



Telecom Notice of Consultation CRTC 2014-76

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Ottawa, 20 February 2014

Notice of hearing

29 September 2014

Gatineau, Quebec

Deadline for submission of interventions: 1 May 2014

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Review of wholesale mobile wireless services

File numbers: 8620-C12-201401489, 8620-C12-201317230 and 8620-C12-201312082

The Commission will hold a public hearing, beginning on **29 September 2014 at 9:00 a.m.**, at the **Conference Centre, Phase IV, 140 Promenade du Portage**, in **Gatineau, Quebec**.

The Commission hereby initiates a proceeding to determine whether the wholesale mobile wireless services market is sufficiently competitive and, if not, what regulatory measures are required.

Introduction

1. The mobile wireless services market is the largest and fastest growing sector in the Canadian telecommunications industry. In 2012, mobile wireless services in Canada generated revenues of \$20.4 billion, which accounted for 46 percent of total telecommunications revenues in this country.¹ There are almost 28 million mobile wireless service subscribers in Canada who rely on the voice, text, and data services available on their wireless devices for their communication needs. The growth in the number of subscribers in Canada using devices such as smartphones, tablets, and other connected devices (e.g. machine to machine) has increased consumer demand for mobile broadband data services over wireless networks.
2. Given the importance of mobile wireless services in Canada, the Commission is hereby initiating a proceeding to determine whether the wholesale mobile wireless services market is sufficiently competitive and, if not, what regulatory measures are required.

¹ Based on information in the 2013 *CRTC Communications Monitoring Report*

Background

Wholesale market

3. The components of a mobile wireless network are numerous and functionally complex. Radio spectrum is the medium over which all wireless signals are transmitted, and wireless carriers in Canada hold spectrum licences that allow them to provide services within a specific geographic area. In addition to spectrum, wireless carriers require equipment, such as towers, switches, and transmission facilities, to offer wireless services within their coverage area.
4. To provide service to their customers, wireless service providers² enter into wholesale arrangements which, depending on the circumstances, address such commercial and technical matters as roaming, tower sharing, and network sharing. Examples of wholesale arrangements include the following.
 - Under roaming arrangements, wireless carriers make their networks available to one another to allow customers to originate or terminate communications when they are outside their own carrier's network footprint.
 - Under tower sharing arrangements, wireless carriers install their equipment on other parties' towers, rather than building their own towers. These arrangements are implemented in areas for which wireless carriers hold spectrum licences.
 - Under network sharing arrangements, two or more wireless carriers essentially join together to build and/or operate a network. These arrangements are complex, and the terms and conditions can vary with respect to the number and type of network components that are shared, whether spectrum is included in the arrangement, and whether there are associated roaming or tower sharing arrangements.
5. Wireless service providers can also negotiate wholesale arrangements with wireless carriers for varying degrees of access to those carriers' facilities or services. For example, mobile virtual network operators (MVNOs) rely on wireless carriers for access networks but may supply their own core network elements, operations support systems, and administration systems. Mobile virtual network enablers (MVNEs) provide infrastructure and services (e.g. billing, network element provisioning, administration, operations, and operations support systems) to enable MVNOs to offer services, but they do not have a relationship with end-customers themselves. Branded resellers provide only marketing services, distribution channels, and billing services; they rely on wireless carriers for the rest of the business, including the operation of the network. These types of wholesale arrangements can support a variety of business models for the provision of mobile wireless services and are used more frequently in other countries than in Canada.

² Wireless service providers include wireless carriers and resellers that provide mobile wireless services.

Regulatory history

6. Wireless carriers are subject to conditions of licence, imposed by Industry Canada under the *Radiocommunication Act*, for the spectrum used to provide wireless services.³ In accordance with these conditions, wireless carriers are required to facilitate tower and site sharing, and to provide roaming services on their networks to other wireless carriers. If wireless carriers are unable to agree on tower and site sharing or roaming arrangements, they may have recourse to arbitration in accordance with Industry Canada's *Arbitration Rules and Procedures*. There are no requirements in the conditions of licence for wireless carriers to provide other wholesale mobile wireless services.
7. In terms of the Commission's jurisdiction, mobile wireless services are currently forborne from regulation except with respect to the powers retained by the Commission under section 24 and subsections 27(2), 27(3), and 27(4) of the *Telecommunications Act* (the Act). As a result of forbearance, wireless carriers are not required to obtain prior Commission approval of the rates, terms, and conditions for mobile wireless services, including wholesale mobile wireless services. However, the Commission has retained the power to impose conditions on the offer and provision of services, and to make findings of undue preference or unjust discrimination.
8. In 2012, the Commission imposed a condition, under section 24 of the Act, to establish the Wireless Code, a mandatory code of conduct for providers of retail mobile wireless voice and data services.⁴ The Wireless Code came into effect on 2 December 2013.
9. In mid-2013, Commission staff undertook a fact-finding exercise to assess the impact of wholesale mobile wireless roaming arrangements on the competitiveness of the Canadian wireless industry and the choices available to Canadians. As part of that exercise, in a letter dated 30 August 2013, Commission staff requested information on roaming from certain Canadian wireless carriers. Commission staff also met with representatives from some of those wireless carriers to obtain additional information and clarification.
10. As a result of the fact-finding exercise, the Commission issued Telecom Notice of Consultation 2013-685 to consider whether or not, as a question of fact, there is a situation of unjust discrimination or undue preference with respect to wholesale mobile wireless roaming arrangements in Canada. In addition, the Commission stated its intention to initiate a separate proceeding to further examine, among other things, the wholesale mobile wireless services market and the regulatory measures required if the Commission were to find that the market is not sufficiently competitive.

³ *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)

⁴ The Wireless Code was established in Telecom Regulatory Policy 2013-271.

Issues to be examined

11. The Commission hereby initiates a proceeding to determine whether the wholesale mobile wireless services market is sufficiently competitive, both now and in the future.
12. The Commission will review the matters raised in this proceeding in light of the policy objectives set out in section 7 of the Act and taking into consideration the Policy Direction.⁵ The Commission considers that its wholesale mobile wireless services policies should take into account the need for (i) continued innovation and investment in high-quality telecommunications facilities, and (ii) sustainable competition that provides benefits to Canadians, such as reasonable prices and innovative services.
13. In this regard, the Commission will examine the market conditions for wholesale roaming and wholesale tower and site sharing in Canada, as well as the market conditions for other wholesale mobile wireless services.
14. Specifically, the Commission will examine the relevant product and geographic markets for wholesale mobile wireless services. The Commission will further examine the supply and demand for wholesale mobile wireless services in their defined markets, and will identify trends (at the retail and wholesale levels) that may influence future supply and demand for the services. The Commission will review the impact that the wholesale mobile wireless services market has on the development of the downstream retail services market and the effect on sustainable competition in that market.
15. The Commission will also consider whether greater regulatory oversight, including mandating access to any existing or potential wholesale mobile wireless service, would be appropriate if it were to find that the wholesale mobile wireless services market is not sufficiently competitive. In the event of such a finding, the Commission will consider whether its existing powers under the Act are sufficient or whether it should reassert its jurisdiction to apply certain provisions of the Act that are currently forborne in order to impose regulatory measures on wireless carriers with respect to wholesale mobile wireless services.

Call for comments

16. The Commission invites interventions to address the issues identified in this notice. In their interventions, parties should provide supporting rationale and all evidence on which they rely to formulate their positions.
17. Parties are also asked to respond to the following questions:
 - 1) Describe the current market conditions associated with wholesale mobile wireless services, as well as the market trends that are likely to influence these conditions in the next five years. Identify the impact of these conditions and trends on

⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

- downstream retail services by consumer segment (e.g. residential/business) and geographic area, as applicable.
- 2) Wholesale roaming services are mandated through Industry Canada's conditions of licence. The Commission has forborne from regulating wholesale roaming services except with respect to its powers under section 24 and subsections 27(2), 27(3), and 27(4) of the Act.
 - a. Explain, with supporting rationale, whether the market for wholesale roaming services is sufficiently competitive. Your response should consider the application of the criteria set out in Telecom Decision 94-19 and any other appropriate criteria.
 - b. If you consider that the market is not sufficiently competitive,
 - i. identify, with supporting rationale, the regulatory measures, if any, that should be put in place either through the Commission's existing powers or through the reassertion of the Commission's jurisdiction to apply other provisions of the Act; and
 - ii. for each proposed regulatory measure, explain how it should be implemented.
 - 3) Tower and site sharing services are mandated through Industry Canada's conditions of licence. The Commission has forborne from regulating wholesale tower and site sharing services except with respect to its powers under section 24 and subsections 27(2), 27(3), and 27(4) of the Act.
 - a. Explain, with supporting rationale, whether the market for wholesale tower and site sharing services is sufficiently competitive. Your response should consider the application of the criteria set out in Telecom Decision 94-19 and any other appropriate criteria.
 - b. If you consider that the market is not sufficiently competitive,
 - i. identify, with supporting rationale, the regulatory measures, if any, that should be put in place either through the Commission's existing powers or through the reassertion of the Commission's jurisdiction to apply other provisions of the Act; and
 - ii. for each proposed regulatory measure, explain how it should be implemented.
 - 4) Explain, with supporting rationale, whether there are any wholesale mobile wireless services not currently mandated through Industry Canada's conditions of licence that should be mandated by the Commission. For any service proposed to be mandated,

- a. provide supporting rationale with reference to the Commission's regulatory framework for wholesale services (refer to Telecom Decision 2008-17), the Telecom Decision 94-19 criteria, and any other appropriate criteria, as applicable; and
 - b. explain how the service should be regulated, including what provisions of the Act should be applied.
18. Shortly following the release of this notice, the Commission will also request information from the wireless carriers in the form of interrogatories, which will be addressed by way of a separate letter.
19. The record of the proceeding initiated by Telecom Notice of Consultation 2013-685 is made part of the record of this proceeding.

Procedure

20. 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, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings, where applicable. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website at www.crtc.gc.ca, under "CRTC Rules of Practice and Procedure." The *Guidelines on the CRTC Rules of Practice and Procedure*, as 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.
21. The Commission will hold a public hearing, beginning on **29 September 2014 at 9:00 a.m.**, at the **Conference Centre, Phase IV, 140 Promenade du Portage**, in **Gatineau, Quebec**. The hearing is expected to last no longer than five days.
22. All Canadian carriers that provide mobile wireless services are made parties to this proceeding and may file interventions with the Commission by **1 May 2014**.
23. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **1 May 2014**. The intervention must be filed in accordance with section 26 of the Rules of Procedure and must include one of the following statements in either the first or the last paragraph:
 - 1) I request to appear at the public hearing.
 - 2) I do not want to appear at the public hearing.

24. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position but do not wish to appear at the hearing. 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. The cover letter template is also available on the Commission's website at www.crtc.gc.ca, under "Public Proceedings."
25. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
26. Parties who wish to appear at the public hearing must provide reasons why their written intervention is not sufficient and why an appearance is necessary. In addition, parties requiring communications support must state their request for such support on the first page of their intervention.
27. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the hearing. An organization and conduct letter, providing directions on procedure with respect to the public hearing, will be issued before the hearing begins.
28. Although the public hearing will be held in **Gatineau, Quebec**, parties may participate from the Commission's regional offices via videoconference. Parties interested in doing so are asked to indicate, at the time they file their interventions, the regional office where they wish to appear. A list of the Commission's regional offices is included in this notice. In addition, the Commission will consider providing videoconference or teleconference links to other locations should it receive requests to do so.
29. Parties requiring communications support, such as assistive listening devices and sign language interpretation, are requested to confirm their specific requirements with the Commission at least **20 days** before the public hearing begins so that the necessary arrangements can be made.
30. The Commission and parties may request information, in the form of interrogatories, from any party to the proceeding. The requesting party must file its request for information with the Commission, and serve the request on the party to whom it is addressed, by **2 June 2014**.
31. Responses to requests for information are to be filed with the Commission, and served on the parties making the requests, by **7 July 2014**.
32. Parties may request (i) further responses to interrogatories, specifying in each case why a further response is necessary, and (ii) the public disclosure of information that has been designated confidential, setting out in each case the reasons for disclosure. These requests must be filed with the Commission, and served on the parties to whom they are addressed, by **14 July 2014**.

33. Responses to requests for further responses to interrogatories and responses to requests for public disclosure must be filed with the Commission, and served on the parties making the requests, by **21 July 2014**.
34. Determinations regarding requests for further responses and requests for public disclosure will be issued as soon as possible. Any information to be provided pursuant to such determinations must be filed with the Commission, and served on the parties making the requests, by **6 August 2014**.
35. All parties may file further interventions with the Commission by **20 August 2014**.
36. Following the hearing, all parties may file final submissions with the Commission on any matter within the scope of this proceeding by **17 October 2014**. Final submissions, including an executive summary, are not to exceed 25 pages.
37. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
38. 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.
39. 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

40. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing 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. The Commission advises parties who file and 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.

41. 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.
42. 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.
43. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.

Important notice

44. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, 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, telephone and facsimile numbers, etc.
45. 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.
46. 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.
47. 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

48. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the file numbers provided at the beginning of this notice or by visiting the "Public Proceedings" section of the Commission's website. The documents can be accessed by selecting "View all proceedings open for comment," then clicking on the links in the "Related Documents" column associated with this particular notice.

49. Documents are also available from Commission offices, upon request, during normal business hours.

Commission offices

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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Secretary General

Related documents

- *Wholesale mobile wireless roaming in Canada – Unjust discrimination/undue preference*, Telecom Notice of Consultation CRTC 2013-685, 12 December 2013
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *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
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994