



Telecom Decision CRTC 2010-445

PDF version

Route reference: Telecom Notice of Consultation 2010-43

Ottawa, 30 June 2010

Modifications to forbearance framework for mobile wireless data services

File number: 8663-C12-201000653

In this decision, the Commission amends the forbearance framework for mobile wireless data services by making the offering and provision of these services by Canadian carriers subject to the Commission's powers and duties under section 24 and subsections 27(2), 27(3), and 27(4) of the Telecommunications Act. Further, the Commission determines that the policy framework established for Internet traffic management practices applies to the use of mobile wireless data services to provide Internet access.

Introduction

1. In Telecom Notice of Consultation 2010-43, the Commission announced its intention to review, among other matters, the continued appropriateness of the existing forbearance framework for the offering and provision of wireless services.¹ In this regard, the Commission specifically called for comments regarding the appropriateness of applying section 24 and subsections 27(2), 27(3), and 27(4) of the *Telecommunications Act* (the Act) to mobile wireless data services.
2. The Commission received comments from Barrett Xplore Inc., on behalf of itself and Barrett Broadband Networks Inc.; the British Columbia Broadband Association (BCBA); the Canadian Film and Television Production Association; the Canadian Wireless Telecommunications Association (CWTA), on behalf of its members;² MTS Allstream Inc.; Northwestel Inc.; Pelmorex Media Inc.; the Public Interest Advocacy Centre, on behalf of Canada Without Poverty, Option consommateurs, and Rural Dignity of Canada; Rogers Communications Inc.; the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, on behalf of OpenMedia.ca; Saskatchewan Telecommunications; TekSavvy Solutions Inc.; and TELUS Communications Company.

¹ The forbearance framework was first established in Telecom Decision 94-15 and was refined in Telecom Decision 96-14. In a number of follow-up decisions, the framework was extended to wireless services provided by Canadian carriers not captured by Telecom Decisions 94-15 and 96-14.

² The CWTA's regular members are service providers licensed by Industry Canada pursuant to the *Radiocommunication Act*. The list of members represented by the CWTA in this proceeding is set out in the Appendix to this decision.

3. The public record of this proceeding, as it relates to the matter of the mobile wireless data services forbearance framework, closed on 10 May 2010 and is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.
 4. The Commission has identified the following issues to be addressed in its determinations:
 - I. Should the mobile wireless data services forbearance framework be amended?
 - II. Should the Internet traffic management practices (ITMP) framework be applied to mobile wireless data services?
- I. Should the mobile wireless data services forbearance framework be amended?**
5. The CWTA submitted that the Commission should have the authority to address potential issues regarding unjust discrimination or undue preference in the provisioning of mobile wireless data services. It also submitted that the scope of forbearance with respect to these services should be symmetrical with that established for mobile wireless voice services.
 6. Accordingly, the CWTA, as well as all parties to this proceeding except the BCBA, supported amending the forbearance framework to enable the Commission to apply section 24 and subsections 27(2), 27(3), and 27(4) of the Act to mobile wireless data services. The BCBA submitted that there is no need to change the existing mobile wireless data services forbearance framework at this time.
 7. The Commission notes that a framework that provides for the application of section 24 and subsections 27(2), 27(3), and 27(4) of the Act to mobile wireless data services would be consistent with the forbearance regimes applicable to mobile voice services and to retail Internet services. The Commission considers that amending the forbearance framework to provide for such application is appropriate and will enable it to address, among other things, unjust discrimination and undue preference issues with respect to the provision of mobile wireless data services by Canadian carriers.
 8. In light of the above, effective the date of this decision, the offering and provision by Canadian carriers of mobile wireless data services shall be subject to the Commission's powers and duties under section 24 and subsections 27(2), 27(3), and 27(4) of the Act.

II. Should the ITMP framework be applied to mobile wireless data services?

9. Some parties submitted that the Commission should examine the applicability of the ITMP framework, as set out in Telecom Regulatory Policy 2009-657, to mobile wireless data services. No parties objected to this submission.
10. The Commission notes that in Telecom Regulatory Policy 2009-657, it stated that it intended to review the appropriateness of applying section 24 and subsection 27(2) of the Act to the provision of mobile wireless data services. It also stated that, in the meantime, it expected Internet service providers using such services to provide Internet access services in accordance with the determinations of Telecom Regulatory Policy 2009-657.
11. Given the findings in this decision and in light of the principle of competitive neutrality, the Commission determines that, effective the date of this decision, the ITMP policy framework set out in Telecom Regulatory Policy 2009-657 applies to the use of mobile wireless data services to provide Internet access.

Secretary General

Related documents

- *Proceeding to review access to basic telecommunications services and other matters*, Telecom Notice of Consultation CRTC 2010-43, 28 January 2010, as amended by Telecom Notice of Consultation CRTC 2010-43-1, 5 March 2010, and Telecom Notice of Consultation CRTC 2010-43-2, 30 March 2010
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009
- *Regulation of mobile wireless telecommunications services*, Telecom Decision CRTC 96-14, 23 December 1996
- *Regulation of wireless services*, Telecom Decision CRTC 94-15, 12 August 1994

List of CWTA regular members

- Bell Canada
- Bruce Telecom
- Corridor Communications, Inc.
- Dryden Municipal Telephone System, Dryden Mobility
- EastLink
- FIRST Networks (First Networks Operations Inc.)
- Globalive Wireless Management Corp.
- Inukshuk Wireless Partnership
- KMTS
- Lynx Mobility
- Mobilicity
- MTS Allstream Inc.
- Nexicom Mobility Inc.
- Omega Communications Ltd.
- PageNet Canada Inc.
- Public Mobile Inc.
- Rogers Wireless Inc.
- Saskatchewan Telecommunications
- SkyTerra Communications Inc.
- Sogetel inc.
- TBayTel
- TELUS Communications Company
- TeraGo Networks
- Videotron Ltd.