

DWCC et al.'s RESPONSE to Q5 Forbearance

This document from DWCC et al. focuses on the query regarding Forbearance coming from CRTC's RFI Question 5.

Additional comments

1. After submitting our reply, we read further to understand this even better, and we have some further comments before we respond in this final reply.
2. To DWCC et al.'s understanding, the current status of Forbearance in the mobile sector stems from the mid-'90s, and the most relevant recent decisions are in two of CRTC's Telecom Decisions: TD CRTC 2010-445¹ and TD CRTC 2012-556². The first decision established the powers the CRTC would engage concerning mobile wireless data services, and the second led to the establishment of the wireless code.
3. DWCC et al. turn attention to the Telecommunications Act³, and the interpretation is that Sections 24 and 27(2) give the CRTC such broad discretion on how to exercise its powers. However, the powers that the CRTC *has* engaged are broad and enable it to intervene in most aspects of the market.
4. **Section 24**, in particular, gives the CRTC an extensive scope to attach conditions to the offering of service by mobile carriers. It is interesting to note that the appeals court has upheld the breadth of these powers in several instances in recent years. The following is for reference:

Conditions of service — a person other than a Canadian carrier

24.1 The offering and provision of any telecommunications service by any person other than a Canadian carrier are subject to any conditions imposed by the Commission, including those relating to

- (a) service terms and conditions in contracts with users of telecommunications services;
- (b) protection of the privacy of those users;
- (c) access to emergency services; and
- (d) access to telecommunications services by persons with disabilities. [bold added]**

5. There are historical precedents as well, specific to what was (then) termed "handicapped" and "hearing and speech impaired" consumers. There are archived decisions, public notices, and orders that show that the Commission has made determinations to provide telecommunication access that serves social requirements and offers social benefits.

¹ Telecom Decision CRTC 2010-445 Modifications to forbearance framework for mobile wireless data services - [link](#)

² Telecom Decision CRTC 2012-556 Decision on whether the conditions in the mobile wireless market have changed sufficiently to warrant Commission intervention with respect to mobile wireless services - [link](#)

³ Telecommunications Act - Part III: Rates, Facilities and Services - [link](#)

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6. One such example is from **Decision CRTC 2007-56**.⁴ **(Part) II. The appropriateness of retaining the 50 percent discount for TTY users**, involving several telephone companies. See paragraphs 38 & 39:

38. The Commission notes subparagraph 1(b)(iii) of the Policy Direction⁵, which states that the Commission, when relying on regulation, should use measures that satisfy the following criteria, namely, those that

(iii) if they are not of an economic nature, to the greatest extent possible, are implemented in a symmetrical and competitively neutral manner.

39. Given that the TTY discount addresses accessibility issues, the Commission agrees that such a requirement would help to meet the objectives of paragraph 7(h) of the Act by responding to the economic and **social requirements** of telecommunications service users.

7. In this particular decision, the Commission had the view that it would be appropriate to consider the discount "in respect of the planned proceeding to address unresolved accessibility issues for persons with disabilities that the Commission has identified in the second year of its three-year work plan, 2007 to 2010, dated 24 April 2007."
8. The Commission decided to continue the discount, while considering proposals from the companies, in consultation with the various associations for hearing - and speech-impaired persons, *for a mutually acceptable temporary alternative to maintaining the basic toll schedule and the TTY discount for these users.* **[Italics added]**.
9. In **Telecom Public Notice 98-30**⁶, we read of an example where Section 24 was cited in a previous decision related to accessibility and discounts;

"In Forbearance - Regulation of Toll Services Provided by Incumbent Telephone Companies, Telecom Decision CRTC 97-19⁷, 18 December 1997 (Decision 97-19), the Commission partially forbore from regulation of toll and toll -free services provided by incumbent telephone companies. However, among other things, as a condition pursuant to section 24 of the *Telecommunications Act*, the Commission required the federally regulated Stentor member companies (the Stentor companies) to include in the rate schedule for basic toll services the 50% discount applicable to calls which originate from, and are billed to, the residence of a registered certified user of a telecommunications device for the deaf (TDD)."

10. The above are but two historical examples of how the Commission has applied Section 24 to decisions related to Telecommunication Accessibility issues. The following paragraphs related to Section 27 will be the comments related to other consumer groups, and finally, the DWCC et al. analysis and comments.

⁴ Telecom Decision CRTC 2007-56 - [link](#)

⁵ Policy Direction 2006 - [link](#)

⁶ Telecom Public Notice CRTC 98-30 - [link](#)

⁷ Telecom Decision CRTC 97-19 - [link](#)

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Section 27

11. While the CRTC does not currently exercise Section 27(1) of the act, which allows it to regulate the rates charged for retail services, other sub-sections of 27 are relevant for our consumer group, specifically at Section 27(6).
12. Section 27(6) is relevant because it provides context for how the legislative branch intended the CRTC to exercise its powers. It reads:

Exception

*(6) Notwithstanding subsections (1) and (2), a Canadian carrier may provide telecommunications services at no charge or **at a reduced rate** (a) to the carrier's directors, officers, employees or former employees; or (b) **with the approval of the Commission, to any charitable organization or disadvantaged person or other person.** [bold and italics added].*

13. DWCC et al.'s interpretation of Section 27(6) demonstrates that Parliament expressly contemplated the Commission playing a role in ensuring that telecommunications services are provided on an equitable basis to "disadvantaged persons." For example, in the context of Section 27, this means that it could be a consideration in determining whether a preference being conferred upon a group is "due or undue" (i.e. should it be allowed) and in the context of Section 24 whether the Commission could or should attach conditions to the offering of service that ensures such services are being delivered equitably.
14. DWCC et al. believe that the above Section 27(6) indeed has in effect been an established part of decisions made by the Commission in providing reduced rates to a specific population of disadvantaged persons. The best-known case where Deaf, Deaf-Blind, and Hard of Hearing consumers, working with charitable organizations (CAD-ASC and the Western Institute for the Deaf) and with telecommunication companies (BC Tel/Telus and others) to create the first provincial Message Relay Service (also called TTY Relay) and establishing a country-wide 711 number for Deaf and hard of hearing TTY users access the relay service to contact hearing telephone users.
15. One more recent example is when Telus partnered with Sorenson Canada and the Deaf community to create a video relay service trial to test the feasibility of VRS in Canada.

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Other consumer groups

16. The Canadian Deaf Grassroots Movement (CDGM) assert that according to TRP 2020-130,⁸ the plans proposed in that policy decision are not sufficient to meet the needs of its accessibility group of DDBHH Canadians: *Therefore, the Accessibility plans... provided by all WSPs must not be left to Forbearance, the CRTC must regulate accessibility plans to meet the needs of DHH individuals that will give us accessibility according to Accessibility Canada Act.*" DWCC et al. share the same perspective that CRTC can exert powers with regards to accessibility plans that are given to the Commission according to the Accessible Canada Act, as set in TRP 2021-215⁹.
17. DWCC et al. appreciate the Deaf and Hard of Hearing Coalition (DHH Coalition) 's reminder about Telecom Regulatory Policy 2016-496 which is a result of DWCC et al. making its first appearance in the proceeding that led to the policy determination section: *"212. Accordingly, the Commission directs all WSPs to offer mobile wireless service packages that meet the needs of Canadians with disabilities. These include **people who are Deaf or hard of hearing, and primarily use video to communicate**, as well as people with visual disabilities who use way-finding and Global Positioning System (GPS) apps..." [bold added]*
18. In addition, DWCC et al. would like to highlight the first part in this determination, for it emphasizes the fact that there was, and still is, disparity among the wireless service providers' accessibility efforts.
*"211. The record of this proceeding demonstrates that some WSPs offer packages tailored to customers with disabilities; however, this does not appear to be a common practice among all WSPs. **Canadians with disabilities should have equitable choices in the marketplace that meet their needs.**"*
19. While DWCC et al. agree with the other consumer groups, the forbearance topic is complex and not easily navigated with its true intent for the competitive market. However, there are times accessibility and social benefits need to be front and centre.

DWCC et al.'s position

20. The wireless service providers shared similar outlooks typified by Telus' comment that it is "unnecessary for the Commission to reassert any forbore powers to ensure the interests of persons with disabilities are being met."
21. DWCC et al. generally agree with the carriers that the CRTC does not have to de-forbear from any additional legislative powers in mobile wireless markets to address the issues raised in this consultation.

⁸ TRP 2020-130 - Review of mobile services - [link](#)

⁹ CRTC Telecommunications and Broadcasting Regulatory Policy 2021-215 - [link](#)

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22. However, DWCC et al. disagree with the carriers when arguing that the CRTC should not *exercise* its existing powers to create solutions. The CRTC should engage sections 24 and 27(2) to grant the relief being sought by DWCC et al. and other consumer or accessibility groups, and those powers are sufficient [for the CRTC] to do so.
23. The powers currently available to the Commission are broad, and so is the CRTC's discretion on whether and how to exercise them. The CRTC's use of these powers has been defended successfully before the courts on multiple occasions in recent years and used as precedent in earlier Telecom Decisions.

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