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May 3, 2018

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

Dear Mr. Doucet:

Re: Part 1 Application by TNW Wireless Inc. relating to wholesale roaming agreements required under Telecom Regulatory Policy 2015-177, CRTC File No: 8620-R63-201705675

1. TELUS Communications Inc. (“TELUS”) files these supplemental comments further to the procedure established in Commission procedural letter dated March 23, 2018. The above noted application by TNW Wireless Inc. (“TNW”) was put on hold pending the resolution of the Commission’s reconsideration of certain aspects of the wholesale mobile wireless regulatory framework in Telecom Notice of Consultation 2017-259. That proceeding concluded with the issuance of Telecom Decision CRTC 2018-97 *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service* (“TD 2018-97”). The Commission afforded parties to TNW’s application the opportunity to supplement their submissions in light of TD 2018-97.
2. The wholesale mobile wireless framework, as it applies to TNW’s application, continues to apply exactly as it did before the issuance of TD 2018-97. Accordingly, TNW remains ineligible for mandated, tariffed wholesale roaming services. TELUS’ comments, as filed in its original answer dated August 4, 2017 (TELUS’ “Answer”) continue to apply in their totality.
3. Moreover, we reiterate that TELUS is justified in denying services to this particular access seeker, regardless of any determinations about eligibility for mandated wholesale roaming services. This company is indistinguishable from related entities that racked up substantial debts to TELUS that were never paid, and therefore presents an unacceptable credit risk. TELUS is empowered through its General Tariff Terms of Service¹ to refuse

¹ CRTC 21461, Section 1, Items 100-124.

tariffed services to this company on this basis. Moreover, there is substantial reason to question the legal validity and therefore the stability of TNW's wireless operations. All of these reasons continue to apply and justify TELUS' refusal.

TNW's Proposed Operations Are Ineligible for Mandated Roaming

4. TNW is ineligible for mandated wholesale roaming services due to its proposed service offering and business plans. TNW claims to hold spectrum licences covering only a small portion of the country. (The validity of those claims is discussed further below). Yet TNW clearly intends to offer wireless services throughout the country. Those customers would rely on Wi-Fi connections when available, and when not available, they would "roam" on another carrier's network. TNW has no plans to market and sell its services solely in its own licensed serving territory. Accordingly, TNW is not seeking wholesale "roaming" services, which would allow customers from a licensed area to travel to another area and visit a roaming partner's network. Instead, TNW is seeking to engage in wireless network resale: to provide access to TELUS' network to customers based in areas where TNW holds no spectrum licenses.
5. These issues have been repeatedly considered by the Commission. In each case, the Commission has affirmed that mandated wholesale roaming does not extend to these circumstances. Most recently, in TD 2018-97, the Commission again determined that it "maintains the view that public Wi-Fi should not form part of a wireless carrier's home network for purposes of establishing what constitutes incidental use of the visited network pursuant to the relevant wholesale roaming tariff".² TELUS' tariff accordingly allows roaming only where use is incidental.³
6. In its supplemental filing, TNW simply repeated the same arguments from its earlier submissions: that the proposed use of TELUS' network would be "incidental" because the handsets would not be registered to TELUS' network when connected through a public Wi-Fi network, and that the handsets would make "remote" use of TNW's licensed network. These points are *entirely irrelevant* to the questions before the Commission. TNW's claims are based on a misunderstanding of the meaning of "incidental" and "permanent" in the context of mandatory roaming services provided under tariff. TELUS responded to these matters thoroughly in its initial Answer.

² TD 2018-97, para 59.

³ TELUS' Carrier Access Tariff CRTC 21462, *GSM-based Roaming Service*, definition of "Roaming Service", item 233.2.

Technical Arguments Are Misleading

7. Subsequent to its initial application, TNW has filed additional evidence regarding the technical details of its technology and proposed services. This new evidence was in TNW's reply submission dated August 15, 2017 (TNW's "Reply") as well as the supplemental filing. None of the technical submissions by TNW have any impact on the question before the Commission in this proceeding: whether TNW is eligible for mandatory roaming services. TNW's assertions pertaining to technical details do nothing to change the fact that TNW plans to operate as a Wi-Fi first provider in all areas outside of its licensed territory (which may not even be operational or part of TNW's actual business plans). When TNW offers service outside of its licensed territory, it will be offering services over wireless facilities that it neither owns nor operates. The service will rely on public Wi-Fi and the networks of wireless carriers who have actually deployed network facilities in that area. The *only* licensed spectrum the handsets will use in that scenario is the visited network of a roaming partner. TNW's claim that these customers will be remotely connected to TNW's home network while connected via Wi-Fi is irrelevant and exhibits a fundamental misunderstanding of the regulatory framework.
8. TNW's arguments are a transparent attempt at regulatory gaming. TNW is claiming to be a facilities-based operator in regions of the country where it does not, in fact, own or operate actual wireless network facilities. These facilities are crucial to the delivery of wireless services: handsets cannot connect wirelessly to any network without the existence of wireless network facilities covering the area where the handsets are located. TELUS' analysis, provided in its original Answer, continues to apply. Nothing filed by TNW, either in its supplementary filing or (improperly) in its Reply, alter this analysis in the slightest.
9. TD 2018-97 does not change the application of the Commission's wholesale wireless framework. Accordingly, the Commission must deny TNW's request on the basis that the proposed use of TELUS' services falls outside of the terms of the relevant tariff, which reflect the regulatory policy the Commission has created for wholesale wireless roaming.

An Order for "Traditional Roaming" Should Not Be Granted

10. In TNW's original Reply submission, TNW purported to break its request into separate parts. It asked the Commission, for the first time, to order that TELUS and Bell provide roaming services only for "traditional roaming" (i.e. for customers from their licensed territory when roaming outside, or within the territory where TNW does not maintain

- coverage).⁴ TNW also included a vague assertion that it would abide by any “specific terms of compliance” imposed by the Commission. TNW did not propose any such terms in its Reply. TELUS objected to TNW’s amendment to its requested relief in a procedural request dated August 17, 2017.
11. TNW, despite having this opportunity to file supplementary comments, has not further pursued a request for split relief. There is no mention in the additional comments about the alternative relief to provide wholesale services in respect of “traditional roaming” customers only. Moreover, TNW failed to take the opportunity to propose any “specific terms of compliance” that might be applied in the case of this limited form of relief. TNW has also failed to provide any indication of how it will restrict its service offering to “traditional roaming” customers and prevent the use of TELUS’ network by customers based outside of the licensed territory. Indeed, the focus of the supplemental comments is once again on the Wi-Fi based iPCS technology, and TNW’s efforts to distinguish this service offering from other Wi-Fi first business models.
12. It would appear that TNW has now abandoned the request for split relief. TNW is not interested in serving its licensed territory. Wi-Fi first was the focus of the original application, and is the focus of its supplementary comments. TELUS provided evidence in its Answer demonstrating that TNW is transparently and openly looking to market a national service. TELUS noted that TNW seeks to “serve customers who reside outside of [TNW’s] wireless network footprint, with their connectivity via Wi-Fi and roaming on other carriers’ networks”.⁵ Such use of TELUS’ network is resale and does not fall within the meaning of incidental access under the Commission’s policies. TNW is therefore ineligible for the tariffed service.⁶
13. TNW has done nothing to refute this position. To the contrary, it is clear that TNW has no intention to restrict its service offering to customers in its licensed territory. TNW’s supplemental filing suggests that the development of its licensed network is, at most, an aspirational goal. TNW concedes that it does not supply continuous coverage along its Alaska Highway territory.⁷ It claims only to have plans to develop this coverage, at some unspecified future date, and implies that these plans are contingent on “reinvesting”

⁴ TNW’s Reply, para 44.

⁵ TELUS’ Answer, para 20.

⁶ TELUS’ Answer, paras 38-39.

⁷ TNW Supplemental Filing, paras 54.

- profits⁸ which would presumably flow from the improper resale of TELUS' and Bell's networks.
14. If TNW had any real interest in roaming services solely for its "traditional" customers, it would surely have addressed this in its new submission. To date, this inchoate request occupies no more than a minor part of the three substantive filings TNW has made in this proceeding.
15. Moreover, TELUS does not believe that there are acceptable technical means to restrict TNW from offering services to non-traditional customers. Nor does TELUS believe that TNW would, in fact, abide by any edicts to limit its service offering to its licensed territory. We note, in this regard, that TNW's webpage continues to advertise coverage well beyond its licensed territory.⁹ On this basis, an order for "traditional" roaming only is unlikely to be successful, and TELUS opposes it.
16. Finally, TELUS reiterates that it has several bases for refusing services to TNW, which apply to *both* traditional and non-traditional service offerings. In particular, as discussed further below, TNW is part of a group of companies that amassed sizable debts to TELUS. TELUS is accordingly empowered to deny tariffed services. Additionally, there is substantial reason to doubt the validity of TNW's entitlement to spectrum licences.

Compliance with Regulatory Obligations is Not Equivalent to Eligibility for Mandated Roaming

17. In several places, TNW asks that the Commission determine "as a separate issue, that its iPCS technology as detailed in previous Application submissions is fully compliant with both the letter and the spirit of all current telecommunications regulations".¹⁰ To be clear, this is not the same thing as a request for separate forms of relief, one for traditional roaming, and the other for non-traditional. A service offering can be *compliant* with regulatory requirements and still be *ineligible* for a mandated wholesale roaming service.
18. TELUS' arguments that TNW is ineligible for its tariffed roaming service are not based on a claim that the iPCS offering is non-compliant with regulatory obligations. Rather, they are based on the facts that TNW is ineligible for a mandated service under the specific terms of a tariff, and that TELUS is otherwise entitled to refuse the service.

⁸ Ibid, para 55.

⁹ Appendix 1 has a version of the following website, accessed on April 30, 2018. See <http://wireless.tnwcop.com/network-coverage/>

¹⁰ TNW's Supplementary Comments, para 13.

19. Whether or not the Commission assesses the compliance status of iPCS in a general sense is irrelevant to the disposition of the request for mandated wholesale roaming services.

Use of Wi-Fi by Wireless Carriers Is Irrelevant to Request for Roaming

20. In its original Reply, and in its supplementary comments, TNW made submissions regarding the use of Wi-Fi by other wireless carriers, including TELUS. TNW made the puzzling assertion that this somehow “call[s] into question the validity of [Bell and TELUS’] objection to iPCS”.¹¹ This argument is a misdirection, and has no bearing on the regulatory analysis nor the “validity” of TELUS’ answer.
21. TELUS has not argued, in this proceeding or otherwise, that wireless carriers are not permitted to support the use of public Wi-Fi by their customers. Instead, TELUS has argued that it is not required to provide wholesale roaming services to TNW because it intends to market and sell its wireless services to customers based in locations where TNW does not own or operate any wireless network infrastructure. As discussed in the section above, there is a distinction between a service being *compliant* with regulations and being *eligible* for mandatory roaming. TNW has improperly conflated the two concepts.
22. No provider is entitled to mandated roaming services in support of marketing and selling services to customers located outside of its serving territory. This is precisely what TNW proposes to do. If TNW wishes to sell services in this manner, it may do so, but it is not entitled to tariffed wholesale roaming services.

TELUS Entitled to Deny Tariffed Services Even if TNW Were Otherwise Eligible

23. TELUS noted in its original answer that it is entitled, under its General Tariff Terms of Service, to deny services to this particular access seeker. Item 103.1 provides in relevant part that TELUS “must provide services to all customers who apply, except when: a) the customer applying for the services owes money to the Company, other than as a guarantor, and refuses to pay the amount owed or refuses to make payment arrangements acceptable to the Company”. This is an appropriate case in which to look past notional corporate separateness between TNW Wireless and other TWN-group companies, and treat TNW Wireless Inc. as indistinguishable from other entities in the group that amassed considerable unpaid debts to TELUS. Controlling shareholders, management, branding, and financial administration of these various entities lead inevitably to this

¹¹ TNW’s Reply, para 31.

- conclusion. These matters were addressed in detail in TELUS' original Answer.¹² As described therein, TELUS bases this determination not only on its own experience, but also the sworn affidavits of members of TNW's management and conclusions of the monitor overseeing the CCAA proceedings of several TNW-group companies.
24. The finalization of the sale process undertaken to conclude those CCAA proceedings has been delayed by litigation, much of which revolves around the challenges of determining which assets are held by which specific company. As described by the British Columbia Court of Appeal, the sale of assets under the CCAA process has "foundered on the issue of whether the petitioners in fact own the assets in question such that the assets can be sold in the CCAA proceeding. Uncertainty on that point arises because the purchaser wishes to acquire all the assets pertaining to a complex and highly integrated telecommunications business (the "Business") carrier on by several corporations comprising the "TWN Group of Companies".¹³ In another judgment by the BC court of appeal, the Court provided additional detail:

The distinction between the assets of the Petitioners [those specific companies subject to the CCAA proceedings] and those associated with the Business [of the Petitioners] has emerged as the most difficult challenge for the Monitor in this proceeding. The evidence was that all of the companies in the group operated seamlessly together as one business. The companies of the TNW Group use the same facilities and the degree of integration is so great that the financial statements of most of the companies in the Group are prepared on a consolidated basis.¹⁴ (emphasis added)

25. In this scenario, it is an entirely valid exercise of business judgment for a company to refuse to do business with such a prospective customer. Related companies with the same management amassed sizable debts and generated substantial contentious regulatory, civil, and insolvency litigation. The refusal to provide additional services in this circumstance is the normal course for any reasonable business. It is only because the service sought is subject to a regulatory mandate that this issue even needs to be discussed. General regulatory wholesale policy should not compel companies to provide services to customers that present such an obvious credit risk. To do otherwise would be an offense to equity.

¹² TELUS Answer, paras. 51-57.

¹³ *8640025 Canada Inc (Re)*, 2018 BCCA 93, para 1.

¹⁴ *8640025 Canada Inc (Re)*, 2017 BCCA 303, para 10.

Insolvency of TNW Shareholders Makes Them Unacceptable Credit Risk

26. Since the last filings in this matter, the ownership of TNW Wireless Inc. has become further complicated by additional insolvency proceedings. The entity which purported to acquire TNW Wireless (Investel Capital Corp) is now subject to a receivership order.¹⁵ As noted in TELUS' original answer, TNW issued a press release suggesting that TNW Wireless was to be transferred to another entity. However, later sworn affidavits from TNW principals suggest that such transactions had not closed by September 2017¹⁶ and TNW Wireless Inc. was still owned by Investel Capital Corp.¹⁷ We have no cause to believe that the transactions have yet closed.
27. TELUS has a lengthy history of not being paid by the TNW group. TELUS would not voluntarily do business with such a customer: it is normal business practice for companies to avoid doing business with credit risks. Even in ordinary circumstances, TELUS would be justified in rejecting the request for services. However, these concerns are heightened in the present context, since TNW does not appear to have the means to pay for the service, nor to provide any security to guarantee future payments, since its shareholders are insolvent.

Spectrum Licences Improperly Transferred and Conditions Breached

28. In its original answer, TELUS noted that TNW appears to be in breach of its spectrum licence conditions. In particular, the original transaction by which the TNW group obtained control of the company RuralCom Corporation, which holds spectrum licences, constituted a "deemed transfer" of those licences under ISED's licence transfer framework. Consequently, the transaction required approval of the Minister of Industry. There is no evidence that such approval has ever been provided.
29. TNW has had nearly a year to rebut this point. It would have been very easy to do: TNW could simply have produced a copy of the letter or other instrument by which the Minister of Industry approved the transaction, if that had actually happened. Instead, in its initial Reply, TNW dodged the question and addressed only considerations about the corporate transaction.¹⁸ In its supplementary filing, TNW again completely ignored the issue and has yet to confirm whether the required regulatory approvals have been

¹⁵ A copy of the receivership order is attached as Appendix 2.

¹⁶ 25 Affidavit of Sandeep Panesar in the CCAA Proceeding, dated September 1, 2017, attached as Appendix 3, paras 20-21.

¹⁷ Ibid, Exhibit "A".

¹⁸ TNW's Reply, paras 64-70.

- obtained. The Commission should infer from TNW's failure to respond to this point that the transaction has not, in fact, been approved.
30. Moreover, spectrum licence transfer decisions are routinely published on ISED's Spectrum Management website.¹⁹ The deemed transfer of the RuralCom Corporation licences does not appear there, although many other transactions do. And finally ISED's online licence viewer continues to show the licences as held by RuralCom Corporation.²⁰ While these points are not determinative, together they strongly suggest that ISED has not recognized or approved the change in control of the licence holder in accordance with the ISED licence transfer framework.
31. The status of TNW as a licensee is directly relevant to the question before the Commission in this proceeding: whether TNW is eligible for roaming services. Under TELUS' tariff, GSM-based wholesale roaming services are only made available to "mobile wireless carriers, other than Bell Mobility and Rogers Communication Partnership ("RCP"), that are licensees of one or more commercial mobile wireless spectrum licenses under the licensing framework established by Innovation, Science and Economic Development Canada".²¹ If TNW is not or ceases to be a licensee, it loses eligibility under the tariff.
32. There is significant reason to doubt that TNW is a licensee or will remain one. Having regard to the challenges and impact of carrier disconnections, the Commission should decline to order the provision of wholesale roaming services in these circumstances.

Conclusion

33. It is abundantly obvious that TNW is seeking access to TELUS' network for purposes of offering a wireless service to customers based in territories where TNW does not hold spectrum licences or own or control any wireless network facilities. The purported purchase of RuralCom Corporation was clearly for the purpose of attempting to access mandated wholesale roaming services: to acquire some spectrum licences and claim to be a "facilities-based" operator, and therefore argue for access to a mandated wholesale roaming service, which it then intended to use in support of a national Wi-Fi-based

¹⁹ See <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/home?OpenDocument>

²⁰ See <https://sms-sgs.ic.gc.ca/licenseSearch/searchSpectrumLicense?execution=e1s4&licenceNumber=010288961-001> and <https://smssgs.ic.gc.ca/licenseSearch/searchSpectrumLicense?execution=e1s5&licenceNumber=010288971-001>

²¹ Item 233.1.

service offering. It is also obvious from the filings in this matter that TNW has no intention of basing its service offering in its licensed territory. It is not even clear that TNW intends to offer the service to *any* customers based in its licensed territory, or to develop a functioning network there.

34. This transparent attempt at regulatory gaming must not succeed. TNW is not entitled to mandated roaming services under the letter or the spirit of the Commission's wholesale wireless roaming framework.
35. Aside from the question of eligibility, TNW is not entitled to additional tariffed services from TELUS, for the reasons set out above. Finally, there is substantial reason to doubt the legal and financial foundations of TNW's business. The Commission should not order the provision of services given the likelihood of a subsequent need to terminate those services, and the attendant complexity of a disconnection.

Yours truly,

{Original signed by Stephen Schmidt}

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