



## Telecom Order CRTC 2007-230

Ottawa, 29 June 2007

### **Cogeco Cable Canada Inc., Rogers Cable Inc., Shaw Cablesystems G.P., and Vidéotron ltée**

Reference: 8740-C6-200414509, 8740-R4-200414532, 8740-S9-200414524,  
8740-V3-200414516, Cogeco Tariff Notice 15, Rogers Tariff Notice 15,  
Shaw Tariff Notices 7 and 7A, Vidéotron Tariff Notice 10

### **Third-party Internet access using cable networks – Follow-up to Telecom Decision CRTC 2004-69**

*In this Order, the Commission denies the applications of Cogeco Cable Canada Inc., Rogers Cable Inc. (Rogers), Shaw Cablesystems G.P. (Shaw), and Vidéotron ltée (collectively, the Cable Companies) for proposed tariffs for DS-3 line cards and 100Base-FX line cards for third-party Internet access (TPIA) services. The Commission authorizes the Cable Companies to require any Internet service provider (ISP) that is requesting interconnection at a point of interconnection (POI) to use a media converter or line extension equipment in order to meet the Cable Companies' reasonable technical requirements. The Commission also directs the Cable Companies to allow ISPs to provide their own media converters or line extension equipment subject to the selected equipment meeting the reasonable technical requirements of the Cable Companies. In addition, the Commission directs Shaw to remove its TPIA service disconnection charge from its tariff, and to bill for disconnection at a POI in accordance with Shaw's Commission-approved labour rates. The Commission also directs Rogers and Shaw to modify their service agreements to reflect clarifications related to the Commission-approved deposits for ISPs requesting TPIA service interconnection.*

*The Commission makes the above directives effective the date of this Order and directs the Cable Companies to issue revised tariffs and service agreements that reflect the determinations of this Order within 30 days of the date of this Order, providing copies to the Commission.*

#### **Introduction**

1. The Commission received applications dated 2 December 2004 from Cogeco Cable Canada Inc. (Cogeco), Rogers Cable Inc. (Rogers), Shaw Cablesystems G.P. (Shaw), and Vidéotron ltée (Vidéotron)<sup>1</sup> (collectively, the Cable Companies) under Cogeco Tariff Notice 15 (Cogeco TN 15), Rogers Tariff Notice 15 (Rogers TN 15), Shaw Tariff Notices 7 and 7A (Shaw TN 7), and Vidéotron Tariff Notice 10 (Vidéotron TN 10), respectively. These applications were filed as a follow-up to the Commission's directives set out in *Point of interconnection and service charge rates, terms and conditions for third party Internet access using cable networks*, Telecom Decision CRTC 2004-69, 2 November 2004, as amended by Telecom Decision CRTC 2004-69-1, 24 November 2004, and Telecom Decision CRTC 2004-69-2, 3 February

<sup>1</sup> Vidéotron's application was filed on its behalf by Quebecor Media Inc.

2005 (Decision 2004-69). In that Decision, the Commission directed Cogeco, Rogers, Shaw, and Vidéotron to file tariffs for line cards for dedicated DS-3 interconnection and Fast Ethernet 100Base-FX interconnection for Commission approval, with supporting cost studies.

2. In Decision 2004-69, the Commission also directed the Cable Companies to revise their third-party Internet Access (TPIA) service agreements to provide a single design and costing report per Internet service provider (ISP) connection request. In addition, the Commission directed the Cable Companies to file revised TPIA service agreements, modified to implement the Commission's determinations in that Decision.
3. In their applications, Cogeco, Rogers, and Shaw included supporting cost studies and revised service agreements. Vidéotron included its supporting cost study with its application, and provided revised tariff pages and its service agreement as separate filings.
4. The Commission received comments and/or reply comments from the Cable Companies; the Canadian Cable Telecommunications Association (CCTA),<sup>2</sup> on behalf of Cogeco, Rogers, and Shaw; Xit telecom inc. (Xit telecom); and Cybersurf Corp. (Cybersurf). The record of this proceeding closed with the CCTA's comments on behalf of Rogers and Shaw on 3 March 2005.
5. While the positions of parties have necessarily been summarized in this Order, the Commission has carefully reviewed and considered the submissions of all parties.
6. The Commission determines that a number of the matters raised by the parties to this proceeding either require no further action at this time or are outside the scope of this proceeding.
7. The Commission finds that the follow-up process initiated by Decision 2004-69 raises the following issues:

I. Proposed tariffs for line cards,

II. Provision of media converters or line extension equipment,

III. Shaw's TPIA service disconnection charge, and

IV. Submissions related to modifications to service agreements.

#### **I. Proposed tariffs for line cards**

##### ***Commission's analysis and determinations***

8. In Decision 2004-69, the Commission determined that ISPs could provide their own line cards for interconnection at a point of interconnection (POI), subject to the requirements of the Cable Companies. The Commission also directed the Cable Companies to make two common types of line cards (DS-3 and 100Base-FX) available to ISPs at tariffed rates, based on a three-year contract period. The Commission considered that this approach would be efficient, and would reduce barriers to competitor entry while minimizing the administrative burden on

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<sup>2</sup> The Commission notes that the CCTA ceased to operate in February 2006.

the Cable Companies of maintaining and updating tariff pages for a large number of line cards.

9. The Commission considers that, in the absence of approved tariffs for DS-3 and 100Base-FX line cards, ISPs have successfully negotiated with the Cable Companies alternative interconnection arrangements using self-supplied line cards. The Commission considers that bilateral negotiation is an appropriate approach to establish the line card type and the associated business arrangements for interconnection. The Commission notes that there have been no complaints from the ISPs with respect to the negotiated interconnection arrangements.
10. The Commission also notes that the Governor in Council recently issued *Order Issuing a Direction to the CRTC Implementing the Canadian Telecommunications Policy Objectives* (the Policy Direction), which became effective on 14 December 2006. The Policy Direction states, among other things, that the Commission should rely on market forces to the maximum extent feasible and, when relying on regulation, use measures that are efficient and proportionate to their purpose. The Policy Direction further states that the Commission, when relying on regulation, should use measures that satisfy certain criteria, including specifying the telecommunications policy objective that is advanced by those measures.
11. The Commission considers that the existing arrangements, whereby ISPs provide their own line cards and negotiate interconnection arrangements with the Cable Companies, are consistent with the Policy Direction requirement that the Commission rely on market forces to the maximum extent feasible as the means of achieving telecommunications policy objectives.
12. In light of the above, the Commission considers that the Cable Companies should not be required to provide DS-3 and 100Base-FX line cards to ISPs on a tariffed basis. Accordingly, the Commission **denies** Cogeco TN 15, Rogers TN 15, Shaw TN 7, and Vidéotron TN 10.

## **II. Provision of media converters or line extension equipment**

### ***Positions of parties***

13. Cybersurf submitted that it was concerned that the Cable Companies were planning to charge monthly rates for media converters or line extension cards. Cybersurf submitted that ISPs should be allowed to provide their own media converters or line extension cards of equipment types approved by the Cable Companies.
14. In response to Cybersurf's objection to monthly charges for media converters, Cogeco, Rogers, and Shaw submitted that some cable companies allowed ISPs to provide their own media converters and others did not. Cogeco, Rogers, and Shaw expressed concerns that ISPs were contemplating interconnection at a POI without using any media converters or using used media converters, potentially requiring additional troubleshooting and maintenance.
15. Cogeco, Rogers, and Shaw further submitted that bilateral negotiations should be used to determine whether a cable carrier would support virtual co-location of ISP-provided media converters or line extension equipment at their head-ends. The Cable Companies indicated that, as a minimum, they should be allowed to specify the make and model of media converter located in a head-end in addition to identifying their requirement for use of media converters.

16. Vidéotron submitted that its existing tariff (General Tariff item 201.6.b) allowed TPIA customers to provide their own line cards and, where required, associated terminal cards (Vidéotron's name for line extension cards or media converters).

***Commission's analysis and determinations***

17. The Commission considers that ISPs should be able to provide their own media converters or line extension equipment. The Commission also considers that, where appropriate for technical reasons, the Cable Companies should be permitted both to stipulate when a media converter or line extension equipment to support interconnection at a POI is required and to specify the type of media converter or line extension equipment that the ISP must select.
18. The Commission authorizes the Cable Companies to require any ISP that is requesting interconnection at a POI to use a media converter or line extension equipment in order to meet the Cable Companies' reasonable technical requirements. Further, the Commission directs the Cable Companies to allow ISPs to provide their own line extension cards or media converters, subject to the selected equipment meeting the reasonable technical requirements of the Cable Companies. The Commission directs Cogeco, Rogers, and Shaw to update their TPIA tariffs to reflect these determinations.
19. The Commission notes that the determinations set out in paragraph 18 above do not prevent ISPs and the Cable Companies from negotiating alternative arrangements for the provision of line extension equipment or media converters.
20. The Commission considers that market forces would not likely resolve issues associated with the provision of line extension equipment or media converters in all circumstances. The Commission considers that its determinations would result in measures that are efficient and proportionate to their purpose, as these measures address the reasonable interconnection requirements of the Cable Companies and allow ISPs to self supply while at the same time allowing for mutually acceptable alternate arrangements for the provision of line extension equipment or media converters. The Commission further considers that these determinations will advance the policy objective, set out in paragraph 7(f) of the *Telecommunications Act*, of fostering increased reliance on market forces and ensuring that regulation, where required, is efficient and effective.

**III. Shaw's TPIA service disconnection charge**

***Positions of parties***

21. Cybersurf submitted that Shaw's \$328 disconnection charge for an ISP on a per-POI basis was not approved in Decision 2004-69 and accordingly should be denied. Cybersurf submitted that disconnection of an ISP at a POI should be billed in accordance with Shaw's diagnostic labour rates as approved by the Commission.
22. Shaw submitted that its ISP TPIA service disconnection charge was proposed in Shaw Tariff Notice 4, dated 13 July 2001,<sup>3</sup> which the Commission approved with the revisions set out in

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<sup>3</sup> Subsequently amended by Shaw with the filing of Tariff Notice 4A on 12 October 2001.

Decision 2004-69. Shaw further submitted that its updated tariff pages reflected the inclusion of the ISP TPIA service disconnection charge as approved in Decision 2004-69.

***Commission's analysis and determinations***

23. The Commission notes that Shaw's service charge for disconnection at the POI was not addressed or approved in Decision 2004-69. The Commission considers it appropriate that the Cable Companies be compensated for disconnection of an ISP at a POI. The Commission further considers that the disconnection of an ISP at a POI should be billed in accordance with Commission-approved diagnostic labour rates. Accordingly, the Commission directs Shaw to remove the \$328 disconnection charge from its tariff, and to bill for disconnection at the POI in accordance with Shaw's Commission-approved diagnostic labour rates.

**IV. Submissions related to modifications to service agreements**

24. In Decision 2004-69, the Commission directed the Cable Companies to revise their service agreements to provide only one design and costing report per ISP connection request. This report was to be provided within 20 business days of an initial ISP request and within 15 business days of a subsequent request at a POI. The connection was to be completed within three months of acceptance of the report for an initial ISP request and within one month for a subsequent request.
25. In Decision 2004-69, the Commission directed the Cable Companies to file revised TPIA service agreements modified to implement the above-noted Commission determinations. The Commission has reviewed the Cable Companies' service agreements and considers that each cable company's agreement includes the above determinations of Decision 2004-69.
26. Based on the comments received during this follow-up proceeding regarding modifications to the service agreements, the Commission considers that the following two issues need to be addressed in this Order:
  - a) a clarification of deposit provisions, and
  - b) the charges for additional or unusual work.

***a) Clarification of deposit provisions***

***Positions of parties***

27. Cybersurf submitted that Rogers and Shaw should modify the language in Articles 8.0 and 7.0, respectively, of their service agreements to ensure that the Commission-approved deposit of \$1,000 that an ISP must provide to a cable company could not be increased by the cable company. Cybersurf requested that Rogers and Shaw amend sections 8.1 and 7.1 of their respective service agreements by adding the words "in the same amount" after the words "or an irrevocable letter of credit", and modify the last sentence of sections 8.3 and 7.3 of their respective agreements by adding the words "not exceeding \$1,000" after the words "to an amount acceptable to Rogers" in the Rogers TPIA agreement and after the words "to an

amount acceptable to the Company" in the Shaw TPIA agreement.

28. Rogers and Shaw indicated that they had no concerns regarding Cybersurf's proposed clarifications.

*Commission's analysis and determinations*

29. The Commission directs Rogers to update sections 8.1 and 8.3 of its service agreement, and Shaw to update sections 7.1 and 7.3 of its service agreement to reflect the requested clarifications set out above related to the allowable deposit.

***b) Charges for additional or unusual work***

*Positions of parties*

30. Cybersurf submitted that Schedule B of Shaw's service agreement allowed Shaw to charge additional amounts for "additional or unusual work incurred by Shaw in order to terminate, install, or in any other manner connect the ISP's transmission facilities and any related equipment" and not commence work until the ISP agreed to compensate Shaw for the costs. Cybersurf further submitted that such a provision gave Shaw the discretion to unilaterally modify the rates that it would be allowed to charge under its TPIA tariff in certain circumstances. Cybersurf requested that Shaw's Schedule B be eliminated.
31. Shaw submitted that the ability of a service provider to recover the cost of special equipment or extraordinary expense was an accepted practice and had been a standard provision in incumbent local exchange carrier (ILEC) retail and competitor service tariffs. Shaw provided examples related to this type of cost recovery in approved tariffs for ILECs and cable companies. Shaw further submitted that its Schedule B specified that Shaw would estimate and identify the costs up front and the ISP would have the choice of whether to proceed or not prior to incurring the costs.

*Commission's analysis and determinations*

32. The Commission considers that, consistent with the current ILEC practice, cable companies should be able to recover the costs for additional or unusual work associated with the connection of an ISP's transmission facilities and any related equipment. Accordingly, the Commission allows Shaw to retain its Schedule B as part of its service agreement.

**Conclusions**

33. In this Order, the Commission
  - **denies** Cogeco TN 15, Rogers TN 15, Shaw TN 7, and Vidéotron TN 10,
  - authorizes the Cable Companies to require any ISP that is requesting interconnection at a POI to use a media converter or line extension equipment in order to meet the reasonable technical requirements of the

Cable Companies,

- directs the Cable Companies to allow ISPs to provide their own media converters or line extension equipment subject to the selected equipment meeting the reasonable technical requirements of the Cable Companies,
- directs Shaw to remove its TPIA service disconnection charge from its tariff and bill for disconnection at a POI in accordance with Shaw's Commission-approved diagnostic labour rates, and
- directs Rogers and Shaw to modify their service agreements to reflect clarifications related to the Commission-approved deposits for ISPs requesting TPIA service interconnection.

34. The Commission makes the above determinations effective the date of this Order and directs the Cable Companies to issue revised tariffs and service agreements that reflect the above determinations within 30 days of the date of this Order, providing copies to the Commission.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*