



Telecom Decision CRTC 2010-544

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Ottawa, 3 August 2010

Bell Canada – Application to exclude competition-related quality of service indicator 2.7A results from the rate rebate plan for competitors for June 2009

File number: 8660-B2-200917495

The Commission approves Bell Canada's request to exclude, for rate rebate purposes, its results for competitor quality of service indicator 2.7A for June 2009 for Rogers Communications Inc.

Introduction

1. The Commission received an application by Bell Canada, dated 11 December 2009, requesting the exclusion of the competitor quality of service (Q of S) results related to indicator 2.7A – Competitor Out-of-Service Trouble Report Late Clearances (indicator 2.7A) from its rate rebate plan for competitors specific to Rogers Communications Inc. (RCI) for June 2009.
2. Bell Canada's application was inadvertently registered incorrectly when Commission staff received it. When the error was discovered, a letter dated 21 May 2010 was sent to a number of companies, including RCI, who would potentially be interested in commenting on the application, advising them of the extension of the comment period to 4 June 2010.
3. The Commission received no comments regarding this application. The public record of this proceeding, which closed on 4 June 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Application

4. Bell Canada submitted that the following adverse events occurred in June 2009: on 1 June, an underground cable was cut and a duct run damaged by a Quebec Ministry of Transportation contractor hired to perform road construction work in Montréal, Quebec; and on 19 June, a duct-encased cable was damaged in several places by a contractor replacing lighting mountings on a bridge in St. Catharines, Ontario. Bell Canada indicated that the damages occurred despite the fact that, prior to the beginning of the work at both sites, it had provided the contractors with proper facilities location and associated information about its network in the immediate work area.

5. Bell Canada submitted further that, due to the extent and severity of the damages, which affected customers of RCI and Bell Canada as well as other customers, it assigned up to six technicians for three days, in the case of the Montréal incident, and a total of nine technicians for the weekend following the incident in St. Catharines, to complete the repair activities. Bell Canada reported that service was ultimately restored to RCI customers in the late afternoon of 4 June 2009 for the Montréal incident and at 3 p.m. on 22 June 2009 for the St. Catharines incident.
6. Bell Canada noted that its actual June 2009 competitor Q of S performance results for service to RCI were below the set standard of 90 percent for indicator 2.7A. However, Bell Canada submitted that the evidence it provided demonstrated that if the trouble reports related to the above-noted adverse events were excluded, its June 2009 results for indicator 2.7A for RCI would have been within the accepted standard because results for this indicator for the affected company were met for the three months immediately prior to the adverse event.¹

Commission's analysis and determinations

7. In Telecom Decision 2005-20, the Commission created a mechanism for considering possible exclusions from competitor Q of S results where circumstances beyond the control of an incumbent local exchange carrier (ILEC) might have caused it to fail to meet a performance standard.
8. In Telecom Decision 2007-102, the Commission adopted a *force majeure* clause that provided that no rate rebates would apply in a month where failure to meet a competitor Q of S standard was caused in that month by events beyond the reasonable control of the ILEC. The Commission considers that, based on the evidence filed, the cable cuts and duct run damage in question qualify as incidents that were beyond the reasonable control of Bell Canada and thus trigger the *force majeure* clause.
9. The Commission considers that Bell Canada has provided sufficient evidence to demonstrate that the cable cuts and duct run damage caused the below-standard results for indicator 2.7A for RCI in June 2009.
10. In particular, the Commission has verified that Bell Canada exceeded the standard for competitor Q of S indicator 2.7A for most of its competitors, including RCI, for either three consecutive months, or at least six out of the twelve months, immediately prior to the June 2009 events. In Telecom Decision 2007-14, the Commission concluded that where a competitor Q of S indicator has been met for the three months immediately prior to an adverse event, or for at least six out of the twelve months prior to that event, it is reasonable to conclude that an ILEC would likely have met its competitor Q of S obligations without the adverse event.

¹ After the adjustment of its results for the month of May 2009, subsequent to Telecom Decision 2009-741

11. In light of the above, the Commission **approves** Bell Canada's request to exclude below-standard results for competitor Q of S indicator 2.7A for June 2009 in the calculation of the amounts due to RCI under the rate rebate plan for competitors.

Secretary General

Related documents

- *Bell Canada – Application to exclude competition-related quality of service indicator 2.7A results from the rate rebate plan for competitors for May 2009*, Telecom Decision CRTC 2009-741, 1 December 2009
- *Retail quality of service rate adjustment plan and competitor quality of service rate rebate plan – Adverse events*, Telecom Decision CRTC 2007-102, 31 October 2007
- *TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors for July 2005*, Telecom Decision CRTC 2007-14, 28 February 2007
- *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005