

Howard Slawner

350 Bloor Street East, 6th Fl
Toronto, Ontario M4W 0A1
rwi_gr@rci.rogers.com
o 416.935.7009
m 416.371.6708

August 4, 2017

Ms. Danielle May-Cuconato
Secretary-General
Canadian Radio-television and
Telecommunications Commission
1 Promenade du Portage
Ottawa, ON K1A 0N2

Filed via GCKey
CRTC File No: 8620-R63-201705675

Dear Ms. May-Cuconato:

Re: Rogers Communications Canada Inc. – intervention in TNW Wireless Inc.’s Part 1 application - Wholesale Roaming Agreements required under Telecom Regulatory Policy CRTC 2015-177

1. This intervention is filed by Rogers Communications Canada Inc. (“Rogers”) in response to the Part 1 application filed by TNW Wireless Inc. (“TNW”) on July 5, 2017.
2. In its application, TNW named Bell Mobility Inc. (“Bell”) and TELUS Communications Company (“TELUS”) as respondents because they refused to enter into roaming arrangements with TNW. However, TNW has implied that it will eventually ask Rogers to provide it with wholesale mobile wireless roaming service as well¹. As such, Rogers respectfully requests that the Commission give equal consideration to the following comments by Rogers.
3. The issues raised in TNW’s application were already addressed in Telecom Decision CRTC 2017-57, *Ice Wireless Inc. – Application regarding roaming on Rogers Communications Canada Inc.’s network by customers of Ice Wireless Inc. and Sugar Mobile Inc.* (“TD 2017-57”). Because they will roam permanently and not incidentally, iPCS customers who reside outside of TNW’s home territory in Northern Canada are not be eligible for roaming service under the mandated roaming regime. As such, the Commission should deny TNW’s requests to compel Bell and TELUS to provide it with wholesale roaming service.
4. Failure by Rogers to respond to any particular position or argument of TNW’s Part 1 application should not be interpreted as agreement with such position or argument.

Introduction

5. TNW is a regional service provider with a small mobile wireless network providing service in rural and remote parts of British Columbia and the Yukon. It holds two licences from the Ministry of Innovation, Science and Economic Development (ISED) for 25 MHz of Cellular spectrum that it acquired through ISED’s *Policy for the Provision of Cellular Services by New Parties*.

¹ B. Jackson, "TNW Wireless asks CRTC to compel Bell, Telus to make wholesale roaming agreements", IT World Canada, 2017. [Online]. Available: <http://www.itworldcanada.com/article/tnw-wireless-asks-crtc-to-compel-bell-telus-to-make-wholesale-roaming-agreements/394617>. [Accessed: 07- Jul- 2017].

6. TNW is in the process of deploying its proprietary “iPCS” technology. As explained in its Part 1 application, iPCS consists of a smart phone based software application and a TNW subscriber identity module (SIM) card. When connected to an available Wi-Fi hotspot, an iPCS customer’s handset remotely connects back to TNW’s mobile wireless network in Northern Canada². This connection back to TNW’s mobile wireless network apparently activates some portion of TNW’s radio access network (RAN), including its licensed radio spectrum. When out of range of a Wi-Fi hotspot, TNW’s service is designed to operate using traditional mobile wireless roaming, connecting to the available RAN of one of its wholesale roaming service providers.
7. TNW asserts that the connection back to its mobile wireless network and RAN satisfies various regulatory requirements which dictate that TNW’s customers must be primarily served by TNW’s own mobile wireless network³.
8. Prior to launching its service, TNW requested both Bell and TELUS to provide it with wholesale roaming service. After some discussion between the carriers, TELUS denied TNW’s request while Bell stopped communication with the carrier⁴. For its part, TELUS wrote that TNW’s iPCS service was not compliant with ISED’s Conditions of Licence and various Commission decisions related to wholesale roaming service⁵.
9. In its Part 1 application, TNW seeks both interim and final relief. In brief, TNW’s interim request for relief is for the Commission to direct Bell and TELUS to provide it with access to their wholesale roaming services under the terms and conditions of their mandated wholesale roaming tariffs. TNW’s request for final relief again asks that the Commission direct Bell and TELUS to provide it with wholesale roaming service, and additionally asks that the Commission review its iPCS service to determine whether it is in compliance with the relevant regulatory decisions.
10. Despite TNW’s assertions, the Commission’s determinations from its wholesale roaming decision, its decision on the final terms and conditions of the national wireless service providers’ tariffs, and its related decision ruling against Ice Wireless’ Sugar Mobile service do not support the legitimacy of TNW’s iPCS service.
11. For these reasons, which Rogers will explain in greater detail below, the Commission should deny TNW’s requests for interim and final relief.

Wholesale Roaming Terms and Conditions

12. In Telecom Regulatory Policy CRTC 2015-177 (TRP 2015-177), the Commission directed Bell, TELUS, and Rogers to provide wholesale domestic roaming service to Canada’s regional mobile wireless service providers⁶. Some of the initial terms and conditions of this mandated roaming service were also set out in TRP 2015-177, although the majority of the service’s terms and conditions were developed through a follow-up process that concluded with Telecom Decision CRTC 2017-56 (“TD 2017-56”).
13. As will be explained in greater detail later in Rogers’ intervention, TD 2017-56 is principally focused on the type of access to a national service provider’s network that wholesale roaming

² TNW’s Part 1 application, para. ES-8.

³ Ibid., para. 6.

⁴ Ibid., paras. 11, 17.

⁵ Ibid., para. 14.

⁶ TRP 2015-177, para. 129.

- provides, namely incidental and not primary. It also covered related conditions of the service, allowing in-footprint roaming and reasonable amounts of traffic off-loading, for example.
14. In parallel with the TRP 2015-177 follow-up process, Ice Wireless Inc. ("Ice Wireless") launched its Sugar Mobile service. The service consists of a smartphone-based application that routes customers' voice calls and SMS messages through a Wi-Fi connection when one is available. Ice Wireless does not own or operate a carrier Wi-Fi network; rather Sugar Mobile customers use publicly available Wi-Fi hotspots in coffee shops or in their own houses, for example. When out of range of a Wi-Fi connection, users connect to Ice Wireless' mobile wireless network if they are present in Ice Wireless' home territory or one of Ice Wireless' roaming partners' networks if not. Ice Wireless sold the Sugar Mobile service nationwide, with the majority of its customers living outside of Ice Wireless' remote operating area.
 15. Shortly after Ice Wireless launched Sugar Mobile, Rogers moved to terminate its roaming arrangement with Ice Wireless as the service was in breach of several of the arrangement's terms and conditions. In response, Ice Wireless launched a Part 1 application with the Commission. In its application, Ice Wireless requested that the Commission require that Rogers provide Sugar Mobile with wholesale roaming service.
 16. The Commission issued its decision, TD 2017-57, in March 2017, on the same day it issued TD 2017-56. The Commission denied Ice Wireless' request for final relief, explaining that the Sugar Mobile service was not compliant with TRP 2015-177 and ran contrary to the Commission's greater policy objectives to promote investment in facilities. The Commission's decision specifically rules that a Wi-Fi network is not a public mobile network⁷. Furthermore, only Sugar Mobile customers residing within Ice Wireless' own network footprint were entitled to roam outside of it. To comply with the Commission's decision, Ice Wireless has stopped selling Sugar Mobile outside of its home territory where it operates a mobile wireless network.

TNW's iPCS Service

17. TNW's service is very similar to what Sugar Mobile originally offered. Like Sugar Mobile, TNW iPCS customers insert a TNW SIM card into an unlocked smart phone and then install TNW's iPCS software application⁸. TNW customers are provided unlimited North American voice calls and text messaging when connected to a Wi-Fi hotspot. TNW intends to also offer customers 500 megabytes (MB) of mobile wireless data per month to use when out of range of a Wi-Fi hotspot, ostensibly as "roaming" on a national carrier's network. This data can be used for voice calls and SMS as well. If customers require more mobile wireless data, they can purchase additional 100 MB increments.
18. Just like Sugar Mobile, TNW will presumably sell iPCS inside its remote home territory, accessing TNW's traditional mobile wireless network when not connected to a Wi-Fi hotspot. However, just like Sugar Mobile again, its key market is nationwide, far from its network footprint. TNW plans to sell iPCS across Canada, meaning that its customers will roam on TNW's roaming providers' mobile wireless networks when out of range of a Wi-Fi hotspot. iPCS customers who live far from TNW's home territory will almost never directly connect to its public mobile wireless network.

⁷ TD 2017-57, paras. 24 – 26.

⁸ "TNW Wireless: How it works ", tnwcorp.com, 2017. [Online]. Available: <http://wireless.tnwcorp.com/how-it-works/>. [Accessed: 27- Jul- 2017].

19. While mimicking Sugar Mobile for the most part, TNW's service claims to differ in one approach. TNW has developed iPCS so that it connects all Wi-Fi sessions back to its mobile wireless network in Northern Canada⁹. This connection back to its wireless network apparently utilizes TNW's RAN and its licensed Cellular spectrum. TNW however built this unnecessary, indirect connection for purely regulatory reasons.
20. TNW has designed its iPCS system to connect its Wi-Fi based end users back to its RAN so that TNW can falsely claim that these customers are primarily served by its mobile wireless network. By claiming that Wi-Fi usage outside of its network footprint in fact is using its RAN, TNW hopes to inflate the usage amounts on its own network in order to argue that any usage on visited networks is incidental. However, there is no technical need for the iPCS service to utilize any part of TNW's RAN and its licensed spectrum while a customer is roaming on another company's RAN and licensed spectrum or is using a Wi-Fi hotspot thousands of kilometres away. In fact, there would be substantial costs associated with the connection back to TNW's mobile wireless network that simply do not need to be incurred to provide voice, SMS, or data services to customers that are roaming or using a Wi-Fi hotspot in another province. Why would a call made in downtown Toronto use any antennas or radio spectrum in the Yukon? Such a network design clearly contradicts common sense. The only purpose of the connection back to TNW's mobile wireless network is a transparent attempt to satisfy the requirement that roaming must be incidental and not permanent as required by TD 2017-56. TNW is also attempting to satisfy ISED's requirement that its customers must be served by its own home network first.
21. Both of Canada's telecommunications regulators, the Commission and ISED, clearly expect that a service provider's customers would directly access their service provider's RAN and network when they are not roaming. That is, the customers would be physically present in the service provider's home territory, and their handsets would directly and exclusively connect with the service provider's RAN using the service provider's licensed spectrum.
22. Tellingly, TNW's Part 1 application does not explain a single tangible benefit that the connection back to its mobile wireless network and RAN provides. This betrays the fact that it is simply intended to exploit what TNW views as a loophole in the Commission's roaming requirements.
23. In TD 2017-57, the Commission wrote that "even if there is some minimal connection between the end-user and Ice Wireless's network backbone, the use of public Wi-Fi by a Sugar Mobile end-user outside Ice Wireless's territory ... would not amount to the use of a home network for the purpose of roaming."¹⁰ This determination holds in the case of TNW as well. Given that the sole purpose of the iPCS service's connection back to TNW's home mobile network is to exploit a perceived regulatory loophole in TD 2017-56 and provides no benefit to its end users, it can certainly be described as "minimal." As was the case with Sugar Mobile, TNW has failed to provide any evidence that the connection back to its home network and RAN is necessary. As such, an iPCS customer remotely connected to TNW's mobile wireless network through a Wi-Fi hotspot should not be considered to be primarily served by TNW's home network. This means that TNW's iPCS does not qualify for roaming under ISED's Conditions of Licence or the Commission's mandated roaming regime.

⁹ TNW Part 1, para. 54.

¹⁰ TD 2017-57, para. 29.

Application of the Commission's Excessive Roaming Indicators to TNW's iPCS Service

24. Since TNW is not truly using its RAN when its customers make Wi-Fi calls, it fails to meet the CRTC's test for incidental roaming. The requirement that mandated wholesale roaming is meant to provide only incidental, and not permanent, access to the national service providers' networks was first established in TRP 2015-177¹¹ and unambiguously reinforced in TD 2017-56 where the Commission "[confirmed] that mandated wholesale roaming provides incidental, and not permanent, access to the incumbents' networks."¹²
25. In setting the final mandated roaming terms and conditions in TD 2017-56, the Commission decided that only a limited amount of excessive roaming should be allowed on the national service providers' networks in special circumstances. The Commission described legitimate incidental excessive roaming as customers "temporarily roaming outside of their home carrier's network footprint."¹³ This would allow a wholesale roaming customer's end users to travel out of their home territory for extended periods of time to attend to family medical emergencies or similar situations.
26. Despite directing the national service providers to remove the bulk of the excessive roaming clauses from their tariffs, the Commission retained five indicators to help it determine whether a wholesale roaming customer is engaging in incidental roaming or excessive roaming on a widespread basis¹⁴. It is appropriate to use these indicators to determine if TNW's proposed service will misuse the mandated wholesale roaming service provided by the national service providers. The five indicators are given in the following excerpt from the decision.

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.*

¹¹ TRP 2015-177, para. 123.

¹² TD 2017-56, para. 31

¹³ Ibid., para. 70.

¹⁴ Ibid., para. 78

27. Although TNW has not yet launched its iPCS service, it has provided sufficient information to apply the Commission's indicators. In a December 2016 press release¹⁵, TNW explained how it will provide phone numbers to its subscribers:

iPCS subscribers will be given a default phone number for their service from within the TNW Wireless home network but will have an operating iPCS phone number from a location of their choosing in North America. Subscribers will also have the option of keeping their existing phone number.

28. Clearly, TNW will issue phone numbers to customers from anywhere in North America. However, it only operates a mobile wireless network using licensed spectrum in small sections of Northern British Columbia and the Yukon. Its customers who live outside of its small and remote home territory will likely select a phone number from a local exchange. They are highly unlikely to use the underlying phone number from TNW's home territory. TNW's service fails the Commission's first test.
29. The Commission's second indicator asks where the wholesale roaming customer will sell its service. In the same press release cited above, TNW explains that its SIM cards will be "offered free via online ordering or free through distributors. TNW Wireless will not have any physical points of sale outside its home public mobile network area."¹⁶
30. Whether TNW is distributing its SIM cards through brick and mortar retail locations or online is irrelevant. The Commission's indicator simply asks where the wholesale roaming customer is marketing or selling their product and not how. TNW is selling its service across the country with no limitation on location. And given its small and remote home territory, the majority of TNW's customers are likely to live far from its network and unlikely to ever directly connect with it. For example, an iPCS customer in Halifax would be predominantly served by one of TNW's roaming partners. TNW would in effect be reselling its wholesale roaming provider's network since that customer would likely never be directly served by TNW's own network. Thus TNW's service fails the second test as well.
31. The Commission's third indicator asks if the wholesale roaming customer is selling their service in a way that would result in its customers permanently roaming. Simply put, TNW intends to sell its service far from its home territory. Its end users will likely never directly connect to its network or to its RAN. As explained above, while the iPCS service might indirectly connect TNW's customers to its network and utilize its licensed spectrum when they are connected to a Wi-Fi hotspot elsewhere in the country, this connection is unnatural, inefficient, and simply not necessary. There is no technical or operational requirement for TNW's iPCS technology to function in this manner. It is solely designed to exploit a supposed ambiguity in the Commission's wholesale mandated roaming decisions.
32. In its Part 1 application, TNW states that its iPCS technology was "designed to be compliant both with the letter and spirit of the regulations." In fact, it is not compliant with either. As explained above, the Commission has already thoroughly discounted unnecessary connections back to an operator's home mobile network in TD 2017-57.

¹⁵ "TNW Networks Announces Deployment of iPCS Mobile Service and its Entrance into the Canadian Mobile", Newswire.ca, 2017. [Online]. Available: <http://www.newswire.ca/news-releases/tnw-networks-announces-deployment-of-ipcs-mobile-service-and-its-entrance-into-the-canadian-mobile-market-to-provide-nationwide-mobile-services-605594386.html>. [Accessed: 27- Jul- 2017].

¹⁶ Ibid.

33. As for the “spirit” of the Commission’s decisions on mandated wholesale roaming, TNW’s end users customers might utilize its mobile wireless network and RAN even when they are not in its home territory, but their handsets are not directly or exclusively connecting with its network through TNW’s licensed spectrum. Rather, their end user’s handsets are connecting to the network remotely through licence-exempt Wi-Fi frequencies and the public Internet. This is not what the Commission intended when directing that an end user should be primarily served by their service provider’s own network.
34. Once the iPCS service’s artificial connection back to TNW’s home mobile network has been discounted, it becomes apparent that TNW’s iPCS service will lead to unabashed and widespread permanent roaming on the national service providers’ networks. The Commission wrote in its decision against Sugar Mobile that “to the extent that Sugar Mobile end-users access RCCI’s network without accessing a home network – that is, a cellular, rather than public Wi-Fi, network – they cannot be considered to be using RCCI’s network only incidentally. This would remain the case regardless of the actual amount of data consumed on the network or whether RCCI is compensated for the use of its network.¹⁷” The circumstances are identical for TNW. The vast majority of TNW’s end users will spend the entirety of their mobile wireless network usage on TNW’s wholesale roaming providers’ networks. This is permanent, not incidental, roaming. TNW’s service therefore fails the Commission’s third test.
35. The Commission’s fourth indicator asks if the wholesale roaming customer has provided its end users with a device that is designed to gain them permanent access to its roaming providers’ networks. TNW’s iPCS service requires its customers to insert a TNW SIM card into an unlocked smartphone. TNW will distribute these SIMs for free through its website¹⁸. Once a user powers on their handset, they are automatically prompted to install the iPCS software application¹⁹. This combination of TNW’s SIM and application represents the device that it provides to its end users. TNW’s device is programmed to establish a traditional mobile wireless roaming connection with TNW’s roaming providers when the handset is out of range of a Wi-Fi hotspot or not in TNW’s home territory. This in itself is not unusual. However, the greater context as described above is that TNW is planning to distribute its ‘device’ to customers far from its own mobile wireless network. While its SIM might preferentially connect to TNW’s mobile wireless network in the presence of multiple options, this will generally never be the case as most customers will live far from TNW’s home territory. TNW’s service fails the Commission’s fourth test as well.
36. The Commission’s fifth and final indicator asks if TNW “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 its December 2016 press release, TNW provides their “Wireless Fair Use Policy.”

Subscribers using iPCS in Canada will be required to use 50% or more of their total monthly data in the TNW home service region or while connected to any open Wi-Fi which deregisters the device from roaming partner networks via the Wi-Node function.

TNW’s policy is not compliant with TD 2017-56, where the Commission clarified that a public Wi-Fi network is not part of an operator’s home public mobile network²⁰. When a TNW end

¹⁷ TD 2017-57, para. 28.

¹⁸ See footnote 15.

¹⁹ See footnote 8.

²⁰ TD 2017-56, para. 31.

user is connected to a Wi-Fi network they are not legitimately using TNW's home mobile network. TNW's policy would allow its customers to roam without any real limitations. Ice Wireless proposed a very similar fair use policy for Sugar Mobile customers in the TRP 2015-177 follow-up process²¹. The Commission rejected this approach then and the facts have not changed since.

37. TNW's fair use policy should instead compare an end user's total monthly data usage while directly connected to their home network in TNW's home territory with their total monthly data usage on a wholesale roaming provider's mobile network.
38. Because it is not taking commercially reasonable steps to limit its customers' roaming to incidental levels, and is in fact actively seeking to subvert the roaming regime, TNW's iPCS service fails the Commission's fifth indicator as well.
39. TNW's iPCS service fails all five of the Commission's indicators of permanent roaming. TNW will be effectively reselling its wholesale roaming providers' networks. Its end users will not be "temporarily roaming outside of their home carrier's network footprint." In fact, in the majority of cases, they will likely never set foot in TNW's home territory. TNW is attempting to resell its wholesale roaming providers' networks without authorization. iPCS is exactly the type of service that is disallowed by TD 2017-56.

TNW's iPCS Service Contravenes ISED's Roaming Determinations and would not Promote Facilities-Based Investment

40. As a condition of holding licences for commercial mobile wireless spectrum from ISED, mobile wireless service providers must provide each other with domestic wholesale roaming service²². ISED has attached some terms and conditions to this requirement. Specifically relevant to TNW's service are the following:

Roaming must enable a subscriber (a Roamer) already served by the Requesting Operator's network (Home Network) to originate or terminate communications on the Licensee's network (Host Network), wherever technically feasible;

...

Roaming as provided for in this condition does not include resale;

41. TNW's iPCS customers are not truly served by its home network. Rather, the majority of them will be exclusively served by public Wi-Fi hotspots and traditional mobile wireless roaming. TNW's home network's involvement in any iPCS call appears to be superfluous unless the caller is present in TNW's home territory. As such, TNW's iPCS customers who reside outside of its home territory would not qualify for roaming service under ISED's mandated roaming regime.
42. TNW would also effectively be reselling its wholesale roaming providers' networks without their authorization. Only TNW's wholesale roaming service providers will deliver mobile wireless service to TNW's customers who live far from its home territory.

²¹ See, for example, Ice Wireless' May 9, 2016 intervention in the TRP 2015-177 follow-up process, para. 8.

²² ISED CPC-2-0-17 — Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements, Part B, section 2.

43. Because TNW's iPCS customers will likely spend the majority of their usage connected to Wi-Fi hotspots, their handsets will primarily utilize licence-exempt spectrum such as the 2.4 gigahertz (GHz) and 5.8 GHz frequency bands. As Rogers explained in its answer to Ice Wireless' application for final relief in the Sugar Mobile proceeding,

“Wi-Fi connectivity is not in scope of ISED’s Conditions of Licence or TRP 2015-177. Moreover, the right to mandatory roaming does not extend to Wi-Fi service providers. Under ISED’s Conditions of Licence, mandated roaming is limited to the licence holders of the Cellular, Personal Communications Services, Advance Wireless Services, Mobile Broadband Service and Broadband Radio Service bands. Each of these services has designated frequency bands associated with it that do not include Wi-Fi bands. ... The so-called primary service offered by Sugar is a Wi-Fi based service, which does not qualify it for any of the benefits of mandated roaming.”²³

In keeping with ISED's policies, Rogers' wholesale roaming tariff considers use of public mobile networks, not Wi-Fi networks. While TNW operates a mobile wireless network and a RAN using licensed Cellular spectrum, the majority of their iPCS users' handsets will never use TNW's licensed spectrum to connect with its RAN. As is the case with Sugar Mobile, TNW's iPCS is primarily a Wi-Fi based service. It does not qualify for mandated roaming.

44. Both ISED and the Commission have based their wholesale mandated roaming requirements on the need to maintain the incentive for carriers to invest in their own facilities. In TRP 2015-177, the Commission wrote “these determinations will not act as a disincentive for wireless carriers to continue to invest in their network facilities because, among other things, wholesale roaming is incidental access to the network.”²⁴ ISED has written that its spectrum licensing policy “seeks to foster facilities-based competition ... Accordingly, mandated roaming as prescribed in the policy does not include resale.”²⁵
45. If approved by the Commission, TNW's iPCS service will undermine the incentives for TNW and other competitors to invest in their own facilities. TNW is seeking access to Bell's and TELUS' mandated wholesale roaming service at low, cost-based rates. TNW should not have the benefit to roam at these rates without making accompanying investments in its own mobile wireless network. That is the intention of TRP 2015-177 and TD 2017-56. Any investments that TNW has made to launch the iPCS service are simply designed to skirt the Commission's and ISED's existing requirements, not to meaningfully enhance mobile wireless service in Canada.

The Order in Council to Reconsider TD 2017-56

46. On June 1, 2017, the Governor in Council referred TD 2017-56 back to the Commission for reconsideration²⁶. On July 20, 2017, the Commission issued Telecom Notice of Consultation CRTC 2017-259 (TNC 2017-259), initiating the proceeding to revisit TD 2017-56. The Commission must complete its reconsideration by March 31, 2018.

²³ Answer of Rogers on Ice Wireless' Application for Final Relief, March 17, 2016, para. 84.

²⁴ TRP 2015-177, para. 123.

²⁵ ISED Responses to Questions for Clarification on the AWS Policy and Licensing Frameworks, February 27, 2008.

²⁶ Order of the Governor in Council, P.C. 2017-0557, 1 June 2017

47. In its Part 1 application, TNW cites the Government's actions as supportive of alternative service providers like itself²⁷.
48. Despite the Order in Council directing the Commission to re-examine its decision on the final terms and conditions for wholesale roaming²⁸, the roaming regime has not yet changed and there is no requirement for facilities-based mobile wireless carriers to enter into roaming arrangements with Wi-Fi-based service providers such as TNW. TNW can revisit its requests for wholesale roaming service pending the outcome of Telecom Notice of Consultation CRTC 2017-259.

TNW does not Meet the Test for Interim Relief

49. In its application, TNW requested the following interim relief:

“to have the Commission compel Bell and Telus to provide in good faith and on economic terms, Wholesale Roaming Agreements as per their respective Carrier Access Tariffs including all necessary interconnection processes and guidelines as set out by the GSM Association Permanent References with Syniverse within 30 days of the delivery of the Wholesale Roaming Agreements and in the interim, the ability to use iPCS technology until such time as it rules on final relief.”²⁹”

50. Rogers does not believe that the facts support TNW's request for interim relief. TNW correctly states that the test for granting interim relief stems from the criteria established in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311. The three criteria are:
 - a. there is a serious issue to be determined;
 - b. the party seeking relief will suffer irreparable harm if the interim relief is not granted; and
 - c. the balance of convenience, taking into account the public interest, favours retaining the status quo until the Commission has disposed of the issues.
51. Interim relief can only be granted where all three criteria are satisfied. While Rogers does not disagree with TNW's assertion that its Part 1 application represents a serious issue³⁰, Rogers believes that TNW's application does not meet the second and third criteria for interim relief.
52. There is no need to grant interim relief to TNW since, unlike Sugar Mobile, TNW has not yet launched its service and it does not have any customers whose service will be disrupted without interim relief. Thus TNW would not suffer irreparable harm by delaying the launch of its service by a few weeks or months while the Commission decides on its application.
53. The Commission's current roaming policy is that Wi-Fi based service providers, like iPCS or Sugar Mobile, cannot benefit from the mandated wholesale roaming regime which is meant to encourage competitors to invest in their own network facilities. The Commission made this decision in light of the public interest. Additionally, should TNW begin to offer service to customers using its iPCS service, and then lose its request for final relief, it might have to

²⁷ TNW Part 1, paras. ES-15 and ES-16.

²⁸ See TNC 2017-259.

²⁹ TNW Part 1, para. 20.

³⁰ *Ibid.*, paras. 82 – 84.

disconnect some of its customers in short order. As such, the balance of convenience, taking into account the public interest, does not support TNW's request for interim relief.

54. The Commission should therefore deny TNW's request for interim relief.

TNW's Request for Final Relief should be Denied

55. TNW has requested the following final relief from the Commission.

a. TNW requests that the Commission direct both Bell and Telus to provide TNW in good faith with Wholesale Roaming Agreements as per their respective Carrier Access Tariffs under reasonable economic terms and that the Commission direct both Bell and Telus to proceed with all necessary interconnection processes and guidelines as set out by the GSM Association Permanent References and to complete the interconnection through Syniverse's facilities no more than 30 days after the delivery of the Wholesale Roaming Agreement.

b. TNW requests that within the Wholesale Roaming Agreements, the Commission direct Bell and Telus not to make as pre-conditions to an agreement inclusions of clauses and components or even discussions regarding specific contract items as already ruled to be excluded from their tariffs in CRTC 2017-56 such as identified in paragraphs 55, 75 and 106 of the Decision.

c. Further to 21 b. TNW requests that the Commission direct Bell and Telus not to refuse to provide Wholesale Roaming Agreements on the basis of any perceived misuse they deem may occur.

d. TNW requests that the Commission review its iPCS technology for compliance with CRTC 2017-56 and a determination that the use of iPCS while on Wi-Fi using Wi-Node cannot be deemed roaming³¹.

56. For the reasons Rogers has described above, TNW's iPCS service does not qualify for mandated roaming under TRP 2015-177. TNW is attempting to circumvent the Commission's requirement that roaming should only be incidental. When iPCS users are connected to Wi-Fi, they are not meaningfully, directly, or exclusively using TNW's RAN or its licensed spectrum. Because TNW will sell the service outside of its remote home territory, the majority of its users will likely never directly or exclusively connect with its mobile wireless network; instead they would permanently roam on TNW's roaming partners' networks.

57. As for Bell and TELUS denying TNW access to their wholesale roaming service based on "perceived misuse they deem may occur," TNW has provided more than enough evidence that its iPCS service will contravene both the Commission's and ISED's mandated wholesale roaming requirements, as shown by the application of the Commission's indicators of excessive roaming. It would be an inefficient use of scarce resources for a national service provider to onboard TNW as a wholesale roaming customer and then subsequently move to disconnect them in short order in the event that the Commission finds that TNW's service does not comply with the roaming requirements. Based on the facts, Bell and TELUS are more than justified in their refusal to provide roaming service to TNW.

³¹ TNW's Part 1 application, para. ES-19.

58. Finally, TNW's iPCS technology is not compliant with the requirements set out in TD 2017-56. TNW's request for the Commission to find that "the use of iPCS while on Wi-Fi ... cannot be deemed roaming" is illogical as a Wi-Fi connection uses neither the home nor the visited network.
59. In light of the above, the Commission should deny all of TNW's requested forms of final relief.

Conclusion

60. Under normal circumstances, a service provider with a mobile wireless network should generally be entitled to benefit from Canada's domestic roaming regime. However, TNW developed its iPCS service in an attempt to skirt the Commission's and ISED's requirements to roam on an incidental basis. TNW believes that its customers' indirect use of its RAN and licensed frequencies when they are connected to Wi-Fi hotspots satisfies this important requirement. However, no reasonable interpretation of Canada's mandated wholesale roaming requirements supports TNW's viewpoint.
61. TNW's service is not compliant with TRP 2015-177 or TD 2017-56. Importantly, it completely fails to pass the Commission's test for whether a wholesale roaming customer might misuse a national service provider's wholesale roaming service. It also does not comply with ISED's requirements and thus does not qualify for roaming service under ISED's regime either. The national service providers should have no obligation to provide TNW with access to their wholesale roaming service.
62. All of this is respectively submitted by Rogers.

Regards,



Howard Slawner
Vice President – Regulatory Telecom
HS/ms

Distribution List

TNW, regulatory@tnwcorp.com
Bell Canada, bell.regulatory@bell.ca
TELUS Communications Company, regulatory.affairs@telus.com

*** End of Document ***