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Chair

Mr. James Rajotte

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• (1530)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): We will call to order the 43rd meeting of the Standing Committee on Industry, Science and Technology.

The order of the day, pursuant to Standing Order 108(2), is continuation of our study on the deregulation of the telecommunications sector. For the first hour and a half we have as a witness Mr. Hank Intven, as an individual, but representing the Telecom Policy Review Panel.

Welcome, Mr. Intven. Thank you very much for coming before us today. There were three members of the panel, but you are representing the entire panel here today. You will have up to ten minutes for an opening statement, and then we will go directly to questions from members.

I believe members are very interested in this topic. Obviously, we've been hearing on this subject for some time now.

Mr. Intven, we look forward to your comments.

Mr. Hank Intven (Former Member of Telecom Policy Review Panel, As an Individual): Thank you, Mr. Chair.

Members of the committee, thank you for inviting me, Dr. Gerri Sinclair, and André Tremblay to appear before the committee to speak about the report we prepared as members of the Telecom Policy Review Panel. Unfortunately, prior commitments prevented Dr. Sinclair and Monsieur Tremblay from joining me here today. They've asked me to represent the panel and to do my best to assist the committee in its deliberations.

The TPR panel was established in April 2005 to undertake the first comprehensive review of Canadian telecom policy and regulation in about 30 years. Our panel's mandate was to conduct an independent review covering three broad areas, namely, the telecom regulatory framework, access to broadband and advanced telecom services, and the adoption of information and communications technologies by Canadians. The panel was assisted by a secretariat that included some of the top telecom experts and consultants in Canada. We received written input from a wide range of Canadian stakeholders in the telecom sector. We held several public fora, and met with Canadian and international telecom experts, regulators, policy-makers, and members of the general public.

We presented our final report on March 22 of last year. Three major themes underline many of the recommendations of our final

report. The first is the need to clarify the objectives of Canadian telecom policy and regulation.

• (1535)

[Translation]

We proposed that the objectives of the current policies contained in the Telecommunications Act be clarified in order to emphasize three main objectives: first, promoting affordable access to advanced telecommunications in all regions of Canada; second, achieving certain specific and important social objectives such as access to telecommunications for persons with disabilities, improved public safety, protecting privacy and limiting public nuisance caused by telecommunications networks; and, third, improving the efficiency of telecommunications markets and the productivity of the Canadian economy.

[English]

The first of these objectives is not radically different from those traditionally pursued by Canadian regulators. Both relate to providing affordable access to telecommunications for Canadians. However, our report also suggests that more emphasis needs to be placed on a third set of objectives, those related to economic efficiency and productivity.

A second theme underlying our report is that telecom policy should rely on market forces as much as possible to achieve Canada's telecom policy objectives. Regulatory intervention should be reduced in areas where market forces can do the job as well or better.

A third theme of the report provides that where the market won't achieve important telecom policy objectives, then smarter and more targeted policy initiatives and regulatory intervention should be developed to achieve those objectives.

It has now been almost a year since the panel released its final report. The report has been well received in industry and policy circles as well as in the media. Most commentators have said that the recommendations were timely and consistent with Canadian needs, as well as with international trends and telecom policy and regulation.

The government has taken some significant first steps to implement the panel's recommendations. In particular, the government has issued a policy direction to the CRTC, as it is authorized to do under section 8 of the Telecommunications Act, requiring the commission to interpret the rather broad and sometimes conflicting objectives of that act in a more market-oriented way.

This policy direction is based on the one recommended by the panel, and it brings the Canadian government's expressed regulatory policy for the telecom sector more closely in line with that of our trading partners.

In addition, the government's orders in council on VOIP and forbearance are consistent with the panel's recommendations to rely more on market forces where those will achieve Canada's telecom policy goals, and to reduce regulatory intervention that interferes with the achievement of those goals.

Today's fixed local telecom access markets, including the VoIP market segment, are highly competitive, with a range of sophisticated and well-financed service providers vying to provide Canadians with among the highest quality and lowest priced services in the world. The new entrants to local telecom markets, including the Canadian cable industry, have demonstrated themselves to be first-class providers of advanced broadband and now VOIP services, who can easily hold their own against the incumbent telecom carriers such as Bell Canada and Telus.

The TPR panel recognized the reality that the CRTC, Industry Canada, and other government policy makers had worked hard to achieve for over two decades, namely, making Canada's telecom markets among the most competitive and dynamic in the world. Today our telecom suppliers are, in most market segments, producing the types of low-cost advanced services that we need to maintain and increase Canada's economic and social welfare.

The panel saw the shift towards a more market-oriented and less regulated local telecom sector as being essential for Canadians to take advantage of the potential that new telecom technologies offer. Today's markets are very dynamic, and the technologies and trends are increasingly global. It would be very risky for Canada to require or permit our regulators to devise regulatory approaches aimed at supporting one particular technology or one business model, and to handicap others in order to achieve a predetermined industry structure. Yet this was the effect of some of the CRTC's regulatory approaches over the past years.

Some of the commission's more intrusive regulatory approaches were aimed at supporting CLECs that relied heavily on the resale of wholesale network services by the incumbent telephone companies. Despite this regulatory support over the past decade, few CLECs have survived. In the meantime, the Canadian cable industry, without significant regulatory support, has become a strong and successful provider of competitive telecom services to Canadians. The market players, and not the regulator, have succeeded in bringing the benefits of competition to Canada.

This experience and that of other countries we studied illustrates why the panel recommended more market-based approaches to regulation of local telecom markets. The experience also indicates why we believe the government has acted appropriately in

implementing some of the panel's recommendations to deregulate local access markets.

● (1540)

While we would commend the government on starting the job of reforming Canadian telecom policy, my colleagues and I on the panel feel strongly that the government and Parliament should now move on to complete the job.

I would like to address some of the main areas of our report where we believe future action is urgently required by the Canadian government and by Parliament.

First, we believe that it is high time for Canada to modernize its telecom legislation to meet the requirements of 21st-century telecommunications. Most of our trading partners did this long ago. While we did enact a new Telecommunications Act in 1993, and I was privileged to be the chief external legal adviser on that legislation, I can share with you what our instructions were. We were asked to update, but not to change, the basic regulatory framework established for Canadian telephone and telegraph companies in the 1906 Railway Act. We were asked only to draft a few specific new initiatives, such as those introducing foreign ownership restrictions and overruling a Federal Court case in order to establish the forbearance power. While there have been several amendments since 1993, such as those related to international service licensing and telemarketing, there have not been changes to the fundamental legislative approach to economic regulation of the telecom industry since 1906, just over 100 years ago.

The legislative approach in the law today gave the board of railway commissioners and its successors, up to and including the CRTC, broad powers to do whatever they considered appropriate to achieve two very vague goals: to ensure that rates are "just and reasonable", and that there is no "unjust discrimination" in the provision of telecommunications services. These two broad objectives have been interpreted heroically by the CRTC to regulate the telephone and now the telecommunications industry. They form the basis of a complex web of economic regulation that can change, depending on the views of current CRTC commissioners, without government or Parliament having any role in the matter. For example, the same two broad objectives have been used over the years to justify both monopoly and competitive provision of telecommunications. The law never changed. This is why the panel recommended that new telecom legislation be introduced, to establish a clear regulatory framework.

I don't have the time to describe all the recommendations in detail. That's done in our report. Let me just highlight a few points.

First, whatever one thinks of the government's recent orders to vary CRTC decisions, I don't think anyone in a modern industrialized democracy believes that the political arms of government should regularly interfere with the decision-making process of an independent professional telecom regulator. Many observers believe that it was timely and appropriate for the government to change the policy direction of the commission in both the VOIP and local forbearance areas. However, over the longer term, government and Parliament should develop clearer policy directions, which should then be administered by an independent professional regulator, and that should be done in legislation.

Next, our panel recommended that the new regulatory approaches set out in the telecom legislation should be more closely aligned to competition policy, rather than to monopoly public utility regulation principles. This is the clear trend in legislation in the U.S., the U.K., Europe, and among our other trading partners.

Our panel also noted that all industrialized countries recognize the importance of maintaining an independent professional telecom regulator, separate from the competition authorities. The only exception to this rule, New Zealand, declared its attempts to rely solely on economy-wide competition law to be a failure, and they have recently re-established a telecommunications regulator with specific expertise in the area.

So after looking at best international practices, our panel recommended a simple approach to applying the necessary expertise in telecom and competition policy to the telecom industry. We proposed a form of joint panel of the CRTC and the Competition Bureau that we called a "Telecom Competition Tribunal", or TCT, as the most efficient solution to developing and applying good economic policies in the regulation of the telecom industry. The TCT would be a practical way to combine the telecom industry expertise of the CRTC with the expertise of the Competition Bureau in the economics of competition.

• (1545)

The TPR report recommended other legislative approaches that would bring Canada in line with, or in a leadership position in, telecom regulatory approaches adopted by OECD countries.

Finally, our panel recommended a number of new policy initiatives to meet the needs of 21st century Canada. While our core conclusion was that Canada should rely on market forces as much as possible to achieve important objectives of Canadian telecom policy, we also recommended that where the market does not achieve these objectives, the government and regulators should utilize smarter and more targeted policy and regulatory initiatives to do so.

There are a number of areas in which we thought such initiatives were necessary. I'll just list them very quickly.

First, we recommended that the CRTC be clearly empowered to order removal of some of the remaining barriers to entry by new telecom competitors—barriers including the existing restrictions on access to telephone and electrical poles, towers, rooftops, in-building wiring, and public property—so that existing and new competitors can compete more effectively.

Second, we recommended the use of radio-spectrum policies to ensure that adequate spectrum is available to new and existing companies, in order to provide advanced and competitive telecom services to Canadians in all areas of Canada.

Next, to ensure that vulnerable consumers are protected in the more competitive and less regulated telecom markets of the future, we recommended a number of initiatives.

The first is a specific legislated duty on incumbent telephone companies to continue to provide basic telephone service and to prevent abandonment of customers.

Second, we recommended the establishment of a new form of ombudsperson's office, called the telecom consumer agency, to resolve complaints from individual and small business retail customers against all telecom service providers, not just the currently regulated ones. Based on well-accepted models in the U.K., Australia, and elsewhere, we recommended that this agency run as a self-funding, independent, industry-established agency subject to guidelines set by the CRTC.

Finally, in the consumer area we recommended a regulatory power to confirm the right of Canadian consumers to access publicly available Internet applications and content by means of all public telecom networks that provide access to the Internet.

Consistent with this same approach, we believe the marketplace will continue to provide Canadians with one of the highest levels of broadband connectivity in the world. But our study suggested that for a small number of communities, often first nations communities and remote areas, it was unlikely the market would provide broadband connectivity. Therefore we recommended the U-CAN program—for "ubiquitous Canadian access network"—to ensure broadband access to these areas.

Finally, in recognition of Canada's lagging productivity performance and low level of adoption of information and communications technologies, the panel recommended a number of government policies to promote both, particularly among small and medium enterprises.

In summary, the panel saw its various recommendations as balanced and interrelated parts of a single new policy framework. This policy framework would result in deregulation in areas where market forces can best achieve Canada's long-term policy objectives while providing smart and targeted policies and regulation in areas where the market fails to do so.

We hope that the government and other stakeholders in the industry have the perseverance to complete what the TPR report has started—to make Canada a leader in terms of telecom policy—and by doing so maintain leadership in terms of the performance of our telecom sector for many years to come.

• (1550)

[Translation]

I remain available to provide as much information as possible to assist and fuel the thinking of committee members.

Thank you very much.

[English]

The Chair: Thank you very much, Mr. Intven. We did allow you to go over your time, but I thought it was important to get your opening statement on record, as you're representing, obviously, the panel that we're talking about most at the beginning of this study.

We will start now with questions. Members have six minutes for questions and answers.

We will start with Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Mr. Chair, incredibly, mine may be very brief, and I'll yield the rest of the time to Mr. Brison.

Mr. Intven, thank you very much for being here.

This is, of course, one of the main reasons we were concerned and as an opposition felt that the decision of the government did not take into consideration all of the recommendations we believe ought to have been made if we are going to take, as you've suggested, a single approach towards reforming telecommunications policy.

I'm interested in your analysis or assessment of why recommendations 3-4, 3-5, and 3-15, dealing with the importance, almost the precondition, of a market power study taking place in the industry prior to deregulation.... I don't want to go into great quotes, but recommendation 3-15 deals with the issue of what would happen in a circumstance where you did not have substantial understanding of the market you were about to deregulate, as opposed to the mere competitive test, which is the presence test, that the government is proposing. What's your opinion on that?

Mr. Hank Intven: It's a very difficult question. As you know, Mr. McTeague, the regulators in this country and in the U.S. and elsewhere have been struggling for over a decade to try to find the appropriate test for deregulating markets. In fact, it's been two decades since we started with the long distance industry.

I suppose it's one of these things that could be studied further; indeed, we recommended as a panel that there be some further study of it. Having said that, once the commission issued its decision on forbearance of local markets, I don't think we considered it inappropriate for the government to act to expedite the deregulation of the local markets.

The reality is, it's very hard to set a specific test. The commission's test, based primarily on a market share threshold, which was the commission's best effort to try to come up with a bright line test, had its flaws. Most economists would not support a straight market share test as a determinant of when a market should be deregulated. I

think, given that literally for four or five years now regulators have been studying—or postponing, in some cases, the study of—fornbearance of telecom markets, and given the relatively rapid pace at which the markets have become competitive—and they've become very competitive—I don't think it was inappropriate for the government to try to expedite the level of—

Hon. Dan McTeague: Mr. Intven, I'm interested because this was written here. Obviously you want to take a whole approach to the recommendations that are there. You're suggesting that economists may not accept going along, nor would the commission, on the question of market share. I don't even think, frankly, we have an idea of what an identified market is.

But are you familiar with any economist who would support what I consider to be a flimsy market presence test? And why didn't you discuss it in the report?

Mr. Hank Intven: The reason our panel did not deal with the issue of forbearance directly is that it was before the commission—*sub judice*, so to speak—while our panel was studying it, and so we did not make specific recommendations on forbearance.

Having said that, we did recommend, as you know, that there be as much reliance as possible on market forces rather than specific regulation. I think the move to deregulate local telecom markets, given the high level of competition in the markets, is a step in the right direction.

• (1555)

Hon. Scott Brison (Kings—Hants, Lib.): Thank you, Mr. Chair.

You speak about there being a high level of competition in markets. In urban Canada, you're quite right. Ridings such as the one I represent in the Annapolis Valley of Nova Scotia aren't so fortunate. We've heard from a number of witnesses that in fact the decision of the government in overturning the CRTC decision and the changes in their approach to forbearance and win-back could in fact reduce the capacity for future competition to develop in some of the smaller markets.

In recommendation 8-1(b) you recommend immediately commencing “a program to ensure that affordable and reliable broadband services are available in all regions of Canada, including urban, rural and remote areas, by 2010 at the latest”. How would you see that being rolled out? There's been no discussion on it from the government, but how would you see it being implemented?

Mr. Hank Intven: Mr. Brison, there are a couple of aspects to your question. The first one deals with competition in smaller markets. I take your point entirely. The competition will not roll out as fast in smaller markets as it does in the major ones. That is the nature of—

Hon. Scott Brison: Would the change to forbearance and win-back not hinder the capacity of smaller players to compete in those markets?

Mr. Hank Intven: I'm not convinced that's the case. It probably takes a number of policy and regulatory initiatives or a supportive framework to ensure competition there.

In your riding, where my daughter is fortunate enough to be a constituent, being at Acadia University right now, EastLink is quite a formidable competitor in some parts of that market. EastLink has proven itself to be a very strong and capable pioneer competitor.

If you looked at what happened historically in the roll-out of not only competition but telecom technologies generally, they naturally tended to start in the bigger markets, because that's where the bigger returns were. But they do get out there, and this is the case with broadband technologies.

On the panel, we had high hopes that new wireless technologies, particularly WiMAX, but also the pre-WiMAX services, such as the Inukshuk service, could provide competitive alternatives to existing services.

What we'll see happen will be intense competition from two or three independent sources in the major markets. In the smaller markets, we'll see a number of others. As you probably know, Barrett Explorer, using a combination of Ka-broadband satellite and fixed-terrestrial wireless, is starting to provide competition.

The Chair: Sorry, we're well past a minute and a half over. You can start off the second round, Mr. Brison.

We'll go now to Monsieur Crête.

[Translation]

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

Thank you for your presentation. The report as a whole provides a thoroughly in-depth analysis. Did you have fun determining how many amendments you want to make to the act in your recommendations? I started counting those you're proposing to the Telecommunications Act, the Department of Industry Act and other acts.

How many major amendments to the Telecommunications Act do you think that will require? My question doesn't just concern the number, but also the proposed reform. What will happen if the amendments to those acts are not put in place and we only have the minister's current directions?

[English]

Mr. Hank Intven: We did not. At one point when we were more ambitious in the early stages of our work, we contemplated drafting a model bill with all of the specific changes. But frankly we thought it was more important to get the basic recommendations out into the public debate.

So we have not done what you asked, Monsieur Crête, and actually itemize the specific number of changes.

•(1600)

[Translation]

Mr. Paul Crête: Perhaps we misunderstood each other.

It's very clear that you've done a proper job. However, a number of recommendations in the report start with the words: "That section 7 of the Telecommunications Act be replaced by the following:..."

The amendments you are suggesting require an overall balance. If I understand correctly, if we remove pieces of the puzzle and don't put the entire reform in place, the structure could collapse.

Do you agree?

[English]

Mr. Hank Intven: I don't think our panel felt that despite our best efforts, it would be likely or possible for all 127 of our recommendations to be enacted precisely as specified. We had a sense that we had a comprehensive package requiring a general overhaul of the legislation. But if the government and Parliament were to get it mostly right and move mostly in that direction, this would suffice. I don't think it would fail because of one, two, or three.

[Translation]

Mr. Paul Crête: Let's simply consider a few examples.

You're suggesting creating a telecommunications competition tribunal. In recommendation 9.1, you suggest amending the mandate of the Minister of Industry with regard to his research and policy development capability. Lastly, you propose that a user rights social protection agency be created.

Do you think these measures are essential to the reform? In your view, are there any others that are essential and without which the operation might not succeed?

[English]

Mr. Hank Intven: I think you have listed the major institutional reforms. We went back to first principles. And I believe that the proper way for government to organize itself in the telecom sector—and, I might add, the way it's done in most OECD countries—is that the government itself should have strong policy research and policy-making capabilities; it should go to Parliament in order to propose and have Parliament ultimately enact legislation to set the general framework for it, and then it should have a number of independent professional regulators to administer those policies set by Parliament and by the government.

The three that you've enunciated—the telecommunications consumer agency, the telecommunications competition tribunal, and then a strengthened CRTC—would be the mechanisms that we think would do it properly in this country. It's very similar to the way it's done in most other OECD countries.

[Translation]

Mr. Paul Crête: In your view, can the amendments announced by the minister thus far be put in place without introducing the other system safeguards? For example, the direction on local telephony isn't in effect because the minister is waiting for our comments. Could it go into effect without there being any other amendments to ensure a balanced system?

[English]

Mr. Hank Intven: Yes, I think so.

In our report, as you will recall, Monsieur Crête, we recommended that the government move in two stages. We suggested that there was an urgency and a need to move, to start to rely more on market forces very quickly.

We would not criticize what the government has done to date. We in fact recommended that in phase one the government implement a policy direction very much along the lines of what they ultimately did, because we knew legislation takes time. The policy-making process and the parliamentary process will take more time.

I think it's completely consistent with our report for the government to have moved quickly on a few things that it can, and we would now encourage them to not stop there but to go ahead and implement a broader, more permanent framework for reform.

[*Translation*]

Mr. Paul Crête: Recommendation 6.1 states, and I quote:

That the Telecommunications Act be amended to clearly require incumbent telephone companies to provide basic telephone service in regions where they have network infrastructure. That CRTC approval be required before abandoning the basic telephone service in any region where the service supplier is the incumbent telephone company.

• (1605)

[*English*]

The Chair: Okay, this will be the last question.

[*Translation*]

Mr. Paul Crête: Can a decision on local telephony be made without this amendment, which is something of a safeguard?

[*English*]

Mr. Hank Intven: I think the answer is yes. In actual fact, this kind of rule that a telephone company cannot abandon service is already in place for Bell Canada under its special legislation and it's enforced indirectly by the CRTC. We just thought it was important to enshrine it in legislation.

The Chair: Thank you.

We'll go now to Mr. Carrie, for six minutes.

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

I have so many questions I'd like to ask. Maybe we can start with your mandate. You wanted to get out and start modernizing the regulatory framework here in Canada. How many people did you actually get to talk to—witnesses, companies, and things like that?

Mr. Hank Intven: We decided early on in our process not to hold public hearings as such, but rather to do two things: issue a consultation paper and then ask for input from the general public. We ensured that there was wide publication of that paper and received about 200 submissions from industry, consumer groups, academics, and others—many of the stakeholders in the industry.

We ensured that this process occurred in a transparent manner to keep everyone honest, so that in the second round of comments parties were able to comment on the views expressed in the first round.

We held several quite successful policy forums. We invited some of the top telecommunications experts—regulatory, economic, and so on in the world—to the one in Gatineau. To another in Whitehorse, we invited and helped subsidize a number of community groups and others who were particularly concerned about service in smaller areas.

Then several of us travelled to talk to regulators, policy-makers, and others in the U.S., the European Union—including the United Kingdom, Brussels, France, and Ireland, which is quite a leader in ICT policy—Japan, and Korea. We got a good sense from that.

Then we talked to people in the industry, consumer groups, and others for the better part of a year. We spent a lot of time in off-the-record discussions, which we also found to be very productive.

In the end, we talked to a lot of people.

Mr. Colin Carrie: In my opinion, you did a thorough, wonderful job.

One of the things we've been recently criticized for is moving too fast. You said there is an urgency, and we're trying to do what we can do in a reasonable fashion, as quickly as we can. But you mentioned that we really haven't changed a lot since 1906, if you take a close view. Would you say on the record—I just want you to give me your opinion—that Canada's current regulatory framework for telecommunications is outdated?

Mr. Hank Intven: It's outdated, yes. The legal framework is.

To be fair, as we've said, the CRTC has struggled heroically with those two very broad rules—that rights be just and reasonable, and that there be no unjust discrimination—and has tried to craft a modern regulatory structure. Indeed, it was doing quite well, but in recent years we've found that other countries have moved ahead, in terms of applying a less monopolist public utility regime and more of a law-based, competitive approach. This is what we're recommending.

Mr. Colin Carrie: Also on the record, if it's okay with you, we've been criticized that perhaps the minister or the cabinet are not working within their powers, that the minister is rushing forward with this. Do you feel that the minister has acted within the Telecommunications Act, and is he moving forward at a quick enough rate?

Mr. Hank Intven: Section 8 of the Telecommunications Act—and I recall the debate when it was being drafted back in the early 1990s—clearly gives the government the power to issue policy directions of general application.

It was surprising to me that this was the first time in 13 years when this was actually done, but it's clearly within the government's power to issue a policy direction. That's what section 8 says.

• (1610)

Mr. Colin Carrie: Thank you very much.

I'd like to talk a bit about the win-back rule and restrictions. We had some consultation last week, and many of the witnesses were complaining about the minister's proposal to do away with win-back restrictions.

The minister's proposal seems to be in line with your report, which stated, and I'd like to quote: "making offers and counter-offers to the same customers is the very essence of competition" and in general "win-back campaigns should not be restricted by the regulator".

Are win-back restrictions really necessary to protect competitors?

Mr. Hank Intven: Win-backs are probably the good example of one of the fundamental kinds of recommendations we made, which was that the regulatory framework should not proscribe per se activities. That is, it should not make something illegal just because there is a risk that it could harm competition.

Is it possible that win-back campaigns could harm competition and drive a competitor out of the market? Yes, it's possible that could happen. For example, if a new entrant came into a market, it is conceivable that a telephone company could give away free service for life to everyone who came back to the telephone company. Is it likely to happen? I don't know, but I doubt it, because I don't think that's very smart business policy.

Our basic approach was to say that rather than have *ex ante* prescriptions against certain types of behaviour, it's better to wait to see what actually happens in the market. If a real problem does occur, yes, then do something about it, by all means.

That's why we recommended that a telecom competition tribunal be established as a powerful, rapidly acting agency that could deal with problems if they emerge.

But should behaviour be prescribed in advance? We don't think so.

The Chair: Thank you, Mr. Carrie.

We'll go now to Ms. Davies. Welcome to the committee, Ms. Davies. You have six minutes.

Ms. Libby Davies (Vancouver East, NDP): Thank you very much.

I'm not the regular member at this committee. Our member is away today, and I don't have the benefit of the panel's report, but just picking up on what you've said today, it's pretty clear that the panel supports the idea of relying on market forces and supports the decision the minister made recently.

I didn't hear you mention—maybe briefly you touched on it once—the protection of the consumer. I think there is a huge concern that if this moves quickly, or if we move to a reliance on market forces, in the end it will be consumers who pay the price.

I remember phone deregulation in long distance 20 years ago. I was on a Vancouver municipal council, and there was a huge debate about what the long-term impact of that would be, so it's interesting that you bring that up. Your assertion is that things haven't changed very much legally since 1906. I'm sure you're correct on that, but in the actual way things are operating there have been enormous changes.

So I express a concern about the fact that you are urging this committee to adopt a position of moving quickly, even while there's a parliamentary process going on. I think there are huge issues of how consumers are going to be protected.

I consider myself an average consumer. The amount of stuff thrown at you about phone services and the so-called competition that's there, particularly if you're in a concentrated urban market like Vancouver, I think creates enormous confusion.

I worry when you say we should rely on market forces, and that somehow this is all going to be fixed and we'll end up with a better system. If we don't have some sort of strong oversight in the public interest, whether you're in a large urban centre or a small community, and with the huge differences that exist there, I think we're going down a road that in the long term will cause a lot of distress for consumers.

I wonder how you answer that. What protection is offered for consumers, if we rely so much on market forces?

Mr. Hank Intven: Well, Ms. Davies, I don't think the two recommendations we made are at all inconsistent. We recommended that in the introduction of new services, the pricing of those services, and the marketing of those services, the regulator should withdraw from involvement in the day-to-day activities. What technologies come to the market, how they're introduced, and that sort of thing should be something that is left to the marketplace.

When it comes to protection of consumers, we agree with your concern entirely. A significant chapter of our report, chapter 6 on social regulation, recognized that there were some concerns about vulnerable consumers, particularly in a less regulated, more competitive marketplace, and we made a number of specific recommendations to protect vulnerable consumers in those areas. We would encourage the government to implement them.

They include the establishment of this ombudsman office, which we called a telecom consumer agency, to deal with the problems. This is a model that's worked quite well in both Australia and the United Kingdom, where essentially it's an industry-funded body, but supervised by the CRTC so that you have the regulator ultimately supervising it.

What it does is put the onus where it should be, on the industry, to clean up its own act. There have been some abusive telemarketing practices, there have been some real problems with comprehensibility of bills—they've become very complex—and the comprehensibility of some of the packages, and some of it has bordered on the misleading. That's why we thought the TCA, the telecommunications consumer agency, could provide a very useful role protecting vulnerable consumers.

● (1615)

Ms. Libby Davies: Do I have a little more time?

The Chair: You have two more minutes.

Ms. Libby Davies: I don't think it's only vulnerable consumers. There are groups in our society that would be more particularly at risk. I actually think it's consumers overall.

I suppose there are people who have a lot of know-how, have a lot of time to investigate all these different sorts of marketing schemes that come forward and whether or not you'll gain in the short term or the long term. I think you have to put enormous energy into doing that.

So, yes, you can beat that game. If you're someone who's highly aware of what the market is, you can compare different offers that come through. But for most people, most consumers who aren't even in that vulnerable category, I just don't think people have the wherewithal or the resources to do that.

I really have a huge concern about that. It's all the lure about special packages or introductory offers, and if there isn't some sort of strong basis or ground rules that protect the public's interest over the phone services and the local service, then I do think that in the long term we lose out. I just don't see, from what I've heard from you today, or the direction the government is taking, that there's a protection for that. There's this sense that the market itself will sort it out. It might for some people, but a lot of people also get left behind.

The Chair: Mr. Intven.

Mr. Hank Intven: We feel that the market is actually working for the average consumer. If you've watched it closely, as I'm sure you have, based on what you've said, today's telecom consumer is immeasurably better off, in terms of the quality and types and pricing of service they get.

You can call now, as people do, at the drop of a hat across Canada and across the ocean and all that. You remember the days when a long-distance call was a special event for a middle-class family. You would have to send a letter in advance or call in advance to set up the call. Now people call when and if they want. Most middle-class and lower-middle-class families have cellphones, which has made family life and getting together so much easier. Everyone relies on the Internet, and Internet rates are reasonably good.

Has it become a little more complex? Yes. The technology itself has made it a bit more complex, and some of the marketing is a little complex, but in the end, I don't think anyone would dispute that the average consumer is much better off.

The Chair: Okay, thank you.

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

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

Earlier, Mr. Intven, you had mentioned that in fact there was a fair degree of competition in rural and small-town communities, and I want to pursue that a little bit with you.

Any competition that does exist in some of the more prosperous smaller towns was abetted and assisted by the win-back restrictions. It was assisted by the previous market-based test, which allowed a triggering at 25% as opposed to a mere presence test.

Aren't you concerned that with those changes we will not see those communities that are currently not as well served by vigorous competition in fact hindered from ever developing that level of competition? If a mere presence test will trigger deregulation, any smaller competitor entering one of these smaller markets and establishing marketing and an office will trigger that, and at that moment be subject to deregulated competition. Probably the example that would be set by a couple of these cases would discourage competition in similar-sized markets elsewhere. Are you concerned about that?

• (1620)

Mr. Hank Intven: The marketplace isn't perfect, and I think the government's market presence test probably isn't perfect either. But it does present a reasonable effort, I think, to come up with a bright-line test, rather than a more complex economic assessment of the situation.

As I understand it, what the government's test says is that the communities you'd worry about wouldn't be subject to forbearance until there are three independent players in the market. That's a fair amount. Remember, the way the technologies are rolling out now, once a cable company lights up a VOIP service, it tends to be ubiquitous; it's available throughout all the areas where the cable company has it. With WiMAX, when it comes on stream, that will be even more so.

So I guess I'm a bit worried. We tend to try to manage market outcomes a little too much in the telecom sector, and it's not just in Canada. The Europeans are doing the same, and the Americans were doing the same and have now backed off. I think the reality is that sometimes if prices go up a little bit in a market, that actually acts as an incentive for someone new to come in with a new technology—for instance, a new wireless technology. Barrett Xplore is a good example of that, and there are others who are trying to find ways to get into the market.

So am I concerned that somehow allowing forbearance too early will act as a real deterrent against competition? I guess not too much. I don't think the telephone companies, the incumbent carriers, are likely to act that foolishly to try to specifically target and drive new entrants out of the market, because to do so would be, one, a public relations disaster for them; and two, it could ultimately result in some legal repercussions, either regulatory or from the Competition Bureau. So I guess I'm not that worried.

Hon. Scott Brison: You mentioned the Competition Bureau. One of the failures, you said, of the New Zealand example was the lack of an organization or a regulatory oversight organization with the expertise at the time. The Competition Bureau, we've heard from other witnesses, does not have the established expertise that the CRTC does have currently. The Competition Bureau is also notoriously slow in its response to these issues. For a smaller competitor, a lengthy battle with a larger telco could be devastating in terms of the profits of a new competitor.

It didn't work in New Zealand, as you stated, in fact partially because of the lack of expertise in the regulatory body. So why are you so confident in the Competition Bureau when it has the same challenge ahead of it? You refer to the telecom competition tribunal, but it really hasn't been established.

The Chair: Thank you.

Mr. Intven.

Mr. Hank Intven: Mr. Brison, our report is quite clear. We did not feel that the Competition Bureau could provide a full answer to the needs of applying competition policy in the telecom sector. We believe there should be something new, such as the TCT, to do that.

The Chair: Thank you.

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

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman; and thank you, Mr. Intven, for coming today.

You mentioned in your presentation that Canada had a strong market not because of the mandated wholesale access policies, but because of the competition from facilities-based cable companies. Do we need a strong and expandable mandated access regime to encourage more competition?

• (1625)

Mr. Hank Intven: I think if you talk to experts around the world and telecommunication economists, they will generally agree that where there are truly essential facilities—that is, facilities that cannot be economically or technically duplicated on a reasonable basis—there should be some mandated wholesale access to those. However, what the CRTC has done over the years is develop a class of what it calls near-essential facilities, and it has also mandated access to those at relatively low cost.

I'm sorry if I get into the economic jargon too much.

The problem with that, we found, is that acted as a disincentive to competitors building their own networks, because you could simply buy wholesale access from the existing incumbent telephone companies at a low price and you had no incentive to build your own network to compete with them. So I think the answer is yes, most economists would say you need some mandated access to essential facilities, but you do not need it beyond that.

Mr. Bev Shipley: For the second part of the question, I want to go back to the report itself in terms of the panel.

You had mentioned earlier in response to a question that you had some 200 submissions to the panel, plus public forums, and then you did some travel to other countries and you mentioned a handful or two of those that you had gone to. Does the report clearly reflect those consultations and the move to deregulation?

Mr. Hank Intven: Yes, we did our best to reflect what we learned in the report. There is a trend, certainly on this side of the ocean, towards pretty substantial deregulation. The Americans have gone much further than we have in Canada in some areas, particularly the area of abolishing their mandated wholesale access regime, so there's a trend toward deregulation.

In Europe it's a little different, but their markets are very different. They do not have a vibrant cable industry in the way we do where they have facilities-based competition, so they've developed different approaches. So when looking at the European market or any market, I would always encourage you to look at the differences in the markets.

Mr. Bev Shipley: Even with some of those restrictions they have over there, they've still moved ahead with deregulation.

Mr. Hank Intven: They've relied much more on a competition-based regime. And yes, in the U.K., for instance, in many areas they've moved strongly towards deregulation.

Mr. Bev Shipley: One of the things that has been brought up by some folks is that they fear the deregulation of the local telephone services will lead to a re-monopolization of the industry. Do you have a comment, or do you agree with that?

Mr. Hank Intven: There's a concern less about re-monopolization than duopolization. There's a concern we'll end up with two big players, the telephone companies and the cable industry. We talked about that quite a bit on the panel, and there is a concern. We think it's the job of government policy, and the way we recommended is to ensure that barriers to competition for third and fourth and fifth entrants are removed, and that includes getting lots of spectrum out there for new competitors to allow them to enter the market, empowering the CRTC to allow new competitors to access utility poles and share tower space and all that.

So rather than having the regulator direct market outcomes, you simply remove the barriers to competitive entry, and that should get rid of the concerns about re-monopolization. Because telecom markets are so dynamic now and there are so many different potential routes to the customer, if you include satellite and wireless technologies in the mix, it should be possible to maintain a pretty vibrant non-duopolistic regime, a truly rivalrous, competitive regime.

The Chair: Okay, thank you very much, Mr. Shipley.

We'll go to Mr. Vincent.

[Translation]

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

In your view, for there to be healthy competition, must all players have the same tools? Do you think that the players have all the same tools for that competition?

[English]

Mr. Hank Intven: No, clearly, some have more than others, and that's because of what economists I think would refer to as some of the economies of scale and scope and density that exist in the industry. Clearly, a larger player will have more of an advantage. It's just like the McLaughlin Motor Car Company found it hard to compete with General Motors and finally we ended up with a smaller number of car companies.

We don't think it's the role of government policy to simply protect smaller businesses because they find it harder to compete with the bigger ones. It should be the role of government policy, we think, to encourage a framework of competition so that the consumer benefits the most, not the particular competitors.

• (1630)

[Translation]

Mr. Robert Vincent: But how can small companies be given an advantage if the big players don't let them penetrate their markets? Transmission, both by cable and wire, belongs to them. So how can small players buy something that belongs to the big players so that they can subsequently compete with them? It seems to me there's something obscure in this decision.

[English]

Mr. Hank Intven: Telecom markets are very dynamic. There are small players that have grown to be very successful, if they find the right business model rather quickly. People always point to Google, but there are many others who have found a way to use existing networks to compete very effectively.

It's the same thing with the wireless industry. We think this is an area where government policy should promote more competition. Today there are a number of quite successful small entrepreneurs becoming competitors in the more rural and smaller markets. We think they will and can succeed, and hopefully based on what they can offer the consumer, not based on the fact that they get government support because there's an idea that there should be a predetermined number of competitors in a market.

[*Translation*]

Mr. Robert Vincent: You also talked about competition policy.

Can you tell us what you think competition should be?

[*English*]

Mr. Hank Intven: In a competitive market, I think there should be two or more players who compete to provide customers with high-quality, low-priced services. In the telecom markets, you can measure this by looking at what's happening in other countries. If our prices in Canada became much higher than European or American prices, for instance, or the roll-out of new services or new technologies were slower, then I think we'd worry about it. But if you look at the statistics, actually Canada does very well. Competition is providing consumers with a product and service that looks very good compared with what's happening in other countries in the world. We think that's the ultimate test of whether competitive markets really are working in Canada.

The Chair: You have one minute.

[*Translation*]

Mr. Robert Vincent: Do you believe in the free market?

[*English*]

Mr. Hank Intven: I have watched telecom markets for 30 years now, and I believe the competitive market works better than the old regulated monopoly market we had.

The Chair: That's a good note to end on.

We'll go now to Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair, and thank you, sir, for attending.

Boy, I'll tell you, I've certainly learned a lot. When we entered this debate I was just appalled at some of the things, but I'm really getting a different picture.

In a nutshell—and I don't want to put words in your mouth, so just tell me if I'm right or wrong—would you agree that the recommendation basically allows for the free market to enter the realm of telecommunications, and that we need not fear all these Chicken Little scenarios; that we're going to see better prices for consumers, and better services? Am I right? Is this something that your report might...?

• (1635)

Mr. Hank Intven: Mr. Van Kesteren, I think you have half the story right. This is a point my colleagues, when I spoke with them, were asking me to encourage you, as members of the committee, to remember. Our fundamental recommendations were, first, to let the market work where it does—and in most cases it will: telecom markets work better in a less regulated environment. But there are

some cases where they don't. Interconnection is a classic example. It would be possible for a large telecom carrier in some areas to prohibit or deny interconnection to other telephone companies or service providers wanting to interconnect with it. In that case, we don't think the free market would work properly; you would want some regulatory oversight in situations like that.

I use that just as an example. There are some areas of consumer protection that would probably warrant some protection as well.

The goal is, as I think we said, that Canada needs to move more quickly to deregulate in areas where the market will work, but in the few areas where it won't, then use smarter, more targeted, less interventionist techniques to achieve the remaining policy goals.

Mr. Dave Van Kesteren: But you have safeguards in your recommendation to protect those areas—

Mr. Hank Intven: Yes, we tried to cover those areas.

Mr. Dave Van Kesteren: —because you're absolutely right, there are areas where there is no competition.

Mr. Hank Intven: Correct.

Mr. Dave Van Kesteren: I want to ask you a question about foreign ownership. Do you think we should advocate any relaxation of foreign ownership restrictions?

Mr. Hank Intven: This is a big and difficult question in the telecom area. I think what we said in an afterword to our report is that the reasons that Canada has maintained its foreign ownership restrictions in recent years....

You may recall that we didn't have foreign ownership restrictions in the telecom area until 1987. The policy announced, interestingly enough, by Flora MacDonald was the first policy to establish that. That was established to help give Canada a bargaining chip in the Canada-U.S. free trade negotiations, because the U.S. had foreign investment restrictions and we didn't. So we thought it was appropriate for Canada to have them. That's how they came into place. Before that, we had none.

Since then, removing them has been very problematic, largely because people are concerned about the impact on the broadcasting industries and on the cable industry, which is the major medium of broadcasting content distribution in this country. So what we recommended in our afterword is that there be some further study. This broadcasting policy was not part of our mandate, but the purpose of that further study would be to try to separate the foreign ownership rules as they apply to content, and maintain them there, from those that relate to carriage, where frankly there's less policy rationale for any restrictions in that area.

Basically, as regards carriage providers, whether they're pipes, wires, cables, or wireless provision, what we need in Canada is the lowest cost, most efficient, most advanced services possible, and I think the nationality of the provider has relatively little to do with that. So we recommended a gradual move to transition towards a regime where the carriage area would not have the foreign ownership restrictions, while respecting the valid concerns about Canadian ownership in our broadcasting and cultural industries.

The Chair: One quick question.

Mr. Dave Van Kesteren: When should that start to happen, before or after deregulation?

Mr. Hank Intven: Well, I'm not sure.

The Chair: Is that a quick answer?

Mr. Hank Intven: I think it's a separate issue from deregulation.

The Chair: Thank you.

We'll go now to Ms. Davies for five minutes.

Ms. Libby Davies: Thanks very much, Mr. Chairman.

I was going to ask you about foreign ownership as well, so I'm glad it came up. It seems to me that if you follow your line, which is that you support the free market.... I actually don't know what the "free market" is. It's something that's used a lot. There are regulations, and I think we're debating how many or how few. So as to all this idea of a free market, even under trade agreements we've seen the impact of that.

In terms of foreign ownership, I think a lot of people would be very concerned about the slippery slope and where that would take us. You're saying, well, we should not have restrictions on foreign ownership on the basis of carriage, but in terms of content, maybe we should. But it seems to me that we would be creating an environment where there would be enormous pressure, where we would be allowing huge multinational corporations to come into Canada with virtually no restrictions. It would be a deregulated environment, and then somehow we're going to say we'll still preserve Canadian content, while we're completely relying on these huge conglomerates that are foreign-owned.

I think that's something that is incredibly huge in terms of a direction that we would take, but is that something that you advocate, that we basically remove the restrictions on foreign ownership?

• (1640)

Mr. Hank Intven: Our recommendations—and they weren't even recommendations, but our thoughts about it—were set out in the afterword. We did not make specific recommendations for removal. But we said essentially what I said earlier, that the reasons for maintaining foreign ownership restrictions in the carriage area really are not nearly as strong as they are in the content area.

We have many types of industries, from the pharmaceutical industry to the automobile industry, where we have Canadian regulations that apply regardless of nationality. In principle, there's no reason why you couldn't have mandatory carriage rules that applied as much to a cable television company, to use an example, whether it was Canadian-owned or foreign-owned.

It probably doesn't come as a surprise to you, but the Canadian telecom and cable companies are also large, profit-seeking companies, and they don't necessarily conduct their business solely in the public interest. It's the role of government, as you said, to set the appropriate rules or regulatory framework for those companies to operate within. Whether they're Canadian-owned or foreign-owned, in the carriage industry I'm not sure it would make a lot of difference.

The Chair: Thank you, Ms. Davies.

We'll go to Mr. McTeague for five minutes.

Hon. Dan McTeague: Let me come back, Mr. Intven, to what I understand the report of you and your colleagues to have done and to what is in fact before us from the minister.

I have cited a couple of examples in the fourth chapter, but I've also gone to the fifth chapter. Every one of those recommendations begins with a comment. In recommendation 5-1:

The wording of subsection 43(5) of the Telecommunications Act should be expanded to ensure that the CRTC has a clear power to resolve disputes....

I go to the next recommendation:

The CRTC should be empowered to resolve disputes over the terms and conditions of access....

Recommendation 5-3 begins:

The CRTC, prior to making an order to resolve a dispute....

I understand that these are technical regulations. I also understand these to be areas that your panel felt important enough to put in as a safeguard to ensure that we made the transition to the open market.

Given, as you have acknowledged, that the CRTC has been completely removed from this process, and given that the traditional role of the Competition Bureau, using the standard "rule of reason" test, as it normally does, has been set aside in favour of an untested "competitor presence" model....

Actually, I'm wrong. It was tested in the United States. The FCC has concluded that it has led to a decline in competition.

How can you be comfortable with what you now see before you? It seems to me that what they have done is not only taken the CRTC and thrown it in the wastebasket, but the order itself has now basically cherry-picked parts of your report.

Is it really possible to have the kinds of conclusions you wanted, given that so much, in a significant way, has been stripped away? I understand your point about new technologies. But I also understand those new technologies can take their place under the current and existing regime.

If we're going to set aside these things and throw away the safeguards, Mr. Intven, how can you even stand here and support any aspect of this order, given that it has done so much to run contrary to the very things you recommended?

Mr. Hank Intven: Mr. McTeague, we're hopeful that the government will move in the other areas in which we made recommendations. We recommended that the policy direction go into place as a first step, because we recognize the complexities of preparing, debating, and implementing legislation to cover the many other areas where we made recommendations.

• (1645)

Hon. Dan McTeague: Is that before or after a market analysis took place—a substantial one consistent with international norms?

Mr. Hank Intven: That's a particular issue, the forbearance issue.

Hon. Dan McTeague: But it's an important one, sir.

Mr. Hank Intven: It's an important issue.

Hon. Dan McTeague: You want to know the market you're testing before you in fact make decisions.

Mr. Hank Intven: Right. Is there a huge risk in applying the market threshold test, the competitive presence test that the government has implemented? I don't think so.

And sometimes it's worth trying these things out. We tend to be overly protective, sometimes. If it really does transpire that there are serious problems with competition evolving outside of the 20 top Canadian markets, then it wouldn't be too late, in our view, to....

The Chair: Sorry about that. That's the competition commissioner phoning again.

Some hon. members: Oh, oh!

The Chair: Mr. Intven, I apologize. Go ahead, please.

Mr. Hank Intven: I was going to say, I don't think we believe that having the competitive presence test applied for a few years is too great a risk for Canadian society or the economy.

Hon. Dan McTeague: But, sir, on the issue of a presence test, whether or not someone is actually playing in the market, I could open up a shed tomorrow and say it's Dan's Telecommunication, not have a single customer, and that constitutes presence. You didn't talk about this in your report.

Mr. Hank Intven: That's very fair. I think in the end it should be the job of a regulator to look at the actual level of competition in a market, because it is hard to prescribe a bright-line test. Many have tried. The commission tried with its 25% rule, and government is now trying with its competitive presence test. Ultimately this should probably devolve back to a regulator, which is why we recommended the TCT.

But is the presence of three independent players in a market a bad starting point? We don't think so.

Hon. Dan McTeague: On win-backs, finally, is it your view that only those who actually abandon the service will profit from this? Ordinary consumers who don't walk away from one of the incumbents certainly won't make any headway.

Mr. Hank Intven: I really haven't thought that through.

Hon. Dan McTeague: I think you did. It was in the report.

Thank you.

The Chair: Okay, thank you, Mr. McTeague.

I'm using the chair's prerogative to take the next Conservative spot.

Mr. Intven, thank you very much for being with us here today. I do want to follow up on my dear friend Mr. McTeague's topic, which is the implementation of your panel report.

Your panel, obviously, was appointed under the last government, and reported to this government. Yet if you look at how the minister is going about implementing this and you turn to page 13:

The Panel suggests that the government should implement its recommendations 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.

When I read the policy direction and the proposed order from the Minister of Industry, it seems as if, to me, reading this, he's using the language that you recommended in your report. The language seems to be very consistent with what you recommend in your report. So it seems to me, as an outside observer, that the minister is doing exactly what you said in terms of the implementation on page 13.

So can I just get you to say, broadly speaking, if the minister follows through on the second phase—and my understanding is he will be doing that—that the minister is in fact following the path that you outline in your report?

Mr. Hank Intven: Yes, he is. If the government follows through on the rest of our recommendations, which we're hoping will happen, that would be the case.

Let me tell you a little bit about why we put the recommendation for the policy direction into the report. It was a bit of an afterthought. What we were concerned about is the great fear of anyone who devotes a little bit of their private time, as we did, to a public initiative such as this, to spend the time and hard work to write a report. You're always worried that it ends up on a shelf and nothing is going to happen with it.

I was also very conscious of how long it takes to get legislation through. Shortly after I left the CRTC and went back into the practise of law, I was recruited in 1987 to work on a new Canadian telecommunications act, and it took until 1993 to get that act through. In between, there were always political issues and some very important ones, involving national unity and others, during that period. But the reality is, telecommunications policy never got high enough on the political agenda to see anything actually happen in those six years.

We were concerned that the CRTC would find itself with a government report, and even if they respected the thinking in the report, they would find themselves in a very difficult position, not knowing whether they should act in accordance with the report or just apply their own thinking to the issues. So we felt that the best way to get things moving in the right direction was to have the government implement a policy direction, and that's why we thought that should be done.

• (1650)

The Chair: Thank you very much for clarifying that.

The second question I want to raise with you is that there seems to be a lot of discussion over the government's market presence test, about which there are two broadly held views. One is that for issues such as forbearance, the CRTC and the government ought to rely on a certain percentage, i.e., 25% market share, in order to allow new entrants to gain some access to that market. The second view, which I think was eloquently stated by the Commissioner of the Competition Bureau, is that you ought to look at the competing services available, rather than a specific percentage.

You indicated that you might not exactly endorse the government's market presence test. One of the concerns raised by some of the witnesses was that the Competition Tribunal and the Competition Commissioner do not act as quickly as the CRTC, so they prefer the CRTC.

But if in fact you adopted what I believe is chapter 4 of your report, where you adopt the telecommunications competition tribunal, this would in fact work very well with the new market test itemized by the minister, and certainly supported by the Competition Commissioner. So if you were to move to that type of a tribunal or panel, that would address the concern about a timely response by the CRTC new competition panel.

Mr. Hank Intven: I think that's very true. There are always real concerns about deregulating in an area and what might happen if the market is allowed to run amok and cause problems. But the reality is, in the very regulated markets we've had in the telecommunications area over the last decade, we've had dozens and probably closer to hundreds of companies—CLEC and others—go out of business, notwithstanding a significant amount of regulatory oversight.

Allowing the market to work on its own for a while and seeing what emerges in the way of competition is certainly no worse than the situation over the last decade.

The Chair: Thank you very much for that.

We have two final questioners, Mr. McTeague and then Monsieur Arthur.

Hon. Dan McTeague: So we don't confuse you completely, Mr. Intven, and not to differ with the chair, but your test on implementation on page 13 reads:

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 your mind, sir, does that work include the CRTC, or the TCT as you proposed?

Mr. Hank Intven: Yes. I think what we had hoped for was that in addition to the policy direction, the government would endorse some of the new regulatory framework recommendations made in our report.

Hon. Dan McTeague: I wanted to thank the chair for endorsing the view that the Liberals have been taking, which is absent here.

Mr. Intven, I don't want to belabour this, but regarding the last point about win-backs, if we have a situation such as the wild west, where only the deepest pockets survive—sorry, maybe it's the lawless east—is it possible in this kind of circumstances that only those...?

I understand you've written at great length about win-back programs and that there ought to be some regulatory oversight, again directed by the CRTC or the TCT, which is now absent in the minister's request. You said:

One justification for the win-back restrictions is that customers should be given an opportunity to try a competitor's service and judge the quality and reliability before being exposed to the incumbent's win-back efforts. In effect, the rules created a temporary protection for the new entrant against targeted marketing efforts by the ILEC.

Recognizing that we all want to have the situation where the customer benefits, would you not suggest that this condition should also be part of the minister's order, at least to ensure that all consumers benefit from this new-found open market, or just the few who happen to walk away from the ILEC?

• (1655)

Mr. Hank Intven: I'm not sure there is much I can add to what we've said about win-backs in the report.

The one comment I would make is that there has been a lot of concern—and I've heard the comment hundreds of times that you've made, Mr. McTeague—that the person with the deepest pockets is going to be the only one left standing.

In this respect, you may have noted a very important thing happened two weeks ago. Rogers Communications Inc. became the largest telecommunications company in Canada by market capitalization, bigger than BCE and Bell Canada.

We think what's happened here is that the competitors—and I say that with great respect for Ted Rogers and his colleagues, who have created an awful lot of value in that company doing it... But the constant concerns that a little company can't grow, because they're going to be subject to some destructive anti-competitive conduct unless they're watched at every move, exaggerates the real concerns. In the real marketplace, things should not get—

Hon. Dan McTeague: You'll not find me defending Rogers, being the guy who led the cable revolt in 1994, Mr. Intven.

But let me ask you this: In the time you have given us here today and the time in which you wrote the report to now, have you had any offers from any of the companies, Rogers, or perhaps Bell Canada or Telus, along your way to help them develop a draft implementation or anything along that line? Or have you just been able to preoccupy yourself with a checklist of what has been observed or what has not been observed?

Mr. Hank Intven: I've spent the last three months trying to buy a satellite company. That answers the question.

Hon. Dan McTeague: Thank you.

The Chair: We'll go finally to Monsieur Arthur.

[Translation]

You have five minutes.

[English]

Mr. André Arthur (Portneuf—Jacques-Cartier, Ind.): Good afternoon, sir.

I think it's quite evident that it took a lot of courage from the Liberal government before to give you their beloved regulator and say try to do something with that. Big players were there, sacred cows were present, and regulation was seen in Canada, and is still seen in Canada, as the only thing that separates us from the U.S. as far as broadcasting is concerned.

I also think it took a lot of courage for the present government to receive your report and try to start implementing it.

If the CRTC were not the society for the preservation of sacred cows, fat cats, and phoney consumer groups, could it have started the deregulation itself if it had the vision to do it?

Mr. Hank Intven: Without accepting any of the assumptions in your question, I would say yes, it would have been possible, I think, for the commission to move toward deregulation more quickly, because, as I pointed out, the law is so broad and vague that it essentially gives the regulator a very broad degree of discretion to apply policies. But the fact is it did move.

We should not underestimate the degree to which the CRTC over the last two decades has promoted competition and started the deregulation of the industry. Our concern was simply that we found that at this point in time, looking at it objectively, it was time to accelerate the process.

Mr. André Arthur: If the CRTC had taken the leadership in deregulation, maybe it would not be necessary at this time in your report to recommend the creation of three other regulators to do its job.

Mr. Hank Intven: In defence of our report, we did not recommend three new regulators. We recommended—

• (1700)

Mr. André Arthur: You mean a tribunal, an agency...

Mr. Hank Intven: I realize there are those who believe that any new creation of a government agency is per se a bad thing. What we recommended—and I regret that this has not been looked at more carefully to date, and I thank you for the question—was for the telecom consumer agency to be an industry-funded, industry-run, self-policing group under the supervision of the CRTC. It's a model that's worked well in other countries. It can work here and it can protect consumers, we believe.

Secondly, there's the TCT, the telecom competition tribunal. Somebody asked me how many people would you need to staff that, and I think the answer is about four people. You need an independent chair and you probably need a little secretariat function, and the whole idea is that the rest of the resources will come jointly from the CRTC and the Competition Bureau. You would actually take these two agencies that have wonderful expertise in their own silos and get

them to put them together to work together to try to do that properly. So we do not see that as a major new regulatory body.

Mr. André Arthur: Please educate me. What went wrong in New Zealand? Why did it fail?

Mr. Hank Intven: New Zealand is very interesting. They had a number of totally libertarian economists come to advise them around the time that... You may recall that in the early 1980s New Zealand technically went almost bankrupt. The International Monetary Fund came in and a number of steps were taken to privatize industry and to try to get the country back on track fiscally.

As part of that process, they experimented with something no other country had done, and they said we'll do without a telecom regulator, and they had some economists who advised them that economy-wide competition law was sufficient and their competition authority could do the job. For ten years companies, including a company called Clear Communications, which at that time was partly owned by Bell Canada and MCI, tried to get interconnection with Telecom New Zealand. After ten years of fighting in the courts and going to the competition regulator, they were unable to achieve interconnection.

Finally, the government said enough is enough; we want to see some real competition in this country. So they established a new office of the telecommunications commissioner within their commerce department. They selected a very good man, Doug Webb, who became the first commissioner. He essentially became the telecom commissioner, and since then competition has started to develop.

Mr. André Arthur: Thank you very much.

The Chair: Thank you.

Thank you very much, Mr. Intven, for your time here today, for all your answers, your presentation, and thank you very much on behalf of the committee for the report as well. We appreciate your work.

We will be suspending, members, for about two to three minutes, and then calling the next witnesses forward. Thank you.

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_____ (Pause) _____

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• (1705)

The Chair: Okay, members, let's find our seats.

We'll start with the second part. It's a 30-minute session, a panel with Internet providers and wireless.

We have two witnesses with us here today. First of all, we have Ms. Kirsten Embree, who is with the Canadian Association of Internet Providers; and secondly, from the Canadian Cable Systems Alliance, we have Mr. John Piercy. Welcome to each of you.

I know it's a short session. We did have an extra-long session with Mr. Intven, so I apologize for that.

You have opening statements of up to three minutes each, and then we'll go immediately to questions from members.

Ms. Embree, would you like to start?

Ms. Kirsten Embree (Counsel, Fraser Milner Casgrain LLP, Canadian Association of Internet Providers): Thank you, Mr. Chairman.

Thank you very much for inviting us here today to speak to the committee.

My name is Kirsten Embree. I've been asked by the Canadian Association of Internet Providers to appear before you today to address the subject of telecommunications deregulation.

The Canadian Association of Internet Providers, or CAIP, as we call it, is one of Canada's largest Internet industry associations, representing both large and small commercial Internet service providers, or ISPs, as well as companies and other organizations that are involved in the industry of Internet service provisioning.

Almost all of CAIP's members are independent ISPs, which means that they are not affiliated, as a result of their ownership, with either the incumbent telephone companies or the incumbent cable companies. As a consequence, CAIP's perspective on the issue of telecommunications deregulation is a unique one. It is one very much oriented towards the experience of new entrants in the market, who must compete with some very large and very well-financed incumbent operators.

Before providing you with our views on the subject of telecommunications deregulation, we thought it might be helpful to give you a brief snapshot or overview of the Canadian Internet services market.

In 2005, the revenues that were generated from the provision of Internet services in Canada reached \$4.5 billion, which represented an 8.8% increase over the \$4.2 billion generated in 2004. In 2005, the number of households with Internet access subscriptions reached eight million, which represents 64% of all Canadian households. As for the number of households with high-speed Internet access, this number reached 6.4 million households, or 51% of all Canadian households, up from 43% in the previous year.

At first blush, these statistics appear to paint a very rosy picture of the Internet services sector, but the reality of competing in this market is very different, and we are quickly coming to the point where we need to think about whether Canada has taken the right steps to promote competition and customer choice in this market segment.

In the CRTC's 2005 telecommunications monitoring report, there is a table that shows residential Internet subscriptions by type of Internet access provider. We have taken that table and turned it into a pie chart in order to demonstrate more graphically what is happening in this segment of the market.

For the record, our analysis indicates that 54% of all Internet subscribers in 2004 subscribed to the cable companies' high-speed modem service, 42% subscribed to the telephone companies' high-

speed DSL services, and only 4% subscribed to the high-speed services of an independent ISP.

In the brief time remaining, I'd like to share with you some of CAIP's thoughts on what we believe has gone wrong with deregulation in the Internet services market and why our members hold such a paltry share, 4%, of that market.

As you may know, the CRTC decided to forbear from regulating the retail Internet services of the incumbent phone and cable companies in the late 1990s. Unfortunately, there was no comprehensive regime in place at that time for independent ISPs to gain access to all of the underlying facilities and services that are needed in order to provide high-speed Internet services to their own end-user customers.

The cable companies' wholesale cable modem service was only tariffed a couple of years ago, notwithstanding the fact that they had launched their own high-speed services more than ten years ago, and the phone companies have either avoided filing tariffs for their wholesale ADSL services or have priced those services so high that independent ISPs have found themselves in a classic margin squeeze.

Competitors need access to essential underlying facilities and services at cost-based rates and without the exorbitant markups that the incumbents will always choose to charge, absent the regulatory oversight of the CRTC. We urge you to take this into consideration in your committee deliberations and to also take a more holistic approach to the issue of telecom deregulation, just as the telecom policy review panel has done, in order to avoid patchwork regulatory fixes that only create problems down the road.

• (1710)

The Chair: Thank you very much, Ms. Embree.

We'll now go immediately to Mr. Piercy.

Mr. John Piercy (Board Member, Canadian Cable Systems Alliance): Thank you.

Good afternoon, everybody. My name is John Piercy. I am here representing the Canadian Cable Systems Alliance. I am a CCSA board member and chair of the CCSA's telecom regulatory committee. I am also president of Mountain Cablevision in Hamilton, Ontario, a CCSA member company.

CCSA represents over 90 small independent cable companies operating in all regions of Canada. Our member companies are generally family-owned businesses serving small and rural centres.

CCSA member companies are the only potential facilities-based competitors in virtually all the markets they serve. These companies have very serious concerns with the draft order.

Let me explain those concerns. The order, as currently drafted, would allow the incumbent telephone company to apply for forbearance as soon as a second facilities-based competitor enters the market. A cable company will satisfy that test as soon as it offers telephone service. The incumbent telephone company would then qualify for forbearance in that market. At that time the local cable company will have few, if any, telephone customers. Even so, the incumbent telephone company will immediately be able to make targeted offers to those customers who indicate an intention to switch to the competing cable company.

The draft order also proposes to eliminate the win-back rules immediately upon its coming into force. With the win-back rules removed, the incumbent's special offers would be targeted only to those customers who inform the telephone company of their intention to move to a competitive service. Most of the telephone company's customers would not receive these offers. Few of those customers would experience lower prices or new service offerings.

In no other business does a competitor have to inform the dominant player that one of its customers is discontinuing service. In the telephone business, however, the competitor almost always has to request the dominant player to transfer the customer's telephone number before it can serve that customer.

During the number porting process, the incumbent telephone company could target the transferring customer with a better offer before the customer has had chance to try the competitor's service. While that practice currently violates agreed industry standards, we know that it happens. Without the win-back rules in place, there is little prospect that a competitor could prove when the win-back offers actually begin.

If this order remains as currently drafted, many of our members will not enter the market; the business prospects will be just too bleak.

Our recommendation to the minister is quite simple: retain the market power test for all markets outside the ten identified in the draft order. Once the incumbents can demonstrate, using the Competition Bureau's current test, that they no longer have market power, they should be forborne from regulation. Win-back restrictions should be kept in place until forbearance has been granted in a particular market.

Such an approach would ensure sustainable facilities-based competition in small markets across Canada. If the order is not revised, not only will residential customers not have access to competitive offerings, but small and medium-sized businesses in these communities will not have access to them either. They will continue to pay the higher prices they have always paid, and their plight may well worsen. Without a viable base of residential customers, our members will never be able to launch a sustainable competitive telephone service that can be made available to local businesses.

The changes that we propose would maintain the streamlined regulatory process and increased reliance on market forces, while fostering sustainable competition in markets where otherwise there would be none at all.

I look forward to your questions.

Thank you.

• (1715)

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

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

Hon. Dan McTeague: Mr. Piercy, thank you very much for that. I think you've spoken—as have you, Madam Embree—to the concerns we have expressed here on this side.

I understand clearly that the proposals you're making are not to protect your own industry, but in fact to enhance competition. You may have just heard from the previous witness, who was one of the panellists who wrote the telecom policy review. Absent in that was a pretty substantial chunk of their recommendations, which we considered to be some of the safeguards. Having seen the report and having had some time to discuss it, are you pleased with that report? Are you, to say the least, concerned that the minister has seen fit to take a very different direction?

Mr. John Piercy: Actually, I think the report was a great report, and I'd like to see the whole thing implemented. I think that would truly put us to a truly competitive marketplace in which a lot of people could succeed and a lot of small businesses could make money.

I think the trick, though, is that you can't do pieces of it. I heard Hank say to give it a couple of years and see what happens; my small member companies, in a couple of years, will be out of business. We have the same problem with the Competition Bureau. I heard that they said they could do a really quick review and prep a case in five months. Well, to a small cable operator, five months could be the difference between living and dying.

We need to have some balance here. We need some ability for the small guys to get into the market and to invest the money that they have to invest to get into that market. There has to be some leveling of the playing field, because right now it's stacked up against these guys, and they're going to struggle to get in.

The Chair: Mr. Brison.

Hon. Scott Brison: I suppose it would be contingent on the market, but in a town of say 5,000 people, what would be the scale of investment required in that kind of market by a cable company in order to move into the telephony market? I know it's a difficult thing to do, but perhaps you could give an idea of what the risk would be.

Mr. John Piercy: Actually, it's an easy thing for me to do, because we've launched our telephone service in Hamilton. We have a base of about 40,000 subscribers, so you can scale that up and down. We spent more than \$10 million getting into that business. A lot of plant upgrades needed to be done; a fair bit of system development needed to be done; we had to find a partner, because we couldn't do the switching ourselves—we couldn't afford it. If you use that as a measure, for a sub-10,000 base you're looking at somewhere between \$2.5 million and \$3 million worth of investment that needs to be done.

Hon. Scott Brison: Would you have made that investment under the rules proposing no restriction on win-back and the mere presence test in terms of forbearance?

Mr. John Piercy: It wouldn't be my call. It would have been the call of the owners of our company. Unfortunately, I'm not one of them. But I don't think they would have gotten into the market under those rules. They were scared when getting into the market under the 25% rules. We thought that sounded too small.

Hon. Scott Brison: And the notion that due to technological advancements the incremental investment to enter telephony in a local market is not material isn't actually accurate: it does cost a fair bit of capital investment to make that transition.

Mr. John Piercy: Yes, I think the “not material” side of it depends on how big you are: \$2.5 million to a Bell Canada is not material, but \$2.5 million to a guy who has to borrow it from the bank and has to say “We think the rules are going to be okay and we don't think they're going to beat us up when we get there”.... It's a material number, at that point.

Hon. Scott Brison: I wanted to ask you a question about broadband. Significant parts of the country are not yet served by broadband, in rural and small-town and remote communities. A part of TPRP's report recommends to “immediately commence a program to ensure that affordable and reliable broadband services are available in all regions of Canada, including urban, rural and remote areas, by 2010 at the latest”. What would be the actions of government that you could see helping to facilitate that? There's been no discussion from the government on this, but what would be the role of government to help foster it?

• (1720)

Mrs. Kirsten Embree: There are some programs in place right now to help underwrite the cost of broadband rollout. But it's true, there are a number of areas of the country that don't yet have broadband Internet access and are in desperate need of it.

I'm not really qualified to speak about what we ought to do to fix that problem, but what I can tell you is what the independent Internet sector faces. They would very much like to address that market and are doing so, using innovative new technologies such as point-to-point wireless, fixed wireless services, and even some mobile. But they also need access to underlying facilities on economic terms and conditions, cost-based rates—

The Chair: I'm sorry, Mr. Brison, but with the time, we have to move on.

Monsieur Crête.

Hon. Scott Brison: Can I just—

The Chair: No, I'm sorry, Mr. Brison.

Monsieur Crête.

[*Translation*]

Mr. Paul Crête: Thank you, Mr. Chair.

Mr. Piercy, you talked about this in your presentation, but can you or Mr. Embree tell me whether it's possible to bring into effect what concerns local telephony or the order you're suggesting without the reform as a whole taking place? Or must the entire framework absolutely be put in place before corrective action is taken?

I know that the minister has until April 6 to decide whether to act or not. He might do something with regard to local telephony only. Perhaps he might agree to the action being taken comprehensively in the east.

I'd like to know all your views on that subject.

[*English*]

Mrs. Kirsten Embree: I think our response is very easy. You have to fix the wholesale regime first. You have to implement all of the TPRP's recommendations before you start taking a piecemeal deregulatory approach to retail markets, such as the local exchange services market.

Mr. John Piercy: I would agree with Kirsten. I think you need to have a balance here. You can't just take a third or a half of the report and say that's good enough and the other half will come in two or three years. I think you need to have a check and balance in it. There are issues around wholesale access that need to be addressed; there are issues around quality of service parameters on those accesses that need to be addressed. There are many things that need to be addressed.

[*Translation*]

Mr. Paul Crête: If the minister implements the direction as stated or takes your comments into consideration, how do you see your two associations in two years? What will happen to the members of your associations?

[English]

Mrs. Kirsten Embree: As I explained during our presentation, our members now hold only 4% of the high-speed residential Internet market. We used to hold 64%; however, as I said, the problem is that from the date that high-speed services were introduced by the telephone companies and the cable companies, we did not have a comprehensive underlying regime for wholesale access to facilities and services by competitors. We've fought and struggled for the past eight years to get that access. We're still fighting. During the intervening years, our market share has declined to the now 4%.

I think it's fair to say that we need to address some other problems first before we start deregulating more in the retail market.

Mr. John Piercy: On the small cable side, I think what's going to happen is that a lot of the small cable operators who are just about to launch and will probably proceed with their launch may find themselves driven out of the telephony market. That would hurt them economically; it might force them to sell their companies, because they might have no other option to settle the debt they just got into to get into the market.

Many of the smaller operators will just continue to operate their current set of services and over time will probably dwindle as competition passes them by, because they won't be able to invest the money to get into the market.

I think the biggest issue is what's going to happen to the people who are in those small towns that don't get the competitive service.

• (1725)

[Translation]

Mr. Paul Crête: Will it be possible to see a situation — somewhat absurd, I would say — in which the giant in a region would seize virtually the entire market, while the small player would be on the verge of collapse, which would mean we would be going back to a regulated service? The result would be a game in which competition would be very artificial because the big company would be virtually forced to keep the small one alive, at least artificially. Is that a situation that can occur, or do you simply think that small businesses will ultimately be wiped out?

[English]

Mrs. Kirsten Embree: I think the trend, at least in the Internet sector right now, is towards duopoly. Mr. Intven was here earlier and said that wasn't in Canada's interest or in consumers' interest. I'm not sure there's much more I can add to that. We'll have two players, perhaps, in a year or two's time who won't have any incentive to innovate or price competitively. It will be a comfortable and cozy arrangement.

Mr. John Piercy: I think you're going to end up with a sort of two-tier service. You're going to have the large towns, which will have a duopoly or maybe an unregulated service with lots of players, and then you're going to have the small towns, which will have a monopoly, and they'll continue to suffer the high price and the poor service. I think that's where we're going to end up.

The Chair: Thank you.

We'll go now to Mr. Carrie.

Mr. Colin Carrie: Thank you, Mr. Chair, and thank you very much to our guests for being here today.

Mr. Piercy, your association represents the small-market, independent cable companies. Are they mostly monopolies in their own markets?

Mr. John Piercy: They're mostly monopolies in the sense that they are the only cable operators in their markets. They have direct-to-home satellite competition and off-air competition. We're typically not the monopoly when it comes to the Internet. There are wireless Internet providers in these small communities, and others. None of us except a few of the larger members have entered the telephone market so far.

Mr. Colin Carrie: Your members are not subject to restrictions on win-back customers who move to satellite TV providers, are they?

Mr. John Piercy: Typically they are not. The win-back rules have long since been met. They were when they were launched—when direct competition came in, there were win-back rules, but they've got through the bar.

Mr. Colin Carrie: But you maintain that your members still need regulatory protection in the voice telephony market?

Mr. John Piercy: I think what you need is some ability to get into the market and actually have customers try your service before they're targeted to win-backs. If you actually allow the large companies to come right in behind the small companies and win back those customers, you'll end up with those small companies just giving up on trying to get into the market.

Mr. Colin Carrie: We've heard from a number of different companies. What we're seeing is that it's apparent there are significant advantages to cable companies that offer voice telephony. For example, these companies can bundle their services, and we've seen, as was mentioned earlier, that Rogers, I believe, has become the number one company in Canada in terms of what the company is worth.

There seems to be a great advantage for cable companies to offer voice telephony. With that fact there, doesn't it seem that your companies would be moving towards it anyway?

Mr. John Piercy: I'd love to be able to bundle the services that Rogers could bundle at my company. I don't have a wireless offer, for one, so that's one of the quad play that I can't bundle.

Bell Canada, in my territory, can bundle everything but local service. From that point of view, we're on level playing ground: they have three services they can bundle, and I have three services I can bundle. They're just not the same three services.

Mr. Colin Carrie: You mentioned that your company did make that investment and that decision because they see the future. They want to get into the voice telephony business, that's for sure.

What capital investments have your members made in providing voice telephony? Do you have numbers for us on how much your membership has put out?

• (1730)

Mr. John Piercy: I don't. The CCSA doesn't actually collect those types of statistics from their members. I could sit here and guess on the ones that have launched. We've probably \$50 million to \$60 million invested so far, but only five or six companies have gotten into the market so far.

Mr. Colin Carrie: Thank you.

I have a couple of questions for Ms. Embree. I believe the cable companies have a larger share of the high-speed Internet or broadband market than the incumbent telephone companies. Is that true?

Mrs. Kirsten Embree: Yes, but the incumbent telephone companies are catching up very quickly.

Mr. Colin Carrie: Who's the primary provider of wholesale high-speed Internet access to your members today?

Mrs. Kirsten Embree: Without a doubt it's the telephone companies. The cable companies have a wholesale service, but thus far it has been technically impossible to use it, and it's also economically unappealing.

Mr. Colin Carrie: Do you mean it's more expensive to go the cable way? Is that it?

Mrs. Kirsten Embree: Both the cable companies' wholesale service and the phone companies' services are priced far above actual cost. They contain excessive markups that result in a margin squeeze for an Internet service provider acquiring or buying those services.

I'll give you an example. In the late 1990s, ISPs complained to the Competition Bureau about the phone companies' pricing in the retail market for Internet services. They pointed out to the Competition Bureau in a formal six-citizens complaint that the phone companies were pricing their retail Internet services below the price of the wholesale offer that was being made available to Internet service providers.

The Competition Bureau made a factual finding that the phone companies were indeed pricing below cost, but they nonetheless allowed the phone companies to continue pricing in the retail market in the way that they had been.

Mr. Colin Carrie: But your members still continue to use the telephone, the ILECs, instead of the cable companies. Is that true?

Mrs. Kirsten Embree: We have used the telephone companies' wholesale DSL services because the cable companies didn't have a wholesale cable modem service available until a couple of years ago.

Mr. Colin Carrie: Now that they do have it—

The Chair: That will be the last question.

Mr. Colin Carrie: Are they still staying with the telephone companies, though? That's what I'm asking.

Mrs. Kirsten Embree: No; some are now using the cable company service, but again, as I said, they're both fairly uneconomic in terms of their pricing.

Mr. Colin Carrie: Thank you.

The Chair: We'll go to Ms. Davies now.

Ms. Libby Davies: Thank you both for coming, because I think you provide another side of the picture about the impact of deregulation and what it may mean in the future.

I'm curious. You say that your share of the market as independent providers used to be 64%, and now it's 4%. Did you say that was over 10 years?

Mrs. Kirsten Embree: In 1997 we had a 64% share of the market. That's for the entire market, high-speed and low-speed. Now we have a 4% share of the high-speed market and a 10% share of the dial-up market, so overall it's 14%. But we haven't made really any inroads into the high-speed market.

Ms. Libby Davies: When you say you'd like to see a holistic approach taken—that's the word you used—what does it mean to you, in terms of this review panel and what they're doing? It looks now as though the minister is cherry-picking what they want. They're moving very rapidly. I think the public has no idea what is going on here and what the impacts are going to be; it's going to be horrendous.

But from your point of view, what does a holistic approach look like?

Mrs. Kirsten Embree: I don't want to flog a dead horse, but we have to fix the wholesale regime first. There is not going to be any true competition, and it's not going to be sustainable long-term, permanent competition, unless you fix the wholesale regime first.

Ms. Libby Davies: How do you compete with them now, if they're selling below wholesale? That's outrageous.

Mrs. Kirsten Embree: That's right.

Let the CRTC have its wholesale proceeding, which is started right now; we're in the process of it right now. We also need to look at the other reforms that have been recommended by the Telecommunications Policy Review Panel.

The panel actually advocated a very holistic approach. It wasn't just about local; it was about all markets, and it was about all services. And it wasn't just about, for example, CRTC regulation; it was also about net neutrality; it was about broadband expansion throughout the country, and finding ways to promote broadband.

It seems as if we have found ourselves in a very strange place, where we're highly focused on one particular aspect of the telecom industry sector, and that's just wrong.

• (1735)

Ms. Libby Davies: Thank you.

The Chair: Thank you very much, Ms. Davies.

Our thanks go to both of you for coming in today. I apologize for the short time. If there's anything further you'd like to add to our study of deregulation of the telecommunications sector, please feel free to submit it to the clerk. We will ensure that all members get it. At this time, we will thank you.

We will suspend for two to three minutes.

Members, I know the committee is over, but we are going to suspend for a couple of minutes and then go in camera for a discussion of a topic we discussed last Wednesday.

[Proceedings continue in camera]

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