



May 3, 2018

Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
Les Terrasses de la Chaudière
1 Promenade du Portage
Gatineau, QC J8X 4B1

Dear Mr. Doucet:

**Re: Part 1 Application filed by TNW Wireless Inc. for interim and final orders against Bell Mobility Inc. and Telus Communications Company for mandated wholesale roaming agreements under Telecom Regulatory Policy CRTC 2015-177, as amended by CRTC Procedural Letter of March 23, 2018
CRTC File No. [8620-R63-201705675](#)**

1. The following comments of Shaw Communications Inc. ("**Shaw**") relate to an Application filed by TNW Wireless Inc. ("**TNW**") on July 3, 2017 pursuant to Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 seeking interim and final orders against Bell Mobility Inc. ("**Bell**") and Telus Communications Company ("**Telus**") that would require these incumbent mobile wireless carriers to enter into mandated wholesale roaming agreements with TNW under the terms and conditions established in Telecom Decision CRTC 2017-56, *Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, 1 March 2017 ("**Decision 2017-56**"). TNW also requested a declaration that its subscribers' use of "iPCS while on Wi-Fi, using Wi-Node cannot be deemed roaming."
2. On August 4, 2017, Shaw submitted an intervention in respect of TNW's Application ("**Shaw's Intervention**"), expressing its view that the Application should be dismissed in its entirety.

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3. On October 23, 2017, the Commission issued a decision letter denying TNW's application for interim relief and suspending consideration of TNW's request for final relief until the completion of the proceeding launched by Telecom Notice of Consultation CRTC 2017-259, *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*, 20 July 2017 ("**TNC 2017-259**").
4. On March 22, 2018, the Commission issued its Telecom Decision CRTC 2018-97, *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service* ("**Decision 2018-97**"), bringing to a close the TNC 2017-259 proceeding. On March 23, 2018, the Commission issued a procedural letter notifying TNW of its decision and instructing TNW to advise by March 27, 2018, if it still wanted the Commission to address its Application.
5. On March 27, 2018, TNW advised the Commission of its intention to proceed with the Application, and on April 13, 2018, TNW provided to the Commission supplemental information (the "**Supplemental Information**").
6. Consistent with the Commission's procedural letter of March 23, 2018, Shaw's comments herein are intended to supplement Shaw's Intervention by addressing the merits of the Application, as amended by the Supplemental Information, in light of Decision 2018-97.
7. Nothing in Decision 2018-97, or the Supplemental Information provided by TNW in relation thereto, has changed Shaw's assessment of the Application as originally expressed in Shaw's Intervention. In fact, Decision 2018-97 serves to strengthen the conclusions expressed in that submission.

Decision 2017-56 and Decision 2018-97 and the Definition of “Home Network”

8. In Shaw’s view, the central issue in this matter is the same as the central issue in TNC 2017-259, which is the definition of “home network.” The scope of this definition is integral to the wireless roaming regime because it constrains eligibility for mandated wholesale roaming. In Decision 2017-56, the Commission was clear that in order to qualify for mandated wholesale roaming, the roaming customer must establish that the purpose and effect of the wholesale roaming arrangement is to provide the wholesale roaming customer’s subscribers with incidental, and not permanent, access to the incumbents’ host networks.¹ The Commission clarified that for purposes of determining what constitutes “incidental use” of the visited network, and thus determining eligibility for roaming, public Wi-Fi does not form part of the wholesale roaming customer’s home network.² The Commission clearly contemplated the possibility of remote access of a home network via public Wi-Fi facilities and determined it would be contrary to the policy objectives of the *Telecommunications Act* to allow it.³
9. Subsequently, as directed by Order in Council P.C. 2017-0557 (the “**Order in Council**”), in TNC 2017-259, the Commission undertook a comprehensive examination of whether the definition of “home network” should be broadened to include other forms of connectivity for the purpose of wholesale roaming. In the decision that followed, the Commission reaffirmed, for a number of important reasons, its original decision to exclude public Wi-Fi from the definition of “home network.”

¹ Decision 2017-56, paragraph 31.

² Decision 2017-56, paragraph 25.

³ Decision 2017-56, paragraph 29.

10. As a result of Decision 2018-97, the definition of “home network” as set forth in Decision 2017-56 stands. In upholding this fundamental aspect of the wholesale wireless roaming framework, the Commission has provided the wireless market with the much-needed regulatory certainty and stability that will support continued network investment. None of the determinations in Decision 2017-56 were altered as a result of Decision 2018-97.
11. Indeed, in the Supplemental Information, TNW itself acknowledges that several key determinations of Decision 2017-56 were reinforced by Decision 2018-97, including the determinations that public Wi-Fi cannot form part of a wireless carrier’s home network and any roaming may only be incidental.⁴ Therefore, there appears to be no disagreement with respect to the proper interpretation of Decision 2018-97 as it relates to the definition of “home network” and prohibition of permanent roaming.

TNW’s Supplemental Information

12. There is nothing in the Supplemental Information provided by TNW to suggest that it has revised its technical solution or the parameters of its proposed service in the time that has elapsed since it filed its Application.⁵ Therefore, Shaw’s understanding of the technical solution and parameters of its proposed service, which was outlined at paragraph 9 of Shaw’s Intervention, remains the same.
13. Since Decision 2018-97 did not change any of the determinations in Decision 2017-56, the wholesale roaming rules that were set forth by the Commission in Decision 2017-56, remain in full force and effect – a view that, as mentioned above, TNW appears to share. This, paired with the fact that TNW has not, in

⁴ See TNW’s Supplemental Information, paragraphs 59-61.

⁵ In the Supplemental Information, TNW confirms that the technical details of iPCS were described in its previous submissions on the record of the proceeding. See paragraph ES-6 of the Supplemental Information.

the Supplemental Information, provided any information that alters our understanding of the technical solution and service parameters of TNW's proposed service, makes it unnecessary to revisit our arguments opposing TNW's Application that were set forth in Shaw's Intervention. Shaw submits that these arguments are only strengthened by Decision 2018-97, since in it, the Commission confirmed the most pertinent aspects of its prior decision.

Impact of Decision 2017-56, as confirmed by Decision 2018-97, on the Application

14. As observed in Shaw's Intervention, nothing stands in the way of TNW entering into a mandated wholesale roaming agreement under the terms and conditions established by the Commission in Decision 2017-56 in order to provide roaming services to its subscribers that are served through a licensed cellular Radio Access Network or other access facilities that TNW owns and operates.⁶ This is not our understanding of the arrangement in question.
15. Instead, TNW contemplates entering into a mandated wholesale roaming agreement in order to serve subscribers that access its backbone and core network through iPCS while on Wi-Fi.
16. TNW argues that this configuration requiring the use of public Wi-Fi should be properly considered to be acceptable "remote access" of its public mobile network, as opposed to an extension thereof, and therefore compliant with the roaming regime. It argues that TNW subscribers should not be precluded from using Wi-Fi when it can be used extensively by all other facilities-based

⁶ Shaw notes that, in such circumstances, TNW would be eligible for mandated roaming only with respect to the customers situated within its home network footprint.

- subscribers whether or not they are within their service provider's respective public mobile network.⁷
17. This argument demonstrates a fundamental misunderstanding of Decision 2017-56. The decision does not suggest that use of Wi-Fi to augment a carrier's wireless service, whether within or without its serving territory, is not allowed. What it requires, for a carrier to have access to mandatory roaming, is that roaming be incidental. In order for roaming to be "incidental," subscribers must have access to a home network that does not involve the use of public Wi-Fi.
 18. "Remote access" of the network through public Wi-Fi may be consistent with the roaming regime if subscribers are able to access the network without public Wi-Fi when in their regular serving territory. However, the only type of access that TNW appears to be offering is "remote access": public Wi-Fi access to its backbone and core networks, which, the Commission has made clear, does not meet definition of "home network."
 19. Shaw has seen no evidence, in the Application or Supplemental Information, to suggest that TNW's subscribers will be able to access TNW's cellular mobile network without public Wi-Fi connectivity. Rather, throughout the Application and Supplemental Information, it is clear that the iPCS solution is predicated on subscriber access through public Wi-Fi facilities. Since public Wi-Fi cannot form part of a wireless carrier's home network, it follows that TNW's subscribers do not have access to a home network.
 20. The definition of "home network" determines eligibility for roaming. If TNW's service does not provide its customers with access to a licensed Radio Access Network or other access facilities that TNW owns and operates, then its

⁷ Supplemental Information, paragraph 60.

subscribers' roaming on the incumbent carriers' host networks is permanent and not incidental.

Conclusion

21. Under the rules pursuant to the Commission's determinations in Decision 2017-56, reaffirmed by Decision 2018-97, given that the only means of access to its network that will be provided by TNW is via public Wi-Fi access points, TNW's service does not meet the definition of "home network" that is required to distinguish permanent from incidental roaming. Without a home network, these subscribers would be considered under the rules to be permanently roaming if granted access to an incumbent's network. As permanent roaming is not mandated under the regime, neither Bell nor Telus should be required to enter into a mandated wholesale roaming agreement with TNW.
22. TNW has submitted that the granting of the final relief requested would not create an environment of regulatory uncertainty. On the contrary, a sudden reversal of Commission policy that has now been affirmed in three separate decisions, including following the Commission's recent, careful reconsideration of the regime, would introduce significant uncertainty to the market, jeopardizing the substantial investments being made by Shaw and other new competitors to extend their network reach and deterring future investment at what is a critical point in the development of competition in the wireless market in Canada.⁸
23. In Decision 2018-97, the Commission stated that the best way to support the growth of facilities-based competition at this time is to provide certainty and stability to wireless competitors by adhering to the five-year time frame identified in the wholesale wireless framework before considering significant

⁸ Decision 2018-97, paragraphs 40 and 68.

regulatory changes. The relief TNW seeks represents a significant regulatory change. TNW will have an opportunity in the proceeding that the Commission intends to initiate next year, in accordance with that five-year time frame, to argue for policy change.

24. For all the foregoing reasons, Shaw respectfully submits that TNW's Application should be dismissed in its entirety.

Yours truly,

[Original signed by]

Paul Cowling
Vice President, Legal and Regulatory Affairs
Shaw Communications Inc.

cc: Distribution List of March 23, 2018

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