



Telecom Order CRTC 2006-286

Ottawa, 27 October 2006

Persona Communications Corp.

Reference: Tariff Notice 3

Third-party Internet access - Introduction of Lite Speed and Extreme Speed service levels

*In this Order, the Commission **approves on an interim basis** with changes Persona Communications Corp.'s proposed revisions to its General Tariff to introduce Lite Speed and Extreme Speed service levels for third-party Internet access.*

Background

1. 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.
2. 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 the rates for its TPIA service, which consisted of TPIA Transport-Lite, TPIA Transport-Regular, and TPIA Transport-Xtreme.
3. In *Persona Communications Corp. – Third-party Internet access and related issues*, Telecom Decision CRTC 2006-36, 2 June 2006 (Decision 2006-36), the Commission directed Persona Communications Corp. (Persona) to file proposed tariffs for the provision of services such as TPIA Transport-Lite and TPIA Transport-Xtreme approved for Shaw in Order 2006-55.

The application

4. Persona filed an application, dated 4 July 2006, in which it proposed revisions to its General Tariff for TPIA. Specifically, Persona proposed to introduce rates for Lite Speed (Lite) and Extreme Speed (Extreme) service levels for TPIA. Persona indicated that its proposed rates were the same as those approved on an interim basis for Shaw in Order 2006-55.

Process

5. Vianet Internet Solutions (Vianet) and Unitz Online (Unitz), two Internet service providers (ISPs) operating their high-speed Internet service over Persona's network, jointly filed comments dated 2 August 2006. Persona filed reply comments dated 7 September 2006.

Positions of parties

6. Vianet and Unitz submitted that the proposed rates were unwarranted. In support of their position, Vianet and Unitz compared the proposed rates to those that were currently being paid by independent ISPs in the regions being served by Vianet and Unitz. In their view, approval of the proposed rates would either result in corresponding consumer price increases or a price squeeze on competing ISPs to the point that they would be forced to exit the market.
7. Vianet and Unitz submitted that Persona had provided no justification for the proposed rates, and noted that the rates proposed by Persona simply mirrored those approved for Shaw in Order 2006-55. Further, Vianet and Unitz argued that Decision 2006-36 did not direct Persona to adopt the rates approved in Order 2006-55, but rather to offer additional TPIA speeds similar to those approved for Shaw in Order 2006-55. Vianet and Unitz were of the view that the proposed rates should reflect Persona's underlying costs of providing the services.
8. Vianet and Unitz also submitted that Persona did not indicate the upstream and downstream transmission speeds for the proposed service levels, and requested that the Commission direct Persona to publish those speeds in its tariff.
9. Vianet and Unitz objected to the six gigabyte (GB) usage limit in Persona's tariff. Vianet and Unitz were of the view that this outdated item should be removed from Persona's tariff.
10. Vianet and Unitz also noted that a restriction pertaining to the use of TPIA to provide voice over Internet Protocol (VoIP) services remained in Persona's tariff. Vianet and Unitz requested that Persona be directed to comply with *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 dated 30 June 2005 (Decision 2005-28), by deleting the restriction.
11. In its reply, Persona noted that it was asked by the Commission to file rates for the Lite and Extreme service levels. Persona further noted that, to date, Shaw was the only large cable carrier with approved tariffs for these levels of service, and argued that its only option was to file the same rates as Shaw for approval.
12. Persona submitted that the upstream and downstream transmission speeds were not specified in the tariffs currently approved for other cable carriers and that it had only included the specifications that were already approved for Shaw. Persona also submitted that these were best-efforts services and that the speeds were subject to change. Persona indicated that TPIA customers would receive the same level of service as its retail Internet access customers.
13. With regard to restrictions pertaining to the use of TPIA to provide VoIP services, Persona indicated that it had already issued revised tariff pages to remove such restrictions pursuant to the Commission's direction in Decision 2005-28.

Commission's analysis and determinations

14. The Commission notes that, in Decision 99-8, it determined that smaller cable carriers could base their TPIA tariffs on the rates approved for larger cable carriers. The Commission further notes that, in Decision 2006-36, it directed Persona to file proposed tariffs for the provision of services such as TPIA Transport-Lite and TPIA Transport-Xtreme approved for Shaw in Order 2006-55.
15. The Commission considers that Persona's proposal to introduce rates based on Shaw's approved rates for the Lite and Extreme service levels is consistent with both Decisions 99-8 and 2006-36.
16. With regard to the publication of the maximum upstream and downstream transmission speeds, the Commission notes that the maximum upstream and downstream transmission speeds are not specified in any of the TPIA tariffs currently approved for the other cable carriers, and that these speeds may be subject to change. However, the Commission notes that the maximum upstream and downstream transmission speeds offered to Persona's retail customers are identified on Persona's website.
17. The Commission considers that information regarding the maximum upstream and downstream transmission speeds available for TPIA service is important to competitors, in that they rely upon the availability of the advertised speeds to ensure that TPIA service meets their requirements. The Commission also considers that, given the sensitivity of competitors' business plans to speed availability, the tariff publication of such data with respect to competitor services is more critical than it is with respect to retail services.
18. The Commission further considers that approval of the tariff as proposed by Persona would offer no recourse pursuant to the company's tariffs, should service complaints arise if Persona did not deliver the proposed speeds.
19. Accordingly, the Commission considers that Persona should be required to publish, in its tariff, the maximum upstream and downstream transmission speeds available for each of the TPIA service levels it provides.
20. The Commission notes Persona's statement that its TPIA customers would receive the same level of service as its retail Internet access customers. However, with regard to the six GB usage limit in Persona's TPIA tariff, the Commission notes that, as indicated on Persona's website, such a usage limit is not imposed on Persona's own retail customers.
21. In the Commission's view, Persona's TPIA tariff is unjustly discriminatory in that it imposes a six GB usage limit on its TPIA customers that it does not impose on its own retail Internet access customers. The Commission finds that the same usage limit must apply to Persona's TPIA customers as to its retail customers.

22. In light of the above, the Commission **approves on an interim basis** Tariff Notice 3, with the changes noted below, effective the date of this Order:
- Persona is directed to specify in its TPIA tariff the maximum upstream and downstream transmission speeds associated with each of its TPIA service levels;
 - Persona is directed to either remove the six GB usage limit from its TPIA tariff, or to impose the same six GB usage limit on its own retail Internet access service; and
 - Persona is directed to issue revised tariff pages forthwith.
23. The Commission notes that, consistent with its determinations in Decision 2006-36, the application of Persona's TPIA tariff is suspended for existing ISPs pending the disposition of the matter of the point of interconnection location or for a six-month period, whichever is later.

Secretary General

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