



Comments of Shaw Cablesystems G.P. in
Review of the Competitor Quality of Service Regime,
Telecom Notice of Consultation CRTC 2017-49

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. Shaw Cablesystems G.P (“Shaw”) is pleased to provide these comments in response to Telecom Notice of Consultation CRTC 2017-49, *Review of the Competitor Quality of Service Regime*, February 23, 2017 (the “Notice”). Shaw wishes to receive intervener status in this proceeding.
2. In the Notice, the Canadian Radio-Television and Telecommunications Commission (the “Commission”) seeks comments to assist in its review of the Competitor Quality of Service (“CQoS”) regime and the associated Rate Rebate Plan (“RRP”), which currently both apply to telephone companies (namely, incumbent local exchange carriers, or “ILECs”).
3. More specifically, the Notice seeks comments regarding: (i) whether the existing CQoS regime, including the RRP,¹ should be retained, and if so, in what form; and, (ii) whether any CQoS regime is required for other regulated wholesale services such as Third Party Internet Access services (“TPIA”), and if so, in what form.
4. In Shaw’s view, the static, monopoly local phone environment in which the CQoS regime was developed and implemented is vastly different from the highly dynamic, competitive telecommunications ecosystem that exists today. In particular, there is no evidence today of recurring, systemic anti-competitive provisioning of regulated wholesale services, as there was at the time CQoS was developed.
5. Today’s wholesale market is characterized by robust policy frameworks² that are leading to more competition and choice for consumers. These frameworks are buttressed by existing, efficient mechanisms to address any specific quality-related

¹ Unless otherwise specified herein, references to the CQoS regime include the RRP.

² Namely, Telecom Regulatory Policy CRTC 2015-326 regarding the wholesale high-speed access framework, and Telecom Regulatory Policy CRTC 2015-177 and Telecom Decision CRTC 2016-56 regarding the wireless framework.

concerns, including alternative dispute resolution, industry working groups and formal complaint processes.

6. It is unclear what consumer benefits would be achieved by retaining or expanding the CQoS regime, as competition and choice are already being driven by facilities-based investments in multiple platforms, supplemented by the recently reviewed wholesale wireline and wireless policy frameworks.
7. The regulatory framework under review in this proceeding was initially established in the 1990s and was expanded in 2005 by way of Telecom Decision CRTC 2005-20. The CQoS regime was designed to incent wholesale service providers to remedy systemic failures in the quality of their services, in order to overcome the threat to nascent competition that resulted from ongoing substandard provisioning of service. By 2005, the CQoS regime had evolved from three to 23 indicators, driven by evidence that competition in retail telephone markets was slow to develop, combined with evidence of repeated failures by ILECs to achieve CQoS standards. The Commission sought to correct these failures to ensure that competitive local exchange carriers were better able to meet customer expectations and compete to offer choice in the market more effectively.
8. The CQoS regime was necessary in the early days of competition in Canada's telecommunications market, a period in which there was a fundamental shift from monopoly supply and rate regulation to market forces. In contrast, the CQoS framework is unnecessary today, when the market is now characterized by intensifying rivalry among more and more players that are delivering increasingly innovative services through diverse network technologies and platforms. As alluded to in the Notice, the way Canadians access and use telecommunications services is rapidly evolving due to advancements in technology.
9. In this submission, Shaw argues for elimination of the CQoS and RRP regime. There is no evidence that it is necessary for wireline voice, high-speed Internet or mobile wireless wholesale services, and maintaining or expanding the regime

would represent inefficient regulation. Our submissions below provide an overview of the current market and policy background against which we believe the review of CQoS and RRP should be conducted. We then discuss the lack of benefits associated with retaining or extending the CQoS regime, and the excessive costs and burden associated with expanding CQoS. In Appendix A, Shaw answers the specific questions posed by the Commission in the Notice.

II. THE CIRCUMSTANCES OF TODAY'S MARKET CALLS FOR ELIMINATION OF CQoS

10. As described further below, in contrast to the monopoly landline telephone era in which the CQoS regime was developed, competition in the current retail landscape is increasingly dynamic.

Wireline Telephony

11. Today, over 112 competitive local exchange carriers are registered to provide voice services in Canada.³ The number of technologies that are used to deliver voice communications services has also grown dramatically over the years. In 1997 when the CQoS regime was first introduced, voice services were delivered almost exclusively over ILEC landline access facilities consisting of twisted copper pairs. Today, voice services can be delivered using wireline copper, cable and fibre facilities, or they can be delivered via wireless technologies such as mobile wireless networks, fixed wireless networks, including Wi-Fi satellite services. Many of these technologies can deliver basic voice connectivity capabilities to Canadian homes and businesses, as well as access to community and emergency response services (911), health services, medical monitoring, home security and

³ CRTC List of Registered Telecommunications Providers – Competitive Local Exchange Carriers. <https://applications.crtc.gc.ca/telecom/eng/registration-list?pt=40>

international long distance. At the same time, dependence on the ILECs' regulated wholesale services that support local phone has declined.

12. In light of the foregoing evidence, the CQoS and RRP regime for wholesale voice telephony should be phased out. It is significant to note that even though Shaw uses certain of these wholesale services, we do not consider it necessary to continue the CQoS and RRP regime to incent the wholesale providers to provision an adequate level of service. We believe that, if issues arise with respect to the quality of these wholesale services, we can pursue alternative mechanisms for resolution, including through the dispute resolution mechanisms overseen by the CRTC.

High Speed Internet

13. The range of facilities used to deliver broadband Internet services is even more diverse than local phone, with no single carrier enjoying monopoly control in the market or over the facilities used to serve consumers.⁴ Canadians stay connected using the services of over 500 registered ISPs including incumbent telephone carriers, cable carriers, fixed wireless, and resale service providers⁵ using copper, coaxial, fibre, satellite, cellular, fixed wireless and Wi-Fi network infrastructures.
14. As illustrated in Table 5.3.4 of the Commission's 2016 Communications Monitoring Report (shown below), ISPs that are not traditional telephone companies or cable carriers, have increased their residential Internet subscriber base each year over the past four years. In stark contrast to the period in which CQoS was developed, in today's Internet market, competitive service providers are gaining access to the facilities necessary to compete in the retail Internet market.

⁴ According to the Communications Monitoring Report 2016, incumbent telcos accounted for 38% of the residential Internet market share, while cable carriers had 50% and alternative service providers held 12% market share.

⁵ Communications Monitoring Report 2016, Page 246.

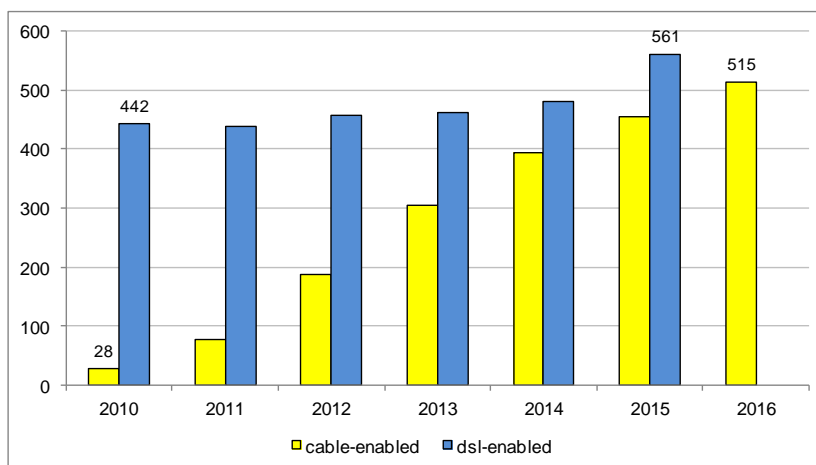
Table 5.3.4 Residential Internet service subscribers, by type of service provider (thousands)

Type of service	2011	2012	2013	2014	2015	Growth (%) 2014-2015	CAGR (%) 2011-2015
Incumbent TSPs	4,014	4,114	4,244	4,429	4,586	3.6	3.4
Cable-based carriers	5,846	5,930	5,933	5,954	5,986	0.5	0.6
Other service providers	811	947	1,074	1,247	1,447	16.0	15.6
Total	10,671	10,991	11,251	11,630	12,019	3.3	3.0
Dial-up (as a percentage of subscribers)	2.3%	1.7%	1.1%	0.8%	0.7%		

Source: CRTC data collection

15. Service providers relying on mandated wholesale services in the Internet market have continued to increase their market share from 8% in 2011 to 12% in 2015.⁶ This in turn has contributed to an increased level of competition in the wholesale Internet market. As illustrated in the chart below, while the incumbent telephone carriers once dominated the wholesale Internet market that supported these ISPs, the cable carriers have been able to significantly increase their wholesale market share over the last six years.

Wholesale High Speed Access Lines (thousands)⁷



16. This increased level of competition between facilities-based service providers drives increased responsiveness in the wholesale Internet market, resulting in

⁶ Communications Monitoring Report 2016, Figure 5.3.1.

⁷ CRTC, Communications Monitoring Report 2015 and 2016, Table 5.6.7 for the years 2010 to 2015. Results for cable-enabled wholesale high-speed access lines for 2016 were derived from information filed by the four largest cable carriers (Cogeco, Rogers, Shaw and Videotron) in their responses to

customer specific arrangements. This is reflected in higher levels of off-tariff negotiated agreements for wholesale Internet, which increased by 60% between 2015 and 2016.⁸ There is clearly a willingness by wholesale service providers to employ distinctive, tailored alternatives to meet the unique needs of various ISP customers.

17. When CQoS was introduced, competition in the local voice market was fragile to non-existent. The opposite is true with respect to the retail and wholesale Internet markets. As discussed above, there is a strong and highly competitive retail and wholesale market provided over diverse networks and supported by a robust, recently affirmed wholesale policy framework. There is no evidence that these markets require the CQoS regime for their continued success.

Mobile Wireless

18. Shaw, through its affiliate, Freedom Mobile, relies on wholesale mobile wireless services. Yet, we do not believe it would be necessary or prudent to implement a CQoS and RRP regime for these services. At this time, there is no need for this particular type of regulatory intervention. Instead, the focus of the Commission's regulatory activities in this market should be on the rates and the terms and conditions of mandated wholesale mobile wireless services.

III. POLICY BACKGROUND

19. The modern era of Canadian telecommunications regulation has consistently emphasized the role of market forces.⁹ Any regulatory framework must put

(CRTC)13Mar17-1 TNC 2017-49 indicating demand for TPIA as measured by the number of end-users. Information filed in confidence with the Commission was aggregated by an independent third party.

⁸ CRTC, negotiated agreements filed pursuant to Telecom Regulatory Policy 2012-359, available at http://www.crtc.gc.ca/part1/eng/2012/8663/b54_201200501.htm

⁹ *Telecommunications Act (Canada)*, section 7(f); *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the "Policy Direction"), at section 1(a)(i).

Canadian consumers at the core by fostering investment and innovation and allowing market forces to meet consumer demand

20. As noted by the Commission in the Notice, the Policy Direction provides important guidance regarding the manner in which the Commission must exercise its mandate and interpret the policy objectives set out in section 7 of the *Telecommunications Act* (the “Act”).
21. The centerpiece of the Policy Direction is reliance on market forces where practicable. It directs the Commission to:
 - “(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and
 - (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.”
22. Based on the key principles of Canadian telecommunications policy and the Policy Direction, retaining or expanding CQoS must be based on evidence that competition in associated retail telecommunications markets is weak, where that weakness is directly attributable to the inferior quality of essential wholesale services, and where the inferior quality of service is due to factors within the control of the carriers supplying the wholesale services.
23. Moreover, if the Commission were to determine that there is evidence that incumbents are providing inferior quality wholesale services, expansion of the CQoS regime should only be considered where it would be the most efficient and proportionate means of remedying the issue.
24. As discussed further below, these requirements have not been met in a manner that would justify the continuation or extension of the CQoS and RRP framework.

IV. NO EVIDENCE OF SYSTEMIC INFERIOR QUALITY OF WHOLESALE SERVICES

25. The evidence suggests that the CQoS and RRP regime should be phased out, not expanded. There is no evidence pointing to a systemic substandard provision of wireline telephony wholesale services that is undermining competition in the market. As discussed, above, competition in the wireline telephony market is strong and dependence on mandated wireline telephony services is declining.
26. With respect to wholesale Internet, Shaw notes that the quality of wholesale TPIA service is also strong and improving. While issues arise in specific circumstances, on particular networks, in distinct regions across our country, there is no evidence of systemic substandard delivery of mandated Internet wholesale services that would call for the adoption of a uniform quality of service standard.
27. In 2013, the Canadian Network Operators Consortium (CNOC) filed an application with the Commission alleging that Shaw, and several other cable carriers, were providing wholesale Internet services in a manner that was unduly discriminatory. CNOC argued that if the situation were allowed to persist it would lead to an undue lessening of competition in the provision of retail services. CNOC asked the Commission to take steps to improve the quality of the cable carrier wholesale Internet services, including the introduction of a CQoS regime.
28. In Telecom Decision 2015-40 the Commission found that CNOC had not provided evidence that demonstrated that the cable carriers had acted in a discriminatory or preferential manner that would necessitate further action and closed CNOC's application.¹⁰ However, the Commission did agree that some aspects of the cable carriers' wholesale service could be improved through bi-lateral negotiation and updated process documentation.

¹⁰ Telecom Decision 2015-40, paragraphs 17.

29. Since CNOC's application and the Commission's determination, competition in the retail Internet market has continued to flourish and collaboration between wholesale providers and their customers has improved. Shaw has worked closely with its TPIA customers to resolve provisioning complaints raised in the proceeding leading to Telecom Decision 2015-40. For example, bilateral negotiations resolved many issues¹¹ and we continue to actively participate in the CISC 1540 Working Group to improve processes related to ordering and trouble ticketing.
30. Significantly, since CNOC's application in 2013, Shaw has transformed its internal structure to better deliver TPIA service by bulking up its dedicated team that works with our TPIA customers. This has resulted in improvements in our processes and provisioning timelines and much better responsiveness to our TPIA customers' needs.
31. The Commission has repeatedly found no evidence that TPIA quality is inferior to that provided to cable carriers' retail customers.¹² This is in stark contrast to the market conditions that resulted in the telco CQoS indicators. At that time, the Commission noted that the incumbent telcos' actions showed "ongoing and, for the most part, uninterrupted substandard performance."¹³
32. Not only is there no evidence of TPIA customers being provided with a chronically unacceptable level of service, there are key differences between the nature of the Internet and wireline voice markets. Unlike with unbundled local voice facilities, the very nature of TPIA and retail internet networks minimizes the risk of disparities in service quality between wholesale and retail services. TPIA service is provided over the same facilities that are used for the cable carrier's retail services. If a cable carrier were to degrade its service or network to impact its TPIA customers,

¹¹ See for example Joint Reports filed to Commission on February 8, 2016 and September 23, 2016, wherein Cable Carriers and CNOC indicated that the parties had resolved certain issues (e.g. regarding the TPIA service sign-up process) and identified the state of progress in resolving outstanding issues.

¹² For example, Telecom Decisions 2006-77 and 2015-40.

¹³ Telecom Decision 2002-34, paragraph 706.

those actions would also degrade the experience of the carrier's own retail customers.

33. It is difficult to see how a CQoS and RRP would enhance the provision of TPIA services, which depend on a number of customer- and provider- specific circumstances. In light of the diversity of circumstances, uniform targets/metrics would be a poor substitute for precise solutions to service issues that arise from time to time. These are more effectively designed through bilateral negotiations or, if necessary, dispute resolution.
34. In light of the above, expanding the CQoS and RRP to include wholesale Internet would not enhance competition in Canada's Internet markets or benefit consumers. In fact, implementing this new regime would more likely undermine competition and consumer benefits, given the significant costs discussed further below.
35. With respect to wholesale mobile wireless services, Shaw supports the regime established through the CRTC's Regulatory Framework for Wholesale Mobile Wireless Services¹⁴ and notes the Commission's reference to quality of service in its decision on Wholesale mobile wireless roaming service tariffs – Final terms¹⁵. Shaw and Freedom Mobile are not aware of any evidence of systemic failures that would satisfy the test laid out in paragraph 22 above and would justify any additional CQoS requirements for the current scope of regulated wholesale wireless services at this time.
36. As discussed above, there is increasing competition in all of Canada's wholesale telecommunications markets sufficient to ensure quality wholesale services are

¹⁴ Telecom Regulatory Policy CRTC 2015-177.

¹⁵ Telecom Decision CRTC 2017-56, paragraph 160 states the following: "In light of the above, the Commission directs the incumbents to include a single quality of service provision in their tariffs located outside the Definitions section; the incumbents to ensure that this provision includes language consistent with the following: "provided that the Services shall provide a Roaming Customer with the ability to access voice and data services at a level of quality comparable to that offered for similar services to the Company's own customers"; and RCCI to delete from its proposed tariff the clause regarding the exclusion of data transmission speeds."

available to competitors so that they can effectively offer choice in the retail market. In the absence of evidence that competition in the retail market is in decline and such decline is directly attributable to the quality of mandated wholesale services, Shaw believes the Policy Direction compels the Commission to phase out the existing CQoS regime and refrain from expanding it.

V. THE COSTS OF EXPANDING CQoS

37. Introducing a CQoS regime for mandated wholesale Internet services would be very complex and costly. As the Commission is aware, the development and implementation of the incumbent telco CQoS regime for voice services took years and tens of millions of dollars to develop and implement.¹⁶
38. While it is impossible for Shaw to estimate the costs of introducing IT infrastructure necessary to capture, track and report on various, still undefined indicators, it is clear that this would require Shaw to divert investment to develop an entirely new automated system specific to its TPIA service. Carriers like Shaw, which are currently not subject to regulated competitor quality of service programs, would be starting from scratch and thereby incurring even more significant costs.
39. The costs of developing, operating and maintaining this system would put upward pressure on rates for TPIA without demonstrated benefit for wholesale customers or end-users. It would also divert investment and energy away from network and service innovation that would directly benefit all Internet users, including retail and wholesale customers.
40. Shaw submits that this redirection of resources would be unjustified given the lack of evidence of wholesale service quality issues, combined with the compelling evidence of intense retail Internet competition and increasing wireline wholesale competition. Furthermore, and critically, there would be no identifiable benefit to consumers. In fact, by unnecessarily incurring significant costs in implementing a

¹⁶ Paragraph 8 of Bell Aliant and Bell Canada intervention on CNO's Part I application respecting TPIA quality of service, 29 November 2013.

CQoS regime, we would actually be undermining competition and facilities-based investment, thereby reducing, not enhancing, consumer benefits.

VI. CONCLUSION

41. An efficient regulatory framework is required in order to support, rather than disrupt, market forces, the competitive process and investment decisions that will drive the development of innovative telecommunications infrastructure in Canada. This is paramount to ensure that Canadian consumers are able to get the maximum benefit of our telecommunications system so that they can participate fully in our digital economy. Shaw submits that retaining or expanding the CQoS regime on the basis of potential problems would not benefit competition, innovation or consumers, would be inefficient and costly, would promote regulatory instability, and would be contrary to the Policy Direction. In the absence of an identifiable problem, we encourage the Commission to refrain from regulating.
42. The telecommunications policy framework – comprised of the Act, the Policy Direction and a body of Commission decisions and policies – has created an expectation that regulation can and will fall away in favor of market forces when it is no longer needed to protect consumer interests. In accordance with this expectation, the CQoS regime should not be retained or expanded.
43. Shaw further notes that there are existing, efficient alternative mechanisms in place to address any specific quality-related concerns that arise. These include CISC working groups, bilateral negotiations, Commission-supervised dispute resolution, and formal complaint processes. In Shaw's view, with these mechanisms, the Commission and parties are better-able to target appropriate remedies to specific, unique issues as they arise.
44. In Appendix A below, we provide our responses to the Commission's specific questions set out in the Notice of Consultation.

Appendix A: Responses to Questions Posed in TNC 207-49

Requirement for a competitor Q of S regime

Q1. How has the current Q of S regime performed in fostering competition?

A. As the Commission is aware, the current CQoS metrics were developed to support competition in the long distance and local wireline phone markets. While the CQoS regime may have benefited competitors who leased facilities such as unbundled loops to compete in the market, true sustainable competition in these markets was achieved through facilities-based market entry. Since that time, the need for leased incumbent facilities to support entry in the local voice market has declined. Therefore, Shaw believes that the current QoS regime is no longer necessary to foster competition in Canada's telecommunications markets.

Q2. Are market forces sufficient to ensure a high level of service or are Q of S regulatory measures required?

A. We believe that market forces are sufficient to ensure quality of service. Regulatory action to improve quality of service within a competitive market should only be considered in instances where there is evidence of a market failure. In this rare situation, narrowly focused and targeted regulation could be imposed to correct the failure.

In Shaw's view, there is no evidence of market failure that would necessitate the continuation or application of a CQoS regime impacting multiple carriers, broad geographical footprints and diverse wholesale services. In fact, there is considerable evidence, as highlighted above in section II, of growing competition in the wholesale wireline market.

Q3. If a competitor Q of S regime is required, what should its objectives be?

A. In Shaw's view, a CQoS regime is not warranted or appropriate. The objective of any CQoS regime should be limited to correct a clear market failure, which would only be evidenced by systemic, anti-competitive substandard provisioning of mandated services or facilities. The Commission must have substantial evidence of an actual problem in order to develop a CQoS regime that is precisely targeted to achieving its intended purpose without having unintended consequences to either the wholesale or retail markets. As Shaw explains in Section IV, there is no such evidence in today's Canadian telecommunications marketplace. Any new CQoS regime must be proportionate to its purpose, in accordance with the requirements of Canada's telecommunications policy framework. In light of the competitiveness of the market and the absence of systemic quality issues in wholesale provisioning, it would be very difficult for the Commission to develop a CQoS regime that would be proportionate to the goal the Commission is trying to achieve. In the absence of a problem that requires a regulatory solution, any intervention would be disproportionate at this point.

Q4. If other regulatory measures are required, what should they include?

A. The Commission has numerous regulatory tools that could be utilized to address specific concerns related to mandated wholesale services that may arise from time to time. These include the Alternative Dispute Resolution process, Part I applications, Bilateral negotiation, off-tariff agreements and CISC Working Group discussions. Shaw does not believe that new regulatory measures are necessary given the existence of these options and the fact that there are still several ongoing processes examining wholesale service provisioning for TPIA.

Appropriateness of the current RRP

Q5. Does the current RRP for competitors remain appropriate? That is, does it provide adequate incentive to maintain a high Q of S?

A. As we discussed above and in the body of our submission, Shaw does not believe CQoS remains necessary to foster competition in the market. Facilities-based

competition in the local voice market has emerged via cable, wireless and Internet facilities. Therefore, the RRP, which is tied to CQoS metrics, is similarly no longer required and should be phased-out.

If the Commission decides to extend the CQoS reporting requirement to include new wholesale services, a position that Shaw does not endorse, the RRP must not be included in this new CQoS regime until such time as there is evidence of repeated failures by carriers to meet CQoS targets and a determination that RRP is the most appropriate measure to incentivize carriers to correct this issue. This approach aligns with the Commission's historical approach to the CQoS regime. The reporting requirement was introduced in Telecom Decision 97-16, but the RRP was introduced in Telecom Decision 2002-34, only after there was evidence of an ongoing systemic failure to meet the CQoS targets.

Q6. If an RRP for competitors is required, are the guiding principles established in Telecom Decision 2005-20 still appropriate? If the existing guiding principles are no longer appropriate, what principles should be adopted?

A. As discussed above, Shaw does not believe the CQoS or the RRP continue to be required to foster competition in retail markets. The increasingly competitive state of the wholesale market, combined alternative means of recourse are sufficient to protect the interests of consumers.

However, if the Commission continues with or expands the CQoS and RRP regimes, Shaw believes the eight guiding principles set out in Telecom Decision 2005-20 remain appropriate, with some modification. Shaw sets out the modified guiding principles below:

1. Q of S indicators to be included in the RRP should measure performance of the provision of mandated wholesale services required by competitors;
2. Q of S indicators to be included in the RRP should be measured on a competitor-by-competitor basis;

3. Q of S indicators to be included in the RRP should be calculated only in respect of an activity that is within the wholesale provider's direct control;
4. Q of S indicators to be included in the RRP should be such that they do not duplicate activities that are already measured by other indicators in the RRP;
5. RRP should be applied to achieve improvement in Q of S obligations only a similar outcome could not reasonably be achieved through other means;
6. The RRP should not operate as a penalty mechanism;
7. The RRP should be easy to understand, to administer and to audit; and
8. The RRP should apply equally regardless of the volume of the mandated wholesale service or the type of wholesale customer.

It should be emphasized that, before moving to assess any of these questions, the Commission would have to have identified sufficient evidence of systemic quality issues in the provisioning of mandated wholesale services, crafted the correct metrics, and then identified sufficient evidence of failure by wholesale providers to meet those metrics. None of the necessary evidence that would justify moving forward with these endeavours has been identified.

Q7. What indicators, if any, should be included in the RRP for competitors?

Include details and rationale about any proposed new or revised indicators, such as proposed indicator names and definitions, and service standards.

A. Shaw is not proposing any new RRP indicators and is not aware of any evidence that would support the continuation or expansion of the RRP indicators. We would caution against introducing any new regulatory measures based on perceived market failures or to guard against hypothetical future market failure scenarios. Taking this course of action would run counter to the Policy Direction, as further explained in section III above.

Q8. Should another mechanism be considered as an enforcement mechanism, either alone or in conjunction with the RRP for competitors?

A. As discussed in our response to Question 4 above, there are numerous tools available to competitors to resolve any issues related to the provision of mandated wholesale services. These tools would provide more tailored, efficient and responsive means to address any quality concerns that arise in today's dynamic marketplace, which are far more likely to depend on the unique circumstances of the ISP customer, the wholesale provider or the particular network and location. This is a much more proportionate, effective solution, in comparison with a uniform, static solution that may not address the ISP customer's needs or be reasonable or efficient for the wholesale provider to implement.

Types of services that should be included

Q9. What criteria should be used to select the types of services, if any, that should be included in the competitor Q of S regime?

A. Shaw is not proposing new CQoS metrics. It would only be appropriate to adopt CQoS if there were affirmative responses to the following questions.

1. Does the mandated wholesale service involve the supply of a monopoly owned or controlled facility that is needed to support competition in the retail market?
2. Is there evidence that market forces at the wholesale level cannot be relied upon to ensure high quality supply of the mandated wholesale service?
3. Is there evidence that the wholesale service provider is failing to provide quality wholesale services in a manner that enables competition in the retail market?
4. Is the failure to provide a quality wholesale service due to factors entirely within the control of the wholesale provider?
5. Is applying a CQoS regime the most efficient approach to correcting the wholesale service quality issue?

6. Does the benefit of the CQoS regime outweigh the regulatory and administrative burden imposed on the wholesale service provider and the Commission?

As detailed throughout Shaw's submissions, there is no evidence that providers of regulated wholesale services are currently provisioning those services in a manner that undermines competition in the retail market. Furthermore, the costs of a new CQoS regime would significantly outweigh the benefits. It would therefore be inappropriate to maintain or expand CQoS.

Even if the responses to all the questions above were affirmative (with which Shaw does not agree), it would still be necessary to undertake a process to define a targeted, proportionate CQoS regime that isolates the correct metrics to address the specific barrier to competition in the retail market that we are trying to overcome. At this point, it is challenging to see what that would be given the absence of evidence of a systemic problem.

Q10. What specific services should be subject to the regime?

A. Shaw is not aware of any mandated wholesale service that would meet the criteria as set out above in our response to Question 9. The market conditions we have today are significantly more dynamic and competitive than the local voice and long distance markets in the late 90s that precipitated the development of a CQoS regime. Critically, there is no evidence of systemic quality issues in the provisioning of regulated wholesale services. In the absence of evidence of a barrier to competition that would justify the introduction of new regulatory requirements, Shaw is not proposing that any mandated wholesale service be subject to a CQoS regime. Shaw would also highlight the risks of applying CQoS to a dynamic, multi-platform market, such as today's. In the monopoly telephony era, there was one provider in the marketplace. With several competitors in today's markets, and multiple platforms, there is a high likelihood of unintended regulatory asymmetries and disadvantages among wholesale providers. This would distort the evolving and growing competitive markets for wholesale and retail telecommunications services in Canada.

Service providers to which a regime should apply

Q11. Should the competitor Q of S regime be expanded to include cable carriers, wireless carriers, small ILECs, and Northwestel? If so, should the competitor Q of S regime apply to all such carriers or should there be a threshold based on the size of the company and/or other factors?

A. Shaw does not support expanding the CQoS regime to include additional carriers. Shaw is not aware of evidence of a market failure that would necessitate the introduction of an onerous and costly reporting regime. Instead, Shaw proposes the elimination of the existing CQoS and RRP regime.

However, if the Commission disagrees and determines that market failure necessitates the expansion of the CQoS regime to include new carriers, we believe it would be prudent for the Commission to take into consideration the size of the carrier in order to ensure the regulatory burden does not outweigh any perceived benefit. This would be consistent with the Commission's previous practices with respect to small ILECs and small cable carriers.

Q12. Does the complaint-based system continue to be the best means of monitoring Q of S for small ILECs?

A. Subject to our response to Q14. below, Shaw's position is that QoS monitoring should be eliminated for all service providers, including small ILECs. To the extent that QoS is maintained for small ILECs, the complaint-based system remains appropriate.

Requirement for an exclusion application process

Q13. Does the exclusion application process continue to be required? If so, should any changes be made to the current process?

A. If the Commission continues with the CQoS and RRP regimes, then the exclusion application process continues to be applicable and should be maintained. Carriers should not be penalized for poor performance metrics beyond their control.

Reporting requirements

Q14. What, if any, reporting requirements should be imposed in the future?

A. Shaw proposes the elimination of the CQoS reporting requirements except those metrics that must be reported in support of an application for forbearance from residential or business local exchange services. The tracking and reporting of the specific subset of CQoS indicators set out in Telecom Decision 2006-15, as modified by Order in Council P.C. 2007-532, must be retained until such time as the local exchange forbearance criteria is altered to eliminate this requirement. For greater clarity, the reporting and tracking of this CQoS metric subset should be retained solely for the purposes of ILEC local forbearance applications. Regular reports of these CQoS indicators and any associated RRP should be eliminated.

Q15. If reporting is required, which performance indicators should be included?

The CQoS regime should not be retained or expanded. However, for the time-being it will be technically necessary to retain the tracking and reporting of the specific subset of CQoS indicators set out in Telecom Decision 2006-15, as modified by Order in Council P.C. 2007-532 until such time as the local exchange forbearance criteria is altered to eliminate this requirement. As the Commission is aware, the local forbearance test includes a requirement that the incumbent local exchange carrier meet certain CQoS indicators in order to be granted local forbearance. Until such time as the CQoS component is removed from the local exchange forbearance criteria, ILECs will need to continue to report on the subset of CQoS when submitting a local forbearance application. Shaw notes that the Commission's 3-year plan includes a review of the local forbearance regime. We suggest this issue could be discussed during that review.

Transition to a new regime

Q16. How should any changes to the regime be phased in or out, and what would be the best way to make the transition to a new regime?

A. Shaw proposes the immediate phase-out of the existing CQoS and RRP regimes, with the exception of reporting of CQoS indicators necessary to support local forbearance applications, as discussed above.

If the Commission proceeds with the expansion of the CQoS regime, including the addition of services or new carriers, then we would expect the Commission to provide at least 18 months following the finalization of the new indicators and reporting metrics in order to develop and implement automated systems for tracking and reporting.

Time frame to review the new regime

Q17. What is an appropriate time frame to begin a review of the new regime?

A. If the Commission proceeds with introducing a new CQoS regime, Shaw suggests that it would need to be reviewed every three years to ensure that it remains appropriate in today's dynamic market.

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