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Chair

Mr. James Rajotte

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● (1530)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): Members, I call the 42nd meeting of the Standing Committee on Industry, Science and Technology to order. Pursuant to Standing Order 108(2), we are continuing our study on the deregulation of the telecommunications sector. We have two sessions today. Each is one hour.

In our first panel we have representatives from four cable television companies. First, from Shaw Communications Inc., we have Mr. Jean Brazeau, vice-president of telecommunications. Second, from COGECO Inc., we have Mr. Yves Mayrand, vice-president of corporate affairs. Third, from Rogers Communications Inc., we have Mr. Kenneth Engelhart, vice-president of regulatory. Fourth, from Vidéotron Ltée, we have Mr. Luc Lavoie, executive vice-president of corporate affairs, Quebecor Inc.

Gentlemen, we will start off with opening statements from each one of you of up to three minutes. Then we'll have about 45 minutes for questions from members.

We'll start off with Mr. Brazeau, please.

Mr. Jean Brazeau (Vice-President, Telecommunications, Shaw Communications Inc.): Thank you, Mr. Chairman, and members of the committee. Shaw certainly welcomes the opportunity to appear before your committee to provide its views on the government's initiatives in the local telecommunications market.

Shaw has publicly stated its support for the minister's order and directive because these initiatives recognize that consumers must come first. Canadian consumers can best be served by an approach that relies on market forces and facilities-based competition. The minister's initiative implements these principles, and consumers across Canada stand to benefit. However, Shaw believes that three issues must be addressed in the order.

The first is interconnection and access to rights of way and support structures. Interconnection to the public telephone system and access to support structures and rights of way are the foundation of facilities-based competition. Without interconnection, facilities-based competitors cannot serve their customers. Without access to the telephone companies' poles and conduits, we cannot build out our own networks. Timely and effective interconnection arrangements and access are therefore necessary for durable facilities-based competition. However, arbitrary delay and denial of access and interconnection are not uncommon in our business.

In order to be consistent with its policy of promoting facilities-based competition and to ensure that consumers realize the full benefits of the proposed order and directive, the government must direct the CRTC to ensure that facilities-based entrants are able to obtain efficient, timely, and effective interconnection and access to the support structures and rights of way we need to build our networks.

The second issue is winbacks. The proposed order provides for the immediate removal of winback restrictions. The telephone companies want forbearance in order to be able to win back customers through targeted marketing initiatives. The telephone companies have little or no interest in implementing broad-based price reductions for their local services; it is removal of the winback restrictions that the telcos really want, in order to retain their dominant market share. It is not forbearance. Shaw believes, therefore, that the winback restrictions should not be removed until such time as the criteria for forbearance have been satisfied.

The final issue is the need for a level playing field for telcos and cablecos. If cable is to compete effectively while delivering full benefits to consumers, then existing regulatory restrictions on cable companies must be made more flexible. At present, cable companies are subject to an extensive regulation under the Broadcasting Act. This regulation restricts their ability to respond to consumer demand. These regulations should be reviewed and replaced to the maximum extent possible by market forces. This will ensure that cable companies have full flexibility to compete aggressively with the telephone companies. More importantly, it will ensure that consumers realize the maximum benefits from competition.

In conclusion, Shaw supports the proposed order and the minister's directive; however, the three changes that we have put forward will, we believe, allow consumers to fully benefit from the minister's approach.

Thank you very much.

The Chair: Thank you very much, Mr. Brazeau. We appreciate the conciseness of your opening statement.

We'll go right away to Monsieur Mayrand.

Mr. Yves Mayrand (Vice-President, Corporate Affairs, COGECO Inc.): Thank you, Mr. Chairman and members of the committee.

Thank you for this opportunity to provide Cogeco Cable's views on the government's proposed order varying the CRTC's decision on regulatory forbearance for local access telephone services of incumbent telephone companies in Canada. The time allotted is short, and I will be brief.

First, let me voice our deep concern that political decision-making now appears to be the norm in Canadian telecommunications, taking precedence over quasi-judicial decision-making by the independent administrative body formally entrusted by Parliament with the job of ruling on telecommunications regulatory issues, including forbearance. As a result, independent fact-finding, proper evidentiary assessment, and due process have all taken a beating, in our view, with a resulting loss of trust in the due process.

The Canadian government' s official vision for smart regulation includes trust in addition to innovation and protection of the public interest. The proposed order, in our view, is at odds with that vision.

● (1535)

[*Translation*]

Second, the proposed order is also at odds with basic principles of competition law, as it completely ignores significant market power and market share of the incumbent telephone companies where SMP still prevails. As a result, incumbent telephone companies with up to 100% market share in some local geographic markets would be deregulated based on the mere presence of alternative wire line and wireless facilities providing alternative local access services.

Third, the proposed order would immediately eliminate the incumbent telephone companies 90-day win-back restrictions throughout Canada, even where alternative local access services are still not available. In practice, this means that in local exchange areas where Cogoco Cable has not been able to launch an alternative service yet due to facilities or interconnection constraints—and there are still a number of those in our footprint—the incumbent telephone company could immediately target in those local markets each and every new customer signing up for our alternative service with special and confidential offers, thus making it uneconomical for us to launch there.

[*English*]

Fourth, the proposed order is at odds, in our view, with several recommendations of the report of the government's own experts, the Telecommunications Policy Review Panel, published less than a year ago, on the way to manage the transition to deregulation of incumbent telephone companies.

But more importantly, when will the government focus on a new Telecommunications Act instead of rewriting the decisions of its regulator?

Thank you for hearing us out. We will be pleased to answer questions you may have on these issues.

The Chair: Thank you for your presentation.

We will now go to Mr. Engelhart, please.

Mr. Kenneth Engelhart (Vice-President, Regulatory, Rogers Communications Inc.): Thank you very much.

If we take a look at the CRTC's forbearance order, they said, as many regulators around the world have said, that they will deregulate once the incumbent phone companies lose significant market power, and they assessed a 25% market share loss as the point at which significant market power is lost. We agree that this is the right number. But if you look today at the numbers for the market share losses the phone companies have incurred in most of their major markets, they're already at the 25% level, or quite close.

Why is it that they have not simply applied for deregulation under the CRTC process? Why are they so opposed to the CRTC process and so in favour of this order? There are really two reasons, which my colleagues have alluded to.

The first is that the proposed order, unlike the CRTC decision, immediately eliminates the winback rules. Those rules are eliminated as soon as the order is promulgated, whereas the CRTC required the phone companies to lose 20% market share before the winback rules are eliminated.

The second is the quality-of-service standards. Those have been watered down by the proposed order.

I think those two changes are very significant.

Dealing with the winback rules first, those rules say that for the first three months after you get a customer, the incumbent cannot phone up that customer to make them a special offer.

There were the same rules in cable television. In fact, in cable television we still have those same rules today for apartment buildings and condominiums, to protect Bell ExpressVu, who argued for them long and hard. The reason for those rules is that in a network business they know exactly what customers they have and know exactly when they've gone to the competitor. It's a way to try to give the competitor a chance to get started before competition just gets knocked out of the box.

The quality-of-service standards are also important. They're important because what they say is that when you get interconnection facilities or services from the incumbent; or business solutions, for companies like Rogers, which gets unbundled loops for the business market; or high-speed pipes from the phone companies; or, for companies such as Rogers that offer telephone service where we don't have cable—we offer it in Montreal and Calgary and Vancouver and have no cable there and need to use phone-company loops—they have to give you the same quality of service on those wholesale facilities as they give for their retail customers. And they never do; they always fall short on that quality of service.

Once the CRTC made it a requirement that they had to meet those quality-of-service standards to get deregulation, we started to see some rapid improvement in the quality of service, a dramatic improvement that I believe will come to an end now that the proposed order, once it becomes a final order, will successfully water down those quality-of-service standards.

Thank you very much.

● (1540)

The Chair: Thank you very much, Mr. Engelhart.

We'll go to Monsieur Lavoie.

[*Translation*]

Mr. Luc Lavoie (Executive Vice-President , Corporate Affairs, Quebecor Inc., Vidéotron Ltée): Thank you very much, Mr. Chairman.

I will be very brief and I will not repeat what we said publicly when the minister announced his decision last fall.

Vidéotron and its parent company, Quebecor, are basically in agreement with the approach advocated by the minister, mainly an approach based on the free-market system, market forces and as much deregulation as possible.

It is true that we appeared before you last fall in order to seek a longer transition period. However, as you may know, yesterday Vidéotron announced in a press release that we now have in excess of 400,000 local and residential telephone service subscribers. As a result, we believe that market forces can now fully come into play.

The consumer is the first to benefit. This is demonstrated by the fact that when Vidéotron launched its residential telephone service in January 2005, the cost of telephone services went down for the first time in the history of Canada. The costs were cut dramatically. This pressure on the market was beneficial to consumers.

Basically, we said, and we repeat, that we would encourage the minister to continue along the same path, to carry through with his reasoning and push, with all of the political might that he has, to deregulate the entire cable industry as well.

With the digital revolution that is unfolding before our eyes, cable companies are acting less and less like cable companies and more and more like telecommunication companies that must be active in all telecommunication sectors. Cable companies must currently deal with complicated regulations that are not in the interests of the consumers, the market or the Canadian economy.

We would encourage the minister and the government to continue moving in the direction of deregulation and a free-market system, and we would encourage the government to accelerate the arrival of new competition in the mobile telephone sector. We believe that this sector constitutes the next frontier and that new competition in the mobile telephone sector will enable Canadians to stop having to pay 60% more than their American neighbours for their telephone services. As far as the penetration rate is concerned, Canada currently is ranked 30th amongst OECD countries.

Canadians do not have access to the latest technology as they should. Right now, the most recent technology is becoming the norm in Europe, Asia and very quickly in the United States. Canadians are lagging behind whereas this new generation of technology encompasses much more than mobile telephone services: it is a portal to culture, music and television programming which will become a universal communication vehicle.

We would therefore encourage the government to do what is needed so that there is more competition in this sector.

Thank you, Mr. Chairman.

[*English*]

The Chair: *Merci beaucoup.*

We will now have questions from members. We'll start with Mr. Brison.

● (1545)

Hon. Scott Brison (Kings—Hants, Lib.): Thank you very much, and welcome back before the committee.

I represent a rural and small-town riding, and like a lot of members of our House and some members of this committee, I'd be very interested in your view as to the impact of the minister's decision on rural and small-town Canada in terms of services, the potential for competition, and the pricing for services in those communities.

Mr. Kenneth Engelhart: I've spoken to quite a few small cable companies who serve some of those smaller markets. Quite frankly, some of them are not at all sure they're going to enter the telephony market. Even for a big company like Rogers.... We have a number of small rural systems in New Brunswick and we're scratching our heads and wondering whether it really makes sense; it's a bit of an economic challenge to serve them in the first place, and then you have the prospect that the very first customer you serve will get one of these winback offers—and the second one, and the third one, and the fourth one. At some point you'll just throw up your hands and get out of town.

I don't think the proposed order is good for those smaller communities.

Hon. Scott Brison: What would be an appropriate period—a blackout period, if you will—on winback that you would be comfortable with, in terms of the period that you think would balance the ability of smaller competitors to enter a market with a reasonable ability for the incumbents to respond?

Mr. Kenneth Engelhart: I think the CRTC had it right in their order, but what we said in our comments to the proposed order was that if the government was anxious to remove these rules, they should at least say six months, so that the rules would be in place for six months after you turned up the service in a market. That would give you some opportunity to launch your service and establish a bit of a beachhead before the winback offer started.

Hon. Scott Brison: I believe the CRTC decision was 90 days.

Mr. Kenneth Engelhart: Yes, the winback period would always be 90 days. I'm not proposing to change that.

But what the CRTC said is that this 90-day rule stays in place until the incumbent has lost 20% market share. While we support that fully, if the time interval to lose 20% market share seems excessive or uncertain, we would propose a six-month interval instead, but leaving the 90-day rule in place.

Hon. Scott Brison: Mr. Brazeau.

Mr. Jean Brazeau: Our position, as we tried to elaborate it today, is that our big concern with winback—and Mr. Engelhart mentioned some timelines—is that these restrictions will be removed even before we enter certain markets. At a minimum, these rules should apply until we enter that market; then, whether additional time is required is certainly debatable—but at least until we enter the market, which will not be the case under this order.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Mr. Engelhart, I'm interested in finding out whether or not winback rules even exist for the cable industry. I don't think I heard you clearly. We seemed to hear Mr. French suggesting yesterday that the cable industry had quite a presence and had a level playing field. Is this correct?

Mr. Kenneth Engelhart: When satellite service was launched, the CRTC put a winback rule in place that stated that cable companies could not call our own customers for 90 days after satellite won them over, so it was exactly the same situation. We were not allowed, if they won one of our customers, to contact that customer for 90 days.

That rule continued for about four years for all customers and is still in place today for apartment buildings and condominiums. If Bell ExpressVu wins a customer from Rogers today in an apartment building, we cannot call them for 90 days.

It's sort of ironic that the very same Bell Canada that says these winback rules make no economic sense in the telephone market is a big proponent of them in the cable market.

● (1550)

Hon. Dan McTeague: Let me ask about quality-of-service regulations. Could you, and Mr. Brazeau as well, give me an example of some of the interconnection problems your company is facing? What communities are we talking about?

Again, the CRTC try to paint it that we had a great, wonderful competition across the country, and the bureau, of course, said we can add this whole new system of law and competition policy specific to this industry, now that we have forgotten about the competitive process.

Mr. Jean Brazeau: To give you an example, we are a facility-based carrier. This policy, or the government's direction, is certainly to promote facilities-based competition. But we need to interconnect those facilities to the incumbent's existing network. They really control the local network. I need to call them to interconnect my network; they do not call me. We've had some challenges to ensure that this interconnection happens on a timely and effective basis.

An example is Vancouver. It will take us probably a minimum of nine months to interconnect our local network with TELUS in Vancouver. The challenge we have is that we're interconnecting all of our network in a number of cities in Alberta, B.C., Saskatchewan, and Manitoba. Getting the incumbents focused on ensuring that this happens effectively is very challenging. You can certainly call the CRTC and ask them to intervene, but they're reluctant to—in their view—micromanage the process. You are left begging and sometimes yelling on the phone to try to get the incumbents motivated to complete the interconnection.

If we're not interconnected, then we can't provide our service and we're not seeing the competition we're supposed to be seeing. That is our big challenge.

The Chair: Thank you.

We'll go to Mr. Crête.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): Thank you, Mr. Chairman.

First of all, I would like to thank you because it was your testimony, given last October, that prompted committee members to ask for a postponement, until March 2007, so that we could examine the situation. In December, the minister decided to circumvent our motion, but since that did not suit the committee, we passed a motion to do an exhaustive study on the whole issue of regulation.

Would you agree that the minister should wait for the results of our consultations, which will take place during the course of eight meetings, before deciding which instructions he will be issuing with respect to deregulation?

I'd like to have an answer from each of you. I see that there is strong opposition in three out of the four briefs.

Mr. Lavoie does not appear to be opposed, but I would like to hear his opinion on the relevance of conducting a study to ensure that the model we decide to use will be determined by an acceptable democratic process.

Mr. Luc Lavoie: If I may, Mr. Crête, I would like to speak first.

I do not feel that I am in any position to determine whether or not the committee should undertake a study. You are the parliamentarians—

Mr. Paul Crête: I would like to know whether the minister should wait for the results.

Mr. Luc Lavoie: Or even if the minister should wait for the results. You have been elected and elected representatives are sovereign in this country. They are the ones who govern and I think that it is up to them to make this decision.

Our position with respect to this issue has not changed. We have already established a position in the market which we feel is strong enough to deal with competition and we will comply with the rules that will be set. I do not believe that I have read or heard anyone say that the minister broke the law.

Mr. Paul Crête: Mr. Lavoie, the first eight recommendations contained in the proposed strategic framework call for amendments to the legislation. We are not saying that the minister acted illegally, but that he exercised a right in a manner that has upset the apple cart.

I heard your opinion and I would like to hear from the others.

Mr. Luc Lavoie: Obviously I am not going to be the one to say it. He did act in an unusual fashion, in that what he did is rarely done, but we can also see it as a sign of courage.

Mr. Paul Crête: At any rate, the committee found that it was disrespectful.

● (1555)

Mr. Luc Lavoie: This is a debate about values.

Mr. Paul Crête: And politics.

Mr. Luc Lavoie: And politics, I would agree.

Mr. Yves Mayrand: I don't want to give the committee members the impression that our company and the industry is suggesting that we postpone liberalization of telecommunications and deregulation indefinitely.

Mr. Paul Crête: I'm talking about a postponement of two months at most.

Mr. Yves Mayrand: That is certainly not the message that we want to give you.

However, on behalf of Cogeco Cable Inc., we are telling you today, as we did on October 19, that we are concerned about the way that these orders are made.

Our company as well as many other parties—not only industry people but consumers, telephone service users and all kinds of interest groups as well—have spent a great deal of time and effort to make presentations and submit accurate documents to the Canadian Radio-television and Telecommunications Commission, the CRTC, about competition issues in certain geographic markets. We are under the impression that no consideration has been given to any of this work, that it has been dismissed. We still don't have the master plan, which is a new telecommunications act, whose objectives would reflect the vision provided to you by the panel of experts appointed by the government itself. That concerns us. We do not want to cause any undue delay, but it is important that this work be done properly.

With respect to the forbearance order specifically, we are troubled in particular by the fact that this whole notion of significant market power, regardless of geographic market, has been dismissed.

You need to understand that the development of competition does not occur at the same rate everywhere, but is in accordance with the size and location of the markets. In small rural region markets, competition develops more slowly, it is more difficult and the economic base allowing for competition is much smaller.

Mr. Paul Crête: Indeed, with respect to that aspect, we heard from the competition commissioner yesterday. She told us that she could not consider market share in her evaluation criteria if there were a monopoly. You are saying that given the way you view the market, this aspect as well as market size are important.

Mr. Yves Mayrand: I think that we need to have an understanding of what is meant by the relevant geographic market. Competition agencies have a method for defining geographic markets throughout the world. This is not something that is used in Canada alone.

We could spend a great deal of time debating what should constitute units as small as the local exchanges or larger units. However, we have to be able to define what is meant by a geographic market and we have to view these things on a geographic market by geographic market basis.

I find it passing strange that, when an established telephone company in a given geographic market is deregulated, there is no concern for the fact that this company may have up to 100% of the market, whereas companies that want to combine their activities in order to obtain a market share that is considerably less than 100%, through mergers or acquisitions, would be subject, in the same market, to a review by the Competition Bureau.

Mr. Paul Crête: In my remaining time, I would like to ask Mr. Engelhart and Mr. Brazeau to answer my first question, which was whether or not the minister should wait for the result of our consultations before making a decision.

[*English*]

The Chair: Go ahead, Mr. Engelhart.

Mr. Kenneth Engelhart: Thank you.

I do think it's a good idea, because one of the concerns I have, along the lines of what Yves was saying, is that the CRTC reads thousands and thousands of pages of evidence. They hear from all these witnesses. They have oral hearings. There are huge books of transcripts.

Cabinet ministers are very busy. I imagine that when these proposed orders are dealt with, they often get briefed for an hour or two. They just don't have access to the same level of information as a regulator has. So if the committee could have, as you're planning to, eight days of hearings, I think it would be a very valuable body of information that could assist the minister in making his determination.

● (1600)

The Chair: Thank you.

Go ahead, Mr. Brazeau.

Mr. Jean Brazeau: I think it goes without saying that you certainly would like to make sure the minister has the best information possible to make a decision; however, time is money. I think we have to move, and move rapidly, because right now there's uncertainty as to what the regulatory regime will look like. That just creates difficulties for companies like Shaw to move forward. So we would like to know what the rules of the game are as quickly as possible, and then move on with them.

The Chair: Thank you.

We'll go to Mr. Carrie.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

Thank you very much for coming here today.

I do want to clarify something, though. The opposition asked an interesting question about policy direction, but we've been talking about forbearance. I think you know the opposition voted to put a six-month moratorium on the implementation of the policy direction. Given that date, which I think was March 1, and given that the minister tabled the policy direction—I believe he listened to what you had to say, and moved forward with it—do you think waiting an extra six months was a good idea or would have been prudent? I'm talking about the policy direction now.

Mr. Kenneth Engelhart: I am very concerned about the policy direction. I think that sometimes government does something that seems on the surface to be a good idea, and then it has unintended consequences, and the policy direction may be an example of that.

The policy direction talks about maximizing the use of market forces. I think all of us, and certainly I myself, strongly believe that market forces are to be preferred to regulatory actions, so how could one really be overly critical of the policy direction? But what we see now that it's in force is that it's thrown a huge spanner into the works of everything the CRTC does.

Just to give you one example from the world of telecom that we live in, the phone companies provide what are called colocation facilities. They are little rooms in their central offices that are used when you acquire unbundled facilities from them. You pay rent for those rooms, and you've got hydro and all sorts of other things.

Well, the CRTC determined that we were being overcharged for the hydroelectric power and overcharged for some of the other elements. They felt that the costing studies done by TELUS, in this case, were faulty. They so ruled. TELUS then appealed back to the CRTC, as they're entitled to do, and said that they couldn't overturn TELUS's own costing estimates, and that anyway they—the CRTC—had started this hearing five years ago, and it was too late to give a refund back to the competitor. Those are the sorts of battles we have all the time.

Now TELUS has filed documents with the commission saying that because of the direction, TELUS has to be right. Because of the direction, you can't challenge our costing studies and you can't challenge our legal opinion on the issues before you. They're creating this argument—which I hope the commission doesn't buy—that says the direction changes everything, and now all the old decisions have to be rewritten and all the old rules have to be thrown out.

Mr. Colin Carrie: Do you think studying it further is going to make much of a difference?

Mr. Kenneth Engelhart: I think a little more study might have let people put a little more flesh on the bones. My concern with the direction always was that it was motherhood statements; you can read a lot into them, and I'm afraid that's what's happening today.

Mr. Colin Carrie: Do you think Bill C-41 would help in that regard?

Mr. Kenneth Engelhart: Do you mean the fining power?

Mr. Colin Carrie: Yes, with the Competition Act.

Mr. Kenneth Engelhart: I'm not a great believer in the fining power as a way to do things. On the quality-of-service issue that I mentioned to you before, the CRTC has something like a fining power in place today: when they give bad quality of service, they have to give refunds. We'll get a couple of million dollars in refunds every year, and it doesn't matter; they still won't improve the quality of service.

Mr. Colin Carrie: May I ask the other panellists the same question? Are you in favour of delaying the policy direction further? Would you have been?

● (1605)

Mr. Yves Mayrand: I can speak briefly to that.

From our vantage point, the policy direction is out. I don't think we've come here to say that we should move backwards and try to undo what has been done. We voiced concerns that the policy direction, in the way it was drafted and brought about, might do more to create difficulties than it would to solve issues.

I think we would like you to understand that one of the big difficulties lately that Cogeco Cable has with this whole process is that we seem to be having some piecemeal use of certain selected parts of the recommendations of the Telecommunications Policy Review Panel report. That report contemplated a policy direction—there is no question about that—and we don't have an issue in principle with that, but it did entail a number of other tied recommendations, including a recommendation that the government move with the policy direction but change the act to repeal the cabinet power to modify individual CRTC decisions.

So much of our unease is with the way in which we seem to be moving with piecemeal measures that do not implement the whole thrust of telecom policy review and that ignore certain fundamental considerations, such as the TPRP's finding that it is not advisable, in a democratic system of administration, to have concurrent use of policy directions and individual decision rewriting from the regulatory body.

Mr. Jean Brazeau: We were supportive of the order, and we still are supportive of the order. Our only addition would be what we mentioned in our comments today, which is that we would like to see a similar order on the broadcasting side that would allow us to more effectively compete on the telecom side.

As Mr. Lavoie indicated, we are much more than just a cable company offering broadcasting carriage services. We need the government to recognize that and to move forward on it.

Mr. Colin Carrie: Mr. Lavoie.

Mr. Luc Lavoie: I think that indeed time is of the essence. The market is moving at an incredible pace. The digital revolution is something that is completely changing the way telecommunications work all over the world, as we speak. It changes the time span we can apply to different decisions of this sort.

I think the minister was right to move fast, but I think he should move just as fast in other sectors to deregulate them, because as we speak, we're seeing—and we could have a long discussion about this—that the IP protocol, the Internet, is becoming the universal vehicle for all sorts of communications.

Soon this committee will not invite cable companies such as we are, because you will not be able to define us as cable companies. As we speak, we at Vidéotron—and I know it's true for the others—have more than 700,000 Internet access users; we have 400,000 wireline telephone users; we have 1.6 million, or close to it, subscribers to our TV distribution system, digital and analog. Are we a cable company anymore? We're not a cable company anymore. We're a part of this digital revolution; we're a telecommunications company.

We do not have years to think it over; otherwise we're going to miss the boat in Canada and we'll be late in terms of technology.

The Chair: Thank you.

We'll go to Mr. Angus now.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, gentlemen, for coming today.

I'm going to make a purely partisan pitch at the beginning. Mr. Engelhart, you have the same last name as a town in my riding where they vote New Democrat, so you obviously are a very wise and intelligent man. I have to say that at the beginning.

Some hon. members: Oh, oh!

Mr. Charlie Angus: I was interested to hear the various discourses given this afternoon. I'm interested because we see examples such as, with Shaw, that you're looking to the CRTC to make changes so that you can get into the telephone market, and yet both Shaw and Vidéotron are publicly defying the terms of their licences right now, with the Canadian Television Fund.

I'd like to ask you and Vidéotron, are you going to pay up your share of the CTF this year?

● (1610)

Mr. Luc Lavoie: Can I go first, or do you want to go first?

We're not defying the law at the moment. The law is very clear, and the official spokesperson for the CRTC was very clear when he spoke about it. Until the end of the broadcast season, which is August 31, what we're doing is not illegal in any way, shape, or form.

Mr. Charlie Angus: Are you putting the money in, though?

Mr. Luc Lavoie: We're going to go up to August 31, and we're going to see how we can improve things.

The Chair: I'm sorry, Monsieur Lavoie.

Do you have a point of order, Monsieur Crête?

[*Translation*]

Mr. Paul Crête: The issue may appear to be very relevant for the entire sector, but unfortunately, that is not the objective of the inquiry. This part of the act comes under the direct jurisdiction of the Department of Canadian Heritage. Consequently, the Minister of Canadian Heritage will have to be the one answering this question. I would prefer that we spend our time today on our telecommunications study. I don't believe that this issue is relevant.

[*English*]

The Chair: I think, Mr. Angus, we are here to discuss the study of the deregulation of telecommunications. I understand there is some overlap here, but I would encourage you to keep your questions relevant to the study before us here today.

Mr. Charlie Angus: I'm sorry, Mr. Chair. My honourable colleague might misunderstand, but this is part of my line of questioning in terms of where we're going with deregulation of telecommunications. I'm trying to get a sense of what parts of the sector they want to keep and what parts they don't want to keep, so that I can get a better sense of their overall picture. I would like to be able to continue with my line of questioning.

The Chair: Perhaps you can explain how it relates to deregulation of telecommunications in putting your question.

Mr. Charlie Angus: Okay.

Once again, we'll go back to the early 1990s, when we had our cable companies come before us asking for help to stop competition from satellites. At that time, the decision that was made was to deregulate and to bump up subscriber fees in order to penetrate markets. Then, after that change had occurred, the decision was the cable production fund, which became the CTF. Now we have a change in direction coming from the cable companies, and I'm looking to see whether they're going to continue with what they're saying publicly, that they're not going to pay after August 31 to this fund and are going to insist on another set of arrangements.

The Chair: Again, Mr. Angus, I am not sure how this relates to the deregulation of the telecommunications sector. Perhaps you could clarify that for us.

Mr. Charlie Angus: Because we are looking to the CRTC for the terms of the licence and we have a public spectacle of companies defying the terms of their licences, I'm looking to see at what point.... Do we pick and choose the terms of the licence? That's the question I'm trying to understand here.

The Chair: You're referring to a BDU licence, right? You're referring to the CRTC's role with respect to broadcasting, and not with respect to telecommunications.

Mr. Charlie Angus: I'm looking at the fact that the CRTC regulates both Shaw and Vidéotron in both their sectors. On the one hand, they are saying they don't like the terms of this part of their licence, but they're now wanting changes in the licence, and they specifically refer to broadcasts. This was part of their discussion today. Mr. Brazeau talked about changes in the Broadcasting Act that they needed implemented.

I didn't bring that up; they did. Once I get that answer, if I can hear that answer, then I can begin to ask the question that was raised in their questioning.

Mr. Colin Carrie: I have a point of order.

The Chair: Go ahead on a point of order, Mr. Carrie.

Mr. Colin Carrie: That is not relevant. We have these witnesses for a very short period of time. I was wondering if we could stick to the telecommunications part. That obviously has to deal with heritage.

The Chair: Mr. Angus, you could put your question, but relate it to the telecommunications.

Mr. Brazeau related his point to telecommunications by saying that he's in favour of the order, but he's also requesting this change in concert with it.

Mr. Charlie Angus: What I would like to ask, then, is this. To quote from Mr. Brazeau's speech, he brought forward the point, specifically with reference to broadcast, that "...cable companies are subject to extensive regulation under the Broadcasting Act which restricts their ability to respond to consumer demand. These regulations should be reviewed and replaced, to the maximum extent possible...".

Could you explain if there are any elements of the Broadcasting Act that you want to be bound by, or do you want to be completely free of it?

Mr. Jean Brazeau: The only thing we are asking for is a review of those regulations whereby market forces can best ensure that consumers are protected and benefit to the maximum extent possible from competition between various players. Those are the areas in which we are recommending changes.

Specifically on the fund and to answer your question, as you can tell by my title, I am the telecom expert in the organization. My areas of responsibility relate to telecom, and I'm here as the company's telecom expert today.

● (1615)

Mr. Charlie Angus: Okay, but you're bringing forward a wide swath against the Broadcasting Act in your presentation today. What is it that has to be changed by market forces? That is what I am getting at today.

Mr. Jean Brazeau: What we're saying is that there has been an extensive review of the telecom sector. There have been some significant changes brought forward to ensure that the incumbents and various players in the telecom sector can effectively compete and, through this competition, can deliver benefits to consumers, benefits superior to those that could be offered through a regulatory regime. What we're suggesting is that a similar type of review of the Broadcasting Act should be undertaken by the government.

What would those changes be? Only after an exhaustive analysis could you then know what those changes should be. It is our view that if the analysis were to be made, we could have a more competitive broadcasting sector and telecom sector—because the two are really converging—and consumers would be better off as a result.

Mr. Charlie Angus: Mr. Lavoie, you mentioned the whole digital issue and this digital wave that's shaking the foundations. There are issues coming out of the Telecommunications Policy Review Panel recommendations about whether to change the regulations to allow the telecoms basically to interfere with net neutrality and to start basically taking fees in terms of setting up a higher tier of access for certain companies over general Internet use. Is that something your company would support?

Mr. Luc Lavoie: It is certainly not something our company is contemplating at the moment, no.

Mr. Charlie Angus: Are any of the other cable players interested in that issue? It has been a big issue at the FCC.

Mr. Luc Lavoie: You're not talking about speed.

Mr. Charlie Angus: We are talking about net neutrality.

Mr. Luc Lavoie: I understand, but you're not including the speed of—

Mr. Charlie Angus: The speed of opening up. Certain sites appear if there's a fee—

Mr. Luc Lavoie: No, we're not contemplating anything like that at the moment.

Mr. Charlie Angus: Are any of the other companies interested in that?

A voice: [*Inaudible—Editor*]

Mr. Charlie Angus: Well, it's part of the telecommunications review panel.

The Chair: Does anyone else want to comment on this?

A witness: I'm not aware.

Mr. Charlie Angus: Thank you.

The Chair: Thank you, Mr. Angus.

We'll go to Mr. Byrne, please.

Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.): Thank you very much, Mr. Chair.

Thank you, gentlemen, for your presentations.

On December 11 and 12, shortly after the minister announced his intentions for the variation order, most companies—and we're sensing this at the table again today—put out press releases indicating strong approval of the minister's direction. They basically committed to deregulation and announced their intention to work with the minister, saying that deregulation is the best avenue for consumers. Generally speaking, with some variation, that was almost a unanimous consensus within the cable sector.

Now we're hearing suggestions that when the minister reviews CRTC decisions and contemplates the potential for a variation order, what also happens is that the minister has one hour or two hours to review a decision, that is briefed for about one or two hours. I find that statement a little strange, given that it's unusual for a minister to issue a variation order on a CRTC decision. This particular minister has done it on a consistent basis.

You issued press releases, but now we're hearing that really it's not necessarily about complete and utter deregulation. We're hearing from your testimony that you feel your sector of the industry still needs to maintain certain regulatory benefits to enable you to compete in market share areas. Based on the virtue of your ability to bundle and other things, you have had significant market penetration in key lower-cost market areas, for example, above and beyond the 25%. Your desire to maintain restrictions on winback and other things was not in your initial press release. Most of your companies are highly capitalized. In fact with Rogers, for example, I think your market capitalization meets or exceeds Bell Canada's.

As a member of this committee, looking to provide advice to the House, I want you to help me out here. How do I communicate to my colleagues that this is good sound policy and sound deregulation, carte blanche, but at the same time that we still need to cherry-pick protective mechanisms for a sector that has penetrated market access, won customers, and is still looking for certain protections?

● (1620)

The Chair: Mr. Engelhart.

Mr. Kenneth Engelhart: Well, we didn't put out a press release supporting either the draft order or the direction. I know some of my colleagues did, so they can explain their press releases.

We, at Rogers, absolutely believe that deregulation is the right approach, that market forces are the right approach, and that competition is the right approach. But almost every western country has followed the approach that the CRTC has, where you don't just decide on day one that it's competitive now and let's go. You have a transition period. As I said in my remarks, whether you do it under the proposed order or under the CRTC's decision, that transition period is pretty much over. We're pretty much at the 25%. It is time to deregulate.

My concerns about the way it's being done under the proposed order are the loss of the quality-of-service incentives—I think it would have been very valuable to leave that part of the CRTC order in—and secondly, the winback rules for those markets where there is no competition today. I think you may discover that some of those markets will never get the benefit of competition now that those winback rules will be removed. But I would agree with you that protectionism is a bad thing, that competition is a good thing, and that after the transition period you want to let it rip.

Hon. Gerry Byrne: Could I ask the question why, in areas where there is very little competition, the cable companies haven't gone in? I heard testimony here this afternoon that in rural areas there's not really a big appetite for cable companies. Do you ever foresee a situation where you may get into that particular market area?

Mr. Kenneth Engelhart: People forget how recent our entry into the telephone market has been. A whole bunch of companies went into the telephone business in the late 1990s and early 2000s, and they all went bankrupt. In 2002-03 we were all scratching our heads wondering what was going to happen. EastLink entered the phone business using a technology that's different from the one we all used. As Mr. Lavoie said, we've used IP technology. We all entered this business around 2005. There has been an astonishingly rapid rollout of service, and we have those rural areas in our sights, but we haven't got there yet.

Hon. Gerry Byrne: I have limited time here. You're the anomaly here in terms of the embracing of the minister's variation decision. Could I ask for some comment from those who did embrace the minister's variation order and are now not necessarily moving down that path?

The Chair: Mr. Brazeau.

Mr. Jean Brazeau: We certainly embraced it, and we still do. The issue we raised today was that the devil is always in the details and the details for us are interconnection. We're a facilities-based carrier. This policy, this minister, this government are promoting facilities-based competition. We just want to make sure that when we call the incumbents and say, by the way, we want to interconnect to Vancouver, Victoria, or Red Deer—pick a city—they don't come back and say, yes, but it'll be a year before we get there. We want them to say, yes, and we'll do it quickly. If it were the Royal Bank or the Government of Canada calling, that interconnection would happen very quickly. We just want the same considerations when we're calling to interconnect our network.

● (1625)

The Chair: Thank you.

Mr. Luc Lavoie: I'd go along the same lines. Essentially we have supported the minister quite strongly. We were asked to make some recommendations as to how we should proceed so that it would be done in an orderly fashion. We made some recommendations, but overall it hasn't changed the basis of our position. Our basic position is that the market forces are what is best for Canadians at the moment because the prices will come down, the services will improve—and we strongly believe that.

The Chair: Thank you.

We'll go to Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman.

Welcome back to a number of you who have been here before. I look forward to the questions that are still to come, even though I guess we are running out of time.

I want to go to you, Mr. Engelhart, regarding the winbacks.

It's been estimated in every telecommunications market in Canada that it's really about prohibiting the ability to call back, as you've mentioned, within 90 days. The telecom panel, I think in its March report, talked about how making offers and counter-offers to the same customers is the very essence of competition and, in general, how winback campaigns should not be restricted by the regulator. I'm wondering if you could make a comment on that.

Mr. Kenneth Engelhart: Of course, in a normal competitive market, these sorts of things are perfectly natural. Even in a communications market where competition has had a chance to become established, I think that the winback rules enhance competition. The trouble is that when you're dealing with a market that has a 100% telephone company monopoly, a monopoly that's been there for 100 years, what happens is that when a new entrant goes into that new market it costs them maybe $300 to acquire a subscriber—a common number—because they have to roll out a truck, install equipment, do advertising, and what have you. When they call that customer up and give them $400 to come back, and that happens to your second, third, and fourth customer, and maybe you lose two out of three of those people, now it's costing them maybe $1,000 to acquire a customer. The project never breaks even. You always lose money, and at some point you give up.

That's what monopolies will do to try to hang on to a monopoly in a market. That's why the CRTC has had these winback rules for cable television and the long distance market, and they've worked. Once the competition gets established, you get rid of the rules, as they did for the long distance market, and customers benefit.

Mr. Bev Shipley: You've been in business, you're actually a substantial company, I think, worth $23 billion. Are you concerned about regulatory protection to keep you competitive?

Mr. Kenneth Engelhart: If you would indulge me, let me read to you what Bell said about the winback rules in the cable market. This is a statement they made on January 28, 2005, in a publication called *Canadian Communications Reports,* a statement by the director of regulatory matters supporting the winback rules in the cable market.

They said:

> You invest a lot of money in a building to put a facility in there, to market to the building, and so on. When you make that investment, you have to count on a certain penetration just to break even, he notes. It really doesn't matter if it's a TV service or anything else. When you're selling to a building, you have to count on a certain penetration level just to break even. If you open a donut store or something in the lobby, you have to assume a certain volume of sales to make your presence worthwhile. And if the donut store next door came along and suddenly said, "Don't buy donuts from him, I'll give them to you for half price", you have no opportunity then to make a business. So are you going to go into another building and lose money there too? The cable company can chase you all over town until you run out of money. (The revised winback rule) is another measure that the commission has put in place to give competition an opportunity to get established...It's only a 90-day opportunity to prove to customers that you have the ability to provide the service they want.

So that's Bell—big company, big satellites already launched—and they felt they needed that protection just to get established, and they still have that protection today.

I agree with you, sir, that protectionism is something that normally makes us all question whether the regulator is doing the right thing. But this formula of having winback rules in place has worked. I'm concerned that we're going to come to some small market five years from now that won't have phone service, because of the elimination of these rules.

● (1630)

The Chair: Last question.

Mr. Bev Shipley: I was going to get some comments on it from some of the others.

Just one. In our position, we've asked for support for Bill C-41in terms of the competitive productive practices. The opposition obviously is not supporting that. We want to get it moved as quickly as possible. If it were passed, do you believe that would maintain the fair practices in the telecommunication market?

The Chair: Quickly. We'll go down the line.

Mr. Kenneth Engelhart: The Competition Bureau really can't help in the telecommunications market because their procedures and their practices take too long. They take years and years. They're not designed to take a monopoly market to competition. Quite frankly, they won't even begin their investigation until you're bankrupt.

The Chair: Mr. Shipley, your time is up. I'm sorry.

Anyone else want to comment further to Mr. Engelhart? You all agree?

Mr. Yves Mayrand: I would add that we are on record as saying it really doesn't make any difference for administrative monetary penalties to be added to situations of abuse of dominance, for the very simple reason that history shows that this particular tool under the Competition Act as it exists—i.e., abuse of dominance—is so complicated to prove and so long to bring to a head that it really doesn't make any difference whether you add monetary penalties or not.

Mr. Jean Brazeau: I think Shaw is of the same view, that the tool is too blunt a tool to really be effective in the telecom sector.

The Chair: Monsieur Lavoie, do you have any difference of opinion?

Mr. Luc Lavoie: I concur with my colleagues.

The Chair: Thank you, gentlemen, for appearing. I apologize for the shortness of time. It was a very good discussion. We appreciate your being with us here today.

We are going to suspend for two minutes and have the witnesses come to the table. We'll suspend for a couple of minutes, members.

● _____ (Pause) _____ ●

● (1635)

The Chair: Members, we are into our second hour, and we have our second panel, consisting of the competitive local exchange carriers.

We have three witnesses before us today. First of all, from Primus Telecommunications Canada, we have Ted Chislett, the president and COO. Secondly, from MTS Allstream, we have Chris Peirce, the chief regulatory officer. Thirdly, from Vonage Canada, we have Joe Parent, vice-president of marketing and business development.

We'll start off in the same order, beginning with you, Mr. Chislett, for your opening statement.

Mr. Ted Chislett (President and Chief Operating Officer, Primus Telecommunications Canada Inc.): Thank you very much for inviting me here today. You probably have copies of my presentation, if you want to follow along.

Today, in the short time I have, I would like to impress upon you the need for a wholesale access regime and ongoing regulatory oversight to monitor and react to those players with market power, post-deregulation. This is necessary to ensure that a competitive retail market exists and that impediments to competition do not develop.

By way of background, Primus Canada is the largest alternative telecommunications service provider in Canada that is independent of incumbent telephone or cable companies, with approximately one million customers.

Some appearing before you may say there already is lots of competition in the local market in Canada. I say not to be misled by the extent of competition or the reasons for it. All competitors are reliant on either the telephone or cable companies' local networks to deliver local broadband and other services to their customers. The extent to which vigorous competition exists in local and broadband services from players such as Primus and others is a direct result of the current CRTC policies and its mandatory wholesale access regime.

The local access network is different from other areas of telecommunications like long distance, because it is a "natural monopoly", like electricity, gas, and water distribution. The cost for competitors like Primus to overbuild this last mile network by digging up the streets and backyards is enormous, and it's an insurmountable barrier to facilities-based entry.

For Canadians to receive the benefits of telecom competition, we need many competitors who can innovate and compete, not a monopoly or a duopoly. A workable wholesale access regime will foster vibrant retail competition and thereby enable the reliance on market forces, eliminating the need for retail rate regulation and tariffs.

However, after retail forbearance, even with wholesale access, we are still very concerned about the continued market power of the ILECs and cable companies. We are concerned that their market power could unduly impair competitive forces in the market, resulting in higher prices, less innovation, and lower quality of service. Therefore, an ongoing oversight role is required to ensure that the actions by dominant players, either individually or jointly, will not unduly impede competition and be detrimental to the objectives of the Telecommunications Act. This oversight should normally be non-intrusive, but the CRTC needs to retain the power to step in and intervene if necessary in order to promote the telecom objectives.

Here are some examples. I think everyone would agree that if the ILEC were to call every customer who switched from their service and offered them $1,000 to switch back, this would be anti-competitive. While we haven't seen $1,000 credits yet, customers joining our competitor are called, and we have seen offers of over $400 credits. We have also seen long distance credits applied to the customer's local bill, which violates the CRTC's rules.

As another example, if service is consistently worse for wholesale customers than for the dominant player's own retail customers, potentially penalties or even institutional separation may be required.

Guidelines may also be required for promotions. Short-term service discounts or incentives are part of a competitive environment, but it would not be fair if returning customers were offered lower long-term rates not available to customers who did not leave the ILEC. This would establish two classes of customers, which would be unjust.

Intervention may also be required if retail rates are lower than the wholesale rates or if services are not made available to competitors for resale. Also, it may be necessary to mandate network neutrality, prohibit blocking of content, and define what level of packet prioritization is acceptable.

This oversight is broader and more specific than general competition law, as it is concerned with the telecom objectives and fostering an environment to stimulate innovation and competition in an industry of natural monopolies. The CRTC, as the industry's regulator, is needed to provide this oversight.

In conclusion, as the telecommunications industry moves from economic regulation to deregulation, there is a need for a workable wholesale access regime and ongoing regulatory oversight to monitor those players with market power and ensure that Canadians can benefit from competition.

Thank you.

● (1640)

The Chair: Thank you very much, Mr. Chislett.

We'll go to Mr. Peirce.

Mr. Chris Peirce (Chief Regulatory Officer, MTS Allstream Inc.): Thank you.

MTS Allstream is a leading national communications solutions provider. In Manitoba, we are the incumbent, and we now face competition from Shaw. We are unique among the former monopoly providers in that over half our revenues come from having committed to a growth strategy defined by expansion from coast to coast, where we have none of the clear advantages of incumbency. Nationally, we are the leading provider of competitive solutions to Canadian businesses, whether they be small, medium, or large.

By definition, then, we endorse the objective of achieving fully competitive markets as serving the best interests of Canadian customers. Competitive market forces will bring faster innovation, customer choice, and competitive pricing. Market forces that are not competitive, where one dominant player is free to exercise its market power, will slow innovation, bringing less customer choice and inflated pricing. Importantly, we also support the policy direction issued in December by the government. In its final form, that policy direction responded positively to the concerns we raised before this committee.

We cannot support, however, the proposed order dealing with forbearance. In its current form, that proposed order strikes at the very core of the conditions under which the CRTC may or must not grant forbearance, per the Telecommunications Act.

The proposed order offers a choice of two tests to an applicant seeking retail deregulation. The first is the test referred to Monday by Sheridan Scott, the Commissioner of Competition. It is multi-pronged and, while ambiguous, at least considers the presence of market power, including reference to market share, the number of competitors offering service, and active rivalry, all to determine if competitive market forces are present. But the second choice is a test that ignores all of these attributes of competitive market forces and merely calls on the regulator to count the number of providers apparently offering service: two facilities-based providers and, for residential markets, an additional wireless provider.

Clearly, no former monopoly in its right mind will choose Ms. Scott's test. To be deregulated in the local market without having one's market power even considered, as per the second test, is manna from heaven for the former monopolies, not for consumers.

Just as clearly, the second test, which I'll call the mere presence test, is contrary to the approach specifically recommended by the telecom policy report, that deregulation should only occur where significant market power was found not to exist.

The mere presence test is also inconsistent with the policy direction, which recognized the ability of the former monopolies to exercise market power in the retail market, absent an updated essential facilities regime for competitors, and which directed the CRTC to put such a regime in place, a task that won't be completed until 2008.

Our detailed comments submitted to the government in response to the proposed order point out that the mere presence test is fundamentally incompatible with competition law. Nowhere else in the world, save in the now re-monopolizing U.S., would regulators consider deregulating an incumbent without looking at the actual state of competition in the market. Further, and as was alluded to Monday by Richard French, the mere presence test is unworkably vague.

Most importantly, we are concerned with the legality of the proposed order, which supplants the statutory obligations of the CRTC with the mere presence test. The proposed order effectively repeals subsections 34(1) and 34(3) of the Telecommunications Act.

Obviously, cabinet cannot itself amend the statute. In our respectful view, the measure proposed will not withstand judicial scrutiny.

Despite our wholehearted endorsement of the objective of competitive market forces and attendant retail deregulation, we can't support the proposed order. The existing forbearance decision offers more certainty and is, frankly, more streamlined.

Thank you.

The Chair: Thank you very much, Mr. Peirce.

We'll go to Mr. Parent, please.

Mr. Joe Parent (Vice-President, Marketing and Business Development, Vonage Canada Corp.): Thank you for the invitation to appear.

For those members who aren't yet familiar with Vonage Canada, we're a leading independent provider of innovative consumer-friendly broadband telephone service, also referred to as voice over IP or VOIP. We've been in the telecommunications business for a little over two years, and within that time we've created over 200 well-paying technology sector jobs in Canada.

We believe Canadians are hungry for innovative and well-priced alternatives to the services of the large telephone and cable companies. We want to continue to build our high-growth business and provide that choice to consumers and businesses.

The committee study is on telecommunications deregulation. Vonage Canada supports the goal of a deregulated telecommunications market structure that will ultimately produce lower prices, greater choice, and increased innovation for Canadians in our economy. However, we cannot simply wish such a competitive market structure into being. The CRTC, an independent regulator, conducted an extensive proceeding and developed a sound plan for the transition from a market still dominated by former monopolies to robust and sustainable competition. By contrast, the minister's proposed order varying the local forbearance decision assumes a competitive market regardless of the overwhelming evidence that the former monopolies still dominate. It does so in contradiction of the Competition Bureau's criteria and in contradiction even of the Telecommunications Act.

But the main reason we felt it important to address you today is that the proposed order takes Canada in the direction of less innovation and of less choice, not more. The minister's proposed order would replace the CRTC criteria with a singular focus on the presence of a competitor's network in the geographic market. This competitive presence test ignores completely the market power a telephone company continues to exercise.

A small provider like Vonage Canada is David to Bell's Goliath. We cannot ignore the former monopoly's market power, which is real and manifests itself every single day. Bell and TELUS can and do preclude competition by denying Vonage Canada access to their online advertising properties and by limiting the supply of broadband connections used to provide VOIP.

Moreover, under the proposed order, Bell and TELUS would have the ability to contact each and every new customer signed up by Vonage Canada at the very moment that customer acts on his or her decision to switch. Using the knowledge that they obtain through their monopoly position, the telephone companies will be able to offer those customers, and only those customers, a special deal. The vast majority of their customers will not experience lower prices as a result.

In our view, the competitive presence test adopted in the proposed order will simply transition the market from a telephone company monopoly to a duopoly including the cable company. These companies share a mutual incentive to protect their market share, but lack the incentive to compete aggressively for Canadians' business by innovating or contributing to our national productivity. The cable companies have simply matched the product and price offered by the telephone company. This may be in their commercial self-interest, but it does not result in true choice or innovation for Canadians.

Canadians will not and should not be satisfied with such a limited choice and poverty of imagination, nor, in our view, should the government.

Thank you.

● (1645)

The Chair: Thank you very much, Mr. Parent, and thanks to all of you for being brief in your opening statements.

We will go to questions from members. I should have pointed out last session, but I will do so now, that members have a very limited time in which to ask questions, so we ask you to be as brief as possible in order to allow other panellists to answer. They have six minutes in the first round and five minutes in the second—not too much time for questions.

We'll start with Mr. McTeague for six minutes.

Hon. Dan McTeague: Thank you for being here today and thank you for the frankness and the brevity with which you presented your concerns here today. I can tell you that on the opposition side we are deeply concerned about the rush by the minister to proceed notwithstanding the number of recommendations made in the TPRP.

I wanted to point out for my colleague Mr. Shipley that Bill C-41's genesis was Bill C-19, and it was this member of Parliament who had everything to do with making that happen. Unfortunately, we had a lot of opposition at that time, including that from your party.

I realize, Mr. Shipley, you weren't here at the time, but I want to make it abundantly clear that the issue of fines concerns us. Fines, if they are limited only to administrative monetary penalties that go back to general revenue, assuming the time it takes to even get a fine, cannot possibly help you, the aggrieved party.

Tell me, from your perspective, how you see these fines—assuming that your various companies have been found to be in a position of having been egregiously violated—helping your company stay in business, or will you be gone by that point?

Mr. Chris Peirce: I think, to start off quickly, I would say that I agree completely that the problem with the AMPs approach is that there is nothing remedial about it. If you had a competition act that actually granted access to private interests to pursue a remedy, that would be different, but as Ken Engelhart mentioned in a previous panel, in terms of quality of service, there already are fines.

We just received another cheque for over $300,000 from Bell for inferior-quality service provided in the fourth quarter of 2006. They've clearly decided that the fines are just a cost of doing business, and that they are better off paying the fines than providing improved quality of service.

So to us, the act needs redefinition in terms of what constitutes anti-competitive behaviour in telecommunications, because the fines on their own don't make that any sort of avenue of relief for us.

Mr. Ted Chislett: We don't see the fines as being any detriment. The real issue is that the Competition Bureau, in our opinion, is not the right organization. The CRTC has the industry knowledge. They'll be dealing with wholesale in the future, and they'll be able to step in and order things other than fines. That's where it should be.

The test you have for trying to prove the purpose and the activity as a practice, and all the legal things about the Competition Bureau, make it unworkable, together with the length of time it takes to do it.

● (1650)

Mr. Joe Parent: I completely agree with that. While the intent is there, the process would take so long that it would be irrelevant, from the position of Vonage Canada. We would be out of business by the time any damages were levied. We think it's much more effective to consider policy direction that would prevent the activity from happening in the first place, as opposed to fining it after it's determined to have happened.

Hon. Dan McTeague: We in the opposition are very concerned about what has happened in the United States, with the rush to do the same thing. Of course, now there's less competition, higher prices or at least stable prices, and very little in the way of innovation.

Mr. Peirce, you may be the best one to speak to this. I saw something here on the Industry Canada website about the potential violation of the Telecommunications Act; that it may be deemed ultra vires. Can you enlighten this committee as to how your company sees this to be the case?

Mr. Chris Peirce: Right now the Telecommunications Act calls on the CRTC, under section 34, to find as a fact, on a case-by-case basis, that sufficient competition is present to justify the granting of forbearance to a incumbent provider.

The telecom policy review admittedly says that section of the act should be replaced, but the way you replace that is through an amended piece of legislation. One test you could relate to this proposed forbearance order—the one Sheridan Scott was referring to—talks about various indicia of market power. But the problem is that the applicant gets to choose the test, and the test any applicant will choose is the one that isn't about market power; it's just about counting whether or not there are providers in the marketplace.

On the question earlier about what would happen in a rural or a more regional municipal setting, if small cable companies to which we'd provided the wholesale provider were looking to get into telecommunications and knew that as soon as they even existed in the marketplace the incumbent would be able to apply for forbearance, they'd be very hesitant to get involved. That's why we say that section is effectively replaced by this proposed forbearance order.

Hon. Dan McTeague: The TPRP made about 127 recommendations. In the view of the opposition here, I think it's very clear that some serious cherry-picking took place.

Do you believe there are some egregious omissions in this order? You've alluded to a few of them regarding market share and the hybrid being created by the CRTC and the Competition Bureau—sort of a band-aid solution, from our perspective. I'm wondering if you would agree and could live with this committee's recommending that the government endorse the entire report before proceeding with its order.

Mr. Chris Peirce: We endorsed most of the findings of the telecom policy review report. The ones we had problems with were around wholesale access, as Ted has raised. Thanks to the hearings of this committee in late 2006, the policy direction was amended to recognize that gap and deal with the issue of wholesale access.

With that proviso about the importance of wholesale access, proceeding more holistically with the telecom policy review report is certainly a better route than acting only to deregulate the incumbents that still possess, even according to the best analysis, 80% to 90% of the market today. It's important to remember as well that 70% of the Canadian market is deregulated now. The date of deregulation, the date of forbearance in any service that's been forborne in Canada, represents the high-water mark for competitors. Competitors don't gain market share post-forbearance; incumbents do.

The Chair: Thank you.

We'll go to Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent (Shefford, BQ): Thank you, Mr. Chairman.

I would like to ask two questions.

Mr. Pierce, on page 5 of your brief, you say:

> But most importantly, we are concerned with the legality of the Proposed Order which supplants the statutory obligations of the CRTC with the Mere Presence test. The Proposed Order effectively repeals subsections 34(1) and 34(3) of the Telecommunications Act.
>
> Obviously, Cabinet cannot itself amend the statute. In our respectful view, the measure proposed will not withstand judicial scrutiny.

Could you please elaborate a bit further on this matter?

● (1655)

[*English*]

Mr. Chris Peirce: As I mentioned in response to Mr. McTeague's question, subsections 34(1) and 34(3) both call on the CRTC to find, as a fact, that there is competition present sufficient to protect the interest of users before granting an order of forbearance to an incumbent, a former monopoly provider, that applies to be deregulated from the retail business. So on a case-by-case basis, it's a statutory obligation of the CRTC to look at the situation, find competition, grant forbearance.

This order says, don't do that. It says, count providers. If there's more than one facilities-based provider offering service, then that's sufficient. You then must grant forbearance. Pay no attention to the market power of the incumbent; pay no attention to the other indicia of market power, which is what competition is all about—if those providers are offering service, that's sufficient. If the incumbent provider has 95% of the market, and there's one other provider with 2% and another with 3%, you must deregulate. You can't look at any further assessment of market power. We say that is effectively repealing section 34 by executive order, which would be really ultra vires the executive branch.

Mr. Ted Chislett: I think we have a slightly different perspective, only for the fact that I think you can forebear for retail rate regulation and falling of tariffs in advance, but you need to establish a proper regime afterwards to monitor it. That's what I see missing from the CRTC, and there's no direction to change that. There should be some ongoing requirement and obligation under the Telecommunications Act to monitor what's happening and make sure that what is happening is in conjunction with the objectives of the Telecommunications Act, even things like having people send in rates for information, file rates, not to intervene beforehand but so that the CRTC has it on file, so the CRTC has files with the quality of services for retail service as well as wholesale, so they can see if there's a difference and if there's discrimination.

From our perspective, it's really about what the monitoring regime is going to be. I'm less concerned about whether it's 20% or 25%, or whether it's two players or three players. Let's have a regime afterwards. You can't just wash your hands of regulations and say, okay.... We don't know what the right number is, whether it's 25% or 30%, so we have to monitor it afterwards and put this in place. That's the big thing I see missing in both the CRTC's...and not varied by the direction as it stands today.

[*Translation*]

Mr. Robert Vincent: My next question is for Mr. Parent.

On the second last page of your brief, you refer to companies that have a mutual incentive to protect their market share. You stated, and I quote:

> ...but lack the incentive to compete aggressively for Canadians' business by innovating or contributing to our national productivity. The cable companies have simply matched the product and price offered by the telephone company. This may be in their commercial self-interest, but it does not result in true choice or innovation for Canadians.

The way I see it, cable or telephone companies will set a price and the players who want to latch on to these companies will be stuck, because they will have to pay in order to reach the network. They will have to pay and therefore they will not be competitive.

I would like to hear your comments on this matter.

[*English*]

Mr. Joe Parent: First of all, I should explain the comment regarding simply price matching. If you look at the products that have been brought to market by the cable companies, it would seem they have almost intentionally been structured to exactly, or very closely, match the products that are already on the market from the telephone companies. So you simply buy a local access service and then you pay on a permanent basis, or you bundle for a block of long distance minutes and so forth.

There has not been, in our estimation, any significant innovation in terms of the way those products are brought to market, the way they're priced and packaged, and in fact, in the value that's baked into those. As an example, if you look at a Vonage service, it is essentially packaged to eliminate the concept of local versus long distance; you buy a service that provides you access across North America. It's that kind of innovation that we feel will only be brought to market by smaller players because it is not in the business interests of the cable companies or the telephone companies to change the structure. They are simply in a battle for market share, which will ultimately—hopefully, in their perspective—result in the highest possible prices and the highest possible returns for their business, whereas with smaller companies like Vonage, we must innovate or we die. If we don't come to market with something different, we don't have a business to bring.

To go forward with the policy as it's espoused could essentially result in a market structure that results in no significant change in the product that's brought to market, with no significant across-the-board improvements in pricing or competitiveness of the players that are left in the market.

● (1700)

The Chair: Thank you.

We'll go to Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you for coming this afternoon.

I want to separate this thing. I want to go right back to basics again. As you know, the members opposite brought forward a motion a few weeks ago that would impose a six-month moratorium on the application of the policy direction. We're talking about the policy direction at this point.

Considering the minister brought forward this proposal in June and there was ample time for reflection from the industry and then you responded to that, I have to ask you a really basic question. Do you think—and we're talking now about the policy direction—would it have been prudent, would it have been constructive, to wait another six months for that direction to come into force?

Mr. Chris Peirce: The policy direction has been issued. We think there were important amendments that the policy direction made as a result, in part, of the hearings in front of the committee. Once those amendments were made, we supported the policy direction and were quite comfortable with it being issued.

Mr. Dave Van Kesteren: So, Mr. Peirce, you're on record as supporting that policy direction?

Mr. Chris Peirce: Yes, in its final form we support the policy direction.

Mr. Dave Van Kesteren: Mr. Parent.

Mr. Joe Parent: The policy direction as espoused by the minister, the concept itself, we are on record as supporting. The issue we have with it is that we don't believe the actual implementation of that policy direction will deliver the results or the objectives that are espoused as part of that policy objective. We're concerned it's moving forward without taking that into account.

Mr. Dave Van Kesteren: We're talking about the policy direction at this point. We're not talking about forbearance or any of those issues?

Mr. Joe Parent: The objectives of the policy as stated we are definitely in favour of.

Mr. Dave Van Kesteren: Mr. Chislett.

Mr. Ted Chislett: I certainly would say that the policy direction as it has now been amended we strongly support. We had a number of concerns about it originally. As Chris mentioned, through a lot of the work of this panel looking at that, I think we were successful getting it changed to something that we find is very supportive today.

Mr. Dave Van Kesteren: The next part of my question, and this was another shocker that we received too, is that this whole process—and we're talking about the process itself—was illegal. Mr. Peirce, you were wondering about the legality of the proposed variance. Of course, we're talking about "proposed" at this point too. I want to quote you something that Mr. French, who is the vice-chairman of the CRTC, said when he was here. When asked about the legality of that, his response was that the Telecommunications Act has been written in a general way to leave room for interpretation. He also said that the government-proposed decision is in conformity with the status and the Constitution.

Sir, do you disagree with the vice-chairman of the CRTC, who said this was legal?

Mr. Chris Peirce: I was here on Monday and I think, frankly, there was some confusion over when people were talking about the policy direction as opposed to when they were talking about the proposed order of forbearance. When I heard the questions of legality, I heard him speaking about the policy direction and whether or not it was legal. I certainly wouldn't expect the vice-chair, as you said, to opine on the legality of a proposed order of forbearance. That's not what I heard him doing.

Certainly, from our perspective, we would be a party affected by this order. I would expect Bell Canada to seek forbearance in the business market in the city of Toronto if this order went ahead as drafted. If it did, we would certainly question how that would pertain to granting forbearance to the business market in a place like Toronto, Ottawa, or anywhere else where we were in business, as to whether or not this order is ultra vires of the existing Telecommunications Act and doesn't require a statutory amendment to grant forbearance without any consideration of the market power of the party applying to the actual presence of competition.

Mr. Dave Van Kesteren: Does anyone else want to make a comment on that?

Mr. Ted Chislett: Just the one I mentioned earlier. I believe there certainly is the power to forebear from falling tariffs and having an *ex ante* regime and moving to a *ex post* regime. I believe that's allowed, but you have to have that monitoring position in place.

The concern I have, as mentioned earlier, was in the absence of that monitoring that is the big obligation. The obligation of the commission is to make sure things are happening according to the Telecom Act, and that's the big opening, the big hole I see.

● (1705)

Mr. Joe Parent: The concern I have is the same as was espoused earlier, which is that the policy direction is one thing, but we feel that the way it's worded and would roll out would result in a market structure that would make it very difficult, if not impossible, for us to carry on business the way we do today.

Mr. Dave Van Kesteren: I have a little bit of difficulty with that winback proposal and some of your objections to that.

I was in business, and you usually put your best foot forward. Now, won't that just result in better service, and won't that result in better prices for consumers? Can't you compete? I understand that you're up against a giant, but you also have some advantages that they don't have.

The Chair: Go ahead, Mr. Parent.

Mr. Joe Parent: Certainly we can and do compete on a regular and daily basis. The issue, I guess, boils down to the fact that I don't have 125 years of monopoly power behind me, and I don't have a 125-year relationship with this customer base, nor do I have millions of customers I can draw upon.

From our point of view, in order to have sustainable competition, which is one of the policy objectives, competitors need an opportunity to establish themselves in the market. And just as we're getting to a beachhead, if our customers are getting attacked or poached, or whatever word you want to use, before we have an opportunity to establish a relationship with them—a relationship that, in former situations, could last 90 days before their old beau came back and started offering incentives to them—it becomes much more difficult for us to create a viable business. In fact, if you look at the situation, where it costs us hundreds of dollars to achieve a customer, if more and more of those customers can be taken away without any kind of return before we've even had a chance to break even, it becomes very difficult to run a business.

The Chair: Thank you.

Thank you, Mr. Van Kesteren.

I'll go to Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, gentlemen, for being here.

Mr. Chislett, I have just a quick question. In your brief, and again in your verbal presentation, you indicated that your company is aware of breaches of the regulations and the criteria. When that comes to your attention, what do you do? Do you report? And what happens?

Mr. Ted Chislett: We are currently working with the staff of the CRTC to try to resolve the issues. The staff is aware of the instances we have in place, and they're going through the process.

Mr. Joe Comartin: What would you expect, or what would you hope, to be the outcome?

Mr. Ted Chislett: Ideally, I would hope they'd be told that they can't offer it, that it's against the rules, and they would cease and desist.

Mr. Joe Comartin: How fast does CRTC respond?

Mr. Ted Chislett: This has been going on for maybe a couple of months, so it's reasonably quick, and I expect we'll have something resolved within the next month—it is my hope—or at least the staff will put a lot of pressure on the offending parties. So I think it's a matter of months and not a matter of years. Certainly the CRTC has a reasonable process to expedite and move through these things.

We're working informally right now in the hope that this can work, but if not, there is a formal process we can go through as well.

Mr. Joe Comartin: Okay.

This is to Mr. Peirce and Mr. Parent, following Mr. Van Kesteren's line on the legality of what's happened here. Without completely breaching your plan, are you looking forward to having to challenge this in court?

Mr. Chris Peirce: No.

Mr. Joe Comartin: There were some semantics there. Let me try that again. As a lawyer, though, I'd like to think you might be willing to pay all those big legal fees.

Mr. Chris Peirce: Well, my lawyers may feel that way too.

Mr. Joe Comartin: Although you're not looking forward to it, are you expecting that it's what you're going to have to do, or are you planning for that? And I'm asking that in light of the suggestion we have had of a six-month delay.

Mr. Chris Peirce: What we would really hope is that the test for forbearance, the framework—however it's amended—will provide certainty.

Remember, in Manitoba we will be seeking forbearance in the city of Winnipeg, because that's where Shaw is present. Nationally we want to make sure that forbearance is not granted in markets until competition is present.

The problem we have is that this test of mere presence, of counting providers, really has nothing to do with the presence or not of competitive market forces. And if we want competitive market forces, we should follow the specific recommendation of the telecom policy review panel report, which was to review, and if there is market power, don't forbear the retail pricing of the incumbents; if there is no more market power present, then forbear.

So we would prefer to see the order revised. If six months of hearings would help us do that, then certainly we'd be in favour of that.

● (1710)

Mr. Joe Comartin: Let me pursue it to this extent. If six months is not granted, would you be moving for an injunction as part of any litigation you would initiate?

Mr. Chris Peirce: Once the government acts, and of course, as a stakeholder—and as the largest competitor in the business market in Canada, we certainly are a stakeholder—we would have to review what our options would be in response to that order once it's issued in final form.

Mr. Joe Comartin: Do you want to add anything, Mr. Parent?

Mr. Joe Parent: With apologies to the legal profession, we would not look forward to a legal challenge either. Our hope is that rather than the dual criteria, the presence test would be dropped, and the Competition Bureau criteria would be adopted as the forbearance test. Ruling that out, I certainly wouldn't want to pursue legal action, but I wouldn't rule it out either.

Mr. Joe Comartin: If it goes ahead, as has been proposed by the government, I'll get some comments from each one of you as to what the consequences will be to your companies. You've all left me with the impression that you may not be in existence much longer if it goes this route. Is that too much? Are you looking at being bought out? Are you looking at going bankrupt, or just losing large market share? What will the consequences be to your three companies?

Mr. Chris Peirce: We don't maintain that the consequence would be us disappearing. In the latest CRTC telecom monitoring report, people talk about the accelerating pace of competition. The most recent telecom monitoring report shows that in the business market in Canada, competitor share of business revenues dropped from 14% to 12% from 2005 to 2006. There's no question that the incumbents are dominant in the business market in our market in Canada today. It is a very competitive market, because most of what they do is forborne now. Certainly the market would be even tougher for competitors. As I said, 70% of the telecom market has been forborne. The only thing that is really regulated is the local exchange rates of the former monopolies.

At any point of forbearance, that's the high-water mark for a competitor share. With long distance, data services, or any services like that, after forbearance the incumbent gains back share and competitors don't. That's the history in Canada, without exception.

You have to expect that if forbearance comes along in local retail services, you will probably see a high-water mark for a competitive market share in that. We only have a market share at this point for most competitors, as Ken Engelhart mentioned, that is approaching 25% in a number of municipalities—more in Halifax.

Mr. Joe Comartin: You're the one who used the term, you renovate or you die.

The Chair: Does someone want to add to that?

Mr. Ted Chislett: We believe that the cable companies and the telcos will continue to have market appearance and market power, both individually and jointly, for the foreseeable future, because they have this national monopoly and access networks. For us, the key thing is to have a reasonable wholesale access regime where players like you, Vonage, and others can have access to these bottleneck facilities in the local loops, provide these services, and innovate. If you have that, you can forebear on the retail rates.

The Chair: Thank you.

Mr. Brison.

Hon. Scott Brison: Thank you, Mr. Chair.

On the Competition Bureau, earlier it was discussed that fines wouldn't be that effective. I'd like you to expand on the issue around responsiveness. In reply to Mr. Comartin's question you said it might take three months for the CRTC to respond. What would you expect the Competition Bureau response time to be on one of these issues?

Mr. Ted Chislett: The Competition Bureau has a very complicated two-stage process to go through. We have difficulty even getting standing in the process—it's not open. It would take years.

Hon. Scott Brison: So the government is trying to replace a process that would take three to four months with one that would take years.

Mr. Ted Chislett: That's absolutely our concern, and why we strongly believe that the ministry that regulates the CRTC has to be the one that looks after this in the future.

Mr. Chris Peirce: The real difference is that the bureau is intended legislatively to govern markets that are already competitive. The CRTC is there to take a market that was a monopoly and transition it to competition. That implies a whole different view of things compared to when you're looking at the possibility of anti-competitive behaviour in an already competitive market. That's why the bureau is really not geared to help facilitate the emergence of competition. It's just there to protect egregious infractions.

● (1715)

Mr. Ted Chislett: The CRTC would like them to look out and see if the actions that are happening have the potential to impede competition.

Hon. Scott Brison: Just to get a cease and desist, how long would it take?

Mr. Ted Chislett: I can't imagine how long it would take. I think it would take years.

Mr. Chris Peirce: It's a quasi-criminal process. As Ted says, as an applicant you don't have any control over the process. At least at the CRTC someone applies who's aggrieved and there's a process where you have some ability to influence the tribunal.

Hon. Scott Brison: With respect to Mr. Van Kesteren's point earlier about winback, you said it's common practice that a business would put its best offer forward automatically. It is also common business practice that offers or bids are typically sealed such that the competitors are not aware of the other bidding.

Would not the large telco companies be aware of the incoming competitor offer on the day the switch order is made by a potential consumer? Wouldn't they know right then what was being offered?

Mr. Ted Chislett: They know that the customer is gone. They know who the customer is. They can call the customer and find out the details. They can tailor an offer uniquely to them, which isn't available to the public at large.

Hon. Scott Brison: In fact, with the blackout on winback for a period, as he levels the playing field, and as he restores it to a common business practice approach in some ways, giving a capacity for a competitor to make that sort of offer—

Mr. Ted Chislett: Absolutely. The example I think I used the last time I was here was that if Air Canada knew who had a ticket on WestJet and called them and offered a special rate to cancel the reservation and fly on Air Canada, we'd say, hey, that's anti-competitive. That's what winbacks are. Because of the nature of the network, you know when they leave and who they are and you can target them individually.

Hon. Scott Brison: Go ahead.

Mr. Joe Parent: I was going to say that the issue of winback, from my perspective, is not so much reverting back to new business practices but the fact that the objective of the policy is to deliver the benefits of competition to the wider audience. Winback delivers cost savings to a very select group of high-risk customers without running the risk of delivering all the benefits of competition to the market at large. We feel that is the issue with winback, that it will not deliver the benefits of competition as espoused in the policy direction.

Mr. Ted Chislett: You end up with two different classes of customers: those who have received special offers and left, and those who don't have those offers available to them. And that's not fair.

Hon. Scott Brison: If they take a more aggressive pricing strategy in more competitive markets, in some of the larger markets, is there the potential, from a profit perspective, for the incumbents of large telcos to actually raise prices in some of the less competitive markets? Is there that potential in some of the rural and smaller-town communities?

The Chair: Just briefly, Mr. Peirce, we're running out of time.

Mr. Chris Peirce: You already heard a sort of analog to that, on Monday, with Bell's rate increases. Bell has applied to increase rates by 80¢ a month for all its subscribers and is removing its service connection fee to those who are moving. It says it's doing that to meet competition. It describes that as revenue neutral. It's not lowering prices, it's raising prices across the gamut to deal with those instances where it feels it needs competitive advantage.

The Chair: Thank you.

We'll go to Mr. Arthur, for five minutes.

Mr. André Arthur (Portneuf—Jacques-Cartier, Ind.): Thank you.

Let's see—

[*Translation*]

Mr. Paul Crête: On a point of order, Mr. Chairman.

The Chair: Mr. Crête.

Mr. Paul Crête: I agree to letting Mr. Arthur speak.

[*English*]

The Chair: Thank you, Monsieur Crête. It's very kind of you to allow Mr. Arthur to speak, but he has every right to speak, as a member of this committee.

Monsieur Arthur.

[*Translation*]

Mr. Paul Crête: He is entitled to speak, but I am giving my consent so that he can speak during this round.

[*English*]

The Chair: Monsieur Crête, as the chair, I am the person who recognizes members, and I recognize Monsieur Arthur for five minutes.

● (1720)

[*Translation*]

Mr. Paul Crête: I am entitled to raise a point of order.

M. André Arthur: Now that the pettiness is over, I will speak.

[*English*]

Good afternoon.

Let's see if I understand. The telcos are too big, and the cables soon will be. You need big brother CRTC to protect you in the schoolyard, which is a little tumultuous. The government says you won't have this protection for very long.

If you can't stand the heat, why do you stay in the kitchen?

Mr. Chris Peirce: I could respond to that. There's a lot of talk about protecting competitors. I think people forget that an explicit goal of our regulatory framework since competition was opened up, since 1992, has been to keep the incumbents whole. So actually the policy, since competition, has been to protect the incumbents from the consequences of competition, to make sure that their rate of return has remained at least what it was when it was guaranteed. In fact the rate of return of all incumbents since competition opened up, after 100 years of monopoly, has been better than or above what it was when that rate of return was regulated.

The policy of the government is to invite Canadians—only Canadians—to invest in competing network facilities that were built at no risk by the incumbents. So Canadians are being asked to invest completely at risk. As Ken Engelhart mentioned, what happened in the late 1990s and early 2000s—to my company included, which was AT&T Canada then—was that all of those investors lost their money because the incumbents were kept whole but none of the competitors were. So competitors don't come before this committee or the government today asking for protection. They ask that if the government's going to have a policy of competition, it pursue competitive market forces, not market forces that favour monopolies.

Mr. André Arthur: Then why should I be a customer of yours?

Mr. Chris Peirce: You should because I'll offer you better service, more choice, and competitive pricing.

Mr. André Arthur: Okay.

And that's not enough for me to be a customer of yours? Your selling points to me, as a customer, will never be up to the level of what Bell Canada or Cogeco or Vidéotron can do? You'll always be losers? You have decided that you will always be losers, and you will always need somebody to protect you?

Mr. Chris Peirce: No, I've mentioned a protection point, but actually we do have loyal customers, including the Government of Canada. In terms of our business markets, there is the Canadian Federation of Business, small- and medium-sized business across the country. We're talking to you about the reality, in facing up to what was a monopoly for 100 years, of gaining and winning customers when, as Mr. Chislett mentioned, you have a former monopoly incumbent that can always come back on a far greater economic scale and take back a specific customer with specific pricing.

Mr. André Arthur: So your argument to me, to be a customer, will be price and price only?

Mr. Chris Peirce: No.

Mr. André Arthur: What would it be? What are your points? What are your advantages that you want to put forward to make me a customer, even though Bell Canada will undercut you after a few months?

Mr. Joe Parent: Let me, if I may, turn the answer around and share with you what it's like to be a competitor, what it's like to become a customer of Vonage Canada. First of all, I have to convince someone who's been with a monopoly phone company for quite some time to try out a new technology. I need to spend significant amounts of money to advertise to them. I don't have an existing relationship with them.

Mr. André Arthur: You're not answering my question, sir. I understand your right to say whatever you want. My question was this. Give me specific points that will make me a customer of yours, even though Bell Canada can undercut you. Why should I be your customer? What do you have that the others do not have? Small is beautiful? If that's the point, say it. But give me a good reason to be a customer of yours.

Mr. Joe Parent: I would be happy to. Small is beautiful, absolutely. And hopefully it will remain so—small, agile, focused on customer service. Price to me and to our customers is simply a price of entry. It's just a method of providing savings. Savings alone will not keep our customers. We have to provide a superior level of customer service to that of any competitor that we've had. We have to do so with less of an infrastructure to do it on. So I have to be smarter and faster. I have to deliver more innovative services, because if they can get exactly the same service by not doing anything or by going to a cable company and getting the same thing, with a well-known brand that's been around for quite some time as well, what's their incentive? I need to be more innovative, bring new technologies and services to them, and I need the chance to be able to do that—

● (1725)

Mr. André Arthur: Do you think that I, as a Canadian customer, am too dumb to realize that and that I will fall prey to a reduction of $2 a month by Bell Canada?

The Chair: Order.

Okay, that will be the last question we have time for.

Mr. André Arthur: Did I say something wrong?

The Chair: No, we're just out of time.

But I would like you to answer this, Mr. Parent.

Mr. Joe Parent: I don't believe there are stupid customers. I believe there are customers who simply act in their own best interests. What we need to do is make sure the rules of the market are such that they cannot be skewed and make it possible for there to be an unlevel playing field. I need to be able to compete on a fair level with much larger competitors.

The Chair: Thank you.

Monsieur Crête.

[*Translation*]

Mr. Paul Crête: Are you giving the floor to a Bloc member? According to my list, it is now the turn of a member from the Liberal Party of Canada.

[*English*]

The Chair: You have the spot if you want it. If you do not want the spot, I can move on.

[*Translation*]

Mr. Paul Crête: I will take it.

Do you think it is important that the minister wait until the committee has completed its consultations and made its recommendations before deciding how to deregulate, either by using his authority to issue directives or by making a more comprehensive recommendation to amend the statute if necessary, or do you quite simply believe that the best idea would be to maintain the status quo?

[*English*]

Mr. Ted Chislett: In the areas we talked about, the forbearance proposal certainly needs more work in terms of ongoing oversight afterwards. That's certainly a shortcoming, more to the CRTC side of things.

Because the proposal from the governing council is basically to amend that, it has the same shortcomings with it. It would be worthwhile to look at that and to see what the consequences of what we're doing are.

We don't know what the right answer is supposed to be to forbearers. We'd better have a way of monitoring this afterwards to make sure we're getting what we expect and so that we're able to intervene and know what's happening. It's worthwhile to look at that area. I don't think enough study has been done to see what the consequences are and what the possibilities afterwards are.

I'm less concerned about what the threshold is. I'm more concerned about what monitoring you're doing afterwards to make sure the objectives are followed.

Mr. Chris Peirce: Certainly in terms of the proposed order, we would recommend that the order of forbearance needs more work.

In terms of the broader issue, I'd presume that if the minister decides to table legislation, that will certainly give the committee a chance to get more broadly into the issue of how telecommunications should be legislated in Canada.

Mr. Joe Parent: To be brief, yes, it would be a good idea to give the committee some extra time. We feel things are moving quickly, at a pace at which the implications in the market and the players and competition, specifically on Canadians' ability to take advantage of the benefits of competition, are at risk of not being captured as part of this, so I would agree with that.

[*Translation*]

Mr. Paul Crête: Am I to understand that you would have preferred a proposal that considers all of the recommendations made by the task force looking into the telecommunications regulatory framework, rather than the ad hoc interventions made by the minister, such as the one we witnessed whereby it was the Competition Bureau that imposed fines rather than the CRTC, as provided for in the strategic framework?

[*English*]

Mr. Chris Peirce: Yes, in terms of the AMPs, the fines, we've communicated to the minister's office and publicly that we think the incentive to quality of service approach is going to work far better than penalties, and that you need again a more embracing amendment of the Competition Act to make it useful in telecommunications.

If we are going forward with the Telecommunications Policy Review Panel recommendations, then yes, we need to do it on a more holistic basis and not on some sort of one-off that seems to favour deregulation of the former monopolies above all else.

Mr. Ted Chislett: Certainly from a policy direction perspective, we think that should proceed, and that is consistent with the telecom policy review as well. Certainly that makes sense. We can certainly look at the broader scope, try to do more study, and take all the different recommendations into consideration.

[*Translation*]

Mr. Paul Crête: Thank you.

[*English*]

The Chair: Thank you very much for appearing with us today. Again, it's a short time period for some very big issues, but we appreciate your time today.

Members, we will finish the official formal meeting now, and then we will ask all those except for members and their staff to depart the room. We will then have an in camera meeting beginning at 5:30, hopefully finishing sometime before 6 o'clock.

The meeting is suspended for a few minutes. Thank you.

[*Proceedings continue in camera*]

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