



## Telecom Public Notice CRTC 2005-2

Ottawa, 28 April 2005

### Forbearance from regulation of local exchange services

Reference: 8640-C12-200505076 and 8640-A53-200403329

*With this Public Notice, the Commission initiates a proceeding and invites comments on a framework for forbearance from the regulation of residential and business local exchange services. The Commission also invites comments on the appropriateness of a transitional regime that could provide incumbent local exchange carriers with more regulatory flexibility prior to forbearance through: 1) lessening or removing competitive safeguards on promotions and the no-contact restriction under the winback rules; 2) permitting the ex parte filing of tariff applications for promotions; and 3) the waiving of service charges for residential local winbacks. Further, the Commission invites comments on Aliant Telecom Inc.'s Part VII application for forbearance from regulation of residential wireline local services, filed on 7 April 2004.*

#### Background

1. The Commission has, in a gradual and orderly manner, opened up monopoly-based telecommunications markets to competition. Subsequent to the introduction of competition, the Commission refrained from regulation when it found there was sufficient competition. Examples of services and markets for which the Commission has forborne include: terminal equipment,<sup>1</sup> mobile wireless,<sup>2</sup> toll,<sup>3</sup> interexchange private lines,<sup>4</sup> retail Internet,<sup>5</sup> wide area networking,<sup>6</sup> and certain data services.<sup>7</sup>
2. In *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), the Commission found increased competition in the local telecommunications market to be in the public interest, and determined that restrictions on entry into local markets should be removed. In *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), the Commission recognized that emerging competition was stimulating innovation in services and prices, and increasing market revenues to the benefit of both consumers and the telecommunications industry. In that Decision, the Commission established the framework for competition in the local services market.

<sup>1</sup> *Forbearance - Sale of terminal equipment by Canadian carriers*, Telecom Decision CRTC 94-14, 4 August 1994.

<sup>2</sup> *Regulation of wireless services*, Telecom Decision CRTC 94-15, 12 August 1994, *Regulation of mobile wireless telecommunications services*, Telecom Decision CRTC 96-14, 23 December 1996, and *NBTel Inc. - Forbearance from regulating cellular and personal communications services*, Telecom Decision CRTC 98-18, 2 October 1998.

<sup>3</sup> *Forbearance - Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997.

<sup>4</sup> *Stentor Resource Centre Inc. - Forbearance from regulation of interexchange private line services*, Telecom Decision CRTC 97-20, 18 December 1997.

<sup>5</sup> *Forbearance from retail Internet services*, Telecom Order CRTC 99-592, 25 June 1999.

<sup>6</sup> *Forbearance granted for telcos' wide area network services*, Order CRTC 2000-553, 16 June 2000.

<sup>7</sup> Telecom Order CRTC 96-130, 19 February 1996, and Telecom Order CRTC 99-253, 19 March 1999.

3. The Commission also recognized in Decision 97-8 that efficient and effective competition would be best achieved through facilities-based competitive service providers.
4. In monitoring the Canadian telecommunications industry, the Commission has found, as set out in its annual *Report to the Governor in Council: Status of Competition in Canadian Telecommunications Markets – Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, that competitors have not gained a substantial market share with respect to local telecommunications services since the issuance of Decision 97-8. Local competitors have, however, made some inroads primarily in local business urban markets and to some degree in local residential urban markets in some parts of the country.
5. On 7 April 2004, Aliant Telecom Inc. (Aliant Telecom) filed a Part VII forbearance application (Aliant Telecom's forbearance application) with the Commission, requesting forbearance from the regulation of specified residential wireline local services in 32 exchanges. The company cited substantial competition in its territory by Bragg Communications Inc., operating under the brand name of EastLink.
6. Aliant Telecom also requested approval of expedited relief from some competitive safeguards pending completion of the Commission's consideration of its forbearance application. The company requested that the Commission remove the 12-month no-contact restriction under the winback rules,<sup>8</sup> suspend the moratorium on promotions involving local wireline services,<sup>9</sup> reinstate the *ex parte* filing of tariff applications for promotions, and waive service charges for residential local winbacks in the 32 exchanges.
7. Having considered comments from interested parties, in a letter dated 16 August 2004, the Commission denied Aliant Telecom's request for a separate expedited proceeding to consider its requested relief from some competitive safeguards. The Commission determined that such a request would be considered at the same time as Aliant Telecom's request for forbearance from the regulation of local services. The Commission noted that both of Aliant Telecom's requests were premised on the view that an exchange was the appropriate geographic market to consider in making determinations regarding local services forbearance and removal of competitive safeguards. Accordingly, the Commission determined it could not consider Aliant Telecom's request for relief from such safeguards in an expedited proceeding as Aliant Telecom had proposed.
8. Subsequently, the Commission determined in *Promotions of local wireline services*, Telecom Decision CRTC 2005-25, 27 April 2005 (Decision 2005-25) that incumbent local exchange carrier (ILEC) promotions involving local wireline services are permitted subject to a number of competitive safeguards. In that Decision, the Commission also stated that the criteria under which the competitive safeguards on promotions could be lessened or removed should be reviewed in this proceeding.

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<sup>8</sup> In *Call-Net Part VII Application - Promotion of local residential competition*, Telecom Decision CRTC 2004-4, 27 January 2004, the Commission extended the no-contact period from three months to twelve months.

<sup>9</sup> In *Review of winback promotions*, Telecom Public Notice CRTC 2003-1, 15 January 2003, the Commission suspended consideration of incumbent local exchange carriers' applications for winback promotions and other promotions that have the effect of targeting customers of competitors. In *Review of promotions*, Telecom Public Notice CRTC 2003-1-1, 13 March 2003, the Commission suspended consideration of applications for all incumbent local exchange carrier promotions.

9. The Commission considers that there is a need to establish a framework for local forbearance, including clear criteria that it can use to determine when it is appropriate to forbear from regulating local exchange services. The Commission also considers that there is a need to determine whether there should be a transitional regime that provides ILECs with more regulatory flexibility prior to forbearance and, if so, what should be the appropriate criteria under which: 1) the competitive safeguards on promotions specified in Decision 2005-25 and the no-contact restriction under the winback rules should be lessened or removed; 2) the *ex parte* filing of tariff applications for promotions should be permitted; and 3) the waiving of service charges for residential local winbacks should be permitted.
10. The Commission intends, in this proceeding, to use these criteria to decide upon Aliant Telecom's forbearance application, and, in future proceedings, to use them to decide upon future applications for forbearance from regulation of local exchange services.

### **Analytical framework for forbearance from the regulation of telecommunications services**

11. Section 34 of the *Telecommunications Act* (the Act) states:

(1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

12. Section 47 of the Act provides that the Commission shall exercise its powers and perform its duties under the Act with a view to implementing the Canadian telecommunications policy objectives, set out in section 7 of the Act, and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27 of the Act. In addressing the telecommunications policy objectives, the Commission will consider and balance the interests of customers, ILECs, and competitors.

13. In Decision 94-19, the Commission adopted the concept of market power, commonly used in economics and in competition law, as the standard by which to determine whether a market is, or is likely to become, competitive. Under this approach, the determination of whether or not to forbear from regulating a service or class of services is based on a determination of the relevant market in which the service(s) is/are offered and on whether a firm has market power in that market.
14. The Commission considers that a market is not sufficiently competitive if a firm possesses substantial market power. Market power may be assessed by examining three factors: market shares, demand conditions that affect responses of customers to a change in price for a product or service, and supply conditions that affect the ability of competitors in the market to respond to a change in the price of a product or service. High market share is a necessary but not sufficient condition for market power; other factors must be present to enable a firm with market power to act anti-competitively.
15. Other indicators of a sufficiently competitive market may be taken into consideration. These include evidence of rivalrous behaviour, such as falling prices; vigorous and aggressive marketing activities; or an expanding scope of competitor activities in terms of products, services, and geographic boundaries.
16. The Commission's process for assessing the degree of competition in telecommunications service markets is outlined in Decision 94-19.
17. The first step is the identification of the relevant market. The relevant market is the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase. The definition of the relevant market is based on the substitutability of the services in question.
18. The next step in the analysis involves determining whether a firm has market power with respect to the relevant market. As indicated in Decision 94-19, there cannot be sustainable competition in a market in which a firm possesses substantial market power. Market power can be demonstrated by the ability of a firm to raise or maintain prices above those that would prevail in a competitive market.
19. The last step in the analysis is to determine whether, and to what extent, forbearance should be granted.

### **Scope of the proceeding**

20. In this proceeding, the Commission will determine the framework, including the criteria, for forbearance from the regulation of residential and business local exchange services. The Commission will also determine whether there should be a transitional regime that provides ILECs with more regulatory flexibility prior to forbearance and, if so, what should be the criteria under which: 1) the competitive safeguards on promotions specified in Decision 2005-25 and the no-contact restriction under the winback rules should be lessened or removed; 2) the *ex parte* filing of tariff applications for promotions should be permitted; and 3) the waiving of service

charges for residential local winbacks should be permitted. In this proceeding, the Commission will also apply this framework and these criteria to make a determination on Aliant Telecom's forbearance application.

### **Framework for forbearance**

21. This proceeding will focus on the framework for forbearance from the regulation of local exchange services. In particular, the Commission invites parties to comment on the following issues: 1) the local exchange services that should be within the scope of this proceeding; 2) the relevant market(s) for forbearance from the regulation of local exchange services, taking into consideration both services and geographic areas; 3) the criteria to be applied to determine whether the relevant market(s) is/are sufficiently competitive for forbearance; 4) the appropriate scope of the Commission's forbearance from its powers and duties; 5) post-forbearance criteria and conditions; and 6) the process for future applications for forbearance from the regulation of local exchange services.

#### ***1. What local exchange services should be within the scope of this proceeding?***

22. The Commission considers that local exchange services used by residential and business customers to access the public switched telephone network (PSTN) are within the scope of this proceeding, as are the service charges and any features related to the provision of these services. The scope of this proceeding does not include: public telephone services, customer-specific arrangements (CSAs) and bundles that do not include local exchange services, point-to-point services, operator services, mobile and exchange radio services, and competitor services.
23. The Commission notes that some local exchange services that are within the scope of this proceeding use underlying access and transport services. An example of such a service is Megalink, sometimes referred to as ISDN-PRI, a local exchange service that requires components of Digital Network Access (DNA) service. The Commission considers that the dependencies between these underlying access and transport services and local exchange services are relevant to this proceeding.
24. As part of the process for finalizing the list of local exchange services to be considered in this proceeding, those ILECs who are made parties to this proceeding are to identify each tariffed local exchange service that they consider to be within the scope of this proceeding, including justification for why each service should be within the scope of this proceeding. In addition, with respect to each service identified, each ILEC is to indicate whether that service is dependent on any underlying service. As part of this proceeding, parties are invited to comment on the list of services provided by the ILECs, and the Commission will determine the final list of local exchange services that will fall within the scope of this proceeding.

#### ***2. What is/are the appropriate relevant market(s) for forbearance from the regulation of local exchange services, taking into consideration both services and geographic areas?***

25. Parties are invited to provide their views, with supporting rationale, with respect to the appropriate service and geographic components for each relevant market.

26. In its forbearance application dated 7 April 2004, Aliant Telecom suggested the exchange as the appropriate geographic area for the purpose of forbearance. Other possibilities include, but are not limited to, operating territory, province, or local calling area.

***3. What are the appropriate criteria to be applied to determine whether the relevant market(s) is/are sufficiently competitive for forbearance?***

27. Parties are invited to address the criteria for determining market power set out in Decision 94-19 and other criteria that would demonstrate that the statutory requirements of section 34 of the Act are met.
28. In Decision 94-19, the Commission's key concern was whether any firm held sufficient market power within a relevant product or service market of a specific geographic area that prevented establishment of sustainable competition. Parties are invited to submit their views, with supporting rationale, as to the appropriate quantitative and qualitative criteria that would demonstrate that competition is, or will be, sufficient to protect the interests of users, and that a determination by the Commission to refrain from exercising its powers and/or performing its duties under the Act in relation to a telecommunications service or class of services would not be likely to impair unduly the establishment or continuance of a competitive market for a service or class of services.

***4. What Commission powers and duties should be forborne?***

29. Pursuant to section 34 of the Act, the Commission can forbear in whole or in part, and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31. Parties are invited to submit their views, with supporting rationale, as to which powers and duties should be forborne and to what extent and with what conditions, if any. Parties should address whether the extent of forbearance should vary depending on market circumstances.
30. The Commission has, under these sections of the Act, established conditions of service between ILECs, competitive local exchange carriers, resellers, and other competitive telecommunications service providers and their customers. These conditions establish rights and obligations among these various parties. For example, the ILECs' Terms of Service include safeguards with respect to deposits and suspension or termination of tariffed services. As well, there are quality of service standards that the ILECs have to meet in providing certain tariffed services to competitors and retail customers. Other conditions include, for example, the Multiple Dwelling Unit access condition and conditions concerning the confidentiality of customer information. Parties are invited to submit their views, with supporting rationale, as to the extent, if any, such rights and obligations associated with the local exchange services of the various service providers should be retained if the Commission were to forbear.

***5. What post-forbearance criteria and conditions should apply and why?***

31. Parties are invited to submit their views, with supporting rationale, on the post-forbearance criteria, conditions, or safeguards, if any, that should be put in place at the time of forbearance. These could include, for example, triggers which, if met, would result in either automatic de-forbearance or a review of the appropriateness of ongoing forbearance. Such triggers could include rate relationships, rate increases, changes in market share or the end of a pre-determined period of time.

**6. What is the appropriate process for future applications for forbearance from the regulation of local exchange services?**

32. Parties are invited to make submissions on the appropriate process for considering future forbearance applications for local exchange services, taking into account the need to demonstrate how the criteria to be set out in the Decision resulting from this proceeding have been met. Parties should demonstrate how their proposed processes would ease regulatory burden while ensuring that regulation, where required, is efficient and effective.

**Should there be a transitional regime that provides ILECs with more regulatory flexibility prior to forbearance?**

33. Parties are invited to submit their views, with supporting rationale, on whether there should be a transitional regime that provides ILECs with more regulatory flexibility prior to forbearance and, if so, under what circumstances should the Commission: 1) lessen or remove the existing competitive safeguards for promotions defined in Decision 2005-25 and the no-contact restriction under the winback rules, 2) permit the *ex parte* filing of tariff applications for promotions, and 3) permit the waiving of service charges for residential local winbacks. Parties are invited to make submissions on the appropriate process for considering future applications for regulatory flexibility, taking into account the need to demonstrate how the circumstances to be set out in the Decision resulting from this proceeding have been met. Parties should demonstrate how their proposed processes would ease regulatory burden while ensuring that regulation, where required, is efficient and effective.

**Aliant Telecom's forbearance application**

34. Considering the issues identified above, parties are invited to provide comments on Aliant Telecom's forbearance application, including its request to remove the competitive safeguards identified in its application. Aliant Telecom may file updates to its forbearance application.

**Other issues**

35. Parties are invited to provide comments on any other matters within the scope of this proceeding.

**Procedure**

36. Aliant Telecom, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, Société en commandite Télébec, and TELUS Communications Inc., including the former TELUS Communications (Québec) Inc. (the telephone companies), are made parties to this proceeding.
37. Other parties who plan to participate in this proceeding are required to notify the Commission of their intention to do so by **4 May 2005** (the registration date) and to provide their contact information. They should do so by contacting the Secretary General by mail at CRTC, Ottawa, Ontario, K1A 0N2, by fax at (819) 994-0218 or by e-mail at [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca). They are to indicate in the notice their e-mail address where available. If such parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard copy filings.

38. The Commission will issue, as soon as possible after the registration date, a complete list of parties and their mailing address (including their e-mail address, if available), identifying those parties who wish to receive disk versions.
39. The telephone companies are to file with the Commission, serving a copy on all parties, by **13 May 2005**, their lists of tariffed local exchange services that they consider to be within the scope of this proceeding. For each service, the telephone companies are to provide details including the following: tariff number and website link directly to the tariff, item number, service name, service description, and basket to which the service is assigned. Additionally, if the service is dependent on another service, the telephone companies are to provide a description of the nature of the dependency and identification of the underlying service, including: tariff number and website link directly to the tariff, item number (if tariffed), service name, and service description. The telephone companies are requested to file this information in a Microsoft Excel spreadsheet (current version), formatted with the following columns for each service:
- Tariff number and website link directly to the tariff;
  - Item number;
  - Service name;
  - Service description;
  - Basket to which the service is assigned; and
  - Dependency on underlying service(s), if applicable, specifying for each such service:
    - Tariff number and website link directly to the tariff (if tariffed),
    - Item number (if tariffed),
    - Service name,
    - Service description, and
    - Nature of the dependency.

Companies are requested to use 'Not Applicable' (N/A) to indicate areas that are not relevant.

Telephone companies are not required to file the above information with respect to CSAs and bundles which include local exchange services.

40. Aliant Telecom is to file with the Commission, serving a copy on all parties, by **18 May 2005** any updates to its forbearance application.
41. Parties are invited to comment, serving a copy on all parties, on the lists of tariffed local exchange services provided by the telephone companies pursuant to paragraph 39 by **20 May 2005**.



42. The Commission will issue a determination on the final list of services which are within the scope of this proceeding as soon as possible.
43. Parties are invited to file written comments with the Commission with respect to the issues described in this Public Notice, serving a copy on all other parties, by **22 June 2005**. Each submission is to include a table of contents and the portion of the submission that addresses the matters identified as issues 2 to 6 in paragraph 21 is to be structured as described in that paragraph. Parties are to include with their comments any evidence that they consider necessary to support their arguments. This includes any research studies or other material that parties wish to refer to in this proceeding.
44. Any members of the public who wish to file written comments, without receiving copies of the various submissions, may do so by submitting their comments in writing to the Commission by **22 June 2005**.
45. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding.
46. Parties are to indicate their intent to participate in the oral consultation detailed below by **13 July 2005**.
47. The Commission and the parties may address interrogatories to the telephone companies and to any party who filed comments pursuant to paragraph 43. Any such interrogatories must be filed with the Commission and served on the party in question by **20 July 2005**.
48. Responses to those interrogatories are to be filed with the Commission and served on all parties by **15 August 2005**.
49. The Commission will issue an organization and conduct letter to outline the process of the public consultation by **19 August 2005**.
50. Requests by parties for further responses to their interrogatories, specifying in each case why a further response is both relevant and necessary, and requests for public disclosure of information for which confidentiality has been claimed, setting out in each case the reasons for disclosure, must be filed with the Commission and served on the relevant party or parties by **22 August 2005**.
51. Written responses to requests for further responses to interrogatories and for public disclosure must be filed with the Commission and served on the party or parties making the request by **26 August 2005**.
52. A determination with respect to requests for further information and for public disclosure will be issued as soon as possible. Any information to be provided pursuant to that determination must be filed with the Commission and served on all parties, by **8 September 2005**.
53. Parties may file written argument with the Commission, serving a copy on all parties no later than **15 September 2005**. Written argument shall be no longer than 30 pages.

54. A public consultation will be held on **26-29 September 2005** at 140 Promenade du Portage, Niveau 0, Phase IV, Gatineau, Quebec. Only those parties who have filed comments in accordance with paragraph 43 above will be permitted to make an oral presentation at the public consultation.
55. The Commission reserves the right to group parties of similar views together for the purpose of presenting their views at the public consultation.
56. Parties may file reply argument with the Commission, serving a copy on all other parties by **7 October 2005**. Reply arguments shall be no longer than 10 pages.
57. A Decision will be issued within 150 days after the record closes.
58. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
59. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
60. Where the submission is filed by electronic means, the line **\*\*\*End of document\*\*\*** should be entered following the last paragraph of the document as an indication that the document has not been damaged during electronic transmission.
61. Please note that only those submissions electronically filed will be available on the Commission's website and only in the official language and format in which they are submitted.
62. Each paragraph of all submissions should be numbered.
63. The Commission also encourages parties to monitor the record of this proceeding (and/or the Commission's website) for additional information that they may find useful when preparing their submissions.

### **Important**

64. All information submitted, including your name, e-mail address, and any other information not submitted under a claim for confidentiality, will be posted on the Commission's website. Documents received in electronic format will be posted on the Commission's website exactly as you send them, and in the official language and format in which they are received. Documents not received electronically will be available in .pdf format.

### **Location of CRTC offices**

65. Submissions may be examined or will be made available promptly upon request at the Commission offices during normal business hours:

Central Building  
Les Terrasses de la Chaudière  
1 Promenade du Portage, Room 206  
Gatineau, Quebec J8X 4B1  
Tel: (819) 997-2429 - TDD: 994-0423  
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Metropolitan Place  
99 Wyse Road, Suite 1410  
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Secretary General

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