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

January 21, 2005

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

Dear Ms. Rhéaume:

Potential Re-regulation of Interexchange Private Line Routes

1. On January 12, 2005, the Coalition for Competitive Telecommunications ("the Coalition") provided comments in response to the Commission staff letter dated November 29, 2004 regarding possible re-regulation of interexchange private lines (IXPLs). The Coalition has reviewed the comments filed by other parties on January 12, 2005 and has the following reply comments.
2. In its initial comments, the Coalition stated that, from the perspective of business users of telecommunications services, it would be inappropriate and premature to re-regulate IXPL services on the routes in question at this time. The Coalition noted that there has been no evidence presented that the market for IXPL services is failing or that serious abuses are occurring. Furthermore, the Coalition noted (at paragraph 5 of its initial comments) that there are mechanisms by which customers seeking IXPL services can protect their interests. The Coalition provided other arguments to support the inappropriateness of re-regulation of the IXPL routes in question at the time, and the Coalition hereby reiterates those views in this reply. There is no evidence in the comments filed by other parties that would lead the Coalition to deviate from the views it expressed on January 12, 2005 in this proceeding.
3. Having reviewed the comments filed by other parties on January 12, the Coalition finds it significant that parties favouring re-regulation provided almost no evidence of market failure on the routes in question. Rather, harm to customers or market failure is simply assumed. The Coalition notes that, as some level of industry consolidation was occurring over the last six months (coupled with some level of new market entry), the normal

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process of requests for quotes and pricing proposals has been continuing. If there were serious and systematic problems with the current negotiation process, a pattern of behaviour or an accumulation of cases would emerge. However, this has not occurred to date.¹

4. Accordingly, the Coalition urges the Commission to continue the current framework which permits business customers to engage in broad RFP processes for all currently forborne services, including for IXPL services on the routes in question, and to negotiate mutually acceptable contracts which will be permitted to stand as binding both the customer and the carrier. In this regard, there should be no general presumption by the Commission that the resulting contracts agreed to by both parties are invalid or contrary to the public interest or that such contracts require prior approval by the Commission.
5. In the event that the Commission were to revert to re-regulation of such IXPL services, the Commission staff letter poses a further question regarding whether existing IXPL customer contracts on the routes in question should be grandfathered. On this point, the Coalition is very encouraged that nearly all parties have taken the reasonable and responsible business position that such contracts were valid at the time agreed and should be honoured for their duration. In its comments, MTS Allstream quite correctly described these as “contracts that were entered into in good faith and in accordance with the law in relation to a forborne IXPL route” (paragraph 15 of MTS Allstream comments). The Coalition also endorses the following further comment by MTS Allstream in regard to this issue:

By definition, any contract entered into in relation to a forborne IXPL route is entered into in an environment of competition sufficient to protect the interests of users. Consequently, any existing contracts for forborne IXPL services for routes that may become the subject of re-regulation would have been negotiated in an environment where the presence of competition protected the fair negotiation of those contracts. Accordingly, allowing those contracts to run their course would not put the consumer at a disadvantage.

[paragraph 16 of MTS Allstream comments]


¹ The Coalition notes that one party filing comments, Xit Telecom, has suggested that customers may migrate from IXPL services to WAN services, a forborne service.

6. Most parties filing comments agreed with the Coalition that existing customer contracts should be grandfathered. However, the Coalition was deeply concerned that Call-Net chose to support a position that existing, legal contracts should be “cancelled” in the event of re-regulation, a position that is fundamentally at odds with the interests of users of telecommunications services, presumably including Call-Net’s own customers.
7. For the reasons set out above and in its initial comments filed January 12, the Coalition submits that re-regulation of IXPL routes would be, at this time, premature. Nevertheless, if the Commission were persuaded that a review and variance of its prior forbearance decisions in respect of certain IXPL routes was warranted, the Coalition would urge the Commission to consider an alternative mechanism, other than traditional tariffs, which would serve to protect the interests of customers as well or better than the tariff process. More specifically, the Coalition submits that a private market, contract-based mechanism, as described below, would serve to meet the interests of customers and the objectives of the *Telecommunications Act* very well in this case. In this regard, it is clear that the vast majority of the IXPL market in Canada, measured by volume of business, revenues or data capacity, will continue to be forborne. The large capacity routes between many Canadian city pairs will continue to meet the traditional IXPL forbearance test and remain subject to private market forces. Prices will vary and may go up or down depending on market conditions.
8. On any route where there is no longer facilities-based competition for digital services, the customer’s primary interest is to be assured that the price charged is reasonably comparable to the prevailing market price, at the time, for similar digital capacity, term of contract and distance. If the customer had such an assurance, there would be no concern that the price charged on the particular route was unreasonable. Accordingly, incumbent carriers could be required, as a condition under section 24 of the Act, to include a contractual commitment or guarantee to customers, on the routes in question, that the price quoted is no higher than 10% above the prevailing price level offered by the incumbent carrier for equivalent services at the time. The Commission could, in consultation with the industry, define the mechanics of the procedures for measuring the prevailing incumbent price level for equivalent services at the time or over a period of three to six months. No tariff would be filed by the incumbent carrier but the customer would receive a binding contractual commitment as described above. The Commission could, in any particular case or on complaint by a customer, require that data or documentation to

support compliance with this contractual condition be provided for review by the Commission.

9. The mechanism described in broad terms above would provide customers with the protection and assurance that they require while still allowing private market negotiations to continue. In the Coalition's view, this private, contractual approach is far superior to the rigid, cumbersome and time consuming process of traditional tariff approvals. Accordingly, as an alternative, the Coalition would urge the Commission to consider favourably the foregoing private contractual solution, if any solution is required, to the matter under consideration in this review.

Yours sincerely,



Ian C. Russell
Chairman
Coalition for Competitive Telecommunications