



**Canadian Network Operators Consortium Inc.  
Consortium des Opérateurs de Réseaux Canadiens Inc.**

January 21, 2013

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John Traversy  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Gatineau, Quebec  
K1A 0N2

Dear Mr. Traversy,

**Subject: Allstream Inc. Part I Application regarding CDN DS-1 Intra-exchange channels and DS-3 accesses leased from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (CRTC File No. 8622-M59-201300095)**

1. In accordance with Part I of the *CRTC Rules of Procedure* (“Rules”), Canadian Network Operators Consortium Inc. (“CNOC”) wishes to be considered an intervener in the proceeding initiated by Allstream Inc. (“MTS Allstream”) by way of the above-cited application (“Application”). This constitutes the intervention of CNOC with respect to the Application.

2. In the Application, MTS Allstream is seeking an order from the Commission directing Bell Aliant Regional Communications, Limited Partnership and Bell Canada (“Bell”) to allow wholesale facilities and services leased from Bell to be available for resale, other than simple resale, irrespective of whether the service in question is forborne or continues to be regulated. MTS Allstream is making this request because it has received notice from Bell that Bell will prohibit the resale of forborne wholesale services to other telecommunications service providers (“TSPs”), which will prevent MTS Allstream from fulfilling orders for additional access and transport to existing customers.

3. MTS Allstream is also requesting that Bell be directed to: (i) grandfather the current competitive digital network access (“CDN”) wholesale tariffed rates for those DS-1 intra-exchange channels between Bell central offices (“COs”) that are being migrated to Bell’s retail DS-3 channel service pursuant to MTS Allstream’s 2 March 2012 request, until such time as Bell has completed those migrations; and (ii) grandfather rates for in-

service CDN DS-3 access services at least until the planned review of the essential services policy has been completed. By grandfathering the existing CDN rates for in-service demand only, forbore rates would apply to any new demand.

4. Finally, MTS Allstream is seeking to advance to 2013 the Review of Essential Services Policy currently scheduled in the Commission's three year plan to take place in 2014-2015.

5. CNOC fully supports all of the relief sought in the MTS Allstream Application with the exception of the advancement of the Review of Essential Services Policy to 2013.

6. A number of other TSPs rely on the resale to them by MTS Allstream of the wholesale services provided by Bell to which the Application relates. If resale of these services is no longer allowed, those competitive TSPs will not have any meaningful option other than Bell for future growth.

7. The absence of Bell forbore services will also end up removing other competitive choices dependent on the Bell services from the market. For example, it is common for competitive TSPs to purchase MTS Allstream access and backhaul services together. In such cases, MTS Allstream provisions the backhaul elements itself but the access is provided through DS-3s that MTS Allstream leases from Bell. Removal of the resale of the access component will mean that the business case for competitors to purchase MTS Allstream backhaul services is also significantly diminished. This is because competitors will have to purchase the access directly from Bell or MTS Allstream will have to provide the Bell access component at the significantly higher DNA rates for the DS-3 access component. In such cases, competitors will not want to pay the higher access rates by purchasing the service from MTS Allstream, and this will also lead to a reduction in the demand for the closely related MTS Allstream backhaul services as well. Thus, the absence of resale of the Bell access component will lead to an undue lessening of competition in the markets for both access and backhaul services. Accordingly, the resale restrictions sought by Bell will have cascading consequences to competitive markets that extend far beyond the market for DS-3 services and DS-1 intra-exchange services.

8. In other words, if wholesale facilities and services leased from Bell are no longer available for resale after those services are forborne, one of the very sources of supply on which the Commission relied to justify forbearance of access and transport services will be removed from the marketplace.<sup>1</sup>

9. CNOC further notes that, in Telecom Decision CRTC 2008-17, the Commission retained its jurisdiction under section 24 of the *Telecommunications Act*<sup>2</sup> (“*Act*”) “to impose future conditions upon the forborne services, as warranted.”<sup>3</sup> Given the impact of the removal of resale of these services just described, it would be entirely appropriate for the Commission to impose a condition, pursuant to section 24 of the *Act*, requiring Bell to allow the resale of wholesale facilities and services once forborne. This condition is just as essential to protecting consumers, as conditions imposed on carriers and the TSPs that resell carrier services, such as requirements to protect the confidentiality of end-user information and abide by applicable VoIP 9-1-1 obligations.<sup>4</sup>

10. Similarly, if the current tariffed CDN rates, terms and conditions for in-service DS-1 intra-exchange channels are not maintained at current levels pending successful completion of MTS Allstream’s 2 March 2012 request to migrate these channels to Bell’s retail DS-3 channel service, TSPs that obtain access to the underlying Bell CDN facilities through MTS Allstream will be subject to an enormous price increase for in-service DS-1 intra-exchange channels once those channels are forborne from rate regulation. The same outcome will occur in the case of DS-3 access services if the current tariffed CDN rates, terms and conditions for in-service DS-3 access services are not maintained pending a final determination in the upcoming Review of Essential Services Policy.

11. Moreover, the negotiation history between Bell and MTS Allstream recounted in the Application also amply demonstrates that Bell enjoys significant market power with regard to the wholesale services in question. It is not reasonable to expect that the problems identified above can be resolved through negotiations with Bell, since Bell stands to gain by winning end-users through the exercise of its market power. Accordingly, unless the Commission grants the relief sought by MTS Allstream in the Application, there will be an undue lessening of competition in the downstream markets for retail services.

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<sup>1</sup> See paragraphs 117 and 118 of Telecom Decision CRTC 2008-17.

<sup>2</sup> S.C. 1993, c. 38.

<sup>3</sup> Telecom Decision CRTC 2008-17, at paragraph 190.

<sup>4</sup> See, e.g., paragraphs 20 and 21 of Telecom Regulatory Policy CRTC 2009-723 and paragraphs 13 and 14 of Telecom Decision CRTC 2012-137.

12. For all of these reasons, CNOC urges the Commission to grant, as soon as possible, the relief requested in the MTS Allstream Application with respect to resale of wholesale services, as well as the maintenance of the prices, terms and conditions of DS-1 intra-exchange channels and DS-3 access services, pending the upcoming Review of Essential Services Policy. For clarity, the order allowing resale of carrier services should apply to all carrier services, inclusive of those forborne and pending forbearance.

13. However, CNOC does not support the advancement of the Review of Essential Services Policy to 2013. The grandfathering of rates, terms and conditions for in-service Bell wholesale services until the Commission makes a determination in the upcoming Review of Essential Services Policy as requested by MTS Allstream is a reasonable and minimally intrusive regulatory measure, whereas advancing the Review of Essential Services Policy will impose a significant and unnecessary regulatory burden on the Commission and all parties from a resource, planning, cost and preparation perspective.

Yours very truly,

William Sandiford  
Chair of the Board and President

Copy: Teresa Griffin-Muir, Allstream Inc. (via email)  
List of Parties per CRTC letter dated 10 January 2013 (via email)  
Mario Bertrand, CRTC (via email)

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