Telecom Decision CRTC 2007-30

Ottawa, 3 May 2007

TELUS Communications Company – Application to exclude certain retail quality of service results from the retail quality of service rate adjustment plan for June and July 2005

Reference: 8660-T66-200606741

In this Decision, the Commission determines that TELUS Communications Company (TCC) is to exclude from the retail quality of service rate adjustment plan the results for three retail quality of service indicators for June and July 2005. TCC had requested that its results for these months be adjusted in order to remove the impact of severe flooding in southern Alberta during June 2005.

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

The application

1. On 29 May 2006, TELUS Communications Company (TCC) filed an exclusion application requesting adjustments to three of its retail quality of service (Q of S) indicators for the months of June and July 2005, due to severe flooding in southern Alberta during June 2005. TCC requested that the results for the following retail Q of S indicators be adjusted in order to remove the impact of the flooding and to restore the results to where they would likely have been but for its occurrence:

   - Indicator 1.3B, Held Orders – Rural (indicator 1.3B): measures the number of outstanding requests for network access service (NAS) which were not met on the due date in rural areas because of facility shortages, expressed as a percentage of 100 NAS inward movement orders. The standard is set at 3.3 percent or less.

   - Indicators 2.1A and 2.1B, Out-of-Service Trouble Reports Cleared within 24 hours – Urban and Rural (indicators 2.1A and 2.1B): measure the percentage of out-of-service trouble reports that are cleared within 24 hours. The standard is set at 80 percent or more.

   - Indicators 2.2A and 2.2B, Repair Appointments Met – Urban and Rural (indicators 2.2A and 2.2B): measure the percentage of completed repair orders for which repair appointments are met. The standard is set at 90 percent or more.

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 a retail rate adjustment plan (RAP) for the large incumbent local exchange carriers (ILECs).

3. In Decision 2005-17, the Commission considered it appropriate for the Q of S retail RAP to include a mechanism whereby Q of S performance failures might be excluded from the ILECs' Q of S results. The Commission 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 also determined that each adverse event, whether it be 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 retail RAP should be determined on a case-by-case basis.

4. The Commission also determined that 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.

Process

5. By letter dated 22 July 2005, TCC advised the Commission that it would submit an exclusion application regarding the flooding once it was possible to measure the effects of the event on its Q of S indicators.

6. By letter dated 14 September 2005, TCC advised the Commission that due to resource constraints caused by a labour disruption involving unionized personnel in Alberta and British Columbia, it would be unable to submit an exclusion application regarding the floods until the effects of the labour disruption had ended.

7. By letter dated 12 December 2005, TCC advised the Commission that it anticipated being in a position to file its exclusion application during the second quarter of 2006.

8. On 29 May 2006, TCC submitted an exclusion application related to severe flooding in southern Alberta during June 2005 and copied the parties to *Retail quality of service rate adjustment plan and related issues*, Telecom Public Notice CRTC 2003-3, 27 March 2003.

9. MTS Allstream Inc. (MTS Allstream) submitted comments on the exclusion application on 30 June 2006 and TCC filed reply comments on 21 July 2006.

Positions of parties

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

TCC

10. TCC submitted that during June 2005, southern Alberta had experienced record rainfall, making it the wettest month since record keeping had begun in 1885. According to TCC, the previous record had been set in July of 1927. TCC submitted that the record rainfall had caused widespread and severe flooding – washing out roads; destroying sewers, bridges, and buildings; and forcing residents out of their homes. It indicated that the flooding had begun on 7 June 2005 and had continued until 1 July 2005, at which time Alberta Environment had lifted a flood advisory. TCC added that a state of emergency had been declared in many cities and towns in the southern half of Alberta, including Calgary and Edmonton.

MTS Allstream

11. MTS Allstream noted that TCC's application was filed 10 months after the end of the event. It submitted that the application should be denied since TCC had not followed the process set out in Decision 2005-17.

TCC's reply

12. TCC submitted that the Commission had been fully apprised as to the anticipated timing of the exclusion application and the obstacles that had precluded filing the application before the second quarter of 2006. TCC provided a chronology of the events leading to the filing of its application, and illustrated that each step had been undertaken with the Commission's knowledge and in accordance with resource availability and necessary prioritization.

13. TCC submitted that it had filed the application when it was possible to do so and that the timing of its filing was not cause for denial of the application.

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

TCC

14. TCC submitted that the flooding had had a severe and extensive effect on its plant and operations, resulting in over 3,000 customers in southern Alberta being without telephone service. TCC noted that at one point, an entire community had been without service due to damage to fibre optic transport facilities and repeater stations.

15. TCC indicated that during the flooding, repairing existing facilities and preventing further damage to its infrastructure had taken precedence over new installations as measured by indicator 1.3. TCC also indicated that throughout the area affected by the flooding, digging trenches and provisioning facilities often had been neither possible nor safe, and certainly not practical.

16. TCC submitted that crews, composed of installation and repair technicians, had worked around the clock under challenging conditions to prevent, minimize, and repair flood damage to its facilities, and to restore service to affected customers. It also submitted that repair crews often had been unable to reach damaged sites until the water had receded and roads and bridges had been repaired. The company submitted, further, that in many instances, service was first restored on a temporary basis.

17. TCC noted that it had reassigned staff to those locations affected by the flooding to assist in cleaning up flood-damaged sites and restoring service. TCC also noted that during its attempts to focus on dealing with the flooding, it could not adequately address its everyday volume of repair reports and service installations. TCC claimed that as a result, even after the floods had receded and permanent repairs to damaged plant and equipment had been completed, there remained a considerable backlog of other repair work and installation orders.

18. TCC submitted that conducting repairs at a flood-damaged site was very different and much more time consuming than conducting repairs in the normal course of operations. TCC noted that cabinets and other infrastructure damaged by flooding must be cleared of water and cleaned of debris and mud. TCC claimed that this operation was painstaking and highly labour intensive, and had to occur before damage could be assessed and permanent repairs could be made.

19. TCC submitted that while the adverse event might have affected performance on all 13 of its retail Q of S indicators, its application only sought adjustments to results for indicators 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B, which would otherwise be subject to rate adjustments.

20. TCC stated that the impact of the flooding on its ability to clear out-of-service trouble reports within 24 hours and to meet its repair appointments had been multi-faceted. According to TCC, not only had there been an increase in the volume of repairs, but employees had been working simultaneously to prevent further flood damage.

21. TCC submitted that this effect had been exacerbated by the fact that many flood-related repairs had not been reported, which had increased the proportion of delayed repairs being reflected in these indicators. TCC indicated that response times, which were the essence of indicator 2.1 and 2.2 measurement, had increased. It also indicated that this effect had not ended when the flooding abated, but rather had continued as TCC addressed workload backlogs created by the flooding.

22. TCC argued that even if the volume of out-of-service trouble calls had not increased during the flooding, its performance on indicators 2.1 and 2.2 would have declined simply because repair activities associated with the flooding were far more time-consuming than normal repair activities.

23. TCC submitted that the impact of the flooding had extended to the third week of July 2005, particularly for the repair functions. It also submitted that once service had been restored, it had turned to completing the backlog of out-of-service and degraded trouble reports that it had been unable to address during the flooding and its aftermath.

24. TCC argued that it had had no chance of addressing these reports within 24 hours. The company also argued that its ability to meet its repair appointments had been affected in the same manner, and the backlog had extended beyond the period of time during which service affected by the flooding was being restored. TCC indicated, however, that the backlog had been effectively addressed before the labour disruption had begun on 21 July 2005.

MTS Allstream

25. MTS Allstream submitted that TCC had not provided sufficient evidence that it had reacted appropriately to mitigate the effect of the adverse event. According to MTS Allstream, TCC had made no indication in its application that it had deployed resources from departments other than installation and repair in order to provide a larger workforce to rectify their many outstanding repair troubles. MTS Allstream noted that TCC had not provided any measurement of available resources in its application.

TCC's reply

26. In response to MTS Allstream's allegation that TCC had not demonstrated that it had responded appropriately to the adverse event, TCC submitted that Decision 2005-17 did not state that adjudication of exclusion applications was dependent upon the efficiency of the ILEC's operations. TCC added that it had had every incentive to restore service as quickly as possible to maintain the company's brand and reputation, and to retain customers in an increasingly competitive environment. TCC noted that in its application, it had provided detailed descriptions of the time-consuming process involved in repairing damage due to flooding.

3) Proposed methodology for adjustments to Q of S results

TCC

27. TCC proposed a methodology that involved adjusting or normalizing its Q of S results affected by the flooding with a view to (a) removing the impact of the adverse event, and (b) restoring the Q of S results to where they would likely have been but for the occurrence of the adverse event. TCC submitted that this methodology took into account the possibility that its performance might have been below standard on any particular indicator even if the adverse event had not occurred. It noted that, in fact, there were instances where using this methodology did not yield above-standard results.

28. TCC indicated that rather than excluding the months that had been affected by the adverse event, it was excluding the effect of the adverse event on the Q of S results for such months. The company submitted that it had calculated its Q of S results at the level at which they would have been but for the occurrence of the adverse event. It also submitted that such an approach would yield a more accurate picture of the impact of the adverse event. TCC submitted, further, that if a particular indicator had not been measured prior to the adverse event, it had no choice but to use another methodology for adjusting its Q of S results.

29. TCC submitted that it had compared its results during the unaffected months of 2005 to the same months of 2004 in order to exclude the effect of the adverse event from its performance on a particular indicator and that it had calculated a ratio to reflect this comparison. According to TCC, this ratio was then used to calculate an adjustment to its Q of S results for the months in 2005 that had been affected by the adverse event. For each month affected by the flooding, TCC indicated that it had used its performance during the same month in 2004, adjusted by the ratio reflecting the average difference between its 2004 and 2005 performance in the months unaffected by the adverse event, to estimate what its performance in 2005 would have been had the flooding not occurred.

30. TCC indicated that the result was that each month in 2005 that had been affected by the adverse event was now at the same ratio relative to the corresponding month of 2004 as the months of 2005 that had not been affected by the adverse event. TCC submitted that, in this way, the effect of the adverse event was removed and seasonal variations in the volume and type of repair and installation work, which were a major driver of month-to-month variations in Q of S results, were taken into account. TCC submitted that this adjustment might, or might not, yield an above-standard Q of S result.

31. TCC stated that it had used this methodology to estimate what its Q of S results would have been but for the occurrence of the adverse event with respect to indicators 1.3 and 2.2. In the case of indicator 2.1, TCC indicated that it had used 2003 results to adjust the 2005 results because its 2004 performance on this indicator had been severely affected by tracking system issues for the last half of 2004.

32. TCC provided charts depicting its monthly Q of S results for January 2004 – or, in the case of indicator 2.1, January 2003 – to 21 July 2005 for each of the indicators addressed in its application. It noted that the charts also showed the adjusted Q of S results for the months affected by the adverse event.

33. TCC submitted that it had calculated its Q of S results for July 2005 in order to exclude the effects of a labour dispute that had begun on 21 July 2005. TCC indicated that it had estimated its results for the last 11 days of July by calculating its average daily performance for the first 20 days of July and then extrapolating to the end of the month. TCC submitted that without the labour disruption, its performance during the last 11 days of July would have mirrored the first 20 days of July.

34. TCC submitted that using its proposed methodology, its retail Q of S results for June and July 2005 should be adjusted to exclude the effects of the June 2005 flooding.

MTS Allstream

35. MTS Allstream noted that TCC had requested that the effect of the adverse event for the full months of June and July be reflected using a ratio adjustment based on its 2004 results for the same indicators, in order to establish new 2005 results. MTS Allstream submitted that the proposed replacement of 2005 results with prior year results was not in keeping with the principle of exclusion provided in Decision 2005-17. According to MTS Allstream, for some of the indicators submitted, TCC's proposed adjustments would give the company better average June and July 2005 results than the average results for the preceding five months in 2005.

36. MTS Allstream submitted that TCC should not be permitted to substitute results that were an improvement over preceding months when its actual Q of S results were substandard.

TCC's reply

37. TCC argued that MTS Allstream's characterization of its methodology was inaccurate and that MTS Allstream's reference to a "principle of exclusion" had no basis in any Commission ruling. TCC submitted that, contrary to MTS Allstream's allegation, TCC's methodology did not replace results with the prior year's results. It indicated that, rather, it had used the average difference between its performance in 2004 and 2005 to reconstruct what the results would have been if the flooding had not occurred. TCC submitted that rather than excluding the period that had been affected by the adverse event, it had excluded the effect of the adverse event on the Q of S results for this period.

38. TCC submitted that its methodology took into account the possibility that its performance might have been below standard on any particular indicator, even if the adverse event had not occurred. The company also submitted that using this methodology to adjust its Q of S results

for the months affected by the adverse event did not yield above-standard results. It submitted, further, that seasonal variations in the volume and type of repair and installation work and the accessibility of equipment sites were taken into account. TCC argued that MTS Allstream's comparison was flawed because of the seasonal variations in the volume and type of repair and installation work and the accessibility of equipment sites, which were a major driver of month-to-month variations in Q of S results.

39. In TCC's view, the Commission had not prescribed or ruled out any particular adjustment methodology in Decision 2005-17, nor had it established a principle of exclusion. TCC argued that the choice of methodology was left to the applicant and that the Commission had stated that any modification to Q of S results would be determined on a case-by-case basis.

Commission's analysis and determinations

40. The Commission notes that in its application, TCC requested that the Commission adjust the results for retail indicators 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B for June and July 2005 so that it would not be held responsible for below-standard results due to the floods. The Commission further notes that the request for relief from paying rate adjustments on these indicators was based on TCC's proposed adjustment methodology, which TCC submitted had removed the effects of the floods on provisioning and repair functions based on ratios derived from 2004 or 2003 results for the same indicators.

41. In the Commission's view, there are five main issues to consider in this application. These are:

- Should TCC's application be dealt with, considering its late filing date?
- Do the 2005 floods qualify as an adverse event pursuant to Decision 2005-17?
- Is there a causal link between the adverse event and the retail Q of S results?
- What methodology should be used in this case to determine whether retail Q of S indicators should be adjusted or excluded from the retail RAP?
- Which retail Q of S indicators should be excluded from the RAP and for how long?

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

42. The Commission notes that in Decision 2005-17, it required the ILECs to file any application for exclusion of Q of S results within 21 days of the end of an adverse event and, in the case of an ongoing event, within 21 days of the end of the reporting period.

43. The Commission notes that MTS Allstream raised the issue of TCC's application being filed 10 months after the end of the flooding in southern Alberta. However, the Commission also notes that TCC kept the Commission informed regarding the anticipated timing of the exclusion application and the obstacles that precluded it from filing the application before the second quarter of 2006.

44. The Commission considers that TCC's delay in filing its application is reasonable, given that resources were not available to file the application during the labour disruption that started shortly after the June 2005 flooding and its aftermath. Consequently, the Commission determines that TCC's application should be reviewed in accordance with Decision 2005-17.

Do the 2005 floods qualify as an adverse event pursuant to Decision 2005-17?

45. In the Commission's view, TCC has provided sufficient information concerning the June 2005 floods in southern Alberta for them to qualify as an adverse event on the basis that they were unpredictable and beyond the company's reasonable control. For example, the Commission notes that during the month of June 2005, southern Alberta experienced record rainfall, which made June 2005 the wettest month since record keeping began in 1885. The Commission also notes the severity of the situation, in that Alberta Environment only lifted its flood watch or flood warning advisories for southern Alberta on 1 July 2005, following 24 consecutive days of postings.

46. The Commission notes that while MTS Allstream alleged that TCC could have done more to mitigate the effect of the floods, it did not dispute that the floods constituted an adverse event.

47. Based on the above, the Commission determines that the 2005 floods in southern Alberta were unpredictable and beyond the reasonable control of TCC and, therefore, that they qualify as an adverse event for the purpose of the retail RAP.

Is there a causal link between the adverse event and the retail Q of S results?

48. In the Commission's view, the floods that started on 7 June 2005 required TCC to review and set priorities to ensure that service was restored to customers as soon as practically possible. The Commission considers TCC's argument that recovery from flooding is a difficult and time-consuming operation to be reasonable. The Commission also considers it reasonable that the reassignment of resources from various areas of the company to deal with the effects of the floods would have contributed to the creation of a backlog of provisioning orders and repair reports in TCC's operating territory, which TCC indicated was not cleared until 21 July 2005.

49. In the Commission's view, there is a causal link between the June 2005 floods and the substandard retail provisioning (indicator 1.3B) and repair (indicators 2.1 and 2.2) Q of S performance results for TCC in its operating territory during the months of June and July 2005. The Commission therefore determines that the three above-noted retail Q of S indicators were adversely affected by the June 2005 floods in southern Alberta.

50. The Commission notes that TCC applied for adjustments under the retail RAP for the months of June and July 2005. The Commission also notes that TCC submitted that it had fully recovered from the effects of the floods by 21 July 2005 and any adjustment could apply for all of July 2005 or only for the first 21 days of the month.

51. In the Commission's view, an exclusion should generally apply to an entire month since the retail RAP Q of S performance results are based on an annual average of monthly results. The Commission considers that any attempt to pro-rate adjustments would have to assume that the volume of service orders/trouble reports is constant. In the Commission's view, this is unlikely

to be the case for either provisioning or repair activities. The Commission therefore determines that the exclusion period related to the June 2005 floods in TCC's operating territory will include the entire months of June and July 2005.

What methodology should be used in this case to determine whether retail Q of S indicators should be adjusted or excluded from the retail RAP?

52. The Commission notes that TCC proposed a methodology to normalize its retail Q of S performance results for the months affected by the June 2005 floods by adjusting the results for indicators 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B for the months of June and July 2005 based on past results. While the Commission considers it appropriate to look at past performance results as an indication of what might occur going forward, it also 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.

53. The Commission notes that TCC's proposed methodology to normalize its retail Q of S results for June and July 2005 used 2003 or 2004 results against unaffected 2005 results to develop adjustment ratios that would not provide consistency under varying Q of S results. The Commission is concerned that if very poor Q of S results in the base year are used to develop a ratio with unaffected results for 2005, then the resulting improvement in the months affected by the adverse event may be artificially inflated. In the Commission's view, the greater the difference between the base year and 2005, the greater the ratio and, hence, the greater the improvement in the results affected by the adverse event. The Commission considers, therefore, that developing a ratio from a poor performance in order to derive a better performance is not appropriate.

54. The Commission further considers that if applied, TCC's proposed methodology might not accurately normalize the June and July 2005 performance results because the volumes and types of provisioning and repair orders within a particular month cannot be assumed to be consistent with those in the same months of previous years. The Commission notes that TCC's proposed methodology cannot be tested against normal working conditions after July 2005 due to the labour dispute that started on 21 July 2005.

55. The Commission also considers that while TCC's proposed methodology takes into account historical Q of S results, it is not appropriate to rely upon data from the beginning of 2004 or, in one case, from 2003, because these timeframes are simply too far removed from the period of the adverse event.

56. Based on the above, the Commission denies TCC's proposed methodology to adjust retail Q of S results for the months of June and July 2005.

57. The Commission considers that by reviewing Q 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 Q of S indicator standards. 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 twelve 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.

58. The Commission considers, therefore, that if TCC's retail Q of S performance results for the twelve months prior to June 2005 show that the standard was met for at least six out of those twelve months or for the three consecutive months immediately prior to June 2005, it is likely that TCC would have met the standard for that indicator in June and July of 2005.

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

59. The Commission notes that TCC met the retail Q of S standard for all 13 retail indicators during the entire three-month period immediately prior to the June 2005 floods.

60. Based on the above, the Commission considers that, for this application, it is reasonable to conclude that TCC would have met the service standards for indicators 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B for June and July of 2005, were it not for the adverse event. The Commission therefore determines that TCC is to exclude these three indicators from its Q of S results for the months of June and July 2005 under the retail RAP.

Timing of any customer credits

61. The Commission notes that TCC has not yet paid any customer credits related to retail Q of S results for 2005, pending Commission determinations regarding the current application and a second exclusion application related to a labour dispute that started on 21 July 2005. The Commission also notes that customer credits are determined based on total average annual Q of S results.

62. The Commission considers that since TCC is waiting for a determination regarding the exclusion application pertaining to the labour dispute, the company is not yet in a position to finalize its 2005 retail Q of S results for the RAP. The Commission determines, therefore, that TCC is not required to provide customer credits for 2005, if applicable, until the Commission issues its determination regarding TCC's exclusion application for the 2005 labour dispute.

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

Secretary General

Dissenting opinions of Commissioner and Vice-Chair, Telecommunications Richard French
Commissioner and Vice-Chair, Broadcasting Michel Arpin
Commissioner Andrée Noël

Our dissent from this decision is founded on the same reasons and susceptible to the same remedies as those which we expressed in our dissent to CRTC 2007-29, of today's date.