



## Telecom Decision CRTC 2016-446

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Ottawa, 9 November 2016

*File number: 8663-T117-201513325*

### **TekSavvy Solutions Inc. – Application regarding transitional access to aggregated wholesale high-speed access service**

*The Commission directs Rogers Communications Canada Inc. (RCCI) to (i) continue to provide TekSavvy Solutions Inc. (TekSavvy) with access to TekSavvy’s existing, as well as new, retail end-users in the Bayview Mills Condominium Townhouse community (the Bayview Mills complex) by way of aggregated wholesale high-speed access (HSA) service provisioned over RCCI’s fibre-to-the-premises access facilities, subject to the conditions set out in this decision; and (ii) continue to provide any other competitors with access to their existing, as well as new, retail end-users in the Bayview Mills complex through the same service and subject to the same conditions set out for TekSavvy.*

*The Commission’s determinations in this decision will allow for more consumer choice and competition in the Bayview Mills complex, as well as enhance competitors’ ability to acquire sufficient end-user demand to migrate to a disaggregated wholesale HSA service in the future.*

#### **Background**

1. The Bayview Mills Condominium Townhouse community (the Bayview Mills complex) is a condominium complex in Toronto, Ontario, where competitors, including TekSavvy Solutions Inc. (TekSavvy), provide Internet access services to their end-users using the services of an incumbent carrier.<sup>1</sup> To provide retail Internet access service in this complex, TekSavvy used the aggregated wholesale high-speed access (HSA) service<sup>2</sup> provisioned by Rogers Communications Canada Inc.<sup>3</sup> (RCCI)<sup>4</sup> using Data Over Cable Service Interface Specification (DOCSIS)<sup>5</sup> over hybrid fibre-coaxial (HFC) cable (DOCSIS-HFC).

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<sup>1</sup> In this decision, “incumbent carriers” refers to incumbent local exchange carriers (ILECs) and cable companies.

<sup>2</sup> Aggregated wholesale HSA service provides competitors with a high-speed path to end-users’ premises throughout an incumbent carrier’s entire operating territory from a limited number of interfaces (e.g. one interface per province).

<sup>3</sup> Rogers Communications Canada Inc. holds all the business activities, including assets and liabilities, of the former Rogers Communications Partnership, which ceased to exist on 1 January 2016.

<sup>4</sup> RCCI’s aggregated wholesale HSA service is called “Third Party Internet Access (TPIA)” in its tariffs.

<sup>5</sup> DOCSIS is an international telecommunications standard that enables the addition of high-bandwidth data transfer capability to a cable television system.

2. In the fall of 2015, RCCI upgraded its cable distribution network from DOCSIS-HFC to DOCSIS provisioned over Radio Frequency over Glass (RFoG)<sup>6</sup> (DOCSIS-RFoG), an optical-fibre-based solution, in the Bayview Mills complex. The upgrade was part of a joint project between RCCI and Toronto Hydro. At the request of the complex's property manager, RCCI removed the coaxial cable.
3. RCCI informed its Bayview Mills complex end-users of its upgrade plans on 12 November 2015. It informed TekSavvy on 24 November 2015 that TekSavvy's existing customers would be migrated to a fibre-to-the-premises (FTTP)<sup>7</sup> access facility from the existing fibre-to-the-node (FTTN)<sup>8</sup> access facility, with those customers continuing to receive the same service at current aggregated wholesale HSA service rates, effective 16 December 2015. RCCI also notified TekSavvy that no new customers could be added until the disaggregated wholesale HSA tariff associated with Telecom Regulatory Policy 2015-326 (the wholesale wireline decision) is approved and in effect.<sup>9</sup>

## Application

4. The Commission received an application from TekSavvy, dated 4 December 2015, in which the company requested that the Commission (i) direct RCCI to halt the removal of existing coaxial infrastructure at the Bayview Mills complex until the issues raised in its application have been disposed of, or (ii) ensure that wholesale access to the access facilities required to provision downstream retail Internet services is always provided for pursuant to existing tariffs in a technology-neutral manner. TekSavvy sought interim and final relief in its application.<sup>10</sup>
5. In particular, TekSavvy requested that the Commission confirm
  - that existing wholesale obligations apply to RCCI's network upgrades in the Bayview Mills complex and, by extension, wherever incremental upgrades are undertaken to implement DOCSIS-RFoG; and

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<sup>6</sup> RFoG is a type of passive optical network deployed by cable companies to deliver their radio frequency signals that carry video, data, and voice services. In some cases, RFoG is used to replace the coaxial portions of HFC access facilities.

<sup>7</sup> FTTP access facilities are fibre access facilities that extend from a cable head-end or an ILEC central office to the end-user's premises.

<sup>8</sup> FTTN technology upgrades the incumbent carriers' access networks by extending fibre-based facilities closer to the end-user's premises (but not directly to the premises as with FTTP) in order to provide increasingly higher-speed access services. Cable FTTN access facilities are synonymous with HFC access facilities.

<sup>9</sup> In that decision, the Commission determined that competitors desiring access to customers served by FTTP access facilities would only be able to do so using a disaggregated wholesale HSA service, which is a service that provides high-speed paths between a competitor's end-user's premises and an interface on an incumbent carrier's network (at the central office or head-end), where the competitor connects and routes its end-user's traffic onto its own network.

<sup>10</sup> By letter dated 15 December 2015, the Commission, by majority decision, denied TekSavvy's request for interim relief.

- the applicability of a six-month advance notification requirement for the types of network changes undertaken by RCCI, and of more detailed informational requirements for these types of changes that would provide a pathway for the changes to be tested, when appropriate, before the Commission.
6. TekSavvy also requested that the Commission (i) adopt a standardized notification form to be used by incumbent carriers when informing their wholesale customers of network changes, and (ii) harmonize the notification requirements among all wholesale service providers.
  7. The Commission received interventions regarding TekSavvy's application from the Canadian Network Operators Consortium Inc. (CNOc), the Public Interest Advocacy Centre (PIAc), RCCI, Saskatchewan Telecommunications (SaskTel), TELUS Communications Company (TCC), Vaxination Informatique (Vaxination), and two individuals.
  8. The public record of this proceeding, which closed on 25 April 2016, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file number provided above.

## Issues

9. The Commission has identified the following issues to be addressed in this decision:
  - Access to wholesale HSA service
    - Are DOCSIS-RFoG access facilities FTTN access facilities?
    - Did the wholesale wireline decision address situations where an incumbent carrier upgrades to FTTP access facilities and removes the existing copper or coaxial facilities over which competitors access end-users using aggregated wholesale HSA service?
    - Should RCCI be required to continue to provide competitors with access, on an aggregated basis, to its upgraded FTTP access facilities in the Bayview Mills complex?
    - Other issues raised by parties to the proceeding
  - Notification of network changes
    - Should the Commission find that six months' notice is required for the types of network changes undertaken in the Bayview Mills complex?
    - Is there a need for (i) a standardized notification form for network changes, and (ii) harmonized notification standards across different technology platforms?

## **Access to wholesale HSA service**

### **Are DOCSIS-RFoG access facilities FTTN access facilities?**

#### ***Positions of parties***

10. TekSavvy argued that the network modifications undertaken in the Bayview Mills complex did not result in the installation of true next-generation fibre access facilities. TekSavvy submitted that the new DOCSIS-RFoG access facilities use the same DOCSIS standard for data transmission as the existing FTTN access technology. TekSavvy further submitted that RFoG is different from the true next-generation fibre passive optical network (PON)<sup>11</sup>-based FTTP access technology considered by the Commission in the wholesale wireline decision, and is simply an extension of the existing FTTN access infrastructure. PIAC supported this view.
11. In support of its position, TekSavvy referenced Telecom Regulatory Policy 2010-632 (the wholesale HSA services decision), in which the Commission pronounced that competitors continue to require access to the wholesale services then offered by the incumbent cable companies over their DOCSIS 3.0 platforms. TekSavvy argued that the wholesale wireline decision did nothing to displace this obligation.
12. TekSavvy further noted RCCI's response to an interrogatory that there are no differences in technical capabilities, bandwidth, signal quality, or speed threshold between the FTTN technology used prior to the change in the Bayview Mills complex and the current RFoG technology.
13. CNOC and Vaxination provided general support for TekSavvy's position.
14. RCCI submitted that incumbent carriers are under no obligation to provide aggregated wholesale HSA access on FTTP access facilities, and that the wholesale wireline decision did not create different classes of FTTP access facilities as suggested by TekSavvy.
15. TCC argued that the characterization of the network modifications as constituting next-generation facilities is irrelevant to determining the matter at hand. Rather, TCC argued that the Commission need only determine whether, after the upgrades, RCCI is still using facilities in place at the time the wholesale HSA services decision was issued, since the competitor access obligations imposed on incumbent carriers in that decision were restricted to the wholesale services then being offered by the incumbent carriers.

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<sup>11</sup> PON is a telecommunications technology that involves a point-to-point or point-to-multipoint architecture, and in which unpowered fibre-optic splitters are used to enable a single optical fibre to serve multiple end-points, such as end-users, without having to provision individual fibres for each end-user.

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

16. In the wholesale wireline decision, the Commission defined FTTP access as the fibre-optic access facility connecting an individual customer premises to a head-end or central office. The new fibre access facility in the Bayview Mills complex fits this definition since the fibre extends from the head-end to the customer premises.
17. The definition of FTTP access in the wholesale wireline decision is independent of the data transmission technologies used within the fibre. Accordingly, the Commission disagrees with TekSavvy's argument that the RFoG access facility should be considered as an extension of the FTTN access facility into the customer premises. Contrary to TekSavvy's submission, the facts that (i) both FTTN and RFoG use the same DOCSIS standard for data transmission, and (ii) there is no difference between their technical capabilities, are not relevant in determining whether RFoG is or is not an FTTP access facility.
18. In light of the above, the Commission determines that the DOCSIS-RFoG access facilities are FTTP, and not FTTN, facilities.

**Did the wholesale wireline decision address situations where an incumbent carrier upgrades to FTTP access facilities and removes the existing copper or coaxial facilities over which competitors access end-users using aggregated wholesale HSA service?**

### ***Positions of parties***

19. TekSavvy, supported by PIAC, submitted that the wholesale wireline decision was sensitive to the understanding that incumbent carriers will not be removing copper or coaxial facilities during the transition from providing competitor access to wholesale facilities on an aggregated to a disaggregated basis; the decision called for a seamless transition plan that would ensure that wholesale access to access facilities required to provision retail services is always provided for. In support of this view, TekSavvy referenced paragraph 143 of the wholesale wireline decision, where the Commission stated the following:

143. (...) the Commission determines that disaggregated wholesale HSA services, including those over FTTP access facilities, are to be mandated for the incumbent carriers subject to this decision. Moreover, the Commission determines that aggregated wholesale HSA services will no longer be mandated for the incumbent carriers under certain conditions and subject to an appropriate transition plan. This transition plan will serve to ensure that wholesale access to the access facilities required to provision downstream retail services is always provided for.

20. Vaxination similarly submitted that removing access to aggregated wholesale HSA service in favour of disaggregated wholesale HSA service would be a breach of the wholesale wireline decision since competitors are to have access to the aggregated service for at least three years after the disaggregated service has been implemented.

21. RCCI submitted that TekSavvy's interpretation of the wholesale wireline decision and, in particular, its interpretation of paragraph 143, is incorrect. In RCCI's view, the transition plan is addressed to the replacement of aggregated wholesale HSA services with disaggregated wholesale HSA services. The transition plan sought to ensure that the incumbent carriers' obligation to provide aggregated wholesale HSA services would only cease after they had introduced disaggregated wholesale HSA services. RCCI argued that contrary to TekSavvy's view, the wholesale wireline decision did not establish a regime whereby competitor access to every premises would be provided for through a transition plan.
22. TCC submitted that incumbent carriers do not have any obligation to provide wholesale access to facilities other than the facilities, including DOSCIS 3.0, to which they provided wholesale access as of 30 August 2010, the date of publication of the wholesale HSA services decision.

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

23. During the oral phase of the proceeding leading to the wholesale wireline decision, the incumbent carriers generally assured the Commission that they had no intention of removing existing copper or coaxial access facilities when installing entirely fibre access facilities. Because of this assurance, the Commission did not specifically address what regulatory obligations, if any, should apply when incumbent carriers remove copper or coaxial access facilities.
24. The Commission determined, however, that the obligation to provide access to FTTP access facilities was limited to disaggregated wholesale HSA services in circumstances where (i) there is demonstrated competitor demand at the central office or head-end for the service, and (ii) there are existing facilities available to competitors to continue to access end-users over a three-year transition period. These two elements are absent in the Bayview Mills complex situation. Accordingly, the Commission disagrees with RCCI's position that the Commission's finding in the wholesale wireline decision with respect to access to FTTP access facilities for disaggregated wholesale HSA services applies in the Bayview Mills complex situation.
25. The Commission therefore finds that the wholesale wireline decision did not address situations in which an incumbent carrier upgrades to FTTP access facilities and at the same time removes the existing copper or coaxial access facilities over which competitors access end-users using aggregated wholesale HSA service.

**Should RCCI be required to continue to provide competitors with access, on an aggregated basis, to its upgraded FTTP access facilities in the Bayview Mills complex?**

***Positions of parties***

26. TekSavvy submitted that the removal of competitor access to wholesale HSA services in order to provision downstream services to end-users, including residents of the Bayview Mills complex, pending the introduction of disaggregated wholesale HSA services causes gaps in service, harms competition, and runs counter to the objectives pursued by the Commission in the wholesale wireline decision.

27. TekSavvy argued that RCCI should be required to provide aggregated wholesale HSA service in the Bayview Mills complex.
28. CNOC submitted that to the extent the Commission relied on the incumbent carriers' statements in the proceeding leading to the wholesale wireline decision that the carriers would not replace the HFC access facilities with FTTP access facilities, and that wholesale access over existing access infrastructure would remain available until the disaggregated wholesale HSA services are implemented, the foundation underpinning the wholesale wireline decision has now clearly been removed.
29. Vaxination submitted that denying access to end-users in situations like the present one would reduce competitors' ability to invest in disaggregated wholesale HSA services. Vaxination argued that in these situations, aggregated wholesale HSA services should continue to be available to competitors under existing tariffs.
30. RCCI submitted that while the Commission, in the wholesale wireline decision, provided for eventual competitor access to FTTP access facilities, this determination was the result of a careful consideration of the possible impact such a determination would have on consumer choice and on continued investment in all-fibre access facilities. RCCI submitted that the Commission arrived at its determination to mandate competitor access to FTTP access facilities in part based on the understanding that such access would be provided in a manner that ensured that the incumbent carriers would be appropriately compensated for such access. RCCI also submitted that the costs of FTTP access facilities are significantly higher than those of FTTN access facilities, and that the Commission recognized this.
31. RCCI noted that the Bayview Mills complex comprises 347 townhouses and that the removal of the existing coaxial access facilities was the result of a specific request from the complex's property manager. RCCI informed TekSavvy that it would continue to provide aggregated wholesale HSA service for existing customers of TekSavvy, but that TekSavvy would not be allowed to acquire any new end-users on that service. RCCI noted that as a result of its decision to grandfather TekSavvy's existing customers in the complex by providing TekSavvy with access to FTTP via its current aggregated wholesale HSA service, TekSavvy would be placed in the same situation it would face in new home developments with FTTP deployments. Noting that the introduction of disaggregated wholesale HSA services will provide these competitors with the ability to compete for these customers in the near future, RCCI argued that it is hyperbole for TekSavvy to claim that its market position will be permanently affected by the current situation.

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

32. As discussed above, the wholesale wireline decision did not specifically address what regulatory obligations, if any, should apply in circumstances where the existing copper or coaxial cable access facilities used by competitors to access end-users are removed.
33. However, in that decision, the Commission determined that, to ensure that wholesale access to the facilities required to provision downstream retail Internet services is always provided for, the removal of the obligation to provide wholesale access to

aggregated HSA services and the introduction of an obligation to provide disaggregated wholesale HSA services, including over fibre access facilities, would be subject to a transition plan. The transition plan adopted by the Commission contemplated that the migration from aggregated to disaggregated HSA services would be triggered by competitor demand and that, once triggered, aggregated access would remain in place for a three-year period.

34. In this context, RCCI should continue to provide TekSavvy access to its aggregated wholesale HSA service, which is now provisioned over FTTP access facilities in the Bayview Mills complex. RCCI's removal of coaxial access facilities in the Bayview Mills complex resulted in the foreclosure of competitor access to new end-users located in this complex by way of the company's existing aggregated wholesale HSA service.
35. By denying competitors the ability to seek new end-users in the Bayview Mills complex on the aggregated wholesale HSA service over FTTP access facilities, RCCI would be conferring upon itself an undue preference and subjecting competitors to an undue disadvantage, since only RCCI would be able to access new end-users in that complex until such time as RCCI has an approved disaggregated wholesale HSA service that competitors wish to use. In addition, if the Commission were to accept RCCI's request that TekSavvy should not be allowed to acquire any new end-users on the aggregated wholesale HSA service over FTTP access facilities, it would result in less consumer choice and competition in the Bayview Mills complex, as well as undermine competitors' ability to acquire sufficient end-user demand to migrate to a disaggregated wholesale HSA service in the future.
36. Based on the above, the Commission
  - **directs** RCCI to provide TekSavvy with access to TekSavvy's existing, as well as new, retail end-users in the Bayview Mills complex by way of aggregated wholesale HSA service provisioned over its FTTP access facilities, at the same speeds and rates as those provided for in its aggregated wholesale HSA service tariff, and subject to the conditions imposed in the wholesale wireline decision;<sup>12</sup> and
  - **directs** RCCI to provide any other competitors with access to their existing, as well as new, retail end-users in the Bayview Mills complex by way of aggregated wholesale HSA service provisioned over its FTTP access facilities, subject to the same conditions set out above in relation to TekSavvy.
37. The above determinations will continue to apply until, at the request of a competitor, disaggregated wholesale HSA service is implemented at the cable head-end associated with the Bayview Mills complex, subject to the terms and conditions established by the Commission in the wholesale wireline decision.

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<sup>12</sup> Access to FTTP access facilities on an aggregated basis will be subject to the 100 megabit-per-second speed threshold, and competitor access to aggregated wholesale HSA service will be subject a three-year phase-out period once the disaggregated service is implemented in the cable head-end.



38. Further, in cases where incumbent carriers undertake network upgrades resulting in the installation of FTTP access facilities and the removal of copper or coaxial access facilities over which competitors provide service to end-users, such actions may, subject to a full examination of the facts and submissions, be in violation of subsection 27(2) of the *Telecommunications Act* (the Act),<sup>13</sup> absent a Commission decision requiring the incumbent carriers to continue to provide competitors with access to wholesale HSA services over the upgraded facilities, on an aggregated basis.

### **Other issues raised by parties in this proceeding**

#### **Competitor wholesale HSA service access for other residential multi-dwelling units**

##### ***Positions of parties***

39. TekSavvy submitted that in addition to the Bayview Mills complex situation, competitors increasingly find themselves being told that locations they serve have been withdrawn from competition, with no opportunity being provided to test whether such withdrawal is consistent with the Commission's policies. To support this claim, TekSavvy provided a list of 169 Toronto-area residential multi-dwelling units in which it stated that it serves customers over a wholesale HSA service, but in which RCCI has informed TekSavvy that the service is no longer available.
40. RCCI submitted that, consistent with the wholesale wireline decision, the 169 multi-dwelling units that have FTTP access will not be available to TekSavvy until disaggregated wholesale HSA service is implemented.

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

41. TekSavvy did not provide evidence sufficient to establish a clear record of the situations prevailing at these multi-dwelling units. As such, it is not appropriate for the Commission to take any action.

#### **Legal arguments raised by TCC**

##### ***Positions of parties***

42. TCC argued that with its application, TekSavvy was attempting to do indirectly what it was not permitted to do directly. TCC argued that in the wholesale wireline decision, the Commission was clear that competitor access over fibre access facilities was mandated solely through the implementation of disaggregated wholesale HSA services. TCC further argued that in that decision, the Commission said nothing to prevent incumbent carriers from removing access facilities, subject to appropriate notice. TCC submitted that absent a new proceeding with proper notice, it was not open to the Commission to revisit its determinations set out in the wholesale wireline decision.

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<sup>13</sup> Subsection 27(2) states the following: No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

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

43. The Commission disagrees with TCC's arguments. As discussed above, in this decision, the Commission is not revisiting its determinations made in the wholesale wireline decision, because the Commission made no determination that engaged the circumstances giving rise to TekSavvy's application. Further, absent the relief set out in this decision, RCCI would be conferring an undue preference on itself and subjecting TekSavvy to unjust discrimination, contrary to subsection 27(2) of the Act. As such, the Commission has the statutory duty to address the matter of compliance with subsection 27(2) in the circumstances of this particular case.

### **Notification of network changes**

**Should the Commission find that six months' notice is required for the types of network changes undertaken by RCCI in the Bayview Mills complex?**

### ***Positions of parties***

44. TekSavvy submitted that RCCI did not provide sufficient notice when it replaced the coaxial cable with fibre in the Bayview Mills complex, and that RCCI contacted TekSavvy's existing customers before it contacted TekSavvy. TekSavvy submitted that this conduct frustrates the company's relationships with its customers by creating confusion.
45. TekSavvy submitted that the Commission, in Telecom Letter Decision 94-11 for the incumbent local exchange carriers (ILECs) and in Decision 2001-748 for the cable companies, determined that notification should be given at the time an incumbent carrier decides to make a network change, or six months before the change, whichever is earlier, whenever the change affects competitor services. TekSavvy noted that the notification requirements for network changes approved by the Commission are contained in the CRTC Interconnection Steering Committee's (CISC) Network Management Guidelines.
46. TekSavvy requested that the Commission issue a ruling that affirms the existing six-month notification requirement for future network changes that affect competitor access to regulated facilities. CNOC and PIAC supported TekSavvy's request.
47. RCCI acknowledged its notification error and that it should have informed TekSavvy before TekSavvy's customers were contacted. RCCI noted that Telecom Letter Decision 94-11 allows for exceptional circumstances, such as the Bayview Mills complex situation. RCCI submitted that the purpose of network notification is to enable the other party to make any necessary change to its network to enable interworking with the changed network. RCCI submitted that TekSavvy faces no necessary changes and that there is no network impact on TekSavvy.
48. RCCI submitted that notification requirements related to the cable companies for situations such as the Bayview Mills complex fibre deployment are being addressed at the industry level by the CISC 1540 Wholesale High-Speed Access Service Ad Hoc Working Group (CISC 1540 WG), and that it is therefore not necessary for the Commission to set notification timelines as part of this proceeding.

49. SaskTel submitted that a six-month notification period is appropriate for the types of network changes being reviewed, but that under special circumstances, a period of less than six months may be appropriate.
50. TCC submitted that while it might be beneficial for the CISC 1540 WG to address the notification requirements associated with network changes such as those undertaken in the Bayview Mills complex, it is not aware of whether the activities of that working group will address such matters since it is not a participant. TCC submitted that the notification standards set out in Telecom Letter Decision 94-11 still apply generally.

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

51. RCCI gave TekSavvy only three weeks' notice regarding its network upgrade in the Bayview Mills complex. The current notification guidelines allow for different notification periods for different situations. In Telecom Letter Decision 94-11, the Commission generally required that six months' notice be given with respect to network changes.
52. RCCI erred by notifying TekSavvy's end-users prior to notifying TekSavvy. However, no further action is necessary since (i) RCCI admitted to its mistake, (ii) the network change in the Bayview Mills complex – replacement of coaxial cable with fibre – did not require any corresponding network changes by TekSavvy, and (iii) the Commission has determined that TekSavvy is to be given aggregated wholesale HSA service over FTTP in the Bayview Mills complex.
53. With regard to TekSavvy's request for the Commission to issue a ruling that affirms the existing six-month notification requirement for future network changes, the CISC 1540 WG is currently reviewing the notification guidelines regarding network changes applicable to cable companies. In the circumstances, it would be premature to rule on the appropriate notification requirement for network changes at this time.

**Is there a need for (i) a standardized notification form for network changes, and (ii) harmonized notification standards across different technology platforms?**

***Positions of parties***

54. TekSavvy submitted that (i) a standardized notification form is needed to deal with the issue of network evolution on a much more widespread basis than the Bayview Mills complex situation, and (ii) the harmonization of standards across platforms in the Internet Protocol environment is needed, instead of separate sets of rules for different platforms.
55. TekSavvy submitted that the standardized form that it was proposing would list pertinent information such as the technical nature of the network change, the geographic scope of the affected area, the number of affected end-users, and any other information the Commission deems necessary.
56. RCCI submitted that the CISC 1540 WG is actively discussing the format of a standardized form for notification of network changes that affect competitor access.

57. PIAC and SaskTel supported the use of a modified standardized form common to all incumbent carriers.
58. TCC opposed the use of a standardized form for notification since inclusion of various details may delay the notice, and the network change activity, unnecessarily. With regard to harmonized notification standards, TCC submitted that if harmonization is to occur, the guidelines applicable to the cable companies should be harmonized with those applicable to the ILECs, and not the other way around. TCC further noted that examination by the CISC 1540 WG is limited to issues surrounding the provision of wholesale HSA service by the cable companies, and its recommendations cannot be applied to any other services.

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

59. There is merit in the review of a standardized notification form for network changes and the harmonization of notification standards used by the ILECs and the cable companies. However, not all eligible parties have participated in this proceeding, given that it dealt mainly with a dispute between TekSavvy and RCCI.
60. Accordingly, the Commission requests that CISC examine the following and report back to the Commission within **120 days** of the date of this decision:
  - the merit and feasibility in developing a standardized notification form associated with network changes; and
  - the merit and feasibility in the harmonization of notification standards used by the ILECs<sup>14</sup> and the cable companies<sup>15</sup> for comparable network activities associated with network changes.
61. Following consideration of the above report, the Commission may request further actions from CISC related to this matter.

#### **Policy Direction**

62. The determinations made in this decision are consistent with the Policy Direction<sup>16</sup> for the reasons set out below.
63. The 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 Policy Direction.

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<sup>14</sup> Refer to CISC Consensus report BPRE094a – *Network Management Guidelines Version 3.3*, 20 August 2015, approved in Telecom Decision 2015-480.

<sup>15</sup> Refer to CISC Consensus report HSRE008 – *Network management and Administration Guidelines*, HSRE008, 23 November 2001, approved in Decision 2001-748.

<sup>16</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

64. The regulatory measures under consideration in this decision are of an economic nature and deal with network access regimes. Therefore, subparagraph 1(a)(ii)<sup>17</sup> and subparagraphs 1(b)(i), (ii), and (iv)<sup>18</sup> of the Policy Direction apply to the Commission's determinations in this decision.
65. In compliance with subparagraph 1(b)(i) of the Policy Direction, the Commission considers that the policy objectives set out in paragraphs 7(a), (b), (c), (f), (g), and (h) of the Act<sup>19</sup> are advanced by the regulatory measures established in this decision. The Commission's determinations ensure that retail Internet service remains competitive in the Bayview Mills complex and that end-users will continue to receive high-quality Internet service.
66. Consistent with subparagraphs 1(a)(ii) and 1(b)(ii) of the Policy Direction, the Commission considers that the regulatory measures approved in this decision are (i) efficient and proportionate to their purpose, and minimally interfere with market forces, and (ii) neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. The Commission's determinations are consistent with the Policy Direction since they permit competitors to pursue new end-users in the Bayview Mills complex, subject to conditions imposed in this decision, on an economically efficient basis.
67. Consistent with subparagraph 1(b)(iv) of the Policy Direction, the Commission's determinations, as they relate to network interconnection arrangements or regimes for access to networks, are technologically and competitively neutral and do not artificially favour either Canadian carriers or resellers. The Commission's determinations preserve competitor access to the Bayview Mills complex on an aggregated wholesale HSA service basis, until the disaggregated wholesale HSA service is implemented in that location, consistent with the Policy Direction's provision regarding competitive neutrality.

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<sup>17</sup> Subparagraph 1(a)(ii) states that the Commission should, "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."

<sup>18</sup> Paragraph 1(b) states that "the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that (i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with this Order, (ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry, ...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."

<sup>19</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; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (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; (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services; and (h) to respond to the economic and social requirements of users of telecommunications services.

Secretary General

### **Related documents**

- *CISC Business Process Working Group – Consensus report BPRE094a regarding changes to the Network Management Guidelines*, Telecom Decision CRTC 2015-480, 26 October 2015
- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015, as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
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