



Telecom Decision CRTC 2007-45

Ottawa, 20 June 2007

TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors due to extreme weather in British Columbia

Reference: 8660-T66-200705304

In this Decision, the Commission approves TELUS Communications Company's (TCC) request to exclude below-standard results for competitor quality of service (Q of S) indicators 1.19, 2.7, and 2.10 from the rate rebate plan due to extreme weather in British Columbia from November 2006 to January 2007. The Commission denies TCC's request to exclude competitor Q of S indicator 1.10A for the same period of time.

The Commission determines that TCC is eligible for a refund of any rate rebate amounts that it paid to competitors for substandard performance results for competitor Q of S indicators 1.19, 2.7, and 2.10, for the period of time approved in this Decision.

Introduction

1. The Commission received an application by TELUS Communications Company (TCC), dated 5 April 2007, in which it requested that the Commission exclude certain competitor quality of service (Q of S) indicators from the associated rate rebate plan (RRP) for competitors for the months of November 2006 to February 2007. TCC submitted that extreme weather conditions in British Columbia (B.C.) in November and December 2006, and January 2007, had prevented it from being at or above standard for the following competitor Q of S indicators:
 - Indicator 1.10A – Local Number Portability Order (Standalone) Late Completions (indicator 1.10A)
 - Indicator 1.19 – Confirmed Due Dates Met – CDN¹ Services and Type C Loops (indicator 1.19)
 - Indicator 1.19A – CDN Services and Type C Loops – Late Completion (indicator 1.19A)
 - Indicator 2.7 – Competitor Out-of-Service Trouble Reports Cleared within 24 hours (indicator 2.7)
 - Indicator 2.7A – Competitor Out-of-Service Trouble Report Late Clearances (indicator 2.7A)

¹ CDN stands for "competitor digital network."

- Indicator 2.10 – Mean Time to Repair (MTTR) – CDN Services and Type C Loops (indicator 2.10)
2. TCC submitted that although the results for indicators 1.19A and 2.7A had been below standard during the period of the adverse event, it was unlikely that they would have been at or above standard during the period of the adverse event, had the adverse event not occurred. As a result, TCC did not request an exclusion from paying rate rebates for these two indicators.
 3. The Commission established the final RRP in *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005 (Decision 2005-20). The final RRP, which became effective 1 July 2005, included a mechanism for considering possible exclusions from competitor Q of S results where circumstances beyond the control of an incumbent local exchange carrier might have caused it to fail to meet a performance standard.
 4. The Commission received comments on TCC's application from MTS Allstream Inc. (MTS Allstream) and Shaw Communications Inc. (Shaw). The record closed with TCC's reply comments, dated 1 May 2007.
 5. The Commission considers that TCC's application raises the following issues:
 - I) Does the extreme weather in B.C. qualify as an adverse event?
 - II) Which competitor Q of S indicators should be excluded from the RRP?
 - III) For which months should the indicators be excluded?

I) Does the extreme weather in B.C. qualify as an adverse event?

Positions of parties

6. TCC submitted that various areas of B.C. had been subject to a series of severe storms between 5 November 2006 and 15 January 2007, and that approximately 24,000 of its customers in the lower mainland and on Vancouver Island had been without telephone service at some point during the period in question. The company also submitted that its ability to meet competitor Q of S indicator standards had been affected and that the effects of the adverse event had extended until February 2007, as it continued restoring service.

Commission's analysis and determinations

7. The Commission notes that neither MTS Allstream nor Shaw contested that the extreme weather in B.C. was an event that could affect TCC's ability to meet the competitor Q of S indicator standards.
8. The Commission considers that TCC has provided sufficient evidence to demonstrate that the extreme weather that affected B.C. was beyond its control and affected its ability to meet the competitor Q of S indicator standards. The Commission therefore determines that the extreme weather in B.C. from 5 November 2006 to 15 January 2007 qualifies as an adverse event.

II) Which competitor Q of S indicators should be excluded from the RRP?

9. The Commission considers that if it is likely that TCC would have met the competitor Q of S indicator standards absent this adverse event, then, consistent with Decision 2005-20, it would be reasonable that TCC be granted an exclusion from paying rate rebates for competitor Q of S indicators that were below standard for the Commission-approved exclusion period determined below.
10. In *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 (Decision 2007-14), the Commission examined performance results for the 12-month period prior to the month in which the adverse event began in order to determine whether the adverse event had affected TCC's ability to meet its competitor Q of S indicator standards.
11. In its application, TCC proposed to use the methodology² set out by the Commission in Decision 2007-14 for indicators 1.10A and 2.7. For indicators 1.19 and 2.10, TCC proposed to use a different methodology from that used in Decision 2007-14.
12. The Commission notes that TCC met or exceeded the standard for indicator 2.7 in the three consecutive months immediately preceding the start of the adverse event. The Commission therefore considers that it is likely that TCC would have met or exceeded the standard for indicator 2.7 during the period of the adverse event, had the adverse event not occurred. Accordingly, the Commission determines that TCC should be granted an exclusion from paying rate rebates for below-standard results for indicator 2.7 during the eligible exclusion period.
13. The Commission examines the remaining three indicators submitted by TCC for exclusion in greater detail in this section of the Decision and the period affected by the adverse event in the next section.

Indicator 1.10A – Local Number Portability Order (Standalone) Late Completions

Positions of parties

14. TCC submitted that for indicator 1.10A, its results for each of the three months immediately prior to the adverse event – August, September, and October 2006 – were at or above standard. It suggested, therefore, that it should be granted an exclusion for the months that this indicator was below standard.

² If TCC's competitor Q of S indicator results were at or above standard for at least 6 months of the 12-month period prior to the month of the adverse event or, alternatively, if TCC's results were at or above standard for the 3 consecutive months prior to the month of the adverse event, then it would be reasonable to conclude that TCC would have met the standards for the competitor Q of S indicators had the adverse event not occurred.

Commission's analysis and determinations

15. The Commission notes that an examination of the actual indicator 1.10A results for the three-month period immediately preceding the adverse event, which TCC filed in its quarterly competitor Q of S report to the Commission, shows that TCC was at or above standard for only the month of October 2006. For August and September 2006, although TCC claimed in this application that it had provided at- or above-standard results, there was no actual stand-alone local number portability order activity. The Commission considers that although TCC was not below standard for indicator 1.10A in August and September 2006, it cannot take credit for being at or above standard for that indicator if it had no actual orders to complete in those months.
16. The Commission also notes that, based on the data provided by TCC in its application and in its quarterly competitor Q of S reports to the Commission, the company did not provide at- or above-standard results for indicator 1.10A in at least 6 of the 12 months preceding the adverse event in question.
17. The Commission therefore considers that TCC has not provided sufficient evidence to demonstrate that it would have met or exceeded the standard for indicator 1.10A during the period of the adverse event, had the adverse event not occurred.
18. Accordingly, the Commission determines that TCC should not be granted an exclusion for below-standard results for indicator 1.10A during the eligible exclusion period.

Indicator 1.19 – Confirmed Due Dates Met – CDN Services and Type C Loops

Positions of parties

19. TCC submitted that because indicator 1.19 was new, there were only five months of historical data on which to determine whether it was likely that its performance would have been above standard in the absence of the adverse event. The company also submitted that its performance on this indicator had improved over the five-month period prior to the adverse event, was close to standard in the month before the adverse event and in the first two months of the adverse event, and was above standard in January and February 2007, despite the adverse event. TCC was of the view that, based on the above, its results for indicator 1.19 would likely have been above standard, absent the adverse event.
20. MTS Allstream and Shaw submitted that TCC should not be granted an exclusion from paying rate rebates for below-standard results for indicator 1.19 during the adverse event. MTS Allstream was of the view that indicator 1.19 did not meet the exclusion conditions set out in Decision 2007-14, while Shaw argued that TCC had been consistently unable to meet the standard for this indicator.
21. In reply, TCC submitted that the Commission had not prescribed a single methodology for determining whether competitor Q of S results would likely have been above standard in the absence of an adverse event. TCC added that nowhere in Decision 2007-14 had the Commission stated that the methodology used to determine the exclusion of competitor Q of S results in that particular case was to be applied to all future applications. TCC submitted that, accordingly,

it had proposed a methodology different from that used in Decision 2007-14 to determine whether its competitor Q of S results for indicator 1.19 would have been above standard had the adverse event not occurred.

Commission's analysis and determinations

22. The Commission notes that it has only required indicator 1.19 to be tracked and reported since June 2006.
23. The Commission considers that since there are not 12 months of data available to apply the Decision 2007-14 test, it is reasonable to consider some other methodology to test TCC's ability to provide service at or above standard for indicator 1.19.
24. The Commission notes that starting in October 2006, TCC's performance in providing the services measured by indicator 1.19 improved significantly. The Commission further notes that even during the period of the adverse event, TCC continued to improve its performance to the point that it exceeded the standard for this indicator in January and February 2007.
25. The Commission considers that, based on the evidence provided by TCC for indicator 1.19, it is likely that, absent the adverse event, TCC would have provided at- or above-standard performance for competitor Q of S indicator 1.19 during the period of the adverse event.
26. Accordingly, the Commission determines that TCC should be granted an exclusion from paying rate rebates for below-standard results for indicator 1.19 during the eligible exclusion period.

Indicator 2.10 – Mean Time to Repair (MTTR) – CDN Services and Type C Loops

Positions of parties

27. TCC submitted that although its results for indicator 2.10 did not meet the test established in Decision 2007-14, its results for three of the four months prior to the adverse event were at standard and its result for February 2007 was above standard, despite the adverse event. TCC further submitted that it had significantly re-engineered its processes and improved its systems over the previous year, resulting in a vast improvement in its performance on this indicator over the 12 months prior to the event. TCC submitted, therefore, that absent the adverse event, its results for this indicator would likely have been at or above standard.
28. MTS Allstream submitted that TCC should not be granted an exclusion from paying rate rebates for below-standard results for indicator 2.10 during the adverse event because indicator 2.10 did not meet the conditions for exclusion set out in Decision 2007-14.
29. In reply, TCC submitted that for the same reasons set out for indicator 1.19 above, it had proposed a methodology different from that used in Decision 2007-14. TCC also submitted that steps it had taken in September 2006 to modify its systems to specifically address below-standard results for indicator 2.10 had made it likely that it would have been at or above standard for indicator 2.10, had the adverse event not occurred.

Commission's analysis and determinations

30. The Commission notes that TCC's performance for indicator 2.10 does not meet the tests of either 3 consecutive months of met or exceeded results immediately prior to the adverse event, or 6 months of met or exceeded results within the 12 months prior to the adverse event.
31. However, the Commission also notes TCC's argument that the significant improvement in the results for competitor Q of S indicator 2.10 was due to the implementation of improved processes in September 2006. The Commission considers that because of the timing of these system improvements, it would not be reasonable or reliable to use the methodology set out in Decision 2007-14 to determine whether TCC would have been at or above standard for indicator 2.10 during the period of the adverse event, had the adverse event not occurred.
32. The Commission considers that the evidence supports TCC's claim that changes implemented in September 2006 allowed the company to meet or exceed the standard for indicator 2.10 for October 2006, and February and March 2007 – the period surrounding the adverse event.
33. The Commission considers that, based on the evidence provided by TCC, it is likely that, absent the adverse event, TCC would have provided at- or above-standard performance for indicator 2.10 during the period of the adverse event.
34. Accordingly, the Commission determines that TCC should be granted an exclusion for below-standard results for indicator 2.10 during the eligible exclusion period.

III) For which months should the indicators be excluded?

35. The Commission has determined that TCC should be granted exclusion from the RRP for below-standard results for competitor Q of S indicators 1.19, 2.7, and 2.10. In this section of the Decision, the Commission determines the period for which TCC will be excluded from paying rate rebates for below-standard competitor Q of S results.
36. The Commission notes that for the three indicators above, TCC has requested an exclusion for one or more months, depending on the particular indicator, between November 2006 and January 2007. The Commission considers that, given that the adverse event in question occurred during the months of November 2006 to January 2007, it is reasonable that TCC be granted an exclusion from paying rate rebates for that period of time.
37. Accordingly, the Commission determines that the appropriate exclusion period for TCC to exclude below-standard competitor Q of S results is November 2006 to January 2007.

Conclusion

38. In light of the above, the Commission **denies** TCC's request to exclude below-standard results for competitor Q of S indicator 1.10A, but **approves** its request to exclude below-standard results for competitor Q of S indicators 1.19, 2.7, and 2.10 for the period of November 2006 to January 2007.

39. The Commission determines that TCC is eligible for a refund of any rate rebate amounts that it paid to competitors for substandard performance results for competitor Q of S indicators 1.19, 2.7, and 2.10 for the period of time noted above.

Secretary General

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