Telecom Decision CRTC 2012-287

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Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application to remove the trailing indicators from the competitor quality of service framework and the rate rebate plan

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In this decision, the Commission denies the Bell companies' request to remove the five trailing indicators from the competitor quality of service framework and the rate rebate plan.

Application

1. The Commission received an application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies), dated 1 December 2011, in which the companies requested that the Commission remove the five trailing indicators from the competitor quality of service (Q of S) framework and the rate rebate plan (RRP).

2. The Commission received interventions from the Canadian Network Operators Consortium Inc. (CNOC), Globility Communications Corporation (Globility), MTS Inc. and Allstream Inc. (collectively referred to as MTS Allstream), Quebecor Media Inc., on behalf of Videotron Ltd. (QMI), Shaw Telecom G.P. (Shaw), and TELUS Communications Company (TCC).

3. The public record of this proceeding, which closed on 30 January 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Background

4. In a series of decisions beginning with Telecom Decision 97-16, the Commission established a number of competition-related Q of S indicators, which permit the Commission to monitor the provision of certain services to competitors by the large incumbent local exchange carriers (ILECs).

5. In Telecom Decision 2005-20, the Commission finalized the Q of S RRP for competitors applicable to the large ILECs. The RRP requires ILECs to provide rebates to competitors in the event that certain performance indicators are missed. The competitor Q of S framework and RRP are composed of several main, or "leading," indicators to measure whether the ILEC delivers a facility or service on time, as well as five "trailing" indicators which capture the ability of the ILEC to deliver the same facility or service within a set time frame after the initial due date is missed.

6. The five trailing indicators are

   1.10A - Local Number Portability Order (Standalone) Late Completions;

   1.11A - Interconnection Trunk Order Late Completions;

   1.13 - Unbundled Type A and B Loop Order Late Completions;

   1.19A – Competitor Digital Network (CDN) Services – Late Completions; and

   2.7A - Competitor Out-of-Service Trouble Report Late Clearances

Should the Commission eliminate the trailing indicators from the competitor Q of S framework and the RRP?

7. The Bell companies submitted that the trailing indicators should be eliminated because they are no longer necessary in light of changes to the telecommunications industry and regulatory environment which have occurred since the competitor Q of S framework and the RRP were finalized in Telecom Decision 2005-20. In this regard, the Bell companies argued that removing the trailing indicators would be consistent with the Policy Direction,[1] Telecom Decision 2006-15 (as modified by the Governor in Council),[2] Telecom Decision 2008-105, and the principle of regulatory symmetry between wholesale and retail services. TCC supported the Bell companies' application.

8. Concerning the Policy Direction, the Bell companies submitted that the use of trailing indicators is not a measure that is efficient or proportionate to its purpose, and it imposes an unreasonable burden on ILECs. Both the Bell companies and TCC provided examples of instances where a small number of complex orders might cause an ILEC to fail a trailing indicator even if it greatly exceeded the standard for the corresponding leading indicator, thereby placing an unreasonable burden on an ILEC. The Bell companies therefore submitted that the use of trailing indicators does not represent a minimum level of regulation as set out in the Policy Direction.

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[1] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

[2] Telecom Decision 2006-15 was amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007

9. The Bell companies argued that removal of the trailing indicators would be consistent with Telecom Decision 2006-15, which removed the competitor Q of S trailing indicators from the conditions associated with granting local forbearance.

10. The Bell companies also submitted that, in light of the Commission's decision in Telecom Decision 2008-105 to streamline the reporting requirements for retail Q of S standards by eliminating the reporting of all but three of the retail indicators, the Commission should likewise reduce the reporting requirements for competitor Q of S standards.

11. The Bell companies noted that in Telecom Decision 2010-501, regarding CDN provisioning intervals, and in other decisions, the Commission espoused the principle that service levels for retail and wholesale customers should be the same for comparable services. They submitted that this service symmetry principle should be reflected in the other service provisioning and repair activities that underlie the trailing indicators. In this regard, the Bell companies and TCC both submitted that their provisioning systems do not distinguish between retail and wholesale customers when processing orders, particularly with respect to the provisioning of CDN services, such that competitors are afforded the same priority and treatment as the ILEC's retail customers. In their view, the trailing indicators are therefore not needed to incent ILECs to provide a high Q of S to competitors and should be eliminated.

12. The Bell companies and TCC did not support the removal of individual trailing indicators, arguing that they should be eliminated as a group.

13. CNOC, Globility, MTS Allstream, QMI, and Shaw (collectively, the competitors) each opposed the request to remove the trailing indicators. These parties were generally of the view that the trailing indicators are important to ensure reliable provisioning and repair of facilities that they lease from the ILECs in order to provide service to end-customers. The competitors argued that if the trailing indicators were removed, the ILECs would have no incentive to follow-up on an order once it has been missed, which would lead to prolonged service delays and cause immediate and future harm to the competitors' relationships with their customers.

Commission's analysis and determinations

14. With regard to arguments that the trailing indicators are not efficient or proportionate to their purpose, the Commission notes that, as stated in Telecom Decision 2005-20, the purpose of the Q of S framework for competitors is to ensure that all competitors receive a quality of service from the ILECs of a sufficiently high level to enable the competitors to compete on a level playing field with each other and with the ILECs. Specifically concerning the trailing indicators, the Commission considered that given the potential consequences[3] facing competitors in cases where ILECs miss a second

[3] For example, the Commission indicated in Telecom Decision 2005-20 that, in cases where an ILEC fails to meet a trailing indicator, it will undermine the competitor's business relationship with its customer (or potential customer) and possibly result in a positive business opportunity for the ILEC with the frustrated customer.

provisioning or repair due date, it is appropriate that the ILECs be held to a very high standard with respect to the trailing indicators.

15. The Commission notes that competitor services, including certain of the services monitored by the trailing indicators, were in limited supply at the time of Telecom Decision 2005-20, and that the ILECs are currently mandated to provide certain wholesale services to competitors due to limited or non-existent supply alternatives.[4] As a result, the potential consequences to competitors associated with repeated or prolonged service delays, which were taken into consideration by the Commission during the establishment of the trailing indicators, remain as concerns today.

16. Furthermore, the Commission notes that it has previously taken steps to relax the competitor Q of S standards in response to ILEC concerns over certain indicators being onerous and difficult to attain. For example, in Telecom Decision 2005-20, the Commission reduced the performance standards for the trailing indicators from 100 to 90 percent. Additionally, in Telecom Decision 2007-54, the Commission modified the business rules for all competitor Q of S indicators to address concerns regarding ILECs' missed service standards due to low-volume orders.[5]

17. In light of the above, the Commission considers that the use of trailing indicators is a regulatory measure that is efficient and proportionate to its purpose, consistent with the Policy Direction.

18. Concerning the relationship between the competitor Q of S framework and local forbearance, the Commission notes that the Governor in Council's modifications to the framework for local forbearance set out in Telecom Decision 2006-15, including the elimination of the trailing indicators from the framework, were made with the intent to streamline and simplify the granting of local forbearance.[6] The Commission notes that the Governor in Council's modifications did not address the appropriateness of the trailing indicators as they pertain to the competitor Q of S framework or the RRP. In fact, based on the Governor in Council's modified competitor presence test,[7] the Commission has granted local forbearance in many cases based on the availability of ILEC wholesale services, such as unbundled local loops, the provision of which are subject, in part, to performance monitoring by the trailing indicators in the competitor Q of S framework.

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[4] For example, pursuant to the Commission's decision on essential services in Telecom Decision 2008-17, unbundled loops and certain CDN access services are classified as conditional essential services, meaning ILECs are obligated to provide them to competitors because competitive alternatives are limited or non-existent.

[5] Specifically, the Commission approved a modification to the business rules, allowing a single missed order or trouble report for each competitor in a month not to cause an ILEC to miss an indicator standard for that competitor.

[6] See footnote 2.

[7] The modified framework considers that the competitor presence test can be met by the presence of a facilities-based provider making use of underlying ILEC facilities, such as unbundled loops.

19. With regard to arguments concerning the streamlining of the retail Q of S framework, the Commission notes that it reduced the number of retail Q of S indicators in non-forborne markets in Telecom Decision 2008-105, in part, because it found that several of the retail indicators no longer reflected current Q of S concerns, while other indicators were difficult to administer due to the granting of forbearance in many retail markets. The Commission also noted in that decision that the revenue and corresponding rebates at stake were small and declining, making certain reporting requirements and the retail rate adjustment plan inefficient and not minimally onerous. However, the Commission considers that these same factors do not apply in the case of the competitor Q of S framework and, in particular, to the trailing indicators, because the market conditions for wholesale services differ from those of retail services, notably in terms of supply. Accordingly, the Commission is not persuaded that the retail and competitor Q of S frameworks should be subject to symmetrical regulatory treatment.

20. The Commission notes that the Bell companies and TCC indicated that their provisioning systems are set up in such a way as to treat retail and wholesale customers equally. However, the Commission is also mindful of the overall concern expressed by the competitors that the trailing indicators mechanism is ultimately needed to create market discipline and incent ILECs to provide high-quality service to competitors. On balance, the Commission is of the view that removal of the trailing indicators from the competitor Q of S framework and the RRP could be detrimental to the ability of competitors to have reliable Q of S for the underlying facilities they use to provide service to their end-customers, which in turn could ultimately harm both competitors and consumers.

21. In light of the above, the Commission considers that the trailing indicators remain appropriate as a means to incent ILECs to provide timely follow-up to missed orders and prevent future delays in the provisioning and repair of competitor services. The Commission therefore **denies** the Bell companies’ application to remove the five trailing indicators from the competitor Q of S framework and the RRP.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application regarding proposed changes to competitor digital network provisioning time frames*, Telecom Decision CRTC 2010-501, 22 July 2010

- *Retail quality of service framework in non-forborne markets*, Telecom Decision CRTC 2008-105, 6 November 2008

- *Revised regulatory framework for wholesale services and definition of essential service*, Telecom Decision CRTC 2008-17, 3 March 2008

- *CISC Business Process Working Group – Non-consensus report BPRE064a to revise competitor quality of service indicator business rules per Telecom Decision 2006-59*, Telecom Decision CRTC 2007-54, 13 July 2007

- *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

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

- *Quality of service indicators for use in telephone company regulation*, Telecom Decision CRTC 97-16, 24 July 1997