



Broadcasting Decision CRTC 2003-176

Ottawa, 6 June 2003

Application by Vidéotron ltée for reconsideration of Broadcasting Decision CRTC 2002-299

This decision sets out the Commission's findings with respect to an application by Vidéotron ltée to reconsider and vary certain aspects of Broadcasting Decision CRTC 2002-299. That decision included a mandatory order that set out certain terms and conditions under which Vidéotron ltée and its affiliates, including Câblage QMI inc., must make inside wire available to third parties.

Background

1. On 8 February 2002, Vidéotron ltée, CF Cable TV Inc., Videotron (Regional) Ltd., Vidéotron (RDL) ltée, and Télé-Câble Charlevoix (1977) inc. (collectively referred to as "Vidéotron and its subsidiaries" or simply "Vidéotron") entered into an agreement with Câblage QMI inc. (CQMI) under which Vidéotron contracted to sell to CQMI the inside wire it owned in multiple unit dwellings (MUDs) that had 20 units or more. CQMI is a subsidiary of Quebecor Media Inc. and an affiliate of Vidéotron. Vidéotron and CQMI entered into a further agreement under which Vidéotron would pay CQMI \$5.00 per month for each unit served by Vidéotron for the right to use the inside wire now apparently owned by CQMI. On 12 February 2002, CQMI notified in writing all other broadcasting distribution undertakings (BDUs) competing with Vidéotron and currently providing service to subscribers in Vidéotron's serving areas in Quebec, that CQMI would make inside wire available to each of them on the same terms and conditions that it made its inside wire available to Vidéotron.
2. On 14 February 2002, the Commission received a complaint from Cable VDN Inc. (Cable VDN), a licensed BDU, alleging, among other things, that Vidéotron and its subsidiaries had breached sections 9 and 10 of the *Broadcasting Distribution Regulations* (the Regulations). These sections of the Regulations read as follows:
 9. No licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.
 10. (1) A licensee that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, by another licensee, or by a broadcasting undertaking in respect of which an exemption has been granted, by order under section 9(4) of the Act, from the requirement to obtain a licence.

- (2) The licensee that owns an inside wire may charge a just and reasonable fee for the use of the wire.
 - (3) The licensee that owns an inside wire must not remove it from a building if a request for the use of the wire has been made and is pending under section (1), or while the wire is being used in accordance with that subsection.
3. Subsequently, the Commission received complaints alleging breaches of sections 9 and 10 of the Regulations by Vidéotron, from Bell ExpressVu Limited Partnership (ExpressVu) and Look Communications Inc. (Look), also licensed BDUs. All three complainants requested that the Commission intervene and issue a mandatory order that would compel Vidéotron to comply with its regulatory obligations not to give itself an undue preference or subject its competitors to an undue disadvantage, and to provide access to the inside wire at a just and reasonable fee.
4. On 8 March 2002, the Commission issued *Call for comments – cable inside wire lease fee*, Broadcasting Public Notice CRTC 2002-13, 8 March 2002 (Public Notice 2002-13) in which it called for comments on its preliminary view as to what would be a just and reasonable fee for the use of cable inside wire in MUDs. In Public Notice 2002-13, the Commission found, on a preliminary basis, that a fee of \$0.44 per subscriber per month was an appropriate lease fee for inside wire.
5. Following receipt and review of comments received in response to Public Notice 2002-13, the Commission then issued *Cable inside wire fee*, Broadcasting Public Notice CRTC 2002-51, 3 September 2002 (Public Notice 2002-51). In Public Notice 2002-51, the Commission found, on a final basis, that \$0.52 per subscriber per month was a just and reasonable fee for the use of inside wire in MUDs.
6. On 9 October 2002, following an extensive public process that included an oral public hearing, the Commission issued *Mandatory Order issued pursuant to section 12(2) of the Broadcasting Act against Vidéotron ltée and its subsidiaries*, Broadcasting Decision CRTC 2002-299, 9 October 2002 (Decision 2002-299). In that decision, the Commission found that Vidéotron had retained control of the inside wire assets, even though these were ostensibly owned by CQMI, and that CQMI was acting as Vidéotron's *alter ego*. The Commission further found that the 8 February 2002 transaction between Vidéotron and CQMI did not enable Vidéotron to avoid its regulatory obligations. The Commission determined, among other things, that Vidéotron and its *alter ego*, CQMI, were obligated, pursuant to section 10 of the Regulations, to charge a just and reasonable fee for the use of the inside wire and that Vidéotron had conferred undue preference on itself, and its subsidiaries and affiliates, contrary to section 9. Therefore, the Commission issued a mandatory order pursuant to section 12(2) of the *Broadcasting Act* (the Act) against Vidéotron and its subsidiaries. The mandatory order provided that Vidéotron, its subsidiaries and its affiliates, including CQMI, could not use the inside wire, ostensibly owned by CQMI, for the delivery of broadcasting services unless Vidéotron and its

subsidiaries and/or CQMI offered third parties, in competition with Vidéotron for such delivery, the use of that wire at a monthly fee not exceeding \$0.52 per subscriber per month. The mandatory order also directed that no other fee was to be charged.

The current application

7. On 8 November 2002, the Commission received an application from Vidéotron¹ pursuant to section 12(3) of the Act seeking reconsideration and variance of certain aspects of Decision 2002-299.
8. Vidéotron submitted that, subsequent to Decision 2002-299, it asked CQMI to offer the inside wire to competitors on the basis of the terms set out in Decision 2002-299. Vidéotron stated that, on 10 October 2002, CQMI had sent letters to Look, Cable VDN, ExpressVu and Star Choice Communications Inc. (Star Choice) offering each of them use of CQMI's inside wire for the purposes of providing broadcasting services at a monthly fee of \$0.52 per subscriber per month. Vidéotron added that this offer was made subject to and without prejudice to any rights of appeal or reconsideration of Decision 2002-299, or any other legal recourse available to CQMI. Vidéotron alleged that the letters that CQMI received from these competitors, in response to the offer, did not contain a clear and unequivocal acceptance of CQMI's offer.
9. In its application, Vidéotron argued that there was nothing in the Regulations, in Public Notice 2002-51, or in Decision 2002-299 that clearly established an obligation on the part of users of inside wire to pay the fee for the use of CQMI's inside wire. Vidéotron also submitted that, generally, the obligation to pay monthly fees and to abide by other terms and conditions of use of inside wire should be established by contract. In its view, without a contract, CQMI had no clear means of enforcing payment of monthly usage fees by users of its inside wire.
10. Vidéotron submitted that the failure of Look, Cable VDN, ExpressVu and Star Choice to clearly accept CQMI's 10 October 2002 offer had placed Vidéotron and CQMI in an untenable position. Vidéotron submitted that Decision 2002-299 effectively compelled CQMI to offer its inside wire at a mandated price, without ensuring that CQMI has the corresponding ability to enforce payment. According to Vidéotron, this was contrary to fundamental principles of fairness and the functioning of a market economy and is entirely unprecedented.

¹ Since the sale of its inside wire to CQMI, the Vidéotron groups of companies has been reorganized. The reorganization follows the implementation of two decisions: *Intracorporate reorganization – transfers of assets*, Broadcasting Decision CRTC 2002-152, 12 June 2002, and *Corporate reorganization – transfers of assets*, Broadcasting Decision CRTC 2002-153, 12 June 2002. Vidéotron ltée continues to own CF Cable TV Inc., which continues to own Vidéotron (Regional) Ltd. Vidéotron (RDL) ltée and Télé-Câble Charlevoix (1977) inc. have been acquired by Vidéotron (Regional) Ltd., and all of their cable undertakings are now held by Vidéotron (Regional) Ltd.

11. In light of the above, Vidéotron requested that the Commission reconsider and vary Decision 2002-299 so as to clarify that:
- (i) a BDU that uses third party inside wire is obligated to pay the monthly usage fee, with the fee for the first month prorated to reflect the usage start date, and that in the case of inside wire used pursuant to the terms of the offer made by CQMI dated 10 October 2002, the obligation to pay the \$0.52 fee commenced 10 October 2002;
 - (ii) any BDU that wishes to use third party inside wire is obligated to enter into a binding written contract, setting out the terms and conditions of use;
 - (iii) Decision 2002-299 does not restrict the application of contractual terms and conditions of use of inside wire by third parties, provided that the terms do not confer an undue preference or undue disadvantage on a BDU; and
 - (iv) Vidéotron is under no obligation to ensure that CQMI allows BDUs that have not clearly accepted CQMI's 10 October 2002 offer to use its inside wire.

Comments from interested parties

12. In a letter dated 26 November 2002, interested parties were asked to comment on Vidéotron's application to reconsider and vary Decision 2002-299. Cable VDN, ExpressVu and Look submitted comments on 13 December 2002. Vidéotron provided its reply to these comments on 20 December 2002.

Cable VDN

13. Cable VDN opposed Vidéotron's application for reconsideration and variance of Decision 2002-299. Cable VDN submitted that, in its application, Vidéotron had implied that CQMI would not have recourse to the Commission in the event of non-payment because CQMI was not a licensee. Cable VDN argued that this submission demonstrated an underlying flaw in Vidéotron's application. Cable VDN claimed that Vidéotron's application ignores the Commission's finding that CQMI is the *alter ego* of Vidéotron.
14. Cable VDN further argued that there is no need for a written contract between the parties for the use of inside wire since the Commission has already created a process by which guidelines for the regime surrounding the use of third party inside wire will be established. Cable VDN submitted that Public Notice 2002-51 set out an ongoing process to establish an administrative framework for the use of inside wire. Cable VDN noted that this process will ultimately result in a Commission determination on the proper framework for the use of inside wire.
15. In Cable VDN's view, once the Commission has established the framework for the use of inside wire, that framework will eliminate the need for a contract, and all disputes relating to the use of the inside wire should be resolved by the Commission. Cable VDN expressed concerns that, if the use of inside wire were governed by a contract, as proposed by Vidéotron, then in the event of a dispute there might be lengthy delays and

periods during which no access would be given to new entrants. Cable VDN submitted that such a situation would be counter to the Commission's goal of ensuring fair and open competition.

16. Cable VDN argued that, contrary to Vidéotron's assertions, it does intend to pay for its use of Vidéotron/CQMI owned inside wire in MUDs for the period subsequent to 10 October 2002. Cable VDN submitted that, in the event it did not pay for the use of the inside wire, Vidéotron/CQMI could complain to the Commission.

ExpressVu

17. ExpressVu opposed Vidéotron's application for reconsideration and variance of Decision 2002-299. ExpressVu objected to Vidéotron's request that the fee of \$0.52 per subscriber per month take effect only after 10 October 2002. ExpressVu stated that it had received invoices from CQMI that demanded payment at the \$5.00 per month fee from 8 February 2002, the date of the sales transaction between Vidéotron and CQMI, to 10 October 2002, and at the \$0.52 fee thereafter. ExpressVu submitted that the Commission's finding that the \$5.00 fee was contrary to sections 9 and 10 of the Regulations speaks from the date of the purported CQMI transactions, 8 February 2002, not from 9 October 2002, the date of Decision 2002-299.
18. ExpressVu further argued that Vidéotron's proposal to prorate the fee for the first month to reflect the usage start date would create an unwanted and unnecessary administrative burden. ExpressVu submitted that a better approach, which it has adopted, is to pay the \$0.52 fee for the entire month, based on the number of subscribers that are using third party inside wire on the last day of that month.
19. ExpressVu stated that it accepted its obligation to pay for the use of Vidéotron's inside wire at the fee of \$0.52. According to ExpressVu, a formal written contract for the use of inside wire, as requested by Vidéotron, is unnecessary since, in ExpressVu's view, there is an implied contract between the incumbent cable undertaking and a competitor to the extent that the incumbent provides access to the wire and the competitor pays the fee. ExpressVu submitted that this contract can be implied from the legal requirements of the Regulations and the Commission's decisions and orders.
20. ExpressVu also noted the Cable Wire sub-working group of the CRTC Interconnection Steering Committee (CW-CISC) was currently developing a consensus report dealing with administrative and reporting procedures for the use of inside wire. ExpressVu noted that it was prepared to abide by the terms governing the procedures for the use of inside wire that are set out in this report.
21. ExpressVu submitted that the terms and conditions of access to and use of inside wire are fundamental to whether the inside wire is offered at a just and reasonable fee and on a non-preferential or discriminatory basis. ExpressVu argued that it would be illogical, from a purposive regulatory perspective, to leave such important terms to be determined by a private contract, particularly where the parties to that contract have unequal bargaining power.

22. ExpressVu argued that, by insisting on signed contracts for the use of inside wire, Vidéotron was attempting to achieve two goals:
- 1) Retain control over all material terms of access to inside wire other than the monthly fee; and
 - 2) Establish a foothold to continue to pursue its interests through the provincial courts, arguing that the terms and conditions set out in any such agreement are matters of private contract, within provincial jurisdiction, and are beyond the authority of the Commission.
23. With respect to Vidéotron's request that it not be required to ensure that CQMI allows BDUs that have not clearly accepted CQMI's 10 October 2002 offer to use its inside wire, ExpressVu argued that, if the Commission were to approve this request, Vidéotron could bypass the requirements set out in Decision 2002-299 through contractual negotiations.

Look

24. Look opposed Vidéotron's application for reconsideration and variance of Decision 2002-299. Look noted that the Commission has not established specific guidelines for reconsideration of a mandatory order pursuant to section 12(3) of the Act and suggested that the Commission apply the same criteria that it uses to review and vary decisions pursuant to the *Telecommunications Act*. In that regard, Look submitted that the application by Vidéotron does not raise substantial doubt as to the correctness of the decision, and accordingly should be dismissed by the Commission without any unnecessary delay.
25. Look argued that Vidéotron's claim that competitors do not have a clear obligation to pay for use of its inside wire is disingenuous. According to Look, it is implicit, if not explicit, from Decision 2002-299 and all of the associated proceedings that preceded Decision 2002-299 that the regulatory regime established for competitors' use of inside wire is a non-interference model under which the competitor pays a just and reasonable fee for use of the wire. Look confirmed its intention to pay the \$0.52 per month.
26. With respect to Vidéotron's argument for a written contract, Look submitted that it supports the implementation of a standard, industry-wide framework that would protect both the user and the owner of inside wire. It submitted that, in Public Notice 2002-51, the Commission had determined that the operational and implementation issues surrounding the regime for third party use of inside wire should be dealt with through the CW-CISC.
27. Look concluded that since the Commission has explicitly directed the CW-CISC to deal with operational issues affecting inside wire, the fact that the Commission did not address the need for parties to enter into a contract in Decision 2002-299 cannot be characterized as giving rise to substantial doubt as to the correctness of that decision.

Vidéotron's reply

28. In its reply comments, dated 20 December 2002, Vidéotron noted that, despite the stated intentions of ExpressVu, Cable VDN and Look to pay the \$0.52 lease fee for the inside wire, CQMI has not yet received any payments from these parties. Vidéotron filed a copy of a letter sent by Look to Vidéotron and CQMI which, according to Vidéotron, took the position that Look was not obligated to pay for the use of the inside wire until the CW-CISC had finished developing the administration and reporting procedures mandated by the Commission in Public Notice 2002-51. According to Vidéotron, the differing views of ExpressVu, Cable VDN and Look on the nature of the obligation, if any, to pay for the use of inside wire, their objections to entering into a contract for the use of inside wire and their refusal to simply state that they accept the terms of CQMI's 10 October 2002 offer attested to the need for clarification. In this respect, Vidéotron submitted that there is a clear need for the Commission to clarify that BDUs are obligated to pay the monthly lease fee for inside wire.
29. Vidéotron contended that the refusal of ExpressVu, Cable VDN, and Look to sign contracts for the use of inside wire was motivated by a desire to ensure that the use of inside wire remains outside the jurisdiction of provincial courts and that their obligations with respect to the inside wire remained vague and difficult to enforce. Vidéotron submitted that the views of ExpressVu, Cable VDN and Look against entering into comprehensive written contracts were fundamentally at odds with standard commercial practice.
30. Vidéotron also argued that regulation by the Commission does not eliminate the need for written contracts. By way of example, Vidéotron noted that, although regulation may affect the terms and conditions of telecommunications service contracts, it does not, however, alter the commercial requirement for comprehensive written contracts for service with telecommunications carriers. Vidéotron further submitted that the Commission's regulatory framework for inside wire does not preclude BDUs from entering into written contracts as long as the terms and conditions of those contracts are not unduly preferential.
31. Vidéotron also submitted that ExpressVu, Cable VDN and Look have refused to state clearly that they have accepted CQMI's 10 October 2002 offer or to recognize that they are under a contractual obligation to pay monthly inside wire usage charges to CQMI. Vidéotron reiterated its request that the Commission clarify that, without a clear acceptance of CQMI's 10 October 2002 offer, Vidéotron would be under no obligation to ensure that CQMI allows BDUs to use its inside wire.

The Commission`s analysis and determinations

What criteria should be used to evaluate Vidéotron`s application?

32. In its comments, Look noted that the Commission has not established specific criteria for assessing applications for reconsideration of a mandatory order issued pursuant to section 12(3) of the Act, and suggested that the Commission apply the same criteria that it uses to decide whether to review and vary decisions made pursuant to the *Telecommunications Act*. In its reply, Vidéotron submitted that, under section 12(3) of the Act, it is entitled to apply for reconsideration of the mandatory order. Vidéotron did not, however, address the issue of whether or not its application should be evaluated in the same way as an application to review and vary a decision made pursuant to the *Telecommunications Act*.
33. The Commission has not developed criteria for dealing with reconsideration and variance applications under the Act. However, after reviewing Vidéotron`s application, the Commission considers that Vidéotron is not requesting a change to any of the findings set out in Decision 2002-299, but is rather seeking further orders related to various aspects of Decision 2002-299 and of the Mandatory Order attached thereto to assist it in implementing Decision 2002-299 and the Mandatory Order. The Commission therefore finds that it is not necessary to address the issue of criteria for evaluating applications to reconsider and vary decisions made under the *Broadcasting Act* in order to deal with Vidéotron`s application.

Are BDUs obligated to pay Vidéotron/CQMI \$0.52 per subscriber per month for use of its inside wire?

34. In its application, Vidéotron submitted that, although \$0.52 per subscriber per month has been established as the appropriate fee for CQMI to charge for the use of its inside wire, there was nothing in Public Notice 2002-51 or in Decision 2002-299 that established an obligation on the part of users of inside wire to actually pay the fee. In its comments, Look argued that Decision 2002-299 and all associated proceedings that preceded Decision 2002-299 implied that the regulatory regime established for competitors` use of inside wire is a non-interference model under which the competitor pays a just and reasonable fee for the use of the wire. Cable VDN submitted that Vidéotron`s position ignored the Commission`s finding in Decision 2002-299 that CQMI was an *alter ego* of Vidéotron. In light of the Commission`s finding, Cable VDN considered that Vidéotron/CQMI would have recourse to the Commission in the event of non-payment.
35. The Commission notes that section 10 of the Regulations imposes obligations on licensees, i.e. licensed BDUs, with respect to use of their inside wire. CQMI is not a licensee. However, the Commission found, in Decision 2002-299, that Vidéotron and CQMI acted as a single entity in the matter of the use of the inside wire, and that Vidéotron could not use the corporate vehicle of CQMI to escape its regulatory

obligations. In interpreting section 10 for the purposes of that decision, the Commission therefore determined that Vidéotron and its *alter ego* CQMI were obligated to charge a just and reasonable fee determined and reviewable by the Commission for the use of inside wire in MUDs with 20 or more occupants.

36. In applying section 10(2) of the Regulations, the Commission considers that it is entitled to interpret that section in a manner that avoids absurdity. In particular, the Commission can examine whether a proposed interpretation of section 10(2) of the Regulations would defeat the purpose of the section or render it pointless or futile.
37. The Commission considers that to interpret section 10(2) of the Regulations as giving a licensee a right to charge a just and reasonable fee but not imposing a concomitant obligation on the party using the inside wire to pay that fee would defeat the purpose of section 10(2) and would be absurd.
38. In light of the above, the Commission finds that a party wishing to use the inside wire is required to pay a just and reasonable fee charged by a licensee.

For Vidéotron/CQMI, what is the appropriate effective date of the \$0.52 per subscriber per month fee?

39. As noted above, Vidéotron sold its inside wire to CQMI on 8 February 2002. Competitors were informed of the sale on 12 February 2002 and told that CQMI would make its inside wire available to them at a cost of \$5.00 per subscriber per month. On 9 October 2002, following a public proceeding, the Commission issued Decision 2002-299, which included a mandatory order providing that Vidéotron and its subsidiaries and its affiliates, including CQMI, could not use the inside wire, ostensibly owned by CQMI, for the delivery of broadcasting services unless Vidéotron and its subsidiaries and/or CQMI offered third parties, in competition for such delivery, the use of that wire at a monthly fee not exceeding \$0.52 per subscriber per month. On 10 October 2002, CQMI offered use of the inside wire to the competitors at the \$0.52 fee established by the mandatory order.
40. In its application, Vidéotron requested that the \$0.52 per subscriber per month fee be considered effective as of 10 October 2002. The Commission notes that none of the parties that submitted comments disputed the fact that the \$0.52 fee was in effect on 10 October 2002. ExpressVu, however, noted that it had received invoices from CQMI that demanded a \$5.00 per subscriber per month fee for the period from 8 February 2002 to 10 October 2002, and at the \$0.52 fee thereafter. ExpressVu considered that the Commission's finding that the \$5.00 fee was contrary to sections 9 and 10 of the Regulations speaks from the date of the purported CQMI transactions, 8 February 2002, not from the date that the Commission issued Decision 2002-299.
41. The Commission notes that the ability for a BDU to charge a fee for the use of its inside wire pursuant to section 10 of the Regulations was effective when relevant amendments to the Regulations came into force on 18 September 2000.

42. However, section 10(2) states that the fee that a licensee may charge for the use of its inside wire must be “just and reasonable.” In Decision 2002-299, the Commission concluded that Vidéotron was in violation of its obligations under section 10 of the Regulations when it, or CQMI, required any fee in excess of \$0.52 for the use of inside wire in MUDs.
43. The Commission considers that Decision 2002-299 has the effect of preventing CQMI from collecting the \$5.00/month fee, as this would constitute the charging of an unjust and unreasonable fee.
44. In light of the above, the Commission finds that the effective date from which Vidéotron/CQMI is entitled to receive the \$0.52 fee is 8 February 2002, the date on which Vidéotron/CQMI elected to start charging a fee for use of the inside wire. The Commission further finds that Vidéotron/CQMI is not entitled to charge the \$5.00 fee for any time period at issue in this proceeding.

How, if at all, should Vidéotron/CQMI's \$0.52 per subscriber per month fee be pro-rated?

45. The issue of pro-rating of the usage fee relates to situations where a customer acquires or discontinues service during a month rather than at the end of a month, for example, where a former Vidéotron subscriber receives service from ExpressVu over Vidéotron's wire from the fifteen of the month until the end of the month. Vidéotron/CQMI's position was that, in such situations, it should collect half of the \$0.52 fee for that subscriber. ExpressVu argued that it would be administratively simpler to only count subscribers using third party inside wire at the end of the month and pay the full \$0.52 fee for all such subscribers for the entire month, regardless of when they began to receive service.
46. In Public Notice 2002-13, the Commission stated that the administrative burden of the inside wire regime should be kept to a minimum. The Commission further notes that the issue of pro-rating has been raised by submissions to the CW-CISC as part of the development of the administrative and reporting procedures.
47. In light of the above, the Commission finds that, for purposes of this proceeding only, competitors should pay to CQMI the full \$0.52 per subscriber per month fee for each subscriber using the inside wire in use at the end of the month.

When are BDUs obligated to make payments to Vidéotron/CQMI?

48. In its reply comments, Vidéotron/CQMI noted that it had not received any payments from ExpressVu, Cable VDN and Look for the use of the inside wire owned by CQMI. Vidéotron also filed a letter sent by Look to Vidéotron and CQMI which, according to Vidéotron, took the position that Look was not obligated to pay for the use of the inside wire until the CW-CISC had finished developing the reporting procedures mandated by the Commission in Public Notice 2002-51.

49. The Commission notes that the obligation of competitors to pay for the use of inside wire arises from the operation of section 10(2) of the Regulations and is not dependent on the creation of the administrative or reporting procedures mandated by the Commission in Public Notice 2002-51. Furthermore, the Commission is of the view that, since a just and reasonable fee for the use of the inside wire has been established, those parties using Vidéotron/CQMI's inside wire should now be paying for the use of that inside wire.
50. In light of the above, the Commission finds that parties are required to pay Vidéotron/CQMI for the use of its inside wire forthwith, and at regular monthly intervals thereafter, with the final payment intervals subject to the Commission's ultimate finding with respect to the reporting procedures currently under discussion in the CW-CISC.

Are written contracts necessary with respect to the use of Vidéotron/CQMI's inside wire by BDUs?

51. Vidéotron argued that BDUs wishing to use third party inside wire should be obligated to enter into a binding written contract setting out the terms and conditions of its use. It considered that Decision 2002-299 should not restrict the application of contractual terms and conditions of use of inside wire, provided that the terms do not confer an undue preference or undue disadvantage on a BDU.
52. None of the parties that submitted comments considered that contracts setting out terms and conditions for the use of inside wire were necessary or desirable. These parties noted that the Commission had already instituted a process for dealing with the use of inside wire through the CW-CISC and generally considered that the framework developed through this process would be appropriate and adequate for dealing with issues related to the use of inside wire.
53. The Commission has, to date, taken several steps to establish a framework for access to inside wire. As noted above, in Public Notice CRTC 2002-13, the Commission took the preliminary view that an appropriate lease fee for inside wire was \$0.44 per subscriber per month. The Commission also took the preliminary view that an appropriate lease fee should make no provision for the recovery of maintenance costs by the owner of the wire. The Commission considered that the primary responsibility for investigating and repairing any problems with leased wire should lie with the lessee. The Commission further took the preliminary view that there should be no explicit charges for the recovery of administration costs. The Commission also indicated its view that inside wire administration and reporting could use processes already developed for third party Internet access services. Using these processes, new entrants would provide reports to the four largest incumbent cable companies (Rogers Cable Inc., Shaw Communications Inc., Cogeco Cable Inc. and Vidéotron ltée) through their Customer Services Groups (CSGs). Reports made to other inside wire owners would be subject to a non-disclosure agreement.
54. In Public Notice 2002-51, the Commission found that a fee of \$0.52 per subscriber per month for the use of inside wire in MUDs would constitute a just and reasonable fee pursuant to section 10(2) of the Regulations. The Commission also confirmed its

preliminary view that inside wire use should be reported through the CSGs of the four largest cable companies, and pursuant to a non-disclosure agreement, similar to that approved for third-party Internet access services, in the case of other BDUs. The Commission directed the CW-CISC to draft a set of administrative and reporting procedures for inside wire and to submit the proposed procedures to the Commission by 3 March 2003.²

55. In the near future, the Commission will finish the process of setting out parameters for the reporting of inside wire used by competing BDUs. The Commission has already established the appropriate fee level and costs that the owner of the inside wire is entitled to recover through that fee. The Commission will, following the report of the CW-CISC, finalize the applicable non-disclosure agreement and the administrative and reporting procedures. In light of the above, the Commission considers that mandating private written contracts, as requested by Vidéotron, could create further impediments to access to inside wire. While the Commission recognizes that there may be certain terms and conditions outside of the Commission's framework for a lessor and lessee to work out, it believes that negotiations of such terms and conditions should not impede a lessee's right of access or a lessor's right to charge a just and reasonable fee, and should not in any other respect violate sections 9 or 10 of the Regulations or any other regulation, Commission decision or policy.
56. In light of the above, the Commission finds that the right of access to inside wire in MUDs is not dependent on the execution of a formal written contract, and, similarly, that the requirement to pay a just and reasonable fee for the use of that wire is not dependent on the execution of a formal written contract.

Secretary General

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

² The Commission subsequently extended this date to 30 June 2003.