



## Telecom Decision CRTC 2013-36

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Ottawa, 31 January 2013

### **Canadian Network Operators Consortium Inc. - Application requesting enforcement of matching speed requirements with respect to third-party Internet access services provided by Rogers Communications Partnership**

File number: 8661-C182-201214270

*In this decision, the Commission denies the Canadian Network Operators Consortium Inc.'s (CNOC) requests that Rogers Communications Partnership (RCP) be required to make new wholesale third-party Internet access (TPIA) service speeds available at disaggregated points of interconnection (POIs) and that the rates for these new wholesale speeds be based on RCP's retail service pricing. The Commission directs RCP to issue amended tariff pages for TPIA service at aggregated POIs that identify the upstream speeds available to independent service providers.*

#### **Background**

1. Third-party Internet access (TPIA) services are wholesale high-speed access (WHSAs) services of large cable carriers that enable independent service providers to offer retail Internet services to their own end-users. As a result of the availability of TPIA services, residential and business end-users have greater choice in the Internet services that are available to them. TPIA services are offered under terms and conditions that must be approved by the Commission, whereas the Commission has refrained from regulating the rates and most terms and conditions applicable to retail Internet service offerings.
2. In Telecom Decision 2006-77, the Commission decided that if a cable carrier introduces a new retail Internet service speed, the cable carrier must also offer that speed to independent service providers by filing, at the same time, a tariff for a wholesale TPIA service that matches the new speed offering, with a supporting cost study (the matching speed condition). This condition is necessary in order to ensure that independent service providers can offer retail Internet services that are comparable to the retail Internet services offered by the cable carriers. In that decision, the Commission further stipulated that when a cable carrier introduces a speed upgrade to one of its retail Internet service offerings with no corresponding price change, that cable carrier must revise its tariff for wholesale service to match these retail service speed changes with no corresponding price change (the re-speeding condition).

3. In Telecom Regulatory Policy 2010-632, the Commission re-examined the regulatory obligations that should apply to the WHSA services of the cable carriers and telephone companies (incumbents). The Commission affirmed the need for the matching speed condition, and determined that the rates for wholesale services provided by incumbents should be based on the costs to provide the wholesale services. Further, with a view to making the WHSA services provided by cable carriers more similar to those of the telephone companies, the cable carriers were required to modify the interconnection arrangements so as to reduce the number of points of interconnection (POIs)<sup>1</sup> needed by independent service providers to access their end-users served by cable carriers, a practice known as POI aggregation.
4. The rates for TPIA services offered at the newly-developed aggregated POIs of cable carriers were approved on a final basis in Telecom Regulatory Policy 2011-703 (hereinafter referred to as aggregated TPIA services). In that decision, the Commission also determined that TPIA services provided at the previously-defined disaggregated POIs would be phased out over a two-year transition period ending November 2013.
5. The Commission received an application, Tariff Notice (TN) 28, from Rogers Communications Partnership (RCP), dated 7 November 2012, in which it proposed revisions to introduce four new wholesale aggregated TPIA service speeds (new speeds). In Telecom Order 2012-706, the Commission approved TN 28 on an interim basis with modifications to the proposed interim rates such that the monthly access rates were based on the nearest lower speed service in RCP's tariff.

### **The application**

6. The Commission received a Part 1 application from the Canadian Network Operators Consortium Inc. (CNOc), dated 8 November 2012, alleging that the changes proposed by RCP in TN 28 violate the re-speeding condition set out in Telecom Decision 2006-77. CNOc requested that the Commission require RCP to adhere to the re-speeding condition by increasing the 18 megabits per second (Mbps), 28 Mbps, and 32 Mbps service speeds offered to its TPIA customers to 25 Mbps, 35 Mbps, and 45 Mbps respectively, with no price increase, for both disaggregated and aggregated POIs.
7. The Commission received comments regarding CNOc's application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), RCP, Teresa Murphy, and Vaxination Informatique (Vaxination). The public record of these proceedings, which closed on 23 November 2012, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file numbers provided above.

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<sup>1</sup> A POI is a location which connects an independent service provider's network to the cable carrier's network in order to access retail customers through high-speed access paths on the cable carrier's network.

## Issues

8. The Commission has identified the following issues to be addressed in this decision:
  - I. Should RCP be required to make the new aggregated TPIA service speeds approved in Telecom Order 2012-706 available at disaggregated POIs?
  - II. Should RCP be directed to use its retail pricing behaviour as a basis for setting rates?
  - III. Has RCP withheld upgrades to upstream speeds from competitors?
- I. Should RCP be required to make the new aggregated TPIA service speeds approved in Telecom Order 2012-706 available at disaggregated POIs?**
9. CNOC, supported by Vaxination, submitted that the new speeds proposed by RCP in TN 28 should also be made available to independent service providers at disaggregated POIs. CNOC argued that RCP rolled out the infrastructure required to support the new speeds throughout its network so that there would only be a minimal incremental cost associated with offering the new speeds at disaggregated POIs. Finally, according to CNOC, any additional costs would be offset by higher revenues for RCP from additional services requested by independent service providers.
10. RCP submitted that in Telecom Regulatory Policy 2011-703, the Commission directed cable carriers to develop aggregated POIs for use by independent service providers, and established a fixed period of two years for all independent service providers to make a transition from the disaggregated POIs currently in place to these new aggregated POIs. According to RCP, it would make no sense to require cable carriers to maintain two sets of arrangements when one of them is subject to a phase out commitment, particularly in view of the additional investment that would have to be incurred by RCP to provide the new speeds at disaggregated POIs. RCP also noted that, to date, no independent service provider has migrated its customers to its aggregated TPIA service.
11. RCP indicated that in prior Commission decisions, cable carriers were only obliged to introduce new services at aggregated POIs. RCP submitted that its tariff applications are consistent with these prior decisions.

## Commission analysis and determination

12. The Commission notes that in Telecom Order 2011-377, it approved interim rates for wholesale TPIA services provided by RCP and other cable carriers at aggregated POIs. In that decision, the Commission also noted that cable carriers would be required to maintain their existing services at disaggregated POIs until the end of the transition period. In Telecom Regulatory Policy 2011-703, the end of the transition period applicable to disaggregated POI arrangements was set to 15 November 2013.

13. The Commission further notes that in Telecom Decision 2011-482, it determined that no new TPIA speeds needed to be made available at disaggregated POIs.
14. Based on the above, the Commission considers that independent service providers have been given ample notice that TPIA services presently available at disaggregated POIs would only continue to be available until 15 November 2013. Further, the Commission considers that it would not be appropriate to require RCP and other cable carriers to offer new services over interconnection arrangements that are expressly being phased out. The Commission therefore **denies** CNOc's request that the new speeds approved in Telecom Decision 2012-706 be made available at disaggregated POIs.

## **II. Should RCP be directed to use its retail pricing behaviour as a basis for setting rates?**

15. CNOc, supported by Vaxination and Teresa Murphy, submitted that since RCP increased its retail service speeds without changing the prices of those services, it should have ensured that the same speed increases were made available to TPIA customers without any changes to TPIA rates. Therefore, in CNOc's view, the new speeds introduced in TN 28 should be made available to independent service providers at no additional charge, consistent with the re-speeding condition set out in Telecom Decision 2006-77, instead of at the higher rates proposed by RCP.
16. RCP submitted that the new higher speeds offered to its retail customers are only available to the small group of its customers that have the updated modems required to support such speeds. On that basis, RCP submitted that it did not re-speed its retail services. Moreover, according to RCP, the new speeds will co-exist with currently-available speeds for several months, and should therefore be seen as new services, not as upgrades to existing services.
17. Finally, RCP noted that under the pricing framework applicable to aggregated TPIA services, as set out in Telecom Regulatory Policy 2010-632 and subsequent decisions, TPIA service rates are based on costs plus an appropriate markup. RCP submitted that CNOc's proposal to establish rates for new services on the basis of RCP's retail pricing behaviour is inconsistent with the Commission's requirement that WWSA rates be cost-based.

## **Commission analysis and determinations**

18. The Commission notes that the speed-matching condition applicable to WWSA services requires that incumbents provide a WWSA service speed that matches the speed of its retail offerings.
19. The Commission further notes that Telecom Regulatory Policy 2010-632, as well as Telecom Regulatory Policy 2011-703, require that rates for WWSA services provided at aggregated POIs be based on the cost incurred to provide the services, plus an appropriate markup, without exception. Consistent with the principle of

setting rates for wholesale aggregated TPIA service on the basis of the cost of providing those services, the Commission considers that a cable carrier should be able to charge a rate for a new speed that recovers its costs, independent of the changes that it makes to its retail rates.

20. The Commission also considers that where an incumbent proposes to establish a new wholesale service speed, the rate charged for that speed must be supported by a cost study before being approved on a final basis. Where a cost study has not been provided, rates for WHSA services at an existing lower speed would provide an appropriate interim rate for the new service speed. The Commission applied this rating principle in Telecom Order 2012-706. In light of the above, and in view of the forborne status of retail Internet services, the Commission no longer considers the re-speeding condition to be appropriate.
21. Based on the above, the Commission **denies** CNOc's request to decide that RCP's proposed rate treatment for new speeds fails to respect its matching speed obligations.

### **III. Has RCP withheld upgrades to upstream speeds from competitors?**

22. CNOc, supported by Teresa Murphy, submitted that RCP, coincident with its introduction of faster downstream speeds for some of its retail customers, provided those retail customers with faster upstream speeds, without making the same upstream speeds available to wholesale customers.
23. RCP replied that the new downstream speeds proposed in TN 28 would be accompanied by improved upstream speeds for wholesale services, just as they are for RCP's retail customers.

### **Commission analysis and determinations**

24. The Commission notes that the matching speed condition applies to both the downstream and upstream capacities of services provided by incumbents. In the event that any incumbent provides improved upstream speeds to its retail customers, or even optional speed arrangements to its retail customers, those same capacities must be made available to wholesale customers, consistent with the speed matching requirement.
25. The Commission notes RCP's submission that the proposals in TN 28 would improve upstream speeds available to wholesale aggregated TPIA customers on the same basis as they are made available to its retail customers. On that basis, the Commission finds that RCP has respected the Commission's matching speed obligations.
26. The Commission, however, notes that the wholesale aggregated TPIA service tariff pages approved on an interim basis in Telecom Order 2012-706 do not specify the upstream speeds that are made available to independent service providers. In the interest of clarity, the Commission considers that incumbent service providers should

specify in their approved tariff pages for WHSA services, the upstream speeds made available to independent service providers, including any optional speeds that may apply. To that end, RCP is directed to issue amended tariff pages for its aggregated TPIA services that provide this information within 30 days of the date of this decision<sup>2</sup>.

Secretary General

### **Related documents**

- *Rogers Communications Partnership – Introduction of four new wholesale Third Party Internet Access service speeds*, Telecom Order CRTC 2012-706, 21 December 2012
- *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
- *Canadian Network Operators Consortium Inc. – Application for clarification and expedited relief concerning the manner in which cable companies intend to implement directives in Telecom Order 2011-377*, Telecom Decision CRTC 2011-482, 10 August 2011
- *Interim rates for wholesale residential and business high-speed access service*, Telecom Order CRTC 2011-377, 15 June 2011
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010
- *Cogeco, Rogers, Shaw, and Videotron - Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006

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<sup>2</sup> The revised tariff pages can be submitted to the Commission without a transmission page or an approval request; a tariff application is not required.