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COMMENTS:

Telecom Public Notice CRTC 2005-2, Forbearance from regulation of local exchange services – Replies to requests for further responses and for public disclosure

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August 26, 2005

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

Dear Ms. Rhéaume:

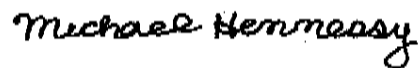
**Re: Telecom Public Notice CRTC 2005-2, Forbearance from
regulation of local exchange services – Replies to requests for
further responses and for public disclosure**

1. Pursuant to Public Notice 2005-2 and the procedures set out at paragraph 51, the Canadian Cable Telecommunications Association (CCTA) submits its replies, as set out in Attachment 1, to requests for further responses to interrogatories and public disclosure of information for which confidentiality has been claimed.
2. CCTA is in receipt of requests for further responses and public disclosure respecting CCTA's responses to interrogatories from the following parties: Bell Canada and Télébec, société en commandite (collectively, the Companies), MTS Allstream Inc. (MTS Allstream), and Xit telecom Inc. (Xit).

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3. CCTA is filing in Attachment 2 a supplemental response to CCTA(The Companies)20Jul05-13, for the reasons noted in Attachment 1.
4. A machine-readable file copy of this submission is provided to the Commission and parties via Internet email.

Sincerely,



Michael Hennessy,
President

Attachments

cc.: Parties to Public Notice 2005-2

*****END OF DOCUMENT*****

The Canadian Cable Telecommunications
Association
August 26, 2005

Response to Interrogatory
CCTA(The Companies)20Jul05-13
SUPPLEMENTAL
PN 2005-2
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INFORMATION REQUESTED BY
THE COMPANIES
July 20, 2005

ITEM NO. 13

Q.

AT PARAGRAPH 100, CCTA STATES THAT "PROVIDING TELEPHONY SERVICES INVOLVES NOT JUST TECHNICAL NETWORK UPGRADES, BUT ALSO REQUIRES SIGNIFICANT INVESTMENTS IN BACK OFFICE SUPPORT SYSTEMS AND SERVICE PROVISIONING."

FOR EACH OF ROGERS, SHAW AND COGECO, PROVIDE:

- A) THE PLANNED CAPITAL EXPENDITURES DIRECTLY CAUSAL TO THEIR TELEPHONY SERVICE OFFERINGS, EITHER INCURRED OR TO BE INCURRED BY YEAR-END 2006;
- B) THE PROPORTION OF THE AMOUNT IN A), WITH JUSTIFICATION, THAT WOULD BE CONSIDERED SUNK, THAT IS, WOULD HAVE NO ECONOMIC VALUE UPON EXIT OF THE TELEPHONY MARKET; AND
- C) THE PROPORTION OF THE AMOUNT IN A) THAT HAS ALREADY BEEN INCURRED.

R.

(a), (c)

See the responses to Cogeco(CRTC)20Jul05-213, Rogers(CRTC)20Jul05-213, and Shaw(CRTC)20Jul05-213.

More detailed information respecting the planned capital expenditures for telephony service offerings of Rogers, Shaw and Cogeco is confidential. Such detailed information is commercially sensitive and is consistently treated in a highly confidential manner. Release on the public record of planned capital expenditures would enable existing and potential competitors to formulate more effective marketing strategies and to focus on specific market segments, thereby prejudicing the competitive position of the cable companies and causing specific direct harm to them.

(b) The cable companies consider that all capital expenditures that are directly causal to their telephony service offerings would be considered sunk.

*****END OF DOCUMENT*****

ATTACHMENT 1

Replies to Requests for Further Information and Disclosure**CCTA(The Companies)20Jul05-9 (b) – (f) PN 2005-2**

In this interrogatory, CCTA was requested to provide information on the rates for cable television services provided by Cogeco, Rogers and Shaw. Specifically, the interrogatory sought for each of these companies:

- b) For each MSO, for the licensed areas listed in a) 2., confirm that the regulated rate for basic monthly service is the maximum rate that can be charged, and that the licensee is permitted by the Commission to charge a rate lower than the regulated basic monthly rate if it so chooses.
- c) For each of the licensed areas listed in a) 1. and a) 2., confirm that the monthly rates for discretionary broadcasting services, that is any broadcasting services provided in addition to the basic service, are not rate-regulated by the Commission. If the answer is in the negative, describe the specific circumstances in which the rate for discretionary services is rate-regulated by the Commission.
- d) Describe in detail any and all circumstances, providing examples, whereby one subscriber would pay a different monthly rate than another subscriber, residing within the same licensed area, who receives an identical set of programming services.
- e) Describe any "bulk rate" monthly subscription rates to subscribers residing in multiple-unit dwellings, and describe in detail the circumstances under which that monthly rate differs from:
 - 1. bulk subscription rates to other multiple-unit dwellings in the same licensed area;
 - 2. the standard rate offered to residents of single-units dwellings in the same licensed area; and
 - 3. the standard rate offered to residents of multiple-unit dwellings where no bulk rate is provided.
- f) Describe any circumstances under which a subscriber residing in a multiple-dwelling unit would pay a different monthly subscription rate from a resident in a single-unit dwelling within the same licensed area, receiving an identical set of broadcasting services from the licensee.

In response to the information requested by The Companies, CCTA stated that the information requested is irrelevant and unnecessary for a determination in this proceeding for the following reasons.

The issues before the Commission in this proceeding deal with the framework for forbearance from regulation of the ILECs local exchange services. As such, there is no basis for requiring pricing information respecting cable companies' broadcast distribution services. These services are not regulated under the *Telecommunications Act*. Information regarding any aspects of these services,

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including how such services are priced and marketed, is not necessary to make a determination on the issues in this proceeding.

In requesting a further response to this interrogatory, The Companies stated:

Cable television markets provide examples of how normal competitive markets function. Several parties to this case have alleged that certain behaviour such as for example, time limited offers, discounts, etc. should be restricted or not allowed at all for incumbent providers of local exchange services even in a forbore environment. A response to this question will provide insight to parties and the Commission about what behaviour should be expected and permitted under the normal functioning of a competitive market. It will also support the Companies' position that the concerns raised by parties, including CCTA itself, to this sort of behaviour are unfounded.

CCTA remains of the view that the information requested is irrelevant and unnecessary. In CCTA's submission, information respecting pricing of cable television services by Cogeco, Rogers and Shaw is of little evidentiary value to the Commission or interested parties to this proceeding. As CCTA stated in its response, the regulation of cable television services is not subject to the objectives or provisions of the *Telecommunications Act*. As these services are regulated pursuant to the *Broadcasting Act*, the outcomes in the market for these services are influenced by the objectives in that Act, as embodied in the regulations that apply. CCTA described some of the factors influencing pricing in response to CCTA(Aliant)20Jul05-102:

Prices in the broadcast distribution market are driven in large part by the volume (i.e., number of channels) and the cost of the programming content distributed. Distribution of programming services by cable companies are regulated by the Commission with respect to the wholesale rates paid, the number of services that must be carried and whether services must be carried on the basic service or one of the discretionary tiers. Cable companies have increased their prices in response to Commission-approved increases in wholesale rates and the licensing of additional programming services that must be carried.

These factors can result in movements in prices that are not related to competitive market forces but due to regulatory obligations that flow from the Commission's objectives under the *Broadcasting Act*. These services are not subject to any tariffing requirements pursuant to the *Telecommunications Act*, nor have the services been forbore from regulation pursuant to section 34 of that Act.

This proceeding's primary purpose is to develop the regulatory framework for forbearance in the local exchange services market. This requires assessing the criteria for forbearance that would ensure the Commission fulfills its obligations pursuant to section 34 of the *Telecommunications Act*. More specifically, what criteria would ensure that forbearance would be granted where: (i) to refrain from regulating local exchange services "would be consistent with the Canadian telecommunications policy objectives;" (ii) local exchange service provided by a Canadian carrier "is or will be subject to sufficient competition to protect the interests of users;" and (iii) to refrain would not be

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likely "to impair unduly the establishment or continuation of a competitive market for that service or class of services." It is difficult to understand how the purpose of this proceeding would be furthered by examining information on pricing of cable television services that are not subject to the same legislative authority or objectives. CCTA further submits that the state of competition in the market for broadcasting distribution services is not at issue in this proceeding. As such, there is no reason to consider pricing behaviour in that market.

To the extent it may be relevant to consider evidence on pricing behaviour for services in markets other than local exchange services, it may be more informative to consider evidence on pricing behaviour in the markets for services subject to the *Telecommunications Act*. For example, The Companies could have lead evidence on pricing of telecommunications services that are subject to sufficient competition to have been forborne pursuant to section 34 of that Act. A list of these was provided in The Companies Submission of June 22, 2005, at paragraph 10:

There are many instances in Canadian telecommunications where the Commission has refrained from regulation, either at the introduction of a service or at some later date, to the benefit of the competitive process and, consequently, to customers. Wireless, Internet, terminals, long distance, and inter-exchange private lines are worthy examples of the success of this approach.

The Companies have not found it necessary or relevant to the issues in this proceeding to lead evidence, or address interrogatories, about pricing behaviour in the markets for these competitive telecommunications services. The only exception is wireless services which The Companies have argued are in the same relevant market as local exchange services.

CCTA submits that there is no basis for The Companies claim that evidence on pricing behaviour respecting cable television services is relevant to this proceeding while disregarding pricing of competitive telecommunications services. Unlike cable television services, pricing of the above telecommunications services is not influenced by regulatory objectives under the *Broadcasting Act*.

Finally, CCTA notes that the Commission has not made reference to, or sought information on, the prices of cable television services. The Commission has also rejected requests in a recent proceeding respecting regulatory treatment of local exchange services to require further responses to interrogatories seeking information related solely to the provision of cable television services and the broadcast distribution market.¹ The same principles apply in the case of this proceeding. In this regard, CCTA notes that the information sought in CCTA(The Companies)20Jul05-9 (b) – (f) is related solely to the pricing behaviour and regulation of cable television services.

¹ Commission letter, "Telecom Public Notice CRTC 2003-10, Amendments to Telecom Public Notice CRTC 2003-8, Review of price floor safeguards for retail tariffed services and related issues – Requests for further response to interrogatories and/or disclosure of responses filed in confidence; dated April 16, 2004.

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For the reasons given above, CCTA submits that it is unnecessary to provide any further information in response to CCTA(The Companies)20Jul05-9 (b) – (f).

CCTA(The Companies)20Jul05-13

In this interrogatory, The Companies requested information on the capital expenditures by Cogeco, Rogers and Shaw related to telephony services. Specifically, the interrogatory sought for each of these companies:

- a) the planned capital expenditures directly causal to their telephony service offerings, either incurred or to be incurred by year-end 2006;
- b) the proportion of the amount in a), with justification, that would be considered sunk, that is, would have no economic value upon exit of the telephony market; and
- c) the proportion of the amount in a) that has already been incurred.

In the response, CCTA referred to the individual responses to the following interrogatories: Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213. CCTA stated that more detailed information respecting the planned capital expenditures for telephony service offerings of Rogers, Shaw and Cogeco is confidential. Such detailed information is commercially sensitive and is consistently treated in a highly confidential manner. Release on the public record of planned capital expenditures would enable existing and potential competitors to formulate more effective marketing strategies and to focus on specific market segments, thereby prejudicing the competitive position of the cable companies and causing specific direct harm to them.

In the request for a further response, The Companies noted that the information in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213 was filed in confidence with the Commission. The Companies further noted that, "the Commission was seeking not only aggregate information related to capital expenditures," but also other more detailed information. The Companies stated that they are requesting only aggregate capital expenditures for a one year period and the proportion that would be sunk. In The Companies' view, "disclosure of the information requested in this question would not, in any way, assist existing and potential competitors to formulate more effective marketing strategies nor to focus on specific market segments, as CCTA claims."

CCTA notes that it is filing in Attachment 2 of this submission a supplemental response to CCTA(The Companies)20Jul05-13, with respect to the information requested in part (b) of the interrogatory. As the supplemental response indicates, the companies are of the view that all capital expenditures that are directly causal to their telephony service offerings would be considered sunk.

CCTA submits that The Companies' request for a further response is, in part, a request for disclosure of the information filed in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213. The cable companies that

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filed these responses claimed confidentiality for both the aggregate and the more detailed information. CCTA further notes that MTS Allstream has sought disclosure of the information filed in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213. The reasons given by the individual companies in response to MTS Allstream's request for disclosure apply equally in response to the request by The Companies respecting CCTA(The Companies)20Jul05-13.

In addition, CCTA disagrees with the claims of The Companies that information they have requested is "more aggregate" than that provided in response to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213. The Companies requested in part (a) of the interrogatory information for a specific period up to year-end 2006, and in part (c) of the interrogatory the proportion that has already been incurred. In contrast, the information provided in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213 is for aggregate of total capital expenditures that will be incurred over multiple years, as well as one-time and recurring costs.

Disclosure of the capital expenditures planned for the initial period of market entry by the three cable companies would allow existing and potential competitors to discern more detailed information regarding the readiness of the companies to enter new markets, the financial resources required to do so and an indication of the companies' plans to enter new markets. Information as to the proportion that has already been incurred would further reveal to competitors the amount of capital expenditure that is planned for the upcoming sixteen months. This information could be used, in turn, to derive more specific marketing plans in anticipation of cable companies' entry into new territories, both in the near term and longer term. Disclosure of such information would clearly cause direct and specific harm to Cogeco, Rogers and Shaw.

The competitive sensitivity and confidentiality of information respecting individual competitors' plans for service deployment has been recognized by The Companies in past proceedings. Most recently, in response to a request for disclosure from MTS Allstream respecting information filed in confidence in response to The Companies(CRTC)16Jul04-1 PN 2004-2 a), The Companies stated as follows:

In response, it is essential in a competitive marketplace that competitors be able to develop their services in confidence and that they retain control over the disclosure of such plans. Divulging plans of either a specific or general nature would provide potential or actual competitors with information which may allow such competitors to more effectively target their marketing and service development efforts. This would cause direct harm to the Companies. The Companies note that in their day-to-day operations they carefully protect such information.²

² The Companies responses to requests for further responses and for public disclosures filed in Telecom Public Notice 2004-2, Attachment 2, page 1; dated August 23, 2004.

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In CCTA's submission, The Companies' reasons for confidential treatment of their own service plans are just as applicable to the cable companies' capital expenditure plans. CCTA notes that the Commission upheld The Companies' claim for confidentiality.³

CCTA further submits that disclosure of the requested information would cause specific direct harm to Shaw, given its decision to rely on an affiliate of Bell Canada for some of its CLEC operations. Access to detailed cost information would prejudice Shaw's position in negotiations with Bell Canada as a supplier as the information could be used to determine Shaw's cost of entering the local telephone market.

It is also the Commission's practice in assessing requests for disclosure of confidential information to take into consideration the level of disaggregation. The more disaggregated the information is, the more likely its disclosure would cause specific direct harm. As indicated above, the information requested by The Companies would be more disaggregated than that already on the public record, and that filed in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213. In particular, The Companies requested disclosure of a single year's worth of capital expenditure, as compared to the more aggregated figure of total expenditure over a multi-year timeframe.

Another important factor in determining whether to disclose information is the degree of competition in the market. CCTA submits that disclosing capital expenditure plans for new entrants in an emerging competitive market would substantially increase the likelihood of specific direct harm that could be expected to result from disclosure. The specific harm that could result from disclosure of the competitors' expenditures and entry plans is far greater than what might be expected from the disclosure of the ILECs' capital expenditures. Even in the latter case, the Commission has upheld the confidentiality of ILECs' capital expenditures. In CCTA's submission, disclosure on the public record of breakdowns of a company's expected expenditures by individual cost components, either for a single year or a multi-year timeframe, would be inconsistent with the Commission's practice to uphold the confidentiality of detailed cost information.

For the reasons given above, CCTA submits that it is unnecessary to provide any further information in response to CCTA(The Companies)20Jul05-13.

CCTA(The Companies)20Jul05-14

In this interrogatory, The Companies requested information on detailed expenditures by Cogeco, Rogers and Shaw related to telephony services. Specifically, the interrogatory sought for each of these companies expenditures for each of the following activities that will be incurred for the period July 2005 to year-end 2006:

³ Commission letter, "Telecom Public Notice CRTC 2004-2, Regulatory framework for voice communication services using Internet Protocol," dated September 8, 2004.

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- a) changes and /or the acceleration of network upgrade plans in order to install additional transmission facilities and routing equipment;
- b) increasing the capacity at the head-end;
- c) increasing resources allocated to customer support;
- d) increasing resources allocated to installation at customer premises;
- e) increasing resources allocated to customer premises equipment;
- f) increasing resources allocated to obtaining access to support structures and rights of way; and
- g) increasing resources allocated to the negotiation and resolution of outstanding disputes.

In the response, CCTA referred to the individual responses to the following interrogatories: Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213. CCTA stated that more detailed information respecting the expenditures directly causal to the telephony service offerings of Rogers, Shaw and Cogeco is not relevant to this proceeding and in any event would be confidential. Such detailed information is commercially sensitive and is consistently treated in a highly confidential manner. Release on the public record of planned capital expenditures would enable existing and potential competitors to formulate more effective marketing strategies and to focus on specific market segments, thereby prejudicing the competitive position of the cable companies and causing specific direct harm to them.

In the request for a further response, The Companies noted that the information in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213 was filed in confidence with the Commission. In support of their request, The Companies claimed that the information would allow parties to assess CCTA's statement at paragraph 103 of its Submission respecting the ability of cable companies to expand supply of telephony services.

The ability of cable companies to expand supply, such as taking on new customers or deploying in new areas, will be constrained by the state of their network upgrades, and the capital and labour resources available to overcome these constraints. In order to pursue such an expansion, companies may need to change and/or accelerate network upgrade plans in order to install additional transmission facilities and routing equipment. There may also need to be increases in capacity at the head-end as well as more resources allocated to customer support, installation at customer premises and customer premise equipment. Capital and labour resources may need to be diverted or increased. Access to support structures and rights of way may need to be negotiated and outstanding disputes resolved.

The Companies further claimed that the information requested in CCTA(The Companies)20Jul05-14 is of such "critical importance" that the public interest outweighs any confidentiality concerns that may arise.

CCTA submits that the information filed in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213 provides the Commission with sufficient detail to assess the one-time and recurring expenditures that the three

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cable companies plan to incur to support the supply of telephony services. The information provided in confidence includes total expenditures, further broken down by individual cost components. This information contains extremely competitively-sensitive details regarding the specific costs that individual cable companies will incur.

In CCTA's submission, the fact that there are substantial sunk costs that must be incurred in order for cable companies to expand the supply of local telephony services to new areas demonstrates the presence of material constraints. CCTA notes, however, that The Companies have already expressed their view that the total capital expenditures of the cable companies for telephony services is "relatively little".

In response to The Companies(CRTC)20Jul05-206, they stated at page page 4:

Cable companies, like Rogers, Vidéotron, Cogeco, Shaw and Eastlink, spent \$6 billion over the last five years to upgrade their networks in order to offer advanced digital communications services. The result of this sunk investment is that virtually all of the cable companies' networks are now capable of providing two-way broadband Internet access service, and telephony with relatively little additional investment. Evidence of this fact is provided by the launch of local telephony services by all major cablecos in the last year. (emphasis added, footnotes in original omitted)

Shaw and Rogers have already publicly announced planned capital expenditures of nearly \$300 million to deploy telephony, as indicated at paragraph 106 in CCTA's Submission. Disclosure of more detailed information on the underlying cost components provided in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213 is unlikely to change the views of The Companies that the cable companies' expenditures on telephony are "relatively little".

In CCTA's submission, the information already on the public record respecting total capital expenditures to support cable telephony, combined with the description of the resources and activities underlying those expenditures, provide parties with sufficient evidence to assess whether constraints on supply expansion exist. CCTA notes in this regard that the purpose of the proceeding is to determine the framework for forbearance of the ILECs' local exchange services. It is not a rate-setting proceeding, and more importantly, not a proceeding to establish tariffed rates for the cable companies' local telephony services. The public interest in reviewing detailed cost estimates of the cable companies' telephony costs is significantly lower, by comparison to proceedings to consider setting tariffed rates for ILECs' services. Even in those latter proceedings, the confidentiality of detailed cost estimates has generally been upheld. CCTA submits that in the context of the current proceeding, there is little public interest in the disclosure of detailed cost estimates of the competitors. It follows, therefore, that the public interest in providing further detailed information is limited and must be weighed against the substantial harm that would be caused by disclosure of such information.

CCTA is strongly of the view that the public interest in disclosure of more detailed cost information provided in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213 does not outweigh the

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substantial specific direct harm that would be caused by disclosure of this information on the public record.

First, detailed cost information is routinely filed in confidence by the ILECs and not disclosed in the course of regulatory proceedings, including proceedings where the purpose is to establish tariffed rates. A recent case in point is the filing by Bell Canada that accompanied its Tariff Notice 6874. In that tariff filing, Bell Canada did not disclose the cost information in the accompanying Economic Evaluation Study or the minimum and maximum ranges of the rates for its Digital Voice service. The level of detailed cost information for which The Companies have sought disclosure is comparable to that provided in support of proposed tariffs for rate regulated services.

Second, the level of disaggregation of the costing information requested by The Companies exceeds that provided in confidence to the Commission in that The Companies requested information for only the period July 2005 to year-end 2006. This further increases the competitive-sensitivity of the information for which disclosure is being sought.

Disclosure of the specific capital expenditures planned for the initial period of market entry by the three cable companies would allow existing and potential competitors to discern more detailed information regarding the readiness of the companies to enter new markets, the financial resources required to do so, an indication of the companies' plans to enter new markets and the companies' underlying cost structures. Existing and potential competitors may also be able to use this information in combination with other publicly available information to develop more accurate projections of the cable companies' telephony entry plans. This information could be used, in turn, to derive more specific marketing plans in anticipation of cable companies' entry into new territories, both in the near term and longer term. Disclosure of such information would clearly cause direct and specific harm to Cogeco, Rogers and Shaw.

The competitive sensitivity and confidentiality of information respecting individual competitors' plans for service deployment has been recognized by The Companies in past proceedings, as noted in CCTA's reply to the requests for further information in response to the interrogatory CCTA(The Companies)20Jul05-13.

In addition, information on individual cost components is highly competitively-sensitive information. Such information related to actual and planned expenditures at this level of detail is not revealed in the course of disclosures to investors or the financial community. Requiring disclosure on the public record of the information for the three cable companies could impair the companies' financial position as publicly-traded corporations.

CCTA further submits that disclosure of the requested information would cause specific direct harm to Shaw, given its decision to rely on an affiliate of Bell Canada for some of its CLEC operations. Access to detailed cost information would prejudice Shaw's position in negotiations with Bell Canada as a supplier as the information could be used to determine Shaw's cost of entering the local telephone market.

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As also noted in CCTA's reply above, the Commission's practice in assessing requests for disclosure of confidential information takes into consideration the level of disaggregation. The more disaggregated the information is, the more likely its disclosure would cause specific direct harm. As indicated above, the information requested by The Companies is very disaggregated, indicating cost information for individual cost components and, as requested by The Companies, for a particular period of time. This information is far more disaggregated than that already on the public record and, due to the limited time period, more disaggregated than that filed in confidence in the responses to Cogeco(CRTC)20Jul05-213; Rogers(CRTC)20Jul05-213; and Shaw(CRTC)20Jul05-213. In particular, The Companies requested disclosure of capital expenditures for an 18 month period, as compared to the more aggregated figure of total expenditure over a multi-year timeframe.

As also indicated above, the degree of competition in the market is another important factor in determining whether to disclose information on the public record. CCTA submits that disclosing detailed cost information for new entrants in an emerging competitive market would substantially increase the likelihood of specific direct harm that could be expected to result from disclosure. The specific harm that could result from disclosure of the competitors' cost information is far greater than what might be expected from the disclosure of the ILECs' cost information. Even in the case of the latter case, the Commission has upheld the confidentiality of ILECs' cost information. In CCTA's submission, disclosure on the public record of breakdowns of a company's expected expenditures by individual cost components, either for a single year or a multi-year timeframe, would be inconsistent with the Commission's practice to uphold the confidentiality of detailed cost information.

For the reasons given above, CCTA submits that it is unnecessary to provide any further information in response to CCTA(The Companies)20Jul05-14.

CCTA(MTS Allstream)20Jul05-204

In this interrogatory, CCTA was requested to explain whether the same underlying facilities are used or can be used to provision both residential and business local exchange services.

CCTA's response to this interrogatory referred MTS Allstream to the CCTA's responses to CCTA(CRTC)20Jul05-207 and CCTA(Bureau)20Jul05-1(b).

MTS Allstream claimed that the information provided in the referenced responses does not provide the information requested in CCTA(MTS Allstream)20Jul04-204. MTS Allstream further stated that it was seeking "answers [to] the technical question posed in the initial interrogatory."

At the outset, CCTA submits that if the intent of MTS Allstream's initial interrogatory had been to obtain technical information on the facilities used to provision residential and business local exchange services then MTS Allstream should have specified that in its initial interrogatory. The initial interrogatory, however, made no reference to technical

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requirements. Rather, the initial interrogatory begins with a quote from paragraph 111 of the report prepared by Drs. Gillen and Ross:

[t]hat residential and business consumer groups constitute separate product markets, this because of their different demands and differences in the costs of delivering those services (in addition to historically different regulatory treatments).

Based on the quote, the initial interrogatory was interpreted as seeking an explanation of the differences in the facilities used to provision residential and business services as these relate to "differences in the costs of delivering these services".

CCTA is of the view that the information provided in the referenced interrogatory responses provides a complete response to the initial interrogatory. In response to CCTA(CRTC)20Jul05-207, CCTA stated:

It is also expected that, even where a service provider does not have specific limitations on the use of a local exchange service, the features and functionality of a residential service would generally not meet the needs of a business customer.

This statement indicates that, in order to meet the needs of a business customer, additional features and functionality would need to be provided. This is one factor that would lead to differences in costs and demonstrates the differences in facilities used to provision service to a business customer.

In response to CCTA(Bureau)20Jul05-1 (b), at sub-part (v), CCTA stated:

CCTA's member companies have networks that primarily serve residential customers and do not have the infrastructure in place to provision service to most business customers. It would require substantial capital investment to build the necessary infrastructure to extend the network to reach business customers not already passed by cable infrastructure. This investment would be a major contributor to significant cost differences between the ILECs and cable companies. CCTA does not have any other specific information on the magnitude of these costs. (emphasis added)

This statement further demonstrates the differences in facilities required to provide service to business customers.

In CCTA's submission, the information provided in the referenced interrogatories provides an explanation as to "whether the same underlying facilities are used or can be used to provision both residential and business local exchange services." The information as requested in the initial interrogatory has been provided. It is not open to MTS Allstream to address to CCTA a supplemental interrogatory seeking additional information "from a technical standpoint" of the facilities in question.

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The procedures in PN 2005-2 do not provide parties the opportunity to pose supplemental interrogatories, including revised versions of interrogatories. It would be procedurally unfair to CCTA and other interested parties to permit MTS Allstream such an opportunity. The Commission has rejected efforts by parties to seek new information in past rulings respecting requests for further responses. One of the Commission's general principles in considering requests for further responses is "the extent to which an interrogatory answer is responsive to the interrogatory **as it was originally asked.**" CCTA submits that MTS Allstream has failed to demonstrate that CCTA's response is not responsive to the original interrogatory.

For the reasons given above, CCTA submits that it is unnecessary to provide any further information in response to CCTA(MTS Allstream)20Jul05-204.

CCTA(MTS Allstream)20Jul05-302

In this interrogatory, CCTA was requested to provide market share information broken down by LIR and province for each of the years 1998 through to 2005; including the following:

- a) The percentage market share held by Canadian cable companies, including their affiliates, in the retail market for residential local exchange services;
- b) The percentage market share held by Canadian cable companies, including their affiliates, in the retail market for business local exchange services;
- c) The percentage market share held by Canadian cable companies, including their affiliates, in the wholesale market for underlying local access facilities that are used by competitors to provision residential local exchange services; and
- d) The percentage market share held by Canadian cable companies, including their affiliates, in the wholesale market for underlying local access facilities that are used by competitors to provision business local exchange services.

In the response, CCTA noted that MTS Allstream had directed interrogatories seeking similar information from individual cable companies and provided references to the responses to Cogeco(MTS Allstream)20Jul05-302, Rogers(MTS Allstream)20Jul05-302 and Shaw(MTS Allstream)20Jul05-302. CCTA further stated that information with respect to other cable companies, which are not publicly-traded, is confidential and consistently treated as such by these companies. CCTA further noted that information respecting forecasts prepared by third parties for the cable industry in aggregate was provided in the response to CCTA(CRTC)20Jul05-205.

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With respect to the information requested in parts (a) and (b) of the interrogatory regarding retail market shares, MTS Allstream stated that a central issue in this proceeding is how to determine ILEC and non-ILEC market share in the retail market for local exchange services. MTS Allstream further stated that the information was required in order to test the claims of ILECs in the proceeding respecting the state of competition in the retail market for local exchange services. MTS Allstream, in its request for further information, indicated that information on market share by province would be sufficient. MTS Allstream also argued that the public interest in disclosure of this information is extremely high given the fact that retail market share thresholds is a key issue under consideration in this proceeding. MTS Allstream further argued that the provision of this information at an aggregated level, such as on a province-by-province basis, would not result in specific direct harm to any of these companies, especially given the fact that the requested information is historical in nature.

CCTA submits that the information requested in parts (a) and (b) of the interrogatory regarding retail market shares has been provided to the extent possible. CCTA notes that the information provided in response to CCTA(CRTC)20Jul05-205 provides estimates of retail market shares for cable companies for the period 2004 to 2007, broken down by residential and business lines. CCTA further notes that EastLink is the only cable company that operated as a CLEC prior to 2005. Information respecting EastLink's residential access lines for the period 2000 to 2004 has been filed with the Commission, subject to a claim of confidentiality, in the response to EastLink(CRTC)20Jul05-803. Neither MTS Allstream nor any other party has sought disclosure of the information filed in the response to EastLink(CRTC)20Jul05-803. CCTA notes, however, that Aliant has filed in Attachment 2 of its response to Aliant(CRTC)20Jul05-808 estimates of entrants access lines and market share in the residential local exchange market for Nova Scotia and Prince Edward Island for 2004.⁴ CCTA will reserve further comment on this information pending a review of Aliant's estimates and the underlying assumptions.

With respect to the information requested in parts (c) and (d) of CCTA(MTS Allstream)20Jul05-302 regarding wholesale market shares, MTS Allstream stated that it is also an issue in this proceeding as to whether it is necessary to establish any additional rules relating to the underlying facilities that are used by the ILECs to provision their retail local exchange services if those retail services are forborne from regulation. MTS Allstream claimed that the requested information on market shares of cable companies in wholesale facilities would indicate how significant these alternative sources of supply may be in relation to the ILECs' and that this would enable it to determine what the regulatory treatment should be for the ILECs' underlying facilities. MTS Allstream further claimed that information at the provincial level and on a historical basis would not cause harm to the cable companies.

CCTA submits that the information sought by MTS Allstream in parts (c) and (d) of the interrogatory CCTA(MTS Allstream)20Jul05-302 is similar to that filed by cable companies in the proceeding initiated by Telecom Public Notice 2002-4, which culminated in Telecom Decision CRTC 2005-6 (Decision 2005-6). In that proceeding,

⁴ Aliant stated in its interrogatory response that entrants' share of Residential lines other than EastLink's is insignificant as of year-end 2004.

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and pursuant to Telecom Decision 2003-52, the Commission directed Cogeco, EastLink, Rogers and Shaw to file information respecting access and intra-exchange facilities. Information filed by these companies was kept confidential, however, the Commission did release aggregated information in an attachment to its letter dated October 30, 2003. In that letter, it stated:

In making determinations with respect to the information that it would be appropriate to place on the public record, the specific direct harm, if any, likely to result from disclosure was weighed against the public interest in disclosure. Given the high degree of specific direct harm that could flow from the disclosure of a respondent's detailed data, Commission staff undertook to aggregate information in order to provide parties with a more complete record while upholding a respondent's claim of confidentiality in respect of the detailed information provided in its responses.

CCTA submits that, in the context of the issues before the Commission in this proceeding, the public interest in disclosure of the requested information is much lower. As MTS Allstream indicates in its request, determining the ILECs' market share in the retail market for local exchange services is a central issue. CCTA is of the view that the information on wholesale market shares requested in parts (c) and (d) of CCTA(MTS Allstream)20Jul05-302 is less relevant to this central issue. At the same time, the competitive-sensitivity of information on individual cable companies' market share in the provision of wholesale facilities is very high, as recognized by the Commission in its letter of October 30, 2003. CCTA submits, therefore, that the public interest in disclosure of the requested information does not outweigh the specific direct harm that could flow from disclosing individual companies' market shares.

CCTA further submits that MTS Allstream already has information as to the significance of cable companies as alternative sources of supply of wholesale facilities. At paragraph 70 of Decision 2005-6, the Commission made the following finding based on detailed information filed by the five largest cable companies:

The Commission considers that hydro TSPs and cable companies are at this time insignificant suppliers of DNA access and intra-exchange services.

In CCTA's submission, the findings of the Commission provide MTS Allstream with sufficient information to comment on the regulatory treatment for the ILECs' underlying facilities, as this relates to the central issue in this proceeding, which is to determine the framework for forbearance from the regulation of the ILECs' local exchange services.

For the reasons given above, CCTA submits that it is unnecessary to provide any further information in response to CCTA(MTS Allstream)20Jul05-302.

CCTA(Xit)20Jul05-2

In this interrogatory, CCTA was requested to provide a list of all of the conditions that CCTA deemed as necessary for asynchronous voice to become a functional substitute

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to isochronous voice before forbearance of isochronous local telephone services can be warranted. CCTA was further instructed to provide its answer taking into consideration the following parameters: means of controlling jitter, delay, echo suppression, support of legacy voice band protocols such as fax, modem, TTY, alarm services, DTMF transport, etc.

In CCTA's response, it stated:

The determination of when forbearance of local exchange services is warranted includes the identification of the relevant market for determining if the incumbent has market power and includes identifying the products that are close substitutes with local exchange service. In Decision 2005-28, the Commission determined that local VoIP services should be regulated as local exchange services (para. 194). Consumers switching from circuit-switched local services to local VoIP services would indicate that the products are considered functional substitutes. CCTA described the criteria for forbearance that should apply to local exchange services in paragraphs 131 to 147 of its Submission of June 22, 2005.

In Xit's request for a further response to CCTA(Xit)20Jul05-2, it referred CCTA to MTS Allstream's response to Allstream(Xit)20Jul05-3 and requested that CCTA re-state its answer. CCTA has reviewed the response to the referenced interrogatory and is unable to understand why it is relevant to the information sought in CCTA(Xit)20Jul05-2 as the two interrogatories did not request the same information.

In any event, CCTA submits that it has provided a complete answer to the original interrogatory as it was addressed. Xit has requested CCTA to file a further response, not based on the original interrogatory, but in response to information that another party has provided in response to a separate interrogatory. In essence, Xit has sought the opportunity to address a supplemental interrogatory to CCTA.

The procedures in PN 2005-2 do not provide parties the opportunity to pose supplemental interrogatories, including revised versions of interrogatories. It would be procedurally unfair to CCTA and other interested parties to permit Xit such an opportunity. The Commission has rejected efforts by parties to seek new information in past rulings respecting requests for further responses. One of the Commission's general principles in considering requests for further responses is "the extent to which an interrogatory answer is responsive to the interrogatory **as it was originally asked.**" CCTA submits that Xit has failed to demonstrate that CCTA's response is not responsive to the original interrogatory.

For the reasons given above, CCTA submits that it is unnecessary to provide any further information in response to CCTA(Xit)20Jul05-2.

CCTA(Xit)20Jul05-22

In this interrogatory, CCTA was requested to provide a response to the following:

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Given that today's rates are derived from local telephone rates frozen in 2002 under price caps and that it is nearly next to impossible to know that prices would have been prevailing otherwise, the question poses itself as to what would be the Competition Bureau's approach given that the mere fact that ILECs would only choose to maintain the current rates could be interpreted as an exercise of market power tantamount to increasing rates over that which should have likely prevailed otherwise. How do the MEGs intersect with price cap regulation in the context of determining whether forbearance and when forbearance is appropriate?

In CCTA's response, it stated that the question is not relevant to the CCTA since it appears to be directed to the Competition Bureau.

Xit's request does not comment on the completeness of CCTA's response. Rather, it appears to have posed a new interrogatory, as follows:

If an ILEC chose to maintain its rates as constrained by Price Cap regulation at the current level rather than decrease them upon forbearance being granted, would the Competition Bureau consider this an exercise of market power tantamount to a rate increase? If not, please explain why.

CCTA remains of the view that it is up to the Competition Bureau to determine whether the hypothetical situation described above would be considered an exercise of market power. CCTA notes that Xit addressed the same interrogatory to the Competition Bureau. CCTA is not in a position to speculate as to how the Bureau would address a complaint brought before it that met the circumstances described in Xit's scenario. CCTA has no further information to provide, either in response to the original interrogatory or the new interrogatory, as posed by Xit in its request for a further response.

The procedures in PN 2005-2 do not provide parties the opportunity to pose supplemental interrogatories, including revised versions of interrogatories. It would be procedurally unfair to CCTA and other interested parties to permit Xit such an opportunity. The Commission has rejected efforts by parties to seek new information in past rulings respecting requests for further responses. One of the Commission's general principles in considering requests for further responses is "the extent to which an interrogatory answer is responsive to the interrogatory **as it was originally asked.**" CCTA submits that Xit has failed to demonstrate that CCTA's response is not responsive to the original interrogatory.

For the reasons given above, CCTA submits that it is unnecessary to provide any further information in response to CCTA(Xit)20Jul05-22.

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