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November 7, 2005

Mr. Alex Himelfarb
Clerk of the Privy Council and Secretary to the Cabinet
Langevin Block, Room 322A
80 Wellington Street
Ottawa, Ontario K1A 0A3

Dear Mr. Himelfarb:

**Re: Canada Gazette Part 1, Notice No. DGTP-007-05 - Petitions to the
Governor in Council**

On behalf of its members, the Canadian Cable Telecommunications Association (CCTA) submits the attached submission in response to the petitions to the Governor in Council requesting a review of Telecom Decision CRTC 2005-28, *Regulatory framework for voice communication services using Internet Protocol*, May 12, 2005.

An electronic copy of the submission is provided to petitioners and Interested Parties by email.

Sincerely,

Michael Hennessy
Attachments

cc.: Larry Shaw, Industry Canada
Diane Rhéaume, CRTC
Petitioners
Interested Parties PN 2004-2



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GAZETTE NOTICE NO DGTP-007-05

**IN THE MATTER OF PETITIONS TO THE GOVERNOR
IN COUNCIL TO VARY TELECOM DECISION CRTC 2005-28
*REGULATORY FRAMEWORK FOR VOICE COMMUNICATION
SERVICES USING INTERNET PROTOCOL***

**REPLY SUBMISSION
OF
THE CANADIAN CABLE TELECOMMUNICATIONS ASSOCIATION**

November 7, 2005

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EXECUTIVE SUMMARY

1. This submission is filed by the Canadian Cable Telecommunications Association (CCTA) in response to Petitions filed by Aliant Telecom Inc., Bell Canada, Saskatchewan Telecommunications, Télébec, société en commandite and TELUS Communications Inc. (collectively referred to as the “ILECs”) on July 28, 2005; the Government of Saskatchewan on July 5, 2005; the Vancouver Board of Trade on July 28, 2005 and the Communications, Energy and Paperworkers Union of Canada (CEP) on July 26, 2005.
2. In their Petition, the ILECs have asked the Governor in Council to vary Telecom Decision CRTC 2005-28 *Regulatory Framework for Communication Services Using Internet Protocol*, by eliminating the economic regulation of VoIP services, including related marketing safeguards such as the “winback rules”, and referring the decision back to the CRTC for “reconsideration.” The other Petitioners have asked for similar relief.
3. The “reconsideration” requested by the Petitioners is a reconsideration in name only since the ILECs are asking that the CRTC be ordered to “make the Decision conform in all material respect to this variation.” The essence of the ILECs’ Petition is therefore to totally reverse the CRTC’s decisions to regulate VoIP service as a local telephone service and to maintain marketing safeguards against anti-competitive behaviour by the dominant ILECs.
4. Local telephone service has been a monopoly in Canada for over 100 years. Despite the fact that this segment of the telecommunications market was declared open to competition in 1997, the ILECs have remained overwhelmingly dominant. In its latest release of data respecting the status of competition in Canadian telecommunications markets, the CRTC reported that the ILECs have

retained 97% of the local residential telephone market.¹ The ILECs also retained an 87% share of the local business market. The ILECs' share across both residential and business markets ranged from highs of 100% in Saskatchewan, 99.8% in New Brunswick and 99.6% in Manitoba, to a low of 86% in Nova Scotia. This new data is important since it demonstrates that there was very little change in the competitors' market share between 2003 and 2004. In fact, in three provinces, the ILECs' market share either increased or remained static.

5. The Petitions allege that the CRTC erred in treating VoIP services as part of the market for local exchange services for purposes of its forbearance analysis. Yet, this is precisely what section 34 of the *Telecommunications Act* (the Act), as well as competition law analysis, requires. Despite its protestations to the Governor in Council to the effect that VoIP service is dramatically different from local exchange service, Bell Canada has conceded in recent proceedings before the CRTC that the services are close substitutes for each other. Once it is conceded that VoIP is part of a market in which the ILECs collectively have a 97% share, there is no basis in law, economics or public policy for the CRTC to forbear from regulating this service. Moreover, as found in the international analysis conducted for the CCTA by Lemay-Yates Associates, other regulatory agencies that have completed the assessment of VoIP, such as Singapore and Hong Kong, have found VoIP services that are interconnected to the PSTN are substitutes to local voice services and, accordingly, integrated these services into the same regulatory framework.²

¹ CRTC Report to the Governor in Council on the *Status of Competition in Canadian Telecommunications Markets*, 31 October 2005.

² Lemay-Yates Associates Inc., "A Discussion of the Evolution of VoIP Regulation Worldwide", Appendix 2, page 4.

6. The CRTC's Decision provides consumers with immediate benefits in the form of lower prices and innovative services, while protecting them from re-monopolization of the local telephone market. The impact of the CRTC's decision is already starting to be manifested with new entry by cable companies and resellers over the past eight months. Despite what the ILECs are saying, the CRTC's Decision also opens the door to the ILECs offering their own VoIP services at prices that are significantly lower than they charge for traditional telephone services. Bell Canada, for one, has already started offering its own VoIP service bundle at a price that is lower than rivals Rogers and Cogeco.

7. Far from "hobbling" Bell's ability to respond to competition, the CRTC has been extremely accommodating and has granted Bell unprecedented pricing flexibility in the market. What the CRTC has not allowed Bell to do is to price below cost, or to use its dominant position in the local market to engage in anti-competitive conduct. This is what the ILECs' Petition is really about – the ability to drive their competitors out of the market and recapture the 3% market share that they have collectively lost. Economic experts appearing on behalf of CCTA before the CRTC in the proceeding on local forbearance explained that the ILECs could effectively engage in anti-competitive behaviour and would have the incentive to do so.

But if you can predate by targeting very selectively, targeting geographically or even finding the individual people that are trying to leave, so you don't offer lower prices to the whole market ...then predation becomes a much less costly strategy and these theories have, I think, greater currency.³

³ Dr. Thomas W. Ross, CRTC public consultation on Local Forbearance, Transcript Volume 3, September 28, 2005, para. 5570.

8. The CRTC's track record on deregulation is a good one and has resulted in deregulation in all major segments of the telecommunications market except local telephony, where effective competition has yet to be established. The OECD looks to Canada as a model for the deregulatory process and has credited the CRTC with avoiding the pitfalls encountered by many other member States. According to the OECD:

Canada is one of the leading OECD countries in terms of its performance in the telecommunication sector. Its best practice performance is largely due to its regulatory processes and frameworks and policy structures.⁴

9. Calls by the Petitioners to follow the lead of other countries that do not share Canada's good track record, should be viewed with scepticism. This is an area in which Canada is leading the world. Canada enjoys one of the highest broadband penetrations among industrialized countries and we stand first among the G-8 countries in deployment of this vital telecommunications infrastructure. With new facilities-based competitors poised to enter the local telephone market using these facilities, and with a regulatory regime praised by the OECD as embodying "best practices", why would we want to emulate the regulatory practices of other countries? To do so would amount to a failure to recognize the success of our own policies.

10. The issues raised in the Petitions are already the subject of debate in other public policy fora, which ought not to be prejudged or pre-empted by the Governor in Council. The government has appointed an independent Telecommunications Policy Review Panel to develop recommendations on a long-term policy and regulatory framework for Canada. Part of the mandate of

⁴ OECD Reviews of Regulatory Reform, *Regulatory Reform in Canada – From Transition to New Regulation Challenges*, 2002.

that Panel is to review what the ILECs are calling “an out-of-date regulatory paradigm.” The Telecommunications Policy Review Panel is receiving submissions and holding public consultations on these issues and will be reporting to the Government at the end of this year.

11. The CRTC has also launched a public hearing to develop criteria for deregulation of local phone companies once competition is established in the local market and to consider an application by one of the Petitioners, Aliant Telecom, to deregulate local telephone service in 32 local exchanges in its operating territory. Since VoIP services are considered to be part of the local telephone market by both the CRTC and Aliant, this proceeding is dealing with precisely the same issues that are raised in the Petitions. It would be extraordinary and poor public policy for the Governor in Council to accede to the Petitioners’ requests to pre-judge the outcome of the CRTC proceeding, the record of which is already complete and which involved some 50 parties, representing all industry and consumer stakeholders.

12. The CCTA notes that when it comes to the Government intervening in CRTC decisions, the bar is set high to preserve the historical role of the CRTC as an independent quasi-judicial regulatory body and the role of Government as the policy maker. This point was made by a former Minister of Industry following the release of PC 2000-1053, denying a petition:

“...to ensure that competition continues, and that all Canadians have access – the regulatory environment has to be right. ...As a government, our role is to establish policy. We must leave the CRTC to regulate. When it comes to intervening in CRTC decisions, we must set the bar

high. If we don't, we undermine the independent regulatory authority. These decisions involve matters best left to the regulator."⁵

13. In this instance, the CRTC has not departed from Government policy – it has applied the statutory test for forbearance in section 34 of the Act and has found local competition to fall short of the level required to protect the interests of consumers.

14. At the same time, the CRTC has granted the ILECs unprecedented flexibility to offer their own VoIP services at a discount to their traditional telephone services, and to adjust their prices to meet competitive conditions. What the CRTC has prevented the ILECs from doing is driving out competition by pricing below cost or otherwise engaging in anti-competitive activity.

15. The bar for Government intervention and reversal of CRTC decisions is high, and the evidence justifying such an intervention is lacking in this instance.

16. For all of these reasons, elaborated on below, the CCTA opposes the Petitions and urges the Governor in Council to deny them.

I. Local telephone service is still a monopoly

17. The ILECs' Petition to the Governor in Council must be viewed in the context of an on-going campaign by the ILECs to prematurely deregulate their participation in the local telephone market.

⁵ Speaking Notes for the Honourable John Manley, Minister of Industry, CANARIE/NET 2000, 28 June 2000.

18. As the Governor in Council is aware, the Act established a regulatory regime for the CRTC to manage the transition of the Canadian telecommunications market from a predominantly monopoly structure to a competitive one. It provided a mechanism in section 34 of the Act for the CRTC to forbear from regulation: “Where the Commission finds as a question of fact that a telecommunications service or class of service is or will be subject to competition sufficient to protect the interests of users.” Conversely, section 34(3) of the Act states that the Commission “shall not make a determination to refrain... if the Commission finds that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of service.”

19. The test used by the CRTC to make these determinations, and the test advocated by the Commissioner of Competition, is whether the ILECs retain significant market power in this market. The usual measure for the presence of significant market power is whether, in the absence of regulation, the incumbent carrier could raise prices by a significant amount for a non-transitory period of time without loss of market share. If it can, the Act requires the Commission to continue to regulate the rates charged by the ILECs in order to protect consumers from anti-competitive pricing. This is a requirement of the Act – not a matter within the discretion of the CRTC.

20. To date, approximately 70% of the telecommunications market (by revenues) has been forborne from economic regulation pursuant to section 34. This includes the wireless market, the long distance market, the terminal market, the retail internet market, and much of the private line market. What remains subject to economic regulation is the local telephone market, where the ILECs retain their dominance and their market power.

21. Local telephone service has been a monopoly in Canada for over 100 years. Despite the fact that this segment of the telecommunications market was declared open to competition in 1997, the ILECs have remained overwhelmingly dominant.

22. In its latest release of statistics respecting the status of competition in Canadian telecommunications markets, the CRTC reported that the ILECs have retained 97% of the local residential telephone market.⁶ The ILECs also retained an 87% share of the local business market. The ILECs' share across both the residential and business markets ranged from highs of 100% in Saskatchewan, 99.8% in New Brunswick and 99.6% in Manitoba, to a low of 86% in Nova Scotia. The source of this data is the CRTC's Report to the Governor in Council on the *Status of Competition in Canadian Telecommunications Markets*, which was released on October 31, 2005. This updates the information contained in the CRTC's November, 2004 Report to the Governor in Council on the *Status of Competition in Canadian Telecommunications Markets*, which the Commission had relied upon for market data when it rendered its decision not to forbear from regulation of VoIP services in Decision 2005-28. This new data is very important since it demonstrates that there was very little change in competitors' market share between 2003 and 2004. In fact in three provinces, the ILECs' market share either increased or remained static.

23. Given that under Canada's *Competition Act*, the *Merger Enforcement Guidelines* and the *Abuse of Dominance Guidelines* use a 35% market share as a threshold for considering the presence of market power, one can readily discern that an average market share of 97% is cause for immediate concern. Indeed, in one of the cases cited in the *Abuse of Dominance Guidelines*, the

⁶ CRTC Report to the Governor in Council on the *Status of Competition in Canadian Telecommunications Markets*, 31 October 2005.

Competition Tribunal stated that where market shares exceed 80% it would require evidence of “extenuating circumstances, in general, ease of entry” to overcome a *prima facie* determination of control.⁷

24. The local telephone market has never been characterized by ease of entry. The CRTC has recognized this and has spent years trying to lower the barriers to entry. The most recent market data does nothing to dispel the fact that this market segment is still characterized by high entry barriers.

II. VoIP services are part of the Local Exchange Services Market

25. The ILECs’ Petition alleges that the CRTC erred in treating VoIP services the same as local exchange services for purposes of its forbearance analysis under section 34 of the Act. And yet, this is precisely what section 34, as well as competition law analysis in general, requires. If VoIP is a close substitute for local exchange service, then it must be considered as part of the local exchange market for both *Telecommunications* and *Competition Act* purposes.

26. Despite its many protestations to the Governor in Council to the effect that VoIP is dramatically different from local exchange service, Bell Canada has conceded in recent proceedings before the CRTC that the two services are close substitutes for each other. In an interrogatory response filed just 18 days after the Petition, in the context of the CRTC’s public proceeding on forbearance of local exchange services, Bell Canada stated unequivocally that it agreed with the Commission’s analysis regarding service definition:

⁷ Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc., (1997), 73 C.P.R. (3d) 1 (Competition Tribunal).

Bell Canada agrees with the Commission's finding in Telecom Decision 2005-28, Regulatory framework for voice communication services using Internet Protocol, that local VoIP services (asynchronous) and circuit-switched local exchange services (isochronous) are close substitutes and are therefore already part of the same relevant market.⁸

27. Bell Canada is clearly playing both sides of the fence on this issue. Before the CRTC, Bell is arguing that VoIP and local telephone service are in the same market, in order to advance Bell's forbearance agenda, while in the ILECs' Petition, Bell is arguing that the two are distinct services, in order to undermine the CRTC's Decision. Bell can't have it both ways.

28. Once it is conceded that local VoIP services are part of a market in which the ILECs collectively have a 97% share, the only possible argument to countermand the CRTC's decision to regulate local VoIP services would be a finding that there are no significant barriers to sustained entry into this market. The facts belie any suggestion that this might be the case in the local exchange market, where numerous companies have gone out of business trying to enter and the few competitors remaining have managed to garner less than three percent of the national residential market over an eight year period.

29. The barriers to entering and competing in the local exchange market include:

- Technical barriers including the development of standards for IP to IP interconnection and implementation of 9-1-1 and message relay service for IP-based service providers;

⁸ Bell(Xit)20Jul05-2 PN 2005-2, filed August 15, 2005.

- Financial barriers including the costs of infrastructure, equipment, technical and customer support staff, cost of capital and foreign ownership restrictions that affect the cost of capital;
- Regulatory barriers including CLEC obligations; access to support structures and rights of way;
- Behavioural barriers including customer inertia;
- ILEC incentives to engage in anti-competitive behaviour and lack of compliance with competitive safeguards; and
- Barriers to entry due to lengthy construction periods and high sunk costs.

30. Even with the introduction of VoIP services in 2004, 97% of Canadian consumers still rely on the local telephone companies for basic telephone service, according to the CRTC's latest data.

31. Speculation that new technology, coupled with cable entry into the local telephone market, may end the monopoly does not provide sufficient grounds for premature deregulation under section 34 of the Act. The telephone companies made the same argument eight years ago when local competition was introduced and virtually all the original competitors are now out of business. Concrete evidence of significant market share loss is required before there can be any assurance of viable competition.

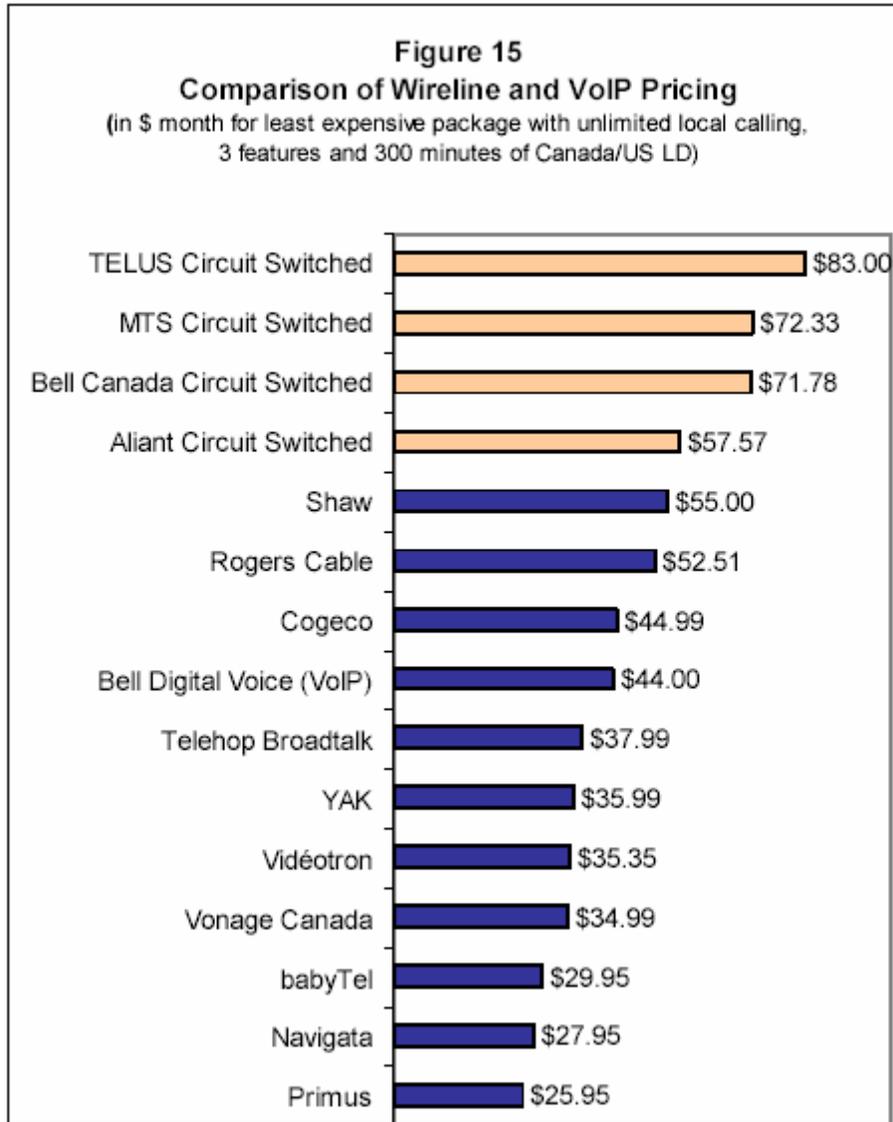
32. While the CCTA's members have every intention of trying to change the status quo over the next few years, the ILECs remain overwhelmingly dominant in most, if not all, local markets in Canada and there is no basis in law, economics or public policy to stop regulating what is still a *de facto* monopoly. It is simply premature to consider forbearance.

33. Interestingly, the CRTC's decision to treat VoIP services as close substitutes for local exchange services will actually hasten the deregulation of the local exchange market. Since VoIP is widely viewed as the service that will enable competitors to make inroads in local exchange markets, the CRTC's decision to treat the two services as close substitutes will ultimately lead to higher market shares by local service competitors, thereby justifying forbearance of the local exchange market at an earlier date than would otherwise be the case. Had the CRTC acceded to the ILECs' original arguments, that VoIP services were new services distinct from local exchange services, deregulation of VoIP would not ultimately lead to deregulation of the much larger local exchange market.

III. Consumers are receiving immediate benefits

34. Contrary to the ILECs' protestations, the CRTC's decision provides consumers with immediate benefits in the form of lower prices and innovative services, while protecting them from the repercussions of re-monopolization of the local market. The impact of the decision is already starting to be manifested with new entry by both facilities-based cable companies and VoIP service providers over the past eight months. Despite arguments to the contrary by the ILECs, the decision also opens the door to the ILECs offering their own VoIP services at prices that are significantly below the level charged for their wireline telephone services. Bell Canada, for one, has already started offering its own VoIP service bundle at a price that is lower than rivals Rogers and Cogeco. Far from being restrained from competing, Bell is aggressively countering the pricing and service offerings of its principal competitors.

35. The ILECs' own Petition demonstrates their ability to price VoIP services competitively. This is revealed in Figure 15 of Attachment 1 to the ILECs' Petition, which compares traditional wireline telephone pricing with VoIP pricing:



36. Bell Canada has priced its bundled VoIP offering below that of three of the four largest cable television companies, Shaw, Rogers and Cogeco, and above that of Vidéotron. The price for Bell's bundled VoIP offering is approximately 39% below Bell's price for wireline telephone service.

37. Moreover, the CRTC has granted Bell Canada an undisclosed range of rates at which to price its VoIP offering. This means that Bell can adjust its price within the permitted range in its discretion upon two days notice to the CRTC without further approvals, in order to respond to competitive conditions. Interim approval for the Bell Digital Voice service was received within 10 days of filing on an *ex parte* basis.

38. Bell's argument that interim approval is not reliable and that it hampers the company's marketing efforts is not credible. Bell is out in the market with its VoIP offerings and is not being held back by regulatory constraints. Consumers have access to this service at the new low rates approved by the CRTC. Moreover, once the service is in the market, any changes to the tariff would impact the retail rates paid by consumers on a prospective basis only.

IV. The CRTC Decision does not limit choice or innovation

39. Far from "hobbling" Bell's ability to respond to competition, the CRTC has been extremely accommodating to Bell and has granted it unprecedented pricing flexibility in the market. What the CRTC has not allowed Bell to do is to price below cost, or to use its dominant position in the local market to engage in anti-competitive conduct. This is what the ILECs' Petition is really about – the ability to drive their competitors out of the market and recapture the 3% market share that they have collectively lost.

40. This is also apparent from the Petition of the Government of Saskatchewan, which claims that SaskTel will be unfairly constrained in its ability to deliver next generation services to the public. Again, the facts belie this suggestion.

41. First, with 100% of the local telephony market at the end of 2003, and 100% at the end of 2004, Saskatchewan has the fewest competitive options and the strongest *de facto* monopoly in Canada. Any suggestion that it is held back by regulation is not credible.⁹ It is not possible to capture more than 100% of the market.

42. Second, it is consumers in Saskatchewan who are being disadvantaged by the lack of competition in that province. It is very telling that as the strongest monopoly in Canada, SaskTel has not introduced in its territory a VoIP service like Bell Canada's Bell Digital Voice service, which is priced at a significant discount to its wireline service. The reason for SaskTel's lack of initiative is obvious. With 100% of the local market, SaskTel has no incentive to give its customers a break on price. To do so would cut into its monopoly profits.

43. SaskTel and its owner, the Saskatchewan Government, would like to keep things this way. Granting their petitions would help to preserve the status quo in Saskatchewan and would therefore hurt consumers in that province.

44. SaskTel is not the only ILEC that is "talking the talk" but failing to "walk the walk". With the exception of Bell Canada, not a single ILEC has come forward

⁹ The fact that there are few competitive options in Saskatchewan is also confirmed by the absence of any local telephone number portability in that province.
<http://www.crtc.gc.ca/cisc/eng/Portable.HTM>.

with a competitive VoIP offering for the residential telephone market.¹⁰ The first VoIP service was offered in Canada in January of 2004 – some 20 months ago. Why weren't the ILECs in on the leading edge of VoIP technology? Why haven't they launched their own VoIP offerings?

45. The answer is the same for Telus, Aliant and Manitoba Tel as it is for SaskTel. These companies have no interest in giving customers new services at lower prices – unless they are at risk of losing a customer to competitors. If the ILECs were really as worried about VoIP as they claim, they would have jumped into the market earlier with their own VoIP offerings. The truth is that they would rather charge their customers higher prices using older technology for as long as possible. In fact, Bell recently proposed increases of up to 10% in the rates for business local service.¹¹ This is the monopoly way.

46. The reason that the ILECs claim they need more pricing flexibility is not to broadly deliver the benefits of lower prices but to price below cost in a discriminatory manner to just those customers who have or are about to switch to a competitor. The reason why the ILECs would like their marketing restrictions eliminated is so that they can respond in a strategic and targeted manner to competition, where it appears, while continuing to charge captive customers higher prices in the rest of the country. Consumer groups have indicated their opposition to such a strategy by the ILECs:

The Consumer Groups would be pleased if Bell Canada and the other ILECs were to reward loyal customers by reducing prices generally. But

¹⁰ TELUS launched a business VoIP service on November 17, 2003 called "IP-One" but has not yet launched a residential service.

¹¹ Bell Tariff Notice 6907.

that is not what they wish to do. Instead, they wish to engage in targeted pricing in an attempt to achieve perfect price discrimination. This does not reward loyal customers. It rewards customers who have switched or are about to switch to another service provider. All other consumers receive little, if any, benefit from this type of competition.¹²

47. This strategy is not a figment of the CCTA's imagination – it has been acknowledged publicly by Bell Canada to its investors. It was made clear by Bell Canada's President of Residential Services, Kevin Crull, on September 14, 2005:

“We will target customers and use [Bell Digital Voice] as a save tool for customers on their way out to a cable offering.”

...

“This isn't a big-band product introduction for Bell. This is the voice product of the future for us. It does give us [a service to] very tactically have the ability to respond to cable.”¹³

Mr. Crull also stated at the BMO Nesbitt Burns Conference on September 13, 2005 that: “Needlessly giving discounts is not something we are interested in doing.”

48. The ILECs view VoIP as a nuisance – not as a service to benefit their customers. They will use it in a limited way to fend off competition. They want the increased flexibility to go below cost and drive competitors out of the market in a selective manner. The ILECs are asking the Governor in Council to instruct

¹² Consumer Groups Reply Argument in CRTC Local Forbearance proceeding, October 7, 2005, para. 10.

¹³ National Post, September 14, 2005.

the CRTC to permit them to do this. The CRTC knows that this is not the way forward to a more competitive market. It would be a serious mistake for the Governor in Council to order the CRTC to allow this to happen. It would be a step backwards toward re-monopolization.

V. Restricting anti-competitive behaviour is good public policy

49. The CRTC's decision allows emerging competitive local telephone companies to get a toehold in the market by restraining the ILECs from abusing their market power. It thereby ensures that consumers get the benefit of a choice of service providers and lower prices from both the ILECs and new entrants.

50. At the same time, incumbent telephone companies are free to launch VoIP services and to offer discount pricing to consumers, as demonstrated by Bell Canada's new VoIP service. What the CRTC's decision does prevent is anti-competitive targeting by the ILECs of competitors' hard-won customers as part of a strategy designed to drive new entrants from the market and discourage others from entering.

51. There is no public policy justification for the ILECs pricing at below cost. With 97% of the market, the only purpose served by pricing below competitive levels would be to recapture the remaining three percent of the market and re-establish their monopoly. Such a result is contrary to the policy objectives in the Act and would ultimately hurt consumers. The only thing worse for consumers than a regulated monopoly is an unregulated one.

52. This point has not been lost on the Consumer Groups in the CRTC's *Local Forbearance* proceeding that is currently underway. The Consumer Groups favour a cautious approach to forbearance precisely because they will be the big losers if premature forbearance results in re-monopolization by the ILECs:

If the Commission waits longer than is strictly necessary to forbear, consumers may be denied some of the benefits of full, robust competition. This would be an unfortunate thing but not disastrous. On the other hand, if the Commission were to forbear too soon, competition could be seriously undermined.¹⁴

53. Under present circumstances, premature forbearance would undoubtedly result in the incumbent telephone companies acting to thwart competition by dropping prices where they face a competitor while maintaining them at higher levels in other areas where they still enjoy a monopoly. This could eliminate competitors before they get firmly established and ultimately hurt consumers.

54. Some patience is required. It has taken the CRTC twelve years to lower the very significant technical and economic barriers to local entry. What remains is to wait and see whether all of this very complex and difficult work will pay off in the form of increased competition. To dismantle price cap regulation and marketing safeguards prematurely would seriously jeopardize all that has been accomplished on the regulatory front since 1993.

¹⁴ Argument of the Consumer Groups, September 15, 2005, PN 2005-2.

VI. The CRTC's track record on deregulation is a good one

55. The CRTC's historical approach to forbearance has resulted in deregulation in all major segments of the telecommunications market except local telephony, where effective competition has yet to be established. The OECD looks to Canada as a model for the deregulatory process and has credited the CRTC with avoiding the pitfalls encountered by many other member States:

This report examines Canada's regulatory reform effort thus far and its impact on the performance of telecommunications markets. Canada is one of the leading OECD countries in terms of its performance in the telecommunication sector. Its best practice performance is largely due to its regulatory processes and frameworks and policy structures. The development of competition in the telecommunication service sector has shown good progress but, as is the case for other OECD countries, is still insufficient for local telephone service and local access and in the short distance leased line market. But many of the contentious regulatory problems that have marred performance in other OECD countries have been largely resolved in the Canadian telecommunication context. Low prices, good quality service and relatively rapid diffusion of new technologies characterise the Canadian telecommunication landscape. The regulatory framework is transparent and allows for full participation of all interested parties. Consensus building has been a key factor in the development and implementation of regulations.¹⁵

¹⁵ OECD Reviews of Regulatory Reform, *Regulatory Reform in Canada – From Transition to New Regulation Challenges*, 2002.

56. Calls by the Petitioners to follow the lead of other countries that do not share Canada's good track record should be viewed with scepticism. This is an area in which Canada is leading the world. Canada enjoys one of the highest broadband penetrations among industrialized countries and we stand first among the G-8 countries in deployment of this vital telecommunications infrastructure.

57. With new facilities-based competitors poised to enter the local telephone market using these facilities, and with a regulatory regime praised by the OECD as embodying "best practices", why would we want to emulate the regulatory practices of other countries – when we are doing better than they are? To do so would amount to a failure to recognize our own success.

VII. The petitions are in need of a reality check

58. **Smart Regulation:** The ILECs claim that the CRTC's decision is "inconsistent with Smart Regulation."¹⁶ In support of this argument, they cite the objectives of Industry Canada's 2002 Innovation Strategy. Yet the following is what Bell Canada told Industry Canada in 2002 regarding the CRTC's role in spawning an innovative telecommunications industry:

It is important to recognize that innovation is at the root of Canada's success, both in the telecommunications and broadcasting fields. And there is no doubt that the regulatory and legal framework for communications in Canada has played a key role in achieving this success.

¹⁶ ILEC Petition, at page 26.

In telecommunications, it is clear that Canada is doing much better than other countries in terms of quality, availability and price of both basic and advanced telecommunications services. One of the major reasons for this is the regulatory framework that the Government of Canada and the CRTC have put in place. This framework is designed to foster competition based on sound economic principles rather than regulatory interference with market forces. [emphasis added]¹⁷

59. In short, Bell Canada seems to have done a complete about face from praising the government's telecommunications policy direction and the CRTC's regulatory framework as key drivers of ICT development, to faulting them for alleged lapses in Canada's productivity and ICT in relation to the United States.

60. More recently, a slide from a January 2005 Bell Canada investor presentation stated that Canada's regulatory environment is "based on sound economic principles" and is a key differentiator for the company relative to telecommunications firms in the United States.¹⁸

61. Again, the ILECs are playing both sides of this issue as it suits their purpose. The ILECs' inconsistent positions place their credibility in serious doubt.

62. **Productivity Gap:** The ILECs have also suggested that Canada's productivity is lagging the U.S. and that this is in large measure due to our outdated telecommunications policies.

¹⁷ See <http://www.innovation.gc.ca/gol/innovation/site.nsf/en/in02239.html>, emphasis added.

¹⁸ BCE Presentation, slide 4 Smith Barney Citigroup Entertainment, Media and Telecommunications Conference, January 11, 2005.

63. In fact, there is no evidence to suggest that the productivity gap is being caused by lack of innovation or higher prices in the telecommunications sector. To the contrary, the evidence independently produced by the OECD demonstrates that Canada enjoys a combination of greater basic telephone and high-speed Internet penetration, with lower prices, than its major trading partners.

64. In Appendix 1 to this submission, the CCTA has assembled comparative data of Canada's telephone and high speed Internet penetration and pricing relative to the US, OECD countries and other developed countries. These data confirm Canada's enviable position. In comparison with the United States, for example, Canada's residential and business tariff service basket is less expensive than the U.S. baskets (Figures 1 and 2); Canada has more access channels per 100 inhabitants than the U.S. (Figure 3); Canada has higher broadband penetration than the U.S. (Figure 7), as well as lower unit costs (Figure 9); and while U.S. prices for international services are lower than Canada's (Figures 4 and 5), Canada's mobile phone rates are lower (Figure 6).¹⁹ In fact, prices of residential telephone services in Canada are so low that even the much-hyped "Skype" service is unable to offer any significant savings.²⁰ If there is a Canada-U.S. productivity gap, it is not caused by our telecommunications industry or policies.

65. **International Best Practices:** The ILECs have also argued that the CRTC's decision "runs counter to best practices internationally."

¹⁹ OECD Communications Outlook 2005 USD converted using Purchasing Power Parity.

²⁰ Ibid, Figure 6.1, Skype produces savings of only 1.1% compared to Canadian residential telephone rates.

66. The reality is that Canadian telecommunications policy and the CRTC's regulatory practices are cited by the OECD as setting the standard for "best practices" internationally. The CRTC is ahead of the curve - the rest of the world is trying to catch up. As found in the international analysis conducted for the CCTA by Lemay-Yates Associates, Canada is a leader in VoIP regulation and many countries are following a similar path.²¹

67. The reason that Canada was one of the first countries in the world to make a ruling on the regulatory treatment of VoIP is because higher broadband penetration by the Canadian cable television industry has made this an issue in advance of other countries. The countries cited by the ILECs in their Petition lag Canada in broadband penetration. Perhaps more importantly, they also lack a strong competitive provider of broadband services. These facts are borne out by the country comparisons shown in Tables 4 through 6 of the Lemay-Yates Associates report where all but four of the 18 countries had lower penetration rates and even fewer exhibited a strong competitor. VoIP regulation is not an issue in countries with either low broadband penetration or a monopoly provider of broadband services. It is an issue in Canada because we are running ahead of other countries in competitive broadband deployment.

68. The majority of broadband is provided over incumbent DSL in EU countries. This is significant because it limits the ability of consumers to substitute VoIP for an existing wireline service. In the EU ILECs have not been required to offer DSL as a stand-alone service (sometimes referred to as "naked DSL"), thereby preventing consumers from disconnecting their wireline service and relying only on VoIP over DSL. Since there are no strong competitive broadband networks as found in Canada, customers have no ability to replace

²¹ Lemay-Yates Associates Inc., "A Discussion of the Evolution of VoIP Regulation Worldwide", Appendix 2, page 3.

fixed wireline circuit-switched service with VoIP service.²²

69. However, the OECD has indicated in its most recent report, released in August of 2005, that other countries are also starting to turn their attention to this issue:

There has been heightened interest in Voice over Internet Protocol (VoIP) services in recent years. A number of regulators are beginning to examine how new emerging voice services using the Internet should be treated, and whether there should be regulatory forbearance allowing these services to develop unhindered in the market without being subject to the obligations required by voice services provided over public switched networks. ... Whereas in the early days when VoIP was emerging regulators for the most part viewed this service as a data service, there now appear to be a number of regulators who, using technological neutrality arguments, are ready to subject VoIP providers to the same obligations as PSTN operators. Nevertheless, there is recognition that treatment of VoIP will very much depend on how such services are classified and on the way in which they are provided in the market. PSTN operators using IP networks to transmit their traffic are likely to still be considered as public telecommunications operators, whereas other service providers without ubiquitous networks and without using PSTN numbering resources may likely be treated differently.²³

70. The report describing these developments in other OECD countries appears to closely track the CRTC's policy framework and considerations, contrary to what the ILECs would have the Governor in Council believe. While

²² http://www.telecommagazine.com/International/Article.asp?Id=AR_1083.

²³ OECD Communications Outlook 2005, at page 35.

the specific rules in each country are not necessarily identical, most OECD countries have adopted a technology-neutral approach to telecommunications services. The analysis by Lemay-Yates Associates also found that the technology-neutral principle has been applied consistently to VoIP services:

If there is one principle on which all regulators seem to agree, it is that telecommunications services should be regulated on a technology-neutral basis. Of all the countries highlighted in this Report, not one has chosen to regulate VoIP services differently than other voice services because it is based on a different technology platform than traditional circuit-switched Plain Old Telephone Service (POTS). Service attributes and usage by consumers are the key elements on which regulators, as well as competition tribunals, have based their assessment of VoIP services.²⁴

71. Canada's policy and regulatory framework embody the "best practices" that other countries are emulating, rather than the converse.²⁵ This was also found to be the case in the Lemay-Yates Associates report:

The CRTC was ahead of other regulators in identifying that VoIP is a substitute for traditional circuit-switched telephone services and in moving ahead to ensure adequate consumer protection, as far back as in the preliminary opinion outlined in Telecom PN 2004-2 in April 2004. Since then, other jurisdictions have joined the growing chorus that adequate consumer protection must be provided when consumers subscribe to VoIP

²⁴ Lemay-Yates Associates Inc., "A Discussion of the Evolution of VoIP Regulations Worldwide", Appendix 2, page 4.

²⁵ OECD Communications Outlook 2005, Table 2.9.

services. These include the US, Hong Kong and the European Union. Hong Kong refers to the CRTC in explaining its decision to impose free access to emergency services for Class 1 and Class 2 VoIP service providers “if they assign their customers with numbers from the Hong Kong Numbering Plan”.²⁶ [footnotes omitted]

72. The analysis by Lemay-Yates Associates also points out that some differences in approach are due to significant differences in the structure of local voice markets. In Europe, local calling services can be subscribed to as a separate service from access to the public-switched telephone network. Market assessments and resulting regulatory treatment take into account loss in call revenues even while the incumbent telephone companies retain a monopoly position in the provision of access.

73. The ILECs are also fond of citing the Australian approach to telecommunications as a regulatory model that Canada should emulate. Again, this needs to be subjected to a reality test.

74. There is little in the Australian model to recommend it to Canada. From the point of view of outputs, the Australian telecommunications industry is not in the same league as Canada. As indicated in Figures 1 and 2 of Appendix 1, the OECD ranks Australia last among the countries in the chart in terms of both residential and business tariff baskets – with prices far above those that prevail in Canada; Australia trails Canada in access channels per 100 inhabitants (Figure 3); it has higher international charges than Canada (Figures 4 and 5); it has higher mobile phone charges (Figure 6); it has fewer broadband subscribers per 100 inhabitants than Canada (Figure 7); and it has significantly higher high-

²⁶ Lemay-Yates Associates Inc., “A Discussion of the Evolution of VoIP Regulation Worldwide”, Appendix 2, page 4.

speed Internet rates than Canada for significantly lower bandwidth offerings (Figure 8 and 9).

75. In these circumstances, the only conceivable reason for following the Australian regulatory model would be because it entails less regulation of the dominant carrier. From a consumer's perspective, or from the perspective of national productivity, the Australian model produces poor results compared with the Canadian model. This simply substantiates with empirical data the OECD's previous reports citing Canada for "best practices" in the telecommunications regulatory arena.

76. **Anti-competitive Behaviour:** Regulatory safeguards are necessary to prevent ILECs from using their incumbency advantages to price below competitive levels and engage in targeted win-back promotions. ILECs would engage in this type of anti-competitive behaviour in areas where they face emerging competition to eliminate new entrants, deter entry and expansion and undermine investment in competitive broadband networks.

77. CCTA has asked economic experts to comment on the likelihood of anti-competitive behaviour in the local exchange market. These economists have concluded that predatory behaviour is likely and rational when the effect is to eliminate and prevent entry and to preserve market share. With such a dominant share of a highly profitable industry, ILECs are determined to prevent the development of a competitive market and will use every available means to do so.

78. CCTA's economists have suggested that an important feature of the local exchange market is the ability of ILECs to target specific customers. In the analysis prepared for CCTA, Dr. Gerald Brock explains that the economic theory

of predation has developed to recognize several credible models including financial market predation, reputation effects, and signalling models.²⁷ Dr. Brock concludes the following:

[T]he ability to target narrow groups of customers increases the rational incentive to engage in predatory pricing. With targeting, the incumbent firm does not have to incur losses across its entire market while it attempts to discourage competitors, but only incurs losses on the narrowly targeted customers. In a world of easy entry to all segments of the market, targeting is ineffective because the competitor simply shifts to serving the more profitable non-targeted segment of the market. However, in telecommunication and other real-world markets, entrants must incur substantial customer-specific costs (such as marketing, order entry, and costs of service hook-up). If the incumbent convinces those customers to switch back to its service, the customer-specific sunk costs cannot be recouped by the entrant and therefore the entrant cannot easily shift from serving the targeted customers to serving the non-targeted customers.... In a world of asymmetric information and/or the ability to target price cuts to specific groups of customers, predatory pricing can be a rational long-run profit maximizing strategy.

79. Dr. Brock stresses the importance of distinguishing between actual competition and predatory pricing behaviour designed to eliminate competitors, which can be “a rational long-run profit-maximizing strategy.” CCTA suggests that anti-competitive targeting by ILECs is the most rational, effective and likely strategy particularly in the early stages of competitive entry. Of particular interest to the circumstances in the local telephone market is the fact that the ILECs

²⁷ Dr. Gerald W. Brock, “The Economic Theory of Predatory Pricing”, Appendix 3.

serve and can target 100% of all customers. There simply is no segment of the market that can escape the reach of the ILECs' ability to target.

80. The ease with which ILECs could engage in this anti-competitive behaviour was explained by Dr. Thomas Ross, one of the economic experts appearing on behalf of CCTA before the CRTC in the proceeding on local forbearance:

But if you can predate by targeting very selectively, targeting geographically or even finding the individual people that are trying to leave, so you don't offer lower prices to the whole market ...then predation becomes a much less costly strategy and these theories have, I think, greater currency.²⁸

81. Dr. Ross concurs with Dr. Brock's opinion about the importance of targeting. Targeting – which is not very costly but highly effective – means that traditional predation theories based on recoupment are less relevant and the assumptions necessary to support these theories do not hold true in the local services market. To “recoup”, the ILECs need only protect their market position. As Dr. Ross explains, “you'd rather have a whole of a profitable market than only a fraction of a profitable market.”²⁹

82. The ability to target and the effectiveness of this strategy demands that the provision of VoIP services be subject to the same regulatory treatment as other local exchange services. If ILECs can price VoIP services below competitive levels or offer a significantly discounted stand-alone or bundled VoIP

²⁸ Dr. Thomas W. Ross, CRTC public consultation on Local Forbearance, Transcript Volume 3, September 28, 2005, para. 5570.

²⁹ Dr. Thomas W. Ross, CRTC public consultation on Local Forbearance, Transcript Volume 3, September 28, 2005, para. 5578.

service to win back every customer that makes a decision to switch, it will be impossible for competitive entry to develop on a sustainable basis in any part of Canada. Forbearing from the regulation of VoIP services would ensure that ILECs have a weapon in their arsenal to prevent the development of competition.

83. According to the ILECs, the CRTC's decision to impose regulatory safeguards on them was based on "unfounded fears of anti-competitive behaviour."

84. Contrary to the ILECs' contention, the CRTC's competitive safeguards are not based on unfounded fears of anti-competitive behaviour. They were formulated in response to actual instances of anti-competitive behaviour over a period of years. The regulatory safeguards imposed by the CRTC (floor prices, bundling rules, win-back and promotions rules) were originally promulgated in response to complaints about abuse of dominance by the ILECs. The CRTC investigated these complaints, found them to be substantiated, and formulated regulatory safeguards in order to ensure that the anti-competitive conduct would not continue. If one examines the various attempts by the ILECs to evade these rules through loopholes or a narrow construction of their intent, one would find that in many cases, the CRTC had to revisit the issue more than once and fill the loopholes discovered by the ILECs. The evolution of the CRTC's safeguards was summarized in its submission to the Telecom Policy Review Panel.

While new entrants had to penetrate a market already one hundred percent served by the ILECs, the ILECs could target their marketing efforts in respect of individual customers that chose to leave them, thereby often reversing a customer's decision to switch by offering them a new deal. This conduct, which was impeding the development of a competitive market, prompted the Commission to implement a number of regulatory

safeguards designed to restrict the ILECs' retaliatory marketing efforts until competitors managed to get a foothold in the market.³⁰

85. The ILECs' conduct in exploiting their dominance over the years provides full justification of the CRTC's approach when significant market power is found to exist. The opportunities for the ILECs to exploit their dominance arise on such a frequent basis, and have such a potentially damaging impact on their competitors, that one cannot afford to wait for the ILECs to re-offend. To do so after the damage is done is simply too late.

86. **The Wireless Precedent:** The ILECs have also pointed to the wireless market as the appropriate model to apply to VoIP services. According to the ILECs, all of the same factors that led the CRTC to conclude that VoIP is functionally equivalent to, and should be regulated in the same manner as, traditional telephone service, apply even more so to wireless service.³¹

87. Again, there is need for a reality check. In fact, Statistics Canada reports that only a very tiny percentage of cellular/PCS customers use their wireless phones as a substitute for local wireline telephone service. Moreover, between 2003 and 2004, this number did not change dramatically, only creeping up to 2.7% nationally by the end of 2004.

88. The following excerpt is from the Argument of the Commissioner of Competition which was filed with the CRTC in the *Local Forbearance* proceeding as recently as September 15, 2005. The Commissioner summarized the evidence on this issue in the following manner:

³⁰ CRTC submission to the Telecom Policy Review Panel, August 15, 2005, para. 75.

³¹ ILEC Petition, at page 17.

The Bureau is not aware of any decisions or studies on the record in this proceeding, which conclude that wireless is in the relevant market for local exchange services. Aliant cites Statistics Canada data that shows that in December 2004, 4.1% of Halifax households were wireless only. For Nova Scotia as a whole, the number is 2.5% and for Prince Edward Island, it is 2.4%. Aliant is not aware of any other data on wireless only households within its operating territory. Aliant's economic expert states that wireless services are an effective substitute "for some customers" but wireless could not necessarily be expected to limit the ability of a wireline monopolist from exercising market power.³²

89. The fact that wireless service did not start out as a substitute (in terms of price, quality and functionality) for local telephone service also means that the ILECs did not start out with 100% of the market. This is different in the VoIP market, where the product is a close substitute for local telephone service and the ILECs enjoy a 97% share of the relevant product market.

90. In addition to the fact that the vast majority of Canadians do not use wireless communications as a substitute for local telephone service, the ILECs have mischaracterized the regulatory model applied to wireless by Industry Canada and the CRTC when wireless services were first introduced. The decision not to regulate wireless services was tied to the structural separation of the corporate entity offering wireless service from the ILEC itself. The ILECs were given an option to offer cellular service out of a separate arms-length subsidiary on an unregulated basis, or to offer it out of the ILEC on a regulated basis subject to price regulation. When offering the service out of a separate subsidiary, the ILEC was prohibited from jointly marketing wireless services or

³² Aliant(Bureau)20July05-33 PN 2005-2; Aliant(MTS Allstream)20July05-106 PN 2005-2; Aliant(CRTC)20July05-803(b) PN 2005-2.

providing other services at preferential rates to its affiliate. Industry Canada also ensured that the ILECs could not enter the wireless market until appropriate non-discriminatory access arrangements were made available to the competing licensee on terms approved by the CRTC.

91. The wireless model was therefore a far cry from what the ILECs are proposing in their Petition. In the case of VoIP services, the ILECs are not proposing to offer them out of a separate arms-length affiliate and they are not proposing restrictions on joint marketing or preferential arrangements.

92. If there is any doubt that wireless service did not start off as a substitute for wireline telephone service, one only needs to consider the price of terminals back in 1985. At around \$2000 per handset, the service was not an affordable option for most Canadians, and was certainly not a substitute in economic or quality terms for local telephone service.

93. As indicated by the Commissioner of Competition, even 20 years later, with much lower prices, wireless service is still only used as a substitute for local wireline service by a very small number of Canadians. The lack of flat rate pricing, the absence of local number portability and the poorer quality of wireless service are still viewed as obstacles to its broad-based substitutability for local telephone service.

VIII. Proceedings are already underway that address all of the issues under appeal

94. The government has appointed an independent Telecommunications Policy Review Panel to develop recommendations on a long-term policy and regulatory framework for Canada. Part of the mandate of that Panel is to review

what the ILECs are calling “an out-of-date regulatory paradigm.” The Telecommunications Policy Review Panel is already receiving submissions and holding public consultations on these issues and will be reporting to the Government at the end of this year. It would be a huge mistake to prejudge or pre-empt the outcome of that public policy review by reversing the CRTC’s Decision. It would also be bad public policy to do so. We are still operating under the *Telecommunications Act* and, until that Act is amended, it must be applied. Section 34 of the Act contains statutory tests for when forbearance from regulation is justified. The CRTC has applied those tests in a logical manner consistent with the requirements of the Act and in accordance with methodology advocated by the Competition Bureau, and has rendered its decision accordingly.

95. The CRTC has also launched a public hearing to develop criteria for deregulation of local telephone service once competition is established in the local market and to consider an application by one of the Petitioners, Aliant Telecom, to deregulate local telephone service in 32 Nova Scotia exchanges. Since VoIP services are considered to be part of the local telephone market by both the CRTC and Aliant, this proceeding is dealing with precisely the same issues that are raised in the Petitions. It would be both extraordinary and poor public policy for the Governor in Council to accede to the Petitioners’ requests to pre-judge and pre-empt the outcome of the CRTC proceeding, the record of which is already complete and which involved some 50 parties, including the Commissioner of Competition.

96. Part of the CRTC’s Decision is also before the Federal Court of Appeal pursuant to an application for leave to appeal filed by the ILECs. The ILECs have sought rulings by the Court striking down those parts of the CRTC’s decision dealing with “winback” restrictions. Again, it would be inconsistent with prior practice for the Governor in Council to rule on these issues in advance of a

Court ruling.

IX. Conclusion - the bar is set high for intervention

97. Finally, the CCTA notes that when it comes to the Government intervening in CRTC decisions, the bar is set high to preserve the historical role of the CRTC as an independent quasi-judicial regulatory body and the role of Government as the policy maker. This point was made by a former Minister of Industry, following the release of PC 2000-1053, denying a petition:

“...to ensure that competition continues, and that all Canadians have access – the regulatory environment has to be right. ...As a government, our role is to establish policy. We must leave the CRTC to regulate. When it comes to intervening in CRTC decisions, we must set the bar high. If we don’t, we undermine the independent regulatory authority. These decisions involve matters best left to the regulator.”³³

98. In this instance, the CRTC has not departed from Government policy – it has applied that policy. The CRTC has applied the statutory test embodied in section 34 of the Act and has found that the evidence does not justify forbearance of VoIP services at this point in time. In these circumstances, the Act requires the CRTC to keep regulating the ILECs’ services.

99. The wording of subsections 34(3) and (4) of the Act is clear that a determination as to whether competition is sufficient to protect the interests of users is an issue of fact. The subsections expressly state that this is the case. The legislation establishes the test and dictates the result based on this finding of

³³ Speaking Notes for the Honourable John Manley, Minister of Industry, CANARIE/NET 2000, 28 June 2000.

fact. It is unusual for the Governor in Council to be asked to reverse the CRTC on a finding of fact, and it would not be good public policy for the Governor in Council to accede to the Petitioners' requests to do so in this instance. This is not a policy dispute. The Petitioners are asking the Governor in Council to substitute its judgement on a factual issue for that of the CRTC. The CRTC had an extensive public proceeding as well as a public hearing to consider this issue and it has rendered a well-reasoned decision. This type of factual determination should only be reversed on the soundest of evidence. Such evidence is clearly lacking in this instance.

100. At the same time, the CRTC has granted the ILECs unprecedented flexibility to offer their own VoIP services at a discount to their traditional telephone services, and to adjust their prices to meet competitive conditions. What the CRTC has prevented the ILECs from doing is driving out competition by pricing below cost or otherwise engaging in anti-competitive activity.

101. The bar for Government intervention and reversal of CRTC decisions is high, and the evidence justifying such an intervention is lacking in this instance.

102. For all of these reasons, the Petitions should be denied, and the Governor in Council should allow the other concurrent public processes to run their course before the CRTC, the Telecommunications Policy Review Panel, and the Federal Court of Appeal.

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