

**IN THE MATTER OF  
CANADA GAZETTE, PART I, 4 APRIL 2009  
NOTICE NO. DGTP-004-09**

**PETITIONS TO THE GOVERNOR IN COUNCIL  
BY BELL CANADA, BELL ALIANT REGIONAL  
COMMUNICATIONS, L.P., AND TELUS  
COMMUNICATIONS COMPANY SEEKING TO  
VARY TELECOM DECISION CRTC 2008-117 AND  
RESCIND TELECOM ORDER CRTC 2009-111**

**COMMENTS OF  
THE COMPETITOR COALITION**

**4 MAY 2009**

## I. INTRODUCTION

1. These comments are submitted by a coalition of independent telecommunications service providers (the “Competitors”) in opposition to the above-noted petitions to the Governor in Council filed by Bell Canada, Bell Aliant Regional Communications, L.P. and TELUS Communications Company ( “Bell and Telus” or the “phone companies”).<sup>1</sup>
2. The Competitors are all Canadian based companies that provide a wide variety of telecommunications services to both the residential and small- to medium-sized business (“SMB”) markets. Among the services provided by the Competitors to their customers are Internet access services, local and long distance voice services (including VoIP-based services), wireless services and broadband data services.
3. Because the local access and transport networks of Bell and Telus represent natural monopolies that cannot be economically or practically duplicated, many of the Competitors must lease “last mile” facilities and services from Bell and Telus in order to provision services to their own end-user customers. Included among the last mile facilities and services leased by the Competitors from Bell and Telus are a set of services that are sometimes called wholesale ADSL access (“WAA”) services.
4. WAA services are not Internet access services. In fact, they do not provide access to the Internet at all. They simply provide the last mile of access and transport facilities that are needed to connect a competitor’s point of

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<sup>1</sup> See Bell Canada, *Petition to the Governor in Council to vary Telecom Decision CRTC 2008-117, Cybersurf Corp.'s application related to matching service speed requirements for wholesale Internet services, and to rescind Telecom Order CRTC 2009-111, Cybersurf's application related to the implementation of Telecom Decision 2008-117 regarding the matching speed requirement by Bell Aliant and Bell Canada* (dated 11 March 2009) and TELUS Communications Company, *Petition to the Governor in Council to Vary Telecom Decision CRTC 2008-117 and to Rescind Telecom Order CRTC 2009-111* (dated 11 March 2009), collectively referred to herein as the “Bell and Telus petitions”.

presence (“PoP”) to an end-customer’s premises. By combining their own facilities and services with the phone companies’ WAA services, competitors can provide an entire range of broadband-based services, such as high speed Internet access service, VoIP services, remote LAN access services and streaming audio and video services.

5. In their petitions, Bell and Telus have asked the Governor in Council to vary and rescind two recent CRTC rulings<sup>2</sup> (the “Decisions”) which essentially direct these companies (as well as other incumbent telephone companies in Canada) to provide competitors with WAA services at speeds which match the speeds that Bell and Telus are currently providing to their own retail Internet service customers. In the case of Bell Canada, this would mean that Bell would be required to offer WAA services at speeds of 7, 10 and 16 Mbps in addition to the 512 Kbps, 5 Mbps and 6 Mbps speeds that are currently reflected in its WAA tariffs.
6. The CRTC made this determination because it recognized that WAA services represent “the only cost-effective means to provide transport to, and access from, an ILEC’s central office to a competitor’s end-customer.”<sup>3</sup> The CRTC also recognized that, absent the mandating of the additional WAA service speeds, there would be a substantial lessening of competition in downstream retail markets for high speed Internet access services.<sup>4</sup>
7. Given the natural monopoly that exists in the last mile portion of Bell and Telus’ networks, this decision was more than fair. In fact, even though the Competitors believe that further steps need to be taken by the Commission in relation to the phone companies’ WAA services (as discussed in the Competitors’ separate submission to the Governor in Council on the MTS

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<sup>2</sup> See Telecom Decision CRTC 2008-117, *Cybersurf Corp.’s application related to matching service speed requirements for wholesale Internet services*, dated 11 December 2008 and Telecom Order CRTC 2009-111, *Cybersurf’s application related to the implementation of Telecom Decision 2008-117 regarding the matching speed requirement*, dated 3 March 2009.

<sup>3</sup> Telecom Decision CRTC 2008-117, para. 19.

<sup>4</sup> *Ibid*, para. 19.

Allstream petition<sup>5</sup>), in many respects, the Commission's "matching speed" Decisions were the very least that it could do to address a very serious problem that exists in Canada's broadband markets, namely the lack of a meaningful competitor presence in many residential markets and most if not all SMB markets across Canada.

8. For example, only 3.9% of the residential market for high speed Internet services is served by independent telecommunications service providers ("TSPs") such as the Competitors.<sup>6</sup> The remainder of the residential market is essentially occupied by a duopoly composed of the incumbent telephone companies and the incumbent cable companies.<sup>7</sup>
9. In the business market, there is no significant cable company presence, so the market for underlying access and transport facilities (including both copper and fibre) is entirely dominated by the incumbent phone companies.
10. Given this frankly embarrassing state of competition in Canada's broadband markets, the Competitors are strongly opposed to the phone companies' petitions to vary and rescind these important CRTC Decisions.
11. In the Bell and Telus petitions, each of these companies threatens to cease to invest in next generation networks if they are forced to offer competitors WAA service if that service rides on any portion of the so-called next

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<sup>5</sup> MTS Allstream, *Petition to the Governor in Council, Concerning Telecom Decision CRTC 2008-118, MTS Allstream Inc. – Application to review and vary certain determinations in Telecom Decision 2008-17 regarding the classification of wholesale Ethernet services and Telecom Regulatory Policy CRTC 2009-34, Request to Review and Vary Directives in Telecom Decision 2008-10 related to the Provision of Central-Office based Wholesale ADSL Access Service and Aggregated ADSL Access Service*, dated 11 March 2009 ("MTS Allstream Petition").

<sup>6</sup> CRTC, *Communications Monitoring Report for 2008*, Table 5.3.2.

<sup>7</sup> Because of the technology that underlies the cable companies' networks, these companies do not offer WAA services. Although the cable companies do offer a wholesale service to TSPs called third party Internet access service or "TPIA", as discussed more fully below, this service is based on outdated technology which poses a myriad of technical problems and makes it difficult if not impossible for TSPs to provide private and secure services to their end-user customers. As a consequence, only a handful of TSPs in Canada actually use this service.

generation or fibre network ("NGN"). In essence, Bell and TELUS are arguing that they will no longer invest if they are mandated to provide higher speeds of wholesale ADSL access services to their competitors.

12. Both petitions are premised on a highly misleading account of the nature and extent of their NGN investments, the degree of competition in Canada's broadband markets, and the drivers of investment in NGN, all of which they claim will be threatened if their petitions are not granted.
13. Not only are these arguments false, they should be seen for what they truly are, namely a self-serving attempt by Bell and Telus to maintain their control over the SMB market for broadband services and to leverage that virtual monopoly to compete with the cable companies in the residential Internet market. This will diminish competition and produce the market outcome that this very Government set out to reverse when establishing the rules for the recent AWS spectrum auction. If granted, the Bell and Telus petitions will limit competition and customer choice for residential customers of high speed Internet services as well as various bundled voice and data services (including video and IPTV services) to, at best, the duopoly that exists today between the phone companies and the cable companies.
14. Despite their claims that the market is "vigorously competitive", the phone companies continue to control over 85% of the residential telephone market in Canada, and between 70% and 85% of various business market segments.<sup>8</sup>
15. Moreover, in the 12 years that have passed since the phone companies first introduced broadband Internet access services in their traditional serving territories, the overall market share held by independent ISPs in the retail

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<sup>8</sup> CRTC, *Communications Monitoring Report* for 2008, Table 5.3.2 and pages 197, 202, 210 and 222.

market for Internet services (including both dial-up and high speed services) has declined from 64% in 1997 to a mere 7.7% at the end of 2007.<sup>9</sup>

16. The phone companies are not truly interested in the Government's policy objective to promote competition and customer choice through the operation of "market forces". They know that their exercise of control over their ubiquitous last mile networks and the inability of competitors to replicate these networks insulate them from true competitive market forces, especially when combined with the protective effect of Canada's telecom foreign ownership rules. Their goal is very simple: it is to foreclose any further entry into the market by preventing competitors from gaining access to critical last mile network facilities and by blocking regulation whenever and wherever possible in order to preserve and enhance their dominant market positions.
17. When seen in their true light, the Bell and Telus petitions are really nothing more than thinly veiled requests for even greater market protection than they currently enjoy - something which neither this Government nor the Canadian economy can afford in these trying economic times.

## **II. THE PETITIONS ARE PREMISED ON NUMEROUS FALLACIES**

18. The Bell and Telus petitions are essentially predicated on the highly misleading claim that neither of these companies will make investments in their networks to provide so-called NGN services if they are required to provide competitors with access to the last mile network facilities that are used to provision NGN services and higher speed Internet access services, to say nothing of the potential for ISPs to offer other competing services such as IPTV service.
19. These claims do not stand up under any serious scrutiny and are also contradicted by the experience in other jurisdictions regarding telephone

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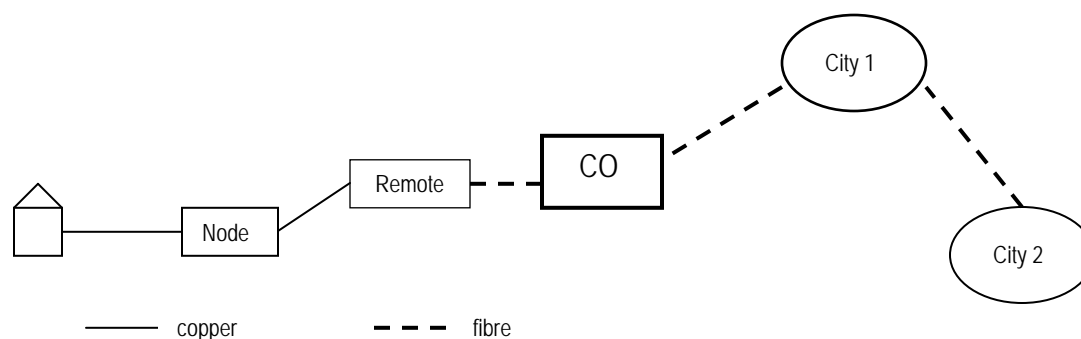
<sup>9</sup> Includes both dial-up and high speed Internet access services. See *Ibid*, Table 5.3.2 as well as Ekos Research Associates, *Rethinking the Information Highway: The ISP Marketplace*, September 2002.

company capital investments and the regulation of last mile access services that are based on fibre to the node ("FTTN") and fibre to the home ("FTTH") technologies.

**a) *There is Nothing Novel about the Phone Companies' FTTN Plans***

20. In their petitions, Bell and Telus make it sound as if the deployment of NGN requires a complete overbuild of their existing networks and that they have had to dramatically increase their capital investment over the past few years to accomplish this NGN build.
21. Nothing could be further from the truth. The fact of the matter is that this is not the first time Bell and Telus have ever deployed fibre in their networks. In addition, the phone companies' plans to deploy FTTN do not represent a massive overhaul of their existing networks.
22. The Competitors note in this regard that Bell and Telus have been deploying fibre throughout their networks for well over two decades and FTTN is simply a means of further extending the reach of their already extensive fibre network. Indeed, the additional fibre being deployed is simply the next step in the continuous technological evolution of the Bell and Telus networks.
23. It is important to note that the phone companies' networks are made up of a number of different transport components, including an inter-city transport component, an intra-city transport component, a transport component that connects telephone company switching offices ("COs") to "remote" switching facilities ("remotes"), another transport component that connects remote switching offices with "nodes", and an "access" component that connects individual homes and offices with the node. These various network elements are depicted in the following diagram:

**Figure 1 – Fibre Deployment in Telephone Company Networks**



24. Right now, every single one of these network components is composed of fibre with the exception of the “access” component and the transport component that connects neighbourhood “nodes” to “remotes”. In many areas of Canada, these latter facilities are composed of twisted copper pairs; however, as Bell’s petition makes clear, it has been deploying fibre from the remote to the node for at least five years, if not longer,<sup>10</sup> so many of the transport facilities that connect “remotes” to “nodes” in Bell’s network have already been converted from copper to fibre.
25. However, regardless of where Bell and Telus may be in their plans to deploy fibre to the node, one thing is clear: there is nothing unusual or novel about FTTN - it is simply part of the natural and ongoing evolution of the phone companies’ networks. In fact, as noted above, the phone companies’ networks were already heavily composed of fibre facilities. The only thing that is entailed with FTTN is the extension of that fibre network from the remote to the node, which in many instances may only involve a few hundred feet.

<sup>10</sup> By the end of 2006, Bell Canada had deployed a total of 3,612 nodes (reaching a total of over 1.1 million homes) which suggests that this upgrade program began prior to 2004. By the end of 2008, Bell had deployed FTTN to 5,890 nodes (reaching a total of over 2 million homes). Source: BCE quarterly reports.



26. It is important to take these considerations into account when assessing the phone companies' sensationalized claims regarding the novelty of their FTTN deployment plans. These plans have been in the works for many years. In fact, ever since the federal government and the CRTC signaled their respective intentions in the mid-1990s to permit the phone companies and the cable companies to compete in each other's markets (*i.e.*, the markets for local telephone services and broadcasting distribution services),<sup>11</sup> the phone companies have been building-out the broadband capabilities in their local access and transport networks. As a case in point, almost an entire regulatory proceeding was overtaken in 1995 by discussions of Bell's proposed "Beacon initiative", which was a large scale, broadband deployment program that Bell had launched in anticipation of its entry into the broadcasting distribution business. Shortly after this program was launched, Bell applied for and then obtained licences from the CRTC to provide BDU to services in Ontario and Quebec.
27. Moreover, while a certain portion of the annual capital expenditures of these companies will now be directed to ensuring that the broadband capabilities of their networks are increased, their overall annual capital expenditures remain relatively flat which underscores the fact that FTTN programs are simply part of the natural technological evolution of the phone companies' networks.
28. The Competitors also note that in October 2008, Bell and TELUS announced that a good portion of their annual capital expenditures will be directed toward an upgrade of their wireless networks to compete more aggressively with potential new wireless competitors. This recently announced investment to create a more advanced wireless network perfectly illustrates the real driver of investment - competition. And in this case competition brought about by judicious government rules that recognized the negative impact that a comfortable oligopoly was having on Canadians and Canadian

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<sup>11</sup> See: CRTC, *Connection, Community, Content, The Challenge of the Information Highway*, September 27, 1995 and Department of Canadian Heritage and Industry Canada, *Convergence Policy Statement*, August 6, 1996.

businesses and put in place a framework that would increase competition and, with it, investment and choice for Canadians.

29. For Bell and Telus to suggest or imply that their FTTN plans are a novel development or ones which they will not pursue if they are forced to offer wholesale services to competitors is simply false. Indeed, as discussed more fully below, and as Bell and TELUS themselves concede, the cable companies are augmenting their own networks with fibre. It is ridiculous therefore for Bell and Telus to argue, on the one hand, that they are facing heavy competition in the broadband market from cable companies and then, on the other hand, to claim that they will cease to invest in the very network upgrades that they need in order to compete with the cable companies.
30. Bell and Telus are merely trying to control the pace and extent of their investment and to leverage their virtual monopoly in the small and medium business market to compete with the cable companies in the residential market. In fact, if Bell and TELUS were really losing a significant portion of their overall customer base to the cable companies, they would have a tremendous incentive to offer competitors a state of the art wholesale service to defray some of these competitive losses.

**b) *The Empty Rhetoric of Withheld Investments***

31. The Governor in Council should view with equal skepticism the phone companies' claims that they will not pursue their FTTN plans or withhold these investments if they are required to provide WAA services at the speeds mandated by the CRTC in its Decisions.
32. As indicated above, the phone companies' plans to deploy FTTN have been "on the books" ever since the federal government and the CRTC announced their intentions in the mid-1990s to permit "convergence" by opening up the local telephone and BDU markets to competition. During this time, the phone companies have been mandated to provide a number of last mile

access and transport services and this never stood in their way of pursuing their strategy to build a network that is capable of delivering the same types of services that can be delivered over the cable companies' networks.

33. It is a blatant falsehood, therefore, for Bell and Telus to argue that they will not pursue certain investments in their networks simply because the CRTC has mandated that they provide last mile connectivity to competitors at speeds that match those which they provide to their own customers.
34. It is patently obvious that Bell and Telus are making these investments in response to competitive pressures from the cable companies. Indeed, it is a well-known fact that the cable companies are themselves upgrading their networks to provide higher speeds of Internet access and other broadband services,<sup>12</sup> so the phone companies must, out of necessity, reciprocate with their own network upgrades if they wish to remain competitive with the cable companies.
35. There is no merit, therefore, to the argument that Bell and Telus will not proceed with their FTTN investments if they are mandated to provide higher speed WAA services. These investments will be made regardless of whether the Governor in Council grants their petitions.
36. In fact, if their petitions are *denied*, Bell and Telus actually stand a better chance of recouping their FTTN investments than if their petitions are granted. The reason why is very simple: there is no guarantee that an end-user will purchase higher speed services from Bell and Telus simply because this capability has been built into their networks. However, if both the phone companies *and* other TSPs are competing with each other in the provision of these services, this competition will serve as a significant stimulus in encouraging end-customers to migrate more rapidly to higher speed services

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<sup>12</sup> It is a widely known fact that DOCSIS 3.0 upgrades will make it possible for the incumbent cable companies to provide Internet access services at speeds of 50 Mbps: <http://fastnetnews.com/docsisreport/163-c/1438-20-upgrade-to-docsis-30>

on the phone companies' networks, thereby speeding up the process by which the costs of these network investments can be recouped.

37. While the phone companies might prefer that all of these end-users become direct end-customers of their own, even if some of these customers opt to obtain service from a competitor, the phone companies will still be paid for the use of their networks by the competitors.
38. It is incorrect, therefore, for the phone companies to argue that they will not be able to recoup their FTTN investments if they are mandated to provide higher speed WAA services to competitors. Not only will they be paid for the actual cost of these services, *plus* a CRTC-approved mark-up, they will also be able to recoup their FTTN investments more quickly because the presence of competitors in the market will increase the rate at which end-users migrate to higher speed services on the phone companies' networks, either directly through the competitive efforts of the phone company or indirectly through the competitive efforts of other TSPs.

***c) The Experience in Other Jurisdictions***

39. In their petitions, the phone companies refer to the regulatory treatment that has been accorded by the FCC in the United States to the last mile elements that make up the local access and transport networks of US phone companies, including network elements composed either partially or wholly of fibre facilities.
40. Bell and Telus then hold up the FCC's rules and policies as the ideal model upon which Canada should structure its own rules.
41. The Competitors wish to make several observations regarding the FCC's rules. First, as most everyone is aware, the US economy was, until very recently, governed by rules which favoured deregulation, often for the sake of deregulation alone. This experiment has led to disastrous consequences

for the US economy, especially in relation to the banking and financial services sectors, but the telecom sector did not emerge unscathed either.

42. Indeed, the evidence from the US shows that when telephone companies are no longer mandated to provide wholesale services to their competitors, they do not increase their capital investments. In fact, these investments actually decline because one of the key catalysts for those investments, namely competition from other service providers, has been reduced or completely removed from the equation.
43. This is clear from a report prepared by Economics and Technology, Inc. (the "ETI Report") which shows that the investment levels of the large regional Bell operating companies ("RBOCs") in the US declined once they were no longer mandated to provide wholesale last mile services to competitors.<sup>13</sup> In particular, in the 2000-2001 time frame, RBOC capital investments peaked at approximately \$30-billion per year.<sup>14</sup> However, under the FCC's deregulatory approach, the capital expenditures of US phone companies in 2007 had *dropped to around 60%* of their 2001 levels.<sup>15</sup>
44. By contrast, in Canada where wholesale service prices remained regulated by the CRTC (although not based entirely on actual costs as they should be), the capital expenditures of the phone companies remained relatively high during the same time frame.<sup>16</sup>
45. The ETI Report also notes that several parties, including the fully independent National Regulatory Research Institute and the Government Accountability Office, have found that the deregulatory approach in the US

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<sup>13</sup> ETI, *The Role of Regulation in a Competitive Environment: How Smart Regulation of Essential Wholesale Facilities Stimulates Investment and Promotes Competition*, March 2009, at p. 22. A copy of the ETI Report can be found in Appendix 2 of the 11 March 2009 Petition to the Governor in Council by MTS Allstream regarding Telecom Decision CRTC 2008-118 and Telecom Regulatory Policy CRTC 2009-34.

<sup>14</sup> *Ibid*, p. 22.

<sup>15</sup> *Ibid*, p. 22, emphasis added.

<sup>16</sup> *Ibid*, p 28.

***did not*** produce an increase in the number of competitors in the market and that the phone companies continue to own “the vast majority of the last-mile broadband in the US, ***including in densely populated urban areas***.<sup>17</sup>

46. The ETI Report concludes that if the Government fails to require the phone companies to make *all* last mile services available to competitors, this will result in less competition overall, less investment in Canada’s telecom infrastructure, higher retail telecom prices, and substantial economic harm to Canadian business and the Canadian economy overall.<sup>18</sup> According to ETI:

Experience in both the US and Canada demonstrates that all telecom stakeholders – incumbent carriers, competitive telecommunications service providers, consumers (residential, small business, enterprise and government), and the national economy overall, will all benefit when entrants are assured, on an ongoing and permanent basis, economic access to the incumbent carrier networks.<sup>19</sup>

47. Despite the phone companies’ apparent fondness for the US model, Canada has never favoured the form of deregulation that they espouse, namely deregulation for the sake of deregulation. This Government has repeatedly emphasized the importance of “smart regulation”, and this is one of the many reasons why the Canadian economy, including both its banking and telecom sectors, is in much better financial health than the economy south of the border.
48. Furthermore, where there has been a failure of market forces in bringing about the benefits of competition in the form of lower prices, increased customer choice and higher levels of innovation, this Government has taken concrete steps to remedy the problem. A recent example of this smart regulation approach can be seen in the rules that were established for Canada’s AWS spectrum auction which were deliberately designed by the

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<sup>17</sup> *Ibid*, pp. 7-16, emphasis added.

<sup>18</sup> *Ibid*, p. 31.

<sup>19</sup> *Ibid*, p. 31, emphasis added.

Government to increase the number of competitors in the market and to ensure that those competitors could gain a foothold by requiring the incumbent wireless carriers to make their cell phone tower facilities available to new entrants.

49. The phone companies also fail to point out in their petitions that the deregulatory model that was adopted in the United States (and which is now poised to be revisited in the context of the FCC's recent Notice of Inquiry on a National Broadband Plan<sup>20</sup>), has been roundly rejected in several jurisdictions around the world, including in the UK, where the domestic regulator, Ofcom, has determined that deregulating wholesale last mile access services is harmful to competition. In fact, so harmful that the incumbent telephone company, British Telecom ("BT"), agreed (after an extensive investigation by Ofcom) to functionally separate its wholesale operations from its retail operations and to offer wholesale last mile services, including those based on fibre/copper technologies, at mandated cost-based rates.
50. As indicated in the Towerhouse Report attached to the MTS Allstream Petition, local access facilities in the UK, such as copper loops and fibre-based Ethernet access and transport facilities, are treated as an "enduring" or "economic bottleneck" because they are considered to be natural monopolies.<sup>21</sup> In particular, these facilities are not generally capable of being economically duplicated because they require large, upfront, sunk investments in copper, fibre, underground ducts and above-ground telephone poles.<sup>22</sup>

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<sup>20</sup> FCC Notice of Inquiry 09-31, *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, Issued and Released on 8 April 2009.

<sup>21</sup> See Towerhouse Consulting LLP, *Ethernet and Other Next Generation Access; Lessons from the UK Example*, 9 March 2009, attached as Appendix 1 to the MTS Allstream Petition, page 7.

<sup>22</sup> *Ibid*, page 7.

51. These facilities cannot be practically or economically duplicated - at least not overnight. Moreover, the duplication of these facilities is not desirable from a societal standpoint because it entails the ripping up of roads and the installation of additional telephone poles, ducts, switching offices, and remote cabinets and other infrastructure in each neighborhood and at each home.
52. For these reasons, the UK regulatory authority has determined that last mile access and transport facilities must be made available by the incumbent telephone company to competitors.
53. The Canadian economy is almost half the size of the economy of the UK,<sup>23</sup> yet Bell and Telus are advocating a regulatory model that has been rejected by the telecommunications regulatory authority of a much larger economy. In fact, it should be noted in this regard that, at one time, British Telecom's last mile access facilities were subject to a set of rules that were not unlike the deregulatory framework adopted by the FCC in relation to the RBOCs in the US. However, this approach to regulation did not result in an increase in the number of service providers in the wholesale market (a result which is consistent with the findings that are now coming out of the US). In fact, BT continued to exercise significant market power throughout this period of time. Consequently, Ofcom decided that BT's last mile facilities should be subject to specific price controls which require the prices of those facilities to be based on their underlying costs, rather than a "market price" determined by the incumbent.<sup>24</sup>

**d) *A Legacy of Rate Payer Subsidies***

54. The phone companies also fail to point out in their petitions that there are a series of CRTC decisions which have allowed them to raise local rates and use "contribution" payments made by other TSPs for the specific purpose of

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<sup>23</sup> In 2008, the International Monetary Fund ("IMF") estimated Canada's GDP to be \$1.3 trillion. By contrast, the GDP of the UK was estimated by the IMF to be \$2.2 trillion.

<sup>24</sup> *Supra*, note 20, at 8.



upgrading their networks in rural and underserved areas, and to also make use of funds in their “deferral accounts” to build out broadband capabilities to some of these very same regions of the country.

55. For example, in Telecom Decision CRTC 2002-34, the CRTC authorized Bell to use “contribution” funds to finance a \$75.3 million service improvement plan to upgrade its network in a number of rural and underserved areas within the provinces of Ontario and Quebec.<sup>25</sup> Two years later, this amount was increased by the CRTC (at the request of Bell) to a cost range of \$131.9 million to \$159.9 million.<sup>26</sup>
56. Furthermore, in Telecom Decision CRTC 2008-1, the CRTC approved the use of deferral account funds by the incumbent phone companies for certain initiatives to improve access to telecommunications services for persons with disabilities and to expand broadband services to certain rural and remote communities in British Columbia, Alberta, Manitoba, Ontario, and Quebec.<sup>27</sup> These funds were generated by the phone companies from the provision of regulated local telephone services.
57. It is patently false for the phone companies to insinuate that their FTTN investments are not being funded by local rate payers and other regulated services. The phone companies have been authorized by the CRTC to use contribution subsidies and rate payer monies to fund both their service improvement and broadband expansion programs. In addition, there is a very good chance that they will be lining up for additional funding from the

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<sup>25</sup> See *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, dated 30 May 2002.

<sup>26</sup> See *Bell Canada - Application to increase the capital cost range of its service improvement plan, and to extend the period of its roll-out plan*, Telecom Decision CRTC 2004-75, dated 16 November 2004.

<sup>27</sup> See *Use of deferral account funds to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities*, Telecom Decision CRTC 2008-1, dated 17 January 2008.

federal government once the terms of its \$225 million rural broadband infrastructure program have been finalized.

58. In the face of these subsidies, it would be profoundly unfair to allow Bell and Telus to appropriate these subsidies for their own protectionist and excessive margin-seeking ends. Local telephone subscribers have paid for all of the fibre that has been laid in the phone companies' networks to date as well as all of the telephone poles and underground conduit networks through which and upon which Bell and Telus will run their FTTN fibre.
59. The local access and transport facilities within Bell and Telus' last mile networks represent natural monopolies which cannot be practically duplicated by any competitor. In the absence of any meaningful competitive alternatives to these facilities, fairness dictates that access be granted to the phone companies' networks in accordance with the terms of the CRTC's matching speed Decisions.

**e) *Bell and Telus are Already Insulated from Competitive Forces***

60. The Telus and Bell petitions make repeated reference to the need for "investor friendly" rules. Of course, what Bell and Telus fail to mention in their petitions is that Canada has a set of telecom foreign ownership rules which effectively limit the number of facilities-based entrants in the market which makes both of these companies more attractive to investors because of the lower levels of competition that they face.
61. The Competitors are not seeking to re-visit Canada's telecom foreign ownership rules in these comments. However, it is important to recognize that these rules do have an impact on both the number and type of competitors in the market. Thus, when Bell and Telus espouse the rhetoric of "investor friendly" rules, what they really mean - and what they are really seeking - is to be further insulated from competition so that the only

competitors that they might have to face in the market are the cable companies.

62. If this Government is committed to the telecom foreign ownership rules, then smart regulation dictates that the regulatory framework for telecommunications services be properly calibrated to take account of the impact of these rules on competition. The easiest way for the Government to do this is to ensure that there is an effective wholesale regime in place which mandates the provision of WAA services (and other wholesale facilities/services such as Ethernet) to competitors at cost-based rates. Otherwise, the only parties that will reap the rewards of these protective rules are Bell and Telus.

### **III. THE LAST MILE IS AN ENDURING BOTTLENECK**

63. Competitors have invested extensively and at great risk to build their own network facilities both between and within many of the major cities and towns in Canada. Despite these massive investments, it remains impossible for competitors to build all of the local network access and transport facilities that are required to reach every single household and every single business premise in each of these cities and towns.
64. Quite literally, in order for competitors to serve all of these premises, a competitor would have to rip up roads and install lines from every household and every commercial building back to a neighbourhood "serving wire centre" and then rip up more roads and install more lines to connect each of these serving wire centres together within a given town or city.
65. Despite over two decades of competition in Canada's various telecommunications markets, these last mile local access and transport facilities have not been duplicated by any one competitor in any city or town in Canada.

66. The phone companies, in contrast, already own all of the transmission facilities, as well as the underground conduit and above-ground pole infrastructure that is needed in order to gain access to every commercial building or premise in their serving territories as a result of their legacies as monopoly telcos. In fact, not only does this legacy provide the phone companies with a ubiquitous physical network infrastructure upon which they can make incremental upgrades such as FTTN, it also provides them with the scale required to justify building or upgrading their last mile networks in order to maintain a service level according to market demand.
67. Technology has evolved, but the necessity of securing a physical connection to each and every end-customer premise has not yet been overcome. Consequently, new entrants are at the mercy of the phone companies when it comes to last mile access to end-customers.
68. And this is why the CRTC decided to mandate the provision of wholesale access and transport services such as WAA service. Specifically, in its matching speed Decisions, the CRTC determined that WAA services must be mandated because they are “the only cost-effective means to provide transport to, and access from, an ILEC's central office to a competitor's end-customer.”<sup>28</sup> The CRTC further found that with respect to service speeds, these are “an important competitive attribute, with rates differing significantly by speed and speed often being a major differentiation point from a marketing standpoint.”<sup>29</sup> Accordingly, the CRTC concluded that:

...absent a matching service speed requirement, the ability of competitors that rely on the mandated aggregated ADSL service to compete in the retail market **would be significantly restricted, which would likely result in a substantial lessening or prevention of competition** in the retail high-speed Internet services market.<sup>30</sup>

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<sup>28</sup> Telecom Decision CRTC 2008-117, para. 19.

<sup>29</sup> *Ibid*, para. 19.

<sup>30</sup> *Ibid*, para. 19, emphasis added.

69. It is also important to note that in the same Decision, the CRTC rejected claims made by Bell and Telus that the mandating of additional WAA speeds would serve as a disincentive to investment. The CRTC found that the phone companies' investment incentives "would not be materially impacted" by the mandating of additional WAA services speeds and that, in reality, these investment decisions are "principally impacted by their need to compete with facilities-based competitors in retail broadband markets" such as the cable companies.<sup>31</sup>
70. Finally, the CRTC concluded that the phone companies will be able to recover the causal costs associated with the provision of WAA services to competitors, "including their investments in the associated facilities" which would include FTTN related investments.<sup>32</sup>
71. Thus, there is no truth to the myth perpetrated by Bell and Telus that they will not be compensated when they provide higher speed WAA services to competitors. Competitors have always stood ready to pay fair and compensatory prices for these facilities, so it is inaccurate and indeed misleading for Bell and Telus to suggest that they will not be reimbursed when they provide higher speed WAA services to TSPs.

#### **IV. CONCLUSION**

72. The Competitors believe that further steps still need to be taken by the CRTC in relation to the phone companies' wholesale services. Indeed, as noted above, the CRTC's "matching speed" Decisions represent the very least that needs to be done in order to address the lack of a meaningful competitor presence in many residential markets and most if not all SMB markets across Canada.

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<sup>31</sup> *Ibid*, para. 22.

<sup>32</sup> *Ibid*, para. 22.

73. The CRTC rendered the matching speed Decisions because it recognized that WAA services represent “the only cost-effective means to provide transport to, and access from, an ILEC’s central office to a competitor’s end-customer.”<sup>33</sup> The CRTC also recognized that, absent the mandating of the additional WAA service speeds, there would be a *substantial lessening of competition in downstream retail markets for high speed Internet access services*.<sup>34</sup>
74. The Bell and Telus petitions are nothing more than thinly veiled requests to be granted absolute power and control over the number and type of competitors in the market for broadband services. Despite their use of technical acronyms and obfuscation to describe their FTTN investments, there is no risk that they will abandon these investments. In fact, they will continue to make these investments in order to remain competitive with the cable companies. As noted above, these investments are entirely incremental to phone companies’ existing networks – there is nothing new or revolutionary about them – and, as demonstrated by Canada’s slipping broadband rankings, they are being made in catch-up mode to the rest of the world.
75. We know from the experience in Canada’s mobile wireless market that even with three competitors, this does not constitute sufficient competition to produce the benefits of competition to consumers, such as lower prices, increased customer choice and higher levels of product and service innovation. Under Bell and Telus’ vision of the future, Canada’s broadband telecommunications services market would be contested by only themselves and possibly the cable companies.
76. The Bell and Telus petitions have nothing to do with delivering leading-edge broadband telecommunications services to Canadians and everything to do with preventing competitors from entering new broadband markets which

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<sup>33</sup> Telecom Decision CRTC 2008-117, para. 19.

<sup>34</sup> *Ibid*, para. 19.

they seek to dominate and control. The future of broadband telecommunications entails the delivery of bundled voice, data and video services (including IPTV services). Without access to higher speed WAA services, competitors will be not be permitted to evolve with the market or their customers' expectations.

77. The Competitors believe that the Bell and Telus vision is inconsistent with the objective of maintaining and promoting competitive telecommunications service markets in Canada. The Competitors, therefore, respectfully request that the Governor in Council deny the Bell and Telus petitions in their entirety.

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