



Telecom Order CRTC 2021-392

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Ottawa, 24 November 2021

Public record: Tariff Notice 69

Rogers Communications Canada Inc. – Introduction of a new wholesale high-speed access speed tier

Regarding Rogers Communications Canada Inc.'s application proposing the introduction of a new wholesale high-speed access (HSA) service tier to the company's Access Services Tariff – Third Party Internet Access Service, the Commission **approves on an interim basis**, effective **24 November 2021**, the following speeds and monthly access rates:

- 10 MbpsU/50MbpsD Service (disaggregated wholesale HSA service) – FTTN, with a rate of \$26.50; and
- 10 MbpsU/50MbpsD Service (disaggregated wholesale HSA service) – FTTH, with a rate of \$32.37.

Moreover, the Commission approves on a final basis, effective **24 November 2021**, the following speed and monthly access rate:

- 10 MbpsU/50MbpsD Service (aggregated wholesale HSA service) – FTTN, with a rate of \$28.65.

Application

1. The Commission received an application from Rogers Communications Canada Inc. (RCCI), Tariff Notice (TN) 69, dated 23 February 2021, proposing the introduction of a new wholesale high-speed access (HSA) service tier to the company's Access Services Tariff – Third Party Internet Access (TPIA) Service. The proposed service tier would include:

Access Service Speed Bands	RCCI's proposed interim rates
Aggregated TPIA configuration – Fibre to the node (FTTN) 10 megabits per second (Mbps) Upstream and 50 Mbps Downstream – 10MbpsU/50MbpsD Service	\$21.50
Disaggregated TPIA configuration – Fibre to the node (FTTN) 10 Mbps Upstream and 50 Mbps Downstream – 10MbpsU/50MbpsD Service	\$26.50
Disaggregated TPIA configuration – Fibre to the home (FTTH) 10 Mbps Upstream and 50 Mbps Downstream – 10MbpsU/50MbpsD Service	\$32.37

2. RCCI indicated that the aggregated wholesale HSA 10MbpsU/50MbpsD service rate is based on the next lower speed tier of 4MbpsU/45MbpsD approved by the Commission in Telecom Order 2012-706.
3. RCCI noted that the disaggregated wholesale HSA 10MbpsU/50MbpsD service rates are the rates currently approved on an interim basis by the Commission in Telecom Order 2017-31.
4. The Commission received an intervention from TekSavvy Solutions Inc. (TekSavvy).

Positions of parties

TekSavvy

5. TekSavvy submitted that, as of the date of its intervention, 26 March 2021, RCCI had not made the new service speeds available to wholesale customers. TekSavvy further submitted that it had received an email from RCCI on 23 March 2021, in which RCCI confirmed that it will not make the wholesale HSA 10MbpsU/50MbpsD Service available to wholesale customers until the service has received Commission approval.
6. TekSavvy provided an example to illustrate its contention that RCCI does not need Commission approval to make wholesale HSA services available to wholesale customers. The example showed that RCCI introduced wholesale HSA 10 Mbps

service on 31 January 2019 under [TN 62/A](#) and that it was made available to wholesale customers without Commission approval.

7. TekSavvy also referenced a [letter](#) from Commission staff to Shaw Cablesystems G.P. (Shaw), which TekSavvy submitted was intended to compel Shaw to offer its retail 1 gigabit per second HSA service (1 Gbps service) concurrently with its wholesale HSA service offering. TekSavvy cited the letter's statement that the speed-matching requirement¹ continues to apply with regard to Shaw's obligation to make its 1 Gbps service available concurrently on a wholesale basis pursuant to the speed-matching requirement set out in Telecom Decision 2006-77 and Telecom Regulatory Policy 2010-632.
8. TekSavvy also expressed its concern that to allow RCCI to make new speeds available on the retail market while not making them available on a wholesale basis would enable RCCI to stay ahead of competition.
9. TekSavvy requested two remedies from the Commission:
 1. an expedited determination requiring RCCI to make the 10MbpsU/50MbpsD Service available to its wholesale customers immediately; and
 2. a clarification that, as a matter of course, carriers are required to make new retail services available concurrently on a wholesale basis, either through the filing of an *ex parte* application in advance of making a service available on the retail market, so that new tariff pages related to the service would have interim approval before the service is launched, or by offering a new service to retail and wholesale customers at the same time, even if the service does not yet have Commission approval.

RCCI's reply

10. RCCI submitted that standard practice for filings with regard to TPIA tariffs falls under the section on competitor tariff applications in Telecom Information Bulletin 2010-455-1, which states that the Commission will issue an order or a decision to dispose of each tariff application associated with competitor services that belong to Group B tariff filings.²

¹ The term "speed matching" refers to a regulatory requirement that incumbent local exchange carriers and cable carriers provide wholesale services that enable competitors to offer Internet services to their retail customers at speeds that match the Internet speeds provided by those incumbents to their own retail customers.

² Group B tariff filing applications consist of retail and competitive local exchange carrier tariff applications that do not belong to Group A and are not associated with service destandardization and/or withdrawal. Tariff applications qualify as Group A applications if the associated revisions are restricted to one or more conditions, which are identified in Telecom Information Bulletin 2010-455-1, and are too numerous to list here.

11. RCCI also cited subsection 25(1) of the *Telecommunications Act*, which states that no Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission.
12. Based on those examples, RCCI submitted that there is clear guidance from the Commission that tariff approval is needed prior to any new speed tier introduction.
13. RCCI further submitted that the section specific to competitor tariff applications does not mention the applicability of *ex parte* applications.
14. With respect to situations in which RCCI has made a new speed tier available to wholesale customers prior to Commission approval, RCCI stated that, in the past, pre-emptively allowing such access without Commission approval has created uncertainty. RCCI submitted that, because of this uncertainty, it can no longer offer a service until the Commission has approved the related tariff.
15. Lastly, in order to introduce more certainty in the industry, RCCI proposed a more streamlined approval process whereby interim approval would be deemed granted in 15 days as it is in Group B filings.

Issues

16. The Commission has identified the following issues to be determined in this order:
 - Should the Commission approve the introduction of the new service tier?
 - Are the proposed rates appropriate?

Should the Commission approve the introduction of the new service tier?

Commission's analysis and determinations

17. In Telecom Decision 2006-77, the Commission determined 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; and
 - if a cable carrier introduces 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.
18. The Commission notes that in Telecom Decision 2006-77 it did not require cable carriers to offer a corresponding wholesale service at the same time as a retail Internet service speed. Rather, the Commission only determined that, when a retail Internet service speed is offered, a cable carrier must file the proposed revisions to its TPIA tariff with the Commission. The Commission is of the view that a wholesale service will become available to wholesale customers once the related tariff application has

received Commission approval. Accordingly, the Commission considers that RCCI's proposal is in compliance with the speed-matching requirement as it is set out in Telecom Decision 2006-77.

19. In Telecom Regulatory Policy 2010-632, the Commission reiterated its determinations in Telecom Decision 2006-77 regarding the requirement for cable carriers to provide their wholesale HSA services to competitors at speeds that match all of the speed options they offer their retail Internet service customers. Accordingly, the Commission considers that RCCI's proposal is in compliance with the speed-matching requirement as it is set out in Telecom Regulatory Policy 2010-632.

Are the proposed rates appropriate?

Commission's analysis and determinations

20. The Commission notes that TekSavvy's submission did not raise any specific issues related to the proposed interim rate for the 10MbpsU/50MbpsD Service or any associated terms and conditions. Rather, TekSavvy's intervention was related to the delay between offering the service to retail subscribers and making it available to wholesale customers.
21. The Commission notes that in Telecom Decision 2021-181 it approved on a final basis a rate of \$28.65 for RCCI's aggregated wholesale HSA Speed Band 3 – 31-60 Mbps downstream / Up to 10 Mbps upstream, which would include the 10MbpsU/50MbpsD (FTTN) service. Accordingly, the rate for the aggregated wholesale HSA 10MbpsU/50MbpsD (FTTN) service does not need to be based on the lower speed tier rate of \$21.50, as proposed by RCCI.
22. Accordingly, the Commission adjusts RCCI's proposed rate of \$21.50 to align with the speed band rate of \$28.65 that was approved in Telecom Decision 2021-181.
23. The Commission further notes that RCCI did not submit an economic study report with its tariff application for its disaggregated wholesale HSA 10MbpsU/50MbpsD (FTTN and FTTH) service, since those rates are based on existing approved interim rates. The costs associated with RCCI's disaggregated wholesale HSA 10MbpsU/50MbpsD Service (FTTN and FTTH) will be reviewed once the proceeding initiated by Telecom Notice of Consultation 2020-187 has been completed.

Other matters

24. With respect to the submissions of RCCI and TekSavvy on issues related to offering wholesale and retail HSA services concurrently and the proposal of a more streamlined approval process, the Commission is of the view that they are out of the scope of this proceeding. Tariff proceedings focus on the tariff notices themselves and the rates and services in question, rather than wider issues related to the Commission's processes. It is open for parties to avail themselves of the

Commission's application processes not tied to specific rates or service should they wish general matters to be determined by the Commission.

Conclusion

25. In light of all of the above, the Commission

- **approves on an interim basis**, effective **24 November 2021**, the following speeds and monthly access rates:
 - 10 MbpsU/50MbpsD Service (disaggregated wholesale HSA service) – FTTN, with a rate of \$26.50; and
 - 10 MbpsU/50MbpsD Service (disaggregated wholesale HSA service) – FTTH, with a rate of \$32.37.
- **approves on a final basis**, effective **24 November 2021**, the following speeds and monthly access rate:
 - 10 MbpsU/50MbpsD Service (aggregated wholesale HSA service) – FTTN, with a rate of \$28.65.

26. For disaggregated wholesale HSA services, the existing interim rates will remain in effect until final rates are established.

Policy Directions

27. The 2019 Policy Direction³ states that the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation. The Commission has reviewed the application in light of the 2019 Policy Direction and has considered its aspects to the extent necessary, using measures that are efficient and proportionate to their purpose. The Commission considers that approval of this application will promote competition and consumer interests.

28. Further, in accordance with subparagraph 1(b)(i) of the 2006 Policy Direction,⁴ approval of this application advances the policy objectives set out in section 7(f) of the Act.⁵

Secretary General

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁵ The cited policy objective is: 7(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.

Related documents

- *Requests to review and vary Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services*, Telecom Decision CRTC 2021-181, 27 May 2021
- *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020, as amended by Telecom Notice of Consultation CRTC 2020-187-1, 22 July 2020
- *Rogers Communications Partnership – Introduction of four new wholesale Third Party Internet Access service speeds*, Telecom Order CRTC 2012-706, 21 December 2012
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *Cogeco, Rogers, Shaw, and Videotron – Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006