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May 1, 2009

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

**Subject: Petitions to the Governor in Council by Bell Aliant, Bell Canada and  
Telus Communications Concerning Telecom Decision CRTC 2008-  
117 and Telecom Order CRTC 2009-111; Gazette Notice DGTP-004-09,  
4 April 2009, Department of Industry, Telecommunications Act**

Dear Sir,

In accordance with the procedures set out in the above-referenced Gazette Notice, Distributel Communications Limited submits the attached comments on the 11 March 2009 petitions to the Governor in Council submitted by Bell Aliant and Bell Canada and by Telus Communications.

Yours truly,

A handwritten signature in blue ink, appearing to read "Melvin Cohen".

Melvin Cohen  
President

Attachment

cc: The Honourable Tony Clement, Minister of Industry  
Mr. Robert Morin, Secretary General, CRTC  
Ms. Helen McDonald, Assistant Deputy Minister,  
Spectrum, Information Technologies and Telecommunications  
Mr. Jean-Pierre Blais, Assistant Deputy Minister, Cultural Affairs  
In electronic format, to telecom@ic.gc.ca

**Petitions to the Governor in Council by  
Bell Aliant, Bell Canada and Telus Communications  
Concerning Telecom Decision CRTC 2008-117  
and Telecom Order CRTC 2009-111**

**Gazette Notice DGTP-004-09**

**4 April 2009**

**Department of Industry**

**Telecommunications Act**

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**Comments  
of  
Distributel Communications Limited**

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**1 May 2009**

## Introduction

1. On 11 March 2009 Bell Aliant and Bell Canada (collectively "Bell") and Telus Communications ("Telus") filed petitions to the Governor in Council seeking variances to Telecom Decision CRTC 2008-117 and Telecom Order CRTC 2009-111 (collectively the "CRTC Decisions").
2. The CRTC Decisions establish a level competitive playing field by requiring Bell and Telus to offer wholesale Internet services at the same speeds as Bell and Telus offer to their retail customers. The cable companies are already providing this type of wholesale speed matching to competitors, but Bell and Telus do not want to be subject to this symmetric and competitively neutral requirement.
3. Distributel Communications Limited ("Distributel") opposes the Bell and Telus petitions. Distributel is a 100% Canadian owned and controlled telecommunications service provider offering Internet, as well as local and long distance telephone services. Distributel has been in business since 1988 and serves approximately 200,000 customers in Ontario and Quebec.
4. Bell and Telus want the Governor in Council to believe that the ongoing evolution of telecommunications networks has hit a unique and critical stage and that that evolution will grind to a halt - with devastating consequences - if the CRTC Decisions are allowed to stand. This is nonsense.
5. The reality is that Bell and Telus are trying to re-establish their former monopolies to the greatest extent possible. And, where that is not possible they want a cozy duopoly with the cable companies - free of the annoyance of smaller competitors who offer serious price competition and service diversity.
6. Canadians have already seen what happens when only two or three competitors exist in an area of telecommunications. The Canadian wireless industry - with three major players - has been one of the least competitive in the developed world and Canadians have literally had to pay the price.
7. Fortunately, the Government has recognized that the presence of two or three competitors does not guarantee true competition. The opportunity and incentive for these companies to divide the market between them is too great. Consequently, the Government has taken vigorous steps to bring competition to the wireless sector. The Governor in Council needs to be equally vigilant in the present case.
8. Bell and Telus would also like this government to believe that the CRTC has, with heavy hand, meddled into industrial affairs that

should be better left to self-regulation through market forces. Nothing could be further from the truth.

9. The reality is that over a period of thirty years, the CRTC has presided over a gradual de-monopolization of telecommunication markets. Throughout this entire period, they have kept the telecom incumbents whole. Not one Canadian telephone company or cable company has suffered economically from the CRTC's oversight. By contrast, dozens of would-be competitors have either fallen by the wayside completely or required financial restructuring that replaced their original investors. Notable examples include Unitel Communications and Group Telecom.
10. The de-monopolization of telecommunications has a long way to go still, as evidenced by the fact that the incumbent telephone companies still hold over 80% of the local telephone market in Canada. If the Governor in Council were to accept at face value the Bell and Telus story that the CRTC is meddling unnecessarily, it would be ignoring the realities of the telecommunications marketplace at the peril of competition and consumer choice.
11. In the remainder of these comments, Distributel addresses four areas:
  - i) the dubious idea of "next generation" networks;
  - ii) the need for open access and competitive neutrality;
  - iii) the false claims of Bell and Telus regarding subsidization of competitors; and
  - iv) the disingenuous claims of Bell and Telus suggesting imminent disaster if the CRTC Decisions are implemented.
12. For all of the reasons discussed in the following sections, Distributel submits that the Bell and Telus appeals should be denied.

**i) What is a "next generation" network?**

*... a firm definition of next generation networks that is used broadly in the telecommunications industry is somewhat elusive ...*

Bell Aliant and Bell Canada  
Submission to the CRTC  
12 March 2009<sup>1</sup>

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<sup>1</sup>12 March 2009 submission of Bell Aliant and Bell Canada (at paragraph 23) in the CRTC proceeding initiated by Telecom Regulatory Policy CRTC 2009-34.

13. As admitted by Bell in its 12 March 2009 submission to the CRTC - a submission filed one day after Bell's petition to the Governor in Council was submitted - there is no single definition of "next generation networks". Rather, this phrase is a term of convenience used by different people to mean different things in order to serve different purposes. In other words, the phrase is so elastic as to be devoid of serious meaning.
14. The reality in the present case is a simple one. Bell and Telus, along with telephone companies throughout the world, have been installing fibre optic cable into their local access networks for many, many years. In Canada, this upgrading of local networks began at least two decades ago. A CRTC decision issued in 1990 - nearly 20 years ago - includes the following statement on this point:

*At the review meeting [held on June 5 and 6, 1990], Bell stated that the deployment of fibre optic technology in the access network is currently limited to feeder cable facilities. Bell also stated that, by the mid-1990s, the SEM program will be near completion and that fibre optic facilities will have achieved a high degree of penetration in the interoffice and intertoll networks. Bell indicated that, at that time, it would consider establishing a major program for increasing the deployment of fibre in the access network.<sup>2</sup>*
15. The so-called "next generation" local access network involving the installation of fibre optic cable was already becoming a reality in 1990. And the incremental evolution of local access networks has continued unabated since that time.
16. The importance of incorporating fibre optic cable deep into the local access network was trumpeted long ago by Stentor - the now defunct consortium of all the major Canadian telephone companies, including the predecessors of Bell and Telus. In 1994 Stentor announced a major network upgrade program - the Beacon Initiative - to bring broadband to all Canadian homes using fibre optic cable and the evolving transmission technologies.<sup>3</sup>
17. Since those days in the early 1990s there has been an ongoing and continuous upgrading of the telephone companies' networks, including both the installation of fibre optic cable further out into the network (i.e., closer to homes and business premises) and the introduction of more advanced transmission equipment as it becomes

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<sup>2</sup> *Bell Canada Construction Program Review*, Telecom Decision CRTC 90-27 , 30 November 1990

<sup>3</sup> Stentor materials can be found at: <http://www.ifla.org.sg/II/canada.htm>

available. That process continues today and will continue for many years to come.

18. The somewhat banal reality is that there is no such thing as a “next generation” local access network. There is no sharp demarcation point between “old” and “new” or “legacy” and “next generation” in the continuous evolution and development of local networks. The adoption of new fibre optic technologies has been made on an incremental basis for decades by Bell and Telus.
19. For regulatory and political purposes, however, Bell, Telus and telephone companies throughout the world are trying to breathe special meaning into the phrase “next generation network”. These companies are trying to create the impression that a unique transformation is taking place - even though the truth is much simpler and incremental. Why are they doing this? Because they hope to be able to use this spin on the phrase “next generation network” as a key weapon in their attempt to protect and reinforce their dominance in the local telecommunications market.<sup>4</sup>
20. In Europe, this strategy has been recognized for what it is - an attempt to re-monopolize local telecommunications. As stated by European Commissioner, Ms. Vivian Reding:

*How we treat next generation access is therefore the single most important policy question in the telecoms sector today. We have to create incentives for investment whilst making sure that no-one (and I insist on this no-one), can be in a position to foreclose the market.<sup>5</sup>*

...

*Regulatory restraint as a carte blanche for incumbents to re-monopolise markets where the buds of competition are flourishing is not a policy option if we want competitive markets.<sup>6</sup>*

21. The Governor in Council must be equally alert to the telephone companies’ strategy and recognize the petitions of Bell and Telus for what they are - a ploy to protect and strengthen their dominance in local telecommunications markets.

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<sup>4</sup> In Canada, the telephone companies have had to share the high speed Internet market with the cable companies so that there are two dominant players who have divided the market between them and, for the most part, do not engage in significant price competition. In the area of local telephony, the telephone companies retain an 80% market share on a national basis.

<sup>5</sup> January 14 2008 Speech by Ms. Viviane Reding to the KPN Annual Event.

<sup>6</sup> Speech by Ms. Viviane Reding: Europe’s Way to the High Speed Internet: Why Effective Network Competition is the Freeway to the Future, ECTA Annual Conference, Brussels, June 25, 2008.

22. The ultimate public policy goal for the Government - a goal already recognized and acted upon by this Government in the context of wireless services - is to properly enable competition so that Canadians can enjoy the kind of reduced prices and service innovation that comes with true, vigorous competition.
23. Given the realities of wireline networks and the historical and economic advantages enjoyed by Bell, Telus and other telephone companies, the only way to ensure vigorous competition in local telecommunications services is by means of an appropriate wholesale regime embodying full open access - a fact properly recognized in the CRTC Decisions which are the subject of the Bell and Telus petitions.

## ii) The importance of open access and competitive neutrality

*Fair and open access must be promoted by public policy and supported through government regulation. To ensure that all service providers have equal and open access to the information highway, the government must modify the regulatory process to ensure that ... no undue competitive advantage is conferred on any player or technology ...*

Stentor - 1993<sup>7</sup>

24. In 1993, Stentor - speaking on behalf of all the major telephone companies in Canada - recognized the importance of open access and competitive neutrality. Stentor's vision of the future saw all service providers having access to open networks so that competition would thrive and consumers would have the benefit of service diversity, innovation and price competition.
25. That same vision has been adopted by most governments throughout the developed world. For example, in the United Kingdom a high priority has been placed on open access and competitive neutrality and major steps have been taken to make it a reality. In 2006 British Telecom was split into two, separating out the local access business as Openreach<sup>8</sup>. Under the rules established by Ofcom, the British communications regulator, Openreach must provide local access services to all service providers on competitively neutral terms.
26. More recently, in Australia the federal government has taken an even more dramatic step which illustrates clearly the importance placed on

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<sup>7</sup> The Stentor policy document can be found at: <http://www.ifla.org/ll/canada.htm>

<sup>8</sup> A description of the creation and role of Openreach is available at: [www.openreach.com](http://www.openreach.com).

open access and competitive neutrality. On 7 April 2009, the Australian government announced that it will invest up to \$AUS 43.5 Billion to build a broadband local access network of fibre-to-the-premises which will provide open access to all service providers.<sup>9</sup> This step was taken, in part, because Telstra, the incumbent telephone company in Australia, had refused to agree to the government's open access requirements in an earlier attempt to formulate this initiative. In response, the Australian government insisted on the importance of open access and decided to proceed without Telstra - effectively overbuilding the entire local access network in Australia.

27. The Australian example is an extreme case driven, in part, by Telstra's intransigence and refusal to obey open access rules. It demonstrates, however, the central importance placed on open access and competitive telecommunications markets by Canada's trading partners and competitors. These countries are continuing to develop open networks which will ensure that their citizens and businesses enjoy the benefits of full competition in all areas of telecommunications.
28. In Canada, the CRTC continues to support open access and competitive neutrality - that is what the CRTC Decisions are all about. However, in the years since 1993 when Stentor endorsed these concepts, Bell and Telus have changed their views. These companies have abandoned their commitment to open access - as is evidenced by their petitions to the Governor in Council in respect of the CRTC Decisions.
29. Bell and Telus have also largely abandoned their commitment to competitive neutrality - at least when it comes to situations where they already have an advantage over their competitors. It is revealing that Bell and Telus remain willing to invoke the idea of competitive neutrality when they suspect there may be an asymmetry between the regulation of the cable companies and themselves.<sup>10</sup> And yet, in the next breath they balk at the idea of providing Internet speed matching at the wholesale level - a competitively neutral requirement - even though cable companies are already required to do so. There is no better illustration of the pure self-interest behind their position.
30. Open access and competitive neutrality are critical to the development of a competitive telecommunications sector which, in turn, is critical to the economic, social and cultural health of Canada.

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<sup>9</sup> [http://www.minister.dbcde.gov.au/media/media\\_releases/2009/022](http://www.minister.dbcde.gov.au/media/media_releases/2009/022)

<sup>10</sup> Bell and Telus submissions relating to the recent Cybersurf Corp. application seeking greater unbundling of cable networks provide a good example of these companies supporting competitive neutrality when it suits their purposes.



The CRTC Decisions recognize this fact. They should not be overturned to serve the narrow self-interest of Bell and Telus.

### **iii) There is no subsidization of competitors**

31. In their petitions Bell and Telus argue that the wholesale access required by the CRTC Decisions would subsidize competitors at the expense of the telephone companies.<sup>11</sup> This is simply false. The wholesale rates established by the CRTC are set at levels which ensure that Bell and Telus recover their full costs and make a reasonable profit.
32. If the true concern of Bell and Telus were the level of the wholesale rates, then they should have waited until those rates were established and then appealed them if they felt the rates were too low. That is not what they are doing. Instead, Bell and Telus are appealing against the very concept of open access and competitive neutrality.
33. It is very clear that what Bell and Telus really want to do is eliminate competition - to the extent that they can. They want to protect and entrench their dominance in local telecommunications services by seriously limiting competitive access to their networks in the immediate term and eventually eliminating such access altogether.<sup>12</sup> They want to do this to the detriment of Canadians. And they don't care about the public interest in having competitive telecommunications markets.

### **iv) The sky is not falling or about to fall**

34. Bell and Telus suggest in their petitions that if the CRTC Decisions are not overturned there will be dire consequences for Canadian telecommunications. They claim investment in local networks will slow. Bell goes so far as to argue that there will be both an urban/rural and an urban/urban digital divide.
35. These statements are nothing more than hypocritical puffery intended to disguise their true goal of killing open access and minimizing competition.

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<sup>11</sup> See the Bell petition at paragraph 5 and the Telus petition at paragraph 1.

<sup>12</sup> In paragraph 40 of its petition Bell asks the Governor in Council to vary the CRTC Decisions so that access would have to be provided to competitors only in situations where the entire route from the Central Office to the end customer was made of copper. This would quickly eliminate almost all homes from an access requirement. Bell's petition states at paragraph 3 that 2.4 million homes in Ontario and Quebec are served by Bell's so-called "next generation" network and that 5 million homes will be served this way by the end of 2012. All of these homes would be "competition free zones" if the Governor in Council were to grant Bell's petition.

36. The hypocritical aspect of these claims comes from the willingness of Bell and Telus to use public money to build their networks and then attempt to eliminate competitive access to those networks. These companies are gladly using hundreds of millions of dollars from the price cap deferral accounts to build broadband infrastructure into their local networks in remote and underserved areas. And they are lined up to gain access to the \$225 million of public funds announced in the Government's recent budget. And yet, when it comes to granting competitively neutral, open access to their local networks, suddenly the public funding of their networks is forgotten and they aggressively argue that their networks should be closed to outsiders.
37. The puffery in their claims relates to their arguments about capital spending and digital divides. Bell and Telus are engaged in a capital intensive business. The maintenance and upgrading of local access networks is an ongoing requirement if they are to stay in business. The suggestion that they would somehow stop such investments is simply not credible - especially at a time when they must improve their local networks in order to offer services which are competitive to those offered by cable companies.
38. Telus states in its petition that it has the highest capital intensity of any telephone company in North America<sup>13</sup> and that its so-called "next generation" networks are being funded entirely through internal resources<sup>14</sup>. This does not sound like a company that is in danger of pulling back on its capital investments.
39. Interestingly, nowhere in its petition does Telus identify how much it plans to spend on these network improvements in the future - only that it has already spent hundreds of millions on them<sup>15</sup>. This raises the possibility that there is little, if anything further to do in respect of these particular projects. In any event, Telus has made and is making its investments with the full knowledge of the CRTC's emphasis on open access and competitive neutrality. Telus cannot claim to have been taken by surprise on this point.
40. Similarly, Bell states that it has already spent \$1 billion on these types of network improvements in the last three years.<sup>16</sup> The required infrastructure in Montreal and Toronto has already been completed.<sup>17</sup> All of that investment was made with a complete understanding of the CRTC's policies and decisions.

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<sup>13</sup> Telus petition at paragraph 20.

<sup>14</sup> Telus petition at paragraph 6.

<sup>15</sup> Telus petition at paragraph 10.

<sup>16</sup> Bell petition at paragraph 3.

<sup>17</sup> Bell petition at paragraph 3.

41. It is also important to note that Bell's 2009 capital budget is \$2.5 billion<sup>18</sup> and that it expects to spend \$700 Million over the next three years on so-called "next generation" improvements<sup>19</sup>. This amounts to \$233 million per year which is less than 10% of Bell's 2009 annual capital budget. It stretches credulity to suggest that 10% of Bell's annual capital budget is funding a monumental transformation of its network which will grind to a halt if the CRTC Decisions are not overturned.
42. The simple fact, as emphasized above, is that the ongoing upgrades to the networks of Bell and Telus are neither unique nor likely to be stopped if the CRTC Decisions remain in place. These companies knew what the CRTC's policies were when they made their investments. They are not going to let their networks slowly degrade and become "yesterday's technology". They have no choice but to continue to invest in their networks if they want their businesses to continue to thrive.
43. And finally, it is important to recognize that both Bell and Telus have ample revenues to support the network upgrades they consider necessary. Bell's operating revenues for 2008 were \$14 billion<sup>20</sup> and Telus had wireline operating revenues in 2008 of \$5 billion and wireline EBITDA of \$1.8 billion<sup>21</sup>. These companies are financially strong and technologically sophisticated. They recognize that local networks are now and always have been a work in progress. They understand the need to invest and they can afford to do so. The suggestion that they will stop investing is not credible.

## **Conclusion**

44. Bell and Telus are asking the Governor in Council to turn away from the Government's pro-competitive policy of open access and competitive neutrality. They want Canadians to be denied the benefits of competition in telecommunications at a time when the vast majority of Canada's trading partners are placing even greater emphasis on the need for competition in order to bolster their economies and better serve their citizens' needs.
45. Bell and Telus want the Governor in Council to overturn the CRTC Decisions so as to create an uneven playing field which will ultimately block access to their networks. They want to eliminate competition to

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<sup>18</sup> Bell petition at paragraph 1.

<sup>19</sup> Bell petition at paragraph 20.

<sup>20</sup> \$14 billion is the total operating revenues of Bell Wireline and Bell Aliant according to BCE's 2008 Annual Information Form.

<sup>21</sup> Telus Communications' 2008 Investors Fact Sheet available at [www.telus.com/investors](http://www.telus.com/investors).

the greatest extent possible in order to further their own private interests at the expense of Canada and Canadians.

46. There is absolutely no merit to any of the arguments put forward by Bell and Telus in their petitions. Their requests should be denied.

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