



Telecom Decision CRTC 2021-10

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Bragg Communications Incorporated, carrying on business as Eastlink – Application to review and vary Telecom Order 2020-60 regarding terms and conditions of access to the cable carriers' aggregated wholesale high-speed access services

*The Commission **denies** Eastlink's application to review and vary Telecom Order 2020-60 because the company failed to demonstrate that there is substantial doubt as to the correctness of the order.*

Background

1. The Commission regulates wholesale high-speed access (HSA) services provided by the large cable and telephone companies (collectively, the wholesale HSA service providers). Competitors, also known as wholesale HSA service customers, can use these services to provide their own retail Internet services and other services. The aggregated wholesale HSA services provided by large cable companies are also known as third-party Internet access (TPIA) services.
2. In Telecom Decision 2018-458, the Commission directed Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), to modify its TPIA General Tariff to (i) include a specific term permitting wholesale HSA service customers to resell HSA service on a wholesale basis, and (ii) require the removal of any terms that limit the services that a wholesale HSA service customer can offer to retail Internet services and voice over Internet Protocol (VoIP) services.
3. Further, in Telecom Notice of Consultation 2018-459, the Commission directed the other cable carriers, that is, Cogeco Communications inc. (Cogeco); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); and Shaw Cablesystems G.P. (Shaw) [collectively, with Eastlink, the cable carriers], to show cause why the Commission's determinations in Telecom Decision 2018-458 should not apply to them as well.

4. The cable carriers subsequently filed their respective proposed tariff pages incorporating the above-noted determinations for Commission approval. In its application (Tariff Notice [TN] 40), Eastlink proposed to include an additional condition in its tariff that would allow it to apply a credit limit to its wholesale HSA service customers. The proposed credit limit provision, item 102.13.7, read as follows:

A credit limit may be set by Eastlink where we reasonably determine, at its sole discretion, that there is a credit risk or risk of loss. Customer shall provide Eastlink such financial information as Eastlink deems necessary to determine Customer's creditworthiness. Eastlink may review (and if necessary adjust) Customer's credit limit from time to time. The total amount owed by Customer to Eastlink at any time shall not exceed Customer's credit limit set by Eastlink. In the event Customer exceeds their credit limit, Eastlink has the right to suspend or terminate services until Customer makes a sufficient payment to bring its account within the credit limit provided.

5. In Telecom Order 2020-60, the Commission directed the cable carriers to file revised tariff pages reflecting the Commission's determinations on the terms and conditions of their respective aggregated wholesale HSA services, as set out in the Appendix to the order. Among other things, the Commission denied Eastlink's request to add a credit limit provision, finding that the existing protections in the tariff, including the ability to impose an interest charge, were sufficient to protect Eastlink's interests. The Commission considered that credit limits could affect competition at the retail level if a wholesale HSA service customer obtained a significant number of new end-users in one month, and gave too much power to Eastlink in its relationship with its wholesale HSA service customers.
6. Pursuant to Telecom Order 2020-60, the cable carriers filed their respective revised tariff pages, which the Commission approved on a final basis in Telecom Order 2020-277.

Application

7. The Commission received an application from Eastlink, dated 13 May 2020, in which the company requested that the Commission review and vary Telecom Order 2020-60. Eastlink submitted that there was substantial doubt as to the correctness of the order on the basis that the Commission made errors of fact, law, and principle, and on the basis of a fundamental change in circumstances since the date of the order.

8. Eastlink submitted that the Commission failed to recognize that the company's primary concern is not protecting it against late payment, but rather mitigating the significant financial risk when faced with non-payment. It submitted that establishing credit limits will allow it to ensure that wholesale HSA service customers are able to pay the amount owed up to the credit limit, which will minimize the risk should there be a default in payment. For Eastlink, this is not an impediment for those customers, since they can simply make payments so their accounts are within the credit limit and carry on with business. If they cannot pay their monthly recurring wholesale HSA service fees, or choose not to do so, Eastlink will without question bear the financial losses associated with up to two months, or more, of non-payment.
9. Eastlink added that the existing tariff provisions are insufficient to ensure that the risk to it of non-payment is covered. Even if a tariff provision helped minimize the risk, this is not a sufficient reason to deny it the right to apply a common business practice without sufficient evidence that doing so would cause harm or be contrary to the objectives of the *Telecommunications Act* (the Act) or Commission policies.
10. Eastlink submitted that, in TN 40, it was simply requesting to apply a standard practice in any commercial relationship for both small and large retail residential and business customers. Under this arrangement, no further services or supplies are received until a payment is made to stay within the credit limit. Eastlink noted that even wholesale HSA service customers are free to set credit limits for their own end-users.
11. Eastlink argued that there was no evidence on the record of the TN 40 proceeding that supports that credit limits are unjustifiable practices, damaging, or in breach of the objectives of the Act or other Commission policies. Eastlink added that the only concern regarding harm that the Commission raised in Telecom Order 2020-60 was that credit limits would hinder a customer from acquiring a large number of subscribers in a single month.
12. Eastlink submitted that the Commission's reasons for denying its application to apply credit limits were not supported by the facts. It also submitted that the Commission failed to consider a basic principle that a business should be entitled to manage its payment risks consistent with commercial practice, while there was no clear evidence that such practice would harm wholesale HSA service customers.

13. Eastlink submitted that the Commission failed to recognize that a credit limit will protect the company from financial loss of up to two months or more of defaulted payments, and its denial was unjustifiable and an inappropriate regulatory intervention over its ability to manage its business. Eastlink also submitted that Telecom Order 2020-60 was not compliant with the 2006 Policy Direction.¹
14. The Commission received interventions from City Wide Communications Incorporated (City Wide), Competitive Network Operators of Canada (CNOOC), Distributel Communications Limited (Distributel), TekSavvy Solutions Inc. (TekSavvy), Shaw, and Videotron (collectively, the interveners).

Review and vary criteria

15. 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 Act. Specifically, the Commission stated that 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.

Issues

16. The Commission has identified the following issues to be addressed in this order:
 - Did the Commission err by basing its decision on numerous irrelevant or unsubstantiated reasons?
 - Did the Commission err by failing to consider the principle that credit limits are a normal business practice?
 - Was there a fundamental change in circumstances or facts since Telecom Order 2020-60 was issued that requires inclusion of a credit limit provision?
 - Is Telecom Order 2020-60 inconsistent with the 2006 Policy Direction and the 2019 Policy Direction²?

¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

² *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

Did the Commission err by basing its decision on numerous irrelevant or unsubstantiated reasons?

Positions of parties

17. As discussed below, Eastlink argued that several of the specific findings on which the Commission based its decision were irrelevant, not supported by the evidence, or simply wrong.

The Commission made irrelevant findings linked to late payment, not non-payment

18. Eastlink submitted that the Commission's claims that it will be adequately compensated for late payments (through the ability to charge interest and the current wholesale HSA service rates) are irrelevant, since credit limits are intended to minimize the amount of financial risk incurred by Eastlink by ensuring wholesale HSA service customers pay within the limit and therefore minimize the risk of non-payment, not late payment.
19. Eastlink submitted that it had explained in the proceeding that led to Telecom Order 2020-60 why existing tariff provisions, such as the right to charge interest and the threat of suspension or termination, were ineffective in preventing or limiting the financial risk of non-payment situations. According to Eastlink, this evidence showed that certain wholesale HSA service customers were consistently in a non-payment situation and that Eastlink could not recover payment unless it threatened disconnection. Eastlink submitted that the threat of termination does not remedy the problem.
20. Eastlink submitted that current wholesale HSA service rates do not adequately cover the costs of resources used to pursue customers for non-payment, which translates into reduced investments and communities potentially not receiving upgrades or service features.
21. Distributel submitted that, in paragraph 99 of Telecom Order 2020-60, the Commission took into account Eastlink's position. It added that the Commission understood the differences between on-time payment and limiting financial risk, since seeking recourse against another party's assets does not occur as a result of late payment, but rather as a result of non-payment.
22. City Wide, CNOC, and TekSavvy argued that Eastlink's tariff sufficiently mitigates the risk of non-payment through its deposit and interest charge provisions, and that the risk of loss to the company is conflated or exaggerated.
23. City Wide and CNOC submitted that Eastlink has commercial and legal methods available to mitigate the risk of non-payment. They also suggested that if Eastlink suffers a financial loss due to non-payment, the company could gain additional retail subscribers from the failed wholesale HSA service customers.

24. City Wide also noted that Eastlink bills in advance for wholesale HSA services that will be provided in the future, allowing it to charge in advance for 50% of the monthly recurring charges (MRCs).
25. Shaw and Videotron agreed with Eastlink that the Commission made errors in fact by mischaracterizing credit limits as a remedy for delinquent payments and by not considering evidence that certain wholesale HSA service customers were consistently in a non-payment situation, resulting in losses of over two months' worth of fees.
26. Eastlink replied that the wholesale HSA service regime was not designed to turn facilities-based service providers into financial institutions that are forced to take on competitors' financial risks.
27. Eastlink also replied that its concern is not with the billing period but rather that it has no possible recourse to collect the outstanding amounts owed until after 60 days have passed.
28. With regard to the ability to recapture retail business from failed wholesale HSA service customers, Eastlink replied that there is no guarantee that it will win these retail customers over to its retail business, since there are a number of companies in Eastlink's serving territory that these end-users could switch to, including other wholesale HSA service customers and providers.

The Commission had no evidence that credit limits would cause harm to competitors

29. Eastlink argued that the Commission's finding that credit limits would affect competition in the retail market is unfounded, since there is no evidence that credit limits would harm competitors or hinder them from acquiring a large number of customers in the retail market in a month. Eastlink further argued that a credit limit does not prevent a company from growing and it is not an impediment to operating a business.
30. City Wide submitted that the relationship between Eastlink and wholesale HSA service customers is not a normal business relationship because wholesale HSA is a regulated service, which prevents Eastlink from using its market power to impose unreasonable terms and conditions, including credit limits, upon its customers.
31. City Wide and CNOC submitted that deposits and the establishment of credit limits amount to a prepayment, which advances significant amounts of interest-free funds to Eastlink and limits competitors' ability to offer affordable telecommunications services to their end-users, while effectively subsidizing and helping Eastlink entrench its market power.

32. CNOC submitted that many wholesale HSA service customers likely do not have deposits with Eastlink at the moment and that Eastlink's combination of credit limits and deposits is effectively an interest-free loan that insures and subsidizes it for up to two months of MRCs.
33. City Wide, CNOC, Distributel, and TekSavvy submitted that credit limits could undermine the ability of a wholesale HSA service customer to gain a large number of new subscribers in a given month. City Wide submitted that a successful new customer may find itself unable to process any new service orders unless it can meet Eastlink's credit limit provision in a prompt fashion. CNOC submitted that even prosperous customers that pose no risk of non-payment may find it difficult to advance the equivalent of two months of MRCs to Eastlink on demand. TekSavvy submitted that credit limits allow Eastlink to directly control the customer's subscription growth.
34. Shaw submitted that the Commission acted arbitrarily by concluding that credit limits would hinder competitors from acquiring a large number of end-users in a single month by not considering Eastlink's evidence that (i) customers added during a month would be applied to the next month's billing; (ii) end-user acquisition would increase competitors' revenue, which enhances their ability to pay and increase the available credit for the next month's billing; and (iii) credit limits are a standard commercial practice.
35. Eastlink replied that a credit limit does not hinder the acquisition of a large number of customers in any given month, because a wholesale HSA service customer would establish an amount it can have outstanding at the time it receives its invoice before payment is required. It added that the payment does not have to be the entire amount outstanding. Rather, it can be a portion of the outstanding balance so that, once a payment is made, the customer's outstanding balance is within its credit limit. Eastlink further submitted that a wholesale HSA service customer that increases its number of subscribers, and hence revenues, would have an increased ability to pay and make a payment on the account to reduce the credit limit.
36. Eastlink specified that the credit limit for each wholesale HSA service customer would be determined based on its MRCs, payment history, and abnormal risk of loss, and not on two months of MRCs. Eastlink added that the customer could apply the deposit and/or make partial payments to the credit limit and, when the credit limit is reached, no further wholesale HSA services would be provided.

Eastlink no longer proposes access to confidential information as part of the provision, and the Commission should approve credit limits

37. Eastlink submitted that the Commission's concerns that Eastlink would have discretion to set and change the credit limits as well as obtain a customer's confidential financial information for use in its competitive strategy were not sufficient grounds to deny the credit limit provision. It submitted that financial information provides an understanding of the credit risk in order to assess the amount of the credit limit, and it sees no reason why the right to set a credit limit was deemed a concern by the Commission.
38. However, Eastlink clarified that it was not keeping the proposed wording for access to confidential information given the Commission's concerns, so the Commission's reason for denying the addition of the credit limit provision is no longer relevant. However, Eastlink argued that the Commission had the discretion to deny that part of the proposed language if it had concerns.
39. Eastlink submitted that the Commission has full discretion to, and should, vary its determination and approve, even in part, Eastlink's right to apply credit limits.
40. Shaw supported the view that the Commission had the option to modify the wording of the proposed tariff item, as it did with other tariff items under consideration in Telecom Order 2020-60, and that the Commission's concerns with the wording of the tariff were not sufficient to justify denying Eastlink's request altogether.

The deposit provision is an insufficient measure without credit limits

41. Eastlink submitted that the Commission's finding that the provision regarding the right to review deposits in six-month intervals was sufficient protection was incorrect. It submitted that it is common for a customer's MRC to increase significantly and that a deposit that covers an MRC at that point in time is likely to be insufficient over a six-month period.³ Eastlink added that a credit limit would help mitigate its loss in cases where the MRC grows over time.
42. TekSavvy submitted that, like most other carriers, Eastlink is permitted, pursuant to its tariff, to use deposits as a tool to mitigate financial risk. TekSavvy argued that, while it opposes any unnecessary use of deposits since they can create extreme financial stress for competitors, deposits are not anti-competitive like credit limits since they do not directly control wholesale-based competitors' growth.

³ Part A, item 102.6.6 of Eastlink's General Tariff states the following: "Eastlink must review the continued appropriateness of deposits and alternative arrangements at 6-month intervals."

43. CNOC noted that Eastlink has the ability to seek deposits from wholesale HSA service customers that pose an abnormal risk of loss or have other credit issues, and that the Commission determined that the deposit provisions were sufficient to protect Eastlink from the risk of non-payment. CNOC argued that there is no reason to disturb that finding, based on the near-total lack of evidence put forward by Eastlink.
44. City Wide submitted that Eastlink is able to adjust the deposit every six months and increase it in situations where the customer presents an abnormal risk of loss or other criteria for which Eastlink can request a deposit under its tariff.
45. Eastlink replied that, even though some interveners referred to the deposit provisions as potential remedies, they also made it clear that their view is that there are very limited circumstances in which a deposit is warranted. For Eastlink, this highlights the difficulties it faces when trying to put measures in place to minimize its financial risks.

Commission's analysis and determinations

46. With respect to Eastlink's first argument (i.e. that the Commission made irrelevant findings linked to late payments), the Commission acknowledges that the analysis provided in Telecom Order 2020-60 regarding customer credit limits initially addressed Eastlink's ability to recover costs in cases of late payments through interest charges and rates charged to its customers. However, in its analysis, the Commission then acknowledged the "additional risk" (of non-payment), for which Eastlink proposed a new provision in the terms and conditions of its tariff to set a customer credit limit.⁴ The Commission denied Eastlink's request in part because it considered that setting a credit limit to address the additional risk of non-payment would negatively affect competition in the retail market.
47. Intervenors in the present proceeding argued that Eastlink still has means to recover its costs, even with respect to non-payment. As argued by City Wide and CNOC, the Commission considers that Eastlink currently has sufficient methods at its disposal to mitigate the risk of non-payment, as the Commission did in its original findings. They include the ability to (i) seek deposits from wholesale HSA service customers, (ii) terminate a wholesale HSA customer's service, and (iii) use legal remedies.

⁴ See paragraphs 97 to 101 and 116 of Telecom Order 2020-60.

48. With respect to Eastlink's second argument, that the Commission had no evidence that credit limits would cause harm to competitors, several interveners in this proceeding provided evidence that credit limits could undermine the ability of a wholesale HSA service customer to gain a large number of new subscribers in a given month. Although Eastlink explained the proposed mechanism to apply credit limits and how this would not hinder competition, the Commission considers that its original finding is supported by the evidence presented in this proceeding.
49. In particular, the Commission considers that, under the proposed credit limit provision, a wholesale HSA service customer would not only have to advance the necessary funds (i.e. it would be required to make a payment of the amount over the established credit limit as soon as it receives the invoice) but it would carry the burden of managing its credit limit on a recurring basis. Further, the Commission is of the view that the credit limit provision would provide Eastlink with broad discretion to deny service to wholesale HSA service customers should negotiations between parties regarding credit limit amounts fail. The Commission considers that such a provision would introduce competitive uncertainty for the wholesale HSA service customer, hindering its ability to effectively compete in the market.
50. With respect to Eastlink's third argument, that it no longer proposes to require access to financial information as part of the credit limit provision and that the Commission should approve credit limits, the Commission does not consider that this change, in itself, justifies approving the rest of the provision. Even after considering Eastlink's concession regarding access to financial information, the Commission considers that there is no substantial doubt as to the correctness of the order, for the reasons set out in this decision.
51. With regard to Eastlink's fourth argument, that the deposit provision is an insufficient measure, the Commission is of the view that the evidence in this proceeding shows that deposits remain a viable and reasonable measure to mitigate non-payment, since they strike an effective balance of financial and competitive protections for all parties, regardless of the approval of a credit limit provision.
52. In light of all the above, the Commission finds that Eastlink failed to demonstrate that the Commission erred by basing its decision on numerous irrelevant or unsubstantiated reasons.

Did the Commission err by failing to consider the principle that credit limits are a normal business practice?

Positions of parties

53. Eastlink submitted that the Commission failed to consider a basic principle: that a business should be entitled to manage its payment risks consistent with commercial practice. It submitted that the Commission should not deny Eastlink the ability to apply a common business practice unless there is clear evidence that it would cause harm to wholesale HSA service customers that outweighs the benefit to Eastlink in granting the right. Eastlink submitted that there are no evidence or findings of harm to wholesale HSA service customers.
54. Eastlink added that its suppliers apply interest to late payments, and may suspend or terminate service agreements if Eastlink fails to pay its MRCs, yet they still set credit limits to manage risk.
55. City Wide argued that the relationship between Eastlink and its wholesale HSA service customers is not a normal business relationship and that Eastlink's relationship with its suppliers, which are not competitors, cannot justify the application of credit limits to its wholesale HSA service customers. City Wide further argued that the Commission must look with suspicion upon proposals to apply credit limits, which restrict the ability of wholesale HSA service customers to compete and also tie up their capital. For City Wide, the nature of the relationship between Eastlink and its TPIA customers means that there is a very real risk that Eastlink may act unreasonably in setting credit limits and that unreasonable credit limits would have the effect of impeding the development of competition in Eastlink's serving territory.
56. Videotron noted that it is subject to credit limits from some of its suppliers and argued that there is no justification for excluding wholesale HSA service customers from the application of this standard business practice. Videotron added that no proof was presented during the proceedings that led to Telecom Order 2020-60 that would result in the conclusion that the competitive strength of wholesale HSA service customers could be reduced if they were subject to reasonable credit limits.
57. Eastlink replied that wholesale HSA service customers should be subject to the same terms and conditions as in any other commercial relationship where credit limits are applied to protect the provider against the significant risk of loss.

Commission's analysis and determinations

58. The Commission acknowledged Eastlink's submission in regard to the principle that credit limits are a normal business practice to manage risk in paragraph 99 of Telecom Order 2020-60, although the Commission did not explicitly respond to it.

59. It is a well-established principle in administrative law that decision makers must consider central arguments, yet they are not bound to respond to every argument in a proceeding.⁵ The principle that credit limits are a normal business practice may have been a central argument in the proceeding that led to Telecom Order 2020-60, which the Commission declined to address. However, this was not fundamental to the determination, and, in any case, the reasons set out below cure any defect in the lack of explicit response.

60. On the basis of the evidence in this proceeding, the Commission considers that credit limits have an undisputed place in standard commercial practice. However, the Commission notes that the relationship between Eastlink and its wholesale HSA service customers is not that of a standard commercial practice. Specifically, such a relationship is set in the context of control of a facility that requires regulatory oversight in order to, among other things, ensure competition. Due to the nature of such a relationship, establishing credit limits would slow down competition. This analysis supports Telecom Order 2020-60.

61. In light of the above, the Commission finds that Eastlink failed to demonstrate that the Commission erred by failing to consider the principle that credit limits are a normal business practice.

Was there a fundamental change in circumstances or facts since Telecom Order 2020-60 was issued that requires inclusion of a credit limit provision?

Positions of parties

62. Eastlink submitted that there was a fundamental change in circumstances since Telecom Order 2020-60 was issued: the company had dealt with a wholesale HSA service customer with a high MRC that it believed had posed significant challenges with regard to obtaining a deposit. It undertook measures to address the issue of customer non-payment pursuant to its wholesale HSA service terms and conditions. Eastlink argued that these measures, in its view, were inadequate to manage its risk of financial loss.

⁵ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 128.

63. Eastlink added that it had dealt with a wholesale HSA service customer with a high MRC that had defaulted on a payment; however, Eastlink could not treat the account as past due until it remained unpaid for 30 days. It also could not issue a notice of disconnection unless it provided 30 days' notice, which resulted in two months of non-payment. Eastlink further submitted that it was not able to seek a deposit from some of its wholesale HSA service customers and that, where it was able to obtain one, the customer would direct the deposit to be applied to its unpaid monthly invoice.
64. City Wide, CNOC, and TekSavvy submitted that Eastlink's claim of providing sufficient evidence is unjustified since it references only one instance of customer non-payment, and it did not indicate that it pursued other remedies. City Wide and CNOC further submitted that it would be inappropriate for the wrongs of a single wholesale HSA service customer to result in a change in policy that would negatively affect all such customers.
65. City Wide added that Eastlink's claimed potential size of a loss is not the same as a risk of that loss materializing. It also submitted that Eastlink should be required, however, to justify the discrepancy with respect to the interest rate for late payments posted on City Wide's bill, which is contrary to the tariff terms and conditions.
66. Eastlink, supported by Videotron, also submitted that the current COVID-19 pandemic constitutes a fundamental change in circumstances that generated a heightened risk of wholesale HSA service customer non-payment, and that it should not have to provide multiple examples of default, since any loss translates to direct harm in the form of reduced investments and potential communities not receiving the upgrades or services.

Commission's analysis and determinations

67. Eastlink provided no indication that the situation it described with the wholesale HSA service customer was not ultimately resolved, and it identified only one instance of what it considered a customer non-payment in its introduction of a new circumstance as evidence.
68. There is insufficient evidence on the record of this proceeding to establish a prevalent issue, or pattern, of non-payments with other Eastlink wholesale HSA service customers, either currently or going forward. Further, the COVID-19 pandemic is a global event that affects most, if not all, commercial operations, not just Eastlink's. Therefore, it would be unwarranted to make exceptions to the standard terms of the tariff by accepting Eastlink's request.

69. In light of the above, the Commission finds that Eastlink failed to demonstrate that there is substantial doubt as to the correctness of Telecom Order 2020-60 due to a fundamental change in circumstances or facts since the order was issued.

Is Telecom Order 2020-60 inconsistent with the 2006 Policy Direction and 2019 Policy Direction?

Positions of parties

70. Eastlink submitted that denying credit limits is inconsistent with the 2006 Policy Direction because it is contrary to the telecommunications policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act, as follows:⁶

- paragraphs 7(a) and (b) – Eastlink is denied rights to manage its business, with the eventual impact of consumers’ unpaid service being terminated and Eastlink bearing the economic impact;
- paragraph 7(c) – enhancing competition does not mean giving wholesale HSA service customers the ability to avoid obligations for payment and forcing Eastlink to absorb the financial losses created by irresponsible customers; and
- paragraph 7(f) – increased reliance on market forces means not prohibiting normal business practices, which is an unnecessary and unjustifiable intervention.

71. City Wide and CNOC submitted that applying credit limits as a means of achieving the policy objectives will undermine reliance on market forces, tie up capital, and reduce funds to devote towards innovation. This will limit the effectiveness and development of competition and deter economically efficient entry into the telecommunications market by significantly increasing the costs of entry for competitors.

72. With regard to the 2019 Policy Direction, City Wide and CNOC submitted that applying credit limits will tie up the capital and investment of competitors, hinder their ability to offer affordable and lower-priced telecommunications services in incumbent serving territories and rural areas, and divert competitors’ capital by using it to pay down arbitrary credit limits instead of using it to invest in growing and innovating their businesses.

⁶ The cited 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.

Commission's analysis and determinations

73. The 2006 Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the 2006 Policy Direction. While guiding the Commission on how the 2006 Policy Direction is to be implemented, the 2019 Policy Direction states that the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
74. In Telecom Order 2020-60, the regulatory measures that were under consideration related to terms and conditions for wholesale HSA services. Therefore, the Commission stated that subparagraphs 1(a)(i) and (ii)⁷ and subparagraphs 1(b)(i), (iii), and (iv)⁸ of the 2006 Policy Direction applied to its determinations. Those same provisions are relevant for the analysis of the present application.
75. The Commission is of the view that Telecom Order 2020-60 is consistent with the 2006 Policy Direction for the following reasons:
- subparagraph 1(a)(i) – competitors and incumbents can rely on market forces to the maximum extent feasible in acquiring customers without the impediment of credit limits, thereby ensuring that all parties are on equal footing when competing in the market;
 - subparagraph 1(a)(ii) – the deposit, late payment penalties, and termination provisions currently in the wholesale HSA service tariffs that address payment issues (including late payment and non-payment) are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary;

⁷ Paragraph 1(a) of the 2006 Policy Direction states that the Commission should (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives; and (ii) when relying on regulation, use 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.

⁸ Paragraph 1(b) of the 2006 Policy Direction states that the Commission, when relying on regulation, should use measures that (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with the 2006 Policy Direction; [...] (iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner; and (iv) 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.

- subparagraph 1(b)(i) – the policy objectives set out in paragraphs 7(a), (b), (c), and (f) of the Act are advanced and in compliance with the 2006 Policy Direction, given that competitors can focus on their marketing efforts to acquire customers from both rural and urban markets unencumbered by the financial limitations resulting from credit limits; consumers will benefit from increased choice of suppliers while Eastlink will earn the associated wholesale revenues, thus creating a healthy and vibrant competitive marketplace; and competition is further enhanced through reliance on market forces by not layering the additional financial burden of a credit limit on competitors while implementing regulatory measures, such as deposit and late payment provisions, which are appropriate, balanced, and efficient;
- subparagraph 1(b)(iii) – the consistent application of the deposit and late payment terms and conditions for TPIA services across all facilities-based providers ensures that these measures are implemented in a symmetrical and competitively neutral manner to the greatest extent possible; and
- subparagraph 1(b)(iv) – by not unnecessarily encumbering competitors’ ability to acquire customers through the use of credit limits, network interconnection arrangements or regimes for access to networks are competitively neutral and do not artificially favour either Canadian carriers or resellers.

76. The Commission considers that its denial of Eastlink’s application is compliant with the 2019 Policy Direction since it will promote competition, affordability, and consumer interests by encouraging competition and reducing barriers to entry into the market and to competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service providers. This is achieved mainly by denying Eastlink’s proposed credit limit provision, which encumbers competitors’ ability to acquire new customers due to the financial limitations imposed by credit limits, and may add a barrier to entry into the market and to competition. Such analysis is consistent with the Commission’s original approach in Telecom Order 2020-60.

77. In light of the above, the Commission finds that Eastlink failed to demonstrate that there is substantial doubt as to the correctness of Telecom Order 2020-60 because it is inconsistent with the 2006 Policy Direction. Further, the Commission finds that its original determination was consistent with both the 2006 Policy Direction and the 2019 Policy Direction.

Conclusion

78. In light of all the above, the Commission **denies** Eastlink's application to review and vary Telecom Order 2020-60, because the company failed to demonstrate that there is substantial doubt as to the correctness of the order.
79. The Commission considers that the determinations made in this decision are consistent with the 2006 Policy Direction and the 2019 Policy Direction for the reasons set out above.

Secretary General

Related documents

- *Cable carriers' revised tariff pages filed pursuant to Telecom Order 2020-60, Telecom Order CRTC 2020-277, 18 August 2020*
- *Terms and conditions of access to the cable carriers' aggregated wholesale high-speed access services, Telecom Order CRTC 2020-60, 14 February 2020*
- *Show cause proceeding and call for comments – Applicability of the Commission's determinations set out in Telecom Decision 2018-458 to Cogeco Communications Inc., Rogers Communications Canada Inc., Shaw Cablesystems G.P., and Videotron Ltd., Telecom Notice of Consultation CRTC 2018-459, 11 December 2018*
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