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**Coalition for Competitive Telecommunications /
Coalition pour une concurrence en télécommunications**

August 15, 2005

SENT BY E-MAIL

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

Dear Ms. Rhéaume:

**Forbearance from Regulation of Local Exchange Services:
Telecom Public Notice CRTC 2005-2**

In accordance with the procedures set forth in Public Notice 2005-2, enclosed please find the responses of the Coalition for Competitive Telecommunications (the "Coalition") to the interrogatories that it received from the Competition Bureau, The Companies, MTS Allstream and Primus.

The Coalition notes that the interrogatories that it received from ARCH relate to the provision of telecommunications products and services. Neither the Coalition or its members offer any telecommunication products or services nor do they intend to offer any such products or services in the future. Accordingly, the Coalition has not provided responses to the interrogatories from ARCH.

Yours sincerely,

Ian C. Russell
Chairman
Coalition for Competitive Telecommunications

Coalition Advisors

Davies, Hoskin & Harcourt LLP
Tactix Government Consulting

INFORMATION REQUESTED BY
PRIMUS TELECOMMUNICATIONS CANADA INC.

Q. (A) IN THEIR COMMENTS, CALL-NET ENTERPRISES INC. AND MTS ALLSTREAM ADDRESS THE IMPORTANCE OF OPEN AND EFFECTIVE WHOLESALE ACCESS TO THE ILECS' NETWORKS IN ORDER TO OFFER COMPETITIVE SERVICES. PROVIDE YOUR VIEWS ON THE NEED FOR SUCH AN ACCESS REGIME PRIOR TO FORBEARANCE BEING GRANTED IN THE LOCAL MARKET.

(B) PROVIDE YOUR VIEWS ON WHETHER THE ACCESS ISSUES THAT NEED TO BE ADDRESSED (AS IDENTIFIED BY CALL-NET AND MTS ALLSTREAM) SHOULD ALSO BE APPLIED TO THE NETWORKS OF THE CABLE COMPANIES. GIVEN THAT, IN MANY INSTANCES, LAST MILE CABLE NETWORKS ARE THE ONLY VIABLE ALTERNATIVE TO ILEC LOCAL NETWORKS, EXPLAIN FULLY WHETHER CABLE NETWORKS ARE CURRENTLY SUFFICIENTLY OPEN TO COMPETITORS. IN YOUR VIEW, SHOULD THE COMMISSION MANDATE FURTHER CHANGES TO THE CURRENT TARIFFS GOVERNING ACCESS TO CABLE NETWORKS PRIOR TO GRANTING FORBEARANCE TO THE ILECS' LOCAL SERVICES?

(C) IN YOUR VIEW, HOW WOULD THE FAILURE TO MANDATE WHOLESALE ACCESS (AS REFERENCED IN A & B ABOVE) THREATEN THE CONTINUANCE OF A COMPETITIVE MARKET AFTER A DECISION TO FORBEAR HAS BEEN MADE.

A a) In the Coalition's view, the Commission has appropriately addressed wholesale access issues since 1997. Accordingly, the forbearance model proposed by the Coalition would apply only to retail services and assumes that existing wholesale access restrictions (e.g., those relating to co-location and unbundled loops) will continue to apply. The Coalition's model foresees these existing access conditions on essential or near essential facilities being retained for as long as required but does not contemplate the imposition of any new constraints.

With respect to IP-based services however, the Coalition has stated its concerns with respect to open and effective access to underlying networks in order to purchase or offer competitive VoIP services. In the VoIP proceeding the Coalition urged the Commission to take a light handed approach to regulation. However, with respect to access to underlying networks, the Coalition urged the Commission to make clear to all providers of high-speed access services that it will intervene to prevent such a provider from blocking or degrading access to any VoIP service provider chosen by an end-user. In this regard, the Coalition proposed that the Commission impose an access condition on all facilities-based providers under s. 24 of the *Act*. In this final decision in that proceeding, Telecom Decision 2005-28, the Commission declined to impose such an access condition. The Commission indicated it would be prepared to deal with such cases, if they arise, on a case-by-case basis.

INFORMATION REQUESTED BY
PRIMUS TELECOMMUNICATIONS CANADA INC.

- b) The Coalition is of the view that existing wholesale access conditions on essential or near essential facilities should be retained where required.

With respect to the access condition on underlying facilities in the provision of VoIP services, the Coalition submits that any access condition proposed under s. 24 should apply equally to all providers of high-speed access, including cable companies and all LECs. In most parts of Canada, there are only one or two providers of high-speed access facilities. Therefore, at least until there is a significant expansion in the availability of highspeed access facilities, such a condition or constraint on high-speed access providers should apply to all facilities-based providers. Beyond an access condition with respect to IP-based services, the Coalition does not propose any changes to the current tariffs or the imposition of new tariffs.

- c) As noted in response to 2. A) above, in the Coalition's view, the Commission has appropriately addressed wholesale access issues since 1997. Accordingly, the forbearance model proposed by assumes that existing wholesale access restrictions will continue to apply for as long as is required. The only additional requirement proposed by the Coalition is the access condition discussed in the responses to (a) and (b) above.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPANIES

Q.1 PROVIDE THE COALITION'S VIEWS REGARDING THE DESIRABILITY TO ITS MEMBERS OF PURCHASING TELECOMMUNICATIONS SERVICE ARRANGEMENTS THAT INCLUDE NON-CORE TELECOMMUNICATIONS SERVICES SUCH AS WEB HOSTING SERVICES, MANAGED NETWORK SERVICES, AND CONSULTING SERVICES.

- A. The Coalition's members, and business users in general, are interested in purchasing a wide variety of telecommunications services including non-core services such as those listed above. Non-core telecommunications services are a critical component of many businesses today. The Coalition's members are already purchasing and using non-core services and they obtain them from a wide variety of vendors including CLECs, ILECs, ISPs, systems integrators and consulting firms.

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INFORMATION REQUESTED BY
THE COMPANIES

Q.2 PROVIDE THE COALITION'S VIEWS ON LARGE CUSTOMERS' REACTIONS TO NEGOTIATING WITH A SUPPLIER THAT IS SUBJECT TO THE REQUIREMENT FOR REGULATORY APPROVAL OF SERVICE INTRODUCTION, SERVICE CHANGES, AND BUNDLING ARRANGEMENTS.

- A. As the noted in the Coalition's Comments in this proceeding, the process of seeking proposals, assessing alternatives and selecting a supplier is a critical business process which businesses apply daily to all of their operations. Moreover, the skills developed in this regard can play a major role in determining the overall success of the business. Therefore, given the choice between the freely-negotiated contract model that is employed for most business inputs and having their business transactions scrutinized and controlled by the regulator, business and institutional users would clearly prefer the former. And, once such freely negotiated contracts have been put in place, in the Coalition's view, the Commission should make clear that they are valid and binding and refrain, in the interests of business certainty and fundamental principles of contract law, as much as possible from interfering with them. There should be a rebuttable presumption that all such contracts are legally valid and will not be interfered with by regulators except in extraordinary cases.

Business customers, especially those that have the resources and skills to negotiate complex purchasing arrangements, find it extremely frustrating that their freely-negotiated contracts may be found to be invalid and be overturned by the regulator, ostensibly for their own good. These, often large and sophisticated, business customers are clearly capable of determining their own economic interests when negotiating service arrangements and are not in need, or want, of regulatory protection.

These customers and the suppliers that they negotiate with are already subject to laws of general application, such as the *Competition Act*, that are intended to ensure that business is conducted fairly and to protect businesses and markets from abusive conduct. Our members seriously question the justification for, and utility of, regulatory oversight of telecommunications services contracts that are mutually agreeable to the parties.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

**Q.1 (A) ARE LOCAL TELECOMMUNICATIONS PRICES TYPICALLY
NEGOTIATED INDIVIDUALLY OR AS PART OF BUNDLE?**

**(B) IF A BUNDLE, WHAT SERVICES ARE TYPICALLY OFFERED IN THE
BUNDLE?**

**(C) WHAT ARE THE TYPICAL COST SAVINGS OF PURCHASING IN A
BUNDLE?**

A. The Coalition notes that a detailed response to some of the Bureau's interrogatories, namely 1 to 14, with respect to the practices of specific companies which are members of our member associations would require canvassing of over 12,000 companies. This would be an exercise that is beyond the scope of the Coalition's resources and abilities and beyond what is necessary in the context of this proceeding. Nevertheless, the Coalition has attempted to respond to these questions on the basis of its general knowledge and expertise relating to the business telecommunications market and the Coalition's knowledge of the experiences of the typical business telecommunications user.

a) & b) It is very common for businesses, and particularly for large businesses, to negotiate contracts for the provision of local telecommunications services on an aggregated basis. The purchase of several different types of telecommunications services, all negotiated at the same time, may or may not fall within the term "bundle", as the CRTC has defined that term.

The services offered together could include the full range of services to which business telecom customers subscribe. Such services include local and long-distance telephone service, voice messaging systems, teleconferencing service, Internet, wireless and IP applications.

c) The Coalition has no specific information on cost savings, except that they vary widely. The number of services included and the length of the contract term for the services tends to be associated with the size of the business customer. Customers that purchase more services for longer periods expect to benefit from greater costs savings.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.2 (A) WHAT IS THE COST TO YOUR MEMBERS, IF ANY, TO SWITCH SUPPLIERS OF LOCAL TELECOMMUNICATIONS SERVICES?

(B) CAN YOUR MEMBERS SWITCH RAPIDLY OR ARE YOUR MEMBERS LOCKED-IN TO A SPECIFIC SUPPLIER (E.G. DUE TO CONTRACT OBLIGATIONS, DEDICATED ASSETS, SOFTWARE ETC.)?

- A. a) The Coalition is not able to provide specific information on the costs to switch local telecom suppliers. However, the Coalition would expect that such costs would be influenced by a number of factors including the size of the business, the extent of its telecommunications needs, the terms of its existing telecommunications services contracts, and its level of sophistication in negotiating service arrangements.
- b) The Coalition is not able to provide specific cost or contract information but notes that the ease with which member associations' member companies could switch suppliers would vary widely. Nevertheless, it is often the case that, for both regulated and forborne services, business customers have entered into contract commitments with suppliers for terms of 2-5 years. Termination of a contract during the term usually results in additional, early-termination charges. Such arrangements or charges are common with both regulated and unregulated carriers.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.3 (A) TO WHAT EXTENT DO YOUR MEMBERS POSSESS THE ABILITY TO CONSTRAIN THE EXERCISE OF MARKET POWER BY INCUMBENT LOCAL TELECOMMUNICATIONS FIRMS?

(B) IF YOUR MEMBERS DO HAVE THIS ABILITY, IDENTIFY THE CREDIBLE OPTIONS, WHICH ARE AVAILABLE TO YOUR MEMBERS.

- A. a) Many of the businesses that belong to our member associations possess significant countervailing power over the potential exercise of market power by the incumbents. Businesses select and purchase telecommunications services through the normal market process: needs are assessed, services are reviewed, comparative prices and quality are assessed and a supplier is selected. The terms are negotiated and set out in a contract.

As noted in our Comments in this proceeding, the process of seeking proposals, assessing alternatives and selecting a supplier is a critical business process and the skills developed in this regard can play a major role in the overall success of the business.

Businesses typically solicit and receive multiple bids for the provision of services and are sophisticated negotiators. Provided a business customer has a choice among service providers, which may include an offer of service from a supplier not yet in the particular geographic area of the customer, then the customer's willingness to exercise his option to choose (or the threat to do so) operates as a powerful constraint on any supplier, including a very large supplier. As in any other market, in such circumstances, the business can exercise effective countervailing power. Even small businesses possess effective countervailing power where they can choose between multiple service providers.

- b) A number of options are available depending on the services and the service arrangements sought. Alternatives to traditional local phone service, convergence and business customers' ability to negotiate for bundles of services provide customers with countervailing power even where there is little choice in traditional wireline local telephone service. In such cases, a customer's ability to choose another provider for a competitive service provided by the incumbent or to choose another technology altogether reduces the risk of potential abuses by the incumbent.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.4 (A) TO WHAT EXTENT IS VOIP AN ACCEPTABLE SUBSTITUTE FOR YOUR MEMBERS FOR TRADITIONAL WIRELINE LOCAL SERVICE?

(B) TO WHAT EXTENT ARE YOUR MEMBERS USING VOIP NOW OR EXPECT TO USE IT WITHIN THE NEXT TWO YEARS?

- A. a) While the Coalition does not have any specific company information relating to VoIP usage, certain of our members have indicated that their member companies are using VoIP services in much the same way as they use wireless service. According to these members, VoIP is currently used as a compliment to, as opposed to a true substitute for, traditional wireline services in meeting their overall communications needs. In these cases, businesses are using VoIP for its enhanced functionality such as choice in area code, accessibility from anywhere in the world via an Internet connection, and unified messaging. Therefore, at this stage in its development VoIP is largely a business application rather than a substitute for wireline primary exchange service.

It is likely that businesses will replace traditional wireline local exchange service with newer services, such as VoIP and wireless. In effect, the traditional local exchange service would be abandoned and replaced by new services that are, from a customer point of view, more flexible, portable and feature-rich. Specifically, Integrated IP-based distance-insensitive services (including VoIP) and wireless voice/data mobile services would become the new norm. The traditional wireline local voice service then becomes a "legacy" in every sense. The timing of these developments will depend on the size and nature of the business, the imagination and innovation of service providers and the degree to which regulators permit the market to function freely.

- b) The Coalition believes that developments of the type described above in response to 4. a) are occurring and will spread and accelerate among business users of telecommunications over the near future.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.5 (A) IF YOUR MEMBERS ARE USING VOIP NOW AS A SUBSTITUTE FOR YOUR LOCAL SERVICE, WHO SUPPLIES THIS SERVICE TO YOUR MEMBERS?

(B) WHAT OTHER FIRMS WOULD YOUR MEMBERS CONSIDER AS RELIABLE SUPPLIERS OF VOIP?

- A. a) To the Coalition's knowledge, member companies are not currently using VoIP as a substitute for traditional local service. Please see response to 4.a) and 4. b).
- b) The Coalition does not have company specific information with respect to the firms that the companies would consider to be reliable suppliers of VoIP.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

**Q.6 WHAT PROBLEMS, IF ANY, HAVE ANY OF YOUR MEMBERS
ENCOUNTERED IN USING VOIP.**

A. The Coalition does not have any information regarding any problems encountered using VoIP.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

**Q.7 (A) TO WHAT EXTENT IS MOBILE WIRELESS AN ACCEPTABLE
SUBSTITUTE FOR YOUR MEMBERS FOR TRADITIONAL WIRELINE
LOCAL SERVICE?**

**(B) TO WHAT EXTENT ARE YOUR MEMBERS USING MOBILE
WIRELESS NOW OR EXPECT TO USE IT WITHIN THE NEXT TWO YEARS?**

- A. a) The Coalition believes that wireless service is used both as a compliment to and as a substitute for, traditional wireline services in meeting the overall communications needs of businesses. Depending on the nature of the business, some companies conduct most of this calling via wireless services, though they likely still retain at least some wireline access service.
- b) Business users of telecom services overwhelmingly make use of mobile wireless services and more and more business is carried out using wireless services. This reliance on wireless services will likely accelerate in the business telecom sector.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.8 (A) IF YOU ARE USING MOBILE WIRELESS NOW AS A SUBSTITUTE FOR YOUR LOCAL SERVICE, WHO SUPPLIES THIS SERVICE TO YOUR MEMBERS?

(B) WHAT OTHER FIRMS WOULD YOU CONSIDER AS RELIABLE SUPPLIERS?

A.

a) & b) The Coalition does not have any company specific information on wireless usage and therefore cannot provide a response to this question.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

**Q.9 WHAT PROBLEMS, IF ANY, HAVE YOUR MEMBERS ENCOUNTERED IN
USING MOBILE WIRELESS?**

- A. See responses to Questions 7 and 8. The Coalition is not aware of any problems with mobile wireless that may have been encountered.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.10 (A) TO WHAT EXTENT IS FIXED WIRELESS (IE. WIFI) AN ACCEPTABLE SUBSTITUTE FOR YOUR MEMBERS FOR TRADITIONAL WIRELINE LOCAL SERVICE?

(B) TO WHAT EXTENT ARE YOUR MEMBERS USING FIXED WIRELESS NOW OR EXPECT TO USE IT WITHIN THE NEXT TWO YEARS?

- A. a) WiFi is typically used as a short range access technology and not a primary means of voice communication. The Coalition believes, therefore, that WiFi would be used by businesses as a compliment to, as opposed to a substitute for, traditional wireline services in meeting the company's overall communications needs. WiFi may be commonly used to access systems within corporate premises
- b) The Coalition does not have any data on WiFi usage by members. The Coalition understands that, in general, WiFi is typically self-provisioned once the appropriate equipment has been purchased.

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INFORMATION REQUESTED BY
THE COMPETITION BURERAU

Q.11 (A) IF YOUR MEMBERS ARE USING FIXED WIRELESS (IE. WIFI) NOW AS A SUBSTITUTE FOR THEIR LOCAL SERVICE, WHO SUPPLIES THIS SERVICE TO YOUR MEMBERS?

(B) WHAT OTHER FIRMS WOULD YOUR MEMBERS CONSIDER AS RELIABLE SUPPLIERS?

A.

a) & b) The Coalition does not have any company specific information on WiFi usage by members. See response to Question 10.

*** End of Document ***

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

**Q.12 WHAT PROBLEMS, IF ANY, HAVE YOUR MEMBERS ENCOUNTERED IN
USING FIXED WIRELESS?**

- A. The Coalition does not have any information on problems, if any, with fixed wireless usage.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.13 (A) TO WHAT EXTENT IS INSTANT MESSAGING AN ACCEPTABLE SUBSTITUTE FOR YOUR MEMBERS FOR TRADITIONAL WIRELINE LOCAL SERVICE.

(B) TO WHAT EXTENT ARE YOUR MEMBERS USING INSTANT MESSAGING NOW OR EXPECT TO USE IT WITHIN THE NEXT TWO YEARS FOR THIS PURPOSE?

- A. a) The Coalition does not have any information on Instant Messaging usage. However, the Coalition expects that Instant Messaging will develop into a widespread application within the overall evolution of IP-based services platforms for business, as described in the response to Question 4 above.
- b) The Coalition does not have any information on Instant Messaging usage by members.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.14 IDENTIFY ANY OTHER SERVICE WHICH YOUR MEMBERS ARE USING AS AN ACCEPTABLE SUBSTITUTE FOR TRADITIONAL WIRELINE LOCAL SERVICE OR BELIEVE WILL BE AN ACCEPTABLE SUBSTITUTE WITHIN TWO YEARS.

- A. The Coalition is not aware of any other such services. The Coalition has described its broad expectations regarding the current evolution of business services in its response to Question 4 above.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.15 (A) DOES THE COALITION BELIEVE THAT LOCAL BUSINESS AND LOCAL RESIDENTIAL ARE TWO SEPARATE MARKETS?

(B) IF THE ANSWER IS TO (A) IS AFFIRMATIVE, SHOULD THEY BE TREATED DIFFERENTLY IN TERMS OF FORBEARANCE?

- A. a) Yes, the Coalition believes that local business and local residential are two separate markets.
- b) The Coalition believes that the local business and local residential markets should be treated as separate markets for the purposes of forbearance determinations.

The Coalition notes that several of the parties to this proceeding have either expressly or impliedly suggested that residential and business markets be treated separately in forbearance considerations. For example, at the outset of its Comments, the CCTA notes that "...residential local exchange service should be identified as a separate product market from business local exchange service, as these are two distinct markets."¹ Indeed and as noted by the CCTA in its submission, the Commission itself has consistently tracked the development of competition in the business and residential markets separately and "has noted the differences in the development of competition between residential and business local exchange markets."²

In this proceeding, the Coalition's interest, knowledge and submissions are restricted to issues of relevance to business consumers of telecommunications services. Therefore, the proposed model for forbearance put forth by the Coalition in paragraph 33 of its Comments in this proceeding is proposed for application to the market for business local exchange services.

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¹ CCTA Comments at para. 8.

² CCTA Comments at para. 30 referencing *Review of price floor safeguards for retail tariffed services and related issues*, Telecom Decision CRTC 2005-27, April 29, 2005, (Decision 2005-27), paras. 32, 33, 208 and 209; and Decision 2005-28, para. 131 and 160.

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.16 AT CLAUSE 33 OF ITS SUBMISSION, THE COALITION STATES THAT THE EXISTENCE OF TWO OR MORE PROVIDERS OFFERING BUSINESS LOCAL SERVICES WITHIN A LOCAL CALLING AREA WOULD BE ONE CRITERIA FOR DETERMINING WHEN FORBEARANCE WOULD OCCUR.

DOES THE COALITION SPECIFICALLY MEAN FACILITIES-BASED PROVIDERS OF SERVICE (AS IN THE PRIVATE LINE FORBEARANCE MODEL)?

A. No. In the Coalition's view, the presence of active competitors in a market and their willingness to offer services to customers is the most relevant evidence of a competitive market. These competitors need not be facilities-based.

For example, a carrier could offer alternative local telephone service by relying on the unbundled loops of the ILECs. In that case, the carrier would not own its own physical facilities but would use loops provided under tariffs. In such cases, wholesale regulation of unbundled loops is sufficient to allow competitors to offer a competitive service.

However, the Coalition would support the continued application of certain conditions pursuant to section 24 of the *Telecommunications Act* with respect to access, interconnection and wholesale services under any forbearance for local exchange services. For example, such conditions would ensure that no provider of local exchange services, including all forborne service providers, is permitted to offer a local exchange service which blocks or degrades access to any other service providers.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.17 FROM THE COALITION'S PERSPECTIVE, FORBEARANCE FROM THE EXERCISE OF WHICH CRTC POWER WOULD PROVIDE THE MOST IMPORTANT BENEFIT FROM FORBEARING LOCAL SERVICES?

- A. The Coalition is of the view that when the Commission forbears under section 34 of the Act, it should forbear from exercising all of its regulatory powers as permitted by section 34, with the exception of section 24. However, the section 24 power to impose conditions on the provision of services would only be used to regulate forborne service in respect of social obligations (such as 9-1-1 and privacy) and to ensure access to essential facilities but not to apply economic regulation.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.18 IN THE COALITION'S VIEW, HOW MANY OF ITS MEMBERS (AND REPRESENTING WHAT VALUE OF LOCAL TELECOMMUNICATIONS PURCHASES) HAVE THE ALTERNATIVE OF PURCHASING (AND INTERCONNECTING) AND OPERATING THEIR OWN LOCAL AND OTHER COMMUNICATIONS FACILITIES AS AN ALTERNATIVE TO PURCHASING SUCH SERVICES?

- A. The Coalition is not aware that any of its member companies own their own facilities nor is it aware of their ability to do so. Businesses are not typically interested in self provisioning physical facilities for services such as local exchange services. Many businesses lease local and non-local facilities from carriers for customer premises facilities. Furthermore, with the increasing prevalence of IP-based integrated service platforms, businesses have much greater opportunity to design, control and re-configure their own IP services networks, independent of the underlying high-speed access provider. VoIP services provide an example of increased customer control over the nature and functions of the service. In this sense, businesses will gain greater control over their communications and, thus, may be regarded as engaged in a form of self-provisioning at the services/applications level. See also response to Question 4.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.19 (A) REGARDING PARAGRAPH 45 OF ITS SUBMISSION, IS THE COALITION AWARE OF INSTANCES WHERE SERVICE PROVIDERS HAVE ACTED TO “BLOCK OR DEGRADE” ACCESS TO OTHER SERVICE PROVIDERS?

(B) PLEASE DESCRIBE ANY SUCH INSTANCES.

A. (a) and (b)

The Coalition is not aware of any such instances in Canada to date. However, the Coalition notes that a number of parties in the CRTC's proceeding to determine the regulatory framework for VoIP had concerns that high-speed Internet access providers may give a preference to packets transmitted for their own VoIP services and even block consumers' access altogether to the services of independent, third-party VoIP providers.

In the VoIP proceeding Bell, Telus and Rogers acknowledged that building packet prioritization abilities into the network was technologically feasible though the companies did not, at that time, have plans to do so.³

In the U.S. however, there has already been a finding by the Enforcement Bureau of the Federal Communications Commission against a telephone company for blocking ports used for VoIP applications, thereby affecting customers' ability to use VoIP through one or more VoIP service providers including Vonage. With respect to such activities then Chairman of the FCC, Michael Powell stated unequivocally that: “The industry must adhere to certain consumer protection norms if the Internet is to remain an open platform for innovation”. It is noteworthy that the FCC took a hands off approach to all other aspects of VoIP regulation.

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³ Transcript of the proceeding 795-799 (Bell), 1461 (Telus), and 4196 (Rogers).

INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.20 REGARDING THE COALITION'S THIRD ELEMENT OF ITS SUGGESTED FORBEARANCE CRITERIA DISCUSSED IN PARAGRAPH 33 OF ITS SUBMISSION, HOW WOULD THE BEHAVIOUR OF PROVIDERS BE MONITORED?

- A. As noted in our Comments in this proceeding, businesses select providers, negotiate terms and enter into service contracts for telecommunications services through the normal market process as they would for any other business input. This free market process applies to all other goods and services and is not typically monitored or subject to regulatory constraints.

Business and institutional customers are best suited to protect their own economic interests. Therefore, their freely negotiated contracts should not be subject to regulatory intervention and should be subject only to laws of general application. The Coalition submits that if and when there are particular cases of alleged or apparent abuse or anticompetitive conduct in a forborne market by any supplier or group of suppliers, such behaviour can be dealt with effectively, on the facts and evidence of the case, under the *Competition Act*. There is no need to review, supervise or monitor all telecommunications service contracts.

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INFORMATION REQUESTED BY
THE COMPETITION BUREAU

Q.21 IN PARAGRAPH 26 OF ITS SUBMISSION, THE COALITION STATES THAT THEY WOULD USE A MODEL DEVELOPED BY THE “COMMISSION FOR THE FORBEARANCE OF BASIC SERVICE RATES FOR CLASS 1 INCUMBENT CABLE TELEVISION LICENSEES”. DOES THE COALITION PROPOSE TO USE THE SAME THRESHOLD AS THE CABLE MODEL? IF NOT, WHAT THRESHOLD WOULD THE COALITION SUGGEST?

- A. The Coalition’s proposal is an adaptation of the model established by the CRTC for basic cable rate deregulation, which is set out in subsection 47(1) of the *Broadcasting Distribution Regulations*.⁴

The Coalition’s model requires forbearance where there is evidence of the existence of two or more providers willing to provide business local exchange services in a local calling area and an ILEC market share loss of 5% or more. In addition, regardless of whether those two criteria are met, forbearance is also required in any case where a business or institutional customer solicits, receives and chooses among multiple offers (or proposals) of local exchange services from the incumbent provider and one or more new entrants within the local calling area. In such cases, the resulting contract should be respected, forborne from regulatory intervention and subject only to the laws of general application. Thus, the first two criteria are modeled closely on the framework set by the Commission for basic cable rate forbearance. The third criterion is a new criterion developed by the Coalition solely for the business telecommunications market.

*** End of Document ***

⁴ SOR 97/555, as amended

INFORMATION REQUESTED BY
MTS ALLSTREAM

Q.1 AT PARAGRAPH 33 OF ITS 22 JUNE 2005 COMMENTS, THE COALITION PROPOSES THAT:

"... IN ANY CASE WHERE A BUSINESS OR INSTITUTIONAL CUSTOMER SOLICITS, RECEIVES AND CHOOSES AMONG MULTIPLE OFFERS (OR PROPOSALS) OF LOCAL EXCHANGE SERVICES FROM THE INCUMBENT PROVIDER AND ONE OR MORE NEW ENTRANTS WITHIN THE LOCAL CALLING AREA, THE RESULTING CONTRACT FOR LOCAL EXCHANGE SERVICES, WHETHER IT BE WITH THE INCUMBENT OR ANOTHER PROVIDER, SHOULD BE DEEMED TO BE LEGALLY VALID AND BINDING UNDER THE *TELECOMMUNICATIONS ACT* WITHOUT FURTHER REVIEW OR APPROVAL BY THE COMMISSION. IN EFFECT, BUSINESS AND INSTITUTIONAL CUSTOMERS WOULD BE FREE TO CONTRACT FOR SUCH LOCAL SERVICES, WITHOUT REGULATORY CONSTRAINT OR APPROVAL, JUST AS THEY DO NOW FOR ALL OTHER ICT SERVICES."

SEPARATELY, FOR EACH OF THE MEMBERS OF THE COALITION, PROVIDE THE FOLLOWING INFORMATION IN RESPECT OF THE CONTRACTS ENTERED INTO BY THE MEMBER FOR LOCAL EXCHANGE SERVICES, IDENTIFIED SEPARATELY FOR EACH OF THE INCUMBENT TERRITORIES OF ALIANT, BELL, SASKTEL, TÉLÉBEC AND TELUS:

(A) WHETHER THE MEMBER'S ACCOUNTS FOR TELECOMMUNICATIONS SERVICES QUALIFY IT AS A SMALL, MEDIUM, LARGE OR VERY LARGE WIRELINE BUSINESS CUSTOMER, AS THOSE TERMS ARE DEFINED IN THE COMMISSION'S *REPORT TO THE GOVERNOR IN COUNCIL; STATUS OF COMPETITION IN CANADIAN TELECOMMUNICATIONS MARKETS; DEPLOYMENT/ACCESSIBILITY OF ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE AND SERVICES*, NOVEMBER 2004 AT PAGE 110.

(B) THE NUMBER OF CONTRACTS FOR LOCAL EXCHANGE SERVICES ENTERED INTO BY THE MEMBER IN EACH OF THE YEARS 1998 TO 2004 AND IN 2005 TO DATE.

(C) FOR EACH CONTRACT IDENTIFIED IN (B) ABOVE, THE NUMBER OF PROVIDERS THAT MADE AN OFFER (OR PROPOSAL) TO PROVIDE LOCAL EXCHANGE SERVICES.

INFORMATION REQUESTED BY
MTS ALLSTREAM

(D) FOR EACH CONTACT IDENTIFIED IN (B) ABOVE, WHETHER THE INCUMBENT WAS ONE OF THE PROVIDERS THAT MADE AN OFFER (OR PROPOSAL).

(E) FOR EACH CONTRACT IDENTIFIED IN (B) ABOVE, WHETHER THE CONTRACT WAS AWARDED TO A COMPETITOR OR TO THE INCUMBENT.

(F) FOR EACH CONTRACT IDENTIFIED IN (B) ABOVE, THE TERM OF THE CONTRACT, IN YEARS.

- A. The Coalition is comprised of business and trade service associations that collectively represent over 12,000 Canadian companies. The Coalition was established to represent the collective views of these business users of telecommunications services as they are reflected by the Coalition's member associations. Accordingly, the Coalition does not have the type of company-specific information requested. Obtaining this type of contract information is beyond the Coalition's resources and abilities.

In any event, the Coalition does not consider that this type of detailed information relating to specific contracts is necessary or relevant to determine the framework for forbearance going forward.

The Coalition notes that the third criterion of its proposal (which is cited in the interrogatory) simply applies to telecommunications services the same free market process that applies to most other goods and services purchased by Canadian business.

Business and institutional customers are best suited and have every incentive to protect their own economic interests. As such, there is no need or justification for reviewing business customers' contracts and applying regulatory scrutiny and control over them. If there are particular cases of alleged or apparent abuse or anticompetitive conduct, redress can be sought under the common law or the *Competition Act* and businesses can be expected to seek such redress in order to protect their own interests.

*** End of Document ***

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Q.2 AT PARAGRAPH 39 OF ITS COMMENTS OF 22 JUNE 2005 THE COALITION STATES:

IN THIS REGARD, THE COALITION NOTES THAT THE MAJOR CABLE COMPANIES ARE LARGE, WELL-FINANCED ENTERPRISES WHICH HAVE IN PLACE THEIR OWN PHYSICAL NETWORK AS WELL AS LONG STANDING RELATIONSHIPS WITH MILLIONS OF CUSTOMERS. THUS, THEIR ENTRY OR RE-ENTRY INTO THE LOCAL EXCHANGE SERVICES MARKET WOULD BE VERY LIKELY AND RELATIVELY SIMPLE IF A FORBORNE INCUMBENT LOCAL SERVICES PROVIDER WERE TO TRY TO RAISE ITS PRICES ABOVE COST-BASED MARKET LEVELS.

SEPARATELY, FOR EACH OF THE MEMBERS OF THE COALITION, PROVIDE THE FOLLOWING INFORMATION IN RESPECT OF THE MEMBER'S EXISTING RELATIONSHIP WITH THE INCUMBENT CABLE COMPANY, IDENTIFIED SEPARATELY FOR EACH OF THE INCUMBENT TERRITORIES OF ALIANT, BELL, SASKTEL, TÉLÉBEC AND TELUS:

- a) WHETHER THE MEMBER CURRENTLY HAS A BUSINESS RELATIONSHIP WITH THE INCUMBENT CABLE COMPANY.**
- b) IF SO, WHETHER THE SERVICES THAT THE INCUMBENT CABLE COMPANY PROVIDES TO THE MEMBER ARE LIMITED TO CABLE TELEVISION SERVICES OFFERED BY THE CABLE COMPANY IN ITS CAPACITY AS A BROADCASTING DISTRIBUTION UNDERTAKING.**
- c) IF THE SERVICES ARE NOT SO LIMITED, THE SERVICES THAT THE INCUMBENT CABLE COMPANY PROVIDES TO THE MEMBER.**
- d) WHETHER THE MEMBER HAS HAD A BUSINESS RELATIONSHIP WITH THE INCUMBENT CABLE COMPANY WITHIN THE PAST FIVE YEARS.**
- e) IF SO, WHETHER THE SERVICES THAT THE INCUMBENT CABLE COMPANY PROVIDED TO THE MEMBER WERE LIMITED TO CABLE TELEVISION SERVICES OFFERED BY THE CABLE COMPANY IN ITS CAPACITY AS A BROADCASTING DISTRIBUTION UNDERTAKING.**
- f) IF THE SERVICES WERE NOT SO LIMITED, THE SERVICES THAT THE INCUMBENT CABLE COMPANY PROVIDED TO THE MEMBER.**

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A. See response to Question 1.

The Coalition notes that it appears as though the cable industry is focusing largely on the residential market. Accordingly, the Coalition expects that, to date, business relationships with the cable companies would not be widespread among its member associations' member companies. However, any excessive pricing of business services by the ILECs is likely to encourage entry by the cable companies into the business market given that they are already participating in the local exchange services market on the residential side. In that event, such entry would provide greater choice to business users.

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Q.3 AT PARAGRAPH 33 OF ITS COMMENTS OF 22 JUNE 2005, THE COALITION PROPOSES THAT THE COMMISSION FORBEAR FROM THE REGULATION OF BUSINESS LOCAL EXCHANGE SERVICES IN A LOCAL CALLING AREA WHERE THERE IS EVIDENCE OF TWO OR MORE PROVIDERS OFFERING BUSINESS LOCAL EXCHANGE SERVICES AND EVIDENCE OF A LOSS OF MARKET SHARE OF 5% OR MORE BY THE INCUMBENT.

AT PARAGRAPH 48, THE COALITION STATES:

THE COALITION WOULD STRONGLY OPPOSE A REGIME IN WHICH THERE WERE "TRIGGERS" THAT RESULT IN AUTOMATIC DE-FORBEARANCE OR AN AUTOMATIC REVIEW OF THE APPROPRIATENESS OF FORBEARANCE. IN ITS MANY PRIOR FORBEARANCE RULINGS, THE COMMISSION HAS NOT IMPOSED ANY SUCH CONDITION WHICH WOULD, IN EFFECT, RESULT IN AUTOMATIC REVERSAL OF FORBEARANCE. AS IN THE CASE OF OTHER SUB-MARKETS, THERE IS NO NEED FOR SUCH A CONDITION IN THE MARKET FOR LOCAL EXCHANGE SERVICES.

RECONCILE THE COALITION'S CONCLUSION THAT "TRIGGERS" ARE APPROPRIATE FOR FORBEARANCE BUT ARE INAPPROPRIATE IN THE CASE OF DE-FORBEARANCE OR RE-REGULATION.

A. The use of triggers or thresholds in an initial forbearance analysis has been shown to be a comprehensive and efficient approach. The CRTC has successfully used market share thresholds for forbearance from cable service rate regulation under Section 47 of the *Cable Distribution Regulations* since 1997. The record before the Commission over many years in regard to cable deregulation applications demonstrates that the model is clear, simple to apply and administratively efficient. The Coalition considers that telecom forbearance decisions would similarly benefit from a similar, efficient approach. And, in the interests of regulatory parity, it makes sense to adopt an approach in former-monopoly telecom markets that is consistent with the approach that has for years been applied to former-monopoly cable markets.

However, the decision to re-regulate a market that has been operating free from regulatory intervention can have far greater adverse effects on consumers than the initial decision to de-regulate. Indeed, the effects of re-regulation on consumers can be very negative. A likely consequence of re-regulation is an increase in the general level of prices for the whole market or for many locations and customers. For example, in the inter-exchange private line ("IXPL") market, re-regulation, (ostensibly proposed to protect consumers), would result in price increases across the board.

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It is precisely this subordination of consumers' interests to those of the service providers that rallied business users of telecommunications to form the Coalition to ensure that consumers' interests would be protected in regulatory proceedings. The Coalition notes that while Section 7 of the *Telecommunications Act* specifically requires that the CRTC respond to the interests of users, it is altogether silent regarding the protection of service providers. The Coalition submits that in considering whether to re-regulate a market in which consumers have been freely conducting business, the CRTC is bound by its statutory objectives to undertake a full and public analysis of the appropriateness of such action and to focus primarily on the impact it would have on consumers. For this reason, an automatic trigger of a pre-determined threshold is an altogether inappropriate approach to re-regulation.

In addition to ignoring consumer interests, a trigger test for re-regulation ignores a number of other critical factors. As the Coalition recently submitted in its comments to the CRTC in a proceeding to examine the potential re-regulation of inter-exchange private line ("IXPL") routes, the reliance on pre-determined triggers or tests ignores current market circumstances focusing instead on the market circumstances that existed when the original forbearance decision was made. For example, setting the same 5% market share trigger for re-regulation as for forbearance does not take into account changes that may have occurred in the market as a result technological advances or the passage of time since the test was first imposed.

In its submission to the CRTC, the Coalition noted that:

"Secondly, the process initiated by the staff letter of November 29 appears to turn entirely on a single criterion: the presence of more than one facilities-based supplier of digital inter-exchange lines on a specific route. In the Coalition's view, given the developments in the market for digital services since *Order 99-434* and *Decision 97-20*, before reversing prior forbearance decision, the Commission should first consider the continued relevance and usefulness of the *Order 99-434* test. In the Coalition's view, the test appears far too narrow a basis on which to make such decisions. There are market constraints, as discussed above, which serve to limit the pricing flexibility of a supplier on any monopoly routes. there are also alternative and developing technology solutions which may serve as further constraints. For example, these include wireless broadband facilities currently being rolled out and VSAT digital satellite solutions."¹

¹ Comments of the Coalition for Competitive Telecommunications, dated January 12, 2005, in response to CRTC letter re: Potential re-regulation of Inter-exchange Private line Routes, dated November 29, 2004 at 2 and 3.

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It is noteworthy that, pending the outcome of this proceeding, the Commission has deferred its decision as to whether an automatic trigger for IXPL re-regulation is appropriate. In June of this year, the Commission issued a procedural ruling postponing its consideration of the proposed re-regulation of IXPL markets.

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