



## Telecom Decision CRTC 2006-75

Ottawa, 23 November 2006

### Rate ranges for services other than voice over Internet Protocol services

Reference: 8661-C12-200606965

*In this Decision, the Commission renders its determinations in the proceeding initiated by Rate ranges for services other than voice over Internet protocol services, Telecom Public Notice CRTC 2006-8, 9 June 2006. The Commission determines that rate ranges would generally be appropriate for local exchange and related services, with exceptions for certain services in recognition of the importance of services with regard to such matters as public safety, protection of privacy, and accessibility for persons with disabilities. Further, the Commission considers that it would generally be appropriate not to require the public disclosure of rate ranges. When an incumbent local exchange carrier (ILEC) establishes a new operative price point within an approved rate range, it will be required to issue revised tariff pages identifying that price point no later than the commencement of the business day that the change is to be effective, or on an earlier day if the change is to be effective on a non-business day. The Commission notes that the use of rate ranges will permit an ILEC to change rates within an approved range, at any time, without delay and without the requirement to file a tariff application and obtain Commission approval, thus reducing regulatory burden for both the ILECs and the Commission. The rate range regime outlined in this Decision will be subject to the Commission's pricing constraints and safeguards in place for the larger incumbent telephone companies.*

### Background

1. In *Rate ranges for services other than voice over Internet protocol services*, Telecom Public Notice CRTC 2006-8, 9 June 2006 (Public Notice 2006-8), the Commission initiated a proceeding to consider the establishment of appropriate guidelines for the filing of applications involving rate ranges for services other than voice over Internet Protocol (VoIP) services. In particular, the Commission indicated that there was a need to set clear guidelines regarding the use of rate ranges in order to provide greater clarity and regulatory certainty to the industry, and to assist the Commission in dealing with applications involving rate ranges for services other than VoIP services in a timely fashion. The Commission invited parties to comment on the services or groups of services for which, and the circumstances under which, rate ranges would be appropriate, and on any other regulatory issues related to rate ranges.
2. The Commission also noted that it had received three applications requesting approval of rate ranges for certain services other than VoIP services. The three applications were the following:
  - Saskatchewan Telecommunications (SaskTel) *ex parte* Tariff Notice 107 (TN 107), dated 29 March 2006, in which SaskTel proposed the addition of item 300.05 – Feature Package to its General Tariff;

- Bell Canada Tariff Notice 6946 (TN 6946), dated 9 May 2006, in which Bell Canada proposed to introduce a market trial of a new service charge option for eligible business and wholesale customers; and
  - Bell Canada Tariff Notice 6947 (TN 6947), dated 11 May 2006, in which Bell Canada proposed revisions to item 2180 – PrimeLine Executive service of its General Tariff.
3. The Commission approved SaskTel TN 107 on an interim basis in *Saskatchewan Telecommunications – Ex parte application*, Telecom Order CRTC 2006-143, 9 June 2006 (Order 2006-143), with the exception of the company's proposed rate range. The Commission noted in Order 2006-143 that final disposition of SaskTel's application would occur when the decision resulting from the Public Notice 2006-8 proceeding was issued.
  4. The Commission approved Bell Canada TN 6946 on an interim basis in *Bell Canada – Accelerated Delivery Interval – Market Trial*, Telecom Order CRTC 2006-142, 9 June 2006 (Order 2006-142). In Order 2006-142, the Commission considered that a company conducting market trials should be allowed to vary the price within a range during the market trial period to establish the demand-price relationship without having to obtain Commission approval. The Commission was of the view that given that market trials were of limited scope and duration, and were normal business instruments to set prices for new services, the ability of Bell Canada to change prices in the short term for its proposed market trial was acceptable. In Telecom Order CRTC 2006-279, 19 October 2006, the Commission approved Bell Canada Tariff Notice 6946A on an interim basis, extending the company's market trial until 28 November 2006.
  5. In Public Notice 2006-8, the Commission deferred consideration of Bell Canada TN 6947 pending the decision resulting from the Public Notice 2006-8 proceeding.

## **Process**

6. The Commission received comments, all dated 14 July 2006, from: the Consumer Groups; Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and SaskTel; Bell Canada, NorthernTel, Limited Partnership, and Société en commandite Télébec (collectively, the Bell Companies); Cogeco Cable Inc., Quebecor Media Inc., Rogers Communications Inc., and Shaw Communications Inc. (collectively, the Cable Companies); MTS Allstream Inc. (MTS Allstream); and TELUS Communications Company (TCC).
7. The Commission received reply comments, all dated 28 July 2006, from the Consumer Groups; Bell Aliant, SaskTel, and the Bell Companies (collectively, Bell Canada et al.); the Cable Companies; MTS Allstream; and TCC.

## **Positions of parties**

### **The Bell Companies**

8. The Bell Companies supported the use of rate ranges and the filing of rate ranges in confidence, with respect to all markets and services except in the limited circumstances where there was a compelling public policy reason for restricting the use of rate ranges. The Bell Companies argued

that the onus should be on any party opposing rate ranges to demonstrate a compelling policy rationale for not permitting their use in a particular filing.

9. The Bell Companies submitted that a market trial using a rate range would allow a company to assess market responses to different rates and to evolve its pricing strategy over the course of the trial. The Bell Companies also submitted that rate ranges would assist service providers when they were considering withdrawing a product or service and wished to create an incentive for customers to move to alternatives.
10. The Bell Companies argued, however, that rate ranges would not be appropriate for tariff elements relating to emergency services (such as 9-1-1 service) and social protection services (such as Message Relay Service [MRS]) as these services represented social obligations and their rates should not fluctuate based on market forces.
11. The Bell Companies indicated that they were not taking a position as to whether rate ranges were appropriate for Competitor Services; in their view, the appropriateness of rate ranges for such services could be considered in the context of a proceeding to review the regulatory treatment of Competitor Services.
12. The Bell Companies noted that, under the current price cap regime, the average price of services within certain baskets was only permitted to change in accordance with an overall basket constraint. As well, rate element constraints apply for some services, which limit the amount of increases that could be made in any given year to a predetermined maximum amount.
13. With regard to the treatment of rate ranges in the context of the current price cap regime, the Bell Companies noted that, while no predetermined constraint applied on rate increases for uncapped services, rate decreases must pass an imputation test. They argued that the establishment of a range of rates for an uncapped service raised no price cap concerns provided the minimum rate met or exceeded the price floor established by an imputation test.
14. In the case of rate ranges approved for new services, the Bell Companies proposed that the maximum rate would be used in the service basket index (SBI) calculation and submitted that the rate range would only be permitted if the resultant SBI was less than or equal to the corresponding service basket limit (SBL). For new services subject to a rate element constraint, the Bell Companies proposed that the most that the maximum of the range could rise above current rates would be the rate element constraint that applied to services in the basket.
15. For a service that was already subject to established price cap constraints, the Bell Companies submitted that approval of minimum and maximum rates for any associated rate element(s) could be implemented in a manner that was price cap compliant. For example, the Bell Companies proposed that the most that the maximum of the range could be set above current rates would be subject to any applicable rate element constraint. The Bell Companies submitted that any increase in prices at the rate element level that was within the rate element constraint could only be undertaken if the SBI for the basket was less than or equal to the corresponding SBL; they argued that, otherwise, the overall basket constraint would be violated. The Bell Companies added that satisfaction of the overall basket constraint might require that prices for other rate

elements in the basket be modified in order to accommodate a rate change for the element(s) subject to a minimum and maximum rate, even though the proposed rate change for the rate element in question was within the approved rate range.

16. The Bell Companies noted that the Commission had already approved several rate range tariff proposals with respect to VoIP services, and that these filings involved a rate range filed in confidence with the Commission and a public rate in the tariff which reflected the single rate the service provider was charging for the service at the time. The public rate could be changed within the rate range without extensive filing requirements or Commission approval with the filing of an amended tariff page. The Bell Companies supported this rate range model and submitted that it should be available for a wide range of tariff filings.
17. The Bell Companies also proposed an enhancement to this existing process which, in their view, would increase the competitive and regulatory benefits of rate ranges. Specifically, the Bell Companies proposed the option of a range within a range. For a given tariff element, there would be an absolute rate range with confidential minimum and maximum rates. The minimum rate in the absolute rate range would have to meet the imputation test. There would also be a smaller, public rate range, within the larger absolute rate range, within which the service would be priced at any given time. Service providers could change the public rate range at any time by issuing an amended tariff page showing the amended rate range, which would not require Commission approval. Commission approval would only be required for amendments to the confidential absolute rate range. The actual rate being charged, at any point in time, would not be known to either the public or the Commission. The Bell Companies proposed that companies filing public rate ranges be required to certify annually that no rate was charged that did not fall within the public rate range applicable at any given time.
18. The Bell Companies submitted that their range-within-a-range proposal would comply with existing regulatory safeguards, including the imputation test, the price cap regime, the requirement that rates be just and reasonable, the prohibition on rate de-averaging, and the restrictions on promotions. However, instead of providing detailed supporting information such as imputation tests or price cap compliance demonstrations at the time of filing, the applicant would provide a statement of compliance complete with a checklist attesting that the filing adhered to the applicable list of regulatory requirements. The Bell Companies indicated that this could be accomplished through a negative disallowance tariff approval regime.
19. The Bell Companies submitted that the use of rate ranges would reduce the regulatory burden on the Commission and carriers filing tariffs, and as well reduce regulatory delay as there would be no need for separate approvals of changes in public rates as long as the rate or range of rates fell within the approved absolute rate range.

#### **Bell Aliant and SaskTel**

20. Bell Aliant and SaskTel submitted that the approval of a rate range was no different than the approval of a series of applications for the same service proposing a rate, and that the continued use of regulatory measures such as *ex parte* treatment for tariff applications and the filing of information on a confidential basis should be available to companies proposing rate ranges in the same way as they applied to companies filing an application in which a single rate was proposed.

21. Bell Aliant and SaskTel submitted that a broad use of rate ranges could potentially decrease the number of tariff applications required for a service if applications proposing rate ranges were not subject to any additional regulatory hurdles and if a more progressive approach were taken to consider ranges within ranges or other such enhancements. Further, there would be some operational efficiency gains, greater certainty for budget and resource allocations, and certainty that collateral materials could be developed and printed in advance and that marketing campaigns could start on a specific date.

#### **TCC**

22. TCC submitted that rate ranges should be permitted and approved for all services facing any degree of competition. TCC added that all such services should be permitted to be offered with rate ranges specifying a minimum or maximum rate or both.

23. TCC submitted that the maximum rate would be constrained by the treatment afforded the service within the price cap framework. TCC submitted that the minimum pricing constraint for all services should be short-run incremental cost plus any tariffed rates that must be imputed.

24. TCC submitted that applications for rate ranges for services should be filed in confidence, along with supporting economic studies, and that the ranges should not be disclosed for competitive reasons. The Commission should approve or deny applications for rate ranges expeditiously because, by definition, rate ranges were sought in order to respond to competition.

25. TCC submitted that once a rate range was established, the carrier should be permitted to respond to its competitors with prices within the approved range with only a requirement to notify the Commission in writing of the new rate within 24 hours of making the rate change. This would reduce the regulatory lag and burden on both the Commission and incumbents and it would ensure that consumers benefit promptly from competition. It would also permit incumbent providers some flexibility to respond to competition.

#### **MTS Allstream**

26. MTS Allstream submitted that rate ranges should only be approved for those services that were offered in competitive situations where confidentiality of the range of rates must be maintained for competitive reasons. In non-competitive situations, market conditions would not warrant increased flexibility in the setting of rates, and there would be no justification to keep the ranges confidential. MTS Allstream expressed its concern that confidential rate ranges could, in some cases, be used as a backdoor means of obtaining further pricing flexibility without the thorough analysis that was necessary. MTS Allstream submitted that an evidentiary basis for any rate range would be necessary and, therefore, a tariff application proposing approval of a range of rates for a service must include sufficient information to establish that competitive conditions existed for that service such that the specific direct harm likely to result from disclosure of the rate range would outweigh the public interest in its disclosure.

27. MTS Allstream submitted that all existing pricing rules, such as those related to the imputation test, promotions, bundling, and rate de-averaging, should continue to apply to services that were approved on the basis of a range of rates. In addition, guidelines for the filing and approval of rate ranges must recognize the principle of technological neutrality which underlies the regulatory framework for local competition.

28. MTS Allstream submitted that the existing process already being applied in respect of VoIP services, where a confidential range of rates had been approved by the Commission, could be applied to all services for which confidential rate ranges were established. MTS Allstream submitted that customers should be provided with 30 days advance notification of price increases.

### **The Cable Companies**

29. The Cable Companies were of the view that rate ranges should not be permitted for: any service which was offered at a rate which was below cost, such as primary exchange service (PES) in high-cost serving areas (HCSAs); Competitor Services; or services that fulfilled specific social policy objectives such as public safety (e.g. 9-1-1 services), the protection of privacy (e.g. per-call blocking), or ensuring accessibility for persons with disabilities (e.g. MRS).
30. The Cable Companies submitted that the maximum rate in the range must comply with the pricing constraints imposed by the price cap regime and should be treated as the price actually charged by the incumbent local exchange carrier (ILEC) for price cap purposes. If an ILEC chose to charge a rate lower than the maximum rate, that should be viewed as a business decision which should not grant the ILEC greater pricing flexibility in respect of other services within the same basket. It would be unduly complex from an administrative and regulatory perspective to take any other approach to the application of the price cap mechanism.
31. The Cable Companies submitted that the same rate should be charged to all customers of a regulated service to ensure that rate ranges were not used by an ILEC as a mechanism to introduce further rate de-averaging within a band or other forms of price discrimination between customers of the same service. The minimum rate in a rate range must satisfy the Commission's price floor safeguards.
32. The Cable Companies submitted that the operative price points for services involving confidential rate ranges should be disclosed at any given time by issuing tariff pages and providing copies to the Commission, in confidence, two business days in advance. Further, the Cable Companies submitted that, in the case of a rate increase, customers should be provided with 30 days advance notification of a price change.

### **The Consumer Groups**

33. The Consumer Groups submitted that rate ranges would afford ILECs greater competitive flexibility, and consumers could benefit from such increased competitiveness in the form of lower prices and innovative service offerings. The Consumer Groups argued that establishing appropriate guidelines would minimize the risk of the ILECs taking advantage of the flexibility where competition was not sufficient to protect the interests of consumers.
34. The Consumer Groups submitted that price protection afforded for basic residential services in past Commission determinations must be maintained. The Consumer Groups were of the view that the Commission should not permit rate ranges for residential PES on a stand-alone basis, touch-tone, primary directory listing, connection charges, late payment charges, interest charges, and non-sufficient funds cheque charges.

35. The Consumer Groups submitted that ILECs should have the flexibility to offer rate ranges for discretionary services such as optional local services, bundles of residential PES, and forbore services. The Consumer Groups argued that granting approval to rate ranges for discretionary residential services would strike an appropriate balance between affording ILECs with the flexibility to respond to competitive pricing and protecting the interests of consumers.
36. The Consumer Groups submitted that the ILECs should not be permitted the flexibility to charge non-targeted customers the maximum permitted under an approved rate range while lower prices were offered to other customers who may have switched, or are considering switching, to a competitor. Vulnerable and uncontested customers who have few or no competitive alternatives should not be discriminated against by being denied the option of attractively priced offers.
37. The Consumer Groups submitted that rate ranges may be justified for competitive reasons but could leave customers exposed to considerable financial risk, and noted that customers would have no way of knowing in advance that the price of the package could increase or by how much. The Consumer Groups submitted that customers should receive a minimum of 30 days advance notice of any price increase. The Consumer Groups also argued that consumers should be provided with unambiguous, detailed information on the terms, including contract obligations and any penalties for cancelling the service for any other reason. The Consumer Groups added that consumers would be protected from the financial risk if, upon receiving notification of a price increase, they were afforded a penalty-free option of cancelling a contract or switching to another service.
38. The Consumer Groups submitted that the ILECs should be required to issue amended tariff pages that reflected the new rate on or before the date that the rate was to come into effect, and that the effective date for the rate should be clearly indicated on the tariff page. The Consumer Groups also submitted that the ILECs should be required to file the revised tariff page with the Commission as well as make it available through their own websites and customer service representatives.

### **Parties' reply comments**

#### **Bell Canada et al.**

39. Bell Canada et al. submitted that MTS Allstream's proposal that rate ranges and confidential absolute ranges should only be permitted when a competitive situation existed would be extremely burdensome to administer, virtually impossible to implement, prove extremely contentious, and give rise to endless debates. Bell Canada et al. added that MTS Allstream's proposal also had the disadvantage that, once a rate range had been disclosed, the harm done to a company by the disclosure could not subsequently be remedied.
40. Bell Canada et al. were opposed to the Commission mandating an advance customer notice period for rate increases. Bell Canada et al. submitted that the telephone companies' respective Terms of Service specifically direct that changes to tariffs, including rate changes, were effective as of the effective date approved, regardless of whether customers had been notified of the change. Bell Canada et al. argued that all rates within a range would be approved in advance as just and reasonable. Bell Canada et al. noted that the Commission had not established a general

requirement for advance notice to customers of changes to single-rate tariffs, and there was nothing unique about rates under a range of rates that would trigger a new obligation.

Bell Canada et al. noted that the telephone companies often gave advance notice to customers of rate increases and would continue to do so in the future in appropriate circumstances.

41. Bell Canada et al. submitted that the Commission should reject the Consumer Groups' proposal that basic residential services should not be eligible for a rate range when offered on a stand-alone basis, arguing that the Consumer Groups had erroneously assumed that rate ranges were equivalent to full forbearance.
42. Bell Canada et al. noted the Consumer Groups' proposal that consumers with long-term contracts should be permitted to terminate their contracts without penalty if there were a rate change during the duration of the contract. Bell Canada et al. submitted that there was no such requirement in the case of price changes applicable to single-rate tariffs and there was no compelling reason to impose such a requirement with respect to tariffs containing rate ranges.

#### **MTS Allstream**

43. MTS Allstream disagreed with the Bell Companies' position that rate ranges would benefit consumers with more responsive pricing and more price competition, even where there was no price competition or competitive market behaviour. MTS Allstream submitted that competitive market forces did not exist to provide price discipline in the marketplace for those services in relation to which there was little or no competition. MTS Allstream added that, without competitive prices to respond to, there would be no incentive for an ILEC to reduce its prices and no need for pricing flexibility using confidential approved rate ranges.
44. MTS Allstream submitted that confidential rate ranges should only be permitted on a case-by-case basis where there was a demonstrated need for such ranges in the public interest, and any request for additional pricing flexibility made in association with a request for a rate range must be explicitly made in the tariff application. MTS Allstream was of the view that the Bell Companies' range-within-a-range proposal could be used as an implicit means of circumventing other regulatory rules. In particular, MTS Allstream argued that it was not clear what the purpose of a range within a range would be unless it was to engage in rate de-averaging or other anti-competitive conduct.

#### **TCC**

45. TCC noted MTS Allstream's submission that ILECs be required to provide evidence of competitive conditions in order to justify the confidentiality of the range. TCC submitted that MTS Allstream's proposal spoke more to increasing the regulatory and administrative burden on ILECs and the Commission than to recognizing the need for competitive flexibility and greater consumer benefits.
46. TCC argued that rates for tariffed services were approved as of the effective date and no further notice requirements were warranted. TCC noted that the 30-day advance notice proposed by some parties went beyond TCC's General Terms of Service which do not require any specific notification process. In addition, TCC argued that notification requirements would fundamentally frustrate the very purpose of having a range of rates, that is, to respond to competitive

circumstances. TCC argued that the publication of rate changes 30 days in advance would signal to competitors ILEC price changes and provide them with an undue advantage. TCC noted that it suspected that most, if not all, carriers advised their customers as soon as possible of rate changes in the interest of customer service and relations.

### **The Cable Companies**

47. The Cable Companies agreed with the Bell Companies' suggestion to consider the appropriateness of rate ranges for Competitor Services in the context of a proceeding to review the treatment of those services. However, they submitted that the Commission should make clear in its decision that rate ranges would not be permitted for Competitor Services in the meantime. The Cable Companies also agreed with the Bell Companies that it would not be appropriate to permit rate ranges for services which represented social obligations for telecommunications service providers, since their availability was not driven by market forces. With regard to services offered below cost, the Cable Companies were of the view that there was no room for the establishment of rate ranges.
48. The Cable Companies opposed the Bell Companies' range-within-a-range proposal because it would create a potential for price discrimination among customers and for a violation of the rate de-averaging prohibition. The Cable Companies further argued that it would make it difficult and cumbersome for the Commission to ensure that regulated services involving rate ranges were offered in compliance with all existing pricing rules or applicable regulatory safeguards. The Cable Companies submitted that, in order to avoid any competitive disputes in the future, the Commission should make a clear declaration that proposed rate ranges must be compliant with all existing pricing rules and regulatory safeguards.
49. The Cable Companies submitted that the Bell Companies' proposal with respect to a negative disallowance tariff approval regime and certification process was beyond the scope of this proceeding.

### **The Consumer Groups**

50. The Consumer Groups agreed with the Bell Companies and the Cable Companies that the guidelines for rate ranges should exclude emergency services/9-1-1 and MRS. The Consumer Groups noted that the Commission's price cap regime provided that the rates for these services must be frozen. The Consumer Groups submitted that it would be inconsistent with the existing price cap regime to allow rate ranges for these services or any other service for which the rates had been frozen.
51. The Consumer Groups disagreed with the Bell Companies' submission that the onus should be on any party opposing rate ranges to demonstrate a compelling policy rationale for not permitting their use in a particular filing. They argued that placing such a burden on interveners would be unreasonable, and that the Bell Companies' submission was inconsistent with the Commission's current regulatory framework that required the party filing the tariff to demonstrate that rates were just and reasonable.

52. The Consumer Groups submitted that under the Bell Companies' range-within-a-range proposal, the ILECs could use rate ranges to engage in price discrimination against vulnerable and uncontested customers by charging different customers different rates within the public range for the same service at any given time.

53. The Consumer Groups submitted that adequate notification was required for price increases that would affect existing customers, and expressed concern that, absent more specific provisions, the form of notification used may be inadequate. They proposed that guidelines similar to those established by the Commission in *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, for a communications plan to be used by ILECs when they were applying for forbearance, should be used for the provision of information to customers respecting rate increases.

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

54. After reviewing all of the parties' submissions noted above, the Commission addresses the following within the context of this proceeding:<sup>1</sup>

1. Types of services for which rate ranges would be appropriate
2. The Bell Companies' "range-within-a-range" proposal
3. Regulatory framework issues

#### **Types of services for which rate ranges would be appropriate**

55. The Commission notes that, while there was general agreement among parties to this proceeding that rate ranges would be appropriate for many non-VoIP services, the parties submitted that rate ranges would not be appropriate for certain types of such services. Cognizant of these reservations, which are addressed below, the Commission is of the view that rate ranges would provide ILECs with increased pricing flexibility, and would also reduce the regulatory burden for the ILECs as well as the Commission by reducing the number and complexity of tariff applications. Subject to certain conditions outlined below, the Commission considers that rate ranges would generally be appropriate for local exchange services and other services.

56. The concerns raised by the parties to this proceeding relating to the use of rate ranges for certain types of services are summarized as follows:

- Bell Canada et al. submitted that rate ranges would not be appropriate for tariff elements relating to emergency services (such as 9-1-1) and social protection services (such as MRS). The Cable Companies submitted that rate ranges should not be permitted in respect of services which had been established to fulfill a specific social policy such as public safety (e.g. 9-1-1 services), the protection of privacy (e.g. per-call blocking), or

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<sup>1</sup> Orders relating to the final disposition of Bell Canada TN 6946, Bell Canada TN 6947, and SaskTel TN 107 are being issued concurrently with the release of this Decision.

ensuring accessibility for persons with disabilities (e.g. MRS). The Consumer Groups were of the view that the guidelines for rate ranges should exclude emergency services/9-1-1 and MRS.

- The Cable Companies further submitted that rate ranges should not be permitted for services which are offered below cost such as PES in HCSAs.
- While TCC considered that rate ranges should be permitted for all services facing any degree of competition, MTS Allstream was of the view that rate ranges should only be approved for services that are offered where there was sufficient competition.
- The Consumer Groups were of the view that the Commission should not permit rate ranges for residential PES on a stand-alone basis, touch-tone, primary directory listing, service connection charges, late payment charges, interest charges, and non-sufficient funds cheque charges.

57. The Commission notes that there was general agreement among the parties to this proceeding that rate ranges should not be permitted for services established to fulfill specific social policy objectives. The Commission notes that, under the current price cap regime, the rates for the following services, among others, are frozen in recognition of their importance with regard to such matters as public safety, protection of privacy, and accessibility for persons with disabilities: toll restriction; call display blocking; partial payment provisions; unlisted numbers; 9-1-1 service; MRS; call blocking service; and 900 call denial/blocking services. The Commission is of the view that the use of rate ranges would generally not be appropriate for services established to fulfill specific social policy objectives.

58. With regard to the Cable Companies' submission that rate ranges should not be permitted for services that are priced below cost, such as PES in HCSAs, the Commission considers that rate ranges for these services would generally be appropriate, provided that the minimum rate in the proposed range is the current rate. For example, the Commission considers that it would be reasonable to permit an ILEC to propose a rate range that would allow it to raise residential rates in HCSAs in order to move towards recovering its costs. This would permit the subsidy to be reduced and customers would be protected from unreasonably high rates by the price cap constraints and safeguards referred to in paragraphs 61 and 62 of this Decision, as the maximum rate in the range could not exceed the maximum permitted under the price cap rules.

59. In regard to the appropriateness of rate ranges under competitive conditions and the view that rate ranges should not be permitted for PES on a stand-alone basis and for various related services, the Commission notes that its current regulatory framework includes safeguards that constrain certain aspects of the ILECs' ability to set prices for their services.

60. In *Promotions of local wireline services*, Telecom Decision CRTC 2005-25, 27 April 2005, the Commission determined that ILEC promotions in the local wireline market were permitted, subject to a number of safeguards. In *Review of price floor safeguards for retail tariffed services*

*and related issues*, Telecom Decision CRTC 2005-27, 29 April 2005, the Commission set out a number of pricing safeguards with regard to retail tariffed services including those with respect to the imputation test as well as service bundles.

61. The current price cap regime, established by the Commission in *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002, includes (a) the assignment of the ILECs' tariffed services to various baskets, and (b) pricing constraints for services in the capped service baskets in order to provide customers of capped services with price protection. Applicable pricing constraints vary depending on the service basket, and may include:
  - a basket constraint, operating through the SBL for that basket which on an annual basis adjusts revenues of the services in the basket upwards or downwards by the rate of inflation less, in some cases, the productivity offset, and
  - a rate element constraint limiting rate increases for certain capped services to a predetermined factor per year.
62. In addition, there is a safeguard which specifies that rates for capped as well as uncapped services should not generally be permitted to be further de-averaged within a band.
63. The Commission notes that the framework for rate ranges is subject to the constraints and safeguards of the current regulatory framework, including the existing price cap regime. The Commission also notes that its price cap constraints and safeguards, including the further rate de-averaging rule, are under review in the proceeding initiated by *Review of price cap framework*, Telecom Public Notice CRTC 2006-5, 9 May 2006 (Public Notice 2006-5), and the framework for rate ranges will be subject to those constraints and safeguards of the price cap regime that will be announced as a result of that proceeding.
64. As noted above, the Commission is of the view that rate ranges would provide ILECs with increased pricing flexibility, and would also reduce the regulatory burden for the ILECs as well as the Commission. The Commission notes that the framework for rate ranges will be subject to the Commission's pricing constraints and safeguards. As noted above, the Commission considers that rate ranges would generally be appropriate for local exchange services.
65. The Commission notes that the Bell Companies specifically identified both market trials and circumstances where a service was to be withdrawn as being suitable for rate ranges.
66. The Commission considers that the use of rate ranges for market trials would be appropriate in order to allow the ILECs to test price points against the perceived value of the service/product under trial, and to quickly adjust the rate within the approved rate range, if necessary, based on customer reaction to the initial price level without having to obtain Commission approval.
67. The Commission notes that it has established procedures for the disposition of applications for the destandardization and/or withdrawal of tariffed services in *New procedures for disposition of applications dealing with the destandardization and/or withdrawal of tariffed services*, Telecom

Circular CRTC 2005-7, 30 May 2005. These procedures require the ILECs to demonstrate that destandardization and/or withdrawal of service is warranted, and show, among other things, that a reasonable substitute for the service is available.

68. In assessing an application for destandardization and/or withdrawal, the Commission examines whether the applicant has met certain criteria, one of which is the filing of a transition plan. The Commission notes that, in determining whether an appropriate transition plan exists, the Commission must ensure that the applicant has taken, or will take, all reasonable steps to ensure a smooth transition for affected customers from the potentially destandardized and/or withdrawn service to the substitute service.
69. The Commission is of the view that a smooth transition could involve the implementation of a series of price points, generally increasing in a consistent systematic manner. A rate range, however, could detract from such a smooth transition since it may lead to erratic fluctuations in price during the transition period. Accordingly, where an ILEC considers that rates should be increased to create an incentive for customers to move to an alternative service, the Commission considers that it would be more appropriate if the ILEC were to propose, in its application, a single proposed increased rate or a series of proposed rates with a schedule detailing the proposed price points and the proposed effective date of each price point.
70. The Commission notes that ILECs sometimes file special facilities tariffs (SFTs) which are typically associated with contracts and address particular customer requirements. The Commission considers that proposals for rate ranges for SFTs should be addressed on a case-by-case basis taking into account such particular customer requirements.
71. In addition, the Commission notes that the Bell Companies and the Cable Companies indicated that the appropriateness of rate ranges for Competitor Services should not be addressed in this proceeding, but in the context of a proceeding to review the regulatory treatment of those services. In this regard, the Commission notes that it has issued *Review of regulatory framework for wholesale services and definition of essential service*, Telecom Public Notice CRTC 2006-14, 9 November 2006, to initiate a proceeding to review the definition of an essential services and the regulatory framework for wholesale services. Included in the scope of that proceeding are the pricing principles that should be applicable for wholesale services. The Commission concludes that the matter of rate ranges for Competitor Services would be more appropriately addressed in that proceeding.

#### **The Bell Companies' "range-within-a-range" proposal**

72. Given the interrelationship between the Bell Companies' range-within-a-range proposal and the matter of further rate de-averaging being addressed in the Public Notice 2006-5 proceeding, the Commission is deferring its determination on the range-within-a-range proposal until it has made its determinations in the Public Notice 2006-5 proceeding.

## **Regulatory framework issues**

### ***Confidentiality of ranges***

73. The Commission notes that section 39 of the *Telecommunications Act* allows for the filing of information with the Commission in confidence, including commercial information that is confidential and that is treated consistently in a confidential manner by the person who submitted it, as well as information the disclosure of which could reasonably be expected to result in material financial loss or gain to any person, or to prejudice the competitive position of any person. The Commission is also empowered to order disclosure of such information if it determines that the specific direct harm likely to result from disclosure of that information would not outweigh the public interest in its disclosure.
74. The Commission notes that rate ranges should provide the ILECs with greater flexibility to respond to changing market conditions. The Commission considers that, in light of changing market conditions, it would generally be appropriate not to require the public disclosure of rate ranges as the specific direct harm likely to result from the disclosure of the rate ranges would generally outweigh the public interest in its disclosure.

### ***Price cap constraints***

75. With regard to uncapped services, the Commission notes that the current price cap regime imposes no upper pricing constraints on the rates for these services. Therefore, if an ILEC were to propose a rate range for an uncapped service, the Commission considers that it would be consistent with the current price cap regime for no upper pricing constraint to apply to the maximum rate in the range of rates.
76. With regard to existing capped services, the Commission considers that it is important that the rate ranges for existing capped services provide customers with the same protection against rate increases that they currently receive under the price cap regime. The Commission notes that the current price cap regime imposes two pricing constraints which operate at the level of the basket and at the rate element level. These constraints operate in tandem to protect customers of capped services from excessive price increases. A basket constraint places a limit on the extent to which the average price of services in a basket can increase - it requires that the SBI not exceed the SBL for that basket. A rate element constraint places a limit on the extent to which the rate for a particular service element can increase. The Commission considers that the following approach would provide customers who subscribe to capped services in a rate range regime with no less price protection than that which they currently receive under the price cap regime.
77. When a rate range is first proposed for an existing capped service, the Commission considers that the maximum of the range is to be set no higher above the current rate than what would be permitted by the applicable rate element constraint. For any subsequent proposal to increase the maximum rate of an approved rate range, the new maximum rate is to be set no higher above the current maximum rate than what would be permitted by the applicable rate element constraint.
78. In addition, when a rate range is first proposed for an existing capped service, the applicant is to demonstrate that any price increase within the range would be in compliance with the applicable price cap basket constraint. As discussed above, this requires that the SBI not exceed the SBL for that basket. The Commission considers that the applicant is to perform the SBI calculation as if

the current rate was being increased to the maximum of the range. For subsequent annual price cap filings, the Commission determines that the maximum rate is to be treated as the price actually charged by the ILEC for price cap purposes.

79. With regard to the introduction of a new capped service, the current price cap regime requires that the price cap constraints be those that are applicable to the basket to which the new service is assigned. The Commission notes, however, that the maximum rate in the range would not be constrained because there would not be an existing rate to which the rate element constraint would be applied. The Commission also notes that, under the current price cap regime, a new service is first included in the SBI calculation in the first annual price cap filing after the service is introduced.
80. The Commission therefore considers that when a new capped service with a rate range is first included in the SBI calculation, the ILEC is to calculate the weighted-average rate of the new capped service over the number of months since the service was introduced, provided the service was introduced at least six months earlier. If the maximum rate in the range is above that weighted-average rate by more than what the rate element constraint would permit, the Commission will require the ILEC to reduce the maximum rate in the range at that time. If at least six months have not expired prior to the first annual price cap filing after the service was initially introduced, inclusion of this service into the SBI will be delayed until the next annual price cap filing.

*Process for changing operative price points within an approved rate range*

81. The Commission notes that the use of rate ranges will permit an ILEC to change rates within an approved range, at any time, without delay and without the requirement to file a tariff application and obtain Commission approval. This will reduce regulatory burden for both the ILECs and the Commission.
82. The Commission notes that MTS Allstream, the Cable Companies, and the Consumer Groups argued that ILECs should be required to provide customers with advance notice of operative price point changes. The Commission also notes TCC's comments indicating that, once a rate range was established, an ILEC should only be required to notify the Commission, in writing, of price changes within the range within 24 hours of making the rate change.
83. The Commission notes that it has not established a general requirement for advance notice to customers of changes to single-rate tariffs, and that the ILECs' Terms of Service state that changes to tariffs approved by the Commission, including rate changes, are effective as of the effective date approved, regardless of whether customers have been specifically notified of the change.
84. The Commission notes that requiring advance notice to customers would introduce delays in the ILECs' ability to change rates.
85. In light of the above, the Commission concludes that it would not be appropriate to mandate advance notification of rate changes within a range.

86. When an ILEC establishes a new operative price point within an approved rate range, it is to issue revised tariff pages identifying the price point no later than the commencement of the business day that the new rate comes into effect. If the new rate is to come into effect on a non-business day, the ILEC is to issue its revised tariff pages no later than the last business day immediately preceding the effective date. The Commission determines that it is not necessary to provide advance notice to the Commission.

*Contract termination*

87. The Commission notes the Consumer Groups' submission that customers would be protected from financial risk if upon receiving notification of a price increase, they were able to cancel a contract or switch to another service without penalty. The Commission notes that there is no such requirement in the case of price changes applicable to single-rate tariffs. The Commission notes that when it approves a change to a rate provided under a contract, the approved new rate would generally be applicable to new contracts as well as to existing contracts. The Commission further notes that contracts for tariffed services generally stipulate that the rates in an ILEC's general tariff supersede the rates in the contract and that they may be subject to change. As such, customers currently on existing contracts are required to pay the new rate approved by the Commission. Similarly, the Commission concludes that it would not be appropriate to mandate that customers be allowed to cancel a contract or switch to another service without penalty if rates change within an approved range.

*Negative disallowance*

88. The Commission notes the Bell Companies' comments related to the use of a negative disallowance tariff approval regime in conjunction with its range-within-a-range proposal. The Commission considers that a negative disallowance tariff approval regime raises broader issues that are not within the scope of this proceeding.

Secretary General

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