



Telecom Decision CRTC 2012-210

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Globalive Wireless Management Corp., operating as WIND Mobile, and the Public Interest Advocacy Centre – Applications to review and vary Telecom Decision 2011-360 regarding roaming on Rogers Communications Partnership’s wireless network

File numbers: 8662-G44-201112391 and 8662-P8-201112424

In this decision, the Commission denies requests by WIND and PIAC/CAC to review and vary Telecom Decision 2011-360 regarding roaming arrangements with RCP. The Commission also denies PIAC/CAC’s request to initiate a proceeding to address roaming rates and rules.

Introduction

1. The Commission received two applications, both dated 30 August 2011, from the Public Interest Advocacy Centre, on behalf of itself and the Consumers' Association of Canada (collectively, PIAC/CAC), and from Globalive Wireless Management Corp., operating as WIND Mobile (WIND). In their applications, WIND and PIAC/CAC requested that the Commission review and vary certain determinations in Telecom Decision 2011-360.
2. In Telecom Decision 2011-360, the Commission, among other things, determined that Rogers Communications Partnership (RCP)¹ had not granted itself a preference in its provision of roaming services to WIND, specifically with respect to seamless call transition.² The Commission considered further that, in view of its determination that RCP had not granted itself a preference, it would be inappropriate to deal with the issue of mandating seamless call transition.
3. Telecom Information Bulletin 2011-214 states the following regarding the criteria to review and vary Commission decisions pursuant to section 62 of the *Telecommunications Act* (the Act):

In order for the Commission to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to

¹ In Telecom Decision 2011-360, Rogers Communications Partnership was referenced as Rogers.

² Seamless call transition is the uninterrupted flow of a voice call while transitioning from a wireless home network to a host network. When a host network does not provide for seamless call transition from a home network, in-progress calls roaming from the home network to the host network are dropped.

- (i) an error in law or in fact;
 - (ii) a fundamental change in circumstances or facts since the decision;
 - (iii) a failure to consider a basic principle which had been raised in the original proceeding; or
 - (iv) a new principle which has arisen as a result of the decision.
4. In their 30 August 2011 applications, WIND and PIAC/CAC submitted that there is substantial doubt as to the correctness of Telecom Decision 2011-360 because the Commission erred in law and in fact in its determinations. WIND argued that there has been a fundamental change in circumstances since the decision, that the Commission failed to consider a basic principle which had been raised in the original proceeding, and that new principles have arisen as a result of the decision.
5. WIND requested that the Commission declare, pursuant to section 27 of the Act, that RCP
 - has conferred an undue preference upon itself and its subscribers, and has subjected WIND, WIND's subscribers, and consumers who are WIND's potential subscribers to undue discrimination and to an unreasonable disadvantage, contrary to subsection 27(2) of the Act; and
 - has not discharged its burden of establishing that such discrimination is not unjust, that such preference is not undue or unreasonable, and that such disadvantage is not undue or unreasonable, as required by subsection 27(4) of the Act.
6. WIND also requested that the Commission, pursuant to section 24 of the Act, direct RCP to negotiate reasonable commercial terms for the provision to WIND of hand-offs that enable WIND subscribers to have seamless call transition when moving out-of-zone, as RCP enables other subscribers of mobile services to have.
7. PIAC/CAC requested that the Commission rescind Telecom Decision 2011-360, rehear WIND's application under the appropriate legal standard, and consider wireless roaming rates and rules in a future proceeding.
8. The Commission received comments regarding the applications from Bell Canada, Bragg Communications Inc., operating as EastLink (EastLink), Data & Audio-Visual Enterprises Inc., operating as Mobilicity, RCP, TELUS Communications Company (TCC), and l'Union des consommateurs (l'Union). The public record of this proceeding, which closed on 11 October 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.

Issues

9. The Commission considers that the following issues must be addressed:
 - I. Is there substantial doubt as to the correctness of Telecom Decision 2011-360?
 - II. Should the Commission initiate a proceeding to consider wireless roaming rates and rules?

I. Is there substantial doubt as to the correctness of Telecom Decision 2011-360?

i) Error in law or in fact

10. WIND and PIAC/CAC argued that the Commission erred in law in not concluding that preference, discrimination, or disadvantage exists.
11. WIND and PIAC/CAC noted that paragraph 23 of Telecom Decision 2011-360 states the following:

...while Chatr customers do not experience dropped calls when they travel from a Chatr zone to an Out of Chatr zone on the Rogers network, WIND customers' in-progress calls are dropped when they transit from WIND's network to Rogers' network.
12. WIND argued that this difference in the treatment of in-progress calls noted by the Commission demonstrates that RCP is discriminating against WIND, gives a preference to Chatr³ and to Chatr subscribers, and gives a corresponding disadvantage to WIND. In addition, WIND argued that in deciding only that no preference had been granted to RCP, and in failing to decide whether WIND or its subscribers had been subjected to a disadvantage, the Commission erred in law.
13. PIAC/CAC argued that the difference in the treatment of in-progress calls is a factual finding of disadvantage or preference and is contradictory to the Commission's finding that there is insufficient evidence of a preference or disadvantage.
14. WIND also argued that the Commission's rationale in Telecom Decision 2011-360 relating to the finding of preference, i.e., that WIND's claim of disadvantage was based on RCP's marketing campaign, which indicated "that Chatr offered fewer dropped calls than new wireless carriers," and the fact that that the roaming agreement between WIND and RCP does not require seamless call transition, does not support the conclusion that no preference exists.
15. EastLink argued that RCP's provision of seamless call transition to Chatr but not to other wireless service providers constitutes preference, discrimination, or disadvantage.

³ Chatr is a prepaid brand offered by RCP that is similar to the service offering of other wireless carriers.

16. Bell Canada, RCP, and TCC argued that there is no discrimination, disadvantage, or preference in the current case. RCP and Bell Canada stated that when moving out-of-zone, Chatr in-progress calls are not dropped because they stay on the RCP network (i.e. RCP is not providing roaming to Chatr and Chatr subscribers do not roam on the RCP network).
17. RCP also stated that the roaming service that it provides WIND is identical to the roaming service arrangements that it has with other Canadian wireless service providers (i.e. no seamless call transition), and that this is equal treatment, not preferential treatment. RCP further stated that when a Chatr customer moves outside the RCP network footprint to another wireless network, in-progress calls are dropped, the same as occurs when a WIND customer moves outside the WIND network footprint to the RCP network.

Commission's analysis and decisions

18. The Commission notes that subsection 27(2) of the Act requires that a Canadian carrier that provides a telecommunications service does not unjustly discriminate, or confer an undue or unreasonable preference, or subject any person to an unreasonable disadvantage in the provision of that service.
19. The Commission notes that Chatr is a brand of RCP's services and not as in Wind's case a wholesale customer of RCP. Accordingly, the Commission considers that RCP is not providing a seamless call transition service to Chatr customers when they move out of Chatr zones and when these customers remain on the RCP network.
20. The Commission further notes that when a Chatr customer moves from the RCP network to another wireless network, an in-progress call is dropped (i.e. no seamless call transition), in the same manner as when a WIND customer moves from the WIND network to the RCP network.
21. In Telecom Decision 2011-360, the Commission found that there was insufficient evidence to make a finding of preference under subsection 27(2) of the Act.
22. In this decision, the Commission confirms that the applicants have provided no evidence of discrimination against WIND, or of advantage or preference being granted by RCP to Chatr or to Chatr customers. The Commission determines that it did not err in law in Telecom Decision 2011-360 in concluding that RCP had not granted itself a preference.

ii) Other arguments made by WIND

23. WIND stated that the roaming rules established in the U.S. by the Federal Communications Commission (FCC) mandate seamless call transition and that this constitutes a fundamental change in circumstances. RCP and TCC provided reports from U.S. consultants that stated that the FCC does not mandate seamless call transition.

24. WIND also argued that Telecom Decision 2011-360 failed to consider a basic principle, specifically paragraph 7(b) of the Act, which states that a Canadian telecommunications policy objective is “to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.” WIND argued that its subscribers should receive more reliable and higher quality service when roaming onto the RCP’s network.
25. WIND further argued that three new principles were established as a result of Telecom Decision 2011-360, namely
 - After concluding that there is preferential or discriminatory treatment, the Commission may still place an additional burden on the applicant to demonstrate that there is a "preference," which the Commission will act upon.
 - It is sufficient to rule on preference and to ignore disadvantage and discrimination.
 - It is sufficient to reach a decision by considering only the impact on WIND as a competitor, and not to consider the impact on WIND's subscribers or on other consumers.

Commission’s analysis and decisions

26. The Commission considers that the question of whether seamless call transition is mandated in other jurisdictions is not relevant to the current situation. Nevertheless, the Commission considers that there is no evidence on the record of this proceeding that any other jurisdiction has mandated seamless call transition. Therefore, the Commission concludes that WIND has not demonstrated that there has been a fundamental change in circumstances since the decision.
27. Regarding the objectives in the Act, the Commission is obliged to consider all policy objectives in its decisions, including for example paragraph 7(f), which states that a policy objective is “to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.” The Commission notes that evidence was provided in the proceeding leading to Telecom Decision 2011-360 that indicated that mandating the implementation of seamless call transition would be costly and complex. The Commission therefore concludes that it did not fail to consider a basic principle in Telecom Decision 2011-360.
28. With respect to WIND’s allegation that new principles have arisen as a result of Decision 2011-360, the Commission notes that all of the new principles cited by WIND presume a finding of preference, advantage, or discrimination. Since the Commission has determined that there has been no preference, advantage or discrimination, the Commission concludes that WIND’s claims have no merit.
29. In light of the above, the Commission concludes that neither WIND nor PIAC/CAC have demonstrated that there is substantial doubt as to the correctness of Telecom Decision 2011-360.

II. Should the Commission initiate a proceeding to consider wireless roaming rates and rules?

30. PIAC/CAC requested that the Commission consider seamless call transition and all roaming arrangements across the wireless industry, including matters of retail pricing for roaming, both within Canada and abroad, in a future proceeding. WIND and l'Union supported PIAC/CAC's request.

Commission's analysis and determinations

31. The Commission considers that parties have not provided on the record of this proceeding evidence that would support further investigation into seamless call transition or other roaming issues.
32. In view of this, the Commission concludes that parties have not demonstrated the need for the Commission to initiate a separate proceeding to examine roaming rates and rules.
33. In light of all of the determinations in this decision, the Commission **denies** WIND's and PIAC/CAC's applications.

Secretary General

Related documents

- *Globalive Wireless Management Corp., operating as WIND Mobile – Part VII application regarding roaming on Rogers Communications Partnership's wireless network*, Telecom Decision CRTC 2011-360, 3 June 2011
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011