



## Telecom Decision CRTC 2007-109

Ottawa, 21 November 2007

### Small incumbent local exchange carriers' show cause – Follow-up to Telecom Decision 2006-14

Reference: 8638-C12-200606527

*In this Decision, the Commission*

- *determines that the local winback rule and the competitive safeguards for promotions will not apply to the small incumbent local exchange carriers (SILECs);*
- *forbears from regulating the retail access-independent local voice over Internet Protocol (VoIP) services provided by the SILECs but does not forbear from regulating the access-dependent local VoIP services provided by the SILECs;*
- *determines that the other aspects of the VoIP framework – including local number portability, digital subscriber loop service providers' access, directory listings, and equal access obligations – will apply to the SILECs; and*
- *determines that the quality of service rate rebate plan detailed in Telecom Decision 2005-20 will not apply to the SILECs. Instead, the Commission directs the SILECs to continue to use their complaint-based system.*

#### Introduction

1. In Telecom Decision 2006-14, the Commission established the price regulation regime that is currently applicable to the small incumbent local exchange carriers (SILECs).<sup>1</sup> The Commission also permitted competitive entry in the SILECs' territories, effective immediately, by allowing the resale of the SILECs' local services.
2. However, as the Commission considered that the full benefits of competition in the SILECs' territories could only be realized via facilities-based competition, it directed each SILEC to file an implementation plan with the Commission within 30 days following a formal signed expression of interest from a local exchange carrier (LEC) or other carrier requesting to use

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<sup>1</sup> There are currently 38 SILECs in Canada; these companies are listed in Attachment 1 to this Decision.

competitor services in its serving territory. The Commission also directed the SILECs to show cause why the following determinations that are applicable to the large incumbent local exchange carriers (large ILECs)<sup>2</sup> relative to local competition should not also apply to them:

- promotion safeguards and the local winback rule;
  - the determinations in Telecom Decision 2005-28;
  - the quality of service (Q of S) determinations in Telecom Decision 2005-20.
3. The Commission received submissions by and/or comments from the Canadian Independent Telephone Company Joint Task Force (the Task Force),<sup>3</sup> which represented the SILECs, and TELUS Communications Company (TCC). The record of the proceeding closed 31 October 2006. The public record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public proceedings".
4. The Commission has identified the following issues to be addressed in its determinations:
- I. Should the promotions safeguards established in Telecom Decision 2005-25 and the local winback rule established in Telecom Decision 2005-28 apply to the SILECs?
  - II. Should the voice over Internet Protocol services (VoIP services) provided by the SILECs be regulated by the Commission?
  - III. Should the SILECs have to implement a Q of S rate rebate plan for competitors?
- I. Should the promotions safeguards established in Telecom Decision 2005-25 and the local winback rule established in Telecom Decision 2005-28 apply to the SILECs?**
5. In Telecom Decision 2005-25, the Commission determined that promotions were generally a legitimate business practice and permitted the large ILECs to introduce them in the local exchange services market with certain competitive safeguards. Specifically, the Commission stated that the large ILECs' promotions involving local exchange services must:
- be available and equally promoted across one or more entire rate bands;

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<sup>2</sup> The large ILECs are Bell Aliant Regional Communications, Limited Partnership; Bell Canada; MTS Allstream Inc; Saskatchewan Telecommunications; and TELUS Communications Company.

<sup>3</sup> The Task Force is comprised of the members of the Association des Compagnies de Téléphone du Québec inc. that are not members of the Société d'administration des tarifs d'accès des télécommunicateurs (SATAT); the members of the Canadian Alliance of Publicly-owned Telecommunications Systems; NorthernTel, Limited Partnership; the members of the Ontario Telecommunications Association; and the members of SATAT.

- not be limited to competitors' customers;
- pass an imputation test for the service, including the impacts of the promotion; and
- have a combined enrolment and benefit period that does not exceed six consecutive months, have no customer lock-in requirement beyond the promotion period, and have a minimum six-month waiting period after the expiry of the most recent previous promotion before offering a new promotion involving the same local wireline service.

6. In Telecom Decision 2005-28, the Commission determined that the winback rule set out below would apply to the large ILECs:

...an ILEC is not to attempt to win back a business customer with respect to primary exchange service [PES] or local VoIP service, and in the case of a residential customer of local exchange service (i.e. PES or local VoIP service), with respect to any service, for a period commencing at the time of the local service request and terminating three months, in the case of a business customer, and 12 months, in the case of a residential customer, after that customer's primary local exchange service or local VoIP service has been completely transferred to another local service provider, with one exception: ILECs should be allowed to win back customers who call to advise them that they intend to change local service provider.

7. The Commission notes that the Task Force was of the view that there was no need to apply competitive safeguards associated with the promotion of local exchange services and the local winback rule, in consideration of the SILECs' relatively small size as compared to the large ILECs and the large incumbent cable companies.
8. In *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007, the Governor in Council (GIC) determined that the Commission should remove (a) the existing competitive safeguards for promotions as defined in Telecom Decision 2005-25 and (b) the local winback rule as set out in Telecom Decision 2005-28 and confirmed in Telecom Decision 2006-53.
9. The Commission notes that the SILECs have limited resources in comparison to and are smaller than the large ILECs. The Commission also notes that as a result of the above-noted Order in Council, the competitive safeguards for promotions and the local winback rule no longer apply to the large ILECs.
10. In light of the above, the Commission considers that it is neither necessary nor appropriate to introduce the competitive safeguards for promotions for the SILECs and to apply the local winback rule to them. Accordingly, the Commission determines that the competitive safeguards for promotions and the local winback rule will not apply to the SILECs.

## **II. Should the voice over Internet Protocol services (VoIP services) provided by the SILECs be regulated by the Commission?**

11. In the proceeding that led to Telecom Decision 2005-28, the large ILECs and Télébec, Limited Partnership sought forbearance from the regulation of certain local VoIP services on a going-forward basis.
12. In considering those requests for forbearance, the Commission used two distinct approaches:
  - Under the first approach, the Commission used the analytical framework based on principles commonly used in economics and competition policy within the framework initially set out by the Commission in Telecom Decision 94-19.
  - Under the second approach, the Commission considered arguments presented by parties seeking forbearance under section 34 of the *Telecommunications Act* (the Act) that were not necessarily advanced within the Telecom Decision 94-19 framework.
13. In Telecom Decision 2005-28, the Commission (a) denied the requests for forbearance of local VoIP services; (b) determined that local VoIP services should be regulated as local exchange services; and (c) determined that the regulatory framework governing local competition<sup>4</sup> applied to local VoIP service providers, with some exceptions.<sup>5</sup> The Commission also made a number of determinations in relation to the implementation of the VoIP regulatory framework.
14. In Order in Council P.C. 2006-305, 4 May 2006, which was issued pursuant to subsections 12(1) and 12(5) of the Act, the GIC referred Telecom Decision 2005-28 back to the Commission for reconsideration.
15. In Telecom Decision 2006-53, the Commission reconsidered the above-noted request for forbearance from the regulation of local VoIP services. In so doing, the Commission reaffirmed (a) the 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 and (b) the regulatory regime for local VoIP services established in Telecom Decision 2005-28.

### ***Positions of parties***

16. The Task Force submitted that significant exceptions were needed to the provisions of Telecom Decision 2005-28 for the SILECs with respect to the regulation of VoIP services. The Task Force requested that the Commission forbear from regulating SILEC local VoIP services on the basis of the two separate approaches under both the Telecom Decision 94-19 framework and section 34 of the Act. The Task Force submitted that the SILECs should be treated differently than the large ILECs which were the focus of Telecom Decision 2005-28.

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<sup>4</sup> As set out in Telecom Decision 97-8 and subsequent determinations.

<sup>5</sup> Exceptions include message relay service (MRS) and privacy safeguards.

The Task Force was of the view that the framework for the implementation of local VoIP services must recognize the SILECs' lack of market power and limited resources.

17. The Task Force submitted that the SILECs' serving areas typically represented a relatively small sub-market of the overall local voice market. The Task Force further submitted that the SILECs were not as dominant in their own local exchange services market as the ILECs were in the overall local exchange services market. In this regard, the Task Force submitted the following:
  - The SILECs' local exchange services markets were small.
  - Barriers to entry for competitive local exchange carriers (CLECs) were non-existent. CLECs were no longer required to obtain local network and service resources from a SILEC to compete in a SILEC's territory as CLECs could provide their own network resources. The Task Force submitted that service resources such as public switched telephone network (PSTN) connections and numbers were typically obtained from the large ILECs (rather than the SILECs) in recognition of the prior entry of a CLEC into the adjoining large ILEC local exchange services market.
  - Given their existing cable plant and market share, the large cable companies faced no obstacles in deploying local VoIP services in the SILECs' territories. The cable companies' ease of entry was at a very low cost increment. In this regard, the Task Force noted the significant penetration of cable modem Internet service and the ease with which VoIP technology could accordingly be introduced. The Task Force further submitted that all of the large cable companies had experience in serving telephone customers, as witnessed by their successful VoIP service deployments.
18. TCC submitted that market power did not relate to the size of the firm; instead, market power was assessed by examining market shares, demand conditions that affected customer responses to product or service price changes, and supply conditions that affected the ability of competitors in the market to respond to such changes. TCC considered that market power would exist where a service provider controlled essential facilities, functions, or services that were required by competitors.

*Commission's analysis and determinations*

19. The Commission considers that the SILECs' show cause on Telecom Decision 2005-28 raises the following issues:
  - A. The appropriateness of regulating retail access-independent and access-dependent local VoIP services in the SILECs' territories
  - B. The appropriateness of applying the VoIP regulatory framework in the SILECs' territories

***A. The appropriateness of regulating retail access-independent and access-dependent local VoIP services in the SILECs' territories***

20. The Commission will address retail access-independent and access-dependent local VoIP services separately.

*Retail access-independent local VoIP services*

21. Order in Council 2006-1314<sup>6</sup> varied Telecom Decision 2005-28 so that the Commission would refrain from exercising its powers and performing its duties under sections 25, 29, and 31 as well as subsections 27(1), (5), and (6) of the Act in relation to retail local access-independent VoIP services provided by ILECs within their incumbent territories to the same extent that it does in relation to retail local telecommunications services provided to end-users by CLECs.
22. The Commission notes that Order in Council 2006-1314 does not apply to the VoIP services offered by the SILECs. However, the Commission considers that it would be consistent with Order in Council 2006-1314 to forbear from regulating retail local access-independent VoIP services provided by the SILECs within their incumbent territories.
23. In addition, the Commission notes that high-speed Internet access service is a prerequisite for access-independent local VoIP services, and that a SILEC cannot offer access-independent local VoIP services unless a service provider is offering high-speed Internet access service in that SILEC's territory. The Commission also notes that the nature of access-independent local VoIP services is such that if high-speed Internet access service exists, multiple providers can offer access-independent local VoIP services using that service. Therefore, when a consumer has high-speed Internet access service, they will be able to select either a SILEC's access-independent local VoIP services or a competitor's services. Accordingly, the Commission considers that the presence of high-speed Internet access service means that a customer has choice of access-independent local VoIP service providers, and that there therefore is workable competition in the access-independent local VoIP services market in the SILECs' territories.
24. In light of the above, the Commission considers that it would be appropriate to forbear from regulating retail access-independent VoIP services provided by the SILECs within their incumbent territories.
25. Pursuant to subsection 34(1) of the Act, the Commission finds, as a question of fact, that to refrain from the exercise of its powers and the performance of its duties to the extent set out in this Decision with respect to the regulation of retail local access-independent VoIP services provided by the SILECs within their incumbent territories is consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act.
26. Pursuant to subsection 34(2) of the Act, the Commission also finds, as a question of fact, that retail local access-independent VoIP services provided by the SILECs within their incumbent territories will be subject to a level of competition sufficient to protect the interests of users.

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<sup>6</sup> The GIC issued Order in Council P.C. 2006-1314, 9 November 2006, pursuant to subsection 12(7) of the Act.

27. Pursuant to subsection 34(3) of the Act, the Commission finds, as a question of fact, that refraining from regulating retail local access-independent VoIP services provided by the SILECs within their incumbent territories, to the extent set out in this Decision, is unlikely to unduly impair the establishment and continuance of a competitive market for these services.
28. In light of the above, the Commission considers it appropriate to refrain from exercising its powers and performing its duties under sections 25, 29, and 31, as well as subsections 27(1), (5), and (6) of the Act in relation to retail access-independent local VoIP services provided by the SILECs within their incumbent territories.
29. The Commission declares, pursuant to subsection 34(4) of the Act, that effective the date of this Decision sections 25, 29, and 31 as well as subsections 27(1), (5), and (6) of the Act do not apply to retail access-independent local VoIP services provided by the SILECs within their incumbent territories.

*Retail access-dependent local VoIP services*

30. In its consideration of the retail access-dependent local VoIP services, the Commission will base its analysis on (i) the Telecom Decision 94-19 framework, which requires the assessment of (a) the relevant market; (b) whether a firm has market power with respect to the relevant market; and (c) whether, and to what extent, forbearance should be granted; as well as (ii) the forbearance criteria set out in section 34 of the Act.

*(i) The Telecom Decision 94-19 framework*

*(a) The relevant market*

31. The relevant market is the smallest group of products and the smallest geographic area in which a firm with market power can profitably impose a sustainable price increase. The identification of the relevant market is based on the substitutability of the services in question.
32. The Commission notes that the Task Force did not challenge the Commission's findings in Telecom Decision 2005-28, as amended by Order in Council 2006-1314, that access-dependent VoIP local services are
  - (a) in the same relevant market as circuit-switched local exchange services; and
  - (b) close substitutes for circuit-switched local exchange services, and therefore are a part of the same relevant market as these circuit-switched services.
33. In light of the above, the Commission determines that the relevant product market is as defined in Telecom Decision 2005-28.

*(b) Whether a firm has market power with respect to the relevant market*

34. Market power can be demonstrated by the ability of a firm to raise or maintain prices above those that would prevail in a competitive market.
35. The Commission notes that each SILEC's market for local exchange services is a relatively small segment of the overall local exchange services market. However, the Commission notes that under the Telecom Decision 94-19 analysis, each local exchange services market is assessed independently of other local exchange services markets in the area or the overall local exchange services market. Accordingly, the Commission finds that the local exchange service market's size compared to the overall local exchange services market is not relevant to the assessment of competitiveness within the relevant market in question.
36. In Telecom Decision 94-19, the Commission considered that market competitiveness should be assessed via analysis of the following factors in the relevant market: market share, demand conditions, rivalrous behaviour, and supply conditions.
37. With respect to market share, the Commission notes that in Order in Council 2007-532, the GIC replaced the Commission's market-share test regarding a large ILEC's application for local forbearance with one that emphasized the presence of competitive infrastructure. Order in Council 2007-532 states that forbearance will be granted for residential local exchange services if there are, in addition to the ILEC, at least two independent facilities-based telecommunications service providers, including providers of mobile wireless services. Each of these service providers must offer local exchange services in the market and be capable of serving at least 75 percent of the number of residential local exchange service lines that the ILEC is capable of serving, and at least one, in addition to the ILEC, must be a facilities-based, fixed-line telecommunications service provider. In the case of business local exchange services, forbearance will be granted if there is, in addition to the ILEC, at least one other independent facilities-based, fixed-line telecommunications service provider that offers local exchange services in the market and is capable of serving at least 75 percent of the number of business local exchange service lines that the ILEC is capable of serving.
38. The Commission notes that in most of the SILECs' territories there are currently no facilities-based competitors offering local exchange services. The Commission also notes that although it recently approved the implementation of local competition in TBayTel's serving territory in Telecom Decision 2007-78 and in NorthernTel, Limited Partnership's serving territory in Telecom Decision 2007-93, at this point a facilities-based competitor has not firmly established itself in either of these local exchange services markets. The Commission notes that the evidence on the record does not indicate that there is a facilities-based fixed-line telecommunications service provider offering residential and/or business services in the SILECs' territories that is capable of serving at least 75 percent of the number of residential and/or business local exchange service lines that the ILEC is capable of serving. Accordingly, the Commission finds that the competitive infrastructure presence test is not met in the territories of the SILECs.

39. With respect to demand conditions, the Commission considers that, if and when alternatives become available, it will be economically feasible for a user to switch from a SILEC's local exchange service to another supplier's service offering. Accordingly, the Commission finds that there are no demand-based barriers to competitive entry or expansion for local exchange services in the SILECs' territories.
40. With respect to rivalrous behaviour, the Commission notes that there is no evidence on the record of the proceeding that led to this Decision to demonstrate that rivalrous behaviour exists in the SILECs' territories.
41. With respect to supply conditions, the Commission considers that, in general, the networks of the cable companies are becoming more advanced and more easily interconnected with telecommunications facilities of the SILECs and the large ILECs. The Commission also agrees that some cable companies now have experience serving telephone customers. Accordingly, the Commission considers that sufficient innovation and technological change have occurred to enable incumbent cable companies to compete in the SILECs' local exchange services market.
42. However, the Commission notes that in most of the SILECs' territories there are currently no facilities-based competitors offering local exchange services, and in those territories where there is a facilities-based competitor offering local exchange services, the competitors have not yet firmly established themselves. Accordingly, the Commission considers that it is not clear whether there are additional barriers to entry, such as the requirement to implement local number portability (LNP) and access to unbundled loops, that may not be cost-effective in some of the SILECs' territories.
43. In light of all of the above, the Commission finds that the SILECs have market power in the local exchange services markets in their incumbent territories.

*(c) Whether, and to what extent, forbearance should be granted*

44. In Telecom Decision 94-19, the Commission stated that the mere possibility of competition does not provide sufficient grounds to forbear. Further, the Commission considered that it requires evidence that significant barriers to entry have been removed and that workable competition has occurred or will occur within a period of one or two years in order to assess whether competition in a market is or will be sufficient to (a) protect the interests of users and (b) be sustainable.
45. As noted above, the competitive infrastructure presence test is not met in the territories of the SILECs. The Commission further notes that competition may not emerge in some of the SILEC territories. Accordingly, the Commission considers that, based on a Telecom Decision 94-19 analysis, there is insufficient evidence to find as a question of fact under subsection 34(2) of the Act that local exchange services in the SILECs' territories are or will soon be subject to sufficient workable competition to protect the interests of users.
46. Accordingly, the Commission considers that it is inappropriate to forbear from the regulation of access-dependent local VoIP service in SILEC territories at this time.

*(ii) The forbearance criteria set out in section 34 of the Act*

47. In Telecom Decision 2005-28, the Commission determined that it was inappropriate to forbear from regulating VoIP services under section 34 of the Act. In Telecom Decision 2006-53, the Commission reaffirmed its determination. In Order in Council 2006-1314, the GIC did not change the Commission's determinations with regard to the regulation of access-dependent local VoIP services.
48. As noted above, the Commission considers that the territories of the SILECs do not meet the competitive infrastructure presence test. The Commission further considers that to forbear from regulation of the local exchange services market would not be consistent with the policy objectives stated in paragraphs 7(b), (c), (f), and (h) of the Act.
49. Accordingly, the Commission considers that it would not be consistent with the Canadian telecommunications policy objectives to refrain, at this time, from exercising any power or performing any duty under sections 24, 25, 27, 29, or 31 of the Act in relation to access-dependent local VoIP services provided by the SILECs.
50. The Commission notes that, as set out above, it considers that while barriers to entry in the SILECs' territories for potential competitors are low, particularly for incumbent cable companies, the competitive infrastructure presence test is not met in the territories of the SILECs.
51. In light of the above and based on the record of this proceeding, the Commission considers that it is unable to find at this time as a question of fact under subsection 34(2) of the Act that the SILECs' access-dependent local VoIP services are or will be subject to competition sufficient to protect the interests of the users. Accordingly, pursuant to subsection 34(2) of the Act, the Commission considers that it is not appropriate at this time to refrain from the exercise of any power, or the performance of any duty, under sections 24, 25, 27, 29, and 31 of the Act in relation to access-dependent local VoIP services provided by the SILECs.
52. Based on the Commission's conclusions that it is not appropriate to forbear pursuant to subsections 34(1) and 34(2) of the Act, the Commission considers it unnecessary to examine subsection 34(3) of the Act in this case.

***B. The appropriateness of applying the VoIP regulatory framework in the SILECs' territories***

53. In Telecom Decision 2005-28, the Commission made a number of determinations in order to accommodate the provision of local VoIP services, which include the following: access to numbers, LNP, directory listings, equal access, access for the disabled, message relay service (MRS), privacy safeguards, tariff filing requirements for in-territory local VoIP service, IP-to-IP interconnection, contribution, and removal of VoIP restrictions on digital subscriber line service providers (DSLSPs).
54. For the reasons set out below, the Commission finds that these aspects of the VoIP regulatory framework will apply to the SILECs. Except where otherwise indicated, the Task Force did not oppose the imposition of these aspects of the VoIP regulatory framework.

*Access to numbers*

55. In Telecom Decision 97-8, the Commission granted the right to directly access North American Numbering Plan numbers from the Canadian Numbering Administrator, as well as the LNP database, to CLECs but not to resellers. In Telecom Decision 2005-28, given its determination that local VoIP services should be regulated as local exchange services, the Commission considered that the existing rules should apply equally to VoIP service resellers and, accordingly, local VoIP service resellers could obtain numbers from any LEC in the marketplace.
56. In the Commission's view, access to numbers removes a supply barrier to local VoIP service resellers, and the SILECs' small size and limited resources in comparison to the large ILECs do not justify the SILECs not being subject to the same requirements regarding access to numbers. Accordingly, the Commission determines that, consistent with Telecom Decision 2005-28, local VoIP service resellers operating in the SILECs' territories can obtain numbers from any LEC, including SILECs, in the marketplace.

*LNP*

57. In Telecom Decision 97-8, the Commission granted certain rights to and imposed some obligations on LECs, including the requirement that all LECs implement LNP. In Telecom Decision 2005-28, the Commission applied this ruling to LECs providing local VoIP services.
58. In Telecom Decision 2006-14, the Commission concluded that when local competition was implemented in a SILEC's territory, that SILEC must implement LNP and participate in the LNP porting process. However, in consideration of the limited resources of the SILECs, the Commission concluded that while a SILEC must implement the porting out process, it could choose whether to implement the porting in process. The Commission also directed each SILEC to file an implementation plan with the Commission within 30 days following a formal signed expression of interest from a LEC or carrier requesting to use competitor services within a SILEC's territory. The Commission determined that the implementation plan should contain certain details such as the start-up costs to implement local competition, including those associated with the implementation of LNP, if appropriate, and how those costs will be recovered.
59. The Commission considers that the process for porting telephone numbers for VoIP service is the same as that identified in Telecom Decision 2006-14 with respect to PSTN service. Accordingly, the Commission determines that the SILECs' requirements for porting VoIP numbers be the same as those identified in Telecom Decision 2006-14, i.e., that the SILECs must implement the porting out process, but can choose whether to implement the porting in process.
60. Further, consistent with Telecom Decision 2006-14, the Commission directs each SILEC to file an implementation plan with the Commission within 30 days following a formal signed expression of interest from a LEC or carrier requesting to use competitor services within the SILEC's territory for the purpose of providing VoIP services. The implementation plan should include the start-up costs to implement local competition and LNP if appropriate, and how those costs will be recovered.

61. The Commission notes that in Telecom Public Notice 2007-7, the Commission invited comments regarding the extent to which LNP functionality should be supported for local VoIP services, with supporting rationale. The Commission notes that the determinations reached in the Telecom Public Notice 2007-7 proceeding may affect the implementation of LNP in the SILECs' territories.

*Directory listings*

62. In Telecom Decision 2005-28, the Commission determined that existing directory listing requirements for large ILECs, CLECs, and resellers would also apply when they provided local VoIP services. The Commission stated that directory listings should appear in the local directory where calls to and/or from that number were local calls, regardless of the geographical location of the customer's service address.
63. The Commission notes the relatively small size and limited resources of the SILECs compared to the ILECs, but considers that the SILECs should continue to provide a comprehensive directory of local telephone numbers in each local calling area for the benefit of end-users. Accordingly, the Commission determines that the existing directory listing requirements in the SILECs' Terms of Service also apply when the SILECs provide local VoIP services. The Commission also finds that directory listings should appear in the local directory where calls to and/or from that number are local calls, regardless of the geographical location of the customer's service address.

*Equal access*

64. In Telecom Decision 92-12, the Commission introduced competition in public long distance voice telephone services and required the large ILECs to provide equal access to interexchange carriers (IXCs). In Telecom Decision 97-8, the Commission required CLECs to provide equal access to all IXCs at terms and conditions equivalent to those found in the large ILECs' tariffs.
65. In Telecom Decision 2005-28, the Commission determined that the existing equal access obligation would apply to LECs providing VoIP services. In Telecom Decision 2006-11, the Commission reiterated its concern regarding the possibility of a LEC conferring an undue or unreasonable preference with respect to access to its networks. The Commission considered that consumers should continue to be able to select IXCs when subscribing to a VoIP service from a LEC.
66. The Commission considers that maintaining the equal access obligation on SILECs that provide VoIP service would be consistent with the principle of technological neutrality, given that their circuit-switched competitors are subject to that obligation. Accordingly, the Commission finds that the existing equal access obligation applies to SILECs providing VoIP services.

*Access for the disabled*

67. In Telecom Decision 2005-28, the Commission requested that the CRTC Interconnection Steering Committee (CISC) assess the accessibility needs of people with disabilities with respect to the development of VoIP technologies. In reply to that request, the Accessibility

Issues Working Group (AIWG) submitted the following non-consensus report: *Needs of persons with disabilities in relation to VoIP – Follow-up to Telecom Decision CRTC 2005-28*, 31 January 2006. In that report, the AIWG agreed that there were issues related to the telecommunications needs of persons with disabilities in the VoIP environment that needed to be addressed; however, the AIWG did not reach a consensus on what those issues were or the appropriate forum or venue to investigate the issues. The AIWG also did not reach a consensus on what its mandate should be in that regard.

68. The Commission notes that a conclusion has not been reached in this area. The Commission determines that the SILECs' obligations regarding access to VoIP services by the disabled will be considered once a conclusion has been reached for the large ILECs.

*MRS*

69. In Telecom Decision 2005-28, the Commission concluded that the existing obligations to provide MRS, established in Telecom Decision 85-29, applied to local VoIP service offerings to the extent technically feasible. The Commission directed all LECs to provide access to MRS throughout their operating territories to the extent technically feasible. The Commission also directed all LECs to include in their contracts or other arrangements with VoIP service providers the requirement that the latter provide access to MRS throughout their respective operating territory as a condition of providing telecommunications services to local VoIP service providers.
70. In addition, the Commission requested a report from CISC addressing the circumstances under which MRS could currently be provided over VoIP, any problems that prevented MRS from being provided over VoIP, possible solutions for the provision of MRS functionality over VoIP where it was not currently technically feasible, and the time required for existing VoIP service providers to implement those solutions.
71. In reply to that request, the Network Working Group (NTWG) submitted a consensus report, *Message Relay Services (MRS) in VoIP Environment*, 6 December 2005. In the consensus report, the NTWG reported that there were no technical obstacles preventing VoIP service providers from offering MRS. Accordingly, in Telecom Decision 2006-12, the Commission reiterated its directions in Telecom Decision 2005-28 regarding MRS.
72. The Commission notes that the SILECs currently provide MRS throughout their operating territories. The Commission considers that there are no technical obstacles unique to the SILECs that prevent them from offering MRS over VoIP. Accordingly, the Commission directs the SILECs to provide access to MRS throughout their territories, to the extent technically feasible. The Commission also directs the SILECs to include in their contracts or other arrangements with VoIP service providers the requirement that the latter provide access to MRS throughout their operating territories as a condition of providing telecommunications services to local VoIP service providers.

*Privacy safeguards*

73. In Telecom Decision 2005-28, the Commission directed all LECs to comply with the existing regulatory requirements designed to protect customer privacy as stated in Telecom Decision 97-8 and in the consensus report, *Application of Customer Safeguards to Resellers*,

2 September 1997, to the extent technically feasible. The Commission also required the LECs to include in their contracts or other arrangements with a VoIP service provider the requirement that the latter make the privacy safeguards in question available to consumers, to the extent technically feasible, as a condition of providing telecommunications services to local VoIP service providers.

74. The Commission also directed all LECs, as a condition of providing local VoIP services, to obtain, prior to the commencement of service, the customer's express acknowledgement of the extent to which the privacy safeguards are not available with their local VoIP services. In addition, the Commission required LECs, as a condition of providing telecommunications services to a local VoIP service provider, to include in their service contracts or other arrangements with these service providers the requirement that the latter obtain the customer's express acknowledgement of the extent to which privacy safeguards are not available with their local VoIP services.
75. The Commission considers that, in order to meet the objective set out in paragraph 7(i) of the Act, telecommunications services must be provided in a manner that contributes to the protection of the privacy of persons. Accordingly, the Commission directs all SILECs to comply with the existing regulatory requirements designed to protect customer privacy as stated in Telecom Decision 97-8 and in the consensus report, *Application of Customer Safeguards to Resellers*, to the extent technically feasible. The Commission also requires the SILECs to include in their contracts or other arrangements with a VoIP service provider the requirement that the latter make the privacy safeguards in question available to consumers, to the extent technically feasible, as a condition of providing telecommunications services to local VoIP service providers.
76. The Commission also directs the SILECs to adopt the requirement set out in Telecom Decision 2005-28 that prior to the commencement of providing local VoIP services, they obtain the customer's express acknowledgement of the extent to which the privacy safeguards are not available with their local VoIP services. In addition, the Commission requires the SILECs to include in their service contracts or other arrangements with a local VoIP service provider the requirement that the latter obtain the customer's express acknowledgement of the extent to which privacy safeguards are not available with their local VoIP services.
77. The Commission adds that, for the purpose of fulfilling the requirement set out in the paragraph above, express acknowledgement may be taken to be given by a customer where the customer provides
  - written acknowledgement;
  - oral confirmation verified by an independent third party;
  - electronic confirmation through the use of a toll-free number;
  - electronic confirmation via the Internet;
  - oral acknowledgement, where an audio recording of the acknowledgement is retained by the carrier; or

- acknowledgement through other methods, as long as an objective documented record of customer acknowledgement is created by the customer or by an independent third party.

78. In Telecom Decision 2005-28, the Commission requested that CISC assess technical issues associated with implementing the privacy safeguards that could not be implemented immediately. The Commission also requested that CISC identify solutions to those technical issues and provide a timeframe for the implementation of those safeguards. In reply to that request, the Business Process Working Group (BPWG) submitted *Privacy Safeguards related to VoIP – Interim Report regarding Technical Issues referred to the NTWG*, 1 November 2005. In that report, the BPWG submitted that it was unable to complete the task requested by the Commission until the NTWG had concluded its work to develop the IP-to-IP technical interface specification.
79. The NTWG submitted *IP Interconnection Profile for Interconnection Between Service Providers Under the Jurisdiction of the CRTC*, 7 November 2006 (NTRE039C), in which the NTWG proposed the minimum guidelines for establishing an IP-to-IP interconnection. In Telecom Decision 2007-22, the Commission approved the report as submitted by the NTWG.
80. As noted above, in Telecom Decision 2005-28 the Commission requested that CISC assess technical issues associated with implementing the privacy safeguards that could not be implemented immediately, identify solutions to those technical issues, and provide a timeframe for the implementation of those safeguards. The Commission notes that the BPWG is currently working on that task, and that any conclusions reached by the BPWG on this task may affect the SILECs' regulatory requirements to protect customer privacy.

*Tariff filing requirements for in-territory local VoIP service*

81. The Task Force submitted that the Commission should recognize the SILECs' non-dominant status in the local VoIP market by waiving the regulatory requirement associated with the filing of tariffs for in-territory local VoIP services. The Task Force was of the view that the framework for the implementation of local VoIP services must recognize the SILECs' lack of market power and limited resources. The Task Force also submitted that competitive equity required that the regulatory treatment for the filing of tariffs for the SILECs' in-territory local VoIP services be equivalent to the regulatory treatment provided to its likely main competitor, i.e., a cable company operating as a CLEC in a SILEC's territory.
82. In Telecom Decision 2005-28, the Commission stated that where an ILEC provides a customer with a telephone number associated with an exchange within that ILEC's territory, it must do so in accordance with an approved tariff. The Commission also stated that where an ILEC provides local VoIP service with an out-of-territory telephone number, the service would not require a tariff unless it is provided as part of a tariffable bundle (e.g. in combination with in-territory access-dependent local VoIP service). With respect to local VoIP service tariff filing requirements, the Commission stated that ILEC tariffs must be filed in accordance with all existing regulatory requirements applicable to local exchange services, including the pricing safeguards set out in Telecom Decision 2005-27.

83. As noted above, forbearance from the regulation of access-dependent local VoIP services in the SILECs' territories is not warranted at this time. Accordingly, the Commission determines that where a SILEC provides a customer with access-dependent local VoIP service with a telephone number associated with an exchange within that SILEC's territory, it must do so in accordance with an approved tariff. The Commission also determines that where a SILEC provides access-dependent local VoIP service with an out-of-territory telephone number, the service does not require a tariff unless it is provided as part of a tariffable bundle (e.g. in combination with in-territory access-dependent local VoIP service). With respect to access-dependent local VoIP service tariff filing requirements, the Commission further determines that the SILECs' tariffs must be filed in accordance with all existing regulatory requirements applicable to the SILECs' local exchange services.

*IP-to-IP interconnection*

84. In Telecom Decision 2005-28, the Commission requested that CISC file IP-to-IP interconnection interface guidelines along with a report detailing its progress as well as any outstanding issues. In reply to that request, the NTWG submitted NTRE039C, which recommended the minimum guidelines for establishing an IP-to-IP interconnection, in order to facilitate the exchange of pertinent information for satisfying the requirements of the Minimum Message Set. In Telecom Decision 2007-22, the Commission approved NTRE039C as submitted.
85. The Commission therefore directs the SILECs to deploy their VoIP technology in accordance with the minimum IP-to-IP interconnection guidelines approved in Telecom Decision 2007-22.

*Contribution*

86. In Telecom Decision 2005-28, the Commission determined that revenues associated with VoIP services were contribution-eligible. The Commission further determined that those associated with peer-to-peer (P2P) VoIP services, as defined in Telecom Decision 2005-28, could be deducted on the retail Internet revenue line of the annual revenue report required to be filed pursuant to Decision 2000-745. The Commission also determined that if the service allowed for access to and/or from the PSTN, the service was to be considered contribution-eligible, even if the customer also used the service to make P2P calls.
87. Regarding National Contribution Fund (NCF) subsidies, the Commission determined that local residential VoIP service providers were eligible to receive the existing subsidy per residential network access service (NAS) if the service provider (a) was an approved LEC, (b) provided both the underlying access and the local services components, and (c) met all of the criteria established by the Commission in Telecom Decision 97-8 and subsequent related determinations for receiving subsidies. Among other criteria, the service provider must comply with all LEC obligations and must meet or exceed the basic service objective.
88. Regarding the amount of subsidy to be paid from the NCF, the Commission determined that the existing subsidy per residential NAS amounts were to be paid to a LEC providing residential local VoIP services in high-cost areas, as long as the LEC met all of the conditions required to receive a subsidy, including providing both the access and service components, meeting the requirements of Telecom Decision 97-8 and subsequent related determinations, and providing a service that meets or exceeds the basic service objective.

89. In Decision 2001-756, the Commission determined that the SILECs would move to a subsidy process that was essentially the same as that established for the large ILECs with the following exceptions:
- The SILECs would use the national weighted-average band-specific Phase II costs, increased by 7.5 percent as proxy PES costs, rather than producing detailed Phase II costs studies;
  - The SILECs would use a fixed residential local service monthly rate of \$22.75; and
  - The SILECs would use a banding structure modified to (i) provide four sub-bands for Band F and (ii) exclude the Band F loop length criteria.<sup>7</sup>
90. In Telecom Decision 2006-14, the Commission established the process for CLECs operating in a SILEC's territory as well as the interim subsidy per residential NAS amounts that would be paid in a SILEC's territory once that territory was opened to local competition.
91. The Commission notes that, like all other services that allow for access to and/or from the PSTN, revenues associated with VoIP services are contribution-eligible. As a result, the Commission considers that its determinations regarding subsidies in Telecom Decision 2005-28 do not affect the SILECs' subsidy process. The Commission therefore considers that there is no reason to deviate from the determinations in Telecom Decision 2005-28 to accommodate the SILECs' subsidy process. In light of the above and consistent with its direction in Telecom Decision 2005-28, the Commission applies the same contribution framework to the SILECs with regard to the amount of subsidy to be paid to a LEC providing residential local VoIP services in high-cost serving areas.

*Removal of VoIP restrictions on DSLSPs*

92. Regarding DSLSP interconnection, the Task Force noted that in Telecom Decision 2005-28 the Commission modified the restriction in Order 2000-983 to allow DSLSPs that were not CLECs and that obtained unbundled loops, connecting links, and co-location from the ILECs to provide VoIP services in addition to retail Internet services. The Task Force submitted that DSLSP access to the SILECs' unbundled elements should be contingent upon a previous request by a CLEC for such elements, with this latter request administered in the manner contemplated by the Commission in Telecom Decision 2006-14.
93. The Commission considers DSLSP access to be a competitor service. The Commission also considers that, as it stated in Telecom Decision 2006-14, the SILECs' resources continue to be limited and competitive entry might not occur in every territory. Accordingly, the Commission

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<sup>7</sup> In Decision 2001-238, the Commission determined that Band F subsidy would only be made available if the average loop length was greater than four kilometers. In Decision 2001-756, the Commission determined that the Band F loop length criteria would not apply to the SILECs.

directs the SILECs to file an implementation plan with the Commission within 30 days following a formal signed expression of interest from a DSLSP requesting to use competitor services within a SILEC's territory, consistent with the implementation plan process detailed in Telecom Decision 2006-14.

### **III. Should the SILECs have to implement a Q of S rate rebate plan for competitors?**

94. In Telecom Decision 96-6, the Commission determined that for the SILECs with less than 25,000 NAS, issues pertaining to Q of S<sup>8</sup> would be addressed via complaints lodged concerning a particular SILEC.<sup>9</sup> The Commission also endorsed the SILECs' practice of addressing Q of S concerns to ensure the protection of the subscribers' interests.
95. In Telecom Decision 2005-20, the Commission finalised the Q of S rate rebate plan (RRP) for competitors applicable to the large ILECs.

#### *Positions of parties*

96. The Task Force submitted that the determinations in Telecom Decision 2005-20 should not apply to the SILECs. The Task Force submitted that the SILECs' much smaller numbers of NAS compared to the large ILECs' larger numbers of NAS merited the continued use of the complaint system detailed in Telecom Decision 96-6 for all independent telephone companies when dealing with competitor Q of S indicators.
97. The Task Force submitted that the current form of reporting customer complaints did not preclude any customer, including competitors, from filing a complaint directly with the Commission. The Task Force was of the view that filing a complaint directly with the Commission would provide competitors with an appropriate recourse when they felt they were being treated unjustly.
98. The Task Force was also of the view that the numerous implementation issues related to the competitor Q of S RRP, such as internal and external auditing, internal systems evaluation, administration of indicator reporting and the competitor Q of S RRP, would put a severe financial and administrative burden on the SILECs that outweighed the benefits of implementing that regime.
99. TCC submitted that if the competitor Q of S RRP continued to apply to the large ILECs, it must be applied to all providers of competitor services, including the SILECs and facilities-based CLECs.

#### *Commission's analysis and determinations*

100. The Commission notes that in Telecom Decision 2005-20, it stated that the purpose of the competitor Q of S RRP was to ensure that all competitors received a sufficiently high level of Q of S from the large ILECs to enable competitors to compete on a level playing field with each other and with the large ILECs.

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<sup>8</sup> As competition was not present in the SILEC territories at that point in time, Q of S only referred to retail services.

<sup>9</sup> In that Decision, the SILECs were referred to as independent telephone companies.

101. The Commission considers that potential competitors in the SILECs' territories may depend to some extent on the use of the SILECs' services in order to serve their own customers. Further, the Commission notes that, in Telecom Decision 2005-20, it stated that the ILECs had little incentive to provide service to customers in a manner that facilitated the successful operation of their competitors' businesses. Accordingly, the Commission considers that there would be some benefit to the implementation of a competitor Q of S RRP in the SILECs' territories.
102. The Commission considers, however, that the situation of the SILECs is different from the situation of the large ILECs because of the SILECs' smaller size and limited resources in comparison to the large ILECs. The Commission notes that, in some cases, the resources of the SILECs' competitors will greatly exceed those of the SILECs.
103. The Commission notes that in order to implement the competitor Q of S RRP, the SILECs would likely have to incur additional one-time and ongoing costs to do the following: develop new systems; perform internal and external audits; prepare reports and payouts; and maintain the database. The Commission also considers that the SILECs would likely have to hire additional personnel or divert resources on a one-time basis to establish the new systems. The Commission further considers that the SILECs would likely have to hire new or additional personnel or divert resources on an ongoing basis to operate the competitor Q of S RRP.
104. In light of the SILECs' small size and limited resources, the Commission is of the view that the additional costs and the diversion of resources for the competitor Q of S RRP could impair the SILECs' ability to compete against new competitors in the local exchange services market. The Commission therefore considers that the additional costs and resources that would be required to implement a competitor Q of S RRP in the SILECs' territories outweigh the benefits at this time. The Commission considers, however, that a system should be in place to monitor the SILECs' Q of S to competitors, and the Commission further considers that the current complaint-based system used by the SILECs is sufficient at this time.
105. In light of the above, the Commission determines that the competitor Q of S RRP detailed in Telecom Decision 2005-20 will not apply at this time to the SILECs in the event that they are required to offer services to competitors. In its place, the Commission directs that the current complaint system continue to be used. The Commission notes that it will continue to closely monitor complaints received from competitors and will revisit the competitor Q of S RRP if it becomes necessary.

Secretary General

## Related documents

- *Implementation of local competition in NorthernTel, Limited Partnership's serving territory – ExaTEL Inc. and Ontera*, Telecom Decision CRTC 2007-93, 28 September 2007, as amended by Telecom Decision CRTC 2007-93-1, 1 November 2007
- *Implementation of local competition in TBayTel's serving territory – ExaTEL Inc. and Shaw Communications Inc.*, Telecom Decision CRTC 2007-78, 31 August 2007
- *Review of local number portability for voice over Internet Protocol services*, Telecom Public Notice CRTC 2007-7, 8 May 2007, as amended by Telecom Public Notice CRTC 2007-7-1, 27 July 2007
- *IP-to-IP interconnection report – Follow-up to Decision 2006-13*, Telecom Decision CRTC 2007-22, 12 April 2007
- *Reconsideration of Regulatory framework for voice communication services using Internet Protocol*, Telecom Decision CRTC 2006-53, 1 September 2006
- *Revised regulatory framework for the small incumbent local exchange carriers*, Telecom Decision CRTC 2006-14, 29 March 2006
- *Message relay service in a VoIP environment – Follow-up to Decision 2005-28*, Telecom Decision CRTC 2006-12, 16 March 2006
- *Bell Digital Voice Service*, Telecom Decision CRTC 2006-11, 9 March 2006
- *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, 30 June 2005
- *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision CRTC 2005-27, 29 April 2005
- *Promotions of local wireline services*, Telecom Decision CRTC 2005-25, 27 April 2005
- *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005
- *Regulatory framework for the small incumbent telephone companies*, Decision CRTC 2001-756, 14 December 2001

- *Restructured bands, revised loop rates and related issues*, Decision CRTC 2001-238, 27 April 2001, as amended by Decision CRTC 2001-238-1, 28 May 2001 and Decision CRTC 2001-238-2, 7 August 2001
- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000
- *Digital subscriber line service providers' access approved for unbundled loops and co-location*, Order CRTC 2000-983, 27 October 2000
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- *Regulatory framework for the independent telephone companies in Quebec and Ontario (except Ontario Northland Transportation Commission, Québec-Téléphone and Télébec ltée)*, Telecom Decision CRTC 96-6, 7 August 1996, as amended by Telecom Decision CRTC 96-6-1, 17 September 1996
- *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994
- *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, as amended by Erratum 92-12-1, 28 August 1992
- *British Columbia Telephone Company – Voice Relay Service Centre*, Telecom Decision CRTC 85-29, 23 December 1985

*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: <http://www.crtc.gc.ca>*

**List of SILECs subject to Decision 2006-14**

**British Columbia**

CityWest Telephone Corporation

**Ontario**

Amtelecom Limited Partnership  
Brooke Telecom Co-operative Ltd.  
Bruce Telecom  
Cochrane Telecom Services  
Dryden Municipal Telephone System  
Execulink Telecom Inc.  
Gosfield North Communications Co-operative Limited  
Hay Communications Co-operative Limited  
Huron Telecommunications Co-operative Limited  
Kenora Municipal Telephone System  
Lansdowne Rural Telephone Co. Ltd.  
Morningson Communications Co-operative Limited  
Nexicom Telecommunications Inc.  
Nexicom Telephones Inc.  
North Frontenac Telephone Corporation Ltd.  
NRTC Communications  
NorthernTel, Limited Partnership  
Ontera  
People's Tel Limited Partnership  
Quadro Communications Co-operative Inc.  
Roxborough Telephone Company Limited  
TBayTel  
Tuckersmith Communications Co-operative Limited  
WTC Communications  
Wightman Telecom Ltd.

**Quebec**

CoopTel  
La Cie de Téléphone de Courcelles Inc.  
Téléphone Guèvremont inc.  
La Corporation de Téléphone de La Baie (1993)  
La Compagnie de Téléphone de Lambton Inc.  
Téléphone Milot inc.  
Compagnie de téléphone Nantes inc.  
Sogetel inc.  
Le Téléphone de St-Éphrem inc.  
La Compagnie de Téléphone de St-Victor  
La Compagnie de Téléphone Upton Inc.  
La Compagnie de Téléphone de Warwick