

# CANADIAN INDEPENDENT TELEPHONE COMPANY

## JOINT TASK FORCE

ACTQ - ITPA

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31 January 2014

**By GC Key**

Mr. John Traversy  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

**Subject: *Review of wholesale services and associated policies* - Telecom Notice of Consultation CRTC 2013-551&1 - First intervention by the Canadian Independent Telephone Company Joint Task Force**

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1. Pursuant to the procedures established by the Commission in the Notice of Consultation noted above ("TNC 2013-551"), the Canadian Independent Telephone Company Joint Task Force ("the JTF") hereby submits its first intervention. The members of the JTF are listed in the Appendix to this submission. At this time, the JTF wishes to appear at the public hearing.

2. The JTF does not intend to address each of the issues raised by the Commission in TNC 2013-551 and will limit these comments to addressing the Commission's questions in order of their priority to the JTF.

### **Question 7 - Carriers subject to the wholesale services framework**

3. In question 7 the Commission asks:

Indicate which carriers should be subject to the Commission's wholesale services framework, the extent of the associated wholesale service obligations, and what criteria should apply.

4. In *Revised regulatory framework for wholesale services and definition of essential services* - Telecom Decision 2008-17, 3 March 2008, ("Decision 2008-17") the Commission established a regulatory framework for wholesale services that was focussed on the large ILECs and, to a lesser extent, the large cable companies. This new framework was not imposed on the small incumbent local exchange carriers ("SILECs").

5. Notwithstanding this, SILECs operate under a *de facto* wholesale services regime which has the following features:

- A recently created a fifth basket of services for SILECs' competitor services;<sup>1</sup>
- Services in the fifth basket are governed by pricing rules set by the Commission;<sup>2</sup>
- A regime for interconnection with IXCs has been in operation for many years;
- Request driven facilities-based local competition and Wireless Number Portability ("WNP") regimes are in place and operating.
  - Any requirement for the unbundling of SILEC services to implement these regimes is done on a case-by-case basis depending on the services required by the competitive entrant. The SILEC local competition and WNP regimes are guided by the large ILEC regimes for these services.<sup>3</sup>

6. While there have been requests for both local competition and WNP in some SILEC territories it is fair to say that there has not been a strong or increasing demand for SILEC wholesale services. For example, CLECs that have entered SILEC operating territories are exclusively cable companies that require few unbundled services. The SILECs involved have filed the tariffs required to facilitate these carriers.

7. The frameworks for interconnection with SILECs, most notably for local and wireless, were the subject of lengthy debates and significant Commission intervention. This time and effort underscored the importance to the SILECs of fully considering the terms of interconnection in their territories. Interconnection frameworks, including the pricing rules for wholesale services, are now in place and functioning. However, demand for wholesale services has remained largely stagnant since the issuance of Decision 2008-17. Therefore, the JTF submits that there is no need for significant changes to the SILEC wholesale services regime.

8. The JTF notes that the Governor In Council's Policy Direction to the Commission states that the Commission must:

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<sup>1</sup> *Regulatory framework for the small incumbent local exchange carriers and related matters*, Telecom Regulatory Policy 2013-160, 28 March 2013, paragraph 23.

<sup>2</sup> *Ibid*, paragraphs 35-37.

<sup>3</sup> The principles behind the SILEC local competition regime are set out in paragraphs 158-168 of *Revised regulatory framework for the small incumbent local exchange carriers* - Telecom Decision CRTC 2006-14. The principles behind the WNP regime are set out in *Regulatory framework for the implementation of wireless number portability within the serving territories of the small incumbent local exchange carriers*, Telecom Decision CRTC 2008-122, 18 December 2008, as modified in *Network interconnection for voice services*, Telecom Regulatory Policy CRTC 2012-24, 19 January 2012, in paragraphs 112-116.

1.(a)(ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives; (emphasis added)

9. The JTF submits that that the current SILEC wholesale services framework is efficient and proportionate and that any additional mandates to unbundle services in advance of declared demand are not needed to facilitate toll, local or wireless competition in SILEC territories nor would they rely on market forces to the maximum extent feasible.

#### **Questions 4f - Pricing - SILEC Basket 5 Pricing Rules**

10. In question 4f the Commission asks in part:

Should more simple and efficient pricing approaches apply to certain wholesale services and/or carriers, and if so, what are they?

11. As part of its position in this proceeding, the JTF is requesting that the Commission modify one aspect of the SILEC wholesale services regime that was established in *Regulatory framework for the small incumbent local exchange carriers and related matters*, Telecom Regulatory Policy 2013-160, 28 March 2013 (“TRP 2013-160”).

12. At paragraph 37 of Decision 2013-160 the Commission determined as follows:

... the initial rates for small ILEC’s competitor services assigned to basket 5 be established by matching Commission-approved rates for the same service with supporting rationale. The supporting rationale must address the appropriateness of the proposed small ILEC rates in light of rates in an adjacent large ILEC territory for the same service. Once rates for the services assigned to basket 5 are established, rate changes will be permitted if a small ILEC provides a cost study or other evidence that demonstrates that costs have changed. (emphasis added)

13. The JTF is requesting that the Commission change its policy with regards to basket 5 rate changes to reflect basket pricing 4 rules. The Commission’s current rules for basket 4 pricing are as follows:

... rates for services in the Fourth Basket will be allowed to increase up to any rate approved by the Commission for the same service, as established in 2001-756. In addition, an economic (Phase II) study must

accompany an application to support proposed rate increases over and above an approved ILEC rate.<sup>4</sup> (emphasis added)

14. Assume that a SILEC introduces a new basket 5 service and the Commission grants approval based on the fact that the rate for the new service matches an existing ILEC rate for the same service in an adjacent large ILEC territory. It then becomes unclear as to how the SILEC would be able to increase its rate in the future if the adjacent ILEC increases its rate. TRP 2013-160 states that the SILEC would have to demonstrate that “costs” have changed. It is unclear as to whether the Commission is referring to the large ILEC’s costs or the SILEC’s costs.

15. If it is the large ILEC’s cost, it is unclear how the SILEC could prove that the large ILEC’s costs have changed other than simply asserting that this must be the case and asking for a matching rate. If it is the SILEC’s costs, it is unclear how the SILEC could prove that its costs have changed due to the fact that the initial rate was not based on its own costs but rather was another carrier’s rate that was adopted by the SILEC for its service.

16. In addition, no SILEC has internal costing staff to rely on for these purposes which means that they would have to attempt to engage very scarce and expensive industry experts for what should and could be a relatively simple process of using the basket 4 pricing rules and often for a single rate element (e.g. a one-time service charge or a monthly rate for a single service element).

17. The Policy Direction’s mandate cited above in paragraph 7 of this submission applies here as well. Given that the Commission already uses the price matching mechanism for basket 4 services, the JTF submits requiring a Phase II cost study for rate increase in basket 5 is neither efficient nor proportionate. Section 1.(c)(i) of the Policy Direction also states that the Commission should:

...use only tariff approval mechanisms that are minimally intrusive and as minimally onerous as possible.

Adopting the JTF’s proposal on this matter would satisfy this requirement.

18. Finally, employing this price matching mechanism for basket 5 services makes sense given the fact that SILECs are landlocked by the large ILECs and are able to exercise little or no market power, even in their own operating territories. The Commission will already have established a prevailing rate for the competitor service

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<sup>4</sup> *Revised regulatory framework for the small incumbent local exchange carriers* - Telecom Decision 2006-14, 29 March 2006, paragraph 54.

offered by the ILECs in the surrounding area. Should the SILEC chose to adopt the ILEC rate for a competitor service, rather than filing its own-company specific rate based on a cost study<sup>5</sup>, the SILECs rate would at the very least conform to existing pricing in the surrounding market for these services.

#### **Question 4b - FTTP Facilities**

19. In question 4b the Commission asks:

Explain whether additional wholesale HSA services, including FTTP facilities should be mandated. Explain how the mandating of any proposed additional service would facilitate the development of a competitive Canadian broadband market while also providing incentives to invest in innovative networks. Provide an overview of the potential economic and social impacts that may result from either mandating or not mandating access to such services for consumers, competitors, or incumbent carriers.

20. In *Revised regulatory framework for wholesale services and definition of essential services* - Telecom Decision 2008-17, 3 March 2008, ("Decision 2008-17") the Commission established a regulatory framework for the wholesale services that was focussed on the large ILECs and, to a lesser extent, the large cable companies. The wholesale services regime was imposed on the large ILECs due to their status as incumbent (and former monopoly) telephone companies and on the large cable companies due to their status as incumbent (former monopoly) cable TV companies. Commission regulation of wholesale services provided by other Telecommunications Service Providers ("TSPs"), for example CLECs, as been limited to the interconnection services required to implement a network of networks:

... the framework for local exchange competition must allow for the transition from the single ILEC's network to a network of fully interoperable networks permitting subscribers of any [local exchange carrier] to complete calls with at least the same ease and efficiency as at present. Only with this degree of interoperability can there be the true local exchange competition necessary to fulfill the promise of local price and service innovation.<sup>6</sup>

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<sup>5</sup> The SILEC would continue to have the option of proposing its own rate based on Phase II costs "or any other reasonable costing method" as allowed for by the Commission in paragraph 20 of *ACTQ/OTA/CityWest - Application to review and vary Telecom Regulatory Policy 2011-291 regarding determinations affecting small incumbent local exchange carriers* - Telecom Decision CRTC 2011-733, 28 November 2011.

<sup>6</sup> *Local Competition*, Telecom Decision CRTC 97-8, 1 May 1997, paragraph 7.

21. Services required to implement this network of fully interoperable local exchange networks are contained in each CLEC's tariff. However, other services offered by CLECs and other Telecommunications Service ("TSPs") on a retail or wholesale basis have been forborne by the Commission.

22. It is important to note that since the Commission opened the local exchange market to competition in 1998, CLECs and other TSPs have not been required to lease or share the local access circuits that connect customers to their networks. For example, wireline CLECs have not been required to provide co-location space and lease end-customer access circuits to another LEC.<sup>7</sup>

23. However, the JTF notes that the Commission's wording in TNC 2013-551 relating to its intent to "study FTTP in Canada" and its question as to "whether regulatory intervention is needed with respect to mandated sharing of FTTP facilities"<sup>8</sup> have cast a very wide net. Moreover, TELUS and the Bell Canada companies have argued that CLECs and non-dominant service providers should be required to respond to interrogatories from other parties regarding their FTTP projects.

24. The JTF does not support mandated access to SILEC FTTP projects. However, if the Commission is contemplating such a mandate, it will first of all have to address the fact that regulation of local exchange services is technology neutral (i.e. that the regulatory framework is blind with regard to the underlying technology used to provide local exchange services). Regulatory measures that treat FTTP facilities in a different manner than twisted copper pair would likely violate the Commission's technology neutral approach to regulation.

25. Second, the Commission will have to consider whether the market conditions that permitted forbearance in the first place are no longer adequate to protect the interests of consumers thereby justifying regulation of these CLEC/TSP facilities.

26. Only after these two issues are dealt with in an appropriate manner can the Commission consider whether CLEC/TSP FTTP facilities should be subject to a mandate to share these facilities with other service providers. The JTF will now focus its comments in the remainder of this section of its intervention on FTTP projects by SILECs in both their incumbent and CLEC operating territories.

27. With the exception of Tbaytel, SILECs' origins are in rural Canada in areas where the large ILECs lacked the motivation to offer service. The incumbent exchanges of the

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<sup>7</sup> For a full discussion of the regulatory framework for new CLEC entrants see Ibid, paragraphs 258-274.

<sup>8</sup> TNC 2013-551, paragraph 19.

SILECs represented by this intervention are High Cost Serving Areas exclusively. Importantly, these exchanges contain no large/urban population centres through which the SILECs can cross-subsidize their rural operations. SILECs have typically funded this network evolution internally through their customer bases and have assumed the risk associated with these activities. Historically SILECs have focussed on evolving their networks in order to provide cutting edge services to their customers so that today there is no rural/urban digital divide in these areas. By doing so, the SILECs as a group have advanced the following Policy Objectives found in the *Telecommunications Act* (“the Act”):

(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;

and

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

It is universally understood that without these companies’ efforts, this advanced telecommunications network infrastructure would not exist in rural Canada.

28. There is currently much discussion at the political level in Canada regarding ways in which to improve the coverage of broadband services in rural Canada. The latest example of this is the Industry Minister’s press release of 10 January 2014 dealing with the pending 2500 MHz auction framework in which he states:

These [auction] rules include the following:

- Smaller geographic licence areas, providing more opportunity for rural Internet service providers to participate in this auction

...

Spectrum in the 2500 MHz band is ideal for delivering fast, reliable service on the on the latest smart phones and tablets, and it can also be used to provide fixed broadband Internet services in rural areas.

...

Those actions include the following:

- Monetary penalties for companies that violate rules on tower sharing, deployment of spectrum and service to rural areas.<sup>9</sup> (emphases added)

29. SILECs have been on the ground in rural areas, many for over 100 years, and have taken significant strides in rolling out broadband in rural areas in ways that other larger service providers have not. The JTF notes the announcements of FTTP projects made by the Bell companies over the course of 2012 and 2013.<sup>10</sup> Timmins, Sault Ste. Marie, Sudbury and North Bay have all been the focus of FTTP projects. However, each of these projects range in size between 15,000 and 33,000 premises passed.<sup>11</sup> SILEC FTTP projects are far smaller and are done in more rural areas, in small towns or even farmland where, as described above, there are no large urban customer bases to available to cross-subsidize these projects. In contrast to the Bell companies, the capital involved typically is equal to or greater than the SILECs' annual depreciation levels making the risk levels very high for these small service providers. The benefits for the rural customers served by these projects, on the other hand, are equally significant.

30. In view of all of these factors (i.e. SILECs' size, location, assumed risk and promotion of Act's objectives) the JTF does not support mandated access to SILEC FTTP projects. However, if the Commission were to mandate access to SILEC FTTP networks in either or both of their incumbent or CLEC operating territories, it must develop a regime that recognizes that rural areas are different than urban areas and that the regimes developed for the large ILECs do not fit with SILEC realities (either their incumbent or CLEC operations).

31. The JTF would like to propose a number of principles that the Commission must use if it intends to mandate access to SILEC FTTP projects, regardless of whether they are in the SILECs' incumbent or CLEC operating territories:

- Recognition of the differences between urban and rural areas;

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<sup>9</sup> [Harper Government Announces New Measures to Benefit Canadian Wireless Consumers - Canada News Centre](#)

<sup>10</sup> The press releases identifying these projects are available at [The latest BCE News Releases About Corporate, Financial, Regulatory, Products & Services » BCE](#)

<sup>11</sup> The smallest of the projects announced by the Bell companies is Sturgeon Falls, Ontario at 4,000 premises.



- Small service providers must be able to recover their capital investment within a timeframe that makes sense from their businesses' perspective;
- Provide the best rate of return/a rate of return equal to a scenario where sharing is not mandated;
- Attach importance to the extreme risk assumed by the company when it chose to install FTTP vs. traditional twisted copper pair or coaxial cable;<sup>12</sup>
- The regime must provide incentives to ensure that SILECs continue to keep investing in this infrastructure in rural Canada.

32. Regarding the last bullet in the list above, SILEC FTTP projects have been entered into using good business sense, sound - but not risk free - plans for capital recovery and taking into account the prevailing, well understood<sup>13</sup> regulatory regimes. From the perspective of JTF member companies, FTTP projects require "patient money" with plans for cost recovery spanning the very long term.

33. SILEC FTTP projects contribute to the government's agenda of rolling out broadband to rural Canadians as discussed earlier in this section. Any changes to the current regulatory regimes must take into account SILEC realities in a manner that serves to augment the gains made by end-users in rural Canada through these projects not erode them. For the sake of rural Canadians, any new regime must provide similar or even more incentive for the continuation of FTTH projects. The importance and benefit of high bandwidth and delivery of services to rural customers cannot be overstated.

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<sup>12</sup> The Commission recognized just such a risk by Northwestel in *Northwestel Inc. - Regulatory Framework, Modernization Plan and related matters* - Telecom Regulatory Policy CRTC 2013-77. In paragraphs 152-156 the Commission granted Northwestel an additional markup "to recognize its fibre investment, the Commission considers that an increase to the markup would recognize the additional risk associated with the upfront investment in fibre facilities in Northwestel's terrestrially served areas."

<sup>13</sup> For example, as noted in paragraph 22 of this intervention, CLEC and other TSPs have not been required to lease or share the local access circuits that connect customers to their networks.

Signed (on behalf of the companies represented by the Canadian Independent Telephone Company Joint Task Force),

A handwritten signature in black ink that reads "Serge Déry". The signature is written in a cursive style with a large initial 'S'.

Serge Déry  
Président and CEO  
Association des Compagnies de Téléphone du Québec

A handwritten signature in black ink that reads "Jonathan L. Holmes". The signature is written in a cursive style with a large initial 'J'.

Jonathan L. Holmes  
Executive Director  
Independent Telecommunications Providers Association

Attachment

## Appendix

### **Association des compagnies de téléphone du Québec (ACTQ)**

CoopTel  
La Cie de Téléphone de Courcelles inc.  
Groupe Maskatel LP  
La Compagnie de Téléphone de Lambton inc.  
Téléphone Milot inc.  
Le Téléphone de St-Éphrem inc.  
La Compagnie de Téléphone de St-Victor  
Sogetel inc.  
La Compagnie de Téléphone Upton inc.

### **Independent Telecommunications Providers Association (ITPA)**

Brooke Telecom Co-operative Limited  
Bruce Telecom  
CityWest Telephone and Cable Corp.  
Cochrane Telecom Services  
Execulink Telecom Inc.  
Gosfield North Communications Co-operative Limited  
Hay Communications Co-operative Limited  
Huron Telecommunications Co-operative Limited  
The Lansdowne Rural Telephone Company Limited  
Mornington Communications Co-operative Limited  
Nexicom Telecommunications Inc.  
Nexicom Telephones Inc.  
North Frontenac Telephone Corporation Limited  
North Renfrew Telephone Company Limited  
Ontera  
Quadro Communications Co-operative Inc.  
Roxborough Telephone Company Limited  
Tuckersmith Communications Co-operative Limited  
WTC Communications  
Wightman Telecom Limited