



Telecom Decision CRTC 2007-40

Ottawa, 8 June 2007

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

Reference: 8660-C12-200705585

In this Decision, the Commission gives the incumbent local exchange carriers (ILECs) an option for the purpose of demonstrating that they meet the competitor quality of service (Q of S) criterion for local forbearance. ILECs can opt to replace any competitor Q of S indicator results excluded for rate rebate plan purposes, with results from any earlier or later permissible non-excluded month(s) contiguous with the original six-month period.

Introduction

1. In *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005, the Commission determined that the incumbent local exchange carriers (ILECs) have to provide rate rebates to those competitors to whom they did not provide service at or above the minimum performance standards. The Commission also created a mechanism for considering possible exclusions from paying rate rebates for competitor quality of service (Q of S) results where circumstances beyond the control of an ILEC might have caused it to fail to meet the performance standard.
2. In *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as modified by *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007 (modified Decision 2006-15), the Commission determined that in order for an ILEC to qualify for local forbearance in a particular relevant market it would be required to meet several criteria. Among other things, an ILEC must demonstrate that during a six-month period, it met, on average, the performance standard for each of the applicable competitor Q of S indicators averaged across all competitors.
3. In April 2007, the Commission invited comments¹ on what it should do when an ILEC applies for local forbearance and the Commission has approved an exclusion, for rate rebate plan (RRP) purposes, of one or more competitor Q of S indicators for one or more months of the six-month period that the ILEC has used to demonstrate that it met, on average, the performance standard for each of the specified competitor Q of S indicators.
4. The Commission received comments and/or reply comments from Bell Canada, Bell Aliant Regional Communications, Limited Partnership, and Saskatchewan Telecommunications (collectively, the Companies); the Canadian Cable Systems Alliance Inc. (CCSA); Cogeco Cable Inc., Quebecor Media Inc., Rogers Communications Inc., and

¹ See *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, 13 April 2007, as amended by Telecom Public Notice CRTC 2007-5-1, 16 April 2007 (Public Notice 2007-5).

Shaw Communications Inc. (collectively, the Competitors); MTS Allstream Inc. (MTS Allstream); and TELUS Communications Company (TCC). The record of the proceeding closed with reply arguments filed on 4 May 2007.

5. The Commission considers that the issue raised by the Public Notice 2007-5 process is what methodology is appropriate when an ILEC applies for local forbearance and competitor Q of S results have been excluded for RRP purposes.

Positions of parties

6. The CCSA submitted that, at a minimum, an ILEC applying for local forbearance must demonstrate that the competitor Q of S standards had been met for the full six months required by modified Decision 2006-15. The CCSA was of the view that approach a) identified by the Commission in Public Notice 2007-5² was the minimum acceptable requirement.
7. The Competitors submitted that approach a) appropriately required the ILEC to meet the competitor Q of S standards for a six-month period, and it would be inappropriate to allow the ILECs to achieve forbearance with anything less than six months of competitor Q of S data.
8. MTS Allstream submitted that it would not be appropriate to permit an applicant ILEC to be forborne on anything less than a record of six months of actual adequate performance.
9. The Companies recommended replacing excluded months in the six-month period employed by the ILEC, by using a proxy for the affected months. The Companies proposed a proxy that averaged the performance from the three-month period immediately prior to the excluded month(s) in order to approximate what the actual results for the affected months would likely have been in the absence of the adverse event.
10. TCC recommended replacing excluded months in the six-month period by averaging the prior and later months on either side of the adverse event and using these as a proxy for the excluded month(s). TCC recommended using one month prior and one month after for one-to-two month exclusions, one month prior and two months after for three-to-four month exclusions, and one month prior and three months after for five-to-six month exclusions.
11. In reply, MTS Allstream submitted that the six months of competitor Q of S results necessary for forbearance must be factual and not the theoretical product of formulas or conjecture on the part of an applicant ILEC. MTS Allstream further submitted that if an applicant ILEC were allowed to substitute months that contained excluded indicators with the average results from other months in the six-month period, a forbearance decision would be inappropriately based on less than six months' worth of actual results.

² Approach a) was to consider the six-month period used by the ILEC in its local forbearance application, replacing the excluded indicator(s) in a given month with an indicator (or indicators) from earlier or later permissible non-excluded months.

Commission's analysis and determinations

12. The Commission notes that modified Decision 2006-15 sets out that
 - an ILEC must demonstrate that it met the competitor Q of S standards during a six-month period; and
 - the six-month period can begin no earlier than eight months prior to the local forbearance application and can end at any time up to the Commission's decision with regard to that application.
13. The Commission considers that it must have a minimum of six months of Q of S data with which to verify that an ILEC is providing sufficient quality of service to competitors in its territory to justify forbearance. Accordingly, the Commission considers that a methodology would be inappropriate if it could result in the Commission having less than six months of competitor Q of S data with which to consider forbearance.
14. The Commission is also of the view that each month of competitor Q of S data must be distinct in order to provide an appropriate six-month period of competitor Q of S data. The Commission considers that it would be inappropriate to use the results of one or more months of competitor Q of S data already contained within the six-month period in order to replace the excluded months. Doing so would result in double-counting by assigning more weight to the results for those substituted month(s) and would, in effect, result in the Commission using less than six distinct months of competitor Q of S data to consider a local forbearance application. Accordingly, the Commission considers that a methodology is inappropriate if it would not provide six distinct months of competitor Q of S data.
15. The Commission notes that by using TCC's proposed proxy methodology, an ILEC would use the results of one or more months of competitor Q of S data already contained within the six-month period in order to replace the excluded month(s), which would not provide six distinct months of competitor Q of S data.
16. The Commission notes that the Companies' proposed proxy methodology also would not provide six distinct months of competitor Q of S data, except when the excluded month(s) is/are at the beginning of the six-month period. In that case, the Commission notes that the Companies' proposed proxy methodology would consider a month earlier than the eight-month limit set in modified Decision 2006-15.
17. In light of the above, the Commission considers that the proxy methodologies proposed by TCC and the Companies are inappropriate.
18. The Commission notes that approach a) proposed in Public Notice 2007-5 would provide six permissible months of distinct competitor Q of S data with which to consider a local forbearance application. Accordingly, the Commission considers that this methodology is appropriate.

Conclusion

19. In light of the above, the Commission provides the ILECs with an option for the purpose of demonstrating that they meet the competitor Q of S criterion for local forbearance. ILECs can opt to replace any competitor Q of S indicator results excluded for RRP purposes, with results from any earlier or later permissible non-excluded month(s) contiguous with the original six-month period.

Secretary General

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