



October 23, 2020

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa ON K1A 0N2

Filed electronically

Dear Mr. Doucet,

Re: Shaw Cablesystems G.P. Tariff Notice 35 and Tariff Notice 35/A – CRTC File 8740-S9-202005892 – Reply to Intervention

1. Shaw Cablesystems G.P. (**Shaw**) files this reply to the October 13, 2020 intervention received from TekSavvy Solutions Inc. (**TekSavvy**, with such intervention the **TekSavvy Intervention**) in response to Shaw's Tariff Notice No. 35, as amended by Tariff Notice 35/A (together, **TN 35**), to General Tariff 26300 – Third Party Internet Access (**TPIA**) Service. TN 35 introduces new upload speeds for three existing access services: Internet 150 (150 Mbps download and 15 Mbps upload); Internet 300 (300 Mbps download and 100 Mbps upload); and Internet 750 (750 Mbps download and 100 Mbps upload) (the **TN 35 Services**).
2. The entirety of TekSavvy's intervention must be dismissed given that the submissions are:
 - entirely irrelevant to – and out of scope of – TN 35 and the Commission's consideration thereof; and,
 - a thinly disguised and procedurally inappropriate attempt to make additional arguments and false allegations in respect of the following proceedings that are closed for public comments: (a) Shaw's Part 1 Application filed on May 27, 2020 (the **Relief Application**) requesting immediate and necessary relief from the Commission's speed-matching requirement as it applies to Shaw's new 1 Gig service (download speeds of 751-1000 Mbps) any faster speed tiers launched while the relief is in place (collectively, the **Gig Services**);¹ and (b) Shaw's Tariff Notice

¹ Shaw Part 1 Application for Immediate Interim Relief from the Speed-Matching Requirement as it applies to Shaw's Gigabit Residential Internet Service Speeds (CRTC File No. 8661-S83-202003193).

No. 34 to our General Tariff 26300 – Third Party Internet Access Service (**TN 34**), filed on June 15, 2020.

3. On May 27, 2020, Shaw filed the Relief Application, in which we sought immediate and critical relief from the speed-matching obligation for our Internet 1000 speed tier and other Gig Services. Our Relief Application was required to address the pernicious asymmetry in the current wholesale high-speed access (**HSA**) services regime that was impeding Shaw from launching our Gig Services and, more broadly, damaging to the dynamic competition between Shaw and our ILEC competitors, to the detriment of consumers, in the market for next-generation services across Western Canada. As we explained to the Commission, an exception to the rules and procedures that would require the filing of a tariff notice for Internet 1000 pursuant to the speed-matching requirement was entirely appropriate in the circumstances, particularly given that our ILEC competitors were not required to file a tariff notice for their Gig Services. In addition to the market distortions stemming from the lack of regulatory symmetry and competitive and technological neutrality, it was not reasonable or practicable to file a cost study because of the then-current (and continuing) state of significant regulatory uncertainty.²
4. Nevertheless, when the Commission subsequently requested that Shaw file a tariff notice for the new Internet 1000 speed with a proposed rate while the Relief Application was under consideration, Shaw filed TN 34 in compliance with the Commission’s request.
5. To date, the Commission has not issued a decision on either the Relief Application or TN 34. Accordingly, it was not appropriate to include it in TN 35. Internet 1000 remains available to our TPIA customers on a non-tariff basis only.
6. In addition to the Relief Application and TN 35, the Commission is currently considering the cable carriers’ application to review and vary Telecom Order CRTC 2019-288 (the **Review & Vary Application**). If a determination in one or more of these proceedings provides the necessary certainty and guidance and if the Commission requests an update to our TN 35 filing to include the new Internet 1000 upload speed, Shaw will comply. However, imposing such a requirement at this time would be premature and procedurally inappropriate. Furthermore, it would only perpetuate the asymmetrical application of the speed-matching and tariff requirements for next-generation services and the dampening effect this asymmetry is having on competition and consumer choice. It would also impose an increased administrative burden on the Commission at a time when all available resources should be directed towards the multiple proceedings that are critical to resolving the ongoing state of uncertainty and asymmetry within the wholesale HSA regime.

² The Relief Application, paragraph 49.

7. Clearly, TekSavvy should understand the above-described concerns, as well as Shaw's compliance with the relevant Commission procedures and requests.
8. We are very concerned that TekSavvy is abusing this intervention process to make false allegations that are intended to impugn Shaw and influence the Commission's decision-making on several closed proceedings, including those mentioned above. Their request that the Commission impose administrative monetary penalties (AMPs) is especially inappropriate, unprecedented, and absurd. As explained above, Shaw is in compliance with Commission policies and procedures and has filed the necessary requests for relief. As confirmed by the Commission, AMPs will only be used where they are the most appropriate tool to obtain compliance and deter future non-compliance.³ In this circumstance, where there is an outstanding Relief Application and compliance with a Commission request to file a tariff notice, AMPs are clearly inappropriate.
9. Moreover, TekSavvy's allegation that it "continue[s] to suffer harm"⁴ due to Shaw's decision to omit the Internet 1000 upload speed upgrade from TN 35 is completely disingenuous. Competitors have access to Internet 1000, including the upgraded upload speeds, through off-tariff negotiated agreements, just as they do to our ILEC competitors' gig services. Moreover, Shaw notes that Internet 300 and Internet 750 were upgraded to the same upload speed as Internet 1000. As such, TekSavvy will be able to offer its customers 100 Mbps upload speeds pursuant to TN 35 as part of Internet 300 and Internet 750 access services.
10. Regarding the "operational concerns" raised by TekSavvy, we note that our upload upgrades are being completed on a node-by-node basis. With new nodes being upgraded daily, it is impossible to make the higher upload speeds available "by default", as TekSavvy suggests.⁵ Similarly, due to the evolving nature of this upgrade, we did not append a list or map of completed markets in the Shaw email referred to by TekSavvy. By the time TN 35 is approved, that list or map would be out of date. However, when TN 35 is approved – or if required to support off-tariff negotiations – Shaw will provide our TPIA customers with more detailed and periodically updated information about service availability at the hub site level, so that address checks are not required.
11. Finally, TekSavvy closes its intervention by asking the Commission to "set cost-based interim rates for Shaw's new speeds in TN 35 and TN 35A, as well as Shaw's Internet 1000 services" using the access rate of \$11.47 as a proxy.⁶ This request is out of process and should therefore be disregarded by the Commission. The Commission has already

³ Compliance and Enforcement and Telecom Information Bulletin CRTC 2015-111 (27 Mar 2015), paragraph 17.

⁴ TekSavvy Intervention, paragraph 8.

⁵ TekSavvy Intervention, paragraph 9.

⁶ TekSavvy Intervention, para. 10.

approved interim rates for the TN 35 Services, which Shaw is not proposing to change in spite of now offering higher upload speeds, and the proceeding to consider the appropriate rate for Internet 1000, namely TN 34, is closed. Furthermore, the access rate of \$11.47 has been stayed by the Commission pending its determination on the Review & Vary Application.⁷

12. Notwithstanding our view that substantive discussion of the Relief Application is out of scope of TN 35, we object to TekSavvy's apparent ignorance (willful or otherwise) of the harmful asymmetry and regulatory uncertainty in the market for wholesale HSA services and their consistent attempt to equate the reseller interest with the consumer interest. TekSavvy does not seem to appreciate that there will be serious and potentially irreversible consequences for investment, competition, consumer choice, affordability and innovation in the market for next-generation speeds, if the current asymmetry persists. The impacts we are already seeing in the Western Canadian broadband market motivated the Relief Application. Accordingly, we strongly urge the Commission to dismiss TekSavvy's submissions, which are clearly against the public interest.

13. For each of the above reasons, Shaw respectfully requests that the Commission disregard the entirety of TekSavvy's intervention and approve TN 35 as filed.

Sincerely,



Dean Shaikh
Vice President, Regulatory Affairs

CC: regulatory@teksavvy.com

*****End of Document*****

⁷ Telecom Decision CRTC 2020-342, Ottawa, 28 September 2020, *Requests to stay the implementation of Telecom Order 2019-288 regarding final rates for aggregated wholesale high-speed access services.*