



Telecom Circular CRTC 2005-7

Ottawa, 30 May 2005

New procedures for disposition of applications dealing with the destandardization and/or withdrawal of tariffed services

Purpose of this Circular

1. The purpose of this Circular is to provide notification of procedural changes that the Commission will implement to expedite the processing of tariff applications dealing with the destandardization and/or withdrawal of tariffed services.
2. The Commission considers that with the implementation of the initiatives detailed in this Circular, the time period associated with the processing of these types of applications will be greatly reduced. Further, the establishment of new procedures for dealing with these types of applications will provide greater regulatory certainty by identifying clear, publicly-known steps, timelines and criteria that can be consistently relied upon by both customers and carriers. Moreover, the Commission's initiatives will enable the telephone companies to respond more quickly to market requirements in an increasingly competitive telecommunications marketplace.

The need for new procedures for approval of applications dealing with destandardization and/or withdrawal of tariffed services

3. On 5 January 2005, Bell Canada filed an application, pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, requesting that the Commission establish new formal procedures for a Canadian carrier to destandardize and/or withdraw a tariffed service. Bell Canada's proposal included specific timeframes for disposing of these applications, and would have allowed for the automatic approval of certain applications. In submitting its proposal, Bell Canada noted that the Commission does not have a specific process for dealing with cases where carriers propose the destandardization and/or withdrawal of a tariffed service.¹
4. The Commission is of the view that the existing tariff approval process is not well suited for applications involving destandardizing and/or withdrawing tariffed services, and recognizes the need for timelier disposition of such applications. In the Commission's view, any new process for destandardization and/or withdrawal applications would have to take into account the fact that customers may lose service, raising different public interest considerations than regular tariff applications. Accordingly, different criteria will have to be used to assess destandardization and/or withdrawal applications as compared to regular tariff applications. Timelines would also have to be adjusted in order to allow sufficient time for customer comments. Taking into account the interests of all stakeholders - incumbents, competitors and customers - the Commission has developed the initiatives set out below.

¹ The existing process for destandardizing and/or withdrawing a tariffed service relies on Part II of the *CRTC Telecommunications Rules of Procedure*, which covers tariff applications for new services or for changes to existing tariffed services.

5. In the Commission's view, the initiatives set out below address the concerns raised by Bell Canada in its application. They do not, however, allow for automatic approval of tariff applications.

6. By separate letter dated today, the Commission is disposing of Bell Canada's Part VII application.

New procedures for disposition of applications for the destandardization and/or withdrawal of tariffed services

7. In the course of considering a variety of service destandardization and/or withdrawal applications over a period of years, the Commission has found that such applications can have serious effects on individual customers. The procedures being put in place to dispose of destandardization and/or withdrawal applications take into account the needs of existing customers.

8. The Commission is of the view that each application for the destandardization and/or withdrawal of a tariffed service should be assessed on a case-by-case basis using one common set of criteria, regardless of whether the service is a retail or a Competitor service. The Commission, in assessing an application for destandardization and/or withdrawal, will examine whether the applicant has met the following criteria:

- a) that there is a reasonable substitute for the service being destandardized and/or withdrawn;
- b) that there is a clear transition plan including sufficient time to allow customers to make plans to replace the service in question; and
- c) that affected customers are given adequate notice to enable them to participate meaningfully in the Commission's process.

Reasonable substitute service

9. The Commission, in determining whether a reasonable substitute service exists, will examine the following factors: functionality of the substitute service, availability of the substitute service in the same geographical area, and cost of the substitute service (including the initial outlay and ongoing costs to the customer).

10. The Commission considers that the cost to the customer of the substitute service must be comparable to the cost to the customer of the service being destandardized and/or withdrawn. In examining the cost to the customer for the substitute service, the Commission will consider at both the initial costs (e.g. equipment costs) and the ongoing costs. The Commission considers that if the cost to the customer of the substitute service is greater, the applicant must be able to show that the substitute service is a more effective service or provides additional meaningful functionality for the higher cost to the customer. The Commission expects that higher prices to the customers should be generally proportionate to the value and actual benefits customers would receive from using the more effective service or the additional functionality.

11. In examining the costs of the substitute service, the Commission will also consider any costs in equipment or otherwise which the customers may have incurred in obtaining the potentially destandardized and/or withdrawn service. The Commission expects that if the cost to replace the service is high, then the applicant should propose ways to reduce the transition costs for customers.

Transition plan

12. The Commission, in determining whether a clear transition plan exists, will need to assure itself that the applicant has taken, or will take, all reasonable steps to ensure a smooth transition for affected customers from the potentially destandardized and/or withdrawn service to the substitute service.
13. The Commission is of the view that affected customers will require time to make plans to replace the potentially destandardized and/or withdrawn service in question. The applicant must develop a transition plan to allow customers affected by an application for destandardization and/or withdrawal to adjust and prepare for migration to substitute services. The transition plan must address customer concerns and provide affected customers with ample time for a migration to the substitute services they choose.
14. The Commission believes that if prior to filing an application for destandardization and/or withdrawal, the applicant were to work with affected customers to develop a transition plan which is mutually satisfactory to all parties, it would remove many of the hurdles associated with the destandardization and/or withdrawal of services. The Commission considers that the applicant should make all reasonable efforts to ensure that affected customers understand what alternative services exist, including their functionality, geographic availability and associated costs. Where appropriate, the transition plan should provide incentives for customers to migrate.

Notice to affected customers

15. The Commission considers that with respect to participating in destandardization and/or withdrawal proceedings, affected customers must be given adequate notice with clear and sufficient information to enable them to participate in the Commission's process. Affected customers must be made fully aware of the deadlines and the process. Failure to provide reasonable notice would be grounds for denial of the application. Further details on the notice to be given to customers are set out below.

Process

16. In order for the Commission to properly assess a proposal for destandardization and/or withdrawal, the applicant must file an application containing the following information:
 - a) service proposed to be destandardized and/or withdrawn;
 - b) proposed date for destandardization;

- c) proposed date for ultimate withdrawal of service;
 - d) type of destandardization;
 - e) rationale for the application;
 - f) availability of a substitute, with rationale as to why it is reasonable in terms of equivalent functionality, availability in the same geographical area, and cost (including the initial outlay and ongoing costs to the customer);
 - g) the transition plan;
 - h) relevant information concerning existing customers such as the numbers of customers affected;
 - i) a copy of the notice to affected customers; and
 - j) any other information the applicant believes is relevant.
17. The applicant should indicate in its application whether it has worked with its customers to resolve any transition issues before it filed the destandardization and/or withdrawal application. If the applicant has not done so, then it should indicate why.
18. If the applicant considers that certain criteria should not apply to a particular application, then the Commission expects the applicant to provide submissions on why it believes that those criteria should not apply.
19. The applicant must provide notice to each customer affected by its application to destandardize and/or withdraw a particular service. In that notice, the applicant must include items a) to g) set out in paragraph 16 above, as well as clear and detailed information as to how an affected customer can participate in the Commission's process, including the date when comments must be received by the Commission. The notices should be sent to affected customers on the date the application is filed.
20. The Commission considers that items g) to i) of paragraph 16 are not required if there are no existing customers affected by an application to destandardize and/or withdraw a particular service.
21. An application will be considered complete when the Commission has received the entire application, which includes all of the information noted above.
22. There may be cases where an application is returned due to deficiencies. In such a case, the Commission will issue a letter identifying the specific deficiencies. The Commission notes that where applications are returned or denied due to deficiencies, new applications can be filed.

Timeframes

23. The Commission is proposing to modify the time parties have to file comments and replies with respect to tariff applications dealing with the destandardization and/or withdrawal of tariffed services. Recognizing that customers affected by these types of applications often live in remote areas, the Commission finds that interested parties should be allowed 45 calendar days to comment on an applicant's destandardization and/or withdrawal application. The applicant would have 10 business days to respond to parties' comments.
24. In cases where there are no customers for a particular service and the Commission is of the view that there are no significant issues, the Commission intends to grant interim approval within 10 business days of a complete application being filed, and to issue a final decision within 45 business days of the date of the application.
25. The Commission also recognizes that there may be a need for further process depending on the complexity of the application. As an example, if a destandardization and/or withdrawal application raises significant issues, interrogatories, to the extent that they are required, would normally be issued by the Commission within 15 business days of the date of the application. Normally, responses to interrogatories will be expected to be provided within 5 to 10 business days, depending on the complexity of the information being sought.
26. The Commission notes that section 26 of the *Telecommunications Act* (the Act) requires that it respond to a tariff application within 45 business days either by approving the tariff, disallowing the tariff, or making public reasons why the Commission has not approved or disallowed the tariff. Further, the Commission notes that given the 45-day comment period provided to customers, it may not be possible to dispose of an application for destandardization and/or withdrawal within 45 business days, particularly where the issues involved require the Commission to issue interrogatories. In such a case, the Commission will issue a letter setting out the reasons why the application will not be disposed of within 45 business days, specifying the period of time within which the Commission intends to dispose of the application, in accordance with section 26 of the Act.
27. Schedule A sets out the expected outcomes and timelines for disposition of applications under the Commission's new procedural initiative. The Commission anticipates that a significant number of applications for the destandardization and/or withdrawal of tariffed services will be disposed of within 45 to 65 business days.

Tariff applications to be filed electronically

28. As noted in paragraph 14 of *Introduction of a streamlined process for retail tariff filings*, Telecom Circular CRTC 2005-6, 25 April 2005 (Circular 2005-6), all tariff applications are now required, as of 1 May 2005, to be filed on an electronic basis using Epass, in order to help the Commission meet its objective of responding expeditiously to tariff applications. Epass will allow the applicants to file at the same time, on a secure basis, both the confidential and abridged versions of the applications and any supporting documentation. The information necessary to file using Epass is available on the Commission's website at the following address: <http://www.crtc.gc.ca/eng/file.htm>.

29. Further, as outlined in Circular 2005-6, since applicants must file all necessary information in support of their tariff applications using Epass, they will no longer be required to file paper copies of these applications.

Conclusion

30. With this Circular, the Commission has taken several major steps to increase regulatory efficiency. In the Commission's view, regulatory delay will be reduced significantly as a result of the initiatives outlined in this Circular, given its intention to dispose of a significant number of applications for the destandardization and/or withdrawal of tariffed services within 45 to 65 business days. The Commission has also introduced increased certainty to the process, as applicants will know at an early stage the criteria that the Commission will use to assess their applications and the amount of time the processing of their applications will likely take.
31. The initiatives set out above, with the exception of those related to the filing of electronic documents, are being introduced as of 1 June 2005. The Commission is instituting these initiatives on a trial basis, until such time as the Commission has sufficient information to assess their ongoing appropriateness. The Commission will continue to examine additional options for increasing regulatory efficiency.

Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Schedule A - Commission Process - Anticipated outcomes and timelines under the new process

| Situation | Anticipated outcomes and timelines under the new process |
|---|---|
| A) There are no customers, and, in the Commission's view, there are no significant issues | <ul style="list-style-type: none">• Interim approval within 10 business days from the date of the application.• Final decision issued within 45 business days from the date of the application. |
| B) There are no customers, and, in the Commission's view, there are significant issues | <ul style="list-style-type: none">• If required, interrogatories issued within 15 business days from the date of the application, and responses due within 5 to 10 business days depending on the complexity of the information being sought.• Final decision issued within 55 business days from the date of the application. |
| C) There are no existing customers but there are comments from potential customers | <ul style="list-style-type: none">• Reply comments, if any, from applicant due within 10 business days following the close of the 45 calendar day comment period.• Final decision issued within 65 business days from the date of the application. |
| D) There are customers but no comments, and, in the Commission's view, there are no significant issues | <ul style="list-style-type: none">• Final decision issued within 45 business days from the date of the application. |
| E) There are customers but no comments, and, in the Commission's view, there are significant issues | <ul style="list-style-type: none">• If required, interrogatories issued within 15 business days from the date of the application, and responses due within 5 to 10 business days depending on the complexity of the information being sought.• Final decision issued within 55 business days from the date of the application. |
| F) There are customers and comments, and, in the Commission's view, there are no significant issues | <ul style="list-style-type: none">• Reply comments, if any, from applicant due within 10 business days following the close of the 45 calendar day comment period.• Final decision issued within 65 business days from the date of the application. |

G) There are customers and comments, and, in the Commission's view, there are significant issues

- If required, interrogatories issued within 15 business days from the date of the application, and responses due within 5 to 10 business days depending on the complexity of the information being sought.
- Reply comments, if any, from applicant due within 10 business days following the close of the 45 calendar day comment period.
- Final decision issued within 75 business days from the date of the application.