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January 20, 2012

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**RE: Application by Canadian Distributed
 Antenna Systems Coalition ("CANDAS");
 Board File No.: EB-2011-0120**

We are writing to file the responses of CANDAS to the interrogatories of Vulnerable Energy Consumers Coalition ("VECC") in respect of the Reply Report of Ms Patricia Kravtin filed on behalf of CANDAS.

For ease of reference, where we have referred to answers to first round interrogatories, we have used the following protocol: *e.g.* THESL(CANDAS)Byrne-1, would be a reference to THESL's response to CANDAS' question #1 on Ms Mary Byrne's Affidavit.

Where we have provided a reference to answers to second round interrogatories on CANDAS' Reply Evidence, we have used the following protocol: *e.g.* CANDAS(OEB)Larsen REPLY-1, would be a reference to CANDAS' response to Board Staff's question #1 on Tormod Larsen's Reply Evidence.

We will file two paper copies of the responses as soon as possible.

Yours very truly,

(signed) H.T. Newland

YMS/bc

cc: All Intervenors

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by the **Canadian Distributed Antenna Systems Coalition** for certain orders under the *Ontario Energy Board Act, 1998*.

**RESPONSES TO INTERROGATORIES OF
VULNERABLE ENERGY CONSUMERS COALITION**

(on the Reply Report of Ms Patricia Kravtin filed on behalf of the Applicant, CANDAS)

January 20, 2012

Interrogatory #1

In your evidence, you submit that utility poles are a natural monopoly that makes it "necessary, efficient, and practical for their shared occupancy"(page 2). In your view, is attachment space on utility poles thus an essential facility in that it is alleged that the use of the space is a bottleneck requirement, controlled by a monopoly that cannot be economically duplicated by wireless providers? If this is not an issue that concerns essential facilities, why should access be mandated under this heading of relief?

Response:

Yes.

Interrogatory #2

- (a) What is your precise definition of the product market? Are there any substitutes available to CANDAS as per your definition?
- (b) What is your understanding of the definition of product market proposed by Mr. Starkey and Dr. Yatchew?
- (c) Please explain your statements concerning the impact of convergence and dynamism in the telecommunications market on the definition of product market (page 10). Intuitively, these concepts would seem to enlarge the product market to include all wireless attachments.

Response:

- (a) Ms Kravtin assumes the interrogatory is asking for clarification of Ms Kravtin's definition of the relevant input product market, which is addressed at pages 7 to 10 of Ms Kravtin's Reply Report. As explained therein, Ms Kravtin defines the relevant input product market as the market for utility pole attachments. Per Ms Kravtin's definition, which relies on well-established competition guidelines for defining markets, there are no sufficiently close substitutes to utility pole attachments available to CANDAS. See also CANDAS(Energy Probe)Kravtin REPLY-2(b) and 2(d).
- (b) See CANDAS(Energy Probe)Kravtin REPLY-2(b). Assuming that the question relates to the definition of the relevant input product market, Ms Kravtin's understanding of the definition of the product market proposed by Mr. Starkey and Dr. Yatchew, is the "siting market for wireless attachments," including such inferior substitutes as rooftops, towers, building walls, street furniture, assorted decorative fixtures, billboards, signage and the like (see Yatchew Affidavit at 12, 16 and 30 and Starkey Affidavit at 23).
- (c) To understand the impact of convergence and dynamism in the telecommunications market, one must separate those impacts as to the upstream input market and the final (or downstream) product market.

With respect to the final (or downstream) product market, Ms Kravtin agrees, as the interrogatory suggests, that the impact of convergence is to enlarge the product market. Ms Kravtin's analysis does so by defining the relevant product market more broadly as the market for high quality, ubiquitous telecommunications services (including broadband services that are increasingly being provided via new-generation wireless networks such as DAS as well as via traditional cable and telephone networks, oftentimes, at least in Canada, by the same incumbent Canadian carriers). In contrast, Mr. Starkey and Dr. Yatchew define the final product as being limited to wireless

services, notwithstanding the economic reality of an evolving, increasingly convergent telecommunications market in which wireline and new-generation wireless services can compete.

With respect to the relevant input product market, the impact of convergence and dynamism, consistent with well-established competitive guidelines, is to effectively narrow the product market to utility pole attachments. Again, in contrast, Mr. Starkey and Dr. Yatchew define the input market to include all wireless siting alternatives, notwithstanding their unsuitability to provide high quality, ubiquitous telecommunications services relative to utility pole attachments. See also Ms Kravtin's response to THESL's interrogatory at CANDAS(THESL)Kravtin REPLY-1(a).

Interrogatory #3

- (a) Please confirm that CANDAS' advocacy of the public interest standard (pp 11-15) is a separate ground for the relief requested in this proceeding.
- (b) Please provide the precedential support for the statement in paragraph 26 that:

"Where government regulation of industry occurs, as in the case of public utilities, the overarching decision-making criteria to be applied by the regulator is a public interest standard."
- (c) The standard set out in paragraph 26 appears to imply a measurement of the interests of the utility and access seeking stakeholders, as well as the greater public good including the interests of ratepayers. Is this a quantitative measurement of each that must be performed, or does the enhancement of the public good always prevail? How do reductions to the revenue requirement brought about by possible premiums associated with market based attachment rates fit in this analysis?

Response:

- (a) As an economist, Ms Kravtin's report focuses on the underlying economic and public policy rationale that support a policy of non-discriminatory right to access for all telecommunications carriers. Whether the various rationales presented in Ms Kravtin's Reply Report are ultimately considered to be relevant by the Board to separate grounds of relief or interrelated grounds of relief is irrelevant to the underlying economic analysis set forth in her report.
- (b) Ms Kravtin's statement in paragraph 26 referenced above is deeply embedded in principles of social welfare economics as explained on page 13 of Ms Kravtin's Reply Report. While Ms Kravtin cannot speak to "precedential" support in the legal sense, Ms Kravtin is aware of many regulatory decisions in which the public interest standard is directly referenced and applied in decision-making, including the Board's CCTA Order (see CCTA Order at 3 and 10), the Board's decision in the 2007 NGEIR case (see NGEIR Decision at 42-48). While there are other theories of governmental economic regulation of industry of which Ms Kravtin is aware, *i.e.*, that regulation primarily serves the pecuniary interests of the regulated industry, Ms Kravtin's statement referenced above is expressed in terms of what she believes, based on established economic and regulatory principles, to be the appropriate economic and public policy standard to be applied by the regulator in order to achieve desirable market and social welfare performance outcomes and a system of effective regulation, consistent with sound economic principles and principles of public utility regulation. See J.C. Bonbright, *Principles of Public Utility Rates*, New York: Columbia University Press (1961).

- (c) The social welfare standard described at paragraph 26 of Ms Kravtin's Reply Report can be demonstrated either quantitatively or qualitatively. Under social welfare principles, consideration of social costs and benefits (*i.e.*, the public good), in addition to private costs and benefit will, all other things being equal, serve to enhance overall social welfare. Possible reductions to the revenue requirement brought about by possible premiums associated with monopoly-based pricing – in the absence of a well functioning market, it makes no sense to talk in terms of "market based" attachment rates – would be considered in the calculus. However, they would be weighed against (and in Ms Kravtin's opinion, far offset by) the significant benefits accruing to ratepayers associated with pole attachment rates that are more closely aligned with economic costs (such as would result in a competitive market if one existed as opposed to "premium" or monopoly rates). These benefits are described in Ms Kravtin's Reply Report at pages 12-13, and include among others, more widespread deployment of broadband telecommunications services, with their attendant beneficial multiplier effects throughout the economy.

Ms Kravtin's opinions are also informed by quantitative analyses she and others have performed of the relative impacts on the average electricity subscriber of an increase in the pole rental rate (assuming the increase results in a dollar for dollar reduction in the price they pay for electricity) with the impact on the average telecommunications subscriber (who may well be practically identical to the average electricity subscriber). The positive impacts on the electricity subscriber tend to be orders of magnitude smaller than the negative impacts on the telecommunications subscriber, given the comparatively small amount of pole attachment revenues relative to the size of the utility revenue requirement and/or kwh sales. The effect on consumers and overall societal welfare is further magnified by the fact that consumer demand for electricity is far less responsive to changes in price (in economic parlance, demand for electricity is price inelastic) as compared with consumer demand for broadband telecommunications service which is relatively price sensitive (*i.e.* price elastic). As a result, the impact on quantity of electricity service demanded resulting from a price decrease for electricity will be negligible relative to the impact on the quantity of telecommunications service demanded that would result from a price increase for broadband service.

For all the reasons discussed above and in Ms Kravtin's Reply Report, the public interest is not served by allowing the utility to exercise its monopoly power over utility poles with unfettered discretion.

Interrogatory #4

Does the threat of abuse of dominant position, advanced on page 15 of your evidence, fall under the "natural monopoly" or the "public interest standard" grounds for relief, or constitute a third ground to substantiate the same?

Response:

It is not the purpose of Ms Kravtin's Reply Report to opine on grounds for relief. In her opinion, all the various factors identified in her report – both individually and collectively – provide support for the policy of mandated non-discriminatory access to utility poles for all Canadian carriers. These factors include, but are not limited to the two specific items referenced in this interrogatory, *i.e.*, the natural monopoly characteristic of the utility pole network, and application of the public interest standard.