



Telecom Decision CRTC 2015-113

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Wightman Telecom Ltd. – Application to review and vary Telecom Decision 2014-349 regarding Rogers Wireless Home Phone Service

*The Commission finds that Wightman Telecom Ltd. (Wightman) has failed to demonstrate substantial doubt as to the correctness of the Commission’s determinations related to the classification of Rogers Wireless Home Phone Service as a mobile wireless service. The Commission therefore **denies** Wightman’s request to review and vary that decision.*

Background

1. Rogers Communications Inc. (RCI) offers the Rogers Wireless Home Phone Service (RWHPS), which is a low-cost, wireless, home and small business voice service (no data or text messaging). The service operates on RCI’s mobile wireless network, includes unlimited Canada-wide calling, and is available across Canada where RCI’s landline services are not offered.
2. Customers who wish to use RWHPS must first purchase a device that consists of an electrically powered adapter with an active subscriber identification module (SIM) card. The customer’s cordless or corded phones can then be plugged into the device to use RWHPS. The service also works while the customer is in transit on RCI’s mobile wireless network through the use of the device and an external battery power unit.
3. Wightman Telecom Ltd. (Wightman) filed a Part 1 application, dated 9 October 2013, in which the company requested that the Commission find that RWHPS is a local exchange service and that RCI should be offering the service for regulatory purposes as a competitive local exchange carrier (CLEC) and not as a wireless service provider (WSP). In Telecom Decision 2014-349, the Commission determined that RWHPS is a wireless service and that RCI is operating within the regulatory framework under which wireless services can be provided by WSPs in the serving territories of the small incumbent local exchange carriers (small ILECs).

Application

4. The Commission received an application from Wightman, dated 29 September 2014, in which the company requested that the Commission review and vary Telecom Decision 2014-349.

5. The Commission received an intervention regarding Wightman's application from RCI on 29 October 2014 and a reply from Wightman on 10 November 2014. The public record of this proceeding, which closed on 10 November 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.
6. Wightman submitted that the Policy Direction¹ and the policy objectives set out in the *Telecommunications Act* (the Act) require the Commission to classify RWHPS as a local exchange service, and that therefore, the Commission should mandate RCI to provide this service as a CLEC.
7. Specifically, Wightman submitted that the Commission erred in law by contravening
 - subparagraphs 1(a)(ii),² and 1(b)(iii)³ and (iv)⁴ of the Policy Direction;
 - the policy objectives set out in paragraphs 7(c) and (f) of the Act;⁵ and
 - the rules regarding unjust discrimination and undue preference set out in subsection 27(2) of the Act.⁶
8. Wightman argued that when the Commission evaluates a new service, it should properly classify the service for regulatory purposes first, and then determine the correct framework under which the Commission would regulate the service. Wightman submitted that the Commission wrongly characterized and misclassified RWHPS as a mobile wireless service, and that RWHPS is a fixed wireless service, or at most a transportable service, and should therefore be regulated as a local exchange service.

¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

² Subparagraph 1(a)(ii) of the Policy Direction states that the Commission, when relying on regulation, should use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

³ Subparagraph 1(b)(iii) of the Policy Direction states that the Commission, when relying on regulation, should use measures that, if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner.

⁴ Subparagraph 1(b)(iv) of the Policy Direction states that the Commission, when relying on regulation, should use measures that, if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers.

⁵ The policy objective set out in paragraph 7(c) of the Act is to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications. The policy objective set out in paragraph 7(f) of the Act 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.

⁶ Subsection 27(2) of the Act states that 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.

9. Wightman submitted that Telecom Decision 2005-28, relating to access-dependent voice over Internet Protocol (VoIP) service,⁷ and Telecom Decision 2014-349, relating to RWHPS, contradict each other, and that one decision must therefore be incorrect. Wightman added that the Commission applied the wireline local exchange regulatory framework to access-dependent VoIP service based on the functionality and substitutability of the service, and that it applied the WSP framework to RWHPS based on the technology used to provide the service.
10. Wightman also submitted that in Telecom Decision 2014-349, the Commission imposed different regulatory regimes on competing providers of telecommunications services, thereby creating asymmetrical regulatory regimes. Wightman added that in so doing, the Commission has discriminated against certain competing carriers and given preference to other carriers, since the regulatory requirements imposed on CLECs and on ILECs that provide local exchange home phone services are more onerous than those imposed on WSPs.

RCI's intervention

11. RCI submitted that Wightman provided no new information in its review and vary application but merely re-packaged its original arguments and failed to raise substantial doubt as to the correctness of the original decision.
12. RCI argued that the Commission has consistently recognized, for example, in Telecom Decision 97-8 and in Telecom Regulatory Policy 2012-24, that a WSP may choose to become a CLEC if it wishes to obtain the benefits of that status, but has no obligation to do so.
13. RCI indicated that non-CLEC WSPs must meet all the obligations imposed on wireless CLECs,⁸ but do not obtain the associated economic benefits, such as shared-cost interconnection and bill-and-keep compensation.
14. Regarding Wightman's argument that Telecom Decision 2014-349 contravenes the policy objectives set out in paragraphs 7(c) and (f) of the Act, RCI submitted that Wightman was aiming to block it from providing RWHPS as a WSP, which is contrary to the purpose of these objectives.
15. RCI added that RWHPS is a fully mobile service that works anywhere RCI's wireless network has coverage.

⁷ These services are Internet Protocol (IP)-based voice services in which the access and service components are necessarily linked, since they are provided by changing the underlying technology of the local access network from circuit-switched to packet-switched.

⁸ These obligations include customer confidentiality, privacy services (e.g. per-line blocking), alternate billing formats, enhanced 9-1-1, message relay and IP relay services, and N-1-1 services.

Commission's analysis and determinations

16. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it uses to assess review and vary applications that are filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to
 - an error in law or in fact;
 - a fundamental change in circumstances or facts since the decision;
 - a failure to consider a basic principle which had been raised in the original proceeding; or
 - a new principle which has arisen as a result of the decision.
17. Wightman has argued that in Telecom Decision 2014-349, there is substantial doubt as to the correctness of the original decision due to errors in law and the Commission's failure to consider a basic principle raised in the company's original Part 1 application.
18. As noted by RCI, the Commission's regulatory framework for WSPs permits a WSP to determine whether it wishes to become a CLEC and assume the associated obligations and obtain the associated benefits. The Commission provides WSPs with this choice when offering a service to account for the principles of technological and competitive neutrality and to avoid the imposition of unnecessary costs and technological burdens. Regarding Wightman's argument that RWHPS should be considered a local exchange service because it is a fixed wireless or transportable service, the Commission notes that a fixed wireless service is generally defined as a radio communication service between specified fixed end-points. Typically, the equipment used to provide a fixed wireless service is installed on the customer's building to allow a direct line-of-sight to the fixed wireless base station. In addition, the service is provided using dedicated licensed or unlicensed wireless spectrum on a network separate from a mobile wireless network.
19. The Commission considers that RWHPS is not a fixed wireless service since it works on RCI's mobile wireless network and it can work while the customer is in transit with a battery power unit. The Commission notes that RCI already provides mobile wireless services within Wightman's serving territory and that RWHPS is merely an extension of those services.
20. Given the wireless and mobile functionality of RWHPS, as well as the fact that the service functions using RCI's mobile wireless network, the Commission continues to consider that the classification of RWHPS as a mobile wireless service is correct.
21. With respect to Wightman's claim that Telecom Decisions 2005-28 and 2014-349 contradict each other, the Commission notes that the aim of the policy outlined in Telecom Decision 2005-28 is to determine the relevant market for VoIP services for

the purposes of the Commission's forbearance test – namely that access-dependent VoIP service is considered a substitute for local exchange service when applying the local forbearance test. The Commission did not require, in Telecom Decision 2005-28 nor any other decision, that a carrier must register as a CLEC when offering a service that is a close substitute for a wireline local exchange service.

22. Accordingly, the Commission determines that it did not fail to consider a basic principle that was raised in Wightman's original application.
23. With respect to the sections of the Policy Direction and the Act that Wightman alleges that the Commission contravened in Telecom Decision 2014-349, the Commission considers that Wightman has not provided sufficient evidence to support its contentions.
24. The Commission considers that its finding that RWHPS is a mobile wireless service is consistent with its objective to maintain technological and competitive neutrality and avoid the imposition of unnecessary burdens on WSPs. In addition, the Commission considers that classifying RWHPS as a local exchange service and therefore requiring RCI to interconnect directly with Wightman as a CLEC may result in the discontinuation of RWHPS, which would limit the competitive choices available in Wightman's serving territory. The Commission therefore considers that its determinations in Telecom Decision 2014-349 constitute the most efficient and proportionate method of advancing the policy objectives of the Act with the least amount of interference with competitive market forces, consistent with subparagraphs 1(a)(ii) and 1(b)(iv) of the Policy Direction and paragraphs 7(c) and (f) of the Act.
25. With respect to subparagraph 1(b)(iii) of the Policy Direction, the Commission considers that this subparagraph does not apply in this case because it refers to measures that are not of an economic nature. The Commission considers that the interconnection obligations of CLECs and WSPs relevant to this case are economic in nature since they involve financial and technical arrangements between two telecommunications service providers.
26. Regarding Wightman's claim that the Commission had, in Telecom Decision 2014-349, violated the rules against unjust discrimination and undue preference set out in subsection 27(2) of the Act, this subsection does not refer to the Commission's decisions causing unjust discrimination or undue preference towards any one carrier or group of carriers, but rather deals with the actions of a Canadian carrier that might cause unjust discrimination or undue preference. Therefore, the Commission considers that the rules regarding unjust discrimination and undue preference set out in subsection 27(2) of the Act do not apply in this case.
27. In light of all the above, the Commission finds that it did not err in law in its determinations set out in Telecom Decision 2014-349, and finds that its determinations did not contravene the Policy Direction, the policy objectives set out in paragraphs 7(c) and (f) of the Act, or the rules against unjust discrimination and undue preference set out in subsection 27(2) of the Act.

28. Accordingly, the Commission **denies** Wightman's review and vary application.

Policy Direction

29. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.

30. The Commission maintains that its determinations in this decision rely on market forces to the maximum extent feasible as the means of achieving the policy objectives set out in paragraphs 7(c) and (f) of the Act, consistent with subparagraph 1(a)(i)⁹ of the Policy Direction.

Secretary General

Related documents

- *Wightman Telecom Ltd. – Application regarding the appropriate interconnection regime for Rogers Wireless Home Phone Service*, Telecom Decision CRTC 2014-349, 2 July 2014
- *Network interconnection for voice services*, Telecom Regulatory Policy CRTC 2012-24, 19 January 2012
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005, as amended by Telecom Decision CRTC 2005-28-1, 30 June 2005
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997

⁹ Subparagraph 1(a)(i) of the Policy Direction states that the Commission should should rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives.