



Telecom Decision CRTC 2008-22

Ottawa, 6 March 2008

Regulatory policy

Mandatory customer contract renewal notification and requirements for service destandardization/withdrawal

Reference: 8663-C12-200713819

In this Decision, the Commission determines that, effective the date of this Decision, the contract renewal notification requirements outlined in Telecom Decision 2003-85 are modified and the requirements to include a reasonable substitute and a transition plan as part of an application to destandardize and/or withdraw a tariffed service are eliminated.

Introduction

1. In Telecom Decision 2007-51, the Commission released an action plan indicating its intention to review existing 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 regulatory measures pertaining to the rules concerning mandatory customer notice on contract renewal and the requirements for service destandardization/withdrawal (the regulatory measures) as matters to be reviewed during the 2007-2008 fiscal year. The rules pertaining to mandatory customer notice on contract renewal are set out in Telecom Decision 2003-85, while the requirements for service destandardization/withdrawal are set out in Telecom Circular 2005-7.
2. In Telecom Public Notice 2007-17, the Commission initiated a proceeding in which it invited parties to comment on the continued appropriateness of these regulatory measures.
3. The Commission received submissions from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, Saskatchewan Telecommunications, and TELUS Communications Company (TCC) (collectively, the Companies); MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc. (Primus); and the Public Interest Advocacy Centre (PIAC).
4. The record of this proceeding closed with the receipt of reply comments on 14 November 2007. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

5. The Commission has identified the following two issues to be addressed in its determinations:
 - I. Are the current contract renewal notification requirements consistent with the Policy Direction?

- II. Are the current procedures for the disposition of applications dealing with the destandardization and/or withdrawal of tariffed services consistent with the Policy Direction?

I. Are the current contract renewal notification requirements consistent with the Policy Direction?

Regulatory measure to be reviewed

6. In Telecom Decision 2003-85, the Commission directed Bell Canada and TCC¹ to notify business service customers that have entered into contracts that contain auto-renewal clauses, (i) 60 days before contract expiry, that the contract will be automatically renewed (the prior-expiry requirement), and (ii) within 35 days following automatic renewal, that the contract has been renewed, and that the customer may terminate its contract without penalty within 30 days of the date of the renewal notice (the after-expiry requirement) (together, the notification requirements).

Policy Direction test

7. In order to determine whether this regulatory measure 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?
8. 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 it interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives?
 - Is the approval mechanism as minimally intrusive and as minimally onerous as possible?

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

9. Primus submitted that allowing the incumbent local exchange carrier (ILEC) to include automatic contract renewal provisions without restrictions would represent a barrier and disincentive to competitive entry and would be anti-competitive. Primus argued that this would

¹ Known as TELUS Communications Inc. at the time of Telecom Decision 2003-85.

allow ILECs to lock up customers for repeating contract periods with a very limited window of opportunity for customers to switch to another provider. Primus argued that this behaviour would artificially depress the addressable market for competitors.

10. Primus further argued that without the current restrictions, automatic renewal provisions represented potentially unfair contract terms for business customers who do not have the same knowledge as the service provider with respect to how and when a contract will renew.
11. Primus submitted that the telecommunications policy objectives advanced by the notification rules for renewals were those set out in paragraphs 7(c)² and 7(h)³ of the *Telecommunications Act* (the Act).
12. The Companies submitted that the Commission imposed the notification requirements because customers might forget when automatic renewal would take place.

Commission's analysis and determinations

13. In Telecom Decision 2003-85, the Commission expressed concern that customers might forget when automatic renewal would actually take place and thus might not consider whether or not they wanted to renew the contract. The Commission noted that the notification requirements were intended to minimize the possibility that contracts were automatically renewed contrary to customers' wishes.
14. The Commission notes that in Telecom Decision 2003-85, it concluded that customers appreciate automatic contract renewal provisions and that contracts containing automatic renewal provisions are appropriate. The Commission disagrees with Primus' submission that the notification requirements are intended to address paragraph 7(c) of the Act. In this regard, the Commission notes that in the proceeding leading to Telecom Decision 2003-85, no party expressed concern that automatic contract renewal provisions, regardless of whether they included the notification requirements, were anti-competitive or acted as a barrier or disincentive to entry. Additionally, in that Decision the Commission did not conclude that one of the purposes of the notification requirements was to prevent anti-competitive behaviour. Furthermore, the Commission has not been persuaded by Primus' arguments in this proceeding that the notification requirements were intended to address anti-competitive behaviour.
15. In light of the above, the Commission considers that the notification requirements were intended to address paragraph 7(h) of the Act.

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

16. The Companies submitted that business customers appreciated auto-renewal contract provisions as they avoided costs and inconvenience. Given their view that the telecommunications marketplace was becoming more competitive every day, the Companies also submitted that market forces should be relied upon with respect to renewal notice provisions, and the notification requirements should be eliminated.

² Paragraph 7(c) – "to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications"

³ Paragraph 7(h) – "to respond to the economic and social requirements of users of telecommunications services"

17. Primus argued that market forces were not sufficient to achieve the telecommunications policy objectives as evidenced by the fact that even in generally unregulated industries, governments had imposed such safeguards as notification rules pertaining to automatic renewals. Primus also argued that without the current restrictions, automatic renewal provisions could be unfair due to the unequal bargaining power between the parties.

Commission's analysis and determinations

18. The Commission notes that the notification requirements only apply to certain business local exchange services that are offered in the non-forborne areas of Bell Canada's, Bell Aliant's, and TCC's territories. The Commission considers that in these markets, business customers would primarily be small/medium sized and generally would have limited purchasing power influence over the rates, terms, and conditions of contracts. Further, the Commission considers that in markets in which local exchange services have not been forborne, there is either limited competition, or the incumbent has not met the competitor quality of service requirements, or both, and therefore many customers do not have the option to choose an alternative provider. In these circumstances, the Commission is of the view that market forces cannot be relied upon to achieve the objectives of the Act. Accordingly, it is necessary to assess the notification requirements in light of the other criteria specified in the Policy Direction.

Is the regulatory measure efficient and proportionate to its purpose?

Does it interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives?

Is the approval mechanism as minimally intrusive and as minimally onerous as possible?

19. The Companies stated that, in Telecom Decision 2003-85, the Commission found no compelling evidence that auto-renewal provisions would impede competition or that customers were prejudiced by the absence of a mandatory renewal notice. The Companies submitted that this finding also applied in today's market.
20. The Companies submitted that a mandatory renewal notice was not an efficient regulatory measure and was not proportionate to its purpose. The Companies also submitted that the mandatory renewal notification requirements interfered with the operation of competitive market forces and were neither symmetrical nor competitively neutral.
21. Primus argued that while the measure imposed an administrative burden on the ILECs, it was neither an undue nor unprecedented measure.
22. PIAC submitted that the notification requirements should be extended to residential customers in forborne exchanges who could be subject to similar contract renewal terms in their unregulated contracts. PIAC was also of the view that any extension of the notification requirements to residential customers should be applied to all local service carriers including competitive local exchange carriers, resellers, and voice over Internet Protocol local service providers.

Commission's analysis and determinations

23. The Commission notes that the notification requirements were implemented in Telecom Decision 2003-85 as a means of ensuring that customers are aware of when automatic renewal will actually take place and thus consider whether or not they want to renew the contract.
24. The Commission notes that the requirement to provide notification both before and after a contract is renewed, as well as giving the customer 30 days to cancel the contract after the second notice, places a significant administrative responsibility on the ILEC. In the Commission's view, the after-expiry requirement adds comparatively little benefit. Therefore the Commission is of the view that the current notification requirements are not the most efficient and proportionate means of achieving the objective set out in paragraph 7(h) of the Act, do not minimally interfere with competitive market forces, are not as minimally intrusive or as minimally onerous as possible, and are therefore not consistent with the Policy Direction.
25. However, as noted above, the Commission considers that the customers that are affected by the notification requirements are primarily small/medium sized businesses. In the Commission's view, in order to respond to these customers' economic concerns, there is a continuing need to require ILECs to provide customers with notification before the contract is automatically renewed. The Commission considers that the requirement for a single notification reduces the administrative burden on the ILEC while continuing to ensure that customers are aware of upcoming contract obligations. The Commission considers that this is the most efficient and proportionate means of minimizing the possibility that customers' contracts are automatically renewed contrary to their wishes.
26. Finally, the Commission considers that PIAC's proposal to extend the notification requirements to residential customers is beyond the scope of this proceeding.
27. In view of the foregoing, the Commission determines that, effective the date of this Decision, the contract renewal notification requirements outlined in Telecom Decision 2003-85 are modified by eliminating the after-expiry requirement. For clarity, the Commission notes that the prior-expiry requirement is maintained. Accordingly, the Commission directs the Companies to issue revised tariff pages reflecting this determination effective the date of this Decision.

II. Are the current procedures for the disposition of applications dealing with the destandardization and/or withdrawal of tariffed services consistent with the Policy Direction?

Regulatory measure to be reviewed

28. In Telecom Circular 2005-7, the Commission determined that each application for the destandardization and/or withdrawal of a tariffed service should be assessed on a case-by-case basis using the following criteria:
 - Is there a reasonable substitute for the service being destandardized and/or withdrawn?

- Is there a clear transition plan including sufficient time to allow customers to make plans to replace the service in question?
- Are affected customers given adequate notice to enable them to participate meaningfully in the Commission's process?

These criteria apply for both retail services and competitor services.

29. These criteria were implemented on a trial basis until such time as the Commission had sufficient information to assess their ongoing appropriateness.

Policy Direction test

30. In order to determine whether this regulatory measure 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?

31. 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 approval mechanism as minimally intrusive and as minimally onerous as possible?

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

32. The Companies submitted that the purpose of the measure was to notify the customer of the ILEC's intent to destandardize or withdraw a tariffed service and to present the customer with alternatives where they existed. They submitted that the policy objectives addressed by the destandardization/withdrawal rules were set out in paragraphs 7(b),⁴ 7(c), 7(f),⁵ and 7(g)⁶ of the Act.

⁴ Paragraph 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"

⁵ Paragraph 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"

⁶ Paragraph 7(g) – "to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services"

33. The Companies noted that, under the current rules, an ILEC seeking to destandardize or withdraw a tariffed service must submit a detailed application to the Commission and obtain the Commission's prior approval. They submitted that this process could be considerably less intrusive and onerous.

Commission's analysis and determinations

34. As stated in Telecom Circular 2005-7, the established regulatory requirements associated with destandardization/withdrawal were intended to provide greater regulatory certainty by identifying clear, publicly-known steps, timelines, and criteria that could be consistently relied upon by both customers and carriers. Further, the Commission noted at that time that any new process for destandardization and/or withdrawal applications would have to take into account the fact that customers might lose service as a result of destandardization/withdrawal, and that such applications could have serious effects on individual customers.
35. The Commission considers that the policy objectives of the Act that are relevant to this purpose are those set out in paragraphs 7(b), 7(c), 7(f), and 7(h).
36. The Commission does not agree with the Companies that the objective set out in paragraph 7(g) of the Act applies; in the Commission's view, its regulatory requirements with respect to either destandardizing or withdrawing existing tariffed services do not have a direct impact on an ILEC's research and development plans in the field of telecommunications.

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

37. The Companies submitted that they required the ability to destandardize or withdraw tariffed services due to factors such as changes in demand, the obsolescence of the underlying technology, or a change in the costs associated with the delivery of a service. The Companies argued that, in such circumstances, market forces should determine whether the provider should continue to supply the service or withdraw it and, if so, when and how.
38. PIAC submitted that market forces alone were unlikely to provide proper notice in destandardization/withdrawal applications, as by their nature they involve a service a company no longer wishes to fully support, for whatever reason, whether economic or not.

Commission's analysis and determinations

39. The Commission notes that the destandardization/withdrawal requirements are only applicable to tariffed services that are offered in the non-forborne areas of ILECs' territories. The Commission considers that in markets in which local exchange services have not been forborne, there is either limited competition, or the incumbent has not met the competitor quality of service requirements, or both. In view of these conditions, the Commission is of the view that competitive market forces cannot be relied upon to achieve the objectives of the Act.
40. Therefore, the Commission finds that it is necessary to assess each of the three criteria established in Telecom Circular 2005-7 in light of the following three criteria specified in the Policy Direction:

Is the regulatory measure efficient and proportionate to its purpose?

Does it interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives?

Is the approval mechanism as minimally intrusive and as minimally onerous as possible?

41. The Companies submitted that the current destandardization/withdrawal process was unnecessarily burdensome and inefficient. They argued that the resources required from the Commission, the applicant, and the impacted customers far outweighed the intended benefit to all parties.
42. The Companies also submitted that the process was also disproportionate to its purpose, arguing that the current rules imposed a number of artificial hurdles to a process that should be governed by the service provider's customer relations practices. The Companies argued that the current rules far exceeded generally accepted market practices for evolving products and services and their underlying technologies.
43. With respect to service destandardization, the Companies proposed that they should have the ability to destandardize a tariffed service at any time, upon notification of the customer and the Commission. The Companies argued that destandardization does not deny existing customers the continued use of the service.
44. With respect to service withdrawal, the Companies proposed that when they withdraw a tariffed service they would provide notification to the affected customers and to the Commission, identifying the service or services to be withdrawn and the time frame within which the service would be withdrawn. The notification to affected customers would be filed coincident with the filing of the application and would not be less than 30 days prior to the proposed withdrawal date, but could be longer if necessary. The Commission would then have 20 days to determine whether any further process was required. On expiry of this period, if the Commission had not initiated further process, the withdrawal would be automatically approved and would become effective on the date as requested in the application.
45. The Companies proposed that the Commission should initiate further process only in cases of emergency, public safety, and social protection services, or in exceptional circumstances. They submitted that the process could include a period for comments from affected customers, that any process associated with such a proceeding should be completed no later than 45 days from the date the proceeding was initiated, and that the Commission would have to render a decision within 30 days following the conclusion of that proceeding.
46. MTS Allstream submitted that a fair balance must be struck between customers' needs and the cost of providing service; in MTS Allstream's view, the criteria established in Telecom Circular 2005-7 found that correct balance.
47. PIAC submitted that a decision that removed the requirement for an ILEC to provide a substitute could allow ILECs to withdraw a discrete service element supporting the basic service objective (BSO). PIAC argued that this could undermine the Commission's requirement for an ILEC to provide stand-alone basic service, including in forborne areas, in accordance

with the BSO. PIAC argued that any such service withdrawal should be denied unless it was clearly of benefit to stand-alone customers, and that ILECs should be required to file a plan for preserving the BSO for stand-alone primary exchange service (PES) customers for withdrawal of any service that might affect the BSO.

48. PIAC submitted that for all destandardization/withdrawal applications, a notice should be required to ensure customers are reasonably informed. PIAC argued that for less important services the notice need not list reasonable substitutes and attendant obligations such as a transition plan and cost of the transition to the substitute service. PIAC submitted that this abbreviated type of notice would be the minimally intrusive regulatory measure to assure symmetry of information between customers and providers in the market.
49. PIAC submitted that for more important services, notice of substitutes (including geographic availability and costs) was unlikely to be provided by a company without a regulatory requirement. PIAC argued that, for those services, the requirement to give notice of substitutes was the least intrusive method to achieve the goal of market awareness on the part of the customer.
50. PIAC agreed that in most cases the imposition of a transition plan requirement would not be minimally intrusive, and that such a plan should not be required. However, it argued that where there was little or no competitive choice, there was a danger that service providers would migrate customers of a service that was destandardized or withdrawn to a higher-priced service when a less expensive substitute was available. PIAC argued that in these areas a transition plan was necessary to ensure that customers were aware of the least-cost alternative. PIAC also argued that a transition plan generally should be required where the service to be destandardized or withdrawn was likely to impact vulnerable consumer groups more heavily than regular customers.

Commission's analysis and determinations

51. The Commission notes that ILECs are currently required to provide a substitute analysis and transition plan at the time of filing an application for service destandardization or withdrawal, regardless of the service or circumstances involved. The Commission notes that, in most applications for destandardization and/or withdrawal that have been filed since the issuance of Telecom Circular 2005-7, there was limited or no customer demand for the services in question. Further, the Commission considers that service providers have incentives to identify service alternatives and to manage customer transition to these services regardless of whether the Commission requires that a substitute be identified and that a transition plan be developed.
52. The Commission also notes that services that are the subject of destandardization and/or withdrawal applications may rely on technology no longer supported by the manufacturer, or may be subject to increased costs that make the service uneconomic. The Commission considers that in such cases there may not always be substitutes available that exactly match the functionality and price of those services.

53. The Commission notes MTS Allstream's comment that the destandardization/withdrawal criteria should achieve a correct balance between the financial implications of maintaining a service and substitutability. The Commission notes that in most cases service destandardization and/or withdrawal applications have been unopposed, either because there would be no existing customers for the service or existing customers would be satisfied with the ILECs' proposed substitutes and/or migration plan. The Commission concludes that requiring the ILEC to provide a substitution analysis and detailed transition plan in every case, when in most cases it is not necessary, does not achieve this correct balance.
54. Accordingly, the Commission concludes that a regulatory measure requiring ILECs to provide a substitution analysis and detailed transition plan in every case, when in most cases it is either unnecessary or would be developed in any event, is not efficient and proportionate to its purpose, does not minimally interfere with the operation of competitive market forces, and is unnecessarily intrusive and onerous.
55. In light of the above, the Commission finds that the requirements to include an analysis of available substitutes and a transition plan as part of every application for service destandardization and/or withdrawal are not consistent with the Policy Direction. Accordingly, these requirements are eliminated.
56. The Commission notes the Companies' proposal to be able to destandardize a service at any time, without Commission approval. The Commission further notes the Companies' proposal for automatic approval of certain applications for service withdrawal, i.e., in instances in which the Commission had not initiated further process within 20 days of having received the application. The Commission recognizes that service destandardization and/or withdrawal may, in some cases, have a significant negative impact on customers. Therefore, the Commission considers that it is important that customers be given adequate notification, and that ILECs be required to provide clear and detailed information to affected customers, including how they can participate in the Commission's process. In order to ensure that the public has a meaningful opportunity to comment, the Commission considers that, prior to approval, it is important to provide the public with an opportunity to comment, and that the Companies' proposals do not permit such an opportunity. The Commission considers that the process outlined in the Appendix addresses this concern.
57. The Commission notes the Companies' proposal to have a Commission process in cases of emergency, public safety, and social protection services, or in exceptional circumstances. The Commission considers that the procedures outlined in the Appendix to this Decision allow the Commission to initiate further process in the event that an application involves significant public interest. In the Commission's view, this is the least intrusive means of addressing customers' potential concerns.
58. The Commission notes PIAC's concern that removing the requirement for an ILEC to provide a substitute when destandardizing and/or withdrawing a service could undermine the Commission's determination that ILECs continue to be required to provide stand-alone PES in forborne areas in accordance with the BSO. The Commission notes that ILECs' obligations in the provision of PES and the BSO were not specifically identified in Telecom Public Notice 2007-17 as subjects to be addressed in this proceeding, nor were they specifically

discussed by most parties. For clarification, the Commission's determinations in this proceeding do not alter previous Commission rulings regarding the ILECs' obligations in the provision of PES and the BSO.

59. Accordingly, effective the date of this Decision, the Commission modifies the procedures for the disposition of destandardization and/or withdrawal applications, as set out in the Appendix to this Decision.

Secretary General

Related documents

- *Review of rules pertaining to mandatory customer notice on contract renewal and requirements for service destandardization/withdrawal in light of Telecom Decision 2007-51, Telecom Public Notice CRTC 2007-17, 3 October 2007*
- *Action plan for the review of Commission regulatory measures in light of Order in Council P.C. 2006-1534, Telecom Decision CRTC 2007-51, 11 July 2007*
- *New procedures for disposition of applications dealing with the destandardization and/or withdrawal of tariffed services, Telecom Circular CRTC 2005-7, 30 May 2005*
- *Follow-up to Decision 2002-34 – Automatic renewal of contracts with a minimum contract period, Telecom Decision CRTC 2003-85, 22 December 2003*

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

**New procedures for the disposition of applications dealing with the
destandardization/withdrawal of tariffed services**

1. An application to destandardize and/or withdraw a tariffed service must contain the following information:
 - a) service proposed to be destandardized and/or withdrawn;
 - b) proposed date for the destandardization and/or withdrawal;
 - c) rationale for the destandardization and/or withdrawal;
 - d) type of destandardization, where applicable;
 - e) the number of customers affected;
 - f) a copy of the notice to affected customers; and
 - g) any other information the applicant believes is relevant.

The applicant must provide notice to each customer affected by its application to destandardize and/or withdraw a particular service. In that notice, the applicant must include items a) to d), as well as clear and detailed information as to how an affected customer can participate in the Commission's process, including the date when comments must be received by the Commission. The Commission encourages companies to identify any substitute services, where available, in this notification. The notices should be sent to affected customers on the date the application is filed.

2. Interested parties will be allowed 30 business days to comment on an applicant's destandardization and/or withdrawal application. The applicant would have 10 business days to respond to parties' comments. In cases where comments are received, the Commission intends to issue a final decision within 65 business days of the date of the application.
3. In cases where there are no customers for a particular service, the Commission intends to grant interim approval within 10 business days of a complete application being filed, and to issue a final decision within 45 business days of the date of the application.
4. Interrogatories, to the extent that they are required, would generally be issued by the Commission within 15 business days of the date of the application. Normally, responses to interrogatories will be expected to be provided within 5 to 10 business days, depending on the complexity of the information being sought.
5. The Commission notes that section 26 of the *Telecommunications Act* (the Act) requires that it respond to a tariff application within 45 business days by either approving the tariff, disallowing the tariff, or making public reasons why the Commission has not approved or disallowed the tariff.

6. The Commission notes that given the 30-day comment period provided interested parties, it may not be possible to dispose of an application for destandardization and/or withdrawal within 45 business days, particularly where the issues involved require the Commission to issue interrogatories. In such a case, the Commission will issue a letter setting out the reasons why the application will not be disposed of within 45 business days, specifying the period of time within which the Commission intends to dispose of the application, in accordance with section 26 of the Act.