



**Rogers Communications Partnership**

333 Bloor Street East  
Toronto, Ontario M4W 1G9  
Tel.: 416.935.3515  
Fax: 416.935.2523  
david.watt@rci.rogers.com

**David Watt**

Vice President  
Regulatory Telecommunications

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[Via Access Key](#)

Mr. John Traversy  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Centre Building  
1 Promenade du Portage  
Gatineau, Quebec K1A 0N2

Dear Mr. Traversy:

**Re: Rogers Communications Partnership Comments on CNOC Letter Request  
for Enforcement of Speed-Matching Requirement Against Rogers  
Communications Partnership – CRTC Reference: 8661-C182-201214270**

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**Introduction**

1. Rogers Communications Partnership (“Rogers”) herein files its comments on a letter dated November 8, 2012 received from CNOC Inc. addressing Rogers Tariff Notice 28 (“TN 28”) pursuant to the process established in the CRTC staff letter dated November 9, 2012.
2. In its letter, CNOC proposes an expedited process to address its request that the Commission “require Rogers to comply, on an expedited basis with Telecom Decision CRTC 2006-77 (“Decision 2006-77) and increase immediately the 18 Mbps, 28 Mbps and 32 Mbps service speeds offered to its third party Internet access (TPIA) customers to 25 Mbps, 35 Mbps and 45 Mbps, respectively, with no price increase, for both disaggregated and aggregated points of interconnection (“POI”).
3. Rogers submits that CNOC’s arguments are without merit and that its requests should be denied in their entirety.

**Summary of TN 28 and Rogers new 25, 35, 45 and 150 Mbps services**

4. In TN 28, Rogers is seeking approval of new 25 Mbps, 35 Mbps, 45 Mbps and 150 Mbps aggregated POI TPIA services at prices of \$21.00, \$21.68, \$22.35 and \$22.69 respectively, effective December 7, 2012. These services require the use of DOCSIS 3.0 modem technology to enable both higher download and uploading speeds.
5. Rogers continues to offer 18 Mbps, 28 Mbps, 32 Mbps and 75 Mbps aggregated POI TPIA services. These speeds will continue to be available to TPIA customers for new end-users until April 14, 2013 at existing rates. Existing end-users at that date will be allowed to remain at these speeds for so long as they chose to continue to subscribe to their existing service.
6. 25 Mbps service already has a CRTC-approved final rate of \$21.00 established in Telecom Regulatory Policy 2011-703 (“TRP 2011-703”). In TN 28, Rogers proposes interim rates be established for those speeds that do not have a currently approved rate, specifically 35, 45 and 150 Mbps services. The proposed interim rates are based on the rates for 25 and 50 Mbps services already approved by the Commission in TRP 2011-703.
7. TN 28 does not address TPIA services offered through disaggregated POIs – the legacy architecture offered on a transitional basis for the next year concluding November 15, 2013. Rogers will continue to offer 18 Mbps, 28 Mbps, 32 Mbps and 75 Mbps disaggregated POI TPIA services until November 15, 2013, pursuant to paragraph 153 of TRP 2011-703.

**Rogers Response****i) Wholesale rates are to be cost-based and the CRTC has already approved a cost-based 25 Mbps service rate for aggregated POI TPIA Service**

8. With regard to the new aggregated POI TPIA services, CNOC’s quarrel with TN 28 is with the proposed rates, not with lack of access to the services because access to the higher speed services is being offered. CNOC submits that TN 28 violates paragraph 210 of Decision 2006-77 wherein the Commission stated:

“The Commission determines that should a cable carrier introduce a speed upgrade to one of its retail Internet service offerings with no corresponding price change, it is to issue at the same time, revised TPIA tariff pages that match these retail service speed changes with no corresponding price change.”

9. CNOC argues that:

“Rogers “new” 25 Mbps, 35 Mbps and 45 Mbps retail speeds are not really new. They are simply speed increases to Rogers’ Express, Extreme and Extreme Plus retail services previously offered at 18 Mbps, 28 Mbps and 32 Mbps service speeds, respectively.”

10. In short, CNOC wants Rogers’ aggregated POI TPIA rates frozen by brand name independent of the speed offered. Such an approach would violate the Commission’s long-held practice of cost-based pricing.

11. Indeed, CNOC chose not to quote paragraph 211 of Decision 2006-77 immediately preceding its selected paragraph wherein the Commission:

“determines that if a cable carrier introduces a new retail Internet service speed, it is to file, at the same time, proposed revisions to its TPIA tariff to include this new speed offering, with a supporting cost study.”

12. Rogers has met this Commission determination. On November 7, 2012, Rogers introduced a retail 25 Mbps speed service and on that same day, Rogers filed proposed revisions to its TPIA tariff to include this new speed offering through TN 28. There was no need to append a supporting cost study for 25 Mbps service because a CRTC-approved rate for this speed already existed.

13. As the Commission is aware, last year it approved a monthly access fee of \$21.00 for 25 Mbps service for Rogers in TRP 2011-703 after an exhaustive 14 month process reviewing Rogers’ cost studies. The cost studies (as adjusted by the Commission) approved in TRP 2011-703 for 25 Mbps and 50 Mbps services (at the time branded as Extreme Plus and Ultimate, respectively) reflect the use of DOCSIS 3.0 technology.<sup>1</sup> The other speeds costed in Rogers Tariff Notice 18 were based on DOCSIS 2.0 technology.

14. CNOC argues that the Commission should ignore its Decision approving a \$21.00 monthly access rate for 25 Mbps service based on DOCSIS 3.0 technology and instead require Rogers to offer 25 Mbps service at a monthly access rate of \$14.25; a rate approved by the Commission for 10 Mbps service based on DOCSIS 2.0 technology. This would be entirely inappropriate and inconsistent with the principle of cost-based pricing.

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<sup>1</sup> See Rogers Tariff Notice 18, Follow-up to TRP 2010-632, Economic Evaluation and Rogers(CRTC)15Sep10-105.

15. Rogers has not filed cost studies for those speeds that do not have a tariff approved by the Commission. As explained in TN 28, In light of impending decisions on the applications to review and vary TRP 2011-703 that could affect the rates, Rogers proposes that interim rates be approved for the new 35, 45 and 150 Mbps service speeds. These interim rates would be adjusted retroactively to the rates that will ultimately be approved reflecting the forthcoming determinations regarding the review and vary applications.
16. Rogers proposed interim rates for 35, 45 and 150 Mbps speeds are based on the rates for 25 Mbps and 50 Mbps service already approved by the Commission in TRP 2011-703.
17. Finally, in an intervention on Rogers TN 28 on November 13, 2012, Vaxination asks at paragraph 22 why Rogers has not submitted a tariff for a 250 Mbps speed tier (symmetrical for download and upload) advertised on its website. Rogers submits that this service does not use DOCSIS cable modem technology and therefore a tariff is not required.

#### **ii) CNOC's submission that these are not new services should be rejected**

18. CNOC submits that Rogers 25 Mbps, 35 Mbps and 45 Mbps retail speeds are not really new. Rogers agrees that 25 Mbps retail speed is not new because that speed has been offered although it was not available for new customers for the past nine months as other speeds were promoted. Rogers has not offered 35, 45 and 150 Mbps retail speeds before and they are undeniably new services. As explained above, these services require DOCSIS 3.0 modems and provide very consistent throughput as DOCSIS 3.0 technology combines multiple channels making available the combined bandwidth of the channels.
19. Therefore CNOC's argument is not correct but in any event is irrelevant. As described above, Rogers has a CRTC-approved rate for 25 Mbps aggregated POI TPIA service that must apply to 25 Mbps service. Moreover, Rogers has a CRTC-approved rate for 50 Mbps aggregated POI TPIA service that together with the 25 Mbps rate can be used to establish reasonable interim rates for 35, 45 and 150 Mbps service.
20. Rogers further notes that the existing 18, 28, 32 and 75 Mbps speeds will remain available in the retail market on a "grandfathered" basis with existing rates. And these speeds will remain available in the wholesale market for additional end-users until April 14, 2013 and on a grandfathered basis thereafter.
21. CNOC's assertion that Rogers has already implemented the speed increases to its Express, Extreme and Extreme Plus retail packages without any price change to

Rogers' retail customers is incorrect. Rogers has not re-speeded its retail customer base. Customers with DOCSIS 2.0 modems will remain at their existing speeds and these customers represent two-thirds of Rogers' retail end-users. With regard to the one-third of Rogers' retail customers who do have DOCSIS 3.0 modems, these customers will be moved to the higher speeds over the next five weeks.

**iii) New service speeds offered after TRP 2010-632 are not required for disaggregated POI TPIA service**

22. TN 28 does not address TPIA services offered through disaggregated POIs because Rogers is not required to offer new speeds introduced into the retail market after Telecom Regulatory Policy CRTC 2010-632 ("TRP 2010-632")<sup>2</sup> on a regulated wholesale basis.
23. In Telecom Decision CRTC 2011-482, the Commission determined that Rogers was required to match retail speeds on a wholesale basis for services launched "before the issuance of Telecom Regulatory Policy 2010-632". It further determined in regard to a new retail service offered by Videotron that since Videotron had launched the retail speed after the release of TRP 2010-632 Videotron was "not required to implement its new retail speed on its disaggregated POIs"<sup>3</sup>.
24. This determination was also reflected in Telecom Order 2012-590 wherein the Commission approved Cogeco Cable Inc.'s Tariff Notice 37. In that notice, Cogeco proposed to introduce a 20 Mbps third-party Internet access (TPIA) service for its aggregated points of interconnection (POIs) and withdraw its 16 Mbps TPIA service for its aggregated and disaggregated POIs. In the Order, the CRTC denied Cogeco's request to withdraw 16 Mbps service for its disaggregated POI TPIA service but did not require, nor did CNOC request in its intervention during the tariffing process, that 20 Mbps service be provided for disaggregated POIs.
25. Consistent with these regulatory determinations, Rogers is not proposing to deploy 25, 35, 45 and 150 Mbps speeds on disaggregated POI TPIA service. In the past year, Rogers has offered new speeds on a wholesale basis that matched new speeds on a retail basis because the new speeds replaced old speeds. With regard to the introduction of 25, 35, 45 and 150 Mbps speed services, as explained above, Rogers will continue to offer 18, 28, 32 and 75 Mbps retail and wholesale speed services.

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<sup>2</sup> TRP 2010-632 was released on August 30, 2010.

<sup>3</sup> Telecom Decision 2011-482, paras. 19 and 20.

26. In addition, Rogers notes that disaggregated POI TPIA service is being replaced by aggregated POI TPIA service as advocated by the ISPs in the proceeding leading to TRP 2010-632. To assist the ISPs in moving to aggregated POI TPIA service, over a year after the release of TRP 2010-632, the Commission established in TRP 2011-703 a full two-year transition period during which cable carriers would be required to operate two network architectures for the ISPs; aggregated and disaggregated POIs.
27. One year of the transition period has now ended. Rogers submits that it would make no sense to vary the regulatory policy established in Decision 2011-482 and force carriers to take the steps necessary to implement additional speeds on a disaggregated basis. Decision 2011-482 gave notice to the ISPs three months before the start of 2-year transition period that new speeds would not be available at disaggregated POIs. Now CNOC argues that it should receive these additional speeds and at no incremental cost.
28. This is contrary to the intent of limiting the transition period so as to not require the Cable Carriers to make unnecessary investments to maintain disaggregated POIs. As explained in response to Rogers(CRTC)30Aug12-1 (filed September 6, 2012 in the context of CNOC's Part 1 Application to Review & Vary TRP 2011-703 & 704) additional traffic that will flow from higher speeds will cause costs for additional links and capacity augmentations to end-of-life equipment that will be stranded. Rogers submits that offering 25, 35, 45 and 150 Mbps speeds on aggregated POI TPIA service to which ISPs must transition within the next year gives ISPs the wholesale service they need to compete.
29. Finally, in an intervention on Rogers TN 28 on November 13, 2012, Vaxination states at paragraph 8 that:

“Towards the end of the blockbuster of R&Vs of 703/704, CNOC revealed that one major TPIA ISP had performed the migration at some cost to itself. This would mean that there would now be some spare capacity on the older routers at the un-aggregated POIs, so the modest increase in demand as a result of the speed increases should be achievable without having to upgrade the un-aggregated POI routers, satisfying a major Rogers' concern.”

Rogers submits that Vaxination's comment does not apply to Rogers' TPIA service. Rogers can confirm that there has been no migration of any end-users of its TPIA customers from disaggregated to aggregated POI TPIA service. The number of end-users on Rogers' disaggregated POI TPIA service has increased every month since TRP 2010-632.

### Conclusion

30. For all of the reasons above, Rogers submits that CNOC's arguments are without merit and that its requests should be denied in their entirety.

Yours very truly,



David Watt  
Vice President  
Regulatory Telecommunications

Copy: Interested Parties to TRP CRTC 2011-703  
William Sandiford, CNOC  
Chris Seidl, CRTC  
Lynne Fancy, CRTC  
Yvan Davidson, CRTC  
Tom Vilmansen, CRTC  
Martin Brazeau, CRTC  
Suzanne Bédard, CRTC

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