

**John Meldrum, Q.C.** 2121 Saskatchewan Drive  
Vice-President, Regina, Saskatchewan  
Regulatory Affairs & S4P 3Y2  
Corporate Counsel

Telephone: (306) 777-2223  
Fax: (306) 565-6216  
Internet: document.control@sasktel.sk.ca

***Via Electronically***

4 May 2009

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

Re: *Canada Gazette, Part I, 4 April 2009, Petitions to the Government in Council concerning Telecom Decisions CRTC 2008-17 and CRTC 2008-118, Telecom Regulatory Policy CRTC 2009-34, and Telecom Order CRTC 2009-111, Notice No. DGTP-004-09*

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1. Saskatchewan Telecommunications (SaskTel) has reviewed petitions to the Governor in Council (GIC) from Bell Aliant Regional Communications, Limited Partnership and Bell Canada ("the Companies"), and TELUS Communications Inc. (TELUS) requesting that the Governor in Council vary Telecom Decision CRTC 2008-117, *Cybersurf Corp.'s application related to matching service speed requirements for wholesale Internet services*, and rescind Telecom Order CRTC 2009-111, *Cybersurf's application related to the implementation of Telecom Decision 2008-117 regarding the matching speed requirement*. SaskTel has also reviewed the petition to the GIC from MTS Allstream (MTSA) requesting that GIC vary 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 2009-34, *Requests to review and vary directives in Telecom Decision 2008-17 related to the provision of central-office-based wholesale ADSL access service and aggregated ADSL access service*.
2. The following constitutes SaskTel's comments on these petitions. Failure by SaskTel to address any specific assertion made in the petitions should not be construed as acceptance of such assertion where acceptance would be inconsistent with the interests of SaskTel.
3. In their petition, the Companies ask the GIC to intervene in the above-referenced CRTC decisions and make changes which "would have the effect of allowing

wholesale services for access to the NGNs of the incumbent local exchange carriers' (ILECs) to develop based upon market forces.”<sup>1</sup> TELUS asks the GIC to make changes which remove the obligation for TELUS “to share this new investment with arbitragers at regulated rates.”<sup>2</sup>

4. Meanwhile MTSA’s petition requests that the GIC order the CRTC to require ILECs (and only ILECs) to provide access at artificially low rates to not only the services in question in the petitions of the Companies and TELUS, but also the Ethernet services which the CRTC has classified as “non-essential, subject to phase out” in Telecom Decision 2008-17, *Revised regulatory framework for wholesale services and definition of essential service* (Decision 2008-17).
5. SaskTel notes that Decision 2008-17 represented the conclusion of a proceeding launched by the CRTC in response to the instructions in the federal government’s Policy Direction to:

[C]omplete a review of its regulatory framework regarding mandated access to wholesale services, to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and to determine the appropriate pricing of mandated services, which review should take into account the principles of technological and competitive neutrality, the potential for incumbents to exercise market power in the wholesale and retail markets for the service in the absence of mandated access to wholesale services, and the impediments faced by new and existing carriers seeking to develop competing network facilities<sup>3</sup>
6. SaskTel submits that, despite the instructions received in the Policy Direction, the CRTC has made little progress in addressing the extent to which the incumbent local exchange carriers (ILECs) are required to provide wholesale services to competitors at artificially low prices. The granting of MTSA’s petition would represent a significant weakening of the limited progress that has been made. SaskTel further submits that, to the extent that they request the GIC to issue instructions to the CRTC requiring it to support the development of an innovative and competitive information and communications technology (ICT) environment, the petitions of the Companies and TELUS should be granted.
7. A substantial contribution to Canada’s economic growth comes from investments in information and communications technologies. As TELUS points out in its petition to the GIC, the Report of the Canadian National Broadband Task Force

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<sup>1</sup> The Companies petition, paragraph 8

<sup>2</sup> TELUS petition, paragraph 1

<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, Order in Council, PC 06-1534

concluded, "The impact of broadband communications on Canadian life will be at least as great as the impact of railways, highways, airlines and traditional telecommunications and broadcasting". Investments in higher speed connectivity to Canadian homes and small businesses will generate substantial, broadly based economic value, and bring more choices and better prices to Canadian consumers.

8. The development of broadband infrastructure requires massive capital investments, with an accompanying high degree of risk due to the fierce competition provided by cable companies and wireless platforms. This risk is only exacerbated by the current economic climate. In order to support this level of investment, investors must feel comfortable that they will have a reasonable opportunity to recover their investments in next generation network facilities plus a profit margin which will compensate them for taking such a risk. If investors know that, after making such a risky capital investment, they will be required to supply access to their competitors at an artificially low rate and at no risk to the competitors (who will only purchase sufficient quantities to meet known demand) they will not make the investment.
9. SaskTel believes that the federal government is committed to an innovative and competitive ICT environment. Indeed, in recent years, both the federal government and the province of Saskatchewan have made commitments to encourage the development of rural broadband infrastructures in order to close the urban-rural broadband gap.
10. As well, the federal government's Policy Direction calls upon the CRTC to increase incentives for innovation and investment in and construction of competing telecommunications network facilities, and to ensure the technological and competitive neutrality of those arrangements or regimes. It also directs the CRTC to enable competition from new technologies and not to artificially favour either Canadian carriers or resellers. These directions are consistent with the view expressed by the CRTC more than a decade ago that the source of efficient and effective competition will be best achieved through facilities-based competitive service providers.<sup>4</sup>
11. Unfortunately, the CRTC's actual practice is consistent with neither its expressed view regarding the development of efficient and effective competition nor the

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<sup>4</sup> *Local Competition*, Telecom Decision CRTC 97-8

Policy Direction. Its practice is, in fact, to demand that the ILECs make access and transport services available to their competitors. Not only does the CRTC demand that these services be made available, it also demands that they be made available under rates and conditions which do not provide appropriate compensation for the ILECs' investment. These practices do not establish an environment which encourages investment in broadband facilities.

12. SaskTel wishes to stress its firm belief that an innovative and competitive ICT environment can only be attained under a regulatory regime which promotes the construction of competing network facilities and the technological and competitive neutrality of the wholesale requirements faced by each of those networks. Any regulatory regime which requires those who have constructed or could conceivably construct or expand networks to provide access to their networks at artificially low rates will not be a regime which promotes such construction.
13. As noted in the petitions of both the Companies and TELUS, the CRTC's policies are not technologically neutral. In practice, it is only the ILECs which are required to unbundle their access and transport facilities. The CRTC fails to recognize that broadband capabilities are available from not only wireline local exchange carriers, but also fixed and mobile wireless carriers, and cable companies, the majority of the latter having established themselves as the dominant providers of high speed Internet services.<sup>5</sup>
14. The instructions to the CRTC within the Policy Direction focus attention on fostering "fair regulation"; regulation that increases incentives for innovation and investment to enable competition for new technologies. Charles Dalfen, former CRTC Chairman, once noted that "equal treatment of equal competitors is just, while equal treatment of unequal competitors is unjust. The principle...is fairness, not symmetry."<sup>6</sup> The provision of telecommunications services is not principally a function of size; rather it is greatly dependent upon technical capability. SaskTel believes that the more similar the technical capabilities among telecommunications service providers, the more equal they are as competitors. Cable broadcast distribution undertakings which have become telecommunications service providers have demonstrated that they have technical capabilities to deliver services equivalent to the ILECs' in many respects. This is reflected by their

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<sup>5</sup> *CRTC Communications Monitoring Report - July 2008*, Table 5.3.2 – Residential Internet subscribers by type of TSP, page 208

<sup>6</sup> As described in a *Globe and Mail* update, April 6, 2004

provision of local exchange services, high speed Internet services, and other high-speed data services. Regulation among equal competitors is not "fair" if it is not applied in a competitively neutral manner to all; that is, if regulation is not imposed in a balanced manner among equal competitors.

15. SaskTel submits that all companies capable of providing access and transport facilities should be encouraged to provide access to them, so long as they are compensated appropriately for their investments. In SaskTel's view, such an environment would create the incentive for investment in next generation facilities and services, and provide the catalyst for the establishment of facilities-based competition.
16. SaskTel respectfully requests that the GIC respond to the petitions of all of the applicants by reinforcing its instructions to the CRTC to use regulation, where that is necessary, which increases incentives for innovation and investment in and construction of competing telecommunications network facilities, and to ensure the technological and competitive neutrality of those arrangements or regimes. In addition, SaskTel requests that the GIC direct the CRTC to stay the implementation of the decisions under appeal and initiate a proceeding to examine and assess the technical capabilities of all potential network providers to provide access to wholesale facilities and service to the extent of the ILECs' capabilities. Following the results of a broader policy proceeding the appropriate action can then be taken by the CRTC to deal with the more specific issues raised in the appeals.

All of which is respectfully submitted.

Sincerely,



John Meldrum  
Vice President, Regulatory Affairs and Corporate Counsel

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c.c.: Director General, Telecommunications Policy Branch (telecom@ic.gc.ca)