



Telecom Notice of Consultation CRTC 2009-261

Ottawa, 8 May 2009

Notice of hearing

16 November 2009

Gatineau, Quebec

Proceeding to consider the appropriateness of mandating certain wholesale high-speed access services

File number: 8663-C12-200907321, 8638-C12-200905010, and 8661-C122-200904286

In this Notice of Consultation, the Commission merges two existing proceedings into a single broader-scope proceeding to examine the appropriateness of mandating certain wholesale high-speed access services and other matters related to the provision of such services by incumbent local exchange carriers and cable carriers.

Introduction

1. In Telecom Regulatory Policy 2009-34, the Commission initiated a proceeding to consider matters related to the feasibility and appropriate configuration and classification of a wholesale central-office (CO)-based asymmetric digital subscriber line (ADSL) access service with respect to Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel), TELUS Communications Company (TCC), and Télébec, Limited Partnership [collectively, the incumbent local exchange carriers (the ILECs)] (the CO-based ADSL access proceeding).
2. The Commission subsequently received an application by Cybersurf Corp. (Cybersurf) and Alberta 1356382 Ltd., dated 2 March 2009, requesting that cable companies operating as common carriers be required to provide a wholesale access service that (1) is configured to allow actual or virtual co-location of competitor equipment at a head-end or equivalent, and (2) dedicates a set of 6 MHz channels for competitor use (the head-end-based cable network access proceeding).
3. By letter dated 3 March 2009, TCC, supported by Bell Aliant and Bell Canada (collectively, the Bell companies), requested that the Commission combine the CO-based ADSL access and head-end-based cable network access proceedings (the two proceedings) into a single proceeding. By staff letter dated 9 March 2009, TCC's request was denied.

4. As an alternative to combining the two proceedings, the Bell companies requested, by letter dated 19 March 2009, that the Commission conduct them in parallel and that each proceeding include an oral hearing component. Bragg Communications Inc., carrying on business as EastLink; Cogeco Cable Canada Inc.; Rogers Cable Communications Inc.; Shaw Communications Inc.; and Videotron Ltd. [collectively, the cable carriers]; MTS Allstream; Cybersurf; the Coalition of Internet Service Providers (CISP); and Distributel Communications Limited (Distributel) opposed the Bell companies' request.
5. Finally, by letters dated 1 April 2009, the Bell companies and TCC submitted that the Commission should first conduct a broad-based policy proceeding to establish a consistent and coherent regulatory framework for the ILECs and cable companies. On the same date, SaskTel submitted that any review should not be limited to the ILECs.
6. The two proceedings were suspended by staff letters dated 31 March 2009 and 1 April 2009.

Merged proceeding

7. The Commission notes that the ILECs and cable carriers are making investments to upgrade equipment and facilities in their local access networks in order to enhance their high-speed ADSL and cable modem termination system (CMTS)-based retail Internet services. The Commission further notes that competitors have requested use of these networks to offer comparable retail services to their customers.
8. The Commission considers that the two proceedings raise similar important issues, including competitive neutrality, and that it would be more efficient to address them in a single proceeding. Accordingly, with this Notice of Consultation, the Commission initiates a proceeding that merges the CO-based ADSL access proceeding and the head-end-based cable network access proceeding (the high-speed access proceeding) as described more fully below.
9. The Commission notes that the head-end-based cable network proceeding involves a proposal for a specific access configuration. In contrast, this merged high-speed access proceeding is not limited to consideration of the specific proposed configuration.
10. In this proceeding, the Commission will examine the appropriateness of mandating the provision of a CO-based ADSL access service and a head-end-based cable network access service. Among the issues to be examined are the feasibility, configuration and, if mandated, the classification of the services in question.
11. This proceeding will also examine competitive neutrality issues pertaining to the services under consideration. Further, in order to afford incumbent carriers an adequate opportunity to recoup service introduction costs, the Commission will consider the appropriateness of establishing competitor demand thresholds such as on a per-interconnection-point basis.

12. The Commission notes that this proceeding is not intended to establish a new regulatory policy framework, but rather to apply the existing regulatory framework as set out in Telecom Decision 2008-17. Accordingly, the issue of whether the provision of the high-speed access services that are the subject of this proceeding should be mandated will be addressed in the context of that framework.
13. Finally, the Commission notes that its determinations in this proceeding must be taken with a view to implementing the Canadian telecommunications policy objectives set out in section 7 of the *Telecommunications Act*, and that it is required in making those determinations to take into account the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006. With respect to the latter, the Commission notes that the regulatory measures under consideration in this proceeding are of an economic nature and deal with network access regimes.

Procedure

14. The ILECs, the cable carriers, CISP, Cybersurf, Distributel, OneConnect Canada, and Primus Telecommunications Canada Inc. are made parties to this proceeding.
15. The records of the CO-based ADSL access proceeding and the head-end-based cable network proceeding are made part of the record of this proceeding.
16. Parties other than those identified in paragraph 14 that are interested in participating in this proceeding (including receiving copies of all submissions) must notify the Commission of their intention to do so by filling out the online form; or by writing to the Secretary General, CRTC, Ottawa, Ontario, K1A 0N2; or by faxing to: 819-994-0218 by **22 May 2009** (the registration date). Parties are to provide their email address, where available. If parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard-copy filings.
17. The Commission will post on its website, as soon as possible after the registration date, a complete list of parties and their mailing addresses (including their email addresses, if available), identifying those parties who wish to receive disk versions.
18. Persons wishing merely to file written comments in this proceeding, without receiving copies of the various submissions, may do so by writing to the Commission by **7 December 2009** at the address or fax number noted above, or by filling out the online form.
19. The ILECs and cable carriers are to file, and other parties may file, initial submissions with the Commission on any matters within the scope of this proceeding, serving copies on all other parties, by **22 June 2009**. Such submissions are to provide detailed rationale, together with any supporting evidence.
20. The ILECs' initial submissions filed pursuant to paragraph 19 are to include, to the extent not already provided, the information described in Appendix 1. To the extent that an ILEC has already provided this information, it is to identify precisely where on the record the information may be found.

21. The cable carriers' initial submissions filed pursuant to paragraph 19 are to include the information described in Appendix 2.
22. Parties may address interrogatories to any party who filed initial submissions pursuant to paragraph 19. Any such interrogatories must be filed with the Commission and served on the relevant party or parties by **17 July 2009**.
23. Responses to interrogatories addressed pursuant to paragraph 22 are to be filed with the Commission and served on all parties by **10 August 2009**.
24. Requests by parties for further responses to their interrogatories, specifying in each case why a further response is both relevant and necessary, and requests for public disclosure of information for which confidentiality has been claimed, setting out in each case the reasons for disclosure, must be filed with the Commission and served on the relevant party or parties by **24 August 2009**.
25. Written responses to requests for further responses to interrogatories and for public disclosure must be filed with the Commission and served on the party or parties making the request by **8 September 2009**.
26. Determinations will be issued with respect to requests for further information and public disclosure as soon as possible. Any information to be provided pursuant to that determination must be filed with the Commission and served on all interested parties by **5 October 2009**.
27. The Commission will hold an oral public hearing, beginning on **16 November 2009** at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec. The hearing is expected to last no more than five days.
28. Parties wishing to appear at the oral hearing must file notice of their intention to participate no later than **9 October 2009**. An organization and conduct letter, providing directions on procedure with respect to the oral hearing, including the scope of the issues to be examined during the oral hearing, will be issued prior to the commencement of the oral hearing.
29. All parties may file final submissions with the Commission on any matter within the scope of this proceeding, serving copies on all other parties, by **7 December 2009**.
30. All parties may file replies with the Commission, serving copies on all other parties, by **21 December 2009**.
31. The Commission expects to issue a decision on the issues raised in this Notice of Consultation within 90 days after the record closes.
32. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding.
33. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.

34. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
35. Electronic submissions should be in HTML format. As an alternative, those making submissions may use "Microsoft Word" for text and "Microsoft Excel" for spreadsheets.
36. Each paragraph of all submissions should be numbered. In addition, the line ***End of document*** should be entered following the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
37. The Commission also encourages parties to monitor the record of this proceeding (and/or the Commission's website) for additional information that they may find useful when preparing their submissions.

Important notice

38. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, email address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
39. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
40. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
41. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the webpage of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.

Location of CRTC offices

42. Submissions may be examined or will be made available promptly upon request at the Commission offices during normal business hours:

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
Gatineau, Quebec J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Metropolitan Place
99 Wyse Road, Suite 1410
Dartmouth, Nova Scotia B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West, Suite 504
Montréal, Quebec H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East, Suite 624
Toronto, Ontario M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue, Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel.: 204-983-6306 – TDD: 204-983-8274
Fax: 204-983-6317

2220 – 12th Avenue, Suite 620
Regina, Saskatchewan S4P 0M8
Tel.: 306-780-3422

10405 Jasper Avenue, Suite 520
Edmonton, Alberta T5J 3N4
Tel.: 780-495-3224

580 Hornby Street, Suite 530
Vancouver, British Columbia V6C 3B6
Tel.: 604-666-2111 – TDD: 604-666-0778
Fax: 604-666-8322

Secretary General

Related documents

- *Requests to review and vary directives in Telecom Decision 2008-17 related to the provision of central-office-based wholesale ADSL access service and aggregated ADSL access service, Telecom Regulatory Policy CRTC 2009-34, 26 January 2009*
- *Revised regulatory framework for wholesale services and definition of essential service, Telecom Decision CRTC 2008-17, 3 March 2008*

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix 1

Notwithstanding the content of its submission made pursuant to paragraph 19, each ILEC is to include the following in its initial submission:

- a) a description, illustrated with diagrams, of a CO-based ADSL access service for competitors that (i) provides access to all end-users to whom the ILEC is able to offer its retail high-speed Internet service and (ii) is configured to allow a competitor point of interconnection at each CO;
- b) a description of (i) how the service would be deployed within the ILEC's current architecture; (ii) any network additions or modifications that would be required; (iii) the activities, including estimated time frames, needed to deploy this service once a competitor request is received; and (iv) the technical and economic feasibility of deploying the service, including service introduction costs and associated costing methodology and assumptions; and
- c) a position on (i) whether an alternative CO equipped with an asynchronous transfer mode (ATM)/Ethernet switch should be designated as the competitor interconnection point for the ADSL access service when the serving CO is not equipped with such a switch; and, if so, (ii) a detailed description of the service configuration, the designated interconnection COs, and associated serving COs.

Appendix 2

Notwithstanding the content of its submission made pursuant to paragraph 19, each cable carrier is to include the following in its initial submission:

- a) a description, illustrated with diagrams, of a head-end-based cable access service for competitors that includes the cable carrier's CMTS and (i) provides access to all end-users to whom the cable carrier is able to offer its retail high-speed Internet service and (ii) is configured to allow a competitor point of interconnection at each local head-end;
- b) a description of (i) how the service would be deployed within the cable carrier's current architecture; (ii) any network additions or modifications that would be required; (iii) the activities, including estimated time frames, needed to deploy this service once a competitor request is received; and (iv) the technical and economic feasibility of deploying the service, including service introduction costs and associated costing methodology and assumptions; and
- c) a position regarding the provision of a specific wholesale service that would be configured to allow head-end equipment co-location and access to a set of 6 MHz channels dedicated for competitor use.