ACTQ
Association des Compagnies de Téléphone du Québec

Ontario Telecommunications Association

Petition of

L'Association des Companies de Téléphone du Québec Inc. and

The Ontario Telecommunications Association

to

His Excellency the Governor in Council,

pursuant to section 12 of the *Telecommunications Act*,

in the matters of

***Obligation to serve and other matters*, Telecom Regulatory Policy CRTC 2011-291,**

and

***ACTQ/OTA/CityWest – Application to review and vary Telecom Regulatory Policy 2011-291 regarding determinations affecting small incumbent local exchange carriers*,**

Telecom Decision CRTC 2011-733

February 3, 2012

Executive Summary

1. Small independent local telephone companies in parts of rural Ontario and Quebec, as well as Northern BC, have long provided reliable, affordable, high quality telecommunications services to all customers in their service area, some for over 100 years.

2. Their ability to provide all their customers with a level of service that is comparable in quality to that provided by large incumbents in urban areas has been due to a regulatory framework that (i) did not disadvantage any customers, (ii) took into account various challenges associated with providing services in a rural, often remote, area of the country; and (iii) ensured that these enterprises have the means and resources to meet their extensive regulatory obligations within their high-cost operating environment.

The CRTC's proposed new approach to the introduction of local telephone competition in rural areas of Canada is ill-suited to rural realities, and will undermine, rather than promote the attainment of several important Canadian telecommunications policy objectives.

3. Small independent telephone companies support the Government's direction to the federal telecommunications regulator (CRTC) to place greater reliance on market forces, to the extent feasible, as the means of achieving Canada's telecommunications policy objectives. However, as a practical matter, reliance on market forces alone will not result in the provision of high quality services to all Canadians living in rural and remote locations.

4. The CRTC intends to impose in rural Canada the same competitive model that was developed to encourage competition for large urban incumbent service providers like Bell Canada and TELUS. The model allows new entrants to focus their offering on select customers in a service area, while obliging the incumbent to serve all customers throughout the area. The application of this approach to rural circumstances ignores the reality that roles are reversed in rural areas, with the large, well-financed operator, generally an already-present cable television service provider, being the new entrant into telephony, and the small, local provider being the incumbent. The CRTC's competitive model also fails to take into account the operating realities faced by the small independent companies in these high cost, thinly-populated areas.

5. As a result of the CRTC's "cookie-cutter" approach to competition, the cable company will be free to "cherry-pick" households residing in the more densely populated areas already passed by their cable network, and to ignore serving those residing in more remote parts of the service area beyond the cable network footprint. This will seriously undermine the profitability of the small incumbents, as revenues and subsidy payments plummet and costs remain largely fixed. Those living in the low density, higher cost areas outside of the exchange core will experience a double whammy: not only will there be no competitive offer from the new entrant, but the small local incumbent will now have fewer financial and human resources to invest in the uncontested parts. This market dynamic will lead to the inexorable erosion of both telephone and internet service, and the creation of a new digital divide between the "town and country" in these rural areas where none now exists.

6. Ironically, the new CRTC approach would hamstring the very companies that have been most responsive to the Government's push for greater accessibility to the internet in rural and remote areas, and at a time when the need for Canadians in rural and remote regions to access high quality, reliable telecommunications services has never been greater. The result would be new pressures on the government to spend more taxpayer dollars to meet its goal of creating economic opportunities for rural Canadians by expanding broadband internet service into their communities.

The CRTC's Decisions will in some cases lead to the disappearance of small local independent telephone companies, leaving a single communications service provider with no obligation to serve all customers in the service area and no prospect of competition.

7. Virtually all of the ACTQ/OTA companies facing competition from large cable companies believe that they will be entering bankruptcy, or a situation very close to bankruptcy, within 5 years. The perverse result of the CRTC's approach to competition will therefore be the re-establishment of a single communications service provider in these areas, though one managed from a distant city, with limited local connections, concentrated in the lower-cost, higher-density parts of the service area, and with no obligation or economic incentive to serve households in more remote and rural locations.

8. The disappearance of small independent telephone companies would not only mark the re-emergence of a monopoly, it would remove a major pillar of these rural communities and an engine of economic and social development. These small local companies have not only provided jobs, but have also contributed to the economic well-being of their communities by investing in key communications infrastructure that is utilized by hospitals, schools and other public and business operations. In addition, they have supported the economic base of their communities through their business practices, typically acting as the leading procurement and purchasing organizations for local small and medium-sized businesses in their territories. The loss of jobs that will accompany the demise of the small local telephone company is certain to result in families migrating to larger centres.

9. From a social perspective, these companies have for decades invested in local associations, local sports teams, local arts groups, local educational activities, and local health care. These are investments in the community, non-revenue generating charitable and philanthropic contributions that are often the first to be cut by regional and national companies with more distant ownership, headquarters-based senior management and remote customer care. The weakening and, in some cases disappearance, of these local enterprises would be an unfortunate, unnecessary and perverse consequence of the federal regulator's decision to impose large company, urban solutions on small, rural companies. Indeed, it is not an exaggeration to suggest that the disappearance of these companies will accelerate the demise of these communities themselves.

Conclusion

10. The CRTC's "cookie-cutter" regulatory approach disregards local operating conditions, fails to account for uniquely high cost structures, and is certain to impose crippling financial consequences on small, rural-based companies facing competition. The CRTC's approach will undermine the ability of these local companies to continue to provide a full range of diverse, high quality, and cutting-edge services to all customers in their service area, and will inevitably serve to enlarge the digital divide which the government has been seeking to close. Telecommunications will become part of a growing list of services which rural Canadians have seen degraded over the years.

11. Furthermore, in many cases, the CRTC's framework may ultimately lead to the demise of the local company through consolidation by the new entrant. In that case, the result will be a single large national or regional communications service provider with a limited connection to the local community and no obligation or commercial incentive to serve customers outside the core of a rural, and often remote, high cost service area.

12. Without the intervention of the Governor-in-Council, the CRTC's Decisions and its inappropriate force-fit regulation will decrease the ability of Canadians in some rural areas to access reliable and affordable telecommunications service of high quality, ultimately *reduce* reliance on market forces in some regions of Canada, and weaken the social and economic fabric of these regions, results that are contrary to the Canadian telecommunications policy objectives.

13. In these circumstances, the petitioners ask the Governor-in-Council to vary the CRTC's Decisions and order the CRTC to:

    (i) revert to the subsidy levels and mechanisms for calculating the subsidies paid to small incumbent local exchange carriers ("SILECs") that were in place prior to the Decisions;

    (ii) oblige new entrant competitors in SILEC territories to pay the start-up costs associated with the introduction of local competition; and

    (iii) fund the ongoing costs of implementation of local competition from the central fund the CRTC has established for subsidy payments.

I. Introduction

1. This petition is filed pursuant to section 12 of the *Telecommunications Act*[1] ("the Act") by L'Association des Compagnies de Téléphone du Québec Inc., on behalf of its nine member companies ("ACTQ") and the Ontario Telecommunications Association, on behalf of 21 of its member companies ("OTA") (collectively referred to as either "ATCQ/OTA" or "the Applicants").[2]

2. The Applicants respectfully request that His Excellency, the Governor in Council, vary *Obligation to serve and other matters,* Telecom Regulatory Policy CRTC 2011-291, dated 3 May 2011 ("TRP 2011-291") and/or *ACTQ/OTA/CityWest – Application to review and vary Telecom Regulatory Policy 2011-291 regarding determinations affecting small incumbent local exchange carriers,* Telecom Decision CRTC 2011-733, dated 28 November 2011 ("Decision 2011-733") (collectively referred to as "the Decisions").

3. Specifically, the Applicants ask that the Governor in Council vary the Decisions and order the Canadian Radio-television and Telecommunications Commission ("CRTC" or "the Commission") to:

   (a) revert to the subsidy levels and mechanisms for calculating the subsidies paid to small incumbent local exchange carriers ("SILECs") that were in place prior to the Decisions;

   (b) oblige new entrant competitors in SILEC territories to pay the start-up costs associated with the introduction of local competition and

   (c) fund the ongoing costs of implementation of local competition from the central fund the CRTC has established for subsidy payments.

4. The Applicants are in support of the Government's policies favouring local telephone competition and believe that the *Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*[3] introduced by the Honourable Maxime Bernier in 2006 (the "Direction") represented an important step forward in encouraging the CRTC to place greater reliance on market forces. Wisely, however, the Government did not direct the CRTC to rely blindly on the market in all circumstances, but to do so only to the maximum extent feasible as the means of achieving the telecommunications policy objectives set out in section 7 of the Act.

5. By introducing local competition in the rural and remote areas of Canada using a regulatory framework it developed for large urban incumbent carriers like Bell Canada and TELUS, the CRTC has misunderstood how feasible it will be to rely on market forces to ensure that the telecom policy objectives are met. The CRTC's "cookie-cutter" approach disregards local operating conditions, fails to account for uniquely high cost structures, and is certain to impose crippling financial consequences on

[1] S.C. 1993, c.38, as amended.
[2] The specific member companies are listed in Appendix 1.
[3] Canada Gazette, SOR/2006-355 December 14, 2006.

small, rural-based companies facing competition. This "one size fits all" regulatory approach is certain to undermine rather than promote attainment of the Canadian telecommunications policy objectives set out in section 7 of the Act. Specifically, it will undermine the ability of these local companies to continue to provide high quality, cutting-edge services to all customers in their service area and will stymie the Government's efforts to eliminate the digital divide between urban and rural Canadians. If these Decisions are not varied, telecommunications will become part of a growing list of services which rural Canadians have seen degraded over the years.

II. Background

6. The ACTQ/OTA members are small independent local companies established in the early 1900s in various parts of British Columbia, Ontario and Quebec to provide telephone service to rural and often remote areas of the country. The CRTC refers to such companies as small independent local exchange carriers or "SILECs" to distinguish them from the larger incumbent carriers or "ILECs" such as Bell Canada or TELUS.

7. The ACTQ/OTA member companies vary somewhat in size. For example, the operating territories of the OTA member companies range from a single exchange (e.g. Mornington Communications Co-operative Limited) to six exchanges (Wightman Telecom Ltd). Similarly, the ACTQ member companies range in size from single exchange undertakings (e.g. La Compagnie de Téléphone de St.-Victor) to 16 exchanges (Sogetel inc.). There are no large, lower cost urban centres within the OTA and ACTQ member companies' operating territories and the villages or small communities that do exist frequently contain no more than 100 to 200 households. Indeed, the OTA member companies have a combined total of 81,080 telephone lines, while ACTQ member companies have a combined total of 50,510 telephone lines. By contrast, at year end 2010, Bell Canada served 9.2 million local telephone subscribers[4] and TELUS served 3.7 million local telephone subscribers.[5] Maps of the Applicants' serving territories are attached in Appendix 2.

8. Typically, the Applicants serve areas that are composed of a small, somewhat more densely populated core surrounded by a larger, less densely populated area. However, irrespective of location within the Applicants' service areas, the costs for providing local telephone service are exceedingly high, given the overall low density of the population and the remote locations. Indeed, the CRTC determined in a 2001 decision that the entire serving territory of every ACTQ/OTA member company is a "high-cost serving area" (or "HCSA").[6]

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[4] http://www.bce.ca/data/documents/BCE_annual_2010_en.pdf - BCE 2010 Annual report, page 6
[5] http://www.digitalhome.ca/2011/02/telus-posts-fourth-quarter-results/
[6] *Regulatory Framework for Small Incumbent Telephone Companies*, Decision CRTC 2001-756, dated 14 December 2001.

9. Despite these challenges, the ACTQ/OTA member companies have over the decades been extremely successful in providing reliable and affordable telecommunications service of high quality to customers throughout their service areas. For more than a century in some cases, these small telephone companies have demonstrated their commitment to bringing state-of-the-art service to their rural customers, ensuring that these Canadians have access to the same benefits as their counterparts in urban settings. Keeping pace with changing technology has always been a priority for these companies, with the deployment of digital switching, significant investments in broadband and other recent innovations described below.

10. At the same time, the ACTQ/OTA member companies have enriched the social and economic environments in which they operate, through their close connections and frequent contributions to the local communities. In virtually all cases, these local telephone companies have been “pillars” of their rural communities for more than a century, and have played critical roles as catalysts of local and regional economic expansion within each of their serving areas. Within their operating territories, year after year, they are typically among the leading employers, the leading community arts, culture, sports and charity sponsors, funders and volunteers, and the leading procurement and purchasing organizations for other local small and medium-sized businesses.

11. Vital to the financial and operational success of the ACTQ/OTA member companies was a CRTC telecom regulatory framework that did not disadvantage any customers and at the same time (i) took into account various challenges associated with being the incumbent provider in a rural, and often remote, area of the country, and (ii) recognized and embodied the regulatory bargain that was necessary to ensure that these small telephone companies had the means and resources to meet their extensive regulatory obligations within their high-cost operating environment.

12. The CRTC’s SILEC-sensitive regulatory framework, which has successfully governed the operations of rural telephone companies since 1994, has now been jettisoned by the Commission with the issuance of the Decisions. In its place, the CRTC has substituted a "cookie-cutter" framework model patterned after the model by which local competition has been introduced into the territories of the large ILECs, including Bell Canada and TELUS. In so doing, the CRTC has abandoned its historically sensitive approach to the small incumbents' realities of providing high-cost, local telephone service to rural Canadians. Worse yet, at a most critical juncture, it has abandoned the small local companies that have excelled over the past century in serving their rural customers, effectively consigning many of them to financial ruin under an ill-suited regulatory framework that fails miserably in an attempt to fix a system that wasn’t broken.

III. CRTC Decisions

13. In TRP 2011-291, the CRTC re-examined the framework for local competition in the territories of the SILECs as part of a broader consideration of fundamental regulatory issues including the obligation to serve, the basic service objective and the local service subsidy regime. The obligation to serve is a longstanding feature of telecommunications regulation, which obliges incumbents (but not their competitors) to provide basic residential telephone service to all customers residing in their service area and to stand ready to serve any new customers seeking service in the future. In exchange for this obligation to serve, the CRTC has historically put in place mechanisms aimed at ensuring that incumbents are adequately compensated for the provision of this residential service. For example, where CRTC-approved telephone rates do not cover costs, as is the case for all of the ACTQ/OTA member companies since they operate entirely within HCSAs, the CRTC's local service subsidy fund has filled the gap.[7]

14. At the conclusion of the proceeding that culminated in the release of TRP 2011-291, the CRTC chose a new path by which to regulate the small local telephone companies, making determinations unsuited to local conditions and circumstances. The Commission decided to impose the same framework on both large and small incumbent telephone companies, a regulatory template that if left in place would impose essentially the same model of regulation on Mornington Communications Co-op and La Compagnie de Téléphone de St-Victor, as the Commission applies to Bell Canada and TELUS. The TRP 2011-291 approach featured the following common elements: local telephone competition was encouraged in any part of an incumbent's service area, while the incumbent's obligation to serve all customers residing throughout its area was maintained; a new, uniform mechanism was established to force rates up towards costs in high cost areas; and the approach to calculating the subsidy payment for SILECs was changed to bring it into line with the mechanism applicable to large incumbents.

15. At the same time, the CRTC put in place several "special considerations" for the SILECs, on the basis that their payment of costs associated with the introduction of local telephone competition combined with the loss of their revenues due to the loss of customers, would affect the SILECs’ financial ability to meet their ongoing obligation to serve. The Commission acknowledged that the impact would be particularly acute for customers located in the higher cost, less densely populated outlying portions of their service area. In response, the CRTC carved out a handful of very small incumbents and removed their obligation to pay for the one-time start up costs associated with the introduction of competition. In addition, the Commission provided some limited flexibility for the recovery of ongoing costs associated with local competition and created a short transition period for the SILECs' move to the same subsidy payment system that the CRTC has created for Bell Canada, TELUS and other large incumbents.

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[7] For 2011, the CRTC's local subsidy fund amounted to $156M, of which the Applicants received approximately $14.5M. Meanwhile, the large ILECs, including TELUS, SaskTel, MTS/Allstream, Bell Aliant and Telebec, received $112.1M combined for service to the HCSAs in their territories.

16. Unfortunately, the CRTC has made changes to a regulatory framework that has been working perfectly well for a decade and that has provided incentives for small local companies to provide high quality and affordable services to Canadians living in rural and remote parts of the country. The Commission's imposition of a large ILEC "cookie-cutter" approach to local competition in rural and remote areas, if not varied by the Governor in Council, will now result in severe financial hardship to these small independent companies. Nor will the so-called "special considerations" in any way mitigate the significant financial harm brought on by the CRTC’s Decisions.

17. Specifically, in the Applicants' estimation, the imposition of the large incumbent subsidy model coupled with the market share loss due to competition will result in significant revenue losses for local companies facing competition. For example, as the graphs in Appendix 3 illustrate, the ACTQ/OTA member companies facing imminent competition from large cable companies will, on average, see market share losses of close to 10% in the first year following implementation of the CRTC's Decisions, rising to 30% in the fifth year. This market share loss will in turn have a negative impact on revenues which, when combined with the loss in subsidy payments, will amount to a decline in overall average revenue for these companies of more than $0.6M in the first year to $2M in the fifth year. Overall operating revenues will decline from a current average combined figure of $8M to less than $6M in the fifth, a precipitous drop of 25%. Operating expenditures remain essentially flat. The outcome will be a decline in average net income from operations from slightly more than $1M in the current year to an average operating loss of close to $1M five years following implementation of the Decisions.

18. Given the detailed regulatory nature of many of the adjustments made by the CRTC, ACTQ/OTA decided that it should apply to the Commission to ask for a review of several specific aspects of TRP 2011-291 and a variance of some of the particular mechanisms that were put in place in the decision. On 28 November 2011, the CRTC denied the ACTQ/OTA application in Decision 2011-733.

19. In both TRP 2011-291 and Decision 2011-733, the CRTC has simply failed to understand two harsh realities associated with the operating conditions of the small independent companies. First, given the nature of the SILECs' product and geographic markets, their operating costs are largely fixed. Second, the small incumbents are facing competitors that are ideally suited to "cherry pick" customers in the lower cost, higher density areas and to engage in anti-competitive practices like unreasonably low pricing. In these circumstances, rapid and significant market share losses are inevitable.

20. The CRTC's failure to take proper account of these realities has led them to underestimate the financial harm that is likely to result from the framework set out in TRP 2011-291 and from the Commission's refusal to review and vary that framework in Decision 2011-733.

IV. Impact of the CRTC Decisions on the Canadian telecommunications policy objectives

The CRTC's Decisions will seriously erode the ability of Canadians in some rural areas to access reliable and affordable telecommunications services of high quality and will create a new digital divide in Canada, precisely what the Government of Canada has worked hard to overcome.

21. As noted earlier, the ACTQ/OTA member companies have demonstrated their time-honoured commitment to bringing state-of-the-art service to their rural customers, ensuring that these Canadians have access to the same benefits as their counterparts in urban settings. Indeed, customers of SILECs generally receive service that is comparable or superior in quality to that provided by large incumbents in their urban serving areas.

22. SILECs have frequently shown considerable foresight in pioneering new developments, with most SILECs offering dial up internet services in their remote locations as early as 1995, prior to larger telephone companies, and deploying digital switching and IP technology before this was occurring in major territories.

23. Over the years, small companies such as Hay Communications Co-operative Ltd., Wightman Telecom Ltd., Tuckersmith Communications Co-operative Ltd. and Bruce Telecom have continuously upgraded their networks to provide enhanced services, and most, if not all, small incumbents are at some stage of rolling out fibre to the home ("FTTH"), fibre to the node ("FTTN") or some combination of both. For example, Wightman Telecom has deployed FTTN to 19 of its 21 nodes, allowing for the distribution of local telephone, high speed internet and HD television services over its copper loops. The majority of these nodes have been strategically placed to bring high speed service to rural customers and the final two nodes will be completed in 2012. For its part, Bruce Telecom has just completed a $5.5M major infrastructure project, constructing 24 FTTN nodes and installing VDSL2 ports with 90% coverage, in order to provide its rural Canadian customers with faster internet speeds and expanded digital television availability. In Quebec, Sogetel inc. has also invested heavily in rolling out a fibre network, spending $4.5M in 2011, of which 90% was used to serve customers residing outside core areas. In contrast, large incumbents have not necessarily demonstrated the same interest in moving fibre into high cost serving areas situated within their operating territories. Bell Aliant for example, has recently indicated that it has not undertaken any FTTH or FTTN deployment in its HCSAs.[8]

24. Furthermore, while the entire serving territory of each SILEC is deemed by the CRTC to be a "high cost serving area," nonetheless, these small companies have managed to extend their reliable, high quality services throughout their rural and remote service exchanges, including both high and low population density regions. For example, Hay Communications launched its first high speed internet service in 2000 and rapidly

[8] This was indicated in Bell Aliant's response to the CRTC's questions about the calculation of costs for subsidy purposes, Bell Aliant(CRTC)25Jul11-3 PES

made it available to each and every one of its customers, well in advance of other service providers. Similarly, Tuckersmith introduced high-speed internet in 2001 and over the course of one year rolled it out to every customer that the company served. Meanwhile, le Téléphone de St-Ephrem is providing 100% of its customers with access to high speed internet, while la Compagnie de Téléphone de St-Victor has rolled out telephone, high speed internet and IPTV to all its customers, using a mixture of ADSL, VDSL and fibre. Indeed, residents in such far flung locations as Burgoyne, Topping, Indian River, Millbrook, Moose Factory and R.R. Petit Cheleny have access not only to basic telephone service, but also to high speed internet at prices lower than or comparable to residents of Toronto and Montreal.

25. This singular focus on deployment of broadband has resulted in ACTQ/OTA member companies providing high speed internet access to more than 95% of households in all parts of their serving areas, both within the more densely populated core as well as in the higher cost, less densely populated portions. This result is all the more impressive when compared to a large incumbent, such as Bell Aliant, that has rejected the idea that the company should be obliged to provide broadband to areas outside the more urban areas of its serving territory, as the ACTQ/OTA members have done.[9] In many cases, Bell Aliant provides broadband coverage to only half of the households in its high cost service areas.[10]

26. One of the reasons for the success of the small incumbents was a CRTC regulatory framework that had traditionally taken into account various challenges associated with being the incumbent provider in a rural and remote area of the country. Prior to 1994, the small independent telephone companies in Ontario and Quebec were subject to provincial regulation, which was sensitive to and reflected the characteristics of the regions in which the SILECs operated. Following the Supreme Court of Canada's decision in the *Guèvremont* case,[11] federal jurisdiction over independent telephone companies was confirmed.

27. Fortunately, since assuming jurisdiction, the CRTC has continued to take into account the particular local operating characteristics of the small independent companies. For example, in Telecom Decision 96-6,[12] the Commission conducted a detailed examination of the specific characteristics of the small local independent telephone companies and created a regulatory framework that recognized their specific operating environment. A successful feature of Decision 96-6 was the CRTC's imposition on the SILECs of a lighter-handed regulatory regime than the one that was in place for the larger incumbents, such as Bell Canada and TELUS, which were already subject to federal jurisdiction. The CRTC continued this light-handed approach in further fine-tuning the SILECs' regulatory framework in 2002[13] and 2006.[14]

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[9] Bell Aliant, opening remarks at oral hearing pursuant to *Proceeding to review access to basic telecommunications services and other matters,* Telecom Notice of Consultation CRTC-2010-43,.

[10] Bell Aliant(MTS Allstream)20May10-2 TNC 2010-43, Supplemental, page 2 of 2.

[11] *Téléphone Guèvremont* c. *Québec (Régie des télécommunications),* [1994] 1 S.C.R. 878

[12] *Regulatory Framework for the Independent Telephone Companies in Quebec and Ontario (Except Ontario Northland Transportation Commission, Québec Téléphone and Télébec Ltée),* Telecom Decision CRTC 96-6, 7 August 1996.

[13] *Regulatory framework for the small incumbent telephone companies,* Decision CRTC 2001-756, 14 December 2001.

[14] *Revised regulatory framework for the small incumbent local exchange carriers,* Telecom Decision CRTC 2006-14, 29 March 2006

28. However, in refusing to review and vary TRP 2011-291, the CRTC has effectively abandoned its more tailored and rural-sensitive approach, ignoring in any meaningful way the local realities of small independent incumbents, in favour of the administrative simplicity of a "cookie-cutter" framework developed for Bell Canada, TELUS and other large ILECs .

29. For example, the CRTC has basically refused to consider the fixed nature of the SILECs' operating costs, particularly given the limited economies of scope and scale in their operations. Local independent companies therefore have significantly less flexibility than the large incumbents to lower their costs in direct response to a decline in revenues due to market share loss; moreover, it is highly likely that new entrants will choose not to contest the higher cost, lower density parts of the SILECs' service areas, and that there will be constant pressure on the small local companies to continue to make significant investments in these areas to meet their CRTC-imposed obligation to serve. The proportion of operating costs that are fixed is therefore likely to remain high or even grow as a percentage of overall SILEC operating costs.

30. Furthermore, the Commission has failed to take proper account of the fact that SILECs have a CRTC-mandated obligation to serve all customers in areas that are largely rural and remote, and entirely "high cost," i.e. where the cost of providing local phone service exceeds the revenues that are derived; in contrast, their larger ILEC counterparts also serve areas that are not "high cost". Larger incumbents thus have greater financial flexibility in covering the shortfall from serving high cost areas, since they can rely on their profit-generating local business in those more urban, densely populated parts of their service area that have not been designated as "high cost." Nowhere is this important dichotomy between SILECs and ILECs recognized in the Commission's Decisions.

31. Moreover, even when the CRTC claims to be tailoring the framework to the environment in which the small independent companies operate, the regulatory remedies in the Decisions belie the local circumstances. For example, providing the small incumbents with transitional measures in order to accommodate the imposition of the per-line subsidy mechanism used for large incumbents, totally disregards the fact that a per-line subsidy system does not make sense where the operating costs are largely fixed. In this context, the "special considerations" do not address the shortcomings of the regulatory framework, which will have a crippling financial effect on the ACTQ/OTA members.

32. Similarly, the CRTC has misunderstood the dynamics in those SILEC markets that are facing competition. In all cases, the declared new entrant cable companies have existing cable plant that overlaps the small local company's network, particularly in the core of the SILEC service area, allowing for immediate and aggressive entry. For example, by covering 3% of the territory of Mornington Communications Co-op, EastLink has immediate access to 47% of the customers. Similarly, in Quebec, by serving slightly more than 1% of the physical territory of one of Téléphone

Guèvremont's exchanges,[15] Cogeco will have access to 30% of the residential customers and 50% of the business customers. In both cases, the new entrants have every incentive and opportunity to gain large market share of the local telephone market based principally on price decreases. These price decreases can be absorbed more easily by the new entrants that have signaled their interest to enter the market, since they are large regional or national cable television companies with deep pockets and distribution networks already in place. In these circumstances, the CRTC's assumption in the Decisions that SILECs can raise rates to cover costs is as illusory as it is naive and counter-intuitive.

33. As a result of the CRTC's approach, the financial situation of small companies facing competition will be untenable and their ability to serve all customers throughout their service territory will be seriously curtailed. Specifically, their profitability will plummet more quickly than the CRTC is anticipating, due to (i) rapid market share loss, (ii) their inability to introduce or sustain any local rate increases in the face of price decreases offered by their larger and better-financed cable-based competitors, (iii) the fixed nature of their costs which will not decline in any meaningful way, and (iv) the on-going regulatory burden of an obligation to serve all customers residing throughout their high cost serving areas. At the same time, the subsidy payments to the small independent companies will decline, as the Commission extends the large incumbent model to the small incumbents. The likely financial results for the ACTQ/OTA member companies facing imminent competition from large cable companies are illustrated in the graphs appended in Appendix 3.

34. Compounding the problem, the small independent companies facing competition will need to focus their dwindling resources more intensely in one part of their service area, due to what is sometimes referred to in the industry as "the doughnut effect." Specifically, it is inevitable that new entrants will concentrate their competitive efforts in those parts of the service area where population density is greatest and costs are lowest, namely in the largest village or villages in the service area, where these entrants have already deployed cable plant. The more remote and costly parts of the service area will clearly be ignored by the new entrants who, as noted, have no CRTC-mandated obligation to serve customers in these remote parts of the territories. Indeed, Cogeco noted in a 2009 submission to the CRTC that the main barrier regarding the expansion of its network to customers located in a low density SILEC area was the profitability for such deployment versus the company's other priorities,[16] and at the public hearing leading to TRP 2011-291 Cogeco confirmed that it did not believe that there was a sufficient business case for the company to make the investments necessary to serve all customers in the SILEC territories that they entered.[17]

35. In these circumstances, the small incumbent will also have no choice but to spend a greater proportion of its financial and human resources in the targeted core areas to defend its position.

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[15] Notre-Dame-du-Bon-Conseil

[16] Response to interrogatory Cogeco(CRTC)26Jun09-1 Introduction of local competition in small ILEC territories, dated 7 August 2009.

[17] *Obligation to serve and other matters,* Transcript of Proceedings, Volume 7, 4 November 2010, line 9274 *ff.*

36. Introducing competition in this manner may result in competitive choice for some customers. However, those living in the low density, higher cost areas outside of the exchange core will experience a double whammy: not only will there be no competitive offer from the new entrant, the incumbent will also have fewer financial and human resources to invest in those uncontested parts. Inevitably, this will lead to erosion of both telephone and internet service and a new digital divide in Canada, at a time when the need for Canadians in rural and remote regions to access high quality, reliable telecommunications services has never been greater. Indeed, this development would hamstring the very companies who have been fully responsive to the Government's push for greater accessibility to the internet in rural and remote areas, and would place new pressures on the government to spend more taxpayer dollars to meet its goal of creating economic opportunities for rural Canadians by expanding broadband internet service into their communities.

The CRTC's Decisions may, in some instances, ultimately lead to a reduction in competition through consolidation in the market, reflecting ineffective regulation and precluding reliance on market forces.

37. In many cases, the precarious financial position of a small independent company may lead to that company exiting the market, in the face of local competition from a large, well-financed regional or national cable company, with a distribution network already in place to deliver service to a significant percentage of the population in the more densely populated portions of the service area. Indeed, if the current Decisions are not changed, it is highly likely that virtually all of the ACTQ/OTA companies facing competition from large cable companies will be entering bankruptcy, or a situation very close to bankruptcy, within 5 years. This financial vulnerability can be seen clearly in the charts in Appendix 3.

38. Should that happen, it is highly likely that the new cable company entrant will then remain uncontested in the market, since no other entrant will possess the considerable advantages of these large players, including sunk investments in an already built distribution system, access to capital, and an ability to cross-subsidize from the more lucrative business lines, such as cable distribution, and the more lucrative, less costly exchanges served elsewhere in the province or the country by their regional or national operation. In addition, as noted, the new entrant would have no CRTC-mandated obligation to serve the high-cost, low-density parts of the service area.

39. The net result will be a single service provider concentrated in the low-cost, high-density parts of the service area, with little or no prospect of reliance on market forces in sight, with a consequent degradation of service to customers in the outlying areas of the rural exchanges, clearly a signal of ineffective regulation. Customers living in the uncontested areas of the companies facing bankruptcy would be confronted with the prospect of losing their local telephone service and access to high speed internet, increasing pressure on the Government to fill the gap with taxpayer dollars.

40. The disappearance of small local telephone companies would also put a screeching halt to the continuous roll-out of terrestrial broadband that these companies have been willing to undertake throughout these rural and remote areas of Canada. Bankruptcy of the SILECs would be a most perverse regulatory outcome of the Decisions and would constitute a major setback to the Government's stated desire for all Canadians to have enhanced access to broadband internet. This would be the unfortunate outcome of an attempt through the Decisions to force-fit an urban regulatory model of competition on small telephone companies and their rural subscribers when the existing rural-sensitive regulatory model was not broken.

The disappearance of a SILEC will weaken the social and economic fabric that the company has helped to weave in its rural community for over a century.

41. Not only would the disappearance of a small independent telephone company likely mark the re-emergence of a monopoly, it would also remove a major local business, with close and deep connections to the community it has served for more than a century, as a critical engine of local economic and social developmen**t.** Within their operating areas, year after year, the ACTQ/OTA member companies are typically among the leading employers, the leading community arts, culture, sports and charity sponsors, funders and volunteers, and the leading procurement and purchasing organizations for local small and medium-sized businesses.

42. The ACTQ/OTA member companies have not only provided jobs in their local communities but have also invested in important infrastructure. For example, in 2001, Hay Communications Co-op, Quadro Communications Co-op, Tuckersmith Communications Co-op, Hurontel Telecommunications Co-op and Mornington Communications Co-op joined together to install a fibre optic connection between hospitals in Wingham, St Marys, Listowel, Stratford, Exeter, Goderich, Clinton and Seaforth and the London Health Sciences Centre. This network has also been used to provide connections to local schools, the County of Huron administration, libraries, homes for the aged, and Ambulances and Roads Departments. Moreover, the availability of this network was a factor in the decisions of many local businesses to locate or maintain their operations in this largely rural area. Meanwhile, last year alone, Sogetel inc. and Téléphone Milot inc. invested $10M for equipment and network infrastructure to enhance their telephone, internet and IPTV services.

43. These small local companies have also supported the economic base of their communities for decades through their procurement practices. OTA member companies purchase largely in their region, with companies such as Bruce Telecom spending more than 70% of its recurring expenditures in its serving area or in the immediate surrounding territory, and Hay Communications Co-op and Tuckersmith Communications Co-op spending each well over $3M annually on local suppliers. Sogetel inc. and Téléphone Milot have local purchases of close to $2.5M annually. Moreover, many of these small companies are operated as non-profit co-operatives, allowing for greater investment in the local community and helping to reduce taxes.

44. Equally impressive are the contributions of these small companies to local community activities. They have invested in local associations, local sports teams, local arts groups, local educational activities, and local health care. For example, they support the construction of local arenas and recreational centres, and fund skating and curling clubs as well as baseball, broomball, soccer and hockey teams; they provide financial support to health care foundations, food banks, charitable organisations like the Alzheimer society and community groups like Big Brothers and Big Sisters; they are active in the local Chamber of Commerce; their executives serve on local boards and councils; they contribute to theatres, art galleries and cultural centres in their communities and provide scholarships to local students. Even a small company like CoopTel gives close to $100,000 annually in donations and sponsorships to various social and community organizations, and over the past 10 years has donated more than $1M to charities, youth, elderly people and those in need within their local areas. These are investments in the community, non-revenue generating charitable and philanthropic contributions that are often the first to be cut by regional and national companies with more distant ownership and headquarters-based senior management.

45. The weakening and, in some cases disappearance, of this local social and economic fabric would be an unfortunate, unnecessary and perverse consequence of the federal regulator's decision to impose large company, urban solutions on small rural local companies.

V. Conclusion

46. The Commission's refusal in Decision 2011-733 to review and vary TRP 2011-291 has undermined the Canadian telecommunications policy objectives in several significant ways. The likely result of these Decisions is the fostering of a new digital divide between different regions in Canada where none exists today and the possible demise of the local company through consolidation by the new entrant.

47. The Commission failed to take account of local operating conditions when it imposed a "cookie-cutter", urban-based regulatory framework upon the small ACTQ/OTA member companies, one developed essentially for the introduction of competition in the service territories of large incumbents. In imposing this framework, and in subsequently refusing to review and vary it, the CRTC has increased the likelihood that the high quality service that Canadians in parts of these rural and remote communities have come to expect will be degraded if not eliminated in the future.

48. As a direct result of the CRTC Decisions, Canadians in some rural areas of B.C., Ontario and Quebec can no longer expect assured access to reliable and affordable telecommunications services of high quality. Furthermore, in some instances, these Decisions may ultimately lead to a reduction in competition through consolidation in the market. This result reflects ineffective regulation and will preclude reliance on market forces; it also threatens to weaken the social and economic fabric that the small companies have successfully woven in support of their rural constituencies.

49. The CRTC has simply turned a blind eye to the likely harm that will flow from the Decisions and continues to push on with its implementation of the ILEC-based framework,[18] despite the ACTQ/OTA's request that the Commission at least stay the implementation of TRP 2011-291, pending the exercise of the member companies' legitimate and lawful right to seek a review by the Governor in Council. The Applicants' request to the CRTC for a stay was twice in the past characterized by the Commission as premature and returned to the Applicants, most recently on January 13th of this year. In each case, the Commission has pushed forward with its implementation of various aspects of the impugned Decisions. Now, for the third time, the ACTQ/OTA has submitted to the CRTC its request for a stay of the implementation of the Decisions, in conjunction with this petition, with a request that the matter of a stay be determined by the Commission on an urgent basis.

50. In these circumstances, the Applicants submit that the Governor in Council should vary the Decisions and order the CRTC to:

(a) revert to the subsidy levels and mechanisms for calculating the subsidies paid to SILECs that were in place prior to the Decisions;

(b) oblige new entrant competitors in SILEC territories to pay the start-up costs associated with the introduction of local competition; and

(c) fund the ongoing costs of local competition from the central fund the CRTC has established for subsidy payments.

[18] On January 24, 2012, the CRTC issued a series of decisions implementing the regulatory framework established in TRP 2011-291.