# Telecom Decision CRTC 2007-73

Ottawa, 17 August 2007

## Bell Canada – Application to exclude certain retail quality of service results from the calculation of the retail quality of service rate adjustment plan for 2005

Reference: 8660-B2-200514837

*In this Decision, the Commission determines that Bell Canada is to exclude the results of four retail quality of service indicators from the calculation of the retail quality of service rate adjustment plan for the period of 1 April 2005 to 31 October 2005 to remove the impact of a labour disruption.*

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

### Background

1. In Telecom Decision 2005-17, the Commission finalized the retail quality of service (Q of S) rate adjustment plan (RAP) for the large incumbent local exchange carriers (ILECs). In that Decision, the Commission considered it appropriate for the retail Q of S 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.

### Application

2. The Commission received an application by Bell Canada, dated 5 December 2005, in which the company requested that the Commission exclude certain of its retail Q of S indicators for the months from April to October 2005 from the calculation of the Q of S retail RAP to remove the impact of a labour disruption by Entourage Technology Solutions Inc. (Entourage) technicians.

3. Bell Canada proposed to exclude the following retail Q of S indicators:

   - 2.1A and 2.1B – Out-of-Service Trouble Reports Cleared Within 24 Hours – Urban and Rural (indicators 2.1A and 2.1B), which measure the percentage of out-of-service trouble reports that are cleared within 24 hours;
   - 2.2B – Repair Appointments Met – Rural (indicator 2.2B), which measures the percentage of completed repair orders for which repair appointments are met; and

- 2.5 – Access to Repair Bureau (indicator 2.5), which measures the number of calls to a repair bureau answered in 20 seconds or less.

4. The Commission received a response from the Public Interest Advocacy Centre (PIAC), dated 20 December 2005. The record of this proceeding closed with Bell Canada's reply comments, dated 23 January 2006.

## Issues to be addressed

5. Bell Canada'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 adverse event and the 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

6. Bell Canada submitted that approximately 1,400 technicians represented by the Communications, Energy and Paperworkers Union of Canada (CEP) had declared a strike against Entourage, a company that provided installation and repair services under contract to Bell Canada, in Ontario. Bell Canada noted that Entourage was subject to oversight by provincial labour relations boards. Bell Canada also noted that it was a minority shareholder of Entourage (owning approximately 33 percent of the company) until 30 April 2005, when it acquired control of Entourage.

7. Bell Canada provided the following timeline for the labour disruption:

   a) The strike was declared on 24 March 2005 (36 days before Bell Canada acquired control of Entourage).

   b) Entourage presented an offer to the technicians on strike in Ontario on 6 April 2005.

   c) The technicians on strike voted against a new collective agreement on 17 April 2005.

   d) The labour disruption ended after more than four months, and the technicians on strike who decided to return to work had done so by 8 August 2005.

8. Bell Canada submitted that the labour disruption qualified as an adverse event for the following reasons:

   a) The technicians on strike were neither employees of Bell Canada nor employees of a company controlled by Bell Canada at the beginning of the labour disruption.

   b) The offer Entourage made to the technicians on strike was reasonable.

   c) Picketing activities by the technicians on strike severely disrupted normal work activities, further impacting Bell Canada's ability to meet the performance standards for its Q of S indicators.

9. PIAC submitted that Bell Canada had chosen to contract Entourage to provide installation and repair services to enable Bell Canada to meet its Q of S performance standards. PIAC further submitted that the Commission had maintained in the past that the arrangements for performance of the company's obligations to serve were within the prerogative of the company. PIAC argued that the recognition of a labour disruption taking place in a company to which operations have been outsourced as a mitigating event for ILEC service quality purposes was effectively forcing a reconsideration of the question of whether such outsourcing was prudent and in the interest of ILEC service to ratepayers.

10. PIAC also submitted that the general rule should be that labour disruptions should not be grounds for an exclusion application. PIAC argued that only an extraordinary labour disruption, for example, a strike by all workers responsible for facilitating a company's repair and connections that should be grounds for an exclusion application.

11. PIAC argued that the Commission should dismiss Bell Canada's exclusion application for the following reasons:

    a) Bell Canada's application relied upon events occurring with a supplier that were not germane to the theory and operation of the price cap and the supporting service quality regime; and

    b) Bell Canada had not shown the labour disruption in question to be of such an extraordinary nature as to qualify for the exemption contemplated by the Commission in Telecom Decision 2005-17.

12. In reply, Bell Canada argued that whether Entourage was an outsourced company or a division of Bell Canada was irrelevant. Bell Canada submitted that outsourcing was a legitimate business practice. Bell Canada further submitted that if the impact of the performance of Entourage on Bell Canada's Q of S results were to count toward retail RAP calculations under normal circumstances, the Entourage labour disruption should also be considered a legitimate adverse event.

13. Bell Canada also argued that PIAC had provided no rationale to support its assertion that only an extraordinary labour disruption should be grounds for triggering an exclusion application.

*Commission's analysis and determinations*

14. The Commission considers that Entourage's activities form part of Bell Canada's normal installation and repair operations and that it was entirely within Bell Canada's prerogative to contract Entourage to provide installation and repair services. The Commission further considers outsourcing to be a legitimate business practice. In the Commission's view, there is no rationale for treating outsourcing arrangements any differently than any similar "in house" arrangements where such contract work must be carried out in a manner to enable the company to meet its Q of S standards.

15. Consequently, the Commission rejects PIAC's proposal that it dismiss Bell Canada's exclusion application on the basis that it relied upon events occurring with a supplier that were not germane to the theory and operation of the price cap and the supporting service quality regime.

16. In Telecom Decision 2007-26, the Commission determined that the labour disruption by the Council of Atlantic Telecommunications Unions members who worked for Bell Aliant Regional Communications, Limited Partnership constituted an adverse event since, among other things, the negotiations involved two sophisticated entities acting in accordance with, and exercising, their legal rights within the framework of applicable Canadian labour legislation.

17. The Commission notes PIAC's proposal that it dismiss Bell Canada's application on the basis that the company had not shown the labour disruption in question to be of such an extraordinary nature as to qualify for the exemption contemplated by the Commission in Telecom Decision 2005-17. The Commission considers that where two parties are involved in a labour disruption, neither is able to exercise complete control over the event and therefore, neither party is able to exercise reasonable control over the event. The Commission considers that neither Bell Canada nor Entourage could exercise complete control over either the occurrence or the duration of the labour disruption. Accordingly, the Commission finds that the labour disruption was beyond Bell Canada's reasonable control.

18. In light of the above, the Commission determines that the Entourage labour disruption qualifies as an adverse event.

**II. Whether there is a causal link between the adverse event and the Q of S results**

19. Bell Canada submitted that the Entourage labour disruption had a direct negative impact on its Q of S results for indicators 2.1A, 2.1B, 2.2B, and 2.5 for the duration of the adverse event. Bell Canada submitted that due to this labour disruption,

a) significantly fewer technicians were available to carry out repair activities in Ontario. In this regard, Bell Canada added that it had attempted to mitigate the impact of the labour disruption to the greatest extent feasible by hiring 650-700 contract workers and 230-250 summer students for the duration of the labour disruption to replace the approximately 1400 Entourage technicians on strike;

b) the replacement workers were less experienced and therefore less able to complete work orders as efficiently as the regular Entourage technicians;

c) the work activities of both replacement workers and Bell Canada's own technicians were considerably delayed and encumbered as a result of picketing by the CEP; and

d) due to the above-noted circumstances, a backlog of orders had accumulated, which caused the repair bureau in Ontario to experience a significant increase in calls over the period of the labour disruption.

20. Bell Canada submitted that the Entourage labour disruption also had a direct negative impact on its Q of S results for indicators 2.1A, 2.1B, 2.2B, and 2.5 for a period following the adverse event. In this regard, Bell Canada submitted that two related factors hampered the return to pre-labour disruption performance levels after the end of the labour disruption:

a) Normal Entourage hiring was suspended during the labour disruption, which increased the effective personnel deficit in August.

b) Many customers who had held back order activity during the labour disruption submitted their requests during the back-to-work period, which put a further strain on resources during the already challenging "student inward" period associated with the start of the post-secondary school year.

21. Bell Canada indicated that it had continued to experience difficulties into October for several reasons related to the Entourage labour disruption:

a) The return to Bell Canada of vehicles and tools used by contract workers took up to three weeks during August 2005.

b) During the last week of August and the first week of September 2005, Entourage hired over 300 technicians to replace those technicians who did not return following the labour disruption and to work on the backlog of orders that had accumulated during the course of the labour disruption. Bell Canada submitted that the new technicians had to be trained, which took one month. Further, for two months following their training, the new technicians were only able to complete half of a daily load due to inexperience.

22. Bell Canada also submitted that its retail Q of S results for these indicators were also adversely affected during June and July 2005 due to heavier than average rainfall in Quebec. Bell Canada noted that the heavier than average rainfall had resulted in severe flooding in the Montreal area. Bell Canada also noted that the heavier than average rainfall had resulted in higher load volumes and an increasing backlog of orders. Bell Canada submitted that the adverse effects from this rainfall were compounded by the fact that additional resources could not be borrowed from Ontario due to the Entourage labour disruption.

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

23. The Commission notes that during the Entourage labour disruption, Bell Canada took measures to mitigate the effect of the labour disruption on its retail Q of S results. In this regard, the Commission notes that Bell Canada replaced approximately two-thirds of the technicians during the course of the labour disruption. The Commission also notes that this left significantly fewer technicians to carry out repair activities in Ontario. Further, the replacement technicians were less experienced and therefore less able to complete work orders as efficiently as those technicians participating in the labour disruption.

24. The Commission notes that Bell Canada made numerous motions to the courts in an effort to limit delays caused by picketing activities. However, the Commission notes that the activities of picketers hampered the outside operations of reassigned managers and replacement workers creating physical delays with respect to Bell Canada's repair efforts. In the Commission's view, the results for repair indicators 2.1A, 2.1B, and 2.2B would have been particularly affected by these delays.

25. The Commission considers that due to the above circumstances, Bell Canada would have accumulated a backlog of repair orders by the end of the Entourage labour disruption. The Commission notes that following this labour disruption, in addition to the backlog, Bell Canada addressed requests from customers who had held back on order activity during the labour disruption as well as peak activity workload resulting from orders associated with the commencement of the post-secondary school year. The Commission considers that these activities also prolonged the period necessary to eliminate the total backlog.

26. In light of all of the above, the Commission finds that there is a causal link between Bell Canada's retail Q of S results for indicators 2.1A, 2.1B, 2.2B, and 2.5 and the Entourage labour disruption both during that labour disruption and afterward.

**III. The appropriate adjustment methodology**

27. Bell Canada proposed that the results for indicators 2.1A, 2.1B, 2.2B, and 2.5, for the months of April to October 2005 inclusive, be excluded from the calculation of the retail RAP and that its annual Q of S performance for 2005 be based on the average of the results for these indicators for the five remaining months of 2005.

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

28. In Telecom Decision 2007-30, the Commission determined that if an ILEC had successfully met or exceeded the relevant Q of S standards for at least 6 out of the 12 months, or for the 3 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 if the adverse event had not occurred. The Commission also notes that this methodology has been applied in similar subsequent decisions.

29. The Commission notes that Bell Canada's proposed methodology is based on results being excluded from the RAP calculation. The Commission also notes that this approach is similar to the methodology approved in Telecom Decision 2007-30. The Commission considers it appropriate to apply the Telecom Decision 2007-30 methodology in this case.

**IV. Which Q of S results should be excluded**

30. Bell Canada proposed that the results for indicators 2.1A, 2.1B, 2.2B, and 2.5 be excluded from the calculation of the retail Q of S RAP for the period of 1 April to 31 October 2005 inclusive. In this regard, Bell Canada noted that it had exceeded the standard in each of the months of January, February, and March 2005 for indicators 2.1A, 2.1B, 2.2B, and 2.5. Bell Canada further noted that it had missed the standard for indicator 2.1B by a narrow margin in January, but had exceeded the standard in February and March 2005. Bell Canada submitted that, in general, it did not meet the standards for indicators 2.1A, 2.1B, 2.2B, and 2.5 for the duration of the labour disruption. Bell Canada also noted that it continued to experience difficulties in meeting the retail Q of S standards for indicators 2.1A, 2.1B, 2.2B, and 2.5 into October 2005 for reasons related to the Entourage labour disruption.

31. PIAC submitted that should the Commission decide that the Entourage labour disruption qualifies as an adverse event, its impact should be limited to the duration of the labour disruption. PIAC also urged that if the Commission decided to grant relief to Bell Canada, it should consider less than a 100 percent exemption from rate adjustment for the period chosen.

32. Bell Canada replied that it would be unreasonable for the Commission to expect the company to return to pre-strike performance levels immediately following the conclusion of a 19-week labour disruption as PIAC argued. Bell Canada argued that a recovery period was necessary to clear the backlog of orders that had accumulated during the Entourage labour disruption and to return to normal operations.

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

33. The Commission notes that Bell Canada met or exceeded the standards for indicators 2.1A, 2.2B, and 2.5 during each of the three consecutive months immediately prior to the Entourage labour disruption. The Commission also notes that Bell Canada met the standards for all 13 retail Q of S indicators for March 2005 and that these results included the results for the first week of the labour disruption. The Commission further notes that Bell Canada's retail Q of S results deteriorated significantly during April 2005, which was the first full month of the labour disruption. Accordingly, the Commission finds it reasonable to conclude that Bell Canada would likely have met the standards for indicators 2.1A, 2.2B and 2.5 if the Entourage labour disruption had not occurred.

34. The Commission notes that while Bell Canada did not meet or exceed the standards for indicator 2.1B during each of the three consecutive months immediately prior to the Entourage labour disruption, the company met or exceeded the standard for indicator 2.1B in 8 of the 12 months immediately prior to this labour disruption. Accordingly, the Commission finds it reasonable to conclude that Bell Canada would likely have met the standard for this indicator for the months of April to October 2005 inclusive if this labour disruption had not occurred.

35. In light of the above, the Commission determines that Bell Canada is to exclude the results for indicators 2.1A, 2.1B, 2.2.B, and 2.5 for the length of the Entourage labour disruption for the months from April to August 2005.

36. The Commission notes Bell Canada's request to exclude the results for these indicators for the recovery period following the labour disruption. The Commission considers that it is reasonable to conclude that Bell Canada required a recovery period following the labour disruption in order to a) recover its vehicles and tools, b) hire and integrate new technicians, and c) address the backlog in repairs and installations. Accordingly, the Commission disagrees with PIAC's submission that the length of the exemption period should not exceed the length of the labour disruption.

37. The Commission considers that the recovery period for an adverse event should end once the Q of S indicator results can reasonably be expected to return to standard. The Commission notes that Bell Canada met the standard for all 13 indicators in November 2005. The Commission considers that Bell Canada's retail Q of S results indicate that Bell Canada had returned to normal operations by the beginning of November. Accordingly, the Commission finds it reasonable to conclude that Bell Canada would likely have met the retail Q of S standards for indicators 2.1A, 2.1B, 2.2.B, and 2.5 for the months of September and October 2005 if there had not been a backlog of work resulting from the labour disruption.

38. In light of all of the above, the Commission considers it reasonable to conclude that Bell Canada would have met the service standards for indicators 2.1A, 2.1B, 2.2B, and 2.5 from 1 April to 31 October 2005 if the Entourage labour disruption had not occurred.

39. The Commission, therefore, determines that Bell Canada is to exclude the results for indicators 2.1A, 2.1B, 2.2B, and 2.5 for the months from April to October 2005 from the calculation of the retail Q of S RAP for 2005.

## Customer credits for 2005

40. The Commission notes that customer credits are determined based on total average annual retail Q of S results. The Commission considers that based on Bell Canada's 2005 retail Q of S results and the Commission's determination to exclude certain retail Q of S results in this Decision, Bell Canada has met the standard for all of its retail Q of S indicators in 2005. Accordingly, the Commission considers that Bell Canada is not required to implement customer credits under the retail Q of S RAP for 2005.

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

Secretary General

**Related documents**

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