

January 19, 2017

FILED VIA ACCESS KEY

Danielle May-Cuconato  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Gatineau Québec  
K1A 0N2

Dear Ms. May-Cuconato

**Re: Iristel Inc. – Application by Iristel relating to Eastlink’s refusal to implement local competition in the Aylmer, Ontario exchange – Reply of Iristel Inc. (CRTC File No. 8663-J64-201611913)**

## 1.0 Introduction

1. Iristel Inc. (“Iristel”) is in receipt of the answer of Bragg Communications Inc., carrying on business as Eastlink<sup>1</sup> (“Eastlink”) to Iristel’s Part 1 Application<sup>2</sup> (“Application”) in which Iristel requested that the Commission direct Eastlink to implement local competition in the Aylmer, Ontario exchange in accordance with Telecom Decision 2006-14<sup>3</sup> (“TD 2006-14”) and to interconnect with Iristel via a shared cost facility as described therein and doing all other things necessary for the purpose of enabling Iristel to compete with Eastlink in Aylmer. Eastlink is the small incumbent local exchange carrier (“SILEC”) in Aylmer through its business unit Amtelecom Telco GP Inc. (“Amtelecom”). Iristel is also in receipt of interventions from TELUS Communications Company<sup>4</sup> (“Telus”) and the Independent Telecommunications Providers Association<sup>5</sup> (“ITPA”).

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<sup>1</sup> Bragg Communications Inc., Answer, 9 January 2017, CRTC File No. 8663-J64-201611913 [“Eastlink Answer”].

<sup>2</sup> Iristel Inc., Part 1 Application, *Application by Iristel relating to Eastlink’s refusal to implement local competition in the Aylmer, Ontario exchange*, 17 November 2016 [“Iristel Application”].

<sup>3</sup> *Revised regulatory framework for the small incumbent local exchange carriers*, Telecom Decision CRTC 2006-14, 29 March 2006 [“TD 2006-14”].

<sup>4</sup> TELUS Communications Company, Intervention, 9 January 2017, CRTC File No. 8663-J64-201611913 [“Telus Intervention”].

<sup>5</sup> Independent Telecommunications Providers Association, Intervention, 9 January 2017, CRTC File No.8663-J64-201611913 [“ITPA Intervention”].

2. Iristel has carefully reviewed the submissions of the other parties and continues to maintain the positions it set out in its Application.

## **2.0 The ITPA has dropped its opposition to Iristel’s requested relief**

3. Iristel is pleased to note that, following its review of Iristel’s Application, the ITPA has dropped its initial opposition<sup>6</sup> to Iristel’s requested relief.<sup>7</sup> Iristel submits that the ITPA’s change of position is the only logical outcome as Iristel, as demonstrated through its Application, is in full compliance with all the requirements established by the Commission for the introduction of local competition in the operating territory of a SILEC. In particular, Iristel is a facilities-based Type I competitive local exchange carrier (“CLEC”) that intends to deploy transmission facilities to Aylmer.

4. The ITPA’s decision not to oppose Iristel’s request that Eastlink be directed to implement local competition in Aylmer is significant as it represents the interests of 23 SILECs<sup>8</sup>, which according to the lists maintained by the Commission, represents the majority of Canada’s SILECs.<sup>9</sup>

## **3.0 Telus supports Iristel, subject to certain conditions, which Iristel accepts**

5. In its intervention, Telus states that it supports Iristel’s Application “conditional on the Commission’s acceptance of Iristel as an independent facilities-based telecommunications service provider that can be assessed to determine whether there are competitors present in a local exchange for the purposes of the local forbearance test.”<sup>10</sup> [Footnotes omitted]. Telus’ stated concern is that unless Iristel’s presence in Aylmer is counted for the purposes of the local forbearance test, as set out

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<sup>6</sup> Canadian Independent Telephone Company Joint Task Force, Letter to the Commission, 24 October 2016, CRTC File No. 8663-J64-201610121, at para 1.

<sup>7</sup> ITPA Intervention, *supra* note 5, at para 4.

<sup>8</sup> *Id.* at Appendix.

<sup>9</sup> Canadian Radio-television and Telecommunications Commission, “Responsibilities and Regulatory Obligations – List of SILECs”, <<http://crtc.gc.ca/eng/comm/telecom/resptrans.htm>>.

<sup>10</sup> Telus Intervention, *supra* note 4, at para 2.

in Telecom Regulatory Policy 2009-379<sup>11</sup> (“TRP 2009-379”), consumers will not receive the full benefits of local competition and Eastlink’s ability to compete against Iristel will be handicapped.<sup>12</sup>

6. Iristel does not object to Telus’ proposed condition. Iristel is more than ready to compete in Aylmer, as well as other exchanges across Canada, whether they are subject to forbearance or not.

7. Iristel notes that Telus also raised concerns that Iristel’s desire for entry into Aylmer is driven “at least in part, by the financial opportunities presented by “traffic stimulation” (or “traffic pumping”).”<sup>13</sup> Iristel completely denies this allegation and will address it further below in its response to the arguments raised by Eastlink in its answer to the Application.

#### **4.0 Eastlink has failed to rebut the arguments raised in the Application**

8. Eastlink has completely failed in its answer to rebut the arguments raised in the Application. As a result, the Commission should grant Iristel’s requested relief.

#### **4.1 Iristel has not made “contradictory and confusing statements”**

9. A key element of Eastlink’s answer is that the *bona fides* of Iristel’s request to implement local competition in Aylmer are suspect due to what Eastlink refers to as Iristel’s “contradictory and confusing statements” made in relation to certain questions from Eastlink regarding Iristel’s intentions in Aylmer.<sup>14</sup> Iristel completely rejects the notion that its statements have been intentionally confusing or contradictory or that it has in any way tried to obfuscate its intentions from Eastlink.

10. Iristel urges the Commission to keep in mind that it does not have significant previous experience regarding the introduction of local competition in the territory of a SILEC. As such Iristel had to follow a bit of a learning curve as it became fully aware of its regulatory obligations as a Type I CLEC requesting the introduction of local competition in the territory of a SILEC for the first time.

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<sup>11</sup> Telecom Regulatory Policy CRTC 2009-379, *Framework for forbearance from regulation of retail local exchange services in the serving territories of the small incumbent local exchange carriers*, 23 June 2009 [“TRP 2009-379”].

<sup>12</sup> Telus Intervention, *supra* note 4, at paras 7-8.

<sup>13</sup> *Id.* at para 4.

<sup>14</sup> Eastlink Answer, *supra* note 1, at para 32.

During this learning process, Iristel may not have been precise in its use of terminology when communicating with Eastlink. This was certainly not intentional. However, Iristel submits that its overall intention has been made clear to Eastlink since the start of this dispute, namely that Iristel wishes to enter the Aylmer exchange as a facilities-based, Type I CLEC, in order to vigorously compete with Eastlink. The fact that Iristel may not have been exact in its use of terminology in its initial communications with Eastlink does not render its request to implement local competition not *bona fide*.

11. In any event, Iristel made its intentions perfectly clear to Eastlink in its 23 August 2016 email to Natalie MacDonald, Vice-President, Regulatory, in which Iristel communicated its intention to perform a joint build in Aylmer with Eastlink.<sup>15</sup> Iristel reiterated its intentions in its 9 September 2016 letter to the Commission seeking an order from the Commission directing Eastlink to implement local competition<sup>16</sup> as well as in the Application itself, which was filed on 17 November 2016.

12. Consequently, Iristel's intentions have been clear to Eastlink since the outset of this dispute. Therefore, Eastlink has no justification for arguing that Iristel has made "contradictory and confusing statements" throughout the course of this dispute and using this mischaracterization as a basis for refusing to implement local competition in Aylmer.

#### **4.2 Iristel will deploy transmission facilities in Aylmer**

13. For reasons that are not clear to Iristel, Eastlink continues to doubt that Iristel will deploy transmission facilities in Aylmer.<sup>17</sup> However, as Iristel made abundantly clear in the Application, it has deployed extensive transmission facilities in areas that are far more expensive to serve and more remote than Aylmer, including the North.<sup>18</sup> Thus, Iristel clearly has the capacity and the experience necessary to deploy transmission facilities to Aylmer.

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<sup>15</sup> *Id.* at Appendix G.

<sup>16</sup> Iristel Inc., Letter to the Commission, 9 September 2016, CRTC File No. 8663-J64-201610121.

<sup>17</sup> Eastlink Answer, *supra* note 1, at para 18.

<sup>18</sup> Iristel Application, *supra* note 2, at para 16.

14. As an alternative argument, perhaps recognizing that Iristel can easily deploy transmission facilities to Aylmer, Eastlink argues, without any legal basis, that Iristel’s proposed deployment of joint-build fibre connecting its switch with Eastlink’s local and tandem switches in Aylmer should not qualify it as a facilities-based provider.<sup>19</sup> To recapitulate, in the Application Iristel clearly articulated its planned deployment of transmission facilities in Aylmer as follows:

In the case of Aylmer, Iristel will be deploying transmission facilities in the form of fibre connecting its switch to Eastlink’s local and tandem switches. This fibre will be constructed as part of a joint build to a Mutually Agreed Point (“MAP”) in accordance with the procedures developed by the CRTC Interconnection Steering Committee (“CISC”). The CISC Network Working Group’s *Consensus Report on Joint Build Facility*, which was approved by the Commission, affirms that transport that is built between one LEC’s POI and the MAP is considered to be “transmission equipment”. For greater certainty, Iristel emphasizes that it will not only own this fibre connecting its switch with Eastlink’s local and tandem switches, but it will also be operationally responsible for it.<sup>20</sup> [Footnotes omitted]

15. In the face of this clear plan to deploy transmission facilities in Aylmer, which would make Iristel a facilities-based provider in Aylmer, Eastlink argues that: “running a few meters of fibre in an exchange does not make that service provider a facilities-based provider under the *Telecommunications Act* and the Commission’s regulatory regime.”<sup>21</sup> However, Eastlink is unable to point to a single provision of the *Telecommunications Act*<sup>22</sup> that supports this interpretation.

16. The definition of a “transmission facility” is contained in subsection 2(1) of the *Telecommunications Act*:

*transmission facility* means any **wire, cable**, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points, but does not include any exempt transmission apparatus. [Emphasis added].

Contrary to Eastlink’s assertion that Iristel’s deployment of fibre must be more than a few metres long<sup>23</sup>, nowhere in the definition, or anywhere else in the *Telecommunications Act* is there a requirement that a transmission facility be of a certain length. In fact, the definition of transmission

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<sup>19</sup> Eastlink Answer, *supra* note 1, at para 14.

<sup>20</sup> Iristel Application, *supra* note 2, at para 19.

<sup>21</sup> Eastlink Answer, *supra* note 1, at para 14.

<sup>22</sup> SC 1993, c 38 [“*Telecommunications Act*”].

<sup>23</sup> Eastlink Answer, *supra* note 1, at para 14.

facility contained in subsection 2(1) is quite clear that it includes “any” wire or cable used for the transmission of intelligence between network termination points. Therefore, Iristel’s joint build facility in the form of fibre connecting its switch with Eastlink’s local and tandem switches would certainly qualify.

17. Eastlink appears to be under the impression that Iristel must deploy a full last-mile network to every end-user that it wishes to serve in Aylmer.<sup>24</sup> This is absurd. As Iristel noted in the Application:

such a requirement would defeat the purpose of interconnecting with another LEC, which avoids the inefficient duplication of infrastructure. Iristel is deploying transmission facilities to Aylmer in the form of a joint build fibre connection and this should be sufficient to require Eastlink to introduce local competition in Aylmer.<sup>25</sup>

18. A requirement to deploy a full last-mile network to every end-user that Iristel wishes to serve in Aylmer would also significantly delay the introduction of a local competitor in Aylmer and force the residents of Aylmer to be subject to an economically inefficient monopoly on wireline telephony for the foreseeable future. Iristel already noted in its Application how such an outcome would not be consistent with the policy objectives contained in section 7 of the *Telecommunications Act* or the Policy Direction.<sup>26</sup>

19. Eastlink also makes some unsubstantiated arguments that Iristel is not complying with its 9-1-1 obligations as a facilities-based Type I CLEC and therefore is not a true facilities-based provider.<sup>27</sup> Iristel believes that it is in full-compliance with all of its regulatory obligations and will, as it has always done, continue to adhere to any Commission rulings regarding its 9-1-1 obligations or any other matters.

20. Iristel is planning on deploying transmission facilities to Aylmer in the form of fibre connecting its switch to Eastlink’s local and tandem switches and has clearly articulated to Eastlink the manner in which it intends to deploy those facilities. As Iristel noted in the Application, these facilities will require a substantial initial investment in Aylmer, as well as ongoing operational costs.<sup>28</sup>

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<sup>24</sup> *Id.* at para 18.

<sup>25</sup> Iristel Application, *supra* note 2, at para 21.

<sup>26</sup> *Id.* at paras 49-50.

<sup>27</sup> Eastlink’s Answer, *supra* note 1, at para 16.

<sup>28</sup> Iristel Application, *supra* note 2, at para 37.

Overall, Iristel will be a facilities-based provider in Aylmer and therefore Eastlink should be required to introduce local competition.

### 4.3 Iristel intends to vigorously compete in Aylmer

21. Despite clear evidence to the contrary, Eastlink continues to assert that Iristel has no intention of competing directly in Aylmer and that its intention is simply to wholesale Aylmer-based DIDs.<sup>29</sup> This is incorrect. Iristel already conclusively demonstrated in the Application, including through the use of information filed in confidence regarding wholesale rates for DIDs, that there is no business case for it to enter Aylmer as a facilities-based provider if its sole intention was merely to wholesale Aylmer-based DIDs.<sup>30</sup> As noted in the Application, Iristel does have a wholesale business, which will benefit from Iristel's entry into Aylmer, but the primary intent is to vigorously compete for the business of end-users in Aylmer.<sup>31</sup>

22. Eastlink has partially based its claim that Iristel has no intention of competing for the business of end-users in Aylmer upon what it views as Iristel's overly aggressive five-year NAS forecast. Eastlink states in its answer that:

An aggressive five-year objective for a new entrant with no brand recognition, no bundling ability, and no reputation for reliability in an exchange would be ##% of the NAS, or ## in five years. However, Iristel's five-year NAS forecast is ## subscribers, almost 50% more than the entire subscribership of Aylmer. Clearly, the majority of these ## NAS are going to be located outside Aylmer.<sup>32</sup>

23. Iristel notes that Eastlink is completely unqualified to assess Iristel's prospects for attracting subscribers in Aylmer. Eastlink has no insight into how Iristel intends to market its services to the residents of Aylmer or compete against Eastlink. Iristel anticipates significant demand for its services from the residents of Aylmer who have been relegated to receiving their wireline telephony services from a monopoly. The reason the forecast is so aggressive is because Eastlink, as a monopoly-

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<sup>29</sup> Eastlink Answer, *supra* note 1, at paras 19-22.

<sup>30</sup> Iristel Application, *supra* note 2, at paras 36-44.

<sup>31</sup> *Id.*

<sup>32</sup> Eastlink Answer, *supra* note 1, at para 19.



provider of wireline telephony services is vulnerable to competition. Iristel looks forward to competing aggressively for the business of every end-user in Aylmer.

24. Moreover, Iristel notes that NAS forecasts are becoming a misleading indicator of the number of subscribers that a CLEC hopes to attract as there are increasingly advanced telecommunications Internet of Things technologies being deployed in the market that allow a wider range of household devices to be connected to the Internet with phone numbers. Iristel expects that these technologies will become increasingly prevalent in Canada in the coming years and thus one household may have multiple active phone numbers.

25. In any event, a forecast is only that, a forecast. It is not a guaranteed predictor of the future. It is entirely possible that Iristel's forecast may prove, as Eastlink suggests, too aggressive, or it may end up not being aggressive enough. However, neither occurrence, if it comes to pass, would mean that Iristel is not planning on competing in Aylmer, or that Iristel's request for the implementation of local competition is not *bona fide*.

26. Iristel also categorically rejects the completely unsubstantiated allegations raised by both Telus and Eastlink that Iristel's interest in Aylmer is driven by a desire to engage in so-called traffic stimulation.<sup>33</sup> As noted by both Telus and Eastlink, Rogers Communications Canada Inc. has filed a Part I application alleging that Iristel is engaged in traffic stimulation practices in the 867 exchange.<sup>34</sup> Iristel has vigorously denied the allegations made by Rogers in that proceeding and will not repeat here all its arguments demonstrating the inaccuracy of the claims that it is improperly engaging in traffic stimulation.<sup>35</sup> Suffice it to say, Iristel, as demonstrated above and in the Application, is planning on entering Aylmer for the purpose of aggressively competing against a monopolistic telecommunications service provider and delivering quality services to the residents of Aylmer.

27. Overall, Iristel fully intends to vigorously compete for the business of end-users in Aylmer, which is why it is prepared to deploy costly transmission facilities to Aylmer.

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<sup>33</sup> Telus Intervention, *supra* note 4, at para 4; Eastlink's Answer, *supra* note 1, at para 21.

<sup>34</sup> Rogers Communications Canada Inc., Part 1 Application, *Application concerning Iris Technologies Inc. (Iristel) – Traffic Stimulation*, 16 November 2016, CRTC File No. 8622-R28-201611781.

<sup>35</sup> Iristel Inc., Answer, 5 December 2016, CRTC File No. 8622-R28-201611781.



#### 4.4 Eastlink's concerns about its subsidies are not a valid reason to deny the residents of Aylmer the benefits of competition

28. In its answer, Eastlink argues that one of the reasons that Iristel's request to implement local competition in Aylmer should be denied is that Eastlink will lose access to its voice subsidies while still being required to provide Internet service to the end-user.<sup>36</sup> In response, Iristel reiterates what it already stated in the Application, that the scenario described by Eastlink is exactly how the subsidy regime is supposed to work.<sup>37</sup>

29. Once Eastlink ceases to provide voice service to an end-user that decides to subscribe to Iristel's VoIP service, there is absolutely no justification for Eastlink to continue to receive a subsidy for that end-user. The fact that Eastlink will still likely be providing Internet service to that end-user is irrelevant. Moreover, it is not as if Eastlink will not be compensated for the use of its Internet service as end-users will continue to pay Eastlink's retail rates to subscribe to its Internet service.

30. Iristel comprehensively addressed Eastlink's addiction to its subsidies, and why this should not be a basis for denying its request for the implementation of local competition in Aylmer in section 5.0 of its Application in which it noted that:

The fear of a SILEC of losing its subsidies and revenues associated with losing a customer generally, which is the very definition of competition, cannot be used as a basis for refusing to implement local competition.<sup>38</sup>

31. In any event, Eastlink's fears of losing its voice subsidy are potentially now a moot issue. Since Iristel filed its initial Application on 17 November 2016, the Commission has released Telecom Regulatory Policy CRTC 2016-496<sup>39</sup> ("TRP 2016-496"). In TRP 2016-496 the Commission decided as follows:

Technology has evolved such that the ILECs' network infrastructure, originally installed to deliver voice services, now also delivers other services, including broadband Internet access services. Mobile wireless and fixed broadband Internet access services are key components of

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<sup>36</sup> Eastlink Answer, *supra* note 1, at paras 23-27.

<sup>37</sup> Iristel Application, *supra* note 2, at para 30.

<sup>38</sup> *Ibid.*

<sup>39</sup> Telecom Regulatory Policy CRTC 2016-496, *Modern telecommunications services – The path forward for Canada's digital economy*, 21 December 2016 ["TRP 2016-496"].

the universal service objective. As stated above, the new broadband funding mechanism will help expand the availability of broadband Internet access services in areas that are currently underserved.

Accordingly, the Commission determines that the current local voice service subsidy will be phased out. The Commission will launch a follow-up proceeding early in 2017 to examine the phase-out of the local service subsidy regime.

The Commission expects that subsidy in HCSA Bands E and F exchanges will be phased out first, while Bands G and H1 exchanges could require a longer phase-out period. Local voice service subsidy will be eliminated in regulated HCSA exchanges if the Commission determines that they qualify for forbearance, as set out in Telecom Decision 2006-15 and Telecom Regulatory Policy 2009-379. However, in all other regulated HCSA exchanges, the Commission does not intend to remove the local subsidy for a network access service (NAS) unless reliable broadband Internet access service is available.

32. As noted by Eastlink, Aylmer is a F4 Band High Cost Serving Area.<sup>40</sup> A review of Eastlink's retail website indicates that there is reliable broadband Internet access service available in Aylmer, including download speeds of up to 400 Mbps.<sup>41</sup> Thus, as per TRP 2016-496 Eastlink may face losing its voice subsidies in the near future in any event. This is even more likely if Telus' proposal regarding counting Iristel as an independent facilities-based provider for the purposes of the forbearance test in TRP 2009-379 is accepted.

33. Therefore, concerns that Iristel's entry into Aylmer will somehow cause Eastlink to lose access to its voice subsidies are, depending on how the Commission chooses to implement TRP 2016-496, potentially irrelevant as Eastlink will likely lose these subsidies regardless of whether Iristel enters Aylmer or not. Through TRP 2016-496 the Commission has once again expressed its intention to reduce ILEC reliance on subsidies and to increase reliance on market forces.

34. Iristel is also concerned that Eastlink is refusing to implement local competition in Aylmer, despite the fact that Iristel is clearly a Type I CLEC with extensive experience operating in every province and territory of Canada, to maximize the duration of its participation in the subsidy regime. As Iristel noted in its Application, by refusing to implement local competition in Aylmer, Eastlink is

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<sup>40</sup> Eastlink Answer, *supra* note 1, at para 25.

<sup>41</sup> Eastlink, "Internet", <<http://www.eastlink.ca/central/internet.aspx>>.

able to unjustifiably continue to harvest subsidies, which constitutes Eastlink granting itself an undue preference contrary to subsection 27(2) of the *Telecommunications Act*.

35. Consequently, Eastlink has failed to explain why its desire to retain access to its subsidies should be a factor that weighs against Iristel's bona fide request for local competition to be implemented in Aylmer.

## 5.0 CONCLUSION

36. Eastlink has not provided any convincing reasons in its answer as to why end-users in Aylmer should be denied the benefits of local competition. As Telus correctly noted in its intervention, VoIP providers are the future of wireline telephony services.<sup>42</sup> The fact that Eastlink feels competitively threatened by Iristel's more innovative and efficient operating model is no reason to deny Iristel's requested relief, namely the implementation of local competition in Aylmer, which is in full compliance with the regulatory scheme established by the Commission for the introduction of local competition in the SILEC's serving territories.

37. Overall, Iristel's request is *bona fide*, and Iristel urges the Commission to issue an order requiring Eastlink to implement local competition in the Aylmer, Ontario exchange in accordance with TD 2006-14 and to interconnect with Iristel via a shared cost facility as described herein and doing all other things necessary for the purpose of enabling Iristel to compete with Eastlink in Aylmer.

Sincerely,

Samer Bishay  
President & CEO  
Iristel Inc.

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<sup>42</sup> Telus Intervention, *supra* note 4, at para 9.



Copy: Chris Seidl, CRTC (via email)  
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