



Telecom Order CRTC 2021-405

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Ottawa, 10 December 2021

Public record: Tariff Notice 40

Shaw Cablesystems G.P. – Reintroduction of a new wholesale high-speed access service tier

The Commission **approves, on a final basis**, effective **10 December 2021**, Shaw Cablesystems G.P.'s application to reintroduce a new wholesale high-speed access service tier to the company's Access Services Tariff – Third Party Internet Access Service. Specifically, the Commission approves the Internet 250/15 service at a monthly access rate of \$41.36.

Application

1. The Commission received an application (Tariff Notice 40) from Shaw Cablesystems G.P. (Shaw), dated 5 August 2021, in which the company proposed the reintroduction of a new wholesale high-speed access (HSA) service tier to its Access Services Tariff – Third Party Internet Access (TPIA) Service. The proposed new service tier being reintroduced is Broadband 250/15, which Shaw decommissioned on 23 September 2014. Shaw is proposing to reintroduce Broadband 250/15 and rename it Internet 250/15. This wholesale service tier provides speeds of up to 250 megabits per second (Mbps) download and 15 Mbps upload and falls within Access Service Speed Band 6.
2. Shaw submitted that it has not filed an economic study, since the aforementioned new Internet service falls within its existing Access Service Speed Band 6 with an approved rate of \$41.36.
3. The Commission received an intervention from TekSavvy Solutions Inc. (TekSavvy).

Positions of parties

4. TekSavvy submitted that the new wholesale services must be made available concurrently with retail services. TekSavvy further submitted that it has consistently raised concerns regarding Shaw's apparent willingness to ignore its obligations regarding the speed matching requirement.
5. TekSavvy submitted that, as of its intervention on 8 September 2021, Shaw had not made the new service speeds available to wholesale customers.

6. TekSavvy submitted that there are two reasons to believe that the service has been or will be made available to retail subscribers before wholesale customers:
 - The language included in the email notification introducing the service regarding the timing of the service’s availability.
 - The proposed effective date of Tariff Notice 40, 5 August 2021, has already passed.
7. TekSavvy also referenced a [letter](#) from Commission staff to Shaw. TekSavvy submitted that this letter was intended to compel Shaw to offer its retail 1 gigabit per second (Gbps) HSA service (the 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 therefore requested that the Commission undertake the following actions:
 - Clarify that the speed-matching requirement states that services must be made available concurrently on a wholesale basis;
 - Require Shaw to disclose if and when it first made Internet 250/15 available to its retail subscribers;
 - If the Commission finds that Shaw has made Internet 250/15 available to its retail subscribers, require Shaw to make the service available immediately on a wholesale basis to avoid further non-compliance with the speed matching requirement;
 - Require that Shaw include a confirmation in any future tariff notices that it has not launched a retail version of the associated service and will not until it is offered on a wholesale basis;
 - Consider imposing administrative monetary penalties on Shaw, or any other incumbent, for any further non-compliance with the speed matching requirement; and
 - Consider launching a process to review the tariff application process set out in Telecom Information Bulletin 2010-455-1.

¹ The term “speed-matching requirement” 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 subscribers at speeds that match the Internet speeds provided by those incumbents to their own retail subscribers.

9. In its reply, Shaw argued that the Commission staff letter dated 29 May 2020, referenced by TekSavvy, did not introduce a timing requirement with respect to the Commission's speed-matching policy.
10. Shaw submitted that it objects to TekSavvy's implication that Shaw concealed the date upon which it made Internet 250/15 available to its retail subscribers. Shaw argued that it made Internet 250/15 available to retail subscribers on 5 August 2021, the same day that it filed Tariff Notice 40 with the Commission and emailed the TPIA customers to advise them of the service launch.
11. Shaw submitted that it has followed the same process for Internet 250/15 as it has for other services, in compliance with its obligations under the speed-matching policy.
12. Shaw argued that any changes to the dates by which wholesale HSA service speeds are offered to retail subscribers and the dates by which they are offered to wholesale customers is a significant decision that must be made by the Commission.

Commission's analysis and determinations

13. 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.
14. 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 Shaw's proposal is in compliance with the speed-matching requirement as it is set out in Telecom Decision 2006-77.
15. In Telecom Regulatory Policy 2010-632, the Commission reiterated its determinations set out 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 offered to their retail Internet service customers. The Commission therefore considers that Shaw's proposal is in compliance with the speed-matching requirement as it is set out in Telecom Regulatory Policy 2010-632.

16. With respect to the proposed rate for Shaw's Internet 250/15, the Commission notes that TekSavvy's submission did not raise any specific issues related to the proposed interim rate for Internet 250/15 service or any terms and conditions associated with Internet 250/15 service. Rather, TekSavvy's intervention was related to the delay between offering the service to retail subscribers and making it available to wholesale customers.
17. The Commission further notes that Shaw did not submit an economic study report with its tariff application for its Internet 250/15 service. The Internet 250/15 service falls within Speed Band 6 – 130-250 Mbps downstream/up to 20 Mbps upstream. In Telecom Decision 2021-181, the Commission approved on a final basis a rate of \$41.36 for Shaw's Speed Band 6. As such the Commission considers that Shaw's proposed rate is appropriate.
18. With respect to the submission of TekSavvy on issues related to speed-matching and the tariff approval process, the Commission is of the view that these issues 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 on wider issues related to the Commission's processes. Should parties wish to have matters of general application considered by the Commission, they may take advantage of Commission application processes to raise such issues.

Conclusion

19. In light of all of the above, the Commission **approves, on a final basis**, Shaw's application to introduce its Internet 250/15 Service to its Access Services Tariff – Third Party Internet Access Service at a monthly access rate of \$41.36, effective **10 December 2021**.

Policy Directions

20. The 2019 Policy Direction² 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 considers that approval of this application is compliant with the 2019 Policy Direction and will positively impact competition and consumers given that consumers as wholesale customers will have access to Internet 250/15 Service.

² *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

21. Further, in accordance with subparagraph 1(b)(i) of the 2006 Policy Direction,³ approval of this application advances the policy objectives set out in paragraph 7(f) of the *Telecommunications Act*.⁴

Secretary General

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
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010
- *Cogeco, Rogers, Shaw, and Videotron – Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁴ 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.