

October 15, 2004

BY E-MAIL AND MESSENGER

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

**Re: Telecom Public Notice CRTC 2004-1, *Review and disposition of deferral accounts for the second price cap period* ("PN 2004-1")
Comments of Microcell Telecommunications Inc.**

Dear Ms Rhéaume:

1. On behalf of Microcell Telecommunications Inc. ("Microcell") and our subsidiaries, Microcell Solutions Inc. and Inukshuk Internet Inc., we are pleased to submit the attached Comments as part of the proceeding initiated by PN 2004-1.
2. These Comments, for the most part, draw from and reiterate our initial submission of May 13, 2004. Microcell participated in the interrogatory phase that made up part of the PN 2004-1 process, and we have reviewed the submissions and interrogatory responses of other parties. Based on all this, Microcell continues to advocate and recommend 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 in unserved and under-served regions of Canada.
3. We appreciate the opportunity to file these Comments, and remain,

Yours very truly,

MICROCELL TELECOMMUNICATIONS INC.

(SGD) Dean Proctor

Per: _____
Dean Proctor
Vice-President, Regulatory Affairs

Att.

cc: Interested Parties to PN 2004-1

Telecom Public Notice CRTC 2004-1

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

Comments of

Microcell Telecommunications Inc.

October 15, 2004



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1. Introduction

1. We are pleased to submit these comments on behalf of Microcell Telecommunications Inc. ("Microcell") and Microcell's subsidiaries, Microcell Solutions Inc. and Inukshuk Internet Inc. ("Inukshuk"), pursuant to the procedures established in Telecom Public Notice CRTC 2004-1 dated 24 March, 2004 ("PN 2004-1"), as amended by subsequent letters from the Canadian Radio-television and Telecommunications Commission ("Commission" or "CRTC").
2. These Comments, for the most part, draw from and reiterate our initial submission of May 13, 2004. Microcell also participated in the interrogatory phase that made up part of the PN 2004-1 process, and we have reviewed the submissions and interrogatory responses of other parties.
3. Consistent with our May 13 submission, Microcell continues to advocate and recommend that the accumulated surpluses in the Incumbent Local Exchange Carrier ("ILEC") deferral accounts be dedicated to a competitively-neutral national subsidy program to promote the deployment of broadband Internet access services in unserved and under-served regions of Canada. Such a program could be modelled upon, and perhaps even operate in conjunction with, Industry Canada's well-respected Broadband for Rural and Northern Development ("BRAND") program and the National Satellite Initiative ("NSI").
4. Microcell's proposal, as described in further detail below, would satisfy all the Commission's stated policy objectives for the disposal of the deferral accounts, and moreover would make a substantial contribution to realizing the federal government's *Connectedness Agenda* for Canadians.

2. Background

2.1 *Inukshuk and the deployment of broadband in outlying areas*

5. Microcell has a keen interest in this proceeding, and we are very enthusiastic about the promise held by our proposal to use deferral account surpluses to assist in the deployment of broadband facilities to unserved and underserved areas, in a technology and competitively neutral fashion. We believe that Microcell and other parties can play a role in leveraging the funding available from the deferral accounts to help close the "digital divide" and provide Canadians, wherever they live, with access to quality broadband services and the opportunities these bring about.
6. Inukshuk, a wholly-owned subsidiary of Microcell, was formed in 1999. Following a competitive licensing process, Inukshuk was selected by Industry Canada in 2000 to be granted licences for Multipoint Communications System ("MCS") spectrum to build a unique, "last mile" broadband wireless access ("BWA") network. The MCS licences cover a population of some 30 million people, comprising all the provinces and territories of Canada, with the exception of Manitoba and Saskatchewan.

7. Since formation, Inukshuk has worked diligently, first, to identify and develop the technology best able to utilise the MCS spectrum and deliver attractive broadband wireless services to Canadians. Secondly, with the MCS technology identified and tested, Inukshuk has, working alone and with partners, begun a very extensive BWA network deployment across the country, and has begun the delivery of commercial services across that network.
8. On November 19, 2003 Inukshuk announced the formation of a new venture with Allstream Inc. and NR Communications, to further expedite and extend MCS network deployment. Shortly thereafter, Canada's first commercial MCS service was launched in Yellowknife, Northwest Territories, in February of 2004 with SSI Micro Ltd. Later that month, MCS was deployed in Iqaluit, Nunavut Territory, where Inukshuk is working with another long-time partner, Nunanet Worldwide Communications, as well as the Nunavut Broadband Development Corporation and, again, SSI Micro.
9. In March of 2004, Inukshuk and the partners in the new venture launched commercial MCS services in Richmond, B.C. and in Cumberland, Ontario. Commercial trials of the new BWA service also began in Toronto with AOL Canada and Sprint Canada. Most recently, on July 20, 2004, Inukshuk announced an arrangement with the Kativik Regional Government to implement a BWA network in each of the fourteen Inuit villages in northern Quebec.
10. Inukshuk's business model is to operate as a wholesaler. In this capacity, Inukshuk works with Internet Service Providers ("ISPs") who actually deliver the broadband services on a retail basis to consumers from across the BWA network. A number of ISPs are already involved, including Nunanet, SSI Micro and KRG in Canada's North, as well as Microcell, with its "iFido" broadband service offering in Southern Canada, and Allstream. As mentioned, commercial trials for the BWA service were announced with AOL Canada and Sprint Canada in Toronto. And very positive discussions continue with a large number of other ISPs across the country.
11. Inukshuk's approach encourages competition and openness. It strikes a balance between quality of access and realistic commercial objectives. Substantial investments have already been made in MCS systems, and network deployment is currently underway in a number of additional communities across the country.
12. Tied in with the development of the MCS network, Canada's learning communities are receiving extensive benefits through Inukshuk's unique "learning plan". The plan is the result of extensive consultation across the country, carried out to identify the needs and priorities of learners. Based on what are known as the "three Cs" - Connectedness, Content and Continuity – the plan assists by extending broadband wireless access to communities that are not served or are underserved by broadband networks today, and helps fund the development of multimedia-rich learning content for learners.
13. As for the services themselves, Inukshuk's MCS network fully supports a broad range of high-speed and feature-rich applications that are increasingly essential in today's knowledge-based economy. These include distance learning, Voice-over-Internet Protocol ("VoIP"), home networking and "nomadicity", whereby the Customer Premises Equipment can be moved as readily as a laptop computer to function anywhere within the network footprint.

2.2 The ILEC Deferral Accounts

14. The ILEC deferral accounts were established in Telecom Decision CRTC 2002-34, *Regulatory framework for the second price cap period* (“Decision 2002-34”) and Telecom Decision CRTC 2002-43, *Implementation of price regulation for Télébec and TELUS Québec* (“Decision 2002-43”) as a mechanism to mitigate potential effects on local competition from mandated rate reductions that could result from applying an inflation less productivity offset (“I-X”) constraint to the basket of residential local services in non-high cost serving areas (“non-HCSAs”). The ILECs were directed to assign to their respective deferral accounts, in each year of the price cap period, an amount equal to any revenue reduction that would otherwise be required under the I-X constraint for the basket of residential local services in non-HCSAs.
15. PN 2004-1 asks interested parties to consider how best to dispose of the surplus amounts expected to accumulate in the ILEC deferral accounts. The following policy objectives, initially set out in Decisions 2002-34 and 2002-43, were provided as a guide¹:
- 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.

3. The Need for Broadband Access

16. Ready access to broadband access is widely recognized across Canada, and indeed across the world, as a vital enabler of economic and community development in the new century.
17. Broadband access permits individual citizens and business enterprises to participate to the fullest extent possible in the new information economy, independent of their geographic location. Broadband networks can also be used to deliver valuable distance learning and health services, especially to remote communities, as well as “basic” voice service, through the use of VoIP technology.
18. Yet despite all of this enabling potential, large numbers of Canadian communities have little or no access to broadband services. In June 2001, for example, the National Broadband Task Force estimated that approximately three-quarters of Canadian

¹ PN 2004-1, paragraph 21.

communities did not have high speed access.² While some progress has been made since then, the goal of ready broadband access remains an elusive one for many Canadians.

4. Existing Federal Government Support Programs

19. The federal government has consistently promoted the expansion of broadband access, both in terms of technology types and geographic reach, as a central plank of its *Connectedness Agenda* for Canadians. Two specific programs – BRAND and NSI – best illustrate the priority the government places on bringing broadband Internet access to as many Canadians as possible.
20. The BRAND program, launched in the Fall of 2002, uses a competitive process to bring broadband Internet to unserved rural, remote and First Nations communities. Local not-for-profit organizations, referred to as “community champions”, act as sponsors to organize and develop business plans on behalf of eligible communities. A first phase competitive process aides community champions in the preparation of their business plans, followed by a second phase competitive process to provide financial assistance for implementation of the winning plans. All submissions for funding components are assessed by an independent National Selection Committee that also considers input from the provinces and territories in rating submissions from their respective regions. To date, two funding cycles (each consisting of the two phases described above) have been completed.³
21. The NSI, a joint project between Industry Canada, Infrastructure Canada and the Canadian Space Agency, was launched in the Fall of 2003. It was created to lower the cost of broadband access for communities in the Far and mid-North, and in isolated and remote areas of Canada, where satellite is the only reasonable means of connecting residents. Submissions are assessed through the evaluation process established under the BRAND program. The winners of the NSI’s first round of calls for proposals were recently announced.⁴
22. The initial budgets for the BRAND program and the NSI were established at \$105 million and \$155 million, respectively. Whereas this represents a considerable commitment, especially in the current fiscal environment, there is also every evidence that the demand for assistance from unserved and under-served communities far outstrips supply. One need only peruse the interactive maps on the Industry Canada web pages identified in footnotes 3 and 4 of these Comments to receive a sense of the number of communities across Canada – some remote, some not-so-remote – that do not yet have any options for broadband service.

² Report of the National Broadband Task Force, *The New National Dream: Networking the Nation for Broadband Access*, page 63.

³ More details about the BRAND program can be found at <http://broadband.gc.ca/pub/program/bbindex.html>.

⁴ More details about the NSI can be found at <http://broadband.gc.ca/pub/program/nsi/index.html>.

5. Microcell's Proposal

23. 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 facilities in unserved and under-served regions of Canada.
24. For the new program to qualify as competitively neutral, eligibility must be open on a non-discriminatory basis to projects involving all types of Internet access providers employing all types of broadband technologies (terrestrial fibre, terrestrial wireless, Digital Subscriber Line, satellite or other). Furthermore, decision-making authority for selecting winning projects must be independent of any one access provider or class of providers.
25. Any subsidy program dedicated exclusively to funding ILEC broadband deployments, or which assigns decision-making authority over project selection to the ILECs, would clearly fail the test of competitive neutrality and would therefore be unacceptable.
26. Microcell proposes that the new broadband subsidy program be modelled upon, and perhaps even operate in conjunction with, the federal government's existing BRAND and NSI programs. For example, the responsibility for drafting and submitting proposals could lie with "community champions", acting independently to assess which access provider and which access technology best satisfy the broadband requirements of their particular communities. The responsibility for selecting winning proposals should also lie with an independent body. In fact, it may be desirable to solicit the direct participation of the BRAND National Selection Committee for this purpose.
27. In Microcell's interrogatory responses of July 21, 2004 filed as part of this proceeding, we provided more details on the modalities of the BRAND and NSI programs, and how the processes established for them may assist in developing a fund to disburse the surpluses in the deferral accounts. We will not repeat those responses in these comments.
28. Regarding the amount of deferral account funds that would be required for Microcell's proposal, we note that a program based on calls for proposals, as this one would be, is easily scalable to meet available resources on a national or regional basis. In our view, the Commission would be sending a strong signal of support for the federal government's *Connectedness Agenda* if it were to target a funding commitment from ILEC deferral accounts equal to the government's own \$260 million existing commitment to the BRAND and NSI programs.

6. Consistency with the Commission's Policy Objectives

29. Microcell's proposal is fully consistent with all five of the policy objectives established by the Commission for the disposal of the ILEC deferral accounts, cited earlier in these Comments.
30. First, by working to bring much-needed broadband access to unserved and under-served communities, Microcell's proposal is in obvious agreement with the

Commission's objective of promoting a more uniform availability of high quality telecommunications services across urban and rural Canada.

31. Second, by providing customers with access to vital broadband services they might otherwise not receive, and by doing so in a competitively neutral manner that does not discriminate in favour of either the incumbents or their competitors, Microcell's proposal succeeds admirably in balancing the interests of the three main telecommunications stakeholder groups.
32. Third, as Microcell's proposal provides financial support for infrastructure projects and does so on a competitively neutral basis, it is obviously consistent with the principle of fostering facilities-based competition. In fact, we would stress to the Commission that, with the advent of VoIP technologies, Microcell's proposal may prove to be one of the only ways to deliver effective facilities-based competition in the local voice services market for many Canadian communities.
33. Fourth, by requiring incumbents to compete on a level playing field with alternative access providers for the attention of community champions, the Microcell proposal forces incumbents to be efficient and innovative.
34. Fifth, by relying on community champions to assess which service providers and technologies can best satisfy their communities' needs, and then involving the BRAND National Selection Committee or a similar independent body to select the winning projects, the Microcell proposal minimizes the regulatory burden on the ILECs and other parties. Subsidy support would be distributed in a flexible, scalable and efficient manner with minimal required oversight beyond the project selection stage.

7. On the question of basic service

35. As part of the interrogatory process, the Commission and other parties raised questions about the authority of the CRTC to create a fund to assist broadband deployment to unserved and underserved regions in Canada from the deferral accounts of the ILECs.
36. In response to an interrogatory on this question from MTS Allstream, Microcell referred to section 46.5(1) of the *Telecommunications Act* which states that:

"The Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to basic telecommunications services." [Emphasis added]

37. In our opinion, this section of the *Telecommunications Act* should place no restrictions on the form of any explicit funding mechanism the Commission may choose to implement. This conclusion was echoed by other parties as part of their interrogatory responses. We further stated in response to Microcell(MTS Allstream)23Jun04-100:

"Going further, under Section 2 of the Telecommunications Act, a telecommunications service provider is defined as "a person who provides basic telecommunications services, including by exempt transmission

apparatus". However, no definition of what constitutes "basic telecommunications services" is provided in the Act. Consequently, in Microcell's view, whether the deployment and delivery of broadband service is "basic" or "enhanced", and can thereby be eligible for support pursuant to a fund established under section 46.5 of the Act, is a matter within the Commission's power and discretion to determine."

38. We note that, on a similar point, the Canadian Cable Television Association ("CCTA") responded to interrogatory CCTA(CRTC)23June04-1 by stating:

"In Telecom Decision CRTC 99-16, Telephone Service to High-Cost Serving Areas, the Commission defined a basic service objective for local telephone service. This definition did not include retail Internet service. Accordingly, section 46.5(1) would not appear to be applicable to the circumstances of CCTA's proposal. To the extent such constraints could be addressed, this could enhance the benefits of CCTA's proposal."

39. We believe it is worth making two points with respect to the CCTA's concerns. First, as Microcell stated above and in response to MTS Allstream, it is within the Commission's powers to define whether a given service is "basic". Moreover, to the extent the Commission set basic service objections in Decision 99-16, the Commission also explicitly noted that those objectives may evolve over time:

"23. Incumbent local carriers continue to improve service to their customers. These improvements, in turn, raise Canadians' expectations of what should constitute basic service. However, the Commission found evidence that some companies provide lower levels of service in high-cost areas."

"24. The Commission considers that the level of service now available to the vast majority of Canadians should be extended to as many Canadians as feasible in all regions of the country. Accordingly, the Commission is hereby establishing the following basic service objective for local exchange carriers:

**Individual line local service with touch-tone dialling, provided by a digital switch with capability to connect via low speed data transmission to the Internet at local rates;*

**Enhanced calling features, including access to emergency services, Voice Message Relay service, and privacy protection features;*

**Access to operator and directory assistance services;*

**Access to the long distance network; and*

**A copy of a current local telephone directory."*

"25. The basic service objective is independent of the technology used to provide service, and may change over time as service expectations evolve." [Emphasis added.]

40. As a second point, support for the deployment of broadband facilities in unserved and underserved areas will, obviously, allow for the delivery of retail Internet services. However, broadband facilities will also allow for the deployment of VoIP services. As the CRTC noted in its preliminary views in Telecom Public Notice CRTC 2004-2, *Regulatory framework for voice communication services using Internet Protocol,*

characteristics of VoIP services are “...*functionally the same as those of circuit switched telecommunications services.*”

41. Consistent with this view and with the Commission’s own technology neutral regulatory framework, VoIP is simply another means of delivering “basic” voice service, irrespective of whether the Commission chooses to modify the basic service objectives originally established in Decision 99-16.

8. Conclusions

42. In summary, 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 facilities in unserved and under-served regions of Canada.
43. Such a program could be modelled upon, and perhaps even operate in conjunction with, Industry Canada’s well-respected BRAND and NSI programs. It would satisfy all the Commission’s stated policy objectives for the disposal of the deferral accounts, and moreover would make a substantial contribution to realizing the federal government’s *Connectedness Agenda* for Canadians.
44. Microcell greatly appreciates the opportunity to file these comments, and hopes that they will assist the Commission in its deliberations.

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