



Telecom Notice of Consultation CRTC 2019-57-1

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Reference: 2019-57

Ottawa, 28 October 2019

Public record: 1011-NOC2019-0057

Notice of hearing

Review of mobile wireless services - Changes to procedure

Revised public hearing commencement date: 18 February 2020

Revised deadline for further comments: 22 November 2019

Deadline for parties to reply to the Commissioner of Competition's economic studies: 13 January 2020

Revised deadline for final submissions: 23 March 2020

Introduction

1. In *Review of mobile wireless services*, Telecom Notice of Consultation CRTC [2019-57](#), 28 February 2019, the Commission initiated a proceeding, including a public hearing, to review mobile wireless services in Canada.
2. Shortly after the release of the notice, the Commissioner of Competition (the Commissioner) filed a letter outlining his plan to prepare a series of economic studies to assist the Commission in its analysis and decision making with respect to the proceeding.
3. The Commissioner also made a request, pursuant to paragraph 39(4)(b) of the *Telecommunications Act*, to have certain information designated as confidential by wireless carriers disclosed to him. He indicated that this information was necessary for the preparation of his economic studies.
4. The Commissioner requested that the confidential information be disclosed by 15 July 2019 so that he would have at least 100 days to review the record and prepare his studies, which he would submit as part of the phase for further comments, for which the submission deadline was 23 October 2019.
5. On 2 August 2019, the Commission issued a determination requiring parties to disclose confidential information to the Commissioner by 9 August 2019.

The Commissioner's 30-day extension request

6. By letter dated 20 September 2019, the Commissioner requested a 30-day extension to the 23 October 2019 deadline for further comments, submitting that the delay in receiving the confidential information left him with fewer than 100 days to conduct his analysis and prepare the studies. He also indicated that some of the responses were deficient, requiring additional time and resources to be expended to follow up with certain carriers.
7. Bell Mobility Inc., Rogers Communications Canada Inc., Saskatchewan Telecommunications, Shaw Communications Inc., and TELUS Communications Inc. (collectively, the carriers) conditionally supported the extension request. Among the conditions advanced was that all parties be granted the extra time to file their further comments. Other conditions advanced include the provision of additional process. These matters are discussed below.

Commission's analysis and determinations

8. The Commission considers that providing the Commissioner with a 30-day extension would be reasonable under the circumstances. The Commission also considers that granting this extension to all parties would better enable them to prepare their submissions and contribute to a more fulsome record. Accordingly, the Commission determines that it would be appropriate to extend the deadline for filing further comments for all parties.

Requests for additional process to respond to the Commissioner's studies

9. The carriers requested that the Commission add a process to enable parties to respond to the Commissioner's studies. They submitted that being able to comment before the hearing is a matter of procedural fairness, particularly since the Commissioner will be filing his expert report well after other parties file their own expert reports. They added that the Commissioner has access to confidential information that other parties cannot see, so it is even more imperative that parties are given sufficient time and effective methods to scrutinize the evidence.
10. Most of the carriers requested that an additional reply phase be added to the schedule to give parties an opportunity to engage their own experts to respond directly to the Commissioner's studies. Several of the carriers also requested that they be given an opportunity to submit proposals for requests for information to the Commission, which the Commission could then pose to the Commissioner to test the evidence on their behalf.

Commission's analysis and determinations

11. The Commission notes that the established procedures for the proceeding provided all parties with opportunities to produce expert evidence. Many parties elected to file such evidence as part of the first round of interventions. While the Commissioner has access to information that was not accessible to others, this is also true for many other

parties who engaged experts to produce reports with the benefit of their own confidential information.

12. The established procedures also provide parties with a number of upcoming opportunities to respond to expert evidence tendered by other parties, including during the hearing and the final submissions phase.
13. However, the Commission considers that there is merit in the proposal to add a reply phase, given that the Commissioner's evidence will be based on industry-wide confidential information. The Commission considers that an additional reply phase targeted specifically to responding to the evidence submitted by the Commissioner would provide parties with a further opportunity to raise any concerns or highlight any merits associated with that evidence. This opportunity, which would complement that afforded by the hearing and final submissions phase, would result in a stronger record upon which the Commission can base its determinations.
14. In the Commission's view, a period of approximately six weeks would provide sufficient time for parties to evaluate and respond to the Commissioner's studies, particularly given that parties will also have opportunities at the hearing and during the final submissions phase to make additional comments on the Commissioner's evidence.
15. Accordingly, the Commission determines that it would be appropriate to add a reply phase in which parties may respond to the Commissioner's studies. In this phase, parties are to restrict their submissions to the contents of the Commissioner's economic studies and any appendices or supporting documents.
16. The Commission does not consider it necessary to add a supplementary request for information phase because it would introduce unnecessary delays to the proceeding. Further, in light of the new and existing procedures established for this proceeding, the Commission considers that all parties have been provided with fulsome opportunities to present their own evidence and respond to the evidence of other parties. Accordingly, the Commission does not consider that any value added to the record by the establishment of a supplementary request for information phase would outweigh the adverse impact resulting from such delays.

Requests to reschedule the hearing

17. Given the 30-day extension request and requests for additional process, the carriers submitted that the hearing should be rescheduled. They proposed various dates ranging from March to May 2020.
18. However, the Canadian Network Operators Consortium Inc. submitted that the hearing should not be delayed, given the urgency of the policy issues under consideration.

Commission's analysis and determinations

19. The Commission considers that it is necessary to delay the hearing, given the 30-day extension and the new reply phase.
20. However, it would be in the public interest to not prolong the proceeding unduly. Among the considerations informing the Commission's assessment of an appropriate delay to the hearing is the importance of providing timely regulatory certainty in the market.
21. The Commission considers that delaying the hearing by approximately five weeks would be reasonable, since it would accommodate the 30-day extension and the new reply phase, and provide sufficient time for parties to prepare for the hearing, but would not significantly extend the length of the proceeding overall.
22. Accordingly, the Commission determines that it would be appropriate to modify the schedule for the hearing.

Conclusion

23. In light of the above, the Commission makes the following procedural changes:
 - The Commission amends the deadline for the filing of further comments to **22 November 2019** for all parties.
 - The Commission adds a reply phase so that parties may respond to the Commissioner's studies. Replies in this new phase must be filed no later than **13 January 2020** and are to be restricted to the contents of the Commissioner's economic studies, including any appendices and supporting documents.
 - The Commission amends the date on which the public hearing will begin to **18 February 2020**.
 - The Commission amends the deadline for final submissions to **23 March 2020**.

Secretary General