Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2026-107

PDF version

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Fibernetics Corporation – Application for relief regarding undue preference by Rogers Communications Canada Inc. relating to third-party Internet access interconnection

Summary

The Commission is working to increase choice and affordability of Internet services by promoting greater competition between service providers, while ensuring continued investments in high-quality networks. One way it supports this is by ensuring wholesale services are provided in accordance with a fair and transparent regulatory framework.

Fibernetics Corporation (Fibernetics) filed an application requesting that the Commission order Rogers Communications Canada Inc. (Rogers) to allow a third-party backhaul provider to interconnect inside Rogers' head-end facility in Calgary, Alberta, instead of at the meet-me point designated by Rogers. Fibernetics submitted that Rogers' requirement to interconnect at a meet-me point subjects Fibernetics to an undue disadvantage.

Based on the record of this proceeding, the Commission finds that Fibernetics is disadvantaged by Rogers' requirement, but that this disadvantage is not undue or unreasonable within the meaning of subsection 27(2) of the *Telecommunications Act*.

The Commission acknowledges that it may be ideal for Fibernetics to interconnect where its third-party backhaul provider already has fibre. In this case, however, Rogers' actions are consistent with the regulatory framework, since it has designated a common interconnection point at a reasonable location that complies with its approved tariff. The common interconnection point is also accessible to any customer of the service, including Fibernetics and its third-party backhaul provider.

The Commission continually monitors the effectiveness of its regulatory frameworks and expects all companies to negotiate in good faith. Companies are encouraged to submit a Part 1 application to the Commission when they cannot resolve disagreements related to the Commission's frameworks, or if they may have experienced unjust discrimination, undue preference, or unreasonable disadvantage. In these cases, the Commission will take action quickly to help resolve disputes.

A dissenting opinion by Commissioner Bram Abramson is attached to this decision.

Canada

Background

1. Fibernetics Corporation (Fibernetics) uses Rogers Communications Canada Inc.'s (Rogers) aggregated wholesale high-speed access service (Rogers' third-party Internet access [TPIA] service) at Rogers' Southern Alberta point of interconnection (POI) in Calgary to provide Internet services to its customers.

2. Fibernetics intends to replace Rogers' backhaul services to that POI with another provider.[1] To do so, Fibernetics requested that the third-party backhaul provider (hereafter, the Provider) interconnect with Rogers at Rogers' head-end facility. Rogers denied the request and indicated that interconnection for the Southern Alberta TPIA POI would only be available at Rogers' previously established meet-me point, located approximately half a kilometre away from Rogers' head-end facility. As a result, the Provider would need to extend fibre to the meet-me point.

Application

3. The Commission received an application from Fibernetics dated 7 October 2024, requesting that the Commission grant it relief with respect to Rogers' decision to enforce a POI location for the provision of its TPIA service. Fibernetics claims that this decision puts it and other carriers at an undue and unreasonable disadvantage, while providing Rogers with an undue preference.

4. Fibernetics requested that the Commission grant relief consisting of:

    - an order requiring Rogers to accept that interconnection be located within Rogers' head-end facility for connectivity between Rogers' TPIA service and the Provider's existing fibre;

    - a stay to give Fibernetics up to ten business days after the date of a Commission decision to continue with its TPIA service application; and

    - reimbursement from Rogers to Fibernetics for the monthly fees for the backhaul service which Rogers is currently providing, spanning the period from 16 October 2024 to the date that the service is cancelled by Fibernetics.

5. Fibernetics also suggested during this proceeding that the Commission mandate all TPIA providers to make their exact TPIA POI locations available under non-disclosure agreements to any Internet service provider that requests the locations.

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[1] Fibernetics intends to switch to TELUS Communications Inc. as a backhaul provider.

6. The Commission received interventions from Carry Telecom, the Competitive Network Operators of Canada (CNOC), Quebecor Media Inc. (Quebecor), and TekSavvy Solutions Inc. (TekSavvy). The Commission also received a response from Rogers.

Issue

7. The Commission has identified that the issue to be addressed in this decision is whether Rogers' requirement to interconnect at the meet-me point subjects Fibernetics to a disadvantage and provides Rogers with a corresponding preference. If so, the Commission must determine whether the requirement results in an undue or unreasonable disadvantage or preference.

Positions of parties

8. Fibernetics stated that it is placed at a disadvantage, because of Rogers' requirement for it to connect at the meet-me point designated by Rogers. It also stated that Rogers provides itself with a corresponding undue preference by having a POI for its own transport service within its head-end facility. To support this argument, Fibernetics submitted a copy of an appendix to a service agreement that lists the head-end facility as a location for the service. Fibernetics indicated that switching from Rogers to the Provider would result in lower monthly fees for backhaul service. Fibernetics submitted that extending fibre to the meet-me point would have an associated build cost and take at least 32 weeks to complete. Fibernetics also submitted that the Provider already has fibre into Rogers' head-end facility.

9. Carry Telecom, CNOC, Quebecor, and TekSavvy supported Fibernetics' application. Quebecor and TekSavvy submitted that they have experienced problems similar to those raised in Fibernetics' application when requesting TPIA service from Rogers in Alberta. Carry Telecom submitted examples of what it characterized as excessive pricing of backhaul services, discriminatory meet-me point practices, retaliatory price increases in response to using third-party backhaul services, and service quality issues with Rogers. Among other things, CNOC submitted that "[t]he increased costs associated with Rogers' practices create an artificial barrier to entry for competitors, reducing the availability of affordable [I]nternet options and stifling innovation within the market."

10. Rogers submitted that the Commission should deny the application. According to Rogers, TPIA customers must interconnect at a designated POI, pursuant to its tariff.[2] Rogers submitted that the

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[2] In the context of this decision the tariff is referenced as Rogers' TPIA tariff. In the proceeding, parties referenced Shaw Cablesystems GP (Shaw)'s TPIA Tariff 26300. Shaw merged with Rogers in 2023. As a result, in Shaw's historic serving territory the TPIA Tariff was still in Shaw's name at the time the application was filed. Item 100 of Shaw's tariff included the following definition: "Carrier" is the company owning the transmission facilities that are used by the Customer in order to interconnect to one or more POIs designated by Shaw. Tariff Item 102, 5.1 provides that: "Customers are responsible to interconnect to one or more POIs designated by Shaw. Interconnecting to a POI makes it possible for a Customer to provide services to Wholesale Customers or End-Users served by that POI. POI locations and interconnection procedures can be obtained from Shaw's CSG. A Customer wishing to interconnect at a POI may do so in

meet-me point location does not provide itself with an undue preference. According to Rogers, it does not offer third-party co-location services at its head-end facility since it is not an incumbent local exchange carrier and is not required to build, maintain, or accommodate co-location facilities for third parties. Rogers also stated that its head-end facility lacks the required space, equipment, and security protocols to facilitate TPIA. It submitted that providing access to the location would introduce security concerns and additional risks to critical infrastructure.

Commission's analysis

11. The Commission conducts an analysis of an allegation of undue or unreasonable preference or disadvantage under subsection 27(2) of the *Telecommunications Act* (the Act) in two phases. First, the Commission must determine whether the conduct in question constitutes a preference or subjects a person to a disadvantage. If so, 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 (in this case Rogers) to demonstrate that the preference or disadvantage is not undue or unreasonable.

Does Rogers' conduct constitute a preference or subject a person to disadvantage?

12. As Fibernetics explained in its application, it will incur additional costs as a result of Rogers' requirement for it to connect at the meet-me point designated by Rogers. It would not incur those costs if Rogers permitted the Provider to interconnect with Rogers inside the head-end facility. There are two categories of costs that Fibernetics will incur:

    - Installation costs: Fibernetics will incur costs for the Provider to extend fibre to the meet-me point.

    - Missed cost savings: Fibernetics will experience delays in using the Provider's service while the Provider extends fibre to the meet-me point. During this time, Fibernetics will not be able to realize the cost savings it would obtain from switching service providers.

13. As a result, in these particular circumstances, the Commission considers that Fibernetics is disadvantaged because it must either (i) incur the costs and delays to extend fibre to Rogers' meet-me point, or (ii) accept the increased monthly costs associated with continuing to use Rogers' service. In contrast, Rogers generates revenue from Fibernetics while it uses the service. Rogers also competes with Fibernetics in the retail Internet access market, these particular circumstances subject Fibernetics to a disadvantage and provide Rogers with a corresponding preference, since Fibernetics is likely to remain with Rogers' service to avoid incurring switching costs.

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accordance with the terms, conditions, rates and charges contained in the TPIA Service Agreement and the TPIA Tariff." The tariff has since been updated as Rogers Tariff 21530.

14. In light of the above, the Commission finds that Rogers' requirement to interconnect at the meet-me point subjects Fibernetics to a disadvantage and provides Rogers with a corresponding preference for the purpose of subsection 27(2) of the Act.

Is the preference or disadvantage undue or unreasonable?

15. The Commission considers that Rogers' requirement to interconnect at the meet-me point is consistent with its TPIA tariff. According to the tariff, customers are responsible for interconnecting to one or more POIs designated by Rogers. In this case, Rogers indicated that the designated POI for Southern Alberta is at the meet-me point address in Calgary.

16. The Commission does not view Rogers' existing interconnection within its head-end facility as a POI under Rogers' TPIA tariff. In this case, the Provider is not interconnected with Rogers for TPIA in the head-end facility, but rather for unrelated services that Rogers purchases for its own network use. Similarly, the Commission is not convinced that an appendix to a service agreement that lists the location of the service as the head-end facility demonstrates that Rogers has two different TPIA POIs.

17. Rogers also demonstrated that it consistently requires third-party backhaul providers to interconnect at the meet-me point. As part of its submissions, Rogers noted that it has fulfilled an order from another Internet service provider to the meet-me point. This demonstrates that Rogers is applying its tariff consistently to TPIA customers and not unduly discriminating against Fibernetics in this regard.

18. As described below, a requirement to interconnect at a point designated by Rogers is generally consistent with previous Commission determinations such as Telecom Order 2016-201 and Telecom Order 2022-79. This consistency applies as long as the requirement respects the Act by not leading to undue preference and unjust discrimination.

19. In Telecom Order 2016-201, the Commission noted that it had never mandated a specific location for a carrier's POI with respect to wholesale high-speed access services. However, wholesale high-speed access service providers must respect the Act and avoid undue preference and unjust discrimination in all aspects of the service they provide to competitors.

20. In Telecom Order 2022-79, the Commission considered a similar situation to the present dispute, in which City Wide Communications Inc. (City Wide) requested that the Commission order Bragg Communications Inc., carrying on business as Eastlink (Eastlink), to move its TPIA POI from Pennant Point, Nova Scotia, to a location in the Halifax core. The Commission denied the application. The Commission found that while Eastlink was subjecting City Wide to a

disadvantage, and providing itself with a corresponding advantage by means of its POI location, this disadvantage was not undue or unreasonable.[3]

21. The Commission considers that the rationale that led to Telecom Order 2022-79 can also be applied to Fibernetics' and Rogers' current dispute.

22. In the context of Fibernetics' and Rogers' current dispute, Rogers has an existing meet-me point that it designates for all TPIA customers, which is approximately half a kilometre from the head-end facility. In this specific case, the requirement to interconnect at the meet-me point results in additional costs to extend fibre to that location since the Provider already has fibre at Rogers' head-end facility. However, the Commission does not consider those costs to be undue or unreasonable. Rogers has designated an interconnection point at a reasonably close and accessible location that complies with its approved tariff and is applying the requirement consistently to TPIA customers. In addition, Fibernetics could recover the amount through the cost savings it would realize through lower monthly fees charged by the Provider for backhaul services.

23. In addition, in Telecom Order 2022-79, the Commission found it reasonable for a carrier establishing a POI to consider its existing network configuration and to limit the extent of any modifications needed for this configuration. The carrier may also consider the attributes of its various facilities and its future network plans.

24. In the context of Fibernetics' and Rogers'current dispute, the meet-me point is in a public location, accessible to backhaul transport providers, and provides unrestricted access to new backhaul customers or TPIA customers, upon request. The record does not indicate that the location is inefficient or that a more efficient location exists. From a network design perspective, Fibernetics' request to interconnect within Rogers' head-end facility would require Rogers to make modifications to facilitate TPIA and poses challenges related to access to the equipment within the facility. In contrast, the meet-me point is already set up to provide timely access for parties to interconnect their equipment and perform maintenance. As a result, the Commission is of the view that it would be appropriate for the Provider to interconnect at the designated meet-me point.

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[3] Among other things, the Commission found that Eastlink's decision to locate its aggregated TPIA POI at Pennant Point furthered the implementation of 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. It also furthered the policy 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. This better ensures the reliability of the TPIA service and downstream retail Internet access services. The Commission also found that although the location resulted in higher transport costs, they were not a significant barrier to competition.

25. In light of the above, the Commission considers that Rogers' requirement to interconnect at the meet-me point does not result in an undue or unreasonable disadvantage or preference contrary to subsection 27(2) of the Act.

Other matters raised in the proceeding

26. During the proceeding, Fibernetics suggested that the Commission should mandate TPIA providers to disclose the exact locations of their POIs to requesting Internet service providers, subject to appropriate non-disclosure agreements. This proceeding is a bilateral dispute between Fibernetics and Rogers. Fibernetics' proposal would involve broader policy considerations including increasing regulatory burden. This would impact other parties that did not participate in the proceeding and were not notified that the Commission would consider the matter. However, the Commission considers that Rogers' tariff already provides such a mechanism. In particular, Rogers' TPIA tariff indicates that details of its POI locations can be obtained from Rogers' Customer Service Group. As a result, the Commission is not imposing new requirements at this time.

27. Parties also raised allegations relating to other conduct by Rogers, including claims of retaliatory pricing practices when TPIA customers seek to transition to alternative backhaul providers. While the Commission acknowledges the seriousness of such allegations, it notes that these matters are not directly related to the dispute in question. The Commission reminds parties that TPIA customers may submit a Part 1 application to the Commission if they believe that such conduct constitutes unjust discrimination, undue preference, or unreasonable disadvantage.

Conclusion

28. In light of all of the above, the Commission finds that Rogers' requirement to interconnect at the meet-me point does not result in an undue or unreasonable disadvantage or preference contrary to subsection 27(2) of the Act. As a result, the Commission denies, by majority decision, the requested relief.

Secretary General

Dissenting opinion of Commissioner Bram Abramson

1. Consider carrier hotels: specialized data centres built around interconnection. Common and easy access to meet-me-room (MMR) cross-connections lets each carrier add, drop, and change network partners quickly and at relatively low cost. Capital expenditures or multi-week builds are not required each time. Switching costs are driven down. In this way, carrier hotels act as on-net buildings for collocated carriers, driving down switching costs in a way that makes them key nodal points for telecommunications competition.[1]

2. Of course, carrier hotels have long since moved on from one-room MMR facilities. Modern, high-scale carrier hotels now often deploy distributed MMRs interconnected by dense fibre backbones and high-count tie cables, creating a unified interconnection fabric that can span different floors, wings, and even buildings.

3. Rogers Communications Inc.'s (Rogers) cable head ends are not carrier hotels. Nor are they required to be. Neither the *Telecommunications Act* (the Act) nor the Commission's regulatory frameworks expressly oblige cable carriers to provide much collocation, or facilitate much third-party interconnection, within a head-end facility. Rather, the Commission regulates certain activities that take place within those facilities, including the two raised by Fibernetics Corporation's (Fibernetics') Part 1 application:

    a) Rogers' wholesale high-speed access service, known as Third Party Internet Access (TPIA),[2] is governed primarily by the conditions of Part G of its Access Services Tariff, up to the subscribing Customer's transmission service located at the TPIA POI.[3]

    b) The transmission service between the TPIA POI and the Customer's premises,[4] which the Customer may obtain from a Carrier such as a third party or Rogers itself,[5] is governed

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[1] See, in relation to analogous switching cost barriers in other telecommunications sectors, Jean-Jacques Laffont, Scott Marcus, Patrick Rey and Jean Tirole, "Internet Interconnection and the Off-Net-Cost Pricing Principle", *RAND Journal of Economics* 34:370 (2003) (bilateral Internet peering), and Tommy Staahl Gabrielsen and Steinar Vagstad, "Why is on-net traffic cheaper than off-net traffic? Access markup as a collusive device", *European Economic Review* 52:1 (2008) (mobile/fixed voice)

[2] Despite its name, TPIA service does not include Internet service. Rather, it interconnects local access facilities with the Internet service and, if applicable, other telecommunications services provided by the TPIA Customer.

[3] Rogers, *Access services tariff* (CRTC 21530), Part G ("Tariff for Third Party Internet Access", or "Rogers TPIA Tariff"), defining "Customer" as "a telecommunications service provider that subscribes to the TPIA Service" (Item 700, "Definitions").

[4] Rogers TPIA Tariff, Item 702 ("Terms and Conditions"), Section 5 ("Interconnection"), at paragraphs 5.1 and 5.2: "Customers are responsible to interconnect to one or more POIs designated by Rogers. Interconnecting to a POI makes it possible for a Customer to provide service to a Wholesale Customer or End-Users served by that POI"; "Customers are responsible for providing transmission facilities between their Premises and the POI."

[5] A "Carrier" is "the company owning the transmission facilities that are used by the Customer in order to interconnect to one or more POIs designated by Rogers". Rogers TPIA Tariff, Item 700.

primarily by the undue preference obligation prescribed at subsections 27(2) and 27(4) of the Act.[6]

4. The result is an asymmetry. One regulated service, TPIA, is choreographed by way of tariff. The other, an interconnection service lying immediately on the other side of the POI demarcation, is subject mainly to the two-part undue preference test. Unlike network tenants who may interconnect freely at operational cost within a carrier-neutral collocation facility, a head-end does not lend itself easily to the freer market dynamics simulated by third-party-to-third-party interconnection: the undue preference rule supplies the yardstick against which to measure the head-end operator's conduct.

5. This case turns on the latter function, a transmission service. It is about whether Rogers justified an asymmetry created where its own transport could reach the TPIA handoff without an external civil build, while Fibernetics' chosen Carrier could not.

The asymmetry at issue

6. In the past, Fibernetics designated another provider as the Carrier that provides a transmission facility between Fibernetics' own facility and Rogers' Calgary Heritage POI, paying "highly inflated rates". Now Fibernetics has negotiated rates that it does not qualify as "highly inflated" with another Carrier (New Carrier) already present within the Calgary Heritage POI and wishes to switch over to it.

7. Once Fibernetics paid the necessary fees to find out how to effect such a transition, it learned from Rogers that New Carrier could not cross-connect from New Carrier's Calgary Heritage facilities to the Calgary Heritage TPIA POI. Rogers' head-end facilities are not, after all, carrier hotels. There is no unified interconnection fabric made available to third parties. Instead, New Carrier must establish a second Calgary Heritage presence 500 metres away from the first. Rather than a meet-me cross-connect, which is a day-to-day operational decision, New Carrier must bridge the half-kilometre separation through substantial capital expenditures and a 32-week civil construction delay.

8. The Telecommunications Committee majority recognizes that Rogers, which connects seamlessly from its TPIA POI to its transmission facility and back to Fibernetics' premises, is advantaged relative to New Carrier, which must establish a separate connection at a distance. But the majority finds that Rogers' designated external POI vault is reasonably close and accessible, is required of all TPIA customers other than Rogers, and has not been shown to be inefficient. The majority underlines that the price spread between what Rogers charges and what New

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[6] *Forbearance – Services provided by non-dominant Canadian carriers,* Telecom Decision 95-19, Part II.B ("Accordingly, the Commission will continue to exercise powers and perform duties under subsections 27(2) and 27(4), with regard to issues related to access to the networks of competing carriers and the resale and sharing of their services."); see also Telecom Decision 2008-17, paragraphs 118-119 (incumbent local exchange carriers' analogous fibre-based transport facilities).

Carrier does is such that Fibernetics and New Carrier will recover their build costs within a reasonable period.[7] The majority concludes that requiring New Carrier to stand up a second point of presence at Calgary Heritage, where it is already collocated, in order to provide a transmission facility between the Calgary Heritage head-end and Fibernetics' premises, is consistent with Rogers' TPIA tariff.

9. With respect, those findings answer the wrong questions about the wrong regulatory regime. Commission oversight of the transmission services provided by Rogers and by New Carrier is guided by the undue preference rule, not the TPIA framework. The tariff matters for context. But absent more prescriptive regulation, the undue preference rule is the principal regulatory discipline for activity at a backhaul delivery location that merges cable carriers' incentive to extract high rents with the opportunity to do so.

The burden to be met

10. That rule's legal engine is subsection 27(4) of the Act: once the preference or disadvantage is found, Rogers must justify the specific asymmetry its architecture creates. As such the issue is not whether Rogers was required to operate its head-end like a carrier hotel. Nor is every outdoor meet-me-point designation suspect. However, Rogers made architectural, configuration, and pricing choices. It chose not to make a shared interconnection fabric or cross-connect cabling, or security protocols enabling their use, available at its head-end facility. It charged transport materially above competitive alternatives. It maintained an architecture under which Rogers' own Calgary Heritage transport point of presence could backhaul from the TPIA handoff without an additional point of presence or external civil build, whereas New Carrier's Calgary Heritage transport facilities could not. The question is whether these choices, taken together satisfy Rogers' undue preference obligations.

11. The application before the Commission in this proceeding is about whether interconnection, the tariff heading under which the untariffed transmission backhaul service at issue is described, is provided:

    - on fair, reasonable, and non-discriminatory terms,
    - in a manner that avoids unnecessary costs and significant barriers to competitive entry, and
    - does not result in an inefficient network architecture to the detriment of competition.[8]

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[7] Majority decision, paragraphs 22-24.
[8] These basic principles for interconnection are familiar to the Commission. See, for instance, Telecom Decision 97-8, paragraph 31.

The undue preference that Fibernetics raises is not as between itself and all other TPIA Customers, or between New Carrier and all other transmission backhaul providers: it is between the applicant and Rogers. The cost spread the majority raises is not as between two carriers in similar positions making different pricing decisions: it is between the applicant and a vertically-integrated party that both owns the facility, and competes with third parties, including New Carrier, seeking non-discriminatory access to the non-TPIA side of the transmission backhaul demarcation.

12. The majority's reasoning ultimately rests on the proposition that a disadvantage arising from network architecture may be acceptable if it is not shown to be extreme. But that is not the whole test the Commission must apply. Once the Commission finds a preference and corresponding disadvantage, subsection 27(4) requires more than general appeals to network design or operational context. The majority's findings about distance, cost recovery, and comparative efficiency address a different question: what subsection 27(4) requires is that Rogers point to evidence that explains why the specific differential treatment is necessary or proportionate, and neither undue nor unreasonable. As the Commission has made clear, this means showing the disadvantage will have neither a material adverse impact on the complainant, nor on achievement of the policy objectives set out in the Act.

13. With respect to material adverse impact to the complainant, the majority is satisfied that Fibernetics' opportunity to avoid transport pricing materially above competitive alternatives will leave it ahead, even after build costs. But that treats the price spread, sustained in significant part by the civil-build burden that deters competitive entry, as a cure for that burden. That is circular. The record contains no specific technical evidence from Rogers explaining why a functionally equivalent in-building or other non-civil-build arrangement, designed reasonably, could not have been feasible, safe, or proportionate. Rogers instead raised only general remarks about network design, security, and operational integrity.

14. Those general concerns are not enough. In the absence of specific evidence, the Commission cannot conclude that the preference is not undue or unreasonable. Rogers' remarks were buttressed by objections as to the impracticality of a security escort safeguard. But a carrier should not be able to rely on the absence of its own security escort protocols to justify an enduring competitive bottleneck. Security protocols, including escorts, are familiar in telecom environments ranging from data centres to multi-dwelling unit telecom rooms. Since New Carrier already has fibre infrastructure within the facility, the physical touchpoints needed in any case appear discrete and manageable, without creating an open-ended collocation right.

15. With respect to material adverse harm to policy goals, more importantly, the combination of high barriers to switching (a civil build) and sustained pricing materially above competitive alternatives (which Carry Telecom's, Quebecor's, and TekSavvy's evidence suggest is not an isolated practice) have a deleterious effect on fostering competition, improving consumer choice,

encouraging reasonably-priced services, and regulating wholesale high-speed access equitably.[9] In my view, such arrangements confer a preference and disadvantage. Rogers has not met its burden to demonstrate that they are not undue.

The road not taken

16. I therefore dissent. I would have ordered the parties to negotiate, within 60 days and with access to Commission mediation, arrangements that would eliminate the undue operational and pricing asymmetries identified in this proceeding. Those arrangements could include a technically feasible non-civil-build interconnection option, fairly priced access to Rogers' transport, or a combination of terms that lets Fibernetics' designated Carrier compete with Rogers' backhaul service without duplicative Calgary Heritage presences and civil builds. If the parties could not agree, I would resolve the matter through final offer arbitration, requiring each party to propose a solution that is technically feasible, proportionate, supported by evidence, and sufficient to remove the undue preference on terms that do not reproduce the same asymmetry through charges or conditions.

17. Finally, the issues raised in this proceeding resemble questions now before a panel of my colleagues in relation to aggregated and disaggregated high-speed access services, not least in view of the sharding of Rogers' western-provinces aggregated high-speed access service into 11 separate head-end territories. In that respect, the questions raised here in relation to interconnection and its siting as distinct issues, which have a rich history in telecommunications regulation,[10] are squarely among those "related to the availability of competitive transport services and the potential to reimpose associated regulatory obligations" that the Notice of Consultation pledged the Commission would later review.[11]

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[9] Act, paragraphs 7(c) (competitiveness of telecommunications) and 7(f) (fostering increased reliance on market forces); *Order issuing a direction to the CRTC on a renewed approach to telecommunications policy*, SOR/2023-23, paragraphs 8(a) (fostering competition), 8(c) (improving consumer choice), 8(e) (encouraging the provision at reasonable prices for consumers), and 13 (regulatory framework mandating the provision of wholesale services for fixed Internet to apply equitably).

[10] See, *e.g.,* WTO Negotiating Group on Basic Telecommunications, *Reference Paper* (1996), sections 2.2 (interconnection be ensured under non-discriminatory terms at rates and quality no less favourable than for its own like services, in a timely fashion at cost-oriented rates, at points subject to charges that reflect the cost of construction), 2.3 (procedures applicable to be made publicly available), 2.4 (transparent publication of interconnection agreements or a reference interconnection offer), and 2.5 (dispute settlement by a regulatory body or other independent domestic body).

[11] Telecom Notice of Consultation 2023-56, paragraph 79.

Related documents

- *Notice of hearing – Review of the wholesale high-speed access service framework*, Telecom Notice of Consultation CRTC 2023-56, 8 March 2023, as amended by Telecom Notices of Consultation CRTC 2023-56-1, 11 May 2023; 2023-56-2, 4 July 2023; 2023-56-3, 6 November 2023; and 2023-56-4, 8 April 2024

- *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*, Telecom Order CRTC 2022-79, 25 March 2022

- *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

- *Revised regulatory framework for wholesale services and definition of essential service,* Telecom Decision CRTC 2008-17, 3 March 2008

- *Local competition,* Telecom Decision 97-8, 1 May 1997

- *Forbearance – Services provided by non-dominant Canadian carriers,* Telecom Decision 95-19, 8 September 1995