



Telecom Notice of Consultation CRTC 2009-261-7

Additional references: 2009-261, 2009-261-1, 2009-261-2, 2009-261-3, 2009-261-4, 2009-261-5, and 2009-261-6

Ottawa, 23 December 2009

Notice of hearing

31 May 2010

Gatineau, Quebec

Expansion of proceeding initiated by Telecom Notice of Consultation 2009-261

File numbers: 8663-C12-200907321, 8638-C12-200905010, and 8661-C122-200904286

The Commission expands the scope of the proceeding initiated by Telecom Notice of Consultation 2009-261 to include consideration of matters arising from Order in Council P.C. 2009-2007.

Introduction

1. Telecom Decision 2008-117 requires incumbent local exchange carriers (ILECs) to provide their wholesale aggregated asymmetric digital subscriber line (ADSL) access services to competitors on request at speeds that match the speeds at which ILECs provide retail Internet services (speed-matching requirement). Telecom Order 2009-111 clarified that the speed-matching requirement is not limited to end-to-end copper access facilities.
2. On 11 March 2009, Bell Aliant Regional Communications, Limited Partnership and Bell Canada, and TELUS Communications Company submitted petitions to the Governor in Council requesting that the Governor in Council vary Telecom Decision 2008-117 and rescind Telecom Order 2009-111 (the decisions) with the effect that the speed-matching requirement would not apply to higher speeds of their retail Internet services. In Order in Council P.C. 2009-2007, 10 December 2009 (the Order in Council),¹ the Governor in Council referred the decisions back to the Commission for reconsideration.
3. The Order in Council specifies that the Commission's reconsideration of the decisions is to be completed no later than 1 September 2010.
4. The Order in Council states that the Governor in Council considers that the continued development and availability of broadband Internet infrastructure and services is important for Canadians and the Canadian economy. It notes that it is critical that the regulatory regime provide a cohesive, forward-looking framework that provides the proper incentives for continued investment in broadband infrastructure, encourages competition and innovation, and leads to consumer choice.

¹ The Order in Council is attached as an Appendix.

5. Further, the Order in Council refers to the proceeding initiated by Telecom Notice of Consultation 2009-261, in which the Commission is examining the appropriateness of mandating the provision by major ILECs and incumbent cable carriers of certain wholesale high-speed access services for competitor use to provide retail Internet services (the high-speed access proceeding).
6. In referring the decisions back to the Commission for reconsideration, the Governor in Council stated that she considers it material to this reconsideration for the Commission to consider whether
 - (a) the speed matching requirements unduly diminish the incentives to invest in new network infrastructure in general and, in particular, in markets of different sizes;
 - (b) in the absence of the speed matching requirements there would be sufficient competition to protect the interests of users;
 - (c) the respective wholesale obligations imposed on incumbent telephone and cable companies are equitable or represent a competitive disadvantage; and
 - (d) the impact of these wholesale requirements unduly impairs the ability of incumbent telephone companies to offer new converged services, such as Internet Protocol television (IPTV).
7. The Commission notes that the decisions relate to the speed-matching requirement as it applies to the ILECs' aggregated ADSL access services. Major incumbent cable carriers are also required to provide their wholesale third-party Internet access (TPIA) services at speeds that match the speeds of their retail Internet services.² The term "speed-matching requirement" as used below therefore refers to this requirement as it applies to both ILECs and cable carriers.

Expanded proceeding

8. In Telecom Decision 2008-17, the Commission adopted a definition of the term "essential service" and a regulatory framework for wholesale services (essential service framework). The high-speed access proceeding was applying this framework to the issue of whether to mandate the provision of high-speed access services by ILECs and incumbent cable carriers to their competitors.
9. The Commission notes that the matters the Governor in Council considers relevant to reconsideration of the decisions are generally under examination in the high-speed access proceeding in the context of whether to mandate the provision of high-speed access services.
10. Given this, the Commission considers it appropriate to expand the scope of the high-speed access proceeding to consider the issues in a broader and more cohesive manner.

² See Telecom Decision 2006-77. Competitors also use TPIA service to provide retail Internet services.

Call for comments

11. The Commission therefore invites parties to provide their views, with reasons, on the following:³
 - A. the application of the existing essential service framework on a forward-looking basis such that it provides appropriate incentives for continued investment in broadband infrastructure, encourages competition and innovation, and leads to consumer choice; and
 - B. in the context of the discussion provided in response to A, above,
 - a. whether the speed-matching requirement, mandating the provision of the high-speed access services under consideration, or mandating access to any new types of Internet access infrastructure does, or would, unduly diminish incentives to invest in new network infrastructure in general and, in particular, in markets of different sizes;
 - b. whether, in the absence of the speed-matching requirement and the mandated provision of the high-speed access services under consideration, there would be competition sufficient to protect the interests of users;
 - c. whether the respective wholesale obligations imposed on ILECs and on incumbent cable carriers are equitable or represent a competitive disadvantage; and
 - d. whether the impact of these wholesale requirements unduly impairs the ability of incumbent telephone companies to offer new converged services, such as IPTV.

Procedure

12. Parties who have not previously registered in this proceeding (and who wish to receive copies of all submissions) must notify the Commission of their intention to do so by filling out the online form; or by writing to the Secretary General, CRTC, Ottawa, Ontario, K1A 0N2; or by faxing to: 819-994-0218 by **15 January 2010** (the registration date). Parties are to provide their email addresses, where available. If parties do not have access to the Internet, they are to indicate when they notify the Commission whether they wish to receive disk versions of hard-copy filings.

³ Consideration of the Commission's classification of the ILECs' wholesale Ethernet access and transport services and aggregated ADSL access services is not within the scope of this proceeding. In Order in Council P.C. 2009-2006, dated 10 December 2009, the Governor in Council denied MTS Allstream Inc.'s (MTS Allstream) petition to vary the Commission's determinations in Telecom Decision 2008-118 and Telecom Regulatory Policy 2009-34. In Telecom Decision 2008-118, the Commission had denied MTS Allstream's request to review and vary its determinations in Telecom Decision 2008-17 regarding the classification of the ILECs' wholesale Ethernet access and transport services. In Telecom Regulatory Policy 2009-34, the Commission had, among other things, denied MTS Allstream's requests to review and vary its determinations in Telecom Decision 2008-17 with respect to the classification of the ILECs' wholesale aggregated ADSL access services.

13. As soon as possible after the registration date, the Commission will post on its website a complete list of interested parties, their mailing addresses, and, if available, their email addresses, identifying those parties who wish to receive disk versions.
14. Any party who wishes merely to file written comments in this proceeding, without receiving copies of the various submissions, may do so by writing to the Commission by **21 June 2010** at the address or fax number noted above, or by filling out the online form.
15. All parties may file initial submissions with the Commission on the additional matters on which comments are sought in this notice of consultation, serving copies on all other parties, by **8 February 2010**. Such submissions are to provide detailed rationale, together with any supporting evidence.
16. The Commission and the parties may address interrogatories to any party who has filed initial submissions pursuant to paragraph 15. Any such interrogatories must be filed with the Commission and served on the relevant party or parties by **1 March 2010**.
17. Responses to interrogatories are to be filed with the Commission and served on all parties by **22 March 2010**.
18. Requests by parties for further responses to their interrogatories, specifying in each case why a further response is both relevant and necessary, and requests for public disclosure of information for which confidentiality has been claimed, setting out in each case the reasons for disclosure, must be filed with the Commission and served on the relevant party or parties by **1 April 2010**.
19. Written responses to requests for further responses to interrogatories and for public disclosure must be filed with the Commission and served on the party or parties making the request by **9 April 2010**.
20. Determinations will be issued regarding requests for further information and public disclosure as soon as possible. Any information to be provided pursuant to such determinations must be filed with the Commission and served on all interested parties by **26 April 2010**.
21. The Commission will hold an oral public hearing, beginning on **31 May 2010** at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec. The hearing is expected to last no more than five days.
22. Parties wishing to appear at the oral hearing must file notice of their intention to participate no later than **9 April 2010**. An organization and conduct letter, providing directions on procedure with respect to the oral hearing, including the scope of the issues to be examined during the oral hearing, will be issued prior to the commencement of the oral hearing.
23. All parties may file final submissions with the Commission on any matter within the scope of this proceeding, serving copies on all other parties, by **21 June 2010**.

24. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding.
25. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
26. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
27. Electronic submissions should be in HTML format. As an alternative, those making submissions may use Microsoft Word for text and Microsoft Excel for spreadsheets.
28. Each paragraph of all submissions should be numbered. In addition, the line ***End of document*** should be entered following the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
29. The Commission encourages parties to monitor the record of this proceeding and/or the Commission's website for additional information that they may find useful when preparing their submissions.

Important notice

30. Note that all information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
31. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
32. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
33. Please note that the information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not link directly to the information that was provided as part of this public process.

Location of CRTC offices

34. Submissions may be examined or will be made available promptly upon request at Commission offices during normal business hours.

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Central Building

Les Terrasses de la Chaudière

1 Promenade du Portage, Room 206

Gatineau, Quebec J8X 4B1

Tel.: 819-997-2429

Fax: 819-994-0218

Regional Offices

Metropolitan Place

99 Wyse Road, Suite 1410

Dartmouth, Nova Scotia B3A 4S5

Tel.: 902-426-7997

Fax: 902-426-2721

205 Viger Avenue West, Suite 504

Montréal, Quebec H2Z 1G2

Tel.: 514-283-6607

55 St. Clair Avenue East, Suite 624

Toronto, Ontario M4T 1M2

Tel.: 416-952-9096

Kensington Building

275 Portage Avenue, Suite 1810

Winnipeg, Manitoba R3B 2B3

Tel.: 204-983-6306

TDD: 204-983-8274

Fax: 204-983-6317

2220 12th Avenue, Suite 620

Regina, Saskatchewan S4P 0M8

Tel.: 306-780-3422

10405 Jasper Avenue, Suite 520

Edmonton, Alberta T5J 3N4

Tel.: 780-495-3224

580 Hornby Street, Suite 530
Vancouver, British Columbia V6C 3B6
Tel.: 604-666-2111
TDD: 604-666-0778
Fax: 604-666-8322

Secretary General

Related documents

- *Requests to review and vary directives in Telecom Decision 2008-17 related to the provision of central-office-based wholesale ADSL access service and aggregated ADSL access service*, Telecom Regulatory Policy CRTC 2009-34, 26 January 2009
- *Proceeding to consider the appropriateness of mandating certain wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2009-261, 8 May 2009, as amended by Telecom Notices of Consultation 2009-261-1, 4 August 2009; 2009-261-2, 11 August 2009; 2009-261-3, 12 August 2009; 2009-261-4, 2 September 2009; 2009-261-5, 2 October 2009; and 2009-261-6, 27 October 2009
- *Cybersurf's application related to the implementation of Telecom Decision 2008-117 regarding the matching speed requirement*, Telecom Order CRTC 2009-111, 3 March 2009
- *MTS Allstream Inc. – Application to review and vary certain determinations in Telecom Decision 2008-17 regarding the classification of wholesale Ethernet services*, Telecom Decision CRTC 2008-118, 11 December 2008
- *Cybersurf Corp.'s application related to matching service speed requirements for wholesale Internet services*, Telecom Decision CRTC 2008-117, 11 December 2008
- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008
- *Cogeco, Rogers, Shaw, and Videotron – Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006

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>

Order in Council 2009-2007, 10 December 2009

Whereas, on December 11, 2008, the Canadian Radio-television and Telecommunications Commission (“the Commission”) rendered Telecom Decision CRTC 2008-117, *Cybersurf Corp.'s application related to matching service speed requirements for wholesale Internet services*;

Whereas, in Telecom Decision CRTC 2008-117, the Commission directed the incumbent local exchange carriers (“the incumbents”) to provide wholesale aggregated asymmetric digital subscriber line (ADSL) service to competitors at speeds that match those provided to the incumbents' retail Internet service customers;

Whereas, on March 3, 2009, the Commission rendered Telecom Order CRTC 2009-111, *Cybersurf's application related to the implementation of Telecom Decision 2008-117 regarding the matching speed requirement*;

Whereas, in Telecom Order CRTC 2009-111, the Commission directed the incumbents to comply with the requirements of Telecom Decision 2008-117, having regard to the clarification set out in that order;

Whereas subsection 12(1) of the *Telecommunications Act* (“the Act”) provides that, within one year after a decision by the Commission, the Governor in Council may, on petition in writing presented to the Governor in Council within 90 days after the decision, or on the Governor in Council's own motion, by order, vary or rescind the decision or refer it back to the Commission for reconsideration of all or a portion of it;

Whereas, on March 11, 2009, Bell Aliant and Bell Canada, and TELUS, respectively, presented to the Governor in Council petitions in writing requesting that the Governor in Council vary Telecom Decision CRTC 2008-117 and rescind Telecom Order CRTC 2009-111 (“the petitions”) to, in effect, eliminate the application of the wholesale matching speed requirement to new, higher speed Internet services made available to the incumbents' retail Internet customers;

Whereas, in accordance with subsection 12(4) of the Act, notice of receipt of the petitions was published in the *Canada Gazette*, Part I, by the Minister of Industry on April 4, 2009, indicating the web address from which copies of the petitions and any submissions received in response could be obtained;

Whereas, pursuant to section 13 of the Act, the Minister of Industry has provided an opportunity for provincial consultation;

Whereas the Governor in Council has considered the petitions together with all information and advice received with respect to them;

Whereas the Governor in Council considers that the continued development and availability of broadband internet infrastructure and services is important for Canadians and the Canadian economy;

Whereas the Governor in Council notes that it is critical that the regulatory regime provide a cohesive, forward looking framework that provides the proper incentives for continued investment in broadband infrastructure, encourages competition and innovation and leads to consumer choice;

Whereas the Governor in Council notes that a number of issues were identified in the consultations required under the Act that were not addressed in Telecom Decision CRTC 2008-117 or Telecom Order CRTC 2009-111 or that were not examined in detail in the proceedings leading to those decisions;

Whereas, on May 8, 2009, the Commission initiated Telecom Notice of Consultation CRTC 2009-261, *Proceeding to consider the appropriateness of mandating certain wholesale high-speed access services*;

Whereas, under Telecom Notice of Consultation CRTC 2009-261, the Commission is conducting an extensive proceeding to examine the appropriateness of mandating different wholesale services for competitors, involving the filing and testing of evidence, the collection of information and data, and the presentation of oral and written arguments;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to subsections 12(1) and 12(5) of the *Telecommunications Act*, hereby refers Telecom Decision CRTC 2008-117 and Telecom Order CRTC 2009-111 back to the Commission for reconsideration, to be completed no later than September 1, 2010, and considers that it is material to the reconsideration that the Commission consider whether:

- (a) the speed matching requirements unduly diminish the incentives to invest in new network infrastructure in general and, in particular, in markets of different sizes;
- (b) in the absence of the speed matching requirements there would be sufficient competition to protect the interests of users;
- (c) the respective wholesale obligations imposed on incumbent telephone and cable companies are equitable or represent a competitive disadvantage; and
- (d) the impact of these wholesale requirements unduly impairs the ability of incumbent telephone companies to offer new converged services, such as Internet Protocol television (IPTV).