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***Filed Electronically***

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Morin:

Re: Applications to Review and Vary Telecom Decision CRTC 2007-130,  
*Establishment of an independent telecommunications consumer agency*

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1. Saskatchewan Telecommunications ("SaskTel") has received two applications, dated and received 4 February 2008, to review and vary Telecom Decision CRTC 2007-130. One application is made by Bell Aliant Regional Communications Partnership, Bell Canada, Northwestel Inc. and Télébec, Société en commandite (referring to themselves as "the Companies"). The other application is from Bragg Communications Inc., Cogeco Cable Canada Inc., Quebecor Media Inc. (on behalf of Vidéotron ltée), Rogers Communications Inc., and Shaw Communications Inc. (referring to themselves as "the Applicants").
2. In this Answer, SaskTel provides its support to the arguments of the Applicants and the Companies in the matters identified below, pursuant to Section 59 of Part VII of the *CRTC Telecommunications Rules of Procedure*:
  - o Delegation of complaint resolution powers
  - o Contractual limitations of liability
  - o Collective complaints

In the event that SaskTel does not respond to any specific comment or assertion made in either of the applications, this should not be interpreted as agreement or support by SaskTel where to do so would be contrary to the interests of SaskTel.

3. SaskTel is a founding member of the Commissioner for Complaints for Telecommunications Services (CCTS) and supports in principle the mandate and procedures established collectively by the founding members of the CCTS. SaskTel questions, however, the Commission's authority to mandate conditions and procedures of the CCTS' operations, and supports the relief sought in the applications by the Companies and the Applicants in the above matters.
4. At the outset, SaskTel notes that in Order in Council PC 2007-0533 (OC 2007-533) the Governor in Council considered that an independent agency with a mandate to resolve complaints from individual and small business customers should be an integral part component of a deregulated telecommunications market.<sup>1</sup> In Telecom Decision 2006-15 the Commission invited the industry to propose an industry self-regulatory system to meet the requirements OC 2007-533.<sup>2</sup> Ten telecommunications service providers (TSPs; "the founding members") responded with their proposal for the CCTS which presented the mandate, governance and procedures of a self-regulatory system that would provide the reliable and independent agency to resolve customer complaints expeditiously, as requested by the Government of Canada. SaskTel notes that OC 2007-533 called upon the Commission to approve the structure and mandate of the CCTS.

#### Delegation of complaint resolution powers

5. The Applicants submit that the Commission "cannot delegate powers that it does not have or mandate [Telecommunications Service Providers] to attorn to a jurisdiction that the Commission itself does not possess".<sup>3</sup> The *Telecommunications Act* (the *Act*) provides the Commission the authority to approve a Canadian carrier's liability in respect of regulated telecommunications services; but it does not grant the Commission the authority to grant monetary compensation to consumers of unregulated telecommunications services.
6. The founding members of the CCTS proposed the remedies available to consumers with legitimate complaints regarding a TSP's services to include monetary compensation up to \$1,000, excluding amounts refunded or credited as a result of billing errors. In Decision 2007-130, the Commission required, as a condition of its approval of the CCTS' proposal, that the maximum monetary compensation be increased to \$5,000.
7. SaskTel's view is in accord with that of the Applicants'. Any authority for the award of compensation by the Commission must arise from the *Act* or other applicable legislation. The Commission can not delegate authority that it does not hold itself. Since the Commission does not have the authority to award monetary compensation to consumers pursuant to the *Act*, it has exceeded is

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<sup>1</sup> *Order Requiring the Canadian Radio-television and Telecommunications Commission to Report to the Governor in Council on Consumer Complaints*, 04 April 2007

<sup>2</sup> *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, as varied by Order in Council PC 2007-0532, 4 April 2007, paragraph 373

<sup>3</sup> Application of the Applicants, 4 February 2007, paragraph 31

jurisdiction by directing an independent agency's level of monetary compensation in the resolution of complaints.

Contractual limitations of liability

8. Both the Companies and the Applicants raise objections to the Commission's decision to set aside a TSP's contractual limits of liability (LoL) in the award of monetary compensation.
9. In OC 2007-533, the Governor in Council considered that an independent agency, such as the CCTS, with a mandate to resolve complaints from individual and small business customers should be an integral part of a deregulated telecommunications market. The Commission has determined that the CCTS' mandate will not include resolving complaints regarding regulated services.<sup>4</sup> The CCTS will receive complaints regarding services forborne from regulation.
10. As noted by the Applicants and the Companies, the Commission, when registering its determinations to forbear from regulation, has found that there was sufficient competition to protect the interests of users and it has chosen to forbear unconditionally from s.31 of the *Act*. As an example:

[T]he Commission is of the view that there is insufficient basis for the retention by competing carriers of the benefits of having their limitations of liability prescribed by the Commission pursuant to section 31. Moreover, the Commission finds, with regard to the provision of the services in question by competing carriers, that there is competition sufficient to protect the interests of users, and that to refrain is not likely to impair unduly the establishment or continuance of a competitive market.<sup>5</sup>
11. The Commission has been of the view that, in a competitive market, all carriers should be able to establish through negotiations with their customers, the extent and scope of any limitations on their liability, and that such limitations should not be mandated by the Commission.<sup>6</sup>
12. It is SaskTel's submission that the Commission does not have the authority to direct the CCTS to ignore a TSP's contracted LoL in the allocation of monetary awards to customers. Furthermore, even if it had such authority, its determination that the CCTS ignore the TSPs contracted LoL is without the proper foundation. It is SaskTel's submission that, having forborne pursuant to s.31, the Commission would have to find evidence sufficient for it to overturn its previous forbearance determinations. It would have to find that there was no

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<sup>4</sup> *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, paragraph 62

<sup>5</sup> *Forbearance – Services provided by non-dominant Canadian Carriers*, Telecom Decision CRTC 95-19

<sup>6</sup> *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, paragraph 312

longer sufficient competition in the provision of forborne services to protect the interests of users.<sup>7</sup> No such determination has been made.

#### Collective complaints

13. In OC 2007-533, the Governor in Council proposes an "independent agency with a mandate to resolve complaints from individual [i.e., residential] and small business customers". The Commission's determination at paragraph 104 of Decision 2007-130 that the CCTS in addition "accept collective complaints as well as complaints made by a consumer organization" is inconsistent with the Governor in Council's proposed mandate of the agency.
14. The Applicants note that "the adjudication of collective complaints gives rise to complex procedural issues which the [CCTS] is not equipped to handle". SaskTel agrees that the organization and procedures of the CCTS were not conceived by its founding members to address "collective complaints", and should not be expected to address in the face of other objectives", and should not be expected to address in the face of other objectives. SaskTel agrees with the Applicants' observation that the intention of the founding members was to create a process by which complaints could be resolved expeditiously. It would appear that is the Commission's intention, as well, as it considers that the CCTS should "ensure that the complaint resolution process is timely",<sup>8</sup> and that "each stage of the complaint resolution process, including those performed by the [CCTS], should be subject to an appropriate and measurable time frame".<sup>9</sup>

In the Commission's view, an appropriate industry self-regulatory system would be one that involved most, if not all of the LECs, that was designed in consultation with groups representing customers, that set out clear rules and standards and that provided a reliable mechanism for expeditiously resolving customer complaints.<sup>10</sup>  
[Emphasis added]

15. Simply put, the acceptance and resolution collective complaints, either from a collection of aggrieved customers or a consumer group on behalf of a group of consumers, is beyond the scope and mandate proposed in OC 2007-533.

#### Conclusion

16. OC 2007-533 was issued by the Governor in Council pursuant to s.14 of the *Act*, which provides the Governor in Council the ability to require the Commission to on any matter within its jurisdiction. OC 2007-533 stated that the Commission should approve the structure and mandate of the CCTS. It is SaskTel's submission that what authority the Commission has to approve the structure and mandate of the CCTS pursuant to OC 2007-533 does not extend to imposing

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<sup>7</sup> If the Commission were to re-regulate certain or all of a carrier's services, the administration of complaints regarding those services would not rest with the CCTS.

<sup>8</sup> Decision 2007-130, paragraph 103

<sup>9</sup> Decision 2007-130, paragraph 106

<sup>10</sup> Decision 2006-15, paragraph 373

- new service obligations on TSPs, to re-regulate contractual limits of liability, assert its regulatory authority, or require the CCTS to accept complaints registered by a group of consumers or a consumer group on behalf of a group of consumers.
17. SaskTel submits that in the aspects of Decision 2007-130 addressed here, the Commission has acted unreasonably and that there is substantial doubt as to the correctness of its determinations. Accordingly, SaskTel requests that the Commission review and vary Decision 2007-130 by striking those portions of the Decision directing the increase of the maximum monetary compensation to a complainant to \$5,000, directing the CCTS to not be constrained by a TSP's contracted LoL, and the CCTS' acceptance of "collective complaints".
18. All of which is respectfully submitted by SaskTel.

Sincerely,

*[Original signed by Robert Hersche]*

Robert Hersche  
Director of Regulatory Affairs  
BcS/jed

cc: Interested parties to PN 2007-16

**NOTICE**

This answer is made by Saskatchewan Telecommunications, c/o Bob Hersche, Director Regulatory Affairs, Floor 12, 2121 Saskatchewan Drive, Regina, Saskatchewan, S4P 3Y2

TAKE NOTICE that pursuant to section 61 of the *CRTC Telecommunications Rules of Procedure*, the applicant is permitted to mail or deliver a reply to this answer to the Secretary General of the Canadian Radio-television and Telecommunications Commission, and to serve a copy of the reply on the respondent by 15 March 2008.

Service of a copy of the reply may be effected by personal delivery or by ordinary mail. In the case of service by personal delivery, it may be effected at the address set out above

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