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October 1, 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 – Comments of TELUS Communications Inc. (“TELUS” or the “Company”) to TNW Wireless RFI Responses

1. TELUS files these comments in relation to the responses of TNW Wireless Inc. (“TNW Wireless” or “TNW”) to the requests for information (“RFIs”) from the Commission in the above noted Application and in accordance with the Commission’s procedural letter dated July 24, 2018.
2. The responses of TNW demonstrate that it continues to be ineligible for mandated wholesale wireless roaming services. TELUS’ comments are divided into three sections: first, TELUS addresses TNW’s admitted failure to obtain consent to the transfer of its spectrum licences. Second, TELUS shows that TNW’s RFI responses correspond with TELUS’ evidence regarding the unitary nature of TNW’s operations. Third, TELUS discusses TNW’s additional technical filings. Failure of TELUS to respond to any particular point shall not be taken to be TELUS’ agreement with such point.

TNW Requires ISED Approval to Validly Use its Spectrum Licences

3. TNW now admits that the required regulatory approval for the deemed transfer of its spectrum licences has not yet been granted. TELUS has argued throughout

this proceeding that the transaction by which Ruralcom Corporation¹ was acquired constituted a deemed transfer that required approval from Innovation, Science and Economic Development Canada² (“ISED”) and that there was no evidence that such approval had been granted.³ TNW either denied this or sidestepped the issue in each of its previous filings.⁴ TNW’s responses show that ISED approval was sought nearly two years ago, in December 2016.⁵ On the basis of information filed by TNW, it appears that ISED originally would not consider the deemed transfer application until ISED was “assured that the licences are in ‘good standing’ ”.⁶ ISED subsequently requested information about TNW’s business structure.⁷ To date, it does not appear that ISED has been granted such approval, and the two spectrum licences in question remain in the name of Ruralcom Corporation.⁸

4. This revelation is significant to the Commission’s consideration of the Application. In order to receive mandated wholesale roaming services, a carrier must meet threshold eligibility requirements in TELUS’ CRTC-approved tariff for the service. In particular, the service is provided only to “mobile wireless carriers, other than Bell Mobility and Rogers Communications Partnership (“RCP”), that are licensees of one or more commercial mobile wireless spectrum licenses under the licensing framework established by [ISED]”⁹ (emphasis added). When TNW requested roaming in early 2017, it did not have the critical regulatory approval needed to be a wireless carrier. Its spectrum licences were acquired and needed ISED approval. The approval of a deemed transfer is a crucial part of ISED’s licensing framework: the absence of ISED approval means that TNW did not validly hold licences under the licensing framework. TNW was

¹ The entity holding the spectrum licences on which TNW Wireless intends to base its business.

² Answer of TELUS, dated August 4, 2017 (“TELUS’ Answer”), at para 78.

³ TELUS’ Answer, para 79.

⁴ TNW Reply, dated August 14, 2017; TNW Reply, dated May 14, 2018.

⁵ TNW Response to RFI 6, page 6.

⁶ TNW Response to RFI 6, page 8.

⁷ TNW Response to RFI 6, page 9.

⁸ Innovation, Science and Economic Development Canada, *Spectrum Licence Browser*, accessed October 1, 2018, online: <https://sms-sgs.ic.gc.ca/licenseSearch/searchSpectrumLicense?execution=e1s1&lang=en_CA>.

⁹ TELUS Carrier Access Tariff, CRTC 21462, *GSM-based Roaming Service*, Item 233.1.

simply ineligible for TELUS' tariffed service. TELUS was, and remains, entirely justified in rejecting the roaming request on that basis alone.

5. TNW then filed the Application, before ISED approval was granted, requesting that the CRTC order TELUS to provide services for which it was not eligible. TNW asked, in effect, for the CRTC to order TELUS to provide mandated roaming services to a company that did not properly hold any spectrum licences. TNW was seeking the CRTC's assistance in providing service illegally.
6. Regardless of whether ISED ultimately approves this transfer, two conclusions follow. First, TNW is ineligible for the tariffed roaming services at all points until ISED approves the transfer. Second, TNW has intentionally omitted material facts from its correspondence with the Commission in this matter. TNW did not disclose that it had yet to receive the transfer approval at the time of the Application. Even when TELUS directly raised this issue in its Answer, TNW did not respond to this point until the Commission issued a direct question. These material omissions reveal that TNW has been actively misleading the Commission, and this, along with its behaviour throughout this proceeding and related proceedings, should lead the Commission to question the veracity of TNW's statements and, ultimately, conclude that TNW has no credibility.

TNW Wireless Indistinguishable from Other TNW Group Companies

7. In response to the Commission's RFIs, TNW filed certain information about its corporate structure. Much of the information is redacted, including important responses such as who holds the ultimate legal control of TNW Wireless,¹⁰ the relationship between TNW Wireless and United American Corp,¹¹ and the relationship between TNW Wireless and Fiducie Residence JAAM.¹² Accordingly, TELUS has no means of challenging the information provided to the Commission.

¹⁰ TNW Response to RFI 2.

¹¹ TNW Response to RFI 4c.

¹² TNW Response to RFI 4i.

8. However, despite the limitations resulting from these redactions, the publicly disclosed information provides ample evidence to conclude that TNW Wireless is practically indistinguishable from the other members of the TNW group of companies.
9. TELUS explained in its Answer that TNW Wireless Inc. was owned by Investel Capital Corporation, which was also the controlling or sole shareholder of other TNW family companies.¹³ TELUS also identified that the shares of Investel were owned by Fiducie Residence JAAM, the beneficiaries of which are the family of Benoit Laliberte.¹⁴ TELUS further noted that Benoit Laliberte is considered to be the directing mind behind the operation and management of the TNW group of companies.¹⁵
10. TNW's responses to the Commission's questions on these points fully support TELUS' submissions. TNW states that the sole shareholder is Investel.¹⁶ TNW acknowledges that there is common ownership through one or more trust entities between TNW Wireless Inc. and TNW Networks Corp.,¹⁷ and between TNW Wireless Inc. and 8640025 Canada Inc.,¹⁸ and between TNW Wireless and Telephone Data Centers Inc. (which TNW claims is a subsidiary of 8640025 Canada Inc.).¹⁹
11. TNW redacted information about Fiducie Residence JAAM and Fiducie Familiale MAA; however, TELUS has already filed evidence in this proceeding, based on publicly available information, regarding the beneficiaries of these entities and their close involvement in the TNW corporate structures.²⁰ TNW's recent responses show that these persons continue to enjoy their relationship to TNW Wireless.

¹³ TELUS' Answer, para 51.

¹⁴ TELUS' Answer, para 51.

¹⁵ TELUS' Answer, para 52.

¹⁶ TNW Response to RFI 1.

¹⁷ TNW Response to RFI 4a.

¹⁸ TNW Response to RFI 4d.

¹⁹ TNW Response to RFI 4f.

²⁰ TELUS' Answer, para 51.

12. The directing mind behind the TNW companies continues to be Benoit Laliberte. The correspondence filed by TNW in its responses show that as recently as July 11, 2018, Benoit Laliberte has been actively representing TNW Wireless, including in dealings with ISED regarding the spectrum transfer request.²¹ Moreover, Mr. Laliberte is listed as the inventor of the iPCS technology which forms the basis of TNW Wireless' business plans.²² Similarly, TNW admits that the director of TNW Wireless is Lawry Trevor-Deutsch,²³ the same individual who has been involved with other TNW entities.²⁴ The facts are clear, and unchallenged: the TNW group of companies is managed and directed by the same people, with substantial overlap in legal ownership and beneficial entitlements. There is no credible argument to the contrary.
13. Whatever contrivances TNW may use to assert that various parts of its business are located in different trusts and corporate entities, one unavoidable truth remains: to a third party, it is the same as dealing with one entity. Despite changes over time (including transfers of parts of TNW's business to Distributel), TNW Wireless is very much the continued incarnation of a single operation.
14. Third parties, acting prudently, view TNW Wireless as indistinguishable from other entities in the TNW group. There is no legal or regulatory reason why the Commission should force a third party such as TELUS to do business with a company that amassed sizable debts in the recent past. Nothing in the Commission's regulatory framework for wholesale wireless roaming, or the terms of TELUS' general tariff terms of service ("TOS"), require TELUS to provide services in these circumstances. Indeed, quite the opposite is true: the TOS specifically provide that TELUS may refuse service where the customer applying for service owes money to it and refuses to pay the amount owed or make otherwise acceptable payment arrangements.²⁵ The Commission is not intended to be a mechanism to compel TELUS to supply limitless credit to a group of

²¹ See TNW Response to RFI 6, at page 10.

²² See TNW Response to RFI 11, appendix P, Canadian Patent Office Certification dated November 1, 2016.

²³ TNW Response to RFI 1.

²⁴ See TELUS' Answer, at note 40.

²⁵ TELUS General Tariff, CRTC 21461, *General Terms of Service*, Item 103.1(a).

companies that has serially refused to pay its bills or debts and will foreseeably refuse to do so again.

Technical Responses

15. With respect to the technical questions TNW's responses demonstrate, once again, that TNW is not entitled to the mandated roaming services it seeks. TNW's ineligibility for tariffed roaming services to TNW is premised on TNW's admitted intent to sell and market mobile wireless services in areas of the country where TNW holds no spectrum licences. The question in front of the Commission is not whether TNW can technically or legally deploy the service in this manner. The question is whether TNW is entitled to supplement its Wi-Fi based service with a mandated roaming service from a national carrier under the terms of a CRTC-approved tariff. The answer is a clear no. TNW's plans make it ineligible for the mandated roaming service. Accordingly, TNW must either negotiate a wholesale arrangement to resell access to another provider's network (either a national or regional carrier), or choose to deploy without such access.
16. In its responses, TNW returns to the notion of its end user devices becoming "detached" from the roaming network while a Wi-Fi signal is available.²⁶ However, this is not relevant to the question of whether TNW is entitled to the mandated roaming service. The relevant question is whether TNW intends to market and sell mobile wireless services in areas where it does not hold spectrum licences. The answer is clearly yes. Once that is determined, it does not matter whether the devices are always registered to a visited network while they are on, or whether they only register when a Wi-Fi signal is not present. Fundamentally, the result is the same. Access to a network operating over licensed spectrum in that scenario requires the negotiation of a non-mandated, forborne agreement.
17. TNW has referred, throughout this proceeding, to the concept of "remote access" to its home network. The Commission asked specific questions about why TNW would connect to its "core network via BTS and licensed spectrum rather than via

²⁶ See, for example, TNW Response to Request for Information of July 13, 2018, at para 14.

direct IP connectivity”.²⁷ TNW offers as an explanation that it is cheaper to do so.²⁸ What is apparent from this response is that TNW’s customers will not be present in areas covered by TNW’s licensed spectrum. Those customers are not travelling incidentally into an area that is not covered by TNW’s licensed spectrum, but are located there permanently. As such, any use of the licensed spectrum in this context has no bearing on whether these customers are entitled to roam on TELUS’ network through the tariffed service. These are simply internal network management decisions made by TNW.

18. The existing framework for wholesale wireless roaming services is a policy determination, factoring in multiple competing interests. The Commission took into account the impact on incentives to invest when making these determinations. Most recently in Decision 2018-97,²⁹ the Commission declined to extend the definition of “home network” to include Wi-Fi connectivity after determining that the regulatory uncertainty and risk of negative impact on investment outweighed any benefits.³⁰ TNW has attempted to distinguish its “remote access” concept from the concept of extending the definition of “home network”,³¹ but the regulatory issues are the same: the risk of negative impact on investment outweighs any benefits.

Conclusion

19. TELUS is not obligated to provide roaming service to an entity that fails in multiple respects to qualify for it under the regulatory framework. First, TNW still has not obtained the necessary approvals for the spectrum licences it claims to own, despite initiating the process approximately twenty-two months ago. Second, TNW has confirmed itself to be an indivisible part of a group of companies controlled by a singular directing mind and which owes millions of dollars in debt to the Company, disentitling it from any of TELUS’ tariffed services. Finally, TNW’s business model and intention to provide wireless

²⁷ RFI 14a.

²⁸ TNW Response to Request for Information of July 13, 2018, at para 18 (TNW Response to RFI 14a).

²⁹ *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*, Telecom Decision CRTC 2018-97.

³⁰ Decision 2018-97, at para 85.

³¹ TNW Response to Request for Information of July 13, 2018, at para 14.

service predominantly outside of its footprint is not compliant with the wholesale wireless framework that has been repeatedly and conclusively confirmed by the Commission. Quite simply, granting TNW any relief would fly in the face of the Commission's commitment to sustainable facilities-based competition.

20. TNW has used the Part 1 application mechanism to seek relief to which it is not entitled. Its RFI responses only serve to confirm this fact. Accordingly, TNW's Application should be dismissed in its entirety.

Yours truly,

{Original signed by Stephen Schmidt}

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