



Telecom and Broadcasting Decision CRTC 2019-218

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Cloudwifi Inc. – Application to prevent Bell Canada from interfering with customer use of Bell Canada’s inside wire

*The Commission **denies** Cloudwifi Inc.’s (Cloudwifi) request for an order stating that Bell Canada cannot interfere with customers’ use of Bell Canada’s inside wire in two multi-dwelling units (MDUs) located in North York (Northtown) and Kitchener, Ontario (Spadina). However, once Cloudwifi becomes a registered competitive local exchange carrier (CLEC), it may connect with Bell Canada’s in-building wire to provide telecommunications services at the Northtown and Spadina MDUs, and it may do so regardless of the type of technology it wishes to use.*

While the Commission considers that it would be reasonable for carrier Internet service providers (ISPs) to have access to MDUs, and to local exchange carriers’ (LECs) in-building wire in MDUs, without having to become registered CLECs, it also considers that Cloudwifi’s request for an order giving all facilities-based ISPs access to the inside wire owned by carriers and broadcasting distribution undertakings cannot be granted as part of this proceeding.

The Commission is of the preliminary view that (i) the MDU access condition and associated obligations should be extended to all carrier ISPs, and potentially to all telecommunications service providers (TSPs); and (ii) all carrier ISPs, and potentially all TSPs, should have access to LECs’ and other TSPs’ in-building wire in MDUs on the same basis as registered CLECs, and regardless of technology. Concurrent with the publication of this decision, the Commission is initiating a proceeding, through Telecom Notice of Consultation 2019-219, to consider these matters further.

*In order to increase consumer choice, and given that Cloudwifi’s application was served specifically on Bell Canada, the Commission **directs** Bell Canada, as a condition of providing telecommunications services in all MDUs in which it offers service, to provide access to its in-building wire to all carrier ISPs, including Cloudwifi. The Commission also **directs** Bell Canada to file proposed amended tariff pages reflecting the determinations set out in this decision within **30 days** of the date of this decision.*

Background

1. In March 2018, Cloudwifi Inc. (Cloudwifi), an Internet service provider (ISP) that serves Canadian business and residential customers, began providing Internet service via Bell Canada’s fibre facilities to approximately 50 customers in a multi-dwelling

unit (MDU) located at 10 Northtown Way, North York, Ontario (the Northtown MDU). Cloudwifi did not notify Bell Canada prior to using its facilities.

2. On 20 July 2018, Bell Canada notified Cloudwifi that it would disconnect Cloudwifi's customers at the Northtown MDU on 30 July 2018, and proceeded to do so. According to Bell Canada, Cloudwifi reconnected to Bell Canada's facilities at the Northtown MDU on or about 31 July 2018 and, after being disconnected by Bell Canada technicians on 1 August 2018, connected again on or about 2 August 2018.
3. On 8 August 2018, Cloudwifi applied to become a registered competitive local exchange carrier (CLEC).¹ By [letter](#) dated 15 August 2018, Commission staff informed Cloudwifi that it had completed the requirements to become a proposed CLEC and that the company was therefore authorized to proceed with further arrangements to allow it to provide switched services as a CLEC.
4. On 13 August 2018, Cloudwifi applied to register as an exempt broadcasting distribution undertaking (BDU).² On 17 October 2018, Commission staff registered Cloudwifi to operate as an exempt BDU in Kitchener, London, and Toronto, Ontario. The name of the undertaking and locations were added to the [List of Radio, TV and Cable Broadcasting Services that do and do not need a licence](#) (the Exempt BDU List) as an exempt BDU on 1 December 2018.
5. According to Bell Canada, in mid-August 2018, its technicians installing P-3000 boxes and other Bell Canada-owned in-building wire at 270 Spadina Road East in Kitchener, Ontario (the Spadina MDU) learned that Cloudwifi technicians were
 - installing Cloudwifi in-building wire and equipment at that MDU, and
 - terminating Cloudwifi's wire and data jacks inside the Bell Canada-owned P-3000 boxes, without having an agreement, a contract, or consent permitting them to access and use any of Bell Canada's in-building or in-suite facilities, including the P-3000 boxes.

Application

6. The Commission received an application from Cloudwifi, dated 27 August 2018, in which the company requested the following relief:

¹ A registered CLEC is a telecommunications service provider that has fulfilled a number of obligations set out by the Commission. These obligations include entering into master agreements for local interconnection (MALIs) with other local exchange carriers in the exchanges in which the CLEC seeks to provide local exchange services.

² An exempt BDU is a BDU that operates under the terms and conditions outlined in the Exemption Order for Terrestrial Broadcasting Distribution Undertakings Serving Fewer than 20,000 Subscribers, set out in Broadcasting Order 2017-320 (the BDU Exemption Order).

- an interim order and a final order stating that Bell Canada cannot interfere with a customer’s use of the inside wire³ at the Northtown and Spadina MDUs; and
 - an interim order and a final order allowing facilities-based ISPs to access the inside wire owned by carriers and BDUs.
7. In a letter to Bell Canada and Cloudwifi, dated 25 September 2018, Commission staff stated, among other things, that it expected that Bell Canada would not disconnect Cloudwifi’s customers at the two MDUs in question while the Commission considered the issues raised in Cloudwifi’s application.
 8. The Commission received interventions regarding Cloudwifi’s application from Bell Canada, the Canadian Network Operators Consortium Inc. (CNOC), Iristel Inc. (Iristel), Novus Entertainment, the Public Interest Advocacy Centre (PIAC), and 14 individuals.

Issues

9. The Commission has identified the following issues to be addressed in this decision:
 - Should the Commission issue an order stating that Bell Canada cannot interfere with Cloudwifi’s customers’ use of the in-building wire at the Northtown and Spadina MDUs, based on existing regulations?
 - Should the Commission issue an order allowing facilities-based ISPs to access the in-building wire of telecommunications common carriers and BDUs?

Should the Commission issue an order stating that Bell Canada cannot interfere with Cloudwifi’s customers’ use of the in-building wire at the Northtown and Spadina MDUs, based on existing regulations?

Positions of parties

Cloudwifi

10. Cloudwifi acknowledged that it had not contacted Bell Canada prior to making use of Bell Canada’s in-building wire. It submitted that, relying on the Commission’s determinations set out in Telecom Decision 2003-45, it believed that it could legally access Bell Canada’s in-building wire without providing notice to Bell Canada. In its view, it is entitled to access Bell Canada’s in-building wire under existing broadcasting and telecommunications regulations and policies.

³ Cloudwifi referred to “inside wire” rather than “in-building wire.” However, “inside wire,” as defined in the *Broadcasting Distribution Regulations* (the Regulations) may, depending upon the situation, refer to either “inside wire” or “in-building wire,” which are defined separately in Telecom Decision 99-10. For greater clarity, “in-building wire” has been used in place of “inside wire” in this decision, where appropriate.

11. Cloudwifi submitted that Bell Canada operates as a BDU at the Northtown MDU and uses fibre wiring to deliver its services. It also submitted that all of Bell Canada's services are delivered to each suite using a single Bell Canada fibre wire and that Cloudwifi is using Bell Canada's wire to provide Internet service to approximately 50 suites.
12. Cloudwifi submitted that it provides Internet service at the Spadina MDU using its own in-building wire, which it had installed in accordance with the property owner's instructions. It submitted that the owner had built a single conduit to each suite, which terminates at a P-3000 box, and that the property owner had stated that Bell Canada, Rogers Communications Canada Inc., Cloudwifi, and the electrical utility must all terminate their services at the P-3000 box.
13. Cloudwifi submitted that both the fibre wiring at the Northtown MDU and the P-3000 boxes at the Spadina MDU are "inside wire," as defined in the *Broadcasting Distribution Regulations* (the Regulations).
14. Relying on section 10 of the Regulations, Cloudwifi submitted that as a licensee,⁴ Bell Canada must, on request, permit subscribers and other BDUs to use the inside wire at the Northtown MDU.⁵ In Cloudwifi's view, the intended meaning of section 10 of the Regulations is that licensees can own the wire, but they cannot interfere with a customer's use of it.
15. Cloudwifi submitted that by subscribing to its services, its customers have requested use of Bell Canada's inside wire. It also submitted that in the alternative, if the Commission takes a more restrictive interpretation of "subscriber,"⁶ all customers that subscribed to one or more services from Bell Canada at the Northtown MDU at any time would be entitled to request the use of the inside wire.
16. Cloudwifi submitted that it had signed an agreement with Atop Broadband Corp. (Atop) so that Cloudwifi customers could obtain Atop's BDU services over their Internet connection. It also noted that Atop had sent requests to Bell Canada to use its inside wire at the Northtown MDU and its P-3000 boxes at the Spadina MDU, but that Bell Canada had refused to let Atop use the wire (which includes the P-3000 boxes at the Spadina MDU). In Cloudwifi's view, once Bell Canada received the notices from Atop, it was not allowed to interfere with customer use of the wire.

⁴ "Licensee" is defined under section 1 of the Regulations as "...a person who is authorized by a licence or a regional licence to carry on one or more distribution undertakings."

⁵ Section 10 states the following: (1) A licensee that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, another licensee, or by a broadcasting undertaking in respect of which an exemption has been granted, by order under subsection 9(4) of the [Broadcasting] Act, from the requirement to obtain a licence. (2) The licensee that owns an inside wire may charge a just and reasonable fee for the use of the wire. (3) The licensee that owns an inside wire must not remove it from a building if a request for the use of the wire has been made and is pending under subsection (1), or while the wire is being used in accordance with that subsection.

⁶ "Subscriber" is defined in section 1 of the Regulations as "(a) a household of one or more persons, whether occupying a single-unit dwelling or a unit in a multiple-unit dwelling, to which service is provided directly or indirectly by a licensee...."

17. Cloudwifi submitted that in Public Notice 2000-81, the Commission's goal was to establish inside wire rules that would enable customers to use the service provider of their choice. In Cloudwifi's view, however, Bell Canada was using its ownership of inside wire to prevent that end-user choice from being exercised. Cloudwifi submitted that, as a result, a linchpin of the Commission's efforts to promote the competitive provision of all communications services was under attack by Bell Canada.
18. Cloudwifi submitted that since Bell Canada uses the inside wire at the Northtown MDU to offer BDU, local exchange, and Internet services, that wire is also subject to the *Telecommunications Act*. It also submitted that the rules for access to Bell Canada's in-building wire were set out in a Commission [letter](#), dated 5 June 2000, regarding requests by Eastlink Telephone (Eastlink) and Norigen Communications of Toronto (Norigen) related to access to Bell Canada's and Maritime Telephone and Telegraph's facilities in certain MDUs (the Eastlink/Norigen Letter).⁷ Cloudwifi further submitted that CLECs must be given access to Bell Canada's in-building wire at the demarcation point in the main terminal room (MTR).
19. Cloudwifi noted that proposed CLECs are authorized to make arrangements to provide local switched services as a CLEC – for example, by obtaining number blocks from the Canadian Numbering Administration Consortium. Cloudwifi submitted that proposed CLECs should also be allowed to obtain access to in-building wire so that they are ready to provide local exchange services once all conditions have been met. In its view, it would therefore be appropriate for a proposed CLEC to be considered a CLEC for the purpose of access to in-building wire.

Bell Canada

20. Bell Canada submitted that Cloudwifi's requested relief was inappropriate and should be dismissed. In Bell Canada's view, because Cloudwifi lacked the status of a local exchange carrier (LEC) or a BDU, it had no legal, regulatory, or other rights of use or access to the facilities at issue.
21. Bell Canada argued that Cloudwifi's sole regulatory status was that of a retail ISP, and that it was not entitled to access Bell Canada's in-building wire and related facilities under section 10 of the Regulations because it was neither a licensed nor an exempt BDU. It submitted that Cloudwifi was instead a telecommunications common carrier or a telecommunications service provider (TSP), as defined in section 2 of the *Telecommunications Act*,⁸ which meant that under subsection 4(4) of the *Broadcasting Act*, broadcasting law and regulations did not apply to Cloudwifi.

⁷ *Telecom – Commission Letter – Eastlink/Norigen Part VII Applications – Access to In-building Wire*, 5 June 2000.

⁸ Section 2 defines a “telecommunications common carrier” as “...a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation,” and a “telecommunications service provider” as “...a person who provides basic telecommunications services, including by exempt transmission apparatus.”

22. Bell Canada submitted that the definitions of “inside wire” and “subscriber” undermine Cloudwifi’s interpretation of section 10 of the Regulations. It also submitted that its facilities, which Cloudwifi sought to continue to use, would cease to fall within the definition of “inside wire” if used solely for Cloudwifi’s proposed purpose – providing Internet access service as an ISP.
23. Bell Canada added that it similarly follows that the households in the MDUs that Cloudwifi sought to continue serving using Bell Canada-owned inside wire would fall outside the definition of “subscribers,” as defined in the Regulations, once they stopped receiving broadcasting distribution services; instead, they would be receiving Cloudwifi’s Internet service (i.e. a telecommunications service). Bell Canada submitted that section 2 of the Regulations clearly states that “these regulations apply to persons licensed to carry on a distribution undertaking...” It also submitted that Cloudwifi is not such a person.
24. Bell Canada noted that Cloudwifi was installing its equipment and terminating its wire and data jacks inside Bell Canada’s P-3000 boxes. It submitted that Cloudwifi did not have any agreement or contract permitting it to access and use any of Bell Canada’s in-building or in-suite facilities, including the P-3000 boxes, and did not have Bell Canada’s consent to do so.
25. Bell Canada also submitted that Cloudwifi did not appear to be accessing Bell Canada’s inside wire or P-3000 boxes to provide broadcasting services from Atop or any other BDU. In Bell Canada’s view, there is no evidence that Atop’s BDU service is currently available, or will imminently become available, to Cloudwifi’s customers.
26. Bell Canada argued that because Cloudwifi lacked LEC status, it had no entitlement to access or share Bell Canada-owned in-building wire under the *Telecommunications Act* or related telecommunications regulations. It also argued that even if Cloudwifi were to become a CLEC, the regulations that it relied upon do not override or derogate from Bell Canada’s inherent common law property rights, which oblige Cloudwifi to obtain Bell Canada’s consent before interconnecting with and using its MDU in-building wire and other facilities.
27. Bell Canada submitted that Cloudwifi’s request to prevent Bell Canada from “interfering” with its own property incorrectly assumes that Cloudwifi has, or should have, a blanket access licence entitling it to access Bell Canada’s facilities without having to obtain prior consent. Bell Canada also submitted that no such blanket licence exists by law or regulation, or under common law, and that no law, regulation, or Commission policy has ever derogated from or otherwise extinguished Bell Canada’s common law rights, as the sole owner of its property, to require Cloudwifi (or any other interconnecting party) to provide Bell Canada with notice, and to sign a contract governing its use.

28. Bell Canada also submitted that it was unclear to what extent, if any, the attainment of registered CLEC status would permit Cloudwifi to access in-building dark fibre facilities in an MDU.
29. Bell Canada submitted that Cloudwifi's consistent practice with respect to connecting to Bell Canada's in-building wire is to use equipment that is technically inappropriate and technically incompatible with Bell Canada's equipment, and to perform its installations using substandard workmanship. Bell Canada submitted that Cloudwifi splices Bell Canada's fibre recklessly and attempts to place as much of its wire and other facilities as possible within the limited space of Bell Canada's service enclosures, almost always leaving them so full that the protective doors and coverings cannot be closed. Bell Canada submitted that this leaves delicate fibres inside the enclosures vulnerable to disconnection or damage, to the detriment of Bell Canada's existing customers and future customers that might be served by these facilities.

Interveners

30. CNOC submitted that it supports granting the relief requested by Cloudwifi regarding access to in-building fibre. CNOC also submitted that the Commission must hold a follow-up proceeding to create a cost recovery mechanism that would enable the owners of new in-building fibre to recover their costs of providing access to such facilities to facilities-based TSPs. According to CNOC, development of a new cost recovery mechanism is outside the scope of this proceeding and would require significant costing expertise, as well as an opportunity for all concerned parties to comment.

Cloudwifi – Reply comments

31. Cloudwifi argued that Bell Canada's understanding of section 10 of the Regulations is incorrect. Cloudwifi submitted that the meaning of subsection 10(1) of the Regulations is that the subscriber or another licensee can use the wire for any purpose; it does not say that the subscriber can use the wire for broadcasting purposes alone.
32. Cloudwifi submitted that it had installed its own in-building wire to each suite at the Spadina MDU and terminated its jack at the P-3000 box, as requested by the building owner, but that at the time, contrary to Commission rules, Bell Canada had not posted an access agreement for the Spadina MDU on its website. In Cloudwifi's view, therefore, there was no reason for it to think that the P-3000 box was Bell Canada's property.
33. Cloudwifi submitted that the Commission has full authority to set the rules for access and that the Commission has never given Bell Canada a right to "grant prior consent" before a third party could use the company's facilities.
34. Cloudwifi submitted that its interconnections have not damaged Bell Canada's equipment or in any other way compromised Bell Canada's services to its customers or its ability to connect new customers. It also submitted that it is not aware of a

better way to interconnect its facilities to Bell Canada-owned inside wire. It submitted, further, that it had approached Bell Canada and proposed another method to interconnect, but that Bell Canada had not responded. Cloudwifi suggested that the Commission request the CRTC Interconnection Steering Committee (CISC) to determine an appropriate method for interconnection as soon as possible.

Commission's analysis and determinations

Cloudwifi's entitlement to access Bell Canada's inside wire under broadcasting regulations

35. Section 10 of the Regulations requires a licensed BDU to permit the use of its inside wire only when a request for its use is made by a subscriber, another licensed BDU, or an exempt BDU.
36. In this instance, Bell Canada operates as a BDU in the relevant markets and is subject to section 10 of the Regulations. However, the Commission considers that Cloudwifi's reliance on section 10 of the Regulations to justify its use of Bell Canada's inside wire is unfounded. In this regard, Cloudwifi was neither a licensed nor an exempt BDU at the time it used Bell Canada's inside wire. Further, with regard to Cloudwifi's reliance upon the term "subscriber" under section 10 of the Regulations, the Commission's inside wire access policies and regulations enacted under the *Broadcasting Act* are geared to ensuring that end-users are able to use inside wire to access programming services by way of the service provider of their choice.⁹
37. In light of the above and having regard to the information available on the record of this proceeding, the Commission finds that Cloudwifi has not demonstrated that it can rely on section 10 of the Regulations to justify its or its customers' use of Bell Canada's inside wire at either the Northtown or Spadina MDU prior to or at the time its application was submitted. In addition, it is unclear from the record of the proceeding whether Cloudwifi was a reseller of Atop's BDU services prior to or at the time it submitted its application.

Cloudwifi as an exempt BDU

38. Cloudwifi indicated that it had filed a registration form with the Commission and was waiting to be added to the Exempt BDU List. It was added to this list on 1 December 2018. The Commission therefore finds that, as of that date, Cloudwifi is permitted to operate as an exempt BDU in the markets at issue in this proceeding, and it can avail itself of section 10 of the Regulations in its capacity as an exempt BDU.

⁹ While the language and approach have changed over time, section 10 of the Regulations is a reflection of the Commission's policy to remove barriers that prevent or impede customer access to competitive BDUs, as articulated in Public Notice 1997-25.

39. Based on the record of this proceeding and the definition of “inside wire” in the Regulations, the Commission finds that the use of the inside wire includes access to the P-3000 boxes.
40. However, even where Cloudwifi can justify the use of section 10 of the Regulations to request access to a licensed BDU’s inside wire to provide BDU services, the Regulations do not make such access unconditional. For example, in Public Notice [2000-81](#), the Commission reminded all parties that they must respect the integrity of property they neither own nor control. More specifically, the wording of subsection 10(1) of the Regulations is such that the obligation imposed therein results from a request to use the licensee’s inside wire. Furthermore, subsection 10(2) states that the licensee that owns the inside wire may charge a just and reasonable fee for its use.¹⁰ Accordingly, access to BDU-owned inside wire pursuant to section 10 of the Regulations is contingent on a request being made by a qualifying person and on an agreement on a just and reasonable fee to be charged for such use.

Cloudwifi’s entitlement to access Bell Canada’s in-building wire under existing telecommunications regulations

41. The Commission’s policies and regulations regarding access to in-building wire and MDUs for the provision of telecommunications services are set out in several decisions, as discussed below.
42. In Telecom Decision 97-8, the Commission set out its framework for competition in the local exchange service market. It established a number of measures to facilitate the entry of CLECs into that market, as well as entry obligations for CLECs. Further, the Commission mandated interconnection arrangements between LECs. In order to promote competitive entry and foster consumer choice, the Commission required, as a condition of providing service, that a LEC “ensure that end-users that it serves are able to have direct access, under reasonable terms and conditions, to services provided by any other LEC serving in that area.”
43. In Telecom Decision 99-10, the Commission stated that the ability of CLECs to have access to the in-building wire in an MDU was central to the implementation of its policy of end-user choice.
44. In the Eastlink/Norigen Letter, the Commission determined that, where a CLEC is given access to the MTR in an MDU by the building owner and Bell Canada continues to own the in-building wire, Bell Canada must allow the CLEC to connect to that in-building wire.¹¹

¹⁰ In Broadcasting Public Notice [2002-51](#), the Commission considered a fee of \$0.52 per subscriber per month for the use of inside wire in MDUs to be just and reasonable. The Commission also considered that a higher fee could be charged where a BDU clearly demonstrates, based on detailed evidence, that a particular circumstance warrants such an exception.

¹¹ In Telecom Decision 2001-362, the Commission applied the determination in the Eastlink/Norigen Letter to all LECs.

45. In Telecom Decision 2003-45, the Commission established the conditions and principles for the provision of telecommunications services to customers located in MDUs. That decision also addressed a number of related matters, including the terms and conditions for access to MDUs via LECs' facilities. Notably, the Commission amplified the above-discussed condition imposed in Telecom Decision 97-8 by requiring that

the provision of telecommunications service by a LEC in an MDU be subject to the condition that all LECs wishing to serve end-users in that MDU are able to access end-users in that MDU on a timely basis, by means of resale, leased facilities or their own facilities, at their choice, under reasonable terms and conditions (the MDU access condition).

46. In Telecom Decision 2005-33, the Commission extended the MDU access condition to include a subset of non-CLEC, facilities-based TSPs that provide services to end-users in MDUs – specifically, the member companies of the Coalition of Hydro Telecom Service Providers (the Coalition). However, the Commission's determinations were restricted to members of the Coalition, and do not apply to other non-CLEC, facilities-based TSPs.
47. Based on the Commission's determinations in the above-noted decisions, the rules for access to a LEC's in-building wire in an MDU do not apply to proposed CLECs. The Commission has not provided non-CLEC ISPs with general access rights to a LEC's in-building wire. An ISP that wishes to connect to a LEC's in-building wire in an MDU to provide telecommunications services pursuant to Telecom Decision 2003-45 must first become a registered CLEC. In the present case, Cloudwifi was not a registered CLEC at the time it connected with Bell Canada's wire at the two MDUs in question.
48. Accordingly, the Commission finds that Cloudwifi is not entitled to access Bell Canada's in-building wire under telecommunications regulations until it becomes a registered CLEC.
49. The record of this proceeding indicates that Cloudwifi did not give prior notice to Bell Canada that it would be connecting to Bell Canada's in-building wire. The Commission considers it important to highlight that, under the existing ordering and billing procedures for connection to a LEC's in-building wire,¹² connecting LECs are to notify the LEC that owns the wire before connecting, and follow the appropriate LEC and industry guidelines for connecting.

¹² See the CISC Business Process Working Group's [Procedures for Connection to LEC In-Building Wire](#), Consensus report BPRE019a, 26 July 2000. The Commission approved this report in a follow-up [letter](#) dated 8 September 1999.

In-building fibre

50. While there are no specific rules regarding connection to in-building fibre in an MDU, various rules and associated policies extend to such facilities. In this regard, the access condition established in Telecom Decision 97-8 is not restricted to any given technology.
51. Furthermore, while the Commission concluded in Telecom Decision 99-10, which dealt with the location of the demarcation point for in-building wire in MDUs, that the record of the proceeding did not provide a sufficient basis for determining the demarcation point for coaxial, fibre, or fixed-wireless technologies, the Commission reiterated that the policy of end-user choice applies to all LECs, regardless of the technology used.
52. In addition, the Telecom Decision 2003-45 MDU access condition is broadly worded and not confined to any specific access technology.
53. In Telecom Decision 2008-85, the Commission forbore from regulating intra-exchange dark fibre services provided by Bell Aliant Regional Communications, Limited Partnership; Bell Canada; NorthernTel, Limited Partnership; and Télébec, Limited Partnership in their incumbent serving territories. The Commission considers that that determination does not apply to in-building wire because the wire was not part of the product market being assessed in that decision.
54. Accordingly, the Commission determines that connection to a LEC's in-building fibre in an MDU is provided for under existing policies and regulations.
55. Bell Canada's existing in-building wire tariff is restricted to copper access facilities, and the company does not have a tariff in place for providing access to its in-building fibre. Therefore, the provision of access to Bell Canada-owned in-building fibre will require modifications to the company's existing tariff.

Conclusion

56. With regard to Cloudwifi's entitlement to use Bell Canada's inside wire pursuant to existing broadcasting regulations, the Commission finds that because Cloudwifi was neither a licensed BDU nor registered to operate as an exempt BDU, it cannot use section 10 of the Regulations to justify its previous use of Bell Canada's inside wire at the Northtown and Spadina MDUs. However, as of the date it was registered on the Exempt BDU List, Cloudwifi can avail itself of section 10 of the Regulations in its capacity as an exempt BDU at the locations where it is authorized to operate as a BDU.
57. The Commission reiterates that access to BDU-owned inside wire pursuant to section 10 of the Regulations is contingent on a request being made by a qualifying party and the existence of an agreement on a just and reasonable fee to be charged for such use. Furthermore, the access rights created under this provision are meant to give

effect to the Commission's policy of ensuring that end-users are able to use inside wire to access programming services by way of the service provider of their choice.

58. With regard to Cloudwifi's entitlement to use Bell Canada's in-building wire under existing telecommunications regulations, once Cloudwifi becomes a registered CLEC, it may connect with this wire to provide telecommunications services at the Northtown and Spadina MDUs, and it may do so regardless of the type of technology it wishes to use.¹³ However, as noted above, revisions to Bell Canada's tariffs will be required to provide for access to its in-building fibre facilities.
59. In light of the above and having regard to the information available on the record of this proceeding, it would not be appropriate for the Commission to issue an order stating that Bell Canada cannot interfere with Cloudwifi's customers' use of the in-building wire at the Northtown and Spadina MDUs. Accordingly, the Commission **denies** Cloudwifi's request for such an order.

Should the Commission issue an order allowing facilities-based ISPs to access the in-building wire of telecommunications common carriers and BDUs?

Positions of parties

Cloudwifi

60. Cloudwifi submitted that whether or not the Commission finds that the existing rules allow it to have access to Bell Canada's facilities, access to in-building wire should be granted to all facilities-based ISPs. It noted that the Eastlink/Norigen Letter speaks of giving access to CLECs, and section 10 of the Regulations speaks of access requests by BDUs. In Cloudwifi's view, there is no reason why other service providers such as ISPs should not be allowed to have access to in-building wire at the demarcation point.
61. Cloudwifi submitted that allowing CLECs to use this wire to provide Internet access service while not allowing standalone ISPs to use it constitutes undue discrimination and is contrary to subsection 27(2) of the *Telecommunications Act*.¹⁴
62. Cloudwifi also submitted that the provision of Internet access service is a growing business that is vitally important to Canadian consumers and businesses, and that there is no better way to improve competition and lower prices for Canadian

¹³ While connecting LECs must notify the LEC that owns the wire before connecting and follow the appropriate guidelines, under existing Commission rules and regulations, there is no requirement for Cloudwifi to obtain Bell Canada's consent to connect to its facilities if/when Cloudwifi becomes a registered CLEC.

¹⁴ 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.

consumers than by removing barriers to entry by facilities-based ISPs. It submitted that providing access to in-building wire is a key step in facilitating this competition, just as it was for CLEC and BDU competition.

63. Cloudwifi noted that in Telecom Decision 2005-33, the Commission extended MDU access rights to the Coalition to stimulate facilities-based competition. It submitted that, similarly, the Commission should allow ISPs to have access to in-building wire to help Canadians obtain access to faster Internet access services at lower prices.

Bell Canada

64. Bell Canada submitted that there is no justification for adopting a new rule that would allow ISPs to access the in-building wire of carriers and BDUs. In its view, it would be inappropriate for the Commission to extend its existing rules, either under the *Broadcasting Act* or the *Telecommunications Act*, to ISPs so that they can continue to access all BDUs' and LECs' facilities.
65. Bell Canada submitted that the jurisdiction-limiting provisions found in the *Broadcasting Act*, specifically in subsection 4(4)¹⁵ and in paragraph 10(1)(k),¹⁶ serve to restrict the Commission's regulation-making power to matters that further its broadcasting statutory objects. As such, the Commission is prevented from enacting new rules under that Act and the Regulations that would entitle standalone ISPs to access broadcasting inside wire.
66. Bell Canada submitted that Cloudwifi provided no real justification under the *Telecommunications Act* for new telecommunications rules with respect to MDU in-building wire access that would apply to standalone ISPs. In the company's view, the current rules do not appear to have prevented Canada's retail Internet service market from becoming competitive, and it provided revenue and subscriber data from the Commission's 2017 *Communications Monitoring Report (CMR)* to support its view. It submitted that CMR data suggests an increasingly competitive and rivalrous retail ISP market, and that the in-building wire rules have not impeded retail ISPs from making impressive gains and adding to the overall vibrancy of retail Internet service competition.

Interveners

67. CNOC, Iristel, and PIAC generally submitted that allowing facilities-based ISPs – or, in CNOC's view, any facilities-based TSP – to access in-building wire would allow for effective competition and greater choice and affordability for consumers. They also submitted that such a change would be consistent with various policy objectives set out in section 7 of the *Telecommunications Act* (the Policy Objectives), the Policy

¹⁵ Subsection 4(4) states the following: For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the *Telecommunications Act*, when acting solely in that capacity.

¹⁶ Paragraph 10(1)(k) states the following: [The Commission may, in furtherance of its objects, make regulations] respecting such other matters as it deems necessary for the furtherance of its objects.

Direction,¹⁷ and the Commission's determinations in Telecom Decision 2003-45, Telecom Decision 2005-33, and Telecom Regulatory Policy 2016-496.

68. CNOC submitted that without access by facilities-based TSPs to in-building wire, the owner of the wire can act as a gatekeeper, effectively deciding from which service providers the end-users residing in the building in question will be able to obtain telecommunications services.
69. Iristel submitted that given the shift towards broadband services evident in the telecommunications industry, and reflected in the Commission's decisions, such as in Telecom Regulatory Policy 2016-496, there is no logic in excluding ISPs from the same access to in-building wire that is currently given to CLECs or BDUs.
70. Iristel submitted that not allowing facilities-based ISPs to have regulated access to in-building wire will push them to register as CLECs even if their business plans did not originally contemplate the delivery of voice services. It submitted that this acts as a barrier to entry for small ISPs and is contrary to the Policy Objective set out in section 7(c) of the *Telecommunications Act*, which aims to enhance the efficiency and competitiveness of Canadian telecommunications. It also submitted that this creates an onerous burden on the Commission, numbering authorities, and every other carrier that operates in the same exchange as the ISP. Iristel submitted that the requirement to register as a CLEC clearly goes against one of the objectives in paragraph 7(f) of the *Telecommunications Act*, which is "...to ensure that regulation, where required, is efficient and effective."
71. In PIAC's view, permitting Cloudwifi to access Bell Canada's in-building wire as an ISP would continue to promote the policy objectives of competition and consumer choice, which the Commission set out in Telecom Decision 2003-45, all in light of the new emphasis on broadband Internet access service promotion. It also submitted that with the growth of Internet Protocol television (IPTV) service, telecommunications and broadcasting services are increasingly provided over the same infrastructure by the same providers. PIAC submitted that not allowing access to in-building wire in MDUs in this era due to a regulatory gap would therefore favour providers that offer all of these services.
72. PIAC submitted that the Commission should encourage facilities-based ISP access to the in-building wire owned by carriers and BDUs to promote competition and maximize end-user choice for broadband Internet access service and any other services that such ISPs may also offer. PIAC also submitted that adopting this broader approach would be reasonable given the Commission's previous decisions and the Policy Objectives.

¹⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

Cloudwifi – Reply comments

73. Cloudwifi submitted that while there are many independent ISPs in Canada, as shown in the CMR data that Bell Canada referred to, most of these ISPs are resellers. Cloudwifi submitted that Canada needs facilities-based ISPs to bring lower prices and faster networks to Canada, and that these providers need access to in-building wire.
74. Cloudwifi submitted that Canadians are tired of paying inflated prices for Internet access service, and that the solution is facilities-based competition. Cloudwifi submitted that to enable this solution, ISPs should be given the same access to inside wire as CLECs and BDUs. Cloudwifi submitted that local exchange and broadcasting distribution services are in decline and Internet access service is the future.

Commission's analysis and determinations

75. In Telecom Decision 97-8, the Commission expressed the view that an important objective of local competition was to increase consumer choice. The Commission determined that in order to facilitate such choice, it was in the public interest that end-users have the right and the means to have access to the LEC of their choice in all situations. As noted above, the Commission required that, as a condition of providing service, a LEC ensure that the end-users that it serves are able to have direct access, under reasonable terms and conditions, to services provided by any other LEC serving that area.
76. In Telecom Decision 2003-45, the Commission noted that it had determined that the full benefits of local competition, including high-quality, affordable service; innovation; and service differentiation, would best be realized through facilities-based competition and that, in the long run, facilities-based competition would be the most effective and sustainable form of competition to achieve the Policy Objectives. The Commission further noted that in fostering the development of competition it sought to ensure that service providers could access and serve subscribers in a number of ways, including through reselling services, leasing facilities, and installing and operating their own facilities. It noted that in numerous decisions, it had sought to remove the obstacles limiting the ability of service providers to serve end-users by any of these means.
77. In Telecom Decision 2005-33, the Commission considered that the Coalition members were a small, but growing, set of facilities-based competitors. The Commission agreed with the Coalition that the range of services provided to end-users had changed significantly since the introduction of local competition, reflecting a convergence of voice and data services. Accordingly, the Commission considered that even though the services provided by the Coalition members were not voice services, the Coalition members were important to the development of local competition and, in particular, to the development of facilities-based competition and to the achievement of end-user choice.

78. The Commission also considered that the Coalition members faced entry barriers to MDUs that were preventing them from providing services to end-users in MDUs, whether they provided the services directly, or indirectly as wholesalers. The Commission further considered that, as had occurred in the case of LECs, these entry barriers restricted end-user choice and impaired the ability of the Coalition members to effectively compete in the local telecommunications market. The Commission considered, generally, that removing barriers that restrict end-user choice and impair the development of local competition and, in particular, facilities-based competition, is of central importance to the implementation of the Policy Objectives.
79. Telecommunications services have evolved significantly since the early 2000s, including a migration towards fixed and mobile wireless broadband Internet access services and away from legacy services, such as landline voice service.
80. The Commission considers that the existence of barriers affecting the ability of carrier ISPs¹⁸ to provide Internet access service to end-users in MDUs impedes the development of competition in this market and, consequently, restricts end-user choice. This restriction on consumer choice is contrary to the Commission's objective of increasing consumers' choice of providers, as established in Telecom Decision 97-8, and these barriers and their effects are inconsistent with the Policy Objectives set out in paragraphs 7(b), (c), (f), and (h) of the Act.¹⁹
81. The Commission also considers that requiring carrier ISPs that do not otherwise intend to provide local exchange service to become registered CLECs to connect with LEC facilities in MDUs creates an unnecessary regulatory burden on those ISPs and on other LECs. Such a burden is inconsistent with the four above-noted Policy Objectives, and with subparagraphs 1(a)(ii)²⁰ and 1(b)(ii)²¹ of the Policy Direction.
82. Moreover, the Commission considers that excluding non-CLEC carrier ISPs that are not members of the Coalition from accessing the in-building wire of a LEC in an MDU is inconsistent with subparagraph 1(b)(iv) of the Policy Direction. Specifically, denying access would not ensure the technological and competitive neutrality of

¹⁸ While Cloudwifi referred to "facilities-based ISPs," the Commission considers that the term "telecommunications common carriers," which is a defined term in the *Telecommunications Act*, is more appropriate. For clarity, from here on these entities will be referred to as "carrier ISPs."

¹⁹ The cited policy objectives are 7(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 the 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.

²⁰ Subparagraph 1(a)(ii) states that the Commission should "...use measures that are efficient and proportionate to their purpose and interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives."

²¹ Subparagraph 1(b)(ii) states that when relying on regulation, the Commission should use measures that satisfy the criteria that "...if they are of an economic nature, neither deter economically efficient entry nor encourage economically inefficient entry."

network interconnection arrangements and would impair competition from new technologies.

83. Finally, the Commission considers that mandating access to LECs' in-building wire in MDUs by non-CLEC carrier ISPs would advance Policy Objectives 7(b), (c), (f), (g),²² and (h).
84. Accordingly, the Commission considers that it would be reasonable for carrier ISPs to have access to MDUs, as well as to LECs' in-building wire in MDUs, without having to become registered CLECs.
85. The Commission considers that Cloudwifi's request for an order giving all carrier ISPs access to the in-building wire owned by telecommunications common carriers cannot be granted as part of this proceeding because the application was not served on all potential respondents and, therefore, there was insufficient notice to them.
86. In light of all the above, however, it is the Commission's preliminary view that (i) the MDU access condition and associated obligations should be extended to all carrier ISPs, and potentially to all TSPs, in the same way that Telecom Decision 2005-33 extended the MDU access condition and obligations to members of the Coalition; and (ii) all carrier ISPs, and potentially all TSPs, should have access to LECs' and other TSPs' in-building wire in MDUs on the same basis as registered CLECs, and regardless of technology.
87. Concurrent with the publication of this decision, the Commission has today issued Telecom Notice of Consultation 2019-219 to consider this matter further and to help determine to which other entities, if any, the MDU access condition and associated obligations, and access to in-building fibre, should be extended.
88. Given that Cloudwifi's application was served specifically on Bell Canada, the Commission **directs** Bell Canada, as a condition of providing telecommunications services in all MDUs in which it offers service, to provide access to its in-building wire to all carrier ISPs, including Cloudwifi.
89. As noted earlier, Bell Canada's existing in-building wire tariff is restricted to LECs and copper access facilities, and the company does not have an approved tariff in place for providing access to its in-building fibre.
90. In order to give effect to the Commission's determination to provide carrier ISPs access to Bell Canada-owned in-building wire, modifications to Bell Canada's tariff will be required. Given that Cloudwifi currently has end-users connected to its network by means of Bell Canada-owned in-building wire, the Commission **directs** Bell Canada to file proposed amended tariff pages to reflect such access within **30 days** of the date of this decision.

²² The cited policy objective states the following: to stimulate research and development in Canada in the field of telecommunications, and to encourage innovation in the provision of telecommunications services.

91. Similarly, tariff modifications will be required to provide carrier ISPs and CLECs access to Bell Canada-owned in-building fibre. Accordingly, the Commission **directs** Bell Canada to provide for such access as part of its proposed tariff page amendments, which must include the terms and conditions of connection.
92. The Commission notes that (i) the CISC Building Access and Inside Wiring Sub-Working Group (the Working Group), as part of a work task resulting from Telecom Decision 99-10, was unable to reach consensus on a demarcation point for access to MDU in-building fibre; and (ii) the Commission has not established the location of a demarcation point for access to such facilities. However, the Commission also notes that Bell Canada and MTS Communications Inc. submitted their view about several key details related to the fibre service provider demarcation point in a contribution to the Working Group in November 1999, which could inform Bell Canada's proposed tariff.²³
93. The Commission considers that it would not be in the public interest for Cloudwifi's existing customers to be disconnected while Bell Canada files amended tariff pages. Therefore, the Commission **directs** Bell Canada to apply its existing in-building wire tariff provisions to carrier ISPs, including Cloudwifi, on an interim basis, as of the date of this decision.
94. There is currently no charge for the use of copper in-building wire in Bell Canada's existing tariff, which means that the existing rate is \$0. The Commission therefore sets an interim rate, as of the date of its decision, of \$0 per subscriber per month to be charged by Bell Canada for use of its in-building fibre.
95. The Commission notes that the record of this proceeding does not include sufficient information to establish accurate costs for in-building fibre. If Bell Canada wishes to charge a rate for such facilities, it must file a cost study with its proposed amended tariff pages.
96. Regarding the matter of whether carrier ISPs should have access to BDUs' inside wire, the Commission notes that modifications to section 10 of the BDU Regulations and the BDU Exemption Order would require a specific process, including a broadcasting notice of consultation. Given this, the fact that any such relief raises important issues (including issues of jurisdiction), and the lack of arguments and evidence on this point, the Commission considers that this is not the appropriate proceeding in which to consider this matter.
97. The Commission notes (i) the ubiquitous presence of facilities-based TSPs in MDUs, and (ii) that most, if not all, BDUs that own inside wire offer both broadcasting and Internet services and, therefore, also operate as TSPs. To the extent that the Commission determines, as an outcome of Telecom Notice of Consultation 2019-219, that regulatory measures are required to address barriers to MDU entry

²³ [*Service provider demarcation points for coaxial cable, fibre and fixed wireless*](#), Contribution of Bell Canada and MTS Communications Inc., 19 November 1999 (BICO048a).

faced by carrier ISPs, it is of the view that the ISP MDU access issues raised by Cloudwifi in its application would be satisfactorily resolved. The Commission considers, therefore, that no further action is required, at this time, to give carrier ISPs access to BDU inside wire.

Secretary General

Related documents

- *Applicability of the Commission's preliminary view set out in Telecom and Broadcasting Decision 2019-218 to all telecommunications service providers*, Telecom Notice of Consultation CRTC 2019-219, 21 June 2019
- *Revised exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Regulatory Policy CRTC 2017-319 and Broadcasting Order CRTC 2017-320, 31 August 2017
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Regulation of intra-exchange dark fibre services*, Telecom Decision CRTC 2008-85, 8 September 2008
- *Application of Decision 2003-45 to the Coalition of Hydro Telecom Service Providers*, Telecom Decision CRTC 2005-33, 10 June 2005
- *Provision of telecommunications services to customers in multi-dwelling units*, Telecom Decision CRTC 2003-45, 30 June 2003
- *Cable inside wire fee*, Broadcasting Public Notice CRTC 2002-51, 3 September 2002
- Decision CRTC 2001-362, 19 June 2001
- *Revised policy regarding inside wire regime; Call for comments on proposed amendments to section 10 of the Broadcasting Distribution Regulations*, Public Notice CRTC 2000-81, 9 June 2000; as amended by Public Notice CRTC 2000-81-1, 17 July 2000
- *Location of Demarcation Point for Inside Wire in Multi-Dwelling Units and Associated Issues*, Telecom Decision CRTC 99-10, 6 August 1999
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *New regulatory framework for broadcasting distribution undertakings*, Public Notice CRTC 1997-25, 11 March 1997