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**Jonathan L. Holmes**  
Executive Director  
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17 May 2019

Mr. Anthony Durocher  
Deputy Commissioner, Mergers  
and Monopolistic Practices Branch  
Monopolistic Practices Directorate  
Competition Bureau  
50 Rue Victoria  
Gatineau, Quebec K1A 0C9  
email: anthony.durocher@canada.ca

Dear Mr. Durocher:

**Subject: Complaint from the Independent Telecommunications Providers Association on behalf of its members regarding an anti-competitive act by Bell Canada**

1. The Independent Telecommunications Providers Association (“the ITPA”) represents twenty-one small telecommunications providers that together serve approximately 180,000 access lines across rural Ontario, Quebec and British Columbia.<sup>1,2</sup> On behalf of its members, the ITPA is submitting this letter to the Competition Bureau of Canada (“the Bureau”), seeking the following:

- An investigation by the Bureau into price increases recently announced by Bell Canada (“Bell”) applicable to Unbundled Local Loops (“ULLs”), which are facilities leased by Bell’s competitors in order to provide retail services in competition to Bell;
- A finding that these price increases are evidence of Bell’s abuse of its dominant position and constitute an anti-competitive act by Bell within the meaning set out in

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<sup>1</sup> A list of ITPA member companies can be found in the Appendix.

<sup>2</sup> Maps identifying ITPA member companies’ incumbent and CLEC exchanges can be found at [www.itpa.ca](http://www.itpa.ca).

section 78 (1) of the *Competition Act*, in particular paragraph (a) concerning margin squeezing and paragraph (e) regarding pre-emption of scarce facilities;

- A directive requiring that Bell to stay price increases scheduled to take effect on (or after) 1 June 2019, or if Bell has already implemented such price increases, a directive requiring that Bell reverse those price increases and issue credits of the incremental amount billed within thirty days; and
  - Any other such actions as the Bureau deems appropriate.
2. Each ULL is a pair of copper wires connecting a retail customer to the incumbent telephone company's central office, leased by a competitive service provider as a means of providing competition for local phone service, Internet access service, or other services such as alarm and telemetry channels. ULLs are provided by Bell across its incumbent territories, which include the majority of Ontario and Quebec and (through acquisitions of other ILECs) the entirety of Manitoba and all four Atlantic provinces. ULLs are also provided by TELUS Communications Company in Alberta and British Columbia and by Saskatchewan Telecommunications in Saskatchewan.
  3. This letter pertains to ULLs leased from Bell in Ontario and Quebec by ITPA member companies. ITPA member companies have no concerns to date with ULL prices in British Columbia, and do not lease ULLs in Saskatchewan or in Bell's territories in Manitoba and the Atlantic provinces (which have all been subject to price increases by Bell).

## **Background**

4. In 1997, the Canadian Radio-Television and Telecommunications Commission ("CRTC") introduced competition in Canada's local telephone services marketplace to provide consumers with greater choice and innovation.<sup>3</sup> At the time, the CRTC recognized that competitors could perform many of the functions performed by then-monopoly incumbent telephone companies such as Bell (also called Incumbent Local Exchange Carriers, or "ILECs") including connecting calls, providing operator services,

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<sup>3</sup> Telecom Decision CRTC 97-8, *Local Competition*, 1 May 1997.

and routing emergency calls. However the CRTC also recognized that competitors could not feasibly duplicate the local loop connecting customers to the central offices of the ILECs. The CRTC ordered ILECs to unbundle the local loops from the other components of local telephone service, and provide ULLs to competitors on a wholesale basis.

5. The CRTC determined that ULLs should be priced according to approved costing methodology plus a markup of 15%. Bell's ULL prices were most recently reviewed in 2012.<sup>4</sup>
6. Over the years, competitors have served hundreds of thousands of customers using ULLs. However the CRTC determined that regulation of ULLs could be discontinued starting in 2018.<sup>5</sup> Continued use of ULLs is now subject to unpredictable pricing and servicing, potential unavailability for new retail customers, and potential withdrawal of availability for existing customers.
7. Aside from ULLs, competitors can deploy their own access facilities (subject to many constraints including capital, permits, construction intervals, access to conduit and poles and rights of way, etc.) or they can order unbundled wholesale Internet access services from ILECs or incumbent cable operators (paying others for functions they can perform themselves, and also subject to many constraints including high set-up charges and very limited rollout capacity dictated by the incumbents). In general, ITPA members and other competitors who currently lease ULLs are actively deploying their own facilities and also leasing bundled wholesale Internet access services, but remain several years away from being able to use these options to serve customers currently served using ULLs. However these price increases may force some ITPA members to exit markets they currently serve, ceding those retail customers back to Bell and severely curtailing competitive market forces in those areas/markets.

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<sup>4</sup> Telecom Decision CRTC 2012-628, *Applications to review and vary Telecom Decision CRTC 2011-24 regarding rates for unbundled local loops provided by Bell Aliant Regional Communications, Limited Partnership and Bell Canada in Ontario and Quebec*, 15 November 2012.

<sup>5</sup> Telecom Regulatory Policy CRTC 2015-326, *Review of wholesale wireline services and associated policies*, 22 July 2015. The CRTC retained limited powers, for example to address unjust discrimination and undue preference or to impose conditions of service.

## Bell Canada's price increases for ULLs

8. On 15 January 2019, Bell sent notice to ITPA members of price increases for ULLs to be effective 15 February 2019. On 1 May 2019, Bell sent notice to ITPA members of additional price increases to be effective 1 June 2019. The cumulative effect has been to more than double many prices, with the highest increase being 251%. Price increases were applicable to all ULLs across all seven provinces where Bell operates as the ILEC, though ITPA's members are only affected by the increases in Ontario and Quebec. Those increases (which were not designated "confidential" by Bell) are as follows:

### Monthly prices for Unbundled Local Loops as communicated by Bell Canada to ITPA Members

Ontario / Quebec Region 1 Loop Type A	Price to 14 Feb 2019	Price as of 15 Feb 2019	Price as of 1 June 2019	Increase 15 Feb 2019	Increase 1 June 2019	Cumulative Increase
Band A	\$5.69	\$7.11	\$20.00	25%	181%	251%
Band B	\$11.52	\$14.40	\$30.00	25%	108%	160%
Band C	\$13.80	\$17.25	\$32.00	25%	86%	132%
Band D	\$15.95	\$19.94	\$35.00	25%	76%	119%
Band E	\$26.31	\$32.89	\$40.00	25%	22%	52%
Band F	\$21.86	\$27.33	\$40.00	25%	46%	83%

Ontario / Quebec Region 2 Loop Type A	Price to 14 Feb 2019	Price as of 15 Feb 2019	Price as of 1 June 2019	Increase 15 Feb 2019	Increase 1 June 2019	Cumulative Increase
Band A	\$8.50	\$10.63	\$20.00	25%	88%	135%
Band B	\$10.34	\$12.93	\$30.00	25%	132%	190%
Band C	\$13.01	\$16.26	\$32.00	25%	97%	146%
Band D	\$15.29	\$19.11	\$35.00	25%	83%	129%
Band E	\$27.84	\$34.80	\$40.00	25%	15%	44%
Band F	\$27.30	\$34.13	\$40.00	25%	17%	47%

Ontario / Quebec Region 1 & 2 Loop Type B	Price to 31 May 2019	Price as of 1 June 2019	Increase 1 June 2019
Band A	\$13.33	\$30.00	125%
Band B	\$27.29	\$40.00	47%
Band C	\$41.89	\$50.00	19%
Band D	\$28.59	\$40.00	40%
Band E	\$34.48	\$50.00	45%
Band F	\$37.18	\$50.00	34%

Regions 1 and 2 are defined in Bell General Tariff (CRTC 6716), item 60. Generally speaking, Region 1 is the Windsor to Quebec City corridor and Region 2 is the rest of Bell's incumbent territory in Ontario and Quebec.

Band A includes the urban core of major cities; successive bands are less dense, with Band F generally including the smallest, least dense and most remote areas in Bell's territory.

Loop Types A and B have different design criteria and performance characteristics.

9. To date, Bell has not indicated when prices will increase again, but given two increases in less than four months, ITPA members would not be surprised if Bell plans to increase prices again in another few months.
10. ITPA has not been able to confirm whether other competitors who lease ULLs from Bell have been subject to the same increases, different increases, or no increases at all. The experience of ITPA members is that they have no ability to negotiate with Bell on proposed price increases. Bell has consistently refused to back away from its expectation of higher revenue, requiring ITPA members to commit to at least \$1 of incremental spending on other products or services for every \$1 of relief on the proposed price increases.

## **Bell's price increases constitute an anti-competitive act**

11. ITPA believes that Bell's price increases for ULLs meet the definition of an anti-competitive act, as set out in the following two paragraphs of section 78 (1) of the *Competition Act*:
  - a) (a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market; and
  - b) (e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market.
12. Bell's price increases mean that many ULLs will be priced higher than \$32.00 which is approximately the upper limit Bell is allowed to charge for standalone residential local phone service. Since many ULLs are used to provide standalone residential local phone service in direct competition to Bell, the margin squeeze means it will no longer be possible for competitors to cover their costs while charging a competitive price. Even for higher-revenue services such as Internet access, the margin squeeze will severely impede a competitor's ability to remain in a market, let alone expand in that market.
13. Bell's price increases also have the effect of pre-empting scarce facilities resulting from the high prices effectively withholding them from the market.

## **Bell Canada's troubling pattern of misconduct**

14. It should be noted that Bell is no stranger to claims and findings of violations of various rules and regulations. Bell has repeatedly been found to be in violation of the *Competition Act* and the *Telecommunications Act*, and is currently under investigation for other potential violations. Over the past decade alone:
  - a) Bell is currently under investigation by both the Bureau and the CRTC (acting on direction from the federal government) for aggressive retail sales practices,

exposed by the CBC in 2018 in a hidden-camera investigation.<sup>6</sup> It may be reasonable to speculate that the current scrutiny on these practices has led to greater discipline by Bell in that area, resulting in Bell taking aggressive steps in other areas such as ULL pricing to generate the revenue increases that aren't being generated in the retail market.

- b) In 2018, Allstream Inc. filed an intervention with the CRTC which included allegations that Bell repeatedly violated its duty of confidentiality to wholesale customers by using, to advance its own interests, data available exclusively to Bell by virtue of its role as a provider wholesale services. That application is still before the CRTC.<sup>7</sup>
  - c) In 2015, Bell paid a fine of \$1.25M following an investigation by the Bureau into misleading sales tactics, characterized as “astroturfing”.<sup>8</sup>
  - d) Also in 2015, the CRTC issued a ruling that Bell and Videotron were violating the *Telecommunications Act* by giving preferential treatment to their own content on their wireless networks, and directed these companies to stop doing so.<sup>9</sup>
  - e) In 2011, Bell paid \$10M following an investigation by the Bureau into misleading advertising, which involved advertising prices which did not include all mandatory charges and which therefore could not be received by customers.<sup>10</sup>
  - f) In 2010, Bell paid a \$1.3M penalty imposed by the CRTC for violations of the telemarketing rules.<sup>11</sup>
15. The above incidents represent a troubling pattern of behavior by a company apparently unwilling or unable to learn from past mistakes.

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<sup>6</sup> <http://www.cbc.ca/news/business/hidden-camera-reveals-misleading-sales-tactics-for-bell-1.4556536>

<sup>7</sup> CRTC file # 8640-B2-201801225

<sup>8</sup> Bell employees posted extremely favourable online reviews of Bell products, without identifying themselves as Bell employees. <https://www.theglobeandmail.com/report-on-business/industry-news/marketing/bell-to-pay-125-million-penalty-for-fake-reviews/article26806629/>

<sup>9</sup> <https://www.cbc.ca/news/business/crtc-backs-net-neutrality-in-ruling-against-apps-that-favour-certain-content-1.2936358>

<sup>10</sup> Competition Bureau reaches agreement with Bell Canada requiring Bell to pay \$10 million for misleading advertising, 28 June 2011, <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03388.html>

<sup>11</sup> <http://www.cbc.ca/news/business/bell-fined-1-3m-for-breaking-do-not-call-rules-1.960118>

## Summary and conclusion

16. ITPA submits that Bell is abusing its dominant position and committing an anti-competitive act by increasing monthly prices for ULLs twice in less than four months, with increases as high as 251%. As a vertically-integrated supplier, Bell is squeezing the margin available to unintegrated customers who compete with Bell, and is pricing scarce facilities with the intent of pre-empting their use by Bell's competitors.
17. ITPA requests that the Bureau investigate Bell's actions, find Bell in contravention of the Competition Act, require Bell to roll back price increases taking effect on or after 1 June 2019, and take any other actions it deems appropriate.
18. By addressing the matters raised in this letter, the Bureau will be protecting the interests of retail customers of competitive telecommunications service providers.

Yours truly,

A handwritten signature in black ink that reads "Jonathan Holmes". The signature is written in a cursive, slightly slanted style.

Jonathan L. Holmes

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## Appendix

### **Independent Telecommunications Providers Association (ITPA)**

9315-1884 Québec inc.  
Brooke Telecom Co-operative Limited  
Bruce Telecom  
City West Cable & Telephone Corp.  
Cochrane Telecom Services  
CoopTel  
Execulink Telecom Inc.  
Gosfield North Communications Co-operative Limited  
Hay Communications Co-operative Limited  
Huron Telecommunications Co-operative Limited  
The Lansdowne Rural Telephone Company Limited  
Mornington Communications Co-operative Limited  
Nexicom Inc.  
North Frontenac Telephone Corporation Limited  
North Renfrew Telephone Company Limited  
Quadro Communications Co-operative Inc.  
Roxborough Telephone Company Limited  
Sogetel inc.  
Tuckersmith Communications Co-operative Limited  
Wightman Telecom Limited  
WTC Communications