



Telecom Order CRTC 2006-55

Ottawa, 20 March 2006

Shaw Cablesystems G.P.

Reference: 8740-S9-200600636

Third Party Internet Access service

Application

1. The Commission received an application by Shaw Cablesystems G.P. (Shaw), under Tariff Notice 8 (TN 8), dated 20 January 2006. In its application the company proposed to modify item 103, Third Party Internet Access (TPIA) service, to revise rates for its TPIA services, which consist of TPIA Transport - Lite, TPIA Transport - Regular, and TPIA Transport - Xtreme (TPIA - Lite, TPIA - Regular, and TPIA - Xtreme).
2. Shaw's TPIA service is offered to Internet service providers (ISPs) in order to permit the interconnection of the ISP's end-users via Shaw's cable plant to provide retail-level Internet services.

Process

3. The Commission received comments from Cybersurf Corp. (Cybersurf), dated 27 January 2006 and 20 February 2006; the Quebec Coalition of Internet Service Providers (QCISP), dated 2 February 2006 and 20 February 2006 and Vianet Internet Solutions (Vianet), dated 2 March 2006. Reply comments were received from Shaw, dated 3 March 2006.

Parties' comments

4. Cybersurf, supported by the QCISP, submitted that the TPIA transport monthly rate of \$21.25 per end-user access, approved in *Terms and rates approved for large cable carriers' higher speed access service*, Order CRTC 2000-789, 21 August 2000 (Order 2000-789),¹ should apply to all TPIA - Lite, TPIA - Regular, and TPIA - Xtreme services until the Commission had verified the cost study evidence filed by Shaw, and competitors had been given the opportunity to comment.
5. Cybersurf noted that Shaw's currently approved TPIA tariff described the approved TPIA end-user access rate as a TPIA transport rate that was not linked to a particular service level or speed. Cybersurf submitted that as a consequence Shaw had an obligation to provide its TPIA services to Cybersurf at the current end-user rate of \$21.25.

¹ *Terms and rates approved for large cable carriers' higher speed access service*, Order CRTC 2000-789-1, 31 January 2001, made corrections to Order 2000-789. These orders will collectively be referred to as Order 2000-789 in this Order.

6. The QCISP requested that the Commission not approve Shaw's rates as proposed in TN 8, submitting that doing so would cause significant and irreparable harm to a QCISP member in Shaw's territory. The QCISP submitted that the productivity improvements realized by Shaw, combined with lower hardware costs, should have led to significantly lower rates than the \$21.25 that had been approved by Order 2000-789.
7. Cybersurf, supported by the QCISP, submitted, among other things, that certain cost study methodologies and assumptions used by Shaw in its TPIA cost studies were not based on the Commission's incremental Phase II costing approach, and that the cost studies filed by Shaw required an in-depth analysis. The QCISP requested the opportunity to address interrogatories to all cable carriers with respect to their TPIA services.
8. The QCISP noted that Shaw had submitted its costing information to the Commission in confidence. The QCISP requested the disclosure of certain costing information and further requested that it be permitted to address interrogatories after the information had been placed on the public record.
9. Vianet submitted, among other things, that Shaw was operating in a geographical area adjacent to another cable provider, Persona, in Northern Ontario. Vianet submitted that it was of the view that the TPIA costs incurred by Shaw should be similar to those incurred by Persona. Accordingly, Vianet requested that the Commission order Shaw to reduce its proposed TPIA transport rates by 40 to 50 percent to coincide with the rates currently charged by Persona.

Shaw's reply comments

10. Shaw submitted, among other things, that the Commission should disregard the comments filed by interveners and approve the rates proposed under TN 8. Shaw submitted that Cybersurf's request that the TPIA transport rate of \$21.25 apply to TPIA - Lite, TPIA - Regular, and TPIA - Xtreme services until the Commission had verified the cost study evidence filed by Shaw should be denied.
11. Shaw submitted that the existing approved rate of \$21.25 applied to the TPIA service approved in Order 2000-789, which was commonly referred to as TPIA Regular service and was labelled as TPIA Transport - High Speed under the Rates and Charges for TPIA Service Elements in Shaw's TPIA tariff.
12. Shaw submitted that it would be arbitrary and inappropriate to use the approved TPIA transport tariff rate for TPIA - Lite and TPIA - Xtreme. Shaw further submitted that the economic evaluations that it had filed in August 2004 and January 2006 demonstrated that the costs and rates of differing TPIA transport service levels/speeds were not the same.
13. Shaw submitted that providing all service levels/speeds to Cybersurf or other TPIA customers at one rate would result in competitors receiving artificially low, subsidized service offerings for those service levels/speeds for which costs were above the existing rate. Shaw further submitted that there was no policy rationale for artificially sustaining competitors through the provision of inappropriately low TPIA transport rates.

14. Shaw submitted that the Commission should convene a proceeding to determine whether the test for forbearance under section 34 of the *Telecommunications Act* (the Act) was now satisfied in the high-speed Internet access market.

Commission's analysis and determinations

15. The Commission notes that it has not yet verified the cost study evidence filed by Shaw and that competitors have not yet had an opportunity to comment on that evidence. However, due to demand for Shaw's TPIA services, the Commission considers it appropriate to determine interim rates for Shaw's three TPIA services, until a final determination is made.
16. The Commission notes that the QCISP requested disclosure of certain costing information and the opportunity to address interrogatories to Shaw after the information had been placed on the public record. The Commission notes that Commission staff will address these requests shortly.
17. With respect to Vianet's submission that Persona provided Vianet with TPIA service at rates less than those proposed by Shaw in TN 8, the Commission notes that a procedure to be established will provide all parties with the opportunity to review and comment on Shaw's proposed rates, on the cost studies it filed in support of its application, and on other submissions made by the applicant and interveners. With respect to Shaw's proposal that the Commission should convene a proceeding to determine whether the test for forbearance under section 34 of the Act was now satisfied in the high-speed Internet access market, the Commission notes that Shaw's proposal is beyond the scope of this application.
18. The Commission notes that in Order 2000-789, a monthly rate of \$21.25 per end-user was approved for Shaw's TPIA service. The Commission also notes that Shaw submitted that this service was commonly referred to as TPIA Regular service and was labelled as TPIA Transport - High Speed under the Rates and Charges for TPIA Service Elements in Shaw's TPIA tariff. The Commission considers that until the cost studies filed in support of the TPIA - Regular service have been verified, modification of the approved TPIA rate would be premature. The Commission further notes that the TPIA transport rate of \$21.25 per end-user exceeds Shaw's proposed TPIA - Regular costs. Accordingly, the Commission considers that it would be appropriate to retain the currently approved TPIA transport monthly rate of \$21.25 per end-user and apply it to Shaw's proposed TPIA - Regular service.
19. With regards to Cybersurf's submission that Shaw had an obligation to provide TPIA - Lite, TPIA - Regular, and TPIA - Xtreme to Cybersurf at the existing \$21.25 TPIA per end-user access rate, the Commission notes that Shaw has proposed significantly different costs for these three services. In particular, Shaw's costing evidence, filed in confidence with the Commission, shows that TPIA transport costs increase significantly as TPIA transport service speeds increase. The Commission notes that, while Shaw's cost evidence has not as yet been tested, Shaw's TPIA service is provided over a shared network and the Commission considers it reasonable to assume, on a prima facie basis, that costs will vary with the service speed. Accordingly, the Commission considers that the current TPIA transport rate of \$21.25 per end-user access should not apply to Shaw's proposed TPIA - Lite and TPIA - Xtreme services.

20. In light of the above, the Commission **denies** Cybersurf's request that the TPIA rate of \$21.25 per end-user access, approved in Order 2000-789, apply to all TPIA speeds (TPIA - Lite, TPIA - Regular, and TPIA - Xtreme).
21. The Commission notes that Shaw's proposed rates for its TPIA services will be verified in detail. The Commission considers that the interim TPIA rates should reflect that Shaw has demonstrated that TPIA costs vary with the service speed. The Commission notes that it has taken into consideration intervener comments in the determination of the interim rates for TPIA - Lite and TPIA - Xtreme.
22. Accordingly, the Commission **approves on an interim basis** Shaw TN 8, modified as follows: the monthly rate per end-user access for TPIA - Lite will be \$19.00 and the monthly rate for TPIA - Xtreme will be \$30.00; and the current TPIA rate of \$21.25 (approved in Order 2000-789) will apply to TPIA - Regular.
23. The Commission may wish to approve rates on a retroactive basis when it disposes of Shaw's application on a final basis. Therefore, the Commission directs Shaw to track competitor demand for each of TPIA - Lite, TPIA - Regular, and TPIA - Xtreme from the date of this Order.

Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>