



Telecom Notice of Consultation CRTC 2018-214

PDF version

Ottawa, 26 June 2018

Public record: 1011-NOC2018-0214

Call for comments

Review of the price cap and local forbearance regimes

Deadline for submission of interventions: 10 September 2018

[[Submit an intervention or view related documents](#)]

The Commission hereby initiates a proceeding to review certain elements of the price cap and local forbearance regimes, including whether any changes should be made to the pricing constraints for residential services, whether some form of compensation is required for the incumbent local exchange carriers given that the local service subsidy will be eliminated, and whether any changes are required to the forbearance regimes for local residential and business services.

Introduction

1. In Telecom Regulatory Policy 2016-496, the Commission established the following universal service objective:

Canadians, in urban areas as well as in rural and remote areas, have access to voice services and broadband Internet access services, on both fixed and mobile wireless networks.
2. In that decision, the Commission stated that it would begin to shift the focus of its current regulatory frameworks from wireline voice services to broadband Internet access services. In particular, to support continued access to broadband Internet access services in underserved areas, the Commission stated its intention to phase out the local service subsidy regime and to establish a new funding mechanism for broadband Internet access services.
3. The Commission also stated that, given the interrelationship of the local service subsidy with both the price cap and local forbearance regimes, the elimination of this subsidy would require a review of, among other things, the existing pricing constraints and price ceilings applicable to the rates for residential local voice services. Accordingly, the Commission stated its intention to launch a proceeding to examine the price cap and local forbearance regimes as applicable to the incumbent

local exchange carriers (ILECs)¹ following its review of the local service subsidy regime.

4. In Telecom Regulatory Policy 2018-213, issued today, the Commission established its plan to phase out the local service subsidy. Among other things, the Commission approved a three-year transition period for the elimination of the subsidy for residential services in high-cost serving areas (HCSAs),² starting on 1 January 2019.
5. With this notice, the Commission sets out the issues specific to the price cap and local forbearance regimes that it intends to review.

Overview of the current regimes

Price cap regimes

6. Price cap regulation, which applies only to the ILECs' tariffed services, generally places upward constraints on prices that these companies can charge their customers. The services that are subject to price cap regulation are grouped into service baskets, each of which are subject to specific pricing constraints. The rates for individual services within a basket can be changed effective 1 June of any given year, as long as they conform to the pricing constraints established for that basket.
7. In addition, ILECs can apply for an exogenous factor³ adjustment as a result of events causing unanticipated changes to input costs. An exogenous factor adjustment can modify the overall pricing constraint on a service basket either upwards (i.e. due to an increase in input costs) or downwards (i.e. due to a decrease in input costs).
8. The Commission currently has similar price cap regimes in place for the large ILECs, the small ILECs, and Northwestel Inc. (Northwestel).⁴ While the regime for Northwestel is set to expire on 31 December 2018, the regimes for the large ILECs and the small ILECs have no expiry date.

¹ This term includes the large and small ILECs, and Northwestel Inc. The large ILECs are Bell Canada (including the former Bell Aliant Regional Communications, Limited Partnership; Bell MTS; and Télécédé, Limited Partnership); Saskatchewan Telecommunications; and TELUS Communications Inc. There is one small ILEC operating in British Columbia and the rest operate in Ontario and Quebec.

² An HCSA is a defined geographical area where the ILEC's monthly costs to provide residential local exchange service are estimated to be greater than the associated revenues generated by service rates.

³ Exogenous factors are approved adjustments to the ILECs' price cap indices to enable the recovery of costs related to events or initiatives that satisfy the following: they are legislative, judicial, or administrative actions that are beyond the control of the company; they are addressed specifically to the telecommunications industry; and they have a material impact on the company. Adjustments for exogenous amounts are reviewed on an individual basis and assigned to the appropriate service baskets (except the Competitor services and Services with frozen rate treatment baskets).

⁴ These regimes are set out in Telecom Decision 2007-27, Telecom Regulatory Policy 2013-160, and Telecom Regulatory Policy 2013-711, respectively.

Local forbearance regimes

9. The local forbearance regimes⁵ set out the criteria that the large and small ILECs are required to meet before the Commission will forbear from the rate regulation of certain local exchange services.⁶
10. In forborne exchanges, the large and small ILECs have an obligation to provide stand-alone residential local exchange services⁷ subject to a price ceiling. This obligation can be met through the provision of mobile wireless voice services.
11. The local forbearance regimes apply only to the large and small ILECs' operating territories where local competition has been implemented.⁸ While the Commission permitted local competition in Northwestel's operating territory in May 2012 through Telecom Regulatory Policy 2011-771, it has not established a local forbearance framework specific to Northwestel.

Issues to be examined

Residential local exchange service rates

12. Currently, rates for residential local exchange services in regulated HCSAs and the price ceiling for stand-alone residential local exchange services in forborne areas are permitted to increase annually by the rate of inflation.⁹ However, residential local exchange service rates in regulated non-HCSAs are frozen.
13. In Telecom Regulatory Policy 2011-291, the Commission implemented several changes to pricing policies for residential local exchange services to give the ILECs the flexibility to harmonize as much as possible the rates for these services in regulated HCSAs and forborne areas. These changes allowed for (i) the calculation of the local service subsidy in HCSAs to be economically efficient and fair, and (ii) rates for stand-alone residential local exchange service in forborne exchanges to better reflect the rates that would likely prevail in a competitive marketplace.
14. The pricing policy for regulated residential local exchange service rates in non-HCSAs, where the rates are greater than the costs to provide the services, has

⁵ The Commission established similar local forbearance regimes for the large and small ILECs. See Telecom Decision 2006-15 and Telecom Regulatory Policy 2009-379, respectively.

⁶ These include the local exchange services used by residential and business customers to access the public switched telephone network, as well as the service charges and any features related to the provision of these services (e.g. extended area service and voice messaging service).

⁷ Stand-alone local exchange services include unlimited local calling at a flat monthly rate and a choice of long distance service provider. See Telecom Regulatory Policy 2011-291 for details.

⁸ Local competition has been implemented in all exchanges for the large ILECs. For the small ILECs, local competition is only required to be implemented in cases where a bona fide request is received by a competitor.

⁹ The rate of inflation is measured using the gross domestic product – price index (GDP-PI).

remained unchanged since the last time the Commission reviewed the price cap regimes. As a result, different pricing constraints apply to the rates for residential local exchange services in non-HCSAs than in HCSAs and forborne areas.

15. Accordingly, in the current proceeding, the Commission will review the pricing constraints for all residential local exchange services.

Potential compensation for the elimination of the local service subsidy

16. During the proceeding initiated by Telecom Notice of Consultation 2017-92, several ILECs raised the issue of “regulatory compact” – that is, whether compensation should be provided to the ILECs for the elimination of the local service subsidy since they submitted that the rates for residential local exchange services in regulated HCSAs would no longer be just and reasonable. They argued that such compensation could come in the form of, for example, (i) increased flexibility in the type of technology used or the terms upon which the ILECs are required to provide residential local exchange service, (ii) increased flexibility to raise rates, or (iii) forbearance from the regulation of residential local exchange services. However, in Telecom Regulatory Policy 2018-213, the Commission concluded that there was insufficient evidence on the record of that proceeding to support the need for compensation to ILECs at this time.
17. Accordingly, the Commission will consider in the current proceeding whether compensation is required given that the local service subsidy is being eliminated, and if so, an appropriate approach.

Exogenous factor mechanism

18. When approved, exogenous factor amounts are assigned to the appropriate price cap service baskets (usually just for residential and business services).
19. The exogenous factor mechanism retains some elements of rate-of-return regulation (e.g. cost recovery), as opposed to focusing on service prices. Further, while there is an incentive for the ILECs to apply for cost recovery related to exogenous events that could increase service prices, there is no incentive for them to apply for events that would reduce their costs.
20. Since the implementation of the price cap regimes, the regulatory landscape for the ILECs has changed greatly, to the point that the vast majority of the ILECs’ revenues are now from forborne services. In addition, there have been very few approved exogenous adjustments in the last 10 years for which the ILECs have implemented rate changes. As a result, there is likely less need for a specific mechanism to recover any unanticipated costs.
21. Accordingly, the Commission will consider in the current proceeding whether there is still a need for an exogenous factor mechanism in the price cap regimes.

Local forbearance regimes

22. In the local forbearance regimes, the main criterion used to determine whether an exchange qualifies for forbearance from regulation is an assessment of competitor presence. In addition, the ILEC must demonstrate that it has met the competitor quality of service standards. When submitting its application for forbearance, the ILEC must also file for Commission approval a draft communications plan that describes how the ILEC intends to inform its customers regarding local forbearance in the relevant market.
23. In Telecom Regulatory Policy 2018-123, the Commission found that legacy wholesale services currently subject to the competitor quality of service regime would no longer be included in that regime; however, it stated that for the time being, ILECs must continue to demonstrate that they meet the competitor quality of service criterion when they file a local forbearance application.
24. In the current proceeding, the Commission will consider whether changes to the local forbearance criteria are warranted. Given the similarity of the forbearance criteria for residential and business local exchange services, the Commission will consider whether any changes would be appropriate to the criteria applicable to both of these markets.
25. The Commission will also assess the competitor presence tests in light of the shift in its focus to broadband Internet access services and the use of other infrastructure to provide local voice services (i.e. fixed wireless and mobile wireless technologies). The Commission will examine the local forbearance competitor quality of service criterion in light of its determinations set out in Telecom Regulatory Policy 2018-123.
26. Accordingly, the Commission will also consider in the current proceeding whether it would be appropriate to (i) modify the competitor presence tests for residential and business services to reflect the inclusion of competitive alternatives, and (ii) modify or eliminate the competitor quality of service criterion with respect to local forbearance applications.

Length of the price cap regime for Northwestel

27. In Telecom Regulatory Policy 2016-496, the Commission extended Northwestel's price cap regime until the end of 2018. Given that a decision in the current proceeding will be issued after that time, the Commission extends the expiry of that regime pending the determinations made in the current proceeding. The Commission will consider in the current proceeding whether it is necessary to establish an end date for Northwestel's price cap regime, and if so, the length of time for the regime.

Call for comments

28. The Commission hereby initiates a proceeding to review certain elements of the price cap and local forbearance regimes. Specifically, the Commission calls for comments on the following:

- a. whether any changes should be made to the pricing constraints regarding rates for residential local exchange services in regulated areas, and if so, what changes would be appropriate;
 - b. whether it is appropriate to modify the price ceiling for stand-alone residential local exchange services in forborne areas, and if so, what would be an appropriate price ceiling;
 - c. whether any measures are necessary to compensate the ILECs given that the local service subsidy will be eliminated, and if so, what measures would be appropriate;
 - d. whether the exogenous factor mechanism in the price cap regimes is still necessary;
 - e. whether any changes are required to the local forbearance regimes for residential and business local exchange services, and if so, what changes would be appropriate; and
 - f. whether it is necessary to establish an end date for Northwestel's price cap regime, and if so, the length of time for that regime.
29. In their interventions, parties should provide supporting rationale and all evidence on which they rely to formulate their position. Parties are invited to comment on how and when any changes resulting from the current proceeding should be implemented.
30. Any submission with respect to compensation for the loss of subsidy must be accompanied by sufficient supporting data, including evidence to demonstrate that compensation is necessary to ensure the recovery of the party's investment and overall financial viability. The Commission may use the information available in its Data Collection System in the assessment of any such submission.
31. Although the topics above may be interrelated and interdependent, parties should structure their submissions as set out above.
32. Coincident with the release of this notice, the Commission is requesting information from the ILECs in the form of interrogatories by way of separate letter.
33. The Commission will review the issues raised in this proceeding in light of the policy objectives set out in section 7 of the *Telecommunications Act* and taking into consideration the Policy Direction.¹⁰ Parties should also take these into account and address their relevant aspects, as applicable.

¹⁰ Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, P.C. 2006-1534, 14 December 2006

Procedure

34. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at www.crtc.gc.ca, under "Statutes and Regulations." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
35. The large ILECs, the small ILECs, and Northwestel are made parties to this proceeding and may file interventions with the Commission by **10 September 2018**.
36. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **10 September 2018**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
37. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
38. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
39. The Commission and parties may request information, in the form of interrogatories, from any party to the proceeding. The requesting party must file its request for information with the Commission, and serve the request on the party to whom it is addressed, by **11 October 2018**.
40. Responses to requests for information are to be filed with the Commission, and served on the parties making the requests, by **13 November 2018**.
41. Parties may request (i) further responses to interrogatories, specifying in each case why a further response is necessary, and (ii) the public disclosure of information that has been designated confidential, setting out in each case the reasons for disclosure. These requests must be filed with the Commission, and served on the parties to whom they are addressed, by **20 November 2018**.
42. Responses to requests for further responses to interrogatories and responses to requests for public disclosure must be filed with the Commission, and served on the parties making the requests, by **27 November 2018**.

43. Determinations regarding requests for further responses and requests for public disclosure will be issued as soon as possible. Any information to be provided pursuant to such determinations must be filed with the Commission, and served on the parties making the requests, by **14 December 2018**.
44. All parties may file final submissions with the Commission on any matter within the scope of this proceeding, by **10 January 2019**. Final submissions, including an executive summary, are not to exceed 15 pages.
45. All parties may file final replies with the Commission, by **24 January 2019**. Final replies, including an executive summary, are not to exceed 10 pages.
46. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website at www.crtc.gc.ca, for additional information that they may find useful when preparing their submissions.
47. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
48. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
49. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

50. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the

document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.

51. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
52. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

53. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, and telephone and facsimile numbers.
54. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
55. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
56. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

57. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the public record number provided at the beginning of this notice or by visiting the "Have your say!" section, then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.

58. Documents are also available at the following address, upon request, during normal business hours.

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Secretary General

Related documents

- *Phase-out of the local service subsidy regime*, Telecom Regulatory Policy CRTC 2018-213, 26 June 2018
- *Review of the competitor quality of service regime*, Telecom Regulatory Policy CRTC 2018-123, 13 April 2018
- *Phase-out of the local service subsidy regime*, Telecom Notice of Consultation CRTC 2017-92, 6 April 2017; as amended by Telecom Notice of Consultation CRTC 2017-92-1, 16 May 2017
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Regulatory framework for the small incumbent local exchange carriers and related matters*, Telecom Regulatory Policy CRTC 2013-160, 28 March 2013
- *Northwestel Inc. – Review of regulatory framework*, Telecom Regulatory Policy CRTC 2011-771, 14 December 2011
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011

- *Obligation to serve and other matters*, Telecom Regulatory Policy CRTC 2011-291, 3 May 2011; as amended by Telecom Regulatory Policy CRTC 2011-291-1, 12 May 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Framework for forbearance from regulation of retail local exchange services in the serving territories of the small incumbent local exchange carriers*, Telecom Regulatory Policy CRTC 2009-379, 23 June 2009
- *Price cap framework for large incumbent local exchange carriers*, Telecom Decision CRTC 2007-27, 30 April 2007
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006; as amended by Order in Council P.C. 2007-532, 4 April 2007