

Willie Grieve  
Vice-President  
Telecom Policy & Regulatory Affairs

(780) 493-6590 Telephone  
(780) 493-6519 Facsimile  
willie.grieve@telus.com

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Mr. Robert Morin  
Secretary General  
Canadian Radio-Television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Morin:

**Subject: Incumbent local exchange carrier applications for local forbearance – Methodology to be used where quality of service (Q of S) results are excluded for purposes of the competitor Q of S rate rebate plan - Telecom Public Notice CRTC 2007-5**

1. In this Public Notice, the Commission is seeking comments on the methodology that should be used for forbearance purposes to deal with periods when quality of service (“Q of S”) results are excluded, due to a “*force majeure*” event. Specifically, the Commission invites comments on whether in determining local forbearance in the above case the Commission should:
  - a) consider the six-month period used by the ILEC in its local forbearance application, replacing the excluded indicator(s) in a given month with an indicator (or indicators) from earlier or later permissible non-excluded months (e.g. if four months of the six-month period used by the ILEC in its local forbearance application are excluded for a particular indicator, should the Commission consider competitor Q of S results for that indicator for the two months that are not excluded, as well as the four other non-excluded months before or after that six-month period?);

- b) consider the six-month period used by the ILEC in its local forbearance application, although one or more of those months are excluded (e.g. if four months of the six-month period used by the ILEC in its local forbearance application are excluded for a particular indicator, should the Commission consider competitor Q of S results for that indicator using the remaining two months in that six-month period?). If so, is there a minimum number of months that are not excluded within the six-month period used by the ILEC in its local forbearance application that should be considered?; or
- c) use another methodology.

**Within the 6 month window, how are the results for excluded months replaced?**

- 2. Overall, TELUS recommends a very simple procedure to replace months in a 6 month window excluded by “*force majeure*” type events by simply averaging the prior and later months on either side of the event and using these as the results for the month(s) during which the excludable event occurred. TELUS recommends using one month prior and after (for 1-2 month exclusions), one month prior and two months after (for 3-4 month exclusions), and one month prior and three months after (for 5-6 month exclusions). TELUS notes that this recommended procedure tends to overweight the service indicator results for the period after the excludable event thereby putting the emphasis on the restoral of service and service levels after the event.
- 3. TELUS presents the above noted procedure as a simple, easy to understand, reasonable methodology to deal with results of one or more months adversely affected by any number of “*force majeure*” events to allow the calculation of the 6 month Q of S measure for handling forbearance applications. TELUS proposes to replace the excluded months with averages made up of leading and trailing months around the excludable event while overweighting the trailing months to ensure that the average is a reasonable and well-based replacement for the excluded results. This calculation methodology also tends to overweight the trailing months to

clearly demonstrate that the service levels have been adequately restored after the event. It is worthwhile emphasizing that TELUS is incented to maintain high standards at all times because the timing of an excludable event is unpredictable and the TELUS proposal to average a leading and trailing month(s) is no guarantee that both will be above standard. Therefore, using this methodology, TELUS bears some risk. TELUS is not proposing an inherently biased methodology aimed at obtaining a potentially favorable outcome.

**Within the 6 month window, what is the minimum number of months for which non-excluded results must exist?**

4. It is TELUS' view, that even if the majority of months are excluded within a 6 month window, this procedure could still be used to calculate a valid average.
5. As a preface to carrying out these calculations, TELUS notes that in paragraph 7 of the Public Notice, the Commission asks "...what the Commission should do when an ILEC applies for local forbearance and the Commission has approved an exclusion, for RRP purposes,...?". TELUS has had some experience in applying for an exclusion under the rules of Decision 2005-20, which states in paragraph 117:

In light of the above, the Commission determines that if an ILEC believes that a performance failure for a Q of S indicator is attributable to circumstances beyond the control of the ILEC, the ILEC may apply to the Commission for a determination that the relevant failure should be excluded from the ILEC's Q of S results. The ILEC must apply for such relief within 21 days of the adverse event and must serve a copy of its application on any affected competitors at the same time as the application is filed with the Commission. In its application, the ILEC must clearly identify the adverse event in question, the effects of the event on specific Q of S indicators and the proposed adjustments to those Q of S results. The competitors will have 10 days to file comments on the ILEC's

application with the Commission, serving a copy on the ILEC. The ILEC may file reply comments with the Commission, serving copies on any competitors filing comments, within a further seven day period. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent by that date.

6. TELUS is concerned with the delays introduced to forbearance if ILECs must await the results of a Commission decision to approve an exclusion application prior to being eligible to gain forbearance. As examples, the following exclusion applications made by various ILECs show the delays which will be incurred to forbearance if the Commission deals with exclusion first and then forbearance second in a sequential fashion.
  - Decision CRTC 2005-64 27 October 2005 Saskatchewan Telecommunications (SaskTel) filed an exclusion application, dated 4 July 2005, requesting an adjustment to its June 2005 Q of S results (4 months delay).
  - Telecom Decision CRTC 2007-14 28 February 2007 TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors for July 2005 TELUS filed May 29, 2006 (9 months delay).
  - Bell Canada Part VII Nov 21, 2005, refiled Dec 5, 2005 for a competitor Q of S exclusion related to a labour disruption (16 months – decision pending).
7. TELUS is particularly concerned by the effect of awaiting the Commission’s decision on an exclusion application prior to forbearance being granted. TELUS notes that the Commission created the exclusion safeguard “where circumstances *beyond the control of an ILEC* might have caused it to fail to meet a performance standard.” (emphasis added) The Commission decided in Decision 2005-20 that it would be reasonable to allow ILECs to exclude the results of specified service

indicators when it could be shown that service failures were due to a “*force majeure*” event, which by definition, is beyond the control of the ILEC.

8. *Force majeure* events, which in most cases are self-evident, should not lead to delays to forbearance being granted where an alternative methodology such as the one proposed by TELUS can be used as a proxy to demonstrate an incumbent telephone company’s CQoS compliance for forbearance purposes.
9. As noted above, in virtually all cases it is clearly evident to all when an excludable event has occurred, whether that event is a labour disruption, a flood, a wind storm or a forest fire or a major cable cut. For Decision 2005-20 rate rebate purposes, it may not be evident until the full record is complete, what rebates might be payable as a result, but nevertheless, the occurrence of the excludable event is always well known because it invariably is reported in the media as well as monitored by independent government agencies such as Environment Canada and Public Safety Canada. TELUS proposes that an incumbent should be permitted to demonstrate the *prima facie* nature of the event to the Commission along with notice that a RRP exclusion application will be forthcoming at a later date following the conclusion of the *force majeure* event. Rather than being required to await the Commission’s determination with respect to the excludable event for RRP purposes, TELUS proposes that for the purpose of the competitor Q of S requirements in Decision 2006-15, as varied by P.C. 2007-0532<sup>1</sup>, TELUS would use the methodology noted above to support forbearance applications.
10. TELUS further recommends that the Commission accept a demonstration by an ILEC that an excludable event has occurred and that an exclusion application will be filed, as the grounds to use the methodology for calculation of the 6 month performance standard outlined above. Awaiting an eventual decision on an

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<sup>1</sup> On 4 April 2007, the Governor in Council (GIC) issued Order Varying Telecom Decision CRTC 2006-15, P.C. 2007-0532 (the Order). In the Order, the GIC determined, among other things, that for a forbearance determination to be granted, an ILEC must demonstrate that with respect to the services provided to competitors in its territory, during a six-month period, beginning no earlier than eight months before its application for local forbearance and ending at any time before the Commission's decision respecting the application, that the ILEC met, on average, the nine primary competitor Q of S standards for each indicator averaged across all competitors.

exclusion application before dealing with a forbearance application will deprive telecommunications consumers of the benefits of forbearance for an unacceptively long period of time.

Yours truly,



Willie Grieve  
Vice-President  
Public Policy and Regulatory Affairs

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c.c.: Interested Parties PN 2007-3

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