



5 December 2018

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed by GC key

Dear Secretary General,

Re: *Lower-cost data-only plans for mobile wireless services, Telecom Notice of Consultation CRTC 2018-98, (Ottawa, 22 March 2018), TELUS Communications Inc.'s 3 December 2018 answer to applications for final costs in respect of costs filings by the Canadian Internet Policy and Public Interest Clinic, Public Interest Advocacy Centre and Forum for Research and Policy in Communications – the Forum's response*

1. The Forum for Research and Policy in Communications (FRPC) is in receipt of two letters, each dated 3 December 2018, from TELUS Communications Inc. (Telus, the company), responding to costs applications submitted in the above-noted CRTC notice of consultation (2018-98 proceeding), for which the public record ended 23 October 2018, with final replies.
2. Each letter refers to the Forum's participation in the 2018-98 proceeding. For readers' convenience the Forum will refer to Telus' 9-page letter with respect to the costs of the Manitoba Branch of the Consumers' Association of Canada and the Aboriginal Council of Winnipeg, as the Manitoba CAC letter. We will refer to Telus' 2-page letter with respect to the Canadian Internet Policy and Public Interest Clinic (CIPPIC), the Public Interest Advocacy Centre (PIAC) and the Forum, as the CIPPIC/PIAC/FRPC letter.
3. As Part 4 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (CRTC Rules)* do not explicitly provide for a reply to an answer made pursuant to section 67 of the said *CRTC Rules*, the Forum respectfully requests that the Commission exercise its authority under Part 1¹ of the *CRTC Rules* to accept this letter as a response to Telus' submissions concerning the Forum's costs application. The Forum believes that the public interest would be served by granting this request, by ensuring that the record of the costs-application part of the TNoC CRTC 2018-98 proceeding is accurate and complete.
4. On the assumption that the CRTC will consider our request, the following is the Forum's response to Telus' arguments with respect to the Forum, as set out in its CIPPIC/PIAC/FRPC and Manitoba CAC letters.

Telus' substantially duplicative argument is not supported by the evidence

5. Telus says in the CIPPIC/PIAC/FRPC letter at paragraph 2 that the survey undertaken by the Forum is "substantially duplicative" with the survey undertaken by PIAC, and by Manitoba CAC, and that the CRTC should reduce the Forum's and PIAC's costs "to a level that reflects the duplication of survey research" (the substantially duplicative argument).

¹ Part 1, s. 7: "If the Commission is of the opinion that considerations of public interest or fairness permit, it may dispense with or vary these Rules."

6. Telus has not provided any evidence to support its argument that the surveys undertaken by PIAC, Manitoba CAC and the Forum duplicated each other, or were 'duplicative'.
7. The evidence on the record does not support Telus' argument. First, the three surveys were different in terms of scope and method. The surveys by the Forum and PIAC were national in focus; the survey by Manitoba CAC focussed on Manitoba. The survey by the Forum contacted respondents by telephone using interactive-voice-response technology; the surveys by PIAC and Manitoba CAC contacted respondents online.
8. Second, while the three surveys all focussed on the issue of data-only plans – in a proceeding that was focussed on data-only plans, each sought Canadians' views for different purposes. As shown in Table 1, which follows, the survey by Manitoba CAC supplemented its food-bank research; the survey by PIAC focussed on price points, data allowances and matters such as domestic roaming; and the survey by the Forum asked about Canadians' experience with respect to mobile phone data and data overage charges, as well as their views on lower-cost data-only mobile phone plans. While some of the questions were necessarily similar ('Does your cell phone plan include data?'), most of the surveys' questions were different.
9. The evidence shows that the surveys undertaken by PIAC, Manitoba CAC and the Forum were not duplicative, in that they differed in terms of scope, approach, purpose and questions. Therefore, Telus' argument should be dismissed.

Telus' "greater coordination" argument is not supported by any legal requirements or evidence

10. Telus refers at paragraphs 2 and 3 in the CIPPIC/PIAC/FRPC letter to its argument about public-interest coordination in the Manitoba letter at paragraph 13. Telus submits that with "greater coordination between the public interest intervenors, survey research costs would have been reduced significantly, and any costs award should reflect that" (the greater coordination argument).
11. In arguing that PIAC, Manitoba CAC and the Forum should have used "greater coordination" to reduce survey research costs, Telus provides neither argument nor evidence to support its position. It does not provide a source, for example, of a duty on the part of participants in general, or public-interest participants in particular, to coordinate their activities or their work before the CRTC. It does not provide any evidence demonstrating that such coordination, if required (and it was not), was either feasible in period granted for preparing an intervention, cost-efficient or possible, given the different geographic focus and interests of the participants. The basis for Telus' position is therefore unclear – except, presumably, that Telus would prefer that participants' costs are kept as low as possible.
12. The Forum notes in response that, first, neither the *Telecommunications Act* nor the *CRTC Rules of Practice and Procedure (CRTC Rules)* requires participants in CRTC proceedings to coordinate their activities.
13. Second, while paragraph 21 of TNoC CRTC 2018-98 says that "[p]arties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position", the Notice did not *require* parties to coordinate their submissions or their position: it simply gave them the discretion to do so if they shared positions and if they wished to file a single submission. The Forum exercised this discretion, to present its own position in its own submission using evidence it gathered. Accepting Telus' argument that the Forum was in fact required to

Table 1: Comparison of surveys incorrectly described by Telus as “duplicative”

Unique element	Manitoba CAC	PIAC	The Forum
Purpose	To obtain rural and northern perspectives from people in Manitoba	To understand the potential demand for data-only plans at different price points and data allowances, as well as to understand consumers’ preferences regarding secondary characteristics like domestic roaming, in Canada	To learn about Canadians’ experience with respect to mobile phone data and data overage charges and their views on data-only mobile phone plans
Geographic focus	Manitoba	Canada	Canada
Survey method	Online panel	Online survey	Telephone survey
Substantive questions	<p>Does your current cell phone plan include a data plan? That is, you pay your provider to access the internet without using a Wi-Fi connection?</p> <p>Which of the following best describes your current cell phone plan?</p> <p>Who pays for your cell phone plan? Select all that apply.</p> <p>Please rate your satisfaction with the price you pay for your current plan?</p> <p>If a low-cost data only plan (that is, data only without a phone or texting plan) were available in Manitoba, how likely would you be to select/switch to this plan?</p> <p>How much monthly data do you think you would require for a data-only plan?</p> <p>How much would you be willing to pay per month for a data-only plan with 500 MB per month of data?</p> <p>How much would you be willing to pay per month for a data-only plan with 2 GB per month of data?</p> <p>If a low-cost data only plan (that is, data only without a phone or texting plan) were available in Manitoba on a 3G network (as opposed to 4G/LTE or 5G), how likely would you be to select/switch to this plan?</p>	<p>Q1. Do you currently subscribe to a mobile phone service?</p> <p>Q2. Who is your current mobile phone service provider?</p> <p>Q3. About how much do you pay in a typical per month for your mobile phone service in \$?</p> <p>Q4. What is your monthly data allowance for your mobile phone service? ____ GB/MONTH</p> <p>Q5. About how much data do you end up using in a typical month on your mobile phone service? ____ GB/MONTH</p> <p>Q6. What is the speed of your current mobile phone service plan?</p> <p>Q7. How interested would you be in subscribing to a lower cost data-only mobile phone plan? Would you be...</p> <p>Q8. What would be your main concerns about switching to or getting a lower cost data-only mobile phone plan?</p> <p>Q9A. If you were to subscribe to a data-only mobile plan, how important would each of the following attributes be on a dcale of 1 to 10, where 1 means not at all important and 10 means extremely important?</p> <p>Price</p> <p>Speed</p> <p>Data allowance</p> <p>Being able to roam on other carriers’ networks in Canada</p> <p>Being throttled (having the speed of the connection slowed down) rather than being billed overage fees if I exceed my monthly data allowance</p> <p>Having a choice of service provider</p> <p>Being able to use share the usage allowance across multiple devices</p> <p>Being able to use share the usage allowance across multiple</p>	<p>1. First of all, how often do you access the Internet using your mobile phone?</p> <p>2. Do you have a pre-paid or post-paid plan for your mobile phone?</p> <p>3. Does your mobile phone plan include data?</p> <p>4. How much data is included in your monthly mobile phone plan?</p> <p>5. Does your current monthly mobile phone plan give you good value for the money you are paying?</p> <p>6. In the past year, have you had to pay additional amounts for your mobile phone service because you have used more data than is included in your phone plan?</p> <p>7. Have you limited your cellphone use in the last year because you worried that you might be charged additional fees for the data you use?</p> <p>8. How much data do you use on your cellphone in a typical month?</p> <p>9. Many mobile plans include voice and data, but some only include data. Users with data-only plans can still use the Internet and they can make calls and send messages if they download and use Internet applications or services. Would you switch to a data-only plan if it cost less</p>

Unique element	Manitoba CAC	PIAC	The Forum
		<p>users</p> <p>Paying only for the data you use</p> <p>Being able to top-up data easily and at a reasonable price</p> <p>International roaming at reasonable rates</p> <p>Q10. If you were thinking of subscribing to a lower cost data-only plan would you do some research to determine what data allowance you would need?</p> <p>Q11A. This question is designed to determine what price point and data allowance you might be willing to _____</p> <p>“switch from your current plan to” _____ “subscribe to for” a new lower cost data-only mobile phone plan.</p> <p>If you were going to _____ mobile phone plan, what is the most you would be willing to pay per month for a data-only plan that included a 250MB monthly data allowance?</p>	<p>than your current plan?</p>
Demographic questions	<p>Gender</p> <p>Age</p> <p>Education</p> <p>Employment status</p> <p>Income</p> <p>Location</p>	<p>Gender</p> <p>Age</p> <p>Education</p> <p>Employment status</p> <p>Household income</p> <p>Region</p> <p>Household size</p> <p>Language</p>	<p>Gender</p> <p>Age</p> <p>Education</p> <p>Employment status</p> <p>Total household income before taxes</p> <p>Province</p> <p>Size of residence' community</p> <p>Survey language</p>
Source	Manitoba Voices: Consumer Engagement Reports, Tab 4; Manitoba CAC intervention	PIAC, <i>Lower-cost data-only plans for mobile wireless services</i> , Intervention (Ottawa, 13 June 2018), Appendix A.	FRPC, <i>Unjust enrichment: The 'competitive' wireless market's failure to offer reasonably priced data requires CRTC intervention</i> , Submission regarding TNoC CRTC 2018-98, (Ottawa, 13 June 2018), Appendix.

coordinate its work in this proceeding with other parties would constitute a retroactive change to the discretion that the CRTC granted to participants in that proceeding, to develop their own positions, gather their own evidence and make their own arguments.

14. Third, the Forum notes that the CRTC has previously considered suggestions for coordinated public-interest submissions. In 2010 PIAC proposed that the CRTC “run a separate eligibility application process at the beginning of a proceeding, arguing that this would inform costs applicants of the participation of other consumer groups and facilitate the coordination of submissions.”² The CRTC declined this proposal, on the basis that “the value of a pre-approved budget process would be limited”, “would not be an effective way to prevent excessive costs from being incurred”, “would impose an additional administrative burden on all parties, particularly costs applicants” and “would introduce procedural delays.”³ Accepting Telus’ argument with respect to the costs applications in the 2018-98 proceeding would, we respectfully submit, constitute a fundamental change in the CRTC’s costs application process and would also amount to retroactive changes to the CRTC’s current costs process.
15. Given Telus’ unsupported position that the Forum’s survey research ‘duplicated’ other survey research in the 2018-98 proceeding and Telus’ failure to provide any evidence or legal argument to support its position that public-interest participants should have ‘coordinated’ their work when they were not required to do so, the CRTC should decline to accept Telus’ arguments about lowering the Forum’s costs.

Request that the CRTC review its costs-application process

16. The Forum has requested the opportunity to respond to Telus’ answer to FRPC’s costs application, for several reasons. First, as we said in paragraph 3, the Forum believes that it is important for the public interest to ensure that the record of the costs-application part of the TNoC CRTC 2018-98 proceeding is both accurate and complete. Second, Parliament provided the CRTC with a mechanism for reimbursing participants in CRTC proceedings for their costs, and must be presumed to have decided that this reimbursement process served the public interest by enabling public interest participants to appear before the Commission in its proceedings; ensuring that the record of costs-applications is complete therefore serves to ensure that Parliament’s objectives are being met properly. Third, the Forum in fact incurred costs to participate in the TNoC CRTC 2018-98 proceeding in a reasonable manner, and in a way that reflects the Forum’s evidence-based understanding of the public interest in that proceeding, while Telus’ answer misrepresented the Forum’s participation in the 2018-98 proceeding, stating incorrectly that its survey research was ‘duplicative’ with other public interest groups’ survey research and that ‘greater coordination’ with other public interest participants was required. Fourth, Telus’ answer is the latest in a series of requests by Canada’s largest telecommunications companies for the past several years to deny any or all costs of public-interest organizations, usually despite (as in this case) the absence of evidence or arguments based in law, to support their requests.
17. The Forum has now used 5.72 hours of time to draft this response to Telus, basing its response on applicable law and available evidence, to respond to a company answer that – while its desire for

² *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy 2010-963 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-963.htm>.

³ *Ibid.*, at ¶¶17-18.

lower costs was clear – was not based on applicable law, did not provide evidence and in fact made statements shown to be incorrect.

18. We assume, with respect, that the resources used by Telus to draft its answer have been or will be paid for their time, and similarly that the CRTC's staff have been or will be paid for their time, in dealing with Telus' answer. Part 4 of the *CRTC Rules* sets deadlines for costs applications and is silent about their amendment, but section 24 of the *Rules* also states that applications may not be amended: we assume this applies to costs applications filed pursuant to section 65. As a result, the Forum is not applying to amend its costs application to include the 5.72 hours of time noted above (which, based on the CRTC-approved tariff now in place, amounts to \$1,430 of billable time).
19. Our concern is that in recent years public interest organizations such as the Forum have been required to defend their interests and the interests of those who have undertaken work for the organizations with the reasonable expectation that reasonable costs would be reimbursed, against allegations, often from the same parties, which lack evidentiary foundation and are not based on Canadian law or the CRTC Rules. These responses take time, for which public interest organizations are not reimbursed, and which the Forum would prefer to devote to its work in participating in proceedings of Parliament, the Governor in Council and the CRTC. Without wishing to belabour the point, making submissions not based in law, evidence or fact and/or that contain errors, is arguably vexatious in nature, and misuses the Commission's resources (as well as those of the Forum).
20. The Forum therefore respectfully asks that the CRTC initiate a proceeding in early 2019 to review its 8-year-old costs-application process.

Sincerely yours,



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