



## Telecom Decision CRTC 2011-342

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Ottawa, 20 May 2011

### **Bell Aliant Regional Communications, Limited Partnership – Application to exclude competition-related quality of service indicator 2.10 results from the rate rebate plan for competitors for December 2010**

File number: 8680-B54-201103811

#### **Introduction**

1. The Commission received an application by Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), dated 24 February 2011, requesting the exclusion of the competitor quality of service (Q of S) results related to indicator 2.10 – Mean Time to Repair (MTTR) – CDN [competitor digital network] Services and Type C Loops (indicator 2.10) from its rate rebate plan for competitors for MTS Allstream Inc. (MTS Allstream) and for Rogers Communications Inc. (RCI) for December 2010.
2. Bell Aliant submitted that two adverse events occurred as a result of severe weather conditions, which affected its services. Specifically, it submitted that on 15 December 2010, a mudslide resulting from a wind and rain storm between two small communities – Margaree Harbour and Cheticamp – along the northwest coast of Cape Breton Island, Nova Scotia, affected CDN services to MTS Allstream and to many of Bell Aliant’s customers. Bell Aliant also submitted that on 29 December 2010, an ice storm along the coast of Labrador impacted the Sand Hill digital microwave radio tower along the Southern Labrador microwave route, resulting in a complete loss of signals that affected long distance, mobility, and data services to a number of customers, including MTS Allstream, RCI, and their respective customers.
3. Regarding the first adverse event, Bell Aliant indicated that one of its buried fibre cables broke as a result of the mudslide and the force of the storm. It stated that on the morning of 16 December 2010, a work crew that it had dispatched located and gained access to the damaged fibre cable, and that CDN service was subsequently restored to MTS Allstream and to Bell Aliant’s customers in the afternoon of 16 December 2010.
4. Regarding the second adverse event, Bell Aliant indicated that it dispatched a technical team to the Sand Hill digital microwave radio tower site once the weather improved on 31 December 2010, following an unsuccessful attempt due to poor weather conditions on 30 December 2010. It submitted that the team cleared away

the ice build-up on the tower, and that radio signals were returned to normal levels and services were restored to MTS Allstream and RCI and their respective customers on 31 December 2010.

5. Bell Aliant submitted that its actual December 2010 competitor Q of S performance results for service to MTS Allstream and RCI were below the set standard for indicator 2.10. However, Bell Aliant provided evidence that if the trouble reports related to the above-noted adverse events were excluded, its December 2010 results for indicator 2.10 for MTS Allstream and 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 24 March 2011, is available on the Commission's website at [www.crtc.gc.ca](http://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 mudslide and ice storm incidents in question both qualify as incidents that were beyond the reasonable control of Bell Aliant and thus both trigger the *force majeure* clause.
9. The Commission further considers that Bell Aliant has provided sufficient evidence to demonstrate that these two incidents caused the below-standard results for indicator 2.10 for MTS Allstream and RCI in December 2010.
10. In Telecom Decision 2007-14, the Commission concluded that if a competitor Q of S indicator has been met for three consecutive months, or for at least six out of twelve months, immediately 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. The Commission has reviewed Bell Aliant's evidence and verified that Bell Aliant exceeded the standard for competitor Q of S indicator 2.10 for MTS Allstream for six out of twelve months prior to the 15 December 2010 incident, and for RCI for the three consecutive months prior to the 29 December 2010 incident. The Commission therefore considers it reasonable to conclude that Bell Aliant would have met its competitor Q of S obligations without the adverse events.

12. In light of the above, the Commission **approves** Bell Aliant's request to exclude its below-standard results for competitor Q of S indicator 2.10 for December 2010 in the calculation of the amounts due to MTS Allstream and 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