



Telecom Decision CRTC 2010-578

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Ottawa, 13 August 2010

Bell Canada – Application to exclude competitor quality of service indicator 2.7A results from the rate rebate plan for competitors for February 2010

File number: 8660-B2-201009390

The Commission approves Bell Canada's request to exclude, for rate rebate plan purposes, its February 2010 results for competitor quality of service indicator 2.7A for Rogers Communications Inc.

Introduction

1. The Commission received an application by Bell Canada, dated 7 June 2010, requesting the exclusion of the competitor quality of service (Q of S) results related to indicator 2.7A – Competitor Out-of-Service Trouble Report Late Clearances (indicator 2.7A) from its rate rebate plan for Rogers Communications Inc. (RCI) for February 2010.
2. Bell Canada submitted that in February 2010 there were two incidents of cable cuts by third parties that were beyond its control and that resulted in service outages to RCI. One incident occurred in Oakville, Ontario, and the other occurred in Montréal, Quebec.
3. Bell Canada submitted that on 17 February 2010 in Oakville, Ontario, contractors employed by a residential property developer damaged five major telecommunications cables extensively when they bore more than 10 twelve-foot steel rods into a Bell Canada cable structure and manhole, and subsequently pumped concrete through the rods. Bell Canada indicated that prior to starting their drilling, the contractors had failed to advise the company of their planned activities or to request facility locates. Bell Canada further submitted that its cable technicians were at work on site on a 24-hour-per-day basis in order to repair the damages, and that it took 223 man hours before service was ultimately restored to RCI late in the afternoon of 19 February 2010.
4. Bell Canada also submitted that four buried cables were cut by a City of Montréal work team excavating to gain access to a water main that broke overnight on 23 February 2010. Bell Canada indicated that the cable cut occurred despite the fact that, prior to the beginning of the excavation work, it had provided the city with proper facility locates and associated information about its network in the immediate excavation area. Bell Canada also submitted that due to the severity of the cable

damages affecting RCI and other customers, it had assigned twenty-three cable technicians and five testers to the repair activities for three days and nights. Bell Canada reported that service was ultimately restored to RCI by late afternoon on 26 February 2010.

5. Bell Canada noted that its actual February 2010 competitor Q of S performance results for service to RCI were below the set standard of 90 percent for indicator 2.7A. However, Bell Canada provided evidence that if the trouble tickets related to the above-noted adverse events were excluded, its February 2010 results for indicator 2.7A for RCI would have been within the accepted standard.
6. The Commission received no comments regarding this application. The public record of this proceeding, which closed on 28 June 2010, 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

7. In Telecom Decision 2005-20, the Commission created a mechanism for considering possible exclusions from competitor Q of S results where circumstances beyond the control of an incumbent local exchange carrier (ILEC) might have caused it to fail to meet a performance standard.
8. 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 the ILEC. The Commission considers that, based on the evidence filed, the cable damage incidents in question qualify as being beyond the reasonable control of Bell Canada and thus trigger the *force majeure* clause.
9. The Commission considers that Bell Canada has provided sufficient evidence to demonstrate that the cable cuts caused the below-standard results for indicator 2.7A for RCI in February 2010.
10. In Telecom Decision 2007-14, the Commission concluded that where a competitor Q of S indicator has been met for either the three months, or for at least six out of the twelve months, prior to an adverse event, it is reasonable to conclude that an ILEC would likely have met its competitor Q of S obligations without the adverse event.
11. After reviewing the evidence and further verifying that Bell Canada exceeded the standards for competitor Q of S indicator 2.7A for RCI for six of the twelve months prior to the February 2010 incidents, the Commission considers it reasonable to conclude that Bell Canada would have met its competitor Q of S obligations without the adverse events.

12. In light of the above, the Commission **approves** Bell Canada's request to exclude the below-standard results for competitor Q of S indicator 2.7A for February 2010 from the calculation of the amounts due to RCI under the rate rebate plan for competitors.

Secretary General

Related documents

- *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
- *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
- *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005