



Telecom Regulatory Policy CRTC 2009-424

Ottawa, 17 July 2009

Revised regulatory requirements for management of customer accounts

File number: 8663-C12-200814740

In this decision, consistent with the Policy Direction, the Commission modifies its policies regarding the disconnection of a customer's service and the payment of customer deposits in forborne markets, subject to the development of an industry code by the Commissioner for Complaints for Telecommunications Services Inc. In addition, the Commission maintains the existing toll restrict policy and conditionally forbears from the regulation of late payment and non-sufficient funds charges.

Introduction

1. In Telecom Decision 2008-34, the Commission issued an action plan to review existing social and non-economic regulatory measures in light of the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction). As part of the action plan, the Commission identified for review the following regulatory requirements for the management of customer accounts:
 - terms and conditions for company-initiated suspension or termination of service (disconnection) and for the use of deposits;
 - the mandatory offering of free toll restrict service;¹ and
 - limits on late payment and dishonoured payment (also referred to as non-sufficient funds) charges.
2. In Telecom Public Notice 2008-16, the Commission invited parties to comment on the continued appropriateness of these measures in light of the Policy Direction. The Commission noted that the measures in question applied in regulated and, to varying degrees, in forborne local exchange service markets. Although these measures currently apply only to the incumbent local exchange carriers (ILECs), including the small ILECs (SILECs),² the Commission requested comments on the implications and feasibility of applying the measures to all Canadian carriers.

¹ Toll restrict service (known as Toll Restriction Services and Call Guardian in certain operating territories) restricts 0+ and 1+ dialed toll calls. Access to 1+ toll-free telephone numbers (e.g. 800) is not restricted by the service.

² The ILECs include Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Allstream Inc.; Saskatchewan Telecommunications; Télébec, Limited Partnership; and TELUS Communications Company, as well as Northwestel Inc. and the SILECs operating in Ontario, Quebec, and British Columbia.

3. The Commission received comments from Bell Aliant Regional Communications, Limited Partnership, Bell Canada, Saskatchewan Telecommunications, and Télébec, Limited Partnership (collectively, Bell Canada et al.); MTS Allstream Inc.; and TELUS Communications Company (TCC). The Commission also received comments from the Coalition of Communication Consumers (the Coalition) and the Public Interest Advocacy Centre, on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (PIAC).
4. The public record of this proceeding, which closed on 18 December 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Policy Direction test

5. In reviewing a regulatory measure in light of the Policy Direction, the Commission first identifies the purpose of the measure and the telecommunications policy objectives of the *Telecommunications Act* (the Act) that are relevant to that purpose. The Commission then assesses whether it can rely on market forces to achieve the purpose underlying the regulatory measure.
6. If the Commission determines that market forces cannot be relied on, it assesses the measure, as required, using other criteria, i.e., whether the measure (1) is efficient and proportionate to its purpose, (2) interferes with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives, and (3) is implemented in a symmetrical and competitively neutral manner.

I. Disconnections and deposits

7. In Telecom Decision 86-7, the Commission established the terms of service that apply to the tariffed services of the ILECs. These terms set out, among other things, when an ILEC may or may not disconnect a customer's service and what procedures must be followed (the disconnection policy), and when an ILEC may require a customer to provide a deposit and on what terms (the deposit policy).³
8. In Telecom Decision 2006-15, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007 (modified Telecom Decision 2006-15), the Commission was not convinced that the operation of market forces in a forborne market would result in the continued accessibility of primary exchange service (PES) for all residential customers. The Commission therefore required the ILECs to maintain the disconnection and deposit policies in relation to residential PES.

³ The disconnection and deposit policies were established for certain ILECs and later extended to all ILECs, including SILECs, in subsequent orders and decisions.

9. Bell Canada et al. submitted that the purpose of the disconnection and deposit policies can be achieved through reliance on market forces. They also submitted that the restrictions on disconnections and deposits impose costs on the ILECs that are not justified and distort competitive market forces.
10. While TCC supported reliance on market forces in forborne markets, it submitted that the regulatory measures remain necessary in regulated markets, given that they are central to the policy objective of accessible and affordable telephone service. However, TCC submitted that the measures should be modified in regulated markets to better reflect prevailing commercial practices.
11. Bell Canada et al. and TCC indicated that the ILECs have every incentive to keep their existing customers and will therefore provide reasonable accommodations to those subject to disconnections or deposits. They also indicated that if an ILEC does not reasonably accommodate its customers, it will drive them to switch to a competitive local exchange carrier (CLEC).
12. The Coalition and PIAC submitted that, given the affordability and accessibility objectives of the Act, the disconnection and deposit policies should be maintained. They also submitted that the benefits of the policies outweigh any harmful regulatory effects due to the importance of telecommunications services in the lives of Canadians.
13. The Commission considers that the purpose of the disconnection and deposit policies is to set out fair terms and conditions that provide customers with a reasonable opportunity to access, or maintain access to, the network. Accordingly, the Commission considers that these regulatory measures further the policy objectives set out in paragraphs 7(a), (b), and (h)⁴ of the Act.
14. The Commission considers that policies regarding disconnections and deposits are required for regulated markets, since market forces are generally minimal or non-existent in these areas. For forborne markets, the Commission acknowledges that the ILECs have an incentive to reasonably accommodate most customers who violate their terms (e.g. are late to pay) or who are without service. The Commission considers, however, that certain customers may be an exception, particularly those who subscribe to low-margin services, who have poor credit history, or who reside in an uncontested area.⁵ The Commission also considers that, without

⁴ These policy objectives are:
7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and
7(h) to respond to the economic and social requirements of users of telecommunications services.

⁵ An uncontested area is a portion of an exchange that has been forborne and in which there is no competitive presence.

explicit and objective policies, these customers could be subject to disconnection or deposit requirements that do not ensure reasonable access to the network. Accordingly, the Commission finds that, given the objectives set out above, market forces alone are insufficient in forborne and regulated markets to achieve the purpose of the disconnection and deposit policies.

15. Notwithstanding the above finding, the Commission considers that the disconnection and deposit policies in forborne markets could be streamlined in order to minimize any interference with competitive market forces while ensuring that a minimum number of consumer safeguards are maintained. The Commission also considers that the establishment of minimum provisions would ensure that any streamlined disconnection and deposit policies would further the relevant policy objectives.
16. Accordingly, the Commission finds that streamlined policies for disconnections and deposits should, at a minimum, contain the following:
 - a reasonable notice period and a reasonable provision for non-disconnection when charges are being legitimately disputed; and
 - a reasonable maximum deposit amount, a reasonable deposit return time frame, and a reasonable rate of interest on deposits.
17. The Commission notes that the mandate of the Commissioner for Complaints for Telecommunications Services Inc. (CCTS)⁶ includes the development of industry codes. In modified Telecom Decision 2006-15, the Commission stated that it would be prepared to remove the requirement to adhere to common local exchange carrier (LEC) obligations for those LECs that participate in an approved industry self-regulatory system.
18. The Commission considers that requesting the CCTS to develop an industry code for disconnections and deposits would be a minimally intrusive means to ensure that the policy objectives continue to be met. The Commission also considers that the CCTS would have the ability to impose such an industry code as symmetrically as possible to all LECs operating in forborne markets.
19. The Commission therefore requests the CCTS to develop and file with the Commission, within **180 days** of the date of this decision, an industry code for disconnections and deposits for all LECs operating in forborne markets, containing, at a minimum, the provisions outlined above in paragraph 16.

⁶ The CCTS is an independent agency with a mandate to receive, to facilitate the resolution of, and, if necessary, to resolve eligible consumer and small business complaints relating to certain forborne retail telecommunications services. Membership in the CCTS is mandatory for all service providers with annual Canadian telecommunications service revenues exceeding \$10 million.

20. The Commission finds it appropriate to maintain the current disconnection and deposit policies on ILECs in forborne markets, until such time as the CCTS establishes an appropriate industry code. Once the CCTS approves the code and its member companies implement it, the Commission will remove the regulatory measures associated with disconnections and deposits in forborne markets for ILECs that are members of the CCTS.
21. However, if the CCTS is not able to develop an industry code as stated above, the Commission would be predisposed to impose streamlined disconnection and deposit policies on the ILECs in forborne markets and to extend this requirement to all LECs in forborne markets, as a condition of service, pursuant to section 24 of the Act.
22. Given that there is limited or no competition in regulated markets, the Commission finds that the current disconnection and deposit policies are appropriate in these areas. The Commission notes, however, that it may consider applying the CCTS industry code in regulated markets in a subsequent proceeding.

II. Toll restrict policy

23. In order to address affordability concerns for consumers with low income, the ILECs are required to offer a number of bill management tools, including toll restrict service. The ILECs are required to provide toll restrict service with no activation or monthly charge to residential customers; however, they are permitted to charge up to \$10 to reinstate toll access.⁷
24. In modified Telecom Decision 2006-15, the Commission was not convinced that the operation of market forces in a forborne market would result in certain social obligations, such as the toll restrict policy, being maintained. The Commission therefore required the ILECs to maintain the toll restrict policy in forborne markets.
25. Bell Canada et al., the Coalition, and TCC submitted that the Commission can rely on market forces to ensure that affordable toll restrict service continues to be offered. Bell Canada et al. submitted that the ILECs are under increasing pressure to minimize their disputed invoices and bad debt, which would encourage the provision of toll restrict service. TCC submitted that, given the decrease in long distance rates, high toll charges are no longer the most important factor affecting affordability. As such, Bell Canada et al. and TCC submitted that toll restrict service should be forborne from regulation pursuant to subsection 34(1) of the Act.
26. Bell Canada et al., the Coalition, and TCC submitted that the toll restrict policy is not efficient or proportionate to its purpose and unduly interferes with competitive market forces. For example, TCC submitted that toll restrict service imposes unrecoverable costs which may be unnecessary or unsustainable in a competitive environment.

⁷ The toll restrict policy was established in Telecom Decision 96-10 for certain ILECs and later extended to all ILECs, including SILECs, in subsequent orders.

27. PIAC submitted that market forces alone cannot be relied on to achieve the policy objectives. PIAC argued that, without a specific policy, ILECs may charge more for toll restrict service, thereby raising affordability concerns. PIAC further submitted that the present toll restrict policy is the least intrusive method of achieving the policy objectives.
28. The Commission considers that the purpose of the toll restrict policy is to provide consumers with an affordable means to manage their services, thereby avoiding long distance charges and encouraging retention on the network. Accordingly, the Commission considers that the toll restrict policy furthers the policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.
29. The Commission notes that, while long distance service rates have generally decreased since Telecom Decision 96-10, the rates for subscribers without long distance plans have not materially changed and may have increased in certain areas where network access charges apply. The Commission also notes that a large number of customers subscribe to toll restrict service. Accordingly, the Commission considers that many consumers still have affordability concerns regarding toll charges. The Commission therefore concludes that it is reasonable to maintain the toll restrict policy for ILECs.
30. The Commission notes that the vast majority of CLECs do not offer any similar service. In this regard, the Commission notes that CLEC customers generally subscribe to bundles, which include toll service, and therefore would have essentially no need for a toll restrict service. The Commission considers that requiring CLECs to offer toll restrict service, in these circumstances, would not be appropriate.
31. In light of the above, the Commission finds that the existing toll restrict policy is consistent with the Policy Direction and therefore should be not modified at this time.

III. Late payment and non-sufficient funds charges

32. The Commission requires the ILECs to file tariffs for late payment charges and non-sufficient funds (NSF) charges associated with tariffed services. With respect to late payment charges, the Commission requires the ILECs to apply a rate using the monthly equivalent of the per annum prime rate of one of the major Canadian banks plus seven percent.
33. In modified Telecom Decision 2006-15, the Commission considered that, since late payment and NSF charges have a direct impact on affordability, it would be appropriate to impose a price ceiling on these charges in forborne areas when they are associated with stand-alone PES.
34. Bell Canada et al. and TCC submitted that market forces can be relied on to achieve the purpose of the late payment and NSF charges policies. They stated that the unregulated rates for these charges associated with non-tariffed services have remained within industry norms and do not materially affect the affordability of PES.

35. Bell Canada et al. submitted that the Commission should forbear from the regulatory requirement for late payment and NSF charges in regulated and forborne markets, pursuant to subsection 34(1) of the Act. TCC supported removing the restrictions regarding late payment and NSF charges in forborne markets, but indicated that it may be appropriate in regulated markets to streamline the measures and to impose a price ceiling on these charges.
36. The Coalition and PIAC submitted that market forces alone are not sufficient to ensure that reasonable terms exist for consumers who require credit from their service providers. PIAC submitted that there are neither abundant nor reasonable alternative short-term credit options for consumers with affordability concerns and that without reasonable policies, the rates for late payment and NSF charges will be higher, with attendant affordability problems for low-income customers.
37. The Commission considers that the purpose of the late payment and NSF charges policies is to provide consumers with affordable credit in cases of non-payment, which encourages retention on the network. These policies also provide reasonable compensation to carriers for providing credit. Accordingly, the Commission considers that these regulatory measures further the policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.
38. The Commission notes that late payment and NSF charges associated with non-tariffed services, in both regulated and forborne markets, have remained within the norms established for all industries in Canada. The Commission considers that there are alternative credit options available to subscribers that would allow the policy objectives to be largely fulfilled. Therefore, the Commission considers that full regulation is no longer necessary in forborne markets. However, the Commission considers that some price protection is required in regulated markets, where there is little or no competition.
39. Accordingly, the Commission removes the requirement imposed at paragraph 454 of modified Telecom Decision 2006-15 that the ILECs' tariffs for late payment and NSF charges apply to the provision of stand-alone PES in forborne markets.⁸
40. In addition, the Commission finds it appropriate to forbear from regulating late payment and NSF charges associated with tariffed services, subject to the condition set out in paragraph 43 of this decision.
41. Pursuant to subsection 34(1) of the Act, the Commission finds, as a question of fact, that forbearing from the regulation of late payment and NSF charges associated with tariffed services, to the extent provided for and subject to the condition set out in this decision, would be consistent with the telecommunications policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.

⁸ The Commission notes that this determination does not affect the maintenance of its powers and duties under subsection 27(1) of the Act to the extent necessary to impose a price ceiling on stand-alone PES, including Touch-Tone and primary directory listing, as well as connection charges.

42. Pursuant to subsection 34(3) of the Act, the Commission finds, as a question of fact, that forbearance with respect to late payment and NSF charges associated with tariffed services, to the extent provided for and subject to the condition set out in this decision, would not be likely to impair the establishment or continuance of a competitive market for the tariffed services to which the charges are incidental.
43. In light of the above, the Commission considers it necessary to retain its powers with respect to section 24 of the Act in order to impose a condition on the rates for late payment and NSF charges associated with an ILEC's tariffed services such that these rates shall not exceed the lowest rate charged in association with any of its non-tariffed services. In addition, the Commission will retain its powers under section 24 of the Act in order to impose future conditions as necessary to achieve the policy objectives in section 7 of the Act.
44. The Commission also considers it necessary to retain its powers pursuant to subsection 27(1) of the Act to the extent necessary to support the section 24 condition imposed in paragraph 43 above.
45. The Commission further considers it necessary to retain its powers pursuant to subsection 27(2) of the Act to ensure that an ILEC does not unjustly discriminate or give an undue or unreasonable preference toward any person in relation to late payment and NSF charges associated with tariffed services.
46. As a necessary consequence, the Commission considers it necessary to retain its powers under subsection 27(3) of the Act in order to ensure compliance with the powers and duties from which it is not forbearing. The Commission also retains its powers under subsection 27(4) of the Act as it relates to subsection 27(2).
47. Accordingly, the Commission declares that sections 25, 29, and 31, and subsections 27(5) and 27(6), of the Act do not apply to late payment and NSF charges associated with tariffed services.
48. The Commission directs the ILECs to file amended tariff pages reflecting the determinations of this decision, replacing any cross-references to late payment and NSF charges in other tariffs, within **30 days** of the date of this decision.⁹

Secretary General

⁹ The Commission notes that in some cases, other elements of the ILECs' terms of service are affected by forbearance from the regulation of late payment and NSF charges. For example, article 17.1 of Bell Canada's terms of service states that "charges cannot be considered past due until the time prescribed in Bell Canada's Late Payment Charge Tariff."

Related documents

- *Review of various customer account management regulatory measures*, Telecom Public Notice CRTC 2008-16, 3 November 2008, as amended by Telecom Public Notice CRTC 2008-16-1, 27 November 2008
- *Action plan for reviewing social and other non-economic regulatory measures in light of Order in Council P.C. 2006-1534*, Telecom Decision CRTC 2008-34, 17 April 2008
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council P.C. 2007-532, 4 April 2007
- *Local service pricing options*, Telecom Decision CRTC 96-10, 15 November 1996, as amended by Telecom Decision CRTC 96-10-1, 29 November 1996
- *Review of the general regulations of the federally regulated terrestrial telecommunications common carriers*, Telecom Decision CRTC 86-7, 26 March 1986

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