



Telecom Order CRTC 2021-1

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Public record: Tariff Notices 67 and 67A

Rogers Communications Canada Inc. – Revisions to the company’s technical Internet traffic management disclosure

The Commission directs RCCI to modify its proposed disclosure regarding Internet traffic management practices (ITMPs) for wholesale high-speed access Internet service customers so that it aligns with the technical ITMP disclosure requirements as set out in the company’s Network Management Policy for end-users.

Background

1. In Telecom Regulatory Policy 2009-657, the Commission established a framework governing Internet traffic management practices (ITMPs) for both retail and wholesale Internet services. The framework reflected the [Commission’s commitment to net neutrality](#) whereby “all traffic on the Internet should be given equal treatment by Internet providers with little to no manipulation, interference, prioritization, discrimination or preference given.” The framework was based on four considerations: transparency, innovation, clarity and competitive neutrality.
2. With respect to transparency, the Commission directed primary Internet service providers (ISPs),¹ as a condition of providing retail Internet services, to disclose to their retail customers the following information related to their technical ITMPs:²
 - why ITMPs are being introduced;
 - who is affected by the ITMP;
 - when the Internet traffic management will occur;
 - what type of Internet traffic (e.g. application, class of application, or protocol) is subject to management; and
 - how the ITMP will affect a user’s Internet experience, including the specific impact on speeds.

¹ A primary ISP is an ISP that is also a Canadian carrier and generally offers both retail Internet services and tariffed wholesale services.

² Technical ITMPs include slowing down a user’s traffic, prioritizing traffic, and detecting heavy users in order to limit their bandwidth.

3. In addition, the Commission considered that the wholesale service tariffs of primary ISPs should, at a minimum, also include the information identified above.
4. In Telecom Regulatory Policy 2009-657, the Commission chose not to address certain ITMPs used specifically to temporarily address unpredictable traffic events (such as traffic surges due to global events or failures on part of an ISP's network) and protect network integrity.

Application

5. The Commission received an application (Tariff Notice [TN] 67) from Rogers Communications Canada Inc. (RCCI), dated 6 May 2020, in which the company submitted technical ITMP disclosure information for its end-users, in the form of its Network Management Policy. RCCI also proposed to add new provisions to item 701 of its Access Services Tariff (AST) for customers of third-party Internet access (TPIA), or wholesale high-speed access (HSA), service providers (also referred to as secondary ISPs). RCCI filed its application concurrent with its implementation of an ITMP to address network security and integrity in relation to an emergency situation (i.e. the COVID-19 pandemic).
6. The Commission received a revision (TN 67A) to RCCI's application, dated 20 May 2020, in which RCCI proposed to add the word "temporarily" to the third sentence of its proposed tariff wording.
7. RCCI's proposed new tariff provisions are shown in bold below:

1.3.1. During times of emergency or high demand, Rogers may apply internet traffic management practices (ITMP) to Internet Service (IS) to ensure all end users have access to in-demand resources. During these periods, any end-user whose disproportionate consumption of shared resources required for internet service is negatively impacting the access to service by other end-users, may have their service affected. Rogers maintains the ability to temporarily constrain the affecting end user's access to the shared resources, regardless of the application used. As a result of this ITMP, other end-users would see improved access to the Internet service whereas the affected end-user would see a restriction on their internet speed for a period of time.

1.4. The Customer may resell or share TPIA Service, in accordance with the terms of this Tariff. **The Customer is responsible for ensuring that any Wholesale Customer complies with this Tariff and with the TPIA Service Agreement.**^[3]

8. The Commission received interventions from the Competitive Network Operators of Canada (CNOOC), Distributel Communications Limited (Distributel), the Internet

³ With respect to the proposed changes to item 1.4, in Telecom Order 2020-60, the Commission directed cable carriers to file revised tariff pages that include this wording, among other things. The Commission approved RCCI's revised tariff pages that included this wording in Telecom Order 2020-277.

Society Canada Chapter (ISCC), Mr. Marc Nanni, and TekSavvy Solutions Inc. (TekSavvy) [collectively, the interveners].

Issues

9. The Commission has identified the following issues to be addressed in this order:
- Is RCCI implementing its ITMP only for the purpose of network security or implementing it only temporarily to protect network integrity?
 - Does RCCI's technical ITMP disclosure in its AST comply with the disclosure requirements set out in Telecom Regulatory Policy 2009-657?
 - Are RCCI's ITMPs more restrictive with respect to wholesale customers' end-users and do they have a significant and disproportionate impact on those end-users compared to retail end-users?

Is RCCI implementing its ITMP only for the purpose of network security or implementing it only temporarily to protect network integrity?

Positions of parties

10. RCCI submitted that it had implemented an ITMP to address the current emergency situation (i.e. the COVID-19 pandemic) and safeguard the access of all retail end-users and wholesale customers' end-users to high-speed Internet services.
11. RCCI submitted that it has seen a 50% increase in Internet service usage throughout the day since mid-March 2020, and a shift in Internet usage from areas of employment to residential areas. It submitted that Internet behaviour has also changed the usage profile between data downloaded and data uploaded. RCCI added that, given the ongoing nature of the pandemic, the impact on Internet traffic patterns continues to be excessive and unpredictable in comparison to the pre-pandemic period.
12. CNOC, Distributel, and TekSavvy submitted that Telecom Regulatory Policy 2009-657 did not explicitly address ITMPs that are used only for the purpose of network security, nor did it mention those employed temporarily to address unpredictable traffic events.
13. RCCI replied that paragraph 45 of that decision, which reads as follows, provides ISPs with the flexibility to implement ITMPs:
45. The Commission is therefore not addressing, in this decision, ITMPs used only for the purpose of network security, nor those employed temporarily⁹ to address unpredictable traffic events (e.g. traffic surges due to global events and failures on part of an ISP's network) in order to protect network integrity.

Footnote 9: In the context of this decision, the term “temporarily” refers to the minimum amount of time required to address a particular problem.

14. RCCI argued that, given the unprecedented nature of the COVID-19 pandemic, ITMPs employed under such conditions are not subject to the requirements imposed pursuant to Telecom Regulatory Policy 2009-657.
15. RCCI added that it updated its Network Management Policy and filed TNs 67 and 67A as soon as the ITMP was implemented. It also provided measured data, in confidence, to support its contention that augmented network investment and targeted application of the ITMP have contributed to a stabilization of the growth rate in upstream and downstream traffic and usage.
16. RCCI further submitted that if it did not implement its ITMP, it might have to suspend or terminate Internet access services provided to end-users who would otherwise be subject to the ITMP under the terms of the company’s Acceptable Use Policy and AST. RCCI added that not implementing its ITMP would result in one category of end-users gaining an advantage (i.e. undue preference) over another not subject to the ITMP.
17. RCCI defined the term “temporary” as an emergency situation caused by the pandemic and submitted that it would consider the situation closed when the pandemic has subsided. Further, it defined “high demand” as a situation when the level of utilization of the shared resources is elevated such that end-users can see a degraded Internet experience.
18. CNOc submitted that RCCI’s “pandemic” ITMP is expected to be a longer-lasting new normal; therefore, it does not have the character of a technical ITMP, which is employed temporarily to address unpredictable traffic events. It further submitted that RCCI must clearly indicate that technical ITMPs are implemented on a temporary basis and employed only for a minimum amount of time.
19. Distributel submitted that RCCI’s application of the ITMP during times of high demand represents a technical ITMP because RCCI claimed that the technical ITMP is applied at any time it decides that high demand is occurring. Accordingly, the application cannot be classified as being temporary to address unpredictable traffic events.
20. Mr. Nanni submitted that RCCI’s elevated Internet usage and traffic due to the pandemic will become a normal occurrence. He argued that its ITMP is used in place of proper network investment and that its description of “high demand” is vague and unsubstantiated.
21. TekSavvy submitted that RCCI’s definition of “temporary” is arbitrary, given that any permanent increase in Internet traffic and usage, which is now more predictable than at the onset of the pandemic, would afford it the right to use the ITMP indefinitely. It further submitted that RCCI’s descriptions of both “high demand” and “temporary” are subjective and vague, and that RCCI failed to address why it used

ITMP measures despite its claim of continuing to invest in networks to ensure that end-user demand is met.

22. TekSavvy further submitted that Internet usage began to normalize as early as 20 April 2020, and that RCCI has applied the ITMP to its end-users' services at least 18 times, including on 13 consecutive days, from the date that RCCI filed TN 67.
23. RCCI replied that wireline home Internet traffic increased as much as 28.4% for downloads and 59.2% for uploads on 11 May 2020, according to a recent [report](#) by the Canadian Wireless Telecommunications Association, which is still much greater than pre-pandemic volumes.
24. RCCI also submitted that traffic patterns are neither normalized nor predictable due to observed negative effects of highly elevated Internet data usage from increased provincial restrictions on businesses and online learning. RCCI further submitted that its investment in network capacity has enabled it to deliver on download and upload speeds during peak periods, as well as respond to current and future emergency or high-demand situations.

Commission's analysis and determinations

25. In Telecom Regulatory Policy 2009-657, the Commission excluded certain ITMPs that may be used for the purposes of network security or integrity from its regulatory framework. Specifically, the Commission excluded ITMPs used temporarily to address unpredictable traffic events (e.g. traffic surges due to global events and failures on part of an ISP's network). RCCI cited the high usage caused by the COVID-19 pandemic to justify its implementation of the ITMP. While RCCI's application of the "temporary" ITMP could be considered appropriate at the outset of the pandemic to protect network integrity, the Commission considers that this is no longer the case.
26. As submitted by several interveners, the increase in traffic utilization from the current pandemic situation now represents a longer-lasting new normal and is reasonably expected to continue for the foreseeable future. RCCI also expected that the situation will likely continue into 2021. Given the nature of the Commission's rules for technical ITMPs, which are focused on proper notice to customers of these policies, those rules exempt ITMPs employed temporarily to address unpredictable traffic events where it would be impractical to give such notice. Several months have already passed with regard to this global event and the high Internet data usage is expected to continue unabated.
27. Further, other primary ISPs are also subject to this global event, yet they have been able to maintain and sustain their network to accommodate the increased traffic without having to apply additional ITMPs. The Commission indicated in Telecom Regulatory Policy 2009-657 that investment in network capacity is a fundamental tool for dealing with network congestion and should continue to be the primary solution that ISPs employ. The Commission further indicated that it was also

aware that investment alone did not preclude the need for certain ITMPs to address temporary network capacity constraints and changing network conditions.

28. In light of the above, the Commission finds that RCCI's proposed technical ITMP is no longer being employed only for the purpose of network security or temporarily to protect network integrity.

Does RCCI's technical ITMP disclosure in its AST comply with the disclosure requirements set out in Telecom Regulatory Policy 2009-657?

Positions of parties

29. CNOc, Distributel, the ISCC, Mr. Nanni, and TekSavvy submitted that the ITMP disclosure information provided by RCCI is either insufficient, lacked transparency, or is vague. CNOc, the ISCC, and Mr. Nanni recommended requesting information on to what, specifically, the ITMP will apply. CNOc, Distributel, and TekSavvy suggested that, at minimum, information related to technical ITMP disclosure guidelines, as set out in Telecom Regulatory Policy 2009-657, should be provided. Distributel, the ISCC, and Mr. Nanni further submitted that certain information in RCCI's tariff wording is unclear or ambiguous.⁴
30. RCCI replied that its level of disclosure with regard to the parameters that apply under its ITMP, as provided in TN 67A, is consistent with disclosures provided by other service providers.⁵
31. CNOc submitted that the disclosure information should be provided with as much advance notice as feasible so that wholesale customers may effectively communicate with their own end-users. Distributel, Mr. Nanni, and TekSavvy submitted that a minimum of 30 or 60 days' notice is required. TekSavvy submitted that RCCI began applying ITMPs on 14 May 2020 without giving notice.
32. RCCI argued that the exception established under paragraph 45 of Telecom Regulatory Policy 2009-657 (i.e. traffic surges due to global events) provides ISPs with the flexibility to implement ITMPs without providing notice to retail or wholesale end-users in order to preserve the reliability and integrity of its Internet access network for the benefit of all customers.
33. CNOc submitted that the Commission should direct RCCI to (i) amend its tariff language to specifically identify the temporary nature of the measure, (ii) identify the impact on end-users with disproportionate consumption, (iii) clarify that the measure shall apply equally to all retail end-users and wholesale customers' end-users, and (iv)

⁴ They referred to the following terms or wording: "high demand," "period of time," "disproportionate consumption," "negatively impacting," "a restriction on their Internet speed," "heavy users," and "temporary."

⁵ For example, RCCI referred to section 2(c) of Distributel's [Acceptable Use Policy](#).

indicate that the measure will be employed for the minimum amount of time necessary.

34. Distributel submitted that it had to respond to a customer’s complaint of decreased Internet speed, and that it was unclear whether the issue experienced was due to the application of RCCI’s ITMP or some other cause. It further submitted that detailed disclosure information is necessary to help it troubleshoot or respond to customer complaints and reduce the use of unnecessary time and resources to determine the impact of traffic management. RCCI replied that Distributel’s situation could be caused by factors unrelated to its ITMP (e.g. congestion caused by other end-users or at its point of interconnection, or use of outdated versions of DOCSIS⁶ modems). RCCI added that wholesale customers follow established technical support processes to diagnose technical issues.
35. RCCI submitted that its tariff wording meets all the disclosure requirements set out in paragraph 60 of Telecom Regulatory Policy 2009-657 as follows:

Requirement	Wording from RCCI’s disclosure in its AST
Why the ITMP is being introduced	“...to ensure all end-users have access to in-demand resources...”
Who is being affected	“...any end-user whose disproportionate consumption of shared resources required for internet service is negatively impacting the access to service by other end-users, may have their service affected...”
When the traffic management will occur	“...during times of emergency or high demand...”
What type of Internet traffic is subject to management	“...Rogers maintains the ability to temporarily constrain the affecting end-user’s access to the shared resources, regardless of the application used...”
How the ITMP will affect a user’s Internet experience	“...the affected end-user would see a restriction on their internet speed for a period of time...”

36. CNO, Distributel, Mr. Nanni, and TekSavvy submitted that RCCI’s response lacks technical parameters or is insufficiently detailed. They argued that the tariff wording does not comply with the disclosure requirements set out in paragraph 60 of Telecom Regulatory Policy 2009-657.

⁶ Data Over Cable Service Interface Specification

37. RCCI replied that the ITMP disclosure in TN 67A and in its retail Network Management Policy meets the requirements in a similar fashion as other service providers' ITMP disclosures, including those of Distributel and TekSavvy, with language that does not specify technical parameters.
38. RCCI submitted that its Network Management Policy's intended audience includes retail and wholesale customers and that its proposed disclosure, which lists the terms and conditions under which the Internet service is provided, is in tariff format due to its different audiences and purposes.
39. Distributel and TekSavvy submitted that the AST cannot function properly if the Network Management Policy is revised at any time without any notice or record of change, as required for wholesale customers pursuant to Telecom Regulatory Policy 2009-657. TekSavvy and Mr. Nanni submitted that neither RCCI's tariff nor its Network Management Policy are sufficiently detailed or transparent; therefore, they do not comply with paragraph 60 of Telecom Regulatory Policy 2009-657.

Commission's analysis and determinations

40. In Telecom Regulatory Policy 2009-657, the Commission stated that, for technical ITMPs where no prior Commission approval is required and as a condition of providing service, the primary ISPs' wholesale service tariffs should, at a minimum, include disclosure information as identified in paragraph 60 of that decision. The Commission clearly established that this information is to be available to secondary ISPs for their technical ITMP disclosures to their own customers.
41. RCCI submitted that the tariff language was formatted for a specific audience and purpose. Regardless of its intended audience, the purpose of the technical ITMP disclosure requirement is to ensure that consumers are clearly and adequately informed about ITMPs and the impact such practices have on retail Internet services. The Commission considers the tariff language used by RCCI to be highly generic, vague, and unclear. RCCI's Network Management Policy, directed towards its retail end-users, provides a clear contrast to the level of detail provided in the AST.
42. The Commission considers that such differences in the disclosure of technical ITMPs can create an appearance of undue discrimination whereby technical ITMPs applied to a primary ISP's wholesale services are more restrictive than those that it applies to its own retail services. For the purpose of symmetry and transparency, it is therefore appropriate for the primary ISP to ensure equal treatment in the content and substance of the information disclosed between its retail end-users and its wholesale customers and their end-users.
43. Further, should RCCI revise the technical ITMP disclosure information in its Network Management Policy without any notice or record of change, wholesale customers would not be aware that this information has been updated, and that the disclosure information to their own end-users would be out of date.

44. In light of the above, the Commission finds that RCCI's technical ITMP disclosure in its AST does not comply with the disclosure requirements set out in paragraph 60 of Telecom Regulatory Policy 2009-657.

Are RCCI's ITMPs more restrictive with respect to wholesale customers' end-users and do they have a significant and disproportionate impact on those end-users compared to retail end-users?

Positions of parties

45. CNOC and TekSavvy submitted that RCCI – or any primary ISP – must consider whether its ITMPs are applied evenly to retail end-users and wholesale customers' end-users, and whether they have a significant and disproportionate impact on secondary ISP traffic. TekSavvy further submitted that its end-users generate more traffic than RCCI's retail end-users. RCCI replied that the ITMP parameters are applied in the same manner to both retail end-users and end-users of wholesale customers, and that the number of affected end-users of wholesale customers is significantly lower than the number of retail end-users. As a result, RCCI argued that TekSavvy's claim that end-users of wholesale customers are disproportionately affected by RCCI's ITMP is incorrect.
46. RCCI further claimed that a small proportion of end-users (both retail and those of wholesale customers) who consume a disproportionate volume of upload bandwidth (i.e. approximately 120 times the average usage) represented less than 0.2% of its 2.6 million Internet end-users.
47. CNOC expressed concern that RCCI's ITMP will unjustly discriminate between wholesale customers (including their end-users) and RCCI's own retail end-users. RCCI replied that its ITMP is applied to both types of end-users, using the same technical parameters, and therefore does not confer an undue preference on either party.

Commission's analysis and determinations

48. As noted in Telecom Regulatory Policy 2009-657, the burden of establishing that an ITMP discriminates or results in a preference or disadvantage is on the complainant, after which it falls on the provider to demonstrate that the preference is not unjust, undue, or unreasonable.
49. The Commission considers that the interveners' submissions did not allege that RCCI's ITMP specifically targeted wholesale customers' end-users, but rather implied that there was a disproportionate impact on those end-users through general statements regarding the nature of secondary ISP traffic, Internet experience, and frequency in the application of the ITMP. RCCI submitted that it used the same technical parameters when it applied the ITMP to both its retail end-users and wholesale customers' end-users.

50. The Commission therefore concludes that the interveners did not demonstrate that RCCI discriminated or showed a preference against wholesale customers' end-users when it applied its ITMP. Further, the Commission has not observed or received complaints that would suggest that there is a widespread or pervasive issue of disproportionate impact on wholesale end-user traffic.
51. In light of the above, the Commission finds that there is insufficient evidence to suggest that RCCI's ITMP is more restrictive with respect to – or has a significant and disproportionate impact on – wholesale customers' end-users compared to its retail end-users.

Conclusion

52. The Commission acknowledges RCCI's continued investment in the network to the benefit of all end-users, coincident with its targeted ITMP application, to address the growth in traffic usage during the COVID-19 pandemic. The pandemic may have been seen, at the outset, as an emergency situation necessitating the application of a temporary ITMP to address network capacity constraints; however, the Commission considers that the emergency situation has evolved into one where higher levels of traffic from usage have become normalized and are expected to continue over an extended period of time.
53. The Commission notes that ITMPs, as originally conceived in Telecom Regulatory Policy 2009-657, are by their very nature temporary, and that pursuing investment in network infrastructure continues to be the fundamental and primary tool for dealing with network congestion. Accordingly, the Commission considers that RCCI's current ITMP is a technical ITMP and, to be applied, must be brought into compliance with the applicable elements of the ITMP framework.
54. In light of the above, the Commission **directs** RCCI to
- modify the relevant pages in its AST to disclose more details about its ITMP, aligning with its retail disclosure and the requirements of Telecom Regulatory Policy 2009-657;
 - modify the relevant pages in its AST to clearly indicate that the tariff is for information purposes only and is not approved by the Commission; and
 - issue revised tariff pages accordingly, given that prior approval of the ITMP is still not required.

Policy Directions

55. The 2019 Policy Direction⁷ states that the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation.

⁷ *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

56. The Commission has reviewed RCCI's application in light of the 2019 Policy Direction and has considered its aspects to the extent necessary, using measures that are efficient and proportionate to their purpose. The Commission considers that its determinations in this order are compliant with the 2019 Policy Direction given that the applicable elements of the ITMP framework promote (i) the competitive interest in symmetry between primary and wholesale ISPs, and (ii) the consumer interest in transparency regarding any technical ITMPs applied to Internet services available to them (whether from primary ISPs or their wholesale customers). Enforcing compliance with those elements furthers those goals, and RCCI's proposed ITMPs are not in compliance with those elements. Specifically, RCCI did not consistently apply the wording of its technical ITMP disclosures equally to both its retail and wholesale customers.
57. Further, in compliance with subparagraphs 1(b)(i) and 1(b)(iii) of the 2006 Policy Direction,⁸ the Commission's determinations above advance the policy objective in paragraph 7(f) of the *Telecommunications Act*⁹ by applying the regulatory measures set out in Telecom Regulatory Policy 2009-657 in a manner that is efficient and proportionate to their purpose. Specifically, the purpose of those regulatory measures is to ensure transparency in the application of technical ITMPs, while otherwise allowing competitive market forces to operate.

Secretary General

Related documents

- *Cable carriers' revised tariff pages filed pursuant to Telecom Order 2020-60*, Telecom Order CRTC 2020-277, 18 August 2020
- *Terms and conditions of access to the cable carriers' aggregated wholesale high-speed access services*, Telecom Order CRTC 2020-60, 14 February 2020
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009

⁸ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁹ The cited policy objective is: 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.