



Telecom Order CRTC 2022-192

PDF version

References: 8740-S9-202005892 and 8740-S9-202101161

Ottawa, 20 July 2022

Public record: Tariff Notice 35A and Tariff Notice 38

Shaw Cablesystems G.P. – Introduction of Internet 750 and Internet 1000 wholesale high-speed access services

Summary

The Commission **approves on an interim basis** Shaw Cablesystems G.P.'s (Shaw) applications to introduce Internet 750 and revise Internet 1000 wholesale high-speed access services, which fall within Shaw's Speed Band 8 and Speed Band 9. Specifically, the Commission **approves on an interim basis** a monthly access rate of \$50.84 for the Internet 750 and Internet 1000 services.

Application

1. On 11 September 2020, the Commission received Tariff Notice (TN) 35 from Shaw Cablesystems G.P. (Shaw), in which the company proposed the introduction of new wholesale high-speed access (HSA) service speeds to the company's Tariff for Third Party Internet Access (CRTC 26300).
2. The proposed new service speeds included
 - Internet 150 (speeds up to 150 megabits per second [Mbps] download and 15 Mbps upload), which falls within Shaw's Speed Band 6, with a proposed monthly access rate of \$41.36;
 - Internet 300 (speeds up to 300 Mbps download and 30 Mbps upload), which falls within Shaw's Speed Band 7, with a proposed monthly access rate of \$50.84; and
 - Internet 750 (speeds up to 750 Mbps download and 75 Mbps upload), which falls within Shaw's Speed Band 8, with a proposed monthly access rate of \$50.84.
3. In Telecom Decision 2021-181, the Commission approved, on a final basis, rates for aggregated wholesale HSA services, including Shaw's Internet 150 (150 Mbps download and 15 Mbps upload) and Internet 300 (300 Mbps download and 30 Mbps upload) services.

4. On 24 September 2020, the Commission received TN 35A from Shaw, which amended the company's application for TN 35 by increasing the upload speeds for Speed Band 7 and Speed Band 8 to 100 Mbps, with no change to the monthly access rates.
5. On 22 February 2021, the Commission received TN 38 from Shaw, in which the company proposed to increase upload speeds for its existing Internet 1000 wholesale HSA service tier (which was introduced in TN 34 and approved on an interim basis in Telecom Order 2021-57) from 25 Mbps to 100 Mbps, with no change to the monthly access rate.
6. Shaw submitted that no cost studies are necessary for their TN submissions because the proposed service speeds fall within Shaw's existing access service speed bands, for which the Commission established interim rates in Telecom Order 2020-325.
7. On 13 October 2020, the Commission received an intervention from TekSavvy Solutions Inc. (TekSavvy) relating to Shaw's TN 35A, and on 25 March 2021, the Commission received an intervention from TekSavvy relating to Shaw's TN 38.

Positions of parties

TekSavvy

8. TekSavvy indicated in both of its interventions that Shaw failed to comply with the speed-matching requirement by not making its Internet 1000 service (speeds up to 1000 Mbps download and 100 Mbps upload) available on a wholesale basis concurrently with its retail services.
9. TekSavvy submitted that incumbents effectively "stay ahead" of competition when they are allowed to not make a new speed available on a wholesale basis concurrently with retail services.
10. TekSavvy requested that the Commission clarify that incumbents are required to make new services available concurrently on a wholesale basis either by filing an ex parte application or by making services available to wholesale customers on the same date as retail customers.
11. In its TN 35A intervention, TekSavvy submitted that the Commission should impose an administrative monetary penalty (AMP) on Shaw because of Shaw's repeated non-compliance with the speed-matching requirement.
12. Additionally, in its TN 35A intervention, TekSavvy submitted that the Commission should set cost-based interim rates for Shaw's proposed new speeds in TN 35A, as well as for Shaw's Internet 1000 service, using the approved just and reasonable access rate of \$11.47 as a reasonable proxy.

Shaw's reply

13. In its reply to TekSavvy's interventions relating to TNs 35A and 38, Shaw indicated that it has continued to comply with its obligations under the speed-matching requirement, noting that the speed-matching determinations did not specify a timing requirement.
14. In addition, Shaw submitted that the entirety of TekSavvy's interventions must be dismissed given that TekSavvy's submissions are entirely irrelevant to, and out of scope of, these tariff proceedings. Shaw argued that TekSavvy's interventions relating to TNs 35A and 38 are a procedurally inappropriate attempt to make additional arguments and false allegations against Shaw's TN 34 and Shaw's Part 1 Relief Application (filed 27 May 2020 requesting immediate relief from the Commission's speed matching requirement as it relates to the introduction of Shaw's Internet 1000 service in TN 34).

Commission's analysis

15. In Telecom Decision 2021-181, following the review and vary of Telecom Order 2019-288, the Commission approved, on a final basis, the rates for Shaw's aggregated wholesale HSA services between Speed Bands 1 and 7. In that decision, Shaw's Internet 150 service (150 Mbps download and 15 Mbps upload) was approved with a rate of \$41.36 while Shaw's Internet 300 service (300 Mbps download and 30 Mbps upload) was approved with a rate of \$50.84. This order therefore only addresses the introduction of Shaw's Internet 750 service (750 Mbps download and 100 Mbps upload), and Shaw's Internet 1000 service at an increased upload speed (1000 Mbps download and 100 Mbps upload).
16. The Commission considers that Shaw's proposals are in compliance with the speed-matching requirement as set out in Telecom Regulatory Policy 2010-632, which requires an incumbent to provide wholesale services at the same speeds as those being offered to its retail end-users.
17. The Commission notes that Shaw did not submit cost studies for either application, since each of the proposed new Internet services falls within the company's existing speed bands, which all have approved interim or final rates.
18. The Commission has not yet established a final rate for Shaw's Speed Band 8 (501-750 Mbps download and up to 50 Mbps upload) as the associated cost study is pending review by the Commission. However, in Telecom Order 2019-52 the Commission approved, on an interim basis, a rate of \$50.84 for Shaw's Speed Band 8.
19. With respect to TekSavvy's interventions, the Commission notes that Shaw's Internet 1000 service, which falls in Speed Band 9, was introduced by Shaw in TN 34 and subsequently approved on an interim basis at a rate of \$50.84 in Telecom Order 2021-57.

20. The Commission further notes that in its TN 38 application, Shaw is proposing to change the upload amount from 25 Mbps to 100 Mbps for service offerings that fall within Speed Band 9 without any proposed corresponding change in rate.
21. With respect to TekSavvy's request that the Commission clarify its position on making new services available concurrently on a wholesale basis, the Commission reiterates its determination in Telecom Order 2021-57 which requires Shaw to file a TN with a proposed monthly access rate for its new service, in accordance with existing rules and procedures, so as to ensure that retail and wholesale services are offered concurrently.
22. With respect to TekSavvy's request that the Commission impose an AMP on Shaw, the Commission notes that TekSavvy made similar requests in its intervention for Shaw's TN 36, and these requests were denied by the Commission in Telecom Order 2022-96. In that order, the Commission considered that Shaw's application was not, in and of itself, a violation of the current Third Party Internet Access tariff or a violation of the *Telecommunications Act*, regulations or Commission decisions.

Conclusion

23. In light of all of the above, the Commission **approves on an interim basis**, effective **20 July 2022**, a monthly access rate of \$50.84 for Shaw's Internet 750 service (750 Mbps download and 100 Mbps upload) and Shaw's Internet 1000 service at an increased upload speed (1000 Mbps download and 100 Mbps upload).
24. In addition, the Commission **denies** TekSavvy's request to impose an AMP on Shaw.

Policy Directions

25. The 2019 Policy Direction¹ states that the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation.
26. The Commission has reviewed Shaw's applications 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 these applications is compliant with the 2019 Policy Direction, since wholesale customers will have access to higher upload speeds which will positively impact competition and consumers.

¹ *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

27. Further, in compliance with subparagraph 1(b)(i) of the 2006 Policy Direction,² approval of these applications advances paragraph 7(f) of the *Telecommunications Act*.³

Secretary General

Related documents

- *Shaw Cablesystems G.P. – Introduction of Internet 1500 wholesale high-speed access service*, Telecom Order CRTC 2022-96, 5 April 2022
- *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
- *Shaw Cablesystems G.P. – Introduction of Internet 1000 wholesale high-speed access service*, Telecom Order CRTC 2021-57, 11 February 2021
- *Shaw Cablesystems G.P. – Introduction of new wholesale high-speed access services*, Telecom Order CRTC 2020-325, 4 September 2020
- *Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services*, Telecom Order CRTC 2019-288, 15 August 2019
- *Shaw Cablesystems G.P. – Introduction of a new wholesale high-speed access band and the Internet 600 access speed tier*, Telecom Order CRTC 2019-52, 22 February 2019
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

³ 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.