



**WE'RE DIFFERENT.  
IN A GOOD WAY.**

**TekSavvy Solutions Inc.**

800 Richmond Street  
Chatham ON N7M 5J5

**TELEPHONE** +1 519 360-1575  
**TOLL FREE** 877-779-1575

**FAX** 519.360.1716  
**teksavvy.com**

**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 February 2019

**RE: TekSavvy Final Submission in Report regarding the retail sales practices of Canada's large telecommunications carriers, Telecom and Broadcasting Notice of Consultation CRTC 2018-246, 16 July 2018** ("TBNC 2018-246" or the "Notice")

Dear Mr. Doucet:

1. TekSavvy Solutions Inc. ("TekSavvy") is an independent Internet and voice service provider based in Chatham, Ontario, and Gatineau, Quebec. TekSavvy provides Internet and voice services over:
  - wholesale DSL and cable network access provided by third parties in provinces across Canada; and
  - self-supplied fixed-wireless network access, in southwestern Ontario.
2. TekSavvy believes in doing what is right for our customers and strives to treat consumers fairly and honestly. During the hearing and in TekSavvy's responses to information and previous submissions to this hearing, we highlighted three ways TekSavvy's values are built into TekSavvy's culture and differentiate us from competitors:
  - First, TekSavvy advertises the best available price, so that our best offer is transparent to both consumers and the competitive market.
  - Second, TekSavvy does not use any sales incentives, targets, or rewards to pressure employees to complete sales. Our agents listen and seek to understand what the consumer wants and needs, and then explains the available service options so that the consumer can make an informed choice about what service best meets their needs.
  - Third, TekSavvy's residential services are sold on a pre-paid basis, with no fixed-term contract. If a customer is dissatisfied for any reason and wishes to switch service providers, they can cancel without paying a cancellation penalty.

3. Many of our customers choose TekSavvy because our service model is built on transparency and honesty. To these customers, TekSavvy is a competitive choice that is refreshingly different from the sales or service practices that have become expected from large telecommunications companies. We noted with interest that consumers in this hearing expressed views that telecommunications competition is not robust, as they viewed their real choices as limited to only a few large telecommunications carriers, especially for higher speeds and fibre technology. Consumers noted various friction points affecting the retail customer experience that are related to barriers with the way wholesale service is provided to competitors.<sup>1</sup> In each case, the result of the wholesale issue served to disadvantage a wholesale-based competitor's ability to compete for or serve a customer, and won a customer back to the carrier's own retail brand.
4. TekSavvy's submissions in this proceeding offered a wholesale-based competitor perspective of specific types of misleading and aggressive sales practices that affect TekSavvy's customers. We detailed three scenarios of misleading or aggressive sales practices that arise because of the unique opportunity for an incumbent's employee to sell its own retail services when it ought to be focused on providing a wholesale service as an underlying carrier:
  - inappropriate sales during wholesale-based service appointments;

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<sup>1</sup> For example, in the Oral Hearing:

- Tony Wacheski, intervention #681, Transcript, 22 October 2018 at para. 539: 539: Previously, I did switch to TekSavvy. However, they are dependent on the incumbents for that last mile. A couple examples of issues, my Teksavvy modem needed a firmware upgrade, but Rogers network could not or would not allow it, so Teksavvy had to mail me a new modem instead of flashing my firmware over the network. When my neighbour changed their cable service, I lost my internet. I chased the truck as it drove away, then I called Teksavvy two minutes later, and my internet wasn't restored for three days. I couldn't afford being without internet and I had to sign directly with Rogers.
- Ryan Adams, intervention #294, Transcript, 22 October 2018 at paras. 699-702: 699 THE CHAIRPERSON: Just one maybe point of clarification.  
700 When you say the service was no longer technically available or you were, to use your description, denied the service, did they provide an explanation? Was it the copper plant was no longer being used to provide DSL, or what was the explanation for ---  
701 MR. ADAMS: That denial in 2014, they provided me no explanation. However, I did elect to go with a third-party service provider; that would be Tech Savvy, as per my submission. You can see in there that basically I provided the full receipts of the email communication with them. And I was signed.  
702 I also qualified on the Bell Web site, so I confirmed that. And in my choice, I chose the lowest costs of DSL, which was Tech Savvy at the time, as service provider.
- Shawn Ahmed, intervention #737, Transcript 22 October 2018 at paras. 1122-1123: 1122 Similarly, resellers like TekSavvy and other sellers that use Rogers' lines are unable to use -- are unable to offer either the speeds or the price that Rogers offers.  
1123 For comparison, like this gigabit promotion was not only four times as fast as TekSavvy's highest offering, but it was also way cheaper. So for many people like myself, the choice to switch to Rogers is really no choice at all.

- misleading statements about TekSavvy as a competitor or TekSavvy's services during sales interactions with incumbent sales employees or by incumbent technicians; and
- apparent misuse of TekSavvy's end-user information, which ought to be treated confidentially within the Carrier Service Group, for incumbent outbound sales calls.

**Incumbent carriers should not be able to abuse their position to switch a wholesale-service call into a sales opportunity**

5. Service providers like TekSavvy are wholesale customers of the incumbent carriers. Incumbents are in a position to control all wholesale levers in the market and know virtually everything about its wholesale customer's position in their market. In addition to these advantages, the same carriers also compete with its wholesale customer for the same retail customers. Opportunities arise from this fundamental conflict of interest for an incumbent's employee to inappropriately promote or sell their own retail services to a competitor's customer when the carrier is acting as a wholesale service provider.
6. The competitive marketplace is distorted and disproportionately harms competitors without market power when these types of misleading and aggressive sales practices occur. TekSavvy emphasizes that these sales practices are able to transpire because of asymmetries in the competitive market, which are exacerbated when incumbents with market power provide wholesale services also compete against their wholesale customers for retail customers.
7. Two of the scenarios outlined underline this asymmetry: inappropriate sales during wholesale-based service appointments and any misuse of wholesale-based providers' end-user information for the purpose of sales. These issues only affect wholesale-based providers' retail customers. Incumbents' own customers would not experience these aggressive sales practices because they send their own technicians for service calls, and do not need to entrust their customer confidential information with an underlying third-party provider.
8. Incumbent carriers are in a privileged and powerful position when dispatching technicians to install service for a wholesale-based provider's customer. Wholesale-based providers, like TekSavvy, must send an incumbent technician into a customer's home for the sole purpose of completing an install or repair.<sup>2</sup> We trust the technician to perform the service requested, and our customer expects a service call, not a sales pitch for another provider. In our view, such sales are aggressive sales practices.<sup>3</sup> TekSavvy agrees with CNOC that it is an abuse of incumbents' dominant position to use their

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<sup>2</sup> See TekSavvy Intervention at paras. 11 and 21, explaining that the regulatory regime requires every wholesale install to dispatch an incumbent technician to the customer's premise to install service.

<sup>3</sup> Transcript, 24 October 2018, Ms. Lo at paras. 2887 to 2889:

2888 We would see these as potentially aggressive situations because the technician is in the customer's home, it's their domain. They're not expecting a sales pitch, so their guard is down, as some of the groups yesterday were talking about. And it's aggressive because it's unexpected.

2889 It's supposed to be a technical call, so a sales pitch is inappropriate, and certainly inappropriate when it's on TekSavvy's time to just get our customer on-boarded."

technicians to promote incumbent retail services during wholesale service calls.<sup>4</sup> It is wholly unacceptable for incumbents to use wholesale service calls as an opportunity to sell retail services for the incumbent, or to proffer disparaging or misleading statements about the wholesale-based provider's services.

9. Consumers are harmed where unfair pressure or aggression is used to complete a sale, where misleading or false statements about competitors are used to win a customer, or where consumers experience unsolicited sales in their own home when they are expecting service installation or repair. Market forces are not a sufficient safeguard to protect consumers from these types of misleading and aggressive sales practices.<sup>5</sup>
10. Moreover, as TekSavvy has explained in its submissions and in the Oral Hearing, there are no regulatory safeguards in the wholesale framework to disincentivize or prohibit these sales practices and no processes to seek a remedy. Instead, wholesale-based service providers can merely escalate concerns to an incumbent's wholesale Carrier Services Group, who typically state that there is a policy but provide no further assurances that there are adequate controls in place to ensure these aggressive and misleading practices do not take place.<sup>6</sup>

**The record speaks for itself – consumers experience the sales practices described by TekSavvy and these are likely just the tip of the iceberg**

11. Consumer experiences on the record of this proceeding speak for themselves. For example, during the Oral Hearing, some consumers tweeted their own experience into the #CRTCforum, outlining inappropriate sales aiming to undermine their service provider choice:
  - “I submit this at my peril. Don't tell me corrupt sales tactics aren't systematic when Bell outright INCENTIVIZES employees with BONUS COMMISSION based on amount of install fees we can get tacked on. Who'd give customers best deal w/ [sic] this structure!? #CRTCForum”<sup>7</sup>
  - “#CRTCForum Maybe this is just a coincidence but all of the customers on the Rogers network (except for Rogers customers) experienced an outage lasting 4 hours at which time Rogers sales reps were knocking on doors in my neighbourhood selling more 'reliable', faster tech responses.”<sup>8</sup>
  - “Door to door Rogers rep claiming faster tech support and more reliable service WHILE customers of @TekSavvyNetwork and others were mysteriously down.

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<sup>4</sup> Canadian Network Operators Consortium, Inc. Reply at para. 11.

<sup>5</sup> Bell in its Intervention at para. 45 argues that the “single most effective form of consumer protection” is “the highly competitive telecommunications market place in which customers are free to switch providers in the event they are dissatisfied.” Similarly, Rogers in its Intervention at para. 5 states that any issues are a reflection of the complexity that exists “within Canada's competitive telecommunications and broadcasting distribution industry.”

<sup>6</sup> TekSavvy Intervention at para. 24, 33, and 45. Transcript, 24 October 2018, Mr. Kaplan-Myrth at paras. 2882-2886.

<sup>7</sup> Twitter user @QUsPzfvclbMokTB (26 October 2018, 9:45 p.m.)

<sup>8</sup> Twitter user @naeemmo (23 October 2018, 5:20 p.m.)

She skipped my neighbour who is already paying Rogers. Shady business #CRTCforum.”<sup>9</sup>

- “Just yesterday I had a Bell rep try to discredit TekSavvy by saying it's just a third-party company, and aggressively try to convince me that 15 Mbps down would be better for me than the 150 Mbps plan I have with you. I called in to have my cell number changed. #CRTCforum”<sup>10</sup>
- “#CRTCforum who doesn't have a story about Bell lying about how they could fix your problem/hook you up so much faster if you just signed up with them? It's their standard playbook - artificially delay 1-2 weeks, sell sell sell, then you finally get a tech and it's 15mins to fix.”<sup>11</sup>

12. TekSavvy has already amplified a sample of consumer experiences described to the Commission on the record of this proceeding and in previous proceedings.<sup>12</sup>
13. Because TekSavvy relies on and is required to use incumbent technicians to perform service calls, we are not in a position to confirm reported incidents. We can only relay what our customers tell us.
14. It is also very likely that reported incidents are just the tip of the iceberg. Customers may not report inappropriate sales scenarios to TekSavvy. For example, where an incumbent successfully wins a sale at a wholesale-based service call, a customer might not tell TekSavvy that their cancellation was due to a sales pitch during TekSavvy's service appointment.
15. No matter the scope of these types of sales practices, the fundamental concern is the harmful *impact* of any incident. Any incident of this nature exploits the incumbent's dominant position and market asymmetry, with the result of undermining consumer choice and harming competition and competitors.

**Something doesn't line up: Bell Canada and Rogers claim their techs don't sell or make misleading statements about competitor services, but consumers say they do**

16. TekSavvy's intervention outlined three scenarios in which misleading or aggressive sales practices have taken place in a wholesale context:
  - an incumbent technician inappropriately offers to sell or sells incumbent services to a TekSavvy end-user during an installation or repair appointment for TekSavvy's services;

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<sup>9</sup> Twitter user @naeemmo (23 October 2018, 5:27 p.m.)

<sup>10</sup> Twitter user @andalerob (24 October 2018, 11:00 a.m.)

<sup>11</sup> Twitter user @JMJimmy1 (24 October 2018, 12:11 p.m.)

<sup>12</sup> TekSavvy Intervention at paras. 31. Transcript, 24 October 2018, Mr. Kaplan-Myrth at paras. 2882-2886, especially:

2885 I think the evidence is these sort of situations have been happening for years. They have been included in submissions, in applications since at least when our industry association, CNOC, raised it in an application in 2013 and in numerous other proceedings at the same time.

2886 It has not been resolved. It continues to happen, and customers are sending you their own testimony about these kinds of situations even in this proceeding now.

- an incumbent's employee or third party, such as a sales representative or technician, makes a misleading and inaccurate statement about TekSavvy's services;
  - an incumbent's sales employee, third party sales agent, or technician targets TekSavvy's end-user using information that it only knows from its wholesale function
17. Neither Bell nor Rogers addressed TekSavvy's concerns that incumbents' employees have made misleading statements about the nature of wholesale-based competitor services, or inappropriately used information about TekSavvy's customers to offer their own retail services.
18. Instead, Bell and Rogers responded only to TekSavvy's first concern that their technicians might poach TekSavvy's customers during a service call. Rogers stated: "none of our technicians are permitted to make any sales offers or make statements about competitors when they are installing or repairing facilities. Nor do we provide any incentive to a technician to encourage a customer to switch carriers."<sup>13</sup> While Bell did not respond directly to any of these claims in its submissions, it noted in an undertaking that its technicians installing wholesale services are "under strict obligations not to market or sell Bell Canada services".<sup>14</sup> Bell did not comment on whether its technicians are incented to encourage a customer to switch.
19. Something doesn't line up when juxtaposing Bell and Rogers' statements that their technicians are not permitted to sell retail services or disparage competitor services during wholesale service calls against consumers' reported experiences on the record of this proceeding, and customer experiences relayed to TekSavvy about sales attempts and technician incentives.

### **Expanded consumer protections in a Code of Conduct**

20. Many interveners supported the idea of a Code of Conduct to address misleading and aggressive sales practices, to be administered by the Commissioner for Complaints for Telecom-Television Services (CCTS).
21. TekSavvy submits that if the Commission finds that a Code is appropriate, the Code ought to, at minimum, prohibit sales during purely service-based interactions, such as wholesale-based installation and repair appointments. This would address concerns raised in this hearing by consumers concerned about how incumbents use service calls as an opportunity to sell their own retail services.

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<sup>13</sup> Rogers reply at para. 42. Rogers also emphasized this in the Oral Hearing. Transcript, 26 October 2018, Mr. Watt at para. 6456:

6455 COMMISSIONER LAIZNER: And I'm just going to switch gears a little bit to ask something I meant to ask earlier and had forgotten. And that was your technicians, are they authorized or encouraged to sell products when they go into the home?

6456 MR. WATT: No, they are not. They do not sell products. I think maybe the background to the question is the allegations by third party Internet providers that we -- when our installers go into install service on their behalf that we try and win their customers away.

<sup>14</sup> Bell et al(CRTC)26Oct18-1 TBNC 2018-246.

22. As noted above, large incumbents such as Bell and Rogers have stated on the record of this proceeding that they do not allow sales during wholesale-based service calls. If incumbents already have internal prohibitions in place, then a regulatory prohibition on sales during wholesale-based service calls would not introduce any additional burden.
23. Such a regulatory obligation would ensure that consumers are not subject to inappropriate and aggressive sales practices, and that wholesale-based competition is not undermined by incumbents' conflict of interest serving its wholesale customers and expanding its own retail business.
24. Moreover, a regulatory obligation would set a clear prohibition to stand the test of time. Incumbent policies, processes, and incentive structures can change with management or strategic priority shifts. Any internal structural changes would not be known or noticed for months or years, but could have very real impacts on consumer experiences in the competitive marketplace.

### **Conclusion**

25. Retail sales practices can occur in many contexts for telecommunications services. The framework for service-based competition in Canada opens the door to inappropriate misleading and aggressive sales practices in the context of wholesale service provision, and ought to be addressed.
26. The misleading and aggressive sales practices examples raised by TekSavvy in this proceeding are mere examples a few tactics that incumbents have used, inappropriately leveraging their position of control over wholesale inputs. These sales practices advantage the incumbent's retail services, disadvantage the competitor (the incumbent's wholesale customer), and, most importantly, harms consumer's choice and competition.

Yours truly,

*[transmitted electronically]*

Janet Lo  
VP, Privacy & Consumer Legal Affairs

cc: Andy Kaplan-Myrth, TekSavvy ([akaplanmyrth@teksavvy.ca](mailto:akaplanmyrth@teksavvy.ca))  
Scott Shortliffe ([scott.shortliffe@crtc.gc.ca](mailto:scott.shortliffe@crtc.gc.ca))  
Guillaume Leclerc ([guillaume.leclerc@crtc.ca](mailto:guillaume.leclerc@crtc.ca))  
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