



Telecom Decision CRTC 2021-157

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Fibernetics Corporation – Application for relief regarding unjustifiable conduct relating to local network interconnection between the company and Bell Canada

In response to an application from Fibernetics Corporation (Fibernetics) for relief regarding unjustifiable conduct by Bell Canada relating to local network interconnection, the Commission determines that

- Bell Canada did not breach Schedule C of the Master Agreement for Local Interconnection between Bell Canada and Fibernetics;
- Bell Canada is to make interexchange private line (IXPL) facilities available to Fibernetics pursuant to the current agreement between the two companies;
- Fibernetics, at its discretion, is to be permitted to use points of interconnection for local network interconnection (LNI) arrangements within the eight local interconnection regions (LIRs) in question in conjunction with tariffed low-speed competitor digital network (CDN) access services; and
- the type of LNI arrangement between Fibernetics and Bell Canada, that is, IXPL services or low-speed CDN access services, is to be determined by Fibernetics on an LIR-by-LIR basis in each of the eight LIRs.

The Commission considers that its determinations will contribute to the continued development of local competition in more rural markets, which is an important policy objective under section 7 of the *Telecommunications Act*.

Background

1. Schedule C of the Master Agreement for Local Interconnection (MALI)¹ that Fibernetics Corporation (Fibernetics) entered into with Bell Canada (hereafter, Schedule C of the MALI) outlines Fibernetics' local network interconnection (LNI)

¹ A MALI is an agreement between local exchange carriers that sets out the operational, technical, and business arrangement between local exchange carriers in terms of how they deal with each other in the competitive local voice service marketplace. The Commission has created a template agreement that local exchange carriers can use. When the template agreement is used, local exchange carriers are not required to submit executed agreements for Commission approval.

arrangements with Bell Canada in the local interconnection regions (LIRs)² where Fibernetics provides telecommunications services. Further, within Schedule C of the MALI, Fibernetics and Bell Canada have agreed to a number of different types of LNI arrangements.

2. When Fibernetics entered into an agreement for certain services with Bell Canada in the past, it informed Bell Canada that it intended to use these negotiated services for LNI and other purposes.
3. On 17 April 2020, Fibernetics provided Bell Canada with a trunk forecast for eight additional LIRs in Ontario and Quebec, for which it proposed using circuits leased from Bell Canada for LNI. For each of the eight LIRs, the leased facility would terminate outside of the LIR.

Application

4. The Commission received an application from Fibernetics, dated 14 July 2020, in which the company claimed that Bell Canada was subjecting it to significant costs and delays and to an undue and unreasonable disadvantage by requiring a specific method of LNI in the eight LIRs in Ontario and Quebec. The method of interconnection was filed in confidence.
5. Fibernetics requested that the Commission issue an order requiring Bell Canada to (i) immediately comply with Schedule C of the MALI and implement LNI in the eight LIRs by way of leased interexchange private line (IXPL) facilities, and (ii) accept leased facilities as a suitable method for LNI when Fibernetics proposes and demonstrates, at any time in the future, that leased facilities will be an efficient and effective arrangement for LNI for any specified LIR.
6. The Commission received interventions regarding Fibernetics' application from Iris Technologies Inc. (Iristel) and TELUS Communications Inc. (TCI).

Issues

7. The Commission has identified the following issues to be addressed in this decision:
 - Did Bell Canada breach Schedule C of the MALI?
 - What type of LNI should be used between Bell Canada and Fibernetics in the eight LIRs?

² An LIR is a grouping of telephone exchanges in which a competitive local exchange carrier (CLEC) can provision a single point of interconnection with other local exchange carriers for the routing of voice traffic in order to be able to reach customers in all the exchanges included in the LIR. LIRs were created in Telecom Decision 2004-46. Once a CLEC has been certified to provide local voice service in one of the exchanges in an LIR, it is deemed to be certified for all of the other exchanges within the same LIR. The only condition for providing voice services to the exchanges in an LIR is that a CLEC must obtain a central office (CO) code for each exchange in which it wishes to provide voice services.

Did Bell Canada breach Schedule C of the MALI?

Positions of parties

8. Fibernetics requested that the Commission issue an order requiring Bell Canada to immediately comply with Schedule C of the MALI and implement LNI as proposed by Fibernetics (i.e. via leased IXPL facilities) for the eight LIRs. Fibernetics submitted that within Schedule C, Fibernetics and Bell Canada had agreed to a number of different types of LNI arrangements. Fibernetics referred to the 54 LNI arrangements it currently has with Bell Canada to illustrate that both parties are currently using all of the LNI methods mentioned in Schedule C.
9. Fibernetics submitted that, after providing Bell Canada with its expansion intentions and trunk forecasts to lease IXPL DS-1³ facilities from Bell Canada in all eight LIRs on 17 April 2020, Bell Canada communicated that its preference was for a specific LNI method in each LIR, rather than for the use of leased facilities. Fibernetics noted that it had leased IXPL DS-1 facilities from Bell Canada for LNI in other LIRs in the past, in each case with Bell Canada's acceptance.
10. Bell Canada indicated that in the 54 LIRs in which Fibernetics is currently interconnected with the company, a variety of interconnection arrangements have been accepted by both companies, and that Fibernetics has used IXPL services from Bell Canada for LNI purposes. Bell Canada submitted, however, that the fact that it and Fibernetics accepted any particular interconnection method in the past for a given LIR does not grant Fibernetics a right to replicate the same solution in new LIRs.
11. Bell Canada submitted that the first section of Schedule C of the MALI clearly states that the scope of the signed MALI is limited to LIRs where the parties have already established an LNI and that new LIRs are subject to new negotiations and are not covered by principles or precedents laid out for previously established LIRs.
12. Bell Canada noted that certain sections of Schedule C of the MALI set out agreed-upon commercial conditions that govern possible changes to the LNI architecture or location of a Fibernetics point of interconnection (POI) for existing LIRs. It also noted that it did not commit to open-ended conditions in Schedule C that would necessarily apply in new LIRs that, at the time of signing the MALI, would not even have been identified and examined yet.
13. Bell Canada further submitted that Fibernetics has no contractual right, under the MALI or any other contract, to lease forborne IXPL facilities for new LIRs, and that there is no merit to Fibernetics' request for a Commission order to force Bell Canada to comply with the MALI, because there is no instance of non-compliance to remedy.

³ DS-1 stands for Digital Signal 1.

Commission's analysis and determinations

14. A review of Schedule C of the MALI reveals that the principles set out in it apply to LIRs where an LNI has already been established, and not to new LIRs. As Bell Canada noted, this is reflected in the first section of the MALI, which provides that the principles outlined in Schedule C are limited to LIRs in which Bell Canada and Fibernetics have already established an LNI. Accordingly, the Commission is of the view that the principles set out in Schedule C do not apply to new LIRs with no previously established LNI.
15. The Commission further notes that the purpose of Schedule C of the MALI is to cover existing contractual interconnection arrangements between Fibernetics and Bell Canada. As new interconnection arrangements are negotiated and agreed upon by the two parties, including Fibernetics' expansion into new LIRs, Schedule C would be updated to include these new arrangements.
16. In light of the above, the Commission considers that Bell Canada did not breach Schedule C of the existing MALI. Accordingly, the Commission **denies** Fibernetics' request for an order directing Bell Canada to comply with Schedule C, because there are no instances of non-compliance to rectify in this case.

What type of LNI should be used between Bell Canada and Fibernetics in the eight LIRs?

Positions of parties

Fibernetics

17. Fibernetics submitted that the eight proposed LIRs it is seeking to enter are small compared to the 54 other LIRs in Ontario and Quebec in which it already provides its services. The company argued that these eight LIRs would be in regions with low populations, which was reflected in the trunk forecasts it provided to Bell Canada on 17 April 2020.
18. Fibernetics further noted that its trunk forecasts indicated the specific number of DS-1 facilities required for each of the eight LIRs five years after its entry into those LIRs.
19. Fibernetics submitted that it had informed Bell Canada that the use of the specific method proposed by Bell Canada would be costly and inefficient for both parties and that, given the low trunk forecast for each LNI, the specific method preferred by Bell Canada was not a suitable choice. Fibernetics argued that, depending on the location of a POI,⁴ this method would likely cost tens of thousands of dollars. Fibernetics therefore suggested an alternative solution of leased IXPL facilities, which it believed would be a more suitable choice since implementation would be easier and quicker.

⁴ Fibernetics submitted that the location of a POI means the distance between POIs.

20. Fibernetics submitted that Bell Canada had indicated that it considers LNI to be permanent and prefers to continue exploring another option. In response, Fibernetics had proposed a longer-term lease arrangement for the LNI facilities, despite the term provided in the existing MALI for leased LNI facilities, but Bell Canada did not accept the proposal.
21. Fibernetics submitted that in Telecom Decision 2004-46, one of the Commission's goals in relation to trunking arrangements between local exchange carriers (LECs) and the creation of LIRs was to lower the overall costs of interconnection and to further the co-carrier relationship between CLECs and incumbent local exchange carriers (ILECs). Specifically, Fibernetics argued that in that decision the Commission (i) wanted to encourage efficient, technologically neutral interconnection arrangements to the benefit of all subscribers, (ii) was of the view that the then current exchange-level interconnection represented a high capital cost for existing CLECs wishing to expand their geographic coverage and for new service providers wishing to enter the market, and (iii) noted that once exchange-level interconnection facilities are established, they are often underutilized or of a scale that is not operationally or economically efficient, especially for small CLECs. Fibernetics was therefore of the view that the goals noted in Telecom Decision 2004-46 were relevant to its application, and could be attained through the use of leased facilities.
22. Fibernetics submitted that there are no other ILECs with whom it can negotiate to enter into these eight LIRs as a Type 1 CLEC, because Bell Canada is the only ILEC in these markets. Fibernetics added that although it has demonstrated Bell Canada's proposed LNI method to be costly, time-consuming, and inefficient for both parties, Bell Canada has insisted throughout their negotiations that it is the only acceptable LNI method.

Bell Canada

23. Bell Canada submitted that Fibernetics is requesting leased IXPL facilities for the eight new LIRs that would terminate at a location outside the LIRs and that this arrangement would therefore not require Fibernetics to establish its own POIs within the LIRs.
24. Bell Canada submitted that while it has entered into a variety of different interconnection configurations with Fibernetics and other LECs, it prefers one type of configuration. Bell Canada noted that its preferred method of interconnection has been the pillar of the local interconnection regime in past Commission decisions. Bell Canada added that it provides tariffed Competitor Digital Network (CDN) low-speed access services to LECs that have established a POI inside an LIR and, more rarely, has agreed to commercial arrangements that involve the use of leased facilities, such as IXPL, to POIs outside an LIR.
25. Bell Canada disagreed with Fibernetics' statement in regard to their agreement for the supply of transport services. Bell Canada submitted that Fibernetics had not informed it that some of these leased services would be used for LNI and other purposes, nor had it informed its staff who deal with interconnection matters that these leased

facilities would be used for LNI. Bell Canada further submitted that when a wholesale customer leases circuits from it, it does not ask or know how these circuits will be used, because that is the customer's business. Bell Canada therefore argued that it could not have presumed to know how these leased circuits would be used. Bell Canada added that, under the new agreement, it did not intend to lease transport services that could be used to enable Fibernetics' expansion into the eight new LIRs without Fibernetics having a POI within each of these LIRs.

26. Bell Canada confirmed that it had expressed a preference for the use of a specific type of facility in each of the eight new LIRs, but that it had not taken the position that this type was the only possible option going forward. It submitted that it would be inappropriate, for the reasons listed below, for the Commission to impose on it a forborne leased IXPL facilities solution.
27. First, Bell Canada argued that the LNI method is negotiable between an ILEC and a CLEC and that there are a number of options available to CLECs. Bell Canada submitted that from the very beginning of local competition, the LNI regime has not entitled a LEC to interconnection outside of an LIR⁵ and requires a LEC, absent a negotiated alternative, to establish a POI in the relevant interconnection geography (initially an ILEC exchange and now an LIR). Bell Canada indicated that should Fibernetics establish a POI inside the desired LIRs, it could subscribe, pursuant to a tariff, to Bell Canada's low-speed CDN access services, which have the capacity Fibernetics has asked for over IXPL facilities.
28. Second, Bell Canada argued that although the Commission modified the LNI regime from the exchange level to the LIR level to facilitate more efficient and lower-cost interconnection solutions, this regime should nonetheless result in a more equitable distribution of costs and a co-carrier relationship between CLECs and ILECs. Bell Canada submitted that Fibernetics' proposed lease of IXPL facilities, without establishing a single POI in the new LIRs, would place the entire construction cost and maintenance burden on Bell Canada, allowing Fibernetics to operate as a pure reseller without any network presence of its own.
29. Third, Bell Canada argued that seven of the eight LIRs targeted by Fibernetics have exchanges that have received forbearance from the regulation of retail local voice services (residential, business, or both), meaning that they are already subject to competitive pressures from CLECs other than Fibernetics. Bell Canada submitted that other CLECs have entered into LNI agreements with the company in these LIRs and that it is therefore not engaging in a practice of refusing entry to CLECs. It also indicated that there are other industry participants that Fibernetics can approach to explore entry options. According to Bell Canada, these options would include entering as a Type III CLEC or leasing transport facilities from these other CLECs.

⁵ In this regard, Bell Canada referenced paragraph 159 of Telecom Decision 2006-35: "The Commission notes that a new entrant (a CLEC having no presence in any of the existing exchanges within an LIR) would be governed by the LIR regime where the LIR-based interconnection arrangement would occur at the designated POI of the LIR."

30. Bell Canada noted that the Commission concluded, in Telecom Regulatory Policy 2015-326 and Telecom Decisions 2018-200 and 2019-94, that the withdrawal of mandated access to unbundled local loops and the subsequent forbearance from the regulation of unbundled local loops in all exchanges would not have a substantial negative impact on local voice competition in any ILEC exchange. It therefore argued that the prospective entry of Fibernetics, which likely has no facilities of any type of its own in these LIRs, would not substantially change local competition dynamics.

Iristel

31. Iristel submitted that there are a number of methods that CLECs can use for LNI, with one being shared-cost fibre builds, and that it might be of interest to hear from other CLECs on how they are using IXPL services in the exchanges where Fibernetics is being refused such services. It added that when shared-cost fibre builds are used, CLECs must build the facilities, which generally requires obtaining municipal permits and access to support structures to build a fibre optic cable to the meet point. It also added that, typically, an OC-3⁶ is the minimum capacity for such builds and that where a small amount of capacity is needed, such as a single DS-1, this type of build is excessive because it is not economically feasible to incur such large costs for so little capacity. Further, these types of projects can take over a year to complete.

32. Iristel submitted that another option is for a CLEC to build a CO in the targeted LIR and to lease facilities from the ILEC. However, this option requires a significant investment and the ILEC may impose build costs for the leased facilities in addition to the tariffed rate for low-speed CDN access services. A further option is co-location, which can involve extremely high costs, making a CLEC's business case impractical if only a small amount of traffic capacity is required.

33. Iristel argued that it has been subjected to Bell Canada's alleged anticompetitive behaviour, which was addressed in Telecom Decision 2019-86 and Telecom Decision 2019-249, and that Bell Canada is further attempting to make its IXPL service unavailable to CLECs for LNI for no other reason than to limit competition and is, as a result, providing itself with an undue preference.

34. Iristel submitted that the Commission should grant Fibernetics the requested relief. It argued that granting it would further the policy objectives of the 2019 Policy Direction,⁷ which states, in paragraph 1(a), that the Commission should

(i) encourage all forms of competition and investment;

(iii) ensure that affordable access to high quality telecommunications services is available in all regions of Canada, including rural areas; and

⁶ OC-3 stands for Optical Carrier 3.

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

(v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service providers.

TCI

35. TCI submitted that due to the level of redaction in the application, the confidentiality of Schedule C of the MALI, and the expected redaction in Bell Canada's answer, it could not provide any meaningful comments on the application. TCI submitted, however, that the redacted information is case-specific, and that it considers that the Commission will have the information it needs to resolve this application as a bilateral dispute under its existing rules.

Fibernetics' reply

36. Fibernetics rebutted Bell Canada's claim that it had not been informed that leased services would be used for LNI. Fibernetics provided dates, names, and relevant content of communications between itself and Bell Canada during the second half of 2019, which it argued provides undisputable evidence that it advised Bell Canada upfront of its plans to use leased facilities for LNI.

37. Fibernetics also disagreed with Bell Canada's claim that the new IXPL lease agreement serves to refresh the rates for existing facilities and does not apply to new services. Fibernetics argued that the new arrangement does explicitly provide for new services and provided the specific section. It further submitted that it had already placed an order for new services from Bell Canada under this arrangement. Bell Canada has delivered the requested services, and therefore, Fibernetics argued, the agreement covers new services.

38. In response to Bell Canada's argument that the use of IXPL facilities to POIs outside of the LIRs places the full construction and maintenance costs on Bell Canada, Fibernetics argued that, as is the case for any leased facility, it would be responsible for installation charges and monthly recurring charges. It added that using leased facilities places all of the costs on Fibernetics, which represents revenue to Bell Canada that would not only cover its costs but also generate a profit for Bell Canada.

39. Fibernetics submitted that for all eight LIRs, leased facilities are the most efficient solution with the lowest cost for both parties. Fibernetics argued that leased facilities will be a source of revenue for Bell Canada, but that Bell Canada refuses to agree to or concede the use of leased facilities. Fibernetics further argued that Bell Canada's position does not further the co-carrier relationship between CLEC Fibernetics and ILEC Bell Canada, but rather has the effect of blocking the provision of Fibernetics' CLEC services to Canadian consumers. It submitted that this could only be considered anti-competitive behaviour.

40. Fibernetics provided an example of Bell Canada's alleged anti-competitive behaviour in the provision of leased facilities for LNI. On 5 January 2018, Fibernetics proposed the use of Bell Canada's IXPL facilities for six new LIRs. Fibernetics submitted that

Bell Canada had initially indicated it would prefer an alternative arrangement for LNI, but that it would consider the use of IXPL facilities for LNI if Fibernetics was willing to lease the facilities for an extended duration. Fibernetics indicated that it agreed with this approach, but that Bell Canada requoted the prices, which were nearly quadruple the original quote.⁸

41. Fibernetics submitted that Bell Canada's suggestion, in its answer to the present application, to use CDN low-speed access services to Fibernetics' POIs in the eight LIRs in order to achieve LNI was never mentioned by Bell Canada during attempted negotiations from April to May 2020. Fibernetics stated that it did not disagree with this last-minute suggestion, but provided the following example of a past situation that involved leased facilities and POIs. Fibernetics submitted that it was leasing IXPL facilities from a Bell Canada CO within LIR ON-17 (Dufferin County, Ontario) to a Fibernetics termination point outside the LIR (the same scenario as the subject of the present application, to which Bell Canada is now objecting). In that case, it had informed Bell Canada that it wished to replace the leased IXPL facilities with CDN low-speed access services to a point of presence within the LIR, but that Bell Canada had declined its request.

Commission's analysis and determinations

42. One of the main purposes of the LNI policy framework is to foster the development of competition in the telecommunications marketplace by facilitating the exchange of customer-generated traffic between carriers. In Telecom Decision 97-8, the Commission encouraged entry by facilities-based competitors. One of the mechanisms to achieve this goal was the use of shared-cost interconnection facilities between CLECs and ILECs. Such arrangements were intended to provide CLECs with equal carrier status to ILECs.
43. Facilities-based LNI arrangements are appropriate where CLECs have entered larger, densely populated urban markets where interconnection traffic volumes could be expected to be sufficiently large (over time) to support the initial construction costs of certain facilities. To this end, Bell Canada and Fibernetics have previously come to an agreement in Schedule C of the MALI, which applies to LNI where Fibernetics currently provides service. In this regard, Bell Canada's preferred specific method would be the appropriate LNI arrangement in cases where Fibernetics' forecasted interconnection traffic volumes are sufficiently large to justify the use and cost of such a method.
44. However, as local voice competition has matured and CLECs are now moving into smaller, less densely populated rural markets, the use of certain methods can be problematic where forecasted LNI traffic volumes are no longer sufficiently large to justify the use and cost of these methods. These methods would likely be

⁸ On 30 January 2018, Fibernetics filed an application with the Commission seeking relief from Bell Canada's alleged anti-competitive behaviour. This application was later withdrawn due to a confidential negotiated settlement with Bell Canada.

underutilized, inefficient, and uneconomic to the point that their use in smaller, sparsely populated markets would be a significant barrier for CLECs wanting to enter these markets. This would deprive Canadian consumers in these markets of the benefits of additional local voice competition or of greater choice.

45. As noted by Fibernetics, one of the goals of Telecom Decision 2004-46, with the establishment of LIRs, was to lower the cost of market entry for CLECs by creating larger areas that could be served by a single LNI arrangement, thus making market entry more economically feasible. In this regard, tailoring the use of different types of LNI facilities and arrangements to suit forecasted traffic volumes can have the same effect, because matching the cost of LNI to expected revenues in smaller markets can play a role in enabling economic entry into smaller markets so that consumers can enjoy the benefits of competition. This approach furthers the telecommunications policy objectives set out in paragraphs 7(b) and (f) of the *Telecommunications Act* (the Act).⁹ It is also consistent with the 2019 Policy Direction because the alternative forms of LNI can enable competitive entry by more players into smaller markets, which can lead to more affordable pricing and new and innovative services, all to the benefit of consumers.
46. Fibernetics submitted that the 54 LNI arrangements set out in Schedule C of the MALI involve a variety of different LNI arrangements and facilities. The Commission considers that these arrangements are indicative of the varying levels of exchanged traffic between Bell Canada and Fibernetics. Accordingly, the type of LNI requested by Fibernetics in the eight new LNIs does not represent a departure from current arrangements.
47. Seven of the eight LIRs for which Fibernetics is seeking LNI arrangements are small and rural in nature. This is reflected by Fibernetics' trunk forecast for each LIR.
48. In Telecom Regulatory Policy 2012-24, the Commission decided that for time-division multiplexing network-interconnection arrangements (the network technology that is the subject of Fibernetics' application), parties could enter into off-tariff negotiated arrangements without seeking regulatory approval. In this regard, the Commission was mindful that new and different forms of LNI arrangements may be appropriate, rather than the methods that have been used to date. Other LNI arrangements would be more appropriate where only small amounts of capacity are required.
49. The Commission considers that Fibernetics' forecasted trunk requirements do not support the use of Bell Canada's method for LNI in the eight LIRs. Further, Telecom Decision 2012-24 permits other negotiated arrangements to be used for LNI. The Commission considers that any negotiated alternative arrangements should take into

⁹ The cited objectives of the Act 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; and (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.

account the forecasted trunk capacity requirement¹⁰ so that the final mutually agreed-upon solution is both economically feasible and efficient.

50. In light of the information submitted by Fibernetics and Bell Canada, it appears that Bell Canada did not fully take into account traffic volume requirements in its negotiations with Fibernetics for LNI in the eight LIRs. The Commission considers that there is no merit to Bell Canada's argument that it prefers to use a specific method, given that Fibernetics requires very little capacity. The Commission further considers that the cost of implementing such a method in these LIRs, as well as the resources and time required to do so, would be uneconomic and inefficient, and would have the effect of being a significant barrier to Fibernetics' entry into these markets. Such a result does not further the policy objectives set out in section 7 of the Act and is contrary to the 2019 Policy Direction.
51. As evidence of Bell Canada's unwillingness to negotiate alternative LNI arrangements with Fibernetics, it appears that Bell Canada only offered the use of POIs and tariffed low-speed CDN access facilities in its answer to Fibernetics' application. Fibernetics indicated that Bell Canada had insisted on the use of a specific method during negotiations and that the first time the tariffed low-speed CDN access services were offered was in its answer to the present application.
52. The Commission is not persuaded by Bell Canada's arguments that the use of IXPL facilities for LNI, pursuant to its agreement with Fibernetics, is not feasible. In the Commission's view, Bell Canada's argument that it would bear all the costs, including construction costs, is incorrect since the lease rates that Fibernetics would pay include all maintenance, operational, construction, and other costs, plus a profit. The Commission further considers that because IXPL services are well-established and widely available, the actual incremental costs to provide the routes required by Fibernetics would be minimal.
53. With regard to the non-permanency of leased facilities, the Commission notes that Fibernetics has offered to enter into longer-term lease arrangements, such as terms of a certain number of years, to provide a degree of permanency. Thus, unlike with other methods where Bell Canada incurs a non-recoverable portion of the construction cost, the leased rate for IXPL facilities allows Bell Canada to recover all its costs and to make a return on those costs. Further, with the email correspondence it provided, Fibernetics has demonstrated that when its agreement with Bell Canada was put in place, Bell Canada was aware that Fibernetics intended to use IXPL facilities for LNI arrangements.
54. Considering that alternative LNI arrangements are already included in Schedule C of the MALI, the Commission considers that there is no reason why they cannot, and should not, be used for the eight LIRs. Moreover, given certain requirements, the use of leased IXPL facilities would provide for an economic and feasible means for

¹⁰ These traffic volumes are a reflection of the expected revenues and, accordingly, of the costs that can be supported by entering these new markets.

Fibernetics to enter these LIRs in order to provide competitive alternatives to Canadians in these markets and further the policy objectives set out in section 7 of the Act.

55. The Commission therefore considers that Bell Canada's insistence on a specific LNI method in each of the eight LIRs subjects Fibernetics to a disadvantage because it exposes it to costs that are uneconomic for the expected traffic volumes. It also makes market entry into each of the eight LIRs difficult since the company may not be able to recover its costs. Delaying Fibernetics' entry into these LIRs is unjustifiable considering there are other interconnection arrangements, such as the proposed IXPL facilities, that could, and should, have been used in each of the eight LIRs in question.

56. Bell Canada submitted that if Fibernetics was to establish a POI within the eight LIRs, it could alternatively subscribe to Bell Canada's CDN low-speed access services. However, as Fibernetics submitted, this option was not raised during negotiations and was only raised by Bell Canada in its answer to Fibernetics' application. Accordingly, given that Fibernetics has not been able to consider this option, and that it expressed in its reply an interest in the use of POIs¹¹ and tariffed low-speed CDN access facilities in some LIRs, the Commission finds that this approach may have some merit and that Fibernetics should be permitted to consider this option in each of the eight LIRs.

57. Accordingly, and pursuant to section 24 of the Act,¹² the Commission

- **directs** Bell Canada to make IXPL facilities available to Fibernetics pursuant to the current agreement between the two companies in each of the eight LIRs;
- determines that Fibernetics, at its discretion, be permitted to use POIs within the LIRs in conjunction with tariffed low-speed CDN access services in each of the eight LIRs; and
- determines that, due to Bell Canada's reluctance to consider alternative forms of transport facilities for LNI arrangements during its negotiations with Fibernetics, the type of LNI arrangement between Fibernetics and Bell Canada, that is, IXPL services or low-speed CDN access services (to POIs inside an LIR), is to be determined by Fibernetics on an LIR-by-LIR basis in each of the eight LIRs.

58. The Commission considers that the continued development of local competition in small rural markets is an important policy objective under section 7 of the Act. In this regard, LNI arrangements with CLECs should take into account the smaller traffic

¹¹ These POIs would have to be established within the LIRs where low-speed CDN access services would be used.

¹² Section 24 of the Act states the following: The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

volumes resulting from CLECs entering into less densely populated LIRs. As such, parties should be mindful of this fact when conducting LNI negotiations, which should result in LNI arrangements that are reflective of these smaller traffic volumes. This means that LNI arrangements should be efficient and economically feasible so that CLECs are able to enter into these markets so as to provide alternative competitive choices to all Canadians.

59. The Commission also considers that the issue of the forms and types of LNI that could be used in rural and low population density LIRs to ensure that competitive choice is extended to all Canadians could also be included in an upcoming interconnection proceeding.

Policy Directions

60. The 2019 Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, must implement the Canadian telecommunications policy objectives set out in section 7 of the Act in accordance with paragraphs 1(a) and (b) of the 2019 Policy Direction.
61. The Commission's determination will advance the policy objectives set out in paragraphs 7(a)¹³, (b), and (f) of the Act. Specifically, the Commission's determination that Bell Canada and Fibernetics should use IXPL or low-speed CDN access services for LNI in each of the eight LIRs in question will promote competition, affordability, and consumer interests by enabling Fibernetics to enter new market areas and by providing consumers in those market areas with more choice in selecting their desired telecommunications service provider (TSP).
62. In accordance with subparagraphs 1(a)(iii) and 1(a)(v) of the 2019 Policy Direction, the Commission's determination that Bell Canada and Fibernetics should use IXPL or low-speed CDN access services for LNI in each of the eight LIRs in question ensures that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas; reduces barriers to market entry; and provides competition from TSPs that are new, regional or smaller than the incumbent national service providers. Specifically, Fibernetics' entry into the new market areas will ensure affordable access to high-quality telecommunications services in rural areas. Further, the Commission's determination should encourage incumbent national service providers to undertake good faith negotiations for alternative types of LNI arrangements with new, regional, or smaller TSPs.

13 The cited objectives of the Act is 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.

63. The Commission also considers that its determinations are consistent with subparagraph 1(a)(ii) of the 2006 Policy Direction¹⁴, which states that when relying on regulation, the Commission should use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. Specifically, the Commission's determination that Bell Canada and Fibernetics should use IXPL or low-speed CDN access services for LNI in each of the eight LIRs in question will encourage TSPs to engage in good faith commercial negotiations in order to reach mutually beneficial solutions and promote collaboration among TSPs to meet the needs of individuals in rural areas who wish to benefit from competition in the telecommunications service market. Further, the solution is not a significant departure from already existing arrangements in other LIRs (using IXPL services), or stems from Bell Canada's proposal to use low-speed CDN access services.

Secretary General

Related documents

- *Iristel Inc. – Application for final relief regarding Bell Canada's rate increases for certain circuits*, Telecom Decision CRTC 2019-249, 19 July 2019
- *Allstream Business Inc. and Zayo Canada Inc. – Application to review and vary Telecom Decision 2018-200*, Telecom Decision CRTC 2019-94, 3 April 2019
- *Iristel Inc. – Application for interim relief regarding Bell Canada's rate increases for certain circuits*, Telecom Decision CRTC 2019-86, 21 March 2019
- *Bell Canada – Application for forbearance from the regulation of unbundled local loops*, Telecom Decision CRTC 2018-200, 5 June 2018
- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015; as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
- *Network interconnection for voice services*, Telecom Regulatory Policy CRTC 2012-24, 19 January 2012
- *Follow-up to Trunking arrangements for the interchange of traffic and the point of interconnection between local exchange carriers*, *Telecom Decision CRTC 2004-46*, Telecom Decision CRTC 2006-35, 29 May 2006
- *Trunking arrangements for the interchange of traffic and the point of interconnection between local exchange carriers*, Telecom Decision CRTC 2004- 46, 14 July 2004
- *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997

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