



## Telecom Decision CRTC 2019-286

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Ottawa, 9 August 2019

*Public record: 1011-NOC2017-0049*

### **CISC Business Process Working Group – Dispute regarding the inclusion of comparisons between retail and wholesale high-speed access service providers’ performance on certain quality of service indicators as a non-consensus item in a report**

*The Commission confirms that the pending CRTC Interconnection Steering Committee (CISC) Business Process Working Group’s report for Task Identification Form 102, to be filed by 8 October 2019, should not include a requirement for comparisons between retail and wholesale quality of service indicators. The inclusion of these comparisons is a policy matter and is thus outside the mandate of CISC and its working groups. The Commission reminds parties that CISC is not the appropriate forum for policy matters.*

#### **Introduction**

1. In *Review of the competitor quality of service regime*, Telecom Regulatory Policy CRTC 2018-123, 13 April 2018 (Telecom Regulatory Policy 2018-123), the Commission directed wholesale high-speed access (HSA) service providers to provide information on a quarterly basis for certain competitor quality of service (QoS) indicators. The Commission noted that certain indicators and timelines on which wholesale HSA service providers must report required a follow-up process.
2. The Commission requested that this follow-up process be conducted by the CRTC Interconnection Steering Committee (CISC),<sup>1</sup> which in turn assigned the task to the Business Process Working Group (BPWG).<sup>2</sup> The BPWG created Task Identification Form 102 (TIF102) to track its work activities, which are being performed by a BPWG sub-working group.
3. Some of the companies that rely on wholesale HSA services wanted retail QoS indicators to be included in QoS reports in order to enable the Commission to determine whether HSA service providers are discriminating against competitors relative to the service they provide to their own customers. Wholesale HSA service providers disagreed.

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<sup>1</sup> CISC is an organization established by the Commission to assist in developing information, procedures, and guidelines as may be required in various aspects of the Commission’s regulatory activities.

<sup>2</sup> The BPWG is responsible for the development and maintenance of various processes, agreements, and guidelines associated with customer transfer, number portability, network operations, network management, billing and collection, directory listings, and any other matters assigned by the Commission.

4. The Chairperson of the sub-working group has stated that the question of including retail QoS indicators is a policy issue that is beyond the scope of CISC members' work and could be submitted as a separate application to the Commission by interested persons. As such, the Chairperson requested that this issue be discussed in a separate section of the TIF102 report, similar to the approach of other working groups. Commission staff also clarified to the sub-working group that the Commission did not request CISC to provide it with any retail QoS information.

### **The dispute**

5. On 11 April 2019, the Commission received a Dispute Information Form<sup>3</sup> from the Canadian Network Operators Consortium Inc. (CNOC), in which CNOC submitted that references to the need for comparisons between retail and wholesale HSA service providers' performance on certain QoS indicators (referred to hereafter as the comparisons) should be included in the TIF102 report as a non-consensus item for a Commission determination.

### **Positions of parties**

6. Allstream Business Inc., a wholly owned subsidiary of Zayo Canada Inc. (Allstream), Primus Telecommunications Canada Inc., and TekSavvy Solutions Inc. (TekSavvy) supported CNOC's position.
7. Bragg Communications Incorporated, operating as Eastlink; Cogeco Communications Inc.; Rogers Communications Canada Inc.; Shaw Cablesystems Limited; and Videotron Ltd. (together, the cable companies), as well as Bell Canada, Saskatchewan Telecommunications (SaskTel), and TELUS Communications Inc. (TCI) did not support CNOC's position, and argued that such references are outside the scope of the TIF102 report.
8. CNOC and TekSavvy noted that the Commission indicated in Telecom Regulatory Policy 2018-123 that it is concerned about discrimination in the provision of wholesale HSA services.
9. Allstream and CNOC submitted that the Commission requires access to retail QoS data in order to determine whether wholesale HSA service providers are unduly discriminating against competitors. CNOC noted that in the proceeding that led to Telecom Regulatory Policy 2018-123, wholesale HSA service providers had attempted to use their own data to show that their provisioning of wholesale HSA services is comparable to their provisioning of HSA services to their own retail end-users.

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<sup>3</sup> The Dispute Information Form is the means by which disputes are documented in CISC working groups to enable CISC to resolve non-consensus issues in its working groups. This process is documented in section 6 of the [CISC Administrative Guidelines](#).

10. CNOC argued that this claim rightly brought the matter of the comparisons within the scope of Telecom Regulatory Policy 2018-123 and TIF102, and that the Commission must make a determination on the comparisons pursuant to the legislative requirements, specifically those set out in subsection 52(1) of the *Telecommunications Act* (the Act), which provides that only the Commission itself may determine a question of law. CNOC maintained that the only manner in which the Commission can make such a determination is if the matter is brought before it as a non-consensus item.
11. CNOC further argued that since the Commission did not specifically exclude a discussion of retail QoS indicators in Telecom Regulatory Policy 2018-123, references to the need for comparisons should be included in the TIF102 report. TekSavvy supported this view. CNOC maintained that if the wholesale HSA service providers disagree that inclusion of such references is appropriate, that disagreement should result in a non-consensus item rather than the removal of the references from the report.
12. Allstream noted that the purpose of CISC is to assist the Commission in developing information, procedures, and guidelines to support its regulatory activities. The company submitted that the products of CISC working groups should reflect the positions of all members. As such, the TIF102 report should include the non-consensus positions related to the comparisons.
13. The cable companies submitted that the absence of any Commission direction on the comparisons in Telecom Regulatory Policy 2018-123 does not mean that they should be included in the TIF102 report, and that their inclusion as a non-consensus item would require the Commission to issue a related determination. The cable companies argued that since the issue is a policy matter that is beyond the scope of TIF102, it should not be a non-consensus determination for the Commission.
14. TCI, supported by SaskTel, noted that (i) the scope of CISC's task was set out in Telecom Regulatory Policy 2018-123, which does not include the provision of retail data; and (ii) the inclusion of such data in the TIF102 report would effectively be contrary to the Commission's determinations in that decision. TCI submitted that the Commission could have created a competitor QoS regime based on the comparisons, but that the Commission did not do so; therefore, the matter is not up for challenge in the CISC process. TCI argued that by asking to present the issue as a non-consensus item, CNOC is seeking to use the CISC process to effect a policy change that would violate CISC's mandate.
15. TCI also noted that, in a 2018 CNOC submission to the Competition Bureau's Broadband Market Study, CNOC had clearly set out its view that in Telecom Regulatory Policy 2018-123 the Commission did not mandate retail comparisons.<sup>4</sup>

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<sup>4</sup> [Competition Bureau Market Study – Competition in Broadband Services](#), CNOC, 31 August 2018, p.66

16. TCI submitted that CNOC's request, if granted, would pose serious procedural fairness concerns to wholesale HSA service providers, including to TCI. The company noted that wholesale business groups are engaged in the CISC process, while retail services groups are not. TCI also noted that since the Commission does not regulate retail Internet service, there are no regulated reports that can simply be forwarded to competitors. TCI argued that if the Commission were to require retail Internet service QoS results, the wholesale HSA service providers would have to engage entirely different teams. It is unclear what impacts this would have on the timing and costs of compliance with Telecom Regulatory Policy 2018-123.
17. Bell Canada submitted that the Commission's reference to possible discrimination in Telecom Regulatory Policy 2018-123, taken in context, refers to potential discrimination between wholesale customers, not that between wholesale and retail customers.
18. The cable companies submitted that CNOC's position calls into question CISC's role and effectiveness in providing solutions and resolving disputes, which sets a precedent that encourages entrenched positions and the misuse of CISC resources.
19. All opposing parties submitted that it was open to CNOC to propose changes to Telecom Regulatory Policy 2018-123 through the filing of a separate application with the Commission.

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

20. In the proceeding that led to Telecom Regulatory Policy 2018-123, CNOC, supported by TekSavvy, proposed company-wide indicators that would enable the Commission to monitor a wholesale HSA service provider's competitor service performance relative to its own retail service performance. The Commission considered, in that decision, that CNOC's proposed indicators would be overly burdensome for wholesale HSA service providers, given the inconsistent evidence on the record of that proceeding regarding possible issues associated with wholesale HSA services. Accordingly, the Commission did not request comparisons between retail and wholesale HSA services.
21. A Commission requirement for wholesale HSA service providers to collect their own retail performance metrics in addition to wholesale performance metrics would clearly be a policy matter, since the Commission would be imposing a new regulatory obligation on wholesale HSA service providers.
22. The Commission-approved CISC Administrative Guidelines state, "CISC shall not substitute for ultimate decision-making by the CRTC." Accordingly, CISC's procedures are neither intended nor designed for policy debates, and policy matters are not to be included in CISC recommendations.
23. The Commission considers that CNOC's request to include references to the need for the comparisons in the TIF102 report would require the Commission to make a determination on a policy matter. Therefore, such references should not be included

in the report. However, CNOC may file a separate application with the Commission regarding its request.

24. Accordingly, the Commission confirms that the comparisons are a policy matter that falls outside the scope of the Commission's directions to CISC in Telecom Regulatory Policy 2018-123. Therefore, references to the need for the comparisons should not be included in the forthcoming TIF102 report as a non-consensus item requiring a Commission determination.
25. The Commission reminds CISC participants that CISC is not the appropriate forum in which to address policy matters. Further, the Commission reminds CISC participants that the CISC consensus and dispute resolution process relies on parties avoiding entrenched positions and remaining open to discussions with other members and to guidance or views provided by Commission staff.
26. The Commission requests that CISC file the TIF102 report with the Commission by **8 October 2019**.

Secretary General