



Telecom Decision CRTC 2006-69

Ottawa, 30 October 2006

Quebecor Media Inc. vs. Bell Canada – Dispute regarding winback rule

Reference: 8622-Q15-200608028

In this Decision, the Commission finds that Bell Canada's customer appreciation card sent to its former customers does not violate the Commission's winback rule.

The application

1. On 16 June 2006, Quebecor Media Inc. (QMI) filed an application pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, requesting that the Commission direct Bell Canada to immediately stop sending the customer appreciation cards that QMI submitted were in violation of the local exchange service (LES) winback restrictions imposed on incumbent local exchange carriers (ILECs), as these restrictions were applied in *Quebecor Media Inc. Part VII application – Alleged violations of winback rule by Bell Canada*, Telecom Decision CRTC 2006-17, 6 April 2006 (Decision 2006-17).
2. QMI provided a copy of the customer appreciation cards that Bell Canada sent to its former LES customers in Ontario and Quebec, in either English or French.
3. The cards had the following caption on their cover: "it just won't be the same without you."
4. The inside of the cards stated the following:

I'm writing to say that we are sorry to see you go. Even though you are no longer using Bell for your **Residential 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.

Unfortunately, industry regulations prevent us from contacting you in an effort to win back your **Residential Phone** service for a period of three months. We are counting down the days until we can talk to you again. These rules do not prevent you from contacting us if you are interested in more information about your local service.

5. QMI noted that the cards did not indicate a contact telephone number. QMI submitted that Bell Canada, in sending out this customer appreciation card (new card) without a contact telephone number, was attempting to evade the Commission's ruling made in Decision 2006-17 on a previous customer appreciation card (old card). QMI alleged that the purpose of this new card was the same as that of the old card; both cards invited former Bell Canada LES customers to contact Bell Canada and both qualified as an attempt by Bell Canada to win back former LES customers. QMI requested that, given the flagrant nature of Bell Canada's breach of the LES winback restrictions, the Commission deal with this matter on an expedited basis.

Process

6. The Commission received Bell Canada's comments on 21 June 2006, and QMI's reply comments on 29 June 2006.
7. On 17 July 2006, Bell Canada filed a supplemental submission, and on 3 August 2006 QMI filed a submission in response to Bell Canada's 17 July filing.

The LES winback restrictions

8. The Commission initially established the LES winback restrictions in a letter entitled *Commission Decision Regarding CRTC Interconnection Steering Committee Dispute on Competitive Winback Guidelines*, dated 16 April 1998. Pursuant to this letter, an 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 telecommunications service provider.
9. The Commission subsequently interpreted and expanded the LES winback restrictions in a number of decisions to address specific issues and circumstances. The most recent iteration is set out as follows in *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006:

...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 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.

10. The above statement will be referred to in this Decision as the winback rule.

Positions of parties

11. Bell Canada submitted that the Commission should dismiss QMI's application because: (a) QMI fundamentally misunderstood how the winback rule applies to ILEC customer appreciation cards; (b) the new cards do not attempt to win back former customers; and (c) the application is out of step with government policy requiring less, and the least intrusive forms of, regulation. Bell Canada further submitted that the first paragraph of text in the new card was a message thanking former customers for their patronage, and the second paragraph of text was factual, in that it explained to former customers the winback rule that is in place and the effect of the rule on former customers.

12. In reply, QMI submitted that an examination of Bell Canada's new card, in light of Decision 2006-17, revealed that it was clearly intended for solicitation and differed in no material respect from the old card that the Commission had found to be in violation of the winback rule. QMI alleged that in sending out these customer appreciation cards to its former LES customers, Bell Canada was contravening the Commission's finding in Decision 2006-17.
13. In its supplemental submission, Bell Canada included a newspaper article in which the author described his experience when switching service from Bell Canada to QMI's Vidéotron Ltd. division (Vidéotron). Bell Canada noted that the author had received an information package from QMI that, among other things, warned the customer that any attempt by the former service provider to contact the customer would be forbidden. Bell Canada argued that the fact that Vidéotron was informing its new local service customers about the operation of the Commission's winback rule was new information of which it was not aware when it filed its comments on 21 June 2006. Bell Canada argued that the information being communicated by QMI to its new customers illustrated how egregious QMI's position would be if upheld – QMI would be permitted to tell former Bell Canada customers about the rule, but Bell Canada would not. Bell Canada further argued that its right to communicate this information was all the more important when considered in light of the inaccuracy of Vidéotron's message. Bell Canada contended that its customer appreciation cards, in addition to generally informing its former LES customers of the Commission's winback rule, corrected the incorrect information regarding the winback rule provided by QMI.
14. QMI submitted that Bell Canada's supplemental submission was irrelevant, frivolous and out of process, and should be struck from the record of the proceeding. QMI submitted that neither the information it provided to its local telephony customers nor the newspaper article referenced by Bell Canada were relevant to QMI's request that Bell Canada refrain from violating the Commission's winback rule.

Commission's analysis and determinations

15. QMI argued that Bell Canada's new cards were in violation of the winback rule as set out in Decision 2006-17. In that Decision, the Commission found that the combination of the old card and a follow-up survey constituted an attempt by Bell Canada to win back former LES customers in violation of the winback rule. The Commission noted that the old card 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 former customer was again invited to call Bell Canada and a telephone number was provided.
16. In Decision 2006-17, the Commission noted that the winback rule does not prohibit all contact with former customers. Further, the Commission stated 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 LES customers in violation of the winback rule.
17. The Commission notes that Bell Canada's new card thanks former customers for their business, provides former customers with information concerning the winback rule, and explains why Bell Canada is not calling them right now. The card does not contain a specific

direct invitation to the former customer to call Bell Canada, nor does it contain any offer or inducement to former customers. In light of the foregoing, the Commission is not persuaded that the new card, in and of itself, is an attempt to win back the former customer, in violation of the winback rule.

18. Accordingly, the Commission **denies** QMI's application. In addition, the Commission considers it in the public interest to allow Bell Canada's supplemental submission and therefore **denies** QMI's request that Bell Canada's supplemental submission be struck from the record of this proceeding.

Secretary General

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>