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OTTAWA, ONT.

#791

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF the application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

-and-

ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.

Respondents

-and-

VIDEOTRON LTD.

Intervenor

CLOSING COMPENDIUM OF VIDEOTRON

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TAB 1



CANADA

CONSOLIDATION

CODIFICATION

Telecommunications Act

Loi sur les télécommunications

S.C. 1993, c. 38

L.C. 1993, ch. 38

Current to November 28, 2022

À jour au 28 novembre 2022

Last amended on June 29, 2021

Dernière modification le 29 juin 2021

Application

Broadcasting excluded

4 This Act does not apply in respect of broadcasting by a broadcasting undertaking.

Application

5 A trustee, trustee in bankruptcy, receiver, sequestrator, manager, administrator of the property of another or any other person who, under the authority of any court, or any legal instrument or act, operates any transmission facility of a Canadian carrier is subject to this Act.

1993, c. 38, s. 5; 2004, c. 25, s. 175.

Special Acts

6 The provisions of this Act prevail over the provisions of any special Act to the extent that they are inconsistent.

Canadian Telecommunications Policy

Objectives

7 It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

- (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- (d) to promote the ownership and control of Canadian carriers by Canadians;
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

Champ d'application

Exclusion des activités de radiodiffusion

4 La présente loi ne s'applique pas aux entreprises de radiodiffusion pour tout ce qui concerne leurs activités de radiodiffusion.

Assujettissement à la loi

5 Le fiduciaire, le syndic, le séquestre, l'administrateur du bien d'autrui ou toute autre personne qui gère ou exploite une installation de transmission d'une entreprise canadienne sous l'autorité d'un tribunal ou en application d'un acte juridique est assujetti à la présente loi.

1993, ch. 38, art. 5; 2004, ch. 25, art. 175.

Cadre législatif

6 Les dispositions de la présente loi l'emportent sur les dispositions incompatibles de toute loi spéciale.

Politique canadienne de télécommunication

Politique

7 La présente loi affirme le caractère essentiel des télécommunications pour l'identité et la souveraineté canadiennes; la politique canadienne de télécommunication vise à :

- a) favoriser le développement ordonné des télécommunications partout au Canada en un système qui contribue à sauvegarder, enrichir et renforcer la structure sociale et économique du Canada et de ses régions;
- b) permettre l'accès aux Canadiens dans toutes les régions — rurales ou urbaines — du Canada à des services de télécommunication sûrs, abordables et de qualité;
- c) accroître l'efficacité et la compétitivité, sur les plans national et international, des télécommunications canadiennes;
- d) promouvoir l'accession à la propriété des entreprises canadiennes, et à leur contrôle, par des Canadiens;
- e) promouvoir l'utilisation d'installations de transmission canadiennes pour les télécommunications à l'intérieur du Canada et à destination ou en provenance de l'étranger;

(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;

(h) to respond to the economic and social requirements of users of telecommunications services; and

(i) to contribute to the protection of the privacy of persons.

f) favoriser le libre jeu du marché en ce qui concerne la fourniture de services de télécommunication et assurer l'efficacité de la réglementation, dans le cas où celle-ci est nécessaire;

g) stimuler la recherche et le développement au Canada dans le domaine des télécommunications ainsi que l'innovation en ce qui touche la fourniture de services dans ce domaine;

h) satisfaire les exigences économiques et sociales des usagers des services de télécommunication;

i) contribuer à la protection de la vie privée des personnes.

Powers of Governor in Council, Commission and Minister

Directions

8 The Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives.

Exemptions

9 (1) The Commission may, by order, exempt any class of Canadian carriers from the application of this Act, subject to any conditions contained in the order, where the Commission, after holding a public hearing in relation to the exemption, is satisfied that the exemption is consistent with the Canadian telecommunications policy objectives.

Inquiry and determination

(2) The Commission may, on application by any interested person or on its own motion, inquire into and determine whether any condition of an exemption order has been complied with.

Interested persons

(3) The decision of the Commission that a person is or is not an interested person is binding and conclusive.

1993, c. 38, s. 9; 1999, c. 31, s. 196(F).

Publication of proposed order

10 (1) The Minister shall have an order proposed to be made under section 8 published in the *Canada Gazette* and laid before each House of Parliament, and a reasonable opportunity shall be given to interested persons to make representations to the Minister with respect to the proposed order.

Pouvoirs du gouverneur en conseil, du Conseil et du ministre

Instructions

8 Le gouverneur en conseil peut, par décret, donner au Conseil, au chapitre des grandes questions d'orientation en la matière, des instructions d'application générale relativement à la politique canadienne de télécommunication.

Exemption

9 (1) Le Conseil peut, par ordonnance, soustraire, aux conditions qu'il juge indiquées, toute catégorie d'entreprises canadiennes à l'application de la présente loi s'il estime l'exemption, après avoir tenu une audience publique à ce sujet, compatible avec la mise en œuvre de la politique canadienne de télécommunication.

Enquête et instruction

(2) Le Conseil peut, d'office ou sur demande d'un intéressé, instruire et trancher toute question relative à l'observation d'une condition d'une ordonnance d'exemption.

Qualité d'intéressé

(3) La décision du Conseil en ce qui touche la qualité d'intéressé est obligatoire et définitive.

1993, ch. 38, art. 9; 1999, ch. 31, art. 196(F)..

Publication du projet de décret

10 (1) Le ministre fait publier dans la *Gazette du Canada* et déposer devant chaque chambre du Parlement le projet de décret visé à l'article 8, les intéressés se voyant accorder la possibilité de présenter au ministre leurs observations à cet égard.

Conditions of service

24 The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

Conditions of service — person other than Canadian carrier

24.1 The offering and provision of any telecommunications service by any person other than a Canadian carrier are subject to any conditions imposed by the Commission, including those relating to

- (a) service terms and conditions in contracts with users of telecommunications services;
- (b) protection of the privacy of those users;
- (c) access to emergency services; and
- (d) access to telecommunications services by persons with disabilities.

2014, c. 39, s. 193.

Telecommunications rates to be approved

25 (1) No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

Filing of joint tariffs

(2) A joint tariff agreed on by two or more Canadian carriers may be filed by any of the carriers with an attestation of the agreement of the other carriers.

Form of tariffs

(3) A tariff shall be filed and published or otherwise made available for public inspection by a Canadian carrier in the form and manner specified by the Commission and shall include any information required by the Commission to be included.

Special circumstances

(4) Notwithstanding subsection (1), the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate

- (a) was charged because of an error or other circumstance that warrants the ratification; or

Conditions de commercialisation

24 L'offre et la fourniture des services de télécommunication par l'entreprise canadienne sont assujetties aux conditions fixées par le Conseil ou contenues dans une tarification approuvée par celui-ci.

Conditions — personne autre que l'entreprise canadienne

24.1 L'offre et la fourniture des services de télécommunication par toute autre personne qu'une entreprise canadienne sont assujetties aux conditions fixées par le Conseil, notamment en matière :

- a) de conditions à prévoir dans les contrats conclus avec les usagers des services de télécommunication;
- b) de protection de la vie privée de ces usagers;
- c) d'accès aux services d'urgence;
- d) d'accès par toute personne handicapée aux services de télécommunication.

2014, ch. 39, art. 193.

Autorisation nécessaire pour les tarifs

25 (1) L'entreprise canadienne doit fournir les services de télécommunication en conformité avec la tarification déposée auprès du Conseil et approuvée par celui-ci fixant — notamment sous forme de maximum, de minimum ou des deux — les tarifs à imposer ou à percevoir.

Dépôt des tarifications communes

(2) Toute tarification commune entérinée par plusieurs entreprises canadiennes peut être déposée auprès du Conseil par une seule d'entre elles avec attestation de l'accord des autres.

Modalités

(3) La tarification est déposée puis publiée ou autrement rendue accessible au public, selon les modalités de forme et autres fixées par le Conseil; celui-ci peut par ailleurs préciser les renseignements devant y figurer.

Tarifs non-approuvés

(4) Le Conseil peut cependant entériner l'imposition ou la perception de tarifs qui ne figurent dans aucune tarification approuvée par lui s'il est convaincu soit qu'il s'agit là d'un cas particulier le justifiant, notamment d'erreur, soit qu'ils ont été imposés ou perçus par l'entreprise canadienne, en conformité avec le droit provincial, avant que les activités de celle-ci soient régies par une loi fédérale.

1993, ch. 38, art. 25; 1999, ch. 31, art. 199(F).

(b) was imposed in conformity with the laws of a province before the operations of the carrier were regulated under any Act of Parliament.

1993, c. 38, s. 25; 1999, c. 31, s. 199(F).

Effective date of tariff

26 Within forty-five business days after a tariff is filed by a Canadian carrier, the Commission shall

(a) approve the tariff, with or without amendments, or substitute or require the carrier to substitute another tariff for it;

(b) disallow the tariff; or

(c) make public written reasons why the Commission has not acted under paragraph (a) or (b) and specify the period of time within which the Commission intends to do so.

Just and reasonable rates

27 (1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

Unjust discrimination

(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

Questions of fact

(3) The Commission may determine in any case, as a question of fact, whether a Canadian carrier has complied with this section or section 25 or 29, or with any decision made under section 24, 25, 29, 34 or 40.

Burden of proof

(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

Method

(5) In determining whether a rate is just and reasonable, the Commission may adopt any method or technique that it considers appropriate, whether based on a carrier's return on its rate base or otherwise.

Date d'entrée en vigueur de la tarification

26 Dans les quarante-cinq jours ouvrables suivant le dépôt de la tarification par l'entreprise canadienne, le Conseil :

a) soit l'approuve — avec ou sans modifications —, lui en substitue une autre ou exige de l'entreprise qu'elle lui en substitue une autre;

b) soit la rejette;

c) soit rend publics, par écrit, les motifs pour lesquels il n'a pas encore pris l'une des mesures visées aux alinéas a) et b) et précise le délai dans lequel il a l'intention de le faire.

Tarifs justes et raisonnables

27 (1) Tous les tarifs doivent être justes et raisonnables.

Discrimination injuste

(2) Il est interdit à l'entreprise canadienne, en ce qui concerne soit la fourniture de services de télécommunication, soit l'imposition ou la perception des tarifs y afférents, d'établir une discrimination injuste, ou d'accorder — y compris envers elle-même — une préférence indue ou déraisonnable, ou encore de faire subir un désavantage de même nature.

Questions de fait

(3) Le Conseil peut déterminer, comme question de fait, si l'entreprise canadienne s'est ou non conformée aux dispositions du présent article ou des articles 25 ou 29 ou à toute décision prise au titre des articles 24, 25, 29, 34 ou 40.

Fardeau de la preuve

(4) Il incombe à l'entreprise canadienne qui a fait preuve de discrimination, accordé une préférence ou fait subir un désavantage d'établir, devant le Conseil, qu'ils ne sont pas injustes, indus ou déraisonnables, selon le cas.

Méthodes

(5) Pour déterminer si les tarifs de l'entreprise canadienne sont justes et raisonnables, le Conseil peut utiliser la méthode ou la technique qu'il estime appropriée, qu'elle soit ou non fondée sur le taux de rendement par rapport à la base tarifaire de l'entreprise.

Exception

(6) Notwithstanding subsections (1) and (2), a Canadian carrier may provide telecommunications services at no charge or at a reduced rate

(a) to the carrier's directors, officers, employees or former employees; or

(b) with the approval of the Commission, to any charitable organization or disadvantaged person or other person.

1993, c. 38, s. 27; 2014, c. 20, s. 239.

Roaming

27.1 [Repealed, 2014, c. 20, s. 240]

Paper bill

27.2 Any person who provides telecommunications services shall not charge a subscriber for providing the subscriber with a paper bill.

2014, c. 39, s. 194.

Transmission of broadcasts

28 (1) The Commission shall have regard to the broadcasting policy for Canada set out in subsection 3(1) of the *Broadcasting Act* in determining whether any discrimination is unjust or any preference or disadvantage is undue or unreasonable in relation to any transmission of programs, as defined in subsection 2(1) of that Act, that is primarily direct to the public and made

(a) by satellite; or

(b) through the terrestrial distribution facilities of a Canadian carrier, whether alone or in conjunction with facilities owned by a broadcasting undertaking.

Satellite transmission of broadcasts

(2) Where a person who carries on a broadcasting undertaking does not agree with a Canadian carrier with respect to the allocation of satellite capacity for the transmission by the carrier of programs, as defined in subsection 2(1) of the *Broadcasting Act*, the Commission may allocate satellite capacity to particular broadcasting undertakings if it is satisfied that the allocation will further the implementation of the broadcasting policy for Canada set out in subsection 3(1) of that Act.

Idem

(3) Before the Commission exercises its power under subsection (2), it shall take into account the carrier's role

Précision

(6) Le présent article n'a pas pour effet d'empêcher l'entreprise canadienne de fournir, gratuitement ou moyennant un tarif réduit, des services de télécommunication soit à ses administrateurs, dirigeants, employés et anciens employés soit, avec l'agrément du Conseil, à des organismes de bienfaisance, à des personnes défavorisées ou à toute personne.

1993, ch. 38, art. 27; 2014, ch. 20, art. 239.

Itinérance

27.1 [Abrogé, 2014, ch. 20, art. 240]

Factures papier

27.2 Il est interdit à toute personne qui fournit des services de télécommunication d'imposer des frais à un abonné pour l'obtention de factures papier.

2014, ch. 39, art. 194.

Transmission d'émissions

28 (1) Le Conseil doit tenir compte de la politique canadienne de radiodiffusion exposée au paragraphe 3(1) de la *Loi sur la radiodiffusion* pour déterminer s'il y a eu discrimination, préférence ou désavantage injuste, indu ou déraisonnable, selon le cas, dans une transmission d'émissions — au sens du paragraphe 2(1) de cette loi — principalement destinée à être captée directement par le public et réalisée soit par satellite, soit au moyen des installations de distribution terrestre de l'entreprise canadienne, en liaison ou non avec des installations de l'entreprise de radiodiffusion.

Transmission par satellite

(2) En cas de désaccord entre une entreprise de radiodiffusion et une entreprise canadienne sur l'attribution des canaux de satellite en vue de la transmission par celle-ci d'émissions — au sens du paragraphe 2(1) de la *Loi sur la radiodiffusion* — par satellite, le Conseil peut attribuer des canaux à certaines entreprises de radiodiffusion, s'il est convaincu que cela favorisera la mise en œuvre de la politique canadienne de radiodiffusion.

Idem

(3) Le Conseil tient compte, dans l'attribution des canaux de satellite, du rôle de l'entreprise canadienne en

(e) substitute or require the Canadian carrier to substitute other provisions for those disallowed;

(f) require the Canadian carrier to file another tariff, agreement or arrangement, or another portion of it, in substitution for a suspended or disallowed tariff, agreement, arrangement or portion; and

(g) in the absence of any applicable provision in this Part, determine any matter and make any order relating to the rates, tariffs or telecommunications services of Canadian carriers.

Integral activities of affiliates

33 Where a Canadian carrier provides a basic telecommunications service and, in the opinion of the Commission,

(a) an activity of an affiliate of the carrier is integral to the provision of the service by the carrier, and

(b) the Commission's other powers under this Act are not sufficient for the purpose of ensuring that the rates charged by the carrier for telecommunications services are just and reasonable,

the Commission may, for that purpose, treat some or all of the earnings of the affiliate from the activity as if they were earnings of the carrier.

Forbearance

Forbearance by Commission

34 (1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

Idem

(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

e) obliger l'entreprise en cause à remplacer les dispositions rejetées, ou y procéder lui-même;

f) obliger l'entreprise en cause à déposer, en tout ou en partie, une tarification ou un accord ou une entente en remplacement de dispositions rejetées ou dont l'application est suspendue;

g) en l'absence de disposition applicable dans la présente partie, trancher toute question touchant les tarifs et tarifications des entreprises canadiennes ou les services de télécommunication qu'elles fournissent.

Filiales

33 Dans le cas où une entreprise canadienne fournit un service de télécommunication de base, le Conseil peut, afin d'assurer l'imposition et la perception de tarifs justes et raisonnables pour la fourniture de ce service, assimiler tout ou partie des revenus tirés d'une activité par une filiale de l'entreprise à ceux de l'entreprise si, selon lui, à la fois :

a) l'activité de la filiale est essentielle à la fourniture de ce service;

b) il ne dispose d'aucun autre pouvoir lui permettant d'assurer l'imposition et la perception de tels tarifs.

Abstention

Exemption

34 (1) Le Conseil peut s'abstenir d'exercer — en tout ou en partie et aux conditions qu'il fixe — les pouvoirs et fonctions que lui confèrent normalement les articles 24, 25, 27, 29 et 31 à l'égard des services — ou catégories de services — de télécommunication fournis par les entreprises canadiennes dans les cas où il conclut, comme question de fait, que son abstention serait compatible avec la mise en œuvre de la politique canadienne de télécommunication.

Exemption

(2) S'il conclut, comme question de fait, que le cadre de la fourniture par les entreprises canadiennes des services — ou catégories de services — de télécommunication est suffisamment concurrentiel pour protéger les intérêts des usagers — ou le sera —, le Conseil doit s'abstenir, dans la mesure qu'il estime indiquée et aux conditions qu'il fixe, d'exercer les pouvoirs et fonctions que lui confèrent normalement les articles 24, 25, 27, 29 et 31 à l'égard des services ou catégories de services en question.

Exception

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

Effect of forbearance

(4) The Commission shall declare that sections 24, 25, 27, 29 and 31 do not apply to a Canadian carrier to the extent that those sections are inconsistent with a determination of the Commission under this section.

1993, c. 38, s. 34; 1999, c. 31, s. 202(F).

Order to Provide Services**Order to provide services**

35 (1) Where the Commission determines as a question of fact that a telecommunications service or class of services provided by an affiliate of a Canadian carrier is not subject to a degree of competition that is sufficient to ensure just and reasonable rates and prevent unjust discrimination and undue or unreasonable preference or disadvantage, the Commission may require the Canadian carrier to provide the service or class of services in any manner, to any extent and subject to any conditions determined by the Commission, if it is satisfied that it would be an effective and practical means of achieving the purposes of section 27 with respect to the service or class.

Order to discontinue service

(2) Where the Commission determines as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is subject to a degree of competition that is sufficient to ensure just and reasonable rates and prevent unjust discrimination and undue or unreasonable preference or disadvantage, the Commission may require the Canadian carrier to discontinue the service or class of services in the manner, to the extent and subject to the conditions determined by the Commission, if it is satisfied that it would be an effective and practical means of achieving the purposes of section 27 with respect to the service or class.

Meaning of affiliate

(3) In subsection (1), *affiliate*, in relation to a Canadian carrier, means a person who controls the carrier, or who is controlled by the carrier or by any person who controls the carrier.

Exception

(3) Le Conseil ne peut toutefois s'abstenir, conformément au présent article, d'exercer ses pouvoirs et fonctions à l'égard des services ou catégories de services en question s'il conclut, comme question de fait, que cela aurait vraisemblablement pour effet de compromettre indûment la création ou le maintien d'un marché concurrentiel pour leur fourniture.

Effet de l'abstention

(4) Le Conseil doit déclarer que les articles 24, 25, 27, 29 et 31 ne s'appliquent pas aux entreprises canadiennes dans la mesure où ils sont incompatibles avec toute décision prise par lui au titre du présent article.

1993, ch. 38, art. 34; 1999, ch. 31, art. 202(F).

Ordre de fourniture de services**Circonstances**

35 (1) Le Conseil peut ordonner à toute entreprise canadienne de fournir, selon les modalités, dans la mesure et aux conditions qu'il peut préciser, les services — ou catégories de services — de télécommunication offerts par un affilié s'il est convaincu que cela constituerait un moyen efficace et pratique de donner effet à l'article 27 à l'égard de ces services, et s'il détermine, comme question de fait, que le cadre de leur fourniture n'est pas suffisamment concurrentiel pour assurer l'établissement de tarifs justes et raisonnables ni pour prévenir toute discrimination, toute préférence ou tout désavantage injustes, indus ou déraisonnables, selon le cas.

Ordre de cession

(2) S'il est convaincu que cela constituerait un moyen efficace et pratique de donner effet à l'article 27 et s'il détermine, comme question de fait, que le cadre de la fourniture de services — ou catégories de services — de télécommunication par l'entreprise canadienne est suffisamment concurrentiel pour assurer l'établissement de tarifs justes et raisonnables et pour prévenir toute discrimination, toute préférence et tout désavantage injustes, indus ou déraisonnables, selon le cas, le Conseil peut ordonner à l'entreprise d'en cesser la fourniture, selon les modalités, dans la mesure et aux conditions qu'il précise.

Définition de affilié

(3) Dans le présent article, *affilié* s'entend de toute personne qui soit contrôle l'entreprise, soit est contrôlée par celle-ci ou par la personne qui la contrôle.

TAB 2

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Government Opts for More Competition in the Wireless Sector

News Release

OTTAWA, November 28, 2007 - The Honourable Jim Prentice, Minister of Industry, today released details on how the auction for Advanced Wireless Services (AWS) spectrum, to be held on May 27, 2008, will be conducted. Of the 105 megahertz (MHz) of spectrum to be made available, 40 MHz will be set aside exclusively for new entrants to bid on. The other 65 MHz will be available to all bidders. The spectrum being set aside amounts to less than 14 percent of the total mobile spectrum that will be in use after the auction. "We are looking for greater competition in the market and further innovation in the industry. At the end of the day, our goals are lower prices, better service and more choice for consumers and business," said Minister Prentice. "That is why we are setting aside a portion of radio spectrum exclusively for new entrants into the wireless market."

Recent studies comparing international pricing of wireless services show Canadian consumers and businesses pay more for many of these services than people in other countries. These services are key to strengthening the

competitiveness of Canadian business.

The decision to set aside spectrum for new entrants is consistent with measures taken in Canada in 1985 and 1995 to facilitate access to spectrum and market entry. It is also similar to measures taken in other countries with competitive wireless markets, notably the United States and the United Kingdom.

Spectrum is used by wireless providers to offer services such as video, music and Internet access over wireless devices such as mobile phones, much the same way a radio station emits its signal over the airwaves. On February 16, 2007, Industry Canada launched a public consultation on how best to conduct an auction process for the available spectrum. The 2006 Telecommunications Policy Review Panel (TPRP), launched by the previous government, also made recommendations on future wireless licensing.

"Having considered all of the comments received during our public consultation, we agree with the TPRP that measures should be taken to enhance competition in this market," said Minister Prentice. "Spectrum is a scarce and valuable resource that is used by all Canadians. It is up to the government to decide how it is to be deployed, to best meet the growing and diverse needs of Canadians."

Further details on the policy framework for the auction can be found at <http://www.ic.gc.ca/spectrumauctions>

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Background - Advanced Wireless Services Spectrum Auction

1. Background

What are Advanced Wireless Services?

Advanced Wireless Services (AWS) promise access to a growing range of innovative wireless applications and enable the timely roll-out of next generation technologies like high-speed video and Internet, with faster access for cell phones, Blackberries and other hand-held devices. The availability of these services will accelerate innovation and choice in the wireless sector.

The U.S. completed an auction for AWS spectrum in 2006, and there was considerable interest by their telecommunications industry. Making this spectrum available in Canada will ensure the Canadian wireless industry remains in step with international developments.

What is Spectrum?

Wireless networks need access to the radio frequency spectrum (airwaves). Spectrum is divided into frequency bands and allocated to services. Some examples are the broadcasting, satellite and mobile services. AWS is a mobile service which means the consumer can be moving while using the device. Spectrum is a finite public resource made available by government through the issuance of licences. Licences for commercial spectrum suitable for use by mobile telephones are very much in demand and most recently awarded through the use of auctions.

Why Auction Spectrum Licences?

Auctions are an efficient licensing process for commercial spectrum licences. Each auction is preceded by a public consultation to establish the policy and licensing framework, auction design, technical requirements and licence conditions. In the AWS auction, the government is making available 105 MHz of spectrum that is comprised of 90 MHz of spectrum for AWS, 10

MHz for the extension of the existing band originally licensed in 1995, and 5 MHz of spectrum in the band 1670-1675 MHz. The 90 MHz of AWS spectrum is interesting at this time, as it is large enough to enable new entry in the wireless market. To provide a measure of comparison, the mobile band which opened in 1985 is 50 MHz wide, and the mobile band which opened in 1995 is 120 MHz wide. Mobile services are transforming how we communicate, and this auction will provide additional spectrum to take it to the next level.

How was the AWS Policy Developed?

In February of 2007, Industry Canada released a paper called Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services. This paper sparked a lot of debate in the telecommunications industry because it asked whether measures should be adopted to foster greater competition in the wireless sector.

The AWS consultation also included a "reply comment" phase, which gave an opportunity to challenge the positions and assertions of other parties. The deadline for reply comments was June 27, 2007. There were 60 submissions received including initial and reply comments. All comments have been posted on Industry Canada's Spectrum Management and Telecommunications website at: <http://ic.gc.ca/spectrumbauctions>.

2. Policy Objectives

Canada's Spectrum Policy Framework, published in June of 2007, sets as the government's primary goal to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. Radio spectrum is a finite and valuable public resource which must be managed in the best interest of Canadians. The auction of licences for mobile spectrum such as AWS is an infrequent and important opportunity and must take into account the best interests of Canadian consumers. The government's role is to help foster a healthy and

competitive telecommunications market that encourages and rewards innovation, and from which consumers will benefit the most.

Industry Canada must determine whether market forces alone are sufficient to achieve its policy objectives or whether specific measures are appropriate at this time. Specific measures that have been used in previous auctions in Canada and by other countries around the world include: determining who is eligible to enter the auction, setting aside spectrum for new entrants, establishing a spectrum cap to limit spectrum dominance, mandating roaming and service roll-out obligations. The department must also consider the implications of the current AWS auction for the broader telecommunications industry and for the information and communications technologies industry (ICT).

The Government of Canada has decided to set aside AWS spectrum for new entrants, in order to foster more competition in the wireless market. The goal is lower prices, more choice and increased innovation for consumers. The government believes that new entry will further enhance competition, not only in the wireless market segment, but across all telecommunications markets in Canada providing new products needed to keep Canada at the forefront of innovation. Having low cost for data transmission and state of the art wireless devices are important to Canada's competitiveness. The measures being taken are intended to ensure an opportunity for entry into the marketplace. The department is satisfied that the potential benefits of new entry warrant these measures. The wireless market, and in particular consumers, can benefit from further competition which strengthens Canada's ability to rely on market forces to the maximum extent feasible. Consequently, the department is: setting aside 40 MHz of AWS spectrum for new entrants; mandating in-territory roaming for 5 years while new entrants build out their networks; providing an extension of a further 5 years for national new entrants provided that roll-out obligations are met;

mandating out-of-territory roaming for at least the 10-year licence term; and mandating antenna tower and site (including roof-top) sharing and to prohibit exclusive site arrangements for all radio and spectrum licensees. In Canada, measures to ensure competition have previously been used for licensing mobile spectrum. Spectrum was set aside in the 1985 licensing of cellular radio, and spectrum caps were chosen to enable new entry in the 1995 Personal Communications Services (PCS) licensing process. Roaming was made a condition of licence for the cellular licensees who acquired PCS spectrum in 1995. Other countries have used similar measures to foster competition or ensure new entry, notably the United Kingdom, Australia and the United States.

3. Roaming

Roaming enables subscribers of a service provider to obtain services from another provider when travelling from one geographic area to another. This increases the functionality of mobile devices for the consumer. Roaming can also be a means of accelerating market entry by allowing new entrants to roam on existing wireless networks for a fixed period of time while they build out their own wireless networks.

The United States has taken wide-ranging measures to ensure roaming. Recently, the Federal Communications Commission (FCC) in the U.S. has mandated automatic roaming, as they found that regional wireless providers were unable to negotiate roaming with the national service providers. Many countries in the European Union have also mandated roaming as part of their licensing processes for additional spectrum. Such measures are sometimes needed to ensure consumer benefits while recognizing the competitive nature of the wireless industry.

4. Antenna Tower and Site Sharing

Antenna tower and site sharing is a method of alleviating concerns about building new antenna towers. These concerns can include the impact of

towers on environmental and local land-use requirements. As suitable antenna sites become increasingly scarce and strategic, competition issues arise as well. Two independent groups, the Telecommunications Policy Review Panel and the National Antenna Tower Policy Review recommended that tower sharing be required. The government agrees that the time has come to mandate the sharing of these supporting structures.

Additional information on the tower approval process can be found on Industry Canada's Spectrum Management and Telecommunications website at <http://www.ic.gc.ca/antenna>. See also the Health Canada and Industry Canada FAQ on Radio Frequency Fields at <http://www.ic.gc.ca/epic/site/smt-gst.nsf/en/sf08792e.html>.

5. The Wireless Industry in Canada

The Canadian telecommunications sector is a \$36.1 billion industry. The wireless sector is the fastest growing segment of the telecommunications industry, generating \$12.7 billion in 2006, an increase of 15.2% from 2005. Revenue growth stemmed from an 10.2% increase in subscribers. Wireless services are now available to 98% of Canadians, despite a wireless footprint that covers only approximately 20% of Canada's geographic area.

The cost, features and availability of wireless services affect a large portion of the public. According to the latest report from the Canadian Radio-television and Telecommunications Commission (CRTC), there are now 18.7 million wireless subscribers in Canada (i.e. 58% of the population).

The three national service providers (Bell Canada Enterprises, Rogers and TELUS) continue to dominate the wireless market, with 94% of subscribers and 95% of the revenues according to CRTC reports. A chart showing commercial mobile spectrum holdings and the spectrum to be auctioned is included as Annex A.

6. Wireless Pricing in Canada Compared to Other Countries

While international price comparisons are challenging, most publicly

available studies suggest that prices in Canada are not as competitive as they could be. In particular, there appears to be a consistent view that prices charged for very high use packages and for data (Internet) services are relatively high in Canada. For example:

The OECD Communications Outlook 2007 compared wireless prices in 30 countries. They found that the service package most comparable to what average Canadians use was more expensive in Canada than in eight other countries like the U.K., Sweden and Denmark. For other packages, Canada ranked 12th and 22nd. The report can be found on the Organisation for Economic and Co-operation Development website.

A recent study by SeaBoard Group points out that rates in the U.S. and Europe, for either unlimited wireless plans, or limited wireless data plans are about half the cost of the same services in Canada. The Seaboard report can be obtained for a fee at <http://www.seaboardgroup.com>.

Recent media reports have looked at what it would cost Canadians to operate the new i-Phone and found that wireless data service rates in Canada are almost twice the amount paid in the U.S., Germany and the U.K., where i-Phones prices range from \$60 to \$68 U.S. A comparable service package in Canada would cost between \$133 and \$160.

7. Future Spectrum Auctions

Mobile spectrum suitable for consumer electronics like mobile phones and similar devices is harmonized with other countries to provide the economies of scale needed to reduce prices for equipment used by service providers and wireless consumers. This type of spectrum comes available only at certain times, usually when standards organizations reach agreements which allow for the mass production of equipment. Industry Canada is continuously looking at ways to enhance spectrum use and reallocate existing spectrum resources to make them more useful. For example, the government is converting analogue TV broadcast

spectrum to digital TV. This will result in some spectrum becoming available for flexible use, including mobile services. This spectrum is expected to become available for auction by 2011. Transitions like these take time, and the department will consult the public as appropriate.

8. Further Information

Additional information can be found on Industry Canada's Spectrum Management and Telecommunications website at:

<http://ic.gc.ca/spectrum>.

Right-click to download EPS or PDF versions of the mobile spectrum pie chart.

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Spectrum Management and Telecommunications

Framework for Spectrum Auctions in Canada

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Canada 

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1. Introduction

Radio frequency spectrum is a finite public resource. Both private users and wireless communications service providers require spectrum for a diverse range of uses. Industry Canada, through the *Department of Industry Act*, the *Radiocommunication Act* and the *Radiocommunication Regulations*, with due regard to the objectives of the *Telecommunications Act*, is responsible for spectrum management in Canada. The Spectrum Management Program operates under the guidance of the *Spectrum Policy Framework for Canada*, revised in 2007, which provides a single policy objective and a set of guidelines to guide Industry Canada's management of this resource.

Where the demand for spectrum is not expected to exceed the supply, Industry Canada generally uses a first-come, first-served licensing process to award spectrum licences. In instances where the demand for spectrum is expected to exceed supply, a competitive licensing process, such as an auction, is generally used.

This *Framework for Spectrum Auctions in Canada* (the Auction Framework) describes the general approaches that Industry Canada will use to auction spectrum licences.

2. Application of Auctions

As indicated in the 2007 *Spectrum Policy Framework for Canada*, Industry Canada has adopted a policy objective to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource. One of the enabling guidelines under this objective recognizes that market forces should be relied upon to the maximum extent feasible. With due regard to this policy and guideline, Industry Canada will generally consider the following broad conditions in determining whether an auction process will be used as the spectrum assignment mechanism:

- whether the demand for spectrum is expected to exceed the available supply;¹ and
- whether government policy objectives can be fully met through the use of an auction.

The use of auctions as a spectrum assignment mechanism may not be appropriate for certain radio services as described below.

2.1 Broadcast Licences

The issuance of broadcasting licences is the responsibility of the Canadian Radio-television and Telecommunications Commission (CRTC) as outlined in the *Broadcasting Act*. The Minister of Industry's role in broadcasting extends to spectrum management and the technical aspects of broadcasting. In order to operate a broadcasting undertaking, both a licence from the CRTC and a certificate from Industry Canada are required. Although broadcasting licences will not be the subject of an Industry Canada spectrum auction, spectrum used by broadcasting services may be the subject of an auction under certain circumstances, such as where alternative uses are also permitted. Such a process would be subject to a public consultation on spectrum utilization prior to a proposed auction.

¹ It is often difficult to estimate whether the demand for particular spectrum authorizations will indeed exceed the available supply. Thus, the process outlined in this document moves seamlessly to an auction where demand is anticipated to exceed supply and acts effectively as a first-come, first-served process should supply exceed demand.

2.2 Priority Users

An auction will generally not be used to license spectrum in bands designated for priority services (such as those whose radiocommunications systems are vital to national sovereignty and defence, law enforcement, public safety and emergency services).

2.3 Satellite Services

Where satellite systems are global in nature, it would not be practical for an individual country to use an auction as the assignment mechanism. However, for domestic or regional satellite systems that cover Canada, the Minister may, under certain circumstances, determine that an auction is appropriate, for example, when the spectrum is pre-assigned to Canada as part of an International Telecommunication Union (ITU) Plan or when Canada has priority access to the spectrum internationally.

3. Licence Attributes

In order to develop business plans, secure financing and develop a bidding strategy, it is important that bidders understand exactly what is being auctioned. The Auction Framework outlines the general attributes of auctioned spectrum licences. The precise attributes related to specific spectrum licences will be included as part of the public consultation preceding a specific auction, as well as in the corresponding policy and licensing framework documents.

Applicants should be aware that auctions represent an opportunity to become a licensee, subject to certain conditions and regulations. Industry Canada makes no representations or warranties about the use of auctioned spectrum for particular services. A spectrum auction does not constitute an endorsement by Industry Canada of any particular service, technology or product, nor does a spectrum licence constitute a guarantee of business success. Applicants should perform their due diligence before proceeding, as they would with any new business venture.

The following sections outline the general attributes of the spectrum licences in an auction.

3.1 Definition of Spectrum Licences

The authorizations available for assignment in an auction will be spectrum licences. These are defined in subparagraph 5(1)(a)(i.1) of the *Radiocommunication Act* as authorizations “...in respect of the utilization of specified radio frequencies within a defined geographic area.”

3.2 Ministerial Authority

Spectrum licences issued pursuant to an auction are subject to relevant provisions in the *Radiocommunication Act*, the *Telecommunications Act* and the *Radiocommunication Regulations*. Specifically, the Minister has the power to amend the terms and conditions of spectrum licences at any time during the licence term (paragraph 5(1)(b) of the *Radiocommunication Act*). Upon expiry of a licence, the Minister may set new terms and conditions, which would normally be the subject of consultations that would take place approximately two years prior to the end of the term of the licence in question.

As well, section 40 of the *Radiocommunication Regulations* continues to apply, which allows among other things, the Minister to reallocate spectrum or to permit others to use the same spectrum on a non-interfering basis, for example, through the use of cognitive technology. Industry Canada recognizes the significant investments made by licensees to establish their networks and the impact that a reallocation may have on a client base. It is therefore important to note that pursuant to these regulations, Industry Canada would reallocate, or provide alternative access to spectrum licences assigned through auction, only under extraordinary circumstances (for example, where a change in international allocation or an overriding policy need arises), taking into consideration whether the licensee has complied with the conditions of licence, the level of investment made and the size of its established client base, and in the case of alternative access, the degree to which the existing use would continue unimpeded. If a reallocation or shared access were contemplated, it would take place only after consultation.

3.3 Flexibility of Spectrum Use

Auctions allow market forces to determine who will gain access to spectrum and, indirectly, how it will be used. To allow licensees to continue to quickly and efficiently adapt their services to changing consumer demands, Industry Canada will generally provide licensees with the maximum possible flexibility in determining the services that they will offer and the technologies that they will employ. Beyond the need to conform to the applicable Canadian spectrum allocation, only those limitations required for interference management purposes will generally be imposed. These limitations will include the terms of international agreements entered into by Canada and the provisions of the ITU's *Radio Regulations*.

3.4 Service Areas

Industry Canada publishes a document entitled *Service Areas for Competitive Licensing*, which outlines the general service areas that will be proposed for an auction. The defined geographic areas have been categorized under "service area tiers" that are based on Statistics Canada's census divisions and subdivisions. The definition of the service areas within these tiers and accompanying maps and data tables are available on Industry Canada's website. Industry Canada will continue its practice of seeking and considering comments from stakeholders, prior to the auction, on the proposed tier level and on whether alternative approaches are warranted for the specific spectrum being offered.

Given the geography of Canada, the borders of some of the service areas will inevitably have incidental coverage of water bodies and/or coastal areas. The provision of a service within these incidental areas will generally be permitted, subject to the domestic and international sharing arrangements that are in effect.

3.5 Licence Term

Licences issued via auction will have terms of up to 20 years, based on the specific spectrum being offered. Where spectrum use is not anticipated to change, longer terms (e.g. 20 years) would be offered. As a condition of licence, licences will have a high expectation of renewal, unless a breach of licence condition has occurred, a fundamental reallocation of spectrum to a new service is required or an overriding policy need arises.

As stated in paragraph 5(1)(b) of the *Radiocommunication Act*, the Minister retains the power to amend the terms and conditions of spectrum licences, during the term of the licence and at the end of the term, as part of the licence renewal process.²

3.6 Licence Fees Upon Renewal

For licences issued through a renewal process, licence fees that reflect some measure of market value will apply. Generally, when a majority of licences in a specific band are nearing the end of their licence term, a public consultation regarding the renewal process will be launched. This consultation will usually commence approximately two years prior to the end of the licence term. Comments would be sought on the appropriate conditions of licence to be applied to the new licences, including the level of fees. In the case where Industry Canada foresees the possibility that it will not issue new licences (e.g. due to a fundamental reallocation of spectrum to a new service or an overriding policy need), a consultation would also be conducted on relevant issues.

3.7 Licence Transferability and Divisibility

Licences acquired through an auction are transferable in whole or in part (divisibility) to a qualified recipient, in both the bandwidth and geographic dimensions, subject to the policy and licensing frameworks applicable to these specific licences. Generally, the area transferred may be no smaller than a single spectrum grid cell (a hexagonal figure with an area of 25 square kilometres). The grid cells fit together in an interlocking pattern over the geography of Canada. In general, no minimum limit will be imposed on the amount of spectrum that can be transferred in the bandwidth dimension. However, limits may occasionally be required on the amount of spectrum that can be transferred in order to respect band channelling plans or other policy needs. Such limits would have been discussed as part of the auction consultation for the band in question and will be defined in the final policy and licensing document.

4. Competition Principles: Promoting a Competitive Post-Auction Marketplace

In an effort to ensure that social and economic benefits are maximized from the use of the radio frequency spectrum, it will be important that licensees operate in a competitive marketplace post-auction. Measures available to the government to promote a competitive post-auction marketplace include restricting the participation of certain entities in an auction and/or placing limits on the amount of spectrum that any one entity may hold by using spectrum set-asides or spectrum aggregation limits. Industry Canada will consider the two guiding principles outlined below in choosing when and how to impose pro-competitive measures.

Principle 1: Restricting Participation in the Wireless Market

Industry Canada may decide that an entity that currently provides telecommunications services should be restricted from holding certain licences if:

- (a) the entity possesses market power in the supply of one or more telecommunications services in a region covered by the licence to be auctioned;

² The licence renewal process, including the timing and need for renewal consultations, may vary for satellite licences.

- (b) a new entrant is likely to use the licence to provide services in competition with the entity's existing services; and
- (c) the anti-competitive effects of the entity acquiring a licence are not outweighed by the potential economies of scope arising from the integration of the spectrum in question into the entity's existing network.

Principle 2: Spectrum Aggregation Limits

It is the view of Industry Canada that, when multiple licences for the use of spectrum in a given geographic area are auctioned, and when these can be used to provide closely substitutable service, aggregation limits may be required on the amount of spectrum that any single bidder is allowed to acquire so as to ensure competitive markets. Spectrum aggregation limits may be imposed in the following circumstances:

- (a) a bidder that acquires an amount of spectrum beyond a certain level would not face effective competition from providers of closely substitutable services; and
- (b) the anti-competitive effects arising from the acquisition of an amount of spectrum beyond a certain level by a single bidder would not be offset by lower prices or higher valued services resulting from a single entity holding this amount of spectrum.

In the analysis of the above-noted competition principles, it is appropriate to consider the current Canadian market, activities of other regulators who deal with the wireless industry and the experience of other countries.

5. Auction Process Overview

This section outlines the general steps in the auction licensing process. A more detailed discussion of specific auction design and rule elements will be provided as part of the consultation process conducted prior to a specific auction, as well as in the corresponding policy and licensing framework documents. The time required to complete the auction process, from the release of the original consultation paper to the assignment of licences, will vary somewhat depending on factors such as: the complexity of the issues related to any specific auction; the specific auction design; the volume of consultation comments received; the number of licences being offered; the number of parties applying to participate in the auction; the number of qualified bidders; and the time required by bidders to prepare their bidding strategies and financing. However, the elapsed time between the release of the final policy and licensing framework documents, and the opening of the bidding is generally six to 10 months, with the auction itself taking anywhere from one day for a sealed bid auction to several weeks to complete for a more complex auction. One of the goals in the process is to clearly articulate the policy and licensing considerations and decisions so that potential bidders have the fullest possible knowledge of the spectrum at issue, as well as the auction procedures and rules, prior to the auction.

Industry Canada also makes available background documents related to the specific auction. The documents typically include a backgrounder, frequently asked questions, the dates relating to the auction and an auction fact sheet. These documents are for information purposes only and do not form part of the official policy.

In general, a spectrum auction will take place according to the following steps:

- 5.1 **Public Consultation:** A notice will be published in the *Canada Gazette* announcing the availability of a consultation paper that addresses issues related to the spectrum auction in question. The objective is to provide interested parties with the opportunity to comment on all aspects of the policy related to a specific auction, the auction design, and the licensing procedures and rules prior to the auction.
- 5.2 **Comment Period:** An initial comment period (generally 45-90 days) will be provided. For common framework issues, comments will be sought as to whether there is any reason to deviate from the approaches laid out in the Auction Framework document. For other issues that will require a different approach from auction to auction (for example, the geographic and bandwidth definition of licences), specific proposals or options will be put forward for comment.

After the closing date for receipt of comments, copies of all the comments received will be posted on Industry Canada's website.
- 5.3 **Reply Comment Period:** A second, shorter comment period may then be opened during which respondents will be invited to comment on the initial comments of others. After the closing date of this reply comment period, these comments will also be made available on Industry Canada's website.
- 5.4 **Development of Final Policy:** After reviewing all the input received, the Minister of Industry will issue the final policy decisions. A second notice will be published in the *Canada Gazette* announcing the availability of the paper that provides the final policy decisions and describes the licences to be auctioned, the terms and conditions that will be attached to the licences, the opening bid for each licence, as well as any changes to the rules of the auction, the eligibility criteria and the application procedures to participate in the auction. A summary of key dates associated with the licensing process will generally be included in this document and updates will be provided on Industry Canada's website.
- 5.5 **Amendments, Supplements and Clarification Questions:** Industry Canada may provide an opportunity for the public to submit written questions asking for clarification of rules or policies related to the auction. Questions received by the established deadline and Industry Canada's written answers to these questions will be published on Industry Canada's website. The answers will be considered as amendments or supplements to the policies and rules set out in the final policy and licensing procedures document. Industry Canada may also issue other amendments and supplements to the final policy as appropriate and will publish these on Industry Canada's website.
- 5.6 **Submission of Applications:** To participate in an auction, all applicants must submit a completed application form, including details of their beneficial ownership, and a financial deposit. Specific requirements will be included in the consultation preceding a specific auction, as well as in the related policy and licensing documents.
- 5.7 **Publication of List of Applicants:** A list of all applicants may be made public via Industry Canada's website soon after the closing date for receipt of applications. The publication of this list in no way qualifies the applicants to participate in the auction.

- 5.8 **Publication of List of Qualified Bidders:** A list of all qualified bidders, the licences for which they are eligible to bid, and their initial level of eligibility points may be made public via Industry Canada's website.
- 5.9 **Auction Opens:** Specific details on the start date and/or schedule of an auction will be included in the consultation preceding a specific auction, as well as in the related policy and licensing documents.
- 5.10 **Auction Closes:** The conclusion of an auction will be dependent on the auction design and format used. Specific details on the closure of an auction will be included in the consultation preceding a specific auction, as well as in the related policy and licensing documents.
- 5.11 **Issuance of Licences:** After the close of the auction, each provisional licence winner must submit eligibility documentation where required, as well as payment for the full amount of its standing high bids and any penalties that it has incurred, as set out in the framework document for that auction process.

Upon completion of payment of the sum of its standing high bids and the sum of its penalties, if any, and a determination by Industry Canada that the eligibility requirements have been met, a provisional winner will be issued the appropriate licences.

- 5.12 **Unsold Licences:** Should a licence not receive a bid during the auction, Industry Canada may make this licence available at a later date. Available licences, including any licences that were forfeited after the close of the auction, may be offered in a subsequent re-auction or through an alternative process (such as a first-come, first-served process).

6. Auction Design and Rules

Auctions are an efficient market-based means of assigning spectrum licences, through a fair and transparent process, to those who value them most. Industry Canada's objective is to select an auction design that is optimal for the spectrum being offered and the circumstances that exist at the time. As both the theoretical and practical aspects of auction design continue to advance, Industry Canada will continue to examine new auction design developments and adopt them as appropriate.

Special details with regard to auction design, rules and attributes will be included as part of the public consultation preceding all specific spectrum auctions, as well as in the corresponding auction policy and licensing framework documents.

7. Conclusion

As outlined above, this document provides the framework and concepts that will generally be applicable for spectrum auctions in Canada. The specific rules and the implementation of these concepts will be provided in the policy and licensing documents that will precede each auction.

Theory and practice related to spectrum auctions will continue to evolve. New developments in auction design will continue to be examined and adopted when appropriate. This Auction Framework will be updated from time to time to ensure that it is aligned and consistent with associated Industry Canada policy objectives and guidelines.

TAB 3

TAB 4



Canadian Radio-television and Telecommunications Commission

Home → Business → Consultations → Public Hearings

Transcript, Hearing February 18, 2020

Volume: 1

Location: Gatineau, Québec

Date: February 18, 2020

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Attendees and Location

Held at:

Outaouais Room
Conference Centre
140 Promenade du Portage
Gatineau, Québec

Attendees:

- **Chairperson: Ian Scott**
- **Vice-Chairperson, Telecommunications: Christianne Laizner**
- **Commissioners: Christopher MacDonald, Alicia Barin, Joanne T. Levy**
- **Legal Advisors: Adam Balkovec, Eric Bowles**
- **Secretary: Jade Roy**
- **Hearing Managers: Jeremy Lendvay, Marianne Blais**

Transcript

Gatineau, Quebec

--- Upon commencing on Tuesday, February 18, 2020 at 8:58 a.m./ L'audience débute mardi, le 18 février 2020 à 8h58

1 LE PRÉSIDENT: Merci, Madame la secrétaire. Bonjour et bienvenue à tous. Good morning. Welcome, everyone.

41 Parties are advised that four exhibits will be posted shortly on the Commission's website, which will be referred to during the hearing.

42 Exhibit 1A and B, Posted Wireless Service Provider's Prices, are two price surveys conducted by CRTC staff. They include plan prices as of 21st November 2019 and 13 February 2020, as posted on certain wireless service provider's websites.

43 The second exhibit, Subset of Occasional Use Plans, is a non-exhaustive list of occasional use plans currently offered by wireless service providers under \$15.

44 Pièce 3, Résumé des plans proposés par les groupes de consommateurs, comprend la liste des forfaits sans fil proposés par les différents de consommateurs dans le cadre de ce processus, ainsi qu'un résumé des composantes et prix des forfaits suggérés.

45 Finalement, Pièce 4, Engagements, fournit une liste des engagements auxquels les parties qui comparaissent à l'audience devront fournir les réponses, des réponses s'il y a lieu, d'ici le 10 mars.

46 All the exhibits will be available in the back of the room and in the examination room, and they will be posted shortly on the Commission's website.

47 And now, Mr. Chairman, we will begin with the presentation by the Competition Bureau.

48 Please introduce yourself and your colleagues, and you have 20 minutes for your presentation.

PRESENTATION / PRÉSENTATION

49 MR. BOSWELL: Good morning, Chairperson Scott, Vice-Chair Laizner, Commissioners, Commission staff and counsel. My name is Matthew Boswell and I am the Commissioner of Competition at the Competition Bureau of Canada.

50 Before I begin, let me introduce the members of our panel. To my immediate right is Laura Sonley, a Senior Competition Law Officer in the Competition Promotion Branch who leads the Bureau team in this proceeding. To her right is Dr. Tasneem Chipty of Matrix Economics. Dr. Chipty is the economic expert the Bureau retained in this Proceeding. To Dr. Chipty's right is Derek Leschinsky, legal counsel for the Competition Bureau.

51 Finally, to my left is Anthony Durocher, Deputy Commissioner of Competition who leads the Bureau's Competition Promotion Branch.

52 This proceeding involves a complex industry and a complex set of issues, analyzed and interpreted by a group of stakeholders with highly divergent perspectives. While most stakeholders agree that the benefits of competition in this industry, such as lower wireless prices, more choice and high-quality networks improve the welfare of Canadians, there is little consensus on just about anything else.

53 This is why the Competition Bureau has placed such importance on our participation in this Proceeding. Evidence and impartiality is needed to make sense of this complexity, and this multiplicity of views.

54 En tant qu'organisme indépendant agissant dans l'intérêt public, le Bureau a le mandat de protéger et de promouvoir la concurrence au Canada. Les recommandations que nous avons présentées dans le cadre de cette instance s'appuient sur les preuves que nous avons examinées et analysées.

55 Comme vous l'avez indiqué dans votre avis de consultation, cette instance vise à faire en sorte que le cadre réglementaire des services mobiles sans fil favorise une concurrence durable qui donne lieu à des prix raisonnables, à des services innovateurs et à des investissements continus dans des réseaux sans fil mobiles de haute qualité dans toutes les régions du pays.

56 Dans cette optique et en nous appuyant sur nos travaux, nous avons proposé ce que nous croyons être la voie la plus prometteuse pour stimuler une concurrence réelle et durable à long terme dans cette industrie.

57 Nous vous remercions de nous accueillir aujourd'hui pour nous permettre de présenter notre point de vue et nos conclusions afin de vous aider à tenir compte de ces enjeux importants dans l'industrie des services sans fil.

58 Évidemment, nous sommes conscients que d'autres enjeux de cette instance dépassent notre mandat et notre expertise. Nos soumissions et les points de vue exprimés aujourd'hui reflètent notre champ de compétence, c'est-à-dire la concurrence.

59 Notre but, ce matin, est d'expliquer le fondement de notre recommandation d'adopter un modèle d'ERMV axé sur les installations pour stimuler la concurrence. Pour ce faire, je décrirai d'abord les deux principales conclusions de l'analyse approfondie effectuée par le Bureau et Madame Chipty qui soutiennent cette recommandation.

60 Premièrement, Bell, Rogers et Telus, les trois grands fournisseurs nationaux, disposent d'un pouvoir de marché et exercent leur puissance commerciale dans plusieurs régions du Canada.

61 Deuxièmement, les entreprises perturbatrices du secteur sans fil dotées d'installations régionales entraînent une importante concurrence des prix là où elles offrent leurs services en ébranlant le pouvoir de marché des trois grands.

62 These important findings that underpin our recommendation bear repeating.

63 First, Bell, Rogers and Telus, or the Big 3, exercise market power in many areas across Canada.

64 Second, regional facilities-based wireless disruptors drive significant price competition where they operate by challenging the Big 3's market power.

65 Our analysis began with a foundational question, is there a competition problem in Canada's wireless industry? This question is key because, in our view, without a competition problem, there is no need for a regulatory solution.

66 To test whether a market is sufficiently competitive, the CRTC assesses whether firms have market power. This test is also at the heart of what we, at the Bureau, do on a daily basis.

67 There are different indicators of market power, including the level of market concentration, the profitability of market participants, and the presence of high barriers to entry. By any measure, the wireless industry in Canada is highly concentrated, very profitable, and it is extremely difficult to enter given, among other factors, the need for spectrum and capital-intensive network build-outs.

68 These indicators of market power are reinforced by Dr. Chipty's in-depth quantitative analysis using wireless carrier data made available to her through this proceeding. Dr. Chipty tested for market power by assessing whether, and how, the Big 3 react to increased competition. Dr. Chipty consistently found that they significantly lower their prices when faced with increased competition from regional facilities-based wireless disruptors, such as Videotron and Freedom Mobile. This solidified the Bureau and Dr. Chipty's finding that the Big 3 possess market power in many markets across Canada.

69 Having concluded that there is a competition problem in the industry, we next assessed how it should be addressed, keeping in mind the need to balance increased competition with the incentive to invest in Canada's high-quality networks.

70 Depending on a stakeholder's viewpoint, the recommendations that have been put forward fall within a spectrum from broad MVNO access to no change to the status quo. The Bureau's perspective is that regulators should only intervene when necessary and based on the best available evidence.

71 In the wireless industry, that would mean that facilities-based competition is the preferred solution, if it is working. Which brings us to the Bureau's second key finding.

72 Facilities-based competition from wireless disruptors is creating a marketplace where Canadians can enjoy the benefits of competition, including lower prices and more choice.

73 The evidence we analyzed painted an encouraging picture of the significant progress made since the CRTC's last wireless review five years ago.

74 The evidence demonstrates that Canadians are choosing facilities-based wireless disruptors more and more.

75 Five years ago, Videotron had around 10 percent of Quebec's subscribers; and Freedom, formerly Wind Mobile, was approaching 800,000 subscribers. Since then, both of those numbers have nearly doubled.

76 Further, the evidence demonstrates that the Big 3 are clearly responding to competition from facilities-based wireless disruptors. Dr. Chipty estimates that Canadians pay on average 10 percent less for a Gigabyte of data where a wireless disruptor has achieved a 5.5 percent market share compared to areas without a wireless disruptor. This benefit increases to a 65 percent saving where a wireless disruptor has achieved 20 percent market share.

77 Simply put, in parts of Canada, competition from facilities-based wireless disruptors is increasingly delivering lower prices and more choice. Knowing this, the Bureau proposed a facilities-focused MVNO model aimed at enhancing and expanding the reach of these competitive benefits to

TAB 5

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1 Quebec?

2 **MR. LESCADRES:** Absolutely. Basically, our
3 wireless business, we started in 2006 as an MVNO with
4 Rogers. So we were reselling basically the Rogers services
5 to our customers, which gave us the appetite that the
6 customers would have for a wireless service. And we
7 subsequently bid in the 2008 AWS wireless auction where we
8 acquired basically, spectrum that gave us the possibility
9 to launch our network in 2010.

10 Basically, we got about 200,000 customers by
11 then and we have been able to have grow that basically, to
12 over 1.7 million today. Going through the years, acquiring
13 wireless spectrum, building our towers, and most recently
14 launching our new brand, Fizz, which has helped us in a lot
15 of ways to get to where we are today.

16 **MR. DAVIS:** How did your existing wireline
17 business in Quebec impact the growth of your wireless
18 business?

19 **MR. LESCADRES:** Basically, that was like the
20 first target that we went through. Clearly, those were the
21 customers that were knowing us, and they were willing to
22 come basically, with our company for basically the same
23 reasons that I have made. The difference for us as we
24 exist as a business was just basically great price and
25 great services. We've been the best service company in our

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1 territory for 17 years pour lever, where we recognized by
2 our customer as very, very interesting brand to deal with,
3 like a brand that respects their customers, which has
4 clearly been our landmark that we've been through to the
5 markets.

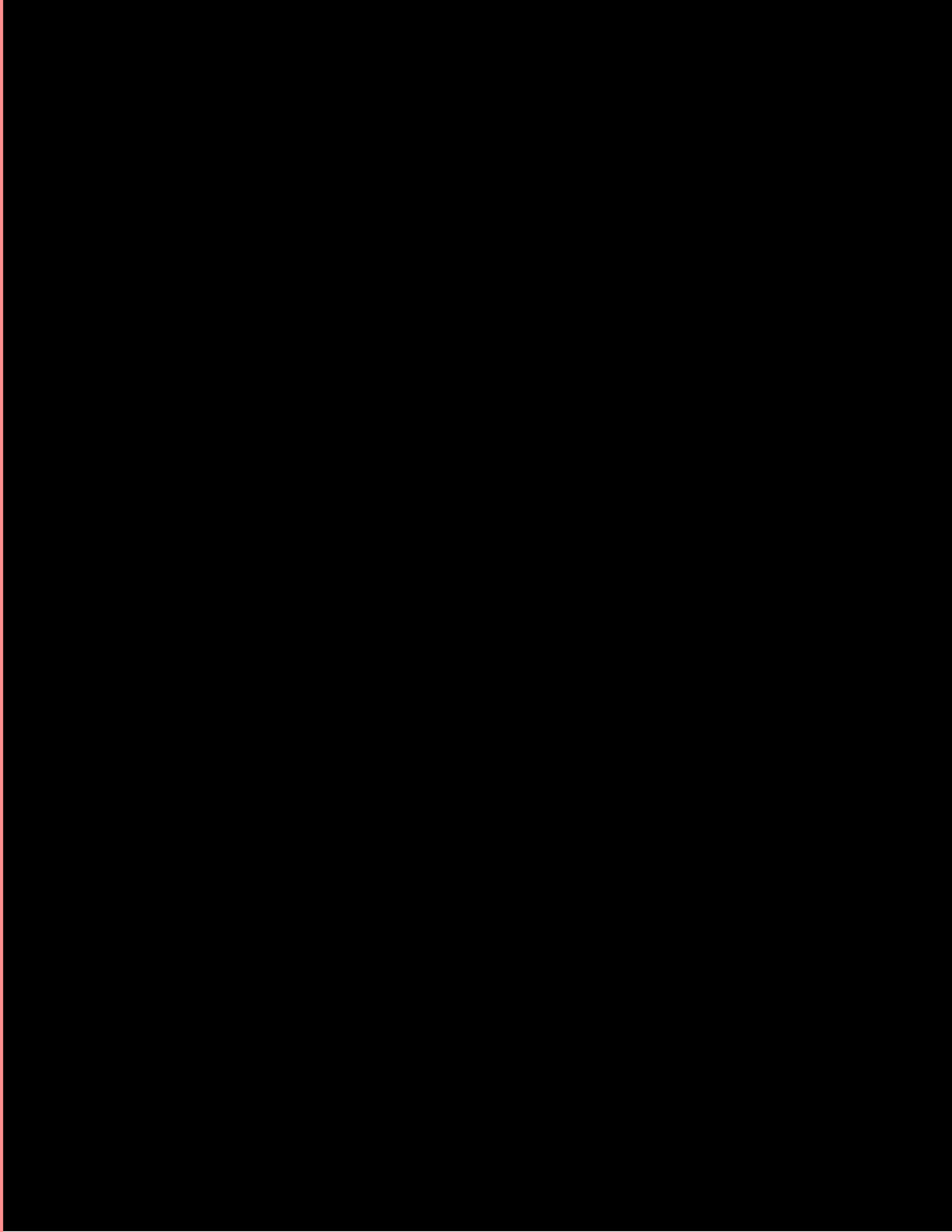
6 So basically, we start with the wireline and
7 we've been able to build that up, I might say that, which
8 honestly gave us some interesting growth. Then we decided
9 that we need to explore even more going out of that
10 territory, which is why I like about three years, well a
11 bit more than three years now, we launched the Fizz brand,
12 which basically is aimed at all the segments that aren't
13 really popular with our customers. When we look at where
14 our customers come from, Fizz has been launched basically
15 to target the other customers and has been able to get
16 tremendous success during like those past three years.

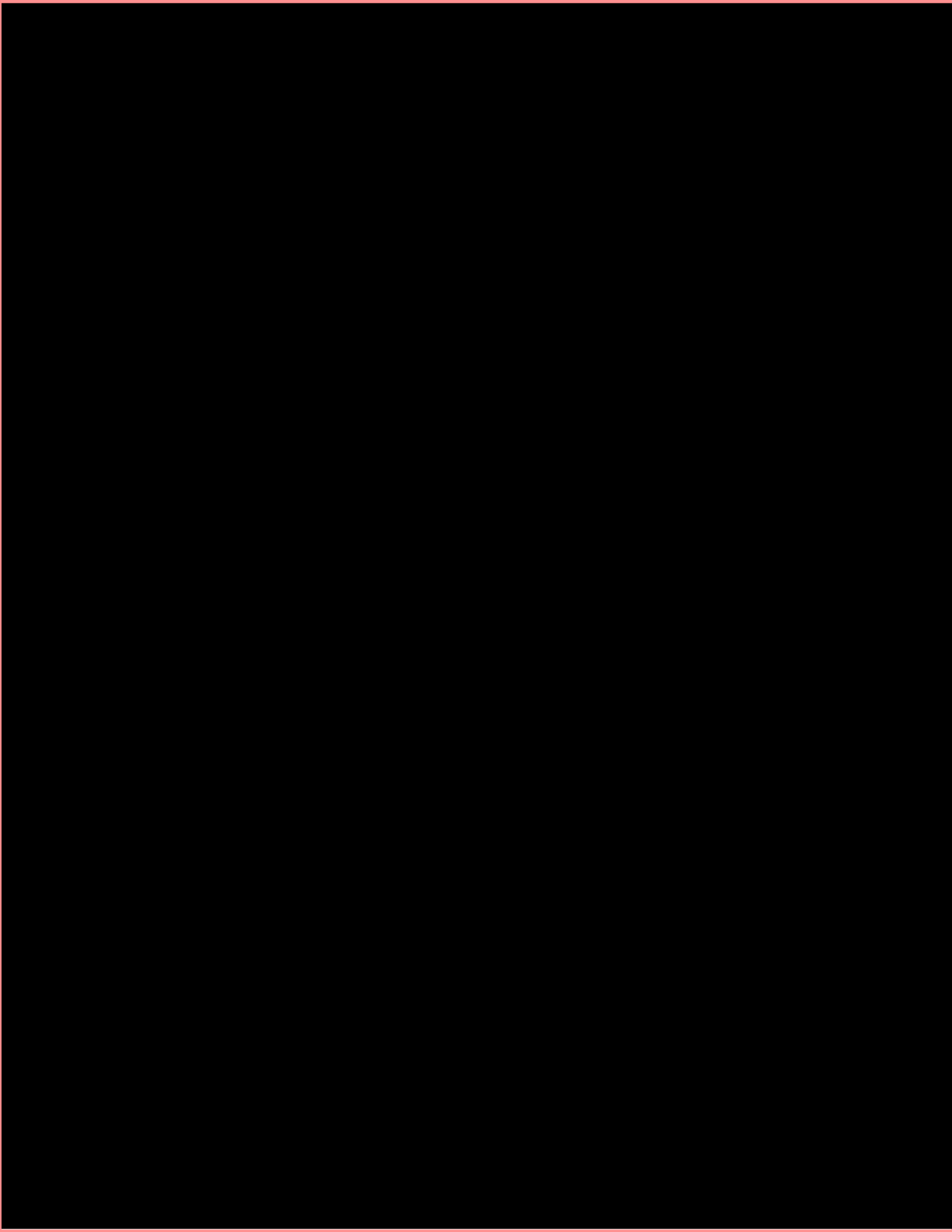
17 **MR. DAVIS:** One of the questions the Tribunal
18 had for Vidéotron at the beginning of this proceeding was
19 its decision not to buy fibre or cable assets as part of
20 this transaction.

21 Given what you've just said about Vidéotron's
22 experience in the wireline business, why did Vidéotron make
23 the decision not to buy those a assets?

24 **MR. LESCADRES:** There's a lot of reasons behind
25 that. Basically, we do think that bundling helps getting

TAB 6





TAB 7

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1 topic now, sir, and let's turn to spectrum. Sir, you
2 purchased 3,500 spectrum; is that correct, sir?

3 **MR. LESCADRES:** Correct.

4 **MR. GAY:** That would cover Alberta, British
5 Columbia, and Ontario; is that correct?

6 **MR. LESCADRES:** I would add Manitoba to that,
7 sir, Mr. Gay, as well as Quebec, obviously.

8 **MR. GAY:** Okay. That's fine. So you paid --
9 and I think that's public information -- you paid I believe
10 it was 850 million for spectrum that would cover Alberta,
11 British Columbia, Ontario, Manitoba, and Quebec. Is that
12 correct, sir?

13 **MR. LESCADRES:** Yes.

14 **MR. GAY:** Fair enough. Of course, if I'm not
15 mistaken, sir, 3,500 is required to roll out 5G; is that
16 correct?

17 **MR. LESCADRES:** That's clearly a part of --
18 really crucial for the 5G network, absolutely.

19 **MR. GAY:** Fair enough. And it's required to
20 roll out 5G in Alberta and British Columbia; is that
21 correct?

22 **MR. LESCADRES:** Yes, which is a crucial part of
23 our plan since we intend to launch 5G services as quick as
24 possible in the next months following an acquisition.

25 **MR. GAY:** Fair enough. And your decision to

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1 the rules in relation to bidding set by Industry Canada, I
2 think, were well-known to you and others. And that is the
3 moment Shaw entered into an agreement with Rogers, it could
4 not participate in the 3,500-spectrum auction; is that
5 correct, sir?

6 **MR. LESCADRES:** That was our understanding,
7 yes.

8 **MR. GAY:** Fair enough. And the reason they
9 couldn't participate and move forward with 5G, or at least
10 the purchase of the spectrum, was because they entered into
11 a deal with Rogers; isn't that correct, sir?

12 **MR. LESCADRES:** That's correct. Basically,
13 they couldn't access the set-aside. They could have
14 accessed the non-set aside, but not the set-aside.

15 **MR. GAY:** Fair enough, sir. In military terms
16 we call that a self-inflicted injury. You'd agree with me,
17 sir, that the reason they can't bid is because they entered
18 voluntarily into an agreement to purchase -- to sell and to
19 merge with Rogers; isn't that correct, sir?

20 **MR. LESCADRES:** I can't talk for them but
21 clearly that's the decision they made to go forward with
22 selling to Rogers.

23 **MR. GAY:** Okay, sir. And conversely, sir, and
24 just accepting this proposition, had they not entered this
25 deal with Rogers, then of course they could have bid and

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1 participated in 3,500; is that correct, sir?

2 **MR. LESCADRES:** I can't talk for them, Mr. Gay.

3 **MR. GAY:** Fair enough. But that wouldn't have
4 been an impediment, and it wouldn't have been an impediment
5 to participating in 3,500; is that correct?

6 **MR. LESCADRES:** They would have been totally
7 allowed to participate in the 3,500.

8 **MR. GAY:** Fair enough. Sir, you purchased the
9 3,500 spectrum and we've established that already; is that
10 correct?

11 **MR. LESCADRES:** That's correct.

12 **MR. GAY:** The 3,500 is an asset; is that
13 correct, sir? You treat that as an asset?

14 **MR. LESCADRES:** We treat that as an asset and
15 part of our strategy, yes.

16 **MR. GAY:** And spectrum can be bought and sold;
17 isn't that correct, sir?

18 **MR. LESCADRES:** That's correct. But there's a
19 lot of restrictions regarding what you can do with it,
20 including not selling it to an incumbent. And I told
21 earlier this morning, basically Minister Champagne put
22 really strict conditions regarding that. Regarding any
23 sales that can be done, and as I said we answered that
24 instantly, because basically our plan is for long term,
25 we're here for the long run, and that's what we're going to

[REDACTED]

[REDACTED]

[REDACTED]

190. That it is often more cost-effective to "rent" space on an existing network is likely one reason why we have not seen smaller TPIA resellers start to build their own networks. Their customer bases are too small or too diffuse to justify building a wireline network to serve them. In addition, and unlike Videotron, these resellers cannot pair wireless services to increase the revenue available from each customer.

Investing in 5G

191. The Financial Plan projects investing nearly \$ [REDACTED] billion in network improvements and spectrum over the first ten years. My team and I developed these projections with Videotron's information technology department led by Mohamed Drif. Mr. Drif describes the technology budget in his witness statement. In discussions with him and his team, we determined that some elements of his May 25, 2022 budget could be allocated to different years, so minor adjustments were made between the May 25 budget and the Capex amounts shown on the *Consolidated Summary Sheet*.

192. Rolling out 5G as soon as possible across the Freedom footprint is important from a marketing and business perspective. [REDACTED]

[REDACTED] To consumers today, that means offering a 5G network. Part of making a good first impression with customers requires us to begin offering 5G service as soon as possible and continuing to improve the quality of the network to deliver the full promise of 5G.

193. Fortunately, we are well positioned to do that. We already have experience building a 5G network in Quebec. We plan to deploy Freedom's 600 MHz spectrum and offer 5G within [REDACTED]. [REDACTED] We then plan to deploy our 3500 MHz spectrum (spectrum that Shaw does not have) to improve the quality of the 5G experience. [REDACTED]

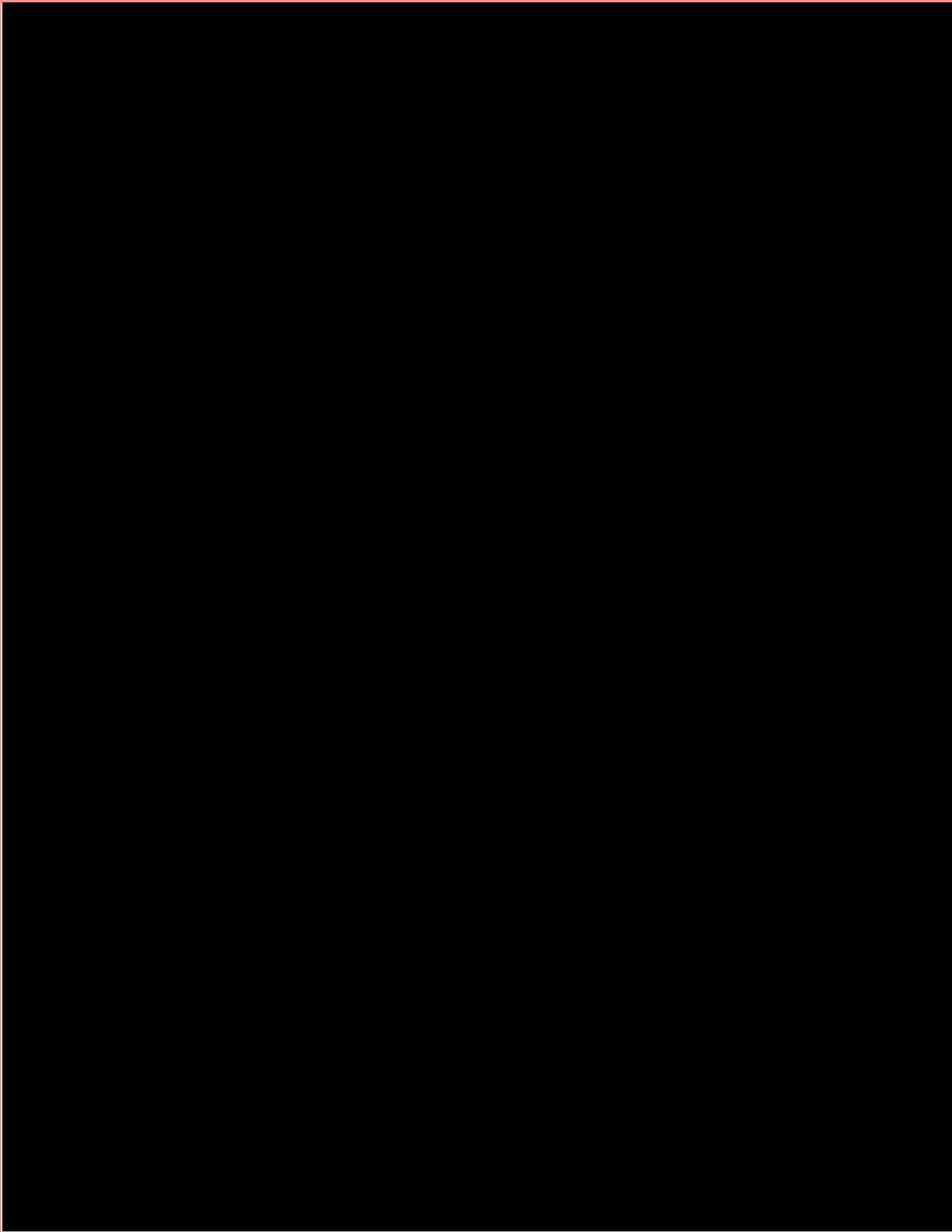
[REDACTED] Attached as **Exhibit "69"** is a copy of a presentation titled *Cadre de l'enchère 3 800 MHz* dated July 13, 2022 describing Videotron's plans regarding the 3800 MHz auction.

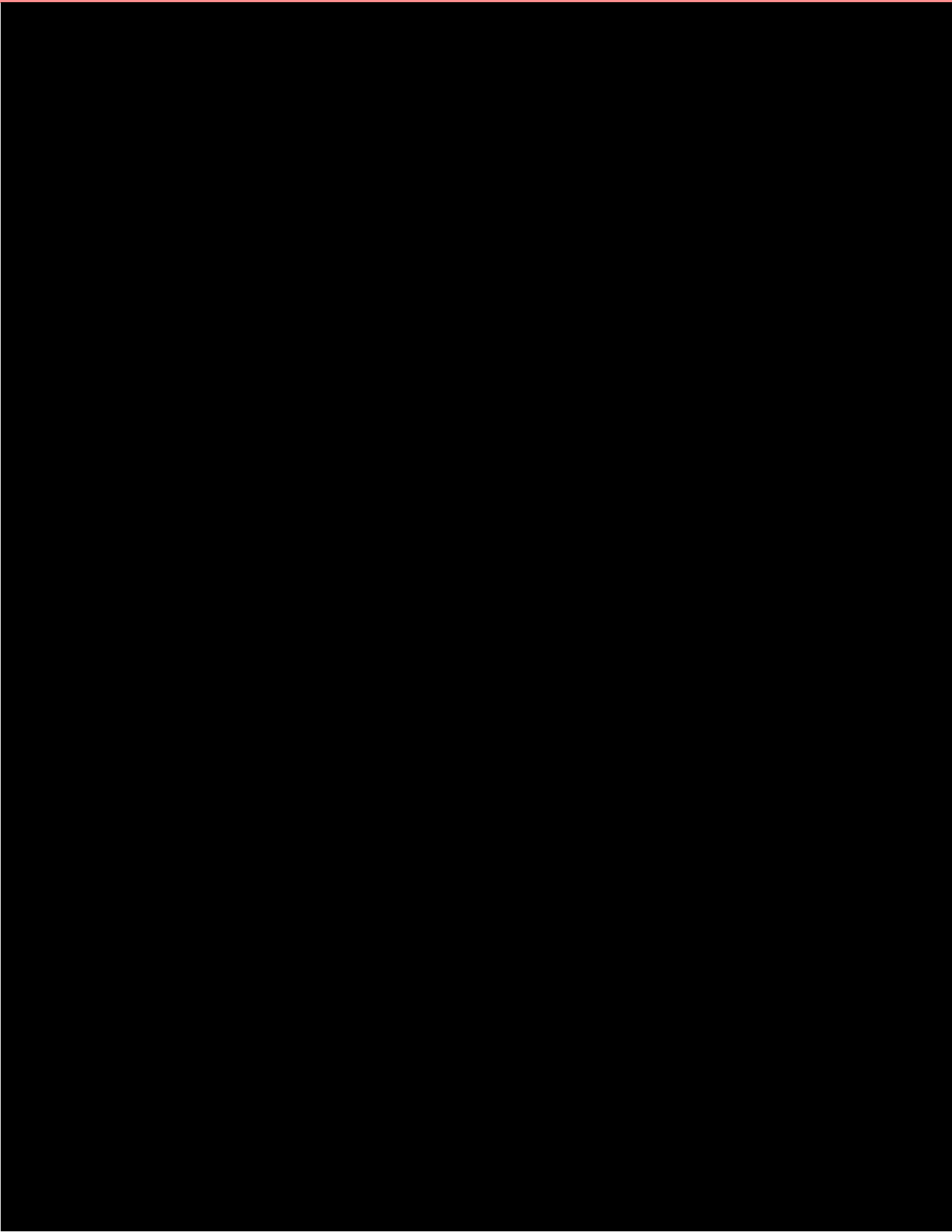
194. However, to complete final preparations for the 3800 MHz spectrum auction, Videotron needs to know whether or not the Divestiture will [REDACTED]

Combining Freedom's Expertise with Videotron's

195. Following the Divestiture, Videotron plans to have both Videotron's senior leadership and members from Freedom's current management team manage the Freedom business. In addition to me, the Videotron senior leadership team consists of:

- Mr. Péladeau, the CEO, who oversaw Quebecor's acquisition of Videotron in 2000 and has been with Quebecor and its subsidiary companies for about 37 years except for the brief period between 2013 and early 2017 when he was involved in Quebec's provincial politics;
- Mr. Simard, Quebecor's CFO who also supports Videotron, spent 1998 to 2017 in a series of key positions with various Quebecor subsidiaries, including Senior Vice-President and CFO of Videotron from 2014 to 2017, Senior Vice-President, Development & Strategy of Quebecor Media, and Vice-President, Finance and CFO of Sun Media Corporation from





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1 type d'usage. Une, c'est pour un usage où la mobilité est
2 importante. Donc, la 5G, elle a la prédilection de servir
3 des services comme dans le futur des voitures connectées de
4 ce genre d'informations, alors que les hotspots, c'est
5 beaucoup plus des situations où on est statiques à une
6 place et on veut transférer des données.

7 **MEMBRE SAMROUT** : Si la transaction passe entre
8 vous et Shaw, alors c'est quoi l'horaire pour pouvoir
9 commencer l'opération à l'Ouest du Canada? Parce qu'il y a
10 des équipements qu'il faut installer, il y a l'intégration
11 et tout ça. Alors, vous prévoyez un horaire de quoi, de
12 plusieurs mois, d'un an, deux ans?

13 **M. DRIF** : Je peux vous parler un petit peu du
14 plan d'intégration qu'on a travaillé, un peu plus en
15 général. On a un plan de transition complet qui est sur
16 deux ans, mais ça inclut les systèmes. Comme vous le savez,
17 il y a des systèmes informatiques qui sont utilisés par
18 Freedom mais qui appartiennent à Shaw. Donc, il faut les
19 transférer sur des systèmes informatiques de Vidéotron ou
20 d'autres instances. Mais d'un point de vue opérationnel, le
21 jour « J », le jour de la conclusion de la transaction,
22 nous sommes prêts à prendre les opérations ce jour « J ».
23 En quelques jours, on va pouvoir prendre les opérations en
24 main. Et ça va déclencher... comme je vous l'ai expliqué,
25 il y a trois étapes de notre plan. Notre plan à court

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1 terme, c'est les ajouts de capacité qu'on va faire dans les
2 trois prochains mois, et notre objectif, c'est d'arriver
3 avec la 5G le plus rapidement possible dans l'Ouest
4 canadien, d'ici les trois mois suite à la conclusion de
5 l'entente.

6 **MEMBRE SAMROUT** : O.K. Alors, c'est comme une
7 priorité, à l'Est comme à l'Ouest, ce n'est pas en étape à
8 l'Est avant l'Ouest ou quelque chose comme ça?

9 **M. DRIF** : En fait, à l'Est, au Québec, on est
10 déjà en déploiement de la 5G. Donc, on est déjà avancé dans
11 ça. Donc, ce qu'il faut faire, c'est pour ça qu'on a mis
12 beaucoup d'efforts sur la priorisation dans le plan de la
13 5G dans l'Ouest pour rattraper ce retard-là, et plus c'est
14 uniforme, plus c'est un déploiement qui est à travers toute
15 la nation, ça va faire que nos opérations vont être
16 beaucoup plus efficaces et beaucoup plus... disons, moins
17 perturbatrices pour les équipes opérationnelles.

18 **MEMBRE SAMROUT** : O.K. Merci beaucoup, monsieur
19 Drif.

20 **M. DRIF** : Merci.

21 **MEMBRE SAMROUT** : Drif, c'est ça. Pardon.

22 **M. DRIF** : Oui.

23 **JUGE EN CHEF CRAMPTON** : Parfait. Maintenant,
24 moi, j'ai une ou deux questions.

25 Donc, au paragraphe 103 de votre déclaration,

85. La première partie de ce plan de déploiement traite de la possibilité pour Vidéotron d'opérer en tant qu'exploitant de réseaux mobiles virtuels (ERMV) afin d'implanter sa présence et de générer des revenus tout en procédant au déploiement de son réseau mobile.

86. Par la suite, le plan de déploiement traite de l'acquisition du réseau mobile de Freedom laquelle améliorerait la stratégie initiale basée sur l'approche ERMV. En effet, les actifs de Freedom permettent une présence initiale plus concrète avec un réseau d'accès déjà établi. Vidéotron aurait donc un accès facilité à un réseau de transport. Ainsi, le réseau de Freedom serait le cœur et l'ERMV serait utilisé pour étendre les services et le réseau au fil du temps.

87. Avec l'acquisition de Freedom, Vidéotron prévoit étendre le déploiement de son réseau 5G à l'extérieur du Québec. Vidéotron prévoit le déploiement de smallcells dans le reste du Canada tout comme au Québec pour compléter ses sites macro-cellulaires. En effet, à court terme et pour les bandes de fréquences basse et moyenne, le recours aux smallcells permet de palier à des enjeux de déploiement lorsque la densité du trafic est très élevée ou qu'aucune structure ne permet le déploiement d'un site macro-cellulaire. Ainsi, la 5G requerra davantage de smallcells surtout pour les bandes millimétriques dont la portée de couverture est, par nature, très limitée.

88. Dans l'immédiat, Vidéotron entend continuer le plan de déploiement mis en place par Freedom pour le 5G lequel se base sur le spectre de 600MHz ce qui permettra de déployer la 5G à ■ sites en Ontario, en Alberta et en Colombie-Britannique. Par la suite, Vidéotron entend utiliser l'allocation dynamique de spectre pour le 600MHz afin d'améliorer le réseau LTE tout en maintenant son utilisation pour la 5G.

89. Également, Vidéotron entend utiliser la technologie permettant l'agrégation de spectre entre les technologies LTE et 5G pour permettre des débits de pointe plus élevés.

90. Enfin, le plan de déploiement du spectre 3500 MHz sera mis en œuvre [REDACTED] en Ontario, en Alberta et en Colombie-Britannique.

91. Vidéotron entend améliorer la capacité et la couverture du réseau actuel de Freedom par l'ajout de couches de fréquences 2500 MHz, 700 MHz et 600 MHz aux sites macro-cellulaires qui ne les possèdent pas encore.

92. En somme, le spectre de 3500 MHz de Vidéotron combiné aux infrastructures de Freedom et au spectre de basse fréquence de Freedom permettra un déploiement rapide de la 5G.

Les dépenses d'investissement capitalisées et d'exploitation pour les 10 prochaines années

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TAB 8

[REDACTED]

164. Given the detail and complexity, I will describe only parts of the Financial Plan and how the Financial Plan aligns and was informed by Videotron's plans to operate Freedom post-Divestiture.

Financing the Divestiture and Future Network Investments

165. The *Transaction Overview Sheet* sets out Videotron's financing for the Divestiture and the expected debt ratios of Quebecor and Videotron post-Divestiture. Because of Quebecor's strong balance sheet, Quebecor and Videotron have secured debt financing from RBC and National Bank to fund the Divestiture purchase price.

166. The additional debt will not significantly change Quebecor's ratio of debt to its earnings before interest, taxes, depreciation, and amortization (**EBITDA**), which is an industry standard measure of a company's ability to repay its debt. A higher ratio means that a company's debt is many times larger than its EBITDA and thus many times larger than the money it has available to pay interest and to eventually repay its debt. Conversely, a low ratio, such as Quebecor's, demonstrates a strong ability to pay interest and to repay the principal.

- (a) The *Pro Forma Leverage – Quebecor* calculations show that Quebecor's total debt will rise from approximately \$ [REDACTED] billion to \$ [REDACTED] billion after the Divestiture. Its debt to EBITDA ratio will rise marginally from approximately

■■■■ its current EBITDA to ■■■■ the projected EBITDA of the combined business. The *Pro Forma Leverage – Videotron* calculations that follow do not show additional debt. They show that portion of Quebecor's total debt attributable to Videotron's business.

- (b) The *Free Cash Flow & Deleveraging Profile* calculations show the combined entity's expected EBITDA less interest payments, taxes, capital expenditures¹ (including those budgeted for building out the 5G network in Quebec and the Freedom footprint), lease payments, and dividend payments to shareholders. Even after all those expenses, Quebecor projects annual free cash flows of between \$■■■ million and \$■■■ million with which to repay its debt. The result is that Quebecor's net debt to EBITDA ratio is projected to fall from ■■■■ EBITDA in 2023 to ■■■■ EBITDA by 2027.

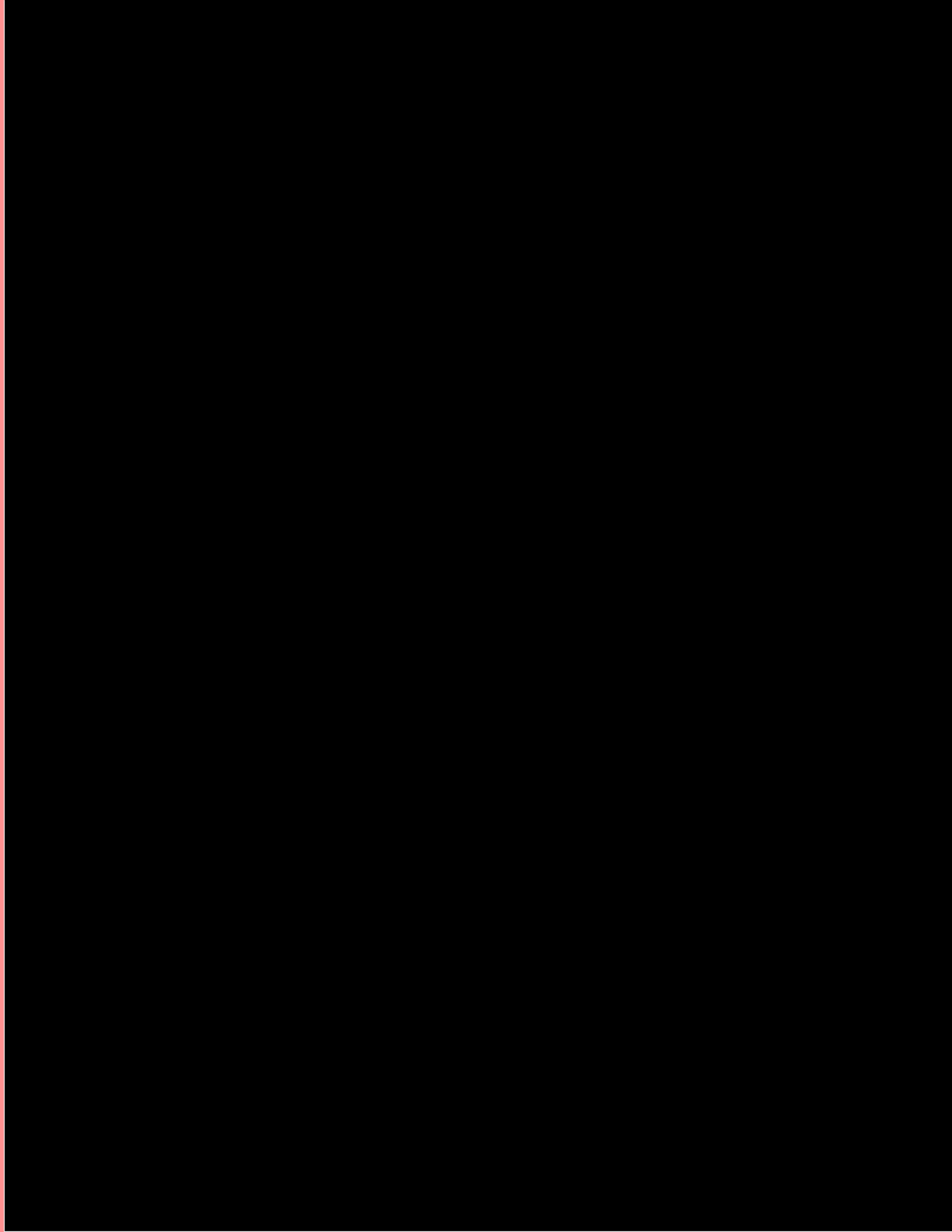
167. Had Videotron had to borrow more money to fund the Divestiture or secured less favourable terms related to TPIA, roaming and transport in the Definitive Agreement, it would have had less free cash flow. As such, Videotron worked hard to negotiate the lowest possible purchase price and the most favourable terms possible to secure its financial position, its ability to invest in 5G deployment, and, ultimately, its ability to compete aggressively over the long term.

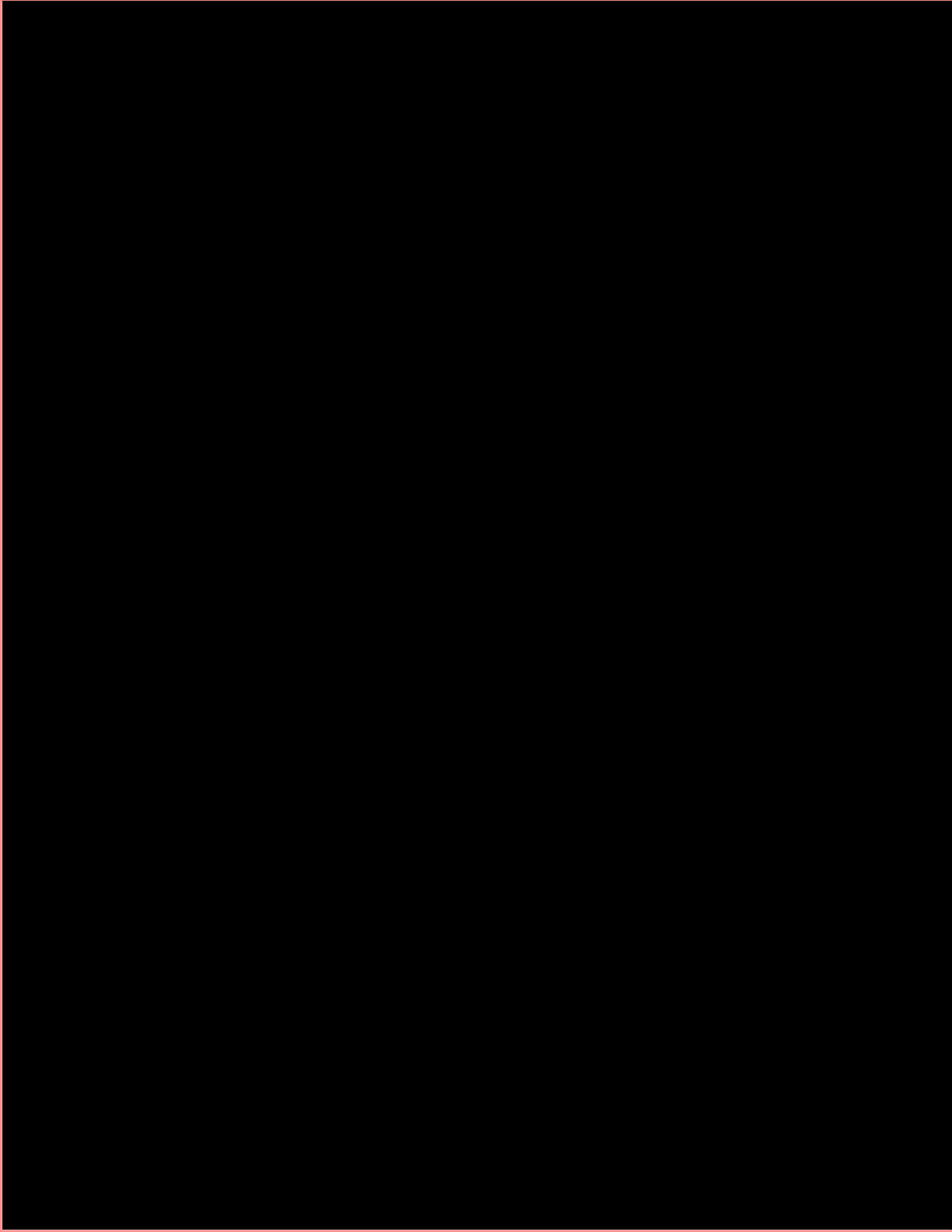
Projections for the Freedom Wireless and Wireline Business

168. Videotron's projections regarding its operation of the wireless portion of the Freedom business post-Divestiture are summarized on the Consolidated Summary Sheet. Projections

¹ Operating expenses are subtracted when calculating EBITDA.

TAB 9





TAB 10

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1 about some of those benefits specifically.

2 One of them that you describe is roaming. What
3 are the benefits from the combination with respect to
4 roaming that you foresee?

5 **MR. LESCADRES:** Yeah, of course. Clearly, like
6 you talk about roaming, there's a lot of benefits regarding
7 roaming.

8 One of them basically -- well, it might be the
9 easiest one. Right now, our customers from Quebec, when
10 they go like to Toronto, for example, well, they roam on
11 the Rogers network. Obviously, when we're going to put
12 that transaction in place, what's going to happen is that
13 the customers are going to stay basically on our network,
14 which is right now the Freedom network, which is going to
15 generate like significant discounts for us. And the same
16 is going to be for the customers from -- for -- from
17 Freedom today. When they're going to come into Vidéotron
18 territory, well, that's going to be quite an interesting
19 saving and that's for the roaming out part, if I -- the
20 roaming out part, if I may.

21 But there's also significant opportunities on
22 the roaming in, which basically, being a national carrier,
23 will open the door for us to offer service to companies
24 from outside Canada basically to the U.S. carriers, to the
25 international carriers, which we have a lot of them.

2159

1 We already have relationships, some bilateral
2 agreements, but clearly, we'll be able to offer them way
3 more interesting solutions covering basically almost all of
4 the big cities of Canada. So clearly that's something we
5 see regarding roaming specifically.

6 **MR. DAVIS:** And what about with respect to
7 brand, which is another topic that you talked about, and
8 the benefits of being a national brand?

9 **MR. LESCADRES:** Yeah. Basically, there's a lot
10 of things there. There's clearly, I would say, like,
11 national recognition, being like a national brand being way
12 more looked at by both the customers and the suppliers as
13 important, which clearly will open up possibilities to
14 reduce our costs in many ways. But also, if I may, there's
15 also incentives like, for example, on the B2B side, being
16 able to offer customers that are all around Canada, which
17 has been an issue for us as a regional player.

18 Clearly, when you look at the customer, for
19 example, that has locations in Toronto, Ottawa, Vancouver,
20 Calgary, Edmonton, clearly right now it's not interesting
21 for these companies to enter a relationship with us and
22 having to have another relationship also with -- we want to
23 make things simple as a business and that's also true for
24 our customers.

25 So clearly, we think we're going to be able to

marketing cost savings of \$ [REDACTED] million that is currently spent on marketing the Videotron brand in the Ottawa region. After closing, Videotron will offer [REDACTED]

[REDACTED] See **Exhibit "75"** for details.

214. *Marginal Cost Savings:* In addition to the efficiencies described above, I expect we will be able to achieve significant marginal cost savings in a number of areas, as detailed in **Exhibit "71"**.

215. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

216. The Divestiture will create spectrum synergies through the addition of Videotron's 3500 MHz spectrum and spectrum holdings in Ottawa to Freedom Mobile's network. Combining Videotron and Freedom Mobile's spectrum will increase capacity on the Freedom Mobile network (allowing us to serve more customers) without any incremental cost. This will also lower Freedom Mobile's marginal costs under Videotron's ownership relative to the scenario where the spectrum is held separately.

217. We also expect to realize substantial marginal cost savings in connection with roaming. First, Videotron will realize significant savings from the costs of Videotron subscribers roaming

on the Freedom Mobile network. We estimate such savings to be \$ [REDACTED] million in 2023 and increasing year-over-year adjusted for expected growth in Videotron subscribers; increased consumption in data; and a decrease in roaming tariffs.

218. Second, we will realize significant savings from the costs of Freedom Mobile subscribers roaming on the Videotron network. We estimate such savings to be \$ [REDACTED] million in 2023, which is an annualized estimate for calendar year 2023 based on the actual amounts owed by Freedom Mobile to Videotron for roaming during the period of January 1, 2022 – June 30, 2022. We expect this figure to increase year-over-year adjusted for expected changes to data usage and roaming tariffs.

219. Third, per the terms of the Roaming Agreement, [REDACTED]
[REDACTED]
[REDACTED] less than the \$ [REDACTED] per GB, the approximate amount that Freedom Mobile currently pays for roaming traffic.

220. Finally, my team has analyzed the international roaming rates paid by each of Freedom Mobile and Videotron and has learned that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

See **Exhibit "76"** for more details.

TAB 11

134. The Letter Agreement and Term Sheet provide for (i) Videotron's acquisition of Freedom's wireless assets; (ii) certain ancillary supply agreements between Rogers and Videotron; and (iii) certain transitional services.

135. ***Freedom Assets.*** Videotron secured the wireless assets needed for it to operate the Freedom wireless business. These assets include Freedom's: mobile wireless services subscribers; wireless spectrum licenses, subject to an agreement between Rogers and Freedom to swap certain equivalent blocks of spectrum in Toronto and rural British Columbia; core network equipment and related wireless core network assets; OEM inventory; mobile network codes; radio access network equipment; cell sites; all backhaul microwave systems and contracts for backhaul with third parties at Freedom cell sites; intellectual property; IT systems; domestic and international roaming agreements; wireless teams; and leases.

136. ***Ancillary Supply Agreements:***

- (a) ***Roaming Agreement:*** Videotron obtained an acceptable roaming agreement with attractive rates and seamless handoff (meaning that customers can transfer seamlessly to Rogers' network when they roam outside of Freedom's network).

[REDACTED]

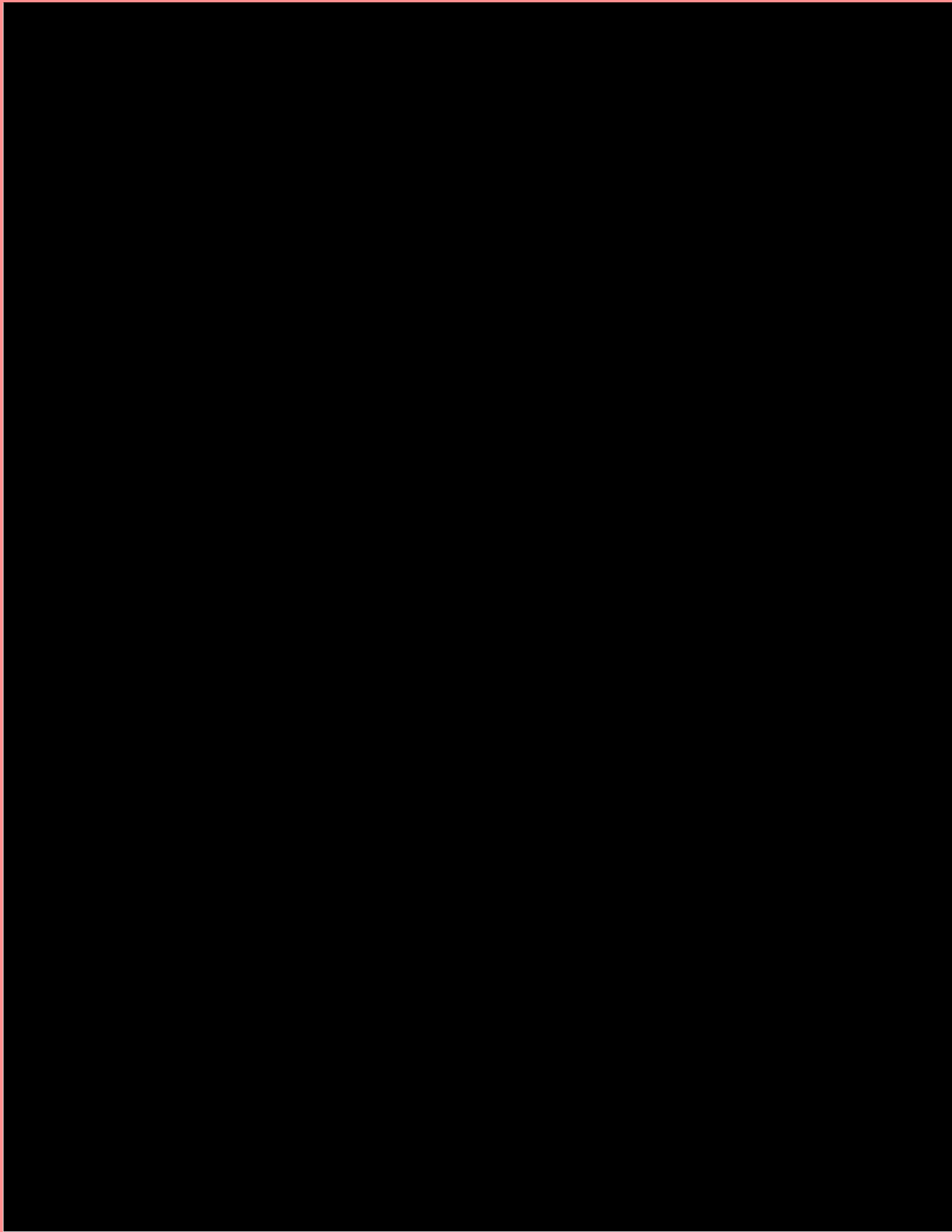
[REDACTED]

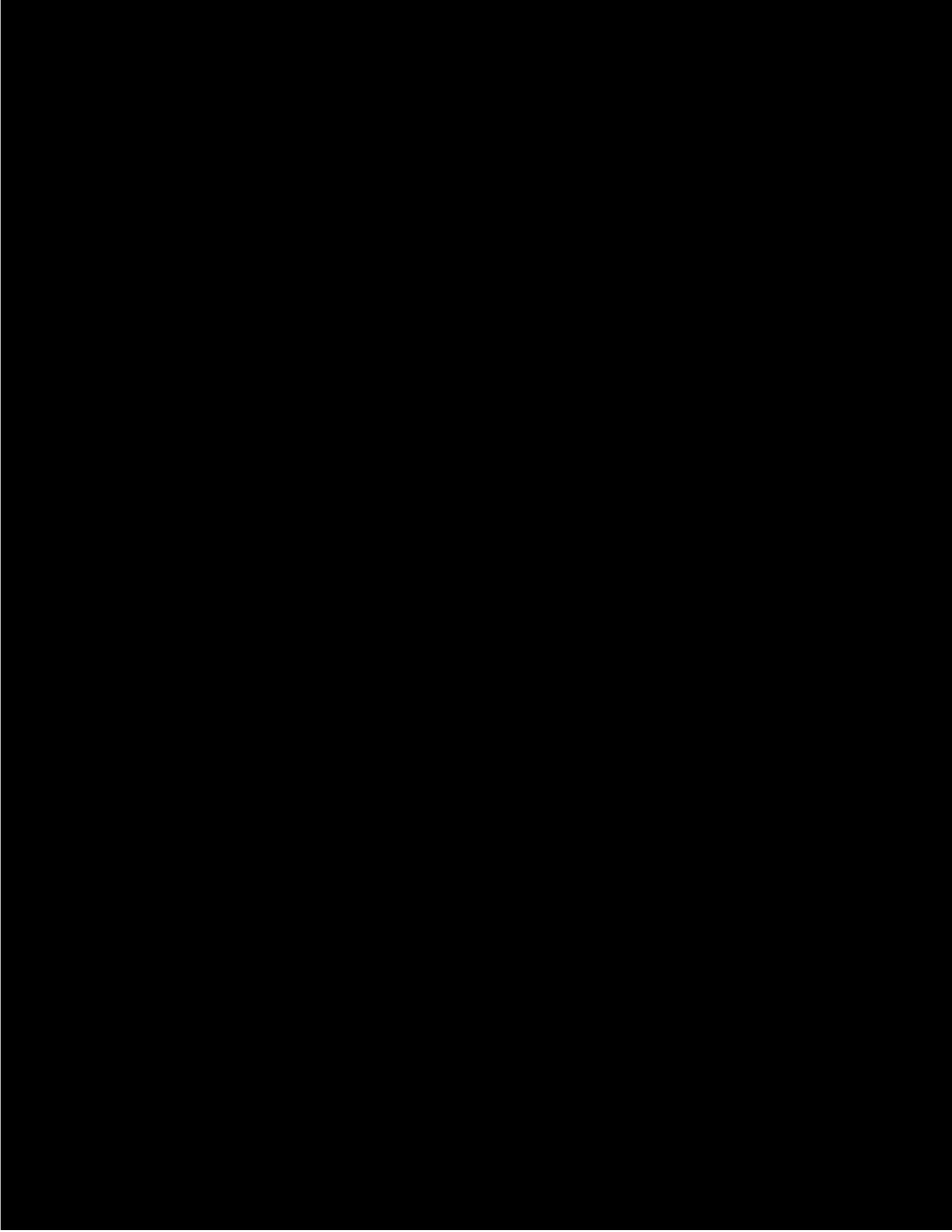
[REDACTED]

[REDACTED]

- (b) ***Transport Agreement:*** Videotron obtained a transport agreement to secure the fibre optic links connecting the elements of its current wireless network, as well as new additions to that network. Rogers agreed to provide [REDACTED]

TAB 12





172. Since introducing Fizz in 2018, Videotron has adopted this same premium/flanker strategy with Videotron as our premium brand and Fizz as our flanker brand. Having said that, Fizz is not a traditional flanker brand. It is an all-digital brand, heavily customizable from the customer's computer or phone, and its wireless offering can be bundled with internet service.

173. [REDACTED]

174. As set out on slide 3 of the June 1 Presentation, Videotron projects [REDACTED]

175. **Pricing:** Videotron recognizes that it has one chance to make a strong first impression with customers after the Divestiture. It plans to offer prices at least [REDACTED] % below existing prices for Freedom branded wireless and wireline services offered on a standalone basis and [REDACTED] % when bundled (see slide 6 of the June 1 Presentation). [REDACTED]

[REDACTED] These planned prices are not promotional only; they generally align with Videotron's prices in Quebec, although we expect to offer promotions as well especially with [REDACTED] to build brand awareness and a subscriber base.

176. Videotron's Financial Plan assumes prices as set out in the June 1 Presentation and still projects sustainable ARPUs [REDACTED]

TAB 13

areas of Quebec where Videotron does not have wireline assets and where it has not to date devoted marketing and retail sales efforts.

33. To address that growth discrepancy, Videotron, among other things, introduced Fizz in 2018 and began offering wireline services as a reseller in Abitibi in 2020.

34. *Fizz*: Videotron intended Fizz to attract new customers both inside and outside of Videotron's wireline footprint. As a digital brand, Fizz is accessible to customers everywhere and does not rely on sales through brick-and-mortar stores. Fizz customers can sign up for service and vary elements of their plan online without every stepping into a brick-and-mortar store. The process is the same whether the customer is in Montreal or Chicoutimi.

35. Fizz has attracted new customers – especially those who did not already purchase a Videotron service. Approximately █% of Fizz customers purchase only one product from Videotron (█% purchase only wireless and █% purchase only internet).

36. *Abitibi*: Videotron offers wireless services in Abitibi but does not have a wireline network there. The region is approximately 600 kilometres from Montreal and is home to about 148,000 people. Its major urban centres are Rouyn-Noranda, Val-d'Or, and Abitibi.

37. On April 30, 2001, Bell acquired Cablevision du Nord de Québec Inc. (**Cablevision**), which is Abitibi's incumbent cable company. By virtue of that acquisition, today Bell is both the incumbent telephone and cable company in Abitibi. Attached as **Exhibit "7"** is Bell's announcement of its acquisition of Cablevision.

38. As Videotron's telecommunications business has matured, it has looked for ways to grow its sales to the approximately 300,000 Quebec households not covered by its wireline network,

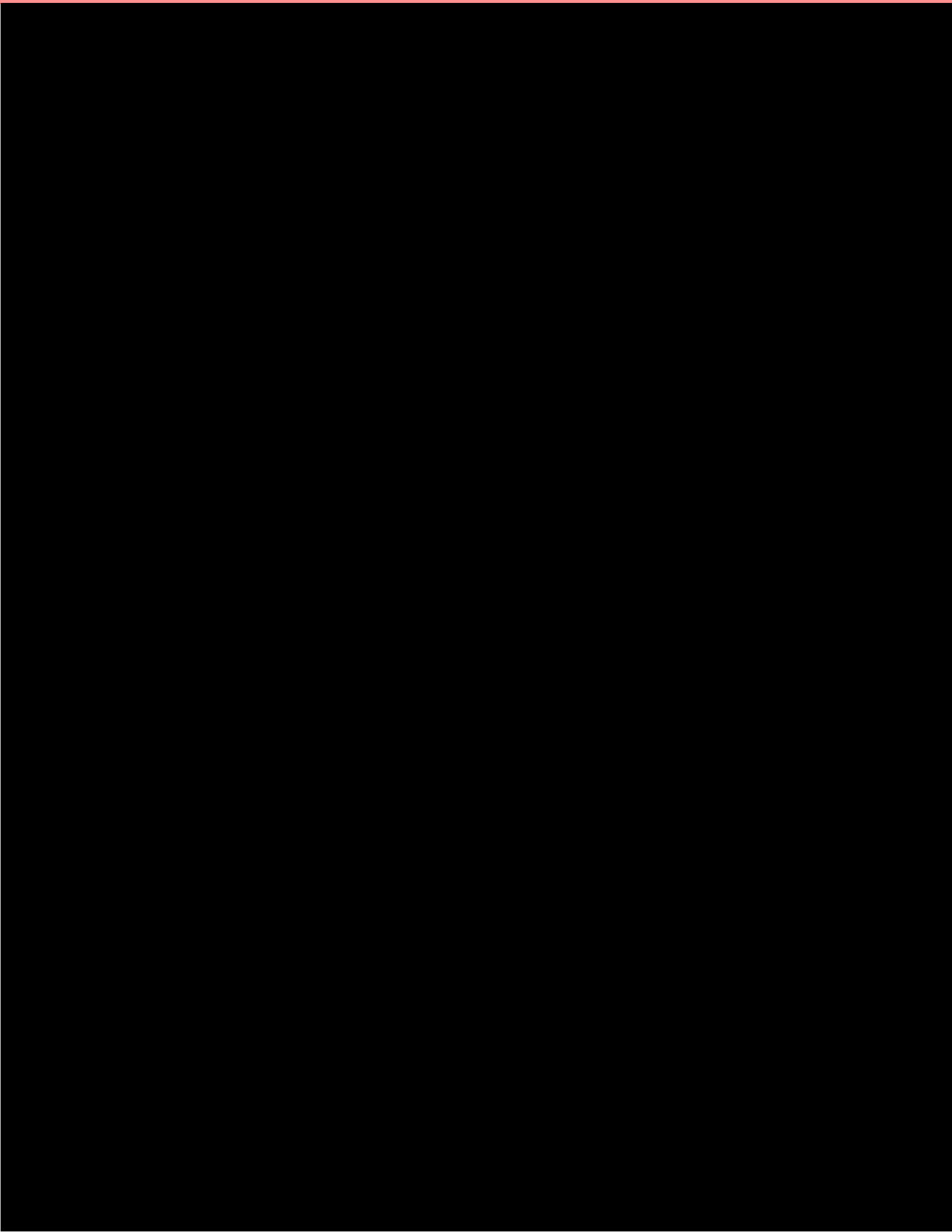
leading levels of customer satisfaction, innovative products and quality services, and the competitive prices that Videotron offers to Quebeckers.

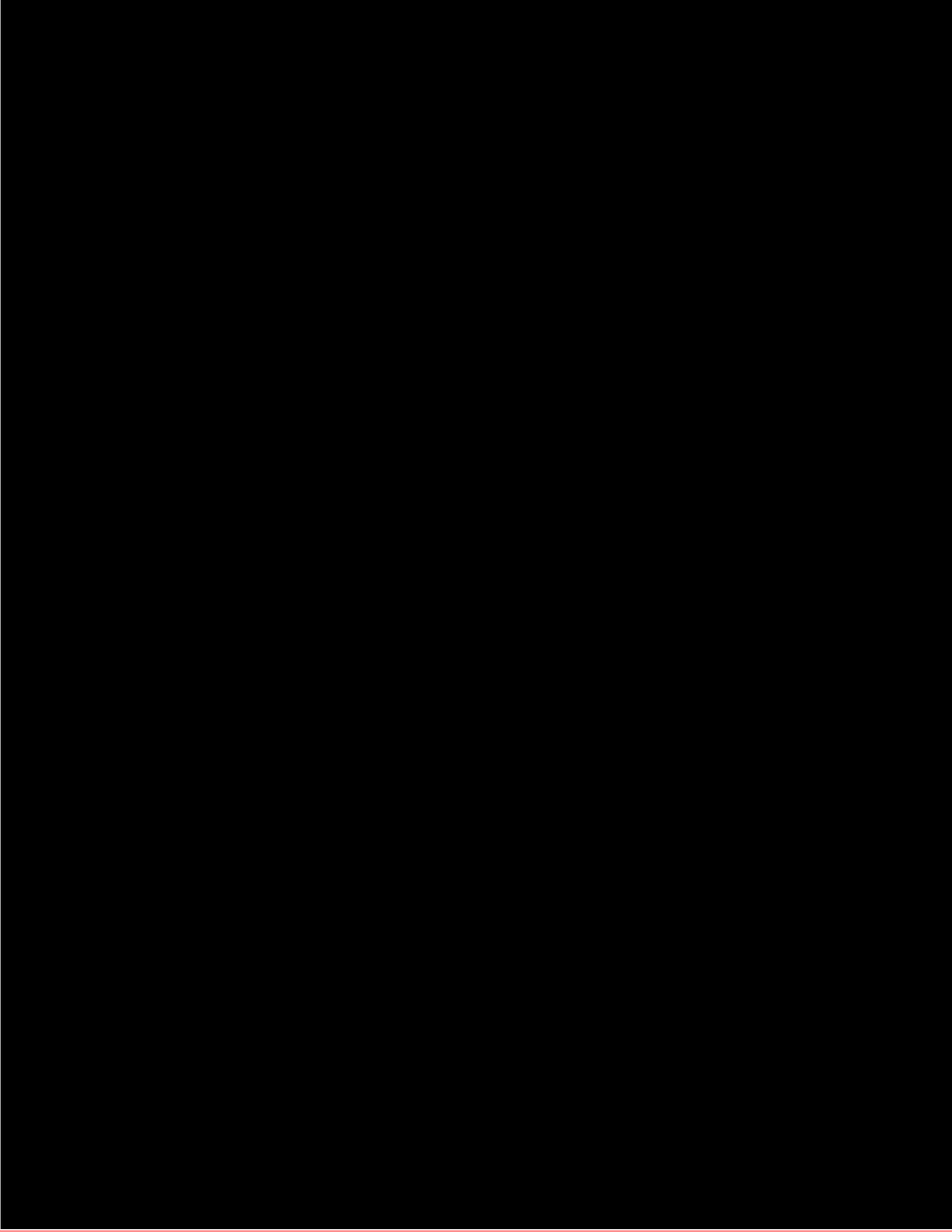
30. Videotron had to capture market share from Mr. Kirby's employer, Bell, to build its internet subscriber base long before it was able to leverage it to capture share in the wireless segment. The common theme has been that Videotron is a maverick and willing to price aggressively to build its subscriber bases, regardless of service line or geography. Videotron plans to replicate this model of aggressive pricing, and cross-selling Internet services to Freedom's existing wireless base and potential customers in the ROC.

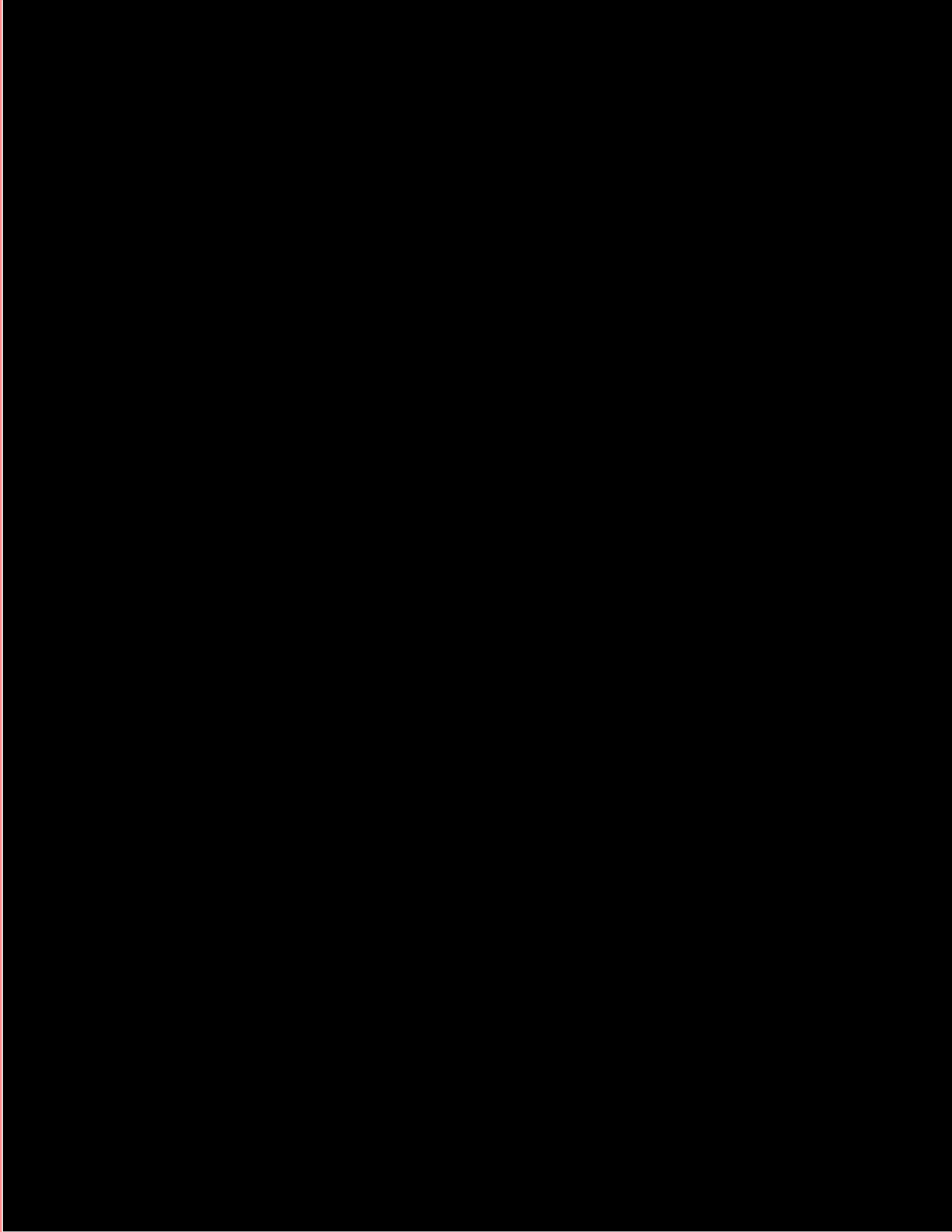
31. Mr. Kirby goes on to opine that if Videotron were to expand into other provinces, it could or would not have the same disruptive impact as it did in Quebec because its brand is unique to Quebec and aligned with Quebec's unique political environment.

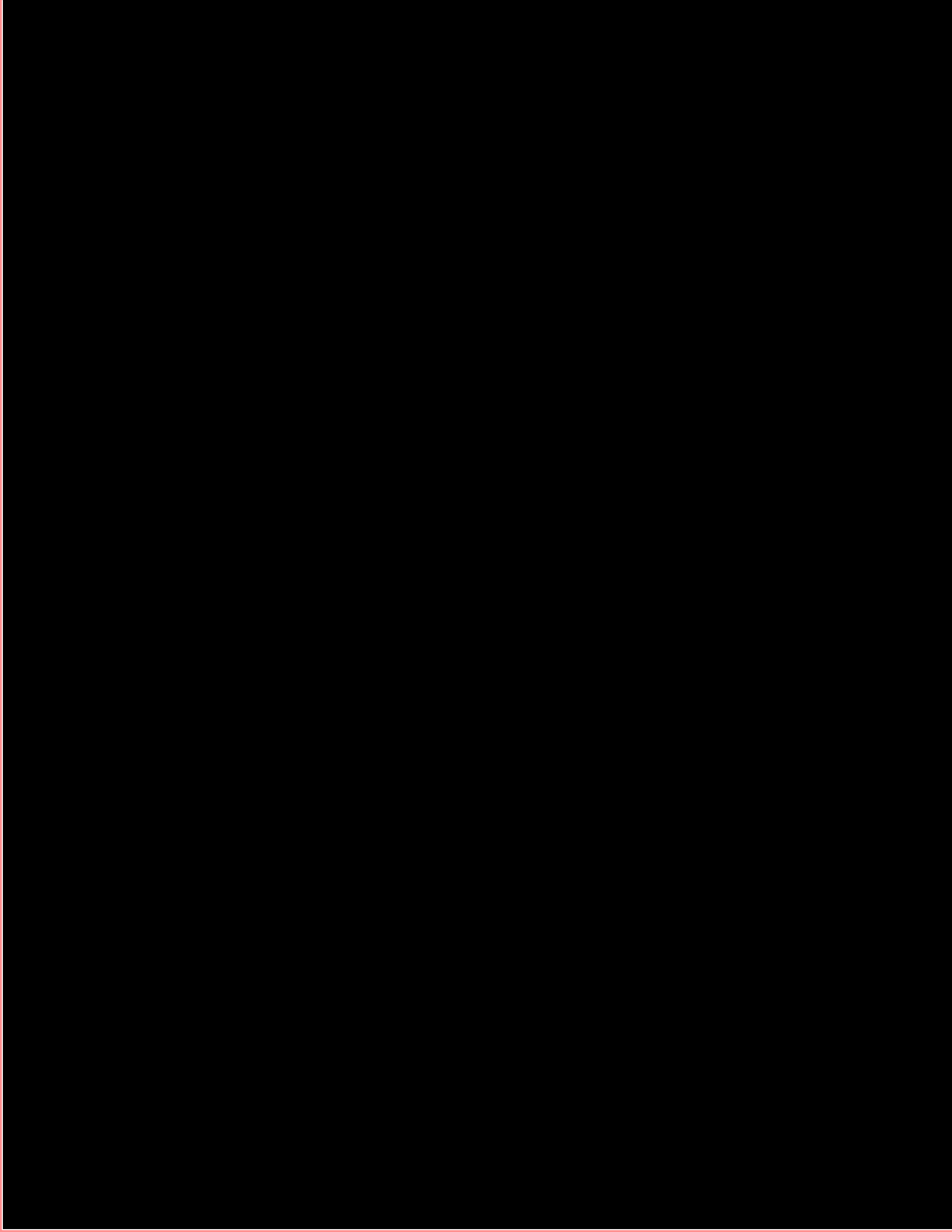
32. Videotron has a strong brand in Quebec, regardless of customers' political affiliation. Fizz, in particular, has attracted Anglophone and Allophone customers with █% of Fizz wireless customers and █% of Fizz wireline customers coming from those groups.

33. █
█ As well, Videotron's market research indicates that Canadians – regardless of regional politics – will be attracted by lower prices for wireless and wireline services. █
█
█
█









TAB 14

179. Videotron's national footprint will also enable it to compete in a way that it cannot currently for national wireless accounts. It intends to [REDACTED]

[REDACTED] By leveraging a national facilities-based network and a more attractive roaming rate, Videotron expects to be more competitive for businesses with facilities across the country, such as the Federal Government.

Bundling Wireless and Wireline Services

180. Videotron successfully offers wireless services to customers who do not buy other services from Videotron. However, bundling wireless and wireline can increase total revenue earned per customer and slightly reduces customer loss. Videotron calculated that in the month of July 2022, it lost approximately [REDACTED]% of customers who purchased only one product, [REDACTED]% of those who purchased two, [REDACTED]% of those who purchased three and [REDACTED]% of those who purchased four. Attached as **Exhibit "68"** is a spreadsheet containing the calculations.

181. For these reasons, as described in the June 1 Presentation, Videotron plans to offer wireline internet and television services across Canada under [REDACTED]. To do so, it plans to operate as a reseller of wireline services, as it does today with great success in Abitibi. As noted above, Videotron plans to offer these services at prices lower than those offered today on a standalone and bundled basis.

182. To support its ability to immediately provide wireline services outside of Quebec, Videotron acquired VMedia on July 20, 2022 for \$ [REDACTED] million. VMedia is a reseller of wireline services such as internet, TV, home phone and home security. It offers services in every province and territory. It has approximately [REDACTED] internet subscribers; [REDACTED] TV subscribers; [REDACTED] home phone subscribers; [REDACTED] home security subscribers; and [REDACTED] RiverTV subscribers.

VMedia's business and the opportunities associated with its acquisition are described in the board presentation attached earlier as **Exhibit "41"**.

183. Since acquiring VMedia, Videotron has lowered prices by launching an everyday low price strategy in Manitoba. Competitors have responded with promotional pricing of their own. For example, VMedia is offering 75 Mbps service for \$39.95 per month. Bell regularly charges \$97.95 for the same service but drops its price on a promotional basis to \$70 – significantly lower than its regular price, but still significantly higher than VMedia's everyday low price. Similarly, VMedia is offering 1 Gbps service for \$99.95 per month, while Bell's regular price is \$128.95 and its promotional price is \$110.

184. Videotron acquired VMedia specifically because of the opportunity to acquire Freedom and Videotron's desire to offer both wireline and wireless services to Freedom's existing customer base and new potential customers.

185. By acquiring VMedia, Videotron will benefit from the skills and expertise of its employees and leadership in providing services as a TPIA outside of Quebec. Videotron retained all of VMedia's leadership and 200 employees as part of the transaction. Videotron will also benefit from VMedia's existing TPIA arrangements with all major Canadian facilities-based network operators. VMedia has agreements with Bell, Rogers, Videotron, Shaw, Telus, Cogeco, Eastlink, and Bell Aliant. Through these agreements, VMedia has access to over 10 million Canadian homes in Canada. VMedia allows Videotron to begin offering bundled products within [REDACTED] of closing the Divestiture.

186. Videotron's Financial Plan projects providing internet to approximately [REDACTED] households by 2032. That would imply a market share of approximately [REDACTED] % in the Freedom

footprint. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

187. As Videotron wins more customers as a TPIA provider, [REDACTED]
[REDACTED]

[REDACTED] As set out in my December 2021 email attached as
Exhibit "10", [REDACTED]
[REDACTED]

[REDACTED] In contrast, buying wholesale access is much more cost
effective when building costs cannot be spread over as many customers and when the cost of
wholesale access compares favourably to the cost of building. In those circumstances, the cost of
building wires past every household – not just the households of your customers – cannot be
justified.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

189. Whether Videotron's TPIA operations in the ROC will create a dense enough customer
base in a specific geography to justify building [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

190. That it is often more cost-effective to "rent" space on an existing network is likely one reason why we have not seen smaller TPIA resellers start to build their own networks. Their customer bases are too small or too diffuse to justify building a wireline network to serve them. In addition, and unlike Videotron, these resellers cannot pair wireless services to increase the revenue available from each customer.

Investing in 5G

191. The Financial Plan projects investing nearly \$ [REDACTED] billion in network improvements and spectrum over the first ten years. My team and I developed these projections with Videotron's information technology department led by Mohamed Drif. Mr. Drif describes the technology budget in his witness statement. In discussions with him and his team, we determined that some elements of his May 25, 2022 budget could be allocated to different years, so minor adjustments were made between the May 25 budget and the Capex amounts shown on the *Consolidated Summary Sheet*.

192. Rolling out 5G as soon as possible across the Freedom footprint is important from a marketing and business perspective. [REDACTED]

[REDACTED] To consumers today, that means offering a 5G network. Part of making a good first impression with customers requires us to begin offering 5G service as soon as possible and continuing to improve the quality of the network to deliver the full promise of 5G.

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1 territory for 17 years pour lever, where we recognized by
2 our customer as very, very interesting brand to deal with,
3 like a brand that respects their customers, which has
4 clearly been our landmark that we've been through to the
5 markets.

6 So basically, we start with the wireline and
7 we've been able to build that up, I might say that, which
8 honestly gave us some interesting growth. Then we decided
9 that we need to explore even more going out of that
10 territory, which is why I like about three years, well a
11 bit more than three years now, we launched the Fizz brand,
12 which basically is aimed at all the segments that aren't
13 really popular with our customers. When we look at where
14 our customers come from, Fizz has been launched basically
15 to target the other customers and has been able to get
16 tremendous success during like those past three years.

17 **MR. DAVIS:** One of the questions the Tribunal
18 had for Vidéotron at the beginning of this proceeding was
19 its decision not to buy fibre or cable assets as part of
20 this transaction.

21 Given what you've just said about Vidéotron's
22 experience in the wireline business, why did Vidéotron make
23 the decision not to buy those a assets?

24 **MR. LESCADRES:** There's a lot of reasons behind
25 that. Basically, we do think that bundling helps getting

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1 customers but, even more, it helps retain customers.

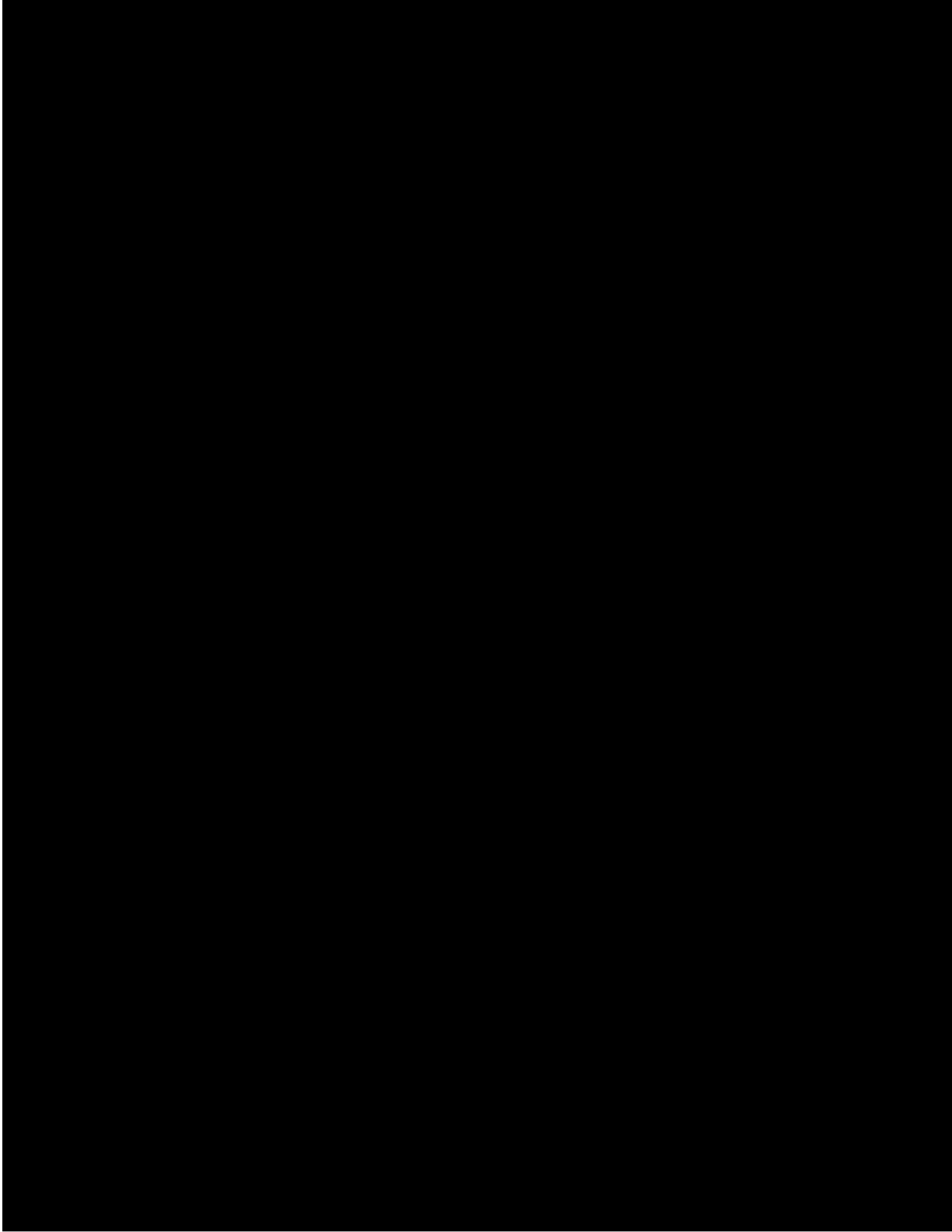
2 We have been able to experience with our
3 experience as a wireless provider in Quebec that the churn
4 on multi-product customers is clearly lower than on solo
5 players. So we believe that that's a way, not the only
6 way, but that's a way to increase our number of customers
7 and that's why part of our strategy is to have a bundle
8 strategy.

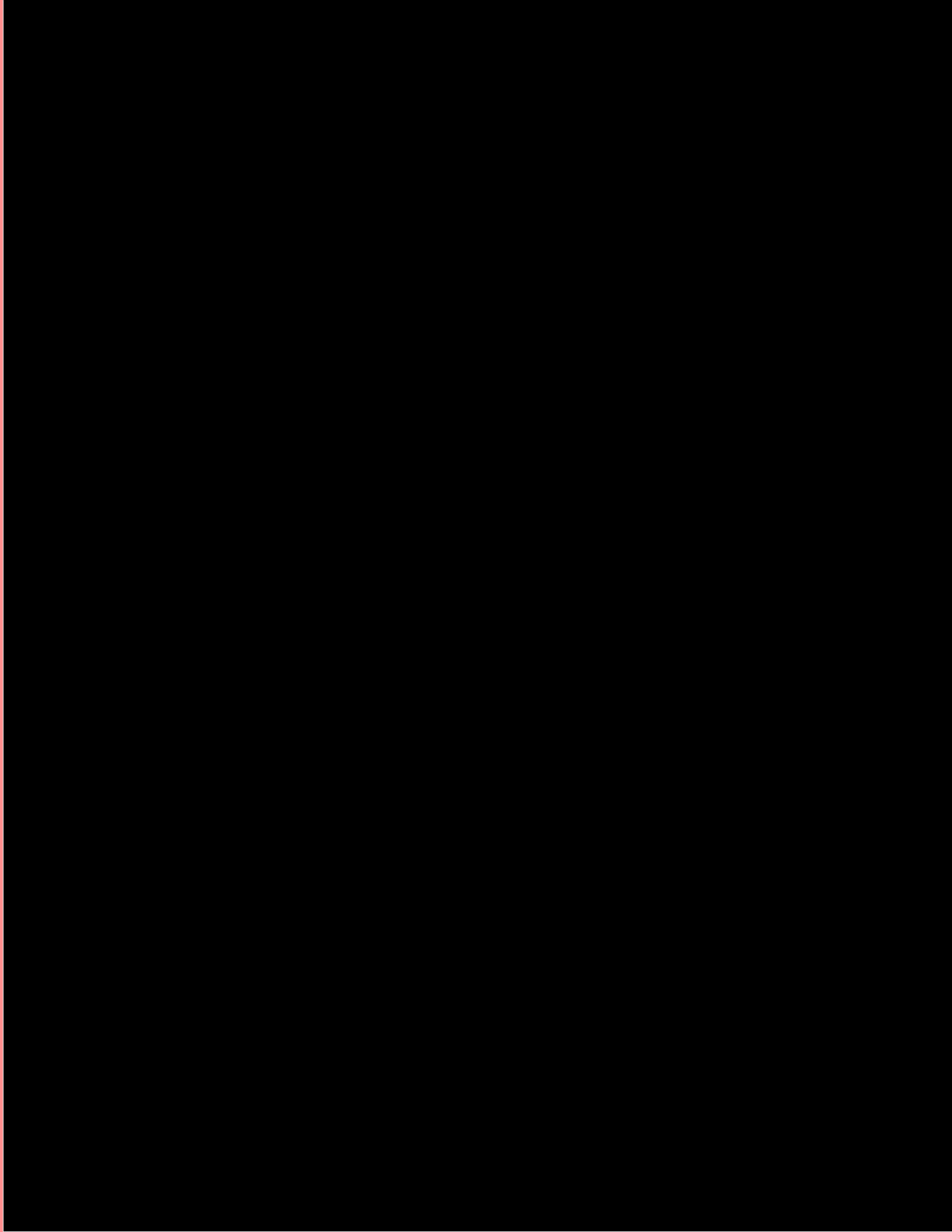
9 However, that doesn't necessarily mean that we
10 need to have our own network in order to do that, and
11 clearly the deal open up a possibility which for us is very
12 interesting that will give you the possibility to sell the
13 wireline services without being an owner of these services.
14 We are using basically the TPIA framework, which we look
15 at. Basically, what we're aiming to do is to offer our
16 customers very, very interesting packages that will include
17 both wireline and wireless, that they will be able to get
18 incredibly a very -- sorry. May I repeat that?

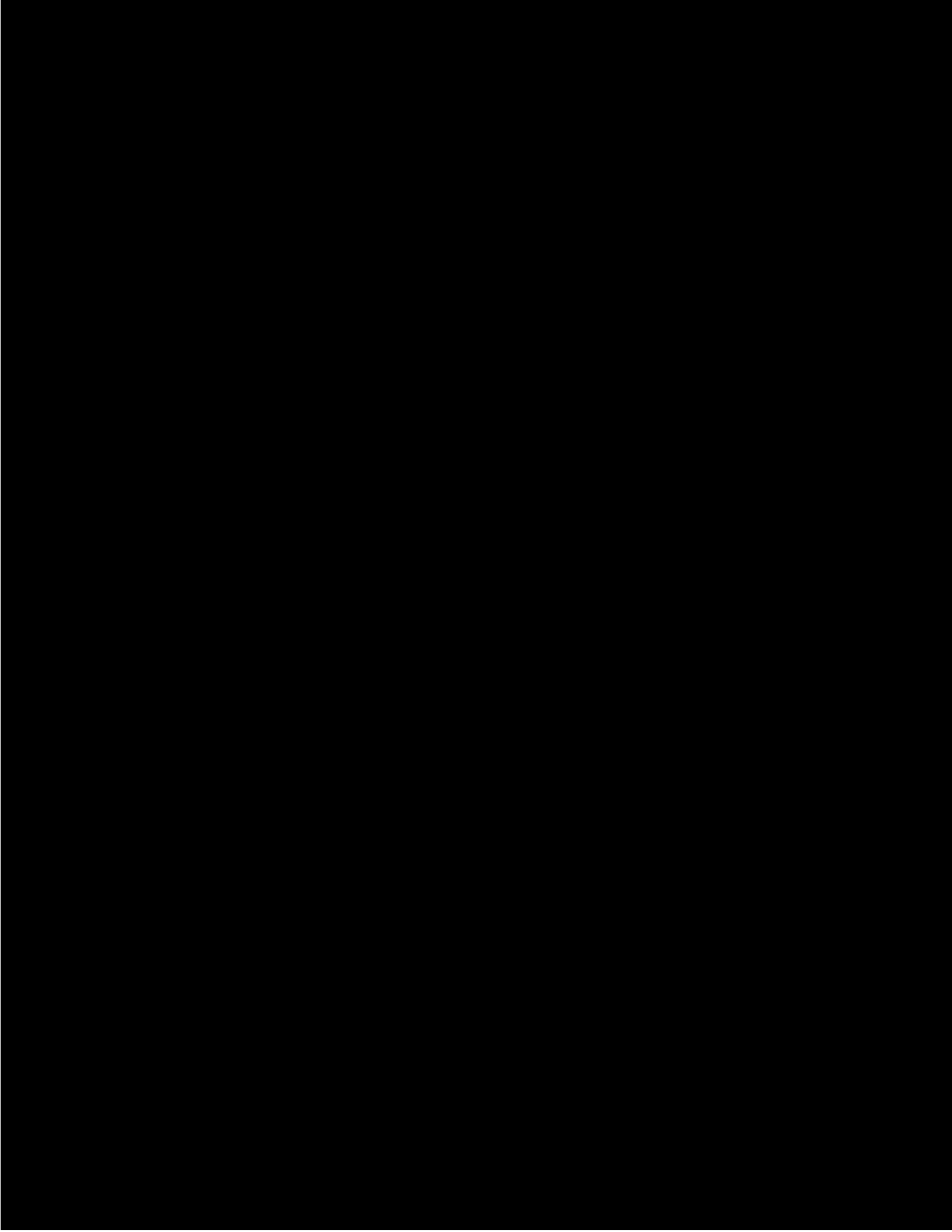
19 They're going to be able to get very great
20 deals regarding that both ways even if they want only
21 wireless or they want a bundled product.

22 **MR. DAVIS:** And what has Vidéotron's experience
23 been using or operating under the TPIA framework that you
24 describe?

25 **MR. LESCADRES:** Well, basically we start about







TAB 15

2159

1 We already have relationships, some bilateral
2 agreements, but clearly, we'll be able to offer them way
3 more interesting solutions covering basically almost all of
4 the big cities of Canada. So clearly that's something we
5 see regarding roaming specifically.

6 **MR. DAVIS:** And what about with respect to
7 brand, which is another topic that you talked about, and
8 the benefits of being a national brand?

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10 of things there. There's clearly, I would say, like,
11 national recognition, being like a national brand being way
12 more looked at by both the customers and the suppliers as
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15 also incentives like, for example, on the B2B side, being
16 able to offer customers that are all around Canada, which
17 has been an issue for us as a regional player.

18 Clearly, when you look at the customer, for
19 example, that has locations in Toronto, Ottawa, Vancouver,
20 Calgary, Edmonton, clearly right now it's not interesting
21 for these companies to enter a relationship with us and
22 having to have another relationship also with -- we want to
23 make things simple as a business and that's also true for
24 our customers.

25 So clearly, we think we're going to be able to

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1 achieve that with a national network, and there's also like
2 other advantage. Like for example, we developed Fizz.
3 Fizz has been developed like for a small market, for the
4 market of Quebec -- well, quite a big market. We build a
5 business for that. So that's not insignificant.

6 But clearly, to be able to use all those
7 investments all around Canada, clearly that's a significant
8 savings for us in all the developments we're making as a
9 company.

10 **MR. DAVIS:** You also describe eastern Ontario
11 and some benefits owing to the overlap of the networks in
12 that region of the country. What are those benefits?

13 **MR. LESCADRES:** Yeah, absolutely. Basically,
14 right now when you look at the eastern Ontario area, what's
15 in place right now is that we have our own network and
16 Freedom has also their own network. So basically, there's
17 an overlap of networks which we're going to be able to
18 generate discounts, obviously, by removing, by
19 concentrating our towers and basically only having to pay
20 for one network instead of two as we are right now when
21 you're considering the two companies.

22 **MR. DAVIS:** Chief Justice, I have a few more
23 questions for Mr. Lescadres, but I think they need to be
24 addressed in a Confidential Level A session because they
25 will touch on commercially sensitive information.

179. Videotron's national footprint will also enable it to compete in a way that it cannot currently for national wireless accounts. It intends to [REDACTED]
[REDACTED] By leveraging a national facilities-based network and a more attractive roaming rate, Videotron expects to be more competitive for businesses with facilities across the country, such as the Federal Government.

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TAB 16

October 19, 2022. Videotron plans to use the CRTC's MVNO framework to fill in any coverage gaps if or where the Rogers network is not available in the ROC.

56. Second, given the statements of the Freedom dealers in this matter, they appear to be deeply unsatisfied with Freedom's continuing competitiveness under Shaw, with these concerns arising even before Rogers agreed to acquire Shaw.

57. On July 11, 2022, Allan Dick, counsel to the Freedom dealers association, emailed our counsel, Mr. Rook, to request a meeting with Videotron executives to discuss the dealer channel under Videotron ownership. Attached as **Exhibit "3"** is a copy of Mr. Dick's email.

58. On July 19, 2022, I and other Videotron executives met with representatives of the Freedom dealers association to express our support for the dealer channel should Videotron acquire Freedom. We described how Videotron is eager to work alongside the Freedom dealers to support and promote the long-term success of the dealer channel, including through the new bundled offerings described above, in order to create effective and sustained competitive disruption in the wireless industry that will bring lower prices and better services to customers in Ontario, Alberta, and British Columbia. I am hopeful that such meetings will smooth the transition process and invigorate the dealer channel so that we and the dealers will work together to immediately bring lower prices and more services to customers in the ROC.

59. I have reviewed the witness statements of the retail wireless subscribers. Videotron acknowledges their concerns regarding high wireless and wireline prices. As I have described in my witness statements, Videotron plans to offer lower prices than these customers have available in the market today.

Big 3 in total wireless share in the near future. Our objectives of pursuing growth and expansion in the ROC and Quebec are not mutually exclusive.

DISTRIBUTION CHANNELS WILL BE ENHANCED UNDER VIDEOTRON

38. Mr. Davies asserts that the Freedom business will lose advertising spending and scale under Videotron's ownership. Mr. Davies is incorrect.

39. I understand that Freedom has spent an average of \$ [REDACTED] per year on advertising expenses over the past three years. Videotron plans to increase the annual average advertising spend to \$ [REDACTED] over a ten year period – nearly a [REDACTED] % increase.

40. [REDACTED]
[REDACTED]
[REDACTED]

41. Mr. Davies asserts that despite the acquisition of all of the Freedom-branded retail locations, the loss of access to Shaw-branded retail stores will weaken Freedom under Videotron's ownership.

42. Mr. Davies' statement appears to be based on a misunderstanding of or lack of knowledge of the Freedom business. My understanding is that Shaw-branded retail stores do not sell, and have never sold, the Freedom brand. If Shaw-branded retail stores are not selling the Freedom brand, they cannot be driving growth for Freedom, and losing access to Shaw-branded retail stores cannot have any effect on the Freedom business under Videotron's ownership. .

43. According to our due diligence, Freedom's subscriber numbers in British Columbia and Alberta – where all of the Shaw-branded retail stores are located – are flat over the past two

TAB 17



Government
of Canada

Gouvernement
du Canada

Canada.ca

Statement from Minister Champagne on competitiveness in the telecommunications sector

From: Innovation, Science and Economic Development Canada

Statement

October 25, 2022 – Ottawa, Ontario

The Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry, made the following statement:

“Good afternoon, everyone.

“Later this week, the parties to the Rogers-Shaw transaction will begin mediation with the Competition Commissioner.

“As Minister of Industry, I wanted to take a moment to remind Canadians of where I stand with respect to spectrum licence transfers and to be crystal clear about my expectations moving forward.

“Earlier this year, I stated that I would—under no circumstances—permit the wholesale transfer of wireless spectrum licences from Shaw to Rogers.

“Today, I officially denied that request, which had been pending before me.

“My decision formally closes that chapter of the original proposed transaction.

“As you’ve heard me say many times before, I will never waver in my commitment to promote competition and make wireless services more affordable for all Canadians.

“Since the original request was tabled, Shaw has proposed to sell its wireless division—Freedom Mobile—to Vidéotron. This would require my approval to transfer the spectrum licences.

“As we look forward, I want to make very clear the lens through which I will consider this proposed spectrum transfer.

“First, I am giving notice that any new wireless licences acquired by Vidéotron would need to remain in its possession for at least 10 years. A new service provider needs to be in it for the long run.

“Second, I would expect to see prices for wireless services in Ontario and Western Canada comparable to what Vidéotron is currently offering in Quebec, which are today on average 20 per cent lower than in the rest of Canada.

“Promoting competition to bring down prices has been at the core of policies advanced by successive governments for many years.

“But let’s face it: when it comes to wireless services, Canadians deserve and need better options.

“Wireless services are essential to our daily lives. They keep us connected to the world around us, to our loved ones and to our jobs.

“Canadians deserve world-class networks and access to wireless services at affordable and competitive prices. I am resolved to achieve these objectives—full stop.”

Contacts

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Date modified:

2022-10-25

Pierre Karl Péladeau comments on announcement by the Minister of Innovation, Science and Industry of Canada concerning the proposed Rogers-Shaw merger

Canada NewsWire

October 25, 2022 Tuesday 8:40 PM Eastern Time

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Length: 329 words

Body

MONTREAL, Oct. 25, 2022 /CNW Telbec/ - In response to the press release issued by the Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry of Canada, Pierre Karl Péladeau, President and CEO of Quebecor, stated:

"We are pleased to see that Minister Champagne recognizes and supports the highly competitive environment created by Videotron in Québec's wireless market over the past several years, which has brought Quebecers the lowest prices and best wireless plans in Canada. We intend to accept the conditions stipulated by the Minister and incorporate them into the new version of the Rogers-Shaw/Quebecor-Freedom Mobile transaction, which has already been negotiated. They are in line with our business philosophy, which has proved highly successful in Quebec, where we have taken a significant market share in a very short span of time. We will work to deliver better prices for Canadians in the other provinces and to end the reign of the 'Big 3' by promoting competition, the public interest and the digital economy in Canada."

About Quebecor

Quebecor, a Canadian leader in telecommunications, entertainment, news media and culture, is one of the best-performing integrated communications companies in the industry. Driven by their determination to deliver the best possible customer experience, all of Quebecor's subsidiaries and brands are differentiated by their high-quality, multiplatform, convergent products and services.

Québec-based Quebecor (TSX: QBR.A, QBR.B) employs nearly 10,000 people in Canada.

A family business founded in 1950, Quebecor is strongly committed to the community. Every year, it actively supports more than 400 organizations in the vital fields of culture, health, education, the environment and entrepreneurship.

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Pierre Karl Péladeau comments on announcement by the Minister of Innovation, Science and Industry of Canada concerning the proposed Rogers-Shaw merger

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Load-Date: October 25, 2022

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TAB 18

management team as it will require their skills, institutional expertise relating to the Freedom business and their experience in operating a wireless company in the ROC. Videotron anticipates that combining the expertise of Videotron and Freedom's management will help Freedom compete more effectively post-Divestiture.

197. Videotron has not yet made decisions relating to which specific Freedom employees it will retain as part of the Divestiture. Videotron's senior management will need to meet with Freedom's management to determine precisely which employees it will retain. During this meetings, Videotron's senior management will consider the skills and expertise it requires to operate its business nationally and to grow the Freedom business in the ROC. [REDACTED]

[REDACTED] See attached as **Exhibit "70"** a spreadsheet titled "HR – Staffing analysis w salaries" setting out Videotron's staffing analysis for Freedom.

Combining the Freedom and Videotron Networks in Ottawa and Eastern Ontario

198. Although Videotron holds spectrum, has three retail locations in Ottawa, and otherwise offers wireless services in the Greater Ottawa Area, those services are a small part of its overall wireless business with only about [REDACTED] % of its total subscribers residing in Ottawa. Videotron's primary strategic rationale for offering wireless services in the Ottawa region is [REDACTED]

[REDACTED] Videotron's relatively small spectrum holdings in Eastern Ontario reflect this strategic rationale.

199. As described in Mr. Drif's statement, the combination of the Freedom and Videotron networks in Ottawa and Eastern Ontario will produce a higher quality network at lower total cost because of the parties' complementary spectrum assets.

200. Videotron expects that a more efficient and higher quality network will enable it to win more customers in the Ottawa area from Rogers, Bell and Telus than either Freedom or Videotron could have separately.

Integrating Freedom to Realize Synergies and Lower Costs

201. Videotron considered potential synergies associated with the combination of the Videotron and Freedom businesses as early as our April 2021 Presentation but these were very rough estimates, not informed by any due diligence and were not a principal rationale of the Divestiture from Videotron's perspective. Videotron's rationale remains the transformational nature of the Divestiture and the once-in-a-generation opportunity for Videotron to emerge as a fourth national wireless carrier.

202. We have more recently explored areas of potential synergies and cost savings and have identified the following categories of savings. These will enable the combined business to operate more efficiently and at a lower cost increasing its ability to offer lower priced services to customers. Attached as **Exhibit "71"** is my team's Synergies and Marginal Cost Savings analysis, which has since been adjusted and more precisely described in some of the category-specific exhibits mentioned in the paragraphs that follow.

203. **IT Systems Savings:** Videotron expects to achieve cost savings of approximately \$ [REDACTED] million by the third year after closing, and ramping up thereafter to \$ [REDACTED] million annually in recurring capital expenditures. These savings will derive from migrating Freedom Mobile's IT systems to Videotron's available Fizz stack, the decommissioning of several duplicate or depreciated IT software and applications, [REDACTED]

[REDACTED] and savings related to increased purchasing power. With respect to the

latter, approximately █% are attributable to estimated purchasing power savings. This estimate is based on the proportion of costs devoted to savings derived from increased buying power on commercial applications versus internal rationalization costs. The costs to achieve these savings and achieve the systems integration are estimated to be \$█ million over the first two years (transition costs) and \$█ million in years 3 and 4 (transformation costs). See **Exhibit "72"** for details.

204. In addition, we expect to generate a one-time avoidance cost of approximately \$20 million for the Freedom business by providing it access to Videotron's Fizz stack. Based on my team's due diligence, █
█ See **Exhibit "73"** for details.

205. *Staffing Savings:* My team has analyzed Freedom's staff and executives and has identified █ likely redundant positions across six categories: █
█ Eliminating these █ positions (which is a █% reduction of total Freedom employees, and a █% reduction in payroll) is likely to result in annual cost savings of approximately \$█ million beginning in year two, net of severance costs associated with such staffing reductions. See **Exhibit "70"** for more details.

206. We will also achieve real estate cost savings through the reduction of these █ positions,
█
█ These staffing reductions will result in a corresponding reduction in office space costs, particularly since █
█

\$ [REDACTED] million over a five year time period. The cost to achieve these savings are as follows: (a) dismantling costs for these [REDACTED] sites are estimated to be \$ [REDACTED] per site, totaling \$ [REDACTED] million; and (b) approximately \$ [REDACTED] million in total integration costs to merge Freedom and Videotron's RANs, which utilize different equipment. The one-time cost savings are therefore approximately \$ [REDACTED] million to be realized over a five year time period.

211. In addition, we expect recurring operating cost savings of approximately \$ [REDACTED] million to result from dismantling these [REDACTED] sites. These savings will derive from annual rent/leasing costs related to these sites (approximately \$ [REDACTED] per site) and electricity and maintenance cost savings (approximately \$ [REDACTED] million in the aggregate). As such, Videotron will also achieve approximately \$ [REDACTED] million in recurring cost savings related to RAN in the Ottawa region. See **Exhibit "74"** for details.

212. *Customer Service/Sales Savings:* My team has determined that the Divestiture will generate significant cost savings for the combined entity's customer service call centres, approximately \$ [REDACTED] million annually. In Canada, Videotron will be able to deploy its English language customer service representatives to serve Canada-wide clients rather than a relatively small number of English speaking customers in Quebec, which will represent some portion of the total \$ [REDACTED] million in cost savings.

213. *Retail and Marketing Cost Savings* [REDACTED] My team has determined that we [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Videotron will also benefit from annual

marketing cost savings of \$ [REDACTED] million that is currently spent on marketing the Videotron brand in the Ottawa region. After closing, Videotron will offer [REDACTED]

[REDACTED] See

Exhibit "75" for details.

214. *Marginal Cost Savings:* In addition to the efficiencies described above, I expect we will be able to achieve significant marginal cost savings in a number of areas, as detailed in **Exhibit "71"**.

215. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

216. The Divestiture will create spectrum synergies through the addition of Videotron's 3500 MHz spectrum and spectrum holdings in Ottawa to Freedom Mobile's network. Combining Videotron and Freedom Mobile's spectrum will increase capacity on the Freedom Mobile network (allowing us to serve more customers) without any incremental cost. This will also lower Freedom Mobile's marginal costs under Videotron's ownership relative to the scenario where the spectrum is held separately.

217. We also expect to realize substantial marginal cost savings in connection with roaming. First, Videotron will realize significant savings from the costs of Videotron subscribers roaming

on the Freedom Mobile network. We estimate such savings to be \$ [REDACTED] million in 2023 and increasing year-over-year adjusted for expected growth in Videotron subscribers; increased consumption in data; and a decrease in roaming tariffs.

218. Second, we will realize significant savings from the costs of Freedom Mobile subscribers roaming on the Videotron network. We estimate such savings to be \$ [REDACTED] million in 2023, which is an annualized estimate for calendar year 2023 based on the actual amounts owed by Freedom Mobile to Videotron for roaming during the period of January 1, 2022 – June 30, 2022. We expect this figure to increase year-over-year adjusted for expected changes to data usage and roaming tariffs.

219. Third, per the terms of the Roaming Agreement, [REDACTED]
[REDACTED]
[REDACTED] less than the \$ [REDACTED] per GB, the approximate amount that Freedom Mobile currently pays for roaming traffic.

220. Finally, my team has analyzed the international roaming rates paid by each of Freedom Mobile and Videotron and has learned that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

See **Exhibit "76"** for more details.

TAB 19

TAB 20

1928

1 specific to the underpinning of the radio access network
2 which extends up to the boundary with the wireless core,
3 which is what you talk about backhaul to the wireless core.

4 **MR. SMITH:** I don't believe that's correct, but
5 it doesn't particularly matter for this question.

6 Sir, I take it when we're talking about
7 backhaul, sir, you're aware that backhaul in this country
8 is readily available?

9 **MR. M. DAVIES:** That does not comport 100
10 percent with my understanding of the situation. Are you
11 asserting that's the case and is there something you would
12 like to --

13 **MR. SMITH:** Sir, did you follow the
14 testimony -- did you follow the testimony in this
15 proceeding, including from Mr. Hickey?

16 **MR. M. DAVIES:** I followed some of that. I
17 don't recall any specific testimony that you're referring
18 to.

19 **MR. SMITH:** So do you remember Mr. Hickey
20 testifying that the regulation of backhaul in this country
21 was forborne?

22 **MR. M. DAVIES:** I don't recall that testimony.
23 If you'd like me to point to it, I could take a look at it.

24 **MR. SMITH:** So you didn't have any
25 understanding of that before you came to testify today. Is

1929

1 that right?

2 **MR. M. DAVIES:** I'm not recalling the testimony
3 of Mr. Hickey in that regard.

4 **MR. SMITH:** And you were not aware of whether
5 or not the regulation of backhaul was forborne when you
6 prepared your first report?

7 **MR. M. DAVIES:** Yes, I was aware that it had
8 not been regulated and I was aware that the reason it had
9 been -- that the decision had been made not to regulate it
10 was purportedly because it was readily available.

11 **MR. SMITH:** Okay. Sir, that is what I just
12 asked you, that backhaul is readily available in this
13 country; correct? That's what I just asked you.

14 **MR. M. DAVIES:** No, it's -- so here is my
15 understanding, which is there's a statement of fact which
16 you're making which is that you're asserting that it is
17 absolutely the case that backhaul is readily available.
18 There's a separate statement which is my understanding is
19 that a decision has been made not to regulate backhaul
20 because it was the -- the opinion was that it was readily
21 available. That's an opinion. It's not an
22 incontrovertible statement of fact.

23 **MR. SMITH:** Sir, please, just focus on my
24 questions. You are aware that there is a regulator in this
25 country, the CRTC.

1930

1 **MR. M. DAVIES:** Yes, I am.

2 **MR. SMITH:** You are aware that that regulator
3 has the power to regulate backhaul transportation.

4 **MR. M. DAVIES:** Yes, I am.

5 **MR. SMITH:** You are aware that that regulator
6 has forborne from regulating that backhaul?

7 **MR. M. DAVIES:** Yes, I am.

8 **MR. SMITH:** And you are aware that the reason
9 it did it is because backhaul does not meet the
10 essentiality test. Are you aware of that?

11 **MR. M. DAVIES:** I am aware that it reached the
12 view that it does not meet the essentiality test.

13 **MR. SMITH:** Right. And sir, do you accept --
14 do you accept the CRTC as an expert regulator in relation
15 to the regulation of backhaul in this country?

16 **MR. M. DAVIES:** I accept that they are the only
17 regulator in Canada, but --

18 **MR. SMITH:** Sir, do you accept -- do you accept
19 the CRTC's expertise in this area?

20 **MR. M. DAVIES:** In this particular instance, I
21 understand that that's their view.

22 **MR. SMITH:** Sir -- sorry, sorry. Mr. Davies,
23 we do not have that much time. Please focus on my
24 question.

25 Do you accept the expertise of the CRTC in this

1931

1 matter?

2 **MR. M. DAVIES:** I accept that they have
3 expertise, but I don't agree necessarily with the
4 conclusion that they have reached.

5 **MR. SMITH:** Sir, are you aware that Freedom
6 Mobile owns none of its backhaul? It owns none of its
7 fibre backhaul. Were you aware of that?

8 **MR. M. DAVIES:** My understanding is that
9 Freedom Mobile is part of a corporate entity which owns
10 that backhaul.

11 **MR. SMITH:** Sir, are you aware that the
12 corporate entity Freedom Mobile owns none of its fibre
13 backhaul?

14 **MR. M. DAVIES:** I'm not aware of the precise
15 nature of the corporate structure in this instance.

16 **MR. SMITH:** Are you aware, sir, that 57 percent
17 of Freedom's backhaul is by way of microwave?

18 **MR. M. DAVIES:** Yeah, I don't recall the
19 precise number, but I am aware that at present the majority
20 of its backhaul is via microwave --

21 **MR. SMITH:** Did you know --

22 **MR. M. DAVIES:** (Indiscernible - crosstalk)
23 change significantly in the near future.

24 **MR. SMITH:** And do you know, sir, that a
25 majority of Freedom's backhaul is leased from third

TAB 21

VIDEOTRON'S PARTICIPATION IN THE 3500 MHZ SPECTRUM AUCTION

60. The Commissioner is relying on some email exchanges from the first quarter of 2021 between my team and a third party consultant, [REDACTED], relating to auction simulations that formed part of our preparations for the 3500 MHz spectrum auction.

61. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

62. Accordingly, such simulations are not necessarily indicative of eventual bidding intentions and, in any event, our simulations included "all-Canada" scenarios, as well as more localized scenarios. Finally, the simulation email exchanges are from March 2021 and pre-date the CRTC's April 15, 2021 decision regarding MVNO access (and subsequent implementation decision of October 19, 2022), which was a significant factor influencing our eventual decision to bid on 3500 MHz spectrum outside of Quebec.

INCENTIVES TO COMPETE WITH ROGERS (AS WELL AS BELL AND TELUS)

63. I have reviewed Dr. Miller's witness statement and understand his evidence to be that the terms of the Ancillary Agreements can deter Videotron from competing aggressively against Rogers after the Divestiture closes.

64. This assertion is not supported by Videotron's incentives, nor is it supported by Videotron's long history of behaviour vis-à-vis Rogers in Quebec. As I described in my

September 23 statement, Videotron and Rogers have a long history of contractual relationships in Quebec; we have vigorously competed with Rogers for wireless customers since 2006.

65. In 2005, Videotron and Rogers entered into a Strategic Relationship and Services and Wholesale Agreement (the "**Reseller Agreement**") for Videotron to purchase and re-sell, under its own name and brand, access to components of Rogers' wireless network in Quebec. The Reseller Agreement enabled Videotron to launch its wireless business in 2006 as an MVNO on the Rogers network, without having to construct its own physical infrastructure.

66. Although Videotron was entirely dependent on Rogers and its network during our operation as an MVNO, I am not aware of any steps Rogers took to use its network ownership to disadvantage Videotron, nor did Videotron compete less aggressively against Rogers during this period.

67. On June 30, 2009, Videotron gave notice to Rogers that it intended to cease purchasing MVNO access to the Rogers network under the Reseller Agreement. Videotron was preparing the launch of its facilities-based network. Rogers accepted this notice without issue and Videotron's subscribers were transitioned from the Rogers' network to the Videotron network in 2010 without any retaliation from Rogers.

68. Also on June 30, 2009, Videotron and Rogers entered into a separate agreement titled "One Way Domestic Roaming Agreement", which allowed Videotron's subscribers to roam on the Rogers network across Canada outside of Videotron's wireless footprint. This agreement was amended in December 2013 and remains in effect today. [REDACTED]

[REDACTED]

[REDACTED]

69. Also in December 2013, Videotron and Rogers entered into an agreement titled Network Operating Agreement (the "**Network Operating Agreement**") for the joint development and operation of a wireless network in Quebec and the Greater Ottawa Area. A copy of the Network Operating Agreement is attached as Exhibit 65 of my September 23 statement.

70. Videotron has continued to be highly dependent on Rogers as a result of these agreements since we transitioned from an MVNO to a facilities-based wireless provider, yet we have still sought to aggressively grow our wireless market share without change to our strategy owing to fear of retaliation from Rogers, and have succeeded in doing so.


71. Any suggestion that Videotron will stop pricing aggressively against Rogers if it acquires Freedom is unfounded. Despite its large and growing market share in Quebec, Videotron continues to price aggressively in that province and to lead promotions, which the Big 3 subsequently match. For example, in February 2022, Videotron executed a second push of its recent "back to school" campaign that offered customers the most aggressive pricing to that point: 20 GB for \$55/month. Less than 24 hours later, the Big 3 all began offering a comparable promotion in Québec

72. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This growth occurred despite the fact that Videotron has relied on Rogers, in one way or another, since we first launched our wireless services in Canada.



Jean-François Lescadres

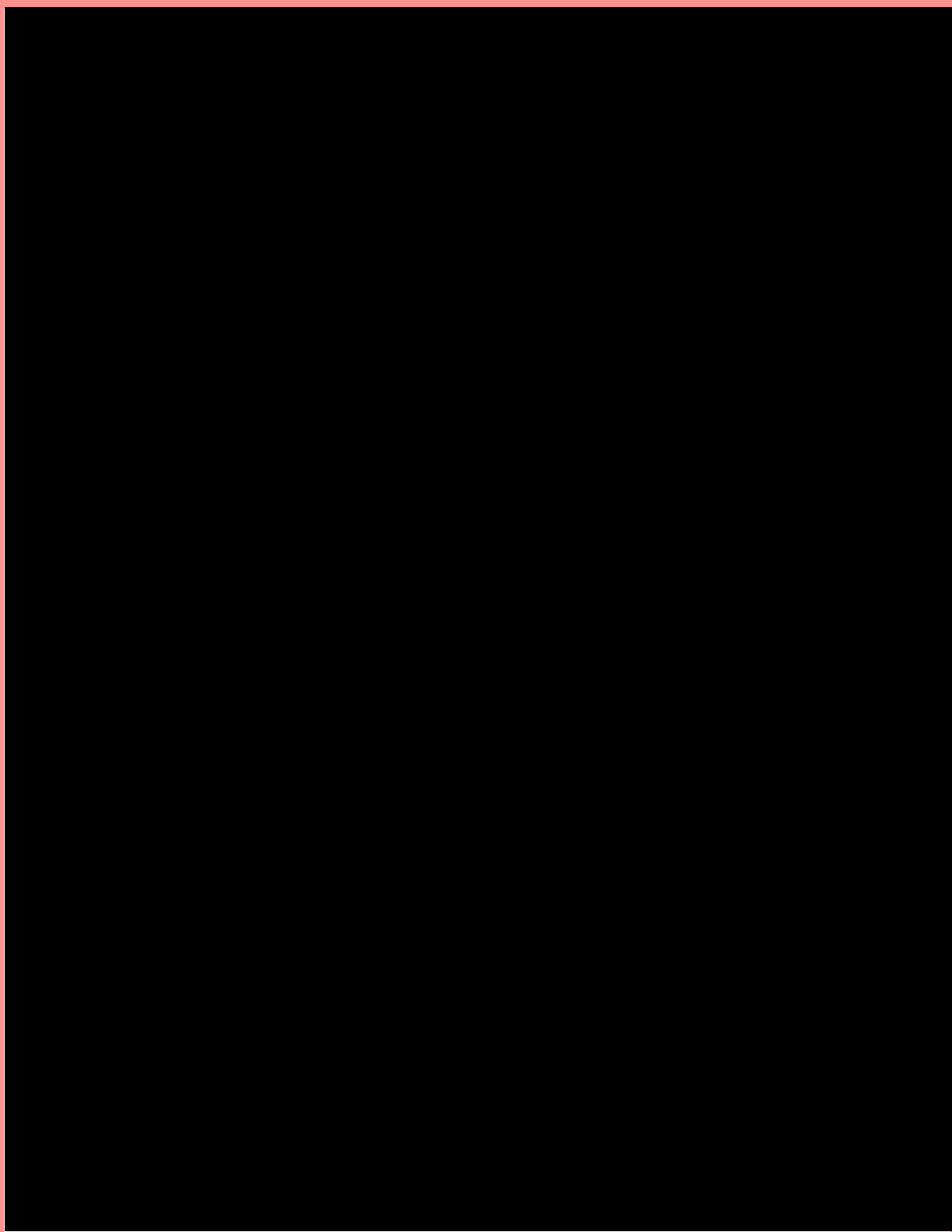
TAB 22

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and transfers between accounts.

Next, the document outlines the process of reconciling bank statements with the company's records. It stresses the need to identify and explain any discrepancies, such as outstanding checks or bank errors, to ensure that the books are in balance. Regular reconciliation is presented as a key practice for preventing errors and detecting fraud.

The document then moves on to discuss the preparation of financial statements. It details the steps involved in calculating net income, determining the cost of goods sold, and preparing the income statement, balance sheet, and statement of cash flows. It also touches upon the importance of adhering to generally accepted accounting principles (GAAP) to ensure consistency and comparability.

Finally, the document concludes with a section on internal controls. It describes various measures that can be implemented to reduce the risk of errors and misstatements, such as segregation of duties, authorization requirements, and regular audits. The goal is to create a robust system of checks and balances that supports the accuracy and reliability of the financial reporting process.



The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and transfers. The document also highlights the need for regular reconciliation of bank statements and the company's records to identify any discrepancies early on.

In addition, the document provides a detailed breakdown of the accounting cycle, from identifying the accounting entity to preparing financial statements. It explains how each step contributes to the overall accuracy and reliability of the financial data. The document also includes a section on the classification of assets and liabilities, providing examples and explanations for each category.

The second part of the document focuses on the practical application of accounting principles. It includes a series of exercises and case studies designed to help students understand how to apply these principles in real-world scenarios. These exercises cover topics such as journalizing transactions, posting to the ledger, and preparing trial balances. The document also provides a comprehensive glossary of accounting terms and a list of references for further study.

Finally, the document concludes with a summary of the key concepts and a final review of the accounting cycle. It encourages students to continue to practice and refine their skills, as accounting is a dynamic and ever-evolving field. The document is intended to serve as a valuable resource for students and professionals alike, providing a clear and concise overview of the fundamentals of accounting.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every receipt, invoice, and bill should be properly filed and indexed for easy retrieval. This not only helps in tracking expenses but also ensures compliance with tax regulations. The document provides a detailed guide on how to set up a filing system, including the use of folders, labels, and digital storage options. It also highlights the benefits of using accounting software to automate record-keeping and generate reports.

The second part of the document focuses on budgeting and financial planning. It explains how to create a realistic budget based on your income and expenses. The document offers various techniques for saving money, such as negotiating with suppliers, reducing unnecessary costs, and taking advantage of discounts. It also discusses the importance of setting financial goals and monitoring progress regularly. The document includes a checklist of items to consider when creating a budget and a sample budget template for reference.

The third part of the document covers risk management and insurance. It explains the different types of risks that businesses face and how to identify and assess them. The document provides a comprehensive overview of various insurance policies, including general liability, property, and workers' compensation. It also discusses the importance of having a disaster recovery plan in place to minimize the impact of unexpected events. The document includes a risk assessment checklist and a list of insurance providers to consider.

The fourth part of the document discusses legal and regulatory requirements. It explains the importance of staying up-to-date on changes in laws and regulations that affect your business. The document provides a checklist of key legal documents that every business should have, such as contracts, leases, and employee agreements. It also discusses the importance of seeking legal advice when needed and provides a list of resources for finding legal counsel. The document includes a checklist of legal requirements to follow and a list of legal services to consider.

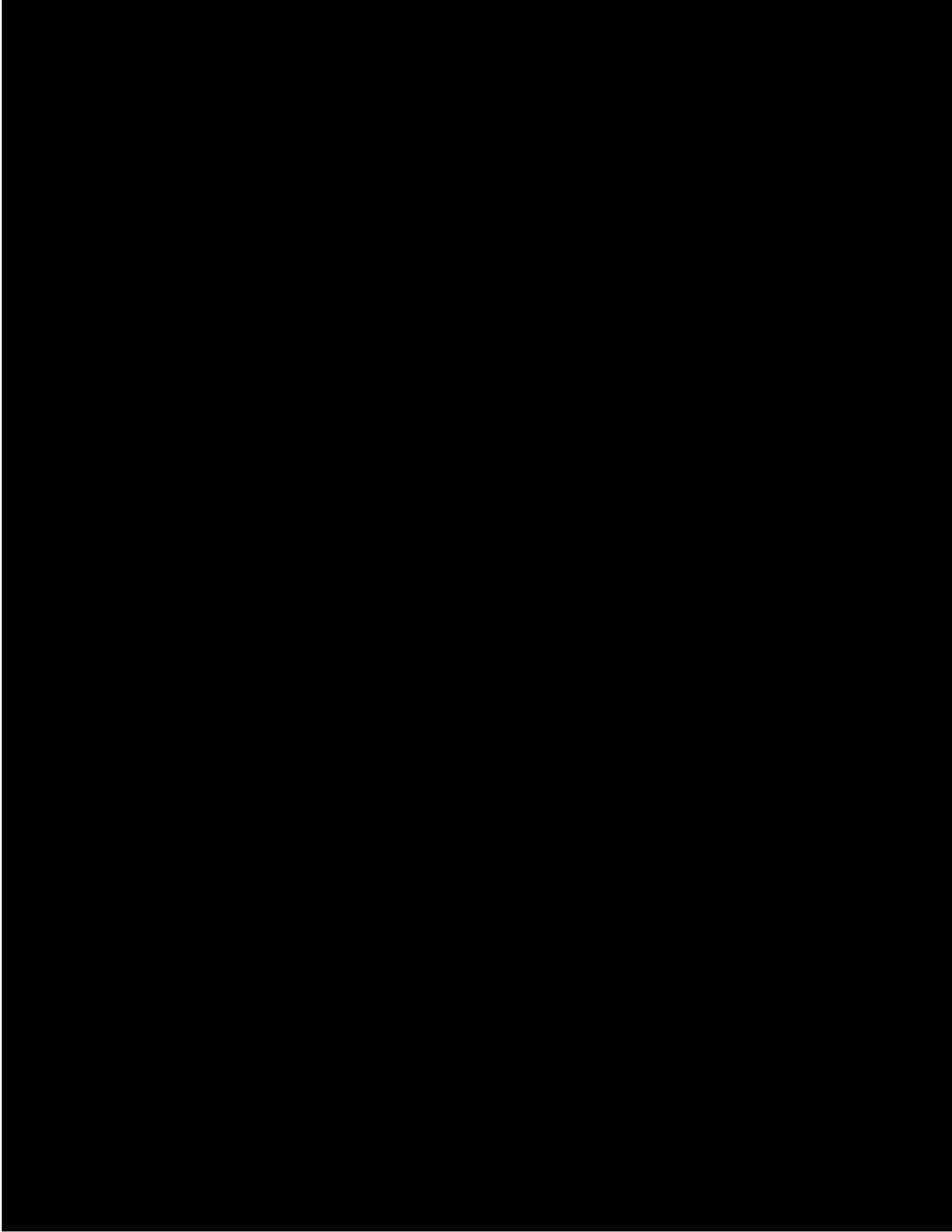
The fifth part of the document covers marketing and sales strategies. It explains the importance of having a clear marketing plan and how to identify your target audience. The document provides a comprehensive overview of various marketing channels, including social media, email marketing, and direct mail. It also discusses the importance of tracking and measuring the effectiveness of your marketing efforts. The document includes a checklist of marketing strategies to consider and a list of marketing tools to use.

The sixth part of the document discusses human resources and employee management. It explains the importance of having a clear hiring process and how to attract and recruit top talent. The document provides a comprehensive overview of various HR practices, including job descriptions, performance evaluations, and employee benefits. It also discusses the importance of creating a positive work environment and fostering employee loyalty. The document includes a checklist of HR practices to follow and a list of HR services to consider.

The seventh part of the document covers financial reporting and analysis. It explains the importance of having accurate financial statements and how to interpret them. The document provides a comprehensive overview of various financial ratios and metrics, including the profit margin, return on investment, and current ratio. It also discusses the importance of comparing your financial performance to industry benchmarks. The document includes a checklist of financial reports to review and a list of financial analysis tools to use.

The eighth part of the document discusses exit strategies and succession planning. It explains the importance of having a clear exit strategy in place and how to identify potential buyers or successors. The document provides a comprehensive overview of various exit options, including selling the business, merging with another company, and passing the business to family members. It also discusses the importance of consulting with legal and financial advisors when planning an exit. The document includes a checklist of exit strategies to consider and a list of resources for finding potential buyers or successors.

TAB 23



TAB 24



Competition Bureau
Canada

Bureau de la concurrence
Canada

Delivering Choice

A Study of Competition in Canada's
Broadband Industry

Canada

- What effect will 5G wireless technologies have on the broadband internet industry? What evidence of a positive competitive impact should a regulator require to adapt regulatory rules?
- How can a regulator balance the positive aspects of greater competition from smaller competitors with any negative effects that it may have on the incentive for larger players to continue to invest in world-class broadband networks?
- Is there a case for further regulation to address industry issues going forward?

Key Findings of the Study

The vast majority of internet users in Canada access broadband internet services through wired networks deployed by telephone and cable companies. Since it is unlikely that additional wired connections will be made available in the future, Canada's telecommunications regulator imposes a mandatory wholesale access obligation to ensure consumer choice and greater levels of competition. Under this wholesale access regime, independent competitors gain access to parts of existing telephone, cable, and fibre optic networks at regulated wholesale rates, and in turn use these connections to serve consumers in direct competition with network owners.

A key goal of this study is to assess the performance of Canada's wholesale access regime. In this vein, the Bureau's study found four key facts. First, wholesale-based competitors, who use the access regime to serve customers, currently provide services to more than 1,000,000 Canadian households. Second, consumers who are served by wholesale-based competitors report higher satisfaction with their provider than those who use traditional providers. Third, wholesale-based competitors act as a competitive alternative for countless other households, who use their presence to negotiate lower prices and other inducements from other competitors. And finally, several facilities-based competitors, who provide services using their own underlying physical networks, have recently launched flanker brands, at least in part as a competitive response to wholesale-based competitors. In these respects, the wholesale access regime appears to be fulfilling its promise to bring about greater consumer choice and increased levels of competition for Canadian consumers.

However, the market performance of wholesale-based competitors takes nothing away from the important marketplace role played by their facilities-based counterparts. These providers, which are typically telephone and cable companies, serve the significant majority of Canadians, while at the same time making the substantial investments necessary to deploy, maintain, and upgrade the physical networks that connect Canadian homes to the internet. These competitors engage in an important form of dynamic competition, working to outdo each other in order to offer the

3. MARKETPLACE RESULTS OF THE WHOLESALE ACCESS REGIME

Key Messages

- Existing statistics are not a perfect indicator of the marketplace performance of wholesale-based competitors.
- The market share of wholesale-based competitors has been growing over the past ten years. In the areas of Canada where wholesale-based competitors have focused their marketing efforts, they possess a market share in the range of 15-20%.
- What is important, from a competition perspective, is not just the market share that any particular competitor has, but whether or not they act as a viable alternative for consumers.

Has the Wholesale Access Regime Resulted in Increased Competition?

Canada's wholesale access regime is designed to increase competition and consumer choice by lowering barriers to entry for wholesale-based competitors to provide internet services in competition with facilities-based competitors. The key question is – how is the regime working? Have wholesale-based competitors been able to bring about meaningful options for consumers?

How Wholesale-Based Competitors Market Themselves

Wholesale-based competitors typically price cheaper than facilities-based competitors. According to CRTC statistics, facilities-based competitors receive, on average, revenues of \$58.32 per subscriber per month, whereas wholesale-based competitors offer services at approximately a 15% discount to this figure.²¹ Other studies indicate even greater discounts by wholesale-based competitors, ranging up to 35% for certain types of plans.²²

²¹ See CMR, *supra* note 6, at Infographic 5.5.

²² Wall Communications Inc. (2018) "5.2 Canadian Broadband Service Prices". *Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions - 2018 Edition*. Available online at: <https://www.ic.gc.ca/eic/site/693.nsf/eng/00169.html#5.2>.

conservative, and wholesale-based competitors may in fact have higher market shares in those consumer segments on which they focus. The Bureau attempted to measure these market shares directly, but was unable to obtain sufficient data from market participants to further segment market shares on other characteristics (such as speed and capacity levels of different internet packages, and whether or not the household is internet-only, or whether it bundles internet services with other services, such as television or home phone).²⁸

Contestability is Key

Through this analysis, the Bureau has learned that wholesale-based competitors have been able to obtain market shares in the order of 15-20% across the areas where they focus their marketing efforts. And the Bureau is aware that countless other households use the presence of wholesale-based competitors to negotiate better rates with other competitors in the marketplace.

But ultimately, what is important for a competition analysis is not just the market share of various providers. Rather, in a competitive marketplace, consumers must be willing and able to switch among providers.²⁹ This is an offshoot of an economic theory called contestability theory – which holds that even competitors with a high market share must respond to the threat of entry or expansion when other competitors are seen by consumers as an effective alternative in the marketplace.³⁰ This very issue is at the heart of the analysis in this study, and informs the rest of this report.

Conclusion on Marketplace Results of the Wholesale Access Regime

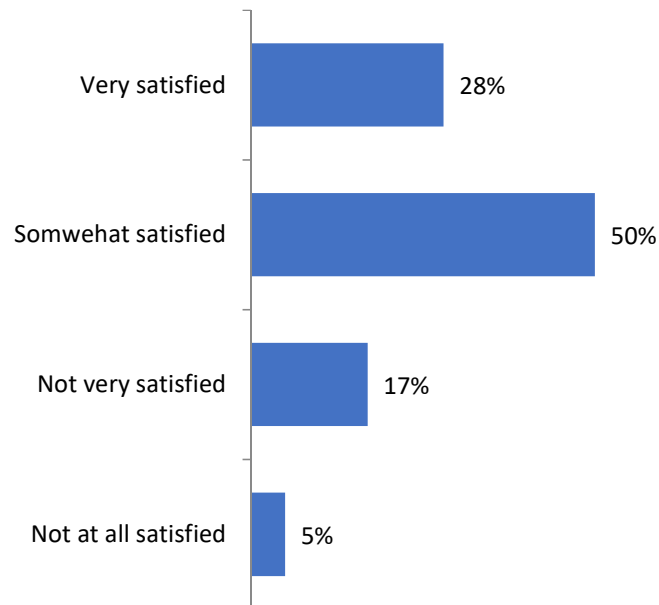
Existing statistics aimed at quantifying the outcomes of the wholesale access regime may not adequately represent the competitive reality of the Canadian broadband industry. To address this, the Bureau obtained marketplace information from a variety of stakeholders. This information shows that dozens of wholesale-based competitors have been established across Canada, and that, in the areas of the country where wholesale-based competitors have focused their marketing efforts, they served approximately one in every six households at the end of 2018. This translates into more than 1,000,000 Canadian households that are served by a wholesale-based competitor.

²⁸ Additional information in this respect is available in Part 4 of this report.

²⁹ See, for example, paragraphs 5.10 to 5.12 in the Bureau's *Merger Enforcement Guidelines* (MEGs). Available online at: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html>.

³⁰ Baumol, W.J., Panzar, J.C., and Willig, R.D. (1982) *Contestable Markets and the Theory of Industrial Structure*. Harcourt Brace Jovanovich: New York, N.Y.

Figure 6: Consumer satisfaction with choice of internet service providers



Of interest, current customers of wholesale-based competitors were materially more likely to respond that they are “very satisfied” with both their current ISP and their choice of ISPs than those who purchase services from facilities-based competitors.

Consumers in rural Canada expressed less overall satisfaction. Rural consumers who participated in the Bureau’s focus groups demonstrated significant dissatisfaction with both the quality of their current services and their choice of ISPs.³⁵ Many participants in these groups noted concerns about a general lack of options between ISPs and the reliability of services available, including whether promised speeds are actually delivered by providers.

“Our internet connection isn't very reliable. Price is high compared to other companies in more urban/suburban areas.” – Rural Internet User

Those who responded that they were not “very satisfied” with their ISP were given the opportunity to elaborate on their response. Of those consumers, 77% indicated dissatisfaction with the cost of their internet service, while 40% indicated concerns about the quality of service that they receive.³⁶

³⁵ The Bureau also received many similar comments from the informal survey described in greater detail in Appendix B. Of note is that, in the online survey conducted by the Bureau’s public opinion research experts, these feelings did not result in substantially lower levels of overall satisfaction.

³⁶ Survey respondents were able to select more than one reason why they were not “very satisfied”. This explains why these two factors total greater than 100%.

7. WHOLESALE-BASED COMPETITORS

Key Messages

- Wholesale-based competitors serve more than 1,000,000 Canadian households, and act as an important competitive alternative in countless more.
- Recent competitive responses, such as the introduction of flanker brands by facilities-based competitors, are an indication of the important competitive role that wholesale-based competitors play.
- Wholesale-based competitors may continue to grow in competitive significance now that a larger number of them offer television services and have an increased ability to bundle.
- Wholesale-based competitors must rely on facilities-based competitors for many go-to-market services, such as customer installs. It remains important to minimize the extent to which one type of competitor must depend on the other going forward.

The Role of Wholesale-Based Competitors

Dozens of wholesale-based competitors currently provide services to more than 1,000,000 Canadian households.⁸⁴ Moreover, those households that subscribe to wholesale-based competitors tend to be more highly satisfied with their internet provider.⁸⁵ But, in assessing competition, the mere presence of a competitor in the marketplace is not always determinative.⁸⁶ Instead, what is often more important is that a competitor has an effect on the prices and terms charged across the marketplace. This is the focus of this section of the report: how do wholesale-based competitors move the marketplace and improve outcomes for consumers and the economy in general?

⁸⁴ See Part 3 of this report.

⁸⁵ See Part 4 of this report.

⁸⁶ See Part 7 of the MEGs, *supra* note 29.

Competitive Effect of Wholesale-Based Competitors

As a first step, it is worth digging deeper to understand the range of wholesale-based competitors that currently serve the marketplace. Of the dozens of these competitors that have established themselves to date, the majority remain somewhat small and atomistic. The remaining few, however, have larger numbers of subscribers, ranging into the order of hundreds of thousands of Canadian households.

It is difficult to expect very small wholesale-based competitors to carry sufficient weight in the marketplace to elicit a strong competitive reaction from large facilities-based competitors. Facilities-based competitors (and, indeed, larger wholesale-based competitors) serve such a large number of households that losing a small number of customers to a competitor may not be sufficient to evoke a strong competitive response.⁸⁷

Ultimately, what is important is that consumers view wholesale-based competitors as an effective option for internet services. As long as it is sufficiently easy for competitors to establish themselves as an alternative in the eyes of consumers, then larger competitors will have to take their presence into account when making decisions on how to bring their products to market.⁸⁸ For example, larger competitors will often match other marketplace offers, or provide some other inducement, when one of their customers threatens to switch to a rival. At this micro level, the presence of smaller competitors results in a real competitive effect to the benefit of consumers in the form of lower prices or other inducements.

On a broader level, however, it is worth thinking about proactive, rather than just reactive, responses from larger competitors. In this context, a proactive response is a positive action by a competitor that is designed to react to the marketplace actions of another competitor. Presently, this can be seen by the launch of “flanker brands” offering broadband internet services, such as Fido Home Internet,⁸⁹ Virgin Mobile Home Internet,⁹⁰ and Fizz Internet,⁹¹ by some of Canada’s largest facilities-based competitors (Rogers, Bell, and Vidéotron, respectively). These flanker brands offer plans that are similar to those of wholesale-based competitors in terms of lower prices and other consumer benefits. The Bureau generally sees this type of activity as being positive for competition, as it places pressure on all market participants to lower prices, minimize

⁸⁷ *Ibid.*

⁸⁸ *Supra* note 30.

⁸⁹ See Fido Home Internet, operated by Rogers at: <https://www.fido.ca/pages/#/internet>.

⁹⁰ See Virgin Mobile Home Internet, operated by Bell at: <https://www.virginmobile.ca/en/internet/index.html>.

⁹¹ See Fizz Internet, operated by Vidéotron at: <https://fizz.ca/en/internet>.

Conclusion on Wholesale-Based Competitors

Wholesale-based competitors fulfill a meaningful competitive presence in the marketplace. They currently serve more than 1,000,000 Canadian households, and act as an alternative for countless others, who use the presence of wholesale-based competitors to negotiate lower prices and better terms from other competitors in the marketplace. Facilities-based competitors are taking strategic actions to respond to the competitive threat posed by wholesale-based competitors, and the recent introduction of television services by several large wholesale-based competitors could elicit additional responses in the future.

Ultimately, it remains important that regulators continue to monitor the marketplace effects of wholesale-based competitors as a way of judging the success of the underlying wholesale access regime. At a high level, one of the best ways to ensure vigorous competition in broadband services is to maximize the independence of wholesale-based and facilities-based competitors, as well as working to minimize regulatory uncertainty. Competition brought about by the wholesale access regime delivers choice and lower prices to consumers; it remains important that this competition be preserved and capitalized on going forward.

Questions Arising from Discussion of Wholesale-Based Competitors

- Will recent integration by wholesale-based competitors into delivery of television services make them a more effective option for a wider base of consumers?
- Are there practical ways to further reduce the dependence of wholesale-based competitors on facilities-based competitors in the future?
- Is there a case for further regulation to address industry issues with the wholesale access regime?
- Is there a way to accelerate regulatory decision making and implementation in respect of the wholesale access regime, while at the same time respecting and preserving the evidence-based nature of these proceedings?

TAB 25

integration of the Freedom business with Videotron and our ROC expansion plan. Our cost structure is sustainable and supports prices lower even than Shaw's existing bundled prices.

47. Part of our cost structure includes the favourable price at which we have agreed to acquire Freedom. A higher purchase price would have required Videotron to take on more debt. More debt would have resulted in higher interest payments and more principal to repay. These higher costs would require us to charge higher prices to meet our debt reduction targets.

48. Another aspect of our cost structure [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. Mr. Davies goes on to say that Freedom, under Videotron, will "have greatly diminished scale relative to Shaw with its Freedom Mobile and Shaw Mobile products." While Mr. Davies is correct that Videotron is not acquiring 400,000 Shaw Mobile subscribers, he is incorrect in saying Freedom's scale will be "greatly" diminished. In fact, Freedom will be joining Videotron's 1,661,000 wireless subscribers and approximately 2.6 million wireline subscribers. Freedom will also be part of the Quebecor group of companies, which once combined with Freedom will immediately have higher total revenues than Shaw does today (pro forma estimate of \$ [REDACTED] billion versus \$5.51 billion for Shaw during its most recently completed fiscal year). Videotron's scale will only continue to grow as it leverages a new national 5G network and adds new customers pursuant to its business plan.

TAB 26

2191

1 brand name in the province of Quebec?

2 **MR. LESCADRES:** We did some advertising on our
3 assets.

4 **MR. GAY:** Thank you, sir. Sir, if I understand
5 correctly and we talk about the media assets and the extent
6 to which you're promoting the Fizz brand name and the
7 Vidéotron brand name in the province of Quebec, and
8 leveraging those assets. You would also agree with me,
9 sir, that you have very few media assets out in Alberta and
10 British Columbia. Isn't that correct, sir?

11 **MR. LESCADRES:** That's correct.

12 **MR. GAY:** And so, if I'm not mistaken then,
13 sir, you're not going to be able to leverage those assets
14 to the same extent in the Province of Alberta and British
15 Columbia as you are in Quebec; correct, sir?

16 **MR. LESCADRES:** That's correct, but that's
17 clearly considered in our business plan.

18 **MR. GAY:** Okay. And you'd agree with me, sir,
19 that media assets are important in establishing brand
20 recognition; are they not, sir?

21 **MR. LESCADRES:** That's a way to help to get
22 brand recognition. Brand recognition, however, that
23 Freedom already has in a significant way without those
24 assets.

25 **MR. GAY:** All right. Let's turn to a different

TAB 27

CONFIDENTIAL – LEVEL A**Summary of Factual Points made by Distributel Representatives based on
Notes of Call with Distributel
December 6, 2021**

Bureau Attendees: Kristen McLean, Ryan Jakubowski, Derek Leschinsky, Gina Demczuk, Stephen Moon

- We believe there should be a divestiture of freedom and wireless assets.
- Freedom standalone mattered more to telecom competition than when it became Shaw. It took Shaw a while, but a bunch of things changed: willingness to partner, prospective pricing for MVNO changed. Competitive intensity – scratching and clawing for every possible customer – has changed under Shaw.
- Shaw should be forced to divest freedom assets – 6 things that should be included in that:

1. The brand

- Prior to Shaw it was Wind. Anybody that takes over those assets needs a running start. We know that especially around times of transition – when customers are faced with a change in ownership and brand its very difficult. So by brand I’m referring to Freedom mobile, not the Shaw mobile. I don’t think Shaw wireless is competing like Freedom – ARPU, packaging and geographies are very different. We think that Shaw wireless itself does not need to be divested. That brand is inextricably linked with Shaw and we don’t see an issue with the Shaw brand becoming a part of the Rogers organisation.
- Shaw mobile was for the bundling play - so how those customers are treated might be very different. Maybe Shaw has changed its marketing but at least initially it was focused on the bundle.

2. Wireless subscribers

- For Shaw mobile customers, they don’t have an expectation that they are buying from a company that is not vertically integrated. They understand that they are buying from one of the big incumbents. Just the Freedom customers need to be divested. The customer mentality/expectations and the disassociation of the bundle is intensive and frankly disruptive. We felt that its more graceful to customers to say Freedom subs over here, Shaw mobile over here.

3. Retail operations

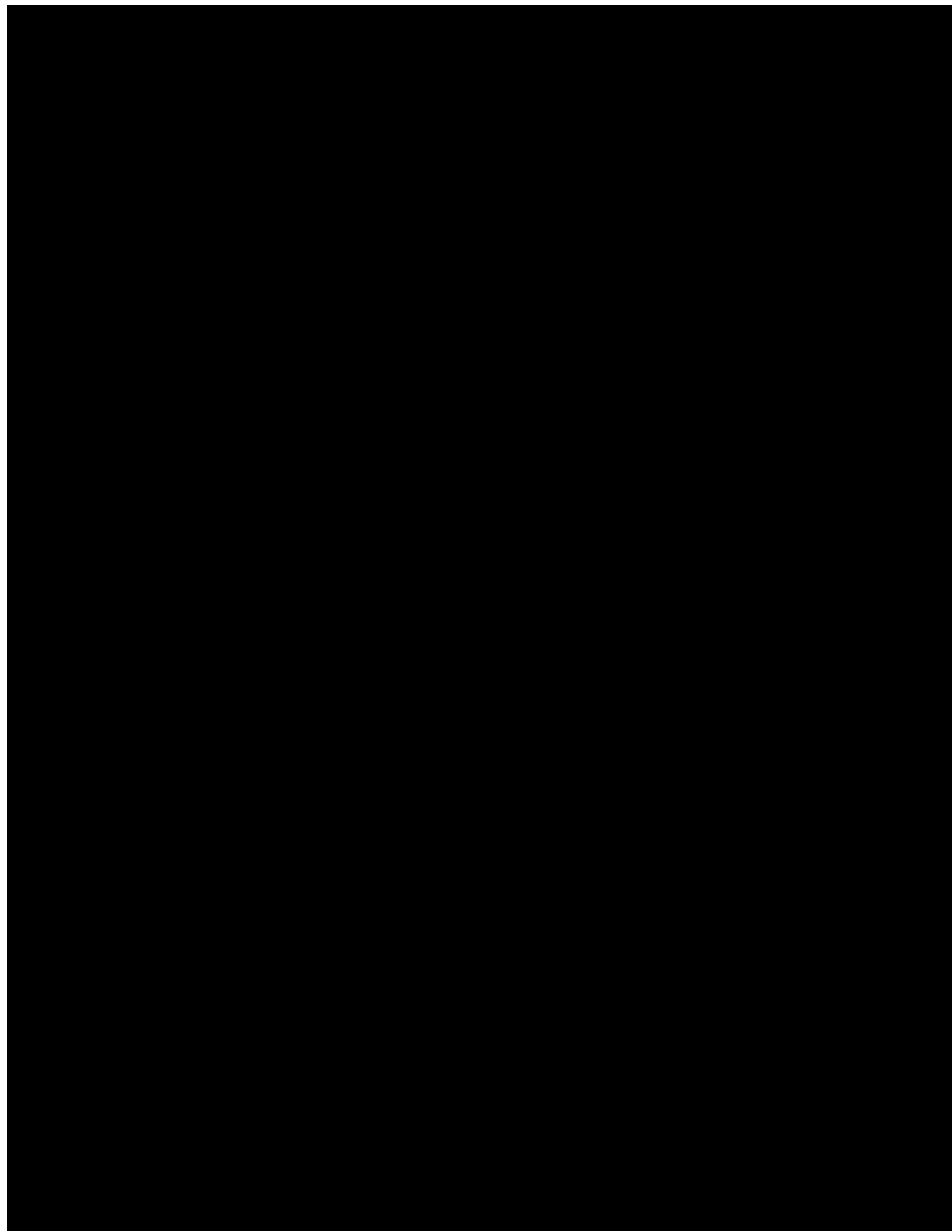
- Focusing on the freedom retail operations - I think substantially most, perhaps not all. The divestiture partner should have the first kick at the ones that matter the most. Some don't – they're not core. Any person other than an existing provider is going to need to build and level up in the retail space. The Brands, subs, retail logistics are all connected.
- A buyer should be able to offer a bundle in all freedom areas immediately. From our experience, not having the quadplay was not enough [REDACTED] Anecdotally, I've heard from former Yak people how badly Wind worked to establish itself with wireline assets and offer home internet. So this is a very real point. To be successful and sustain competition, the lack of ability to offer bundled services will hurt everyone.
- Use TPIA to offer bundle without wireline, as we do now. Inability to offer quad play is absolutely critical.
- We have 100 retail outlets – had zero before purchasing Primus. That is the same number as prior to Covid. We did see retail open up again, but customers still weren't ready to buy at retail. We were worried about our retail aspirations were dwindling, but its back now. Basket size, close rate, bundle size is all different in person than over the phone. Anecdotal but impression is that the same customer makes a faster and bigger buy decision in person.
- Retail in wireless can't be discounted. Retail provides a great place to educate the customer about complicated plans and devices. Also for issues with plan or phone. Important support function, rather than just mailing your phone to a depot. If one tried to operate strictly online there would be a fair amount of customer dissatisfaction – cant prove it, but anecdotal. We have that at our primus/distribute booths – people still want that in person experience.

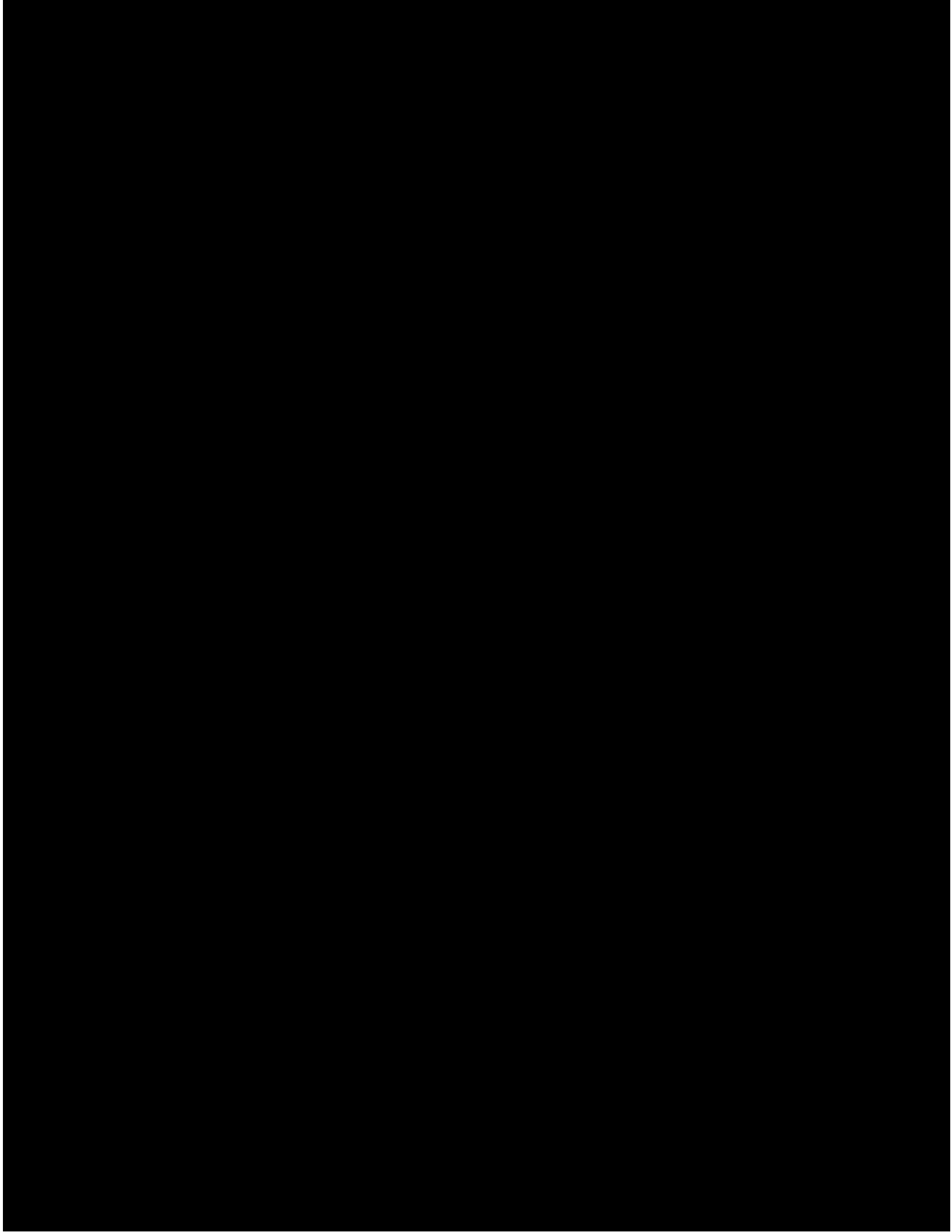
4. The network itself

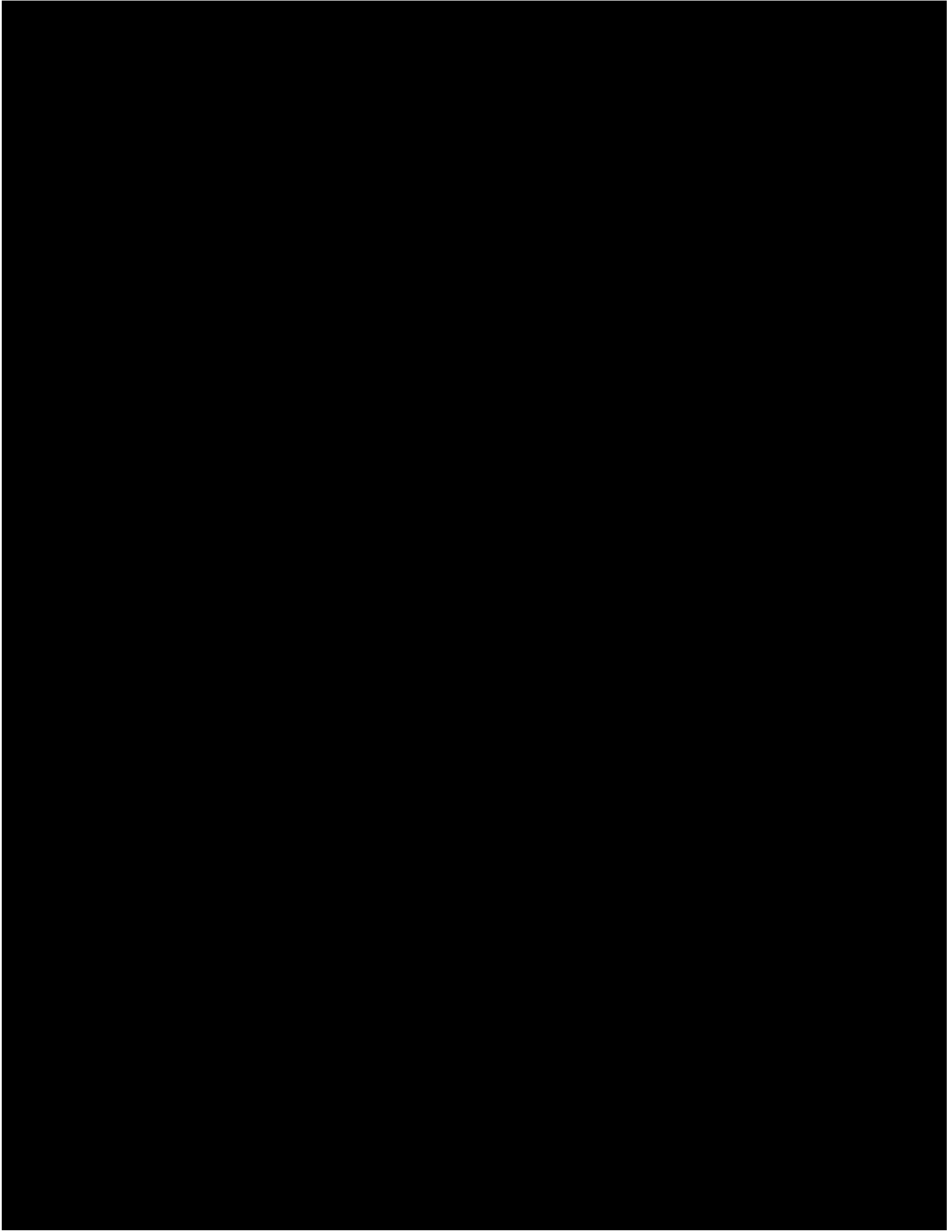
- It took a lot of time, a lot of capital to build that network. Like the retail piece, it shouldn't be cherry picked. It should be THE network – provided the divestiture buyer wants it, but if they don't, you should look into that and be asking why.

5. The spectrum

- All of the spectrum they currently own plus 3.5ghz, Shaw chose not to bid because of the transaction. Any buyer or Shaw on its own, would be hamstrung without it. So all the current Spectrum and some additional "enablement" spectrum.
- It will not be suitable for a divestiture partner to come in cold with no experience in this space. There are different markets in Canada, like wireline in Ontario is a different beast from AB and BC, QC is very different as well. Customers in these areas respond differently, act differently, expect different things. We've seen this in home internet – conditions are different in QC from ON, ON to







TAB 28

PUBLIC

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Memo to file – 28 August 2022

Summary of Facts - Call with Distributel 28 August 2022

Attendees:

Derek Leschinsky

Chris Hickey

Geoff Batstone

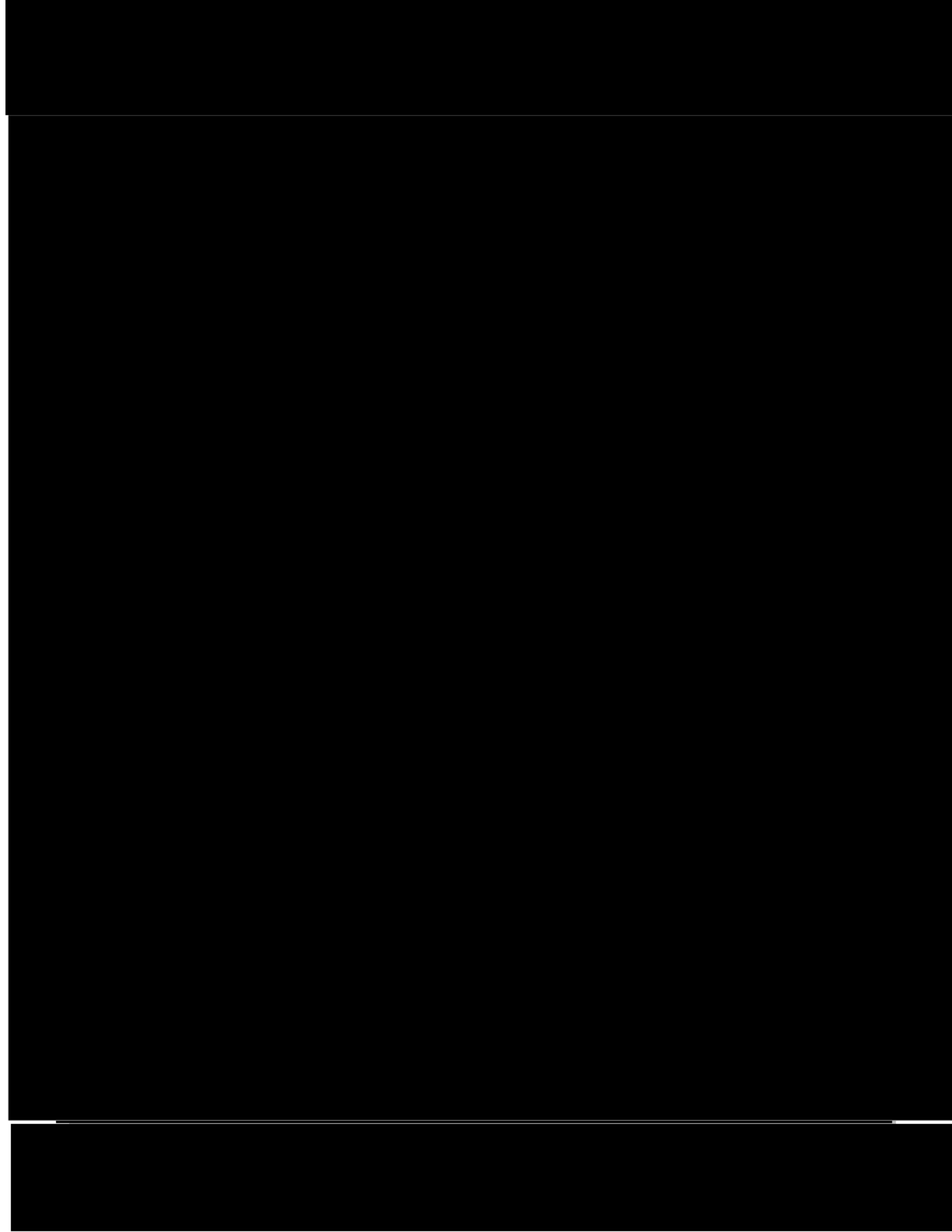
Willing to testify.

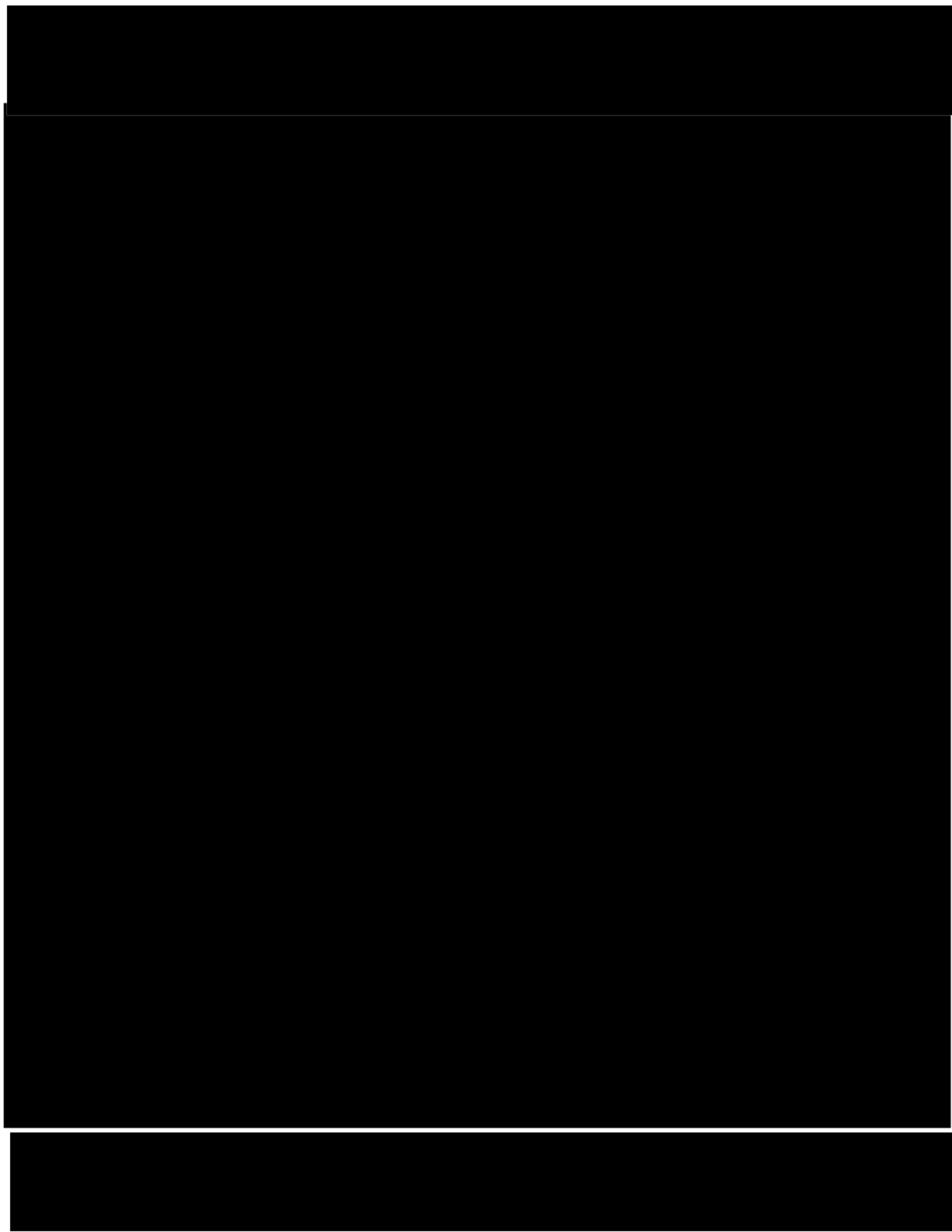
Distributel made two unsolicited offers to buy Freedom. Distributel never got into the Freedom data room. Rogers never acknowledged our proposal. There may have been informal discussions between Matt Stein and Rogers. Do not know details of what was said.

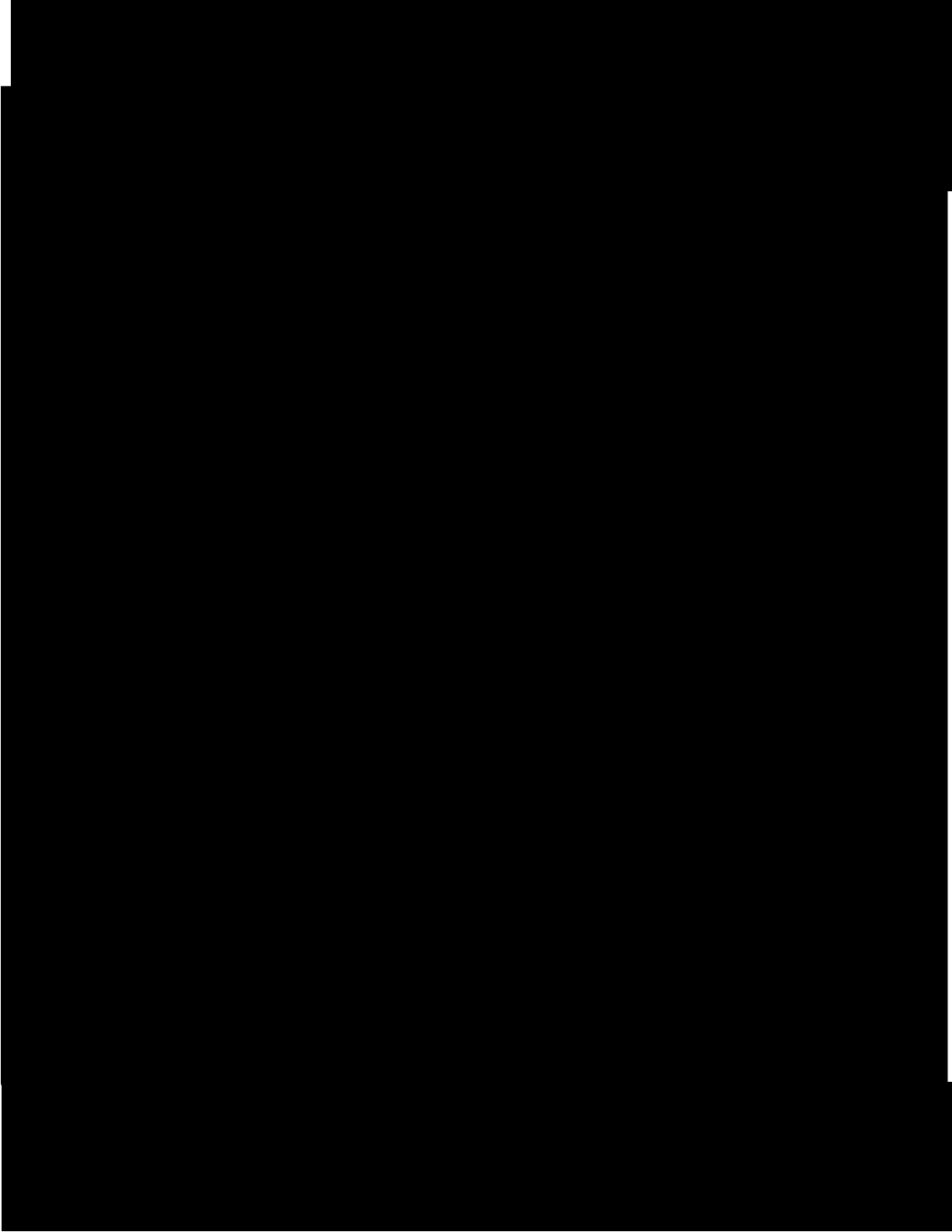
No real changes re TPIA and the CRTC process. Slowest summer ever for CRTC matters. Waiting for the disaggregated rates decision. Nothing is happening.

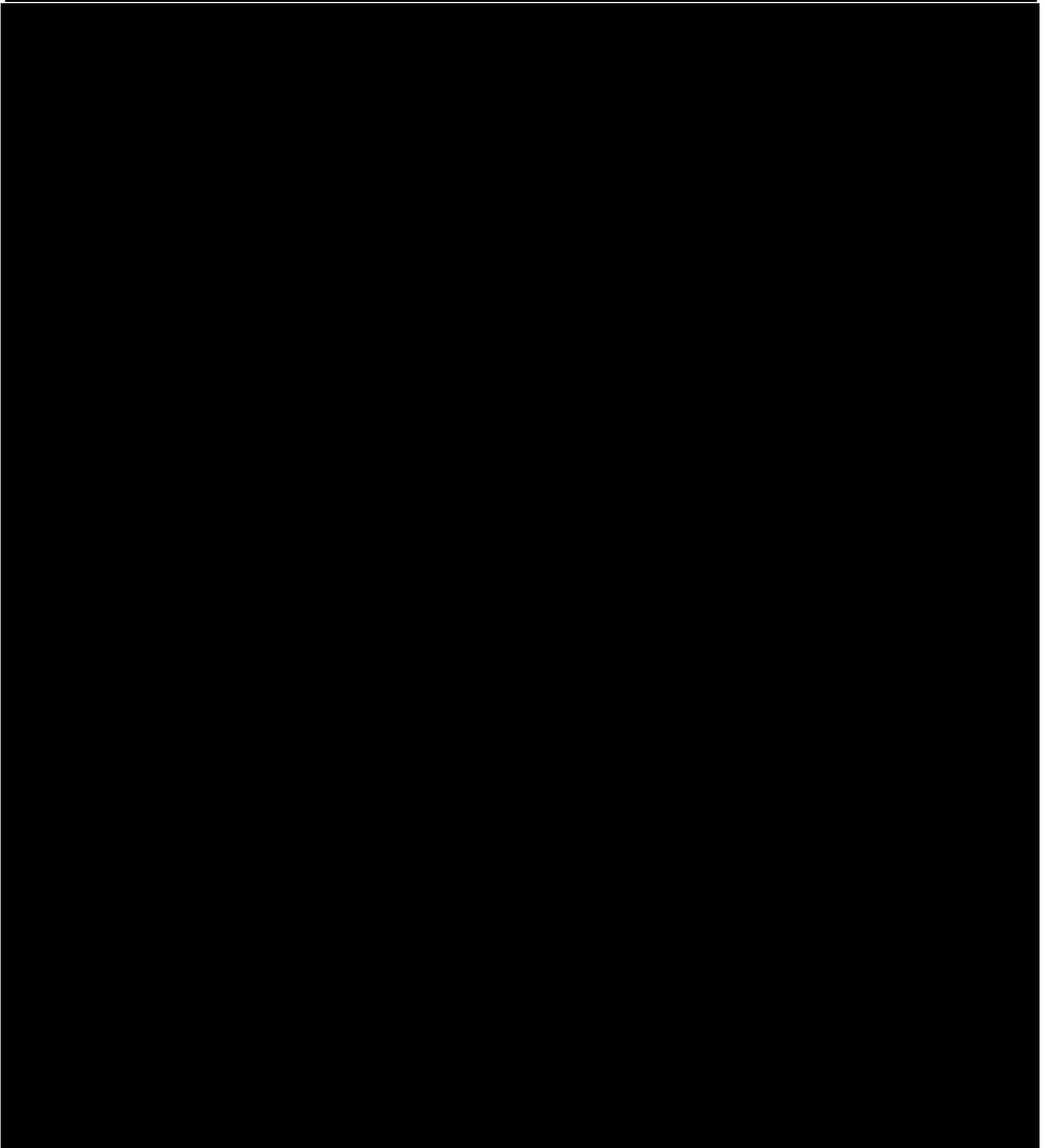
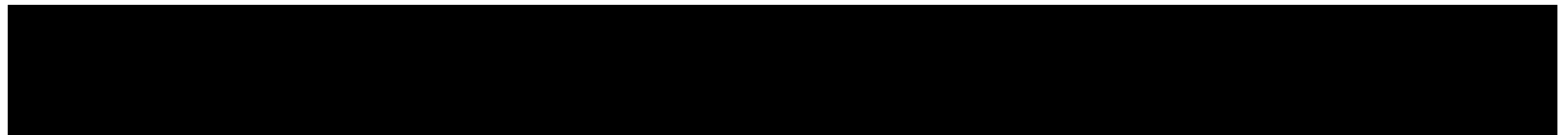
EBox and VMedia acquisitions are very different. EBox wanted to get out of the business for a while. We know this as EBox is a CNOC member. VMedia, I see that as much more strategic and connected to a VT strategy relating to the R/S merger. This may be foreshadowing a change that's coming to the industry. There's been suggestions of industry consolidation, but we cannot elaborate.

TAB 29









TAB 30

2486

1 relativement à la possibilité de louer du backhaul dans des
2 régions rurales. Vous vous souvenez de cette question-là?

3 **M. DRIF** : Oui, je me souviens.

4 **M^e DIONNE-BOURASSA** : Juste pour les fins du
5 Tribunal, donc les tours de Freedom Mobile, est-ce qu'elles
6 couvrent majoritairement des régions urbaines ou rurales ou
7 les deux?

8 **M. DRIF** : Bien, Freedom est beaucoup plus
9 concentrée dans les zones denses et urbaines, très peu dans
10 le rural. C'est la configuration du réseau de Freedom.
11 Donc, c'est plus concentré autour des grandes
12 agglomérations et autour des zones urbaines assez denses.

13 **M^e DIONNE-BOURASSA** : Merci, monsieur Drif.

14 Je n'ai pas d'autres questions, Monsieur le
15 Juge en chef.

16 **JUGE EN CHEF CRAMPTON** : Parfait. Merci
17 beaucoup, maître Dionne-Bourassa.

18 Alors, je demanderais à mes copanélistes de
19 poser leurs questions. Non, il n'y a pas de questions pour
20 le...

21 **MEMBRE SAMROUT** : Oui.

22 **JUGE EN CHEF CRAMPTON** : Le membre Askanas?
23 O.K. Allez-y, Membre Samrout.

24 **MEMBRE SAMROUT** : Bonjour, monsieur Drif.

25 **M. DRIF** : Bonjour.

TAB 31

VIDEOTRON'S PARTICIPATION IN THE 3500 MHZ SPECTRUM AUCTION

60. The Commissioner is relying on some email exchanges from the first quarter of 2021 between my team and a third party consultant, [REDACTED], relating to auction simulations that formed part of our preparations for the 3500 MHz spectrum auction.

61. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

62. Accordingly, such simulations are not necessarily indicative of eventual bidding intentions and, in any event, our simulations included "all-Canada" scenarios, as well as more localized scenarios. Finally, the simulation email exchanges are from March 2021 and pre-date the CRTC's April 15, 2021 decision regarding MVNO access (and subsequent implementation decision of October 19, 2022), which was a significant factor influencing our eventual decision to bid on 3500 MHz spectrum outside of Quebec.

INCENTIVES TO COMPETE WITH ROGERS (AS WELL AS BELL AND TELUS)

63. I have reviewed Dr. Miller's witness statement and understand his evidence to be that the terms of the Ancillary Agreements can deter Videotron from competing aggressively against Rogers after the Divestiture closes.

64. This assertion is not supported by Videotron's incentives, nor is it supported by Videotron's long history of behaviour vis-à-vis Rogers in Quebec. As I described in my

TAB 32

TAB 33

9. Freedom dealers cannot realistically compete with Shaw's mobile offerings that are bundled with Internet plans. In Alberta, Shaw and Telus dominate the market for Internet service. By offering to bundle mobile plans with their existing large base of Internet customers, Shaw has a huge advantage over Freedom.
10. The phenomenon of Shaw mobile persistently undercutting Freedom franchisees in Alberta is not a new phenomenon. I described this in my March 3rd affidavit. Shaw continues to cannibalize Freedom customers and dealers' businesses. While Shaw said that so-called special introductory rates would be time-limited, as I described in my March 3rd affidavit, Shaw's aggressive marketing towards Freedom customers has persisted. Attached as Exhibit "E" to this witness statement is a media article dated July 30, 2020, which referred to Shaw Communications President Paul McAleese describing the promotional packages as being "introductory" and not permanent. These so-called introductory plans have persisted, to the detriment of the Freedom brand.
11. I estimate that a high number of Freedom customers have switched over to Shaw to take advantage of Shaw's favourable deals. Shaw and Freedom would have relevant data on the number of Freedom mobile numbers that have been ported to Shaw.
12. Shaw might say in response that it has levelled the playing field between Shaw and Freedom by enabling Freedom dealers to also sell home Internet along mobile plans, but this is not true. Freedom Home Internet suffers from two basic problems: poor marketing by Freedom and ineffective implementation.
13. There is very little marketing of Freedom Home Internet by Freedom. The marketing that has occurred has been ineffective with consumers.
14. With respect to the implementation, there are serious issues with the system used by dealers to determine whether a customer's residence qualifies for Internet services. Some parts of Alberta have the necessary infrastructure for Freedom Home Internet, while others do not. The system that Freedom has implemented to determine whether a given customer's residence is supported by the necessary infrastructure suffers from persistent IT issues. For example, often a given residential address simply cannot be found in the dealer lookup system. Other times, the system says that the residence does not qualify for Freedom Internet service, even though it qualifies for equivalent Shaw Internet service.

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1 lawsuit you commenced against Freedom --

2 **MR. DHAMANI:** Mm-hmm.

3 **MR. RICCI:** -- was commenced before you signed
4 your witness statement in September of this year?

5 **MR. DHAMANI:** Yes, yes.

6 **MR. RICCI:** But you, of course, do not refer to
7 that lawsuit in your witness statement, do you?

8 **MR. DHAMANI:** No.

9 **MR. RICCI:** Am I right you and the other
10 plaintiffs are seeking damages against Freedom?

11 **MR. DHAMANI:** Correct.

12 **MR. RICCI:** And the damages you are seeking
13 include a million dollars for each and every one of your
14 Freedom locations?

15 **MR. DHAMANI:** Correct.

16 **MR. RICCI:** Now, in terms of the timing of when
17 the Association's concerns arose, you acknowledge in your
18 witness statement that your Freedom stores were growing, to
19 use your words, by leaps and bounds from 2016 to 2019. Is
20 that right?

21 **MR. DHAMANI:** Correct.

22 **MR. RICCI:** And then you hit a roadblock in
23 2020; correct?

24 **MR. DHAMANI:** Correct.

25 **MR. RICCI:** 2020 is, of course, before Rogers

527

1 and Shaw announced their proposed merger in March of 2021.

2 **MR. DHAMANI:** Yes.

3 **MR. RICCI:** Mr. Dhamani, you'll recall that the
4 first wave of COVID-19 hit this country in 2020 as well?

5 **MR. DHAMANI:** Correct.

6 **MR. RICCI:** Am I right that, as a Freedom
7 dealer, you do not have the ability to sell Freedom Mobile
8 plans online?

9 **MR. DHAMANI:** Yeah, we cannot sell it online,
10 yes.

11 **MR. RICCI:** You have to rely on your physical
12 stores to sell all of those plans; correct?

13 **MR. DHAMANI:** Correct.

14 **MR. RICCI:** Am I also right that back in 2020
15 you had Freedom stores that were located in shopping
16 centres?

17 **MR. DHAMANI:** Yes.

18 **MR. RICCI:** For example, you had a store in the
19 Medicine Hat Mall in Medicine Hat, Alberta?

20 **MR. DHAMANI:** Yeah, it was in a mall, yes.

21 **MR. RICCI:** As well as a store in the Northland
22 Village Mall in Calgary?

23 **MR. DHAMANI:** Yes.

24 **MR. RICCI:** Am I right both of those stores are
25 now closed?

442

1 acquiring Freedom.

2 **MR. LIPPÉ:** Why?

3 **MR. VERMA:** It's a death knell.

4 I mean, I say that because of from personal
5 experience what has happened in the marketplace when Telus
6 got Public Mobile and Mobilicity was taken over by Rogers.
7 I also say that because Freedom was competing with Rogers
8 and Fido.

9 I mean, of all the customers that we brought
10 in, 60 percent of our customers, of brought-in customers,
11 they come from Rogers and Fido. Fido is our biggest
12 competitor. With Rogers getting Freedom, there's no need
13 for them to have Freedom in their portfolio brands.

14 We compete in the marketplace with Fido, Rogers
15 and Chatr. And no wonder -- that's the reason why when the
16 merger was announced, our first point of business was to
17 ask Freedom, tell us, if the merger goes through, what are
18 you, as in you as a merged company with Rogers, going to do
19 with this brand. Tell us what your intentions are.

20 And they never told us. I mean, on the
21 contrary, we got -- what we got to hear was go month to
22 month, do whatever you want.

23 **MR. LIPPÉ:** And now you understand that there
24 is a proposed divestiture of Freedom to Vidéotron.

25 Again, the same question. So how do you feel

443

1 about that?

2 **MR. VERMA:** I would be -- on a personal level
3 and at the association also of Freedom dealers, we are
4 cautiously optimistic. And the reason I say that is we
5 know about the proposed divestiture of Freedom to Vidéotron
6 through the media. We know about it because the media is
7 speaking about it.

8 We till now in the last five, six months that
9 these stories have been making their rounds, have not heard
10 anything from Vidéotron in respect to how they intend to
11 compete in the marketplace, what kind of offerings they
12 will have.

13 We have not heard anything from Freedom also
14 with regards to this. So the reason I use the phrase
15 "cautiously optimistic" is unless we sit down with
16 Vidéotron to know what they intend to do with the brand,
17 how they intend to be even more successful than how Freedom
18 was under Shaw, there is not much that I can speak to.

19 **MR. LIPPÉ:** Very well. Thank you, Mr. Verma.
20 Chief Justice, those would be the questions I
21 had for Mr. Verma.

22 **MR. VERMA:** Thank you, Antoine. Thank you so
23 much.

24 **CHIEF JUSTICE CRAMPTON:** Thank you very much
25 and thank you to Mr. Verma.

TAB 34

[REDACTED] I describe our current synergies estimates later in this statement.

66. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

67. [REDACTED]

The July 2021 Auction and the Telus/Bell Application for Judicial Review

68. [REDACTED] Videotron decided to bid on 3500 MHz spectrum in British Columbia, Alberta, and southern Ontario. It determined [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

69. Videotron also believed that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] As such, it remained possible that multiple bidders would drive up the price of the set aside spectrum that Videotron wished to acquire in the ROC.

70. In the result, Videotron successfully acquired 294 blocks of spectrum in the 3500 MHz band across the country for nearly \$830 million, more than half of which is in southern and eastern Ontario, Manitoba, Alberta and British Columbia. Attached as **Exhibit "17"** is a spreadsheet downloaded from ISED's website showing the results of the 3500 MHz auction.

71. On August 26, 2021, Telus applied for judicial review of ISED's decision to qualify Videotron for bidding on set-aside spectrum in Western Canada. Bell also applied for judicial review but later abandoned its application. Attached as **Exhibits "18"** and **"19"** are the Telus and Bell notices of application for judicial review.

72. On September 20, 2021, Telus moved for an interlocutory injunction to prevent ISED from issuing the disputed spectrum licences pending a decision on Telus' application for judicial review. Attached as **Exhibit "20"** is Telus' notice of motion.

73. Videotron believed that Telus' application and motion were efforts to deny Videotron access to the spectrum it required to compete effectively in Western Canada. In fact, in its materials filed in support of its application for judicial review, Telus' witness specifically commented on Videotron's strength as a potential competitor, testifying during cross-examination that: "when there's market entry it does create disruption. I think Videotron is certainly a little bit different than other competitors that may enter [...] Videotron would be a formidable competitor [...] So they are a little bit different in terms of overall profile than of plain vanilla market entrant". Mr. Edora also testified that Telus expected Videotron to offer

lower prices than Freedom or Xplornet saying, "If [Freedom] had gotten the set-aside spectrum, then they probably would just continue their business plan. They wouldn't necessarily come in with lower prices that are already in the market. And so it's that type of dynamic. In Manitoba, Xplornet is already a competitor. If they had acquired the set-aside spectrum, the Manitoba pricing dynamics might not be as dramatically changed, for example, as Vidéotron's entry."

Attached as **Exhibit "21"** is a transcript of the cross-examination of Eric Edora, Telus' Director of Regulatory Affairs.

74. On October 22, 2021, the Federal Court dismissed Telus' motion for an interlocutory injunction. Attached as **Exhibit "22"** are Justice Grammond's Order and Reasons.

75. On May 17, 2022, the Federal Court dismissed Telus' application for judicial review. Attached as **Exhibit "23"** are Justice Diner's Judgement and Reasons.

Internal Deliberations about Deploying the 3500 MHz Spectrum

76. Having successfully bid on 3500 MHz spectrum in the ROC but [REDACTED], we needed to consider whether and how to deploy our 3500 MHz spectrum and what options for expansion into the ROC remained available to Videotron.

77. During late 2021 and early 2022, Videotron's management and other departmental teams considered different ways that Videotron could deploy and commercialize the 3500 MHz spectrum it had acquired in the ROC. For example, [REDACTED]

[REDACTED] Attached as **Exhibit "24"** is a copy of this presentation.

TAB 35

100922

Board of Directors Regulatory Update

Q2 2022



Project Fox

Redacted - Solicitor-Client Privileged



Redacted - Non-Responsive

Redacted - Non-Responsive

Momentum against the deal building across government and public

Redacted - Non-Responsive

Redacted - Non-Responsive

Redacted - Non-Responsive

Redacted - Non-Responsive

Key GRA actions to support TELUS' strategic imperatives



Redacted - Non-Responsive

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Project Fox

- Redacted - Solicitor-Client Privileged :
- CRTC: TELUS, Bell, and others filed written support of consumer group’s petition to Cabinet to overturn CRTC decision; Cabinet dismissed the petition on jurisdictional grounds
- Bureau: Freedom Mobile sale to Quebecor announced for \$2.85B - conditional on Bureau and ISED approval
- ISED: TELUS advocacy highlights danger of PKP as remedy partner; requests Minister not transfer spectrum licences
- TELUS-Globalive network and spectrum sharing agreement announced to boost Globalive’s bid to purchase Freedom Mobile
- Parliamentary Heritage Committee report released opposing the merger
- To leverage the Rogers outage, we have written to the Bureau to reiterate the security risks resulting from the elimination of redundancy; updated public opinion polling to leverage with UCP; engaged in direct advocacy with ISED about the importance of network diversity; and influenced invitation lists to House committee hearing on the outage

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Q2 2022 Board Update - cont

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Board of Directors Regulatory Update

Q2 2022

This document contains a brief overview of key government and regulatory affairs files (Project Fox, Redacted - Solicitor-Client Privileged) and the actions we are taking to support TELUS' strategic imperatives and to deliver the best services for our customers.

1. Project Fox

- Redacted - Solicitor-Client Privileged
 - CRTC: Following the decision approving the transfer of BDU licenses with conditions, consumer group (PIAC) petitioned Cabinet to overturn the ruling – TELUS, Bell, other stakeholders including academics, think tanks, consumer groups and other BDUs, filed written support following outreach to 70+ stakeholders. On 23 June, Cabinet dismissed the petition on jurisdictional grounds.
 - The Competition Bureau: Rogers/Shaw announced the sale of Freedom Mobile to Quebecor on 17 June for \$2.85B. The sale is conditional on Bureau and ISED approval. Should the sale not be approved, the Bureau will proceed with its application to block the merger filed on 9 May, which will be heard on an expedited basis beginning in Q4 2022.
 - ISED: TELUS advocacy requests that the Minister not transfer the spectrum licenses and highlights danger of PKP as remedy partner; ISED's decision will likely follow Bureau's settlement or Tribunal's decision (if litigated).
- Continue negotiations with potential divestiture buyers of Freedom Mobile; network and spectrum sharing agreement with Globalive announced on 19 May in an effort to boost its bid to purchase Freedom Mobile.
- On 17 May, the Standing Committee on Canadian Heritage released its report on the transaction's impact on local news. The report makes 11 recommendations, the first of which is "that the Government of Canada reject the Rogers-Shaw proposed merger".
- Continued execution of our "top-of-house" strategy, where our ELT meet with political leaders to kill, shape and slow the deal. Throughout Q2, NDP leader, Jagmeet Singh, repeatedly asked PM Trudeau during Question Period to block the merger, using TELUS talking points. (N.B. The PM responded by acknowledging that wireless prices are declining, based on StatsCan data).

- To leverage the 8 July Rogers outage, we have written to the Bureau to reiterate the security risks resulting from the elimination of redundancy; updated public opinion polling to leverage with UCP; engaged in direct advocacy with ISED about the importance of network diversity; and influenced invitation lists to House committee hearing on the outage.

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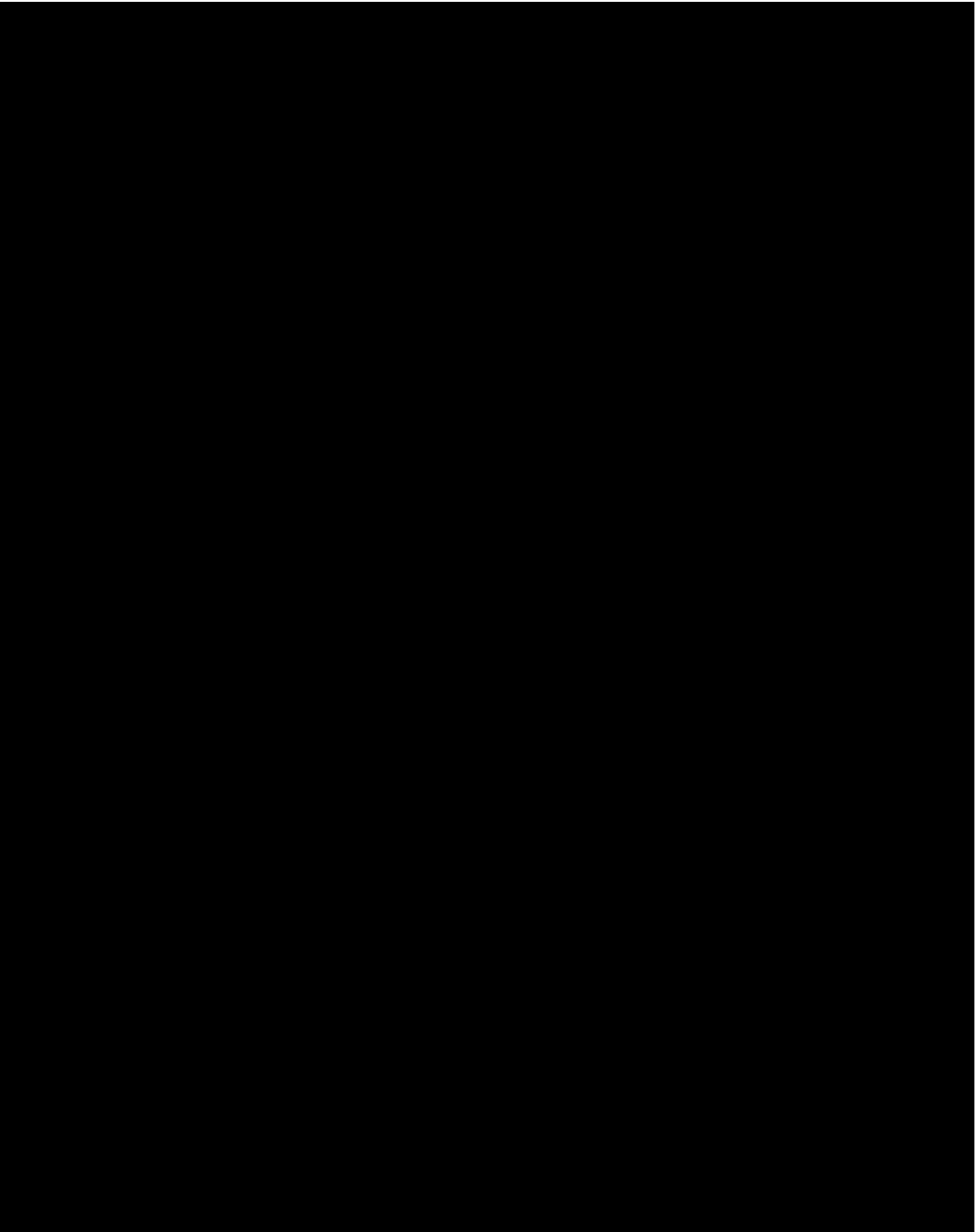
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TAB 36



TAB 37

TAB 38

TAB 39

TAB 40

Joseph Borowski *Appellant*

v.

The Attorney General of Canada *Respondent*
and

Interfaith Coalition on the Rights and Wellbeing of Women and Children, R.E.A.L. Women of Canada and Women's Legal Education and Action Fund (LEAF)

Interveners

INDEXED AS: BOROWSKI v. CANADA (ATTORNEY GENERAL)

File No.: 20411.

1988: October 3, 4; 1989: March 9.

Present: Dickson C.J. and McIntyre, Lamer, Wilson, La Forest, L'Heureux-Dubé and Sopinka J.J.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Appeal — Mootness — Abortion provisions of Criminal Code — Provisions under challenge already found invalid — Ancillary questions relating to Charter rights of the foetus — Whether or not issue moot — Whether or not Court should exercise discretion to hear case — Criminal Code, R.S.C. 1970, c. C-34, s. 251 — Canadian Charter of Rights and Freedoms, ss. 7, 15.

Criminal law — Abortion — Provisions under challenge already found invalid — Ancillary questions relating to Charter rights of the foetus — Whether or not issue moot — Whether or not Court should exercise discretion to hear case.

Constitutional law — Charter of Rights — Right to life, liberty and security of the person — Right to equality before and under the law — Whether or not Charter rights extending to foetus — Charter issues ancillary to question of validity of abortion provisions of Criminal Code — Provisions under challenge already found invalid — Whether or not issue moot — Whether or not Court should exercise discretion to hear case.

Civil procedure — Standing — Standing originally found because action seeking declaration as to legislation's validity — Provisions under challenge already found invalid — Whether or not standing as originally

Joseph Borowski *Appellant*

c.

Le procureur général du Canada *Intimé*
a et

Interfaith Coalition on the Rights and Wellbeing of Women and Children, R.E.A.L. Women of Canada et Fonds d'action et d'éducation juridiques pour les femmes (FAEJ) *Intervenants*

RÉPERTORIÉ: BOROWSKI c. CANADA (PROCURÉUR GÉNÉRAL)

N° du greffe: 20411.

1988: 3, 4 octobre; 1989: 9 mars.

Présents: Le juge en chef Dickson et les juges McIntyre, Lamer, Wilson, La Forest, L'Heureux-Dubé et Sopinka.

EN APPEL DE LA COUR D'APPEL DE LA SASKATCHEWAN

Pourvoi — Caractère théorique — Dispositions du Code criminel relatives à l'avortement — Dispositions contestées déjà déclarées inopérantes — Questions accessoires relatives aux droits du fœtus en vertu de la Charte — La question est-elle théorique? — La Cour doit-elle exercer son pouvoir discrétionnaire pour entendre l'affaire? — Code criminel, S.R.C. 1970, chap. C-34, art. 251 — Charte canadienne des droits et libertés, art. 7, 15.

Droit criminel — Avortement — Dispositions contestées déjà déclarées inopérantes — Questions accessoires sur les droits du fœtus en vertu de la Charte — La question est-elle théorique? — La Cour doit-elle exercer son pouvoir discrétionnaire pour entendre l'affaire?

Droit constitutionnel — Charte des droits — Droit à la vie, à la liberté et à la sécurité de la personne — Droit à l'égalité devant et dans la loi — Les droits garantis par la Charte s'appliquent-ils au fœtus? — Questions relatives à la Charte accessoires à la question de la validité des dispositions du Code criminel sur l'avortement — Dispositions contestées déjà déclarées inopérantes — La question est-elle théorique? — La Cour doit-elle exercer son pouvoir discrétionnaire pour entendre l'affaire?

Procédure civile — Qualité pour agir — Qualité pour agir reconnue initialement parce que l'action visait un jugement déclarant l'invalidité de dispositions législatives — Dispositions contestées déjà déclarées inopéran-

Mootness

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

Le caractère théorique

a La doctrine relative au caractère théorique est un des aspects du principe ou de la pratique générale voulant qu'un tribunal peut refuser de juger une affaire qui ne soulève qu'une question hypothétique ou abstraite. Le principe général s'applique quand la décision du tribunal n'aura pas pour effet de résoudre un litige qui a, ou peut avoir, des conséquences sur les droits des parties. Si la décision du tribunal ne doit avoir aucun effet pratique sur ces droits, le tribunal refuse de juger l'affaire. b Cet élément essentiel doit être présent non seulement quand l'action ou les procédures sont engagées, mais aussi au moment où le tribunal doit rendre une décision. En conséquence, si, après c l'introduction de l'action ou des procédures, surviennent des événements qui modifient les rapports des parties entre elles de sorte qu'il ne reste plus de litige actuel qui puisse modifier les droits des parties, la cause est considérée comme théorique. d Le principe ou la pratique général s'applique aux litiges devenus théoriques à moins que le tribunal n'exerce son pouvoir discrétionnaire de ne pas l'appliquer. J'examinerai plus loin les facteurs dont e le tribunal tient compte pour décider d'exercer ou f non ce pouvoir discrétionnaire.

g La démarche suivie dans des affaires récentes comporte une analyse en deux temps. En premier, il faut se demander si le différend concret et tangible a disparu et si la question est devenue purement théorique. En deuxième lieu, si la réponse à la première question est affirmative, le tribunal décide s'il doit exercer son pouvoir discrétionnaire et entendre l'affaire. La jurisprudence h n'indique pas toujours très clairement si le mot «théorique» (*moot*) s'applique aux affaires qui ne comportent pas de litige concret ou s'il s'applique i seulement à celles de ces affaires que le tribunal refuse d'entendre. Pour être précis, je considère qu'une affaire est «théorique» si elle ne répond pas au critère du «litige actuel». Un tribunal peut de j toute façon choisir de juger une question théorique s'il estime que les circonstances le justifient.