



Telecom Decision CRTC 2019-423

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Videotron Ltd. – Applications regarding (i) Cablevision du Nord de Québec inc.’s (Cablevision) refusal to sign a third-party Internet access (TPIA) service agreement, and (ii) access to Cablevision’s TPIA service at just and reasonable rates, and under just and reasonable terms

*The Commission **approves in part** the two applications by Videotron Ltd. (Videotron). The Commission encourages Cablevision du Nord de Québec inc. (Cablevision) and Videotron to continue their negotiations to conclude a third-party Internet access (TPIA) service agreement. The Commission **directs** Cablevision to file with the Commission a tariff notice for its TPIA service by no later than **3 February 2020**, and to be ready to implement the interconnections at the Val-d’Or and Rouyn-Noranda points of interconnection by no later than **3 April 2020**.*

Background

1. Cablevision du Nord de Québec inc. (Cablevision) was acquired in 2001 by Télébec, Société en commandite (Télébec), and is a wholly owned subsidiary of Bell Canada. Consequently, the incumbent telephone and cable service providers in the Abitibi-Témiscamingue region are part of the same corporate family.
2. The Commission approved Cablevision’s third-party Internet access (TPIA) service in Telecom Order 2005-93. On 16 October 2018, Videotron Ltd. (Videotron) contacted Cablevision to express its interest in subscribing to Cablevision’s TPIA service.
3. Despite negotiations between the parties from January to May 2019, on 15 May 2019, Cablevision filed with the Commission a tariff notice (TN) in which Cablevision requested authorization to withdraw its TPIA service as of 1 January 2020, to coincide with the planned Cablevision-Télébec merger date.
4. In Telecom Order 2019-422, the Commission denied Cablevision’s request to withdraw its TPIA service from its General Tariff. The Commission considered that there is substantial doubt as to Cablevision’s intention to withdraw the TPIA service in light of Videotron’s interest in the service and the discussions held and progress made between the parties to conclude a service agreement.

Applications

5. The Commission received two applications from Vidéotron Ltd. (Vidéotron) dated 10 July 2019. The first (hereafter referred to as the first application) relates to Cablevision's refusal to sign a TPIA service agreement.
6. Vidéotron also requested that the Commission process the first application expeditiously. In light of the issues raised, the Commission processed the first application using an expedited process and sent both parties a letter to that effect on 18 July 2019.
7. Vidéotron's second application (hereafter referred to as the second application) relates to competitors' access to Cablevision's TPIA service at just and reasonable rates and under just and reasonable terms.

Issues

8. The Commission has identified the following issues to be addressed in this decision:
 - In response to the first application, should the Commission require Cablevision to provide its TPIA service to Vidéotron?
 - If so, in response to the second application, under what conditions will Cablevision be required to provide its TPIA service to Vidéotron?

Should the Commission require Cablevision to provide its TPIA service to Vidéotron?

Positions of parties

9. Vidéotron reported having contacted Cablevision on 16 October 2018 to express its interest in subscribing to Cablevision's TPIA service. Formal negotiations were held between the two firms, during which Cablevision provided Vidéotron with, among other things, a proposed wholesale services framework agreement and a proposed TPIA service schedule. On 12 March 2019, Cablevision also provided Vidéotron with a draft design and cost report for its points of interconnection in Val-d'Or and Rouyn-Noranda.
10. On 4 June 2019, Vidéotron informed Cablevision that it was ready to sign the wholesale services framework agreement and the TPIA service schedule. Vidéotron prepared and signed the final versions of the wholesale services framework agreement and the TPIA service schedule and, on 8 July 2019, sent them to Cablevision for signature. Vidéotron also prepared and signed its own version of the design and cost report and sent it to Cablevision on 9 July 2019. In both cases, Cablevision did not respond to Vidéotron's requests.

11. Videotron argued that Cablevision's refusal to sign the documents constitutes a flagrant abuse on the part of an incumbent provider attempting to block market competitors.
12. Cablevision submitted that if the Commission approves its application to withdraw its TPIA service, it would not be appropriate to initiate an interconnection process with Videotron, as the process would become null and void shortly thereafter.
13. Cablevision noted that even if it were required to allow Videotron to subscribe to its TPIA service, a number of details would need to be finalized before moving forward.
14. In addition, Cablevision stated that its TPIA service is not a service that the Commission directed it to provide in Decision 2001-45; rather, it is a service that the company introduced voluntarily in 2005,¹ which it now proposes simply to withdraw.
15. SSi Micro Ltd. (SSi) supported Videotron's first application, pointing out that providing TPIA service was a way for Télébec to meet the commitment it made when it acquired Cablevision, which was to adopt an open network policy allowing third-party network access.²
16. Videotron also opposed Cablevision's argument that its commitment to adopting an open network policy allowing third-party network access has a limited lifespan. Videotron also argued that nothing in the *Telecommunications Act* (the Act) or in Decision 2001-45 exempts Cablevision from its obligations simply because it believes the timing is right.
17. SSi argued that Cablevision's refusal to provide Videotron with its TPIA service unfairly discriminates against Videotron and grants undue preference to Cablevision, thereby violating subsection 27(2) of the Act.

Commission's analysis and determinations

18. The Commission did not order the implementation of Cablevision's TPIA service. However, Télébec told the Commission, when it acquired Cablevision in 2001, that it would adopt an open network policy allowing third parties to access the network and provide their own programming distribution, Internet application, and telephony services, in competition or in cooperation with Cablevision and Télébec. Cablevision had no problem keeping this commitment until a competitor expressed interest in its TPIA service.
19. The Commission reiterates that, for as long as the tariff for Cablevision's TPIA service remains in effect, Cablevision is obliged to provide the service to any competitors expressing genuine interest in the service. This obligation arises from

¹ See Telecom Order 2005-93.

² See paragraph 7 of Decision 2001-45.

subsection 27(2) of the Act, which deals with unjust discrimination. Only if the Commission decided to approve the withdrawal of this service would Cablevision be permitted to refuse it to a competitor.

20. Despite the negotiations under way between the parties, Cablevision filed with the Commission a TN proposing to withdraw its TPIA service, in which it stated that no competitive provider had expressed a genuine interest in the service. Although Cablevision was not obligated to provide the service, given the negotiations in progress, the Commission considers that the company's failure to inform Videotron of the steps it had taken with the Commission to have its TPIA service withdrawn demonstrates that Cablevision was not negotiating with its potential competitor in good faith. The Commission notes that it denied the TN in Telecom Order 2019-422, also published today.
21. The Commission is satisfied that the negotiations initiated by Videotron with Cablevision demonstrate Videotron's genuine interest in Cablevision's TPIA service.
22. In light of the above, the Commission **directs** Cablevision to provide its TPIA service to any competitor showing a genuine interest in the service, as demonstrated by Videotron in this case, for as long as the tariff for this service remains in effect.

Under what conditions will Cablevision be required to provide its TPIA service to Videotron?

Positions of parties

23. In Videotron's view, it is not credible that the terms of Cablevision's TPIA service are required to comply only with the rules applicable to small cable companies. Videotron also does not believe that Cablevision, as a subsidiary of Bell Canada, is unable, among other things, to apply fees and test conditions that are comparable to those of other cable companies.
24. In addition, Videotron argued that there are key indicators suggesting that Cablevision's tariffed rates are no longer just and reasonable. Videotron pointed out that the large cable companies' tariffed rates, which have historically served as the basis for Cablevision's own rates, have since been amended significantly by the Commission.
25. Cablevision stressed that all of the rates and terms in its General Tariff were approved by the Commission and comply with the Commission's established regime for TPIA service provided by small cable companies, which is not the same as the regime for large companies.
26. Cablevision stated that, in light of the significant changes that Videotron proposed to its TPIA service, it is not clear to Cablevision that Videotron has a genuine interest in subscribing to the TPIA service in its current form.

Commission's analysis and determinations

27. The Commission finds reasonable Videotron's request to direct Cablevision to make changes to its General Tariff so that it complies with the Commission's various decisions and orders with respect to TPIA service.
28. Cablevision's General Tariff has not been revised by the Commission since March 2014. Cablevision did not request revision of its tariffed rates when the Commission revised the large cable companies' tariffed rates, which have served as the basis for Cablevision's own rates.³ However, in order to proceed effectively and avoid unduly delaying this process and the provision of TPIA service at just and reasonable rates, the Commission **directs** Cablevision to revise and update its TPIA service tariff pages and submit them to the Commission for approval by no later than **3 February 2020**. The submitted rate will need to be based on a recent cost study, or on cable carriers' Commission-approved rates for aggregated services.
29. That said, negotiations between the parties to establish an off-tariff agreement are permitted and encouraged, and the Commission considers that negotiating in good faith to conclude a TPIA service agreement is the best mechanism for resolving disputes between the two parties. However, in the absence of an off-tariff agreement between Cablevision and a competitor (including Videotron), the revised tariff will apply to all TPIA service agreements between Cablevision and the competitor.

Conclusion

30. In light of the above, the Commission **approves in part** the two applications by Videotron. The Commission:
 - a) encourages both parties to continue the negotiations initiated prior to the filing of Cablevision's TN in order to conclude an off-tariff service agreement, if possible.
 - b) **directs** Cablevision to provide its TPIA service to any competitor with a genuine interest in the service, for as long as the tariff for this service remains in effect.
 - c) **directs** Cablevision to file with the Commission a tariff notice for its TPIA service by no later than **3 February 2020**. The submitted rate will need to be based on a recent cost study, or on cable carriers' Commission-approved rates for aggregated services.

³ Cablevision's current tariff pages are partly based on those of various cable carriers (e.g. Cogeco Communications inc.) approved by the Commission in Telecom Regulatory Policy 2011-703. These tariff pages have since been subject to revisions approved by the Commission in Telecom Order 2019-288.

- d) **directs** Cablevision to be ready to implement the interconnections at its Val-d'Or and Rouyn-Noranda points of interconnection by no later than **3 April 2020**. The rates and terms and conditions of these interconnections will be dictated either by an off-tariff service agreement (see conclusion a) above) or by Cablevision's revised tariff, as approved by the Commission (see conclusion c) above) in the absence of an off-tariff agreement.

2019 Policy Direction

31. The Commission considers that its decision to direct Cablevision to provide its TPIA service to Videotron is compliant with the 2019 Policy Direction,⁴ as well as with the Canadian telecommunications policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.⁵ More specifically, the Commission's conclusions are intended to encourage all forms of competition and to differentiate service offerings (respectively subparagraphs 1(a)(i) and 1(a)(vi) of the 2019 Policy Direction). The Commission's conclusions will help other telecommunication service providers to implement real competition in Abitibi-Témiscamingue and thus provide differentiated services.

Secretary General

Related documents

- *Cablevision du Nord de Québec Inc. – Application to withdraw third-party Internet access service*, Telecom Order CRTC 2019-422, 16 December 2019
- *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services*, Telecom Order CRTC 2019-288, 15 August 2019
- *Billing practices for wholesale residential high-speed access services*, Telecom Regulatory Policy CRTC 2011-703, 15 November 2011
- Telecom Order CRTC 2005-93, 8 March 2005
- Decision CRTC 2001-45, 6 February 2001

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

⁵ The cited policy objectives are as follows: 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; 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; 7(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; and 7(h) to respond to the economic and social requirements of users of telecommunications services.