



Telecom Circular CRTC 2006-10

Ottawa, 16 November 2006

Access-independent VoIP services pursuant to Order in Council P.C. 2006-1314

1. On 9 November 2006, the Governor in Council issued Order in Council P.C. 2006-1314 (the Order in Council), a copy of which is appended to this circular. The Governor in Council, pursuant to subsection 12(7) of the *Telecommunications Act* (the Act), varied *Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2005-28, 12 May 2005, as amended by Telecom Decision CRTC 2005-28-1 dated 30 June 2005, and as confirmed in *Reconsideration of Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2006-53, 1 September 2006, so that, in relation to retail local access-independent voice over Internet Protocol (VoIP) services provided by incumbent local exchange carriers (ILECs) within their incumbent territories, the Commission refrains from exercising its powers and performing its duties under section 25, subsections 27(1), (5), and (6), and sections 29 and 31 of the Act to the same extent that it does in relation to retail local telecommunications services provided to end-users by competitive local exchange carriers as set out in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 and subsequent determinations.
2. The Commission notes that by virtue of the Order in Council the tariffs previously approved by the Commission for the following services are no longer of any force or effect and those services are forborne from regulation to the extent specified in the Order in Council:
 - Bell Digital Voice Lite (Bell Canada General Tariff item 7020)
 - Business IP Voice for Broadband (Bell Canada General Tariff item 7025)
 - WebCall (SaskTel General Tariff item 550.14)
3. Any ILEC that considers that another tariffed service should be similarly forborne from regulation can apply to the Commission with supporting rationale based upon the Order in Council, appended below.
4. The Commission will be reviewing other rules and determinations in effect to determine what further consequential modifications, if any, are required in order to give effect to the Order in Council.

Secretary General

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Order of the Governor in Council

P.C. 2006-1314 dated 9 November 2006

Whereas, on May 12, 2005, the Canadian Radio-television and Telecommunications Commission rendered Telecom Decision CRTC 2005-28 ("the Decision"), entitled *Regulatory framework for voice communication services using Internet Protocol*;

Whereas, in the Decision, the Commission set out the details of the regulatory regime applicable to the provision of local Voice over Internet Protocol (VoIP) services and determined that those services were part of the same market as local exchange services, that it would not be appropriate to forbear from regulating those services and that the regulatory framework governing local competition, set out in Telecom Decision CRTC 97-8, entitled *Local Competition*, and subsequent determinations, applied to those services, except as otherwise provided in the Decision;

Whereas, on June 30, 2005, the Commission amended the Decision, under Telecom Decision CRTC 2005-28-1;

Whereas the Governor in Council, by Order in Council P.C. 2006-305 of May 4, 2006, which was made pursuant to subsections 12(1) and (5) of the *Telecommunications Act* ("the Act"), referred the Decision back to the Commission for reconsideration, which had to be completed within 120 days after the day on which the Order was made;

Whereas, on September 1, 2006, the Commission issued Telecom Decision CRTC 2006-53, entitled *Reconsideration of Regulatory framework for voice communication services using Internet Protocol*, in which it confirmed the Decision, including its finding that it would not be appropriate to forbear from regulating local VoIP services without an examination of the entire relevant market for local exchange services;

Whereas, in the Decision, the Commission imposed the same regulatory regime on both local access-dependent and access-independent VoIP services;

Whereas the Governor in Council considers that retail local access-dependent and access-independent VoIP services are quite different from each other;

Whereas retail local access-dependent VoIP services are services for which access and service are both provided by the same provider, and can be provided by changing the underlying technology of the local access network from circuit-switched to packet-switched;

Whereas for retail local access-independent VoIP services – in which access and service may be provided by distinct providers – the service provider is not required to provide the underlying network on which the service rides and is not required to obtain the permission of the network provider to offer the service to customers on that network;

Whereas the Governor in Council considers that retail local access-dependent VoIP services are typically indistinguishable from traditional local telephone services, while retail local access-independent VoIP services are very different, as they require high-speed Internet access

as well as special handsets, adapters or the use of a computer, and may be more susceptible to service deterioration or disruption;

Whereas the Governor in Council considers that retail local access-independent VoIP services should thus be treated as a distinct class of local telephone services, for regulatory purposes;

Whereas the Canadian telecommunications policy objectives set out in section 7 of the Act include enhancing the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications, fostering increased reliance on market forces for the provision of telecommunications services, ensuring that regulation, where required, is efficient and effective, stimulating research and development in Canada in the field of telecommunications and encouraging innovation in the provision of telecommunications services;

Whereas the Governor in Council considers that VoIP is a relatively new and rapidly evolving technology used to provide telephone services and that it is in the public interest to enable efficient and timely deployment of innovative new technologies by all telecommunications service providers;

Whereas the Governor in Council considers that VoIP technology is increasingly being integrated into telecommunications networks and is a means of reducing costs and enabling innovative features, competition and the entry of smaller players in the local telephone market;

Whereas the Governor in Council considers that barriers to market entry are much lower for retail local access-independent VoIP services as no provision of network facilities is required;

Whereas retail local VoIP services provided by incumbent local exchange carriers (ILECs) within their incumbent territories are subject to economic regulation, while those provided by competitive local exchange carriers (CLECs) are not subject to that type of regulation;

Whereas the Governor in Council considers that it would be consistent with the Canadian telecommunications policy objectives to refrain from regulating the retail local access-independent class of VoIP services provided by the ILECs within their incumbent territories, at this time, since forbearance from economic regulation for those services would stimulate competition and innovation;

Whereas the Governor in Council considers that it is, however, important that those services remain subject to the regulatory framework imposed on VoIP services in section IV of the Decision;

And, whereas, in accordance with section 13 of the Act, the Minister of Industry has notified the minister designated by the government of each province of the Minister's intention to make his recommendation to the Governor in Council to vary the Decision and has provided an opportunity for each minister to consult with him;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to subsection 12(7) of the *Telecommunications Act*, varies Telecom Decision CRTC 2005-28, as amended by Telecom Decision CRTC 2005-28-1 and as confirmed in Telecom Decision CRTC 2006-53, so that, in relation to retail local access-independent VoIP services – being a particular class of services – provided by ILECs

within their incumbent territories, the Canadian Radio-television and Telecommunications Commission refrain from exercising its powers and performing its duties under section 25, subsections 27(1), (5) and (6) and sections 29 and 31 of that Act to the same extent that it does in relation to retail local telecommunications services provided to end users by CLECs in Telecom Decision CRTC 97-8, *Local Competition*, and subsequent determinations. However, nothing in this Order prevents the Commission from exercising its powers and resuming regulation of retail local access-independent VoIP services provided by ILECs within their incumbent territories if, pursuant to subsection 34(3) of that Act, it finds, as a question of fact, that circumstances have changed so that to continue to refrain would be likely to impair unduly the establishment or continuance of a competitive market for the provision of those services. Telecom Decision CRTC 2005-28, as amended by Telecom Decision CRTC 2005-28-1 and as confirmed in Telecom Decision CRTC 2006-53, shall otherwise continue to apply, but to the extent that its provisions are inconsistent with this Order, they shall be interpreted so that the provisions of this Order prevail.