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January 16, 2012

Mr. John A. Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: MTS Allstream Part I Application for Reclassification of Ethernet Services and Ancillary relief – Intervention of Distributel Communications Limited

Dear Mr. Traversy,

1. Distributel Communications Limited ("Distributel") is in receipt of the Part I application of MTS Allstream Inc. dated November 25, 2011 ("Application") requesting reclassification of wholesale Ethernet services and certain ancillary relief.

2. Specifically, MTS Allstream Inc. (MTS Allstream) requests that the Commission address the situation of the lack of competition in the business market, resulting from non-mandated Ethernet access and transport services, through the:

- a) Reclassification of wholesale Ethernet Access and Transport services from the "non-essential subject to phase-out category as follows;
 - i. Ethernet Access services (EAS) to the "conditional essential" category of wholesale services; and
 - ii. Ethernet Transport services (ETS) to the "conditional mandated non-essential: category of wholesale services.
- b) Unbundling of wholesale EAS and ETS services so that competitors can obtain the services individually or together; and
- c) Variance of the Commission's determination to forbear from exercising certain of its powers in respect of wholesale EAS and ETS, all as set out in Telecom Decision CRTC 2008-17 *Revised regulatory framework for wholesale and definition of an essential service*, 3 March 2008 (the Essential Services Decision)

3. EAS and ETS are inputs that are required by competitors in order to offer innovative services to their retail business customers, and Distributel agrees with MTS Allstream that services that satisfy the Commission's test used to determine if a wholesale service should be classified as conditional essential or conditional mandated non-essential.

4. Ethernet and IP facilities have become the de facto standard for high speed business data connections. The ability to provide Ethernet services is paramount if a competitor is to deliver today's advanced telecommunications services, such as SIP trunking and MPLS services.

5. Distributel concurs with MTS Allstream's submission that the ILEC Ethernet infrastructure is not duplicable, and Distributel provides some additional comments on the lack of widespread alternative supply for these services, as well as Distributel's own insight on the view that absent mandated access, reasonable negotiations with the ILECs for these services will not work.

Lack of Widespread Alternative Supply

6. In the Essential Services Decision the Commission branded CDN DS-3, OC-3, OC-12 and Ethernet services as fibre-based access and transport services and concluded that these would be classified as non-essential subject to phase out since the evidence on the record in the proceeding indicated a high incidence of competitor self-supply and that there was a reported level of alternative supply that demonstrated the existence of competition in the marketplace.¹

7. Distributel maintains the view it submitted in the proceeding leading up to the Essential Services Decision that the ILECs and cable companies remain dominant in the supply of key network elements required by competitors.²

8. The lack of widespread supply of key network elements, such as EAS and ETS, is even more apparent today than in the period leading up to the Essential Services Decision.

9. The aforementioned level of alternative supply included various Utility Telecom Providers (UTELCOS), such as Blink Communications Limited, Toronto Hydro, Maxess Networkx and Telecom Ottawa.

10. Since issuance of the Essential Services Decisions there has been consolidation of many of the various UTELCOS, for example:

- i) Toronto Hydro was acquired Cogeco Data Services in August 2008³;
- ii) Maxess Networkx was acquired by Cogeco Data Services⁴;
- iii) Telecom Ottawa was acquired by Atria which in turn has been acquired by Rogers⁵; and

¹ CRTC Telecom Decision 2008-17, paragraphs 117-119

² Supplementary evidence of Distributel Communications Limited dated July 5, 2006 – paragraph 44

³ <http://www.torontohydro.com/sites/corporate/Newsroom/Pages/TorontoHydroCorpAnnouncestheSaleofTorontoHydroTelecomInc.aspx>

⁴ http://www.cogeco.ca/export/sites/cogeco/corporate/files/press_releases_en/cca_pr_eng_maxess_closing.pdf

⁵ <http://www.atrianetworks.com/news/hydro-ottawa-to-sell-telecom-ottawa-to-atria-networks-for-63-million/>

iv) Blink Communications was acquired by Rogers in January 2010⁶.

11. This consolidation has resulted in even fewer options for alternative supply of Ethernet access services.

Negations will not work

12. As stated by MTS Allstream, the idea of being able to rely on negotiations for access sounds reasonable and appealing, however in the absence of competitive alternative supply it just does not happen in practice.

13. Since the phase out of certain services, in accordance with Essential Services Decision, Distributel's own experience with the reality of trying to negotiate rates for access facilitates with an ILEC who has market power and is not facing competitive supply is consistent with some of the "Bell behaviours" experienced by MTS Allstream, evidence that reasonable negotiated wholesale arrangements are not present in the market place.

14. For example, the wholesale rates Bell Canada offered to Distributel for a CDN intra-exchange facility, used between ILEC central offices within the **same exchange** (emphasis added), were higher than the current mandated, retail equivalent DNA rates contained in Bell Canada's NST Tariff.

15. Furthermore, the rate offered to Distributel on a 1 year term for a CDN intra-exchange facility was roughly the same as the rate it had secured from Bell for a forborne IXPL facility on a route that is over 100km, and twice the rate of another IXPL facility obtained from Bell Canada on a route that is approximately 50 km.

16. In both IXPL routes, there are established competitive options for these services, thus evidencing the claim MTS Allstream puts forth, the greater the market power of the incumbent, the more easily it can thwart competition.

17. Ethernet facilities are the foundation of advanced data business services and are a critical network facility for competitors. Distributel believes that EAS and ETS satisfy the Commission's criteria for classification as conditional essential and conditional mandated non-essential, respectively. Allowing these services to be phased out without sufficient alternative supply will result in, as indicated by MTS Allstream, lower investment, fewer choices and higher prices for Canadians, all contrary to the Policy Objectives in the *Telecommunications Act*.⁷

⁶ <http://www.torontohydro.com/sites/corporate/Newsroom/Pages/TorontoHydroCorpAnnouncestheSaleofTorontoHydroTelecomInc.aspx>

⁷ *Telecommunications Act*, S.C. 1993, c. 38 section 7 (b) (c)

18. For all the reasons submitted herein, Distributel urges the Commission to order the requested in the MTS Application.

Yours truly,

A handwritten signature in blue ink, appearing to read "Don Cavanagh", with a stylized flourish at the end.

Don Cavanagh

cc: MTS Allstream

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