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Chair

Mr. James Rajotte

Standing Committee on Industry, Science and Technology

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● (1530)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): Members, we will call the 47th meeting of the Standing Committee on Industry, Science and Technology to order.

Pursuant to Standing Order 108(2), we are furthering our study on the deregulation of the telecommunications sector.

We have two sessions here today of one hour each. For the first session, the first hour, we have two witnesses. First of all, from the Atlantic Institute for Market Studies, we have Mr. Ian Munro. He's the director of research. Secondly, from the Public Interest Advocacy Centre, we have Mr. Michael Janigan, executive director and general counsel.

Welcome, gentlemen. You will each have up to five minutes of opening statements, and then we will go immediately to questions from members.

Mr. Munro, we will start with you for up to five minutes, please.

Mr. Ian Munro (Director of Reseach, Atlantic Institute for Market Studies): Thank you, sir. I had understood three minutes, so my remarks may be brief. Thank you for the invitation to appear before you today.

As you may know, in January my institute submitted comments to Industry Canada in response to the Order Varying Telecom Decision CRTC 2006-15. If I could, I'll briefly summarize our response here.

We are supportive of the proposal to replace the CRTC's market share test with the competitive facilities test or the alternative competition test, and to move to areas smaller than the local forbearance regions defined by the CRTC as the geographic basis for deregulation decisions. The framework established by the commission is too timid and unnecessarily delays the benefits of full competition to consumers.

The entire province of Prince Edward Island constitutes a single CRTC-defined local forbearance region, and it provides an interesting example on this point. The population of P.E.I. is approximately 140,000, and the population of my hometown of Charlottetown is approximately 65,000. Suppose a competitor entered the Charlottetown telephone service market and captured 51% of the customers, so that it now was the largest service provider in the city. By CRTC rules, the Charlottetown market would remain regulated and the incumbent telephone company, now the number two service provider in the city, would still have restrictions on its marketing and pricing decisions, unlike its now larger rival.

When the outcome of regulation is to hinder the number two player in its ability to compete with the market leader, then there is something wrong with the regulation. It also must be kept in mind that a large market share does not necessarily translate directly into market power. The real question is whether a large market share would survive an attempt to charge high prices and earn monopoly profits.

Given the degree of competition that we have already seen spring up in recent years, we do not believe this would occur in a market featuring three facilities-based competitors. There is more than ample evidence that consumers are willing to switch providers when they perceive better value from a competitor than what the incumbent can offer.

Getting back to the question of geography, smaller is better because it allows for a more precise and effective regulatory response. Deregulating a large region in which there are some areas with no competitors present could put some consumers at risk. Conversely, failing to deregulate a large region featuring areas in which competitors have made significant inroads denies the benefits of full competition to consumers in those areas. By drilling down to smaller areas, regulation can be kept in place where competitors are not present and the benefits of full competition can be provided where competitors are present.

We also support the removal of the win-back prohibitions. Competing offers from service providers is the very essence of competition. If competitor A knows that competitor B will be restricted in its ability to respond, it seems reasonable to think that competitor A may not sharpen its pencil quite as much as it could have.

In the Canadian communications sector, liberalization, deregulation, and the introduction of competition have too often been implemented as halting half measures. Regulatory inertia deprives consumers of the benefits of full competition. We support the proposal to accelerate the pace to a deregulated local telephony marketplace where competition has taken hold.

Thank you.

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

We'll go now to Mr. Janigan, please.

Mr. Michael Janigan (Executive Director and General Counsel, Public Interest Advocacy Centre): Thank you, Mr. Chairman and members of the committee, for extending this invitation to address you on matters of concern to residential consumers, particularly vulnerable consumers, associated with the deregulatory actions of the government in relation to the CRTC in particular and telecommunications in general.

The Public Interest Advocacy Centre is a non-profit organization that provides legal and research services on behalf of consumer interests, in particular vulnerable consumer interests, concerning the provision of important public services.

PIAC has made submissions to the minister in response to the notice in the *Canada Gazette* setting out his proposed order reversing CRTC decision 2006-15. We have appended a copy of those submissions on the technical points, which raise objections to both the test used by the minister and the precedent associated with the reversal of the CRTC decision, to the speaking notes that have been circulated to you.

As you have been told, both the reversal and the kind of issue that is sought to be reversed are very unusual. The determination of the conditions that show whether a workably competitive market exists that is sufficient to protect the interests of consumers without regulation is not one that lends itself to resolution by fiat. It is very much an issue where the practical experience of the regulator must be used in conjunction with the various theoretical constructs associated with the presence or absence of market power. CRTC decision 2006-15 was informed by substantial volumes of expert evidence, such evidence being fully tested in an oral hearing before an independent tribunal. No such process has informed the proposed order of the minister.

We are concerned the government may be unwittingly playing the role of a sorcerer's apprentice, setting loose inappropriate market forces and problems in the industry that the previous framework of consumer protection was able to deal with, with appropriate controls. The principal question is whether the appropriate mechanisms will be in place to identify problems, much less solutions.

However, it is important to note what the government actions to date did not do. They didn't introduce competition in any markets where competition didn't already exist. In fact, most major telecom services have already been forborne from regulation by the CRTC.

Secondly, they didn't free the incumbent local exchange telephone companies from the obligation to maintain local rates at tariff levels. These companies were always able to lower rates across their rate bands. That's a very important point, which seems to have been lost in a lot of the public commentary associated with this issue.

Thirdly, they did set an unfortunate precedent in allowing telecommunications regulation by politics to trump long-standing administrative procedure. It is a precedent that may prove costly for the winners in the long run. The ILECs are now frequently openly dismissive of regulatory scrutiny in current proceedings before the CRTC, citing the actions of their new champion, the industry minister, as their justification.

Fourthly, they do not accord with the wishes of Canadians. A Pollara survey of September 2006 found that 80% of Canadians were opposed to the ILECs setting their local rates. Strong majorities were against this prospect even in dense urban areas of cable telephony offerings. In fact, most Canadians, perhaps given the problems associated with the wireless and broadband industries, don't feel that cable provides enough competition for the ILECs.

Fifthly, together with the proposed amendments to the Competition Act, they provide no comfort for customers who complain of overcharging or oppressive conditions from a dominant provider. In theory, the Competition Act protects the potential competitor from anti-competitive conduct; it does nothing for the customer.

It would be, in our submission, far better to create conditions where problems with the proposed new regime may be swiftly identified and remedied rather than endlessly debate the consequences at this time.

These conditions would include, at a minimum: thorough, ongoing, and independent research with stakeholder consultation as to the state of competition in the telecommunications industry, including issues of choice, price, penetration, affordability, and access identified with appropriate customer demographics; establishment of the independent ombudsman consumer agency as recommended by recommendation 6-2 of the Telecommunications Review Panel report to provide remedies for consumers in a deregulated environment and to provide a window on consumer protection problems as well as potential solutions; and the establishment of a process that will swiftly and effectively institute consumer protections where the deregulated market has failed to provide competition sufficient to protect the interests of users.

● (1535)

Thank you for your indulgence. I'd be happy to deal with any questions.

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

We'll now go to questions from members. We'll go to Mr. McTeague for six minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Chair.

Mr. Munro, Mr. Janigan, thank you for being here today. Mr. Janigan, I want to let you know that I did try to have an exchange with one of the witnesses, I believe with the CRTC, as to the allowance of the rate, the very thing you were referring to. I didn't get a satisfactory answer, but that too is not of any surprise to me.

Mr. Munro, I'm wondering, in your glowing commentary about the ability of market forces to reign freely, and given the example of Prince Edward Island, what is it with the TPR report that you agree with, and what is it that you disagree with? Do you believe we should have a hybrid telecommunications competition tribunal, or can the protection and safeguarding of consumers and the competitive process happen on its own?

● (1540)

Mr. Ian Munro: I haven't spent a lot of time analyzing the issue of the institutional structure going forward, but from what I understand from both the testimony you've had here recently from Ms. Scott from the commission and from Mr. Intven, one of the authors of the report, they believe moving to that kind of penalty just described, in the future, would be appropriate, although I note as well that Mr. Intven seemed comfortable that certain measures could go forth, such as this kind of deregulatory measure, before that institution was fully in place.

Hon. Dan McTeague: Sir, you are director of research for the Atlantic Institute for Market Studies. I'm wondering if you have had an opportunity to glean anything from the U.S. experience on the competitive telecom policy there. A court decision had basically upended their version of forbearance, and the conclusion is that after several years the U.S. telecom industry will soon be almost as highly concentrated as it had been prior to the 1984 breakup of the old AT&T as a result of a simple retake or revision or a return to the old monopolies.

It's been the position of the members on this side that there is, without an understanding of a substantial and proper market study, an event that was recommended by the TPR, that this is very much what could happen.

Your comments seem to escape or not to include the fact that the ILECs come from hitherto monopolies. Are you not concerned that without proper safeguards—and of course I understand what you just said with respect to Ms. Sheridan Scott and a few others. But from your perspective, have you had a chance to do any international analysis as far as what happens when regimes are deregulated in the absence of a market study?

Mr. Ian Munro: I don't have any specific studies that would fill that exact bill. I understand there may be measures that would show increased concentration in the U.S. I don't know that I've heard anyone saying that the deregulatory actions have been problematic and that consumers are worse off.

Hon. Dan McTeague: I'm only saying this because we have our own study here, which I'd be quite willing to give you, and it says right off the top: "Library of Parliament", "Local Telephone Company Market Shares by Local Forbearance Region". It says, "According to the market share data in 2006, only residential services in the Halifax region would meet one of the CRTC's forbearance criteria."

In terms of the work you've done, I'm a little concerned that someone who has a background in research and market studies wouldn't first be concerned about the market in which they are trying to do the research and to come to the conclusions you have, but be that as it may, you have used the example of Charlottetown or of Prince Edward Island. I come from a community where we have, in theory, two potential players.

Are you satisfied there could be more, or are you comfortable with just having the two or three players, one being wireless that's not attached to the first two, whether it's cable or telephone?

Mr. Ian Munro: I think the three competitors are sufficient, and as I mentioned in my opening remarks, I think it's wrong to focus too much on market share in this instance. The real test is whether the competitors have the ability to quickly and fully respond to any kind of a price increase that an incumbent might attempt to put in place.

I live in Halifax where EastLink is a very strong competitor. We have wireless competitors as well. If that market were deregulated and if the incumbent chose to increase prices tomorrow, I can be with a competitor by the weekend. And I think that's really the true test. The constraint put on the incumbents is that the competitor is present and able to respond very quickly to any pricing action they might put in place.

Hon. Dan McTeague: Mr. Janigan, in your estimation, after working on these kinds of things in the past, how likely is it if something should go awry for a new competitor that relies on the services and facilities of a former monopoly, and now is thrust back into a position where they're being competed against—either through win-back rules or a mere competitor test presence—that they will become the subject of an anti-competitive act? How likely is it that the $15 million will go back to the Government of Canada as opposed to the aggrieved party? How is this going to help the competitive process?

Mr. Michael Janigan: As the committee well knows, the provisions associated with abuse of dominance and predatory pricing have not had extensive use in Canada. There has been a great deal of reluctance on the part of the Competition Bureau to find conduct that would amount to abuse of dominant position; rather the Competition Bureau looks upon it as potentially a more efficient way of dealing with their own position.

I would not put a great deal of faith in the matter of increasing the penalties under those provisions, because they've been so infrequently used, and in fairness to the Competition Bureau, the associated test in the U.S. jurisdiction has also been very stringent, but perhaps in greater use than in Canada.

Particularly regarding the position of the new entrant competitor, if the best prediction of the future is usually the past, we don't have a great number of local exchange carriers competing with incumbent carriers at this point in time. By and large, they've been unsuccessful in maintaining competitions. Some would say because of the barriers that have been put in place by the dominant company, and some say that it's simply a matter of the economies of scale.

● (1545)

The Chair: Okay. Thank you.

Thank you, Mr. McTeague.

We'll go to Monsieur Crête.

[*Translation*]

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

I'd like to hear more about how regions are defined. The order created a new kind of region. The CRTC used to go by local forbearance regions or LFRs, while the ministerial order created local interconnected regions, or LIRs.

Even though your briefs present somewhat different opinions on the substance of this matter, do you favour going with smaller, or larger, regions?

In Quebec alone, there are 102 LIRs, whereas the CRTC relies on 20 LFRs. This is quite a difference, especially when it comes to limiting competition.

I'd like to hear your view on this subject. What is the best approach to ensuring good competition?

[*English*]

Mr. Ian Munro: Thank you, and I apologize for the difficulty with the language.

Yes, we support the smallest possible area that you could look at as the basis for these deregulation decisions because it allows you the most precision. It also allows you to avoid the potential problems that could occur in either making or not making a regulatory decision in a larger area.

If you imagine a hypothetical large area, in which half is served by a number of competitors and the other half is not, and if you were to deregulate that area, then you would have a certain portion of the area not being served by competitors and deregulated, which is problematic. Conversely, if you choose to retain regulation, then the half of that area in which competitors are present is denied the benefits of complete competition because the regulatory framework stays in place.

If instead you can focus your regulatory decision on each half independently, in my hypothetical example, you can deregulate the area where competitors are present and allow consumers the full benefits of competition, while maintaining protection for consumers in the other area where competitors are not present.

So we always believe in going to the smallest area that can be practically administered.

[*Translation*]

Mr. Paul Crête: So then, practically speaking, you would amend the order to have smaller regions.

[*English*]

Mr. Ian Munro: Yes, the new test speaks of either the LIRs or the exchanges, and in particular we think the exchanges are a very useful area to have on the table.

Mr. Michael Janigan: This matter of an attempt to define LFRs was a matter that occupied a considerable amount of time and head-scratching in the original proceeding. It's frankly not so much a matter of science, but belief, in terms of how this thing should be crafted. There are opinions on both sides of the map.

The difficulty is, of course, if you make the region too small, it would mean that effectively deregulation will only occur in a small core of perhaps an urban area, and the rest of the regions may effectively be subject to regulation for endless amounts of time because the deregulated core is not included with that larger amount. If you make the size too large, then, effectively, some of the rural areas may be included by the fact that their population is less than the urban areas and be automatically deregulated in circumstances where that may not be something that is in keeping with their interests.

There are ways in which the local forbearance region can be constructed either smaller or larger that may in fact either benefit or hurt the interests of the incumbent telephone companies or benefit or hurt the interests of the customers it's attempting to serve. The CRTC took the position of effectively trying to look at a community of interest, in particular the economic community of interest, to come to some resolution on that scale.

And it's not perfect. Let's face it. I's not. You can find exceptions in this country and how it's applied where it's not perfect, but I think, by and large, it would have been preferable to leave that in place and try to individually fix the exceptional regions where their particular plan didn't work.

● (1550)

[*Translation*]

Mr. Paul Crête: I want to be sure that I understand you. You would prefer to see the minister's order amended so that we go with regions established by the CRTC rather than we those provided for in this version.

[*English*]

Mr. Michael Janigan: I think that's correct, yes.

[*Translation*]

Mr. Paul Crête: Fine. I have another question.

Mr. Janigan, you stated that the regulatory body must have decision-making authority and that these decisions must not be overturned any old time. You mentioned the occasional, temporary use by the minister of the power to make orders. It seems the minister regularly exercises this authority.

Are you concerned at all about the decision-making authority of the CRTC or of any new body created as a result of measures adopted?

[*English*]

Mr. Michael Janigan: I think, objectively, in looking at what the proposed order of the minister is, it is a very exceptional order, and it seems to be offside of the standard thinking in relation to the behaviour of regulatory bodies, both within this country and externally.

You'll note in my submissions to the minister there is reference to OECD policy documents in relation to the relationship the government should have with its regulator. In our view, this decision is offside the standard approach to regulation, and we think, and have noted, that in fact the Telecommunications Policy Review Panel report specifically took some time to ensure that this type of action would not be possible in the future. I think it's because of the fact that it's just not in keeping with attempting to design regulatory policy and regulatory frameworks by an independently authorized regulator.

The Chair: Okay, thank you.

Mr. Carrie.

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

Thank you very much to the witnesses for being here today.

We've heard a lot over the last few weeks about how quickly things in the telecom industry are changing. It seems that demographics are changing all across the country. I know in Oshawa, where I'm from, I talk to young people, and they don't even have a land line any more. They all have their cellphone. They love their cellphone. They take it everywhere they go. They send text messages to their friends. It doesn't matter where they are, they can utilize this great technological advance.

In Atlantic Canada, we've had some witnesses—we've had somebody from EastLink and we've had satellite companies—that seem to be really raring to go for competition. In the Atlantic region, do you think the area as a whole—the consumer—will benefit from deregulation?

● (1555)

Mr. Ian Munro: I do absolutely, because deregulation will allow all the players in the marketplace to really fight tooth and nail with one another for customers' loyalty. That's really what competition is all about, fundamentally, and the sooner we can get to that situation where everyone has to sharpen their pencils as much as they possibly can, the more consumers win.

Mr. Colin Carrie: We've heard some concerns about rural areas down east—my family is outside Sydney—and concern about consumers in the rural areas. What do you think would happen to the consumers in the rural areas if we deregulate?

Mr. Ian Munro: I think the point is that by the proposal the minister has put forward we would deregulate in rural areas only where the competitors and competition are present. Where the competitors are not present, regulation will remain to protect consumers. That's why I spoke earlier about the benefits of going to smaller areas. You can precisely target areas based on the competitive nature of the marketplace in that area. Where the competition is not there, of course, we would not regulate, and consumers would remain protected by regulation.

I think that sums it up.

Mr. Colin Carrie: That's good.

Following on that, could you comment a little further on the minister's proposed approach for forbearance, which is to emphasize the presence of competitive infrastructure in the market before deregulating it?

Mr. Ian Munro: Again, I'll make the point I made before about not focusing on market share in these cases. I think what's key is the presence of competitors who can quickly respond to any pricing action by any other competitor. It sounds simplistic, but it's true that if, suppose, the Halifax market were deregulated, and if any one player—be it the incumbent ILEC or any other player—attempted to raise prices, I can switch to someone else by the weekend. You can have lots of debates among economists who have different models, but that seems so straightforward and commonsense to me that I think it really makes the point.

Mr. Michael Janigan: Mr. Carrie, if I may, I'll interject here. I think we have to be clear about what in fact we're talking about in relation to the forbearance order. The telephone companies have always been able to compete with their new-entrant competitors. They have the ability, for example, with respect to local exchange services to lower prices, if they want, across their rate band.

What has been done in this circumstance is to say effectively that we don't need to worry about any of the ordinary protections that are afforded to consumers in a particular region, because there is enough competition here; we'll let the market decide the ultimate price.

In general terms, what that will mean for high-volume consumers is potentially more product offerings, more bundles, and whatever. For example, I'm a fairly intense consumer of telecommunications. Our house probably spends over $300 a month in various forms of communications—Internet, wireless. I expect there may be some better offers available that might be made to me. On the other hand, we would anticipate that those customers who are low-volume or in rural areas will not likely be taking part in those discounts or have those discounts available to them, simply because of the fact of deregulation.

In the case of regulation, what happens with the incumbent telephone company is that their rates have to be lowered across a rate band. In deregulated circumstances, they can be done one on one with customers, and that's effectively what this is all about. It's not necessarily about competition, although competition is part and parcel of it. It's about effectively being able to target your message to the customers you want to attract.

Mr. Colin Carrie: I had another question that maybe you could have input on. Many people who have come forward to this panel fear that our deregulating the local telephone service would lead to re-monopolization. Do you think that will happen?

Mr. Ian Munro: No, I don't. The deregulation, by the test proposed, occurs when there are competing service providers in the area already. Re-monopolization would require the incumbent to drive the competitors out of the marketplace. These cable companies are big boys, not little mom and pop shops. The wireless players are big players. I think the idea that they would be driven from the marketplace is just not credible, and even if, hypothetically, any particular business found itself in financial difficulties, the infrastructure is already there: the cable is in the ground, the wireless towers are in place. So if—again hypothetically, in a sky-is-falling scenario—some competitor company has business problems, someone else is able to step in and pick up the infrastructure and keep going right from there.

So I think the idea that re-monopolization is going to occur is simply not credible.

● (1600)

Mr. Michael Janigan: I also don't believe, particularly in the areas where cable has penetrated the local telephony market, you're going to see re-monopolization. In areas where there has been no new entrant penetration, you may see a reluctance to get on board. It's more likely that you will see a prevalent and established duopoly between the cable companies and the telephone companies. I think that's a concern, because the experience, for example, in things like broadband is that it's a pretty cozy little duopoly that exists both in terms of price and offerings.

The Chair: Sorry, Mr. Carrie, your time is up now.

We'll go now to Ms. Mathyssen, please.

Mrs. Irene Mathyssen (London—Fanshawe, NDP): Thank you, Mr. Chair.

You'll have to forgive me. I'm a neophyte when it comes to all of this.

I was speaking with a constituent who represents a small provider and that constituent had some concerns. I want to address some of those with you.

I want to come back to the question about the big companies gobbling up the little companies by virtue of the fact that there is the possibility that a smaller company could run into difficulty. You made mention of the fact that the infrastructure is still in the ground and it was possible for another company to pick it up. This may seem naive, but is it not also a possibility that those bigger companies that do have that large market share would be the ones doing the picking up of that infrastructure—the gobbling up—and we're back to the monopoly question again?

Mr. Ian Munro: Who was that question directed to?

Mrs. Irene Mathyssen: Both, actually.

Mr. Ian Munro: Thank you.

I don't know which small companies you mean in this example. The main competition to the incumbent telephone companies is coming these days from the cable companies—Rogers, Shaw, EastLink, Vidéotron—and these are certainly not small companies. I think the idea that the phone company would be taking over any of those is.... I don't think that's a credible outcome, so I'm not sure what other small companies you might have in mind in your example.

Mrs. Irene Mathyssen: Okay.

Mr. Michael Janigan: I have to look to the wireless example in Canada, where effectively we attempted to start off the digital networks by licensing Microcell and Clearnet and had them end up being gobbled by the same providers they were supposed to compete with.

It is a big problem, because, in effect, the test on mergers is in fact efficiency. Many times they are able to show that there will be cost savings associated with efficiency—not necessarily associated with consumer welfare, but associated with shareholder welfare. I think there is a problem, not so much in terms of re-monopolization but in terms of the reduction to a duopoly or an oligopoly of companies that is extremely comfortable with their position and is not competing hard with each other.

I was at a conference last month where the president of the largest phone company in India was telling me how hard it was to compete in the wireless market in India where competitors are out offering $20 a month wireless access for life. This is hand-to-hand combat that's taking place among the wireless companies. You're not seeing that here. You're not seeing the same level of competition between wireless companies and broadband that exists in other parts of the world. We will eventually evolve a cozy little duopoly where, effectively, both the cable companies and the telephone companies will be happy with their market share and their performance with the shareholders.

Mrs. Irene Mathyssen: The group I spoke with had some requests in terms of this committee and the minister.

One of the requests was that there wouldn't be any deregulation until it was very clear that it was more than just a competitor, but a healthy competitor, in any given area. The second one was that the service quality would be continued in a regulated way even after deregulation. Thirdly, that there be a mechanism for re-regulation if healthy and sustainable competition were to disappear.

Are these reasonable requests? Are these requests that make sense to you?

● (1605)

Mr. Ian Munro: I think the service quality is just another aspect of competition. Competitors will compete on price and on service quality, and if the quality is poor, they will lose market share. The competitors in the market have every incentive to provide a high level of quality to consumers.

As for healthy competitors, I certainly don't think anyone would say that Shaw, Rogers, EastLink, and Vidéotron are unhealthy competitors. As for some test of their health, I'm not sure I'd recommend that as a new form of regulation to get into. Re-regulation, I guess, legally always remains possible, but to the extent we have a yo-yo effect of regulating and deregulating, I think what you're going to do in that circumstance is deter investment in the market to the detriment of consumers in the future. I would hope that any consideration of re-regulation in the future would be undertaken very, very carefully.

Mr. Michael Janigan: I can speak to your three points.

First of all, I think the appropriate mechanism is to make sure there's independent, accurate information associated with the industry and the state of competition in any of the different local forbearance areas, and that it's maintained and brought up to date and everybody's aware of it and can swiftly act on it.

Secondly, with respect to re-regulation, that, of course, is part and parcel of any accountable plan for deregulation. In effect, if market forces fail to deliver the consumer protections they're supposed to deliver, then the regulator should be able to swiftly step in and institute the consumer protections that are necessary to solve the particular problem.

Your third question—what was the third one?

Mrs. Irene Mathyssen: Quality.

Mr. Michael Janigan: Quality of service was a matter that the commission found in CRTC decision 2006-15 could be looked to by competition. The problem may well be that the individual providers may take more care in the provision of service to their high-volume customers than to their low-volume customers, where it may not necessarily be all that attractive to increase the quality of service or the lines or install new facilities to serve, if it's not economically appropriate.

I think, in fact, service quality should be maintained in a deregulated environment, or, as an alternative, that something like a consumer ombudsman is put in place to report on these kinds of problems and highlight them for the regulator to take up with the companies.

The Chair: Thank you very much.

We'll go now to Mr. Brison for five minutes.

Hon. Scott Brison (Kings—Hants, Lib.): Thank you, Mr. Chairman. Thank you to both of you for your interventions.

Mr. Janigan, I just want to clarify what you said about what the best approach would be in terms of regulatory reform in telecommunications. Are you saying we would be better off with basically implementing the whole TPRP report and through legislation changing the regulatory environment, instead of overturning CRTC decisions to effect what ought to be legislative change?

Mr. Michael Janigan: I think essentially that's correct. The TPRP report is a comprehensive document and has within it a whole series of checks and balances and objectives that are much to be preferred.

The effect of the government action in this case is to take a couple of different measures that seem to have some support within this document and attempt to use them to lever what they're getting at. I think it's inappropriate from that standpoint. If you're going to reform the telecommunications industry, I think it has to be done in a comprehensive fashion. You have to put together something like an implementation committee to implement the provisions of the TPRP report, to discuss the kinds of recommendations, including that new bipartite in the Competition Tribunal, which will take a lot of discussion, and also look at the specific consumer protections that were put in this document, which have not been addressed by the government and should be addressed, particularly if they're looking at a more deregulated environment.

● (1610)

Hon. Scott Brison: Do you believe, then, that the minister, by cherry-picking from the TPRP report and moving forward without a comprehensive plan, is actually solidifying a duopoly as opposed to leading to greater competition?

Mr. Michael Janigan: In my estimation, we're starting off with circumstances where most of the incumbent telephone companies sell about a 90% share of residential markets. If you're starting off implementing reforms that effectively free them up to make greater inroads presumably in that market share, I would suggest that you're likely going to see a solidifying of their dominant position, and at best a duopoly position in the different markets.

Hon. Scott Brison: What you're describing is the market for the Annapolis Valley, where the incumbent has 96.9% of the market. In places like Cape Breton, it's 98.4%. But rural and small town communities, by and large, do not enjoy a significant level of competition.

Mr. Munro, you mentioned that they'll have deregulation where competitors are present. We've heard from a number of smaller players who are in the cable side who are saying absolutely that they will not invest the millions required to enter the telco side in their local markets if we eliminate the market share test in favour of a mere presence test and if we eliminate the win-back blackout period.

The smaller players have been consistent that in their local markets they will not risk their private capital, because they do not believe they will be able to enter those markets successfully, and they believe there will be a predatory approach from the big telcos.

So your assertion that there will be deregulation only where competitors are present is fine, but what we're hearing from the potential competitors is that they won't enter those markets, so there will not be that competition.

How would you respond to that?

Mr. Ian Munro: I find it a bit difficult to fathom that whether there is a 30- or 60- or 90-day win-back provision in place would be the sole criterion upon which these potential competitors would or would not choose to enter the marketplace.

Hon. Scott Brison: I'm sorry to interrupt, but the presence test, in place of the market share test, is a significant change as a barrier to entry for a new competitor.

Mr. Ian Munro: Sure, and in some small areas, yes, it may take a long time for competition to arrive, the same way that there is less competition in lots of other services in those areas. So we're not going to see every small town with three competitors in the next few months or so.

But I think what we have seen in other areas when the competition has begun is that the new entrants have been able to ramp up quite quickly. I still wonder if these smaller players may not reconsider their situation.

Hon. Scott Brison: Under the previous approach we saw new competitors, but you're acknowledging that in fact this increases the barriers to entry in areas that are currently served by only one player, or primarily by one player.

The Chair: Could we have your final answer, Mr. Munro?

Mr. Ian Munro: Sorry, which barrier is being increased?

Hon. Scott Brison: You just acknowledged that these changes have increased the barriers to entry to new competition in areas that are currently dominated by the incumbents.

Mr. Ian Munro: No, I don't think we have increased any barriers at all. They are free to enter at any point.

The Chair: Okay, thank you.

You're over a minute over, Mr. Brison. Sorry.

We're going to Mr. Van Kesteren.

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

Thank you, witnesses, for coming.

May I have just a clarification on the TPR suggestions? There were two phases to the implementation. In the first phase, the government would issue statements endorsing the development. In the second phase, the recommendations and required changes to existing legislation would be implemented.

I think we need some clarification on that. It was stated that there were some areas of concern about those TPR suggestions, but again, the implementation was in two stages.

I want to speak about cherry-picking too. We hear an awful lot about the cherry-picking in the recommendations by the TPR, and that the minister is cherry-picking these recommendations.

Mr. Munro, I understand that the Atlantic region is the most competitive region and market in Canada. That, of course, speaks volumes because there is obviously a desire for those who are in the industry to commit themselves to the process of investment and to going after the market. And you've proved that.

I want to ask you, when we talk about the minister's recommendations, can you comment on the consultation of the process? Can you just quickly comment on that?

● (1615)

Mr. Ian Munro: Sorry, on which consultation process do you mean?

Mr. Dave Van Kesteren: I mean the consultation of the process, of the implementation.

Mr. Ian Munro: I'm still not sure I understand your question, sir.

Mr. Dave Van Kesteren: We had some criticism as to whether or not the minister was correct in his implementation, and I just want your comment on the process.

Mr. Ian Munro: Sure. Thank you for the clarification.

I don't think cherry-picking is really the right phrase. The panel, and Mr. Intven last week as well, suggested certain measures that could be implemented before legislation was changed, such as the one before us now, which I think is the correct way to go.

If we were to wait to have every possible change enshrined in a new legislative change, I don't know how much further behind we'd be in getting that process completed, and all the while many consumers would be denied the benefits of the full competition that could be afforded to them.

Mr. Dave Van Kesteren: The other thing we keep hearing about is the threat of re-monopolization. Could you comment on that? What are your feelings towards that?

Mr. Ian Munro: Again, as I said before, I just don't think that's credible. The cable and wireless players are well-financed, well-known competitors with long-standing customer relationships. That the phone companies would be able to drive them out the marketplace I just don't think is a likely or credible outcome, so I don't think that re-monopolization is something to be worried about.

Mr. Dave Van Kesteren: Do you have any comments on the Competition Bureau as a regulator?

Mr. Ian Munro: I think the general approach of moving those economic issues away from the commission and towards the bureau or a new panel that would bring in the expertise of the bureau, and leaving the more cultural questions with the commission, is a sensible thing to do. The bureau is the area with the economic expertise.

Mr. Dave Van Kesteren: I have one last question. I was just preparing my notes. The biggest area of concern—I find, at least—is that of the smaller companies that need to compete against the giants. How did that wash out in the Atlantic provinces? Is it a concern that you think is properly addressed? I mentioned the implementation. Are the smaller companies properly protected, or is that an area that the minister has to address?

Mr. Ian Munro: Well, I don't think that's an issue. I apologize. Maybe I misunderstood Mr. Brison's question before, so maybe I can attempt to answer it here.

I don't think the point should be to try to protect smaller companies. Competitors compete; some win and some lose. Some gain market share and lose market share over time, and it goes up and down. I think the focus should be on the consumer and on doing whatever can be done to ensure the maximum level of competition for those consumers.

Mr. Dave Van Kesteren: Okay, thank you.

The Chair: Thank you.

We'll go to Monsieur Vincent.

[*Translation*]

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

You stated that deregulation does not favour the consumer or allow other small players to compete on a level playing field.

How will small companies be able to compete with the two major players in this field?

● (1620)

[*English*]

Mr. Ian Munro: They can compete in the sense that they have the infrastructure in place, if you're talking about the smaller cable companies. I understand, again, to go back to Mr. Brison's point, that some of those small companies may not choose to enter the market in the short term. That may be the case. They have their own business reasons for doing what they do, and yes, that may mean that competition comes a little more slowly to the smaller areas.

I think it would be a mistake to follow a regulatory path that would deny the full benefits of competition to the many consumers in larger areas in order to allow the smaller areas to play catch-up, especially understanding that those smaller areas will remain protected by regulation until such time as the competitive environment is in place.

Mr. Michael Janigan: I think you're right that it would be very difficult for new entrants or small competitors to compete in an effective way with the incumbent telephone companies and the cable companies. Once again, the best prediction of the future is probably the past in that regard. There's been a trail of failures in relation to that competition.

I think to some extent that is the reason we've seen a loosening or an effort to loosen the forbearance test—because effectively we've come to the conclusion that they're not going to meet reasonable estimates or a reasonable test for competition for a workably competitive market. Therefore, we'll water down the tests—say they make it—so we can have, effectively, deregulation.

I don't think the future is necessarily too bright for the small, new-entrant competitors.

[*Translation*]

Mr. Robert Vincent: Mr. Janigan, you often state in your submission that a 25% share of the market is too small.

Why do you think that? You claim that a 30% to 40% share of the market would allow for effective competition.

[*English*]

Mr. Michael Janigan: Well, our submissions, particularly before the CRTC in this forbearance decision, were based upon the expert advice that was furnished to us by witnesses who were skilled in both competition and in the telecommunications industry, that effectively what you needed to have was probably three to four different competitors, all having at least 35% to 40% market share, before the market could be workably competitive. The CRTC attempted to whittle that down to some extent by allowing it to be a duopoly and allowing it to be a 25% share.

What we thought the CRTC arrived at was a pretty liberal test, or at least liberal towards the incumbent telephone companies, and we were fairly taken aback with the intensity of their opposition to this particular decision. It just doesn't accord with the views expressed by the experts we have consulted in relation to competition matters in telecommunications and what is required to have a generally competitive market.

What they have done is look at particularly the experience in such things as the wireless market or the long distance market or the broadband market in the United States and come to conclusions on when you see price discounts.

When do you see the appropriate kinds of measures that would constitute competition? You don't see them in duopolies. Duopolies don't compete in a very effective way. Eventually they settle into a pattern of conscious or unconscious parallelism. Well, to a large extent, that's what we're headed for here.

[*Translation*]

Mr. Robert Vincent: How much time do I have left?

The Chair: You have 30 seconds.

Mr. Robert Vincent: Fine then.

Mr. Munro, you mentioned small markets. How is competition even possible if there aren't already wire or cable facilities in place in a given small market?

You mentioned a problem in your particular region, that is in Prince Edward Island, noting that a large region would have to be subdivided into smaller areas.

However, if wire or cable companies provide the only competition in smaller regions, how will a new player be able to capture a share of these small markets if there is no money for facilities?

[*English*]

Mr. Ian Munro: I certainly think there are some areas that are sufficiently small and remote that currently are not covered by cable networks. Yes, it probably will be quite a while until we see competition in those markets, because that's the nature of where they live. That's why we retain the regulatory regime to protect those consumers in those areas.

It would be nice to have a large number of infrastructure-based competitors covering every square mile of the country; I just don't think it's realistic. Again, that's why we retain the regulatory framework to protect those consumers where there's no business case for a competitor to enter.

● (1625)

The Chair: Okay, thank you.

We'll go to Monsieur Arthur.

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

Mr. Janigan, you told us in your presentation that a Pollara survey in September of 2006 found that 80% of Canadians opposed ILEC setting their own local rates.

Would you quote for us, please, the question that was asked of those people to get this answer?

Mr. Michael Janigan: Sure.

> Right now, the rates for local phone service charged by the large local telephone companies (Bell, Telus, Aliant, Sasktel, etc.) have to be approved by an independent commission appointed by the Canadian Radio-television and Telecommunications Commission (the "CRTC").
>
> Please indicate whether you strongly agree, agree, have no opinion, disagree or strongly disagree with the following statement: "My local telephone company should be able to charge what it wants for monthly local telephone rates without having them approved as reasonable by the CRTC."

Mr. André Arthur: Do you think that to interpret those no answers in 80% of the cases as support for opposition to deregulation is honest? Do you think your interpretation is honest?

Did you tell those people that the rates would go down, if such was the case, before they said no?

Mr. Michael Janigan: I don't understand that last question.

Mr. André Arthur: When you ask people the question you just quoted and they say "no" enthusiastically, is it because they are afraid that the rates would go up?

Mr. Michael Janigan: Yes.

Mr. André Arthur: Yet if deregulation starts now, the rates will go down. At that point my question is, was it an honest question?

Mr. Michael Janigan: We thought it was, particularly since, notwithstanding the advice of our pollster, we put in the magic negative word of "CRTC" in the question to ensure that it was completely fair and objective. As you may know, when putting "CRTC" in a question that effectively supports their authority, it is not always the easiest thing to get an appropriate response.

Mr. André Arthur: Was that the only survey in which you participated concerning this issue?

Mr. Michael Janigan: We also participated in a survey together with the major telephone companies prior to the telecom review panel report. That was filed with the TRP and is contained in their submissions.

Mr. André Arthur: Were the results of that first poll identical to the ones you got when you chose the right question?

Mr. Michael Janigan: The questions that were asked with the joint poll were different questions, and to some extent the answers mirrored that result. To some extent they didn't.

Mr. André Arthur: Did you stay on with that survey until the end, or did you move out when you started getting the results and dissociate yourselves with that survey ?

Mr. Michael Janigan: Do you mean the one for the TRP?

Mr. André Arthur: Yes.

Mr. Michael Janigan: No, we filed that and—

Mr. André Arthur: Did you publish it and endorse it?

Mr. Michael Janigan: Yes, we endorsed it, and it went forward to the panel.

Mr. André Arthur: On the same issue of deregulation, did you get the same answers or opposite answers?

It all depends on who pays for the survey, doesn't it?

Mr. Michael Janigan: No, not necessarily. I have seen the recent survey that's been filed from Ipsos Reid by the telephone companies, and I've noted the fact that only 14% were aware of the different changes and the fact that one of the key questions has 100 words of introduction before it gets to the individual questions. But be that as it may, it probably stands for what it stands for.

The TRP survey is also interesting on a number of different points. In favour of the general position that we've advanced, there are substantial majorities that look upon the government as having a big role in the idea of regulation of telecommunications. At the same time, there is support for the idea that telephone companies and cable companies should be treated exactly the same by government regulation.

Mr. André Arthur: How much time do I have?

● (1630)

The Chair: You have 15 seconds.

Mr. André Arthur: Thank you very much. That's it.

The Chair: Thank you very much. That concludes our first session here.

I want to thank you, Mr. Janigan, and you, Mr. Munro, for coming in and stating your views and answering our questions. If you have anything further to submit, please do so to the clerk and we'll ensure that all members receive it. Thank you very much for your time.

We will suspend briefly for two or three minutes and ask the next two witnesses to come forward to the table.

● _____ (Pause) _____ ●

● (1635)

The Chair: Okay, members, let's find our seats, please, as quickly as possible. We will start our second session immediately.

We have with us two individuals. This is our academic panel in this study. We have, first of all, Professor Michael Geist, a professor of Internet law at the University of Ottawa. Welcome, Mr. Geist.

Secondly, we have Mr. Jeffrey Church, a professor at the University of Calgary.

We'll start with you, Mr. Geist, for up to five minutes of statement, and then we'll go to Mr. Church for a five-minute opening statement.

Welcome, gentlemen.

Prof. Michael Geist (Professor of Internet Law, Ottawa University, As an Individual): Good afternoon, and thank you very much for the invitation.

I am a law professor at the University of Ottawa, where I hold the Canada research chair in Internet and e-commerce law. I am also a syndicated weekly columnist on law and technology issues for the *Toronto Star* and the *Ottawa Citizen*. I served on the national task force on spam in 2004-05 and sat on the board of the Canadian Internet Registration Authority, CIRA, which manages the dot-ca domain in Canada, for six years, from 2000 to 2006.

I'd like to briefly discuss three Internet issues that I think have a direct link to telecommunications regulation: network neutrality, broadband access, and spam.

Let me start with net neutrality, an issue that has been generating an increasing amount of attention in recent months and was the subject of a brief question and answer when the minister appeared before your committee last week.

While the definition of net neutrality is open to some debate, at the core is a commitment to ensure that Internet service providers treat all content and applications equally, with no privileges, degrading of service, or prioritization based on the content's source, ownership, or destination. Several concerns are often raised in the context of net neutrality. The first is the fear of a two-tier Internet.

We know that as providers build faster and faster networks, there is reason to believe they will seek additional compensation to place content on a fast lane and leave those unwilling to pay consigned to a slow lane. While consumers, of course, already pay for different speeds, we're talking about something different here. We're talking potentially about a world in which, let's say, Chapters can't compete in the online book space because its content is on the slow lane while Amazon is paying and is on the fast lane.

It's an Internet where U.S. television shows and movies zip quickly to consumers' computers because the U.S. studios have paid to be on the fast lane, but Canadian content and user-generated content creep along in the slow lane. Or, potentially, it's even an environment where two-tier health care is replicated online, where some health care providers have their content zip along on the fast lane, with those unwilling to pay consigned to the slow lane.

That's a vision of the Internet that may well become a reality. In the U.S., major telecommunications companies such as Verizon and BellSouth have talked about just that sort of activity, while in Canada, Vidéotron has publicly mused about the potential for a tariff for the carriage of content.

The second concern is that ISPs will block or degrade access to content and applications they don't like, often for competitive reasons. In the U.S., one ISP, Madison River, blocked access to competing Internet telephony services.

Here in Canada, we have had Telus block access to a union-supporting website during a labour dispute, and in the process blocked more than 600 other websites. We've had Shaw advertise a $10 premium surcharge for customers using Internet telephony services, opening the door to creating a competitive advantage over some of those third-party services. And we have Rogers currently degrading the performance of certain applications such as BitTorrent, which is widely used by software developers and independent filmmakers to distribute their work.

In response to this, there has been growing momentum for net neutrality legislation, provisions that would require ISPs to treat Internet content and applications in a neutral fashion so that the opportunities afforded to today's Internet success stories such as Google, Amazon, and eBay will be granted to the next generation of Internet companies, along with the millions who contribute content online. The U.S. Congress debated such legislation last year, and just in December, AT&T agreed to net neutrality conditions as part of its merger with BellSouth, under pressure from the Federal Communications Commission.

Note that the net neutrality legislation concerns have grown due to at least two problems in the Canadian market. The first is a lack of competition. Canadian consumers have limited choice for broadband, which is typically limited to cable or DSL, or frankly neither in many communities. A viable third provider running their own market rarely exists. A second concern is a lack of transparency. When Rogers degrades the performance of some applications, they rarely disclose the practice. In contrast, some ISPs in other countries identify precisely how they treat all forms of content and applications.

Finally, on the net neutrality issue, last week the minister indicated that he was still studying the issue. I think it is critically important to note that Canada is already active on the net neutrality policy issue on the international front. The OECD is currently working on a report titled "Internet Traffic Prioritization". Given our active participation at the OECD, I must assume that Canadian officials are participating in the drafting process. According to a recent draft that I have seen, the OECD has acknowledged concerns associated with anti-competitive conduct, the prospect of hindering access to information, and the privacy implications of monitoring content that travels through ISP networks.

● (1640)

Moreover, it notes that robust competition can help mitigate these concerns, but Canada is not cited as a country with the competition to counterbalance any competitive concerns.

If I may, I'd like to comment quickly on two other issues in addition to net neutrality. The first is the issue of broadband. We increasingly recognize the critical importance of broadband or high-speed access. Whether for communication, commerce, creativity, culture, education, health, or access to knowledge, broadband access represents the basic price of admission. Canada was once a leader in this area. In the late 1990s, we became the first country in the world to ensure that every school from coast to coast to coast had access to the Internet. Soon after, we launched a broadband task force to develop a strategy to ensure that all Canadians had access to high-speed networks. In the years since that task force, our global standing has steadily declined. Many European countries have eclipsed Canada in broadband rankings, and the TPR panel undertook a detailed analysis of the Canadian marketplace with the goal of identifying whether the market could be relied upon to ensure that all Canadians have broadband access. Their conclusion is that it would not. The panel concluded that without public involvement, at least 5% of Canadians, hundreds of thousands of our fellow citizens, will be without broadband access. We need a broadband implementation strategy.

Finally, over a 12-month period in 2004-05, I served on a national task force on spam, alongside representatives from every major stakeholder group, including telecommunications companies, cable companies, the marketing association, ISPs, and consumer groups. The unanimous conclusion was that Canada needs anti-spam legislation. Our current legislative framework, which includes telco laws, privacy laws, and the Criminal Code, is simply ineffective. With virtually all of our major partners having enacted specific anti-spam legislation, we risk becoming a haven for spammers. Moreover, the costs of a growing deluge of spam are being borne by small businesses, network providers, our educational institutions, and individual Canadians. Legislation alone will not solve the problem, but neither will the issue be solved without it.

Thank you.

The Chair: Thanks.

We'll go now to Mr. Church, please.

Prof. Jeffrey Church (Professor, University of Calgary, As an Individual): Good afternoon. I'd like to thank the honourable members for the opportunity to appear before you today.

I'm a professor at the University of Calgary in the Department of Economics, and also a fellow of the Institute for Advanced Policy Research at the University of Calgary, where I coordinate the markets institution and regulation working group. I have some expertise, having been involved in the telecom wars for at least 12 years, typically as part of the Competition Bureau's telecom team. I was there in 1995-96 as the T.D. MacDonald Chair in Industrial Economics—I happen to have theoretical expertise in network economics—and that was when we were figuring out decision 97-8.

I'm here to talk to you about a couple of things in my opening statement. The first is that when we think of the order by cabinet on overturning the local forbearance decision, there are two issues we have to be aware of.

The first is the institutional context of this decision. In general, for a minister to overrule the regulator has very undesirable implications. On the other hand, if the regulator has made a decision that is sufficiently out of touch, or inefficient, or harmful to consumers, then we have to ask, "How did we end up with a regulator who would make such a decision?" In that case, there are just fundamental problems at the CRTC and with the Telecommunications Act.

The second issue, of course, is assessment of the CRTC's forbearance decision framework and those four key elements.

To understand some of the dissatisfaction I would have with the CRTC's decision framework, you have to recognize two interesting things about this decision. The first is that the nature of the proceeding is all about downward price flexibility. It's about the incumbent local exchange carriers, the ILECs, being allowed to reduce their prices. The existing regulatory regime makes it either impossible or unprofitable for the ILECs to lower their prices to meet competition.

The second issue that dominated the proceedings was the incentive for anti-competitive conduct. That's related to this issue of the lowering of the prices by the ILECs. The worry was that there would be anti-competitive conduct by the ILECs. That worry is whether the dangers are sufficiently legitimate that we should have *ex ante* prohibition on the behaviour of the ILECs or whether we should have an *ex post* approach.

The second issue, which I think is probably more important to Canadians, but which was certainly second in the list of things that went on at the hearing, is the question of when competition is sufficient to replace regulatory constraints on the ILECs' market power. What we mean by that is, when is competition sufficiently developed that we can reduce the caps on the prices, so that instead of a regulator holding prices down, competition is sufficient to hold the prices down?

The point of the proceeding was to come up with an expedited process that was administratively simple. When you think about administratively simple processes, what you have to take into account is errors.

There are two things you have to worry about in terms of errors. You have to worry about the probability that you're going to make an error, which is that you forebear when you shouldn't have forborne or you don't forebear when you should have forborne, and you should worry about the costs of those errors. You should take into account the probabilities that your decision framework is going to result in error, and you should also think about what the cost of those errors might be.

The second thing to think about in terms of that proceeding is that we've had this IP revolution; we've had convergence. The old, hybrid model that the CRTC has tried to create, coming out of decision 97-8, simply doesn't work. It's irrelevant; it was an experiment that has failed. We now have competition between networks, and the CRTC needs to institute a regulatory framework that recognizes the competition between networks and the importance of the launch of digital telephony by the cable companies.

Concerning competition between unregulated broadband networks, the old model simply did not work. It was a nice experiment to try, but it was very hard to get it right. We tried very hard to get it right. The CRTC bent over backwards to try to support the CLECs under the old model. It doesn't work.

The CRTC in this decision was very much worried about anti-competitive behaviour. They thought about the conditions for forbearance and in doing so made the conditions for forbearance, in my opinion, far too difficult. What they did is adopt the CTCA's argument to have very large geographic regions. If you have those very large geographic regions based on a high market share threshold, you're going to delay or potentially eliminate the possibility for forbearance.

The market definition principle that the CRTC used is fundamentally at odds with good competition policy and good economics. The 25% threshold is also irrelevant, if you think about competition between competing networks. The role market share plays in assessing the nature of competition is to ask, if one firm tried to raise their prices, what would happen to their customers? If you have two competing networks and one firm tries to raise their prices, the question to ask is, how easily can those consumers switch to that second network? Is there capacity available on that second network? Does the second network have low prices?

● (1645)

In that respect, when you have competition between two networks that are offering very similar services, the market share measure that is relevant is market share in capacities—in terms of how many broadband pipes or access to the telephone network there are into that house or that location.

In general, I would say that the minister's order is a welcome and refreshing change to what the CRTC had proposed. I note that the price ceiling remains, so what the decision or the order allows is for the incumbents to have some downward price flexibility. That downward price flexibility will benefit consumers, it benefits the ILECs, and it stops protecting the cable companies.

There are three things about the minister and the bureau's test that are interesting. One is that it's a step away from what the ILECs have traditionally argued for. I've spent 10 years fighting the ILECs. They have always argued that it was enough for potential competition if we lowered the barriers to entry. That was enough to deregulate. Finally, now, we have a test that is based on actual competition. Not until the cable network is available and supplying digital telephony, which has been shown to be equivalent to the ILECs, is there going to be deregulation.

There are three things about the minister's test, which is essentially, as far as I can see, the bureau's test, that are very controversial, and I'd be happy to answer questions about. The first is, in general, we would think that two is not enough for competition. We've heard this duopoly problem—two is not enough. Well, sometimes two might be enough, especially when the trade-off is between imperfect competition and imperfect regulation. You might want to look at the characteristics of that industry to see that this is a case of when two might be enough.

The second thing I'd be happy to answer questions on is the potential for tacit collusion or coordinated conscious parallelism. When we get this nice cozy duopoly, why do we think they won't act like a monopolist?

The third thing, of course, is the *ex ante*. Why do we think there may not be such strong incentives for anti-competitive behaviour? The *ex ante* costs of prohibiting this anti-competitive behaviour are very high, and an *ex post* approach, after we actually realize it and do a fact-based incentive to see if it actually happened, may be a preferable approach.

Thank you, Mr. Chairman.

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

We'll go to Mr. McTeague, for six minutes.

Hon. Dan McTeague: I want to thank both of you for being here.

Mr. Geist, I take your last comment with respect to spam. I had a bill that didn't quite make it as far as I wanted it to, but that's probably because there are just so many good issues out there, and this one, as a whole, is one that intrigues.

Mr. Church, I have had a little bit of experience with the Competition Act. I've had a little bit of experience as well with the CRTC, in an earlier period, but I've also noted in your comments that nowhere have you made reference to the TRP report. You talked about the limitations of the CRTC in its existing way of looking at these new emerging technologies. If I heard you correctly, you said it is possible to have two competitors at the end of the day.

In that kind of scenario, sir, when we're trying to increase competition, why would you take the position that simply having two competitors is good enough? The scenario that we've seen, and we've seen this in other industries, is that often, depending on rationalization and efficiencies or if something should happen down the road, it is conceivable that one of the two may in fact quit. We also know that when it comes to wireless, which is the third option, Canadians aren't very well served by that right now.

With your experience, in your estimation, why didn't the government proceed first with the issue of wireless before proceeding headlong into ignoring the TRP report or choosing selectively only parts of it? Why has this not factored into your comments here in this presentation before this committee today?

● (1650)

Prof. Jeffrey Church: Sorry, would the honourable member...? I'm a little uncertain about the nature of the question. Right at the end there you said something about why didn't the government proceed with wireless.

Hon. Dan McTeague: Why do you believe the government didn't proceed with other licences with respect to spectrum—

Prof. Jeffrey Church: Okay, I just needed clarification.

Hon. Dan McTeague: We have three players. There's talk of others. I think one witness, Chair, talked about Virgin coming in. We know they're a reseller for Bell Canada. I'm wondering why you didn't see this as a need for greater competition.

If I'm hearing you correctly, I'm a little disturbed by what appears to be a concern that you've dismissed, that two competitors can do the trick. That puts us back to where we were 10 years ago.

Prof. Jeffrey Church: We had two competitors 10 years ago in telecom?

Hon. Dan McTeague: Well, in terms of two wires going into a home.

Prof. Jeffrey Church: Yes, but now we have two wires going into a home that actually have similar kinds of services. They have a broadband platform with services that compete against each other. Right?

Hon. Dan McTeague: Assuming they stay in the industry.

Prof. Jeffrey Church: Ten years ago we had cable going in and we had telephone on one.

Hon. Dan McTeague: Go ahead.

Prof. Jeffrey Church: What I find interesting about this is if you think about it, we're regulating the telephone companies because we're worried about market power. We're worried that they'll charge high prices above costs to consumers. Right?

Hon. Dan McTeague: No, sir, if I could, we're worried about—

Prof. Jeffrey Church: Why do we regulate them? Why do we have this economic regulation that controls their prices, if it's not to control their market power?

Hon. Dan McTeague: You had experience working with long distance. It was very successful. What we were worried about was someone using an existing monopoly to drive the price below acquisition to prevent other new competitors from coming in—a proposal that, obviously, we thought on this side made sense.

Prof. Jeffrey Church: I'll answer the wireless question first, and then I'll come back and answer the relation question.

The wireless question is interesting, in the sense that it's my opinion that wireless is not in the market; wireless is not a competitor. If you were a hypothetical monopolist of all wireline accesses to a particular location, you could raise the price above 5%. Wireless would not stop you from raising the price. You could exercise market power if you had access to all of the wireline pipes into a location. So wireless is not in the market.

If you're asking me, does issuing more licences affect the question about competition between the cable companies and the telephone companies, I would say no.

Hon. Dan McTeague: The condition is that one of them could be wireless, as two existing wired land lines and one wireless.

Prof. Jeffrey Church: In my estimation, wireless is a nice kind of comfort there. It's a comfort blanket, but the real competition has to come from the cable company and from the telephone company on the wireline side. That's where the competition has to come from. That's the question about predation, and whether we should be worried about predation.

When you're thinking about these concerns about predation, there are two policy approaches. One policy approach is to say that we have very high priors, that we think predation is going to happen. We think there's a high incentive for it to happen, and we think it's very likely going to happen and be successful.

So you have to ask the question, is it going to be profitable for the ILEC? And will it be successful in terms of creating their market power? Will they be able to drive their prey out of the market?

Hon. Dan McTeague: Mr. Church, maybe a third, the ability to prove another criminal test.

Prof. Jeffrey Church: I'm saying when you're thinking about this *ex ante*, and if you're going to have an *ex ante* provision against it, you have to take into account whether you think it's actually going to happen. If you have a really high belief that it's going to happen, then you should have an *ex ante* approach.

On the other hand, if you think it's very unlikely that it's going to happen, then it makes more sense to say, all right, we're not going to constrain the ILEC, we'll let them have the downward pricing flexibility. And if they actually engage in predation, we'll have an *ex post* approach.

Hon. Dan McTeague: Mr. Church, I question—

Prof. Jeffrey Church: So the question is—

Hon. Dan McTeague: Sorry.

Prof. Jeffrey Church: So the question to ask is, what are the characteristics in this industry that should inform your priors about whether the probability of predation is high or low *ex ante*? Those considerations, in my opinion, suggest that it's very unlikely that the ILECs will prey the cable companies out because the cost of the cable companies are sunk, they need telephony to participate in the competition between bundles, and it's not going to pay off because you can raise the price. If you try to raise the price, there are VoIP guys who would enter.

Hon. Dan McTeague: Mr. Church, the scenario you're presenting is one where it is a potential that you will only have a cable company and a telephone company. Where is the incentive for them to compete against each other in your scenario, where it's possible to have only those two as competitors, at the end of the day, in the most dramatic of markets across Canada?

Prof. Jeffrey Church: I think that's a very good question. You have to ask, why in this situation would two be enough? In other markets we might think that two is not enough. You have to remember that you're comparing. We've got an imperfect regulator for imperfect competition.

We have to ask ourselves, are there characteristics of that market that suggest that the imperfect competition is not going to be so bad that two is so bad? The answer I think is really clear. The nature of the cost characteristics in this industry is that you have very high fixed sunk costs and very low incremental variable costs. Those kinds of industries with those kinds of characteristics lead to very extensive and strong price competition.

● (1655)

The Chair: Thank you, Mr. McTeague.

We'll go now to Monsieur Crête.

[*Translation*]

Mr. Paul Crête: Thank you, Mr. Chairman.

[*English*]

The Chair: I remind the witness to put their—okay, they're not.

[*Translation*]

Mr. Paul Crête: Mr. Geist, I'd like to congratulate you on your presentation on net neutrality.

This minister was asked a question about this very matter in the House and his response was extremely vague. How much time do we have to react to this situation to avoid seeing an Internet haggling situation develop? What are the ramifications of not having legislation in place for 2007 or for the next two to three years? What will the consequences be of government inaction on this front?

[*English*]

Prof. Michael Geist: Thanks. I think that's a good question.

I think the experience we're seeing is that, as time goes by, there are more and more examples. When people were talking about net neutrality a year or two ago, we didn't have the Vidéotron example, we didn't have the Shaw example. We were uncertain about Rogers' activity in terms of some of its package shaping. What we are seeing occur on a pretty consistent basis is that the providers themselves are experimenting with a range of different activities.

This is in an area that is moving incredibly fast, without question. YouTube was an unknown a year ago and yet has developed quite rapidly. With the kind of consolidation we're seeing, the growth of user-generated content and the need for Canadian content online, I think we do run the risk, if we don't act soon, of finding ourselves stuck in an environment where we do have this two-tier Internet.

Further, I think if one takes a look at what happened in the United States, AT&T was willing to voluntarily agree to these terms because as part of a merger it made a lot of sense to give on a net neutrality issue. If we're going to deregulate in the marketplace, now is the time to ensure a net neutrality provision is included.

[*Translation*]

Mr. Paul Crête: Give me some examples of what this will mean for small Internet services providers that develop small software applications or interesting access tools, as opposed to those who purchase these Internet services. How will this impact our society's culture and creativity?

[*English*]

Prof. Michael Geist: I think it can have an enormous effect. In many respects, this is really where the fight is. The worst-cast scenario is that the Googles and the Amazons and the eBays pay and leave everybody else unable to pay, because the fees are simply too high.

I think that in a Canadian environment we've seen an enormous opportunity, from a cultural perspective, in recent years. With user-generated content, many smaller players have the ability to use the network to suddenly find audiences where previously they were unable to do so. But I fear that they may lose some of those audiences, or at least lose the ability to reach those audiences, if they are consigned to a slow track while those who are in a position to pay—broadcasting companies and others—ensure that their content reaches the end-user in as fast a manner as possible.

[*Translation*]

Mr. Paul Crête: Failure to legislate this area has consequences. The people who come out ahead will be the ones who will control the Internet in the absence of legislation.

Is there an urgent need for legislation? What would be the main components of this legislation?

● (1700)

[*English*]

Prof. Michael Geist: I think it's opportune at a minimum, given that there's a move towards deregulation. It's the sort of thing we know the large providers are anxious to obtain. A net neutrality provision as part of that would probably be seen as a worthwhile price to pay as part of the broader deregulation.

In terms of the kind of provision that we might look to, I think the AT&T-Bell self-merger conditions provide a pretty good definition of what's involved and a pretty good starting point for what we might consider. There's no question that there needs to be debate, but we need to move beyond what the minister last week characterized as merely studying the issue and towards trying to develop such a provision. We need to recognize that even at the OECD level they're actively involved in this context, as is the Canadian government, presumably, in dealing with it. We need to see that happening at a domestic level as well.

[*Translation*]

Mr. Paul Crête: Therefore, this should be an integral part of reform of local deregulation. It could be a bargaining condition for agreeing to competition. However, access should be guaranteed.

[*English*]

Prof. Michael Geist: The TPR report recognized the issue of net neutrality and raised it as a concern, and it talked about the concern particularly around blocking content and applications. If you're looking for justification from the report, it's already in there. As long as we take a full approach in terms of trying to deal with all the issues recognized by the TPR report, there's every reason to move forward on the issue.

[*Translation*]

Mr. Paul Crête: Regarding spam e-mails, you stated that you worked on a committee that had almost gone so far as to recommend a bill .

Did you in fact table with the government a study report calling for legislation to oversee this sector? What were the main components of the proposed legislation?

[*English*]

Prof. Michael Geist: The national task force on spam was struck by the Minister of Industry, who at that time was Robillard. We presented our report to Minister Emerson, at that time recommending a bill and recommending the specific kinds of provisions that one would find in an anti-spam bill. My understanding is that the department did work on putting a bill of that sort together in response to the task force report, but didn't move forward due to the change in government.

[*Translation*]

The Chair: Briefly please.

Mr. Paul Crête: Regarding spam e-mails, what are the consequences of not having legislation?

[*English*]

Prof. Michael Geist: I think there's real concern there as well in Canada. Network providers are finding now that at certain times of the day, upwards of 90% of their traffic is now spam. There are huge costs involved, and if one takes a look at the anti-spam legislation in many other countries, there are lawsuits being launched against Canadian-based spammers in the United States because we don't have the kinds of provisions in Canada that would allow people to go after Canadian spammers. Given how close some of the U.S.-based spammers are to the Canadian border, there's every reason to believe that many of them may well move into Canada, and Canada will become a haven for spammers unless we take action.

The Chair: Thank you.

We'll go now to Mr. Carrie.

Mr. Colin Carrie: Thank you, Mr. Chair.

Mr. Church, when the telecom review panel made the report, they said there was a certain sense of urgency. The minister has been criticized about cherry-picking certain parts of the recommendation. In the report, it says about the implementation:

> The Panel suggests that the government should implement its recommendation in two phases:
>
> - In the first phase, the government should issue policy statements endorsing the development of a national ICT adoption strategy as well as the implementation of a new regulatory framework, and take steps to reform the policy-making and regulatory institutions. In addition, it would use its powers under the Telecommunications Act to issue a policy direction to the CRTC to interpret the policy objectives of the Act in a manner that is broadly consistent with major reforms recommended in the Panel's report.
>
> - During the second phase, recommendations requiring changes to existing legislation should be implemented.

I was wondering, in your opinion, do you think the minister's approach is cherry-picking, or do you think he has taken a reasonable approach to implementing the TPRP's recommendations?

Prof. Jeffrey Church: I guess I would say that it was a fairly reasonable approach.

I think there have been a number of decisions that the CRTC has made in the last two or three years that are incompatible with a view of how markets are and how the competition from cable and digital telephony is evolving. It seems to me to make sense for the benefit of consumers that the government moves now and deals with the CRTC in both the short run and hopefully the long run, and that we will see some reform to the Telecommunications Act.

Mr. Colin Carrie: If we, as a government, were dragging our feet...this industry seems to be quickly changing. How would it affect the industry internationally if we just slowly move forward instead of taking the sense of urgency to get things moving?

● (1705)

Prof. Jeffrey Church: When you're thinking about things internationally, are you thinking internationally in terms of how our firms are able to compete internationally, domestically—domestic firms that are exporters—or are you thinking about the telecom industry in particular?

Mr. Colin Carrie: The telecom industry in particular. We heard from SaskTel, for example, that they've got contracts around the world. I see it that we're here in Canada, Canadian companies. If we can get our own companies really solid for world competition, I see this is going to be more competition over the years internationally. If we just drag our feet and don't move forward, how is that going to affect our companies internationally?

Prof. Jeffrey Church: One of the tenets that we've learned I think in the last 15 years, primarily based on the work of Michael Porter, is that the more competitive your domestic industries are, the better you do in export industries, because their skills get honed, so to speak, in the internal competition. One of the things the CRTC's approach was doing is that you were not allowing the ILECs to compete.

Mr. Colin Carrie: You mentioned the government can make errors sometimes. We have this 25% rule, and even with our witnesses over the last month, some of them say, "The 25%, we're not sure; it should 20%, 15%, 30%." Everybody has a different opinion on it.

If the government makes a lot of these errors, how will it hold back our industry internationally? You know about the new test—it's based on infrastructure. Would you say it's a more reasonable test, based on infrastructure?

Prof. Jeffrey Church: The problem with the 25% test is that it's based on the wrong market definition. It's based on these very large, 86 local forbearance regions. The problem with it is you can have competition start to happen in one area.

For instance, in Alberta right now, Telus has a problem in Fort McMurray. They face very severe competition from Shaw, but Fort McMurray is in a very large local forbearance region, and before they can hit the 25%, they're going to lose a substantial amount of the market share in Fort McMurray. So the problem with those regions, the way they've been defined by the CRTC, is that they don't reflect where competition actually comes from. Therefore, it makes it far too slow to have forbearance. It takes too long, because you have to lose very high market shares in a region in which there is competition before you can reach the 25% for the whole region. The market definition used by the CRTC is wrong.

Mr. Colin Carrie: Do you have recommendations for the government to help improve the implementation of new regulations and perhaps speed it up even further? Is there anything you can think of?

Prof. Jeffrey Church: I do have two quibbles with the minister's order. If your model is based on the world that you're going to have these two competing networks and that these two competing networks have these very low costs—they have high sunk costs, they have low costs—it's a winner-take-all kind of competition, where you're moving to a world where you've got two broadband pipes. If I can convince you to get access on my broadband pipe, then I get to provide you with everything that goes down that pipe: television, high-speed Internet, digital telephony; you name it, it's going down my pipe. That's another reason, coming back to the Honourable Member Dan McTeague's point, which was that this is a different kind of industry, why you have a winner-take-all at each geographic location. You're going to have strong competition to be that provider of those services in that bundled competition.

Coming back to the nature of the question, I worry about what "throughout the geographic area" means. That's not very well defined.

The other thing that bothers me is that on those quality-of-service indicators, some of them are still related to the old hybrid model, which we know is not very effective. They're worried about unbundling loops and how quickly you unbundle loops and all that. The cable company doesn't need the unbundled loop to compete.

Mr. Colin Carrie: Right. Okay. Do you have any experience with the win-back rule? Good idea, bad idea? What do you think of it?

Prof. Jeffrey Church: The win-back rules are interesting, because in theory, the story that's told makes lots of sense. They say they lose a customer, and the ILEC can identify that customer and they know exactly who it is they've lost. If they can charge any price above their cost, it's better to charge that price, no matter how low it gets, to win that customer back.

Mr. Colin Carrie: You know that's actually not legal. You have the retail part of it and the service. My understanding from the ILECs is that if they lose a customer and they're informed at the service area, they're not allowed to give the name to the retail.

Prof. Jeffrey Church: But they know they've lost a customer. They're not sending a bill to 136 Hawkdale Circle any more, and they used to. That's a theory that's told by the cable companies. But in actual fact, for the win-back to work the way they think it's going to work, it's not clear to me that it's necessarily a concern.

What would happen if this happens? It assumes that the ILEC can win back the customer cost. There's no customer retention cost. The cable company goes and spends all this money to acquire the customer, and then the ILEC comes along and cherry-picks the customer back, and then the cable company goes bankrupt because it doesn't recover its customer-specific costs.

One of the things that the CRTC and the cable companies I don't think are very clear on is how much of those customer acquisition costs are common costs across all customers, in the sense that they're an advertising thing, and how many in fact are specific and sunk to a given customer, which is what they would actually lose. It might just well be that cable modem, which cost $100, and the cable truck, which cost $50. Maybe that's all we're talking about that they would lose on their customer picking.

The other thing we would expect to happen is that if you knew I went to the cable company and got win-back very quickly by the ILEC, everybody on the block would do the same thing. They'd say this is a great deal to get a low price. Switch, and then wait for the win-back to come. So in fact they're not going customer by customer; everyone would get the benefits of the lower price.

● (1710)

The Chair: Thank you, Mr. Church.

We'll go to Ms. Mathyssen, please.

Mrs. Irene Mathyssen: Thank you very much, Mr. Chair.

Again, I apologize that I'm a neophyte. One of the things I heard in speaking to a small competitor was the fear that big companies like Bell Canada would use their customer knowledge and all of the money at their disposal to effectively compete in a very unfair way, and perhaps even drive them out of the market. Is that something that you think is a legitimate concern?

Prof. Jeffrey Church: In general, I think it's not a legitimate concern to have an *ex ante* prohibition against Bell and other ILECs from being able to lower their price.

The question you have to ask is, it going to be effective and is it going to be profitable? Yes, they could spend all this money. Yes, they could drive these guys out of business by giving the service away. But why would they do that unless it was profitable? There are lots of reasons to think in this industry why it would not be profitable. The most important reason to think it wouldn't be profitable is—suppose you did that. Suppose you lowered your price and you drove the cable company out of the business. The only reason it becomes profitable is if you can then re-raise your price back up, to recover the money you lost when you were preying. The cable companies costs are very low. To drive them out of business, you're going to have to lower your prices a long way.

But then as soon as you go to raise your prices, Vonage and the other VoIP guys are available right now on your broadband Internet, so you can't raise the prices. So you have lost all of this money for no effect. The incentive for Bell and the other ILECs to prey on an *ex ante* basis seems to me a very low probability.

Prof. Michael Geist: I would only note that the scenario I just heard described really does rely heavily on Vonage and some of these other third-party providers coming forward.

That's one of the reasons why net neutrality advocates are so concerned, because if you're creating a system whereby you're really looking to these third-party providers as a critical component in terms of the overall competitive marketplace, there is an incentive built in for the cable company, as we've already seen in other ISPs, to try to block access to those services because they've got the customer built in, and the technology makes it easy to ensure that you can keep Vonage out if you really wanted to.

The Chair: Thank you.

We'll go to Mr. McTeague.

Hon. Dan McTeague: Mr. Church, I have a couple of questions again.

It sounds like you have made an argument here for a new definition of relevant market. I know that you wouldn't agree with it because market shares are certainly not here. But you would certainly have to conclude that you've defined a more reasonable and more appropriate market.

Nevertheless, can you give this committee an example of where deregulation has ever taken place anywhere in the world—certainly with nations that have at least some degree of sophistication with telecommunications—where deregulation has proceeded without understanding the market, first of all, or having an agreement as to what the market might be?

Prof. Jeffrey Church: I'd go back to our earlier discussion about the reason these markets are regulated; it's that you're worried about market power. If you're worried about market power, it's very important that you have the market defined correctly. That's the only way you can access where there is market power and whether you can deregulate, where the competition is sufficient to replace the regulatory constraints on market power.

Hon. Dan McTeague: I'm interested in that because I think it's crucial. You said:

> Moving away from before-the-fact (ex ante) regulatory prescriptions to approaches that place greater reliance on after-the-fact (ex post) regulatory intervention, based on verified complaints of significant market problems

is the way we ought to go. That's, in fact, in the TPR.

But the interesting part is that the recommendation immediately before that, sir, is:

> ...applying economic regulation symmetrically to all service providers, based on whether they have significant market power, regardless of the technology they use.

It's acceptable, I suppose, to say we can proceed with all these wonderful new technologies that come down the pipe. If an entrant or one of the two vigorous competitors who are left decides not to compete or decides to leave, and in the absence of any other alternative, you're suggesting perhaps voice-over-IP might be one of the ways to go.

What guarantee does the consumer have that these programs will be made available to them, that new technologies will become available to them, when you have one dominant player left in the market?

● (1715)

Prof. Jeffrey Church: I think you have to be careful....

We're under tight time constraints here in terms of what I'm allowed to say.

In fact, there are a number of reasons why predation might not be such a concern in terms of being able to raise your price later. The most important one is that the cable networks are there. They've been upgraded to broadband. They've made the investment in the equipment to require digital telephony. Someone is going to be able to pick up those assets, even if they pick them up cheaply. And they'll be able to compete.

Hon. Dan McTeague: We've heard from Shaw in Vancouver that they're not at the point of interconnection. If this order proceeds, they will not interconnect. Therefore, they will not be the competition cable and telephone that one would expect, or at least more than the two that you have given as a baseline or as a minimum.

Do you not think this might be a little premature, and that hanging on an extra few months might do the trick, as was suggested by the formula provided in the TPR report?

Prof. Jeffrey Church: So you're suggesting to me that Shaw is not willing to proceed if the minister's order is the regulatory framework?

Hon. Dan McTeague: It's not at the point of interconnection. It's one of the concerns that was raised by the report, that there may be a question of many of them not being at the stage yet where they've been able to connect quality of service issues, etc.

Prof. Jeffrey Church: Okay. I understand.

I think that's fine. And that's why I think a very important bridge was crossed here by the ILECs. Traditionally, the ILECs claimed if we remove the regulatory barriers to entry, we could rely on the threat of hit-and-run entry to control market power and you could deregulate. Our experience has shown us there are economic barriers to entry, and what this thing says is that we don't deregulate until we actually have competition on the ground. In Vancouver there's not going to be deregulation; you continue to regulate Telus until Shaw is interconnected and until Shaw provides service that customers find acceptable.

Hon. Dan McTeague: We have seen in the past that efficiencies defences have been used to create virtual monopolies, based not on a question of consumer welfare but on efficiencies within companies. Superior Propane would be the one predecessor to.... Ms. Sheridan Scott would be able to speak plentifully to this.

What guarantees do you believe could be forthcoming in the mere competition test? That is, a presence test that is, as far as I know, unheard of anywhere in the world. What safeguards are there for consumers if, at the end of the day, you simply have a recognition of a couple of players and leave it that way? It seems to me we've heard enough from people, not complaining because they'll be wiped out and because they're too lazy, but because the facilities by which they must compete will simply be pulled from under them. You're literally pulling the rug from under many of these companies and eclipsing the competition, as opposed to increasing it.

Prof. Jeffrey Church: But you have to be careful in that a bunch of existing competitors use the ILECs facilities. We regulate it wholesale, so those facilities are available to create that competition at retail. But that's a very different form of competition. It's a competition that the CRTC has tried very hard to work since 1997-98. They've bent over backwards to try to make the playing field even more level to make those guys sustainable.

The kind of competition between competing networks we're seeing now is very different. It's facilities-based competition between the two of them. And I think when you look at the nature of that industry and you look at the huge amounts of money that both the cable company and the telephone company put in the ground, which is sunk, and how low their costs are to provide service to a given place, given that they're going to compete over bundles, it's going to be winner-take-all in terms of providing broadband access to that house, given that the cable companies are new entrants, so they have very small market share. They're not interested in colluding or engaging in conscious parallelism yet. They're going to compete fiercely to try to get up their market shares.

I think this idea that we should be worried we're going to have a cozy duopoly right off the bat is completely illogical, given what the mandate of the cable companies will be. They will want to go out and grow their market shares. They are going to compete.

The other thing we should think about is that we had entry. The cable companies have entered, and they don't enter with higher prices; they enter with lower prices to attract customers. That's the direction that prices are going to go. That's the nature of the competition we're seeing.

The Chair: Okay, thank you.

Thank you, Mr. McTeague.

We'll go to Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Chair.

Mr. Church, you're involved with the Competition Bureau. Can you draw a parallel between telecom deregulation and airline deregulation? Is there a parallel?

Prof. Jeffrey Church: There's a parallel, and it's very interesting in the sense that when we engaged in airline deregulation, we stacked the deck the wrong way. In other industries, when we introduced deregulation, we tried to reduce the advantages of incumbency and give the entrants a chance to compete. With airline deregulation, we did the exact opposite. We made it very easy for Air Canada to exert their dominance and remain dominant.

Even with that experience, we've seen that entry and that possibility of having a second hub-and-spoke carrier. WestJet is able to compete. They were able to enter. There we have a duopoly industry. Relative to what the old age of a regulated monopolist was 20 years ago, the competition between a duopoly now seems to me much better.

● (1720)

Mr. Dean Del Mastro: I would agree with that.

How does Canada's regulatory framework for telecom compare to that of other countries internationally?

Prof. Jeffrey Church: Our framework is different. We were early out of the gate in terms of trying to introduce competition into the local network with the United States. The United States did it with their telecom act in 1996. We were engaged in the proceedings for establishing what the conditions of local competition were going to be. That proceeding started in January 1995.

So we were really early out of the gate at trying to do this. Our approach is very different from that of the United States. The United States looked at every network element of the incumbents and said you have to provide every element at such-and-such a price to the entrants, whereas our approach was to identify very few elements in the network, so-called essential facilities, and provide them at much higher prices than those in the United States.

So in some sense the American experience was opening up the whole network and letting all elements of that be available to entrants. It was no more successful than our experiment was with this so-called hybrid model in which we would allow entrants to use some of the incumbent's networks.

Mr. Dean Del Mastro: Intuitively, in my experience, whenever new competition enters into any market, it doesn't tend to drive prices up, which, as you've said, is the purpose of regulation. It tends to drive prices down. I don't see any cause to believe that this deregulation would wind up with prices being higher.

One of the points you've made or that was made earlier is that the types of companies we're talking about that may enter this market are not small companies. It's not like these guys are going to be scared out of the market in short order. Certainly, as you've indicated, if they were scared out of the market, there are other players who will come in and offer these services.

Again, just for clarification, you don't see any reason to believe that players would be driven out of the market, and then in lieu of regulation we would have significantly higher prices being paid for services because these regulations were no longer in place?

Prof. Jeffrey Church: The important thing about what the CRTC did, and about what is in the minister's order, is that we still have this latent regulation. We still have a price ceiling on basic residential service. So I think that's really important, because it means if you've made a mistake on geographic market definition and there's some area where you've forborne and there's no competition, they still have, in essence, regulation.

If you think about the incentives for anti-competitive behaviour, which certain people are very concerned about, well, there's no point, right? There's no point driving people out of business if I can't raise my price. Why can't I raise my price? I could have entry from Vonage. I could have someone else acquire the cable company's facilities, or, ultimately, I still am regulated there. There's no way to recoup the investment in predation. That's an important consideration. We have this kind of lingering remanent on upward pricing by the incumbents.

The debate is about the ability to lower prices, and that's a debate in which consumers hope that lower prices win.

Mr. Dean Del Mastro: Thank you.

Do I still have time, Mr. Chair?

The Chair: You have one minute, Mr. Del Mastro.

Mr. Dean Del Mastro: I'll share that time with Mr. Arthur.

Do you have a question, André?

Mr. André Arthur: How refreshing, Mr. Church, to hear an economist I can understand. Thank you.

Some hon. members: Oh, oh!

Mr. André Arthur: I don't know where this committee will end this debate about deregulation, but if we have to do something constructive, we'll have to settle the problem of those very little mom and pop cable operations. They are in the market with the big telcos. They know that wireless is there. The minute they pay millions to buy the equipment to get telephone, they will be crushed instantly because they are very small operations. They're terrified of what's going to happen to them if they move into this market.

Is there any solution? Is there any protection for those people, still respecting the need to deregulate now?

Prof. Jeffrey Church: I don't think they would be immediately crushed, because the same incentives that the ILECs have when they compete against Shaw and Rogers affect them when they compete against the mom and pop operations. They're going to say, "Even if I crush them, unless the Competition Bureau lets me buy them out so I can acquire those assets, those assets will still be there. Someone will own them and compete against me. It may not be the original mom and pop guy, but someone can acquire those assets, because they're sunk; they're there."

● (1725)

Mr. André Arthur: That brings me to what I understood: that their solution is to sell to a big one.

The Chair: Mr. Arthur, we can put your name back on the list if you want. We are well over time here for this round.

We'll go to Mr. Crête.

[*Translation*]

Mr. Paul Crête: Thank you.

Mr. Geist, you spoke of the need to adopt a strategy for implementing a broadband system. Several years ago, an Industry Canada grant was awarded in my riding.

Do you think that without a policy, there would be no expansion? If we leave the market alone to react, is it possible that vast expanses of Canada will not be covered?

[*English*]

Prof. Michael Geist: That's the conclusion of the TPR report. They did an analysis and took a fairly aggressive approach in assuming that the market would fill in wherever viable, but they still reached the conclusion that a sizeable percentage of Canadians will never have access. The marketplace simply isn't there for them. I think that's indicative of the experience of many Canadians.

I keep hearing about the wonderful price declines and all the great competition. I keep thinking that my home in Nepean in west Ottawa is not the place to be, because my prices keep going up from Rogers and the number of choices I have in terms of Internet connectivity seem to keep being capped and going down.

You don't have to go far outside the general Ottawa area or the GTA to find that there is less choice; there's no rush to enter the marketplace. The conclusion of the TPR report was that there are literally more than a million Canadians who will never have access if we simply leave it to the market.

[*Translation*]

Mr. Paul Crête: What main components should be integrated into a broadband system implementation policy? The implementation of such a system would have a major impact on the use of land and on the survival of rural communities in Quebec and in Canada.

[*English*]

Prof. Michael Geist: It will. There are a number of different possibilities. One is to look to the various municipalities and local towns and provide them with the necessary support to try to create municipally owned infrastructure to ensure they have broadband. Another is to simply invest the money necessary at the federal level to ensure that all communities across the country have that kind of access.

We should note that some of the kinds of things government envisions, whether it's e-government services or e-banking services, are by and large dependent on ensuring that everyone has access. These are costs we will have to engage in at some time.

[*Translation*]

Mr. Paul Crête: Mr. Church, do you think it's possible to opt not to bring in a policy and to let the rules of the market prevail in terms of implementing a broadband system, where all of the territory would be covered and adequate services would be provided? Based on experience, is State intervention in this sector absolutely necessary?

[*English*]

Prof. Jeffrey Church: There are two issues. The first is deciding when we can forbear. The test that's been proposed by the minister and the Competition Bureau is if there is existing competition, then we can let markets take place.

You're asking whether there is a reason for the government to be involved in regions where there is no competition and no broadband access. I think that's a legitimate question to ask. We should look at the costs and benefits, and there may be some intriguing ways to do that.

I come from Alberta, where the provincial government went out of their way to award a contact for the SuperNet to Bell to wire up all local towns in the province. Once they got that wire connection to each town, all of a sudden there were a whole bunch of wireless providers with antennae out there who could feed into that wire. It created competition between Telus and Bell, and it was a wonderful program.

[*Translation*]

Mr. Paul Crête: Mr. Geist, if we fail to adopt a policy, where do you think we'll be in Canada in five years' time in terms of broadband access? Do you think the disparities will be even more glaring, that new technologies will be in place, or that the status quo will be maintained?

[*English*]

Prof. Michael Geist: I think we're going to see a growing digital divide in our own country. Only a few years ago Canada was ranked second globally in broadband access. I believe the most recent ranking had us dropping out of the top ten.

Unless something is put in place, there's every reason to think we're going to continue to drop further. We keep asking what's happening internationally. Country after country recognizes the critical need to ensure there is universal access to broadband, but that's a step we haven't taken yet.

[*Translation*]

Mr. Paul Crête: Has the committee weighed the cost of implementing this policy aimed at making the system universally accessible across the country? We're talking here about building infrastructures, delivering services and so on and so forth.

● (1730)

[*English*]

Prof. Michael Geist: Well, sure, the TPR report refers to this issue as well, and they talk about the development of what they call U-CAN to provide universal access across the country to broadband connectivity. So the TPR report, if you take the time to ensure that you address all the various issues beyond just mere deregulation, addresses many of the sorts of things that I was talking about here today.

The Chair: Thank you, Monsieur Crête.

Mr. Church, just briefly.

Prof. Jeffrey Church: To go very quickly back to that, this isn't a question for the government, but in a newspaper in Calgary this week, some outfit called Netcaster, which unfortunately is owned by Bell, was offering satellite broadband Internet service across the whole province.

The Chair: Okay.

Prof. Jeffrey Church: For $100 a month.

The Chair: We'll go back to Monsieur Arthur. You have one more question.

Mr. André Arthur: Thank you, Mr. Chair.

Professor Church, maybe now I'll prove to you that I'm a bad student, but I want to come back to the question that was raised by Mr. Brison and by Mr. Van Kesteren. I'm trying to understand if there's a solution there.

We're talking about mom and pop operations that are cable networks and that are already in place and do not at this point offer telephone services. They are a little bit everywhere in Canada. Their neighbours and competitors-to-be are big telcos and wireless. The minute those people come in with the new rules, it's “There are three of us; the war is on now.” They are not able to raise the millions of dollars they think they need to get the right equipment to be able to offer telephony because of the uncertainty of the situation, but if they could get those billions and put them into their networks to be able to offer telephony, they would cause the start of deregulation in their area and be the first victims.

You tell me you're not sure they will die, and if they were to die, then they could be sold. This is a little bit brutal, and I'm not too sure that this committee will be able to recommend that.

Is there a solution somewhere between the 25% that the CRTC dreamed about and the “three” infrastructure that the minister is talking about? Is there some common ground somewhere that would allow this committee to do something unanimous for a change?

The Chair: For a change.

Prof. Jeffrey Church: There are two responses to that. One is on this victim thing that you keep talking about. I disagree with that.

It doesn't get rid of the assets, so there's no sense in the ILEC making the investment in predation if it doesn't actually drive the assets out of the business. It may drive mom and pop A out, but then mom and pop B can acquire the assets for a dollar and still compete. So I don't necessarily agree with the victim thing.

The second thing that I suspect is happening now and will happen more is that the mom and pop cable guy is going to sell out to Shaw and Rogers, and they will make the investments in the millions of dollars that are required because they are going to have huge economies of scale and scope already; they have the experience and they have already a bunch of assets that they'll be able to use in multiple geographic markets to support it. So they'll be able to do it cheaper than the mom and pop will be able to do it.

Mr. André Arthur: So mom and pop will not be very loyal to their territory, and they will sell out to Cogeco or Vidéotron or Shaw —

Prof. Jeffrey Church: And they will get a nice retirement cheque.

Mr. André Arthur: And they'll get their retirement that way. So that would be—

Prof. Jeffrey Church: That doesn't sound cruel and brutal.

Mr. André Arthur: —the solution that an economist sees in Calgary.

Thank you very much.

The Chair: Thank you, Mr. Arthur.

I just have a couple of wrap-up questions, as the chair.

I wanted to ask Mr. Geist a question with respect to broadband. John Maduri from Barrett Xplore recommended the SuperNet model for other provinces. Would you recommend the same, the SuperNet model that was done in Alberta?

Prof. Michael Geist: I think there was reference to it just now, and I think it has proven to be a largely successful model. But I don't think it's the only one, and I think that as we start to see an increasing number of municipalities engage in Muni Wi-Fi and the like, there are a number of different models we could look to. The key is to put forward a strategy that perhaps embraces a number of different possibilities, all with the goal of setting a hard target of when we're going to ensure that every Canadian has access.

The Chair: Thank you.

Mr. Church, if my memory is correct, you may have been the first witness to draw attention to the large geographic regions that are evident under the 25% market test with the CRTC and the change in the region size in terms of what the minister is proposing. I believe there are 84 regions under the CRTC and something like 5,400 relevant geographic regions.

Seeing as you are from Calgary, I want to point to some examples. You mentioned Wood Buffalo, where Telus is stating that Shaw has 30% of the market. But if you're looking at their region, they actually group in Wood Buffalo and Cold Lake, they group Lethbridge and Medicine Hat, and they group Camrose and Drumheller.

It was interesting. When Mr. Shaw was here and talked about going after markets, he never grouped those. He said I'm going after Medicine Hat, I'm going after Lethbridge, and I'm going after Camrose.

I just want a brief comment on the geographic region difference.

● (1735)

Prof. Jeffrey Church: That's the problem with the 25%. The CRTC either explicitly or implicitly agreed with the CCTA in the sense that they were worried about predation. They asked how they could deal with this problem and said they could deal with it by forbearance. They said they would slow it down or they would make it very unlikely.

The way you do that is to define a very large geographic region and then say you have to have a 25% market share loss in that very large geographic region, even though in the Wood Buffalo example, Shaw is only in Fort McMurray. To lose my 25%, I have to lose 55% in Fort McMurray. The cable companies don't enter those local forbearance regions all at once; they enter where they have their networks and where the population is.

The Chair: Just further to that, we're relying on a CRTC report from 2006. I believe the data was compiled at the end of 2005. The Edmonton region is 91% Telus and Calgary is 83% Telus. Would you have any sense of what the numbers are today? Even in the Wood Buffalo region, 99.7% is considered incumbent Telus. That's not what it is today. With Shaw, I would presume Shaw is well near 25% of the Edmonton area. Do you have any figures to update this—which would be within a year and a bit in terms of market penetration?

Prof. Jeffrey Church: The figures aren't available. This is one of the frustrating aspects about dealing with the CRTC. The bureau tries to get this data through interrogatory and the answer comes back that it's confidential or not relevant. The confidential data is supplied to the CRTC, but the CRTC doesn't necessarily have the expertise to know what to do with it. So the data never gets tested. Nobody ever gets to say, “I don't believe that number, and here are our competing numbers; here's what the numbers really are.” You have this whole process going on behind closed doors, and nobody ever gets to see what the actual numbers are.

The Chair: Is there a better way of getting the information? If we're using figures like 99.7% as our basis, but in fact it's more like 70% or 75%....

Prof. Jeffrey Church: The way to think about this is that you have competition between the networks. Where you have competition between the networks, the effective market share is 50%. Two networks, 50%. So those numbers are irrelevant.

The Chair: Okay.

I'd love to go on. It has been a fascinating discussion.

Hon. Dan McTeague: Mr. Chair, I have a quick remark. It's something we should take up at the next meeting.

In the process of the exchange we've had here today, our party and the opposition has had two questions with the indulgence of the chair. You have had as many as three and a half to four. I think that should be taken into consideration at our next steering committee meeting. We want to make sure there is some balance.

The Chair: The next subcommittee meeting is after the March break. Is that too late?

Hon. Dan McTeague: That's fine, Mr. Chair. Thank you.

The Chair: Okay.

Thank you very much to both of you for being here. As I mentioned, if you have anything further to submit to the committee, please submit it to the clerk.

Thank you very much for your time.

The meeting is adjourned.

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