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Filed via My CRTC Account

Mr. Claude Doucet, Secretary General  
Canadian Radio-television and Telecommunications Commission  
1 Promenade du Portage  
Gatineau, Quebec J8X 4B1

11 September 2020

**RE: Telecom Order CRTC 2019-288 – Final rates for aggregated wholesale high-speed access (HSA) service – Revised tariff pages**

Dear Mr. Doucet,

1. As you are aware, on 10 September 2020, the Federal Court of Appeal (FCA) issued Judgments and Reasons<sup>1</sup> dismissing the appeals by some incumbent carriers of Telecom Order CRTC 2019-288<sup>2</sup>. An immediate result of those Judgments is that the Orders are no longer in effect staying TO 2019-288. TekSavvy is writing today to request that you require the incumbents that have not issued revised tariff pages to do so immediately.
2. In TO 2019-288, issued on 15 August 2019, the Commission directed the incumbent carriers<sup>3</sup> to issue revised tariff pages reflecting the determinations in that Order within 30 days, *i.e.* by 14 September 2019.
3. On 20 September 2019, Commission staff sent a letter<sup>4</sup> observing that while stay motions had been filed with the FCA, those motions were yet to be considered by the

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<sup>1</sup> *Bell et al. v. BCBA et al.*, [2020 FCA 140](#), 10 September 2020 [FCA rates decision].

<sup>2</sup> [Telecom Order CRTC 2019-288](#), Follow-up to Telecom Orders 2016-396 and 2016-448 – Final rates for aggregated wholesale high-speed access services, 15 August 2019 [TO 2019-288].

<sup>3</sup> The incumbent carriers subject to TO 2019-288 are Bell Canada and Bell MTS (Bell); Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (Rogers); Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TELUS Communications Inc. (TELUS). The incumbent carriers that appealed TO 2019-288 to the FCA were all of the incumbent carriers listed here with the exception of TELUS and SaskTel.

<sup>4</sup> [Commission Staff letter](#) regarding Telecom Order CRTC 2019-288 – Final rates for aggregated wholesale high-speed access (HSA) service – Revised tariff pages, 20 September 2019, [September staff letter].

Court. Noting that only TELUS had issued revised tariff pages in response to the Order, Commission staff requested that the other companies do so by 25 September 2019.

4. Our understanding is that only SaskTel issued revised tariff pages by that extended deadline.
5. On 27 September 2019, the FCA issued interim stays of TO 2019-288 “until the applicants’ motion for leave to appeal and for an interlocutory stay is determined.”<sup>5</sup> On 22 November 2019, the FCA issued interlocutory stays of TO 2019-288 “pending the final judgment of this Court”.<sup>6</sup>
6. With the final judgment of the Court having been issued on 10 September 2020, those stays are no longer in effect. As such, TO 2019-288 is again in effect, requiring the incumbent carriers to have issued revised tariff pages within 30 days of that decision, or by the extended deadline articulated in the September staff letter, a deadline that was only met by TELUS and SaskTel.
7. TekSavvy is of course well aware that the Commission is considering the Part 1 Application to Review and Vary TO 2019-288.<sup>7</sup> However, as noted in the September staff letter in the absence of a stay, “determinations and directions set out in the Order remain in effect, including the direction to file revised tariff pages.”
8. TekSavvy notes that the FCA decision was unequivocal in its findings that the appellants did not have sound legal rationale for their appeal. In fact, the court held that many of their legal arguments were of “dubious merit.” As TekSavvy and other wholesale purchasers are forced to bear the burden of the incumbents’ aggressive and unjustified legal and regulatory delay strategy, TekSavvy asks that the Commission act promptly to implement TO 2019-288 now that the FCA stays have been lifted.
9. TekSavvy therefore respectfully requests that the Commission require the incumbent carriers that have not issued revised tariff pages to do so without delay and no later than 17 September 2020.

Yours truly,

*[transmitted electronically]*

Andy Kaplan-Myrth  
VP, Regulatory and Carrier Affairs

cc: Lyne Renaud, CRTC, <lyne.renaud@crtc.gc.ca>

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<sup>5</sup> Bragg et al v. BCBA et al, Order of de Montigny J.A. in Docket 19-A-58, 27 September 2019; Bell et al v. BCBA et al, Order of de Montigny J.A. in Docket 19-A-59, 27 September 2019.

<sup>6</sup> Bragg et al v. BCBA et al, Order of Boivin J.A. in Docket 19-A-58, 22 November 2019; Bell et al v. BCBA et al, Order of Boivin J.A. in Docket 19-A-59, 22 November 2019.

<sup>7</sup> CRTC File Number 8662-C12-201912502, Requests to Review and Vary Telecom Order CRTC 2019-288 regarding Final rates for aggregated wholesale high-speed access services (Bell Canada, The Cable Carriers and TELUS Communications Inc.), posted 20 December 2019.

Abderrahman El Fatihi, CRTC, <abderrahman.elfatihi@crtc.gc.ca>  
Distribution list from the Commission Staff letter of 20 September 2019

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