Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Order CRTC 2024-207

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Saskatchewan Telecommunications – Tariff Notice 381 – Addition of Local Service Request (LSR) Rejection Charge

Summary

The Commission approves Saskatchewan Telecommunications' (SaskTel) Tariff Notice 381, in which the company proposed to add a local service request (LSR) rejection charge to its Competitor Access Tariff. The proposed addition will enable SaskTel to encourage competitors to reduce their controllable LSR rejections by charging for rejections at a rate that the Commission has previously found to be just and reasonable.

Background

1. When a telecommunications customer changes service providers, the new service provider sends a local service request (LSR) to the previous service provider in order to have the customer's service transferred. The request form should include all information necessary for an efficient transfer of service from one company to the other. An LSR that contains errors may be refused and returned to the company that sent it.

Application

2. On 13 May 2024, the Commission received an application from Saskatchewan Telecommunications (SaskTel), Tariff Notice (TN) 381, in which the company proposed an addition to its Competitor Access Tariff. The company proposed to add item 610.31 - Local Service Request (LSR) Rejection Charge.

3. SaskTel submitted that its proposed tariff item has been structured in accordance with Telecom Regulatory Policy 2012-523, where the Commission set thresholds by which to determine when an LSR rejection charge would apply.

4. SaskTel proposed a rate of $70 for the rejection of each LSR over those thresholds. The company submitted that this is in accordance with rates that the Commission has approved or found just and reasonable in previous decisions.[1]

5. SaskTel requested an effective date of 24 June 2024.

6. The Commission received no comments with regard to the application.

Commission's analysis

7. In Telecom Order 2009-805, the Commission determined that it would be appropriate for Bell Canada and Bell Aliant Regional Communications, Limited Partnership to charge for LSR rejections under certain conditions and above certain rejection rate thresholds. The Commission's intent was to encourage competitors to reduce their controllable LSR rejections.

8. In Telecom Regulatory Policy 2012-523, the Commission expanded the applicability of LSR rejection charges and determined that local exchange carriers could charge for the rejection of LSRs. The Commission also raised the LSR rejection rate thresholds beyond which companies could begin to charge for those rejections. For SaskTel's application, those thresholds would apply as follows:

    - a monthly LSR rejection rate threshold of 12.8% until **12 September 2025**, 10.4% until **12 September 2026**, and 8% thereafter for each service provider that submits more than 500 LSRs in a month unless at least 75% of the LSRs it submits in that month relate to business services; and

    - a monthly LSR rejection rate threshold of 25.6% until **12 September 2025**, 20.8% until **12 September 2026**, and 16% thereafter for each service provider that submits 500 or fewer LSRs in a month and for each service provider where at least 75% of the LSRs it submits in that month relate to business services.

9. SaskTel has reflected those thresholds in its application.

10. SaskTel has proposed a charge of $70 for each request beyond the approved threshold. In Telecom Order 2009-805, the Commission found that rate to be just and reasonable. The Commission has since approved that rate for other local exchange carriers.

11. The Commission considers that SaskTel's proposed tariff is compliant with those decisions.

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[1] See Telecom Order 2009-805 and Telecom Order 2017-213.

Conclusion

12. In light of all of the above, the Commission approves, by majority decision, SaskTel's application. The threshold dates are to be revised to reflect the effective date.

13. Revised tariff pages are to be issued within 10 calendar days of the date of this order. Revised tariff pages can be submitted to the Commission without a description page or a request for approval; a tariff application is not required.

14. The dissenting opinion of Commissioner Bram Abramson is attached.

Secretary General

Related documents

- *9163-7918 Québec inc. (CoopTel) – Introduction of Local Service Request Rejection Charge*, Telecom Order CRTC 2024-183, 21 August 2024
- *Changes to the Canadian Data Interchange Guideline and migration to Transport Layer Security 1.3*, Telecom Decision CRTC 2022-264, 26 September 2022
- *TELUS Communications Company – Interim approval of tariff applications*, Telecom Order CRTC 2017-213, 22 June 2017
- *CISC Business Process Working Group - Consensus report BPRE074a - On-boarding of New Trading Partners Guide*, Telecom Decision CRTC 2015-9, 14 January 2015
- *CISC Business Process Working Group – Consensus report regarding processes for calculating and billing local service request rejection charges*, Telecom Decision CRTC 2014-6, 9 January 2014
- *Review of conditions for approval of a local service request rejection charge*, Telecom Regulatory Policy CRTC 2012-523, 28 September 2012
- *The customer transfer process and related competitive issues*, Broadcasting and Telecom Regulatory Policy CRTC 2011-191, 18 March 2011
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Introduction of Local Service Request Rejection Charge*, Telecom Order CRTC 2009-805, 23 December 2009
- *Finalization of interim competition-related Quality of Service indicators and standards*, Telecom Decision CRTC 2003-72, 30 October 2003

Dissenting opinion of Commissioner Bram Abramson

1. "The most dangerous phrase a data-processing manager can use," as pioneering computer scientist U.S. Rear Admiral Grace Hopper famously had it, "is 'we've always done it this way.'" Hopper's clarion call to resist complacency and embrace a spirit of continuous improvement has long since jumped the shark. It is canon in business circles.

2. The same proposition is less obvious for courts that after all are ruled, in the common law tradition, by the principle of *stare decisis*—the obligation to stand by the precedent of what has already been decided. But even common-law courts are not straitjacketed without the ability to revisit precedent. Historically, they avoided this straitjacket by "interpret[ing] the *ratios* of decisions narrowly, distinguishing precedents […]".[2] Later they did so with more gusto, following the House of Lords' view that "too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law".[3] While "the threshold for revisiting a matter is not an easy one to reach", it

> is met when a new legal issue is raised, or if there is a significant change in the circumstances or evidence. This balances the need for finality and stability with the recognition that when an appropriate case arises for revisiting precedent, a lower court must be able to perform its full role.[4]

3. An administrative tribunal, like the Canadian Radio-television and Telecommunications Commission (CRTC), must stand somewhere between businesses and courts on the matter. Ensuring predictability for the businesses we regulate is fundamental to our role. We do so by establishing clear frameworks, then honouring parties' legitimate expectation to be able to rely on those frameworks as read in context.[5] We depart from them only for good reason to be explained, in turn, in our written reasons in order that we continue to honour predictability.

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[2] As notably affirmed, in *R. v. Kirkpatrick*, 2022 SCC 33 (CanLII), even in the opinion of Wagner C.J. and Côté, Brown, and Rowe JJ. (diss.), which assigned stronger weight to precedent than did the majority (paragraph 175).

[3] *Practice Statement (Judicial Precedent)*, [1966] 1 W.L.R. 1234, cited in the same dissent in *R. v. Kirkpatrick*, paragraph 176, and noting a similar approach in *Reference re The Farm Products Marketing Act*, [1957] S.C.R. 198.

[4] *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101, paragraph 44

[5] *Teksavvy Solutions Inc. v. Bell Canada*, 2024 FCA 121 (CanLII), paragraph 37 ("There are also times when regulatory statements, conduct or decisions are so intimately related to earlier events that they cannot be taken in isolation. In those situations, the Court must evaluate the matter in light of the whole context, not just an isolated event").

4. This means, however, that we must stand at the ready to find such reasons in ways that go beyond the efforts courts bound by *stare decisis* might deploy. That is because, unlike courts, we're not entitled to consider ourselves bound by precedent or past frameworks. On the contrary:

> [a]s a matter of law […] while the CRTC may refer to and take guidance from its earlier decisions, those decisions cannot dictate its subsequent decisions. The CRTC is not bound by precedent and has a legal obligation not to fetter its discretion.[6]

5. The legitimate expectation that we reapply past-enunciated frameworks is, in other words, subordinate to the requirement not to fetter our discretion: "[o]nly procedural expectations are protected, not substantive expectations such as an expectation that a particular methodology would be followed".[7] Put differently: "the argument 'we've always done it this way' is not a legal argument; it is not persuasive and is irrelevant. The question [in the administrative law setting] is what the [statute] says based on" principles of statutory interpretation.[8]

6. This question of how closely we must re-examine past frameworks when new applications invite us to mimetically reapply them is at the heart of the regulatory art. It is also at the heart of my departure from the Telecommunications Committee's majority on this decision on behalf of the Commission.[9] That departure is consistent with my approach in Telecom Order 2024-183 (Cooptel), which I note had not yet been issued when Saskatchewan Telecommunications (SaskTel) filed the application disposed of here.

7. To understand why, I start with the subject at hand. Local service requests (LSRs), formatted[10] and sent[11] in accordance with the Canadian Local Ordering Guidelines (C-LOGs), are fundamental to the competitive processes the Commission oversees.

8. Once, LSRs were used primarily to give effect to end-users' decisions to change their phone company. Now service providers use them to switch mobile, broadband, and

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[6] *Bell Canada v. Canada (Attorney General)*, 2011 FC 1120 (CanLII), paragraphs 88-90

[7] 2024 FCA 121, paragraph 46, citing *Agraira v. Canada (Public Safety and Emergency Preparedness)*, [2013] 2 SCR 559, paragraph 97, and *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525, paragraph 557

[8] *Danek v. Calgary (City)*, 2007 ABQB 679 (CanLII), paragraph 19

[9] *Telecommunications Committee*, By-Law No. 10, paragraph (e) ("Any act or thing done by the Telecommunications Committee shall be deemed to be an act or thing done by the members")

[10] Online: https://crtc.gc.ca/cisc/eng/cisf3e0j.htm

[11] Telecom Decision 2022-264

television subscriptions over, too.[12] They have become basic infrastructure "required for the efficient exchange of information between interconnected TSPs [and broadcasting distribution undertakings] and the development and sustainment of a competitive marketplace."[13]

9. To give an LSR effect, the old service provider receiving it compares its records with the text—much of it personal information[14]—embedded, within the LSR, by the new provider. Where there is a mismatch, the process fails, delays ensue, and end-users are left unhappy.

10. Why would there be a mismatch? Perhaps the new service provider's personnel have been careless filling out the fields, or in verifying the subscriber's own form-filling that has flowed into the LSR. Perhaps the new service provider formats customer initials, or street name abbreviations, differently than the old provider. Perhaps the old service provider's database had errors or old address data to begin with. Perhaps it is something else entirely.

11. How can such mismatches be minimized to generate less service provider fumbling, and happier end-users?

12. In part, through the good behaviour of service providers with a stake in a well-functioning system. Diligent and regular review of their implementation of the C-LOGs qualifies as such behaviour. So does providing fulsome reasons for rejecting LSRs. So does working with one another to "identify […] the root problems with the orders".[15] So, for that matter, does following agreed-on procedures to challenge LSRs that were rejected through no fault of the new service provider's.[16]

13. In part, however, good behaviour can be incented by imposing a cost on less-than-good behaviour, by charging new service providers when they make too many mistakes. How much to charge? How many mistakes are too many? Under what conditions does this price incentive fall out of alignment to create, instead, perverse incentives?

14. As the majority decision explains, the Commission answered these questions in decisions that have since, through reliance on precedent, been elevated to precedent. We critically reviewed Bell Canada's proposal to hit on a formula and price in 2009.

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[12] This includes broadband over wholesale high-speed access (see Broadcasting and Telecom Regulatory Policy 2011-191 and Telecom Decision 2015-9).

[13] Telecom Order 2009-805, paragraph 34

[14] It bears noting that data minimization, or "limiting collection", is a trite principle by which business processes are to be designed so as to contribute to the protection of privacy of persons.

[15] Telecom Decision 2003-72, paragraphs 79 and 83

[16] Telecom Decision 2014-6

We then adjusted it in 2012, based on further assumptions about average increases in error rates when the old service provider's customer databases have no window through which to peer.

15. But that was well over a decade ago. Multi-provider use of LSRs for processing orders for services like home broadband and subscription television was then in its infancy. The degree of automated LSR handling was different. So was the industry's structure.

16. Like Cooptel's application decided in Telecom Order 2024-183, SaskTel's application similarly reproduces the formula that the Commission set down years ago. In the absence of compelling reasons to the contrary, SaskTel, like Cooptel, may be said to have had a legitimate expectation that the formula continue to be applied. This expectation was strengthened by the Commission's general approach. Continuing to apply formulas we have set down until confronted with evidence of changes that must be accounted for is, in many respects, long-standing Commission practice.

17. However, here, as on the Cooptel application, I would have wished that in light of both the highly fact-driven way in which the Bell Canada formula was arrived at and, perhaps more importantly, the passage of time and change in industry dynamics since that time, some evidence had been either filed by the applicant, or sought by the Telecommunications Committee by way of a request for information. Such evidence could have provided the Committee with comfort as to the continuing appropriateness of this approach. This would, in turn, have enabled us to discharge our duty to take guidance, perhaps, from those earlier decisions without crossing the line into letting them dictate our subsequent decisions, as we must not.

18. Had the original setting of those rates been a more generalized exercise, had less time passed, and had fewer changes transpired since that original framework was set in a highly fact-driven context, I would likely have had a different approach in line with the majority's. Generally, the more significant the changes in circumstance since the original formula we are asked to mimic in a me-too tariff application—as is inevitable in a dynamic industry over a long period—the closer to that line we come when we treat the formula as a magical incantation rather than as a presumption strengthened by fresh evidence, even if limited, that we have been able to expressly consider.

19. When circumstances have changed, as may be presumed when much time has passed, parties asking the Commission to paste a precedent should not, therefore, stop at showing their application is consistent with the precedent on which they rely. They should also show that the Commission should want to apply that precedent because it remains appropriate in the circumstances. As the gap in time and circumstance grows between such an application and the precedent on which it seeks to rely, the importance of filing some modicum of evidence, or of soliciting it when not filed, is only sharpened. Otherwise, we run the risk of falling afoul not only of our legal duty, but of the most dangerous phrase in business.