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20 September 2006

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

Dear Ms. Rhéaume:

**Subject: *Review of price cap framework, Telecom Public Notice CRTC 2006-5 – Responses to Requests for Further Responses and Public Disclosure***

1. This letter constitutes the written response of TELUS Communications Inc. (“TELUS” or the “Company”) to requests for further responses and requests for disclosure received by the Company from the City of Calgary, the Consumer Groups (the Consumers’ Association of Canada and the National Anti-Poverty Organization), the Manitoba branch of the Consumers’ Association of Canada and the Manitoba Society of Seniors (CAC/MSOS), l’Union des consommateurs and MTS Allstream.
2. TELUS’ written responses are detailed below.

**TELUS(Calgary)8Aug06-16**

3. In interrogatory TELUS(Calgary)8Aug06-16, the City of Calgary requests that TELUS provide copies of documents referred to by TELUS in certain footnotes to the Company’s Comments filed on July 10, 2006. The City of Calgary states that its request is made “in order for parties to obtain and understand the full context of the quotes and excerpts used by TELUS.” In its response to interrogatory TELUS(Calgary)8Aug06-16, TELUS objected to providing the requested information stating that all of the requested information may be accessed on-line or at virtually any university library.
4. In correspondence dated September 13, 2006, the City of Calgary filed a request for a further response to interrogatory TELUS(Calgary)8Aug06-16. As

justification for its request, the City of Calgary repeats its claim that its request is for the benefit of other parties, and also states that it has not been able to obtain the textbooks it seeks from libraries, has not been able to track down the Oftel document cited by TELUS, nor has it been able to find a CRTC decision on the Commission's web site.

5. In reply, TELUS notes that no other party has made a similar request for further disclosure for the information requested. TELUS also notes that the City of Calgary does not specify in which libraries it has apparently fruitlessly conducted its search. TELUS further notes with incredulity that the City of Calgary has not been able to locate the Oftel document it sought, even though a web link was provided in the relevant footnote in TELUS' July 10, 2006 Comments, nor has the City of Calgary been able to obtain a CRTC document, which, even if not posted on the Commission's web site, could have easily been obtained from the Commission's central office in Gatineau, Quebec, from the Commission's regional office in Alberta, or from other sources. Curiously, it would appear that the City of Calgary Law Department, under whose letterhead its correspondence has been prepared, has neither been able to locate the court cases and journal articles it requests, nor made any effort to do so. Regardless, the court cases and journal articles it seeks could have easily been located by means of the Lexis/Nexis database search service, to which it must surely subscribe.
6. Notwithstanding the above, and in the interests of a full and complete public record, TELUS hereby undertakes to file a revised response to TELUS(Calgary)8Aug06-16 to which it will add a number of attachments to provide the court cases, regulatory documents and journal articles sought by the City of Calgary. However, TELUS is unable to provide copies of the text books cited in footnotes 18 and 40 of its Comments requested by the City of Calgary for copyright reasons. TELUS notes that a cloth edition of *Digital Crossroads: American Telecommunications Policy in the Internet Age* (March 2005 edition), by Jonathan E. Neuchterlein and Philip J Weiser, is available from the publisher, the MIT Press, at the following web link: <http://mitpress.mit.edu/catalog/item/default.asp?ttype=2&tid=10497>, and is also readily available from Canadian book retailers. The text *The Failure of Antitrust and Regulation to Establish Competition in Long-Distance Telephone Services* (1996 edition), by Paul W. MacAvoy, is no longer available from the publishers MIT Press or AEI Press. However, new and used copies of this text are available from on-line retailers, including amazon.ca. TELUS notes that its references to these text books are general in nature and is thus unable to point to specific passages as requested by the City of Calgary.

#### **TELUS(Consumer Groups)8Aug06-2**

7. In parts A to I of this interrogatory, the Consumer Groups requested that TELUS provide detailed information, disaggregated at the wire centre level for each year over the 2003 to 2006 time period, on the telecommunications services provided in its serving territory noting that this information is required to give "the public a

‘snapshot’ of the current state and profitability of telecommunications services in Canada.”<sup>1</sup>. This assertion of the Consumer Groups is without merit and should be dismissed. The number of business and residential customers that TELUS serves out of each wire centre does not provide any information on the current state of telecommunications services in Canada. The strongest competition that TELUS faces is from facilities-based competitors who do not go through TELUS’ wire centres to serve their customers. In addition, TELUS notes that an examination of the profitability of telecommunications services in Canada is clearly outside the scope of this proceeding as set out by the Commission in the public notice.

8. The Consumer Groups also claim that the requested information is necessary because wire centres are being used by the ILECs to provide new services (such as DSL) to their customers and this should be taken into account in setting the prices for local telephone service. In response, TELUS notes the Commission’s ruling in *Call-Net Enterprises Inc. - Request to lift restrictions on the provision of retail digital subscriber line Internet services*, Telecom Decision CRTC 2003-49:

The costs which the Commission used as a foundation for the current unbundled loop rates did not include costs for any of the resources required to provide retail DSL IS. Accordingly, the full cost of the local loop is allocated to local telephony services, and competitors that lease the loop are in effect able to use the portion of the loop on which DSL is provisioned for free.

9. The Commission’s ruling above renders any theoretical cost allocation from primary exchange service to other services (such as DSL) meaningless. TELUS therefore maintains that any information it has on the number of DSL lines provided to customers should be maintained in confidence.
10. TELUS considers all of the information requested by the Consumer Groups in this interrogatory to be confidential for the reasons provided by the Company in its response. TELUS provides much of the information requested by the Consumer Groups in confidence to the Commission on an annual basis as part of its competition monitoring process. In recognition of the sensitive nature of this information, the Commission aggregates this information in its annual Telecommunications Monitoring Report, so as not to release any company-specific information.
11. In the alternative the Consumer Groups request that the information requested in the interrogatory be provided to them under a non-disclosure agreement. The practice of releasing documents to particular parties pursuant to a non-disclosure agreement, with the result that the document is not available to other parties, is not a practice that the Commission has adopted in the past and is not a practice which TELUS endorses. First, any document for which confidentiality has been claimed, which is subsequently produced either voluntarily or pursuant to

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<sup>1</sup> Consumer Group’s letter dated 13 September 2006, page 3 of 9.

Commission order should be treated by the recipient party as confidential. Documents produced in civil litigation are produced subject to an implicit undertaking deemed to be made by the recipient party to use such documents only for the purpose for which it is produced. TELUS takes the view that a similar rule applies in CRTC proceedings. A non-disclosure agreement is therefore redundant. Second, the release of information to selected parties introduces an asymmetry in the access to information which gives rise to procedural concerns and is a practice which should be adopted only in exceptional cases. For the reasons provided above, the Consumer Groups have not demonstrated that public disclosure of any of the requested information is required. Accordingly, the Consumer Groups' suggestion that certain confidential information should be provided to them under a non-disclosure agreement should be dismissed.

#### **TELUS(Consumer Groups)8Aug06-4**

12. In this interrogatory, TELUS was asked to provide copies of all studies conducted by, or on behalf of the Company, which address substitution of voice over Internet protocol (VoIP) offered providers (e.g., Vonage) for TELUS's circuit-switched telephony.
13. In response, TELUS provided subscriber statistics on Shaw's Digital Voice service. In addition, TELUS claimed confidentiality over two market research studies that were conducted on TELUS' behalf. These studies include information regarding VoIP telephony usage for households in TELUS' Alberta and BC territory and substitution of VoIP service for TELUS' residential local exchange service. The Consumer Groups now seek public disclosure of these market research studies.
14. TELUS first addresses an error made by the Consumer Groups in its request for public disclosure of these market research studies. The Consumer Groups assert that the market research studies are of "of key importance...to determine the exact status of ILEC claims of market share loss in the local market."<sup>2</sup> In addition, the Consumer Groups state that the information "is especially relevant given the Commission's intention to consider market share loss" as part of this proceeding.<sup>3</sup>
15. TELUS disagrees that the Commission has stated an intention to consider market share loss as part of *Review of price cap framework*, Telecom Public Notice 2006-5. TELUS sees no mention of the consideration of market share loss as part of this Public Notice. All the Commission has stated is that it will "consider how the price cap regime should be modified pursuant to the framework set out in

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<sup>2</sup> *Requests for Further Responses to Interrogatories and Disclosure of Information Filed in Confidence of the Consumer Groups – Requests regarding Answers to Interrogatories of TELUS*, September 13, 2006, at page 4.

<sup>3</sup> *Requests for Further Responses to Interrogatories and Disclosure of Information Filed in Confidence of the Consumer Groups – Requests regarding Answers to Interrogatories of TELUS*, September 13, 2006, at page 4.

Decision 2006-15.”<sup>4</sup> The Consumer Groups should not be equating this statement with a Commission intention to consider market share loss as relevant to this proceeding.

16. Having said that, TELUS is willing to disclose those portions of the market research studies that are relevant to issue of VoIP substitution. Certain portions of the two research studies involve survey data for services other than VoIP and thus those portions are irrelevant to the interrogatory and to this proceeding. As such, TELUS will provide an abridged version of the two market research studies in question during the week of 2 October 2006.

#### **TELUS(Consumer Groups)8Aug06-5**

17. The Consumer Groups claim that TELUS is deficient in its response to part b) of this interrogatory, which requests that TELUS provide its financial results associated with tariffed services subject to the price cap since the 2002-34 Decision. The Consumer Groups claim that “[t]he information is essential to the Consumer Groups in order to examine ILEC claims of profitability and costs in the local market and how these financial results should be taken into consideration in the setting of a just and reasonable rates for local telephone service.”<sup>5</sup>
18. The ILECs are no longer under a rate of return regime. TELUS does not track, and is not required to track, the profitability of its tariffed products.<sup>6</sup> The task at hand is the design of a price cap, and does not concern the financial position of an ILEC.
19. The Commission set out the scope of this proceeding in Public Notice 2006-5 at paragraphs 21- 23 as follows:

21. In order to streamline this proceeding, the Commission is limiting the issues to be considered to those which it considers directly related to a price cap regime.

22. The Commission is inviting comments on what changes, if any, should be made to the price cap regime with regard to the following:

- objectives of the regime;
- basket structure and assignment of services except for Competitor Services;
- constraints for baskets of services (e.g., I-X);

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<sup>4</sup> PN 2006-5, at paragraph 23.

<sup>5</sup> Page 5 of PIAC’s letter of 13 September 2006

<sup>6</sup> TELUS does provide revenue data to the Commission for the purpose of its annual monitoring process. However, this data is by no means reflective of profitability on a product basis.

- constraints for individual services or rate elements (e.g., the percentage increase per year allowable for basic residential services), except for Competitor Services;
- rate deaveraging within a band;
- components of the price cap formula (e.g., I, X, and Z);
- the continuing need for a deferral account for the residential non-HCSA basket; and
- the length of the next price cap regime, including whether the regime should be of a fixed duration.

23. In addition, the Commission will also consider in this proceeding how the price cap regime should be modified pursuant to the framework set out in Decision 2006-15.

20. Examination of financial results of the ILECs is not “directly related to a price cap regime” (para. 21) - indeed, the ILECs financial results are irrelevant to the fixing of the cap - and the information requested does not fit within any of the categories set out in para 22.

21. In paragraph 24 the Commission specifically set out those issues which would not be included in this proceeding, stating:

This proceeding will strictly focus on issues directly related to those identified above and will not include the following:

- .....
- other forms of regulation (e.g., earnings overlay);
- .....

22. What the Consumer Groups is suggesting is indeed another form of regulation, one in which ILECs are required to produce revenue data by product and rates are set to generate a certain level of return.

23. Further, as TELUS stated in its response, even if this information were not out of the scope of this proceeding, it is confidential. All of the information (including financial information) provided to the Commission in its annual monitoring report process is provided in confidence by TELUS and is retained in confidence by the Commission. TELUS claims confidentiality for this sensitive financial information pursuant to Rule 19 of the *CRTC Telecommunications Rules of Procedure* because it could be used by TELUS’ current and potential competitors to better assess the extent of TELUS’ vulnerability to competition and to better gauge the attractiveness of different entry strategies, including the services that are most vulnerable to competitive entry. Disclosure of such information would put into the hands of competitors that have either entered or are poised to enter into competition with TELUS, detailed financial information that would not

otherwise be available to them. The release of this information would prejudice TELUS' competitive position thereby causing TELUS direct and specific harm.

#### **TELUS(Consumer Groups)8Aug06-8**

24. In this interrogatory, the Consumer Groups requested that TELUS provide all studies or analyses conducted by, or on behalf of, TELUS which examine the level of, or changes to, TELUS's productivity growth for any portion of the years 2000 to 2006.
25. Dr. Bernstein and TELUS compiled information on changes to TELUS unit costs over the period 1995-2006 (Alberta) and 2000-2006 (B.C.) which provided the basis for the analysis provided in interrogatory response TELUS(CRTC)8Aug06-1101. No other studies or analyses of productivity growth have been conducted by or on behalf of TELUS for the period referred to.

#### **TELUS(Consumer Groups)8Aug06-16**

26. In part A of this interrogatory, the Consumer Groups requested that TELUS "provide all studies prepared by, or on behalf of, TELUS which address the emergence of competition." In response, TELUS stated that it performs ongoing analysis on the emergence of competition in its ILEC operating territory. In addition, TELUS claimed confidentiality over two market research studies that were conducted on TELUS' behalf. These studies include information on usage of competitive local telephony services instead of TELUS' residential local exchange service. The Consumer Groups now seek public disclosure of these market research studies.
27. TELUS first addresses an error made by the Consumer Groups in its request for public disclosure of these market research studies. The Consumer Groups assert that the market research studies are of "of key importance...to determine the exact status of ILEC claims of market share loss in the local market."<sup>7</sup> In addition, the Consumer Groups state that the information "is especially relevant given the Commission's intention to consider market share loss" as part of this proceeding.<sup>8</sup>
28. TELUS disagrees that the Commission has stated an intention to consider market share loss as part of *Review of price cap framework*, Telecom Public Notice 2006-5. TELUS sees no mention of the consideration of market share loss as part of this Public Notice. All the Commission has stated is that it will "consider how the price cap regime should be modified pursuant to the framework set out in Decision 2006-15."<sup>9</sup> The Consumer Groups should not be equating this statement

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<sup>7</sup> *Requests for Further Responses to Interrogatories and Disclosure of Information Filed in Confidence of the Consumer Groups – Requests regarding Answers to Interrogatories of TELUS*, September 13, 2006, at page 4.

<sup>8</sup> *Requests for Further Responses to Interrogatories and Disclosure of Information Filed in Confidence of the Consumer Groups – Requests regarding Answers to Interrogatories of TELUS*, September 13, 2006, at page 4.

<sup>9</sup> PN 2006-5, at paragraph 23.

with a Commission intention to consider market share loss as relevant to this proceeding.

29. Having said that, TELUS is willing to disclose those portions of the market research studies that are relevant to issue of the emergence of competition in the local services market. Certain portions of the two research studies involve survey data for services other than substitutes for local telephony and thus those portions are irrelevant to the interrogatory and to this proceeding. As such, TELUS will provide an abridged version of the two market research studies in question in a further response to interrogatory TELUS(Consumer Groups)8Aug06-4 during the week of 2 October 2006.
30. In part C of this interrogatory, the Consumer Groups requested “the percentage of Telus residential customers that subscribe to bundles that will be uncapped and not included in the residential service basket.” TELUS provided the number of residential customers that subscribe to a bundle containing primary exchange service in confidence to the Commission in its response to part A)ii) of interrogatory TELUS(CRTC)8Aug06-1204. TELUS notes that the Consumers Groups have not requested public disclosure of the information in TELUS(CRTC)8Aug06-1204.
31. The percentage of TELUS’ residential customers that subscribe to a bundle of services that contains primary exchange service is extremely sensitive. TELUS’ primary competitor for residential customers, Shaw Communications Inc., and most other competitors, only make telephone service available to their customers in bundles, demonstrating the sensitive nature of the requested information. The potential harm that TELUS would incur from the release of the requested information clearly outweighs the public interest in the disclosure of this information. As a result, TELUS requests that the Consumer Groups request for public disclosure of this information be denied.
32. In the alternative the Consumer Groups request that the information requested in the interrogatory be provided to them under a non-disclosure agreement. The practice of releasing documents to particular parties pursuant to a non-disclosure agreement, with the result that the document is not available to other parties, is not a practice that the Commission has adopted in the past and is not a practice which TELUS endorses. First, any document for which confidentiality has been claimed, which is subsequently produced either voluntarily or pursuant to Commission order should be treated by the recipient party as confidential. Documents produced in civil litigation are produced subject to an implicit undertaking deemed to be made by the recipient party to use such documents only for the purpose for which it is produced. TELUS takes the view that a similar rule applies in CRTC proceedings. A non-disclosure agreement is therefore redundant. Second, the release of information to selected parties introduces an asymmetry in the access to information which gives rise to procedural concerns and is a practice which should be adopted only in exceptional cases. For the reasons provided above, the Consumer Groups have not demonstrated that public



disclosure of any of the requested information is required. Accordingly, the Consumer Groups' suggestion that certain confidential information should be provided to them under a non-disclosure agreement should be dismissed.

**TELUS(Consumer Groups)8Aug06-21**

33. In part C of this interrogatory, the Consumer Groups requested that TELUS "provide a list of all TELUS exchanges where TELUS "Competitive Presence Test" is satisfied for residential customers." In its response, TELUS inadvertently referred to interrogatory response TELUS(CRTC)8Aug06-1204. TELUS meant to refer to interrogatory response TELUS(CRTC)8Aug06-1202 which provides information on facilities-based CLECs operating in TELUS' ILEC serving territory.
34. In interrogatory response TELUS(CRTC)8Aug06-1202, TELUS provides the exchanges where Shaw Communications Inc. and Call-Net are registered as CLECs and an excerpt from a Shaw quarterly financial report that lists the areas where it is providing residential telephone service. TELUS will be updating interrogatory response TELUS(CRTC)8Aug06-1202 to reflect a recent expansion of Shaw Communications Inc.'s serving territory.

**TELUS(CAC/MSOS)8Aug06-1**

35. In part b of this interrogatory, CAC/MSOS requested that TELUS provide the percentage of customers registered for discount packages for the past five years in HCSAs and non-HCSAs. In paragraph 9 of its letter, CAC/MSOS states that "the offering of discount packages to customers, is a measure of the level of competition in a particular area. Differences in availability of these services among various locations and communities across Canada is relevant to issues of access and affordability of service."
36. In TELUS' view, CAC/MSOS' logic is flawed. TELUS agrees that the availability of bundles of services that include local exchange service is an indication of the availability of competition in an area. However, TELUS does not agree that the lack of availability of bundles of services that include local exchange service is an indication of the affordability of telephone service. Customers who do not have access to bundles still have access to local exchange service at the regulated, stand-alone price in which the Commission has addressed affordability.
37. In any event, the percentage of TELUS' residential customers that subscribe to a bundle of services that contains primary exchange service, even at an aggregated level, is extremely sensitive. The potential harm that TELUS would incur from the release of the requested information clearly outweighs the public interest in the disclosure of this information for the reasons given in the interrogatory response. As a result, TELUS requests that CAC/MSOS' request for public disclosure of this information be denied.

38. In part d of this interrogatory, CAC/MSOS asked a general question about “the areas where local competition has begun to emerge within the residential local services market.” TELUS described the areas where competition has emerged and the technologies being used by competitors. TELUS also referenced interrogatory response TELUS(CRTC)8Aug06-1202, which lists the exchanges where competitors are active.
39. In TELUS’ view, the Company has been responsive to part d of this interrogatory. The response to part d, together with interrogatory response TELUS(CRTC)8Aug06-1202, provides a complete response to the questions posed by CAC/MSOS. The process for parties to ask for further responses and public disclosure of information provided in confidence to the Commission does not allow for new questions to be posed to parties, as CAC/MSOS is attempting in its 13 September 2006 letter. TELUS requests that CAC/MSOS’ request for a further response be denied.
40. In part e of this interrogatory, CAC/MSOS asked TELUS to “provide a comparison of the competitive market between the HCSAs and the non-HCSAs.” In its response, TELUS described the difference in competition between HCSAs and non-HCSAs. This description, together with the responses to other parts of this interrogatory are fully responsive to CAC/MSOS’ request in part e. In its 13 September 2006 letter, CAC/MSOS asks that TELUS be required to provide a list of the exchanges with no local exchange service options. TELUS submits that this is a new question that goes well beyond the scope of the original question posed to the Company in part e of this interrogatory. Again, TELUS requests that CAC/MSOS’ request for a further response be denied.

**TELUS(CAC/MSOS)8Aug06-2**

**TELUS(Union des consommateurs)8Aug06–11**

41. In interrogatory TELUS(CAC/MSOS)8Aug06-2, CAC/MSOS asked TELUS to “provide, for each residence primary exchange service (eg. single line, party line, touch tone, etc.) for the years 2000 and 2005 the average total monthly bill of a residential customer subscribing to a local exchange service in a HCSA and the average total monthly bill for a non-HCSA.” CAC/MSOS goes on to state that “the information is sufficiently general so as not to reveal any details that would benefit potential or existing competitors.”
42. In interrogatory TELUS(Union des consommateurs)8Aug06–11, l’Union des consommateurs referenced interrogatory response TELUS(CRTC)24May06-202 and requested average bill information for residential, single-line customers in Alberta and B.C. (including average bill information for optional local services).
43. TELUS provided average total monthly bill information by band and sub-band in confidence to the Commission in interrogatory response TELUS(CRTC)24May06-202 and described the specific harm that would be caused by the public disclosure of the information. CAC/MSOS’ request to

provide average total monthly bill information for HCSAs and non-HCSAs is not sufficiently different from the question asked in interrogatory TELUS(CRTC)24May06-202 to mitigate the harm that would be caused by the release of this information. Most of TELUS' competitors are competing for TELUS' customers based on the price for a full suite of telecommunications services, not just the price for basic telephone service. This results in average total monthly bill information being very sensitive as it could help guide a competitor to target a specific geographic area or to adjust its price for a suite of telecommunications services in order to compete more effectively against TELUS. As a result, TELUS considers average total monthly bill information to be very sensitive, even when aggregated at the level of HCSAs and non-HCSAs. TELUS therefore asks that the Commission deny the disclosure requests from CAC/MSOS and l'Union des consommateurs and not require TELUS to place this information on the public record.

**TELUS(CAC/MSOS)8Aug06-4**

44. In this interrogatory, CAC/MSOS asked TELUS to provide the percentage of residential customers in HCSAs and non-HCSAs that are served by TELUS with technology that has the capability of high speed data transmission. In its response, TELUS noted that the Commission has forborne from the regulation of high-speed Internet access since 1999 and described the vigorous competition that the Company faces for customers of high-speed Internet service. In its response to interrogatory TELUS(CRTC)8Aug0601202, TELUS described the expansion of high-speed Internet service availability into rural areas.
45. In TELUS' view, the requested information is outside the scope of this proceeding, is unnecessary for the Commission to establish the price cap regime for the upcoming price cap period and is highly confidential. As a result, TELUS requests that the Commission deny CAC/MSOS' request for a further response to this interrogatory.

**TELUS(MTS Allstream)8Aug06-5**

46. In this interrogatory, MTS Allstream asked TELUS how services with approved rate ranges should be treated for the purpose of calculating the actual price index (API) for a price cap basket. In response, TELUS referred to interrogatory response TELUS(CRTC)8Aug06-1301. MTS Allstream claims that interrogatory response TELUS(CRTC)8Aug06-1301 does not answer their question in this interrogatory.
47. In TELUS' view, interrogatory response TELUS(CRTC)8Aug06-1301 is fully responsive to the question posed by MTS Allstream in this interrogatory. In interrogatory response TELUS(CRTC)8Aug06-1301, TELUS states that

If rates are de-averaged within a band or within an exchange, each de-averaged rate would constitute a separate price, with an appropriate

weight, for the purpose of demonstrating compliance with the overall price cap constraint for residential services in the Residential Services basket.

48. So, if rate ranges are approved for services within a price cap basket, the effect is the same as for de-averaged rates - the actual rates charged to customers and corresponding demand will be used to demonstrate compliance with the price cap basket constraints.
49. TELUS therefore requests that MTS Allstream's request for a further response be denied by the Commission.

Yours truly,

*{original signed by Willie Grieve}*

Willie Grieve  
Vice-President  
Telecom Policy and Government Affairs

HR/cs

cc: Interested Parties to PN 2006-5

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