



Telecom Decision CRTC 2020-106

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Ottawa, 26 March 2020

Public record: 8622-C282-201901942

Cloudwifi Inc. – Application for an order completing the company’s registration as a competitive local exchange carrier or requiring Bell Canada to sign a Special Master Agreement for Local Interconnection

*The Commission **directs** Bell Canada to sign a Special Master Agreement for Local Interconnection, including Schedule C, with Cloudwifi Inc. (Cloudwifi). This will enable Cloudwifi to proceed with registration as a competitive local exchange carrier (CLEC). In addition, the Commission **denies** Bell Canada’s request for Cloudwifi’s CLEC status to be subject to two additional conditions.*

Introduction

1. On 8 August 2018, Cloudwifi Inc. (Cloudwifi) applied to the Commission to become a registered competitive local exchange carrier (CLEC).¹ On 15 August 2018, Commission staff informed Cloudwifi that the company had completed the requirements to become a proposed CLEC, which is the first step to becoming registered as a CLEC. The company was therefore authorized to proceed with further arrangements to allow it to provide switched services as a CLEC. Cloudwifi was also added to the Commission’s [List of Registered Telecommunications Providers](#) as a proposed CLEC.
2. Cloudwifi subsequently filed an application with the Commission, dated 18 March 2019, in which the company indicated that Bell Canada was refusing to sign a Special Master Agreement for Local Interconnection (MALI) and Schedule C, which was preventing Cloudwifi from fulfilling its CLEC obligations.² Accordingly, Cloudwifi requested that the Commission issue an order (i) completing the company’s registration as a CLEC once it has submitted its fulfilment of CLEC obligations letter, or (ii) requiring Bell Canada to sign a Special MALI with Cloudwifi, including the

¹ A registered CLEC is a Canadian carrier that has fulfilled a number of obligations set out by the Commission to provide local exchange services. These obligations include entering into Master Agreements for Local Interconnection (MALIs) with other local exchange carriers (LECs) in the exchanges in which the CLEC seeks to provide local exchange services.

² A Special MALI is used when one of the LECs relies on an underlying carrier; it was adapted from the standard MALI to take into consideration the specific circumstances of CLECs that interconnect with other telecommunications carriers, or meet some of their CLEC obligations, through a third party. Schedule C provides for the arrangement of the interchange of traffic between LECs, as negotiated between the parties to the agreement.

Schedule C (collectively referred to as the proposed Special MALI), that had been negotiated between the parties. Copies of the proposed Special MALI were filed with the Commission in September 2019.

3. The Commission received interventions regarding Cloudwifi's application from Bell Canada, Iristel Inc. (Iristel), the Canadian Network Operators Consortium Inc. (CNOC), and TELUS Communications Inc. (TCI).

Related proceedings

4. The Commission received an application from Cloudwifi, dated 27 August 2018 (hereafter, the August 2018 application), in which Cloudwifi requested that the Commission prevent Bell Canada from interfering with customers' use of Bell Canada's in-building wire in multi-dwelling units (MDUs).
5. In Telecom and Broadcasting Decision 2019-218, the Commission issued its determinations regarding the August 2018 application. Among other things, the Commission noted that once Cloudwifi becomes a registered CLEC, it may connect with Bell Canada's in-building wire to provide telecommunications services under the existing MDU access rules, and that it may do so regardless of the type of technology it wishes to use (copper or fibre). In addition, the Commission directed Bell Canada to provide access to its in-building wire to all carrier Internet service providers (ISPs),³ not just CLECs, and to file a tariff for such access.
6. The Commission also expressed the preliminary view that (i) the MDU access condition⁴ and associated obligations should be extended to all carrier ISPs, and potentially to all telecommunications service providers (TSPs); and (ii) all carrier ISPs, and potentially all TSPs, should have access to local exchange carriers' (LECs) and other TSPs' in-building wire in MDUs on the same basis as registered CLECs, and regardless of the type of technology they wish to use.
7. On the same date that it issued Telecom and Broadcasting Decision 2019-218, the Commission issued Telecom Notice of Consultation 2019-219, in which it initiated a proceeding for TSPs to show cause why the Commission's preliminary view regarding access to in-building wire should not apply to all TSPs.
8. On 9 July 2019, Bell Canada filed an application in which it requested that the Commission review, vary, and rescind certain findings and directions set out in Telecom and Broadcasting Decision 2019-218 and the matters raised in Telecom Notice of Consultation 2019-219.

³ In Telecom and Broadcasting Decision 2019-218, the Commission used the term "carrier ISPs" to refer to telecommunications common carriers, as defined in the *Telecommunications Act*.

⁴ The MDU access condition, set out in Telecom Decision 97-8, states the following: 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 end-users in that MDU on a timely basis, by means of resale, leased facilities, or their own facilities, at their choice, under reasonable terms and conditions

9. In Telecom Decision 2019-419, the Commission, among other things, confirmed that connection of LEC-to-LEC fibre in-building wire (hereafter, in-building fibre) is covered by its existing policies. However, because the service has not been forborne from regulation, a LEC that receives an access request for in-building fibre must still provide the service in accordance with a Commission-approved tariff. The Commission also maintained the status quo for end-customers of any LEC or carrier ISP, including Cloudwifi, that were connected in accordance with Telecom and Broadcasting Decision 2019-218 (i.e. pursuant to an interim tariff) and were receiving service.
10. In addition, the Commission replaced Telecom Notice of Consultation 2019-219 with a wider consultation in Telecom Notice of Consultation 2019-420, in which it called for comments on, among other things, access to in-building wire in MDUs and the appropriate rates, terms, and conditions for in-building fibre connection.

Issues

11. The Commission has identified the following issues to be addressed in this decision:

- Should the Commission combine Cloudwifi's current application with the August 2018 application?
- Should the Commission decline to rule on the scope and meaning of the in-building wire access framework⁵ and CLEC framework⁶ in the current proceeding?
- Should the Commission (i) issue an order completing Cloudwifi's CLEC registration without a signed Special MALI, or (ii) issue an order directing Bell Canada to sign the proposed Special MALI?
- If the Commission issues an order directing Bell Canada to sign the proposed Special MALI, should additional conditions be imposed?

Should the Commission combine Cloudwifi's current application with the August 2018 application?

Positions of parties

12. In its intervention, Bell Canada requested that the Commission combine Cloudwifi's current application with the August 2018 application.

⁵ The in-building wire framework was introduced in Telecom Decision 99-10 and further addressed in subsequent decisions, including Telecom Decision 2003-45, Telecom and Broadcasting Decision 2019-218, and Telecom Decision 2019-419.

⁶ The CLEC framework was introduced in Telecom Decision 97-8 and modified in subsequent decisions, including Telecom Decisions 2006-58 and 2007-49, and Telecom Regulatory Policy 2012-24.

13. Bell Canada submitted that the Commission cannot consider Cloudwifi's request for an order granting it CLEC status without taking into account the outstanding issues raised in the August 2018 application.

Commission's analysis and determinations

14. Given that the Commission has made its determinations with respect to the August 2018 application, including the subsequent review and vary request, Bell Canada's request to combine the two applications is now moot.
15. However, the Commission notes that certain broad issues regarding in-building wire were addressed in Telecom Decision 2019-419, and will be further addressed in the proceeding initiated by Telecom Notice of Consultation 2019-420. Parties have the opportunity to present their views on in-building wire issues as part of that proceeding.

Should the Commission decline to rule on the scope and meaning of the in-building wire access framework and CLEC framework in the current proceeding?

Positions of parties

16. In a letter dated 10 May 2019, TCI submitted that issues have arisen that, if addressed in the Commission's determinations on Cloudwifi's current application, could have a broader effect on the industry. These issues include the meaning and scope of LEC access obligations regarding in-building wire, and the rights and obligations of CLECs. TCI submitted that these broad issues should not be addressed in this proceeding. TCI suggested that the Commission should (i) decline to rule (directly or indirectly) on the scope and meaning of the in-building wire access framework and CLEC framework in the present proceeding, or (ii) establish a separate process to allow for the broader participation of interested parties.

Commission's analysis and determinations

17. As noted above, certain broad issues regarding in-building wire were addressed in Telecom Decision 2019-419, and will be further addressed in the proceeding initiated by Telecom Notice of Consultation 2019-420. In addition, the determinations set out below address the dispute between Cloudwifi and Bell Canada based on the existing CLEC framework and do not make any new policy determinations regarding overall CLEC rights and obligations.
18. Accordingly, the Commission is not addressing the scope and meaning of the in-building wire access framework and CLEC framework in this proceeding.

Should the Commission (i) issue an order completing Cloudwifi's CLEC registration without a signed Special MALI, or (ii) issue an order directing Bell Canada to sign the proposed Special MALI?

Positions of parties

19. On 1 October 2018, Cloudwifi sent a letter to the Commission and all CLECs and proposed CLECs in the exchanges where it plans to offer local voice services, indicating its intention to offer services in those exchanges and to operate as a Type III CLEC.⁷
20. Cloudwifi submitted that, between October and December 2018, it had numerous exchanges with Bell Canada with respect to signing the proposed Special MALI, including with regard to traffic forecasts.
21. Cloudwifi argued that there is no legal basis for a LEC to request a traffic forecast from a proposed Type III CLEC before signing a MALI, and that there is no legal reason for a LEC to refuse to sign a MALI. Cloudwifi further argued that it is providing competition and lowering prices for services. In the company's view, Bell Canada was refusing to sign the proposed Special MALI in order to use the regulatory process to reduce competition.
22. In response, Bell Canada submitted that it took no position on Cloudwifi's application to become a CLEC. Bell Canada submitted that the purpose of the request for traffic projections was to obtain the best information possible in order to manage its resources and plan for future network capacity, and that it had concerns that Cloudwifi was gaming the CLEC rules. Bell Canada was also concerned that Cloudwifi could continue interconnecting with and using Bell Canada-owned in-building fibre and other Bell Canada-owned equipment in MDUs. Accordingly, Bell Canada argued that approval of Cloudwifi's CLEC status should be subject to two conditions (which are discussed further in the next section).
23. TCI submitted that approval of Cloudwifi as a CLEC without the company having satisfied all its obligations would not be consistent with the requirements regarding competitive neutrality set out in the 2006 Policy Direction,⁸ since other CLECs are required to meet all of the requirements. It further submitted that arbitrarily relieving one provider, or a class of providers, from CLEC obligations artificially favours it over other providers and could discourage other forms of competition and investment.
24. Iristel and CNOC supported Cloudwifi's requests for relief.

⁷ A Type III CLEC is a non-dominant Canadian carrier that relies on the facilities of a third-party LEC, generally for switching and/or interconnection to other LECs to provide voice over Internet Protocol (VoIP) local services. A non-dominant carrier is a facilities-based provider, other than an ILEC, that provides a class of services subject to forbearance as outlined in Telecom Decision 95-19.

⁸ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

25. Iristel submitted that Bell Canada's refusal to sign a Special MALI with Cloudwifi is an attempt to obstruct Cloudwifi's registration as a CLEC. CNOC argued that Bell Canada's actions have impaired the development of competition in voice services in the exchanges in question.
26. In reply, Cloudwifi submitted that under the Commission's CLEC framework, Cloudwifi is either in compliance with the CLEC obligations or it is not. The company submitted that it has completed all of the obligations for a prospective CLEC except one: it does not have a signed Special MALI with Bell Canada because Bell Canada refuses to sign it and has not filed the Schedule C with the Commission.

Commission's analysis and determinations

Order completing Cloudwifi's CLEC registration without a signed Special MALI

27. The Commission considers that Cloudwifi should not be granted CLEC status without having met all the CLEC obligations set out in Telecom Decision 97-8 and in subsequent decisions, including the obligation to have signed MALIs with all LECs that operate in the exchanges in which it wishes to operate. These obligations were set out as a result of extensive public proceedings, and granting Cloudwifi CLEC status without the company having met all its obligations would represent a lack of regulatory symmetry with other entities. Accordingly, the Commission **denies** Cloudwifi's request for an order completing its CLEC registration without a signed Special MALI.

Order directing Bell Canada to sign the proposed Special MALI

28. The CLEC framework has been in place since the establishment of local competition in Telecom Decision 97-8, and has been applied consistently to all proposed CLECs. As has been the case for all other LECs, Cloudwifi and Bell Canada are required to fulfill their respective obligations under this framework, which includes signing a Special MALI, including Schedule C.
29. The Commission considers that Bell Canada's refusal to sign the proposed Special MALI is primarily based on concerns regarding Cloudwifi's continuing interconnection with and use of Bell Canada's in-building fibre. The Commission considers that these concerns have been addressed, in large part, in Telecom Decision 2019-419 and will be further examined as part of Telecom Notice of Consultation 2019-420.
30. In Telecom Decision 2019-419, the Commission decided to maintain the status quo for end-customers of any LEC or carrier ISP that were connected to Bell Canada's in-building wire in accordance with Telecom and Broadcasting Decision 2019-218 and were receiving service. Accordingly, Cloudwifi can continue to serve its end-customers who are currently connected to Bell Canada's in-building wire. However, further and greater access to fibre in MDUs will only be possible should the Commission approve rates, terms, and conditions for that access. CLEC status will not necessarily provide Cloudwifi with access to additional Bell Canada in-building

fibre at other MDUs, since an approved tariff is still required for Cloudwifi to connect to such fibre. Accordingly, the Commission is of the view that the signing of the proposed Special MALI should in no way disrupt the status quo for either Bell Canada or Cloudwifi in this regard.

31. The Commission considers that Bell Canada's refusal to sign the proposed Special MALI is not justified and is contrary to the Commission's CLEC framework. The Commission also considers that Bell Canada's continuing refusal is unnecessarily hindering competition and consumer choice.

32. Accordingly, the Commission **directs** Bell Canada to

- (i) sign the proposed Special MALI, including Schedule C (identical copies of which were filed by both parties with the Commission in September 2019), with a modified effective date, or (ii) execute an alternative Special MALI and Schedule C agreed to by both Bell Canada and Cloudwifi; and
- file the executed Special MALI, including Schedule C, with the Commission by **27 April 2020**.

33. The Commission expects such agreements between LECs and proposed CLECs to be signed on a timely basis.

If the Commission issues an order directing Bell Canada to sign the proposed Special MALI, should additional conditions be imposed?

Positions of parties

34. Bell Canada did not take issue with the specific language in the Special MALI or Schedule C. Rather, the company's objections were based in large part on the absence of conditions related to in-building fibre and the continuing provision of local exchange telecommunications services by Cloudwifi. Bell Canada argued that approval of Cloudwifi's CLEC status should be subject to two conditions. It referred to these conditions as (i) the no fibre condition, and (ii) the no gaming condition.

35. Bell Canada defined the conditions as follows:

- No fibre condition: Cloudwifi should not be permitted to provide telecommunications services by interconnecting its facilities to any new Bell Canada-owned in-building fibre in, on, or around MDUs, aside from the MDUs that Cloudwifi already serves, as identified in Bell Canada's answer to the August 2018 application. If Cloudwifi breached this condition, its CLEC status would be revoked by the Commission.
- No gaming condition: To prevent Cloudwifi from any further gaming of the Commission's MALI signing and CLEC-certification rules, Cloudwifi's CLEC status should be made contingent upon Cloudwifi continuously providing local exchange services in the Local Interconnection Regions

(LIRs) in which it proposes to provide local voice services. The Commission would revoke CLEC status if Cloudwifi ceases to provide local exchange telecommunications services to the public for 90 consecutive days (or three consecutive calendar months) in those LIRs.

36. In support of the no fibre condition, Bell Canada submitted that Cloudwifi has previously taken the position that CLEC status would confer upon it the unfettered right to resume surreptitiously and illegally interconnecting with and using Bell Canada's in-building fibre without Bell Canada's consent. Bell Canada argued that, in the absence of constraints, Cloudwifi can be expected to resume using the same untested equipment, uncertified technicians, and non-standard interconnection techniques it used in 2018, only now with the status of a CLEC.
37. Bell Canada requested that the Commission amend the proposed Special MALI to add the two conditions or impose them as conditions under section 24 of the *Telecommunications Act* (the Act). It submitted that they should apply at least until the Commission issues its determinations on the August 2018 application and/or fully resolves the underlying regulatory and policy issues raised therein.
38. Cloudwifi argued that the conditions amount to a wholesale rewriting of the Commission's rules for CLECs and for facilities-based competition, and that Bell Canada's request is a transparent attempt to use the regulatory process to prevent competition.
39. In a supplemental answer, Bell Canada submitted that it was not proposing wholesale changes to the CLEC rules.
40. Cloudwifi replied that while Bell Canada's proposed conditions may not seem important to the carriers to which they do not apply, Bell Canada is proposing changes that would significantly impact Cloudwifi, the carrier to which they are proposed to apply.
41. CNOC, Iristel, and TCI were generally concerned about the proposed departures from the regulatory framework. For example, Iristel expressed concerns with respect to suggestions that a CLEC should provide a business case to the ILEC with regard to its voice service as a prerequisite to executing a MALI.
42. TCI argued that if the Commission confirms Bell Canada's allegation that Cloudwifi's only interest in CLEC status is to gain access to Bell Canada's in-building fibre, then CLEC status should not be granted.

Commission's analysis and determinations

43. In Telecom Decision 2019-419, the Commission confirmed that there is a policy in place for LEC-to-LEC in-building fibre connection. In addition, the Commission maintained the status quo as it applies to end-customers of LECs or carrier ISPs, including Cloudwifi, who were already connected to Bell Canada's in-building wire

in accordance with Telecom and Broadcasting Decision 2019-218, such that those customers can continue receiving service.

44. Nevertheless, the Commission notes that there is no tariff in place yet to operationalize the policy articulated in Telecom Decision 2019-419. Accordingly, even if Cloudwifi were to become a CLEC, it could not, solely by virtue of its CLEC status, connect to additional Bell Canada in-building fibre. Access to additional in-building fibre will only be possible if and when an approved tariff is in place. In this regard, the Commission notes that it will be examining this matter, among others, in the context of Telecom Notice of Consultation 2019-420. As a result, the Commission does not consider the no fibre condition proposed by Bell Canada to be appropriate or necessary.
45. Moreover, the Commission considers that the no gaming condition proposed by Bell Canada is not required. In this regard, the Commission considers that the CLEC framework does not require a CLEC to immediately begin providing local voice service or provide such a service for a specific period of time. Rather, CLEC status means that the carrier has permission to offer local voice service at some point.
46. The Commission considers that making Cloudwifi's CLEC registration dependent on the nature and timing of the services it currently provides would represent a departure from the established framework and would result in treating one entity differently from other CLECs in a way that would be inconsistent with subparagraph 1(b)(iii) of the 2006 Policy Direction, which states that measures that are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner.
47. In light of the above, the Commission **denies** Bell Canada's request to impose additional conditions on Cloudwifi.

Policy Directions

48. The Commission must exercise its powers and perform its duties under the Act with a view to implementing the policy objectives set out in section 7 of the Act (the policy objectives), and in accordance with the 2006 Policy Direction and the 2019 Policy Direction⁹ (collectively, the Policy Directions).
49. The 2006 Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible and regulate, where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary to meet the policy objectives. The 2006 Policy Direction also requires that the Commission, when relying on regulatory measures, specify the policy objective that is advanced by those measures. With respect to regulatory measures that are of a

⁹ *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

non-economic nature, the 2006 Policy Direction states that the Commission should, to the greatest extent possible, implement measures in a symmetrical and competitively neutral manner.

50. The 2019 Policy Direction guides the Commission on how the 2006 Policy Direction is to be implemented. It provides that the Commission, in exercising its powers and performing its duties under the Act, must implement the policy objectives in accordance with the following provisions: 1(a) the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation; and (b) the Commission, in its decisions, should demonstrate its compliance with the 2019 Policy Direction and should specify how its decisions can, as applicable, promote competition, affordability, consumer interests and innovation.
51. The Commission considers that its determinations in this decision are in accordance with the Policy Directions for the reasons set out below.
52. The Commission considers that the policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act are advanced by the determinations set out in this decision.¹⁰
53. In compliance with subparagraph 1(a)(ii) of the 2006 Policy Direction, the Commission considers that its determinations in this decision – specifically, (i) its direction to Bell Canada to sign the proposed Special MALI, and (ii) its denial of Bell Canada’s request to impose conditions on Cloudwifi’s registration as a CLEC – represent measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. In particular, Cloudwifi will be able to complete the obligations required to begin operations as a CLEC on the same terms as other CLECs and without the imposition of unnecessary additional conditions.
54. In compliance with subparagraphs 1(b)(iii) and (iv) of the 2006 Policy Direction, the Commission considers that its determinations in this decision are, to the greatest extent possible, implemented in a symmetrical and competitively neutral manner and ensure the technological and competitive neutrality of network interconnection arrangements or regimes for access to networks, buildings, and in-building wire, in order to enable competition from new technologies and do not artificially favour either Canadian carriers or resellers. Specifically, the determinations will enable Cloudwifi to meet the same set of obligations and enter into the same types of interconnection arrangements that apply to other proposed CLECs.

¹⁰ The cited policy objectives are 7(a) 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; (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; and (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.

55. In compliance with subparagraphs 1(a)(i), (ii), and (v) of the 2019 Policy Direction, the Commission considers that its determinations in this decision will encourage competition and investment, foster affordability and lower prices, and reduce barriers to entry into the market and to competition. Specifically, by directing Bell Canada to sign the proposed Special MALI, the Commission will address the remaining barrier to Cloudwifi becoming a CLEC and enable a new competitor to enter the market and begin operations as a CLEC. An additional competitor will increase competition and consumer choice, which can lead to lower prices for consumers.

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
- *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*, Telecom Decision CRTC 2019-419, 16 December 2019
- *Show cause proceeding and call for comments – 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
- *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
- *Network interconnection for voice services*, Telecom Regulatory Policy CRTC 2012-24, 19 January 2012
- *Central office code obligations for competitive local exchange carriers*, Telecom Decision CRTC 2007-49, 6 July 2007
- *Canadian Cable Telecommunications Association – Part VII application regarding the application of some competitive local exchange carrier (CLEC) obligations to certain CLECs*, Telecom Decision CRTC 2006-58, 18 September 2006
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003
- *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
- *Forbearance – Services provided by non-dominant Canadian carriers*, Telecom Decision CRTC 95-19, 8 September 1995

