



Telecom Notice of Consultation CRTC 2023-48

PDF version

References: 8740-B38-202104686, 8740-R28-202104636, 8740-T66-202104876, and 8740-S22-202104610

Ottawa, 1 March 2023

Public record: 1011-NOC2023-0048

Call for comments – Facilities-based wholesale mobile virtual network operator (MVNO) access tariffs – Considering the inclusion of additional retail market segments

Deadline for submission of interventions: 31 March 2023

Deadline for submission of replies: 17 April 2023

[\[Submit an intervention or view related documents\]](#)

Summary

With a view to reducing barriers to competition and increasing the overall level of mobile wireless competition to the benefit of Canadians, the Commission invites interested persons to comment on whether the enterprise and Internet of Things (IoT)/machine-to-machine (M2M) retail market segments should be included as part of the Commission's wholesale mobile virtual network operator (MVNO) access policy framework.

Background

1. In Telecom Regulatory Policy 2021-130, the Commission, among other things, mandated the provision of a wholesale facilities-based mobile virtual network operator (MVNO) access service to enable eligible regional wireless carriers to use the networks of Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), TELUS Communications Inc. (TCI), and Saskatchewan Telecommunications (collectively, the incumbents), where these four exercise market power in the provision of retail mobile wireless services, to accelerate service to new areas while they build out their networks.
2. Although the Commission determined that the incumbents possess market power in the provision of retail mobile wireless services, it nevertheless maintained that wholesale MVNO access is not an essential service.¹ However, the Commission also

¹ The essential services test has three criteria: (i) the facility is required as an input by competitors to provide telecommunications services in a relevant downstream market; (ii) it is controlled by a firm that possesses upstream market power such that withdrawing mandated access, or denying access to the facility, would likely result in a substantial lessening or prevention of competition in the downstream market; and

found that the incumbents' effective denial of access to a wholesale facilities-based MVNO access service results in a situation of undue preference and unjust discrimination, to the detriment of a competitive retail market, which engages subsection 27(2) of the *Telecommunications Act* (the Act). Accordingly, the Commission directed the incumbents to file tariff pages containing proposed terms and conditions for a facilities-based wholesale MVNO access service using the national wireless carriers' wholesale roaming tariffs as their basis.

3. Following Telecom Regulatory Policy 2021-130, the incumbents filed tariff pages for Commission approval. As part of those tariff provisions, the incumbents proposed restricting MVNO access to retail customers and small business customers,² to the exclusion of medium- to large-sized businesses, institutions, and other enterprise customers (collectively, enterprise customers). In addition, RCCI and TCI prohibited the use of the wholesale service to enable Internet of Things (IoT) and machine-to-machine (M2M) devices, while Bell Mobility would only permit the use of the service for wireless telephone, tablet, and consumer-connected IoT devices.
4. In Telecom Decision 2022-288, the Commission made a number of determinations related to the terms and conditions and implementation of wholesale MVNO access service and the associated tariff notices. With respect to enterprise and IoT/M2M markets, the Commission considered that the restrictions proposed by the incumbents were appropriate at the time. This determination was made in view of the fact that in Telecom Regulatory Policy 2021-130, the Commission considered mobile wireless services sold to large businesses or institutional customers and for IoT/M2M communications to be in a separate product market from retail mobile wireless services.
5. As a result, the Commission did not make any findings regarding market power in these retail market segments and did not determine whether said market segments would engage subsection 27(2) of the Act. In Telecom Decision 2022-288, the Commission considered that there was insufficient information on the record to make such a determination.
6. However, in the proceeding leading to Telecom Decision 2022-288, a number of regional carriers argued that the inclusion of the enterprise and IoT/M2M market segments as part of the MVNO access service was necessary for successful competition. In this regard, the Commission took the preliminary view that it was highly likely that the market conditions in the enterprise and IoT/M2M retail market segments closely resemble the rest of the market and may in fact be even more concentrated. The Commission expressed concerns that (i) excluding those market

(iii) it is not practical or feasible for competitors to duplicate the functionality of the facility. A wholesale service must meet all three criteria to be considered essential. In addition, the Commission may also use policy considerations to inform, support, or reverse a decision to mandate the provision of a wholesale service.

² In Telecom Decision 2022-288, the Commission directed the incumbents to define small businesses in their tariffs as businesses that have between 1 and 99 paid employees.

segments from the MVNO access framework could result in retail customers being subject to an undue or unreasonable disadvantage under subsection 27(2) of the Act, and (ii) preventing regional carriers from using wholesale MVNO access to serve the enterprise and IoT/M2M market segments raises concerns of undue preference and unjust discrimination on the part of the incumbents that serve these markets.

7. Given those concerns, the Commission indicated it would initiate a proceeding to consider the inclusion of the enterprise and IoT/M2M retail market segments in the MVNO access policy framework.
8. In addition, on 13 February 2023, a new Policy Direction³ came into effect, which directs the Commission to, among other things, consider how its decisions would promote competition, affordability, consumer interests and innovation. Specifically, to foster mobile wireless competition that is sufficient to protect the interests of users, the Commission must monitor and assess the effectiveness of its approach to a mandated wholesale facilities-based MVNO access service.

Call for comments

9. In light of the above, the Commission hereby initiates a public proceeding to consider whether enterprise and IoT/M2M retail market segments should be included as part of the Commission's wholesale MVNO access policy framework in order to foster wireless competition that is sufficient to protect the interests of users.
10. The Commission invites parties and interested persons to comment on the Commission's preliminary views and concerns set out above. Specifically, parties and interested persons should address the following matters:

Q1. To what extent could the Commission's market power assessment for retail mobile wireless services established in Telecom Regulatory Policy 2021-130 also be applied to the enterprise and IoT/M2M retail market segments?

- i. Discuss the specific elements of a market power assessment that would differ between these retail markets.
- ii. Provide your analysis of the overall competitiveness of these retail market segments, and include any relevant studies or reports you have in this regard.

Q2. How should the relevant product market be defined for the enterprise and IoT/M2M retail market segments? In your response, explain

- i. what constitutes an enterprise customer;
- ii. what constitutes an IoT application;

³ [Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy](#)

- iii. what constitutes an M2M application; and
- iv. whether IoT and M2M retail services are part of one single product market or represent different product markets.

Q3. In Telecom Regulatory Policy 2021-130, the Commission found that the relevant geographic market for retail mobile wireless services is provincial/territorial. Should the same geographic market definition apply to the enterprise and IoT/M2M retail market segments?

Q4. Provide your views on the demand conditions for enterprise and IoT/M2M services by responding to the following questions:

- i. Are there any economically feasible and practical substitutes to the retail offerings of the incumbents?
- ii. What is the cost to customers of switching suppliers? Include information on whether there are any significant impediments to switching service suppliers.
- iii. Are these retail market services an essential input into the customer's business activities?

Q5. Provide your views on the supply conditions for enterprise and IoT/M2M services by responding to the following questions:

- i. Are there any barriers to market entry through which a dominant firm, or group of firms, have excluded rivals using a practice of anti-competitive acts?
- ii. Is there any evidence of rivalrous behaviour, such as falling prices, vigorous and aggressive marketing activities, or an expanding scope of activities by competitors in terms of products, services, and geographic boundaries?
- iii. Are these services characterized by rapid innovation and technological change?

Q6. Would excluding enterprise and IoT/M2M retail market segments from the MVNO access framework result in retail customers being subject to an undue or unreasonable disadvantage under subsection 27(2) of the Act?

Q7. Would preventing regional carriers from using wholesale MVNO access to serve the enterprise and IoT/M2M market segments confer an undue preference on the incumbents and subject regional carriers that serve those markets to unjust discrimination under subsection 27(2) of the Act?

Procedure

- 11. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules

of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at www.crtc.gc.ca, under "[Statutes and regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.

12. The incumbents are made parties to this proceeding and may file interventions with the Commission by **31 March 2023**.
13. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **31 March 2023**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
14. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
15. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
16. All parties may file replies to interventions with the Commission by **17 April 2023**.
17. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website at www.crtc.gc.ca, for additional information that they may find useful when preparing their submissions.
18. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
19. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
20. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

21. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service, of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
22. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
23. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

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

contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

27. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

28. Links to interventions, replies, and answers filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.

29. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *Facilities-based wholesale mobile virtual network operator (MVNO) access tariffs – Commission determinations on proposed terms and conditions*, Telecom Decision CRTC 2022-288, 19 October 2022; as amended by Telecom Decision CRTC 2022-288-1, 31 October 2022
- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010