2022 01 05

To: Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: **<u>Part 1 Application for a condition of licence with respect to section 17.1 of the *Broadcasting Distribution Regulations*</u>**

Dear Mr. Doucet,

1. Bell Canada, Cogeco, Eastlink and SaskTel are filing this Part 1 Application to request that the Commission approve a new condition of licence (COL) with respect to the maximum retail price of the small basic service, exclusive of equipment such as set-top boxes (STBs). As detailed in this Application, we request that the maximum permissible price for the distribution of the basic service as provided for in section 17.1 of the *Broadcasting Distribution Regulations* (the *Regulations*) be increased to $28 per month, effective 1 April 2022. We also request that this amount be subject to subsequent yearly adjustments (starting in 2023) for inflation, effective 1 April, based on the annual Canadian consumer price index (CPI), as reported by Statistics Canada for the period ending 31 December of the preceding calendar year. The proposed inflation adjustment would thus treat this permissible maximum price consistent with other rates that are subject to retail rate regulation by the Commission.

2. To effect the change described above, we request that the following COL be added to our broadcasting distribution undertaking (BDU) licences:[1]

> As an exception to section 17.1 of the *Broadcasting Distribution Regulations*, effective 1 April 2022, the licensee shall not charge a subscriber more than $28 per month for the distribution of its basic service, adjusted annually for inflation effective 1 April of each year, starting in 2023, based on the annual Canadian consumer price index (CPI), as reported by Statistics Canada for the period ending 31 December of the preceding calendar year.

3. In addition, as this amendment should apply equally to all licensed BDUs, we request that the Commission amend its *General Authorizations for Broadcasting Distribution Undertakings* to include the above COL.[2] This would provide the Commission with the

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1 This includes our national direct-to-home satellite TV undertaking as well as our regional licences in Manitoba, Ontario, Quebec and the Atlantic provinces.

2 https://crtc.gc.ca/eng/publications/distga.htm.

necessary time to correspondingly amend section 17.1 of the *Regulations*, for which we propose the following language:

> 17.1 Except as otherwise provided under a condition of its licence, effective 1 April 2022, a licensee shall not charge a subscriber more than $28 per month for the distribution of its basic service, adjusted annually for inflation, effective 1 April of each year, starting in 2023, based on the annual Canadian consumer price index (CPI), as reported by Statistics Canada for the period ending 31 December of the preceding calendar year.

4. We note that the proposed wording of the COL discussed above and the amendment of section 17.1 of the *Regulations* to reflect the annual inflationary adjustment of the price of the small basic service is consistent with the wording used by the Commission in BRP 2012-154[3], in the context of the revised mechanism associated with the funding of local expression by BDUs which formerly required such an adjustment.[4]

Background

5. In BRP 2015-96[5], the Commission required licensed BDUs to provide subscribers with a small entry-level service comprised solely of the programming services that are required to be placed in the basic package. In particular, as of March 2016, licensed BDUs are required to provide to their subscribers an entry-level service that must include:

- all local and regional Canadian television stations and provincial or territorial educational services pursuant to sections 17 and 46 of the *Regulations* for terrestrial and direct-to-home (DTH) distributors respectively;
- all the 9(1)(h) services designated for mandatory distribution on the basic service; and
- for terrestrial BDUs, the community channel and the proceedings of the provincial legislature in one or both official languages, if offered.

6. BDUs are also given the discretion to include local radio stations and one set of U.S. 4+1 signals. In addition, terrestrial BDUs are permitted to offer one out-of-province designated educational service in each official language in provinces and territories where no such services exist.

7. The retail price of the small basic service is limited to $25 or less per month, exclusive of equipment such as set-top boxes.[6] More specifically, section 17.1 of the *Regulations* prescribes the maximum amount that licensed BDUs can charge subscribers for the basic service:

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[3] Broadcasting Regulatory Policy CRTC 2012-154, *Revised approach regarding contributions by broadcasting distribution undertakings to local expression.*

[4] At paragraph 42 of BRP 2012-154, the Commission noted as follows:

> In light of all of the above, the Commission adopts the following mechanism for the funding of local expression by BDUs:
> The maximum dollar contribution to local expression by each terrestrial broadcasting distribution undertaking (BDU) licensee will be based on the amount contributed by the licensee during the broadcast year ending 31 August 2010 (the 2010 contribution level). This amount will be adjusted yearly for inflation based on the annual Canadian consumer price index (CPI), as reported for the period ending 31 December of the preceding calendar year.

[5] Broadcasting Regulatory Policy CRTC 2015-96*, Let's Talk TV: A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*.

[6] BRP 2015-96, paragraph 26.

> Except as otherwise provided under a condition of its licence, a licensee shall not charge a customer more than $25 per month for the distribution of its basic service.

8. Among other reasons, the Commission determined that prior to the deregulation of the basic service in 1999, from 1996 to 1999, the average monthly rate charged by licensed BDUs was between $18 and $19 or in the dollars at the date of the decision (i.e., 2015), this would result in a basic rate between $25 and $26.

An Inflationary Adjustment is Required

9. The mandated maximum price of $25 per month for the small basic service does not include a mechanism to adjust for inflation. The purpose of an inflationary adjustment is to ensure that the permissible maximum price of this service does not decline over time, in real terms. Without such an adjustment, this is not the case.

10. The issue of applying an inflation adjustment to the maximum permissible price of the small basic service was raised with the Commission during the public consultation[7] to amend the *Regulations* in order to implement the determinations in BRP 2015-96. Numerous BDUs requested that section 17.1 include an annual adjustment of that price for inflation based on the CPI.[8]

11. In BRP 2015-514[9], the Commission denied the request, stating that BRP 2015-96 did not include indexing, and a reference to an amount prescribed by the Commission would not conform to regulatory drafting requirements.[10] More importantly, the Commission also indicated that it could choose to review the amount in the future. We respectfully submit that the time for the Commission to do so is now.

12. Inflation adjustments of prices are a common regulatory mechanism when fees are capped. The Commission itself has previously adjusted prices or required payments for inflation in different contexts, including, as we noted above, the amount that BDUs contribute to local expression.[11]

13. Finally, under price cap regulation, the Commission applies the percentage change in inflation as a standard factor in determining the permissible prices for many regulated telecommunications services for the large and small ILECs, as discussed below.

Pricing Constraints for ILECs' Regulated Telecommunications Services

14. The ILECs' regulated telecommunications services are subject to price cap regulation which places upward constraints on the prices the ILECs can charge for some of those services. As long as the ILECs' price changes adhere to those constraints, the resultant rates are considered just and reasonable under section 27(1) of the *Telecommunications Act*. The price cap constraints apply to groups, or baskets, of services and/or to individual rate elements within

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7 Broadcasting Notice of Consultation CRTC 2015-304, *Call for comments on amendments to the Broadcasting Distribution Regulations to implement determinations in the Let's Talk TV proceeding*.

8 See, for example, the submissions of Cogeco, QMI, Rogers and Shaw.

9 Broadcasting Regulatory Policy CRTC 2015-514, *Amendments to the Broadcasting Distribution Regulations to implement determinations in the Let's Talk TV proceeding*.

10 BRP 2015-514, paragraph 26.

11 BRP 2012-154, paragraph 3.

those groups of services. The pricing constraints applicable to the large ILECs' regulated services evolved over time, with the current constraints having been set in TRP 2020-40[12].

Pricing Constraints for the Large ILECs' Regulated Basic Residential Local Voice Services

15. Prior to the issuance of TRP 2020-40, the prices for the basic residential local voice services offered by the large ILECs in regulated high-cost serving areas (HCSAs)[13] were permitted to rise by inflation each year starting on 1 June 2014.[14] The measure of inflation used under the ILECs' price cap regime is based on the Gross Domestic Product Price Index (GDP-PI), published by Statistics Canada. Based on this rule, from 1 June 2014 to 1 June 2020, the cumulative permissible increase in the large ILECs' basic residential Primary Exchange Service (PES) rates was close to 10%.[15] The current pricing rules for Northwestel permit the company to increase the rates for residential PES in both non-HCSA and HCSA rate bands[16], by inflation each year, but not exceeding 5%.[17]

ILEC Obligation to Provide Stand-Alone PES[18] in Forborne Areas and Commission-Approved Price Ceiling for Stand-Alone PES

16. In TRP 2011-291[19], the Commission determined that in exchanges where ILECs have obtained forbearance from the regulation of local exchange services, there continues to be a need to have safeguards in place for consumers who rely exclusively on stand-alone PES.[20] As a result, the Commission retained the obligation for ILECs to offer stand-alone PES in forborne exchanges, subject to a stand-alone price ceiling. Effective 1 June 2014, the Commission permitted this ceiling to rise by inflation each year[21] - a rule which still applies today.

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[12] Telecom Regulatory Policy CRTC 2020-40, *Review of the price cap and local forbearance regimes*. The ILEC pricing constraints in effect prior to this decision were set in Telecom Decision 2007-27, *Price cap framework for large incumbent local exchange carriers.*

[13] The HCSA rate bands are Bands E, F and G, where applicable. Band E contains wire centres with less than 1,500 NAS; Band F consists of wire centres with between 1,500 and 8,000 NAS and loop lengths in excess of 4 km; and Band G consists of remote wire centres or exchanges (e.g., without year-round road access or found in remote parts of a company's serving area).

[14] In the remaining portion of the ILECs' serving areas, namely, the non-HCSA portions, residential PES rates were capped at existing levels. The non-HCSAs refer to urban, suburban and some rural areas, classified to fall into the ILEC rate bands designated as A, B, C and D, which depended, in part, on population size and cost characteristics. The Commission adopted this treatment for residential PES in non-HCSAs in Decision 2007-27, stating that a price ceiling on such rates would provide customers with a safeguard against rate increases that would be unreasonable.

[15] As per TRP 2020-40, paragraph 65, effective 1 June 2020, the weighted average price for these services in the HCSA and non-HCSA bands of the large ILECs, excluding Northwestel, is not permitted to rise overall; however, each individual rate element can increase by 5% per year.

[16] The Commission approved two bands for Northwestel: a) Band D, consisting of all wire centres in Whitehorse and Yellowknife, which is referred to as Northwestel's non-HCSA band; and b) Band H1, consisting of all other wire centres, which is Northwestel's HCSA band.

[17] TRP 2020-40, paragraph 147. It is also noteworthy that the SILECs are permitted to change their residential PES rates by inflation each year, pursuant to TRP 2013-160.

[18] Stand-alone PES is defined as local telephone service that includes unlimited calls within a geographical area and access to 9-1-1, message relay service (MRS) and toll services. Stand-alone PES customers subscribe only to stand-alone residential PES and not to any additional services. The rate for stand-alone PES excludes the 9-1-1 and MRS charges.

[19] Telecom Regulatory Policy CRTC 2011-291, *Obligation to serve and other matters*.

[20] TRP 2011-291, paragraph 46.

[21] TRP 2011-291, paragraph 52.

Measures of Inflation

17. The CPI is the most common measure of inflation related to consumer goods and services. The GDP-PI is a measure of the national output price change, which is a broader measure of inflation than the Canadian CPI, that takes into account price changes for other than just consumer goods and services. Specifically, the GDP-PI measures the changes in the prices of goods and services produced in Canada, including those purchased by consumers, businesses, government and those exported to other countries.

18. The Commission assessed the merit of using the GDP-PI and the CPI as measures of inflation under the ILEC price cap regimes. The GDP-PI was ultimately selected as the CPI was a measure of price changes for consumer goods and services only, whereas the GDP-PI was a measure of the national output price change which is broader measure that takes into account price changes for other than just consumer goods and services. Under price caps, the pricing constraints involving inflation applied to both residential and business services and thus GDP-PI was chosen as the inflationary index.[22]

The $25 Maximum Rate for the Small Basic Service Should be Adjusted to Reflect Inflationary Increases, Based on the CPI

19. We submit the Commission should revisit its decision not to permit annual increases of the $25 maximum rate that it adopted for the small basic service in March 2016 based on inflation. Permitting such adjustments would result in a rate regulation regime for BDUs that would be consistent with that which applies to telecommunications service providers for whom inflationary adjustments of regulated prices have been, and continue to be, permitted. Allowing such adjustments to take place will thus ensure regulatory symmetry between BDUs and telecommunication service providers, in addition to ensuring that the maximum rate for the small basic service does not change in real terms going forward.

20. Furthermore, the wholesale fees of the 9(1)(h) services were a factor that the Commission considered in setting the maximum $25 price for the small basic service in BRP 2015-96. Since the time that decision was issued, the wholesale fees of these services have increased by 18.5% in the English-language market and by 13% in the French-language market (with the potential for the increase to be 21% and 18%, respectively, if CBC/SRC's rate requests are approved).[23]

21. In this application, we request that the $25 maximum rate for the small basic service, which was set as of March 2016, be increased by 12% to $28, effective 1 April 2022. We also propose that that rate be adjusted for inflation each year, effective 1 April (starting in 2023), based on the annual CPI for the period ending 31 December of the preceding calendar year. We propose to use the CPI for this purpose, as the CPI is a consumer measure, it is easy to understand, it is published on a timely basis and it is not subject to extensive historical adjustments, which is the case for the GDP-PI. In addition as mentioned above, the GDP-PI was selected as the inflation measure for the ILECs' price cap regime partly because the measure applied to both business and consumer (residential) products. That is not the case here and thus the CPI is the appropriate measure to use.

22. The proposed increase of the $25 maximum rate to $28, effective 1 April 2022, is consistent with the cumulative change in the CPI over the period from March 2016 to November 2021, which is the latest month for which the actual CPI is available. Table 1 below

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22 These two inflation measures were discussed by the Commission in a number of decisions, for example, in Telecom Decision CRTC 97-9, *Price cap regulation and related issues*, at paragraphs 30 to 38.

23 Broadcasting Notice of Consultation CRTC 2019-379, *Notice of hearing,* Appendix 2.

shows that the CPI increased by 13.1% over that period, and if that increase was reflected in the basic service rate, that rate would have been $28.26 by 30 November 2021, which is $0.26 higher than $28.

23. Table 1 also shows that the cumulative increase in the GDP-PI from Q1 2016 to Q2 2021 (the last date for which we were able to extract actual GDP-PI data for) was 16% which exceeded the change in the CPI over the same period (which was 10%). Finally, Table 1 shows the projected increase in both the CPI and the GDP-PI from March 2016 to the end of December 2021, based on the recently published forecasts of the two indices by BMO Capital Markets[24]. Based on those forecasts, the percentage increase in the GDP-PI over that period will be well above the corresponding increase in the CPI, namely 18.7% (for the GDP-PI) as opposed to 13.2% (for the CPI).

Table 1
Inflation-Adjusted Maximum Rates for the Small Basic Service Based on the CPI and the GDP-PI

Maximum Rate for the Small Basic Service = $25 (effective March 2016)	CPI (Cumulative % change)	Maximum Rate – Inflation – Adjusted using CPI		GDP-PI (Cumulative % change)	Maximum Rate – Inflation – Adjusted using the GDP-PI
Dates for CPI	(Note 1)		Dates for GDP-PI (Note 3)	(Note 2)	
March 2016 – June 2021 (Actuals)	10.3%	$ 27.56	Q1 2016 – Q2 2021 (Actuals)	16.0%	$ 28.99
March 2016 – Nov. 2021 (Actuals)	13.1%	$ 28.26	Q1 2016 – Q3 2021	N/A	N/A
March 2016 – Dec. 2021 (Forecast)	13.2%	$ 28.30	Q1 2016 to Q4 2021 (Forecast)	18.7%	$ 29.67

N/A – Not available

Note 1: Statistics Canada. Table 18-10-0006-01 Consumer Price Index, All items, monthly. The December 2021 forecast was obtained from BMO Capital Markets Economic Research, Canadian Economic Outlook for Dec. 23, 2021, 23 December 2021 (BMO Capital Markets).
Note 2: Statistics Canada. Table 36-10-0104-01, Gross domestic product, expenditure based, Canada, current prices and chained 2012 prices. The 2021 Q4 forecast was obtained from BMO Capital Markets.
Note 3: The GDP-PI is published on a quarterly basis. For purposes of this table, we assumed that the quarterly index was representative of the index for the last month of the quarter. The GDP-PI data for 2021 Q3 was not readily available.

24. Based on the above, our proposed inflation-adjusted maximum rate for the small basic service of $28 that would come into effect on 1 April 2022 is a conservative rate.

Licence Amendments Necessary to Reflect the Proposal

25. To effect the changes described above, we request that the following COL be added to our BDU licences:

> As an exception to section 17.1 of the *Broadcasting Distribution Regulations*, effective 1 April 2022, a licensee shall not charge a subscriber more than $28 per month for the distribution of its basic service, adjusted annually for inflation effective 1 April of each year, starting in 2023, based on the annual Canadian consumer price index (CPI), as reported by Statistics Canada for the period ending 31 December of the preceding calendar year.

[24] BMO Capital Markets Economic Research, Canadian Economic Outlook for Dec. 23, 2021, 23 December 2021.

26. In addition, as this amendment should apply equally to all licensed BDUs, we request that the Commission amend its *General Authorizations for Broadcasting Distribution Undertakings* to include the above COL. This would provide the Commission with the necessary time to correspondingly amend section 17.1 of the *Regulations*, for which we propose the following language:

> 17.1 Except as otherwise provided under a condition of its licence, effective 1 April 2022, a licensee shall not charge a subscriber more than $28 per month for the distribution of its basic service**,** adjusted annually for inflation, effective 1 April of each year, starting in 2023, based on the annual Canadian consumer price index (CPI), as reported by Statistics Canada for the period ending 31 December of the preceding calendar year.

27. As noted earlier, the proposed wording of the COL discussed above and the amendment of section 17.1 of the *Regulations* to reflect the annual inflationary adjustment of the price of the small basic service is consistent with the wording used by the Commission in BRP 2012-154 in the context of the revised mechanism associated with the funding of local expression by BDUs, which also previously required an annual inflationary adjustment.

<u>Conclusion</u>

28. We respectfully submit that we have provided the Commission with sufficient and appropriate evidence to support our requests set out in this Application, and urge the Commission to approve those requests as expeditiously as possible.

Yours truly,

[*Original signed by J. Daniels*]

Jonathan Daniels
Vice President, Regulatory Law
Bell Canada

[*Original signed by P. Beaudry*]

Paul Beaudry
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