



## Telecom Decision CRTC 2019-419

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Ottawa, 16 December 2019

*Public record: 8662-B2-201905316*

### **Bell Canada – Request for the Commission to review, vary, and rescind certain elements of Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219**

*With this decision, the Commission varies Telecom and Broadcasting Decision 2019-218 to rescind, except where otherwise stated, its directions to Bell Canada to (i) provide access to its in-building wire to all carrier Internet service providers (ISPs); (ii) file proposed amended tariff pages to include such access, as well as access by carrier ISPs and competitive local exchange carriers to Bell Canada-owned fibre in-building wire (in-building fibre); and (iii) apply its existing in-building wire tariff for copper to carrier ISPs, including Cloudwifi Inc., on an interim basis, as of the date of this decision. In addition, the Commission has issued, concurrently with this decision, Telecom Notice of Consultation 2019-420, in which it replaces the proceeding originally set out in Telecom Notice of Consultation 2019-219 with a revised proceeding to consider changes to the framework for access to in-building wire as well as appropriate rates, terms, and conditions for in-building fibre connections.*

### **Application**

1. The Commission received an application from Bell Canada, dated 9 July 2019, in which the company requested that the Commission review, vary, and rescind (i) certain findings and directions set out in Telecom and Broadcasting Decision 2019-218 (the Decision), in which the Commission addressed a dispute regarding access by Cloudwifi Inc. (Cloudwifi) to Bell Canada's fibre in-building wire (hereafter, in-building fibre) in two multi-dwelling units (MDUs); and (ii) the matters raised in Telecom Notice of Consultation 2019-219 (the Notice), in which the Commission initiated a show cause proceeding regarding access to in-building wire.
2. Specifically, Bell Canada requested that the Commission issue an order reviewing, varying, and rescinding
  - the following portions of the Decision: (i) the determination that connection to a local exchange carrier's (LEC) in-building fibre in an MDU is provided for under existing policies and regulations, and (ii) directions regarding access to in-building fibre and associated tariff changes that apply solely to Bell Canada, pending the outcome of a revised Notice; and
  - the Notice in its entirety; Bell Canada proposed that the Notice be amended to solicit comments and generate an evidentiary record on whether, and, if so,

how rules regarding access to in-building fibre and fibre broadcasting inside wire should be created for all LECs, carrier Internet service providers (ISPs), and potentially all telecommunications service providers (TSPs), broadcasting distribution undertakings (BDUs), and MDU in-building fibre owners for access to all in-building fibre.

3. Bell Canada also requested an interim stay of the determinations, directions, and consultation matters set out in the Decision and in the Notice pending the Commission's final disposition of its application.
4. The Commission received interventions regarding Bell Canada's application from the Canadian Network Operators Consortium Inc. (CNOC); Cloudwifi; Cogeco Communications inc. (Cogeco); the Independent Telecommunications Providers Association (ITPA); the Public Interest Advocacy Centre (PIAC); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Shaw Communications Inc. (Shaw); and TELUS Communications Inc. (TCI).

## **Background**

5. In the summer of 2018, Bell Canada and Cloudwifi – an ISP that serves Canadian residential and business customers – were involved in a dispute over Cloudwifi's connection to Bell Canada's in-building fibre in two MDUs, in Kitchener and Toronto, Ontario, without Bell Canada's knowledge. As a result of this dispute, Cloudwifi filed an application with the Commission, dated 27 August 2018, in which it requested orders (i) stating that Bell Canada could not interfere with a customer's use of the in-building wire in question, and (ii) allowing facilities-based ISPs to access the in-building wire owned by carriers and BDUs.
6. On 21 June 2019, the Commission issued the Decision, in which it, among other things,
  - determined that connection to a LEC's in-building fibre by another LEC in an MDU is provided for under existing Commission policies and regulations;
  - directed Bell Canada, as a condition of providing telecommunications services in all MDUs in which it offers service, to provide access to its in-building wire (including fibre) to all carrier ISPs, including Cloudwifi;
  - directed Bell Canada to apply its existing in-building wire tariff provisions (which were developed for copper in-building wire [hereafter, in-building copper]) to carrier ISPs, including Cloudwifi, on an interim basis, as of the date of the Decision; and
  - directed Bell Canada to file proposed amended tariff pages reflecting the determinations set out in the Decision within 30 days of its publication.

7. Also in the Decision, the Commission expressed the preliminary views that (i) the MDU access condition<sup>1</sup> and associated obligations should be extended to all carrier ISPs, and potentially to all TSPs, in the same way that Telecom Decision 2005-33 extended the MDU access condition and obligations to members of the Coalition of Hydro Telecom Service Providers (the Coalition); and (ii) all carrier ISPs, and potentially all TSPs, should have access to LECs' and other TSPs' in-building wire in MDUs on the same basis as registered competitive local exchange carriers (CLECs), and regardless of technology.
8. Concurrent with the Decision, the Commission issued the Notice, in which it initiated a proceeding that invited TSPs to show cause why
  - the MDU access condition and associated obligations should not be extended to all TSPs, in the same way that Telecom Decision 2005-33 extended the MDU access condition to members of the Coalition; and
  - all TSPs should not have access to all other TSPs' in-building wire on the same basis as registered CLECs, regardless of technology.
9. Bell Canada subsequently filed the application referred to in paragraph 1 above, requesting that the Commission review, vary, and rescind certain elements of the Decision and the Notice, and grant an interim stay of the determinations, directions, and consultation matters at issue.
10. The Commission set out an expedited process regarding the request for interim relief, and suspended the deadlines for Bell Canada to file its proposed amended tariff pages and for interested parties to file interventions with respect to the Notice.<sup>2</sup>

### **Request for interim relief**

11. The Commission will address Bell Canada's request for final relief in this decision. Accordingly, and given the fact that the deadlines for Bell Canada to file its proposed amended tariff pages and for parties to file interventions in the Notice proceeding were suspended, it is not necessary for the Commission to address Bell Canada's request for interim relief.

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<sup>1</sup> The MDU access condition, set out in Telecom Decision 2003-45 and based on the access condition established in Telecom Decision 97-8, requires that the provision of telecommunications service by a LEC in an MDU be subject to the condition that all LECs wishing to serve end-users in that MDU are able to access those end-users on a timely basis, by means of resale, leased facilities, or their own facilities, at their choice, under reasonable terms and conditions. This condition is imposed pursuant to section 24 of the *Telecommunications Act*, and is a legally binding condition of service.

<sup>2</sup> See Commission [letter](#) dated 17 July 2019.

## **Review and vary criteria**

12. In Telecom Information Bulletin [2011-214](#), the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that in order for the Commission to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.
13. Bell Canada submitted that the Commission had committed four categories of legal and factual errors in the Decision and in the Notice. Specifically, Bell Canada submitted that the Commission had erred by
- concluding that the existing in-building wire access framework (the existing framework) applies to in-building fibre;
  - failing to conduct a market analysis of the in-building fibre market;
  - failing to reach any conclusions regarding the appropriateness of its determination to allow carrier ISPs to access Bell Canada's in-building fibre, particularly in light of Cloudwifi's substandard equipment, interconnection standards, and workmanship; and
  - asymmetrically applying new in-building fibre access rules solely to Bell Canada.

## **Issues**

14. The Commission has identified the following issues to be addressed in this decision:
- Is there substantial doubt as to the correctness of the determination that the existing framework applies to fibre?
  - Is there substantial doubt as to the correctness of the directions to Bell Canada to (i) provide all carrier ISPs with access to its in-building wire, and (ii) file proposed amended tariff pages that include provisions for such access, as well as access to its in-building fibre by carrier ISPs and CLECs?

### **Is there substantial doubt as to the correctness of the determination that the existing framework applies to fibre?**

## **Positions of parties**

15. Bell Canada submitted that the Commission had made an error in fact and in law when it concluded that its existing framework applied to in-building fibre. In Bell

Canada's view, the Commission erred by treating its own policies and rules on in-building fibre as the same, even though policies are general, high-level principles that embody broad statements of approach and purpose, while rules govern specific fact situations.

16. Bell Canada submitted that the Commission had used the terms "policy," "rules," and "regulations" and had indicated that each of these terms applied to LECs' in-building fibre access. Bell Canada added that the Commission had failed to appreciate that, while it may have had a pre-existing technology-neutral policy promoting the sharing of in-building wire in MDUs, copper was the sole wiring technology ever referenced in the Commission's rules and regulations regarding the operationalization of in-building wire access.
17. RCCI submitted that MDU access rules and associated obligations governing the use of in-building wire were never intended to apply to in-building fibre and are not an adequate framework to govern third-party interconnections to fibre facilities. It added that if the Commission intended for the MDU access condition and in-building wire rules to apply to fibre, it would have required LECs to file tariffs that also addressed in-building fibre.
18. TCI submitted that the Commission had erroneously concluded that the existing framework already applied to fibre by referring to previous policy decisions, which do not explicitly include or exclude fibre. It added that if fibre was already covered by the existing framework, there would be no need to change the tariffs implementing the framework. In TCI's view, the Commission had confused broadly worded policy statements with the actual, specific orders used to implement its policies, which were restricted to a specific technology. In other words, access to fibre may have been contemplated within the existing framework, but the Commission had not mandated the terms and conditions of that access.
19. Shaw submitted that regardless of whether or not the existing framework applies to in-building fibre, it was clear that the Commission's intention was to increase consumers' choice of service providers, and the company supported that objective. However, Shaw added that it may not be appropriate to simply extend existing policies and rules to include in-building fibre without first considering the significant differences between in-building copper and in-building fibre, and the implications of applying a framework primarily applicable to in-building copper to in-building fibre.
20. PIAC submitted that the Commission had not erred in concluding that the existing framework applied to fibre because the Commission used a technology-neutral approach to interpreting and applying its rules and policies. CNOC submitted that the existing framework has always been technology neutral.
21. Videotron submitted that the distinction Bell Canada was trying to make between policies and rules was artificial and irrelevant, since a measure stemming from a policy is no less binding and should not be taken less seriously than a measure stemming from a rule.

22. Cloudwifi submitted that the existing framework had included fibre from the outset, as acknowledged by Bell Canada in past submissions to the CRTC Interconnection Steering Committee (CISC). Cloudwifi further submitted that the appropriate distinction is not between policies and rules, but rather between rules and connection standards. Cloudwifi and PIAC submitted that while the rules pertain to all in-building wire, there are specific connection standards that apply only to copper, since similar standards for fibre have yet to be developed.

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

23. In the Decision, the Commission indicated that, while there are no specific rules regarding connection to in-building fibre in an MDU, various rules and associated policies extend to such facilities. This determination was based on, among other things, the following:
- the access condition established in Telecom Decision [97-8](#) was not restricted to any given technology and was intended to foster consumer choice;
  - while the Commission concluded in Telecom Decision [99-10](#), which dealt with the location of the demarcation point for in-building wire in MDUs, that the record of the proceeding did not provide a sufficient basis for determining the demarcation point for coaxial, fibre, or fixed-wireless technologies, it reiterated that the policy of end-user choice applied to all LECs, regardless of the technology used;
  - as part of a work task resulting from Telecom Decision [99-10](#), the CISC Building Access and Inside Wiring Sub-Working Group, in which Bell Canada participated, discussed the issue of the demarcation point for access to in-building fibre, despite being unable to reach consensus; and
  - in Telecom Decision [2003-45](#), the MDU access condition was broadly worded and was not confined to any specific access technology.
24. The Commission has reviewed these decisions and remains of the view that the existing framework for MDU in-building wire access was intended to be technology neutral and supportive of end-user choice. As discussed in the Decision, the Commission's policy determinations apply to the service in general, not to a specific means of delivering that service – that is, the existing framework applies to connections to in-building wire for the provision of telecommunications services to customers in MDUs, regardless of technology.
25. The Commission acknowledges that standards have been developed only for in-building copper connections, not for fibre connections. However, this does not mean that in-building fibre is not regulated, only that it has not yet been operationalized through tariffs or guidelines, likely because there was no significant need or demand, nor any direction, to do so in the past. At the time the existing framework was developed, the prevailing technology for in-building wire was copper,

and the Commission directed all LECs that have responsibility and control of in-building copper to file proposed tariff pages for the Commission's approval. Had fibre, or any other technology, been more widespread, the Commission would likely have also extended its request to that technology, as it would have at any other time since then if the issue had been brought before it.

26. However, the Commission acknowledges that the absence of a requirement for tariffs for in-building fibre and of a follow-up with the CISC Building Access and Inside Wiring Sub-Working Group when it was unable to reach a consensus on the issue of the demarcation point for access to in-building fibre may have contributed to the view of some in-building fibre owners that such facilities were not regulated.
27. In light of the above, the Commission considers that the existing framework has always been technology neutral and was intended to apply to any technology used to offer the service, with a view to facilitating competition and consumer choice. Therefore, the Commission determines that it did not err in fact or in law when it stated that connection to a LEC's in-building fibre by another LEC in an MDU is provided for under its existing policies, and does not find that there is substantial doubt as to the correctness of the determination that the existing MDU in-building wire access framework applies to fibre.

**Is there substantial doubt as to the correctness of the directions to Bell Canada to (i) provide all carrier ISPs with access to its in-building wire, and (ii) file proposed amended tariff pages that include provisions for such access, as well as access to its in-building fibre by carrier ISPs and CLECs?**

### **Background**

28. In the Decision, the Commission noted that Bell Canada's existing tariff for in-building wire access was restricted to LECs and to copper access facilities, and that the company did not have a tariff for access to its in-building fibre. Accordingly, the Commission directed Bell Canada to file, within 30 days of the date of the Decision, proposed amended tariff pages that would include
- access to in-building fibre,
  - access to in-building wire by carrier ISPs, and
  - terms and conditions of connection.
29. The Commission noted that if Bell Canada wished to charge a rate for in-building fibre access, it would have to file a cost study with its proposed amended tariff pages.
30. The Commission also directed Bell Canada to apply the provisions set out in its existing tariff to carrier ISPs, including Cloudwifi, on an interim basis, at the established rate of \$0 per subscriber per month, as of the date of the Decision.

## **Positions of parties**

### **Access to in-building fibre**

31. Bell Canada submitted that there is substantial doubt as to the correctness of allowing CLECs and carrier ISPs to interconnect with and access its in-building fibre. Bell Canada submitted that the Commission ordered it to share its in-building fibre with LECs and carrier ISPs using the approach for the sharing of its in-building copper, without considering the implications and appropriateness of extending the existing framework to in-building fibre, and without any record upon which to base its decisions. Bell Canada submitted that the Commission had failed to appreciate the significant technological differences between in-building copper and fibre, and that these technological differences must be taken into account when creating rules for the operationalization of access to in-building fibre, which is fundamentally different from the provisioning of access to in-building copper.
32. Bell Canada added that granting competitors unfettered access to its in-building fibre cannot be permitted without first implementing processes that include minimum standards on how the fibre must be handled and rules on the areas of the fibre termination equipment that must not be accessed. In its view, without these processes and rules, the integrity of entire fibre termination systems in MDUs remains at risk, which could subvert rather than enhance consumer choice and competition in retail Internet services by (i) risking outages in and damage to existing delicate fibre plant, and (ii) undermining incentives to invest further in next-generation fibre networks. Bell Canada submitted that the Commission had failed to take into account, or make any factual findings about, the sub-standard interconnections by Cloudwifi, and had singled Bell Canada out for the application of a new framework for in-building wire access, requiring it to now permit both LECs and carrier ISPs to access its in-building fibre.
33. Cogeco, the ITPA, RCCI, Shaw, and TCI agreed with Bell Canada that there are significant differences between in-building copper and in-building fibre that the Commission should consider before extending its existing policies and rules to in-building fibre. They added that there should be a broader consultation that provides all interested parties with the opportunity to present their views on developing a new framework that requires LECs and other TSPs to provide access to in-building fibre. Most of these parties submitted that, without proper common standards and rules, there is a risk that in-building wire will be damaged, which would also threaten competition, consumer choice, and investment in infrastructure.
34. RCCI submitted that allowing Cloudwifi and other carriers to continue to connect with a LEC's in-building fibre without any fear of consequences for their bad behaviour creates a situation in which fibre facilities could be permanently damaged or degraded.
35. Cloudwifi, CNOC, and Videotron submitted that Bell Canada's claims regarding the difference between copper and fibre technologies are exaggerated. In their view,



Bell Canada wants to delay competitors from using its in-building fibre and, rather than call for a lengthy industry-wide consultation, Bell Canada should quickly file a proposed tariff for in-building fibre access. They submitted that if there are any technical practices that ISPs and LECs should follow, Bell Canada can put them in its proposed tariff so that competitors will have the opportunity to comment on them.

36. Cloudwifi and PIAC acknowledged that interconnection standards for fibre have yet to be developed. However, they submitted that while the Commission determines what those standards should be, the determinations made in the Decision should remain in force and Bell Canada must allow Cloudwifi to access its in-building fibre. Cloudwifi and PIAC submitted that the Commission has made similar rulings in the past – for instance, when it permitted EastLink Telephone (EastLink) and Norigen Communications Inc. (Norigen) to access and connect to in-building wire controlled by incumbent local exchange carriers before it commenced proceedings to determine the terms and conditions under which LECs could connect to in-building wire owned by building owners or other LECs. This determination was set out in *Telecom – Commission Letter – EastLink/Norigen Part VII Applications – Access to In-building Wire*, 5 June 2000 (the EastLink/Norigen letter).
37. CNOC and Videotron submitted that any problems Bell Canada has experienced are the result of its anti-competitive actions during its dispute with Cloudwifi and its refusal to discuss connection methods. Cloudwifi indicated that it has proposed different connection methods to Bell Canada, but received no response from the company.
38. CNOC submitted that market forces would ensure that competitors connecting with in-building fibre exercise the utmost care, because if they damaged the in-building fibre, their own end-users and reputation would be negatively affected. It also submitted that in rare cases where Bell Canada, or any owner of in-building fibre, could prove on a balance of probabilities that a competitor had caused damage to its in-building fibre, the owner of the in-building fibre would be entitled to legal redress from the competitor.
39. Bell Canada replied that none of Cloudwifi's proposed in-building fibre-to-fibre connections are workable, since none are scalable, and they risk disrupting fibre connections. Further, Bell Canada indicated that it was difficult to ascertain how it would have provided direction to Cloudwifi when Cloudwifi had repeatedly refused to tell Bell Canada where it had connected its equipment. Bell Canada also submitted that it has been actively trying to determine how the sharing of in-building fibre could work in a manner that protected all of its existing customers while being operationally effective for both it and other carrier ISPs in the future. Bell Canada's initial view was that this was technically impossible without first adapting its fibre network termination and developing processes to track and operationalize access.

### **Lack of market analysis for in-building fibre**

40. Bell Canada, RCCI, and TCI submitted that the Commission had erred by failing to conduct a market analysis of in-building fibre as part of the proceeding that led to the Decision. In their view, with no evidence about whether the in-building fibre market constitutes a market distinct from the in-building copper market – and, if so, its size, demand and supply characteristics, and the extent to which any party exercises market power within it – there was no evidentiary basis for the Commission to reach the conclusions it had come to. Bell Canada added that the retail ISP market was never a monopoly market and that there was no evidence before the Commission that LECs or carrier ISPs today face any barriers to deploying their own in-building fibre in MDUs.
41. CNOC submitted that the fact that the existing framework has always applied to fibre negates Bell Canada's argument that the Commission erred in law by not conducting a market analysis of in-building fibre prior to extending the existing framework to fibre.
42. In Videotron's view, the Commission had no obligation to conduct a formal market analysis before removing what it considered an obstacle that reduced consumer choice. Cloudwifi and Videotron added that the obligation to allow access to in-building wire was created before any market analysis was conducted, which confirms that it is not required in this case.
43. PIAC submitted that the Commission had not erred by not conducting a market analysis of the in-building fibre market because the Decision was about the specific issue of fibre connection and access in MDUs, and not about the in-building fibre market as a whole. In its view, a market analysis was not necessary to address the issues regarding interconnection and access in MDUs, and the Commission had exercised its discretion not to conduct such an analysis.

### **Asymmetrical application of the Commission's determinations**

44. Bell Canada submitted that there were errors in law associated with the Commission's asymmetrical direction requiring only Bell Canada to make access to its in-building fibre available at no charge before requiring any other carrier to do the same. It added that this asymmetry violated its right to natural justice and procedural justice.
45. RCCI expressed concern about the Commission's decision to apply the existing framework and the MDU access framework asymmetrically to only one carrier's in-building fibre, even for an interim period of time.
46. CNOC and TCI submitted that the nature of the proceeding that led to the Decision was bilateral and, therefore, the determinations in that proceeding should not be used to establish new rules for the whole industry. Accordingly, in their view, the Commission had not erred by directing only Bell Canada to make available access to its in-building fibre at no charge before requiring any other carriers to do the same. CNOC and PIAC submitted that the asymmetrical application of the rules does not

violate the principle of natural justice because it is a temporary measure that applies while the Commission conducts the proceeding related to the Notice. CNOC further submitted that the owners of in-building wire would have to meet a very high evidentiary threshold to establish that they should not be required to provide access to in-building wire to all carrier ISPs in the same way as Bell Canada.

47. PIAC submitted that the Commission had not erred in directing only Bell Canada to provide Cloudwifi and carrier ISPs with access to its in-building fibre, since Bell Canada had an opportunity to comment and the Commission had considered Bell Canada's comments in reaching its decision, as required by the principle of procedural fairness.
48. Videotron submitted that ordering only Bell Canada to give access to its in-building fibre can only be an error if the existing framework did not previously apply to fibre, which is not the case. It also submitted that the obligation to allow access to in-building wire on a technology-neutral basis had applied to all LECs since the Commission issued the EastLink/Norigen letter.

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

49. The Commission's conclusion in the Decision that the framework in place for MDU in-building wire access applies to fibre means that any LEC that is responsible for and has control of in-building fibre in an MDU would also have to provide other LECs with access to that in-building fibre, should it receive an access request. However, because the service has not been forborne from regulation, the LEC that receives the request would have to provide the service in accordance with a Commission-approved tariff. In other words, the elements of the Decision that confirm existing Commission policies with respect to in-building fibre apply to all LECs, not just Bell Canada. However, to date, Bell Canada is the only LEC that has been directed to give access to its in-building wire to all carrier ISPs.
50. Further, there are examples on the record of the current proceeding suggesting that there are issues with in-building fibre connections, including with the methods used to connect, the connection locations, and communication between service providers with respect to access. Some parties have indicated that improper connection methods may result in damage to networks and possible disruption of service to customers. While the Commission should help lower barriers to entry in MDUs as much as possible to promote competition and end-user choice, it considers that any proliferation of potentially improper or damaging connections would be cause for concern, and contrary to certain policy objectives of the Act.<sup>3</sup> The Commission also considers that, because the existing framework for access to MDUs, and to in-building wire in particular, was developed as a measure to promote competitive entry and foster consumer choice, any threats to these goals should be taken seriously.

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<sup>3</sup> For example, to render reliable and affordable telecommunications services of high quality accessible to Canadians and to enhance the efficiency and competitiveness of Canadian telecommunications.

51. The Commission acknowledges that the differences between in-building fibre and in-building copper are greater than it had originally considered. There also appears to be some confusion about the existing framework among both in-building wire owners and competitors. It appears that some LECs that own in-building wire believe that only Bell Canada must give access to its in-building fibre to other LECs, while some competitors are of the view that they are entitled to unconstrained access to in-building fibre anywhere in an MDU without giving notice to the fibre owner. In the Commission's view, neither position is correct: as discussed above, the determination that the existing framework applies to fibre means that access to in-building fibre should be allowed by and for at least the same LECs that provide or obtain access to in-building copper, with at least the same level of obligations.
52. In light of the above, the Commission considers it necessary to clarify the situation and establish rules, standards, and obligations for access to in-building fibre. To that end, it is crucial to have appropriate tariffs in place that take into account the needs of both the competitors that want access to in-building fibre and the owners of the facilities that want to ensure the integrity of their fibre facilities.
53. The Commission considers that this could best be achieved by initiating a proceeding to develop standards for in-building fibre connection and to make all parties aware of their rights and obligations. Additional details are set out in the Conclusion to this decision.
54. The Commission does not need to conduct a market analysis for a service that is already mandated and for which no party has requested forbearance from regulation. Given the Commission's determination that the existing in-building wire framework applies to fibre, no market analysis was required. However, as discussed above, because the Commission did not previously require a tariff for in-building fibre, there may have been some misunderstanding within the industry as to whether such access is indeed mandated.
55. While the Commission strives to exercise regulation in a symmetrical manner, the asymmetrical development and application of regulations sometimes occurs on a temporary basis, particularly when broad regulatory considerations are raised in the context of a dispute between two parties. For example, the determination made in the EastLink/Northern letter that a LEC controlling the in-building wire in an MDU must allow CLECs to connect to that wire applied only to Bell Canada, before being extended to all LECs in Decision 2001-362. Similarly, the asymmetrical application of certain requirements set out in the Decision was temporary.
56. By directing Bell Canada to file proposed amended tariff pages, the Commission gave the company the opportunity to propose in-building fibre connection methods for LECs, as well as for carrier ISPs, that it considered appropriate. Further, if Bell Canada found the 30-day deadline to be too short, the company could have requested an extension. Finally, all of the determinations in the Decision were based on information on the record of the proceeding, regarding issues on which

Bell Canada had the opportunity to comment, including whether carrier ISPs should have access to in-building wire.

## **Conclusion**

57. In light of the above, and given its view that the existing framework applies to connections to in-building wire for the provision of telecommunications services to customers in MDUs, regardless of technology, the Commission considers that it did not have to examine technological connection details, conduct a market analysis, or reach a conclusion on workmanship in previous connections to find that access to in-building fibre was regulated. Further, its decision to apply directions only to Bell Canada on an interim basis while considering whether they should apply to other TSPs was not novel, and its interim nature would have allowed any required redress following the final decision on the issue. As such, the Commission finds that it did not err in any of the instances outlined by Bell Canada in its application.

58. The Commission nonetheless considers that there is substantial doubt as to the correctness of the manner in which it decided to implement its determinations. In particular,

- the record of this proceeding shows that fibre connection is more complicated than the Commission anticipated;
- the in-building wire access tariff for copper connections may not have been the correct model on which to base the tariff for in-building fibre access, even on an interim basis, and may have contributed to potentially improper connections;
- because there are currently no industry-wide agreed-upon standards for fibre connection, 30 days may have been insufficient time for Bell Canada to propose revised tariff pages and prepare a cost study;
- it may have been too onerous for Bell Canada to develop standards on its own, without the benefit of input from other companies; and
- there was some confusion following the Decision as to who is entitled to in-building wire connections, and with whom.

59. In light of the above, the Commission considers that it would be appropriate to grant a portion of the relief requested by Bell Canada.

60. The Commission therefore

- varies the Decision in order to rescind its directions to Bell Canada to (i) provide access to its in-building wire to all carrier ISPs, including Cloudwifi, subject to the exceptions set out in (iii) below; (ii) file proposed amended tariff pages to include such access, as well as access by carrier ISPs and CLECs to Bell Canada-owned in-building fibre; and (iii) apply its existing

in-building wire tariff for copper to carrier ISPs, including Cloudwifi, on an interim basis, as of the date of the Decision, with the exception of end-customers of any LEC or carrier ISP, including Cloudwifi, that have been connected to Bell Canada's in-building wire in accordance with the Decision (i.e. pursuant to the interim tariff) and are currently receiving service.

- replaces the entirety of the Notice with Telecom Notice of Consultation 2019-420, also issued today, in which the Commission initiates a proceeding to
  - request comments on the Commission's preliminary view that all carrier ISPs, and potentially all TSPs, should have access to in-building wire;
  - consider how access to in-building wire in MDUs should be expanded to include carrier ISPs and potentially all TSPs; and
  - consider appropriate rates, terms, and conditions required for in-building fibre connection by LECs and, if required, carrier ISPs and TSPs.

61. As noted above, the Commission has decided to maintain the status quo for end-customers of any LEC or carrier ISP, including Cloudwifi, that have been connected to Bell Canada's in-building wire in accordance with the Decision (i.e. pursuant to the interim tariff) and are currently receiving service. Because the interim tariff for in-building fibre access has been in place since the publication of the Decision, the Commission considers that it would not be in the public interest for customers who have been receiving services pursuant to that tariff to have their services disconnected while the consultation takes place.

62. In addition, the Commission maintains the preliminary views expressed in the Decision and set out in paragraph 7 above.

## **Policy Directions**

63. In arriving at the determinations in this decision, the Commission has considered the 2006 Policy Direction<sup>4</sup> and the 2019 Policy Direction.<sup>5</sup>

64. The Commission considers that its determination, originally set out in the Decision and maintained in this decision, that the existing framework applies to in-building fibre contributes to the implementation of the policy objectives set out in paragraphs

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<sup>4</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>5</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

7(b), (c), (f), (g), and (h) of the Act<sup>6</sup> and to the promotion of competition, affordability, consumer interests, and innovation. This determination encourages competition by not limiting the type of in-building wire to which competitors must be granted access, fosters affordability through competition, enhances and promotes consumer interests through increased consumer choice, and enables innovation. Moreover, it ensures the technological and competitive neutrality of the existing framework and does so in accordance with subparagraph 1(b)(iv) of the 2006 Policy Direction.<sup>7</sup>

65. The Commission considers that its determination to rescind certain directions to Bell Canada from the Decision and to replace the Notice in order to conduct a wider consultation also contributes to the implementation of the policy objectives set out in paragraphs 7(a),<sup>8</sup> (b), (c), (f), (g), and (h) of the Act and to the promotion of competition, affordability, consumer interests, and innovation. Choosing to implement the Commission's policy determinations regarding in-building wire in a more comprehensive and measured way facilitates the orderly development of telecommunications systems. It will also ultimately encourage competition and improve consumer choice by protecting existing infrastructure and avoiding possible disruption to consumers in the event that existing infrastructure is damaged.

Secretary General

### Related documents

- *Call for comments – Access to in-building wire in multi-dwelling units*, Telecom Notice of Consultation CRTC 2019-420, 16 December 2019
- *Applicability of the Commission's preliminary view set out in Telecom and Broadcasting Decision 2019-218 to all telecommunications service providers*, Telecom Notice of Consultation CRTC 2019-219, 21 June 2019

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<sup>6</sup> The cited policy objectives are 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services; and (h) to respond to the economic and social requirements of users of telecommunications services.

<sup>7</sup> Subparagraph 1(b)(iv) states that when relying on regulation, the Commission should use measures that satisfy the criteria that "if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers."

<sup>8</sup> The cited policy objective, 7(a), is to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions.

- *Cloudwifi Inc. – Application to prevent Bell Canada from interfering with customer use of Bell Canada’s inside wire*, Telecom and Broadcasting Decision CRTC 2019-218, 21 June 2019
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Application of Decision 2003-45 to the Coalition of Hydro Telecom Service Providers*, Telecom Decision CRTC 2005-33, 10 June 2005
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003
- *RE: The Commission extends all determinations on the EastLink/Norigen application (access to in-building wire) to all local exchange carriers*, Decision CRTC 2001-362, 19 June 2001
- *Location of Demarcation Point for Inside Wire in Multi-Dwelling Units and Associated Issues*, Telecom Decision CRTC 99-10, 6 August 1999
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997