



Telecom Decision CRTC 2008-105

Ottawa, 6 November 2008

Regulatory policy

Retail quality of service regime in non-forborne markets

Reference: 8663-C12-200805609

In this Decision, the Commission eliminates the retail quality of service rate adjustment plan and the current reporting requirements, except for three indicators as noted below, for incumbent local exchange carriers (ILECs) with over 25,000 network access services (NAS) as of the date of this Decision. The regime for ILECs with fewer than 25,000 NAS remains unchanged.

The Commission determines that further process is required to develop an updated reporting framework for ILECs with over 25,000 NAS in areas that are not forborne from regulation. Until such a new framework is established, the Commission directs the ILECs with over 25,000 NAS to continue reporting the results for three indicators associated with installation and repair activities.

Introduction

1. In Telecom Decision 2008-34, the Commission issued an action plan for reviewing existing social and non-economic regulatory measures in light of the Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction). As part of the action plan, the Commission identified the regulatory requirements associated with the retail quality of service regime (retail Q of S regime) as a matter to be reviewed.
2. In Telecom Public Notice 2008-4, the Commission invited parties to comment on the continued appropriateness of the retail Q of S regime in local markets that are not forborne from regulation.
3. The Commission received submissions from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, Bell Canada et al.); the Canadian Independent Telephone Company Joint Task Force (CITC-JTF) on behalf of the independent incumbent local exchange carriers (ILECs); MTS Allstream Inc. (MTS Allstream); NorthernTel, Limited Partnership (NorthernTel) and Télébec, Limited Partnership (Télébec) [collectively, NorthernTel/Télébec]; the Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (collectively, the Consumer Groups); Saskatchewan Telecommunications (SaskTel); and TELUS Communications Company (TCC).

4. The record of this proceeding, which closed on 5 June 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Policy Direction test

5. In order to determine whether the regulatory measure (i.e. the retail Q of S regime) continues to be appropriate, the Commission will consider the following:
 - What is the purpose of the regulatory measure, and what are the policy objectives that are relevant to this purpose?
 - Can market forces be relied on to achieve the telecommunications policy objectives?
6. If the Commission determines that market forces cannot be relied on to achieve the policy objectives, it will then address the following, as required:
 - Is the regulatory measure efficient and proportionate to its purpose?
 - Does the regulatory measure interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives?
 - Is the regulatory measure as minimally intrusive and as minimally onerous as possible?
 - Is the regulatory measure, to the greatest extent possible, implemented in a symmetrical and competitively neutral manner?

Background

7. The retail Q of S regime was established in the late 1970s to measure the level of service that ILECs provide to subscribers. The regime for ILECs with more than 25,000 network access services (NAS) consists of 17 indicators and associated performance standards; these ILECs are required to track the indicators and performance standards on a monthly basis and report results to the Commission quarterly. If a standard is not met for three consecutive months, the ILEC is required to file an exception report identifying the problem and a course of action to rectify the problem. This requirement remains in effect until the quality of service standard is met for three consecutive months.
8. Those ILECs with fewer than 25,000 NAS are required to report annually to the Commission on the total number of complaints associated with service provisioning intervals, out-of-service clearing time, customer trouble reports, directory listing errors, and complaints addressed to officers and/or the Commission.

9. A rate adjustment plan (RAP) for the retail Q of S regime was established in 2002 for the ILECs subject to price cap regulation.¹ The retail RAP requires that 13 of the 17 quality of service indicators be averaged over the year to arrive at an annual average performance result by indicator. If the average annual performance result is below the established standard for a given indicator, a formula determines the amount of rebate to be paid to all subscribers across the ILEC's operating territory. The maximum rebate payable is equal to five percent of the ILEC's total annual business and residential local revenues.
10. In Telecom Decision 2006-15, the Commission determined that the retail Q of S regime, including the retail RAP, would not apply to exchanges where forbearance from the regulation of retail local exchange services was granted.
11. The competitive local exchange carriers (CLECs) are not subject to the retail Q of S regime.

What is the purpose of the regulatory measure, and what are the policy objectives that are relevant to this purpose?

12. According to TCC, the historical purpose of the regulatory measure was to ensure, through regulation, an adequate level of service quality in an environment where local exchange services were provided solely by monopoly providers. The Consumer Groups submitted that the retail Q of S regime ensures that consumers receive high-quality service in areas where there is little or no competition.
13. NorthernTel/Télébec and SaskTel submitted that, even with the elimination of the regulatory measure, the telecommunications policy objectives set out in paragraphs 7(a), (b), (c), (f), and (h)² of the *Telecommunications Act* (the Act) would continue to be met.
14. Bell Canada et al. submitted that the purpose of the regulatory measure is consistent with the policy objective set out at paragraph 7(b) of the Act.
15. The Consumer Groups submitted that the current requirements of the regulatory measure meet the policy objectives set out in paragraphs 7(b), (c), and (h).

¹ These ILECs are Bell Aliant, Bell Canada, MTS Allstream, SaskTel, TCC, and Télébec.

² These policy objectives are:

7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and

7(h) to respond to the economic and social requirements of users of telecommunications services.

Commission's analysis and determinations

16. The Commission concludes that the purpose of the regulatory measure is to ensure that Canadians receive consistent, high-quality service in areas where the Commission has not forborne from the regulation of local exchange service (non-forborne areas). The Commission also concludes that, although several policy objectives could be linked to the purpose of the current retail Q of S regime, the regime serves primarily to ensure that the policy objectives set out in paragraph 7(b) of the Act are met.

Can market forces be relied on to achieve the telecommunications policy objectives?

17. MTS Allstream, the Consumer Groups, and CITC-JTF submitted that in non-forborne areas market forces are not sufficient to ensure high quality of service to consumers.
18. Bell Canada et al., NorthernTel/Télébec, SaskTel, and TCC submitted that market forces can be relied on to achieve the policy objectives in non-forborne areas because wireless, Internet, and/or video services may be used as a substitute for wireline services where available. Where these services are unavailable, the threat of a possible competitive entrant is sufficient to ensure that the ILECs maintain a high level of service.

Commission's analysis and determinations

19. The Commission notes that in non-forborne areas, there is limited or no competition. Thus, many customers do not have the option to choose an alternative service provider when they receive poor quality of service.
20. The Commission concludes that market forces alone cannot be relied upon to achieve the objectives set out in paragraph 7(b) of the Act. Accordingly, it is necessary to assess the retail Q of S regime in light of the other criteria specified in the Policy Direction.

Is the regulatory measure efficient and proportionate to its purpose? Does the regulatory measure interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives? Is the regulatory measure as minimally intrusive and as minimally onerous as possible? Is the regulatory measure, to the greatest extent possible, implemented in a symmetrical and competitively neutral manner?

21. MTS Allstream submitted that the current retail Q of S regime does not need to be altered or eliminated as it is still required in order to protect the interests of those consumers in non-forborne areas who have few or no alternatives to the ILEC provider.
22. The Consumer Groups submitted that the regime is efficient and proportionate to its purpose, and not unnecessarily burdensome.

23. CITC-JTF favoured retaining the retail Q of S regime specifically for the small ILECs. CITC-JTF submitted that the small ILECs' retail Q of S regime is symmetrical and competitively neutral.
24. Bell Canada et al., NorthernTel/Télébec, SaskTel, and TCC submitted that their existing retail Q of S regime is unnecessarily burdensome, inefficient, and not proportionate to its purpose. In their view, eliminating it would create regulatory symmetry and competitive neutrality. Bell Canada et al. and TCC also submitted that the current retail RAP is punitive and contrary to the Act as the magnitude of the penalty goes far beyond that which could reasonably be considered necessary to encourage the companies to provide high-quality service. In addition, Bell Canada et al. submitted that the administrative burden imposed on the ILECs is unnecessarily onerous with significant resources required to measure, track, and report performance, as well as to carry out both internal and external audits on internal procedures and reported results.
25. As an alternative, Bell Canada et al. submitted that, should the Commission determine it necessary to retain some form of regulatory requirement, it would be sufficient to continue to require the quarterly reporting of monthly performance results for three indicators. These indicators are: (a) 1.2 – Installation appointments met; (b) 2.1 – Out-of-service trouble reports cleared within 24 hours; and (c) 2.2 – Repair appointments met.

Commission's analysis and determinations

26. The Commission notes that the retail Q of S regime was established in a monopoly environment and applied to the total serving territory of each ILEC. Today, with a significant number of the exchanges forborne from regulation, the regime applies to a much smaller portion of the serving territory for many ILECs.
27. With respect to the retail RAP, the Commission notes that the rebates paid for the 2002 to 2005 period ranged from \$0.19 to \$2.73 per subscriber per year, and that there was no requirement to rebate subscribers in 2006 and 2007 as the ILECs met the quality of service standards for those years. The Commission also notes that rebates were paid to all subscribers and not only those who received poor quality of service.
28. The Commission considers that, as more and more exchanges are forborne from regulation, the amount of revenue at stake and the potential number of subscribers to whom rebates would be paid will continue to decline. The Commission considers that, given the small amount of rebates paid since the RAP's inception and the significant resources required for the tracking/reporting function, the administrative and financial burden imposed on the ILECs far outweighs any benefits subscribers derive from the retail RAP.
29. With respect to the quality of service indicators reported by ILECs with more than 25,000 NAS, the Commission considers that several of the indicators and associated performance measurements are outdated and no longer reflect current quality of service concerns. Other indicators have been rendered difficult to administer due to forbearance in many markets and to technological advances, such as the introduction of digital switches, interactive voice response systems, and the Internet.

30. The Commission considers that it is inefficient and onerous to require the ILECs with more than 25,000 NAS to track the performance of indicators that are no longer relevant. However, due to the limited level of competition in non-forborne areas, some form of retail Q of S reporting/monitoring regime is still required to ensure that the policy objectives set out in paragraph 7(b) of the Act are met.
31. With respect to the complaint-based retail Q of S regime for ILECs with fewer than 25,000 NAS, the Commission considers that, given their size and limited resources, this regime continues to be efficient and proportionate to its purpose, and is as minimally intrusive and as minimally onerous as possible.
32. Based on all of the above, the Commission determines that the current reporting requirements for the ILECs with over 25,000 NAS and the retail RAP are not efficient and proportionate to their purpose, nor are they as minimally intrusive and as minimally onerous as possible. Accordingly, the Commission eliminates, as of the date of this Decision, the retail RAP and the current reporting requirements, except as noted below, for Bell Aliant, Bell Canada, MTS Allstream, NorthernTel, Northwestel Inc. (Northwestel), SaskTel, TBayTel, Télébec, and TCC. The Commission also determines that the complaint-based retail Q of S regime for ILECs with fewer than 25,000 NAS is to remain in place.
33. The Commission notes that while Bell Canada et al. submitted an alternative proposal to retain and report certain indicators, the Commission considers that there is insufficient information on the record of this proceeding to deal with this proposal. The Commission considers that it would be appropriate to conduct a further process to develop an updated quality of service reporting/monitoring framework for non-forborne areas in order to fulfill the policy objectives set out in paragraph 7(b) of the Act.
34. Until this new framework is developed, the Commission directs Bell Aliant, Bell Canada, MTS Allstream, NorthernTel, Northwestel, SaskTel, TBayTel, Télébec, and TCC to continue reporting on a quarterly basis the results for the following indicators: (a) 1.2 – Installation appointments met; (b) 2.1 – Out-of-service trouble reports cleared within 24 hours; and (c) 2.2 – Repair appointments met.
35. The Commission sets out below a follow-up process to develop an updated quality of service reporting/monitoring framework in non-forborne areas for ILECs with over 25,000 NAS:
 - a) interested parties are to propose or provide comments, with supporting rationale, on the appropriateness of new or existing performance indicators, and whether the new regime should be complaint-based or based on indicators and performance standards;
 - b) parties may file with the Commission, serving copies on all other parties, submissions with regard to the above-noted issues by **12 January 2009**; and
 - c) parties are to file reply comments with the Commission, providing copies to any interested parties who filed comments, by **23 January 2009**.

36. 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.
37. The Commission expects to release its decision in this matter within 120 days of the close of record of this process.

Secretary General

Related documents

- *Action plan for reviewing social and other non-economic regulatory measures in light of Order in Council P.C. 2006-1534*, Telecom Decision CRTC 2008-34, 17 April 2008
- *Review of the regulatory requirements associated with the retail quality of service regime in non-forborne markets*, Telecom Public Notice CRTC 2008-4, 17 April 2008
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007

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