



**Teresa Griffin-Muir**

Vice President, Regulatory Affairs  
Vice-présidente des Affaires réglementaires  
MTS Allstream Inc.

16 July 2008

**by Courier**

Mr. Wayne G. Wouters  
Clerk of the Privy Council and  
Secretary to the Cabinet  
Privy Council Office, Langevin Block  
80 Wellington Street  
Ottawa, ON K1A 0A3

Dear Mr. Wouters:

**Subject: MTS Allstream Reply Comments - 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 (the Petition)**

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In accordance with *Canada Gazette*, Part I, 27 March 2009, the title and notice reference number DGTP-004-09, MTS Allstream Inc. (MTS Allstream) submits reply comments to the responses filed by Bell Canada Regional Communications, Limited Partnership, and Bell Canada (Bell) and TELUS Communications Company (“TELUS”) to MTS Allstream’s 11 March 2009 Petition to the Governor in Council requesting variance of Telecom Decision CRTC 2008-118 and Telecom Regulatory Policy CRTC 2009-34.

Yours truly,



for Teresa Griffin-Muir

c.c.: Scott Thomson, MTS Allstream, 416-644-5900  
Pamela Miller A/Director General, Industry Canada

Bell  
TELUS

Attachment

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**PETITION TO HER EXCELLENCY  
THE GOVERNOR IN COUNCIL,  
PURSUANT TO SECTION 12(1) OF  
THE *TELECOMMUNICATIONS ACT*  
IN THE MATTER OF**

**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 2008-17  
RELATED TO THE PROVISION OF CENTRAL-OFFICE BASED  
WHOLESALE ADSL ACCESS SERVICE AND AGGREGATED ADSL  
ACCESS SERVICE***

**REPLY SUBMISSION**



16 July 2009

## **Introduction: Policymakers should adopt a forward-looking regime that fosters innovation**

1. In this submission, MTS Allstream Inc. (“MTS Allstream”) replies to the responses filed by Bell Canada Regional Communications, Limited Partnership, and Bell Canada (collectively, “Bell”) and TELUS Communications Inc. (“TELUS”) to MTS Allstream’s petition, filed on 11 March 2009 (the “MTS Allstream Petition”).
2. Our petition seeks the Governor-in-Council’s variance of decisions of the Canadian Radio-television and Telecommunications Commission (the “CRTC”) in which it refused to mandate wholesale access for competitors, at cost-based rates, to digital subscriber line (“DSL”) and “next-generation” digital telecommunications facilities (“Ethernet services”) of the former monopoly telephone companies.
3. As a telecommunications provider with a significant record of innovation, MTS Allstream seeks a regulatory regime that will foster healthy competition, spur investment and increase productivity. This requires breaking through the complacency of monopoly thinking to embrace a forward-looking strategy that incorporates proven best practices from telecommunications sectors around the world and ensures Canada’s place at the forefront of a digital economy.
4. Bell and TELUS’s arguments, however, will not achieve that goal. Rather, Bell and TELUS’s arguments boil down to one thing: a request to allow them, as the dominant providers of telecommunications services in Canada, to control the pace and extent of competition in next-generation networks (“NGNs”) – in the business market in particular – all while realizing supranormal profits at the expense of Canadian customers and the Canadian economy. **MTS Allstream calls on the Government to reject this self-serving perspective and adopt a policy that will reassert Canada’s broadband leadership and ensure that advanced telecommunications services enhance Canada’s productivity and international competitiveness.**
5. Bell and TELUS rely on a number of arguments, some of which mischaracterize MTS Allstream’s position. At the outset of this submission, we address, in summary form, the key mischaracterizations advanced by Bell and TELUS. The response to Bell

and TELUS' positions in respect of these issues are then discussed in greater detail below.<sup>1</sup>

6. First, the terms and conditions of the access sought by MTS Allstream would not only fully compensate carriers for their costs, but also provide a reasonable return on their investment. Therefore, Bell and TELUS' allegations that MTS Allstream is asking incumbents to make "risky" investments and share that infrastructure with "artificially low" rates are untrue.<sup>2</sup>
7. Second, the advantages of incumbency do extend to NGNs. Contrary to Bell and TELUS' claims that the advent of NGNs negates any incumbency advantage that they might otherwise have from their legacy networks,<sup>3</sup> failure to mandate Ethernet and ADSL services will mean that these services will no longer be available to competitors. These statements must be seen for what they are: disingenuous attempts by Bell and TELUS to protect their ability to dictate the so-called "market terms" for access to advanced facilities and services. Failure to mandate fair competitor access to Ethernet and DSL technology will simply reinforce the monopoly pricing practices of the past, contrary to the best interests of the Canadian business sector in particular.
8. Third, this Government's policy of recognizing the importance to competition of "facilities-based competition" – i.e., the use by competitors of a combination of owned and leased facilities – as well as MTS Allstream's own track record of significant and sustained investment, demonstrate the absurdity of Bell and TELUS' arguments that MTS Allstream is proposing a "resale" model rather than investing itself in network components, and proves the necessity of a robust wholesale model to competition. Ironically, the very regulatory history that TELUS recites, chapter and verse, in fact shows that the CRTC's policy of facilities-based competition, a policy that advocates the duplication of ILEC networks, has abjectly failed to produce a dynamic competitive market. This was foreseen in the outcomes projected by MTS Allstream in its many applications over the past few years. Most pointedly, the cable companies' relative success in the residential market has come about despite this policy, not because of it.

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<sup>1</sup> MTS Allstream has focused its comments on the principal arguments advanced by Bell and TELUS. Any failure to respond to a specific argument made by Bell and TELUS should not be construed as agreement therewith.

<sup>2</sup> Bell Response at para. 62, footnote 44; TELUS Response at para. 42.

<sup>3</sup> Bell Response at para. 19.

9. Finally, NGNs are quickly becoming - and in many cases are already – essential to businesses of all sizes, including small and medium-sized businesses (“SMBs”). These advanced services represent an enormous enabler of productivity and growth in the economy. SMBs – the drivers of Canadian productivity – should have cost-effective access to these facilities just as the largest businesses do. Therefore, Bell’s arguments, downplaying the importance of NGNs to SMBs by saying, in essence, that legacy facilities are “good enough” for these businesses should be rejected. Bell’s conclusion that the last generation services are “good enough” for these customers is symptomatic of the patronizing and complacent attitude that underlies much of the thinking of the large former monopolies – why innovate if you don’t have to? This is not the basis on which to make forward-looking policy, and certainly not “good enough” for Canada.
10. Bell and TELUS’s approach is rearward-looking and out-of-step with the prevailing international trend which advocates mandatory sharing of access facilities that constitute enduring bottlenecks, on the same terms and conditions for incumbents and competitors alike. This trend is increasingly leading to the functional separation of vertically-integrated incumbent telephone companies, as has been done in Britain and as is likely to take place in Australia.<sup>4</sup> Regulators around the world recognize that competitors’ extensive duplication of incumbents’ access networks is not only unlikely to occur but also uneconomic and inefficient. At the same time, it is also well recognized that “incumbents have an incentive not to give fair access to infrastructure in order to protect their own revenues and the inefficiencies associated with being a former monopoly.”<sup>5</sup> In a recent report, the International Telecommunications Union found that sharing lowers the cost of deploying broadband networks, plays an important role in the move to fibre to the home access, and reduces the environmental impact of network deployment.<sup>6</sup>
11. It is clear that policy makers the world over are taking the necessary steps – including mandating sharing – to position their telecommunications sectors to serve their national economic interest. This Government, too, has been willing to take steps to ensure that Canada’s telecommunications policy serves the public interest over the objection of the

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<sup>4</sup> Michael Sainsbury and Jennifer Hewett, “Telstra open to break-up as broadband plan forces telecom to overhaul strategy”, *The Australian* (14 April 2009).

<sup>5</sup> ITU, *Trends in Regulatory Reform 2008: Six Degrees of Sharing* at 52.

<sup>6</sup> *Ibid.* at 29. The ITU notes that “laying fibre to every home, building or street cabinet may be unattainable if operators act alone. Companies can, however, share some infrastructure but compete in providing services. With an effective legal and regulatory framework and the right incentives, the critical factor in creating new, affordable broadband access and backbone networks will be government willpower.”

incumbents, where necessary. MTS Allstream respectfully submits that this is another such instance.

### **No risk to investment**

12. TELUS and Bell mischaracterize MTS Allstream's request as seeking "below commercial rates" for access.<sup>7</sup> They claim that granting MTS Allstream's Petition would act as a disincentive to investment in fibre optic facilities and increase the risks that those investors would otherwise take. None of these accusations has merit.
13. First, incumbents are more than fully compensated for access infrastructure used by competitors. The CRTC has, over many years, put a costing methodology into place that not only provides for full recovery of incremental costs, but for a reasonable return on investment as well. The CRTC's model is a forward-looking, incremental cost standard that has been in place since 1979 and was most recently reviewed in 2008.<sup>8</sup> This standard is consistent with internationally recognized costing standards in telecommunications. The rates charged under this model could only be viewed as "below commercial rates" in the context of the excessive markups Bell and TELUS have been able to charge in the absence of competitive market forces. By contrast, tariffs for mandated wholesale services (i.e., Phase II plus 15%) are designed to replicate the outcome of a genuinely competitive market, where competition would compete away any excess profits.
14. Second, as clearly demonstrated by the onset of cable competition in the residential market, the incumbents must invest in response to competition in order to retain customers. With sufficient competition in the business market, a similar dynamic would take hold. The argument that providing NGN access to competitors would create an additional risk to investment, derived from supposedly inadequate returns on wholesale services, is specious.
15. Finally, to define the investment that is purportedly at risk, it is important to look at the amount of investment being made by the ILECs relative to the size of their overall

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<sup>7</sup> TELUS Response at 1-2; Bell Response at para. 5.

<sup>8</sup> Telecom Decision CRTC 2008-14, *Regulatory policy – Review of certain Phase II costing issues*, 21 February 2008.

revenues. Bell's projected FTTN investment of \$1.2 billion between 2004 and 2012 will average \$133 million per year. This represents less than 1% of Bell's total operating revenues in the years 2004-2008, and just 5% of its total average annual capital expenditures.<sup>9</sup> As for TELUS, it has invested approximately \$150 million per year on NGNs or broadband access infrastructure over the last ten years. This amounts to just over 1.7% of TELUS' total operating revenues in the years 2004-2008, and approximately 10% of its total capital expenditures on an average annual basis.<sup>10</sup>

16. In contrast, an examination of the proportionate investment made by MTS Allstream shows that it outstrips that made by Bell and TELUS. MTS Allstream completed a five-year, \$300 million broadband expansion program in 2005.<sup>11</sup> This investment represents approximately 7% and 4% of MTS Allstream's Manitoba-based and total operating revenues, and 21% of its overall capital expenditures in each of the years 2001-2005. On a proportional basis MTS Allstream's investment to augment its network infrastructure with next generation technology is significantly larger than that of both Bell and TELUS. MTS Allstream has been quite open about the fact that this investment was driven by competition. The investment has served both MTS Allstream and customers extremely well bringing choice and innovation to the Internet and TV distribution market.

### **The Incumbent Advantage**

17. The only risk arising from mandated access is greater competition, which would force the extraordinary level of profit that Bell and TELUS now enjoy to descend to normal levels. Competition is intended to, among other things, enhance the efficiency and creativity of competing firms. If competition exists, so too will the large former monopolies' incentive to invest. This simple fact is clearly recognized in both companies' annual reports and is a premise underlying regulation of incumbents' last-mile facilities internationally.<sup>12</sup>

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<sup>9</sup> Average calculated over the last 15 years: see MTS Allstream's Reply to Bell and TELUS Petitions at 37.  
<sup>10</sup> Average calculated over the last 10 years; see MTS Allstream's Reply to Bell and TELUS Petitions at 42-43.  
<sup>11</sup> Manitoba Telecom Services Inc. Annual Information Form for the year ended 31 December 2006, page 4.  
<sup>12</sup> See, e.g. BCE Inc. – 2008 Annual Report at 55: "Cable companies have aggressively rolled out Internet networks offering higher speeds to their customers, forcing us to incur significant capital expenditures in order to also be able to offer higher speeds on our networks. The failure to make continued investments in our Internet networks enabling us to offer Internet services at higher speeds to our customers as well as our inability to offer a different range of products and services compared to our competitors could adversely

18. Bell and TELUS attempt to argue that denying the MTS Allstream Petition would not provide them with any advantage over competitors. Bell states that because higher bandwidth services are provided over fibre rather than copper facilities, the telephone and cable companies gain no incumbency advantages from their legacy network.<sup>13</sup> And both Bell and TELUS argue that if Ethernet and ADSL services are not mandated, they will still be available to competitors at “market-based rates.”<sup>14</sup> These arguments are unsupported by the facts.
19. MTS Allstream’s position as an incumbent in Manitoba, and a long-time competitor in business markets across the rest of Canada, gives it a unique understanding both of the advantages enjoyed by former monopolies, and of the disadvantages faced by competitors with respect to risk and investments in networks.
20. The incumbent telcos - including MTS Allstream in Manitoba - built their access networks in a protected, monopoly environment over the course of a century, with guaranteed rates of return, accesses to municipal rights of way, and entry points into virtually every home and building in the nation. As a result, incumbents have the only truly ubiquitous access networks. This is particularly the case in the business market, where there is no widespread cable network alternative. Augmenting these existing networks with fibre is far cheaper and more efficient than starting from scratch, as competitors are forced to do. Indeed, Bell’s own expert, Mark Goldberg, points out that fibre to the node (“FTTN”) “puts more fibre into the network, *overlaying* an optical connection closer to customers”<sup>15</sup> (emphasis added). Whether overlaid, augmented or replaced, the addition of fibre to an existing network is much more cost-effective than building an entirely new network.

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affect the pricing of our products and services and our results of operations. Furthermore, as the penetration of the Canadian broadband Internet market reaches higher levels, the possibility to acquire new customers increasingly depends on our ability to win customers away from our competitors.” In TELUS’s Annual Report at 53, it notes “To help alleviate the competitive challenges in the traditional wireline segment, TELUS’ Future Friendly Home strategy is positioned to grow wallet share with consumers, while enhancing retention and loyalty through multiple service offerings. TELUS is continuing the roll-out of higher-speed Internet services and TELUS TV, including new products such as HD TV and PVRs, to markets in B.C., Alberta and Eastern Quebec... Despite an expected challenging economic climate and competitive environment in 2009, TELUS believes its consistent strategic focus on providing a full suite of valuable and reliable communications services [including]... the continued enhancement of national wireless and broadband networks, solidly position TELUS for continued growth in the years ahead.”

<sup>13</sup> Bell, para. 19.

<sup>14</sup> TELUS, para. 29.

<sup>15</sup> Appendix 1 to Bell submission, page 23.



21. As MTS Allstream demonstrated in its petition, regulators around the world have come to the conclusion that ubiquitous access infrastructure cannot be duplicated on a practical or economic level anywhere. Moreover, from the point of view of investment, duplicating existing networks is inefficient and in fact devalues the investments the ILECs have made in their access networks. A forward-looking strategy would place those investments in innovative, productivity-enhancing telecommunications solutions that will spur competition and better serve consumers.
22. Competitors face a number of disadvantages: in addition to the costs of the facilities themselves, competitors must negotiate access to rights of way with (often reluctant) municipalities, bear the costs of excavating streets to lay ducts and pipes, negotiate (often expensive) access agreements with building owners, and bear a myriad of other costs that are not faced by incumbents. The infrastructure of these incumbents was long ago built and paid for under guaranteed rate of return regulation and is often subject to agreements and arrangements, e.g. for access, that can be relied upon for the deployment of NGNs. Thus, for Bell and TELUS to argue that incumbents enjoy no advantage because fibre is no more costly for competitors than for incumbents is to miss the point: the fibre itself represents only the tip of the economic iceberg.
23. Moreover, the implication that fibre is revolutionary new technology that erases the barriers that might otherwise exist to competitive investment is a fallacy. The incumbents have been investing in fibre infrastructure for over twenty years, and continue to roll it out ever more closely to the customer. Fibre build-out is an evolutionary process; most networks are now genuine hybrids, composed of both copper and fibre facilities. With their ubiquitous infrastructure, the incumbents continue to possess a major advantage as they augment their remaining legacy facilities. MTS Allstream itself has invested in upgrading its incumbent facilities in Manitoba with fibre over the last nine years. In addition, over the last fifteen years, it has built a national backbone network to deliver IP-based services across the country, established fibre rings around a number of metropolitan areas and is now poised – should its Petition be granted – to build more Ethernet access and transport services.
24. Bell and TELUS's argument that competitors will suffer no disadvantage because Ethernet and ADSL services will continue to be made available at market rates is equally baseless. TELUS goes so far as to state "All suppliers will have incentives to sell these

services in the unregulated (forborne) environment. Service will not be cut-off.”<sup>16</sup> Yet, cutting off service is precisely what Bell did when it refused to sell Cybersurf and other competitors an upgraded wholesale service that would have been equivalent in speed to what Bell was providing to its own retail customers.<sup>17</sup> And where TELUS and Bell do sell forborne wholesale services to competitors, they often charge wholesale rates that are the same as their retail rates – while giving competitors inferior quality of service.<sup>18</sup>

25. Bell and TELUS have no issue with making wholesale services “available”, as long as they can pick and choose to whom they will sell and on what terms. A recent example is the agreement between the two providers for TELUS to resell Bell’s satellite television services in TELUS’s territory.<sup>19</sup> Since Bell does not offer bundled retail services in TELUS’s territory, it is of obvious advantage, and represents no threat to Bell’s business, to have TELUS expand the usage of Bell’s satellite television service in order to complete its offering and compete with Shaw. Bell and TELUS are very happy to share their networks (e.g. satellite television, wireless) where it is mutually beneficial and does not pose a true competitive threat. Their opposition to mandated wholesale arrangements is fundamentally about their desire to control the pacing and extent of competition.
  
26. But allowing the large incumbents to control the terms and extent of competition is inconsistent with the public interest. High rates preclude the ability of competitors to offer genuine alternatives to customers. Similarly, as discussed further below, in a forborne market the large incumbents can choose to sell services only in certain configurations (e.g. end-to-end service rather than unbundled components) thus preventing competitors from offering differentiated service alternatives which might otherwise be provided in combination with the competitor’s own, self-supplied, facilities and services. In such a case, Canadian consumers and businesses lose again, while the dominant providers pocket the profits.

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<sup>16</sup> *Ibid.*

<sup>17</sup> Decision 2007-118 at para. 18.

<sup>18</sup> See MTS Allstream, Telecom Public Notice CRTC 2006-14: Review of Regulatory Framework for Wholesale Services and Definition of Essential Services – Reply Argument, 7 December 2007, paras. 73-77

<sup>19</sup> S. Avery, “BCE, TELUS join forces on satellite TV”, globeandmail.com, 8 May 2009.

## TELUS' Version of "Facilities-Based" Competition Has Not Led to More Investment

27. TELUS is espousing its own, not the government's, version of "facilities-based" competition policy.
28. This Government has confirmed that "facilities-based" competition **includes** providers that both own and lease network elements.<sup>20</sup> TELUS embraces a form of facilities-based competition that has clearly failed, as witnessed by the consolidation of the market and the simultaneous burgeoning of profits of the ILECs over the last decade.<sup>21</sup> Since 2003, for example, both Bell and TELUS have reported annual EBITDA margins in the range of 40%.<sup>22</sup>
29. In any event, however, if the success of what TELUS refers to as "facilities-based" competition is judged by virtue of the investment it has engendered among competitive wireline carriers, MTS Allstream submits it has failed.
30. Much is made by TELUS of the degree of competition in residential markets between the incumbents and cable companies. **But cable entry did not result from the Commission's policy of facilities-based competition.** Like the incumbents, cable companies built their networks under a monopoly environment. Like the incumbents, once they decided to modernize their networks – in this case, to be able to offer telephony and Internet services – cable companies had a pre-existing infrastructure in place that substantially reduced the investment required, as well as a pre-existing subscriber base. The limited degree of cable penetration in business markets clearly reveals that they have not chosen to make the kinds of competitive investments that would take them outside of their existing footprints.
31. TELUS observes that over the last several years, MTS Allstream and its predecessors have consistently argued that facilities should be unbundled, and that its applications to that effect have consistently been rejected by the CRTC, which has determined that

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<sup>20</sup> Order Varying Telecom Decision 2006-15, P.C. 2007-532.

<sup>21</sup> The list of providers who either exited the market or were purchased in the last decade include Axxent, C1, Connect, Maxlink, Norigen, NorthPoint Canada, Psi Net, Riptide, RSP.com, Vidéotron Telecom, Wispra, Call-Net and Microcell (purchased by Rogers), Group Telecom/360 Networks (purchased by Bell), and Clearnet and Quebec Tel (purchased by TELUS).

<sup>22</sup> BCE Inc. Annual Report 2005 at 16; BCE Inc. Annual Report 2008 at 29; TELUS 2008 Financial Review at 6.

granting unbundled access would disincent investment. Similarly, TELUS argues that the 2006 Telecommunications Policy Review Panel also disagreed with MTS Allstream's approach in favour of facilities-based competition. But a careful look at the results of this policy clearly shows that, as MTS Allstream had foreseen in its applications, the result is **less** competition by independent providers – **not more**.

32. The market for high-speed Internet services today is a case in point.<sup>23</sup> The residential market is dominated by the incumbent cable providers, with 57% of the access revenues, followed by the incumbent telephony providers, with a revenue share of 39%. Independent Internet Service Providers ("ISPs") account for just 4% of the market - and most of those providers have not built their own facilities, but use incumbent access infrastructure.<sup>24</sup>
33. For its part, in the business market for high-speed Internet services, incumbents out-of-territory and independent ISPs (who collectively represent 36% of the market by revenues) rely heavily on access to the incumbent providers' last-mile infrastructure, which has, to-date, been mandated. Indeed, the determination of how much of the infrastructure of independent ISPs is self-supplied is at the heart of MTS Allstream's Petition, since in MTS Allstream's view, the CRTC erred in overestimating the amount of self-supply by competitors with respect to Ethernet facilities.<sup>25</sup>
34. A deregulated access model is no guarantee of investment, as TELUS might have one believe. For example, although Verizon was granted all of the deregulation that it sought in the U.S. market, it has nonetheless recently chosen to sell all of its wireline properties in thirteen U.S. states rather than to invest in bringing high-speed broadband to those customers.<sup>26</sup>
35. TELUS also argues that MTS Allstream is proposing a "resale" model rather than investing itself in network components. Both TELUS and Bell claim that MTS Allstream's

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<sup>23</sup> In this context, "high speed" means broadband as defined by the CRTC, i.e. more than 1.5 Mb/s.

<sup>24</sup> CRTC, Communications Monitoring Report 2008 at p. 211. Independent ISPs dominated the market for dial-up Internet services in the early part of this decade and have not made great strides forward in offering high speed services. But if the Commission's policy of facilities-based competition was working, these ISPs would have been incented to invest in their own facilities.

<sup>25</sup> See paras. 57-71 of MTS Allstream's Petition.

<sup>26</sup> P. Svensson, "Frontier to buy rural Verizon lines for \$5.3B" Associated Press, 13 May 2009 (Yahoo! Finance).

approach will result in less competition, investment and innovation, not more. In addition to being out of step with this Government's own definition of a "facilities-based" provider, these hypotheses are not supported by the facts.

36. As Canada's largest facilities-based competitor serving the business market, MTS Allstream well understands the importance of investment. As detailed in its petition, MTS Allstream has invested billions into the Canadian telecommunications market, giving it the most extensive national competitive network in Canada. However, MTS Allstream couples its own facilities with those it leases from the incumbents in order to provide a wide variety of innovative services.
37. In addition to recognizing the value of "hybrid" providers to wireline competition, the Government also understood, in the AWS Auction, that mandating roaming, antenna tower and site sharing for all radio communication carriers<sup>27</sup> would more effectively spur competition in the wireless market than requiring all new entrants to build their own facilities. In these instances, the Government created a forward-looking policy that recognizes that competition and innovation thrives not solely between networks, but also with respect to the services that ride over the access infrastructure. In this instance, to encourage providers to compete on the level of both services and facilities, access to the ILECs' unbundled access networks should be granted until such time as the demand renders self-supply economically justifiable.
38. It is the failure to mandate unbundled Ethernet access that has impeded further competitive investment in this area, not the reverse. As MTS Allstream explained in its petition, at present, Ethernet services are only offered on an end-to-end basis, i.e. as a full service that includes transport, switching and access. If Ethernet transport, access and connecting link facilities were made available for lease at cost-based rates on an unbundled basis, MTS Allstream and other competitors would gradually self-supply more and more of their own facilities as demand grows. But because Ethernet is offered only on an "end-to-end" basis, any investment in a segment of this service – e.g. Ethernet collocation switches, or Ethernet access or transport facilities – is either stranded or deterred, since these facilities cannot be used with the other components of the Ethernet

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<sup>27</sup> CPC-2-0-17 - Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements, November 2008.

network owned by the incumbents. Thus, the present regime actually creates a disincentive for competitors to invest in the individual components. If Ethernet is unbundled, competition for high-speed services will grow in that market and, as competition grows, investment will be a logical next step, where it is economically viable.

39. Bell and TELUS's "resale" argument should be seen for what it is: an attempt to obscure their own role in deterring competitive investment. By perpetuating a model whereby competitors are forced to resell the end-to-end services of the incumbents because there is no other alternative, Bell and TELUS are forcing a so-called "resale model" on competitors who would otherwise invest in components of the service. In fact, this is the very model Bell and TELUS wish to have, because it allows them to contour the pace and extent of competition, and makes it more difficult for competitors to offer new services that use a mix of their own and incumbents' facilities. In essence this perpetuates a "same size fits all" service model, inhibiting rather than promoting innovation and investment.

#### **"Good enough" is not Good Enough for Canadian Business**

40. MTS Allstream's Petition is driven by the belief that all Canadian businesses, including SMBs, should have access to state-of-the-art infrastructure, including high-speed Ethernet access services. In its response, Bell downplays the needs of SMBs, stating "Lower bandwidth requirements, provided for instance over copper facilities, are typically suitable for SMB customers (as well as residential ones)."<sup>28</sup> In essence, Bell is saying that lower-speed services are good enough for Canadian businesses.
41. These facilities may have been good enough for yesterday – but what about today and tomorrow? Ethernet facilities are fast becoming the standard for businesses of all sizes. As drivers of the economy, SMBs require access to leading edge broadband and digital technology to grow and prosper in a fiercely competitive international marketplace. MTS Allstream serves this market for a reason: there is a consistent demand for innovative service alternatives, higher speed capacities, and lower prices. Indeed, to anticipate the next innovation even before demand has been manifested is the *sine qua non* of a competitive marketplace. Bell's complacency and patronizing attitude is

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<sup>28</sup> Bell response, para. 17.

emblematic of the prevailing monopoly approach that limits choice for SMBs, and thus limits the growth of Canadian businesses.

42. Similarly, Bell argues that even those competitors who cannot self-supply Ethernet facilities can nonetheless rely on “substitute technologies (such as certain unbundled loops and DNA services)”.<sup>29</sup> In other words, legacy facilities are “good enough” for competitors as well. As detailed in MTS Allstream’s Petition at paras. 68-71, this attitude – and the wholesale regime that accompanies it – has condemned competitors to attempt to replicate high-speed functionality using legacy facilities which are rapidly becoming obsolete. This is a short-term option at best.
43. The Government should refuse to be satisfied with short-sighted solutions. Rather, it should foster a regulatory environment that promotes creative solutions, that encourages competitor innovation, and that allows businesses of all sizes to be served with the most advanced facilities possible. Whether it is a web-based business operated from a home office, a medium-sized enterprise that relies on automated inventory and logistics protocols, or a large business with significant data management needs, high-speed broadband enables greater productivity and growth across the board. MTS Allstream calls on this Government to recognize the needs of the Canadian business market for today and for tomorrow, by granting the relief requested in the MTS Allstream Petition.

*All of which is respectfully submitted on behalf of the Petitioner this 16th day of July 2009.*

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<sup>29</sup> Bell response, para. 37.