



Telecom Decision CRTC 2023-55

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Ottawa, 8 March 2023

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John P. Roman – Request for review of the Commission’s determinations regarding forbearance from regulation

Summary

The Commission **denies** John P. Roman’s request to broadly review its forbearance determinations in both the retail mobile wireless and retail fixed Internet service markets.

The Commission considers, however, that the concerns expressed by John P. Roman with respect to the retail market for fixed Internet services warrant further exploration. To that end, in Notice of Consultation 2023-56 the Commission will consider whether, in addition to wholesale regulation, some additional form of regulation is now, or may soon be, required in the retail Internet services market to better protect the interests of consumers.

Application

1. On 11 March 2022, the Commission received an application from John P. Roman requesting that the Commission review its forbearance policies with respect to retail mobile wireless and wireline Internet services. John P. Roman submitted that there is insufficient competition in both the wireline and wireless markets to protect the interests of users and submitted that the Commission should reapply section 24 and subsection 27(1) of the *Telecommunications Act* (the Act) to regulate retail mobile wireless and retail wireline Internet service rates.
2. The Commission received interventions from Bell Canada; Cogeco Communications Inc. (Cogeco); Quebecor Media Inc, on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Shaw Communications Inc. (Shaw); TekSavvy Solutions Inc. (TekSavvy); TELUS Communications Inc (TCI); and Vaxination Informatique; as well as from the Forum for Research and Policy in Communications and the Public Interest Advocacy Centre.

Background

3. While mobile wireless services and fixed Internet services have been made available by carriers for many years, the Commission’s regulatory approach to those services has evolved over time in response to changing market conditions.

4. In the 1990s, the Commission forbore from regulating retail mobile wireless services offered by wireless carriers, to enable market forces to guide the development of the mobile wireless service market.¹ Over time, as the wireless service market matured, the Commission found it necessary to reapply certain sections of the Act² and to introduce regulatory measures, including both retail and wholesale regulations, to better protect consumers and support competition. For example, in Telecom Regulatory Policy 2013-271, the Commission imposed a mandatory code of conduct on providers of retail mobile wireless services. In Telecom Regulatory Policy 2015-177, the Commission mandated the provision of wholesale roaming services by the national wireless carriers to competitors at regulated rates, terms, and conditions.
5. In 2019, in response to concerns about the state of the retail mobile wireless service market, the Commission launched a comprehensive review of mobile wireless services, which resulted in Telecom Regulatory Policy 2021-130. In that decision, the Commission found that Bell Mobility Inc. (Bell Mobility), RCCI, and TCI (collectively, the national wireless carriers) together exercised market power in the provision of retail mobile wireless services in all provinces except Saskatchewan, where it found that Saskatchewan Telecommunications (SaskTel) exercised sole market power. It also found that Bell Mobility exercised sole market power in the provision of retail mobile wireless services in Yukon, the Northwest Territories, and Nunavut. In order to address its findings of retail market power, the Commission determined it was necessary to: (i) mandate the provision of a wholesale facilities-based mobile virtual network operator (MVNO) access service, and (ii) require the national wireless carriers to implement seamless roaming. Additionally, with respect to the retail market, the Commission set an expectation that the national wireless carriers and SaskTel would offer and promote low-cost and occasional-use plans.
6. The Commission's regulatory approach with respect to fixed Internet services has evolved somewhat differently. In Telecom Order 99-592, the Commission determined that the retail Internet service market was generally competitive, and that it was therefore appropriate to forbear from regulating retail Internet service rates. However, the Commission retained certain powers and duties under sections 24 and 24.1 and subsections 27(2) and (4) of the Act to, among other things, address issues of unjust discrimination and undue preference, and to impose conditions on the offering and provision of Internet services as may be necessary in the future.
7. Over the years, the Commission found it necessary to address issues in the retail fixed Internet service market by imposing various retail measures on Internet service

¹ The forbearance framework for wireless services was first established in Telecom Decision 94-15 and was refined in Telecom Decision 96-14. In a number of follow-up decisions, the framework was extended to wireless services provided by Canadian carriers not captured by Telecom Decisions 94-15 and 96-14.

² In Telecom Decision 2010-445 the Commission reapplied section 24 and subsections 27(2), (3), and (4) of the Act to mobile wireless data services.

providers pursuant to sections 24 and 24.1 of the Act. These measures included the accessibility policy, the Commission for Complaints for Telecom-television Services policy, the 30-day cancellation policy and associated cancellation and refund policies, the non-carrier regulatory obligation policy, and a mandatory code of conduct.³

8. Wholesale regulation to support wireline competition, however, has a much longer history. Starting in the 1990s with the introduction of competition in wireline markets (see Telecom Decisions 92-12 and 97-8), the Commission developed regulatory frameworks for wholesale services to facilitate competitive entry and to support competition by making essential incumbent-controlled facilities available to competitors on a wholesale basis at regulated rates. This approach to wholesale regulation has evolved incrementally over time as new technologies and services were introduced to the market. For over 20 years, the Commission has actively supported competition for fixed Internet services through the evolution of its wholesale service frameworks.
9. The most recent wireline wholesale service framework was established in Telecom Regulatory Policy 2015-326, in which the Commission determined that incumbent-owned fibre-to-the-premises access facilities are essential. In that decision, it was also determined that wholesale high-speed access (HSA) services, which are used to support retail competition for various services including retail Internet access, would continue to be mandated; however, the provision of aggregated wholesale HSA services would no longer be mandated and would be phased out in conjunction with the implementation of a new disaggregated wholesale HSA service model.
10. Since 2015, the Commission has initiated a number of processes to configure and set rates for disaggregated wholesale HSA services. While the Commission ultimately approved final configurations in Telecom Decision 2016-379 and set out interim rates, terms, and conditions for the services in Telecom Order 2017-312 in Ontario and Quebec, concerns were raised about the disaggregated wholesale HSA service framework and whether it was achieving the intended purpose of supporting competition and consumer interests. These concerns informed the proceeding initiated by Telecom Notice of Consultation 2020-187.
11. At the same time, several years have passed since the Commission's most recent wholesale wireline service framework was last reviewed, and numerous changes in the market have taken place since.

³ These policies can be found in the following documents: Broadcasting and Telecom Policies 2009-430 and 2014-576; Telecom Decisions 2007-130, 2016-171 and 2018-194; and Telecom Regulatory Policies 2011-46, 2016-102, 2017-11, and 2019-269.

Issue

12. The Commission has identified the following issue to be addressed in this decision:

- Should the Commission approve John P. Roman's request to review its forbearance policies with respect to retail mobile wireless and wireline Internet services?

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Positions of parties

13. John P. Roman submitted that the Commission has, through various decisions and orders, determined not to regulate key aspects of data services, including affordability, in both retail wireline and retail mobile wireless markets. John P. Roman further stated that these markets have fundamentally changed since the Commission forbore from regulating retail rates, and that the markets are no longer operating to provide improved services at competitive prices, nor are these services improving.
14. John P. Roman submitted that there are concerns with the way that the incumbent carriers price their data packages for wireline and wireless services, arguing that the pricing structure for both wireline and wireless services results in some users paying disproportionately high prices for their service relative to other users, and relative to the cost of providing the service. John P. Roman argued that this calls into question whether fixed Internet and mobile wireless service rates are just and reasonable.
15. The Forum for Research and Policy in Communications supported John P. Roman's application and added that any public proceeding focused on these concerns could address a number of items related to the affordability of telecommunications services.
16. While the Public Interest Advocacy Centre supported the reconsideration of the Commission's current regulatory approach of forbearing from regulating retail Internet services in principle, it noted that such a proceeding would be premature and counterproductive without an extensive record of retail rates collected by the Commission.
17. Vaxination Informatique submitted that Canada remains among the most expensive countries for telecommunications services and that many competitive carriers have failed or were purchased by an incumbent carrier. It submitted that retail regulation may be necessary to prevent monopolistic pricing, but that now may not be the appropriate time for such regulation.
18. Some of the parties opposed to the application (Bell Canada, RCCI, and TCI) argued that John P. Roman provided virtually no basis to support this application to review

the Commission's forbearance determinations in retail wireline and wireless service markets.

19. Most parties opposed to the application (Bell Canada, Cogeco, RCCI, TCI, Shaw, and Videotron) argued that the fixed retail Internet service market is competitive. They submitted several factors as evidence of effective competition.
20. TCI submitted that Internet prices experienced an average annual decrease of 5.6% between 2016 and 2019, while RCCI submitted that residential data overage charges decreased by 34% between 2016 and 2020.
21. Bell Canada submitted that the market is generally competitive and provided a variety of supporting points, including the increased market share of smaller competitors between 2013 and 2020.
22. Cogeco submitted that John P. Roman's application failed to consider service offerings from smaller Internet service providers, which would have provided a better representation of the services and products available within the market.
23. The opposing parties submitted that the mobile wireless service market is also sufficiently competitive and argued that the state of competition in the mobile wireless service market was recently reviewed in Telecom Regulatory Policy 2021-130. They added that the Commission recently introduced a wholesale MVNO access service as part of that decision, and that the impacts of this additional regulatory measure on competition in the retail mobile wireless service market will become visible after the Commission implements the associated tariffs.
24. TekSavvy submitted that retail rate regulation would only narrowly address the issue of affordability while neglecting other pro-consumer considerations. It added that empowering wholesale-based competition could be a viable measure to improve affordability and increase consumer choice, and that regulating retail rates would negate years of work in advancing the wholesale-based regime.

Commission's analysis

25. Over time, the Commission's approach to regulating mobile wireless services has developed separately from its approach to regulating fixed Internet services, in response to changing conditions in their respective markets. The Commission notes that more than 25 years ago, when these services were initially forborne from regulation, they had relatively limited retail market penetration. Mobile wireless services were considered optional or thought to be for businesses, while the market for fixed Internet services was dominated by low-speed dial-up Internet that had limited uses and applications. Since that time, both service markets have developed to the point where they are now an essential part of the lives of all Canadians and are included in the Commission's universal service objective (see Telecom Regulatory Policy 2016-496). As the size and importance of these forborne retail markets have grown, the Commission has increasingly employed a combination of wholesale

regulation and targeted intervention into the retail market to address the various competitive concerns that have arisen.

26. The Commission notes that John P. Roman is requesting that the Commission review its decisions to forbear from regulating the retail fixed Internet and retail mobile wireless service markets. The Commission considers that the record of this proceeding is limited in this regard, and that more evidence would be required to support the initiation of such a broad review. In general, the Commission considers that its preferred approach to address competitive concerns in a given retail market, including the retail mobile wireless and retail fixed Internet markets, has been to impose effective wholesale regulations, paired with targeted retail measures where necessary, through the use of sections 24 and 24.1 of the Act.
27. With respect to mobile wireless services, the Commission notes that it recently conducted a comprehensive review of the market for these services in the process that led to Telecom Regulatory Policy 2021-130. In that decision, the Commission recognized there were market power concerns in the retail mobile wireless service market and introduced wholesale MVNO regulations to address those concerns. The Commission notes that wholesale MVNO access tariffs are still being finalized, and that more time will be required to determine the impact MVNO services will have on wireless competition. The Commission considers that it would not be an effective use of Commission resources to reinvestigate the retail and wholesale mobile wireless service markets without first observing the effects the MVNO regime may have. Nonetheless, the Commission is continuing to monitor developments in the mobile wireless market to determine whether further regulatory intervention may be required to better support competition and consumer interests and, if so, when.
28. With respect to fixed Internet services, the Commission notes that an equivalent comprehensive review has not taken place, since the most recent review took place in Telecom Regulatory Policy 2015-326. As noted earlier, there have been many developments since that time, many of which have recently given rise to concerns regarding the broader state of competition in the provision of retail Internet services. The Commission considers that such concerns are now being observed and felt by consumers such as John P. Roman, potentially giving rise to the issues raised in this application.
29. The Commission considers that many of the concerns set out in John P. Roman's application could likely be addressed by reviewing the Commission's wholesale HSA service framework to ensure it is effectively disciplining the retail fixed Internet service market. To that end, the Commission notes that, concurrent with this decision, it is issuing Telecom Notice of Consultation 2023-56.
30. John P. Roman expressed concerns regarding pricing transparency, including the different prices that consumers pay for retail Internet services. The Commission acknowledges that it is important for consumers to have reliable and accurate pricing

information in order to make informed competitive choices and that such an issue warrants further exploration.

31. The Commission also notes that John P. Roman's application set out the view that the Commission has not taken sufficient action in retail markets to address consumer issues such as affordability. In this regard, the Commission notes that it has intervened directly in both the retail mobile wireless and fixed Internet service markets by, among other things, introducing codes of conduct that make it easier for Canadians to understand their service contracts and switch providers, and that prevent bill shock from overage fees and price increases. However, the Commission considers that if the objectives of the Act cannot be effectively achieved through wholesale regulation and existing targeted retail regulations, it would likely be necessary to consider whether additional retail regulation is required. As a result, John P. Roman's application has informed the scope of Telecom Notice of Consultation 2023-56.

Conclusion

32. In light of all of the above, the Commission **denies** John P. Roman's request to broadly review its forbearance determinations in both the retail mobile wireless and retail fixed Internet service markets.
33. The Commission considers that while wholesale regulation remains its preferred means to address competitive concerns in a given retail market, it recognizes that its current wholesale HSA service framework may not be effectively accomplishing this goal. The Commission considers that this issue will be best addressed in Telecom Notice of Consultation 2023-56.
34. The Commission also considers that, in the event that its wholesale HSA service framework is unable to effectively address competitive issues, it would be appropriate to consider whether some additional form of regulatory intervention is, or may soon be, required in the retail Internet service market. This issue will also be explored in Telecom Notice of Consultation 2023-56.

Policy Directions

35. The Government of Canada recently repealed the 2006⁴ and 2019⁵ Policy Directions. The 2023 Policy Direction⁶ does not apply to this file, the record of which closed in the year prior to the coming into force of that direction.
36. In the absence of a Policy Direction, denying the application would be consistent with the following policy objectives within the Act:
- paragraph 7(a), which aims 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;
 - paragraph 7(f), which empowers the Commission to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.
37. Allowing the Commission's mobile wireless service framework (and associated regulations) time to develop would serve to support the telecommunications system in a manner consistent with paragraph 7(a), as would considering issues related to the retail Internet service market within the context of a future review in order to properly gather evidence and assess the associated dynamics within the market.
38. The immediate reconsideration of mobile wireless and retail Internet service forbearance would be inconsistent with paragraph 7(f), since it does not foster reliance on market forces, nor would it represent efficient or effective regulation.
39. Moreover, issues raised in the application with respect to retail Internet services will be further considered in Telecom Notice of Consultation 2023-56 to review the wholesale HSA framework and in which the new Policy Direction will apply.

Secretary General

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁵ *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

⁶ *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 13 February 2023

Related documents

- *Notice of hearing – Review of the wholesale high-speed access service framework*, Telecom Notice of Consultation 2023-56, 8 March 2023
- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021
- *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020; as amended by Telecom Notice of Consultation CRTC 2020-187-1, 22 July 2020
- *The Internet Code*, Telecom Regulatory Policy CRTC 2019-269, 31 July 2019; as amended by Telecom Regulatory Policy CRTC 2019-269-1, 9 August 2019
- *TELUS Communications Inc. – Request to review and vary Telecom Decision 2016-171*, Telecom Decision CRTC 2018-194, 1 June 2018
- *Interim rates for disaggregated wholesale high-speed access services in Ontario and Quebec*, Telecom Order CRTC 2017-312, 29 August 2017; as amended by Telecom Order CRTC 2017-312-1, 12 September 2017
- *Application of regulatory obligations directly to non-carriers offering and providing telecommunications services*, Telecom Regulatory Policy CRTC 2017-11, 17 January 2017; as amended by Telecom Regulatory Policies CRTC 2017-11-1, 10 July 2017 and 2017-11-2, 17 July 2018
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Follow-up to Telecom Regulatory Policy 2015-326 – Implementation of a disaggregated wholesale high-speed access service, including over fibre-to-the premises access facilities*, Telecom Decision CRTC 2016-379, 20 September 2016
- *Quebecor Media Inc. – Prohibition of 30-day cancellation policies – Application regarding pro-rated refunds for cancelled services*, Telecom Decision CRTC 2016-171, 5 May 2016
- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016

- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015; as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 2015
- *Prohibition of 30-day cancellation policies*, Broadcasting and Telecom Regulatory Policy CRTC 2014-576, 6 November 2014
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Modifications to forbearance framework for mobile wireless data services*, Telecom Decision CRTC 2010-445, 30 June 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009; as amended by Broadcasting and Telecom Regulatory Policy CRTC 2009-430-1, 17 December 2009
- *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, 20 December 2007
- *Forbearance from retail Internet services*, Telecom Order 99-592, 25 June 1999
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Regulation of mobile wireless telecommunications services*, Telecom Decision CRTC 96-14, 23 December 1996
- *Regulation of wireless services*, Telecom Decision CRTC 94-15, 12 August 1994
- *Competition in the provision of public long distance voice telephone services and related resale and sharing issues*, Telecom Decision CRTC 92-12, 12 June 1992