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Ken Engelhart
Vice President - Regulatory

August 8, 2006

Via email: klynch@pco-bcp.gc.ca

Mr. Kevin Lynch
Clerk of the Privy Council and
Secretary to the Cabinet
Langevin Block
Ottawa, Ontario K1A 0A3

Dear Mr. Lynch:

RE: Canada Gazette Notice No. DGTP-008-2006 – Petition to the Governor in Council to Vary Telecom Decision CRTC 2006-9, Disposition of Funds in the Deferral Accounts

Rogers Communications Inc. (Rogers) is filing for the Governor in Council's consideration the attached submission with regard to the above referenced Petition. This submission was filed previously with the CRTC in regard to Telecom Decision CRTC 2006-9 and is directly relevant to the Petition.

Yours very truly,

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a long horizontal line extending to the right.

Kenneth G. Engelhart
Vice President - Regulatory

Copy: The Hon. Maxime Bernier, Minister of Industry
Ms. Diane Rhéaume, Secretary General, CRTC
Mr. Michael Binder, Ass't Deputy Minister, Spectrum
Information Technologies & Telecommunications, Industry Canada
Mr. Len St. Aubin, Acting Director General, Telecommunications Policy Branch,
Industry Canada
Mr. Ed Barrett, Barrett Xplore Inc.

Attachment directly behind.



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Ken Engelhart
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July 5, 2006

Via email: procedure@crtc.gc.ca

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
1 Promenade du Portage
Gatineau, Quebec K1A 0N2

Dear Ms. Rhéaume:

**RE: Application to Review and Vary Telecom Decision CRTC 2006-9 –
Disposition of Funds in the Deferral Accounts**

1. These comments are submitted by Rogers Communications Inc. (Rogers) in respect of the application by Barrett Xplore Inc. (BXI) seeking review and variance of parts of Telecom Decision CRTC 2006-9, *Disposition of Funds in the Deferral Accounts* (Decision 2006-9), relating to the use of deferral account revenues to subsidize the ILECs' provision of broadband facilities in rural and remote areas of Canada.
2. Like BXI, Rogers is concerned that the Commission's decision, to permit only the ILECs to utilize up to \$620 million in deferral account revenues for broadband expansion in rural and remote areas, will provide the ILECs with an unfair competitive advantage in those areas, which are increasingly becoming subject to competitive market forces.

3. Despite references in the Decision to the need for such subsidies to be utilized in a competitively neutral manner, the Decision fails to satisfy this stated policy objective.

4. With up to \$620 million in subsidies being made available solely to the ILECs to support only their network expansion, the Commission is ignoring the fact that other network providers are financing their own broadband networks in many of these same rural and remote areas. This is not limited to BXI's Ka-band satellite services. For its part, Rogers has invested millions of dollars of its own capital in a new national broadband wireless network (Inukshuk), which will provide broadband access in many of the same regions identified by the Commission in its Decision. Indeed, the terms of Inukshuk's radio licences require it to extend service to many underserved areas. As BXI has stated in its application, private capital cannot compete on a level playing field with the ILECs' subsidized networks. Providing third party access to the ILECs' subsidized network does not answer the issue of competitive neutrality. It places competitors at the mercy of the ILECs' monopoly networks and inhibits both price and service competition. It also assumes that other carriers, like Inukshuk, are not already building or planning to build their own backbone networks.

5. As noted by BXI, the Decision also conflicts with the recommendations of the Telecommunications Policy Review Panel (TPRP) in their March 23, 2006 report to the Government of Canada. The TPRP recommended that the Commission stay out of the broadband subsidy business and that any government-sanctioned subsidy programs be carefully targeted, be made subject to a competitively neutral bidding process, and be required to treat backbone and access issues separately.

The Panel believes the best approach to fund expansion of broadband access networks in each of these unserved areas is to hold least-cost subsidy auctions.

Under this approach, private sector service providers, including incumbents and new entrants as well as interested community-based groups, could submit proposals to provide broadband service in a defined area. The subsidy funding should be awarded to the proposal that requires the smallest subsidy, provided that it demonstrates it has the technical, financial and managerial capacity to construct and operate the necessary broadband network infrastructure.

This model contains market-like incentives that should encourage innovation. It also promotes “right size” solutions that would reduce the overall costs to the taxpayer and encourage use of the most efficient technological solution. Unlike BRAND, it would not require communities to organize themselves in order to aggregate demand, develop business plans and compete for funding, except in those cases where communities choose to do so.¹

6. Rogers notes that the Governor in Council has recently recognized the importance of implementing these kinds of regulatory measures in a competitively neutral manner. Paragraph (b)(iii) of the Proposed Policy Direction to the CRTC provides as follows:

Regulatory measures designed to advance non-economic objectives of regulation should, to the greatest extent possible, be implemented in a symmetrical and competitively neutral manner.

7. The Commission’s decision to grant only the ILECs access to deferral account broadband subsidies fails to satisfy this provision of the proposed Policy Direction.
8. The Commission has had experience creating competitively neutral subsidy schemes in the past. As noted by BXI, in the Commission’s landmark decision on *Local Competition*, the Commission addressed the issue of how to administer a subsidy system within the context of a competitive market. Its answer was to

¹ TPRP Report at page 8-16.

make the subsidy transparent and to establish a “portable” contribution regime, which allowed the subsidy to follow the customer’s choice of local exchange carrier in high cost areas. This system has worked well, placing all competitors and all technologies on an equal footing in rural and remote markets.

9. Rogers believes that the Commission followed the correct approach with respect to the portable contribution regime and ought to have followed a similar course of action in respect of broadband subsidies.
10. By making the subsidy available to consumers, or to their carrier of choice, rather than to the ILECs, the Commission would empower consumers to choose the best broadband service available in their region, at the lowest price available, whether it be provided by the ILECs’ fibre networks, BXI’s satellite network, Inukshuk’s wireless broadband network, or by any other competitor. By empowering consumers in this manner, the Commission will address the higher cost of providing service in rural and remote areas without favouring one competitor over another and it will encourage competition to develop in these areas to better serve consumers.
11. For these reasons, Rogers submits that there is significant doubt as to the correctness of the Commission’s original decision. In addition, Rogers believes that the release of the TPRP report and the publishing in the Canada Gazette of the Proposed Policy Direction to the CRTC, subsequent to the release of the Decision, justify a review and variance of the Commission’s Decision.

12. Since there is no point proceeding with implementation of this aspect of the Decision pending completion of this review process, Rogers also supports BXI's application for a stay of the Decision.

Yours very truly,



Kenneth G. Engelhart
Vice President - Regulatory

Copy: All interested parties to Telecom Decision 2006-9

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