

**In the Matter of Canada Gazette,
Part 1, Vol. 140, No. 50 – December 16, 2006**

Order Varying Telecom Decision CRTC 2006-15

**Comments
of
Bell Canada**

15 January 2007

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1.0 INTRODUCTION

1. Bell Canada (or the Company) is pleased to submit the following representations concerning the Governor in Council's proposed Order Varying Telecom Decision CRTC 2006-15 (the Order), published in the Canada Gazette, Part I on 16 December 2006. Bell Canada supports the government's proposed Order as it will benefit telecommunications users and significantly contribute to the success of Canada's telecommunications industry.

2. When the Order comes into force telecommunications end-users will benefit from the greater flexibility that service providers will have to respond to their specific requirements, make "winback" offers and introduce or extend innovative promotions. Delays caused by the need to file tariffs in competitive markets will be eliminated. The new forbearance framework will also minimize the risk that markets without sufficient competition are erroneously forborne and markets with sufficient competition are erroneously regulated. In summary, the government's Order will increase the competitive intensity in the industry and Canadian consumers and businesses will be the beneficiaries.

3. The government's vision for the industry is clear – ensure that Canada's telecommunications industry is internationally competitive and successful by making the regulatory system more modern, flexible and efficient and by facilitating increased competition in the marketplace. The Order is necessary to correct the fundamental deficiencies of Decision 2006-15 which, if left unchallenged, would dampen competition and confound the implementation of the government's vision for the industry. The changes to Decision 2006-15 will also address several deficiencies in Canada's regulatory framework generally. Furthermore, the changes are appropriate and necessary in light of the extensive and growing competition in local telecommunications markets in Canada.

1.1 Extensive and Growing Competition in Local Markets

4. After consulting with international policy makers, regulators and other telecommunications experts, and reviewing almost 200 written and oral submissions from Canadian telecommunications industry participants, consumer groups, community associations, research centres and ordinary Canadians, the government-appointed Telecommunications Policy Review Panel (TPR Panel) concluded:

"In spite of the fact that Canada has one of the most competitive telecommunications markets in the world, we continue to have one of the most detailed, prescriptive and costly regulatory frameworks. This framework is

particularly burdensome for Canada's major telecommunications service providers, who now face stronger competition in a number of market segments from well-established facilities-based rivals as well as from new entrants. The Panel believes the Canadian telecommunications industry has evolved to the point where market forces can largely be relied on to achieve economic and social benefits for Canadians, and where detailed, prescriptive regulation is no longer needed in many areas."¹

5. The TPR Panel found that there are several classes of local service providers competing with the incumbent local exchange carriers (ILECs). Cable companies have become the most significant wireline facilities-based competitors in residential markets across Canada and are increasingly addressing the needs of business customers as well. Their existing cable networks pass approximately 97% of the homes in Canada and the largest cablecos expect to soon have telephony service available to 80% to 90% of these homes, and eventually to have at or near 100% coverage wherever their cable infrastructure will support digital telephony.² Based on the experience of Shaw Communications Inc. (Shaw), Vidéotron Itée (Vidéotron), Rogers Communications Inc. (Rogers), EastLink Telephone (EastLink) and Cogeco Cable Inc. (Cogeco), cable companies are able to quickly capture a significant share of any local exchange services market they choose to enter. For example, Vidéotron is estimated to have captured the telephony business of 13% of its total cable subscriber base only 15 months after initial launch and Shaw has attracted more than 250,000 Digital Phone customers since it launched service in 2005.³ RBC Capital Markets estimates that Shaw's telephony subscribers will grow to 522,000 by 2008.⁴ There is no doubt that cable companies are committed to the provision of telephony and expanding their capability to stimulate even faster growth.⁵

¹ TPR Panel Final Report 2006, March 2006, page 1-22.

² Transcripts from the oral hearing pertaining to Telecom Public Notice CRTC 2006-5, *Review of Price Cap Framework*, at paragraphs 6620-6623; 6867-6873; 6743; 6763-6764.

³ Shaw 1Q 2007 financial results press release, 11 January 2007, <http://www.shaw.ca/NR/rdonlyres/8965A490-AB87-445D-A53E-45CCB1C32518/0/1stQtr07.pdf>

⁴ RBC Capital Markets report on Shaw Communications, 10 January 2007, page 6.

⁵ Cable companies are committed to providing telephony services over the long term because they have already made most of required network, system and process investments and already have established relationships with prospective telephony subscribers. There are also several financial and operational benefits for cable companies which provide telephony services including: incremental revenue and profit from telephony and from bundles of services that include telephony, television and Internet access; lower customer churn; growth in basic cable subscribers; and more cost-effective use of cable network infrastructure.

6. Wireline competitive local exchange carriers (CLECs) typically combine their own facilities with those available from the ILECs at Commission-approved wholesale terms and conditions. Using this approach the Allstream division of MTS Allstream Inc. (MTS Allstream) generates more than \$1 billion in annual revenues from business customers across Canada and has about 570,000 access lines in service. The former Call-Net, now part of Rogers, is active in 160 co-locations in 36 municipalities in Canada and sells to both residential and business customers. Recent consolidation has left MTS Allstream and the former Call-Net in a much stronger financial position than they were previously. TELUS Communications Company (TELUS) and Bell Canada, when operating outside of their incumbent operating territories, have also been very successful in pursuing this approach in business markets.

7. Wireless service providers have invested more than \$15 billion in wireless networks⁶ that provide local and long distance voice services, along with a growing portfolio of data and video services, to both residential and business customers. Wireless service is available to 98% of Canada's population today and has attracted about 18 million subscribers.⁷ In metropolitan areas and many non-urban areas there are typically three providers of wireless service, while in certain non-urban areas there are likely to be two competing wireless providers.⁸

8. The provision of wireless service in Canada is highly competitive. Rogers is the largest wireless service provider in Canada with more than 6.7 million subscribers and a 37% share of total wireless subscriptions, followed by Bell Canada and TELUS with about 32% and 28% of the total subscribers respectively. In July 2006, the Commission concluded that the provision of wireless services in Canada is competitive and that no entity dominates in terms of revenues or subscribers.⁹ IDC recently concluded that "with comparable technologies and pricing structures, competition among wireless carriers has become intense."¹⁰

9. Voice over Internet Protocol (VoIP) services are attracting a growing number of residential and business customers with innovative features and low prices, and in the process have changed the business model for all telecommunications suppliers. VoIP technology allows service providers to launch highly competitive telephony services with very little investment. For

⁶ <http://www.cwta.ca/CWTASite/english/industryfacts.html#>

⁷ http://www.cwta.ca/CWTASite/english/facts_figures_downloads/SubscribersStats_2005-2006.pdf

⁸ See the map on page 86 of the CRTC's *Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets*, July 2006 (CRTC Telecommunications Monitoring Report).

⁹ CRTC Telecommunications Monitoring Report, July 2006, page iv.

¹⁰ IDC, *Wireless Wars 2: Canadian Wireless Forecast and Analysis, 2005-2009*, November 2005, page 9. IDC# CA1712TMS.

example, in less than two years Vonage launched VoIP service in over 60 population centres in Canada yet invested less than \$2 million in fixed assets. As a result of the low barriers to entry, VoIP competition is robust – residential VoIP services are available in Canada from more than 80 suppliers today and VoIP services to businesses are available from more than 70 service providers.

10. It is worth noting that systems integrators and information technology (IT) companies are increasingly enabling businesses to circumvent traditional telecommunications service providers by selling customers total business solutions that include telecommunications services, IT equipment, software applications and professional services. These competitors are typically very large multinational companies with a significant presence in Canada. For example, IBM Canada is a global IT leader, but also has 20,000 employees in Canada and Canadian revenues of \$4.5 billion.

11. In summary, the Canadian telecommunications landscape is highly competitive with several classes of facilities-based providers offering local services. Within each of these competitive classes there are multiple service providers vying for customers' business. Furthermore, it is clear that while facilities-based providers present the strongest and most enduring form of competitive entry, resellers and non-facilities based providers – like VoIP service providers – also provide a significant competitive discipline in markets where they are active.

1.2 Ample Public Dialogue

12. There has been an abundance of public dialogue, consultation and debate over the appropriate telecommunications policy and regulation for Canada in the current competitive era, and the government has had the benefit of this information in preparing the Order. Among the opportunities for interested parties to make their views known are the following:

- VoIP regulatory proceeding – Telecom Public Notice CRTC 2004-2, *Regulatory framework for voice communication services using Internet Protocol*, which resulted in Telecom Decision CRTC 2005-28.
- Petitions to the Governor in Council concerning Decision 2005-28 – the Governor in Council received several submissions related to the five appeals to Cabinet concerning Decision 2005-28 that were filed by: a) the Province of Saskatchewan; b) the Coalition

- for Competitive Telecommunications; c) Aliant Telecom Inc. (Aliant)¹¹, Bell Canada, Saskatchewan Telecommunications (SaskTel), Télébec société en commandite (Télébec) and TELUS; d) the Communications, Energy and Paperworkers Union of Canada; and e) the Vancouver Board of Trade.
- Decision 2005-28 Reconsideration – To comply with Order in Council P.C. 2006-305, the CRTC launched Telecom Public Notice CRTC 2006-6, *Reconsideration of Regulatory framework for voice communication services using Internet Protocol, Telecom Decision CRTC 2005-28*, which resulted in Telecom Decision CRTC 2006-53.
 - Telecommunications Policy Review – as noted above, the process was extensive and incorporated inputs from a broad cross-section of interested parties and international experts.
 - Local forbearance regulatory proceeding – Telecom Public Notice CRTC 2005-2, *Forbearance from regulation of local exchange services* (the local forbearance proceeding), which resulted in Decision 2006-15.
 - Petitions to the Governor in Council concerning Decision 2006-15 – the Governor in Council received several submissions related to the three appeals to Cabinet concerning Decision 2006-15 that were filed by: a) the Province of Saskatchewan; b) the Coalition for Competitive Telecommunications; and c) Bell Aliant, Bell Canada, SaskTel and TELUS.
 - Policy Direction to the CRTC – the proposed Policy Direction was published in the Canada Gazette, Part I, 17 June 2006 and followed by a 60-day consultation period. The House of Commons Standing Committee on Industry, Science and Technology also met with stakeholders to discuss the proposed text of the Policy Direction. The Policy Direction came into force on 18 December 2006.
 - Price cap framework regulatory proceeding – Public Notice CRTC 2006-5, *Review of price cap framework*.
 - The current public process – the proposed Order varying Decision 2006-15 that is the subject of the current proceeding was published in the Canada Gazette, Part 1, Vol. 140, No. 50, 16 December 2006 and followed by a 30-day public consultation process.

¹¹ On 7 July 2006 Bell Aliant Regional Communications was created by joining Aliant's wireline business with Bell Canada's regional wireline business in Ontario and Québec and Bell's majority interest in Bell Nordiq.

13. In each of the above cases, the opportunity was afforded to interested parties to provide detailed comments to the CRTC, the Governor in Council or the TPR Panel, as the case may be. In many of these public proceedings, the state of competition in local markets, and specifically the importance and extent of facilities-based competition in local markets, was discussed at length. The government has access to the record of these proceedings and has proposed to vary Decision 2006-15 in a manner that is consistent with the appropriate evidence.

14. Perhaps it is because the Order has taken account of the extensive public input that was gathered in the past two years that its release has been greeted with enthusiastic support from a wide variety of interested parties. For example, Canadian consumers support the government's Order as evidenced by a recent national Ipsos-Reid survey of 1,000 Canadian adults.¹² This survey found that 75% of Canadians feel the changes will produce more competition which is beneficial to consumers. Furthermore, 70% of those surveyed indicated that the changes were a "good thing" for local residential telephone consumers.

15. Canadian business telecommunications users have also voiced their support for the Order. For instance, the Canadian Chamber of Commerce¹³ (with 170,000 members from all sectors and all regions of Canada), Canadian Manufacturers and Exporters (CME)¹⁴ (the largest trade and industry association in Canada), the Conseil du patronat du Québec¹⁵ (a not-for-profit association representing the employers of more than 70% of the Québec labour force) and the Coalition for Competitive Telecommunications (representing 12,000 firms and all Québec school boards) all provided their support for the Order soon after it was released. The Canadian Chamber of Commerce hailed the Order as: "...good news not only for the over-regulated industry but good news for Canadian consumers", while the CME called the Order "...good news for businesses, for consumers and for competition".

16. Finally, most of the largest communications service providers from across Canada have also welcomed the proposed changes. Notably TELUS, Shaw, SaskTel, MTS Allstream, Bell Canada, Québecor, and Bell Aliant lauded the Order and its key objective of relying to the maximum extent feasible on market forces. Jim Shaw, CEO of Shaw, stated that: "Canadians can best be served by an approach that relies on market forces and facilities-based competition

¹² Ipsos Reid press release, 15 December 2006, http://www.ipsos-na.com/news/client/act_dsp_pdf.cfm?name=mr061215-1.pdf&id=3310.
¹³ <http://www.chamber.ca/cmslib/general/release061211.pdf>
¹⁴ <http://www.cme-mec.ca/national/media.asp?id=900>
¹⁵ <http://www.cpq.qc.ca/index.php?type=calendar&id=120>

to the maximum extent possible and to regulate the services we provide to our customers only when necessary."¹⁶ Québecor said that it "approves of the decision by the Government of Canada to deregulate as soon as possible the telecommunications sector".¹⁷

2.0 COMMENTS ON KEY COMPONENTS OF PROPOSED ORDER

17. Bell Canada supports the government's Order and offers a few refinements, to be discussed below, which are in keeping with the spirit and letter of the 18 December 2006 Policy Direction to the CRTC and which will facilitate the Order's implementation.

2.1 Removal of Winback Rule

18. The Company fully supports the immediate removal of the winback rule as there is no justifiable policy reason for maintaining it. The TPR Panel recommended that blanket, or *per se*, prohibitions embodied by the winback rule should be discontinued:

"One justification for the win-back restrictions is that customers should be given an opportunity to try a competitor's service and judge the quality and reliability before being exposed to the incumbent's win-back efforts. In effect, the rules created a temporary protection for the new entrant against targeted marketing efforts by the ILEC.

However, marketing to one's competitor's clients is a major objective of many campaigns in various sectors of the economy. Often, customers who have switched once can be induced to switch twice (and more). These customers tend to be more responsive to better offers. As a result, it is rational for the ILEC to target these customers. It is also beneficial, at least in the short run, for the customers. Indeed, making offers and counter-offers to the same customers is the very essence of competition.

Unless a win-back campaign can be shown to significantly lessen competition, with the ensuing detriment to consumers outweighing the benefits to them (a very unlikely occurrence, in the Panel's view), win-back campaigns should not be restricted by the regulator."¹⁸

19. The federal government's 18 December 2006 Policy Direction to the Commission provides a further basis for discontinuing the winback rule.¹⁹ The Policy Direction requires the Commission to discharge its mandate by "rely[ing] on market forces to the maximum extent

¹⁶ <http://www.shaw.ca/NR/rdonlyres/6039797E-E17F-4E83-B07F-F9D0DCBD0C72/0/CRTCDec12.pdf>

¹⁷ <http://www.quebecor.com/NewsCenter/PressReleasesDetails.aspx?Culture=en&PostingName=12122006>

¹⁸ TPR Panel, *Final Report 2006*, page 3-23.

¹⁹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, 18 December 2006.

feasible as the means of achieving the telecommunications policy objectives" and to "use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives." The Policy Direction is consistent with section 7(f) of the *Telecommunications Act* (the *Act*) which sets as a policy objective increased reliance on market forces for the provision of telecommunications services and ensuring that regulation, where required is efficient and effective.

20. It can be seen that the winback rule conflicts with the Policy Direction and section 7(f) of the *Act* in a number of ways. Rather than relying upon market forces, the rule subverts them by denying consumers access to accurate, up-to-date commercial information on telecommunications service offers from their former local service provider and by bestowing on competitors an effective three-month shield or holiday from the full effect of competitive market forces. Rather than promote competition and reliance on market forces, the measure undermines competition. It does so, not only in terms of local exchange services, but also in terms of other services, such as Internet and long distance services, which have repeatedly been found to be competitive.

21. The Company continues to consider that the winback rule is inconsistent with section 2(b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) and cannot be justified under section 1 of the *Charter*. The prohibition on attempting to win back former customers applies from the time of the local service request until three months after the customer's local exchange service is completely transferred to another service provider. The winback rule thus prevents the Company from communicating important commercial information about prices and service options to former customers and, equally, prevents those customers from receiving that information.

22. For all of the foregoing reasons, the Company asserts that the winback rule is not only illegal, but represents bad public policy. The Company fully supports the government's intention to eliminate the winback rule immediately as part of the Order. Furthermore, the Company recommends that, for completeness, paragraphs 489 and 529 to 535 as well as Appendix E of Decision 2006-15 should be rescinded as they pertain to the winback rule and are no longer relevant.

2.2 Removal of Restrictions on Promotions

23. The Company supports the Order's immediate removal of the existing competitive safeguards for promotions as defined in Telecom Decision CRTC 2005-25, *Promotions of Local Wireline Services*. Decision 2005-25 placed the following restrictions on ILEC promotions for local services:

- promotions involving a local wireline service must be available and equally promoted across one or more entire rate bands;
- they must not be limited to customers of competitors;
- they must pass an imputation test;
- the combined enrolment and benefit period of a promotion cannot exceed six consecutive months;
- there must be no customer lock-in requirement beyond the promotion period; and
- there must be a minimum six-month waiting period after the expiry of the most recent previous promotion before offering a new promotion involving the same local wireline service.

24. The restrictions listed above are mainly designed to prevent the ILECs from targeting their promotions at customers of competitors and to provide the ILECs' competitors with marketplace advantages. Such restrictions, which have no basis in economics, ignore the dynamics of a competitive marketplace where competition is most intense for the customers who demonstrate a willingness to switch suppliers. The TPR Panel concluded that the Commission's restrictions on promotional activity, along with other *ex ante* restrictions, should be eliminated.²⁰ The Company fully supports the government's intention to eliminate the above-noted promotional restrictions as part of the Order.

2.3 Relevant Geographic Market Definition

25. The Company supports the government's intention to recast the geographic market definition used for local forbearance determinations to local exchanges or local interconnection regions (LIRs). The local forbearance regions (LFRs) defined in Decision 2006-15 are, for the most part, very large and do not reflect economic principles. For example, the Ottawa-Gatineau LFR includes Ottawa-Gatineau and 27 surrounding communities stretching from Clarence

²⁰ TPR Panel, *Final Report*, page 3-27.

Creek (Ontario) in the east to Quyon (Québec) in the west, north to St-Pierre-de-Wakefield (Québec) and south to Kemptville (Ontario). A second LFR, the Ottawa economic region (ER), covers the rest of Eastern Ontario stretching from Hawkesbury in the East to Pakenham in the West and Brockville in the South. In the Ottawa ER, CLECs have only entered four of the most populous exchanges out of 49 exchanges contained in that LFR. Bell Canada estimates it would need to lose 100% of its residential customers in the exchanges where CLECs have chosen to enter in order to meet the Commission's 25% market share loss threshold for local forbearance in that LFR.

26. The risk of having different supply or demand conditions within an LFR is typically high but is multiplied in those instances where the Commission aggregated more than one ER into a single LFR, e.g., LFR 24-13 in Québec includes four ERs: Témiscamingue, Nord-du-Québec, Côte-Nord and Bas-Saint-Laurent. The rationale for aggregating ERs into a single LFR appears to be to reach the arbitrary minimum population threshold set by the Commission in Decision 2006-15.

27. While some ERs may represent communities with common social and economic interests, it would appear that this does not necessarily translate into homogeneous telecommunications supply and demand conditions throughout the LFR. For example, within the Wood Buffalo-Cold Lake ER Shaw only provides telephone service in Fort McMurray and has no intention of entering the other regions of the LFR.²¹ If the current LFR definition of Wood Buffalo-Cold Lake is maintained, TELUS asserts that the citizens of Fort McMurray are unlikely to ever see the benefits of full competition despite the presence of strong, active and successful competition in the city.²² This is clearly an undesirable and unintended outcome of the Commission's local forbearance regime.

28. As the Company and several other parties concluded in the local forbearance proceeding, the local exchange is the most appropriate geographic market definition for local telephone service deregulation analyses for several reasons:

²¹ Shaw's response to a CRTC interrogatory in the proceeding to address TELUS' forbearance application in Fort McMurray, see Shaw(CRTC)1Nov06-1, TELUS Forbearance Application, Fort McMurray, Alberta (LFR 48-04).

²² TELUS, *Application for forbearance from regulation of residential local exchange services in Fort McMurray, Alberta*, 19 October 2006, paragraph 12.

- It is consistent with the decision at issue, i.e., whether or not to forbear from the regulation of an ILEC's local services. The local exchange reflects the topology of the ILEC's network, systems and services.
- It is a narrowly defined market which means it is more likely to be homogeneous with respect to the competitive conditions faced by the customers within it.
- Using the local exchange minimizes the regulatory risks related to choosing too-broad a geographical market definition, i.e., making a decision not to deregulate, when deregulation would have been desirable or a decision to deregulate, when deregulation is not warranted.
- The local exchange is a well-known geographic area, already familiar to local service providers.
- CLECs, including cable companies, have rolled out local services according to local exchanges and are required to obtain telephone numbers in each local exchange where they offer service. As such, defining the market as the local exchange would be consistent with the behaviour of local service providers.

29. In some circumstances competitive conditions may be consistent across multiple adjacent exchanges, e.g., in a municipality, county or district. In such cases, it may be appropriate to define the geographic component of the relevant market for local services along these lines. In the Annex to Telecom Decision CRTC 2004-46, *Trunking arrangements for the interchange of traffic and the point of intersection between local exchange carriers*, the Commission provided a list of all provincially-defined administrative units (communities which the Commission proposed should also serve as LIRs). If competitive conditions are homogeneous in an LIR, the ILECs will be motivated to apply for forbearance for an entire LIR as it would be more efficient than applying on an exchange basis, and therefore consistent with the Policy Direction.

30. The Company supports the Order's redefined geographic markets and the flexibility afforded to the ILECs to apply for forbearance for an exchange or an LIR, whichever is dictated by market conditions.

2.4 Forbearance Criteria

31. The Order replaces the five-criteria forbearance test from Decision 2006-15 with a simpler, objective, fact-based test where forbearance is dependent upon the presence of

multiple facilities-based service providers and the ILEC meeting, on average, certain competitor quality of service (CQoS) indicators for a six-month period. The government has correctly concluded that in markets which are served by facilities-based competitors there is no need to meet minimum market share thresholds, provide CLECs with access to an ILEC's operational support systems, mandate the filing of wholesale tariffs for Ethernet and DSL, or assess the extent of rivalrous behaviour. Where the Competitive Facilities test is satisfied, these are redundant and/or unnecessary conditions. The revised forbearance criteria have the added advantage of being aligned with the Policy Direction, which cannot be said of the original forbearance criteria contained in Decision 2006-15.

32. The Company also notes that in light of the changes to the forbearance criteria in the Order, paragraphs 512 to 520 and Appendix D of Decision 2006-15 are no longer relevant and should be rescinded in the final version of the Order.

2.4.1 Competitive Facilities Test

33. As was discussed at length in the local forbearance proceeding, market share estimates are poor indicators of competitiveness. Economists Werden and Froeb²³ note that market shares do not account for competition at the margin between products in and out of the market and they do not provide any information regarding the nature and extent of competition between specific products when competition is localized. Furthermore, market shares fail to distinguish between products that substitute in different degrees and, therefore, can lead to very misleading conclusions.

34. More relevant than market shares are competitive assessments based on supply capacity. The Competition Bureau of Canada (the Bureau) explained this issue in its final argument in the local forbearance proceeding. In that submission the Bureau pointed out that, for telecommunications markets, measures based upon the alternative facilities ready to serve customers are more appropriate than other market share measures:

"In the Bureau's view, capacity and network coverage represent the most appropriate measures of market shares. Capacity represents the incentive and ability of a service provider to access and compete for the customers of an ILEC in response to a price increase. Network coverage represents the physical

²³ Werden, G., and L. Froeb (1996). *Simulation as an Alternative to Structural Merger Policy in Differentiated Products Industries*, *The Economics of Antitrust Process*, ed. M. Coates and A. Kleit, Boston: Kluwer Academic Publishers, 65-88.

presence of a service provider to offer service to the ILEC customers. For example, in geographic markets where there are two independent facilities-based service providers with sunk costs, that are not capacity constrained, and are equally capable of offering the relevant product, the capacity market share of the ILEC and the new entrant will each be 50%."²⁴

35. The Commission has already determined, based on the record of the local forbearance proceeding, that "local exchange services, including VoIP services and optional features, provided by the ILECs, cable LECs, CLECs, and resellers are all in the same relevant market, regardless of whether they are purchased as a primary or a secondary line, or as part of a bundle".²⁵ In order to make such a finding, the Commission has, by definition, concluded that the services provided by cable LECs, CLECs, and resellers are close substitutes and that consumers are able and willing to switch from ILEC local exchange services to these services. In other words, the demand side conditions for forbearance of these services are met so the forbearance analysis can focus on supply considerations.

36. In terms of supply, there are multiple separate networks capable of providing local service to customers today: the separate wireless networks of Rogers Wireless, SaskTel Mobility, TELUS Mobility, MTS Mobility and Bell Mobility, the cable companies' infrastructures over which they offer their telephony services, and CLECs that use their own facilities together with facilities from other suppliers to deliver their services to end-customers. In Toronto, for example, residential customers can choose to receive their local telephony services from Bell Canada, three mobile wireless suppliers,²⁶ Rogers Cable, three CLECs,²⁷ and a host of VoIP providers.

37. Where there are alternative facilities with the capacity to provide the equivalent services to those of the incumbent, the competitive discipline that the incumbent faces is not measured by the volume of customers that are actually served by competitors, but by the capacity of the alternative networks to expand the number of customers served in response to any pricing changes made by the incumbents. If an incumbent facing such a competitor should increase its prices above market levels, the competitor with spare capacity could offer the same customers

²⁴ Argument of the Commissioner of Competition, PN 2005-2, 15 September 2005, paragraph 62.

²⁵ Decision 2006-15, paragraph 49.

²⁶ Rogers Wireless, Bell Mobility, and TELUS Mobility.

²⁷ Rogers Telecom, FCI Broadband and Primus (which is not a CLEC) through an arrangement with MTS Allstream.

service at a lower price and thereby force the incumbent to rescind its price increase. The supply capacity of competitors is indicative of the supply elasticities in the market and those elasticities are what provide constraints on the pricing behaviour of the ILECs. The same influence is present when competitors can rely upon an ILEC's unbundled network elements, such as loops, to provide alternative services.

38. The presence of competitive facilities capable of providing local telephony services is sufficient evidence to conclude that all competitors' pricing behaviour, including that of the incumbent, will be constrained by market forces. Therefore, it is appropriate for local wireline forbearance to be granted in a market where alternative facilities are in place, regardless of the ILEC's market share loss. For clarity, it is recommended that the Order specify that facilities-based suppliers include those service providers which use self-supplied network facilities, as well as those who combine their facilities with the unbundled loops that the alternate provider may lease from the ILEC or any other provider of facilities.

39. Once a competitor has co-located in a central office, its access footprint extends to the same residential and business locations as those served by the ILEC in that wire centre. In the case of a provider using self-supplied facilities, once it has built its own network, the marginal cost of providing service to premises passed by its network is negligible. For a competitor using unbundled loops, there is an incremental cost of leasing the loop, but that is generally well below the retail rate. As such, the availability of competitor facilities and competitor co-locations ready to use unbundled loops ensures competitive alternatives.

40. It is also appropriate to include wireless networks as alternative facilities for the Competitive Facilities test. Canadians are increasingly using wireless services instead of wireline services, e.g., using a wireless service in the home and increasing wireless minutes of use while decreasing local wireline minutes of use. Furthermore, subscription substitution is also evident as a growing number of people are replacing their wireline service outright in favour of a wireless service, e.g., wireless-only households; small businesses (contractors, consultants) which only use a mobile phone for business. According to Statistics Canada's Residential Telephone Services Survey (RTSS), there were more than 615,000 wireless-only households in Canada in December 2005, up from 332,000 in December 2004 – an 85%

increase in one year.²⁸ In commenting on the decline in traditional telephone services in Canada, Statistics Canada recently noted that "[m]ost of the customers giving up their traditional residential lines are turning to wireless or cable telephone services."²⁹

41. The number of wireless subscribers in Canada increased at a compound annual growth rate (CAGR) of 12% between 2001 and 2005³⁰ while the number of local wireline accesses declined by a CAGR of -0.4% during the same period³¹ – despite growth in the number of Canadian households. The Canadian evidence also demonstrates that wireless subscribers are using their wireless services in place of their wireline services. For example, 71% of wireless users report that they use their wireless service in the home and 49% report up to 25% of their telephone talk time at home is over their wireless phone.³²

42. On the basis of functionality there is little debate that wireless service provides all of the capabilities of wireline service and a great deal more, e.g., the ability to access the public switched telephone network (PSTN), and call anyone, anywhere, using a 10-digit telephone number and complementary local calling features. In addition, wireless services provide mobility and the ability to transmit text messages, photos, and video – capabilities that are not typically available via a traditional local wireline service. The Commission's own research reveals that most (55%) Canadians perceive wireless service to be as good as or better than wireline service.³³ Furthermore, evidence in the proceeding related to Telecom Public Notice CRTC 2006-9, *Proceeding to examine whether mobile wireless services should be considered to be in the same relevant market as wireline local exchange services with respect to forbearance, and related issues*, showed that wireless services are comparably priced to wireline services for many residential and business users.³⁴

²⁸ Statistics Canada, *Residential Telephone Service Survey*, Catalogue 56M0001XCB, December 2005. The sample size for this survey is 38,000 households.

²⁹ <http://www.statcan.ca/Daily/English/060913/d060913c.htm>

³⁰ CRTC *Telecommunications Monitoring Report*, July 2006, page 78.

³¹ *Ibid*, page 31.

³² Decima Research, *Usage of Wireless Communications in Canada*, April 2006, page 34, See Attachment 1 of The Companies(CRTC)18Aug06-105, an interrogatory response in Public Notice 2006-9, for a copy of the report.

³³ CRTC, *Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets*, October 2005, page 112.

³⁴ The pricing comparisons in The Companies(CRTC)18Aug06-4 PN 2006-9 and the Companies(The Competitors)18Aug06-2 PN 2006-9 demonstrate that the local wireline services offered by Bell Aliant, Bell Canada, SaskTel and Télébec are very similarly priced to the wireless services offered by these same companies. The pricing comparison provided in Rogers(CRTC)18Aug06-4 PN 2006-9 Attachment 1 demonstrates that the prices for Rogers' wireline and wireless services are also very similar.

43. Internationally, regulatory bodies in other countries now see a significant and growing amount of substitution between wireless and local wireline services. For example, in Ofcom's 10 August 2006 announcement concerning the release of a U.K. communications industry report called *The Communications Market 2006*,³⁵ it commented on the impact that wireless services have on wireline services.

"Mobile phones play an increasingly important role in consumers' daily lives. As many UK households now have a mobile phone as have a landline phone; and for the first time, the proportion of households relying on mobile phones exclusively (10%) is the same as the proportion who only use landline phones."³⁶

44. In the U.S., State regulatory bodies have recently made rulings concerning the issue of wireless services substituting for wireline services. For example, a 30 August 2006 California Public Utilities Commission Final Order which deals with the relationship between wireless and wireline services concluded: "We agree that the build out of wireless carriers' networks since this Commission's last major telecommunications regulatory review eighteen years ago has made wireless technologies a close substitute for landline services. This evidence is a significant factor in this decision."³⁷

45. In the State of Missouri wireline and wireless services are seen as being within the definition of the relevant local services product market for the purposes of forbearance. In 2005, legislation was passed in Missouri that established new criteria upon which the Missouri Public Utilities Commission may classify an ILEC as "competitive"; i.e., grant forbearance.

"This statutory provision requires the Commission: within thirty days of the request, [to] determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access, as competitive within such exchange.

For the purpose of competitive status, one CMRS [wireless] provider can be considered an entity providing 'basic local telecommunications services.' The statute also requires the Commission to consider as a 'basic local telecommunications service provider' any entity providing 'local voice' service 'in whole or in part' over facilities in which it or one of its affiliates has an ownership

³⁵ Ofcom, *The Communications Market 2006*, 10 August 2006. Available on Ofcom's website at <http://www.ofcom.org.uk/research/cm/cm06/telec.pdf>.

³⁶ http://www.ofcom.org.uk/media/news/2006/08/nr_20060810

³⁷ Decision 06-08-030, 24 August 2006, *Before the Public Utilities Commission of the State of California, Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.*

interest. S.B. [Senate Bill] 237 defines 'local voice service' as meaning "[r]egardless of the technology used . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services ..." [footnotes omitted]³⁸

46. It is also noteworthy that other jurisdictions have lessened or eliminated regulations on incumbent service providers based on the presence of alternative facilities. Tests similar to the Competitive Facilities test have already been implemented in a number of jurisdictions in the U.S., including Alaska, Arkansas, Missouri, Utah, Kansas and Texas, to determine whether a service should be subject to some form of regulation.³⁹ An analysis of global trends in the regulation of incumbent telecommunications service providers prepared by Gilbert + Tobin, a communications legal practice in Asia Pacific with considerable European Union experience, shows that in a number of countries the share of local lines held by incumbents was not a key consideration when the regulator abandoned or substantially revised *ex ante* tariff requirements.⁴⁰

47. In Canada, the Commission has previously adopted the view that alternative supply capacity can effectively discipline ILEC pricing behaviour. In Telecom Decision CRTC 97-20, *Stentor Resource Center Inc. – Forbearance From Regulation of Interexchange Private Line [IXPL] Services*, and Telecom Order CRTC 99-434, the Commission determined that forbearance could be granted for any IXPL route where there is at least one competitor that offers to supply or actually supplies at least one customer with a digital private line service of a minimum bandwidth. In IXPL markets the Commission bases its decision to forbear on the availability of competitive alternatives to customers, and it is appropriate to apply the same criterion to local wireline services markets.

³⁸ Senate Bill 237, 93rd Gen. Assembly, 1st Reg. Sess. (Mo 2005); reference Section 392.245.5, Missouri Revised Statutes (RSMo) (2005); see <http://www.psc.mo.gov/orders/2005/09220692.htm>

³⁹ For details see The Companies(Union des Consommateurs)8Aug06-13 PN 2006-5 and The Companies(CRTC)29Sep06-2404 PN 2006-5 available on the Commission's website. Also see <http://www.puc.state.tx.us/rules/statutes/Pura05.pdf> and <http://www.kslegislature.org/bills/2006/350.pdf>

⁴⁰ Peter Waters, Richard Pascoe, Madura Wijewardena, *Global Trends in Regulation of Retail Telecommunications Services Provided by Incumbent Local Exchange Carriers*, filed as Appendix D-7 to Bell's submission to the TPR Panel, 15 August 2005, at paragraph 16.

48. The Competitive Facilities test is conservative in the sense that it does not take into account the fact that a market may enjoy competition from service providers which are not facilities-based. For example, resellers like Primus Telecommunications Canada and access-independent VoIP service providers like Vonage are likely to be active in many markets. Access-independent VoIP services piggyback on the customer's existing broadband Internet connection to enable the customer to make and receive calls to or from the PSTN using a wireline telephone. It is sometimes referred to as "over the top" VoIP service because the voice signals travel over, and are independent of, the customer's existing broadband Internet connection – be it from a cable company, ILEC, or other Internet service provider. Access-independent VoIP services are available to any customer with access to a broadband network connection – a portion of the population which the CRTC estimated to be 92% of all Canadian residences and virtually all of those in urban areas.⁴¹

49. Another issue related to the Competitive Facilities test which should be clarified in the final version of the Order pertains to use of the phrase "throughout the market" in paragraph 242. a) (ii) and (iii). It is unnecessary for facilities-based providers to offer local exchange services to every single premise in the market to instil competitive discipline on the ILEC. As noted above, a facilities-based provider that is offering local fixed-line service in a market can easily expand to other parts of the market by leasing unbundled local loops from the ILEC and/or expanding its own network on a timely basis (i.e., within two years) as required. The presence of resellers and access-independent VoIP service providers will also serve to discipline the market behaviour of the ILEC. Moreover, the price ceiling on stand-alone residential primary exchange service, which the Order has retained, provides an effective safeguard for those pockets of a market not served by multiple competitors. The Order should therefore clarify that the Competitive Facilities test is satisfied where alternative providers offer service anywhere in the exchange, or if the market is an LIR, that the alternative providers offer service anywhere in each exchange within the LIR.

50. If the phrase "throughout the market" is retained then it would be helpful to clarify in the Order what is meant by "throughout". In Public Notice CRTC 1997-25, *New Regulatory Framework for Broadcasting Distribution Undertakings*, the Commission stipulated that "the basic monthly fee of a Class 1 cable distribution undertaking would become deregulated once the undertaking provides documentary evidence that the basic service package of one or more

⁴¹ CRTC Telecommunications Monitoring Report, July 2006, page 64.

licensed DTH or terrestrial distributors is available to 30% or more of the existing households in the undertaking's licensed service area, and that the number of its basic service subscribers has decreased by at least 5% from the date that the basic service of a licensed competitor was first introduced in the licensed area of the incumbent." For basic cable service, therefore, the Commission considered that 30% market coverage by an alternative facilities-based provider was an appropriate threshold for deregulation purposes. The Company proposes that should the government adopt an analogous standard for local service forbearance then the standard should be consistent with the basic cable deregulation test such that the competitor's service must be available to 30% or more of the ILEC's network access services (or NAS) in the market in question.

51. To summarize the recommendations in this section, the Company recommends that the government clarify that facilities-based suppliers include those service providers which use self-supplied network facilities, as well as those who combine their facilities with the unbundled loops that the alternative provider may lease from the ILEC or any other provider of facilities. The Company also recommends that the Order be clarified to indicate that the Competitive Facilities test is satisfied where alternative providers offer service anywhere in the exchange, or if the market is an LIR, that the alternative providers offer service anywhere in each exchange within the LIR. If the phrase "throughout the market" is retained then the Company proposes that the government adopt a standard for local forbearance that is consistent with the basic cable deregulation test such that the competitor's service must be available to 30% or more of the ILEC's NAS in the market in question. With these minor modifications the government's policy intentions will be clarified and timely implementation of the Order will be facilitated.

2.4.2 Wholesale Quality of Service Indicators

52. The Company submits that there are no policy grounds for considering CQoS indicators in the assessment of whether a retail local services market is, and is likely to continue to be, competitive as required under section 34 of the *Act*. The Company also submits that the application of CQoS indicators to each individual competitor as a precondition to forbearance is inappropriate. The application of this condition makes forbearance dependent upon the circumstances of individual competitors, rather than on the protection of retail users of local exchange services and the strength of market forces, as required under section 34 of the *Act*. Moreover, the Commission has already imposed a penalty regime for CQoS which can, and does, result in significant penalties for ILECs if the service provided to any particular competitor

is substandard.⁴² There is therefore no need to include a duplicate safeguard for CQoS in the local forbearance regime. If left in the final version of the Order, the net effect of CQoS non-compliance will be to penalize the ILEC twice for a single infraction. For all of these reasons, the Company recommends that the government remove the requirement to meet CQoS standards from the criteria used to make retail local forbearance determinations.

53. If meeting the Commission's standards for CQoS indicators is to be retained as a condition of local forbearance it is clear that the modifications contained in the Order correct some of the fundamental flaws in the CQoS criteria from Decision 2006-15. Specifically, the elimination of the trailing indicators is necessary because they are poorly conceived, and as a result, virtually unachievable as currently defined and measured. Furthermore, the trailing indicators inappropriately double-count activity which is already measured in the nine primary CQoS indicators contained in Appendix B of the Order. Measuring CQoS performance across all competitors as opposed to each competitor avoids the potential for a variety of absurd local forbearance results.⁴³ The Order more reasonably stipulates that if an ILEC is meeting each CQoS standard in its territory for its entire wholesale customer base then forbearance should not be denied.

54. Even if the government retains the requirement that an ILEC must meet, on average, the Commission's standards for the nine CQoS indicators, the Order should eliminate the requirement that the ILEC must also demonstrate that it did not consistently provide substandard services to any competitor. This competitor-specific condition is inappropriate for two primary reasons. First, as noted above, forbearance should not be denied because of the particular circumstances of an individual competitor when the CQoS indicators have been satisfied overall. This could lead to the denial of forbearance in highly competitive markets because of circumstances that are unique to a particular company or geographic territory unrelated to the market in which forbearance is requested. Second, the imprecise nature of the condition creates a significant amount of discretion for the regulator to interpret the Order. The condition risks opening up every forbearance application to interventions from a wide range of

⁴² Since 1 July 2005, significant financial penalties have become payable if the standards for any of 14 eligible competitor quality of service indicators are not met in any month. The penalties are payable on a competitor-specific basis. The potential penalty payable by Bell Canada to a competitor in a month is now equivalent to a maximum of 5% of the amounts billed to that competitor in that month for services covered by a quality of service indicator with activity.

⁴³ For example, forbearance would be denied in Montréal even if Bell Canada meets all the CQoS indicators for all competitors operating in Montréal, but does not meet the CQoS indicators for one competitor which operates in only one market in Ontario.

competitors which will significantly slow the forbearance process and further delay the benefits to consumers of a fully competitive market. In consideration of these factors, paragraph 242. b) (ii) should not be included in the final Order.

55. If a competitor-specific condition is to remain in the final version of the Order, then the criterion should be more specific and consistent with competition policy standards such that it protects against an ILEC engaging in a practice of providing substandard services to any competitor for the purpose of preventing or lessening competition substantially.⁴⁴ Clarifying the wording in this way will assist in determining whether the competitive process has been compromised by the ILEC's actions.

56. To summarize, the Company recommends the removal of the requirement to meet CQoS indicators as a condition of local service forbearance. If the government decides to retain a local forbearance criterion related to CQoS, then it is unnecessary and inappropriate to require ILECs to meet competitor-specific standards (as defined in paragraph 242. b) (ii) of the Order) when the Commission's standards for CQoS indicators have been met on an aggregate basis as defined in paragraph 242. b) (i). If the government retains a competitor-specific condition, then the wording of the Order should be more specific and consistent with competition policy.

2.5 Forbearance Application Process

57. The Order proposed two changes to the forbearance application process outlined in Decision 2006-15. The first change is that ILECs are invited to file applications for markets located wholly or partially within the ten largest census metropolitan areas (CMAs) in Canada. The second change is that the Order directed the Commission to consider applications for forbearance in the ten largest markets on a priority basis and issue a decision within 120 days after the day on which the application is received. The Company supports the government's objective to open the largest and most competitive markets to full competition as quickly as possible and notes that the 120-day commitment is an improvement over the timeline prescribed in Decision 2006-15 which called for decisions to be rendered within 130 days to 160 days of receiving an application.

⁴⁴ See for example section 79(1) of the *Competition Act*.

58. Building on these efforts, the Company proposes that the Order should include three modifications to the local forbearance application process. First, Halifax should be added to the list of CMAs that are addressed by the Commission on a priority basis. For residential services, Halifax is one of the most competitive markets for local telecommunications services in Canada given that EastLink, the incumbent cable company in much of Nova Scotia and Prince Edward Island, was the first cable company in Canada to offer telephone service as far back as 1999. It was in response to a 7 April 2004 application by Aliant for forbearance for 32 local exchanges in Nova Scotia (including the Halifax CMA) and Prince Edward Island that the Commission initiated PN 2005-2, albeit more than a year after Aliant's application. In Decision 2006-15, the Commission acknowledged that there was clear evidence of rivalrous behaviour in Halifax and in the July 2006 CRTC Telecommunications Monitoring Report it was estimated that Bell Aliant had lost 34.9% of the wireline residential access lines in Halifax to competitors by the end of 2005.⁴⁵ Despite this, the Commission denied Aliant's forbearance application. The costs of continued unnecessary regulation in the Halifax market are considerable and the problem should be addressed on an expedited basis.

59. Second, and more generally, the time required to evaluate local forbearance applications can be shortened materially in consideration of the new streamlined criteria contained in the Order. The criteria have been reduced from an examination of five factors to two, and the two remaining criteria are objective rather than subjective in nature. It is a matter of fact whether a competitor offers local service in a specific market and whether the ILEC meets the CQoS indicators. Moreover, the Commission already collects these data from industry participants and can easily verify the ILEC's representations using the Commission's own records. All CLECs must register with the Commission on an exchange-by-exchange basis when they begin to offer local service, and all ILECs file their monthly CQoS performance, including volume data, with the Commission on a quarterly basis. An ILEC's forbearance application will also provide the most up-to-date CQoS results available to supplement the quarterly data on file with the Commission. This means that the Commission's decision process is essentially one of verifying the information submitted in the ILEC's forbearance application using sources already in the Commission's possession.

⁴⁵ This estimate does not consider the significant impact of wireless substitution on Bell Aliant's position in the residential market in Halifax. For instance, Statistics Canada's December 2005 Residential Telephone Service Survey estimated that 4.6% of Halifax residents relied on wireless services only and had no fixed line telephony subscription.

60. In consideration of the straightforward and relatively modest nature of the task it would appear unnecessary to allocate four months for local forbearance decisions. Furthermore, given the objective and verifiable nature of the forbearance criteria it is unnecessary to include steps in the forbearance application process for interested parties to file comments and interrogatories and the applicant to file reply comments as outlined in Decision 2006-15. No such steps are required in two similar processes used by the Commission – those for basic cable deregulation and IXPL services forbearance. In the case of basic cable deregulation the process is as follows:

"A licensee would become fee deregulated 60 days following provision to the Commission of appropriate documentation verifying that the two-pronged test has been met, and that subscribers have been notified of the licensee's proposal to be deregulated. The Commission would retain the discretion to disallow or suspend such deregulation pending the receipt of additional information, the completion of a public hearing into the matter, or both if deemed necessary by the Commission."⁴⁶

61. Similarly, the IXPL process established by the Commission in Telecom Order CRTC 99-434 is also straightforward and minimally intrusive:

"The Commission directs all competitors of a Company, including BDUs and BDU affiliates, that provide telecommunications services, to file with the Commission, within 90 days of this Order, serving copies on the relevant Companies, a report identifying all IXPL routes for which they provide or offer IXPL service that meet the criterion established in this Order.

The Commission expects to issue quickly an order granting forbearance to the appropriate Companies for the routes in question, based on the criterion having been met. The scope of the forbearance granted would be the same as that granted in Decision 97-20."⁴⁷

62. The Company proposes to eliminate the steps for comments, interrogatories and reply comments from the local forbearance application process unless the Commission determines there are exceptional circumstances which warrant such additional process steps. Furthermore, the Company suggests that the nature of the forbearance determination using the criteria proposed in the Order would permit the Commission to issue local forbearance decisions within

⁴⁶ Public Notice CRTC 1997-25, *New Regulatory Framework for Broadcast Distribution Undertakings*, paragraph 28.

⁴⁷ Telecom Order CRTC 99-434, *Follow-up Proceeding to Telecom Decision CRTC 97-20: Establishment of criterion and process for considering further forbearance for High Capacity/DDS interexchange private line services*, paragraphs 44 and 45.

60 days of receiving an application. A 60-day decision period would be consistent with the process used by the Commission for almost ten years for basic cable deregulation.

63. The third recommended modification to the local forbearance application process is to make it clear that applications may be made in anticipation of the local forbearance criteria being met, i.e., pre-application. For example, an ILEC would be permitted to apply for local forbearance in a market before it had met the CQoS criterion, to the extent this criterion remains part of the forbearance test, and the Commission would review and approve the application conditional upon the ILEC meeting the CQoS criterion. This approach would reduce the regulatory lag associated with local forbearance applications, open up competitive markets to the full benefits of competition sooner than would otherwise be the case and in general lead to more efficient regulation. Even under the old local forbearance regime the Commission had indicated it was willing to evaluate applications on a prospective basis and grant conditional forbearance. For example, in an 18 April 2006 media interview, former CRTC Chairman Charles Dalfen indicated that ILECs can apply for local forbearance at any time. He stated: "They can even apply before they have entirely met the thresholds – so forbearance could be approved conditional on meeting the criteria."⁴⁸

64. To make it clear that the Commission will process pre-applications on a timely basis, the wording of paragraph 242. b) in the Order could be revised from "during the six-month period preceding its application for forbearance" to "during the six-month period preceding the granting of forbearance". Such a change is consistent with the government's 18 December 2006 Policy Direction to the CRTC which states that the Commission should "continue to explore and implement new approaches for streamlining its processes" and "when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives". Regardless of the duration of the forbearance process, 60 days or 120 days, the Company recommends that the accelerated schedule for the Commission to reach a decision should apply to all markets, not just the largest CMAs.

65. Finally, due to the changes in the Order, the process for applying for local forbearance outlined in Decision 2006-15 is no longer relevant so paragraphs 521 to 528 of the decision should be repealed.

⁴⁸ Angus TeleManagement Group, Telecom Update #525b, Telecom Update Special, 18 April 2006.

66. To summarize, the Company recommends that Halifax be added to the list of CMAs for which the Commission will process forbearance applications on a priority basis. The Company also recommends that, in consideration of the straightforward and modest nature of the forbearance analysis, the application process be further streamlined to remove steps for comments, interrogatories and reply comments, and the Commission be directed to issue local forbearance decisions for all applications within 60 days of receiving them. Finally, the wording of the Order should make it clear that forbearance pre-applications are encouraged and will be processed in a timely manner by the Commission.

3.0 SCOPE OF FORBEARANCE

67. In Decision 2006-15 the Commission determined that when it grants forbearance from regulation for local exchange services it considers it "necessary to retain its powers under subsection 27(2) of the *Act* to address any issues that may arise in forborne markets with respect to unjust discrimination or undue preference in relation to the provision of or charging of a rate for a telecommunications service."⁴⁹ By retaining its powers under subsection 27(2) of the *Act* the Commission has unnecessarily and speculatively retained the power to regulate prices in forborne markets at any point in the future. The Commission previously stated that it will retain its subsection 27(2) powers in order to prevent carriers from discriminating unduly in the provision of access to their network facilities to competing service providers.⁵⁰ However, that concern does not arise in this case because ILECs' underlying network services are "competitor services" which are not affected by a retail forbearance decision.

68. The TPR Panel concluded: "the broad prohibitions of ss. 27.(2) against unjust discrimination and undue or unreasonable preferences are much too general and rely too greatly on the regulator's discretion".⁵¹ The TPR Panel recommended that subsection 27(2) should be "removed and replaced by more specific measures to address carefully defined issues and problems." The Order provides the government with an opportunity to eliminate unnecessary regulation related to forborne local exchange services. The Company therefore recommends that the Order include forbearance from subsection 27(2) of the *Act* in the scope of local forbearance.

⁴⁹ Decision 2006-15, paragraph 461.

⁵⁰ Telecom Decision CRTC 97-8, *Local Competition*, paragraph 266.

⁵¹ TPR Panel, *Final Report*, March 2006, page 3-21.

4.0 CONCLUSION

69. The proposed changes to the local forbearance framework contained in the Order are necessary for Canada to have a modern, flexible and efficient regulatory regime for local forbearance. The resulting marketplace changes will benefit residential and business telecommunications consumers and stimulate competition. Bell Canada supports the Order and has recommended a few changes to ease its implementation. The Company respectfully requests that the Order, with the recommended changes contained herein, be implemented as soon as possible.

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