



Teresa Griffin-Muir

Vice President, Regulatory Affairs
Vice-présidente des Affaires réglementaires
MTS Allstream Inc.

10 September 2009

by Epass

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

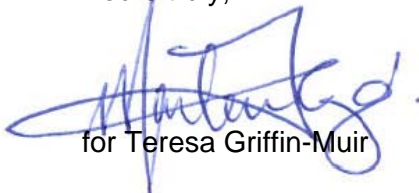
Dear Mr. Morin:

Subject: Exclusion Application Filed Pursuant to Telecom Decision CRTC 2005-20, Finalization of quality of service rate rebate plan for competitors, and Telecom Decision CRTC 2007-102, Retail quality of service rate adjustment plan and competitor quality of service rate rebate plan – Adverse events

Pursuant to the procedures set out in paragraph 117 of Telecom Decision CRTC 2005-20, *Finalization of quality of service rate rebate plan for competitors*, 31 March 2005, and paragraph 32 of Telecom Decision CRTC 2007-102, *Retail quality of service rate adjustment plan and competitor quality of service rate rebate plan, – Adverse events*, 31 October 2007, MTS Allstream Inc. (MTS Allstream) hereby files the attached Exclusion Application to have certain results for Indicator 2.10, *Mean Time to Repair (MTTR) - CDN and Type C Loops* for July 2009 adjusted for the purpose of calculations for the Competitor Rate Rebate Plan.

Consistent with the format prescribed by the Commission in its letter dated 15 January 2002, as amended 1 February 2002, certain information in the Application is being filed in confidence. An abridged version has been provided for the public record. Bell has been provided with the unabridged sections of the Application.

Yours truly,



for Teresa Griffin-Muir

c.c.: Marlene Floyd, MTS Allstream 613-688-8770
Bell Canada

Attachment

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**BEFORE THE CANADIAN RADIO-TELEVISION
AND TELECOMMUNICATIONS COMMISSION**



**EXCLUSION APPLICATION FILED PURSUANT TO
TELECOM DECISION CRTC 2005-20
*FINALIZATION OF QUALITY OF SERVICE RATE REBATE PLAN
FOR COMPETITORS*
&
TELECOM DECISION CRTC 2007-102
*RETAIL QUALITY OF SERVICE ADJUSTMENT PLAN AND
COMPETITOR QUALITY OF SERVICE RATE REBATE PLAN –
ADVERSE EVENTS***

10 September 2009

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1.0 **INTRODUCTION**

1. In Telecom Decision CRTC 2005-20, *Finalization of quality of service rate rebate plan for competitors* (Decision 2005-20), 31 March 2005, the Commission finalized the quality of service rate rebate plan for competitors (Competitor RRP). In that Decision, the Commission also established a mechanism for considering possible exclusions from quality of service results "where circumstances beyond the control of an ILEC may have caused the ILEC to fail to meet a performance standard."¹

2. On 31 October 2007, the Commission released Telecom Decision CRTC 2007-102, *Retail quality of service rate adjustment plan and competitor quality of service rate rebate plan – Adverse events* (Decision 2007-102) in which a *force majeure* clause was adopted to apply to quality of service exclusion applications under the competitor quality of service rate rebate plan which states:

No penalty shall apply in a month where failure to meet the retail or competitor quality of service standard is caused, in that month, by fire, acts of God, labour disruptions (such as work stoppages, strikes, lockouts and similar labour disruption events), default or failure of another carrier, epidemics, war, civil commotions including acts of terrorism, acts of public authorities or other events beyond the reasonable control of the Company.²

3. On 28 June 2009, an incident beyond the control of MTS Allstream Inc. (MTS Allstream) caused damage to the company's communication site in Notigi Lake, Manitoba. The incident was a fire that destroyed the buildings, diesel generators and microwave equipment at the site. This incident, in turn, caused blocked calling services in and out of several affected communities in north-western Manitoba including Leaf Rapids, Lynn Lake and South Indian Lake, as well as interruptions to MTS Allstream's FleetNet 800 digital radio services.

4. Repair times for these disruptions were measured and reported in the July 2009 results for Indicator 2.10, *Mean Time to Repair (MTTR) – CDN Services and Type C Loops*

¹ Decision 2005-20, 31 March 2005, paragraph 115.

² Telecom Decision CRTC 2007-102, *Retail quality of service rate adjustment plan and competitor quality of service rate rebate plan – Adverse events*, 31 October 2007, paragraph 32.

(Indicator 2.10). The inclusion of trouble reports related to the fire resulted in MTS Allstream not meeting the July 2009 standard for Indicator 2.10 in July 2009 for Bell Canada (Bell).

5. Pursuant to the procedure set out in paragraph 117 of Decision 2005-20, MTS Allstream hereby files the following Exclusion Application to have the July 2009 results for Indicator 2.10 for Bell adjusted for the purpose of reporting and for calculations for the Competitor RRP.

2.0 THE EXCLUSION APPLICATION MECHANISM

6. In Decision 2005-20, the Commission determined that, in any Exclusion Application, the ILEC must clearly identify:

- (1) The adverse event in question;
- (2) The effects of the event on specific quality of service indicators; and
- (3) The proposed adjustments to those quality of service results.

7. Each of these factors is addressed below.

2.1 THE ADVERSE EVENT

8. On 28 June 2009 there was a fire at a remote radio telecommunication site at Notigi Lake, situated in northern Manitoba, 110 kilometres north-west of Thompson. The fire is under investigation by both the Fire Commission and the RCMP and is a suspected arson. The fire destroyed several buildings, specifically two equipment trailers that housed diesel generators, radio and microwave equipment.
9. The damage from the fire blocked calling services in and out of the affected communities of Leaf Rapids, Lynn Lake and South Indian Lake, as well as FleetNet 800 digital radio services in those communities. MTS Allstream was able to restore the service in seven days (including a statutory holiday) by having the specialized equipment that was needed brought in from other areas to this remote location.

10. MTS Allstream is cooperating with the fire commissioner and the RCMP in their on-going investigation into the cause of the fire. Given that the fire was not caused by MTS Allstream and under investigation by the Fire Commissioner and the RCMP, it can be concluded that this event was reasonably outside of MTS Allstream's control.

2.2 EFFECTS OF THE ADVERSE EVENT

11. The fire in Notigi Lake destroyed the buildings, diesel generators and microwave equipment, damaging cables and negatively impacting the services of a competitor who leases CDN circuits on those damaged cables.
12. Although, MTS Allstream had continually met the standard for Indicator 2.10 for Bell during the six month period prior to July 2009, as a direct result of the Fire in Notigi Lake, the Commission standard for Indicator 2.10, MTTR of less than 4.0, was not met in July 2009 for Bell. Table 1 below shows the actual July 2009 results for Bell.

Table 1
Indicator 2.10 – July 2009 Results

	<u>Actual MTTR</u>	<u># of Trouble Tickets</u>
Bell	18.6	#

13. MTS Allstream submits that absent the fire in Notigi Lake, it would not have missed the Commission standard for Indicator 2.10 for Bell in the month of July. Table 2 below shows the adjusted July 2009 results for Bell with the removal of the two Bell trouble tickets resulting from the fire.

Table 2
Indicator 2.10 – July 2009 Results

	<u>Adjusted MTTR</u>	<u># of Trouble Tickets</u>
Bell	3.7	#

2.3 PROPOSED ADJUSTMENT TO INDICATOR 2.10 RESULTS

14. In Decision 2007-102, the Commission adopted a *force majeure* clause that applies to the Competitor RRP:

No penalty shall apply in a month where failure to meet the retail or competitor quality of service standard is caused, in that month, **by fire**, acts of God, labour disruptions (such as work stoppages, strikes, lockouts and similar labour disruption events), default or failure of another carrier, epidemics, war, civil commotions including acts of terrorism, acts of public authorities or other events beyond the reasonable control of the Company.³ (Emphasis added)

15. The Notigi Lake fire was an event that was unpredictable and beyond the reasonable control of MTS Allstream and qualifies as adverse event as defined in Decision 2007-102.
16. In Telecom Decision CRTC 2009-521, *Saskatchewan Telecommunications – Application to exclude competition-related quality of service results from the rate rebate plan for competitors for April 2009* (Decision 2009-521)⁴, the Commission examined a similar situation, regarding the cut of Saskatchewan Telecommunications (SaskTel) underground cables by a third party. In that decision the Commission concluded that the act qualified as an incident that was beyond the reasonable control of SaskTel and thus triggered the force majeure clause of Decision 2007-102.
17. Therefore, MTS Allstream submits that the Notigi Lake fire is an adverse event as defined in Decision 2007-102 and that the # trouble tickets associated with the Notigi Lake fire should be removed for the calculation of Indicator 2.10 for Bell.

³ Telecom Decision CRTC 2007-102, *Retail quality of service rate adjustment plan and competitor quality of service rate rebate plan – Adverse events*, 31 October 2007, paragraph 32.
Telecom Decision CRTC 2009-521, *Saskatchewan Telecommunications – Application to exclude competition-related quality of service results from the rate rebate plan for competitors for April 2009*, 27 August 2009.

6.0 **CONCLUSION**

18. MTS Allstream submits that the Notigi Lake fire was an unpredictable event which was beyond MTS Allstream's reasonable control. The fire is currently under investigation by the Fire Commissioner and the RCMP and MTS Allstream submits that the fire should be considered to be an adverse event under the terms of the *force majeure* clause in Decision 2007-102, and for the purpose of the calculation of Indicator 2.10, the # trouble tickets relating to the fire should be eliminated from the July 2009 calculation of Indicator 2.10.

* * * End of Document * * *