



Telecom Decision CRTC 2020-48

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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 services offered to Videotron – Final relief

*The Commission **approves** an application for final relief prohibiting Bell Canada, on behalf of Bell Mobility Inc., from suspending wholesale roaming services offered to Videotron Ltd.*

Application

1. The Commission received a Part 1 application, dated 11 June 2019, from Quebecor Media Inc. (Quebecor), on behalf of Videotron Ltd. (Videotron). In the application, Quebecor requested that the Commission direct Bell Canada, on behalf of Bell Mobility Inc. (collectively, Bell), not to suspend the wholesale roaming services it provides to Videotron (the services).
2. Videotron 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 item 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 were not remedied within 30 days of Bell's notice, Bell would have the right to suspend the service as of 23 June 2019. In Telecom Decision 2019-307, the Commission approved Quebecor's request for interim relief on behalf of Videotron.
3. The Commission received interventions regarding the request for final relief from the Public Interest Advocacy Centre (PIAC), Iristel Inc. (Iristel), TELUS Communications Inc. (TCI), and TNW Wireless Inc. (TNW), as well as a response from Bell.

Regulatory background

4. In Telecom Regulatory Policy 2015-177 (the wholesale mobile wireless service framework), the Commission determined that it was necessary to mandate the provision of wholesale roaming services based on Global System for Mobile communications (GSM) by Bell Mobility, Rogers Communications Partnership

(RCP),¹ and TELUS Communications Company (TCC)² (collectively, the incumbents) to other Canadian wireless carriers and to regulate the rates, terms, and conditions for such services.

5. In Telecom Decision 2017-56, the Commission directed that changes be made to the proposed final terms and conditions for the mandated wholesale mobile wireless roaming services³ (mandated wholesale roaming) offered by the incumbents. The Commission approved these changes with a view to ensuring that, among other things, the incumbents' tariffs would define the scope of mandated wholesale roaming to avoid potential anti-competitive behaviour by the incumbents, and to prevent customers that purchase the service from making unauthorized use of the incumbents' networks, for example, by reselling wireless services.
6. Bell Mobility's tariff item 100.1(a)(23) – National Wireless Roaming Service stipulates the following:

“Roaming” means the provision of the GSM-based wireless network functionalities, as expressly contemplated under this tariff item. For greater certainty, the wholesale roaming services provided under this tariff item and prescribed by the CRTC enable retail End-users of a wireless carrier (i.e., the home network carrier, hereunder the Wholesale Roaming Customer) to automatically access voice, text, and data services by using a visited wireless carrier's network (also referred to as “the host network,” hereunder the Company Available PMN), [...] on an incidental basis and not on a permanent basis [...].

7. In Telecom Decision 2017-56, the Commission also refused to adopt *ex ante* rules that would establish a specific threshold to determine whether a wholesale roaming customer was using the service inappropriately. In paragraph 73 of that decision, the Commission considered that, if thresholds were established that would allow for a certain amount of permanent roaming, certain problems could arise, such as
 - end-users who simply access the visited network even once a day could be identified as permanently roaming;
 - the wholesale roaming customer would need to incur costs to monitor and identify permanently roaming end-users and to develop a tracking system to track individual end-user roaming;

¹ RCP ceased to exist on 1 January 2016. All of RCP's business activities, including its assets and liabilities, are now held by Rogers Communications Canada Inc.

² In the proceeding that led to Telecom Regulatory Policy 2015-177, comments were received from TCC. However, on 1 October 2017, TCC's assets were legally transferred to TCI, and TCC ceased to exist.

³ In Telecom Order 2017-433, the Commission approved, on a final basis, the terms and conditions for the wholesale roaming offered by the incumbents.

- there is a lack of solid quantitative evidence to justify choosing one specific threshold over another;
 - setting the threshold too low could have a negative effect on end-users since the wholesale roaming customer may need to limit the number of end-users who permanently roam for legitimate reasons to stay under the threshold; and
 - setting the threshold too high could inadvertently allow, to an inappropriate extent, the very abuse that incumbents should be permitted to protect against (i.e. the resale of permanent access to their networks).
8. The Commission determined that, since mandated wholesale roaming provides incidental access, and not permanent access, to an incumbent's networks, the possibility of a wholesale roaming customer being able to resell permanent access to an incumbent's network should be greatly reduced.
9. In addition, by not setting a threshold, the Commission expected that the incumbents and their wholesale roaming customers would collaborate to determine what constitutes an acceptable level of incidental roaming. For this reason, in paragraph 77 of Telecom Decision 2017-56, the Commission stated that if a dispute arises between an incumbent and one of its wholesale roaming customers with respect to whether roaming is surpassing an acceptable level, the parties may request that the Commission determine whether a wholesale roaming customer is making improper use of the service.
10. In paragraph 78 of Telecom Decision 2017-56, the Commission stated that it may use some or all of the following indicators to help it determine whether the wholesale roaming customer has misused the service or has allowed its mobile virtual network operator (MVNO) to do so, depending on the particular facts of the case:
- it has deliberately issued phone numbers from exchanges outside its home network footprint to its end-users;
 - it has sold or marketed its services outside its home network footprint;
 - it has sold or marketed its services in a manner that would result in its end-users gaining permanent access to the incumbent's network;
 - it has provided its end-users with a device that has for its sole or predominant purpose permitting them to gain permanent access to the incumbent's network; and
 - it has otherwise failed to take commercially reasonable steps to limit roaming on the incumbent's network by its end-users to incidental levels that are within the scope of the service. In considering this factor, the Commission may take into account evidence of broad traffic patterns and network use trends concerning a significant proportion of wholesale roaming customers or MVNO end-users.

Interpretation of the regulatory context

11. In this proceeding, PIAC, TNW, and Videotron stated that, in paragraph 77 of Telecom Decision 2017-56, the Commission clearly indicated that it expected to be consulted by parties in the event of a dispute with respect to allegations of permanent roaming. Videotron argued that Bell completely ignored this expectation by sending Videotron a notice of suspension without prior consultation. Videotron argued that, on this basis alone, the Commission should order Bell to abstain from any action to suspend the services.
12. PIAC and TNW also expressed their opinion that the Commission should consider rewriting paragraph 77 in order to clarify the obligation of parties who suspect that a customer allows permanent roaming to submit an application to the Commission.
13. Further, Videotron claimed that the indicators listed in paragraph 78 of Telecom Decision 2017-56 must be applied in order to determine whether wholesale roaming service customers have misused the service. Videotron submitted that Bell did not make any allegations of inappropriate behaviour by Videotron with respect to the first four elements of the Commission's framework for analyzing permanent roaming disputes. Videotron also endeavoured to demonstrate how it satisfied each of the indicators' requirements and how its efforts to control permanent roaming are commercially reasonable and applied carefully and in good faith.
14. Iristel submitted that it was completely inappropriate for an incumbent to send a notice of suspension to a wholesale roaming customer without first attempting to resolve the dispute, either directly or by asking the Commission to intervene in the event of an unsuccessful attempt. Iristel also stated that Bell should have at least indicated which of the criteria listed in Telecom Decision 2017-56 it was accusing Videotron of not complying with, and should have provided evidence to support the allegations. According to Iristel, if the Commission wishes to modify or clarify the procedures for wholesale roaming disputes, Telecom Notice of Consultation 2019-57, for which a public hearing is being prepared, provides an opportunity for broader consultations on this issue than the current proceeding, which has a rather limited scope.
15. TCI requested that the Commission initiate a proceeding to first define, in a reasonable manner for all parties, wholesale roaming on an *ex ante* basis. Secondly, the Commission could set out a process and guidelines that could be used to triage concerns about permanent roaming before they are brought before the Commission for resolution. According to TCI, this activity would provide clarity to home and host network carriers and would deter any potential abuses. Moreover, a clear process and specific guidelines would reduce the administrative burden placed on the Commission and the wireless industry in Canada, minimizing the number of disputes brought before the Commission.
16. The Commission notes that the words "may request" in paragraph 77 of Telecom Decision 2017-56 are permissive and do not require a party to consult the

Commission to determine whether a wholesale roaming customer is using the service inappropriately. Furthermore, these criteria are not part of the tariff. However, as indicated above, the Commission noted that it expects incumbents and their wholesale roaming customers to work together to determine what constitutes an acceptable level of incidental roaming. Nonetheless, if a dispute arises between an incumbent and one of its wholesale roaming customers with respect to whether roaming is surpassing an acceptable level, as noted in paragraph 77 of Telecom Decision 2017-56, the parties may request that the Commission determine whether the wholesale roaming customer is making improper use of the service.

17. In its 24 May 2019 notice, Bell did not refer to the indicators set out in paragraph 78 of Telecom Decision 2017-56. However, Bell was not required to do so pursuant to Telecom Decision 2017-56 and Bell Mobility's tariff.
18. With respect to the interventions from PIAC, Iristel, and TNW concerning modifying the wording in paragraph 77 of Telecom Decision 2017-56 and TCI's request for a proceeding concerning permanent roaming, the Commission finds that these issues are not within the scope of this proceeding.

Issue

19. The Commission has identified the following issue to be addressed in this decision:
 - Can Bell suspend or terminate wholesale roaming service in the circumstances of this case?

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Position of parties

Videotron's application

20. Videotron noted that in the proceeding that led to Telecom Decision 2017-56, numerous proposals were put forward to define permanent roaming. Bell Mobility agreed with the idea of defining permanent roaming and included a definition in its interim wholesale roaming tariff, which remained in effect until the publication of Telecom Decision 2017-56. The exact wording of Bell Mobility's definition (which was found under item 100.1(a)(20)) was as follows:

“Permanent Roaming” means a situation whereby more than fifty (50%) percent of a Roaming Customer's data and/or voice usage, measured on a per International Mobile Subscriber Identity (IMSI) basis, is generated during each of any three (3) consecutive calendar months on the Company Available PMN, when measured against such Roaming Customer's aggregate data and/or voice usage on both the Operator's PMN and the Company Available PMN.

21. Videotron noted that, in Telecom Decision 2017-56, the Commission expressly chose not to adopt a definition for permanent roaming.
22. However, Videotron noted that during a period of almost two years between the publication of Telecom Regulatory Policy 2015-177 and the publication of Telecom Decision 2017-56, Bell Mobility's interim wholesale roaming tariff contained the definition of permanent roaming cited above. In order to avail itself of that tariff, Videotron put in place the systems necessary to monitor its end-users' roaming usage volume, in accordance with Bell Mobility's definition cited in paragraph 20 above. Videotron kept the systems in place following the publication of Telecom Decision 2017-56.
23. Videotron noted that it checks the systems once a month and that steps are taken to ensure that its end-users do not abuse their access to roaming service. Specifically, Videotron contacts end-users for whom, in each of two consecutive months, more than 50% of data or voice usage is generated on a host network, when compared with their overall data or voice usage on both the host network and the home network. The end-users are then notified that access to roaming may be interrupted should this consumption pattern persist (the Videotron test).
24. Videotron considered this a far more reasonable and reliable approach to control permanent roaming than the one Bell put forward in its letter to Videotron dated 7 June 2019, which is the volume of connections provided by Syniverse. Videotron noted that the Commission stated in Telecom Decision 2017-56 that simply connecting to a host network frequently while roaming does not constitute sufficient evidence that use of the network is not temporary.

Bell's response

25. In its response, Bell stated that, in its 7 June 2019 letter, it had provided Videotron with the following details:
 - Between May 2018 and May 2019, a number of Videotron end-users apparently connected to the Bell Mobility network while roaming. In doing so, a number of these users would have incurred, on Bell Mobility's network, a monthly amount of data that was, on average, equal to or greater than the monthly amount of data that would reasonably be expected to be incurred by those users on Videotron's network or on the networks of its other roaming service providers.
- Bell also provided Videotron with a sample of 10 of these Videotron end-users, identified by their IMSIs.
26. Bell stated that it did not object to the definition of non-incident and permanent roaming that Videotron said it applied to its customers who used Bell Mobility's roaming service. Bell indicated that this was one of many reasonable means of ensuring compliance with the roaming service definition included in the tariff. Bell stated that the Videotron test closely corresponded to the underpinning analysis that

Bell had applied initially when, in its 24 May 2019 letter, it determined that there were reasonable and probable grounds for suspending or terminating the service.

27. Bell then gave the Commission and Videotron four confidential lists containing the IMSIs of the Videotron end-users who had connected to Bell's network while roaming between 30 June 2018 and 31 May 2019. These users should have been flagged by the Videotron test because they roamed on a non-incident and permanent basis for two to three consecutive months.

Videotron's reply

28. In its 15 July 2019 reply, Videotron provided the results of an analysis of Bell's four lists.

29. Videotron noted the following:

- Not all the IMSIs identified by Bell met the test that would justify sending a notification, namely 50% usage for two consecutive months, or the test for imposing a suspension, namely 50% usage for three consecutive months. This is unsurprising, as Bell has no way of knowing the usage level of Videotron's customers on the latter's network.
- It appears that Bell and Videotron do not have the same thresholds for triggering an analysis of roaming usage. While the thresholds are not identical, Bell's and Videotron's are nonetheless very similar.
- To give an idea of the impact of this difference in terms of the number of notifications sent and suspensions imposed, Videotron carried out another data analysis for the relevant period using Bell's usage thresholds.
- There are very few subscribers for whom services were suspended then reinstated in light of mitigating circumstances. According to Videotron, this is the evidence that it had applied the exception in moderation and in a responsible manner.
- The tables also include the number of IMSIs attributed to Fizz, Videotron's flanker brand launched in late 2018. By compiling the roaming data of its end-users, Videotron found that its monitoring analyses were not being carried out for Fizz subscribers. This situation has been rectified. In any event, Videotron confirmed that the number of subscribers concerned is extremely low.

Requests for further information

30. Commission staff asked Videotron to verify information on the number of subscribers⁴ linked to Bell's four lists of IMSIs suspected of permanent roaming. In

⁴ Videotron was invited to provide detailed information on the number of its end-users on Bell Mobility's network (i) with two consecutive months of alleged permanent roaming, and (ii) with three consecutive months of alleged permanent roaming.

response to Commission staff's requests, Videotron provided further detail on the reasons why certain end-users did not receive a notification.

31. Videotron described the process under which it allows end-users who have received two- and three-month letters to present their mitigating circumstances to Videotron. It also described the process followed to study these circumstances and the process to determine whether end-users should be able to keep their roaming privileges.
 - Since it would be impossible to foresee all circumstances that would justify withdrawing the suspension of an end-user's roaming privileges, Videotron does not have recourse to an exhaustive list of justifications. That being said, here are some examples of justifications that Videotron considers acceptable: (i) due to the death or long-term illness of a loved one, a customer must relocate for an extended period; (ii) a customer is temporarily working outside Videotron's network footprint; and (iii) a customer moves beyond Videotron's network footprint without realizing it. In the latter case, Videotron contacts the customer to explain that they must quickly find a new wireless service provider.
 - Videotron also pointed out that its policy is to allow the suspension of an end-user's roaming privileges to be withdrawn only once during the commercial relationship binding Videotron to the end-user in question. For all these reasons, Videotron reiterated that the number of withdrawals of suspension is extremely low. Videotron asserted that this is evidence that it applied the exception in moderation and in a responsible manner.
32. In its response to requests for information presented on 19 August 2019 and in its final response dated 26 September 2019, Bell noted that Videotron revealed two data series concerning the four IMSI lists:
 - The first dataset involved the IMSI lists of Videotron end-users that were submitted on 8 July 2019, and Videotron's 12 August 2019 response to the Commission's requests for information, based on the IMSI samples.
 - The second dataset indicated the formerly confidential numbers that Videotron provided in its 15 July 2019 reply.
33. Bell submitted that Videotron's two datasets demonstrated shortfalls in Videotron's safeguards against permanent roaming. Bell stated that the unreasonable aspect of these measures becomes clearer when examining the extent to which Videotron's system fails at the moment of identifying and advising all permanent roaming subscribers of two or three months who should have been identified and advised (and prevented from using the roaming service) but who were not.
34. Bell specified that two elements supported the unreasonable aspect of Videotron's safeguards against permanent roaming, that is, the non-inclusion of Fizz subscribers and a "technical issue."

35. Bell expressed concern over Videotron's references to using its own internal roaming thresholds. Bell noted that there was a column in Videotron's table entitled "Number of additional IMSIs that would have received a notification if Videotron has used Bell's usage thresholds." [Translation]

36. Bell raised three concerns regarding Videotron's request for a "usage threshold":

- The prohibition in the tariff against roaming on a non-incident and permanent basis is absolute and not tied to any minimum roaming threshold for data and voice usage.
- Videotron's attempt to quote the usage thresholds that Bell had applied when its model was under development (and the similarity between Bell and Videotron's thresholds) as purported justification for its own internal usage thresholds was completely inappropriate. Bell stated that it had applied the usage thresholds while developing its model to increase its level of assurance when it produced lists of IMSIs suspected of being in non-incident and permanent roaming situations for voice and data usage over two or three consecutive months. Bell noted that its model was both useful and accurate, since it enabled six out of ten IMSIs in its initial sample of 7 June 2019 to be identified, as either current permanent roaming subscribers or those at high risk of becoming one.
- Videotron's use of roaming thresholds means that the actual failure rate of the safeguards against permanent roaming very likely exceeds the rates that Bell had detected in its first dataset because (i) Videotron's overall failure rates are not very high, only for the IMSI samples taken from Bell's model, as the model indicates only the heaviest monthly users of the roaming service that were sampled; and (ii) Videotron applied higher usage thresholds inappropriately for the roaming service when it applied its internal safeguards against roaming.

37. Furthermore, Bell stated that as a result of Videotron's policy, which consists of terminating end-users' roaming privileges only once during their "commercial relationship" with the company, recurrent and regular roaming customers are effectively exempt from additional suspensions following an initial suspension. Bell argued that this indicates Videotron's current safeguards against permanent roaming absolutely do not constitute reasonable safeguards to prevent roaming on a non-incident and permanent basis on Bell Mobility's host network, pursuant to the tariff.

38. For all of the above-stated reasons, Bell requested that the Commission deny the remainder of Videotron's application, that is, a permanent injunction prohibiting Bell Mobility from applying its tariff. Moreover, Bell requested that the Commission issue a number of mandatory orders pursuant to section 24 of the *Telecommunications Act* (the Act) in order to rectify or correct the ineffectiveness of Videotron's safeguards against permanent roaming, thus ensuring that the company's use of the roaming service complies with the tariff.

Videotron's final reply

39. On 7 October 2019, Videotron submitted its final reply to Bell's concerns. With respect to Videotron not applying its safeguards against permanent roaming to Fizz's customers in the months immediately following the launch of Fizz, Videotron argued that it was simply an oversight that has been addressed. Fizz's customers are now subject to the same safeguards against permanent roaming as Videotron's customers.
40. Regarding the technical issue Videotron encountered when it sent notifications to a portion of its end-users who were in a permanent roaming situation, Videotron indicated in its response to the Commission's request for information that the problem was a result of a communications failure between Videotron's monitoring and SMS notification systems. The problem was discovered as Videotron was preparing its responses to the Commission's requests for information, and the cause of the anomaly has since been identified as inconsistencies in the task creation scripts between the rate system, the relative usage calculation system, the outgoing SMS system, and the mediation system. A plan to address this issue was defined and Videotron expected to have it in place no later than 1 December 2019.
41. Videotron recognized that its omission with respect to Fizz and the technical issue related to sending out notifications were regrettable. However, Videotron argued that, considered in combination, these errors never involved more than a quarter of Videotron's total end-users who were in a permanent roaming situation. More importantly, according to Videotron, these errors occurred in a context in which Videotron never, at any time or in any way whatsoever, encouraged its end-users to place themselves in a permanent roaming situation, as demonstrated by the fact that Bell did not even attempt to raise allegations against Videotron relating to the first four indicators of the framework used by the Commission to assess permanent roaming allegations.
42. Concerning the existence of usage thresholds in Videotron's permanent roaming detection system, Videotron stated that it was of the opinion that Bell's sudden opposition to the concept was simply unreasonable. Based on Bell's newly adopted position and the example used to support it, a Videotron end-user who made calls of a total duration of 60 seconds on Bell Mobility's network and calls of a total duration of 45 seconds on Videotron's network each month for three consecutive months should be denied roaming. Videotron argued that it sees no public interest policy for which such a draconian interpretation of permanent roaming could be of interest.
43. With regard to the fact that Videotron does not permanently suspend end-users who are in permanent roaming situations, Videotron noted in the last paragraph of its response to the request for information that Bell would have understood that Videotron was referring to the policy under which Videotron withdraws roaming service suspensions resulting from mitigating circumstances. Videotron stated that it does so only once in the course of a commercial relationship with a Videotron customer. As for suspending such roaming services, Videotron does so several times if justified by a customer's activities.
44. Lastly, Videotron objected to the new corrective actions proposed by Bell. Videotron

submitted that if Bell has suggestions concerning the Commission's framework to assess permanent roaming allegations or if Bell Mobility wishes to amend its tariff in order to add a right to require periodic reports of end-user roaming activities, it is free to file its own application with the Commission.

Commission's analysis and determinations

45. Bell Mobility's tariff⁵ stipulates that roaming must be incidental and non-permanent, and that it is up to wholesale roaming customers to ensure that their end-users comply with this obligation.
46. As noted in paragraph 23 above, Videotron has put in place a system that allows it to determine whether its end-users are roaming on Bell Mobility's network on a permanent and non-incidental basis. For the purposes of this dispute, Bell initially agreed that Videotron's test was reasonable. Bell later disagreed, however, with the way in which Videotron applied this test and with the related issues mentioned above, that is, the one-time suspension of service, the technical issue, Fizz's customers, and the threshold.

One-time suspension of service

47. Videotron noted in its reply that it would withdraw a suspension (thus restoring roaming privileges) only once in the course of its commercial relationship with an end-user. In other words, if Videotron suspended the roaming rights of an end-user as a result of permanent roaming and the rights were later restored but the user once again used them on a permanent basis, Videotron would suspend them and not reinstate them again in the course of its commercial relationship with the end-user. In light of this clarification, the Commission is satisfied that Videotron's approach is appropriate.

Technical issue

48. Regarding the Videotron end-users that should have received a two- or three-month notification but did not receive one because of the technical issue, Videotron submitted that the reason was a communications failure between Videotron's monitoring and SMS notification systems, but did not provide further details. The Commission is concerned that Videotron did not provide convincing evidence to show that it had taken steps to ensure that the IMSIs exceeding roaming usage limits receive the notification letters that they should have received and that their service is suspended in accordance with Videotron's planned process. Although Videotron considered that the notifications that were not sent because of the technical issue represent less than 18% of the total notifications, the fact remains that permanent roaming is prohibited, regardless of the percentage.

⁵ Item 100.1(a)(23) of the [Access Services Tariff](#)

49. Although Videotron has a plan to address this issue, the Commission is of the view that Videotron has, by the existence of this issue, failed to meet its obligations under the tariff. However, the Commission notes that, by the time a decision is issued relating to this file, the technical issue should be resolved (no later than 1 December 2019). In addition, considering the time that passed since the selection of Bell's sample on 8 July 2019 (i.e. from 30 June 2018 to 31 May 2019), the Commission is of the view that it would not be appropriate to require Videotron to send end-users notifications of suspension for this period of time because, in some cases, over a year may have passed since the date of the alleged permanent roaming. Such notifications would not be in the interest of end-users because they could cause confusion among Videotron's end-users, especially if the practice has ended.
50. The Commission considers that it would be more appropriate to require Videotron to confirm with Bell and the Commission – within 10 days of the date of this decision – that the technical issue has been resolved and that it can now send notifications to all end-users who are in permanent roaming situations. If Videotron has still not resolved the technical issue, as it indicated it would do by 1 December 2019, it should be required to install a manual system for the purpose of issuing two- and three-month excessive roaming notification letters, since the company was able to confirm that permanent roaming customers had not received the letters because of this technical issue. Videotron should be required to maintain this manual system until the technical issue is resolved and to inform the Commission as soon as it is resolved.

Fizz subscribers

51. Although Videotron did not implement safeguards against permanent roaming for Fizz subscribers in the months following the launch of Fizz,⁶ the Commission notes that Fizz subscribers are now subject to the same safeguards against permanent roaming as Videotron subscribers. The Commission is of the view that Videotron failed to fulfill its obligations under the tariff. The Commission therefore considers that it is appropriate to remind Videotron that Bell Mobility's tariff applies, without exceptions, to all Videotron end-users, whether the service is branded as Fizz or something else. The Commission considers that, because of the time that passed since Bell presented the sample on 8 July 2019 (i.e. from 30 June 2018 to 31 May 2019), it would be inappropriate to require that notifications of suspension be issued to end-users. The Commission is satisfied that Videotron will nevertheless correctly apply permanent roaming safeguards for Fizz end-users.

Threshold

52. As indicated in paragraphs 73 and 75 of Telecom Decision 2017-56, the Commission considers that it would be inefficient to adopt an *ex ante* approach to establish a specific threshold in the tariffs, and that the Commission's establishment of thresholds allowing a certain level of permanent roaming could raise some problems.

⁶ Fizz was launched in September 2018.

53. Although the Commission stated in Telecom Decision 2017-56 that it would not include a specific threshold in the tariffs, it did not prohibit the parties from agreeing upon a threshold among themselves. In the circumstances of the current application, the Commission is of the view that the use of a certain threshold by Bell and Videotron, under which no analysis is performed, would be appropriate to ensure that resources are used efficiently. However, the Commission considers that the record of this proceeding is insufficient for it to determine whether the threshold used by Videotron is appropriate. The Commission is of the view that the parties should agree upon a threshold that would balance the burden that abuse of roaming would impose on the Bell Mobility network with the burden imposed on Videotron by tracking the usage of all of its end-users. The Commission is of the view that, until the parties agree on a threshold, Videotron should be able to continue using its current threshold. If the parties are unable to reach an agreement, they may use the Commission's staff-assisted dispute resolution mechanisms, as set out in Broadcasting and Telecom Information Bulletin 2019-184.

Legitimate permanent roaming circumstances

54. Regarding users who received an exemption because of special circumstances, the Commission notes that in paragraph 70 of Telecom Decision 2017-56, it provided for the possibility of legitimate permanent roaming.⁷

55. The Commission is of the opinion that Videotron provided legitimate reasons, which are set out in paragraph 31 of this decision, as to why it had allowed some of its end-users to temporarily use permanent roaming services, pursuant to paragraph 70 of Telecom Decision 2017-56. The Commission considers that it is in the public interest to allow end-users to temporarily use roaming outside the coverage zone of their home network on a protracted basis for legitimate reasons (e.g. study, work, or a family emergency).

Conclusions

56. The Commission concludes that

- i) Videotron did not comply with Bell Mobility's tariff for permanent roaming in that there was a technical issue preventing certain customers from receiving a notification when they should have received one;
- ii) Videotron did not comply with Bell Mobility's tariff for permanent roaming in that its test was not applied to Fizz customers.

57. However, Videotron demonstrated an effective application of certain reasonable measures to ensure that end-users were not permanently roaming. No proof was

⁷ The third scenario involves end-users who select an appropriate wholesale roaming customer as a service provider, and then, for valid reasons (e.g. study, work, or family emergency), use the roaming mode outside the home network's coverage area on a temporary, but protracted, basis.

submitted that Videotron was reselling wireless services through roaming on the Bell Mobility network. Finally, considering the amount of time that has elapsed since the period referenced in Bell's notice of suspension (30 June 2018 to 31 May 2019), the Commission is of the view that it would be inappropriate to order Videotron to issue a notice of suspension for violations that took place over a year ago.

58. For these reasons, the Commission **directs** that

i) Videotron use its current minimum threshold, from which it starts applying its test, until Videotron and Bell agree upon an acceptable threshold;

ii) Videotron confirm with Bell and the Commission by **17 February 2020** that the technical issue has been resolved and that the usage of all end-users, whether they are Videotron or Fizz subscribers, is appropriately tracked;

iii) in the event that Videotron has not resolved the technical issue, Videotron implement a new manual system for issuing two-month and three-month notification letters regarding excessive roaming, and maintain the system until the technical issue is resolved and the Commission has been notified; and

iv) over a six-month period beginning on **15 April 2020**, Videotron set out in a report for Bell and the Commission a list of the IMSIs of the end-users to whom Videotron issued two-month and three-month notifications.

59. Considering the corrections made by Videotron and the assurance that the monthly reports will provide, the Commission **approves** Videotron's application for final relief and **directs** Bell to not suspend or terminate the wholesale roaming services offered to Videotron, in accordance with Bell's notice to this effect dated 24 May 2019.

60. Regarding the orders sought by Bell against Videotron, the Commission considers that, subject to the issues reviewed above, Videotron has generally implemented reasonable measures to ensure that the roaming service is not used inappropriately. Nevertheless, Videotron's tracking of end-users' usage should be improved. Thus, Videotron will implement reasonable safeguards against non-incident and permanent roaming on the Bell Mobility host network, as required by the tariff. In addition, the Commission considers that, as a result of its findings on the imposition of reporting requirements – applied over six months following the issuance of the decision – it is not necessary to impose the orders requested by Bell at the moment.

61. Finally, the Commission considers that it would have been more productive if Bell and Videotron had reviewed, before Bell issued the notice of suspension or termination on 24 May 2019, the following issues together: (i) an acceptable level of incidental roaming, and (ii) the adequacy of Videotron's safeguards in ensuring that its end-users are not permanently roaming (which should have been done before Bell issued its 24 May 2019 notice of suspension or termination). As such, Bell and Videotron would have allowed the Commission and themselves to save precious time and significant resources, given the quantity of information exchanged in this

proceeding. To this end, the Commission expects Bell and Videotron to exchange information on a regular basis and to discuss issues affecting the provision of services set out in the tariffs before issuing notices of suspension or submitting applications to the Commission.

Policy Directions

62. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the 2006 Policy Direction⁸ and the 2019 Policy Direction.⁹ The Commission considers that the conclusions set out in this decision are in accordance with the 2006 Policy Direction and the 2019 Policy Direction for the reasons stated below.
63. Pursuant to subparagraphs 1(a)(ii) and (iii) of the 2019 Policy Direction, the Commission considers that the regulatory measure stated above – more specifically, the order for Bell not to suspend or terminate wholesale roaming services provided to Videotron in accordance with Bell’s notice to this effect dated 24 May 2019 – promotes the orderly development of telecommunications throughout Canada, so that access to affordable telecommunications services of high quality is available in all regions of Canada, including rural areas, to respond to the economic and social requirements of users of the services, thus advancing the policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.¹⁰
64. Pursuant to subparagraph 1(a)(i) of the 2019 Policy Direction, the Commission considers that the regulatory measure stated above – more specifically, the order stipulating that Videotron may use its current minimum threshold until Videotron and Bell agree upon another threshold – ensures that regulation is effective by facilitating the policy objective set out in paragraph 7(f) of the Act.¹¹ This regulatory measure also supports the interests of consumers, who will not be at risk of having their wireless services suspended when they are temporarily and legitimately outside the coverage area of their home network.

⁸ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁹ *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. The 2019 Policy Direction stipulates that in exercising its powers and performing its duties under the Act, the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation. The Commission should also indicate how its decisions comply with the Policy Direction.

¹⁰ The cited policy objectives of the Act are 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; (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; and (h) to respond to the economic and social requirements of users of telecommunications services.

¹¹ The cited policy objective of the Act is 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.

65. In addition, the Commission considers that the order requiring that Videotron confirm that the technical issue has been resolved and that all end-users' usage is being tracked, whether they are subscribers of Videotron or Fizz, in accordance with the 2006 Policy Direction, more specifically subparagraph 1(a)(ii), which requires that, when relying on the regulation, the Commission 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; and subparagraph 1(b)(iii), which requires that, if regulatory measures are not of an economic nature, to the greatest extent possible, they are implemented in a symmetrical and competitively neutral manner.

Secretary General

Related documents

- *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*, Telecom Decision CRTC 2019-307, 30 August 2019
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019
- *Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, 28 February 2019; as modified by Telecom Notice of Consultation CRTC 2019-57-1, 28 October 2019
- *Follow-up to Telecom Decision 2017-56: Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, Telecom Order CRTC 2017-433, 6 December 2017
- *Wholesale mobile wireless roaming service tariffs – Final terms and conditions*, Telecom Decision CRTC 2017-56, 1 March 2017
- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 2015