

May 19, 2004

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

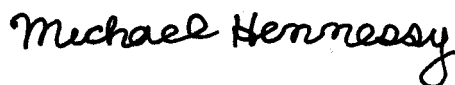
Dear Ms. Rhéaume:

**Re: Telecom Public Notice 2004-1, Review and disposition of deferral
accounts for the second price cap period**

1. These Comments are filed by the Canadian Cable Television Association (CCTA) pursuant to the procedures established in Telecom Public Notice 2004-1, *Review and disposition of deferral accounts for the second price cap period* (PN 2004-1). The CCTA proposes the use of the funds in the incumbent telephone companies' deferral accounts to expand broadband access to unserved communities.

2. An electronic copy of this submission is provided to the Commission by email.

Sincerely,



Michael Hennessy
Acting President, CCTA

Attachment

c.c.: Registered Interested Parties, Telecom Public Notice 2004-1



**Canadian Radio-television and
Telecommunications Commission**

Telecom Public Notice 2004-1

*Review and disposition of deferral accounts
for the second price cap period*

**COMMENTS OF THE
CANADIAN CABLE TELEVISION ASSOCIATION**

May 19, 2004

1.0 OVERVIEW

1. These comments are filed by the Canadian Cable Television Association (CCTA), on behalf of its members, pursuant to the procedures established in Telecom Public Notice 2004-1 (PN 2004-1), *Review and disposition of deferral accounts for the second price cap period*. In PN 2004-1, parties were invited to submit proposals for the disposition of amounts in the incumbent local exchange carriers' (ILECs) deferral accounts, in a manner that balances the interests of customers, competitors and the ILECs.

2. In this submission, the CCTA proposes that the amounts accrued in the deferral accounts be used to fund the construction of fibre interexchange transport facilities to bring broadband Internet to rural and remote communities. This proposal would promote the competitive supply of broadband Internet service in these communities by alleviating the cost barriers of connecting to the Internet backbone. As such, it would further the policy objectives set out in section 7 of the *Telecommunications Act* (the Act) by accomplishing the following:

- expanding high speed Internet service to all regions;
- increasing customer access to broadband networks and advanced communications services, and
- increasing competition in all regions.

3. These outcomes would be consistent with the Commission's key objectives, as expressed recently in a speech by Charles Dalfen, delivered by Andrée Wylie, to the 2004 Telecommunication Invitational Forum:

At the end of the day, the Commission relies on a couple of key objectives: we want Canadians to have access to the best possible local telecommunications services at the lowest possible prices; we want to have a healthy telecommunications industry that gives Canadians the most advanced telecommunications infrastructure and services it can afford, in relation to its needs.¹

¹ Charles Dalfen, Chairman, CRTC, speech delivered by Andrée Wylie, Vice-Chairperson, Broadcasting, "Regulating Local Telecommunications in a Time of Disruptive Technology," to the 2004 Telecommunications Invitational Forum, April 20, 2004.

4. CCTA's proposal is competitively neutral and promotes facilities-based competition. As a result of implementing CCTA's proposal, some communities could have broadband access services competitively supplied by an incumbent telephone company, a cable company and/or other service providers. The CCTA's proposal would open up opportunities for a range of broadband service providers to take the initiative and begin providing broadband access services in unserved communities. In addition to promoting competition and the delivery of advanced services to rural areas, the CCTA proposal is designed to benefit customers, competitors and incumbent telephone companies.

5. In PN 2004-1, the Commission directed parties to apply the objectives under the *Act* and the regulatory framework in Telecom Decision 2002-34 in the preparation of proposals for the disposal of deferral account surpluses. The CCTA submits that its proposal to use the deferral account to fund the roll-out of broadband access to unserved communities represents one of the best ways to satisfy the *Act* objectives and the Commission's regulatory framework objectives.

6. The CCTA further submits that, in addition to these objectives, the nature of the funds in the deferral account should guide the Commission in their disposition. The funds in the deferral accounts represent revenues overpaid to the incumbent telephone companies by residential customers. These revenues would have been in the hands of residential customers in the form of lower rates, under the normal operation of the Price Cap regime. The deferral account does not represent funds for use by the incumbent telephone companies, for their benefit alone.

7. In summary, the CCTA recommends that the Commission adopt the following course of action for the use of deferral account surpluses:

- draw down of the deferral account to finance the installation of dark fibre transport facilities to communities that have no broadband service from any service provider as of the date that the program is initiated;
- permit use of the dark fibre transport facilities, without additional charge, by cable operators and other service providers that commit to provide broadband access services in the unserved community; and
- grant approval of the CCTA's proposed procedure for the supply of broadband access to unserved communities.

2.0 POLICY BASIS FOR USE OF THE DEFERRAL ACCOUNT

8. The deferral account provides an instrument for the Commission to ensure that regulation is "efficient and effective". In addition to these policy objectives, the deferral account provides a means for the Commission to fulfill many other section 7 policy objectives, including:

- (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

- (h) to respond to the economic and social requirements of users of telecommunications services.
9. During the review of the Price Cap regime, the Commission re-examined the objectives for the framework it would use for the regulation of the incumbent telephone companies. Not surprisingly, the objectives identified by the Commission for the price cap regime complement the policy objectives of the *Act*. The Commission said the Telecom Decision 2002-34 regulatory framework is designed to accomplish the following:
- (a) to render reliable and affordable services of high quality, accessible to both urban and rural area customers;
 - (b) to balance the interests of the three main stakeholders in telecommunications markets, i.e., customers, competitors and incumbent telephone companies;
 - (c) to foster facilities-based competition in Canadian telecommunications markets;
 - (d) to provide incumbents with incentives to increase efficiencies and to be more innovative; and
 - (e) to adopt regulatory approaches that impose the minimum regulatory burden compatible with the achievement of the previous four objectives.²
10. The Commission affirmed these objectives in PN 2004-1 and directed parties to apply them in the preparation of proposals for the disposal of deferral account surpluses.
11. Use of the deferral account to finance the roll-out of broadband access complements the policy objectives of the *Act* and in Telecom Decision 2002-34. Funding broadband roll-out will: make reliable and affordable telecommunications services available in rural areas; provide and encourage the use of Canadian advanced transmission facilities that do not currently exist; foster competition and introduce competition in communities where it may otherwise never occur; enhance the economic

² Telecom Decision CRTC 2002-34, paragraph 99.

and social development of small and remote communities; balance the interests of customers, competitors and incumbent telephone companies; foster facilities-based competition; and provide incumbents with incentives to increase efficiencies and to be more innovative.

12. A significant disparity in broadband access services exists between Canadians in urban areas and Canadians in rural and remote areas. This fact was noted by the Commission in its November 2003 Report to the Governor in Council:

Broadband deployment continued to progress, with approximately 85% of Canadians living in communities that are served by high-speed Internet access. However, the majority (80%) of the rural communities remained unserved.³

Without public funding and support, broadband services of similar quality and price to those available in urban areas will generally not be made available in rural and remote areas of the country.⁴

13. The overwhelming response to Industry Canada's Broadband for Rural and Northern Development (BRAND) program provides an indication of the need and demand for broadband access in unserved communities. In October 2003, Allan Rock, Minister of Industry, announced that 33 communities were awarded a total of \$44 million for the deployment of broadband access to their communities.⁵ These 33 communities were chosen from approximately 90 pre-selected applicants. In April 2004, the Government announced that 25 projects had been selected for funding under the second round of the BRAND program. Industry Canada estimated that there are 768 First Nations, northern and rural communities that do not have broadband access.⁶

³ Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets, *Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, November 2003, page ii.

⁴ Report to the Governor in Council, Status of Competition in Canadian Telecommunications Markets, *Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, November 2003, page 94

⁵ News Release "Allan Rock and Andy Mitchell Announce \$44 Million to Bring Broadband Internet Service to First Nations, Rural and Remote Communities".

⁶ <http://broadband.gc.ca/applications/applicants.html?round=1>

14. Other programs exist to promote the introduction of broadband services but progress is slow and most of the 768 communities identified by Industry Canada and the 80% of rural communities identified by the Commission will not have broadband access by 2005. Indeed, many communities will not have broadband access for many years after the 2005 target. In conjunction with existing programs, the CCTA's proposal offers a means to achieve the Government's goal sooner.

15. Funding the roll-out of broadband access to unserved communities is an effective way to substantially reduce the significant disparity that exists between urban communities and most rural communities. Use of the deferral account funds for this purpose will help answer the Government of Canada's commitment for broadband access in all communities in Canada. For the Commission, the CCTA's proposal for the roll-out of broadband access helps the Commission fulfill its statutory mandate and satisfies the objectives the Commission set out for itself in Telecom Decision CRTC 2002-34.

3.0 A TRUST ACCOUNT

16. The incumbent telephone companies' deferral accounts are necessary for the functioning of the Price Cap regime set out in Telecom Decision 2003-34. Price caps give the incumbent telephone companies the opportunity to adjust rates for services within the inflation minus productivity offset formula. In the case of residential services in non-high cost serving areas, the formula produces rate reductions whenever the productivity offset is greater than the rate of inflation. After years of rate rebalancing and bringing residential rates closer into line with costs, price cap induced rate reductions would reverse the Commission's rate rebalancing and cost-based rates initiatives. While residential local rate reductions could be expected to occur with competition, the

Commission has rejected reductions that would be the product of the price cap mechanism because of the potential for adverse effects on local competition.⁷

17. The creation of a deferral account provides a mechanism to account for residential rate reductions that the price cap mechanism would otherwise produce. In this way residential local rates are maintained at appropriate levels. Without a deferral account, either residential rates would fall, in some cases below cost, and impede the creation of competitively supplied residential services, or residential rates would be held at current levels, contrary to the Commission's price cap constraints.

18. The deferral account records the total revenues overpaid to the incumbent telephone companies by residential customers. The money represented in the deferral account would have been in the hands of residential customers in the form of lower rates, under the normal operation of the Price Cap regime. In a sense, the overpayments made by residential customers are held in trust accounts, administered by the incumbent telephone companies. The money is held for the future benefit and use of residential customers. The deferral account does not represent funds for use by the incumbent telephone companies, as they see fit. The role of the telephone companies is to hold the money in trust until the Commission directs how it should be used.

19. When the Commission directed the incumbent telephone companies to create deferral accounts, it said that funds in the accounts would be used for projects that balance the interests of customers, competitors and ILECs, and that the use of the funds should help achieve the Commission's price cap policy objectives. The Commission said:

The Commission considers that the creation of a deferral account for residential local services will assist in achieving the objective of balancing the interests of the three main stakeholders in telecommunications markets: customers, competitors and ILECs.⁸

⁷ Telecom Decision CRTC 2002-34, paragraphs 403, 410.

⁸ Telecom Decision CRTC 2002-34, paragraph 409

The Commission intends to clear these amounts in a manner that contributes to achieving the Commission's objectives for the next price cap framework, including balancing the interests of the three main stakeholders in the telecommunications markets.⁹

3.1 The Benefits for Customers

20. The CCTA believes that customers, competitors and ILECs will benefit from the use of the deferral account funds to finance the roll-out of broadband access.

Broadband access is expected to produce these benefits for customers:

Broadband will bring Canadians closer together, helping businesses compete and providing Canadians with better access to services such as telehealth and distance education.¹⁰

Broadband will strengthen rural communities by enhancing opportunities for improved health care, life-long learning and access to a competitive business environment. Stronger rural communities mean a stronger Canada.¹¹

Broadband technology will go a long way toward reducing the isolation of rural and remote communities. It will help connect these communities to emerging opportunities in health care delivery, life-long learning, and business development.¹²

21. Customers in rural areas typically have dial up access to the Internet and the Commission has been diligent in ensuring that toll free Internet access is available in high cost communities. While dial up access provides some of the general benefits of Internet connectivity, it is limited in its ability to deliver all of the benefits of a broadband Internet connection. The economic and social development of rural and remote communities can be enhanced through access to higher-speed Internet.

⁹ Telecom Decision CRTC 2002-34, paragraph 413

¹⁰ Allan Rock, Minister of Industry, News Release "Allan Rock and Andy Mitchell Announce \$44 Million to Bring Broadband Internet Service to First Nations, Rural and Remote Communities".

¹¹ Andy Mitchell, Secretary of State, News Release "Allan Rock and Andy Mitchell Announce \$44 Million to Bring Broadband Internet Service to First Nations, Rural and Remote Communities".

¹² David Johnston, President of the University of Waterloo, News Release "Allan Rock and Andy Mitchell Announce \$44 Million to Bring Broadband Internet Service to First Nations, Rural and Remote Communities".

22. Customers in rural areas could benefit from technological advances that build on the capabilities of a broadband Internet connection. In recent months new service providers have commenced offering voice services over the Internet. The new services are generally available to anyone in Canada with broadband access, automatically excluding residents in all of the unserved communities. The voice over IP services that have begun to sweep the country are available only to the "have" communities, while the "have-not" communities are stranded from this promising new innovation.

23. It is expected that IP generally and VOIP services in particular will produce a range of new and innovative features that are not available from circuit switched technology. Basic local telephone service will not change as it moves to an IP technology platform. The safeguards in the Commission's regulatory framework that apply to the incumbent telephone companies' basic local telephone services today will remain just as important as when these services are provided over IP. IP technology simply provides the means to provide advanced features that are not possible today. IP technology also potentially provides a way for service providers, including the incumbent telephone companies, to reduce the cost of providing service.

24. Recently, AT&T introduced a VOIP service in the United States, named CallVantage. It is noteworthy that AT&T identifies the value-added features of the service as the reason why it will be attractive to residential customers. In its news release¹³, AT&T described several "value-add" features of VoIP applications that it believed would provide consumers with "unprecedented convenience and control" and will help consumers to "justify their investment in broadband".

- "Call Logs," which tracks incoming and outgoing calling with "click to dial" capability;
- "Do Not Disturb," which allows customers to receive calls only when they want, while letting emergency calls ring in;

¹³ AT&T Ushers In New Era in Communication With Launch of AT&T CallVantage Service - New Jersey, Monday, March 29, 2004.

- "Personal Conferencing," which enables users to set up a meeting with up to nine additional callers;
- "Locate Me," which enables home phones to find customers by ringing up to five phones all at once or one right after the other;
- "Voicemail with eFeatures," which allows customers to hear their messages from any phone or PC and forward the voicemail to anyone on the Web.

25. The CCTA anticipates that many new types of value-added features will be introduced as the technology matures and competition is heightened both in the United States and in Canada. While the value-added features available from VOIP services might be the reason that "consumers are seeking to justify their investment in broadband", it remains a prerequisite that broadband service be available to consumers. For those residing in rural and remote communities, broadband service is not available and, for many communities, it is unlikely to be offered in the foreseeable future.

26. Without a deliberate and focused plan to make broadband access more widely available, residents and businesses in unserved communities will be unable to join in the benefits of the new generation's technology. They will have access to fewer services available over the Internet, no access to developing IP-based voice services, no access to advanced and developing enhanced services, and higher costs for continued use of services based on older technologies, such as circuit switched telephone services. The CCTA's proposal to draw down the balances in the incumbent telephone companies' deferral accounts will benefit customers in areas that are not served with broadband access. The CCTA's proposal also provides an effective way to make advanced features, which are becoming available to urban customers, available to customers in rural and remote areas.

3.2 The Benefits for Competitors

27. Almost all communities are connected with transport facilities that are sufficient for the provision of basic telephone service, including dial-up access to the Internet, and cable television services. When copper facilities are used to connect rural and remote communities the available bandwidth is very limited and insufficient to provide broadband access. The costs of transport facilities to rural and remote communities effectively prevent cable companies and other potential service providers from offering broadband services in many of the unserved communities. Once sufficient bandwidth to the unserved community is available, the local network within the unserved community is frequently capable or can be made capable to provide broadband access services.

28. The single largest impediment to broadband access services in rural and remote communities is the lack of fibre transport facilities and the cost of installing them. While the cost of constructing fibre transport facilities can be justified to serve large markets, the fixed cost of fibre construction cannot be recovered from relatively few customers in the unserved communities. The National Broadband Task Force estimated the cost per kilometre of fibre to be \$22,000 to \$35,000.¹⁴

29. Use of the deferral account balances to install and maintain the fibre transport facilities alleviates this obstacle, thereby benefiting competitors. The CCTA's proposal provides an opportunity for incumbent telephone companies, cable companies and other service providers to offer broadband services in markets that would not otherwise be available to them. It is the desire and intention of cable operators to provide broadband access services to customers in rural areas, within their serving territories. Once fibre

¹⁴ Report of the National Broadband Task Force "The New National Dream: Networking the Nation for Broadband Access", page 46.

transport facilities are available to unserved communities, cable operators would be in a position to offer broadband services under essentially the same terms and conditions as are available in urban areas.

30. By expanding markets and enlarging the customer base, the average cost of service supply is lessened, leading to lower prices for all customers. The CCTA's proposal also fosters facilities-based competition, consistent with the policy objectives of both the *Act* and Telecom Decision 2002-34. The construction of dark fibre transport facilities effectively provides a means for all competitors to share facilities while engaging in facilities-based competition.

31. Cable companies that are facilities-based competitors in the supply of broadband service are disadvantaged if forced to rely on incumbent telephone companies for the supply and maintenance of transport services at current tariffed rates. When cable companies must obtain services from the incumbent telephone companies in order to provide broadband access services, there is an incentive and opportunity for the incumbent telephone companies to discriminate against them. The interests of customers are likewise compromised because competition based on resold facilities is not as sustainable as facilities-based competition, nor are there the same incentives for improving network efficiencies and cost reductions, which lead to lower customer prices in a competitive market. Alternative broadband proposals that make transport available only as a resold service primarily benefit the incumbent telephone companies and do not balance the interests of the three main stakeholders.

3.3 The Benefits for Incumbent Telephone Companies

32. The incumbent telephone companies will benefit substantially from the CCTA's proposal. Use of the deferral account funds for the construction of fibre transport facilities provides the incumbent telephone companies with the opportunity to sell telecommunications services in areas that they would not otherwise serve, including high speed private line services. If the plan is structured to grant the incumbent telephone

companies the right to construct the transport facilities, they also benefit from ownership of significant fibre assets. In effect, the incumbent telephone companies are provided with the full use of network facilities at no cost to them. The benefit of the CCTA's proposal for the incumbent telephone companies is significantly greater than if the Commission decided to draw down the deferral account only for customer rebates or further decreases to CDNA rates.

33. In the Price Cap decision, the Commission did not specify how the deferral account funds should be spent but did convey its general expectations for their use. The Commission said that the deferral account could be drawn down to mitigate rate increases or "the funding of initiatives that would benefit residential customers in other ways".¹⁵ While the Commission did not predetermine the projects for use of the funds, it made clear that overpayments made by residential customers should be held in the deferral account for the future benefit of customers and that there should be a balancing of the interests of the three main stakeholders in the telecommunications markets. The CCTA's proposal satisfies these requirements and provides an excellent opportunity for government policy, Commission policy, industry initiatives and customer interests to be fulfilled in a complementary fashion.

4.0 DETAILS OF THE PROPOSAL

34. The CCTA proposes that deferral account balances be used to finance the installation of dark fibre transport facilities to communities that have no broadband service from any service provider as of the date that the program is initiated. The incumbent telephone company, from whose deferral account the funds are drawn, could be the party responsible for the construction and maintenance of the facilities. Features of the broadband roll-out proposal are described below.

¹⁵ Telecom Decision CRTC 2002-34, paragraph 412.

4.1 Transport Only

35. The deferral account funds should be available only for the construction of fibre transport facilities to communities without broadband service. Costs associated with the local network, any upgrades or equipment would be ineligible under the plan.

36. In the case of incumbent telephone companies, the costs to install remotes, DSLAMs, fibre to remotes, and any costs to remove bridge taps or loading coils would be borne by the companies. Similarly, any local costs incurred by cable companies including upgrading plant for two-way capability (e.g., plant hardening, amplifiers, node segmentation, CMTS) would not be eligible for funding. Costs incurred by other competitors to lease or construct facilities within communities to connect customers would be borne by the service provider. With the exception of the dark fibre facilities, the broadband network and operational costs would be the responsibility of the service provider in the same way the service provider would bear those costs in urban communities.

37. The National Broadband Task Force estimated the costs of providing broadband facilities and services to and within all Canadian communities by 2004. The cost estimates were based on the number of unserved communities as of December 2000 and ranged from a minimum of \$2.8 billion to \$4.6 billion. The transport costs were estimated at \$1.3 billion to \$1.9 billion.¹⁶

38. The incumbent telephone companies' submissions, providing details concerning their respective deferral account balances, filed in response to Public Notice 2004-1, indicate that there will be a cumulative balance in excess of \$500 million in the Aliant, Bell, MTS, SaskTel, Telus and Telus Quebec deferral accounts as of May 31, 2005.¹⁷ In the first two years alone, the amount of funds has totalled more than \$300 million. The

¹⁶ Report of the National Broadband Task Force "The New National Dream: Networking the Nation for Broadband Access", page 5.

¹⁷ Submissions filed by the ILECs on April 14, 2004, pursuant to paragraph 27, as revised by Bell Canada on May 11, 2004.

estimate of the balance is net of the telephone companies' proposed draw downs from the deferral account balances totalling more than \$150 million. CCTA notes that the additions and draw downs estimated by the ILECs have not been tested or approved by the Commission and that the deferral account balances may be substantially greater than \$500 million.

39. Limiting draw down of the deferral account for recovery of transport facilities costs would allow more communities to benefit from the plan. By excluding local plant costs from those costs eligible for funding, the proposal would foster competitive neutrality among potential service providers. If local plant costs are included in the plan, comparison of costs between telephone copper plant upgrades and cable HFC plant upgrades would be required. Inequities between the draw downs from the deferral accounts by incumbent telephone companies and cable operators could cause disputes and delay the roll-out of broadband access. Disputes and delays over acceptable equipment and plant upgrade costs and the appropriate cost and use of plant equipment common to multiple services can be eliminated if local costs are excluded.

40. The CCTA proposes that funds from the deferral account promote the roll-out of broadband services but funding should not thwart incentives for innovation, cost minimizing, or market responsiveness. Plans that permit service providers to recover all costs of local network upgrades provide no incentive for service providers to minimize costs or develop ways to provide broadband service in rural communities more efficiently.

41. Funding of the high cost fibre transport facilities to rural and remote communities places all service providers on an equal footing and maintains competitive neutrality between them. Two or more service providers will compete to provide service in a community if they each believe that they have a superior service and better cost efficiencies. Entry decisions will continue to be based on economic considerations. However, if local network upgrade costs are recoverable from the deferral account, there will be no incentive to make decisions based on economic considerations. Furthermore,

if one supplier has an advantage over other competitors in its ability to recover local costs, potential competitors will be effectively prevented from entering the community to provide service. A plan that allows a company to recover all costs of providing broadband access to rural communities and favours one competitor over another, either intentionally or unintentionally, would create a subsidized monopoly.

42. The Commission should not entertain proposals that treat deferral account balances as a pool of capital for the incumbent telephone companies to extend their networks as they see fit. The deferral account does not represent funds for the exclusive use by the incumbent telephone companies to upgrade their local networks. The role of the telephone companies is to hold the money in trust until the Commission directs how it should be used in a way that balances the interests of customers, competitors and ILECs.

43. Proposals for use of the deferral account balances to fund network construction projects that are of exclusive benefit to the incumbent telephone companies are problematic. If such proposals are adopted, they reduce the potential for competition in broadband Internet in rural and remote communities by subsidizing incumbent telephone companies' entry to the disadvantage of competing service providers. The CCTA submits that the deferral account should not be used in a manner that impedes the development of competition.

44. The CCTA notes that the use of the deferral account in a manner that is competitively and technologically neutral is consistent with the National Broadband Task Force's eighth principle for broadband infrastructure development programs. In its report the Task Force stated:

Government broadband infrastructure development programs in service of the specific ends described above as well as the general public interest, should focus on those communities where, without government involvement, the private sector is unlikely to deliver such services and should be guided by such considerations as sustainability, *technological neutrality, timeliness and affordability, and the value of an open and competitive market.*¹⁸ (emphasis added)

45. This principle of competitive and technological neutrality is consistent with the policy objectives of the *Act* and the Commission's regulatory framework. The CCTA believes that a plan that funds only dark fibre transport construction and maintenance to unserved communities is competitively neutral and would avoid many of the problems created by alternate plans.

4.2 Connection to the Fibre Transport Facilities

46. The broadband access service provider would be responsible for all facilities and equipment needed to connect its local network to the fibre transport facilities, both in the served community (originating end) and in the unserved community (terminating end). On the assumption that the originating and terminating ends of the fibre transport facilities will be located in the incumbent telephone companies' central offices, broadband access service providers should have the option of connecting at fibre patch panels or in manholes near the central offices.

47. If the fibre is spliced in a manhole near the incumbent telephone company's central office, the cost of the splice box, splicing and testing should be shared between the incumbent telephone company and the broadband access service provider. If the broadband service provider's fibre is pulled into the central office for connection to the fibre transport facilities at the fibre patch panel, the costs should be shared between the incumbent telephone company and the broadband access service provider.

¹⁸ Report of the National Broadband Task Force "The New National Dream: Networking the Nation for Broadband Access", page 10.

48. The broadband access service provider and the incumbent telephone company would each bear its own costs for design, planning, materials and labour, and all other costs for fibre connections at the originating and terminating ends of the fibre. Of course, broadband access service providers have options for leasing facilities, from the incumbent telephone companies or competitors, from their points of presence to the points of connection with the incumbent telephones. Leasing facilities to connect with fibre transport facilities would be available instead of connecting at fibre patch panels or in manholes near central offices.

4.3 Eligible Communities

49. Communities that are not served with broadband access by any service provider as of the date that the community's name is put forward for consideration should be eligible to have transport facilities constructed and maintained using funds from the deferral account. Communities that have been awarded funding under a provincial or federal broadband program, such as BRAND, should be excluded as eligible communities. However, given the uncertainty and delays in applying, qualifying and winning approval for funding, communities should be permitted simultaneous consideration under the deferral account program and provincial or federal broadband funding programs.

50. Any broadband access service provider should be permitted to propose communities that merit construction of fibre facilities to provide broadband access. The service provider should file a proposal with the Commission and include the following information:

- the name of the proposed city, town, unincorporated municipality or other identifier for the originating end of the fibre facilities;
- the population of the unserved community and any other relevant information about the community;
- the proposed number of fibre strands to the unserved community;

- confirmation that the proposed community has not been awarded broadband funding under BRAND or other similar government program; and
- a commitment to provide broadband service in the community within 12 months of the completion of the fibre facility construction.

A broadband access service provider filing a proposal should copy all parties registered with the Commission to receive notices of proposed fibre facilities construction to unserved communities.

51. CCTA is working with cable companies to identify the communities that should be considered eligible. The eligible communities would include those that do not have broadband access services and have not been awarded federal or provincial broadband funding as of the date that the program is initiated. Determination of the eligible communities can be assisted by information from Industry Canada. Industry Canada maintains on a publicly-available web site a comprehensive list of communities across Canada with detailed information on each, including whether the community has access to broadband Internet.¹⁹ The number of unserved communities is likely to exceed one thousand. It may be reasonable, therefore, to establish some criteria by which communities could be selected for the program, possibly based on the information in the Industry Canada community database. Should the Commission approve CCTA's proposal for the funding of dark fibre transport to unserved communities, each application for facilities to an unserved community would include the detailed information listed in paragraph 50, as well as information required to comply with criteria that may be established.

¹⁹ The information is available on the web site www.broadband.ic.gc.ca under the section "Community Demographics". Community lists are grouped by province and region. For each community, a table can be called up showing the latitude, longitude, total population, total dwellings, total land area, principal community and distance to it, regional municipality, status as a remote community, population within 40 and

4.4 Cost Recovery

52. All capital costs and expenses associated with the fibre transmission facility should be recovered from the deferral account. Capital costs include design, planning, construction and associated labour. The incremental costs of acquiring, installing and maintaining fibre patch panels in the central offices, where the fibre transport facilities originate and terminate, are recoverable from the deferral account. The timing of the draw down should match the depreciation expense for the fibre transport facilities.

53. Recoverable expenses would include costs to maintain the fibre facilities. Similar to the draw down for capital costs, the draw down from the deferral account for expenses should match the actual expenses incurred for the period.

4.5 Rates and Charges

54. Under the CCTA's proposal, the party constructing the transport facilities would fully recover all capital costs and expenses for the fibre transmission facilities from the deferral account. Because there would be no unrecovered costs, no rates or charges for the use of the fibre transmission facilities should be levied.

55. As explained above, a cable company or other service provider that uses the fibre transmission facilities to provide broadband access service would be responsible for its costs of connecting to the fibre, and for all costs associated with any necessary plant upgrades in the unserved community. If services are leased from incumbent telephone companies to supplement the service provider's local facilities, these services would be leased at tariffed rates.

56. The feature of the CCTA's proposal that requires each service provider to incur its own costs of local plant upgrades for the provision of broadband service serves four purposes:

1. A potential source of conflict over the eligibility of costs for telephone copper plant upgrades compared with cable HFC plant upgrades is eliminated and prevents a potential cause of delay for the roll-out of broadband access.
2. Limiting draw down of the deferral account for recovery of transport facilities costs will allow more communities to benefit from the plan.
3. The funding of transport facilities and the exclusion of local facilities helps ensure there is competitive and technological neutrality between the incumbent telephone companies and all other broadband service providers.
4. Requiring the broadband service provider to incur its own local network upgrade costs helps ensure that decisions about the deployment of capital is made consistent with the principle of economic efficiency.

57. Consideration of economic efficiency is an important factor in the evaluation of all proposals. Under the CCTA's proposal, service providers would be responsible for any local plant upgrade costs that are necessary for the provision of broadband access services. This ensures that an entry decision for each community requires a financial commitment from the service provider and thereby guards against inefficient use of the funds available from the deferral account. More importantly, under the CCTA's plan, service providers have strong incentives to minimize costs of providing broadband access and to consider the use of alternate and innovative technologies that may be more cost effective.

58. Alternative plans that propose to use deferral account balances for all costs associated with the provision of broadband service into unserved communities would create incentives for service providers to over-invest in local network upgrades. Recovery of all costs would also promote local plant expenditures for the benefit of other competitively supplied services. Attempts to determine whether upgrades benefit services other than broadband services lead to difficult and contentious questions over allocation of construction costs and appropriate recovery levels.

4.6 Exceptions to the Construction of Fibre Transport Facilities

59. In its April 6, 1998 letter, the Commission responded to a dispute between the incumbent local exchange carriers and competitors. At issue was whether fibre should be the default technology when there are disagreements over the technology to be deployed for interconnection between ILECs and CLECs. The Commission decided that it was not appropriate for fibre to be the default technology because "it is not reasonable to construct new facilities in every case where there is a dispute over whether existing facilities are adequate or could be made adequate at a cost lower than that of constructing new facilities". The Commission decided that "mandating fibre as the default technology may have the effect of causing the inefficient construction of new facilities and that, accordingly it would be preferable to rule on a case by case basis in such situations".²⁰

60. The CCTA acknowledges that there may be circumstances where alternative technologies are preferable to fibre facilities. Recognizing the Commission's preference to rule on disputes when they occur rather than mandating fibre as the default technology, the CCTA proposes that any party intending to become a broadband access service provider in an unserved community or the party responsible for the construction of the transport facility may propose the use of a technology other than fibre. However, in the absence of a request for an alternative technology, the parties may assume that

²⁰ CRTC Letter, Re: Commission Decisions Regarding Certain CRTC Interconnection Steering Committee Consensus Items and Disputes, April 6, 1998.

fibre will be the technology deployed for the connection to the unserved community. In the majority of cases, the CCTA anticipates there will be no challenge to the use of fibre.

61. The CCTA also anticipates that, in the majority of cases, unlit fibre facilities will be adequate for use by broadband access service providers. In some cases, however, unlit fibre may not be appropriate due to factors such as the distance to the unserved community from the originating end of the fibre, or an inability to access the central office due to inadequate duct or pole space to the incumbent telephone company's central office.

62. If such limitations exist, the CCTA recommends that they be identified by the incumbent telephone companies at the time they submit their Phase 1 reports to the Commission. As described in more detail below, a Phase 1 report should be filed with the Commission within 30 days of receipt of a proposal from a broadband service provider for service to an unserved community.

4.7 Procedure for Supplying Broadband Access to Unserved Communities

63. The CCTA proposes the following procedure and schedule for supplying broadband access to unserved communities.

63.1 A proposal is filed, with the Commission, by a broadband access service provider to offer service in an unserved community. The proposal must provide the information identified in paragraph 50, as well as information required to comply with criteria that may be established. The proposal must be provided to the incumbent telephone company and all parties which have registered to receive proposals.

63.2 The incumbent telephone company²¹ provides a Phase 1 Report to the Commission, the broadband access service provider that made the proposal, and all parties that have registered to receive such proposals, that includes:

- the cost of constructing the transmission facilities, including a list of the cost components and identification of the components eligible for draw down from the deferral account;
- the exchange name and address of the central office (or other location) where the fibre will originate;
- a map and description of the fibre route from the originating location to the unserved community;
- the number of kilometres of the fibre route between the originating and terminating locations;
- the exchange names and addresses of any central offices through which the fibre will transit;
- any limitations which may exist, at both the originating or terminating ends of the fibre, that may affect a broadband access service provider's ability to connect to the fibre transport facilities, and;
- confirmation that fibre technology is the appropriate technology or the reasons it is not appropriate and the proposed alternative technology.

A Phase 1 Report should be submitted to the Commission within 30 days of receipt of a proposal to provide broadband access to the unserved community.

²¹ The procedures described in this section assume that the incumbent telephone company is granted the right to construct the transport facilities. Additional steps would be required to provide for a selection process for the party constructing the transport facilities.

63.3 All parties have an opportunity to comment on the Phase 1 Report. Comments must be filed within 15 days of receipt of the Phase 1 Report from the incumbent telephone company. The broadband service provider must also indicate to all parties whether it intends to continue with its plans to offer broadband service or withdraw its proposal in light of information provided in the Phase 1 Report.

63.4 If there are no objections to the Phase 1 Report, the Commission approves the proposal from the broadband access service provider. If there are objections or questions about the Phase 1 Report, the Commission may issue directives to the incumbent telephone company for modifications to the construction plan or the Commission may decide to have a further proceeding before making a determination.

63.5 The incumbent telephone company files a Phase 2 Report with the Commission, the broadband access service provider that made the proposal, and all parties that have registered to receive such proposals, that reflects the modifications directed by the Commission. The Phase 2 Report is filed within 15 days of the Commission's directives to the incumbent telephone company for modifications to the Phase 1 Report.

63.6 The broadband service provider must indicate whether it intends to continue with its plans to offer broadband service or withdraw its proposal in light of information provided in the Phase 2 Report.

63.7 The Commission approves the Phase 2 Report or takes other action as it considers necessary.

63.8 Upon approval of the Phase 1 Report or the Phase 2 Report, the incumbent telephone company commences construction of the transport facilities, for completion within 10 months.

63.9 When the facilities construction is completed, the incumbent telephone company notifies the Commission, the broadband access service provider that made the proposal, and all parties that have registered to receive notification of proposals to provide broadband access to communities without service.

63.10 The broadband access service provider which submitted the original proposal has six months, or other period determined by the Commission, to commence service in the community.

5.0 CONCLUSION

64. Drawing down from the incumbent telephone companies' deferral accounts for the purpose of rolling out broadband access service helps fulfill many of the policy objectives set out in the *Act* and the Commission's objectives identified for the Price Cap regime. The CCTA's proposal also complements provincial and federal broadband initiatives, such as BRAND, and will help the Government of Canada accomplish its mandate to provide broadband access in all communities in Canada.

65. Unlike other proposals, the CCTA's plan is competitively neutral and promotes facilities-based competition. It will allow the incumbent telephone companies, cable companies and other service providers to deploy broadband service in unserved communities. As a result of implementing CCTA's proposal, some communities could have broadband access services competitively supplied by an incumbent telephone company, a cable company and/or other service providers. The CCTA's proposal would open up opportunities for a range of broadband service providers to take the initiative and begin providing broadband access services in unserved communities.

66. The proposal is designed to maximize the benefit of funding broadband access from the deferral account by limiting the types of costs that are recoverable. Restricting the types of eligible costs will allow a greater number of unserved communities to benefit from the plan, minimize regulatory intervention and help ensure competitive neutrality.

End of Document