

Docket: 2012-458(GST)G

BETWEEN:

TELE-MOBILE COMPANY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 29, 2015, at Vancouver, British Columbia

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant: Kimberley Cook

Counsel for the Respondent: Frédéric Morand, Tamara Watters

JUDGMENT

The Appeal from the reassessment made under the *Excise Tax Act* with respect to the Notice of Reassessment dated June 25, 2009, is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 6th day of August 2015.

“Campbell J. Miller”

C. Miller J.

Citation: 2015 TCC 197
Date: 20150825
Docket: 2012-458(GST)G

BETWEEN:

TELE-MOBILE COMPANY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

C. Miller J.

[1] Tele-Mobile Company (“Telus”) is a partnership between Telus Communications Inc. and 3817873 Canada Inc. Telus appeals the Goods and Services Tax (“GST”) assessment in which the Minister of National Revenue (the “Minister”) assessed GST on the telecommunication service provided by Telus of roaming airtime services (“RAT”) in the United States. The Minister applied paragraph 142.1(2)(b) of the *Excise Tax Act* (the “Act”) on the basis that the RAT was part of a single supply of telecommunication services by Telus, which services included long distance calls from the United States to Canada. Telus’ position is that the RAT was a separate supply for a telecommunication service taking place entirely in the United States and therefore not captured by paragraph 142.1(2)(b) of the *Act*.

[2] The Parties most helpfully provided an Agreed Statement of Facts which is reproduced in its entirety and attached as Appendix A: a careful reading of those facts is essential to appreciate the technical machinations of making a cellular long distance call from the United States to Canada as a Telus subscriber.

[3] I add the following to the evidence contained in the Agreed Statement of Facts: first, attached as Appendix B are excerpts from an invoice for a subscriber, illustrating the breakdown between RAT charges and long distance charges.

[4] What is clear from a review of the invoice is that often the RAT was based on a call that would have been a minute longer than the roaming long distance charge, presumably as it could take up to a minute to connect to the toll switch at the MTSO (as those terms are described in the Agreed Statement of Facts).

[5] Next, I attach as Appendix C part of a CHARM 781 monthly expense report for Telus. This simply shows that the roaming airtime was greater than the toll or long distance time. To put this in simple terms, this means a Canadian subscriber not only used the cell phone while travelling in the United States to make long distance calls back to Canada, but also used it to make local calls, for example making a local dining reservation.

[6] I was also provided in the Joint Book of Documents with a copy of part of Telus' website entitled "Coverage and Travelling" which stated in part:

Traveling in the United States?

With our automatic U.S. roaming service, you can take your TELUS Mobility PCS* 1X phone or data device to hundreds of cities across the United States, and access all the great PCS phone and data features you enjoy at home.

What you pay

We've made U.S. voice and data roaming simple. You don't have to sign up, just take your phone and go. Just like at home, airtime and long distance are billed in Canadian dollars so there's no need to worry about U.S. exchange rates.

Airtime (within the U.S. and to Canada

Long Distance (within U.S. the U.S. and to Canada

Data Roaming

95¢ per minute

Additional 50¢ per minute

Charged by the Megabyte in 1X areas. See our PCS US Data Roaming FAQs for details

[7] In the agreement with its customer, under the heading "Roaming", Telus stipulated:

Roaming: When roaming outside of TELUS Mobility's area, Customer is responsible for all applicable charges, and is subject to the terms and conditions of service (including limitations of liability) imposed by the wireless service provider providing the roaming services. ...

[8] Finally, in an agreement with a United States carrier (the example provided by the Parties was an agreement with Alaska Digitel LCC), Telus and the U.S. carrier agreed in part as follows:

2. The Home Carrier shall be liable to the Serving Carrier in accordance with Paragraph 2.1 of Appendix II for all of the service and pass-through charges for all calls chargeable to the Home Carrier's customers (including the customers of its resellers) and invoiced by the Serving Carrier to the Home Carrier as specified in Appendix III. "Home Carrier" and "Serving Carrier" are defined in Appendix II.

...

- 4.1 Each Home Carrier shall be responsible for billing to, and collecting from, its own customers all charges that are incurred by such customers as a result of service provided to them as Authorized Roamers by the Serving Carrier. The Home Carrier shall also be responsible for billing its customers for, and remitting to, the Federal Government all federal excise tax that may be due in connection with the service being billed by it to its customers. While the Serving Carrier will be responsible for the computation and remittance of all state and local taxes, each Home Carrier shall be liable to the Serving Carrier for all such state and local taxes billed by the Serving Carrier, regardless of whether these amounts are paid to the Home Carrier by its customers.

...

9. Billing Invoice Summary. The minimum information needed for an invoice issued with non-clearinghouse documentation must include the following:

- Billing Period (To/From Dates)
- Batch Sequence Number
- Batch Date
- Serving and Home SID's (the five digit numeric corresponding to the FCC designation of the Carrier)
- Total Airtime Charges
- Total Intra-State Toll
- Total Inter-State Toll

- Other Charges and Credits
- Total Taxes
- Total Charges

Issue

[9] The issue is whether GST is exigible on the RAT charges incurred on long distance calls made by a subscriber to Canada while travelling in the United States. The answer depends on whether the RAT charge is for a single supply of that telecommunication service (being the transmission from the cell phone in the United States to the MTSO) or whether that supply, to which the RAT charge relates, is part of an overall supply of telecommunication services that includes both the long distance element (being the transmission from the MTSO to the Canadian recipient of the call) and the RAT element. In other words, was Telus supplying, and the subscriber receiving, two separate supplies:

- a) the transmission between the cell phone and a toll switch (MTSO) in the United States where the transmission is then transferred to a cross-border transmission; and
- b) the transmission from there to the Canadian recipient of the call.

To be clear, GST was charged and collected on (b), the second supply, but not on (a) the charge for the transmission from the cell phone to the toll switch at the MTSO. It is only the latter that is in dispute.

Legislation

[10] I start with a review of the applicable provisions of the *Act*.

[11] “Supply” as defined in section 123 of the *Act* means:

subject to sections 133 and 134, the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition;

[12] “Telecommunication service” is defined in section 123 of the *Act* as:

- (a) the service of emitting, transmitting or receiving signs, signals, writing, images or sounds or intelligence of any nature by wire, cable, radio,

optical or other electromagnetic system, or by any similar technical system, or

- (b) making available for such emission, transmission or reception telecommunications facilities of a person who carries on the business of supplying services referred to in paragraph (a);

[13] Telecommunication service is broadly defined and is a supply for purposes of the *Act*. Pursuant to subsection 165(1) of the *Act* a person who pays consideration for a taxable supply made in Canada is required to pay GST. Further, pursuant to section 221 of the *Act* the supplier is obliged to collect the GST.

[14] Section 142 of the *Act* sets out principles to determine whether a supply is made in Canada and consequently caught by the GST charging and collecting provisions. Section 142.1 of the *Act* specifically addresses this issue in relation to a telecommunication service. It reads:

- 142.1(1) For the purposes of this section, the billing location for a telecommunication service supplied to a recipient is in Canada if
 - (a) where the consideration payable for the service is charged or applied to an account that the recipient has with a person who carries on the business of supplying telecommunication services and the account relates to a telecommunications facility that is used or is available for use by the recipient to obtain telecommunication services, that telecommunications facility is ordinarily located in Canada; and
 - (b) in any other case, the telecommunications facility used to initiate the service is located in Canada.
- (2) Notwithstanding section 142 and subject to section 143, for the purposes of this Part, a supply of a telecommunication service is deemed to be made in Canada where
 - (a) in the case of a telecommunication service of making telecommunications facilities available, the facilities or any part thereof are located in Canada; and
 - (b) in any other case,
 - (i) the telecommunication is emitted and received in Canada, or

- (ii) the telecommunication is emitted or received in Canada and the billing location for the service is in Canada.

[15] It is agreed that Telus has a billing location in Canada as described in subsection 142.1(1) of the *Act*. It is subsection 142.1(2) of the *Act*, however, where the dispute arises, and specifically the application of subparagraph 142.1(2)(b)(ii) of the *Act*. With respect to a cellular call from the United States to Canada made by a Telus customer: (i) if the telecommunication service is viewed as a single supply of the entirety of the transmission (that is from the cell phone in the United States to a phone (cell or landline) in Canada) then because it is received in Canada it is subject to GST, or (ii) if the telecommunication service is viewed as two separate telecommunication services or supplies, one being the transmission from the cell phone in the United States to the toll switch at the border for which there is a RAT charge and the other from the toll switch at the border to the Canadian recipient for which there is a long distance charge, then only the latter transmission is received in Canada and therefore considered a supply made in Canada and the RAT charge would relate to a supply neither emitted nor received in Canada and therefore not subject to GST.

Analysis

[16] So, a single supply of a telecommunication service or separate supplies of telecommunication services? Given the definition of telecommunication service in the *Act* is in the disjunctive, that is, the emission, transmission or reception of a signal, can each be considered a telecommunication service? Yes, under the *Act* I readily conclude that the RAT transmission to the MTSO could be a supply and the long distance transmission from the MTSO to the Canadian recipient could be a supply. The question is however whether, pursuant to the development of the jurisprudence on single supply versus multiple supplies, these transmissions are separate supplies for purposes of the *Act* or integral components of a single supply.

[17] There has been considerable case law addressing this issue. I start with the principle set out by Chief Justice Rip in *O.A. Brown Ltd. v R*,¹ to which both Parties referred me:

...The test to be distilled from the English authorities is whether, in substance and reality, the alleged separate supply is an integral part, integrant or component of

¹ [1995] G.S.T.C. 40 (TCC).

the overall supply. One must examine the true nature of the transaction to determine the tax consequences...

...one should look at the degree to which the services alleged to constitute a single supply are interconnected, the extent of their interdependence and intertwining, whether each is an integral part or component of a composite whole...

[18] I note with interest, as did Justice Rothstein in the Supreme Court of Canada's decision in the *Calgary (City) v R.*² that Chief Justice Rip cited the importance of common sense in making this determination. Indeed, common sense is my starting point and common sense suggests to me that when I use my cell phone in the United States to phone Canada and Telus charges me for that service, I am being supplied a phone call, regardless of the inner machinations of the various transmissions. A review of the case law may assist in determining whether there is support for that common sense approach or not. The Parties cited several cases all of which acknowledge the overriding principles set out in *O.A. Brown*. I am going to rely on just a handful, as I believe they best reflect the factors Courts have considered in dealing with the single versus multiple supply issue.

*Global Cash Access (Canada) Inc. v Canada*³

[19] This case referred to the commercial efficacy, or lack thereof, of supplies of: (i) allowing kiosks on casino premises, (ii) providing support services at the cashier cages and (iii) cashing *Global's* cheques, finding that these elements constituted a single supply. The Federal Court of Appeal stated:

25. It is clear from the contract and from the undisputed facts that none of the three elements of the supply as identified by Justice Woods had commercial efficacy on its own. More importantly, there is no evidence that Global would have been prepared to pay consideration to the Casinos for any of the three elements on its own. Since the three elements are integrally connected and there is a single consideration, there is a single supply.

*BC Ferry Services Inc. v HMQ*⁴

² 2012 SCC 20.

³ [2013] F.C.J. No. 1271.

⁴ 2014 TCC 305

[20] This case dealt with the supply of staterooms to passengers travelling on ferries. The appellants indicated that the use of staterooms during the voyage was not included in the purchase of the ticket for the transportation. *BC Ferry Services* was assessed on the basis that the supply of staterooms was part of the single supply of the ferry service. Justice Campbell decided otherwise, finding that rental staterooms was a separate supply from the supply of ferry services. She indicated:

65. I am of the view that the provision of stateroom rentals is a separate supply. Common sense dictates that the provision of ferrying services remains a useful and valuable supply minus the rental of staterooms. Staterooms are not an essential component to the overall supply of transportation services. In fact, there are insufficient numbers of staterooms to accommodate every passenger, even if all of the passengers on any route wished to purchase a stateroom. The provision of staterooms can be, and frequently is, omitted from the supply of ferry services. It is only logical to conclude that it must be a separate supply. It can be purchased separately and still result in a useful service for a particular passenger. It is a “stand alone” product independent of the ferrying service. There is such a lack of interconnectedness that it is very easy to identify these stateroom supplies as distinct components from the supply of transportation services that get a passenger from Point A to Point B. The rental of staterooms falls within the Act’s definition of short-term accommodations and, in any event, can easily be separated from the overall supply, leaving a useful product or service intact.
-

*Jema International Travel Clinic Inc. v Canada*⁵

[21] In this case, the health clinic provided travel health advice which was required before determining which vaccination the customer needed, and the clinic would then supply and administer the vaccination. No vaccination was given without first having a consultation, which could in fact result in no vaccination being necessary. Justice D'Arcy stated:

33. After reviewing the evidence, I have concluded that the Appellant made two supplies, i.e. the supply of the consultation and the supply of a vaccine.
34. The consultation between the nurses and the clients involved a determination of what vaccines the latter was required to have and what vaccines he or she could elect to have before travelling to a specific country. The consultations also resulted in the determination of whether the client, based upon his or her current health and medications, could receive the vaccines. The consultations could result in the client receiving no vaccines (if for example he/she has previously received all required or recommended vaccines), a single vaccine or numerous vaccines. Further, the actual number and type of vaccines administered by the nurses at the clinic would vary from client to client.
35. This, in my view, evidences that the supply of the consultations was separate from the supply of the vaccines. For example, a person may attend at the clinic and the nurse may determine that he or she does not require any vaccines. The supply of the consultation has been made, but there is no supply of a vaccine. In other words, a supply of the vaccine is not required to make a supply of the consultation. This supports a finding that the supply of the consultation was separate from the supply of any vaccines.
36. In addition, the supply of the consultation is a useful service even if a supply of a vaccine is not made. If the client elects not to receive a required vaccination then he/she knows that he/she cannot travel to the country that requires the vaccine. Alternatively, if the consultation results in a determination that the client can travel safely to a specific country without having received any vaccinations, then he/she has still received useful information.

⁵ 2011 TCC 462.

*Cie de Gestion Alger inc. v R*⁶

[22] This case dealt with home delivered pizza. Justice Paris found that the delivery person, albeit self-employed, was an agent of the pizza parlour itself and notwithstanding the cost of pizza and the cost of delivery were separately itemized, he found one single supply. He indicated:

31. When the various elements of a supply are an integral part of said supply and they are inextricably linked, or when each loses its independence and must be supplied jointly, the supply will usually be considered as being a single supply. Conversely, when a number of elements of a supply are reasonably severable or separable, the supply will usually be considered as being a multiple supply. In that regard, it would be prudent not to artificially split, for business purposes, a supply that is clearly a single supply.

...

36. In the case at bar, it is necessary to determine whether the property (the food) and the service provided (the delivery) constitute a single supply, or whether they are two separate supplies. One must ask, in the light of the evidence adduced:

- Is it possible to separate each of the elements and end up with a useful and functional service or property?
- What is the degree to which the food and the delivery service are interconnected?
- Is the delivery service an integral part of the supply of food?
- Are separate charges made?

37. On the one hand, the evidence reveals that the cost of food and the cost of delivery were itemized separately on the invoice provided to the customer. However, when the customers paid their invoice, they paid the delivery person the total amount, without distinction between food and delivery. As for the food and delivery services being interconnected, the evidence shows that there were two ways of obtaining the food: go to the appellant's establishment in person or place an order for delivery. In the first case, the food was made available to the customers while at the restaurant. In the second, the food was made available to the customers

⁶ 2014 TCC 53.

upon delivery. What differs is the manner in which the supply was made available to the customers. As for the interconnection and separation of elements, it is clear that it was possible to obtain the food without delivery. However, to obtain delivery without food is simply illogical. By separating the two elements, such that all that remains is the delivery, a viable and useful service or property cannot be obtained.

[23] It is also helpful to consider the Government's policy on this issue. In Policy Statement P-077R2 entitled "Single and Multiple Supplies" the Canada Revenue Agency indicates:

Is the recipient made aware of the elements (in detail) that are part of the package?

If the recipient is not made aware of the specific elements, there is likely only a single supply.

When the recipient is made aware of the elements that make up a package of property and/or services, this information may help to establish the relationship amongst the individual elements and the importance of each element. A detailed indication of specific elements might include the quantity of the particular elements being supplied, their physical characteristics, or the steps to be followed in providing a particular element. If the recipient is made aware of the specific elements, there may be multiple supplies or there might only be a single supply.

[24] The Appellant, in presenting a review of this case law, suggests there are five criteria to be applied in the determination of whether there is a single or multiple supply:

- a) Do each of the supplies have commercial efficacy?
- b) Is the recipient aware of the specific elements of each of the supplies?
- c) Are there separate fees for each of the supplies?
- d) Are any of the supplies an optional component?
- e) Are any of the supplies useful on their own?

[25] I am prepared to review the facts before me addressing each of these factors, but it is important to distinguish at the outset the difference between viewing two alleged separate supplies in context versus viewing them unattached to one another. For example, it is of no assistance to point to the pizza parlour and say that because a customer can buy pizza directly from that place, it must be a separate supply. The analysis should not be centered on a different circumstance: the circumstance in that case was the purchase of home delivered pizza. Likewise, with respect to the telecommunication service it is faulty analysis to look just at the

RAT and say that because a customer can simply buy that, it must be a separate supply. No, it must be viewed in context of the end result to the recipient of the overall supply. In effect, you cannot have one without the other to achieve the result. So you cannot have pizza without delivery nor delivery without pizza for home delivered pizza. You can, however, have a ferry service without the stateroom though, as you can have health advice without the vaccination.

Commercial efficacy

[26] Does the RAT have commercial efficacy on its own? Only, I would suggest, if you consider it out of context of the long distance charges. Clearly, the plans bought by a subscriber permitted use of roaming airtime for purposes of making local calls, while roaming in the United States, but that is not the service at issue. I recognize it is not required of the subscriber that he or she use the long distance element of the package, though presumably that is partly the reason for acquiring such a Telus plan. Appellant's counsel pointed out, even in the context of traditional telephone communication,

Yet, even in this traditional context, an individual making a long distance call does absolutely nothing different in picking up a phone to call either a local or long distance number. The phone is simply being used to make the call.

[27] The evidence of the invoices and the CHARM summary suggest that the RAT can be used independently of long distance charges, and therefore has a commercial efficacy as a standalone supply. But again, I would emphasize that is only in the context of locally made calls. The subscriber may or may not make long distance calls from the United States. But by paying for the RAT the subscriber has access to the system allowing it to make that long distance call, and the two (RAT and long distance service) work hand-in-hand to provide the overall long distance service.

Awareness of specific elements

[28] In Telus' advertising it markets the seamless nature of phoning from the United States, though it also makes clear that the customer pays for access to United States RAT and then pays again for long distance.

[29] This arrangement is also confirmed in the service plan the subscriber ultimately subscribes to, which again separates charges for the RAT versus the long distance service. It is clear though the subscriber avails him or herself of both

services for a Telus long distance call. The invoices themselves also set out the separate charges.

[30] While I do not view this as an artificial separation, as the Respondent might suggest, I see it more as an internal tool for the providers of the service.

Separate fees

[31] Yes, the fees are separate for the RAT transmission from the cell phone to the MTSO and for the long distance charge from the MTSO to the Canadian recipient. I agree with the Appellant that this too is not an artificial separation. This does suggest two separate supplies but it is not determinative.

Optional Component

[32] The Appellant argues that when one or more elements of the supplies are optional it supports a finding of separate supplies. Given subscribers had different options regarding the provision of United States Long Distance Service (calling card or collect for example), it follows the United States Long Distance element was optional and therefore a separate supply. I do not view the optional nature of the service this way. This is not the same as having an option to buy the use of a stateroom on a ferry. The option in that case is with the same supplier – the ferry service. With the Telus long distance call, using only Telus, there are no other options. The RAT and long distance service must work together.

Useful supply

[33] I again agree with the Appellant that the RAT service is a useful standalone service, for example, in making local calls while travelling in the United States. But the point is that is not the service at issue. It is the service of a Telus cellular long distance call from the United States to Canada. Are either the RAT or long distance service useful by themselves in making the long distance call through Telus? The answer is no.

[34] In summarizing a review of the factors suggested by the Appellant, I understand why the Appellant believes case law could support separate supplies. Yet, with respect, these criteria are not as helpful as they might be. For example, in applying these criteria to the delivered pizza case as opposed to the vaccination case, it is difficult to discern any bright line test based on commercial efficacy,

separate billing, optional component or useful supply. I harken back to the words of Chief Justice Rip in *O.A. Brown*:

...integral part, integrant or component of overall supply.

[35] This integration approach, I believe, remains the essence of the single versus multiple supply. And this, I suggest, distinguishes a delivered pizza from the vaccination or from the stateroom on the ferry. With the delivered pizza, the recipient is simply getting a pizza. With the ferry ride, the recipient is getting more than the ride as he or she is also getting a stateroom and all that entails. With the vaccination, the recipient gets more than just a vaccination, it gets valuable health advice.

[36] The delivery of the pizza is integrated into the supply of the pizza. The stateroom and the health advice are not integrated into the ferry ride and the vaccination respectively. Viewing the telecommunication service offered by Telus as a service of communication for customers to talk to another person, how that service is delivered is more akin to the delivery of pizza than provision of a separate stateroom service or vaccination service. The customer is simply paying to be able to make a call from his cell phone to Canada. The RAT and long distance service are fully and seamlessly integrated into making that happen. For the delivery of a long distance call from the United States to Canada by cell phone, you cannot have the RAT without long distance nor can you have long distance without the RAT for a Telus made call. They are totally interdependent: integral components of an overall supply.

[37] Finally, I wish to address the Appellant's argument that "two very distinct and separate services are being provided". The Appellant presents the analogy of a transaction at a dry cleaner, where a customer takes in a shirt to be cleaned and to be mended, tasks completed by different subcontractors and identified and billed separately by the dry cleaner.

The Appellant argues:

124. In the example each of the cleaning and mending services has commercial efficacy on its own, the customer is aware of the separate elements, separate fees and charged for each service, either of the services is an optional component and both services are useful on their own. The mending and cleaning services are accordingly separate supplies.

125. In contrast, the opposite conclusion would arise in a situation where the customer came in to have the shirt cleaned and the dry cleaner told the customer that he would be charged \$2 for cleaning solution and \$8 for the cleaning service. This situation is an example of the type of artificial transaction the Courts have ruled must be considered as a single supply. (For example, the minimal quantity of cleaning solution used had no commercial efficacy on its own, and it is an integral and non-optional part of the cleaning service). In this example a single supply of a cleaning service is being rendered with an artificial separation of an integral non-optional element that does not alter the nature of the supply.

[38] This analogy does not work for me. The Telus customer is looking to Telus for one thing – the ability to phone Canada by cell phone while travelling in the United States. The ferry passenger has two distinct objectives – the transportation and the comfort of a stateroom. The dry cleaner customer has two distinct objectives – the clean shirt and the repaired shirt. The telephone customer has one objective – the phone call. How Telus provides that and charges for it does not turn it into multiple distinct and separate supplies.

[39] Appellant’s counsel has done a masterful job of gleaned tests from the case law to support her client’s position. It has not been enough though to overcome my common sense view that the interdependence of the RAT service and the long distance service is such that there is a single supply of a transmission from cell phone in the United States to recipient in Canada, and as that transmission is received in Canada it is caught by subparagraph 142.1(2)(b)(ii) of the *Act*.

[40] The Appeal is dismissed with costs to the Respondent.

These Amended Reasons for Judgment are issued in substitution of the Reasons for Judgment dated August 6, 2015.

Signed at **Vancouver, British Columbia**, this **25th** day of August 2015.

“Campbell J. Miller”

C. Miller J.

APPENDIX A

2012-458(GST)G

TAX COURT OF CANADA

BETWEEN:

TELE-MOBILE COMPANY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent


PARTIAL AGREED STATEMENT OF FACTS


For the purpose of this appeal only, the parties agree to the following facts:

1. The Appellant is a Canadian partnership between Telus Communications Inc. and 3817873 Canada Inc.
2. The Appellant is a GST registrant required to file its GST returns on a monthly basis.
3. The Appellant carries on a cellular wireless telecommunications business.
4. As part of its business, the Appellant supplied subscriptions for cellular telephone services to individual and corporate clients ("Subscribers").

Issue in dispute

5. The disputed amount of \$120,294.65 represents the total GST that the Respondent alleges was collectible by the Appellant for the period from December 1, 2004 to December 31, 2004 ("Relevant Period") on charges for roaming airtime services ("Roaming Airtime") in connection with long distance calls placed by Subscribers to Canada while in the U.S.

Appellant's counsel 

Respondent's counsel 

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Appellant's cellular network


6. During the Relevant Period, the provision of cellular services to Subscribers was governed by a standard form service agreement entered with the Appellant.¹
7. Subscribers' billing and invoicing information was associated with an assigned Canadian telephone number and, for all but an estimated 6850 Subscribers, a mailing address in Canada.
8. Subscribers were able to place and receive calls:
 - i) within their assigned home service area ("Local Calls").
 - ii) while traveling outside of Canada ("Roaming").
9. When Subscribers placed a call, their cellular handset sent a radio signal to the closest location where transmission and reception antennae, electronic communications equipment and other components were placed – usually on a radio mast, tower or other elevated structure ("Cellular Site").
10. Cellular Sites were either owned or leased by the Appellant. Each Cellular Site served a land area known as a cell, which when joined together with other cells composed the Appellant's cellular network.

Mobile Telephone Switching Office

11. During the Relevant Period, Cellular Sites were used to enable a connection between Subscribers' cellular handsets and the "Mobile Telephone Switching Office" ("MTSO").
12. Generally, the central difference in technology between placing and receiving calls through a traditional wire-line service as opposed to through a cellular service, is that a wire-line telephone is connected to the telephone network by wires, while a cellular telephone is connected to the telephone network by radio transmissions.
13. The telephone network, which is composed of a system of telephone lines, fiber-optic cables and similar communications instruments, enables one person to place a call and another person to receive the call, even if the caller is using a wire-line telephone, for example and the receiver is using a cellular telephone.
14. When a Subscriber uses a cellular telephone, the telephone sends a radio signal to the closest Cellular Site within the cellular network, or if the Subscriber is outside of the cellular network, to a Cellular Site served by a different carrier.

¹ *Personal Use Service Agreement* dated March 11, 2005, [the terms of the 2005 Personal Use Service Agreement are substantially similar to the terms of the 2004 Personal Use Service Agreement]; *Corporate Customer Agreement* effective December 15, 2004.

Appellant's counsel 

Respondent's counsel 

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15. The MTSO is a central coordinating facility for a cellular network that routes wireless calls from Subscribers' cellular handsets to Cellular Sites. It is the mobile equivalent to the "Public Switched Telephone Network" ("PSTN") which is a collection of interconnected equipment and facilities that provide, among other things, traditional wire-line telephone service.²
16. Once wireless calls were routed to Cellular Sites, the MTSO also performed the function of routing the calls to the destination phone numbers through:
 - i) the wireless cellular network;
 - ii) the PSTN; or
 - iii) a combination of both.
17. The MTSO was also used to compile billing information and to provide services to efficiently support Subscribers, such as registration, authentication and location updating.

Roaming Agreements with U.S. Carriers

18. During the Relevant Period, other than some fiber-optic lines, the Appellant did not own telecommunications facilities in the U.S.
19. In order for Subscribers to place or receive calls while Roaming in the U.S., an American telecommunications carrier ("U.S. Carrier") had to make its network facilities available to the Appellant.
20. For this purpose, the Appellant entered into contractual relationships with various U.S. Carriers ("Roaming Agreements").³
21. While Roaming in the U.S., Subscribers had to access a U.S. Carrier's Roaming Airtime services in order to place any call. The Roaming Airtime service facilitated a connection from the cellular handset to the Cellular Sites and MTSO.
22. If a Roaming Subscriber wanted to make a long distance call while in the U.S., the Subscriber also had to access long distance services ("Roaming Long Distance"). The Roaming Long Distance services carried the call from the U.S. Carrier's MTSO (or PSTN) to the local switch of the destination phone number.

² For calls between cellular and wire-line telephones, the MTSO interfaces with the PSTN.

³ *Intercarrier Roamer Service Agreement between AGT Mobility Inc. and Cellular Holding, Inc.* (February 8, 1994); *Intercarrier Roamer Service Agreement between TELE-MOBILE COMPANY and Commnet Wireless, LLC.* (December 16, 2003); *Inter-carrier Roamer Service Agreement between Tele-Mobile Company and Alaska Digital* (April 1, 2002);

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Respondent's counsel FE

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23. Roaming Subscribers in the U.S. could place a long distance call to Canada in a few different ways:
- a) The Roaming Subscriber could obtain Roaming Long Distance service through the same U.S. Carrier that was providing the Roaming Airtime service. This chosen method only required the Subscriber to directly dial the destination phone number to complete the call. In these circumstances (depending on the Subscriber's calling plan) the Appellant would charge the Subscriber a long distance fee ("Roaming Long Distance Fee").
 - b) The Roaming Subscriber could also obtain Roaming Long Distance service through a service provider other than the U.S. Carrier that provided the Roaming Airtime service. Specifically Roaming Long Distance service could be obtained using:
 - i. a prepaid long distance card, which was a card that generally contained a code entitling the user to a certain number of minutes of long distance service. The seller of the pre-paid card was usually not the actual Roaming Long Distance service provider, but was instead a contractor of the service provider who purchased bulk quantities of long distance minutes to sell in small increments;
 - ii. a calling card, which was a card that generally enabled the user to obtain the Roaming Long Distance service through a link to an existing account without prepayment being required; or,
 - iii. a third party billing (eg. collect call), which generally allowed the caller to obtaining the Roaming Long Distance service through an existing account that belonged to a third party, typically the person at the destination phone number, with the third party account consenting to being charged the fee for the Roaming Long Distance service.
24. Generally when using a calling card or a prepaid long distance card the Roaming Subscriber would follow the instructions on the card which typically required calling a toll free number.
25. When a Roaming Subscriber obtained Roaming Long Distance from a service provider other than the Roaming Airtime service provider, the Roaming Airtime service provider would deliver the Subscriber's call to the long distance toll switch associated with the Roaming Long Distance service provider at which point, the Roaming Long Distance service provider would pick up the call and supply the Roaming Long Distance service to carry the call to the final destination phone number.

Appellant's counsel JK

Respondent's counsel ELL

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26. The amount in dispute for the Relevant Period relates only to situations where Roaming Subscribers used the Roaming Long Distance service of the U.S. Carrier that was also providing Roaming Airtime service to complete a long distance call from the U.S. to Canada as described at subparagraph 23. a) herein.
27. When Roaming Subscribers placed a call :
 - i) the serving U.S. Carrier's equipment would identify the Subscriber as the Appellant's customer and create a temporary account that was used to track details of the call; and,
 - ii) the serving U.S. Carrier charged the Appellant a fee for the Roaming Airtime Service.
28. When the call placed by the Roaming Subscriber was a long distance call to Canada, and the Subscriber was obtaining the Roaming Long Distance service from the serving U.S. Carrier, the Appellant was charged a fee for the Roaming Long Distance service.
29. The fee for the Roaming Long Distance service was a charge for the service of carrying a call from the long distance toll switch at the MTSO (or PSTN) in the U.S. to its final destination in Canada.
30. The Appellant typically marked up the fees it was charged by the U.S. Carrier for Roaming Airtime service and Roaming Long Distance service when billing Subscribers.
31. The Appellant invoiced Subscribers for Roaming Airtime service and Roaming Long Distance service in accordance with the terms of each Subscriber's chosen service plan.

Service plans available to Subscribers

32. During the Relevant Period, Subscribers had the option of subscribing to the following service plans in order to receive cellular services from the Appellant:
 - i. *Talk North America (100 or 150)* under which for a flat monthly fee Subscribers were entitled to:
 - unlimited minutes of long distance service anywhere in the U.S. or Canada;
 - a set maximum of anytime minutes of airtime service for calls originating anywhere in the U.S. or Canada (400 minutes in the 100 plan and 700 minutes in the 150 plan); and,

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Respondent's counsel FEQ

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- once the applicable airtime minute limit was exceeded by Subscribers, a fee of \$0.25 per minute was charged for airtime (including for Roaming Airtime service), but there was no extra fee charged for long distance service.
- ii. *Talk Anywhere or Talk Canada (100 or 250)* under which for a flat monthly fee Subscribers were entitled to:⁴
 - on calls originating in Canada and terminating anywhere in North America:
 - unlimited long distance service;
 - a set maximum of anytime minutes of airtime service (800 minutes in the 100 plan and 2500 minutes in the 250 plan); and,
 - once the applicable airtime minute limit was exceeded by Subscribers, a fee of \$0.25 per minute was charged for airtime service;
 - when the Subscriber was Roaming in the U.S.:
 - a fee of \$0.95 per minute was charged for Roaming Airtime service; and,
 - on calls made to elsewhere in the U.S. or to Canada a fee of \$0.50 per minute was charged for Roaming Long Distance service .
- iii. *Work Canada 250* under which for a flat monthly fee Subscribers were entitled to:
 - for calls originating in Canada and terminating anywhere in North America;⁵
 - 2500 anytime airtime minutes or "Direct Connect" minutes, as well as unlimited long-distance; and,
 - an additional fee of \$0.50 per minute was charged for airtime used in excess of 2500 minutes;
 - when the Subscriber was Roaming in the U.S.:
 - a fee of \$0.95 per minute was charged for Roaming Airtime service; and,

⁴ Renamed "Talk Canada 100/250" in December 2004.

⁵ "Direct Connect" was a program involving a specific network that generally facilitated communications for employers with employees usually in remote regions.

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- a fee of \$0.50 per minute was charged for Roaming Long Distance service on calls made to elsewhere in the U.S. or to Canada (except on calls from the U.S. to anywhere in North America under "Direct Connect").
- iv. *Super Talk 20* under which for a flat monthly fee, Subscribers were entitled to:
- a maximum of 50 local anytime minutes and 1000 local evening and weekend minutes of airtime service;
 - an additional fee of \$0.30 per minute was charged for airtime service in excess of the 50/1000 minutes;
 - a fee of \$0.30 per minute was charged for long distance service on calls originating in Canada and terminating in North America ; and
 - when the Subscriber was Roaming in the U.S.:
 - a fee of \$0.95 per minute was charged for Roaming Airtime service; and,
 - on calls made to elsewhere in the U.S. or to Canada a fee of \$0.50 per minute was charged for Roaming Long Distance service.

Collection of GST on service plans invoices

33. The invoices issued to Subscribers by the Appellant contained information such as:
- i) monthly access or plan fee;
 - ii) additional local airtime service;
 - iii) long distance charges;
 - iv) roaming charges;
 - v) value-added services;
 - vi) data and other services;
 - vii) network and licensing charges;
 - viii) GST, PST and international roaming taxes;
 - ix) time, date and location of each call made by Subscribers; and,

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- x) a breakdown of the minutes and fees/charges associated with each service provided to the Subscriber.⁶
34. The Appellant collected and remitted GST on all fees charged to Subscribers for Roaming Long Distance service on calls from the U.S. to Canada.
35. More specifically, in respect to long distance calls placed to Canada from the U.S. by Subscribers under the *Talk North America* plan:
- i) the Appellant collected and remitted GST on monthly access fees and other fixed monthly charges; and,
 - ii) if and when the number of airtime minutes included in that plan were exhausted, the Appellant did not collect and remit GST on the additional charges of \$0.25 per minute for the supply of Roaming Airtime services.
36. In respect to long distance calls placed to Canada from the U.S. by Subscribers under the *Talk Canada*, *Work Canada* and *Super Talk* plans:
- i) the Appellant collected and remitted GST on monthly access fees and other fixed monthly charges; and,
 - ii) the Appellant did not collect and remit GST on the charges of \$0.95 per minute for the supply of Roaming Airtime services.
37. The Appellant collected and remitted GST on the monthly access fees.
38. The monthly access fee was billed in advance and the Appellant collected and remitted GST on the entire fee to ensure it complied with its GST obligations.
39. For all Roaming Long Distance services on calls from the U.S. to Canada, the Appellant did not collect and remit GST on the separate fees for Roaming Airtime services that were charged to Subscribers:
- i) who did not have a service plan that included Roaming Airtime services; or,
 - ii) who had exhausted the number of Roaming Airtime minutes included in the service plan.

⁶ Sample invoices: issued to R.C. (May 5, 2007); issued to B.A.L. and a Limited Corporation (October 31, 2006); issued to a company: W.G. L M (May 6, 2007); issued to L.M. (July 1, 2002); issued to J.M. (May 27, 2007); [Invoices from earlier and later periods are substantively similar to those issued for the Relevant Period].

Appellant's counsel KO

Respondent's counsel FE

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Syniverse, CHARM 781 and CIBERNet

40. During the Relevant Period, the Appellant used the services of Syniverse, a data clearing house service, which among other things, captured and arranged billing information regarding roaming calls made by one carrier's subscribers using another carrier's network.
41. Syniverse sent the Appellant monthly expense reports known as a "CHARM 781" regarding each of the Appellant's roaming partners.
42. The CHARM 781 set out information with respect to the amounts payable by the Appellant to the other carriers, including:
 - i) the identity of the roaming Subscribers;
 - ii) the applicable date when Subscribers made calls;
 - iii) the area within the carrier's network where the Subscribers had made calls on that date;
 - iv) the duration of any local calls made and the corresponding airtime charges;
 - v) the duration of any long distance calls made and the corresponding airtime charges and long-distance charges;
 - vi) the applicable taxes.⁷
43. During the Relevant Period, the Appellant also used the services of CIBERNet.⁸
44. CIBERNet functioned as a financial clearing-house for many carriers to invoice each other in an organized and timely manner.
45. The information contained in the CHARM 781 was sent to CIBERNet who used that information to prepare monthly invoices for the Appellant.
46. The total amount payable to each carrier was stated on the CIBERNet monthly settlement statement.⁹
47. The Appellant also settled debts with carriers outside of the CIBERNet system.¹⁰

⁷ CHARM 781 sample.

⁸ CIBERNet/Canadian Carrier Agreement (February 9, 1995).

⁹ CIBERNet settlement statement (January 6, 2005 for the period covering 11/16/2004 to 12/15/2004).

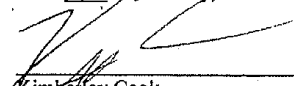
¹⁰ List of United States Carriers with which Appellant settled debts outside the CIBERNet system.

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Respondent's counsel EE

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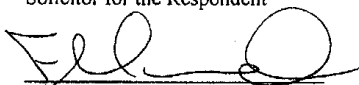
DATED at the City of Vancouver, British Columbia, this 14th day of May, 2015.




Kimberley Cook
Counsel for the Respondent *Appellant re*
Thorsteinssons Tax Lawyers
Box 49123, Three Bentall Centre
2703 - 595 Burrard Street
Vancouver, British Columbia
V7X 1J2

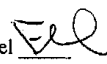
DATED at the City of Ottawa, Ontario, this 14th day of May, 2015.

William F. Pentney, Q.C.
Deputy Attorney General of Canada
Solicitor for the Respondent



Per: Frédéric Morand
Tamara Watters
Counsel for the Respondent
Department of Justice Canada
Tax Law Services Section
99 Bank Street, Suite 1133
Ottawa, Ontario
K1A 0H8

Appellant's counsel 

Respondent's counsel 

APPENDIX B

BILL DATE : 01-May-07
PAGE 3 of 13

CLIENT N° :

ACCOUNT DETAIL

Current Charges - Detail

Monthly Service Plans May 02 to Jun 01

Service Plan Name	Total
Talk \$50/500/EW (contract)	50.00
Talk Canada \$150/1250 PCS	150.00
Total	\$ 200.00

Additional Local Airtime

Service	Total Airtime	Free Airtime	Included Airtime	Chargeable Airtime	Total
Phone (minutes)	587:00	214:00	373:00	0:00	0.00
Total					\$ 0.00

Long Distance Charges

Service	Total LD Minutes	Free LD Minutes	Included LD Minutes	Chargeable LD Minutes	Total
Domestic Phone	43:00	0:00	43:00	0:00	0.00
US / Int'l Phone	22:00	0:00	22:00	0:00	0.00
Total					\$ 0.0

Roaming Charges

Service	Roaming Minutes	Roaming Charges	Roaming LD Minutes	Roaming LD Charges	Roaming Surcharge	Total
US / Int'l Phone	249:00	236.55	237:00	118.50	0.00	355.05
Total						\$ 355.05

Data and Other Services

Service	Total Events	Event Type	Total
Text Messaging - Received	3	Msg	0.45
Text Messaging - Sent	14	Msg	2.10
Browsing - Partner Sites	17	wwb	0.85
Picture Messaging - Pictures	1	Pic	0.25
US 1X Data Roaming	348	KB	3.40
Total			\$ 7.05

Voice Services

Service	Total Events	Event Type	Total
411	1	DIR	1.50
Total			\$ 1.50

Value Added Services May 02 to Jun 01

Service	Total
Business Bundle 10	20.00
Total	\$ 20.00

Other Charges and Credits

Charge or Credit	Total
Account Set-up	35.00
Account Set-up-CR	-35.00
Late Payment Charge	5.40
Total	\$ 5.40

Network and Access

Charge	Total
Enhanced 911 Access Charge	1.50
System Access Fee	13.90
Total	\$ 15.40

Taxes

	Total
GST	19.17
PST - British Columbia	21.35
Total	\$ 40.52

BILL DATE : 01-May-07
PAGE 12 of 13

CLIENT N° :

INDIVIDUAL DETAIL continued

Phone		Call Period: D-Daytime, E-Evening, W-Weekend											
Call	Date	Time	Call	From	Number	To	Call	Local	Local	LD	Additional	Total	
			Period		Called		Length	Airtime	Airtime	Charges	Charges		
							mm:ss	Rate	Charges		Call		
215	29 Apr	18:04	W	INCOMING	604-209-1950	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
216	29 Apr	20:18	W	INCOMING	604-209-1950	VANCOUVER BC	2:00	0.00	0.00	0.00	0.00	0.00	
217	30 Apr	09:15	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	2:00	0.00	0.00	0.00	0.00	0.00	
218	30 Apr	09:35	D	VANCOUVER BC	604-818-5811	MSG RTRVL BC	3:00	0.00	0.00	0.00	0.00	0.00	
219	30 Apr	09:38	D	VANCOUVER BC	604-899-7474	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
220	30 Apr	10:06	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	2:00	0.00	0.00	0.00	0.00	0.00	
221	30 Apr	10:08	D	VANCOUVER BC	604-818-5811	MSG RTRVL BC	2:00	0.00	0.00	0.00	0.00	0.00	
222	30 Apr	11:04	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	1:00	0.00	0.00	0.00	0.00	0.00	
223	30 Apr	15:16	D	INCOMING	250-864-8085	VANCOUVER BC	3:00	0.00	0.00	0.00	0.00	0.00	
224	30 Apr	15:58	D	INCOMING	604-942-4238	VANCOUVER BC	3:00	0.00	0.00	0.00	0.00	0.00	
225	30 Apr	16:30	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	1:00	0.00	0.00	0.00	0.00	0.00	
226	30 Apr	16:32	D	VANCOUVER BC	604-899-7474	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
227	30 Apr	16:40	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	1:00	0.00	0.00	0.00	0.00	0.00	
228	30 Apr	16:43	D	VANCOUVER BC	604-899-7474	VANCOUVER BC	4:00	0.00	0.00	0.00	0.00	0.00	
229	30 Apr	16:47	D	VANCOUVER BC	800-788-6133	800 CALL BC	1:00	0.00	0.00	0.00	0.00	0.00	
230	30 Apr	16:54	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	2:00	0.00	0.00	0.00	0.00	0.00	
231	30 Apr	16:58	D	VANCOUVER BC	604-818-5811	MSG RTRVL BC	2:00	0.00	0.00	0.00	0.00	0.00	
232	30 Apr	18:57	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	1:00	0.00	0.00	0.00	0.00	0.00	
233	30 Apr	18:58	D	VANCOUVER BC	604-899-7578	VANCOUVER BC	3:00	0.00	0.00	0.00	0.00	0.00	
234	01 May	08:39	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	1:00	0.00	0.00	0.00	0.00	0.00	
235	01 May	09:40	D	VANCOUVER BC	604-899-7474	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
236	01 May	09:41	D	VANCOUVER BC	604-818-5811	MSG RTRVL BC	1:00	0.00	0.00	0.00	0.00	0.00	
237	01 May	09:42	D	VANCOUVER BC	206-334-7452	SEATTLE SR WA	6:00	0.00	0.00	0.00	0.00	0.00	
238	01 May	10:16	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	2:00	0.00	0.00	0.00	0.00	0.00	
239	01 May	10:21	D	VANCOUVER BC	604-818-5811	MSG RTRVL BC	2:00	0.00	0.00	0.00	0.00	0.00	
240	01 May	10:43	D	VANCOUVER BC	604-899-7474	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
241	01 May	10:44	D	VANCOUVER BC	604-899-7474	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
242	01 May	10:59	D	INCOMING	206-334-7452	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
243	01 May	13:38	D	INCOMING	604-808-2249	VANCOUVER BC	2:00	0.00	0.00	0.00	0.00	0.00	
244	01 May	14:24	D	INCOMING	604-899-7699	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
245	01 May	14:45	D	VANCOUVER BC	714-704-2622	ORANGE CA	1:00	0.00	0.00	0.00	0.00	0.00	
246	01 May	15:24	D	CALL FORWARD	604-818-5811	MSG CENTRE BC	2:00	0.00	0.00	0.00	0.00	0.00	
247	01 May	15:35	D	INCOMING	714-493-3601	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
248	01 May	16:59	D	INCOMING	780-945-3404	VANCOUVER BC	2:00	0.00	0.00	0.00	0.00	0.00	
249	01 May	18:03	D	INCOMING	604-842-4238	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
250	01 May	18:07	D	VANCOUVER BC	780-945-3404	EDMONTON AB	1:00	0.00	0.00	0.00	0.00	0.00	
251	01 May	18:47	D	VANCOUVER BC	206-334-7452	SEATTLE SR WA	1:00	0.00	0.00	0.00	0.00	0.00	
252	01 May	18:48	D	INCOMING	206-334-7452	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
253	01 May	18:54	D	CALL FORWARD	604-818-5811	MSG DPST BC	1:00	0.00	0.00	0.00	0.00	0.00	
254	01 May	19:01	D	VANCOUVER BC	604-209-1950	NWESTMNSTR BC	1:00	0.00	0.00	0.00	0.00	0.00	
255	01 May	19:02	D	INCOMING	604-209-1950	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
256	01 May	19:03	D	INCOMING	604-899-7699	VANCOUVER BC	1:00	0.00	0.00	0.00	0.00	0.00	
257	01 May	21:22	E	VANCOUVER BC	206-334-7452	SEATTLE SR WA	1:00	0.00	0.00	0.00	0.00	0.00	
Total										\$ 0.00	\$ 0.00	\$ 1.50	\$ 1.50

Roaming

Call	Date	Time	Call	From	Number	To	Call	Local	Local	LD	Additional	Total
			Period		Called		Length	Airtime	Airtime	Charges	Charges	
							mm:ss	Rate	Charges		Call	
1	16 Apr	20:43	D	MARYSVILLE WA	604-818-5811	VOICE MAIL CL	5:00	0.95	4.75	2.50	0.00	7.25
2	18 Apr	20:51	D	MARYSVILLE WA	604-861-1271	VANCOUVER BC	3:00	0.95	2.85	1.50	0.00	4.35
3	18 Apr	22:13	E	SEATTLE WA	250-864-8085	KELOWNA BC	1:00	0.95	0.95	0.50	0.00	1.45
4	18 Apr	22:16	E	SEATTLE WA	604-861-1271	VANCOUVER BC	2:00	0.95	1.90	0.00	0.00	1.90
4	18 Apr	22:15	E	SEATTLE WA	604-861-1271	VANCOUVER BC	1:00	0.00	0.00	0.50	0.00	0.50
5	17 Apr	07:30	D	INCOMING CL	604-818-5811	SEATTLE WA	2:00	0.95	1.90	1.00	0.00	2.90
6	17 Apr	12:52	D	SEATTLE WA	604-209-1950	NEWWTMNSTR BC	1:00	0.95	0.95	0.50	0.00	1.45
7	17 Apr	12:53	D	SEATTLE WA	604-899-7474	VANCOUVER BC	1:00	0.95	0.95	0.50	0.00	1.45
8	17 Apr	17:21	D	SEATTLE WA	604-209-1950	NEWWTMNSTR BC	2:00	0.95	1.90	1.00	0.00	2.90
9	17 Apr	17:24	D	INCOMING CL	604-818-5811	SEATTLE WA	11:00	0.95	10.45	5.50	0.00	15.95
10	17 Apr	19:37	D	SEATTLE WA	905-937-8073	STCTNSTHLD ON	7:00	0.95	6.65	3.50	0.00	10.15
11	17 Apr	19:44	D	INCOMING CL	604-818-5811	SEATTLE WA	4:00	0.95	3.80	2.00	0.00	5.80
12	17 Apr	21:44	E	INCOMING CL	604-818-5811	SEATTLE WA	3:00	0.95	2.85	1.50	0.00	4.35
13	18 Apr	11:54	D	SEATTLE WA	604-861-1271	VANCOUVER BC	1:00	0.95	0.95	0.50	0.00	1.45
14	18 Apr	11:56	D	SEATTLE WA	206-973-1700	SEATTLE WA	1:00	0.95	0.95	0.00	0.00	0.95
15	18 Apr	12:40	D	INCOMING CL	604-818-5811	SEATTLE WA	1:00	0.95	0.95	0.50	0.00	1.45
16	18 Apr	13:52	D	SEATTLE WA	604-942-4238	PTCOQUITLM BC	10:00	0.95	9.50	5.00	0.00	14.50
17	18 Apr	14:01	D	SEATTLE WA	604-818-5811	VOICE MAIL CL	1:00	0.95	0.95	0.50	0.00	1.45
18	18 Apr	15:14	D	SEATTLE WA	604-861-1271	VANCOUVER BC	1:00	0.95	0.95	0.50	0.00	1.45
19	18 Apr	15:31	D	SEATTLE WA	604-899-7550	VANCOUVER BC	1:00	0.95	0.95	0.50	0.00	1.45
20	18 Apr	15:32	D	INCOMING CL	604-818-5811	SEATTLE WA	6:00	0.95	5.70	3.00	0.00	8.70
21	18 Apr	16:42	D	INCOMING CL	604-818-5811	BELLEVUE WA	4:00	0.95	3.80	2.00	0.00	5.80
22	18 Apr	18:02	D	INCOMING CL	604-818-5811	BELLEVUE WA	3:00	0.95	2.85	1.50	0.00	4.35

mins

LOCAL

APPENDIX C

JBP TAB 16

CHARM 781 Report

This is Exhibit 'C' referred to in the affidavit of Diana Verweire

sworn before me at Calgary this 2 day of OCT, 2014

[Signature]
A Commissioner for Taking Affidavits in Alberta

RACHELLE ANNE HARVEY
A Commissioner for Oaths
in and for the Province of Alberta
My Commission expires Apr. 29, 2015

Home SID Code	Ship Name	SERVE CARRIER'S CHARITABLE ID#	Number of Usable Records	As New (Units)	UNCS Units	AIR Minutes	Air Charge	As New (Units)	TOLL (Minutes)	Passage Charge	US\$ Charge	TOTAL (Minutes)	TOTAL (US\$)	TOTAL (US\$)	TOTAL (US\$)
16384	CALGARY	CELLULAR SOUTH, INC	18	7	8	54	\$27.00	\$0.50	26	\$3.99	\$0.35	\$0.00	\$35.99	\$0.00	\$2.51
16384	CALGARY	CELLULAR SOUTH, INC	33	11	10	105	\$52.50	\$0.50	49	\$15.68	\$0.32	\$0.00	\$68.18	\$0.00	\$4.70
16384	CALGARY	CELLULAR SOUTH, INC	87	14	16	288	\$129.00	\$0.50	194	\$62.75	\$0.32	\$0.00	\$191.75	\$0.00	\$13.50
16384	CALGARY	CELLULAR SOUTH, INC	43	10	9	90	\$45.00	\$0.50	49	\$15.68	\$0.32	\$0.00	\$60.68	\$0.00	\$4.24
16422	VANCOUVER	CELLULAR SOUTH, INC	25	6	8	51	\$25.50	\$0.50	31	\$10.59	\$0.34	\$0.00	\$36.09	\$0.62	\$2.73
16422	VANCOUVER	CELLULAR SOUTH, INC	29	11	11	124	\$62.00	\$0.50	70	\$22.40	\$0.32	\$0.00	\$84.40	\$0.00	\$5.38
16422	VANCOUVER	CELLULAR SOUTH, INC	5	5	1	5	\$2.50	\$0.50	5	\$1.60	\$0.32	\$0.00	\$4.10	\$0.00	\$0.30
16422	VANCOUVER	CELLULAR SOUTH, INC	17	8	8	61	\$30.50	\$0.50	46	\$14.72	\$0.32	\$0.00	\$45.22	\$0.00	\$3.15
16436	WINNIPEG	CELLULAR SOUTH, INC	1	3	1	3	\$1.50	\$0.50	2	\$0.64	\$0.32	\$0.00	\$2.14	\$0.00	\$0.17
16436	WINNIPEG	CELLULAR SOUTH, INC	2	3	1	3	\$1.50	\$0.50	3	\$0.64	\$0.32	\$0.00	\$2.14	\$0.00	\$0.15
16436	WINNIPEG	CELLULAR SOUTH, INC	3	16	2	32	\$16.00	\$0.50	30	\$9.60	\$0.32	\$0.00	\$25.60	\$0.00	\$1.80
16436	WINNIPEG	CELLULAR SOUTH, INC	1	1	1	1	\$0.50	\$0.50	1	\$0.32	\$0.32	\$0.00	\$0.82	\$0.00	\$0.06
16436	WINNIPEG	CELLULAR SOUTH, INC	1	4	1	4	\$2.00	\$0.50	4	\$1.28	\$0.32	\$0.00	\$3.28	\$0.05	\$0.25
16436	WINNIPEG	CELLULAR SOUTH, INC	3	9	2	17	\$8.50	\$0.50	1	\$0.32	\$0.32	\$0.00	\$8.82	\$0.00	\$0.62
16436	WINNIPEG	CELLULAR SOUTH, INC	6	8	4	33	\$16.50	\$0.50	31	\$9.92	\$0.32	\$0.00	\$26.42	\$0.00	\$1.85
17500	TORONTO	CELLULAR SOUTH, INC	28	19	7	132	\$66.00	\$0.50	63	\$20.16	\$0.32	\$0.00	\$86.16	\$0.00	\$6.06
17500	TORONTO	CELLULAR SOUTH, INC	7	10	5	49	\$24.50	\$0.50	18	\$5.76	\$0.32	\$0.00	\$30.26	\$0.00	\$2.11
17500	TORONTO	CELLULAR SOUTH, INC	24	17	7	120	\$60.00	\$0.50	68	\$21.76	\$0.32	\$0.00	\$81.76	\$0.00	\$5.74
43794	NORTH BAY	CELLULAR SOUTH, INC	2	2	1	2	\$1.00	\$0.50	2	\$0.64	\$0.32	\$0.00	\$1.64	\$0.02	\$0.14
43794	NORTH BAY	CELLULAR SOUTH, INC	15	18	2	36	\$18.00	\$0.50	29	\$9.28	\$0.32	\$0.00	\$27.28	\$0.00	\$1.91
43802	SACKVILLE	CELLULAR SOUTH, INC	1	4	1	4	\$2.00	\$0.50	2	\$0.00	#DIV/0!	\$0.00	\$2.00	\$0.00	\$0.14
43802	SACKVILLE	CELLULAR SOUTH, INC	2	11	1	11	\$5.50	\$0.50	2	\$0.00	#DIV/0!	\$0.00	\$5.50	\$0.00	\$0.39
43802	SACKVILLE	CELLULAR SOUTH, INC	1	2	1	2	\$1.00	\$0.50	2	\$0.64	\$0.32	\$0.00	\$1.64	\$0.00	\$0.11
60026	SASKATOON	CELLULAR SOUTH, INC	2	15	1	16	\$9.00	\$0.50	2	\$0.00	#DIV/0!	\$0.00	\$9.00	\$0.00	\$0.63
60026	SASKATOON	CELLULAR SOUTH, INC	5	14	2	28	\$14.00	\$0.50	28	\$5.96	\$0.32	\$0.00	\$22.96	\$0.00	\$1.60
60026	SASKATOON	CELLULAR SOUTH, INC	5	11	2	21	\$10.50	\$0.50	21	\$5.72	\$0.32	\$0.00	\$17.22	\$0.00	\$1.22
60026	SASKATOON	CELLULAR SOUTH, INC	3	9	2	18	\$9.00	\$0.50	14	\$4.48	\$0.32	\$0.00	\$13.48	\$0.00	\$0.94
60026	SASKATOON	CELLULAR SOUTH, INC	369	11	117	1,282	\$641.00	\$0.50	787	\$253.85	\$0.32	\$0.00	\$894.85	\$0.69	\$63.04
Grand Total													\$894.85	\$0.69	\$63.04

CITATION: 2015 TCC 197
COURT FILE NO.: 2012-458(GST)G
STYLE OF CAUSE: TELE-MOBILE COMPANY AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: June 29, 2015
REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller
DATE OF JUDGMENT: August 6, 2015

APPEARANCES:

Counsel for the Appellant: Kimberley Cook
Counsel for the Respondent: Frédéric Morand, Tamara Watters

COUNSEL OF RECORD:

For the Appellant:

Name: Kimberley Cook

Firm: Thorsteinssons LLP

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada