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September 8, 2016

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

Dear Ms. May-Cuconato:

Re: Telecom Decision CRTC 2016-171 - *Prohibition of 30-day cancellation policies –Application regarding pro-rated refunds of cancelled services (the “Decision”), Part I Application by TELUS Communications Company (“TELUS” or the “Company”) - Reply of TELUS*

Introduction

1. The following constitutes TELUS' Reply to the interventions submitted in response to the Company's Application dated July 4, 2016.¹
2. In the Application, TELUS asked for an order, on an expedited basis,
 - (i) providing guidance and advice on whether the Decision requires TELUS to make pro-rated refunds of monthly service fees billed in advance in the event of customer cancellations in three specific cases described in the Application;
 - (ii) providing for an extension of time to facilitate implementation of the Decision;

¹ The date for delivery of this Reply was extended to September 8, 2016 in a letter from Commission staff dated September 1, 2016.

- (iii) grandfathering of contracts with existing customers; and
 - (iv) confirming that, prior to the release of the Decision, the practice of billing in advance and not paying pro-rata refunds of monthly fees in respect of any unexpired part of a billing month in the event of early customer cancellation of a service contract was lawful, and ratifying the charging of the relevant rates.
3. TELUS is in receipt of interventions by Bell Canada (“Bell”), Québecor Média, the Public Interest Advocacy Centre (“PIAC”), the Canadian Network Operators Consortium Inc. (“CNOc”),² Aaron Messer, Gordon Salisbury and Jonathan Mann.³
4. In what follows, TELUS replies to the submissions made for guidance and advice (Part A), and the submissions made concerning TELUS’ proposal for an extension of time for implementation of the Decision, grandfathering and ratification of rates (Parts B, C and D, respectively). Interveners also raise two issues of process. The first is whether TELUS should have proceeded by way of an application to review and vary the Decision pursuant to section 62 of the *Telecommunications Act* rather than by way of application for guidance and advice pursuant to section 58. The second concerns ex parte communications. TELUS also replies to these submissions (Parts E and F, respectively).

A. The Request for Guidance and Advice

5. In the Application, TELUS submitted that considerable uncertainty has arisen concerning the interpretation and application of the Decision in certain situations⁴ and asked the Commission to provide guidance and advice in relation to the three following specific cases:

- Case 1: Wireless services with a subsidized device.

² CNOc does not take a position on the issues except to state that the Commission’s determinations should be made applicable to all service providers: CNOc Intervention, para 5. Bell also submits that the decision in this matter should apply to all service providers: Bell Intervention, para. 20.

³ Messrs. Messer, Salisbury and Mann generally oppose the Application.

⁴ Application, para. 13.

- Case 2: Usage-based Services.
- Case 3: Local Telephone Services in Non-forborne exchanges.

Case 1: Wireless services with a subsidized device

6. In the Application, TELUS explained that it frequently sells customers a device as a part of contracts for post-paid services. Where the device is provided at a price that is lower than the retail price of the device, TELUS is in effect subsidizing the difference between the retail price and the contract price. Payments under the contract are generally structured so that the value of the subsidy is recovered in equal monthly instalments over the life of the contract. TELUS pointed out that a literal application of the Decision would mean that part of that subsidy would not be recovered, but that the Commission's recent *Wireless Code* decision deals with this issue differently. One of the fundamental components of the *Wireless Code* was the treatment of early cancellation fees when a customer under a postpaid contract cancels service prior to the end of a contract term. Under the *Wireless Code*, the service provider is entitled to recover the unamortized value of a device subsidy in the event of a customer service cancellation.⁵
7. In particular, the Commission stated that an early cancellation fee associated with a subsidized device in a postpaid wireless contract is the value of the device subsidy, which is the "retail price of the device minus the amount that the customer paid for the device when the contract was agreed to,"⁶ and that the value of the device subsidy reduces to \$0 by the end of a maximum 24-month period. As such, the Commission explicitly recognized in the *Wireless Code* that monthly payments include the reduction in the device subsidy.
8. By requiring pro-ration of the entire monthly payment, the Decision ignores the Commission's previous recognition in the *Wireless Code* the monthly payment also includes an allotment to reduce the device subsidy. As a result of this apparent inconsistency between the Decision and the Code, TELUS sought guidance as to the Commission's intentions. TELUS advocated that the guidance

⁵ See Application, para. 15 ff.

⁶ *Wireless Code*, section G.2.(ii)(a).

provided should reconcile and give full effect to both decisions. Specifically, TELUS requested that the Commission clarify that, if a subsidized device has been provided to a customer as part of a wireless service contract, when that customer cancels service during a month, the monthly service fee would be reduced by an amount that would be pro-rated to reflect the number of days for which the customer received service during that month but without regard to any outstanding subsidy.⁷

9. Bell and PIAC support TELUS' position,⁸ and Québecor Média says that "La première confirmation recherchée par TELUS va de soi". Québecor Média adds:

Québecor Média est d'avis qu'il ne fait aucun doute que la méthode de calcul des frais de résiliation anticipée pour les appareils subventionnés prévue au Code sur les services sans fil mis en place par la PRT 2013-271 n'est pas affectée par la Décision 2016-171.⁹

10. There is therefore wide support for TELUS' position. TELUS therefore asks the Commission to issue guidance and advice to the effect that the Decision does not apply to the subsidy component of charges for wireless services provided with a subsidized device.

Case 2: Usage-based Services

11. TELUS submitted that to apply a *time-based* pro-rating formula to *usage-based* services, such as Internet access service, would fail to recognize the essential difference between the two types of services and give rise to incongruous results,¹⁰ and therefore asked for confirmation that the Decision does not apply to usage-based services.
12. By way of illustration, TELUS referred to the case of a customer who subscribes to TELUS' Internet 25 service who is charged \$30 for usage of up to 300 MBs per month and who uses the entirety of their monthly usage allowance in a single day.

⁷ Application, para. 21.

⁸ Bell Intervention, paras. 8-11 ; PIAC Intervention, para 4.

⁹ Québecor Média Intervention, para. 4.

¹⁰ Application, para. 24ff.

If the customer cancelled on that day, the operation of the Decision would mean that the customer would be eligible for a \$29 refund.¹¹

13. TELUS submitted that it undertakes to incur the fixed costs necessary to provide the capacity required to meet its contractual commitment to customers, and it is only reasonable that TELUS has an opportunity to recover that cost when the customer cancels in the middle of the billing cycle.¹² In addition, usage-based services are premised on a minimum contract period of one month.¹³ Therefore, TELUS asked that the Commission rule that the usage-based services be out-of-scope in terms of application of the Decision.
14. Bell endorses TELUS' position. Bell argues that "it is not consistent or logical to require customers, on one hand, to pay only for service actually delivered in the month in which cancellation occurs and, on the other hand, to permit customers to obtain refunds notwithstanding that they have completely consumed the service for which they agreed to pay".¹⁴
15. Québecor Média opposes TELUS' request. Québecor Média argues that TELUS allows customers to modify their monthly allotment of minutes within the same billing cycle and that it would be unjustified to treat customers who cancel their contract differently by permitting the first to benefit from pro-rata but not the second.¹⁵ This argument overlooks the obvious. In the one case, there is an ongoing relationship and the customer will continue to contribute to recovery of the capacity costs TELUS has incurred and therefore perform its part of the bargain,¹⁶ and in the other TELUS would be left with an unfunded shortfall. It is therefore inappropriate to refund charges that relate to a period during which TELUS has contracted to provide capacity that the customer for his or her own reasons subsequently chooses not to use.

¹¹ Application, para. 24.

¹² Application, para. 25.

¹³ Application, para. 28.

¹⁴ Bell Intervention, para. 12.

¹⁵ Québecor Média Intervention, para. 16.

¹⁶ It is relevant to note that, in the vast majority of cases where customers change their plans mid-cycle, they are increasing the allotment of minutes to avoid overage charges they may otherwise incur.

16. In addition, Québecor Média’s argument fails to recognize the distinction between the cancellation or modification of a *service* and the cancellation of a *contract*. This is an important distinction as the policies that the Decision intended to clarify are expressly limited to cancellation of *contracts*. The Wireless Code and CRTC Policy 2014-576 indeed relate to the cancellation of contracts only.¹⁷ The Decision, moreover, is expressly characterized by the Commission as an exercise of its jurisdiction to clarify existing policies, and not as the creation of new legal rules through the expansion of those policies, which would have required formal consultation of stakeholders. This fundamental difference between the two concepts is especially manifest for services sold in a bundle within a single contractual framework.
17. For bundled offers, the addition or cancellation of individual *services* is permitted by the contract whereas cancellation of the *contract* itself is treated completely differently. Nothing in the Wireless Code or CRTC Policy 2014-576 can serve as a basis for an extension of a principle applying to cancellation of contracts to the modification of a service. The example used by Québecor Média relating to the modification of a *service* is not relevant to the issues raised by TELUS’ application.
18. PIAC also opposes the TELUS’ request on this point. PIAC makes a variety of misleading and baseless claims.
19. One is that “The alleged ambiguity [about the application of the Decision to usage-based services] arises from TELUS’s attempt to use advance billing to circumvent the *Wireless Code* requirements that contracts must be cancellable at any time and that cancellation must be effective immediately.”¹⁸ This claim shows a lack of understanding of the historical context. Advance billing of monthly charges has been the industry standard since the inception of wireless service; and in the case of wireline services, dates back to the industry’s earliest days. The ambiguity that now arises is a product of that history which has now

¹⁷ Wireless Code decision, paras. 233-234 and Section G.1(1), (2) and (3) of the *Wireless Code*; . *Prohibition of 30-day cancellation policies*, Broadcasting and Telecom Regulatory Policy CRTC 2014-576, paras. 1, 38, 40, 41, 43-44.

¹⁸ PIAC Intervention, para. 10. See also para. 55, which repeats the claim.

been changed by the different approach to early cancellation introduced by the Decision rather than any actions taken by TELUS to circumvent the Wireless Code.

20. PIAC also takes issue with TELUS' description of the wireless market as "demonstrably competitive".¹⁹ It does so largely on the basis of the tendentious claim that the recent Nordicity Study²⁰ "paints a picture of a mobile wireless service industry that is failing Canadians."²¹ However, a fair reading of the Nordicity Study presents a more complex and positive picture than that portrayed by PIAC. In its own words, Nordicity found that In the Mobile Wireless Telephony category, "Canada ranked the highest [out of 8 countries] in pricing in the Level 1 service basket, third in the Level 2 service basket and second in the Level 3, 4, 5 and 6 service baskets."²² "In the Mobile Wireless Internet category, Canada ranked third most expensive [out of 8 countries] in all three service baskets."²³ In other words Canadian charges are sometimes higher, sometimes lower, and sometimes near the average. In addition, Canada is a "high subsidy" market in that Canadian consumers generally gravitate to higher subsidy, higher end devices with lower upfront prices. This results in high cost of acquisition ("COA") and cost of retention ("COR") investments by Canadian carriers. One cannot look at rate plans by country in isolation from COA/COR/subsidy and device mix.
21. Moreover, as Nordicity notes, its Study does not take into account "factors such as population density, terrain and climate [that] have significant impacts on the cost of service".²⁴ In these areas, Canada carriers face challenges that its foreign

¹⁹ PIAC Intervention, para. 24ff., citing Application, para 27.

In the Application, TELUS submitted that the Commission long ago dismantled the barriers to dynamic competition by mandating the introduction of number portability, near instantaneous porting intervals, by eliminating the 30-day prior notice requirement and by introducing the Wireless Code requirements for unlocking handsets and limiting cancellation fees, which led to the shortening of contract periods. See Application, para. 34.

²⁰ Nordicity Group Ltd, *2016 Price Comparison Study of Telecommunications Services in Canada and Select Foreign Jurisdictions*; <http://www.crtc.gc.ca/eng/publications/reports/compar/compar2016.htm#KF> ("Nordicity Study").

²¹ PIAC Intervention, para. 26.

²² Nordicity Study, at p. 9.

²³ Nordicity Study, at p. 11.

²⁴ Nordicity Study, at p. 12. This is one of a number of caveats the authors of the Nordicity Study attach to their findings. The full passage reads as follows:

- counterparts do not have to contend with. It has addressed these challenges by investing heavily in network deployment. In a 2015 report prepared by Dr. Robert W. Crandall of the Brookings Institute that was filed in the *Review of Basic Telecommunications Services* proceeding, Dr. Crandall found that “Canadian carriers have spent more than their U.S. counterparts and about twice as much as EU carriers since 2007.”²⁵ These investments contribute to higher costs.
22. In response to TELUS’ evidence that other jurisdictions do not require pro-rating,²⁶ PIAC claims the “UK government is exploring steps to make it easier for customers to switch”.²⁷ This is a misleading statement. A review of the UK government’s statement on the subject²⁸ indicates that PIAC is taking liberties with the facts. Although the UK government is seeking ways to make switching between telecommunications and other network services easier, requiring that telecommunications carriers provide pro-rated refunds of monthly usage charges in the event of early customer termination is not one of the measures being considered.²⁹
23. Further, in para. 46 of its Intervention, PIAC takes issue with the benefit ratio table in para. 39 of TELUS’ Application. As TELUS amply demonstrated, any double billing that might occur is minimal and certainly is not a barrier to exit by customers. Moreover, customers can control this cost by simply referring to their billing date. As TELUS respectfully explained in its Application, any balance

This Study did not take into account the network technologies deployed in the networks nor the speed or quality of service of those networks. Finally, this Study did not account for any cost of service or socio-economic factors that may be relevant for price differences across different domestic and international jurisdictions. Thus, factors such as population density, terrain and climate have significant impacts on the cost of service. Similarly, socio-economic factors such as affordability indicators (i.e. mobile prices in relation to disposable income), number of handsets per subscriber, number of minutes of usage per subscriber and other factors were not within the scope of this Study.

²⁵ Crandall, “The Performance of the Canadian Telecom Sector; A Policy Perspective”, Section C, para. 11. (Filed as *First Intervention of TELUS Communications Company*, July 14, 2015, Appendix A.)

²⁶ Application, para. 48.

²⁷ PIAC Intervention, para. 34.

²⁸ UKRN, *Consumer engagement and switching*, Statement, 14 December 2014; <http://www.ukrn.org.uk/wp-content/uploads/2016/07/20141217ConsumerEngSwitch.pdf>.

²⁹ The UK government is concerned instead with early termination charges for fixed term contracts. In 2013, two thirds of new mobile phone contracts were for fixed terms of two years: see *ibid.*, para 4.31. The UK government acknowledges that early termination charges “may offer a legitimate way for providers to recover some of their fixed costs, [although] they can also create barriers for consumers who wish to get out of fixed-term contracts”: see *ibid.*, para 4.76.

retained of the monthly amount is to compensate for TELUS' fixed costs of providing the service and operating and maintaining its networks.

24. TELUS therefore requests that the Commission provide guidance confirming that usage-based services are “out of scope” where the Decision is concerned because the pricing of such services is based on a minimum contract period of one month. The right for the carrier to keep the balance of the month’s payment also reflects a reasonable compromise between the carrier’s obligation to stand ready to serve customers with the required capacity and the customer’s right to cancel its contract at any time. In TELUS’ respectful submission, to determine otherwise is to expose customers to potential “bill shock” where overage charges apply.

Case 3: Local Telephone Services in Non-forborne exchanges

25. TELUS pointed out in its Application that both TELUS and customers subscribing to local telephone service in non-forborne exchange (and certain other tariffed retail services) are both bound by Terms of Service prescribed by the Commission, and that the latter provide that no refund is payable in the case of a customer service cancellation during the minimum contract period, whereas a literal interpretation of the Decision appears to require the opposite.³⁰ TELUS submitted that there is no express indication on the face of the Decision that the Commission intended to alter its approach to tariffed services and for that reason sought guidance.
26. TELUS submitted that the Commission’s aim of facilitating competition by “removing unnecessary barriers to consumer choice” would be served in a manner that more appropriately balances the rights and obligations of customers and service providers if, in the case of services to which the Decision and the Terms of Service both apply, the latter shall take precedence.³¹

³⁰ Application, para. 29 ff.

³¹ Application, para. 32.

27. Bell supports TELUS' position.³² PIAC does not oppose this part of the Application.³³
28. Only Québecor Média makes submissions opposing TELUS' Application on this point. However, its argument amounts to no more than the assertion that the Decision is silent on the point raised by TELUS and that the Decision could be literally construed as applying to regulated services.³⁴ But that misses the point: the Commission long ago prescribed the rules as to how refunds for cancellation of regulated services are to be applied. The Commission used its powers under the *Telecommunications Act* that approved terms of service that are a different approach to that adopted in the Decision. In the Decision, the Commission gave no indication of an intention to alter or sweep away these long standing tariff provisions. As TELUS submitted, the best approach to resolving this inconsistency is for the Commission to clarify that the Terms of Service adopted by the Commission in Decision 86-7 and other decisions continue to apply to tariffed services and that the Decision does not apply in such cases.³⁵
29. TELUS therefore asks the Commission to issue guidance and advice to the effect that the Decision does not apply to services governed by the Terms of Service.

B. Extension of Time

30. TELUS indicated in the original proceeding that it would require "a reasonable transition period" to implement pro-rating.³⁶ It was not possible to be more precise at that stage, when the scope of the eventual decision was still unclear. However, it is now apparent that implementation of the Decision involves complex, multi-faceted and time-consuming issues involving changes to multiple billing systems, business processes, accounting practices, customer communications, and team member training, among other matters.³⁷ TELUS submitted in the Application that "The reach and scale of this change is vast -- embracing all retail wireline, wireless and broadcasting services offered by

³² Bell Intervention, paras. 14-15.

³³ PIAC Intervention, para. 5.

³⁴ Québecor Média Intervention, para. 20.

³⁵ Application, para. 32.

³⁶ Response to request for information TELUS(CRTC)17Nov15-1.

³⁷ Application, para. 50.

TELUS to 10M+ customers”.³⁸ TELUS has therefore requested an extension of time of six months to implement the Decision. This is in line with the intervals set in other comparable cases.³⁹

31. Bell supports TELUS’ request:

We echo Telus' concerns with respect to the complexity of the changes required to multiple systems across all of our product lines to correctly implement Decision 2016-171. In particular, we have determined that Decision 2016-171 requires complex, multi-faceted and time-consuming changes to multiple billing systems across our wireless, Home Phone, Internet and TV retail product lines. Lack of adequate time to develop and properly test the required modifications could result in billing errors impacting millions of customers. Like Telus, it is not an option for us to manually implement Decision 2016-171 by individually recalculating thousands of customer bills on a continuing basis.⁴⁰

32. PIAC and Québecor Média oppose the request,⁴¹ but they do not provide any evidence to counter the carriers’ position that an extension is required. Québecor Média says (as already noted) that TELUS has indicated a readiness to accommodate individual customer requests to modify their monthly allotment within the same billing cycle, and that this suggests that the task of implementation is not as significant as claimed.⁴² However this point ignores the fact that TELUS does individual requests today through manual interventions for bill credits by our customer service agents. The management of individual requests is a far different matter than the overhaul of entire billing systems for all of TELUS’ services which would be required to implement the Decision. Changing billing systems is a significant undertaking and requires adequate time to correctly implement.

33. TELUS therefore asks the Commission to grant the requested extension of time.

³⁸ Application, para. 51.

³⁹ Application, para. 55.

⁴⁰ Bell Intervention, para. 18.

⁴¹ PIAC Intervention, paras. 58-62; Québecor Média Intervention, paras. 23-28.

⁴² Québecor Média Intervention, para. 27.

C. Grandfathering

34. TELUS submitted that it is logical, fair and reasonable that contracts with existing customers be grandfathered given 1) that proration modifies the contractual agreement between TELUS and its customer since the absence of refund in the event of cancellation in the middle of a billing cycle is set out clearly in the relevant contracts; 2) that modifying existing contracts creates unpredictability, and uncertainty of the regulatory environment especially given the fact that the Decision which covers the whole industry emanates from a bilateral dispute which was not subject to a Telecom Notice of Consultation, and was contrary to previous Commission staff's advice; 3) that the Decision solves a problem that does not exist as double-billing is not a switching impediment and, accordingly, there is no pressing need for the Commission to intervene in existing contractual relationships; 4) that the Commission staff confirmed on at least 4 occasions that pro-rated refunds were not required and TELUS has built its systems and developed its practices based on these assurances; and finally 5) that it would allow service providers the opportunity going forward to explain to new customers before they enter into a contract the consequences of cancelling their contracts in the middle of a billing cycle.⁴³
35. Bell supports TELUS' position,⁴⁴ but the request is opposed by PIAC. PIAC says that grandfathering would be unfair to customers.⁴⁵ Claiming unfairness is hardly credible in light of the fact that the arrangements governing refunds in the event of early cancellation are clearly set out in the relevant contracts and conformed with Commission requirements when they were entered into.
36. TELUS' request is also opposed by Québecor Média. While Québecor Média mentions each of the five arguments advanced by TELUS in favour of grandfathering (as set out in para. 34, above),⁴⁶ it does not convincingly engage with the key issues: for example, to TELUS' first assertion, that pro-ration modifies the contractual agreement between TELUS and its customer, Québecor Média responds that to accept TELUS' position would have a negative impact on

⁴³ Application, para. 57.

⁴⁴ Bell Intervention, para. 20.

⁴⁵ PIAC Intervention, para. 67ff.

⁴⁶ Québecor Média Intervention, para. 29ff.

the relevant customers. On the contrary: the application of the Decision to them would unfairly enrich them by making them eligible for a refund in circumstances where they have no contractual right to claim one. TELUS' third assertion is that the Decision solves a problem that does not exist as double-billing is not a switching impediment. Québecor Média completely avoids that issue and talks instead about how the Decision eliminates uncertainty about refund policy by imposing a blanket rule and refers to evidence regarding the 30-day cancellation policy which related to a different situation. Québecor Média does not address at all the evidence submitted by TELUS regarding the offers currently in the market whose benefits clearly outweigh the impact of any potential de minimis double-billing for consumers nor does it discuss the point that any potential double-billing is clearly not a switching impediment in light of the current rivalry in the market.

37. TELUS therefore asks the Commission to grandfather the contracts as requested in its Application.

D. Ratification

38. In the Application, TELUS requested an order confirming that, prior to the release of the Decision, the practice of billing in advance and not paying pro-rata refunds of monthly fees in respect of any unexpired part of a billing month in the event of early customer cancellation of a service contract was lawful, and ratifying the charging of the relevant rates pursuant to section 25(4) of the *Telecommunications Act*.
39. Bell supports TELUS' position on this point.⁴⁷
40. PIAC submits that "backdating" of the Decision is not appropriate, especially if it involves "clawing back" money from TELUS subscribers. PIAC misapprehends TELUS request. There is no question of any "clawing back". TELUS is seeking to make it clear that, until the Decision, the practice of billing in advance and not paying pro-rata refunds in the event of a customer cancellation was lawful.

⁴⁷ Bell Intervention, paras. 16-17.

E. Process - Should TELUS have proceeded by way of application to review and vary?

41. Québecor Média and PIAC contend that TELUS should have proceeded by way of application for a review and variance pursuant to section 62 of the *Telecommunications Act* rather than an application for guidance and advice pursuant to section 58.⁴⁸ (Québecor Média makes this argument in respect of Cases 2 and 3 (usage sensitive and regulated services) and PIAC in respect of Case 2 only.)
42. Section 58 is very broad. It provides that “The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act or any special Act”. Québecor Média does not elaborate on why section 58 is not available, or why the possibility of proceeding under section 58 is ousted by section 62. Presumably, that is because Québecor Média doesn’t believe that the Commission should provide guidance or advice to the industry on Decision 2016-171 or perhaps any of its decisions.
43. In TELUS’ submission, a section 62 process is appropriate where an applicant is challenging the correctness of the Decision or asking that the Decision be modified in any respect. But that is not TELUS’ case. TELUS is seeking clarification of how the Decision as it stands should be interpreted and applied in three specific circumstances.
44. PIAC bases its opposition on the claim that TELUS is seeking to correct the evidentiary record upon which the Commission based the Decision relating to usage-based services, and that TELUS is implicitly arguing that the Commission failed to consider a basic principle. That assertion is incorrect. The Decision sets out a principle about customer refunds but does not explicitly reference how that principle would be applied to usage-based services. The Application is aimed at clarifying the position. It is entirely appropriate, in that context, to refer to evidence that has a bearing on the approach the Commission should favour. Doing so does not, as PIAC implies, transform the Application into a section 62 application.

⁴⁸ Québecor Média Intervention, paras. 7-9; PIAC Intervention, para. 18.

F. Process - Ex parte communications

45. PIAC expresses concern about “certain ex parte communications TELUS has engaged in with the Commission regarding matters of policy and interpretation”.⁴⁹ Its concerns are unfounded, and the issue is in any event irrelevant in so far as the Application is concerned.
46. This is not a case of ex parte contact occurring in the course of a proceeding. It is of paramount importance to recognise that the specific communications referenced by PIAC all occurred prior to the initiation of the present proceeding and were aimed at resolving issues of interpretation arising out of previous Commission decisions.⁵⁰ Indeed, PIAC does not suggest otherwise. Canadian administrative law imposes restrictions on ex parte contact with decision-makers that takes place in the course of a proceeding if the contact could give rise to a reasonable apprehension of bias, but the law does not preclude ordinary-course contact with staff that occurs outside of a pending proceeding.
47. PIAC says that it does not seek to prevent such communications: “a regulator and the industry it oversees must have open lines of communication”.⁵¹ What it wants instead is “visibility” in respect of TELUS-CRTC communications. The *Access to Information Act* already provides a mechanism that permits “visibility” of communications with regulators. No need for an additional mechanism has been shown and the institution of any further measures would threaten to disrupt the flow of ordinary-course communications that PIAC acknowledges is necessary for the smooth operation of the regulatory process.
48. PIAC’s submissions about ex parte communications should be disregarded.

⁴⁹ PIAC Intervention, para. 69.

⁵⁰ Moreover, as a perusal of the communications in question will show (Application, paras. 2, 44-45), it is wrong of PIAC to characterize the information that TELUS received as “*decisions* [that] affect the users of telecommunications services”. No “decisions” were made. Guidance and advice was provided.

⁵¹ PIAC Intervention, para. 72.

G. Conclusion

49. TELUS respectfully requests that the Commission reject the submissions opposing the Application and make the order referred to in the Application.

Yours truly,

{Original signed by Ted Woodhead}

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