



## Telecom Decision CRTC 2011-482

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Ottawa, 10 August 2011

### **Canadian Network Operators Consortium Inc. – Application for clarification and expedited relief concerning the manner in which cable companies intend to implement directives in Telecom Order 2011-377**

File numbers: 8661-C12-201102350 and 8638-C12-201016882

#### **Background**

1. In Telecom Order 2011-377, the Commission directed the cable companies to issue, by 23 June 2011, tariff pages with interim rates for wholesale high-speed access services whose provision the Commission had mandated in Telecom Regulatory Policy 2010-632. Final rates for these services will be set at the conclusion of the proceeding initiated by Telecom Notice of Consultation 2011-77.
2. The Commission received an application by the Canadian Network Operators Consortium Inc. (CNOc), dated 4 July 2011, requesting that the Commission issue directions to the cable companies regarding the tariff pages they had issued pursuant to Telecom Order 2011-377.
3. In its application, CNOc expressed concerns about how the major cable companies had interpreted certain matters. CNOc requested that the Commission address these matters on an expedited basis, given the short time frame available until the new interim rates were scheduled to come into effect.<sup>1</sup>
4. The Commission received comments on CNOc's application from Quebecor Media Inc., on behalf of its affiliate Videotron G.P. (Videotron); Rogers Communications Partnership (RCP); Shaw Cablesystems G.P. (Shaw); and TELUS Communications Company (TCC). The public record of this proceeding, which closed on 15 July 2011, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file numbers provided above.
5. The Commission has identified the following issues to be addressed in this decision:

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<sup>1</sup> Pursuant to Telecom Order 2011-377, issued on 15 June 2011, the interim rates were to be effective within 30 days of the date of the order or, if a company had no wholesale customers for its existing speeds at that time, within 90 days of the company receiving a request for service.

- I. Should Shaw continue to offer third-party Internet access (TPIA) services at disaggregated points of interconnection (POIs)<sup>2</sup> at existing rates?
  - II. Where and in what time frame should certain services be made available to competitors?
  - III. Should the cable companies be required to provide new disaggregated POIs?
  - IV. Should certain TPIA service intervals be modified?
- I. Should Shaw continue to offer TPIA services at disaggregated POIs at existing rates?**
6. In Telecom Regulatory Policy 2010-632, the Commission directed the cable companies to modify their TPIA services to provide TPIA customers with access through as few POIs as possible (aggregated POIs). This change represented improved access as compared to the existing TPIA service, which in some cases required TPIA customers to interconnect at many POIs (disaggregated POIs).
  7. Shaw submitted that it had completed POI aggregation in April 2011 and that, given that it now has only aggregated POIs, it should be able to charge the interim rates set out in its modified tariff pages. Shaw argued that if it were to maintain disaggregated POIs, it would be penalized for implementing the directives set out in Telecom Regulatory Policy 2010-632.
  8. CNOC submitted that Shaw's TPIA customers are being served through the same POI arrangements that Shaw has historically provided, with a modest increase in serving areas. CNOC also submitted that Shaw's new POI arrangements do not correspond to the POI aggregation contemplated in Telecom Regulatory Policy 2010-632. CNOC further submitted that the significant rate increases that Shaw has proposed would disrupt the retail business of TPIA customers and that Shaw should be required to provide disaggregated POIs at existing rates.
  9. TCC supported CNOC's position and submitted that Shaw should not charge the interim rates until the Commission has determined whether Shaw has implemented the aggregated POIs.

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

10. The Commission notes that, in paragraph 4 of Telecom Order 2011-377, it considered that it was important to minimize any disruption in the competitive market during the interim period and determined that all rates for the cable

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<sup>2</sup> Disaggregated POIs are those that have been specified for TPIA services in tariffs approved prior to the issuance of Telecom Regulatory Policy 2010-632.

companies' disaggregated POIs were to remain as currently approved. In addition, the Commission directed the cable companies to maintain their disaggregated POIs during the interim period.

11. Accordingly, the Commission directs Shaw to continue to provide TPIA services at disaggregated POIs approved prior to the issuance of Telecom Regulatory Policy 2010-632, at existing approved rates.

## **II. Where and in what time frame should certain services be made available to competitors?**

12. In Telecom Decision 2006-77, the Commission determined that if a cable company introduced a new retail Internet service speed, it was to file, at the same time, proposed revisions to its TPIA tariff to include the new speed offering (matching speeds).
13. CNOC submitted that RCP and Videotron are in breach of Telecom Decision 2006-77 because they did not implement matching speeds for TPIA service when they introduced certain new retail service speeds.<sup>3</sup> CNOC argued that TPIA services at these speeds should be made available on disaggregated, and not solely on aggregated, POIs. CNOC further argued that TPIA services at these speeds should be made available on an interim basis at a discount of 35 percent compared to stand-alone retail rates, because the cable companies would require additional time to justify tariff rates for these services based on cost studies.
14. CNOC also submitted that the services in question should be implemented within 30 days of the date of Telecom Order 2011-377.<sup>4</sup> It submitted that RCP's and Videotron's interpretations that the order had allowed them 90 days to implement the services was incorrect, adding that the 90 days applies only to incumbents that do not have any wholesale demand.
15. TCC supported CNOC's position.
16. RCP argued that the services in question should not be made available on existing disaggregated POIs because these POI arrangements will persist only until aggregated POI rates are finalized. It further argued that it is not reasonable to expect the cable companies to incur redundant costs and to increase the magnitude of the transition from disaggregated to aggregated POIs. RCP stated that it would be operationally and technically difficult to route traffic for the three services in question to the aggregated POI and to offer these services through disaggregated POI service.

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<sup>3</sup> The services in question are RCP's (a) Ultra-Lite service with download speeds up to 500 kilobits per second (kbps), (b) Extreme Plus service with download speeds up to 25 megabits per second (Mbps), and (c) Ultimate TPIA service with download speeds up to 50 Mbps, as well as Videotron's Ultimate Speed 120 service with download speeds up to 120 Mbps.

<sup>4</sup> Telecom Order 2011-377 was issued on 15 June 2011; therefore, according to CNOC, the services in question should have been implemented by 15 July 2011.

17. RCP and Videotron submitted that paragraph 35 of Telecom Order 2011-377 states that where a company does not have wholesale customers for a particular speed tier, the company is to take steps to provide service within 90 days of receiving a request for the service. They further submitted that 90 days would be needed because of implementation obstacles, including changes to provisioning and billing systems.

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

18. The Commission notes that the requirement to file proposed TPIA tariff revisions for matching speeds stems from Telecom Decision 2006-77, and that the tariff revisions were to be based on the disaggregated POIs established by the relevant cable company. In this respect, the Commission notes that the requirement to implement aggregated POIs was only introduced in Telecom Regulatory Policy 2010-632.
19. The Commission also notes that RCP introduced the retail versions of the services in question subsequent to Telecom Decision 2006-77 but before the issuance of Telecom Regulatory Policy 2010-632. Accordingly, the Commission considers that RCP should have filed tariff revisions based on disaggregated POIs when it introduced the retail services. Its failure to do so means that RCP is in breach of the directives set out in Telecom Decision 2006-77.
20. In contrast, Videotron introduced its retail service after the release of Telecom Regulatory Policy 2010-632. At that time, the Commission had directed the cable companies to introduce aggregated POIs and had not specified any transition requirements. Accordingly, the Commission concludes that Videotron is not required to implement its new retail speed on its disaggregated POIs.
21. With respect to timing, the Commission notes that it considered RCP's arguments with respect to implementation obstacles in Telecom Order 2011-377 and directed the cable companies to implement POI aggregation services, with interim rates, within 30 days of the date of that order. The Commission considers that RCP and Videotron interpreted the phrase "If a company currently has no wholesale customers for its existing speeds" in paragraph 35 of that order to mean that they had 90 days to provide the new services at interim rates. The Commission considers that this interpretation is incorrect because both RCP and Videotron currently have wholesale customers for their existing speeds. Further, such an interpretation would render the 30-day time period to provide new matching-speed services meaningless.
22. In light of the above, the Commission directs RCP and Videotron to provide the services in question immediately. It directs RCP to provide these services on both disaggregated and aggregated POIs, and directs Videotron to provide them on aggregated POIs.
23. The Commission notes that requiring RCP to file cost studies for the services to be provided on disaggregated POIs would further delay competitor access to these services. Accordingly, the Commission considers that the appropriate interim rates

for RCP's disputed services are the stand-alone retail rates, excluding monthly modem charges, minus 35 percent.

### **III. Should the cable companies be required to provide new disaggregated POIs?**

24. CNOC stated that RCP is making changes to its network that will result in some TPIA end-customers being changed from their current disaggregated POI to an aggregated POI. CNOC argued that RCP's approach will cause major disruptions to these customers' existing business because they will be forced into the new rate and interconnection regime. CNOC submitted that RCP should be directed to provide a new disaggregated POI to serve the affected TPIA end-customers.
25. In addition, CNOC requested that the Commission not allow any cable company to refuse deployment of a disaggregated POI under existing rate structures or to cause any other disruption to a TPIA customer's existing customer base when the cable company is initiating the types of network reconfigurations mentioned above. Further, CNOC requested that the Commission direct the cable companies to accommodate POI capacity augmentation requests<sup>5</sup> and to prohibit the cable companies from interfering with any other expansion by TPIA customers under the current regime, pending a final determination in the Telecom Notice of Consultation 2011-77 proceeding.
26. RCP replied that it is constructing a new head-end location, with a planned migration of customers to begin in November 2011. It stated that because TPIA service will be provided shortly by an aggregated POI, it is not sensible to implement a disaggregated POI at the new head-end, which is to be turned up within just a few months. RCP also stated that, contrary to CNOC's submission, there will be no interference with or disruption to CNOC's business because existing customers' traffic will go through the aggregated POI and be subject to Commission-approved interim rates or final rates, as the case may be when November arrives.
27. RCP submitted that it has accommodated capacity augmentation requests at disaggregated POIs since the release of Telecom Regulatory Policy 2010-632, and will continue to do so until the Commission approves final rates.

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

28. The Commission notes that cable companies undertake network reconfigurations to increase network efficiency and improve service. In the Commission's view, it is reasonable to allow cable companies to make such network changes, even if the changes affect TPIA customers in some cases.

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<sup>5</sup> An augmentation request, made by a TPIA customer that is already connected at a POI, is a request for revised or additional connection facilities.

29. The Commission notes that in this circumstance, there is no indication that end-customers' services will be affected by RCP's changes to its network. The Commission considers that, in the longer term, aggregated POIs will help TPIA customers and that the major impact of rerouting existing end-customers' traffic through aggregated POIs will be on the rates charged to TPIA customers. Given that RCP's planned migration will not begin until November 2011, the Commission considers it likely that final rates will be in place by that time and that TPIA customers will have adequate notice of the pending rate changes.
30. In light of the above, the Commission **denies** CNOC's request to require the cable companies to establish new disaggregated POIs.

#### **IV. Should certain TPIA service intervals be modified?**

31. In Telecom Decision 2004-69, the Commission directed the cable companies to provide a design and costing report, referred to as a Subsequent Report, to a TPIA customer within 15 business days of that customer making an augmentation request for a POI where it was already connected.
32. CNOC stated that RCP has recently adopted the practice of providing TPIA customers with Subsequent Reports in response to POI augmentation requests and requiring those customers to provide their acceptance of the Subsequent Reports in writing, along with the payment of fees associated with POI augmentation requests. CNOC submitted that RCP has not followed this practice in the past. CNOC acknowledged that these requirements are set out in RCP's TPIA tariff and submitted that it has no objection to paying the fees. CNOC argued, however, that the reports are not in fact required, as demonstrated by the fact that RCP has not relied on them in the past. CNOC added that the Subsequent Report process introduces an unnecessary delay of 25 business days into the augmentation process.
33. CNOC asked that the Commission direct RCP and the other major cable companies to accept written requests for POI augmentation upon payment of the applicable Subsequent Report fee and to process such requests within 14 days of receiving them, without requiring a Subsequent Report to be filed.
34. RCP stated that its recent failure to prepare Subsequent Reports was the inadvertent consequence of changes in the personnel who manage its TPIA service. RCP further stated that it has prepared these reports in the past and that the Subsequent Report process is useful and necessary to ensure common understanding between parties in regard to augmentation requests. RCP added that, with proper planning, a TPIA customer can order augmentations in a time frame that will not slow its growth.
35. Shaw stated that it has always provided Subsequent Reports to its TPIA customers and that the report is an important document that captures the TPIA customer's acceptance of the terms of the augmentation. Shaw argued that CNOC provided no basis for its request to impose a new 14-day time frame to complete any augmentation work.

## Commission's analysis and determinations

36. The Commission notes that the Subsequent Report provides specific information about the augmentation request, including the cost to complete the work. The Commission therefore considers that the report does have merit and helps ensure that a request for augmentation is agreed to by both parties, thereby preventing future disputes. Thus, the Commission does not consider it appropriate to eliminate the requirement for the report, as requested by CNOC.
37. The Commission also notes that the 25 business days in question for the Subsequent Report process consist of two separate time periods: 15 business days for the cable company to prepare the report and 10 business days for the TPIA customer to accept the report. The Commission considers that the parties involved have become more experienced with processing augmentation requests since these time frames were established. The Commission is therefore not convinced that the current time frames are still required, and considers that conditions warrant a faster turnaround in the preparation of these reports. The Commission considers that a change to the cumulative time frame for preparing and accepting Subsequent Reports from 25 business days to 14 business days will not cause an undue burden for either the cable companies or TPIA customers.
38. In light of the above, the Commission directs the cable companies, upon receiving a request for POI augmentation, to prepare a Subsequent Report within seven business days. TPIA customers will have seven business days to deliver their written acceptance of the report.
39. Regarding CNOC's request that RCP be required to process augmentation requests within 14 days, the Commission is not persuaded that the existing requirement, as set out in Telecom Decision 2004-69, should be changed. This requirement provides that augmentation requests be processed within one month, subject to equipment delivery delays. Accordingly, the Commission **denies** CNOC's request.

Secretary General

## Related documents

- *Interim rates for wholesale residential and business high-speed access services*, Telecom Order CRTC 2011-377, 15 June 2011
- *Review of billing practices for wholesale residential high-speed access services*, Telecom Notice of Consultation CRTC 2011-77, 8 February 2011, as amended by Telecom Notice of Consultation CRTC 2011-77-1, 17 March 2011, and Telecom Notice of Consultation CRTC 2011-77-2, 8 April 2011
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010

- *Cogeco, Rogers, Shaw, and Videotron – Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006
- *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 2005