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October 15, 2004

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
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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 Telecommunications 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) and the Commission's letter dated July 30, 2004.
2. An electronic copy of this submission is provided to the Commission by email.

Yours truly,

Michael Hennessy,
President

Attachment

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



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**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 TELECOMMUNICATIONS ASSOCIATION**

October 15, 2004

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1.0 OVERVIEW

1. These Comments are filed by the Canadian Cable Telecommunications 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) and the Commission's letter dated July 30, 2004. In this document the CCTA provides a summary and clarification of the CCTA's broadband initiative proposal and addresses proposals made by parties for the disposition of deferral accounts.

2. The CCTA proposes that the amounts in the ILECs' deferral accounts be used to fund the construction and maintenance of transport facilities needed to extend broadband services from the internet backbone to unserved rural and remote communities rather than allocated to construction of facilities in a community. CCTA submits it is possible to stimulate facilities-based competition in a rural and remote community if the high cost of long distance access to the internet can be overcome. Subject to eligibility requirements, selected communities will be those where a supplier of higher speed access service¹ commits to making available high-speed internet services upon completion of the transport facility. CCTA submits its proposal best meets the objectives of the proceeding as well as those set out in section 7 of the *Telecommunications Act*.

1.1 Commission objectives in PN 2004-1

3. In Public Notice 2004-1, the Commission made it clear to parties participating in the proceeding that they should "use the objectives set out by the Commission as a guide when preparing their submissions". The objectives identified by the Commission are

¹ Defined by the Commission in Telecom Decision 98-9, as services above 64 Kbps.

- (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

4. Supporting the expansion of broadband services into unserved rural and remote communities, through the method proposed by the CCTA, uniquely fulfills the Commission's objectives for use of the deferral account funds.

1.2 Objectives best met through broadband expansion

5. Customers in many rural areas simply do not have access to broadband services available to urban customers, and dial up service does not provide the same level of reliability or quality provided by broadband service. In most cases, broadband services are not available mainly because the costs of providing the service vastly exceed the revenue potential. Deploying broadband service in these areas includes substantial costs, within the community to upgrade the local access facilities and particularly with respect to the transport facilities necessary to connect the community to the internet backbone. While there is potential for facilities-based competitive provision of the access component at the community level,³ there is an absence of transport capacity, largely due to the size and remoteness of the unserved communities.

² PN 2004-1, paragraph 21.

³ Sources of community access facilities include existing telephony and cable plant as well as fixed satellite or terrestrial wireless.

6. Facilitating broadband service expansion will benefit the interests of customers, competitors and incumbent telephone companies in a balanced way. There are obvious and substantial benefits of a broadband initiative for customers in areas that are not served and not likely to be served. Businesses and educational institutions also benefit because they gain access to larger potential markets. Competitors and incumbent telephone companies benefit because the roll-out of broadband services enables them to compete in new markets that they would not otherwise serve. Also, if the Commission were to approve the CCTA's broadband initiative, the transport facility provider (most likely the incumbent telephone company) may reap additional benefits from ownership of transport assets such as opportunities to reduce cost or generate additional revenue.

7. Provided within a competitively neutral structure such as that proposed by the CCTA, the expansion of broadband services into unserved areas holds the potential to foster facilities-based competition while providing all broadband service providers with significant incentives to increase efficiencies and innovate.

8. The administration of a broadband expansion initiative can be minimal and tailored to complement specific programs as needed. The CCTA submits that considerations relating to administrative burden must be balanced against the need to ensure sufficient regulatory oversight to guard against anti-competitive behaviour or misuse of the deferral account funds.

1.3 CCTA's broadband proposal is best-suited to meeting the objectives

9. CCTA recognizes that several parties have advanced broadband expansion proposals of one type or another. Unlike these other proposals, in particular the proposals of TELUS and Bell, the CCTA's plan is competitively neutral and promotes facilities-based competition. It allows the incumbent telephone companies, cable companies and other service providers to compete and 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.

10. In contrast to proposals made by other parties, the CCTA's proposal would permit *only* the construction and maintenance of transport facilities to be eligible for funding from the deferral accounts. Costs associated with the local access network, including local network upgrades and equipment, would not be eligible under the plan. Limiting draw down of the deferral account for recovery of transport facilities costs would allow more communities to connect to broadband and 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. This would also create incentives for service providers to efficiently deploy broadband within the community.

11. It is the Commission's long-standing policy to encourage facilities-based competition. Competition among facilities-based carriers is expected to "ensure high quality, affordable service, as well as innovation and service differentiation"⁴ and that "the full benefits of competition can only be realized with facilities-based competition"⁵.

12. Having achieved a high measure of success in the creation of broadband services competition among facilities-based competitors in larger markets, the Commission should ensure that new policies implemented for the use of the deferral account funds do not, in any way, benefit one facilities-based competitor over another or diminish the ability of existing facilities-based suppliers to compete.

⁴ Telecom Decision CRTC 2002-34, paragraph 94.

⁵ Telecom Decision CRTC 97-8, paragraph 237.

1.4 Other proposals are flawed

13. In addition to the proposals for broadband expansion, parties advanced other proposals to use funds from the deferral account. These proposals fell largely into four categories: rebates, rate reductions and promotions, ILEC cost recovery, and support for competitors in the local exchange market. CCTA submits these proposals are flawed because they do not meet important objectives and would unduly benefit one stakeholder group to the detriment of the others. The Commission's intent in PN 2004-1 was unambiguous. Proposals to dispose of deferral account funds must meet the five primary objectives outlined therein. CCTA submits its own proposal is fully up to the task while most others fall well short and should therefore be rejected.

2.0 CCTA's proposal for broadband expansion

2.1 Eligible facilities and cost recovery

14. In its May 19, 2004 submission, the CCTA set out a proposal for the use of the deferral accounts, consistent with the objectives identified by the Commission in Public Notice 2004-1. Funds from the deferral accounts would be drawn down for the planning, construction and maintenance of transport facilities to provide broadband services to unserved communities.

15. The CCTA proposes that the transport facilities, funded from the deferral account, be made available to any and all broadband service providers that wish to use them. Most often, transport facilities are fibre facilities. However, there could be occasions when an alternative technology is more appropriate for transport, such as microwave.⁶ The CCTA's broadband initiative will promote the competitive supply of broadband internet service in these communities by alleviating the cost barriers of connecting to the internet backbone. The transport portion is frequently the single largest cost of providing broadband services and therefore, the greatest

⁶ Microwave could be a better technology in cases where the construction of fibre is particularly difficult or expensive. Rugged terrain, environmentally sensitive areas and absence of necessary rights of way are examples circumstances when microwave technology could be a preferred alternative over fibre.

barrier to broadband deployment in rural and remote communities. The CCTA proposes that the deferral account funds be available only for the fibre transport facilities. Costs associated with the local network, any upgrades or equipment should be ineligible.

16. In response to Bell(CCTA)23June04-1, the CCTA identified the following transport costs that should be eligible for recovery from the deferral account:

The deferral account would fund the following elements, required for transport:

- network design and engineering of the transport
- preparation of reports and studies
- fibre cable
- installation
- rights-of-way
- fibre termination patch panels
- repeaters and related equipment, where required

Expenses that would be funded from the deferral account are:

- network monitoring
- maintenance
- repair
- recurring rights-of-way expenses
- negotiations with broadband service providers for access to the dark fibre
- recurring support structure expenses

17. The capital costs would be recovered over a multi-year period based on depreciation expense, while other expenses would be recovered in the year the expenses are incurred. It may not be practical or appropriate for the deferral account to be drawn down by an amount equal to a specific year's depreciation expense, absent the creation of a specific account that would remain in place for the required period of time. As an alternative, there could be an immediate drawdown from the deferral account for the full capital cost, however, the amount of funds actually distributed to the company constructing and maintaining the facility would be limited to the actual costs incurred in a given year.

18. Any party with a plan to provide broadband service to the community would be permitted to access the transport facility without further payment to the constructing company. There should not be any charges paid by the broadband service providers to use the transport facilities constructed because the company that constructed the facility would be compensated for all relevant costs from the deferral account. The construction of the transport facility does not represent an investment by the company, the recovery of which requires a future stream of revenue from rates charged to users. If service providers were charged an additional amount for the use of the transport facilities, then the company that constructed the transport facilities would be compensated twice for the same facility.

19. For any particular community there could be one, two or three service providers, or more, and they could each enter the market at the same time or the second and subsequent provider could enter months or years later. Funding of the transport facilities places all broadband service providers on an equal footing. In this way, the broadband initiative promotes facilities-based competition.

20. CCTA developed a preliminary list of potential communities where CCTA member companies could offer a broadband internet service.⁷ The community list indicates a total of 220 communities that could be eligible under the CCTA's proposal. The potential number of households that could obtain service would approach 140,000, based on the number of dwellings located within the communities identified.

21. As CCTA stated in the response to CCTA(CRTC)23June04-11, the broadband service provider filing an application for funding of the transport facility would undertake the necessary analysis to determine a community's eligibility prior to putting forward that community as a candidate for funding of a connecting transport facility. Included in this analysis would be consultation within the community to ensure that the investments required by the broadband service provider to deploy service within the community would be justified. Cable companies have a strong local presence in the communities they serve by the very nature of their core

⁷ See the response to CCTA(Bell)23June04-2 PN 2004-1.

business of providing cable television services via terrestrial facilities. As such, they are well positioned to consult with the community stakeholders in preparation of filing an application.

2.2 Administration

22. In its May 19, 2004 submission, the CCTA proposed a 10-step procedure for the administration of its proposal. The Commission subsequently asked parties to propose procedures for the CCTA's broadband initiative that would be less administratively burdensome than those recommended by the CCTA in its May 19, 2004 filing.⁸

23. The CCTA recognizes that the procedures identified in its May 19, 2004 proposal for the supply of broadband access to unserved communities are more detailed than those set out by parties who have made alternative broadband proposals. The CCTA also recognizes that one of the criteria used by the Commission to assess proposals is to "adopt regulatory approaches that impose the minimum regulatory burden compatible with the achievement of the previous four objectives".⁹

24. The CCTA fully endorses the reduction of regulatory and administrative burdens and the CCTA provides recommendations below. However, the CCTA also submits that administrative simplicity must be balanced with a process that is sufficiently transparent to avoid anti-competitive behaviour or misuse of the deferral account funds. When there is too little oversight of the use of the deferral account the potential for misappropriation arises.

25. The CCTA submits that some minimum administrative oversight is important for any use of the deferral account funds. It is worth recalling that the deferral accounts have a cumulative balance in excess of \$580 million in the Aliant, Bell, MTS, SaskTel, TELUS and TELUS Quebec deferral accounts as of May 31, 2005.¹⁰ This sum represents money held for the future benefit

⁸ See, for example, Microcell(CRTC)23Jun04-5.

⁹ Telecom Public Notice CRTC 2004-1, paragraph 21.

¹⁰ Submissions filed by the ILECs on April 14, 2004, pursuant to paragraph 27 of PN 2004-1, with updates by the ILECs as noted in Attachment 1.

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. In Attachment 1 to this submission, the CCTA has summarized the anticipated cumulative deferral account balances, based on the ILECs' estimates of net additions and draw downs.

26. Ultimately, the administration of the initiative is a related but different consideration. Adopting the CCTA's broadband initiative does not necessarily require the implementation of the CCTA's recommendations for the administration of the deferral account funds. While the CCTA has a preference for the method of administration set out in its May 19, 2004 submission, the broadband initiative could be also be implemented under alternative administrative schemes that provide less regulatory oversight or involve participation by third parties, such as the Industry Canada model.¹¹

27. The CCTA stands by its recommended administrative procedures as the most appropriate approach for overseeing the use of the deferral accounts, however the CCTA also recognizes that alternative less burdensome procedures could be easily adapted in support of the construction of transport facilities to extend broadband services to unserved areas. Alternatives schemes respecting administration of the CCTA's proposal for broadband expansion are described in section 4.2 below.

3.0 Supporting broadband expansion is in the public interest

28. Drawing down from the incumbent telephone companies' deferral accounts for the purpose of facilitating broadband expansion helps fulfill many of the policy objectives set out in the *Act* as well as the Commission's objectives identified for the second Price Cap period. Moreover, this 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.

¹¹ These alternatives are described by the CCTA in response to interrogatory CCTA(CRTC)23June04-11.

29. The CCTA and other parties to the proceeding have noted the public benefits of making broadband services available in unserved areas. Bell Canada, RipNET, Microcell and TELUS have each made proposals to extend broadband services. Even the consumer groups, which have much different proposals for the use of the deferral account balances, recognize that "wider diffusion of broadband services may enhance the availability of telemedicine offerings, distance educational offerings and the like".¹² Ultimately, funding the roll-out of broadband access to unserved communities is the most effective way to substantially reduce the significant disparity that exists between urban communities and most rural communities.

3.1 Benefits of broadband expansion

30. Like the CCTA, many of the parties in this proceeding have commented on the benefits of drawing on the deferral accounts for the expansion of broadband services in unserved rural and remote areas. Microcell's submission reinforces the perspective of Industry Canada and many provincial governments that broadband services are required in unserved rural and remote communities as a "vital enabler of economic and community development in the new century."¹³ Microcell proposes that the "accumulated surpluses in the ILEC deferral accounts be dedicated to a competitively-neutral national subsidy program to promote the deployment of broadband Internet access services in non-served or under-served regions of Canada."¹⁴

¹² Evidence of Johannes M. Baueron on behalf of the Consumer Groups, paragraph 49. The observation made by Baueron is drawn for a paper titled "Broadband deployment: toward a more fully integrated perspective", Quello Center, working paper 001-2003. This paper also offers the following summary and conclusions:

The shared cost characteristics of broadband networks suggest that broadband policies will be most effective if they are tailored to local market conditions. However, the fact that sharing occurs at successively higher levels of the network suggests that region-wide coordination for policy development may be best for large areas with low population densities.

Broadband policies should be tailored to the spatial and product characteristics of broadband services. In the case of predominantly private benefits of club goods, the role of the public sector will best be focused on measures facilitating demand synchronization and aggregation. Where the mix of benefits has the character of public goods, other means might be more effective, including public funding or even direct provision. (p. 24)

¹³ Microcell, May 19, 2004, paragraph 6.

¹⁴ Microcell, May 19, 2004, paragraph 14.

31. RipNET observes that Canadians outside of rural towns and villages should also be afforded the opportunity to benefit from broadband services. RipNET states:

While there is clearly a need for high-speed broadband service in remote towns and villages, RipNET submits that there is just as great a need to extend high-speed broadband and competitive telephony services to those truly rural Canadians who live outside towns and villages.¹⁵

32. RipNET's submission advocates the use of the deferral account to finance the construction of "facilities needed to provide high-speed broadband and other telephony services to low-density rural and remote communities."¹⁶

33. The CCTA concurs with Microcell and RipNET on the need to expand broadband services into unserved areas. It is not just existing applications like email and web surfing that unserved Canadian are missing. Broadband services are needed to enable all Canadians to benefit from future services that are developing rapidly. Within the next two years, applications will be available through broadband services that are not yet conceived. The ability to access current as well as future broadband service applications will determine each Canadian's ability to participate in the new economy and society.

34. As CCTA noted in its May 19, 2004 submission, Industry Canada has significant expectations of what broadband services should provide for Canadians.

Broadband will bring Canadians closer together, helping businesses compete and providing Canadians with better access to services such as telehealth and distance education.¹⁷

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.¹⁸

¹⁵ Response to interrogatory RipNET(CRTC)23Jun04-5.

¹⁶ RipNET, May 19, 2004 paragraph 69.

¹⁷ 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." October 24, 2003.

¹⁸ *Ibid.*

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.¹⁹

35. The realization of these benefits will come to many rural and remote communities only if the much higher costs of providing the connecting transport facility to support broadband services are recovered from a source other than just the retail rates for the service.

36. Bell and TELUS each recognize the same benefits as the CCTA has identified in its May 19, 2004 submission. For its part, Bell says,

Broadband connections in a community enable households, businesses, institutions (such as, for example, educational institutions, hospitals) and governments at all levels to leverage the power of information technologies to achieve numerous goals. Households can use these technologies for educational, informational, transactional and other purposes. For remote households these connections become a powerful tool for overcoming the disadvantages normally associated with remoteness. Businesses can increase productivity, develop training opportunities, conduct business, advertise and promote themselves to a broader audience using the power of the Internet. Educational institutions can draw upon the vast array of information available on the Internet for research and other purposes as well as develop distance learning applications. Health organizations have developed tele-health applications whereby consultations, diagnostics and other information can be made available over the Internet, saving time and travel for all participants. Governments can provide many basic services over the Internet and facilitate communications to the public about other government services by providing such information on Web sites. For each of these sectors the Internet has demonstrated a powerful capacity to allow organizations and households to attain objectives more effectively and efficiently than otherwise.²⁰

37. TELUS has made similar observations. Darren Entwistle, CEO of TELUS has said that the use of the deferral account for expanding broadband services to unserved areas will result in the "betterment of our country". In his speech, he said,

¹⁹ *Ibid.*

²⁰ Bell Canada, Part VII Application "Re: Proposal to Seek Funding from the Deferral Account for the Expansion of Bell Canada's Digital Subscriber Line Footprint to Certain Areas", paragraph 22.

A large portion of the funds would be directed at the digital divide in B.C, Alberta, and Eastern Quebec – improving service to rural communities. Imagine if the application of the deferral account in this regard were implemented uniformly across all the incumbent telephone companies. We would have much of the money, and the mechanism, to help bridge the digital divide in Canada. All we need collectively is the will to make this decision, which will result in the betterment of our country.²¹

38. The CCTA submits that there is considerable public interest in using the deferral account to support expanding broadband services to unserved rural and remote communities. The use of the deferral account funds to fulfill this goal is particularly compelling because the Commission, federal and provincial governments, and other key stakeholders have all affirmed the need and endorsed programs to make it happen.

3.2 Broadband expansion satisfies the Commission's objectives

39. In Public Notice 2004-1, the Commission made it clear to parties participating in the proceeding that they should "use the objectives set out by the Commission as a guide when preparing their submissions". Expansion of broadband services into unserved rural and remote communities uniquely fulfills the Commission's objectives for use of the deferral account funds.

3.2.1 Render reliable and affordable service

40. The first of the Commission's objectives is "to render reliable and affordable services of high quality, accessible to both urban and rural area customers". This objective goes to the heart of broadband expansion programs. As matters currently stand, many communities outside of urban areas do not have access to broadband services. While many customers rely on dial up Internet service, the speed of dial up service limits their ability to enjoy many applications that are available through broadband service. Furthermore, competitive alternatives to local exchange services, like VoIP service, could be more broadly available through broadband connections. In this regard CCTA observes that in the recently concluded

²¹ Darren Entwistle, President and CEO, TELUS, The 2004 Telecom Summit, Keynote Address, June 16, 2004, page 11.

VoIP proceeding,²² several participants described the ease with which PSTN-voice service could be provided via residential high-speed internet services. In that same proceeding, CCTA and others made the case that these PSTN-voice services are the same as or a close substitute for primary exchange service and therefore compete in the same market as ILEC local voice.

41. Customers in many rural areas simply do not have access to broadband services available to urban customers, and dial up service does not provide the same level of reliability or quality provided by broadband service. In most cases, broadband services are not available mainly because the costs of providing the service vastly exceed the revenue potential. Deploying broadband service in these areas includes substantial costs, both within the community to upgrade the local access facilities and the transport facilities necessary to connect the community to the internet backbone. While there is potential for facilities-based competitive provision of the access component at the community level,²³ there is an absence of transport capacity, largely due to the size and remoteness of the unserved communities.

42. In urban areas, thanks to broadband access competition and the local voice competition now on the horizon, the Commission's first objective is being met. Fulfilling this objective in rural communities requires the push that a competitively neutral broadband expansion program can provide.

3.2.2 Balance the interests of customers, competitors and incumbents

43. The second objective that the Commission asked parties to consider is "to balance the interests of the three main stakeholders in telecommunications markets, (i.e., customers, competitors and incumbent telephone companies)". As noted above, there are very substantial benefits of a broadband initiative to customers in areas that are not served or not likely to be served. There are also advantages to customers that already have broadband service. Customers that already have broadband access can use applications such as video conferencing, exchange of image files and voice over the Internet to communicate with family

²² Telecom Public Notice CRTC 2004-2.

²³ Sources of community access facilities include existing telephony and cable plant as well as fixed satellite or terrestrial wireless.

members and friends in rural and remote areas. Businesses and educational institutions also benefit because they gain access to a larger potential market.

44. Competitors benefit because the roll-out of broadband services enables them to compete in new markets. A competitively neutral broadband initiative funded through deferral accounts also provides competitors with the means to access new markets at approximately the same time as ILECs, thereby reducing the head start advantages that the ILECs would otherwise gain.

45. Finally, ILECs benefit from the funding of broadband services from the deferral accounts. Use of the deferral account funds for the construction of transport facilities will provide 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. Under the CCTA's broadband proposal, it is expected that the majority of funded transport facilities will be constructed by and remain in the possession of the incumbent telephone companies. In effect, with the exception of the capacity provided to competitive broadband access provider, the incumbent telephone companies will essentially gain the full use of network facilities, at zero cost and zero risk to them.

3.2.3 Foster facilities-based competition

46. The Commission also asked parties to make proposals that "foster facilities-based competition in Canadian telecommunications markets". The expansion of broadband services into unserved areas holds the potential to foster facilities-based competition, depending on how the funding and eligibility of the broadband initiative is structured. If the facilities needed to provide broadband services are available on non-exclusive and identical terms and conditions, or if the funds are made available to all facilities-based competitors the CCTA believes that facilities-based competition will be fostered. Unfortunately, the Bell and TELUS proposals do not give competitors access to facilities funded from the deferral account and, as a result, serve to hinder facilities-based competition. The CCTA's concerns with the Bell and TELUS proposals are discussed in more detail in section 5.

3.2.4 Increase efficiency and innovation

47. The fourth objective that the Commission asked parties to consider is "to provide incumbents with incentives to increase efficiencies and to be more innovative". Making broadband services available in unserved communities through funding from deferral accounts can be structured to provide the incumbents, and other broadband service providers, with incentives to increase efficiencies and be more innovative. When competitors are on an equal footing, they will compete to provide the best services at the lowest cost. In urban centres, where there is intense competition between cable companies and ILECs, ILECs have minimized costs while introducing new and advanced technologies for the supply of DSL-based broadband services. Programs that ensure competitive neutrality and encourage competition among multiple suppliers of broadband services in unserved rural areas will create the same positive outcomes that have occurred in urban centres.

48. A broadband initiative that is competitively neutral will also encourage multiple facilities-based companies to enter the market and compete on the basis of innovative services. Innovation can take many forms. In the existing broadband services markets competitors have introduced "lite" and "extreme" services, raised the download and upload speeds, partnered with companies such as Yahoo and Microsoft for additional features, competed with bundled broadband service offerings, and offered customers an array of additional services such as multiple email addresses and space for creation of web pages. A program that is not competitively neutral, such as one where the benefits of deferral account funding are available only to an ILEC, will result in a single-supplier rather than competitive model in the eligible communities. Under such circumstances, the incentives for service innovation are minimized, to the detriment of broadband service customers.

3.2.5 Impose minimum regulatory burden

49. The final objective identified by the Commission in its Public Notice is "to adopt regulatory approaches that impose the minimum regulatory burden compatible with the achievement of the previous four objectives". The CCTA submits that administrative simplicity

must be balanced with a process that is sufficiently transparent to avoid anti-competitive behaviour or abuse of the deferral account funds. When there is too little oversight of the use of the deferral account the potential for misappropriation arises. CCTA submits that use of the deferral account for the funding of broadband expansion to unserved areas can be administered with few regulatory requirements and can be modified as needed. Moreover, as the Commission gains experience with a broadband program, modifications can be made to streamline the processes.

4.0 CCTA's broadband proposal is best-suited to meeting the objectives

50. The funds in the ILECs' deferral accounts should be used in a manner that is competitively neutral. A competitor or group of competitors should not benefit from an artificial advantage created through the use or distribution of the funds in the deferral account. The concept is especially important for the broadband access services market.

51. The Commission has repeatedly found that the level of competition in the broadband services market is "highly competitive", exhibits "rigorous competition"²⁴ and characterized by "vigorous facilities-based competition"²⁵. The success of facilities-based competition should not be regarded lightly. An advantage created through regulation could easily tilt the market in favour of one competitor over another. The use of the deferral account funds to promote one technology over another could introduce market distortions.

52. It is the Commission's long-standing policy to encourage facilities-based competition. Competition among facilities-based carriers is expected to "ensure high quality, affordable service, as well as innovation and service differentiation"²⁶ and that "the full benefits of competition can only be realized with facilities-based competition"²⁷.

²⁴ Telecom Decision CRTC 2004-28, paragraph 53.

²⁵ Telecom Decision CRTC 2004-28, paragraph 60.

²⁶ Telecom Decision CRTC 2002-34, paragraph 94.

²⁷ Telecom Decision CRTC 97-8, paragraph 237.

53. 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 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.

54. Consistent with the objectives identified by the Commission in Public Notice 2004-1, the focus of the CCTA proposal is to promote the expansion of broadband services to unserved rural and remote communities through the construction of transport facilities. Funds from the deferral accounts would be drawn down for the construction and maintenance of transport facilities to provide broadband services to unserved communities, as discussed in detail in section 2.1.

55. The CCTA proposes that the transport facilities, funded from the deferral account, be made available to any and all broadband service providers that wish to use them. The CCTA's broadband initiative will promote the competitive supply of broadband internet service in these communities by alleviating the cost barriers of connecting to the internet backbone. The CCTA also proposes that the deferral account funds be available only for the construction of fibre transport facilities. Costs associated with the local network, any upgrades or equipment should be ineligible.

56. Limiting draw down of the deferral account to recovery of transport facilities costs allows more communities to benefit and creates incentives to efficiently deploy broadband in the community. Excluding local plant costs from those costs eligible for funding ensures that the proposal will foster competitive neutrality among potential service providers. 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. For example, if local plant costs are included in the plan, comparison of costs between telephone

copper plant upgrades and cable hybrid fibre coax 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.

57. Under the CCTA's broadband proposal, it is expected that the majority of funded transport facilities will be developed by and remain in the possession of the incumbent telephone companies. Accordingly, the incumbent telephone companies will benefit substantially from the CCTA's proposal. Use of the deferral account funds for the construction of 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, without incurring the associated costs. Ownership of the transport facilities allows the ILECs to integrate them into their existing networks and monitor and maintain them using current resources and practices. The CCTA submits that this amounts to a significant advantage and, along with the continued reliance on the ILECs for access to the transport facility, represents an important concession by the CCTA members.

58. From the perspective of the CCTA's members, using ILEC-owned transport facilities to access rural and remote communities means that success of their broadband services is contingent upon the cooperation of the ILECs. When the transport facilities are owned and maintained by the ILECs, scheduling access to the fibre, connecting with it, monitoring, maintenance and testing are all aspects of the services that are necessarily under the control of the ILECs.

59. CCTA maintains that its broadband proposal holds far greater promise and is more aligned with the Commission's objectives than the broadband proposals offered by other parties to this proceeding.

4.1 Concerns raised by parties to the proceeding

60. Some parties have objected to the CCTA's proposal on the grounds that it will lead to rates for broadband service that will be different in urban and rural areas.²⁸ This is not correct. As noted in CCTA's May 19, 2004 submission, once fibre 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. Quite simply, eliminating the added variable of exorbitant transport costs puts rural and urban service models on a more equal footing.

61. Variations in service and rates exist today within cable companies' serving territories. The differences are not due to the rural or urban location of customers but the result of a number of other factors including the acquisition of a cable system by a larger cable operator, new service roll-out or special promotions.²⁹

62. The commitment to offer broadband services in communities that benefit from the broadband initiative, under the same terms and conditions as broadband services offered elsewhere in a cable operator's territory, was made to assure the Commission that rates would not be higher in rural and remote communities. TELUS has objected to the CCTA's proposal because CCTA members may charge *less* in communities where transport facilities are financed from deferral accounts. TELUS argues that the incentive to price broadband services lower in high-cost rural areas arises because it would cost a cable company less to serve a rural community in the absence of transport costs than other communities.

63. TELUS has mistakenly assumed that the costs of upgrading the access network in unserved areas is equal to or less than the cost of upgrading the access network in other areas. Unserved areas typically have lower population densities and a require hub sites to service larger geographic areas. These factors serve to increase the cost of upgrading an access network in rural areas, making it more costly to serve.

²⁸ See, for example, TELUS(CRTC)23Jun04-5, page 2.

²⁹ See response to CCTA(Bell)23June04-5.

64. In any case, the CCTA members would offer broadband services to communities that benefit from the broadband initiative on the same terms and conditions as available to customers in other communities.

4.2 Administration options

65. CCTA urges the Commission to recognize that, irrespective of the complexity that may be associated with administration options, the CCTA's broadband expansion proposal will best meet the objectives set out in PN 2004-1. With this in mind, and with a view to ensuring the substance of its proposal is not overlooked simply due to fears raised by others respecting the administration of that proposal, CCTA wishes to draw attention to alternative administration models that may prove less burdensome, but would nonetheless support the same goal of broadband expansion.

4.2.1 National Selection Committee

66. As noted in response to interrogatory CCTA(CRTC)23June04-11, Industry Canada has created procedures for the administration of broadband programs. In brief, a National Selection Committee, composed of 24 members representing all of Canada and representing a cross-section of relevant experiences was created to assess applications for funding. The Committee's recommendations for communities that should receive broadband funding were provided to the Minister of Industry Canada for his consideration.

67. Either the existing National Selection Committee or a committee like it could review and assess funding for unserved communities proposed by broadband service providers.³⁰ Any broadband service provider could submit a proposal to the committee for the construction of transport facilities to provide broadband services to an unserved community.

³⁰ The CCTA notes that the National Selection Committee in its Report titled "Stronger Communities for a Stronger Canada: The Promise of Broadband" at page iv, recommended to the Minister of Industry Canada that there should be a continuation of the Broadband Pilot Program or something similar for communities unlikely to be served by a commercial provider by 2005.

68. The committee's approval would serve as authorization for the broadband service provider to proceed with construction of the transport facilities and to recoup the cost of construction, specified in the proposal.

69. The committee could also make recommendations to the Commission, should the Commission decide it is necessary to review and approve transport construction projects.

4.2.2 Bell Model

70. Bell's broadband expansion program, described in its December 2, 2003 Part VII Application and in its May 19, 2004 submission, minimizes both administrative processes and regulatory oversight. Using high-level criteria, Bell proposes to select the communities that will benefit from the broadband expansion program. CCTA does not support the manner of funding proposed by Bell because it would provide the company with an undue advantage. However, CCTA considers there may be merit in the administrative approach associated with the plan.

71. CCTA developed a preliminary list of potential communities where CCTA member companies could offer a broadband Internet service.³¹ The community list, as presented in the response to CCTA(Bell)23June04-2, was developed based on information from Industry Canada that identified communities where broadband internet service is not currently available. Other communities that are currently unserved and are not within the serving territory of a CCTA member company may also be eligible.

72. The following table summarizes the number of communities in each province where broadband services are not currently available but where services could be provided under the CCTA's broadband service initiative.

³¹ Since the time that the list was developed, Persona Communications Inc. has become a member of the CCTA. It is expected that additional communities that are within Persona's serving area could be eligible under the terms proposed by the CCTA.

Province	Number of Unserved Communities
Alberta	28
British Columbia	3
Manitoba	12
New Brunswick	75
Newfoundland	2
Nova Scotia	11
Ontario	37
Prince Edward Island	8
Quebec	43
Saskatchewan	1
Total	220

73. Should the Commission find merit in Bell's proposed administrative procedures for the deferral account funds, the CCTA members could immediately commence work to provide service to the unserved communities listed in the response to response to CCTA(Bell)23June04-2.

74. Under this model, CCTA members could draw down funds from the deferral accounts with the ILEC managing the relevant deferral account. In all other respects, the administration of the CCTA's broadband service initiative would be identical to the administration of the program proposed by Bell in its December 2, 2003 Part VII Application and its May 19, 2004 submission.

4.2.3 Alternative administration scheme

75. The CCTA has carefully reviewed its proposed procedures for the administration of the broadband initiative and considered the comments filed by other parties in response to the Commission's interrogatory for alternative procedures that would be less administratively complex. The CCTA proposes the following streamlined procedures for the implementation of its proposal for the construction of transport facilities to unserved communities. The CCTA requests that:

- the Commission endorse the list of communities that the CCTA provided in response to interrogatory Bell(CCTA)23June04-2;
- the Commission direct the ILECs to construct fibre transport facilities to any of the listed communities within ten months of receiving a request from a cable company or other broadband service provider. A letter to the ILEC, naming the community and verifying that it remains unserved, would constitute a valid request; and,
- each of the ILECs file quarterly reports on transport construction projects completed, under construction and requested along with deferral account draw downs for each of the projects.

76. As noted above, the Commission may decide, based on experience with the broadband initiative, to modify the procedures by eliminating the requirement for ILECs to file quarterly reports or adding any necessary procedures to improve regulatory oversight.

5.0 Drawbacks of other broadband proposals

77. The funds in the ILECs' deferral accounts should be used in a manner that is competitively neutral, consistent with the second and third objectives as set out in PN 2004-1. A competitor or group of competitors should not benefit from an artificial advantage created through the use or distribution of the deferral account funds. This principle is critically important for the broadband services market. CCTA submits that alternative broadband proposals put forward, most notably by Bell and TELUS, suffer from the flaw of being skewed in favour of the ILECs' own facilities and services.

5.1 Bell

78. Bell has proposed to draw down from the deferral account to finance the expansion of broadband services to unserved communities in its operating territory. Unlike the CCTA's broadband initiative, Bell proposes to administer the fund without regulatory oversight and offers

no means for the Commission or other parties to monitor expenditures drawn from the deferral account.

79. Bell proposes that the costs to install remotes, DSLAMs, fibre to remotes, and any costs to remove bridge taps or loading coils would be recovered from the deferral account. The CCTA submits that 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 should be ineligible.

80. Under Bell's proposal, many communities that could benefit from the construction of transport facilities would not be included. The costs of local network upgrades will exhaust the funds represented in the deferral account much sooner than if only transport costs are recoverable. Limiting draw down of the deferral account for recovery of transport facilities costs would allow more communities to benefit from the plan.

81. Bell's proposal to draw on the deferral account for local network upgrades is not competitively neutral. Bell would be able to draw on the deferral account funds to externally finance investments in its own local networks. This would provide Bell with an immediate recovery of capital investments at zero-risk, increasing the asset value of the company and expanding the company's ability to generate new revenue streams. As a result, Bell would gain substantial advantages that would not be available to any other competitor. It stands to reason that if Bell can only provide service through financial support of the deferral account, no competitor would ever be in a position to provide a competitive facilities-based alternative absent a similar subsidy.

82. Bell's proposal does not provide any administrative oversight of the use of the deferral account. There would be no independent oversight of the funds Bell plans to withdraw from the deferral account. For example, if Bell decided to entirely reconstruct the outside plant in communities where DSL service is being extended, no process exists or is proposed that would identify inappropriate uses of the deferral account funds or prevent the expenditures before they occurred. There would be no approval process whereby the Commission or other interested

parties would evaluate the costs of extending service to each community. The selection of communities and the schedule to complete the work would not be subject to independent, prior review. Nor is there any process to review changes or prohibition to prevent Bell from making changes to the program how and when it sees fit. There is no approval process whereby the Commission or other interested parties would consider each community to be served with funding from the deferral account. Bell's proposal does not allow for an opportunity for parties to review a project to ensure that it accommodates the requirements of other broadband service competitors or recommend changes to better serve the communities that do not have broadband service.

83. The absence of information and absence of transparency in the decision-making would give Bell complete and unfettered discretion in the use of the funds.

84. If Bell's proposal is adopted, the Commission will not be able to assess whether the funds are used in a manner that serves the interests of customers or consistent with the Commission's objectives for the deferral accounts.

85. The absence of oversight or an acceptable administration process is inconsistent with the Commission's objectives to 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.

86. Bell describes its proposal as competitively neutral. The Commission asked Bell to explain how its "proposed broadband expansion program using deferral account funds is competitively neutral, and how it will provide opportunities for competitors and resellers, including those that offer alternate technologies"³². In its answer, Bell says that its proposal "applies to areas where there is no competitive broadband service provider *and one is not likely to emerge* without the benefit of some form of economic incentive" and "[c]onsequently, the proposal is competitively neutral with respect to potential facilities-based competitors" (emphasis added).

³² Bell(CRTC)23Jun04-9.

87. In other words, it is competitively neutral because Bell assumes that a cable company or other facilities-based competitor will not want to provide service to the community and, therefore, there will be no cable company interested in using the ILECs' facilities funded from deferral accounts. The obvious flaw in this logic is that there *are* facilities-based competitors which have an interest in providing broadband services to unserved communities and would do so if there was access to facilities.

88. The CCTA notes that nowhere in its proposal has Bell offered to make the transport facilities funded from the deferral account available to other facilities-based competitors nor has Bell provided an explanation why it thinks the facilities should not be provided. Bell's proposal effectively eliminates cable companies and other facilities-based competitors from competing in many of the unserved remaining broadband service markets in Canada.

89. The CCTA's members and the ILECs not only engage in intense competition for new broadband service customers but they have an interest in extending services to many of the same unserved communities. Given these facts, Bell's proposal to use the deferral account to fund the construction of transport facilities and upgrade the local access network in communities for the supply of DSL-based services weakens the position of cable companies in rural areas with respect to broadband and broadcast distribution. In doing so, the Bell proposal would deny cable companies access to any of the facilities funded from the deferral account and therefore, is not competitively neutral.

5.2 TELUS

90. TELUS has proposed a broadband expansion program to close the "digital divide." In its May 19, 2004 filing, TELUS said that, through its proposal, it would "extend higher-speed transport facilities to rural and remote areas of BC that do not currently have the capability to access high-speed services."³³ It goes without saying that the CCTA is supportive of the

³³ TELUS, May 19, 2004, paragraph 34.

objective, but most aspects of the TELUS proposal are deficient in achieving the stated purpose, particularly when measured against the Commission's objectives.

91. Unlike the CCTA's proposal, the use of the deferral account funds to "put in place improved transport facilities" is not accompanied with a commitment to actually provide broadband services to the rural and remote communities. Although TELUS does not elaborate on this important point, it seems that TELUS may complete the construction of transport facilities and draw down from the deferral account but delay the provision broadband services.

92. In response to interrogatories, TELUS states:

These facilities *could* then be used by any company to provide high-speed Internet service to these communities.³⁴ (emphasis added)

In TELUS' view, the Digital Divide initiatives are competitively neutral. These initiatives will provide transport facilities that *could be used* in the *future* by TELUS or any other service provider to provide high-speed services at tariffed rates.³⁵ (emphasis added)

TELUS' Network Modernization and Digital Divide initiatives will not in and of themselves will result in an expansion of TELUS' DSL services. These initiatives will put in place improved transport facilities that would remove the interexchange facilities cost barrier, allowing Internet and other high-speed data services to be offered by TELUS and other competitors alike on an economic basis at current rates.³⁶

93. The CCTA submits that any use of funds from the deferral accounts to expand broadband services should be conditional on a commitment to provide the broadband services to the relevant communities within a specific period of time. In its proposal, the CCTA's members have committed to turn up broadband services within six months, or other period determined by the Commission, to commence service in the community.³⁷

³⁴ TELUS(BXI)23Jun04-5.

³⁵ TELUS(Consumer Groups)23Jun04-10.

³⁶ TELUS(CCTA)23Jun04-26.

³⁷ CCTA, May 19, 2004 paragraph 63.10.

94. TELUS indicates that its proposal is competitively neutral. According to TELUS, the facilities constructed and financed from the TELUS deferral account will be made available, under tariff, to other competitors for the supply of broadband services. In essence, TELUS argues that being paid twice for the same facility, first from the deferral account and then from the competitor, satisfies the goal of competitor neutrality. CCTA disagrees.

95. The CCTA submits that any use of the funds, generated from overpayments by residential service customers, to expand broadband services should not grant an undue advantage for one facilities-based service provider over another.

96. In its May 19, 2004 submission to the Commission, the CCTA noted that:

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.³⁸

97. In light of this, the CCTA finds it particularly objectionable that TELUS proposes to charge competitors standard tariffed rates for facilities that TELUS acquires at no cost to itself. In effect, TELUS proposes to double recover the cost of the facilities; once from the deferral account and a second time from competitors that use the facilities to provide broadband services. The construction of transport facilities would be paid for entirely from the deferral account funds, thereby eliminating any need for TELUS to invest its own capital or incur any risk of recovery. Allowing TELUS to generate revenues over and above this payment constitutes overcompensation and would represent a transfer of wealth from the deferral account to TELUS and its shareholders.

³⁸ CCTA, May 19, 2004, paragraph 18.

98. Charging competitors tariffed rates for the use of transport facilities makes it exceedingly difficult for competitors to provide the broadband services needed in the communities. While TELUS enjoys the benefits of fully recovering the costs of constructing or upgrading transport facilities from the deferral account, it proposes that competitors that use the same facilities be charged standard tariff rates.

99. The tariffed rates which TELUS proposes to charge competitors were identified in its response to TELUS(CCTA)23Jun04-3³⁹. The response indicates TELUS would charge competitive broadband service providers \$10,596 per month for a DS-1 provided over a distance of 200 kilometres. Local access facilities needed to connect to the interexchange DS-1 would be in addition to \$10,596 per month, as would service charges for both the interexchange facilities and the local access services. A DS-3, which would be required to provide broadband services to medium-sized rural communities, would cost \$47,682 per month, plus local access charges, plus service charges. DS-1 and DS-3 rates with distances greater than 200 kilometres are substantially higher.

100. If TELUS' proposal to charge competitors for the use of transport facilities financed from the deferral account was approved, the magnitude of the costs would continue to preclude competitors from providing broadband services in the unserved markets.

101. In the CCTA's May 19, 2004 submission it was noted that:

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.⁴⁰

³⁹ In response to TELUS(CCTA)23Jun04-27 n), TELUS indicates that the relevant tariffed rates that would be charged to competitors are those identified in response to TELUS(CCTA)23Jun04-3.

⁴⁰ CCTA, May 19, 2004, paragraph 28.

102. TELUS refers to the high cost of provisioning transport facilities to rural and remote communities the "interexchange facilities cost barrier."⁴¹ CCTA agrees that the cost of the interexchange facilities effectively prevents broadband service providers from providing service to many rural and remote communities.

103. TELUS' proposal to charge competitors tariffed rates for the use of transport facilities to unserved communities contradicts the very purpose of drawing down the deferral accounts to build transport facilities. Charging competitors tariffed rates for the use of the transport facilities entrenches and does not remove the "interexchange facilities cost barrier". TELUS' proposal serves only to enforce the cost barrier for all service providers except itself.

104. If it is TELUS' purpose to use the deferral account for the provision of transport facilities to communities that would not otherwise have broadband access, it is wrong for TELUS to charge competitors rates for the use of the same facilities which were provided to TELUS at no cost.

105. TELUS proposes that draw downs from the deferral account be used for broadband service in exclusively in British Columbia. No explanation is offered why customers in unserved communities in Alberta should not be accorded the same opportunity to have broadband services available. The CCTA submits that a competitively neutral broadband expansion initiative should be available in all provinces where the ILEC has a positive deferral account balance.⁴²

106. TELUS makes only two suggestions regarding the administration of its proposal. First, it says that it will "consult" with the Government of British Columbia to "prioritize the routes to be served".⁴³ These consultations would be bilateral and closed to other stakeholders.

⁴¹ Response to TELUS(CCTA)23Jun04-26.

⁴² See the response to CCTA(CRTC)23June04-1 for a discussion of an alternative approach using a single national fund. CCTA notes that its proposal does not require the establishment of a single national fund.

⁴³ Response to TELUS(MTS)23Jun04-104.

107. The CCTA submits that this approach is inadequate. Cable companies have the capability and willingness to expand broadband services into unserved communities. The option should exist for other stakeholders to make their preferences known for the selection of communities and the scheduling of service availability. Furthermore, unless there is an opportunity for the CCTA members to participate, TELUS cannot determine whether any of the companies have an intention to roll-out broadband service to communities on a commercial basis, without funding from the deferral account. TELUS may very well decide use the deferral account for transport facilities to a community which a cable company plans to service.

108. TELUS' second suggestion regarding the administration of its Digital Divide initiative is for a tracking mechanism of projected and actual expenditures.⁴⁴ The tracking mechanism would consist of periodic reports to the Commission but would not contain any details of specific projects or details of future plans. In fact, TELUS does contemplate any means for either the Commission or interested parties to participate.

109. Ultimately, the TELUS proposal lacks transparency. In addition to the forgoing, it is also unclear what costs TELUS proposes should be recovered from the deferral account. TELUS offers the following description:

TELUS notes that these [Network Modernization and Digital Divide] initiatives would replace the current technology with technology that would be DSL upgradeable. However, should any provider choose to offer DSL services, further fibre facilities to the network equipment may be required to make the network DSL capable. The costs of the fibre facilities, DSL and Internet equipment necessary to make the network DSL capable are not included in the costs of the Network Modernization and Digital Divide initiatives.⁴⁵

110. The CCTA submits that this description is insufficient and, in any case, costs that are not directly associated with the transport facilities should be excluded as eligible costs. As noted by CCTA in its May 19, 2004 submission, the costs to install remotes, DSLAMs, fibre to remotes,

⁴⁴ Response to TELUS(CRTC)23Jun04-8.

⁴⁵ Response to TELUS(CCTA)23Jun04-26.

and any costs to remove bridge taps or loading coils should not be recoverable from deferral accounts.⁴⁶

111. In section 4.2, the CCTA has provided comments on the attributes of an appropriate administration mechanism. The proposal offered by TELUS does not address any of these concerns. Given the substantial sum represented in the TELUS deferral account and the large and potentially harmful impact of TELUS' Digital Divide initiative on competition in highly competitive broadband markets, the CCTA recommends that the Commission reject TELUS' proposal for the administration of the deferral account.

6.0 Proposals to fund initiatives other than broadband do not satisfy the Commission's objectives

112. At paragraph 21 of PN 2004-1, the Commission expressed its desire that "Deferral accounts were to be cleared in a manner that contributes to achieving the Commission's objectives for the current price cap period. Parties should use the objectives set out by the Commission as a guide when preparing their submissions." The Commission's intent in this regard was unambiguous. Proposals to dispose of deferral account funds must meet five primary objectives. CCTA submits its own proposal is fully up to the task but certain others, as discussed in this section, fall well short and should therefore be rejected. The objectives, which, with one addition, neatly combine and restate the Canadian Telecommunications Policy Objectives appearing at section 7 of the *Telecommunications Act*, were set out in the balance of paragraph 21:

- 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

⁴⁶ CCTA, May 19, 2004, paragraph 36.

- e) to adopt regulatory approaches that impose the minimum regulatory burden compatible with the achievement of the previous four objectives.

113. CCTA will refrain from reviewing all proposals in detail and will focus on the categories of proposals offered during the course of the proceeding. Outside of the broadband expansion proposals discussed above, deferral account proposals fell largely into four categories: rebates, rate reductions and promotions, ILEC cost recovery, and support for local exchange competitors. CCTA submits that these proposals are flawed because they do not meet important objectives established by the Commission and would unduly benefit one stakeholder group to the detriment of the others.

6.1 Rebates

114. Consumer groups advocate refunding the balances in the deferral accounts to residential local service customers. The CCTA does not support this proposal. The consumer groups have not offered any compelling arguments to justify rebating funds in the deferral accounts to residential local service customers. Nor have they demonstrated how this will serve the objectives identified by the Commission. Indeed, some parties did not even attempt to fit their proposals within the parameters established by Decision 2002-34 or PN 2004-1. Without disputing the attraction to individual consumers of receiving a rebate, it is unclear how directing the refund of small amounts of cash allows the Commission to discharge the mandate it assumed when creating the deferral accounts in the first place.

115. The consumer groups' proposal for rebates will not meet the Commission's objectives:

- Rebates will not "balance the interests of customers, competitors and incumbents,"
- Rebates will not provide incumbents "incentives to increase efficiency and to be more innovative,"
- Rebates would do nothing to foster facilities-based competition or contribute to the accessibility and affordability of high quality services.

116. CCTA submits that, in the event that the Commission were inclined to consider the rebate proposal, factors relating to administrative complexity and unintended consequences provide sufficient cause to reject the proposal. Finally, as set out in the CCTA's response to CCTA(CRTC)23Jun04-3, there would be considerable administrative effort required to ensure that the appropriate amount of rebate is provided to each of the customers who paid for service within the relevant time period.

117. A Commission decision directing rebates will generate attention across ILEC and CLEC customer-bases alike. Further, as customers who have switched to a CLEC may be eligible to receive a rebate for the period of time during which the customer subscribed to an ILEC's services, winback and other competitive concerns must be taken into account. First, ILEC customer contact necessary to issue the rebate would contravene the letter and the spirit of the winback restrictions. Second, the purpose of the contact (rebates) could create an expectation of further Commission-mandated rebates thereby granting the ILEC an undue advantage over CLECs. Finally, in the face of rebates to ILEC customers, CLECs will be under pressure to respond. While such responses are entirely appropriate in a competitive market in response to competitive pressures, they are not appropriate when brought about regulatory intervention. The Commission drew a similar conclusion in Decision 2002-34 stating "residential local rate reductions that flow from market forces would be generally preferable to mandated rate reductions".

6.2 Rate reductions and promotions

118. Deferral account proposals falling into this category are, to borrow the language used by TELUS, styled as "initiatives that enhance affordability and universal service," but would more accurately be described as activities designed in furtherance of generating revenue and goodwill for the ILEC. As with rebates, these proposals entice the consumer to favour the ILEC because of the potential for tangible, immediate benefits to existing customers. And like rebates, they suffer from the defects of administrative challenges, an overly broad diffusion of insignificant and short-term benefits across (ILEC) customers. Under these proposals, the only

clear winner would be the ILEC that would receive benefits including receipt of most of the disbursed monies, improved customer relationships and lingering goodwill. CCTA strongly urges the Commission to reject all proposals of this nature.

119. Foremost among these proposals is Bell's \$63M reprice⁴⁷ of various calling features, described by Bell as a "means of delivering additional benefits from the deferral account directly to residential customers." Bell expects to "recover the resultant revenue loss from the deferral account" and would, of course, benefit from the goodwill and enhanced customer entanglement associated with reducing rates for the most common local calling features. The Commission will recall that in the first Price Cap period, Bell fought a Commission denial of price increases in order to secure the unfettered right to raise the rates for optional local calling features.⁴⁸ Bell now seeks Commission approval to recover "lost" revenues for rate reductions just when competitors are lowering prices of calling features. This proposal would appear to finance a competitive response by Bell, rather than satisfy objectives respecting affordable rates.

120. Of course, Bell is not alone in seeking Commission approval to "recover forgone revenue" in the name of providing transitory benefits to consumers. MTS Allstream would eliminate or rebate nearly \$7M of charges to subscribers of specific tariffs.⁴⁹ TELUS, including TELUS Quebec, would draw down more than \$8.7M to offset the revenues "lost" by giving away services, and in some cases, cash.⁵⁰ As with the Bell proposal, these programs would largely result in the funds from the deferral account being returned as revenue to the ILECs. In all cases, the risk of deferral account funds straying from the ILEC to competitive suppliers is remote or non-existent. ILECs would, in most cases, treble benefit: from deferral account recovery, from renewed or continued subscription to tariffed services, and from increased consumer and general public goodwill.

⁴⁷ Bell Canada PN 2004-1 Initial Submission, May 19, 2004, paragraph 71.

⁴⁸ Order CRTC 2001-253, wherein the Commission, by majority opinion, granted to Bell Canada a review and vary application of earlier denials of rate increase for optional local services.

⁴⁹ MTS Allstream PN 2004-1 Initial Submission, May 19, 2004, paragraph 17.

⁵⁰ TELUS PN 2004-1 Initial Submission, May 19, 2004, Attachment 1 (\$4M for Bill Payment Assistance, \$0.5M for payphone cards, \$3.7M for free Call Screen service); TELUS Quebec PN 2004-1 Initial Submission, May 19, 2004, Annexe 1 (\$515K for free Call Screen service).

121. As stated elsewhere, funds derived from residential customer overpayment should not be put to purposes that unduly benefit the ILECs. Furthermore, temporary rate reductions and promotions are precisely the type of proposal the Commission was seeking to discourage when it established objectives for deferral account fund use. Nothing about these proposals would foster facilities-based competition, increase efficiencies, encourage innovation, contribute broadly to affordability of services, or strike an appropriate balance among the interests of customers, competitors and incumbent telephone companies. Indeed, as with rebates, they offer only small and temporary benefits to customers, at no cost to the ILECs and with the added bonus of increased customer entanglement and public goodwill.

6.3 ILEC Cost Recovery

122. The Price Cap model and other aspects of the Commission's regulatory regime are structured to take into account the obligations on ILECs that may limit their ability to increase revenues from non-competitive services or require costs to be incurred to serve high-cost areas. Within this regulatory regime, the Commission makes accommodation for ILEC expenses relevant to their regulatory burden. Because deferral account funds represent customer overpayments and not ILEC general revenues, the Commission has taken a measured approach to authorizing draw downs on the deferral accounts to permit cost recovery of financial impacts associated with Commission determinations (e.g., CDNA). CCTA submits the ILECs should not be permitted to now treat account balances as pool of funds available for general use in cost recovery. As with exogenous factor adjustments in the Price Cap model, strict limitations on permitted use are required.

123. CCTA urges the Commission to reject ILEC proposals to use deferral account funds to recover the costs associated activities that are either routine, necessary in competitive markets or are designed to provide the ILEC with an edge over other service providers. Further, and particularly in reference to TELUS' surprising proposal to replace fuel storage tanks, the Commission must reject outright proposals that are "ordinary course of business" and would be required of any similarly situated carrier.

124. CCTA submits that each dollar allocated to ILEC cost recovery proposals represents a dollar diverted from proposals capable of meeting the Commission's true objectives for this proceeding and for the Price Cap period generally. Ironically, CCTA finds its best argument against such proposals as TELUS' fuel storage tank replacement proposal from TELUS CEO Darren Entwistle, in the same quote referenced earlier in these comments with approval:

A large portion of the funds would be directed at the digital divide in B.C, Alberta, and Eastern Quebec - improving service to rural communities. **Imagine if the application of the deferral account in this regard were implemented uniformly across all the incumbent telephone companies.** We would have much of the money, and the mechanism, to help bridge the digital divide in Canada. All we need collectively is the will to make this decision, which will result in the betterment of our country.⁵¹ (emphasis added)

125. To paraphrase Mr. Entwistle, "imagine" if TELUS hadn't sought to divert \$16M of deferral account funds to fuel tank replacement how many more rural communities could have access to the internet backbone and broadband services available from a number of competing local suppliers. CCTA submits that, with the advent of facilities-based competition in inter-exchange, broadband and local service, it is no longer the case that a dollar spent improving the ILECs' network will create benefits for all consumers.

6.4 Competitor Support

126. TELUS and Call-Net have proposed to use the deferral account to also fund initiatives in support of particular groups of competitors. Namely, competitors that rely substantially on ILEC inputs to offer service in the local exchange market. CCTA concedes that for competitors of these classes, the proposals arguably contribute to achievement of some of the Commission's objectives in this proceeding, most notably to objectives respecting ILEC efficiencies and to the interests of certain competitors. Notwithstanding this, CCTA is concerned that such proposals could encourage increased reliance on resale of ILEC local access facilities. Moreover, and

⁵¹ Darren Entwistle, President and CEO, TELUS, The 2004 Telecom Summit, Keynote Address, June 16, 2004, page 11.

contrary to the Commission approach to local competition,⁵² other competitors, including those relying on their own facilities, would not share in the benefits.

127. CCTA urges the Commission to pay special attention to the risks associated with entrenching competition through resale of ILEC facilities and directing the deferral account funds to the service of only certain competitors. Technology neutrality has been a hallmark of Commission regulation and should implicitly guide the Commission's consideration of these proposals.

7.0 Conclusion and recommendation

7.1 Broadband expansion is in the public interest

128. In this proceeding, the Commission has received a wide range of proposals for the use of funds in the deferral accounts. The most appropriate criteria for assessing the proposals are the objectives set out by the Commission in PN 2004-1.

129. The CCTA, Microcell, RipNET, Bell and TELUS have all proposed broadband service initiatives that would extend service to Canadians who reside in unserved rural and remote areas. Each of the five parties have identified strong public policy reasons why the deferral accounts should be used for this purpose. The proposals build on programs launched by the federal government and some provincial governments to support broadband expansion. Many communities have benefited but many more remain.

⁵² See, for example, paragraph 73 of Decision 97-8:

The Commission is of the view that efficient and effective competition will be best achieved through facilities-based competitive service providers; otherwise, competition will only develop at the retail level, with the ILECs retaining monopoly control of wholesale level distribution.

See also, paragraph 155 of Decision 2002-34:

The Commission's regulatory framework is intended to foster facilities-based competition. The Commission believes that fostering facilities-based competition is the most appropriate way to ensure high-quality, affordable service, as well as innovation and service differentiation.

130. A broadband expansion program, funded from the ILECs' deferral accounts will help provide reliable and affordable broadband services of high quality, accessible to both urban and rural area customers, consistent with the Commission's first objective. A broadband program can be designed to balance the interests of the three main stakeholders in telecommunications markets, i.e., customers, competitors and incumbent telephone companies, as required by the Commission's second objective. Facilities-based competition in the supply of broadband services will also be promoted if the funding is provided on a basis that is competitively neutral. The CCTA believes that its broadband initiative will provide incumbents with incentives to increase efficiencies and to be more innovative. The fifth objective the Commission identified requires the balancing of a desire to minimize regulatory burden with a need for sufficient regulatory oversight to avoid anti-competitive behaviour or misuse of the deferral account funds. The CCTA believes that its proposal strikes the correct balance.

7.2 Only CCTA's proposal meets Commission's objectives

131. The CCTA's proposal satisfies all five of the Commission's objectives for the use of the deferral accounts. Consistent with the objectives identified by the Commission in Public Notice 2004-1, the focus of the CCTA proposal is to promote the expansion of broadband services to unserved rural and remote communities through the construction of transport facilities. Funds from the deferral accounts would be drawn down for the construction and maintenance of transport facilities to provide broadband services to unserved communities, as discussed in detail in section 2.1. In addition to fulfilling the Commission's five objectives, the CCTA's broadband initiative has attributes that the other broadband proposals are lacking.

132. The CCTA's proposal is competitively neutral and creates incentives to efficiently deploy broadband in the communities. It allows all facilities-based service providers to benefit from the construction of transport facilities. The CCTA believes that the ILECs would maintain an advantage by virtue of the control and ownership of the transport facilities while competitors obtain access to the use of facilities that would not otherwise be available. Bell's proposal does not permit competitors, including the CCTA's members, to gain access to the facilities funded

from the deferral accounts. The TELUS proposal would require broadband access competitors to pay standard tariff rates for the use of services that the company would have been paid for up front using the deferral account.

133. The CCTA's proposal is also competitively neutral because the selection of a community to which broadband services will be extended can be made by any facilities-based competitor that commits to providing broadband service. By contrast, the Bell and TELUS proposals do not provide any opportunity for cable companies or other facilities-based competitors to select communities that they wish to serve.

134. CCTA maintains that its broadband proposal holds far greater promise and is more aligned with the Commission's objectives than the broadband proposals offered by other parties to this proceeding.

****End of Document****

ILEC Deferral Account Balances

as of May 31, 2005

	\$ millions	Source:
Aliant	23.8	Aliant(CRTC)23Jun04-1, Attachment
Bell	421.9	Bell(CRTC)23Jun04-11, Attachment 3
MTS Allstream	16.5	MTS Allstream(CCTA)23Jun04-11, Attachment 1
SaskTel	-11.7	SaskTel letter to CRTC, dated April 14, 2004, Attachment
TELUS	125.7	TELUS(CRTC)24Mar04-1
TELUS Quebec	3.7	TCQC(CRTC)24mars2004-1
Total	580.0	