



## Telecom Decision CRTC 2005-63

Ottawa, 21 October 2005

### Issues with respect to the provision of optical fibre

Reference: 8638-C12-200311283 and 8638-C12-200312728

*In this Decision, the Commission directs TELUS Communications Inc. to file, within 60 days of this Decision, a general tariff for the provision of interexchange optical fibre in its operating territory.*

*The Commission also directs that if Aliant Telecom Inc., MTS Allstream Inc. or Saskatchewan Telecommunications decide to provide optical fibre, proposed general tariff rates must be filed for approval at the same time as the customer specific tariff.*

*Finally, the Commission finds that it would not be appropriate to confirm its preliminary view expressed in Xit Télécom v. TELUS Québec - Provision of fibre optic private networks, Telecom Decision CRTC 2003-58, 22 August 2003, to forbear from regulating the provision of optical fibre on interexchange private line routes that have been forborne.*

### Background

1. In *Tariff filings related to the installation of optical fibres*, Telecom Decision CRTC 97-7, 23 April 1997 (Decision 97-7), the Commission directed Bell Canada, MTS Communications Inc. (MTS) now known as MTS Allstream Inc., and TELUS Communications Inc. (TCI) to file general tariffs for intra-exchange optical fibre based on the criteria of demand (actual and potential), the need to minimize any potential unjust discrimination and fungibility.
2. In *Stentor Resource Centre Inc. - Forbearance from regulation of interexchange private line services*, Telecom Decision CRTC 97-20, 18 December 1997 (Decision 97-20), the Commission granted forbearance from the regulation of high capacity and digital data interexchange private line (IXPL) services on routes where at least one competitor offered the equivalent of DS-3 bandwidth (or greater) on a private line basis to at least one customer, using terrestrial facilities from a company other than an incumbent local exchange carrier (ILEC) or an affiliate of such a company.
3. In *Applications for review and variance of Telecom Decision CRTC 97-7 and follow-up matters relating to the requirement for the Atlantic companies to file general tariffs for optical fibre*, Telecom Decision CRTC 98-10, 16 July 1998 (Decision 98-10), the Commission made the following determinations:
  - Island Telecom Inc., Maritime Tel & Tel Limited, New Brunswick Telephone Company Limited and NewTel Communications Inc. (now collectively known as Aliant Telecom Inc.) (Aliant Telecom) would not be required to file optical fibre general tariffs as the amount of fibre that they had provided in the companies' special facilities tariffs (SFTs) was, depending on the serving territory, either negligible or not significant;

- MTS was relieved from the obligation to file a general tariff for optical fibre on the basis that it had provided a limited number of optical fibre SFTs; and
  - Should Aliant Telecom or MTS decide to provide optical fibre in the future, general tariff rates must be filed at the same time as the proposed SFTs.
4. In *TELUS Communications Inc. - Fibre Use and Management Agreement*, Telecom Decision CRTC 2003-4, 31 January 2003 (Decision 2003-4), the Commission initiated a proceeding to consider whether it would be appropriate for TCI to provide interexchange optical fibre pursuant to a general tariff.
  5. In *TELUS Communications Inc. - Use of interexchange dark fibre in Alberta*, Telecom Decision CRTC 2003-22, 7 April 2003 (Decision 2003-22), the Commission approved TCI's SFT to provide Axia SuperNet Ltd. (Axia), by way of indefeasible rights of use, with interexchange optical fibre for use in the Alberta SuperNet (SuperNet) project. The Commission indicated that it would determine at a later date whether it would be appropriate for TCI to provide interexchange optical fibre pursuant to a general tariff.
  6. In *Xit Télécom v. TELUS Québec - Provision of fibre optic private networks*, Telecom Decision CRTC 2003-58, 22 August 2003 (Decision 2003-58), the Commission directed TELUS Communications (Québec) Inc. (TELUS Québec) to file general tariffs to provide intra-exchange and interexchange optical fibre.
  7. In *Xit Télécom v. Bell Canada - Provision of fibre optic private networks*, Telecom Decision CRTC 2003-59, 22 August 2003 (Decision 2003-59), the Commission directed Bell Canada to file a general tariff to provide interexchange optical fibre.

## **Process**

8. In Decisions 2003-58 and 2003-59, the Commission directed Aliant Telecom, MTS, Saskatchewan Telecommunications (SaskTel), TCI and Société en commandite Télébec (Télébec) to show cause why they should not provide intra-exchange and interexchange optical fibre pursuant to a general tariff.
9. In Decision 2003-58, the Commission was of the view that there was a benefit in considering the information contained in the proceeding initiated by Decision 2003-4 in the broader context of the Decision 2003-58 follow-up proceeding. Accordingly, the Commission placed all the information filed pursuant to Decision 2003-4 on the record of this proceeding.
10. In Decision 2003-58, the Commission also invited Aliant Telecom, MTS, SaskTel, TCI, Télébec and TELUS Québec to file comments on the Commission's preliminary view that forbearance, to the extent granted in Decision 97-20, should be expanded to include optical fibre facilities on IXPL routes that have been forborne. In Decision 2003-59, Bell Canada was invited to participate in the proceeding to consider the Commission's preliminary view.
11. In *Société en commandite Télébec - Fibre swapping agreement*, Telecom Order CRTC 2005-21, 13 January 2005 (Order 2005-21), the Commission denied Télébec's application for approval of a fibre swapping agreement with Bell Canada and considered that

the use of a general tariff by Télébec and Bell Canada would address concerns regarding potential unjust discrimination or undue preference. The Commission directed Télébec to file for approval general tariffs for intra-exchange and interexchange optical fibre and further directed Télébec and Bell Canada to use the applicable general tariffs, once Télébec's general tariff had been approved, to charge Télébec and Bell Canada for their use of optical fibre. Given this determination, the issue of whether Télébec should be required to file general tariffs has already been disposed of and, hence, need not be considered in this proceeding.

12. The Commission received comments on 14 October 2003 from Aliant Telecom, Bell Canada, MTS, SaskTel and TCI. As a result of an approved request for an extension to file, Télébec provided its comments on 24 October 2003.
13. The Commission received comments between 21 October 2003 and 24 October 2003 from 408936 Canada Inc. operating as Xit Télécom on behalf of itself and Télécommunications Xittel inc. (collectively, Xit Télécom), the Broadband Community Champions Consortium (BC3), the Columbia Mountain Open Network (CMON), the Community of Nakusp Broadband Working Group, the Corporation of the Village of Montrose (Village of Montrose), the District of Sparwood, the Gold Trail Open Network Society (GTONS), the Province of British Columbia, the Regional District of East Kootenay (East Kootenay), the Village Council of Radium Hot Springs (Radium Hot Springs), the Slokan Valley Economic Development Commission (SVEDC), and the Vancouver Island Open Network (VION).
14. The Commission also received comments on 3 November 2003 from 360networks services ltd. and GT Group Telecom Services Corp. (collectively, 360nsl), Allstream Corp. (Allstream), Axia and Chapleau Energy Services Corp. on behalf of itself and Chapleau Regional Development Corporation, the Town of Chapleau and Fox Lake Reserve (Chapleau Energy).
15. The Commission received reply comments on 3 November 2003 from Aliant Telecom, Bell Canada, MTS, SaskTel, Télébec and Xit Télécom.
16. The Commission received additional reply comments on 13 November 2003 from Aliant Telecom, Bell Canada and MTS, on 14 November 2003 from Télébec and on 27 November 2003 from SaskTel.
17. By letter dated 13 November 2003, Xit Télécom argued that the established process did not contemplate additional reply comments and that the comments received after 3 November 2003 should be excluded from the record of the proceeding because they would delay the implementation of Decision 2003-58. The Commission agrees that the additional reply comments were not contemplated by the process established for this proceeding but considers that, for reasons of fairness, these submissions should not be excluded.

## **Issues**

18. The Commission notes that this proceeding raises two major issues:
  - A. Should general tariffs be filed by Aliant Telecom, MTS and SaskTel for the provision of intra-exchange and interexchange optical fibre, and by TCI for the provision of interexchange optical fibre?

B. Should the Commission confirm its preliminary view that the provision of interexchange optical fibre should be forborne on forborne IXPL routes?

**A. Should general tariffs be filed by Aliant Telecom, MTS and SaskTel for the provision of intra-exchange and interexchange optical fibre, and by TCI for the provision of interexchange optical fibre?**

*Position of parties*

*Parties opposed to the filing of general tariffs*

19. Aliant Telecom, MTS and SaskTel submitted that broadening the ability of competitors to use ILEC facilities would be contrary to the Commission's stated objective in multiple decisions over the last six years of developing facilities-based competition. SaskTel submitted that making ILEC facilities available to competitors would cause the ILECs to effectively finance the uneconomic entry of service providers and would frustrate the development of competitive supply. Aliant Telecom submitted that mandating the provision of a competitive service was highly unusual and could be likened to the expropriation of company property.
20. Bell Canada and Télébec were of the view that Aliant Telecom, MTS, SaskTel and TCI should not be required to file general tariffs for the provision of optical fibre facilities. They submitted that due to the widely varying construction costs, the requirement for a general tariff with broadly averaged rates would place ILECs at a substantial competitive disadvantage for networks spanning rural or remote areas. Bell Canada indicated that such an arrangement undermined the reliance on market forces and, hence, should not be contemplated. Bell Canada argued that the ILECs should be allowed to compete, along with other fibre construction companies, based on a competitive bidding process that would recognize the unique costs and circumstances of a community's individual requirements.
21. TCI submitted that there was no evidence that a general tariff for interexchange optical fibre would increase access to broadband services in rural and remote communities. TCI also submitted that a general tariff was not appropriate in markets like interexchange optical fibre, where the requirements of specific customers were likely to be unique and the costs to TCI to construct that fibre were highly variable across different geographical areas. TCI submitted that general tariffs were an instrument best suited for uniform arrangements where the needs of specific customers were unlikely to vary significantly.
22. Aliant Telecom, MTS, SaskTel and TCI submitted that the provision of optical fibre pursuant to a general tariff was not warranted in this instance, based on the three criteria the Commission applied in Decision 97-7 to determine whether optical fibre should be provided under a general tariff: demand, the need to minimize any potential discrimination, and fungibility.
23. With respect to demand for optical fibre, Aliant Telecom stated that since Decision 97-7 had been issued, neither it nor any of its predecessor companies had provided optical fibre facilities of any kind and had not filed any SFT or general tariff for the provision of such facilities. MTS stated that it had not provided optical fibre to any customers on any basis since Decision 98-10, nor had it any desire to offer optical fibre as a service. SaskTel stated that of a total of three SFTs negotiated prior to coming under federal regulation, it had only one

remaining SFT for the provision of intra-exchange optical fibre on a standalone basis. SaskTel submitted that it had never provided interexchange optical fibre, it had not entered into any agreement to provide optical fibre since February 1999 and it did not intend to provide optical fibre in the future. TCI stated that its policy was one that regarded interexchange optical fibre as a strategic asset and not as a service it would seek to provide and that there was no evidence that it intended to provide interexchange optical fibre on a regular basis. TCI submitted that the SuperNet project was a unique, one-time arrangement and did not portend any intent to enter the business of providing interexchange optical fibre.

24. Aliant Telecom, SaskTel and TCI submitted that they had very little surplus fibre optic facilities as such facilities were used to provide lit fibre solutions to their customers, to competitors and to satisfy their regulatory obligations to serve.
25. With respect to the need to minimize potential unjust discrimination, Aliant Telecom, MTS, SaskTel and TCI submitted that if a company did not provide optical fibre facilities, it could not be viewed as providing an undue advantage or engaging in unjust discrimination. Aliant Telecom, MTS and SaskTel noted that they were not acting in any way that would present a barrier to firms engaged in the construction of fibre optic facilities from conducting business in their respective territories.
26. Bell Canada submitted that the efficient operation of a competitive marketplace would ensure that each customer could obtain the best possible business deal. Bell Canada noted that the high degree of competition for the construction of facilities rendered it unnecessary to require only one competitor to have a general tariff. Bell Canada noted that it had been involved in a number of request for proposal (RFP) processes that had been contested by a variety of suppliers.
27. Aliant Telecom, MTS and SaskTel submitted that the amount of fungible optical fibre facilities available in their territories was insufficient to warrant the requirement to provide optical fibre facilities pursuant to a general tariff. Aliant Telecom, MTS and SaskTel stated that they had very little or no surplus optical capability in their networks. MTS and SaskTel argued that facilities provided under a general tariff would likely require new construction and, therefore, would not necessarily be viewed as fungible by the Commission.

*Parties supporting the filing of general tariffs*

28. The CMON, BC3, Community of Nakusp Broadband Working Group, District of Sparwood, GTONS, Golden and Area Community Economic Development Office, East Kootenay, SVEDC, Tom Pearce on behalf of Stan Boychuk and the Clayoquot Sound Mamook Broadband Steering Committee, VION, Village of Montrose and Radium Hot Springs (collectively, the Communities), who filed comments pursuant to the proceeding initiated by Decision 2003-4 and/or Decision 2003-58, submitted that access to optical fibre and the local loop for digital subscriber line in rural areas was very significant in the development of the rural communities. Several interested parties were of the view that, in light of the public interest and government and industry initiatives, the ILECs should not be able to choose to stay out of the optical fibre market. CMON submitted that the ILECs should be compelled to share that infrastructure with qualified community network groups in order to allow these groups to construct open access networks. The Village of Montrose submitted that a policy to

permit the ILECs to bar access to communications infrastructure was in direct conflict with federal and provincial government policies to stimulate economic development in rural areas. The Province of British Columbia submitted that a regulated optical fibre tariff in rural British Columbia would increase the likelihood of alternative suppliers emerging who would introduce real competition into these regions. Chapleau Energy submitted that it would be uneconomic for competitors to duplicate the infrastructure of the ILECs and that the ILECs were capable of utilizing their dominant position to determine the future of regional communities.

29. With respect to demand for optical fibre, 360nsl submitted that there was a growing demand for optical fibre that was not being met because the ILECs were refusing to supply it. 360nsl submitted, for example, that Aliant Telecom had consistently refused access to interexchange optical fibre facilities.
30. Allstream, Axia, Chapleau Energy, the Communities and Xit Télécom submitted that the demand for broadband connectivity led to the initiation of projects such as the SuperNet project and Industry Canada's Broadband for Rural and Northern Development Pilot Program.
31. The Province of British Columbia indicated that it was considering upgrading the Shared Provincial Access Network and that it might wish to dramatically upgrade the amount of optical fibre leased over the next two to three years.
32. SVEDC and VION submitted that there was a pent-up demand for optical fibre in communities. VION referred to the demand from hospitals, schools, universities and other community services for access to optical fibre as a significant component of local broadband communications backbone infrastructures, noting that demand existed throughout British Columbia and not just in rural areas.
33. CMON submitted that its own estimated requirement of more than 1,000 kilometres of optical fibre and the trend for community, government and school boards to self-supply optical fibre was evidence of demand.
34. Xit Télécom submitted that interest in acquiring optical fibre assets was increasing and companies were restructuring their offerings in order to take advantage of the availability of government subsidies.
35. Axia, Allstream and CMON submitted that TCI had demonstrated that it was in the business of selling optical fibre. CMON noted that TCI had freely chosen to submit a response in competition with other vendors for the Axia SuperNet RFP and submitted that by doing so, TCI was effectively stating that it was only interested in large arrangements. Allstream submitted that TCI's provision of interexchange optical fibre for the SuperNet project demonstrated that TCI would offer interexchange optical fibre when it suited its own business interests. Axia submitted that TCI had used the same argument in the proceeding that led to Decision 97-7 as it had in this proceeding, namely that it did not intend to provide optical fibre in the future. Axia noted that in Decision 97-7, the Commission had determined that the scope of fibre-based services provided by TCI and TELUS Communications (Edmonton) Inc. was significant, given that they had provided a number of fibre SFTs.

36. Allstream submitted that general tariffs were the only means of ensuring that the ILECs did not unjustly discriminate and were in the public interest as they would promote competition. Allstream also submitted that potential competitors had neither the ubiquity nor the immediate ability to provision interexchange optical fibre in the same manner as the ILECs. 360nsl and Xit Télécom submitted that the optical fibre market was not highly competitive.
37. Allstream submitted that the fungibility criterion had become less meaningful as the increased demand for higher bandwidth services ensured that fibre facilities continued to have alternate applications. Allstream stated that neither Bell Canada nor TCI had argued that the facilities in question were not fungible. Allstream submitted that TCI was able to provision the Axia SuperNet SFT using spare capacity within its network. Allstream submitted that demand for an interexchange optical fibre indicated that the assets would be fungible.

*Commission's analysis and determination*

38. As a preliminary matter, the Commission notes that some parties used this proceeding to urge the Commission to order ILECs to provide optical fibre to any party that requested it. For example, the Communities argued that in light of the public interest, government and industry initiatives, the ILECs should not have the option to stay out of the optical fibre market, but should be compelled to share their optical fibre infrastructure. The Commission notes that the purpose and scope of this proceeding are to determine whether Aliant Telecom, MTS, SaskTel and TCI should be required to provide optical fibre through a general tariff, as opposed to exclusively relying on SFTs. In this regard, the Commission notes that the provision of optical fibre by ILECs that have optical fibre general tariffs is subject to the availability of facilities.
39. With respect to the arguments that the Commission should not require general tariffs to be filed because it would be inconsistent with facilities-based competition and optical fibre is not an essential facility, the Commission notes that TCI made very similar arguments in the proceeding that led to Decision 98-10. In that Decision, the Commission agreed that the issue was whether it would be appropriate to require services that were provided under an SFT to be made available under general tariffs. The Commission stated that while incumbent telephone companies were required to provide essential facilities to competitors in order to promote competition, this did not mean that non-essential facilities provided under SFTs should not be provided under general tariffs. The Commission considers that no new argument has been presented to suggest that the Commission should take a different view in this proceeding.
40. In Decision 97-7, the Commission based its determinations on whether or not an ILEC had to file general tariffs for intra-exchange optical fibre on the criteria of demand, minimizing the potential for unjust discrimination, and fungibility. In Decisions 2003-58 and 2003-59, the Commission applied those same three criteria to evaluate whether a general tariff would need to be filed by TELUS Québec for intra-exchange and interexchange optical fibre and by Bell Canada for interexchange optical fibre. The Commission considers that it would be appropriate to apply the same criteria as the basis for determinations in this proceeding.
41. With regard to the criterion of fungibility, in Decisions 97-7, 98-10, 2003-58 and 2003-59, the Commission determined that optical fibre facilities within major centres had alternate economic uses for the telephone company and were therefore not likely to be stranded. In Decision 2003-58, the Commission noted that existing optical fibre facilities had a variety of

uses, including addressing the demand by customers or competitors for optical fibre and serving as an underlying facility for other ILEC telecommunications services. The Commission considered that optical fibre was fungible where fibre existed. The Commission also determined, however, that where construction had to be undertaken to provide facilities to a particular customer, such facilities were likely to have little economic reuse value and would, therefore, not likely be fungible. The Commission accordingly determined that the provision of optical fibre under the general tariff should be subject to the availability of facilities.

42. The Commission considers that parties to this proceeding did not provide any compelling evidence to suggest that its fungibility criterion should be applied any differently in this proceeding. The Commission therefore considers that its previous finding, that an ILEC's existing optical fibre facilities are fungible, is still appropriate in this proceeding. The Commission also considers that to the extent that optical fibre facilities are fungible, this would support the need for a general tariff to be filed.
43. With regard to the criterion of unjust discrimination, the Commission notes that in Decisions 97-7 and 98-10, it found that the use of general tariffs would eliminate concerns raised regarding unjust discrimination in the pricing and availability of optical fibre. The Commission considers that parties did not provide any argument or evidence to suggest that its finding should not be similarly applied in this proceeding.
44. With regard to the criterion of demand, the Commission notes Aliant Telecom's statement that since Decision 97-7, in which the Commission determined that the predecessor companies of Aliant Telecom were not required to file general tariffs for intra-exchange optical fibre, the company has not provided optical fibre facilities of any kind. The Commission further notes MTS's statement that it had not provided optical fibre to any customers on any basis since Decision 98-10, nor had it any desire to do so. The Commission is persuaded, based on this information, that Aliant Telecom and MTS should not be required to file general tariffs due to insufficient demand.
45. The Commission notes that while SaskTel indicated that there was one remaining SFT for optical fibre in its operating territory, this SFT was established in February 1999, prior to SaskTel coming under federal regulation, and was due to expire in 2004. The Commission notes that this SFT is dated and that SaskTel stated that it had not provided optical fibre to any customer since February 1999. The Commission is of the view that this particular SFT is not evidence of sufficient demand to justify the filing of a general tariff.
46. The Commission notes that TCI indicated that it issued one SFT for interexchange optical fibre since Decision 97-7. TCI argued that the optical fibre it provided as part of the Axia SuperNet SFT was a one-time deal and that it should be exempt from filing an interexchange optical fibre general tariff because it would not be offering optical fibre to anyone else in the future.
47. The Commission notes that in Decisions 2003-58 and 2003-59, it determined that the filing by Bell Canada and TELUS Québec of several SFTs reflected actual demand for optical fibre facilities which, when assessed along with the criteria respecting unjust discrimination and fungibility, supported the filing of general tariffs.



48. The Commission notes that TCI's Axia SuperNet SFT is a subset of the SuperNet project that involves more than 9,000 kilometres of fibre linking more than 400 communities, and consists of providing interexchange fibre between 88 pairs of predominantly rural or remote communities of Alberta. In the Commission's view, the Axia SuperNet SFT represents the provision of a significant amount of optical fibre and constitutes evidence of significant actual demand for optical fibre facilities in TCI's operating territory.
49. With respect to TCI's argument that the Axia SuperNet SFT was unique and that the company had no intention of providing interexchange optical fibre on a regular basis, the Commission notes that in the proceedings that led to Decisions 97-7 and 98-10, TCI declared its intention not to provide intra-exchange optical fibre in the future, but was, nonetheless, required to file intra-exchange optical fibre general tariffs. Moreover, the Commission notes that in *TELUS Communications Inc. - Fibre and related services agreement*, Telecom Order CRTC 2005-309, 26 August 2005 (Order 2005-309), the Commission denied an application by TCI seeking approval pursuant to section 29 of the *Telecommunications Act*, of a Fibre and Related Services Agreement between itself and 653117 B.C. Ltd. (Entel) with respect to the swapping of fibre optic facilities in the Nass Valley area in British Columbia. The Commission directed TCI to file an SFT providing for the sale of the fibre and the associated maintenance services that were the subject of the proposed agreement.
50. In summary, the Commission considers that the criteria of fungibility, minimizing the potential for unjust discrimination and demand support the filing by TCI of a general tariff with respect to the provision of interexchange optical facilities.
51. Accordingly, the Commission directs TCI to file proposed interexchange optical fibre tariffs within 60 days of the date of the decision. These general tariffs should be, consistent with normal practice, subject to the availability of existing unused and unallocated facilities. Consistent with Decisions 97-7, 2003-58 and 2003-59, where facilities are not available and construction has to be undertaken to provide service to a particular customer, SFTs are appropriate and the rates for optical fibre facilities should not be less than the general tariff rates.
52. If Aliant Telecom, MTS or SaskTel decide to provide optical fibre in the future, proposed general tariff rates must be filed for approval at the same time as the customer specific tariff.

**B. Should the Commission confirm its preliminary view that the provision of interexchange optical fibre should be forborne on forborne IXPL routes?**

***Position of parties***

53. Aliant Telecom, Bell Canada, MTS, TCI, Télébec and TELUS Québec supported the Commission's preliminary view that forbearance should be granted to optical fibre facilities on forborne high capacity digital IXPL routes to the same extent granted in Decision 97-20. Aliant Telecom agreed with using the established processes to disclose and administer forborne route information.

54. 360nsl, Axia and Xit Télécom disagreed with the Commission's preliminary view. Axia submitted that allowing the parties to expand interexchange optical fibre forbearance with IXPL forbearance would allow the ILECs to control the market and, to a large extent, the services available. 360nsl submitted that it would be necessary to determine whether there was a competitive supply of optical fibre services on that specific route, and not simply determine whether there was competitive supply of IXPL services on that route. 360nsls argued that to do otherwise could result in the granting of forbearance on routes where there is no actual competitive supply of optical fibre facilities.
55. Xit Télécom submitted that IXPL forbearance criteria should not apply to optical fibre. Xit Télécom submitted that forbearance should apply only when there is a competitive optical fibre offering by a non-affiliated customer, on a specific route.
56. In reply, Aliant Telecom, Bell Canada and MTS disagreed that a competitive supply of IXPL services did not necessarily mean that there was competitive supply of optical fibres on that specific route. Aliant Telecom submitted that since competitive IXPL services would not be supplied over its facilities, the presence of a competitive IXPL service, which is principally provisioned over optical fibre facilities, was proof that there was a competitive supply of optical fibre. MTS submitted that if a particular service like IXPL was competitive on a given route, it had to be carried on competitive facilities. MTS submitted that the existence of a competitively provided IXPL service must therefore indicate the existence of a competitive facility.

*Commission's analysis and determinations*

57. The Commission notes that while they are closely linked, optical fibre facilities and IXPL are two different services. The Commission further notes that Aliant Telecom, SaskTel and TCI indicated in this proceeding that they would not be providing optical fibre service to third parties but instead would reserve the optical fibre they have in the ground for their own use or to offer lit services over those facilities. The Commission considers that competitors may choose to adopt a similar policy and in such circumstances, that it is possible that a competitor may be offering IXPL services over a particular route sufficient to have caused the granting of forbearance on that route, but have decided to offer little or no optical fibre as a service to third parties. Accordingly, the Commission is not persuaded that merely because there is sufficient competition to justify forbearance with respect to IXPL services on a particular route, there is sufficient competition to also justify the forbearance of the provision of optical fibre on that same route.
58. In light of the above and based upon the record of this proceeding, the Commission finds that it would not be appropriate to confirm its preliminary view expressed in Decision 2003-58 to forbear from regulating the provision of optical fibre on IXPL routes that have been forborne.

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>*

