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April 27, 2007

VIA E-PASS

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Mr. Morin:

Subject: TPN CRTC 2007-5: Incumbent local exchange carrier applications for local forbearance – Methodology to be used where quality of service (Q of S) results are excluded for purposes of the competitor Q of S rate rebate plan

1. The Canadian Cable Systems Alliance Inc. (“CCSA”) currently comprises more than 90 independent cable operators that serve, in the aggregate, approximately 850,000 Canadian analog television subscribers and over 150,000 digital subscribers
2. CCSA Member Companies also offer two-way broadband communications, including High-Speed Internet access to their customers as local Internet Service Providers. Those companies also have opportunities to leverage their broadband networks to establish themselves as Voice-over-Internet-Protocol (VoIP) telephone service providers in their communities.
3. Some such companies recently have begun to offer local telephone service. Many others are on the verge of entering the local exchange services business for the first time.
4. The CQoS indicators and standards were developed and first applied in the context of the Rate Rebate Plan (RRP). One of the principles underlying their application, as was

noted in Telecom Decision CRTC 2005-20, is that the RRP should not penalize an ILEC with respect to matters over which the ILEC has no control.

5. For that reason, the Commission decided that ILECs could apply, on a case-by-case basis, for exclusion of one or more indicators in the event that such indicators could not be met due to circumstances beyond an ILEC's control.
6. Application of the CQoS criteria in the context of forbearance has a different purpose.
7. Whereas the RRP was intended to operate as an incentive to encourage ILECs to provide high quality service in key service areas to competitors, the CQoS criteria are used, in the forbearance context, to ensure that the ILECs do not frustrate competition through the provision of sub-standard services and access to facilities required by competitors.
8. The continuing relevance and importance of that purpose was underscored by the CRTC Chair's remarks of April 25, 2007 to the 2007 Telecommunications Invitational Forum. While recognizing and supporting the Government's drive toward and increased reliance on market forces in regulation of telecom services, the Chair emphasized that certain key rules remain vitally important:

I'm talking about competitor quality of service standards. While the number of standards has been reduced, the ones that remain are at the heart of the matter with regard to creating conditions that will allow for robust competition.

The government's message on service standards echoes the position the Commission has traditionally taken: fair play by incumbents in their dealings with competitors is a prerequisite for deregulation, and consumers should benefit, not suffer, from deregulation of local services.

9. Despite the ILECs' frequent assertions to the contrary through the course of the proceeding that culminated in Telecom Decision CRTC 2006-15, independent cable companies that enter the local exchange services market will, in many cases, rely heavily on competitor facilities provided by the ILECs. In many cases, they will rely directly on the ILEC for the provision of PSTN access facilities and services.
10. As a result of the Governor-in-Council's Order Varying Telecom Decision CRTC 2006-15, P.C. 2007 (the "Order"), so-called "trailing" CQoS indicators no longer apply to the forbearance analysis. With respect to the nine remaining relevant indicators, the ILECs are permitted to average performance across all in-territory competitors for the purpose of calculating whether the CQoS standards have been met.
11. Already, those changes leave smaller individual competitors, each of whom counts very little toward the total volume of aggregated in-territory service incidents for an ILEC in a given period, exposed to targeted anti-competitive behaviour by the ILECs in terms of the quality of competitor service that is provided.

12. For those reasons, it is imperative to the growth of durable, facilities-based competition in smaller markets that the remaining CQoS standards be strictly enforced prior to the granting of forbearance in such markets.
13. The ILECs must be held to a strict proof of an extended pattern of acceptable CQoS performance prior to the granting of forbearance in such markets. Once forbearance is granted in a market, that last protection for small market new entrants – the guarantee of acceptable quality of service levels for competitor services – will cease to have an effect.
14. CCSA submits that, at a minimum, the ILEC must be required to demonstrate, as a condition of forbearance, that the CQoS standards have been met for the full six month period required by the Order. That is, the approach set out at paragraph 7(a) of TPN 2007-5 is the minimum acceptable requirement.
15. CCSA notes that, even within that framework, it will be possible for an ILEC to meet the forbearance condition when the standards, averaged across all in-territory competitors, have not been met for the two months immediately prior to forbearance.
16. To the extent that earlier rather than later periods may be substituted for months in which an exclusion has been granted, the period immediately prior to forbearance in which the ILEC can fail to meet the standards will be extended.
17. While CCSA recognizes that exclusions relate to circumstances over which the ILEC has no control, we submit that, as a matter of policy, the Commission should take all possible steps to minimize the length of the period immediately prior to forbearance during which the ILEC is excused from performance of any CQoS standards.
18. Rather, forbearance should be conditional on the ILEC having demonstrated a consistent pattern of high quality service to competitors in the months leading up to the granting of forbearance in a market.
19. The Order maintained provisions to ensure the ILECs continue to meet the CQoS criteria in order to qualify for forbearance. The ILECs should not be provided with any opportunity to undermine those provisions. In their drive to achieve early forbearance, the ILECs should not be allowed to manipulate the rules surrounding achievement of CQoS standards, for example, by engineering novel bases for exclusions.
20. CCSA therefore respectfully submits that the Commission should remain vigilant in ensuring CQoS standards are being satisfied as it formulates its policies concerning calculation of the eligible months that can be employed.
21. For the same reasons, the CRTC should ensure that exclusions are granted only in relation to matters that are fully and demonstrably beyond an ILEC's control and that truly prevent the ILEC from meeting the CQoS indicators and standards for which a case for exclusion is made. Such exclusions must be very much the exception.

22. Finally, CCSA wishes to emphasize to the Commission that there are not one but two components to the CQoS performance test. Both components are conditions to the granting of forbearance.
23. The first is demonstration that the standards have been met, over a six month period, as averaged across all in-territory competitors. The second branch of the test is that the ILEC has not consistently provided sub-standard service to any one competitor over the same six month period.
24. In the CCSA's view, the second branch of the test is a critically important protection for new entrants in smaller markets. CCSA respectfully requests the Commission to ensure that, with respect to a forbearance application in a given exchange, the ILEC be held to a strict proof that it has met that second part of the test. In particular, to the extent exclusions are permitted, the Commission should ensure that no one competitor is placed at a disadvantage as a result.
25. CCSA thanks the Commission for the opportunity to participate in this proceeding.

Respectfully submitted,



Christopher J. Edwards
Vice-President, Corporate & Regulatory Affairs

cc. Interested Parties, TPN CRTC 2005-2

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