
**Petition to the Governor in Council to Refer
Telecom Decision CRTC 2006-15
*Forbearance from the Regulation of Retail
Local Exchange Services*
Back to the Canadian Radio-television and
Telecommunications for reconsideration**

**Pursuant to Section 12(1) of the
*Telecommunications Act***

By

Province of Saskatchewan

29 May 2006

A. Introduction

1. The Government of Saskatchewan hereby petitions the Governor in Council to immediately take action to address the continuing inequities resulting from federal telecommunications regulation. The recent Canadian Radio-television and Telecommunications Commission (CRTC) decision setting the framework for local service forbearance (Telecom Decision CRTC 2006-15, *Forbearance from the regulation of retail local exchange services*) displays an inability or unwillingness on the part of the federal regulator to properly reflect market realities and competitive conditions in Saskatchewan. Once again, CRTC involvement in the marketplace will be harmful to both Saskatchewan consumers and to Saskatchewan Telecommunications (SaskTel), our publicly owned telecommunications company.
2. The Government of Saskatchewan has consistently supported the development of a competitive telecommunications industry in Canada. Saskatchewan believes that Canada can only remain on the cutting edge of communications and build a 21st Century economy if competition and markets are as unencumbered as possible. In our view, consumer choice, competition and technological innovation should be the motivating drivers in the telecommunications sector, not regulation.
3. The Government of Saskatchewan fully expected that the framework for local service forbearance would ensure that competition and market forces would be made quickly available to consumers so that all can reap the benefits. Unfortunately, instead of deregulation, the CRTC provided a framework for continuing regulation of the last major telecommunications market in Canada.
4. With the local forbearance decision, not only did the CRTC choose an artificially high market share that SaskTel must lose before it will be able to compete on an even footing, but it has included massive rural areas with urban areas in defining the relevant geographic market. The result will be that deregulation will be virtually

unachievable in many parts of Saskatchewan. The impact on Saskatchewan customers will be that they will not get the benefit of market forces, which translates into fewer choices and much less price competition. Equally important, is the financial impact of the decision on SaskTel and its ability to continue to invest in new services and technologies that drive growth and improved productivity. As one commentator has observed, the decision is “forcing the shareholders and customers of existing phone companies to bear the cost of funding competition.”¹

5. In March 2006, the Telecommunications Policy Review (TPR) Panel completed a comprehensive and authoritative review of telecommunications policy and regulation. It concluded “Canada has reached the point, for the vast majority of retail telecommunications markets, where the potential costs to the Canadian economy of continued regulation outweigh any real benefits.”²
6. Moreover, this past month, the Government of Canada referred the CRTC’s Voice over Internet Protocol (VoIP) decision back to the Commission for reconsideration. At that time, Federal Industry Minister Maxime Bernier stated unequivocally that, “In order to encourage innovation and productivity, it is imperative that regulatory measures interfere as little as possible with competitive market forces.”³
7. It is clear that independent industry experts and federal policy makers believe that the cornerstone of the telecommunications policy framework should be an increased reliance on market forces. Yet, with its local forbearance determinations, and many other recent decisions, the federal regulator continues to rely and insist on a different interventionist philosophy. This approach is proving not to be beneficial for the Province of Saskatchewan or its residents.

¹ Terence Corcoran, “Goldilocks and the forbearance mess”, National Post, 13 April 2006.

² Final Report, Telecommunications Policy Review Panel, 2006, page 3-11.

³ “Government of Canada Refers CRTC Decision on VoIP Back to the Commission for Reconsideration” Industry Canada News Release, 5 May 2006.

8. As a result, the Government of Saskatchewan asks that the Governor in Council direct the CRTC to reconsider its framework for local forbearance in a manner that is broadly consistent with the regulatory direction and objectives recommended in the Telecommunications Policy Review Panel Final Report, and to more properly reflect the realities and conditions (including geography) of the Saskatchewan marketplace, including, without limiting the generality of the foregoing, a direction to consider local calling areas in Saskatchewan as appropriate geographic markets.

B. Missed Opportunity

9. Saskatchewan respectfully submits that rather than deregulate local telephone service in any meaningful way, the CRTC chose instead to revert to rules and regulations of the past. Quite simply, the CRTC has retained a regulatory framework that the TPR Panel described as “becoming more of an exception to the norm applied by its major trading partners.”⁴ In our view, a golden opportunity to position the Canadian telecommunications sector for the 21st Century has been lost.
10. With its local forbearance decision, the CRTC set out the criteria that must be met before it will forebear from regulating local exchange telephone services. The conditions include the following:
 - a. Competitors must have a 25% share of the local telephone market to trigger deregulation. Wireless only substitution for wireline connections was ignored in the calculation of wireline market share losses;
 - b. The designation of 106 large, heterogeneous areas across the country as the appropriate geographic component of the relevant markets for the local forbearance framework. In Saskatchewan, only five large urban/rural local forbearance regions have been mandated;

⁴ Final Report, Telecommunications Policy Review Panel, 2006, page 4-12.

- c. SaskTel and other incumbents must have provided competitors with well-functioning access to its network for a six month period, and have met each of 14 competitor Quality of Service standards for a six month period (to ensure competition);
 - d. SaskTel and other incumbents must offer access to various components of their networks at CRTC-regulated rates and terms and conditions, and have implemented competitor access to their operational and support systems where required (i.e. ordering and billing systems); and,
 - e. The retention of current winback restrictions for SaskTel and other incumbent companies, although the Commission reduces the no-contact period under the residential local winback rule from 12 months to three months, and keeps these restrictions in place until at least 20 percent of the market has been lost.
- 11.** In effect, the CRTC has chosen not only to maintain the major elements of the existing regulatory framework for local services, but it in fact adds new regulatory rules to an already out-of-date regime. The decision maintains the old presumption of economic regulation and creates more intrusive and costly micromanagement of the market. The CRTC continues to require ex ante approval of tariffs. Moreover, the onus to show the case for deregulation remains with SaskTel and other incumbent companies. Significantly, the CRTC's approach to local forbearance is explicitly unfair – only SaskTel and the traditional phone companies are singled out for regulation, regardless of the market power of others.
- 12.** The retention of the regulatory status quo is completely wrong. In comparing regulation in Canada to other countries the TPR Panel concluded, “Canada has more relatively intrusive, complex and costly regulation of major telecommunications

service providers, with more extensive prior regulatory approval requirements and longer regulatory delays.”⁵

- 13.** On the one hand, Saskatchewan notes that the TPR Panel recommended that the federal government act immediately to make the necessary changes to ensure a regulatory framework that relies on competition and market forces to the maximum extent feasible, and which applies regulation fairly to all service providers. On the other hand, in stark contrast, the CRTC's decision on local forbearance demonstrates that the CRTC does not comprehend the essential characteristics and requirements of a competitive marketplace or is unwilling to rely on market forces.
- 14.** In addition, the local forbearance decision provides further evidence that the CRTC is incapable of understanding the Saskatchewan market. Its application of a one-size-fits-all solution to forbearance will be particularly damaging in our province.

C. Failure to Address the Saskatchewan Market

- 15.** As noted earlier, Saskatchewan believes the purpose of the local forbearance determinations was to provide a framework for the deregulation of residential and business local services. It completely fails to do this, and in the process negatively impacts Saskatchewan consumers, competition and innovation.

16. Market Share Loss

- a.** While the CRTC acknowledges the importance of market power as a concept, within the local forbearance decision it takes no steps to measure its presence or absence. Instead, the CRTC uses market share loss as the only criteria for

⁵ Final Report, Telecommunications Policy Review Panel, 2006, page 9-4.

determining market power and forbearance, and an exceedingly high and arbitrary threshold of 25%.

- b.** Surprisingly, the CRTC also chose to totally ignore the issue of wireless substitution, finding that a customer that chooses to abandon all wireline connections in favor of a cell phone is not part of the relevant market. This, despite a recent Statistics Canada report showing that the percentage of Canadian households relying on cell phones has doubled in the past two years⁶ and a Decima Report indicating that 17% of Canadian households that currently have a wireless phone, or plan to have one in the next 12 months, are likely to replace their existing wireline service with a wireless service.⁷
- c.** The 25% threshold stands in stark contrast to how the CRTC handled the cable television industry, where it determined a market could be deregulated if a cable company lost only 5% of its customers. In addition, the process for deregulation was streamlined and required little time to be approved. The differences between the threshold for deregulation allowed in the cable industry and that imposed upon the telecommunications industry are impossible to rationalize particularly in view of the convergence and technological change which is driving the industry. This approach is unfair for companies like SaskTel. For example, going forward, when SaskTel wins a cable customer from a competitor like Shaw Communications, it will face a fully competitive response. Yet, when SaskTel loses a telephone customer to Shaw, it will be hamstrung in its competitive response.
- d.** Industry analyst, Neil Quigley, describes the situation in these terms, “These guidelines suggest the CRTC is in the business of promoting competitors, not competition, and not consumer welfare or investment in the

⁶ Statistics Canada, *The Daily*, 5 April 2006, page 5.

⁷ Decima Research, *Final Report: Usage of Wireless Communications in Canada*. Prepared for Canadian Wireless Communications Association, April 2006, page 4.

telecommunications industry. The CRTC's regulatory regime could create a legal framework for appropriating the network infrastructure of the incumbents for the benefit of their new competitors – and would require the incumbents allow 25% of their customer base to be transferred to their competitors if they wished to avoid regulation.”⁸

- e. The TPR Panel was unmistakably critical of this regulatory approach as well saying, “Its approach has been to engage in a ‘balancing of interests,’ rather than an economic analysis of market power. This results in a tendency to micro-manage competitive market behaviour in order to influence competitive outcomes, rather than to seek less intrusive remedies.”⁹
- f. The financial impact of the decision on SaskTel and its ability to continue to invest in new services and technologies that drive growth and improved productivity is staggering. SaskTel preliminary analyses indicate that over time the decision could guarantee SaskTel competitors over \$50 million per year in revenue.

17. Geographic market

- a. The CRTC has included massive rural areas with urban areas in defining the relevant geographic market for local forbearance resulting in only five local forbearance regions in Saskatchewan. These five regions would each include one major urban centre. However, the regions also would encompass dozens of smaller communities and rural municipalities that are not expected to attract competition any time in the foreseeable future.

⁸ “Hands are tied: While they are forced to share assets with competitors, traditional telephone companies cannot set prices,” National Post, 13 April 2006.

⁹ Final Report, Telecommunications Policy Review Panel, 2006, page 4-13.

- b.** Saskatchewan believes, and SaskTel had demonstrated during the local forbearance proceeding, that the local exchange is the appropriate choice for the relevant geographic market for forbearance in Saskatchewan. The local exchange generally represents a “community of interest” and in Saskatchewan it normally encompasses a city, town or village and adjacent areas – areas where consistent demand and supply conditions are more likely to exist. It was strenuously argued during the local forbearance proceeding that any geographic alternative to the exchange area would be ignoring the realities of the Saskatchewan marketplace and would translate into perverse results in the province.
- c.** Despite these warnings, the CRTC has effectively mandated such regulatory anomalies in Saskatchewan.
- d.** As a result of the Commission having chosen an unreasonably large geographic area as the relevant market, the effective estimated market share that must be lost for SaskTel to be able to compete on a level playing field will be far in excess of 25%. The effective market share loss that must be suffered in order to receive forbearance if a competitor enters *only* the largest urban centre in the region are as follows:

 - i.** In Regina-Moose Mountain local forbearance region – 36% of consumer lines and 31% of business lines in the Regina exchange;
 - ii.** In Saskatoon-Biggar local forbearance region – 32% of consumer lines and 30% of business lines in the Saskatoon exchange;
 - iii.** In Swift-Current-Moose Jaw – 67% of consumer lines and 70% of business lines in the Moose Jaw exchange;

- iv. In Yorkton-Melville – 119% of consumer lines (therefore unachievable) and 85% of business lines in the Yorkton exchange;
 - v. In the Northern and Prince Albert local forbearance region – 140% of consumer lines and 106% of business lines in the Prince Albert exchange (therefore unachievable).
- e. In other words, in Saskatchewan cities like Yorkton and Prince Albert, it is likely that there will never be local service economic deregulation in the absence of a decision to use a geographic market other than that determined in the decision. In short, Saskatchewan consumers in many parts of the province will not reap the full benefits of competition in terms of expanded choice of competitive prices.
- f. Industry commentators have been blunt in their assessment of the decision on consumers. Terence Corcoran stated, “The absurdity of the decision – forbearance from the regulation of retail and local exchange services – can be quickly grasped by looking at its effect. The Commission has decided to make it illegal for the phone companies to cut prices. Instead, the CRTC will continue to regulate local telephone companies – Bell, Telus, Aliant, MTS or SaskTel – to prevent them from lowering prices for the vast majority of the country’s telephone service users.”¹⁰

18. Marketing restrictions

- a. In a similar vein, Saskatchewan questions the CRTC’s determination to maintain a number of marketing restrictions and prohibitions (i.e. limited promotions; winbacks and targeted pricing) on incumbent telephone companies within the local forbearance decision.

¹⁰ Terence Corcoran, “Goldilocks and the forbearance mess,” National Post, 13 April 2006.

- b.** As circumstances have proven in Saskatchewan, placing unnecessary restrictions on SaskTel does not accelerate competition, but it does deny benefits to consumers. (for example, SaskTel was banned for many years from offering local promotions to consumers, despite the absence of a local competitor - this ban only hurt consumers).
- c.** These impediments to service delivery include:

 - i.** SaskTel's inability to adjust prices in specific markets based on competitive conditions in those markets without CRTC approval;
 - ii.** SaskTel only being able to offer very limited promotions;
 - iii.** SaskTel's inability to bundle local service with other services without specific CRTC approval of the price;
 - iv.** SaskTel's inability to make winback calls or talk to customers for 3 months after losing them to a competitor.
- d.** Industry observers recognize these marketing initiatives as common business practices that are actively engaged in by every sector of the Canadian economy. Indeed, the TPR Panel concluded that these regulatory restrictions are contrary to competition law and that they should be completely eliminated.¹¹
- e.** In the short term, this local forbearance decision denies Saskatchewan consumers the benefits of market forces and price competition. In the longer

¹¹ Final Report, Telecommunications Policy Review Panel, 2006, pages 3-21 to 3-30.

term, however, the impacts are more ominous – the ongoing provision of a leading edge communications network and infrastructure, which is fundamental to the well-being of the Province of Saskatchewan, may be in jeopardy.

- f. Here again, Economist Neil Quigley succinctly voiced the longer term issues associated with the forbearance decision observing:

“When regulation requires assets to be shared with competitors, creates mandatory requirements to provide services at regulated prices, and limits incumbents’ competitive offers to retain customers won by new entrants, it may amount to an undue limit on the property rights of incumbent firms. And because the infrastructure investments and services of the incumbent firms are made available to entrants at prices below the economic cost of investment, entrants have few incentives to invest in facilities of their own.

When, in addition, incumbents face the prospect of being required to operate under these conditions until they have allowed competitors to win 25% of their customers, and substantially more of their revenue, Canadians should be pleased and surprised if the incumbent telcos invest heavily in new services and technologies.”¹² (emphasis added)

D. Conclusion

- 19.** The CRTC local forbearance decision is the most recent case of inappropriate and unwarranted telecom regulation that fails to follow general economic principles or fulfill public policy objectives. Moreover, the decision is reflective of the existing

¹² “Hands are tied: While they are forced to share assets with competitors, traditional telephone companies cannot set prices,” National Post, 13 April 2006.

intrusive regulatory framework that the recent TPR Panel condemned thoroughly and unequivocally.

20. More specifically, and fundamentally, for Saskatchewan residents the decision will result in much less price competition and limit the variety of new services, as well as seriously impair the maintenance of Saskatchewan's next generation communications network and infrastructure.
21. As the head of a major Canadian business association commented recently, "if Canada is going to remain a leader in telecommunications, we need to stop relying on an all-knowing regulator to decide what's best and start giving consumers greater choice, letting competition determine outcomes."¹³
22. In light of the above, the Government of Saskatchewan asks that the Governor in Council direct the CRTC to reconsider its framework for local forbearance in a manner that is broadly consistent with the regulatory direction and objectives recommended in the Telecommunications Policy Review Panel Final Report, and to more properly reflect the realities and conditions (including the geography) of the Saskatchewan marketplace, including, without limiting the generality of the foregoing, a direction to consider local calling areas in Saskatchewan as appropriate geographic markets.

All of which is respectfully submitted on behalf of the Petitioner this 29th day of May, 2006.

¹³ Perrin Beatty, "Choose not to regulate: Government must take the reins from the CRTC before Canada falls behind in the fast-paced telecom industry," The Ottawa Citizen, 19 April 2006, page A19.