



Telecom Decision CRTC 2006-36

Ottawa, 2 June 2006

Persona Communications Corp. – Third-party Internet access and related issues

Reference: 8740-R9-200515124

*In this Decision, the Commission **approves** Persona Communications Corp.'s (Persona) requests that (1) references to its former name in its tariffs, Regional Cablesystems Inc., be changed to its new corporate name, Persona; and (2) tariff pages associated with the company's retail high-speed Internet access for residential and business customers be withdrawn.*

*In addition, the Commission **approves on an interim basis** Persona's proposed revisions to its General Tariff to establish rates, terms, and conditions for third-party Internet access. The application of this tariff is suspended temporarily with respect to Internet service providers currently connected to Persona's network pending disposition of various issues identified in this Decision.*

The application

1. The Commission received an application by Persona Communications Corp. (Persona), under cover of Tariff Notice 2 dated 12 December 2005, as amended on 24 January 2006 by Tariff Notice 2A, proposing revisions to its General Tariff in order to:
 - a) reflect the change in its corporate name from Regional Cablesystems Inc. (Regional) to Persona Communications Corp.;
 - b) withdraw tariff pages associated with retail high-speed Internet access for residential and business customers; and
 - c) introduce item 101 to establish rates, terms, and conditions for access by third-party Internet service providers (ISPs) to Persona's network based on the tariff approved for Rogers Communications Inc. (RCI).

Process

2. Vianet Internet Solutions and Unitz Online (Vianet and Unitz), two ISPs operating their high-speed Internet service (IS) over Persona's network, jointly filed comments dated 16 December and 28 December 2005, and additional comments dated 31 January, 16 February, 1 March, and 3 March 2006. Persona filed reply comments dated 20 January, 24 February and 22 March 2006.

3. In addition, Unitz provided the Commission with five petitions, signed by a total of 142 individuals, dated 16 February, 24 February, 3 March, 20 March, and 10 April 2006. Unitz also provided a copy of a letter dated 24 February 2006 from Diane Marleau, MP for Sudbury, to the Honourable Beverley Oda, Minister of Canadian Heritage. The Commission received comments from Raymond Bonin, MP for Nickel Belt; Charlie Angus, MP for Timmins James Bay, Gilles Bisson, MPP for Timmins James Bay, and Shelley Martel, MPP for Nickel Belt. In addition, the Commission received comments from the Greater Sudbury Development Corporation; the City of Timmins, the City of Temiskaming Shores, the City of Elliot Lake, the Town of Iroquois Falls, the Board of Directors of NetCentral Community Communications Network and from WhittmanHart Interactive. In this Decision, these interveners are collectively referred to as the "community interveners."

Regulatory framework

4. In *Regulation under the Telecommunications Act of certain telecommunications services offered by "broadcast carriers,"* Telecom Decision CRTC 98-9, 9 July 1998 (Decision 98-9), the Commission forbore from regulating the rates at which broadcast carriers offered retail-level IS to their customers.
5. In *Regulation under the Telecommunications Act of cable carriers' access services,* Telecom Decision CRTC 99-8, 6 July 1999 (Decision 99-8), the Commission gave smaller cable carriers the option of filing for approval of their own third-party Internet access (TPIA) rates based on their incremental costs. As an alternative, the Commission determined that smaller cable carriers could base their TPIA rates on the costs and rates approved for larger cable carriers.
6. In *Definitions of larger cable carrier and the creation of confidentiality agreements,* Order CRTC 2000-317, 18 April 2000 (Order 2000-317), the Commission established additional requirements governing access by ISPs when offering service over cable networks. In particular, the Commission determined that incumbent cable carriers who offered higher-speed retail IS and underlying broadband access services were required to enter into a standardized non-disclosure agreement.
7. In *Terms and rates approved for large cable carriers' higher speed access service,* Order CRTC 2000-789, 21 August 2000, as amended by Order CRTC 2000-789-1, 31 January 2001, the Commission approved terms and transport rates for the provision of higher-speed access services to ISPs by Cogeco Cable Canada Inc., RCI, Shaw Communications Inc., and Vidéotron ltée (collectively, the larger carriers).
8. In *Point of interconnection and service charge rates, terms and conditions for third party Internet access using cable networks,* Telecom Decision CRTC 2004-69, 2 November 2004, as amended by Telecom Decision CRTC 2004-69-1, 24 November 2004, and Telecom Decision CRTC 2004-69-2, 3 February 2005 (Decision 2004-69), the Commission approved on an interim basis point of interconnection (POI) rates and service charges for the interconnection of ISPs to the networks of the larger cable carriers. In addition, the Commission approved the POI locations proposed by the larger cable carriers.

9. In *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005, as amended by Telecom Decision CRTC 2005-28-1, 30 June 2005 (Decision 2005-28), the Commission directed the larger cable carriers to remove a restriction in their TPIA tariffs to allow the provision of voice over Internet protocol (VoIP) services.
10. In *Shaw Cablesystems G.P. – Third Party Internet Access service*, Telecom Order CRTC 2006-55, 20 March 2006 (Order 2006-55), the Commission granted interim approval, with modifications, to Shaw Cablesystems G.P.'s (Shaw) proposed revisions to rates for its TPIA service, which consisted of TPIA Transport-Lite, TPIA Transport-Regular, and TPIA Transport-Xtreme.

Name change and withdrawal of tariff pages

11. In its application, Persona sought approval to change the reference in its tariffs from Regional to Persona. Persona also requested approval to withdraw tariff pages associated with its retail high-speed Internet access for residential and business customers.
12. The Commission received no comments from the interveners with respect to these issues.
13. The Commission considers that it is appropriate that the tariffs should refer to Persona, given that Persona is the new corporate name.
14. The Commission notes that it forbore from regulating retail-level IS in Decision 98-9 and considers that Persona's proposal to withdraw its associated tariff pages is consistent with the Commission's determination in Decision 98-9.
15. Accordingly, the Commission **approves** the name change in the tariffs to Persona and the withdrawal of tariff pages associated with retail high-speed Internet access for residential and business customers. These changes become effective as of the date of this Decision.

Requests for additional process

Positions of parties

16. Vianet and Unitz argued that a regulatory framework for access to Persona's network was necessary but requested a three-month extension to the tariff approval process and the issuance of a public notice to provide parties with the opportunity to pose interrogatories to Persona and to file detailed comments. Vianet and Unitz and the community interveners also requested oral hearings. The latter expressed concerns that approval of Persona's application might result in, among other things, adverse impact on services, loss of competition, and higher prices for consumers.
17. Persona strongly objected to the petitions filed by Unitz and submitted that Unitz had provided inaccurate information to community interveners. Persona submitted that Sudbury was one of the most competitive high-speed IS markets in Canada.

Commission's analysis and determinations

18. The Commission notes that the proceeding to consider Persona's tariff applications has generated a record significantly more extensive than what is contemplated under the *CRTC Telecommunications Rules of Procedure*. The Commission considers that the numerous rounds of comments and reply comments have allowed all parties to this proceeding an opportunity to make meaningful representations with respect to Persona's applications. Accordingly, the Commission **denies** the various requests for additional process in this matter made by Vianet and Unitz, as well as by the community interveners.

Issues raised by interveners

Positions of parties

19. Vianet and Unitz asserted that Persona's tariff proposal represented a significant departure from the current arrangements they had with Persona, and made submissions with respect to this matter. They also made submissions regarding POIs, service levels, static IP addresses, bundled billing and other transitional issues, as well as undue preference.

The proposed tariff versus current arrangements

20. Vianet and Unitz proposed changes to the tariff based on their current arrangements with Persona. They expressed concerns about moving to a uniform TPIA tariff and submitted that its approval could result in service disconnections, adversely affect rates for customers and competitors, harm them financially, and possibly force them to stop operating. They submitted that RCI's TPIA tariff was outdated and noted that RCI was developing a new tariff in collaboration with the ISP community.
21. Vianet and Unitz submitted that the Commission could use their existing arrangements with Persona to derive compensatory rates; thereby ensuring that customers would continue to receive IS from their existing ISPs. Vianet and Unitz also argued that volume discount arrangements should have been included in the tariff proposal.
22. Persona submitted that adopting the previously approved tariff of one of the larger carriers was fully consistent with the Commission determinations in Decision 99-8 and that to proceed in the manner suggested by Vianet and Unitz would place the company in non-compliance. Persona further submitted that RCI's tariff was up to date, since it included amendments as recent as June 2005.
23. Persona submitted that while approval of its application would result in changes to its previous arrangements with ISPs, the outcome would be a tariff with fair and equitable rates, terms, and conditions for current and future TPIA customers. Persona indicated that it would make all possible efforts to ensure that neither it nor ISPs would lose customers through the transition.

Points of interconnection

24. In its application, Persona proposed to establish a single POI in Sudbury, submitting that this was a logical location since it was the largest centre in its serving area. Persona noted that it

leased facilities to transport its Internet traffic from Timmins to Sudbury, and that ISPs could do likewise in order to interconnect with the proposed POI in Sudbury. Persona further submitted that the record of the TPIA proceeding involving the larger carriers demonstrated that ISPs were requesting consolidation of the number of POIs.

25. Vianet and Unitz opposed the establishment of a single POI in Sudbury. They indicated that their current POIs were located at a switch in each ISP's equipment room and were managed by Persona. Vianet and Unitz submitted that ISPs were required to pay a substantial service charge to bring facilities to their premises and that Persona's proposal would force them to abandon their existing POIs and to incur costly and unnecessary expenses to interconnect at another POI. They also argued that if a single POI solution were chosen, they would prefer that the POI be located in the city in which they operated.

Service levels

26. Vianet and Unitz noted that there was no reference to cable modem speed settings in Persona's application. Vianet and Unitz submitted that the proposed rates and charges for TPIA service elements failed to take account of the several thousand ISP customers who subscribed to what in current agreements was referred to as "Lite" service. Accordingly, they submitted that, under the proposed tariff, ISPs would not be able to offer the entire range of service levels that subscribers currently received, and that some subscribers could lose connectivity. They also submitted that including usage limitations in the tariff was inappropriate, since all levels of IS on Persona's network had unlimited data transfer.
27. Vianet and Unitz submitted that the proposed tariff was restricted to residential customers, even though both they and Persona provided IS to businesses. They requested that the Commission direct Persona to file tariffs for the various cable modem configurations it was offering to business customers.
28. Persona submitted that all the service levels it offered to its own customers would be available to ISPs under the proposed tariff, and that if a TPIA tariff for different service levels was approved for a larger carrier, it would request the Commission's approval to apply it. Persona submitted that in the meantime, third-party ISPs could offer a range of service levels to their customers. Persona indicated that while usage limitations were not currently employed, it reserved the right to apply them to ensure that its network capacity was not exceeded and that traffic volume would remain manageable. Persona indicated that these were standard terms, which are included in RCI's tariff.
29. Persona submitted that although it was not opposed to providing service to small- and medium-sized businesses, it was not planning to allow servers or larger commercial users on its network.
30. In additional comments, Vianet and Unitz submitted that Persona was offering new service levels to its retail customers, but not to competing ISPs. They submitted that this violated subsection 27(2) of the *Telecommunications Act* (the Act), since Persona was using its facilities to confer an undue preference to itself.

Static IP addresses

31. Persona submitted that, consistent with RCI's tariff, it was not proposing to provide static IP addresses to ISPs.
32. Vianet and Unitz submitted that Persona's proposal would eliminate static IP addresses and that many business customers required static IP addresses.
33. In reply, Persona argued that limits on the total number of IP addresses available to each segment of the network made the use of static addresses problematic, since even when they were not in use, these addresses would not be available to other customers.
34. Vianet and Unitz submitted that while static IP addresses were issued from a pool of addresses, there would be more than a sufficient number of IP addresses available to handle non-static customers. Vianet and Unitz indicated that the businesses that required static addresses had online servers that needed to be accessed at all times, and argued that these addresses should never become available for anyone else to use. Vianet and Unitz further submitted that there were always more dynamic IP addresses available in each segment of the network than there were subscribers.

Bundled billing and other transitional issues

35. Vianet and Unitz submitted that there were "bundled billing customers" who received their IS from an ISP but were billed for this service by Persona on the same invoice as their cable television service. They pointed out that Persona had not included a proposal on how to migrate these customers from its billing platform to the ISPs' billing platforms, nor had it allowed for an adequate period of time for such a migration. They expressed concerns that these customers might be transferred to Persona without their consent if this issue was not resolved prior to the approval of the proposed tariff.
36. Vianet and Unitz indicated that, until now, Persona has provided and maintained end-users' modems for all their subscribers and was compensated by a rental fee charged to ISPs. They submitted that while they did not object to becoming responsible for the cable modems, details had to be mapped out prior to the implementation of the proposed tariff.
37. Persona indicated that it was willing to negotiate new commercial agreements with existing ISPs for services falling outside the proposed tariff, such as billing and service call arrangements. Persona submitted that ISPs would also have the option of performing these functions themselves. With regard to modems, Persona submitted that some ISPs might want to own their own modems while others might rent them from the company. The company stated that it was willing to sell the modems that they currently used to ISPs at reasonable rates. Persona asserted that the customers' best interests would be paramount in these negotiations, to minimize service disruption.

Undue preference

38. Vianet and Unitz submitted that Persona had recently renewed its TPIA agreement with Ontera, another ISP operating over Persona's network, and indicated that this agreement would be

in effect for another year, in spite of the approval of the proposed tariff. Vianet and Unitz submitted that this arrangement violated subsection 27(2) of the Act, since it would confer an undue preference on Ontera.

39. In reply, Persona indicated that the agreement it had with Ontera had renewed automatically for one year, pursuant to a clause in the agreement. Persona submitted that once the agreement expired, the terms and conditions of the tariff would apply to Ontera.

Issues pertaining to a previous application

40. Vianet and Unitz raised issues pertaining to a Part VI application they had previously filed with the Commission, where they had alleged inappropriate actions by Persona towards Vianet's and Unitz's customers. They submitted that they would prefer to resolve these issues outside of the tariff application proceeding, but would also be prepared to deal with them within that proceeding.
41. Persona replied that following the filing of the complaint, which had been dismissed by the Commission, the company had reviewed the procedures for its frontline staff and was now confident that the issues raised by Vianet and Unitz in their Part VI application had been resolved.

Commission's analysis and determinations

42. As a preliminary matter, the Commission considers that issues pertaining to the Part VI application previously filed by Vianet and Unitz fall outside the scope of this proceeding.
43. The Commission notes that based on the record of this proceeding, Persona has had a number of negotiated high-speed IS arrangements in place with several ISPs since 1999. The Commission notes that through filing the proposed tariff, Persona is seeking to bring itself into regulatory compliance and to standardize its arrangements with ISPs.
44. The Commission notes that Persona's proposed tariff and non-disclosure agreement replicate RCI's approved tariff and non-disclosure agreement, and that its proposed tariff includes amendments related to VoIP pursuant to Decision 2005-28. The Commission considers that Persona's application is consistent with the Commission's determinations in Decisions 99-8 and 2005-28, and in Order 2000-317. Accordingly, the Commission considers that Persona's application should be approved on an interim basis.
45. The Commission considers, however, that the proposed TPIA tariff represents a significant departure from the current arrangements between Persona and ISPs. The Commission notes that some of these arrangements have been in place for some time and that the company's proposal raises significant cost implications for ISPs that have current arrangements with Persona (the existing ISPs).
46. The Commission notes that in Decision 2004-69, it determined that access at aggregated traffic points was required to foster competition and that ISPs should be able to connect at those points to access a maximum number of cable customers from the fewest POIs. While the Commission generally considers that POI aggregation is the preferred approach, it recognizes

that existing ISPs have incurred significant expense to bring a POI to their premises. The Commission therefore considers that it would not be reasonable to require existing ISPs to interconnect at a single POI in Sudbury at this time. Rather, the Commission considers that Persona should explain why a single POI in Sudbury would be appropriate for existing ISPs. Accordingly, the Commission considers that the application of the TPIA tariff should be suspended and current arrangements extended for existing ISPs, pending the disposition of the POI site issue or for six months, whichever is later, to allow for an orderly transition to the tariffed arrangements.

47. However, with respect to new ISPs requesting Persona's TPIA service, the Commission considers that Persona's proposal to establish a single POI in Sudbury is reasonable.
48. The Commission notes that Persona's contract with Ontera was automatically renewed for one year in the fall of 2005, pursuant to a clause in the contract and that the tariff would apply to this company once the agreement expires in 2006. In this regard, the Commission considers that Ontera should be migrated to the tariff at the same time as other existing ISPs.
49. The Commission notes Persona's confirmation that all the service levels it offers to its own retail customers would be available to competing ISPs under the proposed tariff. The Commission also notes Persona's submission that should TPIA tariffs reflecting different service levels be approved for other carriers, it would request the Commission's approval to apply one of these tariffs. In this regard, the Commission notes that some of the larger carriers have submitted tariff applications in order to revise their TPIA tariffs to include new service levels. The Commission notes that it recently granted interim approval to Shaw's request to offer "TPIA Transport-Lite" and "TPIA Transport-Xtreme" services in Order 2006-55. The Commission considers that Persona should file tariffs for the provision of services such as those approved for Shaw in Order 2006-55.
50. The Commission notes Persona's statement that the proposed tariff does not provide for the connection of servers to its network or for static IP addresses to be provided to ISPs. In this regard, the Commission notes that the larger carriers' TPIA tariffs do not require them to offer static IP addresses. The Commission, however, notes that the CRTC Interconnection Steering Committee (CISC) is currently investigating the various technical and operational issues related to the provision of static IP addresses via TPIA. Consequently, the Commission considers that it would be premature at this time to render a final determination on this issue. In the meantime, the Commission is of the view that Persona's proposal to only offer dynamic IP addresses is reasonable with respect to new ISP customers. With respect to existing ISP customers, to the extent that Persona is currently providing static IP addresses, the Commission considers that it should continue to do so for a period of one year from the date of this Decision, or until a final determination is made on the matter by CISC, whichever is later.
51. The Commission also notes that, based on the record of this proceeding, Persona appears to be providing ISPs with services that are not captured by the proposed tariff, such as billing, service calls, maintenance arrangements, and modem supply and maintenance. The Commission considers that existing ISPs and Persona should be given a reasonable amount of time to address how these issues should be dealt with in the future. In the Commission's view, a six-month transition period would be reasonable, during which, to the extent that Persona continues to perform such functions, the company will need to file appropriate tariff proposals.

52. In light of the above, the Commission **approves on an interim basis** Persona's proposed General Tariff establishing rates, terms, and conditions for TPIA, effective as of the date of this Decision. However, the application of the tariff is suspended for existing ISPs pending the disposition of the matter of the POI location or for a six-month period, whichever is later. Further, the Commission directs Persona to migrate Ontera to the tariff at the same time as other existing ISPs.

Further directions

53. Until the matter of the POI location issue is disposed of by the Commission, the Commission determines that existing ISPs are able to retain their existing POIs and operating arrangements, and will not be required to interconnect at Sudbury.
54. The Commission directs Persona to provide, **within 45 days from the date of this Decision**, serving a copy on existing ISPs, a detailed description, including a network diagram of the current configuration, to explain the disadvantages of the current configuration and to show cause why a single POI in Sudbury is appropriate for existing ISPs. Existing ISPs may, **within 21 days of Persona's submission**, file comments, serving a copy on Persona.
55. The Commission also directs Persona to file, by **4 July 2006**, proposed tariffs for the provision of services such as the "TPIA Transport-Lite" and "TPIA Transport-Xtreme" services approved for Shaw in Order 2006-55.
56. To the extent that Persona is currently providing static IP addresses, the Commission directs Persona to continue to do so for a period of one year from the date of this Decision, or until a final determination is made on the matter by CISC, whichever is later.
57. Finally, the Commission directs existing ISPs and Persona to update the Commission **within 90 days from the date of this Decision** on the status of discussions regarding services currently provided by Persona, such as billing, service calls, maintenance arrangements, and modem supply and maintenance.
58. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.

Secretary General

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