



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

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

Dear Ms. Rhéaume:

Subject: **Exclusion Application for 2004 in Accordance With Telecom Decision CRTC 2005-17, Retail Quality of Service Rate Adjustment Plan and Related Issues**

1. This application is made by Aliant Telecom Inc. ("Aliant" or "the Company") in accordance with Telecom Decision CRTC 2005-17, *Retail Quality of Service Rate Adjustment Plan and Related Issues*, ("Decision 2005-17"). Based on the quality of service results filed for 2002, 2003 and 2004, the Commission required Aliant to implement customer credits for the reporting period of 2004, subject to approval of the Company's exclusion application.
2. The Commission determined that the retail quality of service rate adjustment plan ("the Plan") should include an exclusion mechanism which is sufficiently flexible to accommodate the effects of natural disasters and other unpredictable adverse events which are beyond the reasonable control of the Incumbent Local Exchange Carrier ("ILEC"). The Commission considered that labour disruptions may qualify as such in certain circumstances and that each adverse event should be assessed in light of the surrounding circumstances.<sup>1</sup>
3. Aliant's quality of service results for 2004 were significantly impacted by a unique and material situation, a labour disruption involving its entire non-management workforce which lasted from 23 April to 20 September 2004. Aliant submits that this meets the test for exclusion of the affected results for the assessment of credits under the Plan. For the reasons set out in this Application, Aliant requests exclusion of its results for the period affected, the months of April to December, 2004. When these affected

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<sup>1</sup> Paragraph 56, Telecom Decision CRTC 2005-17

months are excluded, there is no requirement for Aliant to implement customer credits for the reporting period of 2004.

### Background

4. Aliant was formed from the combination in 1999 of the parent companies of NBTel Inc., NewTel Communications Inc., Maritime Tel and Tel Limited, and Island Telecom Inc. which were previously independent companies operating in their respective provincial territories. The merger of four independent telecommunications entities into a single company is unprecedented in Canada. Such a merger of different corporate cultures and processes was bound to be difficult. A particularly difficult aspect of this process was the integration of the disparate collective agreements with the new company's workforce.
5. Despite this, Aliant's commitment to overcome the challenges during its formative years is demonstrated by its quality of service results during the initial period of the interim rate adjustment plan from 1 July 2002 to 31 December 2003. Aliant's quality of service results achieved the Plan's standards and the Commission determined that no rate adjustment is required for that period.
6. A major part of the Company's motivation to provide a high quality of service has been the degree of competition for the residential local market in Aliant's operating territory. Aliant is facing substantially more competitive pressure in its market than any other ILEC in Canada. The Commission's *Report to the Governor in Council on the Status of Competition in Canadian Markets*, dated November 2004, shows that competitors' market share of residential lines for the years 2002 to 2003 increased from 12.7% to 17.6% in the Halifax CMA and from 10.5% to 15.9% in the Charlottetown CMA. This rapid expansion of competitor market share has continued through 2004 and in many exchanges in Nova Scotia, competitor market share is now in excess of 30%. Aliant, to a greater degree than any other Canadian ILEC, has an incentive to provide high service quality to avoid losing customers, to continue to attract new customers, and to reduce customer churn in a market that is experiencing increasing choice from wireless, VoIP, or traditional voice services suppliers.

### Pre-Work Stoppage

7. Aliant had difficulty in meeting the 12 month average for the standards in 5 of the 13 indicators subject to the Plan. However, Aliant will demonstrate that this difficulty is fully attributable to the legal work stoppage of its entire non-management workforce from April 23 to September 20, 2004, which had impacts both during and after that stoppage.
8. The combination of the four predecessor companies resulted in Aliant being subject to nine different collective agreements with four separate bargaining agents. This created a situation in which employees working for the same company, in the same region, worked under materially different employment terms and conditions. Aliant proposed a single bargaining unit that would include all existing bargaining units.
9. The four bargaining agents, the Atlantic Communications and Technical Workers' Union and three locals of the Communications, Energy and Paperworkers Union of Canada created the Council of Atlantic Telecommunications Unions ("the Council") to bargain with Aliant on behalf of the new, merged, bargaining unit. In September 2001

the Canadian Industrial Relations Board (the "CIRB") approved an order declaring 31 December 2001 the common expiry date for the collective agreements applicable to all nine bargaining units.

10. The difficulty and complexity of these negotiations was immense. In an interim ruling the CIRB alluded to the complexity of this situation<sup>2</sup>:

"What was the impact of the agreement to terminate certain collective agreements early? It enabled both parties to get on with the **monumental work of negotiating a single collective agreement to cover all of the nine bargaining units that were merged into a single bargaining unit**". (Emphasis added)

11. Collective bargaining began in March 2002 to establish a single collective agreement. The Company applied to the CIRB to have certain services declared essential to public health and safety. The CIRB denied the request and no unionized employees were required to work during the work stoppage. The progress of negotiations was very slow and by August 2003 the Company and the Council had reached agreement on only 9 of the 36 articles. In September the Company requested assistance from the Federal Mediation and Conciliation Service. Two mediators were appointed and worked with the parties throughout the negotiation process. The difficulty of achieving alignment within the Council and between the Council and the Company was a monumental undertaking. The Company tabled a comprehensive offer in March 2004 which was rejected, at which time the unions sought and received a strike mandate from their members. On 23 April 2004 the Company's further offer was rejected by the Council, and the Company's entire non-management workforce of 4,300 operators, clerical staff, and technicians - 70% of Aliant's entire workforce – began a work stoppage.

#### Work Stoppage Period

12. In planning for a possible work stoppage, Aliant recognized that its ability to continue operations would be severely reduced. It developed a business continuity plan which set certain priorities to be followed during any work stoppage. When the strike began, the Company implemented its business continuity plan with the reassignment of approximately 1,800 management workers to front-line customer service positions.
13. Anticipating that it would be difficult to continue operations during a strike, Aliant had applied to the CIRB for a declaration that certain unionized employees would be required to work through the work stoppage in order to protect public health and safety. The CIRB recognized that telecommunications services had to be maintained in order to protect public health and safety, but declined to order any unionized employees to continue to work. Aliant's first priority during the work stoppage was to maintain emergency services, health and safety of the public, and health and safety of employees. The redeployed management employees were assigned to this in priority to other activities affecting the quality of service measures.

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<sup>2</sup> Council of Atlantic Telecommunications Unions v. Aliant Telecom Inc., CIRB File: 22836-C, Decision no. 237, July 17, 2003

14. The next priorities were the maintenance of the network and repair service. New installation requests and installation of optional services through calls to the business offices were given lower priority.
15. Despite extraordinary efforts by the redeployed management employees, it was not possible to meet the Quality of Service Standards during the work stoppage. There were a number of reasons for this:
  - The single biggest factor was the reduction in the skilled workforce. With the smaller number of managers, many performing functions where they had little or no experience, maintaining service at levels acceptable in normal situations was not possible.
  - The activities of picketers hampered outside operations of the reassigned managers, creating delays and interfering with installation and repair efforts.
  - Standards for “Out of Service Trouble Cleared within 24 hours” – Indicator 2.1 and “Repair Appointments Met” - Indicator 2.2 were also degraded as a result of the prioritization of work activity.
  - Call volumes to business offices and repair bureaus were higher than normal. This resulted in the Company reassigning workers to various queues to meet the priority service requirements. The results for Access to Business Office – Indicator 1.5, and Access to Directory Assistance – Indicator 4.2 were below standard because Aliant’s higher priority was maintaining public safety and restoring existing service.
  - Numerous incidents of sabotage were experienced, including the cutting of the Newfoundland cross-island fibre route disrupting service to a large portion of the province, and numerous cable cuts in Nova Scotia that caused regional service disruptions. Response to service disruptions of this nature was of the highest priority, with service restored as quickly as possible by the redeployment of managers from their other temporary work assignments.
16. Throughout the work stoppage there was frequent contact with senior Commission personnel, including the Regional Commissioner, the Executive Director – Telecommunications, and the Regional Manager, to keep them apprised of the situation and the major issues as they occurred. As well, there was ongoing contact with Commission staff concerning customer concerns and complaints made to the Commission.
17. On 30 August 2004 talks resumed with senior mediators including the most senior official of the Minister’s office, the Director General of the Federal Mediation and Conciliation Service. On September 20, a full five months after the work stoppage began, a resolution was reached and the striking employees returned to work.

#### Post Work Stoppage Activity

18. The impact of the work stoppage on the Q of S indicators did not end with the acceptance of the collective agreement and the return to work. Aliant recognized from the outset that stresses would inevitably develop during the strike, and that these would require time and careful attention to be resolved. In recognition of the impact the strike would have on employees and the Company’s operations during the period following the return to work, a plan was developed early in the work stoppage to facilitate an efficient and effective return to work on the eventual conclusion of the strike.

19. This program was implemented upon the return to work of unionized employees. Debriefing sessions were offered to all employees to help them deal with the emotional issues that had developed during the lengthy work stoppage. These sessions also provided an opportunity for any employees experiencing severe difficulties to take advantage of the professional assistance offered through the Employee Assistance Program ("EAP"), a confidential referral and counseling service. These sessions were facilitated by EAP professionals during work hours. Approximately 800 unionized employees participated in 92 sessions held between 23 September and 30 November 2004. From October to December, 2004 approximately 300 unionized employees also attended programs on financial counseling and stress management.
20. Every frontline manager with direct responsibility for unionized employees was required to participate in a full day return-to-work workshop. Thirty-four joint union-management transition teams were established to provide direct feedback as to how employees were recovering from the work stoppage. Employees were encouraged to attend all of these programs during normal working hours.
21. When the unionized workers returned to work, there was a substantial pent-up demand from the strike period in addition to the usual fall seasonal demand. Unfortunately, there was also extreme weather experienced in the region, including rain storms and early winter snowstorms in November and December that complicated the recovery efforts.
22. The Company was also committed to honoring its employees' vacation entitlements for the year, and for many, vacations were rescheduled to the fourth quarter of 2004 because of the work stoppage. This further impacted a recovery to normal operations in the post work stoppage period.
23. Aliant submits that its commitment to getting its quality of service results back on track for the post labor disruption period is demonstrated by the fact that it has achieved the standard for all three months of the fourth quarter 2004 for eight of thirteen indicators subject to the Plan.
24. Despite the careful planning and implementation of the return-to-work program, the negative impact of a 5 month work stoppage on the Company's operations did not stop with the signing of an agreement. For these reasons Aliant submits that the fourth quarter of 2004 should be considered as part of the exclusion period for quality of service rate adjustment determinations.

#### Responsibilities in a Work Stoppage

25. To the best of Aliant's knowledge, the extent of the strike was unprecedented in the Canadian telecommunications sector. Not only was the strike uncharacteristically long, it affected all non-management unionized employees, which is itself unique.
26. Unlike other industries such as manufacturing, where factories may be shut down or other actions taken to substantially reduce costs during a work stoppage; there is limited opportunity to reduce costs during a labour disruption of a telecommunications service provider. The telecommunications network and customers' ability to utilize that network must be maintained.

27. Aliant Inc. has stated in its Annual Report for 2004 that the labour disruption reduced 2004 revenues and net income by \$40 million and \$43 million respectively. The overall impact of the labour disruption is estimated to have reduced Aliant Inc.'s earnings per share for 2004 by 25% or \$0.32. This negative impact on Aliant is greater than the total maximum adjustment value to which the Company would be subject for failing to meet every one of the 13 indicators covered in the Plan.
28. The retail quality of service interim penalty regime was established in Telecom Decision CRTC 2002-34, *Regulatory framework for second price cap period*. The Commission stated that it was necessary to establish incentives to ensure ILECs' compliance with quality of service standards for services provided to their own customers. In its news release accompanying Decision 2005-17 the Commission stated:

“The Commission introduced quality of service indicators to ensure that the telephone companies maintain quality of service to customers as part of an evolution to a less regulated environment which set rates under a price cap regime. **The Commission introduced the Q of S indicators to ensure that service would not suffer in favour of increased profit margins.**”  
(Emphasis added)
29. Aliant's failure to meet standards for quality of service indicators during the period impacted by the work stoppage was not in favour of increased profit margins. Aliant and the unions did not want a work stoppage, but considering the complexity of the issues they were required to deal with, it is not surprising that they were unable to avoid one. During the strike, Aliant's management employees made extraordinary efforts, at great personal cost, to maintain service at the highest level possible. This also involved a high financial cost to the Company.
30. In the period following the strike, Aliant and its employees worked to overcome the residual stresses and difficulties which are the inevitable result of such a process and restore normal service as quickly as possible. The process has been difficult, but a great deal has been accomplished.
31. The competitive market in Aliant's territory provides significant incentives for Aliant to maintain quality service; and its inability to do so during the strike has resulted in a significant loss of income. The imposition of additional financial penalties for degradation of service quality due to the work stoppage would not serve as an incentive, and would only be punitive.

#### Impact on the Collective Bargaining Process

32. Aliant submits the imposition of additional financial penalties on an ILEC for failing to meet quality of service standards during a work stoppage of its entire non-management workforce would be detrimental to the collective bargaining process. A failure to meet quality of service standards could mean a penalty of up to 5% of the ILEC's total revenue base from local services. Given that some operational limitations are inevitable during such a work stoppage, the threat of such a penalty could significantly impact the collective bargaining process.

33. Aliant submits that the labour disruption it experienced in 2004 was the result of exceptional circumstances with the merger of four companies, the combination of four bargaining agents and the merging of nine collective agreements into a single collective agreement. If the Commission determines that this labour disruption does not qualify as an adverse event beyond the reasonable control of an ILEC, it would establish a precedent that could encourage use of the Commission and the Plan as a powerful lever to affect the outcome of collective bargaining.

Exclusion Requested

34. Aliant's reported retail quality of service results for 2004 show that, despite the stoppage, it achieved the annual average standard for 8 indicators included in the Plan. However, the annual average standard for five of the indicators have been missed as follows:

<u>Indicator</u>	<u>Standard</u>	<u>Annual Average</u>
1.5 Access to Business Office	80	66
2.1A Urban OOS Cleared within 24 hours	80	76
2.1B Rural OOS Cleared within 24 hours	80	68
2.2A Urban Repair Appointments Met	90	86
2.2B Rural Repair Appointments Met	90	84
2.5 Access to Repair Bureau	80	76
4.2 Access to Directory Assistance	80	75

35. Aliant submits that the period from 1 April 2004 to 31 December 2004 should be excluded for determination of retail quality of service rate adjustments under the Plan. The work stoppage began on 23 April 2004. Results for quality of service indicators were on track to achieve standards for the month of April. However, the quality of service results for the period from 23 April to 30 April were far enough below standard to cause the entire month results to come in below the standard for the problem indicators. For the period beginning 1 May to 31 December the Company's operations were seriously impacted by the work stoppage and its aftermath.
36. Aliant submits it is fully consistent with the intent of the Plan that the quality of service results during the work stoppage and the fourth quarter of 2004 should be excluded from the determination of a rate adjustment under the Plan. The Commission determined that the Plan should include an exclusion mechanism which is sufficiently flexible to accommodate the effects of natural disasters and other adverse events which, by their nature, are unpredictable and beyond the reasonable control of the ILEC. The impact of natural disasters such as hurricanes, tornadoes, or floods do not terminate the day the natural disaster ends. Similarly, a period of reconstruction, recovery and reestablishment of the normal processes of both a company and its employees in their personal and professional lives is required following a tumultuous strike. Aliant Inc. has estimated the impact of the work stoppage on its operations is reflected by the negative impact of \$8 million on its fourth quarter 2004 net income. Aliant submits that it has demonstrated that it has taken all reasonable actions to get its operations back to normal as soon as possible. The imposition of an additional financial penalty will not have any affect on improving service quality.

## Conclusion

37. Arising from the merger of Aliant's four predecessor companies, the Company and the Council have faced a difficult and complex collective bargaining process. The complexity of the labour relations issues faced by the Company is demonstrated by the involvement of the CIRB, federally appointed conciliators and mediators, including the Director General of the Federal Mediator and Conciliation Service during the collective bargaining process.
38. Aliant submits that the months affected by this extraordinary situation should be excluded from the determination of the retail quality of service rate adjustment penalty for the interim penalty period of 2004. With that exclusion, Aliant has achieved the standards for all 13 indicators in 2004.
39. The competitive pressures faced by Aliant provide a powerful incentive to maintain and improve its quality of service. Aliant's quality of service results have been recovering from the impacts of the strike, and the Company is working diligently to get results back on track to meet the standard for all indicators for 2005.
40. The cost incurred by Aliant during and after the work stoppage is substantial and greater than any penalty that would be incurred under the Plan. Considering that the quality of service rate adjustment process is intended to establish incentives to ensure ILECs' compliance with quality of service standards for services provided to customers, any additional financial penalty imposed by the Commission would simply be punitive. It would not provide any additional incentive for the Company to do more than it has already done in a very difficult situation.

Respectfully submitted,

*[Original signed by E.H. Burry]*

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For: Richard A. Stephen  
Director – Regulatory Matters

cc: Interested Parties to Public Notice CRTC 2003-3

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