

Stephen Schmidt  
Vice-President – Telecom Policy & Chief Regulatory Legal Counsel  
Telecom Policy & Regulatory Affairs

(613) 597-8363 Telephone  
(613) 597-8374 Facsimile  
[regulatory.affairs@telus.com](mailto:regulatory.affairs@telus.com)

May 28, 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– Response of TELUS Communications Inc. (“TELUS”) to costs claim by PIAC**

1. TELUS files this response to the second final costs claim by the Public Interest Advocacy Centre (“PIAC”) in the above noted Application. PIAC’s second costs claim was filed on May 17, 2018, and proposes that the costs associated with preparing its supplementary submissions be allocated as follows: 50% allocated to TNW, and 50% allocated amongst Bell, TELUS, Rogers, Eastlink, Quebecor, and Shaw, with each carrier’s responsibility proportional to its telecom operating revenues (“TORs”). TELUS opposes the requested allocation, for the reasons set out below. The entirety of the claim should be awarded against TNW.
2. TELUS takes no position on the quantum of costs claimed. For greater certainty, failure by TELUS to respond to any particular aspect of PIAC’s costs claim should not be taken to be agreement with that point.

**Nature of Proceeding Must be Assessed to Determine Allocation**

3. The Commission generally determines that the appropriate costs respondents are those parties that have a significant interest in the outcome and have actively participated in the proceeding. However, in order to determine which party had a significant interest in the outcome of the proceeding, it is necessary to consider the

- nature of the proceeding before the Commission.<sup>1</sup> The present case is not a policy proceeding. Accordingly, it follows that the allocation of costs responsibility will differ from those taken in policy proceedings. The Commission should not mechanically make respondents of all for-profit telecom service providers who participated in the proceeding.
4. The Commission has conducted several policy proceedings regarding the wholesale wireless roaming framework, leading to TRP 2015-177 and TD 2018-97. TELUS was a costs respondent in each of those proceedings, on the basis of the Commission's determinations that it had an interest in the outcome of the proceeding and participated actively. These were proceedings of a different character (polycentric, multi-party policy development processes) and the Commission's determination of costs respondents reflected the nature of the proceedings. Accordingly, TELUS was made responsible for a proportion of the awards based on TORs.<sup>2</sup>
  5. In contrast, the present proceeding is a narrow proceeding initiated at the instance of, and for the sole benefit of, a single party, namely TNW. The proceeding concerns TNW's eligibility under a tariff whose terms and conditions reflect the Commission's determinations in those previous policy proceedings. The party with a significant interest in the outcome of the proceeding is TNW. It is TNW that commenced the proceeding, and it is TNW that stands to gain if, contrary to the arguments of TELUS and other wireless carriers, the Commission finds TNW to be eligible for tariffed wholesale roaming services. It is, at bottom, TNW's proceeding, and as the party with the significant interest in the outcome, TNW should be responsible for costs.
  6. Making such a determination would also accord with common sense. All activities in relation to this proceeding were necessitated by TNW. It is TNW, by initiating a proceeding and pursuing argument that it is entitled to tariffed wholesale roaming services, that created a need for other parties to respond. All costs incurred are,

---

<sup>1</sup> The Commission has assessed the nature the proceeding to be a relevant factor in previous costs decisions, such as determining the basis for allocations in Telecom Order 2018-156 at para 34 and Telecom Order 2018-157 at para 37; determining whether time spent was appropriate, such as in Telecom Order 2015-194 at para 8 and Telecom Order 2017-376 at para 47; or whether a particular party should be entitled to costs, Telecom Costs Order 96-31 at para 3.

<sup>2</sup> For example, TELUS was ordered to pay costs to PIAC in in Telecom Order CRTC 2015-265 and Telecom Order CRTC 2018-156.

- therefore, solely attributable to TNW. It is just and reasonable that TNW should be responsible for paying those costs.
7. PIAC's costs claims recognize that simply dividing the costs based on TORs would not be appropriate in the circumstances. PIAC has proposed that TNW be responsible for 50% of the award. PIAC states that TNW is the party "who initiated the proceeding and stands to gain the most from it".<sup>3</sup> TELUS agrees.
  8. However, TELUS does not agree with PIAC's claim that the wireless carrier parties should also be responsible for 50% on the basis that "they are the beneficiaries of the current facilities-focused regulatory regime".<sup>4</sup> This is not the test for allocating costs. The Commission's normal policy, as discussed above, is whether a party has a significant interest in the outcome and participated actively in the proceeding. When applied having regard to the full factual context, including the nature of the proceedings, the outcome is that TNW should be responsible for the whole of the costs awarded. PIAC has not demonstrated why an alternative approach is appropriate. It is not clear what it means to say that carriers are "beneficiaries" of a regime. Moreover, why would a "beneficiary" of a regime be made responsible for costs any time another entity initiates an application relating to that regime, however without merit it may be?
  9. Instead, the correct resolution is to allocate all costs against TNW, as the party with the significant interest in the outcome and the proximate cause of all costs incurred in the course of the proceeding.

#### **TNW Solely Responsible for Costs of Supplementary Comments**

10. At a more granular level, the specific costs at issue (set out in in PIAC's second costs claim, and pertaining to the preparation of PIAC's supplementary comments), are entirely attributable to TNW. These costs were incurred by PIAC solely in response to TNW's chosen litigation strategy.
11. TNW commenced its application in July 2017. Parties filed answers, interventions, and replies over the subsequent months. In October 2017, the Commission put its

---

<sup>3</sup> PIAC second costs claim, para 16.

<sup>4</sup> Ibid.

- consideration of the final relief requested in the application on hold while it conducted its review of the wholesale wireless roaming framework, in TNC 2017-259. When TNC 2017-259 was completed with the issuance of TD 2018-97, the Commission issued a procedural letter dated March 23, 2018 offering TNW the opportunity to continue its application and make supplementary comment. TNW chose to continue.
12. As TELUS noted in its May 3, 2018 comments on TNW's supplementary submission, 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, there was no need for TNW to supplement the record of the proceeding, since TNW had already had the opportunity to lead its case regarding the application of the current wholesale framework. Not surprisingly, TNW's supplementary filings largely reiterated arguments already advanced by TNW in 2017. TNW could have let the record stand as it was, but it elected not to.
13. By choosing to file repetitive comments, TNW generated needless work for the Commission and other parties, including PIAC. Accordingly, TNW should be responsible for the totality of PIAC's costs associated with the supplementary filings.

Yours truly,

*{Original signed by Stephen Schmidt}*

Stephen Schmidt  
Vice-President - Telecom Policy & Chief Regulatory Legal Counsel  
Telecom Policy & Regulatory Affairs

cc: PIAC, [bsegel-brown@piac.ca](mailto:bsegel-brown@piac.ca); [jlawford@piac.ca](mailto:jlawford@piac.ca)  
TNW, [regulatory@tnwcorp.com](mailto:regulatory@tnwcorp.com)  
Bell, [bell.regulatory@bell.ca](mailto:bell.regulatory@bell.ca)  
Quebecor, [dennis.beland@quebecor.com](mailto:dennis.beland@quebecor.com)  
Rogers, [rwi\\_gr@rci.rogers.com](mailto:rwi_gr@rci.rogers.com)  
Shaw, [regulatory@sjrb.ca](mailto:regulatory@sjrb.ca)  
Eastlink, [regulatory.matters@corp.eastlink.ca](mailto:regulatory.matters@corp.eastlink.ca)  
Ice Wireless, [regulatory@icewireless.ca](mailto:regulatory@icewireless.ca)