October 29, 2001

Ms. Ursula Menke
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Menke:

Re: TELUS Communications Inc. and TELE-MOBILE COMPANY
Part VII Application, filed September 21, 2001 to consider the manner in which Decision CRTC 2000-745, *Changes to Contribution Regime*, applies to the treatment of revenues derived from wireless terminal handsets, and in this regard, to establish implementation principals that accord fully with the spirit and intent of Decision 2000-745

The Canadian Wireless Telecommunications Association (CWTA) is in receipt of the above noted application filed September 21, 2001 on behalf of TELUS Communications Inc. and TELE-MOBILE COMPANY (the Applicants). The Applicants seek orders from the Commission confirming that:

(i) Revenues derived from the sale of wireless terminal handsets may be deducted from the calculation of the Canadian Telecommunications Service Revenues (CTSR) for the purpose of calculating contribution eligible revenues including both the up front payments and monies derived from ongoing revenue streams.
(ii) The proper treatment of revenues derived from the bundling or packaging of wireless handsets and wireless services in accordance with the Decision.

It is CWTA's understanding that the Applicants' proposal is to use the unbundling rules to segment the monthly telecom service revenues into contribution eligible revenues and handset/terminal payback revenues which are non-contribution eligible. In Order 2001-221, the Commission approved the consensus report of the Unbundling & Other Exemptions Working Group that provided for the use of three calculation methodologies to segment a bundled service into contribution versus non-contribution elements.

The first was on the basis of the stand-alone prices of each of the constituent elements to the bundle. The second was to use a proxy for the stand-alone prices of the elements in the bundle and the third was to use a good faith element. The Applicants appear to be

using the second method approved by the Commission. The Applicants propose to use the costs of the input elements as a proxy for the elements in the bundle and specifically, the cost for the wireless terminal. This is clearly provided for in, and thus fully compliant with, the Commission's Order. The CWTA further notes that other parties may bring forward other workable proposals that may be helpful in addressing the current inequitable situation as it relates to wireless.

The CWTA was an active participant on behalf of its members in the CRTC Industry Steering Committee (CISC) activities that resulted in the rulings by Commission staff on July 31, 2001 and August 20, 2001. These rulings effectively limit the manner in which revenues generated from the sale of terminal equipment should be collected from the customer and contravene the spirit and intent of Decision 200-745 to treat all service providers in an equitable manner.

The CWTA shares the concern of the Applicants that these rulings have resulted in the implementation of Decision 200-745 (the Decision) in a manner that effectively denies wireless carriers the ability to deduct all of the revenues associated with the sale of wireless terminal handsets from their total CTSR for the purpose of calculating contribution-eligible revenues. We also agree with the Applicants' conclusion that as a result of these rulings, wireless carriers are being required to pay more contribution than is warranted by the Decision. The CWTA notes that at this time, of all Canadian telecommunications service providers, it is solely wireless carriers who are paying contribution on terminal revenues. This despite the fact that, as the Applicants note, many other non-TSPs that will not be subject to contribution also supply wireless terminals in the Canadian market.

It is important to emphasize that the Canadian wireless marketplace is fiercely competitive in terms of pricing, services offered and network coverage with four facilities-based service providers operating on a national basis. However, despite having some of the lowest prices in the world, penetration levels in Canada continue to lag significantly behind those in most other countries and Canadian carriers continue to sustain financial losses. Despite these factors, the wireless industry has not abandoned the consumer market, as so many wireline CLECs have done.

As noted by the Applicants, since its inception in the 1980s, the competitive mobile phone market has employed a terminal pricing strategy intended to grow the market – for all competitors. Although currently unique to the wireless industry, historically this approach has been employed by many nascent public telecommunications networks in the early stages of their existence. In addition, reducing the up-front cost of wireless terminals removes a significant barrier to entry, especially for consumers. In fact, this pricing strategy is recognized as being instrumental in helping wireless carriers to penetrate the consumer market where cost is even more significant than in the business sector. Lower-income consumers in particular benefit the most from this pricing strategy. Moreover, not allowing wireless carriers to treat <u>all</u> terminal revenues as contribution non-eligible would competitively disadvantage the wireless industry in relation to wireline carriers by establishing an inequitable application of the Decision.

It is important to note that prior to 1982, when the Commission allowed for the attachment of subscriber provided terminal equipment, the main telephone set was provided as part of primary exchange telephone service, and the terminal cost was included in the price of service. It was not until 1984 that the Commission approved

unbundled rates for telephone service and terminal equipment[1]. CWTA submits that this pricing strategy is analogous to the current approach taken by wireless carriers, with the exception that in the wireless segment the customer and not the wireless carrier retain ownership of the terminal.

It is very disconcerting to the wireless industry that the manner in which the Decision is being implemented not only punishes wireless carriers for this pricing strategy, which is common throughout the industry and pre-dates Decision 2000-745 by over 15 years, but also discourages the industry from continuing to spread the initial cost of terminals over a longer period. This could have significant negative financial impacts on the entire wireless industry should the Commission's contribution determinations result, intentionally or inadvertently, in a change in wireless pricing practices with a resultant dampening effect on subscriber activations. This is a very perverse result that appears to be quite contrary to the goals and objectives enunciated in the *Telecommunications Act* and must, in our view, be carefully considered by the CRTC's Commissioners.

The CWTA believes that the CRTC should apply Decision 2000-745 in a manner in which does not penalize wireless carriers because wireless carriers, and at the present time only wireless carriers, employ a marketing plan that lowers the up-front costs of wireless terminals for consumers.

Wireless carriers recover the costs of terminals over the service life of the customer thereby reducing barriers to consumer participation in the telecommunications market and thus encouraging the growth of the Canadian wireless sector. This is a long-standing practice in the wireless industry throughout North America. The full cost of wireless terminals is still recovered, over time, through revenues in monthly service charges. This is clearly documented by the Applicants in the industry statistics presented. The ARPU, or monthly billing per subscriber, multiplied by the number of months the subscriber is with the carrier documented by the churn rate shows that the average subscriber stays & pays many times more than just the balance of the handset cost for contribution-eligible telecommunications services. Consequently, in the CWTA's view, it is fair and appropriate to allow the deduction, consistent with the intent and wording of Decision 200-745, of this revenue stream from the CTSR. The CWTA submits that to do otherwise would be contrary to the spirit of the Decision.

The CWTA wishes to emphasize that continuance of the current manner in which the Decision is implemented might cause fundamental pricing changes in a competitive market from which the Commission has previously forborne. Such a situation would arise should the Commission's activities, in implementing Decision 200-745, result in a decision by wireless carriers to modify their pricing structures and charge a higher price for wireless handsets.

The wireless industry notes that in Telecom Order CRTC 98-1092, which dealt with a number of requests for mandated intrusion into the wireless industry, the Commission concluded that conditions in the wireless industry were "substantially different" than those which existed in the wireline industry when similar issues were addressed. The Commission noted in its Order that in competitive markets, where forbearance had been deemed appropriate, that it was "... the Commission's general approach of

[1] Telecom Decision 84-11, Bell Canada and British Columbia Telephone Company – Implementation of Decision Permitting Attachment of Subscriber-Provided Terminal Equipment

fostering the growth of competitive markets, and whenever possible, leaving rates, terms and conditions for the provision of services to be disciplined by competitive markets." The wireless industry submits that for the Commission to now take action which could result in modifications, to the Canadian segment only, of a fundamental element of the North American wireless pricing model would run entirely counter to the spirit of the Commission's general approach as outlined in Order 98-1092. The Canadian wireless industry does not believe that such a result would constitute good public policy.

The wireless industry further notes that the implications of such a move would leave Canada disadvantaged, vis-à-vis the United States, with regard to the development of a key segment of the telecommunication industry. This could occur as US wireless service penetration, aided by the continuation of the current terminal pricing strategy, continues to grow, while Canadian penetration begins to stagnate. The wireless industry believes that such a result would run directly counter to stated government policy in this regard.

For the reasons expressed above, the CWTA fully supports the relief requested by the Applicants.

Sincerely,

Electronic filing

J. David Farnes
Vice President
Industry and Regulatory Affairs

cc: The Applicants
Interested Parties
L. St-Aubin, Industry Canada