



447 Gondola Point Road, Quispamsis, New Brunswick E2E 1E1 • www.ccsa.cable.ca
tel: 506.849.1334, fax: 506.849.1338

January 15, 2007

Mr. Len St-Aubin
Director General, Telecommunications Policy Branch
Industry Canada
16th Floor, 300 Slater Street
Ottawa, ON
K1A 0C8

VIA EMAIL: telecom@ic.gc.ca

Dear Sir:

Subject: Proposed Order Varying Telecom Decision CRTC 2006-15, Canada Gazette Part I, December 16, 2006 at 4312 - Comments

1. The Canadian Cable Systems Alliance Inc. (“CCSA”) has reviewed the Proposed Order Varying Telecom Decision CRTC 2006-15 (Decision 2006-15) as published in the Canada Gazette Part I, December 16, 2006 at 4312-4321. CCSA is filing the following comments in response to the Proposed Order.
2. CCSA represents independent cable companies that operate in smaller markets across Canada. CCSA’s comments on the Proposed Order are directed at addressing the concerns of its Member Companies. CCSA does not have comments on the merits of the Proposed Order as it may apply in markets that are not served by its members.
3. Where, in this document, CCSA refers to smaller markets, it refers to all markets outside the top 10 census metropolitan areas. Having said that, CCSA makes no comment on the application or appropriateness of the Proposed Order to those larger urban markets.
4. CCSA submits that the Proposed Order will have a devastating impact on local voice services competition in the smaller markets served by Canada’s independent cable companies.

5. Unless changes are made to the Order as it applies to smaller markets, the independent cable companies will have no viable business case for entry into the voice services market. They simply do not have the financial resources to make the necessary investments in equipment and people if they have no real prospect of recovering such investments in a rapidly deregulated market.
6. Consumers in the smaller markets served by most independent cable operators simply do not have the many alternative service options that are available to consumers in the larger markets. If the local cable companies are forced to abandon their plans to provide local telephone service or to withdraw from the local market, the ILECs will be free to set pricing for those consumers without any disciplining competitive market forces.
7. CCSA submits that unintended impacts to companies and consumers in smaller markets present a risk of seriously undermining the overall objective of the Proposed Order; that is, to benefit telephone consumers across Canada. To eliminate that risk, the Proposed Order should be amended to recognize a number of factors that are specific to smaller markets:
 - Most small market cable operators either have yet to launch VoIP or have recently launched and have yet to build any significant market share;
 - As soon as a small market, facilities-based cable company launches voice service, the proposed forbearance test will have been met in that company's market. That cable company, together with the ILEC and the wireless providers, will immediately satisfy the proposed residential and business service facilities tests;
 - Winback and promotional restrictions on the ILECs already will have been removed as of the date the Order comes into force;
 - To gain new customers, a small market cable company that launches VoIP must request number porting for those customers from the ILEC in its market area;
 - At the instant a small market cable company first offers its new VoIP service, the ILEC in that market will therefore be able to use its detailed customer records to implement an intensively targeted, low-cost winback campaign;
 - No independent small market cable company will be able to withstand such a campaign, given its relatively small size and limited resources. No such company will ever gain a foothold as a voice provider in its market if it is unable to acquire and retain customers;
 - The ILECs will either retain their positions as the monopoly wireline local voice service provider in those markets where it is too risky for competitors to enter or re-establish such a position very quickly after driving the new entrant out of the market; and

- As a result, small-town and rural consumers who are served by independent cable companies will never benefit from competition for the provision of local voice service.
8. The competitive realities in smaller markets require specific consideration in fulfilling the policy objectives of the *Telecommunications Act*. The objective stated at s. 7(b) of the *Telecommunications Act* is to “to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada.”
 9. To meet that objective fully, the Proposed Order must recognize the fundamental difference between the competitive realities of the major urban markets and those of the smaller city, small-town, rural and remote markets served by independent cable companies.
 10. CCSA Member Companies want to compete for local telephone customers in their markets and are fully prepared to do so.
 11. However, these companies also understand that, if they lack the opportunity to establish themselves as telephone service providers in their local markets, there will be no real, sustainable competition. They will be spending money only for the opportunity to get beaten out of the market before they even get started.
 12. If the Proposed Order is amended so as to give independent small market cable companies the opportunity to establish themselves in their markets, they will invest in VoIP and roll out voice service to residential and business customers in their communities very quickly.
 13. CCSA submits that the intention of the Proposed Order can be more fully realized by:
 - retaining the Competition Bureau’s market power test for application to smaller markets where smaller markets are those other than the ten census metropolitan areas referred to at paragraph 4 of the Proposed Order; and
 - retaining winback and promotional restrictions in those markets until the market power test is met.

Canada’s Independent Cable Companies

14. CCSA currently represents over 90 independent cable companies that serve, in the aggregate, approximately 850,000 Canadian analog television subscribers in almost 1,100 communities in all Canadian Provinces and Territories. Each of these companies is much smaller than even the smallest of the major players. Only a few of these companies serve more than 20,000 customers.
15. These small, independent cable companies face the daunting task of competing with incumbent telephone companies that are among the largest corporations in the country.

16. Many will compete against Bell Canada and its affiliates, which serve 12.5 million telephone subscribers and almost 1.8 million television subscribers, and generate operating revenues of more than \$19 billion.
17. Others will compete with TELUS, which serves more than 4.7 million telephone subscribers and \$8 billion in operating revenues.
18. Both Bell and Telus operate their own wireless services and, therefore, command a unique bundling opportunity. No small cable company will ever be able to operate a wireless service.
19. Access Cable will have to compete with SaskTel, a crown-owned telephone company able to draw on the resources of the provincial government and its own operating revenues in the range of \$1 billion.
20. Many of the small, independent cable companies within CCSA serve consumers in Canada's small-town, rural and remote communities. They live in and serve remote and aboriginal communities in the B.C. interior, small towns across Alberta and Saskatchewan, Inuit communities across the North, Ontario cottage country and northern towns, Francophone rural Quebec, fishing and farming communities in Nova Scotia and P.E.I. and small towns and outports across Newfoundland and Labrador.
21. CCSA members are the companies that, in the language of the *Act*, serve "rural areas in all regions of Canada."
22. These companies are fiercely independent and have long resisted the urge to sell out to the larger industry players. They have survived consolidation of the broadcasting industry and the introduction of DTH competition by finding innovative ways to provide low-cost services to the consumers they serve.
23. Cable companies responded to DTH competition even though they remained subject to winback restrictions for seven years after competition began. They like to compete and they pride themselves on the hard-won successes that have brought them where they are today.
24. As an example of this competitiveness, almost all CCSA Member Companies invested early in building out broadband communications and now offer High-Speed Internet access to their customers as local Internet Service Providers.
25. These companies have done this despite the relatively high per-subscriber plant costs they face and the often extreme prices they pay for access to broadband backbone facilities.
26. Virtually all of these companies plan to leverage their broadband investment to establish themselves as local telephone service competitors using VoIP technology. They regard the ability to offer their customers a full-service bundle that includes local voice service as

crucial to their future competitiveness. They need to match the service offerings of the major players.

27. Prior to issuance of the Proposed Order, some of these companies had already made significant investments in the hardware and software necessary to provide internet-based voice service. Some had started to hire the new operations people they need to implement the service.
28. However, to date, only a few of those companies have actually rolled out their VoIP service and those that have, as yet, have very few customers. Many have been held back by the regulatory uncertainty that has prevailed for some time around the matter of VoIP competition and the CRTC's entrance requirements for competitive carriers.
29. The independent cable companies who belong to CCSA, some of whom have just launched VoIP and many others of whom had been planning to launch, are re-considering their plans in light of the Proposed Order.
30. Those companies believe strongly that, if the Order comes into effect as proposed, they will have no viable business case for entry into the voice services market. Most will not invest in equipment and hire technicians. They simply do not have the financial resources to make investments that will never be recovered in a market where the ILECs will pull customers back as quickly as they are lost.
31. Others will abandon their new service rather than risk further investment. This will result in fewer jobs and less investment in smaller markets.
32. Independent cable companies both want and need to compete in the voice service sector. To compete, they must be able to provide robust service bundles – including video, high-speed broadband, wireless and local telephone – like those of the major, vertically-integrated telecommunications enterprises that are their competitors. For some, offering voice services will be necessary simply to retain the video and broadband subscribers they have today.

Canada's Small Market Consumers

33. In most of the markets served by CCSA Member Companies, the CCSA Member competes with DTH and, increasingly, the ILECs themselves for television customers. The cable company also competes with the ILEC for high speed internet customers. In those markets where the cable company has yet to launch VoIP, the ILEC is the sole provider of local telephone service.
34. Unlike the case in major urban markets, there are no other competitors in these small markets. VoIP resellers are unable to offer rural customers their existing telephone numbers or even local numbers in some cases. If there is to be sustainable, facilities-based competition to the incumbent telephone company, it will come from the local independent cable company.

35. Small markets such as those CCSA Members serve tend to be high cost serving areas. Unlike the major urban markets, with their high-density, low cost customers, these markets are unlikely to attract a flood of new facilities-based competitors.
36. Wireless substitution for wireline service is an urban phenomenon. While cities like Vancouver may now have as much as 9% wireless-only customers, in rural markets it is less than 2%.
37. Due to cost and coverage issues, wireless telephony will not be a competitive primary exchange service alternative for small market customers in the near future.
38. In the smaller markets, competition for local telephone customers will come, if at all, from the local independent cable company. If that cable company is driven out of the competition before it has the opportunity to gain even a toehold in the market, then there will be no competition.
39. Consumers in these markets simply do not have the many alternative service options that are available to consumers in the major urban centres. If the local cable companies are forced to withdraw from the local market, the ILECs will be free to set pricing for those consumers in the absence of any disciplining competitive market forces.
40. To the extent that independent cable companies are shut out of the competition for residential customers, they will be shut out, as well, from the competition for business customers. Due to their history as television service providers, most independent cable companies, unlike the ILECs, have not run network facilities to the majority of business establishments in their communities.
41. Business customers are therefore even more expensive to secure than residential customers. The financial risk is much higher if the newly gained business customers will be quickly lost to unrestricted, targeted winback campaigns by the ILECs.
42. Like the residential customers, businesses in such markets do not have the choices available to them that they would enjoy in the major urban centres.
43. Again, if the independent cable companies are foreclosed from providing a competitive voice alternative in their markets, local businesses will pay the higher costs required to obtain communications services in a non-competitive market.
44. The result will be a competitive disadvantage for small and medium-sized enterprises (SMEs) across the country.
45. Independent cable companies are the primary competitive alternative in the markets they serve. If Canadian consumers in these markets are to benefit from competition, then those cable companies must be afforded the opportunity to establish themselves as telephone service competitors.

Amendments to the Proposed Order

46. The Proposed Order must be amended to reflect the realities of competition in smaller markets if consumers in these markets are to benefit from the sustainable competition that the independent small cable companies can create.
47. CCSA submits that the following amendments to the Proposed Order are necessary to fulfill the policy objectives of the *Telecommunications Act* to promote competition and access to high quality, affordable telecommunications services in smaller markets, where smaller markets are those other than the ten census metropolitan areas referred to at paragraph 4 of the Proposed Order:
 - the Competition Bureau's market power test, as described at paragraph 213 of Decision 2006-15, must be met in any application for forbearance in exchanges located in smaller markets;
 - the winback and promotional restrictions must remain in effect in the smaller markets until the market power test or, alternatively, the test established at paragraph 488 of Decision 2006-15 is met; and
 - where winback restrictions are removed, any winback attempt made during the process of porting a number to a competitor must be explicitly prohibited, and recognized as an abuse of dominance subject to the fining powers and penalties of the *Competition Act*, as proposed in Bill C-41.
48. These amendments will permit competition to emerge in smaller markets, resulting in greater benefits to consumers and increased investment and jobs in such markets. Under the Competition Bureau's test, small independent cable companies have the opportunity to establish a customer base and offer cost-effective, sustainable competition in the market before the incumbents are completely deregulated.
49. In addition, the CCSA notes that the Proposed Order may well come into force well in advance of the enactment of the new administrative monetary penalties proposed under Bill C-41.
50. CCSA submits that it is absolutely essential that the regulators be equipped with effective *ex post* enforcement tools as quickly as possible, consistent with the recommendations of the *Telecommunications Review Panel Report* (TRPR) recommendations.
51. CCSA submits further that, regardless of the timing for implementation of the new administrative monetary penalties, the Competition Bureau has been ill-equipped to respond quickly and effectively to instances of abuse of dominance. Small independent cable companies do not have the financial strength to withstand the impacts of anticompetitive behavior pending the outcome of a lengthy adjudication.

52. As Konrad Yakabuski put it in the December 14 *Globe & Mail*, “. . . you can't count on the bureau to effectively police abuse of market dominance by companies in any sector. It takes way too long and almost always sides with the big boys.” This, Yakabuski explained, is because the bureau “operates on the basis of competitor complaints and faces an almost unattainable burden of proof.”
53. CCSA considers that the TRPR recommendations regarding the need for timely and effective *ex post* enforcement tools are a vital component of any process for the opening of markets to competitive self-regulation. Without those tools, CCSA Member Companies will have no recourse in the face of the ILECs’ abuse of their dominant position.
54. CCSA appreciates the opportunity to submit its comments in relation to the Proposed Order and thanks Industry Canada for that opportunity.

Yours truly,

A handwritten signature in black ink, appearing to read "Alyson J. Townsend". The signature is fluid and cursive, with the first name being the most prominent.

Alyson J. Townsend
President & C.E.O.