



Telecom Decision CRTC 2004-21

Ottawa, 29 March 2004

EastLink vs. Aliant Telecom – Compliance with bundling rules and Public Notice 2003-1-1

Reference: 8622-E17-200308123

The Commission finds that Aliant Telecom Inc.'s (Aliant Telecom's) value packages are bundles that require tariff approval. The Commission directs Aliant Telecom to immediately cease offering any bundles that include tariff services, such as its value packages, unless and until such time as the Commission may grant tariff approval. The Commission further directs, in the event that Aliant Telecom wishes to offer any such bundles, the company to file, within 21 days of the date of this decision, proposed tariffs with an imputation test for any such bundles. Aliant Telecom may continue to provide such bundles to existing customers who are receiving such services on the date of this decision for 21 days following the date of this decision and, in the event that Aliant Telecom files proposed tariffs, until the Commission issues its decision in respect of such tariffs. Upon the expiry of the 21 day period, in the event that Aliant Telecom does not file proposed tariffs associated with the bundles being provided to existing customers, Aliant Telecom must cease offering and providing such bundles to existing customers. In the event that Aliant Telecom files a proposed tariff relating to the bundles in question, following the issuance of the Commission's decision, Aliant Telecom may only continue to offer and provide such services to existing customers in accordance with the rates, terms and conditions of an approved tariff.

The application

1. The Commission received an application on 26 June 2003 from Bragg Communications Inc. carrying on business as EastLink (EastLink), filed pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*. EastLink alleged that Aliant Telecom Inc. (Aliant Telecom) contravened the rules established by the Commission for bundling regulated and forborne telecommunications services. EastLink further alleged that Aliant Telecom also contravened *Review of promotions*, Telecom Public Notice CRTC 2003-1-1, 13 March 2003 (Public Notice 2003-1-1), in which the Commission suspended incumbent local exchange carriers' (ILECs) applications for any promotion involving local exchange service pending the outcome of the proceeding established in *Review of winback promotions*, Telecom Public Notice CRTC 2003-1, 15 January 2003 (Public Notice 2003-1).
2. EastLink requested that the Commission:
 - a) order Aliant Telecom to cease offering customers any of its services currently offered at bundled or promotional rates, including Internet access promotions;
 - b) provide a remedy that would deter any future non-compliant activity by Aliant Telecom in offering any bundles or promotions that included any local exchange service;

- c) investigate instances of Aliant Telecom's violations of the *Telecommunications Act* (the Act) and Commission rulings in regard to bundling and promotions that are currently being offered; and
- d) appoint inspectors pursuant to section 71 of the Act to verify Aliant Telecom's compliance with any determination that may result from EastLink's Part VII application.

Process

- 3. The Commission received comments from Call-Net Enterprises Inc. (Call-Net) on 16 July 2003, the Canadian Cable Television Association (the CCTA) and Allstream Corp. (Allstream) on 25 July 2003, the Independent Members of the Canadian Association of Internet Providers (IMCAIP) and Aliant Telecom, both on 28 July 2003.
- 4. EastLink filed reply comments on 7 August 2003.
- 5. Aliant Telecom filed a submission on 20 August 2003 claiming that EastLink had introduced new information and allegations in its reply comments that it wished to address. On the same date, EastLink filed a letter with the Commission stating that Aliant Telecom's submission was out of process and requested that the Commission disallow it, or that EastLink be allowed to respond in full if Aliant Telecom's submission was to be considered. On 8 September 2003, EastLink was advised that it could respond to Aliant Telecom's submission. EastLink filed its response on 18 September 2003.
- 6. On 4 November 2003, Aliant Telecom was requested to respond to an interrogatory. The Commission received Aliant Telecom's response on 13 November 2003.
- 7. On 24 November 2003, EastLink filed additional comments and requested disclosure of all of the confidential information filed by Aliant Telecom in its response to the interrogatory posed to Aliant Telecom on 4 November 2003. Aliant Telecom responded on 4 December 2003 stating that EastLink's request for disclosure should be dismissed.

Background

- 8. In *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), the Commission permitted local exchange service to be bundled with forborne services. These bundles were to be submitted to the Commission for approval.
- 9. In *Joint marketing and bundling*, Telecom Decision CRTC 98-4, 24 March 1998 (Decision 98-4), the Commission summarized the bundling rules as follows:

... the Commission in *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994, stated that "the term bundling generally refers to a situation where one rate covers a number of service elements", and that bundling includes "situations where there may be separate rate elements for each service element, but a number of service elements are aggregated for purposes of applying volume discounts, with the result that the discount available is greater than it would be were the service elements not aggregated". In *Forbearance - Regulation of Toll Services Provided by Incumbent Telephone Companies*, Telecom Decision CRTC 97-19, 18 December 1997 and *Stentor Resource Centre Inc.* -

Forbearance From Regulation of Interexchange Private Line Services, Telecom Decision CRTC 97-20, 18 December 1997, the Commission also described bundling as the inclusion of different services or service elements under a rate structure. The Commission noted that this rate structure may be a single rate, a set of rates for various service elements, and/or rates for one or more service elements which are dependent on the usage of other services.

10. In *GT Group Telecom Services Corp. v. Bell Canada – Non-compliance with Bundling Rules*, Telecom Decision CRTC 2002-58, 20 September 2002 (Decision 2002-58), the Commission found that the provision by Bell Canada of long distance rebates, that are contingent on a customer obtaining the company's local exchange service, involves a service bundle requiring tariff approval from the Commission.
11. In *Call-Net Enterprises Inc. – Request to lift restrictions on the provision of retail digital subscriber line Internet services*, Telecom Decision CRTC 2003-49, 21 July 2003 (Decision 2003-49), the Commission noted that retail digital subscriber line (DSL) and local exchange services were not provided under a single rate structure and there was no financial benefit to taking the two services.
12. In Public Notice 2003-1-1, the Commission suspended consideration of ILEC promotions until a decision was issued on the matters raised in Public Notice 2003-1.
13. In *Measures with respect to incumbent telephone company regulatory compliance*, Telecom Public Notice CRTC 2003-4, 10 April 2003 (Public Notice 2003-4), the Commission announced that pursuant to section 71 of the Act, it was designating inspectors for the purpose of verifying compliance by the ILECs with its decisions and the Act. The Commission noted that initial verification would focus on compliance with subsections 25(1) and 27(1) and (2) of the Act.

Position of parties

EastLink

14. EastLink submitted that Aliant Telecom was providing service bundles containing regulated (or tariff) services and services which the Commission had forbore from regulating (forborne services) without the required tariff approval. EastLink further submitted that Aliant Telecom's promotions of service bundles that include high-speed Internet service, which also require a customer to take Aliant Telecom's local exchange service, were in contravention of the restrictions on promotions imposed by the Commission in Public Notice 2003-1-1. In EastLink's view, Aliant Telecom's actions were contrary to section 24, and subsections 25(1) and 27(2) of the Act.
15. EastLink provided several examples of Aliant Telecom's advertised bundles or value packages. EastLink indicated that one example was a newspaper advertisement for two different bundles: one bundle consisted of high-speed Internet, Mobility Plan, unlimited calling features, and local telephone service for \$79.00 per month, compared to a regular price for these services of \$118.25 per month; the other bundle consisted of high-speed Internet, unlimited calling features, evening and weekend long distance plan, and local exchange service for \$89.00 per month, compared to a regular price of \$121.35 per month.

16. EastLink noted that while Aliant Telecom's advertising material indicated in fine print "services available on a standalone basis, with no requirement to take Aliant Telecom's local service and/or calling features," the advertisements always included the provision that customers subscribing to services such as high-speed Internet service were required to subscribe to Aliant Telecom's local exchange service or where it is provided through a local Aliant Telecom reseller. Furthermore, EastLink argued that Aliant Telecom had provided no information on the discounted prices for the forborne services in these or other advertising materials.
17. EastLink submitted that the combined prices for all the services in Aliant Telecom's bundles were much lower than the price of each service, thus, a discount was being provided when the services were taken as a package. EastLink further submitted that Aliant Telecom failed to show the discounted prices for the individual services in the advertised bundles because the price reduction only applied where the customer selected the bundle that included the tariff services. EastLink submitted that not only were the packages bundles, but any offer for high-speed Internet service was also a bundle, since no person could take the high-speed Internet service without also taking Aliant Telecom's local exchange service.
18. EastLink noted that Aliant Telecom's advertising contained statements that the offer was available for a limited time and subject to change without notice, or that the offer was a special offer or was not available in all areas. EastLink submitted that these statements illustrated that Aliant Telecom's offers were promotions, and were therefore in contravention of the suspension on promotions imposed by the Commission in Public Notice 2003-1-1.
19. EastLink noted that one of the Internet services listed on Aliant Telecom's website was only available to new residential customers who committed to a 12-month contract and where technology and availability permitted. EastLink submitted that this was clearly a winback promotion targeted at Aliant Telecom's competitors. EastLink also submitted that it mattered little that the promotion was only for a forborne service since Aliant Telecom was able to tie its local exchange service with each high-speed Internet service order. In EastLink's view, these promotions for discounted pricing amounted to a 12-month commitment for the local exchange service as well as high-speed Internet service. EastLink submitted that these customers were therefore no longer accessible to EastLink for its local exchange service within or after that year.
20. EastLink further submitted that Aliant Telecom's marketing of promotions in areas where EastLink was about to provide local exchange service had the potential to cause direct harm to EastLink as it pre-empted EastLink's ability to acquire local exchange customers when its local exchange service was launched.
21. EastLink stated that given Aliant Telecom's disregard for its regulatory obligations by refusing to apply to the Commission for approval of its tariffs for bundled services and promotions, the only appropriate remedy was to prohibit Aliant Telecom from offering any bundles that included local exchange service. EastLink further submitted that the only way to ensure that Aliant Telecom complied with the Commission's determinations, should the Commission order the relief EastLink requested, was to perform an audit to confirm that existing customers did not continue to receive non-compliant bundles and promotions.

Intervener comments

22. Call-Net, the CCTA, Allstream and IMCAIP supported EastLink's application.
23. Call-Net noted its own Part VII application filed with the Commission on 17 January 2003. In its application, Call-Net requested that the Commission direct ILECs to continue to provide retail DSL service on a stand-alone basis to customers who switched to a different local service provider where the local service provider still utilized the ILECs' local loops¹.
24. The CCTA submitted that ILECs should not be permitted to bundle forborne services that required customers to subscribe to local exchange service, even for technical reasons.
25. In the CCTA's view, any bundle that included a local monopoly service in a manner that locked in customers or reduced incentives for a customer to switch to another service provider might be anti-competitive. The CCTA stated that it was no longer appropriate to wait until the ILECs' activities had been found to be non-compliant and/or damaging to the development of a competitive marketplace before acting, given that the ILECs had been found in the past to be providing services without tariff approval, or in contravention of the Act. The CCTA urged the Commission to consider the designation of inspectors to verify compliance with the prohibition on bundling.
26. Allstream submitted that the root of EastLink's application demonstrated the need for Commission rulings on the follow-up proceedings to Decision 2002-58 and *Regulatory safeguards with respect to incumbent affiliates, bundling by Bell Canada and related matters*, Telecom Decision CRTC 2002-76, 12 December 2002.
27. IMCAIP submitted that Aliant Telecom's conduct undermined competition in the local exchange service market.

Aliant Telecom's comments

28. Aliant Telecom submitted that EastLink's application should be dismissed. In Aliant Telecom's view, EastLink's claims of anti-competitive behaviour on the part of Aliant Telecom were completely unfounded. Aliant Telecom submitted that the foundation of the EastLink complaint was either a misunderstanding, or a deliberate misinterpretation, of the bundling restrictions imposed on the ILECs by the Commission. Aliant Telecom submitted that its value packages and advertising were in full compliance with the Commission's rulings.
29. Aliant Telecom stated that its value packages were really just two separate bundles being advertised under a single price. One bundle consisted only of forborne services and the other bundle was an approved tariff service bundle. Aliant Telecom indicated that the advertised \$79.00 per month bundle consisted of a \$37.05 per month bundle of forborne services and a \$41.95 per month bundle of regulated services. Aliant Telecom further indicated that the advertised \$89.00 per month bundle consisted of a \$47.05 per month bundle of forborne services and a \$41.95 per month bundle of regulated services. Aliant Telecom stated that the price for each of these bundles appeared separately on customers' accounts, with no additional discount or any other advantage. Aliant Telecom indicated that the total savings between the

¹ The Commission issued Decision 2003-49, in regards to the Part VII application.

advertised price of its value packages and the regular price was the savings from the forborne services bundle added to the savings from the regulated services bundle. Aliant Telecom submitted that there was no aggregation of services to provide an additional discount or any other advantage.

30. Aliant Telecom indicated that its advertisements included a note which stated that "internet, wireless and long distance packages are available on a standalone basis with no requirement to take Aliant's local service and/or calling features". Aliant Telecom further indicated that the price of each bundle did not vary with the combination of bundles taken by a customer. Aliant Telecom stated that depending on a customer's needs, as determined during the sales process, the best combination of tariff and forborne services bundles is presented to a customer.
31. Aliant Telecom submitted that of the customers who had signed up to different value package combinations, a certain number of them (number filed in confidence) had not taken the more inclusive bundle or the local services bundle, and had simply taken the forborne services bundle. Additionally, a number of the customers taking the local services bundle had not taken the forborne services bundles of high-speed Internet/mobility or high-speed Internet/long distance. Aliant Telecom claimed this made it very clear that customers had no misconception about Aliant Telecom's advertising and were indeed subscribing to stand-alone packages that met their needs.
32. Aliant Telecom submitted that its advertising was intended to bring its value proposition to customers. Aliant Telecom submitted that the consumer market in its territory was extremely competitive and customers wanted a simple and accurate means of comparing suppliers and evaluating purchase alternatives. Aliant Telecom stated that its advertisements did not constitute bundles under the regulatory rules.
33. Aliant Telecom stated that the tariff services bundle was available for resale. Aliant Telecom indicated that customers, who subscribed to local exchange service from a reseller, could subscribe to the forborne services bundle at the same rate as Aliant Telecom charged its local exchange service customers. Aliant Telecom further submitted that any competitor, including EastLink, could resell the Aliant Telecom local exchange service combined with their own forborne service bundle(s) under their own branding. Aliant Telecom argued that for it to do the same did not constitute a breach of the bundling rules.
34. Aliant Telecom submitted that EastLink misunderstood the Commission's direction on promotions in Public Notice 2003-1-1. Aliant Telecom stated that the Commission suspended consideration of ILEC tariff filings that proposed any discount from tariff rates in the local exchange services market. Aliant Telecom submitted that the Commission has not prohibited the ILECs from advertising, marketing or promoting their services as long as those promotions were fully compliant with existing tariff rates, terms and conditions. Aliant Telecom submitted that the terms such as "special offer", "offer available for a limited time" and "subject to change without notice" included in its advertisements only applied to the forborne services bundle included in the value packages. The regulated services bundle was offered in accordance with a tariff.

35. Aliant Telecom disputed EastLink's claim that Aliant Telecom was targeting EastLink in an anti-competitive way. Aliant Telecom noted that EastLink had based this claim on the phrase: "services are not available in all areas". Aliant Telecom indicated that the full wording of this phrase was: "Customers subscribing to services such as High-Speed Internet must subscribe to a local service that uses the Aliant network. Not available in all areas." Aliant Telecom submitted that this statement meant that high-speed Internet service was not available in all areas as the roll-out of this service was based on various economic criteria that must be satisfied. Further, where high-speed Internet service was not available, dial-up Internet service was offered in a forborne services bundle.
36. Aliant Telecom submitted that in Decision 2003-49, the Commission determined that high-speed Internet service was not a bundle, despite the technical requirement to subscribe to an ILEC-provisioned local loop. Aliant Telecom noted in that decision that the Commission further stated that although DSL was provided only to ILEC local exchange service customers, retail DSL Internet service and local exchange service were not being offered under a single rate structure, and no financial benefits were available to customers for subscribing to both services. The Commission therefore found that under such conditions the provision of retail DSL Internet service and local exchange service by the ILECs did not require tariff approval.
37. Aliant Telecom submitted that the use of contract rates for its high-speed Internet service was a standard offering in competitive markets such as Internet, toll and wireless services. Aliant Telecom stated that contracts were legitimate business arrangements that saved both the supplier and the customer money. Aliant Telecom contended that EastLink was free to offer one year contracts, or resell Aliant Telecom's local exchange service until EastLink's own local exchange service was rolled out.
38. Aliant Telecom submitted that the evidence did not support the need to appoint inspectors to verify its compliance with Commission rulings.

EastLink's reply comments

39. EastLink contested Aliant Telecom's assertion that the local exchange service market in the Atlantic was competitive given that Aliant Telecom had a 97% market share. EastLink submitted that competition in the Atlantic provinces was not at sufficient levels to justify giving Aliant Telecom free reign to target competitors' local exchange customers or offer bundles that had the effect of stalling the growth of competitors' local exchange services.
40. EastLink submitted that Aliant Telecom's bundles had the effect of binding its monopoly local exchange service to other services in the bundle and therefore, reduced the consumer's choice of local exchange service provider. EastLink submitted that this tied arrangement raised the cost of entry for competitors and increased barriers to the growth of competitive service providers. The tied services presented a larger decision to a customer, since a customer wishing to move to another local exchange service provider must move two services (local plus high-speed Internet service) at the same time.

41. EastLink submitted that the examples provided in its application did not support Aliant Telecom's explanation that the value packages were a bundle of two bundles. In EastLink's view, this explanation was inconsistent with the plain reading of the advertisements. EastLink argued that the advertisements supported EastLink's position that the description of a "bundle of bundles" had been contrived by Aliant Telecom to claim compliance with the bundling rules.
42. EastLink noted that the \$37.05 and \$47.05 prices for the forborne services bundles were not advertised anywhere. EastLink submitted that Aliant Telecom had provided no information in advertising or company brochures on the individual discounted rates for services that comprised the bundles. In EastLink's view, this was because the forborne services bundle did not exist. To be a forborne services bundle, it would have to include only forborne services.
43. EastLink noted that one of Aliant Telecom's value packages included long distance service. EastLink noted that the tariff services bundle included 30 minutes of long distance calling, with additional per minute charges at various per minute rates depending on time of day and destination. However, the forborne services bundle also included long distance service. EastLink submitted that the long distance component of the forborne services bundle overrides the long distance component of the regulated services bundle. EastLink suggested that it was illogical that Aliant Telecom would intentionally create a bundle of bundles where one part of the total bundle overrides part of the regulated services bundle. In EastLink's view, this overlap in service offered under both parts of the "bundle of bundles" suggested that the way Aliant Telecom characterized the offering in this proceeding was a fabrication. EastLink submitted that consumers were being sold a single bundle, not a bundle of bundles.
44. EastLink noted that the advertisement for the \$79.00 value package, which included high-speed Internet service, Mobility iMove plan, unlimited SmartTouch calling features and local exchange service, included the following provision: "Must be a loyal Aliant long distance customer". EastLink questioned which one of the two bundles within this package required the customer to be a loyal long distance customer.
45. EastLink noted that in Decision 2003-49, the Commission found that the combination of high-speed Internet service with local exchange service is not a bundle if no financial benefit is offered for the group of services. EastLink submitted that an offering of Internet service at stand-alone market prices with a requirement to take local exchange service in order to obtain Internet service was not a bundle. However, if that same Internet service was offered as part of a forborne service package at a reduced price, and local exchange service had to be taken in order to get the reduced pricing, then such an offering was a bundle that included a regulated service requiring tariff approval.
46. EastLink submitted that Aliant Telecom's argument that it cannot "unbundle" its Internet service from local exchange service for technical reasons was irrelevant. In EastLink's view, if the Commission found that the Internet service and local exchange service were a bundle absent any technical limitations, then it was a bundle notwithstanding the technical limitations. EastLink submitted that any technical limitations should not exempt Aliant Telecom from any obligation to file a tariff where every other ILEC would be required to file such a tariff.

47. EastLink submitted that Aliant Telecom's suggestion that EastLink resell Aliant Telecom's local exchange service bundles was inappropriate since EastLink was a facilities-based service provider. According to EastLink, this suggestion was inconsistent with the Commission's interest in the growth and sustainability of facilities-based competition.

Aliant Telecom's further comments

48. Aliant Telecom submitted that EastLink's contention that Aliant Telecom's forborne services bundles, specifically those including high-speed Internet service, reduced customer choice, was incorrect. Customers of competitive local exchange carriers (CLECs) that do not offer high-speed Internet services had access to Aliant Telecom's high-speed Internet service and its forborne services bundles, which included high-speed Internet service, as long as the access line was DSL capable. Aliant Telecom added that customers of CLECs had access to other service providers who offered services that competed with the components of Aliant Telecom's forborne services bundles.
49. Aliant Telecom submitted that market share information was not a factor in disposing of EastLink's application. Nevertheless, Aliant Telecom stated the 97% market share number used by EastLink was misleading in that it was out of date and used out of context. In Aliant Telecom's view, this number suggested that EastLink had only achieved a 3% share of the market in the areas where it provided local exchange service. Aliant Telecom argued that the relevant criteria for assessing market share numbers were the markets where CLECs had chosen to provide service, namely, in the major urban centres in Nova Scotia and Prince Edward Island. Aliant Telecom noted that EastLink had mentioned in the media that it had achieved penetration rates of 25-30%.

EastLink's further comments

50. EastLink submitted that an existing Aliant Telecom customer with both high-speed Internet service and local exchange service could not obtain EastLink's local exchange service without also moving its high-speed Internet service off of the Aliant Telecom network. EastLink further submitted that many customers were reluctant to make this change since it would mean the loss of their current e-mail address.
51. EastLink submitted that it had not misstated Aliant Telecom's market share across the four Atlantic provinces. EastLink stated that the market share information came from Aliant Telecom's summary of a presentation made to its shareholders on 14 May 2003. EastLink agreed that the issue of market share was not relevant to the issue of whether Aliant Telecom's bundles were compliant with the current regulatory rules. EastLink contended that market share information did become relevant in an environment where the regulations and Commission rulings were disregarded. In EastLink's view, it was important that the existing rules be maintained and enforced so that competition could continue to develop.
52. EastLink submitted that while the copies of bills filed by Aliant Telecom might show the forborne services bundle on a separate line, they all included a tariff service. EastLink argued that this information did not establish that the forborne services bundle was available on a stand-alone basis. EastLink submitted that it had not seen any evidence that customers could purchase the forborne services bundle without also being required to take local exchange service.

53. EastLink submitted that through the requirement to purchase local exchange service, Aliant Telecom was able to benefit from reducing the price of its bundles, offering savings on the basis that the local exchange service was sold with the package. In support of its argument, EastLink indicated that the billing summary provided by Aliant Telecom showed a line for "local and Internet current charges" and a separate line for the mobility charges.

Commission analysis and determination

54. EastLink argued that Aliant Telecom's advertised bundles were one bundle that combined forborne services with tariff services and, therefore, required Commission approval.
55. Aliant Telecom argued that its advertised packages consisted of two separate stand-alone bundles that did not, merely because they were being offered together under one price, require Commission approval.
56. In Decision 98-4, the Commission concluded that bundled services including one or more tariff service elements and services that were the subject of *Review of bundling and joint marketing restrictions*, Telecom Public Notice CRTC 97-21, 6 June 1997², must receive prior Commission approval.
57. In Decision 2003-49, the Commission stated that bundling exists where a customer derives a financial benefit from acquiring more than one service from an ILEC that is greater than the benefit that would be available to the customer if the services were bought separately from the ILEC.
58. In the Commission's view, a suite of services is a bundle when those services are grouped together under a single rate or a single rate structure, and there is a financial benefit inherent in the single rate or single rate structure. As stipulated in Decision 98-4, when such a bundle includes one or more tariff service elements, the bundle must receive prior Commission approval.
59. The Commission notes the advertising and promotional material filed by EastLink for Aliant Telecom's value packages offered both tariff services (local exchange service and calling features) and forborne services (high-speed Internet, long distance and cellular services) in various optional bundles under a single price. For instance, EastLink provided promotional material on several value packages priced at \$79.00, \$89.00 and \$99.00, with a regular price of \$118.25, \$121.35 and \$141.35 respectively. The Commission further notes that the single price for each suite of services represents a significant discount from the sum of the regular prices for the individual services included.
60. Aliant Telecom argued that the prices of its value packages are merely the sum of two separately available bundles. The total savings between the advertised price of its value packages and the regular price is, according to Aliant Telecom, the savings from the forborne services bundle added to the savings from the tariff bundle.

² These services were services of an affiliated company, services of a non-affiliated company and non-telecommunications services offered in-house by the telephone company.

61. In support of its argument, Aliant Telecom noted that the wording at the bottom of its advertisements stated: "internet, wireless and long distance packages are available on a standalone basis with no requirement to take Aliant's local service and/or calling features". In addition, Aliant Telecom noted that the value packages appeared on customers' bills as two separate lines, one for the tariff bundle and the other for the forborne services bundle.
62. Aliant Telecom was asked to provide additional documentation (such as copies of marketing material, brochures, order or contract forms, and price lists) demonstrating that the forborne services bundles included in Aliant Telecom's value packages were separately available. In response, Aliant Telecom provided a table titled "Reference Guide" that Aliant Telecom claimed is used by its customer sales representatives. This table listed information on the tariff bundles and the forborne services bundles that, according to Aliant Telecom, together comprise the value packages. Aliant Telecom also provided representations of what it referred to as internal order screens indicating the component bundles of the value packages, consisting of the tariff bundle³ (e.g. PrimePak, as named by Aliant Telecom) and the forborne services bundle under the name "Aliant Telecom Connect & Save promo". Aliant Telecom also filed several copies of customer invoices showing separate line items for the "Connect & Save" Internet services bundles and the "PrimePak" tariff bundles. The Commission notes that three of the samples show that the "Connect & Save" Internet bundles were combined with various regulated bundles.
63. The Commission notes that one of the representations referred to by Aliant Telecom as an internal order screen appears to show that the "Connect & Save" Internet services bundle was purchased without a PrimePak regulated services bundle. The Commission notes that the document is not a customer invoice and it is not clear to the Commission what the document actually represents or demonstrates. In any event, it appears that local exchange service was apparently ordered on that form. Further, the Commission notes that, if there was a customer invoice demonstrating that the "Connect & Save" Internet bundle was purchased on a stand-alone basis, for example without a regulated services bundle or regulated service, Aliant Telecom could have provided one.
64. The Commission notes that a company might separate the cost of a bundle of services into two component prices on the customer invoice for any number of business or administrative reasons. The Commission finds that the invoices provided do not establish that the forborne "bundle" of services is in fact offered or provided on a stand-alone basis.
65. In the Commission's view, the figure filed in confidence by Aliant Telecom representing the percentage of customers who had taken a tariff bundle but had not taken the forborne services bundle which included high-speed Internet service, does not demonstrate that the forborne services are offered or provided on a stand-alone basis. The Commission considers that it merely shows that some customers only signed up for the tariff bundle and chose not to take high-speed Internet services.

³ The tariff bundle is contained in Aliant Telecom's General Tariff under item 300, Residential Single-Line Access Bundles. Item 300 includes four different bundles. Each bundle includes residential single-line access services, 30 minutes of Canada-Canada direct-dialed direct long distance calling, and a varying number of included calling features. One bundle option also includes dial-up Internet access.

66. Furthermore, the Commission considers that the figure filed in confidence by Aliant Telecom for customers who had taken a forborne service "bundle" but who did not subscribe to the particular advertised tariff bundle is also not conclusive. This figure only demonstrates that a certain percentage of customers did not take tariff bundle #3, in item 300, Residential Single-Line Access Bundle, in combination with the forborne service "bundles". In the Commission's view, it does not demonstrate that customers did not take one of the other tariff bundles in item 300 or that the forborne service bundle is offered or provided on a stand-alone basis.
67. EastLink argued that there is an overlap in the long distance service component of the tariff bundles and the forborne bundles that apparently combine to make the value package offerings. EastLink submitted that the tariff and forborne services bundles are merged in the value packages and that they are not as easily separated as suggested by Aliant Telecom. The tariff services bundle includes 30 minutes of long distance calling within Canada, while the value packages include 200 daytime calling minutes and free calling within Canada on evenings and week-ends. The Commission agrees that there is an apparent overlap in the long distance component of the value package offerings. The Commission considers that it can be implied that the two parts of the value packages are merged and not as readily separated as suggested by Aliant Telecom. The Commission considers that merging the service offerings modifies the tariff bundles in that the 200 long distance minutes included in the value packages in essence replaces the 30 minutes long distance calling of the regulated services bundle. This therefore modifies the tariff bundle. The Commission considers that a modification to the tariff bundle requires Aliant Telecom to obtain Commission approval of the bundle.
68. The Commission notes that Aliant Telecom did not provide any promotional brochures or other advertising promoting the forborne "bundle" of services on a stand-alone basis. The Commission notes that the "bundle" of forborne services within the value package is priced significantly below the stand-alone prices for those services. It appears to the Commission that this is likely because the "bundle" is in fact only offered in conjunction with tariff services. In the Commission's view, there is significant uncertainty that the "bundle" of forborne services is only provided in conjunction with tariff services. In the Commission's opinion, when all of the services are offered together under the value packages, the services are offered at a single bundled rate that is less than the sum of the stand-alone rates of the services in question.
69. In light of the foregoing, the Commission considers that the evidence on the record is insufficient to support Aliant Telecom's position that the forborne services "bundle" is in fact offered or provided on a stand-alone basis. The Commission finds that Aliant Telecom's value packages are bundles that consist of tariff and forborne services with a financial benefit to the customer, and thus require prior Commission approval.
70. The Commission directs Aliant Telecom to immediately cease offering any bundles that include tariff services, such as its value packages, unless and until such time as the Commission may grant tariff approval. The Commission further directs, in the event that Aliant Telecom wishes to offer any such bundles, the company to file, within 21 days of the date of this decision, proposed tariffs with an imputation test for any such bundles. Aliant Telecom may continue to provide such bundles to existing customers who are receiving such services on the date of this decision for 21 days following the date of this decision and, in the event that

Aliant Telecom files proposed tariffs, until the Commission issues its decision in respect of such tariffs. Upon the expiry of the 21 day period, in the event that Aliant Telecom does not file proposed tariffs associated with the bundles being provided to existing customers, Aliant Telecom must cease offering and providing such bundles to existing customers. In the event that Aliant Telecom files a proposed tariff relating to the bundles in question, following the issuance of the Commission's decision, Aliant Telecom may only continue to offer and provide such services to existing customers in accordance with the rates, terms and conditions of an approved tariff.

Restrictions on promotions

71. In regard to the question of whether Aliant Telecom's value packages are promotions and therefore contravene the suspension on promotions imposed by the Commission in Public Notice 2003-1-1, the Commission considers that the main compliance issue relates to whether tariff approval is required for the value packages. In Public Notice 2003-1-1, the Commission amended its direction in Public Notice 2003-1 to read "... will suspend consideration of applications for ILEC promotions in the local wireline market until a decision is issued on the matters raised in this Public Notice." In other words, the Commission will not consider approval of new tariff applications for promotions. The Commission considers therefore, that a company would not be in violation of the suspension order in Public Notice 2003-1-1 by offering a promotion that the Commission had approved prior to the issuance of the Public Notice. When Aliant Telecom files its proposed tariffs for the bundle(s), as directed above, Aliant Telecom will need to ensure that the tariff application could not be considered a new promotion that is subject to Public Notice 2003-1-1.

Tying local exchange service with Internet service

72. In regard to EastLink's request that the Commission prohibit the bundling and/or tying of local exchange service with Internet or other forborne services, the Commission notes that EastLink's request is very similar to the issue raised by Rogers Communications Inc. (Rogers) in its Part VII application filed with the Commission on 27 June 2003. In its application, Rogers requested that the Commission change the bundling rules to prohibit the large ILECs from bundling any tariff residential local exchange service with forborne services. The Commission reiterated in *Amendments to Telecom Public Notice CRTC 2003-8, Review of price floor safeguards for retail tariffed services and related issues*, Telecom Public Notice CRTC 2003-10, 8 December 2003 (Public Notice 2003-10) that Rogers's Part VII application would be made part of the Public Notice 2003-8 proceeding.
73. The Commission notes that the issue of whether the ILECs should be prohibited from bundling local exchange service with forborne services is being considered by the Commission within the context of Public Notice 2003-10. Accordingly, the Commission is not dealing with this issue in the context of the present proceeding.

Investigating compliance

74. In regard to EastLink's request that the Commission investigate instances of Aliant Telecom's violations of the Act and Commission rulings with respect to currently offered bundles and promotions, and that the Commission appoint inspectors to verify Aliant Telecom's compliance

with any order arising as a result of this application, the Commission notes that pursuant to Public Notice 2003-4, it has designated inspectors to verify incumbent telephone company compliance with Commission rulings and the Act. The Commission notes that regulatory compliance issues relative to joint marketing, bundling and tariff filings for regulated services, including the conduct of an independent audit, will be dealt with on a case-by-case basis.

75. Accordingly, the Commission **denies** EastLink's request.

Disclosure of information

76. EastLink requested disclosure of all of the information filed in confidence by Aliant Telecom. EastLink noted that Aliant Telecom claimed confidentiality over its customer data on the basis that it illustrated specific market segmentation. Aliant Telecom had claimed that if its customer data were made public, existing and potential competitors could develop more effective business and marketing strategies, causing specific direct harm to Aliant Telecom. EastLink indicated that Aliant Telecom also claimed confidentiality over illustrations of specific customer orders for forborne services bundles and tariff services bundles. EastLink submitted that Aliant Telecom had provided insufficient explanation as to how the information could cause harm to Aliant Telecom. EastLink argued that it was necessary for it to review the information in order to comment on its sufficiency in supporting Aliant Telecom's position in this application. EastLink stated that even if there were potential competitive ramifications associated with disclosure, these would be outweighed by the public interest served by such disclosure.
77. In reply, Aliant Telecom submitted that EastLink's request for disclosure should be dismissed as EastLink had not demonstrated why disclosure would be in the public interest, let alone whether or not the public interest outweighed the competitive harm that would accrue to Aliant Telecom from such disclosure. Aliant Telecom further submitted that disclosing sample order entry forms would reveal proprietary information related to its business systems and would therefore cause direct harm to Aliant Telecom.
78. In the Commission's view, the percentage figures filed by Aliant Telecom are properly considered to be confidential as the specific direct harm likely to be incurred by Aliant Telecom would outweigh the public interest in disclosure of such information. Further, the Commission considers that the entry forms could indeed contain proprietary business system information. In addition, the Commission considers that disclosure of the specific line items naming the service and the related price was not required in order for EastLink to have a meaningful opportunity to respond to Aliant Telecom's submissions. Finally, the Commission notes that given the Commission's determination that the value packages and any other such bundles require tariff approval, disclosure at this stage of the proceeding would not serve any useful purpose.
79. Accordingly, the Commission **denies** EastLink's request for disclosure of confidential information filed by Aliant Telecom.

Secretary General

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