



**Teresa Griffin-Muir**

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

12 December 2005

**By email and by courier**

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

Dear Mr. Himelfarb:

Subject: Canada Gazette – Notice No. DGTP-007-05  
Petition to the Governor General in Council from MTS Allstream to vary Telecom  
Decision CRTC 2005-28, Regulatory framework for voice communication services  
using Internet Protocol.

MTS Allstream Inc. hereby files the attached comments in reply to the petitions filed by Aliant Telecom Inc., Bell Canada, Saskatchewan Telecommunications, Télébec, société en commandite, and TELUS Communications Inc. (collectively, Bell et al.), the Government of Saskatchewan, the Vancouver Board of Trade and the Communications, Energy and Paperworkers Union of Canada (CEP) requesting the Governor in Council vary certain aspects of Telecom Decision CRTC 2005-28 (*Regulatory framework for voice communication services using Internet Protocol*).

Yours truly,

*Original signed by Angela Donnelly for Teresa Griffin-Muir*

Teresa Griffin-Muir  
Vice President, Regulatory Affairs

Attachments

c.c.: Industry Canada, Bell Canada, Québecor, Vancouver Board of Trade, Coalition for Competitive Communications

**Canada Gazette Part I**  
**Notice No. DGTP-007-05 – Petitions to the Governor in Council**

**In**  
**The Matter of Petitions**

**to the Governor In Council**

**to Vary Telecom Decision CRTC 2005-28,**

***Regulatory framework***

***for voice communication services using Internet Protocol,***

**12 May 2005**

**Reply Submission of MTS Allstream Inc.**

**December 12, 2005**

TABLE OF CONTENTS

Executive Summary ..... 3

Introduction ..... 6

What is VoIP? ..... 9

Consumers are beginning to reap significant benefits from VoIP ..... 15

The VoIP Decision is a sound, pro-competitive decision ..... 18

*Regulating VoIP is not regulating the Internet*..... 19

*Local VoIP is Part of the Local Voice Market*..... 19

*The ILECs remain Overwhelmingly Dominant in Local Voice*.....21

Bell et al.'s claims of being hampered by regulation ring hollow..... 25

The VoIP Decision is not about the productivity of the Canadian economy or  
the ILECs' ability to innovate..... 28

The mobile wireless and long distance markets are not relevant precedents ..... 29

The public interest lies in letting current proceedings run their course ..... 33

### **Executive Summary**

- **The Petitions seek the deregulation of VoIP. But What is VoIP?** - Local VoIP is a local voice service, pure and simple. Like traditional local voice, VoIP service accesses the public switched telephone network (PSTN) that is utilized by nearly 100% of Canadian households and businesses to allow users to talk to each other. Indeed Bell Canada itself, when marketing its so-called VoIP service, goes to great length to assure customers that its VoIP offer is just like "regular phone service". To date virtually no competition has developed in the market for local voice services, as evidenced by the 97% and 94% share of residential and business local voice customers, respectively, the former monopolies continue to hold.
  
- **VoIP is an opportunity.** What makes VoIP a significant development in telecommunications is that it at long last offers the *potential* for real competition and innovation in what has been an entrenched monopoly for the better part of a century, *if* the regulatory framework continues to respect the importance of sustainable competitive entry. In the VoIP Decision, the CRTC recognized that if competition is to materialize, the regulation of VoIP has to reflect what VoIP really is - local voice service - and confront the de facto monopolies Bell Canada and other incumbents have in the local voice market. If the Petitioners are granted the complete deregulation they are seeking, however, competition will inexorably be thwarted.
  
- **Consumers are beginning to reap significant benefits from the VoIP Decision.** Competition is good for consumers. Competition ensures choice of services and suppliers and sparks innovation. Innovative solutions first offered by competitive entrants are invariably the impetus for technological advances in the Canadian telecommunications industry, including the former monopoly network infrastructure. Innovation is typically the means by which competitive entrants distinguish themselves in the market. Once confronted by competitor innovation, the former monopolies respond in an effort to win back market share. This virtuous circle pressures all market participants to be innovative in terms of service offerings and technology. It is this dynamic, not the unbridled ability for dominant providers to pursue their natural incentive to undermine competition, that will promote innovation and consumer choice. If the regulatory

framework that yields sustainable competitive entry is dismantled in the manner requested by the Petitioners, competition will be stymied by monopoly power, innovation will be stifled and consumers and businesses will be worse off, not better.

- **The CRTC got it right – regulate dominant providers not technology.** The VoIP Decision is based on the solid footing of technological neutrality and the need to regulate dominant players. That this is the right approach should be self-evident. Ongoing technological change, and the loose application of technology labels, make it impossible to regulate based on the specific technology used by a service provider, let alone the technology the service provider claims to be employing. In such circumstances, the rules become very difficult to apply in a consistent manner and even more difficult to enforce. Moreover, making an exception on the basis of technology is a recipe for endless regulatory gaming and debates, with attendant uncertainty that is bad for innovation and investment.
- **Competition will be fostered by regulation – and demolished by premature deregulation.** As required by the Act, the CRTC has consistently ensured that it does not forbear from regulating a service before competition in the relevant market is sustainable. Regulation prevents anti-competitive behaviour by the former monopoly phone companies, who continue to possess significant market power in local markets. This protects users by allowing sustainable competition to develop, with its attendant benefits – more choice in both services and pricing. Because the former monopolies control, for the most part, the PSTN and are overwhelmingly dominant in the market for local voice services – factors which are not true of the cable companies or other competitors – they alone are necessarily subject to regulation. Constraining the abuse of market power safeguards choice and diversity for all Canadians.
- **The public interest lies in letting current proceedings run their course.** The Government of Canada recently appointed a Telecommunications Policy Review Panel to review the entire framework of telecommunications regulation in Canada. The Panel's report is due to be provided before the end of 2005. All of the issues raised by the petitions, including the role of VoIP and forbearance from regulation of local services, have been fully canvassed in that review. In addition, the CRTC initiated a detailed

proceeding in the spring of this year to investigate the appropriate criteria for forbearance from regulation of all local voice services, including local VoIP. The CRTC decision is due in early 2006. Rather than pre-empting the work of the Panel and the CRTC, the public interest lies in allowing these proceedings to run their course, without intervention from the Governor in Council, particularly since the results of both proceedings will be available within the next few months.

- **Recognize the Petitions for what they are.** The petitions are in bald terms nothing more than pleas by dominant, former monopoly providers and related special interests to give these former monopolists the opportunity to sustain and strengthen their dominance. To grant the petitions would be inimical to the interests of Canadians and the Canadian economy in the strengthening of choice and innovation. To grant the petitions would be a clear signal that the Government of Canada is no longer committed to a public policy goal of competition in telecommunications. The petitions should be denied.

## **Introduction**

1. This is the response of MTS Allstream Inc. (MTS Allstream) to the petitions filed by Aliant Telecom Inc., Bell Canada, Saskatchewan Telecommunications, Télébec, société en commandite, and TELUS Communications Inc. (collectively, Bell et al.), the Government of Saskatchewan, the Vancouver Board of Trade and the Communications, Energy and Paperworkers Union of Canada (CEP).
2. The petitioners request the Governor in Council to vary Telecom Decision CRTC 2005-28, *Regulatory framework for voice communication services using Internet Protocol*, 12 May 2005 (the VoIP Decision), a decision of the Canadian Radio-television and Telecommunications Commission (the CRTC or the Commission). Bell et al. specifically requests that the Governor in Council eliminate all economic regulation of their voice over internet protocol (VoIP) services.
3. While so-called VoIP services come in different flavours, the services to which the VoIP Decision applies are first and foremost voice services. These services permit users to make voice calls by accessing the public switched telephone network ("PSTN"). Competitors and ILECs alike market these VoIP services as a direct replacement for traditional, circuit-switched voice services and that is how customers use them. IP technology permits additional features to be offered together with this call functionality, but this does not change the nature of the core service. VoIP is an evolutionary, rather than revolutionary, development. MTS Allstream recognizes that the advent of IP technology is a significant development in the telecommunications industry. However, it is not a "silver bullet" that dispenses with the need to regulate dominant providers of local voice service.
4. As if taken by surprise by the CRTC's conclusion that local VoIP services are in the same market as traditional local voice services, Bell et al. refer to the CRTC's VoIP Decision as "unprecedented"; they complain that they are "hampered" by regulation and that the CRTC decision will hinder capital investment and innovation, to the detriment of consumers.

5. In reality, however, the VoIP Decision is based on the solid footing of established regulatory and economic principles, including technological neutrality and the need to regulate dominant players. These principles underpin not only Canada's regulatory framework, but that of telecommunications and competition law regimes worldwide. Moreover, the VoIP Decision is consistent with Government policy, the *Telecommunications Act* (the *Act*) and Commission precedents that are all aimed at the same goal: transitioning the telecommunications market from monopoly to competition.
6. To cut through Bell et al.'s rhetoric, it is important to focus on what the CRTC did and did not do in the VoIP Decision. As required pursuant to the Act, the CRTC did engage in an analysis of whether it should or could forbear from regulating the ILECs' local VoIP service. It applied its established forbearance analysis, borrowed from settled Canadian competition law. The Commission found that, notwithstanding additional features available with IP technology, local VoIP service, which allows access to or from the PSTN and uses traditional phone numbers (hereinafter, "local VoIP"), is substitutable for circuit-switched local exchange service (hereinafter, "local voice"), because service providers sell local VoIP as a replacement for local voice and Canadians in fact substitute local VoIP for local voice.
7. In the face of the ILECs' overwhelming dominance in the provision of local voice service, where they continue to enjoy significant advantages due to the ubiquity of their networks; their sheer scale; their control over the PSTN; their established relationship with close to 100 per cent of local voice customers; and customer inertia specific to local service, the Commission was compelled to find that it was premature to forbear from regulating local VoIP.
8. In the VoIP Decision, the Commission did not regulate "Internet" services, such as peer-to-peer ("P2P") voice services, which do not access the PSTN (consistent with its forbearance from Internet services) nor did it regulate long distance VoIP service *per se* (consistent with its forbearance from circuit-switched long distance services). The Commission also did not regulate the local VoIP services of ILECs when provided "out of territory," i.e., in those markets where they are not dominant in local voice – for example, by Bell outside of Ontario or Québec.

9. The VoIP Decision imposes no new obligations on Bell et al. Moreover, Bell et al. have greatly overstated the practical effect of regulation on their businesses and their local VoIP offerings in particular. Over the past six months, at Bell et al.'s behest the CRTC has:
- a) streamlined the process for all retail tariff filings;
  - b) loosened the rules relating to promotions for local services; and
  - c) granted Bell increased flexibility to target competition by approving a pricing "range" for Bell's so-called "Bell Digital Voice" offering and allowing Bell to target rates on a provincial basis within its operating territory.

This latter development, in particular, gives Bell powerful tools with which to target and foreclose competition where it takes root. Even if one agreed with Bell et al.'s theoretical objection to the VoIP Decision, it is difficult to see, in practice, how they are being hampered from competing in any way.

10. Bell et al.'s self-serving assertion that deregulating their VoIP services will enhance Canada's innovation and productivity is belied by their actual behaviour. Typically, incumbents are not the first to innovate: they only respond after new products and services have been introduced by competitors and they perceive a threat to their market share. VoIP is a ready example of this phenomenon. Numerous new competitors have entered the market with truly innovative VoIP services. The VoIP Decision in no way prevents ILECs from introducing local VoIP service. Yet, Bell is the only major ILEC thus far to roll out its own so-called VoIP service ("Bell Digital Voice"), which is in reality no more than a minimally modified local voice service aimed at preventing customers from moving to the newer, more innovative services offered by competitors. Bell et al. have consistently failed to establish any link between Canada's lagging productivity and regulatory measures aimed at controlling their dominance as former monopoly providers.
11. With most major areas of telecommunications services already forborne from regulation (including long distance, wireless, and Internet communications), local service is the last preserve of the ILECs' former monopoly. It is also the most important segment of the market as it relates to access, the building block on which all other services are based.

In this context, Bell et al. are using VoIP and the subject of VoIP regulation as a Trojan horse in an attempt to breach the few remaining regulatory walls constraining their market power.

12. The Government has established the Telecom Policy Review Panel to consider the question, among others, of whether changes are warranted to Canada's current framework for economic regulation of dominant former monopolies. If the VoIP Decision were overturned by the Governor in Council, as requested by Bell et al., by determining that the current regulatory regime – including both retail and wholesale regulation – does not apply on the basis of a narrow technological exception, this would both prejudge and seriously undercut the Government's Telecom Policy Review process.
13. Overturning the VoIP Decision at this time would also disrupt the outcome of the CRTC's local forbearance proceeding, in which a decision is currently pending, and undermine the existing regulatory framework applicable to local voice services. A determination by the Governor in Council to carve these so-called local VoIP services out of the local voice market would create an ill-defined and unworkable technological exception from regulation. Rather than settling the regulatory status of local VoIP services, such an exception would lead to endless regulatory proceedings to determine where the boundaries of this exception begin and end. The ensuing process and uncertainty will have a far more detrimental impact on innovation and competition than any minimal effect argued for of the requirement that ILECs file tariffs for their local VoIP services.
14. The varying of a CRTC decision by the Governor in Council is exceptional relief which, as then-Minister of Industry Allan Rock noted in 2003, will only be granted in extraordinary circumstances. In MTS Allstream's respectful submission, the VoIP Decision does not present such extraordinary circumstances; to the contrary, varying the VoIP Decision would be bad for Canada and Canadians. Varying the VoIP Decision as requested by Bell et al. would also significantly pre-empt the work of both the Telecom Policy Review Panel and the CRTC. For all of these reasons, MTS Allstream requests that the Governor in Council deny these petitions.

### **What is VoIP?**

15. A major thrust of Bell et al.'s petition is an attempt to persuade the Governor in Council

that VoIP is a revolutionary technology and should not be regulated for that reason. While MTS Allstream is of the view that the move towards IP is significant for the telecommunications industry, it is important to bear in mind that this represents an evolutionary advance on circuit-switched communications, not a revolution rendering the established regulatory framework irrelevant. In the VoIP Decision, the Commission correctly noted that "transmission and switching technologies have been evolving and changing since the earliest days of telephony. From a consumer's perspective, the key question is not what technology is used to provide a service, but rather what use the service is to the consumer."<sup>1</sup> (emphasis added)

16. VoIP refers to the delivery of voice calls employing Internet protocol. There is more than one flavour of VoIP, and this can lead to confusion over what VoIP consists of. VoIP is often used to describe a computer application that carries a call entirely over the Internet and requires both participants to deploy the same proprietary software. This type of service is sometimes referred to as "peer-to-peer", or "P2P". This is an Internet service, and is not the type of service to which the VoIP Decision relates.
17. The VoIP services to which the VoIP Decision relates are voice services using IP technology in the delivery of calls over the PSTN. Like traditional, circuit-switched telephone service, these services permit a customer to connect to the PSTN for the purpose of making voice calls around the corner or to anywhere in the world. For that purpose, they also use the standard numbering plan – the same numbers used to dial and receive circuit-switched voice calls. The use of IP technology in the transmission of these calls – whether over a broadband connection and the public Internet, or via a managed IP network – does not change the central fact that what customers are purchasing is access to the PSTN for the purpose of making voice calls.
18. Customers buy voice service; they do not buy "VoIP" service. In fact, both the ILECs and cable companies in Canada have gone to great lengths not to refer to their services as "VoIP" in their marketing materials. Bell uses "Bell Digital Voice", while Rogers calls its IP-telephony service "Rogers Home Phone", eschewing even the "digital" label in favour of reassuring its customers that its phone service is just that – a phone service.

---

<sup>1</sup> Telecom Decision CRTC 2005-28, *Regulatory framework for voice communication services using Internet Protocol*, 12 May 2005 (the VoIP Decision), paragraph 111.

Vonage appears to be one of the few exceptions to this rule. It uses the tagline "the Internet phone company". Its marketing materials, however, like those of other local VoIP providers, leave no room for doubt that what it is selling is voice.

19. Primus Canada's website demonstrates eloquently that VoIP is voice:

"There's a new phone service on the block. It's just like your current phone line, only it's less expensive, it's easy to set up and it runs over your High Speed Internet Service. It's also known as Voice-over-I.P. We call it TalkBroadband – Broadband Voice Service from Primus."

20. The fact that IP technology is used in the delivery of VoIP means that extra and different features are sometimes available in addition to basic voice connectivity. Like features of local voice service, i.e., Voice Mail or Call Display, however, these features do not dictate the fundamental nature of the service, which remains a voice service.
21. The advent of IP-based communications is not a silver bullet which suddenly places all providers on an equal playing field. To the contrary, market developments present new challenges for curbing the significant market power held by the former monopoly telephone companies – market power which must be recognized and addressed.
22. As found by the Commission in the VoIP Decision, only the former monopoly telephone companies have ubiquitous access to the PSTN, which is an integral component of local VoIP service, as that service is defined and regulated by the Commission. And, VoIP competitors will still require access to network components possessed by the ILECs. As a result, the dominance of the former monopoly providers in the local exchange market, if not constrained, holds the potential to impede the achievement of the Government's goals by stifling competition, innovation, and the development of new products and services.
23. In any event, as outlined in greater detail below, Bell et al. contradict themselves in their discussion of how VoIP should be treated from a regulatory standpoint. On the one hand, they state that "VoIP means that real-time two-way voice can now be provided for a small fraction of the investment required to provide traditional telephone service,"<sup>2</sup> demonstrating that they recognize VoIP is substitutable for wireline phone service. On

the other hand, they argue that since VoIP offers features in addition to those available on a traditional telephone service, it should not be regulated as a traditional phone service at all. This is akin to saying that since the inception of voicemail, the telephone is now an answering machine and thus it should no longer be regulated as a telephone!

24. As the Commission noted in the VoIP Decision, both local VoIP and local voice feature a variety of options which enhance their services, but are not core attributes of these services.<sup>3</sup> Rather than representing some startling new means of communications, local VoIP is another form of traditional local exchange service, which occasionally includes additional features not available on circuit-switched technology. As a result, the introduction of VoIP is not a "revolution" that calls for a dramatically different approach to regulation by the Commission, but an evolutionary step that calls for an enlightened, but consistent, regulatory approach.
25. Bell's Bell Digital Voice offering illustrates the dangers of regulating based on technology, or worse still, based on a technology label.
26. Although Bell positions its Bell Digital Voice product as a VoIP service for purposes of its regulatory filings, it is clear that it is not an innovative, IP-based service, but rather a traditional telephone service, albeit with some additional features. This service is offered over Bell's legacy analogue access lines and shares virtually all the same characteristics as Bell's traditional, circuit-switched local voice telephone service. Indeed, to the extent that a call made over the Bell Digital Voice service employs IP technology at all, it is through the use of packets to transport traffic within some undisclosed point deep within Bell's network.
27. From the customer's premises to the Bell central office, the signal carried on Bell Digital Voice is not even a digital signal – it is an analogue signal. Bell states that, unlike other VoIP services, Bell Digital Voice does not need a customer premise voice adapter. This is because the analogue to digital conversion is performed at Bell's central office – the very same process that occurs with calls made over Bell's traditional circuit-switched

---

<sup>2</sup> Bell et al Petition, p. 5, paragraph. 13.

<sup>3</sup> *Ibid.*, paragraphs. 111, 113.

service. In addition, just like Bell's voice service, Bell Digital Voice is powered from the central office and offers enhanced 9-1-1.

28. When marketing this service to its own customer base, Bell takes great pains to demonstrate to what extent Bell Digital Voice is functionally identical to its traditional circuit-switched local voice service. It states:
- d) Bell Digital Voice works like a regular phone service so the customer does not need an Internet access to place and receive calls;
  - e) Bell Digital Voice works like a regular phone service, and thus offers the same level of quality and reliability;
  - f) In the event there is a power outage, the customer will still be able to make and receive calls with Bell Digital Voice in the same manner as a regular phone service;
  - g) Bell Digital Voice works with home monitoring systems in the same way as regular phone service works with home monitoring systems;
  - h) Bell Digital Voice allows a customer to access emergency services in the same way as the existing telephone service and has all the features that customers receive with a regular home phone emergency service, including providing the customer's address information automatically to the emergency services operator; and
  - i) If the customer switches from Bell's traditional local voice service to Bell Digital Voice there are no installation or activation fees and no site visit is required.<sup>4</sup>
29. Statements made by a senior Bell executive demonstrate that Bell's purpose in introducing Bell Digital Voice is not to provide an innovative new service to Canadians but rather to stop them from signing up for a competitor's service. The President of Bell's residential services division told a conference in September that price discounts will not play a big role in the battle to retain and attract customers. This executive left no

---

<sup>4</sup> See <http://www.digitalvoice.bell.ca/Digital/Voice/index>.

doubt regarding Bell's intention to use Bell Digital Voice to target customers who might be considering switching:

"We will target customers and use [Bell Digital Voice] as a save tool for customers on their way out to a cable offering ...

...

This isn't a big-bang product for us. It does give us [a service to] very tactically have the ability to respond to cable."<sup>5</sup>

30. Ongoing technological change, as well as the loose application of technology labels, makes it impossible to regulate based on the specific technology used by a service provider, let alone the technology the service provider claims to be employing. The lack of a technologically neutral approach makes rules very difficult to apply in a consistent manner and even more difficult to enforce. Moreover, making an exception on the basis of technology is a recipe for endless regulatory gaming and debates, with attendant uncertainty that is bad for innovation and investment.
31. If the Governor in Council were to accede to the request of Bell et al. that local "VoIP" services be unregulated, while all other local voice services provided by the ILECs continue to be regulated due to their overwhelming dominance in this market, it would become virtually impossible for the Commission to apply the scheme of regulation which has been mandated by Parliament. Local VoIP would become the ILECs' "Trojan Horse" with which they could breach the few remaining walls constraining their abuse of dominance.
32. If local VoIP services were forborne then merely by placing the label "VoIP" on a service, an ILEC would be able to claim that it was no longer subject to the forborne requirements of the *Act*, including the need for prior approval of rates, and the prohibition against anti-competitive behaviour.
33. Endless ex post disputes would ensue regarding whether an ILEC service is, in fact, a VoIP service, or whether it is more similar – from a technological, rather than functional, point of view – to traditional, circuit-switched telephony. The proceedings dealing with

---

<sup>5</sup> September 14, 2005 Financial Post Article, "Quebecor rejects income trust route". The report doesn't specify how Bell will know that a customer is "on their way out to a cable offering."

Bell Digital Voice have centred on precisely this concern.<sup>6</sup> The result will either be the perpetuation of uncertainty regarding the regulatory status of VoIP services, which indeed will lead to less investment and innovation by both competitors and incumbents, or worse, to the ILECs' wide scale use of VoIP for the sole purpose of eliminating competition taking root in the market for local voice services.

34. Reliance on an ill-defined and unworkable technological exception from regulation for so-called VoIP services, such as that sought by Bell et al., would permit them to provide a service labeled "VoIP" at narrowly targeted and/or below cost pricing and thereby undermine competitive entry. Such conduct will in fact have the effect of undermining competitive entry in the entire local voice market, because, as the CRTC noted in the VoIP Decision (and Bell et al. have subsequently conceded), customers perceive local VoIP to be a close substitute for local voice. They will therefore switch their existing, regulated service for the lower priced, so-called VoIP offering of the ILEC. The effect will be to shore up the ILECs' virtual monopoly over local voice and prohibit competition from taking root. Customers will suffer in the medium to longer term.

**Consumers are beginning to reap significant benefits from VoIP**

35. Bell et al. and the Coalition concede that competition between VoIP service providers is already lively, with more than 50 companies competing vigorously, and frequent price and product changes.<sup>7</sup> Indeed, in Attachment 1 to their petition, Bell et al. remark "It seems that new VoIP service providers are entering the Canadian market every day."<sup>8</sup> It does not appear that competition has flagged in the wake of the VoIP Decision, nor is there any reason that the VoIP Decision should cause it to do so.
36. Local competition has been slow to develop, in large part because of a combination of barriers to entry faced by new providers, and the overwhelming market power of Bell et al. (who still control over 97% of revenues in the local residential market). The numbers of VoIP providers in Canada today indicate that the prospect of genuine and sustainable competition in the local access market is finally here. But if the regulatory

---

<sup>6</sup> See CRTC Application # 8662-Q15-200509193, Quebecor Media Inc. - *Application to review and vary Decision 2005-6* (Bell Digital Voice).

<sup>7</sup> Bell et al Petition, p. 18, paragraph. 55; Coalition Petition, p. 12, paragraph. 17.

<sup>8</sup> Bell et al Petition, Attachment 1, paragraph. 15.

framework which has fostered this growth is suddenly abolished, all of the companies who are bringing these innovative new services to the market could be decimated – leaving consumers worse off, not better.

37. Regulation is designed to protect users. It protects users by fostering the appropriate conditions for sustainable competition to develop, by preventing anti-competitive behaviour by the former monopoly phone companies, who continue to possess significant market power in local markets. Given Bell et al.'s overwhelming dominance, it would appear that Bell et al. are seeking deregulation to protect themselves and their massive market share, rather than out of any purported concern for competitive equity.
38. If the Government wishes to foster competition and innovation in the provision of VoIP services, it must ensure that the conditions for sustainable competition exist. The Commission has consistently regulated on a technologically neutral basis, with an eye to ensuring that it does not forbear before competition in the relevant markets is sustainable, and therefore with the needs of users firmly at the forefront of its analysis, as required by the *Act*. The VoIP Decision is entirely consistent with this approach.
39. Until 1997, the ILECs provided local telephone service to virtually every subscriber in their serving areas. They have insuperable knowledge of these customers' habits and buying patterns. Moreover, they possess unparalleled brand recognition, customer relationships, and information respecting these customers' telephony needs. These advantages combine to give Bell et al. both the incentive and ability to pre-empt or thwart the development of competition.
40. Although Bell et al. assert that "it is inappropriate to assume that Bell et al. would act anti-competitively and stifle competition,"<sup>9</sup> history shows otherwise. Bell et al. – and Bell Canada in particular – have consistently violated rules designed to safeguard against their abuse of dominance. This includes repeated violations of the winback rules (which prevent them from contacting customers who have chosen to switch local service providers for a period of time);<sup>10</sup> violations of the rules respecting tariffing of services and

---

<sup>9</sup> Bell et al Petition, p. 15, paragraph. 47.

<sup>10</sup> See, for example, Decision 2002-1, *Application of the winback rules with respect to primary exchange service*, 10 January 2002; Decision 2002-73, *Call-Net Enterprises Inc. v. Bell Canada – Compliance with winback rules*, 4 December 2002.

marketing of services through its affiliates;<sup>11</sup> and violations of the rules respecting bundled service offerings (i.e., offerings which package more than one service together at a special rate, often including both tariffed and non-tariffed services).<sup>12</sup> This conduct is damaging to the competitive process and ultimately hurts customers.

41. This was recognized by the Minister of Justice in a recent intervention to the CRTC, responding to an application by Bell Canada to relax the rules respecting the tariffing of bundled services. The Minister of Justice noted that Public Works and Government Services Canada ("PWGSC"), the arm of the Government responsible for purchasing telecommunications services, had awarded a contract to Bell Nexxia (then a subsidiary of Bell Canada) following a competitive process in June 2000. This contract was subsequently reviewed by the CRTC and was found to have contravened the CRTC's bundling rules. In his intervention, the Minister wrote: "At the time PWGSC entered into its contract with Bell Nexxia in 2000, PWGSC was unaware that Bell Nexxia, as a Bell Canada affiliate, was breaching its regulatory obligations." Because the PWGSC was unable to terminate the contract and arrange for services to be provided by another carrier within the 90-day time frame specified by the CRTC (because of the time required for the Government's tendering process), it was forced to pay a "substantial, unexpected" increase to Bell Canada.<sup>13</sup> Thus, Canadian taxpayers literally paid the price for Bell Canada's illegal conduct – while, as the Minister noted, Bell Canada was able to "increase its profits by approximately \$6M each year for the rest of the contract term."<sup>14</sup>
42. It must be remembered that ILECs control, for the most part, the physical network that constitutes the PSTN. Only local VoIP which connects to the PSTN is regulated under the Decision. If, as Bell et al. demand, the Commission forbore from regulating local VoIP services, access to the network by competitors could be jeopardized, or could be controlled in an anticompetitive manner by ILECs.

---

<sup>11</sup> Telecom Decision CRTC 2002-76, *Regulatory safeguards with respect to incumbent affiliates, bundling by Bell Canada and related matters*, 12 December 2002.

<sup>12</sup> Telecom Decision CRTC 2003-63, *Review of Bell Canada's customer-specific arrangements filed pursuant to Telecom Decision 2002-76*, 23 September 2003.

<sup>13</sup> Submission of the Minister of Justice to the CRTC, *In the Matter of an Application by Bell Canada Pursuant to Part VII of the CRC Telecommunications Rules of Procedure – Comments regarding a Request that the Commission*

43. This, together with the fact that the ILECs remain overwhelmingly dominant in the specific market for local voice services, is the primary reason why the ILECs are subject to regulation and the cable companies are not. While Bell et al. claim that cable is as well positioned as the ILECs to benefit from selling local VoIP services, cable companies do not have the same access to the PSTN possessed by the former monopoly telephone companies. Moreover, the fact that cable is successful in the provision of broadband services does not necessarily mean that they will be successful in the market for local telephony: indeed, cable companies have tried before to penetrate the local phone market without success.<sup>15</sup> Conversely, there is no reason why the incumbents will not be able to compete fully with cable companies despite the competitive safeguards imposed by the Commission. Indeed, MTS Allstream notes that figure 7 of Attachment 1 of Bell et al.'s petition, which provides projections for broadband growth, shows the gap between cable and ADSL narrowing in 2006, with the ILECs' ADSL services taking an ever increasing share of the market.<sup>16</sup>
44. MTS Allstream agrees with the quote of the SeaBoard Group cited by Bell et al., that "Canadians' interests are best served by choice and diversity."<sup>17</sup> Constraining the abuse of market power by the former monopoly telephone companies in local markets safeguards that choice and diversity by preventing them from stifling competition, which would eventually result in higher prices for consumers and less innovation.

**The VoIP Decision is a sound, pro-competitive decision**

45. In the VoIP Decision, the CRTC gave full consideration to the arguments of Bell et al. that local VoIP services should be forborne from regulation. In determining that local VoIP should be subject to the same regulatory framework as that which currently exists for local voice, and therefore that it should not forbear from regulating local VoIP, the Commission made a sound decision that will actively encourage competition in the last

---

*modify the bundling rules governing Customer Specific Arrangements involving the provision of both tariffed and non-tariffed services*, October 14, 2005, paragraph. 21.

<sup>14</sup> *Ibid.* at paragraph. 24.

<sup>15</sup> Cogeco, for example, announced entry several years ago but withdrew before actually entering the market, writing off \$29.3 million and citing the "unforeseen level of effort required to deploy the IP telephony solution under evaluation:" see Cogeco Press Release, "Cogeco Announces the Financial Results for the Fourth Quarter of Fiscal Year 2001," 23 October 2001.

<sup>16</sup> Bell et al Petition, Attachment 1, p. 23.

<sup>17</sup> Bell et al Petition, p. 14, para. 41.

bastion of the ILECs' former monopoly – the market for local services. It is helpful to review the Commission's major findings in the VoIP Decision as in many cases these represent a complete answer to the litany of complaints outlined in the petitions.

### **Regulating VoIP is not regulating the Internet**

46. The Commission limited its decision to local VoIP services, i.e., "only those services that allow access to and/or from the PSTN and use NANP-conforming numbers (i.e., not P2P services)."<sup>18</sup> Thus, the Commission clearly distinguished local VoIP services from Internet services. The Commission found that while it shared some portion of the underlying transmission infrastructure, the primary function of local VoIP was not accessing the Internet, but rather accessing the PSTN in order to make and receive calls.<sup>19</sup> The Commission also restricted its findings respecting forbearance of the ILECs' VoIP services to in-territory, local and access services. The VoIP Decision therefore does not "regulate the Internet" as some might have the Governor in Council believe, nor does it apply to stand-alone long distance or VoIP services offered by the ILEC outside of its operating territory, in respect of which the Commission has already forborne.

### **Local VoIP is Part of the Local Voice Market**

47. The CRTC considered the issue of whether it should forbear from regulating local VoIP services when provided by the ILECs. In this regard, it bears mentioning that Bell's primary position in the proceeding was not that the Commission should forbear from regulating these services, but rather that the Commission had already forborne from regulating these services, as "retail Internet services". This was an untenable proposition that the Commission ultimately, and correctly, rejected. Bell is not seeking to vary this aspect of the VoIP Decision. It is noteworthy that Bell also subsequently relied on this position as a fig leaf to cover its subsequent roll-out of its Bell Digital Voice service without prior tariff approval, contrary to the Act.
48. The Commission nonetheless analyzed the forbearance issue using two approaches: first, it engaged in its established forbearance analysis, based on economics and competition law principles; and second, it considered specific additional arguments

---

<sup>18</sup> Telecom Decision CRTC 2005-28, *Regulatory framework for voice communication services using Internet Protocol*, 12 May 2005 [hereinafter "Decision 2005-28"], at paragraph. 64.

presented by Bell et al. as to why it should forbear from regulating local VoIP service pursuant to the Act.

49. The CRTC began its analysis by first identifying the relevant market, and concluded that local VoIP was in the same market as local voice. This was, and remains, a sound conclusion.
50. The CRTC applied a technology-neutral approach to this issue, noting with respect to the purpose of the services, that "the use of IP does not define the fundamental purpose of the service; rather, it defines the underlying technology used to provide and transport the service." It determined that the fundamental purpose of local VoIP was to provide two-way, real-time voice communications to and/or from anyone on the PSTN. The Commission did not ignore the fact that because VoIP uses a different technology, there are different features available with the service, but noted that, like additional features of local voice, these are not core attributes of the service.<sup>20</sup> In other words, while the local VoIP offerings may have additional, or even different, features from local voice, this nonetheless does not change the character of the service.
51. Next, the Commission focused on the manner in which local VoIP offerings were in fact being marketed and provided, that is, as a replacement for local voice, including by providers such as Primus and Vonage.<sup>21</sup> This was supported by evidence both that local VoIP providers intended to provide local number portability, which implies that customers intend to replace their current telephone service with VoIP, as well as the proportion of customers that were already porting numbers to local VoIP. Based on this evidence, the CRTC concluded that consumers perceived local VoIP as a replacement for circuit-switched local exchange services.<sup>22</sup>
52. Based on the evidence before it, and adopting the language of "substitution" from competition law, the Commission therefore found "local VoIP services are close substitutes for circuit-switched local exchange services and therefore are part of the

---

<sup>19</sup> *Ibid.*, paragraph. 63.

<sup>20</sup> *Ibid.*, paragraphs. 111, 113.

<sup>21</sup> *Ibid.*, paragraphs. 115-116.

<sup>22</sup> *Ibid.*, paragraph. 125.

same relevant market."<sup>23</sup> This finding, that local VoIP is effectively local voice, was the central finding of the VoIP Decision. The regulatory framework applicable to ILEC local VoIP services flows directly from this finding.

53. It must be emphasized that although the record of the proceeding leading up to the VoIP Decision was closed over one year ago, the evolution of the market for VoIP services since that time has continued to reinforce the Commission's conclusion and the fact that VoIP is voice. One need look no further than the advertising being used in the marketplace – such as the Primus Canada website quoted above – to confirm that consumers are treating local VoIP as a close substitute for local voice, particularly in the residential market.
54. MTS Allstream notes that notwithstanding the petitions, Bell et al. have embraced the central finding of the VoIP Decision – that local VoIP services are part of the same market as local voice services. They have embraced this finding in the context of the CRTC's local forbearance proceeding<sup>24</sup> because including customers lost to competitors' local VoIP services in the calculation of competitors' market share gains accelerates the process of forbearance. Bell et al.'s position in the local forbearance proceeding is a complete answer to, and belies their claim in the petition, that the Commission erred when it found that local VoIP is a substitute for local voice.

### **The ILECs remain Overwhelmingly Dominant in Local Voice**

55. After determining that local VoIP services form part of the same market as local exchange services, the Commission addressed its established criterion for forbearance – the same criterion it has applied to forbear from regulation of a long list of ILEC services in the past. This test asks whether the ILECs retain substantial market power in the market for the service or class of service. This test flows directly from the requirements of the *Act* that the Commission forbear from regulating where competition is sufficient to protect the interests of users. The Commission has repeatedly determined that competition is sufficient to protect the interests of users where a market

---

<sup>23</sup> *Ibid.*, paragraph. 126.

<sup>24</sup> See, for example, Submission of Bell Canada and Télébec, société en commandite, in response to Telecom Public Notice CRTC 2005-2 (*Forbearance from regulation of local exchange services*, 28 April 2005), 22 June 2005, paragraphs. 41 and 66.

is workably competitive, and a market cannot be workably competitive where an ILEC retains substantial market power.

56. The CRTC's assessment of the ILECs' market power in the VoIP Decision pointed inexorably to the proverbial elephant in the room – the ILECs' overwhelming dominance in the market for local voice services – evidenced by a market share that was then 98 per cent in the residential market, and 92% in the business market.<sup>25</sup> As the Commission has repeatedly noted, market share is not conclusively determinative of the issue of market power. However, given that competition law concerns regarding market concentration in competitive markets begin as low as a 50 per cent market share, a provider with 97 per cent of a market could not credibly be considered to lack market power in the absence of exceptional characteristics of the market, including the almost total lack of barriers to entry.<sup>26</sup> It is a significant understatement to observe that this does not accurately describe the market for local telephone services, where the incumbents continue to enjoy significant advantages due to the ubiquity of their networks, their sheer scale, their control over the PSTN, their established relationship with close to 100 per cent of local voice customers, and customer inertia in this segment.
57. Bell et al.'s petition urges the Governor in Council to accept a characterization of the market for local voice that sees its former monopoly under siege from a formidable array of alternatives, ranging from the sublime – wireless local services – to the ridiculous – instant messaging. The CRTC's recently released *Report to the Governor in Council: Status of Competition in Canadian Telecommunications Markets*<sup>27</sup> the "Competition Report" shows that the former monopoly telephone companies retained **94% of local service revenues** in 2004, a year where Bell et al. claimed to be under assault from

---

<sup>25</sup> In the VoIP Decision, the Commission relied upon the best available information, current to the end of 2003; it must be emphasized, however, that in the Commission's most recent report to the Governor in Council, based on information for the year ended 2004, the figures had changed little: competitors' share of local residential revenues grew from 2% in 2003 to 3% in 2004, while business local revenues increased from 11% in 2003 to 12% in 2004. **[Note to draft: there is some inconsistency between the two GIC reports. In the 2004 report, competitors' share of local business revenues is shown as being only 7.9% - consistent with what the CRTC said in the VoIP Decision - but in the 2005 report it states competitors' local business revenues increased from 11% in 2003 to 12% in 2004].**

<sup>26</sup> See Rogers Communications Inc., written argument in response to Telecom Public Notice CRTC 2005-2 (*Forbearance from regulation of local exchange services*, 28 April 2005), 9 September 2005, paragraph. 52.

<sup>27</sup> October 2005.

new VoIP services rolled out by entities like Primus and Vonage. In contrast, competitors' share of local revenues in the residential market was just 2.8%.<sup>28</sup>

58. Notwithstanding the ILECs' overwhelming market share, the Commission nevertheless considered specific arguments raised by Bell et al. in the VoIP proceeding to support their request for forbearance in relation to local VoIP services.
59. The Commission specifically addressed Bell et al.'s contention that the ILECs' VoIP services would be subject to sufficient competition to protect the interests of users, among other reasons, due to the entry of cable companies and other, independent VoIP providers. The Commission found, however, that:
- j) Cable companies face obstacles that ILECs do not: they must upgrade their existing cable network to offer quality local exchange service, and with one exception, they have no expertise in serving telephone customers;<sup>29</sup>
  - k) Only the former monopoly telephone companies have ubiquitous access to the PSTN - "an integral component of any local VoIP service" - and the resulting ability to migrate existing customers to a fully managed VoIP system. The Commission observed that "the ILECs' ability to migrate their existing customers so easily represents a significant barrier to entry for competitors."<sup>30</sup>
  - l) It is too early to draw conclusions about the state of competition given the fledgling state of VoIP services, and evidence was persuasive regarding the competitive difficulties that service providers of access-independent VoIP were likely to face in a forborne environment;<sup>31</sup>
  - m) ILECs have the advantage of a strong monopoly in local exchange services, with 98% of local residential revenues and 92% of local business revenues across the country at the end of 2003. Moreover, while competitive VoIP providers are dependent on service components purchased from local exchange carriers or

---

<sup>28</sup> Competition Report, pp. 48-49.

<sup>29</sup> *Ibid.*, paragraph. 156.

<sup>30</sup> *Ibid.*, paragraphs. 157-158.

<sup>31</sup> *Ibid.*, paragraph. 159.

ILECs, the ILECs are in a position to self-supply all that is needed to offer local VoIP services.<sup>32</sup>

- n) ILECs have both the incentive and ability to engage in anti-competitive behaviour, including: offering better quality of service to their own customers than to those of competitors; engaging in below-cost pricing and bundling strategies that would have the effect of stifling competition; and targeting competitors' customers to allow ILECs to control the migration of circuit-switched local customers to their own and competitors' local VoIP services, allowing them to preserve their own customer base.<sup>33</sup>
- o) Premature forbearance would have "a material negative impact on the potential for sustainable competition in the provision of local VoIP services, and therefore on the protection of the interests of users."<sup>34</sup>
- p) Precedents cited by Bell et al. (i.e., long distance, private lines, switched data services, terminal devices and wireless) were not helpful to their case as, in each case, the Commission had issued forbearance determinations only after determining that there was sustainable competition in each market and that the incumbents did not possess market power. "The evidence presented in this proceeding has not persuaded the Commission that comparable conditions are present with respect to the provision of local VoIP services."<sup>35</sup>
- q) The record showed that ILECs continue to make investments to migrate their networks to IP technology and will continue to do so.<sup>36</sup> On the other hand, the attainment of the telecommunications policy objectives also required investment from competitors, and premature forbearance would significantly reduce the ability and/or incentive of competitors to make such investments.<sup>37</sup>

---

<sup>32</sup> *Ibid.*, paragraph. 160-161.

<sup>33</sup> *Ibid.*, paragraphs. 161-166.

<sup>34</sup> *Ibid.*, paragraph. 166.

<sup>35</sup> *Ibid.*, paragraphs. 167-168.

<sup>36</sup> *Ibid.*, paragraph. 185.

<sup>37</sup> *Ibid.*, paragraph. 186.

60. In sum, the Commission determined that it could not find that local VoIP services provided by the ILECs would be subject to competition sufficient to protect the interests of users. Rather, it determined that premature forbearance would "diminish the likelihood of sustainable competition and its attendant benefits to consumers of lower rates, new services, and innovation."<sup>38</sup>
61. The Commission's conclusion, that premature forbearance for the ILECs' local VoIP services would be detrimental to competition, and therefore, that continued regulation would promote the establishment of a competitive market, have been borne out. The level of activity in the Canadian local VoIP marketplace (some of which Bell et al. point to in support of their petition) in fact belies Bell et al.'s suggestion that the VoIP Decision will have the affect of slowing innovation or choice of IP-based telephony services in Canada, or keep prices high for Canadians. Although these services have yet to make a significant dent in the ILECs' market share, Canadians are enjoying the benefit of a wide variety of local VoIP offerings, at very attractive prices.

**Bell et al.'s claims of being hampered by regulation ring hollow**

62. Bell et al. complain they are "hampered by regulation." In practical terms, however, the regulatory requirements on the ILECs' provision of local voice, now including local VoIP, cannot reasonably be claimed to hamper or hobble their ability to compete.
63. Over the course of the last six months, the CRTC has taken steps, largely at the behest of Bell et al., to streamline tariffing processes and other aspects of the regulatory regime applicable to the ILECs' services. As a result of these steps – summarized below – not only has the regulatory "burden" been eased considerably for the former monopoly telephone companies with respect to local voice, but since the filing of the petitions, the Commission has gone beyond this to provide Bell with significantly greater flexibility in the pricing of its local VoIP service specifically. Bell et al.'s claims that they are hampered from competing are answered by this greater flexibility granted to Bell, which allows Bell to target competition directly. Bell et al.'s complaints with regulation are fundamentally driven by a deregulatory ideology and agenda, rather than by any practical impediment to their ability to compete fairly in the marketplace.

---

<sup>38</sup> *Ibid.*, paragraph. 188.

64. In April 2005, in response to applications by Bell and Telus, the CRTC streamlined the process for retail tariff filings. In the past, the Commission had taken up to two months to approve a tariff application; as of April 2005, it now responds within 10 days with either an interim approval or reasons as to why interim approval cannot be granted.<sup>39</sup>
65. Also in April of this year the Commission relaxed significantly the previous restrictions on ILEC local voice promotions.<sup>40</sup> In 2003, it had suspended consideration of applications for all ILEC promotions in the local wireline market due to its concern regarding the use of these promotions to target competitors, and its concern regarding the low level of competition in the market. However the Commission this year decided to permit the ILECs to engage in promotions again, subject only to certain specific conditions designed to prevent the possibility of anti-competitive behaviour.<sup>41</sup>
66. More recently, the Commission has granted Bell very wide flexibility in the pricing and targeting of its own so-called "VoIP" service, Bell Digital Voice. In June, the Commission acceded to Bell's request that it be granted approval to charge a range of rates, rather than specific rates, for this new service. This was the first time the Commission has ever approved such a proposal, which permits Bell to change its prices to meet those charged by competitors, without any requirement to obtain the Commission's prior approval.
67. In addition, as recently as October the Commission took the unprecedented step of permitting Bell to price its Bell Digital Voice offerings differently in Ontario and Quebec.<sup>42</sup> It must be recognized that this constitutes a major departure from established Commission policy, confirmed as recently as April 2005<sup>43</sup> preventing ILECs from de-averaging their rates across communities with similar cost structures (i.e., in the same band) and therefore offering a special deal to subscribers in one community over another.

---

<sup>39</sup> Telecom Circular CRTC 2005-6, *Introduction of a streamlined process for retail tariff filings*, 25 April 2005.

<sup>40</sup> Telecom Decision CRTC 2005-25, *Promotions of local wireline services*, 27 April 2005.

<sup>41</sup> The Commission held that promotions involving local wireline services must: be available and equally promoted across one or more entire rate bands; not be limited to competitors' customers; pass an imputation test for the service, including the impacts of the promotion; and have a combined enrolment and benefit period that does not exceed six consecutive months, have no customer lock-in requirement beyond the promotion period, and have a minimum six-month waiting period after the expiry of the most recent previous promotion before offering a new promotion involving the same local wireline service. *Ibid.* at paragraph. 72.

<sup>42</sup> Telecom Decision CRTC 2005-62, *Bell Canada proposal for VoIP service pricing in Ontario and Quebec*, 20 October 2005.

<sup>43</sup> See Telecom Decision CRTC 2005-27 [], [] April 2005.

68. Bell et al.'s claims of being hampered or hobbled by regulation ring hollow. In reality, the requirement to obtain *ex ante* approval of their rates represents a minimal obligation. Bell's Bell Digital Voice offering is a case in point. Bell originally introduced Bell Digital Voice - without a tariff – on March 30, 2005. On May 12, 2005, the Commission released the VoIP Decision. Fourteen days after the Decision, on May 26, 2006, Bell filed a tariff for its Digital Voice Service. It was accorded interim approval by the CRTC on June 9, 2005. If the rules respecting tariffing were as "complex and arcane"<sup>44</sup> as Bell et al. maintain, then one would think that it would have taken Bell far longer to submit a tariff for its service.
69. It can readily be seen, therefore, that even where an ILEC – Bell – has rolled out a so-called "VoIP" service, the roll-out of this service has not been hampered by the Commission's determination not to forbear from the requirement that the ILEC obtain prior tariff approval in respect thereto. Nor does the tariff regulation of this service hinder any innovation that would be occurring in its absence.
70. Given the light and flexible regulatory regime applicable to ILEC tariff filings, one is forced to ask why Bell et al. are seeking forbearance from regulation of their local VoIP services from the Governor in Council.
71. The answer lies in the remedy being sought: the total deregulation of their so-called local VoIP services, and the resulting freedom to target customers of competitors, or to use their market power to constrain competitive entry into the local market.
72. In their petition, Bell et al. are seeking the elimination of all economic regulation of their local VoIP services. Significantly, they have specifically identified section 27 of the Act as a provision from which they seek forbearance. Section 27 not only requires that rates charged by dominant carriers are just and reasonable, but also prohibits a dominant carrier from abusing its dominance by discriminating unjustly against any customer or by granting any person – including itself – an undue preference or subjecting any person to an undue disadvantage.

---

<sup>44</sup> Bell et al petition, paragraph. 35.

73. Section 27 of the Act is the provision on which the entire regulatory framework rests: preventing ILECs from pricing their services in a manner to foreclose competition, providing competitors with the ability to interconnect with ILECs, and providing access to essential and other elements of the ILECs' ubiquitous networks all depend on this prohibition against unjust discrimination. If it wasn't for this provision, competition in local services would not exist at all. Indeed, even in the case of many services in respect of which the Commission has forbore, it has nevertheless retained its powers pursuant to Subsection 27(2) in many cases in order to ensure continued access to ILEC bottleneck facilities.
74. The extreme remedy sought by Bell et al. provides a good indication of the real purpose of the petition, which is not to be allowed to compete on a level playing field, as they claim, but rather to be free to employ their market power in an unconstrained manner to undermine competition, and thereby to preserve their dominance.

***The VoIP Decision is not about the productivity of the Canadian economy or the ILECs' ability to innovate***

75. The Government is rightly concerned about Canada's lagging productivity when compared to that of other industrialized nations. The VoIP Decision, however, has precious little to do with this issue. Bell et al.'s attempt to leverage local VoIP regulation into an issue affecting Canada's productivity is disingenuous.
76. There is not a shred of evidence that Canada's telecommunications industry – let alone the regulation of incumbents within this industry – is a cause for Canada's lagging productivity. In fact, international comparisons demonstrate that Canada is an international leader in many significant respects as concerns our telecommunications industry. These metrics include prices for services and penetration of broadband services. If anything, the OECD has repeatedly praised Canada's regulatory regime, but noted the cautiousness with which the CRTC has provided competitors with access to ILEC facilities.<sup>45</sup> It is not good public policy to seek to emulate the regulatory regime being applied to VoIP in countries with inferior metrics to Canada's.

---

<sup>45</sup> OECD Reviews of Regulatory Reform in the Telecommunications Industry, *Regulatory Reform in Canada From Transition to New Regulation Challenges*, 2002 at 6, available online at [www.oecd.org](http://www.oecd.org).

77. The evidence also strongly suggests that Bell et al. will not be hampered from innovating, as they suggest. Innovation in telecommunications products and services has rarely come from the former monopoly telephone providers, but has historically come from competitors and new entrants. The reason is simple: competitors have more to gain and less to lose from innovating than does the large former monopolies. Incumbents enjoy a dominant market share and do not share the same incentive or urgency to adopt new technologies to offer services at a lower price-point that will cannibalize their existing customer and revenue base.
78. It has only been after new products and services were introduced, and consumers began to demand these services that incumbents have responded. Indeed, in many cases their initial response has been to engage in anti-competitive behaviour. Eventually, seeing a threat to their market share, ILECs have drawn on their superior resources to offer a competing service, except of course the ILEC is not required to lease facilities in-territory.<sup>46</sup> And as the new offer grows, the customer-provided component is incorporated into the ILEC's network.
79. The provision of local VoIP is a perfect case in point: why did Bell wait to enter the market until after competition in VoIP services was already established in Canada? Why indeed, is Bell still the only major ILEC to roll out a VoIP service? Regulation is not the reason. It is questionable as to whether, in the absence of competition, Bell et al. would have felt compelled to introduce a local VoIP service at all, and hence provide Canadians with the innovation they claim is being denied to them. In any event, as discussed above, it is questionable whether the so-called VoIP service introduced by Bell is a local VoIP service at all.

**The mobile wireless and long distance markets are not relevant precedents**

80. Bell et al. spend considerable energy attempting to argue that local VoIP service is analogous to either wireless or to long distance and, consequently, that local VoIP services should similarly be forborne from regulation. However, this perspective ignores

---

<sup>46</sup> Typically competitors innovate by using a mix of competitor-owned and leased facilities in conjunction with equipment located at the customer's premises to offer creative alternatives to the incumbent's services.

both the history of the development of these services and the current reality of their place in the market.

81. In Attachment 1 to their submission "The competitive landscape", Bell et al. try to eradicate the distinction between local VoIP service and wireless telephony by arguing that Canadians have several different, equally substitutable, means of communications, and therefore that all should be forborne from regulation.<sup>47</sup>
82. A look at the history of wireless regulation, however, is instructive. The Government of Canada initially licensed two wireless service providers on a national basis in the mid 1980s -- i.e., CANTEL (now Rogers Wireless) and affiliates of the ILECs (now the incumbent Mobility companies) in their respective operating territories, creating a duopoly market structure. At the time, both players effectively were starting from scratch. They both had to build tower infrastructure, install switching systems, supply customers with handsets and develop billing and operations systems in order to provide customers with wireless service.
83. Measures were taken, however, to ensure that the incumbents did not have a head start, or gain a significant advantage over CANTEL in the provision of wireless services. Significantly, the incumbents were initially prevented from entering the market: they could only offer their wireless services through structurally separate affiliates, and had to refrain from joint marketing of wireless with existing wireline services. In addition, the ILECs were required to implement non-discriminatory interconnection arrangements for wireless services. Although the ILECs still had the advantage of having a ubiquitous wireline network in place at the time that would benefit them in terms of backhaul facilities, central office facilities, billing and operations experience, nevertheless, in effect, the launch of mobile wireless telephony services in the mid 1980s can be viewed as a good example of a "green field" market. The same cannot be said of the market for local voice service of which local VoIP services form part.
84. In addition, the licences granted to the two authorized wireless service providers stipulated that their services were to be launched at the same time -- thereby ensuring that the ILEC affiliates did not have a "head start" in the market. This allowed CANTEL

an equal opportunity to build out its wireless network at the same time as the ILEC affiliates and, given the licensing conditions, at a similar rate of geographic market expansion. As well, given that wireless is not a substitute for wireline service; the ILEC affiliates were not in a position to migrate existing wireline customers to the newly launched wireless services. These factors resulted in the two main players gaining comparable shares of total wireless service customers and revenues.

85. Indeed, notwithstanding that the advantages of incumbency were relatively less significant as they applied to mobile wireless services, when the Commission first forbore from regulation of wireless services, in 1994, it did not forbear in the case of those telephone companies providing primary exchange service. In other words, the former monopoly telephone companies were still subject to regulation.<sup>48</sup> In its 1994 decision, the Commission wrote: "the Commission does consider it appropriate that its determination to refrain should be subject to assurances that cellular activities are conducted at arm's length from the telephone company's regulated activities and that there is no cross-subsidization from monopoly revenues. Accordingly, the Commission will not refrain with respect to cellular operations carried on within a regulated telephone company (i.e., one providing primary exchange service)." (emphasis added) The Commission also applied safeguards to the conduct of the telephone companies vis-à-vis their relations with affiliates offering cellular service.<sup>49</sup>
86. It was not until 1999 – five years after it had made its first forbearance decision respecting wireless services – that the Commission forbore from regulating the provision of wireless services by the former monopoly telephone companies as well.<sup>50</sup> At that point, the CRTC found that the degree of competition in the market was sufficient to warrant forbearance, and determined that costing safeguards imposed since its 1994 decision would protect against anti-competitive behaviour.
87. MTS Allstream submits that the approach to forbearance taken by the Commission in respect of local VoIP services is wholly consistent with how the Commission has dealt

---

<sup>47</sup> at paragraphs. 12, 44-49.

<sup>48</sup> Telecom Decision CRTC 94-15, *Regulation of wireless services*, 12 August 1994, p. 3.

<sup>49</sup> *Ibid.* The decision not to forbear from wireless offered by the dominant telephone companies was retained in Telecom Decision CRTC 96-14, *Regulation of mobile wireless telecommunications services*, 23 December 1996.

<sup>50</sup> Telecom Order CRTC 99-991, 13 October 1999.

with forbearance of wireless services. Indeed, it reflects the Commission's continuing concerns that a market be appropriately and sustainably competitive prior to forbearing from regulating dominant providers in a manner to restrain their abuse of that dominance.

88. Bell et al. also mischaracterize the current state of wireless services in the market. Bell et al. argue that the growing penetration of wireless suggests that viewing wireline and wireless as distinct markets is no longer appropriate.<sup>51</sup> However, Bell et al. rest their argument on the assumption that wireless is being used as a substitute for fixed wireline services. This is simply not the case: although wireless penetration is growing in Canada, it is not becoming a substitute for local wireline voice. According to the 2005 Competition Report, while just under 54% of Canadian households had a wireless phone in 2003, a mere 2.5% of households had only a wireless phone – and this is after wireless telephony has been an option for Canadian consumers for over ten years.<sup>52</sup>
89. Moreover, it does not appear that wireless is going to become a substitute for local wireline telephony any time soon. Bell et al., in Attachment 1, cite the SeaBoard Group's estimate that by 2010, the wireless-only segment could represent 20% of the local market.<sup>53</sup> This projection is questionable. Given that between 1999 and 2003 wireless-only penetration grew by only an average of .5% per year (from .5% to 2.5%) – in a forbore environment, no less – continuing this rate of growth would mean that by 2010, wireless only would have only 6% penetration. The impact of wireless number portability remains to be seen. Significantly, when polled, fully 83% of Canadian consumers said they would not consider replacing their wireline telephones with wireless-only alternatives.<sup>54</sup>
90. The Commission is not alone in its assessment of mobile wireless service being in a different market from local wireline voice services. In its consideration of the merger of

---

<sup>51</sup> Bell et al Petition, Attachment 1, paragraph. 44.

<sup>52</sup> Competition Report, p. 12 (Table 3.4.1).

<sup>53</sup> Bell et al Petition, p. 3, paragraph. 3.

<sup>54</sup> Competition Report, p. 113 (Table 6.2.5).

Rogers with Microcell, the Competition Bureau, too, found that the two represented separate markets.<sup>55</sup>

91. As for the analogy between local VoIP services and the long distance market, Margaret Sanderson's argument in her comment on the Decision (Attachment 2 to Bell et al.'s Petition) is also misplaced. Sanderson argues that if functional substitution was paramount, then local VoIP services should be forborne, because circuit-switched long distance also allows for origination and termination of calls to the PSTN and is forborne.<sup>56</sup> However, this theory ignores the fact that the Commission expressly forebore from regulating long-distance VoIP when provided on a stand-alone basis. The only part of the VoIP market that the Commission has applied the regulatory framework to is local VoIP, which it deemed functionally equivalent to local voice services.

***The public interest lies in letting current proceedings run their course***

92. This year, the Government of Canada appointed a panel to review, among other things, Canada's telecommunications regulatory framework. The Telecommunications Policy Review Panel has undertaken a detailed and wide-ranging proceeding which deals with, among other things, telecommunications policy-making, regulation of telecommunications markets, broadband access, ICT adoption and the role of innovation. The Panel received over 100 submissions, including briefs from the Petitioners and every major telecommunications provider in Canada. It convened a forum in the Yukon and another in Ottawa with international experts. It is expected to write a comprehensive report with recommendations as to how best to implement a modern telecommunications framework that will benefit Canadian industry and consumers. This report is due to be provided to the Government before the end of 2005.
93. All of the issues raised by Bell et al. and the Coalition have been fully canvassed in the review, including the question of forbearance from regulating local exchange services and the role of VoIP in the new economy. MTS Allstream submits that good public policy requires allowing the Panel to write its report and recommendations, rather than pre-empting their conclusions.

---

<sup>55</sup> See *Acquisition of Microcell Telecommunications Inc. by Rogers Wireless Communications Inc.*, summary online at <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=257&lg=e>.

<sup>56</sup> Bell et al Petition, Attachment 2, p. 6.

94. Moreover, as discussed above, in April 2005 the Commission initiated a detailed proceeding to investigate the appropriate criteria for forbearance from regulating local voice;<sup>57</sup> despite the complexity of this issue, the Commission has undertaken to issue a decision in the first quarter of 2006, a mere few months hence. In this decision, the Commission will also address whether it would be appropriate to vary certain competitive safeguards pending forbearance. Any such relief would apply equally to the ILECs' VoIP services.
95. As the then-Minister of Industry Allan Rock noted in 2003, "the Governor in Council will rarely vary a decision of the Commission, except in extraordinary circumstances."<sup>58</sup> If the Governor in Council should only intervene to vary an existing decision in extraordinary circumstances, it should be even more wary of intervening in a proceeding that has not yet resulted in a determination by the Commission. MTS Allstream respectfully submits that the Government should not intervene to undercut the Commission's work, especially when many of the same issues that Bell et al. have raised in their petition are being addressed.
96. It is clear that the VoIP Decision is the Trojan horse in Bell et al.'s battle for the complete deregulation of the telecommunications industry. In other proceedings, Bell et al. have requested and received the streamlining of all regulation of retail services. Bell sought the Telecom Policy Review. Bell et al. have challenged the constitutionality of the winback rules as applied to local voice before the CRTC and local VoIP in the Federal Court of Appeal. Now Bell et al. are challenging the VoIP Decision to Cabinet. This petition is but the latest installment in a calculated onslaught to dismantle what remains of the regulatory regime and to permit Bell et al. to use their significant market power to continue to dominate the Canadian telecommunications industry.

---

<sup>57</sup> Telecom Public Notice CRTC 2005-2, *Forbearance from regulation of local exchange services*, 28 April 2005.

<sup>58</sup> H. Janisch, "Firing on All Cylinders: Responsibilities in Canadian Telecommunications Regulation", attached to TELUS Communications Inc. submission – Telecommunications Policy Review, 15 August 2005 at paragraph. 32.

97. Contrary to the claims made by Bell et al. and the Coalition, this is not an extraordinary situation meriting the Governor in Council's intervention. Given that all of these issues are currently under consideration in other fora, the Governor in Council should exercise its discretion to deny these petitions.

\*\*\*END OF DOCUMENT\*\*\*