Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2013-136

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Ottawa, 18 March 2013

TELUS Communications Company – Application to exclude certain quality of service results from the rate rebate plan for competitors due to adverse events

File number: 8660-T66-201211607

In this decision, the Commission approves an application filed by TCC to exclude results associated with certain quality of service indicators used to calculate the amounts owed to Bell Canada, Equant Canada Inc., and Qwest Communications LLC for the months of May and June 2012 under the Commission's rate rebate plan for competitors. The Commission denies TCC's request to exclude those quality of service results with respect to the amounts owed to MTS Allstream for the same months. Furthermore, the Commission clarifies that the 21-day time frame to file exclusion applications begins from the end of the month during which an adverse event is cleared.

Introduction

1. Under the Commission's rate rebate plan for competitors, the performance of incumbent local exchange carriers (ILECs) in providing services to their competitors is assessed against specific quality of service (Q of S) indicators. In the event that the performance in a given month does not meet the set standard for a given indicator, the ILEC must issue rebates to affected competitors. ILECs are allowed to apply to the Commission to have performance results excluded from the calculation of the rebates when certain events outside of their control cause them to miss meeting one or more indicators.

2. The Commission received an application from TELUS Communications Company (TCC), dated 14 September 2012, requesting the exclusion of the competitor Q of S results related to indicator 2.10 – Mean Time To Repair (MTTR) – CDN [competitor digital network] Services and Type C Loops (indicator 2.10) from its rate rebate plan for competitors for Bell Canada, Equant Canada Inc. (Equant), MTS Inc. and Allstream Inc. (collectively, MTS Allstream), and Qwest Communications LLC (Qwest) for May and June 2012.

3. TCC submitted that four adverse events occurred in May and June 2012 that affected telecommunications services to its end-customers and its competitors' end-customers in the areas around which the events occurred.

4. The first adverse event occurred on 7 May 2012. On that day, five cables were cut and stolen in Delta, British Columbia, a community that is included within the local exchange of Ladner. These cable cuts caused approximately 2,800 customers to lose their telecommunications services. Two further cable cuts relating to cable theft occurred on 11 June 2012 in Burnaby, British Columbia, and on 12 June 2012 in Surrey, British Columbia. These two events affected voice services to almost 300 customers combined. The fourth cable cut occurred in Fort McMurray, Alberta, on 19 June 2012 and was caused by the action of a third-party contractor. In this case, a construction company severed a cable, affecting almost 100 end-customers.

5. The Commission received comments regarding TCC's application from MTS Allstream. The public record of this proceeding, which closed on 29 October 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Issues

6. The Commission has identified the following issues to be addressed in this decision:

   I. Should TCC's application be accepted even though it was filed late?

   II. Should TCC's request to exclude competitor Q of S performance results for indicator 2.10 from its rate rebate plan for May and June 2012 be approved?

I. Should TCC's application be accepted even though it was filed late?

7. In Telecom Decision 2005-20, the Commission finalized the Q of S rate rebate plan for competitors. The Commission determined that, if an ILEC believed that a performance failure for a Q of S indicator was attributable to circumstances beyond its control, the ILEC could apply to the Commission, within 21 days of the adverse event, for a determination that the relevant failure should be excluded from its Q of S results.

8. MTS Allstream requested that the Commission deny TCC's application because it was filed beyond the 21-day time frame prescribed to that effect.

9. In reply, TCC argued that the 21-day time frame to file an exclusion application is not practical, as not all adverse events result in substandard performance results. TCC submitted that binding ILECs to a 21-day filing time frame may result in prematurely filed applications before a full analytical process can be completed, which in turn may result in unnecessary or subject-to-change applications.

Commission's analysis and determinations

10. The Commission notes that TCC submitted its present exclusion application on 14 September 2012 for events that occurred on 7 May, 11 June, 12 June, and 19 June 2012, that is, between 87 and 130 days after the adverse events occurred.

11. The Commission notes that the 21-day time frame prescribed in Telecom Decision 2005-20 for the filing of exclusion applications was designed to incent ILECs to make competitor Q of S performance a priority and to monitor it closely.

12. Nevertheless, the Commission notes that, in the past, it has dealt with and disposed of applications that were filed beyond the 21-day time frame. In its analyses, the Commission took into consideration circumstances that prevented the applicants from filing their requests on time.

13. With respect to TCC's current application, the Commission considers that, given the nature of the adverse events in question and the need for TCC to properly assess the impact of those adverse events on its competitor Q of S performance, TCC's delay in filing its application with the Commission is justified.

14. Accordingly, the Commission determines that it is appropriate in the present situation to accept TCC's late-filed application.

15. In light of the submissions in this proceeding, the Commission finds that it would also be appropriate to clarify the time frame for the filing of exclusion applications. The Commission considers that the filing time frame should allow ILECs to assess the impact of the events as well as necessary repairs, yet be contained enough so that competitors are not unduly disadvantaged by a billing and rebating cycle spread over too long a period.

16. Therefore, the Commission clarifies that the 21-day time frame determined in Telecom Decision 2005-20 will be assessed from the end of the month during which an adverse event is cleared, meaning that service is restored to the impacted competitors.

17. The Commission expects future exclusion applications to be filed within this clarified time frame.

II. Should TCC's request to exclude competitor Q of S performance results for indicator 2.10 from its rate rebate plan for May and June 2012 be approved?

18. TCC submitted a table showing that its results for indicator 2.10 met, on an aggregated basis, the required standard for the period from July 2011 to June 2012.

19. TCC submitted that, at the specific competitor level, its Q of S performance results were below the set standard for indicator 2.10 for four competitors in May 2012 and for one competitor in June 2012. TCC provided evidence that if the trouble reports related to the above-noted adverse events were excluded, its May and June 2012 results for indicator 2.10 for each of the competitors served would have been within the accepted standard.

Commission's analysis and determinations

20. In Telecom Decision 2007-102, the Commission adopted a *force majeure* clause that provided that, under the Q of S rate rebate plan for competitors, no rate rebates would apply in a month where failure to meet a competitor Q of S standard was caused in that month by events beyond the reasonable control of the ILEC. The Commission considers that, based on the evidence filed in this proceeding, the cable thefts and the cable cut in question qualify as events that were beyond the reasonable control of TCC and thus trigger the *force majeure* clause.

21. In Telecom Decision 2007-14, the Commission concluded that if an ILEC had met or exceeded the standard for a particular competitor Q of S indicator for three consecutive months, or for at least six out of twelve months, immediately prior to an adverse event, it was reasonable to conclude that the ILEC would likely have met its competitor Q of S obligations without the adverse event.

22. The Commission has reviewed TCC's performance for the three consecutive months prior to the May 2012 event and finds that TCC met the standard for indicator 2.10 for all competitors served except MTS Allstream, for whom the results were below standard for two out of the three months under analysis. The Commission has also reviewed TCC's performance for the twelve consecutive months prior to the May 2012 event and finds that TCC met the standard for indicator 2.10 for at least six of the twelve months for all competitors served except MTS Allstream, for whom the results were below standard for ten months.

23. The Commission has reviewed TCC's performance for the three consecutive months prior to the June events, and finds that TCC met the standard for indicator 2.10 for all competitors served except MTS Allstream, Bell Canada, and Equant, for whom the results were below standard. For MTS Allstream, the results were below standard for three months, and for both Bell Canada and Equant, the results were below standard for one month. The Commission has also reviewed TCC's performance for the twelve consecutive months prior to the June events, and finds that TCC met the standard for indicator 2.10 for at least six of the twelve months for all competitors served except MTS Allstream, for whom the results were below standard for ten months.

24. In Telecom Decision 2007-54, the Commission noted that when the number of trouble reports is below a particular level, as defined in the decision, the ILEC is exempted from meeting the set standard for indicator 2.10. Based on that exemption, TCC has demonstrated that results pertaining to Qwest for this indicator in May 2012 do not need to be considered.

25. Accordingly, the Commission determines that TCC has not fulfilled the requirements established in Telecom Decision 2007-14 with regard to MTS Allstream.

26. In light of the above, the Commission **denies** TCC's request to exclude its below-standard results for competitor Q of S indicator 2.10 for May and June 2012 from the calculation of the amounts due to MTS Allstream under the rate rebate plan for competitors. The Commission **approves** TCC's request to exclude its below-standard results for competitor Q of S indicator 2.10 for May and June 2012 from the calculation of the amounts due to Bell Canada, Equant, and Qwest under the rate rebate plan for competitors.

Policy Direction

27. The Policy Direction[1] states that the Commission, in exercising its powers and performing its duties under the *Telecommunications Act* (the Act), shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(*a*), (*b*), and (*c*) of the Policy Direction.

28. The Commission considers that its determinations relative to TCC's application to exclude competition-related Q of S indicator 2.10 results from the rate rebate plan for competitors for May and June 2012, as set out in this decision, advances the telecommunications policy objectives set out in paragraphs 7(*b*), (*f*), and (*h*) of the Act.[2] Further, the Commission considers that its determinations in this decision allow TCC to recover certain amounts already paid to Bell Canada and Equant under the rate rebate plan applicable to competitors and clarify the time frame for the filing of future exclusion applications. In light of the foregoing, the Commission considers that, in accordance with subparagraphs 1(*a*)(ii) and 1(*b*)(ii) of the Policy Direction, its determinations in this proceeding interfere with the operation of market forces to the minimum extent necessary to meet the policy objectives of the Act.

Secretary General

Related documents

- *Retail quality of service rate adjustment plan and competitor quality of service rate rebate plan – Adverse events*, Telecom Decision CRTC 2007-102, 31 October 2007

- *CISC Business Process Working Group – Non-consensus report BPRE064a to revise competitor quality of service indicator business rules per Telecom Decision 2006-59*, Telecom Decision CRTC 2007-54, 13 July 2007

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[1] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

[2] The cited policy objectives of the Act are
7(*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;
7(*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
7(*h*) to respond to the economic and social requirements of users of telecommunications services.

- *TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors for July 2005*, Telecom Decision CRTC 2007-14, 28 February 2007

- *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005