Telecom Decision CRTC 2007-55

Ottawa, 20 July 2007

TELUS Communications Company – Application to exclude certain retail quality of service results from the retail quality of service rate adjustment plan for the months of July 2005 to February 2006

Reference: 8660-T66-200608044

In this Decision, the Commission directs TELUS Communications Company (TCC) to exclude certain quality of service (Q of S) results from the retail Q of S rate adjustment plan (RAP) calculation for the following periods due to the impact of a labour disruption:

- *indicator 1.2B for the months of July, August, September, October, November, and December 2005 as well as January 2006;*
- *indicator 1.3B for the months of August, September, October, November, and December 2005;*
- *indicators 2.1A and 2.2A for the months of August, September, October, November, and December 2005 as well as January 2006; and*
- *indicators 2.1B and 2.2B for the months of August, September, October, November, and December 2005 as well as January and February 2006.*

The Commission directs TCC to provide a customer credit, if applicable, starting by 18 September 2007 to customers of record as of the date of this Decision.

The dissenting opinions of Commissioners Arpin and Noël are attached.

Background

1. In Telecom Decision 2005-17, the Commission approved the final quality of service (Q of S) retail rate adjustment plan (RAP) for the large incumbent local exchange carriers (ILECs). The Commission also 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.

2. The Commission considered that the 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 should be assessed in light of the surrounding circumstances; further, any modification to the Q of S results for the purposes of the retail Q of S RAP calculation should be determined on a case-by-case basis.

Application

3. The Commission received an application by TELUS Communications Company (TCC), dated 19 June 2006, in which it proposed adjustments to certain Q of S results for the purpose of

calculating exclusion adjustments under the retail Q of S RAP due to a labour disruption that spanned from 21 July to 19 November 2005.

4. TCC requested that the results for the following Q of S indicators be adjusted for the months of July 2005 to January 2006:

   - 1.2B – Installation Appointments Met – Rural (indicator 1.2B)
   - 1.3B – Held Orders Per 100 NAS Inward Movement – Rural (indicator 1.3B)
   - 2.1A – Out-of-service Trouble Reports Cleared Within 24 Hours – Urban (indicator 2.1A)
   - 2.2A Repair Appointments Met – Urban (indicator 2.2A)

5. TCC also requested that the results for the following Q of S indicators be adjusted for the months of July 2005 to February 2006:

   - 2.1B – Out-of-service Trouble Reports Cleared Within 24 Hours – Rural (indicator 2.1B)
   - 2.2B – Repair Appointments Met – Rural (indicator 2.2B)

6. No comments were filed with respect to TCC's application.

Issues to be addressed

7. TCC's application raises the following issues:

   I. whether the labour disruption qualifies as an adverse event;

   II. whether there is a causal link between the labour disruption and TCC's Q of S results;

   III. the appropriate adjustment methodology; and

   IV. which Q of S results should be excluded.

I. Whether the labour disruption qualifies as an adverse event

8. TCC stated that following the 1999 merger between TELUS (Alberta) and B.C. Telecom Inc., the Canadian Industrial Relations Board (CIRB) had issued an order to create a single bargaining unit for wireless and landline employees in Alberta and British Columbia. TCC further submitted that the collective agreement had expired on 31 December 2000 and that parties had tried to negotiate a new agreement to no avail. TCC also submitted that negotiations were protracted and difficult since they took place between four unions to be merged, which represented five distinct bargaining units, with the Telecommunications Workers Union (TWU) as their bargaining agent.

9. TCC stated that following the failure of negotiations, it had experienced a labour disruption lasting from 21 July to 19 November 2005. TCC indicated that all unionized employees had

returned to work within two weeks following the labour disruption. TCC also submitted that approximately 8,200 employees had taken part in the labour disruption, which had serious repercussions on its customer contact operations, office support staff, installation bureaus, and repair bureaus.

10. TCC proposed that the Commission find the labour disruption to be an adverse event beyond its control.

Commission's analysis and determination

11. In Telecom Decision 2007-26, the Commission determined that the following facts supported its conclusion that a labour disruption experienced by Bell Aliant Regional Communications, Limited Partnership constituted an adverse event:

    a) the amalgamation of the bargaining units resulted from a decision by the CIRB;

    b) the labour negotiation process was complex as it emerged from a process whereby four companies merged, four bargaining agents were combined, and nine collective agreements merged; and

    c) the negotiations involved two sophisticated entities acting in accordance with, and exercising, their legal rights within the framework of applicable Canadian labour legislation.

12. The Commission considers that the circumstances of the labour disruption experienced by TCC are similar to the circumstances of the labour disruption addressed in Telecom Decision 2007-26. In this regard, the Commission notes the following with respect to the labour disruption experienced by TCC:

    a) the amalgamation of the bargaining units resulted from a decision by the CIRB;

    b) the labour negotiation process was complex as it emerged from a process whereby two companies merged and four unions, representing five distinct bargaining units, merged; and

    c) negotiations involved two sophisticated entities (i.e. TCC and the TWU) acting in accordance with, and exercising, their legal rights within the framework of applicable Canadian labour legislation.

13. In light of the above, the Commission concludes that for the purposes of the retail Q of S RAP calculation, the labour disruption should be considered an adverse event as it was unpredictable and beyond TCC's reasonable control.

II. Whether there is a causal link between the labour disruption and TCC's Q of S results

14. TCC submitted that the labour disruption had a direct, negative impact on its ability to meet Q of S standards for repair and installation functions. TCC argued that the scope of the labour disruption and the number of employees affected made it impossible for the company to have provided the same level of service as it could have provided absent the adverse event.

15. In this regard, TCC submitted that as a result of the labour disruption, its workforce was reduced to a third of its normal size. TCC further submitted that it had redeployed managers and employed contract workers to perform network-related functions, which brought the total staffing level to less than 40 percent of the regular staffing levels. TCC added that the redeployed managers had limited experience performing repair and installation functions.

16. TCC submitted that it had implemented emergency measures for the duration of the labour disruption to minimize its impact, focusing on the safety of its employees and the maintenance of the network. TCC stated that, as a result, it had assigned a lower priority to repair- and installation-related functions for the duration of the labour disruption, regardless of whether the end-customer was a customer of TCC or a competitor.

17. TCC also stated that due to a backlog of repair and installation orders, its ability to meet the Q of S standards related to repair and installation had also been affected for a period of time following the labour disruption.

Commission's analysis and determination

18. The Commission notes that TCC requested approval to exclude the effects of the labour disruption until the end of January 2006 for indicators 1.2B, 1.3B, 2.1A, and 2.2A and until the end of February 2006 for indicators 2.1B and 2.2B – a period of three months after the labour disruption was settled. The Commission considers this to be reasonable as unionized employees were reintegrated into the workforce during this period and TCC dealt with the repair and installation backlog resulting from the labour disruption.

19. In light of the above, the Commission finds that there is a causal link between the labour disruption and TCC's substandard Q of S performance results.

III. The appropriate adjustment methodology

20. Using its proposed methodology, TCC compared its performance for each unaffected Q of S indicator for January to May 2005 to its performance during the same months of 2004. This calculation resulted in an average ratio by which TCC would have expected its 2005 results to differ from its 2004 results. TCC then applied this performance difference to its 2004 Q of S results to derive what its 2005 and 2006 Q of S results would have been absent the adverse event.

21. TCC submitted that by using the proposed methodology, it had removed the effect of the adverse event and taken into account seasonal variations in the volume and type of repair and installation work – a major driver of month-to-month variations in Q of S results. TCC submitted that the above-noted methodology might yield an above-standard Q of S result or a rate rebate under the retail Q of S RAP.

Commission's analysis and determinations

22. The Commission notes that TCC's proposed methodology is the same as the one rejected in Telecom Decision 2007-30. In Telecom Decision 2007-30, the Commission denied TCC's proposed adjustment methodology as it was concerned that if very poor Q of S results in a base year were used to develop a ratio with unaffected results in another year, the resulting

improvement in the months affected by the adverse event might be artificially inflated. The Commission also considered that TCC's proposed methodology might not accurately normalize the performance results as the volumes and types of provisioning and repair orders within a particular month could not be assumed to be consistent with those in the same months of previous years.

23. Given that the proposed adjustment methodology in TCC's current application is the same as the proposed adjustment methodology that the Commission rejected in Telecom Decision 2007-30, the Commission, therefore, rejects the adjustment methodology proposed in TCC's current application for the same reasons as it rejected this methodology in Telecom Decision 2007-30.[1]

24. The Commission notes that in Telecom Decision 2007-30, and other similar decisions, it determined that if an ILEC had 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, it would be reasonable to conclude that the ILEC would likely have met its Q of S obligations had the adverse event not occurred. The Commission considers it appropriate to apply the same methodology to TCC's current application.

25. As previously mentioned, in Telecom Decision 2007-30, the Commission determined that TCC should exclude the results for indicators 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B from the calculation of the retail Q of S RAP for the months of June and July 2005. Accordingly, the Commission will not consider the Q of S results for indicators 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B during June and July 2005 in its assessment of whether the Q of S standards for those indicators were met for six out of the previous 12 months, or for the three consecutive months, immediately prior to the adverse event. The Commission considers it appropriate to review TCC's Q of S results for the above-noted indicators for the 12-month period from June 2004 to May 2005. Since indicator 1.2B was not under consideration in Telecom Decision 2007-30, the Commission considers the appropriate 12-month period for this indicator to be from July 2004 to June 2005.

IV. The Q of S results that should be excluded

26. The Commission notes that TCC met the retail Q of S standard for indicators 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B during the entire three-month period immediately prior to June 2005. The Commission also notes that TCC met the retail Q of S standard for indicator 1.2B during the entire three-month period immediately prior to July 2005. The Commission further notes that TCC met the retail Q of S standard for indicators 1.2B, 1.3B, and 2.2A for 6 out of the 12 months immediately prior to the labour disruption.

27. In light of the above, the Commission finds it reasonable to conclude that TCC would have likely met the retail Q of S standard for each indicator in question during the period of July to November 2005 if the labour disruption had not occurred. Accordingly, the Commission directs that TCC exclude the results for each Q of S indicator in question (i.e. 1.2B, 1.3B, 2.1A, 2.1B, 2.2A, and 2.2B) from the retail RAP calculation for the months of August, September, October, and November 2005.

[1] The Commission notes that TCC filed this application before the release of Telecom Decision 2007-30.

28. The Commission notes that the labour disruption spanned approximately four months (i.e. from 21 July to 19 November 2005). Accordingly, the Commission considers it reasonable to assume that TCC required a recovery period of two to three months following the labour disruption for unionized employees to return and be reintegrated into the work force, and to deal with the repair and installation backlog.

29. The Commission notes that TCC's Q of S results for the indicators in question for December 2005 were the same or higher than those achieved in November 2005. The Commission also notes that the minimum standard was reached for indicator 1.3B in January; however, the standard was not achieved for indicators 1.2B, 2.1A, and 2.2A until February 2006 and not achieved for indicators 2.1B and 2.2.B until March 2006. The Commission further notes that TCC's Q of S results for all of these indicators were at or above standard for a period of at least three months thereafter.

30. In light of all of the above, the Commission considers it reasonable for TCC to exclude the results for the following Q of S indicators from the retail Q of S RAP calculation:

- indicator 1.2B for the months of July, August, September, October, November, and December 2005 as well as January 2006;
- indicator 1.3B, for the months of August, September, October, November, and December 2005;
- indicators 2.1A and 2.2A for the months of August, September, October, November, and December 2005 as well as January 2006; and
- indicators 2.1B and 2.2B for the months of August, September, October, November, and December 2005 as well as January and February 2006.

Timing of customer credit

31. The Commission notes that TCC has not yet paid any customer credits related to its retail Q of S results for 2005. In Telecom Decision 2007-30, the Commission directed TCC to wait to pay any applicable customer credit related to its retail Q of S results for 2005 until the Commission had issued its determinations with respect to the 2005 labour disruption. Since the Commission is ruling on TCC's retail Q of S results for 2005 in this Decision, the Commission considers it appropriate for TCC to issue a customer credit, if applicable, starting by 18 September 2007 to customers of record as of the date of this Decision.

Conclusions

32. The Commission directs TCC to

- exclude the results for indicator 1.2B from the retail Q of S RAP calculation for the months of July, August, September, October, November, and December 2005 and January 2006;

- exclude the results for indicators 1.3B from the retail Q of S RAP calculation for the months of August, September, October, November and December 2005;
- exclude the results for indicators 2.1A, and 2.2A from the retail Q of S RAP calculation for the months of August, September, October, November, and December 2005 as well as January 2006;
- exclude the results for indicators 2.1B and 2.2B from the retail Q of S RAP calculation for the months of August, September, October, November, and December 2005 as well as January and February 2006;
- issue a customer credit, if applicable, on its customers' monthly bills, starting by no later than 18 September 2007 for customers of record as of the date of this Decision; and
- file with the Commission by 18 September 2007, the amount of the customer credit per network access service and the network access service count used to determine the customer credit.

33. The dissenting opinions of Commissioners Arpin and Noël are attached.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership's request to review and vary Telecom Decision CRTC 2005-17, as interpreted and applied in Telecom Decision CRTC 2006-27 related to the retail quality of service rate adjustment plan,* Telecom Decision CRTC 2007-26, 27 April 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*, Telecom Decision CRTC 2007-30, 3 May 2007
- *Retail quality of service rate adjustment plan and related issues*, Telecom Decision CRTC 2005-17, 24 March 2005

Dissenting opinions of 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 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*, Telecom Decision CRTC 2007-29, 3 May 2007.