



Telecom Order CRTC 2022-79

PDF version

Ottawa, 25 March 2022

Public record: 8621-C17-202002856

City Wide Communications Inc. – Application to order Bragg Communications Incorporated, carrying on business as Eastlink, to relocate its third-party Internet access point of interconnection

The Commission **denies** City Wide Communications Inc.'s (City Wide) application, in which the company requested that the Commission order Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), to move its Nova Scotia third-party Internet access point of interconnection from Pennant Point to a location in the Halifax core. The Commission finds that while Eastlink is subjecting City Wide to a disadvantage and providing itself with a corresponding advantage by means of its point of interconnection location, this disadvantage is not undue or unreasonable.

Background

1. In Tariff Notices 35 and 35A (filed 15 September 2015 and 14 January 2016, respectively), Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), proposed to implement its aggregated third-party Internet access (TPIA) point of interconnection (POI) for Nova Scotia in its data centre in Pennant Point. Pennant Point is part of the Halifax Regional Municipality but located approximately 30 kilometres from downtown Halifax.
2. In the context of that tariff proceeding, both the Competitive Network Operators of Canada (CNOc), known at the time as the Canadian Network Operators Consortium Inc., and ISN Inc. requested that the Commission direct Eastlink to place its POI in downtown Halifax, where Eastlink already had a Cable Modem Termination System (CMTS). CNOc submitted that Eastlink's proposed POI location at Pennant Point (i) was remote, (ii) would force competitors to bear unnecessary transport costs, and (iii) would disrupt the existing downtown Halifax co-location arrangements of some potential TPIA service competitors, particularly City Wide Communications Inc. (City Wide). CNOc argued that the ultimate result of Eastlink's proposed POI location would be to harm competition and to confer an undue preference on Eastlink, contrary to subsection 27(2) of the *Telecommunications Act* (the Act).
3. In Telecom Order 2016-201, the Commission concluded the following:
 - CNOc had demonstrated that Eastlink's proposed POI location may constitute a disadvantage for one of its members. However, this disadvantage was

largely based on that member's pre-existing co-location arrangement rather than on any action taken by Eastlink.

- Eastlink was proposing a single POI for Nova Scotia, located within the boundaries of the Halifax Regional Municipality, which would enable TPIA service competitors to serve all areas in Eastlink's serving territory in Nova Scotia.
- Eastlink's proposed Pennant Point POI site was a major Eastlink data centre served by competitive transport facilities, and the site could accommodate competitor co-location, although this was not mandatory for TPIA services.
- While there may be a disadvantage to a competitor and a corresponding preference in favour of Eastlink under subsection 27(2) of the Act, based on the information provided, any such disadvantage or preference would not be undue or unreasonable.

Application

4. The Commission received an application, dated 22 May 2020, from City Wide, in which the company requested that the Commission order Eastlink to move its Nova Scotia TPIA POI from Pennant Point to a location in the core of Halifax¹ where Eastlink aggregates its retail Internet service, which City Wide understands to be two locations in the core of Halifax. City Wide further requested that Eastlink bear the full costs of this migration.
5. The Commission received an answer from Eastlink as well as interventions regarding City Wide's application from CNOC, Rogers Communications Canada Inc. (RCCI), Shaw Cablesystems G.P. and Shaw Telecom G.P. (collectively, Shaw), and TekSavvy Solutions Inc. (TekSavvy).

Issue

6. The Commission has identified the following issue to be addressed in this order:
 - Is Eastlink granting itself an undue or unreasonable preference and/or subjecting City Wide to an undue or unreasonable disadvantage by having its TPIA POI located at Pennant Point, outside the Halifax core and, if yes, what is the appropriate remedy?

¹ In its application, City Wide refers to the "core of Halifax" as the portion of the urban part of Halifax that includes locations at which Eastlink and other carriers, such as Bell Canada and Rogers Communications Canada Inc., operate main switching and routing facilities. That part of Halifax is part of the urban area of what used to be the City of Halifax prior to an amalgamation that incorporated large rural areas, including Pennant Point, into what is known as the Halifax Regional Municipality.

Is Eastlink granting itself an undue or unreasonable preference and/or subjecting City Wide to an undue or unreasonable disadvantage by having its TPIA POI located at Pennant Point, outside the Halifax core and, if yes, what is the appropriate remedy?

Positions of parties

City Wide

7. In its application, City Wide submitted that in Telecom Order 2016-201, the Commission authorized Eastlink to establish its aggregated TPIA POI for Nova Scotia at its Pennant Point data centre even though this location is approximately 30 kilometres from downtown Halifax. City Wide argued that this determination was partly based on the fact that Eastlink had made representations to the effect that there was competitive transport at that location, and that the data centre was a carrier neutral facility. City Wide argued that the representations made to the effect that the Pennant Point data centre is carrier neutral and that it is served by competitive transport facilities were both incorrect. City Wide added that the only transport services available at the Eastlink Pennant Point data centre are from Eastlink itself.
8. In this regard, City Wide submitted that after the publication of Telecom Order 2016-201, it investigated transport alternatives to the Pennant Point data centre by inquiring with other major providers of transport services in Nova Scotia. City Wide concluded that no alternative transport options existed.
9. City Wide submitted that one transport provider has fibre facilities that pass close to the Pennant Point data centre. However, this link has only a single fibre path close to Pennant Point and was therefore not viewed as a viable option because one single failure in a single fibre link would disrupt service for all of City Wide's retail Internet access users in Nova Scotia.
10. City Wide indicated that in light of the above, it also looked into the possibility of building its own fibre route to Pennant Point. Following its exploration of this option, City Wide concluded that such a project would be unnecessary and an inefficient expenditure, considering that competitive transport could be built or leased at a much lower cost in the core of Halifax. City Wide submitted that it would incur significant risks should it decide to build transport facilities to Pennant Point, given that Eastlink could decide to move its POI location to another location before City Wide could recover its investment.
11. City Wide submitted that the net effect of the above is that Eastlink is using its choice of TPIA location to capture non-tariffed business, for which it is charging considerably more than City Wide would pay where competitive transport exists. City Wide added that moving a POI location to the core of Halifax would result in lower transport costs for TPIA customers due to reductions in transport facility distance and the availability of increased competitive transport options. City Wide argued that if a POI were located in the core of Halifax, self-supply of fibre from the POI to its point of presence (PoP) would be possible.

12. City Wide argued that in light of the above, Eastlink's determination to provide its TPIA POI at the Pennant Point location has resulted in Eastlink granting itself an undue preference and subjecting City Wide to an undue disadvantage. City Wide further argued that this disadvantage has been compounded by (i) significant delays that City Wide has experienced in receiving responses from Eastlink to provide quotes for the provision of non-tariffed services at the Pennant Point POI location and (ii) severe capacity constraints at the Pennant Point POI location, which inflate costs beyond an already untenable level.²
13. City Wide further argued that Pennant Point does not seem to play a significant role for Eastlink in delivering retail Internet to its customers. In this regard, City Wide highlighted that Pennant Point does not have a CMTS or Converged Cable Access Platform (CCAP).³ City Wide also referred to a situation that had resulted in it receiving, for a number of months, a reduced capacity relative to what it had contracted for and submitted that this constraint did not seem to affect Eastlink's retail Internet users. City Wide argued that if Eastlink's retail Internet traffic had been routed through the same facilities, it would expect that any problems affecting TPIA traffic would have also affected Eastlink's retail Internet traffic. City Wide contends that this serves to further compound the disadvantage faced by TPIA customers because Eastlink's retail Internet traffic is not subject to the capacity constraints faced by TPIA customers served by Pennant Point as none of Eastlink's retail customers are directly connected to Pennant Point (via a CMTS or CCAP).
14. City Wide submitted that it agrees that TPIA service providers should generally be free to select the location of TPIA POIs but added that there are legal limitations as well. City Wide argued that for the reasons identified above, this was an exceptional case, and that it would therefore be justified (i) for the Commission to require Eastlink to relocate the POI to facilities in the core of Halifax where Eastlink aggregates its own retail Internet traffic and (ii) for such migration to be done without charging any associated fees to City Wide.
15. City Wide identified two facilities in the core of Halifax as being the likely location where Eastlink aggregates its own retail Internet traffic that could potentially serve as the TPIA POI. City Wide added that if the Commission were to conclude that none of these locations are more suitable as an Eastlink POI, then an inquiry officer should look for other suitable locations in the core of Halifax to ensure that all other potential

² City Wide argued that its interactions with Eastlink indicate that Eastlink's facilities at Pennant Point were constrained by capacity. These interactions comprised delays in obtaining quotes and providing timelines for capacity augmentation of services that City Wide receives and requires for the provision of its own retail Internet services, including TPIA capacity.

³ A CMTS or CCAP allows the cable company to communicate with the cable modems of the end-users on the subscriber side and with the Internet on the other side. The fact that there is not a CMTS or CCAP at Pennant Point implies that Eastlink's retail Internet users do not connect to Eastlink directly at Pennant Point but rather through other locations in Eastlink's network.

Eastlink sites that serve as natural aggregation points for Eastlink's retail Internet traffic are explored as potential POI locations.

16. Following the disclosure of information in some of Eastlink's responses to the Commission's requests for information, City Wide submitted that it was disappointed to learn at such a late stage in this proceeding that there is a new Eastlink data centre under construction within the Halifax Regional Municipality. City Wide submitted that it would need adequate competitive transport to a POI location to make this location feasible. City Wide indicated that it was not aware if there are any competitive transport options serving this data centre.

Eastlink

17. Eastlink strongly opposed City Wide's application. It argued that granting City Wide's request could set a dangerous precedent to the effect that any reseller could decide where the POI should be established to meet its own business needs. Eastlink added that there are no regulatory requirements for the incumbent to locate its POI at the preferred location of one reseller over the needs of the incumbent and of other wholesale customers.
18. Eastlink submitted that its obligations with respect to its POI are set out in Telecom Regulatory Policy 2010-632. According to Eastlink, in that regulatory policy, the Commission required that the company's aggregation of competitor traffic should be, at a minimum, to the same level as for its own retail traffic. Eastlink submitted that it satisfies this requirement given that Internet service providers obtaining aggregated TPIA service from Pennant Point are able to reach all end-users in Nova Scotia who are connected to Eastlink's network.
19. Eastlink added that when it configured its network to provide the aggregated TPIA service, it considered the existing facilities in place and determined that Pennant Point is the most efficient, reliable, and secure location for its POI.
20. Eastlink submitted that City Wide's application is based on the premise that as an incumbent, it must provide, design, and manage its network to satisfy City Wide's needs. Eastlink characterized City Wide's application as being informed by the erroneous belief that its POI must be located where there are numerous transport options available at City Wide's preferred rates and conditions, regardless of the impact on Eastlink's operations or the impact on other wholesale customers already connected at Pennant Point.
21. Eastlink further argued that its Pennant Point data centre is an ideal location because it benefits from a number of positive attributes, including 24-hour security; advanced fire protection; carrier neutral redundant fibre connecting the facility to Multiprotocol Label Switching, Internet, and data networks; and infrastructure redundancy, including air conditioning, power distribution, and emergency generator power supply.

22. According to Eastlink, the two locations in the core of Halifax proposed by City Wide are not practical for a number of reasons. Regarding the first location, Eastlink acknowledged that this is its only head end on the Halifax Peninsula. It argued, however, that this facility is not an appropriate location for an aggregated TPIA POI given numerous weaknesses, including its location in a residential neighbourhood and the risks arising from its proximity to a multi-storey residential building under construction.⁴ Eastlink added that in part because of those weaknesses, it had begun a multi-year project to reduce the use of the first location and move its equipment to a new data centre under construction.
23. As for the second location identified by City Wide, Eastlink submitted that this was an office tower identified as the company's head office in Halifax. While Eastlink acknowledged that certain equipment was housed in that facility, it submitted that the location had a number of inherent limitations, such as multiple tenants on multiple floors, which could cause access difficulties in case of fire and security breaches. Eastlink added that the size of the building also makes it difficult to manage air conditioning for its network equipment.
24. Concerning the matter of transport facilities, Eastlink submitted that it is subject to an obligation to provide TPIA service, but it is not required to ensure that City Wide is provided with a variety of transport options at that company's preferred rates. Furthermore, Eastlink did not agree with City Wide's assertion that it is charging excessive transport rates. Eastlink submitted that its transport-related rates are consistent with the cost of providing the service.
25. Eastlink argued that the transport costs incurred by TPIA customers cannot have such a negative competitive impact because the number of end-users served by TPIA customers on Eastlink's network has grown significantly, with the majority of the growth in Nova Scotia.
26. Eastlink submitted that it is incorrect to suggest that Pennant Point is not a natural aggregation point for the company's Internet traffic. While Eastlink acknowledged that it has never had a CMTS or CCAP at its Pennant Point facility, the company submitted that its retail Internet traffic routinely passes through the Pennant Point data centre. In this regard, Eastlink indicated that some of its retail Internet traffic and even more of its traffic of other types that are critical to the delivery of the company's Internet service flow through Pennant Point.
27. Eastlink also submitted that it would be costly and inefficient to relocate a POI for TPIA service at this juncture given that the industry is eventually shifting to the disaggregated high-speed access model.

⁴ Eastlink addressed a number of weaknesses of these locations for a TPIA POI in confidence in its 25 June 2020 reply comments and in its answers to requests for information Bragg(CRTC)11September2020-8 and Bragg(CRTC)11September2020-9.

28. Regarding the matter of the company's Pennant Point facility being constrained by capacity, Eastlink argued that this is not the case. It submitted that no facility has unlimited capacity, and that it therefore needs to increase capacity at a given facility from time to time. Eastlink submitted that it had plans to upgrade the Pennant Point facility in early 2021 but added that any work to accelerate such plans to respond to a TPIA customer's needs would only take place once a signed order was in place. With regard to the timelines associated with responding to a request for increased capacity, Eastlink submitted that much of the delay was driven by the need to order, receive, and install third-party equipment, not all of which is in the company's control. When City Wide filed its application, it was negotiating capacity increases with Eastlink, and there were delays.

CNOC

29. CNOC submitted that the record demonstrates that the Pennant Point data centre does not play a significant role for providing retail Internet services to Eastlink's end users. In light of this, CNOC agreed with City Wide that Eastlink's decision to establish its POI at Pennant Point, which is located some 30 kilometres outside the core of Halifax, was not supported by compelling rationale.

30. CNOC further submitted that to the extent that City Wide's factual allegations were found to be true, it shared City Wide's assessment to the effect that Eastlink was providing itself with an undue preference and subjecting City Wide to an undue disadvantage, contrary to subsection 27(2) of the Act. CNOC added that it would therefore support City Wide's request to have Eastlink move its POI to a location in the core of Halifax where Eastlink actually aggregates its retail Internet service. CNOC contended that this should be done without disrupting City Wide's retail services and at no cost to City Wide.

TekSavvy

31. TekSavvy submitted that because it only has a small number of customers in Nova Scotia, it had not seen any impact related to the location of Eastlink's Pennant Point POI other than the higher cost of transport services between its Halifax PoP and Pennant Point compared to the transport services that would be required between a Halifax PoP and a TPIA POI in the core of Halifax.

32. TekSavvy further submitted that the POI should never have been established at Pennant Point in the absence of co-location and competitive transport. TekSavvy added that if the facts alleged in City Wide's application are found to be accurate, the location of Eastlink's aggregated TPIA POI at Pennant Point may amount to Eastlink conferring upon itself and its retail customers an undue preference relative to its TPIA customers and their end-users. TekSavvy indicated that it would not object to a requirement for Eastlink to move its POI to the core of Halifax.

RCCI

33. RCCI submitted that City Wide's claim that Pennant Point is not an aggregation point is unfounded. RCCI added that cable networks are not designed to aggregate the operator's retail Internet traffic at a single location because this would be inefficient and undermine network resiliency. By way of example, RCCI submitted that not all of its retail Internet traffic passes through its York Mills head end. In contrast, its TPIA customers are able to access all end-users reached by RCCI's network throughout Ontario by obtaining aggregated TPIA service from its York Mills facilities. This, however, is as a result of the nature of the aggregated TPIA service.
34. RCCI also submitted that the network design and optimal locations of POIs should be chosen by the wholesale provider. Mandating Eastlink to move its POI would have an impact on future regulatory decisions.
35. Regarding City Wide's argument that only TPIA traffic is affected when there are problems with the POI or transport facilities, RCCI argued that this would be true for any wholesale high-speed access (HSA) provider anywhere in Canada because a TPIA POI and related transport facilities are specific to TPIA.
36. As for the lack of competitive transport at Pennant Point, RCCI submitted that the location seems to be acceptable to most TPIA customers. RCCI added that in CNOC's intervention in a follow-up proceeding to Telecom Order 2016-201 – a proceeding concerning Eastlink's implementation of TPIA service in other parts of Atlantic Canada – CNOC submitted that it was satisfied as to the existence of adequate transport supply at Eastlink's Pennant Point TPIA POI location.
37. RCCI added that it also found three suppliers of transport (including Eastlink) that were willing to initiate pre-sales quotes to build or lease fibre to the Pennant Point location. Based on that and CNOC's statement above, RCCI asserted that there is sufficient available competitive transport at Pennant Point.
38. Finally, RCCI submitted that City Wide, in its application, appeared to be principally concerned with transport rates. RCCI noted that in Telecom Regulatory Policy 2015-326, the Commission found that transport facilities are duplicable and decided to maintain its position not to mandate that the incumbent carriers provide wholesale access to transport facilities. RCCI submitted that City Wide itself acknowledged the duplicability of transport facilities but decided not to build its own facilities due to associated risks. RCCI argued that any disagreements on forborne transport rates are outside the scope of the TPIA service and should therefore not be dealt with as part of the current application.

Shaw

39. Shaw submitted that City Wide's application should be dismissed because the Commission already considered and rejected a similar request in the proceeding that resulted in Telecom Order 2016-201 when CNOC requested that Eastlink place its POI in downtown Halifax. According to Shaw, the Commission's analysis and determinations in Telecom Order 2016-201 demonstrated that competitive transport at a POI is not a requirement for TPIA services.

40. Shaw added that the unavailability of alternative transport facilities at Pennant Point is not due to an action by Eastlink, and that the presence of alternative transport is outside the control of the wholesale HSA provider. Therefore, according to Shaw, there is no undue preference nor disadvantage conferred by Eastlink. Furthermore, Shaw argued that nothing is preventing City Wide from investing in its own transport facilities.
41. Shaw added that it is important that providers can rely with certainty on past Commission determinations.
42. Similar to RCCI, Shaw submitted that if the Commission ruled in favour of City Wide, it would set a dangerous precedent. It would signal to the industry that the choice of a POI location is no longer the choice of the network operator, and that wholesale customers could dictate any network provider's design based on the wholesale customers' individual preferences.

Commission's analysis and determinations

43. The Commission assesses allegations regarding contraventions of subsection 27(2) of the Act on a case-by-case basis and takes into account the circumstances of each case. The Commission must first determine whether there is a preference or disadvantage. If it determines that there is one, it must then decide whether the preference or disadvantage is undue or unreasonable.
44. The party alleging the preference or disadvantage must demonstrate the existence of such a preference or disadvantage. If a preference or disadvantage is demonstrated, pursuant to subsection 27(4) of the Act, the carrier that gives the preference or subjects another to a disadvantage must establish that any such preference or disadvantage is not undue or unreasonable.
45. In Telecom Order 2016-201, the Commission noted that although it had never mandated a specific location for a carrier's POI with respect to wholesale HSA services, wholesale HSA service providers must respect the prohibition against undue preference and unjust discrimination set out in the Act in all aspects of the service they provide to competitors.
46. City Wide has demonstrated that Eastlink's POI location at Pennant Point, having regard to the relevant circumstances, subjects City Wide to a disadvantage and provides Eastlink with a corresponding preference.
47. The record shows that the only currently confirmed existing transport option from the Pennant Point POI is from Eastlink. While the record demonstrates that one provider has facilities running in close proximity to Eastlink's Pennant Point data centre, these facilities are limited to a single strand of fibre, which significantly reduces City Wide's ability to use these facilities to provide retail Internet access services.
48. As a result, City Wide is required to either (i) obtain transport services from Eastlink, thereby ensuring that Eastlink receives additional revenues because it established its

TPIA POI at Pennant Point, or (ii) have new transport facilities built where it would need to assume all, or a large part, of the associated costs, given that such a build would be conducted to respond to City Wide's transport needs. This results in City Wide being at a disadvantage because it has to incur such costs and, given that City Wide competes with Eastlink in the retail Internet access marketplace, also results in Eastlink providing itself with an advantage. Furthermore, to the extent that the situation results in Eastlink driving transport revenues to itself, this provides Eastlink with a further preference.

49. Lastly, the record of this proceeding demonstrates that only a limited portion of Eastlink's retail Internet traffic passes through its Pennant Point facilities. This is not in and of itself unusual or a concern because networks are configured so that traffic does not need be backhauled to pass through a single point in the network. However, the result of this situation is that City Wide is required to incur transport costs based on the circumstances and market conditions prevailing at Pennant Point for all of its traffic, a situation that Eastlink does not face.
50. Consequently, the Commission considers that the location of Eastlink's Pennant Point TPIA POI, having regard to the market conditions prevailing at that location concerning transport facilities and the fact that Eastlink's own retail operations are not similarly affected by these market conditions, results in Eastlink subjecting City Wide to a disadvantage and providing itself with a corresponding preference for the purposes of subsection 27(2) of the Act.
51. Having reached this conclusion, the Commission must consider whether any such preference or disadvantage is undue or unreasonable.
52. The Commission considers that the availability of suitable and economically feasible transport options is only one consideration that should determine if the location of the TPIA POI is appropriate. The Commission finds that when a carrier establishes a POI to provide a wholesale service, it is reasonable for the carrier to consider its existing network configuration and attempt to limit the extent of any modifications needed for this configuration. It is also relevant for the carrier to take into account the attributes of its various facilities, including their age, location, and various amenities. Furthermore, it is relevant for the carrier to consider its future plans.
53. City Wide alleges that to avoid concerns under subsection 27(2) of the Act, Eastlink should have established its TPIA POI at a location in the core of Halifax where Eastlink aggregates its own retail Internet traffic. However, the record of this proceeding demonstrates that Eastlink's facilities in the core of Halifax suffer from certain drawbacks as an appropriate aggregated TPIA POI.⁵

⁵ The drawbacks associated with the facilities under consideration that the Commission retains are those referred to and discussed at paragraphs 22 and 23 of this order.

54. Furthermore, and in part because of those drawbacks, Eastlink has confirmed that it has reduced its reliance on one of the facilities identified by City Wide and is in the process of reducing its reliance on the second of its facilities located in the core of downtown Halifax. It is instead concentrating its Internet equipment at both its Pennant Point data centre and a new data centre also located outside the core of Halifax.
55. The record also demonstrates that Pennant Point features a number of positive attributes for an aggregated TPIA POI. Eastlink's Pennant Point facility (i) provides 24-hour security; (ii) is equipped with carrier neutral redundant fibre connecting the facility to Multiprotocol Label Switching, Internet, and data networks; (iii) contains equipment enclosures designed to handle the airflow and power needs of high-density servers and networking equipment; (iv) benefits from infrastructure redundancy, including air conditioning, power distribution, emergency generators, and an uninterrupted power supply; and (v) provides advanced fire protection.
56. The Commission notes that, consistent with Telecom Regulatory Policy 2010-632, the Pennant Point facilities enable TPIA customers to provide retail service to all end-users throughout Nova Scotia who are connected to Eastlink's network.
57. Given the attributes of Eastlink's Pennant Point data centre and the situation befalling the company's facilities in the core of Halifax, including the ongoing project to reduce reliance on these facilities, the Commission considers that Eastlink has discharged its burden of demonstrating that the location of its aggregated TPIA POI at Pennant Point does not run contrary to subsection 27(2) of the Act.
58. The Commission considers that in the circumstances, Eastlink's decision to locate its aggregated TPIA POI at Pennant Point furthers the implementation of the policy objective set out at paragraph 7(a) of the Act in that it respects Eastlink's network architecture, including future plans, while ensuring that competitors have ready access to all end-users throughout Nova Scotia who are connected to Eastlink's network. It is also consistent with the objective set out at paragraph 7(b) of the Act in that the Pennant Point facility benefits from attributes of security and reliability superior to those at the company's downtown facilities, thereby better ensuring the reliability of the TPIA service and downstream retail Internet access services.
59. The Commission considers that the location of Eastlink's Pennant Point TPIA POI results in competitors incurring higher transport costs than they would if the POI were located in the core of Halifax. However, this situation was known to the Commission when it approved the POI location in 2016.
60. The Commission finds that the record of this proceeding does not support the view that transport costs have been a significant barrier to competition and the delivery of competitive Internet access services to consumers. Rather, the record indicates that City Wide has been able to increase the number of its Internet customers served by Eastlink's TPIA service, and that the number of wholesale HSA end-users on Eastlink's network has also grown since 2016.

Conclusion

61. In light of all of the above, the Commission **denies** City Wide's application to relocate Eastlink's POI from Pennant Point to the core of Halifax.

Policy Directions

62. The Commission is required, in exercising its powers and performing its duties under the Act, to implement the policy objectives set out in section 7 of the Act, in accordance with the 2006 Policy Direction⁶ and the 2019 Policy Direction⁷ (collectively, the Policy Directions). The Commission considers that its determinations in this order are consistent with the Policy Directions for the reasons set out below.

63. The Commission considers that its recommendations in this order advance the policy objectives set out at paragraphs 7(a), (b) and (f) of the Act.⁸ In particular, the Commission's order will further the policy objectives set out at paragraph 7(a) of the Act in that it respects Eastlink's network architecture, including future plans, while ensuring that competitors have ready access to all end-users throughout Nova Scotia who are connected to Eastlink's network. The Commission's order is also consistent with the objective set out at paragraph 7(b) of the Act in that the Pennant Point facility benefits from attributes of security and reliability superior to those at the company's downtown facilities, thereby better ensuring the reliability of the TPIA service and downstream retail Internet access services. Finally, because regulatory action is not required, the determination not to order Eastlink to relocate its POI from Pennant Point to the core of Halifax would minimally interfere with the operation of forces in pursuit of the achievement of the aforementioned policy objectives and would conform with the objective of ensuring that regulation, where required, is efficient and consistent with paragraph 7(f) of the Act.

64. The Commission considers that its determination to not require Eastlink to move its TPIA POI from its current location at Pennant Point is, in the circumstances, consistent with promoting competition, affordability in all regions including rural

⁶ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

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

⁸ The cited policy objectives are: 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 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 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.

areas, and promoting overall consumer interests, given that competitors will continue to be able to provide affordable services to Canadians. Moreover, while there may be additional costs associated with securing transport to Pennant Point as opposed to downtown POIs, there would also be costs to moving the location, which would ultimately be borne by the end customers. Additionally, in light of the unsuitability of the locations requested by City Wide and Eastlink's ongoing project to migrate Internet-related operations away from its existing facilities in the core of Halifax, the costs incurred would not, under current circumstances, promote affordability or consumer interests.

65. Furthermore, given the attributes associated with Eastlink's Pennant Point facilities and those of the company's relevant facilities in the core of Halifax, the decision to maintain the current TPIA POI location does not artificially favour carriers over wholesale Internet service providers and is thus consistent with subparagraph 1(b)(iv) of the 2006 Policy Direction.

Secretary General

Related documents

- *Bragg Communications Incorporated and Persona Communications Inc., both operating as Eastlink – Introduction of third-party Internet access services and destandardization of certain third-party Internet access service speeds*, Telecom Order CRTC 2016-201, 26 May 2016
- *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
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010