



Telecom Public Notice CRTC 2007-9

Ottawa, 30 May 2007

Retail and competitor quality of service rate adjustment plans – Adverse events

Reference: 8660-C12-200708159

Background

1. In *Retail quality of service rate adjustment plan and related issues*, Telecom Decision CRTC 2005-17, 24 March 2005, the Commission determined that it was appropriate for the retail quality of service (Q of S) rate adjustment plan (RAP) to include an exclusion mechanism which was sufficiently flexible to accommodate the effects of natural disasters and other adverse events which, by their very nature, were unpredictable and beyond the reasonable control of an incumbent local exchange carrier (ILEC). The Commission considered that labour disruptions might qualify as such in certain circumstances. The Commission further determined that each adverse event, whether a natural disaster, act of terrorism, or labour disruption, should be assessed in light of the surrounding circumstances. The Commission concluded that a determination with respect to adverse events should be made on a case-by-case basis as to the modifications, if any, which should be made to the Q of S results for the purposes of the RAP.
2. In *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005, the Commission determined that it was appropriate for the competitor Q of S rate rebate plan (RRP) to include a mechanism for considering possible exclusions from competitor Q of S results where circumstances beyond the control of an ILEC may have caused the ILEC to fail to meet a performance standard. The Commission also determined that the types of circumstances at issue were, by their very nature, unpredictable and unique and, therefore, best dealt with on a case-by-case basis.
3. The requirement for a case-by-case analysis to determine whether an event is adverse has added additional time and a level of complexity to processing Q of S exclusion applications. The adoption of a force majeure clause that identifies what events are adverse would reflect common commercial practice and increase the timeliness of decisions.

Issue to be addressed in this proceeding

4. In *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, the Commission indicated its intention to initiate a public proceeding to consider whether, for the purposes of consideration of exclusions from the calculation of rate rebates for failure to meet prescribed retail and competitor Q of S standards, natural disasters, acts of terrorism, and labour disruptions should be considered as adverse events without the necessity of making such determinations on a case-by-case basis.

5. The Commission invites comments on the adoption of a force majeure clause, such as the following, which would be applicable to both the RAP and the RRP:

No penalty shall apply in a month where failure to meet the retail or competitor Q of S standard is caused, in that month, by fire, acts of God, labour difficulties (such as work stoppages, strikes, lock-outs, slow-downs and similar labour disrupting events), default or failure of other carrier, epidemics, war, civil commotions including acts of terrorism, acts of public authorities or other events beyond the reasonable control of the Company.

6. The Commission notes that, in the event that such a force majeure clause is adopted, a case-by-case analysis would still be required to examine whether there was a causal link between the adverse event and the retail or competitor Q of S results as well as any proposed adjustment to those results.

Procedure

7. Interested parties are invited to file written comments with the Commission with respect to the issue described in this Public Notice, serving a copy on all parties to the proceedings initiated by *Retail quality of service rate adjustment plan and related issues*, Telecom Public Notice CRTC 2003-3, 27 March 2003 (Public Notice 2003-3) and *Finalization of the Quality of Service rate adjustment plan for competitors*, Telecom Public Notice CRTC 2003-9, 30 October 2003 (Public Notice 2003-9) by **3 July 2007**.
8. Interested parties may file reply comments with the Commission, serving a copy on all parties to the proceedings initiated by Public Notices 2003-3 and 2003-9 and all other parties that provided comments pursuant to paragraph 7, by **13 July 2007**.
9. The Commission expects to issue a decision on the issue raised in this Public Notice within 120 days of the close of record.
10. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
11. Parties can file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
12. Electronic submissions should be in HTML format. As an alternative, those making submissions may use "Microsoft Word" for text and "Microsoft Excel" for spreadsheets.
13. Each paragraph of all submissions should be numbered. In addition, the line *****End of document***** should be entered following the last paragraph of the document. This will help the Commission verify that the document has not been damaged during electronic transmission.
14. The Commission also encourages parties to monitor the record of this proceeding (and/or the Commission's website) for additional information that they may find useful when preparing their submissions.

Important notice

15. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, email address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
16. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
17. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
18. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the webpage of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.

Location of CRTC offices

19. Submissions may be examined or will be made available promptly upon request at the Commission offices during normal business hours:

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

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Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
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Secretary General

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