



BY E-MAIL

Mr. Leonard St-Aubin
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Dear Mr. St-Aubin:

**Re: Proposed Order Varying Telecom Decision CRTC 2006-15, *Canada Gazette Part I*
(December 16, 2006)**

These representations are filed by Shaw Communications Inc. ("Shaw") in respect of the Proposed Order Varying Telecom Decision CRTC 2006-15, as published in the *Canada Gazette Part I* on December 16, 2006.

As set out more fully below, Shaw wholeheartedly supports the basic principles espoused by the Proposed Order, including most notably the recognition that consumers are best served when market forces and facilities-based competition are relied on to the maximum extent possible, and that satisfaction of competitor quality of service requirements ("Q of S") by the incumbent local exchange carriers (the "ILECs") is fundamental to local competition and must be a pre-condition for forbearance of ILEC local exchange services. To be consistent, however, with the Government's policy of promoting and relying on facilities-based competition, Shaw believes that the Q of S specified in the Proposed Order must be broadened to include an effective facilities-based interconnection service standard as well as a standard for access to ILEC support structures. Also, to provide that the ILECs have an incentive to satisfy the Q of S requirements, removal of the winback restriction should be conditional on ILEC satisfaction of the Q of S indicators.

Shaw supports Minister Bernier's decision to place consumer interests first and rely more on market forces and facilities-based competition

Shaw fully endorses Minister Bernier's decision to place the interests of consumers first and rely more on market forces to regulate the provision of local telephone service. Canadian consumers can be best served by a framework that relies on market forces and facilities-based competition to the maximum extent possible. This is a basic principle that should be applied throughout the communications industry, including in the provision of cable and satellite services.

The Proposed Order properly recognizes that satisfaction of Q of S is an essential prerequisite for forbearance

Shaw also endorses Minister Bernier's decision that compliance with the quality of service requirements by the ILEC is an essential pre-condition to the grant of forbearance for local exchange services. The Q of S are necessary to ensure that the ILECs do not abuse the market power they derive from their position of control over critical network inputs that competitors require to compete effectively in retail local exchange markets.

As the Telecommunications Policy Review Panel ("TPRP") recognized in its Report, all competitors, including facilities-based service providers that rely entirely on their own facilities in provisioning their network, rely on ILEC facilities in the provision of local services. At a very minimum, a full facilities-based competitor requires interconnection and local number portability. To invest and build-out their networks into new areas, facilities-based competitors also require access to ILEC support structures. (TPRP Report, pp.3-31 and 5-4) Timely and effective provision of these competitor services is therefore essential to durable facilities-based competition.

To be consistent with the Government's policy of promoting and relying on facilities-based local competition, the Q of S must be amended to effectively address interconnection and access to ILEC support structures

The Government's longstanding policy of promoting and relying on facilities-based competition as an effective and durable form of competition is continued in the Proposed Order. As stated in the Proposed Order, "facilities-based competition is a durable form of competition that delivers

the greatest benefits to consumers, imposes competitive market discipline on incumbents and strengthens investment in telecommunications infrastructure”. The Proposed Order establishes a competitive facilities test for forbearance which is based on the existence of independently owned facilities-based local service providers in a relevant market. In the *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* dated December 18, 2006 (the “Direction”), the Government has also underscored the need to increase incentives for investment and construction in competing telecommunications network facilities (Direction, s. 1(c)(ii)) and to adopt regulatory measures in respect of network interconnection arrangements and access that, to the greatest extent possible, do not favour either facilities-based or non-facilities-based carriers or resellers. (Direction, s. 1(b)(iii))

Significantly and contrary to these policies, the Q of S listed in the Proposed Order fail to address the requirements of facilities-based competitors for facilities-based interconnection and access to ILEC support structures.

“Competitor Trunk Service Order Interval Met” is the only indicator in the Proposed Order that is intended to track interconnection. This indicator is seriously deficient as it fails to capture the amount of time and effort required by competitors to get an ILEC to accept an interconnection order as well as the time for testing after an interconnection order has been filled.

An order for interconnection cannot be submitted to an ILEC – and hence the clock cannot start ticking in respect of this indicator- until the ILEC agrees to accept the order. An ILEC will agree to accept an order only after all preliminary reviews, forecasts, and negotiations have been completed. In Shaw’s experience, this pre-order period can take months to complete. This Indicator also does not address post-construction testing requirements. Under the proposed Q of S, there is no service standard for pre-order negotiation or post-order testing of interconnection facilities, both of which are essential for facilities-based interconnection.

The establishment of interconnection is particularly difficult for facilities-based competitors that seek to interconnect with the ILEC using their own rather than leased facilities. This type of interconnection requires a joint fibre build by the ILEC and the competing carrier. The resulting negotiations with the ILEC that must precede the submission of an interconnection order can be very drawn out and represent a choke point that is not captured by the Q of S in the Proposed Order. In Shaw’s experience, these pre-order negotiations can take months, seriously delaying

the launch of competing services. Shaw launches have also been delayed weeks, following completion of the build, while Shaw has waited for TELUS to dedicate the people and resources necessary to test the interconnecting facilities before competing services can be launched.

Therefore, “Competitor Trunk Service Order Interval Met” indicator fails to address facilities-based interconnection requirements.

The other significant gap in the proposed Q of S is the absence of any Q of S requirement in respect of competitor access to ILEC support structures. As the TPRP recognized in its report, telecommunications service providers must have timely access to support structures in order to provision their networks and provide services stating “[d]enial or delay in obtaining access can lead to delays in construction of networks and provision of services”. (TPRP Report, p. 5-4) Delays in the provision of access to ILEC support structures result in delays in investment in and construction of competing networks, and the exercise of choice by consumers.

In Shaw’s experience, current ILEC support structure processes are slow and obstructive and lead to denial of access more often than approval. The average time for TELUS to respond to a Shaw application to access its support structures is 97 days. The average time for an application to be approved and work completed is 259 days. These kinds of delays are a significant impediment to facilities-based local competition and consumer choice.

The Government’s policy of promoting and relying on facilities-based competition is at the very heart of the Proposed Order. To be consistent with this policy, Shaw believes that the Q of S listed in Appendix B must be broadened to include an interconnection standard that covers pre and post interconnection order activity and a service standard for access to ILEC support structures.

To ensure the ILECs comply with the Q of S, removal of the winback restrictions must be contingent on satisfaction of the Q of S

If the Proposed Order is implemented in its current form, there is no credible and effective means of enforcing ILEC compliance with the Q of S. The proposed new fining power under the *Competition Act* is not an effective enforcement mechanism. The procedures, evidentiary hurdles and time periods associated with enforcement of the abuse of dominance provisions in the

Competition Act are, quite simply, unworkable. Shaw notes, in this regard, the extraordinarily limited jurisprudence under the abuse of dominance provisions and the fact that these cases have taken years to proceed to decision. Adjudication and relief in respect of Q of S requirements must be timely to be meaningful and effective. The *Competition Act* procedures cannot accommodate this fundamental requirement. (TPRP Report, p. 4-14)

Given the vital importance of the Q of S to local competition, the forbearance framework must include some means of enforcing ILEC compliance with the Q of S. In Shaw's submission this can be accomplished most effectively under the current legislative framework by making removal of the winback restrictions contingent on ILEC satisfaction of the Q of S.

Therefore, Shaw believes that the Proposed Order should be amended such that removal of the winback restrictions is conditional on the ILEC demonstrating that it has satisfied the Q of S over the 6-month period preceding the removal of the winback restrictions.

Conclusion

In conclusion, Shaw supports the basic premises of the Proposed Order including most notably the focus on consumers and increased reliance on market forces and facilities-based competition. To be consistent, however, with the Government's policy of promoting and relying on facilities-based competition, the Q of S must be amended to properly address the most basic requirements of full facilities-based local service providers for interconnection and access to ILEC support structures. In addition, to ensure that the ILECs comply with the Q of S, the removal of winback restrictions must be contingent on ILEC satisfaction of the Q of S.

Yours truly,

Shaw Communications Inc.

Jim Shaw
Chief Executive Officer