Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Consolidated version

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Telecom Decision CRTC 2006-15

Ottawa, 6 April 2006

Forbearance from the regulation of retail local exchange services

Reference: 8640-C12-200505076 and 8640-A53-200403329

Pursuant to the* Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532 (the Order), the modifications to this Decision and appendices are showed in bold and in italic.

The Decision shall otherwise continue to apply, but any provisions in the Decision that are inconsistent with the Order shall be interpreted in accordance with the Order to the extent of the inconsistency.

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In this Decision, the Commission renders its determinations in the proceeding initiated by Forbearance from regulation of local exchange services, *Telecom Public Notice CRTC 2005-2, 28 April 2005. The Commission sets out the details of the framework for forbearance from the regulation of local exchange services (local forbearance), including the local forbearance criteria, as well as its determination on Aliant Telecom Inc.'s (Aliant Telecom) application for local forbearance in 32 local exchanges in Nova Scotia and Prince Edward Island.*

The Commission determines that residential local exchange services and business local exchange services are in different relevant markets for the purposes of the local forbearance framework. In addition, the Commission determines that the appropriate geographic component of the relevant market, for the purposes of the local forbearance framework, is for urban markets the census metropolitan area, while for rural markets the appropriate geographic component will generally be an economic region (ER) or a combination of ERs.

The Commission also determines that it is prepared to forbear from regulating local exchange services in a relevant market where an applicant incumbent local exchange carrier (ILEC) can demonstrate that:

- *The ILEC has suffered a 25 percent market share loss in the relevant market for which forbearance is sought;*

- *The ILEC has, for the six months prior to the application, met individual standards for each of the 14 specified competitor quality of service (Q of S) indicators of the rate rebate plan (RRP) for competitors, when the results are averaged across the six-month period;*

- *The ILEC has put in place the necessary Competitor Services tariffs. In the case of an application for forbearance from regulation of residential local exchange services, the ILEC has an approved Competitor Services tariff for bundled asymmetrical digital subscriber line (ADSL) available over loops not used for primary exchange service (dry loops) as well as in conjunction with primary exchange service (PES), and in the case of an application for forbearance from regulation of business local exchange services, the ILEC has an approved Competitor Services tariff for bundled ADSL available both over dry loops and in conjunction with PES as well as approved competitor Ethernet access service and transport service tariffs;*

- *The ILEC has, where the Commission has required it, implemented competitor access to its operational support systems in accordance with* Competitive local exchange carrier access to incumbent local exchange carrier operational support systems, *Telecom Decision CRTC 2005-14, 16 March 2005; and*

- *The ILEC has demonstrated to the Commission's satisfaction that rivalrous behaviour exists in the relevant market.*

The Commission also outlines the scope of forbearance to be granted under the local forbearance framework. The Commission determines it to be appropriate to retain only those powers and duties that are strictly necessary to protect the interests of customers, particularly uncontested and vulnerable customers, and to further competition. The Commission determines that those powers and duties that relate strictly to economic regulation should be removed in a forborne environment. The Commission also invites proposals for an industry self-regulation scheme that would permit an even greater degree of de-regulation in a forborne market, and sets out its intention to review which, if any, remaining obligations imposed on ILECs in forborne markets are still required.

The Commission adopts certain transitional measures, as part of its local forbearance framework, to aid in the development of sustainable local competition. In this Decision, the Commission reduces the no-contact period under the residential local winback rule from 12 months to three months, and indicates its willingness to lift the local winback rule entirely where an ILEC can demonstrate that it has lost 20 percent of its market share in a relevant market and that, for the three months prior to the application, it has met individual standards for each of the 14 specified competitor Q of S indicators of the RRP for competitors, when the results are averaged across the three-month period.

The Commission establishes data gathering procedures to facilitate the operation of the local forbearance framework. The Commission also establishes expedited procedures for processing applications for local forbearance and applications for relief from the local winback rule.

*The Commission **denies** Aliant Telecom's application for local forbearance on the basis that it does not meet the local forbearance criteria set out in this Decision. The Commission indicates its willingness to consider future applications by Aliant Telecom on an expedited basis.*

I. Introduction

1. In *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), following the coming into force of the *Telecommunications Act* (the Act), the Commission developed a regulatory framework for the telecommunications industry, pursuant to the Act, intended to allow all Canadians, over time, ubiquitous and affordable access to an increasing range of competitively-provided telecommunications services. Decision 94-19 encompassed a wide range of regulatory issues, including a framework for the introduction of competition into the local services market, as well as an approach for considering whether or not to refrain (forbear) from regulating telecommunications services, pursuant to the forbearance responsibilities that had been conferred upon the Commission under section 34 of the Act.

2. The Commission has, in a gradual and orderly manner, opened up monopoly-based telecommunications markets to competition. In a number of markets, the Commission refrained from regulation when it found there was sufficient competition. Examples of services and markets for which the Commission has forborne include: terminal equipment, mobile wireless services, toll services, interexchange private lines, retail Internet services, wide area networking (WAN) services, and certain data services.

3. Local exchange services have, historically, been provided on a monopoly basis by the incumbent local exchange carriers (ILECs). The Commission found in Decision 94-19 that competition in the local telecommunications market is in the public interest.

4. In *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), the Commission established a framework for local exchange competition in furtherance of the Canadian telecommunications policy objectives set out in section 7 of the Act.

5. Over the years, the Commission has recognized, in several Decisions and in its annual *Report to the Governor in Council: Status of Competition in Canadian Telecommunications Markets – Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services* (Annual Monitoring Report), that competitors, overall, had not gained a substantial market share with respect to local exchange services since the issuance of Decision 97-8.

6. Recently, the Commission has seen the beginnings of a marked increase in competition in the local exchange services market. Local competitors made some inroads, primarily in local business urban markets and to some degree in local residential urban markets, in some parts of the country. This past year has seen an accelerated roll-out in the residential local exchange services market of facilities-based local exchange services offered by competitors. While the consequences of this roll-out have yet to fully develop, the initial results indicate that hundreds of thousands of Canadians have chosen to switch their local residential phone service from their local ILEC to a competitive telecommunications service provider (TSP).

7. The Commission received an application from Aliant Telecom Inc. (Aliant Telecom), dated 7 April 2004, for forbearance from the regulation of residential local exchange services (local forbearance) in 32 local exchanges in Nova Scotia and Prince Edward Island.

8. The Commission considered it important, prior to disposing of Aliant Telecom's application, to establish a framework for local forbearance applications, which contained clear criteria that the Commission could use to determine when it would be appropriate to forbear from regulating local exchange services.

Process

9. In *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2, 28 April 2005 (Public Notice 2005-2), the Commission initiated the present public proceeding, including an oral consultation, in which it invited comments on the framework for retail local exchange services forbearance and Aliant Telecom's application.

10. The Commission identified the following principal issues in Public Notice 2005-2:

    - What local exchange services should be within the scope of the proceeding?

    - What is/are the appropriate relevant market(s) for forbearance from the regulation of local exchange services, taking into consideration both services and geographic areas? (relevant market(s))

- What are the appropriate criteria to be applied to determine whether the relevant market(s) is/are sufficiently competitive for forbearance? (local forbearance criteria)

- What Commission powers and duties should be forborne? (scope of local forbearance)

- What post-forbearance criteria and conditions should apply and why? (review of local forbearance)

- What is the appropriate process for future applications for forbearance from the regulation of local exchange services? (application process)

- Should there be a transitional regime that provides ILECs with more regulatory flexibility prior to forbearance and if so, under what circumstances should the Commission: 1) lessen or remove the existing competitive safeguards for promotions defined in *Promotions of local wireline services*, Telecom Decision CRTC 2005-25, 27 April 2005 (Decision 2005-25) and the local winback rule as most recently amended in *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 (Decision 2005-28), 2) permit the *ex parte* filing of tariff applications for promotions, and 3) permit the waiving of service charges for residential local winbacks? (transitional regime)

- A determination on Aliant Telecom's forbearance application.

11. The Commission addressed the first of those issues, that is, what local exchange services were within the scope of the proceeding, in *List of services within the scope of the proceeding on forbearance from the regulation of local exchange services*, Telecom Decision CRTC 2005-35, 15 June 2005, as amended by Telecom Decision CRTC 2005-35-1, 14 July 2005 (Decision 2005-35). The remaining issues are addressed, as necessary, in this Decision.

12. The Commission received submissions, reply comments and/or responses to interrogatories from Aliant Telecom; ARCH: A Legal Resource for Persons with Disabilities, now ARCH Disability Law Centre (ARCH); Bell Canada and Société en commandite Télébec (Télébec) (collectively, Bell Canada/Télébec); Call-Net Enterprises Inc., now Rogers Telecom Holdings Inc. (Call-Net); Canadian Cable Telecommunications Association (CCTA); Coalition for Competitive Telecommunications (Coalition); Cogeco Cable Inc. (Cogeco); Commissioner of Competition (Competition Bureau); Public Interest Advocacy Centre on behalf of Consumer's Association of Canada, National Anti-Poverty Association, and L'Union des Consommateurs (collectively, the Consumer Groups); Cybersurf Corp. (Cybersurf); Bragg Communications Inc. carrying on business as EastLink (EastLink); FCI Broadband, a division of Futureway Communications Inc. (FCI), and Yak Communications (Canada) Inc. (collectively, FCI/Yak); MTS Allstream Inc. (MTS Allstream); Primus Telecommunications Canada Inc. (Primus); Quebecor Media Inc. (QMI); Rogers Communications Inc. (Rogers); Saskatchewan Telecommunications (SaskTel);

Shaw Cablesystems G.P. (Shaw); TELUS Communications Inc. (TCI); United Telecom Council of Canada (UTC); Xit telecom inc., on behalf of itself, Xittel telecommunications inc. and 9141-8077 Quebec Inc. (collectively, Xit telecom) and Vonage Canada Corp. (Vonage). Several of these parties also participated in the oral consultation.

13. In this Decision, the positions of the interested parties have necessarily been summarized; however, the Commission has carefully reviewed and considered the oral and written submissions of all parties.

II. Relevant legislative background

14. The Act states that all telecommunications services provided by Canadian carriers must be provided under tariffs approved by the Commission, subject to criteria set out in the Act. The Act also gives the Commission the authority to refrain from requiring Canadian carriers to file tariffs for approval, and from the exercise of certain other of its powers and duties, in respect of services or classes of services, based on certain findings of fact that the Act authorizes the Commission to make.

15. The Commission must, pursuant to section 47 of the Act, exercise its powers and perform its duties under the Act with a view to implementing the Canadian telecommunications policy objectives, which are set out in section 7 of the Act as follows:

a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

d) to promote the ownership and control of Canadian carriers by Canadians;

e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;

f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;

h) to respond to the economic and social requirements of users of telecommunications services; and

i) to contribute to the protection of the privacy of persons.

16. Section 34 of the Act provides for forbearance from regulation as follows:

(1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

17. The legislative provisions referred to in section 34 of the Act are set out later in this Decision.

III. Overview of local exchange services forbearance framework

18. In Decision 94-19, the Commission adopted the concept of market power, commonly used in economics and in competition law, as the standard by which to determine whether a market is, or is likely to become, competitive. Under this approach, the determination of whether or not to forbear from regulating a service or class of services is based on a determination of the relevant market in which the service(s) is/are offered and on whether a firm has market power in that market.

19. Decision 94-19 set out a three-step process for considering forbearance applications (Decision 94-19 analysis):

- The first step is the identification of the relevant market. The relevant market is the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase. The definition of the relevant market is based on the substitutability of the services in question.

- The next step involves determining whether a firm has market power with respect to the relevant market. As indicated, there cannot be sustainable competition in a market in which a firm possesses

substantial market power. 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.

- The last step is to determine whether, and to what extent, forbearance should be granted.

20. In deciding to establish the local forbearance framework in this Decision, the Commission has been cognizant of the dynamic nature of the local exchange services market in which competition is developing rapidly. The Commission is concerned that to subject every application for forbearance from regulation of local exchange services in a relevant market to a full Decision 94-19 analysis would run the risk of delaying forbearance beyond the point at which regulation was efficient and effective.

21. The Commission has, therefore, established a local forbearance framework in this Decision, which sets forth criteria, that will enable it to reach more expeditious determinations on ILEC applications for local exchange services forbearance in particular relevant markets than would a full Decision 94-19 analysis in each case. The Commission considers that this framework will enable it to determine whether forbearing in a particular relevant market would be consistent with the requirements of section 34 of the Act without delaying the potential benefits of competition, particularly facilities-based competition, to customers any longer than is necessary.

22. With respect to the scope of forbearance, the Commission has decided, upon approval of a local forbearance application, to remove those conditions and relinquish those powers and duties which are solely matters of economic regulation. The Commission will retain only those powers and duties which it considers necessary, at this time, to protect the interests of customers, particularly uncontested and vulnerable customers, and to further competition.

23. The local forbearance framework set out in this Decision will apply to applications for forbearance from the regulation of retail local exchange services filed by those ILECs made parties to this proceeding—Aliant Telecom, Bell Canada, MTS Allstream, SaskTel, Télébec and TCI, including the former TELUS Communications (Québec) Inc. (TELUS Québec). Accordingly, as set out in Public Notice 2005-2, the Commission has applied the local forbearance framework set out in this Decision to Aliant Telecom's application.

IV. Relevant market(s)

24. The Commission notes that, as set out above, the relevant market is the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase. Each relevant market, therefore, will have both a product and a geographic component.

Product

25. The Commission considers that several issues must be addressed to determine which products belong in the relevant market for the purposes of forbearance from the regulation of local exchange services:

- Are the local exchange services provided by competitors in the same relevant market as those provided by the ILECs?

- Are mobile wireless services in the same relevant market as wireline local exchange services?

- Do business and residential local exchange services belong in the same relevant market?

- If business local exchange services belong in a separate relevant market from residential local exchange services, is there one relevant market for business local exchange services or are there multiple relevant markets for business local exchange services based on different product characteristics?

Are the local exchange services provided by competitors in the same relevant market as those provided by the ILECs?

Positions of parties

26. Aliant Telecom submitted that the product component of the relevant market should include the following local exchange services on the basis that these services were provided by the ILECs, suppliers using the same technology as the ILECs, or suppliers using other technologies that formed part of the product component of the relevant market: ILECs' local exchange services, including optional calling features; competitive local exchange carriers' (CLECs) and resellers' local exchange services, including optional calling features, provided through traditional circuit-switched technology; cable local exchange carriers' (cable LECs) local exchange services, including optional calling features, provided over their networks; and voice over Internet protocol (VoIP) providers' local exchange services, including optional calling features, provided over an access connection to the customer that the VoIP provider does not own.

27. Bell Canada/Télébec, SaskTel and TCI supported Aliant Telecom's submission. TCI submitted that it was undeniable that the local exchange service provided by a full facilities-based CLEC was a substitute for ILEC local exchange service as there was evidence of customers switching service providers.

28. The Consumer Groups also generally supported Aliant Telecom's submission but added that services provided by competitors must be provided on a stand-alone basis to be considered close substitutes for ILEC services.

Optional calling features

29. Aliant Telecom submitted that although optional features were discretionary services, not substitutes for wireline access, these should be included in the relevant product market because customers can only purchase optional features from the supplier that provides their access service. Bell Canada/Télébec, SaskTel, the CCTA, Cogeco, EastLink, Rogers, Cybersurf and MTS Allstream supported this view.

VoIP

30. Aliant Telecom, Bell Canada/Télébec, SaskTel, TCI, Cybersurf, MTS Allstream, and UTC agreed that based on the Commission's findings in Decision 2005-28, VoIP was in the relevant product market. The CCTA, supported by Cogeco, EastLink, and Rogers, agreed that VoIP was in the relevant product market on the basis that VoIP was a close substitute for circuit-switched local service.

31. The Consumer Groups argued that, at the time of their submission, VoIP services were only weak substitutes for local exchange services. The Consumer Groups submitted that a general finding that VoIP services were in the relevant product market would be premature; however, it could be assessed on a case-by-case basis. Restated in a later submission, the Consumer Groups submitted that it would be inappropriate to treat access-independent VoIP services as being in the relevant product market.

Secondary lines

32. The Competition Bureau suggested that the relevant product market might exclude residential secondary lines. The Competition Bureau submitted that if customers were to take services from a competitor as a secondary line and perceived the secondary line to be of lower quality, this would exert little competitive discipline on the primary lines.

33. Aliant Telecom submitted that it did not have a large base of secondary lines, and further, its base had declined every year. Aliant Telecom submitted that the demand for secondary lines was initially driven by the Internet; however, the market for secondary lines had disappeared when customers began to adopt high-speed Internet access (HSIA). Aliant Telecom further submitted that the definition of primary versus secondary lines was archaic and that the company had no way of knowing which lines in a customer's home were primary or secondary.

34. During the oral consultation, TCI submitted that it could not make a practical distinction between the first and secondary lines, but that secondary lines likely represented a very small percentage of its business.

35. The UTC submitted that primary and secondary lines were the same.

36. Shaw submitted that it would be overly complicated to try to determine which line was primary. Shaw submitted that it offered primary line service, but if a customer wanted to use a primary line as a secondary line that was the customer's choice.

37. Rogers submitted that the second line market was disappearing due to the decline in home fax machines and dial-up Internet.

Bundles

38. The Consumer Groups submitted that a service that might be considered a substitute if available on a stand-alone basis would likely cease to be a substitute for many consumers if it were only available as part of a bundle. The Consumer Groups acknowledged that some consumers will purchase telecommunications services in bundles and do not require that local exchange services

be available on a stand-alone basis, but they also argued that the evidence suggested that these consumers were in a minority at present. The Consumer Groups argued that most consumers did not consider a bundle a substitute for stand-alone service. The Consumer Groups argued further that even those consumers that were willing to purchase bundles recognized that bundles and stand-alone services were in distinct markets.

39. The Consumer Groups submitted that any analysis of the local exchange market must focus on close substitutes that were available as stand-alone services. Consequently, the Consumer Groups argued that it would be inappropriate to include service bundles in the same relevant product market as stand-alone local exchange services.

40. Bell Canada/Télébec submitted that residential customers were increasingly demanding service bundles of voice, HSIA and broadcast television services for their convenience and price. TCI submitted that subscribers were likely to purchase voice, Internet and video services in a bundle; however, this was a fairly recent phenomenon, and the bundle should not be considered as part of the product component of the relevant market.

Commission's analysis and determinations

41. The Commission notes that, in Public Notice 2005-2, it indicated that retail local exchange services used by business and residential customers to access the public switched telephone network (PSTN) were within the scope of this proceeding.

42. The Commission notes that competitors market the local exchange services they provide that access the PSTN as replacements for the ILECs' local exchange services. Based on evidence presented in the course of this proceeding, the Commission considers that competitors' local exchange services are priced similarly, or at a discount, to the ILECs' local exchange services.

43. Based on market share data and related evidence presented in the course of this proceeding, the Commission considers that in areas where competitors offer local exchange services, customers are willing and able to switch service providers.

44. In light of the above, the Commission considers that the local exchange services provided by competitors are in the same relevant market as the ILECs' local exchange services.

45. With respect to the argument raised by the Consumer Groups that access-independent VoIP services should be excluded from the relevant market, the Commission notes that both Bell Canada and many competitors offer versions of access-independent VoIP service. The Commission further notes that the evidence indicates that these access-independent VoIP services are being priced and marketed as substitutes for local exchange services. In light of these considerations and the growing number of customers that are substituting access-independent VoIP services for traditional ILEC local exchange service, the Commission considers that access-independent VoIP services are in the same relevant market as circuit-switched local exchange services.

46. The Commission notes that optional features do not offer the same functionality as, and are therefore not a substitute for, basic local exchange services. The Commission notes, however, that optional features cannot be purchased on a stand-alone basis, and as a result, customers that

want optional features must purchase them from the provider of their basic local exchange service. In light of these demand characteristics, the Commission considers that optional services are in the relevant product market for the purpose of the local forbearance framework.

47. With respect to the separation of primary and secondary lines into different relevant markets, the Commission notes that there is no difference between primary and secondary lines from the perspective of product characteristics, pricing and marketing, and substitutability. Both primary and secondary lines offer the same functionality, features and quality, and are priced and marketed in the same manner. The Commission further notes the practical difficulties in monitoring secondary lines, which were identified by a number of parties to the proceeding. The Commission also acknowledges the reality that the demand for secondary lines was largely driven by dial-up Internet and fax machines, and that the demand for these lines is now in sharp decline as the use of dial-up Internet and fax machines decreases. Accordingly, the Commission considers that both primary and secondary lines are in the same relevant product market.

48. With respect to the proposal made by the Consumer Groups to exclude bundles from the same relevant market as stand-alone local exchange services, the Commission notes that, as set out in Decision 2005-35, bundles are simply combinations of individual services under a rate structure. The Commission notes that ILECs and competitors are increasingly bundling local telephone service, optional features, long distance, Internet access, video and wireless services to satisfy the converging communication needs of consumers. The Commission considers that a significant number of customers are substituting, for ILEC stand alone local exchange services, local exchange services from either the ILEC or a competitor which are offered in a bundle. In light of this, the Commission considers that local exchange services offered as a component of a bundle are part of the same relevant market as those same local exchange services offered on a stand-alone basis. The Commission considers that the Consumer Groups' concern regarding the ongoing availability of stand-alone local exchange service in a forborne market is more properly addressed in Section VI – Scope of local forbearance.

49. In light of the above, the Commission concludes that local exchange services, including VoIP services and optional features, provided by the ILECs, cable LECs, CLECs, and resellers are all in the same relevant market, regardless of whether they are purchased as a primary or a secondary line, or as part of a bundle.

Are mobile wireless services in the same relevant market as wireline local exchange services?

Positions of parties

50. Aliant Telecom and Bell Canada/Télébec, supported by SaskTel, submitted that mobile wireless services are in the same product component of the relevant market as wireline local exchange services. Aliant Telecom submitted that wireless service is a close substitute for wireline service, and that the relevant market should include at least wireless-only users.

51. Bell Canada/Télébec, supported by Aliant Telecom, submitted that the fundamental purpose of both wireline and wireless services is to provide two-way real-time voice communications to and/or from anyone, and that wireless service provides the same functionality as wireline service in terms of placing, receiving and managing calls. Bell Canada/Télébec further noted

that both wireline and wireless services provide 9-1-1 service and other calling features, and that with wireless number portability (WNP), customers would be able to switch between wireline and wireless service providers without changing telephone numbers.
Bell Canada/Télébec argued that these and other characteristics make wireless service a close substitute for wireline service.

52. Bell Canada/Télébec submitted that a price per-minute analysis indicated that the differences between residential wireline and wireless service prices was small, and that the price comparisons supported the conclusion that, from a price perspective, residential mobile wireless service is a close substitute for residential wireline service.

53. The CCTA argued that wireless should only be considered a close substitute for wireline if the services have similar functionality and there is evidence that a significant number of consumers would replace their wireline service with a wireless mobile service.

54. The CCTA noted that Primus offered a bundle that included both wireline and wireless services and that Rogers offered a discount to customers that purchased both Rogers Home Phone wireline service and Rogers wireless service. The CCTA was of the view that if wireless and wireline services were substitutes for each other, these types of bundled service offerings would not make any sense, nor would they be purchased by consumers as the consumers would be paying twice for services that provide the same functionality.

55. EastLink, Rogers, Cogeco, QMI, and Shaw supported the arguments presented by the CCTA with respect to the lack of substitutability between wireless and wireline services.

56. The Consumer Groups did not consider mobile wireless services to be a close substitute for local wireline services; rather, they argued that the evidence in this proceeding indicated that mobile wireless service was growing as a complementary service to traditional wireline local exchange service, rather than displacing it. In the Consumer Groups' view, mobile wireless services should not be considered as part of the same product market as local exchange services for the purposes of a forbearance analysis at this time.

Commission's analysis and determinations

57. The Commission notes that it has treated mobile wireless services as being in a separate relevant market since the introduction of mobile wireless services in Canada two decades ago. In *Regulation of wireless services*, Telecom Decision CRTC 94-15, 12 August 1994, as amended by an erratum dated 8 September 1994, in *Regulation of mobile wireless telecommunications services*, Telecom Decision CRTC 96-14, 23 December 1996, and in *NBTel Inc. – Forbearance from regulating cellular and personal communications services*, Telecom Decision CRTC 98-18, 2 October 1998, the Commission decided to forbear from regulating mobile wireless services on the basis that such services were in a different relevant market from the wireline local exchange services offered by the ILECs. The Commission reiterated this finding as recently as Decision 2005-28.

58. The Commission considers that while the prices of wireline local exchange services and mobile wireless services may be similar in some cases, the pricing methodologies, particularly usage-sensitive pricing of mobile wireless services, represent a fundamental difference in how the services are priced.

59. The Commission considers that generally mobile wireless services are not marketed as a replacement for wireline services. The Commission notes that there is increasing evidence that several Canadian carriers offer bundles consisting of both wireline and mobile wireless services, which would suggest that the two services are not substitutes for each other.

60. The Commission notes that Statistics Canada has estimated in *Residential Telephone Service Survey*, December 2004, that as of December 2004, only 2.7 percent of all households in Canada have replaced their wireline services with wireless services. The Commission considers that 2.7 percent is very low in comparison to the 67 percent of all Canadian households that have at least one subscription to mobile wireless services.

61. The Commission considers that while some consumers are substituting mobile wireless services for their wireline service, at present, the level of substitution is not significant enough to provide a constraint on the market power of the ILEC in a relevant market.

62. In light of the above, the Commission considers that mobile wireless services do not belong in the same relevant market as wireline local exchange services at this time.

Do business and residential local exchange services belong in the same relevant market?

Positions of parties

63. The CCTA submitted that although residential and business local exchange services served the same fundamental purpose, these services were not substitutes for each other for the following reasons:

- Residential and business local exchange services were marketed and offered differently;
- The prices for residential and business local exchange services were different and did not move together;
- Business customers were generally not permitted to use residential local exchange services for business purposes; therefore, it could not be expected that a residential local exchange service would be purchased as a replacement for a business local exchange service. Further, the features and functionalities of residential service would generally not meet the needs of a business customer;
- Although residential customers could subscribe to business local exchange services instead of residential local exchange services, such a choice would be unlikely given the price difference between the two groups of services; and
- The Commission has consistently tracked the development of competition in residential local exchange services market separately from competition in the business local exchange services market.

64. QMI submitted that residential and business local exchange services were not substitutes for each other for the following reasons:

- Qualitative differences in supply and demand characteristics between the residential and business local exchange services markets existed;
- Business local exchange services customers had service requirements that were not easily substitutable with those of residential local exchange services customers, either in terms of functionality, use profiles or access technology; and
- The nature of customer inertia might be different in the two markets.

65. Bell Canada/Télébec submitted that virtually all suppliers of local exchange services had maintained residential and business distinctions since the onset of local competition, and there did not appear to be any lessening of those distinctions. Similarly, Aliant Telecom submitted that, at the time of its submissions, ILECs were monitoring the use of business and residential services to ensure that business customers did not subscribe to the lower-priced residential service.

66. Bell Canada/Télébec also submitted that although it was technically possible to provide business primary exchange service (PES) over residential facilities, there would be differences between the traffic-driven resources required to deliver business and residential PES as these services differ in length of calls and number of call attempts.

67. The UTC submitted that single-line business and residential services were fundamentally equivalent; however, the UTC also submitted that these were not typically accepted as substitutes because carriers priced these services differently and refused to allow business customers to use residential services. For that reason, the UTC argued that it was appropriate to consider single-line business and residential services as two markets. The UTC submitted that the Commission would have to revisit this issue if business customers were allowed to use residential access services.

68. EastLink submitted that residential and business services might have different cost structures, with some business services requiring different facilities.

69. In contrast, MTS Allstream argued that residential and business local exchange services were in the same relevant product market.

70. MTS Allstream submitted that there were no significant functional differences between residential and business local exchange services with respect to either demand-side or supply-side substitutability. MTS Allstream noted that both residential and business local exchange services provide the user with wireline access to and from the PSTN. MTS Allstream submitted that the local service requirements of small business users were effectively no different from those of residential users, especially with respect to home office business customers. In this respect, MTS Allstream submitted that 95 percent of business customers were small businesses.

71. MTS Allstream further argued that creating an artificial distinction between residential and business local exchange services, which could result in forbearance for one and not the other, could threaten competition for both.

72. MTS Allstream submitted that both business and residential local exchange services offered customers a variety of local options and features. MTS Allstream further noted that some subscribers might choose only a subset of optional features, while others take a broader range of features. MTS Allstream submitted that the fact that different customers subscribe to different optional features did not provide a basis for defining residential and business local exchange services as distinct product markets.

73. MTS Allstream argued that there were no technical reasons why any local service offered to a business customer could not equally be offered to a residential customer. However, MTS Allstream noted that there would be an additional cost to deliver a digital trunk service over a local loop.

74. Cybersurf submitted that, to the extent that residential and business local exchange services were closely substitutable absent regulatory rules that separate the two types of services, both types of services would belong to the same relevant product market. Cybersurf also argued that premature forbearance in only one market segment would likely undermine the objective of promoting competition across all segments of the local market.

Commission's analysis and determinations

75. The Commission considers that although there may be some similarities in the functions, features and quality of residential and business local exchange services, there are also considerable differences in these services, particularly for services provided to large or very large business customers. The Commission considers that although it may be possible for a service provider to offer business services through the use of residential facilities, these services would likely only meet the needs of small business customers with functional requirements similar to those of residential customers. The Commission considers that in the case of Centrex and Digital trunk services, for example, it is unlikely that these services would be within the same relevant market as residential local exchange services if only the product characteristics were considered.

76. Furthermore, the Commission considers that the evidence on the record of this proceeding demonstrates that business and residential local exchange services are priced and marketed differently. The Commission also notes that all ILECs have different tariffs for business services and for residential services. The Commission notes, for example, that all ILECs offer Centrex services that include pricing discounts dependent on the length of the contract term and the volume of lines that the customer orders.

77. Based on the above, the Commission considers that business and residential local exchange services are priced and marketed differently and that customers cannot generally substitute residential local exchange services for business local exchange services.

78. Accordingly, the Commission determines that business and residential local exchange services are in separate relevant markets for the purposes of the local exchange forbearance framework.

If business local exchange services belong in a separate relevant market from residential local exchange services, is there one relevant market for business local exchange services or are there multiple relevant markets for business local exchange services based on different product characteristics?

79. The Commission notes that although it received several submissions both in support of and opposed to dividing business local exchange services into distinct relevant markets, the primary focus of the submissions filed in this proceeding was with respect to residential local exchange services. Such information as was provided with respect to business local exchange services was often conflicting, particularly in terms of service characteristics and substitutability. The Commission considers that the record of this proceeding does not provide a complete picture of business local exchange services in terms of the following: product characteristics, pricing and marketing, regional differences in offerings and substitutability.

80. The Commission considers that although the evidence on the record of this proceeding does not definitively establish the need to divide business local exchange services between multiple relevant markets, it equally does not foreclose such a possibility. The Commission, therefore, intends, for the purpose of the local forbearance framework established in this proceeding, to treat all business local exchange services as being in the same relevant market. However, the Commission is willing to entertain applications for forbearance pursuant to that framework as well as interventions with respect to such applications that propose a division of business local exchange services into multiple relevant markets. The Commission will examine the appropriateness of such a division at the time of the application.

81. The Commission also notes the Coalition's suggestion that the Commission forbear from regulating business local exchange services on the basis of customer characteristics, e.g. forbear from regulating business customers that obtain their business local exchange services through a request for proposal (RFP) process. The Commission notes that such proposals are not feasible under the provisions of the Act which, pursuant to section 34, requires the Commission to continue to regulate or to forbear from regulating on the basis of "a telecommunications service or class of services." The Commission is not permitted to forbear from regulating a class of customers.

Geographic

82. Parties suggested several possibilities for the geographic component of the relevant market(s) for the local forbearance framework, including the following:

- the local exchange;
- the serving area of a full facilities-based CLEC;
- the local calling area (LCA);
- the local interconnection region (LIR);
- the province or the ILEC operating territory; and
- the census metropolitan area (CMA).

83. While parties disagreed over which geographic component the Commission should adopt as part of the relevant market, parties generally agreed that the Commission should adopt a geographic component that reflects a social and economic community of interest, that, for example, has substantially similar local telecommunications market conditions, including common pricing and marketing strategies, local service providers and local service offerings; that is administratively practical and competitively neutral; and that has well-defined, stable boundaries.

Positions of parties

Local exchange

84. Aliant Telecom supported the use of the local exchange for the following reasons: forbearance applies to ILECs, so it was not unreasonable that the parameters would be based on, or at least be consistent with, the ILEC's business structure; the local exchange is the basic building block of local telephone service; CLECs are required to obtain telephone numbers in each local exchange where they offer service; and local exchanges have evolved in the context of a single supplier with the privilege and obligation to serve all customers. Aliant Telecom also argued that the network and the local exchange structure have been based on social and economic communities, that market entrants (including the cable LECs, which have evolved their own networks as monopoly suppliers of broadcast distribution service) deploy their facilities around the same social and economic communities, and that their structure naturally tends to parallel that of the ILECs.

85. Aliant Telecom also submitted that competitive conditions across some local exchanges were sufficiently similar that the Commission might wish to aggregate these local exchanges into broader geographic areas for purposes of determining whether sufficient competition existed to forbear from regulation.

86. Bell Canada/Télébec argued for the use of the local exchange for the following reasons:

- The local exchange was a well-known administrative unit used by local telephone service providers for years, and by CLECs that describe their serving areas by local exchanges, and that utilize telephone numbers that are assigned by local exchange;

- It was unlikely that there would be "pockets" within a local exchange that were unserved by competitors, or would remain unserved for long once entry had occurred in the local exchange, since a local exchange was a relatively small area, and competitive entry and expansion throughout the local exchange was relatively inexpensive once entry had occurred in some portion of the local exchange; and

- There were no obstacles to obtaining data on competitive conditions within a local exchange.

87. SaskTel submitted that CLECs would only enter the Saskatchewan marketplace where it made economic sense to do so, namely in the large urban centres. SaskTel noted that in Saskatchewan the large urban centres were each served by only one exchange. SaskTel submitted that CLECs competing in these cities would only service these exchanges. Further, SaskTel noted that in Decision 97-8 the Commission concluded that "[t]he exchange system is both integral and necessary to the general functioning of the network."

88. SaskTel further submitted that, for the purpose of establishing a framework for local exchange forbearance, it did not make sense for the Commission to use any definition of the relevant geographic market other than the local exchange for several reasons, including, most significantly, that every alternative encompassed multiple local exchanges, many of which, SaskTel submitted, would not be the subject of meaningful competition in the foreseeable future.

89. The CCTA opposed using the local exchange as the relevant geographic market. The CCTA argued that to do so would ignore an ILEC's ubiquitous and entrenched position across a much broader territory, would allow an ILEC to leverage the advantages of its incumbency position to deter the development of competition and would ignore the possibility of supply responses from firms operating in contiguous local exchanges and result in an overly narrow market definition. The CCTA also argued that the local exchange was not competitively neutral as it was based on the network architecture of the ILECs and dictated by the ILECs' legacy technology.

90. MTS Allstream argued that ILEC local exchange boundaries were historical artifacts and had no direct relevance to the coverage of alternative local service networks or to the area over which competitors might choose to offer local exchange services. In this respect, MTS Allstream submitted that the local exchange was no longer the fundamental unit for the purpose of interconnection and the calculation of contribution.

91. EastLink submitted that, as it rolled out local exchange service on a system-by-system basis, the systems and processes it had developed to track subscribers were based on how it tracked its cable services. EastLink submitted that it would be inconsistent with the objectives of the Act, which recognized that competition should be efficient and effective, for the Commission to require it to report its subscribers on a local exchange by local exchange basis.

92. The Consumer Groups submitted that the geographic component of the relevant market should be sufficiently large to be administratively convenient and to decrease the chance of significant market share variations over time. The Consumer Groups also submitted that the use of the local exchange as the geographic component of the relevant market could result in thousands of forbearance areas. The Consumer Groups submitted that the use of the local exchange did not make sense from an administrative perspective and could not reasonably be expected to ensure that regulation, where required, was efficient and effective.

Serving area of a full facilities-based CLEC

93. TCI defined the geographic component of the relevant market for forbearance from the regulation of local exchange services as the serving area of a full facilities-based CLEC—a CLEC that operated its own network, which was physically independent of any other LEC's network, excluding interconnection.

94. TCI submitted that the use of the serving area of a full facilities-based CLEC as the geographic component of the relevant market was consistent with the Commission's view in Decision 97-8 that "efficient and effective competition will be best achieved through facilities-based competitive providers" and that "the full benefits of competition can only be realized with facilities-based competition." TCI submitted that it was not suggesting that non-facilities-based or partially facilities-based competition could not constitute sufficient and durable competition. TCI submitted that it had merely excluded partially and non-facilities-based competition on the basis that, consistent with the Commission's statement in Decision 97-8, the Commission could be confident in the ability of full facilities-based competition to protect the interests of users and to be durable.

95. TCI argued that its proposed geographic market was the most administratively simple and reliable means of identifying those geographic areas where there was sufficient competition to protect the interests of users. TCI argued further that, by defining the forbearance area strictly by reference to the presence of actual full facilities-based competition, it offered the only test that avoided the problem of pockets of uncontested consumers.

96. TCI noted the "unequivocal direction" that the Commission provided in Decision 94-19, where it submitted that "the relevant market is the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase." TCI submitted that this was the only legitimate consideration in the identification of the relevant geographic market, and that all other considerations, such as those regarding pricing and communities of interest, were irrelevant and must be rejected.

97. The Competition Bureau submitted a diagram that illustrated a sample geographic component of the relevant market. This diagram showed an area with cable network; the area of local exchanges; the area outside the cable network; and an area of wholesale regulation.

98. The Competition Bureau argued that the starting point in the analysis to define the geographic component of the relevant market must be the overlapping footprint of the ILECs' and the competitor(s)' networks since this accurately defined the market in which users had the option of actually choosing between competing suppliers (assuming that these suppliers had been determined to supply substitutable products).

99. Aliant Telecom argued that a competitor's footprint could be smaller than a local exchange. Aliant Telecom submitted that the use of a market smaller than a local exchange would result in exchanges that were partly forborne and partly regulated. Aliant Telecom expressed the concern that this would create administrative burden, related to billing modification, identification of customers and market shares in parts of an exchange, multiple proceedings to determine forbearance, and constantly changing forbearance boundaries.

100. The Consumer Groups submitted that the geographic area should be defined prior to beginning a forbearance analysis, and that using the competitor's footprint involved a moving target, which, among other things, was not conducive to administrative efficiency.

101. The CCTA submitted that the idea of using the competitor's footprint as the geographic component of the relevant market suffered from uncertainty and a lack of consistency because the geographic component of the relevant market would be driven by the actions of competitors in the markets, not by a stable and neutral definition. The CCTA argued that, under this approach, the Commission could not know in advance how many different areas it would have to examine with respect to forbearance, and there would be disputes over the forbearance areas in question.

102. The CCTA submitted that as the competitor's footprint continued to expand to increase market coverage and customer base, the geographic component would shift and/or expand over time, resulting in numerous forbearance applications and burdensome data collection. The CCTA also submitted that, if forbearance were granted to an initial serving area, it was not clear how the forbearance criteria would be applied to each new increment of this initial serving area.

103. Rogers, Cogeco, EastLink, and Shaw argued that the serving area of a full facilities-based competitor was not stable over time, was not well defined and was not neutral, in that it relied on the operations of an individual company.

LCA

104. The Coalition submitted that the LCA was the appropriate geographic market for forbearance from the regulation of local exchange services; the Coalition submitted that the LCA was objective and relevant as it reflected the community of interests of customers. The Coalition also submitted that, from a supply and a demand point of view, the LCA was the most meaningful geographic market.

105. The Consumer Groups and Cybersurf had both originally submitted that the LCA was the appropriate relevant geographic market on the basis that it was familiar to consumers; it reflected a community of interest; it was competitively neutral; and it was of intermediate size, significantly larger than a local exchange, but smaller than a province or an ILEC's operating territory and would likely contain relatively homogenous competitive conditions throughout.

106. Both of these parties subsequently switched their positions to support the LIR as the appropriate geographic component of the relevant market, mainly due to concerns over potential administrative problems with the LCA.

107. Aliant Telecom, Bell Canada/Télébec, the CCTA, and TCI argued that LCAs did not lend themselves to identifying distinct geographic areas as there was a high incidence of overlapping LCAs.

108. MTS Allstream argued that granting local forbearance on a narrowly-focused basis, such as on an LCA-basis, would only serve to pre-empt the development of local competition. MTS Allstream also submitted that there was no justification for using the LCA boundaries as the basis of the relevant geographic market, noting that these could be expanded over time.

LIR

109. The CCTA submitted that the relevant issue was the extent to which individual residences should be aggregated to achieve a workable geographic component of the relevant market. The CCTA claimed that the LIR, or, in certain circumstances, an aggregation of contiguous LIRs was an appropriate geographic market for the following reasons:

- In the absence of demand substitution, supply responses suggest a market definition based on one or more LIR(s);

- An LIR represents "a community of interest" – a grouping of locations across which consumers shared common economic and social interests, as established in *Trunking arrangements for the interchange of traffic and the point of interconnection between local exchange carriers*, Telecom Decision CRTC 2004-46, 14 July 2004 (Decision 2004-46). This included areas where consumers had access to similar advertisements and offers via the same local television programs, radio stations and newspapers;

- An LIR closely approximates the geographic boundaries that are likely to provide the basis for geographic price discrimination of local service. It would be very difficult for LECs to profitably sustain geographic price discrimination of residential local exchange service across multiple small markets. It is more reasonable to expect that geographic price discrimination in a competitive market will occur on the basis of an aggregation of local exchanges. Uniform pricing will occur as a result of the presence and service offerings of competitors across the contiguous exchanges rather than within individual local exchanges. It is highly unlikely that different competitive conditions in individual local exchanges will lead to geographic price discrimination on the basis of the local exchange. In a competitive environment, geographic price discrimination on the basis of the LIR is both more likely and more sustainable;

- An LIR represents a geographic market that is large enough to prevent targeted pricing; and

- An LIR provides the best means by which to measure market power. A narrow definition of the geographic market, such as the local exchange, fails to take into account an ILEC's ubiquitous and entrenched position across a much broader segment of its operating territory. The ILEC would retain the advantages of its incumbency position and could leverage these advantages to the detriment of competition in the case of premature forbearance on a narrow geographic basis. Through such means, an ILEC could prevent competition from expanding.

110. Shaw submitted that a competitor could provide service to any new area within an existing LIR, without incurring additional sunk costs, in response to demand.

111. Bell Canada/Télébec argued that supply responses did not suggest a market definition based on LIRs. Supply responses, according to Bell Canada/Télébec, referred to suppliers' ability to respond to a hypothetical monopolist's price increase by expanding their services to customers that would have been affected by the increases. Bell Canada/Télébec argued that if a supply response could be expected across an LIR, then it could be expected that similar competitive conditions would exist across that area. They further argued that this was typically not the case, and that there was no uniformity of competitive conditions across LIRs. Bell Canada/Télébec submitted, for example, that six years after EastLink's entry into the local market in Atlantic Canada, it offered service in only one quarter of the exchanges in the LIRs.

112. Bell Canada/Télébec and TCI argued that the LIR did not represent a community of interest. Bell Canada/Télébec submitted that the LIRs were designed to improve the efficiency and lower the cost of network interconnection into an ILEC's network and had little to do with competitive supply of local exchange services. Bell Canada/Télébec argued that the make-up of the LIR was driven more by the ILECs' network architecture and their use of remotes than by any community of interest. Bell Canada/Télébec submitted further that community of interest had relevance in a market definition only to the extent that it implied that there were demand and supply substitution opportunities within the community.

113. Bell Canada/Télébec and TCI argued that targeted pricing considerations were irrelevant to the definition of the geographic market.

114. Aliant Telecom argued that the LIRs were created to facilitate local interconnection and did not reflect relevant geographic markets and that economic theory did not play any role in the definition of the LIRs. Aliant Telecom submitted that the LIRs were initially prescribed to be political subdivisions, counties in the Maritime provinces, but were redefined to provide that if a local exchange were to be served by a remote off of a switch in another county, that local exchange would be added to the LIR of the serving switch.

115. Aliant Telecom further argued that the LIRs did not reflect comparable competitive conditions in areas within a given LIR. Aliant Telecom noted that Nova Scotia had only four LIRs and that the Halifax LIR contained 62 exchanges, including several small rural exchanges located a considerable distance from Halifax. Aliant Telecom submitted that the competitive conditions in Halifax were irrelevant to the other rural areas. Aliant Telecom further submitted that competition sufficient to justify forbearance in the Halifax exchange would not justify forbearance in these rural exchanges. Aliant Telecom also argued that, conversely, the lack of a competitive entrant in the distant exchanges had no relevance to competitive conditions in Halifax and should not delay forbearance within the Halifax exchange.

116. SaskTel submitted that the revised LIR boundaries proposed by SaskTel, Aliant Telecom, TCI and MTS Allstream as an alternative to those set out in Decision 2004-46 were regions of their serving territories that reflected that local service was provided directly from host switches and from remote switches that homed on a host switch. SaskTel submitted that the adoption of these LIRs would provide more efficient interconnection, present CLECs with greater geographic

reach from a single point of interconnection (POI), and would greatly reduce the costs of interconnection, but that these LIRs could no longer be viewed consistently as representing communities of interest. Furthermore, SaskTel cited Decision 2004-46 where the Commission stated: "The Commission notes this Decision does not modify the assignment of numbering resources, the dialling plan and provision of service to subscribers. Also, local number portability continues to provide service provider portability on an exchange basis."

117. SaskTel disputed the proposition that local competition would arise on an LIR basis, and considered that it would be rolled out on an exchange-by-exchange basis. SaskTel argued that competition was unlikely to reach more than a handful of the 229 exchanges in Saskatchewan and that using LIR as the relevant geographic market for forbearance would be problematic.

118. In its reply argument, the CCTA refined its rationale for supporting the LIR as the geographic component of the relevant market with the following submissions:

- The LIR reflected a community of interests—a grouping of locations across which consumers shared common economic and social interests, as established in Decision 2004-46. This included areas where consumers had access to similar advertisements and offers via the same local television programs, radio stations and newspapers;
- Each LIR described the area across which a facilities-based competitor could supply its services through a single POI; and
- Using the LIR, rather than the local exchange, would ensure that competitors would have the opportunity to establish themselves on a scale sufficient to discourage targeted pricing. A local exchange was simply too small a basis for a competitor to sustain operations and withstand targeting by ILEC.

119. The CCTA contested the suggestion that LIRs were too large and that forbearance on this basis would result in pockets of consumers within a forborne market that would not have access to a competitive alternative. The CCTA argued that a facilities-based competitor established in the LIR could extend its service anywhere in that LIR to constrain the market power of the ILEC. In addition, the CCTA suggested that price caps and restriction on rate de-averaging could be used to offset the risk of unwarranted price increases by the ILECs in pockets where consumers were without competitive choices.

Province or ILEC operating territory

120. EastLink submitted that, at least in the case of Aliant Telecom's application for forbearance, the appropriate geographic component of the relevant market was the province.

121. EastLink proposed that, in establishing the relevant geographic market, the Commission should consider whether that specific market would create opportunities or disincentives for the incumbent to engage in targeted behaviour; how that market would impact competitors and their ability to respond to ILEC behaviour; customers' expectations regarding services and pricing within that market; and general indicators of incumbent market power within that market.

122. In EastLink's view, the key to determining the appropriate geographic market was defining a market boundary, within which, if forbearance were granted, the ILEC's ability to engage in targeted behaviour would be limited. EastLink argued that the larger the geographic market the less likely it was that an ILEC would engage in targeted pricing.

123. EastLink submitted that it would not be able to respond to extreme pricing behaviour by Aliant Telecom if Aliant Telecom's local exchange services were forborne in one local exchange and not forborne in neighbouring local exchanges. EastLink further suggested that if Aliant Telecom could blame the regulator for its inability to reduce prices in local exchanges that are not competitive, it could target the more competitive areas without angering the customers in the non-forborne local exchanges.

124. EastLink submitted that its pricing was consistent throughout all of its serving areas and that consumers expected this type of pricing. EastLink further argued that, if the geographic market was provincially defined, then ILEC pricing and other behaviour would be disciplined by competitors and by the expectations of consumers within that market. EastLink argued that consumers' expectations, pricing and service options had all been previously recognized as relevant considerations in determining the appropriate geographic market. The company cited *Forbearance granted for telcos' wide area network services*, Order CRTC 2000-553, 16 June 2000, where the Commission determined that because WAN services were neither priced nor offered on a route-specific basis, the market was national or regional in scope.

125. EastLink submitted that Aliant Telecom's prices for local services were the same throughout the province, and could support an argument in favour of a territory-wide geographic market. In this respect, EastLink submitted that Aliant Telecom's bundles were currently priced the same across the Aliant Telecom's entire operating territory and that, in the last price cap proceeding, Aliant Telecom sought an increase to its local exchange service prices so that the price would be consistent throughout Aliant Telecom's operating territory.

126. EastLink submitted that while some parties argued that a larger geographic boundary would result in pockets of unserved areas, EastLink was of the view that such a concern was not significant enough to warrant selecting a very narrow market. EastLink suggested that if the Commission granted forbearance where there were some small unserved pockets, it could mandate price caps in those areas to prevent ILEC pricing behaviour that would take advantage of the lack of competitive alternatives.

127. QMI proposed that the geographic component of the relevant market for a forbearance analysis was the ILEC's operating territory. QMI submitted that an ILEC's financial power and its potential ability to bring that power for anti-competitive ends were not restricted to local exchange or other arbitrary regional boundaries. QMI further submitted that local market forbearance should be considered only after dominance had been dislodged on a territory-wide basis. QMI submitted that only once meaningful competition had taken root on a territory-wide basis would more constructive competitive forces have the opportunity to prevail.

128. QMI noted that setting the ILEC's operating territory as the geographic component of the relevant market could give rise to concerns about potential abuse of customers in outlying regions if forbearance were granted too quickly due to competition in urban areas. In this

respect, QMI suggested the development of a process whereby forbearance approval would be granted based on conditions in the entire operating territory, but forbearance implementation would take place on a region-by region basis.

129. Primus submitted that the most balanced method of defining the geographic component of the relevant market would be to base forbearance on ILEC market share across most, if not all, of an ILEC's operating territory, but some high-cost serving areas (HCSAs) could be excluded at the Commission's discretion.

130. MTS Allstream proposed that the appropriate geographic component of the relevant market was the ILEC operating territory subdivided into HCSAs and non-HCSAs.

131. MTS Allstream submitted that the definition of the geographic component of the relevant market must include consideration of the impact of the market definition on the objective of achieving broadly-based, sustainable local competition. MTS Allstream argued that an ILEC had possessed an "actual" monopoly rather than a "hypothetical" monopoly within its operating territory not that long ago and, at that time, each ILEC was able to raise local service prices on a profitable and non-transitory basis throughout its operating territory.

132. MTS Allstream submitted that the state of competition could be measured at the provincial or territorial level providing a more comprehensive view of the scale of competitive entry in each ILEC's operating territory. MTS Allstream further submitted that more granular information at the local level could also be analyzed to give a better perspective of the distribution of competitive entry.

133. MTS Allstream submitted that, for practical purposes, a division of the relevant geographic markets into HCSAs and non-HCSAs was feasible at this time, as it was unlikely that any significant degree of competition would develop in HCSAs in the foreseeable future. MTS Allstream considered that dividing provincial territories in this manner would allow for forbearance where the forbearance test criteria were satisfied in non-HCSAs. MTS Allstream further considered that, given that HCSAs were currently subsidized and represented a relatively small percentage of each ILEC's within-province customer and associated revenue base, there would be very limited ability to leverage market power in HCSAs to engage in anti-competitive tactics in the non-HCSAs, in the event that the rest of the operating region were forborne.

134. The Consumer Groups and the Coalition submitted that a province or ILEC operating territory was well-defined and provided an element of historical integrity that might be viewed as a reasonable basis for market definition purposes. However, these parties further submitted that a province or operating territory was too large to be considered appropriate, as competitive conditions in one city or region had little necessary relationship to conditions in another city or region.

135. Aliant Telecom submitted that choosing a large area such as a province or serving territory to ward off a non-existent threat of predation comes at the cost of denying the benefits of full competition to customers in those areas where competitors have become well-established.

Aliant Telecom submitted that the rationale for these choices was explained in terms of limiting the ability of the forborne ILEC to engage in anti-competitive conduct, but not based on economic principles of substitutability followed in antitrust matters.

136. Bell Canada/Télébec submitted that the shortcomings of the LIR as the geographic component of the relevant market pertained, with greater force, to the province or ILEC operating territory.

137. SaskTel submitted that it would be inappropriate to define the relevant geographic market as the province or HCSAs and non-HCSAs for the following reasons: the areas were too broadly defined to represent a community of interest; they were not representative of areas of consistent conditions of competitive supply and demand; and they were not responsive to the dispersion of the population of Saskatchewan.

CMA

138. The UTC submitted that the appropriate relevant geographic market for the purposes of forbearance would be the metropolitan area served by the ILEC and cited marketing considerations as the basis for its view.

139. The Consumer Groups submitted that in addition to LCAs and LIRs, other municipal boundaries might also be appropriate to reflect an existing community of interest. The Consumer Groups considered that the key point was to have a geographic area that would make sense to consumers and would avoid consumer confusion as to whether or not advertised service offerings were available to them or not.

140. SaskTel submitted that, in most cases, CMA boundaries did not match SaskTel's exchange boundaries. SaskTel listed the communities and rural municipalities (RMs) contained within the Regina and Saskatoon CMAs and argued that these smaller communities and RMs were not expected to attract local service competitors any time in the foreseeable future. In this respect, SaskTel noted that several of the small communities within the Regina and Saskatoon CMAs were not served by the predominant cable distributors, Shaw or Access Communications Co-operative. SaskTel therefore considered that it would be inappropriate to rely on the CMAs as the relevant geographic market for the purposes of forbearance of local exchange services in Saskatchewan.

Commission's analysis and determinations

141. ***The Commission considers that, for the purposes of a local forbearance application by an ILEC, a local exchange is the appropriate geographic component of the relevant market.***

142. ***Paragraph deleted***

143. ***Paragraph deleted***

144. ***Paragraph deleted***

145. ***Paragraph deleted***

146. ***Paragraph deleted***

147. ***Paragraph deleted***

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165. ***Paragraph deleted***

166. ***Paragraph deleted***

167. ***Paragraph deleted***

168. ***Paragraph deleted***

V. Local forbearance criteria

Positions of parties

169. Aliant Telecom submitted that the criteria from Decision 94-19 were still relevant for assessing whether there was sufficient competition for the Commission to forbear. Aliant Telecom submitted that since many of the indicators of competition could be shown to exist now in virtually all local exchanges in Canada, the Commission should be able to establish a new process, as comprehensive as the Decision 94-19 framework that could produce a decision much more quickly. Aliant Telecom suggested that the Commission could reliably infer from observable data that competitive conditions in a particular market were sufficiently competitive to meet the standard of section 34 of the Act without repeating the full analysis contemplated under Decision 94-19.

170. Aliant Telecom proposed a test that would use five percent actual ILEC loss of market share in an exchange as a criterion for forbearance. Aliant Telecom submitted that its proposed process would produce an expedited result based on a clear objective test with the focus being an examination of the market share of the ILEC in a particular local exchange or local exchanges. Aliant Telecom submitted that its proposal was based on the expedited process established by the Commission, under the *Broadcasting Act*, to enable Class 1 cable systems to achieve economic deregulation when pre-defined criteria are met. On the supply side, Aliant Telecom submitted that, considering the competitive nature of the local telephone market the supply availability component of the criteria established for Class 1 cable systems, a competitive alternative being available to 30 percent of households in an exchange had already been achieved. Aliant Telecom submitted it had proposed a more stringent demand side component of five percent loss of market share in an exchange relative to the Class 1 cable system test, which required that a cable provider no longer serve five percent of the addresses it had previously served.

171. Aliant Telecom submitted that CLECs, cable LECs, and wireless providers have all made substantial investments in extensive networks to supply customers with alternatives to the ILECs' local wireline services. Aliant Telecom submitted that with those networks in place and operating, there were no significant barriers to expanding output to meet increased demand. Aliant Telecom further submitted that VoIP providers faced low barriers to entry and that over thirty had started offering service in Canada and offered service in all major urban areas. Aliant Telecom proposed that the Commission should, therefore, conclude that barriers to entry and expansion were not a reason to continue to regulate the ILECs' local exchange services.

172. Bell Canada/Télébec, supported by SaskTel, proposed what it suggested was an efficient test for forbearance of local exchange services that took into account the factors identified in Decision 94-19: low barriers to entry, vigorous and aggressive rivalry by competitors, technological innovation, customer awareness of competitive choices, and the extent to which customers have exercised that choice. These companies proposed, therefore, that the Commission should forbear from regulating a service in any exchange where five percent of the customers have opted for alternatives to the ILECs' regulated local exchange services. In their view, the five percent represents a milestone that enables one to see that customers are availing themselves of competitive alternatives.

173. Bell Canada/Télébec submitted that any loss of local share was in addition to the evidence related to other competitive indicators – the analysis of which sufficiently demonstrated that no service provider has substantial market power. Bell Canada/Télébec argued that by limiting the share calculation to the loss of connections, the metric did not account for any usage substitution from other forms of communication, such as cellular phones, instant messaging, text messaging, and email and, therefore, understated the actual level of substitution taking place. In addition, Bell Canada/Télébec argued that market share was a static, backward-looking measure that underestimated the true level of competition as it ignored the impact of new, strong competitors entering the market, and the competition for the market as evidenced, for example, by the presence of multiple bidders for business customer contracts. Bell Canada/Télébec also argued that losing five percent share of the local connections would imply that further share loss could occur in the future; Bell Canada/Télébec submitted that this prospect of continued share loss was sufficient to discipline the incumbent's behaviour in the entire market where the loss occurred as there were clearly one or more competitors with viable competitive offerings. Bell Canada/Télébec further submitted that when competitors could relatively easily expand to meet customer demand, even a small share loss could discipline the incumbent.

174. Bell Canada/Télébec, supported by SaskTel, submitted that a five percent market share loss criterion by itself did not demonstrate a lack of substantial market power. Bell Canada/Télébec argued that the lack of substantial market power was demonstrated by the evidence of rivalrous behaviour and wide-spread entry, the availability of low cost technology to entrants and the lack of significant barriers to entry. Bell Canada/Télébec submitted that the proposed five percent criterion simply demonstrated that customers were attracted to competitive alternatives and were purchasing them. Bell Canada/Télébec submitted that if it were proposing a market share test for the purposes of measuring market power, measuring shares on the basis of capacity, the ability to provide service, would be more relevant. Bell Canada/Télébec submitted that in those areas where cable LECs have configured their networks to provide telephony services, the ILEC market share, measured on the basis of capacity, was less than 50 percent.

175. Bell Canada/Télébec and SaskTel submitted that evidence of the ease of entry and supply expansion should be considered the key indicators that a market was sufficiently competitive and hence should be forborne. Bell Canada/Télébec and SaskTel submitted that the focus of an assessment of barriers to entry involved determining the time it would take for a potential entrant to become an effective competitor in the relevant market in response to a material price increase. Bell Canada/Télébec and SaskTel suggested that the evidence in this proceeding demonstrated that competition in the local exchange services markets in Ontario and Quebec was rapidly taking hold. Bell Canada/Télébec and SaskTel also concluded that the introduction of VoIP services was allowing for a new era of technology-based alternatives, in contrast to the initial CLECs that offered services using traditional telecommunications network solutions.

176. Bell Canada/Télébec and SaskTel submitted that, for purposes of calculating share loss in residential markets, the Commission should examine the total number of local connections, which should include, at a minimum, all local connections provided by ILECs, CLECs, cable LECs, access independent VoIP providers, and resellers, as well as the total number of wireless-only households.

177. Bell Canada/Télébec and SaskTel submitted that, for purposes of calculating share loss in business markets, the Commission should determine the number of local connections for each of the service markets it had identified: business primary local services, Centrex services and digital trunk services. Bell Canada/Télébec and SaskTel submitted that the Commission should, at a minimum, include the connections provided by ILECs, CLECs, cable LECs, access independent VoIP providers, municipal electric utilities, and resellers, including systems integrators.

178. Bell Canada/Télébec also submitted that it had demonstrated that barriers to entry in the local telecommunications market were low. Bell Canada/Télébec argued that its submissions in this proceeding provided evidence that demonstrated that there was facilities-based competition on a broad scale with capacity commensurate to that of the ILECs; that competitive rivalry was vigorous; that innovation and technological change were evident in markets with new entrants employing, in different ways, new IP technologies; that cable competitors already had relationships with millions of customers and offer a suite of communications services; and that customers were aware of the competitive alternatives available to them.

179. Bell Canada/Télébec and SaskTel submitted that market shares, by themselves, were often misleading indicators of market power in that they were backward-, rather than forward-, looking and accordingly should be used cautiously. Bell Canada/Télébec and SaskTel further submitted that while market power required high market share, high market share alone did not necessarily indicate market power.

180. Bell Canada/Télébec and SaskTel submitted that while market share had the advantage of being quantifiable, indicating that competitive alternatives were available and providing evidence that customers were willing to try alternative suppliers, with respect to establishing a framework for local forbearance, the utility of market share was limited. Bell Canada/Télébec and SaskTel argued that markets shares often did not reflect the level of competition for the market.

181. TCI proposed a bright-line test, whereby in any geographic area in which the following criteria were met, the Commission should determine that provision of local exchange service was sufficiently competitive for the purposes of forbearance under subsection 34(2) of the Act:

Residential

- A full facilities-based CLEC offering residential local exchange service throughout its serving area; and
- That full facilities-based CLEC has five percent of the total residential network access lines (NALs) and NAL-equivalents in its serving area.

Business

- A full facilities-based CLEC offering business local exchange service throughout its serving area; and
- That full facilities-based CLEC has five percent of the total business NALs and NAL-equivalents in its serving area.

182. TCI submitted the rationale behind the first element was that facilities-based entry was both the most effective method of eliminating any remaining ILEC market power and the most likely to be lasting. TCI further submitted that full facilities-based entry was the most stringent standard for competitive entry and provided added assurance of the sustainability of competition within the area served by the full facilities-based CLEC in question.

183. TCI submitted that the second element had its inspiration in the Commission's bright-line test for cable television basic rate de-regulation. TCI submitted the requirement that a full facilities-based CLEC have five percent of the total number of residential or business NALs and NAL-equivalents in its serving area was intended to demonstrate that users had access to a viable commercial alternative and were adopting it, not that the ILEC had lost a certain predetermined market share.

184. TCI submitted that with the entry of a cable LEC or any other full facilities-based CLEC offering a wide variety of services over a single network, the ILEC lost any market power it may have had. TCI submitted that in such a case, market share was not relevant to the assessment of market power. TCI noted that this was the context and justification for its two facilities bright-line test.

185. TCI submitted that for access independent VoIP providers, the barriers to entry and limits to supply side expansion were almost non-existent. TCI suggested that the Commission had recognized this in Decision 2005-28 and that the current count of over 20 such competitors demonstrated this. TCI further submitted that the availability of VoIP technology, which facilitates inexpensive entry as a local service provider, combined with the widespread adoption of HSIA services, rendered barriers to entry in local exchange services markets almost non-existent. TCI submitted that this limited the market power, irrespective of market share, of the incumbent telephone company.

186. MTS Allstream submitted that the criteria for forbearance established in Decision 94-19 were specifically intended to be applied to the telecommunications market, and for this reason, were the appropriate criteria to use when determining if a particular ILEC's local voice services market was sufficiently competitive to forbear from regulation.

187. MTS Allstream argued that forbearance in the local exchange services market was not appropriate at this time and should not be granted until all of the forbearance criteria set out in Decision 94-19 had been met.

188. MTS Allstream submitted that the ILECs enjoy enormous advantages as a result of their incumbency arising from their former monopoly position in the market, for example, customer inertia, economies of scale and density, and the ubiquity of their local access network. As well, in MTS Allstream's view, there were several other significant technical, regulatory and legislative barriers to entry in the local market which should be largely eliminated before the Commission forbears. MTS Allstream submitted that these included, but were not necessarily limited to, the following:

- unbundling of essential and near essential facilities to provide circuit switched as well as Internet protocol (IP)-based local access and transport services;

- elimination of contractual and technical barriers to migrate Centrex local lines from an ILEC to a competitor;

- elimination of ILEC tariffs with long-term contracts and automatic renewal;

- Category I Competitor Services pricing which reflects actual costs to the ILECs;

- resolution of issues and successful implementation of competitor access to ILEC remotes to permit competitors to provide voice services to customers served by remotes;

- meeting competitor quality of service (Q of S) standards, to ensure that the ILECs do not use their control over facilities to delay delivery of essential and near essential services to competitors;

- competitor access to the ILEC's operational support systems (OSS), to provide CLECs with an equal opportunity to compete with the ILECs for local customers;

- full disclosure by the ILECs of all written and unwritten access agreements with multi-dwelling unit (MDU) owners;

- open ILEC-managed Internet platforms to competitors to allow customers more flexibility in supplier choice;

- access to third-party infrastructures including municipal and public lands, utility support structures, and commercial and residential MDUs for new entrants to effectively roll out their networks;

- resolution of issues related to local service inter-working for ILECs' Centrex and managed IP voice services; and

- all issues related to implementation of Decision 2004-46 and Decision 2005-28 resolved and Decision 2004-46 successfully implemented.

189. MTS Allstream further argued that any ILEC seeking forbearance in the local services market should demonstrate that it has fully complied with all of the Commission's rules related to competition in the local services market and that there were no outstanding regulatory compliance proceedings or issues relating to its conduct in the market.

190. MTS Allstream proposed that any ILEC seeking forbearance for its local service must have met all competitor Q of S indicators for a consecutive 12-month period prior to applying for forbearance. MTS Allstream submitted that the ILECs' failure to meet competitor Q of S indicators had seriously prejudiced the ability of competitors to deliver and provide

local telephony and other services to their customers in a timely and predictable fashion. MTS Allstream submitted that this placed competitors at a significant disadvantage relative to the incumbents in the provision of local services. MTS Allstream submitted that the only way to keep suppliers of underlying access and transport facilities from using their control over those facilities to alter the competitive context in their favour in a post-forbearance environment would be to ensure that the ILECs were consistently meeting the competitor Q of S indicators that had been established by the Commission.

191. MTS Allstream submitted that the analysis set out in Decision 94-19 had been employed by the Commission in reaching numerous other forbearance determinations with more facility than the forbearance determinations of most other regulators in the world. MTS Allstream submitted that to now adopt alternative forbearance frameworks depending on the entrant in question would be administratively costly and confusing to all parties involved.

192. MTS Allstream argued that in the absence of a full evaluation of the local services market, it would be entirely inappropriate to replace the Commission's established forbearance criteria with an automated, bright-line market share-based forbearance mechanism.

193. MTS Allstream argued that while it was of the view that market share-based forbearance triggers or pre-conditions were inappropriate, it was critical that any such thresholds that might be considered reflected a proper balance between the ILECs' overall local market position and the scope of the adopted relevant market definition.

194. MTS Allstream submitted that when it came to measuring market share there were already measures of local market share based on revenues and on lines in the Annual Monitoring Report and there was no need to modify these measures or the frequency at which they are calculated.

195. The CCTA, supported by Rogers and Cogeco, submitted that the Commission should rely on a two-part test, employing both objective and subjective elements:

- The first part of the test would be a finding that a minimum 30 percent share of the relevant market was not served by the ILEC. This threshold reflected CCTA's proposed definition of the relevant market. The market share would serve as a necessary, but not sufficient basis for forbearance, and would provide an objective basis for proceeding to the second part of the test.

- The second part would rely on evidence that competitive alternatives exist in the relevant geographic market on a pervasive and sustained basis.

196. The CCTA, supported by Rogers and Cogeco, submitted that in proposing a threshold of 30 percent market share not served by the ILEC, it considered past determinations by the Commission as well as the approach taken by competition authorities in Canada and internationally. The CCTA, supported by Rogers and Cogeco, submitted that in the case of the Commission, it has previously found a market to be workably competitive where the ILEC did not hold more than 70 percent market share, as in the case of toll forbearance.

197. The CCTA, supported by Rogers and Cogeco, submitted that an approach to measuring market share in the residential local exchange market was to consider the proportion of the total number of households within a geographic market that are served by the ILEC. The CCTA, supported by Rogers and Cogeco, submitted that fewer than two percent of all households did not subscribe to residential local exchange service and that all households can be served by the ILEC. In their view, it should follow that measuring market share on this basis would accurately reflect the percentage of the market served and not served by the ILEC. The CCTA, supported by Rogers and Cogeco, argued that another factor in favour of this approach was that it would reflect households that were not served by the ILEC because customers have decided to rely solely on a VoIP reseller's service or a wireless service. The CCTA, supported by Rogers and Cogeco, further submitted that calculating market share using this approach could be derived using information just from the ILEC, so the method was less sensitive to over or underreporting of lines served by competitors.

198. The CCTA, supported by Cogeco, EastLink, Rogers and Shaw, proposed that a consideration of the status of barriers to entry would form an essential part of the second part of CCTA's proposed two-part forbearance test. The CCTA submitted that the persistence of these barriers would prevent the competitive marketplace from functioning in a manner consistent with the intent of section 34 of the Act.

199. Rogers and Call-Net submitted that the Commission should ensure that the following issues were resolved prior to forbearing from the regulation of any of the ILECs' local exchange services:

- full implementation of OSS access;
- full implementation and enforcement of Q of S for Competitor Services, that is, ensuring that the ILECs meet the standards set;
- full implementation of asymmetric digital subscriber line (ADSL) unbundling from retail local service by all ILECs;
- access to the transmission path from ILEC remotes to support competitive provision of voice, video and data services to end users; and
- full compliance by all ILECs with their obligations to file tariffs for all local access and transport facilities and services capable of supporting voice, video and data services, such as Ethernet and ADSL facilities and next generation transport services.

200. Shaw submitted that the Commission should use the approach originally developed in Decision 94-19, which, in its view, was consistent with competition policy literature and jurisprudence. Shaw also submitted that the Commission should consider additional demand conditions, supply conditions and barriers to entry. Shaw submitted that demand conditions considerations should include an assessment of customers' willingness to switch local providers. Shaw submitted that the Commission should also take note of the specific supply conditions and barriers to entry that exist for local competition.

201. Shaw recommended that an application for local telephone service forbearance be automatically rejected unless the ILEC can show the following:

- conclusive evidence that customers were no longer reluctant to change local service providers when offered lower prices from competitors;

- conclusive evidence that competitors had access to support structures on terms that were at least as favourable as the terms the ILECs enjoy and demonstration that delays, onerous and unnecessary requirements and additional costs of accessing the ILECs' support structure were eliminated;

- conclusive evidence that problems with access to rights-of-way and access to buildings no longer existed and that the ILEC proposing the forbearance of local exchange service did not have an advantage or receive any preference, not available to CLECs, with respect to any of these forms of access; and

- it had fulfilled its competitor Q of S obligations, and had consistently done so for a period of 24 months, for services needed by CLECs to provide local exchange services.

202. Shaw also recommended that the Commission make a full assessment of the sunk costs and time to entry, which in its view, act as a barrier to entry and can make competition in the market unsustainable.

203. Shaw submitted that although a high market share was not a sufficient condition for market power, it was an important indicator that market power might exist. Shaw submitted that with market shares approaching 100 percent, it was difficult to conclude that the ILECs did not have market power. Moreover, Shaw also submitted that market share was now more significant when considered in the context of the lower prices offered by competitors.

204. QMI submitted that ILEC market share would clearly play a key, but not an exclusive, role in any set of criteria for approving local forbearance. QMI submitted that market share was a particularly powerful indicator in the present circumstances. QMI submitted that the local exchange telephony market was one characterized by effective saturation and substantial customer inertia, due in large part to the essential nature of the service itself. QMI noted that as a result, new entrants did not have any meaningful scope for establishing themselves via a "grow the market" strategy, as was the case in the television distribution market, the Internet access market and the wireless market. QMI further noted that except for a marginal degree of second line activity, new entrants must establish themselves by winning customers away from the entrenched incumbent. QMI submitted that in these circumstances, it was entirely reasonable for the Commission to afford particular attention to incumbent market share loss as a core criterion, indeed a gating criterion, for forbearance.

205. QMI recommended that when an ILEC fell below 80 percent market share across its entire operating territory the Commission should agree to consider an ILEC application for local forbearance. QMI suggested that it was only at this level of competitor penetration that the ILEC's ability to target competitors' customers would be diluted sufficiently to afford competitors a reasonable chance to survive in the local marketplace.

206. QMI recommended that the Commission adopt, for the purpose of assessing the local residential market, a definition of ILEC market share equal to the number of households purchasing local exchange services from the ILEC at a specific date divided by the total number of households purchasing local exchange services in the ILEC's operating territory.

207. QMI submitted that once an ILEC had filed market share data demonstrating that it had passed this market share loss threshold for proceeding with a qualitative local forbearance analysis, as validated by the Commission, then the ILEC should be called upon to file evidence on the broader supply and demand considerations necessary to conclude that forbearance was factually warranted. QMI submitted that the list of considerations should include, but not necessarily be limited to the following:

- the number and type of competitors (facilities-based and non-facilities-based);
- evidence of rivalrous behaviour in pricing and service differentiation;
- evidence of the substitutability of allegedly competing services, including an assessment of 9-1-1 service equivalency and the availability of message relay service (MRS) and privacy features;
- the existence of fair and rational interconnection arrangements (both circuit-switched and IP-based) between incumbents and new entrants, with characteristics that one would expect to be arrived at through free negotiations between parties of equal bargaining power; and
- the ability of competitors to secure access to municipal rights-of-way and multi-tenant buildings, whether residential or commercial.

208. EastLink proposed that the forbearance test should be a two-stage test, with the first stage being an objective assessment of the incumbent market share loss, measured by lost households and the second stage being an assessment of subjective factors related to the market power of the incumbent and the sustainability of the competition. EastLink submitted that in the first stage, 30 percent loss of market share by the incumbent in its proposed relevant market was a reasonable threshold to apply to initiate the forbearance analysis. EastLink submitted that market share would not assist in determining market power of a firm if competition did not exist sufficiently throughout the geographic market. EastLink proposed that the second stage of the test requires an analysis of whether competitive alternatives exist on a pervasive and sustained basis.

209. EastLink submitted that, if the ILECs had more than 70 percent of the market then they clearly had sufficient market power to impede or unduly impair the establishment or continuance of a competitive marketplace. Further, EastLink submitted that there would be no harm to the ILECs as a result of waiting until they had lost a certain percent of the market before performing the

forbearance analysis. In EastLink's view, the ILECs have sufficient flexibility today to compete and with 70 percent or more of the market they would have the scope and scale to leverage market power against entrants.

210. EastLink submitted, in addition, that part of the criteria for forbearance should include a grace period – a period of time to recognize the need for the competitor to recover some of its initial investment. EastLink submitted that a major element of the viability and sustainability of a competitor was the recovery of the investment made by that competitor. EastLink submitted that the importance the Commission had placed on facilities-based entry clearly indicated that viable competition must take into consideration the reasonable investment environment and noted that its investment was based on that understanding. EastLink submitted that competitors, such as itself, that have made larger investments, should have a longer period of time to recover that investment. With regard to the timeframe for such a grace period, EastLink submitted that the appropriate time period must be established on a case-by-case basis.

211. EastLink submitted that the calculation of its proposed threshold be based on the number of households the ILEC lost. EastLink suggested that this approach to calculating the loss seemed to be the most efficient and practical route as it provided an avenue for minimal evidence to be submitted, by ILECs only, and it counted actual households lost, so there was little risk that the loss of second lines would also be counted.

212. The Competition Bureau noted that, as the Commission observed in Decision 94-19, significant market share was a necessary, but not sufficient, condition to find market power. The Competition Bureau submitted that a significant market share indicated that consideration of additional factors was required to assess the potential for market power. The Competition Bureau submitted that one such factor, and a necessary condition for the exercise of market power, was the existence of barriers to entry.

213. The Competition Bureau proposed that the Commission should adopt a structured rule of reason (SROR) approach that could serve as the basis for streamlined analysis of ILEC requests for local exchange service forbearance, once the relevant product market had been identified. In the Competition Bureau's view, this approach used the following set of conditions that, if satisfied, should be sufficient for the Commission to conclude that an ILEC did not possess market power in the provision of local exchange services:

- At least two independent facilities-based service providers must exist, the ILEC and a facilities-based entrant, capable of offering local service that has been determined to fall within the relevant product market for ILEC local service;

- The entrant was able to obtain and retain a customer base;

- The entrant's variable costs of providing local service are similar to or lower than the ILEC's variable costs of providing local service;

- Neither the ILEC nor the entrant was capacity-constrained;

- There was evidence of vigorous rivalry between the ILEC and the entrant in the provision of local service; and

- Industry characteristics are such that the ILECs are unlikely to engage in anti-competitive behaviour.

214. The Competition Bureau submitted that competition between two or more independent facilities-based service providers was likely to be effective when most of the costs of providing service are fixed and sunk. In the Competition Bureau's view, if the marginal cost of using capacity was relatively small and capacity was plentiful then competition between facilities-based service providers was likely to be effective. In the Competition Bureau's view, an assessment of a competitor's variable costs of providing local service was, therefore, a necessary part of its SROR test to determine whether or not an incumbent has market power.

215. The Coalition submitted that it supported the Commission's expressed intent to establish clear criteria for local forbearance consistent with the framework set out in Decision 94-19. The Coalition suggested that the Commission should consider and adapt certain existing forbearance models that have already proven to operate well and which can serve as useful precedents. In this regard, the Coalition proposed the Commission use either the model developed for deregulation of the basic service rates for Class 1 incumbent cable television licensees or the model developed for forbearance of interexchange private line services.

216. The Coalition submitted that in the market for business local exchange services, the Commission should adopt the following criteria for forbearance:

- evidence of the existence of two or more providers offering business local exchange services in an LCA; and

- evidence of the loss of market share of five percent or more by the ILEC in the LCA. Such a loss would be measured from the time of entry of the alternate service provider(s).

217. Vonage submitted that market share could not be easily separated from other criteria for determining an ILEC's market power. Vonage submitted that when the ILEC retained a high level of market share, the Commission could take no real comfort from other indicia that might suggest competition was rivalrous. Vonage submitted that this was particularly so in the market for local telephone services, where there are not only significant barriers to entry form the perspective of the supply conditions but also a history of an entrenched monopoly, ubiquitous network and customer inertia.

218. Vonage argued that in order to conclude that the ILECs no longer wielded substantial market power such that competition was sufficient to protect the interests of users, the Commission must be confident that the competitors' market share gains were real, non transitory, and sustainable. Vonage submitted that it was critical that the Commission resist the ILECs' urging to deregulate their service on the mere promise, or even modest early results, of this competition.

219. Xit telecom submitted that there was no single bright line test, whether set at five or 30 percent which could prove that the level of competition had attained a level that was both necessary and sufficient so as to ensure that the public interest would be served by forbearance.

220. Xit telecom submitted that new facilities-based entrants, such as itself, intended to enter the local telephone market once the terms and conditions of interconnection had transitioned to IP such as to make entry economically feasible and sustainable on a prospective basis. Xit telecom submitted that squashing the ability of ILECs to force cost prohibitive interconnection with all-IP CLECs was one of the most important criteria of forbearance.

221. The UTC submitted that it might be difficult to develop a simple set of principles to identify market power in a specific market; however, a short cut or bright-line test might provide guidance in clear-cut cases.

222. The UTC submitted that market share was a good indicator of whether a market was competitive. The UTC submitted that market share provides cogent evidence of actual competitive entry into a market, of the substitutability of the competitor's services for the incumbent's services, and the ability of new entrants to gain a foothold in the market. The UTC further suggested that market share was often used by competition authorities as *prima facie* evidence of market power. The UTC cited the Competition Bureau's *Merger Enforcement Guidelines* where a 35 percent market share was used to identify mergers that are unlikely to have anti-competitive circumstances.

223. The UTC submitted that it would be consistent with Canadian and European Community competition law to use market share evidence as a bright-line test for forbearance. The UTC submitted that, pursuant to the Canadian and European practice, a market share of less than 35 percent would justify forbearance on a bright-line test and a higher market share would require a complete competition analysis.

224. In Cybersurf's view, there was no substitute for a solid market analysis along the lines of a Decision 94-19 analysis in order to avoid premature forbearance. Cybersurf submitted that unless competitors of an ILEC in a relevant local exchange service market hold at least a 35 percent market share, the ILEC should generally not qualify for forbearance in that market. Cybersurf further submitted that this was not the end of the analysis and that even if competitors hold a market share equal to or greater than 35 percent in a relevant market, an assessment of related demand and supply conditions was also required before a determination regarding forbearance should be made.

225. Cybersurf suggested that prior to forbearance, among other things, the following steps must be taken:

- The ILECs must fully unbundle and tariff all of the underlying facilities and services used to provision ILEC local exchange services, including those used by the ILECs to provision IP-based local telephony services such as managed voice services;

- The issue of competitor access to ILEC remotes must be resolved, fully tested and implemented;

- ILECs must fully meet all competitor Q of S indicators;
- Competitor access to ILEC OSS must be fully tested and implemented;
- ILECs must fully comply with MDU rules;
- All issues related to local service interworking (including interworking relating to Centrex and IP-based local telephony services such as managed voice services) must be resolved;
- ILECs must demonstrate that all of their customer contracts for Centrex service, including all customer specific arrangements and Special Facility Tariffs that include Centrex-based services, have been amended so as to include transition provisions that allow end-user customers to migrate to the service platform of a competitor without penalty and within a reasonable period of time; and
- Any facility or service that was in the nature of an essential, near essential or bottleneck facility and/or service and that was used to provision a retail telecommunications service (whether wireline, VoIP, etc.) should be unbundled and made available through a Commission-approved tariff prior to the offering of the retail service in question.

226. Primus submitted that the Commission's efforts to develop the appropriate criteria for forbearance should focus on determining whether the ILECs have market power, as set out in Decision 94-19. Primus submitted that the Commission must also consider other factors which, in its view, must be present to ensure that forbearance will not impair the continuance of a competitive market after the decision to forbear has been made. Primus submitted that, among other things, a workable wholesale access regime, governed by tariffs approved by the Commission, must be present before forbearance.

227. In addition, Primus proposed that from its perspective as a reseller, the following entry barriers must be removed before the Commission should grant the ILECs any kind of forbearance in the local telecommunications market as they would facilitate the entry of the greatest number of competitors in the local market:

- full unbundling of essential and near essential facilities by both the ILECs and the cable LECs;
- Competitor Category I Service rates for all ILEC and cable LEC services in the nature of an essential service;
- changes to ILEC Centrex contracts to facilitate switching service to a competitor;
- access to ILEC remotes; and
- ILEC compliance with local competition rules.

228. Primus submitted that the Commission should base any evaluation of market share on the number of local lines, or equivalents, served by the dominant service providers. Primus submitted that other measurements, for example, revenues or customer base, could have the potential to skew the results of such tracking, depending on how these terms were defined, and might not accurately represent the extent of the dominant supplier's market power. Primus further submitted that local lines, or their equivalents, were an objective measure by which to gauge market share.

229. FCI/Yak proposed the following:

- The market was not workably competitive and forbearance was not appropriate if an ILEC had a market share of 70 percent or greater and a price premium of five percent or greater;

- Forbearance would not be appropriate if there was fewer than three facilities-based competitors, including the ILEC, providing service in the market;

- When an ILEC requests forbearance and has less than a 70 percent market share or the price differential was five percent or less, the ILEC must demonstrate that there was a steadily increasing competitor market share. In particular, the ILEC must be able to show that competitors' market share, in the relevant market, has increased by five percent or more, in each of the previous 2 years;

- The ILEC must demonstrate it had met or exceeded all of the competitor Q of S indicators;

- The Commission should reject an ILEC forbearance application if it had made a determination, within the previous 12 months of receiving the application, that the ILEC had engaged in anti-competitive behaviour or had violated any of the Commission's competition safeguards, including the winback and promotions restrictions and tariff obligations;

- The ILEC must demonstrate that access to MDUs, rights-of-way and support structures were available to local service providers on terms and conditions equal to or better than the terms and conditions available to the ILEC; and

- The Commission should assess the time to entry and sunk costs confronted by CLECs, when considering any application for local exchange service forbearance. This should include an opportunity for potential and existing competitors to identify and explain the nature and extent of these barriers to entry.

230. FCI/Yak submitted that market share was a key indicator of the ILECs' size and dominance. FCI/Yak suggested that, while other factors should be considered, a market share equal to or in excess of 93 percent was a strong, if not compelling, indicator of market power and that it was only in theory that a company with overwhelming dominance and market share verging on 100 percent could also have little or no market power.

231. Call-Net submitted that the criteria for determining whether or not an ILEC exercises market power with respect to local exchange services in its operating territory were easy to list but difficult to apply. In Call-Net's view, while market share alone was not determinative, it was clear that a high market share combined with the existence of significant barriers to entry such as bottleneck facilities, sunk costs, customer inertia and limited market growth found in the local exchange services market currently precluded a finding that an ILEC did not exercise market power. Call-Net also submitted that markets with two competitors were usually not as competitive as markets with three or more competitors. Call-Net submitted that the risk of the exercise of market power due to coordinated effects was increased as the number of competitors declined. Call-Net submitted that the fewer the market participants, the easier it was to reach an understanding and monitor compliance.

232. Call-Net proposed that as a pre-condition to forbearance, competitors be able to obtain access to underlying access and transport services at appropriate rates. Call-Net further proposed that the Commission cannot forbear unless competitors have access, on non-discriminatory terms and conditions, to all essential facilities that they must acquire from the ILECs.

233. The Consumer Groups submitted that in general, it would appear necessary to have at least five competitors active in a market in order to assure robust, effective competition. However, if any one competitor has more than 50 percent market share, the Consumer Groups suggested that that competitor may be dominant and, therefore, additional factors would need to be considered. The Consumer Groups proposed that a lower threshold for the number of competitors seemed justified, provided that forbearance was granted on a conditional basis that incorporated safeguards and a mechanism to monitor and, if necessary, to terminate forbearance.

234. The Consumer Groups proposed that it would be reasonable to consider forbearance in a local exchange market if there were at least three service providers in the market, each with a market share of five percent or greater, and the ILEC's market share had fallen below 70 percent for at least 12 consecutive months. The Consumers Groups submitted that if the ILEC's market share were to drop below 70 percent for at least 12 months, then competitors would appear to be building a sustainable presence in the market and this, in turn, would suggest that competition should continue to evolve and consumers should benefit from both price competition and service innovation over the long run.

235. The Consumer Groups submitted that, in some markets, a third facilities-based competitor might not enter the market for some time, if ever. The Consumer Groups submitted that if a situation were to develop where an ILEC had lost significant market share – 30 percent or greater – in a market where there were only two facilities-based suppliers, it would not be unreasonable for the Commission to examine whether a non-facilities-based competitor with five percent or more market share would be able to constrain duopolistic behaviour. The Consumer Groups proposed that this would require a detailed examination of factors such as

evidence of rivalrous behaviour, competitor churn rates, and especially the opportunity for margin squeezing, the diminishment of operational efficiency and comparable issues arising from the dependence of the third competitor on the facilities and services of one of the network operators.

236. The Consumer Groups emphasized that their proposed thresholds did not purport to indicate that an ILEC would no longer have market power. The Consumer Groups' submitted that the existence of significant barriers to entry, together with considerable market fragmentation, strongly suggested that an ILEC with a much lower market share would still enjoy some market power. The Consumer Groups suggested, however, that it would be reasonable for the Commission to forbear, in part and conditionally at their proposed relatively high market share level in order to permit consumers to enjoy the benefits of enhanced competition.

Commission's analysis and determinations

237. Under the Decision 94-19 approach to forbearance, the Commission considers that a market is not sufficiently competitive if a firm possesses substantial market power. Market power may be assessed by examining three factors: market share, demand conditions that affect responses of customers to a change in price for a product or service, and supply conditions that affect the ability of competitors in the market to respond to a change in the price of a product or service. The Commission noted, in Decision 94-19, that high market share is a necessary, but not sufficient, condition for market power; other factors must be present to enable a firm with market power to act anti-competitively.

238. In Decision 94-19, the Commission considered that evidence of rivalrous behaviour was also important with respect to assessing the degree to which a market may be workably competitive. Evidence of rivalrous behaviour may include falling prices, vigorous and aggressive marketing activities, or an expanding scope of competitor activities in terms of products, services or geographic boundaries. The Commission also considered that the nature of innovation and technological change in the relevant market may also be a useful indicator. Industries characterized by rapid innovation in products, processes and technology tend to experience greater price movements and new entry, thereby making it difficult to exercise market power.

239. As set out above, the Commission, as part of the local forbearance framework established in this Decision, has created a set of criteria that it is satisfied will enable it to determine whether forbearing in a particular relevant market would be consistent with the requirements of section 34 of the Act, and hence whether forbearance should be granted, to the degree set out in this Decision, in that relevant market.

240. Outside of a consideration of applicant ILEC market share, in establishing these criteria, the Commission has focused on matters that are either exclusively or primarily within the control of an applicant ILEC. The Commission notes that several parties suggested criteria which are mostly outside of the control of an applicant ILEC, such as ensuring access to municipal rights-of-way, third-party support structures and MDUs. The Commission considers that it would not be appropriate to make such matters criteria for local forbearance. The Commission considers that it would be unfair to an applicant ILEC for the Commission to withhold granting local forbearance due to a matter over which the applicant ILEC has little or no control. The

Commission is also concerned that withholding local forbearance under such circumstances would increase the risk of delaying local forbearance in a relevant market longer than necessary without substantially increasing support for sustainable competition. The Commission also believes that matters such as access to municipal rights-of-way, third-party support structures and MDUs are matters of common telecommunications industry concern and should be dealt with jointly by all Canadian carriers, and not merely the ILECs.

241. The Commission has also not adopted the suggestions put forward by some parties for a grace period to allow competitors to recover sunk costs prior to local forbearance, nor has it adopted the suggestion that it should analyse the variable costs as between competitors and an applicant ILEC in a relevant market. The Commission is charged, under the Act, to, among other policy objectives, foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective. In the Commission's view, it would run counter to this duty under the Act to provide regulatory protection to competitors beyond the point at which an applicant ILEC can exercise market power in a relevant market. The Commission, equally, should not put itself into the position of second-guessing or micromanaging the business plan of competitors by reviewing their variable costs and comparing those variable costs to the variable costs of an applicant ILEC. If an applicant ILEC can demonstrate that it no longer can exercise market power in a particular relevant market then the Commission considers that market forces should be permitted to operate in that relevant market, within the scope of the framework set out in this Decision, and it is incumbent on competitors to adapt to that market reality.

242. ***The Commission considers that, if an ILEC can satisfy the following criteria, then the requirements of section 34 of the Act for a forbearance determination will have been met and the Commission may therefore grant local forbearance in accordance with that section:***

- ***a) the ILEC demonstrates that one of the following circumstances exists in the relevant market:***
  - ***i. that the ILEC does not have market power, based on the criteria set out in paragraph 213,***
  - ***ii. that, if the ILEC offers residential local exchange services, there are, in addition to the ILEC, at least 2 independent facilities-based telecommunications service providers, including providers of mobile wireless services, each of which offers local exchange services in the market and is capable of serving at least 75% of the number of residential local exchange service lines that the ILEC is capable of serving, and at least one of which, in addition to the ILEC, is a facilities-based, fixed-line telecommunications service provider, or***
  - ***iii. that, if the ILEC offers business local exchange services, 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% of the number of business local exchange service lines that the ILEC is capable of serving;***

b) the ILEC demonstrates that, during a six-month period, beginning no earlier than eight months before its application for local forbearance and ending at any time before the Commission's decision respecting the application,

i. it met, on average, the quality of service standard for each indicator set out in Appendix B, as defined in Telecom Decision CRTC 2005-20, Finalization of quality of service rate rebate plan for competitors, with respect to the services provided to competitors in its territory, and

ii. it did not consistently provide any of those competitors with services that were below those quality of service standards.

243. ***For the purposes of subparagraphs 242a)(ii) and (iii) and paragraph 523, the Commission considers that a telecommunications service provider is independent if it does not have the same owner as, and is not affiliated with, any other service provider referred to in the respective subparagraph. Further, for the purpose of those provisions, the Commission considers that a facilities-based telecommunications service provider is one that provides services in the relevant market either by using its own facilities and services or by using a combination of its own facilities and services together with those leased from other service providers.***

244. ***Paragraph deleted***

245. ***Paragraph deleted***

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281. ***Paragraph deleted***

VI. Scope of local forbearance

282. The Commission notes that subsections 34(1) and (2) of the Act empower the Commission to forbear in whole or in part, conditionally or unconditionally, from the exercise of any power or the performance of any duty referred to therein.

283. The Commission received submissions from parties with respect to the appropriate degree of forbearance from its powers and duties set out in sections 24, 25, 27, 29 and 31 of the Act as well as with respect to certain obligations imposed by the Commission pursuant to its powers under these sections.

284. The Commission has set out its conclusions with respect to each of those sections of the Act below, dealing with sections 25, 29 and 31 first, as these sections raise the fewest issues with respect to the scope of forbearance. The Commission has then set out its conclusions with respect to sections 24 and 27.

Section 25

285. Section 25 of the Act provides as follows:

> (1) No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.
>
> (2) A joint tariff agreed on by two or more Canadian carriers may be filed by any of the carriers with an attestation of the agreement of the other carriers.
>
> (3) A tariff shall be filed and published or otherwise made available for public inspection by a Canadian carrier in the form and manner specified by the Commission and shall include any information required by the Commission to be included.
>
> (4) Notwithstanding subsection (1), the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate
>
> (a) was charged because of an error or other circumstance that warrants the ratification; or
>
> (b) was imposed in conformity with the laws of a province before the operations of the carrier were regulated under any Act of Parliament.

Positions of parties

286. Aliant Telecom, Bell Canada/Télébec, MTS Allstream, SaskTel and TCI were of the view that the Commission should forbear completely and unconditionally from the exercise of its powers and duties under section 25 of the Act.

287. Call-Net was of the view that the Commission could forbear from requiring *ex ante* approval of rates under section 25 of the Act, but that the Commission could retain the requirement that the ILEC perform an imputation test and have it available in the event of a dispute.

288. CCTA, supported by Cogeco, EastLink, Rogers and Shaw, considered that the Commission could forbear from section 25 of the Act in relation to ILEC retail telecommunication services provided to end-users, including resellers.

289. The Consumer Groups were of the view that the Commission should forbear from section 25 of the Act with respect to the approval of rates. The Consumer Groups considered, however, that any forbearance framework would have to rely on close monitoring of the performance of the market, including the prices for local exchange services.

290. Cybersurf submitted that where a forbearance determination applies, an ILEC should not be subject to the tariff requirements of section 25 of the Act.

291. QMI submitted that it would be prepared to consider a regime wherein the Commission would forbear from section 25 of the Act.

Commission's analysis and determinations

292. The Commission notes that, in *Forbearance – Services provided by non-dominant Canadian carriers*, Telecom Decision CRTC 95-19, 8 September 1995 (Decision 95-19), it determined to forbear from the exercise of its powers and duties under section 25 of the Act in respect of non-dominant carriers. Similarly, in Decision 97-8, the Commission determined to forbear from the exercise of its powers and duties under section 25 of the Act in respect of retail telecommunication services provided by CLECs to end-users, including resellers.

293. The Commission considers that to require an ILEC in a forborne market to obtain prior Commission approval of tariffs would generally place that ILEC at a competitive disadvantage relative to the competitors offering local exchange services in that relevant market.

294. The Commission considers that, where an applicant ILEC has met the local forbearance criteria in a relevant market, it would be appropriate, with respect to that relevant market, to forbear from exercising its powers and duties under section 25 of the Act.

Section 29

295. Section 29 of the Act provides that:

> No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting
>
> (a) the interchange of telecommunications by means of their telecommunications facilities;

(b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or

(c) the apportionment of rates or revenues between the carriers.

Positions of parties

296. Aliant Telecom, Bell Canada/Télébec, SaskTel and TCI argued that the Commission should forbear completely from section 29 of the Act.

297. Bell Canada/Télébec submitted that the Commission's powers under section 29 of the Act were largely irrelevant to the local services that were within the scope of this proceeding. Bell Canada/Télébec took the position, in this regard, that the ILECs' agreements with LECs and other carriers for local interconnection purposes were Competitor Services which were outside the scope of this proceeding.

298. The CCTA, supported by Cogeco, EastLink, Rogers and Shaw, contended that the Commission must, at a minimum, retain its authority to exercise section 29 of the Act insofar as it relates to LEC services and agreements or involve inter-carrier agreements.

299. The UTC argued that the Commission should retain section 29 powers in order to assist in the retention of Commission jurisdiction over 9-1-1 and other public service features of local service.

300. The Consumer Groups submitted that the Commission must continue to exercise its powers under section 29 of the Act in order to ensure the existence of open systems that facilitate full interconnection and interoperability of local networks and to ensure full implementation of all policy objectives of the Act.

301. MTS Allstream submitted that the Commission might need to retain its powers under section 29 of the Act, at least in the early years of local forbearance, in order to ensure that ILEC interconnection agreements with other carriers remained consistent with the Commission's regulatory framework for local competition as set out in Decision 97-8. MTS Allstream noted in this regard that, at the present time, all LECs, regardless of whether they are dominant in the market or not, must obtain the Commission's approval for all interconnection agreements entered into with other LECs.

302. Xit telecom submitted that the Commission should retain its duties to enforce all dispositions of section 29 of the Act for the foreseeable future.

Commission's analysis and determinations

303. The Commission notes that section 29 of the Act has little application to those local exchange services which are within the scope of this proceeding.

304. The Commission notes further that inter-carrier agreements on Competitor Services, that comprise the vast majority of the agreements requiring section 29 approval by the Commission, are not within the scope of the present proceeding. Nor, as the Commission determined in

Decision 2005-35, are inter-carrier agreements related to certain services that have a strong public interest component, notably 9-1-1 service and MRS. Agreements relating to these services will accordingly still require Commission approval pursuant to section 29 of the Act.

305. The Commission considers, therefore, that it will be appropriate for the Commission to determine to forbear from the exercise of its powers and duties under section 29 with respect to inter-carrier agreements, that are within the scope of the present proceeding, in a relevant market where an applicant ILEC has demonstrated that it has met the local forbearance criteria.

Section 31

306. Section 31 of the Act states:

No limitation of a Canadian carrier's liability in respect of a telecommunications service is effective unless it has been authorized or prescribed by the Commission.

Positions of parties

307. Aliant Telecom, Bell Canada/Télébec, supported by SaskTel, and TCI submitted that the Commission should forbear from exercising its powers and duties under section 31 of the Act.

308. The Consumer Groups, QMI and Cybersurf considered that the Commission could forbear from section 31 of the Act.

309. MTS Allstream submitted that the Commission could forbear unconditionally from section 31 of the Act, provided that all of the concerns raised by it with respect to other issues in the proceeding had been dealt with.

310. The UTC submitted that the Commission needed to decide whether carriers should continue to receive the benefit of the Commission-sanctioned limitation of liability clauses or experience the burden of the Commission-imposed wording of such limitations in a competitive market.

311. The CCTA, supported by Cogeco, EastLink, Rogers and Shaw, considered that the Commission must, at a minimum, retain its authority under section 31 of the Act insofar as it relates to LEC services and agreements or involve inter-carrier agreements.

Commission's analysis and determinations

312. The Commission considers that, in a competitive market for local exchange services, all carriers should be able to establish through negotiations with their customers, the extent and scope of any limitations on their liability, and that such limitations should not be mandated by the Commission.

313. In view of the nature and degree of competition in a relevant market in which an applicant ILEC can demonstrate that the local forbearance criteria have been met, the Commission considers that it will be appropriate to forbear with respect to section 31 of the Act in that relevant market. The Commission notes that any provision limiting liability in any existing contracts or arrangements, as of the date of the Commission decision granting forbearance in

a relevant market, will remain in force until its expiry. Such existing contracts or arrangements will be deemed to terminate on the date or in the manner provided therein, notwithstanding any contractual provisions governing extensions.

Section 24

314. Section 24 of the Act states that:

The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

Positions of parties

315. Aliant Telecom submitted that the Commission should generally forbear completely from section 24 of the Act, with the possible exception of imposing conditions to satisfy specific public policy purposes.

316. Aliant Telecom supported maintaining the same social obligations on ILECs as were imposed on CLECs in Decision 97-8, with the exception of the customer confidential information provisions. Aliant Telecom submitted that with passage of the *Personal Information Protection and Electronic Documents Act* (PIPED Act) there was no longer any need to impose regulations on Canadian carriers regarding the confidentiality of customer information.

317. Aliant Telecom specifically considered that all LECs should be subject to regulatory obligations in respect of the following: public safety (9-1-1), MRS, alternative billing formats for the blind, privacy protections relating to optional services, telemarketing restrictions, and access with respect to MDUs. Aliant Telecom considered that safeguards, if deemed necessary, should be transparent and competitively neutral and should apply to all service providers.

318. Aliant Telecom suggested that the Commission should not regulate how services are offered in a competitive market from an economic standpoint. With reference to the provision of a comprehensive telephone directory, Aliant Telecom submitted that there were strong commercial incentives for publishing a comprehensive white page directory, and that it would not change its practice of providing directories in forborne areas while continuing to provide them in regulated areas.

319. Aliant Telecom suggested that those matters covered by the ILECs' terms of service, that is, providing assurances, processes and supplier obligations, were part of a supplier's service and should not be directed by the Commission in a forborne market. Aliant Telecom submitted that suppliers should have the right to differentiate their services and the terms and conditions under which the services were offered. Aliant Telecom argued, therefore, that as a function of competition, various policies, such as deposit and termination, should be matters of contract between sellers and customers.

320. Bell Canada/Télébec submitted that the Commission should forbear substantially from its power to impose conditions under section 24 of the Act. They argued that the retention and continued exercise of Commission powers on speculative grounds created uncertainty for

industry stakeholders and was contrary to the policy objectives of the Act. Bell Canada/Télébec was of the view that the Commission should expressly specify those purposes for which it would retain its condition-making power and forbear in all other respects. Bell Canada submitted that the most efficient and effective means of attaining its social objectives was for the Commission to retain section 24 condition-making power expressly for this purpose in future forbearance decisions.

321. Bell Canada/Télébec, supported by SaskTel, submitted that customer safeguards should apply to all local service providers as a condition under section 24 of the Act. Bell Canada/Télébec submitted that conditions relating to confidential customer information were unnecessary, duplicative and should be discontinued.

322. Bell Canada/Télébec considered that a competitive market would ensure customer needs are met, including customer demands for stand-alone basic PES. In Bell Canada/Télébec's view, if service providers ignored customer demands, they would not be able to compete. Bell Canada/Télébec considered, therefore, that no regulatory safeguard or mechanism would be required to ensure the availability of stand-alone basic PES. In addition, Bell Canada/Télébec and SaskTel anticipated that all service providers serving a forborne market would be able to agree, without Commission oversight, on a competitively neutral and equitable basis to fund the publication and distribution of white page directories to their own subscribers.

323. Bell Canada/Télébec, supported by SaskTel, submitted that approved terms of service were neither desirable nor required. In Bell Canada/Télébec's view, customers would migrate to other providers if the terms of service were not fair, equitable and commercially reasonable.

324. SaskTel submitted that the Commission should expressly specify those purposes for which it retained its section 24 condition-making power and forbear in all other respects. SaskTel submitted that any safeguards, imposed by the Commission, should be available to all consumers regardless of the service provider. In SaskTel's view, therefore, any section 24 conditions established by the Commission should apply to all LECs.

325. TCI recognized that the Commission may wish to retain section 24 conditions, as it has in several instances in the past, in the interest of the enforcement of its non-price-related rules. TCI submitted, however, that any section 24 conditions should apply equally to CLECs and ILECs, and that ILECs should not have any greater responsibilities for providing services to meet public policy objectives than do their competitors.

326. TCI was of the view that mechanisms and safeguards were not necessary to ensure stand-alone PES was made available. In TCI's view, market forces would ensure that stand-alone PES would continue to be offered. TCI argued that if one LEC ceased providing such service, other LECs would have the incentive to address the market desiring stand-alone PES. In TCI's view, new entrants usually focused on higher revenue producing customers; therefore their initial offerings might be limited to bundles, but as their business grew, they would expand their target market to include customers that take less full-featured bundles and stand-alone services. TCI also submitted that it would continue to produce its white pages directory regardless of whether it was mandated to do so.

327. TCI was of the view that terms of service should not be regulated as market forces would determine such terms.

328. MTS Allstream supported the Commission maintaining its section 24 powers. MTS Allstream noted that, in Decision 97-8, certain obligations were imposed on all LECs. MTS Allstream also noted that resellers are required to comply with other safeguards as a condition of obtaining service from a LEC. MTS Allstream was of the view that if these obligations were suspended for an ILEC, they should also be suspended for competitors. MTS Allstream submitted, generally, that any section 24 conditions should apply equally to ILECs and competitors.

329. MTS Allstream submitted that the Commission could retain ILEC stand-alone PES as a section 24 condition. MTS Allstream was also of the view that the current arrangement for the white pages directory could also be maintained, under section 24, in a forborne market.

330. The Coalition supported maintaining section 24 of the Act to impose conditions that met social policy objectives in order to protect the interests of users. The Coalition suggested, however, that conditions designed to protect the interests of users and to meet social policy objectives should apply to all service providers equally.

331. The Coalition considered that competition would ensure that stand-alone PES was made available at competitive rates. The Coalition suggested that, if there was not sufficient demand or the service was not profitable, an appropriate response might be to subsidize the provision of stand-alone PES. The Coalition also considered that a white pages directory need not be provided and produced by the ILECs alone. The Coalition submitted that one directory could be funded by all LECs with cost sharing based on local telecommunication revenues.

332. The CCTA, supported by Rogers, Shaw, EastLink, and Cogeco, submitted that an appropriate starting point for imposition of conditions under section 24 of the Act would be those conditions applicable to other non-dominant carriers, namely the CLECs. In the view of these parties, to the extent that additional safeguards unique to ILECs were considered necessary, such conditions should be justified by reference to residual market power. The CCTA observed that forbearance would permit ILECs the discretion to provide preferential treatment to needy customers where warranted without need of Commission direction via tariff to validate the preference.

333. The CCTA, supported by Rogers, Shaw, EastLink and Cogeco, maintained that it would be difficult for one competitor to offer services only in a bundle if another service provider offered these services on a stand-alone basis. In the CCTA's view, supported by Rogers, Shaw, EastLink and Cogeco, whether the Commission decides to forbear from regulating ILEC's local service was not dependant on the ILECs' obligation to provide a comprehensive directory; this obligation must be maintained because the ILEC would most likely always serve the critical mass of customers needed to support the compilation of a directory. The CCTA noted that maintenance of this obligation would not prejudice the ILEC as it carries with it the right to brand the directory service as well as to receive revenues from enhanced listings and additional advertising.

334. The CCTA, supported by Rogers, Shaw, EastLink and Cogeco, submitted that the determination in *Local service pricing options,* Telecom Decision CRTC 96-10, 15 November 1996 (Decision 96-10) remained valid today, that is, that telephone service was affordable to the vast majority of Canadians. The CCTA noted that, in Decision 96-10, ILECs were directed to implement several measures to assist local telephone subscribers in managing the affordability of service, for example, toll restriction at no charge, instalment payment plans and other bill management tools.

335. The Competition Bureau was of the view that consumer protection laws and regulations existed in the larger economy that could serve the telecommunication sector well. The Competition Bureau recognized, however, that the Commission might, in order to meet certain objectives of the Act, impose safeguards.

336. The Competition Bureau considered that the Commission should only impose conditions on forborne services where there was compelling evidence that competition would not provide services deemed to be essential for consumers. The Competition Bureau also suggested that conditions might need to be imposed when the public interest and the need for national uniformity required it.

337. The Competition Bureau considered that the maintenance of the confidentiality provisions associated with access by law enforcement agencies to confidential customer information might be required to satisfy both the public interest and the need for national uniformity. The Competition Bureau also suggested that certain safeguards, such as free toll blocking, might need to be maintained in a forborne market.

338. The Competition Bureau considered that if the Commission were to regulate terms of service after forbearing, there was the danger that the terms of service mandated by the Commission would not be similar to those that would have prevailed in a competitive market.

339. The Competition Bureau urged the Commission to make clear, in its forbearance decision, the precise matters it intended to continue to regulate if it decided on partial forbearance or to retain the right to re-regulate forborne markets. According to the Competition Bureau, if the Commission were to decide to regulate some, but not all, terms of service, it should carefully delineate what activities it does intend to regulate.

340. EastLink considered that the ILECs should continue to be regulated under the same conditions that govern CLECs. EastLink suggested that this would include retaining jurisdiction under section 24 of the Act to address consumer safeguards and to facilitate the achievement of the Canadian telecommunications policy objectives.

341. QMI submitted that it would not object if the Commission maintained section 24 of the Act. QMI was further of the view that ILECs could be mandated to continue to provide stand-alone PES if the Commission felt it was necessary.

342. Rogers considered that the Commission should generally maintain section 24 powers. Rogers submitted, in particular, that privacy requirements should be maintained. Rogers also submitted that several other conditions relating to social policy that were imposed on the ILECs' provision

of local exchange services were also imposed on local services provided by CLECs, and through all LECs, on resellers including VoIP providers. Rogers considered that these conditions should be maintained.

343. Cybersurf submitted that it would be appropriate to maintain section 24 powers and impose conditions to safeguard consumers. Cybersurf was also in support of the Commission retaining the general terms of service for the ILECs.

344. FCI/Yak submitted that consumer safeguards currently in place should be maintained. FCI/Yak was also of the view that stand-alone PES should remain tariffed to ensure it was available and affordable.

345. Primus supported the Commission maintaining section 24 powers and establishing conditions to protect consumers. In addition, Primus submitted that the Commission should impose a section 24 condition on the ILECs that would require them to continue to provide stand-alone PES after forbearance. Primus was also of the view that the white pages directory should continue to be produced by ILECs. Primus supported general terms of service applied to both tariffed and non-tariffed services.

346. The UTC considered that the Commission should retain the public service features of local service, which, according to it, required the retention of section 24 powers. The UTC also considered that the public service features of local service should be available from all local service providers. In the UTC's view, a comprehensive directory would still be needed in a competitive market. The UTC was of the view that, if the ILECs did not want the obligation to provide the white pages directory, other service providers would step forward to do so. The UTC was also of the view that approved terms of service were not required as consumers are protected by the *Competition Act*.

347. Xit telecom was of the view that the Commission should maintain section 24 powers and conditions of service.

348. The Consumer Groups submitted that the Commission should not forbear from section 24 of the Act and that all LECs should continue to be subject to regulatory obligations.

349. The Consumer Groups submitted, specifically, that the ILECs, and all other LECs, should continue to be subject to regulatory obligations in respect of the following: protection of customer confidential information; public safety (that is, 9-1-1 service); MRS; alternative billing formats for the blind; privacy protections relating to local optional services; telemarketing restrictions; and access to MDUs. The Consumer Groups also submitted that the Commission should maintain the obligations associated with privacy protections relating to optional services. The Consumer Groups also considered that conditions such as toll blocking would remain justified in a competitive market.

350. The Consumer Groups were concerned that, given the trend toward bundling telecommunications services, absent regulatory intervention, a situation could evolve whereby stand-alone basic PES would no longer be available to customers. The Consumer Groups suggested that a situation where customers were required to purchase services they did not want in order to obtain an essential service could raise affordability issues for some customers.

351. In the Consumer Groups' view, PES was an essential service and it would be unacceptable for consumers not to be able to purchase it on a stand-alone basis. As such, the Consumer Groups argued that the Commission should require ILECs in a forborne market to provide basic stand-alone PES. In the Consumer Groups' view, such a condition would not prevent the ILEC from also offering basic local exchange service as part of a service bundle. The Consumer Groups were also of the view that the ILECs' obligation to provide a comprehensive white pages directory should be retained subject to a requirement that all registered LECs in a forborne area contribute to the cost of the directory creation and distribution.

352. The Consumer Groups considered that general terms of service should be applicable to all LECs, in forborne markets, given that basic local residential service was an essential service. The Consumer Groups expressed concern that, in an area where an ILEC's local exchange services were forborne, some customers could find themselves unable to obtain local telephone service if the LECs serving that area were to require long-term commitments or significant deposits as a precondition of providing service. The Consumer Groups also suggested that customers that experienced financial difficulties could find themselves unable to retain their local exchange service if unduly harsh payment terms were imposed. The Consumer Groups argued that the current ILEC terms of service adequately protected the interests of customers and should be maintained, or even extended to other service providers.

353. ARCH submitted that section 24 conditions should specify that telecommunication services must continue to be provided consistent with all current Commission decisions containing accessibility requirements for persons with disabilities, including the decisions requiring the following: billing statements; bill inserts and information on rates, terms, and conditions of service to be accessible to persons with visual disabilities; MRS; and mandatory teletypewriter (TTY) unit upgrades for pay telephones.

Commission's analysis and determinations

354. The Commission notes that most residential and business customers residing in a forborne market will be able to obtain service from at least two competing TSPs. The Commission considers that the operation of market forces will generally be sufficient to protect the interests of these customers. The Commission considers, however, that there will be exceptions where market forces may not be sufficient to protect the interests of all users in forborne markets.

355. The Commission recognizes that for some customers, particularly residential customers, the operation of market forces after forbearance may result in either a loss of services on which they are reliant or potential increases in prices for services which are essential to their daily lives. The Commission also considers that there may be pockets of uncontested residential and business consumers in forborne markets. The Commission is also cognizant of the arguments raised by ARCH and the Consumer Groups regarding the position of vulnerable customers, including persons with disabilities, and their unique needs with respect to telecommunications services. The Commission considers that market forces alone may not be sufficient to protect the interests of these customers.

356. The Commission also notes that there are issues of privacy and accessibility to basic telecommunications service that are common to all users of telecommunications services which may not be adequately dealt with by the operation of market forces.

357. In light of these concerns with respect to the social and economic requirements of users of telecommunications services, and in light of concerns regarding the need to keep service reliable and affordable in all parts of Canada, the Commission has decided, at this time, that it will not refrain completely from exercising its powers and duties under section 24 of the Act in forborne markets.

358. The Commission's primary focus, with respect to its section 24 powers and duties, has been to eliminate as much economic regulation as possible while maintaining those section 24 powers and duties that are necessary, at this time, to further policy objectives such as affordability, accessibility, the availability of emergency services and privacy.

359. The Commission considers that its discussion of those section 24 conditions that it initially intends to retain in a forborne market, under the local forbearance framework, can usefully be divided into the following categories:

- obligations common to all LECs;
- stand-alone PES; and
- other obligations.

360. The Commission notes that it has found it necessary to retain different section 24 conditions in forborne residential relevant markets than in forborne business relevant markets. In general, the Commission has taken a lighter regulatory approach with regard to business local exchange services as it believes that the social objectives served by residential local exchange services require a greater degree of regulatory oversight in a forborne market. In this regard the Commission notes that references simply to "customers" are intended to apply to both residential and business customers; where the Commission intends that a condition apply only to either residential or business customers it has specifically identified the customer group.

361. The Commission also notes that, in addition to the specific conditions and circumstances set out below, which it has determined are necessary to retain at this time, it will retain its powers and duties under section 24 of the Act in order to impose conditions should that prove necessary.

Obligations common to all LECs

362. The Commission has in a number of decisions and orders imposed common obligations on ILECs and CLECs relating to the offering and provision of local exchange services. These include Decision 97-8; Telecom Order CRTC 98-626, 26 June 1998; *Confidentiality provisions of Canadian carriers*, Telecom Decision CRTC 2003-33, 30 May 2003, as amended by Telecom Decision CRTC 2003-33-1, 11 July 2003 (Decision 2003-33); Decision 2005-28; *Emergency service obligations for local VoIP service providers*, Telecom Decision CRTC 2005-21, 4 April 2005; *Follow-up to Emergency service obligations for local VoIP service providers, Decision 2005-21 – Customer notification requirements*, Telecom Decision CRTC 2005-61, 20 October 2005 and *Provision of telecommunications services to customers in*

multi-dwelling units, Telecom Decision CRTC 2003-45, 30 June 2003. Appendix C contains a summary of the major obligations contained in these Decisions which encompass obligations that are important both for encouraging competition and for promoting social policy objectives.

363. The Commission notes that, with the exception of the customer confidentiality provisions first established in *Review of the general regulations of the federally regulated terrestrial telecommunications common carriers*, Telecom Decision CRTC 86-7, 26 March 1986, as amended by Telecom Order CRTC 86-593, 22 September 1986 (Decision 86-7), parties to the present proceeding were generally in agreement with the proposition that the existing obligations that are common to all LECs should continue to remain in force in a forborne market.

364. The customer confidentiality provisions, which were most recently modified in *Part VII application to revise Article 11 of the Terms of Service*, Telecom Decision CRTC 2005-15, 17 March 2005, prohibit Canadian carriers from disclosing confidential customer information without express consent of the customer, except in certain specified circumstances.

365. The Commission notes that those parties, including Aliant Telecom and Bell Canada/Télébec, that wish the Commission to lift the customer confidentiality provisions, argued that the Commission should do so because the existence of the PIPED Act rendered the Commission's customer confidentiality provisions unnecessary and duplicative.

366. The Commission also notes, however, that it did not accept the same argument put forward by the same parties in the proceeding leading to Decision 2003-33, noting in the decision that it may choose to impose a different standard of privacy protection pursuant to the Act than is required under the PIPED Act. The Commission considers that, in the case of the customer confidentiality requirements, it has chosen to impose a higher standard of privacy protection than that which would be available under the PIPED Act. The Commission considers that the higher degree of privacy protection available to customers of telecommunications services through the customer confidentiality provisions is even more relevant today than when the provisions were first implemented, due to the advent of new technologies and the emergence of electronic commerce, which allow information to be more easily processed, rearranged and exchanged. The Commission also considers that, as its own experience in dealing with privacy issues has demonstrated, technical expertise and specific telecommunications industry knowledge is often required to address privacy-related issues in the telecommunications industry.

367. In light of the above and in light of the Commission's experience with the customer confidentiality provisions, the Commission considers that market forces, even buttressed by the provisions of the PIPED Act, are unlikely to sufficiently protect the privacy interests of customers in a forborne environment. The Commission considers, therefore, that the maintenance of the customer confidentiality provisions and the Commission's ability to use section 24 of the Act to address ongoing privacy issues in a forborne market is necessary.

368. With respect to the other common LEC obligations set out in Appendix C, the Commission considers that these obligations should continue to exist in a forborne market. The Commission notes that it has retained these obligations with respect to other forborne services, and has also

maintained these obligations with respect to the forborne local exchange services provided by CLECs. The Commission notes that these common LEC obligations provide a minimum floor of protection for all customers, regardless of which LEC they choose as their local exchange services provider.

369. In light of the above, the Commission will, in a forborne market established pursuant to the framework set out in this Decision, retain its powers under section 24 of the Act to the extent necessary to maintain the common LEC obligations referred to in this section.

Industry self-regulation

370. The Commission notes that, in broadcasting, industry self-regulation has proven to be a successful model for achieving a relaxation of Commission regulation while still achieving important public policy goals. The Commission notes that both the Canadian Broadcast Standards Council and the Cable Television Standards Foundation have been highly successful industry self-regulatory bodies operating in the broadcasting industry.

371. The Commission considers that a properly designed industry self-regulatory system would serve to address the concerns that underlie the common LEC obligations listed above while, at the same time, freeing LECs in forborne markets from regulation.

372. The Commission therefore invites LECs to establish an industry self-regulatory system that would address the issues raised by these common LEC obligations. The Commission would be prepared on application to approve an industry self-regulatory system that adequately addresses these issues, and to remove the requirement to adhere to those common LEC obligations for those LECs who are participants in the approved industry self-regulatory system.

373. In the Commission's view, an appropriate industry self-regulatory system would be one that involved most, if not all of the LECs, that was designed in consultation with groups representing customers, that set out clear rules and standards and that provided a reliable mechanism for expeditiously resolving customer complaints.

Stand-alone PES

374. The Commission notes that, even in forborne markets established under the terms of the local forbearance framework, there may remain pockets of uncontested customers for whom the ILEC remains the primary or only LEC.

375. The record of the present proceeding indicates, moreover, that even where customers have access to competitive suppliers, the focus of LECs in forborne markets is likely to be on attracting high-use customers that generate high profit margins. In this regard, the Commission notes that currently in competitive markets only some CLECs offer stand-alone PES. CLECs typically offer PES as part of a bundle, either with optional local services or with services such as long-distance, video, wireless and Internet.

376. The Commission considers that market forces will best protect the interests of customers that reside in areas of forborne markets where multiple competitors offer service and where customers wish to subscribe to multiple telecommunications services from the same provider, whether these services are in a bundle or otherwise.

377. The Commission considers, however, that for some residential customers, including those for whom affordability of phone service is a serious issue, such as the many disabled Canadians who live on limited incomes, the availability of PES on a stand-alone basis is very important.

378. In light of the above, in order to ensure that accessibility and affordability are maintained for residential customers in forborne markets the Commission considers that ILECs should continue to be required to provide PES on a stand-alone basis.

379. Accordingly, the Commission will require an ILEC to continue to provide stand-alone PES to residential customers in a forborne market and will retain its powers pursuant to section 24 of the Act to the extent necessary to maintain this requirement.

380. The Commission considers that for business customers generally market forces will prove adequate to protect their interests such that the Commission does not need to mandate the provision of business stand-alone PES. The Commission does note that, to the extent that issues arise with respect to the treatment of uncontested business customers who wish to receive business stand-alone PES, it has, as set out below, retained its powers under subsection 27(2) to deal with any complaints regarding unjust discrimination or undue preference.

381. The Commission also considers that in order to ensure that residential stand-alone PES is available to all residential customers in forborne markets, it will also be necessary to retain in forborne markets the ILECs' obligation to serve with respect to residential stand-alone PES, as set out in paragraph 31 of *Telephone service to high-cost serving areas*, Telecom Decision CRTC 99-16, 19 October 1999 (Decision 99-16). The Commission notes that any existing exceptions or limitations to the obligation to serve would also continue in a forborne market.

382. The Commission notes that in Decision 99-16, it established a basic service objective (BSO) for the ILECs, which included: individual line local service with touch-tone dialling, provided by a digital switch with capability to connect via low speed data transmission to the Internet at local rates; enhanced calling features, including access to emergency services, Voice MRS, and privacy protection features; access to operator and directory assistance services; access to the long-distance network; and a copy of a current local telephone directory. The Commission considers that the residential stand-alone PES provided by an ILEC in a forborne market should be provided in a manner consistent with the BSO, and the Commission will retain its powers under section 24 to the extent necessary to maintain this objective.

383. The Commission notes that, in *Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19, 18 December 1997, as amended by *Correction to Forbearance – Regulation of toll services provided by incumbent telephone companies*, Telecom Decision CRTC 97-19-1, 9 March 1998 (Decision 97-19), it directed the ILECs to provide to the Commission and to make publicly available rate schedules which set out the rates for basic toll services. ILECs were required to update their respective schedules within 14 days to include any changes to the rates for basic toll service.

384. The Commission considers that, if a similar condition were imposed for residential stand-alone PES in forborne markets, customers would be in a position to monitor fluctuations in rates and be better able to judge the value of the service bundles offered by ILECs.

385. In light of the above, the Commission considers it appropriate to require ILECs to provide to the Commission and to make publicly available, rate schedules setting out the rates for residential stand-alone PES, including touch-tone and primary directory listing, as well as for connection charges. The ILECs will be expected to update their respective schedules within 14 days of any change to the rates for residential stand-alone PES.

386. The Commission has also required ILECs to undertake service improvement plans (SIPs) in order to extend and improve telecommunications service in furtherance of its BSO as defined in Decision 99-16. Normally a customer that requests service from an ILEC but whose premises are not currently connected to the ILEC's network would be required to pay the ILEC for the construction costs involved in establishing such a connection. The Commission, in Decision 99-16, in *Regulatory framework for second price cap period,* Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34) and in *Implementation of price regulation for Télébec and TELUS Québec,* Telecom Decision CRTC 2002-43, 31 July 2002 (Decision 2002-43), established limits on the amounts that a customer and an ILEC would have to pay, under a SIP, for the extension of telecommunications services to unserved premises. The Commission also required that, subject to certain conditions, customers be permitted to pay, in instalments, large construction charges incurred under the terms of a SIP.

387. The Commission notes that these requirements were put in place to further the affordability and accessibility of basic telecommunications services in unserved areas. As such, the Commission considers it important that they be maintained in a forborne market. In the absence of these requirements, unserved customers in a forborne market might be put to substantially greater expense in order to receive basic local service even where a SIP, which covers their premises is in place. In light of this, in a forborne market, the Commission will maintain the conditions outlined in Decisions 99-16, 2002-34 and 2002-43, as amended, with respect to limits on the customer's cost contribution and the ILEC's capital cost criteria as well as the requirements with respect to instalment payment plans for construction charges where a SIP is in place which includes the LFR that is part of the forborne market. The Commission will, therefore, retain its powers under section 24 to the extent that it is necessary to maintain these requirements.

Other obligations

388. There are certain other ILEC obligations, a number of which are contained within the existing ILEC terms of service and a number of which are directed generally towards the protection of privacy and affordability, that the Commission considers to be of sufficient importance to maintain, for the time being, even in forborne markets.

389. In Decision 86-7, the Commission established terms of service that applied to all ILEC tariffed services. These terms of service detail rights and obligations that apply both to the ILEC and to the ILEC's customers. The Commission has, from time to time, updated these terms of service to reflect changes in services, technology and commercial practices.

390. The Commission considers that the terms of service, with certain exceptions discussed below, cover matters that, in a forborne market, should be a matter of agreement between the ILEC and the customer. The Commission considers that, subject to these exceptions discussed below,

market forces will be sufficient to discipline the behaviour of ILECs with respect to their terms of service. The Commission expects, however that, in a forborne market, ILECs will notify their customers of any changes to the terms of service at the time those changes are made.

391. Those terms of service that the Commission considers may need to be retained as section 24 conditions are those related to:

- ILEC-initiated suspension or disconnection of service;
- deposit policy; and
- provision of telephone directories.

392. The Commission notes that, while customer confidentiality requirements are also part of the terms of service, it has already addressed these requirements in the section above on common LEC obligations.

393. In the Commission's view, the suspension or disconnection of basic telephone service is clearly among the most serious actions that an ILEC can take with respect to a customer. In the Commission's view, it is important that customers have every reasonable opportunity to maintain their PES. The Commission will, therefore, require that the ILEC-initiated disconnection or suspension of service policy contained in the terms of service be maintained in a forborne market. The Commission will retain its powers under section 24 of the Act to the extent necessary to maintain this requirement.

394. In *Terms of Service – Disconnection for partial payment of charges*, Telecom Decision CRTC 2004-31, 11 May 2004, determined that ILECs were not permitted to suspend, disconnect or threaten to disconnect a customer's tariffed services if that customer made partial payments sufficient to cover the outstanding arrears for tariffed services, whether or not there remained outstanding arrears for non-tariffed services. Consistent with its retention of the ILEC-initiated disconnection or suspension of service policy, as set out above, the Commission considers it appropriate that, in a forborne market, an ILEC not terminate a customer's residential stand-alone PES for non-payment of other services where that customer has made partial payments sufficient to cover the outstanding arrears for the residential stand-alone PES. The Commission will retain its powers under section 24 of the Act to the extent necessary to maintain this condition.

395. The Commission notes that the deposit policy currently mandated pursuant to the terms of service limits the ability of the ILEC to require deposits from a customer and places limits on the amount of any such deposits.

396. The Commission considers that an ILEC's deposit policy is directly related to the affordability of telephone service, particularly for residential consumers. The Commission considers that onerous deposit requirements could negatively impact the penetration rates of PES for consumers, particularly persons with lower incomes. As such, the Commission considers it appropriate to maintain the existing deposit policy for residential PES customers, as set out in the terms of service, in forborne markets. The Commission will, therefore, retain its powers under section 24 of the Act to the extent necessary to maintain this obligation.

397. The Commission notes that currently, both residential and business customers are entitled to receive, free of charge, a copy of the white and yellow page telephone directories as part of their basic service. The Commission also notes that a primary listing in the white pages directory is included in the rate for basic service for residential customers and that a primary listing in both the white and yellow pages directories is included in the rate for basic service for business customers.

398. The Commission considers that the provision of the directories and the primary listings are an integral component of basic telephone service. The existence and availability of a comprehensive telephone directory facilitates the use of telephone service for many customers and is a key tool for many business customers, particularly small business customers. Yet it is not clear that in a forborne market the operation of market forces would result in residential and business customers receiving a comprehensive phone directory and primary listings at a reasonable cost.

399. The Commission will therefore require an ILEC, in a residential forborne market, to maintain the entitlement of its residential customers to receive copies of the white and yellow pages directories and a primary listing in the white pages directory, free of charge. The Commission will also require an ILEC, in a business forborne market, to maintain the entitlement of its business customers to receive copies of the white and yellow pages directories and a primary listing in both the white and yellow pages directories, free of charge. The Commission will retain its powers under section 24 of the Act to the extent necessary to maintain these obligations.

400. The Commission notes that the full terms of service will remain in force, in a forborne market, for all those services outside of the scope of this proceeding including Competitor Services.

401. The Commission notes that it has imposed on the ILECs several privacy and affordability related obligations for the benefit of customers which it considers should appropriately be retained in a forborne market.

402. The Commission notes that in Telecom Order CRTC 98-109, 4 February 1998, and in *Télébec and TELUS Québec – Rates for unlisted number service*, Telecom Decision CRTC 2003-40, 20 June 2003, it required ILECs to provide Unlisted Number Service (UNS) at rates that did not exceed $2.00 per month for residential consumers.

403. The Commission further notes that all ILECs currently provision Call Trace service, at a fixed rate per use, with a monthly cap of $10.00, for residential consumers.

404. The Commission notes that in *Call management service – Blocking of calling number identification*, Telecom Decision CRTC 92-7, 4 May 1992, the Commission required ILECs to provide free per-call blocking of caller number identification information to all customers and also required ILECs to provide free per-line blocking of caller number identification information to certified shelters for victims of domestic violence.

405. The Commission considers that these measures are important to the promotion of the privacy of persons and should be maintained in a forborne market. The Commission is concerned that, in the absence of a regulatory requirement, these privacy-related measures could either be

discontinued or only be available at much higher rates. The Commission, therefore, will require ILECs to maintain these conditions in a forborne market and will retain its powers under section 24 of the Act to the extent necessary to retain these conditions.

406. The Commission notes that, in Decision 96-10, it imposed several obligations on ILECs to address concerns related to the affordability of telephone service for residential customers. ILECs were required to offer toll restriction service at no monthly charge, with no set-up charge, and which included a one-time charge, of up to $10.00, to deactivate the service. The Commission also required that the ILECs allow payment of up-front connection charges to be spread over six months.

407. The Commission noted, in Decision 96-10, that pursuant to the requirements in their approved tariffs, the ILECs allowed customers the option of having calls to 900/976 services blocked either at no charge or for a one-time service charge of $10.00, and allowed the blocking of usage-based calling features at no charge.

408. The Commission also notes that in *900 service – Agreements and consumer safeguards*, Telecom Decision CRTC 2005-19, 30 March 2005, it required the ILECs to waive first-time reasonably disputed 900/976 service charges for residential consumers.

409. The Commission further notes that many ILECs, pursuant to approved tariffs, provide rate discounts on various residential local exchange services to persons with disabilities.

410. The Commission considers that the affordability obligations listed above are all important requirements that serve to help ensure the affordability of basic telephone service for customers. The Commission is not convinced that the operation of market forces in a forborne market will result in such protections being maintained. The Commission will, therefore, require ILECs to maintain these obligations in a forborne market and will retain its powers under section 24 of the Act to the extent necessary to maintain these obligations.

411. At the same time, the Commission considers that the objectives and issues addressed by all of the obligations referred to in this section are pertinent to the services provided by all LECs, competing in forborne markets. The Commission would, moreover, be prepared to consider having them addressed within the industry self-regulatory system discussed earlier rather than as LEC obligations.

Section 27

412. Section 27 of the Act states:

(1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

(3) The Commission may determine in any case, as a question of fact, whether a Canadian carrier has complied with section 25, this section or section 29, or with any decision made under section 24, 25, 29, 34 or 40.

(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

(5) In determining whether a rate is just and reasonable, the Commission may adopt any method or technique that it considers appropriate, whether based on a carrier's return on its rate base or otherwise.

(6) Notwithstanding subsections (1) and (2), a Canadian carrier may provide telecommunications services at no charge or at a reduced rate

(a) to the carrier's directors, officers, employees or former employees; or

(b) with the approval of the Commission, to any charitable organization or disadvantage person or other person.

Positions of parties

Subsection 27(1)

413. Aliant Telecom was of the view that the retention by the Commission of its powers under section 27 of the Act in a forborne market to maintain retail Q of S standards could have negative consequences, even though it would be intended to protect customers. Aliant Telecom argued that if the ILEC were required to adhere to retail Q of S standards, customers might feel that the ILEC was the only provider that could provide good service, thus causing market inertia. Aliant Telecom considered that in a competitive market it was expected that service providers would offer different levels of service at various price points.

414. Aliant Telecom also argued that competition would not likely increase prices in a forborne market. Aliant Telecom submitted that its expectation was that competition would drive prices lower, and customers would get increased value for their money. Aliant Telecom submitted, therefore, that the retention by the Commission of its powers under section 27 of the Act in a forborne market to establish a price ceiling on rates for local exchange services would be unnecessary.

415. Bell Canada/Télébec, supported by SaskTel, considered that retail Q of S standards were not required in a forborne market as market forces, rather than regulatory oversight, would provide all service providers with the incentive to maintain a high Q of S. Bell Canada/Télébec argued that subscribers will switch providers if the Q of S deteriorated.

416. In Bell Canada/Télébec's view, a price ceiling on forborne local exchange services would undermine the telecommunications policy objective of fostering increased reliance on market forces and regulating only where necessary.

417. TCI, supported by the UTC, was of the view that retail Q of S standards would no longer be required. In these parties' view, providing a high Q of S was a way for a provider to differentiate its services from its competitor's services and to charge a premium for superior service quality.

418. TCI, SaskTel, the Coalition and Cogeco submitted that a price ceiling on forborne local exchange services would be unnecessary if the Commission established the proper geographic component of the relevant market for forbearance as the proper geographic component would have very few uncontested customers.

419. The Coalition considered that retail Q of S standards would no longer be required as market forces would ensure that Q of S remained high. In the Coalition's view, consumers of Internet and wireless services pick their providers based on Q of S. The Coalition noted that the Commission does not regulate Q of S for other forborne telecommunication services such as Internet and wireless services.

420. The Competition Bureau submitted that, to the extent possible, the Commission should refrain from imposing retail Q of S standards in a forborne market. The Competition Bureau expected that, in a forborne market, retail Q of S would reflect the interests of customers; customers would switch providers if they were dissatisfied with the service quality.

421. The Competition Bureau submitted that if the Commission was concerned about the potential for price increases post-forbearance, it could maintain price cap regulation or impose a price ceiling.

422. The CCTA, supported by Cogeco, considered that the ILECs would have the incentive to maintain high retail Q of S in a forborne market or risk losing customers. The CCTA noted that the Commission did not maintain or institute retail Q of S reporting requirements in other forborne markets, such as long distance, cellular or Internet access.

423. The CCTA, supported by EastLink, Rogers, Shaw and Cybersurf, submitted that the Commission could establish a price ceiling for stand-alone basic local service rates of the ILECs to provide customers with a safeguard against unjust or unreasonable rate increases. The CCTA noted that, in Decision 97-19, the Commission had considered that the retention of a ceiling on basic toll rates was appropriate.

424. Shaw, supported by Cybersurf, submitted that retail Q of S standards should be discontinued unless it were demonstrated that competition does not provide a sufficient safeguard in a relevant market.

425. MTS Allstream, supported by FCI/Yak, was of the view that retail Q of S standards would not be required in a forborne market if there were robust competition. In the view of these parties, customers would cancel service from a service provider whose service quality had deteriorated.

426. FCI/Yak submitted that if there were pockets where there was insufficient competition, a price ceiling would be appropriate. FCI/Yak was of the view that stand-alone service should be tariffed to ensure it was affordable.

427. Primus, QMI and Xit telecom were of the view that retail Q of S standards would still be required in a forborne market.

428. QMI maintained that the Commission would be making a grave error by allowing its definition of relevant geographic markets to be driven by the need to safeguard unprotected customers against abusive post-forbearance price increases. In QMI's view, the better solution to the issue of uncontested customers would be to impose a price ceiling on the last pre-forbearance price level.

429. The Consumer Groups considered that any forbearance framework would have to rely on close monitoring of the performance of the forborne markets, including retail Q of S. The Consumer Groups proposed that ILECs be required to continue to file retail Q of S reports with the Commission and that the Commission would post those results on its website.

430. The Consumer Groups proposed that, as a condition of forbearance, the Commission should establish a price ceiling on the last approved tariff rate for stand-alone PES offered by the ILECs.

431. The UTC submitted that, in the event that an ILEC was forborne from regulation in a relevant market which was not fully served by competing suppliers of substitutable services, the Commission would need to impose safeguards in order to prevent the ILEC from engaging in price discrimination within that market and to protect customers with no competitive choice from being overcharged. According to the UTC, these pockets of uncontested customers would require Commission-price protection in the form of a price ceiling.

Subsections 27(2), (3) and (4)

432. Aliant Telecom and TCI were of the view that the Commission did not need to maintain subsection 27(2) powers to address claims of unjust discrimination, as the rights of disabled and other disadvantaged groups would be protected by the *Canadian Human Rights Act* and the Canadian Human Rights Commission in a forborne environment.

433. Bell Canada/Télébec, supported by SaskTel, argued that the retention by the Commission of its section 24 powers, in a forborne market, would be preferable to the retention of subsection 27(2) powers, as conditions would provide greater certainty to service providers and consumers regarding the types of services required to be provided to those subscribers.

434. The Competition Bureau submitted that once a relevant market was forborne, the Commission must relieve the ILECs from non-discriminatory pricing obligations in subsection 27(2) of the Act.

435. The CCTA, supported by Cogeco, EastLink, Rogers and Shaw submitted that the Commission must retain its authority to exercise its powers and duties under subsections 27(2), (3), and (4) of the Act, in a forborne market, so that the Commission could respond to complaints alleging unjust discrimination and undue preference in relation to services provided by LECs both to end-users and to other carriers.

436. The Consumer Groups considered that the Commission must retain subsection 27(2) powers, in a forborne market, to prevent unjust discrimination against disabled and vulnerable persons because, in its view, market forces would not prevent discrimination.

437. In the Consumer Groups' view, the *Canadian Human Rights Act* did not relieve the Commission from its obligations under the *Canadian Charter of Rights and Freedoms* or from meeting its social policy objectives in the Act. The Consumer Groups considered that the rules of statutory interpretation indicated that the Commission should exercise its powers and fulfill its duties under the Act in a manner that was consistent with the express intent of Parliament.

438. It was ARCH's position that the existence of another statute of general application, such as the *Canadian Human Rights Act*, did not oust the claims persons with disabilities were making for equal access to telecommunication products and services under the Act. ARCH suggested that the legal basis for these claims flowed from the fact that the Act was subject to the *Canadian Charter of Rights and Freedom*.

439. ARCH noted that the Commission had retained subsection 27(2) powers in many previous forbearance decisions and further noted that the Commission had applied subsection 27(2) of the Act to remedy discrimination against disabled persons in the context of payphones and TTYs.

440. In ARCH's view, the experiences of disabled persons regarding terminal equipment and wireless phones indicated that when the Commission had forborne from exercising its powers under subsection 27(2) of the Act or had not used those powers to ensure accessibility to persons with disabilities, it had failed to discharge its legal obligation of ensuring that persons with disabilities do not face discrimination in their access to telecommunications services.

441. ARCH submitted that the Commission should only forbear if conditions were attached that would ensure that local telecommunication services were provided on a non-discriminatory basis to persons with disabilities. In ARCH's view, telecommunications services should be required to meet future conditions, which the Commission may impose from time to time to ensure ongoing accessibility of telecommunications services for persons with disabilities.

Commission's analysis and determinations

Subsection 27(1)

442. The Commission notes that in considering subsection 27(1) it has examined the need to retain retail Q of S standards in forborne markets and the need for a price ceiling for residential stand-alone PES.

Retail Q of S standards

443. The Commission considers that in a competitive market, customers can determine what level of quality is appropriate and will switch providers if the service quality becomes unacceptable. Consequently, the Commission considers that in a forborne environment, it will be in the

interest of the ILECs to balance efficiency with service quality in order to offer a product of reasonable quality at a reasonable price. The Commission considers that if an ILEC were to fail to meet its customers' expectations for service quality, customers will switch to a provider that offers service of an acceptable quality.

444. The Commission further considers that the Q of S to uncontested pockets of customers will likely be reasonable in forborne markets, even where there is no alternate service provider. In the Commission's view, while it would be possible for ILECs to reduce Q of S, doing so could negatively affect the ILEC in the medium- to long-term.

445. The Commission considers that where an ILEC provides low quality service to a pocket of uncontested customers in a forborne market, strong incentives will be created for competitors to expand their services into that pocket.

446. The Commission also considers that ILECs generally have an interest in promoting and protecting their brand. The Commission considers, therefore, that the ILECs will be motivated to maintain their retail Q of S in forborne markets.

447. In light of the above, the Commission considers that it is not necessary for it to maintain its retail Q of S standards in a forborne market and it will not, therefore, retain its powers under subsection 27(1) of the Act in order to do so.

448. The Commission notes that the retail Q of S indicators are currently tracked and reported by each ILEC across its entire operating territory. The Commission expects the ILECs to develop the capability to report retail Q of S results for only those areas which remain regulated. Similarly, the Commission expects the ILECs to develop protocols to address the provision of retail Q of S rebates in a relevant market which transitions to a forborne environment during a retail Q of S reporting cycle. The Commission expects that such ILEC protocols will provide for pro-rated retail Q of S rebates based on the period of time during the reporting cycle that local exchange services rates were regulated in that relevant market. Customer eligibility for such retail Q of S rebates will continue to be established in accordance with the directives in *Retail quality of service rate adjustment plan and related issues*, Telecom Decision CRTC 2005-17, 24 March 2005. The Commission will retain its powers under section 24 of the Act to the extent necessary to ensure that the ILECs put in place and observe these protocols.

Price ceiling

449. The Commission notes that, in Decision 97-19, it established a price ceiling for basic toll services to protect the interest of customers.

450. The Commission notes that, while market forces will generally discipline ILEC rates for most local exchange services in forborne markets, it has serious concerns with respect to the plight of vulnerable and uncontested residential customers.

451. The Commission considers it important to ensure that the affordability of essential basic residential PES not be compromised in a forborne market. The Commission is concerned that vulnerable and uncontested residential consumers may not have access to stand-alone PES at affordable rates in a forborne environment without a pricing safeguard.

452. In light of these concerns, the Commission considers that a ceiling on residential stand-alone PES would be appropriate. The Commission considers that such a ceiling would provide vulnerable and uncontested customers with a safeguard against unreasonable rate increases in a forborne environment while only minimally limiting the ILECs' pricing flexibility in forborne markets.

453. By contrast, the Commission considers that market forces will likely discipline the rates under which ILECs offer business local exchange services in forborne markets, including to uncontested customers. The Commission considers that should the rates for local business PES become unreasonable, business customers will investigate other alternatives to meet their telecommunications requirements. As such, the Commission does not consider that a ceiling on business PES would be necessary.

454. In light of the foregoing concerns, the Commission finds it appropriate to maintain its powers and duties under subsection 27(1) of the Act to the extent necessary to impose a price ceiling on stand-alone residential PES. The Commission notes that this price ceiling will apply to the most recent approved rates at time of forbearance for stand-alone PES including touch-tone and primary directory listing, as well as for connection charges. In addition, the Commission notes that late payment, interest and not sufficient funds cheque charges were not directly included as part of the services under consideration in this proceeding, and that the various charges contained in those tariffs currently only apply to tariffed services. The Commission considers that these charges have a direct impact on the affordability of residential PES service. As such, the Commission considers that, at the time of forbearance, the applicant ILEC will be required to modify its tariffs such that these charges and the limits on them will apply to stand-alone PES in a forborne market.

455. The Commission notes that since this price ceiling would only apply to stand-alone residential PES, as described above, ILECs will have the pricing flexibility to offer bundles that include residential PES at competitive price points.

456. The Commission also notes that it will also maintain its powers and duties under subsection 27(1) of the Act to impose a price ceiling on those services identified above under section 24 of the Act as being capped at their existing rates.

Subsection 27(2)

457. The Commission notes that when it has previously forborne from exercising its powers and duties under subsection 27(2) of the Act, parties representing consumer interests have argued that it has been to the detriment of vulnerable consumers, particularly persons with disabilities.

458. The Commission notes that, over the years, it has been required to make determinations mandating that the ILECs and competitors accommodate the needs of persons with disabilities or vulnerable consumers. The Commission further notes that in Decision 97-8, the Commission retained its powers under subsection 27(2) of the Act in relation to CLEC retail local exchange services.

459. The Commission is not convinced that the operation of market forces will serve to discipline the behaviour of ILECs with respect to vulnerable customers such as customers with disabilities. The Commission notes that it has had, in the past, to address problems involving vulnerable

customers served by competitors that already operate in a largely unregulated environment. The Commission considers that while the *Canadian Human Rights Act* would provide some protection to vulnerable customers, it would not be sufficient to deal with the concerns identified by ARCH and the Consumer Groups in the present proceeding.

460. The Commission notes that, in Decision 97-8, it retained its powers and duties under subsection 27(2) of the Act so that it could respond to complaints alleging unjust discrimination and undue preference in relation to services provided by CLECs to both end-users and other carriers. The Commission did so to ensure access to CLEC facilities to enhance the efficiency and effectiveness of the Canadian telecommunications industry. The Commission considers that the concerns expressed in Decision 97-8 with respect to the need to retain subsection 27(2) of the Act in the case of CLECs apply with equal force in the case of ILECs in forborne markets established pursuant to the local forbearance framework.

461. In light of these concerns, the Commission considers it necessary to retain its powers under subsection 27(2) of the Act to address any issues that may arise in forborne markets with respect to unjust discrimination or undue preference in relation to the provision of or the charging of a rate for a telecommunications service.

Subsections 27(3) and (4)

462. The Commission considers that as a necessary consequence of its retention of section 24 and subsections 27(1) and (2) in forborne markets to the extent described in this Decision it will also need to retain its powers and duties under subsections 27(3) and (4) for the same purposes. The Commission also considers it necessary to retain subsection 27(3) to the extent that it relates to sections 34 and 40, dealing with interconnection.

Subsections 27(5) and (6)

463. The Commission considers it unnecessary to retain any of its powers under subsections 27(5) and (6) of the Act in forborne markets.

Other issues relating to the scope of forbearance

Competitor Services

464. The Commission notes that, when it forbears with respect to the regulation of a service, it typically retains its powers to ensure that required underlying ILEC facilities may be made available to competitors. The Commission also notes that it has generally retained its powers under sections 27 and 24 of the Act in order to retain the ability to mandate that an ILEC develop new Competitor Services and arrangements. The Commission considers that retention of these powers is important for the purpose of promoting sustainable competition.

465. Accordingly, the Commission will retain its powers under section 24 and subsections 27(2) and 27(4) of the Act to ensure ongoing access by competitors to underlying ILEC facilities and functionalities and to permit the creation of new Competitor Services and arrangements.

HCSAs

466. The Commission notes that in *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000, it introduced a revenue-based contribution collection mechanism and determined that those Canadian carriers providing residential local exchange services in HCSAs would be entitled to receive money in order to subsidize the provision of that service in the HCSAs. The Commission notes that the current subsidy per residential NAS calculation is made up of the following components: a) ILEC residential PES costs, by band, per NAS per month, b) a 15 percent mark-up for fixed and common costs, c) ILEC residential PES revenues, by band, per NAS per month, and d) implicit (deemed) $5.00 per NAS per month for optional local services.

467. In a forborne market, an ILEC will be able to lower the rates for its residential PES without the need for Commission approval or review. The Commission notes that a decrease in residential PES rates would normally lower the average residential PES revenues, which would result in an increase in subsidy.

468. The Commission is concerned, however, about the impact on the contribution collection mechanism and the National Contribution Fund if Canadian carriers operating in a relevant market were able to receive increased subsidy due to the ILEC lowering its residential PES rates in a HCSA of a forborne market. The Commission is also concerned that this situation would allow the ILEC to recover the revenues lost from the price reduction through increased subsidy.

469. In light of the above, the Commission finds that if an ILEC's residential PES rates in an HCSA that is part of a forborne market are set below the tariffed rate that was in force at the time forbearance was granted for that relevant market, the ILEC is to use the tariffed rate at the time of local forbearance to determine its average residential PES revenues for subsidy calculation purposes.

Review of scope of forbearance

470. The Commission, as set out above, has found it necessary to retain, at this time, certain safeguards in order to protect customers.

471. The Commission recognizes that achieving the right balance between those obligations that an ILEC must retain beyond those that other Canadian carriers are subject to and the need for the free and innovative development of competition is a difficult proposition. The Commission also recognizes that both the operation of the markets and technology continue to evolve and change such that those conditions that the Commission has deemed necessary, at this time, to retain may, in the future, be unnecessary.

472. In light of this, the Commission is prepared to review all of the obligations imposed on ILECs in forborne markets with a view to determining which, if any of those obligations are still required and to the extent that they are still required whether those obligations should be extended to other Canadian carriers operating in those relevant markets. Such a review will commence in the Commission's fiscal year starting 1 April 2009. The Commission anticipates that the industry self-regulatory system may have addressed many of these issues prior to the commencement of the review.

Commission conclusion on the scope of forbearance

473. In conclusion, the Commission considers that, if the local forbearance criteria outlined in this Decision are met in a relevant market, it will forbear from exercising its powers and duties under the Act with respect to the services within the scope of this proceeding to the following extent:

- The Commission will forbear from all of its powers and duties under sections 25, 27(5), 27(6), 29 and 31 of the Act;

- The Commission will retain its powers under section 24 of the Act to maintain the specific conditions and obligations as set out above, and to impose such new conditions as may be necessary in the future;

- The Commission will retain its powers under subsection 27(1) of the Act in order to maintain a price ceiling on residential stand-alone PES and the other services identified above, and its powers under subsection 27(2) of the Act for the provision of Competitor Services as set out above, and to address any issues of unjust discrimination or undue preference; and

- The Commission will retain its powers under subsections 27(3) and (4) to the extent necessary to support its retained powers and duties under sections 24, 34 and 40 and subsections 27(1) and (2).

VII. Review of local forbearance

474. Parties to the proceeding provided varying views regarding the possibility of re-regulating a forborne market and the circumstances under which this could occur. There was a general consensus that the Commission should not adopt a system that would result in wild swings between de-regulation and regulation. Parties also generally agreed that it would be in circumstances of market failure that the Commission would need to re-regulate. Where parties differed was with respect to the kinds of indicators that should cause the Commission to believe that market failure had occurred and re-regulation should be contemplated.

475. In the Commission's view, a decision to forbear from regulating local exchange service based on the criteria outlined in this Decision should not be reversed easily, based on temporary swings in a potentially volatile marketplace.

476. The Commission is also of the view that any post forbearance assessment of a particular forbearance decision should be based on the facts present in an individual relevant market and not on rigid rules that are applied universally without reference to circumstances.

477. The Commission considers, therefore, that post-forbearance criteria that, if triggered, would result in automatic re-regulation are not appropriate. A decision to forbear from regulating local exchange services in a particular relevant market indicates that the Commission has found that

market forces are sufficiently strong in that relevant market to discipline the ILEC providing local exchange services in that relevant market and to provide to customers in that relevant market the benefits of competition in terms of price, quality and innovation.

478. In the Commission's view, it is only where the Commission has received evidence demonstrating that market forces in a relevant market are no longer sufficiently strong to discipline the ILEC providing local exchange services in that relevant market that the Commission should initiate a review of forbearance in a particular relevant market. Such evidence could include a material reduction in the number of competitors offering service in a forborne market, a material increase in ILEC market share in that relevant market, a significant long-term decrease in the ILEC's performance with reference to the competitor Q of S indicators or a material sustained increase in prices to customers in the forborne market.

479. A request for a review of forbearance in a relevant market may be initiated by a Part VII application pursuant to the *CRTC Telecommunications Rules of Procedure.* Alternatively the Commission, itself, may seek comments from parties as to whether a review of forbearance should be initiated in a particular relevant market.

480. Should the Commission consider that a review of forbearance is warranted, it will conduct a further process to examine whether an ILEC has regained sufficient market power within the particular relevant market such that the achievement of the telecommunications policy objectives of the Act or the continuance of competition sufficient to protect the interests of users has or will be undermined in that relevant market. Should the Commission so find, it may order that the particular relevant market be completely or partially re-regulated on such conditions as the Commission considers appropriate.

VIII. Transitional regime

481. The Commission received submissions from parties on both the general advisability of a transitional regime as well as under what circumstances the Commission should lessen or remove the existing competitive safeguards for promotions defined in Decision 2005-25 and the local winback rule, permit the *ex parte* filing of tariff applications for promotions, and permit the waiving of service charges for residential local winbacks (collectively, the competitive safeguards).

482. With the exception of the Consumer Groups and MTS Allstream, all parties opposed, for varying reasons, the creation of a transitional regime. Some parties, such as some of the ILECs, argued that a transitional regime was unnecessary as certain of the proposed elements of such a regime, like the removal of the local winback rule, should be implemented immediately on a national basis and not as part of a staged transitional regime in particular relevant markets. These same ILECs also reiterated the position, which they had taken in a Part VII application filed by Bell Canada and SaskTel dated 25 April 2005, that the local winback rule was contrary to section 2(b) of the *Canadian Charter of Rights and Freedoms.* Other parties, such as many of the competitors, argued that a transitional regime was inappropriate as the same proposed elements, like the removal of the winback rule in a relevant market, should occur only when an ILEC is entitled to forbearance in that relevant market.

483. ***The Commission removes the existing competitive safeguards for promotions, as defined in Telecom Decision CRTC 2005-25, Promotions of local wireline services, removes the local winback rule as set out in Telecom Decision CRTC 2005-28, Regulatory framework for voice communication services using Internet Protocol, as amended by Telecom Decision CRTC 2005-28-1 and confirmed by Telecom Decision CRTC 2006-53, permits the ex parte filing of tariff applications for promotions and permits the waiving of service charges for residential local winbacks.***

484. ***Paragraph deleted***

485. ***Paragraph deleted***

486. ***Paragraph deleted***

487. ***Paragraph deleted***

488. ***Paragraph deleted***

489. With respect to the arguments raised by the ILECs that the local winback rule, as it existed prior to the release of this Decision, violates section 2(b) of the *Canadian Charter of Rights and Freedoms*, the Commission notes that it is today in *Bell Canada and Saskatchewan Telecommunications' request that the Commission stop applying the local exchange service winback restrictions on the basis that they unjustifiably infringe the right to freedom of expression in section 2(b) of the Canadian Charter of Rights and Freedoms*, Telecom Decision CRTC 2006-16, 6 April 2006, releasing its decision on the constitutionality of that local winback rule. The Commission notes that the only difference between that local winback rule and the new local winback rule set out above is that the latter sets out a 3-month no-winback period for residential customers, as opposed to a 12-month no-winback period in the previous rule.

IX. Aliant Telecom's forbearance application

490. As indicated above, the Commission decided to consider in this proceeding Aliant Telecom's application for forbearance from the regulation of residential local exchange services in 32 local exchanges in Nova Scotia and Prince Edward Island. A number of parties made submissions either supporting or opposing that application.

Parties supporting Aliant Telecom's application

491. SaskTel submitted that Aliant Telecom's original application and the updated evidence conclusively demonstrated that in the specified exchanges Aliant Telecom did not have market power.

492. TCI submitted that Aliant Telecom's forbearance application should already have been approved as the evidence before the Commission clearly showed that Aliant Telecom did not have market power in the areas where Aliant Telecom sought forbearance.

493. Bell Canada/Télébec submitted that, in Aliant Telecom's original application and updated evidence dated 18 May 2005, Aliant Telecom has conclusively demonstrated that in the specified exchanges EastLink was a significant and effective competitor, and that Aliant Telecom did not have substantial market power.

Parties opposing Aliant Telecom's application

494. Call-Net submitted that Aliant Telecom's application was, and remained, premature. Call-Net submitted that this fact was confirmed by the Commission's determinations with respect to the ILECs', including Aliant Telecom's, overwhelming dominance in the market for local exchange services set out in Decision 2005-28.

495. CCTA submitted that the Commission should deny Aliant Telecom's application on the basis that EastLink was not a viable entrant at this time and that forbearance at this time could end a further roll-out of services by EastLink.

496. Rogers submitted that Aliant Telecom's application was premature and should be denied. In Rogers' view, Aliant Telecom did not meet the forbearance criteria that Rogers had proposed in this proceeding for the relevant product and geographic markets.

497. Cybersurf was of the view that Aliant Telecom had not met the pre-conditions, which Cybersurf had proposed, required for forbearance of its wireline local exchange services at this time.

498. EastLink submitted that it was still too early to grant Aliant Telecom forbearance for its residential local exchange services in the 32 exchanges. EastLink was of the view that it had not achieved a sufficient foothold to be able to withstand and respond to targeted behaviour by Aliant Telecom on an ongoing basis. EastLink submitted that based upon its proposed forbearance test and based upon the evidence currently before the Commission, it was still too early to grant Aliant Telecom forbearance for residential local exchange service for the 32 local exchanges specified in Aliant Telecom's application. In EastLink's view, there was insufficient evidence to indicate that in Aliant Telecom's territory sustainable competition had been achieved to warrant granting forbearance. EastLink submitted, therefore, that Aliant Telecom's application for forbearance should be denied.

499. MTS Allstream submitted that there was little or no evidence of falling local prices in Aliant Telecom's operating territory on the record of this proceeding.

500. The Consumer Groups submitted that Aliant Telecom's application for forbearance should be denied as it did not meet the criteria for forbearance proposed by the Consumer Groups.

Commission's analysis and determinations

501. The Commission indicated, in Public Notice 2005-2, that it would apply to Aliant Telecom's application the local forbearance framework developed in this Decision, including the conclusions regarding relevant markets and forbearance criteria.

502. The Commission notes that the 32 local exchanges in Nova Scotia and Prince Edward Island, for which Aliant Telecom applied for residential local exchange service forbearance, are located within four of the six LFRs which the Commission has identified in Nova Scotia and Prince Edward Island. Specifically the 32 local exchanges are located in

- Aliant Telecom LFR 12-01 Nova Scotia, Halifax CMA (Halifax LFR)
- Aliant Telecom LFR 11-01 Prince Edward Island, Prince Edward Island ER
- Aliant Telecom LFR 12-03 Nova Scotia, North Shore ER
- Aliant Telecom LFR 12-05 Nova Scotia, Southern ER

503. With respect to these regions, the Commission finds, based on the evidence presented in this proceeding, that Aliant Telecom's market share loss is as follows:

- Aliant Telecom LFR 12-01 Nova Scotia, Halifax CMA – 33 percent
- Aliant Telecom LFR 11-01 Prince Edward Island, Prince Edward Island ER – 13 percent
- Aliant Telecom LFR 12-03 Nova Scotia, North Shore ER – nine percent
- Aliant Telecom LFR 12-05 Nova Scotia, Southern ER – eight percent

504. The Commission finds, therefore, that Aliant Telecom has met the market share loss criterion of the local forbearance framework with respect to the Halifax LFR. However as Aliant Telecom has not met the market share loss criteria with respect to any of the other LFRs, it will not be necessary to consider these LFRs with respect to the remaining forbearance criteria.

505. The Commission notes that Aliant Telecom does not currently have an approved bundled ADSL tariff. The Commission finds, therefore, that Aliant Telecom has not met the Competitor Services tariff requirement for residential local exchange forbearance.

506. The Commission notes that the record provides clear evidence of rivalrous behaviour in the Halifax LFR. Both Aliant Telecom and EastLink are vigorously competing for residential local exchange customers through the use of bundles, promotions and extensive advertising campaigns. The Commission considers, therefore, that Aliant Telecom has provided sufficient evidence of rivalrous behaviour in the Halifax LFR.

507. The Commission notes that the access to OSS criterion is not applicable to Aliant Telecom's application as the Commission had not approved an implementation plan for access to Aliant Telecom's OSS prior to the local forbearance application.

508. With respect to the competitor Q of S criteria of the local forbearance framework, the Commission notes that Aliant Telecom has not met the competitor Q of S criteria of the local forbearance framework. Based on the reports received by the Commission from Aliant Telecom covering the period of July 2005 until December 2005, 43 percent of Aliant Telecom's six-month average performances for each competitor indicator were at or above the minimum threshold required by Decision 2005-20. In order to meet the competitor Q of S criterion for local forbearance this number must be 100 percent.

509. The Commission notes that while Aliant Telecom's application was filed prior to the creation of the current competitor Q of S regime, the Commission considers it necessary to assess that application against all of the criteria set out in its local forbearance framework including the competitor Q of S criteria. In the Commission's view, achievement by an applicant ILEC of the competitor Q of S criteria is of critical importance in demonstrating that competition in the relevant market will be sustainable.

510. In light of the above, the Commission **denies** Aliant Telecom's application for residential local forbearance. The Commission notes that Aliant Telecom can reapply for residential local forbearance when it can demonstrate that it has met all of the local forbearance criteria in an LFR. The Commission notes that with respect to the Halifax LFR Aliant Telecom met all of the local forbearance framework criteria except the competitor Q of S criteria and the Competitor Services tariff criteria. In this respect the Commission is prepared to consider a new application for residential local forbearance by Aliant Telecom in the Halifax LFR, which demonstrates that Aliant Telecom meets all of the local forbearance criteria, on an expedited basis.

511. The Commission also notes that Aliant Telecom does not, at this time, qualify for the transitional measure of the removal of the local winback rule as set out above. While Aliant Telecom has lost more than 20 percent of its market share in the Halifax LFR, based on reports received by the Commission from Aliant Telecom covering the three-month period ending in December 2005, 50 percent of Aliant Telecom's three-month average performances for each competitor indicator were at or above the minimum standard required by Decision 2005-20. Therefore it has not achieved sufficient results over the last three reported months on its competitor Q of S indicators in its serving territory to meet that criterion for the lifting of the local winback rule in the Halifax LFR.

X. *Application for local forbearance*

512. ***The Commission will establish a process for dealing with applications for local forbearance filed pursuant to the framework set out in this Decision.***

513. ***In an application for local forbearance, the ILEC should provide evidence that it has satisfied all the criteria referred to in paragraph 242 or indicate that it will make the demonstration referred to in paragraph 242b) after filing the application. Each application should only be with reference to one relevant market and should list the tariff items and associated tariff numbers of the services for which the ILEC is requesting local forbearance.***

514. ***An application for local forbearance should be accompanied by a draft communications plan for the Commission's approval. The plan should describe how the ILEC intends to explain local forbearance to customers in the relevant market, provide information concerning the ongoing availability of stand-alone PES in the market and provide contact information for customers who have questions or concerns***

515. ***If an applicant ILEC is making applications for a number of contiguous local exchanges, the ILEC may request that the Commission determine those applications together.***

516. ***The applicant ILEC will, prior to filing, serve a copy of its application on all registered CLECs and any other known TSP providing local exchange service in the relevant market. Other parties that may be interested in commenting on such applications for local forbearance will be responsible for monitoring the Commission's website in order to be aware of when such applications have been filed.***

517. ***The Commission will post the application to its website once it is received. The Commission notes that applications that are deficient in providing all of the required information, or that are not accompanied by all of the required documents, will be returned to the applicant ILEC.***

518. ***The Commission notes that it may request that the applicant ILEC or others provide further information or documents that it considers necessary to determine whether local forbearance is warranted.***

519. ***In establishing a process for dealing with applications for local forbearance, the Commission considers it important to provide a process that allows for timely decisions to be rendered for those applications. Consequently, if the ILEC provides all the required information and documents in the required form, the Commission undertakes, subject to paragraphs 520 to 522, to complete its analysis of, and render its decision respecting applications which rely on paragraph 242a) (ii) or (iii) within 120 days after the day on which the application is received.***

520. ***Applications for local forbearance that propose a division of business local exchange services into multiple relevant markets will not be subject to the undertaking.***

521. ***If the applicant ILEC indicates in its application that it will make the demonstration referred to in paragraph 242b) after filing the application, the Commission will commence its analysis of the application, but the application will not be subject to the undertaking.***

522. ***Applications for local forbearance that relate to local exchanges that are located wholly or partially within the census metropolitan area of Calgary, Edmonton, Halifax, Hamilton, London, Montreal, Ottawa-Gatineau, Quebec City, Toronto, Vancouver or Winnipeg, will be given priority by the Commission.***

Special circumstance

523. ***If, prior to granting local forbearance, the Commission is informed that the ILEC's application is based on competition in the relevant market from an independent fixed-line telecommunications service provider that, including all of its affiliates, has less than 20,000 local exchange services customers in Canada, the forbearance will not be effective until at least 18 months after the day on which the service provider began providing local exchange services in that market.***

524. ***Paragraph deleted***

525. ***Paragraph deleted***

526. ***Paragraph deleted***

527. ***Paragraph deleted***

528. ***Paragraph deleted***

529. ***Paragraph deleted***

530. ***Paragraph deleted***

531. ***Paragraph deleted***

532. ***Paragraph deleted***

533. ***Paragraph deleted***

534. ***Paragraph deleted***

535. ***Paragraph deleted***

Secretary General

Appendix A of the Decision is repealed.

Competitor Q of S indicators		
Indicators	***Title***	***Standard***
Indicator 1.8	***New Unbundled Type A and B Loop Order Service Intervals Met***	***90% or more***
Indicator 1.9	***Migrated Unbundled Type A and B Loop Order Service Intervals Met***	***90% or more***
Indicator 1.10	***LNP Order (Standalone) Service Interval Met***	***90% or more***
Indicator 1.11	***Competitor Interconnection Trunk Order Service Interval Met***	***90% or more***
Indicator 1.12	***Local Service Requests, Confirmed Due Dates Met***	***90% or more***
Indicator 1.19	***Confirmed Due Dates Met - CDN Services and Type C Loops***	***90% or more***
Indicator 2.7	***Competitor Out-of-Service Trouble Reports Cleared within 24 hours***	***80% or more***
Indicator 2.9	***Competitor Degraded Trouble Reports Cleared within 48 hours***	***90% or more***
Indicator 2.10	***Mean Time To Repair (MTTR) - CDN Services and Type C Loops***	***4 hours or less***

LEC obligations maintained on ILECs

The Commission notes that the following obligations will apply to all ILECs in forborne markets:

- provide wireless service provider interconnection and equal access to inter-exchange service providers;
- provide reciprocal interconnection, bill and keep arrangements, and a POI;
- implement LNP as approved by the Commission;
- connect the caller with the appropriate emergency centre for 9-1-1 call direction and provide Automatic Location Identification information for E9-1-1 to be passed to the emergency centre where available;
- provide MRS;
- pay contribution based on a percentage of their Canadian telecommunication services revenues, subject to certain exceptions and less certain deductions. LECs are eligible to receive benefits from the contribution regime on a per-NAS basis;
- satisfy all existing and future regulatory requirements designed to protect customer privacy. These include the following: (1) delivery of the privacy indicator when invoked by an end-customer; (2) provision of automated universal per-call blocking of calling line identification; (3) provision of per line call display blocking to qualified end-customers; (4) disallowance of Call Return to a blocked number; (5) enforcement of the Commission's restrictions on Automatic Dialing-Announcing Devices, Automatic Dialing Devices, and unsolicited facsimiles; and (6) provision of universal Call Trace;
- comply with the Commission's rules regarding the confidentiality of customer information;
- provide, upon request, the following information:

  (1) LCA boundaries;

  (2) details of all service options, with applicable prices;

  (3) details of all potentially applicable service charges;

  (4) policy on access to enhanced service providers;

  (5) available special needs services; and

  (6) information respecting privacy, including the company's responsibilities with regard to protecting the confidentiality of customer records;

- provide to customers the following information, prior to contracting for service:

  (1) billing frequency and payment policy;

  (2) disconnection policy;

  (3) security deposit policy;

  (4) policy on directories;

  (5) the name and address of the company providing service to the customer;

  (6) a toll-free telephone number from which the customer can obtain further information or lodge a complaint;

  (7) billing date;

  (8) due date for payment;

  (9) interest rate applicable to late payments;

  (10) information with respect to access to 9-1-1 service and MRS, including customer charges, if any; and

  (11) information with respect to safety and privacy protection;

- provide to subscribers, upon request, billing statements in Braille, large print, on computer diskette, or in any other alternative format mutually agreed upon between the LEC and the subscriber;

- provide to subscribers, upon request, bill inserts informing them about new services or changes in rates for existing services, and any bill inserts mandated from time to time by the Commission, in Braille, large print, on computer diskette, or in any other alternative format mutually agreed upon between the LEC and the subscriber;

- provide to visually-impaired subscribers an insert in Braille advising such subscribers of the availability, upon request, of billing statements and bill inserts in alternative formats;

- as a condition of providing telecommunications service in an MDU, LECs are required (1) to ensure that LECs serving end-users in a MDU have access to end-users in that MDU on a timely basis, by means of resale, leased facilities or their own facilities, at their choice, under reasonable terms and conditions; (2) to disclose on their website all terms and conditions, including fees, of any written access agreement concluded with the building owner of that MDU within 30 days of having reached or amended the agreement; (3) to disclose on its website, all terms and conditions, including fees, of any unwritten access agreement concluded with the building owner of that MDU, within 30 days of having received a request from any other LEC operating in the same area; (4) to disclose on its website all terms and conditions, including fees, of any written access agreement concluded with the building owner for the installation of telecommunications facilities during the construction of that MDU, within 10 days of having reached such an agreement; (5) to provide notice, on its website, of any unwritten access agreement concluded with the building owner for the installation of telecommunications facilities during the construction of that MDU, within 10 days of having reached such an agreement and to disclose on its website all terms and conditions, including fees, of such an agreement, within 10 days of having received a request from any other LEC operating in the same area;

- provision of 9-1-1/E9-1-1 service by LECs offering fixed local VoIP services, where the end-user is assigned an NPA-NXX native to any of the local exchanges within the region covered by the customer's serving public safety answering point (PSAP), to provide 9-1-1/E9-1-1 service;

- inclusion by all LECs, as a condition of providing telecommunications services to local VoIP service providers, in their service contracts or other arrangements with these service providers, the requirement that the latter provide, with their fixed local VoIP services, 9-1-1/E9-1-1 in accordance with the Commission's specifications;

- provision of 9-1-1 service by all LECs supporting nomadic local VoIP services or fixed/non-native local VoIP services, including ensuring that a 9-1-1 call originating from a local VoIP service is not routed to a PSAP that does not serve the geographic location from which the call is placed;

- inclusion by all LECs, as a condition of providing telecommunications services to local VoIP service providers, in their service contracts or other arrangements with these service providers, the requirement that the latter provide, with their nomadic local VoIP services or fixed/non-native local VoIP services, 9-1-1 service in accordance with the Commission's specifications;

- provision of initial customer notification to customers of local VoIP service, regarding any limitations that may exist with respect to 9-1-1/E9-1-1 service, before service commencement;

- notification to customers of local VoIP service, during service provision, of any limitations that may exist with respect to 9-1-1/E9-1-1 service;

- receipt, prior to commencement of local VoIP service, of the customer's express consent, by which the customer acknowledges his/her understanding of the 9-1-1/E9-1-1 service limitations;

- ensure that information regarding limitations on 9-1-1/E9-1-1 service is accessible to persons with visual disabilities;

- inclusion by all LECs, as a condition of providing telecommunications services to local VoIP service providers, in their service contracts or other arrangements with these service providers, the requirement that the latter abide by the Commission's directions on customer notification regarding the limitations on 9-1-1/E9-1-1 service;

- extension of the existing regulatory requirements designed to protect customer privacy apply to all local VoIP service providers, to the extent technically feasible; and

- receipt, prior to the commencement of service, of the customer's express acknowledgement of the extent to which the customer privacy safeguards are not available with their local VoIP services, and inclusion in their service contracts or other arrangements with local VoIP service providers the requirement that these service providers obtain the customer's express acknowledgement of the extent to which privacy safeguards are not available with their local VoIP services.

The Commission notes that by virtue of the underlying LECs' obligations, resellers of local exchange services are to meet the service requirements mandated by the Commission.

Appendix D of the Decision is repealed.

Appendix E of the Decision is repealed.