

C A N A D A

(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-06-

SUPERIOR COURT

INGA SIBIGA, domiciled and resident at [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED], Montréal,
Québec, [REDACTED]

Petitioner

- vs -

FIDO SOLUTIONS INC., a legal person duly constituted and having a place of business at 4000-800 rue De La Gauchetière Ouest, Montréal, Québec, H5A 1K3

- and -

ROGERS COMMUNICATIONS PARTNERSHIP, a legal person duly constituted and having a place of business at 4000-800 rue De La Gauchetière Ouest, Montréal, Québec, H5A 1K3

- and -

BELL MOBILITY INC., a legal person duly constituted and having a place of business at Tour A-7, 1 Carrefour Alexander-Graham-Bell, Verdun, Québec, H3E 3B3

- and -

TELUS COMMUNICATIONS COMPANY, a legal person duly constituted and having a place of business at 300 rue Saint-Paul, Québec, Québec, G1K 7R1

Respondents

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND OBTAIN THE STATUS OF REPRESENTATIVE
(C.C.P. Articles 1002 et seq.)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUEBEC
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER ALLEGES
THE FOLLOWING:

The international mobile data roaming fees charged by the Respondents are disproportionate, exploitative and abusive, and bear no relation to the underlying cost of providing mobile data roaming services. This proceeding seeks a reduction of these fees as damages to compensate class members as well as punitive damages for the exploitation of Quebec consumers.

1. The Petitioner wishes to institute a class action on behalf of persons forming part of the Class hereinafter described and of which she is also a member, namely:

- 1.1. All consumers residing in Quebec who were charged international mobile data roaming fees by the Respondents at a rate higher than \$ 5.00 per megabyte after January 8, 2010.
- 1.2. Tous les consommateurs qui résident au Québec et à qui les Intimés ont chargé des frais d'itinérance pour les données à un taux excédant 5,00 \$ par mégaoctet après le 8 janvier 2010.

2. The facts that give rise to an individual action on behalf of the Petitioner against the Defendant Fido Solutions Inc., and which give rise to individual actions on behalf of class members against the Respondents, are as follows:

- 2.1. The Petitioner alleges that the Respondents' international mobile data roaming rates contravene article 8 of the Quebec *Consumer Protection Act* RSQ, c. P-40.1 ("**CPA**") and article 1437 of the *Civil Code of Québec* ("**CCQ**"), which read as follows:

CPA 8. The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.

CCQ 1437. An abusive clause in a consumer contract or contract of adhesion is null, or the obligation arising from it may be reduced.

An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore not in good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.

- 2.2. The Petitioner makes this claim on the basis of an investigation that included the review and analysis of information concerning international mobile data roaming, which was obtained from the following sources, among others:

- a. the Organization for Economic Cooperation and Development (“**OECD**”);
 - b. the European Union (“**EU**”);
 - c. the international mobile data roaming retail rates available in Quebec and Canada; and
 - d. publicly available press releases, news articles and other media reports;
- 2.3. These sources demonstrate that the Respondents have charged and continue to charge Quebec consumers international mobile data roaming rates that are clearly disproportionate, exploitative and abusive;

THE RESPONDENTS AND INTERNATIONAL MOBILE DATA ROAMING

The Respondents

- 2.4. The Respondents are wireless services providers (“**WSPs**”) who contract with Quebec consumers to provide them wireless services on their mobile devices, including mobile data services;
- 2.5. Fido Solutions Inc. offers consumers wireless services under the name “Fido Solutions” (“**Fido**”) as appears from a copy of its entry in the Quebec Régistraire des entreprises, filed as Exhibit **P-1**;
- 2.6. Rogers Communication Partnership offers consumers wireless services under the names “Rogers Wireless” (“**Rogers**”) and “Chatr Wireless” (“**Chatr**”) as appears from a copy of its entry in the Quebec Régistraire des entreprises, filed as Exhibit **P-2**;
- 2.7. Bell Mobility Inc. offers consumers wireless services under the names “Bell Mobility” (“**Bell**”), “Virgin Mobile Canada” (“**Virgin Mobile**”) and “Solo Mobile” (“**Solo**”) as appears from a copy of its entry in the Quebec Régistraire des entreprises and Virgin Mobile’s Terms and Conditions of Service, filed as Exhibit **P-3**, en liasse;
- 2.8. Telus Communications Company offers consumers wireless services under the names “Telus Mobility” (“**Telus**”) and “Koodo Mobile” (“**Koodo**”), as appears from copies of its entry in the Québec Régistraire des entreprises, filed as Exhibit **P-4**;

International Mobile Data Roaming Services

- 2.9. Mobile data services generally include but are not limited to email, web browsing, application usage, instant messaging, picture and video messaging, and video calling;

- 2.10. The Respondents offer class members international roaming so that they can continue to use wireless services on another WSP's network while they travel outside of Canada;
- 2.11. The Respondents charge class members international mobile data roaming fees when they use their mobile device to download or upload data on a foreign network. The Respondents set rates per kilobyte ("KB") or megabyte ("MB")¹ for mobile data roaming in either a given foreign country or a group of countries organized into zones, as appears from copies of the Respondents' website pages listing their standard international mobile data roaming rates, filed as Exhibit **P-5**, en liasse;
- 2.12. The Respondents allow their consumers to purchase prepaid international mobile data roaming plans or add-ons ("**travel plan**") that enable use of a specified amount of mobile data at a lower effective pay-per-use rate. If the consumer exceeds the specified amount of mobile data and does not purchase another travel plan, the Respondents charge either the same lower effective rate or the higher standard rate;
- 2.13. While the amount of mobile data transferred for each data service varies widely, Respondent Rogers provides consumers with the following estimates of the data transferred for a given data service on a smartphone device, as appears from a copy of its webpage entitled "Wireless Internet Calculator", filed as Exhibit **P-6**:

Mobile Data Service	Data Transferred
Sending or receiving an email with a text only attachment	0.022 MB 0.028 MB
with a photo attachment sent/received (based on typical photo captured using mobile device)	0.293 MB
Sending an instant message (50 characters in length)	0.024 MB
Loading one webpage	0.171 MB
Streaming 1 minute of video in standard You Tube quality	1 MB
Streaming a song 4 minutes in length	4 MB

- 2.14. The European Union also provides estimates of the data required for the following services, as appears from a copy of its May 10, 2012 Press Release, filed as Exhibit **P-7**:

Mobile Data Service	Data Transferred
Checking a single map	1 MB
Checking social media accounts for half an hour	5 MB
Uploading one photo	2 MB

¹ The Respondents each equate 1 MB of data with 1024 KB of data, and 1 gigabyte (GB) of data with 1024 MB of data.

- 2.15. In order to provide mobile data services beyond Canada, wireless operators enter into international roaming agreements with domestic or foreign WSPs. These contracts are not publicly available;
- 2.16. In fact, the underlying elements determining the exact cost of providing such services to Quebec consumers are not public. That information lies exclusively within the possession and control of the Respondents;
- 2.17. Petitioner's counsel unsuccessfully attempted to obtain information in this regard from the CRTC by means of access to information requests, as appears from copies of such requests and answers thereto, filed as Exhibit **P-8**, en liasse;
- 2.18. The Petitioner thus believes that further evidentiary support for her allegation will come to light after a reasonable opportunity for discovery;
- 2.19. Nonetheless and irrespective of the rates negotiated between the Respondents and foreign WSPs, the available evidence at this stage clearly demonstrates that the underlying cost of providing international mobile data roaming services represents a minuscule fraction of the retail rates charged by the Respondents and that such retail rates are disproportionate, exploitative, and abusive;

THE DISPROPORTION BETWEEN THE FEES CHARGED TO CLASS MEMBERS AND THE SERVICES PROVIDED BY THE RESPONDENTS

The OECD report on international mobile data roaming

- 2.20. On June 8, 2011, the OECD released a report on the price of international mobile data roaming ("**OECD Report**"), as appears from a copy of the report, filed as Exhibit **P-9**;
- 2.21. The OECD Report found as a general conclusion that current pricing levels indicated that there was either insufficient retail or wholesale competition in the international mobile data roaming market. The OECD Report further stated that the failure of the EU's regulation of wholesale mobile data roaming rates in July 2009 to reduce the wide gap between wholesale and retail prices in the EU highlighted a possible lack of effective competition in the retail market²;
- 2.22. The OECD Report also revealed that within that market, Canadian consumers paid the highest average price among OECD member states for a MB of mobile data when roaming internationally³;

² OECD Report, Exhibit P-9, at 5, 6, 10.

³ *Ibid.* at 14, 24.

- 2.23. From September 7 to October 7, 2010, the authors of the OECD Report collected data on the retail consumer prices advertised by the two largest WSPs in each of the 34 OECD member states⁴;
- 2.24. The average price per MB charged by Rogers and Bell, the two leading Canadian WSPs at the time, was \$30.24.⁵ This average price was 2.86 times more expensive than the average price of \$10.56 per MB charged in OECD member states;
- 2.25. The Canadian average price was 6.7 times more expensive than the average price of \$4.51 per MB charged by Greek WSPs, the OECD member state with the lowest mobile data roaming fees;
- 2.26. The Canadian average price was 3.753 times more expensive than the average price of \$8.06 per MB charged by Korean WSPs, the non-EU OECD member state with the lowest mobile data roaming fees;
- 2.27. The Canadian average price was 1.76 times more expensive than the average price of \$17.15 per MB charged by WSPs in Australia, one of the OECD member states most similar to Canada in its territorial and demographic characteristics;
- 2.28. Thus, the OECD Report demonstrates that the Respondents have charged and continue to charge retail rates that greatly exceed the average retail price on the global market;

Admissions by Telus executive: Telus can cut its prices in half and still make a profit

- 2.29. On June 8, 2011, *the Globe and Mail* published an article on the OECD Report that contained certain declarations by Telus' VP of Mobility Marketing, Brent Johnston, as appears from a copy of the article, filed as Exhibit **P-10**;
- 2.30. P-10 reads in part as follows:

Telus Corp.'s vice-president of mobility marketing Brent Johnston said he "absolutely agrees" with the OECD report's findings about high prices in Canada, and blamed it on the previous monopoly Rogers had on

⁴ See *ibid.* at 10. (The OECD member states are Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.)

⁵ US dollar (USD) amounts presented in the OECD report have been converted into Canadian dollars (CAD) with the same exchange rate used in the report. This rate is available on page 33 of the report (1 USD equals 1.033 CAD).

international roaming deals (because Bell and Telus used a wireless technology that differed from most international carriers, unlike Rogers).

Mr. Johnston said wireless providers could still make a profit by cutting roaming charges considerably. He said Telus would announce a significant price reduction before the summer travel season.

"Dropping [the price] more than 50 per cent on data still allows us to be profitable," Mr. Johnston said in an interview.

He said that as a relative newcomer to international roaming, Telus would have less sway than Rogers in negotiating lower international roaming rates with wireless carriers around the world.

2.31. Following up on Johnston's declarations, Telus in fact announced on June 11, 2011 that it would lower its mobile data roaming rates by 60% from \$25 to \$10 per MB in every country other than the United States and satellite locations, as appears from a copy of its June 11, 2011 media release, filed as Exhibit **P-11**;

2.32. P-11 reads in part as follows:

"After the launch of our new HSPA+ wireless network in late 2009, TELUS was able to offer our customers a true international roaming capability for the first time, ending Rogers' monopoly in international roaming for Canadians. We quickly started working with carriers around the world to negotiate reduced roaming rates for our customers and we now want to make it as simple and affordable as possible for our customers to use their smartphones wherever they go, without coming home to a surprise on their bill" said David Fuller, TELUS Chief Marketing Officer."

2.33. The Petitioner submits that the ability of a relative newcomer to international mobile data roaming like Telus to cut its rates so significantly suggests that the Respondents also have access to similar low wholesale rates;

2.34. Thus, Telus' admission that its rates were so profitable that they could cut them by 60% and still make a profit clearly establishes that the Respondents' retail rates greatly exceed the true costs and value of providing this service;

Admissions by UK executive: UK operator says underlying costs bear no relation to retail roaming rates

2.35. On March 29, 2011, ZDNet UK published an article that reported certain statements made by Hugh Davies, the regulatory chief of Three, a UK based mobile virtual network operator, as appears from a copy of the article, filed as Exhibit **P-12**;

2.36. P-12 reads in part as follows:

The company's regulatory chief, Hugh Davies, tells ZDNet UK that operators do need to incur some one-off costs when enabling data roaming, but these do not explain the charges being levied on consumers. In fact, he says, data-roaming retail prices bear no relation to the underlying costs of data transport — between 1p and 3p per megabyte, depending on the operator.

2.37. If the underlying cost of transporting mobile data is 5 cents⁶ per MB, then some Respondents are selling the service involved for over 600 times what it costs;

2.38. Davies is further quoted as follows in P-12:

"It costs you [the operator] about the same as it costs you at home — plus a little bit extra for the cost of billing from someone else's systems and the integration and connection with someone else's systems, and the risk of countries where you don't have fully integrated systems — but essentially it's the same as what it costs you to sell it in your own market, plus a little bit more," Davies says. "And that little bit more is not the same as what consumers are paying. It's way too high. It's the equivalent of walking into a bar in Germany and being told 'here's a glass of wine for €500 (£439) because you're a Brit or a Spaniard'."

The European Union Roaming Regulations

2.39. On July 1, 2009, the EU amended *Regulation (EC) No 717/2007 on Roaming on Public Mobile Telephone Networks within the Community*. The 2009 amendments established a wholesale price cap on mobile data roaming fees and gradually lowered this price cap each year, as appears from a copy of the 2009 consolidated version of the amended Regulation, filed as Exhibit **P-13**;

2.40. On May 10, 2012, the EU replaced the previous Regulation (P-13) with *Regulation (EU) No 531/2012 on Roaming on Public Mobile Communications Networks within the Union* (“**EU Regulations**”). This regulation further reduced the wholesale price caps and introduced a retail price cap on mobile data roaming fees that would decrease each year, as appears from a copy of the EU Regulations, filed as Exhibit **P-14**;

2.41. The EU regulations established the following price caps:

⁶ 3 pence is equivalent to 5 cents. The amount in U.K. pound sterling has been converted into CAD using the Bank of Canada's 10-year currency converter on March 29, 2011, the date that the article was published, online: [bankofcanada.ca](http://www.bankofcanada.ca) <<http://www.bankofcanada.ca>>.

Wholesale and Retail International Mobile Data Roaming Rates per MB in the European Union and European Economic Area States ⁷						
Price Cap	July 1, 2009	July 1, 2010	July 1, 2011	July 1, 2012	July 1, 2013	July 1, 2014
Wholesale	1.63 (1 EUR)	1.07 (.80 EUR)	0.70 (.50 EUR)	0.32 (.25 EUR)	0.19 (.15 EUR)	0.06 (.05 EUR)
Retail	None	None	None	0.91 (.70 EUR)	0.58 (.45 EUR)	0.26 (.20 EUR)

- 2.42. The EU set each the retail price cap at a level that “guarantees a sufficient margin to roaming providers while also more reasonably reflecting the underlying costs of provision”⁸;
- 2.43. The EU Regulations further posit that the retail price cap “should reflect a reasonable margin over the wholesale cost of providing a roaming service”⁹;
- 2.44. In determining the reasonable margin between wholesale costs and retail prices, the EU sought to “ensure that roaming providers cover all their specific roaming costs at retail level including appropriate shares of marketing costs and handset subsidies and are left with an adequate residual to yield a reasonable return”¹⁰;
- 2.45. Consequently, the European retail price cap establishes that it is possible for a WSP to provide international mobile data roaming in Europe at a profit for a retail rate of less than \$1 per MB in 2012;
- 2.46. By contrast, Respondent Fido’s standard USA roaming rate of \$10.24 is 32 times more expensive than the present wholesale rate of \$0.32 per MB set by the EU. Its Rest-of-World roaming rate of \$31.2 is 97.5 times more expensive than this wholesale rate;
- 2.47. Even if one were to make a more conservative estimate and use the EU’s retail rates as a wholesale rate, Respondent Fido’s standard USA roaming rate of \$10.24 is 11.25 times more expensive than a wholesale rate of \$0.91 per MB. Its Rest-of-World roaming rate of \$31.2 is 34.29 times more expensive;

⁷ Each rate in Euros (EUR) has been converted into CAD using the Bank of Canada’s 10-year currency converter on the date that the given rate entered into force, online: [bankofcanada.ca](http://www.bankofcanada.ca) <<http://www.bankofcanada.ca>>. Rates that only enter into force after the filing of this action were converted using the Bank of Canada’s rate on December 3, 2012. The retail rates exclude the European Union value added tax.

⁸ EU Regulations, Exhibit P-14, at preamble (75).

⁹ *Ibid.* at preamble (43).

¹⁰ *Ibid.* at preamble (47).

2.48. Thus, the EU Regulations clearly indicate that the Respondents have charged and continue to charge retail rates that greatly exceed the true costs of providing this service and their fair market value;

The Quebec and Canadian Retail Markets

2.49. A review of international mobile data roaming services available to Quebec and Canadian consumers reveals that the Respondents charge rates that greatly exceed retail rates offered by competitors;

2.50. The following WSPs and mobile virtual service operators currently offer consumers the following mobile data rates per MB when roaming in the United States and France, as demonstrated by P-5 and as appears from copies of Videotron, Public Mobile, Wind Mobile, and Mobilicity's website pages listing their standard international mobile data roaming rates, filed as Exhibit **P-15**, en liasse;

2012 Retail International Mobile Data Roaming Rates per MB Offered to Quebec and Canadian Consumers¹¹								
Country	Rogers & Fido¹²	Chatr	Bell, Solo & Virgin Mobile	Telus & Koodo	Videotron¹³	Public Mobile	Wind Mobile	Mobilicity
USA	10.24 ¹⁴	6	6	5	1.03	1.5	1	1.5
France	31.2	30	8 ¹⁵	5	4.12	n/a	5	15

2.51. The average rate that Videotron, Public Mobile, Wind Mobile and Mobilicity charge Quebec and Canadian consumers to roam in the USA is \$1.26 per MB. Without recognizing that this rate is representative of a fair market value of this service, it nonetheless demonstrates that competitors can offer the same service, presumably at a profit, for that price;

2.52. Thus, Respondent Fido's standard USA roaming rate of \$10.24 is 8.13 times more expensive than the average price offered by those competitors. As such, it is clearly disproportionate to the cost and value of the service;

2.53. The average rate that Videotron and Wind Mobile charge consumers to roam in France is \$4.56 per MB. The Petitioner does not recognize that

¹¹ Wind Mobile and Mobilicity do not operate in Quebec.

¹² Rogers and Fido charges their subscribers a fee per KB of data used. In every country other than the USA, Rogers and Fido seem to generally impose a minimum data volume of 20 KB with data increments of 20 KB. Thus, a consumer using one MB or 1024 KB would be charged for using 1040 KB of data.

¹³ Prices are based on the subscriber using a Google Nexus One device

¹⁴ Both Rogers and Fido charge subscribers a standard rate of \$0.01 per KB. Rogers and Fido subscribers with a domestic Data Plans pay \$0.006 per KB. Rogers subscribers with a Flex Rate domestic data plan pay \$0.03 per KB.

¹⁵ Solo does not offer roaming services in France.

such a rate is representative of a fair market value. Petitioner alleges on the contrary that such a rate is disproportionate and abusive;

- 2.54. Nonetheless, it demonstrates that competitors can offer the same service as the Respondents, presumably at a profit, for less than \$5.00 per MB;
- 2.55. By contrast, the Respondent Fido's standard French roaming rate of \$31.2 is 6.84 times more expensive than a price which, as will be shown, is already exploitative and abusive;

The Rates available under Travel Plans

- 2.56. A review of Respondent Fido's Travel Plans reveals that it has access to wholesale rates much lower than its standard mobile data roaming rates;
- 2.57. Respondent Fido offers consumers the ability to purchase daily or monthly U.S. and International Mobile data Roaming Passes, as appears from copies of its website pages listing these passes, filed as Exhibit **P-16**, en liasse;
- 2.58. While roaming in the USA, Respondent Fido offers Travel Plans with rates ranging from \$0.20 to \$1.50 per MB. Its standard mobile data usage rate of \$10.24 in the USA is anywhere from 6.83 to 51.2 times more expensive than its rates under USA Travel Plans;
- 2.59. While roaming outside of Canada and the USA, Respondent Fido offers Travel Plans with rates ranging from \$3.00 to \$6.00 per MB. Its standard mobile data usage rate of \$31.2 per MB outside of Canada and the USA is anywhere from 5.2 to 10.4 times more expensive than its rates available under Travel Plans;
- 2.60. Thus, the Petitioner submits that Respondent Fido's Travel Plans suggest that its standard retail prices greatly exceed the true cost of offering mobile data roaming;

The Combined Domestic Mobile Data Rates in Quebec and France

- 2.61. A review of the retail prices that Quebec and French consumers each pay to use domestic mobile data services reveals that Respondent Fido's international mobile data roaming rates greatly exceed the likely true cost of providing this service;
- 2.62. Indeed, the true cost of providing international mobile data roaming cannot be much more than the combined cost of using both networks involved, plus a small amount to account for the cost of billing on someone else's network and the integration of the systems;

- 2.63. Thus, in Quebec, Fido offers consumers a GB of mobile data for \$12.5, and in France, Orange offers a one GB data add-on for \$12.82 (10 euros)¹⁶, as appears from copies of both companies' website pages listing these offers, filed as Exhibit **P-17**, en liasse;
- 2.64. Combining the domestic mobile data usage rates in Quebec and France yields a rate of \$25.32 per GB of data usage. If one were to add a very generous 20% for the cost of billing and integration, one would have a rate of \$30.38 per GB;
- 2.65. The cost of a GB of mobile data for a Fido subscriber while roaming in France is \$31,948.80 per GB. This international mobile data roaming rate thus exceeds the combined Quebec and French domestic rates per GB adjusted for billing and integration by 1051.16 times;
- 2.66. The Petitioner submits that this discrepancy is of such an egregious nature that it demonstrates that the Respondent has acted in bad faith and taken advantage of consumers;

THE LEVEL AT WHICH THE DISPROPORTION BECOMES EXPLOITATIVE

- 2.67. As appears from the foregoing, the available evidence suggests that:
- the true cost of transporting a MB of mobile data is no more than \$0.05;
 - wholesale rates in Europe can be profitable at a level of around \$0.30 per MB;
 - a retail rate available for the US can be profitable at a level of \$1.00 per MB.
 - a retail rate in Europe can be profitable at a level of less than \$1.00 per MB;
 - no evidence of major differences exists for other markets such that any significant difference in price would be justified;
- 2.68. The Petitioner therefore submits that \$1.00 per MB constitutes a very generous fair market rate for providing international mobile data roaming services;
- 2.69. Consequently, an excessive disproportion exists in the case of any mobile data roaming rate being charged at a level greater than \$2.00 per MB;

¹⁶ The rate in EUR has been converted into CAD using the Bank of Canada's 10-year currency converter on December 11, 2012, online: [bankofcanada.ca](http://www.bankofcanada.ca) <<http://www.bankofcanada.ca>>.

2.70. However, in order that there be no doubt whatsoever as to the disproportionate, exploitative, and abusive nature of the fees that are the object of this class action, the Petitioner's claim, based on the evidence available to date, only includes international mobile data roaming charges billed at a rate higher than \$5.00 per MB, or roughly 100 times the cost of providing the service;

THE CASE OF THE PETITIONER

2.71. In 2006, the Petitioner Inga Sibiga entered into an agreement with Respondent Fido for mobile phone services;

2.72. In September 2012, the Petitioner used the Respondent Fido's international mobile data services while travelling on vacation in the United States, as demonstrated by the Petitioner's monthly account summary, filed as Exhibit **P-18**;

2.73. The Respondent Fido charged the Petitioner the following amount for using international mobile data roaming services while on this trip:

Dates	Country	Data Used	Amount Due	Rate per MB	Rate per GB
September 7 to 14, 2012	USA	40.82	\$250.81	\$6.14	\$6 291.76

2.74. The Petitioner paid this bill in full;

3. The composition of the Class makes the application of articles 59 and 67 C.C.P. difficult or impracticable in that:

3.1. The Respondents have each entered into thousands of agreements with Quebecers that enable them to access wireless broadband services domestically and internationally;

3.2. Millions of Quebecers travel every year to the USA and hundreds of thousands if not millions travel to destinations outside North America, as appears from a copy of Statistics Canada 2010 International Travel Catalogue, filed as Exhibit **P-19**¹⁷;

3.3. The size of the Class is conservatively estimated to include tens of thousands of Quebecers who live across Quebec;

¹⁷ Statistics Canada, 2010 International Travel, Catalogue no. 66-201-X (Ottawa: Minister of Industry, 2011), Exhibit P-19, at 42, 46 (Residents of Quebec made 3.4 million overnight trips to the USA, and 1.84 million same day trips to the USA. They made approximately 1.98 million overnight trips to all other international destinations).

3.4. It is impossible for the Petitioner to contact and obtain mandates from each and every class member;

4. The Petitioner seeks to have the following questions of fact and law, which are identical, similar or related and unite each member of the Class, decided by a class action:

4.1. Does the disproportion between the international mobile data roaming fees charged to the class members and the value of the service provided by the Respondents constitute exploitation and objective lesion under article 8 of the *CPA*?

4.2. Are the Respondents' international mobile data roaming fees excessively and unreasonably detrimental to consumers such that the contractual clauses allowing them to charge such fees are abusive under article 1457 of the *CCQ*?

4.3. Must the class member's obligations be reduced and if so, by how much?

4.4. Are the class members entitled to punitive damages, and if so, what amount must the Respondents pay?

5. The questions of fact and law individual to each member of the Class are the following:

5.1. What amount must the Respondents reimburse to each class member?

6. It is appropriate to authorize a class action on behalf of the class members for the following reasons:

6.1. Only the institution of a class action will provide the class members with reasonable access to justice;

6.2. The cost of bringing each individual action would disproportionately exceed the amount sought by each against the Respondents;

6.3. If class members actually exercised their rights, the sheer number of victims would lead to a multitude of individual actions instituted in various different jurisdictions, which could lead to contradictory rulings on questions of fact and law that are for all intents and purposes identical to all the class members;

6.4. A class action, in awarding punitive damages, would serve to deter the Respondents and companies in other industries from ignoring their legal obligations under the *CPA* and the *CCQ*;

7. The nature of the action that the Petitioner seeks to institute is:

- 7.1. An action to reduce obligations and reimburse amounts paid in excess of that reduced amount, as well as for punitive damages;

8. The conclusions that the Petitioner seeks are the following:

AUTHORIZE the class action of the Petitioner and class members against the Respondents, with costs;

GRANT the Petitioner' Motion to obtain the Status of Representative of all class members;

DECLARE that the international mobile data roaming fees charged by Respondents amount to exploitation under article 8 of the *CPA*;

DECLARE that the international mobile data roaming fees charged by the Respondents are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 of the *CCQ*;

REDUCE the obligations of the Petitioner and class members to pay the Respondents for the international mobile data roaming services charged to their fair market value;

ORDER Respondent Fido to compensate the Petitioner for the amount overcharged;

ORDER the collective recovery of all damages owed to the class members for the amount overcharged;

ORDER the collective recovery of all the punitive damages to be paid to all the class members;

ORDER the Respondents to pay each member of the Class their respective claims, plus interest at the legal rate as well as the additional indemnity provided for by law in virtue of article 1619 C.C.Q.;

THE WHOLE with costs at all levels, including the cost of all exhibits, experts, expertise reports and notices;

9. The Petitioner is apt to assume an adequate representation of the class members that she intends to represent for the following reasons:

- 9.1. The Petitioner is a class member;

- 9.2. The Petitioner has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- 9.3. The Petitioner is determined to do her part in order to put an end to the Respondents' behaviour;
- 9.4. The Petitioner cooperates and will continue to fully cooperate with her attorneys;

10. Petitioner requests and proposes that the class action be brought before the Superior Court, sitting in the district of Montreal, for the following reasons:

- 10.1. The Petitioner is domiciled and resides in Quebec, in the district of Montreal;
- 10.2. Counsel for the Petitioner practice in the district of Montreal;
- 10.3. It is likely that the majority of the class members reside in Montreal;

FOR THESE MOTIVES, MAY IT PLEASE THE COURT:

GRANT the Petitioner's Motion;

AUTHORIZE the class action hereinafter described as:

All consumers residing in Quebec who were charged international mobile data roaming fees by the Respondents at a rate higher than \$ 5.00 per megabyte after January 8, 2010.

Tous les consommateurs qui résident au Québec et à qui les Intimés ont chargé des frais d'itinérance pour les données à un taux excédant 5,00 \$ par mégaoctet après le 8 janvier 2010.

IDENTIFY as follows the principle questions of fact and law to be determined collectively:

Does the disproportion between the international mobile data roaming fees charged to the class members and the value of the service provided by the Respondents constitute exploitation and objective lesion under article 8 of the CPA?

Are the Respondents' international mobile data roaming fees excessively and unreasonably detrimental to consumers such that the contractual clauses allowing them to charge such fees are abusive under article 1457 of the CCQ?

Must the class member's obligations be reduced and if so, by how much?

Are the class members entitled to punitive damages, and if so, what amount must the Respondents pay?

IDENTIFY as follows the conclusions sought in relation thereof:

AUTHORIZE the class action of the Petitioner and class members against the Respondents, with costs;

GRANT the Petitioner' Motion to obtain the Status of Representative of all class members;

DECLARE that the international mobile data roaming fees charged by Respondents amount to exploitation under article 8 of the CPA;

DECLARE that the international mobile data roaming fees charged by the Respondents are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 of the CCQ;

REDUCE the obligations of the Petitioner and class members to pay the Respondents for the international mobile data roaming services charged to their fair market value;

ORDER Respondent Fido to compensate the Petitioner for the amount overcharged;

ORDER the collective recovery of all damages owed to the class members for the amount overcharged;

ORDER the collective recovery of all the punitive damages to be paid to all the class members;

ORDER the Respondents to pay each member of the Class their respective claims, plus interest at the legal rate as well as the additional indemnity provided for by law in virtue of article 1619 C.C.Q.;

THE WHOLE with costs at all levels, including the cost of all exhibits, experts, expertise reports and notices.

DECLARE that, unless excluded, the class members will be bound by all judgments to be rendered with respect to the class action in accordance with the law;

FIX the delay for exclusion from the Class at sixty (60) days from the date of the notice to the members, after which those members which did not avail themselves of their option to be excluded shall be bound by all judgments to be rendered with respect to the class action;

ORDER the publication of a summary notice (in accordance with article 1046 *C.C.P.*) to the members of the Class according to the terms to be determined by the Court;

REFER the present file to the Chief Justice for determination of the district in which the class action should be brought and to designate the Judge who shall preside over the hearing;

THE WHOLE with costs, including the cost of all notices;

MONTREAL, January 8, 2013

(s) Trudel & Johnston

TRUDEL & JOHNSTON
Plaintiff's Attorney

TRUE COPY

TRUDEL & JOHNSTON

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-06-

(Class Action)

SUPERIOR COURT

INGA SIBIGA

Petitioner

- vs -

FIDO SOLUTIONS INC.

- and -

ROGERS COMMUNICATIONS PARTNERSHIP

- and -

BELL MOBILITY INC.

- and -

TELUS COMMUNICATIONS COMPANY

Respondents

NOTICE OF PRESENTATION

FIDO SOLUTIONS INC.

4000-800 rue De La Gauchetière
Ouest,
Montréal, Québec, H5A 1K3

BELL MOBILITY INC.

Tour A-7, 1 Carrefour Alexander-
Graham-Bell
Verdun, Quebec, H3E 3B3

**ROGERS COMMUNICATIONS
PARTNERSHIP**

4000-800 rue De La Gauchetière
Ouest, Montréal, Québec, H5A 1K3

TELUS COMMUNICATIONS COMPANY

8885 Route Transcanadienne,
Montréal, Québec, H4S 2C5

TAKE NOTICE that the present motion for authorization to institute a class action and obtain the status of representative will be presented *pro forma* before this Honourable Court, at the Palais de justice, located at 1, Notre-Dame Street East, in the city and district of Montreal, on the date set by the coordinating judge of the class actions chamber.

PLEASE ACT ACCORDINGLY

Montréal, January 8, 2013

(s) Trudel & Johnston

TRUDEL & JOHNSTON s.e.n.c
Plaintiff's Attorney