Canada Gazette Part I, 1 September 2007

***Telecommunications Act* Notice No. DGTP-005-07**

Petition of The Public Interest Advocacy Centre, National Anti-Poverty Organization and Union des consommateurs to Her Excellency the Governor in Council Dated 30 July 2007

Telecom Decision CRTC 2007-27

Response of

Bell Aliant and Bell Canada

1 October 2007

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1.0 EXECUTIVE SUMMARY

ES1. On 30 July 2007, the Public Interest Advocacy Centre, National Anti-Poverty Association and Union des consommateurs (collectively, the Consumer Groups) filed a Petition to the Governor in Council requesting that Telecom Decision CRTC 2007-27, *Price cap framework for large incumbent local exchange carriers* (Decision 2007-27), be referred back to the Canadian Radio-television and Telecommunications Commission (CRTC) for reconsideration of that portion of the Decision dealing with pay telephone rates. In their Petition, the Consumer Groups claim that the record before the CRTC when it made its determination in Decision 2007-27 was incomplete and that certain opinion poll results, which were appended to the Consumer Groups' Petition, should have been considered by the CRTC.

ES2 In Decision 2007-27, the CRTC established the price cap regulatory regime which, effective 1 June 2007, became applicable to Bell Aliant, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications and TELUS Communications Company (TELUS) (collectively, the ILECs). Among many other determinations made in Decision 2007-27, the CRTC approved "the flexibility for all ILECs to increase the local call charge for a cash call up to a maximum rate of $0.50, and to increase collect, third number, Calling Card or commercial credit card charges up to a maximum rate of $1.00." In light of this Decision, Bell Canada and Bell Aliant (in Ontario and Québec) raised their local coin payphone rate to $0.50 per call effective 2 June 2007.

ES3 Prior to this Decision, the local coin payphone rate had been $0.25 for all of the ILECs except for TELUS in Alberta. For Bell Canada, in particular, the local coin payphone rate of $0.25 had been in effect for 26 years, since 1981. In the case of TELUS, the local coin payphone rate had been $0.35 in Alberta since 1998.

ES4 In their Petition, the Consumer Groups are requesting that Decision 2007-27 be rescinded with respect to the rate increases allowed for pay telephone services and referred back to the CRTC for reconsideration. The Consumer Groups contend that the record before the CRTC when it made its determination with respect to Decision 2007-27 was incomplete, and that certain opinion poll results should have been considered. The Companies submit that the Governor in Council should deny the Consumer Groups' request.

ES5 The determinations made by the CRTC in Decision 2007-27 with respect to payphone rates were made in accordance with due process and with consideration to all relevant

evidence. The Consumer Groups had ample opportunity to file the new evidence appended to their Petition in the proceeding leading to Decision 2007-27.

ES6 Furthermore, the determinations made by the CRTC in Decision 2007-27 with respect to payphone rates were correct. Pay telephone rates in Bell Canada territory had not increased since 1981. The rates which have now been allowed in Decision 2007-27 essentially provide the Companies with the flexibility to re-establish, in real terms, the price that was put into place more than a quarter century ago. Therefore, a local coin rate of $0.50 can be considered affordable. Even if the CRTC had considered the new evidence which has now been filed by the Consumer Groups, the Companies submit that the CRTC's determination would not have changed.

ES7 Increasingly, pay telephone usage is being displaced by the use of wireless services. The number of wireless subscribers and wireless usage has grown at an ever increasing rate, thus causing payphone revenues to fall. As a result, a large proportion of payphones have been considered unprofitable and payphones have been taken out of service on a continual basis. It is only by forestalling future revenue decreases, which would naturally occur in conjunction with reduced payphone usage, that the Companies will be able to stem the decline of payphones in service. The flexibility to increase local coin payphone rates, as has been approved by the CRTC in Decision 2007-27, will allow this to happen, thus ensuring continued access to this service.

ES8 The consideration of three opinion poll results, which have now been filed by the Consumer Groups along with their Petition, would not have provided the CRTC with any rationale to have made another determination regarding local payphone rates other than the determination made in Decision 2007-27. In fact, the Consumer Groups' new evidence actually supports the Companies' position that payphone usage is continuing to decline, thus jeopardizing the very viability of payphone operations. This would be particularly so if no rate increase were allowed.

ES9 The relief sought by the Consumer Groups should therefore be denied. There is no reason to rescind Decision 2007-27 with respect to rate increases for local payphone services, nor should Decision 2007-27 be sent back to the CRTC for reconsideration.

2.0 INTRODUCTION

1. On 30 July 2007, the Public Interest Advocacy Centre, National Anti-Poverty Association and Union des consommateurs (collectively, the Consumer Groups) filed a Petition to the Governor in Council requesting that Telecom Decision CRTC 2007-27, *Price cap framework for large incumbent local exchange carriers* (Decision 2007-27), be referred back to the Canadian Radio-television and Telecommunications Commission (CRTC) for reconsideration of that portion of the Decision dealing with pay telephone rates.

2. Pursuant to *Canada Gazette, Part I, 1 September 2007, Telecommunications Act Notice No. DGTP-005-07*, *Petitions to the Governor in Council Concerning Telecom Decision 2007-27*, the following is the response of Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Companies).

3. In Decision 2007-27, the CRTC established the price cap regulatory regime which, effective 1 June 2007, became applicable to Bell Aliant, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications and TELUS Communications Company (TELUS) (collectively, the ILECs). Among many other determinations made in Decision 2007-27, the CRTC approved "the flexibility for all ILECs to increase the local call charge for a cash call up to a maximum rate of $0.50, and to increase collect, third number, Calling Card or commercial credit card charges up to a maximum rate of $1.00."[1] In light of this Decision, Bell Canada and Bell Aliant (in Ontario and Québec) raised their local coin payphone rate to $0.50 per call effective 2 June 2007.[2] As such, the impact of the request in this appeal would be to force price reductions to the rate which existed prior to this price increase.

4. Prior to this Decision, the local coin payphone rate had been $0.25 for all of the ILECs except for TELUS in Alberta. For Bell Canada, in particular, the local coin payphone rate of $0.25 had been in effect for 26 years, since 1981.[3] In the case of TELUS, the local coin payphone rate had been $0.35 in Alberta since 1998.[4]

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1 Decision 2007-27, paragraph 114.

2 Telecom Order CRTC 2007-182, 24 May 2007, gave interim approval; Telecom Order CRTC 2007-217, 15 June 2007, gave final approval after no comments were received with respect to the Companies' tariff applications.

3 Telecom Decision CRTC 81-15, 28 September 1981, page 37.

4 Telecom Order CRTC 98-968, 30 September 1998; Telecom Order CRTC 98-1346, 23 December 1998.

5. In their Petition, the Consumer Groups are requesting that Decision 2007-27 be rescinded with respect to the rate increases allowed for pay telephone services and referred back to the CRTC for reconsideration. For the reasons provided in these comments, the Companies submit that the Governor in Council should deny the Consumer Groups' request.

3.0 CRTC PROCESS WAS APPROPRIATE

3.1 Ample Opportunity to File Evidence

6. In their Petition, the Consumer Groups have argued that the record before the CRTC when it made its determination in Decision 2007-27 was incomplete and that certain studies which were appended to the Consumer Groups' Petition should properly have been considered by the CRTC.[5]

7. In Decision 2007-27, the CRTC established the price cap regulatory regime which is now applicable to the ILECs. Given that it was a major regulatory framework decision, Decision 2007-27 was only issued after a significant amount of public comment was considered. In this regard, the process set out in Telecom Public Notice CRTC 2006-5, *Review of price cap framework* (PN 2006-5) provided for written public comments from the general public, evidence to be filed by the ILECs and by interested parties, interrogatories to any party who filed evidence, a process for requesting further responses to interrogatories, and an opportunity for all parties to file both argument and reply argument. This extensive proceeding was initiated by PN 2006-5 on 9 May 2006 and closed six months later, on 6 November 2006, when reply argument was filed by all parties.

8. Importantly, the proceeding also allowed for an oral proceeding which provided interested parties with the opportunity to cross-examine the ILECs' witnesses. It should be noted that the inclusion of an oral proceeding in a CRTC telecommunications hearing, together with the opportunity for cross-examination, is quite uncommon and last occurred in 2001,[6] at the time the previous price cap framework was established. Therefore, the process set out in the proceeding provided for an extraordinary level of public participation and input which is only rarely experienced in CRTC telecommunications proceedings.

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[5] Consumer Groups' Petition, paragraph 13.
[6] Pursuant to Public Notice CRTC 2001-37, *Price cap review and related issues*.

9. It was clear from the outset that the CRTC fully intended payphone rate levels to be considered as an issue in the proceeding. In PN 2006-5, the CRTC noted that the price cap regime included "eight baskets or groups of services", of which "public payphones" was one. The CRTC further noted that "Each of these baskets or service groups is subject to pricing constraints."[7] In setting out the scope of the proceeding, the CRTC specifically invited comments on:

> "…what changes, if any, should be made to the price cap regime with regard to the following:
>
> - objectives of the regime;
> - basket structure and assignment of services, except for Competitor Services;
> - constraints for basket(s) of services (e.g., I-X);
> - constraints for individual services or rate elements (e.g., the percentage increase per year allowable for basic residential services)…".[8]

10. Despite the extensive process outlined above and the clear indication that payphone rates would be an issue in the proceeding, the Consumer Groups have now suggested that the record of the proceeding was somehow incomplete. In particular, the Consumer Groups have asserted that:

> "…the record lacked the following information:
>
> (a) A study of payphone users performed by EKOS, filed in proceedings giving rise to Telecom Decision 2004-47 which is attached to this petition as Appendix 1.
>
> (b) A report filed by Union des consommateurs ('UC') with the CRTC in the same proceeding on low-income users of pay telephones, which is attached to this petition as Appendix 2.
>
> (c) A subsequently performed survey on pay telephone use and pricing undertaken for PIAC and attached to this petition as Appendix 3."[9]

11. With respect to the reports filed as Appendices 1 and 2 to the Consumer Groups' Petition, the Companies submit that there were many opportunities in the proceeding for the Consumer Groups to have submitted these reports as evidence, if they considered it

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[7] PN 2006-5, paragraph 7.
[8] PN 2006-5, paragraph 22.
[9] Consumer Groups' Petition, paragraph 13.

advantageous to do so.[10] The Consumer Groups did file evidence in the proceeding, but apparently chose not to file evidence on the issue of payphone rate levels. Furthermore, even though the Consumer Groups did cross-examine the Companies on this issue,[11] the Consumer Groups still did not take the opportunity to place these reports on the record of the proceeding at that time. (It is somewhat ironic that while the Consumer Groups contend that the CRTC did not have the necessary information available to make an informed decision, at the same time, the Consumer Groups also claim that "[t]he CRTC had ample, recent information on the use of pay telephone services by consumers and in particular low-income and other vulnerable consumers".[12])

12. The survey filed as Appendix 3 is a different matter, as it was only completed in July 2007 – three months after the issuance of Decision 2007-27. It is therefore totally illogical for the Consumer Groups to argue that "the record before the CRTC when it made the decision to double payphone rates was incomplete" because it lacked this information,[13] which did not even exist at the time of the proceeding and which has now been filed out of process as untested evidence.

13. Regardless, the Companies submit that even if the CRTC had considered the reports filed in Appendices 1 to 3 within the context of the Price Cap proceeding, it would not have made any difference to the CRTC's determinations in Decision 2007-27. This is further discussed in section 5.1 below.

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[10] In accordance with the procedure set out in PN 2006-5, the Consumer Groups could have filed the reports at the following junctures:

- pursuant to paragraph 33, as evidence on 10 July 2006;
- pursuant to paragraph 34, the Consumer Groups could have filed the reports and asked interrogatories of the Companies on 8 August 2006;
- pursuant to paragraph 39, the Consumer Groups could have filed the reports as Exhibits and cross-examined the ILECs in the oral proceeding beginning on 10 October 2006;
- pursuant to paragraph 42, the Consumer Groups could have referenced the findings of the report in Final Argument, given that they had been placed on the record in another proceeding; and
- pursuant to paragraph 44, the Consumer Groups could have referenced the findings of the report in Reply Argument, given that they had been placed on the record in another proceeding.

[11] Transcript, paragraphs 1925 to 1968.
[12] Consumer Groups' Petition, paragraph 33.
[13] Consumer Groups' Petition, paragraph 13.

3.2 Price Cap Proceeding Appropriate Venue to Address Payphone Rates

14. In their Petition, the Consumer Groups argue that the issue of payphone rate increases should not have been considered in a Price Cap proceeding. In this regard, the Consumer Groups state:

> "Payphone accessibility and competition decisions have been separate proceedings with significant public participation, not a tiny part of a larger price caps decision."[14]

15. While it is true that payphone accessibility and payphone competition have been the subject of separate policy proceedings in the past, the subject at issue in Decision 2007-27 is neither accessibility nor competition. Rather, the issue at hand is payphone rate levels, which is most certainly in scope within a Price Cap proceeding. As discussed in section 3.1 above, "public payphones" were one of the eight baskets subject to pricing constraints. The primary purpose of the price cap review was to determine whether the basket structure and pricing constraints set out in the previous price cap regime should be adjusted, thereby including the issue of whether increases in "public payphone" rates would be appropriate.

16. It should be noted that Bell Canada was last allowed to increase its local coin payphone rates in the context of a general rate proceeding and not in a separate policy proceeding. In Telecom Decision CRTC 81-15, *Bell Canada, General Increase in Rates* (Decision 81-15), the CRTC approved Bell Canada's proposal to increase the rate for local public telephone service from $0.20 to $0.25.[15] At that time, the ILECs' rates were established on the basis of rate base rate of return regulation. That is, the CRTC carefully examined an ILEC's revenues and expenses in order to set rates at a level which would, at an aggregate level, generate a rate of return on common equity within an allowable range.

17. However, rate base rate of return regulation has since been superseded by price cap regulation, wherein an ILEC's revenues and expenses are no longer examined by the CRTC in order to determine "just and reasonable" rates. Rather, it is price levels which are the subject of scrutiny. The concept of price cap regulation was explained in Decision 2007-27 as follows:

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[14] Consumer Groups' Petition, paragraph 8.
[15] Decision 81-15, 28 September 1981, page 37.

> "Price cap regulation generally places upward constraints on prices that an incumbent local exchange carrier (ILEC) can charge its customers for various telecommunications services….
>
> Price cap regulation is used to constrain market power with respect to service rates and to ensure customer access to just and reasonable rates. In addition to protecting customers, price cap regulation provides the ILECs with incentives to operate more efficiently and to be more innovative in the provision of services.
>
> In 2002, the Commission established separate price cap regimes for two groups of large ILECs. These regimes, which are generally similar, include eight baskets or groups of services: residential local services in high-cost serving areas (HCSAs); residential local services in non-HCSAs; business services; other capped services; competitor services; services with frozen rates; payphones; and uncapped services. Each of these baskets or groups of services is subject to constraints tailored to meet the circumstances of the relevant services.
>
> In addition to the basket constraints, a variety of rate element constraints are applied on specific services in light of competitive circumstances and related considerations. These rate element constraints provide customers with additional price protection."[16] (emphasis added)

18. In addition to erroneously claiming that payphone rate levels should not have been examined in a Price Cap proceeding, the Consumer Groups have also called into question the fact that "the evidence associated with the need for any increase in rates, including the revenues and expenses associated with the payphone operations of the Companies was excluded from review of the interested parties in the proceedings for reasons of commercial confidentiality." Because the proceeding was a Price Cap proceeding and not a rate base rate of return proceeding, there was no need for the CRTC to have carried out a detailed examination of the revenues and expenses associated with payphone operations. In fact, PN 2006-5 explicitly stated that the issue of setting rates based on rate base rate of return type regulation was out of scope:

> "This proceeding will strictly focus on issues directly related to those identified above and will not include the following:
>
> - …
> - other forms of regulation (e.g., earnings overlay);
> - "re-initialization" of prices at the start of the next regime…".[17] (emphasis added)

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[16] Decision 2007-27, paragraphs 1 to 4.
[17] PN 2006-5, paragraph 24.

19. When the City of Calgary and l'Union des consommateurs ignored the scope outlined in PN 2006-5 and attempted to introduce evidence related to rate base rate of return regulation into the proceeding, the CRTC explicitly excluded that part of those parties' filed evidence from the proceeding:

> "The Commission has reviewed the submissions of the parties and has made the following determinations. The Commission determines that the submissions from the City of Calgary and Union des consommateurs with respect to profit levels, rate of return regulation and earnings sharing are beyond the scope of this proceeding as indicated in paragraph 24 of Public Notice 2006-5."[18]

20. The CRTC thus made clear in the Public Notice, and later emphasized in its 6 October 2006 letter, that rate of return regulation (which, by definition, includes the examination of an ILEC's revenues and expenses) would not be in scope in the Price Cap proceeding. In any event, the CRTC did have access to certain financial information regarding Bell Canada's payphone operations which was filed in confidence.[19] It is not uncommon for this type of information to be considered confidential, and the CRTC routinely makes decisions on this basis.

4.0 CRTC DECISION WAS CORRECT

21. In making its decision to allow ILECs the flexibility to increase the local coin rate up to a maximum rate of $0.50, the CRTC provided the following rationale:

> "The Commission recognizes that pay telephone rates have not increased for most ILECs for almost 25 years. The Commission considers reasonable the position of the Companies that the costs of providing pay telephone services have increased since the last increase in rates in 1981.
>
> In Decision 2004-47, the Commission re-affirmed the ILEC's right to remove and/or relocate pay telephones, with the only restriction being proper notification when the last pay telephone in a community was to be removed. The Commission continues to consider pay telephone service a necessary and valuable public service. The Commission considers that without the flexibility to increase pay telephone rates, the ILECs may remove unprofitable pay telephones which would result in consumers having reduced access to the service."[20]

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[18] CRTC Letter to Parties to the PN 2006-5 Proceeding, 6 October 2006.
[19] Bell Canada Exhibit #1, 12 October 2006.
[20] Decision 2007-27, paragraphs 112 and 113.

22. In the Companies' view, and as further discussed below, the rationale for the Commission's decision is sound for the appropriate public policy reasons.

4.1 No Rate Increase Since 1981

23. Before the rate increase approved by the CRTC in Decision 2007-27, Bell Canada had not had been allowed a rate increase for local coin payphone calls since 1981.[21] Since that time, the Consumer Price Index more than doubled. In real terms, this meant that the price of local coin payphone calls in Bell Canada's serving territory before the June 2007 increase[22] was only 46% of the level at which it was set in 1981.

24. While Bell Canada local coin payphone rates had been $0.25 since 1981, TELUS in Alberta had been allowed to increase its local coin payphone rate to $0.35 in 1998. In approving this rate, the CRTC found that the rate of $0.25 was too low almost nine years ago:

> "The Commission accepts TCEI's evidence that the proposal will move the rate for local cash calls at pay telephones closer to cost...
>
> The Commission notes that TCEI's rate for the cash payment option at public pay telephones has been at the current $0.25 level for many years and considers that, at the rate proposed, local calls from public pay telephones will continue to be affordable."[23]

25. Moreover, in the past, local coin payphone rates in the U.S. had been similar to Canadian rate levels. However, in the 2001/2002 timeframe, local coin payphone rates in the U.S. increased to their current level of $0.50 for virtually all ILECs in the U.S.[24]

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[21] Decision 81-15, 28 September 1981, page 37.
[22] Telecom Order CRTC 2007-182, 24 May 2007.
[23] Telecom Order CRTC 98-1346, 23 December 1998, paragraph 10 and 13.
[24] Qwest Communications to Charge 50-Cent Flat Rate for Local Pay Phone Calls Beginning May 15, 14 May 2001 – Qwest press release announcing that it was increasing the price for a local payphone call from 35 cents to 50 cents across its 14 state local service; SBC Communications began phasing in a local payphone rate of 50 cents across all states in its serving area in July 2001, New York Times, *SBC to Charge 50 Cents at Pay Phones*, 9 July 2001; Verizon began implementing a charge of 50 cents per call in most of the markets it served in September 2001, Verizon press release, *Verizon Raises Price of Local Payphone Call*, 7 September 2001; Bell South followed suit in October 2001, raising the rate to 50 cents in all nine states in its local serving area; in February 2002, a new agreement with New York regulators gave Verizon the flexibility to raise its payphone rate to 50 cents in that state as well, which it did in March 2002, Public Utility Law Project Archive, *Verizon Raises Pay Phone Rates to 50 Cents*, 11 March 2002.

4.2 Flexibility to Increase Rates Will Assist in Ensuring Viability of Payphones

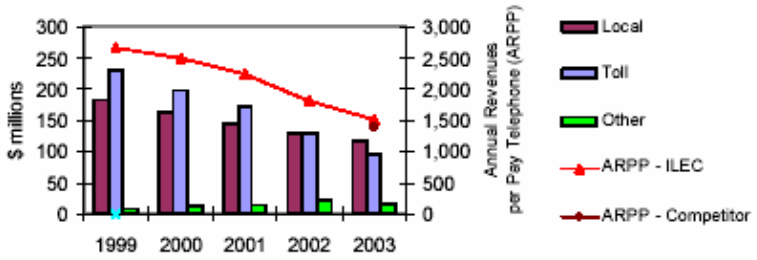
26. A very real issue raised in the proceeding was the continuing viability of payphone operations. As the CRTC acknowledged in Decision 2007-27, "without the flexibility to increase pay telephone rates, the ILECs may remove unprofitable pay telephones which would result in consumers having reduced access to the service".[25]

27. Payphone usage in Canada, as is the case elsewhere, has been declining for about a decade coincident with the increasing use of wireless services. As the CRTC acknowledged in its November 2004 *Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets* (November 2004 Monitoring Report):

> The pay telephone market continues to be affected by declining revenues, as the increasing market penetration of cellular phones in the marketplace has reduced the demand for public pay telephones. In addition, alternate payment methods, such as prepaid phone cards, continue to impact revenues typically collected at the pay telephone.[26] (emphasis added)

28. The November 2004 Monitoring Report illustrated the continuous decline in payphone revenues in Canada, as follows:

Figure 4.8.2
Pay Telephone Revenues



Source: CRTC Data Collection

29. As noted in the CRTC's October 2005 Monitoring Report in the following year, ILECs' annual revenues in 2004 were approximately $1,250 per payphone, down from $1,500 per payphone in 2003, a figure which itself was down 16% from 2002 revenues. In the 2006 and 2007 Monitoring Reports, the CRTC did not specifically address local pay telephone revenues,

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[25] Decision 2007-27, paragraph 113.

[26] *Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets*, November 2004, page 86.

but instead included such data together with "local and access" revenues. In the latter reports, the CRTC did, however, confirm the continued growth of wireless services. Given that payphone usage is increasingly being displaced by wireless services, as noted above in the CRTC's November 2004 Monitoring Report, the continued growth of wireless services infers the continuing decline of payphone revenues.

30. On the issue of wireless services, in its most recent Monitoring Report, the CRTC showed that, over the period of 2002 to 2006, wireless subscribers grew at a compound annual growth rate of 11.8% per year, while wireless revenues had increased at a compound annual growth rate of 16.1% per year:

Table 4.6.1[27]

Wireless and paging revenues and number of subscribers

	2002	2003	2004	2005	2006	*Growth 2005-2006*	*CAGR 2002-2006*
Wireless revenues ($ millions)	6,924.6	7,905.3	9,348.8	10,895.5	12,600.1	*15.6%*	*16.1%*
Paging revenues ($millions)	190.4	157.4	130.3	121.0	96.1	*-20.5%*	*-15.7%*
Total revenues	7,115.0	8,062.7	9,479.1	11,016.5	12,696.2	*15.2%*	*15.6%*
Wireless subscribers (thousands)	11,997.0	13,291.0	15,020.0	17,016.6	18,749.1	*10.2%*	*11.8%*
Paging subscribers (thousands)	1,093.5	951.3	751.0	616.7	504.6	*-18.2%*	*-17.6%*

Source: CRTC data collection

31. In contrast, the number of Bell Canada payphones in Ontario and Québec has continued to decline steadily over recent years. In filing its annual payphone report with the CRTC, Bell Canada reported that as of 30 June 2007, it had 78,699 payphones in service, as compared to 81,545 payphones in services as of 30 June 2006[28] – an annual decrease of 3.5%. Given that Bell Canada had 88,700 payphones in service as of 30 June 2002, this represents a decrease of 10,000 payphones in service, or 11.3%, over the period of 2002 to 2007.

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27 *CRTC Telecommunications Monitoring Report*, July 2007, page 92.

28 Bell Canada report filed with the CRTC pursuant to Decision 98-8 and Decision 2004-47, 15 August 2007.

32. The continuous decline in the number of payphones in service has occurred for two main reasons: i) when non-profitable payphones are broken or vandalized, they are not replaced; and ii) location providers request their removal. Location providers are paid a percentage of revenue if the payphones at their location generate a minimum threshold revenue amount. However, the recent trend has been that, in light of declining revenues, location providers do not consider payphones to be valuable assets for their business. Therefore, many location providers are requesting the removal of payphones so that they can be replaced with apparatus which generate higher revenues, such as vending machines.

33. It is only by forestalling future revenue decreases, which would naturally occur in conjunction with reduced payphone usage, that the Companies will be able to stem the decline of payphones in service. The flexibility to increase local coin payphone rates, as has been approved by the CRTC in Decision 2007-27, will allow this to happen, thus ensuring continued access to this "necessary and valuable public service".

5.0 AFFORDABILITY OF PAYPHONE RATES

34. In their Petition, the Consumer Groups are requesting that the Governor in Council "direct the CRTC to consider the effect of pay telephone rate increases upon all pay telephone users and, in particular, low-income Canadians".[29] With respect to the level of the maximum rate allowed in Decision 2007-27, the Companies have shown in section 4.1 above that the CRTC has allowed the ILECs to restore the local coin payphone rate, in real terms, to the level which the CRTC considered just and reasonable, and therefore affordable, in 1981.

35. Further, as discussed in section 4.2 above, payphone usage in recent years has declined significantly due to the increasing use of wireless services. Although the Consumer Groups surmise that "the circumstances of habits of payphone users, and in particular the needs of low-income payphone users likely have not changed in the last three years",[30] this is not actually true. In fact, the penetration rate of wireless services for low income users has been increasing at a higher rate than for Canadian households as a whole. Statistics Canada's Survey of Household Spending indicates the following wireless penetration rates for all Canadian households compared to those households in the first quintile (i.e., households earning less than $24,450 in 2005):

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[29] Consumer Groups' Petition, paragraph 41.
[30] Consumer Groups' Petition, paragraph 17.

Wireless Penetration Rates [31]

	All Canadian Households	Households in Quintile 1
2000	41.8%	17.3%
2001	47.6%	19.9%
2002	51.6%	23.8%
2003	53.9%	26.9%
2004	58.9%	31.1%
2005	64.2%	**33.7%**

36. As shown above, at 33.7% in 2005 compared to 17.3% in 2000, the penetration rate of wireless services for households in the lowest quintile almost doubled over a five-year period, while the penetration rate of wireless services for all Canadian households has only increased by approximately 50%.

5.1 Surveys Filed by the Consumer Groups

37. The Consumer Groups have asserted that the record of the proceeding was incomplete, as it lacked three reports which had been commissioned by the Consumer Groups.[32] In section 3.1 above, the Companies have shown that there was ample opportunity for the Consumer Groups to have filed the EKOS report (Petition – Appendix 1) and the report prepared by L'Union des consommateurs (Petition – Appendix 2) in the proceeding. Furthermore, as the POLLARA survey (Petition – Appendix 3) was only completed three months after Decision 2007-27 was rendered, the CRTC could not logically have considered that survey in its deliberations. As discussed below, the Companies submit that even if the CRTC had considered these reports, it would not have changed its determinations in Decision 2007-27.

38. The report "Payphone Use in Canada" by EKOS Research Associates (Petition – Appendix 1) confirms the Companies' position that most Canadians rarely use payphones. Exhibit 2.1 of that report shows that a full 50% of Canadians surveyed either never use a payphone or use a payphone less than once a year. Another 32% of Canadians use a payphone only a few times a year. Only 6% of Canadians use a payphone at least once a week or every day. Therefore, 94% of Canadians use a payphone either only occasionally or never at

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[31] The Companies' *Affordability Monitoring Report to the CRTC*, 29 June 2007, Tables 2-5A to 2-5F.
[32] Consumer Groups' Petition, paragraph 13.

all. Given that the EKOS survey was conducted in January 2003 and that wireless access and usage have increased significantly since that time (see section 4.2 above), it can logically be concluded that payphone use would now, almost five years later, be even less than at the time of the EKOS survey – regardless of whether the price of a local coin call had increased or remained at $0.25.

39. The POLLARA survey (Petition – Appendix 3) simply confirms the increasingly low usage of payphones. Of the respondents surveyed, 46% indicated that they never used payphones, while a further 36% indicated that they used payphones once or twice a year. Only 1% of the respondents indicated that they used payphones daily, while 4% indicated that they used payphones once or twice a week.

40. With respect to the reported results in the POLLARA survey, question 9 of that survey was posed as "50 cents is too much for a local payphone call – do you strongly agree, agree somewhat, neither agree nor disagree, disagree somewhat or strongly disagree?" The Companies submit that this question, in making the bold assertion that 50 cents is too much, is blatantly biased and was designed so that the response to it would garner support for the Consumer Groups' position.

41. Regarding the report prepared by l'Union des consommateurs in March 2003 (Petition – Appendix 2), as noted in Appendix A of that report, respondents to the survey were contacted almost exclusively at food banks throughout the country. This is a very small group of similarly situated respondents, and thereby not representative of the Canadian population as a whole. Slightly more than 1% of Canadian households do not have access to telephone service.[33] Furthermore, maintenance of the local coin rate at $0.25 would actually harm those who depend on payphone service, as such a policy would only serve to accelerate the removal of payphones and to thus decrease their availability.

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[33] The Companies' *Affordability Monitoring Report to the CRTC*, 29 June 2007, Table 3-2A.

6.0 CANADIAN TELECOMMUNICATIONS POLICY

42. In their Petition, the Consumer Groups have asserted that the CRTC should have explicitly considered "the economic and social requirements of those persons requiring the use of pay telephone services".[34] In support of this assertion, the Consumer Groups specifically reference subsections 7(a),(b) and (h) of the *Telecommunications Act* (the *Act*):

> "…the Canadian telecommunications policy has as its objectives
>
> (*a*) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
>
> (*b*) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; …
>
> (*h*) to respond to the economic and social requirements of users of telecommunications services".

43. The Companies submit that, in allowing ILECs the flexibility to increase the local coin payphone rate to $0.50, the CRTC was attempting to ensure the continuing availability of payphones to the greatest extent feasible, in an affordable manner, all in compliance with section 7 of the *Act*. This issue is discussed at length in section 4.2 above. Thus, the CRTC's determinations in Decision 2007-27 were entirely consistent with subsections 7(a) and 7(h) of the *Act*.

44. With respect to subsection 7(b), in Telecom Decision CRTC 98-8, *Local Pay Telephone Competition*, the CRTC previously determined that that this section did not generally apply to the provision of payphone services:

> "The Commission considers that <u>the vast majority of people who use pay telephones do so as a matter of convenience or emergency, not as a substitute for basic telephone service</u>. The Canadian telecommunications policy, as set out in the *Act*, requires the Commission to ensure that reliable and affordable telecommunications services of high quality be accessible to all Canadians in both urban and rural areas throughout Canada. <u>This generally refers to the requirement that as many as possible are able to connect to the network via good quality basic access service</u>. The *Act* also requires the Commission to foster increased reliance on market forces for the provision of

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[34] Consumer Groups' Petition, paragraph 30.

> telecommunications services and to ensure that regulation, where required, is efficient and effective."[35] (emphasis added)

45. Penetration rates of telecommunications services in Canada are very high. According to Statistics Canada's Residential Telephone Service Survey, as of December 2006, 98.6% of all Canadian households had access to wireline services, wireless services and/or cable or VoIP services.[36] Given this, it cannot be said that the CRTC's decision to allow the first payphone increase in 26 years, at a level which remains affordable, constitutes a violation of section 7 of the *Act*.

7.0 CONCLUSION

46. The determinations made by the CRTC in Decision 2007-27 with respect to payphone rates were made in accordance with due process and with consideration to all relevant evidence. There was ample opportunity for the Consumer Groups to have filed the evidence appended to their Petition in the CRTC's proceeding. Furthermore, the determinations made by the CRTC in Decision 2007-27 with respect to payphone rates were correct.

47. Pay telephone rates had not increased since 1981. The rates which have now been allowed in Decision 2007-27 essentially just provide ILECs with the flexibility to re-establish, in real terms, the price that was put into place more than a quarter century ago. The increased per call coin rate of $0.50 will serve to forestall future payphone revenue decreases, which would naturally occur in conjunction with continued declining payphone usage. This will, in turn, provide the Companies with the opportunity to stem the decline of payphones in service and ensure their availability to the greatest extent possible.

48. The new evidence adduced by the Consumer Groups in their Petition would not have provided the CRTC with any rationale to have made another determination regarding local payphone rates other than the determination made in Decision 2007-27. In fact, the Consumer Groups' new evidence actually supports the Companies' position that payphone usage is continuing to decline, thus jeopardizing the very viability of payphone operations. This would be particularly so if no rate increase were allowed.

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[35] Telecom Decision CRTC 98-8, 30 June 1998, paragraph 87.
[36] The Companies' *Affordability Monitoring Report to the CRTC*, 29 June 2007, Table 3-2A.

49. The relief sought by the Consumer Groups should therefore be denied. There is no reason to rescind Decision 2007-27 with respect to rate increases for local payphone services, nor should Decision 2007-27 be sent back to the CRTC for reconsideration.

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