detailed above, they also reflect the higher cost of building mobile wireless networks in Canada relative to more densely populated, less topographically challenging countries.

As seen in [Figure 3], wireless carriers in Canada invested approximately $75 per connection in 2016, less than in the US ($103), but well above the $44 per connection spent by EU carriers. Over the past five years, Canadian carriers have invested an average of $80 per connection, compared with $43 per connection per year in Europe. However, the data also show a significant drop in Canadian investment for 2016, declining by nearly 25 percent from its 2015 level (and about seven percent below 2014). Investment in the US also declined from 2015 to 2016, and there is growing evidence that the decline in the US was attributable to increased regulation, including specifically the FCC's 2015 decision to declare mobile broadband to be a "Title II" service subject to common carrier-style regulation. Despite these declines, investment in both Canada and the US remained well above the EU in 2016.[59]

**Figure 3:**
**Wireless Capex per Connection in Canada, EU and US (2010-2016)**




*Source: GSMA Intelligence. Note: Data are limited to carriers that have both connections and capex data for all quarters of a given year. Data indicate capital expenditures exclusive of spectrum purchases.*

59 Eisenach Report at paras. 48-49.

53. The same analysis holds true for wireline services as well. In a 2015 study commissioned for TELUS, Dr. Robert Crandall of the Brookings Institution investigated the effect of mandated network unbundling on fibre deployment. Dr. Crandall demonstrated that " [t]he difference in the extent of FTTP investment by EU and United States carriers suggests that the more aggressive regulatory approach found in the EU has suppressed capital spending and the deployment of new FTTP networks." Dr. Crandall concluded that "[c]ompetitor access mandates neither increase broadband penetration nor investment in broadband facilities, particularly in the long run. To the contrary, they decrease investment in new facilities, and with it, penetration of next-generation broadband access services."[60]

54. In arriving at this conclusion, Dr. Crandall reviewed the academic literature on unbundling and noted the following points:

- In a 2009 literature review the authors concluded, after reviewing more than 20 studies that, while additional research could be useful, "most of the evidence shows that local loop unbundling discourages both ILECs and CLECs from investing in networks."[61]
- A 2009 European study found that "[p]romoting market entry by means of regulated access undermines incentives to invest in facilities-based competition."[62]
- A 2013 study showed not only that broadband penetration increases as broadband networks are deployed, but also that unbundling may actually be associated with *reduced* levels of penetration over time, perhaps because of its effect on investment.[63]

55. In a second 2015 study that TELUS commissioned, Dr. Serentschy reviewed lessons from the European approach to fibre unbundling and concluded that the CRTC's disaggregated wholesale access FTTP regime would "create unstable and unattractive investment

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60 Dr. Robert Crandall, "The Effects of Mandated Network Unbundling on FTTP Deployment," Appendix "B" to TELUS' Intervention further to Telecom Notice of Consultation CRTC 2013-551, *Review of wholesale services and associated policies* 31 January 2014 at paras. 23 and 48, https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=2068532

61 Cambini, Carlo, and Yanyan Jiang, "Broadband Investment and Regulation: A literature Review," Telecommunications Policy, Vol. 33 (2009), p. 569.

62 Grajek, Michał, and Lars-Hendrik Roller. 2012. "Regulation and Investment in Network Industries: Evidence from European Telecoms." Journal of Law and Economics 55 (1): pp.189 – 216.

63 Crandall, R, Eisenach, J, and Ingraham, A (2013), "The long-run effects of copper-loop unbundling and the implications for fiber," Telecommunications Policy, 37, 262-81.

conditions." Dr. Serentschy found that the European experience demonstrates that "enforcing mandatory access to entirely new infrastructure is counterproductive for building a future proof … broadband infrastructure." Dr. Serentschy further concluded that "sustainable competition between physical networks ('facilities-based competition') is the key to economic growth job creation, investment and innovation." In reviewing the evidence on the matter, Dr. Serentschy noted in particular that when the European Commission overturned a 2009 German law and enforced mandatory access on a new DSL network, Deutsche Telekom cut its wireline broadband expenditure in Germany by 15% and instead increased international capital expenditures.[64]

56. In summary, the Governor in Council should not look to encouraging "other forms of competition." Adoption of the European approach to regulation, which has yielded demonstrably inferior results, is to be avoided.

57. However, in the event that the Governor in Council proceeds with the proposed Direction, in order to address this risk, TELUS proposes that the text of consideration 1(a)(i) be amended to read as follows:

> "(i) encourage investment in competing telecommunications networks."

58. TELUS' proposed amendment will better ensure that the Governor in Council achieves its public policy goals of truly promoting competition, ensuring affordability, protecting consumer interests and encouraging innovation, the prioritization of which TELUS addresses in the following section.

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[64] Dr. Georg Serentschy, "Mandated Access to Fibre Lessons for Canada from Europe," Appendix "B" to TELUS Submissions further to the Petition of BCE Inc. to the Governor in Council concerning Telecom Regulatory Policy CRTC 2015-326, 21 December 2015 at pp. 4, 6, and 22: https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/DGTP-002-2015-TELUS-AppendixB.pdf/$FILE/DGTP-002-2015-TELUS-AppendixB.pdf

## 4.0 The Governor in Council Should Not Proceed with the Proposed Direction to Allow the Broadcasting and Telecommunications Legislative Review Panel to Complete Its Work or in the Alternative, the Duration of the Proposed Direction Should be Limited

59. The RIAS states that the "[t]he proposal is not related to a work–plan or commitment under a formal regulatory cooperation forum."[65] Notwithstanding this statement, the timing of the release of the proposed Direction comes less than two months after the deadline for submissions to the Broadcasting and Telecommunications Legislative Review Panel, the mandate of which is to review the Canadian communications legislative framework, including the *Telecommunications Act*, and to submit recommendations for change to the Government of Canada to "maximize benefits that the digital age brings to citizens, artists and creators, the communications industry, and the economy."[66]

60. This initiative overlaps with the ongoing work of the Broadcasting and Telecommunications Legislative Review Panel. In contrast to the timing of the release of the 2006 Policy Direction, which was formulated *after* the release of the 2006 Telecommunications Policy Review Panel Final Report, the Governor in Council is proposing a new Policy Direction *before* the Broadcasting and Telecommunications Legislative Review Panel has had an opportunity to review public submissions and release its interim report, which is to be provided no later than June 30, 2019, and its final report, which is to be filed in January 2020.

61. Further in this regard, the RIAS indicates that the proposed Direction will benefit the regulator in that the "[proposed] policy direction will guide the CRTC in making decisions," and also benefit consumers because "clearer consideration by the CRTC of the promotion of competition, affordability, consumer interests and innovation will benefit the public's understanding of how the CRTC considers the extent to which its decision benefit consumer outcomes."[67]

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65 RIAS, Regulatory Analysis, Regulatory cooperation and alignment.

66 Responding to the New Environment: A Call for Comments, Review of the Canadian Communications Legislative Framework, Introduction, Broadcasting and Telecommunications Review Panel, September 24, 2018.

67 RIAS, Regulatory Analysis, Benefits and Costs, para. 3.

62. The proposed Direction will do neither. As TELUS indicated in its submission to the Broadcasting and Telecommunications Legislative Review Panel, the existing *Telecommunications Act* lacks a clear, consistent, and unambiguous statement of contemporary and future-oriented policy objectives. The current objectives constitute an open-ended, unranked, largely undefined and indeed often contradictory policy statement.[68] Unlike the 2006 Policy Direction which prioritized the role of Canadian telecommunications policy objective 7(f) in the *Telecommunications Act*[69] by providing guidance to the CRTC by directing it "to take a more market-based approach to implementing the [Telecommunications] Act,"[70] the proposed Direction simply provides yet another list of unranked goals to an already unranked list of objectives that provides no guidance to the regulator on how to make decisions and provides no further insight for the public to understand how these goals will be achieved.

63. As TELUS recommended in its submission to the Broadcasting and Telecommunications Legislative Review Panel, the existing Canadian telecommunications policy objectives should be replaced with new objectives emphasizing competition, innovation and investment and the timely deployment of infrastructure as key Canadian public policy objectives for the telecommunications industry. In addition, new policy objectives should clearly express support for exclusive federal authority over telecommunications.[71] Implementation of the TELUS proposal would achieve all of the goals desired by the

68 Broadcasting and Telecommunications Legislative Review Panel, Review of the Canadian Legislative Framework, Submission of TELUS Communications Inc., January 11, 2019, Section 5.0 Theme D – Renewing the Institutional Framework for the Communications Sector, subsection 5.1 – The Telecom Policy Objectives Should Be Amended to Emphasize Competition, Innovation, Investment and Timely Deployment of Facilities.

69 Policy objective 7(f) is "to foster increased reliance on market forces for the provision of telecommunications services ant to ensure that regulation, where required, is efficient and effective."

70 Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission, Regulatory Impact Analysis Statement, Canada Gazette Part 1

71 Broadcasting and Telecommunications Legislative Review Panel, Review of the Canadian Legislative Framework, Submission of TELUS Communications Inc., January 11, 2019, Section 5.0 Theme D – Renewing the Institutional Framework for the Communications Sector, subsection 5.1 – The Telecom Policy Objectives Should Be Amended to Emphasize Competition, Innovation, Investment and Timely Deployment of Facilities.

Governor in Council in its proposed Direction– in addition to others – to the benefit of the regulator and the Canadian public.

64. In light of this situation, the Governor in Council should not proceed with the proposed Direction until the Broadcasting and Telecommunications Legislative Review Panel releases its final report in order to garner the collective expertise of the Panel. In the alternative, the duration of the proposed Direction should be limited in time so as to not effectively pre-empt the findings of the Broadcasting and Telecommunications Legislative Review Panel and any future legislative amendments that may result from the Panel's recommendations.

## 5.0 The 2006 Policy Direction Should Remain in Force

65. In the RIAS accompanying the proposed Direction, the Governor in Council states that the proposed Direction "will exist in complementary fashion to the previous policy direction…"[72] TELUS supports this approach. The Governor in Council's first policy direction, *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* (the "2006 Direction") requires the CRTC "to rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives" outlined in section 7 of the *Telecommunications Act*. The 2006 Direction also requires the CRTC, when relying on regulation using measures of an economic nature, use measures that "neither deter economically efficient competitive entry into the market nor promote economically inefficient entry." The two policy directions can coexist and be read in a harmonious fashion in which each reinforces the messages of the other: the 2006 Direction emphasizes the importance of market forces as a tool for achieving the section 7 objectives, and the proposed Direction focuses attention on affordability, consumer interests and innovation as the desired outcomes of a regulatory policy which are the result of market forces, with an emphasis on facilities-based competition and investment.

[72] RIAS, Regulatory Analysis, third paragraph under subsection entitled "Benefits and Costs".

## 6.0 Conclusion

66. The Governor in Council should discount claims based on flawed studies that have been put forward to provide the basis for the proposed Direction, including that Canadian prices for telecommunications services are comparatively high, and reject unsubstantiated claims that incumbent carriers exercise market power and engage in coordinated behaviour that raises prices. Instead, the Governor in Council should rely on reliable data as the basis for making sound public policy decisions, including data that show the world-leading investment record of Canadian facilities-based carriers and the high-quality and wide-spread availability of advanced services available at prices that compare favourably on an international basis. The Governor in Council should support continued investment in infrastructure by encouraging facilities-based competition and accelerating arrangements for the release of spectrum that is critical to the early introduction of 5G services.

67. Encouraging all forms of competition, including in the form of MVNOs and other types of "service competition," will not achieve the Government of Canada's goals outlined in the proposed Direction and will undermine the incentives for continued investment required to advance the digital economy. Enabling facilities-based competition remains the best public policy approach to ensuring the public policy goals of promoting competition, ensuring affordable services, and advancing consumer interests and innovation.

68. This initiative also overlaps with the ongoing work of the Broadcasting and Telecommunications Legislative Review Panel. In contrast to the timing of the release of the 2006 Policy Direction, which was formulated and released *after* the release of the 2006 Telecommunications Policy Review Panel Final Report, the Governor in Council is proposing a new Policy Direction *before* the Broadcasting and Telecommunications Legislative Review Panel has had an opportunity to review public submissions and release its interim report, which is to be provided no later than June 30, 2019, and its final report, which is to be filed in January 2020.

69. The Governor in Council should not proceed with the proposed Direction until the Broadcasting and Telecommunications Legislative Review Panel releases its final report

in order to garner the collective expertise of the Panel. In the alternative, the duration of the proposed Direction should be limited in time so as to not effectively pre-empt the findings of the Broadcasting and Telecommunications Legislative Review Panel and any future legislative amendments that may result from the Panel's recommendations.

70. To the extent that the Governor in Council intends to proceed with the proposed Direction, TELUS makes the following recommendations:

- The text of the proposed Direction should be amended as follows:
  - Consideration 1(a)(i) be amended to read:

    > "(i) encourage investment in competing telecommunications networks."

- The duration of the proposed Direction be limited in time so as to not effectively pre-empt the findings of the Broadcasting and Telecommunications Legislative Review Panel and any future legislative amendments that may result from the Panel's recommendation; and

- As proposed in the RIAS, the proposed Direction should exist in complementary fashion with the previous 2006 Policy Direction.

71. TELUS will continue to work with the CRTC, ISED, the Competition Bureau, consumer groups and other industry stakeholders to ensure that Canadian continue to receive some of the world's most advanced wireline and wireless services over state-of-the-art networks at affordable prices.

72. TELUS appreciates the opportunity to present these representations on the proposed Direction.

* * * End of document * * *