



Telecom Decision CRTC 2006-17

Ottawa, 6 April 2006

Quebecor Media Inc. Part VII application – Alleged violations of winback rule by Bell Canada

Reference: 8622-Q15-200510710

In this Decision, the Commission finds that Bell Canada attempted to win back former local service customers, in violation of the local exchange service winback restrictions (the winback rule), when it sent a customer appreciation card to former customers followed by an automated survey regarding the cards, each of which included a direct invitation to contact Bell Canada and a telephone number to do so. Accordingly, the Commission directs Bell Canada to bring itself into compliance with the winback rule, as revised in Forbearance from the regulation of retail local exchange services, Telecom Decision CRTC 2006-15, 6 April 2006, within seven days of this Decision.

The application

1. On 12 September 2005, Quebecor Media Inc. (QMI), on behalf of its subsidiaries Vidéotron Itée and Videotron Telecom Ltd. (collectively, VTL), filed an application pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, requesting that the Commission direct Bell Canada to put an immediate stop to the following alleged local residential winback violations:
 - a) sending customer appreciation cards to residential local exchange customers who had ported their telephone numbers from Bell Canada to VTL, inviting them to contact Bell Canada;
 - b) making survey calls to residential local exchange customers who had ported their telephone numbers from Bell Canada to VTL; and
 - c) making automated calls to residential local exchange customers in the process of porting their telephone numbers from Bell Canada to VTL, in the days prior to the scheduled number port, confirming with the customers the dates of their upcoming disconnection from Bell Canada.
2. QMI submitted that the local exchange service winback restrictions were a core element of the Commission's framework for ensuring sustainable local telephone competition, and that any violation of the Commission's winback regime must therefore be regarded as a serious matter.
3. QMI was of the view that the customer appreciation cards constituted a blatant and personalized invitation to contact Bell Canada. As evidence, QMI filed an example of the card sent by Bell Canada to lost residential local exchange customers. The card reads as follows (translation from French):

I'm writing to say that we are sorry to see you go. Even though you are no longer using Bell for your local phone service, we haven't forgotten about you. You were a valued member of our Bell Family and we truly appreciate having been of service.

If there is anything we can assist you with in the future or anything you would like to discuss, please don't hesitate to call my team directly at 1 888 603-8402.

4. QMI submitted that several migrated customers reported having received a call from Bell Canada requesting that they respond to a survey regarding their reasons for leaving Bell Canada and the factors that could incite them to return to Bell Canada. QMI argued that the purpose of these calls was to encourage customers to compare the services of Bell Canada and VTL, with a view to soliciting their return to Bell Canada.
5. QMI also submitted that number porting was a seamless service that did not require any communication between the former telecommunications service provider (TSP) and the customer. QMI argued that the automated calls by Bell Canada were unnecessary and could easily be interpreted by porting customers as an invitation to contact Bell Canada to verify the circumstances of their disconnection.

The local exchange winback restrictions

6. The Commission initially established the local exchange service winback restrictions in a letter entitled *Commission Decision Regarding CRTC Interconnection Steering Committee Dispute on Competitive Winback Guidelines*, dated 16 April 1998 (the Winback Letter). Pursuant to the Winback Letter, an incumbent local exchange carrier (ILEC) was not to attempt to win back a customer with respect to primary exchange service (PES), for a period of three months after that customer's service had been completely transferred to another TSP.
7. The local exchange service winback restrictions were subsequently interpreted and expanded in a number of decisions to address specific issues and circumstances. The version of the restrictions in force at the time of QMI's application, as set out in *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005, and amended by Telecom Decision CRTC 2005-28-1, 30 June 2005, stated as follows:

...an ILEC is not to attempt to win back a business customer with respect to primary exchange service or local [voice over Internet Protocol (VoIP)] service, and in the case of a residential customer of local exchange service (i.e. PES or local VoIP service), with respect to any service, for a period commencing at the time of the local service request and terminating three months, in the case of a business customer, and 12 months, in the case of a residential customer, after that customer's primary local exchange service or local VoIP service has been completely transferred to another local service provider, with one exception: ILECs should be allowed to win back customers who call to advise them that they intend to change local service provider.

The above statement will be referred to in this decision as "the winback rule".

8. In *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006 (Decision 2006-15), the Commission modified the winback rule, as it relates to residential customers, by reducing the period during which the winback rule applies to a given former local exchange service customer from 12 to three months, effective immediately.

Process

9. The Commission received Bell Canada's answer on 16 September 2005 and QMI's reply comments on 20 September 2005.
10. Comments were filed by the Canadian Cable Telecommunications Association (CCTA) on 21 September 2005 and by TELUS Communications Inc. (TCI) on 12 October 2005. QMI filed further comments in reply to TCI's submission on 19 October 2005.

Positions of parties

Bell Canada

11. Bell Canada denied that it had violated either the letter or the spirit of the winback rule.
12. Bell Canada acknowledged that it had sent customer appreciation cards to all its residential customers who had moved their local services to a competing TSP. Bell Canada argued that the nature of these cards, as should be clear from the text within the card, was one of acknowledging that the customers had chosen to take their business elsewhere and letting customers know that their patronage was important to and appreciated by Bell Canada. Bell Canada submitted that in a normal business context, the failure to communicate with a customer that had moved its business to a competitor would leave an impression that the previous supplier did not care about the lost business nor value the former customer's business.
13. Bell Canada was of the view that the text in the customer appreciation card did not violate the winback rule as it did not include any offer, implied or otherwise, nor any other inducement that attempted to win back the former customer's business.
14. Bell Canada submitted that this type of communication was not prohibited by the winback rule, as it was not for the purpose of winning back the customer. Bell Canada further submitted that not only was there no offer, but also there was no call to action.
15. Bell Canada claimed that the provision of a contact number was done simply as a courtesy in the event that the customer decided to contact Bell Canada in the future. Bell Canada argued that the winback rule did not prohibit customer-initiated contact with the ILEC and that, therefore, the customer appreciation card did not offend the winback rule.
16. Bell Canada submitted that an independent market research firm conducted a market survey of a sample of Bell Canada's former local service customers. Bell Canada also submitted that this survey was intended to obtain market intelligence regarding the attitudes and behaviours of

individual customers. Bell Canada further submitted that this type of activity was a normal feature of a vigorously competitive market, as only through the gathering of such market intelligence could service providers understand the needs of their customers so as to design products and provide services to better meet those needs.

17. Bell Canada noted that the firm conducting the market research on its behalf made no winback offers to customers, nor did it attempt to induce customers to contact Bell Canada to initiate winback discussions.
18. With regard to QMI's allegations that its customers had received survey calls from Bell Canada via an automated system, Bell Canada noted that such calls were placed during August 2005 to all customers who were sent the card. Bell Canada claimed that, similar to the market survey discussed directly above, the purpose of these calls was to learn more about the attitudes and potential behaviours of customers, as well as to specifically gauge reaction to the customer appreciation card. For the same reasons as noted above, Bell Canada argued that this type of customer contact did not violate the winback rule.
19. Bell Canada submitted that it used an automated customer service messaging process to remind customers of imminent service order-related activity. Bell Canada indicated that in the normal course of business, when the Carrier Services Group (CSG) staff input local service request (LSR) orders involving the migration of a Bell Canada customer's local service to a competitor, the system suppressed automated notification to that customer.
20. Bell Canada submitted that investigation of QMI's application revealed that Bell Canada had received an unexpected additional volume of LSRs and that, in order to cope with the volume, it had moved additional staff to the CSG.
21. Bell Canada indicated that because of the methods and procedures for newly assigned employees to the CSG, these new employees were not given the appropriate profile for the system to suppress the automated message for LSR order processes.
22. Bell Canada submitted that it had updated its methods and procedures and that therefore, on a going forward basis, all automated messages in respect of LSRs would be suppressed.
23. Bell Canada argued that the automated messages were unnecessary and unintended by Bell Canada and could not be construed as a violation of the winback rule because no offer was made, nor was the purpose of the message to induce the customer to switch back to Bell Canada.
24. Bell Canada argued that the key point that emerged consistently throughout the evolution of the winback rule was that it had always been targeted at the marketing of services. That is, the winback rule prohibited contact for the purposes of marketing ILEC services. Bell Canada was of the view that if the Commission agrees with QMI's application and adopts the interpretation of the winback rule advocated by QMI, the winback rule would effectively preclude all forms of contact between an ILEC and its former customers, even forms of contact such as those at issue in this proceeding, which, according to Bell Canada, had nothing to do with the marketing of services.

25. Bell Canada argued that the three activities that QMI took issue with, namely, the customer appreciation card followed up with an automated survey call, the market survey call, and the automated call to confirm pending disconnection, did not fall within the scope of the winback rule. Bell Canada was of the view that in the alternative, the winback rule, as it existed at the time of the activities that QMI complained about, was unconstitutional and of no force and effect for the reasons set out in the application dated 25 April 2005 filed by Bell Canada and Saskatchewan Telecommunications (collectively, the Companies). That application challenged the constitutionality of the winback rule under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the Charter) (referred to below as the Companies' Part VII application). Bell Canada also argued that in the further alternative, if the winback rule were expanded to prohibit the activities that QMI complained about, then this expanded winback rule would also violate section 2(b) of the Charter and would not be justifiable under section 1 of the Charter. In light of the foregoing, Bell Canada was of the view that QMI's application should be denied.

QMI's reply

26. QMI submitted that a card that told former customers how much they were missed, invited them to call Bell Canada to discuss whether there was anything Bell Canada could do for them and provided a telephone number for the customers to use to make that call was an obvious attempt to win back the customers' business.
27. QMI argued that if the Commission were to tolerate this type of contact, it would establish a loophole in the winback rule that all the ILECs would quickly take advantage of. QMI submitted that this would result in every customer who chose to leave an ILEC for a competitive local exchange carrier (CLEC) receiving such customer appreciation cards, most likely with an invitation to visit the ILEC's website for a complete listing of the ILEC's new service offerings and promotions, as well as the ILEC's contact information. QMI claimed that the effectiveness of the winback rule would then be substantially undermined and the development of local competition impaired.
28. QMI submitted that market surveys targeting former local service customers necessarily involved asking former customers to identify the reasons for switching service and, hence, to compare the services of Bell Canada and VTL. QMI claimed that the market survey was a winback activity, as it invited the customer to reassess whether the decision to switch was appropriate and hence, whether it might be appropriate to switch back.
29. QMI also submitted that the exclusion of survey calls from the scope of the winback rule would create a major loophole in the rule and invite the ILECs to take maximum advantage of that loophole. QMI argued that it would be virtually impossible for the Commission to police all market surveys to determine when a survey call ceased to be an information gathering exercise and began to involve an attempt to convince a former customer to return to the ILEC.
30. QMI claimed that it was clear that the automated pending disconnection calls were unnecessary from an operational perspective. QMI submitted that if Bell Canada were to continue to make these calls, the sole reason for doing so would be to take advantage of their winback potential.

QMI argued that, in the context of customers switching their local service from an ILEC to a CLEC, automated pending disconnection calls were an attempt to win back customers, and, as such, were prohibited by the winback rule.

31. QMI submitted that Bell Canada's argument regarding the winback rule being in violation of the Charter was the subject of a separate proceeding and need not be addressed in the context of the current application. QMI claimed that unless and until the winback rule was judged unconstitutional, it should be enforced vigorously by the Commission.

CCTA

32. The CCTA submitted that QMI had established a strong *prima facie* case of non-compliance.
33. The CCTA also submitted that Bell Canada, through its non-compliant actions, had effectively granted itself interim relief from the winback rule. The CCTA argued that there was a risk of irreparable harm to the public interest, as Bell Canada's winback activity could result in a reduction of residential local competition, and that the balance of convenience favoured making an order enjoining Bell Canada's actions vis-à-vis its lost customers.
34. The CCTA argued that there was no indication that customers, either those lost or the general body of subscribers, would suffer any harm were Bell Canada to discontinue each of the activities identified by QMI.

TCI

35. TCI submitted that the actions taken by Bell Canada did not violate the Commission's winback rule. TCI further submitted that all the alleged violations cited by QMI were normal business practices intended to ensure an orderly transition of Bell Canada customers to new suppliers, to improve the customer experience for remaining Bell Canada customers and to ensure that the departing customers leave with a favourable impression of Bell Canada.
36. TCI argued that as long as these activities did not include offering inducements to the customer not to switch TSPs, or to revert back to the original TSP, or attempt to otherwise market the ILEC's services, they were not winback activities.

QMI's final reply

37. QMI submitted that TCI had taken an unjustifiably narrow reading of the Commission's winback decisions and an unjustifiably narrow view of the scope of possible inducements. QMI was of the view that none of the Commission's winback rulings had made illicit winback activity expressly conditional on the offering of specific inducements to customers. QMI noted that the Commission had repeatedly employed language that stopped short of requiring specific inducements to be offered in order for certain communications to be considered winback activities.
38. QMI submitted that at its core, the winback rule was a "no contact" rule. QMI further submitted that the value and legitimacy of this "no contact" rule stood, regardless of whether the prohibited contact would lead to the offering of a specific inducement. QMI noted that the Commission was most explicit in this regard in the Winback Letter:

The Commission notes that asymmetrical winback guidelines will not prevent ILECs from advertising to the general public. Instead, ILECs will not be allowed to communicate with customers on an individual basis for a limited period of time following transfer of the customer's service to another local service provider.

39. QMI further submitted that there was nothing in the winback rule requiring that the marketing of services be immediate or simultaneous with the offending customer communications in order for the communication to be considered a violation of the rule.
40. QMI contended that it was surely not the Commission's intention, by including an exception to the winback rule for situations where customers called to advise the ILEC that they intended to change TSPs, to open the door to communication strategies, such as the communication strategies used by Bell Canada, that then led to a wholesale undermining of the winback rule itself.

Commission's analysis and determinations

41. The Commission notes that Bell Canada argued that the winback rule prohibited contact of former customers for the purpose of marketing ILEC services and that the three activities, namely, the customer appreciation card followed up with an automated survey call, the market survey call, and the automated call to confirm pending disconnection, were not undertaken for the purposes of marketing ILEC services and were thus outside the scope of, and did not violate, the winback rule.
42. In support of its position, Bell Canada referred to the Commission's letter, issued on 1 April 1999 in relation to a dispute filed by the CRTC Interconnection Steering Committee (CISC) Cable Wiring Working Group, entitled *CISC Dispute – Rules Regarding Communication Between the Customer and the Broadcasting Distribution Undertaking*, where it is indicated that winback activities are generally referred to as:

...the offering to customers of discounts, free services or other inducements in order to convince those customers not to change service providers or to revert back to their original service provider.
43. Bell Canada claimed that the key point that emerged consistently throughout the evolution of the winback regime in various Commission decisions is that the winback regime has always targeted the marketing of services.
44. While the Commission has, in a number of decisions, made references to the inducements that might be offered as part of winback attempts, these were not intended to provide an exhaustive list of activities that are prohibited under the winback rule.
45. According to the winback rule, ILECs are not to attempt to win back former PES and local VoIP customers in certain circumstances. The Commission notes that the winback rule does not prohibit all contact with former customers. Conversely, the mere fact that an activity does not include an express discount offer or other inducement is not determinative of whether or not the activity falls within the scope of the prohibition under the winback rule.

The Commission is of the view that the facts and circumstances of the particular activity in question must be examined in each case to determine whether the activity constitutes an attempt by the ILEC to win back former local exchange service customers in violation of the winback rule.

46. The Commission notes that while the text of the customer appreciation card complained of by QMI in this proceeding did not include explicit offers or inducements, the card, which was sent to all former customers and was personally addressed to each customer, invited the customer to contact Bell Canada and provided a toll-free telephone number for doing so. In addition, the card was followed up in each case by an automated survey call, in which the customer was again invited to call Bell Canada and a telephone number was provided in the following statement: "Thank you for taking the time to complete this survey. Should you have any questions, please call 310-BELL."
47. Bell Canada argued that the provision of a contact number was done simply as a courtesy in the event that the customer decided to contact Bell Canada in the future. The Commission is of the view, however, that the invitation to contact Bell Canada and the provision of a telephone number were part of a winback attempt by Bell Canada, particularly since, as noted in *Bell Canada and Saskatchewan Telecommunications' request that the Commission stop applying the local exchange service winback restrictions on the basis that they unjustifiably infringe the right to freedom of expression in section 2(b) of the Canadian Charter of Rights and Freedoms*, Telecom Decision CRTC 2006-16, 6 April 2006 (Decision 2006-16), if customers who transfer to an ILEC competitor call the ILEC to request information on its local exchange services, it is not a violation of the winback rule for the ILEC sales representative to provide them with such information and to transfer their service back to the ILEC, if they so request.
48. As for the automated survey, the Commission further notes that a survey is normally sent to a sample of customers, as Bell Canada has indicated was done with its market survey. The fact that the follow-up survey by way of automated calls was made to all former customers provides further indication, in the Commission's view, that the follow-up survey was part of a strategy on Bell Canada's part to attempt to win back former customers.
49. In light of the particular facts and circumstances discussed above, the Commission finds that the combination of the customer appreciation card and the follow-up survey, where both the card and the survey included a direct invitation to all former customers to contact Bell Canada and provided a contact telephone number, constituted an attempt by Bell Canada to win back former local exchange service customers in violation of the winback rule.
50. The Commission notes that, in contrast to the follow-up automated survey, the market survey canvassed a sample of former customers and neither invited the former customer to contact Bell Canada nor provided a telephone number or other contact information. The Commission further notes that the market survey also did not contain any offer or inducement to switch TSPs. In the Commission's view, the market survey was, as Bell Canada claimed, merely an attempt to conduct market research regarding customers' needs and preferences. The Commission therefore finds that the market survey in question did not constitute an attempt to win back former local exchange customers.

51. With respect to the automated calls to confirm pending disconnection, the Commission notes that in its answer, Bell Canada recognized that this activity was unnecessary and unintended, and advised that, upon its investigation of QMI's application, it discontinued the automated calls to confirm pending disconnection. Accordingly, the Commission considers that no further action is required.
52. The Commission notes that Bell Canada argued that if the activities identified by QMI are found to fall within the scope of the winback rule (i.e., as it existed at the time of QMI's application), then the rule is unenforceable, as it violates the Charter. The Commission notes that a complete record on whether the winback rule violates section 2(b) of the Charter was developed in the context of the Companies' Part VII application. Based on that record, in Decision 2006-16, the Commission has determined that the winback rule is not inconsistent with the Charter. The Commission notes that, in this proceeding, Bell Canada relied on the arguments it made in the Companies' Part VII application as supplemented by its submissions on the record of this proceeding. Based on the record and the Commission's determinations herein as to whether the impugned activities fall within the scope of the winback rule, the Commission finds that its determinations in Decision 2006-16 apply equally in this proceeding. Accordingly, the Commission finds that the winback rule at issue in this proceeding is not inconsistent with the Charter for the same reasons as set out in Decision 2006-16.
53. In light of the foregoing, the Commission directs Bell Canada to bring itself into compliance with the winback rule, as revised in Decision 2006-15, within seven days of the date of this Decision.

Secretary General

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