Richard A. Stephen
Director - Regulatory Matters
Saint John Brunswick Sq., Flr. 5
Saint John, NB
Canada E2L 4K2
Bus: (506) 694-6512
Fax: (506) 694-2473
E-mail: regulatory.matters@aliant.ca

2005 07 20

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

Dear Ms. Rhéaume:

Subject: **Telecom Public Notice CRTC 2005-2, Forbearance from regulation of local exchange services**

Attached are interrogatories submitted by Aliant Telecom Inc. to parties, as indicated, in respect of the above-noted proceeding.

Attachment 1 – Canadian Cable Telecommunications Association (CCTA)
Attachment 2 – Commissioner of Competition (Competition Bureau)
Attachment 3 – Eastlink
Attachment 4 – Rogers Communications Inc.
Attachment 5 – Consumer Groups/Johannes Bauer
Attachment 6 – ARCH
Attachment 7 – MTS Allstream

Yours truly,

Attachments

cc: Interested Parties List, PN 2005-2

Attachment 1

Public Notice CRTC 2005-2

Forbearance from regulation of local exchange services

Interrogatories from Aliant Telecom to

Canadian Cable Telecommunications Association (CCTA)

CCTA(Aliant)20July05-100 PN05-02

In paragraph 19 of your comments it is stated, "Where services are close substitutes, they are considered to be in the same relevant market": Does the CCTA consider that free over-the-air television service is a close substitute for the television services provided by a broadcast distributor? Please explain.

CCTA(Aliant)20July05-101 PN05-02

In paragraph 106 it is stated, "The investment and time involved to bring about a supply expansion are significant": what are the investment and time involved to expand through leasing unbundled loops from an ILEC?

CCTA(Aliant)20July05-102 PN05-02

Regarding paragraph 124 where you state, "The residential local exchange services market has not been characterized by falling prices on any widespread or sustained basis:" Has the market for broadcast distribution services been characterized by falling prices since competition was allowed in 1997? Please Explain.

Interrogatories CCTA(Aliant)20July05-103 PN05-02 through CCTA(Aliant)20July05-121 PN05-02 are directed to Drs. David Gillen and Thomas W. Ross in relation to their paper prepared on CCTA's behalf and filed as Attachment 1 to CCTA's comments.

CCTA(Aliant)20July05-103 PN05-02

At paragraph 17 of your comments you state, "To the extent that a CLEC still requires access to 'essential' facilities or services from an ILEC, it is not a full, independent competitor." Would you characterize EastLink as a "full, independent competitor" as described here? Does EastLink require access to essential facilities controlled by Aliant to provide its local circuit-switched telephone service? What essential facilities are these? What regulatory protection does the CRTC provide in respect of such facilities if they are relevant?

CCTA(Aliant)20July05-104 PN05-02

a) If, hypothetically, a cable provider of local telephony were to cease to provide local service would it also exit the market for high-speed Internet access and cable television services?

b) If it remained a provider of high-speed Internet service, would the assets used for high-speed Internet access also be available to provide local telephone service should the cable firm wish to re-establish local service?

c) Are the cable firm's high-speed Internet assets also available to access-independent providers of voice over Internet protocol telephony ("VoIP"), such as Vonage and Primus?

What effect does a) through c) this have on the supply elasticity facing the ILEC?

CCTA(Aliant)20July05-105 PN05-02

At footnote 18 (paragraph 29) and at paragraph 142 of your comments you refer to "demand side inertia" and note the "large majority of consumers have not switched to EastLink" despite prices that are about 20% below those of Aliant.

a) What percentage of customers needs to switch in order to demonstrate a lack of customer inertia? Please explain.

b) Assuming a 20% difference in price between EastLink and Aliant and customer switching of about 30%, what does this imply about the elasticity of demand facing Aliant in these locations? How does this elasticity compare to those from the academic studies that you cite? Would a firm elasticity of demand of this magnitude (i.e., in absolute value, equal to a number greater than one) imply significant customer inertia?

c) Have you undertaken any critical loss calculations to determine if Aliant could exercise market power in the specified exchanges, or for that matter in a broader area within Nova Scotia and Prince Edward Island? If not on what basis do you conclude that Aliant could profitably exercise market power in the specified exchanges following forbearance?

CCTA(Aliant)20July05-106 PN05-02

Do any of the academic studies that you cite in respect of the elasticity of demand take into account VoIP competitors? Are they for markets where there is a comparable competitor to that of EastLink?

CCTA(Aliant)20July05-107 PN05-02

At paragraphs 40-41 of your comments you cite various theories of predation but you do not discuss them specifically with regard to Aliant's forbearance request.

a) Please describe in detail how the facts and evidence in respect of Aliant and EastLink within Nova Scotia and Prince Edward Island apply to each of the components of these theories.

b) From this analysis, does Aliant have the ability to recoup its forgone profits from a period of low pricing? Provide your assumption on how low Aliant would have to price its services and for how long Aliant would need to maintain this level of pricing in order to force EastLink out of the local telephony markets within Nova Scotia and Prince Edward Island.

c) How high would Aliant then have to raise its prices for local telephony following EastLink's exit in order to recoup the forgone profits from the low pricing period? How much higher than current prices would these be?

d) Would it be economical for EastLink to re-enter local telephony service in Nova Scotia and Prince Edward Island at these higher prices assuming they do not exit cable television or high-speed Internet markets?

<u>CCTA(Aliant)20July05-108 PN05-02</u>

a) Is it your view that the investments currently being made by the many VoIP entrants in Canada are contingent on the expectation that ILECs will remain regulated and unable to respond to such entry? Provide all evidence which supports such a view.

b) Would you expect a firm making local investments in Lethbridge facing Telus to consider Aliant's actions in Halifax when planning the time horizon for its return on investment?

c) If the investments associated with market entry are viable only if ILECs are prevented from making a competitive response for many years, would you consider such entry to be efficient?

d) Should the CRTC maintain restrictions on ILECs' ability to respond to competitors to encourage inefficient entry? How can the CRTC distinguish between efficient and inefficient entrants?

<u>CCTA(Aliant)20July05-109 PN05-02</u>

To what extent would incumbent cable companies, for whom telephony-related investments are incremental to existing, and often long-standing, investments in cable TV, digital cable, and high-speed Internet networks, enjoy economies of scale, scope, and density?

<u>CCTA(Aliant)20July05-110 PN05-02</u>

At paragraph 142 of your comments you refer to country-wide data from 2003 to support your conclusion of customer inertia.

a) How do you reconcile the use of national "market share" figures to support a conclusion of widespread customer inertia when the facts regarding competitor entry vary so greatly across the country?

b) Is the almost 30% market share of EastLink (and its increase since the time of the data on which you rely) across the 32 specified exchanges indicative of customer inertia?

c) Would a 100% ILEC market share in an area where no competitors have attempted to enter be indicative of customer inertia?

CCTA(Aliant)20July05-111 PN05-02

At paragraph 129 of your comments you agree with Professor Townley that one must aggregate up from individual calling pairs when defining the relevant geographic market. You disagree that the exchange would be an appropriate geographic area over which the CRTC should consider competitive conditions when forbearance requests are made, arguing that a local calling area or something larger is likely a better approach. Do you agree with the CRTC's conclusion in Telecom Decision 94-19 that "The relevant market is essentially the smallest group of products and geographic area in which a firm with market power can profitably impose a sustainable price increase"? (Emphasis added.)

CCTA(Aliant)20July05-112 PN05-02

At paragraph 177 of your comments you propose two sets of conditions for forbearance.

(a) What evidence or facts can you provide to demonstrate that the market in Metro Halifax does not meet the conditions you lay out in paragraph 177 of your submission? If 36% of homes not using ILEC wireline services (i.e., ~32% EastLink and ~4% wireless-only in Halifax Metro) is not a "substantial fraction", then what figure would be?

(b) Is it your view that:

i) EastLink does not have a sustainable foothold in the 32 exchanges which are the subject of Aliant's application – and in Nova Scotia and Prince Edward Island generally – the ability to expand in the relevant markets?
ii) forbearance would reduce the returns on EastLink's investment to below zero?
iii) there is not vigorous competition between EastLink and Aliant (other than the regulatory restrictions on Aliant's ability to compete)?
If so, please provide all evidence on which you rely to support this view.

CCTA(Aliant)20July05-113 PN05-02

At paragraph 236 of its comments, the Competition Bureau notes that a profit-maximizing firm will predate only if it is profitable, that is, if recoupment of lost profits is likely; that recoupment requires the predator to have enhanced or preserved its market power after the successful predation; and that this will only be the case if predation actually induces exit, deters entry, or disciplines rivals and if entry is not timely, likely, and sufficient when the predator attempts to exercise its incremental market power.

Considering the current EastLink/Aliant context, the fact that any hypothetical successful predation against EastLink would still leave its telephony-enabled infrastructure in place, and the growing competition from VoIP and wireless service providers, can you explain how Aliant would be able to recoup lost profits after any hypothetical attempt at predation?

CCTA(Aliant)20July05-114 PN05-02

At paragraph 240 the Competition Bureau cites five elements that must be present for financial predation to be a concern: (i) the prey depends on external financing; (ii) the financing of the prey depends on its initial performance in the market; (iii) predation reduces the prey's initial performance sufficiently to threaten continued financing of the prey and therefore its viability; (iv) the predator is aware and understands the reliance of the prey's external financing on its initial performance; (v) the predator can finance its predatory activities internally or does not have similar constraints as the prey. Can you provide any facts or evidence to demonstrate that all five of these elements are present in the EastLink/Aliant context?

CCTA(Aliant)20July05-115 PN05-02

At paragraph 241 the Competition Bureau lists four elements that must be present for reputation effect predation to be plausible *ex ante*: (i) The predator must be a multi-market firm and entry into its markets will be sequential. The predator may be willing to incur losses in one market (the demonstration market) that are recouped by creating a reputation that entry into its markets is unprofitable, thereby preserving its market power in markets in which there is not entry. (ii) Potential entrants must be uncertain regarding the profitability of entry into the predator's markets. (iii) There is evidence that the predator will follow a reputation effect strategy. (iv) Potential entrants can observe the adverse effect on profits of rivals in the demonstration market. Can you provide any facts or evidence to demonstrate that all four of these elements are present in the EastLink/Aliant context?

CCTA(Aliant)20July05-116 PN05-02

At paragraph 252 the Competition Bureau notes the importance of quality and technical characteristics in customers' switching decisions. Are you aware of any quality or technical issues that would cause consumers to consider EastLink's circuit-switched telephony service to be considered inferior to Aliant's?

CCTA(Aliant)20July05-117 PN05-02

At paragraph 263 of its comments the Competition Bureau states:

> "If the access/bundle over a competing network involves similar or lower incremental costs and provides similar quality service, then if most of the costs of service provision by either the ILEC or the competing network are fixed and sunk, price competition between the two networks is likely to be fairly aggressive. It is not often that two suppliers are sufficient to constrain market power, but these circumstances are suggestive of situations when the competitive impact of a second network should be expected to lead to significant downward pressure on prices."

a) Do you agree with this?

b) Do you believe that the EastLink/Aliant situation is representative of the two-network scenario described by the Competition Bureau?

c) If not please explain why?

CCTA(Aliant)20July05-118 PN05-02

The authors say “the decision to forbear should take into consideration the impact on the prospects for competitive entry in other areas”. Is it the opinion of the authors that when competition is sufficient to protect the interests of customers in an appropriate geographic market (identified in accordance with competition law principles) that forbearance should nevertheless be withheld because of concern about possible impacts in other geographic markets? Please explain.

Attachment 2

Public Notice CRTC 2005-2

Forbearance from regulation of local exchange services

Interrogatories from Aliant Telecom to

Commissioner of Competition (Competition Bureau)

Competition Bureau(Aliant)20July05-100 PN05-02

In paragraphs 236 to 245 of its comments, the Bureau addresses the conceptual and practical framework for predatory pricing. In Appendix A, the Bureau provides a link to several documents, including its *Predatory Pricing Enforcement Guidelines,* March 1992 ("the Guidelines"). The Guidelines state:

> "Historically, the Director has received few predatory pricing complaints which justified referral to the Attorney General of Canada for prosecution. In short, pricing behaviour of the sort prohibited by the statute has proven to be a rare rather than a common occurrence in Canada. For example, in the period 1980 to I990 the Director received some 550 complaints alleging an offence under the predatory pricing provisions. Of those complaints, only 23 resulted in formal inquiries under the Act, four were referred to the Attorney General, and only three resulted in the laying of charges." (footnote omitted)

Of the three complaints in which charges were laid, please provide the number that resulted in convictions and summarize the behaviour of the company that was convicted of predatory pricing. In addition, for the period subsequent to 1990, please provide: 1) the number of complaints alleging an offence under the predatory pricing provisions; 2) of those complaints, how many resulted in formal inquiries under the Act; 3) of the formal inquiries, how many were referred to the Attorney General; 4) of the complaints referred to the Attorney General, how many resulted in the laying of charges; 5) of the complaints where charges were laid, how many resulted in convictions; and 6) where convictions were obtained, summarize the behaviour of the company that was convicted of predatory pricing.

Competition Bureau(Aliant)20July05-101 PN05-02

In *Technical Backgrounder – Acquisition of Microcell Telecommunications Inc. by Rogers Wireless Communications Inc.,* (April 12, 2005), the Bureau states on page 2 that: "It was determined that wireline is not a sufficiently close substitute to wireless to constrain the market power of a wireless 'hypothetical monopolist'." Footnote 6 states, in part: "However, the question of whether wireless telecommunications services are sufficiently close substitutes for wireline services to constraint the market power of a hypothetical wireline monopolist was not relevant to the Bureau's analysis and therefore not considered in the matter." Please explain why the question of whether wireline is a sufficiently close substitute for wireless needs to be examined separately from the question from whether wireless is a sufficiently close substitute for wireline.

<u>Competition Bureau(Aliant)20July05-102 PN05-02</u>

In paragraphs 23 and 24 of its comments, Rogers Communications Inc. (‘Rogers”) argues that the relevant product market for assessing the market power of a broadcast distributor includes the approximately 20% of Canadian households that have a TV but do not subscribe to the services of a broadcast distributor and instead receive only free over-the-air television signals. Does the Bureau agree with Rogers’ argument that free over-the-air television is a sufficient close substitute for the television services offered by a Broadcast distributor to be included in the relevant product market for assessing market power?

Attachment 3

<u>Public Notice CRTC 2005-2</u>

<u>Forbearance from regulation of local exchange services</u>

<u>Interrogatories from Aliant Telecom to</u>

<u>EastLink</u>

<u>EastLink(Aliant)20July05-100 PN05-02</u>

At paragraph 2 of its comments EastLink states: “Additionally, EastLink has experience being regulated as the incumbent cable provider in our territory” and further states, “EastLink’s experiences as an incumbent, entrant and competitor give us insight into various aspects of regulation…”):

a) i. Please provide a list of the Class 1 cable systems that EastLink owns and operates.

ii. For each system, provide a brief description of the area served by the system and a map of the area served by the system.

iii. If a system has had the ceiling on its basic rate removed pursuant to section 47 of the *Broadcast Distribution Regulations*, identify when EastLink applied for basic rate deregulation and when it came into effect.

iv. For each system that has been deregulated, provide the rate for basic cable just prior to deregulation and the current rate.

v. For each Class 1 system that has been deregulated, identify all economic constraints imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.) that EastLink was subject to prior to rate deregulation and which of these restrictions, if any, continue to apply after deregulation.

vi. Identify each of EastLink’s Class 1 systems that has not been deregulated pursuant to section 47 of the *Broadcast Distribution Regulations*. If any of the systems meets the criteria for deregulation, explain why an application for deregulation has not been filed with the CRTC.

vii. For each Class 1 system that has been not been deregulated, identify all economic constraints imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.) that EastLink is currently subject to and which of these restrictions, if any, would continue to apply after deregulation.

viii. For each Class 1 system that has been not been deregulated, provide the rate for each discretionary tier and each pay service at year end 1997, shortly after DTH launched, and the current rate for each of those services.

b) i. Please provide a list of the class 2 and class 3 cable systems that EastLink owns and operates.

ii. For each system, provide a brief description of the area served by the system and a map of the area served by the system.

iii. For the class 2 systems, identify all economic constraints, if any, currently imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.). Identify any additional economic constraints that may have applied earlier and when those constraints were removed.

iv. For the class 3 systems, identify all economic constraints, if any, currently imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.). Identify any additional economic constraints that may have applied earlier and when those constraints were removed.

c) For each class 1, 2 and 3 system that EastLink owns and operates, identify:

i. the competing broadcast distributors offering service in the area served by the system.

ii. whether EastLink provides retail high-speed Internet service in the system. If EastLink does not currently provide retail high-speed Internet service in a system, identify if and when it intends to do so.

iii. whether EastLink provides wholesale high-speed Internet service in the system. If EastLink does not currently provide wholesale high-speed Internet service in a system, identify if and when it intends to do so.

iv. whether EastLink provides local telephony service in the system. If EastLink does not currently provide local telephony service in a system, identify if and when it intends to do so.

<u>EastLink(Aliant)20July05-101 PN05-02</u>

At paragraph 3 EastLink states: “EastLink started just over five years ago and utilizes circuit switched telephony which requires significantly more capital than VoIP service that today’s new entrants will be deploying”.

a) In light of the relatively low capital investment of new entrants to deploy VoIP services in competition with circuit-switched telephony, does EastLink anticipate competition from VoIP service providers over the next 2 years sufficient to cause EastLink to incur market share loss and/or a slowing of its market share rate of growth of telephony services?

b) Does EastLink anticipate pressure to decrease its telephony service rates to meet VoIP service rates to maintain market share growth?

EastLink(Aliant)20July05-102 PN05-02

At paragraph 4 EastLink states: “Entering the business would involve significant upgrades of cable plant to facilitate telephone service, additional significant costs for purchasing the equipment necessary to bring the telephone service to the home over cable…” :

a) Describe the significant upgrade of EastLink’s cable plant to facilitate telephone service.

b) Explain whether these upgrades are also necessary or of advantage in the provision of high speed internet and digital television services.

c) Describe the incremental equipment necessary to bring telephone service to the home over cable. Identify associated costs.

EastLink(Aliant)20July05-103 PN05-02

At paragraph 38 EastLink proposes that after the 30% threshold (incumbent market share loss) is achieved stage two criteria be considered. These criteria would include not only the market power analysis, but also consideration of the investment made by a competitor.

a) Would this be a public process with the competitor’s revenues, cost allocations and capital investment details open to public scrutiny by interested parties?

b) If EastLink is not proposing a public process what process does Eastlink propose to consider the investment made by competitor?

EastLink(Aliant)20July05-104 PN05-02

In paragraph 5 EastLink asserts that one reason that it chose to enter the telecommunications business was that: “EastLink believed in what the Commission was saying”. EastLink states that the question it asked itself was how it could be “sure such a significant move will pay off”.

a) Specifically, what did EastLink believe the Commission was saying with respect to assuring a new entrant that such a significant move would pay off?

b) Does EastLink believe that the Commission guaranteed the success of each new entrant? If so, provide references to the Commission’s guarantee.

c) Does EastLink believe that the Commission should give such a guarantee?

EastLink(Aliant)20July05-105 PN05-02

At paragraph 5 EastLink states: "The public market would not have allowed public companies to take this kind of risk." Please provide all evidence to support this statement. In addition, please explain how publicly traded cable companies in the U.S., were able to launch their local telephony services in the 1990's. For example, Cox Communications launched its local telephony service in 1997 (Cox Communications was publicly-traded at the time and remained so until December 2004).

EastLink(Aliant)20July05-106 PN05-02

At paragraph 7 EastLink states: "In contrast, today EastLink incurs an additional cost in the range of $700 to $1000 for each customer and when that customer is lost a large portion of that capital and incremental acquisition costs are also lost."

a) Describe in detail each of the cost component included in the "$700 to $1000".

b) Disaggregate the "$700 to $1000" into each of the cost components identified in a).

c) Does the "$700 to $1000" vary by the size of the cable system? If so, by how much and explain why it varies.

d) When a local telephony customer is "lost" by EastLink, describe in detail the "large portion of that capital and incremental acquisition costs" that "are also lost".

e) What is the "capital and incremental acquisition cost" that EastLink incurs for each new cable customer?

f) What is the "capital and incremental acquisition cost" that EastLink incurs for each new retail high-speed Internet customer?

g) Explain EastLink's assertion that the cost of churn is significantly more expensive for EastLink than for Aliant providing specific details of EastLink's costs and Aliant's comparable costs.

h) How much of the "capital and incremental acquisition cost" are recovered through installation charges? Do these installation charges vary depending on which service or bundle of services the customer takes?

EastLink(Aliant)20July05-107 PN05-02

At paragraph 7 EastLink states: "Long distance services were provided at high rates, resulting in high rates of return so incumbents could subsidize much of their investments in local services at the time":

a) Explain what is meant by "subsidize much of their investments". Does it refer to anything more than, retail rates were below costs?

b) Does EastLink recognize that it was public policy to set the ILECs' long distance rates at high levels to subsidize local rates, particularly local rates in rural and remote areas?

c) Has EastLink ever been subject to regulatory restrictions on what it charges for its discretionary tiers and pay services? If so, provide the details of the restrictions and when they were in effect.

d) Under the cable regulations that were in effect prior to January 1, 1998, were the revenues from discretionary tiers and pay services used to offset the costs of providing basic cable service?

EastLink(Aliant)20July05-108 PN05-02

At paragraph 10 EastLink states: "Companies need the assurance that they will have a chance of recovering their investments": Does EastLink believe that new entrants to the broadcast distribution industry were given "a chance of recovering their investments''? If so, please explain what that chance was compared to the chance that EastLink is proposing in local telephony.

EastLink(Aliant)20July05-109 PN05-02

At various places in its comments EastLink refers to "anti-competitive behaviour". Define what is meant by anti-competitive behaviour? Does the definition refer only to conduct which would be prohibited by the Competition Act? Explain the difference between "competitive behaviour" and "anti-competitive behaviour".

EastLink(Aliant)20July05-110 PN05-02

At paragraph 10 EastLink states: "Aliant had decades of monopoly status to recover initial investments in its network". In paragraph 1, EastLink states that it started in the cable business in 1971. Competition to cable was not permitted until well into the 1990s. Canadian DTH only launched in mid-1997 and EastLink has yet to face effective competition from a wireline competitor.

a) Did EastLink therefore have well over two and a half "decades of monopoly status to recover initial investments in its network"?

b) Is it EastLink's contention that Aliant has recovered all of Aliant's investments in Aliant's network in recent years?

EastLink(Aliant)20July05-111 PN05-02

At paragraph 12 EastLink states: "EastLink's proposal is that a decision to forbear from regulation of local service requires an understanding of the risks to sustainable competition should premature forbearance be granted". Considering the relatively low cost for VoIP service providers to provide services and the many VoIP service providers planning to provide service, are the risks to sustainable competition reduced despite the negative impact on some competitors?

EastLink(Aliant)20July05-112 PN05-02

At paragraph 12 EastLink proposes: “that the analysis of whether the market is workably competitive must be based on a larger geographic market in order discourage ILEC targeted pricing and anti-competitive behaviour...” Please explain what constitutes competitive versus what constitutes anti-competitive behaviour. Is targeted pricing competitive or anti-competitive behaviour? Aliant notes that EastLink’s service bundles including TV, High Speed Internet and Telephone service and the recent addition of Rogers’ wireless services to complete the quadruple service bundle, would be targeted to consumers that subscribe to all 3 or 4 of these services; does EastLink consider this targeted pricing to be anti-competitive or harmful to customers that wish to subscribe to just one of these services?

EastLink(Aliant)20July05-113 PN05-02

At paragraph 12 EastLink proposes: “Competitors must be able to invest in building their networks and have a period of time to recover that investment before forbearance”. Explain:

a) What degree of capital recovery by new entrants would EastLink propose as a threshold for forbearance of incumbents? Specify what capital expenses would be included and how the degree of capital recovery would be quantified.

b) Would the capital recovery test apply only to the first entrant, or to any entrant from time to time?

c) Considering that the capital recovery by the ILECs was restricted (through regulated depreciation rates) during the period of base rate of return regulation, what level of capital recovery is appropriate for ILECs?

EastLink(Aliant)20July05-114 PN05-02

At paragraph 13 EastLink states: “Without criteria that ensure market discipline, existing competitors are at risk of failure or stunted growth into new areas”. Explain what EastLink means by “market discipline”.

EastLink(Aliant)20July05-115 PN05-02

At paragraph 17 EastLink states: “With regard to residential and business services, it is EastLink’s view that these two markets have distinct characteristics that warrant different forbearance criteria. For example, competitors offering residential service may have different cost inputs and investments to provide the service than in the business markets”. Explain the different cost inputs for residential and business services, and explain why they make it necessary to have different criteria for forbearance. Explain the difference in criteria which EastLink considers appropriate.

EastLink(Aliant)20July05-116 PN05-02

At paragraph 17 EastLink states: “Within the business market there is a broad range of customers and services, from small, single office businesses to large national and international business, in addition to various levels of government, health and university sectors. The requirements to provide services to these various types of customers and the ability of service providers to compete in these markets will vary depending on the type of customer, the type of service provider and the location." Is it EastLink's position that small business, single office business, large national business, international business, government, health, and university sectors represent different product markets?

a) Explain the different product markets that EastLink proposes for consideration of forbearance.

b) Does EastLink assert that residential local services constitute a distinct product market?

<u>EastLink(Aliant)20July05-117 PN05-02</u>

Provide for the public record, in the format similar to that included in Aliant's 18 May 2005 Update:

a) For the 32 exchanges included in Aliant's update, EastLink's estimate of:
   i) EastLink's number of residential lines, and;
   ii) EastLink's share of the total number of residential lines.

b) For the Halifax Metro Area:
   i) EastLink's number of residential lines, and;
   ii) EastLink's share of the total number of residential lines.

<u>EastLink(Aliant)20July05-118 PN05-02</u>

At paragraph 34 EastLink states: "It is EastLink's position that the appropriate geographic market must be the incumbent's province, at least in the case of Aliant's territory." For cable companies, the CRTC decided that the relevant geographic market was each individual Class 1 cable system, regardless of the size of the cable company and the number of cable systems that it owned and operated, and regardless of the size of the class 1 system. The CCTA agreed that this was the relevant geographic market.

If EastLink believes that the CRTC was correct in establishing the relevant geographic market for wireline cable service as the area served by the Class 1 system (of which there are three in the area of the Halifax-Dartmouth-Bedford telephone exchange), explain in detail why the CRTC should establish the province as the relevant geographic market for wireline telephone service.

<u>EastLink(Aliant)20July05-119 PN05-02</u>

At paragraph 38 EastLink states: "EastLink has significant concerns about the potential for targeted behavior by Aliant if an exchange were selected as the geographic market." Has EastLink ever had any constraints imposed by the CRTC on its ability to "target behavior" in response to competitive entry? If so, identify each of those constraints and when they were in effect. For example, was EastLink ever subject to constraints imposed by the CRTC that prevented it from engaging in the following practices on a targeted basis:

- lowering the rate for basic cable;
- lowering the rate for discretionary cable tiers;
- lowering the rate for pay and pay-per-view services;
- lowering the rate for digital cable service;
- waiving installation fees for cable service;
- offering long-term contracts with lower prices for cable services;
- offering promotions of any kind, including free basic cable service; or
- offering bundles of cable services with any or all of: high-speed Internet service, local telephony service and wireless service.

EastLink(Aliant)20July05-120 PN05-02

At paragraph 39 EastLink states: "Aliant and the other ILECs have high revenue from the other services they provide such as Internet, wireless, handsets, and long distance further illustrating that below cost pricing for local services in a small area could be sustained. In fact, Aliant's most recent quarterly reports indicate Aliant's average revenue per Internet and wireless customer is $31.38 and $54.24, respectively."

Please provide EastLink's average revenue per cable customer, Internet customer, local telephony customer, long distance customer, and wireless customer.

EastLink(Aliant)20July05-121 PN05-02

At paragraph 40 EastLink states: "The act of a customer switching service between incumbent and competitor can place an onerous burden on competitors, not just in terms of customer costs, but also in terms of the administration and back end costs for establishing new service." Does EastLink believe that this applies in all industries where a company enters to compete against an incumbent? For example, EastLink is the incumbent cable provider throughout most of Nova Scotia and P.E.I. Aliant has just started to offer wireline cable service in parts of Halifax. If an Aliant cable customer switches to EastLink, will this "place an onerous burden" on Aliant? If not, why not?

EastLink(Aliant)20July05-122 PN05-02

At paragraph 43 EastLink states: "Contrary to the above stated assumptions, it is common industry knowledge that costs of providing circuit switched telephony range from $ 700 to over $1000 per household."

a) Provide all evidence that EastLink has to support this statement.

b) All of the other major cable companies (Rogers, Shaw, Videotron, Cogeco) have recently launched their local telephony services using VoIP technology. What is the cost per household to a cable company of using VoIP technology to provide local telephony service?

c) Is EastLink capable of using VoIP technology? Is it planning to do so? If so, when does it plan to switch to VoIP technology? If not, provide the reasons why.

EastLink(Aliant)20July05-123 PN05-02

At paragraph 44 EastLink states: "In EastLink's view, the key to determining the appropriate geographic market is in defining a market boundary within which, if forbearance were granted, it would limit the incumbent's ability to engage in targeted behaviour".

a) Explain what EastLink means by "targeted behaviour", and explain how this differs from normal behaviour in competitive markets.

b) Explain how the definition of the appropriate geographic market limits the ability to engage in "targeted behaviour".

c) Given that the incumbent would be free to set competitive prices throughout the appropriate geographic market under forbearance, explain how a large forborne geographic market and a small forborne geographic market affect the ability of the incumbent to engage in "targeted behavior".

EastLink(Aliant)20July05-124 PN05-02

At paragraph 46 EastLink states: "EastLink's pricing is consistent throughout all of its serving areas. Customers expect this type of pricing."

a) What is meant by "consistent"? Does it mean identical?

b) Are **all of the services** currently offered by EastLink priced consistently throughout all of its serving areas? Are they priced identically?

c) Has EastLink's pricing of **all of its services** always been consistent throughout all of its serving areas? If not, provide details of the periods of time the prices were not consistent and specify the differences in prices.

d) Has EastLink's pricing of **all of its services** always been identical throughout all of its serving areas? If not, provide details of the periods of time the prices were not identical and specify the differences in prices.

e) Are all of EastLink's special promotions on any or all of cable, digital cable, High-speed internet and telephony services or any bundle of the services offered throughout all its serving areas to all customers?

f) Provide all studies, reports or surveys that support the statement that "Customers expect this type of pricing".

EastLink(Aliant)20July05-125 PN05-02

At paragraph 55 EastLink states: "Finally, aside from the issues of ILEC conduct EastLink notes that selecting the exchange as the geographic market would create a system that would be extremely onerous to administer." The area served by the Class 1 cable system is the relevant geographic market for basic rate deregulation for Class 1 systems. There are over 120 Class 1 systems in Canada. Is the system for rate deregulation for Class 1 systems “extremely onerous to administer”?

EastLink(Aliant)20July05-126 PN05-02

At paragraph 60 EastLink states: “In EastLink’s opinion 30% loss of market share by the incumbent is a reasonable threshold to apply to initiate the forbearance analysis, including the assessment of the number of years from that date before forbearance is granted.”

a) Is there a theoretical basis of the threshold of 30% of local market share loss by the incumbent to “initiate the forbearance analysis” or is it merely EastLink’s recommendation? If so, provide an explanation of the theory.

b) Explain the theoretical basis for the delay of a number of years from the threshold of 30% market share loss, specifying the basis upon which the determination of the number of years would be made.

EastLink(Aliant)20July05-127 PN05-02

At paragraph 66, EastLink refers to “an analysis of whether competitive alternatives exist on a pervasive and sustained basis”. Explain what EastLink means by (a) “pervasive”; and (b) “sustained”.

Explain how this analysis is consistent with the standard for forbearance set out in section 34(2) of the *Telecommunications Act* that, the incumbent’s service is **or will be** subject to competition sufficient to protect the interests of customers.

EastLink(Aliant)20July05-128 PN05-02

At paragraph 69 EastLink states: “There is strong customer inertia in the local telephone market due not only to the monetary costs involved in switching providers, but also the efficiency costs to the customer. For consumers with a reliable local telephone service the hassle of switching for a small price savings is less attractive and therefore less likely than it would be in other product markets.”

a) Provide all studies, data, reports and surveys that have led EastLink to the conclusion that “there is strong customer inertia in the local telephone market”.

b) What growth in competitors’ share of residential lines in the relevant geographic market would have to take place to show that there is not “strong customer inertia”?

c) Starting from the date that it launched local telephony service in an exchange, provide by quarter up until 2005 Q2 the number of EastLink’s residential local telephony customers in that exchange.

d) Starting from the date that it launched local telephony service in an exchange, provide by quarter up until 2005 Q2 the number of EastLink’s business local telephony customers in that exchange.

e) Explain in detail the monetary costs incurred by a customer in switching from Aliant's service to EastLink's service for a residential customer who:

i) takes EastLink's telephone service only, or

ii) takes a bundle including EastLink's telephone, television and high speed internet services.

Does EastLink charge an installation charge in either of these situations? Always?

f) Explain in detail the monetary costs incurred by a residential customer in switching from EastLink's service to Aliant's service.

g) Explain the efficiency costs to a residence customer in switching from Aliant's service to EastLink's service.

h) Explain the efficiency costs to a residence customer in switching from EastLink's service to Aliant's service.

i) Does EastLink market, promote and sell its local telephony service only on the basis of savings relative to Aliant's local telephony service? Provide details of recent promotions and marketing campaigns.

J) Does EastLink market, promote and sell its local telephony service as part of bundle with other services, such as cable TV, high-speed Internet access and wireless? Provide details of recent promotions and marketing campaigns.

k) What percentage of EastLink's local telephony customers only subscribe to local telephony service?

l) What percentage of EastLink's customers subscribe to the following bundles:
- local telephony and cable TV;
- local telephony and high-speed Internet access;
- local telephony and wireless;
- local telephony and cable TV and high-speed Internet access;
- local telephony and cable TV and wireless;
- local telephony and high-speed Internet access and wireless;
- local telephony and cable TV and high-speed Internet access and wireless;
- cable TV and high-speed Internet access;
- cable TV and wireless;
- cable TV and high-speed Internet access and wireless;
- high-speed Internet access and wireless.

<u>EastLink(Aliant)20July05-129 PN05-02</u>

At paragraph 70 EastLink states: "Customers may also be less inclined to switch service providers as a result of perceived fears about the viability of the competitor service." Provide any empirical evidence of customer inertia in the exchanges in which EastLink has chosen to offer its service. Demonstrate that EastLink's market penetration and growth of market share has been constrained by fear about the viability of EastLink service.

<u>EastLink(Aliant)20July05-130 PN05-02</u>

At paragraph 74 EastLink states: "The investment and time involved to bring about a supply expansion are significant". What are EastLink's investment and time requirements to lease an unbundled loop from Aliant?

<u>EastLink(Aliant)20July05-131 PN05-02</u>

At paragraph 83 EastLink states: "EastLink estimates that Aliant's marketing spending is 10-20 times that of EastLink across the same region.

a) What is the "same region" in which EastLink's marketing spending and that of Aliant are compared?

b) Provide details of the marketing spending of each company upon which the comparison is based.

c) Perform the calculation of EastLink's costs imputing the costs of television advertising carried on EastLink's services at prices charged by EastLink to other commercial entities.

<u>EastLink(Aliant)20July05-132 PN05-02</u>

At paragraph 93 EastLink states: "It seems only fair that competitors, such as EastLink, who have made larger investments, should have a longer period of time to recover that investment." Further, at paragraph 94 EastLink states: "All competitors should be entitled to enter a market and operate within the regulatory regime for a sufficient period of time in order to recover some of their initial investment." This approach was not followed when the cable TV business was opened to competition. Should it have been? If not, why was it not appropriate to follow this approach for new entrants to cable, but it would be appropriate to follow this approach in local telephony?

<u>EastLink(Aliant)20July05-133 PN05-02</u>

At paragraph 97 EastLink states: "Aliant has flexibility with at least 78% of its service rates". Provide details of this statement as follows:

a) Define "flexibility".

b) Define which "service rates" EastLink is including in the comparison, identifying those which are *local* services. Identify those local services for which EastLink asserts Aliant has "flexibility".

c) Provide a worksheet showing the calculation of the figure of 78%.

EastLink(Aliant)20July05-134 PN05-02

At paragraph 119 EastLink states: "In EastLink's view, there is very little regulatory oversight today that impacts Aliant". Does EastLink consider that Aliant could impose a material, non-transitory increase in prices above competitive levels in the absence of regulation?

EastLink(Aliant)20July05-135 PN05-02

a) In EastLink's view, is "targeted pricing behaviour" always inappropriate? Explain this with reference to non-regulated product markets.

b) In EastLink's view, is "targeted pricing behaviour" the same as "predatory pricing"? Explain EastLink's concept of "targeted pricing behaviour" and "predatory pricing".

c) Does EastLink believe that the Competition Bureau is capable of dealing with predatory pricing or other abuses of dominant position pursuant to its powers under, *inter alia*, section 78 and 79 of the *Competition Act*?

EastLink(Aliant)20July05-136 PN05-02

At paragraph 121 EastLink states: "Aliant claims it was unable to reduce prices in its territories due to price cap restraints":

a) Specify when Aliant made such a claim;

b) Explain how price cap restraints prevent price reductions.

EastLink(Aliant)20July05-137 PN05-02

At paragraph 143 EastLink states: "Because Aliant's acquisition costs or the costs to provide service is lower than EastLink's, Aliant is already in a better position to offer much lower pricing and still not be guilty under the predatory pricing provisions of the *Competition Act*".

a) Provide all the evidence that EastLink has to support the statement that "Aliant's acquisition costs or the costs to provide service are lower than EastLink's".

b) If Aliant's cost to provide wireline broadcast distribution services is higher than EastLink's, should EastLink be prohibited by CRTC regulations from offering "much lower pricing" than it is currently charging?

EastLink(Aliant)20July05-138 PN05-02

At paragraph 147 EastLink states: "Satellite competitors have no significant barriers to entry…"

a) If the barriers to entry of satellite competitors are not significant, explain why only two have entered the broadcast distribution industry in Canada, one of which –

Star Choice – is owned by Shaw Communications, the second largest cable company with whom it can share most operating costs?

b) Does EastLink consider that there are significant barriers to entry to provide wireline broadcast distribution services? If not, explain why there are so few wireline competitors to cable and why they collectively serve only about 1% of all BDU customers.

EastLink(Aliant)20July05-139 PN05-02

At paragraph 152 EastLink states: “When cable companies enter the telephone business their existing revenue base is already under attack from competition.”

a) Is EastLink suggesting that its revenues have been decreasing?

b) Provide by quarter from 1997 Q3, when DTH launched in Canada, up to and including 2005 Q2, EastLink’s total revenues from all the services (analog cable, digital cable, high-speed Internet, wireline telephony and wireless) that it provides.

c) Provide by quarter from 1997 Q3, when DTH launched in Canada, up to and including 2005 Q2, EastLink’s total number of cable subscribers.

d) Provide by quarter from 1997 Q3, when DTH launched in Canada, up to and including 2005 Q2, EastLink’s total number of retail high-speed Internet customers.

EastLink(Aliant)20July05-140 PN05-02

EastLink asserts that the incumbent telephone companies “have been guaranteed a rate of return”.

a) Specify the rate of return which was “guaranteed” to the telephone companies.

b) Does this guarantee still exist and, if not, when was it terminated?

c) Specify the rate of return actually earned by Canadian cable television companies generally and by EastLink in each of the last 10 years.

EastLink(Aliant)20July05-141 PN05-02

At paragraph 80 EastLink states: “The prices for local services provided by EastLink have not changed since it initially started offering telephone service in 1999. EastLink continues to offer residential telephone service for $20.00 per month, with features prices at tiers based on the number selected.[1] Furthermore, Aliant has not dropped its local service prices since EastLink began offering services. “

a) Provide all price increases implemented by EastLink since 1999 related to:
   i) Basic telephone access
   ii) Second lines
   iii) Features
   iv) Service charges (related to local services and any bundles including local services)
   v) Watch, Talk & Surf; Watch & Talk; and Surf & Talk

b) Describe all promotions by EastLink since 1999 that effectively decreased prices such as 3 months free local service, 6 months free local service, and/or waive service charges.

[1] EastLink’s features are offered individually for $4.95, 3 for $7.95 or all features for $12.95 per month.

Attachment 4

Public Notice CRTC 2005-2

Forbearance from regulation of local exchange services

Interrogatories from Aliant Telecom to

Rogers Communications Inc.

Aliant(Rogers)20July05-101 PN05-02

At paragraph 25 Rogers states: "It should be noted that although Star Choice and ExpressVu launched their satellite services in 1997, the first cable systems to be deregulated were Rogers' St. Thomas and Woodstock systems in November 2000. The CRTC approval was not granted until almost one year after Rogers' application for deregulation was submitted".

a) i) Please provide a list of the Class 1 cable systems that Rogers owns and operates in Atlantic Canada (Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador).

ii) For each system, provide a brief description of the area served by the system and a map of the area served by the system.

iii) If a system has had the ceiling on its basic rate removed pursuant to section 47 of the *Broadcast Distribution Regulations*, identify when Rogers applied for basic rate deregulation and when it came into effect.

iv) For each system that has been deregulated, provide the rate for basic cable just prior to deregulation and the current rate.

v) For each Class 1 system that has been deregulated, identify all economic constraints imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.) that Rogers was subject to prior to rate deregulation and which of these restrictions, if any, continue to apply after deregulation.

vi) Identify each of Rogers' Class 1 systems that have not been deregulated pursuant to section 47 of the *Broadcast Distribution Regulations*. If any of the systems meets the criteria for deregulation, explain why an application for deregulation has not been filed with the CRTC.

vii) For each Class 1 system that has been not been deregulated, identify all economic constraints imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.) that Rogers is currently subject to and which of these restrictions, if any, would continue to apply after deregulation.

b) i) Please provide a list of the class 2 and class 3 cable systems that Rogers owns and operates in Atlantic Canada.

ii) For each system, provide a brief description of the area served by the system and a map of the area served by the system.

iii) For the class 2 systems, identify all economic constraints, if any, currently imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.). Identify any additional economic constraints that may have applied earlier and when those constraints were removed.

iv) For the class 3 systems, identify all economic constraints, if any, currently imposed by the CRTC (e.g., restrictions on increasing the price for basic cable, winback restrictions, bundling restrictions, promotion restrictions, etc.). Identify any additional economic constraints that may have applied earlier and when those constraints were removed.

Attachment 5

Public Notice CRTC 2005-2

Forbearance from regulation of local exchange services

Interrogatories from Aliant Telecom to

Consumer Groups/Johannes Bauer

Consumer Groups(Aliant)20July05-100 PN05-02

In paragraph 85, Mr. Bauer recommends that in the event of forbearance, there should be safeguards (eg., in the form of ceiling prices or minimal service offerings) to protect weak customers against discrimination. Does Mr. Bauer recommend that these safeguards would apply to all providers of local service or only to the former incumbent?

Attachment 6

Public Notice CRTC 2005-2

Forbearance from regulation of local exchange services

Interrogatories from Aliant Telecom to

ARCH

ARCH(Aliant)20July05-100 PN05-02

At paragraph 11 ARCH states: "The constitutional and statutory framework makes it clear that when exercising its powers under the *Telecommunications Act*, the Commission must ensure that telecommunications services are available on a non-discriminatory basis to persons with disabilities." Does ARCH recommend that the duty to provide accessible telecommunication services to persons with disabilities would apply to all providers of local service or only to the former incumbent?

Attachment 7

Public Notice CRTC 2005-2

Forbearance from regulation of local exchange services

Interrogatories from Aliant Telecom to

MTS Allstream

MTS Allstream(Aliant)20July05-100 PN05-02

In paragraph 53 MTS Allstream states, “the magnitude of an ILEC’s regulated customers and revenue base relative to the area over which forbearance could occur under an exchange-based approach enables an appreciation of the leverage an ILEC could bring to bear on a competitor operating within an exchange or small group of exchanges”.

a) Does MTS Allstream consider that the size of a competitor’s business and revenue outside the appropriate geographic market is relevant in determining the extent of the appropriate geographic market? Provide references to the anti-trust/competition law literature to support this theory.

b) Does the magnitude of a carrier’s business and revenues outside a city-to-city route for IXPL service affect the appropriateness of that geographic market for forbearance analysis?

MTS Allstream(Aliant)20July05-101 PN05-02

a) Describe the circumstances under which MTS Allstream would qualify for forbearance for local services in Winnipeg.

b) Would MTS Allstream qualify for forbearance for Winnipeg if competitor market share in that exchange (or those exchanges) exceeded 30%, competitor market share was rising rapidly, and vigorous rivalrous behaviour existed, although competitors might chose not to offer service in other areas of the Province.

c) Alternatively, would MTS Allstream qualify for forbearance for the entire Province of Manitoba based on provincial aggregates, although the efforts of new entrants were targeted in Winnipeg?

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