



17 February 2005

Mr. Randy Hutson
Director – Competitive Disputes
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Chris Frank
Senior Director
Regulatory & Government
Affairs

Dear Mr. Hutson:

Subject: Competitive Access to Rogers Cable Inc.'s Inside Wire in Hotels, Hospitals, Nursing Homes and Other Commercial or Institutional Premises Served By Broadcasting Distribution Undertakings

1. INTRODUCTION

1. Bell ExpressVu LP ("ExpressVu" or "the Company") requests that the Commission implement an expedited dispute resolution mechanism to resolve a dispute regarding the Company's access to Rogers Cable Inc.'s ("Rogers") coaxial inside wire in hotels, hospitals, nursing homes and other commercial or institutional premises ("commercial properties"). For further clarity, this request applies to all properties that house transient residents.

2. Specifically, Rogers and its affiliates refuse to permit access to the inside wire they own in commercial properties as required by section 10 of the *Broadcasting Distribution Regulations* ("the *Regulations*"):

Transfer of Inside Wire to Customer

10. (1) A licensee that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, by another licensee, or by a broadcasting undertaking in respect of which an exemption has been granted, by order under subsection 9(4) of the Act, from the requirement to obtain a licence.

(2) The licensee that owns an inside wire may charge a just and reasonable fee for the use of the wire.

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(3) The licensee that owns an inside wire must not remove it from a building if a request for the use of the wire has been made and is pending under subsection (1), or while the wire is being used in accordance with that subsection.

3. Rogers' refusal prevents any other licensed broadcasting distribution undertaking ("BDU") from providing service to this class of subscribers and, as detailed below in section 3, is based on its narrow interpretation of the definition of "inside wire" and "demarcation point" in the *Regulations*. To date, Rogers is the only cable operator to refuse ExpressVu access to its inside wire in commercial properties.

4. At issue here are fundamental concerns regarding Rogers' behaviour that is contrary to the objectives of the *Broadcasting Act* and the policies of the Commission, which are intended to foster competition in the broadcasting distribution sector. Rogers is trying to perpetuate the dominant position in the market that cable companies enjoy, a position recently confirmed by the Commission:

[T]he Commission agrees...that cable remains the dominant supplier of broadcasting distribution services.¹

5. Rogers' refusal to afford access to its inside wire is detrimental to subscribers in this market segment and is part of a larger pattern of its anti-competitive behaviour, as exemplified by a Commission ruling in November:

The Commission concludes that...Rogers has acted in violation of section 9 of the Broadcasting Distribution Regulations (the Regulations). The Commission further concludes that Rogers would be acting in violation of subsections 10(1) and 10(2) of the Regulations if it were to invoke the [inside wire buy-back] clause...²

6. Thus, ExpressVu urges the Commission to take remedial action confirming that section 10 of the *Regulations* applies to commercial properties. Specifically, given that Rogers and ExpressVu cannot agree on this issue, and that Rogers' refusal to provide access is inhibiting the development of competition, ExpressVu respectfully requests that an expedited dispute resolution process be initiated immediately so that the Commission can quickly resolve the matter.

7. The Company further requests that the Commission not place the documented correspondence accompanying this request on the public record. Given that a specific, third-party subscriber is identified in this correspondence between Rogers and ExpressVu (see Attachment 1), the Company asks that confidentiality be granted to these attachments in order to respect the privacy of this third party.

2. COMPETITION IN THE PROVISION OF BDU SERVICE TO COMMERCIAL PROPERTIES

8. Most commercial properties housing transient residents offer television service in their suites by contracting the services of a licensed BDU. Prior to the advent of competition in the broadcasting distribution sector, the incumbent cable operators were the only BDUs serving this

¹ Broadcasting Decision CRTC 2004-496, *Regional broadcasting distribution undertakings in Ontario and Quebec*, 18 November 2004, paragraph 38.

² Broadcasting Decision CRTC 2004-494, *Complaint by Bell ExpressVu Limited Partnership against Rogers Cable Inc. alleging certain anti-competitive practices*, 12 November 2004, p. 1.

class of subscribers. The property owner/manager negotiates an agreement with a BDU for the provision of specific channels, for a specified term, at a fixed monthly price. In this context, and as defined in the *Regulations*, "...the owner or operator of a hotel, hospital, nursing home or other commercial or institutional premises to which service is provided by a licensee" is considered the "subscriber".

9. Commercial properties are generally built and wired much like a residential multiple-dwelling unit ("MDU"). That is, the BDU installs common distribution plant that terminates at a panel in an equipment room. The programming may be distributed to each individual suite via single coaxial cables ("inside wire") dedicated to those suites – usually referred to as "home run" wiring – or via a single coaxial cable that serves all suites by winding its way through each in serpentine fashion – generally known as "series looped" wiring. In either case, the demarcation point, i.e. the point at which the wire is diverted to the exclusive use and benefit of the subscriber who owns the suites, can be at one of two possible locations in the inside wiring configuration:

- should the existing configuration include a launch amplifier, then the demarcation point would be that point at which the jumper cable connects to the customer side of the launch amplifier; or
- should the existing configuration not include a launch amplifier, then the demarcation point would be a point 30 cm outside the exterior wall of the commercial premises.

For all practical purposes, a competitive BDU requires use of this inside wire in order to offer its service to the commercial property.

10. In those instances where the incumbent cable operator does claim ownership of this coaxial wire, section 10 of the *Regulations* requires that licensee to permit use of the inside wire by a subscriber – again, in this context, the owner or operator of the commercial property – or by another licensee (e.g., ExpressVu). ExpressVu has already acquired access to commercial inside wire owned by Whistler Cable and has a verbal understanding for similar access with Shaw Cable should the business opportunity arise. In either case, the demarcation point for the inside wire is one of the two possibilities presented above.

11. Rogers, however, refuses to provide access to any such wire that it owns in commercial properties. It has advised ExpressVu that its refusal is based on the fact that the *Regulations'* definition of "inside wire" is dependent on the definition of a "demarcation point":

"inside wire" means the wire that is used by a distribution undertaking for the distribution of programming services that extends from the demarcation point to one or more terminal devices inside a subscriber's residence or premises. It includes the outlets, splitters and faceplates that are attached or connected to the wire but does not include a secured enclosure that is used to house the wire and that is attached to the exterior wall of a subscriber's premises, an amplifier, a channel converter, a decoder or a remote control unit.

"demarcation point", in respect of the wire that is used by a distribution undertaking for the distribution of programming services to a subscriber, means

(a) if the subscriber resides in a single-unit dwelling,

(i) 30 cm outside the exterior wall of the subscriber's premises, or

(ii) any point to which the licensee and the customer have agreed;
and

(b) if the subscriber resides in a multiple-unit dwelling,

(i) the point inside the dwelling at which the wire is diverted to the exclusive use and benefit of that subscriber, or

(ii) any point to which the licensee and the customer have agreed.

12. Rogers contends that, while the Commission has established a demarcation point for residential single-family units and MDUs, it has not done so for commercial properties. Rogers has advised ExpressVu that, because the definition of demarcation point in the *Regulations* does not specifically refer to commercial properties, then by definition there can be no inside wire, and that Rogers is therefore not obligated by section 10 of the *Regulations*.

13. In correspondence with ExpressVu dated 8 August 2003 (see Attachment 1), Rogers explains its position with respect to the demarcation point:

Clearly the owner or operator does not reside in a single dwelling unit so (a) is not applicable. (b) (i) is not applicable because there is no place inside the dwelling where the wire is diverted to the exclusive use and benefit of that owner of the building. (b) (ii) is not applicable because we have not agreed on another point. There is therefore no demarcation point in a commercial building and therefore no inside wire, as defined, in a commercial building. Therefore, s. 10 does not apply to commercial premises.

14. ExpressVu disagrees with Rogers' narrow, self-serving interpretation. The Company submits that, contrary to Rogers' reading of (b) (i), the two possible locations specified above by ExpressVu are, in fact, the places, i.e., the demarcation point, inside the commercial property where the inside wire is diverted to the exclusive use and benefit of the subscriber, i.e., the commercial property's owner/operator, who benefits by being able to provide television programming to the transient residents of the property. The fact that the Commission neither specifically defines commercial property as a type of MDU, nor specifically defines a demarcation point for commercial properties in the *Regulations*, does not negate the physical reality of a commercial property's wiring scheme and in no way suggests that the Commission's policy of competition does not extend to commercial properties. Section 10 does indeed apply to commercial premises.

15. Clearly, all of this must be considered within the context of the Commission's overarching policy to promote competition in all segments of the broadcasting distribution market, and its *Regulations* designed to accomplish that end. Commercial properties are, for all intents and purposes, MDUs for transient residents, and the Commission's inside wire rules apply. As a result of Rogers' actions, an entire class of subscribers is denied access to the benefits of competition by the dominant provider of BDU services trying to sustain that dominance. When the Commission initiated its competition policy, it intended that the benefits of competition be available to all segments of the market. To conclude otherwise, as Rogers has done, is to engage in nothing less than a transparent effort to frustrate the long-standing competition policy of the Commission.

3. THE DISPUTE CANNOT BE RESOLVED THROUGH FURTHER DISCUSSION WITH ROGERS

16. Prior to approaching the Commission, ExpressVu attempted to resolve this matter with Rogers directly. The Company engaged in an exchange of e-mails between November 2004 and February 2005 requesting that Rogers agree in principle to provide access, and further agree to specific demarcation points as proposed by ExpressVu. However, Rogers continued to avoid a negotiated resolution.

17. After protracted delays, Rogers confirmed that it is "not prepared to provide Bell ExpressVu with access to our inside wire in commercial premises"³ (see Attachment 2). Rogers made no comment on the demarcation points proposed by ExpressVu (see Attachment 3), and declined to discuss technical arrangements for the transfer of inside wire. Negotiations, such as they were, appear to have ended.

4. THE DISPUTE CANNOT BE RESOLVED THROUGH FURTHER DISCUSSION AT CW-CISC

18. The CISC is the normal venue for resolving competitive issues between BDUs. However, the CW-CISC has been inactive for a prolonged period, and reconstituting it to discuss this issue would be inefficient given Rogers' predilection for delay. One of the key operating principles of the CISC, as set out in the CISC Administrative Guidelines (Version 1.1), is to "recognize that broad and consistent achievement of a consensus resolution is a fundamental expectation and the reason for the existence of the CISC". However, in this case, Rogers has indicated no interest in achieving a consensus resolution. In ExpressVu's submission, the administrative steps of creating a "Task" and initiating discussion would be a wasted effort, because Rogers' position is already known, and appears to be inflexible.

5. RELIEF SOUGHT

19. The issue at hand revolves around a disagreement as to whether section 10 of the *Regulations* is applicable and, if so, in assisting the competitive licensee and the subscriber to reach an agreement on the demarcation point for the inside wire. ExpressVu submits that this issue can be resolved without revising the definition of "demarcation point" in the *Regulations*, as the *Regulations* already provide for the demarcation point to be defined as a point on which both parties agree. Such a process of revision would take considerable time and resources, during which the commercial properties would continue to be denied the benefits of competing offers to provide them service. The same can be accomplished more efficiently using an expedited dispute resolution process.

20. Therefore, in order to preclude Rogers from continuing to thwart competition in this segment of the distribution market, ExpressVu urges the Commission to confirm:

- that since the definition of "subscriber" includes the "owner or operator of ... a commercial or institutional premises to which service is provided by a licensee", and since the definition of "inside wire" includes a "subscriber's premises", the definition of "demarcation point" in the *Regulations* is meant to capture not only residential MDUs but also multi-unit commercial properties in which a subscriber need not reside and that section 10 of the *Regulations* applies to commercial properties; and

³ Correspondence from Rogers to ExpressVu, 9 February 2005.

- that the demarcation point in a commercial property is one of two possible locations:
 - should the existing configuration include a launch amplifier, then the demarcation point would be that point at which the jumper cable connects to the customer side of the launch amplifier; or
 - should the existing configuration not include a launch amplifier, then the demarcation point would be a point 30 cm outside the exterior wall of the commercial premises.

Yours truly,

Chris Frank
Senior Director
Regulatory & Government Affairs

Attachments

c.c.: P. Dinsmore, Rogers
C. Stockley, CRTC
D. Gill, CRTC

*** End of Document ***

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Pamela Dinsmore
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Fax: (416) 935-4875

Dear Ms. Dinsmore:

Re: Request by Bell ExpressVu LP (ExpressVu) for expedited dispute resolution regarding Rogers Cable Inc. (Rogers) inside wire in commercial properties

In a letter to the Commission dated February 17, 2005, ExpressVu has requested the Commission implement an expedited dispute process to resolve a matter involving ExpressVu's access to Rogers' inside wire in commercial properties. I understand that Rogers has received a copy of this letter directly from ExpressVu.


Rogers is hereby requested to provide the Commission with its comments on all aspects of ExpressVu's request by 4 p.m. (ET) March 7, 2005 (with copies to ExpressVu). ExpressVu is to provide reply comments to the Commission, if any, no later than 4 p.m. (ET) March 14, 2005 (with copies to Rogers).

The comments and reply comments should be actually received, not merely sent, by the dates and times specified. Please direct all submissions to me at the following fax number: (819) 997-4504.

.../2

Thank you for your co-operation with respect to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Hutson". The signature is fluid and cursive, with a prominent loop at the beginning and a long, sweeping tail.

Randolph Hutson
Director
Competitive Disputes, Broadcasting

c.c. c.c. Chris Frank, ExpressVu
Fax: (819) 773-5629



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ORIGINAL BY COURIER

March 7, 2005

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Mr. Randy Hutson
Director – Competitive Disputes, Broadcasting
Canadian Radio-television and
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Ottawa, Ontario
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Dear Mr. Hutson:

**Re: Request by Bell ExpressVu LP (ExpressVu) for expedited dispute resolution
regarding Rogers Cable Communications Inc. (Rogers) inside wire in
commercial properties**

1. Further to your letter of February 21, 2005, this constitutes the response of Rogers to the above-noted ExpressVu request for expedited dispute resolution dated February 17, 2005 (the Request). A copy of this letter was filed with ExpressVu at 4:00 p.m. today.

I. INTRODUCTION

2. In the Request, ExpressVu has asked the Commission to implement an expedited dispute process to resolve what it characterises as a dispute regarding its access to our inside wire in hotels, hospitals, nursing homes, and other commercial or institutional premises (commercial properties).
3. Rogers objects to ExpressVu requesting an expedited dispute resolution process. In our view, there has been no dispute between Rogers and ExpressVu. Instead, Rogers has simply informed ExpressVu that the inside wire rules in section 10 of the Broadcasting Distribution Regulations (the Regulations) do not apply to commercial properties. Whether or not we wish to grant access to our wiring in a given commercial property and the terms of such access is therefore purely a business

decision. If we chose to provide access, such access would be subject to a commercial negotiation. ExpressVu is attempting to characterize this matter as a dispute when, in fact, it is a misinterpretation by ExpressVu of the Commission's inside wire rules.

4. Rogers submits that rather than granting ExpressVu's request for an expedited dispute process, the Commission should return the Request to ExpressVu and confirm to it that section 10 of the Regulations does not apply to commercial properties.

II. RESIDENTIAL VS. COMMERCIAL PROPERTIES

5. Rogers notes that the wiring configuration in commercial buildings is typically different from the central distribution system ("home run") configuration normally found in residential multiple-dwelling unit (MDU) properties. In a residential application, the internal wiring accessed by a competitive broadcasting distribution undertaking (BDU) is typically a single drop from a central (panel) location to an individual unit or suite. In a commercial application, it is more typical that the network does not split from a central (panel) location to feed single units. Instead, individual units are fed in more of a "daisy-chain" fashion, as ExpressVu has demonstrated in its diagrams.
6. Due to this wiring configuration, it is not possible to have two providers sharing the same internal wiring in a commercial property. In order to have two providers, the second provider would have to over-wire the building. The inside wire rules contemplate that a competing BDU may use discrete wires in a residential property and pay for such use where the wiring in the building is part of one overall wiring configuration. There are no such discrete wires in typical commercial properties. The inside wire rules therefore do not contemplate the use of and payment for wiring in commercial properties because there are no discrete wires in the overall wiring configuration that could be used by a competing BDU. Instead, a competing BDU has to use either all the wiring in the building or none of it.
7. Rogers submits that the Commission's monthly lease fee for the use of inside wiring was never intended to apply to commercial buildings because the wiring in a commercial building, taken in its entirety, could be worth hundreds of thousands of dollars and it can only be used in its entirety by a competing BDU. In fact, when the CRTC established a monthly lease fee for inside wire use, it included in its calculations the cost it estimated for inside wiring in residential MDUs. It did not include the cost of inside wiring found in commercial properties.
8. The strict application of the lease fee regime to the wiring in commercial properties would lead to an absurd result. Under the current rules, ExpressVu would pay us \$0.52 per subscriber per month for its use of our wiring in the entire building. As there is only one subscriber in a commercial building, Rogers would be paid \$0.52 per month or \$6.24 per year. This perverse result clearly demonstrates that commercial properties were not contemplated by the Commission when it established its lease fee regime.

9. It is clear that ExpressVu wants to use our wiring in those commercial properties that may decide to switch service providers from Rogers to ExpressVu. This issue is not about end-user choice within commercial properties because, as noted above, the end user in such circumstances will not have a choice of BDUs. Instead, this is an attempt by ExpressVu to expropriate our wiring in commercial properties where the owner/operator decides to switch from Rogers to ExpressVu. In our view, ExpressVu is attempting to invoke the inside wiring rules in these circumstances to avoid having to incur the cost of wiring these buildings.

III. ANTI-COMPETITIVE BEHAVIOUR

10. Rogers objects to ExpressVu's attempt to directly link our decision not to allow ExpressVu access to our inside wire in commercial properties with what it alleges is a larger pattern of Rogers' anti-competitive behaviour.
11. Rogers submits that ExpressVu's allegation is unfounded and simply wrong. We have made it clear to ExpressVu that the Regulations do not require us to provide it with access to our wiring in commercial properties nor are we interested in negotiating with ExpressVu for such access. We fail to understand how our commercial decision not to let ExpressVu use our wiring in commercial properties is detrimental to subscribers in this market segment. Should the owner/operator of a commercial property decide to switch providers from Rogers to ExpressVu, nothing prevents ExpressVu from over-wiring the property at its own expense. Rogers has over-wired many buildings in our serving areas over the years and we see no reason why ExpressVu could not do the same.
12. This is not anti-competitive behaviour on our part but a misinterpretation of the spirit and letter of the inside wire rules on the part of ExpressVu and a desire on its part to avoid the cost of over-wiring commercial properties. The inside wire rules do not require us to transfer our wiring in commercial properties to our competitors. As a result, the Commission does not have the jurisdiction under the Regulations to require Rogers to provide ExpressVu with such access.

IV. THE APPLICATION OF SECTION 10 OF THE REGULATIONS TO COMMERCIAL PROPERTIES

13. ExpressVu alleges that section 10 of the Regulations applies to commercial properties. According to ExpressVu, there is a point inside a commercial property at which the wire is diverted to the exclusive use and benefit of each subscriber. However, the Regulations are unambiguous on this topic and only one interpretation is possible.
14. Section 10 (1) of the Regulations reads as follows:

Transfer of Inside Wire to Customer

10. (1) A licensee that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, by another licensee, or by a

broadcasting undertaking in respect of which an exemption has been granted, by under section subsection 9(4) of the Act, from the requirement to obtain a licence.

15. In section 1 of the Regulations, "inside wire" is defined as follows:

"inside wire" means the wire is used by a distribution undertaking for the distribution undertaking for the distribution of programming services that extends from the demarcation point to the one or more terminal devices inside a subscriber's residence or premises. It includes the outlets, splitters and faceplates that are attached or connected to the wire but does not include a secured enclosure that is used to house the wire and that is attached to the exterior wall or a subscriber's premises, an amplifier, a channel converter, a decoder or a remote control unit (emphasis added).

16. For wiring to fall under the definition of inside wire, there clearly must be a demarcation point. Section 1 of the Regulations defines "demarcation point" as follows:

"demarcation point", in respect of the wire that is used by a distribution undertaking for the distribution of programming services to a subscriber, means

- (a) if the subscriber resides in a single-unit dwelling,
 - (i) 30 cm outside the exterior wall of the subscriber's premises, or
 - (ii) any point to which the licensee and the customer have agreed; and
- (b) if the subscriber resides in a multiple-unit dwelling,
 - (i) the point inside the dwelling at which the wire is diverted to the exclusive use and benefit of that subscriber, or
 - (ii) any point to which the licensee and the customer have agreed.

17. In the case of commercial properties, "subscriber" is defined in section 1 as the owner or operator of a hotel, hospital, nursing home or other commercial or institutional premises to which service is provided by a licensee.

18. Under the above-noted definition of demarcation point, commercial properties fall under subsection 1(b) as they are MDUs. Subparagraph 1(b)(i) of the definition of demarcation point prescribes that if the subscriber resides in an MDU, the demarcation point is the point inside the dwelling at which the wire is diverted to the exclusive use and benefit of that subscriber. Since there is no point inside a hotel, hospital, nursing home or other commercial or institutional premise at which the wire is diverted to the exclusive use and benefit of the subscriber (i.e. the owner or operator of the commercial property), Rogers submits that there is no demarcation point in commercial properties and therefore section 10 does not apply to them. Put another way, since in commercial buildings the owner does not reside in the building, the definition of "demarcation point", and hence the inside wire rules, do not apply to these buildings.

V. OTHER CABLE COMPANY AGREEMENTS

19. In paragraph 3 and 10 of its letter, ExpressVu states as follows:

3. Rogers' refusal prevents any other licensed broadcasting distribution undertaking ("BDU") from providing service to this class of subscribers and, as detailed below in section 3, is based on its narrow interpretation of the definition of "inside wire" and "demarcation point" in the Regulations. To date, Rogers is the only cable operator to refuse ExpressVu access to its inside wire in commercial properties. (emphasis added)

10. In those instances where the incumbent cable operator does claim ownership of this coaxial wire, section 10 of the Regulations requires that licensee to permit the use of the inside wire by a subscriber - again, in this context, the owner or operator of the commercial property - by another licensee (e.g. ExpressVu). ExpressVu has already acquired access to commercial inside wire owned by Whistler Cable and has a verbal understanding for similar access with Shaw Cable should the business opportunity arise. In either case, the demarcation point for the inside wire is one of the two possibilities above. (emphasis added)

20. Rogers submits that ExpressVu's above-noted statements are misleading. Regarding ExpressVu's allegation in paragraph 3 that we are the only cable operator to refuse ExpressVu access to our inside wire in commercial premises, the fact remains that there is no "inside wire", as defined in the Regulations, in commercial properties. To the extent that other cable operators may have agreed to allow ExpressVu to use the wiring they own in commercial properties and the terms and conditions of such use, Rogers cannot comment. However, we do believe that ExpressVu is misleading the Commission in its statement about its use of Shaw Cable (Shaw) and Whistler Cable's (Whistler) wiring in commercial properties, based on our discussions with officials at Shaw and Whistler. After receiving ExpressVu's letter, Rogers contacted senior officials at both Shaw and Whistler and sent them a copy of ExpressVu's letter. Both officials expressed surprise and concern at ExpressVu's statement in paragraph 10.

21. At Shaw, the official identified two circumstances across all of its licensed areas where ExpressVu was using its wiring in a commercial property. The first was in a nursing home in Nanaimo where the owner/operator of the nursing home chose to switch service providers from Shaw to ExpressVu. In that case, the owner/operator sought Shaw's agreement to allow it to use the wiring in the nursing home. Local management at Shaw in Nanaimo agreed to allow the owner/operator to use the wiring in order to preserve its relationship. With respect to this same property, Shaw did note that it has been refused access to a new fifty-unit complex, which is served exclusively by ExpressVu. The second circumstance involved a motel chain in British Columbia, which decided to switch from Shaw to ExpressVu for several properties. Like the Nanaimo situation, Shaw provided its wiring to the owner/operator. It never entered into an agreement with ExpressVu regarding the use of Shaw's inside wiring. Shaw made it clear that it had no verbal understanding

with ExpressVu for the use of its wiring in commercial properties now or at some point in the future.

22. At Whistler, the official had no recollection of ever allowing ExpressVu to access its wiring in any commercial properties.
23. Rogers submits that, based on our discussions with Shaw and Whistler, ExpressVu has failed to substantiate its claims that other cable companies have agreed that the inside wire regime extends to commercial properties. It has also failed to demonstrate that other cable companies have agreed to its proposed demarcation points in such properties.
24. Should the Commission decide to pursue this matter further (which Rogers opposes), Rogers urges the Commission to require ExpressVu to file more than unsubstantiated allegations of agreements with other cable companies regarding inside wiring in commercial properties.

VI. THE BENEFITS OF COMPETITION

25. In paragraph 15, ExpressVu argues that the Commission should require Rogers to provide ExpressVu access to our wiring in commercial properties so that the transient residents in these buildings can enjoy the benefits of competition. While Rogers has long been a proponent of end-user choice in MDUs and fully understands the need to provide residents of MDUs with the benefits of such choice, we fail to see the connection between that policy objective and the issue at hand. ExpressVu, if it were to gain access to our wiring in a commercial property, would be the sole provider of television services to that building. Our television service would no longer be available. Given the configuration of wiring in commercial properties, the only way ExpressVu could provide the transient residents with choice would be if it over-wired the commercial property. It would otherwise not be technically feasible for both Rogers and ExpressVu to use the wiring and provide services to the transient residents. As a result, Rogers considers ExpressVu's argument about aligning with the Commission's overarching policy of promoting competition to be without merit.

VII. FURTHER DISCUSSION WITH ROGERS

26. ExpressVu argues that it cannot resolve this matter through further discussion with Rogers. Rogers agrees that we will not give ExpressVu tens or hundreds of thousands of dollars of inside wiring in a commercial building for 52 cents per month, when we have no legal obligation to do so.

VIII. DISCUSSION AT CW-CISC

27. ExpressVu argues that this matter cannot be resolved through the CW-CISC as the working group is inactive and our position is "inflexible". Rogers does not consider that this would be an appropriate item for the CW-CISC, given that we have no regulatory obligation to provide ExpressVu with access to our wiring in commercial properties. Rogers further objects to having our position characterized as "inflexible". We are merely asserting our commercial rights.

IX. RELIEF SOUGHT

28. In the relief sought by ExpressVu in its letter, it has asked the Commission to confirm:

A) that the definition of "demarcation point" in the Regulations includes not only residential MDUs but also MDU commercial properties in which a subscriber need not reside,

B) that section 10 of the Regulations applies to commercial properties, and

C) that the demarcation point in a commercial property is at one of two possible locations:

i) should the existing configuration include a launch amplifier, then the demarcation point would be that point at which the jumper cable connects to the customer side of the launch amplifier; or

ii) should the existing configuration not include a launch amplifier, then the demarcation point would be a point 30 cm outside the exterior wall of the commercial premises.

29. Rogers submits that the relief sought by ExpressVu, if granted by the Commission, would violate both the letter and spirit of the inside wire rules. Accordingly, such a decision would constitute an error of law and jurisdiction. Rogers therefore urges the Commission to dismiss the Request without further process.

Yours truly,



Pamela Dinsmore
Vice President, Regulatory

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14 March 2005

Mr. Randolph Hutson
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Chris Frank
Senior Director
Regulatory & Government
Affairs

Dear Mr. Hutson:

Subject: Request by Bell ExpressVu LP for expedited dispute resolution regarding Rogers Cable Communications Inc.'s inside wire in commercial properties

1. **INTRODUCTION**

1. Pursuant to the process established in your letter of 21 February 2005, Bell ExpressVu LP ("ExpressVu" or "the Company") provides the following comments with respect to the 7 March 2005 response of Rogers Cable Communications Inc. ("Rogers") to the Company's request of 17 February 2005 for expedited dispute resolution.

2. ExpressVu first notes that Rogers' assertion that "there has been no dispute between Rogers and ExpressVu"¹ is incorrect. ExpressVu has sought access to inside wire in commercial properties² currently served by Rogers. In its reply comments, Rogers summarizes its response to ExpressVu's request as follows:

Rogers has simply informed ExpressVu that the inside wire rules in section 10 of the Broadcasting Distribution Regulations (the Regulations) do not apply to commercial properties. Whether or not we wish to grant access to our wiring in a given commercial property and the terms of such access is therefore purely a

¹ Response of Rogers to ExpressVu's request for expedited dispute resolution, 7 March 2005, paragraph 3.

² As part of sub-section (b) of its definition of "subscriber", the *Broadcasting Distribution Regulations* indirectly defines commercial property as "...a hotel, hospital, nursing home or other commercial or institutional premises to which service is provided by a licensee".

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business decision. If we chose to provide access, such access would be subject to a commercial negotiation.³

And, a few paragraphs later:

We have made it clear to ExpressVu that the Regulations do not require us to provide it with access to our wiring in commercial properties nor are we interested in negotiating with ExpressVu for such access.⁴

3. Based on its experience and on Rogers' own admissions in its reply, it is clear to ExpressVu that there is indeed a dispute, which can be summarized as follows: Rogers is denying ExpressVu access to inside wire that Rogers controls in commercial properties; Rogers does not recognize that section 10 of the *Broadcasting Distribution Regulations* ("the *Regulations*") applies to commercial properties; and Rogers refuses to negotiate access arrangements for such inside wire. In ExpressVu's view, section 10 is clear and extends to commercial properties' inside wire. Rogers' refusal to provide access to commercial inside wire currently prevents ExpressVu from serving commercial properties in several of Canada's largest markets. For this reason, this dispute requires expeditious resolution.

4. ExpressVu submits that the Commission currently has before it a complete public record, and that no further process is required. The Commission should provide clear direction that will result in the relief sought:

- A finding that Rogers' refusal to permit ExpressVu access to commercial inside wire under the terms established in Broadcasting Public Notice CRTC 2002-51 (*Cable Inside Wire Fee*) is contrary to the Commission's rules regarding competitor access to inside wire and, for greater certainty, confirmation that section 10 of the *Regulations* applies to commercial or institutional properties in which the subscriber is the owner or operator of the property, and that the definition of "subscriber" in section 10 of the *Regulations* includes the "owner or operator of ... a commercial or institutional premises to which service is provided by a licensee";
- Confirmation, consistent with the definition of "demarcation point" in section 1 of the *Regulations*, that the demarcation point in a commercial property which is wired in a "daisy chain" (or "series looped" as ExpressVu chose to describe it in its request of February 17th) is at one of two alternative locations:
 - should the existing configuration include a launch amplifier, then the demarcation point would be that point at which the jumper cable connects to the customer side of the launch amplifier; or
 - should the existing configuration not include a launch amplifier, then the demarcation point would be a point 30 cm outside the exterior wall of the commercial property.

³ Response of Rogers, paragraph 3.

⁴ *Ibid.*, paragraph 11.

5. Should the Commission consider, however, that additional process is required, ExpressVu reiterates its proposal that the Commission use an expedited dispute resolution process because of the negative impact on the Commission's competition policy and the financial harm caused by Rogers' policy of denying access to its commercial inside wire.

2. COMPETITION AND END-USER CHOICE

6. Rogers argues that commercial properties are typically wired in a "daisy chain" configuration. ExpressVu agrees. Rogers also claims that, in commercial properties configured in such a manner, inside wire cannot be shared by competing broadcasting distribution undertakings ("BDUs"). ExpressVu agrees. As well, Rogers states that, in order for competitive service providers to offer services in such premises simultaneously, it would be necessary for the properties to be "over-wired". ExpressVu agrees.

7. However, ExpressVu also submits that it is not necessary for two BDUs to share "series looped" wiring in order to have competition between them for the provision of service. It is evident from the following statement by Rogers that it also recognizes that in commercial properties, end-user choice is expressed by the subscriber, i.e., the owner/operator:

It is clear that ExpressVu wants to use our wiring in those commercial properties that may decide to switch service providers from Rogers to ExpressVu.⁵

Indeed, the ability to compete in commercial properties in which the owner/operator is the subscriber, and not the transient residents or users of such facilities, is precisely what ExpressVu has been seeking, irrespective of how the premises are wired.

8. The Commission has already determined in Broadcasting Public Notice CRTC 2003-18 (*Application of the concept of end-user choice in multiple-unit dwelling condominiums*) that the concept of end-user choice in MDUs should reflect a range of circumstances. For example, in rental MDUs, individual unit dwellers must be afforded a reasonable choice of competitive BDUs by their landlords. By contrast, in condominiums, the Commission has already recognized that end-user choice may be exercised by the Board or Strata Council, resulting in a single supplier serving the entire building and accessing all of the existing inside wire. In this case, where the Board can be likened to a single subscriber, ExpressVu compensates the owner of the inside wire in accordance with the Commission's existing rules at \$0.52 per unit per month. Similarly, the subscriber in a commercial property should enjoy a competitive choice, with the chosen BDU accessing all of the existing inside wire.

9. Rogers twice makes the contention that the possible decision of a subscriber, i.e., the owner/operator of a commercial property, to switch service providers as a result of competition in the BDU marketplace does not constitute end-user choice. However, as shown above, Rogers has also recognized in its 7 March 2005 submission that, in many commercial properties, the serving BDU is chosen by the owner/operator. Section 10 of the *Regulations* makes no distinction between premises in which the BDU is

⁵ *Ibid.*, paragraph 9.

selected by the owner/operator and buildings in which the choice resides with individual tenants or unit holders.

10. It is unreasonable, and inconsistent with the Commission's intention when it implemented section 10, for Rogers to suggest that, when buildings are "series looped" and a choice of BDU is exercised by the owner/operator, premises should be over-wired in order for competition to arise. In ExpressVu's submission, to deny access to the inside wire in such facilities defeats the Commission's long-held objective to promote competition.⁶

11. As noted earlier, Rogers' response to ExpressVu's request has been a consistent and unconditional refusal to provide access. In Rogers own words, "[w]e have made it clear to ExpressVu that the Regulations do not require us to provide it with access to our wiring in commercial properties nor are we interested in negotiating with ExpressVu for such access."⁷

3. ACCESS FEES

12. The Company notes that the methodology used by the Commission to calculate the appropriate inside wire lease rate, as presented in Broadcasting Public Notice CRTC 2002-51 (*Cable Inside Wire Fee*), reflected a variety of building configurations. The fact that a competing BDU may use all of the existing inside wire is irrelevant in the establishment of the appropriate rate. In any event, Rogers has offered neither evidence nor argument that the cost of wiring a commercial property is typically greater than that of wiring a comparable residential building.

13. As well, Rogers' suggestion at paragraph 26 that ExpressVu expected access to this inside wire "for 52 cents per month" is unfounded. The Company made no such statement in its February 17th submission, or anywhere else. Notwithstanding the fact that there is only one subscriber in a commercial property, i.e., the owner/operator, ExpressVu will compensate Rogers for the use of its commercial inside wire in the same manner that it compensates incumbent BDUs serving condominiums, where the Board can be likened to a single subscriber, i.e., in accordance with the existing rules at a rate of \$0.52 per unit per month.

4. DEMARICATION POINTS

14. One of the arguments that Rogers has put forward in support of its contention that section 10 of the *Regulations* does not apply to inside wire in commercial properties is that no demarcation point exists in such premises. Rogers describes the alleged issue as follows:

Since there is no point inside a hotel, hospital, nursing home or other commercial or institutional premise at which the wire is diverted to the exclusive use and benefit of the subscriber (i.e. the owner or operator of

⁶ "The Commission proposes that measures be developed to ensure that all telephone and cable subscribers have the freedom to connect the inside wire to the systems of whichever suppliers of service they choose.", *Competition and Culture on Canada's Information Highway: Managing the Realities of Transition*, CRTC, 19 May 1995, p. 19.

⁷ Response of Rogers, paragraph 11.

the commercial property), Rogers submits that there is no demarcation point in commercial properties and therefore section 10 does not apply to them.⁸

15. The Company submits that Rogers is attempting to create a complex technical problem where none exists. In its March 7th submission, Rogers argues that commercial inside wire is never available for the exclusive use and benefit of a subscriber. ExpressVu disagrees. Broadcast distribution service is offered in the premises which are the subject of this proceeding on the basis that the subscriber with whom the BDU's contractual relationship exists is the property owner/operator, irrespective of how such premises are wired. It is the commercial property's owner/operator who benefits by being able to provide television programming to the transient residents or users of the property. The Company notes in this respect that, the manner in which such properties are typically wired, i.e., in a "daisy chain", is entirely consistent with the premise that the subscriber is the owner/operator. Carried to its logical end, Rogers' argument would lead to the conclusion that there is never any "subscriber" in commercial premises.

16. Furthermore, in its attempt to portray the situation in commercial properties as technically complex, Rogers ignores the fact that, consistent with the Commission's existing principles regarding access to inside wire, there are two obvious and readily feasible locations for the demarcation point, namely, the places inside the commercial property where the inside wire should be considered diverted to the exclusive use and benefit of the subscriber. These were specified by ExpressVu in its February 17th application.

5. EXPRESSVU AND OTHER CABLE COMPANIES

17. Rogers calls into question the veracity of the Company's statements regarding ExpressVu's access to commercial inside wire owned by Whistler Cable and Shaw Cable ("Shaw"). ExpressVu provided the examples in its application of buildings which it serves and in which choice of BDU is under the control of the building owner/operator. With respect to these comments by Rogers, ExpressVu has re-confirmed that the arrangements in question are as described in its application.⁹ The examples were provided to illustrate the fact that there are no operational or technical barriers to the implementation of the relief the Company is seeking, and that access to inside wire in commercial properties is a reality.

18. Specifically, ExpressVu serves five commercial buildings owned by Blackcomb Skiing Enterprises Ltd.¹⁰ ("Blackcomb") in Whistler, B.C., and does so over inside wire owned by Whistler Cable. Service in these buildings is provided and billed to Blackcomb for the use of their transient occupants, typically Blackcomb employees. Whistler Cable receives monthly lease payments of \$0.52 per unit per month from ExpressVu, in accordance with the Commission's current rules.

19. With reference to Shaw Cable, ExpressVu received oral confirmation from Shaw on 6 August 2003 that it would not deny access to its commercial inside wire. The

⁸ *Ibid.*, paragraph 18.

⁹ ExpressVu is prepared to provide in confidence more specific details to the Commission if required.

¹⁰ These commercial properties are located at 4802 Glacier Lane (50 units), 4804 Glacier Lane (54 units), 4812 Glacier Lane (52 units), 4814 Glacier Lane (45 units) and 3100 Panorama Drive (45 units).

Company further notes that this confirmation was received in the context of a competitive bid against Shaw and Rogers to serve a chain of motels operated across Canada. In formulating its bid, ExpressVu contacted both Shaw and Rogers to ensure that it would gain access to their inside wire. As noted, Shaw agreed to permit access; Rogers, on the other hand, refused. This case serves as an example of how an incumbent licensee that owns inside wire has used such ownership to its competitive advantage, in direct contrast to the Commission's policy of encouraging competition.

20. In the final analysis, however, whether or not arrangements currently exist with other BDUs has little bearing on Rogers' non-compliance with the Commission's requirements regarding access to inside wire. ExpressVu submits that, even without the examples it has provided of properties in which it has obtained access to commercial inside wire under the Commission's existing terms and conditions, the relief sought in the Company's application is clearly in the public interest.

6. RELIEF SOUGHT

21. In ExpressVu's submission, Rogers has failed to disprove any of the Company's submissions in its Application. The Commission has before it all the information it needs to render a determination that Rogers is in breach of section 10 of the *Regulations*. No further process is required. In light of Rogers' explicit statement that it has ignored the requirements of section 10 with respect to commercial inside wire, and that it has no intention of allowing ExpressVu to access commercial inside wire it controls, ExpressVu submits that the relief it has requested is clearly in the public interest.

22. Thus, ExpressVu requests that the Commission provide clear direction that will result in the relief sought:

- A finding that Rogers' refusal to permit ExpressVu access to commercial inside wire under the terms established in Broadcasting Public Notice CRTC 2002-51 (*Cable Inside Wire Fee*) is contrary to the Commission's rules regarding competitor access to inside wire and, for greater certainty, confirmation that section 10 of the *Regulations* applies to commercial or institutional properties in which the subscriber is the owner or operator of the property, and that the definition of "subscriber" in section 10 of the Broadcasting Regulations includes the "owner or operator of ... a commercial or institutional premises to which service is provided by a licensee";
- Confirmation, consistent with the definition of "demarcation point" in section 1 of the *Regulations*, that the demarcation point in a commercial property which is wired in a "daisy-chain" is at one of two alternative locations:
 - should the existing configuration include a launch amplifier, then the demarcation point would be that point at which the jumper cable connects to the customer side of the launch amplifier; or
 - should the existing configuration not include a launch amplifier, then the demarcation point would be a point 30 cm outside the exterior wall of the commercial premises.

23. In light of the competitive harm the Company is suffering as a result of Rogers' policy of denying access to commercial inside wire, this dispute requires expeditious resolution.

24. A machine-readable file copy of this submission is provided to the Commission and interested parties via Internet email.

Yours truly,

Chris Frank
Senior Director
Regulatory & Government Affairs

c.c.: P. Dinsmore, Rogers
C. Stockley, CRTC
D. Gill, CRTC

*** End of Document ***

Love, James

From: Love, James
Sent: March 18, 2005 11:47 AM
To: Pam Dinsmore (pamdivta@rci.rogers.com); Chris Frank (cfrank@expressvu.com)
Cc: 'info@whistlercable.com'; Hutson, Randy
Subject: Whistler Cable Television letter, March 17, 2005



fax1.tif (183 KB)

Pamela, Chris:

Attached is an unsolicited fax from Whistler Cable Television Limited (Whistler). As you can see, it relates to Bell ExpressVu LP's (ExpressVu) February 17, 2005 request for expedited dispute resolution regarding Rogers Cable Inc. (Rogers) inside wire in commercial properties. Specifically, Whistler makes reference to the comments made by ExpressVu in its March 14, 2005 submission.

Rogers and ExpressVu are hereby provided with an opportunity to file procedural and substantive comments on Whistler's letter by 5:00 p.m. (ET) March 24, 2005 (with copies to each other). Please direct all submissions to me at the following fax number: (819) 997-4504.

Thank you for your cooperation.

James Love
Canadian Radio-television and Telecommunications Commission/Conseil de la radiodiffusion
et des télécommunications

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(819) 997-4265
Fax/Télécopieur (819) 997-4504
james.love@crtc.gc.ca



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FACSIMILE TRANSMITTAL SHEET

TO: Randy Hudson	FROM: Ron Saperstein
FAX NUMBER: 1-819-994-0218	CC:
PHONE NUMBER:	DATE: March 17, 2005
RE: # 19139- Bell Express Via	TOTAL NO. OF PAGES INCLUDING COVER: 10.

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS:

per Ron's instruction

↓

Mr. Hudson here is a fax

from Mr. Saperstein

A.I.



WHISTLERCABLE
TELEVISION LIMITED

Suite 214-4368 Main St. Whistler, BC, V0N 1B0 P. 604.932.1111 F. 604.868.7629
info@whistlercable.com www.whistlercable.com

CRTC
Ottawa, Ontario
Canada, K1A 0N2
Fax # (819) 994-0218
Attn: Randy Hudson

March 17, 2005

Re: 19139-Bell ExpressVu-Request by Bell ExpressVu LP for expedited dispute resolution regarding Rogers Cable

Dear Sir:

Rogers Cable has made us aware of Bell Express -Vu (Bell) desire to serve their commercial MDUs using Roger's inside wiring. In number 18 of the above response, Bell misrepresented Whistler Cable Television position. In e-mails sent between Bell and Whistler Cable, Bell stated that they did not acknowledge the use of Whistler Cable's inside wiring and that they would not pay the .52 rental per unit for, again this is contrary to their statement in the above letter.

Bell is not paying us for this inside wiring, and we would like to know the commission's position on this matter.

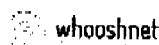
Please note on another matter in the Whistler Market Bell has "converged" on our plant which you will hear about in the coming months. They never notified us via a transfer order to use our inside wiring and cable plant, and I am sure we will have to deal with the same non compliant attitude of this satellite provider.

Yours truly

Ron Saperstein
Managing Director

Ps. please see the enclosures.

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Rogers Cable Inc.
Regulatory
333 Bloor Street East, 9th Floor
Toronto, Ontario M4W 1G9
Fax: (416) 935-4875

**FAX
TRANSMITTAL**

TO: Jim Love
Competitive Disputes,
Broadcasting
CRTC

FAX: (819) 997-4504

FROM: Pamela Dinsmore
Vice President, Regulatory

DATE: March 24, 2005

CC:

FAX:

PAGES: 2

Urgent

For Review

Please Comment

Please Reply

The attached letter has been sent to the CCs by email.

If you have any trouble with this transmission please contact Rosanna Di Vita at (416) 935-4820.

The information contained in this telecopy is intended only for the use of the recipient named above. This telecopy may contain privileged, confidential or undisclosed information. If the reader of this telecopy is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this telecopy in error, and that any review, dissemination, distribution or copying of it is strictly prohibited. If you have received this in error, please notify us immediately by telephone (if necessary call the number above collect) and return the original transmittal by mail. Thank you.



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rogers.com

Pamela Dinsmore
Vice President, Regulatory
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E-mail: pam.dinsmore@rci.rogers.com

BY FAX: (819) 997-4504
ORIGINAL BY COURIER

March 24, 2005

Mr. Jim Love
Competitive Disputes, Broadcasting
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Love:

Re: Request by Bell ExpressVu LP (ExpressVu) for expedited dispute resolution regarding Rogers Cable Communications Inc. (Rogers) inside wire in commercial properties

1. Further to your e-mail of March 18, 2005, Rogers appreciates the opportunity to provide additional comments concerning the information filed with the Commission by Whistler Cable Television Limited (Whistler) on March 17, 2005. As we have noted in our earlier submission, the Commission's inside wiring rules cannot be construed to apply to commercial properties. Accordingly, the state of affairs in Whistler does not have a direct bearing on this case. However, the information filed by Whistler calls into question ExpressVu's claim that Whistler Cable agreed that the inside wire rules apply to commercial properties. Once again, we urge the Commission to dismiss ExpressVu's Request without further process.

Yours truly,

A handwritten signature in black ink, appearing to read "Pamela Dinsmore".

Pamela Dinsmore
Vice President, Regulatory

c.c.: Chris Frank, ExpressVu, Fax: (819) 773-5629, e-mail: Chris.Frank@bell.ca
Paul Armstrong, ExpressVu, e-mail: Paul.G.Armstrong@bell.ca
Ron Saperstein, Whistler Cable, e-mail: ron@whistlercable.com

*** End of Document ***



24 March 2005

Mr. Jim Love
Senior Analyst - Competitive Disputes
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Chris Frank
Senior Director
Regulatory & Government
Affairs

Dear Mr. Love:

Subject: Request by Bell ExpressVu LP for expedited dispute resolution regarding Rogers Cable Communications Inc.'s inside wire in commercial properties

1. Further to Commission staff's e-mail of 18 March 2005 in which staff provided Bell ExpressVu LP ("ExpressVu" or "the Company") and Rogers Cable Communications Inc. ("Rogers") an opportunity to respond to a letter filed on 17 March 2005 by Whistler Cable Television Limited ("Whistler") in relation to the above referenced proceeding, the Company provides the following comments.
2. In its letter, Whistler notes that "[i]n e-mails sent between Bell and Whistler Cable, Bell stated that they did not acknowledge the use of Whistler Cable's inside wiring and that they would not pay the .52 rental per unit". Whistler also states that "Bell is not paying us for this inside wiring".
3. ExpressVu acknowledges that a misunderstanding arose between it and Whistler in 4 Q 2004 regarding the issue of whether ExpressVu was providing service in certain properties (and whether ExpressVu should, therefore, be compensating Whistler for the use of inside wire in these properties).
4. However, the Company notes that the misunderstanding in question did not relate to whether, as a concept or as a matter of law, ExpressVu should be paying for access to inside wire in commercial properties in which the wire is owned by the incumbent cable company. ExpressVu does not dispute that it is required to pay for access to inside wire at the rates approved by the Commission. Rather, the misunderstanding concerned whether ExpressVu was, in fact, providing service to any customers in the buildings in question, thereby using Whistler's inside wire and triggering the requirement to pay for such wire. The electronic correspondence provided by Whistler is absolutely clear that ExpressVu denied payment because it did not believe it was providing service in the buildings in question.

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Internet ID: bell.regulatory@bell.ca

- 2 -

5. ExpressVu acknowledges that its internal systems initially failed to record certain properties in which it was, in fact, providing service. In the 60-day period subsequent to the e-mail correspondence filed by Whistler, the Company's internal records were corrected, and ExpressVu initiated the procedures to process payments to Whistler of \$0.52 per unit per month for access to the cable company's commercial inside wire in these properties. ExpressVu did so both to remedy earlier outstanding payments arising from the misunderstanding and on a going-forward basis.

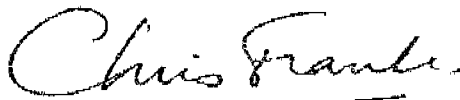
6. The Company notes in this respect that a first payment was issued to Whistler on 4 February 2005¹ in the amount of \$784.25. The total value of this cheque comprised two components: \$206.98 including GST for access to Whistler's inside wire in residential MDUs, and \$577.27 including GST for access to Whistler's inside wire in the aforementioned commercial properties. The latter value represented lease payments for July 2004 to November 2004 inclusive. The Company's practice is to issue payments on a quarterly basis, and the next payment will be made on 25 April 2005.

7. ExpressVu notes that, if anything, the e-mail correspondence supplied by Whistler clearly confirms Whistler's expectation that it would receive payment for access to the inside wire in properties it formerly served – including several commercial properties (which Whistler identified in its e-mails). In fact, the correspondence confirms that access to inside wire in commercial properties previously served by Whistler is and has been provided to ExpressVu on the basis that Whistler would be paid for the use of such wire at the Commission-mandated monthly rate of \$0.52 per unit served.

8. In summary, what is important to note for the case at hand is that Whistler is allowing ExpressVu to use Whistler's inside wire to access customers in commercial buildings; Whistler expects to be paid \$0.52 per unit for this use of wire; and ExpressVu acknowledges its obligation to pay this amount – and is, in fact, doing so.

9. ExpressVu submits that its misunderstanding regarding its provision of service in certain properties previously served by Whistler has no bearing whatsoever on Rogers' continuing refusal to comply with the Commission's directions regarding access to inside wire. Rogers has readily admitted that it does not currently, and has no intention to, provide access to its inside wire in commercial buildings. The issue before the Commission is Rogers' failure to abide by clear Commission's directives.

Yours truly,



Chris Frank
Senior Director
Regulatory & Government Affairs

c.c.: P. Dinsmore, Rogers Cable Communications Inc.

*** End of Document ***

¹ The payment was made as cheque #11109427 and was mailed on 4 February 2005 to Whistler at 4366 Main Street, Suite 214, Whistler, B.C. V0N 1B4.

March 24, 2005

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Ms. Pamela Dinsmore
Vice President, Regulatory
Rogers Cable Communications Inc.
333 Bloor Street East
Toronto, Ontario
M4W 1G9
Fax: (416) 935-4875

Dear Mr. Frank and Ms. Dinsmore:

Staff Opinion Letter

**Re: Request by Bell ExpressVu LP (ExpressVu) for expedited
dispute resolution regarding Rogers Cable Communications
Inc. (Rogers) inside wire in commercial properties**

In a February 17, 2005 letter, ExpressVu requested that the Commission implement an expedited dispute resolution mechanism to resolve a dispute between it and Rogers regarding access to inside wire in commercial multiple-unit dwellings (MUDs). Rogers filed a comment on March 7, 2005 and ExpressVu filed a reply on March 14, 2005.

Having now had the opportunity to review these submissions and consult internally with appropriate Commission staff, I consider the most expeditious manner in which to advance this file is to issue a non-

binding staff opinion pertaining to the central issues. This is intended to provide a staff preliminary view on substance and process. The parties may wish to amend their respective positions on these issues or, as the opinion is non-binding, to request a formal Commission ruling on the matters raised.

The Relevant Regulations

Section 10 of the *Broadcasting Distribution Regulations* (the Regulations) states:

10. (1) A licensee that owns an inside wire shall, on request, permit the inside wire to be used by a subscriber, by another licensee, or by a broadcasting undertaking in respect of which an exemption has been granted, by order under subsection 9(4) of the Act, from the requirement to obtain a licence.

(2) The licensee that owns an inside wire may charge a just and reasonable fee for the use of the wire.

(3) The licensee that owns an inside wire must not remove it from a building if a request for the use of the wire has been made and is pending under subsection (1), or while the wire is being used in accordance with that subsection.

The Regulations define "inside wire" as:

...the wire that is used by a distribution undertaking for the distribution of programming services that extends from the demarcation point to one or more terminal devices inside a subscriber's residence or premises. It includes the outlets, splitters and faceplates that are attached or connected to the wire but does not include a secured enclosure that is used to house the wire and that is attached to the exterior wall of a subscriber's premises, an amplifier, a channel converter, a decoder or a remote control unit.

The Regulations define "demarcation point" as:

...,in respect of the wire that is used by a distribution undertaking for the distribution of programming services to a subscriber, means

(a) if the subscriber resides in a single-unit dwelling,

- (i) 30 cm outside the exterior wall of the subscriber's premises, or*
- (ii) any point to which the licensee and the customer have agreed; and*
- (b) if the subscriber resides in a multiple-unit dwelling,*
 - (i) the point inside the dwelling at which the wire is diverted to the exclusive use and benefit of that subscriber, or*
 - (ii) any point to which the licensee and the customer have agreed.*

Key Positions of Parties¹

ExpressVu

- alleged that Rogers and its affiliates refuse to permit access to the inside wire they own in commercial properties (specifically, hotels, hospitals, nursing homes and other commercial or institutional premises) as required by section 10 of the Regulations.
- explained that, in previous correspondence, Rogers has taken the position that, because the definition of demarcation point does not specifically refer to commercial properties, by definition there can be no inside wire, and that Rogers is therefore not obligated by section 10 of the Regulations to provide access to inside wire in commercial properties.
- maintained that the fact that the Commission neither specifically defines commercial property as a type of MUD, nor specifically defines commercial properties in the Regulations, does not negate the physical reality of a commercial property's wiring scheme and in no way suggests that the Commission's policy of competition does not extend to commercial properties.
- stated that it will compensate Rogers for the use of its commercial inside wire in the same manner that it compensates incumbent broadcasting distribution undertakings (BDUs) serving condominiums, where the Board can be likened to a single subscriber, i.e., in accordance with the existing rules at a rate of \$0.52 per unit per month.

¹ No attempt is being made to be exhaustive in recounting all the points made in the submissions.

Rogers

- noted that the wiring configuration in commercial buildings is typically different from the “home run” configuration normally found in residential MUDs. Rogers explained that, in residential applications, the internal wiring is accessed by competing BDUs from a central panel location. In a commercial application, it is more typical that the network does not split from a central panel location and, instead, individual units are fed in a “daisy-chain” fashion. Rogers stated that it is not possible to have two providers sharing the same internal wiring in a commercial property. It maintained that, in order to have two providers, the second provider would have to over-wire the building.
- submitted that the Commission’s monthly lease fee for the use of inside wiring was never intended to apply to commercial buildings, noting that the wiring in a commercial building, taken in its entirety, could be worth hundreds of thousands of dollars. Rogers also noted that, when the CRTC established a monthly lease fee for the inside wire, it included in its calculations the cost it estimated for inside wiring in residential MUDs and did not include the cost of inside wiring found in commercial properties.
- maintained that, since there is only one subscriber in a commercial building, the application of the lease fee regime to commercial properties would lead to ExpressVu paying it \$0.52 per subscriber per month for the entire building. Rogers argued that this result clearly demonstrates that commercial properties were not contemplated by the Commission when it established the lease fee regime.
- also noted that, under the definition of “demarcation point”, commercial properties fall under subsection 1(b), as they are MUDs. Since there is no point inside a hotel, hospital, nursing home or other commercial or institutional premises at which the wire is diverted to the exclusive use and benefit of the subscriber, Rogers submitted that there is no demarcation point in commercial properties and, therefore, section 10 does not apply to them.

Opinion

Is there a requirement in the Regulations that BDUs must permit access to inside wire in commercial properties?

I note that each party has expressed widely differing and equally firm opinions as to the applicability of section 10 of the Regulations to commercial properties; ExpressVu says yes, Rogers no. My view is that the Commission has simply not, to date, specifically turned its attention to the matter of access to wiring in commercial buildings of the nature described in Rogers' and ExpressVu's submissions.

While the current Regulations do not set out the steps required for an incumbent BDU to provide access to a new entrant BDU in a commercial MUD such as those described, it is to be noted that, since 1995, the Commission has endorsed a policy of increased competition in cable's core business in order to provide consumers with increased choice among distributors. The inside wire regime set out in the Regulations was established in order to implement this policy. In my view, competitor access to an incumbent's inside wiring in commercial MUDs (where it is technically feasible for that alternative BDUs to have access to inside wire and provide service to end-users) would be consistent with the Commission's policy endorsement. Hence, this would lead one to the conclusion that the incumbent BDU should provide access to its inside wiring in such a circumstance. A building wired with a "home run" wiring configuration is an instance where this logic would seem to apply and the competing BDU could access the inside wiring at the central panel location.

However, where end-user choice in a given building wiring configuration is not technically feasible, as may be the case, for example, in "daisy chain" situations, a requirement to provide access to the competitor to that form of wiring does not appear consistent with Commission policy. Thus, in such a situation, the owner of the MUD would be responsible for making the choice between receiving service from either the incumbent or the new entrant BDU, as is currently the case with respect to condominium corporations.

I also note that, as ExpressVu indicated in its submission that it was prepared to pay the Commission authorized rate of \$0.52 per unit per month for each of the units served, access upon payment of this amount in "technically feasible" buildings may well be consistent with the "spirit" of Commission policy. In expressing this opinion, I have taken note of Rogers' statement that, in establishing a monthly lease

fee for the inside wire, the Commission did not include in its calculations the cost of inside wiring found in commercial properties.

Expedited dispute resolution process

ExpressVu requested that this matter be dealt with by the Commission by way of an expedited dispute resolution process.

As stated above, the staff view is that the Commission has not yet had occasion to specifically turn its attention to access to inside wire in the context of commercial properties. Moreover, given that the issue of access to commercial MUDs has the potential to affect all BDUs, in the interest of fairness to all possibly affected parties, a definitive Commission declaration is likely to be given only after all interested parties have had an opportunity to participate fully in some form of multilateral public process. Such a process could be a specific policy process to consider the matter or, possibly, the provision of an opportunity to interested third parties to provide comment on this bilateral process between ExpressVu and Rogers.

In either eventuality, I do not see the issues raised in this request as appropriate for an expedited dispute resolution process leading to a *Commission* determination. However, to the extent that a *staff* opinion may be helpful to the parties in settling this matter, I have provided a non-binding staff opinion on what appears to be the central issue in dispute. If, despite the provision of this opinion, a compromise cannot be reached between ExpressVu and Rogers, I would ask that both parties communicate their positions to me in writing no later than March 31, 2005 on continuing with the current process leading to a *Commission* determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Randolph Hutson". The signature is fluid and cursive, with a prominent loop at the end.

Randolph Hutson
Director
Competitive Disputes, Broadcasting



31 March 2005

Mr. Randolph Hutson
Director - Competitive Disputes, Broadcasting
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Chris Frank
Senior Director
Regulatory & Government
Affairs

Dear Mr. Hutson:

Subject: Request by Bell ExpressVu LP for expedited dispute resolution regarding Rogers Cable Communications Inc.'s inside wire in commercial properties

1.0 INTRODUCTION

1. Pursuant to the process established in your non-binding staff opinion letter of 24 March 2005, Bell ExpressVu LP (ExpressVu or the Company) provides the following position on continuing the process leading to a Commission resolution of this dispute.

2. In response to your suggestion that the parties seek a compromise solution, ExpressVu wrote to Rogers on 26 March to set out its proposal for access to inside wire in commercial properties, consistent with the non-binding staff opinion. In our e-mail, we invited Rogers to a further dialogue on the proposal, or in any event, a written reply, by 30 March. Rogers' response was a curt rejection of our proposal, with no discussion or indication of any flexibility. A copy of ExpressVu's proposal and Rogers' response is attached.

3. Based on Rogers' prior correspondence in which it has stated that it does not wish to discuss access to its wire, and its most recent rejection of our proposal, it would appear that commercial subscribers whose buildings contain inside wire belonging to Rogers will continue to be denied the ability to exercise a choice of service providers, unless they are prepared to have their buildings over-wired, contrary to the Commission's longstanding policies regarding the promotion of competition and choice and the efficient use of in-building wire. Accordingly, ExpressVu wishes to continue with a process leading to a Commission determination on this matter. Given the suggestions in your letter of 24 March 2005, ExpressVu proposes a process, set out below, that would lead to a prompt Commission resolution of the issue.

Bell ExpressVu
110 O'Connor St., 6th Floor
Ottawa, Ontario K1P 1H1
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Fax: (613) 560-0472
E-Mail: chris.frank@bell.ca

4. Consistent with the views it expressed in prior correspondence, ExpressVu submits that the Commission currently has before it a complete public record, and that no further fact-gathering is required. There are no new or unique public policies or operational issues to be resolved. ExpressVu submits that the Commission should issue a decision with the relief sought:

- A finding that Rogers' refusal to permit ExpressVu access to commercial inside wire is contrary to the Commission's rules regarding competitor access to inside wire and, for greater certainty, confirmation that section 10 of the *Regulations* applies to commercial or institutional properties in which the subscriber is the owner or operator of the property, and that the definition of "subscriber" in section 10 of the *Regulations* includes the "owner or operator of ... a commercial or institutional premises to which service is provided by a licensee";
- Confirmation, consistent with the definition of "demarcation point" in section 1 of the *Regulations*, that the demarcation point in respect of the wire that is used to deliver service to a commercial subscriber shall be: a) for home-run wired premises, the point at which the wires are diverted to the exclusive use of an individual unit, and b) for series-looped premises, a point 30 cm outside the exterior wall of the premises unless the configuration includes a launch amplifier, in which case the demarcation point would be that point at which the jumper cable connects to the customer side of the launch amplifier; and
- Confirmation, consistent with the definition of inside wire in the *Regulations*, that, for commercial properties, "Inside wire" means the wire that is used by a distribution service for the distribution of programming from the demarcation point to one or more terminal devices inside a commercial subscriber's premises, and that it includes the outlets, splitters, and faceplates attached or connected to the wire, but does not include a secured enclosure that is used to house the wire and that is attached to the exterior wall of the commercial subscriber's premises, an amplifier, a channel converter, a decoder, or a remote control unit. For further clarity, it would not include a licensee's distribution panel box.

5. Should the Commission consider that additional process is required, ExpressVu submits that the Commission should still issue at this time a decision providing the relief sought. ExpressVu would be prepared to enter into a contractual undertaking with Rogers whereby the parties would agree to be bound, on a retroactive basis to the date of the above referenced Commission decision, by the Commission's later determinations on specific issues, such as the rate for usage of commercial inside wire.

2.0 COMPETITION AND END-USER CHOICE

6. ExpressVu urges the Commission to make a ruling now based on the record of this dispute because of the negative impact on competition and on subscribers of Rogers' policy of denying access to competitors to its commercial inside wire.

7. The Commission established its policy of competition a decade ago and has made a series of decisions consistent with that policy. Access by competitors to existing inside wire was recognized from the outset as a fundamental principle¹. Yet a full decade later, Rogers continues to frustrate this fundamental policy. In the current situation, Rogers is denying commercial

¹ "The Commission proposes that measures be developed to ensure that all telephone and cable subscribers have the freedom to connect the inside wire to the systems of whichever suppliers of service they choose.", *Competition and Culture on Canada's Information Highway: Managing the Realities of Transition*, CRTC, 19 May 1995, p. 19.

subscribers (i.e., owners/operators of hotels, motels, nursing homes and other commercial or institutional premises) the opportunity to choose which supplier will provide services in their premises. In ExpressVu's submission, to deny access to the inside wire in such facilities defeats the Commission's long-held objective to promote competition and it is completely unrealistic to contend, as Rogers has, that over-wiring such premises is an option.

8. As noted in prior correspondence, Rogers' response to ExpressVu's requests has been a consistent and unconditional refusal to provide access. In Rogers' own words, "[w]e have made it clear to ExpressVu that the Regulations do not require us to provide it with access to our wiring in commercial properties nor are we interested in negotiating with ExpressVu for such access."²

9. Therefore, ExpressVu submits that the issue that the Commission should address at the earliest opportunity is the issue of access. To the extent that the Commission must define "demarcation point" and "inside wire" for commercial premises, the Company has provided a proven solution. ExpressVu is, at this time, providing service in commercial premises using the demarcation point it has requested the Commission to approve.

10. Further, ExpressVu submits that the Commission has the full authority to proceed with an expedited determination under the guidelines established in Public Notice CRTC 2000-65, *Practices and Procedures for Resolving Competitive and Access Disputes* (PN 2000-65):

- First, the dispute is bilateral in that it impacts only Rogers and ExpressVu. As established in prior correspondence, Rogers is the only incumbent BDU that has denied ExpressVu access to inside wire in commercial properties.
- Second, the parties have been unable to resolve the dispute by alternate methods, as demonstrated by Rogers' refusal to consider ExpressVu's proposal that was founded on a non-binding staff opinion.
- Third, only matters of interpretation and application of an existing Commission determination, policy, or regulation are raised, none involving a new policy. In that regard, ExpressVu reiterates that the policy of access to inside wire to facilitate competition is well-established. The wording of section 10 of the *Regulations* is clear in its intent and consistent with the Commission's prior policy decisions. From an operations standpoint, the selection of the demarcation point for a specific property is also well-established based on the experience in residential MDUs by both parties. Further, the only matters that might be subject to further consideration, such as the precise rate applicable, can be set aside and resolved in a separate proceeding.
- Fourth, the dispute does not involve a multiplicity of issues, as the relief sought is precise.

11. Moreover, it is clear that Rogers has no interest in negotiating a resolution. Thus, Commission resolution is required.

12. ExpressVu notes your view, as set out in the final paragraph of your letter of 24 March 2005, that the issues raised in ExpressVu's request do not lend themselves to an expedited dispute resolution mechanism. With respect, as set out above, ExpressVu submits that the criteria established by the Commission in PN 2000-65 for expedited dispute resolution have been met.

² Rogers' 7 March 2005 Response, paragraph 11.

13. ExpressVu further notes the final sentence of PN 2000-65, in which the Commission states:

Notwithstanding the above, in circumstances where use of these alternative avenues is inappropriate, or where they fail to achieve the resolution of a dispute, the Commission will not hesitate to intervene to ensure fair and sustainable competition.³

14. In this instance, ExpressVu seeks the Commission's unhesitating intervention to ensure fair and sustainable competition among BDUs for owners and operators of hotels, motels, nursing homes, and other commercial or institutional premises.

3.0 USAGE FEES AND OTHER TERMS FOR ACCESS

15. The Company has previously taken the position that the methodology used by the Commission to calculate the appropriate inside wire lease rate, as presented in Broadcasting Public Notice CRTC 2002-51, *Cable Inside Wire Fee*, reflected a variety of building configurations and should be adequate for the purposes of commercial premises. We continue to hold the view that the current rate is appropriate for commercial premises. As set out in prior correspondence and in the attachment, ExpressVu offered to compensate Rogers 52 cents per suite per month for its use of Rogers' inside wire in commercial premises, regardless of the wiring configuration in the building.

16. If, notwithstanding the broad nature of the Commission's earlier examination and pronouncement respecting the current inside wire lease rate, the Commission should desire a fuller examination of the appropriate fee for inside wire for commercial premises, it could initiate a separate proceeding to do so, separate and distinct from its determination as to access. It would seem likely that such a proceeding would result in a lower price for series-looped wire than ExpressVu's current proposal, given that such configurations are often used to reduce costs, relative to home-run wiring. Nevertheless, in the meantime, ExpressVu would agree (by contract, if necessary) to make interim payments at the existing MDU rate level, and at some point in the future compensate Rogers (or be compensated by Rogers) for the difference between the current rate and the rate that the Commission ultimately establishes. For greater certainty, ExpressVu proposes that the retroactive period would be from the date that the Commission issues its decision on the relief sought in this application (or a property is served, whichever is later), to the future date at which a different rate is approved.

17. ExpressVu notes that the industry followed a similar process in establishing the rate for use of residential MDU inside wire. Specifically, in Public Notice CRTC 1997-150, the Commission established rules to guarantee access to inside wire, and deferred discussion of terms (and rates) to a sub-working group of CISC. When the latter process became protracted, the parties agreed, with the encouragement of CRTC staff, that payments would be retroactive to a specified date. Eventually, the Commission established both the rates and the operational terms for access.

18. As well, the Commission may wish to seek comments from other interested parties on other terms of access, such as the notice required to the owner of the inside wire, and the applicability of the winback rules.

³ PN 2000-65, paragraph 25.

4.0 RELIEF SOUGHT AND FURTHER PUBLIC PROCESS

19. Rogers has failed to disprove any of the Company's submissions in its Application or raise any new or unique principle of public policy or operations. The Commission has before it all the information it needs to render a determination that Rogers is in breach of section 10 of the *Regulations*. No further process is required. In light of Rogers' explicit statement that it has ignored the requirements of section 10 with respect to commercial inside wire, and that it has no intention of allowing ExpressVu to access commercial inside wire it controls, and its apparent refusal to recognize the validity of the non-binding staff opinion, ExpressVu submits that the relief it has requested is clearly in the public interest. ExpressVu further submits that this dispute meets the criteria established for an expedited Commission determination of a dispute, as set out in PN 2000-65.

20. Thus, ExpressVu requests that the Commission provide clear direction that will result in the relief sought, and, should it find there is a need, to initiate a separate public process to reach a final determination on related issues. In the interim, ExpressVu would make payments consistent with the Commission's current approved rate levels.

21. This dispute has, over the past few years, significantly curtailed the ability of commercial subscribers in Ontario and the Atlantic provinces (where served by Rogers) to choose among BDU service providers. Any further undue delay in resolving this dispute could impact scores of commercial property owners who seek multi-year contracts for provision of service to their properties. That is, while this dispute remains unresolved, this segment of the public remains in the capture of the incumbent, a full ten years after the Commission established its policy of competition.

22. In light of the competitive harm that commercial subscribers and the Company are suffering as a result of Rogers' policy of denying access to commercial inside wire, and the Commission's pledge in PN 2000-65 to "not hesitate to intervene to ensure fair and sustainable competition", ExpressVu respectfully requests expedited Commission resolution.

23. A machine-readable file copy of this submission is provided to the Commission and interested parties.

Yours truly,

(Original signed by Chris Frank)

Chris Frank
Senior Director
Regulatory & Government Affairs

Attachment

c.c.: P. Dinsmore, Rogers
C. Stockley, CRTC
D. Gill, CRTC

From: Pam Dinsmore [mailto:Pam.Dinsmore@rci.rogers.com]
Sent: March 30, 2005 6:04 PM
To: Paul Armstrong (E-mail)
Subject: FW: Inside Wire in Commerical Properties

Dear Mr. Armstrong:

Thank you for your email dated March 26, 2005 containing Bell ExpressVu's proposal regarding wiring in commercial properties. Rogers Cable Communications Inc. has reviewed your proposal and wishes to inform you that we do not accept it.

Sincerely ,

Pam Dinsmore

-----Original Message-----

From: paul.g.armstrong@bell.ca [mailto:paul.g.armstrong@bell.ca]
Sent: Saturday, March 26, 2005 1:24 PM
To: Pam Dinsmore
Cc: Pam Dinsmore cc: Rosanna Di Vita
Subject: Inside Wire in Commerical Properties

Dear Ms Dinsmore,

We note that the staff opinion dated March 24, 2005 encourages Bell ExpressVu and Rogers to reach a settlement on this matter prior to March 31. Accordingly, we propose the following:

For commercial properties located in Rogers' serving areas,

- 1) A "commercial subscriber" refers to a subscriber that is the owner or operator of a hotel, motel, nursing home or other commercial or institutional premises
- 2) The "demarcation point" in respect of the wire that is used to deliver service to a commercial subscriber shall be:
 - a) For home-run wired premises, the point at which the wires are diverted to the exclusive use of an individual unit;
 - b) For series-looped premises, a point 30cm outside the exterior wall of the premises, or any other point at which Rogers, the commercial subscriber, and ExpressVu agree. Neither Rogers nor Bell ExpressVu will unreasonably withhold agreement as to a demarcation point.
- 3) "Inside wire" means the wire that is used by a distribution service for the distribution of programming from the demarcation point to one or more terminal devices inside a commercial subscriber's premises. Consistent with the Regulations, inside wire includes the outlets, splitters, and faceplates attached or

connected to the wire, but does not include a secured enclosure that is used to house the wire and that is attached to the exterior wall of the commercial subscriber's premises, an amplifier, a channel converter, a decoder, or a remote control unit. For further clarity, it would not include a licensee's distribution panel box.

4) In situations where Rogers owns an inside wire that serves a commercial subscriber, it shall, upon request of the commercial subscriber or Bell ExpressVu acting on that subscriber's behalf, allow it to be used by Bell ExpressVu to serve that commercial subscriber. Similarly, where Bell ExpressVu owns an inside wire used to serve a commercial subscriber, it shall, upon the request of the Rogers or the commercial subscriber, allow it to be used by Rogers to serve that subscriber.

5) Where Bell ExpressVu uses inside wire owned by Rogers to serve a commercial subscriber, it shall pay Rogers \$0.52 per month per individual suite served within the commercial subscriber's premises. Similarly, where Rogers uses inside wire owned by Bell ExpressVu to serve a commercial subscriber, it shall pay Bell ExpressVu \$0.52 per month per individual suite served within the commercial subscriber's premises.

Bell ExpressVu suggests that these arrangements would be without prejudice as to any contrary determination by the Commission in any subsequent proceeding.

In order to meet the Commission Staff request that we respond by Thursday, March 31, I would be prepared to discuss this with you or your colleagues, or in any event would request Rogers' written reply to this proposal on Wednesday, March 30.

Regards,

Paul G. Armstrong
Director - Regulatory Matters
**New* telephone 613 785 6343*
Mobile Phone: 613 293 0900
and e-mail: paul.g.armstrong@bell.ca

*** End of Document ***



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BY FAX: (819) 997-4504
ORIGINAL BY COURIER

March 31, 2005

Mr. Randy Hutson
Director – Competitive Disputes, Broadcasting
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Hutson:


**Re: Request by Bell ExpressVu LP (ExpressVu) for expedited dispute resolution
regarding Rogers Cable Communications Inc. (Rogers) inside wire in
commercial properties**

1. Rogers is pleased to comment on your letter of March 24, 2005.
2. Your staff opinion indicates that the Commission's current inside wire rules set out in Section 10 of the Broadcasting Distribution Regulations do not apply to commercial properties. It further advises that, consistent with the Commission's policy of end user choice, those commercial properties equipped with a "home run" wiring configuration (where it is technically feasible for a second BDU to have access to the inside wire and provide service to end users) are properties in which a BDU should provide competitive access to its inside wiring. In those commercial properties equipped with a "daisy chain" wiring configuration (where it is not technically feasible to have two providers using the wiring) you advise that the inside wire rules should not apply.
3. While Rogers appreciates your efforts to provide a staff opinion that could form the basis of a settlement with ExpressVu, we do not believe that the opinion you have provided is helpful in this regard. In a commercial property (i.e. a hotel, hospital, prison or other institutional or commercial premise), even if the wiring configuration in the property is "home run", the practice of the owner or operator is to have one

provider servicing the property, not two providers. As a result, whether the wiring in a commercial property is "home run" or "daisy chain", there will not, in practice, be end user choice in these properties and, therefore, access to our wiring in either scenario will not satisfy the Commission's policy of end user choice. As this policy forms the underpinning of your staff opinion, we are unable to rely on it for the purpose of reaching a settlement with ExpressVu.

4. Rogers does not believe that this issue needs to be subject to further CRTC process. It is quite clear that the current inside wire regime does not apply to commercial properties and that the concept of end-user choice is not applicable to commercial properties. If you should determine, however, that this matter should be subject to further CRTC process, we would be pleased to participate.

Yours truly,



Pamela Dinsmore
Vice President, Regulatory

c.c.: Chris Frank, ExpressVu, Fax: (819) 773-5629, e-mail: Chris.Frank@bell.ca
Paul Armstrong, ExpressVu, e-mail: Paul.G.Armstrong@bell.ca

*** End of Document ***

Lehoux, Véronique

From: Stockley, Cynthia
Sent: July 12, 2005 2:32 PM
To: Lehoux, Véronique
Subject: FW: Inside wire in commercial premises

-----Original Message-----

From: Love, James
Sent: April 6, 2005 3:36 PM
To: 'chris.frank@bell.ca'
Cc: Hutson, Randy; Stockley, Cynthia
Subject: Inside wire in commercial premises

Chris,

This is with respect to Bell ExpressVu's request of February 17, 2005 regarding competitive access to inside wire in commercial or institutional premises. As indicated in the parties submissions of March 31, 2005, which were further to the non-binding staff opinion issued on March 24, 2005, it is clear that the parties have not been able to resolve this matter.

In light of the policy issues that are raised in this file, this is to inform you that lead responsibility for the further processing of this file has been transferred to the Distribution and Competitive Policy Group. If you should require further assistance with respect to this matter, please contact Cynthia Stockley at (819) 994-0924.

Regards,

James Love
Canadian Radio-television and Telecommunications Commission/Conseil de la radiodiffusion et des télécommunications

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