



## Telecom Decision CRTC 2006-27

Ottawa, 16 May 2006

### **Aliant Telecom Inc. – Applications to exclude certain quality of service results from the retail quality of service rate adjustment plan**

Reference: 8660-A53-200505084 and 8660-A53-200505555

*In this Decision, the Commission determines that the 2004 work stoppage in Aliant Telecom Inc.'s (Aliant Telecom) territory partially qualifies as an adverse event. The Commission also determines that there was a causal link between the work stoppage and the results of five of the company's retail quality of service (Q of S) indicators for the period of 23 April 2004 to 31 December 2004 and four of its retail Q of S indicators for January 2005. The Commission further determines that Aliant Telecom must provide a credit to its customers of 50 percent of the amount that would have been calculated under the retail rate adjustment plan using the actual Q of S results for the affected indicators between 23 April 2004 and 31 January 2005. The dissenting opinion of Commissioner Noël is attached.*

#### **Background**

1. The Commission first established quality of service (Q of S) standards in *Quality of Service Indicators for Use in Telephone Company Regulation*, Telecom Decision CRTC 82-13, 9 November 1982. The Commission noted that it considered that the mechanisms it established in the decision would "facilitate the objective assessment of the service quality provided and thus assist in the determination of just and reasonable rates."
2. The Commission reaffirmed the connection between service quality and just and reasonable rates in *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994. The Commission noted that under the new regulatory framework, a proper determination of just and reasonable telephone rates would continue to involve an assessment of the service quality provided by telephone companies to their subscribers.
3. In *Quality of service indicators for use in telephone company regulation*, Telecom Decision CRTC 97-16, 24 July 1997 (Decision 97-16), the Commission directed that in circumstances where a telephone company reported an indicator with below-standard quality for 3 consecutive months or 7 out of 12 consecutive months, it was to file monthly reports for that indicator within 15 days of the end of the month rather than quarterly reports, until quality met or exceeded the standard for 3 consecutive months. The Commission also directed that the company was to provide an explanation of the cause of quality degradation and an action plan describing how it intended to rectify and prevent the situation from recurring.
4. In *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002, as amended by *Regulatory framework for second price cap period – Erratum: Telecom Decision CRTC 2002-34 – Appendix 3*, Telecom Decision CRTC 2002-34-1, 15 July 2002, the Commission determined that a Q of S retail rate adjustment plan (RAP) was

required to establish incentives to ensure that incumbent local exchange carriers (ILECs) complied with the Q of S standards for services provided to customers and to ensure that service quality was not sacrificed to achieve higher profits. In this regard, the Commission established a new regime that included a retail Q of S RAP for an interim period.

5. This interim period began on 1 July 2002 for Aliant Telecom Inc. (Aliant Telecom), Bell Canada, MTS Communications Inc., and TELUS Communications Inc. (TCI). In *Implementation of price regulation for Télébec and TELUS Québec*, Telecom Decision CRTC 2002-43, 31 July 2002, the Commission established the same retail RAP for Société en commandite de Télébec and TELUS Communications (Québec) Inc.,<sup>1</sup> effective 1 October 2002.
6. In *Saskatchewan Telecommunications – Transitions to federal regulation – Reporting quality of service*, Telecom Decision CRTC 2002-53, 30 August 2002, Saskatchewan Telecommunications (SaskTel) was made subject to the same Q of S standards and reporting regime as the other large ILECs. In *Saskatchewan Telecommunications – Applicability of interim quality of service rate adjustment mechanisms and related matters*, Telecom Decision CRTC 2003-36, 5 June 2003, the Commission determined that, effective 1 July 2003, SaskTel would be subject to the same retail RAP as the other large ILECs.
7. In *Retail quality of service rate adjustment plan and related issues*, Telecom Decision CRTC 2005-17, 24 March 2005 (Decision 2005-17), the Commission finalized the retail RAP for the interim period and established a final Q of S RAP for retail customers, beginning 1 January 2005. The Commission considered it appropriate for the Q of S RAP to include a mechanism whereby Q of S performance failures might be excluded from the ILECs' retail Q of S results. Decision 2005-17 applied to all the large ILECs, including Aliant Telecom.
8. The Commission considered that such an exclusion mechanism should be sufficiently flexible to accommodate the effects of natural disasters and other adverse events that, by their very nature, were unpredictable and beyond the reasonable control of an ILEC. The Commission considered that labour disruptions might qualify as such in certain circumstances. The Commission further determined that each adverse event should be assessed in light of the surrounding circumstances, and any modifications to the Q of S results for the purposes of the RAP should be determined on a case-by-case basis.
9. The Commission considered that exclusion applications should be permitted for both the interim period and the final plan. The Commission determined that for the interim period, ILECs could file an exclusion application by 25 April 2005. With respect to the final plan, the Commission determined that it was appropriate to require that an ILEC file an exclusion application within 21 days of the end of an adverse event.

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<sup>1</sup> Effective 1 July 2004, TCI assumed all rights, entitlements, liabilities, and obligations relating to the provision of telecommunications services in the territory previously served by TELUS Communications (Québec) Inc. Effective 1 March 2006, TCI assigned and transferred all of its assets and liabilities, including all of its service contracts, to TELUS Communications Company (TCC).

10. The Commission indicated that exclusion applications for both the interim period and the final plan must identify the following: 1) the adverse event for which an exclusion is sought; 2) the effects of the adverse event on specific Q of S indicators; and 3) the proposed adjustments to those Q of S results.

### **Process**

11. On 25 April 2005, Aliant Telecom filed an exclusion application under the interim plan. On 6 May 2005, the company filed an exclusion application under the final plan.
12. The Consumers' Association of Canada, the National Anti-Poverty Organization, and l'Union des consommateurs (the Consumer Groups) filed comments on Aliant Telecom's 25 April 2005 application on 9 May 2005. Aliant Telecom filed reply comments on 16 May 2005.
13. The Consumer Groups filed comments regarding Aliant Telecom's 6 May 2005 application on 20 May 2005. The Consumer Groups noted that they had filed detailed comments on the merits of Aliant Telecom's 2004 exclusion application under the interim plan on 9 May 2005, and that those comments were equally applicable to the company's 2005 application and had been incorporated by way of reference into its 20 May 2005 submission. Aliant Telecom filed reply comments on 27 May 2005.

### **Aliant Telecom's applications**

14. In its 25 April 2005 exclusion application, Aliant Telecom requested that the Commission exclude results for the following five retail Q of S indicators: 1.5 – Access to Business Office (indicator 1.5); 2.1A – Urban Out-of-Service (OOS) Trouble Reports Cleared within 24 hours (indicator 2.1A); 2.1B – Rural OOS Trouble Reports Cleared within 24 hours (indicator 2.1B); 2.2A – Urban Repair Appointments Met (indicator 2.2A); 2.2B – Rural Repair Appointments Met (indicator 2.2B); 2.5 – Access to Repair Bureau (indicator 2.5); and 4.2 – Access to Directory Assistance (indicator 4.2) from the retail RAP for the months of April to December 2004 due to a company-wide work stoppage that had lasted from 23 April to 20 September 2004.
15. In its 6 May 2005 exclusion application, Aliant Telecom requested that the Commission exclude the retail Q of S results for the first quarter of 2005 for indicators 1.5, 2.1B, 2.2B, 2.5, and 1.6 – Competitor Installation Appointments Met (indicator 1.6). Aliant Telecom submitted that these indicators continued to be affected by the residual effects of the 2004 work stoppage.
16. The Commission notes that indicator 1.6 is not a retail Q of S indicator and is not subject to either the RAP or the comparable rate rebate plan for competitors, which was finalized in *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005. As a result, the Commission will not consider indicator 1.6 in this Decision.
17. The Commission considers that since Aliant Telecom's 2004 and 2005 exclusion applications are associated with the same event, it is appropriate to address both of them at the same time.

## **Positions of parties**

### **Event for which the exclusion is sought**

#### *Aliant Telecom's submission*

18. In its 25 April 2005 application, Aliant Telecom submitted that the work stoppage experienced in 2004 had been the result of exceptional circumstances that included the merger of four companies, the combination of four bargaining agents, and the consolidation of nine collective agreements into one agreement.
19. Aliant Telecom submitted that collective bargaining to establish a single collective agreement had begun in March 2002. The company noted that it had applied to the Canadian Industrial Relations Board (CIRB) to have certain services declared essential to public health and safety. It submitted that the CIRB had denied the request and as a result no unionized employees were required to work during the work stoppage.
20. According to Aliant Telecom, the progress of negotiations had been slow and by August 2003 the company and the Council of Atlantic Telecommunications Unions (the Council) had reached agreement on only 9 of 36 articles. Aliant Telecom indicated that in September 2003 it had requested assistance from the Federal Mediation and Conciliation Service. It noted that two mediators had been appointed and had worked with the parties throughout the negotiation process.
21. Aliant Telecom submitted that a comprehensive offer it had tabled in March 2004 had been rejected, at which time the unions had sought and received a strike mandate from their members. The company noted that on 23 April 2004 its further offer had been rejected by the Council, and Aliant Telecom's entire non-management workforce of 4,300 operators, clerical staff, and technicians – 70 percent of Aliant Telecom's workforce – began a work stoppage.
22. Aliant Telecom submitted that on 30 August 2004, talks had resumed with senior mediators, including the most senior official of the Federal Minister of Labour's office, the Director General of the Federal Mediation and Conciliation Service. The company submitted that on 20 September 2004, five months after the work stoppage had begun, a resolution had been reached, and striking employees had returned to work.
23. Aliant Telecom argued that should the Commission determine that the labour disruption did 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 RAP as a powerful lever to affect the outcome of collective bargaining.

#### *The Consumer Groups' comments*

24. The Consumer Groups submitted that the decision to merge the operations of the four former independent ILECs and the proposal to create a single bargaining unit to incorporate the four separate bargaining units from the predecessor companies were actions and events within Aliant Telecom's control.

25. The Consumer Groups argued that Aliant Telecom was aware that a work stoppage might occur as a result of the renegotiation process. The Consumer Groups noted that in its 2003 Annual Information Form, Aliant Telecom had stated that "the process of renegotiating collective agreements could result in higher labour costs or work disruptions thus affecting Aliant Telecom's operating results and financial condition."
26. The Consumer Groups submitted that Aliant Telecom was not without responsibility regarding the work stoppage and that the work stoppage had not been beyond its control. According to the Consumer Groups, Aliant Telecom's work stoppage did not fit the definition of an adverse event, which they noted the Commission had indicated was by nature unpredictable and beyond the reasonable control of the ILEC. The Consumer Groups stated that Aliant Telecom's actions had contributed to the work stoppage, and that Aliant Telecom knew in advance that its actions could result in a work stoppage.

*Aliant Telecom's reply comments*

27. In reply, Aliant Telecom argued that it was wrong to say that the fact that a risk of a work stoppage was recognizable made the event predictable and therefore took it out of the category of *force majeure*. According to Aliant Telecom, the fact that it had recognized the risk of a work stoppage had not made it any less unpredictable. Aliant Telecom stated that it was not unusual for labour negotiations to be resolved at the last minute and that the risk of a strike might be foreseen but the actual occurrence was unpredictable. The company noted that the risk of natural disasters was well known, but they were nevertheless acknowledged to constitute *force majeure*.
28. With respect to the argument that the strike had not been beyond the reasonable control of Aliant Telecom, the company replied that amalgamation of the four former companies had been undertaken for good business reasons, with the intention of strengthening the companies to be more effective participants in the new competitive environment. Aliant Telecom noted that the amalgamation of the bargaining units had come about through a decision of the CIRB and had not been a unilateral action of Aliant Telecom.
29. Aliant Telecom submitted that it could not be said with certainty that the work stoppage had occurred because of the amalgamation since each of the collective agreements was approaching an end and a strike was always a possibility in such circumstances.
30. Aliant Telecom submitted that while it had been recognized that integration of the unionized workforces would be a difficult part of the amalgamation, it would be foolish to suggest that the strike had been an intended consequence of that decision. According to Aliant Telecom, what was clear was that the collective bargaining negotiations had been very complex and difficult, and that they had been made so because of the amalgamation issues. Aliant Telecom argued that this did not establish that it could have avoided the strike by reasonable means.
31. Aliant Telecom submitted that it had conducted its negotiations prudently, in the long-term interests of its customers. Aliant Telecom also submitted that any assessment of the conduct of labour relations, a process conducted under the auspices of the CIRB, was beyond the

jurisdiction of the Commission. Aliant Telecom argued that the potential for a work stoppage was an integral feature of a collective bargaining process and was enshrined in Canadian labour law.

### **What were the effects of the adverse event on Aliant Telecom's Q of S indicators?**

#### *Aliant Telecom's submission*

32. Aliant Telecom submitted that its Q of S results for 2004 had been significantly affected by the work stoppage. Specifically, Aliant Telecom indicated it had had difficulty in meeting the 12-month average for 5 of the 13 indicators subject to the retail RAP.
33. Aliant Telecom submitted that its first priority during the work stoppage had been to maintain emergency services and the health and safety of the public and its employees. It also submitted that approximately 1,800 redeployed management employees had been assigned to this in priority to other activities affecting the Q of S measures, and that the next priority had been the maintenance of the network and repair service. Aliant Telecom submitted that new installation requests and installation of optional services through calls to the business offices had been given lower priority.
34. According to Aliant Telecom, despite extraordinary efforts by the redeployed management employees, it had not been possible to meet the Q of S standards during the work stoppage. Aliant Telecom stated that there had been a number of reasons for this, including the reduction in the skilled workforce, activities of picketers hampering outside operations of the reassigned managers, prioritization of work activity, higher-than-normal call volumes to business offices and repair bureaus, and incidents of sabotage – responses to which were of the highest priority.
35. Aliant Telecom submitted that in recognition of the impact the work stoppage would have on employees and its operations, it had developed a plan to facilitate an efficient and effective return to work after the conclusion of the strike. This plan included debriefing sessions and programs on financial counselling and stress management for unionized employees, as well as a full day return-to-work workshop for frontline managers and the establishment of joint union-management transition teams.
36. Aliant Telecom also submitted that when the unionized workers had returned to work, there was a substantial backlog of demand for services from the work stoppage period, in addition to the usual fall seasonal demand.
37. Aliant Telecom further submitted that its commitment to getting its Q of S results back on track for the post-labour disruption period was demonstrated by the fact that it had achieved the standard for all three months of the fourth quarter of 2004 for 8 of 13 indicators subject to the retail RAP.
38. According to Aliant Telecom, despite the careful planning and implementation of the return-to-work program, the negative impact of a five-month work stoppage on its operations had not stopped with the signing of an agreement. For these reasons, Aliant Telecom submitted that the fourth quarter of 2004 should be considered as part of the exclusion period for Q of S rate adjustment determinations.

39. Aliant Telecom stated that to the best of its knowledge, the extent of the work stoppage was unprecedented in the Canadian telecommunications sector. According to Aliant Telecom, not only had the work stoppage been uncharacteristically long, it had affected all non-management unionized employees, which was unique.
40. According to Aliant Telecom, in the period following the work stoppage, the company and its employees had worked to overcome the residual stresses and difficulties that were the inevitable result of such a process and to restore normal service as quickly as possible.
41. Aliant Telecom argued that the competitive market in its territory provided significant incentives for the company to maintain its Q of S, and that its inability to do so during the work stoppage had resulted in a significant loss of income. Aliant Telecom further argued that 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.
42. In its 6 May 2005 application, Aliant Telecom submitted that the fourth quarter 2004 recovery period, with Q of S results showing improvement, had continued into the first quarter of 2005.
43. Aliant Telecom submitted a table for its first quarter 2005 Q of S that showed results that were below standard. In addition, Aliant Telecom provided the Q of S results for the same months of the years 2004 and 2003 to demonstrate that the first quarter 2005 results were a consequence of the impacts of the labour disruption and not of any intentional degradation of service for financial or any other reasons.

*The Consumer Groups' comments*

44. The Consumer Groups submitted that the impact of the work stoppage on Aliant Telecom's operations after its conclusion did not qualify as an adverse event and should not be excluded from the retail Q of S RAP. The Consumer Groups also submitted that resuming work activity following the work stoppage was clearly an event that was predictable and those activities were within the ILEC's control.
45. The Consumer Groups submitted that in its exclusion application, Aliant Telecom had stated that its Q of S results had been recovering from the effects of the strike, and that it was working diligently to get results back on track to meet the standard for all indicators for 2005. The Consumer Groups submitted, however, that a review of Aliant Telecom's first quarter 2005 results indicated that results were still not up to the Commission's minimum acceptable levels.
46. The Consumer Groups noted that in Aliant Telecom's table that compared the results for January, February, and March for 2003, 2004, and 2005, the results for 2003 and 2004 were provided only where the corresponding 2005 results were below the Commission's minimum standard. The Consumer Groups also noted Aliant Telecom's statement that the results presented for 2003 and 2004 were to show that the first quarter 2005 results were a result of impacts of the labour disruption and not of any intentional degradation of service.

47. The Consumer Groups submitted that the comparison did not support such a finding, nor did it justify the exclusion of the Q of S results for the first quarter 2005 for an event that had occurred and concluded in 2004. The Consumer Groups argued that the results for 2005 might have varied from those of 2003 or 2004 for reasons unrelated to the work stoppage, and that simply stating that this was the reason was insufficient support for excluding the results.
48. The Consumer Groups argued that, when combined with Aliant Telecom's earlier application to exclude the Q of S results from the end of the work stoppage until the end of 2004, the company had proposed to exclude the Q of S results for a period of over six months after the end of the work stoppage, notwithstanding that the work stoppage itself had lasted, by comparison, only five months. The Consumer Groups submitted that it was simply not appropriate to exclude such a lengthy period of time after the work stoppage from the retail Q of S RAP. They argued that at some point Aliant Telecom must take responsibility for mitigating any residual impacts of an adverse event, and that it must not simply wait until its Q of S results were above standard. The Consumer Groups argued that with the conclusion of the work stoppage, the events were no longer beyond Aliant Telecom's reasonable control.
49. The Consumer Groups stated that Aliant Telecom had provided no explanation regarding how the supposed negative residual impacts of the work stoppage had affected January and March results but had managed to skip February.<sup>2</sup> The Consumer Groups submitted that the other factors identified in Aliant Telecom's Exception Reporting and not the residual effects of the 2004 work stoppage had caused the substandard results.
50. The Consumer Groups submitted that for indicators 2.1 and 2.2, for January and February 2005, Aliant Telecom had indicated that it was monitoring trouble reports and repair appointments for rural areas to ensure that resources were allocated when required. They noted, however, that in its March 2005 Exception Report, Aliant Telecom had stated that it would "continue to place additional focus on reducing volumes of dispatched calls, rework and repair cycle times and on effectively allocating resources to meet workload requirements." The Consumer Groups submitted that this indicated that resource allocation issues had been negatively affecting Aliant Telecom's retail Q of S results.

*Aliant Telecom's reply comments*

51. Aliant Telecom argued that it had taken all reasonable steps to ensure the continuation of service, and in particular the maintenance of services essential to public safety. According to Aliant Telecom, every avenue available to minimize customer impacts and to maximize staffing levels had been taken to maintain the highest service levels possible considering the extraordinary circumstances. Aliant Telecom stated that the adverse impact of the strike had continued for many months after the return to work, just as the adverse impacts of Hurricane Juan had continued long after the storm had ended.

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<sup>2</sup> The Commission notes that Aliant Telecom restated its results for the first quarter of 2005 for indicators 1.5 and 2.5 on 3 March 2006 to reflect the recommendations of an internal audit the company had performed to ensure compliance with Decision 2005-17. In the revised statement, the results for indicator 1.5 decreased from 80 to 79 for February 2005 and from 74 to 73 for March 2005. The results for indicator 2.5 increased from 67 to 68 for January 2005 and from 81 to 82 for March 2005.

52. Aliant Telecom stated that it had included the comparison of 2005 first quarter results to 2003 and 2004 results in its 6 May 2005 application in order to show that the first quarter Q of S results for previous years were generally well above the minimum acceptable standard even with the harsh weather conditions experienced in the winter months in the Atlantic provinces. Aliant Telecom submitted that in the previous years it had been able to overcome the impact on its Q of S indicator results from unpredictable adverse events caused by extreme winter weather to still achieve and exceed the standard for the three winter months.
53. Aliant Telecom submitted that it was extremely proactive and was taking every reasonable action to bring all its results for every Q of S indicator back to the standard that it had provided to its customers for the previous years. Aliant Telecom further submitted that the results for the below-standard indicators had been trending upwards since the end of the labour disruption in September 2004.
54. Aliant Telecom argued that the exceptional adverse impacts of a five-month labour disruption had not terminated with the end of the calendar year but continued to affect service level results. The company submitted that in the first quarter of 2005, its employees, systems and processes continued to be stressed due to the residual effects of the excess workload and demands that had accrued during the five months of the labour disruption.

### **Proposed adjustments to the Q of S results**

#### *Aliant Telecom's submission*

55. Aliant Telecom argued that the period from 1 April 2004 to 31 December 2004 should be excluded for determination of retail Q of S rate adjustments under the RAP. Aliant Telecom noted that the results for the Q of S indicators had been on track to achieve standards for the month of April until the work stoppage began on 23 April 2004. Aliant Telecom submitted that the Q of S results for the period 23 to 30 April were far enough below standard to cause the entire month's results to come in below the standard for the problem indicators. Aliant Telecom further submitted that for the period from 1 May to 31 December 2004, the company's operations had been seriously impacted by the work stoppage and its aftermath.
56. Aliant Telecom stated that it was fully consistent with the intent of the RAP that the Q of S results during the work stoppage and the fourth quarter of 2004 be excluded from the determination of a rate adjustment under the RAP. Aliant Telecom submitted that as in the case of natural disasters such as hurricanes, tornadoes, or floods, a period of reconstruction, recovery, and re-establishment of normal processes of both a company and its employees was required following a tumultuous strike.
57. In its 6 May 2005 application, Aliant Telecom submitted that the impact on service of a five-month work stoppage by its entire unionized workforce could not be overcome in a short period. Aliant Telecom also submitted that it was working hard to meet the Q of S standards for all indicators and requested that the first quarter 2005 results for the above-mentioned indicators be excluded under the final RAP since these results had been adversely impacted by events that were beyond the company's reasonable control.

*The Consumer Groups' comments*

58. The Consumer Groups argued that if Aliant Telecom's proposal to exclude the Q of S results for the last nine months of 2004 were approved, there would be no Q of S rate adjustment for 2004, even though the company's Q of S was significantly below standard for the majority of 2004. According to the Consumer Groups, the Commission should reject Aliant Telecom's proposal. The Consumer Groups submitted that retail subscribers, who bore the impact of Aliant Telecom's sub-standard Q of S results, should not be further disadvantaged by excluding the Q of S results from the April to December 2004 period from the 2004 Q of S retail RAP.
59. The Consumer Groups submitted that rather than simply excluding the Q of S results entirely for the period of April to December 2004, the Commission should make some allowance for the work stoppage in recognition that the event was not completely beyond Aliant Telecom's reasonable control.
60. The Consumer Groups noted that while they disagreed with Aliant Telecom's application to exclude the entire period from April to December 2004 from the 2004 Q of S RAP due to the work stoppage, they had previously identified alternatives for treating labour disruptions under the Q of S RAP. The Consumer Groups noted that in the proceeding that led to Decision 2005-17, they had submitted that labour disruptions were not completely beyond the reasonable control of the ILEC since the ILEC management was directly involved in the negotiations that typically lead to a labour disruption. However, the Consumer Groups had also noted in that proceeding that labour disruptions were also generally not within the complete control of the ILEC, since the ILEC management represented only one of the two parties involved in any negotiating process.
61. The Consumer Groups noted that they had suggested in that proceeding that the ILEC could be held responsible for 50 percent of the amount by which performance was substandard during the period in question.
62. In the Consumer Groups' view, if the Commission determined that the work stoppage qualified as an adverse event, only the period of time covered by the work stoppage should be excluded from the Q of S RAP. According to the Consumer Groups, Aliant Telecom's retail Q of S results up to the start of the work stoppage and after the conclusion of the work stoppage should be included in the determination of the Q of S RAP for 2004.
63. The Consumer Groups noted that in support of Aliant Telecom's request to remove the April 2004 results from the Q of S RAP, the company had claimed that the results for the period 23 to 30 April were far enough below standard to cause the entire month's results to come in below the standard for the problem indicators.
64. The Consumer Groups submitted that rather than simply discarding the entire month's results for April 2004, a more appropriate methodology, if the Commission determined that the work stoppage qualified as an adverse event, would be to include April's results on the basis of the period 1 to 22 April 2004, since this would capture and measure the Q of S results for the period prior to the adverse event.

65. In their 20 May 2005 comments, the Consumer Groups submitted that the Commission should reject Aliant Telecom's application to exclude from its 2005 retail Q of S RAP the retail Q of S results for indicators 1.5, 2.5, 2.1B and 2.2B for the period January through March 2005 due to the work stoppage in 2004.

*Aliant Telecom's reply comments*

66. Aliant Telecom noted the Consumer Groups' argument that any exclusion should be limited to the actual duration of the work stoppage. The company submitted that, implicitly, the Consumer Groups had asserted that the adverse impact of the work stoppage had ended with the return to work. Aliant Telecom argued that this was not true and that the adverse impact of the work stoppage had continued for many months after the return to work, just as the adverse impacts of Hurricane Juan had continued long after the storm had ended.
67. Aliant Telecom further argued that it would not be meaningful to try to allocate "fault" for a strike and that even an arbitrary allocation of 50 percent responsibility, as proposed by the Consumer Groups, was an unwarranted adjudication. Aliant Telecom submitted that such a process of apportionment was also inconsistent with the determinations of the Commission in Decision 2005-17, which recognized that if Q of S was adversely affected by a *force majeure*, that period should be excluded in calculation of the averages for purposes of the adjustment program.
68. Aliant Telecom submitted that the Consumer Groups had re-iterated their proposal for treatment of strikes that they had submitted in the proceeding that led to Decision 2005-17. According to Aliant Telecom, this amounted to an application to review and vary the result of that proceeding. Aliant Telecom stated that this proposition had not been adopted by the Commission in Decision 2005-17, and no basis had been shown for doubting the correctness of that decision.
69. Aliant Telecom submitted that the Consumer Groups had not put forward meaningful arguments regarding why the Commission should reject the company's application to exclude the retail Q of S results for the period January through March 2005 for the indicators listed in its 2005 exclusion application in relation to that period.

**Commission's analysis and determinations**

70. The Commission must decide whether to allow Aliant Telecom to exclude certain Q of S results from its retail Q of S RAP. The two main issues regarding the application are: does Aliant Telecom's work stoppage qualify as an adverse event and, if so, for what period of time and to what extent were the Q of S indicators affected by this event. The Commission must also determine, accordingly, how much credit, if any, Aliant Telecom should provide to its customers.

**Does Aliant Telecom's work stoppage qualify as an adverse event?**

71. The Commission considers that customers are entitled to expect high-quality telecommunications services at reasonable prices. The Commission notes that section 47 of the *Telecommunications Act* (the Act) requires the Commission to exercise its powers and perform

its duties under the Act, with a view to implementing the Canadian telecommunications policy objectives set out in section 7 of the Act and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27 of the Act. The Commission also notes that one of the Canadian telecommunications policy objectives listed under section 7 of the Act is "to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada." The Commission further notes that section 27(1) of the Act requires that every rate charged by a Canadian carrier for a telecommunications service be just and reasonable.

72. In establishing the Q of S regime to help meet this requirement, the Commission determined which Q of S indicators were important for customers and created standards that it considered to be the minimum acceptable level of performance for each associated indicator.
73. As noted above, the Commission found it necessary to establish a Q of S RAP to ensure that ILECs complied with the standards and did not sacrifice service quality.
74. The Commission considered, however, that if an ILEC did not meet the minimum established Q of S as a result of an event that was beyond its control, the Commission's concern about ILECs sacrificing service quality did not apply. Accordingly, the Commission established an exclusion mechanism in Decision 2005-17.
75. In the case of Aliant Telecom's current exclusion applications, the negotiation process stretched over two years and the work stoppage emerged out of a process of merging four companies, combining four bargaining agents, and merging nine collective agreements into one. While it was an Aliant Telecom decision to merge the operations of four formerly independent ILECs, the amalgamation of the bargaining units, whether a contributing factor to the work stoppage or not, was not imposed by Aliant Telecom but resulted from a decision of the CIRB. In the end, the negotiations and the labour disruption involved two sophisticated entities acting in accordance with, and exercising, their legal rights within the framework of applicable Canadian labour legislation.
76. In light of the above, the Commission considers that Aliant Telecom's work stoppage was neither completely within, nor completely beyond, the control of the company. As a result, the Commission determines that in this case the work stoppage partially qualifies as an adverse event.
77. The Commission notes that the Consumer Groups proposed that since the work stoppage was not entirely beyond Aliant Telecom's control, it could be held responsible for 50 percent of the amount by which performance was substandard during the period in question. The Commission further notes that Aliant Telecom argued in reply that this point had been raised by the Consumer Groups in the Decision 2005-17 proceeding and that raising the issue again was, in effect, an attempt to review and vary that decision.
78. The Commission notes that in Decision 2005-17 it neither rejected nor accepted the Consumer Groups' or any other parties' proposed methodologies for rate adjustments but left the question to be determined based on the specific circumstances associated with each separate exclusion

application. As a result, the Commission considers that the Consumer Groups were not precluded in this proceeding from proposing the same methodology they had put forth in Decision 2005-17.

79. In light of the above, the Commission determines that to the extent that the work stoppage affected the indicators, Aliant Telecom must provide a credit to its customers of 50 percent of the amount that would have been calculated under the RAP using the actual Q of S results for the period determined below. The Commission will now examine the extent to which, and the period of time during which, the work stoppage affected the indicators.

#### **Effect of the work stoppage on Aliant Telecom's Q of S indicators**

80. The Commission notes that Aliant Telecom submitted two exclusion applications that in total covered four time periods: before the work stoppage, during the work stoppage, from the end of the work stoppage to the end of 2004, and January to March 2005. The Commission will consider each of these periods separately.

##### *Before the work stoppage*

81. The Commission notes that Aliant Telecom met the Q of S standards for all 13 indicators under the retail RAP during the first interim period, from July 2002 to December 2003, and, with one exception, throughout the first quarter of 2004. With respect to the Q of S results for the period 1 April 2004 to the beginning of the work stoppage on 23 April 2004, the Commission notes that Aliant Telecom submitted that it was on track to meet the standards for the five indicators in question. The Commission also notes that the company's Q of S results began to decline as of the beginning of the work stoppage.
82. The Commission considers that it is inappropriate to exclude Q of S results for a period prior to the commencement of a general work stoppage unless there is evidence of conditions such as rotating strikes, wildcat strikes, or work-to-rule action that have affected the Q of S results. Since there is no evidence that Aliant Telecom's Q of S was affected prior to the work stoppage, the Commission determines that the company's Q of S results for 1 to 22 April 2004 should be included in the retail RAP calculation.

##### *During the work stoppage*

83. The Commission considers that the five missed indicators that are the subject of Aliant Telecom's exclusion application for 2004 would have been significantly affected by the work stoppage. The Commission notes that Aliant Telecom's entire non-management workforce of 4,300 operators, clerical staff, and technicians were involved in this activity. The Commission notes that 1,800 management employees were redeployed to replace the entire non-management workforce and that they would not necessarily have had the skill set or experience required to perform functions such that service would be maintained at an acceptable level, thus necessitating prioritization of work activities and impacting all of the affected indicators. The Commission considers that indicators 1.5, 2.5, and 4.2 would have been particularly affected by the lack of trained personnel, with responses to calls not performed in a timely manner. It also considers that indicators 2.1A, 2.1B, 2.2A, 2.2B would have been particularly affected by the lack of technicians, resulting in repair delays.

84. In light of the above, the Commission considers that there was a causal link between the work stoppage that lasted from 23 April to 20 September 2004 and the results of the indicators during that period.

*From the end of the work stoppage to the end of 2004*

85. With respect to the post-work stoppage period of 21 September to 31 December 2004, the Commission considers that based on the length of the work stoppage and the fact that all non-management employees were involved, it is reasonable to conclude that Aliant Telecom would require a period of reconstruction, recovery, and re-establishment of processes in order to achieve normal working operations and to deal with any pent-up demand for repairs and new installations after the end of the work stoppage.
86. In light of the above, the Commission considers that there was a causal link between the work stoppage that lasted from 23 April to 20 September 2004 and the results of the indicators during the fourth quarter of 2004.

*January, February, and March 2005*

87. The Commission notes that although Aliant Telecom claimed an exclusion for the entire first quarter of 2005 for the four retail Q of S indicators, only the standard for indicator 1.5 was missed in all three months. The standards for indicator 2.5 and indicator 2.1B were not missed in February or March, and the standard for indicator 2.2B was not missed in March. In addition, the Commission notes that while the results for indicator 1.5 had improved almost to the point of meeting the standard for February, they showed significant deterioration after March and deteriorated even more seriously for much of the remainder of the year.
88. The Commission further notes that the results for all four indicators were substantially below standard for the month of January 2005, and that they were only slightly higher than those achieved for the month of December 2004. The Commission also notes that Aliant Telecom met the Q of S standards for the four indicators in question for the month of January in both 2003 and 2004. Although there may be variables from year to year, the Commission considers that in the circumstances it is reasonable to conclude that the backlog associated with the work stoppage was still a contributing factor in January 2005.
89. The Commission notes that the results achieved for the four indicators in February and March were either at standard or only slightly below. The Commission considers that Aliant Telecom has not provided sufficient evidence to demonstrate that the impact of the work stoppage continued to affect the Q of S results for the entire first quarter of 2005.
90. In light of the above, the Commission considers that there was a causal link between the work stoppage that lasted from 23 April to 20 September 2004 and the results of the indicators for the month of January 2005, but not for February or March 2005.
91. The Commission notes that pursuant to Decision 97-16, the ILECs are required to file Q of S reports on a quarterly basis and to file monthly reports for indicators whose quality was below standard for 3 consecutive months or 7 out of 12 consecutive months. The Commission also

notes that during its work stoppage, Aliant Telecom did not file its Q of S results. The Commission expects that in the future, all ILECs will continue to file their Q of S results during events that they consider to be adverse.

## **Conclusions**

92. In light of the above, the Commission determines that the 50 percent rate adjustment specified earlier in this Decision will apply to the period from 23 April 2004 to 31 January 2005. This determination applies to the following indicators:

- For the period of 23 April 2004 to 31 December 2004: indicators 1.5, 2.1A, 2.1B, 2.2A, 2.2B, 2.5, and 4.2, and
- For the month of January 2005: indicators 1.5, 2.1B, 2.2B, and 2.5.

93. The Commission directs Aliant Telecom to calculate the amount of credit to its customers as follows:

*2004*

- a) Resubmit the April 2004 Q of S results, removing the results for 22 to 30 April inclusive.
- b) For 2004, calculate the adjustment for the indicators for which no exemption was requested, as directed in Decision 2005-17, Steps 1 through 6, using all 12 months in 2004 and the retail RAP interim standard adjustment table in Appendix A. The result is the amount of adjustment due for the non-affected indicators.
- c) Follow Steps 1 through 6 for indicators 1.5, 2.1A, 2.1B, 2.2A, 2.2B, 2.5, and 4.2, using all 12 months in 2004. This result is the amount of adjustment due for the affected indicators, without any approved exemption.
- d) Follow Steps 1 through 6 for the same indicators as c), using the four-month period from January to April 2004. The result is the amount of adjustment that would be payable for the affected indicators, if the exemption for May to December were to be allowed in its entirety.
- e) However, the Commission has only approved 50 percent of the exemption. Accordingly, subtract d) from c), and divide by two.
- f) To calculate the total 2004 Q of S credit to customers, add the amounts of b) + d) + e).

2005

- g) For 2005, follow b) to f) using 1.5, 2.1B, 2.2B, and 2.5 and the retail Q of S RAP final standard adjustment table in Appendix B of Decision 2005-17. The calculation in d) should be based on an 11-month period (12 months less the approved exclusion for January).
94. The Commission directs Aliant Telecom to implement customer credits resulting from this Decision on their customer's monthly bills starting no later than **16 June 2006** for customers of record as of the date of the Decision. In addition, the Commission directs Aliant Telecom to file with the Commission by no later than **16 June 2006** the amount of the customer credit per network access service (NAS) and the NAS count used to determine the customer credit.
95. The dissenting opinion of Commissioner Noël is attached.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

### **Dissenting opinion of Commissioner Andrée Noël**

With all due respect for the majority's decision, I cannot agree with their finding that the 2004 work stoppage in the territory of Aliant Telecom Inc. ("Aliant" or "the Company"), i.e., all four Atlantic provinces, only *partially* qualifies as an adverse event that impacted the results of five of the Company's retail quality of service (Q of S) indicators for the period of 23 April to 31 December 2004, and four of the Q of S indicators for January 2005.

In addition, I cannot agree with the majority's finding that Aliant should provide a credit to its customers equal to 50 percent of the amount that would have been calculated under the rate adjustment plan (RAP) using the actual Q of S results for the affected indicators between 23 April 2004 and 31 January 2005.

The amalgamation of Aliant's bargaining units following the corporate merger of the four incumbent local exchange carriers (ILECs) serving the Atlantic provinces is the result of a decision by the Canada Industrial Relations Board (CIRB), not a decision by Aliant. To conclude that the resulting work stoppage is *not completely beyond* the Company's control seems risky, to say the least, and subsequently using this argument to justify a credit during the period in question seems frankly dangerous.

As Aliant rightly points out, this establishes a precedent that will tip the scales in the unions' favour and will no doubt be used as a powerful lever in collective bargaining.

Furthermore, as summarized in paragraphs 18 to 22 of the majority decision, the evidence clearly demonstrates that Aliant used every recourse available to it to minimize the impact of the strike on its customers, including an unsuccessful application to the CIRB to have certain services declared essential to public health and safety.

I think it is obvious that telephone service is an essential service in Canada.

With 70 percent of its workforce on strike and with no essential services provided by unionized workers during the labour dispute, it was impossible for Aliant to meet the Q of S indicators set out in paragraphs 14 and 15 of the majority decision.

Accordingly, I would approve Aliant's application to completely exclude from the retail RAP, but only for the period of 23 April to 31 December 2004, indicators 1.5, 2.1A, 2.1B, 2.2A, 2.2B, 2.5 and 4.2, and for the month of January 2005, indicators 1.5, 2.1B, 2.2B and 2.5.

Finally, I believe that during a strike or any other adverse event, the priority of any public utility should be providing service wherever possible, not writing reports. I would therefore grant an extension for the filing of Q of S results for the duration of adverse events.