ROGERS™

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June 22, 2005

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

By fax: 1-819-994-0218

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

Dear Ms. Rhéaume:

Attached, please find the submission of Rogers Communications Inc. with respect to the above-noted Public Notice. Rogers wishes to advise that it intends to participate in the oral consultation.

Yours very truly,

Kenneth G. Engelhart
Vice President, Regulatory

cc. Interested parties

Att.
KGE/mf

Telecom Public Notice CRTC 2005-2;

Forbearance from Regulation of Local Exchange Services

June 22, 2005

Written comments of Rogers Communications Inc.

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Introduction

1. Rogers is a member of the Canadian Cable Telecommunications Association (CCTA) and has had an opportunity to review the CCTA comments, including the expert evidence provided by the CCTA. Rogers fully supports the CCTA comments. This submission contains additional comments on the issues contained in Telecom Public Notice CRTC 2005-2 ("the Public Notice").

2. All parties in the Canadian communications sector agree that the Commission should be using its regulatory powers to bring about a competitive telecommunications market. Indeed, the Commission has stated on numerous occasions that achieving competition and deregulation in the local telephone market is its goal. However, while all parties share the same objective, they are divided on the best way to achieve this objective. Some argue that deregulating the local telephone market in the near term will be the quickest way to a fully competitive market. However, the incumbent phone companies have a 125 year head start in the local phone business. Simply declaring the market to be competitive will not suffice to give customers a real choice of suppliers. The Commission should base its decision on sound public policy analysis, the provisions of the *Telecommunications Act* and principals of competition law and economics. The Commission should not be swayed by the intense public and political lobbying of the incumbents, who seek quick deregulation.

3. In this regard, Rogers points out below that the incumbent phone companies have been arguing for well over a decade that their local telephone market is fully competitive and that their market share is about to fall precipitously. However, despite these dire predictions, Canada's incumbent phone companies continue to have 97% of the local residential telephone market and 92% of the business market. Accordingly, their arguments that competition from cable television companies and VOIP providers is a cause for immediate deregulation must be seen in the context of a decade of comments to the same effect.

4. Rogers will also make some comments about the Commission's deregulation process in the local cable television market.

ILEC Predictions Regarding the Local Telephone Market

5. In the first Price Cap proceeding initiated by *Telecom Public Notice 96-8*, the Stentor companies were already stating that there was vigorous competition in the local telephone market. In the SRCI Evidence, Section 3.0, in paragraph 3-13 they stated as follows:

"Competition in the provision of local telecommunications services is already a reality in Canada and will accelerate in the near future. ... By the time price caps are introduced in 1998, the scope and degree of local competition will have broadened significantly. ... Many of the current competitors and future entrants in the local telecommunications market are already participating in some aspect of the broader communications marketplace and have established relationships with Canadian businesses and consumers, which they can leverage to develop a customer base for their local service offerings."

6. In paragraph 3-66 Stentor stated as follows:

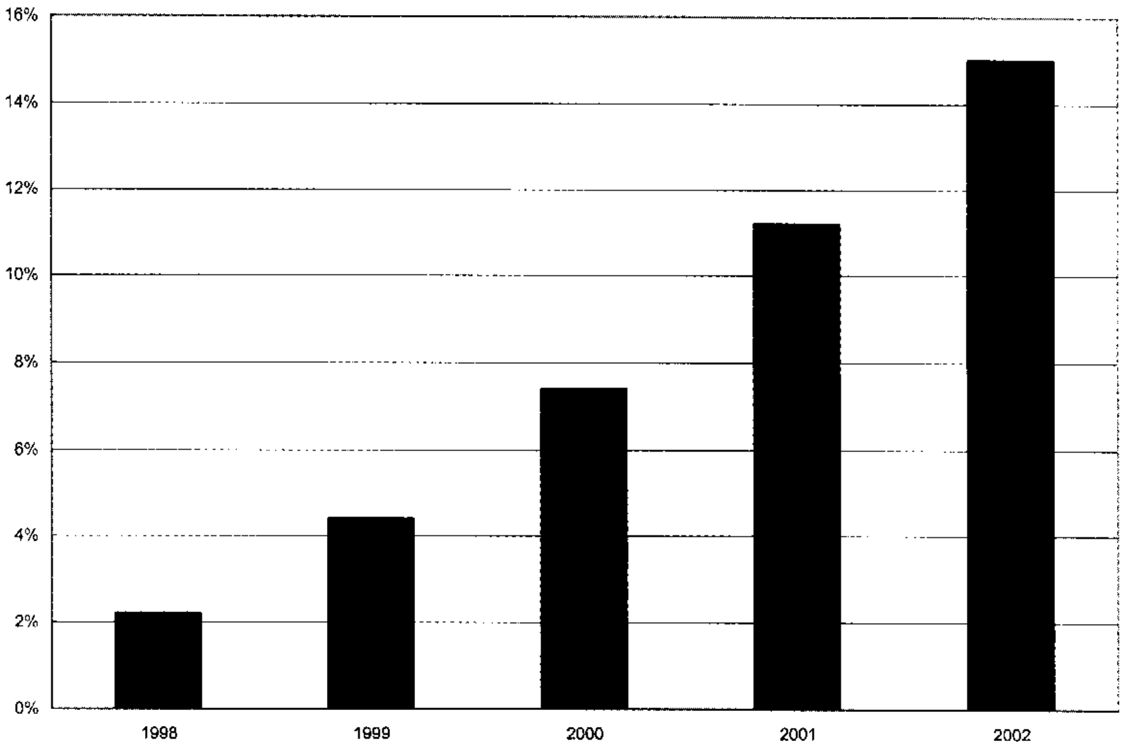
"As has been shown, there are numerous competitors already offering alternatives to the Stentor companies' local service offerings or planning to do so in the near future. Many of these competitors and potential competitors are large, well-financed organizations that are already active in other areas of the Canadian communications market. They can leverage the relationships they have established with their customers in these other areas to quickly gain credibility in the local services market. By the time price caps regulation is implemented, 18 months from now, the competitive market will be very dynamic. The regulatory regime established under price caps must take this into account and must not be prejudiced against the Stentor companies. It must allow the Companies, like other competitors, to have sufficient flexibility to meet the rapidly evolving needs of customers in the broadening communications market."

7. In paragraph 4-34 Stentor stated:

"Impacts of local competition are likely to parallel those of long distance competition."

8. In Table 3 of its Evidence (reproduced below as Figure 1), Stentor provided the following expected market share loss due to local competition for the ILECs:

Figure 1
Total ILEC
Expected Market Share Loss due to Local Competition



9. In *Telecom Public Notice 97-11; Implementation of Price Caps* the incumbent phone companies continued to be very optimistic in their predictions regarding local telephone competition. In paragraph 2-58 they stated as follows:

> "Now that the terms and conditions for local competition have been defined, existing and emerging competitors will employ the latest technologies and bundling strategies to quickly establish themselves in the local market and thereby increasing the corresponding business risk of the Stentor companies."

10. In paragraph 2-61 they stated as follows:

> "The creation of a portable subsidy mechanism, combined with other favourable terms and conditions for new entrants in the local services market, (including the lower than proposed mark-ups on unbundled loops in urban areas), means that competitors should be able to gain local market share relatively quickly. From their statements following the Commission's announcement of its local competition decision, it is clear that existing and potential competitors see plenty of opportunity in the local market and are prepared to do whatever is necessary to

get into the market as soon as possible. All of these factors combine to create a significant degree of additional business risk for the Companies."

11. In the proceeding commenced by *Telecom Public Notice 99-6; Review of Contribution Collection Mechanism*, Bell et al made a very detailed forecast at interrogatory 1204D. This interrogatory response is contained as Appendix 1 to these comments. In their forecast, Bell states that all major ILEC Utility services are expected to lose demand to competitors over the 1999 to 2002 time period. They stated that CLECs will capture NAS and customers from all segments of the local market, eroding revenues from basic local services, Centrex and digital network access services. They also stated that market share loss will be felt in the optional local services category. The CLECs that would take this market share were AT&T, Call-Net, Futureway, Gateway, GT, Maskatel, Norigen, Optel, Group Telecom, C1, Eastlink and twenty other parties that had notified the Commission of their intention of becoming a CLEC. In fact, most of these parties have since become insolvent and many have disappeared.

12. Cable companies and wireless companies were forecast to take significant market share from 1999 to 2002. Bell also cited with approval the forecasts of Yorkton Securities, The Angus Reid Group, NBI/Michael Sone and Associates and Paul DeLottinville and Associates Inc. These experts all forecast huge market share losses for the phone companies for the 1999 to 2002 timeframe.

13. In *Public Notice 2000-96, Local competition; Proceeding to Consider extending the sunset rule for near essential facilities and to treat copper loops as essential facilities*, the Commission stated in paragraph 3 that in light of conditions in the local exchange market, the Commission considered it would be appropriate to retain the mandatory unbundling rule for local loops. In their submission of August 25, 2000, Bell Canada complained that the Commission has not made information available to explain their view of "conditions in the local market". Accordingly, Bell described the current competitive market conditions to the Commission.

14. For the next seven paragraphs, Bell glowingly described the rosy state of competition in Canada. They described the AT&T merger with Metronet and all the communities in which AT&T was providing local telephone service. Again they describe competition from C1 Communications, Eastlink, GT, Gateway Telephone, Futureway Communications and Norigen. In paragraph 12 Bell described local telephone competition from Telus-Clearnet utilizing wireless local loops and in paragraph 14 they describe competition from LMCS licensees using the 24 and 38 GHz frequencies.

15. In Paragraph 15 Bell states:

"Despite assertions to the contrary made by competitors to the Commission, the CLECs have made significant in-roads in the local market and are certainly in a position to accelerate the pace of competitive entry."

16. Again, almost all of the entities described by Bell Canada subsequently became insolvent. Eastlink and Futureway are notable examples that avoided that fate. Whereas Bell states that Futureway was "providing both cable and telephone services in a number of real estate developments ... utilizing self-supplied access facilities", they are now using Bell local loops in new developments. LMCS spectrum also failed to develop as a competitive alternative to local telephone service from the incumbents.

17. With the benefit of hindsight, Bell's description and conclusions seem comical today. As it turns out, Gateway Telephone did not live up to its plan to become "North America's leading wholesale telecom superstore." Contrary to Bell's confident assertions from 1996 to 2000, the CLECs had not made significant inroads and were not in a position to accelerate the pace of competitive entry. Indeed, many were well on their way to insolvency.

18. By the fourth quarter of 2001, it was apparent to many observers there was something seriously wrong in the Canadian local telephone market. However, Bell Canada continued to be upbeat. In their October 31, 2001 Reply argument in *PN 2001-37 Price Cap and Related Issues* Bell stated as follows in paragraph 3-12:

"The Companies suggest that AT&T and Call-Net's characterization of local competition in Canada as a failure that is about to become a disaster unless drastic steps are taken should be rejected given the similarities to the evolution of local competition in the U.S. and to the evolution of competition in Canadian DTH markets."

19. Bell had noted in paragraph 3-11 that the DTH broadcasters had captured 9.8% of the BDU market in Canada in 2001. However, satellite today accounts for 22%[1] of the Canadian BDU market and competition in the local wireline telephone market is only 3% in the residential market and 8% in the business market.

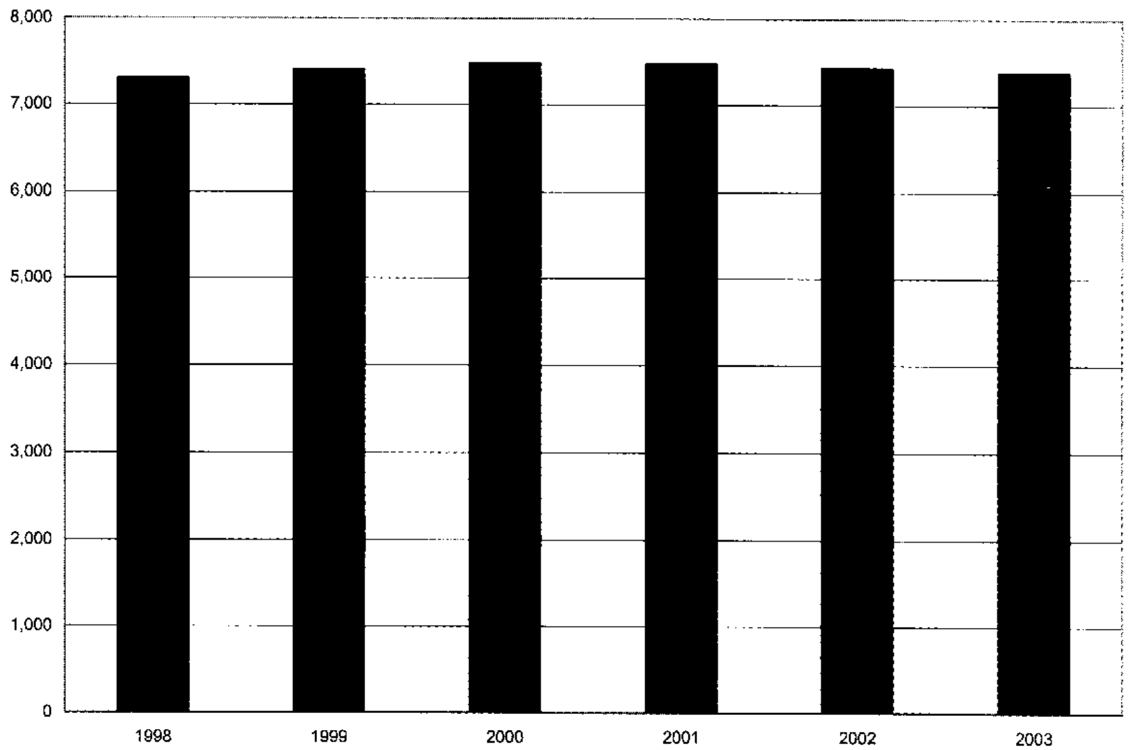
20. In paragraph 3-15 Bell stated that the net income of the CLECs was not important. In paragraph 3-16 they noted with approval that Group Telecom was not concerned about net income. Group Telecom sought CCAA protection on June 26, 2002.

21. Figure 2 below provides Bell's total residential NAS since the introduction of local competition through to 2003[2] while Figure 3 provides Bell's combined

[1] CCTA Annual Report 2005, page 16
[2] The Companies(CCTA)20Feb04-1 Supplemental PN 2003-10.

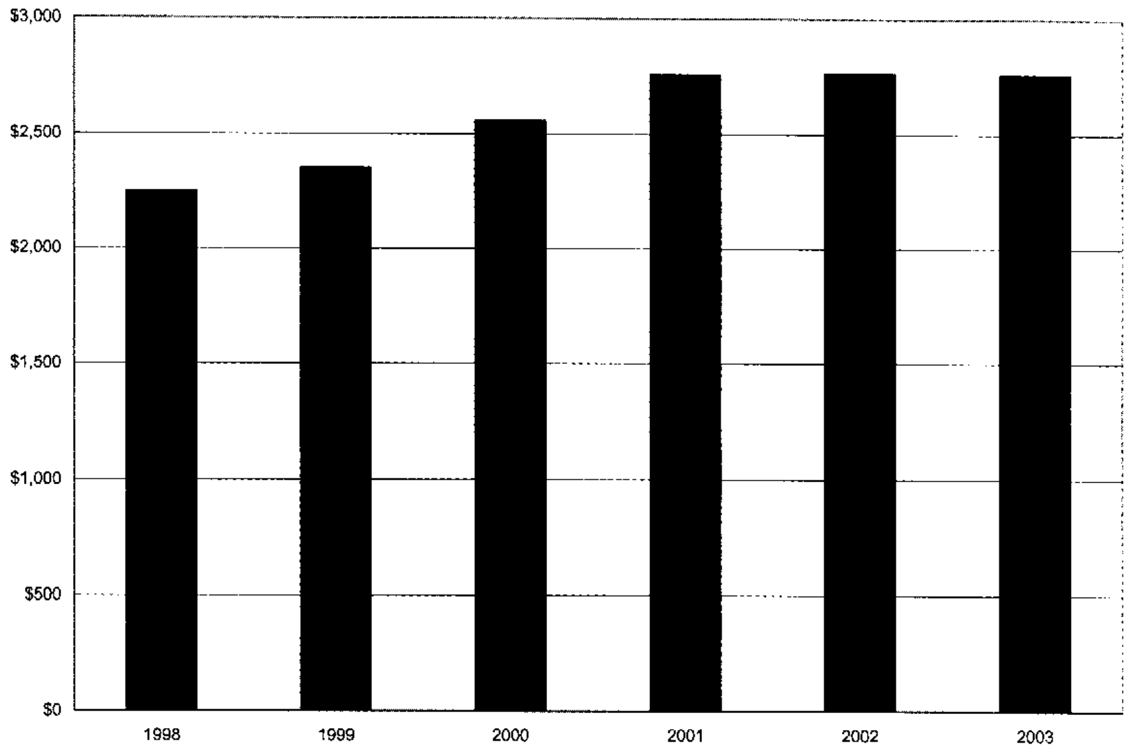
residential primary exchange and optional services revenues for the same period.[3] As the graphs clearly illustrate, contrary to Bell's past predictions, Bell's residential market base has remained stable over this time period while its revenue base has grown substantially.

Figure 2
Bell Canada
Total Residential NAS
('000)



[3] The Companies(CCTA)20Feb04-3 and 4 Supplemental PN 2003-10

Figure 3
Bell Canada
Residential Primary Exchange and Optional Services Revenues
($ million)



22. As an examination of these past Bell Canada statements shows, it is appropriate for the Commission to rely on actual market share losses rather than projections and estimates of future market share losses in making its deregulation decisions.

Deregulation in the Cable Industry

23. The Commission will no doubt wish to consider whether the deregulation test from the cable television industry has relevance in its examination of the local telephone market. The cable television test essentially provides for deregulation after the competitors lose 5% of the BDU market. However, it is important to recognize that the addressable geographic market cannot be assessed merely by looking at BDU subscribership. The relevant issue is each home's decision to subscribe or not subscribe to the incumbent cable operator for television delivery.

24. Just as 2.4% of Canadian households rely only on wireless service and do not have any wireline service, some television homes rely only on black market satellite or over-the-air television and do not have any BDU service.

Indeed, at the time that the Commission imposed the 5% deregulation test, approximately 20% of Canadian homes (virtually all of which have a television) did not subscribe to cable television service. Therefore the cable deregulation test, in effect, required 25% of the homes passed by cable to be served by a television provider other than cable. Accordingly, a telephone deregulation test which requires that 30% of the homes passed by the ILECs should not be served by the ILECs, is an appropriate test. The 30% number is 5% higher than the 25% number to reflect the fact that telephone service is considered by many to be an essential service.

25. It should also be noted that although Star Choice and Bell ExpressVu launched their satellite service in 1997, the first cable systems to be deregulated were Rogers' St. Thomas and Woodstock systems in November 2000. The CRTC approval was not granted until almost one year after Rogers' application for deregulation was submitted.

26. In the Public Notice, the Commission asks whether prior to forbearance, flexibility should be provided to the ILECs, for example under the winback rules. It should be noted that cable television companies continued to have winback rules imposed on them after forbearance. Indeed, eight years following the launch of satellite service, at a time when the two Canadian satellite providers have 22% of the Canadian BDU market, the winback rules continue (in modified form) for cable television companies. Indeed, in the case of multiple unit dwelling (MDU) buildings, a new winback rule was imposed last year, in large part due to complaints from Bell ExpressVu.

Rogers' Position on Issues 2 to 6

27. Rogers' position on issues 2 to 6 identified in the Public Notice is identical to the position advanced by the CCTA.

28. All of which is respectfully submitted.

Kenneth G. Engelhart
Vice President, Regulatory
Rogers Communications Inc.

APPENDIX 1

"D) FOR EACH OF THE MAJOR UTILITY SERVICES IDENTIFIED IN RESPONSE TO PART C) ABOVE, PLUS RESIDENCE AND BUSINESS EXCHANGE AND LOCAL OPTIONAL SERVICES BY BAND (BASED ON THE BAND RESTRUCTURE PROPOSAL), IDENTIFY THE SERVICES THAT ARE EXPECTED TO LOSE DEMAND TO COMPETITORS OVER THE 1999 TO 2002 TIME PERIOD, AND PROVIDE THE EXTENT TO WHICH MARKET SHARE LOSS IS FORECAST WITH SUPPORTING RATIONALE.

A. All major Utility services are expected to lose demand to competitors over the 1999 to 2002 time period. CLECs will capture NAS and customers from all segments of the local market, eroding revenues from basic local services, Centrex and digital network access services. The cross-impacts of local market share loss will be felt in optional local services, as well as in installation charges. Directories and public telephones are already competitive and will continue to lose demand to competition.

Competitive alternatives are currently available for most of the Companies' Utility services and the degree of competition is expected to increase over time. The framework for competition in the provision of switched local access services is established and the enablers required to put this framework into practice were in place. LNP capability has been rolling out steadily across the country and is now available in at least major centres within most Companies' operating territories. Unbundled elements are available at approved prices, interconnection and co-location agreements have been worked out between the Companies and CLECs operating in their territories and major implementation issues have been resolved through the CRTC Interconnection Steering Committee (CISC).

As of 13 April 2000, there were 12 CLECs offering residential and/or business local services in the Companies' operating territories. Of these, 10, comprising AT&T Canada Telecom Services Company Inc. (AT&T Canada, formerly MetroNet Communications Group Inc.), Call-Net Communications Inc., Futureway Communications Inc., Gateway Telephone, GT Group Telecom Services Corp., Maskatel Inc., Norigen Communications Inc., Optel Communications Corp. and two Groupe Vidéotron ltée. subsidiaries, operate in Bell Canada territory. GT Group Telecom also operates in MTS' territory, while AT&T Canada, C1.com Inc. (formerly Fundy Cable Ltd.) and EastLink Telephone all operate in MTT territory. In addition, more than 20 other parties have notified the Commission of their intention of becoming a CLEC within the Companies' operating territories. Most of these parties have already been recognized

as CLECs in order to make the arrangements necessary to provide local switched services. Included among these proposed CLECs are cable companies (Cable Atlantic Inc., intending to provide service in NewTel Communications territory, Cogeco Cable Systems Inc. and Rogers Cablesystems Limited, both targetting Bell Canada locations), wireless service providers (Clearnet PCS Inc. and Microcell Connexions Inc.) and subsidiaries of incumbent local exchange carriers from other regions (TELUS Integrated Communications Inc.).
AT&T Canada became the largest CLEC in Canada following its merger with MetroNet Communications in June 1999. According to its 1999 Annual Report, AT&T Canada had nearly 300,000 local access lines in service at the end of 1999, serving more than 30,000 local business service customers in a total of 18 markets across the country. As well, AT&T Canada had a further four markets under development at the end of 1999. Within the territories served by the Companies, the markets currently or soon to be served by AT&T Canada's local networks include the city of Toronto and surrounding areas, Montréal, Ottawa-Hull, Québec City, London, Kitchener, Hamilton, St. Catharines, Halifax, St. John's, Fredericton, Moncton and Saint John. In addition, several other cities in Ontario and Québec can be served using wireless spectrum. AT&T Canada's revenues from local services in 1999 were 93.4 million. Its BusinessOne service, launched in late 1999, is a service bundle that includes local, long distance, and Internet services.

EastLink operates as a reseller of both residential and business local services in mainland Nova Scotia. In August 1999, EastLink began operations as a CLEC in Halifax offering local service to residential customers.

Futureway Communications Inc. is associated with Metrus Properties Ltd., a land developer which owns a significant proportion of the undeveloped land around the periphery of Toronto. Futureway currently has CLEC status in Maple, Brampton, Thornhill, Gormley and Woodbridge and is providing cable and telephone services in Metrus developments.

Optel, which began reselling Bell Canada's Centrex service as an alternative to business exchange service in 1995, is also a competitor in Bell Canada's territory, with an installed base of 79,478 local access lines at the end of 1999, of which nearly 4,000 lines were facilities-based service. Optel initiated its first facilities-based offerings in Toronto and Montréal during its first quarter, which ended 31 December 1999. Optel continues to offer resale services in these cities as well as in Ottawa-Hull, Québec City and the southern Ontario cities of Hamilton, Kitchener-Waterloo, London, Sarnia, Windsor, St. Catharines-Niagara Falls and Oshawa. As well as initiating its first facilities-based services during the final quarter of 1999, Optel also launched its national expansion plan, which will extend its facilities-based reach within other major Canadian cities, such as Ottawa, by 30 September 2000.

Sprint Canada was also active in the local services market during 1999, with more than 50,000 active lines, representing 30,000 customers in 18 Canadian cities. Within the Companies' operating territories, these cities include Toronto, Montréal London, Kitchener, Guelph, Hamilton and Oshawa. In the Toronto region, Sprint Canada offers a local service bundle to residential customers, which includes a line and an array of features for around $30. During 1999, Sprint Canada's local revenues were $12.9 million – $9.7 million from business customers and $3.2 million from residence/SOHO customers. At the end of 1999, it had over 90 co-locations "in Canada's largest wire centres."

On 9 November 1999, TELUS Integrated Communications, an affiliate of TELUS Communications, began offering services on its facilities in Toronto, Sarnia and Winnipeg. On 7 April 2000, TELUS announced that it was now operating facilities in Kitchener-Waterloo, Windsor, Ottawa-Hull, London, Montréal and Hamilton. TELUS plans to initially target small to medium-sized business customers. Its product offerings include: data services; internetworking services; managed application services; Internet; long distance, local and enhanced voice services. On 31 March 2000, TELUS Communications announced its intention to acquire 70% of QuébecTel, thus "accelerating its entry into Québec by almost two years." As of 1 April 2000, TELUS is also able to offer wireless access services to customers in Ontario and Manitoba, through its TELUS Mobility affiliate.

Vidéotron is registered as a CLEC in Montréal, Québec City, Longueuil, Pont-Viau and St-Jean-sur-Richelieu. Vidéotron's cable network serves 1.2 million customers in Québec and it plans to "go commercial in mid-2000" with home-cable telephone services. The company has set itself the objective of providing telephone lines to 500,000 of the 2.3 million households, where its cable service is available, within the next five years. Vidéotron's plan is to offer local telephone service as part of a bundle of services that will include telephone, TV and Internet. Vidéotron is also considering making Québec a local calling zone, thus eliminating long distance toll charges throughout the province.

Cellular and Personal Communications Service (PCS) prices have declined significantly in recent years, making these services viable substitutes for basic wireline local service for many customers. A May 1999 report by Boston-based Yankee Group showed Canada's wireless rates to be among the lowest in the world. In fact, based on the percent of monthly salary that a wireless bill for 100 minutes of use consumed, Canadian wireless rates were ranked in this report as the most affordable among the 27 countries studied. Both Clearnet and Microcell have declared their intentions to become CLECs in some or all of their digital serving areas. In the case of Clearnet, which had a total of 612,542 subscribers as of 31 March 2000, its digital points-of-presence (POPs) covered about 67% of Canadian businesses and about 55% of the total Canadian population. Microcell, with 654,309 subscribers at the end of the first quarter 2000, has POPs serving 53% of the Canadian population. In total across Canada, "[s]even million Canadians – almost one in four – now own a wireless phone" according to the Canadian Wireless Telecommunications Association (CWTA).

Fixed wireless alternatives to the Companies' local access services will also soon be available from service providers using local multipoint communications systems (LMCS) technologies. In the fall of 1999, Industry Canada auctioned 260 licences for LMCS spectrum in the 24 and 38 GHz frequencies. The 12 successful bidders in this auction included the CLECs AT&T Canada and Gateway Telephone, the potential CLEC Wispra Networks and BCTel Mobility Cellular Inc., which obtained licences in the Companies' territories in Nova Scotia, Québec and Winnipeg. LMCS is a technology that transmits and receives voice, data, Internet and other digital traffic.

Many of the CLECs that offer local switched access services in the Companies' territories also offer other local access services. For example, AT&T Canada, Sprint Canada, TELUS and Vidéotron all offer services that compete directly with Bell Canada's digital access services (e.g., Megalink, Microlink, DEA and DNA). Similarly, AT&T Canada and C1.com offer digital network access services throughout New Brunswick; Access Cable, C1.com and EastLink offer these types of services in metropolitan Halifax; while Cable Atlantic offers DNA-type service in St. John's, Gander, Grand Falls and Corner Brook, Newfoundland.

The local payphone market was opened to competition in Decision 98-8, issued 30 June 1998. The major competitor in the payphone market is Canada Payphone Corp. (CPC), which is now partially owned by AT&T Canada. In addition to owning a 19% stake in the company, AT&T Canada is also the primary wholesale supplier to CPC. In the past year, CPC has reached agreements with ESSO to provide AT&T-branded payphones in 2,500 service stations across Canada, with the Bass Hotel chain to provide payphones and Internet kiosks in its Holiday Inns, Crowne Plazas and other hotels, and with Best Western hotels to install payphones in its 162 hotels and resorts across the country. In addition to CPC, there are dozens of other Competitive Pay Telephone Service Providers (CPTSPs) registered with the Commission. These range from single location providers to full-service CPTSPs, which offer payphone service in multiple locations and/or wholesale such service to smaller CPTSPs. Toronto-based Courtesy Telecom is installing public phones that provide free local calls. The service is financed by display ads surrounding the phone.

Directories are also a competitive area of the local services market. Within most major cities and many smaller ones across Canada, local or neighbourhood directories are delivered door-to-door. As well as paper directories, a variety of alternate directory services are provided on the Internet. Competitive directory providers also offer services to CPTSPs. For example, CPC has signed an agreement with Phone Directory Corp. to obtain phone books and Internet-based directories.

Yorkton Securities' Canadian Telecom Review – Spring 2000 states:

> "All the evidence suggests that with local number portability available, and with competitors able to offer quality of service guarantees, local competition will soon become almost as intense as long-distance and cellular have been in recent years."

This view is shared by many other industry analysts and consultants. In a recent report, the Angus Reid Group stated:

> "The local phone service market is currently one of the most fast paced industries in Canada. As more and more companies state their intentions to compete in this arena, inevitably consumers will have to deal with an entirely new landscape."

NBI/Michael Sone Associates estimated that "[i]n the business core of Toronto, Bell Canada's loss of market share was in excess of 10-percent at the end of 1998." The report then went on to state:

> "It is during 1999 and 2000, however, that competitive local services competition will become a significant factor in the Canadian telecommunications marketplace as dozens of competitors emerge, competition spreads to the residential sector, competition is introduced to additional cities and new products, services, marketing programs and technologies are revealed."

NBI's estimate, in this report, of overall local market share losses in Canada at the end of 1999 and 2000 were 3.1% and 7.7%, respectively, representing NAS losses to both CLECs and resellers.

Another recent report on the Canadian telecommunications market stated:

> "The market share of telephone companies in the local services market will change significantly over the next five years as alternative carriers erode the telcos' customer base through cost cutting and the marketing of a range of basic and enhanced services aimed at both the general business and consumer markets and specific vertical markets. By the year 2003, alternative carriers, resellers, cable companies and wireless service providers will have captured over 25 percent of the local services market.
>
> . . .
>
> Over the next three years the increase in high speed, broadband wireline and wireless networks at the local level will drive the development and marketing of new high-speed broadband local services. It will also increase the competition among the telephone companies, alternative carriers, resellers, the cable companies, and wireless network operators all of which will offer a broad range of multimedia and interactive services to both the business and consumer markets. Within five years all local service providers will market these enhanced local services and applications as their competitive differentiators, with basic local voice provided as a low-cost commodity or 'loss leader' service.
>
> . . .
>
> While most local voice services are currently provided over circuit-switched networks, an increasing percentage of these services will be supplied over alternative networks such as frame relay or IP-based packet networks, especially within business markets where companies will demand new ways to provide its local and long distance voice services more cost-effectively. The introduction of new integrated intelligent switching platforms and products that integrate and transmit IP, circuit-switched, wireless voice, data and other communications services, by telecommunications hardware/software manufacturer/developers will accelerate the shift to packet networks to transmit basic and enhanced local services and applications."

All signs point to the development of a vigorously competitive local services market in Canada over the coming few years."

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