14 August 2006

Director General
Telecommunications Policy Branch
Industry Canada
16th Floor
300 Slater Street
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Attention: Leonard St. Aubin, Acting Director General

Dear Sir:

Lawson A. Hunter
Executive Vice President
& Chief Corporate Officer
Bell Canada

Subject: *Canada Gazette*, Part I, 17 June 2006: In the Matter of *Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission*

1. Bell Canada (or the Company) is pleased to submit the following representations concerning the Governor in Council's proposed *Order under Section 8 of the Telecommunications Act – Policy Direction to the Canadian Radio-television and Telecommunications Commission* (the Policy Direction), published in the Canada Gazette, Part I on 17 June 2006.

2. It is widely agreed that telecommunications regulation in Canada is urgently in need of reform. It places insufficient emphasis on market forces, and is extensive, intrusive and overly interventionist. Bell Canada urges the Government to adopt the Policy Direction, as set out in the *Canada Gazette*, at the earliest possible opportunity. The principles it embodies – namely, relying on competition to the extent feasible and, where regulation is required, ensuring it is efficient and proportionate – are fully consistent with the Federal Government's Telecommunications Policy Review Panel (the Panel) in its landmark Report of 22 March 2006. In the Panel's words:

> "[T]he time has come to reform Canada's telecommunications policy and regulatory framework. In spite of the fact that Canada has one of the most competitive telecommunications markets in the world, we continue to have one of the most detailed, prescriptive and costly regulatory frameworks. This framework is particularly burdensome for Canada's major telecommunications service providers, who now face stronger competition in a number of market segments from well-established facilities-based rivals as well as from new entrants. The Panel believes the Canadian telecommunications industry has evolved to the point where market forces can largely be relied on to

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achieve economic and social benefits for Canadians, and where detailed, prescriptive regulation is no longer needed in many areas."[1]

3. Statistics issued recently by the CRTC are just one more clear demonstration that the industry, including local service markets, is competitive. On 27 July 2006, the Commission issued its 2006 Monitoring Report to the Governor in Council on the *Status of Competition in Canadian Telecommunications Markets*. This showed that, as of the end of 2005, in Toronto, Guelph, London, and Montréal, competitors had captured 12% to 15% of local residential lines. In the business market, local providers had made competitive inroads of more than 21% in Toronto, Barrie, and Kitchener and between 16% and 18% in Montréal and Québec City. And these statistics do not reflect the fact that wireless service has increasingly become a substitute for local wireline services. Given this highly competitive environment, the time has come to put an end to regulatory micro-management and to let market forces prevail.

4. The most recent results of the cable companies' telecommunications businesses also demonstrate that successful competition is continuing apace.[2] The footprint of households passed is expanding rapidly, growth in subscriptions is exceeding expectations, telephony is already making a strong positive contribution to cable company financials and margins are improving as the companies leverage their fixed costs. Analysts are increasing their forecasts for 2006 and beyond. Competition is vigorous and competitors continue to expand. Rogers Communications, Shaw Communications, or Videotron will not exit the market simply because the traditional telephone companies are freed from economic regulation of normal marketing practices.[3] On the contrary, they will compete more intensely. They will have greater incentives to innovate, speed up product development and provide better customer service.

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[1] Telecommunications Policy Review (TPR) Panel Final Report, page 1-22.

[2] Cogeco Cable: Merrill Lynch (Chris Li & Glen Campbell), 11 July 2006: "CCA added 15.4K phone subs in 3Q06 (+2.4 penetration points) vs. 11K est.… We expect the strong growth to continue in 4Q06 as coverage will be expanded from 50% to 75% of cable homes passed. …We think there is upside to management's guidance especially for high speed Internet and phone subscriber growth."
Quebecor: BMO Capital Markets (Tim Casey), 9 August 2006: "…Videotron continues to add digital phone subs at an impressive rate given its aggressive pricing: The company added 56,200 in the quarter, bringing the total subscribers at quarter-end to 283,200. …[T]he service has achieved 18.6% penetration to basic subscribers …is currently available to 75% of homes passed and should reach 90% by the end of 2006. Management indicated that it still expects the service to be EBITDA breakeven come 2007."
Rogers Communications: News Release, 1 August 2006, *Rogers Communications Reports Strong Second Quarter 2006 Results*, "Cable and Telecom ended the quarter with more than 164,700 residential voice-over-cable telephony subscriber lines, with net additions of 68,000 cable telephony subscriber lines for the quarter. Availability of voice-over-cable telephony service expanded through the second quarter of 2006, with service now available to approximately 90% of the homes in Cable and Telecom's cable service areas. The combined number of local telephony lines on both the cable telephony and circuit-switched platforms from Rogers Home Phone and Rogers Business Solutions reached 734,500".
Genuity (Dvai Ghose & Sanford Lee), 1 August 2006: "[A]t 68,000, net cable telephony subscriber additions beat our 50,000 estimate".
Desjardins Securities, *ExpressPulse*, (Joseph Mackay), 1 August 2006: "…EBITDA from Business Solutions grew to C$17.4M, up from C$12.8M in 1Q06."
Mark Evans, *Rogers bundles up big jump in second-quarter*, Financial Post, 2 August 2006: "Mr. Rogers said …Rogers will look at telecom and media acquisitions in Canada. …Jeff Fan, an analyst with UBS Securities, said …'We've just seen the tip of the iceberg for cable and telecom, …I don't think they're hitting on all cylinders yet or hitting the gas pedal as hard as they could.'"
Shaw Communications: Merrill Lynch (Glen Campbell & Chris Li), 3 July 2006: "Strong phone sub growth driving revenues and EBITDA. …[W]e have hiked our FY07 sub growth forecast for Shaw from 170K to 180K; this is probably a conservative forecast. …[and] increased our long-term (2015E) phone penetration forecast to 40% of homes passed (from 37.5%), reflecting Shaw's success to date and the commercial market opportunity."

[3] The Commissioner of Competition is also of this view. In the proceeding leading to Telecom Decision CRTC 2006-15, *Forbearance from the regulation of retail local exchange services*, the Commissioner expressed the view that even if anti-competitive behaviour were to occur, it is unlikely to induce exit "…where the rival [for example, the cabletelcos] has invested in a sunk network that is ubiquitous and exists for other reasons, not only to supply telecommunications services" (See *Telecom Public Notice CRTC 2005-2, Forbearance from regulation of local exchange services: Evidence of the Commissioner of Competition*, 22 June 2005, paragraph 266.)

5. Bell Canada has supported the Panel's recommendation for urgent reform of the regulatory framework. When the Panel's Report was issued, the Company was among numerous national and regional stakeholders who called on the Government, in the interests of all Canadians, to act quickly and decisively on the Panel's Report.[4] By seizing the opportunity presented by the Panel's Report, the Government has taken an important first step to implementing the required reforms. The Policy Direction requires the CRTC to rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and, when relying on regulation, to use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.

6. In its approach to telecommunications regulation, Canada is rapidly falling behind the times and is out of step with other countries around the world. Internationally, governments are putting in place policies for all telecommunications markets which allow market forces to operate free of *ex ante* price controls and marketing restrictions – controls and restrictions which are the staples of CRTC economic regulation. These governments rely on the authorities responsible for enforcing competition law – or on sector-specific regulation based on competition law principles – to deal with cases of anti-competitive behaviour.[5]

7. The Policy Direction provides principles, criteria and operational practices for regulation of both retail and wholesale services. On the retail side, proper implementation would result in elimination of regulatory restrictions on otherwise normal competitive behaviour such as winbacks, price de-averaging, bundling, promotions and lowering prices. On the wholesale side, CRTC regulation of wholesale services is currently too extensive and too detailed and should be reviewed. The Policy Direction would result in a much-needed review of the CRTC's regulatory framework regarding mandated access to wholesale services aimed at encouraging investment and innovation in network infrastructure.

8. Importantly, the *Regulatory Impact Analysis Statement* accompanying the proposed Policy Direction makes reference to the Panel's recommendations and concludes that "[m]aintaining the current regulatory framework is not a viable option if the Government wants to improve the productivity and competitiveness of the Canadian economy and ensure a strong, internationally competitive telecommunications industry." Canada's telecommunications industry badly needs CRTC decisions that reflect the principles in the Policy Direction.

9. Bell Canada remains apprehensive, however, about whether the Commission will embrace the type of regulatory reform that is clearly contemplated by the Government as evidenced, for example, by the Policy Direction as well as the Government's direction to the Commission to reconsider its VoIP decision.[6] As a result, the Company urges the Government to monitor the situation closely. An early opportunity to assess matters will be the Commission's VoIP reconsideration decision which must be rendered by 1 September 2006. Should it become evident that the Commission is not acting in accordance with the spirit of the Policy Direction, either through its actions or, indeed, inactions in removing regulatory obstacles, then the Government should consider further measures, including potentially modifying the Policy Direction prior to its finalization in order to ensure that there is no misinterpretation of the Government's intentions by the Commission.

10. Bell Canada would also suggest that there is one procedural amendment to the Policy Direction that could be made. To avoid decisions being issued after the Order which are

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4 BCE News Release, *Bell Canada Statement re: Telecom Policy Report*, 22 March 2006.

5 TPR Panel Final Report, page 1-22.

6 On 4 May 2006, in Order in Council P.C. 2006-305, the Governor in Council referred Telecom Decision CRTC 2005-28, *Regulatory framework for voice communication services using Internet Protocol*, back to the CRTC for reconsideration, specifying that the Commission should complete its reconsideration within 120 days.

inconsistent with the Policy Direction and to eliminate regulatory costs associated with appeals of those decisions, the Order adopting the Policy Direction should state that it applies in respect of matters pending before the Commission on the day on which the Order comes into force. This provision is contemplated under section 11(2) of the *Telecommunications Act* (the *Act*).

11. Next month will see the 6-month anniversary of the Panel's Report. Bell Canada congratulates the Government on the measures it has already taken – namely the Governor in Council's Order to the CRTC to reconsider its decision to apply the full suite of before-the-fact economic regulation to VoIP telephony, and, under the sponsorship of the Department of Industry, the preparation and tabling of the proposed Policy Direction. But this is only the start. Implementation of regulatory reform requires parallel action on two, equally important, fronts. First, the Policy Direction should be implemented. Second, the process to change the *Act* should get under way. For example, changes to legislation are required to remove the presumption in favour of regulation. It is important to begin now. Announcing the Policy Direction in his speech to the 2006 Canadian Telecom Summit, the Minister of Industry wisely stated "we cannot afford to be slow in adapting". Bell Canada wholeheartedly agrees.

12. This Government has shown that it understands the links between removing unnecessary regulation, intensifying competition, stimulating innovation, increasing productivity and improving living standards for Canadians. In the words of Minister Bernier at the 2006 Telecom Summit, "[i]t's impossible to overstate how important the telecom industry is to our competitiveness, our productivity and our living standards. Our very future as a developed nation is increasingly dependent on information and communications technology."[7] The Minister went on to emphasize that "the record is clear around the world. Economic freedom benefits individuals, communities and countries." Specifically with regard to telecommunications, Minister Bernier concluded that "it is not the role of government to decide how this increasingly complex market should evolve. It is up to …producers and consumers".

13. Some may argue that there is no need for radical change; all that is required is to redress the balance by tweaking a few rules and initiating a few proceedings on particularly egregious issues. Such measures will not reduce the costs of regulation, nor do they deal with the fundamental problems of the presumption in favour of regulation and the wide latitude the CRTC has today to micro-manage the market. Bell Canada agrees with the *Regulatory Impact Analysis Statement* that the *status quo* is not an option.

14. Bell Canada urges the Government to issue the Order providing the Policy Direction, as set out in *Canada Gazette*, Part I, 17 June 2006, at the earliest possible opportunity.

Yours truly,

[Original signed by L.A. Hunter]

Lawson A. Hunter
Executive Vice President and Chief Corporate Officer
Bell Canada

c.c.: The Honourable Maxime Bernier, Minister of Industry
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7 Speech to the 2006 Canadian Telecom Summit.