



## Telecom Order CRTC 2021-188

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*Public record: Tariff Notices 12 and 12A*

### **Câblevision du nord de Québec inc. – Update to its third-party Internet access service**

The Commission **denies** the application by Câblevision du nord de Québec inc. for destandardization because the Commission considers the application to be premature.

#### **Background**

1. In Telecom Order 2019-422, the Commission denied the application by Câblevision du nord de Québec inc. (Câblevision) to withdraw its third-party Internet access (TPIA) service, in light of the intervention and the related applications submitted.
2. In Telecom Decision 2019-423, the Commission directed Câblevision to provide its TPIA service to any competitor with a genuine interest in the service and to file with the Commission a tariff notice (TN) for its TPIA service.
3. In Telecom Order 2020-223, the Commission approved the update to Câblevision's TPIA service. In the context of that order, the company offered speed profiles of 15 megabits per second (Mbps) downstream and 1.5 Mbps upstream (the 15/1.5 profile), 50 Mbps downstream and 5 Mbps upstream (the 50/5 profile), and 125 Mbps downstream and 20 Mbps upstream (the 125/20 profile).

#### **Application**

4. The Commission received an application from Câblevision, dated 28 September 2020 and amended on 14 October 2020, in which the company requested that the Commission authorize the destandardization of its 50/5 profile for its TPIA service customers.
5. The Commission received interventions from the Competitive Network Operators of Canada (CNOC), EBOX inc. (EBOX), and Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron). EBOX also requested that the Commission impose an administrative monetary penalty (AMP) on Câblevision for violating the *Telecommunications Act* (the Act).

## Issues

6. The Commission has identified the following issues to be addressed in this order:
  - Are there reasonable grounds for Câblevision's application to destandardize its 50/5 profile?
  - Should the Commission impose an AMP pursuant to section 72.001 of the Act?<sup>1</sup>

### **Are there reasonable grounds for Câblevision's application to destandardize its 50/5 profile?**

#### **Positions of parties**

7. Câblevision submitted that it no longer needed to offer the 50/5 profile to its TPIA service customers, given that it no longer offers the service to its own retail customers. As a result, this speed profile would be made available to existing end-users only and would no longer be available to new end-users or when end-users wish to change their profile.
8. Câblevision argued that the rate change included in its application was consistent with the definition set out in Telecom Information Bulletin 2010-455-1, which addressed destandardization applications.
9. Câblevision specified that its TPIA service remains improved overall because it includes a new profile of 250 Mbps downstream and 20 Mbps upstream (the 250/20 profile) in TN 11<sup>2</sup> at the same price as its lower speed profile: the 125/20 profile.
10. EBOX and Videotron, supported by CNOC, submitted that Câblevision did not provide any information about its grounds for destandardizing the 50/5 profile.
11. EBOX submitted that destandardizing the 50/5 profile would run counter to the objectives of the 2019 Policy Direction<sup>3</sup> because it would impede competition by allowing Câblevision to maintain its monopoly and reduce the affordability of the TPIA service in the region.
12. Videotron expressed its concern that Câblevision's attempt to destandardize the 50/5 profile is an attempt to restrict Videotron's entrance into the market in Abitibi-Témiscamingue, Quebec. In fact, this speed profile is sufficient to support

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<sup>1</sup> [The General Administrative Monetary Penalties Scheme, the Telecommunications Act \(S.C. 1993, c. 38\)](#)

<sup>2</sup> The Commission approved TN 11 in Telecom Order 2020-387.

<sup>3</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

Helix, Videotron's new Internet protocol television service, at a competitive price. Videotron argued that the destandardization of the 50/5 profile would harm Câblevision's and Videotron's customers, and that the impact would be the greatest on Videotron's customers.

13. EBOX also expressed the concern that the attempt to destandardize the 50/5 profile is an attempt to restrict its entrance into the Abitibi-Témiscamingue market, given the share of its sales that are 50/5 profile subscriptions.
14. Videotron specified that Câblevision is unique in that it offers consumers little choice in Internet plans when compared with the offerings of other cable carriers. This limited offering would force consumers to choose between speeds of 15 Mbps downstream and 125 Mbps downstream. Videotron added that Câblevision's 250/20 profile targets a different market segment than the 50/5 profile, at a proposed wholesale price that is more than 100% higher than that of the 50/5 profile, and that the 250/20 profile would not at all meet the needs resulting from destandardizing the 50/5 profile.
15. EBOX added that the new rate schedule proposed by Câblevision represents a 246% difference between the rates for the 15/1.5 and 125/20 profiles.
16. CNOC supported EBOX's and Videotron's interventions and requested that the Commission deny Câblevision's destandardization application. CNOC submitted that the failure to provide an explanation for this withdrawal application is, in and of itself, sufficient reason for the Commission to deny the application. In addition, CNOC submitted that the Commission should not allow Câblevision to create a gap in the level of service offered in its territory by withdrawing an intermediate speed profile. CNOC specified that Câblevision's destandardization application is anti-competitive, and emphasized that the application represents a possible loophole in the Commission's speed-matching requirement.
17. Câblevision responded that it considers the destandardization of the 50/5 profile for its retail customers to be the only reason necessary to justify its destandardization application, and that the Commission has no valid grounds to deny it.
18. Câblevision also indicated that as of the most recent invoice date, the 50/5 profile is not the most popular profile among its TPIA service customers.

#### **Other issues submitted by EBOX**

19. EBOX requested that the Commission either force Câblevision to offer a configuration that is aggregated in a similar manner to that of the configuration offered in other markets, or to recognize that the type of configuration in place is disaggregated due to the number of points of interconnection. EBOX requested that Câblevision amend its billing rates according to capacity and according to access at a level that is reflective of this reality.
20. EBOX also submitted that Câblevision should process more requests to connect to its TPIA service to meet the forecasts that were shared with Câblevision, so that EBOX does not incur capacity charges that it would not be able to recover in the absence of new connected consumers.

21. Finally, EBOX stated that Câblevision took advantage of the Commission's timeline to approve TN 11 to delay processing the requests to connect to its TPIA service for the 250/20 profile. EBOX considers that this practice was unnecessary, and that most of its wholesale providers do not exercise this regulatory option.

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

22. In accordance with the speed-matching requirement set out in Telecom Regulatory Policy 2010-632, incumbent local exchange carriers and cable carriers must provide wholesale services at the same speeds as those offered to their retail customers. Câblevision destandardized the 50/5 profile for its own retail customers.
23. However, the Commission considers that Câblevision has not provided sufficient grounds to explain the need to destandardize the 50/5 profile, other than the fact that the company has destandardized the 50/5 profile for its own retail customers, while a lower profile and a higher profile are still available and similar speed profiles are still offered by other cable carriers in Quebec. The Commission considers that Câblevision has not provided sufficient grounds to justify the application for destandardization.
24. The Commission notes that Câblevision is currently the only provider with the facilities required to offer a TPIA service in the Abitibi-Témiscamingue region. The Commission also notes that it established the universal service objective in Telecom Regulatory Policy 2016-496, in which it stated that Canadian residential and business fixed broadband Internet access service customers should be able to access speeds of at least 50 Mbps downstream and 10 Mbps upstream. When establishing this threshold, the Commission took into consideration, among other things, speeds that were available to the vast majority of Canadians and those that could become necessary for Canadians. Câblevision's TPIA service, with its 50/5 profile maintained, will give consumers in the Abitibi-Témiscamingue region the choice to subscribe to Câblevision's Internet access services or to an Internet access service offered by one of its competitors.
25. In addition, the Commission considers that the higher speed profiles offered by Câblevision, specifically the 125/20 and 250/20 profiles, do not represent a comparable alternative to the 50/5 profile that was offered to consumers, given that, as of the date that Câblevision submitted its application under this proceeding, the monthly fees associated with these profiles are twice as high (\$51.25 instead of \$24.98). The Commission also notes that Câblevision has not offered to add a profile that is closer to the 50/5 profile than to the other profiles already being offered. The Commission considers that this makes Câblevision's application to destandardize the 50/5 profile premature. In practice, Câblevision's destandardization of the 50/5 profile would mean that new customers wishing to subscribe to an intermediate profile comparable to the speed that was previously offered would have to choose a profile that is much lower (the 15/1.5 profile) or much higher (the 125/20 or 250/20 profiles) than they need.

26. In light of the information provided by Câblevision regarding subscriptions to the 125/50 profile in October 2020,<sup>4</sup> and on the basis of the data available at that time, the Commission considers that a certain percentage of new Câblevision TPIA service customers could be disadvantaged by the destandardization of the 50/5 profile if those customers wish to subscribe to a profile higher than the 15/1.5 profile.
27. Câblevision's application to destandardize the 50/5 profile could have a negative impact on competitors in cases where this profile represents a majority of their sales. The Commission notes that in their interventions, EBOX and Videotron claim that the 50/5 profile could appeal to a larger number of their customers. As a result, the destandardization of the 50/5 profile could considerably limit consumer choice, especially for consumers who consider that this profile has an ideal price and download and upload capacities. Therefore, the Commission considers that the application to destandardize the Câblevision's 50/5 profile is premature in light of the current TPIA service offering in the Abitibi-Témiscamingue region.
28. In light of the above and under the circumstances, the Commission **denies** Câblevision's application to destandardize the 50/5 profile for its TPIA service.
29. The Commission considers that the issues raised by EBOX that are not related to the application to destandardize the 50/5 profile lie outside the scope of this proceeding.

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

#### **Positions of parties**

30. EBOX argued that Câblevision is acting in bad faith and requested that the Commission impose an AMP pursuant to section 72.001 of the Act, given the anti-competitive and repeated nature of Câblevision's actions.
31. CNOC expressed its support of EBOX's request in regard to the Commission imposing an AMP pursuant to section 72.001 of the Act, given Câblevision's growing record of non-compliance with Commission requirements, the nature and scope of the regulations in question, and the benefits that Câblevision would have gained from the delays caused by its non-compliance.
32. CNOC also argued that Câblevision's arbitrary changes, its capacity configurations, and its high number of points of interconnection also justify the Commission's intervention.

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<sup>4</sup> The 250/20 profile was not yet available in October 2020. It became available in December 2020 following Telecom Order 2020-387.

## Commission's analysis and determinations

33. AMPs constitute a tool available to the Commission for promoting compliance with the Act, regulations, or Commission decisions.
34. In the context of the present proceeding, the Commission considers that an application to destandardize a TPIA service speed profile is not, in and of itself, a violation of the current TPIA tariff or a violation of the Act, regulations, or Commission decisions. The Commission does not consider that Câblevision violated its TPIA tariff or acted in bad faith, given that the speed profile that was subject to an application for destandardization continued to be offered to TPIA service customers.
35. In addition, the Commission considers that the issues raised by CNOC and EBOX that are not related to the application to destandardize the 50/5 profile lie outside the scope of the present proceeding.
36. In light of the above, the Commission **denies** the requests by CNOC and EBOX to impose an AMP on Câblevision.

## Policy directions

37. In arriving at its determinations, the Commission considered the 2019 Policy Direction and the Canadian telecommunications policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.<sup>5</sup> The Commission considers that the destandardization of the 50/5 profile would run counter to the objectives set out in paragraphs 7(b), (f), and (h) of the Act to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; to foster increased reliance on market forces for the provision of telecommunications services; and to respond to the economic and social requirements of users of telecommunications services.
38. The 2006 Policy Direction<sup>6</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.

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<sup>5</sup> 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; (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>6</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

39. More specifically, maintaining the 50/5 profile for the TPIA service will provide Canadians with wider access to high-quality telecommunications services, encourage competition in the telecommunications services market, and satisfy the telecommunications services consumption requirements for users in Abitibi-Témiscamingue. In addition, this measure advances the objective of meeting the needs of users in this region who wish to benefit from competition in the telecommunications services market.
40. The 2019 Policy Direction 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 expectations established in this order align with the 2019 Policy Direction, particularly with respect to subparagraphs 1(a)(i), 1(a)(iii), 1(a)(iv), and 1(a)(v). More specifically, the above findings are intended to enable consumers in the Abitibi-Témiscamingue region to enjoy the benefits of healthy competition among providers and ensure that access to competitive, affordable, and high-quality services is not limited by one provider that has market power in the Val d'Or and Rouyn-Noranda regions. Rather, with this order, the Commission aims to reduce barriers for new players to enter into the market, which will promote affordability and encourage competition in the telecommunications services market in Abitibi-Témiscamingue.

Secretary General

### **Related documents**

- Telecom Order CRTC 2020-387, 2 December 2020
- *Cablevision du nord de Québec inc. – Update to its third-party Internet access service*, Telecom Order CRTC 2020-223, 14 July 2020
- *Videotron Ltd. – Applications regarding (i) Cablevision du Nord de Québec inc.'s (Cablevision) refusal to sign a third-party Internet access (TPIA) service agreement, and (ii) access to Cablevision's TPIA service at just and reasonable rates, and under just and reasonable terms*, Telecom Decision CRTC 2019-423, 16 December 2019
- *Cablevision du Nord de Québec inc. – Application to withdraw third-party Internet access service*, Telecom Order CRTC 2019-422, 16 December 2019
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010