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By email and by courier

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Subject: Canada Gazette Part I, Vol. 140, No. 24, 17 June 2006 – Government's proposed Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission.

MTS Allstream Inc. submits the following comments on the Government's proposed *Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission*, including a report prepared by Lee Selwyn and H. Golding, "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy", filed as Appendix A to these comments.

Yours truly,

Original signed by Jennifer Crowe for Teresa Griffin-Muir.

c.c.: Mr. Kevin Lynch, Clerk of the Privy Council
and Secretary to the Cabinet Privy Council Office

Attachments

Canada Gazette Part I

**Government's Proposed Order
under Section 8 of
the Telecommunications Act –
Policy Direction to
the Canadian Radio-television
and Telecommunications Commission.**

**Comments of
MTS Allstream Inc.**

16 August 2006

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Executive Summary

- i) MTS Allstream is the telecommunications incumbent in the Manitoba market and the leading telecommunications competitor in the business market nationally. It employs over 6000 people across Canada, including 2800 outside of Manitoba. MTS Allstream competes in every major city in the country with the country's largest telephone companies, Bell and TELUS. Uniquely however, more than half of MTS Allstream's revenue is derived from outside its home serving territory of Manitoba.
- ii) As a prairie-based company which has aggressively expanded into central and western Canada, MTS Allstream competes head-to-head with these much larger former monopolies who possess enormous historical advantages. There is no company more demonstrably committed to being a national competitor: not only is MTS Allstream the leading competitor to Bell and TELUS in the business market in their respective regions, but the only competitor which consistently achieves profitability outside its incumbent serving territory.
- iii) MTS Allstream agrees wholeheartedly with Minister Bernier's goals, expressed in the Release announcing the tabling of the Proposed Order, which are to ensure our telecommunications regulatory system is "more modern, flexible and efficient" and our industry "internationally competitive and successful", so that "Canadian consumers will benefit from a stronger competitive environment that will bring greater choice and even lower prices and better services."
- iv) For the most part MTS Allstream supports the Proposed Order. However, MTS Allstream believes one section of the Proposed Order, section 1(c)(ii) (the Wholesale Directive), if implemented as currently drafted, will actively undermine achievement of the Government's goals and jeopardize competition, particularly in the critical market for business services. While the construction of competing facilities is a laudable goal, the notion that competitor access to a much abbreviated set of "essential" facilities and services will result in greater and more rapid investment in competing network infrastructure is false and simplistic, as has been clearly demonstrated by the experience of the last ten years.

- v) Indeed, the extent of investment required and the length of time needed to construct a network with even a fraction of the coverage enjoyed by the large former monopolies render this proposition absurd and impossible to fund in the public or private markets.
- vi) Wholesale access has been key to MTS Allstream's ability to grow and expand its services from its prairie base across the country, and is indispensable to the company's (and any competitor's) ability to continue to compete with the twin Leviathans in the east and the west, i.e., Bell and TELUS. Testimony to the critical importance of fair, cost-based network access is the continuing actions of these large former monopolies to thwart competition. At turns they have refused to negotiate broadband access and extracted usurious margins before affording competitors access to critical inputs, and even then provided competitors with inferior quality of service, at each turn guaranteeing themselves a preference over competitors in relation to the retail customers.
- vii) As the leading national business services competitor, MTS Allstream has built and acquired an unparalleled national IP-enabled network, bringing applications and networks together over voice, data, video and mobile platforms. In addition to its extensive network in its home serving territory of Manitoba, MTS Allstream has invested **billions** of dollars in building facilities to compete with the former monopolies in the business market. However, in order to reach its customers MTS Allstream is still required to expend **a quarter billion dollars** annually to purchase facilities and services from the former monopolies. These services and facilities are used by MTS Allstream as inputs into the competing services offered to end-customers. Often these inputs are used to develop very different and innovative offers that have enabled MTS Allstream to distinguish itself in the market.
- viii) In contrast to the other sections of the Proposed Order, which are founded on broadly-based and sound public policy goals such as greater reliance on market forces, regulatory efficiency and transparency, the Wholesale Directive appears to have been inspired by the specific lobbying agenda being aggressively pursued by the largest former monopolies – Bell (together with its affiliate Aliant) and TELUS. This agenda seeks the dramatic reversal of measures taken by the CRTC to promote a strong competitive environment in the face of the enormous barriers resulting from these former monopolies' significant market power (SMP) over networks. These barriers, which are

the product of these companies' historical monopolies, allow them to engage in anti-competitive behaviour, such as charging inflated rates and providing inferior quality of service that severely compromises competitors.

- ix) Thus, by implying that mandated access to local access facilities on fair, reasonable and non-discriminatory terms should be more restrictive, the Wholesale Directive threatens to destroy the modest inroads made by competitors. If the directive is implemented as is, Canada would be placed on a path towards decreased competition, innovation and investment and increased market concentration, the only beneficiaries of which would be these former monopolies.
- x) Acting pragmatically and incrementally, the CRTC has cautiously mandated access to these services, at cost-based rates, in order to ensure customers **do** have competitive alternatives notwithstanding the advantages enjoyed by the incumbents by virtue of their historic monopoly.¹
- xi) If anything, the CRTC has been overly conservative in its approach to wholesale access. When local competition was first introduced in 1997, mandated wholesale access at cost-based rates was restricted to a very narrow set of facilities and services deemed "essential" in the belief that competitors would overbuild other facilities of the former monopolies if they could not access these on the basis of fair, reasonable and non-discriminatory terms and conditions.
- xii) The proposed Wholesale Directive is predicated on the false and simplistic notion that monopoly rents for "essential" inputs will encourage competitors to build rather than lease facilities from the former monopolies. Experience in the marketplace has repeatedly demonstrated that where facilities cannot be economically duplicated, competitors cannot build them and remain viable. This is true regardless of whether the

¹ Incumbent advantages include: ownership and control of ubiquitous networks, built under a guaranteed rate of return structure and connected to virtually every residential and business customer in their serving territories; long-standing relationships with almost all local exchange customers; and informational advantages that come from understanding customers' unique histories and calling patterns. In contrast, competitors must build or access infrastructure, face customer inertia in local markets and shoulder high customer acquisition costs, among other barriers to entry. As a result, almost ten years after the Commission opened the way to competition in the local exchange market, the incumbents continue to retain enormous market share for local exchange services in their serving territories across the country.

facilities required from the former monopoly are priced at exorbitant mark-ups. Indeed, the capital markets will not even fund a business plan based on duplication: the costs are too high, the returns too uncertain, and the overall economic efficiency is highly questionable. The CRTC has therefore applied its expertise to mandate access to a wider range of services which are required as inputs for competitors. If implemented, the Wholesale Directive would both put at risk and ignore ten years of this evolution and experience.

- xiii) This is precisely why the former monopolies have mounted such a strong lobby to eliminate wholesale access. In fact, their recent attack of the CRTC's local forbearance criteria, namely the criteria that ensures wholesale access to broadband and reasonable quality of service for competitors is largely motivated by their desire to preserve their control over these bottleneck facilities and the customers served by them. The Wholesale Directive reflects these companies' intense campaign to maintain and erect new barriers to competition. The intensity of the Canadian former monopoly lobby has only been strengthened by the success of the lobby mounted by the U.S. monopolies to eliminate mandated wholesale access with their competitors. The consequences in the U.S. of eliminating a fair and reasonable wholesale regime were swift and far reaching. Almost immediately the two major independent competitors AT&T and MCI withdrew from the local market and were shortly thereafter purchased by the two largest former monopolies SBC and Verizon. These former monopolies then raised the prices for wholesale access at times to levels greater than retail prices driving the smaller competitors to abandonment or bankruptcy.
- xiv) If not amended, the Wholesale Directive could result in services being deemed "essential" according to an arbitrary formula loosely drawn from theory and blind to the facts and the practical effect in the Canadian marketplace. The consequence of this on competition, innovation and investment would mirror the experience of the U.S.
- xv) However, this need not be the case. The damage to competition can be avoided by ensuring the directive to the CRTC results in a definition of essential services that is technologically and competitively neutral, and adequately addresses the existence of SMP in network infrastructure.

- xvi) MTS Allstream proposes the following alternate wording for section 1(c)(ii) of the Proposed Order which offers the CRTC the benefit of the appropriate policy guidance from the Government yet retains the flexibility necessary to respond to actual market conditions:

1(c) in order to promote efficient, informed and timely operations the Commission should adopt the following operational practices:

...

With a view to providing increased incentives for innovation and investment and to building a stronger competitive environment with greater choice, lower prices and better services for Canadians, conduct a review of its regulatory framework regarding mandated access to wholesale services to ensure that the definition of essential facilities and services is technologically and competitively neutral and adequately addresses the existence where found, of significant market power with respect to network infrastructure.

- xvii) **We are at a crossroads.** The largest former monopolies, through their aggressive lobbying campaign, are seeking broad scale deregulation and the obliteration of wholesale network access for competitors. This will lead Canada down the same disastrous path that was the result of the political lobbying effort of the former monopolies in the U.S., where the FCC's resulting hands-off approach has driven competition from the market. An equivalent path in Canada will **not** lead to a stronger competitive environment. On the other hand, certain jurisdictions like Ofcom in the UK have recognized that enduring bottlenecks resulting from British Telecom's dominance over the public network infrastructure must be made accessible to competitors to ensure that innovation and investment is not frustrated by the former monopoly.
- xviii) In sharp contrast to the U.S. experience, Ofcom's approach in the U.K. has resulted in a healthy emerging competitive market, with British Telecom providing wholesale services to up to 60 competitors, not counting niche service providers (which number in the hundreds). The changes that MTS Allstream is proposing to the Wholesale Directive will allow Canada to follow the same path as these more enlightened jurisdictions. It will also make Minister Bernier's goal of a "stronger competitive environment" and "greater choice and even lower prices and better services" a reality for all Canadians.

Introduction

- 1) MTS Allstream Inc. (MTS Allstream) is pleased to submit its comments on the Government's proposed *Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission* (the Proposed Order).
- 2) MTS Allstream is the incumbent in the Manitoba market and the leading competitor in the business market nationally. It employs over 6000 people across Canada, including 2800 outside of Manitoba. MTS Allstream competes in every major city in the country with the country's largest telephone companies, Bell and TELUS: yet unlike these former monopolies, more than half MTS Allstream's revenue is derived from outside its home serving territory of Manitoba. As a prairie-based company which has aggressively expanded into central and western Canada, MTS Allstream competes head-to-head with these larger former monopolies who possess enormous historical advantages. Yet, not only is MTS Allstream the leading competitor to Bell and TELUS in the business market in their respective regions, but the only competitor which consistently achieves profitability outside its incumbent serving territory.
- 3) MTS Allstream agrees wholeheartedly with Minister Bernier's goals, expressed in the Release announcing the tabling of the Proposed Order, which are to ensure our telecommunications regulatory system is "more modern, flexible and efficient" and our industry "internationally competitive and successful", so that "Canadian consumers will benefit from a stronger competitive environment that will bring greater choice and even lower prices and better services."
- 4) Accordingly, for the most part MTS Allstream supports the Proposed Order. However, MTS Allstream believes one section of the Proposed Order, section 1(c)(ii) (the Wholesale Directive), if implemented as currently drafted, will actively undermine achievement of the Government's goals and jeopardize the growth of competition, particularly in the critical market for business services.

- 5) The Wholesale Directive deals specifically with competitors' access to wholesale services. It instructs the CRTC to “conduct a review of its regulatory framework regarding mandated access to wholesale services, in order to determine the extent to which mandated access to wholesale services that are not essential services should be phased out and the appropriate pricing of mandated services to encourage investment and innovation in network infrastructure.” But this wording contains within it an erroneous presumption: that limiting access to a narrow range of wholesale services will incent competitors to invest in new infrastructure. In fact, as MTS Allstream explains in this submission, too narrow a definition of “essential services” will inevitably result in price increases for other services required by competitors, which will inhibit, not promote, competitors' ability to invest and innovate in new infrastructure and services.
- 6) Wholesale access has been key to MTS Allstream's ability to grow and expand its services from its prairie base across the country, and is indispensable to the company's ability to continue to compete with the twin Leviathans in the east and the west, i.e., Bell and TELUS. At the same time, however, the critical role of wholesale access places competitors at the whim of the former monopolies. As a result, these companies often provide inferior quality of service to competitors who rely on these critical inputs to serve and build relationships with their own retail customers.
- 7) The Wholesale Directive stands out from the balance of the Proposed Order in two striking and significant respects. First, in contrast to the other sections of the Proposed Order, which are founded on broadly-based and sound public policy goals such as greater reliance on market forces, regulatory efficiency and transparency, the Wholesale Directive appears to have been inspired by the specific lobbying agenda being aggressively pursued by the largest former monopolies – Bell (together with its affiliate Aliant) and TELUS. This agenda seeks the dramatic reversal of measures taken by the CRTC to promote a strong competitive environment in the face of the enormous barriers resulting from these former monopolies' significant market power (SMP) over networks. These barriers, which are the product of these companies' historical monopolies, allow them to engage in anti-competitive behaviour, such as charging inflated rates and providing inferior quality of service, that severely compromises competitors, such as MTS Allstream. Thus, by implying that mandated access to wholesale access on fair,

reasonable and non-discriminatory terms should be more restrictive, the Wholesale Directive threatens to destroy the modest inroads made by competitors and sets Canada on a path towards decreased competition, innovation and investment, particularly in the business market where there is no secondary infrastructure.² This would benefit these former monopolies alone.

- 8) As well, while most of the Proposed Order is phrased in language focusing on policy, thereby properly allowing the CRTC, as an expert body, a measure of flexibility in meeting the Government's policy goals, by contrast, the Wholesale Directive is highly specific in its language. In this respect, MTS Allstream believes the provision is inconsistent with section 8 of the *Telecommunications Act* (the *Act*), which states that "The Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives." (emphasis added)
- 9) As the leading national business services competitor, MTS Allstream has built and acquired an unparalleled national IP-enabled network, bringing applications and networks together over voice, data, video and mobile platforms. In addition to its extensive network in its home serving territory of Manitoba, MTS Allstream has invested billions of dollars in building facilities to compete with the former monopolies in the business market. However, in order to reach its customers and offer them a competitive alternative it is still required to expend hundreds of millions of dollars annually to purchase facilities and services from the former monopolies.
- 10) Competitors' fair and reasonable access to wholesale services and facilities of the former monopolies is critical to competition, particularly in the business market where cable companies do not provide a widely available alternative connection to the customer's premises. In order to offer customers choice, competitors must therefore purchase network elements from the former monopoly provider and use these as inputs into their own service. Acting pragmatically and incrementally, the CRTC has cautiously mandated access to these services, at cost-based rates, in order to ensure customers

² In many parts of the residential market, cable companies provide a secondary infrastructure over which telecommunications services can be provided, but cable does not generally reach businesses.

do have competitive alternatives notwithstanding the advantages enjoyed by the incumbents by virtue of their historic monopoly.³

- 11) If anything, the CRTC has been overly conservative in its approach to wholesale access. When local competition was first introduced in 1997, mandated wholesale access at cost-based rates was restricted to a very narrow set of facilities and services deemed "essential" in the belief that competitors would overbuild other facilities of the former monopolies if they could not access these on the basis of fair, reasonable and non-discriminatory terms and conditions. However, experience in the marketplace has repeatedly demonstrated that where facilities cannot be economically duplicated, competitors cannot build them, regardless of whether they could rely on facilities of the former monopoly at mandated cost-based rates. Indeed, the capital markets will not fund a business plan based on duplication: the costs are too high, and the returns too uncertain. Over the years, the CRTC has gradually recognized that limiting competitors' fair and reasonable access to network elements controlled by the former monopolies does not provide these competitors with an incentive to overbuild the former monopolies' networks, and that adhering to this unattainable concept will not foster competition. Indeed, only having mandated, cost-based access to a limited set of wholesale services contradicts the goal of further investment in networks, since revenues which could be invested in facilities must go to pay excessive fees to the incumbents for facilities and services. The CRTC has therefore applied its expertise to mandate access to a wider range of services which are required as inputs for competitors. If implemented, the Wholesale Directive would both put at risk and ignore ten years of this evolution and experience.
- 12) In order to preserve their control over these bottleneck facilities and the customers served by them, however, the former monopolies have consistently sought to restrict the

³ Incumbent advantages include: ownership and control of ubiquitous networks, built under a guaranteed rate of return structure and connected to virtually every residential and business customer in their serving territories; long-standing relationships with almost all local exchange customers; and informational advantages that come from understanding customers' unique histories and calling patterns. In contrast, competitors must build or access infrastructure, face customer inertia in local markets and shoulder high customer acquisition costs, among other barriers to entry. As a result, almost ten years after the Commission opened the way to competition in the local exchange market, the incumbents continue to retain enormous market share for local exchange services in their serving territories across the country.

facilities to which competitors can obtain access on fair and reasonable conditions. The most recent example is the former monopolies' concern regarding those elements of the CRTC's local forbearance criteria aimed at reducing remaining barriers to entry and expansion. In MTS Allstream's view, the Wholesale Directive reflects these companies' intense lobbying campaign to erect new barriers to competition by placing unprecedented restrictions on competitors' access to these wholesale services. If not amended, the Wholesale Directive could result in services being deemed "essential" according to an arbitrary formula loosely drawn from American jurisprudence and theory and blind to its practical effect in the Canadian marketplace. This would strand competitive investment, significantly damage the Government's goal of greater competition and take Canada in the wrong direction altogether.

- 13) MTS Allstream believes that this error can be avoided by ensuring that the CRTC defines essential services in a manner that is technologically and competitively neutral, and adequately addresses the existence of SMP with respect to network infrastructure where it is found. Else, competitors will end up paying exorbitant rates for facilities and services – often receiving inferior service from the ILEC as well – which impedes, not fosters, competition.
- 14) Unless essential facilities and services are defined under a technologically and competitively neutral framework that takes SMP into account, innovation could be cut off at the knees. Access to wholesale facilities and services by competitors results in the development of innovative new services and applications not offered by the former monopolies. Competitors, not incumbents, are the drivers of innovation. For Canada to reap the full benefits of competition, competitors must therefore be given fair and reasonable wholesale access to the public network infrastructure.
- 15) Achievement of the Government's goal of a stronger competitive environment in the telecommunications industry will rely on an appropriate framework for competitors' access to wholesale services. We are at a crossroads. The largest former monopolies, through their aggressive lobbying campaign, are seeking to lead Canada down the same disastrous path towards the obliteration of wholesale access that was the result of the political lobbying effort of the incumbents in the United States. On the other hand, Ofcom (the regulator in the United Kingdom), recognizing the enduring bottlenecks

represented by British Telecom's dominance over the public network infrastructure, has taken steps to ensure innovation and investment is not frustrated by the former monopoly's SMP.

- 16) To ensure the CRTC has the benefit of the appropriate policy guidance from the Government yet retains the flexibility necessary to respond to actual market conditions, MTS Allstream therefore proposes the following alternate wording for section 1(c)(ii) of the Proposed Order:

1(c) in order to promote efficient, informed and timely operations the Commission should adopt the following operational practices:

...

With a view to providing increased incentives for innovation and investment and to building a stronger competitive environment with greater choice, lower prices and better services for Canadians, conduct a review of its regulatory framework regarding mandated access to wholesale services to ensure that the definition of essential facilities and services is technologically and competitively neutral and adequately addresses the existence where found, of significant market power with respect to network infrastructure.

- 17) This language would be consistent with the wording in the rest of the proposed Policy Order, in particular that found in sections 1(b)(iii), which sets out the principle of competitive neutrality with respect to non-economic objectives, and 1(b)(iv), which sets out the principle of technological and competitive neutrality with respect to interconnection arrangements and access regimes – which are themselves closely related to wholesale access issues. As discussed in more detail below, it would also be consistent with recommendations made by the TPRP for regular review of the category of essential facilities in light of the incumbents' market power.
- 18) To demonstrate the dire consequences for competition, investment and innovation if the Wholesale Directive were to be implemented as currently drafted, these submissions will first address the role of wholesale access in addressing the former monopolies' SMP in networks to ensure competition, investment and innovation are realized. Next, some necessary background to the existing framework governing competitors' access to wholesale services will be provided. Finally, with an understanding of the relevant background, we will then discuss two starkly different visions for the future of wholesale

access. This discussion will draw a comparison between the disastrous experience with curtailing wholesale access in the U.S. that resulted from the American incumbents' political lobbying and the more expansive wholesale regime developed in the UK to address the adverse consequences of leaving the former monopolist's SMP unchecked.

Competitive Market Forces are the Goal

- 19) The Government has proposed an order that for the most part would foster increased reliance on market forces. MTS Allstream agrees with this goal. But to reach this goal, it is necessary first to appreciate the difference between the monopolistic forces that are present in a market with one dominant provider, and competitive forces that are present in a market with strong competitors.
- 20) In a market where one provider retains SMP, the so-called "market forces" at work are not those that serve the public interest or the Government's goals. In fact, this is currently being demonstrated by actions of certain former monopolies who are at the very same time actively lobbying the Government to dismantle Canada's regulatory framework aimed at addressing their SMP.
- 21) In cynical and flagrant contradiction of their pleas to the Government that they no longer possess SMP, Bell Canada (Bell) and its affiliate, Bell Aliant (Aliant) are actively seeking to impose price increases on customers, and incredibly, purporting to do so in the name of competition. These actions can only be interpreted as evidence of these former monopolies' certain knowledge that they in fact continue to possess SMP. Indeed, recent CRTC statistics show that the ILECs held 92.4% of local residential access lines and 86% of business access lines across the country at the end of 2005.⁴
- 22) Under competition law, the ability to sustain a non-transitory price increase of 5% is the *sina qua non* of market power.⁵ Recently, both Bell and Aliant proposed to eliminate their \$55 Service Connection service charge (applicable to new or moving local

⁴ CRTC Telecommunications Monitoring Report, *Status of Competition in Canadian Telecommunications Markets*, July 2006 at 32 (figure is for the provinces and excludes the Yukon, Northwest Territories and Nunavut), pages 36 and 37.

⁵ Bell itself noted this principle in its submission to the CRTC during the proceeding leading up to the Local Forbearance Decision: see Bell Canada and Télébec, société en commandite, Submission in response to Public Notice 2005-2, 22 June 2005, paragraph 48.

exchange service customers) in favour of increasing the monthly rates for all local telephone subscribers by \$0.80 cents per month – across their entire serving territories.⁶ Bell claimed that its proposal will “align the Company’s pricing practices with those of its competitors,”⁷ using the purported existence of competition to justify higher prices – surely a first! Moreover, Bell and Aliant have just raised their rates for Centrex and a suite of related local business services by 10%.⁸

- 23) Bell's and Aliant's competitors do not charge service connection fees for the simple reason that the market would not permit it, and they would be delusional if they believed they could compensate for the costs of service connection by charging their existing customer base higher rates for the underlying service. Only former monopoly providers like Bell and Aliant have the ability to make sure they are kept whole for measures they take ostensibly to meet the competition.
- 24) In contrast to this demonstration of market power, true competitive market forces benefit consumers through lower prices and greater choice and innovation. One does not have to look far for examples of how competitive market forces have improved consumer welfare and met the innovation needs of Canadian individuals and businesses. And access to the former monopoly providers' wholesale services consistently plays a vital role in this competitive process.
- 25) Internet services are a case in point. Dial-up Internet access was first provided by competitors leasing Centrex telephone lines from the former monopolies that connected to modems at the competitors' premises. Only after competitors commenced providing this service was it eventually provided by the former monopolies themselves. The ultimate result of this competitive process was the development of a highly competitive market for Internet services, which has resulted in innovation through ever-higher speeds being offered by a variety of providers, with ever-lower prices to consumers. This example shows the discipline exerted on the market when market forces are truly competitive in nature.

⁶ Both Bell and Aliant claimed that the overall impact to them of this change would be revenue-neutral. However, MTS Allstream estimates that this price increase for basic local phone services will result in an additional \$60 million in revenue for Bell.

⁷ Bell Tariff Notice No. 6967, 7 July 2006, paragraph 4.

⁸ Telecom Order CRTC 2006-191 (Interim approval), 21 July 2006.

- 26) Competitive market forces, through the linked processes of rivalry and innovation, lead to new and better services and falling prices. This process catalyzes innovation and investment, which in turn reaps benefits for the Canadian economy in the forms of higher productivity and increased adoption of information and communication technologies (ICTs).
- 27) Competition is particularly important for the growth and development of small and medium-sized enterprises (SMEs), which are the engines of the Canadian economy. Over and over again, studies have found that the adoption of technology by SMEs is a critically important driver of productivity growth.⁹ Advanced telecommunications infrastructure and ICT solutions developed by innovative telecommunications competitors (many of which are SMEs themselves) allow other SMEs to develop core competencies through digital technology and become more competitive in markets at home and abroad. Thus, without sustainable competition, SMEs are prevented from engaging in the innovation, investment and productivity that is so fundamental to the Canadian economy.
- 28) It is the competitors who drive innovation in telecommunications services. Competitors innovate out of necessity, not virtue. They must strive to find new markets, processes and services in order to distinguish their products and services. By contrast, the former monopolies, with their superior networks and resources, will play “catch up” (often after an initial period of anti-competitive behaviour) in the provision of these same services, but only once demand for these services has been created and the former monopolist perceives a threat to its market share.
- 29) By necessity, competitors take the wholesale facilities and services offered by the ILECs and use them in new and different ways to create innovative offerings. A recent example is MTS Allstream’s introduction of Internet protocol (IP) trunking service. IP Trunking allows businesses to extend their IP network capabilities beyond their own

⁹ See, for example, Canadian Federation of Independent Business, Canadian Manufacturers & Exporters and RBC Financial Group, *The path to prosperity: Canada's small and medium-sized enterprises*, October 2002, [hereinafter *The Path to Prosperity*] at 7, available online at http://fcei.ca/research/reports/default_e.asp; 2004 CIBC World Markets Inc., *CIBC Small Business – Secrets to Small Business Success* at 3; G. Gellatly, V. Peters, *Understanding the Innovation Process: Innovation in Dynamic Service Industries* (Statistics Canada: Ottawa, 1999) at 5, available online at www.statscan.ca.

enterprise with a single connection to the public switched telephone network (PSTN). It allows customers to seamlessly interconnect their private branch exchanges (PBXs)¹⁰ to the PSTN, allowing them to bypass costly traditional circuits. In essence, IP Trunking simplifies the customer's network infrastructure by converging all local, long distance, private voice and data traffic onto a resilient backbone that allows traffic to flow both inside and outside of the enterprise. The result is significant cost savings to customers, enhanced productivity and efficiencies in network management, and greater flexibility to increase or decrease IP Trunking bandwidth as required to meet changing business needs.

- 30) Myriad other examples of competitor innovations exist. Voicemail was a competitive response by the ILECs to the introduction of answering machines by third parties. CNCP Telecommunications, a predecessor to MTS Allstream, first launched digital network services in the late 1980s, only to be emulated and outpaced by the ILECs (who then resisted offering competitor pricing for their own digital network access services for over a decade). IP networking was first created by competitors, who reduced customers' costs by offering frame relay services and managing customer premise routes - spurring the ILECs to respond with high-speed Ethernet access and transport facilities. Most recently, Canadians have benefited from the introduction of VoIP services, which were pioneered by new entrants and have only just begun to be pursued by the ILECs. (In fact, TELUS and Aliant have yet to roll out a VoIP product and Bell's principal so-called VoIP product, "Bell Digital Voice," in reality has little to do with IP technology at all.)
- 31) It is consistently the competitors, and not the former monopolies, who innovate and invest to provide new services to customers, often by using wholesale services and facilities of the former monopolies in new and innovative ways. The claims of the largest former monopolies that mandated access to wholesale services is bad for innovation and investment are clearly groundless.

¹⁰ A PBX is a private voice-communications-capable switching facility located in a customer's premises which provides on-site connection between terminals connected to it, including dial service, and may provide connections between those terminals and other communications networks.

Experience Demonstrates the Need for a More Comprehensive and Technology-Neutral Framework for Wholesale Access

- 32) If implemented as currently worded, the Wholesale Directive would give the former monopoly providers virtually free reign to leverage their SMP over networks to severely limit competition. This direction ignores the experience of the last 10 years, which proves that if anything, the CRTC has been too cautious and incremental in its wholesale access policies. A more comprehensive and technology-neutral framework for wholesale access is merited.
- 33) Indeed, revising the Wholesale Directive to incorporate the principles of technological and competitive neutrality would be consistent with the language used elsewhere in the Proposed Order, specifically in sections 1(b)(iii) ("regulatory measures designed to advance non-economic objectives of regulation should, to the greatest extent possible, be implemented in a symmetrical and competitively neutral manner") and 1(b)(iv) ("interconnection arrangements and access regimes...should, to the greatest extent possible, be technologically and competitively neutral, in order to enable competition from new technologies..."). MTS Allstream submits that the principles of technological and competitive neutrality should be applied equally in the context of wholesale access, particularly given the close relationship between wholesale access and interconnection.
- 34) When it opened the local market to competition almost 10 years ago, the CRTC developed its own policy of "facilities-based competition". This policy was based on an assumption (a flawed assumption, as described above) that only competition between providers with their own networks would bring the full benefits of competition. In implementing this policy, the CRTC relied heavily on a narrow meaning of "essential facilities" promoted heavily by the former monopolies. This definition limits what is considered "essential" to those facilities that meet all three of the following criteria: (a) it is monopoly controlled; (b) a CLEC requires it as an input to provide services; and (c) a CLEC cannot duplicate it economically or technically.¹¹

¹¹ This definition of "essential facilities" is by no means universally accepted. See, for example, the WTO Reference Paper on Telecommunications Services (to which Canada bound itself in its Basic Telecommunications Commitments under the GATS) which defines "essential facilities" as "facilities of a public telecommunications transport network or service that (a) are exclusively or predominantly provided by a single or limited number of suppliers; and (b) cannot feasibly be economically or technically substituted in order to provide a service." (emphasis added). Available online at: http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm.

- 35) The former monopolies' intense lobbying campaign is aimed at forcing the CRTC to retreat to a position where they would only be mandated to provide services that meet this definition at cost-based rates, and would be free to withhold or charge so-called "market-based" rates for all other wholesale services, regardless of how critical these inputs are to the ability of competitors to offer competitive alternatives. This approach would not only be disastrous for the state of competition, but also flies in the face of the experience of the last 10 years.
- 36) From the outset, the CRTC recognized that no competition would result if it only mandated the cost-based unbundling of those services that met the very narrow definition it had accepted of what was "essential" (and which is now being pressed by the former monopolies). Accordingly, in its decision establishing the local competition framework, the CRTC expanded its cost-based treatment of network elements of the former monopoly providers to facilities it deemed "near-essential" for a five-year period, referred to as the "sunset clause". However, in 2001, in response to the lack of competitive supply of these "near-essential" facilities, the CRTC was forced to extend this period indefinitely, again in recognition of the fact that these facilities are "critical inputs required by entrants", and entrants in the local market faced substantial barriers to entry, which limit their ability to expand their networks and acquire customers through self-supply of such facilities. The CRTC therefore considered that not extending the availability of these facilities "would significantly limit the development of competition in the local exchange market." Despite the lobbying of the former monopolies, who threaten that they will not invest in their own facilities unless they can "wean" competitors from their networks, such has not proven to be the case; rather, they have upgraded their networks in response to competitive market forces (e.g., to provide high-speed Internet, VoIP, etc.).
- 37) The CRTC has since continued to recognize the critical nature of the availability of specific local access and transport facilities of the former monopolies to the development of competition, and has mandated access to these facilities on a piece-meal basis.¹²

¹² See, for example, wholesale access to digital subscriber lines (DSL); Competitor Digital Network Access (CDNA) services; and Ethernet services.

- 38) The fact is the former monopolies built the public network infrastructure over the course of decades, at a guaranteed rate of return, and have continued to upgrade this infrastructure under a price cap regime which also effectively provides a guaranteed rate of return. In contrast, competitors who have attempted to build their own networks have, without any guaranteed rate of return, spent billions of dollars only to find their costs unsustainable.
- 39) Between 1992 and 2000, more than \$17 billion was spent by over 20 companies in pursuance of facilities-based competition. Today, only two – Allstream and Call-Net – are still significant players in the market, and both of those companies have been bought by larger entities (Allstream by MTS and Call-Net by Rogers).¹³ This represents a colossal loss of investment.
- 40) While Canada's major cable companies are now finally using their cable networks (built in an environment where they enjoyed a monopoly over broadcasting distribution services) to begin to provide IP-based telephony services, this development is of limited, if any relevance to the business market. The cable companies' networks are not ubiquitous throughout Canada; their footprints generally serve residential premises, rather than business locations. Thus Rogers, which purchased Call-Net/Sprint Canada's base of business customers as well as its residential customer base, continues to rely largely on facilities leased by Call-Net from the former monopolies on a wholesale basis to serve these customers and expand their business services.
- 41) Only fair, reasonable and non-discriminatory access to wholesale services and facilities controlled by the former monopolies will generate the full benefits of a competitive market. Accordingly, the Proposed Order should require that the CRTC mandate the availability of "essential services" in a manner that takes into account the SMP of the incumbents and incorporates the principle of technological neutrality. This will foster the

¹³ In 2001 and 2002 alone, eleven competitive telecommunications providers failed: Axxent, C1, Cannect, Maxlink, Norigen, NorthPoint Canada, Psi Net, Riptide, RSP.com, Vidéotron Telecom and Wispra. Three others underwent major restructurings and have all since been purchased by larger undertakings: Call-Net Enterprises Inc., which was purchased by Rogers Communications Inc.; GT Group Telecom Limited, which was purchased by 360 Networks, which in turn was purchased by Bell Canada; and AT&T Canada Corp., the predecessor to Allstream Corp., which was purchased by MTS.

competition that all parties desire, paving the way for deregulation and greater reliance on competitive market forces.

- 42) By incorporating the principle of technological neutrality in its definition of what is essential, a comprehensive approach to unbundling will be facilitated that is not restricted to the former monopolies' legacy bottleneck access facilities, but extends as well to their enduring bottlenecks – the access portion of the incumbents' next generation networks. Because the evolution of technology is a fundamental characteristic of the telecommunications industry, the principle of technological neutrality is key to the regulatory framework. Our focus should not be on changes in technology, but on the impact that these changes have on the competitive environment, to ensure that as we dismantle current barriers to entry, new barriers are not erected.
- 43) Notably, this principle was recognized by the Telecommunications Policy Review Panel (TPRP) in its report to the Government. Amongst its recommendations, the TPRP recommended that the *Act* be amended not simply to provide for the creation of a category of essential facilities that should be subject to mandated supply at regulated rates, but also to establish a process whereby this category of services can be kept current, specifically through a review to take place every three to five years.¹⁴ The TPRP commented:

The set of facilities and related services that meet the essential facilities definition will not be static. Technological and market developments over time may result in a shift of facilities from essential to non-essential status. It is conceivable, although less likely, that shifts may also occur in the other direction. In addition, new essential facilities may emerge.¹⁵

- 44) The recognition of a carrier's SMP where it exists is also key, and was properly a fundamental part of both the CRTC's recent local forbearance decision and the TPRP's report. When a former monopoly provider possesses SMP, it can take undue advantage of its control of services and facilities and engage in anti-competitive behaviour, including by charging inflated rates for services and providing inferior service to its competitors. In the context of wholesale access, the TPRP noted:

¹⁴ TPRP Report, Recommendations, pages 3-20 and 3-22.

¹⁵ TPRP Report, Recommendations, page 3-37.

[M]andated wholesale access should be subject to economic regulation since, by definition, the provider of these facilities and services has SMP. Over time, the service provider's SMP over certain components of mandated wholesale access may erode. In such cases, the review of essential facilities should result in a reclassification of those components to non-essential.¹⁶

- 45) Under the current regime, the former monopolies control access to the PSTN. Where the CRTC has not established cost-based access to their network infrastructure, the rates for such access can carry mark-ups from 50% to 300%. As a result, competitors are paying exorbitant rates for wholesale access – not to mention markups of up to 1000% for services provided to competitors on a retail basis. To put these costs in perspective, last year MTS Allstream paid approximately \$250 million in wholesale access fees to the incumbents. This expenditure is a result of MTS Allstream not having access outside Manitoba to a legacy network paid for under a system of guaranteed rates of return. This amount makes a significant difference to MTS Allstream's ability to reinvest in its own facilities. A wholesale regime that recognizes SMP will encourage investment and provide benefits to consumers, to SMEs and to the economy as a whole.
- 46) As an incumbent in Manitoba itself, MTS Allstream recognizes that prices should reflect incumbents' true costs, plus a reasonable rate of return. But we also recognize that the amounts being charged by the other former monopolies are well above any "reasonable" rate of return. The existing regulatory regime therefore gives a significant advantage to former monopolies over competitors.
- 47) Many former monopolies are offering plainly inferior quality of service to their competitors. The impact of this is immeasurably damaging for competitors. When a competitor wins new business, it relies on a former monopoly for the local network connection. If that connection is not made properly or within a reasonable time frame, both the competitor and its customer suffer. Thus, even when a competitor has won business on the merits of its offering, it can risk losing it because of implementation problems which are due purely to poor service from the former monopoly. Since the former monopoly provider serves its own customers with high-quality service, it is plain that this is an anti-competitive tactic that can actively drive competition out of the

¹⁶ TPRP Report, Recommendations, page 3-38.

marketplace.¹⁷ In its recent decision respecting forbearance from competition in local voice markets, the Commission recognized that quality of service was crucial to sustainable competition, and made the achievement of certain quality of service metrics one of the criteria for deregulation in local markets.¹⁸

- 48) Failure to approach wholesale access in a comprehensive and technologically neutral manner, and to confront the effects on competition of the former monopolies' SMP, will hamper a transition to a state where competitive market forces can be relied upon to the maximum extent to deliver lower prices, greater innovation and increased investment, to the benefit of all Canadians.

Two Paths

- 49) The largest former monopolies are keenly aware of the pivotal role that wholesale access plays in securing a more competitive market place. That is why their lobbying effort has been targeted so intensely at measures in the CRTC's local forbearance decision aimed at reducing the barriers to competitive entry and expansion erected through their exercise of SMP over networks. It is also no accident that their lobbying campaign, reflected in the Wholesale Directive, closely emulates the political war waged by the largest U.S. local service incumbents, the regional Bell operating companies.
- 50) We are indeed at a cross-roads, but the U.S. path is only one path available to Canada, and not the right one. Another path, that pursued in the U.K., deals squarely with the SMP of former monopoly providers, and points the way to increased competitive market forces.
- 51) A review of the experience in the U.S. is an object lesson in how investment can plummet and competition be eradicated by the premature deregulation of wholesale rates for essential facilities and services.
- 52) In recent years, the FCC has taken a largely laissez-faire approach to wired facilities which has not recognized the SMP of the incumbents, but has rather favoured them with

¹⁷ Reports by companies on their quality of service results can be found on the CRTC website at: <http://www.crtc.gc.ca/eng/publications/reports/8660/8660.htm>.

¹⁸ Telecom Decision CRTC 2006-15, *Forbearance from the regulation of retail local exchange services*, 6 April 2006.

corresponding disadvantages to new entrants. One commentator who has tracked this systemic deregulation notes:

The concern that must be raised with this series of FCC rulings is that none of them contains any economic analysis worthy of the name. Indeed, in reading the rulings, it is difficult to escape the conclusion that they refrain from rigorous analysis because they know it would not support the desired conclusions. Instead, they deregulate in response to non-binding statements of intent on the part of wired incumbents, and in the hope that new technologies might generate sufficient competition at some unspecified time in the distant future to warrant the deregulation granted in the present.

The regulatory system in the U.S. has thus been characterized in recent years by deregulation, despite the likely presence (at least in some relevant geographic markets) of SMP.¹⁹ (internal footnotes omitted)

- 53) The result is that some competitors have been forced into bankruptcy, some have exited the market, some have been acquired²⁰, and others have struggled with steadily decreasing profitability.²¹
- 54) Attached as Appendix 1 is a paper by the economists Lee Selwyn and Helen Golding, "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," which outlines the disastrous effects of the deregulatory policies undertaken in the U.S. over the last ten years.
- 55) Local access is a particularly vivid example of this approach. The U.S. *Telecommunications Act* of 1996 was passed with the objective of encouraging competition for local exchange and exchange access services. It established three ways in which a competitor could serve a local market: facilities-based entry (i.e., by building their own networks); unbundled network elements (i.e., leasing components of the incumbents' network on a wholesale basis and combining them with their own facilities or other unbundled elements to form a marketable retail service); and total service resale (purchased from the incumbent at a discount, re-branded and marketed to its own customers). The legislation did not prefer any one means of entry, but left the choice of

¹⁹ J.S. Marcus, "Is the U.S. Dancing to a Different Drummer?" *Communications & Strategies*, no. 60, 4th Qtr 2005, page 41.

²⁰ For example, Cingular acquired AT&T Wireless; SBC acquired AT&T; and Verizon acquired MCI. *Communications & Strategies*, no. 60, 4th Qtr 2005, page 48.

²¹ *Communications & Strategies*, no. 60, 4th Qtr 2005, page 47.

the optimal business model to each competitor. The result was a period of robust growth of competition: under this framework, competitors made major investments in their own network facilities, while simultaneously using wholesale facilities from the incumbents to serve customers where deploying their own facilities was not economic. By 2001, competitors had invested some \$64 billion in their own networks and, by 2003, served 13.6% of residential customers and 24.3% of business access lines.²²

- 56) However, the American incumbents then pursued an aggressive and highly political strategy to cut off their rivals' use of networks at cost-based rates. Their argument was simple, if unsubstantiated: they argued that the fact that some competitors were self-provisioning these components in some places meant that all competitors were capable of doing so everywhere, and that competitors would accordingly not be impaired without access to unbundled network elements. They subsequently convinced a federal court that "UNE-P" (a combination of local loop and local switching elements configured as a complete service, which was used extensively by competitors to serve their residential and small business customers) could be provided by competitors and was therefore no longer essential to competition.²³ The Court held in their favour. Within days of that decision, AT&T announced that the withdrawal of UNE-P made it impossible for it to continue to compete. Both AT&T and MCI, the two largest competitors in the U.S., informed the FCC that they would have no future as "stand-alone" long distance or local service providers, and were subsequently acquired by the two largest American incumbents, SBC and Verizon.²⁴ Remaining competitors have suffered from an inability to raise capital, while facing escalating wholesale prices, which in turn has left them with less revenue to invest in their own networks.²⁵
- 57) The elimination of regulated rates for wholesale services, and their replacement with so-called "pricing flexibility" for the incumbents, has meant that rates for wholesale

²² L. Selwyn and H. Golding, "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," August 2006, page iii (Full report attached hereto as Appendix A).

²³ "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," August 2006, page iii-iv.

²⁴ "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," August 2006, page 6.

²⁵ "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," August 2006, pages iii-iv, 7 and 9.

services in markets deemed to be competitive have risen, not fallen; if competition in fact existed, prices for such access would have been forced down. Moreover, the incumbents' control of the wholesale market for essential services, if not constrained by regulation, gives them both the incentive and ability to dictate competitors' retail price levels, profit margins, market shares, and, ultimately, earning levels.²⁶

- 58) Moreover, although the U.S. incumbents claim that deregulation is necessary to give them the financial incentive to make large-scale investments in network infrastructure, they are spending decidedly less on their network facilities than the amount of capital they have been extracting each year through annual depreciation accruals and the payment of dividends well in excess of current earnings to their corporate parents. For example, incumbent investments in the plant required to deploy broadband have been steadily shrinking, not growing.²⁷ As Selwyn explains, "When the rate of new plant acquisitions...falls below the annual rate of erosion in the *value* of the existing asset base (approximated by the annual depreciation expense accrual) in any accounting period, the company is actually taking more dollars out of its infrastructure than it is putting in. This can be described as a negative investment or *disinvestment*."²⁸ (emphasis in original) Indeed, he notes that each of the incumbents invested more in its plant during the peak of FCC regulation than in recent years, after most of the price regulation regime had been eliminated.
- 59) The U.S. experience makes it clear that high wholesale rates impede competition and redirect capital to the market participant with the least incentive to innovate – the former monopoly.
- 60) Finally, in the U.S., it has been noted that one side effect of the decrease in the number of competitors is the inevitable result that funds for pro-competitive lobbying also decrease, meaning that competitive issues have less of a political voice: "In the context of the U.S. regulatory and political system, this creates a feedback loop, reinforcing the

²⁶ "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," August 2006, page 13.

²⁷ "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," August 2006, page 26.

²⁸ "Avoiding the Missteps Made South of the Border: Learning from the US Experience in Competitive Telecom Policy," August 2006, page 26.

regulatory tilt.”²⁹ In Canada, the issue of wholesale access by competitors to the public network infrastructure on reasonable terms and conditions, particularly for the retail voice market, can also be drowned out by the more powerful and well-resourced voices of those ILECs who call for deregulation at all costs.

- 61) It is useful to contrast the disastrous effects of the approach taken in the U.S. at the behest of the American incumbents with the situation in the European Union, specifically in the UK.³⁰
- 62) The telecommunications framework created by the European Union in 2003 (the Framework Directive) was considered to be a “deregulatory” reform package. However, the Framework Directive required that the first step to be followed by national regulators was to conduct a market analysis of a wide list of markets to establish whether carriers had SMP.
- 63) The effect of the review of these markets by Ofcom (the UK regulator) to determine whether British Telecom (BT) exercised significant market power, was not deregulatory but rather resulted in substantial tightening of regulation in some areas, including much bolder regulation of BT’s wholesale services.³¹ As a result of this review, BT is now subject to conditions consequent on BT’s significant market power, largely in the same markets where it was previously subject to regulation, such as voice origination (Carrier Preselection, indirect access and wholesale line rental), local access (local loop unbundling) and leased lines (Partial Private Circuits).³²
- 64) Specific Measures imposed to date have included:
- *a much more effective obligation not to discriminate between downstream businesses (including their own) that imposes a rebuttable presumption that non-price discrimination is undue;*

²⁹ Marcus at 41.

³⁰ For a full description of the UK regime and developments, see the Report of Towerhouse Consulting, Appendix D to MTS Allstream's submission to the TPRP, available online at <http://telecomreview.ca/epic/internet/intprp-gecrt.nsf/en/rx00043e.html> [the Towerhouse Report]

³¹ Towerhouse Report, page 12.

³² Towerhouse Report, page 9.

- *a requirement for BT to publish Internal Reference Offers detailing the terms and conditions upon which third parties may purchase regulated products; and*
- *the specification of a minimum margin between BT's interconnection-type DSL product which is suitable for operators of alternative networks and ADSL service provided over the BT network to an end user, to prevent price-squeezes of competitors.*

- 65) In respect of wholesale access, BT undertook to provide "equivalency of inputs" to its competitors for specified products and services – i.e., to provide these products and services to its competitors on the same terms and conditions that it provides them to its own retail businesses. (It must be noted that these undertakings were offered up in lieu of the prospect of Ofcom making a reference to the Competition Commission for investigation of whether the only solution to existing market failures would be the full structural separation of BT's wholesale network operations and its retail service provision.) Not only did this increase transparency and lessen the advantage previously held by BT, but it ensured that competitors would receive the same quality of service from the wholesale operator as BT's retail division itself.³³
- 66) It would appear that Ofcom's preference is to foster competition in upstream (wholesale) markets through regulation, rather than regulating heavily in downstream (retail) markets. Two important caveats are relevant when comparing Ofcom's approach to the Canadian framework, however. First, Ofcom has been prepared to be much bolder in regulating BT's wholesale services than has the CRTC; and second, even in the face of this regulation it has seen fit to mandate requirements such as the margin squeeze rule to ensure that wholesale prices are not only correct in the abstract, but also correct relative to prices in downstream markets.
- 67) The strengthening of wholesale regulation has meant that today, competition is flourishing: BT provides wholesale services to up to 60 competitors, not counting niche

³³ In *The Communications Market 2005: 3 Telecommunications*, at 107, Ofcom discussed Phase 2 of its strategic review of the telecommunications sector and options for future regulation. It noted that although full deregulation would "significantly reduce intervention in fixed line markets...given BT's continued market power, this would be unlikely to encourage the growth of greater competition; consequently, Ofcom does not believe this would serve the best interests of the consumer." Report available online at <http://www.ofcom.org.uk/research/cm/cm05/telecommunications.pdf>.

service providers (which number in the hundreds).³⁴ In this context, it is worth noting that in 2004, the largest player in Canada – Bell Canada – had 25% greater market weighting than BT in the UK.³⁵

- 68) Clearly, the UK path to wholesale access, based in part on its recognition of the role played by SMP, has proven to be much more effective in stimulating competition than has the U.S. path, which was driven by the political efforts of the American incumbents. Unfortunately, however, if the Wholesale Directive is not amended, there is a real risk that Canada could go down the same path as the U.S.

Conclusion

- 69) The reduction in competitive market forces that will likely result from the Wholesale Directive will mean higher prices, fewer providers from whom to choose, and less access to innovative products and services and new technologies for Canadians. This will slow productivity and innovation throughout the economy, and slow Canada's progress in the development and adoption of ICTs.
- 70) MTS Allstream supports the Government's goal of greater reliance on market forces and the development of stronger competitive environment that will bring greater choice, competitive pricing, and better services. However, as currently constituted, the Wholesale Directive will not accomplish those goals. What will achieve these goals is a broad policy direction to the CRTC directing that it recognize the SMP of the former monopolies over their networks and acknowledge that technological evolution is a fundamental characteristic of the telecommunications industry. In this manner, wholesale access will result in the innovation, productivity and competitive market forces sought by the Government, to the benefit of all Canadians.

³⁴ *Ibid.*, page 109.

³⁵ Lemay-Yates Report, Exhibit B to MTS Allstream's submission to the TPRP, page 5.