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

Dear Ms. May-Cuconato:

**Re: TNW Wireless Inc. (“TNW”) Part 1 Application for Mandated Wholesale Wireless Roaming – CRTC file no.: 8620-R63-201705675 – Procedural Request of TELUS Communications Company (“TELUS”)**

1. TELUS has reviewed the Reply of TNW in the above noted application (the “Application”). In their Reply, TNW have a) advanced a new, alternative form of relief not addressed in the Application and b) tendered new evidence that ought to have been filed when it made the Application. In each case, the Reply violates the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*<sup>1</sup> (the “CRTC Rules”) and principles of administrative law. Accordingly, the Commission must strike from the record TNW’s new claim for alternative relief and new evidence.

**a) New Request for Relief Must be Struck**

2. In paragraphs 45 and 46 of their reply, TNW request that the Commission order TELUS and Bell to provide mandated roaming covering a “traditional roaming” situation even if the Commission were to deny the requested relief regarding their proposed national, iPCS-based service. They assert that they will “commit to maintaining in good faith any specific terms of compliance as the Commission

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<sup>1</sup> SOR/2010-277.

- may see fit to specify”. They base this request on the inaccurate claim there was an “absence of objections” by parties to the Application.
3. This is clearly a request for an alternative form of relief not already sought. Nowhere in their Application did TNW suggest they were seeking “traditional roaming” only, as distinct from roaming for their iPCS customers. The request, as outlined in the Application, requests only that Bell and TELUS be required to provide “Wholesale Roaming Agreements as per their respective Carrier Access Tariffs”,<sup>2</sup> without differentiating between the various types of customers that might receive roaming under those agreements.
  4. While the concept of roaming for a “Traditional Subscriber” is mentioned in the outline of TNW’s previous discussions with Bell, TNW provided no indication that they intended then, or now, to restrict their offering to such subscribers. They have made it clear throughout the negotiation and Application process that they will use the roaming arrangements to support their out-of-territory iPCS-based service. Significantly, the relief they requested in the Application is clearly in support of their desired national service. It was only in Reply that they suggested, for the first time, that they are willing to pursue an entirely different business model, one based solely on serving customers located in their purported licensed spectrum territory, and requested an alternative form of relief to support that business model.
  5. The Application is focused entirely on incorrect claims that their iPCS-based service, that TNW intend to sell in areas outside of their licensed territory, qualifies for tariffed roaming services.<sup>3</sup> It is readily apparent that the Application was seeking mandatory roaming services in respect of the whole of TNW’s planned operations, not a subset. If TNW were really interested in traditional roaming only, they should have said so in the Application.

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<sup>2</sup> Application, para 20(a).

<sup>3</sup> After setting out their requested relief and history of negotiations, TNW devotes its application to discussing the technical aspects of iPCS (Application paras 47-58, 72-79), why iPCS does not offend rules against permanent roaming (Application paras 49-52), a distinction between iPCS and Sugar Mobile technology (Application paras 72-78), and iPCS and 9-1-1 (Application para 79). The only other substantive sections address the test for interim relief, the policy objective and the Policy Direction, and a section discussing the wireless sector in general.

6. Additionally, the concept of “specific terms of compliance” was not addressed until the Reply. TNW has not provided any indication of what those terms might be, and since they didn’t raise the issue in the Application, parties have not been afforded their procedural right to address this issue either.
7. An applicant is required to clearly set out the nature of the decision sought in the application itself.<sup>4</sup> Applicants are not permitted to amend their applications after they have been posted to the Commission’s website.<sup>5</sup> A reply, therefore, cannot modify the relief sought. TNW’s Reply is a flagrant violation of this rule. TNW have provided no reasoning whatsoever to justify a departure from this rule. Indeed, there is none: they could easily have led this request as part of the Application.
8. More broadly, as a matter of administrative law, it contravenes procedural fairness for a party to amend its request for relief at this late stage in the proceeding. Parties have had no opportunity to comment on these matters.
9. As to the claim that there was an “absence of objections”, this is wrong for two reasons. First, TNW has itself deprived parties of the opportunity to respond in turn, and potentially object, to a form of relief that the applicant did not raise. TNW cannot cite an absence of objections when it is TNW’s own actions that deprived parties of the ability to object in their answers.
10. Moreover, it is incorrect to say that parties have presented no arguments that apply to the “traditional roaming” relief TNW now seeks. TELUS, for example, led arguments concerning TNW’s entitlement to the spectrum licences<sup>6</sup> as well as their general entitlement to tariffed services.<sup>7</sup> These arguments, among others, apply to the alternative relief as well as the primary relief sought in the Application, and are TELUS’ grounds for denying roaming services (regardless of whether such roaming services would be used by TNW’s traditional subscribers, if any, or its iPCS subscribers).

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<sup>4</sup> CRTC Rules, s 22(2)(e).

<sup>5</sup> CRTC Rules, s 24.

<sup>6</sup> Answer of TELUS, paras 78-79.

<sup>7</sup> Answer of TELUS, paras 68-75.

**b) New Evidence Must Not Be Admitted**

11. Similarly, in their Reply TNW filed a considerable quantity of new technical evidence on their iPCS technology. Without limitation, this new evidence is found in paragraphs 18-43, 50-51, and Schedule 1 of the Reply. Among other things, TNW makes numerous allegations about the technical aspects of TELUS' services (see paragraphs 37-43, and 56-59 of the Reply).
12. Under the CRTC Rules, an applicant must state the relevant facts in the Application.<sup>8</sup> A reply must be restricted to points raised in Answers or interventions.<sup>9</sup> This new evidence submitted by TNW simply does not qualify.
13. The technical aspects of iPCS were a central feature of the Application. TNW devoted paragraphs 47-62 and Schedule 1 to a description of iPCS and how it could “ensure incidental roaming”, paragraphs 72-78 to alleged distinctions between iPCS and Sugar Mobile's technology, and paragraph 79 to iPCS and 9-1-1 services (and paragraph 79 stretches more than a page in length).
14. Given that TNW already addressed the technical aspects of iPCS and its relation to the wholesale mobile wireless regulatory framework, there is no way to characterize this as an issue that arose for the first time in the Answers and interventions. Of course parties responded to the allegations regarding iPCS in their Answers and interventions. That does not entitle TNW to split its case and deprive parties of an opportunity to respond to their full evidence on matters raised in their Application. TNW could have, and should have, provided this evidence when they filed their Application.

**c) TELUS Requests that Alternative Relief and New Evidence be Struck from the Record**

15. For the reasons described above, the relief sought for the first time in the Reply, as well as the newly tendered evidence, is procedurally unfair, and the Commission is consequently unable to consider it when rendering its decision.

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<sup>8</sup> CRTC Rules, s. 22(2)(e).

<sup>9</sup> CRTC Rules, s 27(2)(b).

The appropriate remedy to address the procedurally unfair aspects of the Reply is for the Commission to strike the alternative relief and new evidence from the record of this proceeding. While the Commission could also provide parties an opportunity to respond to the new material, striking would be a more just and efficient remedy.

16. As discussed above, there was no reason for TNW to save the alternative relief request and new evidence for the reply round. The burden of an applicant's decision on how to make its case should rest with the applicant, not with the other parties. The fair response is to strike the offending portions of the Reply, not require other parties to address matters that could more efficiently have been addressed at the Answer and intervention stage.
17. As to the new evidence, for the reasons stated by TELUS and other parties in their Answers and interventions, TNW's proposed service does not qualify for the mandated roaming service. Additional technical details do not change that analysis. Further rounds of comments on new evidence will simply waste the time and resources of all parties and the Commission by focusing on matters that, in the end, will prove irrelevant to the decision. The proportionate remedy in these circumstances is for the evidence to be struck.
18. Finally, there is now an open consultation addressing the relationship of public Wi-Fi use to the wholesale mobile wireless regulatory framework.<sup>10</sup> It is a waste of the resources of all parties to be addressing technical minutiae of a particular public Wi-Fi service when the relevant issues are being addressed in that larger proceeding.

**d) Conclusion**

19. For the reasons described above, TELUS respectfully requests the Commission to strike from the record TNW's new alternative form of relief, as well as the newly tendered evidence, as described in this letter. The parties to this proceeding

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<sup>10</sup> Telecom Notice of Consultation CRTC 2017-259, *Call for comments Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service Deadline for submission of interventions*

should not be saddled with making additional submissions on issues and evidence that could have been addressed in previous submissions, had TNW simply chose to make their case at the appropriate time. In the alternative, should the Commission choose not to strike, TELUS requests an opportunity to file further comments responding to those matters.

Yours truly,

*{Original signed by Stephen Schmidt}*

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DP/cs

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