



Telecom Order CRTC 2015-378

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Shaw Cablesystems G.P. – Destandardization of four third-party Internet access services

Application

1. The Commission received an application from Shaw Cablesystems G.P. (Shaw), dated 4 May 2015, in which the company proposed to destandardize the following wholesale third-party Internet access (TPIA) services, effective 3 July 2015:
 - High Speed 10 (10 megabits per second [Mbps] downstream / 512 kilobits per second upstream)
 - Extreme Speed (25 Mbps downstream / 2.5 Mbps upstream)
 - Broadband 50 (50 Mbps downstream / 3 Mbps upstream)
 - Broadband 100 (100 Mbps downstream / 5 Mbps upstream)
2. Shaw submitted that as of 6 January 2015, it no longer offered services with the above-noted speeds to new retail customers, and that existing retail customers subscribing to those services had their services grandfathered.
3. Shaw submitted that no existing wholesale TPIA end-users would be affected by the proposal, since the wholesale services at issue would also be grandfathered. Further, Shaw noted that its tariff makes alternative TPIA services available to its wholesale customers and that it expected TPIA end-users would eventually migrate to these services.
4. Finally, Shaw submitted that the Commission's speed-matching requirement¹ does not oblige the company to make TPIA services available to competitors at speeds that are not available to its own retail customers.

¹ Retail speed-matching requirements for wholesale high-speed access (HSA) services are set out in Telecom Decision 2006-77 and maintained in Telecom Regulatory Policy 2010-632. The speed-matching principle requires that when a wholesale HSA service provider introduces a new retail Internet service speed, it must also offer that speed to competitors by filing, at the same time, a tariff for a wholesale HSA service that matches the new speed offering, with a supporting cost study.

5. The Commission received interventions regarding Shaw's application from the Canadian Network Operators Consortium Inc. (CNOc), Juce Communications Inc. (Juce), and an individual intervener. The public record of this proceeding, which closed on 9 July 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Should the Commission approve Shaw's application to destandardize four TPIA services?

Background

6. In Telecom Order 2015-73, issued on 2 March 2015, the Commission made changes to, and approved on an interim basis, the monthly rates for five new TPIA service speeds, specifically Shaw's Internet 5, 15, 20, 30, and 60 Mbps downstream services. The Commission approved the rates based on Shaw's existing nearest lower-speed services, given the significant increases in the company's proposed rates over the existing rates for the nearest lower-speed services.
7. Shaw subsequently filed an application in which it requested that the Commission review and vary Telecom Order 2015-73 by (i) substituting the five approved interim rates with the company's original proposed rates, and making those rates effective the date of Telecom Order 2015-73; and (ii) without prejudice to the above claims for relief, amending paragraph 20 of the order to set the interim rate for the company's new Internet 30 Mbps service at the current approved final rate for its High Speed 20 Mbps service.²
8. The Commission approved, in part, Shaw's review and vary application in Telecom Decision 2015-338, increasing the interim rate for the Internet 30 Mbps service from \$22.45 to \$29.83, representing the High Speed 20 Mbps service's approved final rate. The Commission denied the remainder of the relief requested by Shaw, thereby maintaining the earlier approved interim rates for the other four services.

Positions of parties

9. CNOc submitted that, if the services in question are destandardized, the only TPIA services available to new Shaw TPIA customers will be the new services for which rates were approved on an interim basis in Telecom Order 2015-73. CNOc argued that if Shaw's higher proposed rates for the new services are approved on a final basis, and if Shaw's request for destandardization of the remaining TPIA services is approved, wholesale TPIA customers would no longer be able to compete for new end-users in the retail Internet service market due to the unreasonably high rates for the services remaining on Shaw's TPIA platform.

² The Internet 30 Mbps service rate was previously set based on the Extreme Speed 25 Mbps service rate. Shaw requested to use the High Speed 20 Mbps service rate as more recent cost information was used to support that rate.

10. Juce expressed concerns about uncertainty related to the interim rates. Specifically, it submitted that it would have to choose between not offering service to new end-users in order to avoid rate uncertainty until final rates are approved, or offering service based on the interim rates and risking financial loss related to the possibility that it could be liable for retroactive cost adjustments when the rates are made final.
11. Further, Juce submitted that the speed-matching requirement does not require that a TPIA service be destandardized simply on the basis that a cable carrier has destandardized that service for its retail customers.
12. For these reasons, CNOC and Juce requested that the Commission not approve Shaw's application for destandardization, at least until the rates for the new services have been finalized.
13. The individual intervener submitted that the present application could adversely affect competition in the TPIA market, which could harm consumers. He requested that the Commission find a solution that would be fair to Canadians.
14. Shaw replied that the concerns about the rates at issue in Telecom Order 2015-73 had already been raised as part of the proceeding leading to that order, as well as during the proceeding to review and vary the order. Shaw submitted that the concerns raised fall outside the scope of the present proceeding.
15. Shaw also submitted that it would be unfair and prejudicial to its competitive position if it were required to maintain services for its competitors indefinitely when these services are no longer offered in its own retail market.
16. Finally, Shaw submitted that its obligation under the speed-matching requirement is to provide speeds to TPIA customers in accordance with the retail services that it introduces, and reiterated that it has no obligation to provide TPIA services at speeds it does not offer to its own retail customers.

Commission's analysis and determinations

17. The five new TPIA service speeds are available to new TPIA customers as alternatives to the existing TPIA services that Shaw seeks to destandardize. Moreover, existing end-users of the services that Shaw has requested to destandardize will be grandfathered at existing speeds, and will therefore not be affected.
18. The Commission considers that with the rates set in Telecom Order 2015-73 and the resolution of the review and vary application, which has been disposed of without significant changes to the majority of rates, a measure of certainty is provided to the industry with respect to the rates that will remain in effect until approved on a final basis.
19. In Telecom Notice of Consultation 2015-225, the Commission initiated a public proceeding to review costing inputs and consider a streamlined tariff application process for wholesale high-speed access services. The rates for Shaw's five new

TPIA service speeds are expected to remain interim until all the costing issues related to pending applications from Shaw that are before the Commission are addressed. In the event that rates for Shaw's TPIA service speeds at issue in Telecom Order 2015-73 were to change upon full review of costs, the Commission will consider at that time whether or not retroactive adjustments are reasonable.

20. Shaw is currently in compliance with the speed-matching requirement, and the destandardization of the services in question would not affect this. In this regard, wholesale TPIA customers do not require access to the destandardized service speeds to offer competitive retail services.
21. Further, Shaw's application to destandardize the above-noted services meets the requirements in Telecom Information Bulletin 2010-455, in which the Commission set out its procedures for dealing with applications to destandardize and/or withdraw tariffed services.³
22. In light of the above, Shaw's destandardization request is reasonable. The Commission therefore **approves** Shaw's application, effective the date of this order.

Secretary General

Related documents

- *Shaw Cablesystems G.P. – Application to review and vary Telecom Order 2015-73 regarding interim rates for third-party Internet access service speeds*, Telecom Decision CRTC 2015-338, 27 July 2015
- *Review of costing inputs and application process for wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2015-225, 28 May 2015, as amended by Telecom Notice of Consultation CRTC 2015-225-1, 3 July 2015
- *Shaw Cablesystems G.P. – Introduction of five new third-party Internet access service speeds*, Telecom Order CRTC 2015-73, 2 March 2015
- *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, 5 July 2010
- *Mandatory customer contract renewal notification and requirements for service destandardization/withdrawal*, Telecom Decision CRTC 2008-22, 6 March 2008
- *Cogeco, Rogers, Shaw, and Videotron – Third-party Internet access service rates*, Telecom Decision CRTC 2006-77, 21 December 2006

³ This bulletin summarizes the Commission's related determinations set out in Telecom Decision 2008-22 and is incorporated by reference in section 59 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*.