



Telecom Information Bulletin CRTC 2024-234

PDF version

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Practice and procedure for final offer arbitration to determine wholesale roaming rates

Summary

This bulletin explains the final offer arbitration (FOA) process for determining wholesale roaming rates. The FOA process will be used by the Commission when parties are unable to reach an agreement through negotiations. The guidelines set out in the bulletin are non-binding.

Background

1. Wholesale roaming allows Canadians to temporarily use their cell phone on other networks when they travel outside of their service provider's local coverage area. Regional carriers without national networks use wholesale roaming to provide their customers with wireless coverage across the country.
2. In Telecom Decision 2024-233, the Commission concluded that the tariff rates for wholesale roaming services approved on a final basis in Telecom Order 2018-99 may no longer be just and reasonable. To ensure that new rates can be introduced as quickly as possible for the benefit of Canadians, the Commission determined that new rates are to be commercially negotiated between regional wireless carriers and national wireless carriers, while maintaining the existing terms and conditions in the tariff.
3. Specifically, the Commission directed national wireless carriers and regional carriers to negotiate in good faith and have a signed agreement in place within 60 days of a request from a regional carrier or group of regional carriers. If the two sides are unable to reach an agreement, either party may ask the Commission to determine a just and reasonable rate through final offer arbitration (FOA).
4. In an FOA process, the only issue to be resolved is the rate. The use of FOA is intended to avoid a lengthy cost-based rate-setting process. Parties are to engage in staff-assisted mediation prior to submitting a request for FOA.

The FOA process

5. FOA is an alternative dispute resolution tool available for the resolution of disputes between two parties that are exclusively monetary in nature. Both parties to the dispute submit offers to the Commission, and a Commission panel acts as arbitrator and chooses between the final offers. This results in a binding determination. General

practice and procedure associated with Commission FOA proceedings, including procedural steps and associated timelines, are outlined in Broadcasting and Telecom Information Bulletin 2019-184 (the dispute resolution bulletin).

6. As set out in the dispute resolution bulletin, parties are expected to have exhausted all other means to resolve outstanding issues in an efficient and effective manner before applying to the Commission for dispute resolution. Parties should refer to the dispute resolution bulletin to understand the different mechanisms by which disputes may be resolved.
7. In the case of the wholesale roaming service, parties are expected to participate in staff-assisted mediation prior to filing an FOA application. Failure to do so could result in a request for FOA being suspended or declined.
8. The Commission may also require parties to participate in a mediation session after the close of record of the FOA process if it is believed it could have positive results. This process has been successful in MVNO and broadcasting FOA proceedings.
9. The Commission will generally allow regional carriers to collectively enter into an FOA process as a single party when such a request is made. When regional carriers enter into an FOA process as a group, the Commission expects submissions to be made by the group collectively and will not allow carriers that are part of the group to submit on an individual basis. Furthermore, the rates selected by the Commission will be binding on all carriers participating in the FOA process.
10. The Commission reminds parties that even once an FOA process has begun, parties are encouraged to continue negotiations. At any time before a decision is issued, if an agreement is reached, and on request of the applicant, the FOA request can be withdrawn.
11. Where multiple FOA applications are filed in a short period of time, the Commission will assess each FOA application received and, where necessary and appropriate, prioritize applications involving a regional carrier that is either a new entrant or has not yet concluded an off-tariff roaming agreement with a national wireless carrier.

Objectives of FOA to determine wholesale roaming rates

12. FOA is used to establish just and reasonable rates, as required by subsection 27(1) of the *Telecommunications Act* (the Act). Under section 47 of the Act, the Commission is required to exercise its powers and perform its duties (including setting just and reasonable rates) with a view to implementing the Canadian telecommunications policy objectives set out in section 7 of the Act (the policy objectives) and any policy directions in force at the time of its decision. Under subsection 27(2) of the Act, the Commission must ensure compliance with the prohibitions against undue or unreasonable preference or disadvantage and unjust discrimination.
13. The Commission will also seek to ensure that the rates it selects reflect a fair market value. Generally, the Commission expects rates that reflect a fair market value to also

be just and reasonable and to contribute to the objectives of the Act and the policy directions.

14. Therefore, in using FOA to establish wholesale roaming rates, the Commission will assess whether the final offers from the parties reflect a fair market value and would result in a just and reasonable rate. In doing so, the Commission will assess how the final offers would serve to further the implementation of the policy objectives, in particular, the objectives set out in paragraphs 7(b), (c), (f), and (g) of the Act.¹ The Commission will also assess the issues in light of the relevant policy direction(s) and ensure that they do not impart an undue or unreasonable advantage or disadvantage on a service provider or give rise to unjust discrimination.
15. To evaluate the final offers submitted by the parties in the course of an FOA, the Commission may rely on the following factors:
 - rates established for roaming service in other negotiated agreements including, for example, rates paid by other parties for access to a host network;
 - retail rates in the market including, for example, the unit price for mobile usage;
 - the contents and reasonableness of the rate structures, including, but not limited to, base price per unit, year-over-year rate decreases, volume tiers, bundling discounts, and additional fees or premiums;
 - fair compensation for the wholesale roaming service provider;
 - the impact of the rates on the wholesale roaming customer's ability to compete in the market; and
 - other factors that may be relevant.
16. The parties to the FOA will have the opportunity to make submissions regarding how their respective proposals would reflect a fair market value, result in a just and reasonable rate, and meet the policy objectives. Parties should also include in their submission which policy objectives and factors should apply, how they should be interpreted, and how much weight they should be accorded in assessing proposals. In their submissions, parties can also propose and provide justification for other factors they believe the Commission should consider, as long as the other party can

¹ The cited policy objectives of the Act are: 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; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (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 (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services.

comment, in its reply, as to the pertinence of the factors in determining the appropriate wholesale roaming rate.

Information gathering

17. As part of the FOA process, the Commission may require parties to provide information and data that it believes are relevant to making its determination.
18. This information and data could be requested through a conduct letter sent to the parties when the Commission accepts a request for FOA as outlined in the dispute resolution bulletin.
19. The Commission may also rely on evidence obtained outside of a given FOA. This could include, for example, (i) information obtained through requests for information regarding mobile virtual network operator and roaming agreements for wholesale telecommunications services; (ii) off-tariff agreements submitted to the Commission; and (iii) information obtained and decisions rendered in other FOA proceedings on mobile wholesale rates.

Confidentiality

20. In any dispute before the Commission, parties must abide by the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* as they relate to the filing of confidential information.
21. Furthermore, as described in the dispute resolution bulletin, among other confidentiality procedures, in FOA proceedings there are generally three versions of each document filed with the Commission: (i) a full, complete version that contains all confidential information and is for use solely by the Commission; (ii) a version that is provided to the other party to the FOA and generally omits certain details that are of a commercially sensitive nature; and (iii) a version that is placed on the public record and generally omits commercially sensitive information and details pertaining to the final offers, among other things. When filing their submissions, parties must clearly designate each version of the submitted document by marking the top of every page of each version of the document with one of the following three designations: “Public version,” “Confidential version for party X,” or “Confidential CRTC version.”
22. Under paragraph 39(4)(a) of the Act, if information designated as confidential is submitted in the course of proceedings before the Commission, the Commission may disclose the information or require its disclosure if it determines, after considering any representations from interested persons, that the disclosure is in the public interest.
23. The Commission is of the view that all carriers that provide or access wholesale roaming services should be provided with sufficient information to understand the Commission’s rationale and decisions. As such, the Commission will aim to release as much information and rationale as possible to the public in its decisions on FOA

proceedings to set wholesale roaming rates. Releasing as much information as possible would also assist other parties in their negotiations for wholesale roaming agreements. Consequently, parties to an FOA are generally expected to provide abridged copies of all submissions for the public record.

Secretary General

Related documents

- *Wholesale roaming service – Review of rates and rate-setting approach*, Telecom Decision 2024-233, 7 October 2024
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019
- *Wholesale mobile wireless roaming service tariffs – Final rates*, Telecom Order CRTC 2018-99, 22 March 2018