CCTA·ACTC

Canadian Cable Telecommunications Association
360 Albert St., Suite 1010
Ottawa, Ontario K1R 7X7
Telephone: (613) 232-2631
Facsimile: (613) 232-2137
www.ccta.ca

Association canadienne des télécommunications par câble
360, rue Albert, bureau 1010
Ottawa (Ontario) K1R 7X7
Téléphone : (613) 232-2631
Télécopieur : (613) 232-2137
www.actc.ca

October 7, 2005

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume:

Re: Telecom Public Notice 2005-2, Forbearance from regulation of local exchange service

This reply argument is filed by the Canadian Cable Telecommunications Association (CCTA) pursuant to paragraph 56 of the procedures established in Telecom Public Notice 2005-2, *Forbearance from regulation of local exchange service* (PN 2005-2).

An electronic copy of this submission is provided to the Commission by email.

Sincerely,

Michael Hennessy

Michael Hennessy,
President

Attachment

c.c.: Registered Interested Parties, Telecom Public Notice 2005-2

CCTA · ACTC

Reply Argument

Telecom Public Notice 2005-2

Forbearance from regulation of local exchange service

October 7, 2005

I. Introduction

1. The Canadian Cable Telecommunications Association (CCTA) is pleased to provide these reply comments in accordance with the procedure set out by the Commission in PN 2005-2.

2. CCTA submits that its proposed framework for forbearance is the only framework put forward in this proceeding that meets the following three essential elements:

- It can be applied fairly and consistently across all markets in all regions of the country;
- It minimizes the risk of premature forbearance, thereby limiting the potential for ILECs to engage in predatory and targeted pricing strategies;
- It is administratively efficient to implement for both the industry and the regulator.

3. In short, CCTA's proposal is the only framework that meets the national telecommunications policy objectives set out in sections 7 and 34 of the Telecommunications Act (the Act). The following addresses issues related to the application of our proposed test and to related issues of safeguards to address market power.

II. Relevant product market

4. Where services are close substitutes, they are considered to be in the same relevant market. CCTA submits that: (a) residential and business local exchange services are in separate markets; (b) VoIP services are close substitutes to local exchange services and should be included in the same relevant market; (c) mobile wireless and other services are in separate markets; and (d) optional calling features should be treated the same as local exchange services for forbearance purposes.

5. As the Commission noted in Decision 2005-28, wireless has been treated as a separate market for regulatory purposes since its introduction two decades ago.[1] Mobile wireless should only be considered a close substitute if the services have similar functionality and there is evidence that a significant number of consumers would replace their wireline service with a wireless mobile service. The evidence to date indicates that this is not the case.

6. Virtually all wireline service customers have retained their primary wireline service when subscribing to a mobile wireless service. Canada has over 15 million wireless subscribers yet only 2.7% or less than 350,000 households rely solely on wireless. Indeed, the percentage of wireless only households has increased by only 0.8% in 19 months.[2] The lack of any substantial wireless substitution was acknowledged by TELUS' representatives at the Public Consultation:

> MS YALE: If at some point enough people see wireless as a substitute for wireline we could get into a debate about how you would incorporate it in. All we are saying

---

[1] Telecom Decision CRTC 2005-28, paras. 127 – 128.

[2] Canadian wireless only households reported at 2.7% in Dec 2004, 2.4% in May 2004 and 1.9% in May 2003.

> here is, we just think that we are not at that place and we haven't incorporated it in the test.[3]

III. Geographic market definition – pockets are not a problem

7. CCTA proposes that the Commission use the local interconnection region (LIR) as the starting point for defining the relevant geographic market. The LIR has three important advantages over other proposals. First, it reflects a community of interests – a grouping of locations across which consumers share common economic and social interests, as established in Decision 2004-46. This includes areas where consumers have access to similar advertisements and offers via the same local television programs, radio stations, and newspapers. Second, each LIR describes the area across which a facilities-based competitor could supply its services through a single point of interconnection, as acknowledged by Bell at the hearing.[4] Third, using the LIR rather than the exchange ensures that competitors will have the opportunity to establish themselves on a scale sufficient to discourage targeted pricing. An exchange is simply too small a basis for a competitor to sustain operations and withstand targeting by the ILEC.[5]

8. Some have suggested that LIRs are too large and that forbearance on this basis would result in “pockets” of consumers within a forborne market that would not have access to a competitive alternative. The suggestion that such pockets are a problem ignores the fact that a facilities-based competitor established in the LIR can extend its service anywhere in that LIR, providing both an opportunity for the competitor to grow and a deterrent against the ILEC increasing prices. The assessment should also consider whether other sources of competitive supply, including VoIP-based local services, will be available to consumers.

9. There are tools, such as price ceilings and restrictions on rate de-averaging, that can be used to offset the risk of unwarranted price increases imposed by ILECs in pockets where consumers are without competitive choices. Of far greater concern is the risk that premature forbearance, based on a narrow geographic market, such as exchange, or a low market share loss threshold, will result in *only* pockets of competition. The Commission’s goal in establishing the geographic market should serve its broader objective to foster the spread of sustainable competition across Canada, as set out in section 7(c) of the Act.

10. Some ILECs argued that applying a market share threshold to a large geographic market that includes areas without competitors would require higher share losses within the locations where competitors operate. Bell noted the example of the Burlington LIR, where two of the seven exchanges are served by Cogeco, and suggested that the 30 percent threshold would require a loss of 40 percent in these two exchanges. Bell’s example is flawed, however, because Cogeco has the ability and intention to expand its services elsewhere in the LIR.

---

[3] Transcript Volume 2, at para. 2088.

[4] Transcript Volume 1, at para. 1397, Mr. Bibic of Bell stated: “I do agree that CCTA, in one of their interrogatory responses, indicate that once they are in an LIR, it is easy for them to expand their service to cover the entire LIR and I say, good, I agree, my point is made.”

[5] Transcript Volume 3, at para. 5552, Dr. William Taylor, a former witness for the ILECs in past proceedings before the Commission, was quoted as stating the following on behalf of SBC-Wisconsin: “A rate or wire centre would be too small a serving area to enable competitors to achieve the proper scale or scope.”

Regardless, Bell agreed that the CLEC does not need to serve the entire area.[6] There will be few cases where no cable company would be capable of entering using its existing network. Cable companies' networks pass by the vast majority of households and exclude only very low-density areas. As such, the market share threshold should not be significantly impacted. In addition, other sources of competition, including Primus, Vonage, out of territory ILECs, wireless CLECs and other entrants, can and will contribute to market share loss.

11. During the course of the proceeding, it was also suggested that the geographic market could be based on some aggregation of exchanges, reflecting a local calling area or other community of interest. This approach is really just a variation on the LIR as originally defined by the CRTC in Decision 2004-46. Subsequent proposals by ILECs resulted in the number of LIRs being reduced from 337 to less than 180.[7] Regardless, the LIRs remain building blocks that can be aggregated up to enable competitors to achieve minimum scale in small markets or disaggregated where remote exchanges result in too large an area. In all cases, the core advantage of the LIR remains. It exactly defines the geographic area that a competitor can supply through interconnection.

12. Another proposal discussed was the use of serving area maps of a full-facilities-based competitor, generally equated to a cable company's network. In an effort to overcome any possibility of "pockets" of customers without competitive choices, these proposals would introduce other difficulties. In the TELUS version, the geographic market would shift or expand as a cable company changed its telephony serving area. In an undertaking, TELUS suggested the changes would be small based on the expectation that cable telephony would roll-out across a metropolitan area.[8] Yet TELUS argued that in the case of Vidéotron, the three stages of deployment in Montreal would each be treated as separate "forbearance areas", abandoning any link to defining a relevant geographic market.[9] Similarly, when Shaw eventually is permitted to interconnect in Airdrie and Sherwood Park, these locations would also be treated as distinct "forbearance areas" under the TELUS proposal. This raises the prospect of numerous forbearance applications and burdensome data collection.

13. The reality is that facilities-based competition will unfold differently in each market depending on market conditions, business decisions of the competitor and, in some cases, the

---

[6] "THE CHAIRPERSON: Mr. Bibic, on the Cogeco example you gave, of Cogeco not covering each ILEC, you are not suggesting that the geographic market definition has to depend on the competitor being actually physically offering service to a hundred percent of the households, are you? MR. BIBIC: Oh, absolutely not." Transcript Volume 1, para. 1387-1388.

[7] Subsequent to Decision 2004-46, the ILECs consolidated some LIRs to include exchanges based on those served by remote switches that homed on the same host switch.

[8] TELUS Undertaking 1, filed October 4, 2005. This 11 page submission by TELUS raised a number of additional points that cannot be adequately responded to within the 10 pages of reply argument available to parties. CCTA notes that the TELUS Undertaking 1 implied that the Commission should use the serving area maps of entire cable networks and not just where telephony is deployed. This makes the TELUS proposal appear closer to that of the Competition Bureau. TELUS also argued the administrative process would be no more difficult than the cable deregulation test. In this regard, TELUS has ignored the fact that the cable rate deregulation test relies on customer data solely from the cable operator and not from any competitor. TELUS' proposal, by comparison, would require frequent and ongoing data collected from all competitors, including other CLECs, VoIP providers and resellers.

[9] At page 4 of TELUS Undertaking 1, it claims that each individual telephony service launch would be treated as a separate forbearance area, which "is not a fully-analyzed economic geographic market".

actions of the ILEC. Competitors frequently add to their serving area, as demonstrated by the Commission's own list of "Market CLECs".[10] Under the TELUS model, there is simply no way to know just how many different "forbearance areas" there will be or even if there will be any agreement on these areas.

14. The Competition Bureau (Bureau) proposed an alternative model that ties the geographic market to the footprint of a cable company's entire network, including areas where telephony has not been deployed. It would allow for some gaps within that network to be filled by leased loops. This raises the question of how to define individual geographic markets. Are contiguous licensed cable systems a single geographic market? Can gaps between systems be served using leased loops so as to create a single geographic market area? These issues would need to be resolved to avoid disputes over the appropriate market definition.

15. The proposals of TELUS and the Bureau both suffer from uncertainty and lack of consistency because the geographic market is driven by the actions of individual competitors in the markets and not by a stable and neutral definition, as is the case with the LIR. CCTA also notes that the Bureau's model allows "pockets" to be addressed by competitors using leased loops – something that equally applies under the LIR approach.

IV. ILEC market share loss should be at least 30 percent to consider forbearance

16. CCTA has proposed a two-part test for forbearance. The first part would require evidence that at least 30 percent of the relevant market is not served by the ILEC. An application for forbearance would only proceed to the second part of the test where this threshold criteria is met. The second part of the test would evaluate the sustainability and pervasiveness of competition by measures such as the number and type of competitors, evidence of rivalrous behaviour and the resolution of barriers to entry.

17. CCTA and a number of other parties, including the Consumer Groups, proposed a market share threshold of 30 percent share lost by the ILECs.[11] In proposing this threshold, CCTA took into consideration past determinations by the Commission as well as the general approaches by competition authorities in Canada and internationally.[12] When a single firm serves 70 percent or more of a market, it is likely to have market power. In the case of local telephony, that single firm previously held 100 percent of that market, has a ubiquitous presence in all geographic markets, and is providing an essential service characterized by very high customer inertia and low overall growth. Because such a firm has the ability and incentive to exercise market power, regulation remains necessary to protect the interests of users. The presence of barriers to entry in the market act to further strengthen the market

---

[10] This list is maintained at http://www.crtc.gc.ca/eng/public/2004/8180/CRTC/clecmkt.htm and shows how frequently CLECs add to the exchanges they serve. In addition, the coverage area within these exchanges can change as new subdivisions are added. See also the Transcript, Volume 3, para. 5336 to 5340.

[11] Some of these other parties included additional criteria, such as a certain number or type of competitor holding a minimum share each, and for a certain period of time. CCTA is of the view that these factors would be taken into consideration in the second part of its test.

[12] See the response to CCTA(TELUS)20Jul05-3 for a list of Commission forbearance rulings and the response to CCTA(Bureau)20Jul05-19 for a discussion of evidence from other jurisdictions.

power of the dominant firm. Given these circumstances, forbearance would be contrary to section 34(3) when the ILEC still serves more than 70 percent of the relevant market.
18. The ILECs repeatedly pointed to the 5 percent threshold used for deregulation of basic cable rates. The ILECs made a similar proposal in the 2001 price cap proceeding, without success. At that time, the Bureau opposed the 5% threshold, noting that:

> The Bureau believes there is a significant distinction between the market environment for cable television when the Commission adopted its 30%/5% test for deregulation of basic cable television service rates and the current environment for local telephone competition. … Hence, when assessing market power over essential services, the Bureau would recommend that the Commission apply a higher standard than it might for non-essential services.[13]

19. The distinctions cited by the Bureau included many of those CCTA has noted in this proceeding. As the Bureau noted, cable television service is not an essential service, and both DTH providers were able to reach 100 percent of the households from the first day they launched. There was no question of whether or when they would deploy in new areas. CCTA has further noted that competitors to cable television are entirely independent of the cable companies – there are no telephone numbers to transfer, no interconnection to arrange. DTH competitors also have the benefit of more flexible carriage requirements and winback restrictions on cable companies that remained long after rate deregulation. Competitors to the ILECs face much greater challenges, including numerous barriers to entry, which warrant "a higher standard". It is appropriate, therefore, to use a stronger market share threshold to ensure that where forbearance is granted the establishment and continuance of competition will not be threatened.

20. Finally, CCTA maintains that measuring market share loss in the residential local exchange market based on households would be more effective and administratively less complex than relying on lines. Measures based on lines would require all participants in the local market to report lines on the same frequency and geographic basis. The Commission would need to determine how to assign nomadic and non-native lines of VoIP services to specific geographic markets and, in the future, how to deal with wireless. The share of lines may also be distorted by downward trends in ILECs' second lines that are no longer needed for dial-up internet and facsimile transmissions and are not replaced by a competitor's service. A measure based on households requires limited information and can rely on information from the ILECs alone. The ILECs have demonstrated that share information can be reported for households.[14] Measuring based on households will also capture the full extent to which residential customers have substituted the ILEC's local service with another supplier's, including a wireless provider.

---

[13] Comments of the Commissioner of Competition to the Canadian Radio-television and Telecommunications Commission re: Telecom Public Notice CRTC 2001-37, October 22, 2001, at paras. 125 and 129.
[14] See the responses to The Companies(Yak)20Jul05-10 and TELUS Undertaking – 4 Abridged.

V. Reply to the Competition Bureau

21. The Bureau rejected bright-line tests in favour of its "Structured Rule-of-Reason" test to determine whether "an ILEC will be limited in its ability to exercise additional market power."[15] In fact, the Bureau incorrectly characterized CCTA's proposed framework as a bright line test based on a 30% market share loss. CCTA's model is not a bright line test. The 30% threshold must be met to justify proceeding to the second part of CCTA's analysis, which is a qualitative assessment of whether competition has been established on a pervasive and sustainable basis, as required under s. 34(3). CCTA acknowledges that factors in addition to market share should be considered under the second qualitative aspect of the CCTA proposed test, including some of the conditions in the Bureau's proposed test.

22. The concept of the "bright-line rule" has been defined as "a judicial rule of decision that is simple and straightforward and that avoids or ignores the ambiguities or difficulties of the problems at hand."[16] CCTA submits that in designing a framework for local forbearance, the Commission should not and cannot "avoid or ignore the ambiguities or difficulties" inherent in the process. The Act requires both the presence of competition sufficient to protect the interests of users (subsection 34(2)) and an assurance that the establishment or continuance of a competitive market will not be impaired (subsection 34(3)). These are factual determinations to be made on consideration of relevant evidence and cannot be replaced by a process solely reliant on measurement of ILEC market share loss. CCTA's proposal allows for proper account to be given to all factors necessary for an effective and efficient forbearance framework.

23. Although CCTA agrees with the Bureau's position that market share is not the only factor to be considered, CCTA submits that market share is one of the most important indicators of market power. A determination of whether the ILEC no longer possesses market power should begin with an assessment of market concentration. This is consistent with the Bureau's Merger Enforcement Guidelines which state that "market shares and concentration can inform the analysis of competitive effects when they reflect the market position of the merged entity relative to its rivals."[17] While market share can be a useful indicator of market power, in the local telephony market, shares based on capacity, as proposed by the Bureau, are not particularly meaningful. The Bureau's suggestion that capacity shares are 50-50 does not reflect the level of market concentration or market power in the local telephony market.

24. Total production capacity is a useful concept in markets such as oil and gas, where demand is not fixed and changes in supply can influence price and demand. In the local telephony market, total demand for local lines is relatively fixed, as it is closely linked to household growth. It is difficult to envision any supplier encouraging a household to increase demand for additional lines. The ability to expand capacity to satisfy a fixed demand does not affect the ILEC's market power. As a result, capacity considerations are simply not relevant. For these reasons, CCTA reiterates that share of households served is the best indicator of market power.

---

[15] Bureau, Final Argument, September 15, 2005, para. 29.
[16] B.A. Garner, *A Dictionary of Modern Legal Usage*, 2d ed. (New York: Oxford University Press, Inc., 2001).
[17] MEGs, para. 4.11.

VI. <u>Substantial barriers to sustained entry remain</u>

25. All competitors to ILEC local exchange services, including cable companies, face barriers that begin before and persist well beyond market launch. These barriers are varied in nature. They can be technical (e.g., implementation of 9-1-1 and MRS), financial (e.g., costs of infrastructure, technical and customer support staff, cost of capital), regulatory (e.g., compliance with CLEC obligations and adherence to CISC-mandated processes), and behavioural (e.g., overcoming customer inertia). Beyond even these, are significant strategic barriers tied directly to ILEC actions.

26. As the record of this proceeding clearly demonstrates, and contrary to the positions advanced by the ILECs, barriers to entry are not overcome with the issuance of a CLEC letter. The interests of users are not protected by mere competitive entry. Competitive alternatives must be sustainable on a sufficient scale to discipline ILEC incentives to act in an anti-competitive manner. Only then can the Commission conclude that traditional barriers to entry are unlikely to hinder competitive activity in a forborne environment.

27. The challenges competitors face have been well covered in this proceeding. The most prominent examples include interconnection, number porting and access to ILEC-controlled support structures and loops.[18] In each case, the obligation to interface with the incumbent puts a CLEC's business plan at risk of delay or even outright abandonment. The availability of Commission dispute resolution processes, while welcome, is not necessarily sufficient to remedy the damage caused by delay in competitor entry and expansion.

28. Whether with intent, through intransigence, inability or simple inadvertence, incumbent telephone companies are uniquely placed to impede a CLEC's entry, customer acquisition and expansion. Negotiating an interconnection agreement with the ILEC is a prerequisite to competitive entry, and can give the ILEC's an opportunity to interfere with entry. Expansion can be slowed through delays in granting – or even considering – competitor requests to access support structures.[19] Even when everything goes well, delays are measurable in months and consumers lose out on or become disenchanted with competitive alternatives.

29. At the Public Consultation, representatives from Shaw explained their frustration with the degree to which ILECs control the "system" at the heart of the local telephone business. The experience of Shaw and other CLECs underscore the need for the Commission to look past the latent – and constrained – potential for competition, to evidence of actual ILEC market share loss before passing judgment on the impact of the various barriers to sustained competitive entry. Economic theory is a poor substitute for evidence that households are switching in numbers sufficient to actually constrain market power.

---

[18] See, for example: EastLink Final Argument dated September 15, 2005 at para 37; Shaw Final Argument, September 15, 2005 at para 37; Transcript, Volume 4, at paras. 5616-5620, 5935 and 5948-5972.
[19] Transcript, Volume 4, at paras. 5916-5917: "On average, it takes Telus 97 days to respond to an application from Shaw for access to Telus support structures. That is 67 days longer than the tariffs permit. On average, it takes 259, or eight months, to have an application approved and work completed."

VII. <u>Targeting is about preserving market share</u>

30. CCTA submits that forbearance should occur only in markets where the market share loss by the incumbents and the scale achieved by at least one entrant are sufficient to demand a competitive rather than targeted response from the ILECs.

31. In a forborne market, assuming entry is sustainable, all consumers will benefit from competitive prices and product choice and these benefits will be long-lasting. Targeted, or differential, pricing between locations where competition is sustained and pervasive across a geographic market will be difficult to maintain for a number of factors, most notably the potential loss of goodwill if customers become aware of differential pricing.[20]

32. In a prematurely-forborne market that is not competitive and where entry is not sustainable, the incumbents will have the incentive and opportunity to engage in predatory targeting with effective prices that are below competitive levels. The risks associated with providing the ILECs with the ability and incentive to selectively target customers are significant. This form of predatory behaviour will benefit only a few customers for only a short period of time. Targeting will inevitably lead to market exit and deter further expansion. Ultimately, consumers will suffer.

33. Predatory targeting will become significantly less costly for the ILEC, very likely and highly rational in two scenarios of premature forbearance: (1) forbearance in artificially narrow markets such as the exchange; or (2) forbearance on the basis of an artificially low market share loss threshold. CCTA submits that its proposed criteria provide the basis to determine whether the state of competition in a market is such that a targeted response would be unlikely and in any event would not substantially undermine competition.

34. The ILECs and the Bureau questioned whether a predation strategy is rational or likely based on traditional theories of predatory pricing. Such academic theories rely on the ability of the predator to recoup lost profits by increasing prices in other markets during the period of predation or by increasing prices in the market where predation took place after the prey exits the market.

35. CCTA's economic experts, Dr. Tom Ross and Dr. David Gillen, explained that the above theory of recoupment ignores some very important elements. In this industry, predatory tactics are feasible and profitable because of the ability of incumbent firms to target their response. Predation becomes "a much less costly strategy" when an incumbent "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."[21]

36. CCTA submits that recoupment through increased prices is not a necessary element of a successful predation strategy in the local telephony market. CCTA has suggested that, because of the significant market power of the ILECs and the enormous revenue generated

---

[20] This was also described in Bell et al Submission, June 22, 2005, Appendix A, Dr. McFetridge, para. 2.32. Other factors include the costs associated with billing, advertising and promoting on a very local basis.
[21] Transcript, Volume 3, para. 5570.

from local telephony, the primary goal of the ILECs is to preserve market share. Absorbing a short-term limited reduction in revenues due to selectively lowering prices to winback a few customers is a highly rational strategy if the effect of targeted pricing is to preserve market share. As Dr. Ross explained, "you'd rather have a whole of a profitable market than only a fraction of a profitable market."[22]

37. Cable companies demonstrated during their appearances that exiting the market or abandoning expansion plans could result from targeted pricing and anti-competitive actions by the ILECs. Claims that these companies will not abandon markets, or that abandoned facilities could be put to use by a subsequent entrant, overlook two key issues. First, abandonment of the local exchange voice business does not preclude putting those same facilities or associated bandwidth to a different (and potentially more profitable) purpose, such as increased bandwidth for broadband or a greater number of digital or HD television channels. Bandwidth is not a sunk cost as many have portrayed it, but has a significant opportunity cost. In these circumstances, neither the original entrant nor any future entrant would have the access network available to support a CLEC venture. Second, any business plan supporting broader geographic expansion of a local exchange voice service would be negatively impacted - possibly forestalled completely – where exposure to targeting by ILECs limits the perceived profitability of the undertaking.

38. Testimony before the Commission from those closest to the financial decision making behind market entry and expansion makes clear that without a viable business plan, abandonment of existing and future markets is not only possible, but likely. Lee Bragg, Co-CEO of EastLink stated as follows:

> It is just bandwidth to me, I have lots of reasons to use that bandwidth. If I can't operate the system and make a dollar or if I think, and that is the key issue, if it looks like the environment has changed such that I can't continue, we will stop, we will repatriate those channels, we will sell the switch, we will move on, we will sell more high speed internet and we will put more video channels on, that is a relatively easy decision.[23]

IX. Transitional regime

39. There is no requirement for a transitional regime to provide ILECs with additional regulatory flexibility in advance of forbearance. The Commission has already granted the ILECs sufficient flexibility to respond to competition. The Commission recently reviewed and adjusted a number of safeguards including those related to the offering of promotions[24] and the bundling of service offerings[25], in addition to the pricing flexibility available under price caps. New procedures implemented by the CRTC for expeditiously dealing with tariff filings ensure that there is limited delay in implementing new service offerings including bundles, changes to existing offers or other tariff filings.

---

[22] Transcript, Volume 3, para. 5570.
[23] Transcript, Volume 4, para. 7278.
[24] Decision 2005-25.
[25] Decision 2005-27.

40. The ILECs already enjoy numerous advantages stemming from decades of incumbency, including brand recognition, customer reach and retention of customer information.[26] Granting the ILECs relief from competitive safeguards and providing further regulatory flexibility prior to forbearance would serve only to further entrench these incumbency advantages. Moreover, any relaxation of measures that prevent targeting, particularly winback rules, would have extremely negative implications on the development of competition in the local exchange market.

41. The current competitive safeguards are in place to promote the objective of effective and sustainable competition and to protect against anti-competitive practices by the ILECs. These safeguards and restrictions have been reviewed and modified by the Commission over time in recognition that local competition has not developed at the pace initially anticipated with the release of Decision 97-8.

42. As the Commission noted in its submission to the Telecom Policy Review Panel, many of the regulations that currently govern ILEC delivery of local exchange service (most notably, those associated with the winback rules) were not implemented to address hypothetical concerns or potential ILEC behaviour but rather were a measured response to repeated instances of anti-competitive ILEC activity that threatened to undermine emerging competition.

43. Enhanced regulatory flexibility for ILECs, such as permitting targeted promotions aimed at winning back customers of competitors, serves only to increase churn and administrative costs for all competitors. The relative impact of these increased costs, of course, is much more significant for CLECs. As noted by Rogers' representative Mr. Linton at the Public Consultation:

> I want you to think of what my day would be like if the ILECs in an unregulated environment could target customers immediately and offer them any sort of incentive not to switch. The high level of customer churn that would result would be disastrous for all competitors and for competition.[27]

44. A transitional regime would only serve to maintain the ILECs' market power and slow down the development of sustainable competition, further lengthening the timeframe until forbearance is warranted. An ILEC's decision not to take full advantage of existing flexibility is not an appropriate reason for granting further regulatory flexibility in advance of forbearance.[28]

*** END OF DOCUMENT ***

[26] Decision 2005-27, paras. 145 and 146.
[27] Transcript Volume 4, para. 6375.
[28] See Telecom Decision 2005-53, as well as the exchange between Commissioner Langford and Aliant Representatives, Transcript Volume 1, para. 746 – 810.