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11 February 2021 **by GCKey**

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Mr. Doucet,

Subject: Part 1 Application by CNOC seeking expedited and temporary relief in the form of wholesale resale of retail Internet services provided over FTTP facilities – Intervention of Allstream, Commission file # 8622-C347-202100080

1. Allstream Business Inc. ("Allstream")[1] is filing this intervention in response to the above-cited application filed by the Competitive Network Operators of Canada ("CNOC") on 8 January 2021.

2. CNOC's application highlights the absence of service-based competition with Incumbent[2] Fibre-to-the-Premises ("FTTP") facilities as promised by the Commission more than five years ago. Their frustrations are shared by the many proponents of fair and open competition, who fear that final implementation of the Commissions' promises may be years away.

3. CNOC is seeking an expedited order from the Commission requiring Incumbents to provide Retail Internet Service Resale ("RISR"), with wholesale prices set 25% below the lowest non-zero retail prices. The requirement for Incumbents to provide RISR would remain until various outstanding proceedings have been resolved and service-based competition is realized over FTTP facilities.

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1 Allstream is an independently operated, wholly owned subsidiary of Zayo Canada Inc. ("Zayo"). Allstream provides IP, cloud, voice and data solutions to business customers (https://allstream.com/about-us/).

2 "Incumbent" refers to the ILECs and Cable Carriers that were obligated to provide such access in Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*, 22 July 2015 ("TRP 2015-326").

4. Allstream supports CNOC's position, with the stipulation that Competitor access to Incumbent FTTP facilities must remain the priority, and implementation of RISR should in no way be used to justify further delays in achieving that priority.

Protecting the interests of consumers

5. Consumers continue to migrate in ever-increasing numbers to ever-faster retail Internet services. The current pandemic has demonstrated the importance of High Speed Internet Access ("HSA"); the migration to HSA has accelerated due to increased demands to connect remotely for work, school, shopping, entertainment, consulting with doctors, attending church, and so much else.

6. ILECs provide retail Internet services at speeds up to 1.5 Gbps, yet generally provide mandated wholesale services at or below 100 Mbps[3] because they continue to maintain monopoly use of their FTTP facilities (as they have for more than a decade). In contrast, Cable Carriers generally offer retail Internet speeds of up to 1 Gbps and make those speeds available to competitors on a wholesale basis.

7. Though the fibre reach of Competitors continues to expand, it is generally targeted to denser areas, downtown cores, business parks, or new multi-unit construction. Collectively, this footprint pales in comparison to those of the Incumbents.

8. Competitors continue to invest in access fibre to the extent they can, but face obstacles at every turn. Access to poles or conduits can be denied for lack of space. Similarly, governments can be reluctant to grant permits to duplicate facilities of the Incumbents, or to use alternate rights of way. Even if these obstacles can be overcome, a Competitors' resultant small market share is often insufficient to justify the building of fibre facilities. It is also prohibitively difficult for a Competitor to create their own access in order to compete. It is often not in the public interest for a Competitor, (let alone multiple Competitors simultaneously), to compete with Incumbent facilities by digging up lawns and driveways, invading backyards to string aerial cable or endlessly disrupt downtown traffic to pull

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3 With the exception of a 150 Mbps bonded service from TELUS Communications Inc.

underground cable. The Commission recognized this fact when they stated "…it is not practical or feasible for competitors to duplicate the access component of wholesale HSA services, including those over FTTP access facilities."[4] The obvious result of the impracticability of Competitors creating ubiquitous infrastructure is their reliance on access to Incumbents' infrastructure.

9. For Internet services at speeds above 1 Gbps, the ILECs have significant market power in the retail market. Competitive forces are clearly absent in this market segment, which disadvantages consumers. Steps must be taken to protect the interests of consumers.

10. Furthermore, for speeds above 100 Mbps and up to 1 Gbps, the retail market is constrained and distorted due to the regulatory asymmetry mandating that Cable Carriers, (but not ILECs) provide wholesale services. This asymmetry unjustifiably violates the policy objective of technological neutrality by favouring ILEC access networks over Cable Carrier access networks, and more specifically by favouring FTTP facilities over other access facilities. It would be in the interest of consumers for ILECs to be subject to the same mandate as Cable Carriers.

No risk to Incumbents' investments in fibre

11. Incumbents will likely respond to CNOC's application with renewed threats to reduce or discontinue investments in FTTP facilities. Incumbents have significant incentive to invest in fibre expansion regardless of these threats. It is in the interest of Incumbents to continue to expand FTTP facilities regardless of Competitors' wholesale access to them. This is evidenced by the fact that Incumbents have continued to deploy FTTP facilities despite the fact that wholesale access to them has been mandated since TRP 2015-326, five and a half years ago.[5]

12. The Commission has previously examined the potential risk to Incumbents' FTTP investments and determined "the negative impact on investment is not likely to happen to

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[4] TRP 2015-326, paragraph 136.

[5] See, for example, https://www.bell.ca/connectcanada where talks about its plans to invest at least $1 billion dollars over the next two years in network expansion.

any significant degree, particularly in more urban areas."[6] Furthermore, the Commission concluded that any investment risk "can be attenuated by providing the incumbent carriers with a reasonable rate of return."[7]

13. RISR as proposed by CNOC would provide wholesale customers a 25% discount below retail rates, likely barely enough to reflect the many customer-facing costs that will be shifted from the Incumbents to their wholesale customers. This poses no investment risk to Incumbents, and in fact likely preserves the lion's share (if not all) of the Incumbents' profit.

Wholesale FTTP is essential, RISR necessary as stop-gap

14. Allstream, like other Competitors, continues to await the promised implementation of wholesale access to FTTP facilities. The Commission has confirmed the essentiality of wholesale availability of FTTP facilities[8] and has also confirmed that such availability is consistent with applicable policy considerations.[9]

15. Wholesale access to FTTP facilities remains the essential cornerstone to ensuring sufficiently vigorous competition in the provision of retail Internet services, at all speeds, to protect the interests of consumers. It is critical that the Commission continue to use the utmost urgency in addressing the various outstanding proceedings which must be resolved for this promise to be fulfilled.

16. Competitors have been shut out of using FTTP facilities for more than a decade, and for more than five years since such use has been mandated. Competitors and consumers all suffer because of this.

17. Since actual implementation of wholesale access to FTTP facilities is likely still years away, the Commission must take immediate steps to rectify the current market failures.

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[6] TRP 2015-326, paragraph 141.
[7] TRP 2015-326, paragraph 142.
[8] TRP 2015-326, paragraph 137.
[9] TRP 2015-326, paragraphs 256 – 262.

As explained by CNOC, RISR is a simple, expedient and fair interim measure that has proven effective in previous situations.

18. It must be emphasized though that while RISR may be appropriate as a stopgap measure, it is in no way an acceptable long-term alternative to wholesale access to FTTP facilities. RISR will allow Competitors to acquire and serve customers they could not otherwise reach using competitive or wholesale facilities. However, RISR leaves Competitors with little flexibility on pricing and no control of service design, features, or customer installation and repair.

Conclusion

19. For the reasons set out above, Allstream supports CNOC's application requesting mandated resale of retail Internet services provided over FTTP facilities, on an expedited and temporary basis, with wholesale prices set 25% below the lowest retail prices. In addition, Allstream urges the Commission to continue to apply the utmost urgency to resolving the outstanding proceedings in order to deliver wholesale access to FTTP facilities.

Sincerely,

Douglas Denney
Vice President, Costs & Policy

cc: CNOC – regulatory@cnoc.ca

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