



Telecom Decision CRTC 2021-385

PDF version

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Competitive Network Operators of Canada – Application requesting relief from Rogers Communications Canada Inc. concerning Data Over Cable Service Interface Specification (DOCSIS) 3.0 modems

The Commission finds that Rogers Communications Canada Inc.'s (RCCI) actions regarding its stop-sell date for new Data Over Cable Service Interface Specification (DOCSIS) 3.0 modems and subsequent phase out of existing DOCSIS 3.0 modems is consistent with a reasonable interpretation of RCCI's tariff and with the Commission's cable modem framework. While this conduct may result in a disadvantage for RCCI's third-party Internet access (TPIA) customers, that disadvantage is not unreasonable.

The Commission **denies** the Competitive Network Operators of Canada's (CNO) request to direct RCCI to modify its notice to its TPIA customers and expects RCCI to adhere to the second-level testing obligations set out in Telecom Decision 2004-37 when collaborating with its TPIA customers to test and approve new DOCSIS 3.1 modem models for use on its access network.

Background

1. The Commission regulates third-party Internet access (TPIA) services provided by the large cable carriers. Competitor Internet service providers (ISPs) purchase TPIA services and provide retail Internet access to their end-customers using cable modems that are connected to and compatible with a cable carrier's access and distribution networks and systems.
2. Rogers Communications Canada Inc. (RCCI) offers TPIA services to ISP customers according to the terms, rates, and conditions set out in its Access Services Tariff (RCCI's tariff).¹
3. RCCI's tariff specifies that ISPs are responsible for providing their end-customers with a modem that meets a set of specifications designed to ensure the integrity of RCCI's network. Modems also have to satisfy RCCI's second-level test, and the company makes available a list of modems that have satisfied this requirement (hereafter, RCCI's list). ISPs can also apply for certification for modems that are not on RCCI's list.

¹ Tariffs for TPIA customers are in Part G of [RCCI's tariff](#).

4. RCCI's tariff also indicates that the company reserves the right to make any changes it deems necessary to the design, function, operation, technology, or layout of its network, and that TPIA customers are responsible for ensuring their equipment continues to be compatible with its network.
5. However, pursuant to Telecom Decision 2004-37, any changes regarding the use of cable modems for TPIA customers must be made in a manner consistent with the Commission's cable modem framework. In particular, TPIA cable modems should, at a minimum, satisfy a set of 10 requirements outlined in that decision.
6. On 15 June 2020, RCCI sent a letter (the June letter) to its TPIA customers informing them that effective 4 January 2021, RCCI would stop activating Data Over Cable Service Interface Specification (DOCSIS) 3.0 modems with fewer than eight upstream channels.² Existing end-customers already using DOCSIS 3.0 modems with fewer than eight upstream channels would receive continued support only under the following conditions:
 - The end-customer's modem is active on 4 January 2021.
 - The end-customer's modem activation request was received on or before 3 January 2021.
 - The end-customer continues to be supported by the same network point of interconnection (POI).
7. The June letter also indicated that effective 1 June 2021, RCCI would implement a stop-sell: it would cease activating all DOCSIS 3.0 modems and would only permit activation of DOCSIS 3.1 modems, regardless of download speed tier. End-customers with active DOCSIS 3.0 modems would only continue to receive support under the following conditions:
 - The end-customer's modem is active on 1 June 2021.
 - The end-customer's modem activation request was received on or before 31 May 2021.
 - The end-customer continues to be supported by the same network POI.
8. The Competitive Network Operators of Canada's (CNO) members contacted RCCI for additional information about its decision and attempted to negotiate a delayed timeline for withdrawing DOCSIS 3.0 modems from RCCI's list.

² DOCSIS is a telecommunications standard used to provide Internet access over a cable modem. The number of channels a model has affects how much data can be transferred between the modem and the network. Older DOCSIS 3.0 modem models have only four upstream channels, while newer ones have eight.

9. On 12 March 2021, RCCI sent a follow-up notice to its TPIA customers notifying them that only certified DOCSIS 3.1 devices would be able to access RCCI's DOCSIS network after 31 December 2022 in the Atlantic region, and after 31 December 2023 in the Ontario region.

Application

10. On 16 February 2021, the Commission received an application from CNOC seeking expedited and temporary relief from what it submitted were arbitrary decisions by RCCI. Specifically, CNOC indicated that its members were being deprived of the opportunity to earn a return on their DOCSIS 3.0 modem inventory. CNOC submitted that RCCI's conduct subjects its TPIA customers to an unreasonable disadvantage, contrary to subsection 27(2) of the *Telecommunications Act* (the Act), and that such conduct is also not consistent with a reasonable interpretation of RCCI's tariff.
11. CNOC submitted that as a result of RCCI's decision, the process for modem selection will prohibit TPIA customers from competing and from accessing RCCI's network.
12. CNOC requested that the Commission order RCCI to allow its TPIA customers to continue to activate DOCSIS 3.0 modems when ordering download speed tiers up to 300 megabits per second for a period of two years after the Commission issues its decision in this proceeding.
13. RCCI filed a response opposing CNOC's application on 24 March 2021, in which it claimed that the proposed relief strikes directly at RCCI's ability to plan, design, and run its network.
14. The Commission received interventions opposing CNOC's request for relief from four cable carriers: Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Quebecor Media Inc., on behalf of Videotron Ltd.; and Shaw Cablesystems G.P. (Shaw) [collectively, the cable carriers].
15. The Commission also received interventions in support of CNOC's application: two from ISPs (Distributel Communications Limited and TekSavvy Solutions Inc.) and one from the Public Interest Advocacy Centre.

Commission staff letter and RCCI's notices of extension

16. Commission staff sent a letter to RCCI on 26 April 2021 requesting confirmation that the company would not require its TPIA customers to start using DOCSIS 3.1 modems for all new activations until the Commission issued its decision in this proceeding.
17. RCCI responded on 28 April 2021, confirming that it would extend its stop-sell date to 31 December 2021, but added that it would not extend the dates by which all DOCSIS 3.0 modems would have to be replaced.

18. On 17 August 2021, RCCI sent a notice to its TPIA customers advising them that it would further extend its stop-sell date to 30 June 2022.

Issues

19. The Commission has identified the following issues to be addressed in this decision:

- Is RCCI's conduct consistent with a reasonable interpretation of its tariff and with the Commission's cable modem framework?
- Does RCCI's conduct subject its TPIA customers to an unreasonable disadvantage, contrary to subsection 27(2) of the Act?
- Should the Commission require RCCI to allow its TPIA customers to introduce DOCSIS 3.0 modems for an additional two years following this decision?

Is RCCI's conduct consistent with a reasonable interpretation of its tariff and with the Commission's cable modem framework?

Positions of parties

CNOC

20. CNOC submitted that the Commission determined in Telecom Decision 2020-355 that TPIA providers have an obligation to provide clear and supportable reasons for removing DOCSIS 3.0 modems from their lists of approved modems. CNOC argued that RCCI failed to provide clear and supportable reasons for removing any modems from its list, and therefore failed to meet the Commission's requirements.

21. CNOC further submitted that the Commission's conclusions in Telecom Decision 2020-355 require a broad interpretation of the tariff, which set network incompatibility as the acceptable threshold for removal of a modem from a TPIA provider's list of approved modems.

22. CNOC added that its application concerned the broader issue of ensuring wholesale access providers are not able to arbitrarily set standards for TPIA customers and, in so doing, undermine their ability to compete for and serve end-users.

RCCI

23. In its answer to CNOC's application, RCCI submitted that it did not detail the exact reasons for its transition to DOCSIS 3.1 in its June letter because its plans and designs for its network are confidential and competitively sensitive, but added that it would nevertheless provide additional information to ensure a more complete public record.

24. RCCI submitted that given the dramatic increase in residential Internet usage due to the COVID-19 pandemic, it has begun to accelerate its capacity augmentation plans, which include a shift to a more efficient DOCSIS 3.1 access network. To take advantage of the advances of DOCSIS 3.1, all of the equipment in the access network must be DOCSIS 3.1-capable, including equipment on the customers' premises, such

as modems. RCCI further submitted that as part of its transition plan to an all DOCSIS 3.1 access network, one of the major milestones required is a stop-sell of DOCSIS 3.0 modems.

25. RCCI submitted that it has the right to determine how best to develop and maintain its network, including the right to decide to remove the DOCSIS 3.0 modems. It argued that this decision is consistent with its tariff, and that it has expended significant resources to begin implementing these changes.
26. RCCI argued that while its list already includes a number of DOCSIS 3.1 modem models permitted for use, its TPIA customers have sufficient time to have other models added, and that it is their responsibility to plan in advance for these types of changes. Moreover, it is important that RCCI, as the owner and operator of its network, be entitled to make its own decisions about these matters, and CNOC members must be subject to RCCI's reasonable decisions to manage its network appropriately.

The cable carriers

27. The cable carriers supported RCCI's argument that the company is within its rights to manage its network as it sees fit. In particular, Cogeco submitted that the Commission determined in Telecom Order 2018-176 that the choice of network configuration, including its critical components, is the prerogative of the carrier alone. The cable carriers also noted that the requirements for modems that the Commission identified in Telecom Decision 2004-37 stipulate that they should operate at the service level specified by the TPIA provider.
28. The cable carriers submitted that implementation of the DOCSIS 3.1 modem standard is well underway in Canada, and that other carriers are planning similar upgrades. They note that the ability to offer higher upload speeds is tied to the implementation of the DOCSIS 3.1 modem standard.
29. The cable carriers pointed out the similarities between this matter and the Commission's conclusions in both Telecom Orders 2018-442 and 2018-463. In Telecom Order 2018-442, the Commission determined that it was appropriate for Shaw to require its TPIA customers to use DOCSIS 3.1 modems to provision Shaw's Internet 300 service. In Telecom Order 2018-463, the Commission required DOCSIS 3.1 modems to support Cogeco's new higher speed services.

Intervenors

30. Intervenors in favour of CNOC's application submitted that RCCI violated the Commission's cable modem framework because it has not provided clear and supportable reasons for why each of the modem models being removed from its list is incompatible with or unable to connect to its network as a result of modifications to RCCI's network or systems.

31. These interveners also submitted that the current situation is not analogous to those in Telecom Orders 2018-442 or 2018-463. They argued that in those instances, DOCSIS 3.1 modems were required for high-speed connections, while in this instance, RCCI is trying to prevent resellers from providing services at lower speeds where DOCSIS 3.1 modems are not necessary for efficiency or avoiding network congestion.

Commission's analysis and determinations

RCCI's tariff

32. In Telecom Decision 2020-355, the Commission determined that Eastlink's removal of a specific brand of modems from its list of approved models was not consistent with a reasonable interpretation of its tariff, because while a limited number of modems in that instance were known to be defective, the vast majority of the modems continued to be compatible with and able to connect to Eastlink's network.

33. CNOC argued that in the present matter, the specific wording in section 9.2 of RCCI's tariff requires that to remove a modem model from its list, RCCI must make a change to its network that renders a cable modem model incompatible with or no longer able to connect to its network, which it has not done.

34. Under CNOC's interpretation of RCCI's tariff, RCCI would have to make a change to its network that would immediately render the DOCSIS 3.0 modem incompatible or unable to connect in order to allow their removal.

35. In the Commission's view, such an interpretation would cause significant disruption, as it would result in the sudden end of service or disconnection for all existing end-users equipped with a DOCSIS 3.0 modem.

36. In the present case, RCCI has planned a complete upgrade to a new modem standard as part of network-wide development intended to maintain efficiency and level of service for all users, including its TPIA customers' end-users. RCCI has demonstrated that its planned network transition will render DOCSIS 3.0 modems incompatible with its access and distribution network and systems in the longer term. It has also justified the need for this transition, as DOCSIS 3.0 modems would negatively affect RCCI's network by reducing spectrum efficiency and data transmission speeds.

37. Accordingly, a planned transition to a DOCSIS 3.1 access network constitutes a situation that would render DOCSIS 3.0 modems no longer compatible with RCCI's access and distribution network, and therefore RCCI would be justified in providing six months' written notice to remove them from the approved list.

38. However, given RCCI's planned large-scale network shift from DOCSIS 3.0 modems to DOCSIS 3.1 modems, providing the minimum six months of written notice to TPIA customers would likely also cause significant disruption for these providers and their end-users, as that would not provide sufficient time to prepare for such a

significant technological change. The Commission is therefore of the view that section 9.2 of RCCI's tariff was not necessarily drafted to take into account the full range of scenarios that would require notification of network changes, including large-scale technology shifts.

39. Instead of providing the minimum notice required for removing modems from its list, RCCI has given ISPs almost one year's notice of an upcoming stop-sell order for DOCSIS 3.0 modems, and has grandfathered the use of DOCSIS 3.0 modems already active on its network, all in order to prepare for an orderly and efficient transition to an upgraded network.
40. In light of the above, the Commission finds that RCCI's conduct is consistent with a reasonable interpretation of its tariff.

The cable modem framework

41. With respect to CNOC's argument that RCCI failed to provide clear and supportable reasons for removing DOCSIS 3.0 modems from its list, the Commission is of the view that while RCCI's June letter to its TPIA customers communicated changes to the modem standards and requirements, it did not include clear and supportable reasons for the removal of DOCSIS 3.0 modems from its list at that time.
42. However, in RCCI's follow-up notice to its customers, the company informed them of important changes to its DOCSIS Roadmap, and specifically of its plan to migrate to an all DOCSIS 3.1 access network, thereby necessitating the decommissioning of DOCSIS 2.0 and DOCSIS 3.0 modems.
43. Taken together, the information provided in RCCI's follow-up notice and in its response to CNOC's application indicates that to transition to an all DOCSIS 3.1 access network, it must first prevent additional units of DOCSIS 3.0 modems from being activated on its network. In addition, RCCI indicated that in anticipation of the operational challenges of transitioning existing end-users, the planned stop-sell of DOCSIS 3.0 modems is a critical component of its gradual and coordinated transition.
44. In light of the above, the Commission considers that RCCI has provided clear and supportable reasons for requiring the stop-sell of DOCSIS 3.0 modems.
45. In light of all of the above, the Commission finds that RCCI's conduct is consistent both with a reasonable interpretation of its tariff and with the Commission's cable modem framework.

Does RCCI's conduct subject its TPIA customers to an unreasonable disadvantage, contrary to subsection 27(2) of the Act?

Positions of parties

CNOC

46. CNOC submitted that RCCI's conduct subjects its TPIA customers to an unreasonable disadvantage, in contravention of subsection 27(2) of the Act, in several ways.
47. Firstly, the process for certifying modems not already on an approved list is lengthy. TPIA customers sought certification of the DOCSIS 3.0 modem and have deployed an extensive number of them, which CNOC submits demonstrates that there is strong demand for this model in conjunction with RCCI's TPIA service. This demand should not be extinguished by RCCI's arbitrary conduct.
48. Secondly, RCCI's requirement that its TPIA customers remove DOCSIS 3.0 modem units from deployment does not allow those customers to make economical use of their significant investments in serviceable equipment. Backed by threat of disconnection, RCCI's notice has already resulted in the removal of thousands of modems by many of its TPIA customers.
49. Finally, RCCI's notice is an inappropriate and untimely measure in light of the current limits on availability of DOCSIS 3.1 modems, which have a reported order lead time of up to one year and may become entirely unavailable due to the worldwide shortage of semiconductor chips.

Intervenors

50. Intervenors that supported CNOC's application submitted that when taken together, the imposed transition to DOCSIS 3.1 modems, the absence of negotiations with TPIA customers, and the modem supply and certification delays threaten the ability of RCCI's TPIA customers to compete in their serving areas.
51. Intervenors further submitted that DOCSIS 3.0 modems are a mid-lifecycle technology that can be used for years to come, and argued that decommissioning them at this time is wasteful and punitive for TPIA customers given the high cost of replacing them.

RCCI

52. RCCI responded that CNOC has no insight into or knowledge of the significant efforts and costs that resulted from RCCI's planned capacity augmentation and transition to an all DOCSIS 3.1 modem access network. While CNOC's members' only concern may be whether the DOCSIS 3.0 modems work, RCCI has to be concerned about the impact of DOCSIS 3.0 modems on its network, specifically with respect to efficiency, spectrum use, capacity, and speed.

53. RCCI reiterated its view that TPIA customers should not be able to dictate the appropriateness of measures the network owner has determined are necessary to upgrade and maintain a particular level of service for all of its users.
54. RCCI submitted that it provided its TPIA customers with twice as much notice as its tariff required that the DOCSIS 3.0 modem would be removed from its list. RCCI also argued that any shortage of DOCSIS 3.1 modems or parts affects everyone, including RCCI, and that it should not be penalized for TPIA customers' poor business contingency planning.
55. RCCI further submitted that its decision has not subjected CNOC members to costs that equate to an unreasonable disadvantage. Its approved list includes a number of models that are permitted to be used. Moreover, its TPIA customers do not use one type of modem exclusively, but instead are using various types of approved modems, and therefore, the decision to stop adding new DOCSIS 3.0 modem units to its network is in no way prejudicial.
56. RCCI added that circumstances related to COVID-19 have created a significant increase in traffic, due in part to a large workforce working from home and using video calls for communication. Increasing capacity and spectral efficiency of its network is therefore a necessity for RCCI, and the use of DOCSIS 3.1 modems is a key solution.

Commission's analysis and determinations

57. The Commission's analysis of an allegation of undue preference or unreasonable disadvantage under subsection 27(2) of the Act is conducted in two phases. First, the Commission must determine whether the conduct in question constitutes a preference or subjects a person to a disadvantage. If it so determines, it must then decide whether the preference or disadvantage is undue or unreasonable. Pursuant to subsection 27(4) of the Act, the burden is on the respondent to demonstrate that the preference or disadvantage is not undue or unreasonable.³ In order to assess CNOC's claim that RCCI imposed an unreasonable disadvantage towards its TPIA customers, the Commission must first determine whether a disadvantage exists.
58. RCCI's decision to remove the DOCSIS 3.0 modem from its approved list would result in its affected TPIA customers incurring a financial cost to replace all non-grandfathered units. Moreover, the removal of DOCSIS 3.0 modems from RCCI's list could have a negative financial impact on CNOC members and on their ability to serve an important market segment seeking lower speeds and costs, insofar as DOCSIS 3.1 modems may cost, on average and based on CNOC's submission, \$60 to

³ Subsection 27(4) of the Act states that the burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference, or subjects the person to the disadvantage.

\$80 more per unit than DOCSIS 3.0 modems.⁴ The Commission therefore concludes that RCCI's conduct does subject CNOC's members to a disadvantage.

59. A preference or a disadvantage in and of itself is not contrary to the Act; the preference or disadvantage must be undue or unreasonable. While RCCI's decision will subject its TPIA customers to certain additional costs, RCCI has also incurred costs as a result of its plans to increase the capacity and spectral efficiency of its network. RCCI described its planned network changes as necessary, and these changes appear to be part of a normal evolution for RCCI. The company is taking advantage of more efficient technologies in order to maintain its position in the competitive market and to improve its services for all end-users, including TPIA customers' end-users.
60. The record of this proceeding does not enable the Commission to assess which party's financial costs to replace DOCSIS 3.0 modems are greater. However, the size and complexity of RCCI's network and planned transition suggest that RCCI's costs associated with investments in its network likely far exceed its TPIA customers' modem purchase and replacement costs.
61. CNOC did not elaborate on its assertion that the costs to TPIA customers will undermine the levels of competition in RCCI's serving territory. However, given that RCCI provided significant advance notification of the stop-sell date and has grandfathered the use of DOCSIS 3.0 modem units already active on its network until as late as 31 December 2023 for the Ontario region, it does not seem that removing DOCSIS 3.0 modems from RCCI's list would have a profound or lasting impact on TPIA customers' ability to compete in RCCI's serving territory. Affected TPIA customers could use DOCSIS 3.1 modem models already on RCCI's approved list or propose new models for certification.
62. CNOC submitted that DOCSIS 3.1 modems are in very short supply and have lead times of up to one year and provided some confidential documentation of these facts. CNOC submitted that requiring TPIA customers to upgrade in a constrained supply environment is therefore unjustified.
63. While the Commission accepts that there are currently limited supplies of and long lead times for DOCSIS 3.1 modems, the Commission considers that CNOC has not provided information that its members are experiencing undue or substantiated difficulties in acquiring DOCSIS 3.1 modems that is sufficient to justify the relief requested. The Commission also considers that CNOC has not provided sufficient detail demonstrating the steps its members took to acquire DOCSIS 3.1 modems after receipt of RCCI's June letter. Accordingly, the Commission is not in a position to assess the impact that the limited supply and long lead times for DOCSIS 3.1 modems are currently having on CNOC's members to justify the relief requested.

⁴ These amounts were proposed by CNOC in its application and were not disputed by any interveners on the record of this proceeding.

64. The Commission further accepts that in the short term, RCCI's decision may have an effect on competition in RCCI's serving territory due to the additional costs associated with purchasing DOCSIS 3.1 modems and certifying new modem models for inclusion on RCCI's list. However, it appears unlikely that there will be any long-term negative effects on competition. The Commission considers that the record of this proceeding does not support CNOC's statements that its members will be unable to compete and access RCCI's network. CNOC members benefit from a lengthy notification period that should allow them to obtain DOCSIS 3.1 modems, despite the current manufacturing delays, and can propose new DOCSIS 3.1 modem models to RCCI for certification. Therefore, in the Commission's view, RCCI's decision will not result in its TPIA customers being unable to access RCCI's network.
65. The Commission is also of the view that CNOC members' ability to service important market segments seeking lower speeds will not be unduly affected by the additional costs associated with the purchase of DOCSIS 3.1 modems because CNOC members have the ability to propose more economical DOCSIS 3.1 modem models to RCCI for certification.
66. CNOC and several interveners argued that they have experienced significant delays having new DOCSIS 3.1 modems tested and approved for use on RCCI's access network. In response to these claims, RCCI notes that CNOC members have proposed only one new DOCSIS 3.1 modem model since RCCI sent its June letter, but that it is prepared to assist and coordinate certification requests of its TPIA customers.
67. The Commission therefore considers that RCCI has met the burden of proof to demonstrate that its decision to remove DOCSIS 3.0 modems from its list does not impose an unreasonable disadvantage on its TPIA customers. The Commission also considers that RCCI's decision seems to have been borne out of an intention to protect or enhance the integrity of its network rather than to gain an advantage over other ISPs using RCCI's network.
68. In light of the above, the Commission considers that RCCI's removal of DOCSIS 3.0 modems from its list would not impose an unreasonable disadvantage on its TPIA customers. The Commission expects RCCI to adhere to the second-level testing obligations set out in Telecom Decision 2004-37 when collaborating with its TPIA customers to test and approve new DOCSIS 3.1 modem models for use on its access network in order to mitigate any potential disadvantage to RCCI's TPIA customers.

Should the Commission require RCCI to allow its TPIA customers to introduce DOCSIS 3.0 modems for an additional two years following this decision?

Positions of parties

69. RCCI submitted that CNOC's requested relief would cost RCCI approximately \$70 million in additional, unplanned capacity augmentation and would jeopardize its planned transition to an all DOCSIS 3.1 modem access network.

70. CNOC responded that RCCI has no basis to claim that CNOC's proposed relief would be responsible for \$70 million worth of economic impacts to the company. CNOC argued that RCCI chose to conduct its network planning contrary to the requirements of RCCI's tariff, and that the company should therefore bear any costs created by its own disregard of regulatory requirements.
71. The cable carriers submitted that in Telecom Order 2018-463, the Commission recognized the impact on Cogeco's network of requiring that wholesale services be offered using DOCSIS 3.0 modems, and that granting CNOC's request for similar relief would set a dangerous precedent in which TPIA customers dictate which equipment can be used on facilities-based providers' networks.
72. Interveners argued that the Commission should prevent RCCI from implementing its transition to DOCSIS 3.1 modems until the Commission determines that there is a sufficient supply of DOCSIS 3.1 modems.

Commission's analysis and determinations

73. As detailed above, the Commission considers that RCCI's justification for migrating its network to DOCSIS 3.1 modems supports its decision to stop activating DOCSIS 3.0 modems on its network, and that the removal of those same modems is a crucial part of RCCI's network development.
74. However, the Commission is sensitive to possible short-term difficulties that CNOC's members and other intervening TPIA customers describe as a result of RCCI's decision. RCCI's major network shift and the removal of an entire class of equipment may have a short-term impact on its TPIA customers, and the Commission considers that TPIA customers should have an appropriate period of time to prepare for this shift.
75. The Commission is cognizant that RCCI has provided advance notice to its TPIA customers and has extended the effective date of the stop-sell on two occasions: first on 28 April 2021, by seven months, to 31 December 2021, and more recently, on 17 August 2021, by six months, to 30 June 2022. The Commission therefore considers that CNOC's members have benefitted from an appropriate period of time to adapt and prepare for RCCI's announced technological changes to its network.
76. In light of the above, the Commission **denies** CNOC's request to direct RCCI to modify its notice to its TPIA customers.

Conclusion

77. In light of all of the above, the Commission finds that RCCI's conduct is consistent with a reasonable interpretation of its tariff and with the Commission's cable modem framework, and that its conduct does not subject its TPIA customers to an unreasonable disadvantage.

78. The Commission expects RCCI to adhere to the second-level testing obligations set out in Telecom Decision 2004-37 when collaborating with its TPIA customers to test and approve new DOCSIS 3.1 modem models for use on its access network.

Policy Directions

79. The 2019 Policy Direction⁵ states that in exercising its powers and performing its duties under the Act, the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
80. The Commission considers that this decision advances the policy objective set out in paragraph 7(c) of the Act.⁶ Specifically, allowing RCCI to remove DOCSIS 3.0 modems as part of transitioning its network to a next level of modems will enhance the efficiency and national competitiveness of Canadian telecommunications. The Commission considers that enabling RCCI's network to perform at optimal levels and maintaining spectral efficiency is beneficial for all users, including RCCI's TPIA customers.
81. The Commission is also of the view that its decision is consistent with subparagraph 1(a)(ii) of the 2006 Policy Direction,⁷ which requires 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.
82. The Commission's decision represents a reasonable response, in that it does not interfere with the right of cable carriers to make appropriate decisions regarding the development and architecture of their networks, while at the same time facilitates the reduction of barriers to competition for smaller ISPs. This continued level of competition also facilitates the accessibility and affordability of broadband services for end-users by promoting end-users' choice of service providers.

Secretary General

Related documents

- *Canadian Network Operators Consortium Inc. – Application for relief regarding conduct relating to Technicolor cable modems by Bragg Communications Incorporated, carrying on business as Eastlink, Telecom Decision CRTC 2020-355, 21 October 2020*

⁵ *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*

⁶ The cited policy objective is 7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355, 14 December 2006*

- *Cogeco Communications Inc. – Introduction of new third-party Internet access service speeds*, Telecom Order CRTC 2018-463, 13 December 2018
- *Shaw Cablesystems G.P. – Introduction of a new third-party Internet access speed band and the Internet 300 access speed tier*, Telecom Order CRTC 2018-442, 29 November 2018
- *Rogers Communications Canada Inc. – New point of interconnection location in Argentina, Ontario*, Telecom Order CRTC 2018-176, 18 May 2018
- *Cable modems for third-party Internet access*, Telecom Decision CRTC 2004-37, 4 June 2004