

# ***Final Reply***

**to**

**Canadian Radio-television and Telecommunications  
Commission**

**by**

***Vaxination Informatique***

***regarding***

**Telecom Notice of Consultation  
CRTC 2014-76**

**Review of wholesale mobile wireless services**

**CRTC 8620-C12-201401489**

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1. Pursuant to the Telecom Notice of Consultation 2014-76 as modified by 2014-76-2, Vaxination Informatique submits its final reply comments. This document shall be blunt, viewer discretion is advised.

### Executive Summary

2. This process is not about evaluating how long to let the status quo unfold before reviewing the situation, it is about deciding now on a long term wholesale framework that will achieve the goal of having competitors who are healthy and strong enough to take on the incumbents and dilute their market power. Despite the presence of 2 maverick carriers (Wind, Mobilicity) in a number of provinces, incumbents can still raise prices.
3. 27.1, as implemented by C-31 has given the struggling new entrants an urgently needed lifeline that only stabilizes their condition. The Commission needs to consider whether the current "facilities based" policy can ever generate players strong enough to force incumbents to compete with lower prices. The Commission needs to consider whether regulating only roaming rates and/or tower sharing is sufficient to transform the current weak new entrants into fierce competitors that would force incumbents to respond.
4. The "minimum extent necessary" is not about doing just enough to allow Mobilicity to get another 3 month extension to their CCAA protection, or Wind having enough money to plant an antenna north of Major Mackenzie dr. The "minimum extent necessary" is about making new entrants strong and healthy enough to grow to a point where incumbents have to warn shareholders that competition is putting downward price pressure which will lower their sacred ARPU.
5. The Commission must decide whether it is realistic to achieve this goal via a "facilities based only" policy, or if it truly needs a rethink and open the door to one or many forms of MVNO wholesale which allow a new entrant to acquire customers nationally and grow to a scale that forces incumbents to react with lower prices.
6. **Either way, the Commission must be ready to make big, bold and long term steps because limiting regulatory action to domestic roaming isn't even close to giving the new entrants the boost they need to become real contenders in the race.**
7. We don't need competitors, we need strong competitors to take on the incumbents.

### Flawed process

8. On the 4th day of the hearing, Commission Molnar, starting the questioning of Bell Mobility after the lunch break stated:

*5678 COMMISSIONER MOLNAR: Okay. Well, good afternoon.  
And the good news is I don't have five hours worth of questions, so –*

*5679 Part of that is where you are here in the process coming in this  
third or fourth day and a lot has been asked and answered through the  
process and there is a lot on the record. So, I really am not going to  
ask questions regarding the retail market and the state of competition.  
I think there is a full record. I want to focus on the wholesale market.  
(emphasis added)*

9. Similar statements were made at other points for different topics in the hearing.
10. To announce mid-hearing that the Commission considers that the record has been filled on an issue is prejudicial against the parties who have not yet presented. This means that the Commission, by selecting the order of appearance, selects whose opinions will be sought, and not seeking opinions from parties in the later part of the hearing. As the questioning is the most productive portion of the hearing (since the oral presentation is made of or arguments already on the record with no new evidence), abridging the questioning in the later part of the hearing leads to an uneven and biased record.

### Ill-timed process

11. On the day of the deadline for this submission, a whole bunch of responses to a letter the Commission allegedly sent on October 3rd were posted on the CRTC web site. This alleged October 3rd letter was not sent by email to all participants. Participants who did not receive that letter could not plan time to read through these responses which consist of "#", with no time for requests for disclosure etc. One chapter of this submission may clash with some of the data submitted in confidence, but that is because there is no time to challenge confidentiality of this public information (retail pricing) not to analyse the responses.

### ***The dreaded "#"***

12. As an example of abuse of the "#" sign, Eastlink, during the hearing, revealed its network was build with HSPA/UMTS overlaid with LTE. Yet, in its written submissions it was all "#" out. The only public information came from its web site which mentions LTE only. (or at least did at the start of this process when Vaxination tried to seek information about Eastlink's network).
13. More importantly, when discussing the roaming partner, Eastlink "#" everything. At the hearing, Eastlink revealed that its contract with the roaming partner (which we all know is Rogers) prevents it from disclosing the identity of the roaming partner.
14. Because Eastlink "#" everything in its submissions, it prevented an intelligent discussion by intervenors on whether the roaming partner should be allowed to require its name never be mentioned, a practice incumbents also impose on TPIA service provides for wired internet.
15. Because Eastlink "#" everything, suggestions such as allowing incumbents to prevent new entrants from using their name in marketing/advertising while allowing it to be released to customers who ask and during regulatory proceedings could have been made.
16. The case of Eastlink is especially notable since, as a new entrant, it is seeking regulatory help from the Commission, so one would think it would want open discussion.
17. Submissions where most of the substance has been "#" out should be considered lobbying efforts as they cannot be challenged nor discussed and as such should be struck from the record. The abuse of the "#" in written submissions is especially notable in this process as some of the information filed "#" in writing was openly discussed during the hearing. This prevents other parties from properly responding, while giving Eastlink and others the opportunity of an unchallengeable private chat with the Commission.
18. When a carrier seeks the regulatory help from the Commission (as is the case of new entrants), they have to be willing to disclose enough information to allow sufficient democratic debate on the issue by all parties.

## **Scope of the proceeding**

19. On February 11th 2014, the Canadian government tabled Bill C-31
20. On February 19th 2014, the results of the 700mhz auction were made public, with companies such as Vidéotron making press statements on the same day. The government's press release<sup>1</sup> on the issue states:

*A fourth wireless provider obtained spectrum in every region of the country, delivering on our government's commitment to encourage more competition in Canada's wireless industry*

As a result, while not explicit, the Government's statement makes it clear that it expects Vidéotron to be that 4th provider in provinces where it obtained 700mhz spectrum. Subsequent announcements on various media outlets placed a lot of significance on Vidéotron's 700mhz win being key to achieving the goal of 4 facilities based providers in every province.

21. On February 20th, the Commission issued Public Notice 2014-76, " Review of wholesale mobile wireless services" whose scope was on wholesale services which even discussed MVNOs. This indicated that the Commission was willing to go beyond the Industry Canada policy which limits competition to only those carriers it designates as "facilities based"<sup>2</sup>.
22. Since then, Vidéotron has made repeated public statements that deployment outside of Québec depended on a number of conditions being met.
23. In light of the above, it is impossible to know the true scope of this proceeding. Is the Commission still open to going beyond the government of Canada's policy of restricting wireless players to government chosen "facilities based" ones ? Or is the outcome limited to implementing the government's policy which restricts competition to facilities-based carriers ? Or is the outcome now limited to acquiescing to Vidéotron's undisclosed needs in order to make it decide to deploy in the Rest of Canada ?

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1 More Choices for Canadian consumers, Feb 19 2014 <http://news.gc.ca/web/article-en.do?nid=816849>

2 By allowing incumbents to sell outside their footprint via network sharing deals, but restricting new entrants to their footprint, Industry Canada subjectively applies different definitions of "facilities based" depending on which carrier is involved.

## ***The Curious Case of Vidéotron***

24. The Commission has been placed in an egg-or-chicken situation because without knowing the outcome of Vidéotron's plans, it cannot meaningfully evaluate the "minimum extent possible" necessary to achieve goals of a working marketplace, and Vidéotron has stated its plans depend on the outcome of this proceeding.
25. The government's statements appear to expect Vidéotron to be a good facilities based carrier and deploy antennas on 700mhz throughout the territories covered by its 700mhz licenses, both urban and rural. This is what is expected of a policy based on the assumption that "4 facilities based carriers will provide enough market forces".
26. Instead of evaluating the idyllic and unrealistic scenario, the Commission should look at worse case scenarios to gauge how strong its regulatory intervention should be:
27. Vidéotron admitted that teaming up with Wind and/or Mobilicity was being considered and later, admitted in a The Wire Report interview that it did not have the resources to deploy outside of Québec and needed a partner.
28. The Commission should ask how many 700mhz antennas it deployed in Québec, or whether its network sharing agreement with Rogers saw Vidéotron use Rogers 700mhz infrastructure with Vidéotron deploying a small number of 700mhz equipment in areas not served by Rogers to extend both its and Rogers' 700mhz footprint. This may provide hints on how Vidéotron might extend its service outside of Québec.

### ***Worst case scenario***

- Vidéotron sits on its 700mhz spectrum hoping to sell it as soon as government policy changes.
  - Mobilicity is liquidated
  - Wind survives but barely strong enough to expand.
29. In this case, the 4th carrier in BC,AB,ON is Wind. What will it take from the regulator to make Wind strong and large enough to be taken as a serious competitor by the 3 major incumbents ?

## ***The Curious Case of Vidéotron (cont)***

30. In Québec, Vidéotron admitted that it was losing money on its wireless network endeavour. As a vertically and horizontally integrated entity, the "bundle" offered to customers may remain highly profitable even if the wireless service itself is not. And the ability to bundle wireless may make it easier for Vidéotron to retain "bundle" customers who might otherwise move all their services to the other incumbent.
31. Building a wireless network that matches its cable footprint not only gives it the ability to market/bundle to existing cable customers, but more importantly greatly reduce deployment costs because Vidéotron already has fibre throughout those neighbourhoods. The formulas change dramatically once Vidéotron moves out of territory.

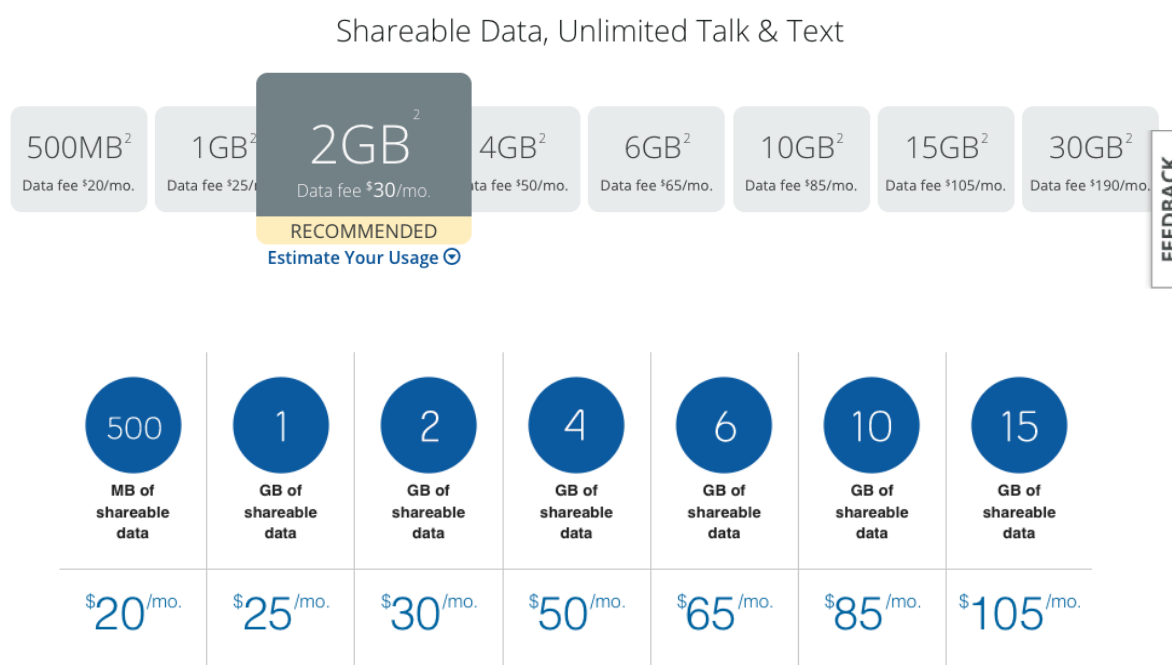
### ***Second worst case scenario***

- Vidéotron buys Shaw's spectrum
  - Vidéotron partners/merges with Wind and/or Mobilicity.
  - Vidéotron extends its current network sharing deal with Rogers to cover BC,AB,ON and QC. Rogers gets to use spectrum from Shaw, Vidéotron, Mobilicity and/or Wind which it otherwise wouldn't have been allowed to purchase.
  - All this without planting a single antenna outside of Québec, or perhaps a token antenna in BC,AB,ON to claim "facilities based" status to meet Industry Canada's loose definition and gain all the privileges and protections of being a "facilities based" provider.
32. In a more likely scenario where Vidéotron teams up with an incumbent because it is more economically efficient to network share, will Vidéotron bring to the table enough leverage to gain full freedom to compete, or will there be an expectation/demand from the incumbent that Vidéotron's retail prices won't be too different from the incumbents? The "commercially negotiated" terms can ensure Vidéotron cannot put significant downward price pressure on incumbents.
33. As the most economically efficient way for Vidéotron to deploy in Rest of Canada is to network share, the Commission must ask whether such arrangement would truly add to market forces since Vidéotron, already an incumbent, would be welcomed into the wireless incumbent club with certain expectations of not being too disruptive.



## Retail pricing trends

34. There have been many claims about retail pricing. Last year, the government was happy to brag about some metric pointing to wireless pricing having gone down. Now, statistics show retail pricing has gone up.
35. During the Wireless-Code hearing, incumbents complained about the thousands of different grandfathered plans they have to keep in their systems. If prices are dropping why do so many Canadians stay on grandfathered plans ?
36. Why is this significant ? Because the "minimum extent possible" should consider how effective the current batch of new entrants has been at diluting the incumbent's market power and how much of an intervention is necessary to move the market where incumbents are forced to compete and lower prices.
37. Rogers launched the iPhone 3G in Canada and offered a 6GB plan for \$30 in July 2008. (\$5/GB). Here is what their data pricing looks at today in Ontario: (Rogers followed by Bell, Ontario)



38. The price ranges from \$40/GB ( \$20/0.5GB) to \$6.33 (\$190/30). Notably, what used to cost \$30 for 6GB now costs \$65. How the incumbents can spin this as prices going down is beyond belief.
39. For \$30 today, you get 2GB, 1/3 of data as you did in 2008.

## Retail pricing trends (cont)

40. Here is another facet on retail pricing that needs to be explored. The issue of competition being different in different provinces.

41. In the case of Québec, while the packages offered by Rogers are different, are they really lower priced due to Vidéotron ?

<sup>\$25/month</sup>  
**2GB<sup>1</sup>**  
Unlimited  
Canada-Wide Calling<sup>2</sup>  
Unlimited  
Messaging<sup>3</sup>  
[View all features](#)

<sup>\$30/month</sup>  
**4GB<sup>1</sup>**  
Unlimited  
Canada-Wide Calling<sup>2</sup>  
Unlimited  
Messaging<sup>3</sup>  
[View all features](#)

<sup>\$35/month</sup>  
**6GB<sup>1</sup>**  
Unlimited  
Canada-Wide Calling<sup>2</sup>  
Unlimited  
Messaging<sup>3</sup>  
[View all features](#)

<sup>\$60/month</sup>  
**12GB<sup>1</sup>**  
Unlimited  
Canada-Wide Calling<sup>2</sup>  
Unlimited  
Messaging<sup>3</sup>  
[View all features](#)

<sup>\$95/month</sup>  
**15GB<sup>1</sup>**  
Unlimited  
Canada-Wide Calling<sup>2</sup>  
Unlimited  
Messaging<sup>3</sup>  
[View all features](#)

42. The price per gig ranges in Québec from \$12.50/GB (\$25/2GB) to \$6.33 (\$95/15GB). Yes, the same \$6.33/GB as in most other provinces. The outlier numbers are for the 6 and 12GB plans where Rogers charges \$5.83/GB and \$5.00/GB respectively.

43. Interestingly, Vidéotron charges \$45 for 6GB (\$7.50/GB) and \$60 for 10GB (\$6/GB). So Rogers isn't reacting to Vidéotron's lower prices since Vidéotron charges considerably more.

44. The incumbent's complex and ever changing pricing makes it hard to do comparisons. The one clear difference is Manitoba where data rates are as low as \$2.50/GB. However, MTS' history as a former happy telco family member who did not hand over the province to the overlords Bell or Telus may have more to do with pricing differential with Bell/Telus needing to win over a province they lost to Rogers than about the number of competitors yielding lower prices.

45. So, the Commission must ask whether the current batch of new entrants, from the maverick Mobilicity/Wind to the incumbent Vidéotron have had significant impact on incumbents who are still able to raise rates as was witnessed in early 2014 when the 3 big guys raised prices by \$5.00, unafraid of the potential loss of customers to the small guys like Wind.

## Rural Towers

46. Pricing games extend to rural towers arguments where incumbents spoke of cost per megabyte instead of cost of building the tower. With 2 towers costing the same to build, the one with higher traffic will have a lower cost per megabyte. It is the cost to build that matters when renting space on a tower.

## **Misunderstood MVNOs**

47. Even if the Commission, due to government policy, is unwilling to seriously consider MVNO as a wholesale scenario, it is important to consider some of the propaganda made by both new entrants and incumbents to dismiss this as an option.
48. Incumbents have dismissed MVNOs as white label resellers which add no value, do not compete and fail. This is because commercial negotiations with the few MVNOs that have existed in Canada are designed to ensure the MVNO will not compete and disrupt the market, leaving MVNOs with little flexibility and restricted to a small niche market the incumbent is not interested in. They complete the incumbent instead of competing against them.
49. The most visible example was that of Vidéotron who was allowed to MVNO on Rogers but only at a resale level where it was not able to grow and compete.
50. It is natural for incumbents to dismiss MVNO since they do not want true competition to disrupt their comfortable position with almost full control of the market.
51. None of the examples cited by incumbents about other MVNO experiences around the world showed one where cost based pricing was regulated to ensure MVNOs could aggressively compete. The biggest extent of regulation cited was that of Spain where MVNO wholesale was mandated with expectation of commercially negotiated rates which are essentially "you must offer it, but you can price it to ensure they won't disrupt your business by competing".
52. **When dealing with incumbents who control the market, any wholesale arrangement, whether roaming or MVNO, must have regulated rates because incumbents will not commercially negotiate rates that allow a competitor to actually compete and drive incumbent pricing down.**
53. For new entrants, they are in a bind. The ability to expand nationally and focus investment where it is most productive (core network) would allow them to grow to a scale where they become profitable and most importantly, provide sufficient market forces to move the incumbents. However, this means their current investments in spectrum and antennas becomes moot (but their core network investment usable in the MVNO environment). To this end, instituting MVNO framework should include the ability for new entrants to fully leverage their spectrum (either as sale or subordination to incumbent in exchange for lower rates).

54. The Commission must consider whether the "facilities based" policy is really the best means to achieve the goals set by Section 7 of the Telecom Act. Does this policy direct investment where it is most efficient at creating competition ?
55. It has taken over 30 years for incumbents to build out their fleet of antennas. Except for Sasktel and MTS, all the telcos have combined either through mergers or through shared networks, with Bell/Telus having a half-shared network with Sasktel where they fully network-share with Sasktel but Sasktel roams on Bell/Telus outside of its footprint.
56. MTS, the black sheep of the former Telecom Canada family was excluded from the Bell/Telus/Sasktel group and instead joined forces with Rogers, as has TBayTel and now Vidéotron. The incumbents have found that network sharing is the most efficient way to deploy the last mile (RANs/antennas/spectrum). So why are new entrants expected to be competitive when they are forced to duplicate last mile infrastructure, an endeavour that is economically inefficient and which incumbents have long ago abandoned in favour of network sharing ?
57. A new entrant's investment in antennas/spectrum will never yield a competitive advantage compared to incumbents who not only have 30 year head start on footprint, but also network sharing advantages that cannot be matched by a new entrant forced to build all by itself.
58. It is investments in the core network that are most efficient at creating competition by allowing the carrier to provide differentiated services, billing approaches, and all the retail differences such as support, marketing etc.
59. Should Canada's policy continue to be narrowly focused on forcing investment in antennas/spectrum with little left for new entrants to actually compete, or should there be a real rethink that focuses their investment where it makes the most difference in increasing market forces ?
60. Can new entrants ever become strong enough to compete if they are expected to sink most of their funds into antennas/spectrum for the next 30 years to catch up with incumbents ?
61. If unwilling to go the MVNO route, the Commission should focus on finding ways to make Wind and/or Vidéotron (depending on outcome) highly successful and grow to a scale where incumbents are forced to respond, and in a way which benefits all Canadians. Wind's maverick pricing is not available in Québec for instance.

62. It is unclear how far the Commission is allowed to go, or whether it is limited to current "facilities based" government policy. But the end result must be the increase in market forces exerted by whomever competes against the incumbents. The incumbent's spin must not be successful in convincing the Commission that all is well in the Canadian wireless industry and that the 3 main players are highly competitive. The only competition that exists between incumbents is for who will raise rates first, knowing the other 2 will follow.
63. It is unclear whether regulating domestic roaming rates would provide sufficient changes to turn the new entrants from weak players struggling to stay alive into energetic lean and mean competitors that force the 3 giant brothers in the oligopoly to respond and reduce main brand prices.
64. Unfortunately, the new entrants have not provided any roadmap and described exactly what they needed to become such lean and mean competitors. So the Commission lacks evidence on what regulatory measure is needed to achieve the goal of a competitive marketplace. All it has are complaints about predatory practices from incumbents on roaming rates and tower sharing without any indication that solving those problems would be sufficient to create the level of competition that is needed in the Canadian marketplace.
65. **Insufficient regulatory measures will at best result in new entrants remaining in survival mode and unable to give incumbents a run for their money. Such "minimum extent possible" regulatory measures will have the perverse effect of helping the incumbents retain their excessive market power by keeping new entrants on life support.**
66. A lifeline was tended to new entrants with C-31 to extend their survival. If the Commission feels it has insufficient evidence to create a winning wholesale framework that will achieve the goal of seriously increasing market forces and reducing market power exerted by incumbents, perhaps it should consider holding a new hearing once Vidéotron has announced its true plans for deployment outside of Québec and a better picture emerges of the competitive landscape.
67. ... Or, the Commission could decide to begin to open the retail market to MVNOs, by offering cost based regulated wholesale rates to the current new entrants, enabling them to expand nationally and leverage their core network investments. Later on, the wholesale MVNO could be opened further to allow additional new players.

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