



## Telecom Order CRTC 2022-107

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Ottawa, 21 April 2022

*Public record: Tariff Notice 73*

### **Rogers Communications Canada Inc. – Introduction of a new wholesale high-speed access speed tier in the Atlantic**

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 a final basis**, effective **21 April 2022**, the following speed and monthly access rate:

- 10MbpsU/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) 73, dated 17 August 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:

<b>Access Service Speed Band</b>	<b>RCCI's proposed interim rate</b>
Aggregated TPIA configuration – Fibre to the node (FTTN)  10 megabits per second (Mbps) Upstream and 50 Mbps Downstream – 10MbpsU/50MbpsD Service	\$28.65

2. RCCI indicated that the aggregated wholesale HSA 10MbpsU/50MbpsD service rate is based on the rate for Speed Band 3 (31-60 Mbps downstream / up to 10 Mbps upstream) approved by the Commission in Telecom Decision 2021-181.
3. The Commission received an intervention from TekSavvy Solutions Inc. (TekSavvy).

## Positions of parties

### TekSavvy

4. In its intervention, dated 17 September 2021, TekSavvy referenced its intervention regarding RCCI's TN 69, dated 26 March 2021. In that intervention, TekSavvy stated its view that the new service speed proposed by RCCI must be made available to wholesale customers concurrently with its retail services.
5. TekSavvy submitted that RCCI is using the argument of the lengthy approval process to justify its non-compliance with the speed matching requirement,<sup>1</sup> and that RCCI should not be citing Commission delay as the reason for its failure to comply. TekSavvy argued that RCCI is not the only incumbent that has adopted this approach, and that this is indicative of a systemic problem with the regulatory process.
6. Additionally, TekSavvy submitted that when incumbents file tariff applications which, in TekSavvy's view, deviate from Commission policy, it falls on the wholesale competitors to intervene, and this delays the Commission's determinations in a tariff proceeding. On this basis, TekSavvy expressed concern that allowing RCCI to make new speeds available in the retail market before they are made available on a wholesale basis forces additional process that delays the introduction of wholesale competition for that service.
7. TekSavvy therefore requested that the Commission undertake the following action:
  - i) render an expedited determination requiring RCCI to make the 10MbpsU/50MbpsD service immediately available to its wholesale customers; and
  - ii) clarify that carriers are required to make new services available concurrently on a wholesale basis by:
    - a) requiring RCCI to include a notice in future TNs that it will not offer a retail version of a proposed service until it is offered on a wholesale basis;
    - b) considering the imposition of administrative monetary penalties on RCCI, or any incumbent, for non-compliance with the speed matching requirement; and
    - c) considering launching a process to review the tariff application process set out in Telecom Information Bulletin 2010-455-1

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<sup>1</sup> 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.

## **RCCI's reply**

8. RCCI submitted that the Commission approved final aggregated TPIA rates and associated speed bands in Telecom Decision 2021-181. In RCCI's view, TekSavvy has failed to recognize that the use of those approved rates and associated speed bands is anticipated to streamline the tariff approval process in the future, as envisioned in Telecom Decision 2016-117.
9. RCCI further submitted that currently, 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 belongs to Group B tariff filings.<sup>2</sup>
10. 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.
11. Based on the above, RCCI submitted that there is clear guidance from the Commission that tariff approval is needed prior to any new speed tier introduction.
12. 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.
13. Regarding TekSavvy's request that the Commission consider launching a process to review the tariff application process set out in Telecom Information Bulletin 2010-455-1, RCCI submitted that this would be unnecessary, and the Commission could render its decision by granting interim approval of tariffs in a timelier manner based on the speed-matching requirement.

## **Issues**

14. 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?

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<sup>2</sup> 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.

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

### **Commission's analysis and determinations**

15. 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.

16. 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 new 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.

17. 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**

18. 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 is related to the delay between offering the 10MbpsU/50MbpsD service to retail subscribers and making it available to wholesale customers.

19. 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 Commission considers that the rate proposed by RCCI for the 10MbpsU/50MbpsD service is appropriate.

## Other matters

20. 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 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 wider issues related to the Commission's processes. Broader considerations, such as those raised by TekSavvy in this proceeding, have implications for all carriers. It is open to parties to avail themselves of the Commission's application processes not tied to specific rates or services should they wish to have general matters determined by the Commission.

## Conclusion

21. In light of all of the above, the Commission **approves on a final basis**, effective **21 April 2022**, the following speed and monthly access rate:

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

## Policy Directions

22. The 2019 Policy Direction<sup>3</sup> states that the CRTC should consider how its decisions can promote competition, affordability, consumer interests and innovation.
23. The Commission has reviewed RCCI's 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 is compliant with the 2019 Policy Direction as it will positively impact competition and consumers, while allowing wholesale customers to have access to the 10MbpsU/50MbpsD service.
24. Further, in accordance with subparagraph 1(b)(i) of the 2006 Policy Direction,<sup>4</sup> approval of this application advances the policy objectives set out in paragraph 7(f) of the *Telecommunications Act*.<sup>5</sup>

Secretary General

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<sup>3</sup> *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

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

<sup>5</sup> 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
- *Review of costing inputs and the application process for wholesale high-speed access services*, Telecom Decision CRTC 2016-117, 31 March 2016
- *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