



Telecom Order CRTC 2007-442

Ottawa, 27 November 2007

Cogeco Cable Canada Inc., Rogers Cable Inc., Shaw Communications Inc., and Videotron Ltd.

Reference: Cogeco Tariff Notices 14 and 14A; Rogers Tariff Notice 14;
Shaw Tariff Notices 4B, 6, and 6A; Videotron Tariff Notices 9 and 9A

Third-party Internet access – Cable modem second-level testing

In this Order, the Commission approves on an interim basis the rates, terms, and conditions for cable modem second-level testing to be used in providing third-party Internet access.

Introduction

1. The Commission received applications supported by cost studies from Cogeco Cable Canada Inc. (Cogeco), Rogers Cable Inc. (Rogers), Shaw Communications Inc. (Shaw), and Videotron Ltd. (Videotron) (collectively, the Cable Carriers), in which they proposed to introduce third-party Internet access (TPIA) cable modem second-level testing to recover the costs of carrying out such tests.
2. The Cable Carriers filed these applications as a result of the Commission's directives set out in Telecom Decision 2004-37. The Commission confirmed that all cable modems used for TPIA must be certified in accordance with the Data Over Cable Service Interface Specification (DOCSIS) by Cable Television Laboratories Inc. (CableLabs). In addition, the Commission determined the conditions under which TPIA cable modem second-level testing would be required and that the testing should be carried out by the Cable Carriers.
3. The Commission received comments and/or reply comments from Cybersurf Corp. (Cybersurf), Xit telecom inc. (Xit telecom), and the Canadian Cable Telecommunications Association (CCTA)¹ on behalf of the Cable Carriers. The record of this proceeding closed on 14 January 2005. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

4. The Commission has identified the following two issues to be addressed in its determinations:
 - Are the rates, terms, and conditions proposed by the Cable Carriers for TPIA cable modem second-level testing appropriate?
 - Under what circumstances is TPIA cable modem second-level testing not required?

¹ The Commission notes that the CCTA ceased to operate in February 2006.

Are the rates, terms, and conditions proposed by the cable carriers for TPIA cable modem second-level testing appropriate?

Positions of parties

5. Cybersurf submitted that cable modem second-level testing was an essential service that Internet service providers (ISPs) or other third parties could not economically or technically replicate. Cybersurf also submitted that a 20 percent mark-up, rather than the 15 percent applied in the case of incumbent local exchange carriers for essential services, would allow the Cable Carriers a reasonable contribution to variable common costs. Cybersurf further submitted that the proposed TPIA cable modem second-level testing rates should be reduced since (i) causal costs for lab equipment, as well as billing and collection charges, should be minimal, and (ii) lab floor space costs and income taxes should be excluded.
6. In reply, the CCTA submitted that cable modem testing was not a separate service but rather a component of the overall TPIA service, given that it was only available and relevant to TPIA customers. The CCTA noted that the Commission had previously concluded that TPIA service was not an essential or near essential service. It followed, therefore, that cable modem second-level testing, which was a component of TPIA service, was also not an essential service.
7. The CCTA submitted that the mark-up proposed by its members was the same as that approved by the Commission in Order 2000-789 with respect to TPIA end-user rates. In its view, this justification also applied to the mark-up for second-level cable modem testing.
8. The CCTA also submitted that the proposed rates were fully supported by economic evaluations and were justified. The CCTA further submitted that, while Cable Carriers had existing facilities that were used to test modems as well as other equipment, the use of this equipment for testing of cable modems for TPIA customers resulted in the equipment not being available for other testing purposes.

Commission's analysis and determinations

9. The Commission notes that the proposed service is considered part of the TPIA service and is only made available to TPIA customers. The Commission further notes that, in Telecom Decision 99-8 and re-affirmed in Order 2000-211, it found that TPIA service was not in the nature of an essential service.
10. The Commission considers that the cost studies submitted by each applicant in this proceeding reflect the appropriate causal incremental costs for TPIA cable modem second-level testing. The Commission further notes that the mark-up proposed by the Cable Carriers is the same as the one for the Cable Carriers' TPIA end-user access rates approved in Order 2000-789 and Telecom Decision 2006-77.
11. The Commission notes, however, that it is currently reviewing its regulatory framework for wholesale services, as well as the definition of what constitutes an essential service, in the proceeding initiated by Telecom Public Notice 2006-14 (the Essential Services proceeding).

12. In the circumstances, the Commission considers it appropriate, subject to the determinations below, to approve the Cable Carriers' TPIA cable modem second-level testing tariff proposals on an interim basis, pending the outcome of the Essential Services proceeding.

Under what circumstances is TPIA cable modem second-level testing not required?

Positions of parties

13. Cybersurf submitted that Rogers and Shaw had defined a cable modem model as a specific combination of hardware, software, and firmware, and that any minor change in hardware, software, or firmware could be viewed as a change to the cable modem model, thus requiring second-level testing. Cybersurf argued that if a certified cable modem evolved without any major upgrades, such as a change in DOCSIS version, and continued to be identified by the manufacturer as the same model, it should not require second-level testing.
14. Xit telecom submitted that a firmware revision would not always warrant TPIA second-level cable modem testing, as such a revision might not affect the DOCSIS interface.
15. The CCTA replied that its position on testing was consistent with CableLabs' approach to certifying cable modems. The CCTA submitted that CableLabs might retest, at its discretion, a previously certified modem where there was any change to hardware, firmware, or software. The CCTA argued that, given that the Commission had accepted CableLabs as the body responsible for cable modems certification, it would be reasonable to consider CableLabs' approach to distinguishing between modem models.
16. The CCTA submitted that, when deploying cable modems with a different version of software than that currently deployed on their networks, its members conducted second-level testing to verify that the modem remained fully compatible with their networks.
17. The CCTA noted that its members were not proposing to subject third parties to any more onerous conditions than they imposed on themselves. The CCTA submitted that its members occasionally waived second-level testing, or alternatively conducted a partial cycle of testing, dependent on the extent of the software change and the impact that it might have on the network. The CCTA submitted that the same approach would be used for second-level testing of third-party ISP modems.

Commission's analysis and determinations

18. The Commission notes the CCTA's description of cable modem changes that would warrant second-level testing to meet the Cable Carriers' own requirements. The Commission further notes that the Cable Carriers' approach for determining when second-level testing is required for third-party ISP modems is consistent with CableLabs' practice. The Commission therefore accepts the Cable Carriers' approach. The Commission determines that the Cable Carriers cannot require second-level testing for third-party ISP modems in circumstances where second-level testing would not occur for modems for the Cable Carriers' own use.

19. The Commission notes that, in their respective TPIA tariff items 19.1 to 19.3, Rogers and Shaw included wording related to the conditions under which second-level testing would be required. In contrast, Cogeco and Videotron did not include such wording in their proposed TPIA tariff pages. The Commission considers it appropriate to include such wording in all the Cable Carriers' TPIA tariffs. Accordingly, the Commission directs Cogeco and Videotron to revise their TPIA tariff pages by including wording similar to that used by Rogers and Shaw.
20. The Commission notes that Cogeco's proposed TPIA tariff item 1.8 indicates that a summary of the second-level test plan and a list of cable modem models that have passed second-level testing would be made available upon request. In contrast, Videotron, Rogers, and Shaw do not include such wording in their TPIA tariff pages. The Commission considers that all Cable Carriers should provide similar information on request. Accordingly, the Commission directs Videotron, Rogers, and Shaw to revise their TPIA tariff pages by including wording similar to that used by Cogeco in its TPIA tariff item 1.8.
21. The Commission considers that the above determinations comply with the Policy Direction² and advance the following policy objectives as set out in section 7 of the *Telecommunications Act*:

(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;

(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; and

(h) to respond to the economic and social requirements of users of telecommunications services.

Conclusion

22. In light of all of the above, the Commission **approves on an interim basis**, pending the outcome of the Essential Services proceeding, the Cable Carriers' applications with the revisions identified above, effective the date of this Order. The Commission expects that the rates, terms, and conditions for this service will not be applied retroactively when disposed of on a final basis.
23. The Commission directs the Cable Carriers to issue revised tariff pages reflecting the determinations in this Order within 10 days of the date of this Order.

Secretary General

² The Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006.

Related documents

- *Cogeco, Rogers, Shaw, and Videotron – Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006
- *Review of regulatory framework for wholesale services and definition of essential service*, Telecom Public Notice CRTC 2006-14, 9 November 2006, as amended by Telecom Public Notices CRTC 2006-14-1, 15 December 2006; 2006-14-2, 15 February 2007; 2006-14-3, 16 March 2007; and 2006-14-4, 20 March 2007
- *Cable modems for third-party Internet access*, Telecom Decision CRTC 2004-37, 4 June 2004
- *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
- *Final approval granted to Special Facilities Tariff for the location of customer provided ADSL-related equipment in Bell Canada's central offices*, Order CRTC 2000-211, 23 March 2000
- *Regulation under the Telecommunications Act of cable carriers' access services*, Telecom Decision CRTC 99-8, 6 July 1999

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