



Telecom Information Bulletin CRTC 2022-337

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Practice and procedure for final offer arbitration to determine mobile virtual network operator access rates

Summary

The Commission provides additional clarity regarding the final offer arbitration process to establish rates for the mobile virtual network operator access service mandated in Telecom Regulatory Policy 2021-130.

The information contained in this information bulletin should be treated as a non-binding set of guidelines, including the identification of factors that may be taken into account in the resolution of a dispute.

Introduction

1. In Telecom Regulatory Policy 2021-130, the Commission completed its review of mobile wireless services.
2. In particular, the Commission found that Bell Mobility Inc., Rogers Communications Canada Inc., and TELUS Communications Inc. (collectively, the national wireless carriers) together exercise market power in the provision of mobile wireless services in all provinces except Saskatchewan, where Saskatchewan Telecommunications (SaskTel) exercises sole market power.
3. To address its findings of retail market power, The Commission mandated the provision of a wholesale facilities-based mobile virtual network operator (MVNO) access service, which would enable eligible regional wireless carriers to use the networks of the national wireless carriers and SaskTel, where they exercise market power, to serve new areas while the regional wireless carriers build out their networks.
4. The Commission stated that the purpose of the mandated facilities-based wholesale MVNO access service was to expedite competitive expansion by regional wireless carriers. It also stated that it was concerned that engaging in a process to set cost-based rates for the service risks unduly delaying its implementation and thus works against its very purpose, which is to accelerate the development of competition.

5. As such, the Commission determined that the parties should enter into commercial negotiations to set the rate. Should negotiations fail, a party may bring the matter to the Commission for resolution by way of final offer arbitration (FOA), with the objective of ultimately arriving at a just and reasonable rate for the service. The use of FOA would avoid a lengthy cost-based rate-setting process.
6. Further, the Commission stated that where there is recourse to FOA, it will be done on the basis of the tariffed terms and conditions established by the Commission.

The FOA process

7. FOA is an alternative dispute resolution tool available for the resolution of bilateral disputes 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).
8. As set out in the dispute resolution bulletin, parties are encouraged to exhaust 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 that document to understand the different mechanisms by which disputes may be resolved.
9. In the case of FOA for MVNO access rates, the Commission may require parties to participate in a mediation session after the close of record of the FOA process if it is believed that it could yield positive results. This practice, referred to in the dispute resolution bulletin, is used in broadcasting FOA proceedings and has been shown to be beneficial.
10. Further, 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 process can be withdrawn.

Objectives of FOA to determine MVNO access rates

11. FOA is a method used to establish just and reasonable rates, as required by subsection 27(1) of the *Telecommunications Act* (the Act). As per 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, and ensuring compliance with the prohibitions against undue or unreasonable preference or disadvantage, and unjust discrimination, set out in subsection 27(2).
12. In the case of using FOA to establish MVNO access rates, 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).¹ More broadly, the Commission will assess rate proposals with a view to achieving the strategic objectives set out in Telecom Regulatory Policy 2021-130, namely that of bringing new competitive choice into the retail mobile wireless service marketplace while also encouraging network expansion and sustainable competition over the longer term. The Commission will also assess the issues in light of the relevant policy direction(s).

13. Rates should also reflect fair market value where possible and appropriate, and the Commission must ensure that they do not impart an undue or unreasonable advantage or disadvantage on a service provider or give rise to unjust discrimination.

14. To evaluate the final offers submitted by the parties in the course of an FOA, the Commission could rely on the following factors:

- 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 MVNO wholesale service provider;
- the impact of the rates on the regional wireless carrier's ability to compete in the market, innovate, and develop its own network;
- retail rates in the market;
- rates established in prior MVNO service agreements between the same two parties;
- rates paid by other parties for access to the network of the carrier party;
- rates paid by the regional wireless carrier party for access to the networks of other carriers; and
- the proposed rates in comparison with Canadian voice and SMS [Short Message Service] tariffed roaming rates and European roaming data caps.

15. The parties to the FOA will have the opportunity to make submissions regarding which policy objectives are met by their respective proposals, as well as which factors should apply, how such factors should be interpreted, and how much weight should

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.

be accorded to a given factor 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 comment, in its reply, as to the pertinence of the factors in determining the appropriate MVNO access rate.

Information gathering

16. The Commission could require parties to provide information and data that it believes is relevant to making its determination.
17. This information and data could be requested through a conduct letter sent to the parties when the Commission decides to accept a request for an FOA as per the dispute resolution bulletin.
18. The Commission could also rely on evidence obtained outside of a given FOA. This could include (i) information obtained through the request for information [letter](#) dated 19 August 2022 regarding wireless and roaming agreements for wholesale telecommunications services; (ii) off-tariff agreements submitted to the Commission, as required by Telecom Regulatory Policy 2021-130; and (iii) information obtained and decisions rendered in other FOA proceedings on MVNO access rates. If the Commission intends to consider such information in a specific FOA, it will inform the parties in a timely manner.

Confidentiality

19. 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.
20. Further, 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 as well as 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”.
21. As per 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.

22. The Commission is of the view that it is of particular importance for the attainment of the objectives set out in Telecom Regulatory Policy 2021-130, as well as in the public interest, that all carriers that provide or access wholesale MVNO services 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 on MVNO access rates. Releasing as much information as possible would also assist other carriers that are approached for the provision of MVNO access or that have approached such carriers with a view to obtaining the service.

Secretary General

Related documents

- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021
- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019