Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2005-16

Ottawa, 24 March 2005

Call-Net Enterprises Inc. – Application for a competitor tariff for an inter-office digital transport service between Halifax and St. John's

Reference: 8661-C25-200407462

In this Decision, the Commission ***denies*** *Call-Net Enterprises Inc.'s application for a competitor tariff for an inter-office digital transport service at OC-3 and OC-12 rates between Halifax and St. John's.*

The application

1. On 14 July 2004, the Commission received an application by Call-Net Enterprises Inc. (Call-Net) pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure*. Call-Net requested that the Commission order Aliant Telecom Inc. (Aliant Telecom) to file a Category I competitor tariff for an inter-office digital transport service at OC-3 and OC-12 rates between Halifax, Nova Scotia and St. John's, Newfoundland and Labrador (Newfoundland) for interexchange carriers. Call-Net also requested that, should the Commission not find this service to be of an essential nature, the service be priced at Category II Competitor rates with a reasonable mark-up.

2. Call-Net stated that since *Stentor Resource Centre Inc. – Forbearance from regulation of interexchange private line services*, Telecom Decision CRTC 97-20, 18 December 1997 (Decision 97-20), over 2000 interexchange (IX) routes had been forborne from regulation and very few commercial centres and long-haul routes (greater than 500 miles) remained non-forborne.

3. Call-Net stated that St. John's was the only provincial capital currently not accessible through forborne IX routes – in contrast with all other provincial capitals which were served by forborne routes. Call-Net further stated that Aliant Telecom's retail rates for the Halifax to St. John's route were at least 14 times higher than the market rates in forborne routes of similar length in Eastern Canada. Call-Net stated that it had signed a Dedicated Services Agreement (DSA) for an OC-3 service that was in Aliant Telecom's special facilities services tariff. Call-Net submitted that it had been unable to negotiate with Aliant Telecom for a rate that was more consistent with rates in competitive markets following the recent expiry of the DSA.

4. Call-Net argued that despite the huge mark-up for the route in question, no competitor had built facilities to Newfoundland because of the high costs of construction and the relatively small customer base. Call-Net further argued that it was not economically and technically feasible for competitors to build on this route. Call-Net submitted that the incumbent local exchange carrier (ILEC) infrastructure on this route was an essential or, at minimum, a near-essential facility. Call-Net further submitted that the current situation on this route was affecting the ability of competitors to deliver the full benefits of competition in Newfoundland.

Canada

The process

5. The Commission received comments from EastLink, dated 12 August 2004; Aliant Telecom, Benson-Myles on behalf of Persona Communications Corp. (Persona), Canadian Cable Television Association (CCTA), and Rogers Communications Inc. (Rogers), dated 13 August 2004; and MTS Allstream Inc. (MTS Allstream), dated 16 August 2004. Reply comments were received from Call-Net, dated 23 August 2004.

6. In its 13 August 2004 comments, Rogers submitted that the Commission should expand the relief requested by Call-Net to include DS-0, DS-1 and asynchronous transfer mode (ATM) services. Rogers further requested that the Commission order Aliant Telecom to reduce rates for all routes from Newfoundland to neighbouring provinces and to make such rates available to telecommunications service providers other than interexchange carriers.

7. The Commission received comments from Bell Canada and Aliant Telecom, dated 13 September 2004, and Saskatchewan Telecommunications (SaskTel), dated 15 September 2004, on Rogers' request to expand Call-Net's application. Call-Net replied to Bell Canada's and SaskTel's comments in a letter dated 22 September 2004. Rogers submitted reply comments on Aliant Telecom's, Bell Canada's, SaskTel's and Persona's comments in a letter dated 24 September 2004.

8. In a letter dated 8 October 2004, Commission staff addressed the expanded relief sought by Rogers and indicated that all matters associated with Rogers' request, with the exception of ATM services, were to be dealt with as part of the process initiated by Call-Net's application. In the same letter, Commission staff addressed interrogatories to parties regarding Call-Net's application. Parties submitted responses to these interrogatories, dated 29 October 2004 and 5 November 2004.

9. The Commission received further comments from SaskTel and MTS Allstream on 12 November 2004 and 15 November 2004 respectively.

Background

10. In Decision 97-20 and in Telecom Order CRTC 99-434, 12 May 1999 (Order 99-434), the Commission determined that given that the interexchange private line (IXPL) market was route specific, it was appropriate to grant forbearance to a route if there was at least one competitor that provided, or that was offering to provide, IXPL services at DS-3 or greater bandwidth on that route using terrestrial facilities other than facilities obtained from the ILEC or an affiliate of the ILEC.

11. In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002 (Decision 2002-34), the Commission established two categories of Competitor Services. A Category I Competitor Service (Category I service) was defined as a service in the nature of an essential service and comprised essential, near-essential or other interconnection and ancillary services required by Canadian carriers and resellers interconnecting to the ILECs' networks. The rate for a Category I service would be based on Phase II costs plus a mark-up of 15 percent. A Category II Competitor Service

(Category II service) was defined as a Competitor Service that was not a Category I service. The rate for a Category II service would be determined on a case-by-case basis. Further, the Commission noted that as the regulatory framework was intended to foster facilities-based competition, mandated cost-based pricing was necessary for certain facilities and services and must be justified on a case-by-case basis so that it did not create a disincentive to facilities-based competition.

12. In *Competitor Digital Network Services*, Telecom Decision CRTC 2005-6, 3 February 2005 (Decision 2005-6), the Commission dealt with, among other things, the need for the ILECs to develop Competitor Digital Network (CDN) services. The Commission used several general considerations in determining the need for CDN services. These general considerations included supply, constraints on facilities construction, the state of competition and competitor reliance on ILEC facilities.

Positions of parties

Absence of forborne IX routes to St. John's

13. Aliant Telecom argued that St. John's was not unique with respect to the absence of forborne (competitive) IX routes and that Call-Net was making this statement to justify its application for rate relief in the Halifax to St. John's IX route.

14. Aliant Telecom submitted that it was not aware of any previous Commission determination where the status of a municipality as a provincial or territorial capital was used to determine the appropriate regulatory treatment of IX routes.

15. Aliant Telecom further submitted that Canada's territorial capitals and other major commercial centres were in similar circumstances. It noted that the three territorial capitals of Whitehorse, Yellowknife and Iqaluit were not accessible through forborne IX routes and that the distances from these territorial capitals to major cities in Western Canada were over 500 miles in each case. It also noted that, 46 percent of the 113 Canadian municipalities with a population of 40,000 or greater were not accessible through a forborne IX route. It further noted that 24 percent of the 42 Canadian municipalities with a population equivalent to St. John's or larger did not have access to forborne IX routes.

16. MTS Allstream, CCTA, EastLink, Persona and Rogers were generally in support of Call-Net's application, but these parties did not provide specific comments on this issue. Bell Canada and SaskTel were opposed to Call-Net's application, but did not comment on this issue.

17. In reply, Call-Net argued that Aliant Telecom's comparison of the territorial capitals and other cities to St. John's was irrelevant to its application. Call-Net further disputed the number of municipalities that did not have access to competitive IX routes. In addition, Call-Net stated that the other major municipalities identified by Aliant Telecom as having similar circumstances to St. John's had access to competitive IX routes in nearby exchanges. It submitted that, in contrast, St. John's was hundreds of miles from Nova Scotia, where the competitive supply of IX facilities was located.

Competitive supply and barriers to supply of IX digital transport facilities

18. Call-Net submitted that it was not economically and technically feasible for competitors to build IX digital transport facilities in the Halifax to St. John's IX route. It stated that no competitor had built IX digital transport facilities to Newfoundland despite the huge mark-up relative to the market rates for forborne IX routes of similar length in Eastern Canada. Call-Net argued that given the very high cost of construction, in the order of $10 million for the Halifax to St. John's IX route, and the relatively small market base, competitors were unable to develop a viable business case to construct IX digital transport facilities to Newfoundland. Call-Net also argued that competitors were discouraged to build because if and once a terrestrial IX digital transport facility was built, Aliant Telecom would ask for forbearance for that IX route and would likely substantially decrease its prices for that IX route, which would reduce competitors' ability to recover their capital investment.

19. Aliant Telecom argued that Call-Net had not provided evidence to substantiate that it was not economically and technically feasible for competitors to build on the Halifax to St. John's IX route. Further, Aliant Telecom stated that Call-Net's statement was incorrect, since there was at least one large competitor, MTS Allstream, which owned and operated its own high-capacity radio system between Newfoundland and the rest of Canada.

20. In addition, Aliant Telecom commented that certain sections of the IX route in question were already subject to competitive supply, such as Halifax-Antigonish, Antigonish-Port Hawkesbury and Halifax-Sydney. Aliant Telecom argued that the supply situation showed that there was no insurmountable barrier to competitive supply on other sections of the IX route.

21. In response to Commission interrogatories, Aliant Telecom noted EastLink's plan to build a submarine fibre optic cable facility from Nova Scotia to Prince Edward Island. It further noted that it would take only two to three weeks to lay the cable. The length of the facility would be 80 kilometres, which was marginally shorter than the 100-kilometre distance between Newfoundland and Nova Scotia. Aliant Telecom argued that EastLink's plan demonstrated that there were no insurmountable technical barriers to construct a submarine fibre optic cable on this IX route, and that given the relatively brief time required to construct a major part of a company's network infrastructure, there were no economic barriers for competitors to construct their own submarine fibre optic cables between the Canadian mainland and Newfoundland. Aliant Telecom also noted that there were a number of submarine cables that were in close proximity to Newfoundland, which were used for international communications.
Aliant Telecom further stated that it planned to augment its existing network between Halifax and St. John's by adding facilities to provide additional OC-192 capacity.

22. Rogers argued that Aliant Telecom had a monopoly on the fibre optic facilities from Newfoundland to neighbouring provinces. It noted that the only other terrestrial facility was a microwave system operated by MTS Allstream. It also noted that the microwave system was currently at capacity. It further notes that it had the longest microwave hop in the world and consequently reliability had been an issue. Rogers further argued that the barrier to competitive supply of IX fibre optic digital transport facilities was the high cost of laying fibre optic cable under sea and the high cost of placing that fibre optic cable from the landing point to St. John's.

23. MTS Allstream supported Call-Net's position that competitors would be unable to economically duplicate the facility in question given the significant costs of construction and limited demand. With respect to Aliant Telecom's reference to EastLink's plan to lay submarine fibre optic cable between Nova Scotia and Prince Edward Island, MTS Allstream argued that EastLink had the expected traffic volumes to justify the planned build. It submitted that, on the other hand, competitors did not have the same traffic volumes in Newfoundland at that time.

24. In response to a Commission interrogatory, MTS Allstream stated that it was currently investigating the feasibility of increasing the capacity of its microwave facility. It submitted that its preliminary investigation indicated that the implementation would be high-risk given the complexity and extreme distance of the radio span.

25. EastLink, CCTA, and MTS Allstream generally supported Call-Net's argument that competitors would be unlikely to build a high capacity IX terrestrial digital transport facility from Nova Scotia to Newfoundland. They also argued that if a facility was built, Aliant Telecom would apply for, and be granted, forbearance for that IX route. They argued, further, that Aliant Telecom would then cut prices to the point that the competitor would be unable to recover its costs of building the facility.

26. EastLink stated that the Halifax to Sydney IX route was forborne, and that any telecommunications traffic from Halifax to St. John's would pass through Sydney. EastLink, supported by CCTA, submitted that the applicable IX route for rate relief should be Sydney to St. John's.

27. Persona submitted that the access/termination point should be both Sydney and Halifax. Rogers submitted that Call-Net's application should be expanded to all IX routes from Newfoundland to neighbouring provinces.

28. In its comments, SaskTel stated that Telesat Canada (Telesat) had launched its Anik F2 Ka-Broadband service – which was capable of delivering cost-effective, two-way broadband services – and intended to make it available across Canada early in 2005. It further argued that alternate supply of IX digital transport facilities to meet Rogers' requirements was economically and technically feasible.

Need for a Halifax-St. John's IX digital transport facility

29. Call-Net argued that Aliant Telecom's IX digital transport facility between Halifax and St. John's met all the conditions of an essential facility: (i) Aliant Telecom was the only supplier of this facility (monopoly controlled); (ii) it was required as an input for competitors to offer competitive services in Newfoundland; and (iii) a competitor could not duplicate it economically or technically given the size of the market and the extremely high cost of building facilities.

30. Aliant Telecom submitted that the Halifax to St. John's IX digital transport facility did not meet two of the three Commission criteria of an essential facility. It stated that MTS Allstream provided a microwave facility between Newfoundland and the rest of Canada and that Telesat provided an IX facility between Halifax and St. John's. Further, Aliant Telecom noted that it was currently leasing capacity from Telesat's and MTS Allstream's IX transport facilities, and

concluded that the IX route in question was not monopoly controlled. Aliant Telecom further argued that it had demonstrated that there were no economic or technical barriers which would prevent Call-Net from providing its own IX digital transport facilities. It submitted that, therefore, the IX facility in question also failed to meet the Commission's third criterion of an essential facility.

31. Call-Net argued that given that the existence of a competitive high-capacity terrestrial IX facility was one of the criteria for forbearance in Commission's determination in Decision 97-20 and Order 99-434, a similar test should be applied when determining whether an IX facility was monopoly-controlled. Call-Net further argued that since no competitor had offered terrestrial IX facilities to St. John's, the IX facility was monopoly controlled and should be considered as an essential facility. Call-Net submitted that the Commission's three criteria established in *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997 (Decision 97-8), should be used to determine whether an IX facility was essential.

State of competition in Newfoundland

32. Call-Net stated that its requested rate relief by means of a competitor tariff would help stimulate competition for telecommunications services and benefit Newfoundlanders by offering better services and choice. Call-Net further stated that the current situation in the Halifax to St. John's IX route was affecting the ability of competitors to deliver the full benefits of competition to Canadians in Aliant Telecom's territories.

33. Aliant Telecom argued that, contrary to Call-Net's claims, competition was well established and growing in Newfoundland. Aliant Telecom referred to the *Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets, Deployment / Accessibility of Advanced Telecommunications Infrastructure and Services*, November 2003 (the 2003 Competition Report), submitting that it showed examples of significant competition in Newfoundland.

34. Aliant Telecom stated that the 2003 Competition Report demonstrated that its local market share in Newfoundland had declined steadily during 2000, 2001 and 2002. Aliant Telecom further commented that, in 2002, its competitors' business lines market share of 10.3 percent in St. John's was higher than anywhere else in Atlantic Canada and was comparable to other much larger metropolitan centres in Canada.

35. Aliant Telecom also stated that, with respect to the long distance market, while no provincial data had been provided in the 2003 Competition Report, competitor share of long distance revenues was relatively unchanged at 27 percent and competitor share of retail long distance minutes had increased by two percentage points in 2002 over 2001. It noted that, with respect to cellular mobile services, in locations where cellular mobile services were provided, two or more service providers were competing for customers. With respect to Internet service, Aliant Telecom indicated that customers in the province had a choice of alternate providers such as Rogers or other Internet service providers. Aliant Telecom concluded that the data from the 2003 Competition Report demonstrated that customers in Newfoundland had a wide range of competitive choice of telecommunications services and that customers had already received the benefits of competition.

36. Rogers argued that the high IX rates from St. John's to the rest of Canada created a barrier to the proper development of competition and advanced telecommunications services. Rogers submitted that high IX rates presented business challenges to its plans for network expansion and introduction of advanced video services. Rogers further stated that high IX rates created an unfair advantage for Aliant Telecom.

37. Persona, MTS Allstream and CCTA generally supported Call-Net's position that high IX rates charged by Aliant Telecom inhibited the development and expansion of a technically advanced and competitive telecommunications market.

38. In response to a Commission interrogatory on retail services that the parties offered in Newfoundland, Call-Net stated that it offered business and residential long distance services including 1+, toll-free and direct access lines (DALs), Private Line, Frame Relay/ATM, Virtual Private Network (VPN), Ethernet and Internet access; MTS Allstream indicated that it offered competitive communications solutions, long distance, Private Line, ATM, Frame Relay and Ethernet services; Rogers Cable stated that it offered high-speed Internet services, while Rogers Wireless offered mobile wireless voice and data services; and Persona noted that it offered high-speed Internet access.

Call-Net's rate comparison

39. Call-Net stated that Aliant Telecom's retail tariff rate for a DS-3 of 591 miles would be up to $145,000 per month, excluding the Customer Volume Pricing Plan (CVPP) discount, and that a corresponding OC-3 route would cost three times that of a DS-3. Call-Net argued that Aliant Telecom's tariff rate for the DS-3 was at least 14 times greater than that of market rates of forborne routes of similar length in Eastern Canada. This represented a mark-up from market rates of approximately 1300 percent.

40. Aliant Telecom submitted that Call-Net's rate comparison was inappropriate and incorrect. Aliant Telecom argued that due to reorganization and bankruptcies of certain competitors, competitive facilities were sold in some cases at rates which were artificially low or which were below costs. Aliant Telecom stated that, on the other hand, it had to charge rates which appropriately recovered the costs of providing the service, with a fair return on shareholders' investment.

41. Persona, CCTA and MTS Allstream commented on Call-Net's application for a rate based on cost. MTS Allstream provided additional data, which it claimed demonstrated that Aliant Telecom's proposed rate for an OC-12 service from Halifax to St. John's was 12 times that of average competitive rates, on a per Mbps/mile basis.

42. Rogers commented that Rogers Wireless currently leased 13 DS-1s in the Halifax to St. John's IX route from MTS Allstream. It submitted that Rogers Wireless currently paid rates for a DS-1 facility at four times the market rates for DS-1 facilities where competition existed. It submitted, further, that Aliant Telecom's quotes for DS-3 services were 10 to 20 times the rates for comparable DS-3 routes in other parts of Canada.

43. In its response to Rogers' request for an expanded rate relief, SaskTel submitted that it was inappropriate for Rogers to compare IX rates charged on various IX routes on the basis of the length of that IX route alone and noted the Commission's determination in *Follow-up to Telecom Decision 2003-76: Rogers Wireless Inc. vs. TELUS Communications Inc. – Toll termination arrangements*, Telecom Decision CRTC 2004-68, 21 October 2004, that appropriate rates for a tariffed service would depend on the costs and attributes of the carrier's network.

Commission analysis and determination

44. The Commission notes that it used several general considerations in Decision 2005-6 to reaffirm its determination in Decision 2002-34 regarding the need for Competitor Digital Network services. The Commission considers it appropriate to use similar considerations in the present analysis to determine if Aliant Telecom has provided itself with an undue preference by requiring competitors to pay retail rates or special facilities services rates on this IX route. These considerations, in the context of this application, include the supply of IX digital transport facilities between Halifax and St. John's, the technical and economic feasibility to construct competitive IX digital transport facilities on this route, the state of competition in Newfoundland as well as the extent to which market forces are working to further the Commission's policy of facilities-based competition.

45. With respect to supply, the Commission notes that Aliant Telecom owns and operates an OC-192 transport network from Halifax to St. John's and is planning to add capacity of OC-192 on the same IX route; Telesat owns and operates satellite facilities to Newfoundland and has launched its Anik F2 Ka-Broadband service which is expected to be available in early 2005; and MTS Allstream owns and operates a microwave system between Halifax and St. John's with capacity for 3 DS-3s and has been assessing the feasibility of augmenting its capacity. In addition, competitive supply of IX digital transport facilities exists between Halifax and Sydney. The Commission considers that while there is some degree of competitive supply of IX digital transport facilities to Newfoundland, Aliant Telecom is currently the major supplier of IX digital transport facilities between Newfoundland and the Canadian mainland.

46. The Commission considers that competitor self-supply of a single IX digital transport link to Newfoundland would not involve the same complexity and cost barriers as, for example, competitor self-supply of local access, intra-exchange and metropolitan IX facilities into a local calling area. In the case of the latter, the Commission found, in Decision 2005-6, that there were significant cost barriers and constraints with respect to acquiring a critical mass of customers to justify facility build, obtaining municipal right-of-way approvals, and obtaining use of support structures. The Commission considers that competitor self-supply of a single IX digital transport link to Newfoundland would provide ready access to an existing customer base and comparable customer reach to what Aliant Telecom would have in Newfoundland.

47. With respect to the technical and economic feasibility of a competitive supply between Halifax and St. John's, the Commission notes that, as competitive supply of IX digital transport facilities exists between Halifax and Sydney, it is sufficient to assess the technical and economic feasibility of competitive supply between Sydney and St. John's.

48. With respect to the technical feasibility of a competitive build of IX fibre optic digital transport facilities between Sydney and St. John's, the Commission notes EastLink's build of an 80-kilometre submarine fibre optic facility between Nova Scotia and Prince Edward Island as well as the existence of submarine cables in close proximity to Newfoundland. The Commission considers that the evidence in the proceeding does not suggest that there are insurmountable technical barriers to constructing fibre optic digital transport facilities from the closest landing point in Newfoundland to St. John's. As such, the Commission is of the view that it is technically feasible to build competitive IX fibre optic digital transport facilities between Halifax and St. John's.

49. With respect to the economic feasibility of a competitive build of IX fibre optic digital transport facilities between Halifax and St. John's, the Commission notes Call-Net's cost estimate of $10 million for building IX digital transport facilities between Halifax and St. John's. The Commission also notes that it recently approved Aliant Telecom's application to introduce a new special facilities service in its Tariff item 713, in which it offers an OC-12 IX digital transport service between Halifax and St. John's to meet the specific requirements of a single customer on a special assembly basis. The Commission notes, further, that the rate for Aliant Telecom's OC-12 IX digital transport service is $590,000 per month or $7 million per year. The Commission considers the cost of building competitive IX digital transport facilities on this route is not prohibitive relative to the potential revenues from a high capacity IX digital transport service.

50. The Commission considers that with an IX digital transport network between Halifax and St. John's, a competitor would be able to aggregate its own customer traffic from the St. John's local calling area and customer traffic from other local calling areas in Newfoundland and transport the total customer traffic to the Canadian mainland. In addition, a competitor may also be able to lease a portion of its IX transport capacity to other competitors, as MTS Allstream is doing, and thereby improve the business case of such a facility build.

51. The Commission notes that Call-Net, MTS Allstream and EastLink argued that competitors are discouraged to build terrestrial high capacity IX digital transport facilities between Halifax and St. John's because if such a competitive facility is built, Aliant Telecom would be granted forbearance for that IX route and would aggressively cut its pricing of this IX route to the extent that competitors would be unable to recover their investment. The Commission notes that this kind of rivalrous behaviour will not be unique to the Halifax to St. John's IX route, if the route is forborne. The Commission further notes that the fact that there are over 2000 forborne IX routes since Decision 97-20 and Order 99-434 demonstrates that while rivalrous behaviour in a forborne IX route is a reality, it has not discouraged competitors from building terrestrial high capacity IX digital transport facilities.

52. In light of the above, the Commission considers that the record of the proceeding does not support the view that it is not feasible, both technically and economically, for a competitor to build IX digital transport facilities between Halifax and St. John's.

53. With respect to the state of competition in Newfoundland, the Commission finds that competitors are offering customers voice services, advanced business data services such as VPN, digital wireless services, cable services and high-speed Internet services. Competition in the local wireline market in Newfoundland, although limited and predominately in the

business market, is comparable to that in the rest of Canada. The Commission considers that the lack of access to forborne IX routes in Newfoundland has not had a significant impact on competitors' ability to bring advanced telecommunications services and choice to customers in Newfoundland.

54. The Commission notes that one of the Canadian telecommunications policy objectives, as set out in section 7(f) of the *Telecommunications Act*, is to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective. The Commission notes that a rate comparison between (i) National Services Tariff item 307 – Inter-office digital channels (retail tariff); (ii) Call-Net's DSA with Aliant Telecom; and (iii) Aliant Telecom's Tariff item 713 indicates that, on a DS-0 mile basis, a discount in the order of 25 percent is provided in the DSA relative to the retail tariff and a discount in the order of 55 percent is provided in Tariff item 713 relative to the retail tariff.

55. The Commission notes that Call-Net alleged that it was unable to negotiate the rate of the DSA to a rate more consistent with competitive market rates on other routes. The Commission notes that on 30 November 2004, it approved an application by Aliant Telecom, dated 15 October 2004, to introduce a special facilities service in its Tariff item 713, Large Capacity (OC-12) Digital Network, between Halifax and St. John's. The Commission notes that Aliant Telecom submitted that the proposed service was the result of a successful negotiation between Aliant Telecom and the customer, who had agreed to the proposed rates, terms and conditions of the proposed service. The Commission further notes that the customer is a competing carrier. The Commission is not persuaded that Aliant Telecom and Call-Net will not be able to negotiate a reasonable rate for OC-3 service on a special assembly basis for the Halifax to St. John's IX route.

56. The Commission considers that given that Aliant Telecom has been providing increasing discounts, on a DS-0 mile basis, to competitors, and that given the recent successful negotiation between Aliant Telecom and a competing carrier – which led to the approval of Aliant Telecom's Tariff item 713 – market forces have affected margins. The Commission also considers that as competitor transport demand has increased, Aliant Telecom has offered increasing discounts to competing carriers.

57. The Commission considers that a regulated rate relief for the Halifax to St. John's IX route could adversely affect the competitive supply of IX digital transport between Halifax and Sydney at this time. The Commission further considers that a regulated rate relief would discourage any incentive for new facility builds on this IX route and would be inconsistent with Commission's policy of facilities-based competition.

58. The Commission notes that Call-Net's rate comparison is between forborne and non-forborne IX routes, which have different market conditions and may have different cost structures. The Commission further notes that the rate comparison is based primarily on the distance between the exchanges. The Commission is of the view that the rate for a service should appropriately reflect the underlying costs of providing the service and a reasonable return on capital investment. The Commission considers that, in light of different market conditions and potentially different cost structures of these IX routes, Call-Net's rate comparison is not persuasive in this context for determining the need for a Competitor service on this IX route.

Conclusions

59. In light of the above, the Commission is of the view that notwithstanding that Aliant Telecom is the major supplier of IX digital transport facilities between Halifax and St. John's, Aliant Telecom has not provided itself with an undue preference by requiring competitors to pay retail rates or special facilities services rates on this IX route. As such, the Commission considers that there is no need to order the creation of a competitor tariff for IX digital transport facilities at OC-3 and OC-12 rates between Halifax and St. John's. Accordingly, the Commission **denies** Call-Net's application.

60. For the same reasons, the Commission also denies Rogers' request to expand Call-Net's application to include DS-0 and DS-1 services, to reduce rates to all routes from Newfoundland to neighbouring provinces, and to make the services available to all telecommunications service providers other than interexchange carriers.

Secretary General