



File No. 8620- R63-201705675

2018 10 01

To: Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: **Part 1 Application by TNW Wireless Inc. relating to wholesale roaming agreements required under Telecom Regulatory Policy CRTC 2015-177, Regulatory framework for wholesale mobile wireless services (TRP 2015-177) – Supplementary Comments**

Dear Mr. Doucet,

1. In accordance with the Commission's procedural direction, dated 13 July 2018, in the above-captioned Part 1 Application (the TNW Application), as amended by Commission procedural letters, dated 20 July 2018 and 24 July 2018, Bell Mobility (Bell) provides these Supplementary Comments on TNW's 27 August 2018 and 4 September 2018 responses to the Commission's requests for information (RFIs).
2. For the reasons following, none of the information TNW has provided in its responses to RFIs alters the fact that TNW's requests for wholesale roaming services from Bell, which are the central issue in the TNW Application, remain invalid.
3. Insofar as TNW's roaming request includes its proposed iPCS model, it violates the Commission's "incidental roaming rule". TNW's end-users would rely far more than incidentally on our roaming service for wireless connectivity when their end-users' roaming connectivity is considered in conjunction with their connectivity with public Wi-Fi.
4. TNW's iPCS model would also undermine and contradict the Commission's and Innovation, Science and Economic Development Canada's (ISED's) objectives of promoting facilities-based competition. TNW's roaming proposal, if implemented as proposed with its iPCS model, would also violate the terms of our Commission-approved tariffs.
5. Finally, there continue to be inconsistencies about whether TNW has put its spectrum into use as required by Condition of Licence (COL) 13 in its spectrum licences. As explained below, TNW's RFI responses appear only to magnify these inconsistencies.

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6. TNW's responses to the RFIs provide no new information that alters any of the key facts. To the contrary, TNW's RFI responses confirm that TNW's proposal is offside the Commission's roaming rules, including the incidental roaming rule, our Commission-approved roaming tariffs and long standing Commission and ISED policies intended to promote facilities based competition.

7. For all of these reasons, the TNW Application should be dismissed in its entirety.

TNW's responses demonstrate that its iPCS proposal would violate the Commission's "incidental roaming" principle

8. The validity of TNW's roaming request must be assessed for compliance with the Commission's existing wholesale roaming regulatory framework, as set out in Telecom Decision 2017-56¹:

31. Accordingly, the Commission
- confirms that mandated wholesale roaming provides incidental, and not permanent, access to the incumbents' networks;
 - clarifies that public Wi-Fi does not form part of a wireless carrier's home network for the purpose of establishing what constitutes incidental use of the visited network pursuant to the relevant wholesale roaming tariff; and
 - clarifies that the MVNO subscriber roaming condition only permits wholesale roaming customers to provide their MVNO customers with access to their roaming arrangements on the same terms and conditions as they would obtain roaming services. The wholesale roaming customer must ensure that any access to the incumbent's network on behalf of its resellers, including MVNOs, occurs on the same basis, and with the same limitations, as set out in the relevant wholesale roaming tariff.
32. The Commission therefore **directs** the incumbents to reword the clauses in their tariffs to remove references to prohibiting the resale of roaming services, and instead to include the following:
- a definition of "roaming service," which should also indicate that wholesale roaming service provides access to the incumbent's network on an incidental basis and not on a permanent basis;
 - definitions of "home network" and "visited network" that exclude public Wi-Fi; and
 - the following text from paragraph 167 of the wholesale wireless framework: "[Incumbent] must provide roaming on their GSM-based mobile wireless networks to all subscribers served by their wholesale roaming partners, including the subscribers of any MVNOs operating on their wholesale roaming partners' networks." plus the following sentence: "The wholesale roaming customer must ensure that any access to [incumbent]'s network on behalf of its reseller or MVNO customers occurs on the same basis, and with the same limitations, as set out in this wholesale roaming tariff."

¹ Telecom Decision CRTC 2017-56, *Wholesale mobile wireless roaming service tariffs – Final terms and conditions* (Decision 2017-56), paragraphs 31, 32 and 78.

78. The Commission may use some or all of the following indicators to help it determine whether the wholesale roaming customer has misused or allowed its MVNO to misuse the service, depending on the particular facts of the case:
- it has deliberately issued phone numbers from exchanges outside its home network footprint to its end-users;
 - it has sold or marketed its services outside its home network footprint;
 - it has sold or marketed its services in a manner that would result in its end-users gaining permanent access to the incumbent's network;
 - it has provided its end-users with a device that has for its sole or predominant purpose permitting them to gain permanent access to the incumbent's network; and
 - it has otherwise failed to take commercially reasonable steps to limit roaming on the incumbent's network by its end-users to incidental levels that are within the scope of the service. In considering this factor, the Commission may take into account evidence of broad traffic patterns and network use trends concerning a significant proportion of wholesale roaming customer or MVNO end-users. [emphasis added]

9. The foundational Commission wholesale roaming rule against which TNW's responses must be assessed is that the provision of our wholesale roaming service to TNW is meant to provide TNW's end-users with "incidental" wireless connectivity and not permanent wireless access.

10. To assess whether TNW would respect the incidental roaming principle, one must assess whether the connectivity which TNW's users obtain via public Wi-Fi networks counts as connectivity with TNW's home network.

11. Despite the clear rule stating that connectivity to public Wi-Fi does not count as connectivity to TNW's home network, TNW adheres to its position that end-users outside its home network and obtaining Wi-Fi connectivity utilizing its iPCS functionality, are connected to TNW's home network or otherwise expand TNW's home network and fall within the ambit of connectivity to it. TNW appears to assert that its users' connectivity to Wi-Fi actually expands the TNW home network when utilizing iPCS as follows:

An iPCS user has remote access to its Home Network which is materially different from a Wi-Fi-first over the top service. At all times, a Mobile Station (MS) as defined in the GSMA standards [footnote removed] and into telecom regulations is considered to be within an operator Licensed Spectrum Area when the device is **actually using license spectrum and at the same time is located within that territory**. When a device loses all its abilities to use a 3GPP radio and loses abilities to be attached directly to a RAN using licensed spectrum because the IMSI is not present into the SIM module of the smartphone device, **then that device is not within a licenced operator territory**. An iPCS user smartphone device on Wi-Fi is not in a "nowhere position", but rather at home on a Wi-Node through a Wi-Fi connection without being attached or using spectrum resources of any VPMN RANs.² [Emphasis in original]

² TNW 27 August 2018 Response to Requests for Information, page 11, paragraph 14.

12. This assertion is unclear, but appears to suggest that a TNW end-user customer connected via public Wi-Fi in Toronto, for example, is somehow "at home" on TNW's network in Northern British Columbia or Yukon. This is obviously incorrect. The Commission's clear rules say this Wi-Fi connectivity is not within range of the TNW home network.

13. TNW made substantially the same argument in its 8 September 2017 submission in the TNC 2017-259³ proceeding into the reconsideration of the Commission's Decision 2017-56 roaming framework, as follows:

14. Remote access to a PMN in itself cannot be considered an extension to the home PMN whether remote access is via Wi-Fi, Bluetooth, USB Ethernet cable or other means. An extension to a network operator's HPMN can only occur if a subscriber's device is connected to a visited PMN ("VPM") using licensed spectrum while at the same time connected to (for example) public or private Wi-Fi while passing voice/text/data through Wi-Fi and while retaining 3G/LTE connectivity through a VPMN.

15. While this may be considered by some in the industry as looking for loopholes in the regulations, it is in fact a very valid point and key to determining what constitutes use of an operator's HPMN, whether an HPMN is "extended" (and therefore the need to expand the definition or at least clarify what constitutes a home network) and when a subscriber is roaming on a VPMN.⁴

14. It follows from the Commission's ruling maintaining the definition of a home network in Decision 2018-97⁵, that our Wholesale Roaming tariff continues to apply. Accordingly, in addition to TNW's proposal being contrary to the Commission's roaming framework from TRP 2015-177 and Decision 2017-56, TNW's roaming proposal, as it relates to its iPCS solution, would also violate our National Wholesale Roaming Service tariff⁶ on the basis of the following points:

- Under the definition of "Home Network" or "HPMN" in Item 100.1(17), TNW's home network expressly excludes any public Wi-Fi network.
- Because, contrary to TNW's claims and its preamble to responses to RFIs 12 to 15, TNW's end-user's connectivity to public Wi-Fi would not be considered part of TNW's home network, its use of the roaming service would fall outside the definition of "Roaming" in Item 100.1(a)(23). That provision states: "For greater certainty, the wholesale roaming services provided under this tariff item and prescribed by the CRTC enable retail End-users of a wireless carrier (i.e., the home network carrier, hereunder the Wholesale Roaming Customer) to automatically access voice, text and data services by using a visited wireless carrier's network (Also referred to as "the host network", hereunder the Company Available PMN), including the RAN(s), on an incidental basis and not on a permanent basis."

³ Telecom Notice of Consultation CRTC 2017-259, *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*.

⁴ See: TNW 8 September 2018 Submission in the matter of TNC 2017-259, paragraphs 14 and 15.

⁵ Telecom Decision CRTC 2018-97, *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*.

⁶ See: Bell Mobility Access Services Tariff for Interconnection with Carriers and other Service Providers, CRTC 15011, Item 100.

- Therefore, under our suspension and termination and other remedies powers pursuant to tariff Item 100.19(a)(3), because TNW would make far more than "incidental use" of the roaming service, we would be fully within our rights to suspend or terminate TNW's use on the basis that TNW, as the customer, would be using the network in a manner other than as permitted under the tariff.

15. We note TNW's response 7, confirming that it holds only two rural and remote cellular spectrum licences, and its responses 8(a) and (b) showing an uncertain number of operational towers. To the extent TNW is permitted to utilize its iPCS solution to effectively ride on public Wi-Fi and otherwise resell the networks of wireless carriers, nothing would prevent an unlimited number of similarly situated providers from replicating this model.

16. By its own admission, because its business model is reliant not on serving consumers in its home licensed territory, but rather providing a national retail service, TNW has no real economic incentive and little need to invest in towers in its licensed territory. The result would be permanent roaming across the networks of the national and regional carriers. Such a result would be antithetical to the Commission's decision in Decision 2018-97 not to expand the definition of home network precisely because of the negative impacts on investment as follows:

69. The effect of broadening the definition of "home network" to include other forms of connectivity, including Wi-Fi, would allow any company to access the wholesale roaming tariff as if they were a wireless carrier, without the necessity of having invested and built one's own wireless network. One consequence of this action would be to disincite existing wireless competitors from investing in their networks, since they could more broadly rely on the national wireless carriers' networks to offer service outside their traditional network footprints.

74. In conclusion, while the introduction of resale competition could result in some improvement to affordability, the Commission considers that the potential negative impact on investment outweighs that benefit.

17. It is hardly surprising that virtually every wireless carrier has opposed the TNW Application at every stage for these very reasons. TNW's claims that its iPCS model would promote facilities based competition should be rejected.

Continuing doubt regarding TNW's compliance with its spectrum licence COLs

18. TNW's responses raise more doubt as to whether TNW is compliant with its spectrum implementation and rollout obligations. These are found in TNW's two spectrum licences⁷ as COL 13, which states as follows:

13 Implementation of Spectrum Usage

The Licensee must demonstrate to the Department that the spectrum has been put into use. By January 31st 2015, the licensee must provide the Department with an updated report including detailed coverage maps of each installed antenna site as well as details on the services and equipment currently being offered to consumers and on the licensee's retail/distribution network. The licensee must establish that its services are being provided to a level of coverage

⁷ See TNW 4 September 2018 response 7, Appendices J and K.

of at least 50% of the population in the licence area or provide some other indicator of usage acceptable to the Department.

19. In its 13 February 2017 Compliance Report to ISED⁸, addressing the spectrum implementation requirements of COL 13, TNW reported as follows:

On February 13, 2017, RuralCom demonstrated in this report to ISED that the spectrum has been put into use by providing fully operational voice services to customers in the licence area (required services).

On February 13, 2017, RuralCom provided this report to ISED indicating that the required services are being offered to customers and provided to a level of coverage of at least 50% of the population in the licence area.

20. However, this report to ISED stands in sharp contrast with the Commission's factual finding, made only eight months later, dated 23 October 2017, dismissing TNW's request for interim relief in this proceeding. That evidentiary finding was based on TNW's own evidence (i.e., in its 3 July 2017 complaint and its 14 August 2017 reply comments). The Commission reviewed this evidence and concluded "there is no evidence that TNW has launched wireless services using either traditional or iPCS wireless technology". To the best of our knowledge, TNW never filed a subsequent submission challenging or otherwise purporting to correct the Commission's 23 October 2017 factual finding on that point.

21. TNW's 13 February 2017 assurance to ISED that it was then serving at least 50% of the population of its licence territory is further contradicted by TNW's response to RFI 7(d). That RFI specifically asked TNW to confirm whether the spectrum licences held by TNW are "currently being used by TNW to provide telecommunications services to the public for compensation." TNW's response to the Commission was that it cannot use its licences, as follows:

TNW requires roaming agreements in order to launch its service to the public on the basis that TNW as with any other small wireless provider, cannot launch proper wireless service without roaming agreements (which is the rationale for the mandatory nature of roaming agreements).

22. It is unclear on what factual basis TNW was able to report to ISED on 13 February 2017 that it was utilizing its spectrum and providing services to more than 50% of the population in its licensed territory given TNW's 4 September 2018 admission in response 7(d) that it "cannot launch proper wireless services".

23. This statement adds further doubt about the correctness of TNW's 13 February 2017 report to ISED. Its statement that it "cannot" launch service suggests that TNW has never launched any services (traditional or iPCS-based) and has no intention of doing so unless and until the Commission rules favourably on the merits of the TNW Application.

24. At a minimum, TNW's inconsistent statements regarding its network deployment over time, including most recently in these RFI responses, suggest that the Commission and/or ISED should investigate and resolve these inconsistencies.

⁸ See TNW 4 September 2018 responses, Appendix N.

25. For all of the foregoing reasons, and consistent with our earlier submissions, we respectfully request that the TNW Application be dismissed in its entirety.

Yours truly,

[Original signed by P. Gauvin]

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