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2005 10 14

Ms. Diane Rhéaume  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Ms. Rhéaume:

Subject: Filing of Revised Agreement to Collect Provincial Fees in New Brunswick for E9-1-1 Service

1. In accordance with Section 29 of the Telecommunications Act, Aliant Telecom Inc. ("Aliant" or "the Company") files for the Commission's approval a revised agreement to collect provincial fees in New Brunswick for E9-1-1 service (the "Revised Agreement").
2. On 2005 06 15, Aliant filed Tariff Notice 167 ("TN 167"), which included a proposed tariff page and a proposed agreement with the Province of New Brunswick. In Telecom Order CRTC 2005-246, dated 2005 06 29, the Commission provided interim approval of TN 167, effective 2005 06 30. In Telecom Order CRTC 2005-269, dated 2005 07 20, the Commission provided final approval of TN 167.
3. Since the Commission's approval of TN 167, there have been further discussions with the Province of New Brunswick and the industry, resulting in a number of proposed changes to the agreement filed in TN 167. The proposed changes are illustrated in the Revised Agreement, which is attached.

4. The Company requests Commission approval of the Revised Agreement by October 28<sup>th</sup>, which is 10 business days from today's date, and is consistent with the Commission's new streamlined approach to regulation. The Company further notes that there are no changes in the tariff filed in TN 167 and approved by the Commission in Telecom Order CRTC 2005-246 or in Telecom Order CRTC 2005-269.

Sincerely,

A handwritten signature in cursive script that reads "David Hennessey". The signature is written in black ink and is positioned below the word "Sincerely,".

Attachment

**THIS AGREEMENT** made in duplicate on this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK**, as represented by the **MINISTER OF PUBLIC SAFETY**

(Hereinafter referred to as the “Province”)

**OF THE ONE PART**

-AND-

**ALIANTELECOM INC.**, a body corporate with an office situate at Saint John, New Brunswick,

(Hereinafter referred to as the “Telecommunications Service Provider” or “TSP”)

**OF THE OTHER PART**

(Hereinafter jointly referred to as the “Parties” or, singly, as the “Party”)

**AGREEMENT TO COLLECT PROVINCIAL FEES  
IN NEW BRUNSWICK FOR E9-1-1 SERVICE**

**WHEREAS** the Province has incurred, and will continue to incur, costs associated with its specific 9-1-1 call answer / transfer service delivery responsibilities, such costs including, but not being limited to: providing, maintaining, and improving hardware / software equipment at Public Safety Answering Points (each a “PSAP”); providing qualified personnel to receive and transfer 9-1-1 calls; administration of the service; public information and education; civic address database management; development of operating procedures and policies; the costs, services and equipment of related programs; and improvements to the general E9-1-1 Service.

**AND WHEREAS** the Province wishes to charge an E9-1-1 Service Cost Recovery Fee, as defined below, to all exchange service customers in order to recover such costs, pursuant to regulations (the “Regulations”) under the *Emergency 911 Act*, S.N.B., 1994, c.- E-6.1, and amendments thereto;

**AND WHEREAS** the public has been duly advised of the Province’s intent to recover such costs through the collection of a monthly E9-1-1 Service Cost Recovery Fee from Local Subscribers for use of the 911 service;

**AND WHEREAS** the Province seeks to implement third-party billing with the TSP to recover the costs associated with the E9-1-1 Service, specifically Public Safety Answering Point or "PSAP" costs related to equipment, maintenance and upgrading, as well as costs associated with providing an efficient long-term E9-1-1 Service.

**NOW THEREFORE** in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

## **1. Definitions**

For the purposes of this Agreement, the following definitions apply:

- 1.1 "Act" means the *Emergency 911 Act, S.N.B., 1994, chapter E-6.*, and amendments thereto.
- 1.2 "9-1-1 Call" means a telephone call routed over telephone service facilities which is placed by a caller dialing the digits "9-1-1", "9-1-1" on PBX system, and "\*9-1-1" or "#9-1-1" or "911" on a cellular phone, and 911 over the VoIP (Voice over Internet Protocol) network.
- 1.3 "Accounts Receivable" means the amounts which are owed to the Province by Local Subscribers through the imposition of the E9-1-1 Service Cost Recovery Fee.
- 1.4 "Automatic Location Identification" or "ALI" means the E9-1-1 system's capability to identify automatically the location of the telephone being used by the caller and to provide a display of this location at the Public Safety Answering Points. In the case of wireless service, the location is that of the cell site and sector that is used to serve the 9-1-1 call.
- 1.5 "Automatic Number Identification" or "ANI" means the E9-1-1 system's capability to identify automatically the calling telephone number and to provide a display of that number at the PSAPs.
- 1.6 "Bill", "billed" and "billing" in this Agreement, shall, where intended to apply to prepaid wireless Local Subscribers, mean and include, as appropriate for the context, the TSP's act or acts of providing advance notice to its wireless prepaid Local Subscribers, in any manner, of the intent to commence collection of the E9-1-1 Service Cost Recovery Fee on a regular monthly basis.
- 1.7 "Billing and Collection Fee" means the monthly charge that the Province will pay the TSP for services, including billing, collecting and remitting to the Province an E9-1-1 Service Cost Recovery Fee as specified in the Regulations.

- 1.8 "CRTC" means the Canadian Radio-television and Telecommunications Commission and its successors.
- 1.9 "Dispatch Centre" means a communication centre to which an E9-1-1 call is transferred from the PSAPs, and which is responsible for dispatching one of the types of emergency service providers.
- 1.10 "E9-1-1 Service(s)" means the services and materials provided by or on behalf of the Province related to the answering of a NB 911 Service call at a PSAP, and the subsequent processing, routing or transfer of the call or related information to an Emergency Service Provider, including, but not limited to, NB 911 Service equipment, operation and administration of the NB 911 Service program, public information and education, civic address database management, and development of operating procedures and policies.
- 1.11 "E9-1-1 Service Cost Recovery Fee" means the monthly charge the Province imposes or requires to be paid by each Local Subscriber in connection with the Province's costs with regards to the E9-1-1 System, and shall include a billing and collection charge.
- 1.12 "E9-1-1 System" means a telecommunication emergency system for the reporting of emergencies to public safety and emergency service agencies which automatically connects a person dialing the digits "9-1-1" to a PSAP through telephone network facilities.
- 1.13 "Emergency Service Provider" or "ESP" means an Emergency Service Provider as defined in the Act.
- 1.14 "Exchange Service" means any local telecommunications service permitting outward voice dialing offered directly or indirectly by the TSP to its Local Subscribers under the terms of a tariff, service agreement or contract, including:
- a) single-line residential access line;
  - b) single-line business line;
  - c) multi-line outgoing access line;
  - d) centrex working telephone number; and
  - e) voice over internet protocol (VoIP)
- 1.15 "Incumbent Local Exchange Carrier" or "ILEC" means the company that provides local telecommunication services and that operates the E9-1-1 System platform or switching station which connects to the Province at its designated PSAPs, currently being Aliant Telecom Inc.
- 1.16 "Local Subscriber" means:
- a) an end-user who is located within the province of New Brunswick and subscribes to a landline-based telephone service of the TSP; or

- b) an end-user who is assigned a telephone number associated with an area within the Province of New Brunswick and subscribes to a wireless telephone service of the TSP.

1.17 "Public Safety Answering Point" or "PSAP" means a communication centre that receives emergency calls and dispatches such calls to Emergency Service Providers or Dispatch Centres.

1.18 "Serving Area" means geographical areas within the Province's boundaries, as determined by the Province, from which 9-1-1 calls will be directed to a particular PSAP.

1.19 "Telecommunications Service Provider" or "TSP" means a telecommunications service provider as defined in the Act and includes the ILEC, any Competitive Local Exchange Carriers (CLECs), and any Wireless Service Providers (WSPs) that provide means for their Local Subscribers to access the Province's E9-1-1 system.

1.20 "VoIP" is the use of Internet Protocol to carry packetised voice between two or more end points for the purpose of real-time voice conversation. It is also sometimes called IP Telephony or IP Telecom when combined with other related applications.

## **2. Authorization**

2.1 The Province represents and warrants to the TSP that it has the authority to establish the E9-1-1 Service Cost Recovery Fee, and to designate the TSP as an agent of the Province to perform the billing and collecting functions described in this Agreement on behalf of the Province.

2.2 The Province hereby expressly authorises the TSP to act as the Province's agent to perform the billing and collecting functions described in this Agreement, and to refer all queries to the Province to explain the nature of the E9-1-1 Service Cost Recovery Fee billed and collected by the TSP as agent for the Province.

## **3. Billing Procedures**

3.1 Each month, beginning not later than November 1, 2005, and ending with the final monthly bill with respect to any Exchange Service, the TSP may:

- (a) bill the TSP's Local Subscribers, in the monthly bill for telecommunications products and services provided by the TSP, or

(b) in the case of wireless prepaid Local Subscribers, the TSP may deduct from the TSP's Local Subscribers wireless prepaid accounts,

the amount of the E9-1-1 Service Cost Recovery Fee set out in Section 15.1.1 or a prorated portion in respect of that month where E9-1-1 services have only been provided for a portion of the month.

The monthly bill or service agreement may identify the amount of the 911 Service Cost Recovery Fee or portion thereof so billed as a separate charge, and may indicate that the TSP is deducting the E9-1-1 Service Cost Recovery Fee, or a portion thereof, as agent for the Province.

- 3.2 Notwithstanding any decision by the TSP to bill only a portion of the E9-1-1 Service Cost Recovery Fee to its Local Subscribers or any subset thereof, or not to bill any part of the E9-1-1 Service Cost Recovery Fee to those Local Subscribers or any subset thereof, the TSP shall be deemed to have billed the full amount to its Local Subscribers every month, and the TSP shall owe and be responsible for remitting to the Province the amounts described in Section 4.1 hereof in the manner and according to the timing described therein.
- 3.3 With respect to wireless prepaid Local Subscribers and the TSP's obligation to remit, at the time of collection, if the TSP is unable to collect the full amount of the E9-1-1 Service Cost Recovery Fee due to insufficient funds in the Local Subscriber's prepaid service account, then there shall be no further collection efforts required on the part of the TSP.
- 3.4 Notwithstanding any decision by the TSP to bill only a portion of the E9-1-1 Service Cost Recovery Fee to its Local Subscribers or any subset thereof, or not to bill any part of the E9-1-1 Service Cost Recovery Fee to those Local Subscribers or any subset thereof, the TSP shall, at least once a year, inform its Local Subscribers of the full magnitude of the E9-1-1 Service Cost Recovery Fee, that it is required to be paid by the Local Subscriber, and that the E9-1-1 Service Cost Recovery Fee has been remitted to the Province on the Local Subscriber's behalf.
- 3.5 Subject to subsection 3.3, the TSP will make commercially reasonable efforts to collect the E9-1-1 Service Cost Recovery Fee, which shall include credit procedures for recovery of its own accounts receivable, provided that the TSP shall not be obligated to terminate service to a Local Subscriber for non-payment of the E9-1-1 Service Cost Recovery Fee.
- 3.6 If the TSP commits any errors in the establishment of the monthly bill, its responsibility is limited to bringing the necessary correction to the next bill or summary following the discovery of the error, and remitting amounts due to the Province as identified in Section 4.1.

- 3.7 The Province will pay to the TSP for each Exchange Service for which the E9-1-1 Service Cost Recovery Fee is billed, a Billing and Collection Fee in the amount set out in Section 15.1.2.

#### **4. Remittance**

- 4.1 The TSP shall either:

- 4.1.1. remit to the Province, within 45 days after the end of each month or quarter, the amount of the E9-1-1 Service Cost Recovery Fee collected and received by the TSP in that month or quarter, less the amount of the Billing and Collection Fee in accordance with Section 15.1.2; or
- 4.1.2 remit to the Province, within 45 days after the end of the month or quarter, an amount equal to the number of Exchange Services billed by the TSP to its Local Subscribers in that month or quarter multiplied by the amount of the E9-1-1 Service Cost Recovery Fee specified in Section 15.1.1 (prorated for partial billings), less:
- a) an allowance for bad debt equal to the TSP's average rate of bad debt for Exchange Services in mutually agreed-upon previous calendar period; and
  - b) the amount of the Billing and Collection Fee in accordance with Section 15.1.2.

For the purposes of this section, "quarter" shall mean in any year:

- a) the period commencing on January 1<sup>st</sup>. and ending on March 31<sup>st</sup>.
  - b) the period commencing on April 1<sup>st</sup>. and ending on June 30<sup>th</sup>.
  - c) the period commencing on July 1<sup>st</sup>. and ending on September 30<sup>th</sup>.
  - d) the period commencing on October 1<sup>st</sup>. and ending on December 31<sup>st</sup>.
- 4.2 The Province may assign its rights to the amounts described in Section 4.1 to a provincial agency, board or commission established for the purpose of administering the E9-1-1 Service Cost Recovery Fee, provided that the Province gives at least sixty (60) days written notice to the TSP. Upon the expiration of the notice period, the TSP will remit the amounts indicated in Section 4.1 to the third party until otherwise indicated in writing by the Province.
- 4.3 If a Local Subscriber is billed or deemed to be billed the E9-1-1 Service Cost Recovery Fee by the TSP, and refuses to pay such fee as required by the regulations, the TSP shall provide to the Province reasonable information, subject to CRTC rules and regulations and all applicable federal legislation as amended



from time to time, as to such Local Subscribers from whom it has been unable to collect the E9-1-1 Service Cost Recovery Fee. For greater certainty, this information shall be limited to the Local Subscriber's name, billing address and month(s) of non-payment.

- 4.4 Section 4.3 shall apply to wireless prepaid Local Subscribers however, the fact that there is an insufficient balance in the Local Subscribers account to deduct the E9-1-1 Service Cost Recovery Fee shall not, in and of itself, constitute refusal on the part of the Local Subscriber to pay the fee.

## **5. TSP Rights and Obligations**

- 5.1 The TSP has the right to do all acts necessary to protect and maintain the value of the TSP's interests relative to the E9-1-1 Service Cost Recovery Fee identified in this Agreement.
- 5.2 For the purposes of establishing the appropriate amount of the E9-1-1 Service Cost Recovery Fee, the TSP shall provide a confidential report to an accounting firm selected by the Province, that indicates the number of Exchange Services provided by the TSP as of a date, and in accordance with a methodology to be agreed between the Province and the TSP from time to time.

## **6. Province's Rights and Obligations**

- 6.1 The Province represents and warrants that:
- 6.1.1 it has the authority to enter into this Agreement;
- 6.1.2. it has the authority to impose the E9-1-1 Service Cost Recovery Fee as defined in this Agreement on Exchange Service Local Subscribers within the Province, subject to clause 6.1.3 of this Agreement; and
- 6.1.3. it is enacting Regulations whereby the E9-1-1 Service Cost Recovery Fee will be lawfully payable by all Exchange Service Local Subscribers, including prepaid wireless Local Subscribers, on and after November 1, 2005.

## **7. Taxes**

- 7.1 The Province shall advise the TSP of all taxes and the rates in respect thereof which must be applied to the E9-1-1 Service Cost Recovery Fee. The TSP shall bill such taxes at such rates to the Local Subscriber and shall remit such taxes to

the appropriate authorities. The Province shall indemnify and save the TSP harmless from any claims arising in connection with the remittance of such taxes.

## **8. Reporting**

- 8.1 At the same time that the TSP remits the amount required under Section 4.1, the TSP will provide to the Province, or its accounting firm, a report indicating the amount billed and the amount collected in the month with respect to the E9-1-1 Service Cost Recovery Fee, including the Billing and Collection Fee. Taxes, levies or duties or similar charges, if applicable, will be itemised separately.
- 8.2 The reports will be conclusively deemed accurate, unless the Province advises the TSP of any errors within ninety (90) days of the end of the provincial fiscal year in which the reports were provided. The Province may have these reports verified by auditors of its choice at the Province's expense. The Province acknowledges that the information upon which the reports are based will change, and such information might not be retained by the TSP beyond a reasonable period. Upon ten (10) days written notice and during the TSP's regular business hours, the Province's auditors or assignee shall have the right to inspect the TSP's books for the purposes of conducting the audit authorised herein.
- 8.3 If the Parties or an assign identify an error, the Parties agree to establish the amount and render compensation if due. The Party who is owed, if there is one, will be reimbursed by making adjustments to the amount of the next remittance, whether the amounts are due to the Province or to the TSP.

## **9. Resolution of Disputes**

- 9.1 Except with respect to any matter within the jurisdiction of Industry Canada and the CRTC, any dispute or disagreement that may occur pursuant to this Agreement may be resolved by the two Parties attempting to reach a fair and equitable resolution by using, in good faith, one or more of the following means until a resolution is reached: negotiation, mediation, or arbitration.
- 9.2 Except for purposes of preserving a limitation period or obtaining an appropriate interim order or remedy where reasonably necessary, the Parties agree that legal proceedings shall be avoided until the procedures in this section have been tried in good faith in the order listed. With respect to procedures and rules, unless otherwise agreed to and confirmed in writing, the procedures and rules of the ADR Institute of Canada will be followed where the same are not inconsistent with the *Arbitration Act, S.N.B. 1992, c. A-10.1*. The arbitration will be by way of a single arbitrator pursuant to the *Arbitration Act* and will be conducted in Fredericton, New Brunswick unless otherwise agreed upon.

## **10. Term and Renewal**

- 10.1 This Agreement will be effective as of the date shown at the beginning of this Agreement and will run for an initial term of one (1) year.
- 10.2 This Agreement will be automatically renewed and extended and remain effective for successive further periods of one (1) year unless either Party gives to the other at least three (3) months written notice of the termination prior to the end of the initial term or any renewal period.
- 10.3 If either Party breaches a material provision of this Agreement, the Party not in breach may give to the other Party written notice specifying the breach and, if the breach is not remedied within a period of twenty (20) business days, or, in the case of a breach which cannot reasonably be remedied within such period, the Party in breach has not adopted a reasonable program for remedying the breach, or does not diligently pursue such program, such other Party may, by a further written notice, terminate this Agreement without penalty to said Party.
- 10.4 In the event that either Party terminates this Agreement pursuant to the preceding paragraphs, the TSP shall be compensated on a *quantum meruit* basis for any work performed or in process under this Agreement.
- 10.5 It is recognised that the capacity of ILEC and any other TSP to perform under this Agreement is subject to such orders and directions as may be made by the CRTC from time to time in the exercise of its telecommunications regulatory jurisdiction over the ILEC and other TSPs.

## **11. Force Majeure**

- 11.1 Neither the TSP nor the Province will be held responsible for any damages or delays as a result of war, invasion, insurrection, demonstrations, fire, floods, strikes, or as a result of decisions by civilian or military authorities, decisions of regulatory authorities, or generally, as a result of any event that is beyond the Province's or the TSP's reasonable control.

## **12. Waiver**

- 12.1 The failure of either Party to require the performance of any obligation hereunder, or the waiver of any obligation in a specific instance, will not be interpreted as a general waiver of any of the obligations hereunder, which will continue to remain in full force and effect.

### **13. Indemnification**

13.1 The Province shall indemnify and save harmless the TSP from and against any and all losses, claims, demands, actions, costs and damages including reasonable legal fees and disbursements (hereinafter collectively referred to as "Claims") arising directly or indirectly from any act or omission of the Province, or the reasonable acts or omissions of the TSP as the Province's billing and collection agent in connection with the provision of services or facilities to be provided on behalf of the Province pursuant to this Agreement, and undertakes to defend any legal action arising from such Claim at its own cost. Notwithstanding the foregoing, the Province shall not be responsible to the extent that any Claims were caused or contributed to by the negligence or willful misconduct by the TSP, and the TSP shall be responsible for, and indemnify the Province from and against the consequences of the negligence or willful misconduct by the TSP.

### **14. Entire Agreement**

14.1 Except as otherwise stated herein, this Agreement constitutes the entire agreement of the Parties and supersedes any previous agreement, if any, whether written or verbal. In the event that any provision of this Agreement is declared null, void or inoperative, the remainder of the Agreement will remain in full force and effect.

### **15. Fees**

15.1 The fees that are to be charged under this Agreement are as follows:

15.1.1. The E9-1-1 Service Cost Recovery Fee shall be \$0.53 per month, including the Billing and Collection Fee, for each Exchange Service, which may change from time to time upon review by the Minister responsible for the Act; and

15.1.2. The Billing and Collection Fee payable to the TSP by the Province shall be \$0.07 per month for each Exchange Service, except that in the case of the ILEC, it shall be the amount set out in the ILEC tariff approved by the CRTC. In the event that the ILEC applies to the CRTC for a new tariff for billing and collection and in the event that the CRTC approves a new tariff rate in excess of \$0.07 per Exchange Service per month, that same new approved rate will also be paid to all other TSPs which bill and collect for the Province.

15.2 Prior to revising the amount of the E9-1-1 Service Cost Recovery Fee, the Province will conduct a review to ensure that the revision is fair and reasonable, and reflective of actual costs of maintenance, operation and upgrading of the 9-1-1 Service. In connection with the review, the Province will provide the TSP with

information on the cost of the 9-1-1 Service at least 90 days prior to any change in the Fee.

15.3 This Agreement is subject to the approval of the CRTC whenever applicable, as well as such terms and conditions as the CRTC may impose from time to time.

## **16. Notice**

16.1 Any notice required pursuant to this Agreement will be in writing and delivered personally, by courier, or sent by registered mail (with proper postage), to the addresses listed herein, or to such other address as either Party may indicate by notice in writing to the other. In the event of a strike or other disruption of postal service, only delivery either personally or by courier or by such other means as is mutually agreeable and confirmed in writing will be considered effective.

16.2

*The Province:*

Minister of Public Safety  
PO Box 6000  
65 Brunswick Street (2<sup>nd</sup> floor)  
Fredericton NB E3B 5H1

Attention: 911 Provincial Coordinator

*Aliant Telecom Inc.*

*One Brunswick Square  
Saint John, NB  
E2L 4K2:*

## **17. Confidential Information**

17.1 The Parties acknowledge that they are subject to the provisions regarding confidential information pursuant to Section 6 of Regulation 96-104 made under the Act, and any other applicable legislation.

17.2 The Parties further agree that information of a proprietary nature belonging to the disclosing party (hereinafter referred to as "Confidential Information") that is received by a Party in the course of, or in carrying out, this Agreement will be kept confidential and will not be disclosed by the receiving Party to any other parties or used for any other purpose whatsoever, except as may be reasonably required by any such employees, servants, agents, permitted assigns, or contractors of the receiving Party as have a need to have access to and the use of such Confidential Information for purposes under this Agreement, or reasonably connected with this Agreement, or as reasonably required under the Act.

17.3 Confidential Information shall not include, and neither Party shall be obliged to maintain in confidence, any information disclosed to it by the other Party to the extent that such information:

- a) is in the public domain at the time of disclosure;
- b) following disclosure becomes generally known or available through no action or omission on the part of the receiving Party;
- c) is furnished to others by the disclosing Party without restriction or disclosure;
- d) is known, or becomes known, to the receiving Party from a source other than the disclosing Party provided that disclosure by such source is not in breach of a confidentiality agreement with the disclosing Party;
- e) is independently developed by the receiving Party without violating any of its obligations under this Agreement; or
- f) is legally required to be disclosed by a duly authorised judicial, administrative or governmental body, provided, however, that prompt notice of such requirement shall have been given to the disclosing Party such that the disclosing Party shall be afforded the reasonable opportunity to pursue and exhaust reasonable remedies against such legal requirement.

17.4 Notwithstanding Sections 17.1, 17.2 and 17.3, the Parties shall each abide by all applicable federal and provincial legislation with respect to the protection of privacy in effect from time to time, including the Personal Information Protection and Electronic Documents Act.

## **18. Relationship of the Parties**

18.1 The relationship of the TSP to the Province is intended to be and shall be that of agent solely for the purpose of billing and collecting the E9-1-1 Service Cost Recovery Fee on behalf of the Province and the TSP shall in no way be held responsible by the terms of this Agreement for any other obligation in relation to the provision of E9-1-1 Service.

