Phase 2:

Legal Background for Canadian VRS

VRS Feasibility Study

Mission Consulting

February 24, 2012

CONTENTS

EXECUTIVE SUMMARY

RESEARCH SUMMARY

LEGAL BACKGROUND FOR CANADIAN VRS

EXECUTIVE SUMMARY

1. Overview

This research summary represents the findings of the second of twelve phases of a study commissioned by Bell Canada (Bell). The feasibility study was commissioned by Bell as part of a deferral account proposal. The objective of the feasibility study is to provide information to facilitate informed decisions regarding potential regulations and implementation of Canadian video relay service (VRS). Bell engaged Mission Consulting to conduct an independent and comprehensive study of the feasibility of VRS for Canada. The final feasibility report will draw, in part, on information contained in this research summary.

This Phase 2 research summary, *Legal Background for Canadian VRS*, provides a synopsis of the legal and regulatory environment in which telecommunications, and more specifically relay services, operate in Canada. This synopsis includes:

- ☑ an overview of the telecommunications regulatory environment;
- ☑ the rights of people with disabilities;
- ☑ consumer privacy and confidentiality considerations;
- ☑ relay obligations of telecommunications providers;
- ☑ access to emergency services; and
- ☑ market structure of services to people with disabilities.

2. Summary Findings

Salient points of this analysis of Canada's legal background for VRS include the following:

- □ All telecommunications service providers (TSPs) are required by the CRTC to provide Message Relay Service (MRS) in the form of TTY Relay and recently IP relay.[1]
- □ TSPs affected include providers of virtually all types of voice telephony services, including ILECs, LECs, CLECs, wireless carriers, and VoIP providers.[2]

[1] CRTC Decision 85-29, and more recently TRP 2009-430 available at http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm. For definitions of TTY Relay and IP Relay, see this report's sections 3.1 and 3.2. At the time of this Phase 2 report (Jan 2011), IP Relay is just becoming operational for Canadians.

- TSPs may provide the MRS service directly, i.e., themselves; may contract out the service to a third party; or may use the MRS service of other TSPs, e.g., ILECs.
- MRS services are currently paid for by a per line charge of 13 cents per month. This rate is presently frozen by the CRTC.
- Telecommunications law and regulation is virtually the exclusive jurisdiction of the federal government and CRTC respectively. Provincial and local governments have little, if any, authority.
- Canadian law precludes most forms of discrimination against people with disabilities. This mandate for non-discrimination has also been incorporated into telecommunications regulations established by the CRTC.
- Canadian laws and CRTC regulations also include consumer privacy and confidentiality protections.
- Access to 9-1-1 emergency services are available through TTY Relay and IP Relay, although the CRTC has stated that this method of access for persons with hearing disabilities is not equivalent to that of hearing people.
- Access to 9-1-1 emergency services directly from the consumer via TTY is not assured equally throughout Canada as not all Canadian 9-1-1 call centers have TTY functionality.
- Access to 9-1-1 emergency services directly from the consumer via IP texting is presently not possible, as Canadian 9-1-1 call centers do not have IP texting functionality.
- The current market structure for telecommunications services in Canada provides a legal framework to support the implementation of Video Relay Service.
- The framework suggests that VRS, if ordered, will likely be required of all TSPs, as it presently is for TTY Relay and IP Relay.
- The framework offers a variety of possibilities of how VRS may be ordered and implemented.

3. Conclusion

Canadian laws and regulations have established a legal framework for the operation of Message Relay Services by telecommunications service providers (TSPs), currently in the form of TTY Relay and recently also IP Relay. This legal framework should support VRS as well, although the actual deployment, cost and payment structures may differ significantly. The deployment and cost models appropriate to VRS may include a number of possibilities, which will be subject to additional study as part of Bell's VRS Feasibility Study project and final report.

---

[2] ILEC = Incumbent Local Exchange Carrier; LEC = Local Exchange Carrier; CLEC = Competitive Local Exchange Carrier; VoIP = Voice over Internet Protocol.

Legal Background for Canadian VRS

RESEARCH SUMMARY

1. The VRS Feasibility Study

This research summary represents the findings of the second of twelve phases of a study commissioned by Bell Canada (Bell). The feasibility study was commissioned by Bell as part of a deferral account proposal. The objective of the feasibility study is to provide information to facilitate informed decisions regarding potential regulations and implementation of Canadian video relay service (VRS). Bell engaged Mission Consulting to conduct an independent and comprehensive study of the feasibility of VRS for Canada. The final feasibility report will draw, in part, on information contained in this research summary.

The twelve phases of the study are as follows:

Phase 1	Project Confirmation
Phase 2	Legal Background for Canadian VRS
Phase 3	Consumer Interests and Perspectives
Phase 4	VRS Models in Other Countries
Phase 5	Technologies and their Forecasts
Phase 6	Interpreter Considerations
Phase 7	Quality of Service
Phase 8	Potential Related Services
Phase 9	Forecasts of VRS User Demand
Phase 10	VRS Cost Variables and Forecasts
Phase 11	Potential Canadian VRS Models
Phase 12	VRS Feasibility Study Report

This Phase 2 research summary, *Legal Background for Canadian VRS*, provides a synopsis of the legal environment in which telecommunications, and more specifically relay services, operate in Canada. This synopsis includes:

- ☑ an overview of the telecommunications regulatory environment;
- ☑ the rights of people with disabilities;
- ☑ consumer privacy and confidentiality considerations;
- ☑ relay obligations of telecommunications providers;
- ☑ access to emergency services; and
- ☑ market structure of services to people with disabilities.

2. Legal Background

2.1. General Regulatory Context in Canada

Under Canada's *Constitution Act*[3]*, 1867* (the "*Constitution Act*"), telecommunications networks and facilities in Canada which extend beyond the limits of a province are subject to exclusive regulation by the federal government. TSPs, to the extent that the networks they operate or utilize permit communication with points beyond the borders of a Canadian province or are interconnected to other networks which permit communications to extend beyond the boundaries of any of the Canadian provinces, are subject to the jurisdiction of the federal government.[4]

This does not mean that communications undertakings are immune from all provincial laws. However, communications undertakings are not subject to provincial laws, as one leading scholar states "to the extent that those laws affect the undertakings in what makes them specifically of federal jurisdiction, such as working conditions, labour relations, management of the undertaking, and, more particularly, the availability and quality of their services and the rates they charge for their services.[5]

There is also no authority in Canada for municipalities or provincial governments to establish franchises governing or limiting (or otherwise regulating) the eligibility of service providers to offer telecommunications services in Canada.

The *Telecommunications Act*[6] is the principal federal statute governing the regulation of telecommunications services in Canada. Under the provisions of the *Telecommunications Act* (hereinafter the *"Act"),* the Canadian Radio-television and Telecommunications Commission (the "CRTC" or the "Commission") regulates the offering of telecommunications services in Canada. Additionally, Bell which serves portions of the provinces of Quebec and Ontario is subject to a specific statute which governs certain aspects of that company's operations.[7]

The *Telecommunications Act* sets out the powers the CRTC exercises and the duties it performs. The Act directs[8] the CRTC to exercise these powers and perform these duties with a view to implementing the

---

[3] (U.K.) 30 & 31 Vict., ch 3. A copy can be found at http://www.canlii.org/en/ca/const/const1982.html.

[4] *Alberta Government Telephones* v. *Canada (CRTC)* [1989] 2 S.C.R. 225 (http://scc.lexum.umontreal.ca/en/1989/1989scr2-225.html); Téléphone *Guèvremont Inc.* v. *Québec (Régie des Télécommunications)* [1994] 1 S.C.R. 878 (http://scc.lexum.umontreal.ca/en/1994/1994scr1-878/1994scr1-878.html)

[5] Ryan, Michael H. *Canadian Telecommunications Law and Regulation* Carswell, (1993, periodic updates) (2010 2nd release edition), paragraph 106.

[6] S.C. 1993, c.38 as amended (the Act can be found at http://laws.justice.gc.ca/en/T-3.4/).

[7] *Bell Canada Act*, S.C. 1987, ch. 19.

[8] In section 47 of the Telecommunications Act.

Canadian telecommunications policy objectives set out in section 7 of the *Act*. Those objectives are as follows:

> *(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;*
>
> *(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;*
>
> *(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;*
>
> *(d) to promote the ownership and control of Canadian carriers by Canadians;*
>
> *(e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;*
>
> *(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;*
>
> *(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;*
>
> *(h) to respond to the economic and social requirements of users of telecommunications services; and*
>
> *(i) to contribute to the protection of the privacy of persons.*[9]

Under the *Act*, the offering and provision of any telecommunications service by a Canadian carrier[10] are subject to any conditions imposed by the CRTC or included in a tariff approved by the Commission.[11] Canadian carriers are prohibited from offering a telecommunications service except in accordance with a tariff filed with and approved by the CRTC.[12] The rates charged by a Canadian carrier for a telecommunications service must be "just and reasonable".[13] A Canadian carrier is also prohibited from "unjustly discriminat[ing] or giv[ing] an undue or unreasonable preference toward any person, including itself, or subject[ing] any person to an undue or unreasonable disadvantage" in providing, or charging a rate for, a telecommunications service.[14] The CRTC determines what is a just and reasonable rate, as well as whether unjust discrimination, an undue or unreasonable preference or an undue or

---

[9] Ibid., section 7 at http://laws.justice.gc.ca/eng/T-3.4/page-1.html#anchorbo-ga:l_I-gb:s_7.

[10] Canadian carrier is defined in section 2 of the *Telecommunications Act*.

[11] Telecommunications Act, section 24.

[12] Ibid., section 25.

[13] Ibid., section 27.

[14] Ibid.

unreasonable disadvantage have occurred, as matters of fact.[15] As discussed later, the Commission's policies regarding service providers' obligations in relation to the supply of services to persons with disabilities rely substantially upon the previously mentioned provision prohibiting unjust discrimination or preferences and upon a balancing of the objectives of Canada's telecommunications policy.

The *Act* further sets out eligibility rules for Canadian carriers, in the form of Canadian ownership and control requirements.[16] These requirements apply solely to Canadian carriers and not to resellers (provided they are not also Canadian carriers) or to the suppliers of services to Canadian carriers (who are not themselves Canadian carriers).

The *Telecommunications Act* empowers the CRTC to "forbear" or refrain from exercising certain of its powers[17] associated with the offering of telecommunications services by a Canadian carrier under certain circumstances. The ability to forbear in certain circumstances enables the Commission to, in effect, deregulate telecommunications services of a given class (in other words, exempt certain Canadian carriers from the application of some of the provisions of the Act, as defined by the Commission and subject to such conditions as the Commission may consider appropriate).

In most instances in which it has forborne, however, the Commission has retained its powers to impose conditions upon the offering of a telecommunications service (section 24 of the *Act*). In many instances it has also retained its authority to prohibit unjust discrimination or preferences (under section 27(2) of the *Act*).

In the proceeding it conducted to consider granting forbearance to the ILECs for their local telephony rates and conditions, the Commission addressed concerns raised by some parties regarding access to services by customers with disabilities. The Commission confirmed that one of the reasons it was retaining its authority under section 27(2) and its powers under section 24 of the *Act*, was to address potential problems in this area:

> *The Commission notes that, over the years, it has been required to make determinations mandating that the ILECs and competitors accommodate the needs of persons with disabilities or vulnerable consumers. The Commission further notes that in Decision 97-8 [in which it allowed local exchange competition and forbore from regulating most services offered by new entrants], the Commission retained its powers under subsection 27(2) of the Act in relation to CLEC retail local exchange services.*
>
> *The Commission is not convinced that the operation of market forces will serve to discipline the behaviour of ILECs with respect to vulnerable customers such as customers*

[15] *Telecommunications Act*, section 27(3). Findings of fact are final, *Telecommunications Act* section 64.

[16] Which are set out in section 16 of the *Telecommunications Act*

[17] Those set out in the Telecommunications Act: sections 24 (conditions may be set by the Commission), 25 (telecommunications services subject to the prior approval of tariffs by the Commission), 27 (rates must be just and reasonable, no unjust discrimination, undue preferences), 29 (prior approval by CRTC of certain agreements with other telecommunications common carriers) and 31 (approval of carrier limitations of liability).

with disabilities. The Commission notes that it has had, in the past, to address problems involving vulnerable customers served by competitors that already operate in a largely unregulated environment….

The Commission notes that, in Decision 97-8, it retained its powers and duties under subsection 27(2) of the Act so that it could respond to complaints alleging unjust discrimination and undue preference in relation to services provided by CLECs to both end-users and other carriers. The Commission did so to ensure access to CLEC facilities to enhance the efficiency and effectiveness of the Canadian telecommunications industry. The Commission considers that the concerns expressed in Decision 97-8 with respect to the need to retain subsection 27(2) of the Act in the case of CLECs apply with equal force in the case of ILECs in forborne markets established pursuant to the local forbearance framework. [18]

The CRTC is required to exercise its powers in accordance with any orders made by the Governor in Council[19]. In December 2006, the Governor in Council made an *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*[20] (the "Policy Direction").

Under the Policy Direction, the Commission in the exercise of its powers and the performance of its duties under the *Act*, has been directed to implement the Canadian telecommunications policy objectives set out in the Act and to rely on market forces to the maximum extent feasible as the means of achieving those policy objectives.

The Commission has also been directed to use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the telecommunications policy objectives.

When it relies on regulation, the Commission has been directed to use measures that:

a) specify the Canadian telecommunications policy objective that is advanced by those measures and demonstrate their compliance with the Policy Direction;

b) if they are of an economic nature, neither deter economically efficient competitive entry into the market nor promote economically inefficient entry,

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

d) if they relate to network interconnection arrangements or regimes for access to networks, buildings, in-building wiring or support structures, ensure the technological and competitive neutrality of those arrangements or regimes, to the

---

[18] Telecom Decision CRTC 2006-15 *Forbearance from regulation of retail local exchange services*, http://www.crtc.gc.ca/eng/archive/2006/dt2006-15c.htm, paragraphs 458-460.

[19] Telecommunications Act, section 47.

[20] P.C. 2006-1534 December 14, 2006 http://laws.justice.gc.ca/en/showdoc/cr/SOR-2006-355/.

greatest extent possible, to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers;

Further to the issuance of the Policy Directive, the Commission has conducted a review of its regulatory measures. Among the measures the Commission has reviewed are those which relate to accessibility to telecommunications services by persons with disabilities.[21]

2.2. Rights of People with Disabilities

This section reviews the rights of people with disabilities as pertains to the Constitution Act's *Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, and the *U.N. Convention on Rights of Persons with Disabilities*. The Commission's application of these three instruments is discussed following their definitions.

2.2.1. Charter of Rights and Freedoms

Canada's Constitution Act also sets out a Charter of Rights and Freedoms (the *Charter*)[22]. Section 15 of the Charter states that:

> *(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*
>
> *(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability*

2.2.2. Canadian Human Rights Act

The Canadian Human Rights Act ("CHRA") prohibits:

> *… discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.*[23]

The legislation's application is limited to "matters coming within the legislative authority of Parliament".[24] On at least one occasion, the Commission has observed that the impact of the CHRA

---

[21] The outcome of this review was Telecom Regulatory Policy 2009-430, discussed below.

[22] Schedule B to the Canada Act 1982, (U.K.) 1982, c. 11

[23] R.S.C. 1985, c. H-6 (as am.), section 2

[24] Ibid.

upon telecommunications services it regulates must be assessed within a broader context.[25] The Commission adopted this broader context on the basis that the *Telecommunications Act* sets out a range of policy objectives specifically focused upon telecommunications services -- which the Commission must balance, whereas CHRA sets out general prohibitions against discrimination based on a list of grounds. Section 47 of the Telecommunications Act specifically requires the Commission to "exercise its powers and perform its duties under this Act and any Special Act [such as the Bell Canada Act] with a view to implementing the Canadian telecommunications policy objectives."

2.2.3. U.N. Convention on the Rights of Persons with Disabilities

Canada is a signatory to and has ratified the United Nations' *Convention on the Rights of Persons with Disabilities.* [26] Article 9 of the Convention addresses accessibility.

Article 9 provides that "State Parties" undertake to "take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, … to information and communications, including information and communications technologies and systems…."[27]

---

[25] See, for example, Telecom Decision CRTC 2006-15, paragraph 459.

[26] UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, (available at: www.unhcr.org/refworld/docid/45f973632.html). Canada, however, has not ratified or signed the *Optional Protocol to the Convention on the Rights of Persons with Disabilities* (available at: www.un.org/disabilities/default.asp?id=311).

[27] Article 9 in its entirety provides as follows:

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
    a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
    b) Information, communications and other services, including electronic services and emergency services.
2. States Parties shall also take appropriate measures:
    a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
    b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
    c) To provide training for stakeholders on accessibility issues facing persons with disabilities;
    d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
    e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
    f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

[footnote continues on next page]

2.2.4. Commission application of *Canadian Human Rights Act*, *Charter*, and *Convention*

In Telecom Decision CRTC 2004-47, the Commission set out its approach to the protections set out in the *Charter* and in the *CHRA* regarding discrimination based on physical disability in relation to the supply of telecommunications services. The Commission described its approach as follows:

> *The Commission notes that, unlike other bodies responsible for administering human rights codes whose mandates are exclusively human rights in nature, the Commission's mandate under the Act is to regulate the telecommunications system in Canada. Part of that mandate, as expressed in subsection 27(2) of the Act, includes an anti-discrimination provision which obliges the Commission to ensure that Canadian carriers provide telecommunications services in a manner that is not unjustly discriminatory. Given the breadth of the Canadian telecommunications policy objectives contained in section 7 of the Act and the direction contained in subsection 47(a) of the Act, regulation of the telecommunications system necessarily involves the balancing of competing objectives. Thus, in determining whether the discrimination is unjust and in developing an appropriate regulatory response, the Commission must make a polycentric policy decision that balances multiple objectives and competing interests. The Commission would not be fulfilling its mandate if it engaged solely in a human rights analysis divorced from consideration of the full range of Canadian telecommunications policy objectives.*
>
> *Accordingly, the Commission's polycentric approach to determining what constitutes "unjust" discrimination in the provision of a telecommunications service utilizes leading Canadian human rights principles that recognize that equality is a fundamental value and central component of the public interest and further considers an application of those principles within the broader policy framework imposed by section 7 of the Act.*[28]

In Broadcasting and Telecom Regulatory Policy 2009-430 *Accessibility of telecommunications and broadcasting services* ("TRP 2009-430")[29] the Commission determined that its findings set out in that Regulatory Policy (which is discussed further below) were consistent with the provisions of the Charter of Rights and Freedoms:

> *As a regulatory tribunal, the Commission must exercise its powers to implement the policy objectives set out in the Broadcasting Act and the Telecommunications Act. The Commission must also act in a manner that is consistent with the Canadian Charter of Rights and Freedoms.*

---

g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

[28] Telecom Decision CRTC 2004-47 *Access to pay telephone service*, (http://www.crtc.gc.ca/eng/archive/2004/dt2004-47.htm), paragraphs 134, 135.

[29] http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm.

> *Given the breadth of the broadcasting and telecommunications policy objectives contained in section 3 of the Broadcasting Act and section 7 of the Telecommunications Act and the directions contained in section 5 of the Broadcasting Act and section 47 of the Telecommunications Act, regulation of the broadcasting and telecommunications systems necessarily involves the balancing of competing objectives.*
>
> *Thus, in assessing the reasonableness of the accommodations proposed in this proceeding, the Commission has considered the extent to which resources are available in the context of paragraph 3(1)(p) of the Broadcasting Act and whether or not discrimination in the provision of or the charging of a rate for a telecommunications service is "unjust" within the meaning of subsection 27(2) of the Telecommunications Act.*
>
> *The Commission has done so within the broader policy framework imposed by the governing legislation and, in the case of telecommunications, with reference to the Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* [P.C. 2006-1534, 14 December 2006] *(the Policy Direction). In considering whether or not the proposed accommodations are reasonable, the Commission has also utilized leading Canadian human rights principles that recognize that equality is a fundamental value and central component of the public interest.*[30]

Regarding the reasonable character of proposed arrangements to meet the expressed needs of persons with disabilities, the Commission has stated that a service arrangement provided to customers with a disability need not be equivalent to services provided to non-disabled customers. In Telecom Decision CRTC 2007-20, the Commission stated that:

> *… in certain circumstances, access to a service may not be provided on an equivalent basis. For example, accommodation via a third person, which could raise privacy issues, might not constitute an equivalent alternative. On the other hand, the use of an additional piece of terminal equipment such as a telephone set adjunct may be a reasonable accommodation that provides suitable equivalency in certain circumstances.*[31]

The approach to *Charter* obligations set out in Decision 2004-47 and in TRP 2009-430 would also likely apply to undertakings set out in the *Convention*. It is worth noting in this respect that the obligations and undertakings set out in section 9 of the *Convention* refer to the taking of "appropriate measures". The decision as to what constitute "appropriate measures" appears to be left to the State Parties themselves. The reference to "appropriate measures" also implies that it is appropriate (and consistent with the provisions of the *Convention*) for the Commission when it renders a decision regarding the

---

[30] Paragraphs 3-6.

[31] Telecom Decision CRTC 2007-20 *Access to certain telecommunications services by persons who are blind* http://www.crtc.gc.ca/eng/archive/2007/dt2007-20.htm, paragraph 43.

rights of persons with disabilities to balance all of the objectives of Canada's telecommunications policy (set out in section 7 of the *Act*) and to reflect the directions issued in the Policy Direction.

2.3. Telecommunications Customer Privacy and Confidentiality

Virtually all Canadian carriers and telecommunications service providers that rely upon underlying services or facilities to provide telecommunications services are subject to basic requirements set by the CRTC regarding customer privacy and confidentiality.[32]

The Commission's requirement is that, subject to certain exceptions (discussed below) unless disclosure is made pursuant to a legal power, a TSP is prohibited from disclosing any customer information to any person other than the customer without the written consent of the customer, other than for the customer's name, address and listed telephone number.[33]

The restrictions regarding the disclosure of confidential customer information are subject to exceptions. Customer information may thus not be disclosed to anyone **other** than:

1) *the customer;*
2) *a person who, in the reasonable judgment of the Company, is seeking the information as an agent of the customer;*
3) *another telephone company, provided the information is required for the efficient and cost effective provision of telephone service and disclosure is made on a confidential basis with the information to be used only for that purpose;*

---

[32] With the exception of mobile wireless services that are not switched, such as paging providers.

[33] These privacy and confidentiality requirements were initially approved by the Commission in Telecom Decision CRTC 86-7 *Review of the general regulations of the federally regulated terrestrial telecommunications common carriers (available at:* http://www.crtc.gc.ca/eng/archive/1986/DT86-7.HTM). *In Decision 97-8, applicability of the requirements was extended to all competitive LECs and resellers.* For all local exchange carriers, the rule was modified in Order CRTC 2001-279 *Provision of subscribers' telecommunications service provider identification information to law enforcement agencies*, (available at http://www.crtc.gc.ca/eng/archive/2001/o2001-279.HTM) and in Telecom Decision CRTC 2002-21 *Provision of subscribers' telecommunications service provider identification to law enforcement agencies*, (available at http://www.crtc.gc.ca/eng/archive/2002/dt2002-21.htm). In Telecom Decision CRTC 2004-27 *Follow-up to Telecom Decision CRTC 2003-33 - Confidentiality provisions of Canadian carriers*, (available *at* http://www.crtc.gc.ca/eng/archive/2004/dt2004-27.htm*),* the Commission directed all Canadian carriers "as a condition of providing telecommunications services, to include in their service contracts or other arrangements with resellers the requirement to abide by the confidentiality provisions established in Decision 86-7, as modified from time to time". In Telecom Decision CRTC 2005-15 Part VII application to revise Article 11 of the Terms of Service (available at http://www.crtc.gc.ca/eng/archive/2005/dt2005-15.htm), the Commission modified its requirements regarding customer consent *to expand the list of methods which may be used to obtain a customer's consent for the disclosure of confidential customer information.* In Telecom Regulatory Policy CRTC 2009-723 *Regulatory measures associated with confidentiality provisions and privacy services*, the Commission revised its rules to permit the disclosure of confidential customer information to affiliates that provide telecommunications or broadcasting services. The Commission also requires all LECs, resellers who provide local telephone service and VoIP service providers who offer local voice service, to offer services designed to protect customer privacy, namely call display, call display blocking, and call trace.

4) *a company involved in supplying the customer with telephone directories, provided the information is required for that purpose; or*
5) *an agent retained by the Company in the collection of the customer's account, provided the information is required for that purpose.*

Items 2) and 3) above, could presumably include relay (including VRS) operators, provided these service providers are themselves subject to contractual confidentiality requirements.

Canada's Criminal Code[34] ("the Code") sets out restrictions regarding the "interception" of "private communications. Section 184 (1) of the Code states that:

> *Everyone who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence.*

Interception under the Code includes the following activities: to "listen to, record or acquire a communication or acquire the substance, meaning or purport thereof".[35] A private communication is defined as:

> *any oral communication, or any telecommunication, that is made by an originator who is in Canada or is intended by the originator to be received by a person who is in Canada and that is made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended by the originator to receive it, and includes any radio-based telephone communication that is treated electronically or otherwise for the purpose of preventing intelligible reception by any person other than the person intended by the originator to receive it.*[36]

It appears highly unlikely, however, that these provisions could be invoked to restrict the provision of TTY Relay, IP Relay or VRS since section 184 (2) provides, as an exception to section 184(1), that the offence of interception in section 184(1) does not apply to:

> *(a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it.*

[34] R.S., 1985, c. C-46 as am.

[35] Criminal Code, section 183.

[36] Ibid.

3. Relay Services: Background, Obligations, Rating and Pricing

3.1. TTY Relay Service

3.1.1. Policy and rationale

A requirement to provide access to TTY Relay Service[37] was first established by the Commission in Telecom Decision CRTC 85-29 ("Decision 85-29"). This decision, which focused upon British Columbia Telephone Company ("B.C. Tel", subsequently (in 1999) merged with AGT Limited (serving the province of Alberta) to form what is now Telus Communications Company ("TCC")), directed B.C. Tel to provide TTY Relay to its customers in British Columbia. In Decision 85-19, the Commission set out the following rationale underlying the direction:

> *In providing telephone service, B.C. Tel is providing a means by which subscribers who pay primary exchange service rates can communicate with other subscribers. Hearing impaired subscribers pay full rates to B.C. Tel for primary exchange service and, as well, incur expenses for their own special terminals, the TDD's. They should, therefore be provided by B.C. Tel with the same ability as any other subscriber to communicate with any and all other subscribers. The Commission believes that the [TTY Relay Service Centre operated and funded by B.C. Tel] is the best method currently available to provide the hearing impaired with this ability and considers that it is B.C. Tel's responsibility to provide it.*
>
> *The Commission wishes to emphasize that this is not a question of ordering a telephone company to provide a service enhancement or a discount, at its own cost, due to the disability of a particular class of customer. Rather, it is the provision by a telephone company, to rate paying subscribers, of the means to use the telephone on a basis that attempts to provide access comparable to that of other subscribers.*[38]

In subsequent decisions and orders, the Commission reiterated this rationale. More recently, in Telecom Regulatory Policy 2009-430, the Commission set out its rationale in the following terms:

> *In previous decisions, the Commission has established a policy framework that recognizes the telecommunications needs of persons with hearing and speech disabilities. The Commission determined that Canadians with hearing and speech disabilities should have the same ability as other users of telephone services to communicate using such services. It also noted that relay services provide persons with hearing or speech disabilities with the technical means to communicate via a telephone call with other subscribers.*

---

[37] In this document the term "TTY" (Teletypewriter) is used instead of "TDD" (Telecommunications Device for the Deaf), as TDD is now obsolete. The exception to this is when TDD is found in a passage cited in a document from a third party, in which case the original wording has not been altered.

[38] Decision 85-29, section II: Responsibility to provide VRSC. The decision can be found at http://www.crtc.gc.ca/eng/archive/1985/DT85-29.HTM.

3.1.2. Functional scope of the obligation to provide TTY Relay

In its initial decisions regarding TTY Relay, the Commission set out the functional scope of the obligation to provide the service. In Decision 85-29, the Commission described the functionality provided as:

> *…the means by which hearing impaired subscribers, who must use telecommunications devices for the deaf (TDD's) to use the telephone network, can send messages to, and receive them from, other telephone subscribers. These messages are relayed by specially trained operators located at the [TTY Relay Service Centre].*

The Commission noted in this decision as well as in subsequent ones that "24 hour operation of the VRSC to handle all calls to and from the hearing-impaired is consistent with the Commission's view that the hearing-impaired should have telephone access which closely approximates that of other subscribers". More recently, the Commission reiterated this requirement in TRP 2009-430.[39]

In Decision 85-29 and in subsequent decisions, the Commission has stated that TTYs would be supplied by the subscriber.[40]

In Decision 85-29, the Commission also determined that the LEC with responsibility to provide TTY Relay should have the ability to choose the location from which the service is provided.[41] More generally, the Commission also stated that the LEC with responsibility to provide the service should control the manner in which the service is provided:

> *The Commission considers that B.C. Tel's responsibility to provide the VRSC requires that the company have sufficient control over the service to enable it to discharge this responsibility. Accordingly, the company should have the discretion with respect to the method of providing the VRSC that it does with any of its other services.*[42]

3.1.3. Who must provide TTY Relay service

In a series of decisions and orders following Decision 85-29, the Commission extended the requirement to all of the other ILECs[43]. Furthermore, in Telecom Decision 1997-8 *Local Competition*, the Commission extended the obligation to provide TTY Relay to include all Local Exchange Carriers ("LECs"), namely, all

---

[39] Para. 11.

[40] Decision 85-12, Section II Responsibility to provide VRSC: "Hearing impaired subscribers pay full rates to B.C. Tel for primary exchange service and, as well, incur expenses for their own special terminals, the TDD's."

[41] Decision 85-29, section III: VSRC Operations, para. B.

[42] Decision 85-29, Section VI, BC Tel's role in the VRSC.

[43] For example, Telecom Decision CRTC 86-17 Bell Canada – Review of Revenue Requirements for the Years 1985, 1986 and 1987 (http://www.crtc.gc.ca/eng/archive/1986/DT86-17.HTM); Island Tel and Maritime Telephone and Telegraph in CRTC Telecom Letter Decision 90-17 (http://www.crtc.gc.ca/eng/archive/1990/90-17.HTM) ; in Telecom Decision CRTC 90-15 Newfoundland Telephone Company Limited – Revenue Requirements for the Years 1990 and 1991 and Attachment of Customer-Provided Multi-Line Terminal Equipment (http://www.crtc.gc.ca/eng/archive/1990/DT90-15.HTM).

Small ILECs ("SILECs") and Competitive Local Exchange Carriers ("CLECs"), as well as the ILECs. The Commission extended the obligation to provide TTY Relay to wireless CLECs in Telecom Order CRTC 98-1.[44] In Telecom Decision 2005-28 *Regulatory framework for voice communication services using Internet Protocol*, the Commission required all VoIP service providers (fixed as well as nomadic VoIP services) to provide TTY Relay. Resellers who resell other LECs' services to provide local exchange telephony are also required to provide TTY Relay, pursuant to the serving obligations set out in the underlying LECs' contractual arrangements[45] when such LECs provide underlying services to resellers. Service providers meet their obligation to provide TTY Relay by supplying the relay operator service functionality themselves or by outsourcing the supply of this functionality to another provider (potentially a third party TTY Relay operator service provider or an ILEC).

TTY Relay is also part of what the CRTC has referred to as the "basic service objective" ("BSO")[46]. The BSO sets a basic level of telephone service that the CRTC requires the ILECs to meet. CLECs who want to have access to the CRTC's local service subsidy regime[47] (which provides a subsidy for retail rates in higher cost locations) must also meet the BSO.

3.1.4. Rating and pricing of TTY Relay

TTY Relay is provided at no charge to users of the service.[48] In Decision 85-29, the CRTC mandated BC Tel to recover its TTY Relay costs from its rate base. In Telecom Decision CRTC 86-17,[49] the CRTC directed Bell to fund TTY Relay from its general body of telephone subscribers and rejected a request from Bell to set out a separate levy in customer bills on a per access line basis. This approach has been subsequently maintained. Costs (and rates) incurred to provide access to TTY Relay are bundled in the

---

[44] And to competitive pay telephone service providers in Telecom Decision CRTC 98-8 *Local Pay Telephone Competition* (http://www.crtc.gc.ca/eng/archive/1998/DT98-8.HTM).

[45] In accordance with Telecom Decision CRTC 97-8 *Local competition*, paragraph 279 (http://www.crtc.gc.ca/eng/archive/1997/DT97-8.HTM). For a more recent example, see paragraph 70 of Broadcasting and Telecom Regulatory Policy CRTC 2009-430 *Accessibility of telecommunications and broadcasting services* (http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm) regarding the implementation of the Commission's directives.

[46] Telecom Decision CRTC 99-16 *Telephone service to high cost serving areas* (http://www.crtc.gc.ca/eng/archive/1999/DT99-16.HTM).

[47] Established in Decision CRTC 2000-745 *Changes to the contribution regime* (can be found at http://www.crtc.gc.ca/eng/archive/2000/DT2000-745.htm). More recently, summarized and consolidated in Telecom Circular CRTC 2007-15 *The Canadian revenue-based contribution regime* (http://www.crtc.gc.ca/eng/archive/2007/ct2007-15.htm).

[48] There is no charge for use of TTY Relay for local calls. For long distance calls there is also no charge for use of the relay operator service. However, toll charges apply to long distance calls but such toll charges are subject to discounts: see, for example Telecom Decision CRTC 87-4 *British Columbia Telephone Company – 50% Discount for intra company message toll service rates for hearing or speech impaired subscribers* http://www.crtc.gc.ca/eng/archive/1987/DT87-4.HTM.

[49] http://www.crtc.gc.ca/eng/archive/1986/DT86-17.htm.

retail rates for local telephony services. The rate approved by the CRTC is applied on the basis of switched network access lines provided to all residence and business customers, and in Telecom Order 96-269, this was also extended to lines provided by independent telephone companies and cellular telephony providers[50] which interconnect to the ILECs' networks. In Telecom Order 96-269, the Commission also rejected a request by Bell Canada seeking to increase its TTY Relay rate from 13 cents per month per subscriber to 15 cents per month. In Decision 97-9, the Commission froze rates for TTY Relay services at the 13 cents level. [51]

As a result of forbearance, ILECs' retail telecommunications services rates have been forborne in a substantial proportion of locations.[52] Their competitors' retail rates have been forborne from the outset.[53] While long distance rates have been forborne, nonetheless, certain long distance calls placed using TTY Relay are subject to a discount (typically 50%) on applicable long distance charges.[54] Certain discounts also apply to long distance calls using TTY Relay placed from a pay phone. Registered TTY users are also eligible for a rebate on Canada-to-Canada long distance calls that are billed to their Bell Canada/Bell Aliant residential telephone service.

3.1.5. Wholesale obligations

The ILECs' TTY Relay services are required to be offered to other service providers under tariffs as "public good" services. Wholesale rates are identical to the retail rates and are also frozen.

---

[50] Telecom Order 96-269, http://www.crtc.gc.ca/eng/archive/1996/O96-269.HTM

[51] Rates were initially set based on incremental costs and a regulated mark-up. Rates were frozen at current levels in Telecom Decision CRTC 97-9 *Price cap Regulation and Related Issues*, paragraph 153 (http://www.crtc.gc.ca/eng/archive/1997/DT97-9.HTM). The freeze was continued in Telecom Decision CRTC 2002-34 *Regulatory framework for second price cap period*, (http://www.crtc.gc.ca/eng/archive/2002/dt2002-34.htm), paragraph 452 and in Telecom Decision CRTC 2007-27 *Price cap framework for large incumbent local exchange carriers* (http://www.crtc.gc.ca/eng/archive/2007/dt2007-27.htm).

[52] Additionally, re out-of-territory services: see Decision CRTC 2001-534 *Forbearance from regulation of incumbent local exchange carriers' out-of-territory services* (http://www.crtc.gc.ca/eng/archive/2001/DT2001-534.htm) and Telecom Decision CRTC 2006-15 (as amended*) Forbearance from the regulation of retail local exchange services* (http://www.crtc.gc.ca/eng/archive/2006/dt2006-15c.htm).

[53] I.e. for local exchange voice telephony service, in Decision 97-8. More generally, in Telecom Decision CRTC 95-19 *Forbearance – Services provided by non-dominant Canadian carriers* (http://www.crtc.gc.ca/eng/archive/1995/DT95-19.HTM)

54 This discount was first established by the Commission in Telecom Decision CRTC 80-14 Bell Canada, General Increase in Rate. When it removed the last constraints regarding the ILECs' long distance rates, the Commission retained the discount, see Telecom Decision CRTC 2007-56 Review of the regulatory constraints that apply to the basic toll schedules (available at: http://www.crtc.gc.ca/eng/archive/2007/dt2007-56.htm#n5*).* The discount also applies to calls billed to a business line, see Telecom Order CRTC 2000-17 (available at: http://www.crtc.gc.ca/eng/archive/2000/O2000-17.HTM).

3.2. IP Relay Service

3.2.1. Functional scope of IP Relay

In Broadcasting and Telecom Regulatory Policy CRTC 2009-430 (TRP 2009-430) the Commission directed all[55] service providers who are currently required to provide TTY Relay to also[56] provide IP Relay service. The Commission described the functionality provided by IP Relay service as follows:

> *In an IP Relay call, the relay operator transmits messages via Internet Protocol (IP)-based text conversation with a person with a hearing or speech disability and via voice conversation with a person without such a disability. The person with a hearing or speech disability communicates using text with the relay operator via the Internet and accesses the IP Relay service through the IP Relay provider's Web page or an Instant Messaging application using IP-based text messaging supported on a web-enabled device (mobile wireless phone, smartphone, web-capable telephone, etc.).*
>
> *From the perspective of a relay service user with a hearing or speech disability, IP Relay is a logical evolution of TTY Relay. Both TTY Relay and IP Relay are text-to-voice relay services; however, IP Relay is not subject to the same technological limitations as TTY Relay. IP Relay enables faster communication between the user with a disability and the relay operator (including calls to 9-1-1). IP Relay enables users to make relay calls using a web-capable device where there is Internet access. IP Relay allows users to see significantly more of the conversation on their computer screens than they can see with a TTY liquid crystal display (LCD) window. IP Relay allows users to print out and save conversations. IP Relay users can initiate multiple calls simultaneously and make conference calls. In light of the above, the Commission considers that the provision of IP Relay would provide significant benefit to TTY Relay users.*[57]

In TRP 2009-430, the Commission also confirmed that service providers may meet their obligation to offer IP Relay by providing the service themselves or by "outsourcing the provision of the service to a third-party"[58].

---

[55] To this end, the Commission required Canadian carriers to include in their contracts with wholesale customers who resell their services (typically known as resellers) to provide voice telephony a condition requiring resellers to meet the same requirement (TRP 2009-430, paragraph 23).

[56] The Commission stated (TRP 2009-430, paragraph 20) that:

> *The Commission further finds it appropriate to continue to require the provision of TTY Relay to meet the specific needs of certain Canadians - particularly those who are DeafBlind, those without Internet access and those who access relay services using payphones.*

[57] TRP 2009-430, paragraphs 16-17.

[58] Ibid., paragraph 21.

3.2.2. Rating, pricing and availability of IP Relay

The ILECs were directed in TRP 2009-430 to file tariffs for IP Relay for Commission approval. Evidence submitted to the Commission in the proceeding initiated by Telecom Public Notice 2008-8 *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities* indicated that the current rates recovered for TTY Relay exceeded (in the period 2004-2008) the costs incurred by the ILECs to provide TTY Relay.[59] On the basis of its finding that "the amount collected to provide TTY Relay has exceeded the amount required to provide it",[60] the Commission stated it did "not expect the proposed tariffs to include rate increases".

In TRP 2009-430, the Commission directed "all LECs, including wireless CLECs, and VoIP providers that are required to provide TTY Relay" to make IP Relay available by 21 July 2010.[61]

Further to requests received from a number of service providers early in 2010, the Commission on 25 June 2010 issued a revised timeline for the deployment of IP Relay service.[62]

Telus Communications Company filed a tariff for wholesale IP Relay service on 17 December 2010. As further explained in its filing letter, Telus chose to provide the service by way of a customer specific special facilities tariff, on the basis that, due to the presence of alternative operator service providers in the marketplace, wholesale IP Relay service should be offered based on customer-specific negotiated arrangements.[63]

---

[59] At the conclusion of this proceeding, the Commission in Broadcasting and Telecom Regulatory Policy RP 2009-430, stated (at paragraph 18) that:

> *... TTY Relay costs have decreased since the TTY Relay service rates were last adjusted. The record shows that, on average, between the years 2004 and 2008, the ILECs collectively collected $28.5 million per year and collectively spent $11.7 million per year to provide TTY Relay. During that period, the amount collected to provide TTY Relay has exceeded the amount required to provide it by an average of $16.8 million per year. The Commission finds that the recent excess in the rates collected to provide TTY Relay provides the funding to support the introduction and operation of IP Relay as an adjunct to TTY Relay via the same revenue stream.*

[60] However, see also Telecom Decision 2010-679 *TELUS Communications Company – Request for an additional drawdown from its deferral account for accessibility initiatives* (http://www.crtc.gc.ca/eng/archive/2010/2010-679.htm).

[61] TRP 2009-430, paragraph 21.

[62] Commission letter issued 25 June 2010, http://www.crtc.gc.ca/eng/archive/2010/lt100625.htm.

[63] TELUS, Tariff Notice 403 (filed on 17 December 2010), amended by Tariff Notice 403A (filed on 5 January 2011) (http://www.crtc.gc.ca/8740/eng/2011/T66.htm#201100023) In TN 403, TELUS notes that the proposed wholesale tariff contains " terms, conditions and rates of an arrangement which provides for IP Relay Service with service features that meet the specific requirements of a single large customer application". TELUS's wholesale tariff includes a one-time "set-up" charge ($2.28M) and a per second usage component which sets out two rates (one for the use of "onshore operators" and one for "offshore operators"). TELUS states that it is providing IP Relay service in this tariff "through a combination of "onshore" and "offshore" IP Relay service agents and the proposed [serving arrangement] includes different onshore and offshore rates."

By letter dated 8 December 2010,[64] Bell Canada and Bell Aliant[65] notified the Commission of their expectation that they would deploy retail and wholesale IP Relay services by 30 January 2011. In subsequent letters[66] a number of service providers notified the Commission that they would also require additional time and, more particularly that they would require up to 90 days following the availability of the Bell companies' wholesale IP Relay service to deploy IP Relay functionality to their own retail customers. By letter dated 22 December 2010,[67] the Commission set out revised dates for the deployment of IP Relay service. In a letter issued 11 January 2011 the Commission extended those dates to additional carriers who had requested delays. It also reiterated its direction to carriers to ensure that they file tariffs for IP Relay no less than 30 days prior to implementation and that they "report to the Commission via letter once they are providing access to IP relay services to their retail customers".[68]

3.3. Video Relay Service

3.3.1. Policy and rationale

In Telecom Decision CRTC 2008-1, the Commission gave its approval to separate proposals put forward by a number of ILECs, including Bell Canada, to enhance accessibility by persons with disabilities of their telecommunications services, notably their voice telephony services. These proposals included the development and launch of VRS. The Commission described the functionality to be provided by VRS in the following terms:

> *a service that would allow a person using sign language and another person using voice to communicate through a relay agent via high-speed Internet and a video camera.*[69]

The Commission found that the VRS proposals were consistent with its earlier directions regarding disposal of ILEC deferral account balances. These directions were set out in Telecom Decision CRTC 2006-9.[70]

---

[64] The letter can be found at: http://www.crtc.gc.ca/PartVII/eng/2008/8665/c12_200807943.htm. In addition to the request from Bell Canada and Bell Aliant, MTS Allstream requested an extension until 31 March 2011.

[65] The letter was also filed on behalf of KMTS, NorthernTel, Limited Partnership and Telebec, Limited Partnership. Implementation dates requested for these companies was 1 March 2011.

[66] The various requests are reproduced out in section 2a) of the CRTC's website associated with the following proceeding: Broadcasting Notice of Public Hearing 2008-8 - Telecom Public Notice CRTC 2008-8 - *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities* (http://www.crtc.gc.ca/PartVII/eng/2008/8665/c12_200807943.htm).

[67] The letter can be found at http://www.crtc.gc.ca/eng/archive/2010/lt101222.htm.

[68] See http://www.crtc.gc.ca/eng/archive/2011/lt110111b.htm.

[69] Decision 2008-1, paragraph 6.

[70] Further to the implementation, in the mid 1990s of price cap regulation in relation to the regulated services of the ILECs (in Telecom Decision CRTC 94-19 *Review of Regulatory Framework* (http://www.crtc.gc.ca/eng/archive/1994/DT94-19.HTM) and Telecom Decision CRTC 97-9 *Price Cap Regulation*

[footnote continues on next page]

The Commission also found, however, that:

> *… while the ILECs sought Commission approval to set aside deferral account funds for future accessibility initiatives, their proposals in respect of these future initiatives contained little information about the initiatives themselves. The Commission considers that reports alone will not allow interested parties an opportunity to understand, assess, and comment on the proposals. The Commission considers that a public proceeding is the appropriate vehicle to ensure that the future accessibility proposals meet the requirements of persons with disabilities and Telecom Decision 2006-9. Accordingly, the Commission directs Bell Canada, MTS Allstream, and TCC to submit their future accessibility proposals for Commission approval.*[71]

In Broadcasting Notice of Public Hearing CRTC 2008-8 and Telecom Public Notice CRTC 2008-8 *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities* (PN 2008-8), the Commission initiated a public proceeding to seek public comments regarding, *inter alia*, its findings regarding VRS in Decision 2008-1.[72]

At the conclusion of the PN 2008-8 proceeding, the Commission issued its determinations in TRP 2009-430.

In TRP 2009-430, the Commission noted the views expressed by some parties in the proceeding regarding TTY Relay:

> *At present, the Commission's requirement on TSPs to provide relay service applies to TTY Relay exclusively. Parties to this proceeding representing the interests of persons with hearing and speech disabilities submitted that due to the limitations and obsolescence of teletypewriter (TTY) technology, the provision of TTY Relay alone is no longer the best method for persons with hearing and speech disabilities to access telephone services. These parties submitted that IP Relay and Video Relay offer significant improvements*

---

and Related Issues), the Commission in 2002 established a deferral accounts mechanism (in Telecom Decision CRTC 2002-34 *Regulatory framework for second price cap period*). Under this mechanism, the Commission directed the ILECs to establish deferral accounts. Under a deferral account mechanism, an amount equal to a revenue reduction which would otherwise have been required under the Commission's price caps regulatory regime a basket is set aside by each of the ILECs and assigned to the deferral account. Such amount is retained in the deferral account. The balance in the deferral account is available for use, as determined by the Commission. In Decision 2008-1, the Commission directed the ILECs to submit for its approval proposals to improve accessibility by persons with disabilities.

[71] Decision 2008-1, paragraph 23.

[72] The proceedings leading to Decision 2008-1 and following PN 2008-8 gave rise to a number of proposals/comments regarding the standards and/or functionality which should apply to VRS. See for example on the proceeding which led to Decision 2008-1: from the Canadian Hearing Society, filed 14 February 2007: http://www.crtc.gc.ca/public/partvii/2006/8678/c12_200615578/727456.PDF; comments from the Centre Québécois de la déficience auditive *et al*., filed 31 July 2007 (available at http://www.crtc.gc.ca/partvii/eng/2006/8678/c12_200615578.htm).

over TTY Relay and requested that the Commission require TSPs to also provide IP Relay and/or Video Relay.[73]

Later in TRP 2009-430, the Commission found that Video Relay service as proposed by the ILECs "provides significant benefit to those persons with hearing and speech disabilities who communicate via sign language (e.g. American Sign Language (ASL) or *Langue des signes québécoise* (LSQ))".[74]

The Commission also found, however, that the record of the proceeding was insufficient for it to render a determination whether or not to require the ILECs (or more generally, TSPs) to offer VRS. More particularly, the Commission determined that it lacked "critical information such as the costs of providing this service, the size of the individual ASL or LSQ Video Relay user markets, or projected use". The Commission also found, however, that "the record does indicate that the costs of providing a Video Relay service would be high, considering the need for high bandwidth and highly-skilled language interpretation in two sign languages".[75]

The Commission also provided the following service description for VRS:

> *Video Relay is a sign language-based relay service. In a Video Relay call, the relay operator communicates with the person with a disability via sign language and the person without a disability via voice. The person with a disability accesses the service by using any device capable of both high-speed (broadband) Internet access and video conferencing to reach the relay provider's website and/or video conferencing application to reach the relay operator. The person without a disability dials a toll free number to reach the relay operator using any telephone service. While access to a high-speed Internet connection and an Internet Protocol (IP) video camera enabled device capable of high-speed Internet access are necessary for the person with a disability to communicate with the Video Relay operator, these items are not part of the relay service offering.*[76]

In letters released the same day as TRP 2009-430 was issued, the Commission directed Bell and Telus to report back on an annual basis, providing the certain specified information regarding trials for VRS which each of Bell and Telus had identified as potential means of advancing the development of VRS service offerings. The information Bell and Telus were directed to provide is as follows:

a) Whether Bell [or TELUS, as the case may be] is providing the VRS directly or through a third-party provider. If using a third-party, provide the name of the third party;

b) The number of trial users/participants;

c) The number of VRS minutes provided per each month;

---

[73] TRP 2009-430, paragraph 14.

[74] TRP 2009-430, paragraph 24.

[75] Ibid., paragraph 25.

[76] TRP 2009-430, Appendix 1.

d) The total amount ($) spent for each month to support the VRS trial;

e) The number of ASL and/or LSQ translators required to support the number of users/minutes in the trial;

f) The cost of the sign language translators (per minute, hour, or month);

g) The cost of the Internet bandwidth required to support the trial.

The Commission also made the offering of VRS by any TSP subject to the filing of tariffs.[77]

3.3.2. Functionality provided

Based on the service description developed by the Commission in TRP 2009-430 (set out above), a VRS offering should provide access to a relay operator who can communicate with a person with a hearing disability via ASL or LSQ sign language. In the arrangement described by the Commission, the person without a disability accesses the operator via a voice line. Under current TTY Relay serving arrangements, this capability can be provided via a local call (or via a toll free number). It is reasonable to expect that this aspect would not change for VRS.

Access to the video relay operator by a hearing impaired user is established via a high speed Internet connection. For the customer with a hearing disability, it is the customer's responsibility to supply the high speed Internet connection as well as terminal equipment (and associated software) capable of transmitting and receiving video in order for the customer with a disability to reach the VRS operator and to communicate via ASL (English) or LSQ (French) sign language.

Depending upon demand in their respective serving territories, the ILECs today provide access to TTY Relay service operators in one or both official languages. In TRP 2009-430, the Commission did not specifically address the extent of TSPs' obligation to provide access to VRS in each of Canada's official languages. The Commission noted that the record of its proceedings at the time it issued TRP 2009-430 did not provide sufficient evidence regarding "the size of the individual ASL or LSQ Video Relay user markets, or projected use".[78] As mentioned above, when the Commission directed Telus and Bell to provide certain information on an annual basis, it included in its request information on the "number of ASL and/or LSQ translators required to support the number of users/minutes in the trial".

3.3.3. Rating and cost recovery

As noted earlier, in TRP 2009-430 the Commission determined that the record of the proceeding was insufficient for it to render a determination on whether or not to require the ILECs (or more generally, TSPs) to offer VRS. The Commission found that the record of the proceeding lacked "critical information such as the costs of providing [Video Relay] service, the size of the individual ASL or LSQ Video Relay

[77] In paragraph 27, the Commission stated that: "... any TSP may choose to provide Video Relay, on a regional or national basis, subject to Commission approval of a Video Relay tariff."

[78] TRP 2009-430, paragraph 25.

user markets, or projected use". The Commission directed Bell Canada and TELUS to develop more evidence on this aspect of the service functionality.

There are currently no specified rating or cost recovery models mandated by the Commission for VRS.

As mentioned earlier, the Commission has acknowledged that based on the information placed on the record of the proceeding which led leading to TRP 2009-430,[79] costs associated with VRS "would be high, considering the need for high bandwidth and highly-skilled language interpretation in two sign languages". That being said however, the Commission has also observed that inadequate data has been provided to enable it to determine whether the service should be mandated.

To date, the costs associated with TTY Relay have been recovered through a rate collected from service providers' general body of subscribers. The Commission has set what might be termed as a "deemed" or proxy rate which has been frozen for some time. As discussed earlier, for service providers whose retail local telephony rates are subject to regulation, the rate has been set by the Commission and is incorporated in such service providers' basic local telephone service rate. Where local exchange service remains regulated, the charge authorized by the Commission has been set at 13 cents per month per subscriber since the 1990s.

For service providers' whose basic service rates have been forborne (including wireless service providers), there does not appear to be any restriction on the rate the service provider charges its subscribers, provided that the same rate is charged consistently to all of the service provider's subscribers.[80] Even this may not necessarily constitute a requirement. Provided a service provider does not set its rate in a manner which targets customers with a disability, it is conceivable that a service provider could, for example, set a higher or lower rate for residential versus business customers. This issue has not arisen before or been determined by the Commission.

In any event, however, it appears unlikely that a usage-based rate charged to retail users of VRS (or of any of the other relay services) would survive challenge before the Commission[81] as such a rating mechanism would likely be found to unjustly discriminate against users of the service.

---

[79] See paragraph 25.

[80] In Decision 97-8 in which it forbore from regulating the services local exchange telephone service rates for the ILECs' competitors, the Commission retained its powers under section 27(2) "so that it can respond to complaints alleging unjust discrimination and undue preference in relation to services provided by [competitive LECs] both to end-users and to other carriers" (paragraph 266). The Commission also retained its powers under section 24" in order to impose on [forborne LECs] a variety of terms and conditions (e.g. consumer safeguards) set out in this Decision as well as those that may prove necessary in the future" (paragraph 265). While this matter is not entirely free from doubt, it appears unlikely that the Commission would permit LECs to set rates for TTY Relay, IP Relay or VRS which seek to recover costs associated with these services in a manner which discriminates against the users of these services.

[81] This may be less certain, however, in relation to service features of an optional or "premium" which a service provider might choose to make available (i.e. beyond the basic functionality specified by the Commission which all telephony service providers must provide). A potential example of such features might be the supply of operators

[footnote continues on next page]

Telus, late in 2010 (see discussion above), filed a usage-based IP Relay rate for its wholesale customers. The rate does not appear to primarily target users of the service but instead targets TELUS's wholesale customers. It is arguable that, in principle, a usage based rate charged to wholesale customers would present a number of advantages. Such a rate may be more symmetrical and competitively neutral than a fixed per subscriber rate by ensuring that the overall charge for the service paid by a service provider corresponds to the usage of the service made by its own end-customers. Such a rate may also provide a safeguard against fraud or misuse of the service by ensuring that each TSP who makes use of TELUS's service pays for the service on the basis of the actual usage its end-customers generate.

As discussed above, given the Commission's expectation that relay service costs should be recovered from service providers' general body of subscribers, it seems highly unlikely that a usage based rate could be extended to retail subscribers. This would apply whether the rates for the telephony service provided to retail subscribers are regulated or forborne since the Commission has retained its jurisdiction in relation to forborne telephony services under sections 24 and 27(2) of the *Act*.

Evidence submitted in the proceeding initiated by PN 2008-8 suggested that revenue generated by the mandated TTY Relay rate significantly exceeded the cost of providing TTY Relay. It is unclear at this point, however, whether the surplus (actual or deemed) generated by the mandated rate would be sufficient to cover costs incurred to provide TTY Relay, IP Relay, as well as VRS.

In the proceeding initiated by PN 2006-15 (leading to Decision 2008-1) one party raised a number of concerns[82] regarding certain cost recovery models, notably that in place in the U.S. In the U.S. VRS is offered by a number of third party suppliers. These suppliers' services are funded through access to a Federal Communications Commission-established fund supported by telecommunications service providers based on call volumes and usage. The party in question's concerns focused upon the alleged offering by U.S-based VRS providers of video relay service to Canadian users (who would not be eligible for funding from the fund in question). Retention in Canada of the CRTC's policy whereby telecommunications service providers fund relay service and select the supplier used to provide the

---

capable of translating between ASL or LSQ used by the customer with a disability and a language other than one of the two Official Languages (English or French) used by the party who does not have a disability. Similarly, translation between ASL and LSQ may be determined to be beyond the scope of basic VRS and therefore may be subject to an additional charge, potentially to reflect the higher cost associated with use of operators who can translate between ASL and LSQ.

[82] See comments of the Canadian Association of the Deaf filed 31 July 2007 in the proceeding initiated by PN 2006-15, (available at http://www.crtc.gc.ca/partvii/eng/2006/8678/c12_200615578.htm), paragraphs 14 and following. See also comments by TELUS Communications Company filed 12 January 2009 in the proceeding initiated by TNC 2008-8 (available at http://www.crtc.gc.ca/PartVII/eng/2008/8665/c12_200807943.htm#a2c) wherein TELUS expressed support in principle for the U.S. funding model but also stated (at paragraph 8) that:

> *prior to the implementation of such a fund in Canada, the Commission would need to determine which services are eligible for funding, the applicable qualifications of service providers eligible to receive payment and the base of telecommunications services providers that are required to contribute to the fund and at what rate. These are all complex questions that require discussion in a public forum.*

underlying relay operator services may alleviate the risk of replicating the alleged instances of fraud which have arisen in the U.S.

In the proceeding initiated by PN 2006-15, some parties put forward the suggestion that a single video relay service serving arrangement provided on a national basis may be desirable in Canada and may be preferable to the serving arrangement currently in place for TTY Relay Service whereby each telecommunications service provider supplies (directly or through a third party) the relay service.[83] It may be appropriate to note that a number of precedents have been set in Canada whereby a functionality has been mandated by the CRTC (or by another government entity) and means of providing the mandated functionality have been developed collectively by the Canadian TSPs. Examples include the Canadian LNP Consortium inc. (the "LNP Consortium"), the Central Fund Administration Consortium and the Commissioner for Complaints for Telecommunications Services (CCTS)[84].

The LNP Consortium[85] is charged with operating certain databases needed to support local number portability. Telecommunications service provider membership in the LNP Consortium is mandated by the CRTC.[86] Funding of the LNP Consortium is provided by the members and is based on a mechanism developed by the members and approved by the CRTC. The LNP Consortium does not itself manage and operate the databases in question but contracts with a supplier selected as the result of a periodic competitive process.

The CCTS was established by TSPs as the result of a direction in which the Governor-in-Council expressed the view that an "independent agency with a mandate to resolve complaints from individual and small business retail customers […] should be an integral component of a deregulated telecommunications market". The CCTS was created as a not-for-profit corporation and provides a complaint resolution service managed by a Commissioner (and his staff) who operates pursuant to the terms of an agreement between TSPs designed to ensure the CCTS's independence in the disposition of complaints.[87]

The establishment of an industry consortium to provide VRS would likely require a broad consensus among Canadian telecommunications service providers. Arrangements for the management of the consortium may also require CRTC approval. It is perhaps worth noting in this respect that at the outset

---

[83] Ibid.

[84] See the P.C. 2007-533 April 4, 2007 *Order requiring the CRTC to report to the Governor in Council on consumer complaints, available at* http://canadagazette.gc.ca/archives/p1/2007/2007-05-26/html/order-decret-eng.html

[85] Regarding the early development of the LNP Consortium, see for example Telecom Order CRTC 97-1243 (available at http://www.crtc.gc.ca/eng/archive/1997/O97-1243.HTM); Telecom Order 98-962 (can be found at http://www.crtc.gc.ca/eng/archive/1998/O98-962.HTM) in which the Commission approved a shareholder agreement (filed in confidence) setting out the operation and organization of the LNP Consortium.

[86] Decision 97-8, Telecom Decisions 2005-72 *Implementation of Wireless Number Portability* (available at: http://www.crtc.gc.ca/eng/archive/2005/dt2005-72.htm).

[87] See http://www.ccts-cprst.ca/

of TTY Relay the Commission expressed the view that telecommunications service providers should have flexibility in selecting the manner in which the service is provided.[88] It is reasonable to expect that the Commission's views would be consistent in relation to VRS.

Unless the VRS supplier is a Canadian carrier, there would likely be no legal constraints against the firm in question being non-Canadian owned or controlled. As discussed earlier, restrictions in the *Telecommunications Act* regarding Canadian ownership or control apply to Canadian carriers but not to their suppliers of facilities or services (unless such suppliers are themselves Canadian carriers).[89]

4. Access to Emergency Services

4.1. Availability and Functionality

At present access to emergency services for customers with a speech or hearing disability is available through use of TTY Relay. A caller with a disability can reach a 9-1-1 operator through a TTY-to-TTY call or through a TTY Relay operator (using a TTY device). In TRP 2009-430, the Commission noted that this technology has shortcomings:

> *Canadians who cannot communicate clearly via a voice call, because of a hearing or speech disability, must establish 9-1-1 communications either through a direct TTY-to-TTY call or through a TTY Relay call. The record of the proceeding indicates that both of these approaches have certain limitations that affect the ability of persons with hearing and speech disabilities to communicate clearly, quickly, or directly with 9-1-1 operators. First, reliable direct TTY-to-TTY access to 9-1-1 service is not guaranteed in all regions of Canada, largely because not all Public Safety Answering Points (PSAPs) are TTY-equipped. Second, there are inherent delays in using a TTY Relay operator to contact 9-1-1. Third, the caller's location and phone number are not automatically transmitted to the PSAP during a relay call as it is the relay operator who makes the call.*[90]

The Commission then went on to note that some parties in the proceeding leading to TRP 2009-430 had suggested that IP Relay might provide improved access to emergency 9-1-1 operators. In TRP 2009-430, the Commission expressed concern, however, regarding IP Relay, observing that the record of the proceeding:

---

[88] See Decision 85-29, section I

[89] See also comments submitted by the department of Foreign Affairs and International Trade of the Government of Canada ("the Department") to the FCC in a proceeding regarding the terms and conditions applicable to suppliers of VRS interpreter services in the United States. The document can be found at http://fjallfoss.fcc.gov/ecfs/document/view?id=7020911390 . In its comments, the Department expresses the view that a proposed restriction before the FCC "to require that all VRS call centers be located in the United States" would be unnecessary and "overly trade restrictive" (see page 2) and may be inconsistent with the provisions of the North American Free Trade Agreement (see page 3)

[90] TRP 2009-430, paragraph 30.

> *shows that 9-1-1 IP Relay calls are likely to be subject to significant limitations of access to 9-1-1/Enhanced 9-1-1 services. These include the effects of power and Internet outages on the ability to access 9-1-1 services, as well as the requirement for callers to provide location information to the IP Relay operator.*[91]

The Commission also noted that some parties to the proceeding had suggested that access to emergency 9-1-1 operators could be improved if callers with hearing and speech disabilities could communicate with emergency operators via text messaging "including short message service (SMS), Instant Messaging (IM) or Real-Time Text (RTT)".

In response to suggestions made during the public proceeding regarding the use of IP Relay and text messaging, the Commission requested the CRTC Interconnection Steering Committee[92] ("CISC") to investigate the matter and to report by the end of January 2010.

The Emergency Services Working Group ("ESWG") of CISC submitted a report to the Commission in January 2010.[93] In its report, CISC concluded that text messaging[94] to 9-1-1 operators were not "viable solutions at this time for people with hearing or speech disabilities to access 9-1-1 call centres".[95] The ESWG concluded that:

> *...in the long term, next-generation 9-1-1 standards and technologies that are currently in development could enable users to access PSAPs via multiple methods of texting to 9-1-1. The implementation of these capabilities will depend on the maturation level of IP networking and next-generation 9-1-1 networks and platforms. The CISC ESWG indicated that it would monitor these technologies and make recommendations on them when they meet enhanced 9-1-1 service criteria.*

---

[91] Ibid., paragraph 31.

[92] CISC is composed of representatives from the TSP community and its activities are overseen by Commission staff. Its purpose is to address operational and technical issues associated with the interconnection of networks and the implementation of competition in Canadian telecommunications. CISC investigates issues identified by the Commission and attempts, through discussions to develop solutions to issues, as requested by the Commission. By common agreement, CISC does not develop or propose policies or policy changes. In TRP 2009-430 the Commission directed CISC to "conduct an investigation and evaluation of the benefits, uses, and limitations of access to 9-1-1 services via various forms of text messaging, including SMS, IM, and RTT, as well as IP Relay" (paragraph 33).

[93] Report to the CRTC by the Emergency Services Working Group (ESWG) *Text Messaging to 9-1-1 (T9-1-1) Service*, Report Number ESRE0051, filed with the CRTC 21 January 2010 (available at http://www.crtc.gc.ca/cisc/eng/cisf3e4g.htm).

[94] Using SMS, IM, RTT, and IP Relay technology.

[95] Telecom Decision CRTC 2010-224 *CRTC Interconnection Steering Committee – Improving access to emergency services for people with hearing and speech disabilities* (http://www.crtc.gc.ca/eng/archive/2010/2010-224.htm), paragraph 3, citing ESRE0051.Report to the CRTC by the Emergency Services Working Group (ESWG) Text Messaging to 9-1-1 (T9-1-1) Service, Report Number ESRE0051 (available at http://www.crtc.gc.ca/cisc/eng/cisf3e4g.htm**).**

It should be noted that there is currently no equivalent in Canada to the use of ten-digit telephone numbers, which in the U.S. facilitate the routing, caller location, and processing of messages destined to 9-1-1. As noted by the ESWG in its report:

> *In the United States, the FCC has established the Telecom Relay Service (TRS), which consists of IP Relay and the Video Relay Service (VRS). In FCC DA 09-2389 (released November 5, 2009), the FCC clarified the use of TRS Communications Assistant Identification Numbers (CA IDs). On June 24, 2008, the FCC released the first TRS Order in which it adopted a uniform system for assigning users of VRS and IP Relay ten-digit numbers linked to the North American Numbering Plan (NANP). The numbering system was designed to further functional equivalency by ensuring that Internet-based TRS users can be reached by voice telephone users in the same way as voice telephone users are reached, as opposed to assigning dynamic (changing) IP addresses. The numbering system was also intended to ensure that emergency calls placed by Internet-based TRS users will be routed directly and automatically to designated emergency services authorities by Internet-based TRS providers. It is important to note this method for achieving direct and automatic routing to the designated emergency authority.*[96]

In its report, the ESWG proposed "further investigation of a potential work-around solution referred to as "SMS T9-1-1 via silent wireless voice call.""[97] The ESWG proposed undertaking a technical trial of this functionality. The trial was expected to span 12 to 18 months.[98]

In Decision 2010-224, the Commission directed CISC to conduct the trial, file status reports at 6 months intervals during the trial and, at the conclusion of the trial, file a report setting out the outcome of the trial and "...any further actions that would be required to implement the service."

Rating and cost recovery issues are considered to be outside the scope of CISC's activities and no rating or cost recovery proposals for a wireless SMS service were discussed or proposed by the ESWG.

---

[96] ESRE 0051, page 12.

[97] Decision 2010-224, paragraph 5.

[98] The ESWG proposed (in ESRE 0051, page 10) that trial include the following activities:

1. Determination of the most efficient method for "flagging" a silent T9-1-1 to a PSAP;
2. Determination of a SMS T9-1-1 registration process and architecture;
3. Development of a detailed technical specification for the service;
4. Development of a verification test plan;
5. Validation of the technical specification in a controlled telecommunications environment;
6. PSAP determination of the technical means, costs, funding, budgeting, and timing of implementing the T9-1-1 service;
7. Cost estimation to launch the service nationally, and proposing methods to fund same;
8. Determination of a reasonable rollout plan for all parties involved;
9. Identification of specific PSAP staff training requirements;
10. Identification of specific DHHSI community education requirements, e.g. how to register, how to place a T9-1-1 call, how to switch from voice to SMS;
11. Preparation of a technical trial concluding report to the Commission.

5. Market Structure of Services to People with Disabilities

As discussed earlier, in Canada telecommunications service providers are subject to defined requirements regarding the services they must make available to users who have hearing and/or speech disabilities. All local exchange carriers and wireless service providers (as well as service providers who resell these carriers' underlying services to provide voice telephony) are required to meet these requirements.

From the outset of relay service in the mid-1980s, the Commission's role has been to set basic or minimum requirements for the functionality telecommunications service providers must make available to users of their telecommunications services but has determined that the service providers themselves should determine how the functionality the regulator has defined should be provided. Service providers also determine whether such services are to be supplied through the use of their own personnel and equipment or by hiring third party operator services suppliers (for relay operators, for example). Canadian telecommunications service providers choose who will perform relay operator functions and they negotiate with their supplier the price for such service.

The ILECs have been required by the regulator to make their relay services available to other telecommunications service providers at CRTC-approved rates, terms and conditions. The ILECs have, in effect, been made suppliers of last resort.

From the outset, telecommunications service providers who are required to provide TTY Relay have been required to fund the service from their general body of subscribers.

Although the public record of relevant CRTC proceedings provides little information regarding operator service and equipment suppliers used by service providers to meet their relay service obligations, it appears that a number of service providers utilize the services of third party operator service providers to support TTY Relay service. Correspondence from the industry addressed to the CRTC in relation to delays in the implementation of IP Relay in 2010 also suggests that many telecommunications service providers (including some of the smaller ILECs) rely upon the largest ILECs (Bell Canada and TELUS Communications Corporation) to provide the service.

6. Conclusion

Canadian laws and regulations have established a legal framework for the operation of Message Relay Services by telecommunications service providers, currently in the form of TTY Relay and recently also IP Relay. This legal framework should support Video Relay Services as well, although the actual deployment, cost and payment structures may differ significantly. The deployment and cost models appropriate to VRS may include a number of possibilities, which will be subject to additional study as part of Bell Canada's VRS Feasibility Study project and final report.