Telecom Decision CRTC 2011-702

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Ottawa, 14 November 2011

CISC non-consensus report – Draft Deposit and Disconnection Code

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In this decision, the Commission approves the deposit and disconnection code submitted by the CISC Deposit and Disconnection Code Development Ad-Hoc Committee in its non-consensus report DDRE0001, entitled Draft Deposit and Disconnection Code.

Background

1. In Telecom Decision 2008-34, the Commission issued a plan to review existing social and non-economic regulatory measures to ensure that they were being implemented in a manner consistent with the Policy Direction.[1]

2. In Telecom Regulatory Policy 2009-424, the Commission reviewed the incumbent local exchange carriers' (ILECs') terms and conditions for company-initiated suspension or termination of local exchange service (the disconnection and deposit policies)[2] in light of the Policy Direction. In that decision, the Commission concluded that (a) it would maintain the deposit and disconnection policies in regulated markets, since consumers in those markets do not have access to competitive alternatives; and (b) these policies could be streamlined in forborne markets to minimize interference with competitive market forces while maintaining certain necessary consumer safeguards.

3. The Commission also requested that the telecommunications industry ombudsman, the Commissioner for Complaints for Telecommunications Services Inc. (CCTS), develop and implement an industry code on disconnections and deposits. This code would apply to the provision of local exchange service by all local exchange carriers (LECs) in forborne markets and would meet the minimum criteria for the code set out in Telecom Regulatory Policy 2009-424. In addition, the Commission determined that it would maintain the existing disconnection and deposit policies in forborne markets until the CCTS implemented the code.

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[1] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

[2] In *Telecom* Decision 2006-15, the Commission required the ILECs to maintain the disconnection and deposit policies in relation to residential primary exchange service in both regulated and forborne markets.

4. On 30 June 2010, the CCTS informed the Commission that it had attempted to develop the code but was unable to do so because various stakeholders had objected to the scope, reach, and style of the draft code. The CCTS submitted that adoption of the code would have required broad agreement among its directors.

5. To resolve this issue, the Commission set out a new approach for the development and approval of mandatory codes to be enforced by the CCTS in Telecom Regulatory Policy 2011-46. The Commission determined that such codes would be developed by a CRTC Interconnection Steering Committee (CISC) working group, in which the CCTS would participate.

6. In addition, the Commission requested that CISC develop a deposit and disconnection code to be enforced by the CCTS, and specified that the code must fulfill the criteria set out in Telecom Regulatory Policy 2009-424. The Commission requested that CISC report on the development of the code within six months of the date of Telecom Regulatory Policy 2011-46.

CISC report and draft code

7. On 8 July 2011, the CISC Deposit and Disconnection Code Development Ad-Hoc Committee (the committee) filed non-consensus report DDRE0001 entitled *Draft Deposit and Disconnection Code*. The report, which contains the draft code, is available on the Commission's website at www.crtc.gc.ca under "CRTC Interconnection Steering Committee."

8. The committee submitted that it had reached consensus on the draft code and requested the Commission's approval of the code. The committee also requested the Commission's determinations on two related non-consensus items: (i) whether a section should be added to the draft code to address the application of partial payments and (ii) when the CCTS should begin enforcing the code.

Issues

9. The Commission considers that the report raises the following issues:

    I. Does the draft code meet the criteria for approval established by the Commission?

    II. Should a section be added to the draft code to address the application of partial payments?

    III. When should the CCTS begin enforcing the code?

I. Does the draft code meet the criteria for approval established by the Commission?

10. In Telecom Regulatory Policy 2009-424, the Commission determined that the deposit and disconnection code should, at a minimum, contain the following elements: (i) a

reasonable notice period and a reasonable provision for non-disconnection when charges are being legitimately disputed; and (ii) a reasonable maximum deposit amount, a reasonable deposit return time frame, and a reasonable rate of interest on deposits.

11. The Commission has reviewed the draft code and finds that it meets all the criteria set out in Telecom Regulatory Policy 2009-424.

II. Should a section be added to the draft code to address the application of partial payments?

12. The committee did not reach consensus on whether the scope of the code should address the allocation of partial payments. At issue is whether it would be appropriate for the code to specify that a LEC must, upon receipt of a payment that is insufficient to cover arrears for all amounts outstanding for all services to which a customer subscribes (including long distance, wireless, Internet, and television services), apply the payment first to the local exchange service, in order to prevent undue disconnection of the customer’s local exchange service.

13. In the CISC report, the Public Interest Advocacy Centre (PIAC) noted that, to prevent the undue disconnection of local exchange services for customers who do not have access to competitive alternatives, the Commission required the ILECs to apply partial payments first to the basic part of their tariffed residential local exchange service. Further, the ILECs could not disconnect a customer’s local exchange service if the customer was making sufficient payments to cover the arrears of the basic part of his or her local exchange service, even if these payments were not sufficient to pay for the customer’s non-tariffed services.

14. PIAC and l’Union des consommateurs (l’Union) argued that this aspect of the ILECs’ company-initiated termination of service policy should be included in the code. PIAC further argued that it should be expanded to ensure that all LECs apply any partial payment to local exchange service first, instead of to wireless, television, or Internet services.

15. The CCTS supported this view and stated that the code should specify that local exchange service cannot be disconnected due to non-payment of other services, such as wireless or Internet service. The CCTS considered that clear guidelines in this respect would reduce ambiguity and improve complaint handling processes.

16. Bragg Communications Inc. operating as EastLink, Cogeco Cable Inc., Rogers Communications Partnership, Shaw Cablesystems G.P., and Videotron G.P. (collectively, the cable carriers), as well as Bell Canada; Bell Aliant Regional Communications, Limited Partnership; Distributel Communications Limited (Distributel); and TELUS Communications Company (TCC), submitted that a provision directing all LECs to apply all partial payments first to local exchange service would be neither necessary nor appropriate in forborne markets. They also submitted that, unlike consumers in regulated markets, consumers in forborne

markets have access to competitive alternatives to re-obtain local exchange service or to other telephony services, such as prepaid wireless service.

17. The cable carriers and Distributel submitted that both LECs and the draft code provide ample opportunities for customers to work out payment plans that reflect their individual needs. They argued that it had not been demonstrated that all customers would want partial payments to apply to their local exchange service first. They submitted that some customers who subscribe to bundled services may prefer that partial payments be applied to their Internet, wireless, or broadcasting services.

18. Distributel submitted that in some cases it is not technically feasible for local exchange service to be retained absent another service. Distributel argued that, for example, some LECs offering voice over Internet Protocol (VoIP) services cannot retain a customer's local exchange service unless the Internet service is also retained. As a result, applying partial payments to local exchange service first in these situations would not help customers retain access to their telephony services and/or would place LECs in a situation where they are forced to continue providing Internet services without receiving compensation.

19. Bell Canada submitted that an allocation scheme may not be practical for services that are sold as an "all in, one price bundle" if there is no discrete price point for local access services.

20. MTS Allstream Inc. (MTS Allstream) and Saskatchewan Telecommunications submitted that, irrespective of whether the code addresses this issue, they would follow the regulated approach to the provision of their local exchange services in both regulated and forborne markets, as has been their standard practice.

21. The Commission considers that, as set out in Telecom Regulatory Policy 2009-424, the purpose of the code is to establish a streamlined deposit and disconnection policy that will apply symmetrically to ILECs and competitive local exchange carriers (CLECs) in forborne markets, where customers have competitive alternatives. As a result, the code imposes new obligations on CLECs.

22. The Commission also considers that, as set out in that same decision, the code must meet certain minimum criteria established by the Commission to protect consumers in forborne markets; however, it is not necessary for the code to contain all the rules currently set out in the ILECs' tariffs. In this regard, the Commission notes that it was not a condition of approval that the code address partial payments.

23. The Commission further considers that, while the content of the code is not limited to the minimum criteria it had set out in Telecom Regulatory Policy 2009-424, in light of the above and the Policy Direction, additional items should be agreed upon by the committee or supported by evidence before being included in the code. In this regard, the Commission notes that the CCTS, PIAC, and l'Union argued that including a partial payment provision in the code would benefit consumers. However, they did not put forward evidence to support their view that this proposed provision is

necessary to protect consumers' interests in forborne markets, in which competitive alternatives are available.

24. The Commission further considers that it could be onerous and expensive for CLECs to implement a partial payment provision, and that it might not be technically feasible for other companies, such as certain VoIP providers, to implement it.

25. In light of all the above, the Commission concludes that it is not necessary that the code address partial payments. However, the Commission considers that the CCTS should track complaints related to partial payment issues and requests that the CCTS report on such complaints in future annual reports.

III. When should the CCTS begin enforcing the code?

26. The committee was unable to reach consensus on when the CCTS should begin to enforce the code when resolving complaints. The committee requested that the Commission make a determination on the appropriate "transition period" for the code.

27. Proposed time frames were: as soon as possible (CCTS); within six months (MTS Allstream, PIAC, TCC, and l'Union); and within twelve months (the cable carriers and Distributel).

28. The cable carriers and Distributel submitted that some provisions in the code are equivalent to new regulations in forborne markets that will impose new obligations on certain LECs. They further submitted that some aspects of the code may require changes to billing and financial systems; for example, a requirement for interest on deposits would mean that LECs that do not currently provide interest on deposits would have to undertake system development. They also submitted that changes to internal processes and training of front-line staff may be required to implement the code.

29. The Commission considers that the code should become effective as soon as possible to benefit consumers. However, the Commission recognizes that the LECs must be given sufficient time to implement the necessary operational changes to meet the conditions set out in the code.

30. The Commission notes that the code has been contemplated since 2009 and the draft code was finalized in July 2011.

31. Accordingly, the Commission finds it appropriate that the CCTS begin enforcing the code within six months of the date of this decision.

Conclusion

32. In light of all the above, the Commission **approves** the deposit and disconnection code as submitted by CISC, with no changes.

33. As directed in Telecom Regulatory Policy 2011-46, following the approval of the code in this decision, the CCTS is to administer the code beginning on **14 May 2012**, publish the code on its website, and report on complaints related to violations of the code in subsequent annual reports.

Secretary General

Related documents

- *Review of the Commissioner for Complaints for Telecommunications Services,* Telecom Regulatory Policy CRTC 2011-46, 26 January 2011

- *Application to review and vary part of Telecom Regulatory Policy 2009-424 regarding deposit and disconnection policies for local exchange carriers,* Telecom Regulatory Policy CRTC 2010-27, 20 January 2010

- *Revised regulatory requirements for management of customer accounts,* Telecom Regulatory Policy CRTC 2009-424, 17 July 2009

- *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 various customer account management regulatory measures*, Telecom Public Notice CRTC 2008-16, 3 November 2008, as amended by Telecom Public Notice CRTC 2008-16-1, 27 November 2008

- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council P.C. 2007-532, 4 April 2007