



Telecom Decision CRTC 2015-40

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File number: 8660-C182-201313113

Canadian Network Operators Consortium Inc. – Application to improve the quality of wholesale high-speed access services provided by cable carriers to independent Internet service providers

*The Canadian Network Operators Consortium Inc. (CNOc) has requested relief with respect to the way in which Cogeco, RCP, Shaw, and Videotron (collectively, the Cable carriers) provide wholesale high-speed access (HSA) services. The Commission considers that the unjust discrimination provision of the Telecommunications Act is an unduly narrow lens through which to evaluate CNOc’s concerns. Further, CNOc lacked access to the evidence necessary to prove its allegations regarding the Cable carriers’ behaviour. In the circumstances, the Commission considers that allowing the industry to generate solutions is likely the most effective and efficient way to begin to resolve CNOc’s concerns. Therefore, the Commission closes the file associated with CNOc’s application and **directs** CNOc and the Cable carriers to address a number of issues through the CRTC Interconnection Steering Committee or bilateral discussions. The Commission further **directs** CNOc and the Cable carriers to submit a report, within **90 days** of the date of this decision, on the state of progress in resolving these issues. The Commission also determines that it will be necessary to collect additional information on certain items following the publication of this decision.*

Introduction

1. The Commission received an application from the Canadian Network Operators Consortium Inc. (CNOc), dated 27 September 2013, in which CNOc requested changes to the wholesale high-speed access (HSA) services provided by Cogeco Cable Inc. (Cogeco), Rogers Communications Partnership (RCP), Shaw Cablesystems G.P. (Shaw), and Videotron G.P. (Videotron) [collectively, the Cable carriers].¹
2. CNOc alleged that the Cable carriers provide wholesale HSA services to independent Internet service providers (ISPs) in an unduly discriminatory manner relative to the way the Cable carriers treat their own retail operations, contrary to subsection 27(2)

¹ The wholesale HSA services offered by the Cable carriers are commonly referred to as “third-party Internet access (TPIA) services.” The services allow independent Internet service providers to provide Internet access to their end-users through cable modems that are connected to the Cable carriers’ access and distribution networks and systems for the purposes of providing retail Internet and voice over Internet Protocol services.

of the *Telecommunications Act* (the Act).² CNOC proposed (i) that the Commission require that all cable carriers make specific changes to their respective wholesale HSA services, and (ii) a series of quality of service indicators and a rate rebate plan.

3. CNOC alleged that, contrary to subsection 27(2) of the Act, ISPs are subject to vastly inferior treatment during the sign-up process for the Cable carriers' wholesale HSA services and at all stages of the wholesale HSA service life cycle, including processes for ordering and provisioning, troubleshooting and repair, network maintenance and modifications, and billing and disconnection.
4. CNOC claimed that the Cable carriers (i) designed their wholesale HSA services and network elements so as to provide ISPs with an inferior level of service compared to what they deliver to their own retail customers, and (ii) do not respond to the service disruptions of CNOC members' wholesale HSA end-users with the same degree of vigilance and urgency that ensures efficient resolution of issues that affect their own retail services.
5. CNOC submitted that the poor quality of wholesale HSA services offered by the Cable carriers unfairly affects ISPs' reputations, and that the continuation of this level of service will irreparably diminish the viability of retail Internet access and other high-speed services offered by ISPs, leading to a lessening of competition.
6. The Commission received interventions regarding CNOC's application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); the Cable carriers; the Public Interest Advocacy Centre (PIAC); and Vaxination Informatique (Vaxination). The public record of this proceeding, which closed on 14 February 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Has CNOC demonstrated preferential treatment by the Cable carriers?

7. The Cable carriers submitted that CNOC had failed to provide any data that proves that the treatment of their own retail customers has been preferential. They also submitted that while the application cited very selective statistics with respect to wholesale HSA end-users' service issues, it lacked details indicating how such statistics compare to the Cable carriers' own retail operations.
8. The Cable carriers submitted that the allegations of discriminatory treatment are based on complaints that were drawn from a very narrow time frame of June to September 2013 and that relate largely to the installation and repair of the Cable carriers' wholesale HSA services. The Cable carriers argued that relying on a short time frame would be inconsistent with the Commission's practice and contrasts CNOC's position in the proceeding leading to Telecom Order 2013-363, wherein

² Subsection 27(2) of the Act states that no Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

CNOC argued that one year of data was too short a time frame to justify a tariff revision to deal with the Bell companies' wholesale HSA service installation problems.

9. Cogeco and Shaw submitted that their wholesale HSA service demand has grown significantly during the past 12 to 18 months, creating a temporary surge in demand for resources to process wholesale HSA service installation requests, in response to which they have made operational adjustments. Videotron submitted that the period covered by the CNOC application is its busiest period for wholesale HSA and retail service installations because it includes the traditional moving period for Quebec households.
10. RCP argued that wholesale HSA service end-user growth has substantially outpaced RCP's retail end-user growth, increasing 15-fold over a three-year period, and that it provisioned this rapid growth under challenging circumstances, including the migration from a disaggregated to an aggregated point of interconnection, as mandated by the Commission in Telecom Regulatory Policy 2011-703.
11. The Cable carriers argued that there is no evidence that points to a systemic problem or unjust discrimination contrary to subsection 27(2) of the Act. As such, they submitted that CNOC's application should be denied.
12. In reply, CNOC disagreed with the Cable carriers' submissions that each issue that it had raised failed to demonstrate an undue preference or unjust discrimination. CNOC argued that the Cable carriers' behaviour with respect to many of these issues, and on a cumulative basis, demonstrated that subsection 27(2) of the Act had been breached.
13. CNOC also replied that a period of rapid growth in the volume of the Cable carriers' wholesale HSA service end-users is not a legitimate justification for the systematic service deficiencies that are imposed upon a broad range of ISPs of various sizes experiencing various growth rates.
14. CNOC submitted that the period of June to September 2013, which represents a critical low point for wholesale HSA service standards provided by the Cable carriers, is the most appropriate foundation for the application, and is the period that warrants the most scrutiny from the Commission.

Commission's analysis and determinations

Unjust discrimination test

15. CNOC's fundamental allegation is that the Cable carriers have breached subsection 27(2) of the Act. The Commission's analysis of an allegation of unjust discrimination under subsection 27(2) of the Act is conducted in two phases:
 - a) The Commission first determines whether the conduct in question constitutes a preference or a disadvantage; and

- b) Where it so determines, it then decides whether the disadvantage is unreasonable or the preference is undue.
16. The burden is on the applicant to demonstrate that the conduct is discriminatory or preferential. Pursuant to subsection 27(4) of the Act, the respondent has the onus of establishing that the discrimination is not unjust or that any preference is not undue or unreasonable.
17. The Commission has carefully reviewed all of the allegations that CNOC presented in its application. Although CNOC described how telecommunications services are delivered to the Cable carriers' wholesale HSA service end-users in general, it did not provide any evidence that specifically contrasted how these services are delivered to the Cable carriers' own retail end-users. CNOC acknowledged that it does not have access to the Cable carriers' retail standards.
18. In any event, and in the particular circumstances of this case, the Commission considers that the unjust discrimination provision of the Act is an unduly narrow lens through which to evaluate CNOC's concerns, and that alternative methods warrant examination. Given this and in order to move ahead, the Commission closes the file associated with CNOC's application.

Can the delivery of the Cable carriers' wholesale HSA services be improved?

19. The Commission notes that based on the record of this proceeding, parties have acknowledged that the delivery of the Cable carriers' wholesale HSA services can be improved.
20. CNOC submitted that while the current state of the Cable carriers' wholesale HSA services inherently involves additional procedures, these procedures should be streamlined and optimized to a degree that results in service standards that are equivalent to those provided by the Cable carriers for their retail operations.
21. The Cable carriers noted that some of CNOC's proposed changes would affect provisioning procedures that were developed through a working group of the CRTC Interconnection Steering Committee (CISC). The Cable carriers therefore proposed that three of CNOC's suggested changes be referred to CISC. The Cable carriers also submitted that four of CNOC's proposed changes are driven by complaints related to a specific carrier, and proposed that those items be resolved through bilateral discussions.
22. CNOC requested that the Commission disregard the Cable carriers' recommendation that certain items be addressed through bilateral discussions, given that the majority of such efforts have failed in the past.

Commission's analysis and determinations

23. The Commission considers that the efficient delivery of wholesale HSA services is essential to a competitive Internet services market. The Commission notes that the Cable carriers are willing to resolve seven of CNOC's proposed changes, listed in the Appendix to this decision, through CISC and/or bilateral discussions. The Commission considers that allowing the industry to generate solutions is likely the most effective and efficient way to begin to resolve CNOC's concerns. Accordingly, the Commission **directs** that items 1-3 in the Appendix be addressed through CISC and items 4-7 be addressed through bilateral discussions. In order to address CNOC's concerns that bilateral discussions may not be effective, and to monitor the progress made by CISC, the Commission **directs** CNOC and the Cable carriers to submit a report, within **90 days** of the date of this decision, on the state of progress in resolving these seven items. At that time, the Commission will assess the state of progress and what measures, if any, should be examined.
24. In addition to items 1-7 listed in the Appendix, the Commission considers that some of the other items raised by CNOC have the potential to create barriers to effective competition in the Internet services market. However, at this time, there is insufficient information on the record of the proceeding to determine if a regulatory response is necessary for these items. Consequently, Commission staff will collect additional information to determine what, if any, action is required to address items 8-10 listed in the Appendix. The Commission has determined that no follow-up is necessary at this time with respect to CNOC's remaining proposals.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Proposed “no access” and “aborted installation” service charges for Gateway Access Service – Fibre to the Node*, Telecom Order CRTC 2013-363, 2 August 2013
- *Billing practices for wholesale residential high-speed access services*, Telecom Regulatory Policy CRTC 2011-703, 15 November 2011; as amended by Telecom Regulatory Policy CRTC 2011-703-1, 22 December 2011

Appendix

Items to be resolved through CISC or bilateral discussions

Item #	Description
1	Status of Installation orders and trouble tickets
2	Trouble escalation process
3	Advance notice of network changes
4	TPIA [third-party Internet access] service sign-up process
5	Mistaken disconnections due to inconsistent tagging of TPIA cable connections
6	Network safeguards (Bidirectional Forward Detection)
7	Internet Protocol address allocation and usage reports

Items for which additional information is required

Item #	Description
8	Installation and service appointments
9	Lack of access to troubleshooting tools
10	Lack of access to service availability information