Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2024-81

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Final offer arbitration between Quebecor Media Inc. and TELUS Communications Inc. regarding wholesale mobile virtual network operator access rates

Summary

The Commission sets out its decision resulting from the final offer arbitration (FOA) proceeding initiated by Quebecor Media Inc. (QMI) regarding the establishment of wholesale mobile virtual network operator (MVNO) access rates between QMI and TELUS Communications Inc. (TCI).

The Commission **selects TCI's offer** and **directs** the parties to enter into an MVNO access agreement consistent with TCI's offer so that QMI can expand its mobile wireless services to Canadians as quickly as possible. Offers were assessed on whether they were just and reasonable and evaluated on a number of public policy factors. Based on those factors, the Commission has selected the offer proposed by TCI since it best meets the evaluation criteria. Further, the Commission **determines**, as a finding of fact, that TCI's offer is just and reasonable as per section 27 of the *Telecommunications Act* (the Act).

This decision helps promote access to affordable telecommunications services for Canadians and foster sustainable competition and continued investment, in accordance with the Act and the 2023 Policy Direction.

The Commission concludes that TCI's offer will promote competition, affordability, and continued investment by both companies in their networks. The Commission is committed to providing as much transparency as possible on FOA processes to provide guidance to the industry, while maintaining confidentiality over information appropriately filed in confidence with the Commission.

Background

1. On 9 November 2023, Quebecor Media Inc. (QMI) requested final offer arbitration (FOA) to establish wholesale mobile virtual network operator (MVNO) access rates between itself and TELUS Communications Inc. (TCI).

2. On 29 January 2024, the Commission issued a conduct letter accepting the FOA request and setting out the scope and procedures of the FOA process and the following terms:

   - the length of time the rates to be determined will be in effect; and
   - what services those rates are for.

3. On 13 February 2024, the parties filed their respective final offer submissions, in which they confirmed that they are seeking only a rate for data on a price-per-gigabyte (GB) basis.

4. As part of its submission, TCI submitted a full Phase II cost study, which included an expert report. The expert report provided additional information on TCI's calculations and assumptions and evaluated the reasonableness of its offer. On 8 April 2024, the Commission published a Secretary General letter striking the expert report from the record of this proceeding, but the Commission retained the remainder of the cost study. The expert report was struck from the record because it went beyond responding to the Commission's 29 January 2024 request for information.

Regulatory framework

5. In Telecom Regulatory Policy 2021-130, the Commission directed Bell Mobility Inc., Rogers Communications Canada Inc., Saskatchewan Telecommunications, and TCI to provide access to their networks to regional wireless carriers via an MVNO access service. The Commission indicated that carriers should negotiate rates for MVNO access among themselves. If such negotiations failed, the Commission added that it could establish access rates through FOA.

6. FOA is a dispute resolution method used for disputes that (i) are exclusively monetary in nature, (ii) involve only two parties, and (iii) otherwise meet the criteria set out in Broadcasting and Telecom Information Bulletin 2019-184. In Telecom Information Bulletin 2022-337, the Commission supplemented its guidance on FOA as it applies to MVNO access. In that same information bulletin, the Commission set out factors on which it could rely in establishing MVNO access rates.

7. As indicated in Telecom Regulatory Policy 2021-130, the objective of the MVNO access framework is to expedite competitive expansion by regional wireless carriers to provide Canadians with more choice. In accordance with this objective, the Commission uses FOA as a backstop to negotiation between carriers to ensure MVNO agreements are entered into in a timely manner. This avoids engaging in a lengthy Phase II process to establish cost-based rates for MVNO access. Given that the Commission must select one of the offers put forth by the parties in its entirety or neither offer, parties are motivated to submit offers with the best possible rate.

8. The Commission, as arbitrator, assesses the final offers submitted by the parties with the objective of selecting an offer that would result in both a just and reasonable rate, as required by subsection 27(1) of the Act, and that would best advance the relevant policy objectives.[1] The Commission cannot accept an offer that it does not consider just and reasonable.

9. The Commission assesses rate offers based on the strategic objectives of Telecom Regulatory Policy 2021-130. These objectives include bringing new competitive choice into the retail mobile wireless service market (hereafter, retail market), while also encouraging network expansion and sustainable, long-term competition. These strategic objectives build on the policy objectives set out in section 7 of the *Telecommunications Act* (the Act) and are reflected in Telecom Information Bulletin 2022-337. The Commission applies the policy objectives consistently across FOA decisions.

10. While subsection 27(1) of the Act requires all Canadian carriers to charge rates for telecommunications services that are just and reasonable, sections 25, 32, and 47 of the Act grant the Commission a broad discretion to set rates for telecommunications services. The Act expressly allows the Commission to use any method it considers appropriate to evaluate whether a rate is just and reasonable.

11. Subsection 27(3) of the Act makes the determination of whether rates for telecommunications services are just and reasonable a question of fact. Moreover, section 52 of the Act makes the Commission's determinations on questions of fact binding and conclusive.

QMI's offer

12. QMI proposed a final offer that it submitted would allow it to compete vigorously in the retail market, with a sufficient profit margin to fund its network investments.

13. QMI stated that its offer was consistent with the Commission's two previous FOA decisions on MVNO access rates. QMI added that its offer reflected market trends by accounting for a decrease in the price for wireless services and an increase in data consumption since April 2023, when the proceeding that led to Telecom Decision 2023-217 was initiated.

14. QMI submitted that a critical aspect of the MVNO access framework is that it enables service providers to build a subscriber and revenue base while establishing their

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[1] This would include the relevant policy objectives in section 7 of the Act, and the relevant objectives included in any direction provided by the Governor in Council under section 8, which would include the 2023 Policy Direction (*Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023).

networks, rather than having to recoup costs only after network deployment. QMI believes this factor must be given significant weight when evaluating the offers.

15. QMI argued that it must earn a profit to be able to expand to new markets (British Columbia, Alberta, Manitoba, and southern Ontario). In QMI's view, a rate that generates losses for its MVNO access zones would hinder its ability to invest in its network and innovate in the market.

16. To show that its offer is just and reasonable, QMI presented a sensitivity analysis consistent with a retail-minus approach. This analysis illustrated the profitability of various plans based on QMI's offer and the costs of providing service to its customers through MVNO access.

17. Furthermore, QMI argued that the Commission must select an offer that maintains both parties' incentives to invest. QMI explained that the temporary nature of the MVNO access framework is the biggest incentive for it to invest in network deployment. At the same time, QMI argued that TCI's incentive and ability to invest would not be affected by the rate selected in this decision given the size and resources of the company.

18. QMI added that its rate would create sustainable competition, resulting in more affordable prices and innovative services for Canadians.

TCI's reply to QMI's offer

19. TCI raised concerns with the retail-minus costing approach used by QMI. TCI maintained that the Phase II cost-based approach used by the Commission in rate-setting procedures is better-suited to establish just and reasonable rates. TCI argued that the MVNO access framework is not designed to produce immediate profits for QMI. Rather, it is designed to allow QMI to grow a base of subscribers that it can migrate onto its network when built.

20. Moreover, TCI submitted that QMI's sensitivity analysis was based on non-sustainable Black Friday and Boxing Week promotional plans rather than non-promotional plans.

21. TCI added that QMI's offer is below the cost of providing the MVNO service and therefore does not provide TCI with fair compensation. TCI stated that a just and reasonable rate is one that allows it to recover the costs of providing the MVNO access service.

TCI's offer

22. TCI proposed a final offer that, in its view, would enable QMI to compete while at the same time provide TCI with fair compensation.

23. TCI explained that its offer is lower than what it would accept during commercial negotiations to avoid the potential negative consequences of the Commission selecting QMI’s offer. TCI added that its offer is closer to being just and reasonable than QMI’s offer.

24. To support its offer, TCI submitted a full Phase II cost analysis. The company asserted that it used the Phase II cost study methodology to provide a high level of certainty regarding its cost to deliver the MVNO service. TCI added that its cost study should be afforded substantial evidentiary weight in the Commission’s analysis.

25. TCI argued that selecting a rate below cost would be equivalent to requiring TCI to subsidize QMI’s network buildout. TCI submitted that this would go against the policy objectives because it neither fosters reliance on market forces nor encourages innovation. TCI added that wholesale rates below the just and reasonable standard discourage investment.

26. In addition to submitting a cost study, TCI provided a model of QMI’s expected profitability under TCI’s proposed rate. Based on this model, TCI indicated that QMI would be able to profitably bring its Fizz, Freedom Mobile Inc. (Freedom Mobile), and Videotron Ltd. rate plans currently offered in Quebec to other areas in Canada.

27. TCI submitted that its model likely underestimates QMI’s potential profitability for two reasons. First, TCI used Boxing Week plans, which it maintained are lower and not representative of the prices of non-promotional plans. Second, QMI can make efficiency gains as it improves synergies between its brands. QMI can make these gains by increasing its number of customers, extending its network, and relying more on its own network and less on MVNO access over time. Furthermore, TCI argued that QMI can always review its plans or reduce operating costs if it is unsatisfied with its rate of return.

28. TCI added that it is not the Commission’s role to ensure that QMI achieves profitable margins for every MVNO plan, particularly as QMI introduces larger data plans that are generally less profitable.

QMI’s reply to TCI’s offer

29. In response to TCI’s claim that QMI’s wireless business would remain profitable if TCI’s rate is selected, QMI provided a sensitivity analysis with the rate proposed by TCI. Based on that analysis, QMI believes that TCI’s proposed rate is not reasonable.

30. QMI argued that the 40% markup used in TCI’s cost study should not be admissible. It should not be admissible because there is sufficient incentive for QMI to build its own network given the temporary nature of the MVNO access framework.

31. Finally, QMI argued that contrary to TCI's assertion, QMI's offer would not reduce TCI's incentives to invest.

Comparison of offers

Advancing the relevant policy objectives in section 7 of the Act and the relevant objectives of the 2023 Policy Direction

32. To determine which offer to select, the Commission must consider (i) which one would best advance the relevant policy objectives in section 7 of the Act and the relevant objectives in the 2023 Policy Direction, and (ii) whether the offers are just and reasonable.

33. Based on the practices and procedures outlined in Telecom Information Bulletin 2022-337 and the arguments raised by QMI and TCI, the Commission considers that certain sets of policy objectives from section 7 of the Act and key objectives from the 2023 Policy Direction are most relevant to evaluating the offers submitted.

34. The first set of objectives relates to affordability of services:

    - the policy objective set out in paragraph 7(b) of the Act: to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and

    - paragraph 2(b) of the 2023 Policy Direction, which requires the Commission to consider the extent to which its decision would foster affordability and lower prices, particularly when telecommunications service providers exercise market power.

35. Whether the proposed rates would allow QMI to offer affordable plans and generally exert enhanced competitive pressures in the retail market is an important line of inquiry. The Commission has applied this line of inquiry in evaluating offers against these first two objectives.

36. The second set of objectives relates to enhancing and fostering competition in the telecommunications sector:

    - the policy objective set out in paragraph 7(c) of the Act: to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; and

    - paragraph 2(a) of the 2023 Policy Direction, which requires the Commission to consider the extent to which its decisions encourage all forms of competition and investment.

37. The Commission has considered whether there is fair compensation for TCI, as a service provider, to continue to compete and invest. At the same time, the Commission has considered the impact of the rates on QMI's ability to compete and innovate in the retail market as well as develop its own network.

38. Finally, the third objective is related to efficient regulation and fostering reliance on market forces:

- the policy objective set out in paragraph 7(f) of the Act: to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

39. To evaluate this objective, the Commission has considered how the rates on offer compare to those in previous MVNO access agreements involving the wholesale MVNO access provider and the regional wireless carrier in question. The Commission also considered how the rates on offer compare to tariffed domestic roaming rates.

40. QMI also submitted that the following two additional objectives are relevant when evaluating the present offers. These objectives were also assessed by the Commission:

- the policy objective set out in paragraph 7(g) of the Act: to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services; and

- the policy objective set out in paragraph 7(h) of the Act: to respond to the economic and social requirements of users of telecommunications services.

41. To evaluate these objectives, the Commission assessed whether the rates create or maintain an incentive to innovate and conduct research and development in the telecommunications industry. The Commission also assessed whether the rates provide sufficient means to fulfill the economic and social requirements of the wholesale customer—in this case, QMI and QMI's mobile users—in a satisfactory way.

Affordability and competition

42. The Commission considers that both offers would allow QMI to continue to compete and offer affordable plans in the marketplace.

43. The Commission stated in Telecom Decision 2023-335 that QMI has been able to introduce new, lower-priced plans than were previously available since the MVNO access framework was implemented. Based on the information submitted by the parties in this FOA process, QMI has continued to demonstrate its ability to compete

and attract new customers through the expansion of lower-priced plans offered by Fizz and Freedom Mobile.

44. The Commission notes that TCI's offer is within the range of rates approved by the Commission in previous FOA decisions involving QMI. Given that QMI is currently able to compete with the rates available from previous MVNO FOA proceedings, both offers appear to allow QMI to continue to compete and offer affordable plans for the benefit of Canadians.

Fair compensation

45. The Commission stated in Telecom Decision 2023-217 that it does not necessarily have to ensure that costs are recouped over the short term for a rate to be considered just and reasonable. However, fair compensation for the wholesale MVNO access provider is still an important consideration in evaluating offers, as outlined in Telecom Information Bulletin 2022-337.

46. The FOA process was established to avoid the development and analysis of a full cost study using the Commission's established and rigorous Phase II costing methodology. In this case, TCI submitted a full Phase II cost study to provide

    - empirical and objective evidence to support its rate proposal; and
    - a high level of certainty regarding its cost to deliver the MVNO service.

47. Phase II costing is one way to establish a just and reasonable rate. However, as per subsection 27(5) of the Act, the Commission is afforded significant discretion in determining the method and technique through which it assesses an offer as just and reasonable.

48. The causal costs provided by TCI appear to be appropriate and fall close to the expected costs for such a service. Compared to the average cost of providing the service included in TCI's cost study, QMI's offer is much lower.

49. As noted in Telecom Decision 2023-335, the Commission supports the introduction of lower-priced plans, which help to improve affordability for Canadians. To ensure that competitors like QMI can continue to advance these goals for Canadians, and to ensure that the relevant policy objectives continue to be achieved, when selecting rates, the Commission also considers sustainability of competition.

50. The Commission considers that TCI's offer would provide it with fairer compensation than QMI's offer and is the best offer to promote sustainable competition.

Investment and innovation

Investment

51. In Telecom Decision 2023-335, the Commission stated that the long-term impact of artificially low wholesale rates on the policy objective of fostering network investments, which is particularly relevant in suburban and rural areas, is a valid concern. The Commission added that lower retail prices backed by lower wholesale rates are desirable, but that these different interests must be balanced with the wholesale MVNO access provider's incentives for continued network investment.

52. In the Commission's view, the need for balance between lower wholesale rates and investment incentives still holds true in this FOA process.

53. Regarding TCI's incentive to invest, TCI submitted that wholesale rates below costs would discourage incumbents from making further network investments. In contrast, QMI alleged that TCI's ability and incentive to invest would not be affected by either offer. In the Commission's view, the impact on TCI's investment incentives, particularly in suburban and rural areas, is an important consideration.

54. On the other hand, QMI indicated that the limited duration of the MVNO access framework is, in itself, an incentive for it to invest. At the same time, QMI added that lower rates would allow it to use the profit to invest in its network. In the Commission's view, the MVNO access framework itself and its time-limited duration provide the greatest incentive for wholesale customers to invest. Therefore, neither offer should have a significant impact on QMI's incentive to invest.

55. The Commission considers that TCI's offer maintains, more effectively, the incentive of both parties to invest.

56. Furthermore, in conjunction with the Commission's analysis on affordability and competition as well as fair compensation, the Commission considers that TCI's offer strikes a better balance between sustainable competition and incentives to invest. Therefore, it will better advance objective 7(c) of the Act.

Innovation

57. QMI argued that its rate best serves the policy objective of innovation by allowing QMI larger profit margins to deploy its 5G network more rapidly and deliver innovative services to Canadians.

58. TCI argued that rates that are below cost and that do not allow for a reasonable rate of return reduce a company's incentives to invest, innovate, and improve efficiencies. TCI added that the selection of QMI's rate would be equivalent to subsidization, which it argued further reduces the incentive to innovate.

59. Although there is a direct relationship between investment and technical innovation, in the Commission’s view, the link between lower wholesale costs and innovative services is less clear. QMI did not elaborate on how a lower MVNO access rate would lead to more innovation.

60. The Commission considers that TCI’s offer maintains the incentive of both parties to innovate and will better advance objective 7(f) of the Act.

Comparable agreements and fair market value

61. Neither party submitted significant arguments using comparable agreements as a basis to justify their offers. As a result, the Commission did not rely on this objective in this FOA process given the lack of evidence.

Responding to the economic and social requirements of users of telecommunications services

62. While this is an important objective, it could not be properly assessed. QMI did not provide significant rationale to demonstrate how its offer would best advance this objective, and TCI did not respond or take a position regarding this objective. Therefore, the Commission cannot conclude that either offer better advances this objective.

Commission determination on a just and reasonable offer

63. As per the Act, the Commission may only approve rates for telecommunications services that are just and reasonable. Having evaluated the offers, the Commission **determines**, as a finding of fact, that TCI’s offer is just and reasonable, based on the reasons above.

Conclusion on the FOA process

64. In this decision, the Commission determines the rates for the MVNO data access service that TCI will provide QMI over a pre-determined agreement period. The Commission considers that this decision is consistent with the relevant policy objectives set out in section 7 of the Act and is in accordance with the 2023 Policy Direction.

65. The Commission has assessed the offers and the evidence submitted by the parties in the context of this FOA process with a view to determining which offer would best promote competition, affordability, consumer interests, and innovation. The Commission has considered which of the offers presented would best serve to encourage all forms of competition and investment and to foster affordability and lower prices for retail mobile wireless services. For the reasons above, the Commission finds that TCI’s offer is just and reasonable and would best serve to promote those objectives.

66. The Commission therefore **selects TCI's offer** and **directs** the parties to enter into an MVNO access agreement consistent with TCI's offer so that QMI can expand its competitive mobile wireless services to Canadians as quickly as possible.

Secretary General

Related documents

- *Final offer arbitration between Bell Mobility Inc. and Quebecor Media Inc. regarding wholesale mobile virtual network operator access rates,* Telecom Decision CRTC 2023-335, 10 October 2023

- *Final offer arbitration between Quebecor Media Inc. and Rogers Communications Canada Inc. regarding wholesale mobile virtual network operator access rates*, Telecom Decision CRTC 2023-217, 24 July 2023

- *Practice and procedure for final offer arbitration to determine mobile virtual network operator access rates*, Telecom Information Bulletin CRTC 2022-337, 9 December 2022

- *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