



## Telecom Decision CRTC 2020-218

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Ottawa, 9 July 2020

*Public record: 8662-C282-202000010*

### **Cloudwifi Inc. – Application to review and vary Telecom Decision 2019-419**

*The Commission **denies** Cloudwifi Inc.'s application to review and vary Telecom Decision 2019-419. In particular, the Commission finds that the company did not demonstrate that there is substantial doubt as to the correctness of the original decision.*

#### **Application**

1. The Commission received an application from Cloudwifi Inc. (Cloudwifi), dated 3 January 2020, in which the company requested that the Commission review and vary Telecom Decision 2019-419 on the basis that the Commission had failed to consider a basic principle raised in the original proceeding, or because a new principle had arisen as a result of the decision. In that decision, the Commission varied Telecom and Broadcasting Decision 2019-218 to rescind certain directions to Bell Canada with respect to providing access to its in-building wire in multi-dwelling units (MDUs), including fibre in-building wire (hereafter, in-building fibre). This was done in order to establish a more fulsome proceeding to consider the appropriate rates, terms, and conditions for such in-building fibre connections.
2. Cloudwifi added that, if the Commission does not consider that the matter should be treated via a review and vary application, it should treat the application as a standard Part 1 application. Cloudwifi requested that, if the Commission decides to treat the application as a Part 1 application, it set up a process, on an expedited basis, to give competitive local exchange carriers (CLECs) interim access to in-building fibre in buildings where in-building wire is not available using the copper in-building wire (hereafter, in-building copper) tariff.
3. The Commission received interventions regarding Cloudwifi's application from Bell Canada; the Canadian Network Operators Consortium Inc. (CNOOC); Iristel Inc. (Iristel); Les.Net [1996] Inc. (Les.Net); the Public Interest Advocacy Centre (PIAC); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); and TELUS Communications Inc. (TCI).

## Background

### Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219

4. In the summer of 2018, Bell Canada and Cloudwifi – an Internet service provider (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, which was done without Bell Canada’s knowledge.
5. As a result of that dispute, Cloudwifi filed an application with the Commission, which resulted in Telecom and Broadcasting Decision 2019-218. In that decision, the Commission denied Cloudwifi’s request for an order stating that Bell Canada cannot interfere with customers’ use of Bell Canada’s inside wire in MDUs.<sup>1</sup>
6. The Commission further expressed the preliminary views that (i) the MDU access condition<sup>2</sup> 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, regardless of technology.
7. At the same time as it issued Telecom and Broadcasting Decision 2019-218, the Commission issued Telecom Notice of Consultation 2019-219, in which it requested that TSPs show cause why the Commission’s preliminary views in Telecom and Broadcasting Decision 2019-218 should not apply to all TSPs.

### Telecom Decision 2019-419 and Telecom Notice of Consultation 2019-420

8. On 9 July 2019, the Commission received an application from Bell Canada, in which the company requested that the Commission review, vary, rescind, and stay certain findings and directions set out in Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219.
9. The Commission addressed Bell Canada’s application in Telecom Decision 2019-419, wherein it reiterated its preliminary view regarding the appropriateness of

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<sup>1</sup> Cloudwifi referred to “inside wire” rather than “in-building wire.” However, “inside wire,” as defined in the *Broadcasting Distribution Regulations* may, depending upon the situation, refer to either “inside wire” or “in-building wire,” which are defined separately in Telecom Decision 99-10. For greater clarity, “in-building wire”, “in-building copper”, or “in-building fibre” have been used in place of “inside wire” throughout this decision, where appropriate.

<sup>2</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 local exchange carrier (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*.

extending the MDU access condition and associated obligations to additional entities, and permitting access to in-building wire (including in-building fibre) by those entities.

10. However, the Commission decided to vary Telecom and Broadcasting Decision 2019-218 by rescinding its directions to Bell Canada to (i) immediately provide access to its in-building wire to all carrier ISPs, including Cloudwifi; (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 (i.e. 16 December 2019), 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 who were receiving service before 16 December 2019.
11. Further, the Commission decided to replace the entirety of Telecom Notice of Consultation 2019-219 with Telecom Notice of Consultation 2019-420, to (i) request comments on the Commission's preliminary views set out in Telecom and Broadcasting Decision 2019-218; (ii) consider how access to in-building wire in MDUs should be expanded; and (iii) consider appropriate rates, terms, and conditions.

### **Review and vary criteria**

12. Pursuant to Telecom Information Bulletin 2011-214, applicants must demonstrate, as part of review and vary applications, that there is substantial doubt as to the correctness of the original decision. This may be due, for example, 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. As noted above, Cloudwifi submitted in its application that the Commission had failed to consider a basic principle which had been raised in the original proceeding, or that a new principle has arisen as a result of the decision. The Commission therefore determines that it would be appropriate to consider Cloudwifi's application as a review and vary application.

### **Should the Commission approve Cloudwifi's application to review and vary Telecom Decision 2019-419?**

#### **Positions of parties**

14. Cloudwifi argued that the Commission did not consider that, by failing to set up an interim access process, it was harming end-user choice and competition because (i) end-users in MDUs would not be able choose a facilities-based CLEC, and (ii) competition for facilities-based CLEC services has been restricted.

15. According to Cloudwifi, many new MDUs contain only in-building fibre, which CLECs cannot currently access using the existing in-building copper tariff. As a result, CLECs would have to install their own in-building fibre to provide service in such an MDU. This has effectively rendered inoperative a Commission policy designed to foster competition and end-user choice.
16. Bell Canada submitted that Cloudwifi's application fails the review and variance test established in Telecom Information Bulletin 2011-214, since its arguments that the Commission had committed errors are invalid.
17. In particular, Bell Canada argued that Cloudwifi was incorrect in claiming that the Commission had failed to consider its longstanding policy of promoting MDU choice and competition. Bell Canada submitted that the Commission did consider the telecommunications policy objectives set out in section 7 of the *Telecommunications Act* (the Act) in rendering Telecom Decision 2019-419, with explicit reliance upon paragraph 7(c).
18. Bell Canada added that Cloudwifi was incorrect in asserting that a new principle has arisen out of Telecom Decision 2019-419, i.e. that end-users can no longer choose a facilities-based CLEC in MDUs. Bell Canada argued that Cloudwifi did not present any evidence to show a decline in competition in MDUs.
19. Finally, Bell Canada submitted that Cloudwifi wrongly assumed that there was a time when LECs could access incumbent local exchange carriers' (ILECs) in-building fibre under commonly agreed-upon technical standards pursuant to the *Broadcasting Distribution Regulations*, because no such standards have been implemented.
20. RCCI submitted that Cloudwifi had failed to demonstrate that there is substantial doubt as to the correctness of the Commission's determinations in Telecom Decision 2019-419, arguing that Cloudwifi did not identify a principle that the Commission had failed to consider in the original proceeding, nor did it identify a new principle that has arisen as a result of the decision.
21. TCI submitted that the Commission did not err by failing to consider a principle, and that Cloudwifi did not provide any evidence to demonstrate the need to vary Telecom Decision 2019-419. In particular, TCI argued that Cloudwifi wrongly contended that the sharing of in-building fibre is standard practice within the industry.
22. PIAC submitted that the Commission did not err in fact or in law in Telecom Decision 2019-419 (i) when it stated that its pre-existing in-building wire interconnection and access regime applied to fibre, or (ii) by requiring Bell Canada to provide mandated access; rather, it may have merely failed to appreciate that a tariff already applied to LECs. According to PIAC, the Commission's statements in paragraph 27 of Telecom Decision 2019-419 confirmed that the existing MDU in-building wire access framework applies to fibre. Furthermore, the \$0 rate for in-building copper, established in Telecom Decision 2003-45, applies to fibre access

until that access is revised under a new regime with new tariffs, which are likely to result from the Telecom Notice of Consultation 2019-420 proceeding.

23. Videotron supported Cloudwifi, arguing that the situation created by Telecom Decision 2019-419 has limited the freedom of choice for end-users who are located in MDUs that have only in-building fibre, and who are therefore unable to benefit from competitive service offerings and the best prices on the market.
24. Iristel and Les.Net also supported Cloudwifi, arguing that the Commission may have revoked access to in-building wire that CLECs have enjoyed for decades when it rescinded aspects of Telecom and Broadcasting Decision 2019-218 in Telecom Decision 2019-419.

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

25. The regime for in-building wire access in MDUs was developed as a measure to promote competitive entry and foster consumer choice. However, the record of this proceeding indicates that there appears to be some confusion about the current framework among both in-building wire owners and competitors, as well as some interveners.
26. The MDU access condition has always applied to fibre, which means that if a LEC has fibre and another LEC cannot access the MDU to install its own fibre, the possibility would arise that the first LEC present in the MDU would have to provide access to its own fibre to avoid unjust discrimination. However, since no tariffs have existed for in-building fibre, it was never possible for LECs to provide access to that fibre. If a situation arose whereby subsequent LECs could not access an MDU to install their own fibre, then the first LEC present in the MDU would be required to file a tariff in order to provide any other LEC with access to its fibre.
27. In Telecom and Broadcasting Decision 2019-218, the Commission found that mandated access was necessary and applied, on an interim basis, the rate of \$0 for access to in-building fibre. This allowed access to Bell Canada's fibre only as of 21 June 2019 (i.e. the date that Telecom and Broadcasting Decision 2019-218 was issued). However, in Telecom Decision 2019-419, the Commission determined that the differences between in-building copper and fibre are greater than previously anticipated and that the tariff for in-building copper access 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. Accordingly, the Commission rescinded the interim tariff, except for connections that were in place before 16 December 2019 (i.e. the date that Telecom Decision 2019-419 was issued), which had the effect of stopping any further connections based upon the interim tariff.
28. In its application, Cloudwifi indicated that many new MDUs contain only in-building fibre, which CLECs cannot currently access using the existing in-building copper tariff. As a result of this reality, CLECs would have to install their own in-building fibre in order to provide service in those MDUs. Cloudwifi was therefore of the view

that Telecom Decision 2019-419 effectively renders inoperative “a Commission policy which has been in force for two decades, and which is designed to foster competition and end-user choice.”

29. While Cloudwifi argued that having CLECs install their own fibre in order to provide service to end-users in MDUs renders inoperative a Commission policy that fosters competition and end-user choice, the Commission finds that this conclusion is incorrect. Indeed, allowing any CLEC, once it has its fibre in place, to provide services to all MDU residents who request its services actually results in a more competitive environment and in more end-user choice, which clearly aligns with the Commission’s guiding principle of encouraging competition.
30. The Commission also notes that Cloudwifi did not identify which specific policy it claimed that the Commission failed to consider. Indeed, Cloudwifi simply mentioned “a Commission policy which has been in force for two decades, and which is designed to foster competition and end-user choice.”
31. The Commission considers that this absence of clarity makes it even more difficult to conclude that Cloudwifi has demonstrated that there was substantial doubt as to the correctness of Telecom Decision 2019-419.
32. Cloudwifi also argued that as a result of Telecom Decision 2019-419, end-users in MDUs can no longer choose a facilities-based CLEC, and competition with respect to facilities-based CLEC services for these end-users is restricted.
33. The Commission considers that there is no evidence to suggest that end-user choice and competition have been harmed by Telecom Decision 2019-419. In fact, there are currently a number of facilities-based CLECs serving end-users in MDUs in markets where Cloudwifi is presently operating, and many of those CLECs have installed their own facilities in those buildings. This aligns with the Commission’s policy goal of encouraging competition through the use of various in-building wire technologies.
34. The Commission does acknowledge Cloudwifi’s concerns regarding end-user choice and competition in light of Telecom Decision 2019-419. However, a reading of that decision clearly demonstrates that the Commission did take into consideration these important issues. Furthermore, these issues informed the decision-making process, as demonstrated by the following Commission statement in Telecom Decision 2019-419 on the importance of end-user choice and competition in its assessment of the decision through the lens of the 2006 Policy Direction<sup>3</sup> and the 2019 Policy Direction<sup>4</sup> (collectively, the Policy Directions):

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<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>4</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

65. [...] 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.
35. In light of the above, the Commission finds that Cloudwifi failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2019-419. Accordingly, the Commission **denies** Cloudwifi's application.

### **Policy Directions**

36. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the Policy Directions.
37. The 2019 Policy Direction provides that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
38. Moreover, the Commission should, in its decisions, demonstrate its compliance with the 2019 Policy Direction and specify how those decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.
39. The Commission considers that its denial of Cloudwifi's application to review and vary Telecom Decision 2019-419 and to not establish an interim access regime, in favour of supporting the ongoing Telecom Notice of Consultation 2019-420 proceeding, effectively contributes to the implementation of the policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act<sup>5</sup> and to the promotion of competition, affordability, and consumer interests. The Commission's ultimate goal in this regard is to maximize competition through the use of various in-building wire technologies in MDUs, but the specific use of in-building fibre still requires implementation through, among other things, guidelines.
40. Furthermore, implementing the Commission's policy determinations regarding in-building fibre in a more comprehensive and measured manner is one way to facilitate the orderly development of Canadian telecommunications systems. It is also an effective way to encourage competition and improve consumer choice by

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<sup>5</sup> The cited policy objectives of the Act 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.

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; as amended by Telecom Notices of Consultation CRTC 2019-420-1, 8 April 2020; and 2019-420-2, 30 April 2020
- *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
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *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