



Telecom Decision CRTC 2011-798

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Ottawa, 20 December 2011

TELUS Communications Company – Application to exclude service orders due to HDSL card shortage from competition-related quality of service indicator 1.19 results for January to May 2011

File number: 8660-T66-201112929

In this decision, the Commission approves TCC's request to exclude, from its competitor quality of service indicator 1.19 results, those service orders that were affected by the ongoing high bit rate digital subscriber line card shortage for January to May 2011.

Introduction

1. The Commission received an application from TELUS Communications Company (TCC), dated 20 September 2011, in which the company requested that the Commission extend the determination it made in Telecom Decision 2011-563 to exclude certain service orders, for the purpose of the rate rebate plan for competitors, from the calculation of TCC's competitor quality of service (Q of S) performance results related to indicator 1.19 – Requested Due Dates Met – CDN [competitor digital network] Services (indicator 1.19) for January to May 2011. Specifically, TCC requested to exclude the service orders affected by the inadequate supply of high bit rate digital subscriber line (HDSL) cards¹ from its supplier due to a global shortage of electronic components (the shortage).
2. In the Telecom Decision 2011-563 proceeding, TCC had submitted that the shortage was affecting its competitor Q of S performance results for indicator 1.19 for November and December 2010. In the current application, TCC submitted that the shortage was still affecting its competitor Q of S performance results for indicator 1.19 for January to May 2011.
3. TCC noted that its aggregated actual January to May 2011 competitor Q of S performance results for service to all its competitors were below the set standard for indicator 1.19. However, TCC provided evidence that if the service orders affected by the shortage were excluded, those aggregated results would have been within the accepted standard for the months of January and April 2011, and would have improved the results for the other months in question.

¹ The HDSL cards are used to provision CDN services to competitors and equivalent services to retail customers.

4. The Commission received comments in support of TCC's application from Saskatchewan Telecommunications. The public record of this proceeding, which closed on 30 October 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Commission's analysis and determinations

5. The Commission notes that TCC's application relates to the same adverse event referred to in Telecom Decision 2011-563. The Commission also notes that, in that decision, it approved TCC's application to exclude the service orders affected by the shortage in the calculation of its competitor Q of S performance results for indicator 1.19 for November and December 2010.
6. In Telecom Decision 2005-20, the Commission created a mechanism for considering possible exclusions from competitor Q of S results when circumstances beyond the control of an incumbent local exchange carrier (ILEC) might have caused it to fail to meet a performance standard. The Commission also determined that the rate rebate plan must ensure that all competitors are treated fairly and thus should focus on Q of S indicators that are measured on a competitor-by-competitor basis to ensure that the service provided to each competitor is subject to the proper scrutiny and is not masked through the aggregation of data.
7. In Telecom Decision 2007-102, the Commission adopted a *force majeure* clause that provided that 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 an ILEC. The Commission considers that, based on the evidence filed and its determinations set out in Telecom Decision 2011-563, the shortage affecting TCC's competitor Q of S performance results for indicator 1.19 for January to May 2011 qualifies as an incident that is beyond the reasonable control of TCC and thus triggers the *force majeure* clause.
8. In light of the above, the Commission **approves** TCC's request to exclude those service orders that were directly affected by the shortage, for the purpose of the rate rebate plan for competitors, from the calculation of its competitor Q of S performance results for indicator 1.19 for January to May 2011. Consequently, the Commission directs TCC to calculate the amounts due to the affected competitors under the rate rebate plan for competitors, based on the adjusted competitor-by-competitor Q of S results for indicator 1.19.

Secretary General

Related documents

- *TELUS Communications Company – Application to exclude competition-related quality of service indicator 1.19 results from the rate rebate plan for competitors*

- *for November and December 2010*, Telecom Decision CRTC 2011-563, 1 September 2011
- *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
- *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005