



Telecom Decision CRTC 2012-665

PDF version

Ottawa, 5 December 2012

Globalive Wireless Management Corp. – Request for a review of TELUS’s ownership

File number: 8656-G44-201207580

The application

1. The Commission received an application from Globalive Wireless Management Corp., operating as WIND Mobile (WIND Mobile), dated 20 June 2012, in which WIND Mobile requested that the Commission immediately initiate a review of the ownership of TELUS Corporation (TELUS) and TELUS Communications Inc. (TCI) in order to determine whether they are operating in contravention of the ownership requirements set out in the *Telecommunications Act* (the Act) and the *Canadian Telecommunications Common Carrier Ownership and Control Regulations* (the Regulations) (collectively, the ownership and control regime).
2. WIND Mobile requested that the Commission undertake a Type 4 review¹ of TELUS’s and TCI’s ownership and control pursuant to *Canadian ownership and control review policy*, Telecom Regulatory Policy CRTC 2009-428, 20 July 2009, as amended by Telecom Regulatory Policy CRTC 2009-428-1, 28 May 2010 (the review policy).
3. The Commission received comments on the application from TELUS Communications Company (TCC) and Bell Canada. The public record of this proceeding, which closed on 4 September 2012, is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings” or by using the file number provided above.

Issue

4. The Commission notes that WIND Mobile requested that the Commission undertake a Type 4 review of TELUS and TCI. The Commission further notes that TCC is registered with the Commission as a Canadian carrier, and operates as the Canadian carrier for TELUS’s services, while TELUS and TCI are not registered with the Commission as Canadian carriers. In addition, the Commission notes that TCC, as a carrier regulated under the Act, is responsible for ensuring that its ownership structure, which includes all of its partners and parent corporations, complies with the ownership and control regime.

¹ A Type 4 review is a multi-party proceeding involving an oral public hearing.

5. The partners of TCC are TCI and TELE-MOBILE Company (TELE-MOBILE). The partners of TELE-MOBILE are TCI, Emergis Inc. (Emergis), and 1219723 Alberta ULC (121 Alberta). TCI owns 100 percent of the voting shares in both Emergis and 121 Alberta. TELUS directly and indirectly controls 100 percent of the shares of TCI.
6. Pursuant to the ownership and control regime, TCC must be Canadian-owned and controlled. In order for TCC to be Canadian-owned and controlled, the entity controlling it – TELUS – must be a “qualified corporation” with not less than 66 2/3 percent of its voting shares beneficially owned and controlled by Canadians.
7. In the present case, the Commission considers that the issue to be addressed in its determinations is whether to initiate a Type 4 review of TCC’s ownership and control.

Should the Commission initiate a Type 4 review of TCC’s ownership and control?

8. WIND Mobile submitted that its application – in particular, reports it provided that were prepared by Broadridge Financial Solutions, Inc. (Broadridge) – presented *prima facie* evidence that TELUS is not in compliance with the ownership and control regime. WIND Mobile further submitted that the Broadridge reports show that approximately 48 percent of the beneficial holders of TELUS’s voting shares are located outside of Canada.
9. While WIND Mobile acknowledged that the Broadridge reports do not constitute conclusive evidence of non-compliance with the ownership and control regime, it submitted that they do raise important questions about the mechanisms used by TELUS to ensure its compliance. WIND Mobile indicated that these mechanisms include a reservation system for controlling purchases of common shares by non-Canadians and the establishment of two separate groups of securities for Canadians and non-Canadians, referred to as the Canadian CUSIP² and the non-Canadian CUSIP. WIND Mobile submitted that information contained in the Broadridge reports shows that non-Canadians currently hold shares in the Canadian CUSIP.
10. WIND Mobile submitted that the issues raised in the application are of a complex and novel nature. WIND Mobile further submitted that the Commission’s determination on these issues, including TELUS’s current compliance with the ownership and control regime, the mechanisms in place to ensure compliance, and the planned restructuring of TELUS’s share capital, would have precedential value to industry participants. WIND Mobile argued that the evidentiary record would be improved by the participation of third-parties and that, pursuant to the review policy, a Type 4 review was merited.

² CUSIP stands for Committee on Uniform Security Identification Procedures.

11. TCC submitted that it is in compliance with the ownership and control regime. TCC submitted that it had undertaken verification of TELUS's shares and determined that 32.59 percent of the voting shares are held by non-Canadians, which is below the 33 1/3 percent permitted under the ownership and control regime. TCC stated that it arrived at this figure by treating all shares in the non-Canadian CUSIP as held by non-Canadians, and verifying the Canadian status of the beneficial owners of all other shares. TCC also submitted that, while non-Canadians sometimes hold shares temporarily in the Canadian CUSIP, this is a normal part of the share reservation system, and does not represent evidence of non-compliance.
12. TCC submitted that all of the mechanisms in place to ensure compliance derive directly from the Regulations. TCC further submitted that section 4 of the Regulations sets out clear procedures for determining whether voting shares are beneficially owned by Canadians. This section sets out different practices for shares held by registered shareholders and for those held by depositories. As permitted by the Regulations, TELUS relies on declarations or affidavits provided by its transfer agent, Computershare Trust Company of Canada, and the depository, CDS Clearing and Depository Services Inc. Finally, TCC noted that the Regulations and TELUS's articles of incorporation provide the board of directors with authority to ensure compliance.
13. Bell Canada submitted that the Commission should refrain from engaging in a review of TELUS's compliance, arguing that such a review would hold little value for the industry and that the regulatory framework is intended to be self-monitoring.

Commission analysis and determinations

14. The ownership and control regime places the onus on carriers to remain in compliance at all times. Subsection 16(4) of the Regulations requires carriers to file annual reports with the Commission detailing their compliance with the ownership and control regime. The regime does not require the Commission to grant prior approval to carriers' ownership structures. In addition, the Regulations provide detailed instructions to assist carriers and ensure compliance with the ownership and control regime.
15. As noted above, TCC's compliance depends on TELUS's status as a qualified corporation, which in turn requires that not less than 66 2/3 percent of TELUS's voting shares be beneficially owned and controlled by Canadians. The Commission notes that WIND Mobile's application rests largely on the Broadridge reports. Both parties acknowledged that the Broadridge reports do not accurately reflect TELUS's current outstanding share capital. In addition, these reports often reflect information provided by intermediaries, rather than the residential addresses of beneficial shareholders. The Commission does not consider there to be sufficient evidence of non-compliance on the record of this proceeding to warrant a review of TCC's ownership. The Commission notes that the Regulations establish the type of documentation required to demonstrate a shareholder's Canadian status. They also establish that, before taking any additional action, the carrier's board of directors must have information that causes it to believe the declarations it has received are incorrect.

16. WIND Mobile failed to demonstrate that TELUS's board of directors had any reason to question the information it received pursuant to the procedures set out in the Regulations. Further, the Commission is satisfied that TELUS's mechanisms for ensuring its compliance are consistent with the provisions and requirements established in the Regulations.
17. In light of the above, the Commission **denies** the request by WIND Mobile for a Type 4 review of the ownership of TELUS and TCI.

Secretary General