



Telecom Decision CRTC 2019-307

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Videotron Ltd. (Videotron) – Application for the Commission to order Bell Canada, on behalf of Bell Mobility Inc., not to suspend wholesale roaming service offered to Videotron – Interim relief

*The Commission **approves** a request for an interim order prohibiting Bell Canada, on behalf of Bell Mobility Inc., from suspending wholesale roaming service offered to Videotron Ltd. until the Commission has issued a decision on Videotron’s application for final relief.*

Application

1. The Commission received a Part 1 application, dated 11 June 2019, from Quebecor Media inc., on behalf of Videotron Ltd. (Videotron) in which Videotron requested that the Commission order Bell Canada, on behalf of Bell Mobility Inc. (collectively, Bell), to abstain from suspending Videotron’s wholesale roaming service (hereafter, the service).
2. Videotron indicated that it had received a letter from Bell, dated 24 May 2019, alleging that a significant number of Videotron’s end-users were using Bell Mobility Inc.’s (Bell Mobility) wholesale roaming service in a manner that contravened section 100.1(a)(23) of Bell Mobility’s Access Services Tariff. On the basis of this allegation, Videotron was advised that in the event that the infraction is not remedied within 30 days of Bell’s notice, Bell would have the right to suspend the service as of 23 June 2019.
3. Videotron requested that the Commission process its application on an expedited basis, so that a decision would be rendered by 23 June 2019. Videotron requested that alternatively, if the Commission were unable to render a final decision before 23 June 2019, it provide interim relief to Videotron by ordering Bell to abstain from suspending the service until a final decision is rendered.
4. In a letter dated 19 June 2019, Commission staff established an expedited process to address the request for interim relief. Further, Bell confirmed in a letter that it was committed to maintaining the service and would refrain from suspending or terminating its provision until either (i) the date on which the Commission issues a decision on the request for interim relief, or (ii) 3 September 2019, whichever is earlier.

5. The Commission received interventions on the request for interim relief from Bell, Iristel Inc. (Iristel), and TNW Wireless Inc. (TNW). Iristel and TNW supported Videotron's request.

The test for interim relief

6. The criteria that the Commission generally applies to assess applications for interim relief are those set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311 (*RJR-MacDonald*). These criteria are that (i) there is a serious issue to be determined; (ii) the party seeking the interim relief will incur irreparable harm if the relief is not granted; and (iii) the balance of convenience, taking into account the public interest, favours granting the interim relief. To be granted interim relief, an applicant must demonstrate that its application meets all three criteria.

Is there a serious issue to be determined?

Positions of parties

7. Videotron submitted that if Bell were to suspend Videotron's access to the service, there would be a negative impact on the safety of citizens, since some of them would no longer be able to complete wireless calls that they would otherwise have been able to complete.
8. Bell was of the view that Videotron has not demonstrated that there is a serious issue to be determined. According to Bell, there is no requirement in *Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, Telecom Decision CRTC 2017-56, 1 March 2017 to consult the Commission regarding disputes between an incumbent and a customer of wholesale roaming services related to permanent network access by such customers. Bell argued that its tariff does not require a Commission determination in order for the company to exercise its rights, as set out in the tariff, to suspend or terminate service. Bell also submitted that Videotron's request amounts to an application to review and vary certain aspects of Bell Mobility's roaming tariff, even though the deadline to file such an application has long passed, and Videotron did not make any submissions in that regard.
9. Finally, Bell submitted that Videotron's concession that it already has a test enabling it to identify, notify, and terminate Bell Mobility's wholesale roaming service to Videotron's end-users who use the service on a non-incident and permanent basis proves that there is no serious issue for the Commission to determine.
10. In response, Videotron submitted that the seriousness of the issue raised by its application for interim relief cannot be challenged, because it directly impacts the safety of Canadians and concerns a flagrant abuse of market power by an incumbent provider. This, in turn, absent a Commission determination, would have a detrimental impact on the overall functioning of the Canadian wireless services market.

Commission's analysis and determinations

11. An application generally meets the first criterion if it is not markedly frivolous. In this case, Videotron's application raises the possibility that the service, provided by Bell Mobility under a tariff that is approved and open to interpretation by the Commission, may be suspended. This is a serious issue, and the Commission finds that the application meets the first criterion for interim relief.

Will the party seeking the interim relief incur irreparable harm if the relief is not granted?

Positions of parties

12. Videotron indicated that if Bell were to carry out the threatened suspension of service, it would inevitably cause irreparable harm. On one hand, Videotron's end-users would be unjustly deprived of legitimate roaming access to Bell Mobility's mobile network, and on the other, Videotron's commercial reputation as a service provider in the country's competitive wireless services market would be compromised, since it would be unable to properly serve its end-users who temporarily access Bell Mobility's mobile network.
13. Bell argued that Videotron's concern about its end-users facing roadside and other potential emergencies is unfounded. According to Bell, that claim ignores the fact that Enhanced 9-1-1 (E9-1-1) service¹ to these end-users would still be available within the range of Bell Mobility's network even if the service were suspended or interrupted.
14. Bell also argued that Videotron should not be permitted to profit and enhance its reputation by allowing itself or its end-users to abuse the service by using it non-incidentally and permanently. Bell argued that in any event, any alleged harm to Videotron would be caused not by the Commission's refusal to grant the requested interim relief, but rather by Videotron's own failure to conduct its wireless business in a manner that is fully compliant with the Innovation, Science and Economic Development Canada (ISED) regulatory frameworks.
15. Finally, Bell noted that along with its 8 July 2019 answer to the requested final relief, it would provide a revised list of end-users who are presumed to be roaming non-incidentally and permanently on Bell Mobility's network by applying Videotron's proposed test.² Bell submitted that the additional data would automatically trigger the application of suspension/termination rights pursuant to section 100.19(a)(3) of its

¹ Basic 9-1-1 service enables callers to be connected to public safety answering point (PSAP) 9-1-1 operators, who dispatch the appropriate emergency responders. E9-1-1 service includes Basic 9-1-1 service but also automatically provides PSAP 9-1-1 operators with ancillary information, such as the telephone number and location of the caller.

² Videotron gave detailed information regarding the systems it has put in place to ensure that its end-users do not abuse their access to roaming service.

tariff, which would result in “re-setting” a 30-day notice clock. Videotron would then have until 7 August 2019 to validate the new data and confirm that it has taken appropriate steps to suspend the service for its end-users who have abused their roaming privileges. Bell argued that as a result, there is no possibility of the service being suspended or terminated, pursuant to its tariff, until 7 August 2019, at the earliest. This renders Videotron’s request for interim relief unnecessary.

16. In reply, Videotron indicated that Bell’s submission with regard to emergency situations suggests that only E9-1-1 calls are urgent or have an impact on safety, which is untrue. Videotron maintained that suspension of the service would have a significant impact on public safety.
17. Videotron argued that since 2014, it has invested significant funds and resources in a multi-dimensional strategy aimed at strengthening its reputation for geographic network coverage. Among other things, this strategy included the deployment of new wireless sites, the signing of new roaming agreements with partners such as Bell Mobility, and the launch of a high-visibility marketing campaign focused explicitly on the benefits of coverage in remote areas. According to Videotron, a sudden and unjustified reduction in the geographic coverage of its mobile network would undoubtedly cause irreparable harm to its reputation with this customer segment.

Commission’s analysis and determinations

18. With respect to the second criterion, the Commission has affirmed that the threshold for irreparable harm is high (see [Commission letter](#) dated 15 December 2015 regarding request for interim relief from TekSavvy Solutions Inc.). To characterize harm as “irreparable” requires an analysis of the nature of the harm, rather than of its magnitude. Harm is more likely to be considered irreparable when there is an unquantifiable loss or a loss that the applicant cannot recover.
19. The Commission considers that suspension or termination of the service while the Commission is examining the application for final relief would cause direct harm to Videotron because its subscribers could lose service in Quebec and certain regions of Ontario.
20. Videotron is an established telecommunications service provider, and the regular daily use by its subscribers of their mobile wireless services should normally be limited to the company’s serving territory, which would not be affected by suspension or termination of Videotron’s roaming agreement with Bell Mobility. However, if the service were suspended, even on a temporary basis, Videotron’s subscribers would no longer have access to the service when they are outside Videotron’s serving territory, in areas where roaming is provided by Bell Mobility. For Videotron, the harm would be considerable and irreparable: many of its customers could decide to change providers, given that they would no longer have access to national coverage. Even if Bell Mobility subsequently re-established the service, this could cause subscribers to question the reliability of the mobile phone service offered by Videotron.

21. Accordingly, the Commission is of the view that Videotron would very likely incur irreparable harm if interim relief were not granted and considers that Videotron has met the second criterion set out in *RJR-MacDonald*. Moreover, contrary to Bell's assertions, the Commission is of the view that it is indeed necessary to render a decision on the application for interim relief, to ensure greater certainty with regard to provision of the service in question.

Does the balance of convenience favour granting the requested relief?

Positions of parties

22. Videotron argued that the balance of convenience, taking into account the public interest, favours granting the application for interim relief. The company indicated that there have been no incidents since its end-users have had access to Bell Mobility's network in roaming mode, that is, since 11 May 2015. Furthermore, Videotron argued that the fact that prior to Bell's 24 May 2019 letter, Bell never informed Videotron of any concerns about permanent roaming, combined with the improvised nature of Bell's factual assertions, suggests that Bell's threat to suspend Videotron's access to the service is not motivated by a legitimate operational concern, but rather is an anti-competitive act intended to weaken a competitor. Finally, Videotron stated that Bell will not sustain any loss, damage, or harm if the interim relief is granted by the Commission.

23. By contrast, Bell submitted that because Bell Mobility's tariff and the conditions imposed by ISED are valid until proven otherwise, the balance of convenience, taking into account the public interest, weighs in favour of the Commission's strict application of Bell Mobility's tariff and ISED's conditions rather than of their suspension.

24. In reply, Videotron noted that Bell's public interest analysis makes no reference to the public as such. However, the first victims would be Videotron's mobile service subscribers, who depend on occasional access to roaming on Bell Mobility's network.

Commission's analysis and determinations

25. With respect to the third and final criterion, the Commission has concluded that Videotron would very likely incur irreparable harm if interim relief is not granted. As such, the presumption is that the balance of convenience favours the granting of interim relief, and special circumstances would be required to rebut this presumption. The Commission considers that no such circumstances exist in the present case. Pending the Commission's disposal of the application for final relief, Bell Mobility will be compensated by Videotron for its use of Bell Mobility's network by way of cost-based tariffed rates.

26. The Commission further considers that Videotron's public interest arguments for granting interim relief are more convincing than Bell's arguments and tip the balance of convenience in Videotron's favour. Indeed, even if access to E9-1-1 service were maintained if Bell were to suspend the service, many Videotron subscribers travelling

in areas not served by Videotron's network would find themselves unable to access the mobile phone service on which they depend. This would include the vast majority of subscribers, who have never used the service on an illegitimate, non-occasional, or permanent basis. Accordingly, the Commission considers that the balance of convenience favours granting the interim relief, and that the application meets the third criterion set out in *RJR-MacDonald*.

Conclusion

27. In light of the above, the Commission **approves** Videotron's application for interim relief and **orders** Bell to refrain from suspending the service until the Commission has made a decision on Videotron's request for final relief.

Policy Direction

28. On 17 June 2019, a new Policy Direction³ was issued to the Commission by the Governor in Council. The new Policy Direction stipulates that in exercising its powers and performing its duties under the *Telecommunications Act* (the Act), the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation. In its decisions, the Commission should demonstrate its compliance with the Policy Direction.

29. The Commission considers that its conclusion conforms to the Policy Direction for the following reasons. The Commission considers that the conclusion will contribute to attaining the policy objectives set out in paragraphs 7a), 7b), 7f), and 7h)⁴ of the Act. The Commission's analysis favours competition, since a decision to allow Bell to suspend the service before the Commission has issued a decision on the request for final relief would clearly have a negative impact on Videotron, since such a decision would significantly reduce the geographic coverage of Videotron's mobile network. This would put Videotron at a competitive disadvantage. The Commission further considers that its conclusion protects the interests and rights of consumers, who would otherwise be deprived of roaming access to Bell Mobility's mobile network. Considering that the Commission will make a definitive ruling on the service, the Commission is of the view that in the interim, consumer interests must prevail over Bell's desire to implement its tariff as quickly as possible.

Secretary General

³ *Order issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019.

⁴ The policy objectives set out in the Act are as follows: 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(h) to respond to the economic and social requirements of users of telecommunications services.