



## Telecom Decision CRTC 2007-29

Ottawa, 3 May 2007

### **TELUS Communications Company – Application to exclude certain quality of service results from the retail quality of service rate adjustment plan from 1 July 2002 to 31 December 2003**

Reference: 8660-T66-200505159

*In this Decision, the Commission determines that TELUS Communications Company (TCC) is to exclude quality of service indicators 2.1A, 2.2A, and 2.5 from the retail quality of service rate adjustment plan for the periods in 2003 that were affected by forest fires, floods, and a cable cut. The Commission directs TCC to adjust the results for indicators 1.5, 2.1B, and 2.2B and to provide a customer credit to customers of record as of the date of this Decision.*

*The dissenting opinions of Commissioners French, Arpin and Noël are attached.*

#### **The application**

1. On 26 April 2005, TELUS Communications Inc., now TELUS Communications Company (TCC),<sup>1</sup> filed an exclusion application requesting adjustments to quality of service (Q of S) results for four indicators due to three adverse events. These events were forest fires in the interior of British Columbia and south-western Alberta from mid-July to September 2003, a cable cut in Vancouver on 22 October 2003, and floods in the lower mainland of British Columbia during the same week as the cable cut. TCC noted that these events had occurred during a compressed timeframe in the first interim rate adjustment period, 1 July 2002 to 31 December 2003. The four indicators and the affected months of 2003 are:
  - 2.1A (urban) and 2.1B (rural) – Out-of-service Trouble Reports Cleared Within 24 Hours (August to December for indicator 2.1A, and August to November for indicator 2.1B);
  - 2.2A (urban) and 2.2B (rural) – Repair Appointments Met (August to October, and December, for indicator 2.2A, and August to December for indicator 2.2B);
  - 1.5 – Access to Business Office (July to October); and
  - 2.5 – Access to Repair Bureau (July to October).

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<sup>1</sup> Effective 1 March 2006, TELUS Communications Inc. assigned and transferred all of its assets and liabilities, including all of its service contracts, to TCC.

## **Background**

2. *In Retail quality of service rate adjustment plan and related issues*, Telecom Decision CRTC 2005-17, 24 March 2005 (Decision 2005-17), the Commission finalized the retail Q of S rate adjustment plan (RAP) for the large incumbent local exchange carriers (ILECs). The Commission set out two rate adjustment periods, 1 July 2002 to 31 December 2003 and 1 January to 31 December 2004, for the calculation of the RAP to address the interim period. It determined that under the final plan, rate adjustments would be calculated on an annual basis beginning 1 January 2005.
3. No changes were made to the 13 Q of S indicators used in the interim RAP. The total maximum adjustment value for all of the indicators continues to be set at five percent of local service revenues, with the maximum adjustment value for each indicator being 1/13th of this amount. Indicators with an urban and rural component are considered to be a single indicator for this purpose. The ILECs' performance on the indicators continues to be tracked monthly with rate adjustments assessed based on the average performance of each indicator during each rate adjustment period.
4. In Decision 2005-17, the Commission determined that it was appropriate to include a mechanism whereby Q of S performance failures might be excluded from the ILECs' Q of S results. The Commission also determined that such an exclusion mechanism should be sufficiently flexible to accommodate the effects of natural disasters and other adverse events that, by their very nature, were unpredictable and beyond the reasonable control of an ILEC. The Commission further determined that each adverse event, whether a natural disaster, act of terrorism, or labour disruption, should be assessed in light of the surrounding circumstances, and any modifications to the Q of S results for the purposes of the RAP should be determined on a case-by-case basis.
5. In addition, the Commission determined that any exclusion applications must identify the following: (1) the adverse event for which an exclusion is sought; (2) the effects of the adverse event on specific Q of S indicators; and (3) the proposed adjustments to those Q of S results.
6. The Commission invited the ILECs to file exclusion applications by 25 April 2005 with respect to adverse events affecting Q of S indicators during the interim period of the rate adjustment regime. Parties were given until 9 May 2005 to comment and reply comments were due by 16 May 2005.

## **Process**

7. On 25 April 2005, TCC notified the Commission and interested parties to *Retail quality of service rate adjustment plan and related issues*, Telecom Public Notice CRTC 2003-3, 27 March 2003 (Public Notice 2003-3), that due to circumstances beyond the company's control, it would not be filing an exclusion application on that date, but anticipated filing one no later than 27 April 2005.

8. On 26 April 2005, TCC filed its exclusion application under the interim plan. The Consumers' Association of Canada, the National Anti-Poverty Organization, and l'Union des consommateurs (the Consumer Groups) filed comments on 9 May 2005. TCC filed reply comments on 16 May 2005, which it subsequently revised on 19 May 2005.
9. The Commission issued interrogatories to TCC on 24 February 2006. On 22 March 2006, TCC requested an extension to 24 April 2006 to respond to the interrogatories. The extension was granted and TCC filed its responses on 24 April 2006.

## **Positions of parties**

### **1) Identification of the adverse event for which an adjustment or exclusion is sought**

#### *TCC*

##### *Forest fires*

10. According to TCC, the 2003 forest fire season had been the most severe in British Columbia in 50 years, destroying significant amounts of physical plant and leaving over 5,000 customers without service. TCC noted that on 1 August 2003, the Government of British Columbia had declared a province-wide state of emergency that remained in effect until 14 September 2003.

##### *Cable cut*

11. TCC submitted that a third party doing construction work on a lot adjacent to a TCC conduit structure had cut a major cable in Vancouver, disrupting service to approximately 10,000 customers and necessitating the redeployment of staff to restore service. The company indicated that accessing the 10,000 pairs of copper cable to restore service had required unusual effort, with a large number of technicians working continuously, digging through 60 feet of concrete conduit structure, 14 feet below ground level, to reach the copper cables. It also indicated that once the cables were reached, they had to be individually matched, spliced, and tested.

##### *Floods*

12. TCC submitted that according to Environment Canada, the monsoon-like rains, which had fallen at a rate of 40 millimetres per hour in some areas, had been the "heaviest deluge of rain to hit the West Coast in 200 years," breaking rainfall records in numerous locations. It submitted that the floods had resulted in approximately 1,200 people being evacuated from their homes in late October 2003 and had caused damage to major fibre optic transport facilities between Whistler and Pemberton.
13. The company indicated that customers had been without service for extended periods since crews were unable to reach damaged sites until the water receded and roads and bridges were repaired. In addition, TCC submitted that it had provided hundreds of emergency phone lines to emergency operations centres, which had diverted personnel from repair activities.

### *The Consumer Groups*

14. The Consumer Groups agreed that the events identified by TCC fit within the Commission's criteria as adverse events.

### **2) Identification of the effects of the adverse event on specific Q of S indicators**

#### **TCC**

##### *Forest fires*

15. TCC submitted that the forest fires had had an extensive effect on its plant and operations, with 80 kilometres (km) of optical fibre and 100 km of copper cable and associated support structures having been damaged or destroyed. It also submitted that the destruction of provincial power facilities had resulted in battery backup being depleted and service being disrupted until power was restored. The company submitted, further, that permanent repairs had been delayed as new fires flared up.
16. TCC indicated that staff in emergency operations centres had worked around the clock to restore service. It also indicated that during this period, it had experienced unusually high call volumes, both from customers requesting repairs and from individuals attempting to determine the well-being of family, friends, and property in the affected areas.
17. TCC submitted that its inability to meet the indicators that measured call centre functions – that is, to answer calls made to the repair bureau within 20 seconds (indicator 2.5) and to answer calls made to its business office within 20 seconds (indicator 1.5) – was the most immediate consequence of the forest fires, with the primary impact occurring during July, August, September, and October 2003. It also submitted that the indicator had been affected as the series of fires occurred, and had continued to be affected as the fires were brought under control and customers expected service restoration to particular areas. In TCC's view, the duration of repair calls may have been longer than usual owing to the unique and grave nature of the service-affecting events.
18. TCC submitted that the negative impact of the series of fires on its ability to meet the two indicators that measured repair functions – indicators 2.1 and 2.2 – had continued for a period of time and was multi-faceted for five reasons: 1) increased service outage and repair appointment volumes; 2) delays in accessing the damaged facilities; 3) unusual amounts of time required to address the damage; 4) reduced capacity in areas that had lent resources to this effort; and 5) backlogs created in both the affected areas and those that had lent resources to the affected areas.

##### *Cable cut*

19. TCC submitted that the cable cut had negatively affected call centre activities in October and repair functions into November and December of 2003.

### *Floods*

20. TCC submitted that the effect of the floods on call centre functions had occurred primarily in October, while the effect on repair activities had been more protracted, extending into November and December 2003.
21. With respect to indicator 2.1A and 2.1B, TCC stated that between June and September of 2003, the volume of cleared out-of-service trouble reports had increased by 61 percent and had remained elevated for the remainder of 2003.
22. With respect to indicator 2.2, TCC stated that the volume of completed repair orders from July through December of 2003, with the exception of August, had been markedly higher than during the other months of 2003. TCC also stated that between June and November 2003, the volume of completed repair orders had increased by 37 percent and had remained at elevated levels for the remainder of 2003.
23. With respect to indicator 2.5, TCC submitted that from June through October 2003 there had been a 43 percent increase in the volume of calls placed to the repair bureau and a 32 percent increase in the number of calls answered by the repair bureau. It also submitted that the increase in the duration of these customer calls, which it suggested was inevitable due to the gravity of the events and the extent of network and property damage, was reflected in the decline in the number of these calls that the repair bureau had been able to answer during August 2003.
24. TCC submitted that with respect to indicator 1.5, an elevated number of calls had been answered by the business office from July through October 2003. TCC also submitted that the increase was due to calls from customers who chose not to wait for a response from an overburdened repair bureau and instead called the business office, as well as calls from individuals concerned about friends, family, and property.

### *The Consumer Groups*

25. The Consumer Groups submitted that TCC was seeking adjustments to its Q of S results for a number of months when there was no meaningful difference between the volume of incidents handled in 2003 and the volume in the comparable months in either 2002 or 2004.
26. The Consumer Groups argued that while TCC was seeking to adjust the results for August to December 2003 for indicator 2.1A and August to November 2003 for indicator 2.1B, only the monthly volumes for September to November 2003 had been significantly different than the volumes in the same months in either 2002 or 2004.
27. With respect to indicator 2.2, the Consumer Groups submitted that TCC was seeking to adjust the results for August to October and for December 2003 for indicator 2.2A, and August to December 2003 for indicator 2.2B, even though only the monthly volumes for September to December 2003 had been greater than the volumes for 2002 or 2004.
28. For indicator 2.5, the Consumer Groups submitted that while TCC was seeking to adjust the Q of S results for this indicator for the period July to October 2003, when compared to similar months for 2002 and 2004, the call volumes had been significantly greater only in the months

of September and October 2003. The Consumer Groups further noted that while the call volumes for September and October 2003 had been significantly greater than the volume of calls answered in either 2002 or 2004, the volume of calls answered in August 2003 had been below the volumes experienced in either 2002 or 2004.

29. The Consumer Groups argued that while TCC was seeking to adjust the Q of S results for indicator 1.5 for the period July to October 2003, only the volumes in October 2003 had been significantly greater than the volumes in either 2002 or 2004.
30. The Consumer Groups stated that in addition to reviewing the incident volumes presented by TCC, they had also reviewed information supplied to the Commission as part of TCC's ongoing Q of S reporting requirements. In the Consumer Groups' view, this information did not support the extent or duration of the adverse impacts identified by TCC in its application.
31. The Consumer Groups noted that in TCC's response to the Commission's 16 June 2003 letter regarding the steps being taken to restore its Q of S results to the minimum standard, regarding indicator 1.5, the company had indicated that it had added new customer service representatives and that the positive impacts of these new employees would not be realized until they had been on the job for three months.
32. With respect to indicator 2.5, the Consumer Groups noted that TCC had indicated that its results for September 2003 had been affected by the reallocation of resources to assist with impacts caused by various severe network outages, network stability issues, and computer virus outbreaks.
33. The Consumer Groups submitted that in its November 2003 exception report, TCC had indicated that the standard for indicator 2.2A had been achieved for that month and would continue to be met. The Consumer Groups also noted TCC's expectation that the standard for 2.2B would be achieved by 31 December 2003. According to the Consumer Groups, it would be inappropriate to adjust the December results based on TCC's statement that the standard would be met in December.
34. Furthermore, the Consumer Groups noted that regarding indicators 2.1A and 2.1B, and 2.2A and 2.2B, TCC had indicated in the explanation in its October 2003 exception report that it had detected that the types of troubles reported were significantly different from previous trouble reports and that it was currently developing and implementing action plans to address the new types of troubles.
35. The Consumer Groups submitted that based on an assessment of TCC's volume data and the explanation and notes from TCC's Q of S results exception filings, as well as taking account of its substandard Q of S results for a number of the indicators leading up to the July to December 2003 timeframe, it would be inappropriate to approve TCC's application as filed.
36. The Consumer Groups submitted that in the alternative, it would only be appropriate to adjust the results for the following periods of 2003: indicator 2.5 (September and October); indicator 1.5 (October); indicator 2.2A (August, September, and October); and indicators 2.2B, 2.1A, and 2.1B (August, September, October, and November).

*TCC's reply*

37. TCC submitted that it had undertaken a rigorous process in which it had examined the adverse events and their consequences, considered the possible impacts of the adverse events upon its Q of S results, analyzed its Q of S results, and determined where and when the adverse events had affected the Q of S results. According to TCC, it was only after this cause and effect determination that it arrived at conclusions about the duration of the impacts of the adverse events upon its Q of S results.
38. TCC stated that its analysis revealed that there was a difference between when the adverse events had affected the call centre-related indicators and when they had affected performance on the repair function-related indicators. TCC submitted that the effect on call center-related performance had been more immediate, occurring from July through October of 2003, and the effect on repair-related performance had been predictably protracted, occurring from August through December 2003. TCC further submitted that it was seeking adjustments for only those months when its results had been affected by events beyond its reasonable control.
39. TCC argued that it was incorrect to assume that the duration of the impacts associated with an adverse event would correspond exactly with a single measure such as the volume of call centre and repair crew incidents experienced by a company. TCC further argued that its performance for the four indicators in question had been affected not only by an increase in call and repair volumes, but also by factors such as the inaccessibility of affected sites due to the adverse events, service outages that were more time consuming to address due to the nature of the network damage, and personnel being redeployed from other areas of the province to assist in addressing the damage.
40. TCC noted the Consumer Groups' observation that the volume of calls answered by the repair bureau during July and August of 2003 was not higher than during the same months in 2002 or 2004. TCC also noted that on this basis alone, the Consumer Groups had concluded that TCC's performance during these months had not been affected by the adverse events.
41. According to TCC, this conclusion was contrary to the facts set out in its application in two key respects. It submitted that, first, during July and August of 2003 there had been a dramatic increase in the volume of calls to the repair bureau that were abandoned – and therefore not included in the volume of calls answered – and that elevated levels had continued through to October 2003. In addition, TCC submitted that its performance on indicator 2.5 had plummeted from over 90 percent in February through June of 2003, to 57 percent in July and 44 percent in August of 2003. TCC also submitted that performance had remained low, at 68 percent in September and 66 percent in October of 2003, and then had returned to levels of over 80 percent, where it had remained until the end of 2004.
42. TCC stated that despite this evidence to the contrary, the Consumer Groups had argued that because there was not an increased volume of calls answered during July and August 2003, TCC's performance on this indicator had not been affected by the adverse events and these months should be excluded from TCC's proposed adjustment of its Q of S results. TCC argued that this was but one example of the spurious conclusions that were mistaken for cause and effect, when only one of the numerous factors that affected TCC's ability to meet the standards for the Q of S indicators was considered.

43. TCC indicated that the Consumer Groups had also asserted that the severity of the impacts of the adverse events had not been supported by TCC's comments in the exception reports it had filed during the period of the adverse events. TCC argued that the purposes of the exception reports were to provide an immediate monthly report on those Q of S indicators that had fallen below standard for a set amount of time, to give a brief explanation as to the cause of the failure to meet the standard, and to propose an action plan to rectify the situation. In TCC's view, the purpose was not to substantiate the effect of an adverse event, since statements made in an exception report were part of the initial and immediate assessment of a situation by the ILEC and were not intended to be a comprehensive analysis of an adverse event and its impact.
44. According to TCC, it had felt the effects of the adverse events upon operations immediately and, thus, it had mentioned them in some exception reports at the time. TCC submitted, however, that the complete extent of the consequences had not been fully understood until after all of the events had ended and normal operations had resumed. In TCC's view, it was only at that point that it had been able to draw conclusions regarding the effects of the adverse events upon the full range of Q of S measures.
45. TCC noted that the Consumer Groups had also cited that other factors had been mentioned in TCC's exception reports as explanations for below-standard Q of S results between July and December 2003. TCC agreed that there were many factors that contributed towards an ILEC's Q of S performance, since any business was affected by external and internal factors. According to TCC, given the sheer scale of the adverse events and the pervasiveness of the impact throughout TCC's operations, it was only logical to conclude that the overriding cause of the deterioration in its performance had been the adverse events.
46. In response to an interrogatory,<sup>2</sup> TCC provided more detail about the cable cut that had occurred in October 2003. TCC indicated that customers and contractors conducting construction and excavation in British Columbia could contact a non-profit organization, BC One Call, to locate utility facilities before digging. It noted that BC One Call coordinated requests for member companies that owned and operated buried facilities, including TCC. The company submitted that BC One Call relayed calls to the member companies for review and action, if required. It also submitted that BC One Call advised contractors that they were not clear to excavate until all the member companies notified had contacted them.
47. TCC indicated that it was contacted by BC One Call for the site in question on 16 October 2003. According to TCC, in this case, the contractor had proceeded without clearance from TCC.

### **3) Proposed methodology for adjustments to Q of S results**

#### *TCC*

48. TCC proposed a methodology that involved adjusting, or normalizing, the Q of S results affected by the adverse events with a view to (a) removing the impact of the adverse events, and (b) restoring the Q of S results to where they would likely have been without the adverse events. TCC submitted that it was not seeking to exclude altogether the Q of S results for a given indicator during the affected period. It submitted that, rather, it was seeking only to

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<sup>2</sup> TCC(CRTC)24Feb06-103.

exclude that portion of its Q of S results that was reasonably attributable to the adverse events. TCC argued that such an approach would yield a more accurate picture of the impact of the adverse events.

49. In order to estimate what its Q of S results would have been without the adverse events, TCC:
- calculated the ratio of its performance in each month of 2003 that was not affected by the adverse events to its performance during the same month of 2004;
  - calculated the average of these monthly ratios to arrive at the average monthly ratio of its performance during 2003 relative to its performance during 2004; and
  - adjusted its performance during each month of 2003 that was affected by the adverse events.
50. According to TCC, the result was that each month in 2003 that had been affected by the adverse events was now at the same ratio relative to the corresponding month of 2004 as the months of 2003 that had not been affected by the adverse events. TCC stated that since there were seasonal variations in the Q of S results for these indicators, this method of estimating the Q of S results for the affected months was more accurate than using the average 2003 results for the months that had not been affected by the adverse events. TCC submitted that it had used this methodology for three of the indicators. In the case of indicator 2.1, however, TCC indicated that it had substituted its 2002 results to adjust the 2003 results since its repair tracking system had not properly reflected performance during the latter half of 2004.

### *The Consumer Groups*

51. The Consumer Groups stated that although TCC's approach might seem reasonable on its face, it was simply not possible to know or determine what the Q of S results would have been if the adverse events had not occurred and that, at best, only a prediction or guess could be made as to what the results would have been.
52. The Consumer Groups stated that basing the proxy adjustment on the average of the performance between the non-affected months for 2003 to 2004 implied that there was a relationship between how the future performance of an indicator in 2004 related to its past performance in 2003 in the non-affected months. The Consumer Groups submitted that the proxy adjustment presupposed that this average relationship would have held through the affected months of 2003.
53. According to the Consumer Groups, an example of the inappropriateness of using the average ratio between 2003 and 2004 could be seen by examining the adjustment for indicator 2.5. They submitted that while TCC's approach determined an average monthly ratio of 1.0 for its 2003 to 2004 results, the ratio varied significantly between months. It noted, for example, that the ratio of January 2003 to January 2004 results was 0.9 while the ratio for December 2003 to December 2004 results was 1.09, a deviation of approximately +/- 10 percent. According to

the Consumer Groups, the range in ratios illustrated that there was not a constant relationship, if there was any at all, between the performance levels from 2003 to 2004.

54. The Consumer Groups argued that a more appropriate approach would be to remove the time period associated with the adverse events from the Q of S results for the affected indicators. The Consumer Groups further argued that if the adverse event lasted an entire month then the monthly result for the indicator should be dropped from the calculation used to determine any rate adjustment under the retail Q of S RAP.
55. The Consumer Groups noted that this approach was consistent with TCC's position in the Public Notice CRTC 2003-3 proceeding, where TCC had indicated that if an allowance for an adverse event was warranted, adjustments to the calculation of the RAP might include the elimination of the affected Q of S indicators from the calculation.
56. The Consumer Groups submitted that adjustments to TCC's results should only be made for the period of time where the adverse events had had an effect on TCC's Q of S results that was beyond the company's reasonable control. The Consumer Groups argued that applying adjustments to months where the adverse events had not affected results would undermine the intent and purpose of the retail Q of S RAP.

*TCC's reply*

57. TCC argued that its methodology was intended to include, rather than to sweep away, performance that likely would have been below standard had the adverse events not occurred. TCC submitted that many of its Q of S results remained below standard even after adjusting for the effect of the adverse events, therefore preventing the masking referred to by the Consumer Groups.
58. Regarding indicator 2.2A, TCC indicated that although it was seeking adjustments to its Q of S results for August, September, October, and December 2003, all but one result – August – remained below standard even after the proposed adjustments for the effects of the adverse events. In addition, TCC noted that its unadjusted average annual performance (AAP) for this indicator was 87.7 percent and that the adjusted AAP was 88.2 percent. TCC submitted that given that the standard was 90 percent, it had not proposed a change to its rate adjustment for this indicator. TCC also submitted that with respect to indicators 2.2B, 1.5, and 2.1B, all of its results for each of the months affected by the adverse events remained below standard even after adjusting for the adverse events, and it had proposed only incremental changes to the level of its rate adjustment for these indicators.
59. According to TCC, if the results for the periods affected by the adverse events for the indicators discussed above were removed as the Consumer Groups had suggested, TCC would be masking results that would have been below standard even without the adverse events. TCC argued, for example, that by excluding the performance results for indicator 2.2B, it would be masking results of 86 percent in August, 85 percent in September and October, and 84 percent in both November and December, all of which were below the standard of 90 percent for this indicator.

60. TCC agreed that it was impossible to recreate the time period during which the adverse events had occurred and to remove the adverse events, in order to be certain about what its results would have been if the adverse events had not taken place. However, in TCC's view, this did not mean that the methodology was flawed. It submitted, rather, that the adjusted results were necessarily based on studied analysis and careful estimates. According to TCC, it was certainly possible to estimate what the results would have been.
61. Regarding the Consumer Groups' assertion that the ratio of TCC's 2003 results to its 2004 results for the affected months was different than the ratio for the months that were not affected, TCC submitted that its analysis of the trending of the data over the July 2002 to December 2004 period showed that, on the contrary, the relationship had held throughout the time period. TCC noted that the Consumer Groups had objected to the use of an average monthly ratio in adjusting Q of S results since it did not reflect the variability between the monthly ratios. TCC submitted that this objection was misguided, and argued that it had used an average monthly ratio in adjusting its Q of S results precisely because this method removed the variability between the monthly ratios.
62. TCC submitted that its methodology was sound and did not mask results that might have been below standard even without the adverse events. According to TCC, adjusting Q of S results in the months that had been affected by the adverse events to the level at which they would likely have been without the adverse events was the correct way to avoid masking otherwise below-standard results, which would occur if such results were simply excluded as suggested by the Consumer Groups.
63. TCC submitted that there was no argument in the Consumer Groups' comments that would obstruct the adoption of its proposed adjustments to the Q of S results for the months affected by the near-simultaneous occurrence of the adverse events. TCC also submitted that the very arguments put forward by the Consumer Groups made imperative the Commission's adoption of TCC's proposal precisely as put forward.
64. According to TCC, should its proposed adjustments be adopted, the AAP for the first interim period for two of the indicators – 2.5 (83.3 percent) and 2.1A (80.3 percent) – would be above the 80 percent standard set by the Commission and TCC would not face a rate adjustment for these two indicators.

### **Commission's analysis and determinations**

65. The Commission notes that TCC requested that the results for indicators 1.5, 2.1A and 2.1B, 2.2A and 2.2B, and 2.5 be adjusted due to the impact associated with three adverse events in 2003. The requested adjustment period varies by indicator and spans the months of July to December 2003. The Commission also notes that the request for adjustment is based on TCC's proposed methodology, which recommends removing the effects of the adverse events on the repair process and business office functions by looking at ratios and trends from 2002 and 2004.

66. In the Commission's view, there are four key issues to consider in TCC's current exclusion application. These are:

- Are the forest fires, floods, and cable cut adverse events pursuant to Decision 2005-17?
- Is there a causal link between the adverse events and the Q of S results?
- What methodology should be used in this case to determine whether indicators should be adjusted or excluded from the RAP?
- Which retail Q of S indicators should be adjusted or excluded from the RAP, and for how long?

**Are the forest fires, floods, and cable cut adverse events pursuant to Decision 2005-17?**

67. The Commission notes that the Consumer Groups agreed that the events identified by TCC were adverse events. The Commission also notes that two of the three events were natural disasters. The Commission considers that TCC has provided enough relevant information on the extent of the forest fires, which resulted in a province-wide state of emergency, and floods in British Columbia's lower mainland to qualify these two events as unpredictable and beyond the reasonable control of TCC.

68. In the Commission's view, it is unreasonable to hold TCC accountable for the cable cut that occurred on 22 October 2003 due to the failure of a third-party contractor to follow established guidelines.

69. In light of the above, the Commission finds that the three events – the forest fires, floods, and cable cut – are adverse events.

**Is there a causal link between the adverse events and the Q of S results?**

70. The Commission notes that the forest fires that began in July 2003 and continued into September left over 5,000 customers without service. The Commission also notes that the cable cut in Vancouver on 22 October disrupted service to approximately 10,000 customers and necessitated the redeployment of staff to restore service. Moreover, the floods that occurred in October resulted in the evacuation of approximately 1,200 people.

71. All three adverse events obliged TCC to review and set priorities to ensure that service was restored to customers as soon as practically possible. The adverse events, which occurred during overlapping timeframes, significantly impacted TCC's ability to provide service in accordance with applicable retail Q of S standards. The Commission considers reasonable TCC's arguments that flood recovery was a difficult and time-consuming operation, that it was unable to access and restore damaged facilities while forest fires raged, and that the cable cut necessitated the redeployment of staff to restore service.

72. With respect to those indicators associated with the speed of response to the repair process, the Commission considers that the adverse events that caused major damage to TCC's network would have affected the company's ability to bring its below-standard Q of S results up to the standard for these indicators.
73. The Commission notes that the forest fires destroyed nearly 80 km of optical fibre and 100 km of copper cable, and associated support structures, facilities, and equipment. The Commission also notes that fire damage to provincial power facilities disrupted TCC's service and depleted its battery backup. The Commission further notes that fires delayed TCC from making permanent repairs to its plant as new fires flared up.
74. In addition, the Commission notes that the floods in British Columbia's lower mainland caused extensive damage to major fibre optic transport facilities between Whistler and Pemberton and that the cable cut destroyed three fibre optic cables containing 256 fibres and several copper cables containing over 10,000 working lines.
75. Furthermore, the Commission considers that the assignment of resources from other areas of the company to deal with the effects of the adverse events would have contributed to the creation of a backlog in the repair process.
76. With respect to indicator 1.5, the only indicator not associated with the speed of response to the repair process, the Commission considers that the main effect of the adverse events on this indicator would be an increase in the volume and duration of calls due to customers' expectations that TCC would restore service once the forest fires were brought under control, the floods had receded, and the cable cut had been repaired.
77. In light of the above, the Commission finds that there is a causal link between TCC's substandard performance results and the three adverse events.

**What methodology should be used in this case to determine whether indicators should be adjusted or excluded from the RAP?**

78. The Commission notes that TCC proposed a methodology to normalize its retail Q of S performance results for the months affected by the adverse events in 2003 that used results for indicators 1.5, 2.1A, 2.1B, 2.2A, 2.2B, and 2.5 that were based on 2002 or 2004 results. While the Commission considers it appropriate to look at recent performance results as an indication of what might occur, it considers that it should not grant an exclusion for indicators that had little chance of meeting the indicator standard at the time of an adverse event.
79. The Commission is concerned that if very poor Q of S results in the base years are used to develop a ratio with unaffected results for 2003, then the resulting improvement in the months affected by the adverse events may be artificially inflated. The Commission considers that the greater the difference between the base years and 2003, the greater the ratio and, hence, the greater the improvement in the results affected by the adverse events. For this reason, the Commission considers that the methodology proposed by TCC is not appropriate.

80. The Commission further considers that if applied, TCC's proposed methodology might not accurately normalize the July to December 2003 performance results because the volumes and types of provisioning and repair orders within a particular month cannot be assumed to be consistent year to year.
81. Based on the above, the Commission denies the methodology proposed by TCC for determining in this case whether indicators should be adjusted or excluded from the retail RAP.
82. The Commission considers that by reviewing Q of S results from the period directly preceding the adverse events, it can better assess whether or not the events had a direct effect on TCC's ability to meet the Q of S indicators. In the Commission's view, if an ILEC has successfully met or exceeded the relevant Q of S standards for at least six out of the 12 months, or for the three consecutive months, immediately prior to an adverse event, then it would be reasonable to conclude that the ILEC would likely have met its Q of S obligations without the adverse event.
83. The Commission considers, therefore, that if TCC's retail Q of S performance results for the 12 months prior to July 2003 show that the standard was met for at least six out of those 12 months or for the three consecutive months immediately prior to July 2003, it is likely that TCC would have met the standard for the indicator in the July to December 2003 timeframe.

**Which retail Q of S indicators should be adjusted or excluded from the RAP and for how long?**

84. The Commission notes that TCC met the retail Q of S standard for indicators 2.1A, 2.2A and 2.5 for six out of the 12 months immediately prior to the adverse events. The Commission further notes that TCC also met the standard for indicators 2.2A and 2.5 during the entire three-month period immediately prior to the commencement of the forest fires.
85. Based on the above, the Commission considers that it is reasonable to conclude that TCC would have met the service standards for indicator 2.1A for the months of August, September, October, November and December; indicator 2.2A for August, September, October, and December; and indicator 2.5 for July, August, September, and October, were it not for the adverse events. The Commission therefore determines that TCC is to exclude the Q of S results for these indicators, for the months mentioned above, from the 2003 RAP calculation.
86. The Commission notes that prior to the adverse events, TCC had not met the Q of S results for indicators 1.5, 2.1B, and 2.2B for either six out of the 12 months, or for the three consecutive months, immediately prior to the adverse events. Accordingly, the Commission considers that it is highly unlikely that TCC would have reached above-standard results for indicators 1.5, 2.1B, and 2.2B without the adverse events.
87. On this basis, the Commission is of the view that the results for these indicators should not be excluded from the RAP. However, the Commission is of the view that the adverse events would have had some impact on these substandard results and considers that this must be taken into consideration.

88. The Commission notes that, historically, TCC demonstrated an inability to meet the retail Q of S standards for indicators 1.5, 2.1B and 2.2B throughout the interim RAP period. The Commission considers that these substandard results are suggestive of a pattern of substandard performance for the indicators in question.
89. Given this, the Commission considers that, for the purpose of indicators 1.5, 2.1B and 2.2B, it is reasonable to assume that an average of the Q of S results for the six months immediately prior to the adverse events would be indicative of the results that TCC would have attained absent the adverse events. Therefore, the Commission considers that it would be appropriate to replace the substandard results for indicators 1.5, 2.1B and 2.2B with the six-month average achieved for each indicator immediately prior to the affected months.
90. In light of the above, the Commission directs TCC to adjust the Q of S results for indicators 1.5, 2.1B and 2.2B as follows:
- replace its Q of S results for indicator 1.5 for the months of July, August, September and October 2003 with 66 percent, which is the average result the company attained in the six months immediately prior to July 2003;
  - replace its Q of S results for indicator 2.1B for the months of August, September, October and November 2003 with 75 percent, which is the average result the company attained in the six months immediately prior to August 2003; and
  - replace its Q of S results for indicator 2.2B for the months of August, September, October, November and December 2003 with 85 percent, which is the average result the company attained in the six months immediately prior to August 2003.

## **Conclusions**

91. In summary, the Commission directs TCC to:
- exclude the Q of S results for indicators 2.1A, 2.2A, and 2.5 from the RAP calculation for the following months of 2003: 2.1A (August to December), 2.2A (August to October, and December), and 2.5 (July to October);
  - replace the Q of S results for indicator 1.5 for the months of July to October 2003 with 66 percent;
  - replace the Q of S results for indicator 2.1B for the months of August to November 2003 with 75 percent;
  - replace the Q of S results for indicator 2.2B for the months of August to December 2003 with 85 percent;

- implement customer credits resulting from this Decision on its customers' monthly bills, starting no later than **3 July 2007**, for customers of record as of the date of this Decision; and
- file with the Commission no later than **3 July 2007** the amount of the customer credit per network access service (NAS) and the NAS count used to determine the customer credit.

92. The dissenting opinions of Commissioners French, Arpin and Noël are attached.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

## **Dissenting opinion of Commissioner and Vice-Chair, Telecommunications Richard French**

There are two key issues which motivate my dissent from the majority on this and the related file (CRTC 2007-30). My dissent is not confined to the implementation of the plan in these two instances, but to the plan itself and thus to any application of it.

First, should the Commission and can the Commission usefully apply rate adjustments to retail quality of service indicators for the incumbent local exchange carriers (ILECs)? What *public purpose* is served by the Commission's application of retail quality of service rate adjustments? Is it *feasible*, given the information at hand, for the Commission to apply retail quality of service adjustments, that is, does the Commission have the information and can the Commission make the judgments required to apply such adjustments?

Second, if, on all of the above criteria, the Commission can and should apply retail quality of service rate adjustments, what is the effect of those adjustments? Is the effect clear and does it accomplish the ends in view? Is the Commission's retail rate adjustment plan *effective*?

In what follows, I shall address these two key issues and then outline my own position.

### Origins, Purpose and Feasibility

The Commission's retail quality of service rate adjustment plan's origins are to be found in the second price caps proceeding which led to Telecom Decision CRTC 2002-34, in which the interim plan was laid out. The final plan was announced in Telecom Decision CRTC 2005-17. The Commission had for many years monitored the quality of service performance of the companies we now know as ILECs; there was extensive reporting and potential CRTC finger-wagging, but in general there were no rate adjustment or other financial implications attached to this monitoring. During the second price caps proceeding, the panel heard a significant amount of complaint about ILEC quality of service during the years 1998-2000. As a consequence, "The Commission indicated that it was not convinced that competitive pressure was sufficient to ensure that the ILECs would meet the approved Q of S standards. The Commission concluded that it was necessary to establish incentives to ensure that the ILECs would comply with the Q of S standards."<sup>1</sup>

It was not therefore without some degree of evidence and the best of intentions that the Commission began a long process of implementing "incentives" for the ILECs to meet retail quality of service standards. As noted, an interim plan (without any mechanism for implementation of any required adjustments) was established effective 1 July 2002 and a final plan was outlined in Telecom Decision CRTC 2005-17, 24 March 2005. It is my contention that despite the good intentions, and the efforts expended, experience in attempting to apply the plan has shown that it is seriously flawed.

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<sup>1</sup> Telecom Decision CRTC 2005-17, paragraph 5. In paragraph 91, the Commission stated, "The failure by an ILEC to meet one or more of these minimum standards must, therefore, trigger an overall rate adjustment to reflect the importance of the Q of S failure and *to provide the ILEC with an incentive to avoid such failures in the future*", italics added by the author.

At its core, the plan required the Commission to exercise systematic oversight and evaluation of the performance of ILEC managers in ensuring retail quality of service to their customers. On a routine basis, a set of quality of service indicators was to serve as a basis for this oversight and evaluation. When major events such as weather or fire or accident compromised service, the Commission rejected the conventional *force majeure* treatment of such events. Thus when, as in the cases at hand, an exceptional event perturbed service, the Commission decided to judge on a case by case basis how ILEC management performed during and in the wake of the events in question, and to deliver a decision having financial implications for the company. To the extent that the Commission judged that the events in question could not reasonably be under the control of ILEC managers, the service effects of such events were, upon application by the ILEC, *excluded* from the rate adjustment plan.

The first issue for me is whether experience has shown that this plan is required and whether its administration by the Commission is feasible.

The process from the point of the second price caps proceeding, which happened in its course to raise *inter alia* quality of service experience for the years 1998-2000, to the moment of implementation of rate adjustments in 2005, was lengthy and not without many changes in the service and competitive environments of the ILECs. By the end of 2006, not less than 80% of Canadian households were passed by cable companies offering either high speed Internet service or VoIP telephony or both. These competitive service providers are making important inroads into the ILEC customer base and they have proven themselves able to retain their new customers. I conclude therefore that whatever the need for regulatory "incentives" for ILECs to meet retail quality of service standards in 2002, today *such incentives cannot reasonably be required except in those areas where there is no alternative facilities-based telephony supplier*. I shall return to the question of the targeting of "incentives", retaining from this discussion that only a minority of Canadian telephony customers *may* require state intervention to protect them from an indifferent monopoly supplier.

Let us then address the question of feasibility. One of a number of reasons for the unconscionable amount of time which has passed from the service-affecting events in 2003 dealt with in the decision at issue, to today in 2007, has been a fruitless attempt by the staff of the Commission to obtain information which would permit the Commission to assess the effectiveness of ILEC management in coping with the consequences of these events. But anyone who has been in the position of managing exceptional events such as forest fires, work stoppages or floods knows that the last thing that one is concerned with at the time is to preserve record-keeping for the judgment of posterity – in this case, what I can only characterize as second-guessing by a Commission largely innocent of any base of experience on which to evaluate management. ILEC management's mind, during the period in question, was concentrated solely on restoring service to customers and rightly so.

And this conclusion, frankly, applies equally to the routine application of the retail quality of service standards for the purposes of rate adjustment, absent any exceptional events. Within companies, failures to meet standards, in my experience, are susceptible to many and varied explanations, some of them even believable. What the simple numbers do not reveal is any straightforward way to distinguish incompetence or negligence from any of the many uncontrollable reasons for such failure. This *caveat* applies even more evidently to committees of well-intentioned strangers to management of the company, such as the CRTC.

I conclude that a retail quality of service rate adjustment plan is subject to such grave flaws of information and analysis that (1) *any such plan should apply only where the need for it can be demonstrated beyond any reasonable doubt*, and (2) *any such plan must be demonstrably effective*. I move to the latter issue.

## Effectiveness

Effectiveness at what? The powers which the Commission applies are those of fixing "just and reasonable rates". On this head, the purpose of the plan is to compensate customers for inferior service quality. On the other hand, Decision CRTC 2005-17 speaks, as we have seen, of "incentives". This can only mean to incent ILEC managers to pay attention to quality of service, on the assumption that a financial impact on company performance would be more effective in ensuring managerial performance than jawboning or competitive pressure. I will examine each rationale in turn.

Are quality of service rate adjustments a credible instrument of "just and reasonable rates?"

Let us look more closely at the customer credits required by this decision. The events in question are forest fires in the interior of British Columbia and south-western Alberta from mid-July to September 2003, a cable cut in British Columbia on 22 October 2003 and floods in the lower mainland of British Columbia in the same week as the cable cut. To make a long story short, customers in the areas of these events found themselves deprived of telephone service for prolonged periods of time. In April 2007, the Commission issues a decision to compensate these customers...and many others, by requiring a customer credit for all of the companies' customers in an amount to be finalized, which is of the same modest order of magnitude as the previous payments detailed in the table below. This figure is arrived at by an assessment based on the underperformance of the company relative to quality of service standards *other than when* service was affected by the adverse events in question. Insofar as the customers who lost service due to these exceptional events, it is precisely the purpose of the exclusion policy, premised on the absence of ILEC control of such events, *not* to attempt to compensate them.

So, the amount of money in question is a few dollars, the time delay is more than three years,<sup>2</sup> and the beneficiaries are the entire current customer base of the company. This customer credit has no impact on the justice and reasonableness of the rates for the subset of customers who lost service in 2003, nor is it intended to do so. I submit that for the majority of current TELUS customers who did not lose service, this credit represents a meaningless windfall, entirely unrelated to just and reasonable rates or to their experience of specific shortfalls they may have experienced in TELUS service. The amounts in question are simply too small and too widely dispersed. I conclude that *the presence or absence of this credit has no impact on and is ineffective in achieving just and reasonable rates*.

This case at hand is not atypical of the operation of the plan. The table below summarizes the experience to date with the retail quality of service rate adjustment plan.

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<sup>2</sup> "The Commission is of the view that the application of credits to customer bills should be made as soon as possible after the end of a reporting period since the longer the time frame between the end of the reporting period and the application of the credit, the greater the possibility that customers who would otherwise be entitled to a credit, may have discontinued service or changed carriers", Telecom Decision CRTC 2005-17, paragraph 168. Indeed.

**Table 1 – Retail Quality of Service Rate Adjustments Paid by ILECs**

<b>Company</b>	<b>Period for which credits were payable</b>	<b>Total Credit Amount</b>	<b>Credit per Customer NAS</b>	<b>Credit Issue Date</b>	<b>Comments</b>
<b>Bell Aliant</b>	2004	\$1,525,537	\$1.16	June/July 2006	R & V pending to reverse this amount
<b>Bell Aliant</b>	2005	\$2,004,361	\$1.53	June/July 2006	Processed with the \$1.16 above, as one Customer Credit of \$2.69
<b>MTS Allstream</b>	July 02–Dec 03	\$193,340	\$0.29	June/July 2005	Processed together as one Customer Credit of \$0.48
<b>MTS Allstream</b>	2004	\$128,168	\$0.19	June/July 2005	
<b>TELUS (Québec)</b>	Oct 02–Dec 03	\$148,586	\$0.51	July/August 2005	
<b>TELUS Communications Company (TCC)</b>	July 02–Dec 03	To be finalized	To be finalized	No later than 60 days from date of decision	
<b>TELUS Communications Company (TCC)</b>	2004	\$2,735,509	\$0.76	July/August 2006	

Note that the customer credits in question are all exceedingly modest in size, raising the question as to exactly what is accomplished in terms of just and reasonable rates. On the other hand, the total financial impact on the ILEC may be significant. The cost of the rate adjustment ordered in the decision at hand is estimated at several million dollars.

Perhaps it is this, the impact on the ILEC, that is really at issue. Perhaps it is the "incentive" feature that is truly operative here. That is, it is not, or not merely, compensation which is the object of the exercise, but a negative incentive which will motivate ILEC managers. Even if one believes that ILEC managers require this kind of attention by the regulator to ensure that they do their jobs, however, this too is a gravely flawed rationale.

A negative incentive must be accompanied by some form of clarity as to the fault in question and as to the forms of behaviour which would obviate the need for such a sanction in future. The Commission can offer no such clarity, for the very good reason that it has neither the information nor the experience to do so. Quality of service standards are an attempt to reduce the infinite complexity of the operations of a huge company to a finite set of numbers on a page. Used with care, over time, by a person who has had substantial personal experience in the complexities in question, they can be one of many methods for evaluating the performance of telecom managers. Where, as in competitor

quality of service standards, they are subject to an obvious and unequivocal conflict of motivations on the part of ILEC management, they may have to be pressed into service by a regulator, *faute de mieux*. There is no such unequivocal conflict of motivations in the case of retail quality of service indicators. They are, in the hands of the CRTC, *an unsuitably blunt and uninformative instrument for "incenting" ILEC management*.

What to do?

As noted above, the issues are raised by the policy itself, and this application of the policy is merely the occasion to articulate them. Instead of continuing to apply the retail quality of service rate adjustment plan, I would suspend the pending exclusion applications and the routine application of the plan, and open the issue of the purpose, feasibility, and effectiveness of the plan itself, to a review proceeding. In that way, the evolution of the marketplace and the (in my opinion, wholly unsatisfactory) experience of trying to apply the plan could be explored in full. I have not mentioned the question of work stoppages as matters of exclusion from the plan, a dimension of the plan which raises its own suite of problems,<sup>3</sup> nor the Governor-in-Council's policy directive on implementing Canadian telecommunications policy objectives,<sup>4</sup> but both would be relevant to this proceeding.

The CRTC normally wishes to apply its policy up to the moment when it is decided to review it, in the name of regulatory certainty and predictability. I do not question this policy as a matter of general practice. However it will be evident from the above discussion that I doubt that any party would be seriously penalized by suspension of the current backlog of applications. The only party which might in theory be subject to incremental penalty might be the ILECs; their position could be sought and ought to be respected by the Commission. To the extent the proceeding validates the purpose, feasibility and effectiveness of rate adjustments for certain consumers, such consumers would ultimately receive their credits under the policy developed from the review proceeding. Competitors have no interests at stake here. It is therefore my view that suspension of application of the plan pending review would not incur the harms generally understood to issue from regulatory uncertainty.

The CRTC on occasion appears to me to treat its decisions as matters which bear the same weight as precedent in common law. However, it is the genius of the concept of the administrative tribunal that a tribunal may adjust rapidly to meet changing circumstances:

When parties appear before a tribunal with a new case raising legal or policy issues similar to those decided in a previous case between the same parties, the tribunal is not bound by the concept of *res judicata*. This flexibility enables a tribunal to continue its pursuit of the public interest, to consider and apply changes in policy and to effectively regulate dynamic and ongoing relationships between parties. A tribunal may permit re-litigation and may come to a different conclusion without risk of court interference. However, the importance of stability in an industry requires that a tribunal have good reason for reversing its decisions.

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<sup>3</sup> See the dissent of Commissioner Andrée Noël to Telecom Decision CRTC 2006-27.

<sup>4</sup> Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534 December 14, 2006, *Canada Gazette* Vol. 140, No. 26 (December 27, 2006).

The principle of *stare decisis* does not apply to tribunals. A tribunal is not bound to follow its own previous decisions on similar issues. Its decisions may reflect changing circumstances in the field it governs.<sup>5</sup>

I believe that the Commission should take full advantage of its flexibility in the case of its retail quality of service rate adjustment plan. A review is required before any further applications of the plan.

As a footnote, I might add that, were I to be a Member of the CRTC at such a review, I would wish to consider whether the best use of any resources devoted to maintaining the quality of retail service might not be for a telecommunications consumer protection agency, whose mandate might be directed in a timely fashion at problems experienced by specific customers.<sup>6</sup> The experience and credibility of such an institution might promise a focus and effectiveness which I do not find in the retail quality of service rate adjustment plan as it stands. I note that after the bulk of this dissent was written, the Governor-in-Council issued an Order requiring the CRTC to co-operate with the industry to establish a telecommunications consumer protection agency, whose codes of conduct and standards and governance would have to be approved by the Commission.<sup>7</sup> In my view, this is a much more promising avenue for the investment of time, energy and money than the retail quality of service plan.

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<sup>5</sup> Sara Blake, *Administrative Law in Canada* (Markham), Lexis Nexis, Butterworths 4<sup>th</sup> edition, 2006, 120, *op. cit.* 133-134.

<sup>6</sup> See *Telecommunications Policy Review Panel Final Report 2006*, (Ottawa, Industry Canada, March 2006), Chapter 6, recommendations 6-2 – 6-4, and compare the suggestions in Telecom Decision CRTC 2006-15, *Forbearance from the regulation of retail local exchange services*, paragraphs 370-373.

<sup>7</sup> *Order Requiring the Canadian Radio-television and Telecommunications Commission to report to the Governor-in-Council on Consumer Complaints*, P.C. 2007-533.

**Dissenting opinion of Commissioner and Vice-Chair, Broadcasting Michel Arpin**

I have read the reasons of Commissioner French and concur with his conclusion.

**Dissenting opinion of Commissioner Andrée Noël**

I have read the reasons of Commissioner French and concur with his conclusion.