

Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the *Class Proceedings Act, 1992*

RESPONDING AND CROSS-MOTION RECORD OF BELL CANADA
(Certification and cross-motion to stay or dismiss, returnable December 7, 8, 2021)

June 30, 2021

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SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs
(Respondents)

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIODefendants
(Moving Party)Proceeding under the *Class Proceedings Act, 1992***NOTICE OF CROSS-MOTION OF BELL CANADA**

(Motion to stay or dismiss pursuant to r. 21.01(3)(a), returnable December 7, 8, 2021)

THE MOVING PARTY, Bell Canada (“**Bell**”) will make a cross-motion to the Honourable Justice Paul Perell on December 7, 8, 2021 at 10:00am or as soon thereafter as the motion can be heard by judicial videoconference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally by way of video conference.

THE MOTION IS FOR:

1. An order:

- (a) staying or dismissing this action as against Bell on the basis that this Court has no jurisdiction over the subject matter of the action under r. 21.01(3)(a) of the *Rules of Civil Procedure* (the “**Rules**”); and
 - (b) granting Bell its costs of this motion and of the action; and
2. Such further and other relief as to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

A. Factual context

(i) The parties

1. The Moving Party/Defendant, Bell, is incorporated pursuant to the laws of Canada. It carries on business as a national telecommunications services provider.
2. The Plaintiffs’ action relates to the telephone services that Bell provided to the Defendant, Her Majesty The Queen In Right Of Ontario, under an agreement that Bell entered into with the Ministry of Community Safety and Correctional Services (the “**Ministry**”). These telephone services are used by individuals incarcerated in provincial correctional and penal facilities in Ontario (“**Facilities**”).
3. The Plaintiffs propose to represent two classes of individuals in this purported class action:
 - (a) inmates who made collect calls from the Facilities; and
 - (b) individuals who accepted and paid for a collect call originating from inmates in Facilities.

(ii) Background to regulation of telecommunications in Canada

4. The regulator of telecommunications services in Canada is the Canadian Radio-Television and Telecommunications Commission (“CRTC”). The CRTC has established an all-encompassing regulatory regime that governs telecommunications services. This regulatory framework is nuanced and complex. Under its governing statute, the *Telecommunications Act* (the “Act”), the CRTC is statutorily required to consider multiple objectives in crafting these regulations, including the development of a national telecommunications system, enhancing competitiveness in the market, fostering reliance on market forces and responding to economic and social needs. Before the CRTC implements regulatory change, it will often seek public consultation with stakeholders in the telecommunications industry, including consumer advocacy groups.

5. On a practical level, one of the primary ways the CRTC has historically implemented its policy objectives is through its approval of tariffs for telecommunications providers. A telecommunications provider will establish a tariff that sets out the rates, charges and conditions applicable to the delivery of a type of service. The tariff is then submitted to the CRTC for review. Once the CRTC provides its approval, the telecommunications company can provide the service in question. Another of the regulatory tools that the CRTC uses is the power under the Act (under what is currently s. 34) to forbear from actively exercising certain powers with respect to specific services (e.g., the *ex ante* approval of rates).

(iii) Issues in the Plaintiffs’ claim are captured within the CRTC’s regulatory framework

6. In accordance with the agreement that Bell entered into with the Ministry, Bell provides non-cash payphone services at Facilities through a system called the Offender Telephone

Management System (“OTMS”). Under the OTMS, inmates make collect calls from public payphones installed in the Facilities. The recipients accept and pay the fees for the calls. The OTMS places certain limits on the calls that inmates can make, including to the duration of calls, the number of times a location could be called, or whether a location could be called at all.

7. The Plaintiffs’ claim relates both to (i) the fees that are charged for calls made under the OTMS as well as (ii) the notice that Bell provides of the rates. Both of these issues are fully captured within the CRTC’s regulatory framework. Specifically:

- (a) The CRTC approved Bell’s General Tariff which governs Bell’s public telephone (*i.e.*, payphone) services. In particular, this General Tariff governs the rates for all local non-cash payphone calls, including for collect calls.
- (b) The CRTC chose to forbear from regulating long distance rates, including the rates associated with long distance non-cash payphone calls.
- (c) With respect to notice, after releasing a fact-finding report and engaging in a lengthy and public consultation process, the CRTC changed its regulations regarding notice of rates for non-cash payphone calls. Despite this thorough review, the CRTC at no point indicated that this notice regulation was intended to apply either to collect calls or to telephone services provided to inmates.
- (d) To the contrary, the CRTC has approved of a separate item in Bell’s General Tariff that relates specifically to the provision of public telephone services to inmates at Facilities. The need for an item specific to inmates arose because of the unique circumstances in the context of telephone services at Facilities. This item allows

Bell to apply different payphone requirements when servicing Facilities compared with the requirements applicable in a public setting. It governs both the rates that can be charged and the conditions under which the services can be provided. The CRTC has never clarified whether or how the rest of its regulatory framework applies to inmate telephone services.

B. The action should be stayed or dismissed

8. The issues raised by the Plaintiffs in this action are within the exclusive jurisdiction of the CRTC. The adjudication of this claim would require this Court to engage in a detailed consideration of the regulatory decisions, orders and policies that the CRTC has issued. It would also require the Court to interpret these regulatory decisions, orders and policies in the backdrop of the CRTC's broader regulatory framework and policy objectives within the Act. This Court either does not have the jurisdiction to engage in such an analysis, or, alternatively, should use its discretion to choose not to exercise such jurisdiction, given the complex nature of the regulation of telecommunications services, and the role and expertise of the CRTC.

9. In the further alternative, the Plaintiffs' claim, in reality, is an action for damages related to the rates that Bell charges under the OTMS. As such, the claim is barred pursuant to s. 72(3) of the Act.

C. Additional grounds

10. Rules 1.04, 2.03, 21 and 37 of the *Rules*.

11. Section 72 of the Act.

12. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The pleadings in this action, including demands for particulars and responses thereto, and the documents referenced therein.
2. The affidavit of Pierre-Luc Hebert, affirmed June 30, 2021.
3. The affidavit of Paul Gortana, affirmed June 30, 2021.
4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 30, 2021

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and BELL CANADA et al.

Court File No. CV-20-00635778-00CP

Plaintiff

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

NOTICE OF CROSS-MOTION

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF PAUL GORTANA

(Affirmed June 30, 2021)

I, **PAUL GORTANA**, of the City of Maple, in the Province of Ontario, DO HEREBY
AFFIRM:

1. I am Director, Sales – Ontario Public Sector at Bell Canada (“**Bell**”), a defendant in this matter. As such, I have knowledge of the matters contained in this affidavit. To the extent I have relied on information from others, I have stated the source of that information and in all cases believe that information to be true.
2. I swear this affidavit in support of Bell’s motion seeking to dismiss the claim as against it for lack of jurisdiction. I also swear this affidavit in response to the representative plaintiffs’

motion for certification of this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*¹.

3. Before swearing this affidavit, I reviewed the representative plaintiffs' fresh as amended statement of claim amended August 14, 2020 (the "**Amended Claim**"), their response to Bell's demand for particulars (the "**Particulars Response**"), the affidavits included in their motion record dated January 6, 2021 (the "**Plaintiffs' Motion Record**") and the supplementary affidavit of Nadine Blum sworn May 13, 2021 (the "**Blum Affidavit**"). In this affidavit, I address a number of factual mischaracterizations contained in the Amended Claim and in the Plaintiffs' motion materials. I also provide necessary context regarding certain of the allegations and statements contained in those documents. Where I do not address a fact or issue that is raised in them, it should not be assumed that I agree with those facts and issues.

A. The OTMS Agreement

4. The Amended Claim concerns the telephone services that Bell provided to the Ministry of Community Safety and Correctional Services (the "**Ministry**"). These telephone services were used by individuals incarcerated in provincial penal and correctional facilities ("**Facilities**") in Ontario.

5. Bell provided these services through a system called the Offender Telephone Management System ("**OTMS**"). Bell was selected as the Ministry's service provider following a request for proposals ("**RFP**") to telecommunications companies to provide OTMS services on September 28, 2012. A copy of the RFP is attached as **Exhibit "A"** of this affidavit.

¹ S.O. 1992, CHAPTER 6

6. The RFP provided that the objectives of the OTMS were to provide telephone services to inmates in a controlled and regulated environment:

- Protect victims of crime, witnesses and other members of the public from harassment and intimidation by inmates while in Facilities;
- Restrict the ability of inmates to conduct criminal activity while in the care and custody of the Ministry;
- Provide inmates with reasonable access to telephone services for the purpose of maintaining connections with family, legal counsel and with community organizations and agencies such as, but not limited to, the John Howard Society, the Elizabeth Fry Society and the Ontario Ombudsman; and
- Provide a monthly Commission to the Government of Ontario from the OTMS and conventional public pay telephones.

7. The RFP stated that proponents submitting proposals would have very little discretion with respect to the terms for providing these services. The selected proponent would be required to enter into the form of agreement attached as an appendix to the RFP (see s. 1.2).

8. Ultimately, Bell was selected by the Ministry and entered into an agreement with the Ministry (the “**OTMS Agreement**”). A copy of the OTMS Agreement is attached as Exhibit “A” to the Blum Affidavit. Bell is referred to as the “Supplier” in the OTMS Agreement.

9. The OTMS Agreement set the local and long distance call rates under which Bell would provide services. This is reflected in section 4.08 of the OTMS Agreement:

Calling Rates

Subject to this Section 4.08 and to Section 3.05(a), the Supplier shall establish the calling rates for local and long distance calls from all telephones. The Supplier shall ensure that the local and long distance rates and connection fees for all telephones are no higher than the published residential rates established by the Incumbent

Local Exchange Carrier (ILEC) applicable to a comparable call connected and billed by the Supplier placed outside the Facility within the local community of the applicable Facility. In accordance with Section 3.02(a)(5) and upon the Ministry's request during the Term of the Contract, the Supplier shall provide written documentation satisfactory to the Ministry, in its sole discretion, to demonstrate compliance with this Section 4.08.

10. In providing services under the OTMS Agreement, the rates that Bell charged for collect calls made from Facilities were the same as the rates that it charged to its residential customers who used their home telephone to make collect calls where Bell is the ILEC. Where Bell is not the ILEC, the rates that Bell charged for collect calls made from Facilities were the same or lower than the published residential rates established by the ILEC for a comparable call placed outside the Facility in the applicable Facility's local calling area. Further, the rates Bell charged for collect calls made from Facilities were either lower than or the same as the amounts that it charged for collect calls made from public payphones. More specifically:

- (a) With respect to local collect calls, Bell charged the same rates irrespective of whether the call was made from a home telephone, a Facility or a public payphone (\$1/call in all instances).
- (b) With respect to long distance non-cash payphone calls (which are not rate regulated), Bell charged an upfront surcharge as well as a per minute long distance charge. For calls that originated from either home telephones or Facilities the surcharge was the same as was the per minute charge, which was determined by the distance of the call. These per minute rates were and are posted on Bell's website. In all cases, the surcharge and the long distance rate charged for calls that originated from a Facility were either lower or the same as the rate charged for calls

that originated from public payphones. Attached as **Exhibit “B”** to this affidavit are printouts of charts containing (i) information regarding surcharges for collect calls (because there were no operators on the OTMS only the automated system charge is applicable),² and (ii) the current long distance rates applicable to calls originating from either a home telephone or a Facility, all of which can be accessed on Bell’s website (www.bell.ca).³

B. Representations about the OTMS

11. In reviewing the Amended Claim and the Particulars Response, the plaintiffs refer to representations that Bell allegedly made about the OTMS. I would like to address this issue.

12. The OTMS is unlike other services that Bell provides. It is not a consumer product that is sold to the general public. As such, Bell does not do any public marketing regarding the OTMS or otherwise make public statements intended to induce consumers to enter into an agreement with it with respect to the OTMS. Once the Ministry selected it as the proponent under the RFP process, Bell did not have to compete with other telecommunications companies to provide these services which obviated any need for marketing communications.

13. In response to the RFP and in the OTMS Agreement, Bell did agree to provide services in the OTMS at certain rates, but those were representations and contractual commitments it made to the Ministry. And based on my knowledge and understanding as set out above, those representations were true.

² https://support.bell.ca/Home_phone/Phone_line/How_to_make_a_collect_call_and_how_much_does_it_cost

³ Intra-province long-distance: https://www.bell.ca/Home_phone/Long_distance_rates/Ontario_and_Quebec.tab.
Intra-Canada long-distance: https://www.bell.ca/Home_phone/Long_distance_rates/Across_Canada.tab

14. In their response to Bell's demand for particulars, the plaintiffs referred to two brief statements made by Bell spokespeople on January 31, 2019 and January 14, 2020, respectively. I have reviewed those statements. I can confirm that both of these statements were made by a Bell media relations representative in response to media requests for comment in respect of news stories relating to Bell's "Let's Talk" campaign, which focuses on mental health awareness. These were not efforts to market the OTMS, nor publish information about rates to inmates, or the recipients of calls made by inmates, in order to persuade them to use the OTMS. I am not aware of any other statements that Bell made for the purpose of inducing inmates or the persons receiving their calls to use the OTMS. Attached as **Exhibit "C"** to this affidavit is a copy of the plaintiffs' response to Bell's demand for particulars.

15. I make this affidavit in support of Bell's motion with respect to jurisdiction and in response to the plaintiffs' motion for certification in this action.

AFFIRMED remotely by Paul Gortana of the City of Maple, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on June 30, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely.*



Commissioner for Taking Affidavits
in and for the Province of Ontario

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Barrister and Solicitor



PAUL GORTANA

This is Exhibit "A" referred to in the Affidavit of Paul Gortana affirmed June 30, 2021.



Commissioner for Taking Affidavits



Ministry of Community Safety and Correctional Services

Request for Proposals

For

**Offender Telephone Management System (OTMS) and
Conventional Public Pay Telephones**

Request for Proposals No.: COS-0009

Issued: September 28, 2012

Proposal Submission Deadline: November 16, 2012

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1. PART 1 – INTRODUCTION

1.1 Invitation to Proponents

This Request for Proposals ("RFP") is an invitation to prospective Proponents to submit proposals for the provision of an Offender Telephone Management System (OTMS) and conventional public pay telephones, as further described in Part 2 - The Deliverables (the "Deliverables"). This RFP is issued by Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services (the "Ministry").

1.2 Type of Contract for Deliverables

The selected Proponent will be required to enter into an Agreement with the Ministry for the provision of the Deliverables in the form attached as Appendix A to this RFP. It is the Ministry's intention to enter into the Form of Agreement attached as Appendix A to this RFP with only one (1) legal entity. The term of the Agreement is to be for a period of five (5) years with an option in favour of the Ministry to extend the Agreement on the same terms and conditions (except in respect of the extension options) for up to two (2) additional terms of up to one (1) year each. It is anticipated that the Agreement will be executed around February 2013 with the initial installation of Deliverables to begin around June 1, 2013. The initial 5-year term of the Agreement is to start on the Commencement Date set by the Ministry, which is anticipated to be after June 8, 2013 and before July 7, 2013. Proponents should refer to Section 3.07 of the Form of Agreement in Appendix A regarding the initial installations and the Commencement Date.

A Proponent who submits conditions, options, variations or contingent statements to the terms set out in the Form of Agreement, either as part of its proposal or after receiving notice of selection, may be disqualified.

1.3 Executive Overview

This RFP is being issued by the Ministry for the provision of an OTMS and the provision of conventional public pay telephones in Facilities designated by the Ministry. The OTMS will provide for telephones in inmate living units and other secure areas within the Facilities. The conventional public pay telephones in the secure and non-secure areas of the Facilities and will be used by staff as well as visitors to the Facilities.

The Ministry reserves the right to add selected youth facilities from the Ministry of Children and Youth Services (MCYS) during the Term of the Agreement. Services provided by the Successful Proponent will be expected to meet strict standards and performance levels as outlined in Section 2.12.

Proponents are encouraged to submit proposals in response to this RFP that demonstrate the use of innovative and cost-effective operational and technological methods, reflecting the best current and proven technologies in the provision of telephone communication, the capability for inmate call blocking, call traffic and tracking features, and the ability to provide the Ministry with accurate, timely statistical and financial information.

The Successful Proponent will pay a monthly Commission to the Government of Ontario that will be a percentage of the Gross Revenue generated by all OTMS and conventional public pay telephones in the Facilities as further described in Section 2.11.

1.4 Overview of Ontario's Correctional System

The Ministry is committed to:

1. Enhancing public safety;
2. Reducing the rate of re-offending; and
3. Increasing inmate accountability and responsibility.

Specifically, the Ministry detains, incarcerates and/or supervises the following personnel:

- Adult inmates, 18 years of age and over, sentenced to terms of imprisonment of less than two (2) years and/or terms of probation of up to three (3) years;
- Persons awaiting trial or sentencing;
- Persons whose federal parole certificates have been suspended or revoked and are awaiting transfer to a federal institution;
- Persons held for immigration hearings or deportation; and
- Persons awaiting transfers to federal institutions to serve sentences of two years or more.

The Ministry maintains four (4) regional offices in Kingston, Toronto, London and North Bay. These regional offices are responsible for the operation of 29 correctional institutions for adult inmates (see Appendix H). During the period of April 1, 2011 through March 31, 2012, the Ministry supervised an average of 65,103 inmates, 8,802 (approximately 13.5%) of which were incarcerated in a correctional setting.

The Ministry's policy and operational objectives supported by the OTMS are to:

- Protect victims of crime, witnesses and other members of the public from harassment and intimidation by inmates while in Facilities;
- Restrict the ability of inmates to conduct criminal activity while in the care and custody of the Ministry;
- Provide inmates with reasonable access to telephone services for the purpose of maintaining connections with family, legal counsel and with community organizations and agencies such as, but not limited to, the John Howard Society, the Elizabeth Fry Society and the Ontario Ombudsman; and
- Provide a monthly Commission to the Government of Ontario from the OTMS and conventional public pay telephones.

1.5 Mandatory Site Visits and Proponent Information Session

In order to provide Proponents with an insight into the four (4) different types of Facilities within the Province of Ontario, mandatory site visits have been organized. These site visits will provide Proponents with an understanding of the security requirements identified in the RFP, along with an opportunity to understand correctional environments within the Province of Ontario. A mandatory Proponent information session will also be held on **Thursday, October 11, 2012 commencing at 9:30 a.m.** prior to the site visit at the Toronto South Detention Centre. The Proponent information session will provide an overview of the Ministry's requirements and assist Proponents in understanding the procurement process in a formal tendering environment. Proponents should note that specific questions regarding the Deliverables must be submitted in writing to the Ministry Contact prior to the deadline for submitting questions as noted in Section 4.1.1. Questions specific to the Deliverables will not be verbally answered during the mandatory Proponent information session.

1.5.1 Mandatory Site Visit and Mandatory Proponent Information Session Registration

Proponents interested in attending the mandatory site visits and Proponent information session are requested to confirm their attendance, via email with the Ministry Contact, identified in Section 1.9, prior to Friday, October 5, 2012 at 4:00 p.m. When registering, the Proponent must include the Proponent's company name, name(s) of their representative(s) attending the site visits and proponent information session, and their position within their organization and a telephone number where they can be reached.

Proponents will be limited to a maximum of two (2) representatives. The representative(s) must be in attendance and sign in at all four (4) mandatory site visits and the mandatory Proponent information session. This will include the need to provide photo identification at the time of sign in. Proponents will not be able to substitute representatives between sites. **Failure to have representative(s) attend and sign in at all four (4) mandatory site visits and the mandatory Proponent information session will result in disqualification from the RFP process.**

1.5.2 Schedule

The mandatory site visits and mandatory Proponent information session have been scheduled as follows:

Date and Time	Location	Address
Site Visit Wednesday October 10, 2012 at 10:00 am	Brantford Jail, Administrative Office	105 Market Street, Brantford, Ontario N3T 6A9
Site Visit Wednesday October 10, 2012 at 2:00 pm	Hamilton Wentworth Detention Centre, Front Lobby	165 Barton St. East Hamilton, Ontario L8L 2W6
Proponent Information Session and Site Visit Thursday October 11, 2012 at 9:30 am	Toronto South Detention Centre/Toronto Intermittent Centre, Front Lobby	160 Horner Ave., Etobicoke, Ontario M8Z 4X8
Site Visit Thursday October 11, 2012 at 2:00 pm	Maplehurst Correctional Complex, Administration Front Lobby	661 Martin Street Milton, Ontario L9T 2Y3

1.5.3 Mandatory Site Visits and Mandatory Proponent Information Session Guidelines

Proponents must meet at the designated locations above on the date and time specified. Proponents who are not in attendance in the designated locations as identified in Section 1.5.2 on the designated dates and at the designated times shall be disqualified from the RFP process.

All Proponents in attendance will be required to sign a Mandatory Site Visit Attendance Sheet at each location confirming attendance. Proponents will also be required to sign a Mandatory Proponent Information Session Attendance Sheet.

Proponents must not contact any of the Facilities regarding the site visits. Any questions regarding the **mandatory site visits or mandatory Proponent information session** must be directed in writing to the Ministry Contact.

During the mandatory site visits, Proponents **must not**:

- carry any cellular telephones, Personal Digital Assistants (PDA's), photographic or video recording devices; and
- converse with or contact any person other than those persons associated with the site visits.

Only questions related to the security, physical layout and telephony wiring or equipment at the Facilities will be permitted during the site visits. All other questions must be submitted in writing to the Ministry Contact. All responses to written questions will be posted on MERX as an Addendum to this RFP within the timetable schedule identified in Section 4.1.1.

Immediately following the mandatory site visits, Proponents will be required to leave the Facilities.

1.6 No Guarantee of Volume of Work or Exclusivity of Contract

The Ministry makes no guarantee of the volume of work to be assigned to the Successful Proponent or the potential revenues to be generated from the OTMS and conventional pay telephones in the Ministry's Facilities. The Agreement executed with the Successful Proponent will not be an exclusive contract for the provision of the described Deliverables. The Ministry may contract with others for the same or similar Deliverables to those described in this RFP or may obtain the same or similar Deliverables.

During the term of the Agreement, the Ministry plans to close old outdated Facilities and to commission several new ones as noted in Table 1, Section 2.3.4 of the RFP. Overall, this will result in a decrease in the number of Facilities in Ontario that will be accessing the Agreement resulting from this RFP process. Where applicable, the Ministry shall make reasonable endeavours to provide the Successful Proponent with written notification of such changes. The Successful Proponent will be required to cooperate with respect to such changes and to install or remove its equipment as expeditiously as possible.

1.7 Trade Agreements

Proponents should note that procurements falling within the scope of:

- (i) Chapter 5 of the Agreement on Internal Trade ("AIT");
- (ii) the Trade and Cooperation Agreement between Ontario and Quebec ("Ontario/Quebec"); or,
- (iii) the Agreement between the Government of Canada and the Government of the United States of America on Government Procurement ("GPA")

are subject, respectively, to that chapter or those agreements but that the rights and obligations of the parties shall be governed by the specific terms of each particular tender call. In any event of the preceding, all rights under each of those trade agreements, wherever prosecuted, shall be limited to the remedies available in each. For further reference please see: (for the AIT) the Internal Trade Secretariat website; (for Ontario/Quebec) the Ontario Ministry of Economic Development and Trade website; and (for the GPA) the Canadian Federal Government website.

1.8 Insurance Requirements

Proponents are directed to the insurance requirements of this RFP set out in Article 7 of the Form of Agreement attached as Appendix A. The selected Proponent must provide proof of insurance coverage in the form of a valid certificate of insurance prior to the execution of the Agreement by the Ministry.

1.9 Definitions

Unless otherwise specified in this RFP, capitalized words and phrases have the meaning set out in the Form of Agreement attached as Appendix A to this RFP.

"Call Blocking" means a feature that prevents a particular telephone number, as determined by the Ministry, from being called by an inmate when the Ministry determines it is necessary to do so;

"Call Traffic Records" means the information contained in the monthly reports set out in section 2.4 of this RFP plus any other information relating to the calling activity from telephones located in the Facilities including the time, date, number of calls made per telephone, total duration of calls, specific telephone used and number of calls blocked;

"Commission" means the payment payable by the Successful Proponent to the Government of Ontario under the Agreement;

"Commission Percentage Rate" means the percentage the Successful Proponent will apply against the monthly Gross Revenue to calculate the monthly Commission payable to the Government of Ontario under the Agreement;

“Common Access Numbers” means the pre-approved telephone numbers (e.g. Ombudsman’s Office) created within OTMS to which telephone calls will be allowed for all inmates. The Ministry will identify these numbers;

“Facility” or “Facilities” means the respective adult correctional institution(s) identified in section 2.3.4 Table 1 – Facility Data and Appendix H of this RFP and such other locations in Ontario that the Ministry may notify the Successful Proponent of from time to time;

“Gross Revenue” means the total revenue from all telephones, both OTMS and conventional public pay telephones, supplied by the Successful Proponent in all Facilities. For greater clarity and certainty, in determining Gross Revenue, all forms of call payment including connection fees shall be included and there shall be no adjustment for any associated expenses or taxes incurred in providing the Deliverables or consideration for whether payment has been received by the Successful Proponent. Gross Revenue shall not include taxes collected by the Successful Proponent;

“Internet Protocol (IP)” means a data-oriented set of rules used by the source and destination telecommunications hardware to exchange data and digitized or digital voice transmissions across a security internet connection;

“MCYS” means the Ministry of Children and Youth Services;

“Ministry Contact” means **Patti Doan**
Senior Procurement Advisor
Email: patti.doan@ontario.ca

“Ministry’s Contract Compliance Manager” means the person responsible for the contract management of the Agreement at the conclusion of the procurement process;

“PBX” means a Private Branch Exchange for the Ministry’s internal administrative telephone system;

“Personal Identification Number (PIN)” means a unique numeric sequence issued to an inmate for the purpose of identification;

“Proponent” means an entity that submits a proposal in response to this RFP;

“Successful Proponent” means the Proponent selected through the RFP process that has executed the Agreement with the Ministry for the supply of the Deliverables, and is referred to as the “Supplier” under the Agreement;

“TTY” is an acronym for Teletype, which is a device that converts voice into typed script for the deaf and hard of hearing; and

“Victim Support Line” (VSL) means an Ontario government service that provides a range of province-wide, multilingual, toll-free services to victims of crime such as specific information about victim services and general information about the criminal justice system. The OTMS Call Blocking feature will be managed by the Ontario Victims’ Services Secretariat, Ministry of the Attorney General through the Victim Support Line.

1.10 Contractor Security Screening

Upon notification from the Ministry, the selected Proponent shall require directors, officers and the Company Security Officer to undergo a Security Clearance Check.

Upon notification, the selected Proponent shall be required to provide the necessary information for each individual requiring security clearance by the Security Services and Contingency Planning Branch (SSCPB)

of the Ontario government. If applicable, Security Clearance Checks must be completed before the selected Proponent and the Ministry enter into the Agreement.

Proponents are directed to Appendix F – Security Clearance Checks for further information, including samples of the forms that will be required when Security Clearance Checks are required.

Proponents are also directed to Section 2.10.1 of this RFP and Section 2.08 of the Form of Agreement regarding criminal records checks to be conducted by the Successful Proponent and to Section 9.01 of the Form of Agreement regarding Security Clearance Checks the Ministry may require under the Agreement.

1.11 Ontarians with Disabilities Act Obligation

The Province of Ontario is committed to the highest possible standard for accessibility. The Successful Proponent must be capable of delivering products and services consistent with the *Ontario Human Rights Code (OHRC)*, the *Ontarians with Disabilities Act, 2001 (ODA)* and that users can benefit from the products and services being provided in this Agreement.

In accordance with *Ontario Regulation 429-07* made under the *Accessibility for Ontarians with Disabilities Act, 2005, Accessibility for Customer Service*, it is expected that policies and procedures are in place as outlined in the regulation by January 1, 2012. Furthermore it is expected that the Successful Proponent may be requested to provide its policies and procedures upon request, to demonstrate compliance with the regulation.

During the term of the Agreement, including any extensions, the Successful Proponent shall comply with any future additions or modifications to legislation as they become enacted to accessibility standards and regulations. For more information on the ODA, please visit:

http://www.mcsc.gov.on.ca/en/mcsc/programs/accessibility/info_comm/index.aspx.

End of Part 1

2. PART 2 - THE DELIVERABLES

2.1. Background

The Ministry recognizes the significant contribution that positive communication between inmates, their families and friends, as well as organizations and agencies within the community make towards an inmate's rehabilitation and successful reintegration into society. To this end, the Ministry has historically sought to provide inmates with reasonable and direct access to telephones while in custody or detention. The Ministry has historically installed telephones in inmate living units and other locations within the Facilities so that inmates may make calls to family, friends, legal counsel and organizations in the community directly.

2.2. Overview of the Opportunity

The Ministry requires a complete turnkey, end-to-end business solution for its requirements. The Proponent's proposed business solution must be the same for all Facilities and include all the features, technology capabilities, and equipment requirements specified in this RFP. In addition to the Deliverables listed in PART 2 of this RFP, Proponents are also referred to Appendix F for a list of mandatory criteria that their business solution must satisfy.

The Successful Proponent may have to establish business relationships with independent telephone service providers to adequately provide the Ministry with the business solution. Notwithstanding any such relationships that the Successful Proponent may establish, the Successful Proponent will be solely responsible for the provision, service, support and maintenance of the Facilities' OTMS and conventional public pay telephone services in all facilities. The services and supporting platform must be a consistent end-to-end business solution covering all Facilities.

Proponents must be a licensed telecommunications carrier and services provider for Canada, registered with the Canadian Radio-television and Telecommunications Commission (CRTC). The Successful Proponent must maintain such license during the term of the Agreement.

The Successful Proponent will also be required to assume all costs associated with its proposed business solution. The Ministry will not pay for any costs.

The Successful Proponent's business solution must be able to meet the Deliverables for a minimum of 8,802 adult inmates which amount represents the average daily adult inmate population base based on information from April 1, 2011 to March 31, 2012, and a monthly average of 449,032 (14,968 daily) inmate calls of an average of 10 minutes duration daily. The Ministry does not guarantee a minimum number of inmates nor inmate telephone calls or the number of telephone calls from either the OTMS telephones or the conventional public pay telephones.

The Ministry is continuing with the transformation of the adult correctional system to ensure modern, efficient and effective facilities are in place to address future requirements. To this end, the Ministry plans to increase inmate capacity within the adult provincial system that will require the Successful Proponent to have resources in place, as required, in sufficient quantities to accommodate this increase.

2.3. Description of the Deliverables

The Successful Proponent shall provide the following and such other Deliverables described in this Part 2:

- A network management system which is an Internet Protocol (IP) business solution;
- A secure web-based access to the network management system for authorized Ministry staff;
- All telephone system components required to implement a scalable IP business solution;

- Supply, installation and maintenance of all telephony components including network redundancy. This includes, but is not limited to, all computer and networking apparatus, telephones, disconnect switches, cabling to support network system equipment, equipment stands, racks, or cabinets, backup power and surge protection devices;
- Technical staff and maintenance services to maximize the telephone platform performance;
- Technical staff and support services which are available to provide provincial coverage 24/7/365 in the event of telephone and/or system malfunction of any hardware or the platform;
- A single point of contact for Ministry staff to report malfunctioning equipment 24/7/365 through electronic mail or web based portal and voice;
- Training of Ministry designated staff on the functionalities and system feature management including but not limited to call blocking, on/off times, and report mechanisms/requirements so that staff may perform their system related responsibilities, as further described in Section 2.8;
- All OTMS and conventional public pay hardware must be securely managed and stored in Ontario. All OTMS related information and data, including all back-up of such information, data and server redundancy, must remain within Canada;
- All Ministry call traffic and inmate data must remain in Canada;
- All digital calls must be carried on secure networks;
- Adhoc call tracking reports and Call Traffic Records to the Ministry in a non-proprietary electronic format acceptable to, and at no cost to, the Ministry, as further described in Section 2.4;
- A monthly Commission paid to the Government of Ontario, as further described in Section 2.11;
- Business solution expertise available, when required by the Ministry during normal business hours, to assist the Ministry with telephone data and information and reporting of exceptions;
- Telephony technical expertise to assist the Ministry when required with system trouble shooting or site specific issues; and
- Attendance at meetings, at a minimum of once every two months and on an as required basis, with the Ministry to review and discuss ongoing operational and contract management performance issues during the Term of the Agreement.

The Successful Proponent will be held accountable to fulfill its responsibilities in accordance with the Agreement.

2.3.1. Required Assessments

If requested by the Ministry, the Successful Proponent shall assist the Ministry in conducting a Privacy Impact Assessment (PIA) and a Threat Risk Assessment (TRA). These assessments should address technical and operational risks to personal information and/or Government of Ontario systems that the Successful Proponent's business solution may introduce, and provide recommendations of actions to be taken that mitigate such risks. Both assessments will be performed during the implementation of the initial installations and any subsequent upgrades or changes. The Successful Proponent will be required to comply with the applicable recommendations arising from the PIA and TRA.

The Successful Proponent shall review and comply with the Government of Ontario requirements concerning the freedom of information and the protection of privacy.

2.3.2. Conventional Public Pay Telephones

The Facilities identified in Section 2.3.4 Table 1 Facility Data require conventional public pay telephones, consisting of new telephone equipment for use by both staff and visitors in secure and non-secure areas of the Facilities. For greater clarity, the equipment supplied by the Supplier for the Facilities must be new and not previously used, unless recycled through manufacturing methods which render such recycled materials into new materials. Conventional public pay telephones, unlike the OTMS, will not be subject to enhanced security features such as Call Blocking or require programming to allow access to Ministry approved telephone numbers commonly used by inmates. These telephones must allow the caller to place out-going calls only that are either user pay (coin, credit card, calling card, etc) or collect and must be accessible to disabled persons (e.g., wheelchair accessible; for use by visually and/or hearing impaired persons) in accordance with government policy as outlined in Section 1.11.

Conventional public pay telephones are subject to all CRTC requirements including the requirement for TTY phones for the hearing impaired. Where more than one public pay telephone is physically located in the same area of a Facility, the Successful Proponent will be required to provide the Ministry with TTY capability.

2.3.3. Offender Telephone Management System

Each Facility requires a telephone system for use by inmates. The Ministry initially requires a complete, non-PIN based, "turn-key" IP network business solution from a single Proponent. This telephone system for use by inmates will consist of all telephones and required equipment, which encompasses the various components and integration of a complete end to end business solution. All telephones and other equipment supplied by the Successful Proponent for use in the Facilities must be new and must never have been used before unless such material has been recycled through manufacturing methods which have rendered such recycled materials into new materials.

The Successful Proponent must provide a business solution that meets or exceeds the Ministry's operational requirements as described in this RFP. The business solution must have the flexibility to allow the Ministry, at its discretion, to change, or render telephones out of service during designated periods, for specific Facilities or specific individual telephones within a Facility. Access for managing this capability must be available to the Ministry both centrally as noted below, and locally at each Facility.

Under certain circumstances, the Ministry will require the manual capability to locally shut down all inmate telephones in a Facility or specific individual telephones within a Facility. All telephone shut offs must be installed ahead of any digitalization.

2.3.4. OTMS Requirements

Facilities allow inmates to make telephone calls that are limited to twenty (20) minutes per inmate call. There is no limit on the number of collect telephone calls an inmate can place. However, unless pre-approved by the Ministry, there is a twenty five (25) telephone call limit on the number of times a particular telephone number can be called in one (1) calendar day from all Facilities. The OTMS supplied by the Successful Proponent must meet these requirements, and have the capability of being programmed to change the maximum call length and number of times a particular telephone number can be called in one (1) calendar day at the discretion of the Ministry. The Ministry reserves the right to review and change the call length and the number of calls placed to a particular telephone number based on Ministry operational and security requirements.

The hours that the inmate telephones are available is determined by the institution Superintendent who has the authority to permit the inmate telephones to be operational more than normally available or to temporarily suspend their use during times of institutional unrest, emergency or any other circumstances which may jeopardize the health, and/or safety of an individual or the security of the Facility.

The OTMS shall only allow inmates to place North American standard ten (10) digit collect telephone calls based on rates charged to the call recipient that will be no greater than the highest published public conventional pay telephone collect call rates within the local community of the respective Facility.

The business solution must be centrally programmable and accessible via a web based portal from the Ministry Transportation and Communication Services (TCS) unit located in Mississauga and the Ontario Victims' Services Secretariat, Ministry of the Attorney General through the Victim Support Line (VSL) located in North Bay. The business solution must allow uninterrupted remote user access by designated Ministry representative (s) 24/7/365 to manage provincially allowed telephone number lists, Call Blocking and other features, including but not limited to security functions available.

The current minimum standard for inmate access to the OTMS is five (5) hours a day, seven (7) days per week, although the Ministry does not guarantee this minimum standard will be maintained, the number of inmates who will use the telephones or the volume of telephone traffic.

Given the length of the proposed Agreement, the Ministry may at its own discretion, make a decision to implement a Personal Identification Number (PIN) based business solution, or an inmate identification environment. Any such system enhancement and/or modification must not result in a lower Commission Percentage Rate and may only have a minimal workload impact on, or be workload neutral to, the Ministry both during the implementation period and the operation of the business solution with the PIN or inmate identification environment during the Term of the Agreement.

2.3.5. Telephone Sets and Equipment

The non-coin operated telephones used for OTMS will permit outgoing local telephone calls and long distance collect telephone calls only and will be installed throughout all Facilities. Inmate telephones must be tamper resistant with physical characteristics that can withstand greater than normal physical stress on the telephone and handset (e.g., features such as a tamper-resistant exterior, with armoured un-detachable handset cord, and a sealed handset of a sturdy coating). Telephone instruments shall be specifically designed for use in a correctional environment and must be approved by the Ministry before installation during the precondition stage. As all equipment entering the Facilities must be new, converted coin telephones **will not be** accepted. Telephones shall be fitted with a volume control device, which will allow the inmate to increase or decrease the volume of the handset earpiece between 60 and 90 decibels in 10 decibel increments. The OTMS telephone key pad must be automatically disabled during call acceptance and for the duration of the call unless the called telephone number has been exempted of this feature by the Ministry.

The OTMS will not be linked in any way to other Facility telephone systems (i.e., PBX system for Facility administrative telephones). OTMS must include enhanced security controls, and must be programmable using a central administration database configuration tool located at the Successful Proponent's remote technical centre within Canada. Technical resources(s) must be available to the Ministry representative(s) between 8 a.m. and 5 p.m. EST to assist the Ministry with system trouble shooting or site specific issues.

The Successful Proponent's business solution must allow for portability of inmate telephones within an area or areas of a Facility as determined by the Ministry and as noted in the below Table 1 – Facility Data, Number of cart/mobile OTMS telephones column. This requirement may include readily movable wired phones or, with the Ministry's prior approval and where feasible, secure wireless solutions that satisfy all Ministry security requirements as outlined in this RFP.

The Successful Proponent must provide, at a minimum, the number of OTMS and conventional public pay telephones in each Facility as noted in the below Table 1 – Facility Data:

Table 1 - Facility Data

	Facility Name	Facility Location	Facility Bed capacity	Number of OTMS telephones	Number of conventional public pay telephones	Number of cart/mobile OTMS phones
1	ALGOMA TREATMENT AND REMAND CENTRE	Sault Ste Marie	128	21	2	3
2	BRANTFORD JAIL	Brantford	83	10	0	0
3	BROCKVILLE JAIL	Brockville	38	7	0	1
4	CENTRAL EAST CORRECTIONAL CENTRE	Lindsay	1184	122	4	11
5	CENTRAL NORTH CORRECTIONAL CENTRE	Penetanguishene	1184	120	3	6
6	CHATHAM JAIL	Chatham	53	11	0	1
7	ELGIN-MIDDLESEX DETENTION CENTRE	London	378	62	2	4
8	FORT FRANCES JAIL	Fort Frances	22	3	0	0
9	HAMILTON-WENTWORTH DETENTION CENTRE	Hamilton	514	67	1	0
10	KENORA JAIL	Kenora	131	16	0	1
11	MAPLEHURST CORRECTIONAL COMPLEX	Milton	1174	130	2	5
12	MONTEITH CORRECTIONAL COMPLEX	Monteith	230	19	0	2
13	NIAGARA DETENTION CENTRE	Thorold	240	31	0	3
14	NORTH BAY JAIL	North Bay	116	13	0	0
15	ONTARIO CORRECTIONAL INSTITUTE	Brampton	220	20	1	0
16	OTTAWA-CARLETON DETENTION CENTRE	Ottawa	530	62	1	14
17	QUINTE DETENTION CENTRE	Napanee	208	22	1	8
18	SARNIA JAIL	Sarnia	93	21	0	0
19	SOUTH WEST DETENTION CENTRE	Windsor	315	TBD	TBD	0
20	ST. LAWRENCE VALLEY CORRECTIONAL & TREATMENT CENTRE	Brockville	100	12	1	2
21	STRATFORD JAIL	Stratford	50	6	0	0
22	SUDBURY JAIL	Sudbury	169	16	0	2
23	THUNDER BAY CORRECTIONAL CENTRE	Thunder Bay	160	12	0	1
24	THUNDER BAY JAIL	Thunder Bay	144	19	0	1
25	TORONTO JAIL	Toronto	504	74	1	3

	Facility Name	Facility Location	Facility Bed capacity	Number of OTMS telephones	Number of conventional public pay telephones	Number of cart/mobile OTMS phones
26	TORONTO EAST DETENTION CENTRE	Toronto	408	59	2	6
27	TORONTO INTERMITTENT CENTRE	Etobicoke	320	24	1	3
28	TORONTO SOUTH DETENTION CENTRE	Etobicoke	1640	175	6	0
29	TORONTO WEST DETENTION CENTRE	Toronto	584	89	3	4
30	VANIER CENTRE FOR WOMEN	Milton	350	31	1	3
31	WINDSOR JAIL	Windsor	148	24	0	0
	TOTALS		11591	1123	26	84

The Ministry reserves the right to expand the OTMS to youth facilities operated by MCYS and additional (new) adult Facilities operated by MCSCS during the term of the Agreement. Current changes expected in the Ministry are as follows (schedules are subject to change):

New Facilities	Facility Location	Potential Opening Date
Toronto South Detention Centre	Horner Ave., Etobicoke	Summer/Fall 2013
South West Detention Centre	Windsor Area	2014

Closing Institutions	Facility Location	Potential Opening Date
Toronto Jail	550 Gerrard Street East, Toronto	Summer/Fall 2013
Toronto West Detention Centre	111 Disco Road, Etobicoke	Summer/Fall 2013
Brantford Jail	105 Market Street, Brantford	Fall 2013
Windsor Jail	378 Brock Street, Windsor	2014
Sarnia Jail	700 North Christina Street, Sarnia	2014
Chatham Jail	17 Seventh Street, Chatham	2014

The Ministry reserves the right to determine the location of each telephone and to have the Successful Proponent install additional or to relocate inmate phones and conventional public pay telephones during the Term of the Agreement.

In addition to the locations identified above, the Successful Proponent will be required to install two digital telephones at the TCS office in Mississauga during the initial installation stage. These digital phones may be used by Ministry operations representative(s) to test the system and features during the implementation period and as necessary in response to issues that arise during the Term of the Agreement.

The Ministry will attempt to provide no less than thirty (30) calendar days' notice to the Successful Proponent in the event of construction, renovation at or closure of a Facility that will necessitate the relocation of the telephones within a Facility or to a new Facility. However, there may be occasions where unforeseen circumstances may limit the amount of advance notice available.

2.3.6. Functions and Features

The Ministry requires uninterrupted access to Ministry functions in OTMS 24/7/365. The Successful Proponent's OTMS solution must include technology that will allow the Ministry to activate or deactivate, entirely or selectively, any or all of the OTMS functionalities and features. The Successful Proponent must provide the Ministry with the necessary training for the Ministry representatives to be able to effectively use these features.

The OTMS shall initially be **non-PIN** based, collect telephone call, automated operator platform with the ability to support PINs during the Term of the Agreement.

Should the Ministry choose to implement a PIN based solution, the Ministry will enter into discussions with the Successful Proponent for planning the implementation and ongoing use of this PIN feature. If implemented, the use of a PIN based solution must not result in a decrease in the Commission Percentage Rate and may only have a minimal workload impact, or be workload neutral to, the Ministry.

In response to the increased use of cellular telephones and Voice over Internet Protocol's (VoIP) home telephones, the Ministry is also requiring an OTMS that could support alternate call payment methods. Should the Ministry choose to explore these payment methods, if implemented, this option must not result in a decrease in the Commission Percentage Rate and may only have a minimal workload impact, or be workload neutral to, the Ministry. The Ministry will work with the Successful Proponent to explore these options further.

The OTMS will not permit any access to a live operator at any time during the calling process. The OTMS shall permit collect, one-way outgoing, station-to-station telephone calls only, to be billed to the call recipient when the telephone call is accepted. The OTMS shall not allow any incoming calls. Inmates shall be required to hang up before dialling a new number. Concurrent calling of the same telephone number(s) from any Facility will not be permitted unless to a telephone number(s) identified and pre-approved by the Ministry. The Ministry must pre-approve any call display and voice-over messages language and programming used by the Successful Proponent. The system shall not permit any access to any dialling services (three, seven, or ten digits). The system shall not allow access to any toll-free number unless specifically identified and pre-approved by the Ministry

The Successful Proponent's OTMS must have the capability of blocking three-way and conference calls, must detect and not allow chain dialling and secondary dial tones and detect any extra digits dialled by the inmate after the party has accepted the call.

The OTMS must allow the Ministry the direct ability to program a minimum of 1000 defined periods of in-service times, with the flexibility to change or render telephones out of service during designated periods for specific Facilities or specific individual telephones in a Facility, at the discretion of the Facility management. The Successful Proponent's business solution shall include technology that has the capability to shut down the OTMS telephones locally at a Facility and/or from a remote location at the Ministry's discretion (e.g. the TCS or VSL).

2.3.6.1 Voice-Over Messages

The OTMS must have the automated capacity to implement a bilingual (French/English) voice-over message on all calls universally on all inmate telephones. The recorded voice over messages will be subject to Ministry review and approval prior to implementation to ensure content and recording quality. Using its conventional business practices and voice-over technology, the Successful Proponent will confirm that the call recipient agrees to accept the collect call however there shall be no live connection between the inmate and the call recipient until the call recipient has agreed to accept the charges.

2.3.6.2 Provincially Allowed Telephone Numbers – Common Access Numbers

The OTMS must permit all inmates to call a minimum of 200 Ministry-approved provincially and where applicable, locally allowed telephone numbers, commonly accessed by inmates. The Ministry will provide pre-approved specified telephone numbers (e.g. Ombudsman's Office, community agencies, etc.) and other toll-free telephone numbers or local numbers. The Successful Proponent's system must allow for telephone numbers that may be local and function at only specific Facilities and not available to all Facilities. Where a local number has an association with a toll-free telephone number, the system will allow for telephone call completion to either telephone number as appropriate from any Facility.

2.3.6.3 Lawyer's Telephone Numbers

The OTMS must allow for the programming of lawyer's telephone numbers to be exempt from Ministry identified security programming features and functions including three-way call detection and allowing inmates to navigate an automated attendant system using the key pad to speak to their lawyers.

2.3.6.4 Canteen Products Orders

If and when implemented by the Ministry, the OTMS must allow for the programming of a toll-free telephone number to be used by inmates for the purpose of ordering canteen. This telephone number must be exempt of Ministry specified security protocols such that inmates may navigate through an automated attendant system using the key pad to order canteen products; and this telephone number must not have the 20 minute limit for these calls.

2.3.6.5 Call Blocking

The OTMS must have the capability to instantly prevent inmate telephone calls to telephone numbers specified as blocked by the Ministry. The OTMS Call Block features must meet the following minimum requirements:

- Province-wide at all Facilities: all inmates are restricted;
- Facility specific: all inmates at a specific Facility are restricted; and
- Telephone specific: designated telephone(s) are restricted.

The OTMS must allow the Ministry the capability to block calls through the VSL, independent of Call Blocking services that are available to the general public.

The Successful Proponent's OTMS business solution must ensure that inmate calls can only be blocked when directed to do so by authorized Ministry staff. The OTMS must maintain an electronic log that identifies the personnel who authorized the call block and all occasions when inmate calls are blocked. This electronic log must be accessible to Ministry staff at the VSL who have the appropriate security access. The OTMS must allow Ministry staff to update, as needed, telephone numbers that are being blocked using the Call Blocking feature.

All blocked telephone numbers within the OTMS must be pre-approved by the Ministry.

The OTMS must have an automated mechanism to inform the VSL immediately if an inmate attempts to call a blocked telephone number. OTMS must deliver an automated message to the caller that the call cannot be completed at this time.

2.3.6.6 Recoding and Monitoring

The OTMS must be capable of delivering call monitoring and recording from a central location should the Ministry, at its sole and absolute discretion, decide to implement one or both of these options during the Term of the Agreement.

At a minimum, the OTMS must have the capability to allow the Ministry to directly record calls made by specific inmates on demand from a central location, as well as the capacity to record all calls simultaneously

within a Facility at all times. These recordings, if made, must be stored for no less than sixty (60) calendar days and the OTMS must have the capacity to export these recordings to an external source for Ministry evidential archives.

The Successful Proponent's business solution must have the ability to playback these recordings using a standard windows based media player instead of a proprietary format. Should the Ministry choose to implement recording and monitoring, the Ministry will enter into discussions with the Successful Proponent for planning the implementation and ongoing use of these features. The implementation of these features must not result in a lower Commission Percentage Rate and may only require a minimal workload for, or be workload neutral, to the Ministry.

2.3.6.7 System Security and Privacy Protection

The Successful Proponent's business solution must be able to maintain rigorous system security to prevent unauthorized access or use of system data. All telephone calls must be carried on secure digital networks. System design requirements shall protect Ministry data systems from virus's and other forms of contamination. The Successful Proponent's solution must provide confirmation for the field(s) of data Ministry authorized and designated VSL and TCS staff can access in order to implement Call Blocking.

2.3.7. Call Tracking and Call Traffic Reports

The Ministry must have direct access to all call record data generated for reporting purposes during the Term of the Agreement.

The Successful Proponent's business solution must provide the capability for call tracking; an automated process to track telephone use; call details; and local and long distance telephone call Gross Revenue. In addition, the business solution shall track call data from the OTMS telephones that enables the Ministry to identify specific telephone numbers called from specific OTMS telephones. The Ministry must be capable of running a report for all data from all Facilities at any time directly from the Successful Proponent's business solution. The business solution must not time out during the generation of the report. The business solution must be able to save generated reports for two (2) Business Days onto the Successful Proponent's business solution allowing Ministry authorized staff to download large data reports after creation.

2.3.7.1 Types of Reports

The Successful Proponent must provide to the Ministry monthly reports containing the information specified below. All data from the OTMS and conventional public pay telephones contained in the reports will be the property of the Ministry.

Each report shall include a Ministry approved reference number identifying the dates the report represents and shall include the required information as follows:

i) Facility Report by Individual Telephone

List of telephones in the Facility identified by:

- Telephone number;
- Location of telephone in the Facility; and
- Type of telephone (OTMS or conventional public pay telephone).

For each OTMS and conventional public pay telephone, between the hours of 0801-1800hrs, 1801-0800hrs, and 2300-0600hrs for Monday-Friday, and a separate report for the same time frames for weekends and holidays:

- Number of local calls and total minutes;
- Gross Revenue from local calls;
- Local collect call connection fees;
- Number of long distance calls and total minutes;
- Gross Revenue from long distance calls;

- Long distance collect call connection fees; and
- Number of blocked call attempts.

ii) Provincial System Report: Consolidated by Facility

List of Facilities:

- Location of each Facility; and
- Number of OTMS and conventional public pay telephones at each Facility.

Totals at each Facility between the hours of 0801-1800hrs, 1801-0800hrs, and 2300-0600hrs for Monday-Friday, and a separate report for the same time frames for weekends and holidays:

- Number of local calls and total minutes;
- Gross Revenue from local calls;
- Local collect call connection fees;
- Number of long distance calls and total minutes;
- Gross Revenue from long distance calls;
- Long distance collect call connection fees; and
- Number of blocked call attempts.

iii) System Service Report

For each Facility location with system equipment installed:

- Number of instances that the Successful Proponent was contacted by the Ministry for system-related service issues;
- Number of instances that the Successful Proponent contacted the Ministry for system-related service issues;
- Number of occasions on which the Successful Proponent provided technical assistance on-site;
- Percentage of out-of-service trouble reports cleared within 24 hours (as set out in CRTC Decision 97-16 *Quality of Service Indicators for Use in Telephone Company Regulation*);
- Percentage of repair appointments met within twenty-four hours (as set out in CRTC Decision 97-16); and
- Percentage of repair appointments which failed to meet the Ministry requirements.

The Successful Proponent's business solution must, at no cost to the Ministry, allow for:

- Reporting flexibility in applying changes to the above report parameters;
- Retention of all data, both current and historical during the Term of the Agreement;
- A secure location for data storage;
- All OTMS traffic records and data to remain in Canada; and
- All reported data to be provided to the Ministry in a non-proprietary electronic format.

These reports must be received by the Ministry in a non-proprietary electronic format on a monthly basis, no later than thirty (30) days following the end of the month to which the data relates.

The Ministry must be able to directly generate a report from the system outlining the programmed on/off times for a particular telephone, a Facility, or all Facilities.

Should the Ministry implement a PIN based solution, the monthly report definitions will be reviewed for any required changes in required data, format and/or additional reports that may be required.

The Successful Proponent's proposal must provide a mechanism which alerts designated Ministry personnel by electronic mail indicating the opening status updates and closing of all trouble tickets. The electronic mail will clearly document the ticket number, individual logging ticket, nature of the problem as reported by the Facility or by the Successful Proponent, the time the problem was reported, the name of the individual reporting the issue, the time and concise repair steps leading to the resolution and final resolution date.

All data from the OTMS and conventional telephones, including Call Traffic Records (including service reports), the monthly Commission report, and relevant data dictionaries shall be provided by the Successful Proponent at no cost to the Ministry. These reports, including adhoc reports must be available in a non-proprietary format to the Ministry using Microsoft Excel, Access or SQL (Oracle) in comma delimited ASCII text files that allows the Ministry to access and analyze the data with the Ministry's standard statistical reporting/writing tools. The Ministry will notify the Successful Proponent of the Ministry personnel who are authorized to request and receive all reports generated by the Successful Proponent. The Successful Proponent will redirect any requests for information or reports from other sources to such personnel.

All costs associated with producing both regular and adhoc reports for the Ministry will be the responsibility of the Successful Proponent for the term of the Agreement.

The Ministry may publish selected Call Traffic Records for the purpose of facilitating competitive procurements for subsequent telephone contracts.

2.3.8. Technology Infrastructure, Systems and Applications

All OTMS equipment, other than wiring currently installed at each Facility's main telephone room located within the Facility, will be supplied, owned, supported and maintained by the Successful Proponent. This equipment includes, but is not limited to the conventional public pay telephones, OTMS telephones, bix blocks, digital equipment (for example digital analog converters), on/off switches, and personal computers, if required by the Successful Proponent's business solution, for managing the features of the OTMS. The Successful Proponent must install all technical components required to make the entire business solution operate as required. The Ministry will not be responsible for the installation of any additional cabling, analog or digital (CAT3, CAT5, CAT6 fibre optic cabling etc.), required for the OTMS beyond the minimum CAT 3 wiring already in existence within the Facilities and owned by the Ministry. Any such additional wiring will become the property of the Ministry at the end of the term of the Agreement.

The Successful Proponent shall maintain necessary resources including staff and infrastructure components to fully support the OTMS and ensure that it continues to operate as required throughout the term of the Agreement. The Ministry shall take reasonable care of the Successful Proponent's personal computers and other equipment installed in the VSL and the TCS.

The Successful Proponent shall not be responsible for supplying electrical power required for the operation of the equipment. The Successful Proponent shall be responsible for supplying all necessary power conditioners, line filters, UPS devices or any other devices connected between the Ministry's supplied power outlet and the Successful Proponent's equipment.

The Successful Proponent must ensure all system data and all features are accessible by the VSL and the TCS staff on a twenty-four (24) hour, seven (7) day a week, 365 day per year basis, at no cost to the Ministry. The OTMS must be designed to provide reliable inmate telephone service with separate redundant connectivity at each Facility for the purpose of maintaining the OTMS functionality in the event of a primary data circuit failure.

2.3.9. Technology Innovation

The Successful Proponent will notify the Ministry, in writing, in the event that the Successful Proponent acquires or develops any new telephone technology during the Term of the Agreement that may enhance the services and continue to meet the needs of the Ministry. The Ministry and the Successful Proponent will consider this information with respect to potential benefits and implications. The Successful Proponent must not change or modify equipment or technology without the Ministry's prior written approval and all associated costs for technology changes must be paid by the Successful Proponent, must not result in a lower Commission Percentage Rate and must be workload neutral to the Ministry.

2.3.10. Implementation Plan and Transition between Service Providers

The Successful Proponent will be required to work in a cooperative manner with the Ministry's current service provider with respect to the implementation of the Successful Proponent's OTMS and conventional public pay telephone business solution and with any new service provider with respect to the Successful Proponent's decommissioning and removal of its equipment and the new service provider's implementation of its OTMS and conventional public pay telephone system during the respective transition periods as set out in Sections 3.09(b) and 8.04(c) in the Form of Agreement.

Following execution of the Agreement, the Successful Proponent must provide, within sixty (60) Business Days, for Ministry approval, a detailed implementation plan that demonstrates a continuous, uninterrupted telephone service will be maintained during the transition period. The plan shall detail all events and contacts for all Facilities that will be required in order to install the new equipment and implement the OTMS and conventional public pay telephone systems. Upon request from the Successful Proponent and subject to operational requirements and security clearances, the Ministry will provide the Successful Proponent with reasonable access to the Facilities in order that the Successful Proponent may prepare their proposed implementation plan.

The Successful Proponent must adhere to all Ministry security procedures and protocols within all Facilities, which include but are not limited to security procedures and protocols related to the use of electronic devices, the taking of any photographs, and the use of or reproduction of drawings, diagrams and/or photographs. Should there be a need for any photographs to be taken within a Facility, prior written Ministry approval must be sought, and, if approved, the Ministry will retain ownership of all photographs taken. Any use of these photographs will require prior written approval of the Ministry.

The final implementation plan submitted by the Successful Proponent, and approved by the Ministry, shall include, but not be limited to, the following new network components supplied by the Successful Proponent:

- New inmate and public telephones;
- Wiring closet cable terminations and cross-connects;
- Manual on/off shut down switches;
- AC power supply sources – wiring closet and other locations as required;
- Wide Area Network (WAN) Facilities;
- Local Area Network (LAN) Facilities;
- Personal computer devices;
- Central office cable terminations and/or other central office equipment;
- Digital conversion equipment; and
- Uninterrupted power source (UPS) for system equipment.

The implementation plan must set out a schedule identifying the order in which the Successful Proponent proposes to install the equipment and begin providing services at the institutions subject to the requirement to first install the Deliverables at the TCS, VSL and TIC and the other requirements below. Once the initial installations have been completed, acceptance testing on the equipment at those locations has been performed to the Ministry's satisfaction and the installations have been approved by the Ministry, staff training has been completed to the Ministry's satisfaction, and the equipment has been implemented, the Ministry will set a Commencement Date and the Successful Proponent may start the installations at the other Facilities in accordance with the Ministry approved implementation schedule.

The implementation plan must therefore meet the following criteria:

- On or around June 1, 2013, the Successful Proponent will be required to conduct the initial installation of the hardware necessary for accessing the system at the TCS in Mississauga and VSL in North Bay followed by the installation of the Successful Proponents OTMS telephones and conventional public pay telephones at the Toronto Intermittent Centre (TIC). Following these installations, the Ministry will conduct rigorous acceptance testing to ensure the solution is

functioning as required and meeting Ministry requirements. This must be completed within the first 4 weeks of the transition period; and

- Following the above initial installations and the setting of the Commencement Date, installation of the Successful Proponent's OTMS telephones and conventional public pay telephones, acceptance testing and any required staff training at all of the remaining 29 Facilities must be completed no later than twenty-two (22) weeks after the above initial installations have been completed and approved by the Ministry.

Further details are set out in the Agreement.

2.3.11. Staff Training

All Proponents should include in their Proposal a detailed training plan that describes the Proponent's approach to initial and on-going OTMS training for Ministry staff. Following the execution of the Agreement, the Ministry will review the Successful Proponent's training plan for Ministry staff and upon approval, training will be scheduled by the Ministry. Equipment specific information (e.g. operating manuals) must be provided by the Successful Proponent with the training plan. Final training materials will be subject to Ministry approval prior to implementation of any training designed for Ministry staff. The Successful Proponent will be responsible for all costs associated with training Ministry staff.

The Successful Proponent must have the ability to remotely identify/diagnose problems with the OTMS and conventional public pay telephones and local supporting technology infrastructure that will immediately notify the designated Ministry representative(s), to ensure repairs are completed and the system is operating properly. All of the Successful Proponents OTMS and conventional public pay telephone hardware inventory must be securely managed and stored in Ontario.

The Successful Proponent shall also provide training on an on-going basis throughout the term of the Agreement as required by the Ministry for system upgrades or changes and training of new staff.

The Successful Proponent shall supply appropriate manuals and instructional materials and all training, which shall be held at the workplace of the staff being trained. Training requirements for staff will be specific to their responsibilities and authorized level of system access.

2.3.12. Equipment Servicing and Repairs

Following the execution of the Agreement, the Successful Proponent must provide a proposed technical support procedures manual, identifying on-site technical support for the installation of any new equipment and de-installation of existing OTMS and conventional public pay telephone equipment and the identification of regular maintenance schedules.

The Successful Proponent must have the ability to remotely identify/diagnose problems with the telephones and local supporting technology infrastructure that will immediately notify the designated Ministry official, to ensure repairs are completed and the system is operating properly. All of the Successful Proponents OTMS and conventional public pay telephone hardware inventory must be securely managed and stored in Ontario.

The Successful Proponent must commence timely technical repairs after notification by the Ministry as follows:

- Provincially (all Facilities or the TCS or the VSL , or the OTMS system) within two (2) hours of notification;
- More than 50% of OTMS telephones at any Facility within eight (8) hours of notification; and
- Single OTMS or conventional public pay telephones within an institution within one (1) calendar day of notification.

The Successful Proponent must notify the affected Facility(s) to coordinate a repair visit within the time lines listed above. All repairs shall meet the standards set by the Canadian Radio-television and Telecommunications Commission (CRTC). The Ministry may monitor the Successful Proponent's performance with respect to repairs and maintenance as part of the performance measurement framework. All costs associated with the repairs and replacements of defective/damaged OTMS and conventional public pay telephones, however caused, and local supporting technology will be the responsibility of the Successful Proponent.

The Successful Proponent's system must provide mechanisms whereby operational problems can be reported by the Ministry via electronic mail or by a central telephone number, and timely repairs put into motion by the Successful Proponent based on the above repair time criteria. The Ministry will promptly advise the Successful Proponent in the above described manner upon becoming aware of any damage to the Successful Proponent's equipment including but not limited to telephones that are not functioning properly and/or out of order telephones. The Successful Proponent must provide all service calls necessary, in the sole and absolute discretion of the Ministry, in order to provide the required service to the Facilities and to ensure all equipment necessary to operate the OTMS and conventional public pay telephone systems are fully functional. For scheduling and access reasons, some Facilities require scheduled weekly visits for OTMS maintenance purposes. As required, the Successful Proponent will arrange through the Ministry for regularly scheduled site specific visits and adhere to that schedule.

The Successful Proponent's system must provide mechanisms that alert designated Ministry staff, including the Ministry's Contract Compliance Manager, by electronic mail indicating the opening and closing of all trouble tickets. The electronic mail will clearly document the name of the Facility, the nature of the problem as reported by the Ministry, the time the problem was reported, the name of the individual reporting the issue and the time and concise repair steps leading to an acceptable resolution.

2.3.13. Policies and Procedures

2.3.13.1 Criminal Record Checks

The Successful Proponent must complete a Canadian Police Information Center (CPIC) criminal record check at their own expense for any individual the Successful Proponent is considering employing or retaining in the performance of the Deliverables and who, if employed or retained, would:

- (i) have access to the software that performs the OTMS security features;
- (ii) be involved in the design or development of the OTMS provided and/or be involved in any enhanced OTMS;
- (iii) require access to Facilities and Ministry specific offices; and/or
- (iv) have access to all Ministry Call Traffic Records.

The CPIC criminal record checks must be specific for the purpose intended and must be obtained by the individual(s) at the local police service agency based on their residential address.

Unless the Successful Proponent decides, after conducting the criminal record check, it no longer wishes to employ or retain the individual, the Successful Proponent must provide a copy of the employee's criminal record check to the Ministry. If such check reveals the existence of a criminal record, the Ministry, in its sole and absolute discretion, will determine whether the individual may participate in the performance of the Deliverables. Where the Ministry provides the Successful Proponent with written confirmation that the criminal record is not incompatible with the performance of the Deliverables, the Successful Proponent may employ or retain the employee, or continue to employ or retain the individual as the case may be.

Such criminal record checks must also be completed every twelve (12) months during the term of the Agreement for each employee.

In addition to the above criminal record checks, the Ministry may require each individual who the Successful Proponent requires to access Ministry data information, a Facility or Ministry specific offices obtain prior security clearance from the Ministry.

Further details are set out in Sections 2.08, 2.09 and 9.01 of the Form of Agreement attached as Appendix A.

2.3.13.2 Criminal Proceedings

The Successful Proponent must develop a comprehensive policy to deal with individuals for whom it is responsible who are charged with criminal offences. The policy will detail the responsibility of the employee/subcontractor employee to report criminal charges to the Successful Proponent and the Ministry. The policy must deal with the status of the person prior to conviction and subsequent thereto. The written policy will be subject to the approval of the Ministry.

2.3.13.3 Conflict of Interest

The Successful Proponent must develop and have in place a comprehensive conflict of interest policy, subject to approval of the Ministry, for all individuals for whom it is responsible. The policy must include specific provisions regarding individuals who knowingly form or continue a relationship or connection of a personal or business nature with an inmate or ex-inmate or with someone known to be in a close relationship with an inmate or ex-inmate, which might reasonably be perceived as, or might lead to, a conflict of interest or a breach of security. Definitions and direction regarding conflict of interest must reflect Section 30(2) of the Ministry of Correctional Services Act.

Written reporting to the Ministry Contract Compliance Manager of any conflict of interest incidents must be made within twenty-four (24) hours of the Successful Proponent being made aware of the situation.

2.4. Commission Paid to the Ministry

The Successful Proponent must provide to the Government of Ontario a monthly Commission based on a percentage of the Gross Revenue generated by all OTMS and conventional public pay telephones in the Facilities.

The Proponents must set out in Appendix C of their proposal their proposed Commission Percentage Rate to be applied against the Gross Revenue generated by both types of telephones (See Section 3.2.2 and Appendix C). The Commission Percentage Rate proposed must be no less than 25% of the Gross Revenue generated by both the OTMS and conventional public pay telephones.

Payment of the Commission to the Government of Ontario will be paid on a monthly basis, no later than thirty (30) calendar days following the last day of the month in which the applicable revenues were generated. Payment will be made payable to the Minister of Finance and sent to the Ministry Contract Compliance Manager for processing. Accompanying the Commission payment will be a Commission statement, which will include the Gross Revenue and Commission amount for each Facility and a total for all OTMS and conventional public pay telephones for all Facilities.

2.5. Performance Management Framework

The Ministry reserves the right to conduct regular testing and audits for the purpose of ensuring system functionality and accurate financial accountability.

The Ministry may document identified performance deficiencies, which may become part of the public reporting on performance measurement released by the Ministry.

2.5.1 Performance Outcomes

Performance outcomes have been developed to monitor the Successful Proponent's performance and will be measured by means of performance indicators that relate to and support the relevant outcomes. These performance outcomes are identified in section 2.5.1.1 and 2.5.1.2.

The performance of the Successful Proponent will be monitored and reviewed by the Ministry on a monthly basis on both OTMS and conventional public pay telephones.

2.5.1.1 OTMS Performance Outcomes

Performance outcomes:

- a) Safety; and
- b) Highly reliable telephone service.

Table 2A - Safety: Increased safety for victims and witnesses.

Performance Indicator	Performance Measures	Indicator/ Data Source	Target
System will not permit calls to be completed to directly dialled blocked telephone numbers.	Number of occasions that the system permits directly dialled calls to be completed to blocked telephone numbers.	System audit.	Zero calls completed to directly dialled blocked telephone numbers.
System will provide access to all identified common access and lawyer numbers as designated.	Number of occasions that system is incapable of supporting access to Ministry identified numbers.	System audit	Zero numbers not configured as allowable in the system.

Table 2B - Highly Reliable Telephone Service:

Performance outcome: OTMS Telephones in the secure areas of Facilities that operate properly, allowing inmates to maintain contact with their families and friends, as well as organizations and agencies within the community.

Performance Indicator	Performance Measures	Indicator/ Data Source	Target
Telephone repair service achieves minimum standards for out-of-service trouble reports and repair appointments met.	Number of occasions when telephone service repair response time exceeds the standards as set out in section 2.7.2 of this document.	Successful Proponent's monthly system service report.	All repairs meet required level of service.
Inmate calls are charged at rates no higher than the highest published rates for conventional public pay telephones in the local community.	Comparison of rates with publicly posted rates for conventional public pay telephones in the community.	Publicly posted calling rates for conventional public pay telephones.	Call rates charged to the call recipient for a call made on the OTMS is no higher than the highest call rate for a call made by a member of the public on a conventional public pay telephone in the community.

Performance Indicator	Performance Measures	Indicator/ Data Source	Target
Telephone system will not fail or go offline outside of Ministry approved maintenance windows.	Number of occasions systems fails outside of Ministry approved maintenance windows	Successful proponent's ticket system.	Zero system failures outside of Ministry approved maintenance windows.

2.5.1.2 Conventional Public Pay Telephones Performance Outcomes

Performance outcome: Highly reliable conventional public pay telephone service that operates properly for public use by Facility staff and visitors in secure and non-secure areas of the Facility.

Table 3 - Highly Reliable Telephone Service

Performance Indicator	Performance Measures	Indicator/ Data Source	Target
Telephone repair service achieves minimum standards for out-of-service trouble reports and repair appointments met.	Number of occasions when telephone service repair response time exceeds the standards as set out in section 2.72 of this document.	Successful Proponent's monthly system service report.	All repairs meet required level of service.
Calls are charged at rates identical to rates charged for the same service in the local community.	Comparison of rates with publicly posted community rates.	Publicly posted calling rate.	No instances of different calling rates between conventional public pay telephones in a Facility and in the local community.

2.6. Management of the Agreement

The Successful Proponent must have representatives attend meetings with the Ministry Contract Compliance Manager and operational representatives on a regular basis, no less frequently than once every two months, to discuss any issues of mutual concern. Such communication may cover the entire scope of the Agreement including but not limited to opportunities to maximize value and reduce overall costs, administrative issues, and the Successful Proponent's service and performance.

The manner and time of communicating through meetings or teleconferences will be arranged by the Ministry with the Successful Proponent as required after the Agreement has been established.

End of Part 2

3. PART 3 – EVALUATION OF PROPOSALS

3.1. Stages of Proposal Evaluation

The Ministry will conduct the evaluation of proposals in the following four (4) stages:

3.1.1. Stage I

Stage I will consist of a review to determine which proposals comply with all of the mandatory requirements. Proposals, which do not comply with all of the mandatory requirements, may, subject to the express and implied rights of the Ministry, be disqualified and not evaluated further.

3.1.2. Stage II

Stage II will consist of a scoring by the Ministry of each qualified proposal on the basis of the rated criteria. Each proposal must meet a minimum score of 70% (70/100 points) to qualify to continue to Stage III.

3.1.3. Stage III

Upon completion of Stage II for all Proponents, the sealed pricing envelope provided by each Proponent meeting the minimum threshold will then be opened and Stage III will consist of a scoring of the Commission offered to the Government of Ontario. Only proposals which contain a Commission Percentage Rate meeting or exceeding a minimum Commission Percentage Rate of 25% of the Gross Revenue from both types of telephones will be evaluated. The evaluation of the Commission shall be undertaken after the evaluation of mandatory requirements (Stage I) and any rated requirements (Stage II) has been completed.

3.1.4. Stage IV

At the conclusion of Stage III, all scores from Stage II and Stage III will be added to determine the cumulative score for each Proponent. If one or more Proponents scores within five percent (5%) of the highest scoring Proponent at Stage IV, the Best and Final Offer process described in section 3.1.5 – Stage V and Section 3.6 – Stage V Best and Final Offer (BAFO), will be triggered.

In the event no Proponent has a total cumulative score within five percent (5%) of the highest scoring Proponent at Stage IV, the Stage V BAFO process will not take place.

If the BAFO process under Stage V is not triggered, the highest scoring Proponent under Stage IV, subject to satisfactory Security Clearance Checks, clearance from the Ministry of Revenue and the express and implied rights of the Ministry, will be selected to enter into the Form of Agreement attached as Appendix A to this RFP in accordance with Part 4 – Terms and Conditions of the RFP Process.

3.1.5. Stage V

If applicable, at the conclusion of Stage IV, the Ministry will enter into a Best and Final Offer (BAFO) process with Proponents whose cumulative scores are within 5% of the highest scoring proponent under Stage IV as further described in section 3.6, Stage V Best and Final Offer.

3.2. Stage I - Mandatory Requirements

Other than inserting the information requested on the mandatory submission forms set out in this RFP, a Proponent may not make any changes to any of the forms. Any proposal containing any such changes, whether on the face of the form or elsewhere in its proposal, may be disqualified.

3.2.1. Form of Offer (Appendix B)

Each proposal must include a Form of Offer (Appendix B) completed and signed by the Proponent.

(a) Conflict of Interest

In addition to the other information and representations made by each proponent in the Form of Offer, each Proponent must declare whether it has an actual or potential Conflict of Interest.

If, at the sole and absolute discretion of the Ministry, the Proponent is found to be in a Conflict of Interest, the Ministry may, in addition to any other remedies available at law or in equity, disqualify the proposal submitted by the Proponent.

The Proponent, by submitting the proposal, warrants that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the proposal or performance of the contemplated contract other than those disclosed in the Form of Offer. Where the Ministry discovers a Proponent's failure to disclose all actual or potential Conflicts of Interest, the Ministry may disqualify the Proponent or terminate any contract awarded to that Proponent pursuant to this procurement process.

(b) General

The Ministry, in addition to any other remedies it may have in law or in equity, shall have the right to rescind any Contract awarded to a Proponent in the event that the Ministry determines that the Proponent made a misrepresentation or submitted any inaccurate or incomplete information in the Form of Offer.

Other than inserting the information requested and signing the Form of Offer, a Proponent may not make any changes to or qualify the Form of Offer in its proposal. A proposal that includes conditions, options, variations or contingent statements that are contrary to or inconsistent with the terms set out in the RFP may be disqualified. If a proposal is not disqualified despite such changes or qualifications, the provisions of the Form of Offer as set out in this RFP will prevail over any such changes or qualifications in or to the Form of Offer provided in the proposal.

3.2.2. Rate Bid Form (Appendix C)

Each Proponent must include this form completed according to the instructions contained in the form as well as those instructions set out below:

- a) All calling rates quoted in the Proponent's Proposal must be in Canadian funds excluding HST;
- b) The Proponent must provide a proposed Commission Percentage Rate to be applied against the monthly Gross Revenue generated from all OTMS and conventional public pay telephones at the Facilities in accordance with Appendix C. This Commission Percentage Rate must be no less than 25% of the Gross Revenue generated from all OTMS and conventional public pay telephones at the Facilities.

The Commission payable to the Government of Ontario by the Successful Proponent shall be provided in Canadian funds.

The Deliverables are to be provided by the Successful Proponent to the Ministry at no cost to the Ministry. The Successful Proponent shall be responsible for all costs associated with providing the Deliverables, including all labour and materials, travel and carriage costs, insurance costs, and all other overhead including but not limited to any fees or other charges required by law.

A proposal that includes conditional, optional, contingent or variable Rates that are not expressly requested in the Rate Bid Form may be disqualified.

By submitting a proposal, a Proponent is deemed to confirm that it has prepared its proposal with reference to all of the provisions of the Form of Agreement attached at Appendix A and has factored all of the provisions of Appendix A, including the insurance requirements, into its assumptions and calculations and into the proposed Commission Percentage Rate and the telephone calling rates indicated on the Rate Bid Form.

3.2.3. Tax Compliance Declaration Form (Appendix D)

The Ontario Government expects all suppliers to pay their provincial taxes on a timely basis. In this regard, Proponents are advised that any contract with the Ontario Government will require a declaration from the Successful Proponent that the Proponent's provincial taxes are in good standing.

Each Proponent must include a Tax Compliance Declaration Form, completed by the Proponent according to the instructions contained in that form. Other than inserting the information requested and signing the Tax Compliance Declaration Form, a Proponent may not make any changes to the Tax Compliance Declaration Form. Proposals containing changes to the Tax Compliance Declaration Form may be disqualified.

The Ministry will forward to the Ministry of Revenue a copy of the selected Proponent's signed Tax Compliance Declaration Form for verification. By signing this Form, the Proponent is consenting to the release of the information on the Form from the Ministry to the Ministry of Revenue and the result of the verification process from the Ministry of Revenue to the Ministry.

Proponents may direct enquiries regarding the Tax Compliance Declaration Form to the Ministry Contact.

In the event that the Ministry of Revenue finds that the selected Proponent's taxes are not in good standing, the selected Proponent must, as a precondition of entering into an Agreement, ensure that its status is brought into good standing and provide evidence of its good standing to the Ministry. The Ministry may rescind the notice of selection of a Proponent who fails to provide evidence of its good standing within the timeframe for satisfying all preconditions of execution set out in the RFP.

3.2.4. OTMS Mandatory System Requirements (Appendix E)

Each Proponent must include this form completed according to the instructions contained in the form confirming the Proponent's solution will meet the minimum OTMS system requirements.

Failure of the Proponent to confirm their proposed solution will meet all of the minimum requirements identified in Appendix E will result in disqualification.

3.3. Stage II – Evaluation of Rated Criteria

Proponents will be required to meet or exceed a **minimum score of 70% (70 points)** of the 100 points assigned to the Rated Criteria in Stage II in order to progress to Stage III Evaluation of Pricing. Rated criteria points will be worth **40%** of the Proponent's overall score.

Proposals should include a table of contents and should structure their responses in accordance with the below noted rated criteria category. Each page (including exhibits and other attachments) should be numbered in sequential order.

The following is an overview of the categories and weighting for the rated criteria of the RFP:

Rated Criteria Category	Weighting (Points)
Experience and Qualifications	16 points
Reporting Requirements	8 points
Technology Infrastructure, Systems and Applications	20 points
Equipment Servicing and Repairs	15 points
Implementation and Transition Plan	30 points
Staff Training	6 points
Additional Features	5 points

Total Points	100 points
---------------------	------------

3.3.1. Experience and Qualifications (16 points)

Each Proponent should provide in its proposal a summary of the Proponent's experience in providing an offender telephone management system and conventional public pay telephones including:

- (a) Number of years of experience (3 points);
- (b) Description of services previously provided and specifics of the secure custodial environment for which services were provided (3 points);
- (c) The number of correctional institutions and OTMS and conventional public pay telephones included in each contract (5 points); and
- (d) The geographic area(s) the OTMS and conventional public pay telephone contracts covered including a description of the network of technical support dedicated to supporting each contract (5 points).

3.3.2. Reporting Requirements (8 points)

Each Proponent should provide in its proposal a sample report identifying all requirements as listed in section 2.3.7 including:

- (a) a sample Facility Report by Individual Telephone (as per Section 2.3.7.1 i) (3 points);
- (b) a sample Provincial System Report: Consolidated by Facility (as per Section 2.3.7.1 ii) (2 points); and
- (c) a sample System Service Report (as per Section 2.3.7.1 iii) (3 points).

3.3.3. Technology Infrastructure, Systems and Applications (20 points)

Each Proponent should provide in its proposal information on how they will maintain necessary resources including staff and infrastructure components to fully support the system and ensure that it continues to operate as required (as per Section 2.3.8). Proponents should describe the:

- (a) Process for providing notification and reporting system malfunctions (10 points);
- (b) Proponent's availability of sufficient technical resources to address system issues (5 points); and
- (c) Process for troubleshooting system related issues (5 points).

3.3.4. Equipment Servicing and Repairs (15 points)

Each Proponent should provide in its proposal information on how they will maintain necessary resources including staff and infrastructure components to fully support the hardware and ensure that it continues to operate as required (as per Section 2.3.12). Proponents should describe the:

- (a) Process for providing the notification and reporting of damaged or malfunctioning equipment (8 points); and
- (b) Proponent's availability of sufficient technical resources and availability of equipment / components on hand to meet repair timelines (7 points).

3.3.5. Implementation Plan (30 points)

Each Proponent should provide in its proposal a proposed draft implementation plan (in accordance with section 2.3.10) which provides the following:

- (a) The planned approach to ensure a continuous, uninterrupted telephone service will be maintained during the implementation and transition within a Facility and across the province (12 points);
- (b) How they will structure their working relationship with the Ministry's current OTMS and conventional public pay telephone service provider, any telecommunication partners and any potential subcontractors with respect to the transition, as well as with Ministry staff (8 points); and

- (c) Draft schedule identifying the order in which the services will be proposed to be installed at the Facilities (10 points).

3.3.6. Staff Training (6 points)

Each Proponent should provide in its proposal a training plan that describes the Proponent's approach for initial and on-going Ministry staff training as in accordance with section 2.3.11.

3.3.7. Additional Features (5 points)

Each Proponent should provide in its proposal a summary of any additional features available at no cost to the Ministry and without any change in the Proponent's proposed Commission Percentage Rate.

3.4. Stage III – Evaluation of Commission (100 points)

Only Proponents which meet or exceed the minimum threshold of 70% or 70 points out of a total 100 points in Stage II will be considered for Stage III - Evaluation of Commission.

Upon the opening of the Stage III Evaluation of Commission envelopes, only Proponents whose proposed Commission Percentage Rate meets or exceeds the minimum 25% of the Gross Revenue generated from the OTMS and conventional public pay telephones in the Facilities will be considered for evaluation.

The Proponent's Commission will be calculated and will be scored based on a relative formula as set out below.

Points in respect of a Proponent's Commission will be allotted based on 100 available points. Commission points will be worth 60% of the Proponent's overall score.

The Proponent's proposed calling rates provided in Appendix C, Part 1, Table 2 to be charged to the call recipient must be no greater than the highest calling rate charged in the local community for calls made from conventional public pay telephones in each of the respective communities where the Facilities identified in Appendix C1, Table 1 are located.

The calling rates provided by the Proponent in Appendix C, Part 1, Table 2 will be used to calculate a monthly Gross Revenue based on the scenario of monthly call traffic, provided for evaluation purposes only, in Appendix C-1.

The Proponent's proposed Commission Percentage Rate, as provided by the Proponent in Appendix C, Part 2, will then be applied against the monthly Gross Revenue calculated as set out above to establish a monthly Commission payable to the Government of Ontario. This monthly Commission will be used to calculate Stage III points.

Each Proponent will receive a percentage of the total possible points allocated for Stage III by dividing that Proponent's monthly Commission, calculated as set out above, by the highest Commission. For example, if the highest monthly Commission is calculated to be \$10,000.00, that Proponent will receive 100% of the possible Stage III points ($10,000/10,000 = 100\%$), a Proponent whose monthly Commission is calculated to be \$8,000.00 will receive 80% of the possible Stage III points ($8,000/10,000 = 80\%$) and a Proponent whose Commission is calculated to be \$5,000 will receive 50% of the possible Stage III points ($5,000/10,000 = 50\%$)

2nd highest monthly Commission

Commission
highest monthly Commission

$$\times \text{Total available points} = \text{Score for Proposal with 2}^{\text{nd}} \text{ highest monthly}$$

3rd highest monthly Commission

Commission

$$\times \text{Total available points} = \text{Score for Proposal with 3}^{\text{rd}} \text{ highest monthly}$$

highest monthly Commission

Etc...for each Proposal

3.5. Stage IV Cumulative Score

At the conclusion of Stage III, all scores from Stages II and III will be totalled and the Proponents will be ranked based on the points awarded. If one or more Proponents has a total score that is within five percent (5%) of the total score of the top ranked Proponent as determined in this Stage IV, Cumulative Score, those Proponents and the highest ranked Proponent will be selected to enter into the BAFO process in Stage V.

In the event that there are no Proponents with a total score within five percent (5%) of the total score of the top ranked Proponent based on the ranking determined in this Stage IV, Cumulative Score, the BAFO process will not be invoked.

3.6. Stage V Best and Final Offer (BAFO)

The Ministry will enter into the "best and final offer" (BAFO) process described below only if one or more Proponents earn a total score that is within five percent (5%) of the total score of the top ranked proponent in Stage IV, Cumulative Score.

If this BAFO process is triggered, the Ministry will request that the highest ranked Proponent and all Proponents with a total score within five percent (5%) of the total score of the highest ranked Proponent under Stage IV submit to the Ministry a "best and final offer" Commission Percentage Rate. Proponents identified to enter into this Stage V will be requested to submit their "best and final offer" Commission Percentage Rate within five (5) Business Days following receipt of written notification from the Ministry. The Commission Percentage Rate provided during this Stage V will be used to calculate a monthly Commission payable to the Government of Ontario in the same manner as set out in Stage III. The Commission Percentage Rate provided during this Stage V will be applied against the Gross Revenue calculated under Stage III (using the same scenario and the original calling rates provided by the Proponent in its Proposal). Proponents selected to participate in this BAFO process must not submit new calling rates.

If a Proponent selected to participate in the BAFO process chooses not to submit a Commission Percentage Rate in Stage V, the Commission Percentage Rate from the Proponent's original proposal will be used to determine the Proponent's scoring under this Stage V.

In the event of a tie between the top Proponents resulting from the BAFO process, the scores the Proponents obtained in Section 3.3 – Stage II – Evaluation of Rated Criteria, will be used as a tie breaker, with the Proponent with the higher score in Section 3.3 Stage II – Evaluation of Rated Criteria being identified as the selected Proponent.

The selected Proponent will enter into the Agreement with the Ministry in accordance with Section 3.7. Scoring from Stages II (unless utilized in a tie as noted above), III and IV will not be considered when determining the selected Proponent under this Stage V.

3.7. Selection of the Proponent to enter into the Agreement

If the BAFO process under Stage V is invoked, the selected Proponent under Stage V, subject to satisfactory Security Clearance Checks, clearance from the Ministry of Revenue, and the express and implied rights of the Ministry, will be selected to enter into the Agreement attached as Appendix A to this RFP in accordance with Part 4 – Terms and Conditions of the RFP Process.

If the BAFO process under Stage V is not triggered, the highest scoring Proponent under Stage IV, subject to satisfactory Security Clearance Checks, clearance from the Ministry of Revenue and the express and implied rights of the Ministry, will be selected to enter into the Form of Agreement attached as Appendix A to this RFP in accordance with Part 4 – Terms and Conditions of the RFP Process.

End of Part 3

4. PART 4 – TERMS AND CONDITIONS OF THE RFP PROCESS

4.1. General Information and Instructions

4.1.1. Timetable

The following is the schedule for this RFP:

- Issue Date of RFP **Friday, September 28, 2012**
- **Mandatory Site Visits and Proponent Information Session** **Wednesday, October 10, 2012 and Thursday October 11, 2012**
- Proponent's Deadline for Questions **Friday, October 26, 2012 at 11:00 a.m.**
- Deadline for Issuing Addenda **Friday, November 2, 2012 at 4:00 p.m.**
- Proposal Submission Deadline **11:00:00 a.m. (Toronto time) on Friday, November 16, 2012**

Period for which proposals are Irrevocable after Proposal Submission Deadline **180 days**

The RFP timetable is tentative only and may be changed by the Ministry in its sole discretion at any time prior to the Proposal Submission Deadline.

4.1.2. Proponents to Follow Instructions

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP where that request was made.

4.1.3. Proponents to Obtain RFP Only Through MERX™

This RFP is available only through MERX™, the electronic tendering system used by the Province of Ontario. For further information about MERX™, call 1-800-964-MERX™ or visit the MERX™ website at www.merx.com.

A proponent who has not obtained this RFP through MERX™ may have its proposal disqualified unless a third party has requested this RFP from MERX™ on that proponent's behalf and that proponent has identified the third party on the Proposal Return Label for its proposal. Failure to identify the third party in this manner may result in disqualification of a proposal.

4.1.4. Proposals in English

All proposals are to be in English only. Any proposals received by the Ministry that are not entirely in the English language may be disqualified.

4.1.5. Ministry's Information in RFP Only an Estimate

The Ministry and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to proponents the general size of the work.

It is the proponent's responsibility to avail itself of all the necessary information to prepare a proposal in response to this RFP.

4.1.6. Proponents Shall Bear Their Own Costs

The proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal including, if applicable, costs incurred for site visits, interviews or demonstrations.

4.2. Communication After Issuance of RFP

4.2.1. Proponents to Review RFP

Proponents shall promptly examine all of the documents comprising this RFP and:

- (a) shall report any errors, omissions or ambiguities; and
- (b) may direct questions or seek additional information

in writing by e-mail on or before the Proponent's Deadline for Questions to the Ministry Contact set out at Section 1.8 of this RFP. All questions submitted by proponents by e-mail to the Ministry Contact shall be deemed to be received once the e-mail has entered into the Ministry Contact's e-mail inbox. No such communications are to be directed to anyone other than the Ministry Contact. The Ministry is under no obligation to provide additional information but may do so at its sole discretion.

It is the responsibility of the proponent to seek clarification from the Ministry Contact on any matter it considers to be unclear. The Ministry shall not be responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

4.2.2. All New Information to Proponents by way of Addenda on MERX™

This RFP may only be amended by an addendum in accordance with this section. If the Ministry, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addenda by way of MERX™. Each addendum shall form an integral part of this RFP.

Such addenda may contain important information including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the Ministry. In the space provided in the Form of Offer, proponents shall confirm their receipt of all addenda by setting out the number of each addendum in the space provided in the Form of Offer.

Proponents who intend to respond to this RFP are requested not to cancel the receipt of addenda or amendments option provided by MERX™, since they must obtain through MERX™ all of the information documents that are issued through MERX™.

In the event that a proponent chooses to cancel the receipt of addenda or amendments, its proposal may be rejected.

4.2.3. Post-Deadline Addenda and Extension of Proposal Submission Deadline

If any addendum is issued after the Deadline for Issuing Addenda, the Ministry may at its discretion extend the Proposal Submission Deadline for a reasonable amount of time.

4.3. Submission of Proposals

4.3.1. Proposals Submitted Only in Prescribed Manner

Proposals must be submitted by the following method:

- (a) a proponent must submit one (1) original signed by an authorized representative (prominently marked "Original") and **five (5)** hard copies and one (1) electronic copy in Microsoft Word format on diskette or flash drive of its proposal in a sealed package with the Proposal Return Label affixed to the outside of the sealed package. Proposals are to be prominently marked with the RFP title and number (see RFP cover), with the full legal name and return address of the proponent, and with the Proposal Submission Deadline date and time;
- (b) The Rate Bid Form is to be submitted in a separate sealed envelope apart from the rest of the proposal. The sealed envelope containing the Rate Bid Form should be placed with the rest of the proposal into a sealed package with the Proposal Return Label attached; and
- (c) Proposals must be submitted to the address set out on the Proposal Return Label.

Proposals submitted in any other manner may be disqualified.

In the event of a conflict or inconsistency between the original hard copy and the electronic copy of the proposal, the original hard copy of the proposal shall prevail.

4.3.2. Proposals Must Be Submitted On Time at Prescribed Location

Proposals must be submitted at the location set out above on or before the Proposal Submission Deadline. Proposals submitted after this point in time will be deemed late, disqualified and returned to the proponent. For the purpose of calculating time, the Ministry clock at the prescribed location for submission shall govern.

4.3.3. Amending or Withdrawing Proposals Prior to Proposal Submission Deadline

At any time prior to the Proposal Submission Deadline, a proponent may amend or withdraw a submitted proposal. The right of proponents to amend or withdraw includes amendments or withdrawals wholly initiated by proponents and amendments or withdrawals in response to subsequent information provided by addenda.

Any amendment should clearly indicate what part of the proposal the amendment is intending to replace.

A notice of amendment or withdrawal must be sent to the address set out on the Proposal Return Label prior to the Proposal Submission Deadline and must be signed by an authorized representative. The Ministry is under no obligation to return amended or withdrawn proposals.

4.3.4. Proposal Irrevocable after Proposal Submission Deadline

Proposals shall remain irrevocable in the form submitted by the proponent for a period of one hundred and eighty (180) days running from the moment that the Proposal Submission Deadline has lapsed.

4.3.5. Ministry May Seek Clarification and Incorporate Response into Proposal

The Ministry reserves the right to seek clarification and supplementary information relating to the clarification from proponents after the Proposal Submission Deadline. The response received by the Ministry from a proponent shall, if accepted by the Ministry, form an integral part of that proponent's proposal. The Ministry reserves the right to interview any or all proponents to obtain information about or clarification of their proposals. In the event that the Ministry receives information at any stage of the evaluation process which results in earlier information provided by the proponent being deemed by the Ministry to be inaccurate, incomplete or misleading, the Ministry reserves the right to revisit the proponent's compliance with the mandatory requirements and/or adjust the scoring of rated criteria.

4.3.6. RFP Incorporated into Proposal

All of the provisions of this RFP are deemed to be accepted by each proponent and incorporated into each proponent's proposal.

4.3.7.No Incorporation by Reference by Proponent

The entire content of the proponent's proposal should be submitted in a fixed form and the content of web sites or other external documents referred to in the proponent's proposal will not be considered to form part of its proposal.

4.3.8.Proposal to be Retained by the Ministry

Subject to Section 4.3.2, the Ministry will not return the proposal or any accompanying documentation submitted by a proponent.

4.4. Execution of Agreement, Notification and Debriefing

4.4.1. Selection of Proponent

The Ministry anticipates that the Ministry will select a proponent within sixty (60) days of the Proposal Submission Deadline. Notice of selection by the Ministry to the selected proponent will be in writing. The selected proponent shall execute the Agreement in the form attached as Appendix A to this RFP and satisfy any other applicable conditions of this RFP within fifteen (15) days of notice of selection. This provision is solely to the benefit of the Ministry and may be waived by the Ministry at its sole discretion.

A proponent who submits conditions, options, variations or contingent statements to the terms set out in the Form of Agreement, either as part of its proposal or after receiving notice of selection, may be disqualified. The Ministry acknowledges the need to add transaction-specific particulars to Schedule 1 of the Form of Agreement but the Ministry will not otherwise make material changes to the Form of Agreement.

Proponents are reminded that there is a question and answer period available if they wish to ask questions or seek clarification about the terms and conditions set out in the Form of Agreement. The Ministry will consider such requests for clarification in accordance with Section 4.2.1 of the RFP.

4.4.2.Failure to Enter Into Agreement

In addition to all of the Ministry's other remedies, if a selected proponent fails to execute the Agreement or satisfy any other applicable conditions within fifteen (15) days of notice of selection, the Ministry may, in its sole and absolute discretion and without incurring any liability, rescind the selection of that proponent and proceed with the selection of another proponent.

4.4.3.Notification to Other Proponents of Outcome of Procurement Process

Once the Successful Proponent and the Ministry execute the Agreement, the other proponents will be notified by the Ministry in writing of the outcome of the procurement process, including the name of the Successful Proponent, and the award of the contract to the Successful Proponent.

4.4.4.Debriefing

Proponents may request a debriefing after receipt of a notification of award. All requests must be in writing to the Ministry Contact and must be made within sixty (60) days of notification of award. The intent of the debriefing information session is to aid the proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

4.4.5.Bid Dispute

Proponents are advised that a formal bid dispute process is available, the details for which are available from the Ministry Contact.

4.5. Prohibited Communications, Confidential Information and FIPPA

4.5.1. Prohibited Proponent Communications

The proponent shall not engage in any Conflict of Interest communications and should take note of the Conflict of Interest declaration set out in the Form of Offer.

4.5.2. Proponent Not to Communicate With Media

A proponent may not at any time directly or indirectly communicate with the media in relation to this RFP or any contract awarded pursuant to this RFP without first obtaining the written permission of the Ministry Contact.

4.5.3. Confidential Information of Ministry

All information provided by or obtained from the Ministry in any form in connection with this RFP either before or after the issuance of this RFP:

- a) is the sole property of the Ministry and must be treated as confidential;
- b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent Contract;
- c) must not be disclosed without prior written authorization from the Ministry; and
- d) shall be returned by the proponents to the Ministry immediately upon the request of the Ministry.

4.5.4. Freedom of Information and Protection of Privacy Act

The Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, as amended, applies to information provided to the Ministry by a proponent. A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Ministry. The confidentiality of such information will be maintained by the Ministry, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed on a confidential basis, to the Ministry's advisers retained for the purpose of evaluating or participating in the evaluation of their proposals.

By submitting any Personal Information requested in this RFP, proponents are agreeing to the use of such information as part of the evaluation process, for any audit of this procurement process and for contract management purposes. Where the Personal Information relates to an individual assigned by the Successful Proponent to provide the Deliverables, such information may be used by the Ministry to compare the qualifications of such individual with any proposed substitute or replacement in accordance with the Performance by Specified Individuals Only paragraph of the Form of Agreement. If a proponent has any questions about the collection and use of Personal Information pursuant to this RFP, questions are to be submitted to the Ministry Contact in accordance with the Bidders to Review RFP section.

4.6. Reserved Rights and Governing Law

4.6.1. Reserved Rights of the Ministry

The Ministry reserves the right to:

- (a) make public the names of any or all proponents;
- (b) request written clarification or the submission of supplementary written information in relation to the clarification request from any proponent and incorporate a proponent's response to that request for clarification into the proponent's proposal;
- (c) assess a proponent's proposal on the basis of:

- i. a financial analysis determining the actual cost of the proposal when considering factors including transition costs arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established);
 - ii. information provided by references;
 - iii. the proponent's past performance on previous contracts awarded by the Government of Ontario;
 - iv. the information provided by a proponent pursuant to the Ministry exercising its clarification rights under this RFP process; or
 - v. other relevant information that arises during this RFP process;
- (d) waive formalities and accept proposals which substantially comply with the requirements of this RFP;
 - (e) verify with any proponent or with a third party any information set out in a proposal;
 - (f) check references other than those provided by any proponent;
 - (g) disqualify any proponent whose proposal contains misrepresentations or any other inaccurate or misleading information;
 - (h) disqualify any proponent or the proposal of any proponent who has engaged in conduct prohibited by this RFP;
 - (i) make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
 - (j) select any proponent other than the proponent whose proposal reflects the highest Commission payable to the Government of Ontario or the highest score;
 - (k) cancel this RFP process at any stage;
 - (l) cancel this RFP process at any stage and issue a new RFP for the same or similar deliverables;
 - (m) accept any proposal in whole or in part; or
 - (n) reject any or all proposals;

and these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and the Ministry shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any proponent or any third party resulting from the Ministry exercising any of its express or implied rights under this RFP.

By submitting its proposal, the proponent authorizes the collection by the Ministry of the information set out under (e) and (f) in the manner contemplated in those subparagraphs.

4.6.2. Governing Law of RFP Process

This RFP process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

End of Part 4

APPENDIX A – Form of Agreement

Appendix A will be posted as an addendum to this RFP.

APPENDIX B – FORM OF OFFER

To Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services:

1. Proponent Information

(a) The full legal name of the Proponent is:

(b) Any other relevant name under which the Proponent carries on business is:

(c) The jurisdiction under which the Proponent is governed is:

(d) The name, address, telephone, facsimile number and e-mail address of the contact person for the Proponent is:

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

(e) The name, title, address, telephone, facsimile and e-mail address of the Proponent's Company Security Officer (CSO) or equivalent:

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

(f) Whether the Proponent is a sole proprietorship, a corporation, a partnership, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

2. Offer

The Proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required under the RFP. By submitting the proposal, the Proponent agrees and consents to the terms, conditions and provisions of the RFP, including the Form of Agreement, and offers to provide

the Deliverables in accordance therewith, including providing the Government of Ontario with the Commission Percentage Rate set out in the Rate Bid Form.

3. Mandatory Forms

(a) The Proponent encloses herewith as part of the proposal, the mandatory forms set out below:

MANDATORY FORMS:	Yes	Page
Form of Offer (Appendix B)		
Rate Bid Form (Appendix C)		
Tax Compliance Declaration Form (Appendix D)		
OTMS Mandatory System Requirements Declaration Form (Appendix E)		
Notice to Proponents: There may be Mandatory Forms in this RFP other than those set out above. See the Mandatory Requirements section of this RFP for a complete listing of Mandatory Requirements.		

4. Rates

The Proponent has submitted its Commission Percentage Rate and calling rates in accordance with the instructions in the RFP and in the form set out at Appendix C.

5. Addenda

The Proponent is deemed to have read and accepted all addenda issued by the Ministry prior to the Deadline for Issuing Addenda. The onus remains on Proponents to make any necessary amendments to their proposal based on the addenda. The Proponent is requested to confirm that it has received all addenda by listing the addenda numbers or, if no addenda were issued, "None": _____.

6. Bid Irrevocable

The Proponent agrees that its proposal shall be irrevocable for 180 days following the Proposal Submission Deadline.

7. Conflict of Interest

Prior to completing this portion of the Form of Offer, Proponents should refer to the definition of Conflict of Interest set out in the Form of Agreement.

If the box below is left blank, the Proponent will be deemed to declare that: (1) there was no Conflict of Interest in preparing its proposal; and (2) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

Otherwise, if the statement below applies, check the box.

- The Proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the Proponent declares an actual or potential Conflict of Interest by marking the box above, the Proponent must set out below details of the actual or potential Conflict of Interest:

The following individuals, as employees, advisors, or in any other capacity (a) participated in the preparation of our proposal; **AND** (b) were employees of the Ontario Public Service ("OPS") and have ceased that employment prior to the Proposal Submission Deadline:

Name of Individual:
Job Classification (of last position with OPS):
Ministry/Agency (where last employed with OPS):
Last Date of Employment with OPS:
Name of Last Supervisor with OPS:
Brief Description of Individual's Job Functions (at last position with OPS):
Brief Description of Nature of Individual's Participation in Preparation of the Proposal:

(Repeat above for each identified individual)

The Proponent agrees that, upon request, the Proponent shall provide the Ministry with additional information from each individual identified above in the form prescribed by the Ministry.

8. Disclosure of Information

The Proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or if required by order of a court or tribunal. The Proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the Ministry to the Ministry's advisers retained for the purpose of evaluating or participating in the evaluation of this proposal.

9. Proof of Insurance

By signing the Form of Offer, the Proponent agrees, if selected, to provide proof of insurance coverage as required in the Form of Agreement. If selected, the Proponent must provide proof of insurance coverage in the form of a valid certificate of insurance prior to the execution of the Agreement by the Ministry.

NOTE: SIGNATURE SECTION ON NEXT PAGE

10. Execution of Agreement

The Proponent understands that in the event its tender is selected by the Ministry, in whole or in part, the Proponent agrees to finalize and execute the Agreement in the form set out in Appendix A to the RFP in accordance with the terms of the RFP.

 Signature of Witness

 Signature of Proponent representative

 Name of Witness

 Name and Title

Date:

I have authority to bind the Proponent

**** ALL PAGES OF THE FORM OF OFFER MUST BE COMPLETED AND SUBMITTED
AS PART OF THE PROPONENT'S SUBMISSION ****

End of Appendix B

APPENDIX C - RATE BID FORM

Proponents are required to complete and submit this form with their proposal. In accordance with Section 3.2.2 of the RFP, the Successful Proponent will be required to provide the Government of Ontario with a monthly Commission based on the Gross Revenue generated by the two (2) types of telephones as described in this RFP. Proponents may refer to the call traffic data in Appendix C-2 for additional information.

Part 1

For the purposes of this evaluation, only calls made using the OTMS will be used for calculating the Gross Revenue. In calculating the Gross Revenue, Proponents are required to specify in Table 2 **the rate per local collect call (including connection fee per call), the per minute calling rates to be charged for long distance calls, and the collect long distance connection fee per call from each Facility identified in Table 1.** These rates, which are to be charged to the call recipient for accepting the call, must be no greater than the highest published public telephone rates for collect calls within the local community of the respective Facility (as identified in Table 1). **Monthly or all-inclusive flat rates will not be accepted.**

For the purposes of this evaluation only, Proponents are to assume the call recipients are within the Province of Ontario only and long distance collect calls are being made outside the area codes where the calls are originating. If there are different long distance rates within or between area codes, Proponents are advised to use an average rate for long distance.

The call rate information provided by the Proponents will be entered into an excel spreadsheet matrix, which will use the call traffic data provided in Appendix C1 to calculate the Gross Revenue.

Proponents must provide a rate for all categories. Should a category not have a charge, Proponents are to provide a '0' or 'nil' response in that category. Failure to provide a rate response for all categories will result in disqualification.

Part 2

The Commission Percentage Rate proposed by the Proponents in Part 2 will be applied against the Gross Revenue from Part 1 to calculate the amount that would be payable as a Commission.

The Proponent with the highest amount of Commission as calculated under Part 2 will be awarded the total available points (100 points). Each remaining Proponent will be awarded points in respect of their Commission based on the relative pricing formula identified in Section 3.4 – Stage III – Evaluation of Commission.

Table 1

Facility Name	Location	Area Code
A. Toronto Jail	Toronto, Ontario	416
B. Hamilton Wentworth Detention Centre	Hamilton, Ontario	905
C. Kenora Jail	Kenora, Ontario	807
D. Monteith Correctional Complex	Monteith, Ontario	705
E. Maplehurst Correctional Complex	Milton, Ontario	905
F. Central North Correctional Centre	Penetanguishene, Ontario	705
G. Quinte Detention Centre	Napanee, Ontario	613
H. Thunder Bay Correctional Centre	Thunder Bay, Ontario	807

APPENDIX C (Continued)

PROPOSER NAME: _____

TABLE 2

	Rates per Facility (as per Table 1)							
Monday – Friday 0801 - 1800	A	B	C	D	E	F	G	H
Collect local call, including connection fee per call								
Collect long distance call rate (per minute)								
Collect long distance call, connection fee per call								
Monday – Friday 1801 - 2200	A	B	C	D	E	F	G	H
Collect local call, including connection fee per call								
Collect long distance call rate (per minute)								
Collect long distance connection fee per call								
Monday – Friday 2201 - 0800	A	B	C	D	E	F	G	H
Collect local call, including connection fee per call								
Collect long distance call rate (per minute)								
Collect long distance connection fee per call								
Saturday, Sunday, Holiday 0801 - 1800	A	B	C	D	E	F	G	H
Collect local call, including connection fee per call								
Collect long distance call rate (per minute)								
Collect long distance connection fee per call								

APPENDIX C (Continued)

PROPONENT NAME: _____

Rates per Facility (as per Table 1)								
Saturday, Sunday, Holiday 1801 - 2200	A	B	C	D	E	F	G	H
Collect local call, including connection fee per call								
Collect long distance call rate (per minute)								
Collect long distance connection fee per call								
Saturday, Sunday, Holiday 2201 - 0800	A	B	C	D	E	F	G	H
Collect local call, including connection fee per call								
Collect long distance call rate (per call)								
Collect long distance connection fee per call								

Part 2

Proposed Commission Percentage Rate to be paid to the Government of Ontario based on the monthly Gross Revenue generated from all of the OTMS and conventional public pay telephones at the Facilities

COMMISSION PERCENTAGE RATE: _____ % of monthly Gross Revenue

APPENDIX C-1 – Rate Bid Form – Monthly Call Traffic Data Info

For the purpose of evaluation only, the below call traffic data will be used by the Ministry to calculate the Gross Revenue based on the Proponent's calling rates provided in Appendix C, Table 2.

			Mon - Fri											
			8:00:01 - 18:00:00				18:00:01 - 22:00:00				22:00:01 - 8:00:00			
Facility	Offender Sets	Public Sets	Local count	Local minutes	LD count	LD minutes	Local count	Local minutes	LD count	LD minutes	Local count	Local minutes	LD count	LD minutes
			Grand Total											
By Facility														
TORONTO JAIL	77	1	17326	201401	617	6930	6678	81655	268	2929	1	1	0	0
HAMILTON-WENTWORTH DETENTION CENTRE	66	1	10944	115360	3828	38049	3230	38818	1300	13886	3	8	0	0
KENORA JAIL	17		1089	6682	2043	12479	432	4563	777	6938	0	0	0	0
MONTEITH CORRECTIONAL COMPLEX	21		269	3435	3145	28261	150	1967	2053	22608	50	575	404	4349
MAPLEHURST CORRECTIONAL CENTRE	135	2	14366	166519	10833	107584	5675	70524	4699	50759	42	297	43	327
CENTRAL NORTH CORRECTIONAL CENTRE	126	3	6820	82185	11910	122524	3863	51832	6427	74893	10	10	7	9
QUINTE DETENTION CENTRE	30	1	2352	21514	2104	19621	1457	18787	1319	14482	0	0	0	0
THUNDER BAY CORRECTIONAL CENTRE	13		854	6531	525	4551	628	6627	379	4372	6	22	6	23

			Sat/Sun/Hol											
			8:00:01 - 18:00:00				18:00:01 - 22:00:00				22:00:01 - 8:00:00			
Facility	Offender Sets	Public Sets	Local count	Local minutes	LD count	LD minutes	Local count	Local minutes	LD count	LD minutes	Local count	Local minutes	LD count	LD minutes
			Grand Total											
By Facility														
TORONTO JAIL	77	1	10265	135529	425	4956	3661	46870	130	1493	0	0	0	0
HAMILTON-WENTWORTH DETENTION CENTRE	66	1	5615	69865	2087	23051	1868	23077	740	8311	0	0	0	0
KENORA JAIL	17		268	2700	589	5098	194	2116	421	4059	0	0	0	0
MONTEITH CORRECTIONAL COMPLEX	21		141	2054	1606	16541	78	1253	1132	12764	18	236	204	2373
MAPLEHURST CORRECTIONAL CENTRE	135	2	7580	97526	6175	68830	2616	32730	2288	25808	19	145	16	125
CENTRAL NORTH CORRECTIONAL CENTRE	126	3	3784	49032	6357	73332	1637	21327	2908	33207	1	1	2	2
QUINTE DETENTION CENTRE	30	1	1189	14079	1288	14682	814	10775	683	8090	0	0	0	0
THUNDER BAY CORRECTIONAL CENTRE	13		395	3947	322	3495	321	3675	238	2909	1	5	0	0

APPENDIX D - TAX COMPLIANCE DECLARATION FORM

The Ontario Government expects all suppliers to pay their provincial taxes on a timely basis. In this regard, proponents are advised that any contract with the Ontario Government will require a declaration from the Successful Proponent that the proponent's provincial taxes are in good standing (see Section 3.2.3 of the RFP).

In order to be considered for a contract award, the proponent must submit the following tax compliance status statement and the following consent to disclosure:

Declaration

I/WE hereby certify that _____ at the time of submitting its proposal,

(legal name of proponent)

is in full compliance with all tax statutes administered by the Ministry of Revenue for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained.

Consent to Disclosure

I/We consent to the Ministry of Revenue releasing the taxpayer information described in this Declaration to the Ministry issuing the RFP as necessary for the purpose of verifying that I/we am/are in full compliance with all statutes administered by the Ministry of Revenue.

Dated at _____ this _____ day of _____ 20_____

(An authorized signing officer)

(Print Name)

(Title)

(Phone Number)

(Fax Number)

End of Appendix D

APPENDIX E – OTMS MANDATORY SYSTEM REQUIREMENTS DECLARATION FORM

Proponent Name:	
------------------------	--

The Proponent's solution must provide the following mandatory minimum OTMS feature and system requirements. Proponents must indicate with a "Yes" or "No" whether their proposed solution meets each mandatory requirement. The Ministry reserves the right to disqualify any Proponent whose proposal includes a "No" response to any of these mandatory minimum requirements.

Proponents are reminded that there is a question and answer period available if they wish to ask questions or seek clarification about the terms and conditions set out in RFP. The Ministry will consider such requests for clarification in accordance with Section 4.2.1 of the RFP.

Minimum OTMS Mandatory requirements (as per Part 2 of the RFP)	COMPLIANT	
	Yes	No
OTMS Features:		
1. Shall provide the Ministry with a complete "turn-key" IP network business solution.		
2. The business solution shall include all telephone system components required to implement a scalable IP business solution.		
3. The OTMS shall initially be Non-PIN based, collect call, automated operator platform.		
4. The OTMS shall have the automated capacity to implement a bilingual (French/English) voice-over message on all calls universally on all inmate telephones.		
5. ALL OTMS equipment will be new, never before used unless recycled through manufacturing methods which render such recycled materials into new materials.		
6. Inmate telephones must be tamper resistant with physical characteristics that can withstand greater than normal physical stress on the telephone and handset (e.g., features such as a tamper-resistant exterior, with armoured un-detachable handset cord, no ringer and a sealed handset of a sturdy coating).		
7. Must have the ability to remotely identify/diagnose problems with the OTMS and conventional public pay telephones and local supporting technology infrastructure that will immediately notify the designated Ministry representative(s).		
8. The Successful Proponent's business solution must allow for portability of inmate telephones within an area or areas of a Facility as determined by the Ministry.		
9. The business solution must be the same in all Facilities.		
10. The OTMS must include the following security features: <ul style="list-style-type: none"> a) Must allow the Ministry the direct ability to program a minimum of 1000 defined periods of in-service times; b) Have the flexibility to locally or from a remote location shut down all inmate telephones in a Facility or specific individual telephones within a Facility at the Ministry's discretion; c) All telephone shut offs must be installed ahead of any digitalization; d) only allow inmates to place North American standard 10 digit collect telephone calls; e) Calling rates will be no greater than the highest published conventional public pay telephone rates within the local community of the respective Facility; f) must be centrally programmable and accessible to designated Ministry staff in Mississauga and North Bay; g) must allow an inmate to make telephone calls limited to twenty (20) minutes per inmate telephone call; h) must have a twenty five (25) telephone call limit on the number of times a particular telephone number can be called in one (1) calendar day from all Facilities; i) telephones shall be fitted with volume control device, which will allow the inmate to 		

Minimum OTMS Mandatory requirements (as per Part 2 of the RFP)	COMPLIANT	
	Yes	No
<p>increase or decrease the volume of the handset earpiece between 60 and 90 decibels in 10 decibel increments;</p> <p>j) shall permit collect one-way outgoing, station-to-station telephone calls only to be billed to the call recipient when the telephone call is accepted.</p> <p>k) The OTMS shall not allow any incoming calls.</p> <p>l) inmates shall be required to hang up before dialling a new number.</p> <p>m) concurrent calling of the same telephone number(s) from any Facility will not be permitted unless to a telephone number(s) identified and pre-approved by the Ministry.</p> <p>n) will not permit any access to any dialling services (three, seven, or ten digits).</p> <p>o) will not allow access to any toll-free number unless specifically identified and pre-approved by the Ministry;</p> <p>p) will not permit any access to a live operator at any time during the calling process; and</p> <p>q) the key pad will be automatically disabled during call acceptance and for the duration of the call unless the called number is deemed exempt of this feature by the Ministry.</p>		
11. The services and supporting platform must be a consistent end-to-end business solution covering all Facilities.		
12. All OTMS and conventional public pay telephone hardware inventory must be securely managed and stored in Ontario.		
13. The business solution must have the capacity to support, at a minimum, 8,802 adult inmates making approximately 15,000 calls daily of an average of 10 minutes duration per call.		
14. The business solution must be centrally programmable and accessible, via a secure web based portal access from the Ministry Transportation and Communication Services (TCS) unit located in Mississauga and the Ontario Victims' Services Secretariat, Ministry of the Attorney General through the Victim Support Line (VSL) located in North Bay.		
15. A single point of contact for Ministry staff throughout the province to report malfunctioning equipment at their facility 24/7/365 through voice, electronic mail or web based portal.		
16. Business solution expertise available during normal business hours (between 8 a.m. and 5 p.m. EST) to assist the Ministry representatives with OTMS trouble shooting, site specific issues, telephone data, information and reporting of exceptions.		
<p>17. Calling Features:</p> <p>a) the business solution must permit all inmates to call a minimum of 200 Ministry-approved provincially and where applicable locally allowed telephone numbers, commonly accessed by inmates;</p> <p>b) the business solution must allow for the programming of legal counsel telephone numbers to be exempt from Ministry identified security programming features and functions, including three way call detection, and allow inmates to navigate an automated attendant system using the key pad; and</p> <p>c) must allow for the programming of a toll-free telephone number to be used by inmates for the purpose of ordering canteen. This telephone number must be exempt of Ministry specified security protocols such that inmates may navigate through an automated attendant system using the key pad to order canteen products; and this telephone number must not have the 20 minute limit for these calls.</p>		
18. The OTMS must have the capability to instantly prevent inmate telephone calls to telephone numbers specified as blocked by the Ministry.		
<p>19. The OTMS Call Blocking features must meet the following minimum requirements:</p> <ul style="list-style-type: none"> • Province-wide at all Facilities: all inmates are restricted; • Facility specific: all inmates at a specific Facility are restricted; and 		

Minimum OTMS Mandatory requirements (as per Part 2 of the RFP)	COMPLIANT	
	Yes	No
• Telephone specific: designated telephone(s) are restricted.		
20. OTMS must allow the Ministry to block calls through the VSL, independent of Call Blocking services that are available to the general public.		
21. The OTMS must be capable of delivering call monitoring and recording from a central location should the Ministry, at its sole and absolute discretion, decide to implement one or both of these options.		
22. Will allow the Ministry the ability to directly record calls made by specific inmates on demand from a central location.		
23. Has the capacity to record all calls simultaneously within a Facility at all times.		
Privacy and Technical Requirements		
24. All OTMS related information and data, including all back-up of such information, data and server redundancy must remain within Canada.		
25. All digital calls must be carried on secure networks.		
26. Must supply, install and maintain all telephony components including network redundancy. This includes, but is not limited to, all computer and networking apparatus, telephones, disconnect switches, cabling to support network system equipment, equipment stands, racks, or cabinets, backup power and surge protection devices.		
27. Uninterrupted remote user Designated Ministry representative (s) to access the OTMS functions and features 24/7/365;		
28. Must allow the Ministry direct access to all call record data generated for reporting purposes during the term of the Agreement.		
29. Call Traffic Records including the service report and monthly commission report will be provided at no cost to the Ministry, non-proprietary format to the Ministry using Microsoft Excel, Access or SQL (Oracle) in comma delimited ASCII text files that allows the Ministry to access and analyze the data with the Ministry's standard statistical reporting/writing tools.		
Additional requirements that may be implemented during the term of the Agreement		
30. Has the capacity to support a PIN based business solution.		
31. Has the capacity to support alternate call payment methods.		

By signing below, we hereby certify that we are a licensed telecommunications carrier and services provider for Canada, registered with the CRTC.

Signature of Proponent representative

Name and Title

Date:

I have authority to bind the Proponent

End of Appendix E

APPENDIX F – SECURITY CLEARANCE CHECKS

When Security Clearance Checks are required, the Proponent's contact will be informed by the RFP Ministry Contact when the necessary forms are required to be submitted.

1. The following forms will be used for the security screening check process:

- Contractor Security Screening Request and Verification of Information Form (attached)

Completed by the proponent's contact (referred to as the Company Security Officer (CSO)); confirms that verification has been conducted for each company director, worker, subcontractor and their workers performing work as part of the contractor work assignment.

The CSO verifies the company directors', officers', workers', subcontractors' and their workers' personal data (and other information, i.e. employment, education, professional/trades or qualifications, where required), by completing a Contractor Security Screening Request and Verification Form for each individual requiring security clearance. Space is provided to indicate a prior security clearance issued by a Canadian government or other organizations.

- Contractor Security Screening Consent and Declaration Form (attached)

Completed by the individual requiring a security screening check; contains the personal information used in conducting a police records check.

All individuals requiring security clearance must each complete the Contractor Security Screening Consent and Declaration Form. Forms that are incomplete or altered in any way will not be accepted and will cause processing delays.

If an individual is under the age of eighteen years old, the Contractor Security Screening Check Consent and Declaration Form is not required. The individual will be contacted by the Ontario government's Security Services and Contingency Planning Branch to voluntarily present himself/herself to an Ontario Provincial Police (OPP) office in their jurisdiction. The OPP office will obtain consent and complete the Canadian Police Information Centre (CPIC) check.

This form is also used by contractor directors, officers, workers, subcontractors and their workers when providing written disclosure within five business days to SSCPB of any charges that have been laid against them subsequent to their last security screening check.

2. The SSCPB reviews all forms for completeness and forwards the relevant documents to the OPP.

Individuals who have not resided in Canada for the last five years, are required to obtain a police clearance certificate from the country/countries of residence (listed in the individual's Contractor Security Screening Consent and Declaration Form) and submit the original certificate(s) for review. If the certificate is not in French or English, the individual is to provide an English translation along with the original certificate.

In the case where a security clearance has been issued by a Canadian government or other organization, SSCPB may initiate a request directly to the issuing organization for confirmation of the individual's security clearance pursuant to memorandums of agreement.

The OPP will conduct the CPIC checks and report the results to the Authorized SSCPB Screening Official.

In the case where a security clearance has been issued by a Canadian government or other organization, the authorized representative of the issuing organization confirms the individual's security clearance and notifies SSCPB.

Additional information may be requested from the individual being checked by SSCPb to confirm the information provided. In some circumstances, fingerprint checks may be required by the OPP to verify identity.

SSCPb will make a security clearance determination based on the information from the security screening check and any subsequent information that may be provided by the individual.

3. Further information is given in the background for each form.



Contractor Security Screening REQUEST and VERIFICATION Form

General Information and Instructions

The Contractor Security Screening Request and Verification form is to be completed by the Company Security Officer (CSO) and the ministry program area contact. It contains information about the type of check requested and confirms whether verification of personal information and reliability checks has been completed. One form must be completed for each CSO, contractor director, officer, worker, subcontractors and subcontractor worker, as applicable.

Delivery of Forms:

The Company Security Officer (CSO) forwards Request and Verification forms, accompanied by the sealed Consent and Declaration forms to the ministry program area via secure courier or by hand delivery.

The ministry program area forwards the Request and Verification forms, along with the sealed Consent and Declaration forms to the Security Services and Contingency Planning Branch (SSCPB), Ministry of Government Services (MGS) via secure courier or by hand delivery using a sealed pre-printed green coloured envelope.

1. Individual Category (completed by the Company Security Officer)

Indicate whether the individual being checked is a CSO, contractor director, officer, worker, subcontractor or subcontractor worker, by marking the appropriate boxes. Check all that apply.

2. Individual Information (completed by the Company Security Officer)

Name: Enter the last name, first name and full middle name (no initials) of the individual being checked.

Date of Birth: Enter the date of birth of the individual being checked in the format, year (YYYY), month (MM), day (DD).

Gender: Indicate whether the individual is male or female by marking the appropriate box.

Contact Information: Enter the individual's address, (including street number, street name, unit or floor number), city (or town or municipality), province and postal code.

Prior Security Screening Clearance Information: Indicate whether the individual being checked holds a prior security screening clearance from another Canadian government or organization (e.g. federal, provincial, municipality) by marking the appropriate box. If the response is 'yes', enter the name of the issuing government organization and the security screening clearance reference number.

Term of Work Assignment: Enter the start and end dates of the individual's work assignment in the format, year (YYYY), month (MM), day (DD), for contractor workers, subcontractors or subcontractor workers.

3. Individual Consent (completed by the individual)

Indicate that you consent to a contractor security screening check by signing and dating by hand, in the spaces provided.

4. Verification and Certification of Information (completed by the Company Security Officer)

Indicate that the verification and certification of personal information and/or the verification of employment, education, professional/trades accreditations or qualification (i.e. reliability check) have been completed for the individual being checked by marking each box. Verification and certification of identity is a mandatory check performed by the CSO or approved verifier to prevent impersonation and to ensure that the records checked are those of the individual being checked. An approved verifier is an OPS contact approved by the ministry program area to perform the verification of the CSO's personal data. This verification and certification must be done by asking the individual to present two pieces of official documentation that confirm name, date of birth and address, of which one piece of identification presented must include a photo, such as a valid driver's licence, passport, or other official government-issued document.

Verification and Certification of Information:

1. An individual contractor must appear in-person to the approved verifier with two separate pieces of acceptable ID to verify legal name, date of birth and address information.

2. Then, the approved verifier will need to verify the individual's signature on the ID against the signature provided by the individual on the Request & Verification form, Section 3.

3. The approved verifier will then photocopy the 2 pieces of ID that are presented and certify the copy by signing and dating the photocopy before providing it back to the individual contractor to include with his/her completed Consent & Declaration form in a confidential envelope.

Reliability checks are undertaken, as required, to ensure the individual identified is being truthful about his or her background and history (e.g. checking employment history, education, accreditation etc).

5. Contractor Information (completed by the Company Security Officer)

Legal Company Name of Contractor Organization: Enter the legal company name of the contractor organization, the company's address, (including street number, street name, unit or floor number), city (or town or municipality), province and postal code.

Corporation and Business Registration Numbers: Enter the Ontario corporation number and the Ontario business registration number of the contractor organization in the space provided.

Name of Company Security Officer (CSO): Enter the full name of the appointed individual with delegated signing authority to verify personal information and perform reliability checks for the contractor organization.

Contact Information: Enter the CSO's position title and telephone number (including area code).

6. Ministry Program Area Information (completed by the Ministry Program Area)

Indicate whether a general security screening check or driver's record check is being requested for the individual by marking the appropriate box. The general screening check box is automatically selected as the default option.

Indicate whether the Request and Verification form being submitted pertains to a prior urgent request by marking the appropriate box and indicating the SSCP Contractor File number associated with the prior urgent request.

Indicate the contact information for the authorized ministry program area contact, by entering his or her full name, telephone number (with area code), email address, ministry/agency name, division, branch, section, unit, address, (including street number, street name, unit or floor number), city (or town or municipality) and postal code.

7. Verification of Information by the Ministry Program Area (completed by the Ministry Program Area)

Verification of Personal Information: Indicate that the verification of personal information and/or the verification of employment, education, professional/trades accreditations or qualification (i.e. reliability check) have been completed for the CSO being checked by marking each box. Verification of identity is a mandatory check performed by the ministry program area to prevent impersonation and to ensure that the records checked are those of the individual being checked. This verification must be done by asking the CSO to present two pieces of official documentation that confirm name, date of birth and address, of which one piece of identification presented must include a photo, such as a valid driver's licence, passport, or other official government-issued document. Reliability checks include checking previous employers and identified references, education and professional trades accreditation or qualifications, where required. Reliability checks are undertaken, as required, to ensure the individual identified is being truthful about his or her background and history.

For all other individuals being checked by the CSO (Section 3), indicate that the verification of personal information and/or the verification of employment, education, professional/trades accreditations or qualification (i.e. reliability check) have been submitted by marking the appropriate box.

Confirmation of Attachments: Indicate whether the additional contractor forms and other written documentation are attached to this request form.

Name, Signature and Date: The authorized ministry program area official must approve the screening check request by printing his or her full name, and signing and dating the form by hand in the appropriate boxes.

Background Information

The Security Screening Process

Security screening involves the following elements:

- The CSO verifies identity by having the individual present two pieces of official documentation that confirm name, date of birth and address, of which one piece of identification must be a photograph, such as a valid driver's licence, passport, or other official government-issued document. The CSO verifies employment, education, professional trades/accreditation or qualifications (as required).
- A written declaration from you disclosing all unresolved charges and/or previous convictions under the offence provisions of federal statutes, including, but not limited to, the *Criminal Code (Canada)*, the *Controlled Drugs and Substances Act (Canada)* and the *Ontario Highway Traffic Act*, where a driver record check is required. For more information, please see the Consent and Declaration form.
- A police records check conducted by the Ontario Provincial Police (OPP).
- A driver's record check conducted by the Ontario Provincial Police (OPP), as required.

SSCPB in MGS is responsible for evaluating and assigning security screening clearances. The verification of personal information, the information you provide on the Declaration Form, and information that is obtained by the OPP as part of the police records check, will be collected by the SSCPB for the purpose of conducting a security screening clearance evaluation. Information collected by the SSCPB will be maintained within the branch in confidence and will only be accessible to designated staff of the SSCPB and government auditors. When a security clearance decision is made, the SSCPB will notify the manager or ministry representative as to your security clearance status.



Contractor Security Screening REQUEST and VERIFICATION Form

For SSCPB Use Only
SSCPB Contractor File No.
Date Received (yyyy/mm/dd)

NOTES: Sections 1, 2, 4, 5 are completed by the Company Security Officer (CSO) for each contractor director, officer, worker, subcontractor or subcontractor worker requiring a security screening check.

Section 3 is completed by the individual.

Section 4 may be completed by the approved verifier when submitting documentation for the CSO.

Sections 6, 7 are completed by the ministry program area contact.

1. Individual Category (completed by the Company Security Officer; check all that apply.)

- Company Security Officer
 Contractor Worker, Subcontractor or Subcontractor Worker
 Contractor Director or Officer

2. Individual Information (completed by the Company Security Officer)

Last Name	First Name	Middle Name(s) (No Initials)	Date of Birth YYYY MM DD	Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
Address (Street No., Name, Unit, Suite, Floor)			Holder of Prior Security Clearance? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City/Town/Municipality	Province	Postal Code	Name of Issuing Government	
Start and End Dates of Work Assignment (for Contractor Workers, Subcontractors or Subcontractor Workers) From (yyyy/mm/dd) To (yyyy/mm/dd)			Clearance Certificate Number	

3. Individual Consent (completed by the individual)

I have read and understand the requirements and the procedures listed on the Contractor Security Screening Consent and Declaration form.

- I acknowledge that I have read the Consent and Declaration form.
- I authorize the SSCPB to conduct a Contractor Security Screening Check in accordance with the procedures described on the Consent and Declaration Form.
- I authorize the OPP to conduct a Police Records Check in accordance with the Consent and Declaration form.
- I authorize and consent to the release of records and information about me held by the RCMP, the OPP and provincial and municipal police forces that are required by the OPP to conduct a Police Records Check.
- I consent to the disclosure of information about me obtained by the OPP in a Police Records Check to the SSCPB.
- I authorize the SSCPB to collect and use information I have provided on this form and information obtained by the OPP through a Police Records Check for the purpose of assessing my Contractor Screening Clearance.

Signature (by hand)	Date (yyyy/mm/dd) (by hand)
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Please note that your Contractor Security Screening Check will be processed with the OPP only if it is accompanied by a completed and signed Contractor Security Screening Check Consent and Declaration form.

4. Verification of Information (completed by the Company Security Officer)

I confirm that the following security screening requirements have been verified for the above mentioned individual:

- Verification of personal information including name, date of birth and address information (e.g. Driver's Licence).
 Verification of employment, education, professional/trades accreditations or qualifications (reliability check) where required.

Name (please print)	Signature (by hand)	Date (yyyy/mm/dd) (by hand)
---------------------	---------------------	-----------------------------

	SSCPB Contractor File No. _____
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5. Contractor Information (completed by the Company Security Officer)

Legal Company Name of Contractor Organization	Corporation Number	Business Number
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Address (Street No., Name, Unit, Suite, Floor)

City/Town/Municipality	Province	Postal Code
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Name of Company Security Officer	Position Title	Telephone (incl. Area Code)
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6. Ministry Program Area Information (completed by the Ministry Program Area)

Type of Screening Requested

Screening Clearance – General Driver's Record Check

Name of Authorized Ministry Program Area Official (Last Name, First Name)	Telephone (incl. Area Code)
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Email Address

Ministry/Agency	Division
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Branch	Section	Unit
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Address (Street No., Name, Unit, Suite, Floor)	City/Town/Municipality/Province	Postal Code
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7. Verification of Information by the Ministry Program Area (completed by the Ministry Program Area)

I confirm that the following security screening requirements have either been completed for the CSO or have been submitted for the contractor director, officer, worker, subcontractor, or subcontractor worker by the CSO:

- Verification of personal information including name, date of birth and address information (e.g. Driver's Licence)
 Verification of employment, education, professional/trades accreditations or qualifications (reliability check) where required.

Attachments:

- Contractor Security Screening Consent and Declaration form (in envelope sealed by the individual)
 Description of Contractor Work Assignment (including the work assignment start and end date)

Name of Ministry Program Area Official (please print)	Signature of Ministry Program Area Official (by hand)	Date (yyyy/mm/dd) (by hand)
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Notice of Collection

Personal information provided in accordance with this form will be collected and used by the SSCPb for the purpose of conducting and assigning an Ontario Public Service contractor security screening clearance. The collection of personal information is authorized by the Contractor Security Screening Operating Policy, issued by the Management Board of Cabinet under section 3 of the *Management Board of Cabinet Act*, RSO 1990, Chapter M-1. Questions about the collection of personal information under this program may be directed to the Manager of Contractor Security Screening, (Security Services & Contingency Planning Branch, 900 Bay Street, 2nd floor Macdonald Block, M2-49, Toronto, Ontario M7A 1Y4 or AskSSCPB@ontario.ca or (416-325-9400).



Contractor Security Screening CONSENT AND DECLARATION Form

General Information and Instructions

The *Contractor Security Screening Consent and Declaration* form is to be completed by each individual requiring a security screening check (e.g. Company Security Officer (CSO), directors/officers, workers, subcontractors and subcontractor workers as applicable). It authorizes a security screening to be conducted and identifies previous convictions and unresolved charges.

This form has two parts, **Part A** – Individual Information, Authorization, Consent and Release; and **Part B** – Declaration.

1. Read and complete information requested and **sign** the authorization and consent for contractor screening checks, authorization and consent for driver's record check (*if applicable*) and release in **Part A**.
2. Complete, sign and date the Declaration form in **Part B**. Part B **must** be signed even if you have nothing to declare.
3. Seal the completed and signed forms in an envelope marked confidential, write your full name on the outside of the envelope and give the envelope to the company security officer.

Delivery of Forms:

The Company Security Officer (CSO) forwards the sealed Consent and Declaration forms, accompanied by the Request and Verification forms to the ministry program area via secure courier or by hand delivery. The CSO also sends the Request and Verification forms electronically to the ministry program area.

The ministry program area forwards the sealed Consent and Declaration forms, accompanied by the Request and Verification forms to the Security Services and Contingency Planning Branch (SSCP). Ministry of Government Services (MGS) via secure courier or by hand delivery using a sealed pre-printed green coloured envelope.

Part A Instructions

1. **Individual Information:**
Enter your last name, first name and full middle name (no initials).
Enter your date of birth, in the format, year (YYYY), month (MM), day (DD).
Indicate whether you are male or female by marking the appropriate box.
Enter all previous last names or aliases you have ever used, if any (e.g. Former marriage, maiden name).
Enter your current residential telephone number.
2. **Place of Birth:**
Enter your place of birth by indicating the city/town/municipality/ village, the province/state, and the country.
3. **Legal Status in Canada:**
Indicate your legal status in Canada by entering *either* your Canadian birth certificate number, citizenship certificate number, landed immigrant certificate number, Canadian Passport number or your work permit number.
4. **Home Addresses for Past 5 years:**
Enter all addresses you have had for the past 5 years. List the most recent address first. Use an extra sheet if required.
5. **Driver Record Check:**
Enter your driver's licence number *only* if your work assignment requires you to have a valid driver's licence.
6. **Authorization and Consent to Security Screening Check:**
Indicate that you have read and understood the requirements and procedures listed for a security screening check, and that you authorize and consent to a security screening check by signing and dating in the spaces provided, **by hand**.
7. **Authorization and Consent to Driver Record Check:**
Indicate, if applicable, that you have read and understood the requirements and procedures listed for a driver record check, and that you authorize and consent to a driver's record check by signing and dating in the spaces provided, **by hand**.
8. **Release:**
Indicate your release in relation to security screening checks, and declare that all information provided in the application is true and complete by signing and dating in the spaces provided, **by hand**.

Part B Instructions

Provide details of all unresolved charges and/or convictions you have received in relation to the offence provisions of federal statutes including, but not limited to, the *Criminal Code (Canada)* and the *Controlled Drugs and Substances Act (Canada)*.

For individuals requiring driver record checks, provide details of all unresolved charges and/or convictions you have received in relation to the offence provisions of the *Ontario Highway Traffic Act*.

If you have nothing to declare, indicate 'not applicable' or 'N/A' in the space provided.

Part B **must** be signed and dated by hand, even if you have nothing to declare.

Background Information

The Security Screening Process

Security screening involves the following elements:

- Your company representative will verify your identity when you present to him/her two pieces of official documentation that confirm name, date of birth and address, of which one piece of identification must be a photograph, such as a valid driver's licence, passport, or other official government-issued document. Also, the representative will verify employment, education, professional trades/accreditation or qualifications (as required). For more information, please speak to your company representative.
- A written declaration from you disclosing all unresolved charges and/or previous convictions under the offence provisions of federal statutes, including, but not limited to, the *Criminal Code (Canada)* and the *Controlled Drugs and Substances Act (Canada)* and the *Ontario Highway Traffic Act*, where a driver record check is required.
- A police records check conducted by the Ontario Provincial Police (OPP).
- A driver's record check conducted by the Ontario Provincial Police (OPP), as required.

SSCP in MGS is responsible for evaluating and assigning security screening clearances. The verification of personal information, the information you provide on the Declaration Form, and information that is obtained by the OPP as part of the police records check, will be collected by the SSCP for the purpose of conducting a security screening clearance evaluation. Information collected by the SSCP will be maintained within the branch in confidence and will only be accessible to designated staff of the SSCP and government auditors. When a security clearance decision is made, the SSCP will notify the manager or ministry representative as to your security clearance status. In addition, the CSO of your company will receive your SSCP file number and security clearance status. Using your SSCP file number, you may make inquiries in writing about your security clearance status to SSCP.

Declaration of Previous Convictions and Unresolved Charges

On the attached Declaration form, you will be asked to declare (subject to the exceptions listed) any outstanding unresolved charges and/or previous convictions for offences under federal statutes including the *Criminal Code (Canada)*, the *Controlled Drugs and Substances Act (Canada)* and the *Ontario Highway Traffic Act*, where a driver record check is required.

The information you supply on the Declaration form will be used by the SSCP to compare against the results of a police records check (described above). If a discrepancy is identified between your declaration and the results of the police records check, you may be contacted by the SSCP and given an opportunity to explain this information before a security clearance decision is made.

Do not provide certain information on the Declaration form (i.e. information relating to discharges and judicial orders in effect) that may be collected during a police records check (see Police Record Check section below).

Police Records Check

Police Records Check

A police records check involves:

A search by the Ontario Provincial Police (OPP) of records maintained by the RCMP in the Canadian Police Information Centre (CPIC), and records maintained by provincial and municipal police forces for information about you relating to:

- Convictions under the offence provisions of federal statutes, including but not limited to, the *Criminal Code (Canada)*, and the *Controlled Drugs and Substances Act (Canada)* (Federal Offences).
Convictions for which a pardon under the *Criminal Records Act (Canada)* has been issued or granted to you will not be collected.
- Where a court has made a finding of guilt in respect of a Federal Offence, and has granted a discharge, unless:
 1. the discharge was absolute and granted more than one (1) year ago; or
 2. the discharge was conditional and granted more than three (3) years ago.
- Charges that have been laid under Federal Offences but remain unresolved.
Charges that have been withdrawn by the Crown or stayed or dismissed by a Court will not be collected.
- Records of judicial orders in effect made in relation to Federal Offences.

Information obtained by the OPP through a police records check will be provided to the SSCP for the purpose of making a security clearance determination. In the event adverse information is identified, you may be contacted by the SSCP to discuss the results of the police records check before a security clearance decision is made. Security clearance status information may be exchanged between SSCP and other Canadian governments or organisations, in cases where the individual indicates that he or she was granted a prior security clearance.

The police records check will be conducted by the OPP using the personal information you have supplied in Part A of this form. Information you provide on this form about your date and place of birth, gender and legal status in Canada, will only be used to verify your identity as part of the police records check, or to confirm your security clearance status in other Canadian governments, and will not be used for any other purpose. In certain circumstances where your identity cannot be confirmed, the OPP may require copies of your fingerprints to confirm if information obtained in the police records check is about you. In this case, you will be asked to consent to a further police records check by the OPP using your fingerprints. Copies of your fingerprints will be returned to you by the OPP after the records check is completed and will not be retained by the OPP.

If you have not resided in Canada consecutively during the last 5 years, SSCP will work with the OPP to gather substantially similar information from similar authorities in the country(ies) of residence you have stated on this form to complete the security screening check. In addition, SSCP will only take into account substantially similar information to that required by the Canadian police record check outlined above in conducting the assessment.

Driver Record Check

Prior to granting a security screening clearance, a check for a driver history is required for any contract work assignment that requires a valid driver's licence. A driver record check involves a search of records maintained by the Ontario Ministry of Transportation.

Part A – Individual Information, Authorization, Consent and Release (to be completed by individual)
1. Individual Information

Last Name	First Name	Middle Name(s) (No initials)	Date of Birth YYYY	MM	DD	Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
Previous Last Name(s) or aliases if any (e.g. Former marriage, maiden)			Current Residential Telephone No. (incl. Area Code)			

2. Place of Birth

City/Town/Municipality/Village	Province/State	Country
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3. Legal Status in Canada (provide one of the following document no.'s)

Canadian Birth Certificate Number	Canadian Citizenship Certificate Number	Canadian Passport Number
Landed Immigrant Certificate Number	Work Permit Number	

4. Home Addresses for Past 5 Years (Beginning with the most recent; use extra sheet if required)

Street Address (Street No., Name, Unit, Suite, Floor)	City/Province/State/Country/Postal or Zip Code	From YYYY/MM	To YYYY/MM
			PRESENT

5. Driver's Record Check (Only for a contract work assignment that requires a valid driver's licence)

Driver's Licence Number	Province/State
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6. Authorization and Consent to Security Screening Check

I have read and understand the requirements and procedures listed on this form for a security screening check.

- I authorize the OPP to conduct a police records check in accordance with this form. I consent to the disclosure of information about me obtained by the OPP in a police records check to the SSCP.
- I authorize the SSCP to collect, use, store and retain information I have provided on this form, and information obtained by the OPP through a police records check, for the purpose of assessing my security screening clearance, and as part of the government's normal audit of business practices.
- I hereby authorize and consent to the release of records and information held by the RCMP, the OPP, provincial, municipal, other police forces and Canadian governments or other organizations that are required by the OPP to conduct a police records check and the SSCP to conduct a security screening check.
- I consent to the exchange of security clearance status information by SSCP where I have indicated that I am a holder of a prior security screening clearance from a Canadian government or other organizations.

Signature of Individual (by hand)	Date (yyyy-mm-dd) (by hand)
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7. Authorization and Consent to Driver's Record Check (only required if requesting a Driver's Record Check in Sec. 5)

I hereby authorize and consent to the release of information contained in the records maintained by the Ontario Ministry of Transportation required by the OPP and the SSCP in order to conduct a driver's record check.

Signature of Individual (by hand)	Date (yyyy-mm-dd) (by hand)
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8. Release

I hereby release and discharge forever Her Majesty the Queen in right of Ontario and any or all her respective directors, employees, servants, and agents, including their successors and assigns, from any and all actions, claims and demands for damages, loss or injury howsoever arising, except as a result of negligence or willful misconduct which may hereafter be sustained by myself as a result of the collection, use and disclosure of information about me by the Ontario Provincial Police, in relation to security screening checks.

I further declare that all the information provided in this application is true and complete.

Signature of Individual (by hand)	Date (yyyy-mm-dd) (by hand)
-----------------------------------	-----------------------------

Part B – Declaration *(to be completed by the individual)***Instructions**

In the section below identify all unresolved charges and/or convictions you have received in relation to the offence provisions of federal statutes including, but not limited to, the *Criminal Code (Canada)* and the *Controlled Drugs and Substances Act (Canada)*, subject to the exceptions listed below.

Do not disclose the following information:

- If you have received a pardon for a previous conviction in accordance with the *Criminal Records Act (Canada)* do not disclose the conviction, nor the fact that you have received a pardon for the conviction.
- If you have been found guilty of an offence and received an absolute discharge on a date more than one (1) year ago, do not disclose the conviction.
- If you have been found guilty of an offence and received a conditional discharge on a date more than three (3) years ago, do not disclose the conviction.
- If you have been charged with, or convicted of an offence under a provincial statute (Provincial Offences) do not disclose the charge or conviction, unless a driver record check is required (see below).
- If as a young person, you were subject to charges that were dealt with under the *Youth Criminal Justice Act*, or its predecessors the *Young Offenders Act*, or the *Juvenile Delinquents Act* do not disclose that information.

If a **driver record check** is required, provide details of all unresolved charges and/or convictions you have received in relation to the offence provisions of the *Ontario Highway Traffic Act*.

If you have nothing to declare, indicate 'Not Applicable' or 'N/A' in the space provided.

Part B *must* be signed and dated by hand, even if you have nothing to declare.

Details of convictions and/or unresolved charges *(provide details - indicate 'N/A' if you have nothing to declare; use extra sheet if required)*

SAMPLE

<i>Name of individual (please print)</i>	<i>Signature of individual (by hand)</i>	<i>Date (yyyy-mm-dd) (by hand)</i>
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Notice of Collection

Personal information provided in accordance with this form will be collected and used by the SSCPb for the purpose of conducting and assigning an Ontario Public Service contractor security screening clearance. The collection of personal information is authorized by the Contractor Security Screening Operating Policy, issued by the Management Board of Cabinet under section 3 of the *Management Board of Cabinet Act*, RSO 1990, Chapter M-1. Questions about the collection of personal information under this program may be directed to the Manager of Contractor Security Screening, (at the Security Services & Contingency Planning Branch, 900 Bay Street, 2nd floor Macdonald Block, M2-49, Toronto ON M7A 1Y4 or AskSSCPb@ontario.ca or 416 325-9400).

APPENDIX G - PROPOSAL RETURN LABEL

AFFIX THIS LABEL TO YOUR SUBMISSION PACKAGE ENVELOPE

Proponent to complete the following:

(Full Legal Name, Address, Contact Information and MERX Organization Number)

NAME: _____

RFP No. COS-0009

ADDRESS: _____

RFP Title: Offender Telephone Management System

PROPOSAL SUBMISSION DEADLINE:**Date: November 16, 2012****Time: 11:00:00 a.m. (Toronto Time)**

CONTACT: _____

PHONE: _____

MERX ORGANIZATION # _____

If applicable, state Third Party Identification (Company Name) as per Section 4.1.3 of the RFP.

Company Name: _____

**TO: Supply Chain Management
Tender Administration Office
700 University Avenue, 6th Floor,
Toronto, ON., M5G 1X6**

The Postal Code is to aid in identifying the building only. The onus remains solely with Proponents to instruct courier/ delivery personnel to deliver Proposal submissions to the exact floor location specified above by the Proposal Submission Deadline. Proponents assume sole responsibility for late deliveries if these instructions are not strictly adhered to.

IMPORTANT INSTRUCTIONS:

Proposals must be submitted in a sealed package(s) to the address indicated on the Proposal Return Label between the hours of 9:00 a.m. and 5:00 p.m. ([Toronto Time], Monday through Friday (excluding Statutory Holidays), AND NO LATER THAN THE PROPOSAL SUBMISSION DEADLINE NOTED ABOVE.

The Ministry does not accept responsibility for Proposal submissions directed to any location other than the address indicated on the label above. The Postal Code is to aid in identifying the building only. **The onus remains solely with proponents to instruct courier/ delivery personnel to deliver Proposal submissions to the EXACT FLOOR location specified above. Proposals that are delivered to another Ontario Government address before the deadline but arrive at the Tender Administration Office after the deadline will be disqualified.**

Proponents assume sole responsibility for late deliveries if these instructions are not strictly adhered to.

Failure to affix this Label to your submission envelope/ package may also result in submissions not being recognized as Proposals. This could result in your proposal arriving late at the Tender Administration Office and will be deemed late, disqualified and returned to the Proponent.

Proposals received by Fax or any other kind of electronic transmission will be rejected.

APPENDIX H – MINISTRY FACILITY LOCATIONS

CENTRAL REGION	
Maplehurst Correctional Complex Box 10, 661 Martin Street Milton, ON L9T 2Y3	Toronto West Detention Centre 111 Disco Road, Box 4950 Rexdale, ON M9W 5L6
Ontario Correctional Institute Box 1888, 109 McLaughlin Road South Brampton, ON L6V 2P1	NEW – Toronto South Detention Centre 160 Horner Ave. Etobicoke, ON
Toronto East Detention Centre 55 Civic Road Scarborough, ON M1L 2K9	Vanier Centre at Milton 655 Martin Street, P.O. Box 1040 Milton, ON L9T 5E6
Toronto Jail 550 Gerrard Street East Toronto, ON M4M 1X6	
EASTERN REGION	
Brockville Jail 10 Wall Street Brockville, Ont. K6V 4R9	Quinte Detention Centre Postal Bag 3060, 89 Richmond Blvd Napane, ON K7R 3S1
Central East Correctional Centre 541 Hwy #36, R.R. # 3 Lindsay, ON K9V 6H2	St Lawrence Valley Correctional & Treatment Centre 1804 Hwy 2 East, P.O. Box 8000 Brockville, ON K6V 7N2
Ottawa-Carleton Detention Centre 2244 Innes Road Ottawa, ON K1B 4C4	
NORTHERN REGION	
Algoma Treatment and Remand Centre 800 Great Northern Road Sault Ste. Marie, ON 6A 5K7	North Bay Jail 2550 Trout Lake Road North Bay, ON P1B 7S7
Central North Correctional Centre 1501 Fuller Avenue Penetanguishene, ON L9M 2G2	Sudbury Jail 181 Elm Street West Sudbury, ON P3C 1T8
Fort Frances Jail Box 189, 319 Nelson Street Fort Frances, ON P9A 3M6	Thunder Bay Correctional Centre P.O. Box 1900, Hwy. 61 South Thunder Bay, ON P7C 4Y4
Kenora Jail 1430 River Street Kenora, ON P9N 1K5	Thunder Bay Jail Box 2806, 285 McDougall Street Thunder Bay "P", ON P7B 5G3
Monteith Correctional Complex Box 90, Junction Highway 11 & 577 Monteith, ON POK 1P0	
WESTERN REGION	
Brantford Jail 105 Market Street Brantford, ON N3T 6A9	Sarnia Jail 700 North Christina Street Sarnia, ON N7V 3C2
Chatham Jail 17 Seventh Street Chatham, ON N7M 4J9	Stratford Jail 30 St. Andrew Street Stratford, ON N5A 1A3
Elgin-Middlesex Detention Centre 711 Exeter Road London, ON N6E 1L3	Windsor Jail Box 38, 378 Brock Street Windsor, ON N9C 3Y6
Hamilton-Wentworth Detention Centre 165 Barton Street East Hamilton, ON L8L 2W6	NEW – Southwest Detention Centre Windsor, Ontario (Location to be determined)
Niagara Detention Centre Box 1050, Highway 58 Thorold, ON L2V 4A6	

APPENDIX I – CALL TRAFFIC STATS DATA FOR 2011 AND 2012

Refer to attached Excel Spreadsheets containing data for January 2011 to December 2011 and for January 2012 to June 2012.

This is Exhibit "B" referred to in the Affidavit of Paul Gortana affirmed June 30, 2021.



Commissioner for Taking Affidavits

How do I make a collect call and how much does it COST?

What is a collect call?

With a collect call, the person receiving the call is billed instead of the person making the call.

To make a collect call from your Bell Home phone, dial 0 and follow the automated voice prompts. The charges will be billed to the person receiving the call, so they must accept the charges before the call can be connected.

Bell charges for collect calls are shown below. If you receive a collect call from another phone carrier, different charges may apply.

Type of call	Charges to the caller	Charges to the receiver
Local collect call (automated system)	None	\$1.00
Local collect call (operator assisted)	None	\$4.00
Long distance collect call (automated system)	None	\$2.50, plus per-minute basic long distance rates apply. Collect calls are not included in any long distance package.
Long distance collect call (operator assisted)	None	\$4.00, plus per-minute basic long distan apply. Collect calls are not included in any long distance package.



Note: some countries do not allow collect calls for fraud-related reasons.



Blocking or stopping collect calls

- Overview
- Phone line
- Long distance and calling cards
- Calling features
- Self-serve options
- Troubleshootin

Was this article useful?

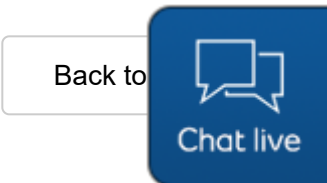
No

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- What are the international and North American calling codes? >
- How to use Call Answer on my Bell Home phone >
- How to use Call Privacy on my Bell Home phone >
- How to use Call Blocking on my Bell Home phone >
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Home phone Packages Long distance Features

With a bundle Basic rates Calling cards

Ontario and Québec

Ontario and Québec basic long distance rates

The table below describes the basic long distance rates for calls in Ontario and Québec based on distance in miles between callers (local calls not impacted). For your best option, subscribe to one of our great [long distance plans](#).

Calling distance (miles)	Peak rates (per minute)	Off-Peak rates (per minute)
0 to 10	\$0.19	\$0.16
11 to 22	\$0.63	\$0.54
23 to 40	\$0.88	\$0.76
41 to 80	\$1.12	\$0.96
81+	\$1.33	\$1.13

Hide peak and off peak hours

	Peak (base rates)	Off-Peak (15% off)
Monday to Friday	8 a.m. to 6 p.m.	6 p.m. to 8 a.m.
Saturday	N/A	24 hours

Windows taskbar: 12:10 PM 6/28/2021

Home phone Packages **Long distance** Features

Long distance

With a bundle **Basic rates** Calling cards

- Ontario and Québec >
- Across Canada**
- Northwestern Canada >
- United States >
- Overseas >
- Save with a long distance plan >

Across Canada basic long distance rates

The table below describes the basic long distance rates for calls across Canada from Ontario or Québec based on distance in miles between callers (local calls not impacted). Excludes calls to Yukon Territory, Northwest Territories or Northern B.C. served by Northwestel Inc. [See Northwestern Canada basic long distance rates](#). For your best option, subscribe to one of our great [long distance plans](#).

Calling distance (miles)	Peak rates (per minute)	Off-Peak rates (per minute)
0 to 20	\$0.19	\$0.16
21 to 56	\$0.26	\$0.47
57 to 400	\$1.06	\$0.90
401 to 680	\$1.33	\$1.13
681+	\$1.33	\$1.13

Hide peak and off peak hours

	Peak (base rates)	Off-Peak (15% off)
Monday to Friday	8 a.m. to 6 p.m.	6 p.m. to 8 a.m.
Saturday	N/A	24 hours

More ways to shop

12:11 PM
6/28/2021

This is Exhibit "C" referred to in the Affidavit of Paul Gortana affirmed June 30, 2021.



Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the *Class Proceedings Act, 1992*

RESPONSE TO DEMAND FOR PARTICULARS

The plaintiffs provide the following particulars in response to your demand for particulars dated January 21, 2021 (“Demand”) without prejudice to the plaintiffs’ right to provide further particulars in the future:

1. Paragraph 1 of the Demand requests:

1. With respect to paragraphs 6 and 28 of the Claim, particulars regarding the “public statements” in which Bell allegedly stated that rates for prisoners are the same as for the general public, including:

- (a) where such statements were made;*
- (b) the format (written or oral) such statements were made;*
- (c) when such statements were made; and*
- (d) what precisely was said.*

2. Plaintiffs’ response: In addition to the Representations particularized in the Fresh as Amended Statement of Claim (“Claim”):¹

¹ Capitalized terms here have the same meanings as those in the Claim.

-2-

- On or about January 31, 2019, a Bell Canada spokesperson was reported by Ottawa Citizen as representing in a statement: “rates for operator-assisted collect calls from Ontario correctional facilities are the same as Bell’s public rates. ‘We couldn’t comment further about any of our business or government contracts.’”
- On or about January 14, 2020, Bell Canada spokesperson, Jacqueline Michelis, was reported by Global News in writing as representing: “Rates for operated assisted calls are the same as Bell’s public rates.”
- Further representations made by representatives and spokespersons for Bell as known to and in the possession of the defendant.

3. Paragraph 2 of the Demand requests:

2. With respect to paragraph 35 of the Claim, particulars regarding the representations that Bell allegedly made, including:

- (a) where such representations were made;*
- (b) the format (written or oral) such representations were made;*
- (c) when such representations were made; and*
- (d) what precisely was said.*

4. Plaintiffs’ response: Paragraph 35, in conjunction with paragraph 1(w) of the Claim which defines “Proposal”, pleads all the particulars requested in paragraph 2 of the Demand. The Proposal was in writing, including the quoted representation. For ease of reference:

- Paragraph 35: “As detailed herein, Bell represented that the rates for calls at the Facilities were the same as its residential rates for the general public.

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In the Proposal, which was part of the Contract under which Bell exercised its monopoly, Bell represented that its telephone services for Ontario Prisoners would be at an ‘identical call rate and connection fees including all time of day and mileage discounts as are experienced by Bell residential customer’”. [emphasis added]

- Paragraph 1(w): “‘Proposal’ means a proposal dated November 20, 2012 that Bell submitted to the Minister for an OTMS, responding to a Request for Proposals numbered COS-0009 issued by the Minister to procure a contract for the purposes of the OTMS” [emphasis added]

5. Paragraph 3 of the Demand requests:

3. With respect to paragraph 41 of the Claim, particulars regarding the representations that Bell allegedly made, including:

- (a) where such representations were made;*
- (b) the format (written or oral) such representations were made;*
- (c) when such representations were made;*
- (d) what precisely was said; and*
- (e) the “actual charges” that were “imposed by the OTMS”.*

6. Plaintiffs’ response: For (a)-(d), see definition of “Representations” in paragraph 1(x) of the Claim and the paragraphs referenced therein, and the answer above to paragraph 1 of the Demand; (e) the Claim particularizes what is meant by the quoted words in the same paragraph: “The actual charges to be imposed by the OTMS were never disclosed to the Class Members, either orally or visually, prior to using the OTMS. The Class Members only discovered the price of phone calls when they received a bill, often weeks after a call. The Commissions paid to the Crown were never disclosed by Bell to Class Members. [emphasis added]”

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7. Paragraph 4 of the Demand requests:

4. With respect to paragraph 52 of the Claim, particulars regarding the CRTC decisions referred to therein, including citations.

8. Plaintiffs' response:

- Telecom Order CRTC 95-316
- Telecom Decision CRTC 98-8
- Telecom Regulatory Policy CRTC 2015-546
- Telecom Regulatory Policy CRTC 2016-295

February 1, 2021

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-5-

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Her Majesty the Queen in right of Ontario

VANESSA FAREAU et al.
Plaintiffs

-and- **BELL CANADA et al.**
Defendants

Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
 PROCEEDING COMMENCED AT TORONTO

RESPONSE TO DEMAND FOR PARTICULARS

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VANESSA FAREAU et al.

and BELL CANADA et al.

Court File No. CV-20-00635778-00CP

Plaintiff

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

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Court File No. CV-20-00635778-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs

and

BELL CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF PIERRE-LUC HÉBERT
(Affirmed June 30, 2021)

I, PIERRE-LUC HÉBERT, of the City of Arnprior, in the Province of Ontario, **DO**
HEREBY AFFIRM:

1. I am Assistant General Counsel at BCE Inc., the parent company of Bell Canada (“**Bell**”), a defendant in the above-noted matter. I have been with Bell since 2003. My role involves understanding the regulatory framework under which Bell provides its telecommunications services and Bell’s role within that framework. As such, I have knowledge of the matters contained in this affidavit. To the extent I have relied on information from others, I have stated the source of that information and in all cases believe that information to be true.
2. I swear this affidavit in support of Bell’s motion seeking to dismiss the claim as against it for lack of jurisdiction. I also swear this affidavit in response to the representative plaintiffs’

motion for certification of this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*.¹

3. Before swearing this affidavit, I reviewed the representative plaintiffs' fresh as amended statement of claim amended August 14, 2020 (the "**Amended Claim**"), their response to Bell's demand for particulars (the "**Particulars Response**"), the affidavits included in their motion record dated January 6, 2021 (the "**Plaintiffs' Motion Record**"), and the supplementary affidavit of Nadine Blum sworn May 13, 2021 (the "**Blum Affidavit**"). In this affidavit, I address a number of factual mischaracterizations contained in the Amended Claim and in the plaintiffs' motion materials. I also provide context regarding several of the allegations and statements contained in those documents. Where I do not address a fact or issue that is raised in them, it should not be assumed that I agree with those facts and issues.

A. Overview

4. Bell is incorporated pursuant to the laws of Canada. It is a national telecommunications service provider.

5. The plaintiffs' claim relates to the non-cash telephone services that Bell provided at correctional and penal facilities ("**Facilities**") in Ontario under the Offender Telephone Management System ("**OTMS**"). Specifically, the plaintiffs raise issues about the rates Bell charged under the OTMS, as well as the notice that Bell provided of those rates. Non-cash telephone calls are calls that are made from public payphones using credit cards, prepaid long distance cards or other telephone cards, as well as collect calls. Collect calls (which were the only type of calls permitted under the OTMS) are distinct from other forms of non-cash telephone calls.

¹ S.O. 1992, CHAPTER 6

For other non-cash telephone calls, the person making the call is responsible for payment. For collect calls, it is the recipient who pays for the call.

6. The regulator of telecommunications in Canada, the Canadian Radio-television and Telecommunications Commission (“**CRTC**”), has established an all-encompassing regulatory regime that governs telecommunications services. Payphone services form one part of this regime. The CRTC has established specific regulations regarding the terms and conditions relating to both cash and non-cash calls, including in respect of rates and consumer safeguards (such as notice to individuals making these calls). The CRTC’s regulations, developed following public consultations, have changed over time.

7. In this affidavit, I describe the relevant aspects of the regulatory framework that exists for general non-cash payphone calls, including public payphones, and how this framework has changed since 1998.

8. I also describe part of the regulatory framework which applies to calls by inmates from Facilities. As I will discuss in further detail below, the CRTC established a tariff which reflects the unique circumstances of telephone services at Facilities. I will further explain how the regulation regarding telephone services provided at Facilities differs from that applicable to telephone services for public payphones.

B. The regulatory framework for non-cash payphone calls

(i) The CRTC’s regulatory power, generally

9. The CRTC oversees all aspects of the telephone services that Bell and other telecommunications companies provide. The regulatory framework for telecommunications is complex. The CRTC is statutorily required to consider a number of objectives in determining how

to exercise its regulatory power. These are set out in s. 7 of the *Telecommunications Act* (the “Act”) and include (among others):

- (a) the “orderly development throughout Canada of a telecommunications system”;
- (b) enhancing the “efficiency and competitiveness... of Canadian telecommunications”;
- (c) fostering “reliance on market forces”; and
- (d) responding to the “economic and social requirements of users of telecommunications services”.

10. In addition to s. 7 of the Act, the Minister of Industry sets out Policy Directions to the CRTC under the Act. These directions guide the CRTC on how it is to implement the objectives under the Act. Two such Policy Directions are relevant to this action. The first is the 2006 Policy Direction, a copy of which is attached as **Exhibit “A”** to my affidavit. The 2006 Policy Direction states that the CRTC should regulate in the least intrusive way:

- (a) the Commission should
 - (i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
 - (ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;
- (b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that
 - [...]

(ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,

[...]

(c) the Commission, to enable it to act in a more efficient, informed and timely manner, should adopt the following practices, namely,

(i) to use only tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible,

[...]

11. In 2019, the Minister issued a new Policy Direction, a copy of which is attached as **Exhibit “B”** to my affidavit. Relevant aspects of the 2019 Policy Direction focus on competition, innovation and investment:

(a) the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation, in particular the extent to which they

(i) encourage all forms of competition and investment,

(ii) foster affordability and lower prices, particularly when telecommunications service providers exercise market power,

(iii) ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas,

(iv) enhance and protect the rights of consumers in their relationships with telecommunications service providers, including rights related to accessibility,

(v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional or smaller than the incumbent national service providers,

(vi) enable innovation in telecommunications services, including new technologies and differentiated service offerings, and

(vii) stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services;

12. On a practical level, one of the primary ways the CRTC has historically implemented its policy objectives is through its approval of tariffs for telecommunications providers. A provider will establish a tariff that sets out the rates, charges and conditions applicable to the delivery of a type of service. The tariff is then submitted to the CRTC for review. Once the CRTC provides its approval, the telecommunications company can provide the service in question.

13. The CRTC has power under the Act (under what is currently s. 34) to forbear from actively exercising certain powers with respect to specific services (*e.g.*, the *ex ante* approval of rates). The CRTC may resort to forbearance where it finds “as a question of fact”² that forbearance would be consistent with its policy objectives. Further, where the CRTC finds “as a question of fact” that the services at issue are subject to “competition sufficient to protect the interests of users,” the CRTC “shall make a determination to refrain, to the extent that it considers appropriate,” from exercising its regulatory power.³ Generally, where the CRTC forbears to regulate specific aspects of telecommunications services, it retains a residual jurisdiction to exercise its powers under ss. 24 and 27 of the Act, allowing it to impose specific conditions of services (for instance relating to 9-1-1 even where telephony rates are not commercially regulated) and to ensure that rates remain just and reasonable, respectively.

14. For example, Bell’s General Tariff – 6716 (“**GT**”) contains provisions governing Bell’s public telephone (*i.e.*, payphone) services. GT Item 250(6)(d)(2) governs rates for local non-cash payphone calls. It currently limits the rate to \$1/call. In 2007, the tariffed rate for local non-cash payphone calls rose from \$0.25 to \$0.50 while the rate for non-cash calls rose from \$0.75 to \$1.00 (prior to this, the rates had not changed since 1981). In 2013, the CRTC denied a request by Bell to

² *Telecommunications Act*, s. 34(1).

³ *Telecommunications Act*, s. 34(2).

increase these rates to \$1 and \$2, respectively. As I will discuss later in this affidavit, the CRTC forbore regulation of long distance rates (with the exceptions of its residual powers under ss. 24 and 27 of the Act). The CRTC reviewed and approved the GT, including GT Item 250. A copy of GT Item 250 is attached to my affidavit as **Exhibit “C”**.

15. The CRTC also acts as an adjudicative body. Under s. 48 of the Act, on the application of any interested party or on its own initiative, the CRTC can inquire and make determinations on whether a telecommunications provider breached the Act or any of its regulations. This includes where it is alleged that a telecommunications provider contravened its CRTC-approved tariff. For example, if someone alleged that Bell charged more than \$1.00 for a local non-cash payphone call, the CRTC would have the jurisdiction to have a hearing and determine whether Bell did violate the terms of its tariff in such a manner. In conducting these hearings, the CRTC has the same powers of a superior court to compel the attendance of witnesses, order the production of documents or enforce its decisions under s. 55 of the Act. If the CRTC finds a breach of its regulations, it has the power to require the telecommunications provider to adhere to the Act or its regulations, to order that the telecommunications provider issue refunds for over or improper billing and/or to order that the telecommunications provider pay an administrative monetary penalty.

16. If an individual takes issue with an aspect of a service over which the CRTC has forbore regulation, a different body, the Commissioner for Complaints for Telecommunications Services Inc. (“**CCTS**”) has the jurisdiction to investigate and make determinations regarding such allegations. Below in my affidavit, I provide further details regarding the CCTS and the scope of its jurisdiction. However, in all instances, even for aspects of services over which the CRTC has forbore regulation (such as long distance rates), it is open for an individual to bring an application to the CRTC for a determination that the rates charged were unjust and unreasonable or that they

“unjustly discriminate”, contrary to s. 27 of the Act. During the course of such a hearing, in addition to any other sanction order, it would be open to the CRTC to determine that forbearance of regulation is no longer appropriate given the issues raised.

17. Based on my review of the Amended Claim, the representative plaintiffs’ claim relates to Bell’s operation of its non-cash payphone system in Facilities in Ontario. Below, I have summarized the regulatory framework specific to this telephone system, including its history.

(ii) Regulatory framework from 1998 until 2015

18. The first notable aspect of the regulatory framework relates to long distance fees generally. On December 18, 1997, the CRTC issued Telecom Decision CRTC 97-19, *Forbearance – Regulation of Toll Services Provided by Incumbent Telephone Companies* (“**TD CRTC 1997-19**”), in which the CRTC determined that it would forbear from regulating long distance calling services (among other services). As such, following TD CRTC 1997-19, Bell no longer required CRTC approval of its rates for long distance calls. Instead, rates were left to the market to determine. This included rates for long distance calls made on payphones. Notably, however, while the CRTC forbore from explicitly approving long distance rates, it maintained oversight over long distance calls, and its ability to impose conditions of service (such as specific discount schedules for individuals with hearing impairments) and address concerns over unjust or unreasonable rates charged for long distance calls, as well as unjust discrimination or undue preferences. A copy of TD CRTC 1997-19 is attached to my affidavit as **Exhibit “D”**.

19. With respect to payphone services more specifically, prior to 1998, only incumbent local exchange carriers (“**ILEC**”),⁴ such as Bell, operated payphones. This changed on June 30, 1998, when the CRTC issued Telecom Decision CRTC 98-8, *Local Pay Telephone Competition* (“**TD CRTC 98-8**”). Under this decision, the CRTC established a regulatory framework that allowed for competition in the local payphone market to stimulate innovation and increase customer choice. It also mandated additional consumer safeguards. Specifically, in TD CRTC 98-8, the CRTC decided, among other things, the following:

- (a) rates charged by ILECs for local calls on payphones would continue to be regulated by the CRTC;
- (b) rates charged by the new entrant competitive payphone service providers (“**CPSP**”) for local calls on payphones would not be regulated;
- (c) CPSPs would be required to prominently display rates for local calls and any surcharge, markup or location charges not included in the price of the call;
- (d) for operator-handled calls (*e.g.*, collect calls) both ILECs and CPSPs were required to provide, when requested by the consumer, the rates and charges for a call and alternative billing method available to consumers; and
- (e) because the CRTC forbore from regulating long distance charges, neither ILECs nor CPSPs were required to provide notice of long distance call rates, but CPSPs were directed to “display prominently the name of the default long distance service provider at each pay telephone”.

⁴ ILEC is a defined terms that CRTC uses to describe traditional telephone companies. The CRTC provides a list of ILECs here: <https://applications.crtc.gc.ca/telecom/eng/registration-list?pt=41>

Attached as **Exhibit “E”** to my affidavit is a copy of TD CRTC 98-8.

20. Before issuing TD CRTC 98-8, the CRTC issued Telecom Public Notice CRTC 97-26, *Local Pay Telephone Competition*, requesting comments from stakeholders on the then-in-place regulatory framework for payphones. Several telecommunications companies, including Bell, and various advocacy groups provided comments, which are reflected and summarized in TD CRTC 98-8.

21. In addition to TD CRTC 98-8, another piece of the regulatory framework that governed during this time period was Telecom Order CRTC 95-316, issued on March 15, 1995. Under this order, the CRTC directed telephone companies, including Bell, to file comprehensive operator services tariffs that (a) incorporate the consumer safeguards for operator-assisted calls currently set out in various locations in their tariffs and white page directories, and (b) state that third-party operator service providers who make use of Bell’s services must, in turn, abide by the same consumer safeguards. Following this Order, Bell filed its required operator service tariff. Attached as **Exhibit “F”** to my affidavit is a copy of Telecom Order CRTC 95-316.

(iii) Post 2015 regulatory framework

22. After those two regulatory decisions and orders were issued in the 1990s, the market for payphones changed drastically. The increasing ubiquity of cellular telephones meant that demand for payphones decreased and led many telecommunications service providers to remove payphones due to the maintenance and operating costs associated with payphones compared to diminishing revenues. In Telecom Decision CRTC 2007-27, *Price cap framework for large incumbent local exchange carriers*, the CRTC recognized that payphone rates had not increased in nearly 25 years and permitted ILECs to increase the local call charge for a payphone cash call up to

a maximum rate of \$0.50 per call and increase collect, third number, calling card or commercial credit card charges up to a maximum rate of \$1.00 per call. The CRTC noted that without such pricing flexibility, providers would remove unprofitable payphones. Attached as **Exhibit “G”** to my affidavit is a copy of Telecom Decision CRTC 2007-27.

23. These circumstances also led to the CRTC’s release of Telecom Notice of Consultation 2013-337 on June 5, 2013. In this notice, the CRTC announced that it would initiate a proceeding to review whether the existing safeguards were sufficient to ensure that consumers were in a position to make informed decisions regarding the use of payphones for non-cash calls. A copy of Telecom Notice 2013-337 is attached as **Exhibit “H”** to my affidavit.

24. In connection with Telecom Notice of Consultation 2013-337, on February 26, 2015, the CRTC:

- (a) released a fact-finding report concerning the then-current role of payphones in the Canadian telecommunications system (the **“Report”**). The CRTC sought input and data for the Report from a number of stakeholders, such as consumer groups, community organizations, ILECs (including Bell), municipalities and various individuals. A copy of the Report is attached as **Exhibit “I”** to my affidavit; and
- (b) issued Telecom Notice of Consultation 2015-67, a copy of which is attached as **Exhibit “J”** to my affidavit (the **“Notice”**). The Notice invited stakeholders to file comments, with supporting rationale, on the following questions:
 - (i) Are the current notification requirements related to non-cash calls from payphones imposed on ILECs and CPSPs sufficient and appropriate?

(ii) If not, what should these requirements be?

25. This began a lengthy public consultation process wherein many stakeholders submitted responses and comments to the CRTC about the regulatory framework for payphones. On behalf of itself, Bell Aliant Regional Communications, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (“**Bell et al**”), Bell made several submissions to the CRTC regarding the Notice, including:

- (a) an initial response, dated March 30, 2015, which is attached as **Exhibit “K”** to my affidavit;
- (b) a final reply, dated April 9, 2015, which is attached as **Exhibit “L”** to my affidavit; and
- (c) a letter, dated May 8, 2015, wherein Bell et al replied to a letter from the CRTC, dated April 24, 2015. In the CRTC’s letter, CRTC staff sought specific comments from certain interested parties, including Bell, with respect to an additional proposal relating to the notification of rates for non-cash calls placed at payphones. A copy of the Commission’s April 24th letter and Bell et al’s May 8th response are attached as **Exhibits “M”** and **“N”** to my affidavit, respectively.

26. This public consultation resulted in Telecom Regulatory Policy CRTC 2015-546, released on December 10, 2015 (“**TRP CRTC 2015-546**”). A copy of TRP CRTC 2015-546 is attached as **Exhibit “O”** to my affidavit.

27. In TRP CRTC 2015-546, the CRTC determined that the then-current notification requirements for rates of local non-cash payphone calls were sufficient. However, the CRTC

found that the notification requirements for rates of long distance non-cash payphone calls were not sufficient. Despite coming to this conclusion, the CRTC was reluctant to impose any specific notification requirements on telecommunications companies because of the contextual nature of the decision:

21. Posting rates or rate bands on or around payphones would achieve the goal of notifying consumers, but may be impractical and may hinder payphone providers' flexibility to react to market forces. [...]

22. If a payphone provider's IVR⁵ system is modified to ensure that the "obtain a quote" option is presented to consumers earlier in the menu, this too could provide greater notice. [...] However, modifying IVRs may not be cost-effective or, in some cases, technologically possible.

25. Based on the record of the proceeding, consumer safeguards for long distance non-cash payphone calls need to be strengthened; however, the record of this proceeding shows that a "one size fits all" solution to address the issue is not appropriate and, while an enhanced notification requirement is necessary, *payphone providers need some flexibility in the means they use to effect notification of rates for long distance non-cash payphone calls*. In so doing, payphone providers should keep in mind the ultimate goal of notification, which is to ensure consumers are empowered to obtain the necessary information and make an informed decision about their long distance non-cash payphone calls. [emphasis added]

28. As such, the CRTC directed ILECs to file proposals setting out the means through which they intended to satisfy the notice requirements for long distance non-cash payphone calls (the **"CRTC Direction"**).

29. Although TRP CRTC 2015-546 dealt with non-cash payphone calls, the decision was unclear as to how it applied to collect calls, if at all. None of the consumer groups who participated

⁵ "IVR" refers to an integrated voice response.

in the public consultation process raised concerns about collect calls. Several aspects of the decision reflected the CRTC's lack of attention to collect calls. For instance, several of the paragraphs (such as 14 and 15) of the decision suggest that the focus of the decision was whether the payphone *user* had sufficient notice of rates before deciding whether to use a payphone to make a non-cash call. It is not clear how the focus on the payphone *user* applies in the collect call context, given that the user does not pay for a collect call. This lack of focus on collect calls is also reflected in other CRTC decisions, where there is again reference to notice of rates to the payphone *user*. For example, in another proceeding where the CRTC considered payphone operator services (Telecom Decision 2013-327, which is attached to my affidavit as **Exhibit "P"**), the CRTC held that Bell's Operator Services tariff does not actually require rates to be provided to a called party – only to the caller:

29. The Commission notes, however, that the consumer safeguards applicable to the provision of operator services set out in Bell Canada's Operator Services tariff apply to Bell Canada and, in turn, to any person acting on behalf of Bell Canada. According to the tariff, Bell Canada's operators are required, among other things, (i) to identify themselves as representing the company to the calling party, the called party, or party accepting charges for operator-handled calls; and (ii) to provide rates for a call and various billing arrangements *when requested by the caller*. [emphasis added]

30. To the best of my knowledge, the CRTC has never expressly stated or clarified how (or whether) either TRP CRTC 2015-546 or Telecom Decision 2013-327 applies to collect calls.

(iv) Recourse mechanism for consumer complaints regarding long distance non-cash payphone calls

31. In TRP CRTC 2015-546, the CRTC noted that there was a recourse mechanism for consumers experiencing "bill shock" with their long distance non-cash payphone calls, namely, the CCTS.

32. The CCTS is an independent telecommunications consumer body that assists Canadians who have been unable to resolve disputes with their service providers. The CCTS was established by a number of telecommunications service providers in 2007 in response to a direction from the Government of Canada set out in *Order requiring the CRTC to report to the Governor in Council on consumer complaints*, P.C. 2007-533, 4 April 2007. In Telecom Decision 2007-130, the CRTC approved, with changes, the CCTS's structure, mandate and operations. Attached as **Exhibit "Q"** to my affidavit is a copy of Telecom Decision 2007-130.

33. The CCTS has jurisdiction to deal with consumer complaints about telecommunications services over which the CRTC has forborne from rate regulation. As discussed above, one such service is long distance calls. Upon receiving such complaints, the CCTS advises the relevant telecommunications service provider of the issue and seeks its response. The CCTS also has the power to conduct investigations of the complaints. Finally, the CCTS has the jurisdiction to issue formal decisions requiring the telecommunications service provider to pay monetary compensation to the complainant. Attached as **Exhibit "R"** to this affidavit is a copy of the CCTS's procedural code, which was accessed from the CCTS's website.⁶

34. The CCTS's jurisdiction also encompasses certain elements of long distance non-cash payphone calls. This was clarified in 2015, when in response to a request for information from the CRTC, the CCTS stated that long distance service, but not the payphone service itself, was in the scope of its jurisdiction:

CCTS' approach would be to determine whether the customer's complaint was actually about the payphone service itself (e.g., a complaint that the payphone was not working), or whether the complaint was about the provision of long distance services using

⁶ <https://www.ctcs-cprst.ca/wp-content/uploads/2018/01/CCTS-Procedural-Code-Sep-2017.html>

the payphone – i.e., about the long distance call or an issue relating thereto (e.g. the billing of the long distance charges). The result of this analysis would determine whether CCTS considers the complaint to be in or out of scope. If in CCTS' judgment the complaint was about the payphone itself, CCTS would refer the customer to the CRTC, as this service is regulated. If CCTS determined that this was a complaint about the long distance service, the complaint would be accepted.

A copy of the Response to Request for Information dated October 15, 2015 is attached as **Exhibit “S”** to my affidavit.

35. Since the release of TRP CRTC 2015-546, individuals, including at least one individual receiving a collect call from an Ontario Facility, have made complaints to the CCTS regarding long distance non-cash payphone calls.

36. As discussed above, in addition to the CCTS, the CRTC has a residual jurisdiction to hear applications that rates charged for services over which the CRTC has forbore regulation are unjust and unreasonable or to impose new conditions of service (without necessarily reversing the original forbearance), for instance to encourage accessibility features, enable emergency services or promote best practices (e.g., the Internet Code).

(v) Bell's response to the CRTC Direction

37. By correspondence dated June 10, 2016, Bell provided the CRTC with its response to the CRTC Direction. In this letter, Bell proposed to modify its IVR platform so that the first option presented to public payphone users making a long distance call would be to “obtain a quote”. This was one of the notification options that the CRTC itself identified in TRP CRTC 2015-546 as being a satisfactory manner of fulfilling the notice requirement. In the letter, Bell set out specifics about how it would revise its IVRs based on the locations and calling platforms of the payphones. Attached as **Exhibit “T”** to this affidavit is a copy of this June 10, 2016 letter.

38. Other ILECs provided responses to the CRTC Direction. All of them similarly proposed to modify their IVR systems in a manner similar to what Bell had proposed. Attached as **Exhibit “U”** to this affidavit are copies of these letters from other ILECs.

C. The regulation of inmate services

39. In addition to the regulations discussed above for non-cash payphone calls, Bell has an item in its GT that applies specifically to the provision of payphone services to inmates at correctional institutions.

40. The need for an item specific to inmates arose because of the unique circumstances in the context of telephone services at Facilities. On May 10, 1996, Bell wrote to the CRTC to propose this new item, which was intended to be an exception to the item in the GT already dealing with Public Telephone Services (*i.e.*, payphones). This exception became necessary because of issues with how inmates were using the payphones at Facilities. As Bell noted in this 1996 letter:

The use of public telephones by inmates is currently subject to minimal scrutiny by guards and other security personnel within correctional or penal institutions. As a consequence, the public telephones have been used to place calls to harass or intimidate victims, witnesses, lawyers and judges, and to participate in criminal conspiracies. There is also contention amongst inmates for use of the public telephones resulting in inequitable use amongst them.

41. To address these concerns, Bell worked together with Correctional Services Canada to develop a new system to provide telephone services to inmates. This new service was described by Bell in the above-noted 1996 letter as follows:

[...] Essentially, the calling process is controlled through software in the public telephone network control centre. There are limits on the telephone numbers inmates can call, on the length of the calls, the number of calls, and on the time the calls may be placed. These

restrictions are determined by the administration of each correctional or penal institution. The intent of these restrictions is to permit certain calling privileges by inmates while at the same time protecting the public from unwanted calls. This approach provides greater equity to the inmate population and is expected to greatly increase the protection of the public from harassing and intimidating calls. [...]

Attached as **Exhibit “V”** to this affidavit is a copy of Bell’s May 1996 letter to the CRTC.

42. Jean-Dominic Laroche (a senior software developer at Bell) who has direct knowledge of how the OTMS operated advises me that the software behind the OTMS operated as follows:

- (a) There was a control centre that applied multiple limits to the telephones lines at a Facility.
- (b) These limits restricted the duration of calls, the number of times a destination could be called, or calls to a destination blocked from calls originating in the province, in a region, in an institution or from a specific telephone. The Ministry determined these limits in accordance with GT Item 292 (discussed further below).
- (c) When an inmate picked up a receiver, they inputted their language and the number they wish to reach.
- (d) The control centre then determined whether the call fell into one of the prohibited categories.

43. GT Item 292 deals with the regulation of inmate telephone services. Item 292 reflects the reality that payphones within Facilities will necessarily need to be regulated in a different manner than other public payphones. It allows Bell to deviate from standard payphone requirements when

servicing Facilities. A copy of GT Item 292 is attached to my affidavit as **Exhibit “W”**. The Item provides as follows:

Item 292. INMATE SERVICE

(a) Inmate service provides public telephone service to correctional or penal institutions for the use of inmates. It is provided at the request of the institution, and is subject to the availability of suitable facilities.

(b) Inmate service allows the institution to control and monitor an inmate's telephone privileges. This control may include blocking access to certain telephone numbers or services, limiting the length of calls, restricting calls to specified periods of the day or specific days of the week and recording calls.

(c) Inmate service calls are rated in the same manner as calls originating from other public telephones except that payment options may be limited based on the requirements of the institution, technological limitations and Company collection policies.

44. The CRTC has never expressly indicated how Item 292, and Bell's telephone services to Facilities more generally, interacts with the rest of the CRTC's regulatory framework regarding non-cash calls. In the proceeding that the CRTC commenced with the Notice, and which resulted in TRP CRTC 2015-546, there was no discussion about Item 292 or telephone services provided to inmates more generally. Despite the correspondence that the CRTC exchanged with Bell regarding this proceeding, it never raised Item 292 or inmate telephones services.

45. Bell did not apply the changes that it proposed in response to the CRTC Direction to telephones in Facilities. There has been no direction from the CRTC regarding whether or how Item 292 (or inmate services) fits into the regulatory framework more generally. Further, despite my role with Bell and experience in the regulatory side of the industry, I am not aware of any guidance or policy or direction from the CRTC about whether or how the rest of the regulatory framework applies to the provision of telephone services at Facilities.

46. However, based on my explanation above, the CRTC has the jurisdiction to extend the CRTC Direction to payphones in Facilities, or to impose different terms and conditions, including in respect of rate notification, to inmate payphone services. As of the date of this affidavit, it has not done so.

47. I make this affidavit in support of Bell's response to the plaintiffs' motion for certification in this action and for no other improper purpose.

AFFIRMED remotely by Pierre-Luc Hébert,
of the City of Arnprior, in the Province of
Ontario, before me at the City of Toronto in
the Province of Ontario on June 30, 2021 in
accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
in and for the Province of Ontario

CARLO DI CARLO
LSO # 62159L
Barrister and Solicitor

Pierre-Luc Hebert

PIERRE-LUC HÉBERT

This is Exhibit "A" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



CANADA

CONSOLIDATION

CODIFICATION

**Order Issuing a Direction to the
CRTC on Implementing the
Canadian Telecommunications
Policy Objectives**

**Décret donnant au CRTC des
instructions relativement à la
mise en œuvre de la politique
canadienne de
télécommunication**

SOR/2006-355

DORS/2006-355

Current to May 4, 2021

À jour au 4 mai 2021

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to May 4, 2021. Any amendments that were not in force as of May 4, 2021 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité — règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 4 mai 2021. Toutes modifications qui n'étaient pas en vigueur au 4 mai 2021 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS**Order Issuing a Direction to the CRTC on
Implementing the Canadian Telecommunications
Policy Objectives**

- 1 Direction
- 2 Effect of Order
- 3 Coming into Force

TABLE ANALYTIQUE**Décret donnant au CRTC des instructions
relativement à la mise en œuvre de la politique
canadienne de télécommunication**

- 1 Instructions
- 2 Effet du décret
- 3 Entrée en vigueur

Registration
SOR/2006-355 December 14, 2006

TELECOMMUNICATIONS ACT

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives

P.C. 2006-1534 December 14, 2006

Whereas, pursuant to subsection 10(1) of the *Telecommunications Act*^a, the Minister of Industry had a copy of the proposed *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* published in the *Canada Gazette*, Part I, on June 17, 2006, substantially in the annexed form, and a reasonable opportunity was thereby given to interested persons to make representations to the Minister with respect to the proposed Order;

Whereas, pursuant to subsection 10(1) of that Act, the Minister laid the proposed Order before each House of Parliament and forty sitting days of Parliament have elapsed since the proposed Order was tabled in both Houses;

Whereas, pursuant to subsection 10(2) of that Act, the Minister consulted the Canadian Radio-television and Telecommunications Commission with respect to the proposed Order before it was published and laid and consulted the Commission again with respect to the proposed Order in its definitive form;

And whereas, pursuant to section 13 of that Act, the Minister, before making his recommendation to the Governor in Council for the purposes of this Order, notified the minister designated by the government of each province of his intention to make the recommendation and provided an opportunity for each of them to consult with the Minister;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to section 8 of the *Telecommunications Act*^a, hereby makes the annexed *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*.

^a S.C. 1993, c. 38

Enregistrement
DORS/2006-355 Le 14 décembre 2006

LOI SUR LES TÉLÉCOMMUNICATIONS

Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication

C.P. 2006-1534 Le 14 décembre 2006

Attendu que, conformément au paragraphe 10(1) de la *Loi sur les télécommunications*^a (la « Loi »), le ministre de l'Industrie a fait publier dans la *Gazette du Canada* Partie I, le 17 juin 2006, le projet de décret intitulé *Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication*, conforme en substance au texte ci-après, et que les intéressés ont ainsi eu la possibilité de présenter leurs observations à cet égard au ministre;

Attendu que, conformément au paragraphe 10(1) de la Loi, le ministre a fait déposer le projet de décret devant chaque chambre du Parlement et que quarante jours de séance du Parlement se sont écoulés depuis le dépôt devant chaque chambre;

Attendu que, conformément au paragraphe 10(2) de la Loi, le ministre a consulté le Conseil de la radiodiffusion et des télécommunications canadiennes avant la publication et le dépôt du projet de décret et que la version définitive du projet de décret a fait l'objet d'une nouvelle consultation;

Attendu que, conformément à l'article 13 de la Loi, le ministre, avant de présenter sa recommandation à la gouverneure en conseil sur la prise du présent décret, a avisé le ministre désigné par le gouvernement de chaque province de son intention de présenter la recommandation et qu'il lui a donné la possibilité de le consulter,

À ces causes, sur recommandation du ministre de l'Industrie et en vertu de l'article 8 de la *Loi sur les télécommunications*^a, Son Excellence la Gouverneure générale en conseil prend le *Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication*, ci-après.

^a L.C. 1993, ch. 38

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives

Direction

1 In exercising its powers and performing its duties under the *Telecommunications Act*, the Canadian Radio-television and Telecommunications Commission (the “Commission”) shall implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:

(a) the Commission should

(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and

(ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives;

(b) the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that

(i) specify the telecommunications policy objective that is advanced by those measures and demonstrate their compliance with this Order,

(ii) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,

(iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner, and

(iv) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers; and

(c) the Commission, to enable it to act in a more efficient, informed and timely manner, should adopt the following practices, namely,

Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication

Instructions

1 Dans l'exercice des pouvoirs et fonctions qui lui confère la *Loi sur les télécommunications*, le Conseil de la radiodiffusion et des télécommunications canadiennes doit mettre en œuvre la politique canadienne de télécommunication énoncée à l'article 7 de cette loi selon les principes suivants :

a) il devrait :

(i) se fier, dans la plus grande mesure du possible, au libre jeu du marché comme moyen d'atteindre les objectifs de la politique,

(ii) lorsqu'il a recours à la réglementation, prendre des mesures qui sont efficaces et proportionnelles aux buts visés et qui ne font obstacle au libre jeu d'un marché concurrentiel que dans la mesure minimale nécessaire pour atteindre les objectifs;

b) lorsqu'il a recours à la réglementation, il devrait prendre des mesures qui satisfont aux exigences suivantes :

(i) préciser l'objectif qu'elles visent et démontrer leur conformité avec le présent décret,

(ii) lorsqu'elles sont de nature économique, ne pas décourager un accès au marché qui est propice à la concurrence et qui est efficace économiquement, ni encourager un accès au marché qui est non-efficace économiquement,

(iii) lorsqu'elles sont de nature non économique, être mises en œuvre, dans toute la mesure du possible, de manière symétrique et neutre sur le plan de la concurrence,

(iv) lorsqu'elles visent des ententes d'interconnexion de réseaux ou des régimes d'accès aux réseaux, aux immeubles, au câblage dans les immeubles ou aux structures de soutien, donner lieu, dans toute la mesure du possible, à des ententes ou régimes neutres sur le plan de la technologie et de

(i) to use only tariff approval mechanisms that are as minimally intrusive and as minimally onerous as possible,

(ii) with a view to increasing incentives for innovation and investment in and construction of competing telecommunications network facilities, to complete a review of its regulatory framework regarding mandated access to wholesale services, to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and to determine the appropriate pricing of mandated services, which review should take into account the principles of technological and competitive neutrality, the potential for incumbents to exercise market power in the wholesale and retail markets for the service in the absence of mandated access to wholesale services, and the impediments faced by new and existing carriers seeking to develop competing network facilities,

(iii) to publish and maintain performance standards for its various processes, and

(iv) to continue to explore and implement new approaches for streamlining its processes.

Effect of Order

2 This Order is binding on the Commission beginning on the day on which it comes into force and applies in respect of matters pending before the Commission on that day.

Coming into Force

3 This Order comes into force on the day on which it is registered.

la concurrence, pour permettre aux nouvelles technologies de faire concurrence et pour ne pas favoriser artificiellement les entreprises canadiennes ou les revendeurs;

c) afin d'agir de façon plus efficace, éclairée et opportune, il devrait adopter les pratiques suivantes :

(i) utiliser les mécanismes d'approbation tarifaires les moins intrusifs et les moins onéreux possible,

(ii) mener à terme l'examen de son cadre de réglementation quant à l'accès obligatoire aux services de gros pour déterminer dans quelle mesure cet accès aux services de gros non essentiels devrait être éliminé graduellement et pour déterminer la tarification appropriée aux services obligatoires et ce, en vue d'accroître les incitatifs pour l'innovation, l'investissement et la construction relativement aux installations de réseaux de télécommunication concurrentielles, lequel examen devrait tenir compte des principes de la neutralité sur les plans de la technologie et de la concurrence, de la capacité des entreprises titulaires de continuer d'occuper une position dominante sur les marchés de gros et de détail en l'absence de l'obligation de donner accès aux services de gros, et des obstacles auxquels se heurtent tant les nouvelles entreprises, que celles déjà établies, lorsqu'elles souhaitent mettre sur pied des installations de réseaux concurrentielles,

(iii) publier et tenir à jour des normes de rendement pour ses divers processus,

(iv) continuer d'explorer et de mettre en œuvre de nouvelles façons de simplifier ses processus.

Effet du décret

2 Le présent décret lie le Conseil à compter de son entrée en vigueur et s'applique à toutes les affaires en instance devant le Conseil à cette date.

Entrée en vigueur

3 Le présent décret entre en vigueur à la date de son enregistrement.

This is Exhibit "B" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



CANADA

CONSOLIDATION

CODIFICATION

Order Issuing a Direction to the
CRTC on Implementing the
Canadian Telecommunications
Policy Objectives to Promote
Competition, Affordability,
Consumer Interests and
Innovation

Décret donnant au CRTC des
instructions relativement à la
mise en œuvre de la politique
canadienne de
télécommunication pour
promouvoir la concurrence,
l'abordabilité, les intérêts des
consommateurs et l'innovation

SOR/2019-227

DORS/2019-227

Current to May 4, 2021

À jour au 4 mai 2021

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to May 4, 2021. Any amendments that were not in force as of May 4, 2021 are set out at the end of this document under the heading “Amendments Not in Force”.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité — règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 4 mai 2021. Toutes modifications qui n'étaient pas en vigueur au 4 mai 2021 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS**Order Issuing a Direction to the CRTC on
Implementing the Canadian Telecommunications
Policy Objectives to Promote Competition,
Affordability, Consumer Interests and Innovation**

	Direction
1	Principles
	Effect of Order
2	Effect
	Coming into Force
3	Registration

TABLE ANALYTIQUE**Décret donnant au CRTC des instructions
relativement à la mise en œuvre de la politique
canadienne de télécommunication pour promouvoir
la concurrence, l'abordabilité, les intérêts des
consommateurs et l'innovation**

	Instructions
1	Principes
	Effet du décret
2	Effet
	Entrée en vigueur
3	Enregistrement

Registration
SOR/2019-227 June 17, 2019

TELECOMMUNICATIONS ACT

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation

P.C. 2019-803 June 16, 2019

Whereas the Governor in Council, in 2006, issued to the Canadian Radio-television and Telecommunications Commission an order entitled *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*^a (the “2006 Direction”);

Whereas the telecommunications market and its regulation have changed since 2006 and the Governor in Council is of the opinion that additional directions should be issued to the Commission as a result of those changes;

Whereas one of the purposes of the additional directions is to guide the Commission on how the 2006 Direction is to be implemented;

Whereas, pursuant to subsection 10(1) of the *Telecommunications Act*^b, the Minister of Industry had a copy of the proposed *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation* published in the *Canada Gazette*, Part I, on March 9, 2019, substantially in the annexed form, and a reasonable opportunity was given to interested persons to make representations to the Minister with respect to the proposed Order;

Whereas, pursuant to subsection 10(1) of that Act, the Minister laid the proposed Order before each House of Parliament and 40 sitting days of Parliament have elapsed since the proposed Order was tabled in both Houses;

Whereas, pursuant to subsection 10(2) of that Act, the Minister consulted the Commission with respect to the proposed Order before it was published and laid and consulted the Commission again with respect to the proposed Order in its definitive form;

^a SOR/2006-355

^b S.C. 1993, c. 38

Enregistrement
DORS/2019-227 Le 17 juin 2019

LOI SUR LES TÉLÉCOMMUNICATIONS

Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication pour promouvoir la concurrence, l’abordabilité, les intérêts des consommateurs et l’innovation

C.P. 2019-803 Le 16 juin 2019

Attendu que le gouverneur général en conseil a émis au Conseil de la radiodiffusion et des télécommunications canadiennes un décret intitulé *Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication*^a (les « instructions de 2006 ») en 2006;

Attendu que le marché des télécommunications et sa réglementation ont changé depuis 2006 et que la gouverneure en conseil est d’avis que des instructions supplémentaires devraient être émises à l’intention du Conseil à la suite de ces changements;

Attendu que l’un des objectifs des nouvelles instructions est d’orienter le Conseil sur la façon de mettre en œuvre les instructions de 2006;

Attendu que, conformément au paragraphe 10(1) de la *Loi sur les télécommunications*^b, le ministre de l’Industrie a fait publier dans la Partie I de la *Gazette du Canada*, le 9 mars 2019, le projet de décret intitulé *Décret donnant au CRTC des instructions relative à la mise en œuvre de la politique canadienne de télécommunication pour promouvoir la concurrence, l’abordabilité, les intérêts des consommateurs et l’innovation*, conforme en substance au texte ci-après, et que les intéressés ont ainsi eu la possibilité de présenter au ministre leurs observations à cet égard;

Attendu que, conformément au paragraphe 10(1) de la Loi, le ministre a fait déposer le projet de décret devant chaque chambre du Parlement et que quarante jours de séance du Parlement se sont écoulés depuis le dépôt devant chaque chambre;

Attendu que, conformément au paragraphe 10(2) de la Loi, le ministre a consulté le Conseil avant la publication et le dépôt du projet de décret et que la version définitive du projet de décret a fait l’objet d’une nouvelle consultation;

^a DORS/2006-355

^b L.C. 1993, ch. 38

And whereas, pursuant to section 13 of that Act, the Minister, before making a recommendation to the Governor in Council for the purposes of this Order, notified the minister designated by the government of each province of the Minister's intention to make the recommendation and provided an opportunity for each of them to consult with the Minister;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to section 8 of the *Telecommunications Act*^b, makes the annexed *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*.

Attendu que, conformément à l'article 13 de la Loi, le ministre, avant de présenter sa recommandation à la gouverneure en conseil sur la prise du présent décret, a avisé le ministre désigné par le gouvernement de chaque province de son intention de présenter la recommandation et qu'il lui a donné la possibilité de le consulter,

À ces causes, sur recommandation du ministre de l'Industrie et en vertu de l'article 8 de la *Loi sur les télécommunications*^b, Son Excellence la Gouverneure générale en conseil prend le *Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication pour promouvoir la concurrence, l'abordabilité, les intérêts des consommateurs et l'innovation*, ci-après.

^b S.C. 1993, c. 38

^b L.C. 1993, ch. 38

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation

Direction

Principles

1 In exercising its powers and performing its duties under the *Telecommunications Act*, the Commission must implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:

(a) the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation, in particular the extent to which they

(i) encourage all forms of competition and investment,

(ii) foster affordability and lower prices, particularly when telecommunications service providers exercise market power,

(iii) ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas,

(iv) enhance and protect the rights of consumers in their relationships with telecommunications service providers, including rights related to accessibility,

(v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional or smaller than the incumbent national service providers,

(vi) enable innovation in telecommunications services, including new technologies and differentiated service offerings, and

(vii) stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services; and

(b) the Commission, in its decisions, should demonstrate its compliance with this Order and should

Décret donnant au CRTC des instructions relativement à la mise en œuvre de la politique canadienne de télécommunication pour promouvoir la concurrence, l'abordabilité, les intérêts des consommateurs et l'innovation

Instructions

Principes

1 Dans l'exercice des pouvoirs et fonctions que lui confère la *Loi sur les télécommunications*, le Conseil met en œuvre la politique canadienne de télécommunication énoncée à l'article 7 de cette loi selon les principes suivants :

a) il devrait examiner comment ses décisions peuvent promouvoir la concurrence, l'abordabilité, les intérêts des consommateurs et l'innovation, en particulier la mesure dans laquelle elles :

(i) encouragent toutes formes de concurrence et d'investissement,

(ii) favorisent l'abordabilité et des prix plus bas, notamment lorsque les fournisseurs de services de télécommunication exercent un pouvoir de marché,

(iii) font en sorte qu'un accès abordable à des services de télécommunication de haute qualité soit disponible dans toutes les régions du Canada, notamment les régions rurales,

(iv) renforcent et protègent les droits des consommateurs dans leurs relations avec les fournisseurs de services de télécommunication, notamment les droits ayant trait à l'accessibilité,

(v) réduisent les obstacles à l'entrée sur le marché et à la concurrence pour les fournisseurs de services de télécommunication, qu'ils soient nouveaux, régionaux, ou plus petits que les fournisseurs de services titulaires nationaux,

(vi) permettent l'innovation dans les services de télécommunication, y compris de nouvelles technologies et des offres de services différenciées,

(vii) stimulent l'investissement dans la recherche et le développement et dans d'autres actifs incorporels qui soutiennent l'offre et la fourniture de services de télécommunication;

specify how those decisions can, as applicable, promote competition, affordability, consumer interests and innovation.

b) dans ses décisions, il devrait démontrer sa conformité avec le présent décret et préciser comment ses décisions peuvent promouvoir la concurrence, l'abordabilité, les intérêts des consommateurs et l'innovation.

Effect of Order

Effect

2 This Order is binding on the Commission beginning on the day on which it comes into force and applies in respect of matters pending before the Commission on that day.

Effet du décret

Effet

2 Le présent décret lie le Conseil à compter de son entrée en vigueur et s'applique à toutes les affaires en instance devant le Conseil à cette date.

Coming into Force

Registration

3 This Order comes into force on the day on which it is registered.

Entrée en vigueur

Enregistrement

3 Le présent décret entre en vigueur à la date de son enregistrement.

This is Exhibit "C" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

PUBLIC TELEPHONE SERVICE

SERVICE DE TÉLÉPHONE PUBLIC

Item

250. PUBLIC TELEPHONE SERVICE

1. The Company furnishes public telephone service at its discretion, primarily to make outgoing service available to the general public and determines the location of the service.

2. The occupant of the premises on which service is to be furnished is to sign the standard public telephone service agreement, except when the Company arranges for space and installs public telephones without providing for supervision by the occupant.

3. Public telephone services are listed in telephone directories only when the Company considers it necessary for the service in general.

4. Public telephones are equipped with coin-collecting devices except when "Charge-a-Call" or cardreader telephones are used to provide the service.

5. Reserved for future use.

6. Rates and Charges

(a) The rate specified in (d)(1) below applies for each originating local call that is paid with coins deposited in the coin collecting device. This rate also applies for each originated local call that is paid using an authorized debit card of an approved institution or organization. The Company determines those public telephones which will accept debit card transactions.

(b) The rate specified in (d)(2) below applies for each originating local call when the connection is established at the request of the calling party for collect, third number or Calling Card billing. This rate also applies for each originating local call billed to a commercial credit card at a cardreader pay telephone.

Exception: This rate is reduced to the rate specified in (d)(1) below, for operator-assisted collect or Calling Card calls requested by disabled persons who have obtained certification from either a physician or a home care professional acceptable to the Company.

(c) These rates do not apply for local calls placed to 9-1-1.

Article

250. SERVICE DE TÉLÉPHONE PUBLIC

1. La Compagnie assure le service de téléphone public à sa discrétion, principalement pour mettre à la disposition du public en général un service téléphonique de départ; elle détermine l'emplacement du service.

2. L'occupant des lieux où le service est fourni doit signer le contrat standard du service de téléphone public, sauf si la Compagnie obtient un emplacement et y installe des téléphones publics sans demander à l'occupant de les surveiller.

3. Les numéros des téléphones publics figurent dans les annuaires téléphoniques seulement si la Compagnie le juge nécessaire pour le service en général.

4. Les téléphones publics sont équipés de dispositifs d'encaissement, sauf lorsque ce sont des téléphones Débitel ou des téléphones à carte qui assurent le service.

S 5. Réservé pour utilisation ultérieure. **S**

6. Tarifs et frais

(a) Le tarif indiqué en (d)(1) ci-dessous vise chaque appel local de départ qui est payé au moyen de pièces de monnaie déposées dans le dispositif d'encaissement. Ce tarif vise également chaque appel local de départ payé au moyen d'une carte de débit autorisée d'un établissement ou d'un organisme autorisés. La Compagnie détermine quels téléphones publics accepteront les communications sur carte de débit.

(b) Le tarif indiqué en (d)(2) ci-dessous vise chaque appel local de départ lorsque la communication est établie à la demande du demandeur, soit pour un appel à frais virés, appel porté à un 3e numéro soit pour un appel sur carte d'appel. Ce tarif vise également chaque appel local de départ sur carte de crédit commerciale établi à partir d'un téléphone payant à carte.

Exception: Ce tarif est réduit au tarif indiqué en (d)(1) ci-dessous dans le cas des appels à frais virés avec assistance du téléphoniste ou des appels sur carte d'appel établis à la demande des personnes handicapées qui ont obtenu un certificat d'un médecin ou d'un professionnel de soins à domicile acceptable par la Compagnie.

(c) Ces tarifs ne s'appliquent pas aux appels locaux faits au 9-1-1.

(d)(1) each/l'unité (Note)	\$0.50
(2) each/l'unité.....	1.00

Note: This rate includes any applicable taxes.

Note: Ce tarif inclut n'importe quelles taxes applicables.

PUBLIC TELEPHONE SERVICE

SERVICE DE TÉLÉPHONE PUBLIC

Item

250. PUBLIC TELEPHONE SERVICE - continued

7. Regular rates apply for each message toll service call that is paid for with coins deposited in the coin collecting device except that the resultant charge, including applicable taxes, is rounded to the nearest nickel.

8. Service charges associated with the establishment of service and distance charges do not apply. Changes of location and other changes which the Company considers necessary are made without charge; otherwise, service charges apply for the work as stated in Item 100.

9. The Company also accepts payment for calls originated from public telephones through prepaid cash cards or reloadable cash cards.

10. The rate specified in 6(d)(1) above applies for each originated local call that is paid for using an authorized cash card. As an exception and where technology permits, when the remaining value of a non-reloadable cash card is from \$0.05 to \$0.45, this value applies.

11. For each originated message toll call that is paid for using an authorized cash card, the rate specified for Automated Calling Card service would apply, except that the resultant charge, including applicable taxes, is rounded to the nearest nickel.

12. The Company determines those public telephones which accept cash card transactions.

13. The Company will issue promotional pre-paid cash cards with a value of up to \$25.00. These cards may be distributed at events such as consumer exhibitions, trade shows, sporting events, or elsewhere. The Company intends to distribute the cards in a random fashion at each event or in each market segment where the promotion is aimed. At each event where promotional cards are distributed, the Company intends to give no more than one card per person. In addition, the Company may provide sample cards to existing and potential pre-paid cash card retailers.

14. The Company may also introduce marketing initiatives such as where pre-paid cards may be provided at a discount below face value or, alternatively, the pre-paid card may have in excess of the face value on the card. The Company intends its marketing activities to impact broad segments of its target market

Article

250. SERVICE DE TÉLÉPHONE PUBLIC - suite

7. Les tarifs habituels visent chaque appel interurbain payé au moyen de pièces de monnaie déposées dans le dispositif d'encaissement, sauf que les frais qui en résultent, y compris les taxes, sont arrondis au multiple de cinq cents le plus proche.

8. L'établissement de ce service ne comporte pas de frais de service et il n'y a pas de frais de distance. La Compagnie effectue sans frais les changements de lieu et autres changements qu'elle juge nécessaires: par ailleurs, des frais de service s'appliquent aux travaux mentionnés à l'article 100.

9. La Compagnie accepte aussi le paiement par carte prépayée ou par carte bancaire rechargeable pour les appels faits à partir de téléphones publics.

10. Le tarif indiqué en 6(d)(1) ci-dessus vise chaque appel local de départ payé au moyen d'une carte prépayée autorisée. À titre d'exception et à condition que la technologie le permette, lorsque la valeur restante d'une carte de paiement non rechargeable se situe entre \$0.05 et \$0.45, c'est cette valeur qui s'applique.

11. Pour chaque appel interurbain de départ payé au moyen d'une carte prépayée autorisée, le tarif indiqué pour le service Carte d'appel automatique s'appliquerait, sauf que les frais qui en résultent, y compris les taxes, sont arrondis au multiple de cinq le plus proche.

12. La Compagnie détermine quels téléphones publics offriront les transactions par carte prépayée.

13. La Compagnie remettra, à des fins de promotion, des cartes prépayées avec une valeur maximum de \$25.00. Ces cartes peuvent être distribuées lors des événements tels que d'expositions, de foires commerciales, d'événements sportifs ou dans d'autres circonstances. La Compagnie prévoit distribuer les cartes de façon aléatoire lors de chaque événement ou à chaque segment de marché visé par la promotion. À chaque événement où les cartes sont distribuées, la Compagnie a l'intention de limiter cette distribution à une carte par personne. De plus, la Compagnie peut offrir des échantillons de carte aux marchands de cartes prépayées actuels ou potentiels.

14. La Compagnie peut également, dans le cadre d'un programme de marketing, offrir des cartes prépayées à un prix inférieur à la valeur réelle ou des cartes prépayées d'une valeur supérieure à la valeur réelle. La Compagnie compte atteindre de vastes segments de son marché cible grâce à ses initiatives.

Continued on page 62A-1 / Suite page 62A-1.

See page 4 for explanation of symbols / Voir liste des symboles page 4.

Issued/Publication 2007 05 14

Authority: Telecom Order CRTC 2007-182 May 24, 2007.

Effective date/Entrée en vigueur 2007 06 02

Cf. Ordonnance Télécom CRTC 2007-182 du 24 mai 2007.

This is Exhibit "D" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

Canadian Radio-television and Telecommunications Commission[Home](#) → [Business](#) → [Decisions, Notices and Orders](#)

Telecom Decision

Ottawa, 18 December 1997

See also: [97-19-1](#)

Telecom Decision CRTC 97-19

FORBEARANCE - REGULATION OF TOLL SERVICES PROVIDED BY INCUMBENT TELEPHONE COMPANIES

File No.: 96-2333

I GENERAL CONCLUSIONS

1. The Commission finds that to refrain from regulation for toll services (which includes basic toll and discount toll services) and toll free services (or so-called 800/888 services) would be consistent with the Canadian telecommunications policy objectives, and that toll and toll free services are, or will become, subject to a level of competition sufficient to protect the interests of users. The Commission is of the view that it is appropriate to forbear, as described more particularly below, from regulation in respect of both the toll and toll free markets of the Stentor member companies (except Sask Tel) (the Stentor companies) and Sogetel inc. (Sogetel), and, subject to proving compliance with the equal access implementation condition detailed below, to forbear to the same extent from the regulation of toll and toll free services of Québec-Téléphone and Télébec Itée (Télébec).

2. Based upon an evaluation of the factors identified in Review of Regulatory Framework, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19 or the Regulatory Framework Decision) to define the relevant service market, the Commission finds that toll services are comprised of the following two markets: (i) toll services; and (ii) toll free services, and that the toll and toll free markets are national, rather than regional or local in scope.

3. In general terms, both the toll and toll free markets manifest the indicators of workably competitive markets. Both are characterized by: (i) a number of competitive suppliers; (ii) subscribers who have demonstrated a willingness to switch to competitive suppliers; (iii) an adequate supply of switching and transmission facilities; and (iv) low barriers to entry. Furthermore, both markets show extensive evidence of rivalrous behaviour, including falling prices, vigorous and aggressive marketing activities, and an expanding scope of activities.

4. The telephone companies subject to this Decision will no longer require prior Commission approval of tariffs and rates under section 25 of the Telecommunications Act (the Act) for the toll and toll free services which they provide. As an imputation test will no longer apply, the toll and toll free

services of these companies will no longer be required to be priced above the floor levels prescribed under the Commission's service-specific imputation test. The Commission will also forbear from exercising its power under section 31 of the Act to authorize limitations of liability in relation to the toll and toll free services of the telephone companies.

5. In view of the Commission's concerns about the extent of workable competition in areas of the country not served by equal access switches (non-equal access areas), and the concern that revenues from basic toll services could be used to subsidize below cost pricing to the detriment of workable competition in more competitive segments of the toll and toll free markets, the Commission will continue to exercise its powers to impose certain conditions under section 24. The Commission will continue to apply, in modified form, an upward pricing constraint on basic toll services. The Commission will also continue to exercise, in part, its powers in respect of just and reasonable rates and unjust discrimination under section 27, and its powers to approve certain agreements or arrangements under section 29 of the Act.

II BACKGROUND

6. On 24 July 1996, the Commission issued Forbearance from Regulation of Toll Services Provided by Dominant Carriers, Telecom Public Notice CRTC 96-26 (PN 96-26), initiating a public process to consider the appropriate time and extent to which the Commission should, pursuant to section 34 of the the Act, forbear from the regulation of some or all of the toll services offered by the Stentor companies, the Quebec independent telephone companies, and Ontario Northland Transportation Commission (the telecommunications operating division of which is now known as O.N. Tel) (referred hereinafter collectively as the Incumbent telephone companies).

7. In Decision 94-19, the Commission stated that in general, it supported forbearance for the Stentor companies with respect to toll services. However, the Commission indicated that the following conditions must be met before it could forbear from the regulation of such services: (1) full technical and operational implementation of equal access; (2) resolution of 800 access related issues; (3) comparable access for competitors including the resolution of unbundling and co-location (local competition) issues; (4) implementation of the imputation test; (5) the splitting of the rate base and the implementation of the Carrier Access Tariff (CAT); and (6) evidence of rivalry in the relevant market.

8. In Forbearance - Services Provided by Non-Dominant Canadian Carriers, Telecom Decision CRTC 95-19, 8 September 1995 (Decision 95-19 or the Non-Dominant Carriers Decision), the Commission declined to forbear from the regulation of the Stentor companies' toll and toll free services as part of its consideration of forbearance from regulation of the services provided by the non-dominant long distance carriers. In so doing, the Commission stated in part: "Specifically, the Commission finds that a degree of forbearance for the Stentor companies greater than that contemplated in Decision 94-19 would be likely, at this time, to impair unduly the continuance of a competitive market."

9. In PN 96-26, the Commission noted that conditions 1, 2, 4, and 5 identified above in Decision 94-19 had been satisfied by the Stentor companies, and that condition 3 would be addressed in various proceedings dealing with issues such as interconnection, unbundling and co-location with anticipated implementation in 1997. Accordingly, the Commission, in PN 96-26, sought comment on, among others, the following issues:

- (i) Is or will there be sufficient competition in each of the Basic Toll, Toll-free and Discount Toll market segments to justify forbearance, and, if so, what should be the extent of forbearance and should it be conditional or unconditional?
- (ii) Should the current imputation test be maintained as a test to resolve complaints in a de-tariffed environment?
- (iii) In the event the Basic Toll market segment rates continue to be regulated, is there a continued requirement for an upward pricing constraint in this segment, and, if so, what, if any, changes should be made to the current regulatory safeguards?

10. The Commission received submissions from the following parties: Stentor Resource Centre Inc. (Stentor) (on behalf of BC TEL, Bell Canada (Bell), The Island Telephone Company Limited (Island Tel), MTS NetCom Inc., Maritime Tel & Tel Limited, The New Brunswick Telephone Company, Limited (NBTEL), NewTel Communications Inc. (NewTel), and TELUS Communications Inc. (TELUS)), TELUS (on its own behalf), the Director of Investigation and Research under the Competition Act (the Director of Investigation), ACC TelEnterprises Ltd. (ACC), AT&T Canada Long Distance Services Company (AT&T Canada LDS), the B.C. Old Age Pensioners' Association et al. (BCOAPO et al.), Call-Net Enterprises Inc. (Call-Net), the Canadian Business Telecommunications Alliance (CBTA), the Canadian Cable Television Association (CCTA), the Consumers' Association of Canada, La Fédération nationale des associations de consommateurs du Québec and the National Anti-Poverty Organization (CAC/FNACQ/NAPO), FONOROLA Inc. (FONOROLA), Fundy Cable Ltd. (Fundy), O.N. Tel, the Province of Saskatchewan Department of Intergovernmental Affairs and Westel Telecommunications Ltd. (Westel). London Telecom Network (London Telecom), the Province of British Columbia Information and Technology Access Office, NBTEL, and the Province of Manitoba also filed submissions during the comment and reply phases of the proceeding. The Government of Quebec Minister of Culture and Communications participated in the interrogatory phase of the proceeding only.

11. Parties' forbearance proposals ranged from submissions that the Commission should forbear completely and unconditionally, to submissions that the Commission ought not to forbear.

III SPECIFIC CONCLUSIONS

A. Market Definition

12. The Commission established, in Decision 94-19, the analytical framework for determining whether to forbear from regulation pursuant to section 34 of the Act. In that Decision, the Commission adopted the concept of market power as the standard by which to determine whether a market is, or is likely to become, workably competitive.

13. An accepted definition of market power is the ability of a firm to impose unilaterally and profitably a significant, non-transitory price increase within the relevant market.

14. As noted in Decision 94-19, the definition of the relevant service market requires consideration of both demand and supply factors. Demand factors include: (i) the ability of customers to switch to other service suppliers; (ii) the availability of practicable substitutes; and (iii) the ease with which customers are able to switch between the products or services offered by competitors. Supply considerations include: (i) the supply expansion responses of firms to price increases; (ii) the ability of competitors to enter the market; and (iii) the presence of barriers to entry.

15. Parties expressed a broad range of views on the definition of the relevant toll services market or markets. Alternative providers of long distance services (APLDS) generally asserted that the basic, discount, and toll free market segments identified by the Commission in Decision 94-19 and in PN 96-26 have evolved into the following three markets: (i) residential toll; (ii) business outbound toll; and (iii) business inbound toll service. This argument rests, among other things, upon the view that business and residential services are distinguishable on the basis of off-peak discounts, the magnitude of discounts, the presence of minimum billing levels, and the availability of provincial or national aggregation.

16. CCTA argued that toll services are comprised of just two markets, basic toll and non-basic toll, and submitted that basic toll is not yet subject to sufficient competition to warrant forbearance.

17. In contrast, the Director of Investigation, Stentor and TELUS argued that toll services constitute just one market, since the same plant, technology, switches and conduit are used to transmit all toll messages, and since basic toll, discount toll and toll free are merely different billing arrangements for the same service.

18. The Commission finds that the relevant service markets for the purposes of determining whether to forbear are as follows: (i) the toll market (which includes basic toll and discount toll services); and (ii) the toll free market.

19. The Commission considers that the toll free market continues to be a market separate and distinct from the remainder of the toll market on the basis that customers of toll free services would incur significant costs and customer dislocation if required to migrate to other toll services, and because subscribers of toll free service would likely not view other toll services as substitutes for toll free service.

20. The Commission further considers that basic and discount toll services constitute one market distinct from the toll free market. The Commission notes that discount services are ready substitutes for basic toll services, and, in contrast with toll free services, there are no meaningful barriers preventing subscribers of basic toll services from switching to discount toll services.

21. The Commission is of the view that it would not be appropriate to segment the toll markets into business and residence categories as proposed by APLDS since basic toll service is used by both residence and business customers and the same rates apply. Further, the purported distinction between residence toll and business toll service arises substantially by virtue of the definitions of

business and residence service currently prescribed in the Stentor companies' tariffs. These classifications are presently under consideration in the proceeding initiated by Definition of Business and Residence Service for Stentor Member Companies, Telecom Public Notice CRTC 97-30, 7 August 1997.

22. Regarding the geographic scope of the toll and toll free markets, the Commission notes that the majority of parties agreed that the markets are national in scope.

23. The Commission notes, however, that several parties disagreed with the Commission's view expressed in PN 96-26 regarding the full implementation of equal access. They argued that as there are areas of the country where equal access is not yet operational, non-equal access areas should be considered as separate and less mature markets for the purpose of the forbearance analysis, and that such areas should therefore be excluded from any forbearance determination.

24. The Commission agrees with the majority of parties that the geographic scope of the toll and toll free service markets is national rather than regional or localized in scope. The Commission notes that most toll and toll free services are available nationally, the Stentor companies and their competitors market many of their services nationally, and service advertizing does not generally distinguish between intra and inter-company or inter-regional toll calling.

25. As discussed more fully in section D below, the Commission considers that certain safeguards applicable in non-equal access areas are necessary reflecting the lower degree of competition to protect the interests of users in these areas, while allowing for some degree of forbearance. In the Commission's view, such a national forbearance determination provides an appropriate balance between the Act's objectives of ensuring that regulation is efficient and effective, while, at the same time, promoting reliable and affordable telecommunications services accessible in both urban and rural areas in all regions of Canada.

B. Competition and Market Power

26. In assessing whether carriers possess market power, the Commission considers a number of factors: (i) market shares of the dominant and competing firms; (ii) demand conditions; (iii) supply conditions; (iv) likelihood of entry into the market; (v) barriers to entry; and (vi) evidence of rivalrous behaviour.

(i) Market Share

27. The record indicates that as of year-end 1996, the Stentor companies had, on average, across their combined territories, approximately 70% of the combined toll and toll free markets calculated on the basis of minutes of traffic, and that APLDS had approximately 30% of these combined markets. It is estimated that APLDS will have captured approximately 34% of the combined toll and toll free markets in the Stentor companies' territories by year-end 1997.

28. The Commission remains of the view expressed in Decision 94-19 that it would be inappropriate to adhere to a particular market share as a basis for determining whether to forbear.

(ii) Demand Conditions

29. In its review of demand conditions, the Commission considers the following factors: (i) the ability and willingness of customers to switch to another supplier or to reduce consumption in response to a price increase by the dominant supplier; (ii) the availability of economically feasible and practical substitutes; (iii) costs to customers of switching suppliers; and (iv) whether the product is an essential input.

30. APLDS expressed concerns regarding the willingness or ability of low volume residential toll users to switch suppliers. They argued that the inconvenience of obtaining pricing information and of dealing with multiple service providers for toll and local service often outweighs the potential savings on long distance services available to toll users who switch to an APLDS. APLDS also noted that customer inertia among low volume residential toll users is exacerbated by the practice of assigning new customers of local telephone service to the telephone company's toll service where the customer has not made an active decision to switch to an APLDS at the time of the initial service order. APLDS also stated that price elasticity of demand is not high enough to limit significantly the exercise of market power.

31. Stentor noted the Commission's statement in Customer Balloting to Select a Long Distance Service Provider, Telecom Decision CRTC 95-12, 8 June 1995, that it is primarily the responsibility of new entrants to overcome problems such as customer inertia due to a lack of information. Stentor also argued that APLDS have started to compete very actively for the low volume segment of the market, as evidenced by the availability of a number of discount plans which do not involve fees, and the introduction of discount plans not requiring minimum spending levels in order for the subscriber to qualify for discounts.

32. The Commission is of the view that the record, particularly evidence of growing traffic volumes and steadily increasing market share among APLDS, indicates that both toll markets generally manifest the demand indicators associated with a competitive market identified by the Commission in Decision 94-19, particularly evidence that subscribers are able and willing to change suppliers.

33. The Commission considers, however, that the basic toll segment of the toll market has exhibited consumption characteristics marked by a greater degree of customer inertia than for the toll market as a whole. This would appear to reflect a significant number of customers whose volume of toll use is at such a low level as to not warrant switching to a discount plan. It is also noted that the rates for the basic toll segment have remained unchanged or been subject to relatively minor price reductions since facilities-based toll competition was introduced in 1992.

(iii) Supply Conditions

34. Supply expansion responses of firms to price increases or other developments affecting the relevant market are a further factor considered to evaluate market power. The easier it is for rivals to expand output in response to a price increase by the dominant firm in the market, the lower is the dominant firm's market power.

35. The record indicates a general consensus that there is an adequate supply of toll switching facilities. However, parties were divided as to whether the supply of toll transmission facilities is sufficient to discipline a price increase by one or more of the Stentor companies.

36. APLDS argued that, while there is adequate fibre capacity in the Québec City to Windsor and Vancouver to Edmonton corridors, capacity in the rest of Canada, particularly in Atlantic Canada and across the Prairies, is severely constrained. APLDS noted that AT&T Canada LDS' backbone across the Prairies and into Atlantic Canada is a digital radio system which is currently fully utilized, and that expansion of this system would not be economical because of radio spectrum scarcity and limitations of the technology. APLDS therefore asserted that their existing transmission capacity is insufficient to discipline the market and prevent Stentor from raising rates.

37. APLDS noted that the fONOROLA-Ledcor Industries Ltd. fibre facility from Vancouver to Toronto currently under construction, would not be operational until at least early-1999. The construction of a competitive trans-Canada fibre transmission facility was among the necessary pre-conditions to toll forbearance proposed by many APLDS.

38. Stentor and TELUS argued that APLDS have a sufficient supply of switching and transmission facilities that is workably competitive and expected to intensify over time.

39. The Director of Investigation submitted that there is not yet sufficient facilities-based capacity in the hands of competitors in some cross-sections to accommodate existing traffic levels. The Director of Investigation indicated that this lack of facilities has not, however, prevented competitive entry into markets utilizing these cross-sections.

40. The Commission considers that the record regarding the supply of transmission capacity does not preclude a forbearance determination.

41. The record indicates that APLDS have opted to construct facilities in the high use Windsor to Québec City and Calgary/Edmonton to Vancouver corridors.

42. In the Commission's view, the absence of ubiquitous competitor-owned transmission facilities across Canada does not necessarily demonstrate there is a shortage of transmission facilities. The Commission notes that although APLDS have not yet constructed facilities in all corridors, service providers may lease additional capacity from the Stentor companies in areas where they do not own transmission facilities.

43. In the Commission's view, the fact that many APLDS have experienced steadily increasing annual long distance traffic volumes, with a network configuration which has blended leased and self-owned facilities, demonstrates that such a blended approach is not inconsistent with workable competition.

44. The Commission notes that, whereas it determined in Decision 94-19 that effective facilities-based competition is a pre-condition for private line forbearance, this condition does not apply to toll forbearance.

45. The Commission considers that APLDS could lease additional transmission capacity from the Stentor companies to accommodate increased traffic caused by the migration of customers from the Stentor companies in the event of a significant price increase by one or more of the Stentor companies. As described more fully in section D below, the Commission considers that the continued exercise of certain of its powers under subsection 27(2) of the Act, similar to that

prescribed in respect of the non-dominant carriers in Decision 95-19, would serve to ensure that continued access to the Stentor companies' toll and toll free services is available and that these services are made available on a non-discriminatory basis for resale and sharing.

(iv) Market Entry

46. The likelihood of entry is a further indicator of market competitiveness. The analysis of this factor includes an examination of the following indicators: (i) whether entry occurred in the past; (ii) whether current attempts are being made to enter; and (iii) whether firms marketing related products or firms from other geographic markets have considered expanding into the relevant market.

47. The Commission considers that the evidence indicates substantial levels of entry in the toll and toll free markets. The Commission notes evaluations of the Canadian toll sector by the Yankee Group in its September 1996 White Paper, Yankee Watch Telecommunications, predicting stability for the Canadian toll sector, stronger earnings, and healthy outlooks for, amongst others: AT&T Canada LDS, Sprint Canada Inc. (Sprint), fONOROLA, ACC and London Telecom.

48. In addition, the September 1996 Yankee Group White Paper notes the growth of the wholesale segment comprised of new rebillers and resellers, which it states may be more prevalent in Canada than in the U.S. and which, it says, increases the commoditization of the industry and helps to promote strong retail price competition.

(v) Barriers to Entry

49. Barriers to entry is a further factor considered in the assessment of market dominance. The presence of essential bottleneck facilities that competitors cannot duplicate, regulations or policies preventing or limiting entry by competitors, lengthy construction periods, and high sunk investment costs are among possible barriers noted by the Commission in Decision 94-19.

50. APLDS identified factors such as high sunk costs, lengthy construction periods, economies of scale and scope, and foreign ownership restrictions as barriers to entry in the long distance markets. APLDS argued that because bypass restrictions prevent alternative carriers from using U.S. telecommunications facilities for the transmission of Canada-Canada calls, the scarcity in transmission capacity can only be eliminated through the construction of fibre links by APLDS between Edmonton and southern Ontario and from Québec City into Atlantic Canada. APLDS also argued that lengthy timeframes involved in the planning, financing, and construction of facilities, as well as the uncertainty of possible anti-competitive responses by the telephone companies, all serve to limit the entry of viable facilities-based competitors.

51. Stentor, TELUS and the Director of Investigation disputed the APLDS' assertion that toll markets are characterized by barriers to entry. TELUS noted that foreign ownership restrictions and bypass restrictions do not prohibit entry into the toll markets, and that the presence of ACC, which is not a Canadian carrier and which indicates it has no intention of constructing and owning its own facilities, provides ample evidence of the absence of barriers to entry.

52. The Director of Investigation argued that barriers to entry, whether regulatory, technical or financial, are relatively low. Among other things, the Director of Investigation noted that AT&T Canada LDS and Sprint have access to technical support through their alliances with U.S. carriers.

53. In the Commission's view, the record indicates that there are no significant barriers to entry into the toll and toll free markets.

(vi) Rivalrous Behaviour

54. Evidence of rivalrous behaviour, including falling prices, vigorous and aggressive marketing activities, or an expanding scope of activities by competitors in terms of products, services and geographic boundaries, is an important indicator in the Commission's consideration of the extent to which a market is, or may become, workably competitive.

55. Many APLDS conceded that the toll and toll free markets are generally characterized by falling prices and vigorous and aggressive marketing activities. However, APLDS asserted that overall market prices continue to be determined by the Stentor companies, and noted that any rivalrous behaviour has occurred in the presence of several important regulatory safeguards, including the requirement that proposed telephone company rates satisfy a service-specific imputation test and the principle of route-averaged pricing.

56. Stentor indicated that prices offered by APLDS are typically 15-20% lower, and in some cases, 20-30% lower than the prices of Stentor company services such as Advantage Outbound and Advantage Vnet. Stentor also stated that Bell's switched toll rates have declined by about 26% since the issuance of Resale and Sharing of Private Line Services, Telecom Decision CRTC 90-3, 1 March 1990, and about 18% since the issuance of Competition in the Provision of Public Long Distance Voice Telephone Services and Related Resale and Sharing Issues, Telecom Decision CRTC 92-12, 12 June 1992 (Decision 92-12), and that BC TEL's switched toll rates have declined about 31% since 1991 and about 25% since the issuance of Decision 92-12.

57. The Yankee Watch September 1996 White Paper on Telecommunications described the Canadian business telecommunications market from 1992 to 1996 as raucous, and marked by heavy discounting. The report stated that the price of long distance calling has dropped primarily because of volume discounts. Citing the example of a direct distance dialled call of five minutes in duration from Montréal to Toronto, the publication noted that, with the applicable discounts for \$10,000 in monthly calling, Stentor companies' prices have dropped almost 42% since 1991, whereas Sprint's price for the same five minute call has fallen 30%.

58. The Yankee Watch Report indicates average toll free prices have fallen approximately 33% from 1993 to 1996. The Yankee Group, the report's publishers, predicted that by year-end 1996, Stentor's market share in the toll free market would have fallen to 77% nation-wide. It estimated that Stentor's market share will continue to fall before stabilizing in the low 60% range by the end of 1999.

59. The Commission considers that, other than the basic toll sector of the toll market, the record indicates both the toll and toll free markets exhibit virtually all of the indicators of rivalry identified above.

60. The less developed level of rivalry and competition in the basic toll market segment is confirmed, in the Commission's view, in part, by the relatively minor price reductions for these services which have taken place since the introduction of competition compared with other sectors of the toll and toll free markets. The Commission notes, with the exception of price reductions in a few select distance bands by just two of the eight Stentor companies, that the basic toll rates applicable to intra-company, Canada-Canada and Canada-U.S. long distance calling for the Stentor companies are unchanged since the advent of facilities-based competition in their respective territories.

61. The relatively static level of basic toll rates compared with the price reductions in Stentor companies' discount plans, as well as the fact that some discount plans are generally marketed such that customers must enrol to qualify for savings off the basic toll rates, suggests, in the Commission's view, that the basic toll sector of the toll market is not subject to as intense a level of price competition as are the toll market as a whole and the toll free market.

C. Forbearance Determination

62. Based on the record, including the evidence: (i) of entry into the relevant markets; (ii) indicating the ability and willingness of customers generally to switch to APLDS; and (iii) of rivalrous behaviour, the Commission considers that the toll and toll free markets satisfy the criteria under section 34 of the Act for a forbearance determination and that it would be appropriate to forbear.

63. In particular, the Commission finds that a determination to forbear from regulation of the services provided by the Stentor companies listed in the Appendix of this Decision would, under subsection 34(1) of the Act, be consistent with the Canadian telecommunications policy objectives, including section 7(c) of the Act - to enhance the efficiency and competitiveness of Canadian telecommunications, and section 7(f) of the Act - to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective. In addition, the Commission is of the view that it would be appropriate under subsection 34(2) of the Act to forbear as it finds that the toll and toll free markets are subject to a level of competition sufficient to protect the interests of users of toll and toll free services. Finally, the Commission finds that to forbear would not impair unduly the establishment or continuance of a competitive market for toll or toll free services.

D. Scope of Forbearance for the Stentor Companies

64. The Commission notes that subsections 34(1) and (2) of the Act both empower the Commission to forbear in whole or in part, conditionally or unconditionally from the exercise of any power or the performance of any duty referred to therein. The scope of the Commission's forbearance determination is set out in detail below.

(i) Section 25 - Tariff Filings

65. The Commission notes that in Decision 95-19 it determined to forbear from the exercise of its powers under section 25 (filing and prior Commission approval of tariffs specifying rates) in respect of the non-dominant carriers. The Commission considers that it would be appropriate, given the

robust competition manifested generally in the toll and toll free markets noted above, to do likewise in respect of the Stentor companies.

66. To continue to require the Stentor companies to obtain prior Commission approval of tariffs for toll and toll free services would, in the Commission's view, generally place the Stentor companies at a competitive disadvantage relative to APLDS.

67. Absent certain safeguards, however, forbearance from the requirement to file and receive prior approval of tariffs under section 25 could leave basic toll and toll subscribers in non-equal access areas vulnerable to price increases. As discussed below, the Commission considers that these concerns can be appropriately addressed through various conditions of service and through partial forbearance in respect of the Commission's powers relating to just and reasonable rates and unjust discrimination under section 27.

(ii) Section 24 - Conditions

68. In Decision 95-19, the Commission retained its powers under section 24 (conditions on the offering and provision of telecommunications services) governing the treatment of customer confidential information and restricting the bypass of Canadian services and facilities to require that existing conditions continue to apply in respect of the non-dominant carriers. In addition, the Commission stated that it would retain its powers under section 24 to impose further conditions on the non-dominant carriers in the future if circumstances should require it. In addition to those section 24 conditions described elsewhere in this Decision, following is a list of the section 24 conditions which the Commission considers to be appropriate to apply to toll and toll free services offered or provided by the Stentor companies.

(a) Basic Toll Service and Non-Equal Access Areas

69. As stated above, the Commission considers that the basic toll sector of the toll market is not subject to as intense a level of price competition as are the toll market as a whole and the toll free market.

70. In PN 96-26, the Commission requested comment upon whether there is a continued requirement for an upward pricing constraint in the basic toll market segment, and, if so, what, if any, changes should be made to the current regulatory safeguards. Parties' positions on the issue were varied. Stentor, TELUS and the Director of Investigation proposed the abolition of the upward pricing constraint, while APLDS favoured its retention.

71. Stentor advocated the discontinuance of the cap on a number of grounds, including: (i) the arbitrary distinction between basic toll and discount toll service; (ii) the inappropriateness of applying differing regulatory regimes to the Stentor companies' toll services and those of APLDS, given that the companies' basic and discount toll services compete against similar services offered by competitors; (iii) the fact that the same Stentor company resources are used to serve low and high volume subscribers and the only difference is the cost of doing so; and (iv) even if the APLDS do not

presently compete in the low volume segment of the market, if the Stentor companies' basic toll prices are excessive relative to those for high volume users, this will create opportunities for resellers and specialized carriers.

72. TELUS argued that the cap on basic toll rates should be discarded and asserted that the overall toll market was sufficiently competitive to protect the interests of users.

73. APLDS advocated the retention of the cap for a variety of reasons. APLDS noted the continued presence of significant numbers of inert basic toll and low volume residential subscribers, notwithstanding substantial reductions in the level of toll contribution charges, as evidence that market forces are insufficient to discipline the Stentor companies' pricing in this market sector. ACC recommended that the Commission establish a maximum rate schedule for residential customers equal to the current basic toll rates.

74. In Decision 94-19, the Commission indicated that the discount toll and toll free market segments exhibited sufficient competitive pressures to obviate the need for upward pricing constraints. However, the Commission found that an upward pricing constraint would be appropriate in respect of the basic toll rates because of a reduced ability to rely on market forces to discipline pricing.

75. The Commission considers that the retention of a ceiling on basic toll rates would be appropriate. A ceiling would preclude the Stentor companies from generating increased revenues from the basic toll sector of the toll market which could be used to finance below cost pricing in areas of the market which are highly competitive. The retention of a ceiling would also provide consumers in the less competitive non-equal access areas with an additional safeguard against unjust or unreasonable rate increases in a de-tariffed environment.

76. The Commission notes that the price ceiling implemented in Decision 94-19 operates such that increases are permitted to rates in any of the North American basic toll schedules, provided that the weighted-average rate for the schedules considered on an aggregate basis remains unchanged.

77. The Commission notes that under the forbearance regime established in this Decision, the Stentor companies will be able to make changes to basic toll rates without the prior approval of the Commission. The Commission considers that to protect basic toll subscribers in less competitive areas, it is appropriate to modify the existing cap so that it would apply separately for each basic toll rate schedule. Thus, price changes to a schedule will be permitted, provided that rate increases within a schedule are offset by corresponding decreases in the same schedule, so that there is no change to the weighted-average rate for each schedule.

78. The Commission notes that the record indicates that the roll out of equal access capable switches varies across the Stentor companies, with NBTel and TELUS having converted 100% of their respective switches to equal access, whereas only 30% of NewTel's switches were equal access capable as of December 1996. By the end of 1997, Stentor estimated that 100% of Network Access Services (NAS) in the territories of Island Tel, NBTel and TELUS will be served by such switches, whereas only 77.6% of NewTel NAS will be served by such switches. The other Stentor companies forecast that 97% or more of their respective NAS will be served by equal access capable switches by year-end 1997.

79. The Commission considers that in a forbore environment in which prior Commission tariff approval is no longer required, subscribers in non-equal access areas do not yet have the ability to switch to comparable services provided by APLDS, and thus require certain regulatory protection.

80. The Commission considers that, without the necessity of obtaining prior Commission approval of tariffs, the Stentor companies could, in the absence of safeguards, route de-average basic toll rates in high-cost remote areas where there is no effective competition, and raise rates for such subscribers.

81. To protect the interests of users, including users in high-cost remote areas, and in light of the Canadian telecommunications policy objectives, the Commission considers it appropriate to adopt the following additional conditions applicable to the offering or provision of toll services:

(i) The Stentor companies shall provide to the Commission, and make publicly available, rate schedules setting out the rates for basic toll service. These schedules are to include the 50% discount currently applicable to calls which originate from, and are billed to, the residence service of a registered certified hearing or speech-impaired Telecommunications Devices for the Deaf (TDD) user. The Stentor companies shall update their respective schedules within 14 days of any change to the rates for basic toll service.

(ii) The Stentor companies shall provide reasonable direct notice in writing to subscribers in advance of any increase to basic toll rates.

(iii) The Stentor companies shall not route de-average basic toll rates.

(iv) The cap on overall North American basic toll rates implemented by the Commission in Decision 94-19 shall continue to apply in modified form. Changes within any of the North American basic toll schedules will be permissible, provided any rate increases within a schedule are offset by corresponding decreases within the same schedule such that there is no change to that schedule's weighted average rate.

(v) The Stentor companies shall ensure that all toll customers and applicants for toll services in their respective serving territories can choose basic toll service at the rates set out in the rate schedules noted above.

82. The Commission intends to review the continued need for the foregoing five conditions in conjunction with its review of the four-year price cap regime.

(b) Customer Confidential Information

83. The Commission is of the view, consistent with its determination applicable to the non-dominant carriers, that it would be appropriate in respect of the Stentor companies to retain existing conditions protecting customer confidential information on a going forward basis. The Commission considers that, in the absence of such a condition, commitments to protect confidential information would be voluntary and may not be sufficient to adequately protect such information. Accordingly, on a going-

forward basis, the existing conditions concerning customer confidentiality are to be included, where appropriate, in all contracts or other arrangements with customers for the provision of services forborne in this Decision. ¹⁵⁰

(c) Bypass of Canadian Telecommunications Facilities

84. The Commission notes that Stentor indicated that it generally would not be opposed to being subject to the bypass restrictions applicable to the non-dominant carriers if the Commission were to prescribe the restrictions on bypass adopted with respect to alternate providers in Decision 95-19.

85. Consistent with its determination in respect of the non-dominant carriers, the Commission considers that it would be appropriate in respect of the Stentor companies to retain the existing restrictions against the bypass of Canadian telecommunications services and facilities as currently prescribed. Accordingly, on a going-forward basis the existing conditions concerning bypass are to be included, where appropriate, in all contracts or other arrangements with customers for the provision of services forborne in this Decision.

86. The Commission considers that there may exist incentives in a competitive environment for the bypass of Canadian facilities and services. The Commission notes that these restrictions are under consideration in Competition in the Provision of International Telecommunications Services, Telecom Public Notice CRTC 97-34, 2 October 1997.

(d) Future Conditions

87. Consistent with the approach in Decision 95-19, the Commission considers it appropriate to retain section 24 powers to impose future conditions upon the offering and provision of toll and toll free services by the Stentor companies, where circumstances so warrant.

(iii) Section 27 - Just and Reasonable Rates/No Unjust Discrimination or Undue Preference

88. In Decision 95-19, the Commission determined to forbear from the regulation of the non-dominant carriers in respect of the subsection 27(1) requirement that rates shall be just and reasonable. Regarding subsection 27(2) (unjust discrimination and undue preference), the Commission found access to telecommunications networks to be in the public interest and, accordingly, while otherwise forbearing from regulation under subsection 27(2), retained subsection 27(2) powers in respect of issues related to access to the networks of non-dominant carriers and the resale and sharing of their services.

89. Parties expressed a broad range of views on the appropriate scope of section 27 forbearance for the Stentor companies. TELUS, Stentor and the Director of Investigation generally supported forbearance, whereas APLDS generally supported varying degrees of continued regulation under section 27.

90. TELUS submitted that there is sufficient competition to ensure that rates will be just and reasonable and supported complete forbearance under section 27.

91. Stentor and the Director of Investigation agreed that it would be appropriate for the Commission to forbear from the exercise of its powers under subsection 27(1), as it has done so in respect of the non-dominant carriers. They argued that Stentor company rates established in a competitive market would be just and reasonable.

92. The Director of Investigation stated that the Commission may wish to retain authority over access to the telephone companies' networks to ensure resale and sharing of their services in the same manner as it has with respect to non-dominant carriers.

93. AT&T Canada LDS argued that, provided the alleged transmission facility shortages are remedied and competitive facilities-based entry into the local market occurs in at least one of Bands A or B in the territories of Bell, BC TEL and TELUS, it would be appropriate for the Commission to forbear from the exercise of its subsection 27(1) powers in respect of business outbound and business inbound services. AT&T Canada LDS supported continued regulation under subsection 27(2) and indicated that such a determination would be consistent with the Commission's determination in Decision 95-19.

94. Call-Net and other APLDS also proposed that certain pre-conditions be satisfied before the Commission forbears from regulation, including: (i) construction of a competitive trans-Canada fibre transmission facility; (ii) alternatives to local interconnection with the telephone companies; (iii) APLDS having the ability to replicate the advantages of vertical integration enjoyed by the Stentor companies; and (iv) the reduction of toll contribution charges. Call-Net proposed that once these pre-conditions are satisfied, the Commission should forbear from exercising its powers under subsection 27(1), but should retain its subsection 27(2) powers as it has for the non-dominant carriers.

95. The Commission considers that the competitive market will be generally sufficient to ensure that the Stentor companies' rates are just and reasonable. Accordingly, and consistent with the Commission's approach for the non-dominant carriers, the Commission will forbear from the exercise of its subsection 27(1) powers in respect of the Stentor companies. However, because there is limited, if any, competition in many non-equal access areas, the Commission considers that it would be appropriate to retain its subsection 27(1) powers in respect of the toll and toll free services of the Stentor companies in such areas to ensure that rates there remain just and reasonable. The Commission notes that the continued exercise of its powers under subsection 27(1) in respect of basic toll service will also be necessary in order to implement the cap on the various North American basic toll schedules.

96. Consistent with its approach in the Non-dominant Carriers Decision, the Commission will retain its subsection 27(2) powers in respect of issues related to access to the Stentor companies' networks and resale and sharing of their toll and toll free services. However, because of the absence of competition in non-equal access areas, the Commission considers it appropriate to retain all of its subsection 27(2) powers in those areas. Similarly, the Commission will continue to exercise all its subsection 27(2) powers in respect of basic toll services. Subject to the Commission's concerns regarding bundling, described below, in all other respects, the Commission will forbear from the exercise of its powers under subsection 27(2).

97. The Commission considers it necessary to retain its powers and duties under subsections 27(3) to 27(6) to the extent that they refer to compliance with powers and duties not forborne from in this Decision.

(iv) Section 29 - Agreements and Arrangements

98. In Decision 95-19, the Commission forbore from the exercise of its section 29 powers (prior approval of certain inter-carrier agreements and arrangements) in respect of agreements and arrangements between domestic non-dominant carriers. Based on concerns related to bypass, the Commission continued to require APLDS to file for Commission approval agreements or arrangements between APLDS and foreign carriers falling within the scope of section 29.

99. The Commission notes that Stentor did not request forbearance with respect to section 29 of the Act in this proceeding. In contrast, TELUS submitted that the Commission can rely on market forces to ensure a relative equality of bargaining power and fair and equitable arrangements between carriers, and supported forbearance by the Commission from the exercise of its section 29 powers.

100. Call-Net opposed forbearance with respect to section 29, noting: (i) the vertically integrated structure of the Stentor companies would make it difficult to distinguish between strictly toll agreements and those which include local service functionality; (ii) existing Stentor arrangements have reduced the level of competition in many toll and local markets by restricting the ability of Stentor companies to compete in each others' territories; (iii) the Commission's concerns regarding bypass of Canadian facilities; and (iv) the possibility that Stentor companies could confer undue preferences upon themselves or their customers through arrangements with foreign carriers.

101. ACC, AT&T Canada LDS, and Westel also advocated continued regulatory oversight in respect of section 29 for the Stentor companies.

102. The Commission is of the view that for the purposes of section 29 agreements and arrangements, the circumstances of the non-dominant Canadian carriers differ from those of the Stentor companies.

103. The Commission notes that unlike the non-dominant carriers, the Stentor companies have section 29 agreements and arrangements to act in concert as a national entity. These agreements and arrangements address the settlement of jointly earned revenues. The Commission considers the settlement of jointly earned revenues, including whether such settlement arrangements are equitable, to be a matter which should remain subject to the Commission's oversight.

104. The Commission therefore considers that it would be appropriate to continue to exercise its section 29 powers in respect of the Stentor companies.

(v) Section 31 - Limitations of Liability

105. In Decision 95-19, the Commission determined to forbear completely and unconditionally from exercising its powers to prescribe limitations of liability for the non-dominant carriers. Commission-approved limitations of liability were continued in existing contracts or arrangements for the balance

of their unexpired terms. The Commission's determination was based in part on the view that there was sufficient competition to protect the interests of users.

106. Stentor, TELUS and the Director of Investigation all supported forbearance under section 31 for the Stentor companies. TELUS stated it would be inappropriate for the Commission to forbear from regulation under sections 24 or 25 while asserting a need to continue to exercise its section 31 powers. TELUS also asserted that equal bargaining power in a competitive market would ensure reasonable limitations on liability amongst long distance providers because no one carrier could impose unacceptable limitations without incurring lost market share.

107. Stentor advocated forbearance with respect to section 31 for the Stentor companies on the same terms as applicable to the non-dominant carriers.

108. Consistent with arguments noted above, AT&T Canada LDS argued that it would only be appropriate for the Commission to forbear from exercising its powers under section 31 in respect of business toll services once construction of competitors' trans-Canada backbone facilities across the Prairies and the Maritimes and implementation of local interconnection is complete.

109. In view of the competitive nature of the markets, as noted above, the Commission considers that it would be appropriate to forbear to the same extent for the Stentor companies as in Decision 95-19 for the non-dominant carriers with respect to section 31. Any provision limiting liability in existing contracts or arrangements will continue to remain in force until their expiry. A contract or arrangement will be deemed to terminate on the date or in the manner provided therein as of the date of this Decision, notwithstanding extensions provided for therein.

E. The Imputation Test in a Forborne Environment

110. In PN 96-26, the Commission requested comment on whether the current imputation test should be maintained as a test to resolve complaints in a de-tariffed environment. Parties were divided on this issue, with views ranging from Stentor and the Director of Investigation, who argued that the imputation test be abandoned, to the province of British Columbia and many APLDS, who supported the continued applicability of the imputation test.

111. Stentor opposed either a service-specific or aggregated imputation test, arguing that in a de-tariffed environment the companies would not have the incentive, the means, or the ability to engage in anti-competitive pricing. Stentor asserted that the Stentor companies could not successfully follow a strategy of below imputed cost pricing because it would have to be implemented over a long period, would require that the Stentor companies be able to raise rates to recoup losses sustained during the period of below cost pricing, and would likely fail given the diversity of competitors and the resources available to them and their U.S. partners. Stentor also asserted that the provisions of the Competition Act would apply in a forborne environment, and the Competition Bureau would ensure that the provisions of the Competition Act, including the provisions related to predatory pricing, were not violated.

112. TELUS stated that responsibility for policing anti-competitive pricing practices, including the application of its proposed imputation test, would become the responsibility of the Director of Investigation and the Competition Bureau in a forbore environment. TELUS and Stentor submitted that a decision by the Commission to forbear would not be irreversible. However, TELUS asserted the following conditions would have to be met in order for the Commission to resume the application of the imputation test: (i) strong prima facie evidence of anti-competitive behaviour; (ii) the Director of Investigation is not in a position to provide relief; and (iii) a determination by the Commission to reverse its forbearance order.

113. TELUS' proposed imputation test would require, as the first step, that the price for a specific service be above its incremental cost. The second step would ensure the carriers' revenues cover both incremental costs for the service market, as well as the markups for essential facilities, interconnection, and contribution which competitors must pay to compete in the relevant market.

114. The Director of Investigation argued that maintenance of the imputation test in a competitive market would be unnecessary and undesirable. The Director of Investigation stated that the imputation test may unnecessarily restrict competition because it does not require any evidence of impact on competition. The Director of Investigation also expressed concern that retention of the imputation test may have the undesirable and unintended effect of establishing an artificial price floor, thereby limiting the full benefits of price competition to consumers.

115. APLDS argued that the abandonment of the imputation test in a forbore environment would dramatically increase the likelihood of anti-competitive pricing by the dominant carriers. APLDS asserted that the fact that toll contribution is an internal company transfer for the dominant carriers, combined with differing levels of competition in different market segments, provides the Stentor companies with the incentive to recover contribution at different levels across different toll market segments. The APLDS argued that this provides the telephone companies with the means to sustain pricing below imputation test levels in the most contested markets by using contribution generated in less competitive markets to offset lower contribution in the former.

116. AT&T Canada LDS cited the Commission's reasoning in Review of Regulatory Framework - Targeted Pricing, Anti-Competitive Pricing and Imputation Test for Telephone Company Toll Filings, Telecom Decision CRTC 94-13, 13 July 1994 (Decision 94-13), and argued that the underlying concerns which first resulted in the implementation of the imputation test continue to apply.

117. The Commission considers that circumstances have changed since the implementation of the imputation test in 1994. As determined above, the toll and toll free markets have generally become more competitive. In addition, there are presently fewer sources and amounts of revenues available to subsidize below cost pricing. The Commission considers that its determination to retain its powers under subsection 27(2) of the Act, described above, would, to a certain extent, reduce the incentive to engage in below cost pricing by ensuring that the terms under which forbore services are made available by the Stentor companies for resale and sharing are not unjustly discriminatory or unduly preferential in comparison with the rates charged by these companies for such services to other

customers. Further, the maintenance of the cap on basic toll service rates would, in the Commission's view, preclude the Stentor companies from obtaining an additional source of revenue with which to finance below cost pricing.

118. On the basis of the foregoing, the Commission considers that the imputation test is no longer required for toll and toll free services. Accordingly, the imputation test is, as of the date of this Decision, discontinued for these forborne services.

F. Other Issues Raised in the Proceeding

(i) Affiliate Rule

119. Pursuant to Affiliate Rule, Telecom Decision CRTC 94-6, 4 March 1994, the affiliate rule restricts the affiliates of the Stentor companies from providing switched toll services and from engaging in joint-use resale of the Stentor companies' inter-exchange private line (IXPL) services.

120. APLDS argued that the Commission should continue to apply the affiliate rule in a forborne environment. AT&T Canada LDS asserted that the Commission's rationale for the affiliate rule, including the need to ensure that Stentor companies not abuse their dominant positions and avoid regulatory oversight through the use of reseller affiliates, continues to apply in today's market.

121. ACC and Call-Net argued that it would not be sufficient for the Commission to rely solely upon subsection 27(2) and a complaints process to protect against cases of unjust discrimination in the provision of access to facilities by the Stentor companies, and that it would therefore be appropriate to make all forborne toll services subject to the condition, pursuant to section 24, that all such services continue to be subject to the current resale and sharing rules.

122. Stentor noted that the affiliate rule was adopted for the express purposes of reducing the opportunity for the telephone companies to provide long distance services on a non-regulated basis and to minimize the potential for inter-exchange carriers to avoid contribution. In Stentor's view, neither rationale continues to be valid, given that the Commission's contribution concern appeared to end with the granting of forbearance to the non-dominant carriers, and pricing concerns are no longer relevant, given the level of rivalry in the market.

123. The Commission considers that the record of this proceeding is not adequate to determine whether the Affiliate Rule should be discontinued in a forborne environment. Accordingly, it is retained.

(ii) Bundling

124. Bundling refers to the inclusion of different services or service elements under a rate structure. For example, this rate structure may be a single rate, a set of rates for various service elements, and/or rates for one or more service elements which are dependent on the usage of other services.

125. ACC, Westel and Call-Net supported the continuation of the rule against the bundling of terminal equipment and network service elements. Westel and ACC also argued that the following three conditions should be met in the event the Stentor companies wish to bundle forborne services

with tariffed services: (i) the price of the bundled offering must satisfy a prior imputation test - with bottleneck components costed at the tariffed rates; (ii) competitors can use stand-alone tariffed bottleneck elements to assemble their own bundles; and (iii) resale of the bundle is permitted.

126. CBTA argued that the Stentor companies should be prohibited from bundling long distance and local services until local competition is a reality. Otherwise, in its view, the Stentor companies would enjoy a marketing advantage.

127. Stentor opposed the continuation of the Commission's bundling restrictions. Stentor stated that the terminal equipment market has been competitive for a number of years, and it would therefore be appropriate to discontinue the prohibition against the bundling of terminal equipment and network service elements implemented in Decision 94-19. Stentor also argued that the bundling of toll and local services was permitted by the Commission in Decision 94-19 subject to certain rules, and that CBTA's proposed prohibition would have the anomalous result of limiting rather than expanding the Stentor companies' marketing flexibility in a forborne environment.

128. The Commission notes that shortly after the conclusion of the PN 96-26 proceeding, in Local Competition, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8 or the Local Competition Decision) it endorsed the principle of bundling by the Stentor incumbent local exchange carriers (ILECs). The Commission stated that the Stentor companies should not be prevented from bundling forborne services with ILEC local exchange services. However, the Commission determined that, where a forborne service is included in a new bundled service, the rates for the bundled service are to be filed for approval by the Commission and the Phase II costs for the forborne service must be filed as part of the imputation test. In addition, the Commission stated that, where Stentor companies bundle below-cost single line residential exchange services with other telecommunications services, the cost of the residential exchange services will be deemed to be equal to the tariffed rate for the purposes of the imputation test.

129. Given the evolution of competition in the terminal market and the competitive nature of the toll and toll free markets noted above, the Commission finds it appropriate to remove the restriction against the bundling of terminal equipment with network service elements.

130. As stated in paragraph 96 of this Decision, the Commission has concluded that it is appropriate to retain its subsection 27(2) powers in respect of issues related to access to the Stentor companies' networks and resale and sharing of their toll and toll free services. Consistent with this determination, the Commission will retain its subsection 27(2) powers with respect to a bundled service which includes a toll and/or a toll free service and another forborne service. Thus, for example, a bundled service involving terminal equipment would be subject to regulation by the Commission under subsection 27(2) in respect of issues related to resale and sharing of toll and toll free services.

131. Consistent with the bundling rules recently established in Decision 97-8, the Commission will permit the bundling of forborne toll and toll free services with ILEC local exchange services, or with other tariffed telecommunications services. Consistent with Decision 97-8: (i) when a forborne service is included in a new bundled service, the Phase II costs of the forborne service must be filed

as part of the imputation test applicable to the bundled service; (ii) the Commission must approve the rates, terms and conditions of the bundled service; and (iii) the Commission will deem the cost of residential exchange services to be equal to the tariffed rates for such services where Stentor companies bundle below-cost single line residential exchange services with other services.

G. The Quebec Independent Companies

132. While Sogetel has not satisfied the six conditions identified in PN 96-26 for forbearance, the Commission notes that Sogetel's toll service revenues are minimal. The Commission notes that pursuant to Regulatory Framework for the Independent Telephone Companies in Quebec and Ontario (Except Ontario Northland Transportation Commission, Québec-Telephone and Télébec Itée), Telecom Decision CRTC 96-6, 7 August 1996, Sogetel will be implementing equal access in 1998.

133. The Commission's evaluation of the extent to which Québec-Téléphone and Télébec satisfy the six conditions follows.

(i) Equal Access

134. In Regulatory Framework for Québec-Téléphone and Télébec Itée, Telecom Decision CRTC 96-5, 7 August 1996 (Decision 96-5) the Commission ordered Québec-Téléphone and Télébec to implement equal access by 1 January 1998.

135. As noted above, several of the Stentor companies, including NewTel, which estimated that 77.6% of NAS in its territory would be served by equal access switches by year-end 1997, continue to work toward the goal of serving 100% of NAS with equal access capable switches. For the reasons set out above, the Commission has determined that forbearance for the Stentor companies is appropriate in conjunction with the above described regulatory safeguards to protect the interests of subscribers in non-equal access areas.

136. As noted above, the implementation of safeguards in non-equal access areas will ensure that the interests of users in these areas are protected in a forborne environment. Consistent with the finding that the relevant markets are national in scope, and with the view that a national forbearance determination strikes an effective balance between efficient and effective regulation and the promotion of reliable and affordable telecommunications services, the Commission considers that a determination to forbear from the regulation of either Québec-Téléphone or Télébec should be conditional upon the companies satisfying the Commission that a minimum of 75% of NAS (i.e. the threshold satisfied by all the Stentor companies subject to this Decision) in their respective serving territories are served by equal access capable switches.

137. Accordingly, any determination by the Commission to forbear from the regulation of toll and toll free services provided by Québec-Téléphone or Télébec will be conditional upon these respective companies satisfying the Commission in writing that a minimum of 75% of NAS in their respective serving territories are served by equal access capable switches.

(ii) Toll Free Access

138. The Commission notes that issues related to interconnection between APLDS and the Quebec independent telephone companies were addressed in the proceeding culminating with Telecom Order CRTC 95-558, 11 May 1995 (Order 95-558). The Commission considers that toll free access has been effectively attained since the issuance of Order 95-558.

(iii) Implementation of the Imputation Test

139. The Commission notes that pursuant to Decision 96-5, Québec-Téléphone and Télébec have for the past several months filed imputation test results in conjunction with their toll and toll free tariff filings.

(iv) Splitting of the Rate Base and Implementation of the CAT

140. In Implementation of Regulatory Framework for Québec-Telephone and Télébec Itée, Telecom Decision CRTC 97-21, (Decision 97-21), also issued today, the Commission directed, effective 1 January 1998, Québec-Téléphone and Télébec to split their respective rate bases into Utility and Competitive Segments. Currently a CAT is in place for both companies.

(v) Evidence of Rivalry

141. The Commission considers that there will be a growing and significant level of toll and toll free competition in the territories of Québec-Téléphone and Télébec. This view is based, in part, on evidence available to the Commission in various proceedings involving these companies, as well as upon competitive trends evident in the toll and toll free markets which, as noted, are national in scope. In addition, the Commission considers that competitive forces will only be enhanced by the fact that Québec-Téléphone and Télébec subscribers are increasingly being made aware of competitive toll alternatives because of their proximity to Bell's territory and exposure to APLDS' advertizing.

(vi) Comparable Access for Competitors

142. The Commission notes that, in Decision 96-5, it expressed its preliminary view that local competition should be permitted in the territories of Québec-Téléphone and Télébec. The Commission also stated that it would issue a public notice to determine the applicability of the terms and conditions for local competition once the Commission had issued its decision regarding local competition in the territories of the Stentor companies.

(vii) Forbearance Determination

143. The Commission considers that the circumstances of Québec-Téléphone and Télébec warrant a less rigorous application of the above six forbearance pre-conditions than is appropriate for the Stentor companies. The Commission notes that Québec-Téléphone and Télébec are less well positioned for toll and toll free competition in their territories than the members of the Stentor alliance, given that the APLDS, who market their services nationally, generally average their prices over the national market, whereas Québec-Téléphone and Télébec have a significantly more limited geographic coverage and subscriber bases. The Commission further notes that both Québec-Téléphone and Télébec's CATs are significantly higher than that of Bell.

144. In light of the foregoing, the Commission finds that the markets of the Quebec independent companies will be subject to competition sufficient to protect the interests of users. The Commission also finds that to refrain from regulating their toll and toll free services would be consistent with the Canadian telecommunications policy objectives. Finally the Commission finds that to forbear would not impair unduly the establishment or continuance of a competitive market for toll or toll free services.

145. Accordingly, in respect of the toll and toll free services provided by Québec-Téléphone, Télébec, and Sogetel, the Commission hereby announces that it will forbear from the exercise of its powers to the same extent and subject to the same conditions as described above for the Stentor companies. In the case of Québec-Téléphone and Télébec, the Commission's determination is subject to both companies respectively satisfying the Commission in writing of compliance with the above noted equal access NAS threshold condition. Sogetel is directed to file, within 45 days of this Decision, proposed tariff pages removing its toll and toll free services from its tariffs. Québec-Téléphone and Télébec are directed to file with the Commission, concurrent with the filing of evidence confirming their compliance with the above noted condition of forbearance, proposed tariff pages removing their toll and toll free services from their tariffs. For all three companies, the imputation test is discontinued, as of the date of this Decision, with respect to toll and toll free services.

H. O.N. Tel

146. The Commission notes that O.N. Tel is among the carriers in respect of which PN 96-26 elicited comment on toll forbearance. The Commission notes that Regulatory Framework - Ontario Northland Transportation Commission, Telecom Public Notice CRTC 97-7, 19 February 1997 (PN 97-7) is intended to establish a regulatory framework for O.N. Tel, including whether it would be appropriate to introduce toll and toll free competition in its territory. In view of the PN 97-7 proceeding, the Commission considers that it would be premature to forbear from the regulation of toll services provided by O.N. Tel at this time.

147. The Commission notes that O.N. Tel's tariffs for toll and toll free services make reference, where applicable, to the rates for similar services set out in the Stentor National Services Tariff. Given the Commission's determination above to forbear from the exercise of its section 25 powers with respect to the Stentor companies, O.N. Tel is hereby directed to issue, within 45 days of this Decision, tariff pages reflecting the rates applicable to its toll and toll free services as of the date of this Decision. Further, O.N. Tel is to file, for tariff approval pursuant to subsection 25(1) of the Act, all future tariff revisions.

I. Timing of Forbearance

148. The Stentor companies are directed to issue within 90 days of this Decision, tariff pages removing the tariffs for the services listed in the Appendix, to the extent prescribed therein. Forbearance will be effective on the earlier of the date that revised tariff pages are issued, or 90 days from the date of this Decision (the effective date). The conditions herein prescribed under section 24 will come into force on the effective date.

149. The Appendix lists services which Stentor identified in its 22 November 1996 submission. The Stentor companies have subsequently issued tariff pages for new toll and toll free services. Accordingly, the Stentor companies are further directed to file, within 45 days of this Decision, a list of other services, identified on a tariff item basis, which they consider to be toll or toll free services subject to this Decision.

150. Pursuant to subsection 34(4) of the Act, on the effective date, section 25 and 31, and (in part) sections 24 and 27 will no longer apply to the Stentor companies' and Sogetel's toll and toll free services, to the extent that they are inconsistent with the Commission's determinations herein.

Laura M. Talbot-Allan
Secretary General

This document is available in alternative format upon request.

200	Advantage Vnet* Service	201
201	Prepaid Service	213
202	HELLO!	221
203	Advantage Toll-free	231
204	Advantage Toll-free Entry	231.9
205	Advantage Toll-free International	231.18
206	Advantage Toll-free Features	231.23
207	Advantage Toll-free Service Guarantees	232
208	Advantage Toll-free Billable Call Detail	233
210	Message Toll Service - General	240
211	Message Toll Service - Short Haul	240.15
212	Intraprovincial Message Toll Rate Schedules	240.16
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216	Rebiller Elite Service	241
220	International Service	252
222	Advantage Outbound	257
223	Advantage Preferred Entry	258
224	Switched Call Completion (SCC)	259
225	Advantage Long Distance Plan	260
Section 10	Promotions Tariffs	Section 10
226	Residential Savings Plan	261
502	Advantage Teleconferencing	515
504	Fax Management Service	541
803	Business Rewards	812
910	International Directory Assistance	911

* = Forbearance in respect of toll service component only

2. Bell Canada

Tariff CRTC 6716

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1250	Toll Terminals	125
3170	Message Time-Allowance Plan	312
3175	Between Friends	312A
3180	Teleplus	313
3182	Teleplus Overseas	313A-1
3184	Real Plus	313A-2
3260*	Remote Call Forwarding Service	323
3280	Special Reverse Charge (Zenith) Service	324
3281	Municipal Reverse Charge (Contac)	324-1
3290	Bell Rewards	325
3360*	Conference 300	333
3520*	Ship and Aircraft	349
3530*	Ship and Aircraft	350
3550*	Ship and Aircraft	350
3560*	Ship and Aircraft	350
3580*	Ship and Aircraft	350
3600	800 Service	354A
3620	Canada 800 Service	368A
3625	Advantage Toll-free Features	368E
3630	Canada-United States 800 Service	369
3298	Real Plus Extra	327B
3299	Real Plus Extra Rewards Program	327C
3070	Special Billing Codes	304A
4750	Voicecom	570
4800	FaxCom Service	580

* = Forbearance in respect of toll service component only

3. BC TEL

Tariff CRTC 1005

242*	Aircraft, Mobile and Ship Stations - MF/HF	837
243*	Air-ground Radiotelephone Service - U.H.F.	839-A
263	Long Distance Message Toll Service - General	863-A
282	Special Billing Numbers	871
285	Access to U.S. National 800 and 888 Numbers - South of 49	874
286	Free Weekends Offer Promotion	874-A
288	Real Plus Extra Savings Plan	875
290	Real Plus Extra Rewards Program	876
293	Real Plus Savings Plan	886-A
294	Grow Your Savings Program	887

296	Other Line Rates	888
297	Teleplus Service	889
297-A	Teleplus Overseas Subscription Service	889-A
298	Between Friends Service	890
298-A	Between Friends Overseas Service	890-A
298	Between Friends	890
299-B	Advantage Small Business Service	895
330	Canada & U.S. Wide Area Telephone Service (WATS)	923
334	BC TEL Rewards	925-C
336	800 Service	926
338	800 Plus Service	928
339	Canada-U.S. 800 Service	930
340	B.C. Intratel Service - General	940
342	B.C. Intratel Service - Description of Service	940
344	B.C. Intratel Service - Rates	941
346	Residence Optional Calling Plan	942
348	Short Haul Message Toll Service - General	954
350	Short Haul Message Toll Service - Type of Service & Rates	954
352	Short Haul Message Toll Service - Collection of Charges	954
354	Short Haul Message Toll Service - Usage Periods	954
356	Short Haul Message Toll Service - Message Rates	955
357*	Remote Call Forwarding (RCF)	956
358	Special Reversed Charge Service (Zenith)	957
380	Voicecom Service	1108
381	Facsimile Service - FaxCom	1111

* = Forbearance in respect of toll service component only

4. Island Tel

Tariff CRTC 11001

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968	Island Tel Rewards	93, 93A & 93C
970 & 980	LD Class of Service	94
990	Types of Calls	95
1000	Minimum Service Periods	96
1010	Timing of Messages	96 & 96A
1040	PEI Rate Schedule	97
1047*	Radiotelephone Service	97B
1100	Real Plus	97J
1101	Real Plus Extra Savings Plan	97J-1
1081	Supersaver Service	97I-1
1120*	Remote Call Forwarding	98
1160	Zenith	100
1200	Provincial Outward Calling Service	102

1205	Island Tel Advantage Small Business	102A
1300	WATS	105B & 105C
1090	Between Friends North America	97I-2 & 97I-3
1095	Between Friends Prince Edward Island	97I-4 & 97I-5
1110	Island Wide Service	97K
1475	FaxCom Service	150L, 150M, 150N, 150O, 150O-1
1480	Voicecom Service	105P & 105Q

* = Forbearance in respect of toll service component only

5. MTS NetCom

Tariff CRTC 24001

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2315	Methods of Applying Rates (refers to NST)	272
2320	Timing of Messages (refers to NST)	273
2325	Classes of Service (refers to NST)	274
2330	Messenger Service General	275
2332	Leave Word Service (refers to NST)	276
2335	Reversal of Charges (refers to NST)	277
2345	Peak and Off Peak Period Rates (refers to NST)	279
2350	Special Reversed Charge Service (Zenith Service)	280
2355	Rates and Charges Manitoba Points (refers to NST)	281
	Rates and Charges TransCanada (refers to NST)	283
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	Rates and Charges Canada-Alaska (refers to NST)	
	Rates and Charges Canada-Hawaii (refers to NST)	287
	Rates and Charges Canada-Mexico (refers to NST)	
	Rates and Charges Canada-Overseas (refers to NST)	289
2365	Real Plus Extra Savings Plan	290 to 290A
2368	Real Plus Extra Rewards Program	290B to 290C
2370	Teleplus Subscription Service	291
2372	Advantage Select	293 & 294
2375	Residential Optional Toll Calling Plan	295
2430	Between Friends Subscription Service	307 & 308

2440 Teleplus Winnipeg/Teleplus Brandon Service	313 & 314
2450*Remote Call Forwarding	321
2520 Wide-Area Telephone Services (WATS)	322 to 324
2550 Circle Inwats	343 & 344
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Tariff CRTC 24002 - Supplementary Tariff Special Services and Facilities

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7200*Public Air/Ground Mobile Service	253 to 255
7210*Ship Service	256 to 258
8350 Voicecom Service	271

Tariff CRTC 24005 - Supplementary Tariff Special Assemblies

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* = Forbearance in respect of toll service component only

6. Maritime Tel & Tel

Tariff CRTC 10001

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2201	Real Plus Extra Rewards	112E, 112F & 112G
2210	LD Class of Service	113
2220	Types of Calls	114
2230	Minimum Service Periods	115
2240	Timing of Messages	115
2250	Discounts	115, 115A
2260	Nova Scotia Rate Schedule	116
2261*	Radiotelephone Service	116B
2330	Real Plus Extra Savings Plan	128
2340	Real Plus	128A
2345	Supersaver Service	128B
2350*	Remote Call Forwarding	129
2600	Zenith	140
2700	Zonephone Out	141, 142
2730	MT&T Advantage Small Business	144A, 144B
2750	Between Friends North America	144D
2775	Between Friends Nova Scotia	144F, 144G
2800	MT&T WATS	145, 146
2829	MT&T Provincial Inward Service	150H, 150H-1
2950	FaxCom Service	158A, 158B, 158C, 158D
3000/3020	Voicecom Service	159, 160
3075*	Maritime Relay Service	162F, 162G

Tariff CRTC 10003 - Special Facilities Tariff

10950 Customer Specific Toll Free Tariff 225, 226

* = Forbearance in respect of toll service component only

7. NBTel

Tariff CRTC 12001

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660 Frequent Caller Discount Plans	141
680 Special Calling Card Service	142
700*Conference 300 Service	145
720 Wide Area Telephone Service - Intra N.B.	146
730 Brunswick 800 Service	148
750*Remote Call Forwarding Service	149
760 Zenith Service	150

Tariff CRTC 12002 - Special Services Tariff

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2012 TOP 3 for Me!	45
2013 Loyalty Plan	46
2022 Atlantic Business Pak	51
2026 Teleplus Overseas Service	52A
2027 Between Friends Service	53
2030 Outward Wide Area Telephone Service - Inter-Canada	54
5100 FaxCom Service	412
6460 Voicecom Service	526

* = Forbearance in respect of toll service component only

8. NewTel Communications

Tariff CRTC 13001

425 - 430 Message Toll Service Promotions	169 to 172
450* Ship to Shore	175
455* Aircraft Service	176
457 30-Minute Message Toll Package	176
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530 Provincial 800 Telephone Service	193
545* Remote Call Forwarding Service	198A
550 Between Friends Subscription Service	199
560 Teleplus Subscription Service	199A
561 Teleplus Overseas Service	199B-1
565 Real Plus Savings Plan	199C
570 FaxCom Service	200-203
Section A Voicecom Service	16A

* = Forbearance in respect of toll service component only

9. TELUS Communications Inc.

Tariff CRTC 18001

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410 Alberta - British Columbia Message Toll Rate Schedule	165
415 Alberta - Northwest Message Toll Rate Schedule	166
420 Alberta - Saskatchewan Message Toll Rate Schedule	167
425 Alberta - Trans Canada Message Toll Rate Schedule	168
430 Alberta - United States Message Toll Rate Schedule	169
435 Alberta - Alaska Message Toll Rate Schedule	170
440 Alberta - Hawaii Message Toll Rate Schedule	171
445 Alberta - Mexico Message Toll Rate Schedule	172
450 Alberta - Overseas Message Toll Service	178
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470 Between Friends Service	224
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480 Isolated Community Calling	228
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482 Select Route - 10 Hour Service	231A
490*Ship and Aircraft Service	239
495 Canada 800 Service - 160 Hour	243
500 Tariff Item 500	250
507 Teleplus Overseas Service	257
510 Real Plus Savings Plan	260
515 Message Toll Rebill Charge	266
609 Prepaid Service Promotion	305
610 Welcome Back Free Weekends Offer	306
800 Time and Charge Service	400

* = Forbearance in respect of toll service component only

Date modified:

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This is Exhibit "E" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



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Telecom Decision CRTC 98-8

Ottawa, 30 June 1998

LOCAL PAY TELEPHONE COMPETITION

I BACKGROUND

In *York University - Provision of Competitive Local Pay Telephone Service*, Telecom Decision [CRTC 95-20](#), 18 September 1995 the Commission expressed the preliminary view that the resolution of certification issues for competitive local exchange carriers (CLECs), in the context of the proceeding announced in *Implementation of Regulatory Framework - Local Interconnection and Network Component Unbundling*, Telecom Public Notice [CRTC 95-36](#), 11 July 1995, would be sufficient to address concerns identified with respect to competition in the local pay telephone market. The Commission also indicated its intention to initiate a proceeding, following the establishment of the CLEC certification requirements, to consider whether or not additional consumer safeguards were required as a condition of competitive entry into this market.

On 1 May 1997, the Commission issued Local Competition, Telecom Decision CRTC 97-8 (Decision 97-8), which established the framework for local exchange competition. The Commission found that resellers of local exchange services would meet certain of the service requirements that the Commission imposed on local exchange carriers (LECs) such as 9-1-1 and Message Relay Service (MRS), by virtue of the underlying LEC obligations.

On 8 July 1997, the Commission issued Telecom Public Notice CRTC 97-26, Local Pay Telephone Competition, requesting comments on issues in relation to pay telephone competition, including the following:

- (i) Is it appropriate at this time to permit competition in the local pay telephone market?
- (ii) If so, what consumer safeguards should be met by service providers?
- (iii) What is the appropriate mechanism to ensure the enforceability of the consumer safeguards identified in (ii) above?

Comments and reply comments were received from AT&T Canada Long Distance Services Company (AT&T Canada LDS), The British Columbia Public Interest Advocacy Centre on behalf of the British Columbia Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of B.C., Federated Anti-Poverty Groups of B.C., Senior Citizens' Association of B.C., West End Seniors' Network, End Legislated Poverty, B.C. Coalition for Information Access and the Tenants' Rights Action Coalition (collectively, "BCOAPO et al."), Consumers' Association of Canada (CAC), Consumers' Association of Canada, Alberta Branch (CACAlta), Call-Net Enterprises Inc. on behalf of itself and Sprint Canada Inc. (Call-Net), Canadian Business Telecommunications Alliance (CBTA), Canadian Cable Television Association (CCTA), Canada Payphone Corporation (CPC), the Director of Investigation and Research (the Director), The Public Interest Advocacy Centre (PIAC), Queen's University (Queen's), RNL Financial & Investment Advisory Services (RNL), Stentor Resource Centre Inc. (Stentor) on behalf of BC TEL, Bell Canada (Bell), Island Telecom Inc. (formerly known as The Island Telephone Company Limited), Maritime Tel & Tel Limited, MTS Communications Inc. (formerly known as MTS Netcom Inc.), The New Brunswick Telephone Company, Limited, NewTel Communications Inc., TELUS Communications Inc. and TELUS Communications (Edmonton) Inc., The City of Calgary, and Vidéotron Télécom Itée.

II GENERAL CONCLUSIONS

A. General

As noted above, the Commission in Decision 97-8 established a framework for local competition that balances the interests and needs of consumers, local competitive entrants, toll competitors and incumbent telephone companies. Building on that framework, the Commission finds that it is appropriate to allow competition in the local pay telephone market.

Highlights of the Commission's determinations in this proceeding are listed below. Detailed discussion of the various issues and rationale are set out in Parts III, IV, and V of this Decision.

B. Competition

The local pay telephone market is opened to competition effective the date of this Decision. Before a new entrant may provide service, the following must be completed: (i) all new entrants must register; (ii) where an unregulated provider uses an incumbent local exchange carrier's (ILEC) services for access, Commission approved pay telephone access tariffs and a standard service agreement must be in place; and (iii) where an unregulated service provider uses CLEC's services for access, the CLEC must ensure that its service contract includes the consumer safeguard requirements of this Decision.

The Commission intends to hold a review within a three-year time frame to investigate the impact competition has had on the local pay telephone market. This review will include, among other things, problem areas that have been identified through complaints, including complaints with respect to consumer safeguards and barriers to entry.

C. Consumer Safeguards

The Commission mandates additional consumer safeguards to augment those established in Decision 97-8. These safeguards will serve to protect the Canadian consumer and address the concerns which have historically militated against the opening of the pay telephone service market to competition.

D. Enforcement Mechanism

The registration process established for CLECs in Decision 97-8 is modified for specific application to entry into the local pay telephone market. A new entrant must: (1) attest in writing that it understands and will conform to the obligations and consumer safeguards set out in this Decision; (2) provide the name of the carrier supplying the access lines; (3) provide to the Commission serving area maps for information purposes and make such serving area maps available upon request at its business offices; and, (4) provide details as to how it proposes to deal with consumer complaints.

CLECs are directed to include the consumer safeguards established in this Decision in all contracts negotiated with competitive pay telephone service providers (CPTSPs) for the provision of pay telephone service.

Stentor-member companies are directed to file proposed pay telephone access tariffs within 45 days of this Decision. The tariffs are to incorporate the mandated consumer safeguards established in this Decision.

Non-compliance by the CPTSP with the ILEC tariff or the CLEC contract as applicable will constitute reason for the termination of the access service.

E. Regulatory Framework For New Entrants

Pursuant to section 34 of the *Telecommunications Act* (the Act), the Commission refrains from exercising its powers and performing its duties pursuant to sections 25, 29 and 31 and subsections 27(1), (5) and (6) of the Act, in relation to local pay telephone services provided by CLECs. Sections 24, 25, 27, 29 and 31 do not apply to CLECs to the extent that they are inconsistent with the determinations in this Decision.

F. Other

ILECs are directed to file reports within 45 days of this Decision indicating where pay telephones were located as of 1 July 1998 in their respective serving territories. Thereafter, ILECs are directed to file annual reports indicating locations where pay telephones were removed and the reasons why.

ILECs are directed to file information within 45 days of this Decision with respect to any long-term or exclusive contracts entered into after 1 July 1997 which have a life expectancy of five years or longer.

The Commission considers it appropriate to establish a per-call compensation regime and that ILECs may file tariffs for its implementation. The Commission also considers it appropriate that new entrants negotiate rates with interexchange carriers.

III ISSUES

A. Should Competition be permitted in the Local Pay Telephone Market?

All parties that commented on this issue, with the exception of CAC, CACAIta, PIAC and Stentor, expressed the view that competition should be introduced in the local pay telephone market.

CAC, CACAIta, PIAC and Stentor supported competition in varying degrees provided adequate consumer safeguards were put in place. CAC expressed considerable reservation that such a state could be reached and urged the Commission to consider the United States' experience carefully. PIAC submitted evidence prepared by Dr. Mark Cooper indicating that since competition became a major thrust of public policy in telecommunications in the United States, few areas have been more troubling than the competitive provision of pay telephone service. Dr. Cooper also recommended the provision of public interest pay telephones. These are pay telephones which are deemed to be required in locations to further the public interest (e.g. promote public health and safety), but which are not likely to be profitable. To ensure that these telephones are deployed, subsidy mechanisms are necessary, typically drawn from a universal service fund.

Stentor submitted that Canadian consumers have been provided with and have come to expect high quality pay telephone service. According to Stentor, pay telephones located in Canada provide consumers with an array of services and consumer safeguards, including access to local and toll services provided by the Stentor-member companies and other service providers, alternate billing arrangements, access to emergency services, access to MRS, clearly posted instructions, a process for repairs, and leading edge technology.

Stentor noted that the details of the competitive pay telephone scene painted by Dr. Cooper would not be disputed by knowledgeable industry observers. Given the awareness of the situation, Stentor stated that the Commission must assess whether it is in the public interest to establish a competitive environment for the provision of pay telephones. If so, a framework should be put in place that embodies consumer safeguards, establishes appropriate enforcement mechanisms, allows consumers to obtain the benefits of competition, promotes a healthy and viable pay telephone industry, fosters investment and innovation in the pay telephone industry, and ensures equality in regulatory treatment for all pay telephone service providers.

In Decision 97-8, the Commission found that it was in the public interest to exercise its powers under section 24 of the Act, in order to impose a variety of terms and conditions (e.g. consumer safeguards) on CLECs. The Commission also indicated that resellers providing local exchange services would meet certain of the service requirements imposed on LECs, such as 9-1-1, MRS, and privacy protection, by virtue of the underlying LECs' obligations. The Commission notes that parties to this proceeding generally supported the notion of competition in the local pay telephone market, provided appropriate consumer safeguards were put in place.

The Commission notes that parties to this proceeding generally agreed that safeguards, in addition to those established in Decision 97-8, were required to deal with specific issues associated with pay telephone service.

The Commission also notes that CAC, CACAIta, PIAC and Stentor submitted that the introduction of pay telephone competition in the United States was accompanied by customer confusion and complaints caused by negative practices. Many of the problems encountered were related to alternate operator service providers (AOSPs) and included such concerns as a lack of rate information on the services provided and the inability of callers to select or use a service provider of their choice. Customer complaints reflected concerns such as being billed unreasonable rates, being billed for unanswered calls, restricted carrier access and variances in billed amounts due to "call splashing". Call splashing occurs when an AOSP transfers a call to a particular carrier at the caller's request. In such cases, for billing purposes, the call is transferred or deemed transferred to an interexchange carrier in the city where the AOSP's switching centre is located. If the location of the AOSP switching centre differs from that of the caller, the call may be billed from the location of the centre, rather than from the location where the call originated. As a result, the bill may confuse the customer and be higher than expected.

The Commission considers that the uniform consumer safeguards adopted by the Commission in Consumer Safeguards for Operator Services, Telecom Order CRTC 95-316, 15 March 1995, (Telecom Order 95-316) go a long way towards resolving many of the price gouging problems involving AOSPs encountered in the United States' market. (A detailed description of these safeguards is outlined in Part III B (vi) "Provisioning of Operator Services" of this Decision).

The Commission considers that the establishment of a regime that incorporates the safeguards established in Decision 97-8, those set out in Part III B of this Decision, and the enforcement mechanism in Part III C of this Decision is sufficient to protect the Canadian consumer and address the concerns which have historically militated against the opening of the pay telephone service market to competition.

In the Commission's view, introducing competition in the local pay telephone market will stimulate service innovation, foster a viable domestic industry and increase total market revenues. It is therefore consistent with the Commission's stated objective in Review of Regulatory Framework, Telecom Decision CRTC 94-19, 16 September 1994 that increased competition in the local telecommunications market is in the public interest and that restrictions on entry into the market should be removed where appropriate. Furthermore, the Commission considers that the rules for competition in the local pay telephone market established in this Decision conform to the Commission's objectives of placing greater reliance on market forces and ensuring that regulation, where required, is effective. Accordingly, the Commission directs that the local pay telephone market be opened to competition effective the date of this Decision. Before a new entrant may provide service, the following must be completed: (i) all new entrants must register; (ii) where an unregulated provider uses an ILEC's services for access, Commission approved pay telephone access tariffs and a standard service agreement must be in place; and (iii) where an unregulated service provider uses CLEC's services for access, the CLEC must ensure that its service contract includes the consumer safeguard requirements of this Decision.

B. Consumer Safeguards

Many of the safeguards established in Decision 97-8, such as access to 9-1-1 and provision of MRS were unanimously supported and are being mandated here. As noted above, parties, in general, supported the view that additional safeguards are required to ensure that consumers are protected from potential abuses and competition is permitted to roll out properly. The following areas were contentious and are examined in more detail: rate regulation; notification of long distance charges; location provider commissions; per-call compensation regime; provisioning of various types of calls (local, long distance, incoming and outgoing) and means of payment (use of coin and/or card); provisioning of operator services; provisioning of operating instructions; public interest pay telephones; information campaign; and long-term and exclusive contracts. Each of these concerns is addressed below.

i) Rate Regulation

PIAC, CAC and CACAIta argued that the Commission should impose full rate regulation on CPTSPs and that a rate ceiling should be established for local calls at current rates.

AT&T Canada LDS, CPC, the Director and Queen's submitted that, similar to the treatment afforded CLECs in Decision 97-8, retail rates for CPTSPs should not be regulated. Furthermore, the Director argued that the Commission should forbear from regulation of the rates charged by the ILECs, pursuant to the provisions of section 34 of the Act, if it is satisfied that there is, or is likely to be, sufficient competition to protect the interests of users.

The Director noted that traditional wireline services as well as wireless cellular and personal communications services (PCS) services were likely to provide an increasing constraint on the pricing of pay telephone services and that, given factors such as location and volume of calls, it is highly likely that there is a wide range of costs associated with the provision of pay telephone services. The Director considered that capping rates at \$0.25 or some other pre-determined level could have the effect of eliminating price competition and inhibiting the installation of competitive pay telephones in higher cost areas. Moreover, to the extent that rate regulation has led to subsidies for the provision of pay telephone service, such subsidies will act as a barrier to entry for competitors.

According to Stentor, in a competitive pay telephone market, the terms and rates for pay telephone services should be determined by market forces, thus generating conditions which will support service availability, quality, innovation and competitive prices. Stentor submitted that the principle of establishing a level playing field should lead the Commission to conclude that the regulation of pay telephone rates will not be necessary once competition is established to some degree.

The Commission is of the view that ILECs will remain dominant in the local pay telephone market for the foreseeable future and accordingly, until such time as sustainable competition is in place, forbearance from the regulation of ILEC-provided pay telephone service is inappropriate. However, the Commission considers that, in a competitive pay telephone market, new entrants will not have sufficient market power to impose unreasonable rates on callers. Accordingly, market forces should be sufficient to discipline the pay telephone rates of these providers. Forbearance is discussed further in Part IV of this Decision.

ii) Notification of Long Distance Charges

PIAC and CAC submitted that a mechanism to inform the customer of the long distance rates for all calls should be provided on-line (e.g. the rate for the first three minutes or the per-minute rate for that particular carrier) after the number has been dialled, but prior to the call being completed, thus giving the caller the opportunity to terminate the call at no charge.

CPC indicated that should a caller choose an alternate interexchange carrier (IXC), it may not be possible for the CPTSP to identify the charges which would apply, as only the IXC selected by the caller would have this information.

According to Stentor, the rates for alternately billed calls are determined by the network service provider and are beyond the control of the pay telephone service provider (PTSP). Additionally, long distance rates for most service providers are unregulated and, therefore, there is no readily available process through which PTSPs could learn of rate changes, making it a challenge to ensure that accurate rate information is provided. Moreover, Stentor noted that the costs incurred to change the rate information at each pay telephone at the time of any service provider's rate change would be onerous. Stentor submitted that should the CPTSP or location provider impose an end-user charge in addition to that of the network service provider, a mechanism should be provided so that consumers are aware of such charges prior to placing calls.

The Commission notes that currently ILECs are not in a position to provide customers who use alternate interexchange service providers via swipe cards, 1-800/888 or 10XXX dialling with the long distance charges incurred on those networks. Furthermore, the long distance rates charged by such service providers are unregulated. Given these circumstances, CPTSPs would not be in a position to provide the long distance rates for all alternate interexchange service providers. In addition, the Commission considers that callers who select alternate interexchange service providers, other than the default service provider, can be presumed to be aware of the rates charged by that provider, or if not, are likely to have been informed by the selected service provider how to obtain this information. In the Commission's view it would not be feasible or practical to direct CPTSPs to provide the long distance rates for all service providers, given the number of resellers. However, in order to ensure that consumers are aware of the default service provider selected for the pay telephone in question, the Commission directs CPTSPs to display prominently the name of the default long distance service provider at each pay telephone.

iii) Commissions Charged By Location Providers

CACAlta submitted that splitting of revenues with location providers such as the owner of the establishment, placement agent, property manager or any other party who might gain benefit from the establishment of a pay telephone location should not be permitted. CACAlta considered that these third parties already benefit due to increased traffic to the location, enhanced property values or other similar reasons. CACAlta also considered that revenue splitting would cause the CPTSP to increase rates.

Stentor noted that location providers supply essential floor space and appropriate lighting and, in some cases, assume additional responsibilities such as cleaning the telephone and enclosure, providing electricity, reporting service problems and assisting customers with change or dialling problems. According to Stentor, a discontinuation of the practice of revenue splitting with location providers would lead to a reduction in the availability and quality of pay telephone service in Canada and, therefore, CACAlta's arguments in this regard should be rejected.

In Canada, typically, location providers are compensated through negotiated settlements with the ILECs based on earned eligible revenues per public pay telephone. The Commission is of the view that it would not be possible or appropriate to eliminate revenue splitting between the PTSPs and third parties and that, in fact, to do so could result in a deterioration of pay telephone service.

The Commission notes that location surcharges to be paid by pay telephone users have not been part of the history of the Canadian pay telephone industry and are not a part of the historic norm in a monopoly environment. The Commission also notes PIAC's concern that, in the United States, CPTSPs are not adhering to a requirement to post warnings with respect to location surcharges. The Commission considers that the Canadian consumer's expectation about the cost of a call is based on experiences with long distance calls billed from home and that without warnings about location surcharges, consumers will, at least initially, not be aware of them.

Accordingly, the Commission directs that any surcharges not included in the cost of a call be prominently displayed at each pay telephone location.

iv) Per-Call Compensation Regime

Stentor submitted that PTSPs should be compensated for every call that accesses an IXC's network from a local pay telephone. However, Stentor considered that this charge should ideally be collected from the IXC rather than directly from the initiator of the call. This would permit toll-free and casual calling to continue and reflect the fact that the network service provider is the beneficiary of the provision of this access to their network. Stentor also concurred with CPC's view that, at the present time, such a charge should be at least equivalent to the value of a local call. According to Stentor, even if the Commission determined that competition is not appropriate at this time, the implementation of a per-call compensation regime for access from pay telephones is required. Stentor indicated that its members were studying alternative approaches for implementing a per-call compensation regime for the use of their pay telephones, with the intention of proposing tariffs in the fourth quarter of 1997.

CPC submitted that a suitable mechanism to compensate PTSPs would be to charge the caller the price of a local call in order to access an IXC, although a lesser charge (or no charge at all) could be levied for calls to IXCs who have made compensation arrangements with the PTSP. CPC noted that a similar approach had been adopted by the Federal Communications Commission (FCC) and could serve as an appropriate interim or final arrangement in Canada.

AT&T Canada LDS considered that rates charged for services or forms of access from CPTSPs (e.g., card swipe access or location provider compensation), should be limited to no more than the rates charged by ILECs where the ILECs' rates are subject to Commission approval. Moreover, AT&T Canada LDS and Call-Net indicated that until Stentor offered details as to the type of access charge and the business case underlying that fee, they were not in a position to comment meaningfully on the justification of such a charge.

Queen's submitted that CPTSPs should be compensated for calls and should negotiate the appropriate charge. In its view, if parties are unable to agree on the amount, they should have recourse to some form of alternative dispute resolution procedure.

In Stentor's view, services such as swipe card access, which are provided on a competitive basis or could be self-provided, do not meet the definition of an essential service. Furthermore, in a competitive environment, rates for such services, regardless of the specific service provider, should be subject only to market forces. Stentor noted that the economic structures associated with different location characteristics vary substantially and, therefore, inflexible price structures or terms and conditions associated with location access would unduly constrain service availability, and quality, and stifle innovation.

The Commission notes that the Canadian pay telephone industry has accommodated access to alternate toll service providers, delivered card swipe access service and provided access to toll-free services without additional direct charges to the pay telephone user. In Telecom Order CRTC 98-281, dated 18 March 1998, the Commission found it appropriate to establish an ongoing usage charge of \$0.25 as a proxy for an access charge to provide for a contribution to the costs of the pay telephone operations. However, this rate will apply solely to calls using the three slots being offered by the ILECs to long distance competitors.

The Commission also notes that Stentor, CPC, the Director and Queen's supported the requirement for a per-call compensation regime. In principle, the Commission considers such a regime to be appropriate but is of the view that there is insufficient evidence at the present time to assess the appropriate level of this compensation. The Commission notes that Stentor, in reply comments, stated that its members were in the process of studying alternative approaches for implementing a per-call compensation regime, with the intention of filing proposed tariffs in the fourth quarter of 1997. As of this date, no tariffs have been filed. The Commission considers it appropriate to establish a per-call compensation regime and ILECs may file tariffs for its implementation. With respect to unregulated PTSPs, the Commission considers it appropriate that they negotiate rates with IXCs.

v) Provisioning of Various Types of Calls and Means of Payment

PIAC noted that several parties wished to provide a level of pay telephone service which is substantially less than currently provided. PIAC considered that consumer expectations would likely be frustrated by partial service and noted that while many participants indicated that competition would promote better service at lower prices, the first thing they wished to do was raise prices and cut back on services.

With the exception of Queen's, parties considered that CPTSPs should provide for both local and long distance calls. According to Queen's, all pay telephones should be technically configured to provide both services; however, CPTSPs should not be mandated to provide both as a condition of service.

Stentor submitted that any CPTSP's telephones that provide for long distance calls should be required to provide equal access to all networks of alternate providers of long distance services (APLDS).

With the exception of CBTA, Queen's and Stentor, parties to the proceeding were of the view that both coin and card payment options should be mandated.

CBTA submitted that coin access should be mandatory and card access optional, the assumption being that in order to compete, PTSPs will provide for card access. With respect to CBTA's proposal, Queen's argued that the service provider should have the ability to determine which means of payment best satisfies its customers' needs and its own business operations, whether that be through the use of coins, credit cards, debit cards, smart cards, or some combination of these or other alternatives. Queen's noted that the operation of coin pay telephones involves increased operating costs, e.g. collection of coins, and greatly increased risks of vandalism and theft, as compared to card only pay telephones.

Stentor indicated that its installed base of pay telephones includes both coin-operated sets and pay telephones which do not accept coins. According to Stentor, mandating the acceptance of cash payment at all pay telephones could actually stifle innovation in the technology and services available to consumers in Canada.

The Commission is of the view that opening the local pay telephone market to competition and then mandating CPTSPs to provide the identical services to those currently in place is at odds with the concept of the benefits to be derived from competition. The Commission finds that, subject to the requirements established in this Decision, new entrants should be allowed to determine the nature and scope of the services they wish to provide. However, if long distance calling is provided for, the CPTSP must allow access to all APLDS' networks accessed by the CPTSP's underlying LEC.

In addition, it will be left to the CPTSPs' discretion as to what types of payment they will accept. However, it is imperative that they ensure coinage is returned for incomplete calls, such as busy signals or no answer (if coins are accepted) or similarly, if a card is used, that alternately billed charges do not apply if the call is not connected to the called party.

vi) Provisioning of Operator Services

Parties varied in opinion as to whether or not provision of directories and operator services, other than 9-1-1 and MRS, should be mandated. AT&T Canada LDS argued that if operator services are provided, it should be in compliance with the industry guidelines noted in paragraph 284 of Decision 97-8. BCOAPO et al. argued that operator services similar to those provided by ILECs should be mandated, including 9-1-1, MRS, directory assistance, collect calling, line verification, and coin return for incomplete calls. CAC expressed the view that local and long distance directory assistance should be provided. CBTA argued that free access to the ILEC's operator assistance, or that of any CLEC's as such services are developed, should be provided.

According to CPC, operator services should be limited to 9-1-1, MRS, local and long distance directory assistance. Queen's submitted that all pay telephones should provide free access to directory assistance, operator assistance, 1-800 services, 9-1-1 and MRS. In RNL's view, 411 and 0+ calling should be provided.

Stentor considered that access to operator services and directory assistance could be mandated as an industry requirement or left to market forces. In addition, Stentor submitted that the provision of directories need not be mandated, as market forces could reasonably be expected to ensure that consumer needs in that regard were met by CPTSPs.

In Telecom Order 95-316, the Commission mandated that: (1) operators identify themselves as representing the company to callers or to any party accepting charges for a collect or billed-to-third party call, prior to charges being incurred; (2) operators provide the customer with sufficient time to terminate the call at no charge prior to the call being connected; (3) operators provide, upon customer request, (a) rates or charges for a call, (b) alternative call billing methods available to customers, and (c) complaint procedures available to dissatisfied customers; (4) the company post information in close proximity to each publicly accessed telephone serviced, identifying itself and providing rate information; and (5) in cases where the company provides operator services on behalf of another party, it withhold payment of any compensation to that party if 10-XXX or 1-800 access is blocked to competitive carriers.

In addition, the Commission directed Unitel Communications Inc. (now AT&T Canada LDS) in that Order to implement standards to ensure that (a) emergency calls are connected to the appropriate emergency service in the reported location, if known, and, if not known, in the originating location of the calls, and (b) where there is no 9-1-1 service available, operators handle emergency calls in a manner similar to that expected of the incumbent local telephone company operators; furthermore AT&T Canada LDS was directed to incorporate its complaints and access procedures into its operator services tariffs.

The Commission directed the ILECS, in Telecom Order 95-316, to file operator services tariffs that (a) incorporate the consumer safeguards currently set out in various locations in their tariffs and white page directories, and (b) state that contracts are required pursuant to the ILECs' operator services tariffs. Furthermore, the ILECs were directed to negotiate contracts with operator services providers for services or facilities used in the provision of operator services. These contracts were to (a) include provisions similar to Article 11 of the ILECs' Terms of Service, (b) specify that, when cases of abuse arise, the Commission may direct regulated carriers to discontinue the provision of access and related services to operator services providers, and (c) reference the fact that negotiated operator services contracts were required pursuant to the ILECs' operator services tariffs.

In Decision 97-8, the Commission declined to mandate the provision of, or terms and conditions for, operator services provided by CLECs, with the exception of access to emergency services through 9-1-1 or, failing that, through an operator and MRS. With regard to 9-1-1, all service providers were directed to ensure, to the extent technically feasible, that the appropriate end-user information is provided to the Automatic Location Identification database to the same extent as that provided by the ILECs. Furthermore, the Commission declined to mandate the provision of directory assistance and directories as it considered that, by virtue of CLEC non-dominance, market forces would be sufficient to discipline the provision of these services.

The Commission notes that CPC has indicated its intention to initiate service using paper directories. CPC plans, over time, to develop new electronic directory services that will not be subject to the same vandalism problems experienced with paper directories.

The Commission is of the view that the same rationale used in Decision 97-8 with respect to CLECs can be adopted in this proceeding. Accordingly, CPTSPs are not mandated to provide directories, access to directory assistance or operator services, with the exception of 9-1-1 or operator assisted emergency service access and MRS. However, should a CPTSP decide to offer its own operator services or use the operator services of a third party, such services must comply with the consumer safeguards established in Telecom Order 95-316.

In Decision 97-8, the Commission directed the CRTC Interconnection Steering Committee (CISC) to establish guidelines, processes and procedures for the provision of Operator Services within a multiple service provider environment. In its Consensus Report to the Commission (DOTF009 - Operator Processes, dated 26 August 1997), the Operator Services/Directory Listings Sub-Working Group of CISC indicated that further discussions would be deferred until such time as an AOSP existed. At that time the industry would decide whether to re-open discussions using the work completed to that date as a starting point.

The Commission directs that any operator services offered by CPTSPs be provided in compliance with procedures that evolve from CISC.

vii) Provisioning of Operating Instructions

Parties submitted that an approach for the provision of operating information similar to that established in Decision 97-8 should be adopted. In Decision 97-8, CLECs were directed to provide two distinct categories of information. The first category contains consumer information, which must be made available upon request, including rate information, and services available. The second category contains information that must be made available before the purchase decision is made, including the company name, address and a toll-free telephone number where information can be obtained and complaints addressed.

Stentor was of the view that the provision of instructions on accessing APLDS should not be mandated but should continue to be the responsibility of each APLDS. With respect to the level of detail for operating instructions to be posted on or near a pay telephone, Stentor considered that it would be in the CPTSPs' best interest to ensure that their pay telephones are easy for customers to use.

The Commission is concerned that in a competitive environment where rates for all parties are not regulated, it is essential that consumers have full, comprehensive and comprehensible information to make informed choices.

In order to achieve this goal, the Commission directs that the following information be prominently displayed at each pay telephone location provided by CPTSPs: (a) rates of local calls; (b) charges for operator services (if provisioned); (c) the name of the default long distance provider, if applicable; (d) any surcharge, mark-up or location charges not included in the price of the call; and, (e) the CPTSP's name, address and toll free number where information can be obtained and complaints addressed. In addition, CPTSPs are directed to place the Commission's address and toll-free number (1-877-249-CRTC) on all pay telephones, in order to ensure that, when complaints are not satisfactorily addressed, consumers have direct recourse to the Commission. CPTSPs are also directed, as part of the registration process, to disclose the method by which complaints concerning rates, charges or collection practices will be resolved.

With respect to providing information on the operation of special features such as Email, Internet browsing and on-line services, the Commission considers that these services could conceivably be delineating factors and an incentive for the public to opt to use the equipment. Accordingly, given that it would be in the CPTSP's best interest to ensure that clear operating instructions are provided, the Commission will not mandate that such instructions be provided.

However, should there be limitations on the functionality of the pay telephone equipment, such as an inability to make long distance calls, the Commission directs the CPTSPs to post this information either on, or in close proximity to, the pay telephone.

With respect to providing information on how to access APLDS, the Commission considers that, similar to when the long distance market was opened to competition, APLDS will ensure that their customers know how to access their networks from pay telephones. Accordingly, the Commission does not consider it necessary to mandate this requirement.

viii) Public Interest Pay Telephones

As already noted, PIAC submitted evidence prepared by Dr. Mark Cooper recommending the provision of public interest pay telephones. Public interest pay telephones are defined by the FCC as pay telephones which (a) fulfil a public policy objective in health, safety, or public welfare; (b) are not provided for a location provider with an existing contract for the provision of a pay telephone, and (c) would not otherwise exist as a result of the operation of the competitive marketplace.

BCOAPO et al. argued that a regulatory body should be created, whose costs would be borne by the CPTSP through a fee of \$0.25 per month per telephone, to handle issues and concerns raised by consumers, location providers and competitors, in respect of these telephones.

AT&T Canada LDS submitted that subsidized public interest pay telephones have the potential to be as contentious as existing mechanisms to subsidize residential basic local service. Such a regime would require a clear definition to establish which pay telephones would be eligible, quantifying the appropriate subsidy, possibly at a very disaggregated level depending on the location, and establishing a mechanism to recover and distribute the subsidy.

CPC indicated that in Local Service Pricing Options, Telecom Decision CRTC 96-10, 15 November 1996 (Decision 96-10), the Commission noted the high penetration rate of telephone service in Canada and found that affordability was not presently an issue. CPC noted that PIAC had relied for its submissions solely on information relating to activities in the United States and that the FCC had acknowledged in CC Docket No. 96-128, Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, that the question of whether there was a need for public interest pay telephones varied from region to region and it was, therefore, more appropriate for the individual states to regulate this area based on local conditions.

CPC argued that it would be inappropriate to import a regulatory scheme from California or any other state which would almost certainly be unrelated to Canadian realities. In this regard, CPC submitted that Decision 96-10 reflected Canadian realities and a comparable approach should be adopted with respect to public interest pay telephones.

Queen's objected to the imposition of an obligation to serve on CPTSPs and submitted that such an obligation does not currently exist. Queen's considers that it would be ironic if the introduction of competition in the provision of pay telephone service was accompanied by an obligation to serve which is more typically associated with the provision of a service on a monopoly basis.

Stentor argued that requiring a certain number of pay telephones to be maintained and funded in the interest of serving health, safety and welfare goals had never been imposed in the past, and would, in effect, be an attempt to mandate certain forms of obligation to serve.

Stentor stated that pay telephones are installed today primarily to meet the needs of the travelling public and people away from their primary network access. Unlike the situation in the United States, these pay telephones are not typically installed in areas with low levels of residential telephone penetration in order to provide an extension to basic local service.

According to Stentor, communication options available to the travelling public have increased over the last several years and, as a result, the number of non-compensatory pay telephones has decreased. In Stentor's view, the approaches suggested by BCOAPO et al. and PIAC are entirely inappropriate in today's environment.

The Commission has in the past encouraged ILECs to provide pay telephone service in locations where costs exceed revenues. However, this is not mandated, as illustrated in Item 250 of Bell's General Tariff which states that the company furnishes public telephone service at its discretion, primarily to make outgoing service available to the general public and determines the location of the service.

In the Commission's view, there is no compelling evidence on the record to indicate that the introduction of competition in the pay telephone market warrants placing an obligation to serve, which currently does not exist, on CPTSPs or incumbent PTSPs at this time. Furthermore, establishing such a regime could prove to be contentious and a heavy administrative burden. The FCC acknowledged this concern when it indicated that any effort by it to implement a national program for public interest pay telephones would be beyond its current resource capabilities.

The Commission considers that the vast majority of people who use pay telephones do so as a matter of convenience or emergency, not as a substitute for basic telephone service. The Canadian telecommunications policy, as set out in the Act, requires the Commission to ensure that reliable and affordable telecommunications services of high quality be accessible to all Canadians in both urban and rural areas throughout Canada. This generally refers to the requirement that as many as possible are able to connect to the network via good quality basic access service. The Act also requires the Commission to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

The Commission agrees with the majority of parties in this proceeding that circumstances, at present, do not indicate a need for the establishment of public interest pay telephones. However, it is the Commission's intention to hold a review within a three-year time frame to investigate the impact competition has had on the pay telephone market. This review will include, among other things, problem areas that have been identified through complaints, including complaints with respect to consumer safeguards and barriers to entry. In addition, the Commission will, as part of the review, assess the requirement for public interest pay telephones. ILECs are directed to file reports within 45 days of this Decision indicating where pay telephones were located as of 1 July 1998 in their respective serving territories. Thereafter, ILECs are directed to file annual reports indicating locations from which pay telephones have been removed and the reasons why. Should the outcome of the review indicate that significant negative changes have occurred, the Commission would consider establishing a regime for public interest pay telephones.

ix) Information Campaign

PIAC argued that there should be a CRTC-directed information program, paid for by the CPTSPs, that would begin to educate Canadian telephone customers against potential abuses. This information program would be proactive and go beyond the mechanisms, i.e., billing inserts, adopted by the Commission with respect to long distance competition.

CPC opposed PIAC's suggested campaign noting the expense and the implicit and unjustified message that competitive pay telephones are unreliable and likely to cause consumers problems. According to CPC, this type of hidden message would undermine the evolution of competition from the outset.

In Stentor's view, mandating an information campaign focusing on potential consumer abuses, as proposed by PIAC, could well have the effect of prejudicing Canadian consumers against all new CPTSPs, which would retard the establishment of a competitive marketplace and the attendant benefits that Canadians may derive from it. Stentor noted that Canadians are well educated concerning the use of pay telephones and, indeed, many have first-hand experience with the complexities associated with the use of competitive pay telephones in the United States. In addition, Stentor considered that normal market forces could be relied upon to ensure that necessary and sufficient information is provided to consumers.

The Commission considers that the concept of competition generally in the telecommunications industry is not new to Canadians. Further, the Commission is of the view that, imposing the requirement on all CPTSPs to post rates, etc. at all pay telephone locations should provide sufficient information to consumers. The Commission is not persuaded that the expected benefits of conducting an information campaign would materialize and, in fact, believes that it could stifle the introduction of competition. The Commission, therefore, finds that an information campaign is not required.

x) Long-term and Exclusive Contracts

The Director submitted that the widespread existence of long-term and exclusive contracts entered into by ILECs prior to the beginning of competitive entry could pose a competition policy concern if it prevented entry in high volume locations such as airports, shopping malls, hospitals, universities and hotels.

CPC shared the Director's concern and submitted that it would be ironic if regulatory concerns about the anti-competitive aspects of these types of contracts actually served to delay the introduction of competition.

RNL submitted that Stentor should reveal the percentage of key, high volume locations that are presently under contract and the percentage of total revenue currently protected under these contracts, as well as any other contracts expiring beyond the end of 1997 in order to assist in determining whether barriers to entry exist.

Stentor submitted that, although some exclusive contracts have been entered into by certain ILECs with location providers, such contracts do not constitute a significant barrier to entry into the pay telephone business. Furthermore, the percentage of pay telephones covered under such arrangements is small and would not prevent an entrant from acquiring presence in key, high volume locations.

The Commission notes that one of the key success factors in operating a pay telephone service is the securing of appropriate sites. From a commercial perspective, these sites are ideally located in high pedestrian traffic areas. The use of long-term and/or exclusive contracts is one way to secure these sites for a pay telephone provider and thereby lower its ongoing costs. In anticipation of competition, the ILECs have had an extra incentive to secure attractive pay telephone sites on both privately and publicly owned lands. Such recent arrangements would be anti-competitive if they had the effect of erecting barriers to prevent new entrants from entering the market.

The Commission is of the view, however, that long-term contracts between PTSPs and owners/managers of airports or hotels, for example, are not counter to the public interest in the long term as such contracts lower the costs to both parties of providing the service or underlying services. If exclusive contracts give rise to inappropriately high prices, one can be confident that the users will put pressure on the airport or hotel management to get the price lowered either directly or through the use of alternatives such as portable wireless handsets.

Further, as far as competition itself is concerned, the Commission expects that the airport or hotel management will wish to engage in cost-efficient business practices that stimulate revenues by serving its customers and engendering goodwill. Such managers, therefore, can be expected to contract with the CPTSP or CPTSPs that can provide the best service at reasonable prices. Such CPTSPs will have to be at once innovative and efficient.

The Commission notes that, based on the above, exclusive contracts may be benign or disadvantageous. Those most likely to be disadvantageous to entry are the ones that have been concluded before entry is permitted. In order to identify whether a problem exists, the Commission directs the ILECs to file information with respect to any long-term or exclusive contracts entered into after 1 July 1997 which have a life expectancy of five years or longer, within 45 days of this Decision.

xi) Mandated Safeguards

The following safeguards are mandated as a condition of entering the local pay telephone market:

- (a) Provision of coinless and cardless access to 9-1-1, or access to emergency call routing by an operator accessed by dialling 0 at a pay telephone. Where required by civic authorities, provision of a list of detailed pay telephone locations to the enhanced 9-1-1 administrator;
- (b) Provision of MRS;
- (c) Provision of 6-1-1 or other number for reporting telephone trouble;
- (d) Provision of non-discriminatory access to the networks of all APLDS connected to the underlying LEC network, if long distance calling is permitted;
- (e) Posting on or near the pay telephone the company name, address and toll free number where information can be obtained and complaints addressed;
- (f) Posting the Commission's address and toll-free number (1-877-249-CRTC) on all pay telephone equipment, in order to ensure that consumers have direct recourse to facilitate resolution of unresolved complaints;
- (g) Operator services, if provided, (other than emergency services access and MRS) that are in compliance with Telecom Order 95-316 as well as with procedures that evolve from the CISC;
- (h) Prominent display, at each pay telephone location, of the following information: rates of local calls, the name of the default long distance provider; and any surcharges not included in the price of the call;

- (i) Provision for coin return for uncompleted calls, such as busy signals or no answer if coin access is applicable, and similarly if a card is used, alternately billed charges must not apply if the call is not connected to the called party;
- (j) Standard arrangement of letters as well as numbers provided on the dial in order to permit callers to reach their provider of choice through the use of commonly used vanity access sequences;
- (k) All pay telephones are to meet existing and future CSA and the Terminal Attachment Program Advisory Committee standards to prevent network harm;
- (l) All pay telephones are to be accessible to the physically disabled, be hearing aid compatible and meet the standards established in Telecom Order CRTC 98-626 for provisioning of service to visually impaired consumers; and
- (m) Adherence to all applicable Commission rules concerning protection of customer privacy.

C. Mechanism to Ensure Enforceability of Safeguards

With respect to the appropriate mechanism to ensure enforceability of safeguards, CAC, CCTA, PIAC, Queen's and Stentor supported the system established for CLECs in Decision 97-8. CPC submitted that the appropriate mechanism to ensure enforceability of the safeguards would be to embody them in the relevant LEC tariffs. In a similar vein, safeguards could be imposed on CPTSPs by incorporating them in the pay telephone access tariff offered by LECs to CPTSPs. Should a complaint be lodged, the Commission would investigate the matter and if the CPTSP had failed to comply with one or more of the safeguards, it could be directed to demonstrate that it had brought itself into compliance. Failing this, the Commission could direct the LEC supplying the access line to terminate the service. According to CPC, this tariff mechanism is familiar, fair and effective and has been used by the Commission to enforce regulatory restrictions against end-users, resellers and other unregulated service providers.

CPC indicated that when it conducted its technical trial in the Vancouver area, it utilized a regular business line with answer supervision and BC TEL's directory assistance - all of which were provided on a General Tariff basis. According to CPC, given the minimal technical requirements necessary to begin offering competitive pay telephone service, the Commission could direct the companies to adopt a tariff along the lines of the model tariff it provided which included provision for interconnection, resale, and terms and conditions of service.

In CPC's view the tariff could, in time, evolve to address any technical requirements or related matters that might arise. CPC urged the Commission to approve an initial pay telephone access tariff as part of its decision to allow the immediate commencement of competition and to direct the Stentor-member companies to file tariffs implementing the Commission's decision within 30 days of the date of the decision.

The Director supported the registration/tariff approach envisaged by CPC, but agreed with Stentor that a requirement for the LECs to essentially police their competitors would place an inappropriate regulatory burden on the LECs. According to the Director, any certification process should be subject to review within a fixed period of time, at which time, the process could be modified or terminated.

Queen's submitted that ILECs should be required to submit pay telephone tariffs incorporating appropriate safeguards. With respect to CLECs, Queen's noted that safeguards could be imposed, pursuant to section 24 of the Act, in all CLEC contracts with CPTSPs for the provision of services. In both scenarios, non-compliance by the CPTSP could constitute cause for termination of the service.

Stentor was of the view that the Commission should enforce safeguards directly. Complaints regarding non-compliance should be addressed to the Commission for review with the possibility of certification being withdrawn. Furthermore, the Commission would have the power to effect this termination through a disconnection order served on the provider of the underlying access lines.

Stentor noted that enforcement of these safeguards could be compromised in the instances where a CPTSP obtains access facilities from a reseller and, accordingly, the Commission might consider prohibiting the resale of underlying facilities for purposes of providing pay telephone service. In addition, the CPTSP should inform the Commission as to which carrier is providing the underlying facilities.

Stentor concurred with parties that recommended the use of both a certification and complaints process. Stentor noted that in order for a complaint process to be effective, it must be simple for consumers to invoke and it must produce timely results. Stentor also noted that, based on the volume of complaints to the FCC and state Public Utilities Commissions, a more robust complaint process (e.g., added resources, use of a 1-800 number, etc.) than is currently in place at the Commission might be required.

With respect to CPC's suggestion to embody safeguards in the relevant LEC access line tariffs, Stentor argued that it would be inappropriate for the companies to be tasked with policing their competitors and that the Commission, in Resale to Provide Primary Exchange Voice Services, Telecom Decision CRTC 87-1, 12 February 1987 (Decision 87-1), had recognized the potential drawbacks to this approach. According to Stentor, the imposition of such a role on the companies would inevitably lead to disputes between the parties along with accusations of anticompetitive behaviour in cases where the companies are obliged to take action to correct non-compliance.

In addition, such disputes would act to slow the process of resolving the non-compliance - to the detriment of the public - and would burden the companies with substantial additional costs as a result of this role, which their competitors would not experience. Therefore, Stentor submitted that the imposition of such a role on the companies would be an ineffective public policy, which would ultimately negatively effect the pay telephone industry.

With respect to CPC's proposal that existing tariffs for individual business lines were sufficient to meet the needs of a new pay telephone industry, Stentor noted that the companies would expect to file tariffs for the provision of pay telephone access lines which reflect the unique requirements of these customers (such as, among other things, inclusion of the pay telephone number in the Billed Number Screening (BNS) Database), until competition in access lines allows deregulation. Additionally, the costs associated with provisioning pay telephones in public locations (e.g., on street corners or along highways) would need to be reflected in the development of such tariffs.

Stentor noted that CPC plans to initially install pay telephones that have certain operating characteristics which enable them to operate with a standard business access line. However, other competitors may choose to install pay telephones that utilize a different technology and require different access line characteristics. For example, the answer supervision provided on business lines would not provide appropriate service to the majority of the pay telephones currently installed in North America. Issues of this nature would have to be addressed to adequately reflect the access line needs of all CPTSPs. Furthermore, the unique calling patterns generated from pay telephone lines may result in an additional or reduced load on operators when compared to other access services.

Stentor agreed with CBTA that with full competition the market would tend generally towards self-regulation, eliminating the need for any elaborate enforcement mechanism. However, Stentor submitted that it would be naïve to believe that the elimination of all regulated safeguards would be possible with the initial establishment of local pay telephone competition bearing in mind the United States experience.

Finally, Stentor noted CCTA's proposal that only CLECs be permitted to provide local pay telephone service, so that safeguards would be enforced through direct regulation. Stentor further noted that this would be a workable enforcement mechanism and was, in fact, very similar to the approach taken by the Commission in its findings regarding the provision of toll only pay telephone service.

The Commission has, over a period of several years, declined to permit competition in the pay telephone market due to concerns with respect to unregulated service providers. With its decision to allow competition, the Commission must now establish a competitive pay telephone framework that encompasses the ILECs and two new potential types of competitive service providers.

The first such entity is a CLEC, which by definition, is a Canadian carrier pursuant to the Act and is subject to direct enforcement of its consumer safeguards by the Commission. In Decision 97-8, the Commission found that, with respect to end-users, CLECs would be bound by the obligations set out in the Decision, but no tariffs would be required. However, the Commission retained its power under section 24 of the Act so that the offering and provision of any telecommunications service by Canadian carriers would still be subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

The second type of provider would be an unregulated service provider, a reseller, such as CPC or Queen's. Resellers are beyond the scope of the Act, are not subject to direct regulation, and are not required to file tariffs for the approval of rates or of other terms and conditions of service. Therefore, for these entities, the enforcement of consumer safeguards would involve indirect regulation through the LEC whose access services are being used to connect the pay telephone equipment.

In Decision 87-1, the Commission found that it would not be appropriate to place conditions in ILEC tariffs for enforcement of obligations on CPTSPs, as it would place the ILEC in a position whereby it would have to monitor and enforce compliance on its potential competitors.

However, the Commission notes that it has used the tariff mechanism to enforce regulatory restrictions on telecommunication resellers on several occasions, in a variety of areas. For example, in Attachment of Subscriber-Provided Terminal Equipment, Telecom Decision CRTC 82-14, 23 November 1982, terminals (i.e., telephones, PBX systems) which could be attached to the networks of carriers were restricted via tariff provisions. Likewise, pursuant to Telecom Order CRTC 94-629, 8 June 1994, Access to Billing and Collection Services and Related Databases by Resellers with Trunk-Side Access, the telephone companies were required to provide resellers with trunk-side access to the telephone companies' BNS databases, conditional on the recipient signing a non-disclosure agreement. This agreement required the reseller to undertake to protect the confidentiality of any billing or other information received, using it only for the purpose of billing and not reselling it or otherwise disclosing it to any third party. The Commission also notes that consumer safeguards governing the provision of operator services have been included in tariffs, with a condition stipulating that unregulated service providers that obtain facilities or services of the company which are used in the provision of operator services must have a signed contract with the company which spells out the terms and conditions and consumer safeguards with which they must comply. Furthermore, contractual arrangements such as agreements specifying the procedures of the Interexchange Carrier Group and Non-Disclosure Agreements are currently used by the telephone companies and competitors in place of specific tariff provisions in the provisioning of interconnection services.

In the Commission's view, the registration/tariff/contract approach is the most suitable to ensure adherence to its findings in this Decision. The registration process established for CLECs in Decision 97-8 is modified for specific application to entry into the pay telephone market.

The Stentor-member companies are directed to file proposed pay telephone access tariffs which include the unique requirements, i.e., inclusion of the pay telephone number in the BNS database, associated with provisioning of pay telephone service, together with a standard service agreement, within 45 days of this Decision. The tariffs are to make reference to service agreements which include as part of the terms and conditions of service, the mandated consumer safeguards established in this Decision.

The CLECs are directed to include the consumer safeguards established in this Decision in all contracts negotiated with CPTSPs for the provision of pay telephone service.

The Commission notes that non-compliance by a CPTSP with either the ILEC tariff or the CLEC contract will constitute reason for the termination of the access service. When cases of abuse arise and are substantiated, the Commission will direct LECs to discontinue the provision of access service.

IV REGULATORY FRAMEWORK FOR NEW ENTRANTS

In Decision 97-8, the Commission considered the issue of forbearance for certain services offered by CLECs, and concluded that sections 25, 29 and 31 and subsections 27(1), (5) and (6) of the Act would not apply in respect of retail telecommunications services offered by CLECs to end-users. The Commission notes that, while local pay telephone service offered by CLECs would be considered a retail service, issues with respect to the extent of regulation of this service were not considered in Decision 97-8.

In light of the findings set out in this Decision, the Commission considers that it is appropriate to refrain, pursuant to section 34 of the Act, from exercising certain of its powers and performing certain of its duties in respect of local pay telephone service offered by CLECs. The Commission is of the view that to do so would be consistent with the Canadian telecommunications policy objectives outlined in the Act. Subject to the following, the Commission also considers that the offering of local pay telephone service will be subject to sufficient competition to protect the interests of users.

As noted earlier in this Decision, the Commission considers that competition will be sufficient to discipline the rates for pay telephone services offered by CLECs. Accordingly, the Commission will forbear from exercising its powers and duties under section 25 and subsection 27(1) of the Act with respect to the rates charged for local pay telephone service provided by CLECs. CLECs will not be required to file tariffs for these services. The Commission is also of the view that it is appropriate to refrain from exercising its powers under section 29 of the Act with respect to the approval of agreements.

The Commission has also concluded in this Decision that it is appropriate to require CLECs to include the safeguards set out in this Decision in all contracts negotiated with CPTSPs. Accordingly, the Commission considers that it is in the public interest that it continue to exercise its powers under section 24 of the Act to impose on CLECs the conditions contained in this Decision, as well as any that may prove necessary in the future.

In order to ensure that CPTSPs do not unjustly discriminate against any other service providers or subscribers, or confer an undue or unreasonable preference toward any person, the Commission will retain its powers and duties under subsections 27(2), (3) and (4) of the Act.

The Commission has also concluded that it would be appropriate to forbear from exercising its powers and duties pursuant to section 31 of the Act which deals with limitation of a Canadian carrier's liability. In Decision 97-8, the Commission concluded that it would not be in the public interest to provide CLECs with the regulatory protection that ILECs receive in respect of limitation of liability, as many CLEC services would not be subject to rate regulation while those of the ILECs would. The Commission is of the view that the same reasoning applies in respect of local pay telephone services.

In light of the above, the Commission will refrain from exercising its powers and performing its duties pursuant to sections 25, 29 and 31 and subsections 27(1), (5) and (6) of the Act, in relation to local pay telephone services provided by CLECs. Sections 24, 25, 27, 29 and 31 do not apply to CLECs to the extent that they are inconsistent with the determinations in this Decision.

Pursuant to subsection 34(3) of the Act, the Commission finds, as a matter of fact, that to refrain from exercising its powers as set out herein, would not likely impair unduly the establishment or continuance of a competitive market for local pay telephone service.

V ENTRY PROCEDURES

New entrants must conform to the following registration procedures:

- (1) The CPTSP must attest in writing that it understands and will conform to the obligations and consumer safeguards set out in this Decision;
- (2) The CPTSP must provide the name of the carrier supplying the access lines;
- (3) The CPTSP must provide to the Commission serving area maps for information purposes and make such serving area maps available upon request at their business offices; and
- (4) The CPTSP must provide details as to how it proposes to deal with consumer complaints.

Laura M. Talbot-Allan
Secretary General

This document is available in alternative format upon request.

Date modified:

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This is Exhibit "F" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



ARCHIVED - Telecom Order CRTC 95-316

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Telecom Order

Ottawa, 15 March 1995

Telecom Order CRTC 95-316

IN THE MATTER OF the proceeding initiated by Consumer Safeguards for Operator Services, Telecom Public Notice CRTC 94-35, 2 August 1994 (Public Notice 94-35).

WHEREAS, on 17 June 1994, Unitel Communications Inc. (Unitel) filed an application under Tariff Notice 919 requesting approval of tariff revisions providing for the introduction of operator-assisted calling for Unitel calling card holders and for consumer safeguards for Unitel-provided operator services;

WHEREAS, with regard to consumer safeguards, Unitel proposed that:

- (1) Unitel operators identify themselves as representing Unitel to callers or to any party accepting charges for a collect or billed-to-third-party call, prior to charges being incurred;
- (2) Unitel operators provide the customer with sufficient time to terminate the call at no charge prior to the call being connected;
- (3) Unitel operators provide, upon customer request, (a) rates or charges for a call, (b) alternative call billing methods available to customers, and (c) complaint procedures available to dissatisfied customers;
- (4) Unitel post information in close proximity to each publicly accessed telephone serviced, identifying itself and providing rate information; and

(5) in cases where Unitel provides operator services on behalf of another party, Unitel withhold payment of any compensation to that party if 10-XXX or 1-800 access is blocked to competitive carriers;

WHEREAS, in Public Notice 94-35, the Commission stated the preliminary view that uniform consumer safeguards governing the provision of operator services should apply to all carriers under its jurisdiction that offer competitive long distance services;

WHEREAS the Commission also stated the view that it may be appropriate to include consumer safeguards as conditions of service in the telephone companies' tariffs for services or facilities that might be used by competitors offering operator services;

WHEREAS, in Public Notice 94-35, the Commission requested comment on:

- (1) the adequacy of the specific consumer safeguards proposed by Unitel and whether any alternate or additional safeguards would be appropriate;
- (2) whether uniform safeguards should be required in all tariffs for operator services provided by facilities-based carriers of competitive long distance service; and
- (3) whether the telephone companies' tariffs should provide for such safeguards through conditions of service for services or facilities that might be used by competitors offering operator services;

WHEREAS the Commission also requested comments on the specifics of Unitel's application, noting that Unitel proposed surcharges of \$1.25 for operator-assisted Canada-Canada, Canada-U.S. and U.S.-Canada calling card calls, and a surcharge of \$6.25 for Canada-Mexico calling card calls;

WHEREAS comments were received from the Competitive Telecommunications Association (CTA), Sprint Canada Inc. (Sprint), Stentor Resource Centre Inc. (Stentor) on behalf of AGT Limited, BC TEL, Bell Canada, The Island Telephone Company Limited, Manitoba Telephone System, Maritime Tel and Tel Limited and The New Brunswick Telephone Company, Limited (collectively, the telephone companies) and Unitel, and reply comments were received from Stentor and Unitel;

WHEREAS the parties agreed that uniform consumer safeguards should apply to all operator services providers;

WHEREAS CTA submitted that there were only two remaining issues to be resolved: (1) unreasonable rates charged by unregulated firms, and (2) protection of subscriber information;

WHEREAS CTA submitted that provisions similar to those approved in Telecom Order CRTC 94-629, 8 June 1994, with regard to access to billing and collection services and related databases by resellers with trunk-side access, were sufficient to deal with the above-noted concerns;

WHEREAS Sprint submitted that Unitel's proposed safeguards were adequate and should be adopted as a uniform set of standards;

WHEREAS Stentor stated that Unitel had not provided information as to how emergency calls would be processed;

WHEREAS Stentor submitted that Unitel should elaborate on any proposal it had for completing 9-1-1 calls;

WHEREAS Unitel stated that it did not anticipate any emergency calls reaching its operators, due to the long dialing sequence required;

WHEREAS Unitel stated that, upon introduction of its full complement of operator services, it would offer access to emergency service providers on a full-time basis, twenty-four hours a day, seven days a week, and would work in conjunction with Stentor to negotiate any technical requirements associated with completing emergency calls to 9-1-1 service providers;

WHEREAS Unitel agreed with Stentor that operator services providers should adhere to a code of ethics when dealing with the content, as well as the details, of a customer's telephone call;

WHEREAS Unitel considered that confidentiality was provided for by Article 11 of its Terms of Service;

WHEREAS Unitel stated that its employees were required to sign a "Code of Business Conduct", which addresses the release of confidential information and prohibits employees from revealing such information without proper authorization;

WHEREAS Unitel stated that its operators are required to sign an additional code of ethics, which relates specifically to operator services;

WHEREAS Stentor stated that the Commission should be informed of the method by which complaints were to be resolved, and of the manner in which callers would be informed of the process;

WHEREAS Unitel submitted that it had detailed procedures to handle all complaints, including operator services complaints, and that the "welcome package" it sends to all new customers includes information on these procedures;

WHEREAS Unitel submitted that problems with call splashing would not be encountered, as it did not currently plan to provide domestic operator-to-operator services;

WHEREAS Unitel stated that, in the case of international calls, it would have the correct originating and terminating telephone numbers and would therefore be in a position to correctly bill the call;

WHEREAS Unitel stated that, in cases where operator services providers transferred calls to Unitel operators without supplying the originating telephone number, Unitel would inform the customer that the call would be rated from the originating location of the operator to the requested terminating number;

WHEREAS Unitel stated that it would complete the call if the customer consented to this rating method;

WHEREAS Stentor stated that, in order to prevent customer confusion and unwarranted activity by telephone company operators, Unitel's tariff should provide sufficient information as to how Unitel's card users could access operator assistance;

WHEREAS Unitel submitted that instructions with respect to accessing operator assistance are provided on the back of each Unitel calling card, and would be provided by voice commands when a call was placed;

WHEREAS Unitel indicated that the proposed requirement that each publicly accessed telephone serviced by Unitel be clearly identified is designed to ensure that members of the public will understand that all "1+" long distance calls placed from that telephone will be carried on the Unitel network;

WHEREAS Stentor expressed concerns as to the inclusion in the telephone companies' terms of service of consumer safeguards with regard to the provision of operator services by competitors;

WHEREAS Stentor submitted that a requirement for the telephone companies to enforce consumer safeguards through their terms of service would be inappropriate and ineffective, except in the event of a Commission directive to discontinue service;

WHEREAS Stentor stated that the telephone companies would be willing to discontinue the provision of access and related services to alternate operator services providers as a result of abuse, on the advice of the Commission;

WHEREAS Unitel stated that regulated carriers should include safeguards in their tariffs, and that, for unregulated operator services providers, the safeguards should be included in the conditions of service of the regulated companies whose facilities would be used;

WHEREAS Unitel stated that Stentor members did not have safeguards in place to protect customers from potential abuse;

WHEREAS Stentor submitted that the telephone companies' Terms of Service and tariffs reflect numerous consumer safeguards;

WHEREAS no party other than Unitel commented on the rates proposed under Tariff Notice 919;

WHEREAS the Commission has considered the comments and reply comments filed in this proceeding;

WHEREAS the Commission considers that safeguards providing consumer protection are required in a competitive marketplace;

WHEREAS the Commission is of the view that Unitel's proposed safeguards, in conjunction with Article 11 of its Terms of Service, adequately protect consumers in respect of rates, access and confidentiality;

WHEREAS the Commission considers that Unitel has not made adequate provision for handling emergency calls; and

WHEREAS the Commission is of the view that complaint and access procedures should be incorporated into operator services tariffs -

IT IS HEREBY ORDERED THAT:

1. Unitel is directed to file for final approval revised proposed tariff provisions incorporating those proposed in Tariff Notice 919, modified as set out below.
2. In its revised proposed operator services tariffs, Unitel is to implement standards to ensure that (a) emergency calls are connected to the appropriate emergency service in the reported location, if known, and, if not known, in the originating location of the calls, and (b) where there is no 9-1-1 service available, Unitel operators handle emergency calls in a manner similar to that expected of telephone company operators.
3. As an alternative to paragraph 2, above, Unitel may wish to make arrangements with the telephone companies for the handing-off of emergency calls, with the originating telephone number.

4. Unitel is directed to incorporate its complaints and access procedures into its operator services tariffs.
5. The telephone companies are directed to file, within 90 days, comprehensive operator services tariffs that (a) incorporate the consumer safeguards currently set out in various locations in their tariffs and white page directories, and (b) state that contracts are required pursuant to the telephone companies' operator services tariffs.
6. The telephone companies are directed to negotiate contracts with operator services providers for services or facilities used in the provision of operator services.
7. The contracts referred to in paragraph 6 are to (a) include provisions similar to Article 11, (b) specify that, when cases of abuse arise, the Commission may direct regulated carriers to discontinue the provision of access and related services to operator services providers, and (c) reference the fact that negotiated operator services contracts are required pursuant to the telephone companies' operator services tariffs.

Allan J. Darling
Secretary General

Date modified:

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This is Exhibit "G" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



Canadian Radio-television and Telecommunications Commission

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Telecom Decision CRTC (Canadian Radio- television and Telecommunications Commission) 2007-27

Ottawa, 30 April 2007

Price cap framework for large incumbent local exchange carriers

Reference: 8678-C12-200605553

In this Decision, the Commission establishes a price cap regime that will apply to Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, and TELUS Communications Company (collectively, the ILECs (incumbent local exchange carriers)).

The Commission's key determinations in this Decision include the following:

- *basic residential service rates in urban areas are capped at existing levels (i.e. price ceiling);*
- *basic residential service rates in rural areas are not permitted to increase by any more than the lesser of the annual rate of inflation or 5% on an annual basis;*
- *local optional service and bundled service rates are no longer subject to pricing constraints;*
- *the prohibition on further rate de-averaging is removed for local residential, including optional local services;*
- *business and other capped service rate increases are limited to the rate of inflation overall and a maximum increase of 10% per year for individual rates;*
- *pay telephone service rates are permitted to increase to a maximum rate of \$0.50 per cash call, and a maximum rate of \$1.00 per non-cash call; and*
- *rates for public safety and social services (e.g. 9-1-1 service, Message Relay Service) remain frozen at existing levels.*

The price cap regime is designed to ensure that customers continue to have access to just and reasonable rates while at the same time providing the ILECs with incentives to operate more efficiently and to be more innovative in the provision of services. This regime will apply to those areas which do not qualify for forbearance.

The Commission directs Société en commandite Télébec to show cause, by 30 May 2007, why the determinations made in this Decision should not apply to it.

The dissenting opinion of Commissioner Langford is attached.

Background

1. Price cap regulation generally places upward constraints on prices that an incumbent local exchange carrier (ILEC (incumbent local exchange carrier)) can charge its customers for various telecommunications services. The price cap regime includes other rules which govern the rates charged to residential and business customers. Services subject to price cap regulation account for almost \$7 billion in annual revenues collectively for the large ILECs with over 65% derived from the local residential voice market.
2. Price cap regulation is used to constrain market power with respect to service rates and to ensure customer access to just and reasonable rates. In addition to protecting customers, price cap regulation provides the ILECs with incentives to operate more efficiently and to be more innovative in the provision of services.
3. In 2002, the Commission established separate price cap regimes for two groups of large ILECs.¹ These regimes, which are generally similar, include eight baskets or groups of services: residential local services in high-cost serving areas (HCSAs); residential local services in non-HCSAs; business services; other capped services; competitor services; services with frozen rates; payphones; and uncapped services. Each of these baskets or groups of services is subject to constraints tailored to meet the circumstances of the relevant services.
4. In addition to the basket constraints, a variety of rate element constraints are applied on specific services in light of competitive circumstances and related considerations. These rate element constraints provide customers with additional price protection.
5. The current price cap regimes are set to expire in mid-2007. In order to establish the price cap regime that would go into effect in 2007 in the operating territories of the large ILECs, the Commission initiated a proceeding in 2006. In *Review of price cap framework*, Telecom Public Notice CRTC 2006-5, 9 May 2006 (Public Notice 2006-5), the Commission invited comments on what changes, if any, should be made to the price cap regime with respect to the following:
 - a. objectives of the regime;
 - b. service basket structure and pricing constraints;
 - c. components of the price cap formula;
 - d. further rate de-averaging within a band; and
 - e. other issues including the duration of the next price cap regime.

The proceeding

6. The Commission received submissions, interrogatory responses, comments and/or arguments from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, and Saskatchewan Telecommunications (SaskTel) (collectively, the Companies); Bragg Communications Inc., carrying on business as EastLink; the British Columbia Public Interest Advocacy Centre

(BCOAPO et al.); the City of Calgary; Cogeco Cable Canada Inc., Rogers Communications Inc., and Shaw Communications Inc. (collectively, the Competitors); the Public Interest Law Centre representing the Manitoba Branch of the Consumers' Association of Canada and the Manitoba Society of Seniors and Manitoba Keewatinook Ininew Okimowin (collectively, PILC); MTS Allstream Inc. (MTS Allstream); the Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization) (PIAC (Public Interest Advocacy Centre)); Quebecor Media Inc. (including its affiliate Vidéotron Ltd.) (QMI); TELUS Communications Company (TELUS); and l'Union des consommateurs (UÇ (l'Union des consommateurs)).

7. An oral hearing was held from 10 to 18 October 2006 before Vice-Chairman Richard French (chairman of the hearing) and Commissioners Helen del Val, Elizabeth Duncan, Stuart Langford, and Andrée Noël. Final written arguments were filed on 26 October 2006 and the record of the proceeding closed with reply arguments filed on 6 November 2006.

8. In this Decision, the Commission will address the issues set out in Public Notice 2006-5, as listed above. While the positions of parties have necessarily been summarized in this Decision, the Commission has carefully reviewed and considered the submissions of all parties.²

Overview of the current regulatory environment

9. After the close of record of this proceeding, the government announced two initiatives that will have an impact on the manner in which the Commission will regulate the telecommunications industry.

10. The first of these initiatives is a direction, *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* (the Policy Direction), issued by the Governor in Council to the Commission. The Policy Direction came into effect on 14 December 2006.

11. The Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible and regulate where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary to meet the policy objectives of the *Telecommunications Act* (the Act). Although the Policy Direction does not apply to this particular proceeding,³ the Commission has taken the Policy Direction into account in making its determinations in this Decision.

12. The second initiative was a change to the Commission's forbearance test set out in *Forbearance from the regulation of local retail services*, Telecom Decision CRTC 2006-15, 6 April 2006 (Decision 2006-15). *Order varying Telecom Decision CRTC 2006-15*, Order in Council P.C. 2007-532, issued 5 April 2007 (the Forbearance Order), among other things, replaced the Commission's forbearance test based on market share loss with one that emphasizes the presence of competitive infrastructure. The Commission anticipates a significant portion of the regulated telecommunications market could be forborne in the near future. However, in those areas where a facilities-based competitive market does not exist, the Commission's regulatory oversight, including price cap regulation, will remain in place.

13. In those areas which do not qualify for forbearance, the ILECs will continue to have significant market power and customers will have limited competitive alternatives. The ILECs would have both the incentive and ability to raise and control prices. In light of these circumstances, the next price cap regime is designed to protect the interests of customers in those areas that will not be forborne from the regulation of local exchange services to ensure such customers have just and reasonable rates.

14. The Commission notes that applications have been filed by some ILECs requesting forbearance from the regulation of local services in certain exchanges within their operating territories. These applications have been filed pursuant to the Forbearance Order. The Commission notes that until rulings are made to approve these applications, the price cap regime set out in this Decision will continue to apply in these exchanges.

A. The objectives of the price cap regime

15. The price cap regimes set out in Decisions 2002-34 and 2002-43 were designed to achieve the following objectives:

- a. to render reliable and affordable services of high quality, accessible to both urban and rural area customers;
- b. to balance the interests of the three main stakeholders in telecommunications markets, i.e., customers, competitors and incumbent telephone companies;
- c. to foster facilities-based competition in Canadian telecommunications markets;
- d. to provide incumbents with incentives to increase efficiencies and to be more innovative; and
- e. to adopt regulatory approaches that impose the minimum regulatory burden compatible with the achievement of the previous four objectives.

16. The Commission notes that BCOAPO et al., the City of Calgary, and the Competitors generally agreed with the objectives set out in Decisions 2002-34 and 2002-43, while the Companies, MTS Allstream, QMI, TELUS, and UC proposed alternative objectives.

17. Section 7 of the Act sets out the following telecommunications policy objectives:

- a. to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- b. to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- c. to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- d. to promote the ownership and control of Canadian carriers by Canadians;
- e. to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
- f. to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

- g. to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;
- h. to respond to the economic and social requirements of users of telecommunications services:
and
- i. to contribute to the protection of the privacy of persons.

18. The Commission notes that some of the objectives set out in Decisions 2002-34 and 2002-43 are not explicitly reflected in section 7 of the Act. The Commission recognizes that most of the objectives proposed by the parties are consistent with the telecommunications policy objectives in the Act, in particular paragraphs (a), (b), (c), (f) and (h).

19. As stated earlier, the Policy Direction does not apply to this proceeding. However, the Commission notes that the Policy Direction emphasizes certain objectives of the Act, including the use of efficient and effective regulation. The Commission also notes that some parties proposed objectives which are consistent with the Policy Direction.

20. The Commission considers that the formulation of a distinct set of objectives specifically applicable to the price cap regime is no longer necessary. Instead, the Commission finds that section 7 of the Act sets out the appropriate objectives for the next price cap regime.

21. The Commission has taken these objectives into consideration and has made reference to them, as applicable, in developing the parameters of the next price cap regime. The Policy Direction has also provided guidance in this regard.

B. Service basket structure and pricing constraints

22. As stated earlier, the current price cap basket structure and pricing constraints were established in Decisions 2002-34 and 2002-43. In general, the Commission determined that two different types of constraints would be in effect for the price cap period. Firstly, a basket constraint was applied to the revenues derived from the basket or sub-basket of the ILECs' services. Secondly, in many cases, a rate element constraint was imposed on the price of a specific service.

23. The basket structure and key pricing constraints were established as follows:

- a. *Residential Services in Non-HCSAs*: This basket was divided into two sub-baskets: basic residential services and residential optional services. The basket was subject to a constraint of inflation (I) less a productivity offset (X-factor). However, in order to avoid the possibility that the operation of the constraint might force price reductions which would have a negative impact on the development of local competition, this basket was subject to a deferral account⁴ mechanism.

In order to provide additional pricing protection to customers, the sub-basket of basic residential services in non-HCSAs was subject to a constraint of inflation less a productivity offset (I-X) provided that productivity did not exceed inflation. If productivity exceeded inflation, the constraint would be set at zero. Services in this sub-basket were also subject to a rate element constraint which limited increases in any service rate element to 5% per year.

The second sub-basket, residential optional services in non-HCSAs, was not subject to a basket constraint. However, some services in this sub-basket were subject to a constraint which limited price increases to \$1 per feature per year.

- b. *Residential Services in HCSAs*: As was the case for residential local services in non-HCSAs, the identical sub-basket structure and associated constraints were established for these services except that no constraint was imposed on the basket overall.
- c. *Business Services*: The basket was subject to a constraint set at inflation. No productivity offset was imposed. These services were also subject to a rate element constraint limiting individual rate increases to 10% per year.
- d. *Other Capped Services*: This basket was subject to a constraint of inflation less a productivity offset. In addition, these services were subject to a rate element constraint limiting rate increases to 10% per year.
- e. *Services With Frozen Rate Treatment*: Rates for these services (e.g. 9-1-1 service and Message Relay Service) were frozen at existing rate levels.
- f. *Payphones*: Rates for these services (e.g. public and semi-public pay telephones) were frozen at existing rate levels.
- g. *Competitor Services*: This group of services was divided into two service groups: Category I Competitor Services (i.e. services in the nature of an essential service)⁵ and Category II Competitor Services (i.e. other competitor services).

Services in the Category I Competitor Services group were generally to be priced at Phase II costs plus a 15% mark-up. With certain exceptions, they were also subject to a rate element constraint of I-X.

The rates for Category II Competitor Services were either mandated or market-based and were based on considerations in addition to or other than Phase II costs. The rates for these services were capped at existing levels and were reviewed as required on a case-by-case basis.

- h. *Uncapped Services* included all tariffed services not in one of the previous baskets or service groups and were not subject to any upward pricing constraints.

Positions of parties

The Companies

24. The Companies submitted that the current market conditions supported a more liberal price cap regime. They argued that regulation had a legitimate role in the protection of customers' interests. However, where market forces were sufficient to perform this role, regulation could actually interfere to the detriment of consumer welfare. The Companies' proposed basket structure included pricing constraints as well as market indicia to determine when it was time to rely on market forces rather than on regulatory pricing constraints.

25. The Companies proposed five service baskets: connectivity services; emergency, public safety and social protection services; competitor services; discretionary services; and bundles.

Connectivity services

26. The Companies' proposed connectivity services basket included any service that connected a customer to a network or other location. The Companies submitted that the services assigned to this basket had the same characteristics as essential services⁶ and required some form of regulatory oversight to discipline prices in the absence of competitive market forces.

27. The Companies proposed that these services be capped, on average, at existing rate levels, except for: (1) pay telephone services; (2) services for which pricing constraints would be redundant; and (3) business services whose prices were below cost. The Companies also proposed that residential connectivity services be subject to a basket constraint of zero and an individual rate element constraint of 5% per year. Business connectivity services should be subject to a basket constraint of zero, and an individual rate element constraint of 10% per year. The Companies submitted that the individual rate element constraints would ensure the continued affordability of each of these connectivity services. The Companies also argued that prices in a capped basket could not increase, on average, which would be more restrictive than if prices were allowed to increase by applying an inflationary constraint.

28. Regarding the exceptions above, the Companies requested the flexibility to increase the local coin pay telephone rate from \$0.25 to \$0.50 per call. The Companies also requested that Bell Canada be provided the flexibility to increase the rate for local calls placed with collect, third number, calling card, or commercial credit cards from \$0.75 up to a maximum of \$1.00 per call.

29. In addition, the Companies proposed uncapping services such as Centrex, Internet Protocol services, special facility tariffs and late payment charges since there were regulatory constraints of some form already established for these services. Finally, the Companies proposed that business service prices be allowed to increase if a company could demonstrate that the prices of the services were below the underlying costs.

Emergency, public safety and social protection services

30. The Companies proposed that this basket include those services that have already been deemed by the Commission to have a value in protecting safety, privacy, and other socially desirable goals and that the treatment of them need not be reconsidered. For these services, which include 9-1-1, Call Display Blocking and Message Relay Service, the Companies proposed that prices should remain unchanged over the next price cap period.

Competitor services

31. The Companies submitted that an adjustment of inflation less productivity (i.e. I-X) should not be applied to Category I Competitor Service rates and that these rates should be frozen pending the conclusion of the proceeding initiated by Public Notice 2006-14,⁷ given the likelihood that the proceeding would result in changes to the regulatory framework for competitor services. If the Commission were to impose a productivity offset (i.e. X-factor) for Category I Competitor Services, the Companies submitted that -0.5% would be an appropriate level for 2007 and 2008.

32. For Category II Competitor Services, the Companies proposed that the current rules be retained, whereby any changes in prices would be assessed on a case-by-case basis.

Discretionary services

33. The Companies proposed that all other regulated services be classified as discretionary. The Companies proposed that these services be uncapped, since they were not used to connect the individual to society in general, and typically only a small fraction of customers took these services.

34. The Companies argued that discretionary services differed from connectivity services in terms of positive externalities. The Companies submitted that the benefits of connectivity services went beyond the customer actually purchasing the services, and accrued to others, and thus to society as a whole. The Companies argued that, by contrast, discretionary services had few, if any, externalities. Rather, discretionary services resembled other categories of goods and services, in that the bargain struck between the customer and the supplier had little impact on, or interest for, third parties. As a result, the same concerns as to pricing did not arise, and there was no special reason to impose price caps or similar mechanisms on discretionary services. The Companies submitted that customers had recourse if they became dissatisfied with the ILECs' prices by going to an alternative provider, or by dropping the service. The Companies submitted that market forces would discipline the ILECs' pricing of these services.

Bundles

35. The Companies submitted that bundles were made up of individual service components, which were either subject to their own price cap constraint, or were forborne from regulation, or were an unregulated non-telecommunications service. As such, the customer's protection against high prices, for regulated components of the bundle, would be provided through the constraints that apply to the prices of stand-alone components.

TELUS

36. TELUS submitted that it had designed its proposed price cap framework to reflect prevailing and expected market conditions.

37. TELUS proposed five service baskets: residential services, business services, services with frozen rate treatment, payphone services, and competitor services.

38. TELUS also proposed that the prices of residential and business service bundles and optional services be uncapped.

Residential services

39. TELUS proposed that the residential non-HCSA (high-cost serving area) and HCSA services sub-baskets be amalgamated and that prices for these services be capped, on average, at existing levels during the next price cap regime. TELUS proposed, as a further safeguard, an individual rate element constraint of 5% per year on all stand-alone residential primary exchange services (PES

(~~primary exchange service~~)), whether or not they were included in the residential services basket. TELUS submitted that, under this basket structure, optional local services and bundles would not be included, but rather would be uncapped.

40. TELUS argued that competitive alternatives, such as cable telephony, wireless service and access-independent voice over Internet Protocol (~~VoIP (voice over Internet protocol)~~) services, would discipline the ILECs' residential service pricing decisions. TELUS argued that competition was exerting increasingly powerful constraints on the upper bound of prices for residential services.

Business services

41. TELUS proposed a new business services basket that would comprise the services that were assigned to the Business Services and Other Capped Services baskets in Decision 2002-34. TELUS argued that as a result of the significant increases in service alternatives and the general price-disciplining power of competitive market forces, there was no longer a reason to maintain separate service baskets. TELUS proposed that a 10% rate element constraint per year apply for services assigned to this basket.

Services with frozen rate treatment

42. TELUS proposed that no changes be made to the basket of services with frozen rate treatment and that their rates remain frozen over the next price cap period, except in cases where an ILEC elected to average rates for these services among its serving territories on a revenue-neutral basis as allowed by the Commission in Decision 2002-34.

Payphone services

43. TELUS proposed that prices for the services in this basket remain frozen at current levels⁸ during the next price cap period.

Competitor services

44. TELUS submitted that I-X should not be applied to Category I Competitor Service rates and that these rates should be frozen pending the conclusion of the Public Notice 2006-14 proceeding. TELUS further submitted that the Phase II review⁹ should also be completed before making further changes to the price cap regime for Category I Competitor Services.

45. TELUS submitted that once these proceedings were completed and prices for Category I Competitor Services established, the next step would be to determine how to change those prices over time, one method being an I-X adjustment. TELUS argued that Commission-approved Phase II costs had resulted in rates that were too low for many Category I Competitor Services and that the continued application of the I-X constraint would exacerbate this situation.

46. TELUS submitted that the current treatment for Category II Competitor Services should be maintained.

Service bundles and optional services

47. TELUS argued that customers did not need the existing protection with respect to bundled services since the stand-alone components of the bundle would be protected with a 5% rate element constraint on residential PES. A customer that was dissatisfied with the bundle price could opt to purchase the same services on a stand-alone basis. In addition, TELUS argued that including the revenues from bundles in the residential services basket would provide the ILECs with the opportunity to create headroom to increase prices for some residential PES in the basket, as the bundled rate declined. TELUS argued that competition for bundles was strong and prices would be disciplined by market forces.

48. TELUS proposed that optional services should be uncapped since they were not essential, were discretionary and were available from cable, wireless and other suppliers.

MTS Allstream

49. MTS Allstream proposed minor modifications to the basket structure and associated pricing constraints established in Decision 2002-34. MTS Allstream submitted that in developing its proposal it had been guided by the fact that local competition had only recently begun to emerge within the residential local services market. MTS Allstream also submitted that the basket structure and associated pricing constraints should protect customers in areas where competitive alternatives were limited or non-existent.

50. MTS Allstream proposed that the distinction between basic residential services in HCSAs and non-HCSAs be eliminated and that the service basket constraint be inflation minus productivity when inflation exceeded productivity, and zero otherwise. MTS Allstream argued that this would not result in mandated rate reductions for basic local service, which could stifle the pace and extent of competitive entry.

51. MTS Allstream submitted that with competition emerging in the residential segment of the retail local services market, there was no longer any need or justification for including optional services in the Residential Services basket. MTS Allstream further submitted that these services were discretionary in nature and typically formed part of a bundled offering. As competition for retail services continued to increase, the availability and pricing of these services would be dictated by market forces. Where optional services formed part of a bundle, MTS Allstream proposed that the existing bundling and price floor rules still apply.

52. MTS Allstream proposed that no changes be made to the Business Services basket. For the Other Capped Services basket, MTS Allstream proposed a basket constraint of inflation minus productivity, when inflation exceeded productivity, and zero otherwise, on these services. In addition, MTS Allstream proposed that the existing 10% individual rate element constraint continue to apply for these services.

53. MTS Allstream also proposed that the current rate treatment of services with frozen rate treatment and pay telephones remain unchanged. MTS Allstream submitted that requests for changes to these service rates should be considered on a case-by-case basis.

54. MTS Allstream argued that there was no basis to change the existing price cap treatment for Category I and II Competitor Services until the conclusion of the Public Notice 2006-14 proceeding.

The Competitors

55. The Competitors proposed that, except as noted below, the Commission retain the basket structure and pricing constraints established in Decision 2002-34, as well as the assignment of services to those baskets. The Competitors submitted that the pricing constraints established for those baskets would be appropriate on a going-forward basis in order to protect consumers.

56. The Competitors proposed to remove the productivity offset on the Residential Services and Other Capped Services baskets. The Competitors submitted that eliminating the explicit productivity offset on these baskets would be consistent with the Commission's approach to business local services in Decisions 2002-34 and 2002-43.

57. The Competitors proposed that the current treatment for Category I and Category II Competitor Services be retained since there were few, if any, competitive alternatives for these services. The Competitors submitted that the residential market should benefit from lower Category I Competitor Service rates since lower rates would assist competitors in providing more robust, lower cost services to their residential customers.

Consumer Groups

58. The Consumer Groups proposed retaining the basket structure established in Decision 2002-34, with minor modifications to the rate element constraints, arguing that residential consumers were still facing ILEC monopoly power.

59. The Consumer Groups proposed that rate increases for the basic residential service sub-basket be limited to the rate of inflation, or 5%, whichever was lower. For the residential optional services sub-basket, the Consumer Groups proposed that rate increases be limited to the rate of inflation plus 3%.

60. In applying a productivity factor, the Consumer Groups argued that the Commission should recognize the expected productivity gains resulting from shared inputs and scope economies in a competitive market. The Consumer Groups argued that firms experiencing scope economies in competitive markets should not have the ability to arbitrarily award all productivity gains to a single product or service. The Consumer Groups argued that if the productivity gains were not shared with basic service customers, then the ILECs would be able to cross-subsidize the operations to which they allocate productivity gains, potentially harming competition.

61. The Consumer Groups also submitted an alternate price cap model that proposed to cap all existing tariffed rates, so that rates could go down but not up. In support, the Consumer Groups argued that the ILECs would then bear all the risk of inflation during the price cap period and no group of customers would face increases to pay for price discounts to consumers elsewhere.

Comments on proposals

The Companies' views on proposals from other parties

62. The Companies did not object to TELUS' price cap proposal. The Companies noted that, although TELUS' proposal was not identical to their own in every respect, there was no material incongruity of approach.

63. The Companies were opposed to MTS Allstream's and the Competitors' proposals on the grounds that these proposals did not incorporate a mechanism to allow regulation to keep pace with market conditions, as would be the case with a test for the uncapping of services.

64. The Companies were critical of the Consumer Groups' proposal in that rather than letting market forces dictate market outcomes where they are capable of doing so, the Consumer Groups suggested that the Commission guess what would happen in a competitive market, and then impose pricing rules intended to put those guesses into effect. The Companies were of the view that the Consumer Groups' initial proposal of an I-X pricing constraint was not supported by any credible evidence.

TELUS' views on proposals from other parties

65. TELUS considered that the Companies' proposed uncapping test for business services triggered by the presence of alternative facilities was unnecessary. TELUS argued that there was significant competition throughout its serving territory for business customers of all sizes, and that this competition would continue to intensify and expand. TELUS noted that the Commission itself had previously recognized the relatively greater degree of competition for business services when it determined not to impose a productivity offset on business exchange services.

66. TELUS noted that MTS Allstream proposed a unified residential basket for all exchanges. TELUS criticized this approach since it would permit an ILEC to offset price decreases in more competitive exchanges with price increases in less competitive exchanges. For example, TELUS noted that under MTS Allstream's proposed single basket, it would leave an ILEC free to offset rate decreases in more competitive exchanges with price increases in less competitive exchanges, provided the ILEC's prices met the overall basket constraint.

67. TELUS noted the Consumer Groups' alternative proposal, which did not involve the adoption of an explicit X-factor and, to that extent, represented a major concession. While TELUS considered it helpful to know that the Consumer Groups' principal concerns could be met without adopting an explicit X-factor, the principal concerns of the ILECs would not be met, as suggested by these groups. TELUS considered unacceptable the Consumer Groups' proposal that any increase to individual rates should be prohibited. Moreover, TELUS noted that under its proposal no increase in aggregate rates would be permitted for services in the Residential Services basket.

The Competitors' views on the proposals from the Companies and TELUS

68. Although the Competitors did not provide specific comment on the basket structure and pricing constraint proposals, they noted that the proposals made by the Companies and TELUS failed to protect consumers from the ILECs' exercising their market power in areas where competitive

options are weak or unavailable. In addition, the Competitors considered the design of the ILECs' proposals would enable them to prevent competitors from growing their businesses in areas where competition is emerging.

Consumer Groups' views on the proposals from the Companies and TELUS

69. The Consumer Groups were of the view that the ILECs' proposals were inappropriate in relation to protecting the interests of consumers and that they should be rejected in favour of Consumer Groups alternate proposal of capping tariffed rates at existing levels.

70. The Consumer Groups were of the view that the Companies and TELUS confused the promise of real competition with its actual arrival. The confusion was then exacerbated by the premise that since competition was on the way, the Commission could be less concerned with the rigor of setting a price cap to ensure just and reasonable rates. The Consumer Groups noted that it considered the record was insufficient to support the ILECs' premise that consumer price protection was interfering with the development of competition.

Commission's analysis and determinations

General conclusions on the basket structure

71. The Commission notes that the proposals from the Companies and TELUS supported a more liberal price cap regime. In particular, these proposals suggested that the Commission rely more heavily on market forces to discipline prices.

72. As noted earlier, the Forbearance Order set out the criteria to forbear from the regulation of local services based on the presence of competitive infrastructure. The Commission notes that price cap regulation only applies to non-forborne markets. In those areas which do not qualify for forbearance, the ILECs will continue to have significant market power and customers will have limited competitive alternatives. The Commission considers that in these circumstances, a reliance on market forces, as set out in paragraph 7(f) of the Act, to discipline prices would not be appropriate. The Commission therefore considers the proposals made by the Companies and TELUS to be unsuitable.

73. The Commission notes that the Consumer Groups initially put forward a basket structure based on pricing constraints that were more restrictive than those set out in Decisions 2002-34 and 2002-43. The Commission considers that, while the Consumer Groups' proposal would provide apparent protection for consumers, it would unnecessarily limit the ILECs' pricing flexibility with respect to residential services. In addition, the Commission considers that the Consumer Groups' proposal to mandate residential rate reductions resulting from an I-X adjustment would interfere with the natural development of market forces. The Commission therefore declines to adopt the Consumer Groups' initial proposal.

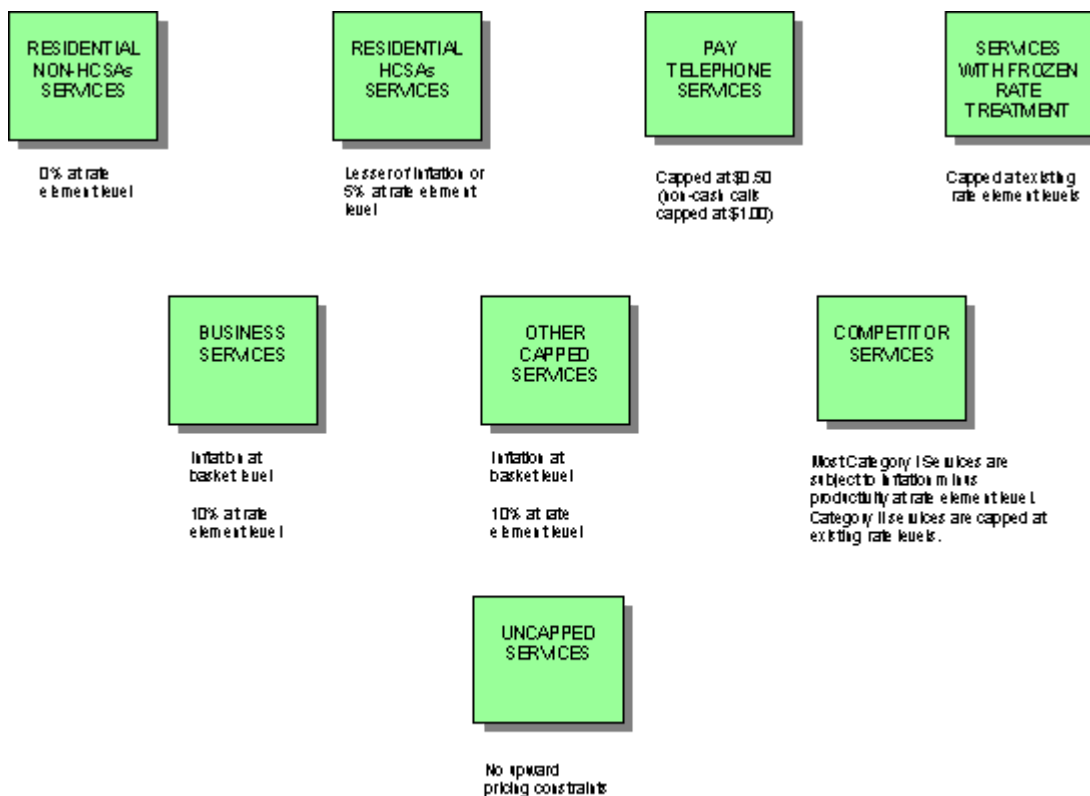
74. As an alternate proposal, the Consumer Groups recommended in final argument that the Commission simply cap all existing tariffed rates on a going-forward basis. The Commission considers that the Consumer Groups' proposal may have merit in certain circumstances; however, it

would not provide the ILECs with the opportunity or flexibility to increase rates where services are provided below cost.

75. The Commission notes that, while a variety of pricing constraints for various groups of services were proposed by the parties, the majority generally supported the current basket structure and assignment of services to the baskets. The Commission notes that the assignment of services to baskets in Decisions 2002-34 and 2002-43 was generally based on the homogeneity of the services offered. As evidenced by this proceeding and the ILECs' general tariffs, the ILECs' delivery of these services has generally not changed over the last several years.

76. In light of the above, the Commission concludes that the current assignment of services to baskets as established in Decisions 2002-34 and 2002-43, with the exception of moving optional services to the Uncapped Services basket, remains appropriate for the next price cap regime. The Commission has also decided to make some specific changes to the basket and rate element constraints. The modifications to the price cap framework are discussed in detail below. The overall scheme of the framework is illustrated in Figure 1.

Figure 1



Changes to basket and rate element constraints

a) Productivity offset for retail services

77. In the current price cap regime, a productivity offset, or X factor, is applied to most retail services at the basket or rate element level, except for the Business Services basket.

78. The Commission notes that applying a productivity offset to revenues from retail services may result in mandated rate reductions. The Commission considers that mandated rate reductions through the application of an X-factor, could interfere with the natural development of market forces. In addition, the Commission notes that mandated rate reductions would not be in keeping with the paragraph 7(f) of the Act (i.e. efficient and effective regulation) and the Policy Direction (i.e. use measures that are minimally intrusive and minimally onerous).

79. The Commission notes that with respect to most residential PES in HCSAs, rates are generally below cost. In these circumstances, the Commission considers that applying an X-factor to the revenues associated with these services would not be appropriate.

80. Regarding the Business Services basket, the Commission notes that no parties proposed that a productivity offset should be applied to the services in this basket. The Commission considers this practice continues to be appropriate.

81. Regarding the services assigned to the Other Capped Services basket, the Commission notes that 1) several of the services are becoming obsolete, making it difficult to find replacement parts, and 2) certain legacy services are being replaced by new services offering additional features and benefits. The Commission considers that the ILECs are facing a declining market with respect to several of the services currently assigned to this basket. As such, the Commission considers that the ILECs' ability to achieve productivity and efficiency gains in respect of these services in the next several years would be limited.

82. Accordingly, the Commission finds it appropriate not to subject retail services to a productivity offset (i.e. X-factor) in the next price cap regime. Consequently, the Commission has not applied a productivity offset to the Residential Services (non-HCSA and HCSA sub-baskets), Business Services and the Other Capped Services baskets.

b) Residential local optional services

83. The Commission considers that as residential optional local services are discretionary in nature, the demand would tend to be more sensitive to prices. As a result of price increases, a customer could choose to explore other alternatives or to drop the service entirely.

84. The Commission notes that during the current price cap regime, the ILECs have generally not proposed any rate increases to their residential local optional services. The Commission considers that the ILECs have generally established maximum prices for these services on an individual basis and that any further rate increases would likely lead to a decrease in demand.

85. The Commission also considers that assigning optional services to the Uncapped Services basket would reduce the number of sub-baskets for residential services, and simplify the price cap regime and its associated annual price cap filing requirements. The Commission notes that this would be consistent with the objective of efficient and effective regulation (i.e. paragraph 7(f) of the Act).

86. Accordingly, the Commission considers it appropriate to assign residential optional local services to the Uncapped Services basket. Consequently, these residential optional local services rates will no longer be subject to any upper pricing constraints.

c) Modifications to the Residential Services baskets

87. In Decisions 2002-34 and 2002-43, noting the significantly different circumstances in non-HCSAs and HCSAs, the Commission established two baskets for residential local services: a sub-basket of residential local services in non-HCSAs and a sub-basket of residential local services in HCSAs.

88. The Commission notes parties' views varied on whether to retain separate baskets for non-HCSAs and HCSAs. However, all parties proposed that the same rate element constraint be applied to both non-HCSA and HCSA customers.

89. The Commission considers that there is no evidence to suggest that circumstances in non-HCSAs and HCSAs have changed and the application of different constraints for residential PES in non-HCSAs and HCSAs remains appropriate. Accordingly, the Commission maintains separate baskets for residential PES in non-HCSAs and HCSAs.

90. The Commission sets out the pricing constraints for residential PES in non-HCSAs and HCSAs below. The Commission was mindful of paragraph 7(b) of the Act (i.e. affordable telecommunications services in both urban and rural areas) in establishing these constraints.

Residential Non-HCSAs Services basket

91. In establishing the local forbearance framework in Decision 2006-15, the Commission considered it important to ensure that the affordability of essential residential PES not be compromised in a forborne market. The Commission was concerned that vulnerable and uncontested residential consumers may not have access to stand-alone PES at affordable rates in a forborne environment without a pricing safeguard. Consequently, the Commission determined that in a forborne market, a price ceiling would apply to the most recently approved rates at the time of forbearance for stand-alone PES, including touch-tone, primary directory listing, and connection charges.

92. The Commission notes that there will be consumers in non-HCSAs who will not have sufficient competitive alternatives for residential PES. The Commission considers that consumers in non-HCSAs face similar circumstances as those uncontested customers identified in Decision 2006-15.

93. The Commission considers that a price ceiling on residential rates in non-HCSAs would provide customers with a safeguard against unreasonable rate increases. The Commission notes that the treatment of these services would be consistent with the Consumer Groups' alternate proposal to cap rates at existing levels and would be similar to the proposals made by the Companies and TELUS to cap, on average, residential rates. The Commission also considers that maintaining residential PES rates in non-HCSAs at the same level will likely provide an incentive for the ILECs to be more cost-efficient.

94. Accordingly, except for the possible rate adjustments resulting from the consideration of the matter noted below, the Commission finds it reasonable to cap the ILECs' residential PES rates in non-HCSAs at existing levels and to apply a rate element constraint of 0% for residential PES in non-HCSAs.

95. In *Elimination of service connection charge applicable to Residential Primary Exchange Service customers*, Telecom Public Notice CRTC 2006-11, 11 August 2006, as amended by Telecom Public Notice CRTC 2006-11-1, the Commission invited comments on applications received from Bell Aliant, Bell Canada and TELUS to eliminate the residential service connection charge and to increase residential PES rates. The Commission will consider the issues associated with the elimination of the residential service connection charge and the increase to residential PES rates subsequent to this decision.

96. As set out later in this Decision, the Commission is allowing the ILECs to propose exogenous factor adjustments during the next price cap regime. The Commission considers that, in these circumstances, rate element constraints should apply to the Residential Non-HCSAs Services basket. Accordingly, rate increases to the services in this basket will be capped at 5% per year per rate element.

97. The Commission notes that the current price cap regime incorporates a deferral account mechanism. In each year of the price cap period, the ILECs are required to assign to the deferral account an amount equal to any revenue reduction that would otherwise be required under the I-X constraint for the Residential Non-HCSAs Services basket.

98. The Commission notes that based on the basket structure and pricing constraints set out in this Decision, a deferral account is no longer required. Accordingly, the Commission concludes that the deferral account mechanism will not form part of the next price cap regime.

99. In Decisions 2002-34 and 2002-43, the Commission determined that the revenues derived from service bundles that included a residential local exchange service or a residential optional local service component must be included in the Residential Services basket when calculating the revenues subject to the deferral account.

100. As noted above, the Commission is eliminating the requirement for a deferral account in the next price cap regime. Accordingly, it is no longer necessary to require that the Residential Services basket include revenues derived from service bundles with a residential local exchange service or a residential optional local service component.

Residential HCSAs Services basket

101. In Decisions 2002-34 and 2002-43, the Commission did not impose any basket constraints on residential PES in HCSAs given that rates were generally below costs. The Commission notes that residential PES rates in HCSAs generally continue to be below costs.

102. The Commission notes that its general policy is to move rates closer to costs provided these rates remain just and reasonable. The Commission considers that allowing ILEC residential rates to increase in HCSAs would move rates closer to costs and reduce the amount of the National

Contribution Fund.¹⁰

103. The Commission determines that it would be reasonable to allow the ILECs to increase residential PES rates in HCSAs by the annual rate of inflation. To protect against any unexpected rise in the rate of inflation, a rate element constraint equal to the lesser of the annual rate of inflation or 5% will apply to the services in the Residential HCSAs Services basket.

104. As set out later in this Decision, the Commission is allowing the ILECs to propose exogenous factor adjustments during the next price cap regime. The Commission considers that, in these circumstances, rate increases to the services in this basket will be capped at 5% per year per rate element.

d) Business and Other Capped Services baskets

105. As noted above, the Business Services basket is currently subject to an overall basket constraint of inflation and a rate element constraint of 10%. No party proposed changes to the constraints for this basket.

106. The Commission determines that it would be appropriate to maintain the current basket constraint of inflation and the rate element constraint of 10%.

107. Regarding the Other Capped Services basket, as discussed earlier in this Decision, the services in this basket will not be subject to a productivity offset in the next price cap regime. The Commission considers that customers of services in this basket will require protection against unreasonable rate increases.

108. Accordingly, the Commission concludes that the Other Capped Services basket be subjected to an overall basket constraint of inflation and a rate element constraint of 10%.

e) Pay telephone services basket***Pay telephone services rates***

109. In Decisions 2002-34 and 2002-43, the Commission concluded that public and semi-public pay telephone services be assigned to a separate basket and that the rates for these services be capped at the then current levels. As noted above, the Companies requested flexibility to increase pay telephone rates during the next price cap regime.

110. The Consumer Groups submitted that the Companies remained dominant in the local pay telephone markets. The Consumer Groups argued that information related to the cost and revenues for pay telephone services had not been provided and there had been no opportunity to adequately evaluate the real need for a rate increase.

111. The Consumer Groups pointed out that in *Access to pay telephone service*, Telecom Decision CRTC 2004-47, 15 July 2004 (Decision 2004-47), the Commission considered pay telephone service to be an important public service that wireless services had not rendered obsolete. The

Consumer Groups also stated that Decision 2004-47 provided the Companies with a relatively free hand to make decisions concerning removal of unprofitable pay telephones or relocation of pay telephones to more profitable venues.

112. The Commission recognizes that pay telephone rates have not increased for most ILECs for almost 25 years. The Commission considers reasonable the position of the Companies that the costs of providing pay telephone services have increased since the last increase in rates in 1981.

113. In Decision 2004-47, the Commission re-affirmed the ILEC's right to remove and/or relocate pay telephones, with the only restriction being proper notification when the last pay telephone in a community was to be removed. The Commission continues to consider pay telephone service a necessary and valuable public service. The Commission considers that without the flexibility to increase pay telephone rates, the ILECs may remove unprofitable pay telephones which would result in consumers having reduced access to the service.

114. Accordingly, the Commission approves the flexibility for all ILECs to increase the local call charge for a cash call up to a maximum rate of \$0.50, and to increase collect, third number, Calling Card or commercial credit card charges up to a maximum rate of \$1.00.

Pay telephone local directory assistance charges

115. Charges for calls to Local Directory Assistance (LDA (Local Directory Assistance)) are currently included in the Other Capped Services basket and vary by ILEC territory. However, LDA calls originating from pay telephones are exempt from incurring these charges.

116. The Companies, on behalf of Bell Canada, requested that the exemption for LDA calls made from pay telephones be removed and a new charge of \$0.25 be established in Bell Canada's territory. The Companies argued that rates charged to access directory assistance by the major competitors in Canada vary from \$0.25 to \$1.00.

117. The Consumer Groups did not support this request, arguing that the social policy issues associated with directories at pay telephone locations had not changed and that pay telephone locations were frequently without directories.

118. The Commission considers that the Companies' request did not adequately address any of the public or social policy issues raised by the Consumer Groups. The Commission considers that the record of this proceeding is insufficient to make a determination on this issue. Accordingly, the Commission denies the Companies' proposal to remove the exemption from charges for local directory assistance calls placed from semi-public and public pay telephones at this time.

f) Competitor Services

119. With respect to TELUS' submission that applying I-X would exacerbate what it characterized as rates for Category I Competitor Services that are too low, the Commission notes that the issue of Category I Competitor Service rate levels is not within the scope of this proceeding. With respect to

the suggestion made by the Companies and TELUS that the Commission should also suspend its practice of reviewing costs associated with Category I Competitor Services as part of a freeze on the rates for these services, the Commission notes that the review of costs is not a price cap matter.

120. The Commission notes that the Companies and TELUS referred to other Commission proceedings in support of their proposals to freeze rates for Category I Competitor Services. However, the Commission also notes that the large ILECs are required to provide a service as a Category I Competitor Service if the Commission finds that the service is in the nature of an essential facility.

121. The Commission considers that Category I Competitor Services are not subject to competitive market forces sufficient to ensure the sharing of productivity gains with users of those services. The Commission also considers that the ILECs will continue to experience productivity gains in respect of these services.

122. Accordingly, the Commission determines that an annual I-X adjustment should continue to apply to Category I Competitor Services whose rates were not exempted from the application of this factor in Decisions 2002-34 and 2002-43.

123. The Commission notes that no parties proposed changes to the price cap treatment of Category II Competitor Services established in Decisions 2002-34 and 2002-43. The Commission determines that this treatment should continue to apply.

g) Test to uncap certain services

124. Both the Companies and TELUS proposed a competitive presence test for the uncapping of certain services in areas where alternative facilities were in place. In support of their proposed uncapping test, the Companies cited the need to rely on market forces to the greatest extent possible while ensuring that regulatory constraints were imposed only as necessary to achieve the objectives of regulation. TELUS cited the need for ILECs to have greater flexibility to respond to competitive pressures and that competition would ultimately protect consumers.

125. The other parties to this proceeding disagreed with the uncapping tests proposed by the Companies and TELUS. MTS Allstream, the Competitors and the City of Calgary argued that the tests would not demonstrate diminishing market power and that such market power could be abused. MTS Allstream and BCOAPO et al. argued that the pricing flexibility afforded by such tests prior to forbearance could have undesirable effects on both consumers and competitors, with the possibility of lowered rates where the ILECs faced competition and higher rates elsewhere. BCOAPO et al. and the City of Calgary objected to TELUS' inclusion of wireless service as an alternative in its uncapping test, arguing that wireless service was not a suitable alternative to local wireline service. A number of parties submitted that the proposed uncapping tests were simply alternative tests to forbearance.

126. As noted above, in those areas which do not qualify for forbearance, the ILECs will continue to have significant market power and customers will have limited competitive alternatives. The ILECs would have both the incentive and ability to raise and control prices. The Commission considers that

even in areas where there may be competitive alternatives, the ILECs do not require the flexibility to increase prices in those circumstances.

127. The Commission notes that this price cap regime applies only to non-forborne markets. The Commission also notes that ILECs can apply for forbearance in areas where the forbearance criteria are met.

128. Accordingly, the Commission finds that the uncapping tests proposed by the Companies and TELUS are inappropriate and unnecessary.

C. Components of the price cap formula

129. In Decisions 2002-34 and 2002-43, the Commission established the individual basket constraints which relied on an inflation factor, a productivity factor and an exogenous factor, as appropriate. As noted above, the Commission invited comments in this proceeding on what changes, if any, should be made to these components of the price cap formula.

1. Inflation factor

130. In Decisions 2002-34 and 2002-43, the Commission considered it appropriate to use the annual chain-weighted national Gross Domestic Product – Price Index (GDP-PI) as the measure of inflation in the current price cap regime. The GDP-PI is a measure of the national output price change published by Statistics Canada.

131. Both the Companies and TELUS submitted they would support the retention of the GDP-PI as the measure of inflation for the next price cap period in the event that the Commission considered it appropriate to use an explicit measure of inflation. Other parties who commented on the inflation factor also supported the continued use of the GDP-PI.

132. The Commission determines that the measure of inflation for the next price cap regime is the annual chain-weighted GDP-PI published by Statistics Canada.

2. Productivity offset

133. In Decisions 2002-34 and 2002-43, the Commission set the productivity offset (i.e. X-factor) at 3.5% based on a marginal cost approach. This marginal cost approach examined the change in the ILECs' unit costs over time. The X-factor value of 3.5% was developed based on analysis of the ILECs' unit cost changes for residential PES.

134. The Commission notes that several approaches were proposed by the parties in this proceeding to calculate a productivity offset. The Commission will address each of these approaches below.

a) Marginal cost approach

135. The Companies and TELUS proposed that a marginal cost approach be used to establish a productivity offset if the Commission determined that there was a need for an X-factor in the next price cap regime.

136. The Companies proposed an X-factor of -0.5% based on a marginal cost approach for the next price cap regime. The Companies estimated the X-factors for each of the years 2006 to 2008 to be -1.0%, -0.9% and -0.1%, and averaged the forecasted X-factors for the years 2007 and 2008 to arrive at their X-factor of -0.5%.

137. The Companies submitted that they conducted their analysis in three steps. First, the historical trend in Bell Canada's unit costs for residential PES from 1988 to 2005 was estimated using a consistent costing methodology throughout that period. The result of this analysis showed that the unit costs declined at an average rate of 1.04% per year over that period.

138. Second, the Companies combined that information with the average annual economy-wide inflation of 2.16% (based on Statistics Canada's chain-weighted GDP-PI series) for the same period. An average historic value of the X-factor, over the period from 1988 to 2005, was estimated to be 3.2% per year.

139. Third, the Companies adjusted the X-factor value of 3.2% downwards for the years 2006 to 2008, based on three factors related to their expected demand loss associated with the residential PES due to competition. The Companies identified these three factors as: (a) lower average working fill factor (utilization of copper plant), (b) loss of more customers in lower-cost bands relative to high-cost bands, and (c) increased spending on customer retention activities.

140. TELUS proposed an X-factor value in the range of 0.3% to 1.8% based on a marginal cost approach for areas that did not pass its competitive presence test for residential PES. TELUS submitted that the appropriate value would depend on the specific assumptions made about the extent of competitive losses. TELUS argued that demand reductions from increased facilities-based competition were reducing the scale of TELUS' operations, thereby increasing unit costs and decreasing productivity growth.

141. TELUS estimated that, based on an assumed annual reduction of 3.0% in its primary residential lines, its average annual unit cost change would be 1.7% for the years 2007 to 2011. TELUS calculated an inflation rate of 2.0% based on a historical annual average rate from 1995 to 2005. TELUS then calculated an X-factor of 0.3% based on these figures. Using the same methodology, TELUS also submitted X-factors of 1.1% and 1.8%, assuming percent decline in residential lines of 2.0% and 1.0%, respectively.

b) Total Factor Productivity (TFP (Total Factor Productivity)) Approach

142. The Consumer Groups' methodology for calculating the productivity offset was based on a TFP approach that examined a firm's or an industry's use of inputs relative to its production of outputs. The Consumer Groups submitted that when economies of scope expanded, firms were able to produce more outputs without a proportional increase of inputs; therefore, expanding scope economies would result in increased productivity.

143. The Consumer Groups proposed that the productivity offset be set at 6.0% for the next price cap regime. This productivity offset level included (1) an industry TFP growth of 4.2% based on data from 1988 to 1995, (2) an economy-wide TFP adjustment of -1.06% from 1995 to 2004, (3) an input price differential of 2.0% to reflect the difference between industry and economy-wide input price growth rates,¹¹ and (4) a stretch-factor of 1.0% to reflect economies of scope.

144. The Consumer Groups stated that the major problem with using a service-specific marginal cost approach for calculating productivity was that it excluded economies of scope. The Consumer Groups submitted that due to new technologies, such as digital subscriber line (DSL (digital subscriber line)), the recovery of costs associated with loop plant, interoffice facilities, customer support and marketing, and billing could be spread over more services to create economies of scope.

145. The Consumer Groups submitted that a stretch factor of up to 1.0% should be added to the productivity offset because the historical data in the ILECs' service specific marginal cost studies were unlikely to reflect economies of scope.

146. While the City of Calgary supported the Consumer Groups' proposed X-factor value of 6.0%, the Companies, MTS Allstream and TELUS opposed it.

147. The Companies submitted that the TFP approach proposed by the Consumer Groups was inferior to an approach based on the analysis of trends in service-specific unit costs for residential services. TELUS and MTS Allstream submitted that the TFP approach incorrectly measured productivity across all services, rather than specific services that were subject to regulation. The Companies submitted that setting a productivity target for regulated services based on productivity for services that were not regulated would blunt incentives for efficiency in both service areas because neither sector would bear the complete consequences of what occurred.

148. Regarding the source data used by the Consumer Groups in their X-factor calculation, the Companies submitted that the starting point of 4.2% as an estimate for TFP was flawed because it was based on all the operations of a company instead of only regulated services. Additionally, the Companies and TELUS submitted that the Consumer Groups' source data was significantly outdated and thus it was unclear whether the TFP would be close to 4.2%, if measured with more recent data.

149. The Companies and TELUS submitted that because the Consumer Groups used different time periods when comparing economy-wide TFP (1995 to 2004) and industry TFP (1988 to 1995), the results were inconsistent and therefore unreliable. The Companies and TELUS also submitted that the Consumer Groups' use of U.S. data, instead of Canadian data, to calculate an input price differential of 2.0% provided doubtful comparisons.

150. Regarding the Consumer Groups' proposed stretch factor, the Companies submitted that this adjustment was conceptually flawed. The Companies submitted that the presence of other services would not change the cost of providing a local loop and that the use of the loop, for whatever

purpose, was included when a customer purchases PES. Thus, the incremental costs of providing PES to a customer must include an entire local loop and the entire cost of the loop must be included as part of the unit costs for PES.

151. TELUS submitted that its marginal cost approach to calculating productivity captured economies of scope and referred specifically to the inclusion of changes in various other outputs on residential PES costs, including the effect of DSL output on PES costs.

152. MTS Allstream submitted that the potential existence of economies of scope in the provision of telecommunications was not a new phenomenon and that while the introduction of new services had likely contributed to the industry's productivity growth to some degree, there were no estimates, if any, of the precise contribution.

153. MTS Allstream argued that under the existing marginal cost-based approach, there was no need or rationale to include a stretch factor to reflect economies of scope since, to the extent that they have influenced the cost of provisioning PES over time, they would already be reflected in the marginal cost trends.

c) Modified approach

154. MTS Allstream submitted that the X-factor for the next price cap period should be re-set independent of any individual ILEC's actual productivity performance under the current regime, and that it should be based on market conditions that are expected to prevail.

155. MTS Allstream argued that scale economies were the most significant factor explaining historical TFP growth in the telecommunications industry, and the X-factor should be based on the expected impact of scale economies over the next price cap period. MTS Allstream submitted that, on average, scale economies accounted for 60% to 80% of Canadian telecommunications industry historical TFP growth.

156. MTS Allstream submitted that because ILEC Network Access Services (NAS (network access service)) counts were declining on a yearly basis and given the importance of scale economies on productivity growth, the current X-factor value of 3.5% should be reduced by 60%, thereby arriving at a new X-factor value of 1.5%.

Commission's analysis and determinations

157. Regarding the Consumer Groups' approach to calculating the X-factor, the Commission considers that the vintage of the industry TFP growth data used by the Consumer Groups is not sufficiently recent to calculate an appropriate X-factor value for the next price cap regime. The Commission agrees with the Companies' and TELUS' submissions that the use of different time periods for economy-wide TFP and industry TFP is inappropriate. The Commission also considers that U.S. data cannot be relied on to estimate trends in Canadian input prices.

158. Regarding the Consumer Groups' proposed stretch factor, the Commission acknowledges that the advent of technologies such as DSL could potentially contribute to additional economies of scope given that more than one service could be provided over the same local loop. While such

economies of scope could potentially impact the value of the X-factor, the Commission considers that the Consumer Groups' evidence submitted in this proceeding is insufficient to estimate this impact, specifically with respect to the Canadian telecommunications industry.

159. In light of the above, the Commission rejects the Consumer Groups' proposal for an X-factor value based on the TFP approach.

160. The Commission notes that while the Companies, MTS Allstream, and TELUS proposed different methodologies for the determination of the X-factor value, each was based at least in part on a marginal cost approach.

161. Regarding MTS Allstream's X-factor calculation, the Commission considers it inappropriate to calculate this value by combining results from a marginal cost approach and a TFP approach. Consequently, the Commission rejects MTS Allstream's proposal.

162. The Commission notes that both the Companies and TELUS based their proposed X-factor on their forecast demand loss from competition in the local residential PES market. As stated above, the Commission is applying a productivity offset to competitor services and to the calculation of the subsidy for residential services in HCSAs. Since these services are subject to limited competition, the Commission considers that the adjustment for demand loss from competition in the residential PES market would not apply in these circumstances. Consequently, the Commission concludes that it would not be appropriate to include forecast data provided by the Companies and TELUS in the determination of the value for the X-factor.

163. The Commission considers that the Companies' residential PES marginal cost data provides the most appropriate basis on which to calculate the productivity offset since it was based on historical unit costs dating back to 1988. Therefore, the Commission has used the updated marginal cost information filed by the Companies in this proceeding to calculate the X-factor for the next price cap regime.

164. In light of the above, the Commission adopts a productivity offset (i.e. X-factor) of 3.2%.

165. As set out in this Decision, the productivity offset will be applied to certain Category I Competitor Services and to the residential high-cost subsidy calculation. The Commission considers that while the residential PES marginal cost data used to calculate the productivity offset of 3.2% does not specifically relate to competitor services, it provides a better approximation of marginal cost trends of competitor services than other data available in this proceeding.

3. Exogenous factor

166. In Decisions v, the Commission set out its criteria for exogenous factor adjustments. Events or initiatives which satisfy all of the following criteria are considered to be exogenous adjustments:

- they are legislative, judicial or administrative actions which are beyond the control of the company;
- they are addressed specifically to the telecommunications industry; and
- they have a material impact on the company.

167. Each exogenous event is reviewed on an individual basis, taking into consideration the particular circumstances of each event, and the assignment to the various price cap baskets is determined on a case-by-case basis.

168. Exogenous factors are not assigned to the Services with Frozen Rate Treatment and the Competitor Services baskets. ILECs are required to notify the Commission of any proposed exogenous adjustment within 60 days of the event's occurrence. Other parties who believe an exogenous adjustment is required are to notify the Commission as soon as possible after they learn of the relevant facts.

169. The Competitors, MTS Allstream, and TELUS submitted that the requirement to treat an event or initiative as exogenous had not changed since the time of the last price cap review proceeding, and that the existing process had worked effectively.

170. The Companies submitted that there should be no requirement for exogenous adjustments. The Companies submitted that if the Commission were to establish a new regulatory obligation that imposed a material cost on the regulated company, it should address the possibility of cost recovery in the proceeding that established the new obligation.

171. The Commission notes that exogenous adjustments in the past have included instances beyond that of a new regulatory obligation, such as a reduction to Bell Canada's Ontario Gross Receipts Tax and MTS Allstream's recovery of income tax expense.

172. The Commission considers that the ILECs would unfairly be required to bear the risk associated with events beyond their control that increase their costs to a significant extent. The Commission also considers that consumers and competitors using the ILECs' services would not benefit from cost savings that could be passed on to them through exogenous adjustments.

173. The Commission concludes that an application of an exogenous factor adjustment, as set out in Decisions 2002-34 and 2002-43, remains appropriate for the next price cap regime.

D. Rate de-averaging

174. In Decision 2002-34, the Commission explicitly prohibited any further rate de-averaging within a rate band for residential services, single and multi-line business local exchange services, and other capped services. As a result of the Commission's prohibition on further rate de-averaging, ILECs cannot lower a rate for these services in one part of a rate band without lowering the rate across the entire band. For uncapped services, the Commission indicated that an ILEC seeking to further de-average rates was to provide supporting rationale with its application.

175. In this proceeding, the Commission invited comments on what changes, if any, should be made to its current policy on rate de-averaging within a band.

Positions of parties

176. The Companies and TELUS were in favour of further rate de-averaging within rate bands while MTS Allstream, the Competitors, and the Consumer Groups were against it.

177. The Companies submitted that uniform pricing led to economic inefficiencies and inhibited efficient pricing decisions. Different marks-ups for different types of customers reduced the intensity of competition in various sub-markets and created an ILEC price umbrella that protected new entrants. The Companies argued that the restriction on further rate de-averaging harmed customers by keeping prices higher than they would be if the ILEC were able to meet competition where it existed.

178. The Companies submitted that as the telecommunications industry continued to evolve, it was unlikely that the rate de-averaging prohibition would ensure just and reasonable rates or the continued development of competition.

179. TELUS argued that the existing rate de-averaging prohibition interfered with market forces and had negative consequences for consumers, entrants, incumbents and the natural evolution of competition. TELUS argued that it needed further rate de-averaging across geographical markets that straddled exchanges and bands in order to have the flexibility to create and implement uniform pricing strategies across large geographical areas.

180. TELUS submitted that eliminating the prohibition on rate de-averaging would provide the company with a reasonable opportunity to begin adjusting its rates to better reflect the underlying cost of providing PES.

181. TELUS submitted that, based on its proposal, de-averaging within bands and exchanges would be limited by both upward and downward pricing constraints. Business or residential PES rates would not be permitted to fall below the Commission's imputation test level. TELUS submitted that as long as de-averaged rates did not increase by more than the rate element constraint, rates would not be unjustly discriminatory. TELUS was of the view that the Commission would continue to have the power to review rate changes to ensure that they were not unjustly discriminatory.

182. In support of its position to maintain the current restriction on rate de-averaging within a rate band, MTS Allstream submitted that local competition was still very limited or non-existent in many parts of the country and that removing the prohibition would only serve to undermine the limited degree of competition that had developed.

183. MTS Allstream argued that where market power persisted in non-forborne markets, upward price controls must be retained. MTS Allstream submitted that the combined effect of removing the prohibition against de-averaging and uncapping services would undercut the local forbearance criteria and damage the development of competition.

184. MTS Allstream also submitted that de-averaging was all about making targeted price reductions available only to those customers who had competitive options and that this was inappropriate in a non-forborne market because the ILECs had a captive customer base to fund this targeting.

185. The Competitors submitted that while they supported rate de-averaging between provinces, rate de-averaging within a rate band within a province should not be permitted because not all locations within a rate band faced competition. As a transitional measure, the Competitors proposed that, once market share loss reached a 20% threshold in a specific local forbearance region (LFR (local forbearance region)), the same rate could be charged to all customers within this LFR.

186. The Competitors further submitted that where competition was still weak or non-existent, the Commission must protect consumers from the ILEC's ability to raise prices to unreasonable levels.

187. The Competitors argued that, as competition generally benefited consumers, the role of a regulator was to foster the development of a competitive market. The Competitors submitted that allowing rate de-averaging would permit the ILECs to reduce rates where they faced competition while maintaining them at higher levels where they did not. The Competitors submitted that allowing the ILECs to reduce prices down to their underlying costs in a selective manner would deny competitors the ability to expand their operations, while the ILECs would sustain their own operations in other market segments where they retained market power.

188. The Consumer Groups argued that the current rate structure in the residential market provided the ILECs with a significant level of rate de-averaging and the level of competitive activity was too low to allow further rate de-averaging. The Consumer Groups submitted that rate de-averaging could be allowed for the business market segment because it already enjoyed rate de-averaging through individual case basis pricing.

189. The Consumer Groups stated that there was little reason to expose customers in markets that were not yet and may never be competitive to the risks of rate increases due to the ILEC's desire to reduce prices to attract customers in other areas. In citing the low level of competitive presence in the residential market segment, UC submitted that rate de-averaging within a rate band would require a high level of regulatory oversight.

Commission's analysis and determinations

190. The Commission's approach to rate de-averaging has always been guided by subsections 27(1), (2) and (4) of the Act which state:

(1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable;

(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage; and

(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

191. As recently as 2005, the Commission considered that allowing further rate de-averaging was inappropriate as it would allow for a degree of targeted pricing which could subject other customers in the rate band to an undue disadvantage, result in rates that were not just and reasonable, and slow the development of fair and sustainable competition. This view is reflected in *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision CRTC 2005-27, 29 April 2005 (Decision 2005-27) in which the Commission denied the Companies' and TELUS' requests to further de-average rates within a rate band to meet existing or anticipated competition.

192. The Commission notes that parties provided very few comments and little evidence on the issue of removing the prohibition on further rate de-averaging for pay telephone and business services. As a result, the Commission considers that the record of this proceeding is insufficient to determine whether the prohibition on further rate de-averaging for pay telephones and business services should be removed at this time.

193. The Commission notes that much of the focus during the proceeding related to how the prohibition on rate de-averaging affected the natural development of competition in the residential markets and its ultimate impact on residential consumers.

194. The Commission finds that much has changed in the residential markets since the determinations in Decision 2005-27. The Commission's determinations were largely based on market conditions as outlined in the Commission's 2003 and 2004 Monitoring Reports. The Commission notes that the facilities-based cable competitors are well positioned to enter the residential market because of their existing infrastructure and their ability to bundle telephony services with their existing suite of services.

195. The Commission recognizes that the Policy Direction requires that the Commission, when relying on regulation of an economic nature, use measures that neither deter economically efficient competitive entry into the market nor promote economically inefficient entry. The Policy Direction also requires that when relying on regulation, the Commission use measures that are efficient and proportionate to their purpose.

196. In light of the above background and in light of its statutory obligation under section 27 of the Act, the Commission has examined whether its prohibition on further rate de-averaging remains necessary to ensure that residential rates are just and reasonable and to deter unjust discrimination or undue preference in the charging of these rates.

197. As part of the new price cap framework, the Commission has put in place and/or maintained a number of upward and downward constraints on residential services.

198. For example, the Commission is capping the rates for stand-alone residential services in non-HCSAs. For HCSAs, the Commission is allowing rates to increase at the lesser of the rate of inflation or 5%. As a result, removal of the prohibition on further rate de-averaging would not lead to a significant increase in rates for residential HCSA subscribers given the pricing constraints established for residential services baskets. The Commission considers that these constraints will ensure that residential PES rates do not rise to unreasonable or unjust levels.

199. The Commission also notes that downward constraints are in place. Specifically, any proposal to reduce rates for residential services, including optional local services, must generally be accompanied by supporting rationale that demonstrates the proposed rates continue to pass an imputation test. These safeguards deter anti-competitive pricing strategies for services offered by ILECs.

200. The Commission considers that removing the prohibition for residential services would foster economic efficiency in those areas where the ILEC remains the dominant service provider. For example, TELUS noted during its testimony that if rate de-averaging is allowed, it would have the pricing flexibility to offer a bundled service across a very large geographical area. As a result, TELUS would be able to pass these benefits to consumers through either rate reductions or bundled service offerings to meet various sub-market requirements across their operating territory.

201. In light of the above, the Commission considers that the rates for residential services, including optional local services, subject to regulation would remain just and reasonable under the next price cap regime.

202. Removal of the prohibition would not entail the abdication of all regulatory oversight over the pricing strategies of the ILEC. The Commission retains the ability on a case-by-case basis, to determine whether the particular pricing strategies of the ILEC lead to discrimination that is unjust or confer a preference or disadvantage that is undue or unreasonable. To this effect, the Commission notes that subsection 27(4) of the Act places the onus on the Canadian carrier to demonstrate that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable.

203. Accordingly, the Commission concludes that it is appropriate to remove the prohibition on further rate de-averaging for residential services, including optional local services. The Commission will allow price de-averaging down to the individual subscriber.

204. Regarding pay telephone and business services, the Commission will conduct a follow-up proceeding to consider whether the prohibition on further rate de-averaging should be removed for these services.

205. The Commission notes that in *Rate ranges for services other than voice over Internet Protocol services*, Telecom Decision CRTC 2006-75, 23 November 2006, the Commission determined that rate ranges would generally be appropriate for local exchange and related services. However, the Commission decided to defer its determinations on the range-within-a-range proposal until a determination was rendered on the rate de-averaging issue. In light of the Commission's determinations on rate de-averaging in this Decision, the Commission will rule on the range-within-a-range proposal shortly in a separate decision.

E. Other issues

206. In the following section, the Commission will consider issues related to a) contribution, b) implementation of the price cap regime, and c) follow-up processes.

a) Contribution issues

i) Adjustment to PES costs

207. In Decisions 2002-34 and 2002-43, the Commission determined that an I-X adjustment would be applied annually to the PES cost component of the ILECs' subsidy calculations.

Positions of parties

208. The Companies submitted that the cost component of the subsidy requirement formula should be fixed at current levels throughout the price cap period. The Companies argued that if its estimated productivity factor of -0.5% was applied, the amount of subsidy would increase each year, which would be an inappropriate result from a public policy perspective.

209. TELUS proposed that the Commission freeze the subsidy per residential NAS amounts for HCSAs at the current levels until the Commission completed its review of the Phase II costing methodology. TELUS was concerned that the current Phase II calculations for contribution underestimated the amount of contribution per line that was required and that the application of the annual I-X adjustment had likely exacerbated the underestimation problem.

Commission's analysis and determinations

210. The Commission is not persuaded by the request to freeze the subsidy per residential NAS amounts since there is no evidence on the record of this proceeding that the current HCSA residential PES costs are underestimated.

211. The Commission notes that the I-X adjustment to the PES cost component was established in Decisions 2002-34 and 2002-43 to reflect the expected cost changes for residential local exchange services in HCSAs. The Commission considers that the ILECs will continue to experience productivity gains in respect of these services. The Commission also considers that since residential PES in HCSAs are generally not subject to competitive market forces, it would not be appropriate for the ILECs to keep all the productivity gains associated with these services.

212. The Commission determines that the annual I-X adjustment applied to the PES cost component of the ILECs' subsidy calculations continues to be appropriate. The Commission directs that when the I-X adjustments are being applied, each individual calculation should be rounded to the nearest whole cent. The ILECs' 31 December 2006 residential PES costs to be used in their 2007 Total Subsidy Requirement calculations are as follows:

ILEC Territory	Band E	Band F	Band G
Bell Aliant – New Brunswick	\$28.40	\$22.81	not applicable
Bell Aliant – Newfoundland	\$30.47	\$30.56	\$35.05
Bell Aliant – Nova Scotia	\$26.95	\$25.93	not applicable
Bell Aliant – Ontario/Quebec	\$27.67	\$26.00	\$42.22
Bell Aliant – P.E.I.	\$29.96	\$31.14	not applicable
Bell Canada	\$27.67	\$26.00	\$42.22
MTS Allstream	\$42.63	\$36.54	\$81.68

SaskTel	\$44.94	\$37.93	\$52.44
TELUS – Alberta	\$34.19	\$30.55	\$33.65
TELUS – B.C.	\$47.30	\$36.48	\$44.83
TELUS – Quebec	\$37.85	\$27.74	\$66.78

213. In *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000, the Commission determined that the ILECs would be allowed a 4.5% exogenous adjustment in their 2001 price cap filings to recover the costs associated with the contribution revenue-percent charge applicable to their capped services.

214. In Decisions 2002-34 and 2002-43, the Commission determined that the ILECs could recover the cost of the revenue-percent charge on their HCSA residential local rates from the National Contribution Fund. However, the ILECs had to reduce their HCSA residential local rates in their subsidy calculations by 4.5% before the cost recovery amount was calculated.

215. Given that the ILECs will have the flexibility to increase residential local rates in HCSAs as a result of the determinations in this Decision, the Commission considers that the 4.5% reduction to average HCSA residential local rates in the subsidy calculation is no longer required. Accordingly, the Commission directs the ILECs to use their actual band-average HCSA residential local rates in their subsidy calculations.

ii) HCSA residential local rates for subsidy calculation purposes

216. In this proceeding, parties were requested to comment on the appropriateness of mandated HCSA residential local rate increases in order to reduce the National Subsidy Requirement and the contribution collection revenue-percent charge.

Positions of parties

217. The Companies submitted that such a proposal touched on a variety of complex issues that would best be addressed in a separate proceeding. For example, mandating an ILEC to increase HCSA residential local rates, but not other parties offering such services in the same market, would distort the competitive outcome and have impacts on the contribution regime.

218. MTS Allstream submitted that mandated HCSA residential local rate increases would have the effect of significantly reducing the National Subsidy Requirement, but it would also substantially increase the price of basic local services for subscribers in rural and remote areas of the country.

219. SaskTel submitted that any consideration of taking specific rate action to reduce the subsidy requirement should be addressed in a proceeding specifically designed to examine the continuing need for subsidies. SaskTel also submitted that the current subsidy mechanism achieved the policy objectives in section 7 of the Act and there were no sound policy reasons for reducing the National Subsidy Requirement through mandated HCSA rate increases.

220. TELUS submitted that mandating a series of residential local rate increases to reduce the National Subsidy Requirement could be accommodated by allowing rate de-averaging at the same time. TELUS submitted that, regardless, mandated local rate increases should be treated, for price

cap index purposes, in the same way as an exogenous adjustment. TELUS also submitted that, as a general approach, a maximum affordable rate should be determined and rates be adjusted to that level over time, while reducing the subsidy per line amounts at the same time. TELUS agreed with other parties that, in order for such a plan to be adopted, another proceeding would be required.

221. The Competitors submitted that mandated cross-subsidy mechanisms such as the National Subsidy Requirement reduce economic efficiency by distorting price signals to both consumers and producers of telecommunications services. They supported the gradual elimination of the National Subsidy Requirement through annual HCSA residential local rate increases where rates were below cost.

222. The Consumer Groups did not support mandated residential local rate increases. The Consumer Groups submitted that without access to competitive alternatives, vulnerable and captive HCSA customers would be forced to pay higher rates to maintain this essential service, which would be inconsistent with the objectives of the price cap regime. The Consumer Groups also submitted that consideration must be given to broader issues such as affordability, quality of service, rate shock, remoteness, the legislative obligations imposed on the Commission, and policy considerations.

Commission's analysis and determinations

223. As set out in this Decision, the Commission will allow the ILECs' the flexibility to increase, on an annual basis, residential PES rates in HCSAs by the lesser of the annual rate of inflation or 5%. The Commission notes that if it were to mandate these local rate increases, the contribution requirement would be reduced.

224. The Commission considers that the decision whether to increase HCSA residential local rates resides with the ILECs. However, under the current subsidy regime, the Commission notes that there is little incentive for the ILECs to increase HCSA residential local rates since any rate increase would be entirely offset by a corresponding decrease in subsidy payments.

225. If the Commission were to impute for subsidy calculation purposes any local rate increases in HCSAs permitted by the price cap constraints, regardless of whether the ILEC actually increases its rates, the resultant reduction in the National Subsidy Requirement would be passed on to those telecommunications service providers who pay into the National Contribution Fund through a lower revenue-percent charge. The Commission notes that a similar approach was used for the small ILECs in *Regulatory framework for the small incumbent telephone companies*, Decision CRTC 2001-756, 14 December 2001.

226. The Commission considers that a target residential local rate for subsidy calculation purposes should be established to ensure that any imputed local rate increases would not result in residential local rates going beyond just and reasonable levels. The Commission notes that the ILECs' current subsidy band-average residential local rates are at or below \$25, except for TELUS in Alberta. Given that the approved residential local rates in some HCSAs are already in excess of \$30, the Commission considers that a target HCSA residential local rate of \$30 would not be unreasonable, particularly given that these rates are below cost.

227. The Commission considers that the imputed local rate increases should only apply to those bands that receive subsidy because once a band stops receiving subsidy, it would be considered to be at cost for subsidy purposes. For individual residential line rates that are above \$30, while no imputed increase would be applied, if the ILEC increases the rate, then the increased local rate should be used to determine the band-average rate for subsidy calculation purposes.

228. Accordingly, the Commission determines that, for subsidy calculation purposes:

- i. For those bands that receive subsidy where the individual residential local rate is below \$30, the ILECs are to impute individual residential local rate increases, effective 1 June of each year, based upon the HCSA residential rate element constraint, to each individual HCSA residential local rate used in the subsidy band-average rate calculation, regardless of whether the ILEC actually increases rates; and
- ii. For those bands where the subsidy per residential NAS amount has been reduced to zero or the individual residential local rate is above \$30, the ILECs are not required to impute any rate increase. However, the individual residential local rates used to determine the subsidy band-average rates must include any rate increases actually taken by the ILEC.

229. In Decisions 2002-34 and 2002-43, the Commission determined that the ILECs should use their band-average actual residential local rates calculated at 31 December of the preceding year, in their subsidy calculations. As a result of this Decision, local rate increases will be imputed effective 1 June of each year. In calculating band-average residential local rates for subsidy calculation purposes, the Commission directs the ILECs to take into account the impact of (a) any imputed local rate increases that would be effective 1 June, and (b) any non-imputed actual local rate increases that would be effective the date of their implementation.

230. The ILECs are required to file their subsidy per residential NAS calculations by 31 March of each year, except for their 2007 filing which is required by **30 May 2007**.

b) Implementation of the price cap regime

i) price cap period

231. In Decisions 2002-34 and 2002-43, the Commission determined that the duration of the price cap regimes would be four years. The length of the regimes was later extended by one year.¹²

Positions of parties

232. The Companies argued for a price cap period not to exceed two years. The Companies submitted that it would not be consistent with the notion of promoting a dynamic industry, especially in the current environment of significant change, to establish pricing restrictions for an extended period of time. The Companies submitted that the pricing constraints in their own proposal would be too inflexible if the price regulation period were in excess of two years.

233. TELUS proposed that the next price regime be open ended, with the option for the Commission to initiate a review of any aspect of the regime, after a period of four years. TELUS submitted that a review could be initiated by the Commission on its own motion or on application by an ILEC or by another party. TELUS further proposed that, to simplify the process and to recognize the differences in market conditions in different regions of the country, any further reviews should generally be restricted to the price constraints attached to a specific company. TELUS argued that limiting future price cap reviews to company-specific issues would account for the likelihood that competition would develop in different ways and in different degrees across the country.

234. The City of Calgary, the Consumer Groups, and MTS Allstream all proposed a four-year price cap regime. The Consumer Groups predicated its four-year proposal on the assumption that the Commission would establish a reasonable inflation offset.

235. The Competitors proposed that the period for the next price cap regime be five years, noting that during this time a number of telephone services in specific geographical locations would be forborne from rate regulation.

Commission's analysis and determination

236. The Commission notes that in those areas which do not qualify for forbearance, an ILEC will continue to have significant market power and the price cap regime will continue to apply. The Commission also notes that when the ILEC considers that it no longer has market power in a relevant market, the ILEC can apply for forbearance from regulation as set out in the Forbearance Order. The Commission considers that with established criteria for forbearance, a fixed price cap period and a scheduled review date for the next price cap regime are not required.

237. The Commission determines that the next price cap regime will not have a fixed duration.

ii) Amalgamation of TELUS' price cap indices

238. The price cap regime for the services provided by TELUS in the province of Quebec is currently scheduled to expire on 31 July 2007, as opposed to 31 May 2007 for TELUS in Alberta and British Columbia. TELUS requested that the price cap regime for the services it provides in its operating territory in Quebec be fully integrated into the overall basket structure proposed for TELUS with an effective date of 1 June 2007. This request would be independent of the structure of the general tariffs for the individual operating territories.

239. The Commission considers that, in establishing a price cap regime that would apply on a going-forward basis, it would be reasonable to allow TELUS to amalgamate the price cap indices for its operating territories into one price cap regime that incorporates all of its capped services. The Commission approves TELUS' request to integrate the price cap regime for the services it provides in its operating territories.

240. The Commission notes that, with the application of the I-X adjustment on 1 August of each year, the former TELUS Communications (Québec) Inc. (TELUS Québec) has different subsidy per residential NAS amounts for the periods (a) January to July and (b) August to December, of each

year.

241. The Commission determines that, in order to streamline reporting processes, the effective date for the former TELUS Québec calculation of its subsidy per residential NAS amounts should be changed to 1 January of each year starting in 2008. For its serving territory in Quebec, the Commission directs TELUS to apply only 5/12's of the August 2007 I-X adjustment, to cover the period August to December 2007, with the full 2008 I-X adjustment being applied effective 1 January 2008.

iii) Timing of annual price cap filings

242. Under the current price cap regime, the ILEC must file, by 31 March of each year, a submission demonstrating compliance with the applicable pricing constraints by comparing a price index of actual price changes with a price index of allowable price changes. The allowable average price changes are reflected through a service band limit (SBL (service band limit)) while the Actual average price changes are reflected through a service band index (SBL (service band index)).

243. Based on the basket structure and associated pricing constraints in this Decision, the Commission considers that it would be appropriate to continue with 31 March for the annual update of the price indices. In addition, the Commission concludes that the SBLs and SBIs should be set at 100 effective 31 May 2007.

244. Accordingly, the Commission directs:

- i. for the year 2007, each ILEC to file the SBL and SBI with supporting calculations, formulae and spreadsheets, for each basket of capped services, as applicable, on **30 May 2007**;
- ii. for subsequent years on an annual basis on 31 March, each ILEC to file updates to the SBL and SBI, with supporting calculations, formulae and spreadsheets, for each basket of capped services, as applicable; and
- iii. each ILEC to issue tariff pages reflecting the application of the I-X constraint on rates for Category I Competitor Services effective 1 June of each year.

c) Follow-up processes

i) Price ceiling when forbearance is granted

245. In Decision 2006-15, the Commission determined that residential local rates would be capped at the approved tariff rate when forbearance was granted. In HCSAs, if an ILEC's residential local rates are set below the tariffed rate applicable at the time forbearance is granted, the tariffed rate at the time of forbearance would be used to determine the ILEC's average residential rate for subsidy calculation purposes.

246. The Commission notes that the determinations made in this Decision may have an impact on the determinations made in Decision 2006-15 with respect to the cap for residential PES rates in HCSAs and on the subsidy calculation. The Commission's preliminary view on these issues is as follows:

- i. change the cap at the time forbearance is granted from the tariffed rate to the rate being imputed for subsidy calculation purposes; and
- ii. continue to impute HCSA local rate increases for the ILECs after forbearance is granted until the band no longer receives subsidy or the \$30 target is reached.

The Commission notes that these modifications could result in local rate increases in HCSAs after forbearance has been granted and would move rates closer to cost.

247. Accordingly, parties are requested to provide their comments on the Commission's preliminary view by **30 May 2007**, serving a copy on all interested parties to this proceeding. Parties may file reply comments by **11 June 2007**, serving a copy on all parties.

ii) Application of the price cap regime to Société en commandite Télébec

248. Société en commandite Télébec (Télébec) proposed that subsequent to a decision in this proceeding it would file a submission with the Commission indicating whether the regime set out was appropriate to the company going forward, noting any changes it would prefer. In Public Notice 2006-5, the Commission stated that it would request Télébec to indicate why the regime set out in this Decision should not apply to it.

249. The Commission directs Télébec to show cause by **30 May 2007**, serving a copy on all interested parties to this proceeding, as to why the determinations made in this Decision should not apply to it. Parties may file reply comments by **14 June 2007**, serving a copy on Télébec and all parties. Télébec may file final reply comments, serving a copy on all parties, by **29 June 2007**.

250. As part of this show cause proceeding, Télébec is also requested to comment on, starting in 2008, changing the effective date of the subsidy per residential NAS amounts to 1 January and changing the price cap filing dates to those set out in this Decision.

251. In order to allow for a timely decision with respect to the final 2007 revenue-percent charge, Télébec is to file its 2007 subsidy per residential NAS calculations, based upon the effective date it will propose in the show cause proceeding, by **30 May 2007**.

252. Since a decision on this show cause process will be issued after 1 June 2007, the Commission concludes that Télébec is not required to impute any residential local rate increases in 2007 for subsidy calculation purposes. Rather, this determination will only apply to Télébec starting in 2008.

253. The dissenting opinion of Commissioner Langford is attached.

Secretary General

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML (Hyper text markup language) at the following Internet site: <http://www.crtc.gc.ca>

Footnotes

[1] The price regulation regime established in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002 (Decision 2002-34) applies to: Aliant Telecom Inc., now known as Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Communications Inc., now known as MTS Allstream Inc; Saskatchewan Telecommunications; and TELUS Communications Inc., now known as TELUS Communications Company. The price cap regime set out in *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002 (Decision 2002-43) applies to Société en commandite Télébec (Télébec) and TELUS Communications (Québec) Inc. (TELUS Québec) (now part of TELUS Communications Company). All the companies listed in these decisions are referred to as the large ILECs.

[2] Where BCOAPO et al., PIAC, PILC, and UC took the same position on an issue, the Commission refers to them collectively as the Consumer Groups in this Decision.

[3] In accordance with subsection 11(2) of the Act, policy directions may apply in respect of matters pending before the Commission. However, in accordance with subsection 11(3) of the Act, a policy direction does not apply in respect of a matter pending before the Commission if final submissions were filed during the year prior to the direction coming into effect.

[4] In Decision 2002-34, the Commission imposed a pricing constraint equal to inflation less a productivity offset of 3.5% on residential local services in non-HCSAs. However, in order to avoid an adverse impact on local competition, the Commission required that all incumbent telephone companies that were subject to the determinations in Decision 2002-34 create a deferral account where they placed amounts equal to the revenue reductions that would otherwise have resulted from an application of the price cap formula. Deferral accounts were subsequently established for Télébec and TELUS Québec in Decision 2002-43.

[5] As described in paragraph 167 of Decision 2002-34, Category I Competitor Services are in the nature of essential services and comprise interconnection and ancillary services, including essential services as defined in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997, which are critical inputs required by competitors in light of the very limited competitive supply of the services.

[6] The Companies considered that essential services were typically defined as services of such importance to the economic and social welfare of the citizenry that universal access to such services at affordable rates remained a key element of public policy.

[7] In the proceeding initiated by *Review of regulatory framework for wholesale services and definition of essential service*, Telecom Public Notice CRTC 2006-14, 9 November 2006, as amended by Telecom Public Notices CRTC 2006-14-1, 2006-14-2, 2006-14-3 and 2006-14-4 (Public Notice 2006-14), the Commission is considering various matters, including a revised definition of "essential service".

[8] TELUS charges \$0.35 per call for local coin pay telephone service.

[9] In the proceeding initiated by *Review of certain Phase II issues*, Telecom Public Notice CRTC 2007-4, 30 March 2007 (Public Notice 2007-4), the Commission is reviewing certain Phase II costing issues.

[10] In *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000, the Commission introduced, effective 1 January 2001, the National Contribution Fund to subsidize the high cost of local service in rural and remote areas where rates are below costs. In that Decision, the Commission also established a new national contribution mechanism based on revenues from telecommunications service providers (i.e. revenue percent charge).

[11] The Consumer Groups calculated an input price differential of 2.0% based on a study of U.S. price inflation over the years 1995 to 2004.

[12] In *Extension of the price regulation regime for Aliant Telecom Inc., Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications and TELUS Communications Inc.*, Telecom Decision CRTC 2005-69, 15 December 2005, the Commission extended the current price cap regime without changes for Aliant Telecom, Bell Canada, MTS Allstream, SaskTel and TELUS for a period of one year, to 31 May 2007. In *Extension of the price regulation regime for Société en commandite Télébec and TELUS Communications (Québec) Inc.*, Telecom Decision CRTC 2005-70, 16 December 2005, the Commission extended the current price cap regime without changes for Télébec and TELUS Québec for a period of one year, to 31 July 2007.

Dissenting opinion of Commissioner Stuart Langford

I disagree with a good many of the positions taken by the majority, and in the paragraphs that follow I explain why and offer alternatives. By way of general introduction, I am of the view that the majority, in formulating those elements of a third price cap regime (price cap 3) that apply to residential subscribers in non-forborne, non-high cost service areas (non-HCSAs), has lost sight of the purpose of such schemes. In its quest for administrative efficiency, the majority appears to have abandoned its responsibilities to balance the interests of all stakeholders: customers, competitors and incumbent telephone companies.

A fundamental error:

The result is a regime which I believe will fail on any number of fronts. Vulnerable consumers will find themselves stripped of many of the protections built into both competitive marketplaces and properly constructed price cap schemes. Competitors will be left with little or no incentive to expand into unopened markets because the majority decision equips incumbent telephone companies with pricing and marketing tools powerful enough to halt dead in its tracks any future roll-out of competition in their territories. Finally, incumbent telephone companies could also lose. Should inflation drive up the cost of providing service, they may find themselves subsidizing residential stand-alone primary exchange service (PES).

Perhaps in its desire to capture the spirit of two Government initiatives, the December 14th, 2006²⁴¹ Policy Direction (the Direction) favouring reliance on market forces, and the April 5th, 2007 Order-in-Council (the Order) regarding the staged deregulation of telecommunications services in Canada, the majority appears to have made a fundamental error. It seems to have overlooked the fact that market forces cannot be relied upon to protect consumer interests in places where little or no competition exists.

price cap 3 will only apply to these areas, areas where neither the letter nor the spirit of the Government's Direction or Order is applicable, where market forces and the prospect of deregulation do not exist. We are talking here about parts of Canada where incumbent telephone companies, for all intents and purposes, remain monopolies or near-monopolies and where regulation remains necessary if consumer interests are to be protected.

The need for a price cap scheme:

Broadly speaking, the purpose of establishing a price cap scheme in such places is twofold: to imitate and to stimulate. Properly constructed, such a regime will protect consumers in the short term by imitating the effects of a rivalrous marketplace, and in the long term by helping to establish conditions conducive to stimulating competitive entry. In my opinion, the majority decision fails on both fronts. It deprives consumers of the key benefit of competition, lower prices, and provides incumbent telephone companies with excessive powers, powers that can only frustrate the roll-out of competition in their territories. Neither consequence is in the public interest.

As revised by the Government in the Order, the test used to determine whether a market is sufficiently competitive to no longer require price regulation by the Commission has become both straightforward and easy to meet. Under its terms, services provided to most of Canada's residential non-HCSA subscribers will soon be forborne. Except in extraordinary circumstances, consumer buying choices, not regulatory oversight, will be the sole methods of disciplining future telecommunications service offerings and prices in forborne areas. Hopefully, that approach will work.

In non-HCSAs that do not meet the Order's simple test, consumer protection from monopolistic and near-monopolistic service providers and the job of creating market conditions attractive to competitive entry, will remain largely in the hands of the Commission. In my opinion, the changes to the majority decision I set out in the following paragraphs would make it far more likely that those two goals will be achieved.

Pricing residential services:

For customers in the non-forborne, non-HCSA markets that will be regulated by price cap 3, the majority has replaced most of the consumer-oriented pricing constraints included in the last price cap regime (price cap 2) with one safeguard. Going forward, prices for basic, no-frills, no-extras service will remain capped at today's levels. So, if you are paying \$25 per month for basic service today, in theory, as long as you remain in a regulated area, you will never pay more. That's the theory. In reality, other circumstances could see basic service prices climb.

For everything else, notably, optional services like "caller identification" and bundles of basic and optional services, the majority has cancelled all upward pricing restrictions. Incumbent phone companies can charge whatever they like; the sky's the limit. Consumers are left with two choices: pay or do without. That does not sound like the regulatory bargain that the Minister of Industry, The Hon. Maxime Bernier, anticipated when on February 19th, 2007, he made the following statement before the Standing Committee on Industry, Science and Technology:

"The rural areas – and this is an important point – have not been deregulated. They still benefit from CRTC regulations and standards that are currently in effect. It's the *status quo*."

What was "currently in effect" when the Minister made this statement was the price cap 2 regime, and in my view, the price cap 2 approach was fairer to consumers than the price cap 3 regime set out in the majority decision. With certain modifications, I would continue it.

If the decision were mine alone to make, residential phone services in non-forborne non-HCSAs would be price-controlled as follows: each year incumbent telephone companies would be allowed to raise prices for residential services as a whole the equivalent of that year's inflation level less a productivity factor of 3.2% and an "economies-of-scope" factor of 1%, though the price of no single service element or service bundle could be raised more than 5%. Price rises for optional services would be treated differently. Any of them could be raised a maximum of \$1 per year.

A few examples:

So, if inflation in a given year were, say, 6%, prices for all residential services in non-forborne non-HCSAs could be raised 6% minus 3.2% minus 1%. That is, a total of 1.8%. No optional service could be raised more than a dollar, and no other single element making up residential service could be raised more than 5%. On the other hand, if inflation were, for example, 3%, the effect would be the following: $3\% - 3.2\% - 1\% = \text{minus } 1.2\%$. At year-end, consumers would receive a credit on their bill of 1.2% of what they had paid that year for residential services.

More complicated, but fairer:

I believe that though this system seems more complicated than the majority's selective price freeze, it is much fairer. Here is why:

First, it imitates a competitive marketplace. Competition forces suppliers to be more productive and to pass on the benefits of those productivity gains to their customers, if they wish to keep them as customers, in the form of lower prices. The majority decision fails to try to duplicate this phenomenon. It enables incumbent telephone companies to deprive their captive customers of the benefits of productivity, distributing all such gains to their shareholders in the form of dividends and to their executives in the form of annual bonuses.

Second, an economies-of-scope factor of 1% recognizes that the infrastructure telephone companies use to deliver local residential telephone service is also used by them to deliver other services like long distance, internet, home security systems and television. Prices for these services are not regulated. The companies can charge anything customers are willing to pay. Yet, all of the cost for a good deal of that infrastructure is treated as though local phone services are the incumbent telephone companies' only products. Telephone users making local calls are subsidizing those who buy other services. How fair is that?

Third, my formula treats everyone equally. Both consumers and suppliers are positioned to benefit, depending on the state of the economy. If inflation is below 4.2% (the sum total of the 3.2% productivity factor and the 1% economies-of-scope factor), consumers benefit. If the inflation rate goes above 4.2%, the companies get to raise prices. Why shouldn't they? Where is it written that commercial companies, even monopolies or near-monopolies, must subsidize their customers' purchases?

Three cheers for equality:

And while on the subject of equality, there are two other aspects of the majority decision which I regard as likely to favour telephone service providers over telephone service users. The first deals with what are called "exogenous" factors, explained by the majority in paragraph 166. In certain circumstances under the price cap 3 regime, when they are hit by a particular type of unexpected expense, incumbent telephone companies will be allowed to raise basic rates. Those are the rates that are supposed to be frozen. That's fair, though knowing this could happen, in my opinion, makes the majority's categorization of basic service as capped or frozen misleading.

When an exogenous event occurs, for example, the Commission orders telephone companies to add a service like 911 or special telephones for consumers with disabilities, the companies affected are given permission to raise rates to recover the costs of following those orders. To be fair, the majority decision will also force telephone companies in areas regulated by price cap 3 to lower rates if an exogenous factor, say a reduction in taxes on phone revenues, ends up saving them money. The cloth cuts both ways, but experience demonstrates that most of the cutting goes in one direction. A review of exogenous claims over the past nine years of price cap regulation reveals that with only one exception (see the majority decision, paragraph 171), Commission decisions on exogenous matters resulted in money flowing into company coffers, not into the hands of customers. Expect those "frozen" basic service prices to thaw and rise.

The second strange case in the majority decision of what I regard as uneven treatment is that it applies the benefits of a productivity factor to competitive telephone service providers but not to the incumbent telephone company's customers. Rates charged to competitor companies for most Category I services (see the majority decision, paragraph 165) are subject to an inflation minus 3.2% pricing formula. The majority forces incumbent telephone companies to share the benefits of productivity gains with their competitors but not with their own customers. My approach to pricing as set out above would see all users benefit.

Rate de-averaging:

Traditionally, incumbent telephone companies have been restricted as to the price offerings they can make to consumers. Their territories have been divided into what are called rate bands. Typically, an "A" band is in a city's downtown core, "B" bands cover the city's residential areas, and bands "C" and higher cover ever more rural areas containing decreasing population densities. The rule has been that any rate offered to one resident in any band has to be made available to all the residents in that band. If Bell, for example, offers Mr. Smith in band "B" a rate of \$20 per month for basic service, it has to give everyone else in band "B" the same price.

The majority decision drastically changes that rule. In fact, it does away with it entirely. Under price cap 3, as the majority has devised the regime, incumbent telephone companies can offer different prices to each and every one of the people living in non-forborne areas, just as it can in forborne or deregulated areas. Five or ten or a hundred people all living on the same street in the same city might all find themselves paying different prices for the same services. Why?

Remember the fundamentals:

De-averaging rates in deregulated areas makes sense. The incumbent telephone companies are competing against other service providers like cable companies who are not subject to the rule against de-averaging. It isn't fair to give one equally strong competitor an advantage over another in an area where market forces are powerful enough to ensure that no service provider can become a monopoly. But the price cap 3 regime does not apply in such areas. To repeat the fundamental point I made at the beginning of this dissenting opinion, the whole reason for developing a price cap scheme lies in the fact that it will apply only in areas where competitive forces are weak or non-existent.

Fairness forgotten:

Rate de-averaging in price cap regulated areas can have only two effects. Both are negative. First, it is anti-competitive. It enables an established telephone company to slash a particular customer's rates the instant it learns that customer is planning to switch to another service provider. Let us say, for example, that Primus, a non-facilities based phone company, attracts a customer away from the incumbent telephone company, say Bell Canada. Primus contacts Bell and says, "Please switch Mrs. Jones' service to us." Using the majority's de-averaging rules, Bell can immediately phone Mrs. Jones and say: "We didn't know you were unhappy with us. We want to keep you as a customer. We will beat any offer Primus has made and throw in 3 optional services and free long distance. Come on back to Bell."

If she accepts Bell's offer, Primus loses Mrs. Jones and all the money it spent to attract her as a customer. From a consumer fairness perspective, the fallout is equally negative. The other subscribers in Mrs. Jones' rate band continue paying the old prices with no freebies, thereby subsidizing Bell's efforts to crush competition. How can that further the interests of fairness? More particularly, how does it further Parliament's direction to the Commission (see paragraph 7(f) of the *Telecommunications Act*) to make best efforts "to foster increased reliance on market forces"? It is

hard to imagine why entrepreneurs would invest the huge sums required to start phone businesses in price cap regulated areas where the Commission has given incumbent phone companies so much power to crush competition before it even gets started.

Pay phones:

It is equally hard to imagine why the majority has taken the position it has on the pricing of pay telephone services. The majority has granted incumbent telephone companies in non-forborne areas the freedom to increase rates to a maximum of 50 cents per cash local call and a maximum of \$1 for local calls paid by way of collect billing, third number, calling card or commercial credit card (non-cash). This is precisely what Bell Canada, Bell Aliant and SaskTel requested.

At first blush, these increases may seem reasonable. After all, Bell Canada, to take one example, has been charging 25 cents for a cash-paid local pay phone call since 1981, and who can deny that costs have gone up over the past 26 years. But there is another revealing piece of evidence on the record of this proceeding. TELUS has been charging 35 cents for cash and 75 cents for non-cash calls since 1998, and it did not ask for increases in either rate. It seems logical to assume, then, that the 35/75 formula is more than compensatory if Canada's second largest incumbent telephone company is happy with it. For that reason, I would have adopted the TELUS price structure.

What's the difference?

After analyzing the majority decision, a fundamental question remains unanswered: Why did it bother devising price cap 3? What's the difference between deregulation, forbearance in other words, and price cap 3? For consumers, the answer will be, very little. In fact, in the future, consumers living in forborne regions will be better protected. At least they'll have competition to rely on. Under price cap 3, the only consumers protected are those that subscribe exclusively to basic, no-frills, no-options service. For them, prices are theoretically frozen. Big deal! Basic service subscribers in forborne areas will enjoy the same protection.

As I understand the positions espoused by representatives speaking on behalf of some of Canada's former monopoly service providers, though they will no doubt be delighted by the majority decision which gives them practically carte blanche when it comes to pricing, they certainly did not expect anything like it. What they, like Minister Bernier, seemed to have anticipated was a continuation of the consumer protections offered by price cap 2. Here are examples of what incumbent telephone company representatives promised the Standing Committee on Industry, Science and Technology when they appeared before it on February 14th, 2007:

Mr. Denis Henry, speaking for Bell Aliant: "There's no doubt that there will be some rural communities where there is no choice, and the current regime will apply in that case. There will be full price regulation."

Ms Janet Yale, speaking for TELUS: "I don't believe that in the absence of competition there is any threat at all to customers, because they are completely protected under the regulatory umbrella today."

The majority decision takes away consumers' umbrellas. For that reason, I cannot support it.

Date modified:

2007-04-30

This is Exhibit "H" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



Canadian Radio-television and Telecommunications Commission

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Telecom Notice of Consultation CRTC 2013-337

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Additional reference: [2013-337-1](#)

Ottawa, 16 July 2013

Call for comments

Fact-finding process on the role of payphones in the Canadian communications system

File number: [8650-C12-201310060](#)

With this notice, the Commission initiates a proceeding to collect information on the current role that payphones play in the Canadian communications system, including the extent to which Canadians rely on payphones, and the effects, if any, that further payphone removals and possible rate increases may have on Canadians.

Background

1. Payphone service provides Canadians with access to public telephones for the purpose of making local and long distance calls, and is offered at various indoor and outdoor locations throughout Canada. Payphone service is offered at the discretion of the payphone provider, in that it is the provider who decides the location and number of payphones available in any area. Payphones accept various means of payment including coins, credit cards, calling cards, or prepaid phone cards. Some payphone calls, such as 9-1-1 and calls to toll-free numbers, are provided at no charge to the user.
2. In Telecom Decision [98-8](#), the Commission established a regulatory framework that allowed for competition in the local payphone market in order to stimulate service innovation and increase customer choice. Prior to the introduction of this framework, payphone service was only provided by incumbent local exchange carriers (ILECs) within their respective operating territories. At that time,

payphone service was considered to be a valuable complement to basic service, and the Commission encouraged the ILECs to ensure its widespread availability and accessibility at affordable rates.

3. In 1998, when the competition framework was introduced, the Commission considered that ILECs would remain dominant in the local payphone market for the foreseeable future. Today, ILECs continue to be the primary providers of payphone service across Canada and, as a result, the Commission continues to regulate the ILECs' local payphone rates under a price cap regime.^[1] currently, ilecs have the flexibility to charge up to a maximum rate of \$0.50 for a local cash call, and up to a maximum rate of \$1.00 for a local non-cash call.^[2]

4. The Commission last reviewed the accessibility of payphones to Canadians in Telecom Decision 2004-47. The Commission concluded at the time that although demand for payphone service was declining, it was still an important public service that wireless services had not yet rendered obsolete. In that decision, the Commission, among other things, also established a notification process for when the last payphone in a community is scheduled for removal.^[3] this notification process was imposed only on certain ilecs.^[4]

5. In Telecom Decision 2013-336, issued today, the Commission denied an application by Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership (collectively, Bell Canada et al.) to increase the price ceiling for local payphone rates. The Commission noted that while payphones were removed from service during the past few years in response to declines in revenues and demand, the record of that proceeding did not indicate the extent to which the widespread availability of advanced technology and services had affected the demand for payphone service, particularly among persons who earn low income and those living in rural and remote communities. The Commission considered that additional data was required to assess the extent to which Canadians now rely on payphones. The Commission also considered that it was not clear whether its policy on the removal of the last payphone in a community^[5] continued to ensure access to payphones to meet the requirements of Canadians. Accordingly, the Commission announced that it would initiate two follow-up processes to

a) consider the appropriateness of prohibiting, on an interim basis, the removal of the last payphone in a community;^[6] and

b) collect information on the current role that payphones play in the Canadian communications system, including the extent to which Canadians rely on payphones, and the effects, if any, that further payphone removals and possible rate increases may have on Canadians.

Call for comments

6. With this notice, the Commission initiates a fact-finding process, as set out below, to clarify the current role of payphones in the Canadian communications system. As part of this process, the Commission has requested, via separate letters issued today, information from the ILECs (see Appendix A) and the Public Interest Advocacy Centre (PIAC).

7. In Telecom Decision 2004-47, the Commission made a series of determinations about the use and role of payphones. Since that time, there has been substantial change in the telecommunications market, particularly in the growth of wireless services. Almost 80 percent of Canadians have adopted wireless technology; however, there are factors such as socio-economic status and geography which may limit the availability of wireless services. Therefore, the Commission considers it important to examine the conditions surrounding the use of payphones by Canadians today.

8. Accordingly, the Commission invites all parties to provide data and evidence, including social, economic, and geographical factors, on the following:

- a) the extent to which Canadians use and rely on payphones;
- b) the purposes for which Canadians use payphones (e.g. basic, complementary, convenience, and emergency);
- c) the demographic profile of Canadians who rely on payphones;
- d) the availability of payphones (including payphones equipped with teletypewriter capabilities)^[7] to meet Canadians' needs;
- e) the impact of payphone removals on Canadians;
- f) the impact of past or potential payphone rate increases on Canadians' usage of payphone service; and
- g) the barriers that Canadians may experience in accessing payphone service.

9. The Commission also invites parties to provide comments and evidence on whether there are other technologies and services that are substitutes for payphone service, and, if so, the extent to which they meet the needs of Canadians who use payphones.

Procedure

10. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding.^[8] For help understanding the Rules of Procedure, see the *Guidelines on the CRTC Rules of Practice and Procedure*.

11. The ILECs listed in Appendix A of this notice are made parties to this proceeding.

12. Concurrent with the release of this notice, the Commission, by way of separate letters, issued interrogatories to the ILECs listed in Appendix A of this notice and to PIAC. The responses to these interrogatories must be filed with the Commission by **10 September 2013**.

13. Requests for public disclosure of information filed pursuant to paragraph 12 that has been designated confidential, setting out in each case the reasons for disclosure, must be filed with the Commission and served on the relevant party or parties by **20 September 2013**.

14. Responses to these requests must be filed with the Commission and served on the party or parties making the request by **27 September 2013**.
15. Determinations regarding requests for public disclosure will be issued as soon as possible. Any information to be provided pursuant to such determinations must be filed with the Commission and served on the party or parties making the request by **11 October 2013**.
16. Parties to this proceeding and interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **22 October 2013**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
17. The Commission will post the interventions on its website shortly after they are filed. All documents required to be served on a party or parties to the proceeding must be served using the contact information contained in the interventions.
18. The Commission and parties may request information, in the form of interrogatories, from any party to this proceeding relating to its intervention filed pursuant to paragraph 16 of this notice. In accordance with section 73 of the Rules of Procedure, the requesting party must file its request for information with the Commission, and serve the request on the party to whom it is addressed, on or before **19 November 2013**.
19. Responses to requests for information are to be filed with the Commission, and served on the requesting party or parties as applicable, by **17 December 2013**.
20. Requests by parties for further responses to their requests for information, specifying in each case why a further response is both relevant and necessary, and requests for public disclosure of information that has been designated confidential, setting out in each case the reasons for disclosure, must be filed with the Commission and served on the relevant party or parties by **14 January 2014**.
21. Responses to these requests must be filed with the Commission and served on the party or parties making the request by **21 January 2014**.
22. Determinations regarding requests for further responses and requests for public disclosure will be issued as soon as possible. Any information to be provided pursuant to such determinations must be filed with the Commission and served on the party or parties making the request by **4 February 2014**.
23. All parties may file final comments with the Commission, serving copies on all other parties, by **18 February 2014**.
24. The Commission expects to publish its findings on the data collected in response to this notice within four months of the close of record.
25. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding.

26. Parties are reminded that, in accordance with the Rules of Procedure, if a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline.

27. Submissions longer than five pages should include a summary, and each paragraph of all submissions should be numbered. In addition, the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

28. The Commission encourages interested persons and parties to monitor the record of this proceeding and/or the Commission's website for additional information that they may find useful when preparing their submissions.

29. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
(Intervention/comment/answer form)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

Important notice

30. All information provided as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information provided.

31. The personal information provided will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

32. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

33. The information provided to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not link directly to the information provided as part of this public process.

Availability of documents

34. Electronic versions of the documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the file number provided at the beginning of this notice or by visiting the "Public Proceedings" section of the Commission's website. The documents can be accessed by selecting "View all proceedings open for comment," then clicking on the "View entire record" link associated with this particular notice. All interventions are also available on the Commission's website, at the same location, by clicking on the "Interventions" link associated with this particular notice.

35. Documents are also available and may be examined during normal business hours at the Commission offices directly involved with these applications or, upon request, within two business days at all other Commission offices.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Central Building

Les Terrasses de la Chaudière

1 Promenade du Portage, Room 206

Gatineau, Quebec J8X 4B1

Tel.: 819-997-2429

Fax: 819-994-0218

Regional offices

Metropolitan Place

99 Wyse Road

Suite 1410

Dartmouth, Nova Scotia

B3A 4S5

Tel.: 902-426-7997

Fax: 902-426-2721

205 Viger Avenue West

Suite 504

Montréal, Quebec

H2Z 1G2

Tel.: 514-283-6607

55 St. Clair Avenue East

Suite 624

Toronto, Ontario

M4T 1M2

Tel.: 416-952-9096

360 Main Street

Suite 970

Winnipeg, Manitoba

R3C 3Z3

Tel.: 204-983-6306

Fax: 204-983-6317

2220 – 12th Avenue

Suite 620

Regina, Saskatchewan

S4P 0M8

Tel.: 306-780-3422

100 – 4th Avenue SW

Suite 403

Calgary, Alberta

T2P 3N2

Tel.: 403-292-6660

Fax: 403-292-6686

858 Beatty Street

Suite 290

Vancouver, British Columbia

V6B 1C1

Tel.: 604-666-2111

Fax: 604-666-8322

Secretary General

Related documents

- *Removal of the last payphone in a community*, Telecom Notice of Consultation CRTC [2013-338](#), 16 July 2013
- *Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership – Application to increase the price ceiling for local payphone calls*, Telecom Decision CRTC [2013-336](#), 16 July 2013
- *Access to pay telephone service*, Telecom Decision CRTC [2004-47](#), 15 July 2004
- *Local pay telephone competition*, Telecom Decision CRTC [98-8](#), 30 June 1998

Appendix A

ILECs made party to the proceeding

Amtelecom Limited Partnership

Bell Aliant Regional Communications, Limited Partnership

Bell Canada

Brooke Telecom Co-operative Ltd.

Bruce Telecom

CityWest Telephone Corporation

Cochrane Telecom Services

CoopTel

Dryden Municipal Telephone System

Execulink Telecom Inc.

Gosfield North Communications Co-operative Limited

Hay Communications Co-operative Limited

Huron Telecommunications Co-operative Limited

KMTS

La Cie de Téléphone de Courcelles Inc.

La Compagnie de Téléphone de Lambton Inc.

La Compagnie de Téléphone de St-Victor

La Compagnie de Téléphone Upton Inc.

Lansdowne Rural Telephone Co. Ltd.

Le Téléphone de St-Éphrem inc.
Mornington Communications Co-operative Limited
MTS Inc.
Nexicom Telecommunications Inc.
Nexicom Telephones Inc.
North Frontenac Telephone Corporation Ltd.
NorthernTel, Limited Partnership
Northwestel Inc.
NRTC Communications
Ontera
People's Tel Limited Partnership
Quadro Communications Co-operative Inc.
Roxborough Telephone Company Limited
Saskatchewan Telecommunications
Sogetel inc.
TBayTel
Télébec, Limited Partnership
Téléphone Guèvremont inc.
Téléphone Milot inc.
TELUS Communications Company
Tuckersmith Communications Co-operative Limited
Wightman Telecom Ltd.
WTC Communications

Footnotes

[1] Price cap regulation generally places upward constraints on prices that a company can charge its customers.

[2] Non-cash calls include calls using calling cards or commercial credit cards.

[3] The notification process requires (i) a 60-day written notification to the location provider and to the local government, (ii) a notice posted on the payphone scheduled for removal at least 60 days prior to removal, and (iii) a notice placed in the local newspaper at least 60 days prior to removal.

[4] The notification process currently applies to Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Inc.; Saskatchewan Telecommunications; Télébec, Limited Partnership; and TELUS Communications Company.

[5] See Telecom Decision 2004-47.

[6] See Telecom Notice of Consultation 2013-338.

[7] Teletypewriter (TTY) relay service is an operator-assisted text-to-voice and voice-to-text relay service for persons who are deaf, hard of hearing, or have a speech disability.

[8] The Rules of Procedure set out, among other things, the rules for the filing, content, format, and service of interventions and interrogatories; the procedure for filing confidential information and requesting its disclosure; and the conduct of the public hearing, where applicable. Accordingly, the procedure set out in this notice must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."

Date modified:

2013-07-16

This is Exhibit "I" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

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Results of the Fact-Finding Process on the Role of Payphones in the Canadian Communications System

Download this [report in PDF \(Portable Document Format\)](#).

26 February 2015

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Summary

On 16 July 2013, the Commission initiated a fact-finding process to clarify the current role of payphones in the Canadian communications system. The purpose of this fact-finding process was to collect information on the extent to which Canadians rely on payphones, and the effects, if any, that further payphone removals and possible rate increases may have on Canadians. The Commission collected data and views from Canadians, community and consumer organizations, local and provincial governments, and payphone service providers. In addition to this report, the Commission had a third-party study prepared by RedMobile Consulting (the RedMobile Study) in order to evaluate the role of payphones in emergency preparedness, as well as alternatives to payphone service.

The results of this process clearly show that payphone service is a technology that is declining in usage and availability. When the Commission last reviewed access to payphone service in 2004, 50% of Canadians indicated that they had used payphones on occasion. Today, only 32% of Canadians indicated that they had used a payphone at least once per year. While many participants in the fact-finding process submitted that payphone service continues to fulfill an important role that has social benefits and is in the public interest, the service is not relied upon to the same extent as in prior years.

For the majority of Canadians who participated in this process, payphone service is an important complementary or convenience service and is valued because it provides public access to the voice telecommunications system that is

- unmetered for local and toll-free calls;
- pay-per-use; and
- able to accept coin payment.

Payphone service is generally used for reasons of affordability, access, and reasonable choice. It is sometimes used as a last resort in times of inconvenience and emergency. Payphone rate increases are viewed to have the greatest impact on Canadians who are economically or socially disadvantaged and who also appear to be the most frequent users of payphone service.

Overall, the annual payphone removal rate is expected to increase, from approximately 6% in 2008 to 15% in 2016, in response to declining usage and revenues. However, independent of payphone removals, annual payphone call volumes continue to decline at a higher rate of 24%.

Payphones with little or no usage continue to be maintained by payphone service providers. For example, in 2013, Bell Aliant Regional Communications, Limited Partnership and Bell Canada submitted that they were currently maintaining 636 payphones that have had no usage in the previous 13 months and 10,501 payphones with revenues of less than \$0.50 per day during the same period. These particularly low-usage payphones account for 15% of the companies' total payphone base.

According to the information provided by payphone service providers, the cost of providing payphone service exceeds revenues. In general, payphone service providers attribute the negative margins to the fact that payphones are currently over-provisioned with respect to present demand.

Payphone service providers demonstrated that it is not within their sole discretion to determine where payphone service is made available, since all payphones require contractual agreements with location providers (e.g. private businesses, public sector sites, and municipalities). The vast majority of annual payphone removals, on average 75%, are initiated by location providers and not payphone service providers for a variety of reasons.

This is not to suggest that payphones are expected to be entirely redundant in the foreseeable future. Payphone service providers have indicated that many payphones continue to be viable at current rates, and that these payphones will remain in service for the foreseeable future. As of 2016, it is expected that approximately 55,000 payphones will remain in service across Canada. Moreover, location providers have invested in alternatives to payphone service that include semi-public payphone service (i.e. the location provider pays a monthly fee to maintain the payphone terminal), public courtesy phones (i.e. a regular business telephone line with toll denial that is accessible to the public), and, in some instances, competitive payphone service. A few payphone service providers have also converted traditional payphones into "courtesy payphones" by disabling the coin feature to allow community members free access to local, toll-free, and 9-1-1 calls. According to the payphone service providers, they have yet to remove the last payphone in any community.

Some payphone service providers in other countries have reported that payphones are being repurposed to make them more attractive to a wider audience (e.g. by adding Wi-Fi hotspots or leveraging advertising to increase revenues). Such attempts in the past by Canadian payphone service providers have been limited and unsuccessful.

Regulatory context

Payphone service in Canada

Payphone service provides Canadians with access to public telephones for the purpose of making local, toll-free, and long-distance calls, and is offered at various indoor and outdoor locations throughout Canada. Payphone service is offered by incumbent local exchange carriers (ILECs), competitive local exchange carriers, and competitive payphone service providers. Payphones accept various means of payment including coins, credit cards, calling cards, or prepaid phone cards. Some payphone calls, such as 9-1-1 and calls to toll-free numbers, are free of charge to the user.

Competition

Prior to 1998, payphone service was provided only by ILECs within their respective operating territories. At that time, payphone service was considered to be a valuable complement to basic telephone service, and the Commission encouraged the ILECs to ensure the widespread availability and accessibility of payphone service at affordable rates. In Telecom Decision 98-8,¹ the Commission established a regulatory framework that allowed for competition in the local payphone market to stimulate service innovation and increase customer choice.

In that decision, the Commission considered that ILECs would remain dominant in the local payphone market for the foreseeable future. Today, ILECs continue to be the primary providers of payphone service across Canada and, as a result, the Commission continues to regulate the ILECs' local payphone rates under the price cap regime.²

Rates

Currently, ILECs have the flexibility to charge up to a maximum rate of \$0.50 for a local cash call, and up to a maximum rate of \$1.00 for a local non-cash call. Long-distance charges are unregulated for all payphone service providers.

Access

The Commission last reviewed access to payphone service in Telecom Decision 2004-47.³ The Commission concluded at that time that although demand for payphone service was declining, it was still an important public service that wireless services had not yet rendered obsolete.

The Commission found that although wireless service could be considered an alternative for many consumers, it was not an affordable option for all. In 2004, the wireless penetration rate was measured at 58.9%.

Access to payphone service was also seen to be particularly crucial in rural and remote communities, where consumers may not have access to basic and residential service and where telecommunications service providers may not offer wireless service. Accordingly, the Commission determined that it was necessary to impose a notification requirement for when the last payphone in a community is targeted for removal. The notification requires

- a 60-day written notification to the location provider and to the local government;
- a notice posted on the payphone scheduled for removal at least 60 days prior to removal; and
 - The notice must clearly indicate the pending removal in large enough format to attract users' attention and must include the date of removal, the ILEC's name, address, and toll-free number, as well as directions to, and the location of, the nearest payphone.
- a notice placed in the local newspaper at least 60 days prior to removal.

At the time, the Commission recognized the difficulty in precisely describing what constitutes a community when applying the above-mentioned notification requirement. The Commission noted that the ILECs have established geographic administrative areas within their territories, which are used to define local exchanges. Within an exchange, there are one or more wire centres. The Commission considered that, as a minimum rule, the ILECs must undertake public notification in all cases where the last payphone in the area served by a wire centre is to be removed.

The public notification requirement currently applies only to **Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; MTS Inc. (MTS); Saskatchewan Telecommunications (SaskTel); Télébec, Limited Partnership (Télébec); and TELUS Communications Company (TCC).**

Scope of the fact-finding process

Telecom Notice of Consultation 2013-337

On 16 July 2013, the Commission issued Telecom Notice of Consultation [2013-337](#), ⁴ in which parties were invited to provide data and evidence, including social, economic, and geographical factors, on the following topics:

- the extent to which Canadians use and rely on payphones;
- the purposes for which Canadians use payphones (e.g. basic, complementary, convenience, and emergency);
- the demographic profile of Canadians who rely on payphones;
- the availability of payphones [including payphones equipped with teletypewriter (TTY) capabilities] to meet Canadians' needs;
- the impact of payphone removals on Canadians;
- the impact of past or potential payphone rate increases on Canadians' usage of payphone service; and
- the barriers that Canadians may experience in accessing payphone service.

The Commission also invited parties to provide comments and evidence on whether there are other technologies and services that are substitutes for payphone service, and, if so, the extent to which they meet the needs of Canadians who use payphones.

The Commission received more than 400 interventions from individuals; municipalities; consumer and community organizations; the Yukon Government; the Minister of Manitoba Healthy Living, Seniors and Consumer Affairs; and all ILECs that were made party to the above-referenced notice of consultation. The [record](#) of this process is publicly available. A list of participants is available in [Appendix A](#) of this report.

In addition to the topics listed above, the Commission obtained observations from parties to this proceeding relating to

- operating observations;
 - declining call volumes
 - flexibility for payphone removals and installations
 - installation and removal considerations, and
 - other challenges
- alternatives to payphone service;
- modernized payphone service; and
- the importance of local coin calls.

Further, the Commission reviewed payphone service in other countries and had a third-party study prepared on the role of payphones in emergency preparedness, as well as alternatives to payphone service (the [RedMobile Study](#)).

Telecom Regulatory Policy 2013-708

At the time of the launch of the fact-finding process, the Commission considered that it was not clear whether its policy on the removal of the last payphone in a community continued to ensure access to payphones to meet the requirements of Canadians. Consequently, the Commission initiated a consultation in Telecom Notice of Consultation [2013-338](#) ⁵ to consider whether it should prohibit all ILECs, on an interim basis, from removing the last payphone in a community pending the conclusion of its fact-finding process. The Commission announced a moratorium on the removal of the last payphone in a community in Telecom Regulatory Policy [2013-708](#). ⁶ The [record](#) of the Telecom Notice of Consultation [2013-338](#) proceeding is also publicly available.

Both the fact-finding process and the moratorium were initiated as a result of Telecom Decision [2013-336](#), ⁷ in which the Commission denied an application from Bell Aliant, Bell Canada, and Télébec to increase the price ceiling for local payphone rates.

Key observations

Note: For the purpose of this report, “Consumer views” refer to the views of consumer organizations, community organizations, provincial and municipal representatives, and individuals. “ILEC views” refer to the views of the ILECs made party to this process. “Wireless service” refers to mobile wireless service.

Stakeholder views

The extent to which Canadians use and rely on payphones

Consumer views

All consumer parties recognized that payphone demand is not the same as it was in prior years. **The Public Interest Advocacy Centre, the Consumer's Association of Canada, and the Council of Senior Citizens' Organization of British Columbia**, (collectively, **PIAC et al.**) submitted a quantitative study entitled *Payphone Use in Canada: 2013 (the PIAC general study)*. According to this research, which came from a survey of 1,001 adults aged 18 and over living across Canada, 32% of respondents stated that they had used a payphone at least once in the past year. When similar research was conducted for the Commission's last review of access to payphone service in 2004, 50% of respondents had answered that they had used payphone service at least on occasion in the past year.

All consumer parties submitted that the general decline in payphone demand should not, however, be interpreted to mean that payphones are declining in importance for all Canadians. Consumer parties rejected arguments that wireless service is a substitute for payphone service, particularly for Canadians who are economically disadvantaged. These parties submitted that access to payphone service continues to fill gaps in the communications system that wireless services do not fill.

- For those who are facing economic hardships or who are a part of socially vulnerable groups (e.g. the homeless, those suffering from mental illness, and victims of abuse), payphones play a critical role in facilitating communication with government, employment, social, and medical services.
- The importance of payphone service is not limited to economically and socially disadvantaged Canadians. Payphones continue to serve the needs of Canadians in rural areas that experience sporadic wireless service; Canadians who choose not to own a mobile device; Canadians whose mobile device has failed; and Canadians in distress because either wireless or wireline service is inaccessible due to power outages or weather-related events.

Consumer parties, community organizations, and individuals indicated that locating a working payphone is, however, becoming more difficult.

I really need payphones. I am on a low pension and have MS. I need to use a payphone to call a friend to pick me up from doctors' appointments. I am unable to afford a cellphone. If I could get one, I could put ten dollars on it and use it whenever I need, it would be great but you have to keep adding money to it every month and there is the cost of buying the phone. I am finding it hard to even find a payphone anymore. I have to go to the hospital and it is a long walk to the only one they have and walking is a problem for me. Not everyone makes thousands of dollars and I only get \$16,000 a year and with rent of \$915.00 a month. Every dollar left is for food.

— *Intervention 27, Ontario*

ILEC views

All ILECs submitted that Canadians are relying less and less on payphones to make calls, and attributed this trend to the increased adoption of wireless services and preferences for on-the-go and varied communication tools [e.g. email and short message service (SMS), as well as messaging and voice over Internet Protocol (VoIP) apps]. In their view, Canadians have developed an expectation that their personal telephone service should be accessible not only while at home or another fixed location, but that it should be a portable service that can be used from nearly anywhere.

Bell Aliant and **Bell Canada** submitted that in 2004, the wireless penetration rate in Canada was measured at 58.9%,⁸ leaving many areas of the country without reliable access to wireless service. At that time, devices were simple mobile telephones, capable of only basic calling and texting functions. As of 2012, 99.4% of the Canadian population has access to wireless service, including 72% of Canadians who have access to long-term evolution (LTE) wireless networks.⁹

The purposes for which Canadians use payphones

Consumer views

In the **PIAC general study**, of those who responded "yes" to using a payphone in the last year, 61% made calls in situations where they were unable to use a mobile device. For those who earned less than \$30,000 per year, payphones were most used for casual personal calls and calls to transportation services.

PIAC et al. also submitted a qualitative study entitled *Payphone Use Among Low Income and Socially Vulnerable Canadians (the PIAC LISV (low income and socially vulnerable) study)*. According to this research, in which 22 front-line community workers working directly with low-income and socially vulnerable individuals were surveyed, wireless services are widespread. However, the ability to continuously maintain wireless service can be difficult for affordability and credit reasons.

PIAC et al. further submitted that many Canadians who are low-income earners subscribe to metered prepaid or time-restrictive mobile plans with rates that are considerably higher during the daytime. Consequently, these individuals use a collection of tools, including payphone service and courtesy phones, to meet their basic telecommunications needs. Payphone service is a relied-upon tool used in these scenarios:

- when minutes of users' prepaid wireless service run out;
- when making long-distance calls with toll-free calling cards;
- when placing collect calls;
- in situations where anonymity is required (domestic abuse, individuals in crisis, etc.); and
- when making calls to government service agencies, offices that are open during weekday hours, or other toll-free calls that may entail lengthy wait times and/or lengthy conversations.

My pay as you go cellphone plan with Presidents Choice charges .50 a minute for long distance. As I only call my Mom in Thunder Bay, I use a calling card at .04 a minute and call her from a phone booth every other day. I would have to lock into a more expensive long term contract if there were no easily available public phones...

— *Intervention 329, Ontario*

Many [clients] have debts to Telus etc. and can't afford a landline. They often have cellphones, but can't afford to top them up and sometimes shut them off to save money. Some check in with us regularly by payphone and we have no other way to be in touch with them...a big reason to use payphones is because of the VERY long wait to get through to government offices. If one of my clients makes a call to a government office (e.g., EI) and has to wait 35 or 48 minutes, they can blow their entire phone budget while on hold. If my client knows there will be a long wait, they will often search out alternative phones, such as payphones, to complete these calls.

— *North Shore Community Resources, Vancouver, B.C. (PIAC LISV study)*

ILEC views

All ILECs submitted that payphones were intended to provide a convenience service and not basic service. Given Canadians' increased adoption of wireless service and data applications, the need and utility of payphones has lessened dramatically. In the case of a time-sensitive emergency, many ILECs noted that the user is more likely to locate a stranger or business with a functioning telephone service than to locate a payphone.

The demographic profile of Canadians who rely on payphones

Both consumer parties and ILECs noted that Canadian penetration rates for wireless and wireline service indicate that wireless service reliance is the highest among the lowest-income quintiles. However, based on the **PIAC LISV study**, qualitative evidence indicates that Canadians who are low-income earners are also the most frequent users of payphone service because it is a valuable complement to basic wireless plans in certain instances.

Consumer views

Consumer parties pointed out that the lowest quintiles have the highest subscriber rates for wireline-only service as well. For many Canadian families, multiple wireless subscriptions per household are often not feasible for affordability reasons; thus, it is more economical to subscribe to wireline service which, because it is unmetered, can be shared among all family members on multiple telephone lines. For these individuals, payphones are relied upon for communications purposes outside the home.

**Canadian penetration rates by income quintile -
Wireline and wireless subscribers per 100 households (2010)**

Income quintile (Note)	Wireline	Wireless	Wireline and/or wireless	Wireline only	Wireless only
First	82.2	54.9	97.3	42.4	15.1
Second	85.7	71.1	99.7	28.6	14.0

Income quintile (Note)	Wireline	Wireless	Wireline and/or wireless	Wireline only	Wireless only
Third	89.3	82.0	99.8	17.8	10.5
Fourth	93.1	89.7	99.9	10.2	6.8
Fifth	95.3	93.5	100.0	6.5	4.7
All households	89.1	78.2	99.3	21.1	10.2

Note: The upper bounds for the first to fourth quintiles are \$27,000; \$47,000; \$71,000; and \$110,000.

Source: Statistics Canada Survey of Household Spending. * Reproduced from the CRTC Communications Monitoring Report, September 2012, page 129, Table 5.1.8

I don't have a cellphone and neither do my children as I can't afford to provide that for each member of my family. I use a payphone at least a few times a month and think that they are definitely a safety item. I would support a law prohibiting retailers from removing payphones and a requirement for new development, like Walmart or grocery stores to provide at least one.

— Intervention 144, Ontario

I speak as a mother of four children. We are a low income family with two working parents. Two of our children have part time jobs. One pays for a cellphone himself but the other chose to spend her earned money on school and other priorities. We cannot afford to provide cellphones to our children. We do however have a phone plan which allows our children to call home from anywhere in North America from a payphone, or any phone, using a 1-800 number. This has been invaluable to their safety in situations. For example, my 18 year old daughter finished work and missed the last bus home. She was locked out of the bus depot and was able to call us from a payphone and wait at a restaurant for a ride. (She travelled 40 km for her part time job) I truly feel public payphones are necessary for public safety and are currently used by those who cannot afford a cellphone or land line. I feel it would be discriminatory against the poor to remove public payphones.

— Intervention 316, Ontario

Consumer parties also noted that not all Canadians who use payphones are economically disadvantaged. Canadians who live in rural and remote areas with “patchy” wireless service, as well as Canadians who choose not to obtain wireless service, continue to view the widespread provision of payphones to be in the public interest.

I live on Vancouver Island - north of Campbell River there is no cellphone service - and I am sure this is the case for many northern/remote areas of our country. Having reasonable, inexpensive access to phones for all Canadians should be a guaranteed service these companies provide. To keep in touch with family while travelling recently I had to abandon my smartphone, buy a calling card and find phone booths. Despite the expense, the opportunity saves lives (I wondered how on earth would I have gotten help if the car broke down...), keep people in contact, please keep payphones for airports, remote communities, people who do not use cellphones or computers.

— Intervention 93, British Columbia

My husband and I, Canadians in our 30s who live in a major Canadian city and are heavy computer users, are both in support of ensuring there are payphones. We do not have cellphones by choice. When we move homes (Internet and home phone service interruption) or are traveling, we rely on payphones. Payphones are important in the case of emergencies. We are worried that there are fewer payphones available to Canadians.

— Intervention 165, Quebec

La Coalition pour le service 9-1-1 au Québec submitted that payphones continue to play an important role in emergencies for persons of all socio-economic status, particularly in Quebec where wireless penetration rates are lower than in the rest of the country. A payphone is useful for emergency purposes during an extended power outage, in communities where wireless service is not offered, where telephone service is unavailable (e.g. subways), for individuals who by choice do not have a mobile phone (e.g. for economic reasons), to contact emergency services discreetly and anonymously, and for travellers who are visiting from abroad.

DiversityCanada Foundation, as well as several individuals, also noted the relevance of payphone service to Canadians of all socio-economic groups in emergencies, such as natural disasters, or in instances where mobile networks have failed.

ILEC views

Most ILECs submitted that no direct data was available on the demographic profile of Canadians who rely on payphones.

Bell Aliant and **Bell Canada** noted that, within their operating territories, payphones are only designated to place outgoing calls and are unable to receive incoming calls. Therefore, it is very difficult for Canadians to rely on payphones as a substitute for a personal wireline or wireless service. The inability to receive calls does not allow consumers to respond to calls from potential employers or other service representatives. They noted that the assumption that payphone service cannot be relied upon for basic service has been recognized by anti-poverty organizations.

As an example, **Bell Aliant** and **Bell Canada** submitted that the B.C. Welfare Food Challenge, an organization that advocates for increases to British Columbia welfare rates, has developed exemplary budgets for welfare recipients in that province. In these budgets, the organization has considered a cellphone to be an essential monthly expense for welfare recipients to enable them to look for work.

Welfare Food Challenge's breakdown of monthly expenses for welfare recipients

Total welfare (per month)	\$610
Rent (realistic cost of single room occupancy)	\$425
Damage deposit	\$20
Book of 10 bus tickets (to look for work)	\$21
Cellphone (to look for work)	\$25
Personal hygiene/laundry	\$10
Amount left for food	\$109

Source: <http://welfarefoodchallenge.org/why-26/>

The availability of payphones [including payphones equipped with teletypewriter (TTY) capabilities] to meet Canadians' needs and the impact of payphone removals on Canadians

Consumer views

In the **PIAC LISV study**, many front-line workers expressed concern about payphone removals. However, some respondents believed that there were already so few payphones available in their communities that the impact of total payphone removals would be minimal. Respondents noted that, in some cases, the lack of payphone availability drives lower-income individuals to greater cellphone use by virtue of simple necessity.

In particular it is very distressing to not be able to locate a working payphone when you need assistance out in the community. There is almost an assumption that everyone has a cellular phone, and people who do not have cellphones are somehow stigmatized.

— *Habitat Services, Toronto, ON (PIAC LISV study)*

Many individuals expressed the same concerns and frustration, noting that locating a working payphone is becoming more challenging.

There is a negative effect to removal of payphones. Right now in Vancouver payphones are very few and some have receivers with cut wires which makes them useless. I am unemployed and don't have the funds to pay for the exorbitant costs of mobile phone use and when I'm out and about I use a payphone if I can find one, which isn't often. It's my only form of communications away from my home.

— *Intervention 75, British Columbia*

The Canadian Association of the Deaf recognized that the decline in the role of payphones is inevitable and irreversible. However, the fact that pay TTYs continue to be maintained by Deaf service agencies and schools - where Deaf people and especially lower-income Deaf people congregate - suggests that they are being used in these locations in sufficient numbers to justify their existence. There has been, and still is, at least implicitly, sufficient demand to rule out pay TTY removals from these locations. Payphones equipped with TTY capabilities are especially important for Deaf Canadians who cannot afford wireless service or Internet.

Le Centre québécois pour la déficience auditive submitted similar views, noting that costs of providing payphone service could be reduced by minimizing the number of payphones in one particular location rather than augmenting local rates, which would have negative effects on consumers who continue to use this service regularly.

Jim Rondeau, Minister of Manitoba Healthy Living, Seniors, and Consumer Affairs submitted that vulnerable individuals and families will be among the hardest hit by the removal of payphones, including those living on low incomes and receiving social assistance. In the 32 Manitoba Aboriginal and Northern Affair communities, payphones are a scarce resource. Further, replacing payphones with cellphones is not feasible in these communities as there is limited cellular coverage, which many low-income families cannot afford. For cost and accessibility reasons, it is very common for Northern residents to purchase long-distance cards for use on a payphone. The removal of payphones may create further barriers to vital services and supports, reduce capacity for self-reliance, and contribute to the marginalization and social exclusion of low-income individuals and households.

The Yukon Government expressed similar concerns, noting that payphone access may be more acute in Yukon, and elsewhere in northern Canada where wireless service may not be available or is unreliable. The economic and geographic realities of remote and rural communities mean that the opportunity for the competitive provision of any service, including payphone service, is limited or non-existent, which accentuates reliance on Northwestel Inc. (Northwestel) as the primary provider of payphone service in the North.

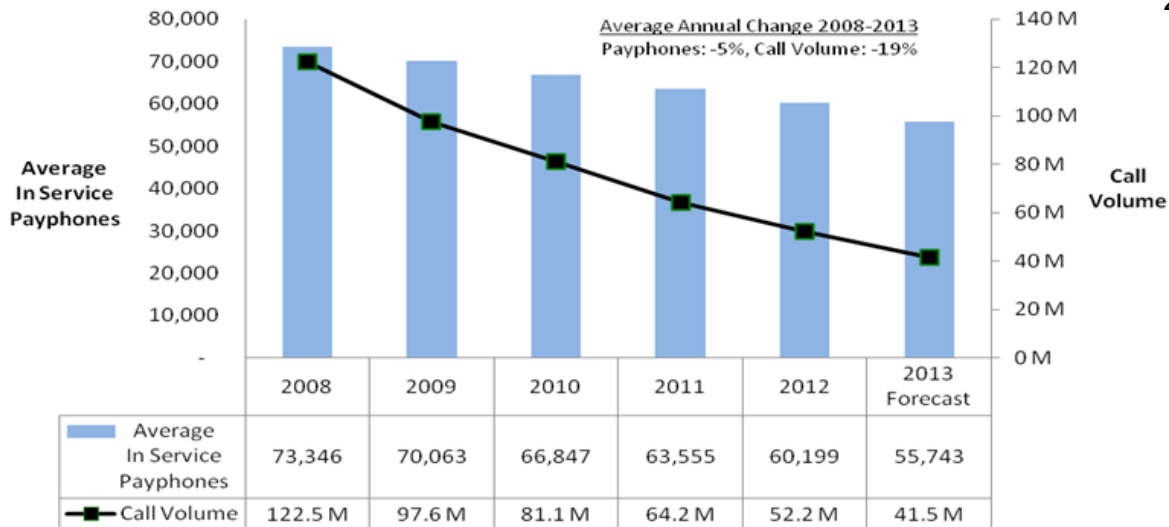
The Consumer Association of Saskatchewan submitted that it is not always practical to seek out a courtesy phone, as many people or businesses are reluctant to allow others to use their phones.

ILEC views

The ILECs argued that Canadians are choosing not to use payphones. The overall decline in demand for payphone service is attributed to consumers "voting with their feet." **Bell Aliant** and **Bell Canada** submitted that projected negative margins are attributed to the fact that payphones are currently over-provisioned with respect to present demand, and that the full base of payphones that was originally provisioned to meet a much greater level of demand from a pre-wireless world is no longer required.

Bell Aliant and **Bell Canada** submitted their operating data, which indicated that payphone call volumes in Ontario and Quebec have decreased at a rate of 19%, on average, from 2008 to 2013. At the same time, the number of payphones has decreased at a rate of only 5%, on average, during the same period, thus demonstrating that payphone call volumes are dropping significantly each year on an independent basis, regardless of the removal of certain payphones.

Comparison of payphone removal and payphone call volume data provided by Bell Aliant and Bell Canada



Note: Average in-service payphones and call volume, consisting of local, non-local, 1-800 and directory assistance calls, reflect the total aggregated actual data from 2008 to 2012, and the 2013 forecast for Bell Aliant and Bell Canada in their Ontario and Quebec operating territories, as provided in Attachments 1 and 2 of the response to the interrogatory entitled The Companies(CRTC)16Jul13-103 TNC 2013-337.

Other ILECs submitted similar views. **TCC** noted that, while some decrease in call volumes can be attributed to payphone removals, substantial decreases in calls per payphone are noted (i.e. for payphones that remain in its operating territory, the volume of usage is still decreasing). In 2012, a payphone in **TCC's** operating territory was used, on average, to make only 2.36 calls per day.

Decrease in calls per in-service payphone for provided by TCC

Year	Calls per in-service payphone	% decrease year-over-year
2008	2,187	n/a
2009	1,543	-41.7%
2010	1,312	-17.6%
2011	1,054	-24.5%
2012	862	-22.3%

The impact of past or potential payphone rate increases on Canadians' usage of payphone service

Consumer views

All consumer groups indicated that rate increases, particularly for local coin calls, would marginalize Canadians who earn lower incomes and have greater sensitivities to costs. According to **the PIAC LISV study**, Canadians who earn lower incomes have greater sensitivities to costs and tend to use a collection of communications tools and services as they attempt to meet their needs. For these consumers, payphones provide an important and affordable tool to communicate.

A few individuals submitted that they would support a rate increase to ensure guaranteed access to payphones.

I am a disabled mother of 5 living on CPPD (Canada Pension Plan) disability. We can barely afford our rent and utilities... My family owns ONE prepaid phone, and enough money is kept on it only for emergency (10 dollars per month). We cannot afford to actually 'use' it for real communication purposes...

As my husband is primary caregiver to me as I am mostly bedridden, he often needs to check in during the day to discuss things like groceries or banking, duties which he is out in the 'real world' doing. We live on an island, in rural Ontario, and days in 'town' (i.e. for groceries and such) require significant time planning. Also, our teenage son (who hates not having a smartphone) needs to use the payphone at the ferry to let us know when to come and pick him up. When [the rates] doubled from 25 to 50 cents, it was noticed in our budget. If you go to \$1.00, it will only reduce our disposable income further...

We budget tightly every month, and often have to access food banks. (Nevertheless, we have two university graduates and three post secondary students; no stereotyping here please, and I was a medical researcher working at a large Canadian university before my illness and disability)... We are already struggling under difficult financial times, but Bell's profits are so staggering that it makes no sense that they 'need' such revenue...

Finally, we do note that most of the payphones we go to now are BROKEN and UNSERVICED, another ploy to let the payphone die. Not everyone enjoys a middle class life; many of those who enjoyed middle class life are now suffering a life of increasing poverty. You need to keep this demographics' interest in mind when making this, purely for profit, decision.

— Intervention 52, Ontario

My wife is a disabled wheelchair user. Nobody in the family drives. Access to a taxi service is essential and cellphones are beyond our pockets. In most places, we either ask staff to call for us (not always practical...); use the direct free phones linked to the taxi companies or call from a payphone when there's no direct phone. There are times when a payphone is the only available option.

There's certainly a case for increasing the 25c charge. But to have to get taxis for reasons of disability is bad enough. To pay extra taxi fees due to the caregiver (additional passenger) and the van necessary to ensure room for the chair and THEN have to pay \$1 for each call on top (sometimes a second or third call is needed for non arrival) is just too much.

— Intervention 195, New Brunswick

Many of the people who really need payphones are those who do not have the means to make a submission to you: homeless people and people who cannot afford internet service. They and those who cannot afford a minimum \$15 a month for basic cellphone service, such as myself, need payphones. We may not use payphones often, but when we do, the need is urgent, for example, calling 911, calling a taxi, contacting a potential employer, calling local transit for information...

— Intervention 308, Ontario

I am in a lower income situation as are many people in my neighbourhood in Mimico. I do not own a cell. My only way of contacting family, friends, emergency calls are by public telephone when not at home. If those phone calls increase in price or are removed, how does one make those important calls without a public telephone and still make it affordable? I find it upsetting the nation assumes "everyone" owns a cell. I do not, could not afford it even if I wanted one...

— Intervention 218, Ontario

Like many people of my generation (62), I have no need for a cellular telephone. Well, I didn't until the only [payphone] in Oilphant was removed last year. This was done because cellular service had apparently improved. Because service on the offshore islands is rarely usable, we relied on the on-shore pay phone. I don't object to the cost going up to \$1. However, there is no argument for a \$1 surcharge for using plastic. It costs the phone company far less to process card charges than it does to collect and deal with the coins.

— Intervention 350, Ontario

ILEC views

ILECs were generally unable to assess the impact that past rate increases have had on Canadians' usage of payphones or to predict what the impact would be if rates were to be increased in the future.

When rates were permitted to increase in 2007, **Bell Aliant** and **Bell Canada** noted that a localized decline in payphone service was experienced that can likely be attributed to the payphone rate increase; however, they were unable to determine whether the rate increase resulted in any ongoing impact.

TCC submitted that it does not consider the price of a call to be a true barrier to accessing payphones. The affordability of payphone calls has always been part of its considerations. While it is possible that for some persons, a \$0.50-per-call rate might seem expensive, the fact remains that regulated firms must be given a reasonable opportunity to recover the cost of providing service. Payphone service is in massive and irreversible decline because consumers have chosen to meet their on-the-go communications needs by other means. The best option, in these circumstances, is to preserve the current payphone regime without changes.

The barriers that Canadians may experience in accessing payphone service

Consumer views

All consumer parties submitted that the most common barrier to accessing payphone service is payphone removals.

DiversityCanada Foundation further submitted the following as specific barriers that Canadians may experience: no payphone in close proximity to their home; no or few payphones to accommodate special needs (i.e. TTY); payphone locations that are inaccessible at certain hours of the day because the building in which payphones are housed is closed; inadequate lighting; surroundings that are perceived to be unsafe; vandalized payphones that are not fully functional or not operational at all; and poorly maintained or unsanitary payphones.

ILEC views

ILECs submitted that the barriers to accessing payphone service are minimal and the same as they have always been: buildings that are not open 24/7 and vandalized payphones that render the service unavailable.

Technologies and services that are substitutes for payphone service and the extent to which these services meet the needs of Canadians who use payphones

Consumer views

Consumer parties rejected arguments that wireless service is a complete substitute for payphone service.

PIAC et al. submitted that for users on a strict budget, wireless services present significant challenges in a variety of circumstances. Most wireless services meter usage. The rate at which lower-cost wireless service is typically sold provides usage for a fixed number of minutes over a set interval of time (for example, monthly). Wireless customers also typically pay for airtime for incoming and outgoing calls. Usage that exceeds the specified allowance is then typically billed at a per-minute rate, which is often higher than the assumed per-minute rate for usage included in the customer's monthly service rate.

Calls for medical or other appointments, to government service agencies, for assistance in locating employment, to arrange for transportation, for legal services, to toll-free numbers for a wide range of services, etc., which may entail significant on-hold times or lengthy conversations, effectively render mobile service a potentially unaffordable luxury. In many instances, a consumer can quickly consume the allotted calling time associated with a wireless service if the consumer uses his/her wireless service for such calling.

L'Union des consommateurs (l'Union) submitted that payphones are an affordable and reliable form of access to the communications system. **L'Union** emphasized **PIAC et al.'s** view that as access to payphone service continues to diminish annually, Canadians who are struggling are at risk of being "left behind" and further marginalized by the effects of the digital divide.

Consumer parties submitted that the Commission should consider permanent regulation against the decommissioning of an adequate supply of payphones. **PIAC et al.** suggested that the provision of payphone service could be an element of the incumbents' basic service obligation in the Commission's upcoming basic service review proceeding. **L'Union** and **DiversityCanada Foundation** noted that the provision of payphones falls under the universal service obligation in other jurisdictions.

ILEC views

ILECs submitted that many alternatives are widely available to Canadians, including the following: prepaid plans; pay-as-you-go; courtesy phones; short message service (SMS); data messaging apps; email; free Wi-Fi at coffee shops, libraries, and other establishments; and VoIP applications.

ILECs submitted that wireless products, services, and offerings will continue to evolve to meet the needs of all Canadians.

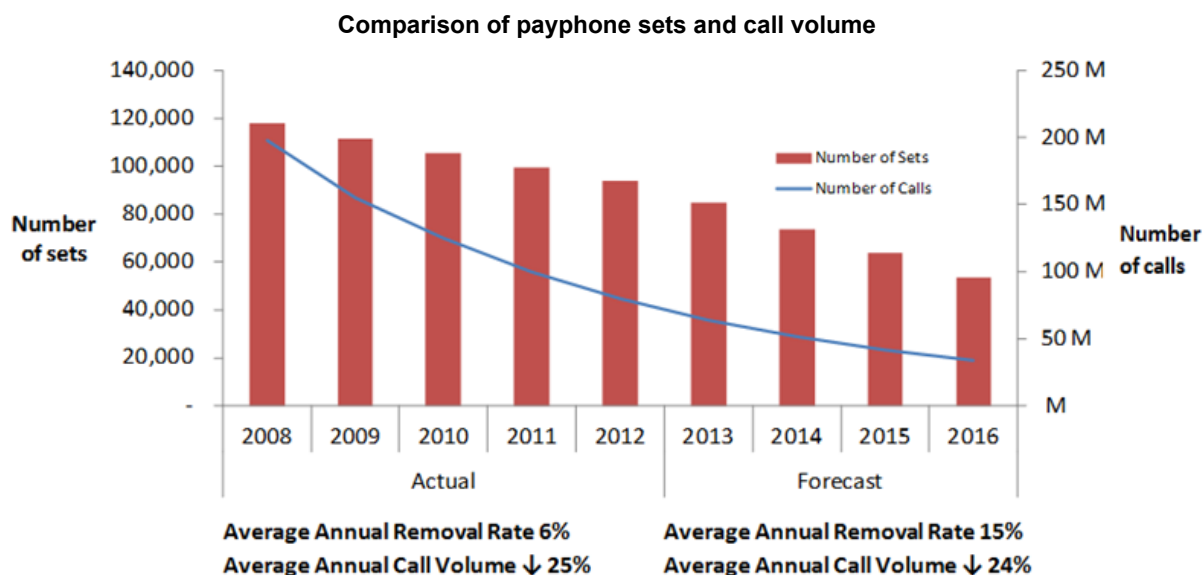
Operating observations

Declining call volumes

Data submitted by ILECs indicated that some payphones are simply not used at all by Canadians, or are used only on the rare occasion, and that therefore, the estimated costs of providing payphone service currently exceeds revenues across all providers. For example, in 2013, **Bell Aliant** and **Bell Canada** submitted that they were currently maintaining 636 payphones that have had no usage in the previous 13 months, and 10,501 payphones with revenues of less than \$0.50 per day during the same period. These particularly low-usage payphones account for 15% of their total payphone base. **Bell Aliant** and **Bell Canada** submitted that low-usage payphones are prioritized for removal in the following types of locations because alternatives to payphone service are easily available or are not required:

- educational institutions of all types in both rural and urban settings (universities, high schools, elementary schools, etc.);
- rural churches, nursing homes, apartment buildings, and recreation sites; and
- urban recreation sites.

Given that payphone demand and revenues are declining annually, ILECs have forecasted payphone removals to accelerate. Although some decline in call volume can be attributed to payphone removals, the number of calls per payphone is declining on an independent basis and at a significantly higher rate. However, this is not to suggest that all payphones are unprofitable. The ILECs submitted that many payphones generate sufficient revenues to cover their costs at current rates and that these payphones will remain in service for the foreseeable future. The following graph reflects data provided by the ILECs.



Sources: Bell Aliant, Bell Canada, MTS, Northwestel, SaskTel, Télébec, and TCC

Flexibility for payphone removals and installations

All ILECs submitted that flexibility is required in determining where payphone service is made available. The placement of any payphone requires entering into contracts with location providers that represent both private sector entities (e.g. entities that own retail locations, commercial buildings, hotels, gas stations, and entertainment venues) and entities, such as municipalities, that own/manage public sector sites (e.g. provincial and federal government buildings, hospitals, transit/subway/rail/bus stations, and airports).

ILECs stated that location providers are critical in the provision of payphone service because they provide essential floor or street space and appropriate lighting. In some cases, location providers assume additional responsibilities, such as cleaning the telephone and enclosure, providing electricity, reporting service problems, and assisting customers with change or dialing problems.

According to the ILECs, the vast majority of annual payphone removals, on average **75%** of all payphone removals, are initiated by location providers and not by ILECs for a variety of reasons, including

- business closures, renovations, and reduced commission payments due to lack of usage;
- a preference to offer courtesy telephones and/or free Wi-Fi instead of payphone service;
- reductions in the total number of payphones on site (e.g. removals of payphones from banks or from multiple locations within a single building); and
- a desire to minimize unwanted traffic (e.g. loitering, illegal activities, and acts of vandalism).

For example, the City of Barrie recently stated its intention to remove certain payphones in its downtown core. City councillors voted to remove the payphones because of reports that they were being used for illegal activities and were encouraging loitering, which was having a negative impact on local business owners. It was noted that other payphones would still be available at the nearby bus terminal. ¹⁰

Installation and removal considerations

Beyond anticipated or actual usage and requests from location providers, the ILECs consider multiple variables relating to market considerations for each location to determine if a payphone should be installed or removed.

Installation considerations (for an existing location provider)

Overall value of the entire contract with the location provider; average revenues/profitability of existing payphones at the location requested; location and proximity of the new payphone to existing payphones; potential for the new payphone to become profitable (e.g. expected usage) without impacting usage on the existing telephone base at the location in any significant way; expense impacts of placing the payphone at the location desired (e.g. assessing if the location is prone to vandalism, which would result in increased expenses); forecasted installation costs and return on investment; and increases in business activity for the location provider (e.g. expansion, new locations, or new area of the business).

Installation considerations (for a new location provider)

Type of business as compared to experience with similar types of businesses within the same industry; reasons for the request; accessibility of the payphone (e.g. hours of operation of the business, is the business seasonal or year round); size of the business and the potential volume of payphone users; legality (is the requester the property owner or the business owner); the availability of wiring, electrical service to power the payphone, and lighting; and the availability of wireless service in the community.

Removal considerations

Revenues generated and usage; profitability (considering factors such as revenue, repair costs, hydro, maintenance costs, and vandalism); proximity to the nearest payphone; location (indoors or outdoors); needs of the location provider (e.g. requests to reduce the number of payphones at one location versus all payphones); and the availability of wireless service in the community.

Alternatives to payphone service

In the case that a payphone removal is initiated by an ILEC because of non-usage or low-usage, location providers are offered the option of semi-public payphone service, which allows the payphone terminal to remain on the premises in exchange for a monthly fee paid by the location provider.

Payphone removals that are not offered the option of semi-public service occur in instances of excessive vandalism, excessive repair costs, or damage to booths due to vehicular accidents, whereby the maintenance or replacement costs have been deemed excessive.

If the location provider requires an alternative for an indoor location, but does not want to maintain the payphone terminal, the ILEC can provide a courtesy phone. A courtesy phone is defined as a regular business line service equipped with toll denial and is paid for by the location provider.

On occasion, small ILECs may also consider converting existing payphones into courtesy payphones. For example, **WTC Communications** and **Tuckersmith Communications**, in consultation with the communities in their operating territories, have turned off the coin-collection mechanism in certain payphone units and now offer free local calls and access to 9-1-1 in recognition of the fact that public telephone service is an important feature of local community life.

Location providers also have the option of seeking a competitive payphone service provider. For example, WiMacTel, an independent telecommunications company based in California and Calgary, recently announced that it has acquired refurbished payphone assets from the U.S. and Canada, and now offers payphone service in British Columbia, Alberta, Quebec, and Ontario. It differentiates itself from ILECs by offering location providers more attractive contractual agreements and business models. ¹¹

Evidence indicates that location providers have invested in the above-mentioned alternatives. For example, **TBayTel**, which operates approximately 375 payphones in northern Ontario, submitted that approximately 60% of its payphones are classified under semi-public payphone service.

For some location providers, including government institutions and community organizations, whose payphone traffic is not expected to be high but where publicly accessible telecommunications is needed, a courtesy phone is often viewed as a more cost-effective and efficient solution.

Other challenges

MTS, like many other ILECs, submitted that although it has removed more than 25% of its total payphone base during the last five years, it has never removed the last payphone in a community. While all attempts to avoid the removal of the last payphone in a community will be exhausted, other factors must be considered, such as the lack of adequate facilities or power to maintain older payphones, and the inability to find alternate locations in a community.

SaskTel noted that there are challenges with repairing and maintaining Millennium payphone platforms, since there are currently a very limited number of vendors still providing access to the supply of spare parts and specialized software required to service these payphones.

The Canadian Independent Telephone Company Joint Task Force, on behalf of the small ILECs, submitted that, without subsidy, it is only prudent to allow small providers the ability to exit lines of business that are no longer profitable.

Modernized payphone service

Consumer views

Many consumer groups recognized the challenging business case for payphones and suggested that ILECs take initiatives to improve their profits by making payphone service more attractive to a wider range of users, including wireless subscribers. Media reports have indicated that some metropolitan cities are “re-inventing” their public access telecommunications systems (e.g. modernizing their payphones to include the functionality of Wi-Fi, and generating revenues from advertising). The examples they submitted include the following:

- In New York City (U.S.), city authorities recently announced the revival of payphones to include the functionality of free Wi-Fi, as well as an interactive portal for information, goods, services, and an open infrastructure for future applications. ¹²
- In Boston (U.S.), city authorities are trying to maximize the utility of payphones by generating advertising revenues and offering free Wi-Fi in high-traffic areas. City officials are also hoping to install Wi-Fi payphones in low-income neighbourhoods, where not all residents can afford to pay for Internet service. ¹³
- In Melbourne (Australia), PieNetworks, a marketer of Internet kiosks, is working with Telstra to provide Internet-capable payphones in high-traffic and urban areas, such as shopping centres and airports. ¹⁴

ILEC views

The ILECs submitted that initiatives to leverage technological enhancements in Canada have been attempted in the past with no success. For example,

- **Bell Canada** introduced text messaging payphones and multi-media terminals that provide access to the Internet. Initially, these initiatives were successful; however, consumers' preference for personal Internet-capable devices lessened usage of these alternatives to the point where all units have now been decommissioned.
- **SaskTel** experienced similar issues. In 2008, Wi-Fi hotspots were offered as part of its payphone portfolio and were installed in high-traffic areas (airports, truck stops, campgrounds, etc.). The decision to exit the Wi-Fi hotspots service was made after numerous businesses requested that the hotspot be removed due to the installation of their own Wi-Fi offerings.

Other ILECs did not consider repurposing their payphones to be economically viable.

The importance of local coin calls

Approximately 10% of in-service payphones do not accept coins. ¹⁵ Consumer parties recognized that payphone providers could in fact reduce service capabilities by eliminating the option of coin payment, or alternatively, by beginning to meter calls. Consumer parties indicated that this would significantly burden consumers who rely on payphones, since the pay-per-use and unmetered features of payphone service are their most attractive features.

Other countries

Decline in payphone demand is a global trend that has resulted in various developments. The Commission has assembled the following chart to identify notable differences between the payphone systems in other countries and in Canada.

Comparison of payphone systems in other countries and in Canada

Country	Notable differences from Canadian system	Access	Developments
France	<ul style="list-style-type: none"> • Calls are often metered • Payphones do not accept coins (bank cards or prepaid cards only) • No competition • Payphone service is provided by one service provider under one contract (Orange) 	<ul style="list-style-type: none"> • Provision of payphones falls under its universal obligation to serve • Must provide at least 1 payphone per municipality and 2 for towns of 1,000 inhabitants or more 	<ul style="list-style-type: none"> • (April 2014) Orange announced that it would no longer sell prepaid cards due to the obsolescence of the card readers and limited use of cards, which averages 3 minutes/day • Orange's term as the sole provider of payphones expired in early February 2014, but the company stated that it would continue to operate until a successor is found • Orange has not made a profit on payphones for approximately 2 years ¹⁶
U.K.	<ul style="list-style-type: none"> • Calls are often metered • Limited competition • Many payphones do not accept coins 	<ul style="list-style-type: none"> • Provision of payphones falls under its universal obligation to serve • Community consultation is required for payphone removals before the last payphone from a "site" is removed • A "site" is defined as any area within a walking distance of 100-400 metres from another payphone • Providers are prohibited from removing the payphone if the notice for removal results in written objection by any of the following: the local planning authority; the local parish council; or the local community council 	<ul style="list-style-type: none"> • (2012) Recent changes to the directive modified the distance requirement for notification from 100-400 metres to simply 400 metres • Payphone usage is declining significantly. British Telecom, the primary provider of payphone service in the U.K., is renting or having communities "adopt" iconic phone booth spaces in high-traffic areas for advertising or alternative purposes (mini libraries, art galleries, community defibrillators, etc.). Ironically, the actual payphone is removed from the kiosk. ¹⁷

Country	Notable differences from Canadian system	Access	Developments
Australia	<ul style="list-style-type: none"> • Some competition for payphones in private sector locations • Public sector payphones are provided by one service provider under a single contract (Telstra) • Telstra must provide one or more payphones where it is not commercially viable and where it is assessed that projected revenues will not cover the depreciation and maintenance costs of providing and maintaining the payphone 	<ul style="list-style-type: none"> • Provision of public payphones falls under its universal obligation to serve • Government subsidies are obtained for the provision of public payphones in rural and remote areas, although Telstra ultimately has discretion over installations and removals • Removals must undergo an extensive “public interest” test, which requires community consultation • Criteria for placement is pre-determined by distance (in kilometres) and type of location (e.g. national park, small service station) 	<ul style="list-style-type: none"> • (July 2012) The Government of Australia determined that it would subsidize Telstra’s entire payphone suite on a 20-year contract to ensure that payphones are reasonably accessible to all people in Australia. ¹⁸ The contract is valued at \$44M per year. ¹⁹
U.S.	<ul style="list-style-type: none"> • Many competitors • Payphone service is not usually provided by wireless carriers • Local and long-distance rates are unregulated • Providers compete for large city contracts 	<ul style="list-style-type: none"> • Payphones do not fall under its universal obligation to serve 	<ul style="list-style-type: none"> • Some payphone companies are deploying interactive payphones with value-added features, such as Internet access; however, basic payphones continue to be removed annually due to lack of demand

The RedMobile Study

In recognition of concerns expressed over payphone availability for emergency purposes and about the availability of alternatives to payphone service, additional research was commissioned by Commission staff to assess these issues. The full [RedMobile Study](#) is publicly available today. Outlined below are some notable findings.

The role of payphones in emergency preparedness

While payphones offer the benefits of reliable location data and resiliency in disaster situations, the functionality provided by payphone terminals during power outages may be limited. Contrary to consumer beliefs, newer types of payphone terminals, which represent upwards of 65% of all payphones, have limited functionality during power outages. While all payphones have access to 9-1-1 emergency services when there is no power to the terminal, other types of calls may be restricted (e.g. the payphone may be able to dial 9-1-1, but is unable to connect a local call).

Regarding access to 9-1-1, the overall number of calls received by public safety answering points (PSAPs) from payphones is considerably low. In most regions, these account for approximately 1-5% of total 9-1-1 calls. Moreover, PSAPs indicated that they are trained to treat 9-1-1 calls from payphones with greater scrutiny as the number of inappropriate calls made to 9-1-1 is higher from

payphones due to their public exposure.

For example, both ILECs and public safety agencies report instances where schools have requested the removal of payphones from their premises due to the abuse of 9-1-1. In these situations, 9-1-1 calls have been supported through increased availability of office phones and students' own mobile devices.

The study further elaborates on the consumer trend that the majority of calls made to 9-1-1 originate from mobile devices. The study indicates that the greater challenge for public safety agencies is not in the removal of payphones but in consumer education about expectations for accurate location data when dialing emergency services from a mobile device.

Alternatives to payphone service

Consumer groups and individuals also expressed significant concerns over the availability of affordable wireless service as an alternative to payphone service. The study highlights that payphone service offers specific benefits, such as cost advantages for infrequent users, unmetered calling, no credit requirement for use, and anonymous voice access in public places.

The study further demonstrates that all carriers offer prepaid, pay-as-you-go, and postpaid plans at different monthly rates or per-minute rates that are equivalent to, or cheaper than, the cost of a \$35 wireline home phone subscription. The study also confirms that all of the lowest-priced plans meter usage either by the minute or according to the specific time of day.

The study did not, however, indicate whether these plans are considered affordable or sufficient to meet the communications needs of Canadians of all demographics.

Appendix A

Participants in the fact-finding process

Consumer groups and community organizations

L'Union des consommateurs; PIAC; the Consumers' Association of Canada, the Council of Senior Citizens' Organization of British Columbia; DiversityCanada Foundation; the Consumer Association of Saskatchewan; la Coalition pour le service 9-1-1 au Québec; le Centre québécois pour la déficience auditive; the Canadian Association of the Deaf; l'ACEF de l'Outaouais; le Service budgétaire Lac-Saint-Jean-Est; The Royal Client Empowerment Council; St. Mark's Extreme Weather Response Shelter; the Red Bear Healing Home Society; and the Community Counseling and Resource Centre

ILECs

Bell Aliant; Bell Canada; MTS; SaskTel; Télébec; TCC; Northwestel; TBayTel; Bell Canada on behalf of DTMS, KMTS, and Northerntel; Bragg Communications Incorporated (Eastlink) on behalf of Amtelecom Limited Partnership and People's Tel Limited Partnership; The Canadian Independent Telephone Company Joint Task Force on behalf of CoopTel; La Cie de Téléphone de Courcelles inc.; Groupe Maskatel LP; La Compagnie de Téléphone de Lambton inc.; Téléphone Milot inc.; Le Téléphone de St-Éphrem inc.; La Compagnie de Téléphone de St-Victor; Sogetel inc.; La Compagnie de Téléphone Upton inc.; Brooke Telecom Co-operative Limited; Bruce Telecom; CityWest Telephone and Cable Corp.; Cochrane Telecom Services; Execulink Telecom Inc.; Gosfield North Communications Co-operative Limited; Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; The Lansdowne Rural Telephone Company Limited; Mornington Communications Co-operative Limited; Nexicom Telecommunications Inc.; Nexicom Telephones Inc.; North Frontenac Telephone Corporation Limited; North Renfrew Telephone Company Limited; Ontera; Quadro Communications Co-operative Inc.; Roxborough Telephone Company Limited; Tuckersmith Communications Co-operative Limited; WTC Communications; and Wightman Telecom Limited

Municipal and provincial representatives

La Ville de Saint-Raymond; le Village de McCreary; the Municipality of Wawa; la Municipalité de la Doré; la Municipalité de Courcelle; the Yukon Government; and the Manitoba Minister of Healthy Living, Seniors, and Consumer Affairs

Individuals across Canada

See public [record](#)

Footnotes

- 1 *Local pay telephone competition*, Telecom Decision CRTC 98-8, 30 June 1998
- 2 For example, see *Price cap framework for large incumbent local exchange carriers*, Telecom Decision CRTC 2007-27, 30 April 2007.
- 3 *Access to pay telephone service*, Telecom Decision CRTC 2004-47, 15 July 2004
- 4 *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC 2013-337, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-337-1, 11 September 2013
- 5 *Removal of the last payphone in a community*, Telecom Notice of Consultation CRTC 2013-338, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-338-1, 2 August 2013
- 6 See *Removal of the last payphone in a community*, Telecom Regulatory Policy CRTC 2013-708, 17 December 2013.
- 7 *Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership - Application to increase the price ceiling for local payphone calls*, Telecom Decision CRTC 2013-336, 16 July 2013
- 8 CRTC Telecommunications Monitoring Report, July 2006; Table 2.3.1: Canadian penetration rates – Wireline and wireless subscribers (per 100 households)
- 9 CRTC Communications Monitoring Report 2013: Table 5.5.10: Wireless coverage, penetration, and ARPU (average revenue per user) by province, 2012
- 10 <http://www.thebarrieexaminer.com/2013/10/29/barrie-council-ready-to-pull-four-downtown-phones-due-to-illegal-activities>
- 11 <http://www.wimactel.com/calgary-based-wimactel-launches-payphone-alternative-in-canada-with-the-acquisition-of-cpc-payphone-assets/>
- 12 <http://reinventpayphones.splashthat.com/>
- 13 http://www.boston.com/yourtown/news/downtown/2013/04/some_payphones_in_boston_to_of.html
- 14 http://www.arnnet.com.au/article/395616/pienetworks_strives_replace_telstra_payphones_internet-enabled_webphones/
- 15 CRTC Communications Monitoring Report 2013, Figure 5.2.1: Large incumbent TSPs (telecommunications service providers)' payphone revenues and quantities
- 16 <http://www.telecompaper.com/news/orange-continues-to-provide-payphones-despite-end-of-term--996441>
- 17 <https://www.facebook.com/pages/BT-Payphones-Adopt-a-Kiosk/108474672961;>
<http://btbusiness.custhelp.com/app/hub/c/2197,3309#h=eyJmaW5kZXJlaWVvYlJoiMjE5N18zMzA5XzMyNTgifQ.>
- 18 [http://www.smh.com.au/business/telstra-strikes-a-deal-on-payphones-20130201-2dqcl.html;](http://www.smh.com.au/business/telstra-strikes-a-deal-on-payphones-20130201-2dqcl.html)
- 19 http://www.tusma.gov.au/about_us/governance_and_accountability/register_of_public_interest_telecommunications_contracts

Date modified:

2015-02-26

This is Exhibit "J" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



Telecom Notice of Consultation CRTC 2015-67

PDF version

Ottawa, 26 February 2015

File number: 8650-C12-201501825

Call for comments

Deadline for submission of interventions: 30 March 2015

[\[Submit an intervention or view related documents\]](#)

Consumer safeguards for payphones – Notification of rates for non-cash payphone calls

The Commission initiates a proceeding to determine if the current consumer safeguards for notification of rates for non-cash payphone calls are sufficient and appropriate.

Introduction

1. In Telecom Decision [2013-327](#),¹ the Commission determined that it would be appropriate to initiate a proceeding to review whether the existing consumer safeguards are sufficient to ensure that consumers are in a position to make informed decisions regarding the use of payphones for non-cash calls.²
2. To make an informed choice regarding the cost of making non-cash payphone calls, consumers need to understand the total cost of placing a payphone call. This requires access to information about rates and any surcharges not included in the price of the call, such as the cost of the operator services used to complete the call.
3. The Commission considers it important for Canadians to be properly informed concerning the costs associated with payphone calls before making these calls. As such, the Commission has put notification requirements in place to ensure that consumers can obtain information about rates and surcharges for non-cash payphone calls, particularly those associated with operator-assisted calls, prior to making such calls.

¹ Telecom Decision [2013-327](#) was issued as a result of the Commission's consideration of an application filed by the Public Interest Advocacy Centre, on behalf of itself and Canada Without Poverty, in November 2012.

² Non-cash payphone calls include calls paid for using third-party billing, credit cards, and telephone cards (including calling cards, collect cards, prepaid long-distance cards, and other telephone cards).

4. The current consumer safeguards with respect to notification of rates for non-cash payphone calls, which were established in Telecom Order [95-316](#) and Telecom Decision [98-8](#), are as follows:
- At each payphone they operate, competitive payphone service providers must prominently display rates for local calls and any surcharge, markup, or location charges not included in the price of the call.
 - For operator-handled payphone calls, telephone companies³ and competitive payphone service providers are to provide, when requested by the customer, the rates and charges for a call and alternative billing methods available to customers.
5. Today, the Commission released a fact-finding report concerning the current role of payphones in the Canadian communications system.⁴ Concurrent with the release of the above-noted report, the Commission has decided to initiate the review referenced in paragraph 1 above to ensure that the existing consumer safeguards are meeting the needs of Canadians.

Call for comments

6. With this notice, the Commission invites parties to file comments, with supporting rationale, on the following questions:
- Are the current notification requirements in relation to non-cash calls from payphones imposed on incumbent local exchange carriers and competitive payphone service providers sufficient and appropriate?
 - If not, what should these requirements be?
7. The Commission notes that, as a result of this proceeding, it could modify existing notification requirements for incumbent local exchange carriers and competitive payphone service providers.

Procedure

8. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of

³ In this case, “telephone companies” refers to the incumbent local exchange carriers.

⁴ The Commission’s report, entitled *Results of the fact-finding process on the role of payphones in the Canadian communications system* (the [Report](#)), was placed on its website today. The Report was prepared based on the results of the fact-finding process initiated by Telecom Notice of Consultation [2013-337](#).

public hearings, where applicable. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website at www.crtc.gc.ca, under "Statutes and Regulations." The *Guidelines on the CRTC Rules of Practice and Procedure*, as set out in Broadcasting and Telecom Information Bulletin 2010-959, provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.

9. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues, by **30 March 2015**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
10. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin [2011-693](#).
11. All parties may file final submissions with the Commission on any matter within the scope of this proceeding by **9 April 2015**. Final submissions are not to exceed five pages.
12. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
13. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
14. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

15. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
16. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
17. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.
18. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.

Important notice

19. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, etc.
20. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
21. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
22. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

23. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the file number provided at the beginning of this notice or by visiting the "Participate" section of the Commission's website, selecting "Submit Ideas and Comments," then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
24. Documents are also available from Commission offices, upon request, during normal business hours.

Commission offices

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Nova Scotia

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Tel.: 514-283-6607

Ontario

55 St. Clair Avenue East, Suite 624
Toronto, Ontario M4T 1M2
Tel.: 416-952-9096

Manitoba

360 Main Street, Suite 970
 Winnipeg, Manitoba R3C 3Z3
 Tel.: 204-983-6306
 Fax: 204-983-6317

Saskatchewan

1975 Scarth Street, Suite 403
 Regina, Saskatchewan S4P 2H1
 Tel.: 306-780-3422
 Fax: 306-780-3319

Alberta

220 – 4th Avenue Southeast, Suite 574
 Calgary, Alberta T2G 4X3
 Tel.: 403-292-6660
 Fax: 403-292-6686

British Columbia

858 Beatty Street, Suite 290
 Vancouver, British Columbia V6B 1C1
 Tel.: 604-666-2111
 Fax: 604-666-8322

Secretary General

Related documents

- *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC [2013-337](#), 16 July 2013, as amended by Telecom Notice of Consultation CRTC [2013-337-1](#), 11 September 2013
- *Public Interest Advocacy Centre and Canada Without Poverty – Billing of calls placed from Bell Canada payphones*, Telecom Decision CRTC [2013-327](#), 5 July 2013, as amended by Telecom Decision CRTC [2013-327-1](#), 10 July 2013
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC [2011-693](#), 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC [2010-959](#), 23 December 2010
- *Local pay telephone competition*, Telecom Decision CRTC [98-8](#), 30 June 1998
- Telecom Order CRTC [95-316](#), 15 March 1995

This is Exhibit "K" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

2015 03 30

To: Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: **Telecom Notice of Consultation CRTC 2015-67, Consumer safeguards for payphones – Notification of rates for non-cash payphone calls (TNC 2015-67) – Intervention**

Dear Mr. Traversy,

1. In TNC 2015-67, the Commission has undertaken to review whether the existing consumer safeguards that apply to the provision of pay telephone service are sufficient to ensure that consumers are in a position to make informed decisions regarding the use of payphones for non-cash calls. Specifically, the Commission seeks comments on whether the existing notification requirements that apply to non-cash calls from payphones owned by incumbent local exchange carriers (ILECs) and competitive pay telephone service providers (CPTSPs) are sufficient and appropriate, or if they should be modified in some way.

2. These comments are submitted collectively, on behalf of Bell Aliant, Bell Canada, Northwestel and Télébec. We are pleased to provide the Commission with our views on the continued appropriateness of the existing requirements. As described below, we believe that the existing regulatory regimes that apply to non-cash calling from payphones ensure that consumers are well-informed about the rates associated with both local and long distance calls.

Rates for Non-Cash Local Calls Are Well-Established and Predictable

3. As a preliminary note, we note that the present discussion may be broken into two discrete areas: notification of rates with respect to local non-cash calls, and notification of rates with respect to non-cash long distance calls.

4. With respect to local non-cash calls from our payphones, we do not believe that any changes to the existing regulatory regime are necessary. While ILECs and CPTSPs are subject to different regulatory requirements with respect to the rates for non-cash local calls, we submit that both regimes are appropriate and have symmetrical results. Specifically, each regime has been developed to ensure that customers may be protected from abusive pricing practices from service providers.

5. In the case of ILEC payphones, rates for local calls have always been – and remain – regulated. Local cash and non-cash call rates are approved by the Commission and set out in our tariffs, and are further regulated within the price cap regime (whereby they are managed within their own service basket (the Public Services basket) and subject to upward pricing constraints). Rates for local calls have been unchanged at payphones since 2007, and in some cases, rates have not been modified for much longer periods of time. Customers are familiar with these well-established rates, and can predictably place calls from ILEC payphones without incurring unexpected costs.

6. CPTSPs are subject to a different set of rules as their rates for local cash and non-cash calls are not subject to Commission oversight. In order to ensure that customers do not incur unexpected costs from CPTSP payphones, when the Commission opened up the payphone market to competition in Decision 98-8¹, it required CPTSPs to post their rates for local calls. Given that customers were accustomed to the local cash and non-cash rates charged by ILECs, it was important for customers to be clearly informed of the rates charged by CPTSPs, which may deviate considerably from consumer expectations.

7. Accordingly, the different rules that apply to ILECs and CPTSPs with respect to cash and non-cash local calling were developed to respond to different regulatory circumstances, and represent alternate means to achieve a symmetrical result; namely, that consumers are able to place local calls without incurring unexpected charges. We submit that the current regulatory regimes continue to safeguard against abusive pricing practices, and allow customers to properly consent to the charges associated with local calls. For all of these reasons, we do not believe that any changes to the existing regimes are necessary.

Rates for Non-Cash Long Distance Calls Are Highly Competitive

8. While rates for local calls from payphones remain regulated across the country, rates for long distance calls have been forborne, as this market is subject to intense competition. From a payphone, a consumer has the option of placing a call using the default long distance provider servicing the payphone, or by placing a call using the services of an alternate provider of long distance service (APLD). As evidence of the level of competition that exists in this market, we note that there are at least 64 individual calling cards available to consumers in Ontario.² Each of these cards offers distinct rates and conditions for long distance calling. In addition, other companies offer long distance options such as dial-around (1010+) services.

9. Given the intense level of competition in the long distance market, it is not feasible for a payphone provider to physically post the long distance rates it charges. As the default long distance provider competes with dozens of APLDs, it must be able to nimbly respond to competitive market pressures. In the case of Bell Canada (Bell), Bell alone currently manages well over 40,000 payphones in Ontario and Quebec. If Bell were required to physically post default long distance rates at payphones, the time and resources required to print and install modified rate cards would significantly impair its ability to change its rates and compete with APLDs. These same considerations would apply for all payphone service providers. A requirement to post long distance rates at payphones would result in reduced competition in the long distance market, to the detriment of consumers.

10. In light of this, we submit that a requirement to post long distance rates would run counter to the Policy Direction, which requires the Commission to: 1) rely on market forces to the maximum extent feasible, and 2) interfere with the operation of competitive market forces to

¹ Telecom Decision CRTC 98-8, *Local pay telephone competition*, issued 30 June 1998.

² <http://www.ontariophonecards.ca/callingcards?page=0>.

the minimum extent necessary.³ While we believe that it is important for rate information to be easily accessible for consumers, we do not believe that it would be appropriate for payphone providers to be directed to display long distance rate information at each payphone.

11. Furthermore, even if it were possible for long distance rates to be physically posted without harming competition, we do not believe that physically posting rates would be the most convenient and easy way for consumers to obtain rate information in any case. As long distance calling rates are highly specific and complex, a published rate card listing default long distance rates would necessarily include dozens of entries that consumers would need to sift through prior to making a call. Indeed, calling such a posting a "rate card" would likely be a misnomer; it is more likely a "rate book" given the complexity of rate information. In light of this, in addition to causing competitive harm, we submit that the physical posting of rates would not effectively serve the consumer interest.

Rates for Non-Cash Long Distance Calls Are Easily Accessible through Operator Services

12. For both competitive and consumer reasons, we believe that the most effective and appropriate way to inform customers about the rates for non-cash long distance calls is to ensure that transparent, call-specific rate information is easily accessible to consumers through a provider's non-cash operator services calling system.

13. In order to place a non-cash call from a payphone, a customer must necessarily access a provider's operator services platform, whether by using an automated integrated voice response (IVR), or by speaking with a live operator, in order calling and payment information. The Commission has directed that operator services must ensure that clear rate information is provided to customers in advance of any charges being incurred.⁴ Specifically, our Operator Services tariff includes the following two requirements:

(b) The Company's operators will provide the customer with sufficient time to terminate the call at no charge before the call is connected.

(c) The Company's operators will provide, when requested by the customer at the beginning of an operator-handled call, the rates and charges and various alternate billing arrangements available to the customer.

14. Consistent with these requirements, we make our non-cash long distance rate information easily accessible to consumers who wish to obtain rate information, no matter how a consumer accesses our operator services system.

15. There are two ways that a consumer can initiate a non-cash call from a Bell payphone. In the first method, a consumer initiates a call by pressing 0 on the payphone keypad (or by dialing 0 plus the number that they wish to call (for example, +0(123)456-7890)). In this case, the caller is immediately connected to our operator services IVR system⁵. Upon reaching the IVR, following an introductory greeting message, the consumer is provided with the following sequence of options:

³ Order Issuing a Direction to the Commission on Implementing the Canadian Telecommunications Policy Objections, SOR/2006-355, subsection 1(a)(i) and (ii).

⁴ See the consumer safeguards set out in Telecom Order 95-316, which are incorporated in our Operator Services Tariff (General Tariff, Item 85), available online at: <http://www.bce.ca/assets/Tariffs/bellcanada/GT/2/85.pdf>.

⁵ This system is operated by WiMacTel.

- i) The caller is asked whether they want to continue in French or English;
- ii) If the caller initiated the call by dialling 0 only, the caller is asked to input the area code and telephone number they are calling; and
- iii) The caller is then presented with a menu of four options, whereby they may:
 - 1) Indicate that they wish to place a collect call;
 - 2) Enter a calling card or credit card number;
 - 3) Speak with an operator; or
 - 4) Obtain a rate quote.

16. Once the caller has entered the number that they wish to dial (or simply selected to continue in English or French where the caller has access the IVR by dialing +0(123)456-7890), these four menu options are heard over a period of only 8.5 seconds, with a maximum pause of 0.25 seconds between menu options.

17. Alternatively, a caller may initiate a non-cash call at a millennium payphone by simply swiping a credit card or calling card through the payphone's card reader and entering the number that they wish to dial (for example, +1(123)456-7890). In these circumstances, the caller is connected to the operator services IVR, but presented with a simplified list of options:

- i. The caller is asked whether they want to continue in French or English;
- ii. For a credit card, where required, the caller is asked to provide certain information to validate their card (e.g., expiry date and CVV); and
- iii. The caller is presented with a menu of two options, whereby they may:
 - 1) Complete the call; or
 - 2) Obtain a rate quote.

18. These two menu options are heard over a period of 2.5 seconds. A caller may connect to a live operator to obtain more information about rates by pressing 0 at any point during the menu.

19. Accordingly, as may be seen from the above descriptions, it is extremely easy for a caller to obtain a rate quote for a non-cash long distance call placed at our payphones. Furthermore, consistent with our tariff requirements, the consumer will not incur any charges until they choose to place a call. As a result, we do not believe that any regulatory changes are needed to better provide consumers with rate notification with respect to non-cash long distance calls. This information is already easily accessible through our operator services, and for the reasons set out above, it is not practical for service providers to post this information on a physical rate card.

Conclusion

20. In light of all of the above, we do not believe that any changes are needed to the current regulatory regimes that apply to payphone providers with respect to the notification of rates for non-cash calls. In the case of non-cash local calling, consumers are well-informed about the rates for calls at either ILEC or CPTSP payphones. ILEC rates are well-established among consumers as they are regulated by the Commission and have remained constant for many years. While CPTSP rates for local calls may deviate considerably from consumer expectations, CPTSPs are required to post their local rates at payphones to ensure consumers may properly consent to charges.

21. Because of the complexity and highly competitive nature of the long distance marketplace, however, it is not appropriate nor feasible for payphone providers to be required to post non-cash long distance rates at payphones. For non-cash long distance rates, the most

appropriate mechanism to provide notification of rates is to do so through operator services. To this end, the current regulatory safeguards that apply to operator services ensure that consumers have easy access to rate information to make fully informed choices concerning long distance calls, and that no charges will be incurred unless a consumer has determined that they wish to proceed with a call.

22. For all of these reasons, we submit that the current regulatory regimes that apply to the notification of rates for non-cash calls remain entirely appropriate, and no changes are necessary.

23. We appreciate the opportunity to provide these comments.

Yours truly,

[Original signed by P. Gauvin]

Philippe Gauvin
Senior Legal Counsel

*** End of Document ***

This is Exhibit "L" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

2015 04 09

To: Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: **Telecom Notice of Consultation CRTC 2015-67, Consumer safeguards for payphones – Notification of rates for non-cash payphone calls (TNC 2015-67) – Final Reply**

Dear Mr. Traversy,

1. Bell Aliant, Bell Canada, Northwestel and Télébec are pleased to provide their Final Reply in relation to the above-noted proceeding.

Rates for Non-Cash Local Calls Are Transparent and Predictable

2. As we noted in our 30 March 2015 Intervention, we do not believe that any changes are needed to the current regulatory regimes that apply to payphone providers with respect to the notification of rates for non-cash calls. In the case of non-cash local calling, consumers are well-informed about the rates for calls at either ILEC or CPTSP payphones. ILEC rates are well-established among consumers as they are regulated by the Commission and have remained constant for many years. While CPTSP rates for local calls may deviate considerably from consumer expectations, CPTSPs are required to post their local rates at payphones to ensure consumers may properly consent to charges.

3. We note that no party has provided any concerns with respect to consumer awareness of non-cash local calling rates. Accordingly, we submit that the current regimes are appropriate and should be maintained in their current form.

It Is Impractical to Post Rates for Non-Cash Long Distance Calls

4. We note that certain parties have submitted that the rates for non-cash long distance calls should be physically posted on or near payphone sets. We wish to reiterate our position that this is simply not practical, nor does it represent the most convenient and easy way for consumers to obtain rate information relating to non-cash long distance calls.

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2015 04 09

5. As we stated in our Intervention, rates for long distance calling are competitive. Using calling cards alone, consumers in Ontario have access to at least 64 distinct long distance providers offering different long distance rates and conditions.¹ The default long distance provider for a payphone must be able to compete in this competitive marketplace. A requirement to physically post rates for non-cash long distance calls would drastically interfere with the competitive position of the default long distance provider at a particular payphone.

6. For example, if Bell Canada (Bell) were required to physically post these rates at its payphones, in order to change its long distance rates, it would have to install a new rate card at each of its over 40,000 payphones. The cost in doing this would prevent Bell from nimbly changing its rates to compete with other long distance providers. These same considerations would apply for all other long distance providers who serve as the default long distance provider for payphones. Accordingly, a requirement to physically post rates would result in reduced competition in the long distance market, to the detriment of consumers. Even posting rates above a certain threshold is impractical as the costs of physically displaying the rates at each payphone, and the maintenance of such physical notifications which would be subject to frequent change and vandalism, would be cost prohibitive and prevent the default long distance providers from competing above these thresholds. Accordingly, such a threshold would unduly interfere in the competitive long distance market by making it onerous for one provider to change their rates (since they would incur significant costs to post them, if this were even practical) while other competitors are not restricted at all.

7. Additionally, as we noted in our Intervention, we do not believe that physically posting rates would be the most convenient and easy way for consumers to obtain rate information in any case. As long distance calling rates can be highly specific and complex, a published rate card listing default long distance rates could necessarily include dozens of entries that consumers would need to sift through prior to making a call. Indeed, calling such a posting a "rate card" would likely be a misnomer; it is more likely a "rate book" given the complexity of rate information. In light of this, in addition to causing competitive harm, we submit that the physical posting of rates would not effectively serve the consumer interest.

Rates for Non-Cash Long Distance Calls Are Easily Accessible through Operator Services

8. We thus maintain our position that, for both competitive and consumer reasons, the most effective and appropriate way to inform customers about the rates for non-cash long distance calls is to ensure that transparent, call-specific rate information is easily accessible to consumers through a provider's non-cash operator services calling system.

9. As we noted in our Intervention, the current regulatory safeguards that apply to operator services ensure that consumers have easy access to rate information to make fully informed choices concerning long distance calls, and that no charges will be incurred unless a consumer has determined that they wish to proceed with a call. As we demonstrated in our Intervention, consumers may easily access rate information through our operator services.

10. For all of these reasons, we submit that the current regulatory regimes that apply to the notification of rates for non-cash calls remain entirely appropriate, and no changes should be made.

¹ <http://www.ontariophonecards.ca/callingcards?page=0>.

2015 04 09

11. We appreciate the opportunity to provide our Final Reply.

Yours truly,

[Original signed by P. Gauvin]

Philippe Gauvin
Senior Legal Counsel

c.c.: Nanao Kachi, CRTC
Guillame Leclerc, CRTC
Intervenors as per 25 March 2015

*** End of Document ***

This is Exhibit "M" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 21, 2021.



Commissioner for Taking Affidavits

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ARCHIVED - Telecom Procedural Letter Addressed to the Distribution List

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Ottawa, 24 April 2015

File number: 8638-C12-201501833

To: Distribution List

BY EMAIL

Re: **Call for comments – Consumer safeguards for payphones – Public notification policy for the removal of the last payphone in a community**

Dear Sir or Madam:

On 26 February 2015, the Commission issued Telecom Notice of Consultation CRTC 2015-66¹ and called for comments on improving the public notification policy for the removal of the last payphone in a community set out in Telecom Decision 2004-47².

Specifically, the Commission proposed the following modifications to the existing policy for the removal of certain payphones set out in that decision:

- modify the definition of a “community” to include, in addition to the last payphone in an area served by a wire centre, the last payphone in a municipality and the last payphone in a First Nations reserve;
- require that the notification requirement also be triggered for the removal of any payphone that is in a location, determined by street address, that does not have access to mobile wireless service by any carrier; and

- require that the notification requirement (triggered by the removal of the last payphone in a community and by the removal of any payphone in a location that does not have access to mobile wireless service) apply to all ILECs.

Definition of a community

Commission staff notes that interveners, including user groups and service providers, voiced concerns with the suggestion to modify the definition of a “community” to include the concept of a “municipality” and did so for varied reasons.

The main concerns for most interveners seemed to be that a “municipality” is a fluid concept, decided by local governments, occasionally modified, and not always representative of population centers.

User groups and local governments provided different alternative proposals that they considered would be in the best interest of Canadians while service providers generally argued the current practice of notifying for the last payphone in a wire center was sufficient.

Further, providers generally argued that their current payphone management systems were not built to take into account the level of specificity necessary both for the Commission’s proposal and for the proposals put forward by user groups. For example, in response to CAC-COSCO-PIAC’s suggestion that the notification be triggered by specific distance criteria, Bell submitted that:

“CAC-COSCO-PIAC asserts that “mapping technology has significantly advanced”.³ This may be correct; however, it remains a fact that our systems, which have been in place to support our installed legacy base of payphones over several decades, do not support these new technologies, and significant investment would be required to essentially remap every payphone installed across our serving territory.”⁴

Access to mobile wireless service

While most interveners on the record, including user groups, local governments, and some service providers, agreed that the Commission’s proposal was reasonable and in line with consumer objectives, Bell noted that:

“... such a requirement would introduce an inefficient and disproportionate regulatory measure that is not necessary to ensure that adequate notification takes place to inform consumers that payphone service will no longer be available in a community.”⁵

MTS also noted that, while they are not opposed to the proposal, such a requirement “would increase the ILECs’ costs to their detriment, with the corresponding benefits being uncertain given the existing notification requirement already in place”⁶ and further noted that “the Commission should offer clarity on how wireless coverage is to be defined so that it can be applied and

implemented in as effective a manner as possible.”⁷ Some user groups noted similar concern regarding how it would be determined that a location does not have access to mobile wireless access.

Request for Additional Comment

Staff notes that the Commission will dispose of the issues on which it called for comment in Telecom Notice of Consultation CRTC 2015-66 in due course. However, in light of the interventions and reply comments received in the proceeding, Commission staff is of the view that additional information is required on the public record of the proceeding.

Staff notes that most providers argued in this proceeding that payphones are a declining industry and that significant investments in the management of payphones could make some payphones even less profitable.

Staff notes that Canadians, local governments, and user groups took the position that payphones are still of importance to some segments of the Canadian population and that the safeguards around payphone removals need to be determined keeping in mind the individuals who rely on them and the situations where they may be a useful additional means, or even the only means to access the telecommunications system.

Given the above, Commission staff seeks comment on the following alternative proposal that, in its view, may address the concerns of parties who intervened:

- A new, streamlined notification requirement for all payphone removals, whereby service providers would be required to post a notice on any payphone scheduled for removal, wherever it is located, for at least 30 days prior to removal, with the same required information as the existing notice requirement⁸.

Staff is of the opinion that this proposal could ensure that Canadians get an opportunity to voice their concerns that a specific payphone is scheduled for removal while not requiring service providers to modify their payphone management systems in a potentially inefficient manner.

Parties may file a reply to this request by no later than **8 May 2015**.

This letter and all subsequent correspondence form part of a public record. As set out in Broadcasting and Telecom Information Bulletin 2010-961, *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, parties may designate certain information as confidential. Parties must provide an abridged version of the document involved, accompanied by a detailed rationale to explain why the disclosure of the information is not in the public interest.

All submissions are to be made in accordance with the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277.⁹

Should you have any questions concerning any of the above, please contact Guillaume Leclerc by telephone at 819-934-4342 or by e-mail at guillaume.leclerc@crtc.gc.ca

Yours sincerely,

ORIGINAL SIGNED BY/ Stephen Harroun for

Nanao Kachi

Director, Social and Consumer Policy, CRTC

c.c.: Guillaume Leclerc, CRTC, guillaume.leclerc@crtc.gc.ca

Mary-Louise Hayward, CRTC, mary-louise.hayward@crtc.gc.ca

Distribution List:

All interveners in Telecom Notices of Consultation CRTC 2015-66 and 2015-67 as of 24 April 2015

Footnote 1

Telecom Notice of Consultation CRTC 2015-66 <http://www.crtc.gc.ca/eng/archive/2015/2015-66.htm>

1

Footnote 2

Telecom Decision CRTC 2004-47 <http://www.crtc.gc.ca/eng/archive/2004/dt2004-47.htm>

2

Footnote 3

CAC-COSCO-PIAC Intervention, paragraph 23.

3

Footnote 4

Bell Reply, paragraph 9

4

Footnote 5

Bell Intervention, paragraph 19

5

Footnote 6

MTS Reply, paragraph 4

6

Footnote 7

MTS Reply, paragraph 4

7

Footnote 8

As required in Telecom Decision 2004-47 and restated in Telecom Notice of Consultation 2015-66:
“The notice must clearly indicate the pending removal in large enough format to attract users’ attention and must include the date of removal, the ILEC’s name, address, and toll-free number, as well as directions to, and the location of, the nearest payphone.”

8

Footnote 9

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2010-277/index.html>

9

Date modified:

2015-04-24

This is Exhibit "N" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

2015 05 08

To: Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: **Telecom Notice of Consultation CRTC 2015-67, Consumer safeguards for payphones – Notification of rates for non-cash payphone calls (TNC 2015-67) – Response to request for further information – Response to request for Additional Comment**

Dear Mr. Traversy,

1. In a letter received 24 April 2015, Commission staff has sought comments from interested parties in the above-noted proceeding concerning an additional proposal relating to the notification of rates for non-cash calls placed at payphones. Specifically, in order to provide consumers with clearer notification of such rates, Commission staff has proposed that:

A requirement be established so that the first option provided to consumers on the provider's menu interface in the case of a non-cash long distance calls allow consumer to obtain a quote, detailing all costs pertaining to their calls.

2. Bell Aliant, Bell Canada, Northwestel and Télébec are pleased to provide the following comments on the Commission staff proposal.

A Rate Quote Option Is Not Available from Many Payphones

3. We have certain concerns with the Commission staff proposal as it could impose a significant burden on many payphone providers. While the record of the proceeding suggests that a rate quote option is a common feature available across Canadian payphones, we do not believe that this is the case. At Bell Canada payphones, a rate quote option was only introduced into the current IVR as an added benefit for customers as part of a major change in non-cash call handling in 2011. Prior to 2011, a rate quote option simply did not exist in the IVR used to process non-cash calls at Bell Canada payphones and rate information was provided by the operator. We suspect that this may be the case at many payphones across Canada that use IVRs to process non-cash calls, and from our own experience, we do not believe that the revenue associated with non-cash calls would justify the costs that would need to be incurred by service providers to modify existing IVR options to introduce or alter a rate quote option, particularly given that rate information can be easily obtained by speaking with an operator. Accordingly, we do not believe that it would be appropriate for the Commission to impose such a requirement on service providers.

Rate Quotes Are Easily Accessible at Bell Canada Payphones

4. With respect to our own IVR system, we have designed our menu interface to provide a streamlined, easy to use, set of options for consumers. As part of the design of our IVR, we have worked to ensure that callers may easily obtain rate information at multiple points in the call process, and may also connect to a live operator at any point in time should they have any questions about their call. While the rate quote option is not presented first, it is prominently featured at multiple points in the call process to ensure that customers may easily access this information.

5. As we described in our 30 March 2015 submission, our IVR system allows callers to initiate a non-cash call in two ways: 1) by dialing +0(123-456-7890) or just 0; or, 2) by swiping a credit card or calling card through a millennium phone card reader and dialing the number they wish to call.

6. Where a customer initiates the call by dialing +0(123-456-7890), the first option that is heard allows the caller to select whether they wish to continue in French or English. Once a language has been selected, the caller is presented with four options. The first two options allow the caller to identify how they wish to place the call (i.e., whether it will be a collect call, or whether the caller would like to pay using a calling card or credit card). The third and fourth options ask the caller if they would like to speak with an operator or obtain a rate quote. Accordingly, two of the four options in this initial menu allow the caller to obtain rate information.

7. However, even if a caller does not select to obtain rate information at this point in the IVR, the caller has further opportunity to obtain rate information before incurring any charges on credit card calls. For example, if the caller selects option 2 out of the initial menu (to pay using a calling card or credit card), after entering their credit card information, the caller is presented with two options whereby they may select to place their call, or obtain a rate quote. In this way, the caller is given multiple opportunities to obtain a rate quote before incurring any charges.

8. In addition to these direct rate quote options, a caller who presses 0 prior to selecting to make their call in the IVR process will be connected to a live operator for assistance.

9. Where a caller initiates a call by swiping a calling card or credit card at a millennium payphone and dialing the number that they wish to dial, the call process is streamlined for the caller. The caller is asked to select whether they wish to continue in French or English. Following this, the caller may be asked to validate their credit card information (if required). Once their payment information is validated, the customer is asked whether they would like to proceed with their call, or obtain a rate quote. The caller may also connect to a live operator by simply pressing 0 prior to selecting to make the call.

10. It has been our goal to make our IVR as customer-friendly as possible to use, and we believe that we have been successful in streamlining the call flow options to serve our customers' needs. As we have demonstrated, at our payphones, customers are presented with multiple opportunities to obtain a rate quote before placing their call, and they may easily connect to a live operator should they have any questions about using our payphones, including the rates associated with non-cash calls. We believe that the design of our IVR ensures that customers have easy access to transparent rating information.

Conclusion

11. In response to Commission staff's proposal, we don't believe that the Commission should require service providers using an IVR to process non-cash calls to have a rate quote option, as introducing such an option would impose costs on many providers that would in all likelihood exceed their revenues associated with non-cash calling, and rate information can be easily obtained through an operator. We introduced a rate quote option at our payphones to make our payphones as user-friendly as possible for consumers as part of a major change in call handling in 2011. We believe that consumers are able to easily obtain rate information when using our IVR to place non-cash calls, as rate quote options are presented at multiple points in the call process, and a customer may also choose to speak with a live operator at any time.

12. We appreciate the opportunity to provide these comments.

Yours truly,

[Original signed by P. Gauvin]

Philippe Gauvin
Senior Legal Counsel

c.c.: Nanao Kachi, CRTC
Guillaume Leclerc, CRTC
Mary-Louise Hayward, CRTC
Intervenors in TNC 2015-67

*** End of Document ***

This is Exhibit "O" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



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Telecom Regulatory Policy CRTC 2015-546

[PDF version](#)

Reference: Telecom Notice of Consultation [2015-67](#)

Ottawa, 10 December 2015

File number: [8650-C12-201501825](#)

Consumer safeguards for payphones – Notification of rates for non-cash payphone calls

The Commission finds that the current notification requirements for local non-cash payphone calls, whose rates are regulated, are sufficient. However, the Commission finds that the current notification requirements for long distance non-cash payphone calls are not sufficient. Non-cash calls are often made using credit cards, prepaid long distance cards, and other telephone cards. Consumers generally only become aware of the rates to be paid for their calls when they receive their billing statement, potentially leading to bill shock.

*To ensure consumers can obtain the necessary rate information to make an informed decision about their long distance non-cash payphone calls, the Commission **directs** specific payphone providers, namely the incumbent local exchange carriers (ILECs), to make detailed rate information available to consumers. The Commission further **directs** the ILECs to file, no later than **six months** from the date of this decision, information on the means they intend to use to meet this requirement.*

As a result of the enhanced safeguards introduced in this decision, Canadians will be empowered to make informed choices concerning their use of payphones to make long distance non-cash calls.

Background

Current notification requirements for non-cash calls

1. The current consumer safeguards with respect to notification of rates for non-cash payphone calls, which were established in Telecom Order [95-316](#) and Telecom Decision [98-8](#), are as follows:
 - At each payphone they operate, competitive payphone service providers (CPSPs) must prominently display rates for local calls and any surcharge, markup, or location charges not included in the price of the call.

- For operator-handled payphone calls, the incumbent local exchange carriers (ILECs) and CPSPs are to provide, when requested by the consumer, the rates and charges for a call and alternative billing methods available to consumers.

Telecom Decision 2013-327 and subsequent Commission releases

2. On 5 June 2013, the Commission determined, in Telecom Decision 2013-327,¹ that it would initiate a proceeding to review whether the existing consumer safeguards are sufficient to ensure that consumers are in a position to make informed decisions regarding the use of payphones for non-cash calls.²
3. On 26 February 2015, the Commission released a fact-finding report concerning the current role of payphones in the Canadian communications system.³ The Commission also issued Telecom Notice of Consultation 2015-67, inviting parties to file comments, with supporting rationale, on the following questions:
 - Are the current notification requirements in relation to non-cash calls from payphones imposed on ILECs and CPSPs sufficient and appropriate?
 - If not, what should these requirements be?
4. The Commission received interventions regarding the Telecom Notice of Consultation 2015-67 proceeding from Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (collectively, Bell Canada et al.); the Canadian Independent Telephone Company Joint Task Force (JTF); the Consumers' Association of Canada and the Public Interest Advocacy Centre (collectively, CAC/PIAC); TBayTel; TELUS Communications Company (TCC); l'Union des consommateurs (l'Union); and about 15 individuals.
5. The public record of this proceeding, which closed on 8 May 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

6. The Commission has identified the following issues to be addressed in this decision:
 - Do the current notification requirements for non-cash payphone calls remain sufficient and appropriate?
 - What changes should be made to the current notification requirements for non-cash payphone calls?
 - How should the notification requirements for non-cash payphone calls be applied to CPSPs?

Do the current notification requirements for non-cash payphone calls remain sufficient and appropriate?

7. Bell Canada et al., the JTF, TBayTel, and TCC generally were of the view that the current notification requirements for both local and long distance non-cash payphone calls were sufficient and appropriate. On the other hand, CAC/PIAC and l'Union argued that the current notification requirements for non-cash payphone calls are insufficient and do not protect consumers from bill shock.
8. L'Union noted that in some instances, such as long distance non-cash payphone calls, consumers can incur charges in addition to the rate incurred for the call itself, such as "connections fees," which CAC/PIAC noted could be more than \$10 per call, and that consumers are not sufficiently notified of that fact. CAC/PIAC noted in this regard that consumer complaints concerning the notification of charges for non-cash payphone call requirements led, in part, to the issuance of Telecom Decision 2013-327.
9. Bell Canada et al. and TCC noted that a consumer can readily call the operator at no charge to obtain a quote and that the option is available through their Interactive Voice Response (IVR) system. CAC/PIAC and l'Union argued that the "obtain a quote" option is not effective as a means of consumer notification as it is often presented after the option to complete the call in the IVR system. L'Union argued that if consumers were fully aware of all costs prior to making a call, many would not proceed.
10. CAC/PIAC noted their concern that consumers may not have any recourse in relation to complaints they may have regarding their experience of bill shock for non-cash payphone calls.

Commission's analysis and determinations

11. The main concern of the consumer groups in this proceeding is that the current regime may not be robust enough to prevent bill shock for some users of long distance non-cash payphone calls who were not made aware of the various one-time fees and per-minute rates.
12. As rates for local non-cash calls on payphones operated by ILECs are regulated, the Commission finds that the current consumer safeguards for such calls are sufficient to prevent bill shock for payphone users and, as such, remain sufficient and appropriate.
13. Rates for long distance non-cash calls on payphones operated by ILECs, however, are not regulated. While this can lead to a more competitive market, it may also lead to situations in which the rates and charges incurred in order to complete a call are not made sufficiently clear to Canadians. This, in turn, may lead to bill shock when the sum of the fees is higher than expected. The Commission is not satisfied that the notification methods currently being used to meet the existing requirement are resulting in effective notification of the full scale of the rates and charges that consumers may incur in completing their long distance non-cash payphone calls. Based on the above, the Commission finds that the current safeguards for long distance non-cash payphone calls are not sufficient.

What changes should be made to the current notification requirements for non-cash payphone calls

14. Payphone providers generally argued that users are sufficiently aware that they have the option to reach the operator by dialing 0 at any time to obtain rate information. The JTF and TCC noted that further requirements could make the business proposition of some payphones even less appealing, with TCC noting that in some instances the imposition of further requirements could accelerate the removal of payphones.
15. CAC/PIAC and l'Union argued that payphone users are often under pressure to complete a call quickly, citing examples like completing a call in a busy airport or due to a personal emergency, and, as such, new requirements should be put in place so that information is quickly and easily available.
16. Intervenors to this proceeding suggested alternative means to convey the information related to long distance non-cash payphone calls to consumers, including (a) making detailed rate information available by posting it on or around the payphone itself, (b) modifying the IVR system so that the option to obtain a quote comes first, and (c) maintaining the current practice of using the operator services by dialing 0. Payphone providers generally argued that implementing the various proposals, above and beyond their current practices, would be unworkable, not necessary, and onerous, but did not provide details regarding the specific costs that would be incurred as a result.
17. Bell Canada et al. submitted that posting the rates for non-cash calls on payphones would diminish their flexibility to respond to market forces, and that it would be expensive to continually update this information on every payphone. CAC/PIAC recognized that posting all possible rates may not be reasonable, but argued that the posting of rate bands should be feasible. TCC argued that, should this proposal be required by the Commission, it should only apply to payphone providers who charge rates in excess of a pre-determined threshold. L'Union submitted that all rate information should be posted on payphones.
18. L'Union suggested that the "obtain a quote" option should be presented before the option to complete the call in the IVR system, in addition to posting the rates on the payphones. CAC/PIAC supported the proposal, particularly in light of the high initial charge to complete a call at certain payphones. Bell Canada et al. argued that the revenues generated from payphones would not justify the costs to modify existing IVR options, while TCC submitted that it is unsure if it would even be possible to modify some of its older payphones. Further, TCC argued that the order in which options are presented to consumers seeking information will not have any bearing on whether a consumer chooses one option over another.
19. CAC/PIAC voiced concerns that consumers are not notified that a third-party service provider may be billing for payphone service, arguing that a consumer should be notified that this could be a possibility.

Commission's analysis and determinations

20. The intent of notification requirements for non-cash payphone calls is to empower consumers by giving them the tools to make informed decisions. By providing consumers with the opportunity to get information that could affect their decision making, the possibility of bill shock is lowered. In order to achieve this goal, rate information must be available to consumers as early and as clearly as possible in the process of making a long distance non-cash payphone call.
21. Posting rates or rate bands on or around payphones would achieve the goal of notifying consumers, but may be impractical and may hinder payphone providers' flexibility to react to market forces. As for the suggestion of only applying such a requirement when fees surpass a certain threshold, as submitted by TCC, considering that rates for long distance non-cash payphone calls are not regulated, a requirement that only applies on the basis of the fees charged would not be appropriate in the circumstances.
22. If a payphone provider's IVR system is modified to ensure that the "obtain a quote" option is presented to consumers earlier in the menu, this too could provide greater notice. The order in which options are presented to consumers is likely to have an impact on the choices consumers make, especially in instances where the consumer is under pressure to quickly complete their call. A consumer who is offered the option of completing a call before being offered the option of receiving rate information is less likely to receive that rate information. However, modifying IVRs may not be cost-effective or, in some cases, technologically possible.
23. While operator services, which can be reached by dialing 0, may be an efficient means for consumers to obtain detailed rate information, the current notification requirements only apply when a consumer requests the information in the course of an operator-handled call. Consumers may not be aware that the operator can provide this information, and may not even be aware that they may be subject to additional charges, such as connection fees, nor of their scale, and thus may not think to inquire about them.
24. On the matter raised by CAC/PIAC that consumers should be made aware that the entity billing their long distance non-cash payphone call may be a third party, the name on their statement should not affect whether consumers experience bill shock.
25. Based on the record of the proceeding, consumer safeguards for long distance non-cash payphone calls need to be strengthened; however, the record of this proceeding shows that a "one size fits all" solution to address the issue is not appropriate and, while an enhanced notification requirement is necessary, payphone providers need some flexibility in the means they use to effect notification of rates for long distance non-cash payphone calls. In so doing, payphone providers should keep in mind the ultimate goal of notification, which is to ensure consumers are empowered to obtain the necessary information and make an informed decision about their long distance non-cash payphone calls.

26. Accordingly, pursuant to its powers under section 24 of the *Telecommunications Act* (the Act), the Commission **directs** that as a condition of providing payphone services, all ILECs must make detailed information available to consumers regarding the rates and other fees charged by or on behalf of the ILEC with respect to long distance non-cash payphone calls. Detailed rate information includes connection fees, per-minute rates, and any other charges that would be charged to the consumer by or on behalf of the ILEC for a long distance non-cash payphone call.
27. The Commission **directs** all ILECs to file, within **six months** of the date of this decision, (a) the means they intend to use to ensure the above requirement is met, (b) how this approach will ensure that all potential users have an opportunity to obtain information about detailed rate information necessary to make an informed decision, and (c) the timeline for the implementation of the selected approach.
28. The Commission provides the following non-exhaustive list of examples of means that would be considered as meeting the above requirement:
- posting, on or around the payphone, detailed rate information to common destinations, including destinations in Canada, the U.S., and abroad;
 - modifying the IVR system so that the first option presented to consumers making a long distance non-cash payphone call is the option to “obtain a quote;” or
 - posting, on or around the payphone, that detailed rate information, including all fees, can be obtained by dialing 0 to reach an operator. The operator would have to disclose detailed information if asked about rates, including rates and additional charges and any difference between IVR- and operator-completed calls.

How should the notification requirements for non-cash payphone calls be applied to CPSPs?

29. Conditions of service - such as the notification requirements for non-cash payphone calls - can be imposed on Canadian carriers, such as ILECs, by virtue of section 24 of the Act. However, CPSPs are considered resellers of telecommunications services rather than Canadian carriers. Accordingly, the current notification obligations were imposed on CPSPs indirectly. In Telecom Decision 98-8, the Commission directed Canadian carriers doing business with these resellers to include the obligations in their tariffs and contracts with CPSPs. In December 2014, Parliament amended the Act by adding section 24.1, which allows the Commission to impose conditions of service on resellers directly. However, no CPSPs participated in the present proceeding and there is no evidence on the record addressing the question of how the new obligations should be imposed in their case.
30. Accordingly, while the Commission is of the view that the new notification requirement, expressed above, should apply to CPSPs, a follow-up proceeding is necessary in order to determine how this requirement should be imposed on them as well as whether the underlying Canadian carriers who provide facilities to CPSPs should continue to be subject to the

conditions of service requiring them to apply the existing notification obligations on CPSPs.³¹² Thus, the Commission intends to issue a notice of consultation calling for comments on these issues.

Policy Direction

31. The Commission, in exercising its powers and performing its duties under the Act, is required to implement the policy objectives set out in section 7 of the Act, in accordance with the requirements of the Policy Direction.⁴
32. The Commission considers that its determinations in this decision will advance the policy objectives set out in paragraphs 7(a), (b), (f), and (h)⁵of the Act.
33. Consistent with subparagraph 1(a)(i) of the Policy Direction, in this case, market forces alone cannot be relied upon to ensure that payphone providers adequately notify consumers of the costs of completing long distance non-cash payphone calls, based on the record related to consumer bill shock that has not been prevented by the current requirements.
34. Consistent with subparagraph 1(a)(ii) of the Policy Direction, the regulatory requirement set out above, wherein payphone providers will select the means through which they will comply with the requirement, is efficient and proportionate to its purpose, and minimally interferes with market forces. The burden that will be imposed on payphone providers in complying with this requirement has been considered, as well as the potential impact on these payphone providers' existing business models. However, the requirement will ensure that consumers are provided information on which to base their decision, while not prohibiting current practices by the payphone providers, and giving payphone providers flexibility in determining how to meet the requirement.
35. Consistent with subparagraph 1(b)(iii) of the Policy Direction, the regulatory requirement set out above, once fully implemented, would achieve a symmetrical regulatory regime across all payphone providers, regardless of the technology they use, the geographic market in which they operate, and their size.

Other matter

Recourse mechanism for consumers experiencing bill shock with their long distance non-cash payphone calls

36. As noted above, the current notification requirements do not sufficiently protect consumers from the possibility of bill shock related to long distance non-cash payphone calls. There should be a clear recourse mechanism available to consumers who experience bill shock related to such calls.

37. In general, the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) deals with consumer complaints about forborne telecommunications services, including long distance calls, whereas complaints about regulated services are typically dealt with by the Commission.⁶
38. A review of the structure and mandate of the CCTS was initiated by Broadcasting and Telecom Notice of Consultation 2015-239, which included a public hearing that took place from 3 to 6 November 2015. The role of the CCTS in dealing with bill shock related to long distance non-cash payphone calls was commented on by the CCTS during that proceeding. The Commission shall release its determinations in that proceeding in due course.

Secretary General

Related documents

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation CRTC 2015-239, 4 June 2015, as amended by Broadcasting and Telecom Notices of Consultation CRTC 2015-239-1, 24 July 2015, and 2015-239-2, 25 September 2015
- *Consumer safeguards for payphones - Notification of rates for non-cash payphone calls*, Telecom Notice of Consultation CRTC 2015-67, 26 February 2015
- *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC 2013-337, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-337-1, 11 September 2013
- *Public Interest Advocacy Centre and Canada Without Poverty - Billing of calls placed from Bell Canada payphones*, Telecom Decision CRTC 2013-327, 5 June 2013, as amended by Telecom Decision CRTC 2013-327-1, 10 July 2013
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Local pay telephone competition*, Telecom Decision CRTC 98-8, 30 June 1998
- Telecom Order CRTC 95-316, 15 March 1995

Footnote 1

Telecom Decision 2013-327 was issued as a result of the Commission's consideration of an application filed in November 2012 by the Public Interest Advocacy Centre, on behalf of itself and Canada Without Poverty.

1

Footnote 2

Non-cash payphone calls include calls paid for using third-party billing, credit cards, and telephone cards (including calling cards, collect cards, prepaid long distance cards, and other telephone cards).

2

Footnote 3

The Commission's report, entitled *Results of the fact-finding process on the role of payphones in the Canadian communications system* (the Report), was placed on the Commission's website on 26 February 2015. The Report was prepared based on the results of the fact-finding process initiated by Telecom Notice of Consultation 2013-337. See <https://crtc.gc.ca/eng/publications/reports/rp150226a.htm>

3

Footnote 4

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534, 14 December 2006

4

Footnote 5

The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(h) to respond to the economic and social requirements of users of telecommunications services.

5

Footnote 6

For more details about the mandate of the CCTS, see Telecom Regulatory Policy 2011-46.

6

Date modified:

2015-12-10

This is Exhibit "P" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



ARCHIVED - Telecom Decision CRTC 2013-327

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Additional reference: [2013-327-1](#)

Ottawa, 5 June 2013

Public Interest Advocacy Centre and Canada Without Poverty – Billing of calls placed from Bell Canada payphones

File number: [8650-P8-201215913](#)

In this decision, the Commission finds that Bell Canada has not withdrawn operator services at its payphones, and that it did not breach consumer safeguards as alleged by PIAC/CWP. The Commission directs Bell Canada to incorporate in its contract with WiMacTel an explicit reference to the consumer safeguards set out in its Operator Services tariff and to file with the Commission information regarding a revised script that it undertook to provide to WiMacTel operators. The Commission will initiate a proceeding to examine whether the consumer safeguards with respect to notification of rates are sufficient and appropriate for non-cash calls from payphones.

Background

1. In Telecom Order 95-316, the Commission established consumer safeguards for operator services provided by Unitel Communications Inc. (Unitel), an alternate provider of long distance services.[1] These consumer safeguards included the requirement for operators to identify themselves, to provide rate information when requested, and to inform dissatisfied customers on how to escalate complaints. In addition, Unitel was required to post information, identifying itself and providing rate information, in close proximity to each publicly accessed telephone serviced.
2. In Telecom Order 95-316, the Commission directed the telephone companies, including Bell Canada, to file comprehensive operator services tariffs incorporating the consumer safeguards in their tariffs and white page directories. Bell Canada's Operator Services tariff was subsequently approved by the Commission.
3. In Telecom Decision 98-8, the Commission established consumer safeguards for competitive pay telephone service providers (CPTSPs). These consumer safeguards included the requirements to (i) prominently display the rates for local calls; the name of the default long distance provider; and any surcharge, mark-up, or location charges not included in the price of the call; (ii) post the CPTSP's name, address, and toll free number where information can be obtained and complaints addressed, and the Commission's address and toll-free number; and (iii) comply with Telecom Order 95-316 if operator services (other than emergency services access and message relay service) are provided.

The application

4. The Commission received an application from the Public Interest Advocacy Centre on behalf of itself and Canada Without Poverty (collectively, PIAC/CWP), dated 14 November 2012, regarding the provision of service at Bell Canada payphones.
5. PIAC/CWP stated that it had received a complaint from a Bell Canada payphone user regarding excessive charges for the handling of operator-assisted long distance calls placed from Bell Canada payphones.
6. PIAC/CWP submitted that a firm known as WiMacTel Inc. (WiMacTel) handled operator-assisted calls at Bell Canada payphones. PIAC/CWP also submitted that at a number of Bell Canada payphones it had visited, the only disclosure of the fact that WiMacTel processed these calls was provided by a scrolling notice on the screen of the payphones.
7. PIAC/CWP further submitted that Bell Canada's transfer of operator-assisted long distance calls to WiMacTel without providing adequate notice to customers that their operator-assisted long distance calls will be handled by this third party at excessive charges is not consistent with the Canadian telecommunications policy objectives set out in subsections 7(b), 7(f), and 7(h) of the *Telecommunications Act* (the Act).[2]
8. PIAC/CWP requested that the Commission direct Bell Canada
 - to provide an audited report setting out all of the charges billed to customer accounts or to customers' credit cards in relation to calls handled by WiMacTel, and to refund to the company's customers who have been billed for operator-assisted calls handled by WiMacTel

any charges in excess of the rates in effect for Bell Canada handled calls of similar description;

- to abide by the consumer safeguards set out in Telecom Order 95-316 and Telecom Decision 98-8 regarding operator-assisted long distance calls and require an officer of the company to periodically certify that the company is in compliance (as is its delegate WiMacTel); and
- to develop adequate procedures to ensure compliance with the Commission directives with respect to withdrawing a tariffed service and to periodically confirm its compliance status.

9. PIAC/CWP also requested that the Commission initiate a proceeding to examine the state of the payphone marketplace in Canada and, in particular, the adequacy of current consumer safeguards.

10. The Commission received comments on the application from Bell Canada. The public record of this proceeding, which closed on 18 April 2013, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

11. The Commission has identified the following issues to be addressed:

I. Did Bell Canada violate Commission directives regarding the withdrawal of tariffed services?

II. Did Bell Canada breach the consumer safeguards in Telecom Order 95-316 and Telecom Decision 98-8?

III. Did Bell Canada violate section 27 of the Act?

IV. Should the Commission initiate a proceeding to examine the adequacy of consumer safeguards for payphone services?

I. Did Bell Canada violate Commission directives regarding the withdrawal of tariffed services?

12. PIAC/CWP submitted that to the extent that operator-assisted calling at Bell Canada payphones is now provided by WiMacTel at WiMacTel rates, Bell Canada has discontinued providing operator services at its payphones without having complied with the requirements for the withdrawal of tariffed services established by the Commission in Telecom Circular 2005-7 and Telecom Decision 2008-22.

13. Bell Canada stated that WiMacTel is an independent contractor that provides operator services on Bell Canada's behalf at its payphones, and that all amounts invoiced to customers by WiMacTel are collected and remitted to the company by WiMacTel as agent for the company. Bell Canada submitted that the outsourcing of operator services to WiMacTel cannot be viewed as the withdrawal of a service.

Commission analysis and determinations

14. The Commission notes that Bell Canada has a contract with WiMacTel to provide operator services at Bell Canada payphones. WiMacTel processes operator-assisted or card-swipe calls, except for calls placed using a Bell Canada calling card. Further, all amounts invoiced to customers

by WiMacTel are collected and remitted to Bell Canada by WiMacTel as agent for Bell Canada, and WiMacTel is compensated by Bell Canada in accordance with the agreement for the service provided. The rates and charges invoiced by WiMacTel for local non-cash calls are set out in Bell Canada's Public Telephone Service tariff, and rates and charges for long distance calls are approved by Bell Canada.

15. In view of the above, the Commission concludes that Bell Canada has not withdrawn its operator services and therefore has not breached the directives set out in Telecom Circular 2005-7 and Telecom Decision 2008-22 with respect to withdrawing a tariffed service.

II. Did Bell Canada breach the consumer safeguards in Telecom Order 95-316 and Telecom Decision 98-8?

Telecom Order 95-316

16. PIAC/CWP submitted that Bell Canada appears to be in breach of the requirements set out in Telecom Order 95-316 regarding written notification of rates for long distance calls on payphones.

17. PIAC/CWP also questioned the adequacy of the scrolling notice on the screen of Bell Canada payphones.

18. Bell Canada stated that there is no requirement for an incumbent payphone service provider or a CPTSP to provide notice of the rates associated with long distance services because the Commission has forborne from the regulation of rates for long distance services.

Telecom Decision 98-8

19. PIAC/CWP submitted that by transferring to WiMacTel the handling of operator-assisted calls, Bell Canada has transferred a portion of its payphone business to WiMacTel, and that the CPTSP obligations apply.

20. PIAC/CWP submitted that Bell Canada did not display the name of the default long distance provider or any surcharges, markup, or location charges imposed by WiMacTel; and did not post the CPTSP's name, address, and toll-free number where information can be obtained and complaints addressed.

21. Bell Canada argued that it has no regulatory requirement to post notice with respect to the default long distance provider used at its payphones.

22. Bell Canada stated that, for its customers' benefit, it has voluntarily posted notice that WiMacTel processes operator-assisted calls, despite having no regulatory obligation to do so.

23. With respect to the allegation regarding the displaying of surcharges, markup, or location charges, Bell Canada stated that it wished to clarify that (i) the rates charged are not those of WiMacTel but the company's rates that are invoiced by WiMacTel, and (ii) all rate information is properly provided to consumers.

24. Bell Canada submitted that there is no requirement for an incumbent payphone service provider or a CPTSP to provide notice of the rates associated with long distance services. Bell Canada noted however that because non-cash calls are processed with operator assistance, it is required to, and does, provide rate information for operator-assisted calls in accordance with item 85(1)(c)[3] of its Operator Services tariff. Bell Canada submitted that as all operator-assisted calls processed by WiMacTel are routed either through the WiMacTel integrated voice response (IVR) system or a live operator, a caller using these calling platforms may select the appropriate option from the automated IVR to obtain applicable rates or may simply ask a live operator for rate information.

25. With respect to the allegation that the company does not provide the address/toll-free number for WiMacTel where information can be obtained and complaints addressed concerning WiMacTel services, Bell Canada noted that WiMacTel provides services on behalf of the company and complies with item 85(1)(d)[4] of its Operator Services tariff, which sets out the process for escalation of customer complaints within the company and to the Commission.

26. In order to clarify that WiMacTel is providing operator services on its behalf, Bell Canada indicated that it would alter the greeting used by WiMacTel's live operators and the script used by the WiMacTel IVR system.

27. In response to the concern that a caller was unable to escalate a complaint, Bell Canada stated that it would undertake to ensure that WiMacTel operators and customer service representatives receive additional training to ensure that proper information is given and proper escalation paths are followed.

Commission analysis and determinations

28. The Commission considers that in contracting operator services to WiMacTel, Bell Canada and WiMacTel become neither alternate providers of long distance services or CPTSPs. Therefore, the consumer safeguards set out in Telecom Order 95-316 and Telecom Decision 98-8 do not apply to Bell Canada or WiMacTel, as argued by PIAC/CWP.

29. The Commission notes, however, that the consumer safeguards applicable to the provision of operator services set out in Bell Canada's Operator Services tariff apply to Bell Canada and, in turn, to any person acting on behalf of Bell Canada. According to the tariff, Bell Canada's operators are required, among other things, (i) to identify themselves as representing the company to the calling party, the called party, or party accepting charges for operator-handled calls; and (ii) to provide rates for a call and various billing arrangements when requested by the caller. In addition, a company operator who encounters a customer who is not satisfied with the service provided by Bell Canada must inform the customer of the option to present his or her complaint to the company through the company's Customer Service Centres, a company manager, or company executive. Further, if in following this process the customer remains dissatisfied, the customer may direct their concerns to the Commission.

30. The Commission notes that Bell Canada's contract with WiMacTel does not specifically refer to the consumer safeguards set out in Bell Canada's Operator Services tariff. The Commission considers that the contract must explicitly require that WiMacTel comply with the consumer safeguards applicable to Bell Canada in the provision of operator services. Accordingly, the Commission directs Bell Canada to ensure that WiMacTel is explicitly required pursuant to their agreements to comply with the obligations of Bell Canada set out in its Operator Services tariff, and in particular, the consumer safeguards set out in that tariff, and to file within 60 days evidence of compliance with this requirement.

31. The Commission notes that item 85(1)(a)[5] of Bell Canada's Operator Services tariff requires that operators identify themselves as representing the company. In order to ensure that it is clear to consumers that WiMacTel is providing operator services on behalf of Bell Canada, Bell Canada is directed to provide, within 10 days of this decision, for the Commission's information, the revised script that it has provided to WiMacTel regarding identification of operators. Bell Canada is also directed to file with the Commission, within 60 days of this decision, confirmation that the training of WiMacTel staff has been completed and that WiMacTel has implemented the script changes.

32. With regard to the requirement to advise dissatisfied customers of avenues for complaints, the Commission notes that Bell Canada has undertaken to ensure that WiMacTel operators and customer service representatives receive additional training to properly escalate complaints. In view of this, Bell Canada is directed to provide, within 10 days of this decision, for the Commission's information, the revised script that it has provided to WiMacTel regarding escalation of complaints. Bell Canada is also directed to confirm, within 60 days of this decision, for the Commission's information, that the training of WiMacTel staff has been completed and that WiMacTel has implemented the script changes.

III. Did Bell Canada violate section 27 of the Act?

33. PIAC/CWP submitted that Bell Canada has conferred upon itself an undue preference to the detriment of its payphone users by failing to adequately warn its payphone users of its decision to use WiMacTel to handle certain long distance calls placed from payphones and by not providing notice of WiMacTel's charges for such calls. PIAC/CWP also submitted that Bell Canada has also conferred an undue preference upon WiMacTel to the detriment of the company's payphone users by failing to provide payphone users adequate notice of WiMacTel's rates.

34. PIAC/CWP further submitted that Bell Canada's and WiMacTel's failure to disclose rates also unjustly discriminates against alternate providers of long distance services who compete with Bell Canada. PIAC/CWP argued that if consumers were made aware of WiMacTel's excessive rates prior to making a call, consumers could decide to seek other long distance service providers to carry these calls.

35. Bell Canada submitted that it did not breach section 27 of the Act as alleged by PIAC/CWP.

36. Bell Canada stated that notice of rates for operator-assisted calls invoiced by WiMacTel on the company's behalf is provided according to item 85(1) of its Operator Services tariff, and that all rates invoiced by WiMacTel on the company's behalf are compliant with the company's tariffs, where such rates are tarified.^[6]

37. Bell Canada stated that the Commission has set no requirement for either incumbent payphone service providers or CPTSPs to provide notice of rates for long distance calls at payphones but that where long distance services are provided using the assistance of an operator, rate information must be provided according to the consumer safeguards that apply to operator services, as set out in its Operator Services tariff.

38. Bell Canada submitted that the engagement of WiMacTel to provide operator services for the company's payphones has no effect on the ability of alternate providers of long distance services to compete in the long distance payphone market.

Commission analysis and determinations

39. With regard to PIAC/CWP's allegation that Bell Canada conferred upon itself an undue preference to the detriment of end-users by failing to adequately warn its payphone users of its decision to use WiMacTel, the Commission notes that Bell Canada's operators are required to identify themselves, as set out above. The Commission notes that Bell Canada has no regulatory requirement to provide notice of its decision to contract with WiMacTel to provide operator services on Bell Canada's behalf. Bell Canada has however provided a notice by way of a scrolling notice that states that effective 25 May 2011, operator-assisted and credit card calls would be processed by WiMacTel.

40. With regard to PIAC/CWP's allegation that Bell Canada has conferred an undue preference upon itself and WiMacTel to the detriment of end-users and unjustly discriminates against alternative long distance service providers, in failing to provide adequate notice of rates and thereby facilitating the charging of excessively high rates by WiMacTel, the Commission notes the following. Bell Canada's operators are required pursuant to Bell Canada's Operator Services tariff, to provide, when requested by the customer at the beginning of a call, the rates and charges. When the user interacts with an IVR, the Commission notes that rates can be obtained following a prompt to this end on Bell Canada's IVR platform. Further, the rates invoiced by WiMacTel for local non-cash calls are as approved by the Commission in Bell Canada's Public Telephone Service tariff and the rates for non-cash long distance calls which are forborne are as approved by Bell Canada.

41. Based on the record of this proceeding, the Commission finds that users of Bell Canada's payphones are notified that WiMacTel is providing operator services on behalf of Bell Canada and can obtain the rates and charges in accordance with existing tariff requirements. The Commission also finds that there is no evidence on the record that payphone users are being charged excessive rates, recognizing that the rates are either as approved in a tariff or are unregulated. Further, there is no evidence that such users do not have access to alternate providers of long distance services, which they can clearly access by using for example, pre-paid calling cards or by using toll-free or local access numbers.

42. In light of the foregoing, the Commission is unable to conclude that Bell Canada has conferred an undue preference upon itself, or WiMacTel, or subjected its payphone users to an undue disadvantage or unjust discrimination, as alleged by PIAC/CWP. Further, the Commission is unable to conclude that Bell Canada has unjustly discriminated against alternate providers of long distance services, as alleged by PIAC/CWP.

IV. Should the Commission initiate a proceeding to examine the adequacy of consumer safeguards for payphone services?

43. PIAC/CWP requested that the Commission initiate a proceeding to examine the state of the payphone marketplace in Canada and, in particular, the adequacy of current consumer safeguards. PIAC/CWP stated that the current consumer safeguards were established based on expectations that a vigorously competitive payphone marketplace was developing.

44. PIAC/CWP stated that the manner in which Bell Canada appears to have conveyed a portion of its payphone business to WiMacTel should also raise the Commission's concern regarding the adequacy of the current regulatory regime regarding payphones.

Commission analysis and determinations

45. With respect to PIAC/CWP's request for a broad proceeding, the Commission notes that the *CRTC Three-Year Plan 2013-2016* indicates that the Commission will undertake research to assess the need for a revised regulatory framework for payphones in the year 2013-2014. The Commission notes that any decision regarding a broad proceeding will be made subsequent to the above-noted research.

46. The Commission considers, however, that it would be appropriate to review whether the existing safeguards are sufficient to ensure consumers are in a position to make informed decisions regarding use of payphones for non-cash calls.

47. Accordingly, the Commission will initiate a proceeding to examine whether the consumer safeguards with respect to notification of rates are sufficient and appropriate for non-cash calls from payphones.

Policy Direction

48. The Policy Direction^[7] states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a), (b), and (c) of the Policy Direction.

49. The Commission considers that its findings in this decision are consistent with the Policy Direction and advance the policy objectives set out in paragraphs 7(a), (c), (f) and (h) of the Act.^[8]

50. Further, by not regulating the long distance rates and surcharges charged by Bell Canada and other payphone service providers while maintaining necessary consumer safeguards, the Commission has relied on market forces to the maximum extent possible, and imposed regulatory

measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent, consistent with subparagraphs 1(a)(i) and (ii) of the Policy Direction.

Conclusion

51. Except as otherwise determined above, the Commission **denies** PIAC/CWP's application.

Secretary General

Related documents

- *Mandatory customer contract renewal notification and requirements for service destandardization / withdrawal*, Telecom Decision CRTC 2008-22, 6 March 2008
- *New procedures for disposition of applications dealing with the destandardization and / or withdrawal of tariffed services*, Telecom Circular CRTC 2005-7, 30 May 2005
- *Local pay telephone competition*, Telecom Decision CRTC 98-8, 30 June 1998
- Telecom Order CRTC 95-316, 15 March 1995

Footnotes:

[1] Alternate providers of long distance services provide long distance services in competition with incumbent carriers.

[2] The cited policy objectives of the Act are

7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and

7(h) to respond to the economic and social requirements of users of telecommunications services.

[3] Item 85(1)(c) - The Company's operators will provide, when requested by the customer at the beginning of an operator-handled call, the rates and charges and various alternate billing arrangements available to the customer.

[4] Item 85(1)(d) - If a Company operator encounters a customer that is not satisfied with the service provided by Bell Canada, the operator will inform the customer of their option to present their case to the Company through the Company's Customer Service Centres, a Company manager or executive. If, in following this process, the customer remains dissatisfied, the customer may direct their concern(s) to the Canadian Radio-television and Telecommunications Commission.

[5] Item 85(1)(a) – The Company's operators will identify themselves as representing the Company to the calling party, the called party or party accepting charges for operator-handled calls.

[6] See Bell Canada General Tariff items 250.6(b) and (d).

[7] *Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

[8] Paragraphs 7(f) and (h) of the Act are set out in footnote 2. Paragraphs 7(a) and (c) of the Act are

7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; and

7(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications.

Date modified:

2013-07-05

This is Exhibit "Q" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



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Telecom Decision CRTC 2007-130

Ottawa, 20 December 2007

Establishment of an independent telecommunications consumer agency

Reference: [8665-C12-200711748](#)

In this Decision, the Commission approves, subject to certain conditions being met, the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc. (the Agency), a telecommunications consumer agency established by telecommunications service providers (TSPs).

The Commission determines that all TSPs with annual Canadian telecommunications service revenues exceeding \$10 million are required to be members of the Agency.

In addition, the Commission expects modifications to be made to the Agency's governance structure, mandate, and remedies.

The Commission expects the applicable Agency documents to be modified as per the changes set out in this Decision and expects the Agency's Founding Members to file these documents with the Commission, no later than 45 days following the date of this Decision, to demonstrate that the Commission's conditions of approval have been met.

The Commission requests that the Agency report back to the Commission within three months of the date of this Decision on issues related to the Agency's operating procedures and public awareness campaign. The Commission expects any necessary updates to applicable Agency documents to be filed at that time.

Introduction

The Governor in Council's *Order requiring the CRTC to report to the Governor in Council on consumer complaints*, P.C. 2007-533, 4 April 2007 (the Order) states that an industry-

1. established consumer agency, independent from the telecommunications industry, with a mandate to resolve complaints from individual and small business retail customers should be an integral component of a deregulated telecommunications market.

2. The Order sets out, among other things, general guidelines with respect to the mandate and governance structure for such a consumer agency. It also states that the consumer agency's structure and mandate would be approved by the Commission.

3. In response to the Order, certain telecommunications service providers (TSPs) - Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Cogeco Cable Canada Inc.; MTS Allstream Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Inc.; Saskatchewan Telecommunications; TELUS Communications Company; Virgin Mobile Canada; and Vonage Canada Corporation - established the Commissioner for Complaints for Telecommunications Services Inc. (the Agency). These TSPs were later joined by Bragg Communications Incorporated and are collectively referred to in this Decision as the Founding Members. The Agency began operating on 23 July 2007. The Founding Members filed a proposal with the Commission on that same date, which they subsequently amended, in which they submitted that the Agency fulfilled the expectations set out in the Order.

4. In Telecom Public Notice 2007-16, the Commission initiated a proceeding, including a public consultation, and invited comments on, among other things, the structure and mandate of the Agency.

5. The Commission received written comments in connection with the proposal, and numerous parties made oral presentations at the public consultation. Participating parties are listed in Appendix 1 to this Decision. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca, under "Public Proceedings."

6. The record of the proceeding closed on 23 November 2007.

Overview

7. The Order states that all TSPs should participate in and contribute to the financing of a consumer agency that would be independent from the telecommunications industry and would be effective in responding to the telecommunication complaints of individual and small business retail customers (consumers).

The Founding Members submitted that the Agency was a new industry-established dispute resolution mechanism for telecommunications consumers and that its governing body, once finalized, would be independent from the telecommunications industry. They also submitted

8. that, as such, the Agency met the expectations set out in the Order. The Founding Members further submitted that if the Commission, in approving the Agency's structure and mandate, were to find that certain modifications were required, the Commission should only modify the Agency to the extent required to meet the Order's expectations.

TSPs that had not become members of the Agency generally supported the key principles of the Founding Members' proposal, including the principle of voluntary membership. **TSPs represented by the Canadian Cable Systems Alliance Inc. (CCSA) and the Canadian**

9. **Independent Telephone Company Joint Task Force (collectively, small TSPs), as well as Primus Telecommunications Canada Inc. (Primus), expressed concerns about the financing of the Agency and other requirements for TSPs if membership in the Agency were mandatory.**

The Consumer Groups¹ submitted that the Agency, as proposed, did not meet the expectations

10. of the Order, notably the expectation that it be effective for consumers and independent from the telecommunications industry.

The Commission acknowledges the efforts made by the Founding Members to both establish the Agency shortly after the issuance of the Order and to meet the expectations set out in the Order. The Commission notes that parties to this proceeding submitted many

11. recommendations, with a view toward making the Agency more effective, independent, and consumer-friendly. Based on the record of the proceeding, the Commission considers that some modifications, as set out in this Decision, are required to ensure the Agency's effectiveness and independence.

12. In this Decision, the Commission will consider the key issues of membership, governance structure, mandate, and remedies, as well as other matters.

I. Membership

The Order states that all TSPs should participate in and contribute to the financing of an effective consumer agency. The Order also states that the consumer agency should have a

13. budget set by its governing body and provided by the industry at a level sufficient to effectively execute its mandate.

The Founding Members proposed that membership in the Agency be voluntary. They

14. considered that based on the current level of TSP participation in the Agency, the interests of most consumers would be protected without requiring mandatory membership.

The Founding Members stated that mandatory membership would not be inconsistent with *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications*

15. *Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction); however, they considered that voluntary membership was more in keeping with the principles of the Policy Direction.

16. The Founding Members proposed a funding formula that, in their view, would provide sufficient funding for the Agency to fulfill its mandate. They indicated that the minimum fee for enrolling in the Agency, which would apply to smaller TSPs, would be \$1,000.

17. Shaw Communications Inc. (Shaw) submitted that mandatory membership in the Agency would be contrary to the Policy Direction since there was no evidence that market forces could not be relied upon to ensure that non-member TSPs participated in consumer complaints resolution processes.

18. Those TSPs that were not members of the Agency generally supported voluntary membership and argued that market forces would be sufficient to encourage TSPs to enrol. They submitted that the Commission might not have the authority to require TSPs to participate in and fund an Agency that could impose binding monetary decisions. They also submitted that mandatory membership raised logistical and enforcement issues.

19. The small TSPs and Primus expressed concerns about how the Agency would be financed if membership were made mandatory. Primus submitted that it should not bear full responsibility for the costs associated with complaints that involved an underlying service provider.

20. The CCSA submitted that if membership were mandatory, exemptions should be made for smaller TSPs to minimize administrative and financial concerns.

21. The Consumer Groups generally favoured mandatory membership for all TSPs because they considered that maximum participation in the Agency would benefit the maximum number of consumers and would secure the longevity of the Agency. The Consumer Groups submitted that mandatory membership for all TSPs would be competitively neutral. They also submitted that the Order, not market forces, was driving the development of the Agency.

22. Both the Founding Members and the Consumer Groups indicated that when a provider refused to join the Agency, it would be preferable for a Commission-led process to be undertaken to discipline non-member TSPs, rather than requiring the Agency to do so.

Commission's analysis

(i) Mandatory versus voluntary membership

23. The Commission notes that several major TSPs, including Shaw and Primus, have not yet joined the Agency. The Commission considers that in order for the Agency to be effective, its membership must be as comprehensive as possible to ensure that as many consumers as possible have access to the Agency's complaint resolution services. Therefore, it may be appropriate to make membership in the Agency mandatory.

24. The Commission considers, however, that the duties and fees associated with membership in the Agency could have an adverse impact on smaller TSPs and could raise administrative concerns. As such, the Commission considers that it may be appropriate to not require smaller TSPs to become members.

- The Commission notes that TSPs with annual Canadian telecommunications service revenues in excess of \$10 million account for approximately 95 percent of total Canadian telecommunications service revenues. The Commission considers that establishing a membership requirement threshold at that level would ensure that membership in the Agency is sufficiently comprehensive.

(ii) Application of the Policy Direction

26. The Commission notes that several parties made submissions regarding the applicability of the Policy Direction to the issue of membership in the Agency.
27. In regard to subparagraph 1(b)(i) of the Policy Direction, the Commission considers that a requirement that TSPs with annual Canadian telecommunications service revenues in excess of \$10 million become members of the Agency would advance the policy objectives set out in paragraphs 7(b), (f), and (h) of the *Telecommunications Act* (the Act).
28. With regard to subparagraph 1(a)(i) of the Policy Direction, the Commission notes that TSPs did not establish the Agency until after the Governor in Council had issued the Order. The Commission also notes that while the Order states that all TSPs should participate in the Agency, not all major TSPs have become members. Accordingly, the Commission considers that it cannot rely on market forces to achieve the policy objectives referred to above.
29. With respect to subparagraphs 1(a)(ii) and 1(b)(iii) of the Policy Direction, the Commission considers that requiring TSPs to become members of the Agency would be efficient and proportionate to its purpose, would interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives referred to above, and would be implemented in a symmetrical and competitively neutral manner. The Commission considers that requiring all TSPs with annual Canadian telecommunications service revenues above \$10 million to be members of the Agency would ensure that as many consumers as possible would have recourse to the Agency for complaints related to telecommunications services, without a significant administrative and financial burden being imposed on TSPs.

(iii) Funding

30. Regarding Primus's concern about responsibility for costs associated with complaints involving an underlying service provider, the Commission considers that funding is an issue best determined by the Agency's membership and governing body, as long as the Agency is sufficiently funded to effectively execute its mandate. The Commission also considers that, in the context of the Agency's complaints resolution process, the TSP with the direct consumer relationship should be accountable to the complainant.

Commission's determinations

31. The Commission determines, under section 24 of the Act, that
- as a condition of providing telecommunications service, commencing 1 February 2008, all Canadian carriers with annual Canadian telecommunications service revenues exceeding \$10 million in the previous fiscal year, as reported to the Commission under the contribution regime, are required to be members of the Agency; and

- as a condition of providing telecommunications service to any reseller, all Canadian carriers are required to include in their service contracts and other arrangements with such resellers the stipulation that, commencing 1 February 2008, any such reseller exceeding the threshold noted above is required to be a member of the Agency.

32. The Commission's approval is conditional on all applicable Agency documents being amended to reflect the mandatory membership requirements set out above.

33. The Commission finds that its determinations on membership are consistent with the Policy Direction.

The Commission expects that when the Agency receives a complaint from a customer of a TSP that may be required to be, but is not yet, a member of the Agency, the Agency will notify the Commission, and the Commission will take appropriate action.

34. The Commission also expects the Agency to continue to refine the funding model to encourage the enrolment of those TSPs with annual Canadian telecommunications service revenues of \$10 million or less and to address other budgeting concerns.

II. Governance structure

The Order states that the consumer agency should be independent from the telecommunications industry and should be directed by a governing body composed of (a) a majority of members who are not affiliated with any TSP and (b) a chief executive officer who is appointed by the governing body and is not affiliated with any TSP.

36. The Founding Members proposed that the Agency have two primary decision makers - a board of directors (Board) and a Commissioner (the chief executive officer or CEO). They submitted that the Board would administer the affairs of the Agency, while the CEO's primary responsibility would be to investigate, assist in the resolution of, and make recommendations and decisions related to complaints. They also indicated that the CEO would operate independently of the Board.

The Founding Members proposed a Board comprised of three directors representing the telecommunications industry (industry directors) and four directors independent of telecommunications industry affiliation (independent directors). The Founding Members proposed that consumer groups be responsible for appointing two of the four independent directors and that the other two be nominated through an independent process. These directors are referred to as consumer-group-appointed independent directors and other independent directors, respectively.

The Founding Members submitted that an independent three-person ad hoc nominating committee would nominate the initial candidates for the positions of other independent directors. They also submitted that the provisional Board² would not be able to veto those nominations. Thereafter, replacements for the positions of other independent directors would be nominated by the independent directors. They noted that the ad hoc nominating committee had been organized by a national executive search firm and operated at arm's length from the provisional Board.

The Founding Members proposed that, among other restrictions, people employed by a TSP or a consumer advocacy group within the previous three years be excluded from nomination as other independent directors. The Founding Members also proposed that the independent directors would nominate candidates for the position of CEO and that the eligibility criteria for the CEO would be the same as for the other independent directors.

Regarding Board decisions, the Founding Members proposed different voting approval thresholds - simple majority votes, special resolutions,³ extraordinary resolutions,⁴ and unanimous approval by industry directors only - depending on the matter to be decided.

The Founding Members proposed that, among other things, (a) the approval of the annual report and any reports on issues and trends be subject to simple majority vote; (b) special resolutions apply to such matters as the appointment of other independent directors and the chair of the Board (the Chair); (c) extraordinary resolutions apply to such matters as the development and ratification of industry codes of conduct or standards; amendments to the letters patent, bylaws, membership agreement, and procedural code; the appointment of the CEO; the removal of the CEO or the Chair; and the approval or amendment of the annual budget and business plan; and (d) unanimous industry approval apply to changes to the Agency's funding model.

The Consumer Groups considered that the proposed governance structure was not sufficiently independent of the telecommunications industry to meet the expectation set out in the Order. They proposed a modified governance structure with equal representation of consumer-group-appointed and TSP-appointed directors: specifically, three industry directors, three consumer-group-appointed directors, and one director that would be independent from both TSPs and consumer groups. **ARCH Disability Law Centre (ARCH)** proposed that there be representation from the disability community on the Board.

The Consumer Groups argued that it was inappropriate for the Founding Members to suggest that independence from the telecommunications industry should include independence from consumer advocacy groups. In this regard, the Consumer Groups proposed that the clause that prevented persons employed by a consumer advocacy group within the previous three years from being eligible to become other independent directors be removed.

The Consumer Groups considered that since the Board had responsibility for both corporate governance and policy-making, the requirement for certain special and extraordinary resolutions compromised the independence of the Agency.

In this regard, the Consumer Groups considered that amendments to matters such as the procedural code and bylaws would be required to expand the Agency's procedures and mandate in order to better serve consumers, but that the industry directors would likely block any proposed amendments if such measures conflicted with the interests of TSPs.

The Consumer Groups also objected to the voting approval thresholds for the appointment and removal of the CEO and the Chair. They considered that there was no need to give TSPs disproportionate influence on those matters since those positions were already subject to independence criteria.

- The Consumer Groups further objected to the requirement for Board approval on industry trends and systemic issues. They indicated that the CEO should be free to research and report on those issues without Board approval.

Commission's analysis

- The Commission notes that the proposed Board is comprised of a majority of directors not affiliated with TSPs and considers this to be appropriate. The Commission also considers the proposed division of independent directors into two consumer-group-appointed and two other independent directors to be appropriate.
- The Commission considers the process for nominating the initial other independent directors to be appropriate given that the members of the ad hoc nominating committee were selected by an independent firm, the members of the ad hoc committee were independent from the industry, and the provisional Board could not veto the nominations of the ad hoc committee. The Commission notes, however, that there is currently no process in place for the nomination and appointment of the two consumer-group-appointed directors. The Commission considers that the Consumer Groups active in this proceeding should establish a transparent process for the nomination and appointment of the consumer-group-appointed directors.
- The Commission considers that the proposed nomination restrictions described in paragraph 40 and voting thresholds described in paragraph 42 should be modified in order to ensure an effective and independent Agency.
- The Commission considers that the restriction prohibiting persons employed by a consumer advocacy group within the previous three years from being eligible as other independent directors is unwarranted. In this regard, consistent with the Order, the Commission considers that the Agency is to be independent from only the telecommunications industry, not consumer advocacy groups. The Commission also considers that other independent directors should be selected from among the best candidates available to the Agency, provided that there is no recent industry affiliation.
- The Commission considers that requiring special and extraordinary resolutions for Board approval on certain matters, as proposed, would enable industry directors to limit the Agency's effectiveness and independence. Accordingly, the Commission considers that the voting resolutions should be modified as follows: a simple majority vote would be required for the appointment of the Chair, appointment of the CEO, and approval, repeal, or amendment to the procedural code; and a special resolution would be required for the approval, repeal, or amendment of any bylaws (except regarding the funding formula) and removal of the CEO or Chair. The Commission considers that the other voting thresholds, as proposed, would be appropriate.

Commission's determinations

- The Commission concludes that the Agency's proposed governance structure, including the nomination processes, is generally appropriate. However, the Commission's approval is conditional on all applicable Agency documents being amended to

- remove restrictions that prohibit persons employed by a consumer advocacy group within the previous three years from eligibility as other independent directors, and
- reflect the voting approval thresholds set out in Appendix 2 to this Decision.

III. Mandate

55. The Commission considers that there are four sub-issues to be addressed with respect to the mandate of the Agency: the scope of eligible complaints, industry codes of conduct and standards, identification of trends that may warrant further attention, and the annual report.

(i) Scope of eligible complaints

56. The Founding Members provided a list of telecommunications services and matters to be included in the scope of eligible complaints for the Agency, to which no party objected.
57. The Founding Members also provided a list of telecommunications services and matters to be excluded from the scope of eligible complaints. This list included, among other things, regulated services, claims of false or misleading advertising, policy matters, prices, privacy/confidentiality, general operating practices, and complaints more appropriately dealt with by another tribunal.
58. The Founding Members argued that it would not be appropriate to include regulated services in the scope of eligible complaints since consumers of regulated services had recourse to the Commission. However, they submitted that the Agency would accept complaints related to bundles that combined forborne and regulated services.
59. The Consumer Groups submitted that the Agency would most benefit consumers if the scope of ineligible complaints were as limited as possible. In this regard, they argued that many of the categories of ineligible complaints were overly broad and/or vague and could exclude many complaints. The Consumer Groups submitted that regulated services should be in the scope of eligible complaints, in order to reduce consumer confusion. Accordingly, the Consumer Groups opposed most of the proposed exclusions.
60. The Competition Bureau submitted that the Agency's mandate should be expanded to include complaints related to false or misleading advertising.

Commission's analysis

61. The Commission notes that while the Order sets out that the mandate of the consumer agency should include resolving complaints from consumers, it does not otherwise define the scope of eligible complaints.

62. Given that the Agency has only recently begun operating and that the Commission has jurisdiction over regulated services, the Commission considers that it would not be appropriate at this time to expand the Agency's mandate to include resolving complaints regarding regulated services.

63. The Commission notes the concerns expressed by the Consumer Groups that many of the matters proposed to be out of scope appear overly broad or vague and that the inflexible application of these categories might result in many valid complaints being deemed out of scope by the Agency.

Commission's determinations

64. The Commission concludes that the list of telecommunications services and matters deemed to be in and out of scope of the Agency's mandate is generally appropriate at this time. However, the Commission expects

- the Board to review the list of services and matters deemed to be outside the scope of the Agency's mandate and provide clear definitions, with examples, of these services and matters; and
- the Agency to track complaints deemed to be out of scope and categorize them by type of ineligible complaint.

(ii) Industry codes of conduct and standards

65. The Order states that the mandate of the consumer agency should include the development or approval of related industry codes of conduct and standards.

66. The Founding Members submitted that the Agency might assist in the development or approval of industry-related codes or standards, but only at the request of a TSP member, a director of the Board, or the CEO.

Commission's analysis

67. The Commission considers that the list of parties that may request that the Agency develop industry codes or standards should be expanded to include the Commission. The Commission considers that any industry codes or standards that it requests from the Agency should be filed with the Commission, once they have been approved by the Board.

Commission's determinations

68. The Commission's approval is conditional on all applicable Agency documents being amended to

- expand the list of parties who may request that the Agency develop industry codes or standards to include the Commission; and
- require the filing with the Commission of any industry codes or standards that it requests from the Agency, once they have been approved by the Board.

(iii) Identification of trends that may warrant further attention

69. The Order states that the mandate of the consumer agency would include identifying issues or trends that may warrant further attention by the Commission or the government.

The Founding Members indicated that, at the request of TSP members, the Agency could identify and report on issues or trends within its mandate that might warrant further attention by its members, the Commission, or the government. The Founding Members indicated that such reports would maintain the confidentiality of TSP members.

The Consumer Groups did not consider it appropriate to limit the identification of issues or trends to TSP requests only. The Consumer Groups submitted that the Agency's CEO would be in a position to provide valuable input to the Commission and the government on systemic issues and should be empowered to inquire into, report on, and make recommendations to the industry and to the Commission on issues of consumer concern involving the telecommunications industry, even where such issues might not qualify as eligible consumer complaints. The Consumer Groups opposed the proposal that TSPs never be named in reports about systemic issues.

Commission's analysis

The Commission considers that the ability to identify and report on trends and systemic issues is an important function of the Agency. The Commission also considers that the list of parties who may identify trends or systemic issues that may warrant further attention should be expanded to include any director of the Board, the CEO, and the Commission. Further, the scope of such reports should include matters outside the Agency's scope of eligible complaints for these reports to be comprehensive and effective. Finally, such reports should identify individual TSP members, where appropriate.

Commission's determinations

73. The Commission's approval is conditional on all applicable Agency documents being amended to

- expand the list of parties that may identify trends or systemic issues for Agency reports to include any director of the Board, the CEO, and the Commission; and
- include matters outside the Agency's scope of eligible complaints in reports that identify trends or systemic issues, and identify individual TSP members in these reports, where appropriate.

(iv) The annual report

74. The Order states that the mandate of the consumer agency should include publishing an annual report on the nature, number, and resolution of complaints received for each TSP.

The Founding Members indicated that the Agency would publish an annual report, following its annual general meeting, describing the nature, number, and resolution by stage of eligible complaints for each TSP member. Parties did not object to this proposal.

Commission's analysis

76. The Commission considers the Founding Members' proposal to be generally appropriate in this regard. The Commission also considers that the annual report should be published within a reasonable timeframe after the Agency's fiscal year-end.

Commission's determination

77. The Commission's approval is conditional on all applicable Agency documents being amended to require the publication of its annual report within 90 days following the end of the Agency's fiscal year.

IV. Remedies

78. The Founding Members proposed that the Agency's remedies available to consumers include requiring a TSP to (a) provide an explanation or an apology, (b) undertake to do or cease a specified activity or activities, and (c) provide monetary compensation.

79. The Founding Members proposed that the CEO be able to recommend monetary compensation of up to \$1,000, but that any binding award granted by the CEO at the final decision stage be subject to any applicable limitation of liability clause contained in the TSP's contract. They noted that amounts refunded or credited as a result of billing errors would not constitute monetary compensation and were not subject to the \$1,000 limit. The Founding Members submitted that monetary compensation was limited to \$1,000 since a limit in excess of this threshold would, in their view, require that the Agency develop further procedural safeguards, similar to those found in small claims courts.

80. The Founding Members submitted that the appropriate level of limitation of liability should be determined by the market. In their view, the CEO must apply contractual limitations of liability at the final decision stage of the complaints resolution process because the courts enforce limitation of liability clauses. The Founding Members also argued that very few complaints were expected to reach the final stage in the Agency's complaints resolution process and that the CEO would not be prevented from issuing non-binding recommendations for monetary compensation exceeding contractual limitations of liability prior to that stage. In their view, the Order did not contemplate that TSPs should waive limitation of liability clauses.

81. Primus submitted that if the Commission empowered the Agency to overrule limitation of liability clauses, it would amount to re-regulation or, in the case of resellers, regulating TSPs' terms and conditions of service for the first time.

82. The Consumer Groups submitted that the limit of \$1,000 was inappropriately low. They argued that, for example, the failure of a TSP to provide telecommunications services to consumers could result in a considerable loss to the consumer. The Consumer Groups proposed raising the limit to \$10,000 and submitted that raising the limit would not require any additional procedural safeguards. **The Canadian Internet Policy and Public Interest Clinic (CIPPIC)** argued that the Agency had similar procedural safeguards to small claims courts, which it noted had the power to award compensation of up to \$10,000 in some cases.

The Consumer Groups also opposed the Founding Members' proposal to have contractual limitations of liability supersede the CEO's monetary compensation decisions since this would hinder the Agency's ability to award meaningful monetary compensation. The Consumer Groups noted that TSP service contracts generally included limitations of liability of no greater than \$100.

CIPPIC argued that courts would not necessarily enforce limitation of liability clauses. It considered that courts would not enforce any of the TSP limitation of liability clauses that it had reviewed. CIPPIC submitted that if the Agency's procedural safeguards were sufficient for the Founding Members with respect to matters of breach of contract, then they should be sufficient for limitation of liability clauses.

Commission's analysis

The Commission notes that no party objected to the proposal that the CEO have the power to require a TSP to (a) provide an explanation or an apology to the consumer, (b) undertake to do or cease a specified activity or activities, and (c) provide monetary compensation to the consumer for losses associated with certain complaints. The Commission considers it appropriate that the Agency have access to the above-noted remedies.

The Commission considers that an independent dispute resolution scheme would not be effective at resolving many consumer disputes if it could not provide meaningful financial compensation to the consumer.

The Commission notes that certain consumers, particularly small business customers, could incur losses in excess of the Agency's current \$1,000 threshold during a dispute with their TSP. The Commission considers that the CEO should therefore have greater flexibility to award compensation to adequately compensate the loss incurred and that it would be inappropriate for the Agency to be limited to awarding amounts not exceeding \$1,000.

The Commission notes that courts do not always apply limitation of liability clauses. The Commission considers that it would be inappropriate to allow a limitation of liability clause in a customer contract to effectively overrule a binding decision made by the CEO since doing so would effectively render illusory the Agency's ability to award consumers meaningful financial compensation.

The Commission considers that a compensation limit of \$5,000 per complaint for the Agency should provide sufficient financial compensation to consumers who have disputes with their TSPs. The Commission does not consider that additional procedural safeguards would be necessary as a result of such an increase in monetary compensation.

Commission's determinations

90. The Commission's approval is conditional on all applicable Agency documents being amended
- such that the CEO is not, in the case of binding decisions, constrained by contractual limitations of liability; and
 - to give the CEO the power to award compensation up to \$5,000 per complaint.

V. Other matters

91. The Commission considers that there are three other matters to be addressed in this Decision: operating procedures, public awareness campaign, and future review of the Agency.

(i) Operating procedures

92. The Founding Members proposed operating procedures for the Agency that addressed, among other things, the methods by which a consumer might make a complaint, the timeliness of the complaint resolution process, and the transfer of complaints that would be more appropriately dealt with by another body.

93. The Founding Members proposed that the methods by which a consumer might make a complaint be limited to mail, fax, or web form. They indicated that it was appropriate for the Agency not to accept complaints made via other mediums, including telephone and email, in order to facilitate the full development of the record of the complaint.

94. The Founding Members also proposed that the Agency not accept complaints made by consumer organizations. They indicated, however, that the CEO would have the discretion to treat certain complaints as group complaints if the same circumstances applied to each complaint.

95. The Founding Members submitted that all aspects of the Agency's complaint process should be accessible to all people, but they indicated that its complaint process was not yet fully accessible to people with disabilities. The Founding Members also submitted that the Agency's CEO would be responsible for developing fully accessible operations and information. In this regard, the Founding Members indicated that the CEO would have the discretion to accept complaints in non-written form under certain circumstances.

96. The Founding Members indicated that the Agency's complaint resolution process comprised four stages, with specific timelines associated with a TSP's response at each stage. They indicated that while there were no specific timelines associated with the Agency's deliberations during the process, the CEO could put in place performance standards for the Agency's work. They also indicated that while the Agency did not have a formal process for urgent matters, the CEO would have the discretion to shorten service intervals in some situations, such as where disconnection was imminent.

97. The Founding Members indicated that the Agency had developed working relationships with the Commission and other relevant agencies in order to share information on operational processes and to encourage properly directed transfers of complaints that were outside of the scope of the Agency.

98. The Consumer Groups raised concerns about several of the Agency's operating procedures. They considered it inappropriate to limit the Agency's methods of accepting complaints because such limitations would make the Agency less accessible to consumers. Accordingly, the Consumer Groups proposed that the Agency also accept complaints via telephone, via email, or in person. They also indicated that the Agency should allow consumer organizations to present complaints on behalf of parties since this might be easier and/or more effective for certain consumers.

99. ARCH and the Canadian Association of the Deaf argued that, for the Agency to effectively accomplish its mandate, it must be fully accessible to all Canadians, including those with disabilities. ARCH submitted that the Agency should be willing to accept complaints in any form that met the needs of the complainant. ARCH submitted that the Agency should engage in meaningful and ongoing consultations with people with disabilities and disability-related organizations.

100. The Consumer Groups submitted that the timelines for TSPs to respond to complaints were too long and should be reduced. Non-member TSPs suggested that the Agency's timelines be flexible, recognizing the differences in how they resolved complaints.

101. The Consumer Groups also indicated that there should be a time limit on the Agency's deliberations. ARCH submitted that the Agency's timelines must be sufficiently flexible to accommodate people with disabilities. The Consumer Groups further indicated that the Agency should develop a formal process for urgent issues, such as disconnection.

102. The Consumer Groups and the Competition Bureau submitted that procedures among various parties should be formalized in order to coordinate complaint handling among the Agency, the Commission, and the Competition Bureau.

Commission's analysis

103. The Commission considers that the Agency and its complaint resolution process should be consumer-friendly and notes that several parties proposed detailed modifications to the Agency to achieve this goal. In this regard, the Commission considers that the Agency should (a) modify its complaint resolution process in order for it to be accessible to all telecommunications consumers, (b) ensure that the complaint resolution process is timely, and (c) ensure that complaints more appropriately addressed by another body are transferred efficiently to that body.

104. The Commission considers that the Agency should accept complaints from any consumer via telephone, email, and teletypewriter (TTY), as well as via mail, fax, and web form. The Commission also considers that the Agency should accept collective complaints as well as complaints made by a consumer organization on behalf of a consumer or group of consumers. The Commission considers that the Agency should be more accessible to consumers, particularly to people with disabilities, and that it should make the Agency's services accessible early in the development process. Accordingly, the Commission considers that the Agency should meet, at a minimum, the standards of accessibility offered by the TSP with the highest accessibility standards. Further, the Commission considers that the CEO should consult with groups representing people with disabilities, with a view toward improving the Agency's operating procedures.

106. The Commission also considers that the activities at each stage of the complaint resolution process, including those performed by the Agency, should be subject to an appropriate and measurable time frame. The Commission considers that the Agency should publish a report on these performance standards on its website and update such information quarterly.

The Commission notes that it has procedures in place to deal with urgent matters, such as
107. disconnection of primary exchange service, on an expedited basis and considers that the Agency should develop similar procedures.

Commission's determinations

108. The Commission expects

- the Agency to meet, at a minimum, the standards of accessibility offered by the TSP with the highest accessibility standards as soon as possible;
- the Board to review and consider the other detailed modifications proposed by parties in this proceeding, with a view toward making the Agency's procedures more consumer-friendly; and
- the Agency to establish a coordinating committee, comprising staff from the Agency, the Commission, and other organizations responsible for handling telecommunications-based complaints, in order to develop, among other things, an efficient referral/transfer process and a method to identify regulated and forborne local services and service areas.

109. The Commission requests that the Agency report to the Commission on the following matters:

- the acceptance of (a) any complaint made via telephone, email, and TTY; (b) collective complaints; and (c) complaints made by a consumer organization on behalf of one or more consumers;
- the establishment of seamless transfers, where appropriate, to other organizations responsible for handling telecommunications-based complaints, including live transfers to the Commission;
- the improvements to the Agency's accessibility, pursuant to consultations with groups representing people with disabilities;
- the development of performance standards for the Agency; and
- the development of expedited procedures for urgent matters.

The Commission requests the Agency to file, within three months of the date of this Decision,
110. an update on its operating procedures, as well as its revised procedural code reflecting the Board's review of the above-noted matters.

(ii) Public awareness campaign

The Founding Members proposed that the CEO be responsible for developing a public
111. awareness campaign for the Agency. They indicated that TSP members would be involved in the campaign as appropriate - for example, by including information about the Agency on TSP members' websites and in their directories.

The Consumer Groups submitted that the Agency should undertake a public awareness campaign that would clearly identify its procedures to the public. They also submitted that TSP members should provide information to consumers regarding the Agency's role, contact procedure, and contact information on their websites, in promotional literature, and on billing statements.

Commission's analysis

The Commission considers that the Agency would be more effective if there were broad public awareness regarding its role, responsibilities, and procedures. The Commission also considers that an appropriate communications plan would incorporate public awareness requirements for both the Agency and its TSP members.

The Commission considers that TSP members should use a variety of communications methods, such as directories, websites, and a standard notation on all billing statements, to inform consumers about the Agency. The Commission also considers that if an initial attempt by a TSP member to resolve a consumer's dispute fails, the TSP should inform the consumer about the Agency.

The Commission further considers that the Agency should allocate sufficient resources and develop a plan for its initial and ongoing public awareness campaigns.

Commission's determinations

The Commission requests that the Agency

- develop a comprehensive communications plan for both the Agency and its TSP members, which should include a standard notation for all TSP member billing statements;
- file the communications plan with the Commission, within three months of the date of this Decision; and
- include, in all applicable Agency documents, the TSP members' responsibilities regarding the communications plan.

(iii) Future review of the Agency

The Commission considers that it would be appropriate to conduct a review of the Agency's structure and mandate, as well as related matters, in the future to examine how well the Agency is operating.

Accordingly, the Commission determines that it will initiate a review of the Agency, no later than three years after the Agency meets the conditions of approval set out in this Decision. The scope of the review will be determined at that time.

Conclusion

119. The Commission **approves** the structure and the mandate of the Agency on the condition that all applicable Agency documents are amended as set out in this Decision.

The Commission expects the Founding Members to file, within 45 days of the date of this Decision, a copy of the Agency's membership agreement, bylaws, and procedural code, updated to include the required changes.

Secretary General

Related document

- *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services*, Telecom Public Notice CRTC 2007-16, 22 August 2007

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: www.crtc.gc.ca

Footnotes:

- 1 In this Decision, the term "Consumer Groups" refers collectively to ARCH Disability Law Centre (ARCH); the British Columbia Public Interest Advocacy Centre for BCOAPO; the Canadian Internet Policy and Public Interest Clinic (CIPPIC); the Public Interest Advocacy Centre, as counsel for the Consumers Council of Canada and the National Anti-Poverty Organization; and l'Union des consommateurs.
- 2 The provisional Board, which includes representatives from two TSPs and an associated law firm, is the governing body of the Agency until the permanent Board is established.
- 3 Special resolutions require the approval of at least 2/3 of the Board.
- 4 Extraordinary resolutions require the approval of at least 2/3 of industry directors and at least 2/3 of the independent directors.

Appendix 1

Participating parties

The following parties filed submissions and/or comments during this proceeding, and many also participated in the oral consultation:

- **ARCH Disability Law Centre (ARCH)**
- Bell Aliant Regional Communications, Limited Partnership
- Bell Canada
- Bragg Communications Incorporated
- **The British Columbia Public Interest Advocacy Centre for BCOAPO**
- The Canadian Association of the Deaf

- **The Canadian Broadcast Standards Council**
- **The Canadian Cable Systems Alliance Inc. (CCSA)**
- The Canadian Independent Telephone Company Joint Task Force (**CITC-JTF**)
- **The Canadian Internet Policy and Public Interest Clinic (CIPPIC)**
- The Commissioner of Competition (the Competition Bureau)
- Cogeco Cable Canada Inc.
- Execulink Telecom Inc.
- MTS Allstream Inc.
- Northwestel Inc.
- Primus Telecommunications Canada Inc.
- The Public Interest Advocacy Centre, as counsel for Consumer Council of Canada and National Anti-Poverty Organization
- Quebecor Media Inc., on behalf of Videotron Ltd.
- Rogers Communications Inc.
- Saskatchewan Telecommunications
- **Shaw Communications Inc. (Shaw)**
- Télébec, Limited Partnership
- TELUS Communications Company
- **L'Union des consommateurs**
- Virgin Mobile Canada
- Vonage Canada Corporation
- **Mr. Christopher Smithers**

Appendix 2

Voting approval thresholds for decisions of the Board

Board decision

- Appointment of auditor(s) and fixing the remuneration of the auditor(s)
- Appointment of a secretary or treasurer
- Approval of the annual report
- Appointment of the Chair

Voting threshold

Majority vote

Majority vote

Majority vote

Majority vote

- | | |
|--|--------------------------|
| • Appointment of the CEO | Majority vote |
| • Approval, repeal, or amendment of provisions to the procedural code | Majority vote |
| • Other business that may be transacted at a Board meeting | Majority vote |
| • Approval of reports on issues and trends | Majority vote |
| • Election of an independent director (excluding consumer-group-appointed independent directors) | Special resolution |
| • Approval, repeal, or amendment of any bylaws, except for the funding formula | Special resolution |
| • Removal of a TSP as a member of the Agency | Special resolution |
| • Removal of a director (in certain circumstances) | Special resolution |
| • Removal of the CEO or Chair | Special resolution |
| • Approval of, or amendment to, the annual budget and business plan | Extraordinary resolution |
| • Amendment of the letters patent | Extraordinary resolution |
| • Approval of industry codes of conduct and standards | Extraordinary resolution |
| • Approval of, or amendment to, the funding formula | Unanimous TSP vote |

Date Modified: 2007-12-20

Date modified:

2007-12-20

This is Exhibit "R" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

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**COMMISSION FOR COMPLAINTS FOR TELECOM-TELEVISION SERVICES INC. /
COMMISSION DES PLAINTES RELATIVES AUX SERVICES DE TÉLÉCOM- TÉLÉVISION INC.**

PROCEDURAL CODE

(Amended and Restated effective September 1, 2017)

1. Interpretation

1.1 In this Code,

- (a) **“CCTS”** means the Commission for Complaints for Telecom-television Services Inc. / Commission des plaintes relatives aux services de télécom-télévision inc.;
- (b) **“Code”** means this Procedural Code, as amended from time to time;
- (c) **“Commissioner”** means the Chief Executive Officer of CCTS;
- (d) **“CRTC”** means the Canadian Radio-television and Telecommunications Commission;
- (e) **“Customer”** means (i) an individual or Small Business that received, or has contracted to receive, telecommunications services from a Participating Service Provider; and (ii) an individual that received, or has contracted to receive, television services from a Participating Service Provider;
- (f) **“Decision”** means a Decision of the Commissioner made under Section 13;
- (g) **“Participating Service Providers”** means those telecommunications service providers and television service providers who are required to, and have, become participants in CCTS as shown from time to time on the CCTS’ website;
- (h) **“Recommendation”** means a Recommendation of the Commissioner under Section 12; and
- (i) **“Small Business”** means a business whose: (i) net monthly invoice for all telecommunications services in the month preceding the month in which a complaint is made against such Participating Service Provider; or (ii) average net monthly invoices for all telecommunications services in the three (3) month period preceding the month in which a complaint is made against such Participating Service Provider, did not exceed \$2,500.

2. Functions, Powers and Duties of Commissioner

2.1 The Commissioner shall:

- (a) receive and assess the eligibility of complaints and determine whether a complaint falls within the scope of this Code;
- (b) deal with complaints impartially and efficiently after attempts at resolution between a Customer and a Participating Service Provider have proven ineffective, either:
 - (i) by informal resolution, including mediation, conciliation or other forms of informal dispute resolution; or

(ii) by investigation, Recommendation and Decision;³⁴⁹

- (c) carry out the functions, powers and duties prescribed in this Code, and such other functions, powers and duties as may be directed by the Board of Directors of CCTS from time to time; and
- (d) be bound by and at all times act within and give effect to this Code.

2.2 In carrying out his or her functions, powers and duties, the Commissioner shall act in a manner that is independent and impartial, accessible and efficient. Without limiting the generality of the foregoing, the Commissioner shall:

- (a) remain impartial to the interests of the Participating Service Providers, as between the Participating Service Providers, and from and as between their respective customers;
- (b) not act as an advocate for Participating Service Providers, customers, or any other person;
- (c) provide the services of his or her office in English and French and in such other languages as the Commissioner deems appropriate;
- (d) endeavour to secure the most appropriate, efficient and effective resolution of every complaint on its merits;
- (e) provide the services of his or her office without charge to Customers;
- (f) provide the services of his or her office in a non-legalistic manner; and
- (g) follow cost-effective business practices in order to provide the services of his or her office in an economically efficient manner.

3. Scope

3.1 The Commissioner is authorized to receive complaints from Customers regarding: (i) forborne (unregulated) retail telecommunications services provided by Participating Service Providers; and (ii) retail residential subscription television services provided by Participating Service Providers. Examples of services and subjects which fall outside the Commissioner's scope, are set out in the following list:

- (a) exceptions to telecommunications services: (i) Internet applications or content; (ii) emergency services; (iii) payphones; (iv) yellow page or business directories; (v) telemarketing or unsolicited messages; and (vi) 900 and 976 services;
- (b) exceptions to television services: (i) digital media broadcast undertaking (DMBU) services, which are services generally delivered or accessed over the Internet or delivered using point-to-point technology and received by way of mobile devices; (ii) interactive services and applications provided by TV service providers; (iii) broadcasting content; (iv) journalistic ethics; (v) accessibility issues, for example closed captioning and described video; and (vi) simultaneous substitution; and
- (c) other applicable exceptions: (i) equipment; (ii) inside wiring; (iii) security services, such as alarm monitoring; (iv) networking services; (v) pricing of products or

services; (vi) rights of way; (vii) plant (including, without limitation, poles, towers, conduits, trenches and other support structures); (viii) claims of false and misleading advertising; and (ix) privacy issues. ³⁵⁰

4. Standard of Review by Commissioner

- 4.1 The Commissioner shall investigate, assist in the resolution of, and make Recommendations and Decisions in relation to complaints with a view to determining whether the Participating Service Provider reasonably performed its obligations pursuant to the applicable contract and followed its usual policies and operating procedures in its dealings with the Customer.
- 4.2 In making this determination, or when the contract is silent on an issue, the Commissioner will consider any applicable codes of conduct or practice, good industry practice, general principles of law, and what is fair and reasonable in the circumstances of the Complaint.
- 4.3 Although the Commissioner may consider a Participating Service Provider's policies or operating practices, no Recommendation or Decision may direct or require a Participating Service Provider to change any such policy or practice.

5. Delegation

- 5.1 The Commissioner may delegate any of the Commissioner's functions, powers and jurisdiction to another member of CCTS staff, other than the authority to make Decisions under Section 13.

6. Complaints

- 6.1 Subject to Section 6.2, a complaint shall be in writing and shall:
 - (a) set out the Customer's name, address, phone number and, where possible, the account number assigned by the Participating Service Provider to which the complaint relates;
 - (b) indicate the Participating Service Provider to which the complaint relates;
 - (c) set out the details of the complaint;
 - (d) indicate the date or dates on which the matters complained of occurred and came to the attention of the Customer;
 - (e) set out what steps the Customer has taken to seek to resolve the complaint directly with the Participating Service Provider, including details of the Participating Service Provider's response;
 - (f) indicate what the Customer would regard as a reasonable resolution of the complaint; and
 - (g) indicate the Customer's consent to be bound by this Code and such procedures as may be established by the Commissioner.
- 6.2 In order to ensure reasonable access to CCTS, including, in particular, by persons with disabilities, the Commissioner may accept complaints made:
 - (a) by telephone, e-mail, online complaint form, teletypewriter (TTY), video relay service (VRS), IP relay, in person or by such other means as the Commissioner deems

appropriate, provided all other requirements set out in Section 6.1 are satisfied; and

- (b) by a properly authorized representative of the Customer. The Commissioner may make such inquiries as are deemed appropriate to ensure that the Customer has properly authorized the representative to make the complaint. Any such representative is deemed to have agreed to abide by the provisions of this Code, and in particular Sections 16 to 18 hereof.

6.3 Upon receipt of a complaint, the Commissioner shall assess whether the complaint, or any part thereof, falls within scope.

6.4 If the Commissioner is of the view that no part of the complaint is within scope, the Commissioner shall promptly inform the Customer and explain the reasons.

6.5 If the Commissioner is of the view that any part of the complaint is within scope, the Commissioner shall promptly provide a copy of the complaint to the relevant Participating Service Provider. In the case of a complaint received orally, the Commissioner shall ensure that it is reduced to writing and shall provide the written version to the Participating Service Provider and the Customer.

6.6 The Participating Service Provider shall reply to the Commissioner in writing, with a copy to the Customer, regarding any complaint provided to it by the Commissioner under this section, as follows:

- (a) Objection – if the Participating Service Provider objects to the complaint on the basis that, in its view, the complaint may not or should not be investigated pursuant to this Code or for any other lawful reason, it shall provide a full written explanation, including the specifics of its objection, within fifteen (15) days of receipt of the complaint from the Commissioner; or
- (b) Resolved – if the complaint has been resolved to the mutual satisfaction of the Customer and the Participating Service Provider, the latter shall so inform the Commissioner in writing within thirty (30) days of receipt of the complaint from the Commissioner; or
- (c) Unresolved – if the complaint remains unresolved, the Participating Service Provider shall so inform the Commissioner within thirty (30) days of receipt of the complaint from the Commissioner. Together with this advice the Participating Service Provider shall provide a full and complete written response to the allegations made in the complaint, and shall also provide copies of all documents in its possession that are relevant to the complaint.

6.7 The Commissioner shall continue to resolve and investigate complaints notwithstanding the failure of a Participating Service Provider to provide a full and complete response as required under Section 6.6(c).

6.8 Where the Participating Service Provider objects to a complaint pursuant to Section 6.6(a), the Commissioner shall, following receipt of any additional information or representations from the Customer and/or the Participating Service Provider as the Commissioner may in his or her discretion deem appropriate, decide whether or not the complaint or any part thereof is within scope and whether or not to take action with respect to the complaint or any part thereof that is determined by the Commissioner to be within scope. The Commissioner's decision shall be provided in writing to the Customer and the Participating Service Provider.

- 6.9 Where the Commissioner has concluded that a complaint, or any part thereof, is not within scope, the Commissioner shall inform the Customer and the Participating Service Provider and shall inform the Customer of any agency, body or organization which the Commissioner reasonably believes may have jurisdiction in relation to the complaint. The Commissioner may offer the Customer such assistance as the Customer may request in forwarding the complaint to the appropriate body. If the complaint relates to a telecommunications service provider or television service provider that is not required to be a Participating Service Provider, the Commissioner shall so inform the Customer in accordance with Section 6.4 and may offer the Customer such assistance as the Customer may request in forwarding the complaint to the CRTC.
- 6.10 The Commissioner shall maintain a record of complaints determined by the Commissioner not to be within scope.
- 6.11 Where the Participating Service Provider has informed the Commissioner of the mutual resolution of the complaint pursuant to Section 6.6(b), the complaint shall be deemed to be resolved unless the Customer, within twenty (20) days of the date of the communication in writing from the Participating Service Provider to the Commissioner and the Customer under Section 6.6(b), informs the Commissioner that the complaint has not been resolved to the satisfaction of the Customer.
- 6.12 When a complaint is resolved to the mutual satisfaction of the Customer and the Participating Service Provider, implementation of the resolution is binding upon the Participating Service Provider.
- 6.13 If a complaint has not been concluded under Sections 6.6, 6.8, 6.9 or 6.11, the Commissioner shall proceed to resolve and investigate the complaint in accordance with this Code.
- 6.14 The Commissioner may consolidate, and treat as a single complaint, two or more complaints filed by or on behalf of the same Customer relating to the same Participating Service Provider and arising from the same transaction or occurrence or series of transactions or occurrences.
- 6.15 The Commissioner may consolidate, and take action with respect to, two or more complaints filed by or on behalf of two or more Customers relating to the same Participating Service Provider and arising from the same transaction or occurrence or series of transactions or occurrences.
- 6.16 Subject to Section 6.17, the Commissioner shall not consider and shall take no action with respect to a single complaint filed by or on behalf of more than one Customer.
- 6.17 Notwithstanding Section 6.16, the Commissioner may take action with respect to a complaint filed by or on behalf of one or more Customers, provided that:

- (a) each Customer to which the complaint relates is specifically identified and has authorized that the complaint be filed on behalf of such Customer;
- (b) the complaint relates to the same Participating Service Provider and arises from the same transaction or occurrence or series of transactions or occurrences; and
- (c) the Commissioner considers that it is appropriate and efficient to do so.

7. Unpaid Charges in Dispute

- 7.1 When the Commissioner provides a copy of a complaint to a Participating Service Provider, and the complaint contains an allegation that the Customer is disputing charges that are unpaid, the Participating Service Provider will promptly:
- (a) suspend the due date for payment of the disputed charges;

- (b) refrain from reporting the disputed charges to a credit agency;
- (c) refrain from attempting to collect the disputed amount (either directly or through a collections agency); and
- (d) suspend any collection activity that was initiated before the complaint was received by the Commissioner,

until such time as the complaint is resolved or otherwise concluded by the Commissioner under Section 9, 12 or 13 of this Code.

7.2 If during the investigation or resolution of the complaint the Commissioner concludes that the Participating Service Provider has breached Section 7.1, the Commissioner shall inform the Participating Service Provider of the specifics of the breach, and require the Participating Service Provider to take such steps as are necessary to remedy the breach, which shall be binding on the Participating Service Provider.

7.3 The Commissioner may assess any breach of Section 7.1 above in determining the extent of any loss, damage or inconvenience incurred by the Customer under Section 14.2(a).

8. Failure to Provide Notice of CCTS

8.1 In the course of investigating a complaint that is within scope, the Commissioner may investigate whether a Participating Service Provider has complied with its obligation under the CCTS' public awareness plan to inform the Customer of the right to bring an unresolved complaint to CCTS. As part of such investigation, the Commissioner may request, and a Participating Service Provider shall promptly provide (subject to Section 15.2) to the Commissioner, any information, document, including reliable copies thereof, or other thing that is relevant.

8.2 The Commissioner may assess any such failure to inform a Customer of the CCTS in determining the extent of any loss, damage or inconvenience incurred by the Customer under Section 14.2(a).

9. Discretion to Decline to Take Action

9.1 The Commissioner may decline to take action or continue to take action with respect to a complaint if the Commissioner considers that:

- (a) the complaint is frivolous or vexatious;
- (b) the Customer does not have a sufficient legal interest in the subject matter of the complaint;
- (c) the complaint should more properly be brought before another agency, or a tribunal or court;
- (d) an investigation, or further investigation, is not warranted in the circumstances;
- (e) the Customer has failed to cooperate in a timely manner with the Commissioner's efforts to assess, investigate, attempt to facilitate the resolution of, or make a Recommendation or Decision in relation to the complaint; or
- (f) the Participating Service Provider is offering a resolution that, in the view of the Commissioner, constitutes a reasonable resolution to the matter, even if such resolution is not acceptable to the Customer.

10. Duty to Decline to Take Action

10.1 The Commissioner shall take no action with respect to a complaint unless the Commissioner is satisfied that the Customer has previously brought the matter to the attention of the Participating Service Provider and that the Participating Service Provider has been afforded a reasonable opportunity to investigate and resolve the matter.

10.2 The Commissioner shall take no action with respect to any complaint purported to be brought under this Code that:

- (a) has been the subject of a previous determination by CCTS; or
- (b) has been or is currently under consideration by another tribunal, court, or agency that has the authority to compensate the Customer for losses claimed arising from the occurrence at issue.

10.3 The Commissioner shall take no action with respect to a complaint:

- (a) received by the Commissioner more than one year after the date the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based; or
- (b) in the case of a Participating Service Provider having become a Participating Service Provider on or after September 1, 2017, based upon or in relation to facts having arisen more than one year prior to the date on which the Participating Service Provider became a Participating Service Provider.

Notwithstanding subsections (a) and (b) above and Section 10.5 below, for greater certainty, the Commissioner shall take no action:

- (i) under Section 8; or
- (ii) with respect to a complaint regarding retail subscription television services, in respect of any facts that arose before September 1, 2017.

10.4 For the purposes of Section 10.3(a), a complaint shall be deemed to be received by the Commissioner on the earlier of:

- (a) the date it is actually received; or
- (b) five (5) days after it was sent to the Commissioner by regular mail.

10.5 Notwithstanding Section 10.3(a), the Commissioner may take action with respect to a complaint received by the Commissioner more than one year but no more than eighteen (18) months after the date when the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based where:

- (a) the Customer brought the matter to the attention of the Participating Service Provider no more than one year after the date the Customer knew, or with reasonable diligence ought to have known, the facts upon which the complaint is based; and
- (b) the Customer and the Participating Service Provider continued to be engaged in an attempt to resolve the matter more than one year after the date when the

Customer knew, or with reasonable diligence ought to have known³⁵⁵, the facts upon which the complaint is based.

11. Investigation and Resolution

- 11.1 The procedure for the conduct of any investigation under this Code will be such as the Commissioner considers most appropriate, efficient and effective for resolution of a complaint on its merits.
- 11.2 In the course of an investigation, the Commissioner may continue to seek to facilitate a mutually acceptable resolution of a complaint wherever practical and appropriate.
- 11.3 When a complaint cannot be resolved in a manner acceptable to the parties to the complaint, the Commissioner may direct that it be dealt with under any one of Section 9, 12 or 13 of this Code.

12. Recommendations

- 12.1 Upon completing an investigation, the Commissioner may either reject the complaint or make a Recommendation to the Customer and the Participating Service Provider regarding what the Commissioner considers to be a reasonable and appropriate resolution of the complaint, without having regard to any monetary limitations of liability contained in the contract between the Customer and the Participating Service Provider.
- 12.2 The Commissioner's Recommendation:
- (a) shall be in writing;
 - (b) shall include the Commissioner's reasons;
 - (c) is not binding on the Customer or the Participating Service Provider; and
 - (d) is subject to the monetary limits set out in Section 14.
- 12.3 Within twenty (20) days of receipt of the Commissioner's Recommendation, each of the Customer and the Participating Service Provider shall inform the Commissioner in writing either that:
- (a) the party accepts the Commissioner's Recommendation; or
 - (b) the party does not accept the Commissioner's Recommendation and the reasons why, in the party's view, the Commissioner's Recommendation is not appropriate or acceptable.
- 12.4 If the Customer and the Participating Service Provider both accept the Commissioner's Recommendation, the Participating Service Provider and the Customer shall promptly take such steps as are called for in the Recommendation, and the Customer and the Participating Service Provider shall be deemed to fully release one another from any and all losses, damages, and claims, arising from the matters relating to the complaint.
- 12.5 If either the Customer or the Participating Service Provider fails to respond to the Commissioner's Recommendation within twenty (20) days of receipt, the Recommendation shall be deemed to have been accepted by that party.
- 12.6 A Recommendation that has been accepted by the Participating Service Provider, or which it has been deemed to accept, shall be binding on the Participating Service Provider.

13. Decisions

- 13.1 If either the Customer or the Participating Service Provider, or both, do not accept the Commissioner's Recommendation, the Commissioner shall consider the reasons set out by either or both parties for rejecting the Recommendation, and shall thereafter issue a Decision in writing, including the Commissioner's detailed reasons.
- 13.2 In formulating the Decision, the Commissioner shall consider whether there is substantial doubt as to the correctness of the Recommendation. If in the Commissioner's discretion there is doubt as to the correctness of the original Recommendation, the Commissioner's Decision may amend or modify the remedy recommended to the Customer and the Participating Service Provider in the Recommendation, or may impose a remedy not previously recommended.
- 13.3 The Commissioner's Decision shall be binding on the Participating Service Provider, but not on the Customer.
- 13.4 The Customer may choose whether or not to accept the Commissioner's Decision under Section 13.2 within twenty (20) days of receipt. In order to do so, the Customer shall notify the Commissioner and the Participating Service Provider in writing. If the Customer does not provide this notice, the Customer will be deemed to reject the Decision.
- 13.5 If the Customer accepts the Decision, the Customer and the Participating Service Provider shall be deemed to fully release one another from any and all losses, damages, and claims, arising from the matters relating to the complaint.
- 13.6 If the Customer does not accept the Decision, the Customer may pursue such remedies as may be available to the Customer, and the Participating Service Provider shall be deemed to be fully released from the Commissioner's Decision.

14. Remedies

- 14.1 In making a Recommendation or Decision, the Commissioner may require the Participating Service Provider to:
- (a) provide the Customer with an explanation or apology;
 - (b) undertake to do or cease doing specified activities with respect to the Customer;
 - (c) pay the Customer monetary compensation in an amount not to exceed:
 - (i) in relation to any single complaint, or any two or more complaints consolidated pursuant to Section 6.14, five thousand dollars (\$5,000) in the aggregate; or
 - (ii) in relation to any two or more complaints consolidated pursuant to Section 6.15, five thousand dollars (\$5,000) in respect of each such complaint so consolidated; or
 - (iii) in relation to any complaint filed on behalf of two or more Customers in respect of which the Commissioner has taken action pursuant to Section 6.17, five thousand dollars (\$5,000) in the aggregate; or
 - (d) any combination thereof.

14.2 In making a Recommendation or a Decision that a Participating Service Provider pay monetary compensation to a Customer, the Commissioner:

- (a) shall award an amount that is appropriate to compensate the Customer for any loss, damage or inconvenience incurred by the Customer arising directly from the circumstances of the complaint, or the failure of the Participating Service Provider to abide by Section 7.1 or to inform a Customer of the CCTS in respect of their complaint;
- (b) shall not make an award that is punitive of the Participating Service Provider, or is in the nature of consequential damages; and
- (c) may, where appropriate, exercise his or her discretion whether or not to apply any limitations of liability contained in the applicable contract between the Customer and the Participating Service Provider.

For greater certainty, amounts that the Commissioner determines are to be refunded or credited as a result of billing errors shall not constitute monetary compensation within the meaning of Section 14.1(c).

15. Information and Assistance

15.1 In all matters related to the activities of the Commissioner under this Code, the Commissioner may:

- (a) require such assistance of the Customer and the Participating Service Provider as the Commissioner considers reasonable and appropriate; and
- (b) request, and a Participating Service Provider shall promptly provide (subject to Section 15.2), any information, document, including reliable copies thereof, or other thing that is relevant to the complaint, whether or not such information, document or other thing is admissible as evidence in a court of law. The Commissioner may receive and rely upon any document so provided.

15.2 A Participating Service Provider may decline to provide any information or document requested by the Commissioner, if it can demonstrate, to the satisfaction of the Commissioner, that the material is subject to solicitor-client privilege, or that by providing it the Participating Service Provider would place itself in breach of the law.

15.3 If a Participating Service Provider or Customer discloses documents or supplies information to the Commissioner and requests that the Commissioner not disclose such information, the Commissioner shall not disclose that information to any other party without the consent of the party who has made such request, provided that:

- (a) non-disclosure of such information does not unduly impede the Commissioner's ability to attempt to investigate, assist in the resolution of and/or make a Recommendation or Decision with respect to the complaint; and
- (b) the Commissioner is satisfied that the request has been made in good faith.

If, in the judgment of the Commissioner, the request for non-disclosure impedes a full and fair investigation of the complaint, the Commissioner shall offer the party making such request the opportunity to either (i) withdraw the information or documents from consideration in the investigation of the complaint, or (ii) withdraw the request that the information or documents not be disclosed.

16. No Use or Disclosure in Other Proceedings

- 16.1 The discussions, documents and correspondence of the Customer, the Participating Service Provider, and the Commissioner created for, arising from or in relation to a complaint shall be deemed to be without prejudice and shall not be disclosed or used in any subsequent legal or other proceeding.
- 16.2 The Commissioner, members of his or her staff, or his agents may not be called to testify in any subsequent legal or other proceeding, nor may production or disclosure be sought of any document, discussion or correspondence arising from a complaint or any document or information contained in the files of the Commissioner.

17. Confidentiality

- 17.1 In the course of carrying out his or her functions, powers and jurisdiction, the Commissioner shall, subject to Section 17.3 below, maintain the confidentiality of the Customer and the Participating Service Provider, save as between the parties to the complaint and as may be necessary to carry out the Commissioner's functions in relation to the complaint.
- 17.2 Without limiting the generality of the foregoing, all conciliations, investigations or Recommendations shall maintain the anonymity of the Participating Service Provider and the Customer.
- 17.3 Notwithstanding Section 17.1, a Decision of the Commissioner made pursuant to Section 13.1, whether accepted by the Customer or not, shall be available to the public, including the name of the relevant Participating Service Provider. The name and identity of the Customer shall remain confidential and any identifying information shall be removed from any public disclosure of such Decision.

18. Immunity

- 18.1 The Commissioner and his or her staff and agents are immune from suit in relation to the good faith exercise of their functions, powers and jurisdiction under this Code, and all related activities.

19. Commissioner's Discretion

- 19.1 The Commissioner may, in his or her discretion, on notice to the Customer and the Participating Service Provider, extend or abridge the time for taking any action under this Code, save and except for the time limitation for filing a complaint pursuant to Sections 10.3 through 10.5. Without restricting the foregoing, the Commissioner shall exercise his or her discretion pursuant to this Section to ensure that any changes to the time for taking action under this Code shall not operate in such a manner as to cause unfairness to either a Customer or a Participating Service Provider involved in the complaint.

20. Recommendations and Decisions Do Not Establish Precedents

- 20.1 In considering each complaint, the Commissioner's discretion shall not be fettered by, and the Commissioner shall not be bound by, any previous Recommendation or Decision made by the Commissioner or by any predecessor in that office.

This is Exhibit "S" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

Q. Complaints with Aspects Both in and out of Scope

- a) **How does the CCTS handle complaints which have aspects that are both in and out of the scope of the CCTS? For example : Consumer in areas where local phone service is not forborne may purchase bundles that include forborne services such as Internet service or mobile phone service and may have complaints related to the service bundle.**
- b) **The CCTS current mandate is restricted to disputes relating to forborne telecommunications services as noted in paragraph 3 of its Procedural Code, unless otherwise specified in a code of conduct. The CCTS explicitly excludes disputes about payphones from its mandate. Given that the provision of long distance service from payphones is subject to forbearance, explain how the CCTS handles complaints about long distance charges incurred when making a non-cash payphone call. Would it be appropriate to modify the CCTS' Procedural Code to clearly specify that the payphone related exclusion does not capture disputes relating to the provision of long distances services over payphones?**

A.

- a) PSPs bundle services in varying ways, and obviously not with regard to whether or not the services are forborne, or are within CCTS' scope. Complaints about services that are part of a bundle can potentially be more complex. In some cases, the issue in dispute can be isolated to one particular service in the bundle, and in such cases, assuming that the disputed service is in scope, it is fairly straight-forward to investigate the complaint and determine an appropriate remedy. If the disputed service is not in scope, the complaint can be turned away.

However, complaints that relate to the bundle or package as a whole are more challenging, and this is particularly so in billing complaints in which the focus of the complaint is one particular service in the bundle but the services included are not priced

individually. Speaking generally, CCTS will follow its usual process to investigate the complaint and in the event that there is merit to the complaint, will attempt to fashion a remedy that does not involve the out-of-scope service(s).

A recent case provides a helpful example. CCTS issued a [Decision](#) in September 2015. The customer complained that the PSP had failed to honour the price that it had offered in respect of a bundle that included home phone, internet and TV services. CCTS concluded that the complaint had merit and issued a Recommendation that the PSP credit the customer. The credit was intended to compensate the customer for the excess amount he was charged above the amount of the PSP's offer, from the date of installation to the date of cancellation. The PSP rejected the Recommendation, in part, because the calculation of the amount to be credited included the excess charges for the TV services, which are beyond CCTS' scope. CCTS reviewed the Recommendation in light of this objection and concluded that the PSP was correct, and its subsequent Decision reduced the amount of compensation, removing the amount related to TV services. In the Decision CCTS explained why it had done so, and nonetheless encouraged the PSP to include this sum in the final credit provided to the customer.

- b) CCTS notes that section 3 of the Procedural Code identifies those services and subjects that are not within CCTS' mandate. The Procedural Code contains no exception for services "otherwise specified in a code of conduct".

In the example used in the question, CCTS' approach would be to determine whether the customer's complaint was actually about the payphone service itself (e.g., a complaint that the payphone was not working), or whether the complaint was about the provision of long distance services using the payphone – i.e., about the long distance call or an issue relating thereto (e.g. the billing of the long distance charges). The result of this analysis would determine whether CCTS considers the complaint to be in or out of scope. If in CCTS' judgment the complaint was about the payphone itself, CCTS would refer the customer to the CRTC, as this service is regulated. If CCTS determined that this was a complaint about the long distance service, the complaint would be accepted.

One could imagine any number of scenarios of potential conflict in the Procedural Code. In all such scenarios, CCTS must exercise its judgment to determine whether a complaint falls in or out of scope. If CCTS determines that a complaint is in scope and accepts the complaint, the process gives the PSP an opportunity to object to its acceptance and provide reasons. If CCTS determines that the complaint is out of scope and declines the complaint, the customer is informed of the reason for declining the complaint and would also have the opportunity to object.

An example of one such judgement made by CCTS may be illustrative. Section 3(e) excludes “Equipment” from CCTS’ mandate. CCTS has long interpreted this to be an exclusion relating to the specific PSP “equipment” used for providing the service, but not an exclusion for complaints about equipment provided by the PSP to the customer for use with, or as a necessary incident to, the service. CCTS made this interpretation based on the following factors:

- i. The need to provide recourse to customers who receive “equipment” from their PSP to make use of their service. CCTS concluded that it is illogical to allow a customer to complain about internet service, but not to allow them a remedy if, for example, the modem or router provided to them by their PSP is defective. The same analysis applies to a wireless customer who cannot make use of the service because their PSP-supplied handset, or SIM card, is defective. Absent this interpretation, customers in these situations who could not achieve a resolution with their PSP would have no remedy, possibly being stuck paying for a service they could not use, or possibly incurring cancellation fees if they chose to cancel the service. This did not appear to be the intent of the Procedural Code; and
- ii. The CCTS procedural Code was modeled in large part on Australia’s Telecommunications Industry Ombudsman (TIO) Terms of Reference. Those Terms specifically authorize acceptance of a complaint about equipment supplied by a service provider that affects the customer’s access to a telecommunications service supplied by the provider.

In light of the above, CCTS suggests that no amendment to the Code is needed to address the scenario raised in the Commission’s question. Also it would be impossible to develop an amendment that could cover every scenario imaginable and that level of specificity would likely create more problems for all stakeholders than it would resolve. CCTS has shown itself to be sufficiently flexible to adapt to these circumstances and appropriately exercise its judgment on these issues.

End of Document

This is Exhibit "T" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



File No. 8650-C12-201501825

2016 06 10

To: Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: **Telecom Regulatory Policy CRTC 2015-546, Consumer safeguards for payphones – Notification of rates for non-cash payphone calls (TRP 2015-546) – Follow-up**

Dear Ms. May-Cuconato,

1. On behalf of myself and our affiliates, we are filing the present information in accordance with the Commission's directions set out in paragraph 27 of TRP 2015-546. Specifically, the Commission directed incumbent local exchange carriers (ILECs) to file, within six months of TRP 2015-546, information concerning:

- a) The means they intend to use to ensure that detailed information is made available to consumers regarding the rates and other fees charged with respect to long distance non-cash payphone calls;
- b) How the approach to be used will ensure that all potential users have an opportunity to obtain this information; and
- c) The timeline for the implementation of the approach.

2. To assist ILECs with implementing means that would meet the requirements of TRP 2015-546, the Commission provided a list of means that would be considered to be satisfactory in nature. Within this list, the Commission noted that "modifying the [integrated voice response, or IVR] system so that the first option presented to consumers making a long distance non-cash call is the option to "obtain a quote"¹ would meet the rate information requirement. Consistent with this, we intend to modify our IVR systems in this manner. Accordingly, we believe that our approach will ensure that all users have an opportunity to obtain detailed rate information, as required by the Commission.

¹ TRP 2015-546, paragraph 28.

3. We operate a number of different IVR platforms across our various operations, which each have unique implementation details. In the following paragraphs, we detail how each specific IVR system will be modified from a consumer experience perspective (the specific system design changes required to implement these changes are not detailed here). Through this submission, for simplicity, our call flow descriptions are set out based on the English call paths. The same changes will be implemented in French. Taking into account the multitude of changes that have to be performed and tested across our various payphone calling platforms, and the limited availability of key resources over the summer months to perform this work, we anticipate that these changes can be operationalized within six months of this filing.

Platform 1: Bell Canada's millennium payphones in Ontario and Quebec

4. Non-cash long distance calls can be initiated from Bell Canada millennium payphones in Ontario and Quebec through two pathways: a) by dialing 0 or b) by dialing 1 plus the desired number and swiping a credit card. These calls are routed through an automated IVR platform managed by WiMacTel on our behalf. The changes that we will make to these pathways are described below.

Platform 1a: Initiate call by pressing 0

5. Where a caller initiates a long distance call by dialing 0 (or 0 followed by the number that they wish to call), the following call flow will take place. This call flow will ensure that the option to obtain a rate quote is the first option heard by the caller after entering the number that they wish to call (if not already entered) and responding to a language prompt.

Welcome to WiMacTel's automated billing system, provided on behalf of Bell Canada. (French version)

For English assistance, press 1 now. Pour continuer en français, faites le 2 maintenant.

If user dialed 0 only: *Please enter the area code and number you are calling.*

For a rate quote press 1. To make a collect call press 2 now. To bill to a calling card or a credit card, enter the card number now, followed by the pound sign. To speak to an operator press 0 now.

If user presses 1: *This call shall cost \$x for the first period of two minutes;² \$x for each additional period of one minute.*

Caller is then returned to main menu:

For a rate quote press 1. To make a collect call press 2 now. To bill to a calling card or a credit card, enter the card number now, followed by the pound sign. To speak to an operator press 0 now.

6. The call flow then proceeds to allow the caller to place their call. Should the caller wish to pay by credit or calling card, he or she is prompted for card information in order for the call to be processed. The call may also be completed through a live operator.

² The first period of two minutes is calculated by adding any applicable surcharge to the per-minute charge.

Platform 1b: Initiate call by pressing 1+(123)456-7890 and swiping a credit card

7. When a caller initiates a call by dialing 1+(123)456-7890 and swiping a credit card, a more streamlined call flow is presented, since the caller has already indicated the number they wish to dial and the payment method they wish to use. In these circumstances, the following call flow will take place:

For English assistance, press 1 now. Pour continuer en français, faites le 2 maintenant.

To obtain the rates for this call, please press 1. To complete your call please press 2.

If user presses 1: *This call shall cost \$x for the first period of two minutes; \$x for each additional period of one minute. Press 1 to continue or zero to terminate this call.*

8. A caller can reach a live operator at any time by pressing 0.

Platform 2: Bell Canada's centurion payphones and payphones of Télébec, NorthernTel, Ontera, DMTS and KMTS

9. When placing a long distance call from the above payphones, there are two pathways that may be accessed, which involve either: a) access to an automated IVR system, or b) direct assistance from a live operator. We note that the payphones under platform 2 are not equipped with card readers and it is not possible to place card swipe calls from these sets (i.e., it is not possible to initiate a call by dialing 1+(123)456-7890 and swiping a credit card).

Platform 2a: Access to an automated IVR system

10. Where a caller initiates a call by dialing 0+(123)456-7890 from a Bell Canada centurion payphone, or a payphone of Télébec, NorthernTel or Ontera, the caller will be directed to an automated IVR system. As part of the IVR, a prompt to speak with the operator to obtain a rate quote will immediately follow the language prompt, as follows:

Welcome to (company name). (French version)³

For service in English press 1-7. Pour le service en français, appuyez sur le 1-9.

Rate quote prompt: ***If you are making a long distance call and would like a rate quote, please ask the operator.***

Billing prompt: *To charge this call to a calling card, enter the calling card number now. For a collect call, press 1. To charge this call to another number, press 2. For person to person or other calls, press 0 for the operator.*

11. If a caller chooses to speak with the operator in response to the rate quote prompt, the operator will provide the caller with rate information and complete the call if desired.

³ French version is heard first in Quebec.

Platform 2b: Direct assistance from a live operator

12. Where a caller initiates a call by dialing 0 only from a Bell Canada centurion payphone, or a payphone of Télébec, NorthernTel or Ontera, or by pressing 0 only or 0+(123)456-7890 from a DMTS or KMTS payphone, the call will be automatically transferred to a live Bell Canada operator. Prior to the call being picked up by the operator, the following automated rate quote prompt will be presented to the caller:

Rate quote prompt: ***If you are making a long distance call and would like a rate quote, please ask the operator (French version)***⁴

Platform 3: Northwestel payphones and Bell Canada millennium payphones in Atlantic Canada

13. Calls placed from Northwestel payphones and Bell Canada millennium payphones in Atlantic Canada will follow a mixture of the pathways identified above.

14. In the case of Northwestel, for millennium payphones, which are equipped with card swipe mechanisms, calls initiated by dialing 1+(123)456-7890 and swiping a credit card will be routed through the WiMacTel IVR as described in Platform 1b, above. All other calls, placed by dialing 0 only or 0+(123)456-7890 at a millennium or centurion payphone, will be routed directly to a Bell Canada operator and presented with the rate quote prompt as described in Platform 2b.

15. With respect to Bell Canada millennium payphones in Atlantic Canada, calls initiated by dialing 1+(123)456-7890 will be routed through the WiMacTel IVR as described in Platform 1b, above. Calls placed by dialing 0+(123)456-7890 will follow the call flow set out in Platform 2a, above, and calls placed by dialing 0 only will follow the call flow set out in Platform 2b, above.

16. We trust that these modifications will ensure that all users have an opportunity to obtain detailed rate information, as required by the Commission in TRP 2015-546.

Yours truly,

[Original signed by P. Gauvin]

Philippe Gauvin
Senior Legal Counsel

*** End of Document ***

⁴ French version is heard first in Quebec.

This is Exhibit "U" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

Stephen Schmidt
Vice-President – Telecom Policy & Chief Regulatory Legal Counsel
Telecom Policy & Regulatory Affairs

(613) 597-8363 Telephone
(613) 597-8374 Facsimile
regulatory.affairs@telus.com

June 10, 2016

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Ms. May-Cuconato:

Re: Telecom Regulatory Policy CRTC 2015-546 (“TRP 2015-546”) – *Consumer safeguards for payphones – Notification of rates for non-cash payphone calls*– TELUS’ compliance plan

1. In TRP 2015-546 the Commission determined that the existing consumer safeguards for non-cash long distance payphone calls, namely that upon request, the rates and charges for a call and alternative billing methods available to consumers needed to be disclosed, should be strengthened¹. The Commission directed the ILECs to make detailed rate information available to consumers regarding the rates and other fees charged by or on behalf of the ILEC with respect to long distance non-cash payphone calls. The Commission provided a non-exhaustive list of examples of different means that ILECs could use to provide the rate information, any one of which could be chosen to meet the obligation² set out in TRP 2015-546.
2. The Commission then ordered ILECs to notify the Commission on or before June 10, 2016 of the means they intend to use to ensure that detailed information is

¹ TRP 2015-546, para 25.

² TRP 2015-546, para 28.

available to consumers. This letter fulfils TELUS' obligation to notify the Commission of its compliance to TRP 2015-546.

3. TELUS has chosen to meet its TRP 2015-546 obligations by modifying its Interactive Voice Response ("IVR") system so that the first option customers hear when placing a long distance non-cash call is the option to obtain a quote for the cost of the non-cash long distance call. This was one of the options suggested by the Commission as being sufficient to meet the new consumer safeguards.
4. The process and timeline for modifying the IVR system depends the model of payphone. The first of the two models that TELUS has is the "Millennium", which accounts for 70% of the Company's payphone inventory. These phones can be reprogrammed remotely. As such, by July 1, 2016, the IVR for the Millennium phones will be modified to change the ordering of the menu options on the IVR system so that the first option available to customers when placing a long-distance non-cash call is to obtain a quote for the cost of the call.
5. The remaining 30% of TELUS payphones are "Centurion" phones. This model is often located in very remote locations, such as along highways or at campgrounds. These phones require individual programming to have each phone's IVR modified. Therefore, the transition to the new IVR messaging for these phones will take longer. TELUS expects to be able to complete this programming by September 1, 2016.

Yours truly,

{Original signed by Stephen Schmidt}

Stephen Schmidt
Vice-President - Telecom Policy & Chief Regulatory Legal Counsel
Telecom Policy & Regulatory Affairs

JS/io

* * * End of Document * * *

10 June 2016

by GCKey

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Ms. May-Cuconato:

**Subject: MTS Inc. – CRTC 2015-546 – Consumer safeguards for payphones –
Notification of rates for non-cash payphone calls**

1. In response to Telecom Regulatory Policy CRTC 2015-546 *Consumer safeguards for payphones – Notification of rates for non-cash payphone calls*, MTS is hereby filing answers to questions posed by the Commission to all incumbent local exchange carriers (ILECs) regarding the Commission direction that ILECs must make available to consumers detailed rate information for long-distance non-cash payphone calls, in particular:

- (a) the means intended to be used to ensure such detailed rate information is provided;
- (b) how the approach will ensure that all potential users have an opportunity to obtain information about detailed rate information necessary to make an informed decision; and
- (c) the timeline for the implementation of the selected approach.

Yours truly,



Grainne M. Grande
Director Regulatory & Privacy Officer

Attachments

c.c.: Sharon Apt Hubner, regulatory@mts.ca

* * * End of Document * * *

INFORMATION REQUESTED BY
CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
(CRTC)

Q. The Commission directs that as a condition of providing payphone services, all ILECs must make detailed information available to consumers regarding the rates and other fees charged by or on behalf of the ILEC with respect to long distance non-cash payphone calls. Detailed rate information includes connection fees, per-minute rates, and any other charges that would be charged to the consumer by or on behalf of the ILEC for a long distance non-cash payphone call. The Commission directs all ILECs to file, within six months of the date of this decision:

- (a) The means they intend to use to ensure the above requirement is met,**
- (b) How this approach will ensure that all potential users have an opportunity to obtain information about detailed rate information necessary to make an informed decision, and**
- (c) The timeline for the implementation of the selected approach.**

A. (a) MTS is planning to modify its existing Interactive Voice Response (IVR) system so that the first option presented to consumers making a long distance non-cash payphone call is the option to “obtain a quote.” In particular, MTS will be presenting consumers with an opportunity to obtain a rate quote by pressing the number one (1) key for option one to obtain a quote prior to initiating a long distance non-cash payphone call. This rate quote will inform the consumer of rate for the first two minutes of the call and any subsequent minute rates thereafter. If the consumer chooses to not accept these rates, they can hang-up the call at that time and not incur any charges.

(b) This new solution is compatible with long distance non-cash payphone calls that are both non-operator assisted and operator assisted. In the case of operator assisted long distance non-cash calls, the consumer would dial 0+ and the first option presented to the consumer would be to obtain a rate quote prior to indicating how the customer would like the call to be billed. In both situations, the consumer is offered the option of receiving rate information before the option of completing a call. Placing a priority on receiving rate information before completion of the call thus empowers consumers by giving them the tools to make informed decisions.

The rates disclosed to the consumer represent all extra charges and fees for the call. For clarity, there are no other fees or charges that will be charged to the customer beyond what is referenced in the IVR message or by the operator in the case of an operator-assisted call.

(c) MTS will be deploying the new IVR modification solution on or around September 30, 2016.

* * * End of Document * * *

June 10, 2016

By GCKey

Ms. Nanao Kachi
Director, Social and Consumer Policy, CRTC
Canadian Radio-Television and
Telecommunications Commission
Ottawa, ON.
K1A 0N2

Dear Ms. Kachi:

Re: Consumer Safeguards for Payphones – Notification of Rates for Non-Cash Payphone Calls.

1. On December 10, 2015, the Canadian Radio-Television and Telecommunications Commission issued Telecom Regulatory Policy CRTC 2015-546 *Consumer Safeguards for Payphones – Notification of Rates for Non-Cash Payphone Calls*, (“TRP 2015-546”) whereby the Commission after finding that the current notification requirements for long distance non-cash payphone calls are not sufficient, directed incumbent local exchange carriers (ILECs) to make detailed rate information available to consumers, and further directed the ILECs to file, no later than six months from the date of issue of TRP 2015-546, information on the means they intend to use to meet this requirement.
2. In addition to providing the means that the ILECs intend to use to meet the requirement of providing detailed rate information to consumers, the ILECs also have to show how their approach would ensure that all potential users have an opportunity to obtain detailed rate information necessary to make an informed decision regarding non-cash payphone calls. Additionally, the ILECS are to identify the timeline for the implementation of their selected approach.
3. To assist the ILECs, the Commission provided examples of means that it would consider appropriate in meeting the Commission’s directive. One such example was “*modifying the IVR system so that the first option presented to consumers making a*

long distance non-cash payphone call is the option to “obtain a quote”. It is this means that Tbaytel has chosen to employ to meet the directive of the Commission regarding notifying consumers of rates for non-cash payphone calls.

4. As an attachment to this submission, Tbaytel has provided an outline of its approach to meet the Commission’s requirements regarding the provision of long distance rate information for non-cash payphone calls. All potential users of the various types of non-cash payphone calls upon initiating a call will be prompted in each case first to request a quote for the pending call, thereby affording the customer the opportunity to become aware of the possible charges and make a decision to have the call goes forward.
5. The modifications to Tbaytel’s IVR system will be completed by the end of today, June 10, 2016.
6. Respectfully submitted this 10th day of June 2016.

Yours truly,

A handwritten signature in black ink that reads "Robert Olenick." The signature is written in a cursive, flowing style.

Robert Olenick

Regulatory Analyst, Tbaytel

Telecom Regulatory Policy CRTC 2015-546**Tbaytel's approach to meeting requirements**

Tbaytel will be modifying its IVR system on non-cash payphones to allow for the rate quote to be the first option when making a long distance call. There are 4 scenarios that can lead to a customer requiring a quote for long distance including 0+ calls, 0- calls, 1+ calls, and collect calls.

0+ Calls – Customer will dial the destination and upon receiving the dialed number, the platform takes the user through the following prompts:

1. "For a rate quote, press 1"
2. "To make a collect call, press 2"
3. "To use a calling card or credit card, enter the card numbers now"
4. "To speak to an operator, press 0 now"

**All prompts requiring input from the user are repeated 3 times. After the 3rd repetition, the platform transfers to a live operator.*

0- Calls – Platform requests the area code and number the customer is dialing. Once the customer dials the destination, the platform takes the user through the following prompts:

1. "For a rate quote, press 1"
2. "To make a collect call, press 2"
3. "To use a calling card or credit card, enter the card numbers now"
4. "To speak to an operator, press 0 now"

1+ Calls – Customer directly dials a 1+ number and pays via credit card swipe. Once the destination and credit card information has been received, the platform takes the user through the following prompts:

1. "To obtain the rates for this call, please press 1"
2. "To complete your call, please press 2"

Collect Calls – If a collect call is chosen, the receiving party will receive the following:

"You have a collect call from (name here). For a rate quote, press 1. To accept this call, press 2. To deny the call, press 0 or hung up."

When option 1 is selected for the **Rate Quote**, the operator will state the following:

"This call shall cost \$x.xx for the first two minutes, and \$x.xx for each additional period of one minute."

Nicolet, le 4 juillet 2016

Madame Danielle May-Cuconato
Secrétaire générale
CRTC
Ottawa (Ontario) K1A 0N2

V/réf : 8650-C12-201501825

Objet : Politique réglementaire de télécom CRTC 2015-546

Madame la Secrétaire générale,

Sogetel inc. est une ESLT qui possède des téléphones payants sur son territoire et souhaite par conséquent se conformer aux dispositifs 26 et suivants de la politique réglementaire mentionnée en rubrique.

Elle informe le Conseil qu'elle a débuté l'installation d'une affiche autocollante sur le combiné de chacun de ses téléphones publics informant le client de s'adresser au téléphoniste pour connaître les tarifs pour un appel interurbain. Une copie de cette affiche est jointe à la présente.

Sogetel prévoit avoir terminé l'installation de cette affiche d'ici le 15 juillet 2016.

En espérant le tout conforme, veuillez agréer, Madame la Secrétaire générale, nos salutations distinguées.

SOGETEL INC.



Louise Bégin,
Avocate

**Pour information sur les tarifs et
frais des appels interurbains,**

☞ composez le 0³⁷⁸ ☞

et adressez-vous au téléphoniste.



W.N. (Bill) Beckman
Senior Director –
Regulatory Affairs
2121 Saskatchewan Drive
Regina, Saskatchewan
S4P 3Y2

Telephone: (306) 777-5820
Fax: (306) 565-6216
Internet: document.control@sasktel.com

22 August 2016

Via GCKey

CRTC reference: 8650-C12-201501825

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

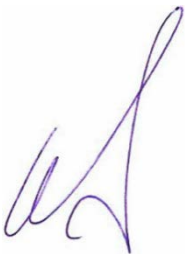
Dear Ms. May-Cuconato:

Re: Telecom Regulatory Policy CRTC 2015-546, *Consumer safeguards for payphones – Notification of rates for non-cash payphone calls*- SaskTel information on implementation

1. Pursuant to the procedure established at paragraph 27 of Telecom Regulatory Policy CRTC 2015-546, *Consumer safeguards for payphones – Notification of rates for non-cash payphone calls* (“Regulatory Policy”), Saskatchewan Telecommunications (SaskTel) submits its information regarding how it intends to meet the Commission’s requirements for providing detailed information to consumers regarding the rates and other fees charged for long distance non-cash payphone calls.
2. In its Regulatory Policy, the Commission directed that as a condition of providing payphone services, that all ILECs must make detailed information available to consumers regarding the rates and other fees charged by or on behalf of the ILEC with respect to long distance non-cash calls. The detailed rate information included connection fees, per-minute rates, and any other charges that would be charged to the consumer.

3. Furthermore, the Commission directed that all ILECs file, within six months of the date of the decision (a) the means they intend to use to ensure that the above requirement is met, (b) how this approach will ensure that all potential users have an opportunity to obtain information about detailed rate information necessary to make an informed decision, and (c) the timeline for implementation of the suggested approach.
4. At the outset, SaskTel notes that its operators are trained and have access to systems that allow them to provide a rate quote to customers from payphones for long distance non-cash calls, including any other fees that may be charged. As such, customers are best served by contacting an operator for a rate quote for a long distance call from a payphone should they wish to be advised of the rates.
5. Given that operators are in the best position to provide an accurate quote to customers in these circumstances, SaskTel is proposing to update the software in its Millennium payphone units to display the following message on the digital display "*Local Calls are 50 cents. Dial 0 to receive a detailed long distance quote, including all fees*". SaskTel anticipates that this software update will be completed by 22 August 2016.

Sincerely,



W.N. (Bill) Beckman
Senior Director - Regulatory Affairs
KS/nb

****End of Document*****

Reference: Telecom Notice of Consultation 2016-103
File number: 1011-NOC2016-0103

Subject: Application of certain consumer safeguards for payphones directly to competitive payphone service

Telecom Regulatory Policy 2016-295
Implementation of notification of rates for non-cash payphone calls

=====
For non-cash calls, WIMACTEL INC provides the following methods for callers to get rate information prior to call processing:

1. After dialing 0+ number, follow the IVR message and select from the menu prompt that offers the option to get the rate of the call.
2. Dial 0 and speak to the operator to get the rate of the call. Callers are advised by the operator that rates are available upon request.

Number of payphones owned by WIMACTEL in Canada

=====
payphones

Specific location (province, city) of WIMACTEL payphones in Canada

=====
Province City Number of payphones

#

Non-cash call volume

=====
Total for all WIMACTEL payphones combined: average # calls per month (# per year).

[Canadian Radio-television and Telecommunications Commission](#)

[Home](#) → [Business](#) → [Decisions, Notices and Orders](#)

Telecom Regulatory Policy CRTC 2015-546

[PDF version](#)

Reference: Telecom Notice of Consultation [2015-67](#)

Ottawa, 10 December 2015

File number: [8650-C12-201501825](#)

Consumer safeguards for payphones – Notification of rates for non-cash payphone calls

The Commission finds that the current notification requirements for local non-cash payphone calls, whose rates are regulated, are sufficient. However, the Commission finds that the current notification requirements for long distance non-cash payphone calls are not sufficient. Non-cash calls are often made using credit cards, prepaid long distance cards, and other telephone cards. Consumers generally only become aware of the rates to be paid for their calls when they receive their billing statement, potentially leading to bill shock.

*To ensure consumers can obtain the necessary rate information to make an informed decision about their long distance non-cash payphone calls, the Commission **directs** specific payphone providers, namely the incumbent local exchange carriers (ILECs), to make detailed rate information available to consumers. The Commission further **directs** the ILECs to file, no later than **six months** from the date of this decision, information on the means they intend to use to meet this requirement.*

As a result of the enhanced safeguards introduced in this decision, Canadians will be empowered to make informed choices concerning their use of payphones to make long distance non-cash calls.

Background

Current notification requirements for non-cash calls

1. The current consumer safeguards with respect to notification of rates for non-cash payphone calls, which were established in Telecom Order [95-316](#) and Telecom Decision [98-8](#), are as follows:
 - At each payphone they operate, competitive payphone service providers (CPSPs) must prominently display rates for local calls and any surcharge, markup, or location charges not included in the price of the call.
 - For operator-handled payphone calls, the incumbent local exchange carriers (ILECs) and CPSPs are to provide, when requested by the consumer, the rates and charges for a call and alternative billing methods available to consumers.

Telecom Decision 2013-327 and subsequent Commission releases

2. On 5 June 2013, the Commission determined, in Telecom Decision [2013-327](#),¹ that it would initiate a proceeding to review whether the existing consumer safeguards are sufficient to ensure that consumers are in a position to make informed decisions regarding the use of payphones for non-cash calls.²
3. On 26 February 2015, the Commission released a fact-finding report concerning the current role of payphones in the Canadian communications system.³ The Commission also issued Telecom Notice of Consultation [2015-67](#), inviting parties to file comments, with supporting rationale, on the following questions:
 - Are the current notification requirements in relation to non-cash calls from payphones imposed on ILECs and CPSPs sufficient and appropriate?
 - If not, what should these requirements be?
4. The Commission received interventions regarding the Telecom Notice of Consultation [2015-67](#) proceeding from Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (collectively, Bell Canada et al.); the Canadian Independent Telephone Company Joint Task Force (JTF); the Consumers' Association of Canada and the Public Interest Advocacy Centre (collectively, CAC/PIAC); TBayTel; TELUS Communications Company (TCC); l'Union des consommateurs (l'Union); and about 15 individuals.
5. The public record of this proceeding, which closed on 8 May 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Issues

6. The Commission has identified the following issues to be addressed in this decision:

- Do the current notification requirements for non-cash payphone calls remain sufficient and appropriate?
- What changes should be made to the current notification requirements for non-cash payphone calls?
- How should the notification requirements for non-cash payphone calls be applied to CPSPs?

Do the current notification requirements for non-cash payphone calls remain sufficient and appropriate?

7. Bell Canada et al., the JTF, TBayTel, and TCC generally were of the view that the current notification requirements for both local and long distance non-cash payphone calls were sufficient and appropriate. On the other hand, CAC/PIAC and l'Union argued that the current notification requirements for non-cash payphone calls are insufficient and do not protect consumers from bill shock.
8. L'Union noted that in some instances, such as long distance non-cash payphone calls, consumers can incur charges in addition to the rate incurred for the call itself, such as "connections fees," which CAC/PIAC noted could be more than \$10 per call, and that consumers are not sufficiently notified of that fact. CAC/PIAC noted in this regard that consumer complaints concerning the notification of charges for non-cash payphone call requirements led, in part, to the issuance of Telecom Decision [2013-327](#).
9. Bell Canada et al. and TCC noted that a consumer can readily call the operator at no charge to obtain a quote and that the option is available through their Interactive Voice Response (IVR) system. CAC/PIAC and l'Union argued that the "obtain a quote" option is not effective as a means of consumer notification as it is often presented after the option to complete the call in the IVR system. L'Union argued that if consumers were fully aware of all costs prior to making a call, many would not proceed.
10. CAC/PIAC noted their concern that consumers may not have any recourse in relation to complaints they may have regarding their experience of bill shock for non-cash payphone calls.

Commission's analysis and determinations

11. The main concern of the consumer groups in this proceeding is that the current regime may not be robust enough to prevent bill shock for some users of long distance non-cash payphone calls who were not made aware of the various one-time fees and per-minute rates.
12. As rates for local non-cash calls on payphones operated by ILECs are regulated, the Commission finds that the current consumer safeguards for such calls are sufficient to prevent bill shock for payphone users and, as such, remain sufficient and appropriate.
13. Rates for long distance non-cash calls on payphones operated by ILECs, however, are not regulated. While this can lead to a more competitive market, it may also lead to situations in which the rates and charges incurred in order to complete a call are not made sufficiently clear to Canadians. This, in turn, may lead to bill shock when the sum of the fees is higher than expected. The Commission is not satisfied that the notification methods currently being used to meet the existing requirement are resulting in effective notification of the full scale of the rates and charges that consumers may incur in completing their long distance non-cash payphone calls. Based on the above, the Commission finds that the current safeguards for long distance non-cash payphone calls are not sufficient.

What changes should be made to the current notification requirements for non-cash payphone calls

14. Payphone providers generally argued that users are sufficiently aware that they have the option to reach the operator by dialing 0 at any time to obtain rate information. The JTF and TCC noted that further requirements could make the business proposition of some payphones even less appealing, with TCC noting that in some instances the imposition of further requirements could accelerate the removal of payphones.
15. CAC/PIAC and l'Union argued that payphone users are often under pressure to complete a call quickly, citing examples like completing a call in a busy airport or due to a personal emergency, and, as such, new requirements should be put in place so that information is quickly and easily available.
16. Interveners to this proceeding suggested alternative means to convey the information related to long distance non-cash payphone calls to consumers, including (a) making detailed rate information available by posting it on or around the payphone itself, (b) modifying the IVR system so that the option to obtain a quote comes first, and (c) maintaining the current practice of using the operator services by dialing 0. Payphone providers generally argued that implementing the various proposals, above and beyond their current practices, would be unworkable, not necessary, and onerous, but did not provide details regarding the specific costs that would be incurred as a result.
17. Bell Canada et al. submitted that posting the rates for non-cash calls on payphones would diminish their flexibility to respond to market forces, and that it would be expensive to continually update this information on every payphone. CAC/PIAC recognized that posting all possible rates may not be reasonable, but argued that the posting of rate bands should be feasible. TCC argued that, should this proposal be required by the Commission, it should only apply to payphone providers who charge rates in excess of a pre-determined threshold. L'Union submitted that all rate information should be posted on payphones.
18. L'Union suggested that the "obtain a quote" option should be presented before the option to complete the call in the IVR system, in addition to posting the rates on the payphones. CAC/PIAC supported the proposal, particularly in light of the high initial charge to complete a call at certain payphones. Bell Canada et al. argued that the revenues generated from payphones would not justify the costs to modify existing IVR options, while TCC submitted that it is unsure if it would even be possible to modify some of its older payphones. Further, TCC argued that the order in which options are presented to consumers seeking information will not have any bearing on whether a consumer chooses one option over another.
19. CAC/PIAC voiced concerns that consumers are not notified that a third-party service provider may be billing for payphone service, arguing that a consumer should be notified that this could be a possibility.

Commission's analysis and determinations

20. The intent of notification requirements for non-cash payphone calls is to empower consumers by giving them the tools to make informed decisions. By providing consumers with the opportunity to get information that could affect their decision making, the possibility of bill shock is lowered. In order to achieve this goal, rate information must be available to consumers as early and as clearly as possible in the process of making a long distance non-cash payphone call.
21. Posting rates or rate bands on or around payphones would achieve the goal of notifying consumers, but may be impractical and may hinder payphone providers' flexibility to react to market forces. As for the suggestion of only applying such a requirement when fees surpass a certain threshold, as submitted by TCC, considering that rates for long distance non-cash payphone calls are not regulated, a requirement that only applies on the basis of the fees charged would not be appropriate in the circumstances.
22. If a payphone provider's IVR system is modified to ensure that the "obtain a quote" option is presented to consumers earlier in the menu, this too could provide greater notice. The order in which options are presented to consumers is likely to have an impact on the choices consumers make, especially in instances where the consumer is under pressure to quickly complete their call. A consumer who is offered the option of completing a call before being offered the option of receiving rate information is less likely to receive that rate information. However, modifying IVRs may not be cost-effective or, in some cases, technologically possible.
23. While operator services, which can be reached by dialing 0, may be an efficient means for consumers to obtain detailed rate information, the current notification requirements only apply when a consumer requests the information in the course of an operator-handled call. Consumers may not be aware that the operator can provide this information, and may not even be aware that they may be subject to additional charges, such as connection fees, nor of their scale, and thus may not think to inquire about them.
24. On the matter raised by CAC/PIAC that consumers should be made aware that the entity billing their long distance non-cash payphone call may be a third party, the name on their statement should not affect whether consumers experience bill shock.
25. Based on the record of the proceeding, consumer safeguards for long distance non-cash payphone calls need to be strengthened; however, the record of this proceeding shows that a "one size fits all" solution to address the issue is not appropriate and, while an enhanced notification requirement is necessary, payphone providers need some flexibility in the means they use to effect notification of rates for long distance non-cash payphone calls. In so doing, payphone providers should keep in mind the ultimate goal of notification, which is to ensure consumers are empowered to obtain the necessary information and make an informed decision about their long distance non-cash payphone calls.
26. Accordingly, pursuant to its powers under section 24 of the *Telecommunications Act* (the Act), the Commission **directs** that as a condition of providing payphone services, all ILECs must make detailed information available to consumers regarding the rates and other fees charged by or on behalf of the ILEC with respect to long distance non-cash payphone calls. Detailed rate information includes connection fees, per-minute rates, and any other charges that would be charged to the consumer by or on behalf of the ILEC for a long distance non-cash payphone call.
27. The Commission **directs** all ILECs to file, within **six months** of the date of this decision, (a) the means they intend to use to ensure the above requirement is met, (b) how this approach will ensure that all potential users have an opportunity to obtain information about detailed rate information necessary to make an informed decision, and (c) the timeline for the implementation of the selected approach.
28. The Commission provides the following non-exhaustive list of examples of means that would be considered as meeting the above requirement:
 - o posting, on or around the payphone, detailed rate information to common destinations, including destinations in Canada, the U.S., and abroad;
 - o modifying the IVR system so that the first option presented to consumers making a long distance non-cash payphone call is the option to "obtain a quote;" or
 - o posting, on or around the payphone, that detailed rate information, including all fees, can be obtained by dialing 0 to reach an operator. The operator would have to disclose detailed information if asked about rates, including rates and additional charges and any difference between IVR- and operator-completed calls.

How should the notification requirements for non-cash payphone calls be applied to CPSPs?

29. Conditions of service - such as the notification requirements for non-cash payphone calls - can be imposed on Canadian carriers, such as ILECs, by virtue of section 24 of the Act. However, CPSPs are considered resellers of telecommunications services rather than Canadian carriers. Accordingly, the current notification obligations were imposed on CPSPs indirectly. In Telecom Decision 98-8, the Commission directed Canadian carriers doing business with these resellers to include the obligations in their tariffs and contracts with CPSPs. In December 2014, Parliament amended the Act by adding section 24.1, which allows the Commission to impose conditions of service on resellers directly. However, no CPSPs participated in the present proceeding and there is no evidence on the record addressing the question of how the new obligations should be imposed in their case.
30. Accordingly, while the Commission is of the view that the new notification requirement, expressed above, should apply to CPSPs, a follow-up proceeding is necessary in order to determine how this requirement should be imposed on them as well as whether the underlying Canadian carriers who provide facilities to CPSPs should continue to be subject to the conditions of service requiring them to apply the existing notification obligations on CPSPs. Thus, the Commission intends to issue a notice of consultation calling for comments on these issues.

Policy Direction

31. The Commission, in exercising its powers and performing its duties under the Act, is required to implement the policy objectives set out in section 7 of the Act, in accordance with the requirements of the Policy Direction.⁴
32. The Commission considers that its determinations in this decision will advance the policy objectives set out in paragraphs 7(a), (b), (f), and (h)⁵ of the Act.
33. Consistent with subparagraph 1(a)(i) of the Policy Direction, in this case, market forces alone cannot be relied upon to ensure that payphone providers adequately notify consumers of the costs of completing long distance non-cash payphone calls, based on the record related to consumer bill shock that has not been prevented by the current requirements.
34. Consistent with subparagraph 1(a)(ii) of the Policy Direction, the regulatory requirement set out above, wherein payphone providers will select the means through which they will comply with the requirement, is efficient and proportionate to its purpose, and minimally interferes with market forces. The burden that will be imposed on payphone providers in complying with this requirement has been considered, as well as the potential impact on these payphone providers' existing business models. However, the requirement will ensure that consumers are provided information on which to base their decision, while not prohibiting current practices by the payphone providers, and giving payphone providers flexibility in determining how to meet the requirement.
35. Consistent with subparagraph 1(b)(iii) of the Policy Direction, the regulatory requirement set out above, once fully implemented, would achieve a symmetrical regulatory regime across all payphone providers, regardless of the technology they use, the geographic market in which they operate, and their size.

Other matter

Recourse mechanism for consumers experiencing bill shock with their long distance non-cash payphone calls

36. As noted above, the current notification requirements do not sufficiently protect consumers from the possibility of bill shock related to long distance non-cash payphone calls. There should be a clear recourse mechanism available to consumers who experience bill shock related to such calls.
37. In general, the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) deals with consumer complaints about forborne telecommunications services, including long distance calls, whereas complaints about regulated services are typically dealt with by the Commission.⁶
38. A review of the structure and mandate of the CCTS was initiated by Broadcasting and Telecom Notice of Consultation [2015-239](#), which included a public hearing that took place from 3 to 6 November 2015. The role of the CCTS in dealing with bill shock related to long distance non-cash payphone calls was commented on by the CCTS during that proceeding. The Commission shall release its determinations in that proceeding in due course.

Secretary General

Related documents

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation CRTC [2015-239](#), 4 June 2015, as amended by Broadcasting and Telecom Notices of Consultation CRTC [2015-239-1](#), 24 July 2015, and [2015-239-2](#), 25 September 2015
- *Consumer safeguards for payphones - Notification of rates for non-cash payphone calls*, Telecom Notice of Consultation CRTC [2015-67](#), 26 February 2015
- *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC [2013-337](#), 16 July 2013, as amended by Telecom Notice of Consultation CRTC [2013-337-1](#), 11 September 2013
- *Public Interest Advocacy Centre and Canada Without Poverty - Billing of calls placed from Bell Canada payphones*, Telecom Decision CRTC [2013-327](#), 5 June 2013, as amended by Telecom Decision CRTC [2013-327-1](#), 10 July 2013
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC [2011-46](#), 26 January 2011
- *Local pay telephone competition*, Telecom Decision CRTC [98-8](#), 30 June 1998
- Telecom Order CRTC [95-316](#), 15 March 1995

Footnote 1

Telecom Decision [2013-327](#) was issued as a result of the Commission's consideration of an application filed in November 2012 by the Public Interest Advocacy Centre, on behalf of itself and Canada Without Poverty.

¹

Footnote 2

Non-cash payphone calls include calls paid for using third-party billing, credit cards, and telephone cards (including calling cards, collect cards, prepaid long distance cards, and other telephone cards).

²

Footnote 3

The Commission's report, entitled *Results of the fact-finding process on the role of payphones in the Canadian communications system* (the Report), was placed on the Commission's website on 26 February 2015. The Report was prepared based on the results of the fact-finding process initiated by Telecom Notice of Consultation [2013-337](#). See <http://crtc.gc.ca/eng/publications/reports/rp150226a.htm>

3

Footnote 4

Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534, 14 December 2006

4

Footnote 5

The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; 7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and 7(h) to respond to the economic and social requirements of users of telecommunications services.

5

Footnote 6

For more details about the mandate of the CCTS, see Telecom Regulatory Policy [2011-46](#).

6

Date modified:

2015-12-10

This is Exhibit "V" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits



Richard S. Tropea
Director
Regulatory Matters

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1996 05 10

Mr. Stuart MacPherson
Executive Director
Telecommunications
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. MacPherson:

Associated with Tariff Notice No. 5759

Attached for the Commission's approval is a revision to the Company's General Tariff section pertaining to Public Telephone Service. The Company is proposing the introduction of Item 292, Inmate Service, relating to the provision of public telephone service to a correctional or penal institution for the use of inmates.

The use of public telephones by inmates is currently subject to minimal scrutiny by guards and other security personnel within correctional or penal institutions. As a consequence, the public telephones have been used to place calls to harass or intimidate victims, witnesses, lawyers and judges, and to participate in criminal conspiracies. There is also contention amongst inmates for use of the public telephones resulting in inequitable use amongst them.

The Company, working together with Correctional Services of Canada, has been trialing a more effective approach for the provision of public telephone service to inmates. Essentially, the calling process is controlled through software in the public telephone network control centre. There are limits on the telephone numbers inmates can call, on the length of the calls, the number of calls, and on the time the calls may be placed. These restrictions are determined by the administration of each correctional or penal institution. The intent of these restrictions is to permit certain calling privileges by inmates while at the same time protecting the public from unwanted calls. This approach provides greater equity to the inmate population and is expected to greatly increase the protection of the public from harassing and intimidating calls. It is also expected that the safety of guards and security personnel will be enhanced.

In general terms, this service allows the administration to control inmate telephone privileges in a centralized fashion. This service may permit access to specific telephone numbers and may include blocking access to other telephone numbers or services. In addition, calls may be limited in duration and may be permitted during specified periods of the day or specific days of the week. In order to further protect the public, recorded announcements stating that the call originates from a correctional institute may be added to the calls.

Call detail information may be furnished to the institution and calls may be monitored and recorded according to applicable federal and provincial laws with respect to the authority granted to the administration of correctional or penal institutions. Release of customer confidential information would be subject to the provisions of Article 11 of the Company's Terms of Service which allows the Company to release confidential information when disclosure is pursuant to a legal power. The Company's role in this regard is to provide the necessary telecommunications facilities. Corrections Canada or the provincial authorities will determine the information which they require to monitor in compliance with their legislatively vested authority.

Calls from inmate public telephone service are rated in the same manner as calls originating from other public telephones. However, payment options may be limited based on the requirements of the institution's administration, the technological limitations of the public telephone set, and the Company's collection policies. Currently, collect calling is the only payment option that is permitted.

The Company notes that the inmate telephone sets are less costly to provision than regular public telephone sets because inmate sets do not require any coin collecting mechanism or coin box and there is no need to send a coin collector to these sets. While there are also some aspects of Inmate Service which may have incremental costs compared to usual public telephone service, the Company is of the view that the cost of providing Inmate Service is well within the existing range of costs for the Company's public telephones. The Company is further of the view that the proposed Inmate Service will benefit the institutions, their inmates, and the public at large.

Yours very truly,



for Director - Regulatory Matters

Attachment

IS/MTH/krq

This is Exhibit "W" referred to in the Affidavit of Pierre-Luc Hébert affirmed June 30, 2021.



Commissioner for Taking Affidavits

PUBLIC TELEPHONE SERVICE

Item

292. INMATE SERVICE

(a) Inmate service provides public telephone service to correctional or penal institutions for the use of inmates. It is provided at the request of the institution, and is subject to the availability of suitable facilities.

(b) Inmate service allows the institution to control and monitor an inmate's telephone privileges. This control may include blocking access to certain telephone numbers or services, limiting the length of calls, restricting calls to specified periods of the day or specific days of the week and recording calls.

(c) Inmate service calls are rated in the same manner as calls originating from other public telephones except that payment options may be limited based on the requirements of the institution, technological limitations and Company collection policies.

SERVICE DE TÉLÉPHONE PUBLIC

Article

292. SERVICE AUX DÉTENUS

(a) Le service aux détenus permet d'assurer un service de téléphone public aux établissements correctionnels ou pénitentiaires à l'intention des détenues. Le service est fourni à la demande de l'établissement, si les installations nécessaires sont disponibles.

(b) Le service aux détenus permet à l'établissement de contrôler et de gérer les privilèges téléphoniques des détenus. À cette fin, il est possible d'enregistrer les appels, de bloquer l'accès à certains numéros de téléphone ou à certains services, de limiter la durée des appels ou d'autoriser seulement les appels effectués à certaines heures de la journée ou certains jours de la semaine.

(c) Les appels effectués par les détenus sont tarifés de la même façon que les appels effectués au moyen des téléphones publics ordinaires, sauf que les modalités de paiement peuvent être limitées en raison des exigences de l'établissement, des limites de la technologie ou des politiques de recouvrement de la Compagnie.

C

VANESSA FAREAU et al.

and BELL CANADA et al.

Court File No. CV-20-00635778-00CP

Plaintiff

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

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and BELL CANADA et al.

Court File No. CV-20-00635778-00CP

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

RESPONDING AND CROSS-MOTION RECORD OF
BELL CANADA

(Motion to stay or dismiss pursuant to r. 21.01(3)(a),
returnable December 7, 8, 2021)

STOCKWOODS LLP

Barristers

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