15 January 2007

Mr. Leonard St-Aubin
Director General
Telecommunications Policy Branch
Industry Canada
16th Floor, 300 Slater Street
Ottawa, Ontario
K1A 0C8

Dear Mr. St-Aubin:


Saskatchewan Telecommunications (SaskTel) is writing to you in response to the federal government’s proposed Order to Vary Telecom Decision CRTC 2006-15, Forbearance from the regulation of retail local exchange services (the Local Forbearance Decision).

In SaskTel’s view, varying the Local Forbearance Decision is a significant step in creating a new regulatory framework for the telecommunications sector that reflects the realities of the telecommunications industry and is more flexible, fair and efficient.

SaskTel, and others, believe the CRTC Local Forbearance Decision was a serious impediment to competition and consumer choice in Canada. The proposed Order, along with other recent announcements by the federal government to reduce unnecessary economic regulation and increase reliance on market forces in the telecommunications sector, will provide many benefits. As the Regulatory Impact Analysis Statement associated with the Order states,
“Consumers will benefit from more choices and improved products and services, innovation will be encouraged as a result of more intense competition between traditional telephone companies and their competitors, and there will be a reduction in overall regulatory costs and burden for both government and industry.”

In Saskatchewan, the proposed Order will see economic deregulation in some markets take place much sooner than would have been the case under the CRTC Local Forbearance Decision, and also provide the opportunity for SaskTel to provide a wider range of telecommunications options and solutions to businesses and residents.

With the Local Forbearance Decision, not only did the CRTC choose an artificially high market share that SaskTel must lose before it would be able to compete on an even footing, but it included massive rural areas with urban areas in defining the relevant geographic market. As a result, deregulation would be virtually unachievable or needlessly delayed in many parts of Saskatchewan, denying Saskatchewan consumers from realizing the benefits of real competition.

Replacing the CRTC’s arbitrary and convoluted market share test with one that emphasizes the presence of competitive infrastructure will provide a more administratively simple criterion for forbearance. In conjunction with the use of smaller, more appropriate geographic areas (i.e. the local exchange), the proposed Order addresses the realities of the Saskatchewan marketplace and potentially will result in many Saskatchewan consumers receiving the benefits of an increased reliance upon market forces in a matter of months rather than years or some unknown timeframe.

SaskTel notes also that the federal government’s inclusion of wireless carriers in its proposed competitive facilities test for the forbearance of residential local services is consistent with SaskTel’s position that the use of mobile wireless technology by consumers as a cost-effective alternative to wireline service is increasing.
Moreover, SaskTel is fully supportive of the proposal to remove current marketing restrictions on “winbacks” and other promotions immediately upon coming into force of the proposed Order. The principle that regulation should be applied only where there is a need to regulate is one that SaskTel has advanced consistently.

For many years, despite the absence of a local competitor, SaskTel has been banned or severely restricted from offering local service promotions to consumers. As circumstances in Saskatchewan have demonstrated, placing unnecessary restrictions on the incumbent telephone companies has not accelerated competition. Such restrictions have only hurt consumers. In fact, the Consumers’ Association of Canada, Saskatchewan (CAC-Sask), has argued before the CRTC that SaskTel promotions should be permitted, and further submitted that prohibiting such promotions deprived consumers of benefits, and SaskTel of the opportunity to maximize its revenues from promoted services.

While fully endorsing the general direction of the proposed Order to vary Telecom Decision CRTC 2006-15, SaskTel does have some observations to make regarding specific portions of the Order. These comments are made not to challenge the objective of the Order but to make a positive contribution to improve its wording in order to reflect its overall purpose.

- In its discussion of the new local forbearance criterion, the competitive facilities test, at paragraph 242 a) (ii) and (iii), the proposed Order states that facilities-based telecommunications service providers must be offering local exchange services “throughout that market”. In the case of a local exchange, this terminology implies that service providers must have facilities throughout the exchange and be offering services over the entire ILEC exchange before forbearance is granted. SaskTel respectfully submits that this condition is unnecessarily strict, and that the
competitive provision of services “within that market (exchange)” would be the sufficient condition.

Each of SaskTel’s local exchanges serving the large cities in Saskatchewan includes rural areas immediately adjacent to the city boundaries – typically cultivated land or pasture. The local cable television service provider typically does not offer services to the residences in these areas. Within the cities themselves, a cable television service provider may choose not to place its infrastructure throughout the whole exchange – for example they often do not serve central business districts, industrial parks or strip malls. These areas are unattractive to a competitor if its target market is focussed only the residential consumers. Other competitors may make similar judgements to focus on particular market segments and ignore others. A strict interpretation of the wording of paragraphs 242 a) (ii) and (iii), the proposed Order could result in SaskTel being denied forbearance unreasonably, to the detriment of development of effective competition and consumer choice.

In Saskatchewan, the incumbent cable television service providers have begun offering competitive residential local services currently employing their existing cable distribution infrastructure. Although their infrastructure may not extend throughout the exchange, they and other facilities-based competitors are able to provide services beyond the reach of their own facilities through wholesale services obtained from the ILEC (for example, unbundled local loops and Competitor Digital Network services). These services permit a competitor to connect its network to the ILEC’s wire centres and to end customers within the exchange. Given the opportunity for the competitor to utilize SaskTel’s wholesale services in areas where it has not deployed its own facilities, the requirement to demonstrate that a competitor is offering services “throughout the market” is unreasonably strict and the proposed Order should be amended to require the ILEC to demonstrate the competitor’s offering of services “within the market”.

SaskTel is encouraged that the modifications contained in the proposed Order correct some of the fundamental flaws in the Competitor Quality of Service (CQoS) criteria from CRTC Decision 2006-15. In particular, measuring CQoS performance across all competitors as opposed to each competitor is a necessary change in order to ensure that incumbent companies can reasonably meet the service standards required for forbearance.

A detailed review of SaskTel’s Competitor Quality of Service results demonstrates that, even if SaskTel were to meet the performance standards averaged across all competitors (which is currently the case), SaskTel would never be eligible for forbearance if Decision 2006-15 is not amended in accordance with the proposed Order.

The proposed Order identifies Local Interconnection Regions (LIRs) as one of the appropriate geographic definitions of a relevant market, with reference made to Telecom Decision CRTC 2004-46. SaskTel notes that the LIRs established in that Decision were amended by Telecom Decision CRTC 2006-35, *Follow-up to Trunking arrangements for the interchange of traffic and the point of interconnection between local exchange carriers, Telecom Decision CRTC 2004-46.*

SaskTel also notes what we believe to be certain unintentional inconsistencies within the proposed Order.

The proposed Order rescinds paragraphs 242 to 281 of the Local Forbearance Decision, replacing the CRTC’s market share test with a competitive infrastructure-based test, streamlining ILEC requirements in relation to competitor quality of service standards and removing CLEC access to ILEC OSS as a criterion for forbearance. But, there are no accompanying instructions within the Order to repeal or modify Appendix D, Part B (Application template for forbearance from the regulation of local exchange services) of the
Local Forbearance Decision, which references the CRTC determinations that have been rescinded.

In a similar vein, while the Order repeals paragraphs 483 to 488 of the Local Forbearance Decision resulting in the removal of marketing restrictions such as local winback rules and the competitive safeguards for promotions, it does not repeal the associated Appendix E (Application template for removal of local exchange services winback rule). Similarly, as paragraph 483 of the proposed Order removes the competitive safeguards for promotions, as defined in Telecom Decision CRTC 2005-25, and the local winback rule, as set out in Telecom Decision CRTC 2005-28 and confirmed in Telecom Decision CRTC 2006-53, it is SaskTel’s view that paragraphs 529 – 535 of the CRTC’s Local forbearance Decision are no longer necessary and should be removed.

In our view, given the revised framework within the proposed Order, the federal government did not intend for these Appendices to be retained in their current form.

In light of the fact that the proposed Order removes ILEC market share loss as a criterion for forbearance, SaskTel suggests that the requirements set out in paragraphs 514 – 520 of the Decision (Data gathering and calculating market share loss) are no longer necessary and should be removed.

SaskTel notes that paragraph 7 of the Order indicates that any provisions in the Decision that are inconsistent with the Order shall be interpreted in accordance with the Order, but the federal government may wish to address the above-mentioned inconsistencies upfront in order to avoid protracted deliberations and disputes with respect to the application of the revised directives contained in the Order.

In closing, SaskTel believes that the federal government’s proposed Order to vary the Local Forbearance Decision is a significant and much-
needed step in a new regulatory approach to the telecommunications sector.

In Saskatchewan, the revised framework for local service forbearance will ensure that the benefits of competition and an increased reliance upon market forces will be made quickly available to consumers so that all can reap the benefits, including more choice, innovative services and lower prices. Moreover, SaskTel is greatly encouraged by the overall policy agenda that the federal government continues to advocate for the Canadian telecommunications sector, particularly its emphasis on less and better regulation and a greater reliance on market forces.

Thank you for the opportunity to provide our views on the proposed Order, and we look forward to its expeditious adoption.

Sincerely,

[Original signed by J.C. Meldrum]

John Meldrum
Vice President, Regulatory Affairs and Corporate Counsel

cc : Maxime Bernier
Industry Minister

Carol Skelton
Minister of National Revenue

Gerry Ritz
Secretary of State (Small Business and Tourism)