



Telecom Decision CRTC 2020-122

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Bell Canada – Request for clarification of Telecom Decision 2019-419

*The Commission **directs** that, in order to benefit from the exception set out in Telecom Decision 2019-419, all local exchange carriers and carrier Internet service providers that have been connected to Bell Canada’s in-building wire in accordance with Telecom and Broadcasting Decision 2019-218 are to provide to Bell Canada, by **11 May 2020**, a list of all multi-dwelling units in which end-customers were receiving service on 16 December 2019.*

Application

1. The Commission received an application from Bell Canada, dated 20 December 2019, in which the company requested that the Commission clarify Telecom Decision 2019-419, issued on 16 December 2019. In that decision, the Commission varied Telecom and Broadcasting Decision 2019-218 to rescind certain directions to Bell Canada with respect to providing access to its in-building wire (IBW) in multi-dwelling units (MDUs), including fibre IBW.
2. In its application, Bell Canada requested that the Commission issue an erratum indicating the following:

A party (the Lessee), that on 16 December 2019 (the Relevant Date) used fibre IBW and/or other equipment that is the property of another party (the Fibre IBW Owner) in an MDU to serve the Lessee’s end-user customers without notice to and the consent of the Fibre IBW Owner, shall deliver to each such Fibre IBW Owner a list consisting of each MDU (identified by the municipal address, including the particular units in each MDU), where the Lessee used the Fibre IBW Owner’s property on the Relevant Date. Such list shall be provided no later than a date to be prescribed by the Commission.

3. The Commission received interventions regarding Bell Canada’s application from Cloudwifi Inc. (Cloudwifi), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI).

Background

4. In the summer of 2018, Bell Canada and Cloudwifi – an Internet service provider (ISP) that serves Canadian residential and business customers – were involved in a

dispute over Cloudwifi's connection to Bell Canada's fibre IBW in two MDUs, in Kitchener and Toronto, Ontario, without Bell Canada's knowledge. As a result of this dispute, Cloudwifi filed an application with the Commission, dated 27 August 2018, in which it requested orders (i) stating that Bell Canada could not interfere with a customer's use of the IBW in question, and (ii) allowing facilities-based ISPs to access the IBW owned by carriers and broadcasting distribution undertakings.

5. In a letter dated 25 September 2018, Commission staff indicated that it expected Bell Canada not to disconnect any of Cloudwifi's existing customers at the MDUs referenced in Cloudwifi's application while the Commission considered the issues raised in the proceeding.
6. On 21 June 2019, the Commission issued Telecom and Broadcasting Decision 2019-218. In that decision, the Commission noted that, according to the record of the proceeding, Cloudwifi had not given prior notice to Bell Canada that it would be connecting to Bell Canada's IBW. The Commission also highlighted that, under the existing ordering and billing procedures for connection to a local exchange carrier's (LEC) IBW, which are set out in the CRTC Interconnection Steering Committee (CISC) Business Process Working Group's *Procedures for Connection to LEC In-Building Wire*, Consensus report BPRE019a, 26 July 2000 (the CISC report),¹ connecting LECs are to notify the LEC that owns the wire before connecting and follow the appropriate LEC and industry guidelines for connecting.
7. In addition, the Commission expressed 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), in the same way that Telecom Decision 2005-33 extended the MDU access condition and obligations to members of the Coalition of Hydro Telecom Service Providers; 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 competitive local exchange carriers (CLECs), and regardless of technology.
8. Ultimately, the Commission directed Bell Canada, as a condition of providing telecommunications services in all MDUs in which it offers service, to provide access to its IBW to all carrier ISPs, including Cloudwifi. Since Bell Canada's existing IBW tariff was restricted to LECs and copper access facilities, and since the company did not have an approved tariff in place for providing access to its fibre IBW, the Commission directed Bell Canada to file proposed amended tariff pages and to apply its existing IBW tariff provisions to carrier ISPs, including Cloudwifi, on an interim basis, as of the date of the decision.
9. The Commission concurrently issued Telecom Notice of Consultation 2019-219, in which it asked interested persons to show cause why the Commission's preliminary view regarding access to IBW, expressed in Telecom and Broadcasting Decision 2019-218, should not apply to all TSPs.

¹ The Commission approved this report in a follow-up letter dated 15 November 2000.

10. Bell Canada subsequently filed an application to review, vary, and rescind certain elements of Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219. In its application, Bell Canada indicated that it had respected and would continue to respect the expectation set out in the 25 September 2018 Commission staff letter to not disconnect any existing Cloudwifi customers.
11. On 16 December 2019, the Commission issued Telecom Decision 2019-419, in which it rescinded its directions to Bell Canada to (i) provide access to its IBW to all carrier ISPs, including Cloudwifi, subject to the exceptions set out in (iii) below; (ii) file proposed amended tariff pages to include such access, as well as access by carrier ISPs and CLECs to Bell Canada-owned fibre IBW; and (iii) apply its existing IBW tariff for copper to carrier ISPs, including Cloudwifi, on an interim basis, as of the date of Telecom and Broadcasting Decision 2019-218, with the exception of end-customers of any LEC or carrier ISP, including Cloudwifi, that were connected to Bell Canada's IBW in accordance with Telecom and Broadcasting Decision 2019-218 (i.e. pursuant to the interim tariff) and were receiving service at the time that decision was issued.
12. On the same day, the Commission issued Telecom Notice of Consultation 2019-420 to, among other things, (i) request comments on the Commission's preliminary view that all carrier ISPs, and potentially all TSPs, should have access to IBW, (ii) consider how access to IBW in MDUs should be expanded; and (iii) consider appropriate rates, terms, and conditions for fibre IBW connection.
13. Bell Canada subsequently filed the application discussed in paragraphs 1 and 2 above.

Issue

14. The Commission has identified the following issue to be addressed in this decision:

- Should any LEC or carrier ISP using fibre IBW belonging to Bell Canada without Bell Canada's knowledge be compelled to list all locations where it was using such wire on 16 December 2019 in order to benefit from the status quo granted in Telecom Decision 2019-419?

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Positions of parties

15. Bell Canada noted that the Commission has grandfathered continued access to fibre IBW for end-customers of any LEC or carrier ISP, including Cloudwifi, that have been connected to Bell Canada's IBW in accordance with Telecom and Broadcasting Decision 2019-218 as of the date that Telecom Decision 2019-419 was issued. It submitted, however, that the Commission did not specifically state that the LEC or carrier ISP should notify the fibre IBW owner as to where those grandfathered

locations are (and to which MDU suites they have connected). As a result, it requested that the Commission clarify such a disclosure obligation via an erratum.

16. Bell Canada submitted that it has repeatedly requested a list of such locations from Cloudwifi, without success, and considers that the company's refusals are contrary to the Commission's requirement that Cloudwifi should have provided notice to and obtained prior consent from all owners whose fibre IBW it is using.
17. Bell Canada submitted that the Commission should issue an erratum to
 - clarify that fibre IBW users are to give notice to its owner, as intended by the Commission;
 - prevent the proliferation of potentially improper or damaging fibre IBW connections (and the resulting degradation in the quality of service provided to end-customers) and further confusion about the rules regarding access until the issuance of any new fibre IBW access rules in the decision resulting from Telecom Notice of Consultation 2019-420; and
 - enable TSPs to better respond to consumers and potential new service requests in MDUs.
18. RCCI supported Bell Canada's request, arguing that the erratum would provide Bell Canada (and any fibre IBW owner) with the opportunity to prevent the proliferation of improper or damaging connections to its fibre IBW, identify and repair any damage, and maintain the integrity of its network, as well as address the confusion surrounding the Commission's rules governing fibre IBW access and sharing.
19. TCI also supported Bell Canada's request, submitting that the regime for access to IBW has never permitted access seekers to connect to IBW without providing notice to the owner of the wire. It added that an itemized list of existing connections would enable owners to inspect equipment for damage and to identify locations in which they may be limited in responding to customer service requests.
20. Cloudwifi submitted that it had no objection to providing Bell Canada with a list of the fibre IBW facilities it is using, but that Bell Canada's application raises legal and technical issues that should be addressed before such a list is provided.
21. First, Cloudwifi submitted that, in the proceeding that led to Telecom Decision 2019-419, Bell Canada indicated that it was concerned that its labelling system did not allow it to determine which fibre wire served which suite, but now the company is asking for suite numbers to identify fibre wires. Cloudwifi recommended that the list include port numbers only, unless Bell Canada has concluded that identification is no longer an issue.

22. Bell Canada replied that the reason it requires its fibre wires to be identified by suite numbers rather than port numbers is because often there are no port numbers or labels on its fibre wires. It added that Cloudwifi's request to provide it with port numbers is tantamount to not providing any information about which MDU suites it serves, and would not constrain Cloudwifi from expanding its use of fibre IBW beyond the suites it was serving on 16 December 2019.
23. Second, Cloudwifi submitted that the idea that the party using IBW must obtain the consent of the owner was created by Bell Canada, while the Commission had indicated in Telecom and Broadcasting Decision 2019-218 that, although connecting LECs must notify the LEC that owns the wire before connecting, under existing Commission rules and regulations, there was no requirement to obtain consent prior to connecting to the facilities. As such, if the Commission were to require parties to provide a list of connections, it should repeat that its fibre IBW framework does not require the prior consent of the IBW owner.
24. Bell Canada replied that it is not asking for prior consent in this case, since the connections already exist, but submitted that Cloudwifi had already conceded on several occasions that parties seeking access to fibre IBW have a duty to obtain consent from the owner, when the company's Chief Executive Officer or counsel agreed to negotiate access arrangements. It submitted that this was an admission that Cloudwifi must first have Bell Canada's consent to use its property.
25. Finally, Cloudwifi submitted that it should not have to provide the list requested by Bell Canada until Bell Canada signs a Master Agreement for Local Interconnection (MALI), which would allow Cloudwifi to become a CLEC.²
26. Bell Canada replied that the MALI issue was irrelevant to Telecom Decision 2019-419.

Commission's analysis and determinations

27. As noted in Telecom and Broadcasting Decision 2019-218, under the existing ordering and billing procedures for connection to a LEC's IBW, as set out in the CISC report, connecting LECs are to notify the LEC that owns the wire before connecting and follow the appropriate LEC and industry guidelines for connecting. This obligation was implicitly extended in Telecom and Broadcasting Decision 2019-218 to carrier ISPs that have connected with Bell Canada's IBW. As such, to be connected in accordance with Telecom and Broadcasting Decision 2019-218 (i.e.-pursuant to the interim tariff), as required by Telecom Decision 2019-419, the connecting LEC or carrier ISP should have given notice to the IBW owner.
28. Further, the Commission considers that IBW owners should be able to know where competitors are using their wire. Given that a fixed number of end-customers as of 16 December 2019 are exempted from the rescission of the directions in Telecom and Broadcasting Decision 2019-218, the Commission considers that identifying those

² This issue was addressed in Telecom Decision 2020-106.

end-customers would ensure that only the people receiving service at the time the decision was issued can continue to do so.

29. However, the parties disagreed on the type of information that would be appropriate for IBW owners to receive in order to identify wires used by competitors. Pursuant to the CISC report, only the civic address of the building in which connections are planned is required for notification. In Telecom Decision 2019-419, only the end-customers of any LEC or carrier ISP, including Cloudwifi, that have been connected to Bell Canada's IBW were granted the exception and are protected by the status quo. As such, the Commission considers that, in this case, the required information should be that which is most suitable to identify end-customers. As part of its application, Bell Canada requested that the MDU, identified by the municipal address, including the particular suites in each MDU, be provided. The Commission considers that this is a reasonable request. The Commission also acknowledges Bell Canada's submission that providing port numbers only would be insufficient to identify end-customers.
30. The Commission notes that while there is an obligation in the CISC report for parties seeking access to IBW to give notice to the IBW owner before connecting, the report does not require them to obtain the owner's prior consent to use its facilities.
31. The Commission does not consider Cloudwifi's submissions regarding the MALI with Bell Canada to be relevant to this application. Regardless of the status of that agreement, to be connected in accordance with Telecom and Broadcasting Decision 2019-218 means that notice should have been given to the IBW owner.
32. In light of the above, the Commission **directs** that, in order to benefit from the exception set out in Telecom Decision 2019-419, all LECs and carrier ISPs, including Cloudwifi, that have been connected to Bell Canada's IBW in accordance with Telecom and Broadcasting Decision 2019-218 are to provide to Bell Canada, by **11 May 2020**, a list of all MDUs in which end-customers were receiving service on 16 December 2019. The MDUs are to be identified by the municipal address, including the suite numbers in each MDU that were receiving service.

Policy Directions

33. In arriving at the determination in this decision, the Commission has considered the 2006 Policy Direction³ and the 2019 Policy Direction.⁴
34. The Commission considers that its determination will clarify how the exception granted to end-customers of any LEC or carrier ISP, including Cloudwifi, that have been connected to Bell Canada's IBW in accordance with Telecom and Broadcasting Decision 2019-218 and were receiving service when Telecom Decision 2019-419 was

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

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

issued should be implemented. As such, it will contribute to the implementation of the policy objectives set out in paragraphs 7(a), (b), (c), (f), and (h) of the *Telecommunications Act*⁵ and to the promotion of competition, affordability, and consumer interests. The Commission's determination will encourage competition by allowing consumers who were already receiving service from competitors to continue receiving service while the Commission conducts a wider consultation on IBW, and will facilitate the orderly development of telecommunications systems at the same time. It will also ultimately encourage competition, thereby fostering affordability and improving consumer choice by protecting existing infrastructure and avoiding possible disruption to consumers in the event that existing infrastructure is damaged.

Secretary General

Related documents

- *Cloudwifi Inc. – Application for an order completing the company's registration as a competitive local exchange carrier or requiring Bell Canada to sign a Special Master Agreement for Local Interconnection*, Telecom Decision CRTC 2020-106, 26 March 2020
- *Call for comments – Access to in-building wire in multi-dwelling units*, Telecom Notice of Consultation CRTC 2019-420, 16 December 2019
- *Bell Canada – Request for the Commission to review, vary, and rescind certain elements of Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219*, Telecom Decision CRTC 2019-419, 16 December 2019
- *Show cause proceeding and call for comments – 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
- *Cloudwifi Inc. – Application to prevent Bell Canada from interfering with customer use of Bell Canada's inside wire*, Telecom and Broadcasting Decision CRTC 2019-218, 21 June 2019
- *Application of Decision 2003-45 to the Coalition of Hydro Telecom Service Providers*, Telecom Decision CRTC 2005-33, 10 June 2005

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