



Telecom Decision CRTC 2007-14

Ottawa, 28 February 2007

TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors for July 2005

Reference: 8660-T66-200606759

In this Decision, the Commission approves TELUS Communications Company's (TCC) request to exclude competition-related quality of service (CQ of S) indicators 1.9, 2.7, 2.9 and 2.10 from the rate rebate plan for competitors for July 2005 due to flooding in southern Alberta in June 2005. The Commission denies TCC's request to exclude CQ of S indicators 1.8, 1.11, 1.13 and 2.7A for the same period.

The Commission considers that TCC is eligible for a refund of the rate rebate amounts that it paid to competitors for substandard CQ of S performance results in July 2005 for indicators 1.9, 2.7, 2.9, and 2.10.

The application

1. On 29 May 2006, the Commission received an application by TELUS Communications Company (TCC) requesting that the Commission exclude eight competition-related quality of service (CQ of S) indicators from the rate rebate plan (RRP) for competitors for July 2005. TCC stated that flooding in southern Alberta during June 2005 had affected the following CQ of S indicators for July 2005:¹
 - Indicator 1.8 – New Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.8);
 - Indicator 1.9 – Migrated Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.9);
 - Indicator 1.11 – Competitor Interconnection Trunk Order Service Interval Met (indicator 1.11);
 - Indicator 1.13 – Unbundled Type A and B Loop Order Late Completions (indicator 1.13);
 - Indicator 2.7 – Competitor Out-of-Service Trouble Reports Cleared within 24 Hours (indicator 2.7);

¹ The RRP for competitors was finalized in Decision 2005-20 and became effective on 1 July 2005, hence no request for exclusion in June 2005 when the floods occurred.

- Indicator 2.7A – Competitor Out-of-Service Trouble Report Late Clearances (indicator 2.7A);
- Indicator 2.9 – Competitor Degraded Trouble Reports Cleared within 48 Hours (indicator 2.9); and
- Indicator 2.10 – Mean Time to Repair (MTTR) – CDN [Competitor Digital Network] Services and Type C Loops (indicator 2.10).

Background

2. In *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005 (Decision 2005-20), the Commission established a final RRP for competitors, effective 1 July 2005. The final RRP included 14 CQ of S indicators. The Commission noted that the purpose of the quality of service regime for competitors, including the RRP for competitors, was to ensure that all competitors received a quality of service from the incumbent local exchange carriers (ILECs) of a sufficiently high level to enable them to compete on a level playing field with the ILECs.
3. In Decision 2005-20, the Commission created a mechanism for considering possible exclusions from CQ of S results where circumstances beyond the control of an ILEC might have caused it to fail to meet a performance standard. The Commission determined that if an ILEC believed that a performance failure for certain CQ of S indicators was due to circumstances beyond its control, the ILEC could file an exclusion application within 21 days of the end of the adverse event. The Commission added that exclusions would best be dealt with on a case-by-case basis.
4. The Commission determined that an exclusion application should contain the following elements:
 - identification of the adverse event for which exclusion is sought;
 - identification of the effects of the adverse event on specific CQ of S indicators; and
 - the proposed adjustments to those CQ of S results.

Process

5. On 22 July 2005, the Commission received a letter from TCC advising the Commission of the flooding during the previous month. TCC noted in the letter that it would submit an exclusion application at a later date since it was still assessing the effects of the flood damage on specific CQ of S indicators.
6. On 14 September 2005, TCC advised the Commission that due to a labour disruption involving its unionized clerical and craft personnel in Alberta and British Columbia, it was still unable to measure the effects of the flood damage.

7. On 29 May 2006, TCC filed its exclusion application regarding the floods in southern Alberta and copied the parties to *Finalization of the Quality of Service rate adjustment plan for competitors*, Telecom Public Notice CRTC 2003-9, 30 October 2003. MTS Allstream filed comments on 29 June 2006 and TCC filed reply comments on 25 July 2006.

Positions of parties

1) Identification of the adverse event for which an exclusion is sought

8. TCC noted that the flooding that had occurred between 7 and 30 June 2005 in southern Alberta had caused widespread and severe damage to roads, sewers, bridges and buildings, and had forced the evacuation of residents from their homes. TCC also noted that a state of emergency had been declared in many cities and towns, including Calgary and Edmonton.
9. MTS Allstream did not specifically comment on the floods but noted that the application had been filed 10 months after the end of the event.

2) Identification of the effects of the adverse event on specific CQ of S indicators

10. TCC submitted that during the flooding, repair functions measured by indicators 2.7, 2.7A, 2.9 and 2.10 had taken precedence over installation functions measured by indicators 1.8, 1.9, 1.11 and 1.13.
11. TCC indicated that digging trenches and provisioning facilities throughout the affected areas had not been possible, safe or practical. It noted that installation and repair technicians had worked around the clock to prevent, minimize and repair damage to its facilities, and to restore service to affected customers. TCC also noted that repair crews had often been unable to reach damaged sites until flood waters had receded and roads and bridges had been repaired, and that in many instances service had first been restored on a temporary basis.
12. TCC indicated that it had reassigned staff to locations affected by the floods to assist in cleaning up damaged sites and restoring service. TCC noted that during its attempts to manage the effects of the floods, it could not adequately address a growing backlog of service requests. TCC submitted that even after the flood waters had receded and permanent repairs to damaged plant and equipment had been completed, a considerable backlog of other repair work and installation orders had remained.
13. TCC indicated that conducting repairs at a flood-damaged site was very different and more time-consuming than conducting normal repairs. TCC noted that cabinets and other infrastructure damaged by flooding had to be cleared of water, debris and mud, and each piece of equipment in the cabinets had to be cleaned and dried. TCC submitted that this work had to occur before damage could be assessed and permanent repairs could proceed.
14. TCC submitted that the adverse event had generally had a negative impact on its operations, resulting in below-standard average performance for eight CQ of S indicators during the affected period. TCC also submitted that although the adverse event might have affected its performance on all CQ of S indicators, its application addressed only those indicators for which its performance had been below standard for the affected period and might have resulted in rate rebates.

15. According to TCC, even if the out-of-service call volume had not increased during the flooding as customers called to report service outages, its performance for indicators 2.7, 2.7A, 2.9 and 2.10 would have declined simply because flood-related repair activities were more time-consuming than most other repair activities.
16. TCC submitted that the impact of the flooding on the repair functions had extended into the third week of July 2005. According to TCC, once outages caused by the flooding had been cleared, it had started to deal with the backlog of out-of-service and degraded trouble reports that it had been unable to address within the prescribed 24 or 48 hours, as measured by indicators 2.7, 2.7A and 2.9.
17. TCC noted that the backlog had been effectively addressed before a labour disruption began on 21 July 2005.

MTS Allstream

18. MTS Allstream submitted that TCC had failed to demonstrate that it had responded reasonably to the flooding by increasing field service resources in the affected areas. MTS Allstream also submitted that TCC had not provided any explanation or justification for adjusting its CQ of S results for the days prior to the flooding and after the lifting of the flood advisory.

3) Proposed adjustments to CQ of S results

TCC

19. TCC proposed a methodology that, according to the company, excluded the effects of the flooding from its performance for a particular CQ of S indicator. TCC noted that it had compared its performance for each CQ of S indicator between January and May 2005 to its performance between January and May 2004, deriving an average ratio by which it would have expected its 2005 results to differ from its 2004 results. TCC submitted that it had then applied this performance difference ratio to its 2004 monthly CQ of S results to derive what its 2005 monthly CQ of S results would have been without the flooding.
20. TCC submitted that this methodology removed the effect of the flooding and took into account seasonal variations in volume and type of repair and installation work that were a major cause of month-to-month variations in CQ of S results. TCC suggested that this adjustment might or might not have yielded an above-standard CQ of S result or a rate rebate under the RRP.
21. TCC noted that it had used this methodology to calculate an adjustment to its CQ of S results for the affected period regarding seven of the eight indicators addressed in its application. TCC also noted that indicator 2.10 was a new indicator that had not been measured prior to July 2005.
22. TCC submitted that the repair function measured by indicator 2.10 was very similar to the one measured by indicators 2.7 and 2.7A. TCC noted that indicator 2.10 measured the speed at which out-of-service trouble reports regarding CDN services and Type C loops were resolved, while indicators 2.7 and 2.7A measured the same function regarding Type A and B loops.

TCC also submitted that in both cases service outages could be resolved only after the flood waters had receded. TCC reiterated that even after the flood waters had receded, accessing repair sites had been difficult and repairs challenging.

23. TCC noted that its results for indicator 2.7 had scored above standard when adjusted. TCC submitted that once the effects of the flooding had been taken into account, there was a good chance that the results for indicator 2.10 would also have been above standard. TCC also submitted that because it did not have the data required to adjust the results for indicator 2.10 to remove the effects of the flooding, the results for indicator 2.10 during the affected period should be excluded from the rate rebate calculation.
24. TCC submitted that the results for the month of July 2005 had also been affected by a labour dispute that had begun on 21 July 2005. TCC noted that it had estimated what its results for the last 11 days of July 2005 would have been without the labour dispute by calculating its average daily performance for the first 20 days of July 2005 and then extrapolating to the end of the month. TCC indicated that this assumed that without the labour disruption its performance during the last 11 days of July 2005 would have mirrored its performance during the first 20 days.
25. TCC submitted that its proposed methodology would adjust its CQ of S results for the month of July 2005 to exclude the effects of the 2005 floods in southern Alberta, as follows:

Indicator	Standard	TCC's recorded actual result	TCC's proposed result
1.8	90%	86%	82%
1.9	90%	72%	* 93%
1.11	90%	33%	78%
1.13	90%	46%	55%
2.7	80%	72%	* 91%
2.7A	90%	33%	57%
2.9	90%	83%	* 96%
2.10	<4 hours MTTR	12.5 hours	Exclude

* Above-standard adjusted CQ of S results

MTS Allstream

26. MTS Allstream submitted that TCC's application should be denied since its proposed methodology consisted of replacing, rather than excluding, 2005 CQ of S results with numbers based on the prior year's results. MTS Allstream was of the view that this methodology gave better results for June and July 2005 when compared to the average results for the five months preceding June 2005. MTS Allstream argued that the proposed replacement of 2005 results did not respect the principle of exclusion described in Decision 2005-20. MTS Allstream also argued that TCC should not be permitted to substitute improved results for a period in which its actual CQ of S results were substandard.

27. MTS Allstream noted that under TCC's proposed methodology, TCC had calculated an above-standard performance result for indicator 1.9, but then had excluded the result for indicator 2.10 because replacement results were not available. MTS Allstream submitted that TCC had chosen the methodology best suited to providing it with a favourable outcome.

TCC's reply comments

28. Regarding MTS Allstream's allegation that TCC had failed to demonstrate that it had responded reasonably to the flooding, TCC submitted that Decision 2005-20 did not state that adjudication of exclusion applications was dependent upon the efficiency of the ILEC's operations. TCC indicated that it had needed to restore service as quickly as possible after the flooding in order to protect the company's brand and reputation, and to retain customers in an increasingly competitive environment.
29. Regarding the period claimed, TCC submitted that it had not requested an exclusion from the RRP for June 2005 since the RRP had only taken effect on 1 July 2005.
30. Regarding the methodology used for calculating proposed adjustments to CQ of S results, TCC submitted that Decision 2005-20 did not prescribe a particular methodology and that its methodology was therefore entirely in accord with that Decision. TCC argued that it had not chosen the methodology best suited to providing it with a favourable outcome and that the results exclusion methodology that MTS Allstream had advocated would have been more favourable to TCC.

Commission's analysis and determinations

31. The Commission notes that under TCC's proposed methodology, the company's adjusted results did not make it subject to any rate rebate for July 2005 for CQ of S indicators 1.9, 2.7, 2.9 and 2.10. The Commission also notes that TCC consequently requested to exclude those CQ of S indicators from the RRP for that month.
32. The Commission also notes that TCC's proposed methodology removes, according to the company, the effects of the flood damage on provisioning and repair functions by looking at partial year-over-year ratios and monthly trends of those functions applied to previous year CQ of S data.
33. The Commission considers that TCC's application raises the following issues:
- Should TCC's application be dealt with, considering its late filing date?
 - Do the June 2005 floods in southern Alberta qualify as an adverse event?
 - To what extent were TCC's CQ of S indicators affected by this adverse event and for what period of time?
 - Is TCC's proposed ratio calculation methodology acceptable?

- Which CQ of S indicators should be excluded from the RRP and for how long?
- How should rebates be refunded?

Should TCC's application be dealt with, considering its late filing date?

34. The Commission notes that MTS Allstream indicated that TCC's application was filed 10 months after the end of the adverse event. The Commission also notes that in Decision 2005-20 it allowed the ILECs 21 days from the end of an adverse event to submit an exclusion application.
35. The Commission further notes that TCC notified it within 21 days of the adverse event – on 22 July 2005 – that it intended to file an exclusion application once the measurement of the effects of the flood damage on its CQ of S results was possible. In addition, on 14 September 2005, TCC advised the Commission that its exclusion application regarding the floods would be further delayed because of a labour disruption.
36. The Commission considers that TCC's delay in filing of its application is justified under the circumstances. Accordingly, the Commission concludes that TCC's application should be considered.

Do the June 2005 floods in southern Alberta qualify as an adverse event?

37. The Commission notes that while MTS Allstream alleged that TCC could have done more to mitigate the effects of the flood damage, it did not dispute that the floods were an adverse event beyond TCC's control. The Commission considers that TCC provided sufficient information on the extent of the floods in southern Alberta to demonstrate that the event was beyond its control.
38. The Commission therefore determines that the June 2005 floods in southern Alberta qualify as an adverse event.

To what extent were TCC's CQ of S indicators affected by this adverse event and for what period of time?

39. The Commission notes that the floods, which started on 7 June 2005 and left over 3,000 customers without service, required TCC to review and set priorities to ensure that service was restored to customers as soon as possible. The Commission agrees with the view that flood-recovery is a difficult and time-consuming operation that requires more effort and resources than normal. The Commission considers it reasonable that the reassignment of resources to deal with the effects of the flood damage contributed to the creation of a backlog of provisioning orders and repair reports in TCC's operating territory, which the Commission notes was not cleared until 21 July 2005.

40. Based on the above, the Commission considers that TCC's substandard performance results for its provisioning and repair activities are causally linked to the June 2005 floods in TCC's operating territory. The Commission therefore determines that CQ of S indicators 1.8, 1.9, 1.11, 1.13, 2.7, 2.7A, 2.9 and 2.10, which deal with TCC's provisioning orders and repair reports, were adversely affected by the June 2005 floods in southern Alberta.
41. The Commission notes that TCC submitted that it had recovered from the effects of the floods by 21 July 2005, theoretically restricting the exclusion period to the first 21 days of July 2005.
42. However, the Commission notes that the CQ of S framework is based on a monthly interval and that ILECs file monthly CQ of S performance results. The Commission considers that any attempt to prorate adjustments would have to assume that the volumes of orders/trouble reports are constant in nature, which is not the case for either provisioning or repair activities. The Commission also considers that it would be difficult for both ILECs and competitive local exchange carriers to administer a prorated performance for a period of less than one month.
43. In light of the above, the Commission determines that the eligible exclusion period for the June 2005 floods is the entire month of July 2005.

Is TCC's proposed ratio calculation methodology acceptable?

44. The Commission notes that TCC proposed a methodology to normalize its CQ of S performance results for the months affected by the June 2005 floods by adjusting the results for seven indicators for June and July 2005 based on past results, and by excluding results for one indicator due to lack of data.
45. The Commission notes that TCC submitted that its methodology accounted for seasonal variations in the volume and type of repair and installation work that were a major cause of month-to-month variations in CQ of S results. The Commission considers that looking at an ILEC's past CQ of S performance has merit when evaluating an exclusion application. However, the Commission considers that TCC's proposed methodology to normalize its CQ of S results for July 2005 is not appropriate.
46. The Commission notes that the volume of provisioning or repair orders varies from month to month. The Commission considers that the volume in 2004 and the volume in 2005 cannot be assumed to track equivalently to allow accurate recalculated results.
47. The Commission notes that TCC's CQ of S results in 2004 were not always above standard. The Commission considers that TCC's attempt to derive a result from a poor performance in 2004 by using a partial year-over-year performance ratio to calculate a performance level in 2005 may not take into account the factors that drove that poor performance in the first place.
48. In addition, the Commission considers that deriving a result from a better-than-standard performance in 2004 in order to calculate a performance level in 2005 may artificially and inappropriately inflate the 2005 performance level. In light of the above, the Commission rejects the results obtained with TCC's proposed ratio calculation methodology.

49. The Commission notes, however, that TCC recognized that it has not always been able to meet the CQ of S standards in the past. The Commission also notes that in support of its exclusion application, TCC looked at past performance history.
50. Although the Commission does not accept TCC's proposed methodology to normalize its CQ of S performance results using a ratio calculation, the Commission considers that it would be appropriate, in this application, to compare an ILEC's performance under adverse circumstances to its past performance under normal circumstances, in order to determine whether exclusion for relevant indicators should be granted or not.
51. The Commission considers that by reviewing CQ of S results from the period directly preceding the adverse event, it can better assess whether or not the floods had a direct effect on TCC's ability to meet the CQ of S indicators. In the Commission's view, if an ILEC has successfully met or exceeded its CQ of S indicator results for at least six out of twelve months, or for three consecutive months immediately prior to an adverse event, then it would be reasonable to conclude that the ILEC would likely have met its CQ of S obligations without the adverse event.
52. The Commission considers, therefore, that if TCC's CQ of S performance shows that the standard was met or exceeded either for at least six months out of the twelve months, or for three consecutive months, immediately prior to June 2005, it is likely that TCC would have met or exceeded the standard for that indicator in June and July of 2005.

Which CQ of S indicators should be excluded from the RRP and for how long?

53. In order to determine which CQ of S indicators should be excluded from the RRP, the Commission examined performance results for the twelve months prior to June 2005 for the eight CQ of S indicators that TCC submitted had been affected by the floods. The Commission then considered whether or not the floods might have had an impact on TCC's ability to meet its CQ of S indicators' standards. After reviewing the CQ of S results filed by TCC, the Commission finds that TCC was not meeting all CQ of S standards consistently before the June 2005 floods – for either the prior three months or for at least six of the previous twelve months.
54. In light of the above, the Commission considers that without the floods:
 - it is unlikely that TCC would have met or exceeded the CQ of S standards for indicators 1.8, 1.11, 1.13 and 2.7A, since the performance results were below standard for more than six of the twelve months prior to the June 2005 floods or, alternatively, the performance results did not meet or exceed the standards for the three months prior to the same date; and
 - TCC would likely have met or exceeded the CQ of S standards for indicators 1.9, 2.7 and 2.9, since the performance results for at least six of the twelve months prior to the June 2005 floods were above standard.

55. Accordingly, the Commission **denies** TCC's exclusion request for indicators 1.8, 1.11, 1.13 and 2.7A, but **approves** its exclusion request for indicators 1.9, 2.7 and 2.9 for the eligible exclusion period. Therefore, the Commission directs TCC to exclude CQ of S indicators 1.9, 2.7 and 2.9 from the RRP for July 2005. The Commission notes that TCC has already included CQ of S indicators 1.8, 1.11, 1.13 and 2.7A results in the RRP calculation for July 2005.
56. The Commission notes that indicator 2.10 was only included in the RRP effective 1 July 2005 and that it was not possible to analyse the results for the period before the floods because no data was available. The Commission agrees with the view that the repair function measured by indicator 2.10 is very similar to the one measured by indicator 2.7, since both indicators deal with repairing failed loops and/or services.
57. The Commission considers that the performance result of indicator 2.10 would have been similar to that of indicator 2.7 under similar circumstances and, therefore, it should be treated in the same way as indicator 2.7 for exclusion purposes. Accordingly, the Commission grants TCC exclusion for indicator 2.10, similar to indicator 2.7, for July 2005 and directs TCC to exclude CQ of S indicator 2.10 from the RRP for that period.

How should rebates be refunded?

58. The Commission notes that TCC paid all of the appropriate rate rebate amounts to competitors prior to filing its exclusion application. The Commission considers that TCC is eligible for a refund of the rate rebate amounts that it paid to competitors for substandard CQ of S performance results in July 2005 for indicators 1.9, 2.7, 2.9 and 2.10.
59. The Commission determines that TCC may deduct these amounts from future rate rebate amounts due to competitors. If no rate rebate amounts are due to those competitors in the quarter that this Decision is released, TCC may recover these amounts within a reasonable time frame not to exceed three months from the date of this Decision.

Secretary General

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