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2005 08 26

Diane Rhéaume
Secretary general
Canadian Radio-television and
Telecommunications Commission
Ottawa ON

Dear Ms Rhéaume:

**Subject: Telecom Public Notice 2005-2 – Local Forbearance
Response to Interrogatory Deficiency Requests**

1. In accordance with the procedural directions in the above Public Notice, Aliant responds to the deficiency requests and requests for public disclosure of material provided to the Commission in confidence filed by various parties.
2. In its letter accompanying its interrogatories and again in its deficiency letter, the Competition Bureau has proposed that parties provide information to the Bureau in confidence. The Bureau has agreed to provide a written undertaking not to disclose any competitively sensitive information provided to it in the course of this proceeding. Aliant acknowledges the Competition Bureau's expertise in analysis of competitiveness of markets, the valuable contribution which the Bureau can make to this proceeding, and the Bureau's experience in operating in a confidential environment. Aliant therefore supports the Bureau having access on this basis to the information which has been filed in confidence if the Commission makes a determination that Aliant will not be required to place the information on the public record.
3. Aliant's response to the deficiency requests and the requests for disclosure of information provided to the Commission in confidence is set out in the attachment.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Stephen", written in a cursive style.

Attachment
cc: Interested Parties to PN 2005-02

Requests for further responses to interrogatories

Competition Bureau

Aliant(Competition Bureau)20July05-14

Such information is highly competitively sensitive and therefore confidential. Disclosure would cause Aliant direct harm in its competitive markets. However, if the Commission determines to allow Aliant to provide the requested information in confidence, Aliant can provide the residential subscriber growth and churn rates by province for the years 2000 to June 2005. The “churn” rate is the number of disconnections in the relevant time period, and this is readily available from Aliant’s residential services records.

Similar information is not available from Aliant’s business service records. The more complex nature of those services and the relatively large number of moves and change orders makes it impossible for Aliant to derive a simple churn number. In any case, Aliant submits that subscriber growth and churn rates for business services is irrelevant to this proceeding as business services were not included in Aliant’s local forbearance application.

MTS Allstream

Aliant(MTS Allstream)20July05-104

MTS asks each ILEC to provide a summary of all approved local service price increases or decreases in the first and second price cap periods.

This information is not relevant to a determination of the framework principles of forbearance of local services. It has no relevance to identification of the appropriate geographic market or product market or of defining the indicia of competitiveness in a market, once defined.

Aliant repeats that it does not have the information compiled as requested. All regulated service price changes are matters of public record and readily accessible to MTS Allstream. To compile such information Aliant would have to use the same process that MTS Allstream could follow to collect the information themselves.

Aliant(MTS Allstream)20July05-105b)

Allstream asks each ILEC to provide a list of all service bundles introduced in the course of the first and second price cap period. However, in CRTC Telecom Decision 2005-35 the Commission ruled that bundles are outside the scope of this proceeding. The Commission said in paragraph 53:

“The Commission notes that, in this Decision, it is making a determination on the individual services that are considered to be within the scope of the proceeding. The Commission also notes that bundles are simply combinations of individual services under a rate structure and that tariff approval is not required for a bundle that does not include any tariffed service. In light of the above, the Commission considers it unnecessary to include service bundles within the scope of this proceeding.”

Accordingly, the requested information is irrelevant.

Aliant(MTS Allstream)20July05-109 b)

MTS Allstream asks each ILEC to disclose its total advertising budget for 2004, broken out between business and residence and by province.

Advertising and marketing budgets are irrelevant to a determination in this proceeding. The information is not relevant to the determination of the relevant geographic or product market, nor is it useful in defining the indicia of competitiveness for purposes of the future test for forbearance.

Advertising and marketing is an indicator of rivalrous behaviour, which is one of the indicia of competitiveness. Aliant has provided evidence of EastLink's marketing activities to demonstrate that the market in which Aliant competes is intensely rivalrous. Aliant has further provided information on Aliant's recent advertising campaigns to MTS Allstream as part a) of this interrogatory. This is a further indication of this rivalrous behaviour. It is the rivalrous conduct which is relevant – spending is not. Further, marketing and advertising budgets and expenditures are matters of considerable commercial sensitivity and confidentiality. Disclosure would cause harm to Aliant in this competitive market, and there is no valid public interest in disclosure.

MTS Allstream's comment that this must be placed in context with the ILECs' advertising and promotional activities and relative capabilities is unclear. The fact the ILECs are advertising merely adds to the evidence of rivalrous behaviour; it does not in any way detract from it. In any case, the advertising budget for one party in a rivalry is irrelevant and unnecessary for a determination in this proceeding.

Aliant(MTS Allstream)20July05-110

MTS Allstream asks each ILEC to provide estimates of local market share (NAS) by province and broken between residence and three types of business service. That information is not relevant to the issues in this proceeding – it will be of no assistance in the definition of the relevant geographic and product markets, nor in the definition of the indicia of competitiveness for the future test for forbearance of local services. The assertion that it is relevant suggests an attempt to skew the test to produce a particular result. Evidence of market share should not be used to determine what the appropriate criteria of forbearance are.

Market share analysis becomes relevant in consideration of an application for forbearance, and Aliant has provided to the Commission its market share estimates for the 32 exchanges in which it has applied for forbearance. These estimates are confidential precisely *because* the market is competitive. In MTS Allstream's own words, "In MTS Allstream's view market share information is an important element **of any forbearance application assessment.**"(emphasis added) As the markets with respect to which the information is requested, with the exception of the 32 exchanges provided in confidence to the Commission, are not the subject of a forbearance application, the information is irrelevant.

Aliant(MTS Allstream)20July05-111

For the reasons given in *Aliant(MTS Allstream)20July05-110 PN05-2* above, and acknowledging MTS Allstream's assertion that "MTS Allstream accepts that market share information at the local exchange level would be considered confidential in nature; consequently, MTS Allstream considers that responses to this interrogatory could be filed in confidence with the Commission", Aliant submits this interrogatory has been satisfactorily answered.

Aliant(MTS Allstream)20July05-112

MTS Allstream asks each ILEC to provide market share estimates based on local services revenues, by province and by service type – residence and three classes of business service. For the reasons given in reference to *Aliant(MTS Allstream)20July05-111 PN05-2* above, Aliant submits this interrogatory has been satisfactorily answered. In any case, estimation of market share by revenues is much more tenuous than estimating market share by NAS. Most of the customers of the entrants have purchased service bundles and estimation of the revenue for local telephone service would be arbitrary. If the Commission considers this information useful in assessing any application for forbearance it should rely on the best evidence available – actual revenue figures from the parties involved, which, no doubt, would be filed in confidence.

Aliant(MTS Allstream)20July05-202

MTS Allstream asked Aliant to provide a list of all proceedings or applications in which allegations of "anti-competitive behaviour of illegal offerings" were made. Allstream refers to Aliant's evidence on the incentive and ability of companies to engage in predatory behaviour in a forborne market. The evidence on this point is clear – predatory behaviour is implausible, unlikely to succeed and rarely if ever seen in real economic life. In any case, there have been no allegations of predatory pricing against Aliant.

In any competitive market there are always complaints amongst competitors, with the telecommunication market being no different. In those complaints the terms "anti-competitive" are used liberally, loudly and without precision. This has been true in certain proceedings involving Aliant. For the most part these complaints related to breach of regulation; they have never involved allegations of anticompetitive behaviour, as that term is understood in economics and competition law. Until the Commission instituted its expedited process in Telecom Circular CRTC 2004-2 *Expedited procedure for resolving competitive issues*, many complaints were brought before the Commission. Before that expedited process was instituted complaints could be filed with the Commission with only accusations and with the burden of proof falling on the respondent. This meant many competitors used the regulatory forum to tie up their competitors, usually the ILECs. Since the expedited process was instituted, the number of competitive complaints has dropped dramatically. Through the expedited process Aliant has participated in three hearings, one initiated by Aliant and two where Aliant was a respondent. In both cases where Aliant was the respondent, the application against Aliant was denied. In the case where Aliant initiated a complaint, the Commission ruled in the respondent's favour.

All these complaints are matters of public record. None is relevant to the matters in issue in this proceeding. When forbearance is granted the regulatory restrictions which were at the core of most of the matters will no longer be applicable. Aliant therefore submits that the requested information, specifically in the context requested, is irrelevant for a determination in this proceeding.

Aliant(MTS Allstream)20July05-203

MTS Allstream asked Aliant to provide “advertising and marketing rationale”, to identify each of Aliant’s competitors and “describe the relationship between the rationale and tariff notices proposing decreases for the same or similar services” in relation to several specified Aliant tariff filings or disputed customer offerings. Each of these was dealt with in other Commission proceedings, and each is quite irrelevant to the matters for consideration by the Commission in this proceeding. MTS Allstream apparently wishes to renew old arguments about compliance with regulatory restrictions. The essence of this application is that, now that the market in certain areas is effectively competitive, these restrictions are no longer appropriate. In areas where the market is not yet sufficiently competitive, appropriate restrictions will remain in place. The information requested is therefore irrelevant to this proceeding.

Aliant(MTS Allstream)20July05-212 a)

MTS Allstream sought production of copies of two reports referred to by Ms. Sanderson in her evidence on behalf of Aliant. If the Commission deems it relevant, Aliant has permission to release a copy of the RBC Capital Markets report.

Aliant maintains that NBI/Michael Sone Associates report "Canadian Local Telecom Services Market Report" 2004 Edition is protected by copyright and the author has denied Aliant’s request to have this placed on the public record. However, with the author’s permission, Aliant provides the following summary of the relevant contents. At paragraph 34 of Ms. Sanderson’s report, she states that: “NBI/Michael Sone Associates also predict substantial growth in VoIP residential subscriber numbers. By the end of 2007, 9% of residential subscribers in Canada will be VoIP customers, of which 73% is expected to be held by cable companies and other non-ILECs.” The footnotes reference pages 10 and page 18 of the NBI/Michael Sone Associates report “Canadian Local Telecom Services Market Report” 2004 Edition.

The report analyzes a number of service providers, including their current or planned VoIP service offerings. On page 10 the report estimates that 9% of residential subscribers will use VoIP by the end of 2007. The exhibits on page 18 provide estimated residential and business VoIP subscribers by carrier for the years 2004 through 2007, and provide residential and business VoIP market share estimates for the same years for three categories: “ILECs (National),” “CableCos” and “Other.” These tables provide the 73% non-ILEC 2007 residential VoIP market share noted in Ms. Sanderson’s report.

Aliant(MTS Allstream)20July05-214

Aliant submits that the information is irrelevant and unnecessary to a determination in this proceeding for the reasons as outlined in *Aliant(MTS Allstream)20July05-110 PN05-2* above.

CCTA

Aliant(CCTA)20July05-10

Aliant accurately answered CCTA's question, which sought information about "civic addresses"; Aliant does not have available the total number of residential civic addresses for each local interconnection region (LIR) or for that matter for each exchange, and can not reasonably get such information. In its request for further information, CCTA implies that what it was really looking for was the number of accounts, not residential civic addresses. Account information aggregated lower than the provincial basis is confidential. Aliant has consistently treated this information as confidential and to release such information would give existing and potential competitors information to help them refine their business plans.

In any event, the requested information is irrelevant and unnecessary for this proceeding. The number of accounts will not assist in determining the appropriate geographic or product markets, or in defining the indicia of competitiveness which will govern the future test for forbearance of local services.

In particular, the number of accounts per LIR is irrelevant to a determination of the issues in this proceeding. The concept of the LIR was created by the Commission for purposes of establishing procedures for, and reducing the cost of, interconnection. Market definition principles were not even considered in the process. Even a cursory review of the LIRs in Aliant's territory reveals that they are not relevant geographic markets (other than, perhaps, interconnection services). The fact that Amherst is included in the same LIR as Halifax while Kentville is in a different LIR does not suggest that the market for local telephone services in Amherst is in anyway related to that in Halifax nor that Amherst is dissimilar to Kentville because they are in different LIRs.

Finally, to the extent that the Commission may be interested in the number of accounts in any particular geographic area it can and should rely on the best data available – the actual market information from the various participants. Data disaggregated below the provincial level would probably be filed in confidence.

Aliant(CCTA)20July05-11

For the reasons discussed in response to *Aliant(CCTA)20July05-10 PN05-2*, neither the number of dwellings nor the population is not relevant.

In any event, the information is not available and could not be made available without considerable cost and effort. Statistics Canada's subdivisions are based on municipal government boundaries - Aliant's exchange areas are not. The shape of the exchange is

determined by network topology, which over time has been influenced by historic growth patterns. A mapping from exchanges to census subdivisions would be a very onerous task, probably involving a manual review of network records in the boundary line areas.

In any event, for the reasons discussed in response to *Aliant(CCTA)20July05-10 PN05-2*, this information by LIR is not relevant.

Requests for public disclosure

Competition Bureau

As noted in the covering letter, Aliant is willing to provide to the Bureau all evidence provided to the Commission in confidence, on the Bureau's undertaking not to disclose the information, if the Commission rules that Aliant will not be required to place the information on the public record.

MTS Allstream

Aliant(CRTC)20July05-212

MTS Allstream has requested the information provided in confidence to the CRTC in *Aliant(CRTC)20July05-212 PN05-2* be placed on the public record. In the question the Commission asked each of the ILECs for the percentage of various business services provided on contracts of varying terms, both by lines and in revenue terms.

Part of the justification given by MTS Allstream was that it provided the information on the public record in its response to the same interrogatory. Aliant is not able to comment on the state of competition for these services in MTS Allstream's territory of Manitoba, but in Aliant's territory these are very competitive services. The release of such information would provide competitors such as MTS Allstream with very sensitive and very helpful competitive information to enable them to shape their marketing strategies to the detriment of Aliant.

MTS Allstream also suggests that such information is highly aggregate in nature and therefore should be placed on the public record. Although the information may be aggregated, it still provides very competitive market and revenue information which the Company would not release in the public domain and which could be very useful to any competitor in developing their business plans.

CCTA

Aliant(CRTC)20July05-808 (C) (iii) Attachment 4

In this response Aliant provided an estimate of the entrants'¹ market share in various geographical configurations. Aliant's estimate of entrants' market share is confidential marketing information which Aliant has spent a great deal of time and money collecting and maintaining. It is of competitive importance to Aliant and would be of equal competitive value to its competitors. This information below the levels already provided on the public record would be confidential and its release could provide competitors with sensitive marketing information. As soon as one starts to slice and dice data it becomes more relevant and more useful to competitors. Aliant therefore claims this information is confidential as the use of the information could be helpful to competitors in developing their business plans.

¹ At the time the estimate was prepared, this was virtually all held by EastLink, although other entrants are now gaining material market shares.

It is noteworthy that CCTA's argument that the data at the LIR level is "highly aggregated" and of no competitive significance is an implicit acknowledgement that the LIR is not a relevant geographic market for competition analysis.

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