

August 4, 2017

FILED VIA GCKEY

Ms. Danielle May-Cuconato

Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau, Quebec
K1A 0N2

Dear Ms. May-Cuconato,

Re: TNW Wireless Inc. Part 1 Application relating to Wholesale Roaming Agreements required under Telecom Regulatory Policy 2015-177 (CRTC File 8620-R63-201705675) – Ice Wireless intervention

1. Ice Wireless Inc. (“Ice Wireless”) is hereby submitting its intervention in the proceeding initiated by the above-cited TNW Wireless Inc. (“TNW”) Part 1 Application (“TNW Application”) and the relief requested therein.
2. On 28 July 2017, Ice Wireless submitted a procedural request regarding the TNW Application (the “Procedural Request”). No parties opposed the Procedural Request and as of the date of this submission, no Commission decision has been rendered regarding this request. The Procedural Request sets out Ice Wireless’ complete views regarding the TNW Application and therefore constitutes Ice Wireless’ intervention in this proceeding. For ease of reference, the contents of the Procedural Request are set out in the balance of this submission.
3. Ice Wireless requests that the Commission: (1) consider the nature of TNW’s iPCS service and whether it should fall within the definition of a “home network” as part of the proceeding initiated by Telecom Notice of Consultation CRTC 2017-259¹ (“TNC 2017-259”) to reconsider the final terms and conditions for wholesale mobile wireless roaming service established Telecom Decision CRTC 2017-56² (TD 2017-56”); and (2) consider as a separate matter, whether Bell

¹ Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service, Telecom Notice of Consultation CRTC 2017-259, 20 July 2017.

² *Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, Telecom Decision CRTC 2017-56, 1 March 2017.

Mobility Inc. (“Bell Mobility”) and TELUS Communications Company (“TCC”) should be required to enter into a wholesale roaming agreement with TNW following the Commission’s decision in the TNC 2017-259 proceeding.

Background

The TNW Application

4. On 3 July 2017, TNW filed the TNW Application, which relates to Bell Mobility and TCC refusal to provide TNW with wholesale roaming agreements. As explained in the TNW Application³, these carriers have refused to provide TNW with wholesale roaming agreements due to concerns that TNW’s mobile service and WIFI-first iPCS technology would not comply with wholesale roaming tariffs, TD 2017-56 and Telecom Regulatory Policy CRTC 2015-177⁴.

5. In order to address this situation, the TNW Application calls for clarification from the Commission regarding whether iPCS technology is compliant with Telecom Decision CRTC 2017-56. It bears reproducing TNW’s specific calls for Commission clarification given the parallels that can be drawn with the matters under review in the context of the TNC 2017-259 proceeding. Specifically, TNW outlines the following policy issues that require Commission clarification at paragraph 19 of its Application:

- a. Whether the iPCS technology is compliant with CRTC 2017-56 based on the technology that is described in the Application;
- b. Whether a licensed operator that is required to provide services under CRTC 2015-177 can unilaterally determine what is a compliant technology;
- c. Whether a licensed operator under 2015-177 can refuse to provide a mandated wholesale roaming agreement by insisting on provisions in advance and “through the back door” that have been specifically excluded under CRTC 2017-

³ Section 1.2 of the TNW Application.

⁴ Regulatory framework for wholesale mobile wireless services, Telecom Regulatory Policy CRTC 2015-177, 5 May 2015.

56 thereby de facto allowing incumbents to enforce these provisions contrary to the spirit of the Commission's determination;

- d. Whether a licensed operator under 2015-177 can refuse to provide a wholesale roaming agreement based on its belief that misuse or non-compliance "might" occur rather than actually having occurred, rather than having the Commission make such adjudication in the proper forum as contemplated by CRTC 2017-56;

6. Paragraph 21 of the TNW Application goes on to request final relief consisting of: (1) a Commission order for Bell Mobility and TCC to enter into wholesale roaming agreements with TNW and proceed with related interconnection processes; (2) a Commission order for Bell Mobility and TCC not to require certain exclusions from their tariffs as pre-conditions to entering into wholesale roaming agreements; (3) a Commission order for Bell Mobility and TCC not to refuse to provide wholesale roaming agreements on the basis of any perceived misuse they deem may occur; and (4) a Commission determination as to whether TNW's iPCS technology complies with TD 2017-56 and use of iPCS while on Wi-Fi using Wi-Node cannot be deemed roaming.

7. As will be demonstrated in the section that follows, the Commission, by way of the TNC 2017-259 proceeding, is undertaking a broader review of the final terms and conditions for wholesale roaming services that will ultimately resolve the dispute underpinning the TNW Application. By extension, the final relief sought in the TNW Application will be rendered moot by the outcome of TNC 2017-259.

TNC 2017-259

8. On 20 July 2017, the Commission issued TNC 2017-259 to reconsider TD 2017-56 regarding final terms and conditions for wholesale wireless roaming service. This initiative was a response to Order in Council P.C. 2017-0557, which, among other things, directed the Commission to reconsider whether broadening the definition of "home network" to consider other forms of connectivity, such as Wi-Fi, would have a positive impact on the affordability of retail mobile wireless services to consumers in Canada.

9. TNC 2017-259 sets out eight questions that invite parties to comment whether a different conclusion than that reached in Telecom Decision 2017-56 is warranted with respect to the issue of how the concept of “home network” should be defined. The questions included in TNC 2017-259 include: What other forms of connectivity could technically constitute a home network? And Should other forms of connectivity, such as Wi-Fi, be included in the definition of “home network” If so, which ones should be included?

Procedural request

10. The issues raised in the TNW Application and the matters under review in the TNC 2017-259 proceeding overlap completely. As aforementioned, the dispute between TNW and Bell Mobility / TCC will be resolved one way or another following the Commission’s determinations on the definition of “home network” in the decision resulting from the TNC 2017-259 proceeding. Thus, Ice Wireless submits that it would be more appropriate for TNW to advance its concerns relating to the definition of “home network” vis-à-vis its iPCS technology in the context of the broader TNC 2017-259 proceeding. As a separate matter, the Commission can then make a determination on whether Bell Mobility and TCC should be required to enter into a wholesale roaming agreement with TNW following the Commission’s decision in the TNC 2017-259 proceeding.

11. There are no benefits to maintaining separate proceedings in these circumstances. Doing so will only needlessly consume limited industry regulatory resources by requiring interested parties to participate in a redundant regulatory proceeding. Likewise, separate proceedings create an unnecessary administrative burden for the Commission by requiring it to manage an additional process and public record in addition to preparing a separate standalone decision.

12. There is also an additional procedural concern resulting from the significant overlap between the TNW Application and the TNC 2017-259 proceeding. The deadlines for submissions in the TNC 2017-259 proceeding will follow the deadline for TNW’s reply comments in the TNW Application proceeding. Consequently, parties in the TNC 2017-259 proceeding will have an opportunity to comment on submissions that ought to constitute an applicant’s (i.e. TNW) final reply in a closed proceeding.

13. All of these consequences of maintaining separate proceedings can be avoided should the Commission grant Ice Wireless' request to defer consideration of the TNW Application in the context of the TNC 2017-259 proceeding. Importantly, this procedural request will not prejudice TNW. TNW will retain its right to be heard on the matters raised in its Application. Furthermore, Ice Wireless' procedural request is unlikely to affect the timing of any relief that TNW would stand to obtain if separate proceedings were maintained. Given the significant overlap between the TNW Application and the TNC 2017-259 proceeding, Ice Wireless expects that the Commission would issue decisions in both of these proceedings concurrently. It also bears noting that as of the date of this filing, no process has been established to address interim relief requested in the TNW Application.

14. For all of these reasons, Ice Wireless urges the Commission to defer consideration of the TNW Application and the relief requested therein, as described in paragraph 3 of this intervention.

Sincerely,

Samer Bishay
President & CEO
Ice Wireless Inc.

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