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

Telecom Decision CRTC 2006-59

Ottawa, 21 September 2006

Part VII application to review and vary Decisions 2003-72 and 2005-20

Reference: 8662-B2-200602278

In this Decision, the Commission finds that there is not substantial doubt as to the correctness of Finalization of interim competition-related Quality of Service indicators and standards, *Telecom Decision CRTC 2003-72, 30 October 2003 and* Finalization of quality of service rate rebate plan for competitors, *Telecom Decision CRTC 2005-20, 31 March 2005 (Decision 2005-20). The Commission accordingly* ***denies*** the proposal by *Bell Aliant Regional Communications, Limited Partnership,[1] Bell Canada, and TELUS Communications Company[2] (collectively, the Companies) to remove the phrase "where facilities do not exist" from the business rules of the trailing indicators and also* ***denies*** *a proposed modification to the measurement method for those same indicators. The Commission also* ***denies*** *the Companies' proposed modification to the business rules of competitor quality of service (Q of S) indicator* 2.7A – Competitor out-of-service trouble report late clearances, *and Rogers Communications Inc.'s request for additional competition-related Q of S indicators to measure the aging of orders.*

The Commission adopts a modified measurement method for the trailing indicators to mitigate an "inverse relationship" identified by the Companies with respect to the measurement of the trailing indicators, which adheres to the Commission's Q of S indicator principles set out in Decision 2005-20. The Commission also directs the CRTC Interconnection Steering Committee to review the measurement methods of the Q of S indicators that may not provide a sufficient incentive to provide high quality service to competitors, and to report back to the Commission within 90 days of this Decision.

The application

1. The Commission received an application from Bell Aliant Regional Communications, Limited Partnership,[3] Bell Canada, and TELUS Communications Company[4] (collectively, the Companies) dated 3 March 2006, filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* and section 62 of the *Telecommunications Act* (the Act). In the application,

[1] On 7 July 2006, Bell Canada's regional wireline telecommunications operations in Ontario and Quebec were combined with, among other things, the wireline telecommunications operations of Aliant Telecom Inc., Société en commandite Télébec, and NorthernTel, Limited Partnership to form Bell Aliant Regional Communications, Limited Partnership (Bell Aliant).
[2] Effective 1 March 2006, TELUS Communications Inc. assigned and transferred all of its assets and liabilities, including all of its service contracts, to TELUS Communications Company.
[3] See footnote 1.
[4] See footnote 2.

the Companies alleged that there was substantial doubt as to the correctness of *Finalization of interim competition-related quality of service indicators and standards*, Telecom Decision CRTC 2003-72, 30 October 2003 (Decision 2003-72) and *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005 (Decision 2005-20), including errors of fact and law and the Commission's failure to consider a basic principle which had been raised in the original proceedings.

2. In particular, the Companies requested that the Commission review and vary Decisions 2003-72 and 2005-20 by

- varying the definition, measurement method, and business rules for the following competitor quality of service (Q of S) indicators:
  - 1.10A, Local Number Portability [LNP] Order (Standalone) Late Completions (indicator 1.10A)
  - 1.11A, Interconnection Trunk Order Late Completions (indicator 1.11A)
  - 1.13, Unbundled Type A and B Loop Order Late Completions (indicator 1.13)
  - 1.19A, CDN [Competitor Digital Network] Services and Type C Loops – Late Completion (indicator 1.19A)
  - 2.7A, Competitor Out-of-Service Trouble Report Late Clearances (indicator 2.7A);
- excluding from the measurement of indicator 1.13 those orders where due dates are missed due to a lack of facilities;
- changing the measurement method to avoid an inherent inverse relationship whereby the better the Companies' performance with respect to other established indicators, the worse its performance with respect to indicators 1.10A, 1.11A, 1.13, 1.19A, and 2.7A; and
- excluding from the measurement for indicator 2.7A those orders where due dates are missed as a result of a lack of facilities due to damages caused by third parties or due to capacity limitations in certain terminals.

Process

3. MTS Allstream Inc. (MTS Allstream) and Rogers Communications Inc. (RCI) filed comments on 3 April 2006. The Companies filed reply comments on 13 April 2006.

Background

4. Since 1994, the Commission has initiated a number of proceedings and issued a number of determinations related to establishing a competitor Q of S framework. The Commission

has been of the view that competitors depend significantly on the use of incumbent local exchange carrier (ILEC) services. For competition to succeed, competitors must be able to provide service to their customers of a quality that is comparable to that which the ILECs provide to their own customers. If a competitive local exchange carrier (CLEC) cannot provide comparable service quality, it will not be able to compete effectively. The indicators that are the subject of this application, with the exception of indicator 1.19A, were given final approval by the Commission in Decision 2003-72 when the interim rate adjustment plan (RAP) was established, and then in Decision 2005-20, those indicators, now including indicator 1.19A, were subsequently included in the final rate rebate plan (RRP).

5. The RRP consists of two basic types of Q of S indicators, those that measure the provisioning of a facility or service to a competitor and those that measure the repairing of a facility or service, should it fail. The two basic types of Q of S indicators are each further sub-divided into two groups. One group, known as main indicators, measures the ability of an ILEC to provision or repair a facility or service within an approved or set service interval. A second group, known as trailing indicators, measures the ability of an ILEC to provision or repair a facility or service after it has missed its initial due date but within an additional approved service interval. The indicators that are the subject of this Part VII application are the five trailing indicators included in the RRP.

6. Pursuant to section 62 of the Act, the Commission may review and vary its decisions. In *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998 (Public Notice 98-6), the Commission announced guidelines for review and vary applications made under section 62 of the Act, as set out below:

> Accordingly, in order for the Commission to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to:
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> (i) an error in law or in fact;
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> (ii) a fundamental change in circumstances or facts since the decision;
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> (iii) a failure to consider a basic principle which had been raised in the original proceeding; or
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> (iv) a new principle which has arisen as a result of the decision.
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> …
>
> Given the public interest in regulatory certainty, the Commission has determined that applications made pursuant to section 62 of the Act should generally be filed within six months of the Commission's original decision.
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> Review and vary applications made after that time will generally only be considered in exceptional circumstances and if the Commission is satisfied that there are good reasons for the delay.

Positions of parties

The Companies

Review and vary timeline

7. The Companies submitted that it was entirely reasonable to allow interested parties to fully assess the long-term impact of a decision before bringing forward a review and vary application. The Companies noted that they had originally filed a review and vary application for indicator 1.13 in March 2005, and that Commission staff disposed of that application by letter dated 7 April 2005 by stating within that letter that Decision 2005-20 addressed the majority of the issues raised by the Companies in their March 2005 application. The Companies indicated that they also required a period of time to assess the changes to the Q of S regime brought about by Decision 2005-20, which included new indicator 1.19A.

8. The Companies noted that while an application made pursuant to section 62 of the Act should be filed within six months of the Commission's original decision, applications made after that time would be considered under exceptional circumstances where the Commission was satisfied that there were good reasons for the delay. The Companies added that where the contested decision contained material errors of fact or law, the simple passage of time did nothing to alter the inherent correctness of the decision or grant jurisdiction to the Commission where an error underlying the decision gave rise to jurisdictional error.

9. The Companies submitted that their current application was an appropriate case for the Commission to review its decision beyond its six-month review guideline.

Substantial doubt – basic principle in original proceeding

10. The Companies submitted that there was substantial doubt as to the correctness of the original determinations made by the Commission in Decision 2003-72 with respect to four Q of S indicators: 1.10A, 1.11A, 1.13, and 2.7A. The Companies noted that while they had concerns with Decision 2003-72 when issued, the full impact with respect to the four Q of S trailing indicators did not become apparent until much later.

11. The Companies noted that in Decision CRTC 2001-366, 20 June 2001 (Decision 2001-366), the definitions and measurement methods for all four trailing indicators were significantly modified from those previously approved. The Companies also noted that the four trailing indicators were included in the RRP in Decision 2005-20 with modified standards. According to the Companies, a fifth trailing indicator 1.19A was imposed by the Commission in Decision 2005-20, approved on a final basis and included in the RRP without any discussion as to the appropriateness of such a trailing indicator.

12. The Companies submitted that there was substantial doubt as to the correctness of the measurement method for indicator 1.13 in that the Commission failed to consider a basic principle in the original proceeding, namely the conflicting interrelationships between

indicator 1.13 and indicators 1.8,[5] 1.9,[6] and 1.12.[7] The Companies submitted that since the denominator of indicator 1.13 consisted only of orders that failed to meet the standard for indicators 1.8, 1.9, and 1.12, the likelihood that the standard for indicator 1.13 would be met decreases as the performance for indicators 1.8, 1.9 and 1.12 increases. This was because the fewer the number of local service requests (LSRs) that were not completed by the confirmed due date, the smaller the universe against which the percentage standard for indicator 1.13 was calculated.

13. The Companies submitted that the paradox that arose was that a rebate might be paid to a competitor for missing indicator 1.13, when the service to the competitor was actually better due to the fact that the Companies exceeded the standard for indicators 1.8, 1.9, or 1.12 by completing more orders by the confirmed due date. The Companies added that they were therefore presented with the incentive to meet the 90 percent standard for indicators 1.8, 1.9, and 1.12, but to avoid exceeding that standard, lest it decrease its performance respecting indicator 1.13. Accordingly, the Companies submitted that there is substantial doubt as to the correctness of the definition for indicator 1.13.

14. The Companies submitted that indicator 1.13 should be varied by amending the measurement method to redefine the numerator and denominator. The Companies added that the numerator should be the total number of LSRs completed on or before one working day after the confirmed due date, as measured in indicators 1.8, 1.9, and 1.12. The denominator would be the total number of LSRs during the month, as measured in indicators 1.8, 1.9, and 1.12. The Companies added that the modifications to the calculation of indicator 1.13 were not to raise or lower the existing Commission standards but to redefine the indicators more comprehensively and restate the standards in an essentially equivalent manner.

15. The Companies also submitted that there was substantial doubt as to the correctness of the measurement method for indicators 1.10A, 1.11A, 1.19A, and 2.7A in that the Commission failed to consider a basic principle in the original proceeding, namely the conflicting interrelationships between the trailing indicators above and indicators 1.10,[8]1.11,[9] 1.19,[10] and 2.7,[11] respectively. The Companies submitted that for the same reasons as discussed with respect to indicator 1.13, the measurement methods should be similarly amended for indicators 1.10A, 1.11A, 1.19A, and 2.7A.

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[5] Indicator 1.8 – New Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.8), service interval of 5 days and a standard of 90 percent.

[6] Indicator 1.9 – Migrated Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.9), service interval of 2 days and a standard of 90 percent.

[7] Indicator 1.12 – Local Service Request, Confirmed Due Dates Met (indicator 1.12), agreed service interval and confirmed by ILEC and a standard of 90 percent.

[8] Indicator 1.10 – Local Number Portability (LNP) Order (Standalone) Service Interval Met (indicator 1.10), two-day service interval and a 90 percent standard.

[9] Indicator 1.11 – Competitor Interconnection Trunk Order Service Interval Met (indicator 1.11), 20- or 35-day service interval dependent on availability of facilities and a 90 percent standard.

[10] Indicator 1.19 – Confirmed Due Dates Met – CDN Services and Type C Loops (indicator 1.19), variable by ILEC service interval and a 90 percent standard.

[11] Indicator 2.7 – Competitor Out-of-Service Trouble Reports Cleared within 24 hours (indicator 2.7), 80 percent standard.

16. In addition, the Companies requested a change to the business rules for indicator 2.7A to "exclude those orders where due dates are missed as a result of a lack of facilities due to damages caused by third parties or due to capacity limitations in certain terminals." In support of their request, the Companies cited the following examples:

- a lack of facilities could be due to a degradation in the network where surplus facilities were not available to restore the service;
- a lack of facilities could exist where a customer cuts a cable and there were no temporary facilities to restore service or a dig was required; and
- a lack of facilities could occur when a contractor cuts a major cable, which cannot be restored within 48 hours due to the severity of the cut.

Substantial doubt – error of fact

17. The Companies submitted that there is substantial doubt as to the correctness of the standard and the business rules for indicator 1.13. The Companies alleged that the Commission erred in fact in basing its conclusions respecting both the inclusion in the measurement of indicator 1.13 of missed due dates due to lack of facilities and the determination of the appropriate standard for indicator 1.13 on a mischaracterization of the CRTC Interconnection Steering Committee (CISC) Business Process Working Group (BPWG) consensus report BPRE028a and non-consensus report BPRE030a.

18. The Companies noted that, with respect to indicator 1.13, in both CISC reports, the BPWG unanimously proposed to "exclude from measurement those orders where confirmed due dates are missed due to facility shortages."

19. The Companies submitted that, in Decision 2003-72, the Commission disregarded the BPWG consensus proposal and mischaracterized the submission with respect to indicator 1.13. The Companies noted that, in Decision 2003-72, the Commission incorrectly stated the following:

> In the BPWG report, consensus could not be achieved on Indicators 1.12 and 1.13 due to opposing views with respect to situations where an ILEC could not fulfil an order because of a lack of facilities.
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> Call-Net,[12] AT&T Canada,[13] Group Telecom and Futureway[14] submitted that in the measurement of Indicators 1.12 and 1.13, orders that could not be completed on the confirmed due date due to a lack of ILEC facilities should be counted as incomplete.

[12] Effective 7 July 2005, Call-Net Enterprises Inc.'s legal name was changed to Rogers Telecom Holdings Inc.
[13] Now part of MTS Allstream Inc.
[14] Now operating as FCI Broadband, a division of Futureway Communications Inc.

20. The Companies submitted that while these companies had provided such views with regard to indicator 1.12, it was not the case with respect to indicator 1.13. The Companies argued that while the BPWG recommendations on indicator 1.13 were filed as a non-consensus item, the only issue of disagreement was in the scope of the definition for indicator 1.13 as to whether all late completions relative to their confirmed due dates should be measured or just those orders measured by indicators 1.8 and 1.9.

21. The Companies added that if the BPWG had known that the Commission would include, in the measurement for indicator 1.13, orders for which facilities do not exist, it would likely have proposed a standard lower then the 90 percent unanimously recommended by the BPWG.

22. The Companies submitted that given that the Commission's conclusions respecting the measurement and the standard for indicator 1.13 were based on the mischaracterization of the BPWG recommendations, there was substantial doubt as to the correctness of the standard and business rules for indicator 1.13. The Companies submitted that the standard and business rules for indicator 1.13 were premised on errors of fact.

23. The Companies submitted that the business rules for indicator 1.13 should be varied, consistent with the unanimous recommendation of BPRE030a, such that orders where confirmed due dates are missed due to facility shortages should be excluded from the measurement. The Companies added that the exclusion should apply to both the numerator and the denominator.

Substantial doubt – error of law

24. The Companies submitted that there was substantial doubt as to the correctness of the standard and the business rules for all trailing indicators in that the Commission erred in law in finalizing the interim indicators, notwithstanding the representations of Commission staff that the indicators would not be finalized without a further public process. The Companies noted that, in Decision 2003-72, the Commission concluded that a further public process was not required before the interim competition-related Q of S indicators were finalized and went on to approve, on a final basis, all interim competition-related Q of S indicators.

25. The Companies added that in making this decision, the Commission explicitly noted the following:

> The BPWG Report stated that Commission staff who participated in the BPWG process had assured the BPWG participants that some form of public proceeding would be initiated to provide an opportunity for further comment on some or all of the Q of S Indicators.

The Companies argued that despite such representations, which led to a narrower BPWG report than might otherwise have been the case, the Commission proceeded to finalize the indicators, without any further process.

26. The Companies submitted that a duty of procedural fairness applied to the Commission's determination of the final competitor-related Q of S indicators. The object of this duty was to provide an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision maker.

27. Accordingly, the Companies submitted that in proceeding to finalize the indicators in question, without the further public proceeding and full review of all indicators that were promised by Commission staff representatives in the BPWG, the Commission breached the duty of fairness or natural justice. The Companies alleged that this ground alone required that the Commission review Decision 2003-72, as amended by Decision 2005-20, to at least consider the submissions that the Companies were unable to make, since the promised review proceeding never materialized.

RCI

28. RCI found it troubling that the Companies were requesting that situations where no facilities were available should be excluded from the Q of S regime. RCI submitted that the Q of S standards at issue in this application measure the performance of the Companies against confirmed due dates. In other words, an LSR had been submitted, accepted, and the Companies had confirmed a due date for completion. RCI added that it was only when the Companies missed the confirmed due date that they were measured by the various late completion indicators.

29. RCI submitted that if the Companies rejected the LSR upon reception because of lack of facilities, the Q of S indicators did not capture that instance in any way. RCI submitted that what the Companies were requesting was that they were to be excused from providing service, because of no facilities, after they had confirmed a due date for the provision of service and RCI had confirmed the due date with the customer.

30. RCI noted that its practice was to request due dates that were longer than the established service intervals. RCI also noted that this practice was adopted to increase the assurance that loops would be provided on the requested due date. RCI noted that this practice provided the Companies with several additional days to meet the service intervals.

31. RCI alleged that excluding the circumstances of no facilities available from the measurement process would produce two undesirable alternatives. First, there would be an incentive to categorize late deliveries of loops as no-facilities situations to avoid penalties for poor performance. Second, there would be no incentive to expeditiously resolve the no-facilities problem. RCI submitted that both of these outcomes would result in CLECs receiving service that would be inferior to the service that the Companies provided to themselves, contrary to the established regulatory framework.

32. RCI added that where no copper loop was available, such as in situations where the customer was served from a remote, some ILECs had been reluctant to install the required equipment to allow a loop to be derived back to the serving central office. RCI noted that the use of remotes by the ILECs was steadily increasing. RCI added that while efforts to resolve this problem had been painfully slow, the current Q of S regime did at least offer some financial motivation to provide a solution.

33. RCI submitted that not only was the Companies' proposal with respect to the "no-facilities available" situation unacceptable, the current Q of S regime was deficient where an LSR was rejected because of lack of facilities. RCI submitted that when an LSR was rejected for

lack of facilities, that order seemed to disappear. RCI alleged that it received no information about the order and the rejected LSR might sit on the books for months until it was resolved and the Companies are not penalized in any way for the lengthy delay.

34. RCI submitted that the Q of S regime should be extended to all situations where loops were not provided due to lack of facilities. RCI suggested that CISC should be directed to develop the required additional indicators. Specifically, RCI suggested that additional standards should be implemented which would track the aging of no-facilities situations.

35. With respect to the modifications suggested by the Companies to indicator 2.7A, RCI considered the request to be vague and unsupported. RCI noted that indicator 2.7A dealt with existing service where the lack of facilities was not an issue and submitted that the Companies' reference to "capacity limitations in certain terminals" was unexplained and completely unclear.

36. RCI provided two comments on this issue. First, in indicator 2.7A, the standard was set at 90 percent to accommodate unusual instances. Second, in Decision 2005-20, the Commission provided for an explicit process whereby the Companies could be exempted from the Q of S standards in situations considered outside their control.

37. With respect to the inverse situation identified by the Companies with respect to trailing indicators, RCI agreed that theoretically the inverse incentive did exist. RCI submitted that if the Commission wished to modify the standards to address the Companies' concern, then the late completion standard should be set at 99 percent based on the total number of orders.

MTS Allstream

38. MTS Allstream submitted that the application was an attempt by the Companies to rewrite the decisions on the Q of S indicators to greatly diminish the utility of the indicators and the level of service to the competitors. MTS Allstream submitted that the modifications requested by the Companies to the indicators were reviewed and rejected by the Commission in Decisions 2003-72 and 2005-20.

39. With respect to the "inherent inverse relationship" between indicators 1.12 and 1.13, MTS Allstream submitted that the Commission established the methodology for the measurement of the two indicators for a good reason and that there was no paradox. MTS Allstream submitted that the interaction between indicators 1.12 and 1.13 was correct and logically sound as it provided an incentive for the ILECs to provide accurate due dates in both cases.

40. MTS Allstream submitted that indicators 1.8, 1.9, and 1.12 measured the ILEC's service performance on the committed due date and indicator 1.13 measured late completions providing an incentive to the ILEC to complete a late order within 24 hours of the original due date. MTS Allstream submitted that, taken together, indicators 1.8, 1.9, 1.12, and 1.13 ensured that all loop orders were completed within one day of the original due date at least 99 percent of the time if the ILEC met the service standard in all cases. MTS Allstream submitted that it was able to meet commitments to its customers with an expectation that at least 99 percent of the time the ILEC would have completed the order or been in the process of completing the order if the ILEC was providing the minimum acceptable performance level.

41. MTS Allstream submitted that the Commission stated that Q of S standards were not performance targets but a minimal acceptable performance level. MTS Allstream added that the Commission clearly understood that the accuracy of the due date provided by an ILEC was crucial to a competitor's ultimate success because, in Decision 2005-20, the Commission stated that the ILECs had little incentive to provide services in a manner that facilitated the successful operation of their competitor's business.

42. MTS Allstream submitted that by allowing the ILEC the discretion of completing the order "on or before" a confirmed due date as proposed by the Companies, the competitor would be prevented from providing its customer with a firm expectation of when service would be delivered, thus decreasing the efficiency of the competitor's operation. MTS Allstream alleged that this situation would allow the ILEC to game the system and leave the competitor in a very precarious position.

43. With respect to facilities shortages, MTS Allstream submitted that a very critical component of the definition of indicator 1.12 provided the ILEC with an opportunity to select due dates that it would most likely be able to meet without having regard to the standard interval, including instances where facilities might not be available. MTS Allstream added that, in Decision 2005-20, the Commission provided an appropriate clarification of indicators 1.12, 1.13, and 2.7A by including the concept of an agreed-upon and confirmed due date. MTS Allstream added that indicator 1.12 included the ability to provide a due date beyond the standard interval which removed any requirement for the exclusion of orders due to facility shortages.

44. MTS Allstream submitted that, when dealing with an order from a competitor, the onus was placed on the ILEC to determine the availability of facilities and the timing of the order as the knowledge related to the availability of facilities was wholly within the ILEC's control. MTS Allstream did not see an error in fact by the Commission.

45. In addition, MTS Allstream found it preposterous that the Companies claimed that the Commission made an error in law when finalizing the interim competitor Q of S without further public process. MTS Allstream submitted that the Companies had not varied their position since the 2 December 2002 non-consensus report BPRE030a. MTS Allstream submitted that the Commission was within its rights to finalize the Q of S indicators in Decision 2003-72 as further delay would have perpetuated the Companies' poor service under the interim RAP. Finally, MTS Allstream added that further process and consequent delay only benefited the ILECs. MTS Allstream noted that the Q of S process had been underway since *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002, and the Companies have had sufficient opportunity to put forward their position.

Commission's analysis and determinations

Review and vary timeline

46. In Public Notice 98-6, the Commission considered that review and vary applications should generally be filed within a six-month timeframe from a decision. However, the Commission indicated that it would consider applications made after that time in exceptional circumstances.

47. The Commission notes that Decisions 2003-72 and 2005-20 are closely linked in that the basis for Decision 2005-20 was established in Decision 2003-72. The Commission notes that Decision 2005-20 was issued on 31 March 2005. The implementation of the competitor Q of S RRP took place on 1 July 2005, three months after Decision 2005-20 was issued. The Commission notes that the three-month interval from 31 March to 1 July 2005 was permitted to allow the Companies to develop processes to implement the Q of S framework set. A further three months, 1 July to 1 October 2005, was then allocated to the Companies to begin collecting Q of S data based on the activity of the competitors operating in the various Companies' regions. The Commission notes that a seventh month, October 2005, was allowed for the Companies to compile the collected Q of S data and calculate any rebate prior to submitting that information to the Commission.

48. The Commission notes that, while the Companies had not filed this application within six months of Decision 2005-20, it is of the view that the Companies would not have been able to measure the actual effect or the full impact of Decision 2005-20 until at least 31 October 2005. In the Commission's view, the interrelationship of Decisions 2003-72 and 2005-20 and the delayed impact of Decision 2005-20 constitute an exceptional circumstance within the guidelines set out by the Commission in Public Notice 98-6.

49. Accordingly, the Commission determines that the Companies' application should be considered.

Error of fact in finding that the BPWG could not reach consensus on indicator 1.13

50. The Commission notes that, in Decision 2005-20, in establishing the principles for the indicators in the RRP, it determined that

> Q of S indicators to be included in the RRP should be calculated only in respect of an activity that is within the ILEC's control.

51. The Commission notes that in establishing a confirmed due date an ILEC has to check that all components, including facilities, of an order exist to complete the order. The Commission is of the view that this function is fully within the control of the ILEC, since the information is or should be retrievable from within the ILEC facility databases. The Commission notes that when an ILEC receives an LSR from a competitor for an order, the duration of time between the receipt of the LSR and the sending back to the competitor of a local service confirmation (LSC) with a confirmed due date is to be used by the ILEC to determine whether all components, including facilities, exist to complete the order. If, after investigation by the ILEC, no facilities exist to complete the order or the ILEC is not certain that the necessary facilities exist, the LSR should be rejected. The Commission notes that where an ILEC rejects an LSR, there are no RRP consequences and that the Q of S indicators associated with the RRP apply only when an ILEC has issued an LSC.

52. The Commission notes that if an LSC is received by the competitor from the ILEC, the competitor is entitled to assume that the ILEC has investigated and determined that all components, including facilities, exist, or will exist to complete the order by the confirmed due date. The Commission notes that the timeframe between receipt of an LSR and the sending

back of an LSC could be as short as 12 hours or as long as 48 hours depending on the order.

53. The Commission notes that if an ILEC does not check on the availability of facilities during the LSR/LSC timeframe, or does not assign sufficient resources to enable the task of ensuring that facilities exist, then a confirmed due date is provided to a competitor with no assurance that facilities exist. In reviewing this application, the Commission notes that the Companies provided no information as to why they are unable to confirm all the component parts of an order before issuing a confirmed due date. The Commission notes that the industry agreed to the timeframes set out for the interval between the receipt of an LSR and the issuance of an LSC.

54. The Commission is the view that if there are issues that need to be addressed with respect to the time period between the receipt of an LSR by the Companies and the issuance of an LSC by the Companies then it is open to the Companies to raise the matter in CISC and/or file an application with the Commission seeking changes.

55. With respect to the alleged error of fact raised by the Companies, the Commission has reviewed consensus report BPRE028a and non-consensus report BPRE030a and agrees with the Companies that the BPWG's positions on facilities shortages and indicator 1.13 are as set out in their application. The Commission has also reviewed Decision 2003-72 and considers that it did mischaracterize the BPWG submission for indicator 1.13 when indicator 1.13 was incorrectly placed together in the same paragraph with indicator 1.12 and identified as one non-consensus item related to facility shortages.

56. However, the Commission is of the view that its error was not material to its decision to not exclude from the calculation of an ILEC's results those cases where the ILEC failed to meet its commitment due to a lack of facilities. The Commission's decision on this issue was not based on the mistaken belief that there was a lack of consensus on this point.

57. In Decision 2003-72, the Commission, as part of its determination on indicator 1.13, reversed its determination in Decision 2001-366 and Decision CRTC 2001-636, 5 October 2001 on the issue of lack of facilities with respect to indicators 1.8 and 1.9, which had also been a BPWG consensus item, in order to encourage the ILECs to verify the availability of facilities prior to issuing the LSC. The Commission stated that

> a provisioning ILEC should confirm the availability of all the constituent elements of an order, including unbundled loops, feeder capacity, and line cards, prior to providing the CLEC with a due date for its order. If an ILEC were not to proceed on this basis, then the due date communicated to the CLEC could not be relied upon. This would defeat the purpose of providing a due date and undermine the very purpose of a quality of service regime (i.e., to ensure reliable, timely provision of services).

58. The Commission also added the following in Decision 2003-72:

> The Commission is of the view, however, that a confirmed due date should have a binding effect and that any order with a confirmed due date that has not been delivered on that date, should be included in the measurement of

the associated indicator.

Accordingly, the Commission establishes as a fundamental operating principle for Q of S business rules and their corresponding indicators, that when an ILEC provides a due date to a service provider, that date becomes binding on the ILEC for all purposes such that missing a due date for any reason including the lack of facilities will be counted as a miss.

59. Accordingly, the Commission considers that its mischaracterization of the BPWG's position was not material to the determinations set out in Decision 2003-72 for indicator 1.13, and **denies** the Companies' request to modify the business rules and measurement method of that indicator.

60. The Commission remains of the view that its determinations in Decision 2003-72 are still valid and the concept of a confirmed due date from an ILEC to a competitor for both the main and trailing indicators holds the ILEC to those dates.

Basic principle relating to the fundamental relationship between main and trailing Q of S indicators

61. The Commission notes that the concept of a trailing indicator was first established in Decision 2001-366 in response to CLEC requests that orders that were not completed on their confirmed due dates should also be measured. This concept has continued as new indicators that measure order or repair completions against a confirmed due date were added to the Q of S framework.

62. The Commission notes that all five trailing indicators have standards set at 90 percent to allow for unforeseen or exceptional occurrences that might preclude the confirmed due date from being met. The Commission also notes that the calculation of a trailing indicator is set out in Decision 2005-20 as follows:

- The numerator equals the total number of orders measured by the main indicator that have been completed within the month, within an extra one or five working days of the confirmed due date; and

- The denominator equals the total number of orders measured by the main indicator completed within the month for which a confirmed due date has been missed.

63. The Commission notes that in establishing the competitor RRP in Decision 2005-20, it stated that an ILEC should not be punished twice for a single order that may be measured by more than one indicator; therefore, as a consequence, each Q of S indicator measures its own separate activity.

64. The Commission notes that, in this application, the Companies have proposed to vary Decision 2005-20 to amend the measurement method for trailing indicators in order to relieve a strained relationship between the trailing indicators and the main indicators. The Companies have proposed to set the numerator for the trailing indicator at the total number of orders completed either on or before one working day of the confirmed due date and the denominator as the total

number of orders in the month.

65. In the Commission's view, the Companies' proposed new measurement method for the trailing indicators would remove the strained relationship between trailing indicators and main indicators but it would, however, result in the double counting of orders. The effect of this double counting would be to raise the numerator closer to the denominator value to make the standard easier to meet and if the ILEC passes the standard for the main indicator, the trailing indicator standard would be automatically passed without any additional effort. The Commission considers, therefore, that the Companies' proposed new measurement method has been mathematically structured just to allow them to pass the trailing indicator without dealing with the issue of missed orders beyond the confirmed due date, thereby effectively eliminating the trailing indicators.

66. The Commission is of the view that in establishing the measurement relationship between the trailing indicators and main indicators; rather than penalizing the Companies, it is adhering to its goal of achieving a more effective competitive framework by incenting the ILECs to complete as many CLEC orders as possible. The Commission considers that a confirmed due date through an LSC has a binding effect on the ILEC and is a trigger for the competitor to notify its potential customer of a service date. The Commission is still of the view that establishing the concept of a confirmed due date within both the trailing indicators and main indicators is a sound policy so as to minimize the number of orders that a competitor cannot fill within the time commitment on which the customer relies.

67. The Commission notes, however, that the Companies have submitted that it is difficult and perhaps unfair to expect them to meet the standard set for a trailing indicator if they exceed the standard of the main indicator. The Commission is, based on the record of this proceeding, concerned that the current Q of S framework does not provide a sufficient incentive to the ILECs to exceed the standards set for the main indicators.

68. The Commission is therefore adopting a modification to the competitor Q of S framework that adheres to the competitor Q of S principles established in Decision 2005-20, and that provides a greater incentive to the ILEC to continue to meet and exceed the standards set for the competitor Q of S indicators. The modified framework will utilize any orders completed above the 80 or 90 percent standard set out for a main indicator, in the calculation of the trailing indicator. The Commission considers that this approach will achieve two results. One, a CLEC will have greater certainty that its orders will be completed on the confirmed due date as measured by a main indicator. Two, an ILEC will be able to meet the standards for the trailing indicators in those cases where this is warranted based on its combined performance on the trailing indicators and main indicators.

69. Accordingly, the Commission **denies** the Companies' proposed new measurement method for the trailing indicators for the reasons noted above. However, the Commission determines that local exchange carriers (LECs) that are required to file competitor Q of S results can use any excess of completed orders above the number of orders required to meet the standard for a main indicator in calculating and reporting the result for a trailing indicator. In filing their competitor Q of S results with the Commission and the appropriate competitors, LECs are required to show the actual results for the main indicator that exceeds its standard and the excess of orders

to be carried over to the trailing indicator.

70. In its review of the Q of S results filed by the Companies, the Commission notes that in certain indicator measurement calculations there may be other disincentives to providing high quality service to competitors. The Commission notes, by way of example, the calculation method when dealing with small volumes of orders where a single missed order causes an ILEC to fail the standard for an indicator. Another circumstance relates to whether there is an incentive for an ILEC to never complete an order which has missed the service interval for a trailing indicator because it would attract a payment under the RRP only when it is completed.

71. The Commission considers that CISC is the best forum to review the measurement methods noted above, and propose solutions to those two issues, and any other potentially problematic circumstance related to calculating Q of S indicator results, in a report to the Commission. Accordingly, the Commission directs CISC to review the measurement methods of the Q of S indicators affected by the circumstances described above and report back to the Commission with solutions, including solutions to the other circumstances, if any, raised within CISC, within 90 days of this Decision.

Error of law in finalizing the existing interim Q of S indicators without further public process

72. The Commission agrees with the position taken by the Companies that Commission staff had indicated to the BPWG in meetings leading up to the issuance of non-consensus report BPRE030a that a further public process would be initiated. The Commission notes that this commitment by Commission staff may have created an expectation of further Commission process to review the competitor Q of S indicators.

73. The Commission notes that it decided in Decision 2003-72 to finalize the interim Q of S indicators without any further public process and that while it did hold a subsequent public proceeding, pursuant to *Finalization of the Quality of Service rate adjustment plan for competitors*, Telecom Public Notice CRTC 2003-9, 30 October 2003, which dealt with the finalization of the RAP for competitors, that proceeding did not involve a full review of the Q of S indicators.

74. The Commission considers, however, that in this proceeding the Companies have had an opportunity to, and did, address the changes they considered should be made to the trailing indicators. The Commission has analyzed the arguments raised by the Companies in this application on their merits rather than holding the Companies to the normal review and vary standard. The Commission considers that as the Companies' arguments on the Q of S indicators are assessed on their merits in this Decision, the Companies have had a full opportunity to make submissions and to have the Commission deal with the issues arising from those submissions in the same manner as if there had been a further public process after Decision 2003-72.

75. Accordingly, the Commission determines that, through this application, the Companies have had the opportunity to make submissions on their competitor Q of S issues that they believed they were unable to make before the Q of S indicators were finalized in Decision 2003-72.

Other issues

Indicator 2.7A

76. The Commission notes that indicator 2.7A was given interim approval in Decision 2001-366 with a 90 percent standard as per the recommendations set out by CISC in consensus report NORE024c. In Decision 2003-72, the Commission established a service interval of 24 hours and approved the indicator on a final basis with a new standard of 100 percent and a revised definition to reflect the new service interval. The Commission notes that the comments in Decision 2003-72 from the Companies focused on what standard should be set and the indicator's definition and that the business rules associated with indicator 2.7A do not mention the presence or lack of facilities.

77. In Decision 2005-20, the Commission modified indicator 2.7A by setting the standard back to 90 percent and including in the definition local network interconnection trunks provisioned as per indicators 1.11 and 1.11A. The Commission notes that the comments with respect to indicator 2.7A from the Companies in Decision 2005-20 focused on whether the 100 percent standard was appropriate.

78. The Commission notes that in the Companies' application, no support for their argument was presented to modify the business rules for indicator 2.7A. In reply, the Companies did, however, present examples of scenarios where a lack of facilities could result in not meeting the standard for indicator 2.7A.

79. The Commission is of the view that the Companies have not presented sufficient rationale to modify the business rules for indicator 2.7A. In particular, the Companies have not demonstrated that the existing exclusion mechanism, set out in Decision 2005-20, is inadequate to address the examples given by the Companies. The Commission is of the view that just describing a number of instances where meeting the standard for the indicator may be problematic is not sufficient to support an allegation that the business rules for indicator 2.7A should be modified.

80. Accordingly, the Commission **denies** the Companies' request to modify the business rules for indicator 2.7A.

Need for additional Q of S standards

81. The Commission notes that RCI requested additional Q of S standards to track the aging of no-facilities situations especially if the Commission determines that orders where no facilities exist should not be counted in the measurement of indicator 1.13.

82. The Commission considers that RCI's proposal is outside the scope of this application and, accordingly, rejects RCI's request to consider the issue of new Q of S indicators to track the aging of orders that were not completed due to a lack of facilities.

Secretary General

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