Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2011-563

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Ottawa, 1 September 2011

TELUS Communications Company – Application to exclude competition-related quality of service indicator 1.19 results from the rate rebate plan for competitors for November and December 2010

File number: 8660-T66-201104348

In this decision, the Commission approves TCC's request to exclude from its results for competitor quality of service indicator 1.19 those service orders that were affected by a high bit rate digital subscriber line (HDSL) card shortage for the months of November and December 2010. However, the Commission denies TCC's request for a blanket approval of future similar exclusion requests for the duration of the shortage.

The Commission also denies SaskTel's request that the Commission permit other incumbent local exchange carriers to exclude service orders affected by the HDSL card shortage from the results for their set of affected competitor quality of service indicators.

Introduction

1. The Commission received an application by TELUS Communications Company (TCC), dated 1 March 2011, requesting the exclusion of the competitor quality of service (Q of S) results related to indicator 1.19 – Requested Due Dates Met – CDN [competitor digital network] Services (indicator 1.19) from its rate rebate plan for competitors for November and December 2010.

2. TCC submitted that because of an insufficient supply of high bit rate digital subscriber line (HDSL) cards[1] from its supplier, due to a global shortage of electronic components (the shortage), the company has been unable to provision many CDN service orders within its standard time frames. TCC further submitted that the shortage has substantially increased the supply lead time for HDSL cards.

3. TCC noted that its actual November and December 2010 competitor Q of S performance results for service to some of its competitors were below the 90 percent set standard for indicator 1.19. However, TCC provided evidence that if the service orders affected by the shortage were excluded, its November and December 2010 results for indicator 1.19 for the affected competitors would have been within the set standard.

4. TCC proposed to adjust its indicator 1.19 competitor Q of S performance results for November and December 2010 based on an aggregated performance result for the entire base of competitors served during each of those two months.

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1 HDSL cards are used to provision CDN services to competitors and equivalent services to retail customers.

5. The Commission received comments regarding TCC's application from Saskatchewan Telecommunications (SaskTel). SaskTel noted that due to an increase in demand for HDSL cards, the timeline for a resolution of the shortage is likely to be long and that network infrastructure repair to ensure public safety takes priority over new commercial installations. SaskTel submitted that the Commission should therefore address the shortage by allowing the incumbent local exchange carriers (ILECs) to be relieved from meeting the set competitor Q of S standards for the indicators affected by the shortage, via the exclusion application process.

6. The public record of this proceeding, which closed on 20 April 2011, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

7. The Commission considers that TCC's exclusion application raises the following issues:

   I. Should TCC's request to exclude its competitor Q of S performance results for indicator 1.19 from its rate rebate plan for November and December 2010 be approved?

   II. Should TCC be permitted to exclude those service orders directly affected by the shortage from the calculation of its competitor Q of S performance results for indicator 1.19 for the duration of the shortage?

   III. Should any exclusion be applicable to other ILECs affected by the shortage?

I. Should TCC's request to exclude its competitor Q of S performance results for indicator 1.19 from its rate rebate plan for November and December 2010 be approved?

8. In Telecom Decision 2005-20, the Commission created a mechanism for considering possible exclusions from competitor Q of S results when circumstances beyond the control of an ILEC might have caused it to fail to meet a performance standard. The Commission also determined that the rate rebate plan must ensure that all competitors are treated fairly and thus should focus on Q of S indicators that are measured on a competitor-by-competitor basis to ensure that the service provided to each competitor is subject to the proper scrutiny and is not masked through the aggregation of data.

9. In Telecom Decision 2007-14, the Commission concluded that if a competitor Q of S indicator has been met for three consecutive months, or for at least six out of twelve months, immediately prior to an adverse event, it is reasonable to conclude that an ILEC would likely have met its competitor Q of S obligations without the adverse event.

10. The Commission notes that in TCC's application, the company filed aggregated competitor Q of S indicator 1.19 results for November and December 2010. The Commission also notes that in order for it to complete its review of the application, it had to analyze TCC's quarterly 2009 and 2010 competitor Q of S performance results

on a competitor-by-competitor basis. This analysis showed that TCC exceeded the requirements established in Telecom Decision 2007-14 for the time period immediately prior to the shortage.

11. 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 an ILEC. The Commission considers that TCC has provided sufficient evidence to demonstrate that the shortage was caused by global circumstances that were beyond the control of TCC. The Commission therefore considers that, based on the evidence filed, the shortage qualifies as an incident that is beyond the reasonable control of TCC and thus triggers the *force majeure* clause.

12. The Commission considers that TCC has demonstrated that the impact of the shortage caused the below-standard results for indicator 1.19, and that without the shortage, TCC would have met the standard for competitor Q of S indicator 1.19 for November and December 2010.

13. In light of the above, the Commission **approves** TCC's request to exclude only those service orders that were directly affected by the shortage in the calculation of its competitor Q of S results for indicator 1.19 for November and December 2010.

II. Should TCC be permitted to exclude those service orders directly affected by the shortage from the calculation of its competitor Q of S performance results for indicator 1.19 for the duration of the shortage?

14. TCC submitted that the shortage is an ongoing event that will likely continue to adversely impact competitor Q of S performance results for indicator 1.19. Consequently, TCC requested permission to file, on a quarterly basis, future results for competitor Q of S indicator 1.19 that exclude service orders affected by the shortage until the shortage is resolved. TCC noted that it expected the shortage to be resolved in the second quarter of 2011, and that it would notify the Commission in writing when the shortage ended.

15. The Commission considers that the purpose of the competitor Q of S regime is to ensure that all competitors receive a Q of S from the ILECs of a sufficiently high level to enable the competitors to compete on a level playing field with each other and with the ILECs. The Commission also considers that if TCC's request for a blanket approval to exclude the service orders affected by the shortage from the results of competitor Q of S indicator 1.19 were granted, the incentive for the ILECs to maximize HDSL card stock use to fulfill customers' requests for CDN services would be removed.

16. Accordingly, the Commission **denies** TCC's request to exclude from its future competitor Q of S performance results for indicator 1.19 service orders that, in TCC's view, are directly affected by the shortage until the shortage is resolved. The Commission will consider future exclusion requests on a per-application basis for the affected months.

III. Should any exclusion be applicable to other ILECs affected by the shortage?

17. The Commission notes SaskTel's request to relieve the ILECs from meeting the set competitor Q of S standards for the indicators affected by the shortage. The Commission considers that the circumstances for each ILEC facing the shortage may differ and therefore require an evaluation on an application-by-application basis. Accordingly, the Commission **denies** SaskTel's request.

Secretary General

Related documents

- *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