



Teresa Griffin-Muir

Vice President, Regulatory Affairs
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MTS Allstream Inc.

4 May 2007

Mr. Robert Morin
Secretary General
Canadian Radio-Television and
Telecommunications Commission
Ottawa ON 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. MTS Allstream Inc. (MTS Allstream) is in receipt of comments from the Canadian Cable Systems Alliance Inc. (the CCSA), Cogeco Cable Inc., Quebecor Media Inc., Rogers Communications Inc. and Shaw Communications Inc. (collectively, the Cable Companies), Bell Aliant Regional Communications Limited Partnership, Bell Canada, and Saskatchewan Telecommunications (collectively, Bell et al.), and TELUS Communications Company (TELUS) dated 27 April 2007, regarding Telecom Public Notice CRTC 2007-5, *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*, 13 April 2007 (PN 2007-5).
2. In accordance with the procedures established in PN 2007-5, MTS Allstream files the following reply comments with respect to the treatment for the purposes of the local forbearance criteria set out in Telecom Decision CRTC 2005-15, *Forbearance from the regulation of retail local exchange services, 6 April 2006, as amended by P.C. 2007-0532* (Decision 2005-15, as amended), of competitor quality of service (CQoS) results for which the Commission has approved an exclusion from the rate rebate plan (RRP).

Purpose of the CQoS local forbearance criteria

3. MTS Allstream agrees with the CCSA that while, in the RRP context, the Commission grants exclusions for adverse events so that the RRP does not penalize an ILEC with respect to matters over which the ILEC has no control, the “[a]pplication of the CQoS criteria in the context of forbearance has a different purpose.” Namely, as the CCSA explains, the CQoS criteria are used in the forbearance context “to ensure that the ILECs do not frustrate competition through the provision of sub-standard services and access to facilities required by competitors.”
4. MTS Allstream submits that the operative question with respect to the CQoS local forbearance criteria is not whether or not an adverse event has occurred that has operationally affected the applicant ILEC, but whether competitors are receiving at least the minimum levels of service from the applicant ILEC necessary for forbearance. Without at least the minimum levels of service, the conditions necessary for sustainable competition are not present and the CQoS criteria for forbearance are not met under Decision 2006-15, as amended.

Six months of consistent CQoS results is a necessary condition for forbearance

5. MTS Allstream also agrees with the CCSA that, “at a minimum, the ILEC must be required to demonstrate, as a condition of forbearance, that the CQoS standards have been met for the full six month period required by the Order.” The six months of CQoS results necessary for forbearance must be factual and not the theoretical product of formulas or conjecture on the part of an applicant ILEC.
6. In sharp contrast to the requirements set out in Decision 2005-15, as amended, both TELUS and Bell et al. propose to substitute the required six months of adequate CQoS results with average results for a shorter period of time. Bell et al. make it clear in their submission that, under their proposal, an applicant ILEC could be granted forbearance on the basis of only three months CQoS results¹, while under TELUS’s proposal the full, required six month

¹ See paragraph 12 of *Telecom Public Notice CRTC 2007-5 – Comments, Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Saskatchewan Telecommunications*, 27 April 2007.

period could be replaced by a different four month period². Furthermore, in the TELUS example, the reduced number of months would not fall entirely within the eight month period prior to the application being made, as required by Decision 2006-15, as amended.

7. These proposals would simply not meet the requirement set out in Decision 2006-15, as amended, which enshrines the principle that no ILEC should be granted forbearance without demonstrating that it is providing adequate, consistent, non-discriminatory CQoS performance in support of sustainable competition.³ In quantitative terms, Decision 2006-15, as amended, requires that the applicant ILEC demonstrate that it met, on average, the quality of service standard for each indicator during a six-month period within a longer eight month period as specified at paragraph 242(b):

b) the ILEC demonstrates that, 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,

(i) it met, on average, the quality of service standard for each indicator set out in Appendix B, as defined in Telecom Decision CRTC 2005-20, *Finalization of quality of service rate rebate plan for competitors*, with respect to the services provided to competitors in its territory, and

(ii) it did not consistently provide any of these competitors with services that were below those quality of service standards.

8. It is plain and obvious that Decision 2006-15, as amended, requires evidence of a minimum of six months of continuously adequate CQoS performance in order to meet the forbearance criterion at paragraph 242(b). It would violate both the intent and the explicit wording of paragraph 242(b) of Decision 2006-15, as amended, to base a forbearance decision on anything less than six months' worth of actual results. And yet, if an applicant ILEC were

² See paragraphs 2 and 4 of *Telecom Public Notice CRTC 2007-5 – Comments, Telus Communications Company*, 27 April 2007.

³ As explained in the Order Varying Telecom Decision CRTC 2006-15, P.C. 2007-0532, "the provision of competitor services by an ILEC, in accordance with the competitor quality of service standards, supports sustainable competition."

allowed to include in its selected six-month period one or more excluded months, that is exactly what would ensue. The Cable Companies also found this approach unacceptable.⁴ It could give rise to the inconsistent situation of a forbearance being granted on the basis of an extended adverse event that excludes the majority or even all of the requisite six-month period when clearly no competitor received adequate service from the ILEC.

9. Moreover, allowing the substitution of months that contain excluded indicators with the average results of other months would create an incentive for the ILEC to apply for forbearance on fewer than six-months of acceptable CQoS results. By the same token, allowing substitution of excluded months would create an incentive for the applicant ILEC to prolong the “impact” of an adverse event and not attempt quantification of the impact on individual indicators or demonstration of reasonable effort for consideration by the Commission. If such a perversion were allowed surely labour strife and rain dancing would become common in the Canadian telecommunications industry where an ILEC is just a lockout or flood away from forbearance. Therefore, MTS Allstream submits that an applicant ILEC should NOT be permitted to make its paragraph 242(b) demonstration based on the less than six months of actual results in the six-month period that it has selected.

There is no exclusion until the Commission says that there is an exclusion

10. MTS Allstream submits that the Commission must also definitively reject the proposals put forward by TELUS⁵ and Bell et al.⁶ that the Commission should substitute results and grant forbearance even without a Commission decision that excludes a month or indicators on the basis of an adverse event. Remarkably, TELUS goes so far as to propose that substitutions be made and forbearance granted on the mere promise that the applicant ILEC will file an exclusion application⁷.

⁴ See paragraph 7 of *Telecom Public Notice CRTC 2007-5 – Comments, Cogeco Cable Inc., Quebecor Media Inc., Rogers Communications Inc. and Shaw Communications Inc.*, 27 April 2007.

⁵ See paragraphs 9 and 10 of *Telecom Public Notice CRTC 2007-5 – Comments, Telus Communications Company*, 27 April 2007.

⁶ See paragraph 16 of *Telecom Public Notice CRTC 2007-5 – Comments, Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Saskatchewan Telecommunications*, 27 April 2007.

⁷ See paragraphs 9 and 10 of *Telecom Public Notice CRTC 2007-5 – Comments, Telus Communications Company*, 27 April 2007.

11. Contrary to the suggestions of TELUS and Bell et al., the character and impact of adverse events claimed by the ILECs have been a matter of much debate and the Commission does not always grant the exclusions claimed by an ILEC. An ILEC seeking an exclusion must not only show that the event itself was beyond the control of the ILEC and that there was a causal link between the adverse event and the CQoS results, but that the negative impact on its customers and on its service levels were also beyond the control of the ILEC. That is, the ILEC must demonstrate that it made all reasonable efforts to mitigate the impact on customers of the adverse event. In the case of CQoS exclusions, the ILEC must also show that it has not multiplied its efforts in serving its own retail customers at the expense of competitor services.
12. MTS Allstream notes that Telecom Decision CRTC 2005-20, *Finalization of quality of service rate rebate plan for competitors*, already contains an expedited process for commenting on exclusion applications. While decisions on exclusion applications may be delayed in some instances, the purpose of the CQoS local forbearance criteria is to ensure that competitors are receiving at least the minimum levels of service from the applicant ILEC and to ensure that the conditions necessary for sustainable competition are present. MTS Allstream submits that this must remain the primary focus and cannot be bypassed as a result of an ILEC's mere intention to file an exclusion application.

Yours truly,

A handwritten signature in black ink, appearing to read 'T. Griffin-Muir', with a long horizontal flourish extending to the right.

for Teresa Griffin-Muir

c.c.: James Robinson, MTS Allstream Inc. (204) 941-5132
Okacha Merabet, CRTC
Parties to PN 2007-5

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