



Telecom Decision CRTC 2007-4

Ottawa, 31 January 2007

Persona Communications Corp. – Point of interconnection location and related matters

Reference: 8740-R9-200515124

In this Decision, the Commission determines that Persona Communications Corp.'s (Persona) Third Party Internet Access Service (TPIA Service) tariff, as modified by this Decision, is to apply to Internet service providers currently interconnected with Persona within 30 days of the date of this Decision.

In addition, the Commission approves Persona's four proposed points of interconnection for its TPIA Service in Sudbury, Timmins, Kapuskasing and New Liskeard.

The application

1. On 18 July 2006, Persona Communications Corp. (Persona) submitted an application as a follow-up to *Persona Communications Corp. – Third-party Internet access and related issues*, Telecom Decision CRTC 2006-36, 2 June 2006 (Decision 2006-36), seeking the Commission's approval to:
 - apply its Third Party Internet Access Service tariff (TPIA tariff), as modified by its proposed Point of Interconnection (POI) location regime, to the Internet service providers (ISPs) currently providing high-speed Internet services over its network; and
 - modify the POI regime under its TPIA tariff for ISPs, from a single POI in Sudbury to four POIs, in each of Sudbury, Timmins, Kapuskasing and New Liskeard.

Process

2. On 4 August 2006, Vianet Internet Solutions and Unitz Online (Vianet and Unitz) jointly filed comments.

Background

3. 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 determined that where a broadcast carrier that is an incumbent cable company or an incumbent telephone company provides higher-speed access services using distribution facilities that it also uses to provide a broadcasting service, the higher-speed access services are to be offered on a tariffed basis.

4. 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 small cable carriers the option of filing for approval TPIA rates based on their incremental costs, or on the costs and rates approved for Cogeco Cable Canada Inc., Rogers Communications Inc. (RCI), Shaw Communications Inc., and Vidéotron ltée (collectively, the large cable carriers).
5. 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 (Order 2000-789), the Commission approved terms and transport rates for the large cable carriers for the provision of high-speed access services to ISPs.
6. 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 POI rates and service charges for the interconnection of ISPs to the networks of the large cable carriers.
7. In Decision 2006-36, the Commission approved on an interim basis Persona's proposed General Tariff, which set out rates, terms, and conditions for the company's TPIA Service. The Commission noted that Persona's TPIA tariff replicated RCI's approved tariff. The Commission considered that Persona's proposed TPIA tariff was consistent with its determination in Decision 99-8 and 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, as well as in *Definitions of larger cable carrier and the creation of confidentiality agreements*, Order CRTC 2000-317, 18 April 2000.
8. In the proceeding that led to Decision 2006-36, Persona had 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. Vianet and Unitz had jointly opposed Persona's proposal by submitting that their current POIs were located at a switch in their respective equipment rooms and that they had paid a substantial charge to bring the facilities to their premises. They argued that Persona's proposal would force them to abandon their existing POIs and to incur costly and unnecessary expenses to interconnect at another POI. However, they also indicated that if a single POI solution were chosen, they would prefer that this POI be located in the city in which they operated.
9. In Decision 2006-36, the Commission noted that Persona had a number of negotiated high-speed Internet service arrangements in place with several ISPs (the existing ISPs). The Commission determined that since the existing ISPs had incurred significant expenses to bring a POI to their premises, it would not be reasonable to require the existing ISPs to interconnect at a single POI in Sudbury at that time. The Commission directed Persona to provide it with a detailed description, including a network diagram, to explain the disadvantages of the current POI configurations with the existing ISPs and to show cause why a single POI in Sudbury would be appropriate for existing ISPs. Existing ISPs were given an opportunity to file comments on Persona's proposal.

10. Accordingly, the Commission suspended the application of Persona's TPIA tariff for existing ISPs, pending the disposition of the matter of the POI location or for a six-month period, whichever was later.
11. In this Decision, the Commission will consider Persona's current POI arrangements with Vianet and Unitz and the appropriateness of making existing ISPs subject to the TPIA tariff.

The current POI arrangements with Vianet and Unitz, and whether Vianet and Unitz should be subject to the TPIA tariff

Positions of parties

Persona

12. In its application of 18 July 2006, Persona provided network diagrams to show the current POI configuration for the existing ISPs. Persona explained that a multi-port switch was installed at each ISP's premises and that this switch was a point of presence (POP), rather than the POI itself, as had been argued by Vianet and Unitz in the proceeding leading to Decision 2006-36. Persona also explained that this switch accommodated the provision of ancillary services as well as the transport from the existing ISP's premises to Persona's POI. Persona indicated that the POI was established at its headend locations.
13. Persona indicated that since the POI was located at a switch within its headend locations, each ISP would be required to connect from its premises to Persona's POI. Persona submitted that it could establish connection services from the ISP's location to its POI at competitive rates, or the ISP could use a third-party bandwidth provider. Persona also submitted that if the ISP elected not to use Persona's transport services, Persona would provide the ISP with non-segregated rack space and associated power to house and operate the ISP's terminal equipment, as specified in the TPIA tariff and service agreement.
14. Persona submitted that the POI transport should be separated from the delivery infrastructure in place for ancillary services, to ensure proper management of service parameters and to minimize exposure in the event that either party discontinued the subscription to ancillary services.

Vianet and Unitz

15. Vianet and Unitz submitted that Persona had failed to demonstrate the disadvantages of the network arrangements that were currently in place for them. They also submitted that Persona's proposal reinforced the need to retain those interconnection arrangements to ensure continued competition and consumer choice. Vianet and Unitz argued that it appeared that Persona was proposing that they be required to abandon the existing transport facilities that connected their POPs to Persona's headend POI and that they must, instead, either build or lease new facilities to the Persona headend POI. They submitted that Persona's proposal was unnecessary, inefficient and wasteful.
16. With regard to Persona's submission that the POI transport should be separated from the delivery infrastructure in place for ancillary services, Vianet and Unitz submitted that during the years that their existing arrangements had been in place, the modification of an ancillary

service had never affected the connectivity of customers. They also submitted that if an error occurred, it would be repaired within minutes. They requested that the existing arrangements be maintained.

Commission's analysis and determinations

17. The Commission notes that in the proceeding that led to Decision 2006-36, Persona indicated that the existing ISPs had concluded the current arrangements with Persona's predecessor, Regional Cablesystems Inc. (Regional), while they were the sole providers of high-speed Internet services to Regional's customers. At that time, Regional did not offer its own high-speed Internet service.
18. The Commission notes that the business relationship between Persona and the existing ISPs changed when Persona acquired Regional in 2005 and started to provide its own high-speed Internet service in competition with Vianet and Unitz. The Commission also notes that since Persona started offering its own Internet services, it has been required to provide TPIA Service pursuant to an approved tariff, consistent with Decision 98-9.
19. Persona's diagram of the existing ISPs' current configuration shows that Persona is responsible for transporting each ISP's traffic over Persona's facilities from Persona's headend to the switch located at each ISP's premises.
20. By contrast, Persona's TPIA tariff, which as noted above replicates RCI's approved tariff, specifies that the ISPs must arrange and pay for the transport of TPIA traffic from its premises to the POI location identified by Persona.
21. The Commission considers that a fundamental principle underpinning the TPIA model to date is that equal treatment should be afforded to all ISPs that wish to interconnect with a cable carrier's network. Under the TPIA model, all ISPs are required to interconnect at a shared POI location identified by the cable carrier, which is typically situated at the carrier's headend.
22. The Commission acknowledges that, as stated in Decision 2006-36, Persona's TPIA tariff represents a significant departure from the current arrangements between Persona and the existing ISPs. Notwithstanding the impact on the existing ISPs, the Commission considers that the principle of equal treatment should apply to the interconnection arrangements between Persona and all ISPs. The Commission further considers that Persona would be conferring an undue preference on the existing ISPs if the current interconnection arrangements were maintained.
23. The Commission notes that the parties submitted conflicting arguments with respect to the matter of transport facilities for POI traffic and ancillary services. The Commission further notes that the issues for determination in this proceeding relate to the provision of TPIA Service by Persona to ISPs, including Vianet and Unitz. In this respect, the Commission notes that generally the provision of ancillary services by non-dominant carriers is not subject to Commission oversight, except to the extent that, for instance, it were to adversely impact, in this case, the provision of TPIA service by Persona. Based on the record of this proceeding, it appears to the Commission that Persona is not making TPIA Service contingent on Vianet and Unitz having separate transport facilities for ancillary services. If this situation were to change, it would be open to Vianet and Unitz to bring the matter before the Commission.

24. Given that the current POI configuration for the existing ISPs is not consistent with the TPIA model approved for the cable carriers and that it gives Vianet and Unitz an undue preference relative to new ISPs, the Commission determines that Vianet and Unitz should be migrated to the TPIA tariff, as modified by this Decision.

Proposed locations for the POIs

Positions of parties

Persona

25. In its application of 18 July 2006, Persona proposed to modify its POI regime under its TPIA tariff for ISPs from a single POI in Sudbury to four POIs, in each of Sudbury, Timmins, Kapuskasing and New Liskeard. Persona submitted that while establishing more than one POI in the same region would result in increased operating complexities and costs for itself, its proposal was intended to recognize the dispersed operations of the existing ISPs and the distances involved.

Vianet and Unitz

26. Vianet and Unitz submitted that Persona's proposal to establish POIs at four locations would result in the maximum cost and disadvantage to competing ISPs.

Commission's analysis and determinations

27. In Decision 2006-36, the Commission had asked Persona to show cause why a single POI in Sudbury would be appropriate for existing ISPs. Given that Persona is no longer proposing a single POI in Sudbury, but rather four POIs in four different municipalities, the Commission considers that the matter of the appropriateness of a single POI in Sudbury is moot.
28. The Commission notes that in Decision 2004-69, it was of the view 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. The Commission further notes that it was also of the view that alternate POI locations in local communities with lesser traffic aggregation would provide ISPs with greater flexibility with respect to interconnection. However, the Commission considered that the provision of such alternate POI locations would generally require the cable companies to incur additional costs at local points to handle Internet traffic for ISPs locally.
29. Upon review of Persona's diagrams, the Commission notes that the existing ISPs are currently interconnected in Sudbury, Timmins, Kapuskasing and New Liskeard, which are the same locations as proposed by Persona in its 18 July 2006 application. Given this, the Commission considers that the four POI arrangements proposed by Persona would likely offer ISPs more options and greater flexibility with respect to the matter of interconnection than the single POI in Sudbury originally proposed by Persona.
30. Further, the Commission considers that Vianet and Unitz should have the right to choose whether to interconnect at one or more of the four locations proposed by Persona.

Charges applicable to existing ISPs

31. The Commission notes Vianet's and Unitz's position that approval of Persona's proposal would cause them to abandon their existing transport facilities, which would result in additional costs for the ISPs. The Commission considers that in light of the impact of the migration to the TPIA model on the existing ISPs, it would be appropriate to establish the following transitory provisions:
 - Persona is to waive the ISP Registration service charge of \$369.73 for existing ISPs, since they have arrangements with Persona; and
 - since the network modification was initiated by Persona, Persona is to waive the charge for the Initial Report for each POI for existing ISPs in the cities where they are currently interconnected. However, the charge for the Initial Report should apply if the existing ISPs interconnect in cities where they were not previously offering service.

Timing of the application of the TPIA tariff to existing ISPs

32. As previously noted in Decision 2006-36, the Commission suspended the application of Persona's TPIA tariff for existing ISPs, pending the disposition of the matter of the POI location or for a six-month period, whichever was the later.
33. The Commission notes that Vianet and Unitz have known for a considerable amount of time that they could be made subject to the TPIA tariff. In the circumstances, the Commission considers that Persona's TPIA tariff, as modified by this Decision, is to apply to Vianet and Unitz within 30 days of the date of this Decision.
34. The Commission also notes that in Decision 2006-36, Vianet and Unitz submitted that Persona had an agreement for the provision of TPIA Service with a third ISP, namely Ontera. The Commission considered that Ontera should be migrated to the TPIA tariff at the same time as other existing ISPs. The Commission notes that Ontera chose not to participate in the follow-up proceeding to Decision 2006-36. Accordingly, the Commission considers that Persona's TPIA tariff, as modified by this Decision, should also apply to Ontera within 30 days of the date of this Decision.

Commission's directions

35. In light of the above, the Commission **approves** Persona's application, with the following directions:
 - Persona's TPIA tariff is to apply to existing ISPs, including Ontera, 30 days from the date of this Decision.
 - Persona is to issue amended tariff pages forthwith to reflect the addition of the POIs in Timmins, Kapuskasing and New Liskeard.
 - ISPs are not required to interconnect at all POI locations, but are allowed the option of interconnecting at the POIs of their choice.

- Persona is to waive the ISP Registration service charge of \$369.73 for existing ISPs, including Ontera.
- Persona is to waive the service charge of \$1,206.40 for the Initial Report for existing ISPs, including Ontera, interconnecting at a location at which they were already interconnected.

Secretary General

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