



Telecom Decision CRTC 2017-57

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File number: 8620-J106-201601633

Ice Wireless Inc. – Application regarding roaming on Rogers Communications Canada Inc.’s network by customers of Ice Wireless Inc. and Sugar Mobile Inc.

*The Commission **denies** an application by Ice Wireless Inc. (Ice Wireless) for relief against Rogers Communications Canada Inc. (RCCI) on a final basis. Ice Wireless has improperly allowed the end-users of its mobile virtual network operator Sugar Mobile Inc. (Sugar Mobile) to obtain permanent, rather than incidental, access to RCCI’s cellular network.*

However, immediate termination of the roaming agreement would result in the loss of service to Ice Wireless end-users who are legitimately accessing RCCI’s network.

*Accordingly, in the interests of affected consumers, Ice Wireless must confirm that Sugar Mobile will stop making unauthorized use of RCCI’s network within **50 days** of the date of this decision.*

Should Ice Wireless continue to allow Sugar Mobile end-users to make unauthorized use of RCCI’s cellular network, RCCI may cease providing wholesale mobile wireless roaming service to Ice Wireless, as described in this decision.

The Commission’s determinations in this decision are consistent with its determinations in Telecom Regulatory Policy 2015-177, one of the objectives of which was to promote facilities-based competition.

Application

1. The Commission received an application from Ice Wireless Inc. (Ice Wireless), dated 15 February 2016, in which the company stated that it had been notified by Rogers Communications Canada Inc. (RCCI) on 2 February 2016 that RCCI intended to (i) terminate the roaming agreement between the two companies, and (ii) disconnect both Ice Wireless and its affiliated mobile virtual network operator (MVNO),¹ Sugar Mobile Inc. (Sugar Mobile), from RCCI’s network. It submitted that RCCI had informed Ice Wireless that Sugar Mobile’s use of RCCI’s network constituted a

¹ An MVNO is a wireless service provider that does not own spectrum or operate its own radio access network (RAN); instead, it relies on the spectrum and RAN of a wireless carrier and, in some cases, other facilities and/or services, to provide mobile wireless services to end-users.

breach of several provisions of the roaming agreement and that RCCI's letter gave Ice Wireless until 16 February 2016 to correct the breach or both affiliated companies would be disconnected.

2. Ice Wireless requested that the Commission
 - affirm Ice Wireless's ability to allow Sugar Mobile to operate in the manner that it has been operating,
 - direct RCCI not to disconnect Ice Wireless or Sugar Mobile from its network, and
 - direct RCCI to update its proposed One-Way Domestic Wireless Roaming Services Tariff to ensure that end-users of MVNOs such as Sugar Mobile are not prevented from roaming on RCCI's network.
3. Ice Wireless also requested that, if its application were denied, the Commission
 - provide it with 90 days following the date of the decision to cease Sugar Mobile's roaming activities on RCCI's network, and
 - require RCCI to maintain the roaming agreement with Ice Wireless in full force and effect, subject to any modifications stemming from Telecom Regulatory Policy 2015-177 (the wholesale wireless framework) and subsequent proceedings.
4. Given RCCI's stated intention to terminate service within such a short time frame, Ice Wireless also requested that the Commission grant interim relief on an expedited basis by directing RCCI to not disconnect Ice Wireless or Sugar Mobile from its network pending the Commission's final ruling on Ice Wireless's application.
5. The Commission received interventions regarding Ice Wireless's application from Bell Canada; Bragg Communications Incorporated, operating as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNOc); OpenMedia.ca; the Public Interest Advocacy Centre; Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); RCCI; TELUS Communications Company (TCC); Vaxination Informatique (Vaxination); and 11 individuals. The public record of this proceeding, which closed on 18 April 2016, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Background

6. Wholesale mobile wireless roaming service (wholesale roaming) enables the end-users of a wireless carrier (i.e. the home carrier) to automatically access voice, text, and data services using a visited wireless carrier's network (also referred to as "the host network") when they travel outside their home carrier's network footprint.

7. Until recently, the provision of wholesale roaming was forborne from the requirement for the provider to file a tariff, and the service was provided pursuant to negotiated agreements and Innovation, Science and Economic Development Canada's conditions of licence for mandatory roaming.² However, in the wholesale wireless framework, the Commission determined that it was necessary to mandate the provision of domestic Global System for Mobile communications (GSM)-based wholesale roaming services by Bell Mobility Inc., RCCI, and TCC (collectively, the incumbents) to other Canadian wireless carriers and to regulate the rates, terms, and conditions of such services. Further, the incumbents were directed to file proposed tariffs for wholesale roaming.
8. RCCI currently provides wholesale roaming under an interim tariff, which contains Commission-approved rates, terms, and conditions.³ Its interim tariff sets out five conditions intended to implement the key policy determinations of the wholesale wireless framework. It also incorporates by reference the terms and conditions of RCCI's existing roaming agreements, except to the extent that these agreements conflict with the five conditions set out in the interim tariff. Of particular relevance to the present application are conditions 1 and 5.
9. Condition 1 sets out the definition of wholesale roaming, along the lines of the definition provided in paragraph 6 of this decision.
10. Condition 5 sets out that RCCI must provide roaming on its GSM-based mobile wireless network to all end-users of its wholesale roaming customers, including the end-users of any MVNOs operating on the wholesale roaming customers' networks (the MVNO subscriber roaming condition).
11. Ice Wireless operates a mobile network and offers traditional retail mobile wireless services in Canada's three territories and northern Quebec. It has an agreement with RCCI that permits Ice Wireless's end-users to roam on RCCI's network in the South and RCCI's end-users to roam on Ice Wireless's network in the North (the roaming agreement). This agreement is incorporated by reference into RCCI's interim wholesale roaming tariff.
12. Sugar Mobile is an affiliate of Ice Wireless and operates as an MVNO on Ice Wireless's network. It offers wireless service across Canada using either Wi-Fi⁴ or cellular data accessed via a subscriber identity module (SIM) card. The SIM card is registered to Ice Wireless and is embedded with a northern Canada 867 area code, but

² These conditions are set out in *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).

³ The interim terms and conditions were approved in a Commission [letter](#) dated 30 November 2015, and the interim rates were approved in Telecom Order 2015-537.

⁴ Wi-Fi is a computer technology that enables a mobile device to access the Internet over a wireless network connection.

Sugar Mobile end-users can choose a phone number with an area code from anywhere in Canada, and it is this number that people calling them dial.

13. RCCI tracks roaming on its network by recognizing the mobile network code in a SIM card. Because Ice Wireless is permitted to roam on RCCI's network, and Sugar Mobile SIM cards have the same mobile network code as Ice Wireless SIM cards, end-users of both companies are able to connect to the RCCI network when outside Ice Wireless's operating territory.
14. In the fall of 2015, in discussions preceding the launch of Sugar Mobile, RCCI indicated to Ice Wireless that the roaming agreement would not necessarily allow all Sugar Mobile end-users to use RCCI's network. On 27 November 2015, Ice Wireless sent RCCI a letter that led RCCI to understand that the Sugar Mobile service would be provisioned in a way that did not use RCCI's cellular network.
15. RCCI became aware of the launch of the Sugar Mobile service, which was provisioned in a way that did use RCCI's cellular network, in January 2016. This led to a series of correspondences and meetings between RCCI and Ice Wireless in early February 2016. In a letter dated 2 February 2016, RCCI indicated its intention to terminate its roaming agreement with Ice Wireless on 16 February 2016, unless the company prevented the Sugar Mobile service from continuing the use it was making of RCCI's network.
16. On 16 February 2016, Commission staff issued a letter that set out an expedited process for the interim relief request and requested that RCCI maintain the existing roaming agreement until the Commission ruled on interim relief. In reply, RCCI agreed to not disconnect Ice Wireless pending a ruling on interim relief.
17. Ice Wireless's request for interim relief was granted in a Commission letter dated 7 July 2016. In that letter, the Commission recognized that a broader proceeding was underway to consider the final wholesale roaming tariffs for RCCI and other companies. In that proceeding, interventions had been filed that addressed the appropriateness of business models such as Sugar Mobile's. Given that the Commission would be ruling in that proceeding on the nature of the wholesale roaming service to be mandated on a final basis (hereafter referred to as "mandated wholesale roaming"), the Commission noted that the outcome of the proceeding would have a significant bearing on the disposition of Ice Wireless's request for final relief. Accordingly, the Commission stated that it expected to rule on Ice Wireless's request for final relief in light of the broader proceeding to consider RCCI's final wholesale roaming tariff.
18. In Telecom Decision 2017-56, also published today, the Commission set out its policy determinations with respect to the terms and conditions of the incumbents' final wholesale roaming tariffs and directed these companies to file for approval tariffs that implement the Commission's determinations. In that decision, the Commission confirmed that under the wholesale wireless framework, mandated

wholesale roaming provides incidental, and not permanent, access to an incumbent's network by the end-users of a wholesale roaming customer.

Issues

19. The Commission has identified the following issues to be addressed in this decision:

- Should the Commission grant Ice Wireless's request for final relief and prevent RCCI from disconnecting Ice Wireless and Sugar Mobile end-users from its network?
- What actions, if any, should the Commission direct the parties to take?

Should the Commission grant Ice Wireless's request for final relief and prevent RCCI from disconnecting Ice Wireless and Sugar Mobile end-users from its network?

Incidental access and Wi-Fi

Positions of parties

20. Ice Wireless submitted that Sugar Mobile end-users use RCCI's network only on an incidental basis, since Sugar Mobile's service is primarily provided through Wi-Fi. It added that when a Sugar Mobile customer does access RCCI's network, RCCI will be compensated at an appropriate rate, as determined by its approved wholesale roaming tariff.
21. Ice Wireless noted that some parties had argued that, in determining whether an end-user is accessing a visited mobile network on a permanent or incidental basis, one must consider only mobile network usage, without any reference to Wi-Fi usage. Ice Wireless submitted that this is an outdated view of telecommunications networks and urged the Commission to reject it, since Wi-Fi networks are now an integral part of mobile networks. The company also submitted that telecommunications regulation should keep pace with technological developments and be technologically neutral.
22. Ice Wireless further submitted that, when a Sugar Mobile end-user is outside Ice Wireless's operating territory and is using the service via either Wi-Fi or RCCI's mobile network, Sugar Mobile's service still relies upon Ice Wireless's backbone network, which is inseparable from its radio access network (RAN), to function.
23. RCCI submitted that Wi-Fi connectivity is not within the scope of the wholesale wireless framework and that a Wi-Fi connection could not be considered a home network for the purpose of establishing whether access to a visited network is permanent or excessive.

Commission's analysis and determinations

24. Wi-Fi is an important source of Internet access for many Canadians and forms an integral part of the overall wireless environment. Public Wi-Fi, such as that provided in coffee shops, libraries, and residences, is being used as a complement to or replacement for cellular network access not only for wireless data, but increasingly for voice applications. However, in the current proceeding the Commission must determine whether public Wi-Fi should be treated as part of a cellular network for the purpose of establishing what is, and what is not, roaming – that is, incidental access – on a visited network.
25. In this context, it would be unreasonable and inconsistent with the Commission's facilities-based policy approach to include public Wi-Fi in the definition of a wireless carrier's home network for the purpose of mandated wholesale roaming. Doing so would essentially mean that all global Internet Protocol (IP) connectivity would need to be treated as part of a wireless carrier's home network, irrespective of whether any of this connectivity was owned, operated, or controlled by the wireless carrier. Further, it would be contrary to the wholesale wireless framework's stated objective of promoting facilities-based competition because it would eliminate incentives for a wireless carrier to invest in its own network.
26. Including public Wi-Fi in the definition of a wireless carrier's home network would fundamentally redefine the concept of roaming itself, since end-users accessing a visited network would not necessarily need to use any of the facilities owned or operated by the wholesale roaming customer to gain access to the visited network. The wholesale roaming customer could sell a mobile wireless service to end-users, the cellular portion of which would be provided exclusively through an incumbent's network, without ever needing to provide access through a home network.
27. Under the wholesale wireless framework, an end-user of a wholesale roaming customer or of its MVNO may only use an incumbent carrier's network incidentally to his or her primary use of the home network, which excludes public Wi-Fi. Condition one of the incumbents' interim tariffs, which defines wholesale roaming, implements this aspect of the framework. In addition, Telecom Decision 2017-56 clarifies that public Wi-Fi does not form part of a wireless carrier's home network for the purpose of establishing what constitutes incidental use of the visited network pursuant to the relevant wholesale roaming tariff.
28. Sugar Mobile end-users who access Ice Wireless's home network at least some of the time may be roaming on RCCI's network – that is, accessing that network in an incidental manner – as permitted by the tariff and the wholesale wireless framework. However, to the extent that Sugar Mobile end-users access RCCI's network without accessing a home network – that is, a cellular, rather than public Wi-Fi, network – they cannot be considered to be using RCCI's network only incidentally. This would remain the case regardless of the actual amount of data consumed on the network or whether RCCI is compensated for the use of its network.

29. With regard to the submission that a Sugar Mobile end-user on public Wi-Fi outside Ice Wireless's territory relies on Ice Wireless's network backbone, Ice Wireless failed to provide adequate support for this claim, and similarly failed to provide adequate support for its claim that the RAN and backbone form a single inseparable network. Nonetheless, even if there is some minimal connection between the end-user and Ice Wireless's network backbone, the use of public Wi-Fi by a Sugar Mobile end-user outside Ice Wireless's territory would still be subject to the concerns set out above and would not amount to the use of a home network for the purpose of roaming.
30. Sugar Mobile is selling and marketing its services throughout Canada. Further, end-users are able to select phone numbers from any exchange in the country. In the circumstances, there is no indication that Sugar Mobile has taken any steps to limit its end-users' access to RCCI's cellular network to levels that could be considered incidental, or, indeed, to require that these end-users use the home network of Sugar Mobile's MVNO host (i.e. Ice Wireless) at all.
31. In light of the above, to the extent that Ice Wireless permits Sugar Mobile end-users to access RCCI's network without also using the Ice Wireless home network at least some of the time, RCCI is not mandated, pursuant to the interim tariff or the framework underpinning the final tariff, to continue to provide mandated wholesale roaming service to Ice Wireless, consistent with the terms set out in paragraph 47 below.

MVNO subscriber roaming condition

Positions of parties

32. Ice Wireless submitted that Sugar Mobile's service is permitted under the MVNO subscriber roaming condition set out in the wholesale wireless framework and in RCCI's interim tariff. Ice Wireless also submitted that Sugar Mobile does not have a RAN and is therefore not a wireless carrier. It argued that Sugar Mobile is, instead, an MVNO that uses Ice Wireless's network as its host network, and that end-users of both affiliated companies are allowed to roam on RCCI's network. Ice Wireless submitted that Sugar Mobile would not be eligible to obtain mandated wholesale roaming through the interim or final tariffs directly, since those tariffs are available only to wireless carriers.
33. Ice Wireless submitted that because the MVNO subscriber roaming condition refers to "all subscribers" and "any MVNOs," the Commission's intention must have been to remove barriers to entry for MVNOs to the greatest extent possible. The company submitted that if the Commission intended for mandated wholesale roaming to be provided only to end-users of MVNOs who live in the operating territory of the home network, in this case Ice Wireless's operating territory, it would have said so explicitly. In Ice Wireless's view, the MVNO subscriber roaming condition clearly permits it to allow Sugar Mobile end-users to roam on RCCI's network to the same extent as Ice Wireless end-users, and RCCI must therefore provide roaming services to Sugar Mobile, which operates on Ice Wireless's network.

34. RCCI submitted that the Commission had made it clear in the MVNO subscriber roaming condition that MVNO end-users must be treated the same as end-users of the wholesale roaming partner; therefore, the MVNO's end-users may roam on an incumbent's network only if they are provided service primarily on the wholesale roaming customer's network. According to RCCI, very few Sugar Mobile end-users will ever make use of Ice Wireless's network.

Commission's analysis and determinations

35. While wholesale roaming provides a wireless carrier's end-users with incidental access to a host network when they are outside their home carrier's network footprint, wholesale MVNO access provides an MVNO's end-users with permanent access to the host network. In the wholesale wireless framework, the Commission concluded that it would not be appropriate to mandate wholesale MVNO access because doing so would, among other things, likely discourage investment by wireless carriers in their own network infrastructure.

36. As noted above, the MVNO subscriber roaming condition requires that an incumbent provide roaming to the end-users of an MVNO of a wholesale roaming customer on the same basis that it provides roaming to the end-users of the wholesale roaming customer. The corollary to this is that the wholesale roaming customer must ensure that any access to the incumbent carrier's network on behalf of its resellers, including MVNOs, occurs on the same basis, and with the same limitations as set out in the wholesale roaming tariff, as the wholesale roaming customer itself is entitled to.

37. Therefore, the Commission determines that, should Ice Wireless continue to permit its MVNOs (such as Sugar Mobile) to operate in a manner in which Ice Wireless is not permitted to operate – that is, by allowing its end-users to obtain permanent, rather than incidental, access to the incumbent's network – RCCI is not mandated to continue to provide Ice Wireless with access to RCCI's network pursuant to the interim tariff or the framework underpinning the final tariff, consistent with the terms set out in paragraph 47 below.

38. In the wholesale wireless framework, the Commission reduced certain barriers faced by MVNOs to facilitate, and allow more flexibility in, their commercial negotiations with wireless carriers. The Commission continues to consider that MVNOs can play a role in increasing consumer choice and value in the retail market, and in supporting the development of a competitive market for wholesale MVNO access. However, MVNOs must comply with the requirements of the framework, as confirmed in Telecom Decision 2017-56.

Conclusion

39. In light of all the above, the Commission **denies** Ice Wireless's application for relief against RCCI on a final basis.

What actions, if any, should the Commission direct the parties to take?

Positions of parties

40. Ice Wireless submitted that if the Commission disagreed with it regarding Sugar Mobile's right to roam onto RCCI's network, the Commission should issue an order directing Sugar Mobile to stop roaming on RCCI's network within 90 days of the date of the Commission's decision. It added that 90 days is a reasonable and realistic amount of time for end-users to be notified and to make alternative arrangements, and is necessary for Ice Wireless to undertake the internal business and technical activities involved with ceasing Sugar Mobile's roaming on RCCI's network.
41. RCCI submitted that disconnection should happen immediately. It added that any problems caused by an immediate termination of its arrangement with Ice Wireless are entirely the fault of that company. RCCI submitted that it had explained the problems with Sugar Mobile's plan to Sugar Mobile's Chief Executive Officer in October 2015, before the service was launched, but that the company chose to ignore this issue and press on despite warnings from RCCI. RCCI added that Ice Wireless could have chosen to come to the Commission for a ruling before Sugar Mobile's launch but did not, and that it is in its current position entirely as a result of its own actions.

Commission's analysis and determinations

42. Ice Wireless end-users who primarily access its network within its home network footprint and only occasionally use RCCI's network when travelling outside that footprint are roaming. The same can be said of Sugar Mobile end-users who access RCCI's network only incidentally to their primary access of Ice Wireless's home network. However, the roaming agreement between Ice Wireless and RCCI, and the interim tariff that incorporates the agreement, only provide for termination of wholesale roaming to Ice Wireless in its entirety. Consequently, termination of the agreement would result in the loss of service to end-users who are legitimately accessing RCCI's network, in addition to those who are not.
43. The Commission mandated the provision of GSM-based wholesale roaming in the wholesale wireless framework. It would be contrary to this mandated status to permit RCCI to stop providing mandated wholesale roaming to Ice Wireless unilaterally without first putting in place a process that provides an opportunity for Ice Wireless to rectify the situation.
44. Further, the interests of affected consumers must be taken into account. For Sugar Mobile end-users living outside Ice Wireless's operating territory, losing access to RCCI's network would not be equivalent to losing service altogether, since they would still be able to use Wi-Fi. However, some may find that a Wi-Fi-only service does not satisfy their needs. They should be given notice of the situation and an opportunity to find alternative solutions, should they so choose.

45. Since Sugar Mobile's service is offered exclusively on a prepaid basis and is renewable every 30 days, 30 days would be the minimum amount of time that would enable Ice Wireless to develop and implement a plan to prevent Sugar Mobile end-users who use the service primarily outside Ice Wireless's operating territory from accessing RCCI's network on a permanent basis. However, end-users should be given additional time in order to ensure that they are not unduly affected. Accordingly, it would be reasonable to require that Sugar Mobile stop making unauthorized use of RCCI's network within 50 days of the date of this decision.
46. It would also be appropriate for Ice Wireless to file a report with the Commission explaining if and how Sugar Mobile intends to offer service in a way that is consistent with the wholesale wireless framework that will underpin the final tariffs.
47. In light of the above, the Commission **directs** Ice Wireless to file the following with the Commission, serving copies on RCCI:
- A report, by **31 March 2017** that
 - i. confirms that Sugar Mobile will stop making unauthorized use of RCCI's network as of no later than **20 April 2017**;
 - ii. details how Sugar Mobile plans to comply with this decision and explains how Sugar Mobile plans to communicate with its customers regarding any service changes it may introduce in light of this decision; and
 - iii. details discussions held with RCCI that demonstrate that Sugar Mobile's plans are acceptable to RCCI.
 - Confirmation, by **20 April 2017** that Sugar Mobile has implemented the plans set out in the above-mentioned report by
 - i. ceasing its unauthorized use of RCCI's network; and
 - ii. contacting customers about any service changes that were introduced in light of this decision.
48. Should Ice Wireless fail to comply with these directions and continue to permit Sugar Mobile to make unauthorized use of RCCI's network, RCCI may cease providing mandated wholesale roaming to Ice Wireless starting no earlier than **1 May 2017**.

Secretary General

Related documents

- *Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, Telecom Decision CRTC 2017-56, 1 March 2017
- Telecom Order CRTC 2015-537, 3 December 2015
- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 2015