



Telecom Order CRTC 2023-2

PDF version

Ottawa, 9 January 2022

Public record: Tariff Notices 63 and 64

Cogeco Communications Inc. – Introduction of new Ethernet passive optical network/fibre-to-the-home disaggregated speed tiers and destandardization of certain third-party Internet access aggregated and disaggregated speed tiers

Summary

The Commission **approves** Cogeco Communications Inc.'s (Cogeco) application to introduce five new disaggregated Ethernet passive optical network (EPON)/fibre-to-the-home (FTTH) speed tiers, with access rates set by proxy on an interim basis to corresponding radio frequency over glass (RfOG)/FTTH speed tier access rates. However, the Commission **directs** Cogeco to introduce new disaggregated EPON/FTTH speed bands that reflect existing RfOG/FTTH speed bands. The Commission **approves** Cogeco's destandardization of its 250 megabits per second (Mbps) aggregated and disaggregated third party Internet access (TPIA) service but **denies** Cogeco's destandardization of its 6 Mbps and 40 Mbps aggregated and disaggregated TPIA service. The Commission also **denies** Cogeco's proposed speed band reformatting for its aggregated and disaggregated hybrid-fibre coaxial and RfOG/FTTH TPIA services.

Applications

1. On 21 June 2021, the Commission received Tariff Notice (TN) 63 from Cogeco Communications Inc., on behalf of its subsidiary Cogeco Connexion Inc. (Cogeco). In its application, Cogeco sought approval for the introduction of five new speed tiers for its disaggregated Ethernet passive optical network (EPON)¹/fibre-to-the-home (FTTH) third party Internet access (TPIA) tariff. The following monthly access rates were proposed
 - 15 megabits per second (Mbps) download and 2 Mbps upload at \$46.02;
 - 60 Mbps download and 60 Mbps upload at \$56.90;
 - 90 Mbps download and 90 Mbps upload at \$66.70;

¹ EPON is a point-to-multipoint fibre-to-the-premises network structure that is fully compatible with the existing Ethernet standards and which enables a single fibre to deliver services to multiple premises.

- 120 Mbps download and 120 Mbps upload at \$66.70; and
 - 180 Mbps download and 180 Mbps upload at \$72.28.
2. Cogeco also proposed introducing four new disaggregated EPON/FTTH speed bands and modifying two existing disaggregated EPON/FTTH speed bands as follows:
 - adding Band-1 of up to 15 Mbps download at \$46.02 per month;
 - adding Band-2 of 16 to 60 Mbps download at \$56.90 per month;
 - adding Band-3 of 61 to 120 Mbps download at \$66.70 per month;
 - adding Band-4 of 121 to 180 Mbps download at \$56.90 per month;
 - renaming the original Band-1 to Band-5 and changing it to 181 to 360 Mbps; and
 - renaming the original Band-2 to Band-6 and changing it to 361 to 1000 Mbps.
 3. On 25 June 2021, the Commission received TN 64 from Cogeco. In that TN, Cogeco sought the Commission's approval for the destandardization of the following three speed tiers from its aggregated and disaggregated hybrid-fibre coaxial (HFC) and radio frequency over glass (RFoG)/FTTH TPIA tariffs:
 - 6 Mbps download and 2 Mbps upload (6 Mbps service);
 - 40 Mbps download and 2-10 Mbps upload (40 Mbps service); and
 - 250 Mbps download and 20 Mbps upload (250 Mbps service).
 4. Cogeco also proposed the following for its aggregated and disaggregated HFC and RFoG/FTTH TPIA services:
 - merging Band-1 (Up to 6 Mbps) and Band-2 (Up to 15 Mbps) into a single speed band (Band-1) with speeds up to 15 Mbps and access rates equal to the previous Band-2 rates; and
 - merging Band-3 (16 Mbps to 40 Mbps) and Band-4 (41 Mbps to 60 Mbps) into a single band (Band-2) with speeds from 16 Mbps to 60 Mbps and access rates equal to the previous Band-4 rates.
 5. The Commission received interventions from the Competitive Network Operators of Canada (CNOC), EBOX inc. (EBOX), Lanctôt Informatique inc./Ouilink Communications (Ouilink), Québec Internet Inc., SkyChoice Communications Inc. (SkyChoice), TekSavvy Solutions Inc. (TekSavvy), and Vaxxine Computer Systems

Inc. (Vaxxine). Cogeco filed replies to the interventions of TN 63 and TN 64 on 30 July 2021 and 13 August 2021 respectively.

Issues

6. The Commission has identified the following issues to be addressed in this order:
 - Are the disaggregated EPON/FTTH service tier access rates proposed by Cogeco reasonable?
 - Did Cogeco provide sufficient grounds to justify the need for the destandardization of the 6 Mbps, 40 Mbps, and 250 Mbps aggregated and disaggregated speed tiers?
 - Is Cogeco's proposed reformatting of speed bands appropriate?
 - Other matters

Are the disaggregated EPON/FTTH speed tier access rates proposed by Cogeco reasonable?

Positions of parties

7. Cogeco submitted that its new EPON/FTTH speed tiers remain compliant with the Commission's determinations, in Telecom Regulatory Policy 2015-326, regarding the speed-matching requirement to implement disaggregated wholesale high-speed access service over fibre access facilities.² Cogeco proposed access rates for the new disaggregated EPON/FTTH speed tiers according to the corresponding band access rates in force for TPIA service speeds over RFoG/FTTH. These proposed rates would be in place until the proceeding initiated by Telecom Notice of Consultation 2020-187³ is concluded.
8. Québec Internet Inc. questioned the reasonableness of Cogeco's proposed EPON/FTTH speed tier rates, stating that the rates are based on obsolete models, which drastically reduce the competitive position of wholesale customers.
9. TekSavvy criticized Cogeco for its proposal to collapse existing speed bands without relying on a cost study, highlighting that this opens the door for Cogeco to reintroduce speeds at higher access rates. TekSavvy submitted that the Commission

² Cable companies are required to make aggregated wholesale high-speed access services available to competitors at speeds matching their own retail service offerings to enable greater competition in the retail Internet access services market. In Telecom Order 2017-312, this requirement was extended to include disaggregated wholesale high-speed access in Ontario and Quebec.

³ Telecom Notice of Consultation 2020-187 is the proceeding used to determine appropriate network and service configurations for disaggregated wholesale high-speed access services.

should require Cogeco to use one of the following approaches to remedy Cogeco's submissions:

- file cost studies to support its proposed speed band changes;
 - if no cost studies are filed, use existing RFoG/FTTH speed bands and associated monthly access rates as approved by the Commission for the disaggregated EPON/FTTH service; or
 - if it chooses to adopt the rates in the RFoG/FTTH tariff, but with different speed bands, apply the rate for the lower speed band to the collapsed speed bands for the disaggregated EPON/FTTH speed bands (i.e., the 16-40 Mbps RFoG/FTTH rate for the 16-60 Mbps disaggregated EPON/FTTH band).
10. Cogeco argued that it did not file an accompanying cost study to ensure regulatory efficiency and tariff simplicity, and out of respect for the proceeding on the rate-setting approach for wholesale telecommunications services that is still underway in Telecom Notice of Consultation 2020-131. Cogeco further submitted that TekSavvy's alternative approaches are financially unsustainable and anti-competitive, and that they would ultimately confer an undue preference on Cogeco's TPIA customers.

Commission's analysis

11. Cogeco's applications are compliant with the speed-matching requirement, given that the company continues to make its TPIA services available to competitors at speeds matching its own retail service offerings, in accordance with the Commission's determinations in Telecom Regulatory Policy 2010-632.
12. The Commission has, in the past, approved the use of proxies or alternative methods to establish wholesale rates, on a case-by-case basis. For example, it has allowed companies to use the cost studies and resulting rates approved for another company for the same service. Since the publication of Telecom Order 2012-706, the Commission has determined that using proxy rates on an interim basis is appropriate in certain cases.
13. The Commission **determines** that Cogeco's disaggregated RFoG/FTTH rates approved on an interim basis by the Commission in Telecom Order 2017-312 are a reasonable and appropriate interim proxy for Cogeco's disaggregated EPON/FTTH service rates.
14. Given that the Commission (i) has suspended setting rates for the disaggregated service until after the close of Telecom Notice of Consultation 2020-187, and (ii) has indicated that the existing interim rates, terms, and conditions established in Telecom Order 2017-312 will remain in effect until then, the Commission finds it reasonable that Cogeco propose proxy rates for a disaggregated service whose configuration is currently being debated in another Commission proceeding.

15. Accordingly, the Commission **approves**, on an interim basis, the following monthly access rates for Cogeco's disaggregated EPON/FTTH speed tiers:

- 15 Mbps download and 2 Mbps upload at \$46.02;
- 60 Mbps download and 60 Mbps upload at \$56.90;
- 90 Mbps download and 90 Mbps upload at \$66.70;
- 120 Mbps download and 120 Mbps upload at \$66.70; and
- 180 Mbps download and 180 Mbps upload at \$72.28.

Did Cogeco provide sufficient grounds to justify the need for the destandardization of the 6 Mbps, 40 Mbps, and 250 Mbps speed tiers?

Positions of parties

16. Cogeco proposed destandardizing its aggregated and disaggregated TPIA speed tiers of 6 Mbps, 40 Mbps and 250 Mbps, since it no longer offers high-speed Internet packages of 6 Mbps, 40 Mbps and 250 Mbps download to its own retail customers. Cogeco added that no existing TPIA end-users would be affected by the proposed destandardization because it plans to grandfather existing service speeds for these end-users.
17. CNOC, supported by EBOX, Ouilink, SkyChoice, TekSavvy, and Vaxxine, requested that the Commission deny Cogeco's request for the destandardization of the 40 Mbps service.
18. Most interveners submitted that the 40 Mbps service is by far the most popular TPIA service among CNOC members using Cogeco's TPIA platform and that there is a lack of affordable TPIA alternatives at comparable speeds and costs to the 40 Mbps service Cogeco is proposing to destandardize. In particular, it submitted that the wholesale rate for the nearest higher speed (60 Mbps) is 65.87% more expensive. CNOC added that Cogeco is the only cable provider equipped with the facilities required to offer TPIA service within its serving areas. Consequently, wholesale customers cannot substitute Cogeco's 40 Mbps service with an equivalent TPIA service speed from another cable carrier.
19. EBOX submitted that 15 Mbps is insufficient for the vast majority of users to participate in the digital economy and to use the EBOX television service. TekSavvy indicated that 40 Mbps is the fastest speed it can profitably offer on Cogeco's network. Vaxxine, supported by Ouilink and SkyChoice, submitted that if the 40 Mbps service were to be replaced by the 60 Mbps service, the increase from 40 to 60 Mbps per customer would require Vaxxine to purchase extra capacity from Cogeco

under the capacity-based billing (CBB) regime.⁴ SkyChoice argued that this would increase CBB costs for TPIA customers by up to 50%, given that more bandwidth capacity could potentially be used by consumers, which would drive up average bandwidth use during peak times.⁵

20. CNOC, supported by EBOX and Vaxxine, submitted that the 40 Mbps service enables the offering of competitive services that are close to the Commission's universal service objective of 50 Mbps.⁶ CNOC added that the 50 Mbps objective set in Telecom Regulatory Policy 2016-496 was a relevant consideration that led the Commission to deny Câblevision du nord de Québec inc.'s (Câblevision) destandardization application in Telecom Order 2021-188. CNOC submitted that if the 40 Mbps service is destandardized, new end-users of competitors will be left with a choice of either (i) a significantly lower service speed of 15 Mbps download that may not meet the end-users' needs for work, education, or other uses; or (ii) a 60 Mbps service speed that is significantly more expensive due to the substantial rate difference.
21. CNOC, supported by EBOX, submitted that Cogeco did not provide sufficient grounds to explain the need to destandardize its 40 Mbps service beyond the fact that it also destandardized the same speed for its own retail customers. CNOC argued that the Commission's determinations in Telecom Order 2021-188 are relevant to this proceeding. In that order, the Commission determined that the destandardization of Câblevision's 50 Mbps service would be contrary to the objectives set out in paragraphs 7(a), (b), (f), and (h) of the *Telecommunications Act* (the Act),⁷ and determined that destandardization of the 50 Mbps speed profile could considerably limit consumer choice, especially for consumers who consider that this profile has an ideal price and download and upload capacities.
22. Finally, CNOC submitted that maintaining the 40 Mbps service would provide Canadians with wider access to high-quality telecommunications services and satisfy the needs of Canadian consumers, who express significant demand for competitor's

⁴ In Telecom Decision 2021-181, the Commission set the CBB cost for Cogeco at \$323.73 per month per 100 Mbps.

⁵ SkyChoice explained that certain types of Internet applications, such as peer-to-peer file sharing, video streaming services, and online games, are often designed to use an increased amount of bandwidth if available. SkyChoice argued that this means that even with the same Internet applications being used and the same number of household users, the average bandwidth usage per subscriber during peak times on a higher tier can be significantly higher without the subscriber even noticing.

⁶ See Telecom Regulatory Policy 2016-496.

⁷ The cited policy objectives are: 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; (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; and (h) to respond to the economic and social requirements of users of telecommunications services.

retail services at this speed. CNOC added that denying Cogeco's request to destandardize the 40 Mbps service consists of regulation that is efficient and proportionate to its purpose, consistent with subparagraph 1(a)(ii) of the 2006 Policy Direction.⁸ CNOC, supported by Ouilink,⁹ SkyChoice, and Vaxxine,¹⁰ concluded that preventing the destandardization of the 40 Mbps service aligns with the requirements of subparagraphs 1(a)(i), 1(a)(iii), 1(a)(iv), and 1(a)(v) of the 2019 Policy Direction¹¹ since maintaining the 40 Mbps service reduces barriers to entry and expansion, which promotes affordability and encourages competition.

23. SkyChoice also opposed the destandardization of the 6 Mbps service, submitting that this would also reduce Internet affordability for light Internet users such as the elderly and low-income Canadians. These users often only need basic Internet service to browse the Web and check email and would therefore be forced to pay at least \$10 more per month (i.e., \$45 instead of \$35 per month) for the 15 Mbps service.

Cogeco's reply

24. Cogeco replied that the proposed destandardizations are consistent with the speed-matching requirement, since Cogeco has already stopped offering each of the three service speeds proposed for destandardization in the list of speeds available to its own retail customers. Cogeco added that the Commission has clearly established, in a number of decisions about speed-matching with regard to destandardization, including Telecom Order 2020-123, that there is no obligation on incumbent local exchange carriers and cable carriers to continue providing TPIA customers with services and service speeds that they do not provide to their own retail customers. Cogeco further added that the proposed destandardizations meet the destandardization requirements set out in Telecom Information Bulletin 2010-455-1.
25. Cogeco added that three factors make its destandardization application different from the precedent set for Câblevision in Telecom Order 2021-188:

⁸ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁹ More specifically, Ouilink submitted that the destandardization of the 40 Mbps service would go against subparagraph 1(a)(vii) of the 2019 Policy Direction, which is to stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services.

¹⁰ Both SkyChoice and Vaxxine referred to Order in Council 2019-0803 in general, which is the 2019 Policy Direction.

¹¹ *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

- Cogeco’s 40 Mbps speed tier has been destandardized for its own retail customers for more than 9 months;¹²
 - Cogeco is not the only provider with the facilities required to offer aggregated or disaggregated wholesale high-speed access services in the territories it serves, especially at speeds around the universal service objective of 50 Mbps downstream and 10 Mbps upstream (TPIA customers and their end-users have a choice of providers); and
 - Cogeco’s 60 Mbps speed tier represents a comparable alternative to the 40 Mbps speed tier (This is unlike the Câblevision situation where the removal of the 50 Mbps speed would have left TPIA customers with the option of having to choose between 15 Mbps downstream and 125 Mbps downstream service speeds, with no intermediate speeds available).
26. Cogeco also submitted that the demand for the 40 Mbps speed tier and lower service speeds is constantly decreasing because end-users’ needs have evolved in recent years to adapt to the characteristics and requirements of new Internet-based applications available on the market. These applications, most notably real-time communications services, require higher speeds, a trend further amplified by the COVID-19 pandemic.
27. With regard to the 40 Mbps service being the most popular among TPIA customers, Cogeco indicated that many TPIA customers have a very limited offering of products in the 16-99 Mbps downstream speed range, with some only providing one option within that range to their end-users. Cogeco argued that end-users with intermediate Internet high-speed access needs often have no choice but to purchase the sole product available in this range, boosting its popularity as a consequence. The withdrawal of the 40 Mbps speed tier and its replacement with the 60 Mbps tier would likely have the very same self-fulfilling consequence: it would make the 60 Mbps speed tier popular among TPIA end-users, like the 40 Mbps speed tier used to be.
28. Cogeco further submitted that if it were to maintain the 40 Mbps speed tier uniquely for new TPIA end-users, capital expenditures would need to be invested uniquely on the wholesale side for additional homes passed, facilities, and equipment, while additional operational expenditures would continue to be incurred for maintenance of facilities and equipment, network monitoring, customer care, and billing, among others.

¹² The Commission notes that in TN 12 which led to Telecom Order 2021-188, Câblevision had destandardized the 50 Mbps service for its own retail clients on the date it submitted its TPIA destandardization request to the Commission, not several months prior to submitting its request like Cogeco did in TN 64.

29. Finally, Cogeco submitted that the 15 Mbps speed tier, which replaces the 6 Mbps speed tier, is better suited to run current digital operations and Web services for end-users with lower Internet high-speed access needs, and is only charged at a slightly higher rate.

Commission's analysis

30. While compliance with the speed-matching requirement is a factor in approving an application for destandardization, the Commission referred to other factors in Telecom Order 2021-188, in which it denied Câblevision's proposed destandardization of its 50 Mbps service, namely
- the lack of sufficient justification from Câblevision for the proposed destandardization;
 - the negative impact of destandardization on competitors in cases where the proposed destandardization represents a majority of their sales; and
 - the higher monthly access rates associated with the closest higher speed.
31. In light of Cogeco's tariff application, the supporting rationale submitted by Cogeco, and the issues raised by the interveners, the proposed destandardization should similarly be based on three factors, namely
- whether sufficient grounds were provided by Cogeco to justify the proposed destandardization;
 - whether the proposed destandardization disproportionately affects competitors; and
 - whether the proposed destandardization is uncompetitive in nature.
32. With regard to the first factor, Cogeco's claim that maintaining the 40 Mbps service would entail additional costs was not sufficient to justify the destandardization. TPIA service costs are already offset by revenue originating from wholesale clients as captured by company-specific cost studies. Cogeco did not submit any evidence for why this would no longer be the case and did not indicate which additional costs not already included in the service rates approved by the Commission would be incurred by maintaining the service Cogeco proposed destandardizing.
33. With regard to the second factor, the destandardization of the 40 Mbps service would disproportionately affect competitors since all interveners, with the exception of TekSavvy, have commented that the 40 Mbps speed proposed to be destandardized is used by a large proportion of their subscribers.
34. With regard to the third factor, a transition from the 40 Mbps service to the 60 Mbps service would place an uncompetitive burden on competitors since it would be

accompanied by a significant increase in access costs, which would be compounded by an increase in CBB costs (usage component) due to the need to reserve additional bandwidth capacity for end-users being served at a higher bandwidth speed.

35. Eliminating Cogeco's most affordable Internet service option of 6 Mbps would also run against objective 1(a)(ii) of the 2019 Policy Direction, which is to foster affordability and lower prices, particularly when telecommunications service providers exercise market power. It would also result in increased monthly access costs and higher CBB costs for the competitors. This change would also add an uncompetitive burden to at least one competitor (SkyChoice). SkyChoice has expressed its opposition to the destandardization because it would reduce affordability, and therefore the company's ability to compete for the lowest tier of end-users seeking the most affordable Internet service available.
36. Cogeco's proposed destandardization of the 250 Mbps speed tier, is reasonable since the 180 Mbps, 360 Mbps and 1000 Mbps services are reasonable alternatives that are accessible by competitors at the same wholesale access rate.
37. In light of the above, the Commission **determines** that the proposed destandardization of the 6 Mbps and 40 Mbps aggregated and disaggregated service speeds is premature, and **denies** Cogeco's proposal to destandardize them. However, the Commission **approves** the proposed destandardization of the 250 Mbps aggregated and disaggregated speeds.

Is Cogeco's proposed reformatting of speed bands appropriate?

Positions of parties

38. Cogeco proposed introducing four new disaggregated EPON/FTTH speed bands and modifying two existing disaggregated EPON/FTTH speed bands as follows:
 - adding Band-1 of up to 15 Mbps download at \$46.02 per month;
 - adding Band-2 of 16 to 60 Mbps download at \$56.90 per month;
 - adding Band-3 of 61 to 120 Mbps download at \$66.70 per month;
 - adding Band-4 of 121 to 180 Mbps download at \$56.90 per month;
 - renaming the original Band-1 to Band-5 and changing it to 181 to 360 Mbps;
and
 - renaming the original Band-2 to Band-6 and changing it to 361 to 1000 Mbps.
39. Cogeco also proposed merging the following speed bands for its aggregated and disaggregated HFC, RFoG/FTTH TPIA services:

- merging Band-1 (up to 6 Mbps) and Band-2 (up to 15 Mbps) into a single one (Band-1) up to 15 Mbps with access rates equal to the previous Band-2 rates; and
 - merging Band-3 (16 Mbps to 40 Mbps) and Band-4 (41 Mbps to 60 Mbps) into a single one (Band-2) from 16 Mbps to 60 Mbps with access rates equal to the previous Band-4 rates.
40. TekSavvy argued that Cogeco’s omission of lower speed bands in the disaggregated EPON/FTTH speed bands and Cogeco’s proposal to merge certain speed bands into one at the higher equivalent access rate of other service types would provide Cogeco the flexibility to reintroduce TPIA service at access rates higher than the ones approved in Telecom Decision 2021-181 without submitting a cost study. Specifically, TekSavvy referred to the possibility that Cogeco would later propose the reintroduction of a TPIA service speed in the 16-40 Mbps range with a monthly aggregated access rate of \$24.98 instead of \$15.06, a disaggregated HFC rate of \$32.48 instead of \$21.86, or a RFoG/FTTH rate of \$56.90 instead of \$49.37.
41. TekSavvy asked the Commission to require Cogeco to either
- file cost studies to support Cogeco’s proposed speed band changes;
 - replicate the disaggregated RFoG/FTTH speed bands for the disaggregated EPON/FTTH service bands, and amend Cogeco’s aggregated and disaggregated HFC and RFoG/FTTH tariff pages to reflect destandardization of the 6 Mbps, 40 Mbps, and 250 Mbps speed tiers without any speed band reformatting; or
 - reduce the 60 Mbps service rates to the equivalent of the destandardized 40 Mbps service rates as a proxy.
42. Cogeco replied that it is not proposing any new wholesale disaggregated EPON/FTTH speed tiers in the 0 to 6 Mbps and 16 to 40 Mbps ranges because it will not be offering any products in these speed ranges to its own retail customers and has no plans to do so in the future. Cogeco added that TekSavvy’s alternative approach of applying the lower RFoG/FTTH speed band rate to the higher disaggregated EPON/FTTH speed band of 16-60 Mbps is financially unsustainable, anti-competitive and would ultimately confer an undue preference on its TPIA customers. Cogeco also submitted that disaggregated EPON/FTTH rates would likely be higher than those it proposed if they were set pursuant to any reasonable cost study, as was proposed by TekSavvy.

Commission’s analysis

43. Cogeco’s proposed destandardization of certain speed tiers does not require a change to the existing speed bands, since a speed band does not necessarily require a TPIA

speed tier to be offered within that band.¹³ The approval process for speed bands is, in fact, independent from the introduction, modification, or destandardization of service speeds within approved existing bands.

44. With regard to Cogeco's proposed reformatting of aggregated speed bands and disaggregated HFC and RFoG/FTTH speed bands, the company did not provide sufficient evidence to justify the need to reformat them, especially considering its proposed reformatted speed bands could allow it to introduce or reintroduce destandardized service speeds without a cost study at a rate that is higher than the maximum one allowed before the speed bands were reformatted. The Commission therefore **determines** that Cogeco should maintain its existing aggregated and disaggregated HFC and RFoG/FTTH speed bands, and update speed tiers offered within these bands accordingly, when required.
45. With regard to Cogeco's proposed reformatting of disaggregated EPON/FTTH speed bands, the Commission **determines** that since Cogeco is introducing new EPON/FTTH speed tiers with access rates set to disaggregated RFoG/FTTH access rates by proxy, disaggregated EPON/FTTH speed bands should also be set to disaggregated RFoG/FTTH speed bands by proxy in order to remain consistent with the proxy approach.
46. In light of the above, the Commission **directs** Cogeco to reformat its bands and access rates for aggregated and disaggregated HFC, disaggregated RFoG/FTTH, and disaggregated EPON/FTTH, as indicated in Appendix 1 to this order.

Other matters

Position of parties

47. TekSavvy submitted its concerns about the absence of advance details regarding the geographic availability of Cogeco's services and speed tiers, which limits TekSavvy's ability to effectively market and sell service speeds of 120 Mbps and above. TekSavvy submitted that Cogeco must be required to provide the geographic availability for its remaining services, specifically those at speeds of 180 Mbps and higher, and that the information must be updated as availability changes or with revised service data as needed.
48. TekSavvy also submitted that Cogeco is giving itself an undue preference that is not justifiable, by requiring a DOCSIS [Data Over Cable Service Interface Specification] 3.1 modem for speeds at 180 Mbps and higher while Cogeco's own retail customer modems are not yet approved for TPIA use. TekSavvy requested that

¹³ In Telecom Decision 2021-181, the Commission approved several speed bands despite RCCI, TCI, and Videotron having no speed tiers within that band at the time due to the service within that band having already been destandardized or withdrawn. See footnotes 45, 46, and 47 of that decision regarding RCCI's Band 3, Videotron's Band 8 and TCI's 100 Mbps bonded speed band.

Cogeco approve DOCSIS 3.1 modem models in compliance for TPIA use with the timelines set out in the modem framework.

49. In response to TekSavvy's intervention and its concerns over the geographic availability of new disaggregated EPON/FTTH services, Cogeco replied that the new services will be rolled out throughout its serving territory in Ontario and Quebec, and clarified that the new EPON/FTTH TPIA services will first be available at the points of interconnection in Georgetown, Ontario, and St-Georges, Quebec. Cogeco also indicated that its carrier service group can inform TekSavvy and any other TPIA customer about the availability of wholesale products and assist them with their requests.
50. Cogeco also replied that other issues raised by TekSavvy, most notably with regard to wholesale high-speed access service rates, geographic location of services, and the availability of DOCSIS 3.1 modems, are either unequivocally out of scope of the current destandardization application or have been amply debated and dealt with in an exhaustive manner by Cogeco, TekSavvy, other stakeholders, and the Commission in other proceedings. Cogeco asked the Commission to strike from the record of the proceeding the sections of TekSavvy's intervention regarding these issues.

Commission's analysis

51. The Commission encourages parties concerned by various issues to request Commission staff-assisted mediation services. Commission staff-assisted mediation is a confidential dispute resolution process available for a wide range of issues that can go beyond tariff applications. It can help parties come to a mutually acceptable resolution, and all discussions, information, and materials used in the mediation process are kept confidential.
52. With respect to the lack of transparency regarding geographical availability of speeds over TPIA, the Commission considers that this issue should be taken seriously by wholesale service providers. The Commission is concerned that these types of information-sharing issues keep being brought forward in tariff applications. Cogeco should disclose the geographical availability of speeds to its competitors in a transparent manner.
53. The Commission is also concerned by Cogeco's modem approval practices, particularly in circumstances where the approval of a competitor modem is delayed while the same modem is used by the incumbent for its own retail customers. The Commission reminds Cogeco that it is bound to facilitate competitors' access to their network, both in terms of approving modems for use within a reasonable timeframe and by making information regarding geographic availability of its services readily available and in an open and transparent manner. Nevertheless, the Commission has determined that TekSavvy's grievances concerning Cogeco's approval process for

modems should be dealt with in a process separate from the tariff applications being examined in this proceeding.

Policy Directions

54. The 2006 Policy Direction requires that the Commission, in implementing the telecommunications policy objectives set out in section 7 of the Act, rely on market forces to the maximum extent feasible as the means of achieving the policy objectives. Further, when relying on regulation, the Commission should use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.
55. Additionally, the 2019 Policy Direction provides that when the Commission exercises its powers and performs its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation. Moreover, the Commission should, in its decisions, demonstrate its compliance with the 2019 Policy Direction and should specify how those decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.
56. In arriving at its determinations, the Commission considered the 2019 Policy Direction and the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act. The Commission considers that the destandardization of the 6 Mbps and 40 Mbps speeds would run counter to the objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act. Furthermore, the Commission considers that the elimination of the 16 to 40 Mbps speed bands and their amalgamation with the 41 to 60 Mbps speed bands at higher access rates would run counter to objective 1(a)(ii) of the 2019 Policy Direction.¹⁴
57. The 2006 Policy Direction requires the Commission to rely on market forces to the maximum extent feasible and regulate, where there is still a need to do so, in a manner that interferes with the operation of market forces to the minimum extent necessary to meet the policy objectives of the Act. It also requires the Commission to specify, when relying on regulatory measures, the policy objective of those measures. The above determinations advance the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.
58. More specifically, maintaining the 6 Mbps and 40 Mbps speed tiers for the TPIA service will continue to provide Canadians with wide access to high-quality telecommunications services at affordable rates, encourage competition in the telecommunications services market, and satisfy the telecommunications services consumption requirements for users in Cogeco's operating areas in Ontario and

¹⁴ The cited policy objective is: 1(a)(ii) foster affordability and lower prices, particularly when telecommunications service providers exercise market power.

Quebec. In addition, this measure advances the objective of meeting the needs of users in this region who wish to benefit from competition in the telecommunications services market. Furthermore, the introduction of new disaggregated speeds encourages competitors' migration towards the deployment of newer disaggregated network infrastructure and promotes further investment in the telecommunications industry. Finally, the preservation of existing speed bands, particularly the most affordable speed band of 6 Mbps as well as the most popular speed bands ranging from 16 to 40 Mbps, reinforces the stability and predictability of future TPIA rates for competitors. It also ensures that affordable aggregated and disaggregated TPIA services can be more promptly introduced or reintroduced within these ranges. These services respond to a large proportion of the Internet service demand in Ontario and Quebec.

59. The 2019 Policy Direction states that in exercising its powers and performing its duties under the Act, the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation. The Commission considers that the expectations established in this order align with the 2019 Policy Direction, particularly with respect to subparagraphs 1(a)(i), (ii), (iii), (iv), and (v).¹⁵ More specifically, the above findings are intended to enable consumers in Cogeco's operating areas in Ontario and Quebec to enjoy the benefits of healthy competition among providers and ensure that access to competitive, affordable, and high-quality services is not limited by one cable provider that has market power. Rather, with this order, the Commission aims to reduce barriers for new players to enter the market, which will promote affordability and encourage competition in the telecommunications services market in Cogeco's operating areas in Ontario and Quebec.

Secretary General

Related documents

- *Câblevision du nord de Québec inc. – Update to its third-party Internet access service*, Telecom Order CRTC 2021-188, 1 June 2021
- *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

¹⁵ The cited objectives of the Policy Directions are: 1(a)(i) encourage all forms of competition and investment; (ii) foster affordability and lower prices, particularly when telecommunications service providers exercise market power; (iii) ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas; (iv) enhance and protect the rights of consumers in their relationships with telecommunications service providers, including rights related to accessibility; and (v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional or smaller than the incumbent national service providers.

- *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation 2020-187, 11 June 2020; as modified by Telecom Notice of Consultation 2020-187-1, 22 July 2020
- *Call for comments – Review of the approach to rate setting for wholesale telecommunications services*, Telecom Notice of Consultation CRTC 2020-131, 24 April 2020; as modified by Telecom Notices of Consultation CRTC 2020-131-1, 7 July 2020, and 2020-131-2, 19 October 2020
- *Videotron Ltd. – Application to withdraw the Download 501-1000 Mbps, Upload 0-100 Mbps disaggregated service and to destandardize the Download up to 940 Mbps, Upload up to 50 Mbps aggregated service*, Telecom Order CRTC 2020-123, 14 April 2020
- *Interim rates for disaggregated wholesale high-speed access services in Ontario and Quebec*, Telecom Order CRTC 2017-312, 29 August 2017; as modified by Telecom Order CRTC 2017-312-1, 12 September 2017
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Approval processes for tariff applications and intercarrier agreements*, Telecom Information Bulletin CRTC 2010-455, 5 July 2010; as modified by Telecom Information Bulletin CRTC 2010-455-1, 19 February 2016
- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015; as modified by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
- *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

Appendix 1 to Telecom Order CRTC 2023-2

Cogeco: Final monthly aggregated access rate per end-user

Band	Speed tier	Rate
Band-1: 0 to 6 megabits per second (Mbps)	6 Mbps download 2 Mbps upload	\$12.73
Band-2: 7 to 15 Mbps	15 Mbps download 2 Mbps upload	\$14.78
Band-3: 16 to 40 Mbps	40 Mbps download 2 to 10 Mbps upload	\$15.06
Band-4: 41 to 60 Mbps	60 Mbps download 2 to 10 Mbps upload	\$24.98
Band-5: 61 to 120 Mbps	120 Mbps download 10 Mbps upload	\$42.05
Band-6: 121 to 250 Mbps	180 Mbps download 20 Mbps upload	\$51.25
Band-7: 251 to 360 Mbps	360 Mbps download 30 Mbps upload	\$51.25
Band-8: 361 to 1000 Mbps	1 gigabit per second (Gbps) download 30 Mbps upload	\$51.25

Cogeco: Interim monthly disaggregated hybrid-fibre coaxial (HFC) access rate per end-user

Band	Speed tier	Rate
Band-1: 0 to 6 Mbps	6 Mbps download 2 Mbps upload	\$14.00
Band-2: 7 to 15 Mbps	15 Mbps download 2 Mbps upload	\$15.64
Band-3: 16 to 40 Mbps	40 Mbps download 2 to 10 Mbps upload	\$21.86
Band-4: 41 to 60 Mbps	60 Mbps download 2 to 10 Mbps upload	\$32.48
Band-5: 61 to 120 Mbps	90 Mbps download 10 Mbps upload and 120 Mbps download 10 Mbps upload	\$52.51
Band-6: 121 to 250 Mbps	180 Mbps download 10 Mbps upload	\$61.41

Band-7: 251 to 360 Mbps	360 Mbps download 30 Mbps upload	\$61.41
Band-8: 361 to 1000 Mbps	1 Gbps download 30 Mbps upload	\$61.41

Cogeco: Interim monthly disaggregated radio frequency over glass (RFoG)/fibre-to-the-home (FTTH) access rate per end-user

Band	Speed tier	Rate
Band-1: 0 to 6 Mbps	6 Mbps download 2 Mbps upload	\$43.24
Band-2: 7 to 15 Mbps	15 Mbps download 2 Mbps upload	\$46.02
Band-3: 16 to 40 Mbps	40 Mbps download 2 to 10 Mbps upload	\$49.37
Band-4: 41 to 60 Mbps	60 Mbps download 2 to 10 Mbps upload	\$56.90
Band-5: 61 to 120 Mbps	90 Mbps download 10 Mbps upload and 120 Mbps download 10 Mbps upload	\$66.70
Band-6: 121 to 250 Mbps	180 Mbps download 10 Mbps upload	\$72.28
Band-7: 251 to 360 Mbps	360 Mbps download 30 Mbps upload	\$72.28
Band-8: 361 to 1000 Mbps	1 Gbps download 30 Mbps upload	\$72.28

Cogeco: Interim monthly disaggregated Ethernet passive optical network (EPON)/FTTH access rate per end-user

Band	Speed tier	Rate
Band-1: 0 to 6 Mbps	N/A	\$43.24
Band-2: 7 to 15 Mbps	15 Mbps download 2 Mbps upload	\$46.02
Band-3: 16 to 40 Mbps	N/A	\$49.37
Band-4: 41 to 60 Mbps	60 Mbps download 60 Mbps upload	\$56.90

Band-5: 61 to 120 Mbps	90 Mbps download 90 Mbps upload and 120 Mbps download 120 Mbps upload	\$66.70
Band-6: 121 to 250 Mbps	180 Mbps download 180 Mbps upload	\$72.28
Band-7: 251 to 360 Mbps	360 Mbps download 360 Mbps upload	\$172.43
Band-8: 361 to 1000 Mbps	1 Gbps download 1000 Mbps upload	\$172.43