



Telecom Notice of Consultation CRTC 2013-685

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Ottawa, 12 December 2013

Call for comments

Deadline for submission of interventions: 29 January 2014

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Wholesale mobile wireless roaming in Canada – Unjust discrimination/undue preference

File numbers: 8620-C12-201317230 and 8620-C12-201312082

Following a fact-finding exercise to assess the impact of wholesale mobile wireless roaming arrangements on the competitiveness of the Canadian wireless industry, the Commission hereby initiates a proceeding to consider whether or not, as a question of fact, there is a situation of unjust discrimination or undue preference with respect to these arrangements in Canada. In addition, the Commission intends to initiate a separate proceeding in early 2014 to further examine matters related to the wholesale mobile wireless roaming market in Canada.

Introduction

1. Wireless carriers rely on their own networks to provide service within their coverage areas but must rely on the networks of other wireless carriers to provide service when their customers travel outside their coverage areas. This is commonly referred to as roaming.
2. For the spectrum used to provide wireless services, wireless carriers are subject to conditions of licence¹ imposed by Industry Canada under the *Radiocommunication Act*. These conditions, among other things, require wireless carriers to provide roaming arrangements at commercially negotiated rates, terms, and conditions (wholesale roaming arrangements).
3. Since the mid-1990s, the Commission has forborne from regulating mobile wireless services except with respect to its powers under section 24 and subsections 27(2), 27(3), and 27(4)² of the *Telecommunications Act* (the Act).³ As a result of

¹ Refer to Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements (CPC-2-0-17 Issue 2, March 2013)

² The cited provisions are:

24. The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

forbearance, wireless carriers are not required to obtain prior Commission approval of the rates, terms, and conditions for mobile wireless services, including wholesale roaming. However, the Commission has retained the power to impose conditions on the offer and provision of services, and to make findings of undue preference or unjust discrimination.

4. In mid-2013, Commission staff undertook a fact-finding exercise to assess the impact of wholesale roaming arrangements on the competitiveness of the Canadian wireless industry and the choices available to Canadians. As part of that exercise, on 30 August 2013, Commission staff requested information on roaming from certain Canadian wireless carriers, including copies of their wholesale roaming arrangements with other Canadian and U.S.-based carriers, roaming revenues, and the rates, terms, and conditions for voice, data, and text roaming services in Canada and the U.S. Commission staff also met with representatives from some of these wireless carriers to obtain additional information and clarification.

Issues to be examined

5. Based on the information obtained through the fact-finding exercise, the Commission notes that some Canadian wireless carriers are charging or proposing to charge significantly higher rates in their wholesale roaming arrangements with other Canadian carriers than in their arrangements with U.S.-based carriers. For instance, the rates that some Canadian carriers have contracted to pay or are being asked to pay are many times higher than those that U.S.-based carriers pay, particularly with respect to data services. Further, some Canadian carriers are subject to more restrictive terms and conditions than those that apply to U.S.-based carriers.
6. In the Commission's view, these disparities in wholesale roaming rates, terms, and conditions, in particular between certain large Canadian wireless carriers and other Canadian wireless carriers, give rise to concerns that Canadian wireless carriers may

27(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

27(3) The Commission may determine in any case, as a question of fact, whether a Canadian carrier has complied with section 25, this section or section 29, or with any decision made under section 24, 25, 29, 34 or 40.

27(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

³ 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 company-specific decisions and orders, such as Telecom Decision 98-19, Telecom Order 99-991, Order 2001-501, and Telecom Decision 2004-84, the framework was extended to the wireless services provided by Canadian carriers that were not captured by Telecom Decisions 94-15 and 96-14. In Telecom Decision 2010-445, the Commission amended the forbearance regime for mobile wireless data services to be consistent with the forbearance regime applicable to mobile voice services.

be subject to unjust discrimination or undue preference, contrary to subsection 27(2) of the Act. Given that these circumstances raise issues that can be addressed through the powers it has retained under the Act, the Commission considers that it is necessary to examine whether or not, as a question of fact, there is a situation of unjust discrimination or undue preference in the Canadian wholesale mobile wireless services market at this time.

7. In addition, also based on the information obtained through the fact-finding exercise, the Commission wishes to examine whether or not the current wholesale roaming arrangements are affecting the sustainability of competition in the mobile wireless services market in Canada. The Commission therefore intends to initiate a proceeding in early 2014 to examine, among other things, the state of that market and what regulatory measures may be required if the Commission were to find that the market is not sufficiently competitive. That proceeding is expected to conclude in late 2014 at the earliest.

Call for comments

8. The Commission hereby initiates a proceeding to consider whether or not, as a question of fact, there is a situation of unjust discrimination or undue preference with respect to wholesale roaming arrangements in Canada. The Commission calls for comments on this issue, including supporting rationale and data. In addition, the Commission calls for comments on what remedies would be appropriate if it finds that Canadian wireless carriers are subject to unjust discrimination or undue preference.⁴
9. The information filed in response to the Commission staff letter dated 30 August 2013, as well as the additional information filed subsequently, is made part of the record of this proceeding. Most of the information provided was filed in confidence pursuant to section 39 of the Act. To the extent that abridged versions were filed, they are available on the Commission's website.
10. By **29 January 2014**, wireless carriers are to file copies of any wholesale roaming arrangements that they have concluded with Canadian wireless carriers and U.S.-based carriers, other than those they have already filed with the Commission in the context of the fact-finding exercise. To the extent that arrangements have been modified since they were filed, wireless carriers are to file copies of the modified arrangements by **29 January 2014**. If such arrangements form part of broader agreements, only the portions of the agreements that deal with wholesale roaming rates, terms, and conditions need to be filed. After 29 January 2014, any new arrangements concluded or modifications made to existing arrangements are to be filed with the Commission immediately.

⁴ Parties' comments are to address the policy objectives set out in section 7 of the Act and the Policy Direction (*Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006), as appropriate.

Procedure

11. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the filing, content, format, and service of interventions, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of the public hearing, where applicable. Accordingly, the procedure set out in this notice must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure." For help understanding the Rules of Procedure, see the *Guidelines on the CRTC Rules of Practice and Procedure*.
12. All Canadian wireless carriers that offer mobile wireless services are made parties to this proceeding and may file interventions with the Commission by **29 January 2014**.
13. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **29 January 2014**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
14. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
15. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693. The cover letter template is also available on the Commission's website at www.crtc.gc.ca, under "Public Proceedings."
16. All parties may file replies to interventions with the Commission by **10 February 2014**.
17. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.
18. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out below has been followed.
19. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline.

20. Submissions longer than five pages should include a summary, and each paragraph of all submissions should be numbered. In addition, the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
21. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
22. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[Intervention form]

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

23. The Commission advises those who file and serve by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
24. Before initiating service through electronic means, parties must ensure that they will be able to satisfy the Commission, upon request, that service was completed. The sender must keep proof of the sending and the receipt of the document for 180 days after the day on which it is filed.

Important notice

25. All information provided as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information provided.
26. The personal information provided will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

27. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
28. The information provided to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information provided as part of this public process.

Availability of documents

29. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the file numbers provided at the beginning of this notice or by visiting the "Public Proceedings" section of the Commission's website. The documents can be accessed by selecting "View all proceedings open for comment," then clicking on the links in the "Related Documents" column associated with this particular notice.
30. Documents are also available from Commission offices, upon request, during normal business hours.

Commission offices

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Secretary General

Related documents

- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Modifications to forbearance framework for mobile wireless data services*, Telecom Decision CRTC 2010-445, 30 June 2010
- *Prince Rupert City Telephones – Cellular service forbearance*, Telecom Decision CRTC 2004-84, 21 December 2004
- *CRTC refrains from regulating O.N.Telcom's delivery of mobile wireless services*, Order CRTC 2001-501, 29 June 2001

- Telecom Order CRTC 99-991, 13 October 1999
- *Forbearance from Regulation of Mobile Wireless Services Provided by Municipally Owned Telephone Companies*, Telecom Decision CRTC 98-19, 9 October 1998
- *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