



## Telecom Decision CRTC 2021-187

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Ottawa, 1 June 2021

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### **Videotron Ltd. – Application against Câblevision du nord de Québec inc. regarding the cost of upgrading routers at points of interconnection for its third-party Internet access service**

The Commission **directs** Câblevision du nord de Québec inc. to finish upgrading its routers in Val-d'Or and Rouyn-Noranda at its own expense by **1 September 2021** in order to add the capacity for its third-party Internet access service requested by Videotron Ltd.

#### **Introduction**

1. On 3 November 2020, Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron), filed an application with the Commission regarding the cost of upgrading routers at the Val-d'Or and Rouyn-Noranda points of interconnection (POIs) that provide Câblevision du nord de Québec inc.'s (Câblevision) third-party Internet access (TPIA) service.
2. In its application, Videotron requested expedited processing, given that it is the fourth time in 16 months that it has filed a Part 1 application with the Commission regarding Câblevision and its regulatory obligations with respect to its TPIA service.
3. Videotron indicated that in September 2020, it requested that Câblevision increase Videotron's capacity at the Val-d'Or and Rouyn-Noranda POIs. In response to this request, Câblevision issued Videotron a design and costing report for upgrading the capacity of its routers, in which it concluded that Videotron's request required unusual expenses.
4. Videotron argued to Câblevision that upgrading the capacity of a POI router is not an unusual expense but rather a normal expense incurred to meet the growing demand for its TPIA service. Videotron added that this expense is already largely offset by the substantial additional revenue that Câblevision receives as basic monthly usage charges and monthly capacity charges.
5. Câblevision refused to pay for upgrading the routers identified by Videotron unless Videotron agreed to pay the required additional expenses.

#### **Application**

6. Videotron requested that the Commission

- process the application expeditiously;<sup>1</sup>
- direct Câblevision to complete by 15 February 2021 the router upgrades required to comply with Videotron's requests for increased capacity at the Val-d'Or and Rouyn-Noranda POIs;
- direct Câblevision not to charge Videotron for upgrades to the routers in question except for the basic monthly usage charges and monthly capacity charges already billed to Videotron under Câblevision's TPIA tariff;
- impose on Câblevision, pursuant to section 72.001 of the *Telecommunications Act* (the Act), an administrative monetary penalty (AMP) that is high enough to stop Câblevision's repeated delay tactics towards Videotron regarding TPIA services.

## Issues

7. The Commission has identified the following issues to be addressed in this decision:
- Can Câblevision claim the cost of upgrading routers at POIs under its TPIA service?
  - Should the Commission impose an AMP under section 72.001 of the Act?

## Can Câblevision claim the cost of upgrading routers at POIs under its TPIA service?

### Positions of parties

#### Videotron

8. In September 2020, Videotron asked Câblevision to increase the capacity of its Val-d'Or and Rouyn-Noranda POIs for its TPIA service because Videotron had already amassed a large number of users on the Câblevision network, and the number of users had climbed even higher after a month.
9. Assuming no increase in the average consumption of its users, Videotron submitted that there was a limit to the maximum number of users that each POI could accommodate based on the available interconnection capacity. However, in November 2020, Videotron already had a backlog of service requests despite having stopped its marketing activities in Câblevision's territory since August 2020.
10. Videotron submitted that it expected to be able to serve a certain number of users in the short term, and that its acquisition of new users in Câblevision's territory is

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<sup>1</sup> On 7 December 2020, the Commission issued a procedural letter to allow interested persons to file their interventions within Videotron's requested time frame and granted Videotron the time frame it requested to submit its response. Videotron and Câblevision submitted their arguments within the established deadlines of 14 December 2020 and 16 December 2020.

limited by Câblevision's processing capacity of TPIA orders. Videotron expected to reach its user limit towards the end of February 2021 for the Val-d'Or POI and around July 2021 for the Rouyn-Noranda POI, assuming Câblevision maintained a processing capacity for a certain number of TPIA orders per business day.

11. Videotron indicated that upgrading the capacity of a router at a POI does not represent unusual expenses. The company argued that they are instead normal expenses incurred to meet growing demand for TPIA service. These expenses are already mostly offset by the substantial additional revenue that Câblevision receives through basic monthly usage charges and monthly capacity charges.
12. Videotron submitted that Câblevision's current TPIA tariff is modelled after the Cogeco Communications inc. (Cogeco) tariff, as Câblevision itself indicated in the tariff notice that it submitted and that the Commission approved in Telecom Order 2020-223. According to the cost studies submitted by Cogeco and other cable carriers to justify their TPIA rates, the cost of routers at the POI is already part of costs explicitly recovered through standard monthly charges.
13. Videotron added that the Commission had already obtained evidence of the explicit recovery of costs of routers at the POI in Cogeco's cost study in response to a request for information from the Commission, Cogeco(CRTC)15sep10-101, filed under a follow-up proceeding to Telecom Regulatory Policy 2010-632.
14. Videotron submitted that Câblevision's attempt to use discretionary fees to impose the recovery of costs for upgrading routers at POIs runs contrary to pricing principles, given that Câblevision is attempting to recover twice the cost of its equipment.
15. Videotron also submitted that treating router upgrade charges as service charges for modifying or moving POIs, as described in item 201.3(d) of the TPIA tariff, could provide Câblevision with free rein to bill wholesale customers a discretionary amount for any expense that is not related to a limited number of service charges explicitly identified in Câblevision's tariff item. Videotron argued that this practice would open the door to unlimited forms of unfair billing.
16. Videotron added that even if Câblevision were entitled to charge an additional amount for upgrading its routers, the amount charged would be unfair because it would represent the full cost of upgrading routers at Câblevision's POIs.
17. Moreover, Videotron submitted that Câblevision had stated its intention to install two panels at each POI router, which Videotron considers redundant. Videotron also submitted that item 200.3(1)(iv) of Câblevision's TPIA tariff indicates that redundancy for wholesale customers is excluded. Videotron added that it has never requested such capacity for TPIA interconnections.
18. Videotron further submitted that Câblevision did not mention the value of the equipment that would be decommissioned during the replacement and stressed that

the equipment has a significant exchange value, which should logically be deducted from the value of the new equipment.

19. Finally, Videotron submitted that it had already been informed by Câblevision that it would take three months for Câblevision to upgrade the routers at the POIs to accommodate Videotron's capacity requests. Therefore, if the upgrades to routers at Câblevision's POIs were not to be initiated before December 2020, Videotron would be left with no choice but to completely stop activating new users on the Val-d'Or POI towards the end of February 2021. It would next need to completely stop activating new users on the Rouyn-Noranda POI around July 2021.

#### **Câblevision**

20. Câblevision submitted that, pursuant to item 201.3(d) of its TPIA tariff, costs associated with moving or modifying POIs or POI access equipment, including a POI router, are billable to interconnected wholesale customers, and that the costs incurred by Câblevision are owed by the customer for whom the work is completed. It is therefore possible for Videotron to be responsible for the costs incurred. Videotron's and Cogeco's tariffs include identical items.
21. Although Câblevision emphasized that item to Videotron, Câblevision submitted that Videotron has never explained the circumstances under which the item may apply and why the dispute between them does not directly apply. Moreover, given that the Cogeco tariff also contains this clause, the purchase of the router mentioned in Cogeco's cost study – which was an initial purchase according to Câblevision – cannot cover all router upgrades. Otherwise, that item would serve no purpose.
22. Câblevision indicated that to meet the additional capacity requested by Videotron, it would need to upgrade its routers at two POIs because of the limited capacity of its existing equipment.
23. Câblevision submitted that it is perplexed by the considerable physical capacity that Videotron is retaining for itself. Câblevision argued that it was not reasonably able to anticipate such a demand from Videotron, given the current proportion of capacity that Videotron's subscribers consume and the proportion represented by the requested capacity. Videotron is requesting a physical connection that exceeds twice what Câblevision uses for a substantially smaller number of active subscribers.
24. Câblevision added that item 201.3(j) of its tariff, which the Videotron and Cogeco tariffs also include, states that certain charges may be billed to accommodate a competing provider whose needs have changed at a POI.
25. Câblevision submitted that it did not charge Videotron unusual expenses for previous increases to its allocation of physical capacity, given that the increases did not require POI panels to be replaced.
26. Câblevision added that it is possible for several competing providers to pay for a portion of the costs if they use the capacity added at Videotron's request.

Accordingly, Câblevision indicated that it would support a mechanism under which Videotron would pay an initial amount per POI but, should another competing Internet provider use the new physical capacity made available through the initial investment in a POI, this provider would have to pay Câblevision for a portion of the charges, and Câblevision would then transfer the payment to Videotron.

#### **Videotron's reply**

27. Videotron submitted that in 2014, it had to upgrade its POI in Montréal to meet the growing demand for its TPIA service, and that, because of space constraints where the POI was located, the upgrade forced the company to move the POI to a new building. Videotron absorbed the moving costs of this process in full (e.g. acquisition of the new router, its installation at the POI, and time spent on coordinating the migration of the company's wholesale customers). Videotron also submitted that it never attempted to charge its wholesale TPIA customers for these costs because the tariff did not allow such charges.
28. Videotron argued that Câblevision's suggestion to establish a mechanism allowing Videotron to recover from other wholesale TPIA service customers a portion of the costs of upgrading routers at POIs paid to Câblevision is misleading. Videotron considers the suggestion misleading because this type of mechanism has not been approved by the Commission and is not reflected in the Cogeco TPIA tariff, which the Câblevision tariff is based on. If the Commission were to approve such a mechanism, all cable carriers would be allowed to amend their TPIA tariffs accordingly by, for example, removing from their cost studies amounts equivalent to payments received directly from wholesale TPIA service customers.
29. Videotron also indicated that such a mechanism presents numerous practical challenges because it raises questions about Câblevision's and other competing providers' share of contributions and about equipment in use prior to the upgrades.

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

30. Item 201.3(d) of Câblevision's TPIA tariff states that

[translation] [Câblevision] will determine the location of POIs. [Câblevision] may at its own discretion change the POI locations, remove POIs, modify POIs or modify POI access equipment, including POI routers. In the event of a change of POI location, removal of a POI, modification to a POI or modification to POI access equipment, including POI routers, that affects TPIA service, [Câblevision] will provide the Customers interconnected at that POI with reasonable notice which in any event shall not be less than six (6) months. Customers will bear their own costs of relocation or of changes to the POI or the POI access equipment, including POI routers. The Customer must provide [Câblevision] the same reasonable notice in the event of any change to its facilities that affects [Câblevision].

31. In general, for capital costs relating to equipment required to offer TPIA services, there are two types of costs included in the cost studies: access-driven capital costs<sup>2</sup> and usage-driven capital costs.<sup>3</sup>
32. Moreover, the Commission notes that one of the basic principles of TPIA tariffs based on cost studies is that billed costs are still calculated according to actual use of the equipment, regardless of its degree of use. For this reason, POI access charges are billed according to the actual number of accesses dedicated to wholesale customers rather than the total possible number of accesses the equipment can accommodate. Similarly, charges for POI capacity are billed according to the consumption dedicated to wholesale customers, in increments of 100 megabits, rather than the total router capacity with respect to possible consumption.
33. The Commission notes that router costs are generally included in monthly access and capacity charges. This is a basic principle that is reflected in the cost studies submitted to the Commission for wholesale TPIA service tariffs.<sup>4</sup> Further, the tariffs currently in effect for all cable carriers reflect this principle and are consistent with it, including the Cogeco tariffs approved following Telecom Order 2017-22.
34. The Commission also notes that an increase in the number of accesses and in consumption brings additional revenue related to access and capacity for the TPIA service provider. In the long run, this offsets any additional costs associated with equipment upgrades that support the additional capacity.
35. In the design report provided to Videotron dated 30 September 2020 (the design report), Câblevision stated that upgrading router capacity at each POI represents unusual expenses that are billable to wholesale customers pursuant to item 201.3(j) of its tariff. In this case, Videotron is the customer. Although the concept of unusual expenses is not defined in Câblevision's TPIA tariff and has never been established by the Commission, the Commission considers unusual expenses to be, for example, a request made by a wholesale customer to move a POI from one place to another, or a request that lies beyond the usual scope of the provision of a TPIA service.
36. The Commission considers that an increase in average consumption by users to be a general trend that is well known within the Internet service industry. Moreover, a request for additional capacity was foreseeable following the arrival of new players on the market, such as Videotron and EBOX inc., another Câblevision TPIA service client, in Abitibi-Témiscamingue. The Commission also considers the requested capacity increase to be even more feasible in the current context of strong growth in Internet consumption.

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<sup>2</sup> For this type of equipment, capacity is apportioned to users and is expressed as number of accesses.

<sup>3</sup> Equipment that makes up the aggregation transport network, such as routers and the cable modem termination systems of cable carriers, is usage driven. For this type of equipment, the capacity is expressed as an amount of peak traffic usage (kilobits per second or megabits per second).

<sup>4</sup> See Telecom Regulatory Policies 2011-703 and 2011-704 and Telecom Order 2016-396.

37. In light of the above, the Commission considers in this case that the costs of upgrading routers are not included in item 201.3(d) with respect to the costs of moving or modifying routers, and that Câblevision can therefore not charge for the costs of upgrading its routers at its POIs.
38. The Commission also notes that, in the design report provided by Câblevision to complete the interconnection of routers at the POIs, Câblevision indicated that [translation] “the timeline is dependent on the date the [Internet service provider] accepts the costs and the receipt of the acceptance by Câblevision,” and that the interconnection period will be consistent with item 201.3(1) of its TPIA tariff, meaning three months. This item reads, in part, [translation] “[Câblevision] will complete interconnection requests within three (3) months of the Customer’s acceptance of [Câblevision’s] design and costing report for an initial Customer request.” The Commission therefore considers Câblevision capable of upgrading its routers at its POIs within three months.
39. In light of all the above, the Commission **directs** Câblevision to finish upgrading its routers at the Val-d’Or and Rouyn-Noranda POIs at its own expense to accommodate the capacity requested by Videotron by **1 September 2021**.

### **Should the Commission impose an AMP under section 72.001 of the Act?**

#### **Positions of parties**

##### **Videotron**

40. Videotron submitted that it is the fourth time in 16 months that it has filed a Part 1 application with the Commission regarding Câblevision and its regulatory obligations with respect to its TPIA service. It submitted that the sole purpose of Câblevision’s flagrant and persistent non-compliance with the Commission’s regulatory framework is to prevent residents and businesses in the Abitibi-Témiscamingue region from receiving the benefits of true competition for communication services.
41. Videotron indicated that if the average user bandwidth consumption is constantly growing, the actual number of users that can be served with this capacity decreases each month. Consequently, if Câblevision does not upgrade its routers at the POIs, the number of Videotron users will be capped at each of the POIs that are currently in service in Câblevision’s territory. Furthermore, Câblevision already told Videotron that it would need three months to upgrade its routers at the POIs to accommodate Videotron’s capacity requests. Videotron was therefore of the view that it may be left with no choice but to completely stop activating new users on the Val-d’Or POI towards the end of February 2021, and that it would need to completely stop activating new users on the Rouyn-Noranda POI around July 2021.
42. Videotron argued that Câblevision’s attempt to use discretionary fees to impose the recovery of costs for upgrading routers at POIs is a clear violation of Câblevision’s

TPIA tariff and runs contrary to the most basic pricing principles, given that Câblevision is attempting to recover twice the cost of its equipment.

43. Videotron submitted that Câblevision had already attempted to charge it discretionary fees to acquire, install, and activate the routers at the POIs in March 2019. Videotron added, however, that Câblevision later recognized that the fees were inappropriate following an email exchange with Videotron and withdrew them. Videotron argued that the attempt to charge fees in this case is a repeat of the same type of incident.
44. In light of what it considers repeated delay tactics, Videotron requested that the Commission impose an AMP on Câblevision pursuant to section 72.001 of the Act.

#### **Câblevision**

45. Câblevision submitted that the allegation that it is employing a delay tactic to prevent Videotron from competing in Abitibi-Témiscamingue is unfounded because Câblevision had offered to increase the capacity of its routers.
46. Câblevision specified that, on 6 and 30 November 2020, it made a proposal to Videotron to begin the work to complete the upgrades required to meet Videotron's requests to increase capacity as soon as possible, with an effective date of 1 March 2021, provided that Videotron agreed to pay Câblevision the amounts under protest that Câblevision requested. Câblevision proposed to reimburse Videotron these amounts with interest if the Commission so decided.
47. Câblevision submitted that it simply did not interpret the tariff in the same way regarding the applicable fees, and added that consulting the Commission under these circumstances would help reinforce compliance with the regulatory framework, which is not consistent with a violation of the rules that would call for an AMP.

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

48. The Commission notes that it cannot impose an AMP on Câblevision as a result of previous Part 1 applications because the matter is beyond the scope of this proceeding.
49. Although Câblevision should have upgraded its routers, the Commission does not consider Câblevision to have acted in bad faith. On the contrary, the dispute between the parties raised issues that had yet to be the subject of a decision by the Commission.
50. In light of the above, the Commission considers that imposing an AMP would not serve the objective of having Câblevision abide by the tariff, and that it is not a proceeding in which it would be appropriate to impose an AMP pursuant to the Act.

## Policy Directions

51. The 2006 Policy Direction<sup>5</sup> requires the Commission to 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 the operation of market forces to the minimum extent necessary to meet the policy objectives of the Act. It also requires the Commission to specify, when relying on regulatory measures, the policy objective of those measures. The above determinations advance the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.<sup>6</sup> More specifically, upgrading the capacity of Câblevision's routers at POIs in Abitibi-Témiscamingue will promote the development of telecommunications in Canada, provide Canadians with better access to high-quality telecommunications services, encourage competition in the telecommunications market, and satisfy requirements for the consumption of telecommunications services by users in the area.
52. In addition, these measures should encourage the parties to respect the terms of the TPIA tariff and work more collaboratively with the objective of meeting the needs of the people of Abitibi-Témiscamingue who wish to benefit from competition in the telecommunications market.
53. The 2019 Policy Direction<sup>7</sup> states that in exercising its powers and performing its duties under the Act, the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation. The Commission considers that the determinations in this decision are consistent with the 2019 Policy Direction, particularly with respect to subparagraphs 1(a)(i), 1(a)(iii), 1(a)(iv), and 1(a)(v). This decision also promotes greater collaboration in the provision of wholesale telecommunications services, so that consumers in the Abitibi-Témiscamingue region can enjoy the benefits of healthy competition among providers and have access to competitive, affordable, and high-quality services that are not limited to a single provider with market power in the Val-d'Or and Rouyn-Noranda regions. Rather, with this decision, the Commission aims to reduce barriers for new players to enter into the market, which will promote affordability and encourage competition for telecommunications services in Abitibi-Témiscamingue.

## Secretary General

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<sup>5</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>6</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; (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; and (h) to respond to the economic and social requirements of users of telecommunications services.

<sup>7</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

## Related documents

- *Câblevision du nord de Québec inc. – Update to its third-party Internet access service*, Telecom Order CRTC 2020-223, 14 July 2020
- Telecom Order CRTC 2017-22, 24 January 2017
- *Tariff notice applications concerning aggregated wholesale high-speed access services – Revised interim rates*, Telecom Order CRTC 2016-396, 6 October 2016
- *Billing practices for wholesale business high-speed access services*, Telecom Regulatory Policy CRTC 2011-704, 15 November 2011
- *Billing practices for wholesale residential high-speed access services*, Telecom Regulatory Policy CRTC 2011-703, 15 November 2011; as amended by Telecom Regulatory Policy CRTC 2011-703-1, 22 December 2011
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010