



Telecom Decision CRTC 2005-25

Ottawa, 27 April 2005

Promotions of local wireline services

Reference: 8622-C12-2003-0020-3 and 8740-B2-6711/02

In this Decision, the Commission issues its determinations on matters outlined in Review of winback promotions, Telecom Public Notice CRTC 2003-1, 15 January 2003, and Review of promotions, Telecom Public Notice CRTC 2003-1-1, 13 March 2003 (Public Notice 2003-1-1).

The Commission determines that incumbent local exchange carrier promotions in the local wireline market are permitted, subject to a number of competitive safeguards.

These safeguards specify that: promotions involving a local wireline service must be available and equally promoted across one or more entire rate bands; they must not be limited to customers of competitors; they must pass an imputation test; the combined enrolment and benefit period of a promotion cannot exceed six consecutive months; there must be no customer lock-in requirement beyond the promotion period; and there must be 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.

*The Commission **denies** a Part VII application by Saskatchewan Telecommunications (SaskTel) to review and vary the determination in Public Notice 2003-1-1 to suspend promotions in SaskTel's operating territory.*

Part I: Promotions of local wireline services

Introduction

1. In *Review of winback promotions*, Telecom Public Notice CRTC 2003-1, 15 January 2003 (Public Notice 2003-1), the Commission invited parties to comment on the following:
 - a) the appropriateness of continuing to approve incumbent local exchange carrier (ILEC) winback promotions and other ILEC promotions that have the effect of targeting customers of competitors in the local wireline market, whether or not these promotions meet the imputation test; and
 - b) any other aspect of the current regulatory framework for ILEC promotions in the local wireline market, such as whether it is appropriate to change the existing approach to determining whether or not a promotion is of limited duration.

2. In Public Notice 2003-1, the Commission suspended consideration of ILECs' applications for winback promotions and other promotions that had the effect of targeting customers of competitors in the local wireline market until a decision was issued on the matters raised in the Public Notice.
3. In *Review of promotions*, Telecom Public Notice CRTC 2003-1-1, 13 March 2003 (Public Notice 2003-1-1), the Commission subsequently stated that it considered that promotions targeted at the ILECs' existing customers might have a similar effect on competition as targeting existing customers of the competitors, in that any such promotions targeted the addressable market of competitors. Accordingly, the Commission suspended consideration of applications for all ILEC promotions in the local wireline market and invited parties to file additional comments on the issues raised in the Public Notice.

Background

4. When the Commission extended the imputation test, developed for the interexchange voice market 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), to local exchange services in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), it exempted the ILECs from the requirement to file imputation tests in support of promotions in the local wireline market where sufficient information was provided by the ILECs to demonstrate that the offering was a legitimate promotion of limited duration.
5. In Decision 97-8, the Commission did not specify in what circumstances a promotion would be considered to be of "limited duration." The Commission has generally approved promotions, without the support of an imputation test, where the combined enrolment and benefit period of the proposed promotion and any previous promotion for the same services and target groups did not exceed 12 months.
6. The Commission has also approved promotions where the combined enrolment and benefit periods, including any previous promotions for the same services and target groups exceeded 12 months, where these have been supported by filings demonstrating that they have met the imputation test.

Process

7. The Commission received comments and/or reply comments pursuant to Public Notice 2003-1 and Public Notice 2003-1-1 from Aliant Telecom Inc. (Aliant Telecom), on its own and with Bell Canada, MTS Communications Inc. (MTS, now MTS Allstream Inc.), Saskatchewan Telecommunications (SaskTel), and Société en commandite Télébec (Bell et al.); AT&T Canada Corp., later Allstream Corp. (Allstream, now MTS Allstream Inc.); Call-Net Enterprises Inc. (Call-Net); the Consumers' Association of Canada and l'Union des consommateurs (the Consumer Groups); EastLink; Futureway Communications Inc. (Futureway, now FCI Broadband); Microcell Telecommunications Inc. (Microcell); Primus Telecommunications Canada Inc. (Primus); Saskatchewan Telecommunications,

on its own and with Bell et al.; TELUS Communications Inc. and TELUS Communications (Québec) Inc. (TELUS); and several individuals. In addition, Call-Net filed supplementary reply comments on 17 April 2003.

Parties' comments

8. Competitors, such as Allstream, Call-Net, EastLink, Futureway, and Primus, submitted that unless the Commission suspended all promotions by the ILECs, it would be impossible for competitive local exchange carriers (CLECs) to develop a sustainable customer base in the local wireline services market. They argued that the low level of competition in the provision of local wireline services at that time was, to some extent, a consequence of certain types of promotions by the ILECs.
9. Allstream, Call-Net, EastLink, Futureway, and Primus requested that the Commission generally suspend all ILEC promotions involving local wireline services to both non-ILEC and existing ILEC customers. They argued that ILEC promotions in general were detrimental to competition. They submitted that while promotions targeted to win back customers from competitors were clearly anti-competitive, other types of promotions aimed at the ILECs' existing customers were also detrimental to competition since they discouraged customers from switching to a competitor. Call-Net submitted that the ILECs used promotions to their existing customers as a means to strategically minimize competitors' market share in the provision of local wireline services.
10. Regarding the appropriate length of time that the safeguards on promotions should be in effect, Futureway, Primus, and the Consumer Groups argued that safeguards should remain in effect until competition in local wireline services was more developed. Futureway submitted that the Commission should consider allowing the ILECs to offer winback promotions for local wireline services only when the CLECs (as a group) had 50 percent of the market for local wireline services. Call-Net proposed that the safeguards remain in effect until at least the end of the current price cap period.
11. The Consumer Groups submitted that all ILEC promotions that had the effect of winning back customers lost to competitors, or of locking in existing customers, should be disallowed, regardless of cost recovery. They also submitted that only ILEC promotions that did not have these effects should be permitted, until competition had established itself in the market.
12. Allstream stated that the effects of promotions were particularly acute in local wireline services and justified a different standard from that previously applied in the toll market. According to Allstream, it was more difficult and more expensive to acquire and migrate a customer onto a competitor's local wireline network than it was to persuade a customer to switch long distance service.
13. Primus submitted that the customer churn resulting from the ILECs' winback promotions imposed costs on competitors, because customers left before the competitors were able to recoup the costs of gaining such customers.

14. Allstream, Call-Net, EastLink, and Primus submitted that the imputation test exemptions that the Commission had provided for in Decision 94-13, which permitted below-cost pricing of promotions, were inappropriate.
15. Allstream, Call-Net, and EastLink submitted that, depending on the circumstances, specific promotions, such as those for new services to existing customers of an ILEC, might be legitimate and should be permitted.
16. Allstream stated that it would be appropriate for the Commission to approve, on a case-by-case basis, promotions of new services, such as new calling features to existing customers of the ILECs, at the time of their initial launch. Allstream submitted that such promotions should meet the following safeguards: they should pass the imputation test, be of a duration no longer than six months, and not be subject to any form of extension, continuation, or repetition.
17. EastLink submitted that it would be appropriate to permit ILEC promotions for new services, as long as a thorough review ensured that such promotions were not attempts to circumvent the rules, were of limited duration, and passed an imputation test.
18. Similarly, Call-Net acknowledged the need to permit legitimate promotions for new technologies and new products. Call-Net proposed that the Commission apply the following criteria for determining whether an application by an ILEC for such promotions should be permitted:
 - the ILEC must demonstrate on a case-by-case basis that any particular promotion relates to a genuinely "new" product or service;
 - promotions of primarily re-packaged or re-priced services or products would not be eligible;
 - the promotion must be conducted over a period no longer than 90 days;
 - promotion of a new offering should not be allowed more than once and the promotion must occur within 12 months of introducing the service or product into the market; and
 - all promotions of new products or services must be by way of tariff, supported by an imputation test.
19. Allstream stated that the ILECs had attempted to avoid the rules respecting promotions by, for example, combining ostensibly different promotions which targeted the same customers, thus ensuring that the promotions continued for more than a year. It submitted that such lengthy promotions frustrated competitor entry since competitors did not have sufficient profit margins to run similar promotions for an extended time.
20. Call-Net and Futureway submitted that any promotional offer exceeding two or three months would be perceived by customers as a standard offer and competitors would be compelled to react by changing their own standard offering.

21. Call-Net argued that placing time limitations on promotions had not worked in the past since the ILECs had strategically turned promotions into pricing and market retention tools.
22. Futureway submitted that if the Commission decided to permit limited and specific ILEC promotions, the ILECs should be limited to the following timeframes:
 - any promotion should be limited to one billing cycle (e.g., about 30 days) for any one particular service. The Commission should not approve a repeat offer within a 12-month period; and
 - the ILECs must not be permitted to promote more than one feature on any one service in any 12-month period.
23. EastLink submitted that should the Commission decide not to ban promotions, a clear definition and time limitation must be established. It suggested that this would require: clarifying the types of promotions that would be permitted; establishing a means to satisfy parties that the promotion is not below cost, even if this meant implementing a form of imputation test for promotions; and defining the time limit. EastLink submitted, further, that the Commission should also consider implementing rules regarding back-to-back promotions that effectively extended the timeframe of a particular promotion.
24. The Consumer Groups submitted that a promotion ceased to be a promotion of limited duration after three to six months. They proposed that any reasonable promotion be limited to about six months.
25. Aliant Telecom, Bell et al., and TELUS submitted that suspending winback promotions would deny consumers the intended benefits of competition. They submitted that promotions had always been part of the product cycle, even prior to the introduction of competition in the telecommunications industry. They noted that promotions were used in virtually all industries, and were considered a legitimate business practice. They submitted that it was not the role of the Commission to allocate market share or guarantee the success of particular market participants by sheltering them from normal marketing activities.
26. Aliant Telecom, Bell et al., and TELUS submitted that promotions were not inherently anti-competitive. They argued that just because a provider's customers benefited from promotions did not mean that such activity was anti-competitive. They submitted that the imputation test, including the exception for below-cost promotions of limited duration, was the appropriate test for determining whether ILEC promotions were anti-competitive.
27. Bell et al. submitted that it was important to distinguish between two types of ILEC promotions of local wireline services: promotions intended primarily to increase the demand for products and services, and winback promotions aimed primarily at winning back customers from competitors.
28. Bell et al. and TELUS submitted that there was no need for further constraints on ILEC promotions targeting their existing customers of local wireline services. Bell et al. stated that the role of these promotions was to introduce new offerings, to encourage their adoption by customers, or to increase the interest in existing offerings. Bell et al. argued that increased

penetration allowed ILECs to offer products more efficiently, resulting in lower costs and lower prices for consumers. Bell et al. further argued that competitors indirectly benefited from the general stimulation of demand for products and services.

29. Bell et al. and TELUS submitted that while winback promotions differed from other promotions in that they were aimed at customers of competitors, they were also an integral and legitimate part of the competitive process. Bell et al. submitted that winback promotions on their own were not anti-competitive, although they could become so when combined with anti-competitive behaviour, such as targeted long-term below-cost pricing.
30. Bell et al. stated that the time-limited nature of below-cost short-term winback promotions, and the requirement that longer-term winback promotions meet an imputation test, prevented the anti-competitive use of winbacks by ILECs. Bell et al. submitted that winback promotions where the price exceeded cost were not inherently anti-competitive and should not be generally prohibited.
31. Aliant Telecom submitted that the reference in Public Notice 2003-1 to market share data contained in the *Report to the Governor in Council: Status of Competition in Canadian Telecommunications Markets – Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, 20 December 2002 was misleading since the data contained in the report represented averages for urban, rural, and high-cost serving areas. The company argued that the data did not accurately portray the state of competition in particular markets, such as Nova Scotia and Prince Edward Island – where EastLink was established as a competitor in the local residential market.
32. Aliant Telecom, Bell et al., and TELUS argued that since competition was thriving in a number of markets where winback promotions were permitted, there was no reason to believe that an outright ban on promotions was required to ensure effective competition in the provision of residential local telephone services. They submitted that the Commission should be cautious about developing solutions based on broad market share statistics aggregated across all market and geographical segments. According to Bell et al., in Bell Canada's territory, CLECs had approximately 14 percent of the total business market, aggregated across all bands, and over 16 percent of the business market in Bands A and B.
33. TELUS further submitted that restrictions were not required on ILEC winback promotions involving business local exchange services since this segment of the market was competitive.
34. Aliant Telecom submitted that it would be inappropriate for the Commission to deny its winback promotions in view of the high degree of competition between Aliant Telecom and EastLink, the fifth largest cable operator in Canada.
35. Aliant Telecom stated that since EastLink had begun operating as a local telephone service provider in Halifax in September 1999, it had rapidly rolled out its local telephone services to many urban areas of Nova Scotia and Prince Edward Island. Aliant Telecom submitted that, in 2002, EastLink's telephone service was available to about 60 percent of its base of 250,000 cable subscribers, and that EastLink had publicly stated that it planned to have local telephone

service available to its entire cable subscriber base within two years. Aliant Telecom estimated that at the time of its submission, EastLink's service coverage for local telephony was between 180,000 and 190,000 homes, which was approximately 75 percent of its cable subscriber base.

36. Aliant Telecom submitted that since EastLink was a well-established, well-financed telephone company, and the dominant cable operator in Nova Scotia and Prince Edward Island, it was able to leverage its telephone services onto its vast cable subscriber base and it was not in need of the additional regulatory protections contemplated in Public Notice 2003-1.
37. SaskTel submitted that there was no wireline facilities-based competitor operating in Saskatchewan and that the potential for entry of wireline-based providers into the local market was very low given the low population density in the province. Accordingly, SaskTel stated that restricting the use of promotions in low-population density areas and high-cost bands would be an ineffective means for promoting competition.
38. Bell et al. proposed that since competition was not developing evenly across all areas, the Commission should develop a competitiveness test to determine those geographic and service market segments that should be the focus of constraints on promotions by ILECs. They suggested that the Commission consider a test similar to the one it used to determine when to exempt cable companies from rate regulation, where, if five percent or more of addresses in a licensed area were served by competitors and competitive alternatives were available to 30 percent of the population in the area, the cable company was no longer subject to rate regulation.

Reply comments

39. Call-Net and EastLink submitted that the ILECs had failed to demonstrate why all ILEC promotions, with the exception of promotions involving new service offerings, should not be prohibited.
40. Call-Net argued that it was difficult to accept Bell et al.'s position that promotions designed to increase market penetration of an existing service were a normal business practice, since the ILECs already had almost 100 percent of the market. Accordingly, Call-Net reiterated its position that such promotions must be prohibited.
41. Call-Net submitted that it was immaterial that promotions benefited some customers, since the real issue was whether a limitation on such promotions was justified given the state of competition.
42. Call-Net disputed SaskTel's position that it was unnecessary to restrict ILEC promotions in areas where the likelihood of wireline CLEC entry was very low. Call-Net stated that it had made several attempts to commence interconnection negotiations with SaskTel since 2000, but SaskTel had refused to co-operate. Call-Net stated that it had formally notified the Commission of its intention to seek interconnection in Regina and Saskatoon, in a letter dated 9 January 2002. Call-Net submitted that suspending SaskTel's promotions until the end of the current price cap period would encourage competitive entry into the province. Call-Net also noted that the Commission had not exempted SaskTel from other pro-competition decisions, such as those regarding winback rules, bundling rules, and ILEC affiliates on the grounds that

there were no CLECs operating in Saskatchewan. Call-Net also stated that one of the reasons why competitive entry had been delayed in Saskatchewan was due to the fact that SaskTel had not come under the Commission's authority, and corresponding pro-competitive regulatory frameworks, until 29 June 2000.

43. EastLink and Call-Net argued that the Commission should reject Bell et al.'s proposal for narrowing its focus on ILEC promotions to only those individual local market areas that were not competitive. They argued that regardless of how Bell et al. described the competitive landscape, the fact was that the ILECs had the majority of the market for local wireline services, and CLECs faced immense barriers to entry. Call-Net submitted that even if the market share statistics as submitted by Bell et al. were accepted, there was still a pressing need to suspend ILEC promotions for business local services. EastLink further submitted that the Commission needed to assess how rulings that reduced regulation on promotions, where they pertained to price incentives, could further impede competition, arguing that the ILECs had the ability to target promotions in those areas where competition existed, literally outbidding the competitors. EastLink also stated that a sustainable competitive environment did not exist in the Maritimes since Aliant Telecom still had over 96 percent of the local wireline market in the Maritimes, and its revenue from local wireline service was over 18 times greater than that of EastLink.
44. Call-Net submitted that any attempt by the Commission to regulate ILEC promotions on disaggregated basis, as the ILECs were suggesting, would be ineffective and would merely create opportunities for regulatory gaming by the ILECs. EastLink stated that it did not possess the resources to constantly monitor individual markets for non-compliant ILEC activity that it expected would occur in the event that the Commission adopted Bell et al.'s proposal.
45. The Consumer Groups stated that they did not oppose all ILEC promotions, but only those promotions that had the effect of winning back customers lost to competitors or of locking in existing customers.
46. The Consumer Groups stated that should the Commission prohibit ILEC winback and/or other promotions, it would have to decide on a period of prohibition. The Consumer Groups proposed two options: a fixed duration, after which time a review would be held to determine whether the prohibition should be lifted, continued, or modified; or pre-established criteria for the lifting or modification of the prohibition (e.g., a threshold of ILEC market share loss by specified market segment).
47. The Consumer Groups considered that either approach was acceptable in theory, as long as the time period, or criteria, were fair and reasonable. In that respect, the Consumer Groups submitted that an appropriate time period for any new restrictions on ILEC promotions would be the remainder of the current price cap regime.
48. The Consumer Groups suggested that should the pre-established criteria approach be taken, the test for competition applied in the cable television market was inappropriate for the telephone services market since a threshold of five percent market share loss was too low. In the Consumer Groups' view, should the Commission decide to establish a test other than the already articulated criteria for forbearance in the telecommunications market, for the purpose of lifting or reconsidering restrictions on ILEC promotions, a further public process should be initiated on this specific issue.

49. Aliant Telecom, Bell et al., and TELUS submitted that no party to this proceeding had provided any evidence to demonstrate that ILEC winback promotions, or ILEC promotional activities in general, constrained the development of local competition. TELUS noted that competitors already had about 17.5 percent of business access lines across Bell Canada's entire operating territory in Ontario and Quebec (of which 12 percent was provided on their own facilities) and 14.2 percent of the business access market Canada-wide, and that EastLink had substantial market penetration in local residential services in urban areas in Nova Scotia and Prince Edward Island. TELUS submitted that the business local exchange market was highly competitive. TELUS stated that Bell West claimed to have 10 percent of the overall business wireline market in British Columbia and Alberta, where it offered service in 14 cities.
50. Aliant Telecom, Bell et al., and TELUS stated that the CLECs, by erroneously relying on aggregate market share figures in an attempt to demonstrate that there was a universal problem with competition in the local wireline market, had seized upon the perceived opportunity offered by this proceeding to encourage the Commission to intervene in the normal workings of the marketplace by introducing measures designed to protect CLECs from competition. Bell et al. argued that the CLECs had provided an incorrect view of what constituted anti-competitive activity, and submitted that the Commission should see through the CLECs' misuse of terminology and recognize that the CLECs were asking for protection from competition, not from anti-competitive activity. Bell et al. submitted that it was not appropriate for the Commission to micro-manage the competitive marketplace to ensure the success of individual competitors, particularly if this was done at the expense of consumers.
51. Bell et al. and TELUS argued that promotional activity in general could not be considered anti-competitive solely on the basis that it was conducted by an ILEC. They submitted that the Commission had long recognized that ILEC promotions which were above cost and satisfied the imputation test were not anti-competitive. They submitted that the CLECs had provided no convincing argument to the contrary.
52. Bell et al. argued that only below-cost winback promotions offered over an extended period of time had the potential to be anti-competitive. They submitted that the appropriate regulatory response was to ensure that all ILEC winback promotions approved without an imputation test continued to be of limited duration.
53. Bell et al. argued that the Commission's price cap regulatory regime removed the incentive for cross-subsidization of the type alleged by some of the competitors when they suggested that the ILECs offered below-cost promotions for excessive periods of time and amortized the cost of such promotions across their existing customer base.
54. Aliant Telecom argued that Futureway's proposal that the ILECs be prohibited from offering winback promotions until such time that competitors had achieved a market share of 50 percent in the provision of local wireline services had no merit, since more than 50 percent of Aliant Telecom's customers were widely dispersed in rural communities throughout Atlantic Canada. Aliant Telecom submitted that without an economic base in higher margin areas, it would not have the financial means to serve the rural and high-cost areas.

Commission's analysis and determinations

55. The Commission notes that the issues raised in this proceeding, initiated by Public Notices 2003-1 and 2003-1-1, relate to all ILEC promotions affecting the local wireline market. These issues include:
- whether ILEC promotions should be prohibited;
 - if promotions are permitted, what competitive safeguards should apply to such promotions; and
 - if certain ILEC promotions are prohibited or safeguards introduced, for how long should the prohibitions or safeguards be in place.
56. The Commission notes that in Public Notice 2003-1, it stated that competitors in the local wireline market continued to face substantial barriers to entry that, among other things, limited their ability to expand their networks. The Commission noted that as a result of these barriers, competition in the provision of local wireline services had evolved on a narrow geographic basis. Given the state of competition, the Commission expressed concerns about the appropriateness of continuing to approve ILEC promotions involving local wireline services.
57. The Commission is of the view that promotions are generally considered to be a legitimate business practice in both monopoly and competitive markets, and that consumers generally benefit from promotions, at least in the short run. As noted by the ILECs, promotions are used in the telecommunications industry to stimulate demand for new services and to raise consumer awareness and demand for existing services.
58. The Commission notes, however, that the record of this proceeding indicates that there are a number of concerns raised by the ILECs' use of promotions in the local wireline market under the existing rules that were suspended in Public Notices 2003-1 and 2003-1-1. These concerns include:
- promotions targeted specifically at competitors' customers;
 - promotions targeted at geographic areas where competitors are entering or have entered;
 - promotions priced below cost;
 - lengthy and repeated ILEC promotions for the same service; and
 - promotions used to lock customers into long-term contracts.
59. In light of the potential benefits of promotions, the Commission considers that promotions in involving local wireline services should be permitted, provided sufficient competitive safeguards, which are discussed later in this Decision, are in place.

60. In Public Notice 2003-1, the Commission stated that given the state of competition in the local wireline market, it was concerned about the appropriateness of continuing to approve ILEC promotions that had the effect of targeting customers of competitors.
61. While competition is emerging in certain geographic pockets, such as in major urban centres and some areas in Nova Scotia and Prince Edward Island, the Commission notes the high market shares of the ILECs measured in the overall local wireline market. In the recently released *Report to the Governor in Council: Status of Competition in Canadian Telecommunications Markets - Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, 25 November 2004, the Commission noted that, in the 2003 local wireline market, local wireline competitors and incumbent out-of-territory operations had a combined market share of 6.3 percent of local lines. The Commission also noted that in 2003, the competitors' market share of local business lines remained relatively stable at 8.6 percent, and that the competitors' market share of local residential lines was 2.0 percent. Competitors captured only 7.9 percent of business local revenues and 1.9 percent of residential local revenues.
62. In light of the small share of the overall local wireline services market held by competitors, the Commission considers that ILEC promotions that target the customers of competitors in order to win them back would threaten the expansion, and possibly the survival, of competition in the provision of local wireline services. For example, the ubiquitous nature of the ILECs' operations enables them to offer lower promotional prices in areas where competitors have introduced local services, with major consequences for competitors and little risk to themselves.
63. Accordingly, the Commission considers that one of the competitive safeguards required at this early stage in the evolution of local wireline competition is that promotions involving local wireline services are not permitted to target the customers of competitors, whether by being restricted only to such customers or by being offered only in geographic areas where competitors are providing services.
64. The Commission considers that the interests of consumers, ILECs, and competitors would be appropriately balanced if ILECs were required to make promotions available across one or more entire rate bands (A - G), and to promote them equally throughout the band(s) chosen in their operating territories. The Commission is of the view that this approach would strike an appropriate balance in permitting promotional flexibility for the ILECs, while at the same time providing a sufficient safeguard to ensure that any given promotion would not target competitors' customers.
65. The Commission considers that, given the current state of competition, the requirement that the rates of the service being promoted cover the costs of the service would be an additional safeguard to ensure that a particular promotion is not anti-competitive and detrimental to competition. Under the Commission's current regulatory framework, this would be indicated by the imputation test relevant to the service in question. Accordingly, the Commission considers that all ILEC applications for promotions involving local wireline services should be supported by evidence that demonstrates that the service, including the impacts of the promotion, will pass the imputation test.

66. The Commission is of the view that the allowable duration of permitted promotions is an additional competitive safeguard necessary to ensure that these promotions are not detrimental to competition in the provision of local wireline services. The Commission considers that promotions of too long a duration become perceived by consumers as being standard offers, thus compelling competitors in the market to react by changing their own standard offers. The Commission also considers, conversely, that too short a period may be unreasonably restrictive on the ILECs.
67. The Commission notes that promotions typically involve a registration period, during which time customers are eligible to register for the promotion, and a benefit period, during which time the customer actually receives the benefit. The Commission considers that the total duration of any promotion involving local wireline services, including registration period and benefit period, should not exceed six months.
68. The Commission considers, further, that such promotions should not be conditional upon the subscriber remaining an ILEC customer beyond the six-month promotion period. The Commission is of the view that locking in existing customers with long-term contracts would restrict customers from switching providers and would be detrimental to the development of sustainable competition in the local wireline market at this time.
69. The Commission notes that repeated promotions, or successive promotions through minor repackaging of previous promotions by the ILECs, effectively extend the duration of a particular promotion. The Commission considers that limits are necessary on repeated or successive promotions involving the same service.
70. Accordingly, the Commission considers that there should not be a promotion involving a local tariffed service until six months after the end of the most recent previous promotion involving that service. The Commission considers that this competitive safeguard would also prevent the ILECs from effectively locking in customers through repeated promotions or successive promotions that are simply repackaged versions of previous promotions.
71. In the Commission's view, lessening or removing the competitive safeguards on promotions defined in this Decision should only be considered following an assessment of the degree of competition in the local wireline market, taking into account numerous quantitative and qualitative factors. Accordingly, in an upcoming proceeding the Commission will determine the criteria under which the competitive safeguards on the use of promotions could be lessened or removed.
72. In light of the above, the Commission determines that promotions are generally a legitimate business practice and are permitted in the local wireline services market with the following competitive safeguards. Promotions involving local wireline services must:
 - be available and equally promoted across one or more entire rate bands;
 - 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.
73. The ILECs are required to demonstrate that the above competitive safeguards have been met in all applications for promotions involving local wireline services filed for Commission approval.

Part II: Application by SaskTel to review and vary the Commission's determination in Public Notice 2003-1-1

74. The Commission received an application by SaskTel, filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*, dated 14 April 2003, requesting that the Commission review and vary, pursuant to section 62 of the *Telecommunications Act*, its determination in Public Notice 2003-1-1 to suspend consideration of all ILEC promotions involving local wireline services, in order to permit promotions in markets where there was no local competitor.
75. SaskTel submitted that there was substantial doubt as to the correctness of the Commission's determination since a restriction on promotions would be an ineffective means to promote competition because competitors would not be expected to enter low population density areas in Saskatchewan. SaskTel stated that there were no facilities-based competitors providing local wireline services in Saskatchewan at this time, and that no carrier had demonstrated an interest in becoming a CLEC within the province by either registering with SaskTel or meeting the CLEC requirements set out in Decision 97-8.
76. SaskTel submitted that there was no evidence to indicate that suspending ILEC promotions would result in competitive entry in the market for local wireline services. SaskTel submitted, further, that there was no evidence to support the presumption that ILEC promotions involving the provision of local services had a material negative effect on competition.

Process

77. The Commission received comments on SaskTel's application from Call-Net, dated 12 May 2003; Allstream, Bell Canada, the Consumers' Association of Canada, Saskatchewan (CAC-Sask), and Futureway, dated 14 May 2003; and EastLink, dated 15 May 2003.

Parties' comments

78. Bell Canada and CAC-Sask supported SaskTel's application, while the other parties requested that the Commission deny the application on the grounds that SaskTel had not demonstrated that there was substantial doubt as to the correctness of the Commission's determination.
79. CAC-Sask submitted that promotions that were not aimed at winning back customers from competitors should be permitted. It further submitted that prohibiting such promotions deprived consumers of benefits, and SaskTel of the opportunity to maximize its revenues from promoted services. Bell Canada stated that SaskTel's application demonstrated how a broad-brush analysis of local competition might lead to inappropriate results and substantial doubt as to the correctness of the analysis.

80. Call-Net submitted that SaskTel had failed to acknowledge the ongoing efforts made by competitors like Call-Net to enter Saskatchewan. Call-Net stated that it had made several efforts since 2000 to commence interconnection negotiations with SaskTel, and that as a result of deliberate refusal to co-operate by SaskTel, Call-Net had filed a letter with the Commission, dated 9 January 2002, in which it had formally notified the Commission of its intention to seek interconnection in Regina and Saskatoon. Call-Net stated that it remained committed to rolling out facilities in Saskatchewan.
81. Call-Net also stated that one of the reasons why competitive entry had been delayed in Saskatchewan was due to the fact that SaskTel had not come under the Commission's pro-competitive regulatory frameworks until 29 June 2000.
82. Call-Net further stated that the Commission had not exempted SaskTel from any of its recent pro-competitive decisions on the grounds that there were no CLECs operating in the province.
83. EastLink and Futureway submitted that while SaskTel's application was primarily concerned with its own operating territory, its request had much broader implications. They submitted that approval of SaskTel's application would see the re-introduction of promotions not only in its operating territory, but presumably in all of the ILEC exchanges in high-cost bands across the country. EastLink also submitted that since the moratorium on promotions contained in Public Notice 2003-1-1 was granted to provide interim relief until the Commission was able to fully address the concerns raised in the Public Notice, it would be inappropriate to vary that determination.
84. Futureway submitted that SaskTel's assertion that competitive entry was unlikely to occur in high-cost rate bands was incorrect. Futureway noted that it had a significant facilities-based presence over which it offered residential service in Bell Canada's Gormley exchange, which was designated as high-cost (classified as Band F). Futureway submitted that if the Commission were to approve SaskTel's application, ILECs such as Bell Canada would have the ability to target promotions on wireline services to those areas in the Gormley exchange where it competed with Futureway.
85. Allstream stated that the suspension of promotions, even in territories where little or no competition currently existed, would clearly promote competition by removing competitive barriers. Allstream further submitted that the request to remove this suspension underscored that SaskTel had completely misunderstood the purpose of, and the need for, Public Notice 2003-1-1.

Reply comments

86. SaskTel reiterated its view that there was no benefit to suspending local wireline promotions in geographic markets where there were no competitors. SaskTel stated that the reason CLECs were not entering low population density markets was that these areas did not present the necessary financial incentives. SaskTel submitted that a prohibition on ILEC promotions would unnecessarily impede the ILEC's ability to expand the local market and generate additional revenues. SaskTel further stated that Allstream's and Call-Net's arguments relied primarily on the speculation that ILEC promotions constituted a barrier to competitive entry.

Commission's analysis and determination

87. The Commission notes that it has, in this Decision, lifted the suspension on ILEC promotions in the local wireline market. Accordingly, the Commission considers SaskTel's application to be moot. The Commission also considers that there should not be a minimum level of competition in SaskTel's operating territory before competitive safeguards on promotions involving local wireline services are to apply. Accordingly, the Commission **denies** SaskTel's application to review and vary the Commission's determination to suspend promotions in SaskTel's operating territory.

Secretary General

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>