Mailing Address:

World Exchange Plaza
45 O'Connor Street
Suite 880
Ottawa, Ontario
K1P 1A4
Attn.: Tony Stikeman

Tel: 613 566 7053
Fax: 613 566 2026
email: stikeman@tactix.ca

Chairman:

Ian C.W. Russell
Investment Dealers
Association
of Canada

Coalition Advisors

Osler, Hoskin & Harcourt LLP
Tactix Government Consulting

Coalition for Competitive Telecommunications /
Coalition pour une concurrence en télécommunications

August 24, 2005

SENT BY E-MAIL

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A ON2

Dear Ms. Rhéaume:

Re: Telecom Public Notice 2005-2: Forbearance from Regulation of Local Exchange Services

Further to directions from the Commission in regard to the above-noted proceeding, please find attached the Coalition's responses to interrogatories from the Commission.

Yours sincerely,

Ian C. Russell
Chairman
Coalition for Competitive Telecommunications

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. MTS Allstream considers that all local services are in the same relevant market;

Discuss whether premature forbearance in one market segment, either the residential or the business segment, but not the other, could undermine the objective of promoting competition across all segments of the local market.

A. The Coalition notes, as a preliminary matter, that it does not agree with the view that all local services are in the same relevant market. Indeed, it may be noted that most parties in the proceeding share this view with the Coalition, although there is a range of views regarding how the various local exchange services markets should be defined. More specifically, there appears to be a consensus developing that business and residential local services are in separate markets.

In regard to the scenario of "premature forbearance in one market segment" and the consequences for the other segment, the first issue to address is why there may have been "premature forbearance" in one market. The scenario raised by this question suggests that there must have been an incorrect forbearance analysis performed to justify forbearance in that market. If so, the primary concern is to determine how or why an incorrect analysis led to improper forbearance and, for the sake of the customers in that market, the objective should be to correct that error. Any effects on other markets should be a secondary concern to dealing with the appropriateness of forbearance in the primary market. Accordingly, when considering forbearance in each of the business and residential markets within the relevant geographic market, the proper competition law analysis should be applied to each separately.

If one of the markets is forborne as a result of a proper application of the competition law criteria, and the other remains regulated, it may be suggested by some that there could be an adverse impact on competition in the other, still-regulated market. The Coalition regards this concern as improbable if not impractical. For example, in a scenario in which the business local services market is forborne (assuming a proper application of competition law criteria) while the residential market is not, there should be no concern about either excessive or predatory pricing in the residential market since all incumbent prices in that market continue to require regulatory approval. Furthermore, any efforts by the incumbent to tie business and residential services together so as to leverage market power from the residence market into the business market (or vice versa) would seem to be entirely unrealistic. The two types of services are consumed by very different customer groups. They are not purchased together. The Coalition agrees with the comments of the Bureau on this issue:

> It is difficult to see how market power in a residential (business) services market could be "leveraged" into a business (residential) market since tying and bundling strategies usually require that consumers demand both products.[1]

Similarly, if it is suggested that profits from a less competitive market may be used to undermine competition in a highly competitive, forborne market, the Coalition has addressed that scenario in Coalition(CRTC) 20Jul05-503 PN 2005-2. As described in that response, this strategy is not economically rational. Furthermore, based on both the historical record and economic theory, predatory pricing is unlikely. If and when it occurs, it should be dealt with through appropriate measures to restore the market process. However, the mere prospect that such conduct might occur at some point is not sufficient reason to forsake the economic benefits to the economy and all market participants of competition. In regard to the potential for predatory pricing, see also Coalition(CRTC) 20Jul05-204 PN 2005-2.

*** End of Document ***

[1] Bureau (CRTC) 20Jul05-201 PN 2005-2.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. a) **Discuss whether from the perspective of available features and service characteristics, mobile wireless services are a close substitute for local wireline services;**

b) **Discuss why in other jurisdictions, for example Europe and Japan, mobile wireless services have achieved greater substitution for wireline services than in Canada;**

c) **Discuss whether flat- rate local calling and access to low cost long distance calling, both available with wireline services, have limited the substitution of mobile wireless services for wireline services in Canada;**

d) **Are mobile wireless services expected to become a closer substitute for wireline services in the future? If so, explain why and when this is expected to happen;**

e) **Assuming the Commission determines that mobile wireless services are a close substitute for wireline services, if the customer substitutes the wireline from the ILEC to the ILEC's wireless affiliate, discuss whether this should be considered substitution for the purposes of determining market power?**

f) **Discuss the extent to which instant messaging, voice mail and e-mail may limit the ILEC's market power in the wireline market; and**

g) **Provide any surveys, studies or forecasts within your possession that discuss the substitutability of mobile wireless for wireline services.**

A. **a)** The Coalition considers that the features and service characteristics of local wireline and mobile wireless services are very similar. The Coalition believes that wireless service is currently used both as a compliment to, and as a substitute for, traditional wireline services in meeting the overall communications needs of businesses. The Coalition is aware that many companies in certain business areas already conduct most of their calling via wireless services, though these companies are likely to retain for some time to come at least some wireline access service. Given the increasing reliance on wireless services as well as the growth of integrated IP-based networks, the Coalition expects that the relative importance of traditional wireless local service will decline steadily.

b) The Coalition has not examined the use of mobile wireless services in other jurisdictions but considers that their substitution for wireline services in Europe and Japan may be attributed to a number of factors. In Bureau(CRTC)20Jul05-202 PN 2005-2, the Competition Bureau noted that:

> Possible reasons for the higher mobile penetration rates include the flat rate pricing for local wireline services in Canada (as opposed to usage-sensitive pricing for these services in Europe and Japan), the lower penetration rates of wireline services in Europe and Japan at the time of mobile introduction, different population density characteristics over geographic regions and different demographic and consumer preference characteristics.

In CCTA (CRTC) 20Jul05-202 PN2005-2, the CCTA noted further that:

> Other factors include the quality of the underlying wireline network (higher in Canada than most other jurisdictions), local number portability (not required in Canada), and Calling Party Pays (not mandated in North America but used in most other countries).

The Coalition agrees that these factors likely explain higher rates of substitution of wireline service with wireless services in other jurisdictions.

c) The Coalition considers it likely that flat rate local calling and access to low cost long distance calling would be among the additional factors that have limited the substitution of mobile wireless services for wireline services (apart from the factors noted in (b) below).

d) As noted in the response to (a) above, the Coalition expects that mobile wireless services will become a closer substitute for wireline services over time. Improved quality of service and network reliability, and the offering of local number portability and reliable emergency response services will likely render wireless services a closer substitute for wireline services. In the Coalition's view, the once-pivotal role of local wireline services is in the process of receding as customers are presented with and become reliant on other options such as wireless services.

e) The Coalition considers that, where consumers are able to choose from among the ILEC wireless affiliate and one or more other providers and enter into an arrangement for the provision of wireless services to replace wireless services, this decision by the customer and its selection of a supplier of wireless services demonstrates that the ILEC has lost any market power it had with respect to that customer. The customer is free to choose among several wireless providers. The ILEC is in no position to constrain the choice made by that customer.

f) The Coalition is of the view that instant messaging, voice mail and e-mail are complimentary to wireline service and not directly substitutable services in their own right. Accordingly, the Coalition believes that these services have only a small effect on ILECs' market power in the wireline voice market.

g) The Coalition does not have any such surveys, studies or forecasts in its possession.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. An increasing number of Canadians use multiple telecommunication services, e.g., they may use a combination of wireline telephone services, broadband services, and mobile services.

Discuss the impact of this consumer trend towards multiple telecommunications services on the definition of the relevant service and geographic markets.

A. The Coalition agrees that there is an increasing trend towards purchase and consumption of multiple telecommunication services by customers. Canadian business customers are now major users of and heavily reliant on wireless services, broadband/IP services and other data services in addition to wireline local service. As discussed in Coalition(CRTC) 20Jul05-202 PN 2005-2, the relative role and importance of wireline local service is declining. Businesses are planning and building their communications networks on a combination of wireless and IP-based platforms, not on greater use of wireline local exchange service. Capital expenditures on these various services reflect, as one would expect, the changing relative role and importance attached to these various services, within increasing expenditures focussed on enabling a combination of wireless and IP-based service platforms.

The trend toward consumption of multiple communication services by Canadian business does not have an impact on the relevant geographic market for a forbearance analysis. However, it does have, in the Coalition's view, some impact on the analysis of market power in the relevant services market. That analysis should reflect the fact that any market power derived from being the largest provider of traditional wireline local exchange services is moderated or reduced when customers rely on an ever increasing range of services and the wireline local service component is diminishing in importance (and dollar value) in the total package of services consumed. In effect, the wireline local component, once regarded as the pivotal service in the traditional circuit-switched era, is diminishing in relative importance in the total consumption plans of business users. Accordingly, any power to "leverage" that service declines as the service is relegated by business customers to a no-growth, legacy residual status.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. EastLink and QMI submitted that the relevant geographic market should be defined as the ILEC's province or service territory, to prevent targeted anti-competitive pricing by the incumbent.

a) Provide your views, with supporting rationale, whether it is appropriate to define the relevant geographic market to reduce instances of predatory actions.

b) Discuss Professor McFetridge's views, in paragraphs 2.32 and 2.33 of his expert evidence for Bell/Télébec that the relevant geographic market should be relatively narrowly defined in order to, in a forborne market, protect the interests of customers who have no competitive alternative to services from the ILEC.

A. **a) & b)** The Coalition notes that its Comments in this proceeding, dated June 22, 2005 at paras. 19-23, specifically addressed the possibility of defining the relevant geographic market as the ILEC province or service territory and rejected this concept. This definition of the relevant market would be unsound and unjustified on economic grounds. As stated by the Coalition, "local exchange service" is provisioned by suppliers and consumed by customers on a local basis (as the name of the service suggests). A local exchange service in Victoria, BC is not a reasonable or practical substitute for a local exchange service in Penticton, BC or Calgary. From a customer point of view, the services are entirely distinct. The existence of choice and rivalry in local exchange services in Victoria is of great benefit to customers there but of no benefit to customers in Penticton. Furthermore, from a supplier point of view, infrastructure for provision of local exchange service in Victoria will generally not permit the supplier to offer local service in Penticton or Calgary. Accordingly, the use of the ILEC's province or service territory to define the relevant market would contradict the basic underlying economics of the service in question.

Apart from these fundamental considerations, the Coalition would strongly object to any suggestion that the economic analytical tests to define the relevant geographic market should be deliberately distorted in order to address an apprehended collateral concern. If such an approach were accepted, the economic principles and standards of competition law could be abandoned all together. There would be no coherent economic basis for such a result-driven approach. The concerns of Eastlink and QMI regarding possible "targeted anti-competitive pricing by the incumbent" should be assessed on their own merits, not by distorting the definition of the relevant market. In this regard, the apprehensions of these competitors, while understandable, must be considered in light of actual experience to date in the marketplace as well as the likelihood of such a practice in the future. With regard to the experience to date, the Coalition submits that rivalrous behaviour and pricing occurs in forborne markets (indeed it is exactly what is expected) but the record does not bear out claims that predatory pricing has been a practice or that it is likely. For example, in the Internet services and cellular services markets, both of which have been forborne for many years, the ILECs have had the opportunity to engage in predatory pricing to target and damage their competitors. To the Coalition's knowledge, there has been no case brought or established that the ILECs have engaged in such a practice in the markets. Similarly, in the markets for long distance services and broadcast distribution services, the ILECs could have engaged in a practice of anti-competitive predatory pricing. However, it would appear to the Coalition that ILEC pricing in these markets has been driven largely by the pricing actions of their competitors.

The reality is that such a pricing practice is only economically rational if there is a reasonable prospect of recoupment of the short term losses from such pricing. In this regard, the Commission itself has described the unlikelihood of such a pricing strategy by an incumbent in its analysis (and ultimate rejection) of the need for competitive pricing constraints on incumbent cable companies in the competitive BDU markets:

> The Commission's general position on anti-competitive pricing can be found in its regulatory framework for BDUs set out in Public Notice 1997-25. In that notice, the Commission stated that it considered that, in general, the public interest would be harmed where an incumbent, after lowering its rates in an attempt to eliminate the competition, was subsequently able to raise them above competitive levels and, thereby, recover its previously lost revenues. This would be practicable, however, only in circumstances where there were significant barriers to the ability of competitors to enter the market. The Commission's view was that new competitors, whether DTH, wireless or wireline, would be able to enter the market, so that, as soon as the cable operator raised its rates above competitive levels, the competitor or competitors would enter or re-enter the market, and thus pressure the cable operator to reduce its rates. The Commission concluded that it was not convinced that there was any need for specific competitive pricing safeguards.[2]

The Coalition agrees with the Commission's analysis and submits that the same considerations apply to competitive local exchange services.

With respect to Professor McFetridge's views in his expert evidence, the Coalition shares those concerns. From a customer point of view it would be quite disturbing to be declared to be within a competitive forborne market that is defined geographically in such a way that there are "significant isolated pockets of uncontested customers". The customers within such pockets would not have the benefit of competitive choice, nor the protection of a regulated price. This is another reason (in addition to those set out above) why the relevant geographic market should not be defined as broadly as the province or

---

[2] *Complaint by Bell ExpressVu Limited Partnership against Rogers Cable Inc. alleging certain anti-competitive practices*, Broadcasting Decision CRTC 2004-494, dated November 12, 1994 at para. 149.

the ILEC service territory. The relevant market should be defined, as the Coalition and others have advocated, as the local calling area.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. In paragraph 27 of its submission, Bell/Télébec states that cable companies have made or will make significant market share gains in the local exchange market. Bell refers to EastLink, Shaw, Vidéotron and Cogeco.

Provide any surveys, studies or forecast information in your possession, which explore whether these companies are likely to experience market penetration in the future.

A. The Coalition does not have any such surveys, studies or forecasts in its possession.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. MTS Allstream and Call-Net stated that prior to forbearance; a number of issues need to be resolved. These issues include:

- **Full unbundling of essential and near essential facilities;**
- **Competitor Category I service rates for all services in the nature of an essential service;**
- **Access to ILEC remotes;**
- **ILECs must meet competitor quality of service indicators;**
- **Competitors must have access to the ILECs' OSS;**
- **ILECs should comply with MDU rules and disclose all MDU access agreements;**
- **Interworking of ILEC and competitor transmission protocol or dialling plans for Centrex and managed IP services;**
- **Changes to ILEC Centrex contracts to facilitate switching service to a competitor;**
- **Implementation of new regime for interconnection;**
- **ILEC compliance with local competition rules; and**
- **Access to third party infrastructure.**

a) Discuss whether, how and to what extent any of the items above constitute a barrier to entry for competitors into the local market;

b) Discuss whether, how and to what extent the following are barriers to entry into the local market for (a) wireline competitors, (b) cable companies:

- **sunk costs;**
- **smaller scale of entrants than incumbents;**
- **customer inertia; and**
- **difficulty of entrants to provide service bundles.**

c) Discuss whether, how and to what extent, the removal of entry barriers identified in parts (a) and (b) above should be a condition of forbearance; and

d) Discuss whether any concerns, with respect to the removal of entry barriers as a condition of forbearance, change or differ based on the relevant market in question.

A. a) - d) In the Coalition's view, the list of items suggested is excessive and, in any event, the problems listed therein are amenable to solutions other than what would appear to be an indefinite postponement of forbearance.

For example, the Coalition has supported the application of competition law analysis both to the determination of market power and to the identification of essential facilities. The Coalition strongly supports the mandated provision of essential facilities (properly defined). Existing and potential future essential facilities should be required to be provided at regulated rates (which should recover all costs). In the Coalition's view, the Commission has already devoted considerable time to the identification of and prescription of rates for essential services and other Competitor services. To the Coalition's knowledge, there is no reasonable argument that this undertaking by the Commission has been mishandled by the Commission or that it has not resulted in the availability of such services. With respect to any additional services that parties may consider to be essential (e.g. new IP based services), it is always open to such a party to identify such services and request appropriate orders from the Commission. Accordingly, in the Coalition's view, having regard to the considerable time already invested by the Commission in respect of essential facilities, there are no other similar barriers in this regard that constrain competitors. The current arrangements for Competitor Category 1 and II services should continue to be offered.

With regard to access to MDUs and third party infrastructure, these are issues the resolution of which turn on the Commission's current statutory powers and on the extent of the federal constitutional jurisdiction in respect of telecommunications. More specifically, it is not clear, at this time, whether the CRTC could resolve all such access issues given that these involve private property and civil rights and municipal rights, areas subject to provincial jurisdiction. Furthermore, the statutory and jurisdictional constraints on the CRTC authority apply equally to all telecommunication service providers, not only the new entrants. Incumbent telephone companies, incumbent cable companies and other new entrants face the possibility of unreasonable conditions or costs of access being imposed by municipal authorities and/or private property owners. The resolution of such difficult federal/provincial jurisdictional matters is likely to take many years. In the meantime, it is clear from the activities of companies such as Eastlink that effective competitive entry is possible.

In regard to whether sunk costs and smaller scale represent significant barriers to entry, the Coalition has two observations. Firstly, it has been long established policy of the Commission (since at least Telecom Decision 94-19[3]) that the Commission should not create conditions which foster uneconomic entry. New entrants with higher costs overall, even after several years of operation, are not a net benefit to the economy. Secondly, on the facts available to date, it appears that that sunk costs, smaller scale, customer inertia and provision of service bundles are not issues which are preventing effective entry. In the residential market, the success of Eastlink and, more recently, other cable companies shows that these are not significant barriers to entry. For business customers located in urban markets, there are usually several service providers ready to bid on the full range of services sought by the business customer, including local services. The competitive bidding and negotiation process demonstrates that service providers are able and willing to provide business services.

[3] *Review of Regulatory Framework*, Telecom Decision CRTC 94-19, dated September 16, 1994 (Decision 94-19).

Accordingly, the Coalition does not agree that the issues cited constitute valid reasons for declining to proceed at this time with consideration of forbearance for local services.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. a) Please comment on whether for the purpose of forbearance the Commission should consider dividing the market by different customer groups, for example:

- **Residential services**
- **Small business**
- **Small to medium business**
- **Medium to large business**
- **Enterprise**

b) Specify overlaps if any, of products or services across relevant product markets. For example, can digital trunk services offered now, or in the future, be provided to residential or business customers?

A. a) The Coalition believes that the local business and local residential markets should be treated as separate markets for the purposes of forbearance determinations. The Coalition notes that several of the parties to this proceeding have similarly either expressly or impliedly suggested that residential and business markets be treated separately in forbearance considerations. For example, at the outset of its Comments, in this proceeding, the CCTA notes that "...residential local exchange service should be identified as a separate product market from business local exchange service, as these are two distinct markets."[4] Indeed and as noted by the CCTA in its submission, the Commission itself has consistently tracked the development of competition in the business and residential markets separately and "has noted the differences in the development of competition between residential and business local exchange markets."[5]

The Coalition agrees with the CCTA that:

> local exchange services offered to residential customers are in a distinct market that does not include the provision of local exchange services to business customers. While the fundamental purpose of these services is the same, the services are not marketed and offered in the same way and do not have prices that are the same or move together. Moreover, even where a residential service may be adequate for their needs, customers are generally not permitted to

---

[4] Comments of the CCTA dated June 22, 2005 in PN 2005-2 at para 8.

[5] Comments of the CCTA dated June 22, 2005 in PN 2005-2 at para. 30 referencing *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision CRTC 2005-27, April 29, 2005, (Decision 2005-27) at paras. 32, 33, 208 and 209; and *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision 2005-28 dated May 12, 2005 at paras. 131 and 160 (Decision 2005-28).

> substitute an ILEC's residential service for a business service where the purpose is primarily to conduct business or for other commercial purposes. As a result, there is no reasonable expectation that a residential service will be purchased as a replacement for a business service.
>
> It is also expected that, even where a service provider does not have specific limitations on the use of a local exchange service, the features and functionality of a residential service would generally not meet the needs of a business customer. In this regard, some CLECs have launched local exchange services that are offered only to business customers. These services have not been marketed to residential customers. These kinds of offerings highlight the unique competitive market conditions associated with each of the residential and business local exchange markets.[6]

The Coalition is of the view that there may be some merit to further division of the business market. However, the groups or subdivisions suggested in the question seem unworkable. For example, categorizing customers in the proposed segments based on number of lines or revenues seems arbitrary and impractical. The Coalition could support some segmentation of the market, such as the separation of single-line businesses, small/medium businesses, and Enterprise customers. There is appeal to this type of segmentation although it may be difficult in practice to define a small/medium business versus an Enterprise customer with precision.

The Coalition could also support the segmentation of the market into the general categories proposed by the Companies in their Comments in this proceeding. The segments identified by the Companies were: residential primary exchange service (PES), business PES, Centrex and digital trunk services markets. The Coalition agrees with Bell Canada that "this segmentation reflects the differences in the use of local exchange services and is a workable segmentation for forbearance purposes."[7]

It should be noted that, under the Coalition's third criterion for forbearance, customers would be able to remove themselves from regulation when they enter into freely negotiated contracts following a competitive bidding process. This test is based on actual observable conduct of the market participants and avoids the need (at least for this segment) for arbitrary divisions that are likely to lead to numerous regulatory disputes.

[6] Comments of the CCTA dated June 22, 2005 in PN 2005-2 at paras. 28-29.

[7] Bell(CRTC)20Jul05-207 PN 2005-2.

b) The Coalition agrees with the CCTA and Bell Canada that any overlap across markets would be insignificant.[8]

*** End of Document ***

[8] CCTA(CRTC)20Jul05-207 PN 2005-2; Bell(CRTC)20Jul05-207 PN 2005-2.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNIATIONS COMMISSION

Q. Cybersurf submitted that the appropriate relevant market(s) for forbearance are the markets for any one or more of the services that the Commission has held to be within the scope of this proceeding as offered within a given local calling area. Discuss the merits and drawbacks of using individual services as the relevant product markets.

A. The Coalition believes that Cybersurf's proposal whereby each of the individual services on the list of services identified by the Commission in Telecom Decision CRTC 2005-35[9] as within the scope of this proceeding should be considered as standalone relevant product markets for forbearance purposes is fundamentally flawed and without merit.

The proposal, if adopted, would spawn a multiplicity of relevant product markets and a needlessly granular and burdensome regulatory framework for local forbearance. More fundamentally, Cybersurf's proposal ignores one of the key precepts in the Commission's own analytic framework for identifying the relevant product market, namely product substitutability.

By treating each of the listed services as a separate relevant product market for forbearance purposes, notwithstanding that listed services may be closely substitutable for one another, the Cybersurf approach ignores or misunderstands an integral aspect of the test for determining relevant product markets for local exchange services. A careful and correct reading of both Decision 94-19 and Telecom Decision 2005-35 in relation to the current proceeding evidences the Commission's acceptance of product substitutability – from both a functionality and a geographic standpoint – as a critical consideration to assess in correctly determining relevant product markets.

The Coalition notes that other parties to this proceeding have taken a similarly dim view of the proposal to use individual local services as the relevant product markets. For example, both Aliant[10] and the CCTA[11], among others, have dismissed the proposal on

---

[9] *List of services within the scope of the proceeding on forbearance from the regulation of local exchange services*, Telecom Decision CRTC 2005-35, dated June 15, 2005 (Decision 2005-35).

[10] Aliant (CRTC) 20Jul05-208 PN 2005-2.

similar grounds of failing to take account of economic principles such as product substitutability fundamental to the proper identification of relevant product markets.

* * * End of Document * * *

[11] CCTA (CRTC) 20Jul2005-208 PN 2005-2.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNIATIONS COMMISSION

Q. Some business primary exchange services may be tariffed based on the number of accesses a customer may have nationally. For example, Centrex is offered and tariffed by ILECs as a national service in addition to a local service offering (e.g. Bell Canada General Tariff Item 675.5). National Centrex service provider a business customer with a common set of Centrex features on a national basis and the tariff rate takes into account the aggregate number of Centrex locals a customer has across ILEC territories.

Provide your views with supporting rationale on the following:

a) Does the inclusion of a national local exchange service offering (e.g. Centrex) affect the geographic market of a market power analysis?

b) Is there cause to consider a national local exchange service offering (e.g. Centrex as a separate market with a separate forbearance consideration?

c) What other local exchange services are provided and tariffed on a national basis for customers with locations across ILEC territories?

d) If other services are identified in question (c) above, how should the relevant geographic market be defined for these services?

e) If it is determined to be a separate relevant market, what would be the appropriate forbearance criteria?

A. **a) and b)** At paragraphs 17 to 23 of its Comments in this proceeding, dated June 22, 2005, the Coalition supported the use of the local calling area as the appropriate definition of the relevant geographic area for local exchange services, noting in particular at paragraph 21 that:

> These services are, by definition and by description, local in nature. They are offered and provisioned by suppliers and used by customers on a local basis. For example, a local exchange service in Toronto is not from either a customer or a supplier point of view, a reasonable substitute for a local exchange service in Montreal or Halifax.

As the Coalition understands it, the incumbents offering of National Centrex tariff amounts to a convenience and a costs saving option for a very narrow band of customers who could benefit from uniform terms in multiple locations across Canada. While there may be other local exchange services provisioned by the ILECs through national tariffs, the Coalition is not familiar with any such services other than National Centrex.

However, that one or more local exchange services may be offered nationally or extra-territorially by one or more ILECs, does not and should not detract from the fact that Centrex is, by nature, a local service, both from a functionality perspective and, even in the case of National Centrex, from a geographical standpoint. When a large business customer with sufficient scope of operation decides to purchase National Centrex service, it does so based upon an identification of each of the local calling areas within which the customer requires free local calling. Since Centrex service is offered by multiple providers across the country, and since the customer could confront very different conditions of supply of this local exchange service across different operating territories or provincial boundaries, many customers with local service requirements in multiple locations opt for the convenience of a single tariffed offering like National Centrex. However, in such cases, a customer can choose instead to purchase local Centrex service on a local calling area or exchange basis under the relevant individual local Centrex tariffs of the ILECs. In either case, in keeping with the nature of Centrex, the customer has to place its order on an exchange or local calling area basis, and the service in each case is provisioned locally and results in free local calling only within the local calling areas in which the customer requires the service.

In summary, because National Centrex service is by nature a local service and can be substituted from the standpoint of functionality by local Centrex service offered by multiple service providers under standalone tariffs (or by PBX trunks), it would not be appropriate to consider the service as a separate national market with a separate forbearance consideration. From a geographical perspective, the fact that none of the individual locations or local calling areas selected by a National Centrex customer affords comparable competitive conditions suggests that there is no national geographic market for Centrex service, nor can one reasonably view Centrex offered in Toronto as a reasonable substitute for Centrex offered in Halifax, regardless of whether a customer opts for Centrex in a local calling area on a standalone tariff basis or as part of an aggregated offering such as National Centrex.

c) As noted earlier, the Coalition is not aware of any other local exchange services offered under a national or out-of-territory basis by the ILECs.

d) and e) Not applicable.

* * * End of Document * * *

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. In paragraph 150 of its 22 June 2005 submission, MTS Allstream noted that Commission determinations (Decision 2004-46 and Decision 2005-28) have resulted, and will result, in changes to the local service interconnection regime, none of which have been implemented or successfully tested to date. In the case of the LIRs mandated by Decision 2004-46, MTS Allstream submitted that it is not even known what parameters will govern these service areas.

In light of the above concern, provide your comments on the appropriateness of using one or more LIRs as the relevant geographic market.

A. The Coalition is of the view that the Local Interconnection Region (LIR) established by the Commission in Telecom Decisions CRTC 2004-46 and 2005-28 is not the most appropriate area for the relevant geographic market to assess forbearance for local exchange services. This conclusion stems less from the concerns noted by MTS Allstream in paragraph 150 of its 22 June 2005 submission, than from the fact that LIRs are not, and were expressly not designed by the Commission to be the smallest geographic area within which a firm with market power can profitably sustain a price increase. In Decision 2004-46, the Commission chose the LIR because it:

> Consolidates a number of exchanges into a single region so that a smaller number of POIs are required for the interchange of traffic between LECs in that region.

From the foregoing, as the Coalition understands it, a given LIR may contain a number of local exchanges and encompass numerous free calling areas. While the LIR has some inherently attractive features for the purpose of network interconnection efficiencies and provisioning costs, LIRs were not designed for the purpose of correctly mapping off the relevant geographic market to assess market power of ILECs in their provision of local exchange services. Moreover, as some of the ILECs have pointed out, certain aspects of the rules for establishing new LIRs will, if anything, tend to promote greater as opposed to lesser consolidation of exchanges and local calling areas into LIRs, thereby creating potentially large geographic regions the result of, for example, an ILECs design of its network and the deployment of remote switches, factors which have little relevance to or bearing on the forbearance analysis of local exchange service.[12]

For the reasons set out in its Comments of 22 June 2005, and noted herein, the Coalition believes that the correct definition of the relevant geographic market for forbearance

---

[12] See for example Aliant (CRTC) 20Jul05-211 PN2005-2.

purposes for local exchange services is the local calling area, and not an aggregation of numerous local calling areas into a consolidated LIR, effected by the Commission for valid reasons albeit ones wholly unrelated to forbearance considerations. As such, the Coalition considers the LIR to be a geographical demarcation that is artificial and holds little meaning for business or residential customers who regard their free local calling area as the natural and essential geographic basis for their decisions to purchase local exchange services.

Finally, returning to the concerns that MTS Allstream expresses regarding the appropriateness of the LIR as the relevant geographic market, the Coalition agrees with the CCTA that the concerns "do not present insurmountable barriers to relying on LIRs",[13] and also agrees with Aliant that "none of these (concerns) have any impact on the timing of, nor the choice of the relevant geographic market for, ILEC local exchange forbearance."[14]

* * * End of Document * * *

[13] CCTA (CRTC) 20Jul05-210 PN2005-2.

[14] Aliant (CRTC) 20Jul05-211 PN2005-2.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. The local calling area is proposed by some parties to be the appropriate geographic area for the purpose of forbearance. Note that in the case of an ILEC's local exchange service, the local calling area of a local exchange service is based on the community of interest to customers in a given exchange and may vary from exchange to exchange. For example, the local calling area of the Ottawa exchange includes the Ottawa exchange, the Orleans exchange, the Jockvale exchange and other exchanges; the local calling area of the Orleans exchange includes the Orleans exchange, the Ottawa exchange and other exchanges, but excludes the Jockvale exchange; and the local calling area of the Jockvale exchange includes the Jockvale exchange, the Ottawa exchange and other exchanges but excludes the Orleans exchange.

a) Given that a local calling area, from an ILEC's perspective, may vary from exchange to exchange, provide your views on the appropriateness of using an ILEC's local calling area as the geographic area for the purpose of forbearance.

b) In view of your answer to (a) above, provide your views on the appropriate definition of a local calling area for the purpose of forbearance.

A. **a) and b)** The Coalition maintains its view that the local calling area is the most appropriate and relevant geographic area for the purpose of forbearance. From a customer's perspective, local exchange services are sought and consumed on the basis of the customer's need to communicate with friends or businesses within a local free calling area. As the customer's basic point of reference for the purchasing decision for its local calling needs, the local calling area, by definition, also becomes the relevant geographic area within which service providers generally package and supply their local exchange offerings to customers. This has been the case and continues to be the case, notwithstanding the fact that, from an ILEC's perspective, the local calling area varies from exchange to exchange, as in the example referred to in the Commission's question. The Commission's example reflects the realities, and the customer's understanding of the Extended Area Service (EAS) free calling regime, and is factored into a customer's decision to procure a local exchange service. Competitive conditions in a local exchange market also reflect the existence of free calling patterns and anomalies built into the current EAS regime under which calls placed across neighbouring exchanges may or may not constitute free local calls depending upon EAS factors such as community of interest and calling patterns. Accordingly, the Coalition submits that both customers and suppliers of local exchange service consider the local calling area to be the most meaningful geographic demarcation of local exchange services, and understand the local calling area to encompass certain exchanges contiguous to their own and to exclude certain other exchanges contiguous to their own.

Finally, it bears noting that the issue identified by the question becomes less acute with exchanges situated in more rural and remote locations, where exchanges tend to be larger and local calling patterns are not skewed by the proximity of a large urban centre with partially overlapping EAS calling areas, such as Ottawa in the present example.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Does market share loss always indicate a loss of market power, or are there circumstances under which a company can lose market share without losing market power. Explain the circumstances under which this can occur.

A. The loss of market share generally indicates a loss of market power. As the Bureau stated:

> If relevant markets are defined using the hypothetical monopolist test, then *ceteris paribus*, typically lower market shares would typically be associated with a reduction in market power.[15]

The Coalition believes that most would agree that this statement is generally true. There are, however, some circumstances which one might find that market power continues, notwithstanding the loss of market share. The test to apply is whether a major supplier could, in spite of the loss of market share, increase prices significantly (at least above average costs) for an extended period of time. This could occur in several situations. For example, if there is an essential facility which the major supplier is refusing to supply to competitors, the result would be an increase in market power and an undermining of the market process. Alternatively, if there is only one alternative, competing supplier in the market and little or no chance of another supplier entering that market, it is possible that the larger supplier might increase prices with the tacit acquiescence and cooperation of the other supplier. If there is any signalling or cooperation in respect of pricing among such suppliers, then the two firms together are exercising market power. Such conduct should be subject to review by the Competition Bureau.

* * * End of Document * * *

---

[15] Bureau (CRTC) 20Jul05-301 PN 2005-2.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. **At paragraph 181 of its submission, CCTA submitted that part of the forbearance process should include a determination of the degree to which post-forbearance criteria would be necessary. PIAC, at paragraph 114 of its submission, noted that a public proceeding would include a determination of the criteria of forbearance and any safeguards which might be required in light of the specific market conditions under consideration.**

Describe what type of specific market conditions could occur that would warrant that the criteria of forbearance applied in one forborne market might be different from criteria in another forborne market.

A. The Coalition does not generally favour the imposition of post-forbearance criteria. The Coalition is of the view that when the Commission forbears under section 34 of the *Telecommunications Act*, it should forbear from exercising all of its regulatory powers as permitted by section 34, with the exception of section 24. However, in the Coalition's view, the section 24 power to impose conditions on the provision of services should only be used to regulate a forborne service in respect of social obligations (such as 9-1-1 and privacy) and to ensure access to essential facilities but not to apply economic regulation.

In addition, the Coalition objects to the use of pre-determined factors to decide whether and when a market that has been operating free from regulatory intervention should be re-regulated. See Coalition(CRTC)20Jul05-502 for a discussion of the Coalition's views on pre-determined thresholds or triggers for re-regulation.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. a) **Discuss whether (i) Category I and (ii) Category II Competitor Services used by competitors to provide competitive alternatives to an ILEC's local exchange services must be in place before forbearance is granted with respect to an ILEC's local exchange service.**

b) **Discuss the circumstances in which the provision, or continued provision, of Competitor services used to provide competitive alternatives to an ILEC's forborne local exchange service would not be required.**

c) **Discuss whether it would be appropriate to forbear from a circuit-switched local exchange service if ILEC facilities/functionalities that meet the criteria for Competitor Service and that are used to provision alternative retail local services, such as VoIP, have not been tariffed for competitor use.**

A. a) The Coalition has proposed a model that would require forbearance in the market for business local exchange services where there is:

(a) Evidence of the existence of two or more providers offering business local exchange services in a local calling area; and

(b) Evidence of the loss of market share of 5% or more by the incumbent local exchange provider in the local calling area. Such loss would be measured from the time of entry of the alternative service provider(s);

(c) Regardless of whether the above two criteria are met, in any case where a business or institutional customer solicits, receives and chooses among multiple offers (or proposals) of local exchange services form the incumbent provider and one or more new entrants within the local calling area, the resulting contract for local exchange services, whether it be with the incumbent or another provider, should be deemed to be legally valid and binding without further review of approval by the Commission.

To the extent that conditions with respect to access, interconnection and wholesale services are required to meet the test for forbearance proposed above, the Coalition would support such regulation. As noted in the Comments of the Coalition in this proceeding, the Coalition has assumed that such conditions would continue to apply under any forbearance for local exchange services and there is no suggestion in the Public Notice that this would not be the case.[16]

[16] Comments of the Coalition dated June 22, 2005 in PN 2005-2 at para. 44.

However, the Coalition notes that regulation of Competitor Services in and of itself would not be a justifiable basis for forbearance. In this regard, the Coalition agrees with the Competition Bureau that:

> Regulation of Competitor Services is neither a necessary nor sufficient condition for forbearance. Indeed the difficulties with implementing an effective wholesale access regime suggests that competition between networks is likely to be a more robust basis for forbearance. It may be the case that competition in the provision of local exchange services between cable networks (or other networks that provide access at a location to the PSTN) and the ILECs is sufficient to warrant forbearance.
>
> While it is recognized that the availability of such Competitor Services in a given geographic area could be important to reducing barriers to entry and market power, it is not a necessary condition for forbearance. For example, if sufficient other alternatives were available from facilities-based carriers, even though Competitor Services were not, forbearance would still be warranted as long as the necessary preconditions were met.[17]

b) The Coalition considers that there may be circumstances in which the provision, or continued provision, of Competitor Services used to provide competitive alternatives to an ILEC's forborne service would not be required. Generally, this will be the case where essential or near-essential facilities are no longer necessary for the provision of competitive alternatives, or as the CCTA put it, "where such services no longer meet the criteria established by the Commission for Competitor Services".[18]

For example, the telephone services offerings of the cable companies will depend on those companies' underlying facilities and will not require access to ILEC loops. Similarly, wireless and access-independent VoIP providers will not rely on loops from the ILECs. The Coalition notes that as broadband telecommunications become even more prevalent, there will be even less reliance on the ILECs underlying networks. In this regard, the Coalition endorses the view of the Competition Bureau that:

> ...in a broadband world innovations from third parties will not likely require access to create a physical network. Instead, the appropriate regime would be to insure that if wholesale competition is not sufficient, that there is an non-discriminatory open access regime for applications on broadband networks. This would involve regulation to prevent the owners of the broadband networks from discriminating against third party applications (provided it does not harm the network).[19]

The Coalition notes that it has consistently insisted that the Commission should retain its powers under section 24 to ensure that no provider of local services, including all

---

[17] Bureau(CRTC) 20Jul05-303 PN 2005-2.

[18] CCTA(CRTC) 20Jul05-303 PN 2005-2.

[19] Bureau(CRTC) 20Jul05-303 PN 2005-2.

forborne service providers, is permitted to block or degrade access to any other service provider.[20]

c) In the Coalition's view, all ILEC facilities that properly meet the criteria for Competitor services have been tariffed for competitor use. As noted by CCTA:

> "For the most part, the Commission has ensured that essential (or non-essential) services are included in the suite of Competitor services."[21]

The Coalition also agrees with the Competition Bureau that:

> If the ILEC network is the only broadband network for access independent VoIP and access to the ILEC network is not regulated, then forbearance of local services on the basis of competition with access independent VoIP providers could be problematic.[22]

*** End of Document ***

[20] See for example, Comments of the Coalition dated June 22, 2005 in PN 2005-2 at para. 45.

[21] CCTA (CRTC) 20Jul05-304 PN 2005-2

[22] Bureau(CRTC) 20Jul05-303 PN 2005-2

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Certain parties' submissions addressed the dependencies between forbearance and Competitor services.

Identify facilities/functionalities used to provide the following retail services that should be, and are not currently, available as Competitor services: (a) circuit switched local exchange services; and (b) local VoIP services.

In each case explain, with reference to Commission's criteria for Competitor services, why the facility/functionality in question should or should not be provided as a Competitor service.

A. The Coalition reiterates that it, and a number of other parties to this proceeding, have assumed throughout this proceeding that conditions that the Commission has imposed on the ILECs with respect to access, interconnection and wholesale services for the benefit of CLECs, competitive inter-exchange carriers, wireless service providers or consumers would continue to apply under any forbearance for local exchange services.

See Coalition(CRTC) 20Jul05-303 PN 2005-2.

* * * End of Document * * *

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. In a competitive market, consumers typically have a choice of service providers. The Consumer Groups' in paragraph 87 of its submission, expressed concern that consumers would only have the choice of purchasing bundles of services from service providers and that stand-alone residential basic local service may not be available. Currently, the ILECs are the only provider of stand-alone residential basic local service.

Provide comments, with supporting rationale, on mechanisms or safeguards that would ensure residential basic local service is available to consumers that the market may not otherwise find commercially attractive.

A. The Coalition represents the interests of business users of telecommunications services and accordingly, is not well placed to comment on mechanisms or safeguards to ensure the availability of stand-alone basic residential service. However, the Coalition considers that, as with any service, if there is sufficient consumer demand for stand-alone service and the service is profitable, competition should ensure that stand-alone service continues to be provided at competitive rates. If there is not sufficient demand or the service is not profitable, the Coalition agrees with the Competition Bureau that an appropriate response may be to subsidize the provision of stand-alone basic residential service.[23] In this regard, it may be the case that, due to economies of scale and scope, the cost of provision of a stand-alone service is, in fact, higher than the cost of provisioning the same service as part of a bundle.

*** End of Document ***

[23] Bureau (CRTC) 20Jul05-401 PN 2005-2.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Competition in the local exchange market raises the issue of the appropriate regulatory approach to ensure the continued achievement of the policy objective set out in subsection 7(b) of the Telecommunications Act: "to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada". Assuming the Commission determines that a market is sufficiently competitive, comment with supporting rationale on whether a subsidy program such as the Lifeline program that exists in the United States or other mechanism would be required to ensure that residential basic service rates remain affordable for consumers with limited financial resources in a forborne environment.

A. The Coalition supports the long held principle and practice of promoting better connectivity, both narrow band and broad band, to as many Canadians as possible. Advanced communications networks benefit consumers and business by expanding markets for business and lowering costs.

However, in the view of the Coalition, any new government-led program to ensure that residential basic service rates remain affordable in a forborne environment should be funded from general taxation revenues and not from any new or expanded tax on telecommunications services or telecom service providers.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Interrogatory 403 refers to: Aliant's submission, paragraph 103; and Bell's submission, Section 4.2.2. Aliant and Bell/Télébec stated that an ILEC's Terms of Service do not apply to a forborne service. Provide comments on the merits of developing general terms of service that would apply equally to tariffed and non-tariffed services. Provide a list of the items with supporting rationale that would be included.

A. As noted in Coalition(CRTC) 20Jul05-302 PN 2005-2, the Coalition does not generally favour the imposition of post-forbearance criteria. The Coalition considers that market forces should be sufficient discipline to ensure that customers are able to negotiate satisfactory terms and conditions of service. However, where the Commission finds that certain terms of service are necessary to protect the interests of users (e.g., to meet social needs or access to 9-1-1), the Coalition would support the equal imposition on all service providers of those terms of service. The current conditions imposed on the CLECs may continue to be warranted for a forborne service provided by an ILEC. If the CLEC conditions are still relevant, the Coalition supports their equal application to the ILECs and the CLECs but would not endorse the imposition of any additional terms or conditions of service.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Parties, in their submission, generally agreed that the Commission should retain its powers under section 24 of the Act to impose conditions to protect consumers. Provide comments, with supporting rationale, on whether safeguards (e.g., outbound long distance call blocking provided at no charge and per line call display blocking provided at no charge to qualified end customers such as women's shelters) need to be maintained.

A. Throughout its involvement in CRTC proceedings, the Coalition has recognized the important role that regulation of telecommunications services and providers may play in promoting social objectives.[24] As noted in Coalition(CRTC) 20Jul05-302 PN 2005-2 and in the Coalition's Comments in this proceeding, the Coalition would support the Commission's use of its section 24 power to impose conditions on the provision of otherwise forborne services where necessary to ensure that social obligations are met. Access to 9-1-1 and access for the disabled are two examples of such obligations. The Coalition notes that any such conditions should apply equally to all service providers.

*** End of Document ***

---

[24] See for example, the Comments of the Coalition in *Regulatory framework for voice communication services using Internet Protocol*, Telecom Public Notice CRTC 2004-2, dated April 7, 2004.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. **In *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997, the Commission concluded that the ILECs were to continue to provide a comprehensive directory so that any user of the local network could obtain information, as required, to use the local network. Assuming the Commission determines that a market is sufficiently competitive, provide comments, with supporting rationale on whether the current arrangement with respect to white page directories should remain. If not, provide alternatives, with supporting rationale.**

A. The Coalition believes that the provision of a comprehensive directory still serves a useful public purpose. However, in light of consumers' movement towards services for which there is no comprehensive directory service (e.g., wireless and VoIP) it is difficult to see that directories will be required in the long term. The Coalition agrees with the Competition Bureau that, while a comprehensive directory serves a useful public purpose, it need not be provided by the ILECs as is mandated under the current regime. The Competition Bureau states that:

> Other provision and funding models that recognize the public good nature of making comprehensive listing information available to all subscribers should be explored. For example, a single directory might be funded by the local telecommunications industry with cost sharing based on local telecommunications revenues.[25]

*** End of Document ***

---

[25] Bureau(CRTC) 20Jul05-405 PN 2005-2

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. **Aliant, in paragraph 103 (3) of its submission and Bell/Télébec, in paragraph 195 of its submission, both were of the view that in a competitive market, retail quality of service standards would no longer be required. Provide comments with supporting rationale on mechanisms that would ensure a high quality of service in a competitive market remains if retail quality of service standards are discontinued.**

A. The Coalition agrees that in a forborne market, retail quality of service standards will no longer be required. The Coalition considers that market forces will be sufficient to ensure that quality of service remains high. The Commission has not seen the need to impose quality of service requirements in other forborne markets, such as the Internet and wireless services markets. In fact, providers now compete on quality of service. Quality of service is one of the key considerations for consumers when choosing their Internet service and wireless provider. Consumers can be expected to change providers if quality of service falls below a level they consider acceptable.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. **In its submission, paragraph 164, CCTA considered that the Commission may wish to retain a price ceiling for residential local exchange service rates as a means of providing protection to users in rural, remote and less competitive communities. CCTA noted that the Commission determined in paragraph 95 of *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997, it would retain its subsection 27(1) powers to ensure that toll rates remain just and reasonable in non-equal access areas where there was limited, if any, competition. CCTA argued that depending on the nature of a price ceiling applied to ILEC local exchange services, the Commission may also wish to retain its subsection 27(5) powers to establish a method to ensure ceiling rates are just and reasonable.**

Provide comments, with supporting rationale, on the appropriateness of retaining a price ceiling on residential basic local service rates or other mechanisms that would ensure basic local service rates are just and reasonable in pockets of forborne markets where there is insufficient competition.

A. The question addresses measures that may or may not be appropriate for the residential local services market after forbearance. The Coalition consists solely of businesses and institutional users and, accordingly, the Coalition has not made any proposals with respect to appropriate measures specifically for the residential market post-forbearance. The Coalition notes that the issue of "pockets" with insufficient competition post-forbearance arises in other CRTC Interrogatories. See for example Coalition(CRTC) 20Jul05-204 PN 2005-2. As noted in that response, problems arising from pockets of insufficient competition post-forbearance derive from defining the relevant geographic market too broadly.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Bell/Télébec and SaskTel have submitted that the Commission should only examine the issue of re-regulation if it is presented with credible evidence of harm to customers. Similarly, TCI submitted that the presence or absence of customer complaints should be given significant weight in any Commission examination of re-regulation.
Comment on:

a) Whether credible evidence of harm to competitors or the competitive market should also be considered as a reason to examine re-regulation.

b) What would constitute credible evidence of harm to consumers, competitors or the competitive market.

A. **a) & b)** The Coalition would not agree with Bell/ Télébec and Sask Tel and TCI that re-regulation should be considered solely on the grounds that there is "credible evidence of harm to customers". Similarly, the Coalition would not accept that harm to competitors is sufficient grounds in itself to consider re-regulation. While the Coalition would strongly agree that both types of harm are relevant to any consideration of re-regulation, if it is suggested that the analysis should begin with an assessment of harm to either customers or competitors, the Coalition submits that such an analysis begins by asking the wrong question. Rather, the relevant question to ask when considering re-regulation is whether there is credible evidence of harm to the competitive process, not to one or more market participants.

In this regard, it is essential to bear in mind a fundamental principle: *Competition is a process, not an end-state*. Competition is inherently dynamic and, at any given point in time, some suppliers and customers will be doing well and enjoying gains relative to others. At the same time, other participants will be doing less well. This is the norm in competitive markets. A benign outcome for all participants at all times is highly unlikely and should not be expected.

What is relevant to consider is whether the market process is functioning properly; whether it has been harmed; whether it is failing and, if so, what can be done to restore the process.

The proper approach has been well described by Douglas Webb, Telecommunications Commissioner, Commerce Commission of New Zealand in the following terms:

> Competition is a process, not a situation, and this is particularly true in such a volatile industry as telecommunications. The goal is not to promote or protect

> particular competitors, or particular market structures. It may be tempting to think of the end-game as the resolution of disputes between carriers (who wins and who loses). That would be the wrong way of looking at it. In the same way, the regulator isn't in the business of deciding what the industry should look like, how many players there should be, or in which segments they should compete. Those outcomes are to be left to market forces.[26]

The same approach has been succinctly described by the Competition Bureau:

> The Bureau would not agree that harm to competitors should be a trigger to reassess forbearance. The Bureau believes that any trigger should focus on harm to the competitive process, rather than harm to individual competitors.[27]

An assessment of the need for re-regulation of a forborne service (or regulation of a new service) should be determined by applying the standard competition law tests to conditions that prevail at the time. The analysis must determine whether there is choice and rivalry; is entry occurring or is it likely; what opportunities exist for customers to switch to alternatives or similar services; is technological change redefining service boundaries and/or the relative role of the service; are there sunk costs; are there economies of scale or scope; etc. Furthermore, in an IT industry such as telecommunications, the answers to these questions can change over the course of a few years.

When applying these analytical tools to any consideration of re-regulation of a forborne service, the objective should be to determine if the competitive process is working or could work. If not, what remedies can be applied to permit it to work? Such remedies include a range of options, not restricted to traditional tariff (price) regulation.

The Coalition would offer three examples of conduct that would generally be harmful to the competitive process. Firstly, the refusal to supply an essential facility or service (as defined by competition law tests) would likely harm the competitive process. Secondly, measures by a major supplier which prevent customers from participating in the market and exercising choice would harm competition. A specific example of this would occur when a customer is prevented by its chosen high speed access provider from reaching the IP service or application of its choice. A third example arises in the case of a major supplier engaging in a practice of predatory pricing as that term is defined in competition law.

---

[26] Speech by Douglas Webb, Telecommunications Commissioner, Commerce Commission, Government of New Zealand, TUANZ, Telecommunications Day, Wellington, July 25, 2002.

[27] Bureau(CRTC) 20Jul05-501 PN 2005-2.

In all of these examples, there would likely be credible evidence of harm to individual competitors and/or customers. However, the focus of the analysis would be on the operation of the competitive process, not on any particular market participants.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Several parties submitted that the Commission should re-regulate automatically if certain "trigger" points are reached. For example, PIAC submitted that the Commission should monitor market share, prices and quality of service. If any of the criteria reached a pre-determined hard "trigger" point, then the Commission should automatically re-regulate in the relevant market.

Under this approach and depending on the criteria selected, it may be possible for a market to alternate between forbearance and re-regulation due to LEC activities, e.g., marketing campaigns.

Comment on:

a) How the Commission could, under an approach to re-regulation based on "trigger" points, minimize the likelihood and the impact of alternating between forbearance and re-regulation; and

b) What the impact of alternating between forbearance and re-regulation would be on customers, ILECs and competitors.

A. (a) The Coalition does not generally endorse re-regulation of forborne markets unless there is clear evidence of market failure and a full and public analysis of the appropriateness of re-regulation, focussed primarily on the impact it would have on consumers, is performed. The Coalition is altogether opposed to re-regulation on the basis of the tripping of some pre-determined trigger.

As the Coalition explained in Coalition(MTS Allstream)20Jul05-3 PN 2005-2, the decision to re-regulate a market that has been operating free from regulatory intervention can have far greater adverse effects on consumers than the initial decision to de-regulate. Indeed, the effects of re-regulation on consumers can be very negative. A likely consequence of re-regulation is an increase in the general level of prices for the whole market or for many locations and customers. For example, in the inter-exchange private line ("IXPL") market, re-regulation, (ostensibly proposed to protect consumers), would result in price increases across the board.

It is precisely this subordination of consumers' interests to those of the service providers that rallied business users of telecommunications to form the Coalition to ensure that consumers' interests would be protected in regulatory proceedings. The Coalition notes that while Section 7 of the *Telecommunications Act* specifically requires that the CRTC respond to the interests of users, it is altogether silent regarding the protection of service providers. The Coalition submits that in considering whether to re-regulate a market in which consumers have been freely conducting business, the CRTC is bound by its statutory objectives to undertake a full and public analysis of the appropriateness of such action and to focus primarily on the impact it would have on consumers. For this reason, an automatic trigger of a pre-determined threshold is an altogether inappropriate approach to re-regulation.

In addition to ignoring consumer interests, a trigger test for re-regulation ignores a number of other critical factors. As the Coalition recently submitted in its comments to the CRTC in a proceeding to examine the potential re-regulation of inter-exchange private line ("IXPL") routes, the reliance on pre-determined triggers or tests ignores current market circumstances focusing instead on the market circumstances that existed when the original forbearance decision was made. For example, setting the same 5% market share trigger for re-regulation as for forbearance does not take into account changes that may have occurred in the market as a result technological advances or the passage of time since the test was first imposed.

In this regard, the Coalition also notes that the CCTA has also opposed any "hard-trigger" for re-regulation.[28] It is noteworthy that, pending the outcome of this proceeding, the Commission has deferred its decision as to whether an automatic trigger for IXPL re-regulation is appropriate. In June of this year, the Commission issued a procedural ruling postponing its consideration of the proposed re-regulation of IXPL markets.

b) In addition to the concerns outlined above, the Coalition agrees with the Competition Bureau that:

> Sudden and unpredictable shifts in the regulatory regimes are unacceptable because they introduce unnecessary uncertainty and regulatory risk for all suppliers. These risks reduce the incentive for suppliers to make investments and increase their required rate of return. The resulting negative effects on the introduction of new services, innovation, capacity, reliability and costs harm consumers.[29]

*** End of Document ***

[28] See CCTA(CRTC) 20Jul05-502.

[29] Bureau(CRTC) 20Jul05-502 PN 2005-2

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Parties have submitted different views with respect to the relevant markets that should be forborne. For example, MTS Allstream submitted that all residential and business local services are in the same market. TCI submitted that there is a market for residential local services and a market for business local services. Bell/Télébec and SaskTel submitted that the forbearance assessments should be structured around the following 4 markets: residential local services, business primary exchange services, Centrex services, and digital trunk services. Aliant supports the approach of analyzing services provided to residential customers separately than services provided to business customers

Parties are requested to submit their views, with supporting rationale, as to what, if any, competitive safeguards would be required to protect customers and competing carriers from the following situations occurring in a forborne market:

Comment on:

a) Services with little or no competition being used to subsidize services that have competition.

b) Prices for services with little or no competition are reduced as a means to impede future competition for those services (i.e., a potential barrier to future entry).

A. **a) & b)** As a preliminary matter, the Coalition notes that the suggestion that safeguards may be required to protect competing carriers or customers is conceptually wrong for the reasons set out in Coalition(CRTC)20Jul05-501 PN 2005-2. As indicated in that response, if any measures are to be considered after forbearance, they should be designed to protect the competitive market process, not individual participants.

The scenario hypothesized in the question is one in which there are services with "little or no competition" post-forbearance. If there are, in fact, geographic areas of a forborne market with little or no competition, in the Coalition's view, the forbearance analysis of competition must have applied an incorrect definition of the relevant geographic market. There should be sufficient competition, actual or realistically capable of entering, to discipline the incumbent. Otherwise, the relevant market has been defined too broadly and, at least for some customers or areas, forbearance was premature.

On the other hand, as one might expect, if there is less competition in some areas or sub-markets of a properly forborne market, there is still discipline on the incumbent in respect of pricing. Raising prices would simply incent even more competitive entry and accelerate the incumbent's market share loss. Subject to this important constraint on price, the rational strategy for the incumbent is usually to maintain prices at levels so as to maximize corporate net income from the market in question. Thus, it is not generally rational for the incumbent to lead prices downward in order to foreclose entry or impede further competition. If an incumbent were to lead the general structure of prices downward, as the player with the largest market share, it suffers the largest sacrifice in revenue. Revenue forgone in this manner[30] by the incumbent usually can never be recouped later. In telecommunication services, once the market level of prices has moved downward, it is usually very difficult if not impossible for the incumbent to raise the level of prices later. The demand side of the market and other suppliers adopt the new lower price levels as the norm[31].

Nevertheless, an incumbent strategy of reducing prices (assuming prices are still above cost) in the face of existing or increasing competition would not *per se* be anti-competitive. Prices are, *ceteris paribus*, expected to be generally lower (or closer to costs) in competitive markets. Furthermore, prices in forborne competitive markets should not be expected to be uniform across all customers or all locations. Accordingly, pricing lower to respond to market competition is not anti-competitive. It is simply normal market conduct that can be observed in competitive markets generally. On the other hand, engaging in a practice of pricing below costs to harm competitors would be anti-competitive and predatory. The Coalition has provided its views on predatory or anti-competitive pricing in Coalition(CRTC)20Jul05-204 PN 2005-2. Where predatory pricing does occur, the fact that it may be cross-subsidized by another market segment of the same supplier is irrelevant. The source of any funding to support predation, when it occurs, makes no difference. The harm to the market process caused by predation should be dealt with regardless of whether there is any cross-subsidy supporting such conduct.

*** End of Document ***

[30] It is assumed for the purpose of this discussion that prices are reduced but remain above cost. In other words, there is no predatory pricing.

[31] An illustration of this scenario is provided by the history of the level of prices for long distance services in Canada. Prices remain relatively low and show no signs of drifting upward. If anything, they continue to gradually decline.

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. In order to bring some commonality across the wide variety of submissions provided by parties with respect to the need for post-forbearance measures, monitoring, and the need for re-regulation:

a) Describe the characteristics of a sustainable competitive, forborne market;

b) Identify and quantify specific events or changes in the dynamics of such a forborne market which signal that the market may not be sustainably competitive. Provide comments on whether such events or changes can be linked to the acquisition of market power by any firm;

c) Identify, with supporting rationale, any post-forbearance criteria, conditions and safeguards that may be used to address such changes in market dynamics, and demonstrate how these post-forbearance measures should be used to ensure that the market remains sustainably competitive. Identify key areas of concern; and

d) Identify the specific type and nature of the data required for making such determinations, specifying the level of associated administrative and regulatory burden.

A. a) In general, the Coalition agrees with Telus' characterization of a sustainable competitive environment as one in which:

> Generally, there are low-to-medium barriers to entry, and consumers benefit from price competition and competition for quality and other product or service characteristics.[32]

However, it is important to note that where a market has been found to be sufficiently competitive to warrant forbearance, there should not be a presumption that competition will fail. The Commission's test for forbearance as set out in Decision 94-19, looks at the market at that point in time rather than making a prediction as to whether competition will be sustainable. That approach should be maintained.

b) – d) See Coalition(CRTC)20Jul05-403, 406 and 502.

*** End of Document ***

---

[32] Telus(CRTC)20Jul05-504 PN 2005-2

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Assume that forbearance has been granted with respect to an ILEC's local exchange service.

Discuss whether it would be appropriate to continue to develop Competitor services for facilities used to offer competitive alternatives to that forborne local exchange service in the event that, for example, technological or network change (e.g. increasing use of remotes) affects the method of provisioning the forborne service. Include a discussion of the mechanisms through which any such additional Competitor services could be developed.

A. Current regulatory requirements to provide access to essential facilities and near-essential facilities should continue to apply where they are necessary, according to competition law tests, for the provision of competitive alternatives. The Coalition considers that in the event of a technological or network change, the same tests for determining whether a facility is essential or near-essential should continue to apply to determine whether any additional access requirements are necessary.

*** End of Document ***

INFORMATION REQUESTED BY

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Q. Parties are requested to submit their views, with supporting rationale on the following:

a) Is it appropriate to establish a time period that a market share threshold criterion should be maintained before forbearance is granted?

b) If so, what is an appropriate time period?

c) If, after forbearance has been granted, an ILEC's market share were to drop below the threshold criterion, is it appropriate to require that the drop be maintained for a pre-determined time period before considering and/or implementing re-regulation?

d) If so, what is an appropriate time period?

A. **a) and b)** The Coalition does not support the establishment of a time period over which a market share threshold would have to be maintained for forbearance to be granted. The Commission's past forbearance determinations have always been based on an examination of the market at that point in time and that approach should be maintained. If a market is found to be sufficiently competitive to protect the interests of users, the Commission should forbear from economic regulation immediately.

c) and d) See Coalition(CRTC)20Jul05-502.

*** End of Document ***