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September 18, 2017

Mr. Michael Wernick
Clerk of the Privy Council and Secretary to the Cabinet
80 Wellington Street
Ottawa, Ontario K1A 0A3

Dear Mr. Wernick:

Re: Notice No. TDPB-001-2017 – Petition to the Governor in Council concerning Telecom Regulatory Policy CRTC 2017-91 - *Implementation of the National Public Alerting System by wireless service providers to protect Canadians* (“TRP 2017-91”), Submission of TELUS Communications Company (“TELUS”)

1. TELUS files this submission in accordance with the procedures set out in the above mentioned notice, as published in the *Canada Gazette*, Part 1, August 19, 2017.
2. In TRP 2017-91, the CRTC¹ rendered a decision where it ordered Canadian wireless service providers (“WSPs”) to implement a national emergency public alerting system by April 6, 2018. Avis de Recherche Inc. (“ADR”) has now submitted a Petition to the Governor in Council asking that TRP 2017-91 “be rescinded and/or referred back to the CRTC for reconsideration so that ADR be given full opportunity to present its position.”² Additionally, ADR requests that the TRP 2017-91 be stayed in the interim. The basis of the petition is that ADR was not invited to participate in the public proceeding that led to TRP 2017-91.
3. TELUS opposes ADR’s petition and the request for an interim stay for reasons set out below in detail below. TELUS’ main opposition stems from the fact that TRP 2017-91 followed a comprehensive proceeding that was initiated by the

¹ The CRTC is the Canadian Radio-Television and Telecommunications Commission and is referred to as the CRTC or the Commission in these comments.

² ADR Petition, para. 49.

- Commission via Telecom Notice of Consultation CRTC 2016-115 (“TNC 2016-115”). There is no basis for ADR to claim that it was somehow not invited to participate or otherwise denied an opportunity to participate. For it to now raise some procedural unfairness issue is completely unjustified and must be denied.
4. Furthermore, a national wireless public alerting system will be a tremendous enhancement to public safety in Canada and, as a result of TRP 2017-91, implementation of the system is well underway and achievable by the April 6, 2018 deadline. The Governor in Council should reject the Petition in that it would cause needless delay to the system’s implementation.
 5. In this response, TELUS limits its comments to allegations made in Section II of ADR’s petition, as this is the only portion of the petition that contains substantive rationale for ADR’s position that TRP 2017-91 should be reconsidered by the Commission. The remainder of ADR’s petition, which deals with ADR’s past history with the Commission and its wireless technology has not been addressed in this submission because these sections provide no legal or policy rationale as to why TRP 2017-91 needs to be reconsidered. As such, TELUS does not offer any comment on the remaining sections of the petition and those sections should be ignored in totality by the Governor in Council.

The CRTC’s Public Proceedings Are Open to the Public and ADR Was Not Entitled to Direct Notice of the Proceeding

6. On April 6, 2017, the Commission issued TRP 2017-91, in which decision wireless service providers (“WSPs”) were ordered to implement wireless public alerting (“WPA”) on their long-term evolution (“LTE”) networks as a means to enhance public safety in Canada. This decision resulted from public consultation that was initiated by Telecom Notice of Consultation 2016-115 (“TNC 2016-115”), which was issued by the Commission on March 29, 2016 and accompanied by a press release.³ By issuing TNC 2016-115 the Commission met its general duty to afford notice as required by the *Canadian Radio-television and*

³ The press release can be found using this link: <https://www.canada.ca/en/radio-television-telecommunications/news/2016/03/crtc-seeks-comments-regarding-the-participation-of-wireless-service-providers-in-the-national-public-alerting-system.html>

- Telecommunications Commission Rules of Practice and Procedure* (the “Rules”) and any further duty to notify is specific to the context of the issue under consideration.
7. Importantly, the Commission also invited “interested persons” to participate in this proceeding as “parties” by filing an intervention by May 30, 2016⁴ and it was up to parties to identify whether they wished to become involved in this proceeding. The release of the TNC launched an extensive process during which the Commission investigated “whether to require wireless service providers to participate in Canada’s National Public Alerting System, which will ensure that Canadians receive timely warnings of imminent threats to life and property on mobile devices.”⁵
 8. In TNC 2016-115 the Commission issued a series of questions and publicly requested comments relating to WSPs participation in Canada’s National Public Alerting System (“NPAS”). All WSPs were made parties to the proceeding and were asked to file interventions with the Commission on the issues in the proceeding by May 30, 2016 as part of the notice of consultation.⁶ Following the filing of initial comments, a series of requests for information addressing more technical details of the possible WPA systems were posed to WSPs and other parties who intervened on June 17, 2016.
 9. The ADR makes a claim that the Commission had some duty to inform potentially interested parties of this proceeding, including ADR. ADR states that the CRTC had a “positive duty to advise ADR of the hearings and give ADR the opportunity to present.”⁷ ADR suggests that because of their smart-phone applications for public alerting and history of broadcasting public safety notices, which the CRTC was aware of, ADR has a special interest which warrants a direct invitation to participate in the proceeding.

⁴ TNC 2016-115, para. 21.

⁵ TNC 2016-115, headnote.

⁶ TNC 2016-115, para. 20.

⁷ ADR Petition, para. 42.

10. ADR is claiming that the CRTC breached procedural fairness in failing to provide specific notice to ADR of the TNC. However, ADR was not owed any such notice, meaning that there is no breach of procedural fairness in the manner in which the Commission initiated this proceeding.
11. Importantly, the Commission followed its prescribed rules when it launched TNC 2016-115. This is a critical point, because according to the Supreme Court of Canada, “the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances.”⁸ As such, the requirement for the Commission was to undertake a public proceeding on the issues. What the Rules require for notices of consultation is laid out in Section 21 of the Rules. Specifically, Section 21(1) of the Rules requires that “the Commission must post a notice of consultation on its website.” This requirement was fulfilled with the posting of TNC 2016-115 on the CRTC website on March 29, 2016
12. TNC 2016-115 was a **public** proceeding, a transparent and open process that allowed all interested parties to participate as required by the Rules. The initiation of a TNC is a general notice to the public that the Commission has commenced a consultation on a particular issue.
13. ADR is claiming that it was to be provided specific notice of the proceeding. The issue of whether a party is entitled to direct notice of a proceeding was examined by the Supreme Court of Canada in *Telecommunications Workers Union v. Canada(Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781 (“TWU v. Canada”). In that case, the Court ruled that the Commission was not required to provide direct notice of a hearing to an indirectly affected party.⁹ In that case the Telecommunications Workers Union (“TWU”) claimed interest in the proceeding and sought direct notice given of a proceeding that the work jurisdiction of its members would be impacted by the decision. The Supreme

⁸ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, para. 27.

⁹ TWU v. Canada, at para. 32.

- Court of Canada ruled that the TWU was not required to obtain direct notice of the proceeding given that the Commission proceeding “concerned questions of telecommunications policy,”¹⁰ and not a specific TWU matter.
14. Similarly TNC 2016-115 was a proceeding where ADR had an indirect interest in that there was no specific conflict or issue of which ADR was directly affected.¹¹
 15. ADR might have a direct interest if a the CRTC decision could have involved a change to a licence that ADR might hold or the proceeding involved a dispute raised by another party against ADR, but neither of those situations were in play. As such, ADR’s interest in the proceeding is incidental, as a potential technology supplier of wireless public alerting or because of general interest in the topic. While ADR may be affected by the issues under consideration in TNC 2016-115, it is of an indirect effect and does not warrant direct notice. Similar to the reasoning of the Supreme Court of Canada in TWU v. Canada, the interests of ADR are indirect to the telecommunications policy question of whether to implement WPA and no direct notice to ADR was warranted.
 16. Further, ADR claims that the CRTC “sought interventions from various parties,” quoting paragraph six of TRP 2017-91, with the ADR implying that the Commission had somehow picked certain parties to participate, at the potential exclusion of others (including itself). In fact, paragraph six states that the Commission received interventions as part of the proceeding:

The Commission received interventions from a wide range of parties, including individuals; EMOs; municipal, regional, and provincial governments; industry groups; non-profit organizations; technology solution providers; WSPs; the Canadian Wireless Telecommunications Association (CWTA); the Office of the Privacy Commissioner of Canada (OPC); and the Senior Officials Responsible for Emergency Management Federal/Provincial/Territorial Public Alerting Working Group (SOREM). [emphasis added]

¹⁰ TWU v. Canada, para. 32.

¹¹ The position of ADR stands in contrast to that of the WSPs. WSPs had a direct interest in TNC 2016-115 in that they would be the entities that would have to implement WPA if determined by the Commission, so they were made parties to the TNC directly by the CRTC.

17. This misinterpretation is at the heart of the mistake ADR's flawed petition. The Commission is not required to "seek" interventions from parties with an indirect interest in a general policy-making proceeding. Importantly, the Supreme Court of Canada stressed the difficulty in requiring the Commission or any regulatory agency to abide by such a notice requirement. The Court stated that to require the CRTC and other regulatory agencies to provide notice to parties of a proceeding by way of specific notification "would have grave consequences that could paralyse regulatory agencies." In other words, it would be a significant and potentially impossible burden of the Commission were to be required to identify all potentially interested parties ahead of time of a proceeding of which the parties might have interest.

Given the wide scope of many regulatory agencies, their decisions are likely to have an indirect effect on a large number of individuals in contractual relations with the regulatee. As a result, all such parties would have to be provided with notice of the regulatory proceedings. This is particularly problematic in light of the extreme difficulty of ascertaining exactly who these parties are in advance of the hearing and the possibility that, in the absence of notice, these parties would be able to challenge the legality of the regulatory decision. This could result in an endless series of challenges that would effectively paralyse regulatory agencies.¹²

18. Notably, the challenge being raised by ADR in its petition is precisely the type of challenge that the Supreme Court of Canada sought to avoid.
19. As such, consistent with the requirements in Baker, the Commission followed the process as laid out in the Rules when it initiated TNC 2016-115. Consistent with TWU v. Canada, the Commission is not required to send invites to each party that could have possibly been indirectly affected by the issues under consideration. There was no requirement to provide ADR with specific notice of the proceeding and no breach of procedural fairness occurred in this case.

ADR's Lack of Participation Is Entirely its Own Fault

¹² TWU. V. Canada, para. 33.

20. ADR claims that despite the public notification of TNC 2016-115 ADR was “unable to intervene in the hearings”¹³ because “unlike large entities, ADR does not have staff that monitors CRTC bulletins that happen to be published. ADR claims that it only learned of the TNC 2016-115 on September 19 and 21, 2016, “after seeing the *Globe and Mail* and *Toronto Star* articles thereon.”¹⁴ As ADR only became aware of TNC 2016-115 in September 2016, it had missed the deadline to participate as an interested person because the public proceeding had closed months earlier.
21. ADR’s size is no excuse for its inability to intervene. This becomes especially apparent in consideration of the fact that over two hundred parties, of varying sizes, managed to become aware of the proceeding in time to participate. This included over one hundred individuals, who presumably do not have any resources other than themselves to monitor Commission bulletins and are not industry participants that would stay abreast of industry developments.
22. The Commission has been entirely transparent and forthright about this issue and the fact that WPA would be investigated by the Commission. Prior to the launch of the proceeding and the publication of TNC 2016-115 on its website, the Commission had, for many years, stated its interest in an emergency public alerting system. In the Commission’s Three-Year Plan for 2014-2017, the planned 2014-15 activities included assisting “in the development of technical standards to enable Canadians to receive location-based emergency messages on their wireless devices.”
23. The following year, the Three-Year Plan for 2015-2017 mentions the Wireless Public Alerting System¹⁵ (“WPAS”) and included in the planned activities for 2016-17 is that “a public proceeding may be launched on WPAS.” And by 2016

¹³ ADR Petition, para. 23.

¹⁴ ADR Petition, para. 22.

¹⁵ As the proceeding continued the reference changed from WPAS to WPA.

Wireless Emergency Alerting, was highlighted as its own item in that year's Three-Year Plan:¹⁶

 **Wireless emergency alerting**

The CRTC will monitor the implementation of the Wireless Public Alerting System (WPAS) pilot project, which is being co-ordinated and funded by Public Safety Canada.

The CRTC will complete a public consultation to consider the implementation of emergency alerting by the wireless industry, including establishing policy guidelines and implementing timeframes for industry compliance, as necessary.

24. The ongoing communication of the Commission's intent to hold a public consultation regarding WPA provided ample notice to all interested parties that it would be initiated in 2016. As a result, the release of the TNC should have been of no surprise, given that notice of this issue was provided for years in advance. There is simply no valid reason ADR can claim that the Commission was somehow at fault for ADR's lack of participation.

Conclusion

25. TELUS fully supports the implementation of a national wireless public alerting system in Canada. TELUS maintains that "a full wireless emergency alerting system implemented across Canada must be effective, reliable and robust."¹⁷ The investments of time and resources by numerous parties across Canada will result in a WPA system with those characteristics that will be available in early 2018.

¹⁶ The Canadian Radio-television and Telecommunications Commission Three-Year Plan 2016-2019, Three-Year Outlook: Protect – Strengthening the security and safety of Canadians within the communications system, 2016-17

¹⁷ Answer of TELUS Communications Company to Application of Bruce Power Requesting Wireless Service Providers to Implement Wireless Public Alerting Service Forthwith, July 2, 2015, para. 13.

26. The baseless petition submitted by ADR should not be allowed to compromise the implementation of timely implementation of WPA. TELUS asks the Governor in Council to reject ADR's petition and the request to stay TD 2017-91.

Yours truly,

{Original signed by Stephen Schmidt}

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