



## Telecom Regulatory Policy CRTC 2020-40

PDF version

Ottawa, 4 February 2020

*Public record: 1011-NOC2018-0214*

### **Review of the price cap and local forbearance regimes**

*With this decision, the Commission reaffirms the intended purpose of the price cap and local forbearance regimes, which is to provide protection to consumers in the absence of sufficient competition and ensure that rates remain just and reasonable. The Commission is making some modifications that will simplify the regimes.*

*The Commission determines that the large incumbent local exchange carriers (ILECs) failed to demonstrate that the elimination of local service subsidy requires some form of regulatory or financial compensation. As a result, there is no convincing justification to support significant price cap changes, including increasing monthly residential primary exchange service (PES) rates to offset the loss of local service subsidy. However, the Commission determines that some changes to the large ILECs' price cap regime are warranted at this time, notably merging the two residential services baskets into one basket, and eliminating the exogenous factor mechanism.*

*With respect to the large ILECs' local forbearance regime, the Commission is not convinced that significant changes to the regime are warranted at this time. However, the Commission determines that the competitor quality of service criteria should no longer form part of the forbearance regime for residential and business local exchange services.*

*On the basis of the limited evidence in this proceeding, the Commission considers that it is likely that the elimination of the local service subsidy will ultimately result in a material shortfall for Northwestel, potentially resulting in rates that are no longer just and reasonable. As a result, the Commission will launch a more fulsome review specific to Northwestel, prior to the complete phase-out of the subsidy, in order to consider the appropriate regulatory approach to address this situation. However, in the interim, the Commission determines that Northwestel's residential PES rates in each of the residential services baskets in high-cost serving areas (HCSAs) and non-HCSAs will be permitted to increase annually by the rate of inflation, to a maximum of 5% per year.*

*The Commission also intends to initiate a follow-up proceeding to seek comments on what changes, if any, should be made to the small ILECs' price cap and local forbearance regimes.*

## Introduction

1. The incumbent local exchange carriers (ILECs), which include the large ILECs,<sup>1</sup> the small ILECs,<sup>2</sup> and Northwestel Inc. (Northwestel),<sup>3</sup> are subject to various regulatory regimes created by the Commission over the years that set out the structure, process, and criteria that guide the Commission in making determinations related to specific services. In the context of local voice services, the Commission has established three main regulatory regimes: (i) the local service subsidy regime, (ii) the price cap regimes, and (iii) the local forbearance regimes. The Commission has also imposed an obligation to serve on the ILECs.

### The local service subsidy regime

2. The local service subsidy regime<sup>4</sup> was established to subsidize the provision of residential local voice telephone services in high-cost serving areas (HCSAs).<sup>5</sup> Until the end of 2018,<sup>6</sup> ILECs received monthly subsidy amounts based on the number of residential network access services (NAS)<sup>7</sup> they serve.

### Price cap regimes

3. The price cap regime allows for a flexible and efficient means for establishing just and reasonable rates for local services that are not forborne from regulation. This regulation applies only to the ILECs' tariffed services and 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.
4. In addition, ILECs can apply for an exogenous factor<sup>8</sup> adjustment as a result of events causing unanticipated changes to their input costs. An exogenous factor

---

<sup>1</sup> These are Bell Canada (including the former Bell Aliant Regional Communications, Limited Partnership; Bell MTS; and Télébec, Société en commandite); Saskatchewan Telecommunications; and TELUS Communications Inc.

<sup>2</sup> These are small, locally owned telephone companies mainly serving rural areas in Ontario and Quebec. There is also one small ILEC located in British Columbia.

<sup>3</sup> Northwestel is a subsidiary of Bell Canada but is regulated separately.

<sup>4</sup> The Commission established the current local service subsidy regime in Decision 2000-745.

<sup>5</sup> 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.

<sup>6</sup> See Telecom Regulatory Policy 2018-213.

<sup>7</sup> A NAS is a connection or line that provides customers with access to the public switched telephone network.

<sup>8</sup> Exogenous factors are legislative, judicial, or administrative actions that are beyond the control of the company, are specific to the telecommunications industry, and have a material impact on the company.

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).

5. The Commission currently has distinct but similar price cap regimes in place for the large ILECs, the small ILECs, and Northwestel.<sup>9</sup>

### **Local forbearance regimes**

6. The local forbearance regimes<sup>10</sup> 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.<sup>11</sup>
7. The local forbearance regimes apply to the large and small ILECs' serving territories only where local competition has been implemented. While the Commission permitted local competition in Northwestel's serving territory beginning in May 2012, pursuant to Telecom Regulatory Policy 2011-771, the Commission has not established a local forbearance regime specific to Northwestel.

### **Obligation to serve**

8. To meet the objectives of the *Telecommunications Act* (the Act), the Commission has approved terms of service pursuant to which ILECs are obligated to provide certain services. The obligation to serve requires ILECs to provide telephone service to (i) existing customers, (ii) new customers requesting service where the ILEC has facilities, and (iii) new customers requesting service beyond the limits of the ILEC's facilities. Further, if a competitor ceases to operate in an exchange, the ILEC in the exchange is obligated to be prepared to serve that competitor's customers (carrier of last resort).<sup>12</sup> The Commission, in various decisions, has retained the obligation to serve, as it applied to voice telephone services, for the ILECs.<sup>13</sup>

---

Adjustments for exogenous amounts are reviewed on an individual basis and assigned to the appropriate service baskets.

<sup>9</sup> These regimes are set out in Telecom Decision 2007-27, Telecom Regulatory Policy 2013-160, and Telecom Regulatory Policy 2013-711, respectively. The regimes for the large ILECs and the small ILECs have no expiry date. The regime for Northwestel was set to expire on 31 December 2018, but was extended pending the Commission's determinations in this proceeding.

<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> For Bell Canada and its affiliates, the terms of their obligation to serve are also set out in section 6 of the *Bell Canada Act*. The *Bell Canada Act* requires the company to provide local telephone service upon request by any person or organization in a municipality or other jurisdiction in which the company provides general telephone service, subject to certain exceptions.

<sup>13</sup> Most recently in Telecom Regulatory Policies 2011-291 and 2016-496.

9. In exchanges that continue to be regulated, the obligation to serve includes the provision of tariffed local voice services and related services (e.g. optional features) throughout the ILECs' serving territories, subject to any limitations set out in the general terms of service.
10. In exchanges where the Commission has forborne from rate regulation, the ILECs continue to be obligated to provide stand-alone wireline local telephone services,<sup>14</sup> which consist of (i) unlimited local calling at a flat monthly rate, subject to a price ceiling;<sup>15</sup> and (ii) access to a choice of long distance service provider. The ILECs have the flexibility to meet this obligation by offering mobile wireless voice services.

### **Telecom Regulatory Policy 2016-496**

11. In Telecom Regulatory Policy 2016-496, the Commission established a universal service objective that Canadians, in urban areas as well as in rural and remote areas, have access to high-quality voice services and broadband Internet access services, on both fixed and mobile wireless networks.
12. 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. 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.

### **Telecom Regulatory Policy 2018-213**

13. In Telecom Regulatory Policy 2018-213, 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 subsidy for residential services in HCSAs, starting on 1 January 2019. The Commission also found that the record of that proceeding had not established that the elimination of subsidy would result in rates that are not just and reasonable, such that some form of compensation was required at that time.

---

<sup>14</sup> Stand-alone wireline local telephone refers to a basic voice service that does not include any additional features (e.g. a long distance plan or optional services) or services (e.g. Internet, wireless, or television).

<sup>15</sup> The Commission set this price ceiling at \$30 per month in forborne exchanges and allowed this rate to increase annually, on 1 June of each year, by the rate of inflation, starting in 2014. The price ceiling includes charges for touch-tone service and other permanent monthly charges associated with unlimited local calling.

## Telecom Decision 2020-41

14. The Independent Telecommunications Providers Association (ITPA) filed an application with the Commission to review and vary Telecom Regulatory Policy 2018-213, arguing, in part, that the Commission did not have the legal authority to remove the local subsidy regime without granting some form of compensation, since removing the regime would render rates unjust and unreasonable. In Telecom Decision 2020-41, also issued today, the Commission denied the ITPA's request that the Commission overturn its decision to eliminate the local service subsidy and maintain the subsidy for at least 10 years, or until it can be eliminated organically.
15. In making that determination, the Commission set out its legal interpretation of its obligations with respect to local subsidy and compensation. The Commission acknowledged the principle of "regulatory compact," which provides that in exchange for serving all customers at reasonable rates and without undue discrimination, a public utility service provider is entitled to a fair rate of return on its investment.
16. As noted in that decision, the concept of the regulatory compact was given statutory force through subsections 27(1) and (2) of the Act,<sup>16</sup> and forms the basis of the Commission's rate-setting authority. However, the Commission's rate-setting authority extends beyond the regulatory compact and its authority in setting rates is also set out in section 47<sup>17</sup> and subsection 27(5)<sup>18</sup> of the Act.
17. Combined, these provisions require the Commission to balance a broad range of interests and objectives when determining just and reasonable rates. In addition to balancing the carriers' interests in a fair rate of return and the customers' interests in fair prices, the Commission must consider the policy objectives set out in section 7 of the Act, competitiveness in the market, the public interest, and the needs of the telecommunications system as a whole.

---

<sup>16</sup> Subsection 27(1) of the Act states that every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable. Subsection 27(2) states that no Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

<sup>17</sup> Section 47 of the Act states that the Commission shall exercise its powers and perform its duties under the Act and any special Act (a) with a view to implementing the Canadian telecommunications policy objectives and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27; and (b) in accordance with any orders made by the Governor in Council under section 8 or any standards prescribed by the Minister under section 15.

<sup>18</sup> Subsection 27(5) of the Act states that in determining whether a rate is just and reasonable, the Commission may adopt any method or technique that it considers appropriate, whether based on a carrier's return on its rate base or otherwise.

## Telecom Notice of Consultation 2018-214

18. In Telecom Notice of Consultation 2018-214, which was issued concurrently with Telecom Regulatory Policy 2018-213, the Commission initiated a proceeding to review certain elements of the price cap and local forbearance regimes (the proceeding). The proceeding included consideration of (i) whether compensation is necessary given the elimination of the local service subsidy, (ii) changes to the pricing constraints for residential local voice service rates, (iii) whether the exogenous factor mechanism should be eliminated, and (iv) changes to the local forbearance regimes for residential and business local exchange services. The large ILECs, the small ILECs, and Northwestel were made parties to the proceeding.
19. The Commission received interventions from Bell Canada et al. (Bell Canada on behalf of itself; DMTS, a division of Bell Canada; KMTS, a division of Bell Canada; NorthernTel, Limited Partnership; Ontera; and Télébec, Société en commandite [Télébec]), Cogeco Communications inc. (Cogeco), the Canadian Network Operators Consortium Inc. (CNOc), the Eeyou Communications Network (ECN), the ITPA, Northwestel, Rogers Communications Canada Inc. (RCCI), Saskatchewan Telecommunications (SaskTel), Shaw Communications Inc. (Shaw), SSi Micro Ltd. (SSi), and TELUS Communications Inc. (TCI), as well as the Public Interest Advocacy Centre (PIAC), the Government of Northwest Territories (GNWT), the Government of Yukon, the Northwest Territories Chamber of Commerce, the Yukon Chamber of Commerce, and one individual.

## Issues

20. The Commission has identified the following issues to be addressed in this decision:
  - In relation to the large ILECs:
    - Are any measures necessary to compensate the large ILECs?
    - Should any changes be made to the pricing constraints regarding the large ILECs' rates for residential local exchange services in regulated areas?
    - Are the large ILECs' other proposals related to compensation for lost subsidy appropriate?
    - Is the exogenous factor mechanism still necessary for the large ILECs?
    - Are changes required to the local forbearance regimes for the large ILECs' residential and business local exchange services?

- In relation to Northwestel:
  - Has Northwestel demonstrated that there is a need for it to be compensated for the elimination of the local service subsidy and, if so, how should the Commission address this need?
  - Should any of Northwestel's proposals for compensation be considered at this time?
  - Is the exogenous factor mechanism still necessary for Northwestel?
  - Should a local forbearance regime be implemented for Northwestel?
- In relation to the small ILECs:
  - Should any changes be made to the price cap and local forbearance regimes for the small ILECs?

### **Are any measures necessary to compensate the large ILECs?**

#### **Background**

21. In Telecom Notice of Consultation 2018-214, the Commission stated that it would consider whether compensation is required given the elimination of the local service subsidy and, if so, the appropriate approach. Further, the Commission stated that 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.

#### **Positions of parties**

22. In general, the large ILECs claimed that compensation for the loss of the local service subsidy was necessary, citing their regulatory obligation to serve, the level of costs to serve HCSAs, and the magnitude that the loss of subsidy represented. Instead of seeking dollar-for-dollar compensation, as noted above, the large ILECs generally proposed various changes to their price cap and local forbearance regimes to provide additional flexibility as a means of compensation.
23. TCI proposed eliminating the obligation to serve for ILECs since it claimed that alternatives to copper wireline voice service are now ubiquitous in Canada, including in HCSAs. TCI also argued that the elimination of the obligation to serve would be consistent with the 2006 Policy Direction,<sup>19</sup> in particular with respect to reliance on market forces.

---

<sup>19</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

24. Bell Canada et al. argued that under the existing price cap framework, removal of the local service subsidy would qualify for an exogenous adjustment. They submitted that, for such an adjustment, the ILECs should be permitted to recover the subsidy loss through rate increases for related services, namely residential primary exchange service (PES)<sup>20</sup> in regulated HCSA exchanges.
25. SaskTel submitted that it did not believe that monetary compensation for the loss of the local service subsidy is an attainable goal and that the Commission should allow increases in pricing constraints that exceed the inflation measure that is currently allowed.<sup>21</sup> SaskTel argued that once regulatory support for local wireline service is removed, there should be a lessening, or a removal, of the associated regulatory rules.
26. While all the large ILECs indicated that compensation was necessary for the loss of local service subsidy, only TCI provided costing information to support this view.
27. With respect to the underlying costs to provision PES, Bell Canada et al. noted that they have repeatedly acknowledged that the existing local service subsidy is based on outdated costs that have disproportionately benefitted some ILECs at the expense of others. They submitted that properly updating those costs would be an extensive and contentious process. However, they were concerned about the impact of the loss of subsidy on rural and remote areas, since these areas are generally expensive to serve due to, for example (i) higher maintenance costs, particularly in northern and fly-in communities (e.g. a requirement for flights or ferries to access the communities, limited access during winter months, and high power costs at central offices); and (ii) space segment satellite operating expenses.
28. TCI submitted that it continues to invest in copper-related infrastructure to provide local residential PES. TCI further submitted that the vast majority of the costs to provide local residential PES are for the copper loop component and its associated maintenance, which it submitted are increasing.
29. Bell Canada et al. and TCI submitted that it has been the Commission's long-standing rule to attribute the full cost of the copper loop solely to residential PES and that it would be difficult to determine the appropriate allocation of costs to other competitive services, such as Internet service, that use the same local loop as local PES (hereafter, additional services). TCI argued that it would be inappropriate to assume that revenues from such additional services can offset the costs of providing local service. TCI submitted that reliance upon these profits as compensation is neither legally defensible nor economically feasible. TCI claimed that the revenues that such additional services generate are normally sufficient only to cover the costs of those services and provide a reasonable profit. TCI also

---

<sup>20</sup> PES is a wireline-based telephone service that provides customers with unlimited local calling within a defined area at a flat monthly rate, as well as access to a long distance network of the customer's choice.

<sup>21</sup> Inflation is measured using the gross domestic product – price index (GDP-PI).

indicated that, due to long loop lengths, many copper lines in HCSAs are capable of providing only local residential PES.

30. PIAC submitted that the Commission has no legal duty to compensate the ILECs for the elimination of the local service subsidy, nor did it provide any assurance that the local service subsidy would continue indefinitely, but that it may be consistent with the policy objectives to provide compensation in limited circumstances. PIAC further submitted that, in almost all cases, ILECs have had ample time to recover the cost of their investments in providing home phone service, and that competitive entry into HCSAs shows that, in many cases, serving those areas is now profitable.
31. ECN, RCCI, Shaw, and SSi were of the view that the ILECs should not be compensated for the loss of the local service subsidy.
32. ECN submitted that continuing to subsidize legacy systems that are not competitive would not only give the ILECs an unfair advantage in the marketplace, it would also divert funding away from better solutions and new players in the market.
33. RCCI submitted that the ILECs have enjoyed an operational subsidy for long enough, and given that capital investments are no longer required to bring local service to HCSAs, there are few costs associated with providing local service.
34. Shaw submitted that the ILECs failed to provide the necessary financial and other costing data to support the need for compensation in HCSAs or to show that the elimination of subsidy would result in rates that are not just and reasonable. Shaw further submitted that reforms to the price cap and the local forbearance regimes should be driven by the objectives of regulatory efficiency and effectiveness under sections 7 and 47 of the Act.

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

#### **Obligation to serve**

35. In past decisions, the Commission has retained the obligation to serve for the large ILECs. Most recently, in Telecom Regulatory Policy 2016-496, the Commission noted that only ILECs are capable of providing access to local voice service for all customers in their respective exchanges. Given this situation, as well as the minimal presence of competitors in regulated exchanges, the Commission retained the obligation to serve, as it currently applies to voice telephone service, for the ILECs.
36. Wireline voice services remain basic telecommunications services. As a result, there continues to be a need to impose an obligation to serve on the ILECs, since the ability to access PES for all Canadians is important, and market forces cannot be solely relied upon in regulated markets, or in pockets of forborne markets, where competition may be minimal or non-existent. The obligation to serve ensures that whatever the situation and location, Canadians have access to a local voice service.

37. Accordingly, given the importance of the obligation to serve, the Commission determines that the obligation to serve will be retained for not only the large ILECs, but for all the ILECs.

#### **Compensation for lost local service subsidy**

38. Consistent with its duties under the Act, in determining whether compensation for the lost local service subsidy is required, the Commission has considered whether there is evidence that the rates would become unjust or unreasonable without such intervention. In addition to a carrier's costs to provide a service, the Commission is required to take into account the different constituencies and interests referred to in the policy objectives.
39. In this regard, none of the ILECs provided the necessary information demonstrating that its costs of provisioning service in HCSAs are such that rates are no longer just and reasonable. This was despite the Commission, in Telecom Regulatory Policy 2018-213, providing parties with notice that they had not met the evidentiary requirement in the proceeding, and, in Telecom Notice of Consultation 2018-214, stating that parties had the burden of providing the necessary data in the proceeding to support any claim that rates were not just and reasonable in the absence of the local service subsidy.
40. Further, as indicated in Telecom Regulatory Policy 2018-213, subsidy amounts are likely overstated given the potential for carriers to earn revenues from other services that did not exist when the local subsidy regime was created. Accordingly, the Commission specified in Telecom Notice of Consultation 2018-214 that parties were required to provide sufficient supporting evidence to demonstrate that compensation is necessary.
41. Having reviewed the current record, the Commission notes that it last approved the costs used to calculate the local service subsidy in 2001, and that these costs have not been reviewed since that time. As a result, the Commission considers that those dated cost studies do not reflect the current realities of PES infrastructure in terms of provisioning and usage. Specifically, those cost studies do not properly take into consideration the costs and revenues of additional services that are using this infrastructure, which the Commission considers contribute to their overall financial viability.
42. None of the large ILECs provided sufficient information for the Commission to determine that compensation, in some form, is necessary. Only TCI provided a cost study; however, the company used a gross book value approach, which is inconsistent with the Commission's determination set out in Telecom Decision 2011-24 that the net book value is the appropriate methodology when existing copper plant is used. Regardless, TCI did not provide sufficient evidence for the Commission to evaluate the impact on the local service subsidy if revenues and costs from other services that use the PES infrastructure were considered in the calculation. Neither Bell Canada et al. nor SaskTel provided supporting costing data.

43. Instead, the parties generally provided information reflecting the amount of subsidy they would lose over the phase-out period and beyond, or noted that these amounts were significant and would, by the very fact of their scale, lead to a situation in which the regulatory compact has not been respected.
44. Given the lack of evidence filed on the record of the proceeding, the Commission considers that there is no need for subsidy or another broadly applicable form of direct compensation for the large ILECs to maintain just and reasonable rates. The Commission considers that current rates continue to be just and reasonable and balance the carriers' interests in a fair rate of return and customers' interests in fair prices.
45. Further, the Commission does not agree with Bell Canada et al.'s position that the removal of the local service subsidy qualifies as an exogenous event. Since the large ILECs have not provided evidence that there would be a material impact on just and reasonable rates as a result of the removal of the subsidy, the rates for PES in HCSAs continue to be just and reasonable, and it cannot be considered an exogenous event.
46. Accordingly, the Commission determines that the large ILECs have failed to demonstrate that measures to compensate for the loss of the local service subsidy are required. Should the ILECs consider that their rates are not just and reasonable, it is open to them to submit the necessary information to the Commission that demonstrates that the rates are not just and reasonable. In assessing this information, the Commission would consider the incorporation of the costs and revenues of additional services that are using the PES infrastructure.
47. The Commission has assessed the ILECs' proposals below for changes to the regimes on their own merits while taking into account the determination that the large ILECs have failed to demonstrate that measures to compensate for the loss of the local service subsidy are required.

### **Should any changes be made to the pricing constraints regarding the large ILECs' rates for residential local exchange services in regulated areas?**

#### **Background**

48. As noted above, price cap regulation generally places upward constraints on the prices that an ILEC can charge its customers for various telecommunications services, which allows for a flexible and efficient means of establishing just and reasonable rates for those services that remain regulated. The price cap regime includes baskets or groups of services that are subject to constraints tailored to meet the circumstances of the relevant services.
49. Residential local voice services are assigned to two separate baskets: one for Residential services in HCSAs and another for Residential services in non-HCSAs. Each of these baskets has different pricing constraints.

50. The rates for services in the Residential services in HCSAs basket are currently permitted to increase annually by the rate of inflation. Additionally, to protect against any unexpected rise in the rate of inflation, increases cannot exceed 5%.<sup>22</sup>
51. The rates for services in the Residential services in non-HCSAs basket have generally been capped at existing levels since 2007.<sup>23</sup>

### **Positions of parties**

52. The large ILECs generally proposed increasing regulated residential PES rates in HCSAs to compensate for the elimination of the local service subsidy.
53. Bell Canada et al. and TCI, supported by Groupe Maskatel LP, Northwestel, and Shaw, proposed that monthly residential PES rates in regulated HCSAs be permitted to increase to \$38.34 over a transition period, subject to certain constraints. Bell Canada et al. submitted that \$38.34 is the highest Commission-approved monthly residential PES rate in the country and is therefore just and reasonable. TCI indicated that permitting rates to increase does not guarantee that market forces would actually permit the ILECs to leverage that pricing flexibility.
54. Bell Canada et al. proposed a maximum annual rate increase of \$2.50 during the transition period, noting that this increase is below the PES rate increase previously approved by the Commission and does not exceed the 5% rate element constraint in any given year, a threshold the Commission has already determined is just and reasonable. Thereafter, the existing constraints would continue to apply. TCI proposed a maximum increase of \$2.00 per year until the rate of \$38.34 is achieved and then a minimum annual increase of 4.5%.
55. Bell Canada et al. made the same proposal for residential PES rates in non-HCSAs. Bell Canada et al. indicated that the application of the different pricing constraints to residential PES in non-HCSAs and HCSAs has contributed to the inability of ILECs to harmonize rates for these services within their serving territories. Bell Canada noted that it has over 30 Commission-approved rates for regulated residential PES in its non-HCSAs, which range from \$20.76 to \$32.01. However, TCI proposed that residential PES rates in non-HCSAs be permitted to increase only by inflation annually, which, it claimed, would ensure that PES continues to be affordable for consumers.

---

<sup>22</sup> In Telecom Regulatory Policy 2011-291, to harmonize rates and reduce subsidy, the Commission allowed monthly rates for residential PES in HCSAs to increase over a three-year transition period to the lesser of \$30 or the amount required to eliminate subsidy, effective 1 June 2011. After the end of the transition period, annual rate increases were limited to the rate of inflation.

<sup>23</sup> In Telecom Decision 2007-27, the Commission implemented a price ceiling on residential PES rates in non-HCSAs to protect against unreasonable rate increases.

56. In addition, Bell Canada et al. proposed that monthly rates for residential party-line services (two-party, four-party, or multi-party) increase to \$38.34 over a transition period, subject to certain rate element constraints. Bell Canada et al. indicated that party-line services are outdated, do not meet the Commission's basic service objective, and represent a small number of lines. They noted that monthly rates for party-line services range between \$10.20 and \$31.77 and that they anticipate that increases in the price for party-line services would result in customers moving to individual line residential PES over time.<sup>24</sup>
57. SaskTel proposed that the Commission allow monthly residential PES rates in HCSAs to increase annually by 5% or the rate of inflation, whichever is higher. The company submitted that inflationary rate increases would continue to enable cost increases in providing PES to be somewhat offset by contributions from customers. It further submitted that limiting the increase to 5% annually would ensure that consumers do not experience rate shock and that they transition gradually away from their current voice service, should they wish to do so. SaskTel further submitted that the Commission may wish to explore ways to remove the high "water mark" represented by Télébec's \$38.34 rate; otherwise, this rate will be the approved "affordable" rate that all other companies must strive to match.
58. Bell Canada et al. and Northwestel, supported by Shaw, also proposed to merge the two residential services baskets into a single basket. Bell Canada et al. submitted that with the elimination of the local service subsidy, there is no practical or other reason to retain the two distinct service baskets. Bell Canada et al. submitted that its proposal would enable it to simplify and harmonize its rate structure so that ILECs could have the same rate for residential PES across their regulated serving territories.
59. TCI did not support the merger of the residential services baskets. The company submitted that Bell Canada et al. failed to provide evidence that there are no longer any distinctions between bands, with or without subsidy.<sup>25</sup>
60. PIAC submitted that if the price cap is changed, it should be lowered. PIAC indicated that the purpose of the price cap regime is to ensure that basic telecommunications services are affordable for consumers and to restrain the exercise of market power by service providers. In PIAC's view, the price caps were not set to reflect service provider's costs, and they should not be reset on that basis. PIAC submitted that Bell Canada et al. had not offered any consumer survey or other research to substantiate that the transition to the proposed monthly \$38.34 rate would not cause hardship or lack of phone service for HCSA customers who, it claimed, tend to be disproportionately low-income seniors.

---

<sup>24</sup> As indicated in Bell Canada et al.'s intervention, Bell Canada filed an application on 17 June 2019 to destandardize residential two-party service. The Commission approved the application in Telecom Order 2019-389.

<sup>25</sup> The ILECs' serving territories are divided into bands. Bands A to D are designated non-HCSAs and Bands E to H1 are designated as HCSAs. Band H1 applies only to Northwestel.

## Commission's analysis and determinations

61. As noted above, the large ILECs have failed to demonstrate that measures to compensate for the loss of the local service subsidy are required. Further, no other appropriate justification was provided to support increasing monthly residential PES rates (including party-line service) as proposed by the ILECs, whether to \$38.34, by 5%, or by inflation annually in HCSAs or non-HCSAs, which would convince the Commission otherwise.
62. Nevertheless, the Commission considers that there are policy reasons separate from compensation that could justify modifying the service basket structure and pricing constraint for residential services. Specifically, with the elimination of the local service subsidy in HCSAs, there is no practical reason to distinguish between non-HCSAs and HCSAs. As a result, the associated price cap basket structure is no longer relevant. Merging the service baskets would provide, to a certain extent, additional opportunities for the companies to harmonize and restructure their residential service rates in their serving territories over time if they wish to do so. Additionally, from a regulatory perspective, a uniform rate may ease administration and reduce the associated regulatory burden.
63. The purposes of the current service basket structures and focused pricing constraints were to (i) provide customers with price protection where local competition was expected to develop more slowly, and (ii) spread the benefits of productivity gains more evenly across various types of services. Similarly, placing a cap on the combined residential services basket such that the weighted average price of all the services in that basket will not be allowed to increase annually over the price cap period is necessary to (i) protect the rates for services in areas where, to date, there has been limited competitive entry, and (ii) provide an incentive for the ILECs to be more cost-efficient in the provision of residential PES.
64. However, to provide the large ILECs with some flexibility to restructure and harmonize rates within the residential services basket, the Commission considers it appropriate to implement a rate element constraint. The Commission considers that a rate element constraint of 5%, which is the current maximum rate increase and provides protection against rate shock, continues to be appropriate. Such treatment would protect customers against unreasonable rate increases.
65. Accordingly, the Commission determines that the two residential services baskets for the large ILECs will be combined into one basket, and that overall, the combined residential services basket will be capped (i.e. the basket constraint is 0%), with an annual individual rate element constraint of 5%. These changes will take effect on **1 June 2020**.

## **Are the large ILECs' other proposals related to compensation for lost subsidy appropriate?**

### **Proposal to eliminate the requirement for equal access when residential stand-alone PES is provisioned using mobile wireless technology**

#### **Background**

66. In forborne exchanges, to fulfill their obligation to serve, ILECs are required to provide stand-alone residential PES with access to the long distance provider of the customer's choice, which requires equal access.<sup>26</sup> In Telecom Regulatory Policy 2011-291, the Commission allowed ILECs to satisfy the obligation to serve through the use of mobile wireless services.

#### **Positions of parties**

67. Bell Canada et al., supported by Northwestel, Shaw, and TCI, proposed the elimination of the requirement to provide equal access in cases where mobile wireless service is used to meet the obligation to serve, which they submitted inhibits ILECs from providing stand-alone PES using mobile wireless technology.

68. Bell Canada et al. submitted that decoupling local and long distance services is impractical for wireless service. They noted that the Commission recognized these difficulties in Telecom Regulatory Policy 2012-24. In that decision, the Commission determined that consumers using wireless services have access to a number of alternative long distance options such as prepaid cards, local access numbers, voice over Internet protocol (VoIP), and over-the-top applications which enable consumers to make voice calls over the Internet. As a result, wireless competitive local exchange carriers were no longer obligated to provide equal access for the provision of local exchange services.

69. Bell Canada et al. submitted that its proposal would make mobile wireless services a more viable alternative to traditional wireline PES. Additionally, the proposal would provide cost-saving opportunities to help compensate for the elimination of the local voice subsidy.

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

70. The Commission has already determined that to support equal access, wireless carriers would be required to make significant investments in their networks, and that equal access in a fully functional manner may not be practical.<sup>27</sup> Further, the

---

<sup>26</sup> Equal access enables competitive long distance service providers to interconnect their networks to local exchange carriers' (LECs) networks. Subscribers can access the long distance competitors' services as easily as they currently access the long distance service provided by their LEC (i.e. by dialing either 0 or 1 plus a 10-digit telephone number).

<sup>27</sup> See Telecom Regulatory Policy 2012-24.

associated costs are unlikely to be recovered from long distance service providers given insufficient demand.

71. Nonetheless, it is unclear what the broader impact would be if the Commission were to remove the equal access criteria from the obligation to provide stand-alone PES in the context of wireless services. Given that the Commission did not directly identify equal access as an issue to be examined in Telecom Notice of Consultation 2018-214, and the limited related input by parties during the proceeding, the Commission considers that it would be premature to remove the equal access obligation for mobile wireless services for large ILECs without considering the broader equal access principle in a more holistic manner.
72. Accordingly, the Commission **denies** the request to remove the equal access obligation for mobile wireless services in the context of this proceeding.

### **Proposal to allow additional technological flexibility to meet the large ILECs' obligation to serve in regulated exchanges**

#### **Background**

73. As specified above, an obligation to serve applies to the ILECs for the provision of telephone service within their serving territories. In exchanges that continue to be regulated, this service is generally provided through fixed-line technology (e.g. copper facilities) and, in some cases, fixed-wireless solutions.

#### **Positions of parties**

74. Bell Canada et al. proposed that the Commission allow the large ILECs the same flexibility they have in forborne exchanges to meet the obligation to serve with mobile wireless technology in regulated exchanges (subject to the removal of equal access, as discussed above). They argued that the additional flexibility would provide ILECs with cost-saving opportunities, in certain circumstances, that could be a form of compensation for the elimination of the voice subsidy.
75. PIAC argued that a significant portion of Canadian consumers are not prepared to accept wireless or Internet technologies as a substitute for their home phone service.

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

76. The Commission determined in paragraph 37 above that it would retain the obligation to serve for all ILECs.
77. Canadian households continue to transition to widespread mobile phone use (according to the Commission's 2019 *Communications Monitoring Report*, 89.5% of households subscribed to mobile services, 36.0% had a cell phone but no landline telephone service, and 9.5% subscribed to landline services only in 2017). While the coverage and adoption of mobile wireless services continue to increase in almost all markets in Canada, there is no data available regarding wireless service adoption in

rural areas, where wireline services generally continue to be regulated, versus urban areas, where wireline services are predominantly forborne from regulation.

78. In Telecom Regulatory Policy 2011-291, the Commission determined that mobile wireless voice services were substitutes for wireline voice services in forborne exchanges based on the fact that the advanced state of mobile wireless competition has resulted in high-quality voice services at increasingly competitive prices. The Commission considers that the situation is different in regulated areas, where mobile wireless competition is relatively limited, resulting in service quality concerns, such as lower coverage and reliability, and higher prices. In addition, there are limitations with respect to access to 9-1-1 and public safety services in rural and remote areas, since location accuracy through mobile wireless services is dependent on the availability of towers in order to triangulate calls. As a result, many consumers in rural and remote areas may not be prepared to accept mobile wireless services as a substitute for wireline home phone services.
79. Allowing the ILECs additional technological flexibility to meet the obligation to serve could encourage investment in their mobile wireless services in rural and remote areas. However, since competition has not fully developed in those areas, such allowance could also unduly limit choice for consumers.
80. The Commission considers that in order to accept mobile wireless services as a substitute for wireline services in regulated areas, there should be clear acceptance by consumers that these services are substitutes. Given ongoing wireline usage and concerns regarding reliability and safety of wireless services, it would appear that wireless services are still not seen by consumers as clear substitutes for wireline services in rural and remote areas.
81. Accordingly, the Commission **denies** the large ILECs' proposal for the Commission to allow them to have additional technological flexibility to meet the obligation to serve in regulated exchanges.

### **SaskTel's proposal to implement changes to its service connection charges**

#### **Positions of parties**

82. SaskTel proposed that, for any rates charged to install local wireline services to a customer, whether within a stand-alone tariff item or as a rate element within a larger tariff item, and for which the per-item charge is less than cost, companies be allowed to adjust their rates to cover their entire cost, plus a reasonable markup. SaskTel submitted that these rates relate to the activities required and the facilities that must be constructed within SaskTel's network or on a customer's premises in order to activate service for the customer.

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

83. The Commission considers that SaskTel has not provided evidence that this compensation is necessary to ensure the recovery of its investment and overall

financial viability. SaskTel did not submit sufficient information to justify its proposed new rates or its related costs. Specifically, SaskTel did not submit information with respect to its proposed rates, terms, and conditions of the revised tariffs, its proposed markup, or the additional revenue generated from the proposal.

84. Accordingly, the Commission **denies** SaskTel's proposal to implement changes to its service connection charges.
85. SaskTel can, however, file a separate tariff application with supporting evidence to the Commission, should it wish to pursue the matter.

### **Is the exogenous factor mechanism still necessary for the large ILECs?**

#### **Positions of parties**

86. The large ILECs and the Government of Yukon supported maintaining the exogenous factor mechanism.
87. TCI submitted that the exogenous factor mechanism is an integral part of the price cap formula. The company submitted that eliminating the exogenous factor mechanism in the price cap regime cannot be reconciled with the principle that a regulated firm should neither unduly benefit nor be unduly penalized for events outside its control.
88. Bell Canada et al. submitted that without such a mechanism in place, ILECs that encounter significant unexpected costs associated with events that meet the exogenous factor criteria would be hindered in their ability to recover the share of those costs that are attributed to their capped regulated services through rate adjustments for those services.
89. SaskTel submitted that although there have been few instances of the use of the exogenous factor mechanism, it remains a safety net that allows companies to apply for relief should unanticipated events occur.
90. ECN and PIAC supported the removal of the mechanism. PIAC submitted that carriers have an incentive to bring applications only for exogenous events that increase prices.

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

91. 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. There have been few requests for exogenous adjustments in the last 10 years. Additionally, ILECs have no incentive to bring forward exogenous events that decrease costs, which would decrease their rates. Further, the monitoring of exogenous adjustments that must be removed once expired creates administrative and regulatory burdens for both the industry and the Commission.

92. Given the above, the Commission considers that it would be appropriate to remove the exogenous factor mechanism for the large ILECs. However, large ILECs may still file an application with the Commission, with appropriate supporting rationale, proposing the recovery of extraordinary costs outside the price cap regime if they wish to do so.
93. Accordingly, the Commission hereby eliminates the exogenous factor mechanism for the large ILECs effective the date of this decision.

## **Are changes required to the local forbearance regimes for the large ILECs' residential and business local exchange services?**

### **Background**

94. The local forbearance regime for the large ILECs sets out a streamlined process for the Commission to determine whether it is appropriate to forbear from the regulation of residential or business local exchange services.<sup>28</sup> The main criterion used to determine whether an exchange qualifies for local forbearance is an assessment of competitor presence in the exchange (i.e. the competitor presence test). The competitor presence test differs depending on whether an ILEC is requesting forbearance for the residential or the business local exchange service market. In addition, an ILEC must demonstrate that it has met the competitor quality of service (QoS) criteria. Further, when a local exchange is forborne from the regulation of residential services, the large ILECs are obligated to provide stand-alone PES subject to a price ceiling.
95. Currently, an ILEC seeking forbearance from the regulation of local exchange services must demonstrate that the following competitor presence test has been met in order to ensure that the requirements of section 34 of the Act are met:

- For residential services:

There are, in addition to the ILEC, at least two other independent, facilities-based telecommunications service providers (TSPs),<sup>29</sup> including providers of mobile wireless services, each of which offers local exchange services in the market and is capable of serving at least 75% of the number of residential local exchange service lines that the ILEC is capable of serving,

---

<sup>28</sup> Pursuant to section 34 of the Act, the Commission may forbear from the regulation of any service in cases where it finds that to do so would be consistent with the Canadian telecommunications policy objectives set out in section 7 of the Act. The Commission must forbear in cases where it finds that there is competition sufficient to protect the interests of users, and it must not forbear in cases where it finds that to do so would be likely to impair unduly the establishment or continuance of a competitive market for the service.

<sup>29</sup> A TSP is independent if it does not have the same owner as, and is not affiliated with, any other service provider referred to in the competitor presence test. Facilities-based TSPs provide services in the relevant market either by using their own facilities and services or by using a combination of their own facilities and services together with those leased from other service providers.

and at least one of which, in addition to the ILEC, is a facilities-based, fixed-line TSP.

- For business local services:

There is, in addition to the ILEC, at least one other independent, facilities-based, fixed-line TSP that offers local exchange services in the market and is capable of serving at least 75% of the number of business local exchange service lines that the ILEC is capable of serving.

### **Changes to the forbearance criteria for residential local exchange services**

#### **Positions of parties**

96. The large ILECs generally proposed that the competitor presence test for residential local exchange services be amended to reflect the presence of two other independent, facilities-based, competitive TSPs, wireline and/or wireless, thereby eliminating the requirement for a competitive “fixed-line” TSP. The large ILECs generally submitted that the 75% threshold is still an adequate competitive indicator, noting that this threshold currently applies to existing wireless competitors and should remain unchanged.
97. TCI also proposed that the number of competitive TSPs that must be present in an exchange be reduced from two to one. TCI submitted that, similar to the competitor presence test for business local exchange services, one TSP would be sufficient to discipline the ILEC and protect the interests of users, noting that such a change would better align the competitor presence tests.
98. The large ILECs generally argued that technology has progressed rapidly and that much has changed in the telecommunications service market since the Commission issued Telecom Decision 2006-15. The large ILECs submitted that the extensive adoption of mobile wireless services and their anticipated dominance going forward support this change. Bell Canada et al. indicated that, while many companies offer VoIP services to residential customers at attractive rates, substitution for mobile wireless services is truly shaping the local exchange service market today.
99. Shaw supported the proposed changes to the local forbearance regime for residential local exchange services, while PIAC and ECN disagreed.
100. PIAC submitted that many consumers in HCSAs are not ready to accept Internet calling and wireless phone services as a substitute for wireline home phone services. PIAC also disagreed with TCI’s proposal to reduce the number of competitors present in an exchange, submitting that this would greatly increase the potential exercise of market power by dominant ILECs to raise prices significantly for a non-transitory period. PIAC argued that the presence of independent facilities-based competitive local exchange carriers in HCSAs is low and that there is a need to protect the interests of consumers and ensure that rates are just and reasonable.

101. ECN submitted that there should be no change to the local forbearance framework until more competition in HCSAs has been established and the Commission has the opportunity to analyze the accessibility and affordability of local exchange services once the local service subsidy is withdrawn.

**Commission's analysis and determinations**

102. There has been an undeniable increase in the adoption of mobile wireless services since the Commission issued Telecom Decision 2006-15. Notwithstanding this trend, according to the 2019 *Communications Monitoring Report*, an average of 63% of Canadian households still subscribe to landline telephone services, and in certain provinces, this percentage is higher.

103. As indicated above, the Commission is concerned about wireless service coverage in rural and remote areas, which generally lags that in urban areas. While market forces in urban areas generally ensure that network coverage and capacity meet the needs of those consumers, in rural and remote areas, there is limited economic rationale for wireless service providers (WSPs) to overbuild their mobile wireless networks. Allowing an ILEC to meet the competitor presence test on the sole basis of the presence of mobile wireless competitors in an exchange could result in mobile wireless services being the only competitive choice available to those consumers, who may not yet be ready to accept such services as substitutes.

104. In addition, the Commission considers that the existing competitor presence test requirement for a fixed-line competitor in an exchange supports the availability of sustainable competitive wireline broadband networks. The Commission considers that the continued availability of wireline networks could be negatively affected in areas where competition is already limited if it were to remove the existing fixed-line requirement.

105. With respect to TCI's proposal that one competitor should be sufficient for forbearance purposes related to residential local exchange services, the Commission considers that diluting the competitor presence test in this manner would not ensure sufficient competitive rivalry to protect the interests of consumers.

106. On the whole, the Commission considers that the large ILECs failed to demonstrate that their proposed changes to the forbearance criteria for residential local exchange services would enable the Commission to make forbearance determinations that would be consistent with section 34 of the Act.

107. Accordingly, the Commission determines that no changes to the competitor presence test under the local forbearance framework for residential local exchange services for the large ILECs are warranted at this time.

## **Changes to the forbearance criteria for business local exchange services**

### **Positions of parties**

108. For business local exchange services, the large ILECs generally proposed that the forbearance criteria be amended to reflect the presence of one independent, facilities-based, competitive TSP, whether wireline or wireless.
109. In support of their proposals, similar to their arguments in relation to the markets for residential local exchange services, the large ILECs generally noted the extensive adoption of mobile wireless services and the growth toward their substitution for wireline services. The large ILECs indicated that many businesses and organizations, including the federal government, have opted to replace their landline services with mobile wireless services, and that the anticipated dominance of mobile wireless services in the near future will ensure that this trend continues.
110. Shaw opposed the large ILECs' proposed modifications, indicating that while many large businesses and organizations are moving towards a more flexible approach to voice services for their employees, which may include mobile wireless services, the limited evidence on the record of the proceeding is insufficient to justify such modifications to the business local exchange service forbearance criteria.

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

111. In addition to the considerations already identified above with respect to the residential market, the Commission considers that there is limited evidence regarding mobile wireless service adoption and substitution specific to the business local exchange service market. In general, mobile wireless service substitution in business markets has lagged that in residential markets, for reasons including that the substitutability of mobile wireless services is highly dependent on the functionalities required, which vary more for business customers than for residential customers. Further, there is no evidence on the record of the proceeding regarding the extent of business mobile wireless service substitution for wireline services in urban versus rural markets.
112. Considering that there is generally less local competition in rural markets, the large ILECs' proposal that forbearance be granted based on the presence of one WSP in an exchange means that an ILEC would likely remain the only fixed-line/wireline service provider present in the exchange capable of providing business local exchange services to customers that rely on this technology for their business. While larger businesses and organizations may have the desire or means to migrate employees to mobile wireless devices, there may be barriers to switching for small and medium-sized businesses and organizations, such as equipment purchases, which affect the substitutability of the services and could limit the flexibility of smaller and medium-sized businesses to make such changes.

113. Accordingly, the Commission determines that no changes to the competitor presence test under the local forbearance framework for business local exchange services for the large ILECs are warranted at this time.

### **Changes to the competitor quality of service criteria**

#### **Background**

114. Under the current local forbearance frameworks, the following competitor QoS criteria apply:

The large ILEC must demonstrate that, during the six-month period prior to its forbearance application, it (i) met, on average, the QoS standard with respect to the services provided to competitors in its serving territory; and (ii) did not consistently provide any of those competitors with services that were below those QoS standards.

115. In Telecom Regulatory Policy 2018-123, the Commission found that the large ILECs' legacy wholesale services associated with local voice services that were subject to the competitor QoS regime would no longer be included in that regime. However, given the scope of the proceeding that led to that decision, the requirement for the large ILECs to meet competitor QoS standards for the purpose of local forbearance applications was retained until the Commission could review it as part of this proceeding.

#### **Positions of parties**

116. The large ILECs, supported by Northwestel and Shaw, proposed that the competitor QoS criteria for the purpose of forbearance from the regulation of residential local exchange services should be eliminated in light of Telecom Regulatory Policy 2018-123.

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

117. The Commission considers that local forbearance has generally been granted on the basis of competition from facilities-based competitors that largely do not rely on wholesale services from the ILECs (i.e. cable-based carriers) and whose size and networks are such that the ILECs have a limited incentive to provide poor quality of service. As a result, there is no longer any policy rationale for the Commission to maintain the requirement that the large ILECs must meet the competitor QoS criteria for the purpose of forbearance from the regulation of residential and business local exchange services.

118. Accordingly, the Commission hereby eliminates the competitor QoS criteria from the large ILECs' local forbearance framework for residential and business local exchange services, effective the date of this decision.

## **Price ceiling for stand-alone residential local exchange services in forborne areas**

### **Background**

119. Under the scope of forbearance from the regulation of residential local exchange services, the large ILECs are required to provide stand-alone PES to residential customers in forborne exchanges, subject to a price ceiling. In Telecom Regulatory Policy 2011-291, as a safeguard for residential local exchange service customers, the Commission set the price ceiling at \$30 per month and permitted it to increase by the rate of inflation starting in 2014.

### **Positions of parties**

120. The large ILECs generally proposed that the Commission should eliminate the stand-alone PES price ceiling in forborne exchanges or, if the Commission determines that the price ceiling should be retained, it should permit the price ceiling to increase. The ILECs submitted that alternatively, they should be relieved of the responsibility to provide stand-alone PES in forborne areas.

121. Similar to their price cap proposals, Bell Canada et al. and TCI proposed a price ceiling for stand-alone PES of \$38.34. They argued that that price ceiling should be permitted to increase by the rate of inflation once the price ceiling is reached. SaskTel proposed that the price ceiling in forborne areas be allowed to increase by 5% or the rate of inflation, whichever is higher.

122. Bell Canada et al. submitted that competition in forborne areas is now rampant and that customers have a wide range of service providers to choose from. Further, they submitted that there is no longer any reasonable insight to the network footprint of another service provider, so it is impossible to determine where pockets of uncontested markets may exist such that the ILEC could target customers in those areas.

123. PIAC supported the continuation of the stand-alone PES price ceiling in forborne HCSAs. It submitted that if competition is sufficient to ensure that rates are just and reasonable, the price ceiling is non-binding and therefore harmless. However, if there is inadequate competition or if competitive rates are unaffordable, the price ceiling remains necessary. PIAC noted that evidence had not been submitted to show that the proposed increase in rates to \$38.34 would not cause hardship or lack of phone service for stand-alone PES customers.

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

124. The Commission determined above that it would retain the obligation to serve in both regulated and forborne areas, which includes the requirement that the ILECs provide residential stand-alone PES in forborne areas.

125. The Commission considers that the price ceiling continues to provide an important level of price protection in forborne areas and is a necessary safeguard to protect the interests of users in cases of local forbearance under section 34 of the Act.
126. With respect to whether the Commission should increase the price ceiling for stand-alone PES rates, the same considerations apply to forborne residential stand-alone PES rates as those that apply to regulated residential stand-alone PES rates. For the same reasons outlined above with respect to residential local exchange service rates in regulated HCSAs and non-HCSAs, and since there are no additional compelling reasons to increase the stand-alone PES price ceiling in forborne areas, the Commission considers that the forborne stand-alone PES price ceiling should remain unchanged.
127. In light of the above, the Commission determines that (i) the stand-alone PES price ceiling will be retained under the local forbearance framework for residential local exchange services; and (ii) the current constraint, which allows for an annual increase at the rate of inflation, will continue to apply.

### **Northwestel – Background**

128. Northwestel is the ILEC operating in Canada's North<sup>30</sup> and provides telecommunications services to 96 communities, of which 94 are considered HCSAs. Northwestel's serving territory has an extremely low population density, vast distances between communities, and an extreme climate, which create challenges in service provision. As a result, the cost of telecommunications infrastructure and maintenance in Northwestel's serving territory are generally higher than in the South.
129. Notwithstanding these challenges, the Commission has stated that northern Canadians should have access to telecommunications services that are as comparable as possible to those provided to southern Canadians.
130. The price cap regime for Northwestel, while similar to that of the large ILECs, has certain differences to address its specific situation. For example, the Commission established an HCSA Band H1<sup>31</sup> specific to the company. As well, Northwestel is the only ILEC for which the Commission regulates certain rates for retail Internet services due to a lack of sufficient competition.
131. Northwestel does not have a local forbearance regime.

---

<sup>30</sup> These are Yukon, the Northwest Territories, Nunavut, Northern British Columbia, and Fort Fitzgerald, Alberta.

<sup>31</sup> In Telecom Decision 2007-5, the Commission approved two bands for Northwestel, (i) Band D, consisting of all wire centres in Whitehorse and Yellowknife; and (ii) Band H1, consisting of all other wire centres.

**Has Northwestel demonstrated that there is a need for it to be compensated for the elimination of the local service subsidy and, if so, how should the Commission address this need?**

**Positions of parties**

132. Northwestel noted that its access portion of the 2018 annual local service subsidy was estimated at \$7.9 million and submitted that, due to the nature of its serving territory, it has depended on the local service subsidy to a far greater extent than any other large ILEC.
133. Northwestel provided cost studies containing revised residential PES costs for its Band H1 using two alternative methodologies (installed first costs and net book value). Northwestel then estimated the shortfall from 2019 to 2023 based on the Commission's determinations in Telecom Regulatory Policy 2018-213. Specifically, the two cost studies demonstrated that Northwestel would incur a loss of between \$12.5 million and \$26.3 million over the next five years, even after taking into account the \$11.9 million in subsidy that Northwestel would have received over the same period.
134. Northwestel submitted that these sums are material for the company and argued that it is reasonable, and necessary under the regulatory compact, that the company be compensated for the loss of subsidy associated with the provision of residential PES in remote communities. However, similar to the large ILECs, Northwestel indicated that it is not seeking dollar-for-dollar compensation for the lost subsidy in order to maintain just and reasonable rates.
135. The GNWT and the Government of Yukon agreed that some compensation seemed to be necessary for Northwestel, but argued that the Commission should take into consideration the impact on consumers.
136. However, ECN, RCCI, Shaw, and SSi argued that the ILECs should not generally be compensated for the loss of the local service subsidy. ECN submitted that Northwestel has benefited for years from the subsidy and monopoly over the Northern market. ECN added that the Act does not indicate that subsidies are granted in perpetuity and that, as the telecommunications industry undergoes transformation due to technological changes, so should the allocation of subsidies.

**Commission's analysis and determinations**

137. In contrast with the information provided by the ILECs, Northwestel provided costing information to support its argument that the loss of local subsidy would affect the reasonableness of its rates. It did so using the net book value approach, which the Commission has determined is appropriate to assess the prospective incremental capital costs associated with the use of existing copper cable plant. However, the Commission considers that any review of the underlying costs to provision wireline services should include consideration of the costs and revenues of other services that use the same infrastructure, a factor that is not reflected in the cost

study that was filed. As a result, while Northwestel's costs provide a basis for the assessment of the company's need for compensation, the Commission considers that those costs overlook the incorporation of other factors that could reduce the total amount of any shortfall. As a result, the Commission's analysis of Northwestel's cost studies is inconclusive.

138. Nevertheless, the Commission considers, on the basis of the available information, that it is likely that even with consideration of the costs and revenues of other services that use the same infrastructure, the elimination of the local service subsidy will ultimately result in a material shortfall for Northwestel, thereby resulting in rates that may not be just and reasonable. As a result, and absent additional information and a more thorough examination of the costing methodology for Northwestel's residential PES, any specific shortfall amount cannot be finalized at this time.
139. Further, the Commission considers that Northwestel's proposals regarding compensation, which include rate increases for residential and business customers, would likely not fully compensate the company for its shortfall. As well, given the unique circumstances of the North, including limited competitive choices and general concerns about the affordability of services, it would not be appropriate for the Commission to broadly impose rate increases on consumers in response to the elimination of the local service subsidy.
140. Given that there is likely a need to compensate Northwestel to some degree for the loss of the local service subsidy, the Commission will launch a more fulsome review prior to the complete phase-out of the subsidy to consider the appropriate overall regulatory approach that should be adopted for Northwestel (hereafter, the future review).
141. In the context of the future review, the Commission plans to undertake a more thorough assessment of the company's costs to determine the extent of the shortfall and to consider what measures may be required to support Northwestel's service offerings while protecting residents and businesses from being disproportionately affected.
142. As a result, Northwestel's current price cap regime is extended pending the outcome of the future review.

**Should any of Northwestel's proposals for compensation be considered at this time?**

**Positions of parties**

143. Northwestel proposed a range of measures which it submitted, when taken together, would provide the company with sufficient flexibility and regulatory simplicity, in conjunction with moderate rate increases, to partially compensate for the elimination of the local service subsidy.

144. Specifically, Northwestel proposed the following:

- to increase residential PES rates in HCSAs and non-HCSAs to \$38.34 over a three-year period and to merge the two residential services baskets into a single basket;
- to increase individual and multi-line business service rates over a three-year period by 12.5% to 17.0%;
- to increase its retail residential Internet service rates and decrease its retail business Internet service rates on a revenue-neutral basis, which would return the residential Internet service rates to the levels in place prior to Telecom Decision 2015-78;<sup>32</sup>
- to revise the pricing constraints on its Retail Internet services basket such that, while still being capped overall, a rate element constraint of 5% would apply to Residential Internet services and 10% to Business Internet services;
- to move residential and business optional local services (i.e. calling features) from the Other capped services basket to the Uncapped services basket;
- to use rate ranges, with rate de-averaging below the band or sub-band level, for its regulated retail services; and
- to grandfather the equal access obligation, such that new customers would no longer have the option of selecting an alternative long distance service provider.

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

145. Given that the Commission is concerned about the affordability of services in the North and that it will be reviewing its regulatory approach for Northwestel, it would be premature, at this time, to modify Northwestel's framework to the extent proposed.

146. However, since (i) the local service subsidy will be eliminated completely starting in 2022, and (ii) the review is planned to take place during the phase-out, some increases are appropriate in the meantime to contribute to rates continuing to be just and reasonable. The Commission considers that permitting residential rates in both HCSAs and non-HCSAs to increase at the rate of inflation pending completion of the future review would be an appropriate measure to mitigate against the loss of the local service subsidy and contribute to rates continuing to be just and reasonable until the review is complete.

---

<sup>32</sup> In Telecom Decision 2015-78, among other things, the Commission reduced Northwestel's residential DSL [digital subscriber line] Internet Lite and DSL Internet 2 service rates by 10%, and its residential DSL Internet 5 and DSL Internet 15 service rates by 30%.

147. Accordingly, the Commission determines that Northwestel's residential PES rates in each of the residential services baskets in HCSAs and non-HCSAs will be permitted to increase annually by the rate of inflation, to a maximum of 5% per year, effective **1 June 2020**.

### **Is the exogenous factor mechanism still necessary for Northwestel?**

#### **Positions of parties**

148. Northwestel and the Government of Yukon supported retaining the exogenous factor mechanism. ECN and PIAC supported removing the mechanism for the same reasons set out above for the large ILECs.

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

149. The vast majority of Northwestel's services remain regulated, unlike those of the large ILECs. Northwestel's ability to implement rate changes to recover extraordinary costs would be limited by the price cap constraints.

150. The Commission acknowledges that there is no incentive for the ILECs to bring forward exogenous events that decrease their costs and in turn decrease their rates. However, in the case of Northwestel, the exogenous factor mechanism continues to be a necessary method to recover unanticipated and extraordinary costs, since the majority of the company's services remain regulated and its ability to recover such extraordinary costs is limited without the mechanism; this therefore justifies the administrative and regulatory requirements of the mechanism. Any application for an exogenous adjustment will continue to require the Commission's approval.

151. Accordingly, the Commission determines that the exogenous factor mechanism will be retained for Northwestel.

### **Should a local forbearance framework be implemented for Northwestel?**

#### **Background**

152. The Commission permitted local competition in Northwestel's serving territory in Telecom Regulatory Policy 2011-771; however, the Commission did not establish a framework for forbearance from the regulation of Northwestel's retail local exchange services at that time.

153. Subsequently, in Telecom Regulatory Policy 2013-711, among other things, the Commission considered whether it would be appropriate to establish a local forbearance framework for Northwestel. The Commission determined that local exchange service competition was limited and developing differently in the North; therefore, it did not establish a local forbearance framework for Northwestel.

## **Positions of parties**

154. Northwestel submitted that the large ILECs' proposed local forbearance framework (i.e. based on the presence of either one or two independent, facilities-based TSPs, depending on whether forbearance is for residential or business local exchange services) should be extended to the North. It proposed that no competitor QoS criteria be adopted for Northwestel and that no price ceiling be applied to its stand-alone PES rates or, if so, that such rates be capped at \$38.34.
155. Northwestel indicated that (i) mobile wireless service adoption and substitution for wireline services are commonplace and increasing in the country, and these factors are as much in play in the North as they are in the South; and (ii) mobile wireless and VoIP services have been and are projected to be what customers will use to replace traditional local telephone services in Northwestel's serving territory, while the emergence of wireline competitors will be limited. The company submitted that any new local forbearance framework should reflect this.
156. In support of its proposal, Northwestel submitted that 77% of communities in its serving territory have at least one WSP, and 50% of communities, representing 66% of total NAS, have access to two WSPs. Further, Northwestel submitted that the total number of residential NAS that it serves has declined by 45% since 2007 due primarily to the adoption of mobile wireless services.
157. PIAC submitted that there is (i) neither sufficient competition nor low-enough costs to deliver affordable prices for Northwestel's customers, and (ii) no reasonable prospect that the situation will change in the near future.
158. SSi submitted that the Commission should deny Northwestel's proposal that a new local forbearance regime exclude competitor QoS from the criteria. SSi argued that this criterion must remain the minimum standard until the Commission finds that there is sufficient competition.

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

159. The Commission did not specifically include the issue of developing a local forbearance framework for Northwestel in the scope of Telecom Notice of Consultation 2018-214. Further, Northwestel's request is directly linked to the Commission approving modifications to the local forbearance regime for the large ILECs. In paragraphs 107 and 113 above, the Commission determined that it would not modify the competitor presence tests for the large ILECs in relation to residential and business local exchange services.
160. In addition to the reasons provided with respect to why it would not modify the competitor presence tests for the large ILECs in relation to residential and business local exchange services, the Commission considers that Northwestel's unique serving environment provides further justification as to why the introduction of a local forbearance framework for the company on the basis of wireless service substitution would not be appropriate. Northwestel remains the dominant provider of

local exchange services to residential and business customers in its serving territory. As well, while penetration rates and number of subscribers for mobile wireless technologies are increasing in Northwestel's territory, the North has the least coverage in the country for long-term evolution (LTE) networks compared to most provinces.

161. In light of the above, the Commission considers that the introduction of a local forbearance framework for Northwestel on the basis of wireless service substitution would not be appropriate and would not protect the interests of residential and business consumers in a manner that would be consistent with section 34 of the Act.
162. Accordingly, the Commission **denies** Northwestel's proposal to implement a local forbearance framework at this time.

### **Small ILECs – Background**

163. The small ILECs operate primarily in HCSAs (specifically Bands E, F, and G)<sup>33</sup> in British Columbia, Ontario, and Quebec, and include municipally owned and publicly and privately held carriers. Most serve fewer than 2,000 residential NAS. The Commission has generally given special consideration to the small ILECs in terms of their regulatory frameworks to account for their small size and limited resources.

### **Should any changes be made to the price cap and local forbearance regimes for the small ILECs?**

#### **Positions of parties**

164. Bell Canada et al. generally submitted that their proposal with respect to the price cap and local forbearance regimes should also apply to the small ILECs.
165. Bell Canada et al. also proposed similar modifications to the local forbearance regime for residential and business local exchange services as it had for large ILECs.
166. Eastlink proposed that, without any subsidy, there should be no price ceiling on residential PES.
167. The ITPA, which represents about 75% of the small ILECs, did not file substantive interventions in this proceeding. It submitted that since it had filed an application to review and vary Telecom Regulatory Policy 2018-213, and given the interrelated nature of the local service subsidy, price caps, and local forbearance, it was not proposing any changes to the small ILECs' current price cap or local forbearance regimes at this time. Further, the ITPA disagreed with all of the large ILECs' proposed changes.

---

<sup>33</sup> The band structure for the small ILECs is (i) Band E – wire centres or exchanges with 1,500 or fewer total NAS; (ii) Band F – wire centres or exchanges with greater than 1,500 and fewer than 8,000 total NAS, with no loop length criterion; and (iii) Band G – remote wire centres or exchanges (e.g. without year-round road access or found in remote parts of a company's serving territory).

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

168. The ITPA chose not to file sufficient evidence to demonstrate whether compensation for the elimination of the local service subsidy is warranted and whether changes are necessary to the price cap or local forbearance regimes for the small ILECs. This was despite notice in Telecom Notice of Consultation 2018-214 that (i) the Commission was open to considering whether compensation was necessary given that the local service subsidy would be eliminated, and (ii) there had to be sufficient supporting data beyond what was provided in the proceeding that led to Telecom Regulatory Policy 2018-213.

169. Given (i) the lack of evidence with respect to the small ILECs' price cap and local forbearance regimes, and (ii) the unique nature of their regimes and serving territories, the Commission considers that another proceeding is required to determine whether any changes are necessary to these regimes. Accordingly, the Commission will initiate a follow-up proceeding to seek comments on what changes, if any, should be made to the small ILECs' price cap and local forbearance regimes, and any other changes applicable to small ILECs that should be considered.

## **2006 Policy Direction**

170. The 2006 Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with paragraphs 1(a) and (b) of the Policy Direction.

171. The regimes were already designed to be efficient and rely on market forces as little as possible. The present decision continues to further the requirements of the 2006 Policy Direction.

172. Consistent with subparagraph 1(a)(i) of the 2006 Policy Direction, in cases where the Commission has maintained regulatory requirements, whether in existing or modified form, it has done so because market forces alone cannot be relied upon to achieve the telecommunications policy objectives set out in section 7 of the Act.

173. Consistent with subparagraph 1(a)(ii) of the 2006 Policy Direction, the Commission considers that the regulatory measures set out in this decision are efficient and proportionate to their purpose, and minimally interfere with market forces. In this regard, the Commission's determinations in this decision with respect to residential PES pricing and local forbearance pertain to areas where regulation continues to be necessary due to limited competition.

174. Finally, consistent with subparagraph 1(b)(i) of the 2006 Policy Direction, the policy objectives listed in paragraphs 7(a), (b), (c), (f), and (h) of the Act<sup>34</sup> are advanced by

---

<sup>34</sup> The cited policy objectives are 7(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

the determinations in this decision. For example, the determinations pertaining to residential pricing constraints ensure that companies have the opportunity to harmonize and restructure their residential service rates in their serving territories over time. A uniform rate may ease administration and reduce the associated regulatory burden. At the same time, constraints are placed to ensure that consumers are still protected from any rate shock and unreasonable rate increases. In addition, the determinations with respect to local forbearance ensure that there is sufficient competitor choice and that the interests of users will continue to be protected while there continues to be a streamlined approach for local forbearance applications. More generally, the determinations are consistent with the objective that Canadians in both urban and rural areas have access to reliable and affordable telecommunications services of high quality and respond to the economic and social requirements of users of telecommunications services.

Secretary General

### Related documents

- *Independent Telecommunications Providers Association – Application to review and vary Telecom Regulatory Policy 2018-213*, Telecom Decision CRTC 2020-41, 4 February 2020
- *Bell Canada – Destandardization of residential two-party service*, Telecom Order CRTC 2019-389, 29 November 2019
- *Review of the price cap and local forbearance regimes*, Telecom Notice of Consultation CRTC 2018-214, 26 June 2018; as amended by Telecom Notice of Consultation CRTC 2018-214-1, 31 July 2018; and Telecom Notice of Consultation CRTC 2018-214-2, 20 February 2019
- *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
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Northwestel Inc. – Tariffs for terrestrial retail Internet services*, Telecom Decision CRTC 2015-78, 4 March 2015

---

accessible to Canadians in both urban and rural areas in all regions of Canada; (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications; (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and (h) to respond to the economic and social requirements of users of telecommunications services.

- *Regulatory framework for the small incumbent local exchange carriers and related matters*, Telecom Regulatory Policy CRTC 2013-160, 28 March 2013
- *Northwestel Inc. – Regulatory Framework, Modernization Plan, and related matters*, Telecom Regulatory Policy CRTC 2013-711, 18 December 2013
- *Network interconnection for voice services*, Telecom Regulatory Policy CRTC 2012-24, 19 January 2012
- *Northwestel Inc. – Review of regulatory framework*, Telecom Regulatory Policy CRTC 2011-771, 14 December 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
- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Monthly recurring rates and service charge rates for unbundled local loops in Ontario and Quebec*, Telecom Decision CRTC 2011-24, 12 January 2011
- *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
- *Price cap regulation for Northwestel Inc.*, Telecom Decision CRTC 2007-5, 2 February 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
- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000