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

Telecom Decision CRTC 2007-53

Ottawa, 13 July 2007

Bell Canada – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors due to a strike

Reference: 8660-B2-200514829

In this Decision, the Commission approves Bell Canada's request to exclude below-standard results for competitor quality of service (Q of S) indicators 1.8, 1.11, 1.11A, 1.12, 2.7, and 2.10 from the rate rebate plan (RRP) for the months of April to October 2005 due to a strike in Ontario. The Commission denies Bell Canada's request to exclude competitor Q of S indicators 1.9, 1.13, 2.7A, and 2.9 during the same period of time.

The Commission determines that Bell Canada is eligible for a refund of any rate rebate amounts that it paid to competitors for substandard competitor Q of S performance results for indicators 1.8, 1.11, 1.11A, 1.12, 2.7, and 2.10 for the period of time approved in this Decision.

In addition, the Commission directs Bell Canada to calculate, if it has not already done so, the appropriate interest charges on its third quarter 2005 RRP payments to competitors for the period 1 November 2005 to 9 January 2006 and to release those interest payments to competitors within 30 days of this Decision.

Introduction

1. The Commission received an application by Bell Canada, dated 5 December 2005, in which it requested that the Commission exclude certain competition-related quality of service (Q of S) indicators from the associated rate rebate plan (RRP) for competitors for the months of April to October 2005. Bell Canada submitted that a strike by 1,400 technicians represented by the Communications, Energy and Paperworkers Union of Canada (CEP) against Entourage Technology Solutions Inc. (Entourage) in Ontario, to which Bell Canada contracted installation and repair services, had affected the companies' ability to be at or above standard for the following 10 competitor Q of S indicators:

   - 1.8 – New Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.8)
   - 1.9 – Migrated Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.9)
   - 1.11 – Competitor Interconnection Trunk Order Service Interval Met (indicator 1.11)

- 1.11A – Interconnection Trunk Order Late Completions (indicator 1.11A)
- 1.12 – Local Service Requests Confirmed Due Dates Met (indicator 1.12)
- 1.13 – Unbundled Type A and B Loop Order Late Completions (indicator 1.13)
- 2.7 – Competitor Out-of-Service Trouble Reports Cleared Within 24 Hours (indicator 2.7)
- 2.7A – Competitor Out-of-Service Trouble Report Late Clearances (indicator 2.7A)
- 2.9 – Competitor Degraded Trouble Reports Cleared Within 48 Hours (indicator 2.9)
- 2.10 – Mean Time to Repair – CDN[1] Services and Type C Loops (indicator 2.10)

2. The Commission established the final RRP in *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005 (Decision 2005-20). The final RRP, which became effective 1 July 2005, included a mechanism for considering possible exclusions from competitor Q of S results where circumstances beyond the control of an incumbent local exchange carrier (ILEC) may have caused it to fail to meet a performance standard.

3. The Commission received comments on Bell Canada's application from MTS Allstream Inc. (MTS Allstream) and Rogers Communications Inc., on behalf of itself and Call-Net Communications Inc. (RCI). The record closed with Bell Canada's reply comments, dated 23 January 2006.

4. The Commission considers that Bell Canada's application raises the following issues:

   I) Does the strike qualify as an adverse event?

   II) Which competitor Q of S indicators should be excluded from the RRP?

   III) For which months should the indicators be excluded?

   IV) Other matters

[1] CDN stands for "competitor digital network."

I) Does the strike qualify as an adverse event?

Positions of parties

5. Bell Canada submitted that it contracted installation and repair services to Entourage to provide service to its customers.[2] It noted that on 24 March 2005, approximately 1,400 technicians represented by the CEP had declared a strike against Entourage in Ontario. It also noted that the technicians in the province of Québec, who were also represented by the CEP, had not gone on strike.

6. Bell Canada noted that Entourage and the CEP had met with a provincial mediator on 5 July 2005 and that the parties had reached a tentative agreement on 10 July 2005. The company also noted that Entourage employees had returned to work over a two-week period beginning 25 July 2005 and that all employees were to have returned to work by 8 August 2005.

7. Bell Canada submitted that the CEP strike against Entourage in Ontario clearly qualified as an adverse event beyond its control. It also submitted that

   - the striking CEP members in Ontario had not been Bell Canada employees, nor had they even been employees of a company controlled by Bell Canada at the beginning of the strike;

   - the offer made by Entourage to its employees had been a reasonable one since CEP members in Québec had accepted Entourage's final offer on 28 April 2005, without any work stoppage; and

   - picketing activities by CEP members, including blockades of major Bell Canada work centres, which had resulted in several injunctions being granted to Bell Canada, had severely disrupted the normal work activities of both its employees and contract employees it had hired, further affecting the company's ability to meet its performance indicators.

8. Bell Canada submitted that its performance associated with competitor Q of S indicators had been negatively affected by the direct effects of the CEP strike in Ontario. The company added that any opportunity to bring performance standards that had not been met prior to the strike up to standard had been eliminated due to the considerable resource and operational challenges presented by the strike. Bell Canada also submitted that, despite its best efforts to continue to meet its competitor Q of S obligations – by hiring, training, and retaining contract and temporary workers – the disruption caused by the strike had made it impossible to meet these indicators during the period in question. Bell Canada was of the view that it would be inequitable to penalize it for failing to achieve a performance standard that it had had no

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[2] Bell Canada submitted that it had acquired control of Entourage on 30 April 2005 and that prior to that date it had been a minority shareholder, owning approximately 33 percent of the shares of Entourage.

opportunity to meet.

9. Bell Canada further submitted that the work activities of both replacement workers and Bell Canada's own technicians had been considerably delayed and encumbered as a result of picketing by the CEP. Bell Canada noted that, consequently, a backlog of orders had accumulated, causing a significant increase in calls to the repair bureau in Ontario over the period of the strike.

10. MTS Allstream submitted that Bell Canada had not demonstrated that the Entourage strike was either unpredictable or unforeseen. It argued that the strike had been an entirely foreseeable legal strike. MTS Allstream also argued that Bell Canada had not demonstrated that it had done everything reasonably possible to meet its obligations under the competitor Q of S regime by adequately deploying the resources that were fully within its control, particularly in light of the company's retail Q of S performance.

11. MTS Allstream submitted that based on a comparison between Bell Canada's exclusion application regarding the retail Q of S plan that had been filed at the same time as the competitor Q of S exclusion application, there was a disparity between the service levels Bell Canada had provided to its retail and competitor customers. MTS Allstream added that it was noteworthy that Bell Canada had requested that the Commission exclude 10 of 14 competitor Q of S indicators, while it had only requested to exclude 4 of 13 retail Q of S indicators from the retail Q of S plan.

12. MTS Allstream argued that Bell Canada's competitor Q of S performance for the first 10 months of 2005 had been, on average, below standard before, during, and after the strike. It added that the strike had simply led to further deterioration of what was already poor service quality. MTS Allstream submitted that Bell Canada's claim that absent the strike it would have met all of the relevant competitor Q of S standards was at best doubtful based on the poor results from the January to March 2005 period, for which the interim rate adjustment plan for competitors had still been in force.

13. RCI submitted that the problems with Bell Canada's service quality resulted from systemic problems inside Bell Canada and that the effect of the strike was minimal. RCI submitted that based on Bell Canada's aggregate competitor Q of S results for all competitors for the period from January to October 2005, it appeared that service quality had been substandard before and after the strike period, and that there had been no significant deterioration during the strike itself.

14. RCI recognized that during 2005 Bell Canada had undertaken a number of initiatives to improve service quality and, on several occasions, had made specific commitments to that effect. RCI submitted that none of these initiatives had produced significant results and none of the commitments had been met, which supported that the strike had not played a major role in the failure of these initiatives. RCI reported that the situation had become significantly worse after the strike, as indicated by the backlog of missed due dates increasing from 650 to 6,000 between August 4 and September 15.

15. RCI submitted that it had not started to see any significant improvement in service quality until Bell Canada senior management had finally committed to providing adequate resources to the critical process areas starting in September 2005. RCI submitted, however, that progress had

been slow and that problems still existed with some of the indicators.

Bell Canada's reply comments

16. Bell Canada submitted that neither MTS Allstream nor RCI had disputed that the Entourage strike was beyond the control of Bell Canada.

17. Bell Canada argued that MTS Allstream's assertion that it was doubtful that Bell Canada would have met the minimum competitor Q of S standards over the seven-month period, even absent the strike, was purely conjecture and unsupported by fact. Bell Canada also argued that supporting information presented by MTS Allstream was inaccurate and misleading. Bell Canada added that the fact that it had consistently missed the standard for two out of eight competitor Q of S indicators in the first quarter of 2005 hardly supported MTS Allstream's assertion that it likely would not have met the Commission standard for any of the indicators in question absent the Entourage strike.

18. Similarly, Bell Canada argued that RCI's assertion that the effect of the Entourage strike on Bell Canada's service quality had been minimal and that the company would not have performed to the competitor Q of S standards even if there had been no strike was purely conjecture. Bell Canada asserted that, generally, it had been meeting the Commission standards for most competitor Q of S indicators prior to the strike.

Commission's analysis and determinations

19. The Commission notes MTS Allstream's comments that the strike had been signaled well in advance and, therefore, it was predictable and not unique. The Commission considers that until a strike occurs there is no certainty it will occur. Accordingly, the Commission considers that the Entourage strike in Ontario was not predictable.

20. The Commission considers that the negotiations involved two sophisticated entities acting in accordance with, and exercising, their legal rights within the framework of applicable Canadian labour legislation. The Commission considers that since Bell Canada and the CEP were each in control of only their own activities, neither one was in control of the adverse event.

21. The Commission considers that in order to evaluate the reasonableness of the measures put in place by Bell Canada to mitigate the effects of the strike on its customers, as MTS Allstream and RCI proposed, the Commission would need to delve into issues outside its purview and expertise. Therefore, the Commission does not consider it appropriate for it to analyze whether Bell Canada's measures to maintain service during the strike were appropriate.

22. In the Commission's view, the strike by Entourage employees necessarily had an adverse effect on Bell Canada's ability to maintain normal working operations. The Commission notes that the Entourage employees who were engaged in the strike would generally have been the same personnel who performed the work associated with the activities measured by the competitor Q of S indicators in question. As a result, the Commission considers that the activities measured by the competitor Q of S indicators would have been directly affected by

the strike.

23. The Commission also notes MTS Allstream's submission that there was a disparity between the service levels Bell Canada provided to its retail customers and its competitor customers. The Commission considers that comparing the retail and competitor indicator functions is not appropriate at the indicator level because the activities being measured and the personnel required to perform those activities are different in certain circumstances.

24. Given that the strike was beyond Bell Canada's control and affected the company's ability to meet the competitor Q of S indicators, the Commission considers that the strike by Entourage employees qualifies as an adverse event.

II) Which competitor Q of S indicators should be excluded from the RRP?

Commission's analysis and determinations

25. The Commission considers that if it is likely that Bell Canada would have met the competitor Q of S indicator results absent this adverse event, then, consistent with Decision 2005-20, it would be reasonable that Bell Canada be granted an exclusion from paying rate rebates for competitor Q of S indicators that were below standard for the Commission-approved exclusion period determined below.

26. In *TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors for July 2005*, Telecom Decision CRTC 2007-14, 28 February 2007 (Decision 2007-14), the Commission set out a methodology[3] that examined performance results for the 12-month period prior to the month in which the adverse event began in order to determine whether the adverse event had affected TELUS Communications Company's ability to meet its competitor Q of S indicator standards.

27. Based on the methodology set out in Decision 2007-14, the Commission considers that, were it not for the strike, under normal operating conditions,

- it is likely that the results for indicators 1.8, 1.11, 1.11A, 1.12, and 2.7 would have been at or above standard since the performance results in at least 6 of the 12 months prior to the strike were above standard; and

- it is unlikely the results for indicators 1.9, 1.13, 2.7A, and 2.9 would have been at or above standard since the performance results in at least 6 of the 12 months and at least 1 of the 3 consecutive months immediately prior to the strike were below standard.

28. Accordingly, the Commission determines that during the eligible exclusion period, Bell Canada should be granted exclusions from paying rate rebates for indicators 1.8, 1.11,

[3] If TELUS Communications Company's (TCC) competitor Q of S indicator results were at or above standard for at least 6 months of the 12-month period prior to the month of the adverse event or, alternatively, if TCC's results were at or above standard for the 3 consecutive months prior to the month of the adverse event, then it would be reasonable to conclude that TCC would have met the standard for the competitor Q of S indicators had the adverse event not occurred.

1.11A, 1.12, and 2.7, but should not be granted exclusions from paying rate rebates for below-standard results for indicators 1.9, 1.13, 2.7A, and 2.9.

29. The Commission examines indicator 2.10 in greater detail in this section of the Decision and the period affected by the adverse event in the next section.

Indicator 2.10

30. The Commission notes that indicator 2.10 was not measured prior to July 2005 and its results were only reported for the first time at the end of the third quarter of 2005. The Commission also notes that no historical data exists to determine the performance of Bell Canada with respect to this indicator prior to the adverse event.

31. The Commission notes that Bell Canada consistently missed the standard for this indicator for most of the period over which it was measured. The Commission notes, however, that beginning in November 2005, Bell Canada was able to meet the standard set for this indicator. The Commission therefore considers that the adverse event had an effect on Bell Canada's ability to meet the standard for indicator 2.10.

32. Accordingly, the Commission determines that Bell Canada should be granted an exclusion for below-standard results for indicator 2.10 during the eligible exclusion period.

III) For which months should the indicators be excluded?

33. The Commission has determined above that Bell Canada should be granted exclusions from the RRP for below-standard results for competitor Q of S indicators 1.8, 1.11, 1.11A, 1.12, 2.7, and 2.10. In this section of the Decision, the Commission will determine the period during which Bell Canada will not be required to pay rate rebates for below-standard competitor Q of S results.

Positions of parties

34. Bell Canada submitted that it had continued to experience difficulties into October 2005 for several reasons related to the strike. First, the return of vehicles and tools used by contractors took up to three weeks in August. Second, in the last week of August and the first week of September, Entourage had hired over 300 technicians to replace those technicians who had never returned from the strike and to work on the backlog of orders that had accumulated during the course of the strike. Bell Canada submitted that after their one-month training, the new technicians were only able to complete half a day's normal workload for the next two months, due to inexperience. It stated that, with most training completed and the backlog reduced, it anticipated being able to meet the Commission's competitor Q of S standards in the month of November 2005.

Commission's analysis and determinations

35. The Commission notes that Bell Canada requested to exclude the effects of the strike on its competitor Q of S results for the same period of time that it took for the company to recover from the strike in the case of its retail operations, that is, from 1 April to 31 October 2005,

which is more than three months after the strike was settled.

36. The Commission also notes Bell Canada's submission that the adverse event had been aggravated by a number of factors, which had hampered its ability to return to pre-strike performance levels.

37. The Commission notes that in August 2005, Bell Canada's customers who may have held back orders would have begun placing them once the strike by Entourage employees was over, increasing the volume of work the company had to deal with. In addition, the Commission notes that the "student inward" period occurs every September. The Commission considers that while Bell Canada had to plan and manage the increased workload, the student inward period, and the backlog of orders, the management of all of the resulting orders would have been predicated on having sufficient qualified resources at hand.

38. The Commission notes that a substantial number of Entourage employees chose not to return to work after the strike had ended and that the return to work process was not achieved as fast as the company had planned. In addition, the Commission considers that the training requirements for the 300 new employees hired in August and September 2005 to replace Entourage employees that chose not to return to work and to work on the backlog would have further reduced the speed with which the backlog was resolved.

39. The Commission considers that given the length of the strike and the large number of technicians involved, it is reasonable to conclude that Bell Canada would require a period of reconstruction, recovery, and re-establishment of processes in order to achieve normal working operations and to deal with any pent-up demand for repairs and new installations after the end of the strike.

40. Accordingly, the Commission determines that the appropriate exclusion period for Bell Canada to exclude below-standard competitor Q of S indicators is April to October 2005.

IV) Other matters

Positions of parties

41. Bell Canada submitted that it had serious concerns about releasing the funds resulting from rate rebate amounts owed directly to competitors at the time they were due. The company also noted that in a letter dated 31 October 2005, it had informed the Commission that it had placed in an escrow account the full amount that would otherwise have been payable to competitors for the third quarter of 2005 but that might not be payable following the issuance of the Commission's decision on the company's application.

42. MTS Allstream submitted that Bell Canada could not impose escrow arrangements upon MTS Allstream and that the Commission's determination that rebates must be paid within 30 days after the end of the quarter should apply. MTS Allstream stated that Bell Canada's rebate payment to MTS Allstream for the third quarter of 2005 had been outstanding effective 1 November 2005 and should incur interest, accruing at the interest rate charged by the ILEC for late payment of ILEC bills as determined by the Commission in Decision 2005-20. MTS Allstream noted that the rate quoted in Bell Canada's terms and conditions was

12 percent per year.

43. Bell Canada submitted that, further to comments by MTS Allstream disagreeing with its escrow account approach, on 9 January 2006 Bell Canada had advised the law firm of Blake, Cassels & Graydon LLP to release the funds held in escrow to MTS Allstream and other competitors, although the company maintained that its treatment of the rate rebate amounts was entirely appropriate.

Commission's analysis and determinations

44. The Commission reminds Bell Canada of its obligations concerning RRP adjustment payments. The Commission considers that Bell Canada deviated from the approach set out by the Commission for adjustment payments under the RRP since payments that were due 1 November 2005 were not made until 9 January 2006. The Commission is unaware whether those payments were made inclusive of interest for late payment, but considers that the company should have included interest in its January payments.

Conclusion

45. In light of the above, the Commission **approves** Bell Canada's request to exclude below-standard results for competitor Q of S indicators 1.8, 1.11, 1.11A, 1.12, 2.7, and 2.10 for the period of April to October 2005, but **denies** its request to exclude below-standard results for competitor Q of S indicators 1.9, 1.13, 2.7A, and 2.9.

46. The Commission determines that Bell Canada is eligible for a refund of any rate rebate amounts that it paid to competitors for substandard performance results for competitor Q of S indicators 1.8, 1.11, 1.11A, 1.12, 2.7, and 2.10 for the period of time noted above.

47. In addition, the Commission directs Bell Canada to calculate, if it has not already done so, the appropriate interest charges on its third quarter 2005 RRP payments to competitors for the period 1 November 2005 to 9 January 2006 and to release those interest payments to competitors within 30 days of this Decision.

Secretary General

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